

Testimony for Hearing on HB1256
Primary Sponsor: Eric J. Murphy, District 43

Thank you, Chairman Lee and my honorable colleagues on the Senate Human Services Committee. For the record, my name is Eric James Murphy, representative from District 43, Grand Forks.

Imagine that you are falsely accused under a system that fails to embrace a basic tenant of our legal system. You may be placed on administrative leave, your constitutional rights trampled by a stampede of administrators seeking to protect a complainant. Then, unlike any other part of our legal system, under accusations filed under either Title IX sexual harassment or discrimination or under institutional policies of sexual harassment or discrimination, the accused is considered guilty until proven innocent. Yes, guilty until one proves themselves innocent.

Before us today is House Bill 1256 that originally sought to make a Class C felony for those who make false accusations under Title IX and institutional policies, but this penalty was reduced to an A misdemeanor by the House Judiciary Committee and that bill passed the House.

About 10 years ago, this body debated a bill that afforded legal representation for students and individuals accused of allegations under Title IX and under institutional policies at institutions of higher education in North Dakota.

The catalyst for this new law was the case of Mr. Caleb Warner. Mr. Warner was convicted under preponderance of evidence standard of broad charges of "Violations of Criminal or Civil Laws, Sexual Assault and Interference" on February 11, 2010, by a hearing body at the University of North Dakota. In this case, despite law enforcement finding no evidence of a crime and making no charges of sexual assault, Mr. Warner's life and education were derailed by overzealous administrators at the University of North Dakota. Interestingly, the States Attorney issued a warrant for the arrest of his accuser on charges of making "False information or report to law enforcement officers or security officials", which is an A misdemeanor.

This was a step in the right direction and today, in the 68th session, we have an opportunity to take another important step forward in protecting the rights of our citizens who, like Mr. Warner, are falsely accused of sexual harassment or discrimination under Title IX or other institutional policies.

As a body of lawmakers, we have an obligation to protect individuals from false allegations under these policies. Title IX uses a preponderance of evidence standard, which is the lowest standard of proof. This victim centric model is problematic as the accused is considered guilty and must prove their innocence. This is in direct opposition to one of our deepest held legal premises, that dates to the rights described in the Magna Carta in 1215, the presumption of innocence until proven guilty.

House Bill 1256 focuses on protecting those who are innocent of wrongdoing, but for nefarious reasons, find themselves facing allegations that are life changing. They find themselves struggling to understand why they are facing these allegations. Some go through it alone,

others with support of their family, but the potential damage to their reputation, psychological damage, family status, and enhanced anxiety they feel are all real.

I reached out to several individuals who have gone through this process to testify today. They all declined. For one it would be just too difficult to relive the pain and agony of what they suffered. The other felt that there would be retributions from their employer, an institution of higher education in the North Dakota University System, to elaborate on their 5-month investigation for alleged discrimination. Another simply did not reply.

To say these false allegations are a victimless action can only be spoken by those who have not suffered through them.

Some will say there will be a “chilling effect” on reporting for individuals who suffer from sexual harassment or discrimination based upon these policies. I think this is grossly overstated. If someone has truly suffered this type of harassment, there should be no fear about coming forward. However, if the accusations are merely weaponization of these policies, this bill adds a layer of protection for the accused. It adds pause for someone making allegations that are just not true.

I want to point to an interesting case. Sarah Viren and Marta Tecedor are a married couple who suffered false accusations while both were faculty members at Arizona State University. The accuser submitted a claim anonymously through ASU’s Title IX office’s website, after he learned that he and Sarah were competing for the same faculty position at the University of Michigan. The accuser made the accusation that he was a female graduate student who suffered from unwanted sexual advances from Marta. This involved parties and wine, all of which painted a clear picture of the professors taking sexual liberties with their graduate students. Oh, a perfect storm. The case followed the normal investigative process that heavily favored the complainant, although this individual was unknown in this case. In the end, after a long, difficult process that tested the very core of their character, these two faculty members were finally able to prove Marta innocent. Yes, prove Marta innocent. Yes, it just didn’t happen.

For more details on this case, you may read:

[The Accusations Were Lies. But Could We Prove It? - The New York Times \(nytimes.com\)](https://www.nytimes.com/2018/03/26/us/politics/title-ix-accusations-were-lies-but-could-we-prove-it.html)

[A Crazy Academic Weaponized Title IX Against a Rival Professor Whose Job He Wanted \(reason.com\)](http://reason.com/story/2018-03-26/a-crazed-academic-weaponized-title-ix-against-a-rival-professor-whose-job-he-wanted/)

Unfortunately, similar cases have occurred and continue to occur in North Dakota. House Bill 1256 seeks to take the impunity away from the complainant. It is not the goal of this bill to limit these allegations when they occur, rather to add a pause when someone has less than legitimate allegations. We can not tolerate violation of these policies, just like we should not tolerate the misuse of these policies.

I have chosen not to give you a bunch of statistics, but these allegations affect students, faculty, and staff in higher education, but similar policies can be misused in any political subdivision in

the State of North Dakota. We need to stop the weaponization of these policies to do harm, rather we need to embrace their power to do good when applied properly. We have an obligation to protect the falsely accused.

I respectfully ask the committee for a due pass on HB1256.

Thank you.