

February 2, 2021

Testimony to the **House Judiciary Committee**

Submitted By: Jesse Walstad on behalf of the ND Association of Criminal Defense Lawyers

Testimony **in Opposition to H.B. 1387**

Chairmen and Members of the House 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 **opposes H.B. 1387** and recommends a **DO NOT PASS**.

Statutes of limitations are not deadlines for victims or finish lines for perpetrators, they serve essential functions designed to ensure justice and fairness within our criminal justice system. They vindicate victim’s rights by requiring the State to swiftly investigate and prosecute crimes. They protect the accused’s right to fairness and due process by ensuring access to reliable evidence that may demonstrate innocence. In doing so, they codify the age old maxim that “Justice delayed is justice denied.”

H.B. 1387, Section 2, would more than double the statute of limitations for felony offenses other than murder. The current three year statute of limitations has been proven to work for more than thirty years. It ensures the swift collection of credible evidence and prosecution of criminal offenses in pursuit of justice for victims and the accused. It spares the accused from the unfair disadvantage of having to defend against stale allegations after exculpatory evidence has been lost. Nearly all forms of evidence decay. With time memories fade or change, documents and digital evidence is destroyed or misplaced, physical evidence deteriorates, and witnesses relocate or pass away. As the reliability of the evidence deteriorates, the corresponding risk of wrongful conviction increases. Increasing the general statute of limitations from three to seven years will result in cases being untimely brought to trial on evidence of diminished reliability. H.B. 1387 will dramatically increase the risk of wrongful conviction in such cases.

One of the aims of Section 3 is to mitigate trauma induced by childhood sexual abuse. A great deal of testimony has been provided to this point, some statistical, some heart wrenchingly personal, all sobering proof of a compelling societal ill. However, Section 3 will not expand access to justice for victims of childhood sexual abuse. Under N.D.C.C. §29-04-03.1, prosecution of an offense must commence within twenty-one years of the offense, or if not reported within the twenty-one years, within three years of the offense being reported to law enforcement. H.B. 1387, Section 3, would grant law enforcement an additional seven years to commence prosecution after the victim reports the offense. This does not expand a victim’s access to justice, nor does it account for trauma induced disclosure delay. Under the proposed amendment, law enforcement could wait nearly a decade before taking material steps to vindicate the rights of victims. Permitting long delays between a victim’s report and the prosecution of the offense denies swift justice to victims and dramatically increases the risk of wrongful convictions.

Similar to Section 2, the triggering event of greatest concern in Section 1 is law enforcement’s receipt of a report of child abuse by surgical alteration of a female minor’s genitals. Page 2, line 1, would extend the time law enforcement may commence prosecution after receiving a report from three to ten years. Granting law enforcement ten years to prosecute an offense after the victim has reported it does not increase the victim’s access to justice. To increase access to justice law enforcement must be required to swiftly gather credible and reliable evidence and commence the prosecution of individuals whom they

have probable cause to believe committed the offense. Failure to do so in a timely manner deprives society of justice and dramatically increases the risk of wrongful convictions.

H.B. 1387, if passed into law, would diminish access to justice. It would reduce the speed with which allegations of criminal misconduct must be investigated and prosecuted and it would dramatically increase the risk of wrongful convictions as reliable exculpatory evidence is lost with the passage of time. To safeguard against the increased risk of wrongful conviction, the NDACDL strongly urges a **DO NOT PASS** on H.B. 1387.

Respectfully,

A handwritten signature in cursive script that reads "Jesse Walstad".

Jesse Walstad