

2023 HOUSE JUDICIARY

HB 1256

2023 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

HB 1256
1/17/2023

| |
|--|
| Relating to false allegations of sexual harassment or discrimination; and to provide a penalty |
|--|

Chairman Klemin opened the hearing on HB 1256 at 11:00 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:

- Class C felony
- False allegations
- Amendment
- Extreme cases
- Public or private sector concerns

Representative Murphy: Introduced the bill. Proposed Amendment (23.0743.02002) Testimony (#13749)

Kathy Frelich, ND School of the Deaf. In support. Testimony. (#14192)

Lee Wilkin, Attorney at Fargo: No written testimony.

Dr. Amy Kovas, Executive Director of the ND Council of education of Leaders In support. No written testimony

Landus Larson, Federal Labor Union In opposition. (#13651)

Kelly Gores, High Plains Housing Center: In opposition. No written testimony

Seth O'Neill In opposition. Testimony (#13474)

Additional written testimony:

- Bruce Gjovig, ND resident (#13637)
- Susan Stewart, Stop abuse for everyone (#13568)
- Julie Reiten, ND Resident, (#13648)
- Greg Kasowski, Children's advocacy center of ND, (#13778)

Hearing closed at 11:34 AM

Delores Shimek, Committee Clerk By: Leah Kuball

2023 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

HB 1256
1/17/2023

| |
|--|
| Relating to false allegations of sexual harassment or discrimination, and to provide a penalty |
|--|

Chairman Klemin opened the meeting on HB 1256 at 3:15 PM

Members present: Chairman Klemin, Vice Chairman Karls, Rep. Christensen, Rep. Cory, Rep. Henderson, Rep. S. Olson, Rep. Rios, Rep. S. Roers Jones, Rep. Satrom, Rep. Schneider, Rep. VanWinkle, Rep. Vetter.

Absent: Rep. Bahl.

Discussion Topics:

- Individuals versus persons
- Class C felony
- Class A felony
- False allegations in public institutions

Representative Shannon Roers Jones moved a Do Not Pass

Seconded by Representative Henderson

Roll call vote:

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

Motion fails: 5 Yes 7 No 1 Absent

Selected a subcommittee:

- Representative Cory, Chairman
- Representative Christensen
- Representative Henderson

House Judiciary Committee
HB 1256
January 17, 2023
Page 2

Meeting closed at 3:40 PM

Delores Shimek, Committee Clerk By: Leah Kuball

2023 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

HB 1256
1/23/2023
Subcommittee

| |
|---|
| Relating to false allegations of sexual harassment or discrimination; and to provide a penalty. |
|---|

Representative Cory, Chairman, called the subcommittee meeting to order at 4:00 PM.

Members present: Representative Christensen, Rep. Cory, and Rep. Henderson.

Discussion Topics:

- Amendment
- Penalties 12.1-11

Representative Christensen: Went over proposed amendments to the bill. #27127

Representative Henderson agreed.

Committee agreed to the amendments, and they will be presented to the full committee.

Representative Henderson moved to make recommendation to full committee to amend HB 1256. (#27127)

Representative Christensen seconds motion

Voice vote: Motion carried.

Meeting closed at 4:06 PM.

Delores Shimek, Committee Clerk By: Leah Kuball

2023 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

HB 1256
1/25/2023

| |
|--|
| Relating to false allegations of sexual harassment or discrimination, and to provide a penalty |
|--|

Chairman Klemin opened the meeting on HB 1256 at 11:29 AM.

Members present: Chairman Kleimin, Vice Chairman Karls, Representatives Christensen, Cory, Henderson, S. Olson, Rios, Roers Jones, Satrom, Schneider, VanWinkle, and Bahl.
Absent: Rep. Vetter.

Discussion Topics:

- Proposed amendments
- Committee action

Rep Cory, Amendment 23.0743.02002 from subcommittee, Testimony 27127

Rep Cory moved the amendment 23.0743.02002 to HB 1256, seconded by Rep Christenson.

Roll call vote:

| Representatives | Vote |
|------------------------------------|------|
| Representative Lawrence R. Klemin | Y |
| Representative Karen Karls | Y |
| Representative Landon Bahl | N |
| 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 | N |
| Representative Lori VanWinkle | Y |
| Representative Steve Vetter | AB |

Motion carried: 10-2-1

Rep Cory moved a Do Pass as Amended, seconded by Rep Rios.

Roll call vote:

| 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 | N |
| Representative SuAnn Olson | Y |
| Representative Nico Rios | Y |
| Representative Shannon Roers Jones | N |
| Representative Bernie Satrom | N |
| Representative Mary Schneider | N |
| Representative Lori VanWinkle | N |
| Representative Steve Vetter | AB |

Motion carried: 7-5-1 Rep Bahl will carry the bill.

11:47 AM meeting adjourned.

Delores Shimek, Committee Clerk

JA 1-25-23

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1256

Page 1, line 8, replace "A person" with "An individual eighteen years of age or older"

Page 1, line 8, replace "C felony" with "A misdemeanor"

Page 1, line 8, replace the second "person" with "individual"

Page 1, line 10, replace "an" with "another"

Page 1, line 11, replace "be false and frivolous" with "have no basis in fact or law"

Page 1, line 12, replace "A person" with "An individual eighteen years of age or older"

Page 1, line 12, replace "C felony" with "A misdemeanor"

Page 1, line 12, replace the second "person" with "individual"

Page 1, line 14, replace "an" with "another"

Page 1, line 16, replace "be false and frivolous" with "have no basis in fact or law"

Page 1, remove lines 17 and 18

Re-number accordingly

REPORT OF STANDING COMMITTEE

HB 1256: Judiciary Committee (Rep. Klemin, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (7 YEAS, 5 NAYS, 1 ABSENT AND NOT VOTING). HB 1256 was placed on the Sixth order on the calendar.

Page 1, line 8, replace "A person" with "An individual eighteen years of age or older"

Page 1, line 8, replace "C felony" with "A misdemeanor"

Page 1, line 8, replace the second "person" with "individual"

Page 1, line 10, replace "an" with "another"

Page 1, line 11, replace "be false and frivolous" with "have no basis in fact or law"

Page 1, line 12, replace "A person" with "An individual eighteen years of age or older"

Page 1, line 12, replace "C felony" with "A misdemeanor"

Page 1, line 12, replace the second "person" with "individual"

Page 1, line 14, replace "an" with "another"

Page 1, line 16, replace "be false and frivolous" with "have no basis in fact or law"

Page 1, remove lines 17 and 18

Renumber accordingly

2023 SENATE HUMAN SERVICES

HB 1256

2023 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Lincoln Room, State Capitol

HB 1256
3/13/2023

| |
|---|
| Relating to false allegations of sexual harassment or discrimination; and to provide a penalty. |
|---|

11:37 AM **Madam Chair Lee** called the hearing to order. **Senators Lee, Cleary, Clemens, K. Roers, Weston, and Hogan** are present.

Discussion Topics:

- Sexual harassment clarification
- Sexual discrimination clarification
- Fact of law accusations
- False allegations
- Policy misuse

11:38 AM **Representative Eric J. Murphy, District 43**, introduced HB 1256, and testified in favor. #24121

11:53 AM **Christina Sambor, Attorney, North Dakota Human Rights Coalition**, testified in opposition. #24359

11:58 AM **Katie Fitzsimmons, Director of Student Affairs, North Dakota University System**, testified in opposition. #24081

12:16 PM **Jaclyn Hall, Executive Director of North Dakota Association of Justice**, testified in opposition. #24358

12:20 PM **Adelyn Emter, Chief of Staff, Policy Advocacy and Research Chair, North Dakota Student Association**, testified on-line in opposition. #23967

12:26 PM **Leo Wilking, Attorney, Wilking Law Firm**, testified on-line in favor. #24542

12:32 PM **Mark Hagerott, Chancellor, North Dakota University System**, testified in opposition verbally.

Additional Written Testimony:

Ashley Limesand in opposition #23587

Brett Sokolow, Chair of the Board, ATIXA in opposition #23603

CoiyaTompkins, President and Chief Executive Officer, Community Violence Intervention Center in opposition #23739

Seth O'Neill, Attorney, CAWS-North Dakota in opposition #23783

Senate Human Services Committee

HB 1256

March 13, 2023

Page 2

Janet Anderson in opposition #23901

Phyllis Johnson in opposition #23929

Andrea Placher in opposition #23971

Kristie Miller in opposition #24012

Christopher Brown in opposition #24067

Faye Seidler in opposition #24077

Cody Severson, Chair, Fargo Human Rights Commission in opposition #24103

Andrew Armacost, President, University of North Dakota in opposition #24222

Jesse Wiesenborn neutral #23927

12:33 PM **Madam Chair Lee** adjourned the hearing.

Patricia Lahr, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Lincoln Room, State Capitol

HB 1256
3/22/2023

| |
|---|
| Relating to false allegations of sexual harassment or discrimination; and to provide a penalty. |
|---|

5:13 PM **Madam Chair Lee** called the meeting to order. **Senators Lee, Cleary, Clemens, K. Roers, Weston** are present. **Senator Hogan** was absent.

Discussion Topics:

- Mismatch

Senator Lee calls for discussion.

Senator Cleary moved **DO NOT PASS**.

Senator K. Roers seconded the motion.

Roll call vote.

| Senators | Vote |
|--------------------------|-------------|
| Senator Judy Lee | Y |
| Senator Sean Cleary | Y |
| Senator David A. Clemens | N |
| Senator Kathy Hogan | AB |
| Senator Kristin Roers | Y |
| Senator Kent Weston | N |

The motion passed 3-2-1.

Senator K. Roers will carry HB 1256.

5:19 PM **Madam Chair Lee** closed the meeting.

Patricia Lahr, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1256, as engrossed: Human Services Committee (Sen. Lee, Chairman) recommends **DO NOT PASS** (3 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1256 was placed on the Fourteenth order on the calendar. This bill does not affect workforce development.

TESTIMONY

HB 1256



521 E Main Avenue
Suite 320
Bismarck, ND 58501

Phone 701.255.6240
Toll Free 888.255.6240
Fax 701.255.1904

cawsnorthdakota.org
contact@cawsnorthdakota.org



House Bill No. 1256
House Judiciary Committee
Testimony Presented by Seth O'Neill, JD, MSW
January 17, 2023

Chairman Klemin and members of the Committee, my name is Seth O'Neill and I am representing CAWS North Dakota in opposition to HB1256. CAWS North Dakota is the statewide coalition of the domestic violence and sexual assault programs in North Dakota.

We are opposed to this bill due to the chilling effect it would have on victims of sexual harassment. This bill would make it a Class C Felony for an individual to make an allegation of sexual harassment that was found to be false and frivolous. These terms false and frivolous are not defined and it is unclear what the requirements would be. If an individual who experienced legitimate sexual harassment is unable to substantiate their claim with outside evidence, it is possible they could be charged with this crime even though they are a victim of sexual harassment. This situation will lead to victims of sexual harassment being even more hesitant to share their experiences due to the overwhelming negative consequences it could have on them.

This bill would classify making a false allegation of sexual harassment a Class C felony. Other examples of Class C felonies include negligent homicide (12.1-16-03), assisting the commission of a suicide (12.1-16-04), sexual abuse of wards (12.1-20-06), simple assault against a peace officer (12.1-17-01), and terrorizing (12.1-17-04).

This bill is unnecessary because making false statements is already a Class A Misdemeanor under North Dakota Century Code 12.1-11-02. We believe creating an additional section for false statements of sexual harassment is unnecessary. Also, enhancing the penalty for

a false statement of sexual harassment to a Class C Felony, punishable by up to five years in prison and/or a \$10,000 fine is inappropriate.

For these reasons, we are opposed to this bill and encourage the committee to give HB1256 a do not pass recommendation. I appreciate your time and I am happy to answer any questions you may have. Thank you.



House Bill 1256
House Judiciary Committee
Testimony presented by Susan Stewart/Stop Abuse for Everyone
January 17, 2023

We applaud the efforts of the bill sponsors to address the increasing problem of false allegations of sexual harassment or discrimination at public institutions, including institutions of higher education. According to Title IX for All, there have been 835 lawsuits to date against colleges and universities by students accused of sexual harassment or discrimination who claim to be the victims of false allegations or mishandling of allegations by their college or university. <https://titleixforall.com/> It is an increasing problem and must be addressed.

North Dakota Century Codes 12.1-11-02 and 12.1-11-03 only address false statements given in an official proceeding or false information or report to law enforcement officers or security officials. HB 1256 specifically addresses false and frivolous allegations made against an individual under the policy of a public institution or under Title IX law. It would be pertinent to include a new chapter to the North Dakota Century Code to address false statements, information or reports made to administrators at institutions of higher education. Adjudications of alleged sexual harassment or discrimination on campuses are governed by the federal Title IX regulations, but also often include school policy and procedures that are not “official proceedings” but rather are quasi-judicial in nature.

We appreciate the concern that the person found guilty of making an allegation of sexual harassment or discrimination found to be false and frivolous should not be charged with a Class C felony. Perhaps a Class A felony might be more appropriate and in alignment with existing North Dakota law.

To: House Judiciary Committee

January 16, 2023

For HB 1256 relating to false allegations of sexual harassment or discrimination and provide a penalty

How damaging are false and fraudulent accusations? Unfortunately, a mere accusation can ruin a person's reputation and be enough to convict the innocent person in the eyes of the media, social media, their profession and in the public. Where do you go to get your reputation back after being falsely accused? Where do you get some justice?

Number 9 of the 10 commandments is "*Thou shalt not bear false witness against thy neighbor.*" This grievous sin includes all forms of lying, a lack of decency and empathy so profound it is hard to understand, but yet too prevalent. There is an old saying, "*A Lie goes halfway around the world before Truth has had time to get its shoes on.*"

Make no mistake about it. In no way is sexual misconduct, harassment or discrimination acceptable. But what is equally alarming is the current climate of falsely claiming harassment and discrimination while claiming to be a victim... when they are not.

False allegations are real. False allegations of sexual misconduct and harassment are real. Few want to admit it, but thousands of people are falsely accused on campuses every year under Title IX... all over this country.

What should the consequences be for falsely accusing someone of sexual harassment? Would you be surprised to find our few, if any, of the liars have any consequences? No punishment? No justice? *The accused has a lot to lose, while the accuser has little to lose.* If there is no fear of lying – making false and fraudulent accusations – then there is no accountability. **Thus HB 1256.**

Oftentimes, false accusations are used as a leveraging point—that is, to create drama, for attention, for revenge, to defame, to harass, out of jealousy, for political reasons, or because of mental illness. And their lies can be convincing. For liars, inflicting pain is the objective. It's not about common good; it's not about justice; it's about inflicting pain — and if they use fraudulent means to reach their goal, so what? *They want to hurt their victim while claiming to be a victim.* There are few consequences for false accusations, especially on a college campus. Vindictive liars do not want to take responsibility for their actions, as they attempt to shift the blame to the accused, many motivated to accuse someone based on a bias.

Another danger is the damage it creates for actual survivors of the sexual misconduct or harassment. Some argue that punishing any false accuser chills the willingness of victims to come forward. Rule-of-law advocates counter that **false accusations are not victimless crimes.** How true. Both the innocent and genuine victims are damaged by false allegations. Every lie casts a shadow of doubt over future reports of harassment and discrimination as true victims may be seen as making charges up, or exaggerating. So, accountability for false and fraudulent accusations is important for justice.

Justice is needed. When making false accusations, liars are messing with innocent people's lives — stealing a good reputation, honor, time, opportunities, relationships, while inflicting hurt

and pain. Accusers making false accusations need to be brought to justice. The lives of the innocent depend on it.

Imagine being a professor or instructor at a university who has devoted years of service to academic excellence through teaching, writing, researching and mentoring in his or her chosen field. Imagine what it would be like to lose everything — potentially tenure, your job, your credentials, and for sure your reputation — because of a false accusation of sexual harassment or discrimination by a student or colleague. That is the often end result for the falsely accused. Meanwhile the liar goes free, unharmed, and hidden from accountability.

False accusations of sexual harassment or misconduct on campus occur at an alarming rate. These false allegations have devastating consequences for those who are unfairly and wrongfully accused. In most cases, an accused student is placed on restrictions and forbidden from participating in student activities. Some have been suspended and expelled unfairly. In all cases, the accused student's studies and social life is disrupted by the Title IX process. Another truth is faced by students who are accused of sexual misconduct or harassment on campus: *To be accused is to be assumed guilty*. End of story. Title IX matters are overwhelmingly one-sided. University administrators too often have failed to protect the rights of the accused. Too many students experience a Kangaroo Court with a presumption of guilt forcing a student to prove their innocence. The accused tuition-paying student cannot assume a school will support and defend their rights as diligently as they support the accuser. The innocent are left with no advocate on campus. No support. No defense. Assumed guilty. Those accused can easily feel as though the whole world is against them while being wrongfully accused. And to cap it off, even if the process finds the student innocent, the accusation can have a lasting impact on their reputation and career. A Google search brings up the false accusations constantly. What happens to the false accuser? Usually nothing. Their name is never released.

If one Googles “sexual harassment false allegations,” there are news articles suggesting that scientific research shows very few people make false sexual assault/harassment allegations. The legal experts say a fair reading of the research supports the opposite. Rather than only 2-8% falsely accuse, the experts report a finding that 20-60% of allegations are false. The 2-8% figure depends on a very specific definition of false allegation, that being one that has been proven false with an admission of lying or solid evidence of falsehood. Of the remaining cases in the study, very few were proven to be true claims of sexual assault. It is important to note that no one says that 92-98% of sexual assault/harassment claims are true. The 2-8% statistic only *suggests* that more than 90% are true, but that is a faulty reading of the study and the statistics. (See *False Allegations of Sexual Assault: An Analysis of Ten Years of Reported Cases*, David Lisak, Lori Gardinier et al, *Violence Against Women* (2010).

As of January 2020 – 3 years ago - more than 150 lawsuits filed against universities over botched Title IX proceedings have ruled in favor of the accused students i.e. the universities were on the losing side, with more than 70 additional lawsuits settled by the universities prior to any decision. There are hundreds of cases pending over depriving students of constitutional due process rights. (New York Journal of Legislation and Public Policy). This method of justice is only open to students and their families willing to pay tens of thousands in legal fees to prove their innocence, i.e. the false allegations were lies. What about those who do not have the financial wherewithal? What if you cannot afford to pay for truth and justice?

Please give favorable consideration to HB 1256 to provide some justice to the falsely accused under Title IX.

I would like to second the testimony of Seth O'Neill. This bill is both unnecessary and has grave potential to be used as retaliation against legitimate victims, especially because the burden of proof that an allegation is "false or frivolous" is undefined. Sexual harassment and sexual assault are notoriously difficult to prove either way because it often boils down to he-said and she-said, so burden of proof that an allegation that is dismissed in court was made with malicious intent is essential before it can be just to enact a penalty on an accuser.

**North Dakota AFL-CIO**

1323 East Front Ave.

Bismarck ND 58504

llarson@ndaflcio.org

701-526-8787

**Testimony of Landis Larson, ND AFL-CIO President
In Opposition to HB 1256
January 17, 2023**

Chairperson Klemin and members of the House Judiciary Committee:

My name is Landis Larson, President of the North Dakota AFL-CIO. The North Dakota AFL-CIO is the federation of labor unions in North Dakota, representing the interests of all working people in our state.

I am testifying on behalf of the North Dakota AFL-CIO in opposition to House Bill 1256. This bill would create a significant threat to any victim of virtually any harassment or discrimination from making an official complaint for fear of being accused of a major criminal offense.

Enacting this bill would have far-reaching negative consequences for both employees of public institutions as well as the wider public as they interact with those same institutions in their daily lives. This would include everything from the many state institutions housed within the capitol building to every public university, public school, public library, public park, city, county and township service in North Dakota.

The number of "what-if" scenarios that this legislation creates for both the institutions and citizens is considerable. Who gets to determine if an allegation is "false and frivolous"? Who decides when to call the authorities and have the person charged with the class C felony for making the "false and frivolous" accusation? If a worker at a public institution reports discrimination or harassment to their supervisor and their supervisor tells them to talk to HR about it, are they now committing a class B misdemeanor crime if the claim is deemed "false and frivolous"?

We do not need this legislation. We know that already all types of harassment and discrimination are underreported for a very real fear of legal and illegal retaliation by their employer. Creating an additional possible criminal penalty based on the subjective analysis of an unknown entity will create more fear and is not the answer to a problem we currently face as a state.

I recommend a "Do Not Pass" recommendation on House Bill 1256.

Respectfully Submitted,
Landis Larson
North Dakota AFL-CIO President

Testimony for Hearing on HB1256

Primary Sponsor: Eric J. Murphy, District 43

Thank you, Chairman Klemin and my honorable colleagues. For the record, my name is Eric James Murphy, representative from District 43, Grand Forks.

Today is a difficult day for me. It forces me to focus on an event that attacked the very core of my soul and character. It attacked who I am as a man. Who I am as a man of faith. During my personal turmoil, Psalm 15 was read at church...and its message resonated with me. Psalm 15 can be found in its entirety on the following page. However, it ends with "Whoever does these things will never be shaken." This gave me faith in the process, and it gave me comfort.

I have been recently asked by members of the media to put my ordeal into perspective. I said this was the second worst event of my life, only next to holding my 3.5-year-old dead grandson.

While it is hard, I promised myself that if elected, I would introduce this bill. I would do all that I could to help others avoid what I faced, false and frivolous allegations of sexual harassment and discrimination under Title IX and under the policies of the University of North Dakota. Of course in the bill this includes sexual harassment or discrimination policies of any public entity in the State of North Dakota.

So, before us today is House Bill 1256 that seeks to make a Class C felony for those who make false and frivolous allegations under Title IX or under sexual harassment or discrimination policies of public institutions. While a public official that willfully encourages submission of false and frivolous allegations would commit a B misdemeanor.

About 10 years ago, this body debated a bill that afforded legal representation for students and individuals accused of allegations under Title IX in North Dakota. This was a step in the right direction and today, in the 68th session, we have an opportunity to take another important step forward.

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 is about 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, and enhanced anxiety are all real.

I reached out to several individuals who have gone through this process to testify. Both 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 discrimination. To say these false allegations are a victimless action can only be spoken by those who have not suffered through them.

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.

Thank you.

New International Version

Psalm 15A psalm of David.

¹ LORD, who may dwell in your sacred tent?

Who may live on your holy mountain?

² The one whose walk is blameless,

who does what is righteous,

who speaks the truth from their heart;

³ whose tongue utters no slander,

who does no wrong to a neighbor,

and casts no slur on others;

⁴ who despises a vile person

but honors those who fear the LORD;

who keeps an oath even when it hurts,

and does not change their mind;

⁵ who lends money to the poor without interest;

who does not accept a bribe against the innocent.

Whoever does these things

will never be shaken.



**CHILDREN'S
ADVOCACY
CENTERS**
OF NORTH DAKOTA

House Judiciary Committee
Neutral Testimony for House Bill #1256
1-17-23

Chairman Klemin and members of the Committee, my name is Greg Kasowski, and I'm the executive director of the Children's Advocacy Centers of North Dakota. I appear today to provide neutral testimony for House Bill 1256.

As many of you know, Children's Advocacy Centers provide services to children who are victims of sexual abuse, physical abuse, neglect, and other forms of child maltreatment. We work closely with law enforcement, human services, prosecution, mental health, victim advocacy, and medical professionals as we coordinate efforts in child abuse cases.

For the proposed legislation, we would like to alert you to a possible unintended consequence to the law as it pertains to child victims of sexual assault:

Would those who have truly been sexually harassed hesitate to come forward because they think they will go to jail or pay a fine if no one believes them and the allegation is "found to be false and frivolous"?

Most children are unaware that for a crime to be considered a class C felony, a court of law (and not an institutional board) would need to prove beyond a reasonable doubt that the person making the allegation made it and knew or should have known it was false. They may simply hear that, "My friend's sister was in jail for years and had to pay thousands of dollars because she lied about being sexually abused by her teacher," for example.

We believe that the knowledge of the threat of extended jail time or a hefty fine may cause a true victim to hesitate in their disclosure of the sexual abuse.

Please consider this potential repercussion for children as you determine your vote for or against House Bill 1256.

Thank you for your time.

Sincerely,

Greg Kasowski
Executive Director

Children's Advocacy Centers of North Dakota

www.CACND.org
director@cacnd.org
701.301.3701



Testimony HB 1256 Kathy Frelich

Good Morning Chairman Klemin and House Judiciary Committee,

My name is Kathy Frelich and I am a Representative of District 15. I am also a State Employee.

My purpose in being here is to provide testimony in favor of Bill 1256. In discussing this Bill with Representative Murphy, I realized that this is an issue. It is right that we have policies against sexual harassment and discrimination. I think we can all agree on that. However, we now live in a time where coworkers can make false allegations with the purpose of destroying a reputation and causing someone to lose their livelihood. Many may feel this is a Bill that favors men, but I'm aware of situations where this would have protected women from this kind of attack. As such, this Bill would also protect me. We are all here voting on Bills that our coworkers my disagree with. That is not the problem. We put ourselves willingly into that position. But we should be protected from false retaliation.

Now, as I understand it, perjury is a Class C felony. And if someone makes a false allegation to purposely injure another party, there should be a consequence. Don't get me wrong, if the allegations are found to be true, there needs to be real repercussions, but I worry we have become a society in which the allegation itself can destroy a life, and if the allegation is false and frivolous, it is wrong. There must be a deterrent for those who wish to harm a reputation for their own purposes.

Thank you for listening to my concerns, and I am open to any questions.

I work in this state as a mental health counselor working with ages 10 and up, and have been a citizen of this state my entire life. It is through both of these lenses that I must be in opposition of this bill.

This bill has a grave potential to not only be used as retaliation against legitimate survivors, but to further increase the stigma and fear already associated with legitimate survivors in saying something in the first place, making it harder for them to get the justice they deserve. Sexual harassment and assault is often very difficult to prove already contributing to this stigma and fear, and suggesting that by speaking up one should be criminalized if not able to provide enough evidence of their trauma to convince the public. Furthermore, definition of claims and “false and frivolous” is undefined and vague, leaving a lot of room for interpretation that would drastically limit the rights of those who do survive such an attack.

While false allegations are certainly undesirable, the harm this bill will do to survivors will drastically outweigh any potential benefit it might have for those falsely accused. This will have a negative effect on the mental health of survivors of such attacks within this state.



February 17, 2023

To: Rep. Eric James Murphy (R), Rep. Kathy Frelich (R), Rep. Jim Jonas (R), Rep. Keith Kempenich (R), Rep. Dan Ruby (R), Rep. Austen Shauer (R), Rep Cynthia Schreiber-Beck (R), Rep. Michelle Strinden (R), Sen. Terry Wankzek (R)
Sixty-eighth Legislative Assembly of North Dakota
Re: Engrossed House Bill No. 1256

Dear Esteemed Representatives and Senator,

The Association for Title IX Administrators (ATIXA) provides a professional association for school and college Title IX professionals who work within the field of sexual harassment, sexual violence, sex-and gender equity in education. ATIXA provides professional collaboration to explore best practices, establish industry standards, share resources, empower the profession, and advance the worthy goal of gender equity in education. In alignment with our 10,800 active members and over 59,000 trained Title IX professionals, we would like to provide information on the Engrossed House Bill No. 1256.

We appreciate the sentiments of the Bill by providing protections to those who have been victims of sexual harassment or discrimination on the basis of sex, gender, sexual orientation as this dovetails with the Title IX process for institutions of higher education as well as K-12 schools and districts. Adding a penalty for a false allegation of sexual harassment or discrimination would without doubt create a chilling effect on reporting of sexual harassment and discrimination, would invite retaliation, and potentially criminalize a privileged act (the filing of a civil rights complaint of discrimination).

ATIXA is also concerned not just with the concept behind the Bill, but its potential execution. What does it mean that there is no basis for a complaint? Who defines what

a basis is in a way that is not fatally subjective? Who makes that determination? Couldn't any person who is cleared on a complaint turn around and file criminal charges based on that? What happens when a college finds there is a basis to a complaint (which they are required by federal regulations to do under Title IX, presently, before processing a formal complaint), but the courts of North Dakota disagree? Colleges already have policies that prohibit complaints made with malicious falsity (which they should have), and offer penalties for filing such complaints. ATIXA does not see any added value to criminalizing anything but the most egregious of knowingly false complaints filed maliciously, a protection that already exists in the criminal law.

Thank you for your time and consideration regarding Bill No.1256.

Sincerely,

A handwritten signature in black ink, appearing to read "Brett A. Sokolow". The signature is fluid and cursive, with the first name "Brett" being the most prominent.

Brett A. Sokolow, J.D.

Chair of the Board, ATIXA



March 10, 2023

Sen. Judy Lee, Chairwoman
Senate Human Services Committee
North Dakota Legislature
600 Boulevard Avenue
Bismarck, ND 58505

Dear Chairman Lee,

My name is Coiya Tompkins, and I serve as president/CEO of the Community Violence Intervention Center in Grand Forks. I'm writing in opposition of House Bill 1256.

With a holistic approach to ending interpersonal violence in two generations, our agency serves more than 3,300 domestic violence and sexual assault clients, and educates nearly 10,000 professionals and students each year. Our agency also provides supervised visitation and exchange services for hundreds of families each year, and works with the state's attorney's office to support nearly 1,400 victims of crime each year. We also provide domestic violence intervention programming on an annual basis and last year, we served nearly 200 individuals who were court ordered to participate in our multi-week educational course for those who use violence.

Our staff work with victims of sexual assault and domestic violence on a daily basis, many of whom avoid seeking help from us initially because they are afraid they won't be believed. We're gravely concerned this bill could create even greater challenges for those who are legitimately assaulted or harassed. If an individual who experienced legitimate sexual harassment is unable to substantiate their claim with outside evidence, as is often the case with sexual assault and harassment, it is possible they could be charged with this crime even though they are a victim of sexual harassment. With sexual assault, already being one of the most underreported crimes, creating additional barriers for reporting is a major concern.

This bill is also unnecessary because making false statements is already a Class A Misdemeanor under North Dakota Century Code 12.1-11-02. Creating an additional section for false statements of sexual harassment is unnecessary. Also, enhancing the penalty for a false statement of sexual harassment to a Class C Felony, punishable by up to five years in prison and/or a \$10,000 fine is inappropriate.

I urge you to vote "do not pass" on HB1256.

Sincerely,

Coiya M. Tompkins
President/CEO
Community Violence Intervention Center



521 E Main Avenue
Suite 320
Bismarck, ND 58501

Phone 701.255.6240
Toll Free 888.255.6240
Fax 701.255.1904

cawsnorthdakota.org
contact@cawsnorthdakota.org



House Bill No. 1256
Senate Human Services Committee
Testimony Presented by Seth O'Neill, JD, MSW
Email: soneill@cawsnorthdakota.org
March 13, 2023

Chairwoman Lee and members of the Committee, my name is Seth O'Neill and I am representing CAWS North Dakota in opposition to HB 1256.

This bill is unnecessary because making false statements in an official proceeding is already a Class A Misdemeanor under North Dakota Century Code 12.1-11-02. Additionally, making a false report with law enforcement is already a Class A Misdemeanor under North Dakota Century Code 12.11-03. We believe creating an additional section for false statements of sexual harassment is unnecessary. Additionally, singling out victims of sexual harassment would have a chilling effect on legitimate claims. Other types of false claims are not provided with their own criminal section and it would be inappropriate to do so now.

If an individual who experienced legitimate sexual harassment is unable to substantiate their claim with outside evidence, it is possible they could be charged with this crime even though they are a victim of sexual harassment. This situation will lead to victims of sexual harassment being even more hesitant to share their experiences due to the overwhelming negative consequences it could have on them.

We encourage the committee to give HB1256 a do not pass recommendation. I appreciate your time and I am happy to answer any questions you may have. Thank you.

March 12, 2023

Chair Lee and members of the Senate Human Service Committee,

I am writing to you today to ask that you vote "Do Not Pass" on HB 1256.

As a ND citizen, as a woman, and as a mother of a teenage daughter, the implications of this bill scares me.

HB 1256 will, without a doubt, prevent victims of abuse and harassment from coming forward. This bill gives power to those perpetrating harassment and removes power from those experiencing this abuse.

Further, this seems to be a solution looking for a problem, especially considering that there are already laws in place to criminalize fraud.

Much of this legislative session seems to emphasize the protection of vulnerable populations, yet the words do not match the deeds. Bills such as HB 1256 say to vulnerable people such as women, the disabled, BIPOC, etc.: "We want you to come to North Dakota so we can claim to be welcoming, but if you find yourself in a bad situation we will do whatever we can to protect "our own" from your allegations." Is this the message you want to send? Because this is the message people are hearing.

Respectfully submitted,

Janet B. Anderson

Burlington, ND

TESTIMONY

Engrossed House Bill No. 1256

Sixty-eighth Legislative Assembly of North Dakota

My name is Jesse Wiesenborn and I've been a resident of this state for 33 years. If you've never experienced sexual harassment or discrimination, then you've never studied or worked in North Dakota.

Sexual harassment and discrimination are so egregiously rampant that you might as well draft a law protecting the right to perform and execute these activities rather than penalize those who make false allegations. This is the tragic and absurd reality of our streets, workplaces and public institutions: there are oftentimes no allegations of sexual harassment or discrimination where these incidents actually occur. They are usually too subtle and subjective or involve too many people to objectively report, and stay unreported due to the fear and stigma victims already suffer.

House Bill 1256 won't give victims of false claims of sexual harassment or discrimination any meaningful relief because it doesn't address the root of this problem. Furthermore, claims that allegations of sexual harassment are without fact or basis could easily be as discriminatory as the allegations themselves. Schools and employers already ignore and dismiss claims of sexual harassment and discrimination even when evidence is provided. When escalated, higher authorities unilaterally side with the decisions of lower authorities.

House Bill 1256 itself is a frivolous piece of legislation because this state is not a right-to-work state. Employers do not need cause to terminate employees, and they do so at whim. This practice is so commonplace that managers, supervisors, and Human Resources departments are quite often the perpetrators of sexual harassment, discrimination, and false allegations themselves. Ground-level employees are so powerless against institutionalized sexual harassment, discrimination, and false allegations that it is redundant to threaten them further with the penalty of a misdemeanor.

House Bill 1256 only further marginalizes victims of sexual harassment and discrimination, and it puts more power in the hands of abusive authorities. However, one "silver lining" of this bill is that it could give tenacity to legitimate accusers' claims. Institutions may hypothetically be more willing to hear individuals who can wager a misdemeanor on their claim in cases where they would otherwise laugh them out of the office.

If I could give any advice to those who suffer from sexual harassment, discrimination, or false allegations of the same, I would say to strictly avoid drugs and alcohol, keep your presence and clarity of mind to immediately react and respond to perpetrators as quickly as incidents occur, and treat everyone with respect and professionalism at all times. Expect nothing less than respect and professionalism in return.

Thank you,

Jesse Wiesenborn
 Fargo, ND

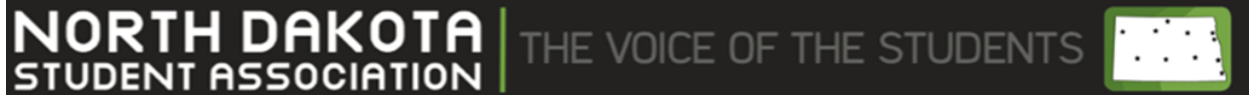
3/12/2023

This bill will have a chilling effect on the willingness of employees or students in public institutions to come forward with allegations of harassment, discrimination, or assault. In my lengthy management career, I have dealt with many such complaints, and they are not made lightly. I have also been the target of some complaints, all of which were unfounded, but I have not felt any need to retaliate against the complainants. They were exercising their rights, and investigative processes worked as they should to determine that I was not at fault. That was the end of the matter.

This bill reeks of “methinks he doth protest too much.”

I urge a NO vote on this bill.

Phyllis E. Johnson, PhD



HB 1256

March 13th, 2023

Adelyn Emter, North Dakota Student Association

(701)260-6246 | adelyn.emter@ndus.edu

Chair Lee and Members of the Committee: My name is Adelyn Emter and I am the Chief of Staff with the North Dakota Student Association (NDSA). I am writing today in opposition of SB 1256.

The North Dakota Student Association is dedicated to ensuring that students have a voice at the table in policy that affects higher education. We consist of delegates from each of the 11 public North Dakota University System (NDUS) institutions, meeting monthly to engage students in discussions about North Dakota higher education policy. Since 1969, our mission has been to empower students, create collaboration between the student bodies of the North Dakota public universities, and to provide a student perspective on higher education policy.

On January 21st, 2023, the NDSA General Assembly passed [NDSA-16-2223](#): A Resolution in Opposition to the Criminalization of False Allegations of Sexual Harassment or Discrimination. This resolution expresses student concerns posed by HB 1256. First, college-age people are the population most at risk of sexual assault. College-age women are 4 times more likely to experience sexual assault than other women and male college-aged students are 78% more likely than non-students of the same age to be a victim of rape or sexual assault^[1]. 13% of all college and graduate students report nonconsensual sexual contact by physical force or an inability to consent, according to a 2019 Association of American Universities survey of nearly 182,000 students^[2]. Because of the disproportional impact of sexual crime on college students, our organization felt it important to take a firm stance against this legislation.

HB 1256 threatens the integrity of the Title IX reporting process by dissuading students from reporting experiences of sexual harassment, sexual violence, and discrimination. Sexual harassment and discrimination is already highly unreported, and this bill would further discourage reporting by establishing a penalty for failure to produce adequate evidence. This



legislation may also have an unintended impact on the actions of mandated reporters. North Dakota University System (NDUS) faculty, staff, and other employees are required to report all known information regarding suspected or potential discrimination, harassment, or sexual violence against students, an obligation that extends to suspected or potential sexual harassment or sexual violence involving students that occurs off-campus. These mandated reporters should not have to choose between fulfilling their obligation to report suspected discrimination or harassment and violating criminal law. Further, students' right to the filing of a civil rights complaint of discrimination must be protected without fear of retaliation\

The process under which the criminal justice system and NDUS Title IX evaluate reported crimes or complaints of discrimination are designed to evaluate information and determine the truth. These existing processes adequately address the concerns presented by the sentiment of this bill. Additionally, making false statements is already a Class A Misdemeanor under North Dakota Century Code 12.1-11-02; therefore, this legislation is unnecessary and detrimental to the reporting of crimes based on Title IX discrimination. In conclusion, the North Dakota Student Association encourages the committee to provide a Do Not Pass recommendation on HB 1256.

March 12, 2023

Senate Human Services Committee Members,

For the record, my name is Andrea Placher and I live in District 2 in Williston, ND. It is my opinion HB1256 would do nothing but further silence the victims of sexual harassment or discrimination and I would request you submit a DO NOT PASS vote. Victims of sexual harassment and discrimination, especially women, are already fearful of retaliation, demotion, and/or punishment for speaking out. I can't even think of what would happen once they knew if there wasn't enough evidence or they simply weren't believed would result in them being charged with a crime...

Please submit a DO NOT PASS on HB1256.

Respectfully,

Andrea Placher

Williston, North Dakota

HB 1256

68th Legislature Session

Representatives: Murphy, Frelich, Jonas, Kempenich, D. Ruby, Schauer, Schreiber-Beck, Strinden

Senator: Wanzek

I am in opposition to HB 1256. As a woman who is born and raised in North Dakota.

How many of you have been sexually harassed at work or any other public forum? How many of you had to listen to humiliating comments said to you about you or had unsolicited and unwanted touching from others at work or in any public forum? Has any of your female relatives or loved ones have had this happen? I have had the very unpleasant experiences in high school, and at my job.

My take from this bill is that there is a false belief out there that there is a huge amount of “false allegations” of rape, discrimination or sexual harassment in North Dakota. I do not believe that to be true and would like to see data proving me wrong. What this bill does is create fear and hesitation for those who have been the victims of discrimination, sexual harassment or rape. The fear of having a felony slapped on them, in the event that the legal system finds that their story not credible, only victimizes the victim a second time.

Let's face it, North Dakota's demographic is largely white, heterosexual males and it's this demographic that places these allegations as “frivolous” or as what I have been told by this same demographic, “boys will be boys” or “that's locker room talk”. I find that line of thinking offensive and condoning of such actions towards anyone other than their own family member. I've had discussions in which when I shared my experiences and asked how this male would like it if his daughter, sister or wife had been the target of such unwanted groping, talk or harassment he then said he wouldn't like it. Yes, the very same individual who said “locker room talk” and “boys will be boys” wasn't so dismissive when he was put to the test of having his loved one the target of these harmful actions. I ask you, how many of you would be ok with having your loved one be faced with the choice of coming forward and risk not only having to go through recalling the emotional and traumatic events but then also risk being accused of making a false allegation and facing a felony?

There are laws already on the books and a process in which law enforcement investigates and puts the facts before the legal system to judge. This bill only adds insult to injury and doesn't protect anyone. Let the legal system do its job, as it has, and stop this witch hunt. There is no reason for this bill.

How can the GOP party endorse such a bill yet refuse to pass the Hate Crimes bill? There is a need for such a bill but the GOP says there's already enough protection on the books protecting minorities, the LGBTQAI community and women BUT now you want HB #1256?

The hypocrisy is glaring! There is no need for this bill. White, heterosexual men in North Dakota are not targets nor need any more protecting than women, LGBTQAI community or minorities in North Dakota. This is a case of what's good for the goose is good for the gander. This bill is making a mountain out of a

HB 1256

mole hill. There are more legitmist cases of discrimination, sexual harassment and rape than there are false allegations.

The GOP party is doing its best to dictate what we citizens in North Dakota think, feel and how we live. I was always under the impression that the GOP party believed in "small government" and to let the people live a life with fewer interference from government. Either the GOP party has changed its ideology or the ND GOP thinks it's citizens lives needs to be governed by people who think they know what's best for it's residents. Nothing could be farther from the truth.

Stop dictating how citizens of North Dakota should live. The target of this bill is LGBTQAI people who bring forth allegations of harassment and discrimination. Come on, make of your mind. Either North Dakota needs to do a better job protecting those who are hurt by discrimination, sexual harassment by utilizing the laws that are already in place OR the Hate Crime bill which was introduced and found not unnecessary needs to be reviewed. You can't declare that minorities, LGBTQAI and ethnics do not need additional protection but then support and pass this bill. That makes no sense unless you believe that white, heterosexual males are being accused falsely of malicious acts and in that case the current laws should be used and this bill isn't necessary.

Make up your mind! White, heterosexual males in North Dakota are not victims of a large amount of false sexual, discriminatory or rape allegations.

This bill, like so many others that the GOP party has produced and are supporting are harmful and unjust. Stop victimizing the marginalized in North Dakota.

Respectfully,
Kristie Miller

Dear Legislators and Committee Members,

My testimony is to ask that you give this bill a Do Not Pass.

I am a public school educator and a 29 year resident of North Dakota. This bill actively harms members of community.

Thank you for your time and consideration.

Sincerely,

Christopher Brown

Dear Chair Lee and the members of the Senate Human Service Committee, I urge a “Do Not Pass” on HB 1256.

Having reviewed and analyzed the testimony on this bill, I think that it sits exactly where we want it to. The question we face is if we want to really make someone pause before considering pursuing a sexual harassment or discrimination claim, knowing that without enough evidence, it could result in criminal penalty.

I believe this bill will make the number of false accusations go down from wherever it is right now. I believe this bill will also cause innocent people, who have been victims of sexual harassment, to be charged with a misdemeanor. I believe it is fair to say both of these things will happen.

I would like to also empathize with the fear individuals have that false accusations can destroy lives and careers. I think individuals who fraudulently and maliciously utilize our systems should be fully punished for doing so.

However, I do think that if this bill becomes law, I would caution anyone coming forward with any complaint that is not matched by very concrete evidence due to the risks. And I believe abusers will take this bill as the power to harass and discriminate whenever they're behind closed doors with their victim. So long as they don't leave concrete evidence, this bill is carte blanche on their actions. I think the most common line we hear from abusers to victims is, “Go ahead and tell, who will believe you?”

A new common line may be, “Go ahead and tell, I'll make sure you go to jail.” It is for these reasons I feel that this bill is perhaps not the right approach and we should seek some other resolution to the complaints this bill attempts to address.

Thank you for your time and service to our state,
Faye Seidler

Legislative Analysis Snapshot

Main Themes in Favor

1. [Needs to be punishment for false claims](#)
2. [False claims are happening a great deal](#)
3. [Reported false claims higher than expected](#)

Main Themes in Opposition

1. [Chilling impact on survivors coming forward](#)
2. [Incentivizes anyone cleared of misconduct to turn around and criminalize accuser](#)
3. [Increase stigma and fear in testifying](#)
4. [Enforceability is questionable and problematic](#)

Main Themes Neutral

1. [Could cause a youth to not disclose due to hearing about extra punishments](#)

| Written Testimony | In Favor | In Opposition |
|--------------------------|----------|---------------|
| Word Count | 1800 | 1,400 |
| Citizen | 2 | 1 |
| Stakeholder/Qualified | 0 | 4 |
| Politician | 2 | 0 |
| Total 9 | 4 | 5 |
| | 44.44% | 55.56% |
| | | |
| In person testimony Mins | 23 | 5 |
| Total Minutes 28 | 82.14% | 17.86% |
| | | |
| Committee Vote | Do pass | Don't pass |
| Total 12 | 7 | 5 |
| | 58.33% | 41.67% |
| | | |
| Floor Vote | Yay | Nay |
| Total 94 | 53 | 41 |
| | 56.38% | 43.62% |



State Capitol – 600 E Boulevard Ave – Dept. 215
Bismarck ND 58505-0230
Phone: 701.328.2960 Fax: 701.328.2961
E-mail: ndus.office@ndus.edu Web: ndus.edu

Engrossed HB 1256

Senate Human Services

March 13, 2023

Katie Fitzsimmons, NDUS Director of Student Affairs

701-328-4109 | katie.fitzsimmons@ndus.edu

Chair Lee and Committee Members: my name is Katie Fitzsimmons and I serve as the Director of Student Affairs for the North Dakota University System (NDUS). I am representing the System Office and the NDUS campuses in opposition to Engrossed HB 1256. The bill is unnecessary and it could place the campuses in North Dakota in violation of federal regulation. For these reasons, we respectfully ask for a Do Not Pass recommendation.

First, a few words on our Title IX process, supportive measures, and policies currently in place. It must be stated that NDUS institutions are very attentive to the rights of both the complainant and the respondent in the review process. Our staff continually seek training on how to best work with students and staff when a complaint is filed but before that can occur, the Title IX staff vet each complaint thoroughly to determine if it meets the criteria for the Title IX process, if it would be handled more appropriately through a conduct channel available on campus, or if it needs to move to a criminal or civil charge outside of the University System. The latest regulations have a much steeper threshold and our Title IX staff members handle these complaints with the utmost concern and consideration.

Further, under the recently revised Title IX federal regulations (current iteration in place since August 2020; new adjustments are coming out in May 2023), campuses must afford supportive measures to both parties; the complainant and the respondent. In such, each party may receive an appointed Title IX advisor to assist them as they navigate through the process. Supportive measures could include counseling, extensions of deadlines, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, and/or increased security or monitoring of certain areas of campus. These supports are detailed in [SBHE Policy 520 Section 8\(c\)\(i\)](#). Also of note, in the [State Board of Higher Education Policy 520](#), section 8 (b)(ii) states: “No disciplinary sanctions or other actions which are not supportive measures may be imposed against a respondent prior to the conclusion of the grievance process.” Under Title IX, no campuses are permitted to prescribe any disciplinary actions against a respondent until the conclusion of a hearing, and only if responsibility is determined. In essence, although Title IX processes are not processes of a criminal justice system, this is the equivalent to “innocent until proven guilty” as practiced in criminal law.

In regard to Title IX training and awareness that happens on our campuses, all faculty, staff, and students are required by federal law to complete Title IX training upon hiring or start of their education. This is to provide education and awareness. All Title IX staff participate in ongoing training on how to handle a received complaint, investigate, adjudicate, and appeal a complaint. For a complaint to reach the Title IX threshold, the action in question must be “unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the institution’s education program or activity” or it must meet the definition of “sexual assault, dating violence, domestic violence, or stalking”. For a complaint to cross the threshold to trigger Title IX, the bar is very high. Campuses report that many complaints that arrive as a Title IX complaint get routed through a standard HR or student conduct process, if at all. These complaints are thoroughly vetted. Failure to do so could easily result in the aggrieved party filing a complaint with the Office of Civil Rights, which results in a lengthy investigation and hefty financial fines for the institution.

To address our concern that Engrossed HB 1256 is unnecessary, our criminal justice system in North Dakota already provides an avenue and remedy for false allegations made in a government matter. Our legal counsel determined that NDCC 12.1-11-02 could be utilized in a situation where a false statement was made during a Title IX process. Furthermore, the language in Engrossed HB 1256 is not consistent with the language set forth in Chapter 12.1-11, which covers Perjury, False Statements, False information to Law Enforcement and defines materially false information.

In addition to the current recourse in the criminal justice system, our internal student conduct or, in the case of employees, internal human resources actions, have disciplinary action required against those who knowingly make false complaints (examples of specific policies are attached) and campuses offer appeal processes to all parties. Going one step more, if an individual felt they had experienced slander or a similar wrongdoing, there would be recourse in the civil justice system. Because there are already criminal, administrative and appellate remedies available in the rare circumstance in which a false statement or allegation is made, Engrossed HB 1256 is redundant and unnecessary.

On a more philosophical note, something for the committee to consider. If NDCC 12.1-11-02 is not a satisfactory remedy for false accusations made in a Title IX complaint or hearing, the committee should consider this: why we are creating a criminal penalty for an allegation brought in a non-criminal administrative Title IX matter? On the other side of the coin, if a student is sexually assaulted, a complaint is filed, the proof is irrefutable, and the respondent party is found to be responsible, there are no prison sentences, fines, or restitution made upon the respondent in the Title IX process. The penalties and consequences remain within the institution. Just as a respondent who feels that an allegation was false could report that

allegation to law enforcement for an investigation pursuant to 12.1-11-02, a victim could also utilize the criminal justice system to report a sexual assault. These would be instances where the involved parties continue action on a complaint by moving it outside of the campus's process, whereas this proposed legislation does not clarify who would file the charges if a complaint was found to be false. The North Dakota University System believes it is unnecessary to conflate the administrative Title IX process with the criminal justice system remedies when there are already separate remedies in both systems to penalize false accusations/statements.

Finally, the federal limitations of Title IX are in place and compliance by our institutions of higher education are required to maintain those standards in order to maintain federal funding, access to scholarships, and support for research, not to mention avoid a lengthy and costly investigations by the Office of Civil Rights. When states impose further Title IX parameters, the legislature places the University System in a precarious position. Engrossed HB 1256 would require public officials with actual knowledge of a report of sexual harassment/discrimination or assault, meeting the definitions under Title IX, to violate the Title IX statute as it would criminalize their participation in the process dictated by federal mandate. Federal law expressly forbids an institution from retaliating against anyone making a Title IX complaint: "No school or person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in a Title IX investigation, proceeding, or hearing." This bill, if enacted, and if it required the institutions to participate in an investigation and/or criminal charges against a complainant of Title IX, it could risk federal funding for our institutions. Of greatest concern right now is that the Department of Education will publish new Title IX regulations in May of this year, right after this Assembly gavel out sine die. We do not know what those new regulations will state, but if this law puts us in further conflict with those new regulations, what are the campuses to do?

I thank you for the opportunity to provide clarity on what is actually taking place on the campuses and how they uphold federal regulations and SBHE policies. I provided the details nine campuses provided to us pertaining to policies that address false accusations. That concludes my testimony on Engrossed HB 1256. Again, I respectfully request the committee consider a Do Not Pass recommendation. I thank you for your time and service and stand for questions.

Appendix: Campus policies on false reporting

Bismarck State College

[BSC Title IX Policy/Procedure](#)

Page 7

Sanctions Page 15

False Reports:

Knowingly submitting a false report of sexual harassment is prohibited. Anyone submitting a false report is subject to disciplinary action.

[BSC Sexual Misconduct Policy/Procedure](#)

Page 8

Sanctions Page 17

False Reports:

Knowingly submitting a false report of sexual misconduct is prohibited. Anyone submitting a false report is subject to disciplinary action.

[BSC Student Code of Conduct](#)

Page 5

Sanctions Page 13

Individual violations and assisting or encouraging others to violate the college's policies are subject to disciplinary action through the appropriate process. The following behaviors violate BSC's Student Rights and Responsibilities. This is not an exhaustive list.

- Acts of Dishonesty - Making a false statement, identification, or act of lying.

[BSC Employee Code of Conduct](#)

Page 3

Sanctions Page 3 Alleged violations of this Code shall be investigated by the Chief Human Resources Officer and Chief Accounting Officer. All employees shall cooperate in investigations of alleged violations. A violation of this Code may lead to dismissal or other appropriate disciplinary action, in addition to any criminal or other civil sanctions that apply.

Employees must not make or engage in any false record or communication of any kind, whether internal or external, including, but not limited to, false expense, attendance, enrollment, financial, or similar reports and statements, or false advertising, deceptive marketing practices, or other misleading representations.

Lake Region State College

[Code of Conduct – 1500.05](#)

“It is expected that all employees will not make, send, enter or distribute a false record or communication of any kind.”

[Harassment – 1500.08](#)

“Anyone who is found to have intentionally made a false report of harassment or who fails to cooperate in the investigation of a complaint will be subject to disciplinary actions up to and including termination, suspension, or expulsion.

[Title IX and Sexual Harassment – 1500.09](#)

“Anyone who is found to have intentionally a false report of harassment or who fails to cooperate in the investigation of a complaint will be subject to disciplinary actions up to and including termination, suspension, or expulsion.

“Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding does not constitute retaliation, although a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

[Student Conduct – 800.30](#)

“Notice of any provisions in Lake Region State College’s code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.”

“A student, a group of students or a student organization shall not retaliate against any person who files a complaint or grievance; reports misconduct, participates as a witness in an investigation, or otherwise provides information to college officials. Retaliation can be classified as minor or major misconduct depending on the nature of the action.”

Mayville State University

Our policy does mention false claims on Pg 14 and states that people making them “may be subject to

discipline”. We would see this as a violation of the code of conduct and it would roll over to that policy.

Our full policy is [HERE](#)

https://mayvillestate.edu/files/4316/6439/7721/M520.01_Title_IX_Sexual_Misconduct_and_Sexual_and_Gender_Based_Discrimination_Policy_adopted_9-19-22.pdf

Minot State University

Minot State University’s Sexual Harassment Policy does entail information regarding False Allegations and Evidence (Item #24, p. 13, <https://www.minotstateu.edu/title9/documents/Sexual-Harrassment-Policy.pdf>).

This section is as follows:

“Deliberately false accusations under this policy, as opposed to allegations which, even if erroneous, are made in good faith, are a serious offense and will be subject to appropriate disciplinary action.

Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence after being directed to preserve such evidence, or deliberately misleading an official conducting an investigation can be subject to discipline under University policy.”

The Grievance Process for False Allegations and Evidence is outlined within the University’s Sexual Harassment Policy under Resolution Process for Alleged Violations of the policy (pg. 15, <https://www.minotstateu.edu/title9/documents/Sexual-Harrassment-Policy.pdf>)

Any matter not falling under the threshold of Title IX is referred to the Vice President for Student Affairs for evaluation of policy violation under the Student Code of Conduct (Student Conduct Policy <https://www.minotstateu.edu/title9/documents/Sexual-Harrassment-Policy.pdf>). The complete handbook is available electronically www.minotstateu.edu/student_handbook.pdf .

North Dakota State College of Science

Disciplinary sanctions imposed after the conclusion of a Title IX or Sexual Misconduct grievance process are assessed pursuant to **[NDSCS Student Guide to Rights and Responsibilities](#)**: A Code of Student Conduct. <https://www.ndscs.edu/current-students/student-conduct>

3.13 of the NDSCS Student Guide to Rights and Responsibilities provides: Deception/Falsification/Misrepresentation

Withholding or providing false information is prohibited. This includes but is not limited to:

- 3.13.1 Falsely representing an entity and/or committing or using the resources of an entity without proper authorization;
- 3.13.2 Knowingly, intentionally or recklessly making false accusations of prohibited conduct against another individual;
- 3.13.3 Providing false information or falsified evidence with the intent of harming another person;
- 3.13.4 Seeking admission to the College under false pretenses and/or
- 3.13.5 Attempting to intimidate witnesses and/or altering or destroying evidence necessary to conflict resolution.

**3.16 of the NDSCS Student Guide to Rights and Responsibilities provides:
Failure to Comply**

Failure to comply with the instructions or directions of all College and/or emergency personnel in the performance of their duties is prohibited. Such acts may include, but are not limited to, recklessly obstructing or delaying any College proceedings, providing misleading or false information during an investigation, resisting or fleeing a police officer, failing to comply with assigned College conduct sanctions, or engaging in verbal and/or physical abuse directed toward any College personnel.

**6.1 of the NDSCS Student Guide to Rights and Responsibilities provides:
Hearing Procedures for Potential Suspension or Expulsion Cases**

Introduction With all parties present, the hearing officer will call the hearing to order and ask all parties participating to introduce themselves and identify their role in the proceedings. The hearing officer will describe the general outline of the hearing and read the following honesty statement: Honesty Statement *“There is an expectation that all information presented in this hearing will be true and correct to the best of each person’s knowledge. If students willfully provide false information, they will be in violation of NDSCS’s Code of Conduct. As a result, they may be subject to additional disciplinary action. Dishonest behavior by any faculty or staff members will be reported to supervisors for any necessary disciplinary action”*

North Dakota State University

[NDSU Policy 162: Sexual and Gender-Based Harassment and Sexual Misconduct \(Not Title IX policy\)](https://www.ndsu.edu/fileadmin/policy/162.pdf)

<https://www.ndsu.edu/fileadmin/policy/162.pdf>

Section 2: Prohibited Conduct

2.5: Interference with an investigation – Any person who knowingly and intentionally interferes with an investigation conducted under this policy is subject to disciplinary action up to and including dismissal or separation from the University. Interference with an investigation may include, but is not limited to: 1) Attempting to coerce, compel, influence, or prevent an individual from providing testimony or relevant information; 2) Divulging confidential information; 3) Removing, destroying, or altering documentation relevant to the investigation; or 4) Providing false or misleading information to the investigator, or encouraging others to do so.

2.7: Obligation to provide truthful information – All University community members are expected to provide truthful information in any report or proceeding under this policy. Submitting or providing false or misleading information in bad faith or with a view to personal gain or intentional harm to another in connection with an incident of prohibited conduct is prohibited and subject to disciplinary action and sanctions under the appropriate disciplinary policy. This provision does not apply to reports made or information provided in good faith, even if the facts alleged in the report are not later substantiated.

NDSU Policy 601: Rights and Responsibilities of Community: A Code of Student Conduct

<https://www.ndsu.edu/fileadmin/policy/601.pdf>

Section 3: Prohibited Conduct

3.17: Deception/Falsification/Misrepresentation

Withholding information or providing false information is prohibited. This includes: Providing false identification; Falsely representing an entity and/or committing or using the resources of an entity without proper authorization; Knowingly, intentionally, or recklessly making false accusations of prohibited conduct against another individual; and/or Altering, destroying, or falsifying evidence.

3.20: Failure to Comply

Failure to comply with the instructions or directions of all University and/or emergency personnel in the performance of their duties is prohibited. Such acts may include recklessly obstructing or delaying any University proceedings, providing misleading or false information, resisting or fleeing a police officer, or failing to comply with assigned University directives or conduct sanctions.

6: Hearing Procedures for Suspension or Expulsion Cases

Honesty Statement

The University expects that all information presented in this hearing will be true and correct to the best of each participant's knowledge. If students willfully provide false information, they will be in violation of NDSU's Code of Student Conduct. As a result, they may also be subject to additional disciplinary action. Dishonest behavior by any faculty or staff members will be reported to supervisors for any necessary disciplinary action.

University of North Dakota

At UND we have a statement in our notice of allegations that is sent to both parties that [states](#) “UND prohibits knowingly making false statements or knowingly submitting false information during the grievance process.”

Our [sexual misconduct policy](https://campus.und.edu/equal-opportunity/title-ix.html) states (<https://campus.und.edu/equal-opportunity/title-ix.html>) (<https://und.policystat.com/policy/11804149/latest/>)

Prohibition against False Statements

UND prohibits knowingly making false statements or knowingly submitting false information during the Sexual Misconduct grievance process. Doing so will subject the party making the knowingly false statement to disciplinary action.

The policy also states that a determination of responsibility alone is not sufficient to conclude someone made a materially false statement in bad faith.

Non-Retaliation for Filing or Participating in a Sexual Misconduct Complaint

Neither the University nor any employee, student, or affiliate may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under the Sexual Misconduct Policy.

The exercise of rights protected under the First Amendment does not constitute retaliation prohibited under this Policy. Charging an individual with a policy violation for making a materially false statement in bad faith in the course of a grievance proceeding under this Policy does not constitute retaliation prohibited by this Policy. However, a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

Valley City State University

This statement is at the beginning of the Student Code of Conduct:

Valley City State University is committed to the view that an important purpose of higher education is to develop mature responsible adult citizens and community leaders. Likewise, the university expects that, on or off campus, students will conduct themselves with courtesy, truthfulness, respect for law, and a thoughtful concern for the rights of others.

In the Student Code of Conduct regarding behavior that is subject to disciplinary action:

Furnishing false information to any university official, faculty member or office.

In our Title IX policy:

Upon receipt of a formal complaint, VCSU will provide the following written notice to the parties who are known:

Notice informing the parties of VCSU's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

Also in our Title IX policy:

In Bad Faith, Charging an Individual with a Code Violation for Making a Materially False Statement

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this part does not constitute retaliation prohibited

under this policy, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

Williston State College

4.17 Deception/Falsification/Misrepresentation

Withholding or providing false information to WSC personnel or members of law enforcement while conducting an investigation regarding WSC students or activities is prohibited. This includes but is not limited to:

- Falsely representing an entity and/or committing or using the resources of an entity without proper authorization.
- Knowingly, intentionally, or recklessly making false accusations against another individual that are intentionally false or made with reckless disregard for the truth.
- Providing false information or falsified evidence with the intent of harming another person.
- Furnishing false or misleading information on admission, registration, student identification, or any other forms.
- Altering College records; and/or
- Attempting to intimidate witnesses and/or altering or destroying evidence necessary to conflict resolution.

4.18 Fraud

Willfully destroying, damaging, tampering with, altering, stealing, misappropriating, or using without permission any College document, program, or file is prohibited.

Chairperson, members of the Senate Human Services Committee, here on behalf of the Fargo Human Rights Commission to testify regarding HB 1256, and I urge you to vote do not pass on this bill.

The Fargo Human Rights Commission consists of [eleven volunteer members](#) who are nominated by the Mayor and appointed by the City Commission. Each serves a three-year term. The Human Rights Commissioners represent a broad range of racial, religious, ethnic, social, economic, political and professional groups.

Our mission is: The Fargo Human Rights Commission provides leadership and education in areas of civil rights, to eliminate discrimination against persons because of color, creed, religion, national origin, age, sex, sexual orientation, gender identity, disability, or marital status. It encourages adherence to civil rights through education, conciliation, and mediation. It identifies human and civil rights-related concerns of the public and recommends policies to the board of city commissioners that protect and preserve individual rights.

At its February, 2023 commission meeting, the assembled commission members voted unanimously on a resolution standing in opposition to the numerous bills targeting our Transgender community.

HB 1256 granted does not single out members of the LGBTQ community. Nonetheless, we stand in opposition to this bill as it would have far-reaching negative consequences. We live in a time and place where already there are many barriers to report harassment or discrimination particularly to members of the LGBTQ community. North Dakota is considered to be one of the most homophobic states in the country. This bill would have a disproportionate chilling effect on anyone needing to raise concerns or issues in an already hostile environment. The bill raises too many "what-if" scenarios, particularly as to who would be the final arbiter in deciding what is "false or frivolous". We need more safeguards, not less in protecting victims of harassment and discrimination. We know already that such complaints are grossly underreported.

Thank you,

Cody Severson

Fargo Human Rights Commission Chair

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.

Testimony in opposition to Engrossed House Bill 1256
Andrew P. Armacost, President, University of North Dakota

Dear Chair Lee and Members of the Senate Human Services Committee,

Please accept these comments relating to Engrossed House Bill 1256. I urge the committee to vote against this bill for the following reasons:

- Our biggest concern is the chilling effect on victim reporting. Many will not report and seek help out of fear that they will be prosecuted.
- The bill is unnecessary because Title IX regulations and all NDUS institution policies already contain provisions that prohibit false reports and set out a method of dealing with that.
- Current language speaks of a person “making an allegation,” which is vague. An allegation could be discussing an incident with a coworker or friend; making a “report” but asking only for support for themselves, not for formal institutional action; or a “formal complaint,” which is the only way to ask a university/college to take action under Title IX. This broad language furthers the risk of victims deciding not to come forward for help.
- Current language also speaks of cases that “have no basis in fact or law.” Universities do not make determinations on this basis. We are required by Title IX to make a determination, based upon a preponderance of the evidence, whether a policy was violated. A decision maker could determine there was no policy violation, but that does not mean the complaint had no basis in law or fact. It only means the gathered evidence was not sufficient to support a policy violation.
- The bill misstates the law in several respects. The title states “sexual harassment or discrimination,” but later says the penalty will apply in cases of discrimination based on sex, gender, sexual orientation, race, religion, and disability but purports that these protected classes all fall under Title IX. This is incorrect.
 - Title IX covers sex only (courts are currently divided about whether that included sexual orientation and gender identity as the Dept of Ed says it does.)
 - Title VII also prohibits discrimination based on sex, sexual orientation, and gender identity but isn’t mentioned at all.
 - Discrimination/harassment based on disability, race and religion fall under a combination of ADA, Section 504 of the Rehabilitation Act, Title VI and Title VII.
 - There are several protected classes (age, color, national origin, veteran status, etc.) that aren’t even included.

The details above were assembled by UND’s Assistant Vice President for Equal Opportunity and Title IX, Donna Smith. We ask you to consider these facts as you deliberate on this bill, and we urge a “Do Not Pass” from your committee.

With respect,

Andrew P. Armacost
President, University of North Dakota



North Dakota Association for Justice
Jaclyn Hall, Executive Director
PO Box 365
Mandan, ND 58554
jaclyn@ndaj.org

HB1256 ~ Senate Human Services

Madam Chair Lee and members of the Senate Human Services Committee, my name is Jaci Hall and I am the Executive Director of the North Dakota Association for Justice. I am here to testify in opposition to HB1256.

HB1256 will create a criminal penalty if an individual gives a false claim of sexual harassment or discrimination under Title IX. This proposed legislation creates a criminal sanction on a non-criminal filing.

Title IX is a federal civil rights law that prohibits discrimination based on sex in any educational program or activity that receives federal funding. This includes most schools, including private institutions and grades K-12. It addresses sexual harassment, sexual violence, or any gender-based discrimination that may deny a person access to educational benefits and opportunities.

Most Title IX complaints go through student affairs, which would not be considered law enforcement or a security official. Under HB1256, their evidence gathering could be used towards the criminal complaint.

Title IX hearing officers generally make a finding of "Not Responsible" or "Responsible" using a preponderance of the evidence standard. Some hearing officers may use the following: "Did not occur", "did occur", "unfounded", "unable to be shown by a preponderance of the evidence", and the like. HB1256 will create an extra burden on the hearing officers to determine whether an allegation is false:

- 1) because of the criminal penalties associated with making false reports if the bill were passed, and
- 2) because of the potential for a civil lawsuit being commenced against the person.

Every university in North Dakota (at least I believe every university) has penalties for making false statements/allegations regarding Title IX. For example, UND's policy "prohibits knowingly making false statements or knowingly submitting false information during the Sexual Misconduct grievance process. Doing so will subject the party making the knowingly false statement to disciplinary action".

Universities create their own policies towards Title IX because it is not a criminal action. It also has a lower standard of evidence compared to a criminal complaint. If passed, I do not believe any criminal actions would be brought against the individual who filed the false complaint. The evidence just may not be there.

Lastly, silencing victims could be a potential consequence of HB1256.

Because Title IX claims are not criminal complaints and each university creates their own penalties for false statements under Title IX, I believe HB1256 is not needed.

Thank you for your time and I will stand for any questions.

Testimony in opposition to HB 1256
Senate Human Services Committee
Christina Sambor, North Dakota Human Rights Coalition
March 13, 2023

Chairwoman Lee and Members of the Committee:

I come before you today on behalf of the North Dakota Human Rights Coalition to oppose HB 1256. This bill is unnecessary first of all in that there are many different avenues through which false public allegations of any kind can adequately be dealt with. Civil defamation, criminal defamation, perjury, and fraud, and the rules of civil procedure, to name a few. The effect of this bill is simply to put up another “barrier” to individuals who seek to enforce their rights to be free from discrimination and harassment. This bill will have a chilling effect on what are already very difficult decisions for marginalized groups to come forward and assert their rights. Please vote do not pass on HB 1256.

Testimony of Leo F.J. Wilking in Favor of H.B. 1256
Senate Human Services Committee
March 13, 2023

Chairwoman Lee, members of the committee:

I submit these comments in support of H.B. 1256.

I am an attorney in private practice in Fargo, North Dakota. I have been a licensed attorney in North Dakota for 43 years. During the past 12 years my practice has been almost exclusively focused on plaintiff's employment law, including discrimination, harassment, unemployment benefits, minimum wage and overtime, severance contracts, etc. A significant portion of that practice has involved faculty, staff and students at colleges and universities within the North Dakota University System. I have represented clients at NDSU, UND, Valley City State, Minot State, and other institutions of higher learning.

I support H.B. 1256 because I have seen the devastating impact which false accusations of sexual harassment, discrimination, and Title IX violations can have on senior faculty. One client, a tenured professor, waited eight months for a hearing on a complaint by a colleague based on Title IX and alleged harassment. After three days of hearing before an administrative law judge, the complaint was dismissed for insufficient evidence. During that entire eight months, my client was barred from teaching classes, barred from campus, prohibited from having any contact with students or faculty, and was stripped of his university e-mail address. In effect he was treated as guilty until proven innocent. This contradicts all our established norms of due process and fair play.

H.B. 1256 is narrow in scope. It would only allow a complainant to be charged with a misdemeanor if the state's attorney finds the allegations had "no basis in fact or law." That is a high bar.

It will be argued that this legislation is unnecessary because false allegations are already subject to prosecution under N.D.C.C. § 12.1-11-02. Not so. The relevant language of that statute is below:

12.1-11-02. False statements.

1. A person is guilty of a class A misdemeanor if, in an official proceeding, he makes a false statement, whether or not material, under oath or equivalent affirmation, or swears or affirms the truth of such a statement previously made, if he does not believe the statement to be true.

I know for a fact that harassment and Title IX violations at the University of North Dakota are not made under oath, and the testimony by witnesses at a hearing before an administrative law judge is also not under oath. Instead, the witness is read the following statement:

I want to remind you that knowingly providing false information during this hearing is a violation of University policy. Do you promise to answer all questions today truthfully to the best of your recollection and ability?

I respectfully submit that agreeing to avoid “violation of University policy” is a far cry from lying under oath, making one subject to perjury laws.

Title IX and harassment policies at our colleges and universities have been “weaponized” by faculty members who have political or professional differences with one of their colleagues. They can file a complaint, whether it has any basis in fact or law or not, and unfairly wreak havoc on the personal and professional life of the accused. H.B. 1256, if passed by the Senate and signed by Governor Burgum, would provide a needed layer of protection against patently false and unjustified accusations. I urge a “Do Pass” vote on this bill.

Respectfully submitted,

Leo F.J. Wilking
WILKING LAW FIRM
3003 32nd Ave. South, Suite 240
P.O. Box 3085
Fargo, N.D. 58108
(701) 356-6823
lwilking@wilkinglaw.com

23.0743.02002
Title.

Prepared by the Legislative Council staff for
Representative Cory
January 23, 2023

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1256

Page 1, line 8, replace "A person" with "An individual eighteen years of age or older"

Page 1, line 8, replace "C felony" with "A misdemeanor"

Page 1, line 8, replace the second "person" with "individual"

Page 1, line 10, replace "an" with "another"

Page 1, line 11, replace "be false and frivolous" with "have no basis in fact or law"

Page 1, line 12, replace "A person" with "An individual eighteen years of age or older"

Page 1, line 12, replace "C felony" with "A misdemeanor"

Page 1, line 12, replace the second "person" with "individual"

Page 1, line 14, replace "an" with "another"

Page 1, line 16, replace "be false and frivolous" with "have no basis in fact or law"

Page 1, remove lines 17 and 18

Renumber accordingly