

HB 1425

Chairperson Lawrence Klemin
Committee Members

From: Rozanna C Larson
Ward County State's Attorney

RE: House Bill 1425

Chairperson Klemin and Members of the Committee,

This is my written testimony OPPOSING HB 1425. I am the State's Attorney for Ward County and have been a prosecutor for 27 years.

When pretrial services were first introduced and adopted by legislators, I was in favor of the program. I truly believed it would be a good tool to assist offenders in getting connected with services they may need such as mental health, chemical addiction, employment, housing etc. This is what we were told pretrial services would be doing. Essentially assisting offenders to obtain the services they needed prior to any sentencing. The goal was to get offenders help in an effort to avoid jail/prison time and to help them to become better neighbors without uprooting them from their community.

What has actually happened is not any of the above. What has actually been 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. The offender ordered to participate in the 24/7 sobriety program. He was allowed to participate by utilizing the remote breath test. It was not until the offender had violated 21 times that the PTS officer notified this office of the violations. When questioned about the failure to notify this office I was provided with a couple of different explanations. One was, the officer attempted to use "intermediate measures." The other was, the officer was not notified of the missed tests and/or was told the missed tests were "made up." I was also told the PTS officer had a conversation with the offenders attorney (but not the State) in an attempt to get the offender back in compliance. The testimony from the PTS officer was this conversation took place at least a month before the State was notified.

I can't speak to other jurisdictions that have PTS currently. Here in Ward County, I also know the offenders are not receiving mental health or chemical addiction services unless they are specifically ordered to by the court. It was my understanding that was the original goal of PTS, they would be supervising offenders, assessing what their needs were and assisting them in obtaining those services. This is not what is occurring. They are simply "monitoring" whether or not the Bail Order is being followed.

I'm truly disappointed in what could have been a good program for offenders and the safety of the community. The reality of what has come about is another arm of DOCR that is not accountable to the Courts or the State and failing to provide the services promised.

I have other concerns with this bill as well.

Specifically, the "Prosecution-led diversion program." The bill does indicate the "State's Attorney for each county may create and administer a prosecution-led diversion program. In practice the word "may" becomes a "shall" (a mandate) for all State's Attorneys within the State. If a State's Attorney does not provide a "prosecution-led diversion program, that State's Attorney will be facing equal-protection/equal-treatment arguments of similarly situated defendants in different counties.

The other concern I have with HB 1425 is the "Deflection Process." This 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 these follow ups. There is NOTHING that mandates the offenders actually participate in "deflection program." There is NOTHING in the bill that provides for any Court Order requiring the 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 this going to be enforced?

This is a bill that is attempting to deflect from prosecution and reduce jail population. It is a bill that seemingly is trying to address behavioral health. It is a bill that actually does not help the people it is trying to help, but puts more burden on law enforcement and prosecutors.

For all the reasons stated above, I request that the House Judiciary Committee give a "Do Not Pass" recommendation on HB 1425.