

January 24, 2021
Testimony to the **House Judiciary Committee**
By Leah Carlson
Testimony In Opposition to HB 1228

Chairman Klemin and Committee Members:

My name is Leah Carlson and I am an attorney in West Fargo, ND. I practice primarily criminal defense at the state and federal level. I am **opposed** to HB 1228.

Presently, the plain language of N.D.C.C. § 12.1-32-07.4 requires a court to initially sentence an individual who has been convicted of a class A misdemeanor or a class C felony to a term of probation. As you are aware, this is known as “presumptive” probation. Typically, presumptive probation applies in cases involving first time offenders. The law includes exceptions to presumptive probation in cases involving particular offenses or the presence of aggravating factors, thus allowing a court to impose a sentence of imprisonment.

HB 1228 seeks to add as an aggravating factor, “Any other factor determined by the court to be appropriate.” Including this language as an aggravating factor undermines the mandatory presumption of probation provided for by this law. This amendment would provide a broad, catch all factor under which a court could choose not to impose probation for virtually any reason. It would essentially eliminate presumptive probation and render the current law useless.

For this reason, I urge a **DO NOT PASS** on HB 1228.

Thank You,

Leah R. Carlson

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