

**Testimony**  
**Senate Bill No. 2036**  
**Senate Judiciary Committee**  
**Senator Diane Larson, Chairman**  
January 14, 2025

Chairman Larson, and members of the Senate Judiciary Committee, I am Dr. Shauna Eberhardt, Policy Clinical Director with the Department of Health and Human Services, Behavioral Health Division. I am here to provide neutral testimony on Senate Bill No. 2036, of which the appropriation is not in the Governor’s budget.

Section 5, creates a new chapter to the North Dakota Century Code. Section 27-20.5-01. adds the definition, "Fitness to proceed." In the state of North Dakota, a Tier 1a mental health professional with specialized training in forensic assessment may complete a fitness to proceed examination. A fitness to proceed examination explores an individual’s ability to understand the court process and take part in their own defense. This examination differs from a criminal responsibility examination, which explores an individual’s state of capacity at the time of the alleged crime. Many factors may contribute to an individual’s inability to take part in their own defense including developmental considerations, and mental health conditions. The assessment itself includes the review of the individual’s current state based upon notes from juvenile justice staff, arrest records, case history, any current mental health records. Next, an in-depth clinical interview is conducted to assess their understanding of the justice system, the charges they are facing, and their ability to assist in their own defense. The assessor will observe the individual’s behavior, demeanor, and response to questions. The assessor will complete a battery of standardized psychological tests to assess cognitive abilities, mental state, and psychological functioning.

Additional tools and observations may explore mental health conditions and related impairment. Lastly, the assessor will collect collateral information including medical records and interviews with family members. Once this information is collected, the assessor will compile a comprehensive report detailing their findings. The time to finalize an assessment varies significantly due to a variety of factors which may include the time spent to access and review records, consistency of the individual to make and keep the appointment as well as functional capacity to tolerate the process and testing.

The findings of an assessment may include: fit to proceed or unfit to proceed. An unfit to proceed finding may result in treatment recommendations to address an individual's mental health, dismissal of charges if fitness (competency) cannot be restored, or recommended competency restoration services, known as "remediation," in the care of juveniles. Remediation refers to services directed at building or restoring the capacity to understand the legal process and assist in an individual's own defense. Other states who have implemented juvenile remediation services, often contract with public sector behavioral health providers to complete these services due to the specialized nature of the assessment and remediation practices. For example, Wisconsin contracts with Behavioral Consultants, Inc. Their specialized team employs a variety of doctoral level staff as well as mental health therapists with specialized training in remediation practices. They provide remediation services based upon specialized curriculum including the topics of factual and rational understanding of the allegations, roles of court principals (e.g., judge, district attorney, defense attorney), plea options and potential consequences of them, problem-solving skills, the delinquency process, skills for aiding in one's defense, and sentencing options. This remediation may also include connection to

additional behavioral health supports such as therapy for a specific mental health condition, case management, and psychiatric medications.

Currently employed by the Department of Health and Human Services, there are four psychologists who complete these assessments for adults and youth across the state, and two inpatient restoration staff who work with adults only, all within North Dakota State Hospital. In the month of December 2024, there were 53 orders for forensic assessments, with January 2025 already seeing 20 orders for forensic assessments. The Department reasonably anticipates that this Bill will impact the number of individuals required by the court to receive a fitness to proceed examinations, thus creating a need for additional psychologists to conduct the forensic assessments. Currently, the Department does not have staff capacity to conduct additional forensic assessments due to the increases that it has seen over years with adult criminal defendants.

As the change requested in section 27-20.5-08 outlines remediation should take place in the least restrictive environment, if the Department were to provide or contract for this service, staff will need to be hired and trained to provide services on an outpatient basis as this service for youth does not currently exist in North Dakota.

In conclusion, as fitness to proceed assessments and remediation are considered specialized services, in order to meet the needs as outlined in this Bill, there would be need for additional Tier 1 mental health professionals to carry out the increase in assessment demand, as well as the remediation staff to provide services to youth found unfit to proceed.

On Page 5, Line 4, under the definition of remediation, it is identified a provider would need to be certified. As a national certification does not exist, there would be need to develop a certification process for remediation

specialists to ensure consistency and competency in the area of juvenile remediation. Finally, there would be need for additional resource to adequately track individuals and outcomes. Section 6 includes an appropriation to implement and administer Section 5. Section 7 has a delayed effective date for Section 5 as the Department will need time to contract or hire staff and establish the certification and remediation services.

We would like to offer an amendment:

**PROPOSED AMENDMENTS TO SENATE BILL NO. 2036**

**SECTION 7. EFFECTIVE DATE.**

Section 5 of this Act becomes effective on January 2, 2027.

This concludes my testimony. I would be happy to try to answer any questions the committee may have. Thank you.