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To: Senate Judiciary Committee
From: David Tamisiea, Executive Director
Date: March 18, 2025
Re: HB 1361 — Human Trafficking Minimum Sentences

The North Dakota Catholic Conference strongly supports common-sense legislation to fight against the scourge of human trafficking and has for many years. Human trafficking violates the dignity of the human person, the sanctity of human life, and fundamental rights of the human person. All three of the last popes (John Paul II, Benedict XVI, and Francis) and the United States Conference of Catholic Bishops, have publicly decried human trafficking and called for its eradication and for the protection of its victims. Our two North Dakotan bishops, Bishop David Kagan and Bishop John Folda, have asked that human trafficking be made a legislative priority. This session, the North Dakota Catholic Conference has testified in support of five different bills aimed at combatting human trafficking. No one should doubt our resolve and commitment to address this difficult issue.

The North Dakota Catholic Conference takes no position on the wisdom of imposing minimum sentences for human trafficking. But the Conference has deep concerns about the amount of years set for minimum sentences for human traffickers under HB 1361:

- Class AA felony Mandatory minimum sentence of 40 years in prison without parole compared to a maximum sentence of life in prison without parole.
- Class A felony Mandatory minimum sentence of 15 years in prison without parole compared to a maximum of 20 years in prison.
- Class B felony Mandatory minimum sentence of 7 years in prison without parole compared to a maximum of 10 years in prison.

HB 1361 Takes Away a Judge’s Discretion: The first concern with this bill is that it virtually eliminates a judge’s ability to exercise discretion in imposing sentences. Under current law, a judge can draw upon his prudence, experience, and good judgment to determine the most appropriate sentence for a convicted criminal defendant after hearing the facts of each case. A judge currently is required to consider factors like strong provocation by others, no prior criminal history, and cooperation with law enforcement to bring other offenders to justice, to consider a less severe sentence that would be more in keeping with a just result (NDCC 12.1-32.04). HB 1361 largely takes that discretion away by imposing “one-size-fits-all” minimum sentences not that much different than the maximum sentences for these classes of felonies.

HB 1361 Introduces Widely Disproportionate Minimum Sentences: The first concern with HB 1361 is that the proposed minimum penalties are widely disproportionate to current minimum penalties in North Dakota's Penal Code. Under current law of the North Dakota Century Code, the only existing minimum sentences for crimes in North Dakota are mandatory minimum sentences of four years imprisonment for armed offenders who use a dangerous weapon, an explosive, a destructive device, or a firearm in the commission of Class AA, Class A, or Class B felonies (NDCC 12.1-32-02.1). By way of comparison, a person convicted of murder using a deadly weapon under the current sentencing law would face a minimum sentence of four years, whereas a person convicted of human trafficking of a minor under HB 1361 would have a minimum sentence of forty years. This imposes upon a trafficker of a minor a penalty that is 10x that imposed upon an armed murderer.

HB 1361 Imposes Excessive Punishments for Minimum Sentences: The third concern with HB 1361 is that it is an excessive punishment, and it does not account for the other two primary purposes of criminal penalties besides retributive justice. According to the Western Christian tradition, there are three primary purposes for punishment of crimes: (1) redressing the disorder caused by the offense (justice); (2) protecting the common good of society (safety); and (3) rehabilitating the offender (medicinal). The punitive element of redressing the wrong in the order of justice must be balanced by the real possibility for criminals to experience conversion and rehabilitation and to no longer pose a threat to society, so that they could be released into society again. HB 1361's proposed penalties are not really minimum sentences, but in reality only slightly-less-than-maximum sentences that seem to disregard the possibility of rehabilitation that would allow for an earlier release from prison.

The North Dakota Catholic Conference urges the Senate Judiciary Committee to consider amending HB 1361 to provide lower and more reasonable minimum sentences for human trafficking offenders if it decides to issue a DO PASS recommendation on the bill.