

Appendix A to Klemin Testimony on HB 1425

Response to Testimony in Opposition to H.B. 1425

Prosecutor-led Diversion

Claim: Pretrial Services isn't working. *The goal [of pretrial services] was to get offenders help in an effort to avoid jail/prison time and to help them become better neighbors...what is actually happening is another 'arm' of DOCR not reporting violations as required by the bail order...I recently had an offender on pretrial services who is charged with manslaughter. He was ordered to participate in a 24/7 sobriety program, and allowed to utilize a remote breath test. It was not until he violated 21 times that the PTS officer notified this office of violations.*

- **Response:** The concern raised in the state's attorney's testimony is related to DOCR's pretrial services program, which was piloted in 2020 and has since expanded to a statewide effort. To be very clear, nothing in HB 1425 alters or expands pretrial services. ND's current pretrial services program provides certain defendants with supervision through DOCR's Probation and Parole division while they are awaiting a court date. People in this program are being formally prosecuted, but they have entered an agreement with the prosecutor that they can be supervised in the community instead of sitting in jail while they wait for their case to process. This is distinctly different from the program included in HB 1425. HB 1425's prosecutor-led diversion program supports local prosecutors in selecting candidates to receive treatment as a response to their behavior, in lieu of being processed through the court system. The population that would be selected for prosecutor-led diversion is different than the population that might be released pretrial while they are being formally processed through the court system. With that said, this prosecutor-led diversion program is not replacing or altering any aspect of the DOCR pretrial services program.

HB1425 does however, call for a study of the pretrial services program to identify challenges like the ones mentioned in the oppositional testimony, and determine overall success. The purpose of this study is to use data to better understand how the program is working and where improvements should be made, which appears to be a top concern for the individual who submitted this testimony.

Claim: *In Ward County, offenders are not receiving mental health or addiction services unless they are ordered by the court. It was my understanding that this was the original goal of pretrial supervision, they would be supervising offenders, assessing what their needs*

were and assisting them in obtaining those services. This is not what's occurring – they are simply “monitoring” whether the bail order is being followed.

- **Response:** Again, the concern outlined here is related to DOCR's pretrial services program. No part of HB 1425 alters or expands pretrial services.

That said, elements of HB 1425 do respond directly to the concern raised in this oppositional testimony related to better assisting people in obtaining treatment services. The prosecutor-led diversion program in HB 1425 allows each state's attorney to determine the eligibility requirements for their diversion program, and select defendants for program participation. The diversion program provides both a framework for connection to services by contracting with local organizations to monitor participants and help them navigate their treatment requirements, and an incentive to receive those services (the promise of a dismissal of charges upon successful completion).

Claim: *The bill does indicate that the state's attorney for each county may create and administer a prosecution led diversion program. In practice, “may” becomes “shall”... if a state's attorney does not offer a prosecution led diversion program, that state's attorney will be facing equal protection/equal treatment arguments of similarly situated defendants in different counties.*

- **Response:** There are currently more than 500 prosecutor-led diversion programs active across the country, many of which are years or even decades old. Nothing would preclude a defendant from making such arguments on federal constitutional grounds today. Moreover, North Dakota Court rule 32.2 already allows for diversion programs – nothing in this bill grants authority (or increases liability) that does not already exist.

Deflection programs

Claim: *The deflection process puts the onus on local governments and law enforcement to provide services and assessments that are not available in communities. It requires law enforcement to become mental health experts. It requires participant follow ups but does not identify who is in charge of those follow-ups. There is NOTHING that mandates that offenders actually participate in “deflection programs.” There is NOTHING in the bill that provides for any court order requiring offenders to participate or what occurs if they do not. HB 1425 mandates participation from law enforcement and behavioral health service providers, but not the offenders. How is it going to be enforced?*

- **Response:** HB 1425 does not require local governments or law enforcement agencies to use deflection practices or to provide any specific services or assessments. Rather, the “deflection process” outlined in the bill provides a framework for agencies who wish to reduce their law enforcement burden and costs by funneling people whose low-level criminal conduct is driven by acute behavioral health crisis rather than anti-social behavior into the appropriate treatment response. The general framework in the bill is intentional – for example, the bill does not identify who is required for “follow-ups” because it allows each agency to determine the appropriate protocols, based on the needs and resources of the community. In contrast to diversion programs, deflection programs happen at the pre-court involvement stage (before there are any charges filed against an individual). There is no court order because court involvement would negate the purpose of the program, which is to avoid unnecessary use of court and law enforcement resources by offering behavioral health support in lieu of arrest.