

HOUSE BILL NO. 1138

Introduced by

Representatives Satrom, Karls, Klemin, Schauer, Vigesaa

Senator Conley

1 A BILL for an Act to create and enact a new section to chapter 27-05 of the North Dakota
2 Century Code, relating to a mental health diversion pilot program in the southeast judicial
3 district; to provide for a report to the legislative management; and to provide an expiration date.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** A new section to chapter 27-05 of the North Dakota Century Code is created
6 and enacted as follows:

7 **Southeast judicial district mental health diversion pilot program - Report to**
8 **legislative management.**

9 1. As used in this section:

10 a. "Eligible individual" means an individual who allegedly committed an eligible
11 offense and has a prior diagnosis of mental illness or for whom a law
12 enforcement officer or prosecutor has a reasonable belief the individual has a
13 mental illness based on behaviors or symptoms exhibited during the commission
14 of the offense, while in custody, or based on information provided by family
15 members or associates during the investigation of the offense.

16 b. "Eligible offense" means a nonviolent misdemeanor offense or a nonviolent class
17 C felony.

18 c. "Mental illness" means a mental disorder classified within the most recent edition
19 of the American psychiatric association's diagnostic and statistical manual of
20 mental disorders, including anxiety disorders, cognitive disorders, adjustment
21 disorders, schizophrenia and other psychotic disorders, bipolar disorder,
22 depression, and posttraumatic stress disorder.

23 2. The southeast judicial district may establish a mental health diversion pilot program
24 under which the district court diverts an eligible individual from the criminal justice

1 system and into appropriate case management and mental health services as early as
2 possible following an interaction with law enforcement in which the individual is alleged
3 to have committed an eligible offense.

4 3. A criminal case within the southeast judicial district involving an eligible individual
5 charged with an eligible offense may be assigned or transferred to the mental health
6 diversion pilot program before arraignment.

7 a. A motion for transfer to the mental health diversion pilot program may be made
8 by the eligible individual's defense attorney or the prosecutor. The motion must
9 be accompanied by documentation or testimony in support of the transfer and the
10 motion must be heard by the judge assigned to the mental health diversion pilot
11 program who shall make the final determination of a defendant's eligibility.

12 b. Unless specifically objected to by defense counsel and except for the providing of
13 documentation relating to the defendant's mental health status and all available
14 statements and police reports, any transfer of a defendant to the mental health
15 diversion pilot program is deemed a waiver of the defendant's right to a speedy
16 trial and formal discovery.

17 c. If the assigned judge determines the defendant is mentally ill or disabled, the
18 defendant is eligible for the mental health diversion pilot program.

19 d. A defendant's right to a speedy trial may be reinstated upon written demand to
20 the court of the defendant's voluntary withdrawal from the program.

21 4. The court shall order an eligible defendant to enter a treatment facility certified by the
22 department of health and human services as a voluntary admission patient or other
23 appropriate treatment facility in the community for screening services and treatment.
24 The court shall stay any further proceeding until the release of the defendant and
25 facilitate the defendant's admission into an appropriate program.

26 5. If a defendant willfully fails to comply with the terms of the court order issued for the
27 defendant's treatment or care, the defendant must be returned to custody.

28 6. Upon successful completion of the mental health diversion pilot program, a defendant
29 convicted of a nonviolent class C felony and transferred to the mental health diversion
30 pilot program is deemed to have been convicted of a misdemeanor.

1 7. If a defendant convicted of a nonviolent misdemeanor is transferred to the mental
2 health diversion pilot program and successfully completes the program, the court shall
3 dismiss the case and seal the file in accordance with section 12.1-32-07.2.

4 8. The supreme court may adopt rules necessary to implement this section.

5 9. Before July first of each even-numbered year, the southeast judicial district shall report
6 and make recommendations to the legislative management on the status,
7 effectiveness, performance, and sustainability of the pilot program established under
8 this section.

9 **SECTION 2. EXPIRATION DATE.** This Act is effective through July 31, 2027, and after that
10 date is ineffective.