

Engrossed House Bill 1287
Senate Judiciary Committee
March 10, 2021
Neutral Testimony of Travis W. Finck
Executive Director, NDCLCI

Madam Chair, members of the Senate Judiciary Committee, my name is Travis Finck and I am the executive director for the North Dakota Commission on Legal Counsel for Indigents. The Commission is the state agency responsible for the delivery of indigent defense services in North Dakota. On behalf of the Commission on Legal Counsel, I rise today to provide neutral testimony on Engrossed House Bill 1287.

The Commission expressed concerns when discussing this bill after the passage through the House. The first issue of concern was the proximate cause, or lack of proximate cause, this section seems to require. A trademark of a criminal statute is a proximate cause between the action of the accused and the harm or wrong suffered. Whilst HB 1287 seeks to address the harm of providing drugs to an individual who then overdoses, it is written in such a way where a proximate cause is not required for the increased penalty to apply. The death of the individual is tied to the use of the controlled substance. However, it is not required to be an overdose death. Hypothetically, this could be used when an individual shares their drugs at a gathering, the person who consumes the drugs cuts themselves while using, walks to the hospital and is run over by a truck and is killed. Who would be responsible for the death, the truck driver or the person who delivered the drugs at the gathering? This example, while seemingly far-fetched, illustrates the potential danger the way the statute is written.

An additional concern with the lack of proximate cause would be in the instance of multiple people delivering controlled substances at a party. Give the legislation, as currently written, lacks a proximate cause requirement, is it the intent of the legislation that each person who provided drugs at the party would be subjected to the enhanced penalties? Furthermore, there could be an extremely difficult proof issue. Would this result in more conspiracy charges? How would a prosecutor be able to show to a jury the agreement necessary for a conviction?

Lastly, this bill, as written, may have unintended consequences. The way the statute is written, it could allow for creative defense attorneys to raise this statute as a defense in a

homicide case if the victim is under the influence of a narcotic. In the hypothetical above, the truck driver could raise a defense that he is not responsible for the death, but the person who provided the substances at the gathering was responsible for the death.

The Commission brings this neutral testimony to raise these concerns and I would stand for any questions.

Respectfully Submitted:

A handwritten signature in dark ink, appearing to read 'Travis W. Finck', with a large, sweeping loop at the end.

Travis W. Finck

Executive Director, NDCLCI