

Testimony
Engrossed Senate Bill No. 2036
House Judiciary Committee
Representative Lawrence R. Klemin, Chairman
March 10, 2025

Chairman Klemin, and members of the House Judiciary Committee, I am Dr. Dan Cramer, Clinical Director with the Department of Health and Human Services, Behavioral Health Division. I am here to provide testimony in support on Senate Bill No. 2036, of which the appropriation is not in the Governor's budget.

Section 5, creates a new chapter to the North Dakota Century Code. Section 27-20.5-01. adds the definition, "Fitness to proceed." In the state of North Dakota, a Tier 1a mental health professional with specialized training in forensic evaluation may complete a fitness to proceed examination. A fitness to proceed examination explores an individual's ability to understand the court process and take part in their own defense. This examination differs from a criminal responsibility examination, which explores an individual's state of capacity at the time of the alleged crime. Many factors may contribute to an individual's inability to take part in their own defense including developmental considerations, and mental health conditions. The evaluation itself includes the review of the individual's current state based upon notes from juvenile justice staff, arrest records, case history, any current mental health records. Next, an in-depth clinical interview is conducted to assess their understanding of the justice system, the charges they are facing, and their ability to assist in their own defense. The assessor will observe the individual's behavior, demeanor, and response to questions. The assessor will complete a battery of standardized psychological tests to assess cognitive abilities, mental state, and psychological functioning.

Additional tools and observations may explore mental health conditions and related impairment. Lastly, the assessor will collect collateral information including medical records and interviews with family members. Once this information is collected, the assessor will compile a comprehensive report detailing their findings. The time to finalize an evaluation varies significantly due to a variety of factors which may include the time spent to access and review records, consistency of the individual to make and keep the appointment as well as functional capacity to tolerate the process and testing.

The findings of an evaluation may include: fit to proceed or unfit to proceed. An unfit to proceed finding may result in a dismissal of the delinquency proceeding if fitness (competency) cannot be restored, or recommended competency restoration services, known as “remediation,” in the care of juveniles. Remediation refers to services directed at building or restoring the capacity to understand the legal process and assist in an individual’s own defense. Remediation services are provided based upon specialized curriculum including the topics of factual and rational understanding of the allegations, roles of court principals (e.g., judge, district attorney, defense attorney), plea options and potential consequences of them, problem-solving skills, the delinquency process, skills for aiding in one’s defense, and sentencing options. This remediation may also include connection to additional behavioral health supports such as therapy for a specific mental health condition, case management, and psychiatric medications.

Section 6 includes an appropriation to implement and administer Section 5. The Department of Health and Human Services does not employ or have staff capacity to perform remediation services for juveniles or have staff capacity to conduct additional evaluations.

The appropriation request of \$500,000 is to be used to contract examinations and remediation program, which currently does not exist in the State of North Dakota, outlined in Section 5 in the least restrictive setting as outlined in 27-20.5-08. Section 7 has a delayed effective date for Section 5 as the Department of Health and Human Services will need time to contract for services that will need to be developed in North Dakota.

This concludes my testimony. I would be happy to try to answer any questions the committee may have. Thank you.