



February 5, 2025

Testimony in Support of House Bill 1425

Chairman Klemin and members of the House Judiciary Committee,

My name is Kimberlee J. Hegvik, and I am the elected State's Attorney in Cass County. Prior to my election in 2022, I served as an Assistant Cass County State's Attorney for nearly 17 years.

Today I am here to voice my support for HB 1425.

I have been actively involved in problem-solving courts for my entire career as a prosecutor. I have served on juvenile and adult drug court multidisciplinary teams, attended national trainings, and assisted with re-writes of both juvenile drug court manuals and adult drug court manuals. Problem-solving courts are effective because they utilize research based best practices.

For several years in my career, I prosecuted juvenile delinquency cases. The juvenile court system in North Dakota is exceptional. The juvenile courts use data to make informed decisions for children who commit delinquent offenses, and utilize restorative justice principles to carry out their mission of promoting public safety, holding juvenile offenders accountable, and increasing the capacity of juveniles to contribute productively to their community.

Working within problem-solving courts and the juvenile justice system has shaped my belief that non-traditional approaches to behavior-modification can be highly successful. I want to help people with substance use and mental health disorders get connected to services before they become deeply involved with the criminal justice system. I want to find ways to hold people accountable for their behavior while making the best and most efficient use of the resources available. In cases where diversion is appropriate, I want outcomes that benefit the offender and the community more than traditional prosecution methods.

Many legal organizations recognize the need for and importance of Deflection and Diversion. The United States Department of Justice, American Bar Association, National District Attorneys' Association, All Rise (formerly The National Association of Drug Court Professionals), Association of Prosecuting Attorneys, and others all offer guidance and support of deflection and diversion. Successful programs exist throughout the United States.

I first learned of deflection while attending a Federal Department of Justice Violent Crime Reduction Summit. Law enforcement agencies spend a significant amount of time interacting with people who suffer from mental illness and substance use disorders. These individuals often catch the attention of law enforcement through minor violations like public intoxication, trespassing, or disturbing the peace. Traditionally, officers have had to choose between arresting and doing nothing. Neither option addresses the root cause of the behavior. Deflection gives law enforcement a third option: immediate referral to services to address the individual's needs without entrance into the criminal justice system.

Justice is not a one size fits all. Diversion is not appropriate for every case, just as incarceration is not appropriate for every defendant. Prosecutors need to be able to use all the tools in our toolbox to achieve justice for each case and defendant. The National District Attorneys' Association's National Prosecution Standards on diversion state that prosecutors should urge the establishment and maintenance of diversion programs. The American Bar Association Standards on Diversion state "[d]iversion programs are consistent with efforts to: reduce collateral consequences; address over-criminalization; reduce incarceration; curtail the burden on and investment in the criminal legal system; and, eradicate racial disparities in arrests, charging, sentencing, and incarceration."

Rule 32.2 of the North Dakota Rules of Criminal Procedure authorizes pretrial diversions. Despite the existing rule, Cass County lacks the resources to monitor people whose cases are appropriate for diversion. The DOCR is not currently authorized to provide monitoring for people who are pre-trial other than through the pre-trial services program, which is separate and apart from diversion. If Cass County doesn't have a way to monitor it, there is a high likelihood that other counties in North Dakota also struggle with the supervision part of the diversion equation. The pilot project portion of this bill would provide funding for monitoring.

A key to the success of diversion is swift availability of appropriate services. This bill provides funding for the Department of Health and Human Services to make services available to people who participate in diversion programs. Behavior modification research shows that consequences are most meaningful when they occur close in time to the behavior to be changed. Research has shown that faster legal proceedings can lead to lower recidivism. Timely legal processes also increase the public's perception of the legitimacy of the legal system.

Last summer, consultants from Aequitas, a national organization that supports prosecutors in their efforts to achieve justice, performed an assessment for my office. One of their initial suggestions was to focus on establishing diversion practices. Our lack of supervisory options and timely access to services were barriers that halted our ability to further explore diversion at that time.

I am excited about this legislation and the meaningful changes it could create. If passed, I will be actively seeking selection as one of the three pilot sites. My office will work diligently to establish a diversion program based on research and best practices. Two years from now, I intend to be back in Bismarck, data in hand, showing the success achieved by investing in diversion and deflection.

Thank you for your time and consideration.

Sincerely,



Kimberlee J Hegvik
Cass County State's Attorney