January 18, 2021
Testimony to the **Senate Judiciary Committee**
Submitted By: Jesse Walstad on behalf of the ND Association of Criminal Defense Lawyers
Testimony **In Support** of S.B. 2182

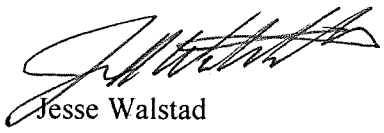
Chairmen and Members of the Senate Judiciary Committee:

My name is Jesse Walstad and I represent the ND Association of Criminal Defense Lawyers. The NDACDL is made up of lawyers throughout our state who dedicate a portion of their practice to criminal defense. The mission of the NDACDL is "to promote justice and due process" and to "promote the proper and fair administration of criminal justice within the State of North Dakota." With that mission in mind, the NDACDL **supports** S.B. 2182 and recommends a **DO PASS** from the Senate Judiciary Committee.

The antiquated language of Section 29–05–20, N.D.C.C., does not embrace decades of Sixth Amendment jurisprudence. S.B. 2182 is a common sense amendment designed to bring the statute into harmony with firmly established State and Federal case law. Section 29–05–20, N.D.C.C., originates from the Code of Criminal Procedure of 1877.[1] It was last amended in 1943.[2] Twenty years after the most recent amendment the U.S. Supreme Court unanimously held the Sixth Amendment's guarantee of a right to counsel applies to criminal defendants in State prosecutions by virtue of the Fourteenth Amendment.[3] Three years later, the U.S. Supreme Court crystalized the requirement that criminal suspects be notified of their right to an attorney during custodial interrogations prior to arrest.[4] The North Dakota Supreme Court has long recognized the import of these landmark cases and that a right to counsel is also enshrined in our State Constitution.[5]

On its face, Section 29–05–20, N.D.C.C., codifies that an individual may visit with their attorney at the attorney's request. The arbitrary limitation fails to recognize the fundamental concept that the accused, not the attorney, holds the right to request assistance of counsel. As a practical matter, the attorney rarely knows what is happening behind the jail house doors. Officers may attempt to interview the client without the attorney's knowledge or actively prevent the lawyer and client from speaking until after the interrogation.[6] In Gideon, the U.S. Supreme Court recognized that the accused's right to counsel is necessary to insure the fundamental human rights of life and liberty and held that justice cannot exist where a meaningful right to counsel is absent. In Miranda, the U.S. Supreme Court discussed at great length the heavy toll to individual liberty caused by allowing an accused to be isolated while "the police [...] persuade, trick, or cajole him out of exercising his constitutional rights." To safeguard against such abuses, the accused's right to request the assistance of counsel must be statutorily vested in the accused. S.B. 2182 would do so by bringing the statute into harmony with decades of jurisprudence. For these reasons, the NDACDL urges a **DO PASS** on S.B. 2182.

Respectfully,



Jesse Walstad

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[1] C. Crim. P. 1877.

[2] R.C. 1943, § 29–0520.

[3] *Gideon v. Wainwright*, 372 U.S. 335, 83 S. Ct. 792 (1963).

[4] *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602 (1966).

5 *John v. State*, 160 N.W.2d 37, 44 (N.D. 1968); see also N.D. Const. Art. I, § 12.

[6] *Escobedo v. State of Illinois*, 378 U.S. 478, 84 S.Ct. 1758 (1964).