

2025 SENATE JUDICIARY

SB 2226

2025 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee Peace Garden Room, State Capitol

SB 2226
1/27/2025

Relating to the commission on legal counsel for indigents; and to provide an appropriation.

11:15 a.m. Vice Chairman Paulson opened the meeting.

Members present: Chair Larson, Vice Chairman Paulson, Senators: Castaneda, Cory, Luick, Myrdal, Braunberger.

Discussion Topics:

- Legal counsel at initial criminal hearings
- Define indigent
- Additional appropriation
- Stutsman County pilot program

11:15 a.m. Senator Jonathan Sickler, District 17, introduced the bill and submitted testimony in favor #31857.

11:25 a.m. Travis Finck, Executive Director, ND Commission on Legal Counsel for Indigents, testified in favor and submitted testimony #31706.

11:42 a.m. Vice Chairman Paulson closed the hearing.

11:42 a.m. Senator Braunberger moved Do Pass and Rereferred to Appropriation Committee.

11:42 a.m. Senator Myrdal seconded the motion.

Senators	Vote
Senator Diane Larson	Y
Senator Bob Paulson	Y
Senator Ryan Braunberger	Y
Senator Jose L. Castaneda	Y
Senator Claire Cory	A
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Motion passed 6-0-1

Senator Braunberger will carry the bill.

11:44 a.m. Vice Chairman Paulson closed the hearing.

Senate Judiciary Committee
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012725
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Kendra McCann, Committee Clerk

REPORT OF STANDING COMMITTEE
SB 2226 ([25.1188.01000](#))

Judiciary Committee (Sen. Larson, Chairman) recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2226 was rereferred to the **Appropriations Committee**. This bill does not affect workforce development.

SB 2226
Senate Judiciary Committee
January 27, 2025
Testimony in Support of SB 2226
Travis W. Finck, Executive Director, NDCLCI

Good morning. Madam Chair Larson, members of the Judiciary Committee, my name is Travis Finck, and I am the Executive Director of the North Dakota Commission on Legal Counsel for Indigents (hereinafter "the Commission"). I rise today on behalf of the Commission in support of SB 2226.

Senate Bill 2226 changes language in the Commission's operating statute declaring all incarcerated individuals' indigent for purposes of establishing release conditions at an initial appearance. Currently an individual must first apply for counsel and be found to be indigent prior to receiving appointment of counsel. The Commission supports this change to meet what we believe is a constitutional mandate the state has currently abdicated, to follow court rules and to provide important relief to overcrowded jails.

The Commission has been following litigation from other states regarding counsel at initial appearances. Particularly, we have been following the proceedings in *Farella v. Anglin* arising from the U.S. District Court for the District of Western Arkansas. In *Farella*, a federal district court held not having counsel at initial appearances was a violation of the sixth amendment of the U.S. Constitution as applied to the states in the 14th Amendment. In that case, the defendants were the state court judge, the state public defender, and the local chief public defender. The case has been appealed to the 8th Circuit Court of Appeals. If the 8th Circuit Court of Appeals affirms the lower court decision, it will be mandatory all states in the 8th Circuit provide an attorney at initial appearances. North Dakota is in the 8th Circuit.

When this opinion was published in August, the Commission began looking at potential options. The Commission voted to establish a work group of potential stakeholders. The workgroup involved the following persons and agencies:

- Justice Douglas Bahr, N.D. Supreme Court
- Travis Finck, Indigent Defense Commission
- Todd Ewell, Indigent Defense Commission
- Mark Friese, Indigent Defense Commissioner
- Judge Daniel Narum, District Court Judge
- Sheriff Chad Kaiser, Stutsman County Sheriff

- Bradley Peterson, Attorney at Protection and Advocacy
- Laura Balliet, Assistant Attorney General, Attorney General's Office
- Corey Schlenger, Director of Pre-Trial Services, DOCR
- Leah Carlson, Attorney, Fargo Public Defender Office
- William Hartl, Contract Attorney with the Commission
- Joshua Frey, State's Attorney for Towner and McHenry Counties
- Sarah Behrens, Staff Attorney, State Court Administrator's office
- Rep. Lisa Meier, Representative, ND House of Representatives
- Sen. Jonathan Sickler, Senator, ND Senate
- Stephanie Dassinger-Engelbrecht, Deputy Director, N.D. League of Cities
- Judge Robert Keogh, Municipal Judge, City of Dickinson
- Malia Brink, Senior Policy Attorney, Deason Criminal Justice Reform Center at SMU Law School

When the Commission established the workgroup, Justice Bahr was asked to chair the workgroup. Justice Bahr chaired the group in his individual capacity and was clear to all participants he would not, and did not speak as to the constitutional issue. The workgroup had several meetings and reviewed several different proposals. We were fortunate enough to have Malia Brink from the Deason Center assist us in a technical capacity. The Deason Center has been very active in counsel at initial appearance cases and has provided input in the *Farella* case.

The workgroup reviewed several different options available within North Dakota. This included reviewing potential expansion statewide of pre-trial services, the potential of using pre-trial services or clerk's offices to screen applications for counsel prior to the initial appearances and adding a presumption of indigence into code. We heard from clerks of court, pre-trial services conducted a pilot data study, and the committee reviewed several different options for a presumption by reviewing other state's statutes. Ultimately, the workgroup recommended a presumption to be added to our code. I reported back to the Commission and the Commission asked me to find a sponsor for this legislation. Our budget is being heard in the Senate, so I thought it best to have this matter started on the Senate side. Senator Sickler graciously agreed to sponsor this legislation. The result is SB 2226.

Counsel at initial appearance is not a new concept in North Dakota. North Dakota Rule of Criminal Procedure Rule 44 provides for the right to counsel in all felony and non-felony criminal cases. It specifically provides for counsel "at public expense to represent the defendant

at every stage of the proceeding from initial appearance through appeal, unless the defendant waives this right.” However, when the Commission was moved from under the Court to an executive branch agency, it has been determined an individual must be first declared indigent. Because of the way court processes work in North Dakota, this determination is typically not made until or after the initial appearance. Thus, individuals are not represented by counsel at an initial appearance unless they have hired their own.

One way the state of North Dakota has attempted to meet this constitutional requirement is to provide counsel through agreements with the Court in jurisdictions where pre-trial services are being offered by the DOCR. Another potential exception is the rare time when a defendant is summoned to court and fills out an application prior to court. When this is done, we can typically find an attorney and have the case assigned prior to the appearance. However, these are the exceptions, and most individuals arrested and detained pre-trial are making their initial appearances without counsel.

This Legislative Assembly has heard many times this session about the overcrowding of our jails and our prisons. Many of the individuals in our county jails are serving on a pre-trial status. According to the Federal Bureau of Justice Statistics, “at midyear 2023, 70% of the jail population (467,600) was unconvicted and awaiting court action on a current charge or being held in jail for other reasons. The remaining 30% (196,600) was convicted and either serving a sentence or awaiting sentencing on a conviction.”¹ Data from the North Dakota Department of Corrections and Rehabilitation in their budget testimony paints a similar picture for North Dakota. By having counsel at initial appearances, an indigent defendant has a voice in the Courtroom. Research is clear as to the importance of having assistance of counsel when bail is set.

Research has repeatedly shown that an individual’s pretrial status shapes virtually every aspect of their case.² The American Bar Association (ABA) recognizes, the “[d]eprivation of

¹ <https://bjs.ojp.gov/library/publications/jails-report-series-preliminary-data-release-2023#:~:text=At%20midyear%202023%2C%2070%25%20of,awaiting%20sentencing%20on%20a%20conviction.>

² 2017 Va. Pretrial Data Rep., supra note 20, at 80, Table 53 (finding defendants who remained detained the entire pretrial period had higher conviction rates (77%) than those released before trial (56%)). See also, Léon Digard & Elizabeth Swavola, Justice Denied: The Harmful and Lasting Effects of Pretrial Detention, Vera Evidence Brief, Apr. 2019 (collecting studies demonstrating worse outcomes for people held in pretrial detention compared to their released peers), <https://www.vera.org/downloads/publications/Justice-Denied-Evidence-Brief.pdf>; Emily Leslie & Nolan G. Pope, The Unintended Impact of Pretrial Detention on Case Outcomes: Evidence from New York City Arraignments, 60 J. L. & Econ. 529 (2017) (finding that pretrial

liberty pending trial is harsh and oppressive, subjects' defendants to economic and physical hardship, interferes with their ability to defend themselves, and in many instances, deprives their families of support.”³ The Judge in the *Farella* case researched the effects of having counsel at initial appearance and the discrepancies when counsel does not appear with a defendant. The Court reviewed the Baltimore study amongst others and concluded “more than two-and-one-half times as many represented defendants were released on recognizance from pretrial custody as were unrepresented defendants” and, additionally, that “two-and-one-half times as many represented defendants had their bail reduced to an affordable amount.” *Farella v. Anglin*, 5:22-CV-5121 (W.D.Ark. 2024) (citing Douglas L. Colbert et al., Do Attorneys Really Matter? The Empirical and Legal Case for the Right of Counsel at Bail, 23 CARDOZO L. REV. 1719, 1720 (2002)). SB 2226 would change the operations of Courts in the State of North Dakota and have an attorney at every initial appearance when someone is in custody. By so doing, the research would suggest the pre-trial jail population would be decreased, alleviating the pressure on local jails.

For the reasons stated herein, the Commission respectfully requests the Judiciary Committee give a do pass recommendation and refer this bill to appropriations.

Respectfully submitted:



Travis W. Finck

detention increases conviction rates by at least 13%); and Will Dobbie, Jacob Goldin, & Crystal S. Yang, The Effects of Pretrial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges, 108 Am. Econ. Rev. 201, 225 (2018) (finding that pretrial release decreases guilty outcomes by 15%, mainly due to increased plea-bargaining power). Evidence from New York City Arraignments, 60 J. L. & Econ. 529 (2017) (finding that pretrial detention increases conviction rates by at least 13%); and Will Dobbie, Jacob Goldin, & Crystal S. Yang, The Effects of Pretrial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges, 108 Am. Econ. Rev. 201, 225 (2018) (finding that pretrial release decreases guilty outcomes by 15%, mainly due to increased plea-bargaining power).

³ ABA STANDARDS FOR CRIM. JUST.: PRETRIAL RELEASE, Std. 10-1.1 (AM. BAR ASS'N 3d ed. 2007) [hereinafter ABA Pretrial Release Stds].



North Dakota Senate

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360



Senator Jonathan Sickler

District 17
152 Christian Drive
Grand Forks, ND 58201-9304
jsickler@ndlegis.gov

COMMITTEES:

Appropriations
Appropriations - Government Operations Division

TESTIMONY IN SUPPORT OF SB 2226

Senate Judiciary Committee

January 27, 2025

The U.S. Supreme Court has held that (1) the Sixth Amendment to the U.S. Constitution affords an indigent person the right to court-appointed counsel in all criminal cases punishable by death or more than a year in jail or prison, including criminal contempt cases, Gideon v. Wainwright, 372 U.S. 335 (1963); and (2) an indigent defendant charged with any offense punishable by less than a year in jail or prison may not be incarcerated as a punishment unless the defendant was appointed or waived counsel, Argersinger v. Hamlin, 407 U.S. 25 (1972). In subsequent Supreme Court cases, this right to counsel was expanded to other criminal proceedings deemed a "critical stage".

In North Dakota, the Commission on Legal Counsel for Indigents was formed by the Legislature in 2005 to manage how such criminal defense representation is provided to indigent defendants. Such services are now provided by a combination of commission staff attorneys and contracted attorneys.

Currently, legal counsel is not consistently provided at the initial appearance stage of criminal actions. At this hearing, among other decisions, the judge can determine the conditions under which a defendant may be released from custody. Because the initial appearance occurs so early in the criminal case procedurally it can be very difficult to make a prior determination that a defendant is indigent. Consequently, many defendants are unrepresented by legal counsel at this appearance.

Litigation is currently pending in at least one other jurisdiction as to whether initial appearances are a "critical stage" at which legal representation is constitutionally required. Regardless of the outcome of those cases, ensuring legal representation at initial hearings is an important change to protect the rights of criminal defendants and make our criminal justice system more efficient. In short, the system works better when all parties are represented by legal counsel.

SB 2226 would address this issue by creating a presumption that all criminal defendants are indigent for certain purposes at the initial hearing stage. This presumption would not carry over to subsequent stages of litigation if the defendant is later determined not to be indigent. My expectation is that criminal defendants who are financially able to retain their own attorneys for their initial appearance would do so.

2025 SENATE APPROPRIATIONS

SB 2226

2025 SENATE STANDING COMMITTEE MINUTES

Appropriations - Government Operations Division Red River Room, State Capitol

SB 2226
2/5/2025

A BILL for an Act to amend and reenact subsection 1 of section 54-61-01 of the North Dakota Century Code, relating to the commission on legal counsel for indigents; and to provide an appropriation.

10:02 a.m. Chairman Wanzek opened the meeting.

Members present: Chairman Wanzek, Vice-Chair Dwyer, Senator Burckhard, Senator Erbele, and Senator Sickler.

Discussion Topics:

- Use of contract attorneys
- Indigent status determination
- Technical policy assistance
- Contract rates
- Caseload / case assignments
- Plea agreement / trial
- Commerce budget
- Department of Transportation budget

10:02 a.m. Senator Sickler, District 17, testified in favor.

10:10 a.m. Travis Finck, Director of ND Commission on Legal Counsel for Indigents, testified in favor.

10:23 a.m. Senator Erbele moved a Do Pass.

10:23 a.m. Senator Sickler seconded the motion.

Senators	Vote
Senator Terry M. Wanzek	Y
Senator Randy A. Burckhard	Y
Senator Michael Dwyer	Y
Senator Robert Erbele	Y
Senator Jonathan Sickler	Y

Motion passed 5-0-0

Senator Sickler will carry the bill.

10:29 a.m. Chairman Wanzek closed the meeting.

Carol Thompson, Committee Clerk

2025 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee Harvest Room, State Capitol

SB 2226
2/6/2025

A BILL for an Act to amend and reenact subsection 1 of section 54-61-01 of the North Dakota Century Code, relating to the commission on legal counsel for indigents; and to provide an appropriation.

11:10 a.m. Chairman Bekkedahl opened the hearing.

Members Present: Chairman Bekkedahl, Vice-Chairman Erbele, and Senators Burckhard, Cleary, Conley, Davison, Dever, Dwyer, Magrum, Mathern, Meyer, Schaible, Sickler, Sorvaag, Thomas, Wanzek.

Discussion Topics:

- Additional Services
- Criminal Defense Attorneys
- Hourly Rates
- Contracted Services

11:10 a.m. Senator Sickler introduced the bill.

11:20 a.m. Senator Sickler moved a Do Pass.

11:20 a.m. Senator Meyer seconded the motion.

Senators	Vote
Senator Brad Bekkedahl	Y
Senator Robert Erbele	Y
Senator Randy A. Burckhard	Y
Senator Sean Cleary	Y
Senator Cole Conley	Y
Senator Kyle Davison	Y
Senator Dick Dever	Y
Senator Michael Dwyer	Y
Senator Jeffery J. Magrum	Y
Senator Tim Mathern	Y
Senator Scott Meyer	Y
Senator Donald Schaible	Y
Senator Jonathan Sickler	Y
Senator Ronald Sorvaag	Y
Senator Paul J. Thomas	Y
Senator Terry M. Wanzek	Y

Motion Passed 16-0-0.

Senator Braunberger will carry the bill.

11:22 a.m. Chairman Bekkedahl closed the hearing.

Elizabeth Reiten, Committee Clerk

REPORT OF STANDING COMMITTEE
SB 2226 ([25.1188.01000](#))

Appropriations Committee (Sen. Bekkedahl, Chairman) recommends **DO PASS** (16 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2226 was placed on the Eleventh order on the calendar. This bill does not affect workforce development.

2025 HOUSE JUDICIARY

SB 2226

2025 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

SB 2226
3/11/2025

A BILL for an Act to amend and reenact subsection 1 of section 54-61-01 of the North Dakota Century Code, relating to the commission on legal counsel for indigents; and to provide an appropriation.

11:37 a.m. Chairman Klemin opened the hearing.

Members Present: Chairman Klemin, Vice-Chairman Karls, Vice-Chairman Vetter, Representatives Christianson, Hoverson, Johnston, McLeod, S. Olson, Satrom, Tveit, VanWinkle, Wolff, Schneider

Members Absent: Representative Henderson

Discussion Topics:

- North Dakota pretrial service program
- Farella v. Anglin court case
- Eighth circuit court rulings

11:38 a.m. Senator Jonathan Sickler, North Dakota Senator for District 17, introduced the bill and provided testimony #40148.

11:45 a.m. Chris Joseph, General Counsel for the North Dakota Governor's Office, testified in favor.

11:46 a.m. Travis Finck, Executive Director of North Dakota Commission on Legal Counsel for Indigents, testified in favor and provided testimony #40273.

12:03 p.m. Chairman Klemin closed the hearing.

Wyatt Armstrong, Committee Clerk



North Dakota Senate

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360



Senator Jonathan Sickler

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152 Christian Drive
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jsickler@ndlegis.gov

COMMITTEES:

Appropriations
Appropriations - Government Operations Division

TESTIMONY IN SUPPORT OF SB 2226

House Judiciary Committee

March 11, 2025

The U.S. Supreme Court has held that (1) the Sixth Amendment to the U.S. Constitution affords an indigent person the right to court-appointed counsel in all criminal cases punishable by death or more than a year in jail or prison, including criminal contempt cases, Gideon v. Wainwright, 372 U.S. 335 (1963); and (2) an indigent defendant charged with any offense punishable by less than a year in jail or prison may not be incarcerated as a punishment unless the defendant was appointed or waived counsel, Argersinger v. Hamlin, 407 U.S. 25 (1972). In subsequent Supreme Court cases, this right to counsel was expanded to other criminal proceedings deemed a “critical stage”.¹

In North Dakota, the Commission on Legal Counsel for Indigents was formed by the Legislature in 2005 to manage how such criminal defense representation is provided to indigent defendants. Such services are now provided by a combination of commission staff attorneys and contracted attorneys.

Currently, legal counsel is not consistently provided at the initial appearance stage of criminal actions. At this appearance, among other decisions, the judge can determine the conditions under which a defendant may be released from custody. Because the initial appearance occurs so early in the criminal case procedurally it can be very difficult to make a prior determination that a defendant is indigent. Consequently, many defendants are unrepresented by legal counsel at this appearance.

Litigation is currently pending in the Eighth Circuit as to whether initial appearances are a “critical stage” at which legal representation is constitutionally required.² As described more thoroughly in other testimony, this litigation led to the formation of a task force to review the current North Dakota process and recommend potential legislation, which resulted in SB 2226. Regardless of the outcome of that case, ensuring legal representation at initial appearances is an important change to protect the rights of criminal defendants and make our criminal justice system more efficient. In short, the system works better when all parties are represented by legal counsel.

¹ The Supreme Court and Eighth Circuit have held that arraignments, post-indictment interrogations, post-indictment lineups, competency hearings, plea bargain negotiations, and the entry of a guilty plea are all critical stages of a criminal proceeding.

² Farella v. District Judge A.J. Anglin et al., No. 5:2022-cv-05121 (W.D. Ark. 2024).

SB 2226 would address this issue by creating a presumption that all criminal defendants are indigent for purposes of establishing release conditions at the initial appearance stage. This presumption would not carry over to subsequent stages of litigation for which the defendant could be determined not to be indigent. My expectation is that criminal defendants who are financially able to retain their own attorneys for their initial appearance would do so, naturally limiting the application of this bill to those who are actually indigent.

SB 2226
House Judiciary Committee
March 11, 2025
Testimony in Support of SB 2226
Travis W. Finck, Executive Director, NDCLCI

Good morning. Chairman Klemin, members of the Judiciary Committee, my name is Travis Finck, and I am the Executive Director of the North Dakota Commission on Legal Counsel for Indigents (hereinafter "the Commission"). I rise today on behalf of the Commission in support of SB 2226.

Senate Bill 2226 changes language in the Commission's operating statute declaring all incarcerated individuals' indigent for purposes of establishing release conditions at an initial appearance. Currently an individual must first apply for counsel and be found to be indigent prior to receiving appointment of counsel. The Commission supports this change to meet what we believe is a constitutional mandate the state has currently abdicated, to follow court rules and to provide important relief to overcrowded jails.

The Commission has been following litigation from other states regarding counsel at initial appearances. Particularly, we have been following the proceedings in *Farella v. Anglin* arising from the U.S. District Court for the District of Western Arkansas. In *Farella*, a federal district court held not having counsel at initial appearances was a violation of the sixth amendment of the U.S. Constitution as applied to the states in the 14th Amendment. In that case, the defendants were the state court judge, the state public defender, and the local chief public defender. The case has been appealed to the 8th Circuit Court of Appeals. If the 8th Circuit Court of Appeals affirms the lower court decision, it will be mandatory all states in the 8th Circuit provide an attorney at initial appearances. North Dakota is in the 8th Circuit.

When this opinion was published in August, the Commission began looking at potential options. The Commission voted to establish a work group of potential stakeholders. The workgroup involved the following persons and agencies:

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- Judge Daniel Narum, District Court Judge
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- Laura Balliet, Assistant Attorney General, Attorney General's Office
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- Leah Carlson, Attorney, Fargo Public Defender Office
- William Hartl, Contract Attorney with the Commission
- Joshua Frey, State's Attorney for Towner and McHenry Counties
- Sarah Behrens, Staff Attorney, State Court Administrator's office
- Rep. Lisa Meier, Representative, ND House of Representatives
- Sen. Jonathan Sickler, Senator, ND Senate
- Stephanie Dassinger-Engelbreton, Deputy Director, N.D. League of Cities
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The workgroup reviewed several different options available within North Dakota. This included reviewing potential expansion statewide of pre-trial services, the potential of using pre-trial services or clerk's offices to screen applications for counsel prior to the initial appearances and adding a presumption of indigence into code. We heard from clerks of court, pre-trial services conducted a pilot data study, and the committee reviewed several different options for a presumption by reviewing other state's statutes. Ultimately, the workgroup recommended a presumption to be added to our code. I reported back to the Commission and the Commission asked me to find a sponsor for this legislation. Our budget is being heard in the Senate, so I thought it best to have this matter started on the Senate side. Senator Sickler graciously agreed to sponsor this legislation. The result is SB 2226.

Counsel at initial appearance is not a new concept in North Dakota. North Dakota Rule of Criminal Procedure Rule 44 provides for the right to counsel in all felony and non-felony criminal cases. It specifically provides for counsel "at public expense to represent the defendant

at every stage of the proceeding from initial appearance through appeal, unless the defendant waives this right.” However, when the Commission was moved from under the Court to an executive branch agency, it has been determined an individual must be first declared indigent. Because of the way court processes work in North Dakota, this determination is typically not made until or after the initial appearance. Thus, individuals are not represented by counsel at an initial appearance unless they have hired their own.

One way the state of North Dakota has attempted to meet this constitutional requirement is to provide counsel through agreements with the Court in jurisdictions where pre-trial services are being offered by the DOCR. Another potential exception is the rare time when a defendant is summoned to court and fills out an application prior to court. When this is done, we can typically find an attorney and have the case assigned prior to the appearance. However, these are the exceptions, and most individuals arrested and detained pre-trial are making their initial appearances without counsel.

This Legislative Assembly has heard many times this session about the overcrowding of our jails and our prisons. Many of the individuals in our county jails are serving on a pre-trial status. According to the Federal Bureau of Justice Statistics, “at midyear 2023, 70% of the jail population (467,600) was unconvicted and awaiting court action on a current charge or being held in jail for other reasons. The remaining 30% (196,600) was convicted and either serving a sentence or awaiting sentencing on a conviction.”¹ Data from the North Dakota Department of Corrections and Rehabilitation in their budget testimony paints a similar picture for North Dakota. By having counsel at initial appearances, an indigent defendant has a voice in the Courtroom. Research is clear as to the importance of having assistance of counsel when bail is set.

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¹ <https://bjs.ojp.gov/library/publications/jails-report-series-preliminary-data-release-2023#:~:text=At%20midyear%202023%2C%2070%25%20of,awaiting%20sentencing%20on%20a%20conviction.>

² 2017 Va. Pretrial Data Rep., supra note 20, at 80, Table 53 (finding defendants who remained detained the entire pretrial period had higher conviction rates (77%) than those released before trial (56%)). See also, Léon Digard & Elizabeth Swavola, Justice Denied: The Harmful and Lasting Effects of Pretrial Detention, Vera Evidence Brief, Apr. 2019 (collecting studies demonstrating worse outcomes for people held in pretrial detention compared to their released peers), <https://www.vera.org/downloads/publications/Justice-Denied-Evidence-Brief.pdf>; Emily Leslie & Nolan G. Pope, The Unintended Impact of Pretrial Detention on Case Outcomes: Evidence from New York City Arraignments, 60 J. L. & Econ. 529 (2017) (finding that pretrial

liberty pending trial is harsh and oppressive, subjects' defendants to economic and physical hardship, interferes with their ability to defend themselves, and in many instances, deprives their families of support.”³ The Judge in the *Farella* case researched the effects of having counsel at initial appearance and the discrepancies when counsel does not appear with a defendant. The Court reviewed the Baltimore study amongst others and concluded “more than two-and-one-half times as many represented defendants were released on recognizance from pretrial custody as were unrepresented defendants” and, additionally, that “two-and-one-half times as many represented defendants had their bail reduced to an affordable amount.” *Farella v. Anglin*, 5:22-CV-5121 (W.D.Ark. 2024) (citing Douglas L. Colbert et al., Do Attorneys Really Matter? The Empirical and Legal Case for the Right of Counsel at Bail, 23 CARDOZO L. REV. 1719, 1720 (2002)). SB 2226 would change the operations of Courts in the State of North Dakota and have an attorney at every initial appearance when someone is in custody. By so doing, the research would suggest the pre-trial jail population would be decreased, alleviating the pressure on local jails.

The Senate Judiciary Committee gave a 6-0-1 do pass recommendation. The Senate Appropriations Committee gave the bill a 16-0 do pass. The Senate unanimously passed the bill 47-0. For the reasons stated herein, the Commission respectfully requests the Judiciary Committee give a do pass recommendation and refer this bill to appropriations.

Respectfully submitted:

A handwritten signature in black ink, appearing to read 'Travis W. Finck', written over a horizontal line.

Travis W. Finck

detention increases conviction rates by at least 13%); and Will Dobbie, Jacob Goldin, & Crystal S. Yang, The Effects of Pretrial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges, 108 Am. Econ. Rev. 201, 225 (2018) (finding that pretrial release decreases guilty outcomes by 15%, mainly due to increased plea-bargaining power). Evidence from New York City Arraignments, 60 J. L. & Econ. 529 (2017) (finding that pretrial detention increases conviction rates by at least 13%); and Will Dobbie, Jacob Goldin, & Crystal S. Yang, The Effects of Pretrial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges, 108 Am. Econ. Rev. 201, 225 (2018) (finding that pretrial release decreases guilty outcomes by 15%, mainly due to increased plea-bargaining power).

³ ABA STANDARDS FOR CRIM. JUST.: PRETRIAL RELEASE, Std. 10-1.1 (AM. BAR ASS'N 3d ed. 2007) [hereinafter ABA Pretrial Release Stds].

2025 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

SB 2226
3/18/2025

A BILL for an Act to amend and reenact subsection 1 of section 54-61-01 of the North Dakota Century Code, relating to the commission on legal counsel for indigents; and to provide an appropriation.

2:57 p.m. Chairman Klemin opened the hearing.

Members Present: Chairman Klemin, Vice-Chairman Karls, Vice-Chairman Vetter, Representatives Christianson, Henderson, Hoverson, McLeod, S. Olson, Satrom, Tveit, VanWinkle, Wolff, Schneider

Members Absent: Representative Johnston

Discussion Topics:

- North Dakota prison overcrowding issues
- First appearances in court
- Committee action

2:57 p.m. Chairman Klemin proposed Amendment LC: 25.1188.01001, testimony #42885.

3:00 p.m. Travis Finck, Executive Director of North Dakota Commission on Legal Counsel for Indigents, answered committee questions and provided testimony #42888.

3:09 p.m. Representative Schneider moved to Amend LC: 25.1188.01001, testimony #42885.

3:09 p.m. Representative Vetter seconded the motion.

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	Y
Representative Steve Vetter	Y
Representative Nels Christianson	Y
Representative Donna Henderson	Y
Representative Jeff Hoverson	Y
Representative Daniel Johnston	A
Representative Carrie McLeod	Y
Representative SuAnn Olson	Y
Representative Bernie Satrom	Y
Representative Mary Schneider	Y
Representative Bill Tveit	Y
Representative Lori VanWinkle	A
Representative Christina Wolff	Y

3:10 p.m. Motion passed 12-0-2.

3:10 p.m. Representative Hoverson moved a Do Pass as Amended and rerefer to Appropriations.

3:10 p.m. Representative Schneider seconded the motion.

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	Y
Representative Steve Vetter	Y
Representative Nels Christianson	Y
Representative Donna Henderson	Y
Representative Jeff Hoverson	Y
Representative Daniel Johnston	A
Representative Carrie McLeod	Y
Representative SuAnn Olson	Y
Representative Bernie Satrom	Y
Representative Mary Schneider	Y
Representative Bill Tveit	Y
Representative Lori VanWinkle	A
Representative Christina Wolff	N

3:11 p.m. Motion passed 11-1-2.

3:11 p.m. Representative Christianson will carry the bill.

3:14 p.m. Chairman Klemin closed the hearing.

Wyatt Armstrong, Committee Clerk

CO
3/18/25
1062

PROPOSED AMENDMENTS TO

SENATE BILL NO. 2226

Introduced by

Senators Sickler, Barta, Larson, Myrdal

Representatives Klemin, Satrom

1 A BILL for an Act to amend and reenact subsection 1 of section 54-61-01 of the North Dakota
2 Century Code, relating to the commission on legal counsel for indigents; ~~and~~ to provide an
3 appropriation: and to provide an effective date.

4 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

5 **SECTION 1. AMENDMENT.** Subsection 1 of section 54-61-01 of the North Dakota Century
6 Code is amended and reenacted as follows:

7 1. The commission on legal counsel for indigents is established for the purpose of
8 developing and monitoring a process for the delivery of state-funded legal counsel
9 services for indigents which are required under the Constitution of North Dakota and
10 the United States Constitution and any applicable statute or court rule. The
11 commission shall provide indigent defense services for indigent individuals determined
12 by the court to be eligible for and in need of those services pursuant to the standards
13 and policies of the commission governing eligibility for such services. For purposes of
14 establishing release conditions at an initial appearance, an incarcerated individual is
15 presumed indigent.

16 **SECTION 2. APPROPRIATION - COMMISSION ON LEGAL COUNSEL FOR**
17 **INDIGENTS - LEGAL COUNSEL SERVICES AT INITIAL APPEARANCES.** There is
18 appropriated out of any moneys in the general fund in the state treasury, not otherwise
19 appropriated, the sum of ~~\$615,734~~ \$463,644 or so much of the sum as may be necessary, to the
20 commission on legal counsel for indigents for the purpose of providing legal counsel services

Sixty-ninth
Legislative Assembly

1 for incarcerated individuals at initial appearances, for the biennium beginning July 1, 2025, and
2 ending June 30, 2027.

3 **SECTION 3. EFFECTIVE DATE.** Section 1 of this Act becomes effective on January 1,
4 2026.

**REPORT OF STANDING COMMITTEE
SB 2226**

Judiciary Committee (Rep. Klemin, Chairman) recommends **AMENDMENTS** ([25.1188.01001](#)) and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (11 YEAS, 1 NAY, 2 ABSENT OR EXCUSED AND NOT VOTING). SB 2226 was placed on the Sixth order on the calendar.

25.1188.01001
Title.

Prepared by the Legislative Council
staff for Representative Klemin
March 17, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

SENATE BILL NO. 2226

Introduced by

Senators Sickler, Barta, Larson, Myrdal

Representatives Klemin, Satrom

1 A BILL for an Act to amend and reenact subsection 1 of section 54-61-01 of the North Dakota
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14 establishing release conditions at an initial appearance, an incarcerated individual is
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19 appropriated, the sum of ~~\$615,734~~\$463,644 or so much of the sum as may be necessary, to the
20 commission on legal counsel for indigents for the purpose of providing legal counsel services

1 for incarcerated individuals at initial appearances, for the biennium beginning July 1, 2025, and
2 ending June 30, 2027.

3 **SECTION 3. EFFECTIVE DATE.** Section 1 of this Act becomes effective on January 1,
4 2026.

Klemin, Lawrence R.

From: Finck, Travis <tfinck@nd.gov>
Sent: Wednesday, March 12, 2025 12:20 PM
To: Klemin, Lawrence R.; Karls, Karen; Vetter, Steve M.; Tveit, Bill; McLeod, Carrie; Satrom, Bernie L.; Schneider, Mary; Olson, SuAnn; Hoverson, Jeff A.; VanWinkle, Lori; Johnston, Daniel; Wolff, Christina; Henderson, Donna; Christianson, Nels
Cc: Sickler, Jonathan; Ewell, Todd; Peterson, Shaun - NDLA, Intern 10
Subject: FW: SB 2226 - Incarcerated Individuals Presumed Indigent to Have Counsel at First Appearances

Rep. Klemin and Members of the Committee:

The Commission was asked to amend the appropriation in Section 2 of this bill given the proposed amendment of the Governor's Office for a delayed implementation date of January 2026. In so doing, the Commission would request the appropriation be amended to \$463,644.

The Commission reached this amount in the following way. The State District Courts are split into for different administrative units. We reached out to each Unit Administrator to find out when initial appearances for those in custody were conducted. We determined we would need a contractor to cover most of those hearings and devoted 1 hour of contract time to cover each initial appearance session. This equates to a requirement of 286.2 hours per month to cover all initial appearance time slots. This includes discounting time for some small rural counties who currently have their initial appearances during the timeslots of the larger counties.

We then multiplied the 286.2 hours per month times 18 months for the biennium. January 2026 – June 30, 2027. This total is 5151.6 hours for the biennium. We then take that number of hours and multiply it by our hourly rate we are anticipating given where our budget is currently at this biennium. (We currently pay 80 per hour, however, the Senate approved \$2,000,000 to increase contract rates and the house is now considering our budget. If that increase remains, we are confident we will be able to raise the rate to at least \$90 / hour.) The total appropriation request to have counsel and all initial appearances then totals: 286.2 hours per month * 18 months * \$90/hour = \$463,644.

Respectfully:



Travis W. Finck

2025 HOUSE APPROPRIATIONS

SB 2226

2025 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee Roughrider Room, State Capitol

SB 2226
4/3/2025

A BILL for an Act to amend and reenact subsection 1 of section 54-61-01 of the North Dakota Century Code, relating to the commission on legal counsel for indigents; to provide an appropriation; and to provide an effective date.

9:07 a.m. Chairman Vigesaa opened the meeting.

Members present: Chairman Vigesaa, Vice Chairman Kempenich, Representatives Anderson, Berg, Bosch, Brandenburg, Fisher, Hanson, Louser, Martinson, Meier, Mitskog, Monson, Murphy, Nathe, Nelson, O'Brien, Pyle, Richter, Sanford, Stemen, Wagner

Member absent: Swiontek

Discussion Topics:

- Committee Action
- Initial Appearance at a Trial
- Electronic Initial Appearance at a Trial

9:07 a.m. Representative Klemin introduced the bill.

9:14 a.m. Travis Finck, Executive Director, ND Commission on Legal Counsel for Indigents answered questions.

9:25 a.m. Chairman Vigesaa closed the meeting.

Krystal Eberle, Committee Clerk

2025 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee Roughrider Room, State Capitol

SB 2226
4/9/2025

A BILL for an Act to amend and reenact subsection 1 of section 54-61-01 of the North Dakota Century Code, relating to the commission on legal counsel for indigents; to provide an appropriation; and to provide an effective date.

9:11 a.m. Chairman Vigesaa opened the meeting.

Members present: Chairman Vigesaa, Vice Chairman Kempenich, Representatives Anderson, Berg, Bosch, Brandenburg, Fisher, Hanson, Louser, Meier, Mitskog, Monson, Murphy, Nathe, Nelson, O'Brien, Pyle, Richter, Sanford, Stemen, Wagner

Members absent: Martinson, Swiontek

Discussion Topics:

- Committee Action

9:13 a.m. Representative Monson moved Do Pass.

9:13 a.m. Representative Bosch seconded the motion.

9:17 a.m. Roll Call Vote

Representatives	Vote
Representative Don Vigesaa	Y
Representative Keith Kempenich	Y
Representative Bert Anderson	Y
Representative Mike Berg	Y
Representative Glenn Bosch	Y
Representative Mike Brandenburg	Y
Representative Jay Fisher	Y
Representative Karla Rose Hanson	Y
Representative Scott Louser	Y
Representative Bob Martinson	AB
Representative Lisa Meier	Y
Representative Alisa Mitskog	Y
Representative David Monson	Y
Representative Eric J. Murphy	Y
Representative Mike Nathe	Y
Representative Jon O. Nelson	Y
Representative Emily O'Brien	Y
Representative Brandy L. Pyle	Y
Representative David Richter	Y
Representative Mark Sanford	Y
Representative Gregory Stemen	Y

Representative Steve Swiontek	AB
Representative Scott Wagner	Y

9:17 a.m. Motion passed 21-0-2.

9:17 a.m. Representative Christianson will carry the bill.

9:18 a.m. Chairman Vigesaa opened the meeting.

Krystal Eberle, Committee Clerk

**REPORT OF STANDING COMMITTEE
AMENDED SB 2226 ([25.1188.02000](#))**

Appropriations Committee (Rep. Vigesaa, Chairman) recommends **DO PASS** (21 YEAS, 0 NAYS, 2 ABSENT OR EXCUSED AND NOT VOTING). SB 2226, as amended, was placed on the Fourteenth order on the calendar.