

Sixty-ninth
Legislative Assembly
of North Dakota

**PROPOSED AMENDMENTS TO
FIRST ENGROSSMENT**

ENGROSSED HOUSE BILL NO. 1425

Introduced by

Representatives Klemin, Hanson, Stemen

Senators Davison, Larson

A BILL for an Act to create and enact a new section to chapter 11-16, a new chapter to title 12, and two new sections to chapter 54-23.3 of the North Dakota Century Code, relating to prosecution-led diversion programs, deflection process, and supervision for presentence programs; to provide for a legislative management study; and to provide for an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 11-16 of the North Dakota Century Code is created and enacted as follows:

Prosecution-led diversion program.

1. The state's attorney for each county may create and administer a prosecution-led diversion program if, after due consideration of any crime victim's rights and subject to approval from the court, the prosecuting attorney and the defendant agree to suspend prosecution for a period of time after which the case will be dismissed under rule 32.2 of the North Dakota Rules of Criminal Procedure on condition that the defendant not commit any new criminal offense during the period of the agreement.
2. Each county that establishes a prosecution-led diversion program shall establish written guidelines for the program and minimum eligibility criteria.

SECTION 2. A new chapter to title 12 of the North Dakota Century Code is created and enacted as follows:

Definition.

As used in this chapter, "deflection process" means a procedure for facilitating an assessment, service or treatment in lieu of incarceration, criminal charges, or unnecessary admissions to the emergency department when a peace officer or first responder is directed to intervene with an individual with a behavioral health condition, including a substance use disorder or mental health disorder, with or without the presence of criminal activity.

Individual with a behavioral health condition - Assistance - Medical care.

A peace officer, as defined under section 12-63-01, may transport or refer an individual to a local hospital, detoxification center, community behavioral health center, or other appropriate treatment facility. A tier 1b mental health professional, as defined under section 25-01-01, of a local hospital may hold that individual for treatment up to seventy-two hours.

Deflection process - Regional authority and planning.

1. A local government, law enforcement agency, or other first responder agency may establish a deflection process in partnership with one or more licensed providers of behavioral health services or substance use disorder treatment services, subject to the provisions of this section. A deflection process must include participation from a law enforcement agency and behavioral health service provider.
2. A deflection process must include procedures for:
 - a. The identification, screening, and assessment of its participants;
 - b. Case management and treatment facilitation;
 - c. Participant followups;
 - d. Law enforcement, first responder, and treatment provider training;
 - e. The collection and evaluation of data for:
 - (1) Demographics of program participants;
 - (2) The number of law enforcement interactions that result in a treatment referral; and
 - (3) The time between initial law enforcement interaction and treatment service;
3. A deflection process must include a performance management system with key performance indicators. Key performance indicators may include the:
 - a. Rate of treatment engagement within thirty days of initial contact;

b. Duration of treatment involvement; and

c. Number of subsequent law enforcement interactions for individuals referred to treatment.

Exemption from civil liability.

A local government agency, law enforcement agency, peace officer, first responder, or employee of the agency, a behavioral health provider, firefighter, fire department, emergency medical service personnel, emergency medical service agency, hospital, clinic, or a public or private entity acting in good faith, is not liable for civil damages as a result of an act or omission in providing services under this section, unless the act or omission constitutes willful and wanton misconduct or gross negligence.

SECTION 3. A new section to chapter 54-23.3 of the North Dakota Century Code is created and enacted as follows:

Supervision for presentence programs.

The department of corrections and rehabilitation has the authority to supervise a defendant while the defendant is participating in a prosecution-led, or pretrial diversion program under section 1 of this Act or rule 32.2 of the North Dakota Rules of Criminal Procedure, or any other pretrial services program.

SECTION 4. A new section to chapter 54-23.3 of the North Dakota Century Code is created and enacted as follows:

Prosecution-led diversion supervision pilot program - Report.

1. The department of corrections and rehabilitation shall establish a prosecution-led diversion supervision program as a pilot project in three counties in the state during the biennium beginning July 1, 2025, and ending June 30, 2027.
2. Beginning July 1, 2025, the department shall collaborate with the department of health and human services, North Dakota association of counties, county state's attorneys, the commission on legal counsel for indigent defense, county and regional correctional facilities, and public and private treatment providers to develop guidelines and procedures for the administration of the prosecution-led diversion supervision program.

3. The department of corrections and rehabilitation shall select three counties for a pilot project and enter contracts with third-party providers in partnership with the pilot counties to provide supervision, including monitoring and connection to services.

4. The department of corrections and rehabilitation shall implement the program no later than July 1, 2026.

5. Before June 30, 2027, the department, in collaboration with the three pilot counties, shall report to legislative management regarding the process and outcome of the prosecution-led diversion program and any recommendations for future legislation.

SECTION 5. LEGISLATIVE MANAGEMENT STUDY - PRETRIAL SERVICE PROGRAMS.

During the 2025-26 interim, the legislative management shall consider studying costs and savings associated with pretrial service programs operating in the state and opportunities to reinvest savings to improve re-entry outcomes. The study must include the effect of pretrial services on admissions to county jail, detention facilities, medical costs of participants, rate of failure to appear in court, rate of recidivism, and rate of participation in treatment programs. The study must identify opportunities for counties, courts, and state agencies to invest cost-savings associated with pretrial services in programs, treatment, and services that will further reduce recidivism and promote public health. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the seventieth legislative assembly.

SECTION 6. APPROPRIATION - DEPARTMENT OF CORRECTIONS AND REHABILITATION - PROSECUTION-LED DIVERSION SUPERVISION PILOT PROGRAM - FULL-TIME EQUIVALENT POSITIONS - ONE-TIME FUNDING. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$1,000,000, or so much of the sum as may be necessary, to the department of corrections and rehabilitation, for the purpose of hiring one full-time equivalent position and contracting with third-party providers for a prosecution-led diversion supervision pilot program, for the biennium beginning July 1, 2025, and ending June 30, 2027. The personnel hired pursuant to this section must prioritize the prosecution-led diversion supervision pilot program. The funding provided under this section is considered a one-time funding item.

SECTION 7. APPROPRIATION - DEPARTMENT OF CORRECTIONS AND REHABILITATION - PRETRIAL SERVICE PROGRAMS COST-SAVINGS STUDY - ONE-TIME

1 **FUNDING.** There is appropriated out of any moneys in the general fund in the state treasury,
2 not otherwise appropriated, the sum of \$55,000, or so much of the sum as may be necessary, to
3 the department of corrections and rehabilitation, for the purpose of contracting for consulting
4 services for the study provided in section 5 of this Act, for the biennium beginning July 1, 2025,
5 and ending June 30, 2027. The funding provided under this section is considered a one-time
6 funding item.

7 **SECTION 8. APPROPRIATION - DEPARTMENT OF HEALTH AND HUMAN SERVICES -**
8 **PROSECUTION-LED DIVERSION TREATMENT SERVICES - ONE-TIME FUNDING.** There is
9 appropriated out of any moneys in the general fund in the state treasury, not otherwise
10 appropriated, the sum of \$750,000, or so much of the sum as may be necessary, to the
11 department of health and human services, for the purpose of providing treatment services for
12 participants in the prosecution-led diversion program, for the biennium beginning July 1, 2025,
13 and ending June 30, 2027. The funding provided under this section is considered a one-time
14 funding item.