



# North Dakota House of Representatives

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## **COMMITTEES:**

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### **TESTIMONY OF REP. LAWRENCE R. KLEMIN HOUSE JUDICIARY COMMITTEE HOUSE BILL NO. 1425 FEBRUARY 5, 2025**

Members of the House Judiciary Committee. I am Lawrence R. Klemin, Representative for District 47 in Bismarck. I am here today to testify in support of House Bill 1425, relating to prosecution-led diversion programs, deflection process, and supervision for presentence programs. This bill is the first in a package of three bills you'll hear today that represent North Dakota's next phase of criminal justice reform.

#### **Overview: How these bills fit into ND's Justice Reinvestment Journey**

For the last eight years, North Dakota has been on a journey to reform our criminal justice system – to maximize public safety, use taxpayer dollars more efficiently, and help people who are justice involved become more productive citizens.

North Dakota's journey started in 2015 when we started a data-driven Justice Reinvestment Initiative. The result of that work was a set of reforms the ND Legislature passed in 2017, which aimed to contain ND's growing spending on correctional facilities, reduce recidivism and increase public safety. That legislation reduced penalties for certain low-level, non-violent offenses and reinvested some of the savings to create Free Through Recovery, a successful outcomes-driven program to address the fact that most incarcerated individuals have addiction and mental health issues.

The three bills you'll hear today are the next step on our Justice Reinvestment journey.

Two years ago, this committee passed HCR 3026 to study how we can further improve reentry outcomes for people leaving incarceration. North Dakota has a wide range of strong reentry efforts from public entities such as the Department of Corrections and Rehabilitation, the Department of Health and Human Services and Job Service, as well as private entities such as F5 and Ministry on the Margins. Even with these efforts, ND's recidivism rate is about 40%. Existing reentry services aim to connect people to services to help with their transition but can be an insufficient patchwork.

As you know, roughly 95% of people who are incarcerated in North Dakota's prisons and jails are eventually released – so they return to being our neighbors. North Dakota releases about 1,400 people from its state prison system every year, plus thousands more from our county jails. The state has a strong interest in ensuring our neighbors can be as successful as possible, becoming part of the workforce and thriving in their communities and with their families.

The reentry study occurred in 2024 with assistance from the Crime & Justice Institute, a national non-partisan policy-focused organization. The assistance was funded by a federal Justice Reinvestment Initiative grant from the U.S. Department of Justice.

We formed a Reentry Study Work Group, a team of 15 leaders from the legislature, DOCR, DHHS, court system, county jails, community reentry service providers, and other entities. The Work Group discussed the research conducted by CJI, which included a deep data analysis and 100+ stakeholder interviews. The Final Report has been uploaded with my testimony.

Key findings from the report included:

- ND's prison population is rising while nationally it is declining.
- Admissions to prison are going up and drug and alcohol offenses and revocations are the primary drivers of the increase.
- People of color, particularly Black and Native individuals, are disproportionately represented.
- People leaving incarceration face barriers to success such as affordable housing, behavioral health care, gaps in Medicaid access, and a lack of state-issued IDs.

The Reentry Study Work Group then evaluated and prioritized research-based best practices that could address these findings. It identified about two dozen proposals to address the issues highlighted by the report. Some of those proposals will be implemented as policy or practice changes within state agencies, other proposals require a state statute change by the legislature, and some ideas will not move forward until more stakeholder conversations occur. The three bills before you today represent a sub-set of the recommendations that require a change to state law.

All three bills share these common goals:

- Ensure public safety
- Make the best use of our prison and jail beds so we have capacity for our most serious offenders
- Save taxpayer dollars by controlling the expected ongoing growth of admissions
- Improve the lives of justice-involved individuals

### ***Explanation of HB1425: Overview***

Now that you have an overview of the Justice Reinvestment Initiative, I'll explain Bill #1.

HB 1425 targets the "front-end" of reentry, including strengthening deflection, diversion, and pretrial services to expand pathways to alternatives to incarceration.

Think of the "front-end" of reentry as a continuum of efforts that provide earlier off-ramps. These off-ramps prevent people from going deep into the criminal justice system, often before they are sentenced.

This range of pre-sentencing processes and programs exists today, but they aren't used as frequently as they could be, so this bill aims to strengthen them.

There are three parts to this bill:

- Prosecution-led Diversion Program
- Deflection Process
- Pretrial Services

***Prosecution-led Diversion Program:***

Diversion programs are a tool for prosecutors to connect low-level offenders to resources and address their criminal behavior without depleting court system resources.

A prosecution-led diversion program gives eligible defendants an opportunity to have their prosecution suspended and their charges dismissed if they do not commit a new offense during the duration of their program participation.

Examples of scenarios that might be handled by this diversion program include cases where a person possesses a small amount of an illegal substance due to their addiction and a prosecutor agrees that treatment will be more helpful in their recovery journey than a conviction.

State's Attorneys in ND have the authority to run such a program today but face barriers to doing so - specifically the lack of supervision resources to ensure participants are following through with program requirements. For example, a supervisor -- similar to a parole officer -- could help provide a connection to a treatment provider in the community and follow-up with the individual to make sure they made it to their appointment and are participating in treatment programming.

HB 1425 strengthens counties' ability to do prosecution-led diversion programs.

The bill would establish a pilot program in three counties for a prosecution-led diversion program. To accomplish that, it authorizes DOCR to supervise these program participants and appropriates funds to DOCR for their supervision. It also appropriates funds to DHHS for treatment and other services for the participants.

The prosecution-led diversion program is covered in **Sections 1, 3, 4, 6 and 8:**

- Section 1 codifies court Rule 32.2 of the North Dakota Rules of Criminal Procedure, which authorizes county prosecutors to offer a diversion program. The bill also says that any county that establishes such a program must have written guidelines and eligibility criteria.

- Section 3 gives the DOCR the authority to provide supervision to people who participate in this and other pre-sentencing programs.
- Section 4 sets up a pilot program for the supervision aspect of the prosecution-led diversion program.
- Section 6 requests an appropriation to DOCR of \$1 million for 7 FTEs to staff the supervision aspect of the pilot program.
- Section 8 requests an appropriation to DHHS of \$750,000 for the services aspect of the pilot program.

### **Filling a gap**

This proposal directly responds to one of the gaps that the Reentry Work Group identified during its interim study.

The report said North Dakota has notably fewer standardized "off-ramps" directing people away from criminal justice system involvement, especially early on. Deflection practices are not standard and there are few formal protocols offering guidance to law enforcement officers who respond to someone with behavioral health issues.

Recommendation #5 of the Reentry Work Group's Final Report (pages 23 and 24) outlines the finding that most diversion opportunities in our state happen later in the court system process. Rather than connecting people to treatment, resources, and accountability shortly after they encounter the justice system, we are processing people through the court system and sentencing them to either probation or prison to access treatment.

We know from the study that a high volume of people convicted of drug or alcohol offenses are still entering the prison system. In 2023, over a third of prison admissions were for those offenses (see page 10 of the Final Report).

The proposal in this bill is not to get that number down to zero, but rather to support prosecutors in holding people accountable while aiding them in their recovery to ultimately prevent future instances of crime.

### ***Deflection Process:***

Deflection is a process that can be used by law enforcement, behavioral health providers and other community partners to connect a person with behavioral health needs with treatment and other services rather than putting them in jail.

The interviews during the interim study revealed that law enforcement wanted enhanced clarity when connecting someone to treatment in lieu of arrest. For example, they wanted to know the roles and responsibilities of the different entities that collaborate to help a person in crisis, and they wanted to clarify protocols for following up with these individuals after they have been stabilized.

The deflection process aspect of this bill is covered in **Section 2:**

- It defines "deflection process" and creates the authority for local communities to establish a deflection process.
- It says that if a community does establish a deflection process, law enforcement and behavioral health shall collaborate on that process and establish minimum standards for protocols, training and data collection. If this bill passes, the Crime & Justice Institute will share best practices on protocols, training resources and data guidelines so communities don't have to recreate the wheel.
- The bill also exempts law enforcement and behavioral health providers who engage in deflection from civil liability with the purpose of encouraging them to use deflection when appropriate.

The bill doesn't create a deflection program or physical centers for deflection; these are local decisions. We need to maintain flexibility based on the community's size and resources. For example, the Fargo Police Department might want to enhance their partnership with the crisis services offered by the Southeast Human Services Center, while a small town like Langdon would have a different deflection process that fits its needs and level of services available in its community.

This section connects to recommendation #2 in the Work Group's Final Report (page 22) and is backed by research showing that deflection can be effective not only in de-escalating behavioral health crises, but in reducing the likelihood that someone becomes involved in the justice system in the future.

### ***Pretrial Services:***

The ND Legislature created a Pretrial Services pilot program in 2019, which rolled out in 2020 and has expanded since then.

ND's Pretrial Services Program involves people after they are charged with a crime and before their case is complete - which can take many weeks or months. It is not always necessary to incarcerate defendants who are not a danger to public safety or a risk of failing to appear on future court dates while they wait for their case to proceed. But sometimes defendants can't afford even a small amount of bail, so they sit in jail, which costs taxpayer dollars and has a negative impact on their employment, housing and family situations.

Rather than being in jail during their pretrial period, the Pretrial Services Program enables eligible defendants to be in the community so they can continue to work, be with their family and get treatment if needed. The program screens potential participants and establishes community supervision strategies and opportunities to connect defendants to resources.

The last evaluation of ND's Pretrial Services Program was done in December 2020, shortly after it rolled out. While leaders across ND have shared positive feedback on the impact Pretrial Services is having, including relief on jail populations, it is important to do another formal, data-driven evaluation of the cost savings and other benefits of this program and to identify potential improvements.

The pretrial services aspect of HB 1425 is covered in **Sections 5 and 7**:

- Section 5: requests Legislative Management to consider studying the cost savings resulting from ND's current pretrial services program.
- Section 7: appropriate \$55,000 for a third-party to conduct the study.

A finding from the Reentry Study was the very fact that the Pretrial Services Program has not been evaluated since its expansion from a pilot to a statewide initiative. The need to evaluate the Pretrial Services Program is referenced within recommendation #6 in the final report (page 24). Having more data on the outcomes of this program will allow us to make more informed decisions about the program, including if we are saving money by not keeping so many people in jail pretrial, and if so, where those dollars can be reinvested.

***Proposed Amendments to Bill #1***

Committee, you'll see proposed amendments to HB 1425, which were discussed with stakeholders after the bill was filed.

On pages 1 and 2, we change "person requiring treatment" (which has a narrow definition in state statute) to a broader term: "a person with behavioral health conditions."

The second change is regarding how we spend the appropriation for the supervision aspect of the pilot program for the prosecutor-led diversion program. The original language of the bill modeled the supervision pilot program after the Pretrial Services pilot that the ND Legislature passed in 2019. For that program, the DOCR hired one FTE right away for the full two years of the biennium to stand up the program, then an additional 6 FTEs in the second year to provide pretrial assessments and services in three judicial districts.

After HB 1425 was filed, stakeholders from DOCR and DHHS and county State's Attorneys met to discuss a different approach, other than using 7 FTEs. The total appropriation is still \$1 million but we are taking a more flexible approach, using contractors instead of hiring 6 FTEs in the second year of the biennium.

Stakeholders agreed that one FTE (or a full-time temporary position) would be valuable to oversee the development of the pilot, facilitate the collaboration between stakeholders, collect data and administer contracts with third-party providers. But instead of hiring 6 additional FTEs to provide the supervision, the group felt that using third-party providers to provide monitoring and service connections would enable more speed (counties that are ready could start sooner) and more flexibility (to accommodate the ramping up and down of volume and need). The other benefit to this approach is that we are not growing government with six ongoing FTEs before we do a proof of concept. After the pilot is underway, we can assess the results and see if this approach

is the most workable and successful or if we need to look at a different approach. The amendment also enables counties that are ready to start sooner than July 2026.

The changes to page 4 line 14 ("be dedicated to" versus "prioritize) would enable county prosecutors to leverage any additional capacity with these resources for other monitoring needs, including following up with defendants charged with lower-level misdemeanors to ensure they are completing their court-ordered requirements.

### ***Closing***

In summary, HB 1425 targets the "front-end" of reentry, by strengthening our state's deflection process, diversion programs, and pretrial services program, so we can expand pathways to alternatives to incarceration. The goals of this bill are to ensure public safety while saving tax dollars, making the best use of our overcrowded prisons and jails, and improving lives.

A wide variety of stakeholders had input on these proposals, and you'll hear testimony from many of them today. I will try to answer any questions you have. The Crime & Justice Institute is also available to answer detailed questions about the Work Group's process, analysis and findings, and best practices in other states.

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