

House Bill 1387
House Judiciary Committee
Testimony in Opposition by Travis W. Finck
Executive Director N. D. Comm. On Legal Counsel for Indigents
February 3, 2021

Chairman Klemin, members of the House Judiciary Committee, my name is Travis Finck, I am the Executive Director of the Commission on Legal Counsel for Indigents. We are the state agency responsible for the delivery of indigent defense services in North Dakota. I appear today on behalf of the Commission on Legal Counsel.

The Commission on Legal Counsel for indigents takes no position on section 1 of the bill. However, sections 2 and 3 cause great concern to the Commission.

Statute of limitations exist for a reason. Statute of limitations were enacted to ensure prosecutions were made on actual evidence. The longer the period of statute of limitations, the more likely it is for witnesses to have faded memories, to have witnesses lost, physical evidence be altered or destroyed and the ability of the accused to recall events be significantly altered. This country bestows upon us all certain inalienable rights, such as due process and the right to counsel. These rights, having been enshrined in the Constitution were to protect the accused from the awesome weight of the government. Noticeably absent from the Bill of Rights is the founders' intent to bestow such awesome authority on the government. In fact, statute of limitations are as old as time itself. The ancient Greeks had a statute of limitations on all crimes except murder. The Romans continued suit, as did most civilizations in history.

Additionally, while the Commission can not say with specificity how many more jury trials will be caused and how much additional expense there will be with the expansion of statute of limitations on all criminal actions, there will be additional costs. As memories fade and evidence is lost, defendants will

have no choice but to try cases. Statute of limitations in shorter periods of time promote prompt enforcement of substantive law. They avoid retrospective application of contemporary standards to behavior that happened in the past. However, most importantly, they adhere to the principle of due process guaranteed in the constitution.

Lastly, HB 1387 continues to cause what I believe to be unintended consequences when reading this proposed change in conjunction with other parts of the century code, principally as it pertains to juveniles and juvenile offenders. If a juvenile were to commit a crime listed in one of the statutes mentioned, the time table for the commencement of prosecution could defeat the purpose of Juvenile Court. NDCC 27-20-34(5) provides “No child subject to the jurisdiction of the juvenile court, either before or after reaching eighteen years of age, may be prosecuted for an offense previously committed unless the case has been transferred as provided in this section.” However, NDCC 27-20-34(8) provides “A person at least twenty years of age who committed an offense while a child and was not adjudicated for the offense in juvenile court may be prosecuted in district court as an adult, unless the state intentionally delayed the prosecution to avoid juvenile court jurisdiction. The district court has original and exclusive jurisdiction for the prosecution under this subsection.” The two statutes seemingly contradict each other in regard the statute of limitations in the prosecution of juveniles alleged to have committed a sex offense against another juvenile. The North Dakota Supreme Court provided some clarity in State v. Woodrow, 2011 ND 192, determining an offender who commits a delinquent act while a juvenile, can in fact be prosecuted as an adult in District Court after their 20th birthday, as the Juvenile Court would be divested of jurisdiction.

In practice, Juvenile Court is meant to be a rehabilitative court and offenders who commit acts as a juvenile are treated differently throughout the code in comparison to their adult counterparts. NDCC 12.1-32-15(1)(f) lists those offenses which classify a perpetrator as a “sexual offender” requiring registration. Within the definition, you will find most, if not all, of the offenses for which HB 1387 seeks

an extended statute of limitations. NDCC 12.1-32-15(2) provides an individual who commits a sexual offense must register as a sex offender. However, 12.1-32-15(2)(c) provides a court may deviate from requiring a juvenile to register when adjudicated delinquent for a felony sex offense under subdivision d of subsection 1 of section 12.1-20-03, subdivision a of subsection 2 of section 12.1-20-03 or for a misdemeanor if the court finds the juvenile had not been previously convicted and the offender did not exhibit mental abnormality or predatory conduct. The same deviation is not available to an adult offender.

For reference, the following crimes would be implicated by HB 1387 section 3:

- 12.1-20-03: Gross Sexual Imposition (sexual act)
 - a) force or threat b) substantial impairment c) victim unaware d) under 15 e) disease
- (2) (Sexual Contact)
 - a) under 15 b) force or threat c) victim unaware
- 12.1-20-03.1: continual Sexual Abuse of a Child
- 12.1-20-04: Sexual Imposition (Sexual act or contact)
- 12.1-20-05: Corruption or Solicitation of a Minor (Requires Adult to Solicit)
- 12.1-20-05.1: Luring Minor by Computer
- 12.1-20-06: sexual Abuse of a Ward
- 12.1-20-06.1: Sexual Exploitation by therapist
- 12.1-20-07: Sexual Assault
- 12.1-20-08: Fornication (A minor engaging in the Act is a misdemeanor)
- 12.1-20-11: Incest

NDCC 12.1-20-01, provides the age limitations for sex offenses under 12.1-20, and they are implicated in this legislation. If an offender commits a delinquent act, such as having sex with another juvenile who is not above the age of 15 (12.1-20-03(1)(d)), and the victim does not report until such time as the child offender would exceed 20 years of age, the offender would no longer be able to avail themselves to the juvenile court or the registration provisions associated with it.

Mr. Chairman, members of the committee. All children matter and need to be protected. This legislation has potential to unintentionally cause harm. Furthermore, statute of limitations exist for a

reason, therefore, the Commission on Legal Counsel for Indigents respectfully requests a DO NOT pass recommendation.

Respectfully submitted:

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

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