2023 HOUSE JUDICIARY

HB 1490

2023 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

HB 1490
2/1/2023

Relating to presumptive probation; and to provide a penalty.

Chairman Klemin opened the hearing on HB 1490 at 9:00 AM. Members present: Chairman Klemin, Vice Chairman Karls, Rep. Bahl, Rep. Christensen, Rep. Cory, Rep. Henderson, Rep. S. Olson, Rep. Rios, Rep. S. Roers Jones, Rep. Satrom, Rep. Schneider, Rep. VanWinkle, Rep. Vetter

Discussion Topics:
- Word change-force
- Presumptive probation
- Class C felonies
- Aggravated assault

Rep. Ista: Introduced the bill. Testimony # 18332

Travis Finck, Executive Director, NDCLCI. Testimony #18285

Jonathan Beyers, States Attorney Association: No written testimony.

Additional written testimony:

Andrew Eyre, Ass't State's Attorney in Grand Forks County. Testimony #17411

Hearing closed at 9:13 AM.

Rep. Vetter moved a Do Pass;
Seconded by Rep. Shannon Roers Jones

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	Y
Representative Landon Bahl	Y
Representative Cole Christensen	Y
Representative Claire Cory	Y
Representative Donna Henderson	Y
Representative SuAnn Olson	Y
Representative Nico Rios	Y
Representative Shannon Roers Jones	Y
Representative Bernie Satrom	Y
Representative Mary Schneider	Y
Representative Lori VanWinkle	Y
Representative Steve Vetter	Y

Rolll Call Vote: 13 Yes 0 No 0 Absent

Carrier: Rep. Vetter

Meeting closed at 9:17 AM

Delores Shimek, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1490: Judiciary Committee (Rep. Klemin, Chairman) recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1490 was placed on the Eleventh order on the calendar.

2023 SENATE JUDICIARY

HB 1490

2023 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

HB 1490
3/7/2023

A bill relating to presumptive probation; and to provide a penalty.

10:30 AM Chairman Larson opened the public hearing.

Chairman Larson and Senators Myrdal, Luick, Estenson, Sickler, and Bruanberger are present. Senator Paulson is absent.

Discussion Topics:

- District Court authority
- Aggravating factors
- Plea agreements
- Application cause
- Deviating from presumption

10:30 AM Representative Ista introduced the bill and provided written testimony #22370, 22371, 22372.

10:41 AM Travis Finck, Executive Director, North Dakota Commission on Legal Counsel for Indigents, testified in favor of the bill and provided written testimony #22374.

10:42 AM Chairman Larson closed the public hearing.

10:42 AM Senator Myrdal moved to adopt amendment LC 23.0342.03001. Motion seconded by Senator Luick.

10:42 AM Roll call vote was taken.

Senators	Vote
Senator Diane Larson	Y
Senator Bob Paulson	AB
Senator Jonathan Sickler	Y
Senator Ryan Braunberger	Y
Senator Judy Estenson	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Motion passes 6-0-1.

10:43 AM Senator Myrdal moved to Do Pass the bill as amended. Senator Luick seconded the motion.

10:43 AM Roll call vote was taken.

Senators	Vote
Senator Diane Larson	Y
Senator Bob Paulson	AB
Senator Jonathan Sickler	Y
Senator Ryan Braunberger	Y
Senator Judy Estenson	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Motion passes 6-0-1.

Senator Sickler will carry the bill.

This bill does not affect workforce development.

10:43 AM Chairman Larson closed the meeting.

Rick Schuchard, Committee Clerk

23.0342.03001
Title.04000

Prepared by the Legislative Council staff for Representative Ista
March 1, 2023

DK
1/1
3-7-23

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1490

Page 1, line 2, remove "and"

Page 1, line 2, after "penalty" insert "; and to provide for application"

Page 2, after line 2, insert:

"**SECTION 2. APPLICATION.** This Act applies to criminal charges filed after the effective date of this Act."

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1490: Judiciary Committee (Sen. Larson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1490 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

Page 1, line 2, remove "and"

Page 1, line 2, after "penalty" insert "; and to provide for application"

Page 2, after line 2, insert:

"**SECTION 2. APPLICATION.** This Act applies to criminal charges filed after the effective date of this Act."

Renumber accordingly

TESTIMONY

HB 1490

January 26, 2023

Mr. Chairman and Members of the House Judiciary Committee:

My name is Andrew Eyre, and I am an Assistant State's Attorney in Grand Forks County. I write to you in support of HB 1490, which would create an exception to our presumptive probation statute for crimes involving the use of force. HB 1490 would take violent crimes out of presumptive probation's framework. I urge this Committee to issue a DO PASS recommendation on HB 1490.

North Dakota's presumptive probation statute has hindered this State's ability to sentence violent offenders to a period of incarceration. Our district court judges and Supreme Court justices do their best to narrowly interpret the legislature's words and intentions. Because our judges narrowly interpret our statutes, our presumptive probation statute has led to interesting results.

Our current presumptive probation statute is codified as Section 12.1-32-07.4. The statute directs our district courts to presume that a period of probation is the appropriate sentence for a first class C felony or class A misdemeanor, unless the case involves domestic violence, a sex offense requiring sex offender registration, an offense involving a firearm, or if a mandatory minimum sentence is required by law. 12.1-32-07.4(2) includes three exceptions that can take a case out of presumptive probation's purview. The exceptions include:

(a) – that the individual has a prior A misdemeanor or C felony conviction
(b) – the age or vulnerability of the victim, or whether the offender was in a position of power over the victim
(c) – the individual used threats or coercion in the commission of the offense

The word "include" is key here. When presumptive probation was first enacted, the legislature provided three aggravating factors that can take a case out of presumptive probation. Normally, the word "includes" means "includes but is not limited to." NDCC 12.1-01-04(15). So, under our normal definitions, the three aggravating factors listed in the presumptive probation section would not be an exhaustive list, unless the word "include" has a radically different definition than the word "includes." There is disagreement and uncertainty among attorneys about whether the three aggravating factors are meant to be an exhaustive list. The North Dakota Supreme Court has only analyzed one presumptive probation case (State v. Christensen). The Supreme Court was able to decide that case without giving an opinion as to whether the three enumerated factors are an exhaustive list, so the question remains unanswered.

If we are to conclude that the three enumerated aggravating factors are meant to be an exhaustive list, then our presumptive probation statute could yield curious results in criminal cases when it comes to sentencing that are illustrated in the following examples:

- Driving under suspension is a class B misdemeanor for a first, second, or third offense within a five year period. Driving under suspension is a class A misdemeanor for a fourth offense within a five year period. Presumptive probation under 12.1-32-07.4 only applies to class A misdemeanors and class C felonies. So, our district court

judges *could* sentence a person to thirty days in jail for the first, second, and third driving under suspension conviction. However, because of presumptive probation, our district court judges could not impose a jail sentence on the person's fourth driving under suspension conviction, assuming, of course, that there is no other factor that would take the case out of presumptive probation.

- Simple assault (12.1-17-01) for causing bodily injury is a class B misdemeanor. Because presumptive probation only applies to class A misdemeanors and class C felonies, a district court judge could impose a thirty day jail sentence for a person's first conviction for a class B misdemeanor simple assault. Assault (12.1-17-01.1-substantial bodily injury) is an A misdemeanor. So, if the courts narrowly interpret the presumptive probation statute, unless one of the three aggravating factors applies, a person who commits a more serious violent offense could get a probation sentence.
- Simple assault against a police officer, a correctional officer, a person engaged in a judicial proceeding, a municipal or volunteer fire fighter, or an emergency medical provider is a class C felony under 12.1-17-01. If a person with no prior criminal history assaults a police officer, or an emergency department nurse, that person could get a presumptive probation sentence under our current law. So, a person *could* get a 30 day jail sentence for a first offense driving under suspension, but could not get the same jail sentence for a first offense, class C felony, simple assault on a police officer.
- 12.1-32-07.4(2)(c) excludes crimes involving a threat from presumptive probation. A person who threatens to strangle a random citizen can be sentenced to a period of incarceration on a class C felony terrorizing charge, but a person who actually strangles a random citizen can get a presumptive probation sentence on a class C felony aggravated assault charge, as long as that person didn't make any threats before strangling their victim.

Our current statute is flawed. Section 12.1-32-07.4, if it is narrowly interpreted, does not give our district courts the ability to sentence certain categories of violent offenders to a period of incarceration. Certainly, a person can get a *suspended* jail sentence, which could be imposed later if there is a probation violation and the case comes back to the district court for a probation revocation hearing. But, at the initial sentencing phase, Section 12.1-32-07.4 ties our district court judges' hands.

The amendment included in HB 1490 would not *require* district court judges to impose a jail sentence for any offense. Rather, it would simply give our district court judges the discretion to impose a jail sentence for offenses involving force. The legislature should give prosecutors and district court judges the discretion to seek a jail sentence for crimes involving violence or the use of force.

Our district courts and our supreme court do an excellent job at narrowly interpreting the law as it is written. Our courts understand that their role is to interpret the law as it is, rather than interpreting the law as they would wish it to be. The legislature has created exceptions to presumptive probation. I ask that you support HB 1490, which would create one more specific exception to presumptive probation. HB 1490 is a limited, narrowly tailored amendment to

Section 12.1-32-07.4 that would allow our State's district court judges to impose a jail sentence for crimes of violence.

I urge this Committee to issue a DO PASS recommendation on HB 1490.

Very respectfully,

Andrew C. Eyre

HB 1490
68th Legislative Assembly
House Judiciary Committee
February 1, 2023
Testimony of Travis W. Finck, Executive Director, NDCLCI

Chairman Klemin, Vice Chair Karls, 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 delivery of public defense services in North Dakota. The Commission stands in support of HB 1490.

HB 1490 enables courts to have discretion when sentencing an individual. The Commission has long supported allowing judges to make determinations of an appropriate sentence based upon facts and circumstances in individual cases.

Chairman Klemin, members of the House Judiciary, for the reasons stated herein, the Commission on Legal Counsel urges a DO PASS recommendation.

Respectfully Submitted:

Travis W. Finck
Executive Director, NDCLCI

#18332

North Dakota House of Representatives

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360

Representative Zachary Ista
District 43
3850 15th Avenue South
Grand Forks, ND 58201-3727
C: 701-361-6671
zmista@ndlegis.gov

COMMITTEES:
Finance and Taxation
Energy and Natural Resources

February 1, 2023

Mr. Chairman and Members of the Judiciary Committee:

In a literal sense, HB 1490 might be the simplest bill you will see all session: it proposes only to add one word and two commas to Century Code. But with that simple change, I believe HB 1490 makes clear the authority our district courts have, or at least ought to have, to sentence violent offenders to a term of incarceration, while also retaining their appropriate discretion to opt for probation when circumstances justify such a sentence.

Broadly speaking, a court usually can decide any given question of law or of fact based entirely on the merits, with any conflicting options all having equal weight. But when there is a presumption, the judge must apply that specific rule or inference unless and until some evidence or factor rebuts it. In other words, it is like a bit like starting with a thumb on the scale in favor of one possible outcome. To put that in the context of a criminal sentence, the sentencing court usually has discretion to sentence an offender convicted of any given offense up to the maximum punishment set by law for that classification level. There are some notable exceptions to this general rule, including crimes for which the law sets minimum mandatory sentences. Presumptive probation is another exception.

Under NDCC § 12.1-32-07.4, a sentencing court presumptively must sentence any individual convicted of a class C felony or class A misdemeanor to a term of probation unless certain exceptions apply (namely domestic violence offenses, offenses subject to registration as a sex offender or offender against children, offenses involving certain weapons, and offenses with a statutorily mandated minimum term of incarceration). If none of these enumerated exceptions apply, the court can deviate from presumptive probation and sentence an offender to a term of incarceration *only if* the court finds “aggravating factors present to justify a departure from presumptive probation.” The statute then defines such aggravating factors to include 1) whether the offender has a qualifying prior criminal record, 2) the age and vulnerability of the victim and whether the offender had any position of trust over the victim or abused a position of public trust or responsibility, and 3) whether the offender used threats or coercion in committing the crime.

Each of these listed examples of aggravating factors appropriately address situations in which an offender, by the nature of his conduct (past or present) should face at least the possibility of incarceration for an offense that might otherwise receive presumptive probation. The aggravating factors proviso is an important tool for ensuring public safety and for promoting justice for victims. And it does so without instituting any mandatory minimum sentences that tie the hands of sentencing judges (and prosecutors and defense attorneys) to consider the individual circumstances of any given case.

Current law, however, has led to questions about whether the listed aggravated factors are the *only* such factors a court can rely upon to deviate from presumptive probation. As noted above, the list of enumerated aggravated factors in NDCC § 12.1-32-07.4(2) is preceded by the word "include." Generally, the use of the words "include" or "includes" indicates that what follows is meant to be an illustrative, but not exhaustive, list. In fact, the criminal title of the Century Code even states that "'[i]ncludes' should be read as if the phrase 'but is not limited to' were also set forth." *See* NDCC § 12.1-01-04(15). But based on conversations with fellow prosecutors across North Dakota, it appears that sentencing courts frequently consider only the aggravating factors explicitly listed in Century Code, leading to possible uneven application of existing law.

The Supreme Court had an opportunity to address this very issue in its 2019 decision in State v. Christensen, but it decided the case on different, narrower grounds that resulted in overturning the lower court's deviation from presumptive probation. Subsequently, it appears many sentencing courts have taken Christensen to stand for a restrictive reading of our current presumptive probation law. Given the ongoing ambiguity, I believe this is an issue that the Legislature should clarify, both to avoid inconsistent application across the state and to enumerate the scope of the presumptive probation statute.

Just last session, I introduced a bill to address this same issue. Admittedly, that bill was drafted in a way that would have created a new aggravating factor that could have swallowed the general rule of presumptive probation, and this Committee understandably rejected the bill. I took the concerns of this Committee seriously when drafting the bill before you now. By adding only the word "force" to the list of aggravated factors allowing rebuttal of presumptive probation, we would give judges another tool to hold violent offenders responsible for their misconduct by giving courts the power to sentence convicted criminals to an appropriate term of imprisonment, but we would also preserve the essence of our current presumptive probation framework.

Let me be clear: the intention of this bill is *not* to swell our prison and jail populations or to disrupt the overall goal of presumptive probation. I do not want to undo the state's presumptive probation framework, and I certainly do not want to incarcerate even one more person than is absolutely necessary to serve the ends of justice and public safety. But I do believe the clarification of law contemplated in HB 1490 would be an important

tool to ensure public safety from violent offenders, to ensure justice for victims of all violent crimes, and to ensure uniform and coherent application of our sentencing laws across the state.

In that regard, I refer the Committee to the written testimony of Andrew Eyre, a prosecutor in Grand Forks County, as to why he supports the proposal. As he notes, without the proposed clarification, current law can lead to curious, if not outright absurd, results. Consider, for example, a hypothetical scenario in which the same person is victimized by two separate defendants with whom the victim has no prior relationship. The first defendant strangled the victim. The second defendant only threatened to strangle the victim but did not engage in the actual physical act of strangulation (misconduct that constitutes the criminal offense of terrorizing). Under a strict reading of the existing presumptive probation statute, the first defendant—the actual strangler—would receive presumptive probation while the second defendant—the one who only threatened to strangle—may not because threats are an enumerated aggravating factor under current law while the actual use of force or violence is not. HB 1490 makes clear what I think is already obvious: that actually strangling someone is just as bad as (if not worse than) threatening to strangle someone, and a court should be able to punish the former equally to the latter.

HB 1490 would fix this peculiarity of current law. In doing so, the bill also promotes public safety and ensures that all options for justice for victims of violent crimes remain in a court's toolbox—including both probation and incarceration in limited, appropriate circumstances. It does so without the mandates of required minimum sentences and without removing one bit of discretion judges have to issue sentences they believe are appropriate or impeding the ability of defendants and their counsel to argue for probation over incarceration. For these reasons, I respectfully urge a **DO PASS** recommendation on HB 1490, and I stand ready to answer the Committee's questions.

23.0342.03001
Title.

Prepared by the Legislative Council staff for
Representative Ista
March 1, 2023

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1490

Page 1, line 2, remove "and"

Page 1, line 2, after "penalty" insert "; and to provide for application"

Page 2, after line 2, insert:

"**SECTION 2. APPLICATION.** This Act applies to criminal charges filed after the effective date of this Act."

Renumber accordingly

23.0342.03001

Sixty-eighth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1490

Introduced by

Representatives Ista, Hagert, Heinert, Louser, O'Brien, Schauer, Schreiber-Beck

Senator Dwyer

A BILL for an Act to amend and reenact section 12.1-32-07.4 of the North Dakota Century Code, relating to presumptive probation; ~~and~~ to provide a penalty; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12.1-32-07.4 of the North Dakota Century Code is amended and reenacted as follows:

12.1-32-07.4. Presumptive probation.

1. The sentencing court shall sentence an individual who has pled guilty to, or has been found guilty of, a class C felony offense or class A misdemeanor offense to a term of probation at the time of initial sentencing, except for an offense involving domestic violence; an offense subject to registration under section 12.1-32-15; an offense involving a firearm or dangerous weapon, explosive, or incendiary device; or if a mandatory term of incarceration is required by law.
2. The sentencing court may impose a sentence of imprisonment if the sentencing court finds there are aggravating factors present to justify a departure from presumptive probation. Aggravating factors include:
   a. That the individual has plead guilty to, or has been found guilty of, a felony offense or class A misdemeanor offense prior to the date of the commission of the offense or offenses charged in the complaint, information, or indictment;
   b. The age and vulnerability of the victim, whether the individual was in a position of responsibility or trust over the victim, or whether the individual abused a public position of responsibility or trust; or
   c. If the individual used force, threats, or coercion in the commission of the offense.
3. This section does not preclude the sentencing court from deferring imposition of sentence in accordance with subsection 4 of section 12.1-32-02 or sentencing an

1 individual to a term of incarceration with credit for time spent in custody if execution of
2 the sentence is suspended.

3 **SECTION 2. APPLICATION.** This Act applies to criminal charges filed after the effective
4 date of this Act.

North Dakota House of Representatives

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360

Representative Zachary Ista
District 43
3850 15th Avenue South
Grand Forks, ND 58201-3727
C: 701-361-6671
zmista@ndlegis.gov

COMMITTEES:
Finance and Taxation
Energy and Natural Resources

March 7, 2023

Madam Chair and Members of the Senate Judiciary Committee:

For the record, Rep. Zac Ista from District 43 (Grand Forks). Today I come before you with HB 1490, which passed the House by a vote of 92-0 on February 6, 2023. In a literal sense, HB 1490 might be the simplest bill you will see all session: it proposes only to add one word and two commas to Century Code. But with that simple change, I believe HB 1490 makes clear the authority our district courts have, or at least ought to have, to sentence violent offenders to a term of incarceration, while also retaining their appropriate discretion to opt for probation when circumstances justify such a sentence.

Broadly speaking, a court usually can decide any given question of law or of fact based entirely on the merits, with all conflicting options having equal weight. But when there exists a legal presumption, the judge must apply that specific rule or inference unless and until some evidence or factor rebuts it. In other words, it is a bit like starting with a thumb on the scale in favor of one possible outcome. To put that in the context of a criminal sentence, the sentencing court usually has discretion to sentence an offender convicted of a given offense up to the maximum punishment set by law for that offense's classification level. There are some notable exceptions to this general rule, including crimes for which the law sets minimum mandatory sentences.

Presumptive probation is another exception. Under NDCC § 12.1-32-07.4, a sentencing court presumptively <u>must</u> sentence an individual convicted of a class C felony or class A misdemeanor to a term of probation <u>unless</u> certain exceptions apply (namely domestic violence offenses, offenses subject to registration as a sex offender or offender against children, offenses involving certain weapons, and offenses with a statutorily mandated minimum term of incarceration). If none of these enumerated exceptions apply, the court can deviate from presumptive probation and sentence an offender to a term of incarceration <u>only if</u> the court finds "aggravating factors present to justify a departure from presumptive probation." The statute then specifically defines these aggravating factors to include 1) whether the offender has a qualifying prior criminal record, 2) the age and vulnerability of the victim and whether the offender had any position of trust over the victim or abused a position of public trust or responsibility, and 3) whether the offender used threats or coercion in committing the

crime. Each of these listed examples of aggravating factors appropriately address situations in which an offender, by the nature of his conduct (past or present) should face at least the possibility of incarceration for an offense that would otherwise receive presumptive probation. The aggravating factors proviso is an important tool for ensuring public safety and for promoting justice for victims. And it does so without instituting any mandatory minimum sentences that tie the hands of sentencing judges (plus prosecutors and defense attorneys) to consider the individual circumstances of any given case.

Current law, however, has led to questions about whether the listed aggravated factors are the only factors a court can rely upon to deviate from presumptive probation. As noted above, the list of enumerated aggravated factors in NDCC § 12.1-32-07.4(2) is preceded by the word "include," which generally means the list is meant to be illustrative but not exhaustive. *See* NDCC § 12.1-01-04(15). But based on conversations with prosecutors across North Dakota, it appears that sentencing courts frequently consider only the aggravating factors explicitly listed in Century Code, leading to possible uneven application of existing law.

The Supreme Court had an opportunity to address this very issue in its 2019 decision in State v. Christensen, but it decided the case on different, narrower grounds that resulted in overturning the lower court's deviation from presumptive probation. Subsequently, it appears many sentencing courts have taken Christensen to stand for a restrictive reading of our current presumptive probation law. Given the ongoing ambiguity, I believe this is an issue that the Legislature should clarify, both to avoid inconsistent application across the state and to enumerate the scope of the presumptive probation statute.

But let me be clear: the intention of this bill is not to swell our prison and jail populations or to disrupt the overall goal of presumptive probation. I do not want to undo the state's presumptive probation framework, and I certainly do not want to incarcerate even one more person than is absolutely necessary to serve the ends of justice and public safety. I do believe, though, that the clarification of law contemplated in HB 1490 would be an important tool to ensure public safety from violent offenders, to ensure justice for victims of all violent crimes, and to ensure uniform and coherent application of our sentencing laws across the state.

In that regard, I ask this Committee to consider which criminal conduct is worse: threatening to strangle someone or actually strangling someone? Current law treats the threatened act (which constitutes the criminal act of terrorizing) as worse than the actual act. This is because threats against a person are specifically listed as an aggravating factor that allows a judge to deviate from presumptive probation and sentence such a defendant to a term of incarceration. But actual acts of physical force (like strangulation) are not listed as an aggravating factor, meaning that a judge may lack a legal basis to sentence the hypothetical actual strangler to prison. HB 1490 makes clear what I think is already obvious: that actually strangling someone is just as bad as (if not worse than) threatening to strangle someone, and a court should be able to punish the former equally to the latter. In

fixing this peculiarity of current law, the bill also promotes public safety and ensures that all options for justice for victims of violent crimes remain in a court's toolbox—including both probation and incarceration in limited, appropriate circumstances. It does so without the mandates of required minimum sentences and without removing one bit of discretion judges have to issue sentences they believe are appropriate or impeding the ability of defendants and their counsel to argue for probation over incarceration.

As you consider the bill, I will raise one issue I overlooked during the House's deliberations: an application clause. Because the bill impacts criminal penalties, there may arise questions about when the new aggravating factor would apply. Without a specific application clause, the general common law rule is that the law in effect at the time an offender is charged controls. To avoid any risk of that rule not prevailing here, I have drafted a proposed amendment to include an application clause specifying that the new presumptive probation language would only apply to charges filed after the effective date of this bill (8/1/2023).

For the foregoing reasons, I respectfully ask this committee to consider the proposed application clause amendment, and I urge a **do pass** recommendation on HB 1490. Thank you for your time, and I stand ready to answer the Committee's questions.

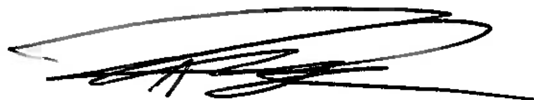
HB 1490
68th Legislative Assembly
Senate Judiciary Committee
March 7, 2023
Testimony of Travis W. Finck, Executive Director, NDCLCI

Madam Chair Larson, 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 delivery of public defense services in North Dakota. The Commission stands in support of HB 1490.

HB 1490 enables courts to have discretion when sentencing an individual. The Commission has long supported allowing judges to make determinations of an appropriate sentence based upon facts and circumstances in individual cases.

Therefore, for the reasons stated herein, the Commission on Legal Counsel urges a DO PASS recommendation.

Respectfully Submitted:



Travis W. Finck
Executive Director, NDCLCI