

2019 HOUSE JUDICIARY COMMITTEE

HB 1164

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1164
1/21/2019
31149

- Subcommittee
 Conference Committee

Committee Clerk: DeLores D. Shimek

Explanation or reason for introduction of bill/resolution:

Relating to drug court participation; and to provide a penalty.

Minutes:

1

Chairman K. Koppelman: Opened the hearing on HB 1164.

Rep. Roers Jones: Introduced the bill. (Attachment #1) (1:38-7:07) This bill would allow for the reduction of sentencing for drug court. Drug court are accountability and treatment. There are five drug courts throughout the state. Went through the requirements of the bill.

Rep. Rick Becker: I like this idea but I have two concerns. Is drug court going to be prepared for a dramatic increase and the interest in applications to the court. This is a dramatic change after someone has been charged and convicted. I am concerned about how someone might get into drug court versus someone who wishes to but is not able to and what the final outcome could be with no longer a felony or sealed.

Rep. Roers Jones: That is a very good question. There is discussion about opening up more drug courts across the state. We will have that incentive to apply for drug court.

Rep. McWilliams: Would you go over Section 1, # 9 of this bill.

Rep. Roers Jones: That is existing law that we are not looking at changing. It allows someone who has been convicted of a felony but they receive a sentence of something less than 365 days; and then their sentence is reduced to a misdemeanor.

Rep. McWilliams: Typically a felony has served more than a year in jail?

Rep. Roers Jones: I don't know if there would be any exceptions to year and a day.

Chairman K. Koppelman: There is also a drug court in Wahpeton. I do not know if it is sanctioned.

Rep. Roers Jones: There is a drug court in Wahpeton, ND. I don't think it is up and running the same as the other ones.

Chairman K. Koppelman: When we say a felony has been reduced to a misdemeanor; we are not taking into account the grades of penalty.

Representative Jones: When it says it will be deemed to be a misdemeanor, does that mean that the record will say it was a misdemeanor?

Rep. Roers Jones: Once they completed their program, it would be the misdemeanor, not the felony.

Rep. Jones: It sounded like this isn't going to be for a first time offense. Is that accurate?

Rep. Roers Jones: I don't know that it would not be available to someone who is a first time offender. It will depend on their chemical dependency evaluation and the likely hood they would benefit from the program. Probably used mostly by someone who has multiple offenses.

Chairman K. Koppelman: Drug court is a spotty thing in ND. Certain parts of our state that have it in many areas do not. There is less opportunity in certain parts of the state to get the use of that program and is that a concern.

Rep. Roers Jones: It is a concern that it is not available to more people and there is an effort to create more drug courts that will solve that issue.

Opposition: None

Neutral:

Sara Behens, Supreme Court: There are drug courts now available and they are full and turn away applications. There are two in Fargo and a third was requested, but that was not supported by DOCR so the funding wasn't there. The one in Wahpeton is a grant fund from the federal National Highway and Transportation so it is really year to year. They have explored drug courts in Dickinson, Williston, Watford City and Rolette, but without the availability of treatment it is not feasible at this time. The information we have there is a 40% recidivism within two years for those coming out of drug court.

Rep. Rick Becker: Do you know percentage of applicants are accepted?

Sara Behens: I don't know off hand. It is in the 50% range.

Rep. Rick Becker: Do you know the percentage of people that are accepted into the program where their sentence would have been greater than one year? Is that part of the practice?

Sara Behens: There are different ways you can get into the drug court and different levels of offenses. You can get accepted into drug court on the first offense that is a felony if you have history of substance abuse.

Rep. Paur: People from other district courts could go to a city that has a drug court. How likely is that?

Sara Behens: I don't know. With the amount of applicants and the number of spots I don't know if it would be entirely likely.

Rep. Paur: The prosecutor where the offense occurred.

Sara Behens: You would have to appear in the drug court where it actually takes place.

Chairman K. Koppelman: Get us some information on that.

Sara Behens: Now we are talking about adult drug courts. We have them in Fargo, Grand Forks, Minot and Bismarck. It will be targeting those

Chairman K. Koppelman: You talked about 40% recidivism. How does that compare to those who do not have drug court? Are they pretty effective?

Sara Behens: There are success stories. (22:00) Discussion on the system and how it works.

Chairman K. Koppelman: Is there a way you can gather some data for us as to how that compared to recidivism without this kind of intervention. Maybe DOCR can help with that so we can understand it better.

Vice Chairman Karls: How are the 40% caught?

Sara Behens: I don't have the specifics. Within two years that they are off probation and it would be considered a new offense.

Hearing closed.

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1164
1/23/2019
31333

- Subcommittee
 Conference Committee

Committee Clerk: DeLores D. Shimek

Explanation or reason for introduction of bill/resolution:

Relating to drug court participation; and to provide a penalty.

Minutes:

Chairman Koppelman: Opened the meeting on HB 1164. People cannot transfer from one jurisdiction to another. The genetic language changing a felony to misdemeanor to and a misdemeanor raised the question should it be an infraction instead.

Rep. Roers Jones: Maybe we could look at additional definition there. The court is going to have discursion also and who it accepts into the program. We don't want to take all the discursion away from the courts. If people are comfortable with the language is it is; then I won't attempt to change it.

Rep. McWilliams: In testimony in this bill we heard there is 40% recidivism rate. I don't see a period of time allocated in this bill after you finish drug court plus a year or two then we can look at taking that penalty down to a misdemeanor. That is one of my concerns.

Rep. Roers Jones: The other record sealing bill is for people who have not had this opportunity available to them during their initial disposition of their case.

Rep. McWilliams: I understand that and I appreciate what this bill is trying to do. It is the test of time that should be a reward after they can prove they have stood on their own.

Rep. Paur: Rep. Roers Jones does it concern you that there are so few drug courts that there might be a disenfranchise. Is this available to some citizens and not others?

Rep. Roers Jones: I don't know what the legal challenges are. I don't know if we want to say that we can do this now because we don't have the resource to put everyone in it then how are we going to have the incentive to develop these drug court resources. If we have more need for drug courts, we will develop more resources.

Chairman K. Koppelman: Drug courts are already full?

Rep. Roers Jones: I think there is a level of popularity. There is an application process. The testimony of the probation officers was when they tell people about the arduous of the process they are not willing to do that. There are different reasons why people are accepted or turned away.

Rep. Satrom: If we can have people out and getting the help they need; this is a fantastic program. This is like a year of accountability.

Chairman K. Koppelman: It is whether the offense should be reduced or done away with.

Rep. Rick Becker: My concern is we can say if you served your time and you are out. For those who are sentenced to greater than one year if they go through drug court they will have their felony decreased. For those people who go through prison they will not. They have no way to have that same equity. The drug court takes repeat offenders. Someone who would have their first offense would stand to gain the most by having their felony whipped out to a misdemeanor. I am worried about that donut hole.

Rep. McWilliams: When they leave the program they are OK, but then they fall off.

Chairman K. Koppelman: If this were to pass and if someone reoffends coming out of drug court, then on their record they have a misdemeanor offense as they go before another court with another charge versus a felony offense. Are we rewarding recidivism coming out of this program in a way that would not be awarded if they were in jail and served their sentence.

Rep. Hanson: I think this bill provides a good carrot it could be an incentive.

Chairman K. Koppelman: All of us understand the effectiveness of drug court and support them. I don't know the numbers.

Rep. Paur: That 39.08.01 refers to DUI. Are we giving drug related offense special treatment compared to alcohol?

Chairman K. Koppelman: We will have to discuss this further later.

Hearing closed

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1164
2/13/2019
32659

- Subcommittee
 Conference Committee

Committee Clerk: DeLores D. Shimek

Explanation or reason for introduction of bill/resolution:

Relating to drug court participation; and to provide a penalty.

Minutes:

Chairman Koppelman: Opened the meeting on HB 1164.

Rep. Roers Jones:

List of concerns was (1) jump from felony to misdemeanor – one level felony to another is not an incentive, stepping down felony levels is consistent with what the law does now; (2) whether or not there should be a period of time after the program is complete where they demonstrate success- who's responsible for monitoring, will a participant have to petition the court after a period of time to show success- this would create more burdens for the court; (3) recidivism after drug court- does the record show a misdemeanor, not a felony? Courts will continue to have full access which will show reduction in charges, they won't be able to look back and see original charge, and (4) the ability to accommodate everyone in drug court in rural areas – everyone says they'd like to see more drug courts and access but acknowledge we have unequal access to services, drug court and otherwise.

Chairman K. Koppelman: I was told the opportunity of transferring to another county was not available?

Rep. Roers Jones: there have been some cases transferred.

Chairman K. Koppelman: Whether a recidivism under a case where someone has gone through drug court, received a reduced sentence, whether that could be used in sentencing later, the answer is the information is there, they're not worried about the extra work for the court or the prosecutors, but they are with the other piece.

Rep. Roers Jones: No, if there's a subsequent charge, the original charge level could be used as a compounding factor in future charges.

Chairman K. Koppelman: The information is there implying the court or prosecution would have to dig it up. Is there anything in law that says they'd be able to use that in a later conviction?

Rep. Roers Jones: I think it's just current practice.

Rep. McWilliams: It is easy to make somebody jump through hoops; I would like to see an amendment on this bill on page 2, #3 Line 10, "following a period of 24 months of no further convictions". Make a motion to this.

Chairman K. Koppelman: That would be for the felony reduction to a misdemeanor and the sealing of the file; but not for the felony reduced to the misdemeanor.

Rep. McWilliams: correct.

Rep. Satrom: second.

Rep. Roers Jones: I would ask the committee to resist the motion; the process out here has been very successful, it still requires a year of involvement in the highly intensive outpatient therapy, sometime in patient therapy, involvement, supervision, and participation in multiple levels of treatment, behavior treatment, interaction with probation and courts, there is multiple different services that they are participating in now. This is a very involved process and has incentive to participate.

Rep. Jones: They should be given what they earned; not adding more hardship onto them.

Chairman K. Koppelman: Under the current bill without the amendment it says that if they complete the program having been convicted of a misdemeanor, the court would be ordering the court to dismiss the case and seal the file. The prior conviction can be used; sealing does not mean it was not available to the court and prosecutors.

Rep. Roers Jones: The sealing of the records does not limit access for law enforcement or the courts. Seals the publicly available records.

Chairman Koppelman: the motion is for an additional 24-month period to ensure to further recidivism before this sealing and dismissal would be granted. Discussion? All in favor say aye, opposed? Motion fails.

Rep. McWilliams: being in drug court is already an alternative to incarceration. Not being in jail is already a reward.

Rep. Vetter: I would move for a Do Pass on HB 1164.

Rep. Magrum: Second.

Chairman K Koppelman: We have a motion for a Do Pass on HB 1164 and a second. Discussion?

Rep. Paur: I am going to resist this because of the unequal implementation. We don't have the system in place to use this with equality. I wonder if we aren't giving preferential treatment to someone driving under the influence drugs over someone driving under the influence of alcohol.

Rep. Vetter: I know someone who is a probation officer (in MN) and he says it seems to be effective method, drug courts very similar.

Rep. Roers Jones: The drug court is not limited to DUI participants.

Rep. McWilliams: They are technically, but they are not often. Drug courts are more likely to be for those on drugs.

Rep. Roers Jones: There are other options for DUI only. These do require constant monitoring.

Chairman K. Koppelman: Roll call vote for a Do Pass on HB 1164. 10 yes, 4 no, 0 absent. Motion carried. Rep. Roers Jones is carrier.

2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1164

House Judiciary Committee

Subcommittee

Amendment LC# or Description: Additional 24 mo-period

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By McWilliams Seconded By Satrom

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman			Rep. Buffalo		
Vice Chairman Karls			Rep. Karla Rose Hanson		
Rep. Becker					
Rep. Terry Jones					
Rep. Magrum					
Rep. McWilliams					
Rep. B. Paulson					
Rep. Paur					
Rep. Roers Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

*Voice
Vote* *Failed*

2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1164

House Judiciary Committee

Subcommittee

Amendment LC# or Description: _____

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Kotler Seconded By Magrum

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman		✓	Rep. Buffalo	✓	
Vice Chairman Karls		✓	Rep. Karla Rose Hanson	✓	
Rep. Becker	✓				
Rep. Terry Jones	✓				
Rep. Magrum	✓				
Rep. McWilliams		✓			
Rep. B. Paulson	✓				
Rep. Paur		✓			
Rep. Roers Jones	✓				
Rep. Satrom	✓				
Rep. Simons	✓				
Rep. Vetter	✓				

Total (Yes) 10 No 4

Absent 0

Floor Assignment Rep. Beau Jones

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1164: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **DO PASS** (10 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). HB 1164 was placed on the Eleventh order on the calendar.

2019 SENATE JUDICIARY

HB 1164

2019 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1164
3/4/2019
#33087 (36:26)

- Subcommittee
 Conference Committee

Committee Clerk: Meghan Pegel

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact two new subsections to section 19-03.1-23 of the North Dakota Century Code, relating to drug court participation; to amend and reenact subsection 9 of section 12.1-32-02 and section 39-08-01.5 of the North Dakota Century Code, relating to drug court participation; and to provide a penalty.

Minutes:

3 Attachments

Chair Larson opens the hearing on HB 1164. Senator Osland was absent.

Shannon Roers Jones, District 46 Representative, testifies in favor (see attachment #1)

Representative Roers Jones: This seeks to create a sentence reduction for participants who successfully complete a drug court program. There are right now in the state of North Dakota five drug courts: two in Fargo, one in Grand Forks, one in Bismarck and one in Minot. There is also one in development in the Whapeton area. This bill allows us to create that incentive for people who are in active addiction in trouble with the law to engage in the drug court system. I've handed out testimony from the assistant Cass county state's attorney Tanya Johnson Martinez as well. This reaches out to people who have had serious struggles with addiction, both alcohol and drugs, and it says that if they complete the drug court program, which is at least one year, they would have a one-step sentence reduction from a felony to a misdemeanor or a misdemeanor to a differed imposition of sorts- the sentence would be dismissed and their record would be sealed to the public. However, the information is always available to court and law enforcement personnel. The items that are being taken out on lines 11 and 12 relate to mandatory minimum sentencing. We don't want to say you have to have mandatory minimum sentences but then say you can have your sentence reduced upon this successful completion.

Chair Larson: The mandatory minimum sentences that are being removed in that section are for what?

Representative Roers Jones: It has to do with mandatory terms of imprisonment and fines related to different drug charges. It lays out that for a second offense, they have to have imprisonment of at least 3 years. For third or subsequent offense, imprisonment for 10 years. It clarifies that it takes out some of that mandatory minimum sentencing so that the judge has the discretion to use the drug court as a tool.

Chair Larson: I have sat in on drug court, and it's very effective.

Senator Bakke: We had a bill last week that took away minimum mandatory sentencing. Does this have to be fixed so it will be in compliance?

Representative Roers Jones: We are taking out the reference to those in the section, so it should be fine.

Senator Myrdal: Would a program like Teen Challenge be affected by this? The courts have the opportunity now to give offenders this option.

Representative Roers Jones: I believe Teen Challenge is a private program. I think the judges would still have the discretion to use that. It wouldn't be affected by this bill because this runs through the state.

Chair Larson: Teen challenge is a treatment program whereas drug court is a court proceeding that has a lot of treatment and probation going along with it. It's two different types of programs.

Representative Roers Jones: Correct.

(6:30) Mark Hendrickson, Drug court officer and ND parole and probation for DOCR, testifies in favor (see attachment #2)

Hendrickson: I've been in law enforcement for over 20 years, and about 13 of those I was with the Department of Corrections as a parole officer. Currently I am assigned as a drug court coordinator in one of our Fargo programs. There are 5 drug court programs in the state of ND: Minot, Bismarck, Grand Forks and two in Fargo.

Chair Larson: I heard that one of those drug court programs was at risk of closing because of personnel. Have you heard about that?

Hendrickson: I have not. These are the 5 that DOCR operates.

Hendrickson: When someone enters the drug court program, they're in that program a minimum of a year, and sometimes longer. There are three phases that participants go through, and each phase is 4 months minimum. In phase one, each participant is required to attend one drug court session per week, have a minimum of two drug and alcohol tests per week and obligated to meet their financial obligations such as court costs, restitution, child support and day to day living. They're to maintain stable housing and employment or

education and are on a curfew from 9p.m. to 6a.m. If they meet all of those requirements within those 4 months, they're moved to phase two. Phase two has two changes to the program: they no longer have the curfew and instead of going to drug court every week, they go every other week. If they complete all of that, they will move to phase three for the last four months. In phase three, they're required to go to drug court once every three weeks. Instead of meeting with their probation officer weekly like they do in the first two phases, they might meet with them once or twice a month. They have less of a treatment program as well. Instead of treatment 3 days a week, they're down to one day a week for an hour which we call an "aftercare program". If they complete all of this, they graduate from the drug court program.

The two basic components are accountability and treatment. Treatment is the biggest component to these drug court programs. Treatment is worked through the Department of Human Services in what's called a "Level 2.1" which is intensive outpatient treatment. That program runs 3 nights a week, 3 hours a night, so you're doing 9 hours a week of treatment. They're very busy, and as they go through the program, we loosen the leash and give them more room to work in the community to see if they can handle it and remain sober. Participants are also required to have a sponsor or a support mechanism in place while they're in the program. They're also required to go to a minimum of two support meetings a week in the community. The purpose of that is to teach them how to network and connect with other sober people in the community therein. Participants are held accountable and given multiple tools to make better choices. We start them off busy and slowly give them room and time in the community to learn to live that sober, productive, law-abiding life in the community. How does this affect our participants? If they have a felony attached to their record, it limits their housing options, employment opportunities, chances to further their education and in some cases it may not allow a person to go into the military.

A lot of times participants basically walk into our office with the shirts on their backs; they have nothing. When we work with them, we work to get them stable housing and employment. That allows them to see how to live that life sober. A drug court team is made up of a judge, state attorney, defense attorney, mental health counselor, treatment addiction counselor and a probation officer like myself. There's nothing more rewarding to see a father or mother graduate from this drug court program and have their children there. To see their children smile and proud of their parent, it's very moving. We're passionate about what we do. We believe that if they can get through this rigorous program and graduate, they should have the opportunity to have that felony lessened, to get rid of that stigma and give them more opportunities as they go through life.

(14:15) Senator Myrdal: Do you have any percentages on the success rates?

Hendrickson: We just did our statistics for 2018. I can only speak to the Fargo programs, but I know one of the programs had over a 60% success rate and the other one had over 70%. We not only work on their addictions, but also creating healthy lifestyles. One individual we had in the program, because of her alcohol and addiction, had racked up over \$13,000 in credit card bills. I personally sat down with that individual and set up a financial plan. In 8 months, she had paid off that debt. I like tell the participants to get there "SAS" on: I want them to continue to develop that support mechanism, learn how to hold themselves accountable and build structure in their lives. This allows the participants one more opportunity to improve their lives while living a life of recovery. They only receive one chance at this program, and if they take advantage of it, they should be afforded this opportunity. If

they make a bad choice after graduating, they don't have that opportunity again, and they're made well aware of that as they go through.

Senator Myrdal: You mention you have five programs in urban areas. I represent a rural area. How do you deal with those incidences across the state?

Hendrickson: It's very limited space, and these people realize it's a great opportunity. We have at times accepted people from other counties, but part of the requirements of these programs is they live within a certain vicinity of where that program is offered because of the rigorous scheduling structure.

Chair Larson: Have you thought of telemedicine to reach smaller communities where a probation officer in a smaller community could meet at a location in front of a judge? Have you thought of expansion in that way?

Hendrickson: That's something I don't deal with.

Vice Chairman Dwyer: I assume that the success rate is higher in drug court than those that don't or are unable to participate.

Hendrickson: It's kind of comparing apples and oranges. The program is the most intense program we have outside of prison. When it started 15 years ago, the individuals we were accepting are a lot different than those we are accepting now. If we wanted a better success rate, we would take low-risk and low-needs individuals. We now take high-risk and high-needs individuals such as heroin or meth addicts and fourth or fifth DUI offenders. We think we're getting the best bang for our buck with those individuals.

Senator Luick: Do you also include violent offenders?

Hendrickson: There is one stipulation in the drug court manual. If they have committed a violent offense within three years, we will not accept those individuals. If it's been more than three years, a lot of times we will accept them.

Senator Bakke: If the individual has a conviction for drug paraphernalia and possession of drugs but also has attempted murder, are they included or does it have to be purely a drug-related offense?

Hendrickson: I'm not sure about attempted murder, but many times we accept the individuals that may commit property crimes. A lot of times these individuals will be involved in burglaries or thefts and what's driving them is gaining money to support their addictions.

Senator Bakke: Let's say there was a robbery conviction at the same time. Would that be reduced as well as their drug, or is only their drug offense reduced?

Hendrickson: I can't answer that question completely. If someone is convicted of a robbery and has pending drug charges as well, they would not be accepted into our program because the violent offense would be too current.

(23:15) Pat Bohn, Director for Parole and Probation

Bohn: We've had conversations about expanding. Right now we're trying to work with the Richland County court to bring some stability there; their grant funding runs out in March 2020. We're also working with Judge Clark out of the Stutsman and Barnes county area to develop a drug court there. We'll have that ready to launch part time in the Spring. Expansion is a concern for us. We're doing work with our officers to have FaceTime contacts in some of those rural areas to reduce the amount of travel for the clients and our officers. There are possibilities for having a tele-judge and something we can think about.

Chair Larson: Did you have an answer to Senator Bakke's question on both crimes being dismissed or reduced?

Bohn: That would be under section 19 and the DUI section, so only those two sections.

Senator Myrdal: It doesn't give every ND the same right. It's difficult to pass a law that's great for some but won't help everyone. It's important that it applies to all people of ND, that they have that opportunity.

Bohn: One of my program managers is attending a webinar this week on some drug court money that may come from the feds to look at some expansion and further implementation of drug courts. I will caution that drug courts are very time and labor intensive. Our officers run a caseload across the state. Our general officers will run a caseload of 75-80 and in some places, upwards of 100. We try to cap their numbers at 25 because of the rigors that officer Hendrickson spoke of.

Senator Bakke: Do you have something similar for juveniles?

Bohn: There are juvenile drug courts in ND and have been in existence since the late 1990's. I was involved in putting the first adult drug court in ND together here in the south central judicial district back in 2000, and they already had juvenile drug courts at that time.

(30) Sara Behrens, Staff Attorney for State Court Administrator's Office, neutral testimony (see attachment #3)

Senator Luick: Could participants do a temporary relocation for this program?

Behrens: I don't know the ins and outs of how that crossover works or if it is very common, but I know they have had participants from other counties in Fargo, and they had to live in Fargo at that time.

Senator Luick: I can see the need for having the close proximity to the facilities, but there should be more effort whether it's temporary residency within that county or something within the program to help willing participants in rural areas.

Senator Bakke: How do we fund our five drug courts?

Behrens: The five we've talked about are state funded. Only the one in Whapeton is funded through the federal government.

Senator Bakke: Is that in the attorney general's budget?

Bohn: It's spread among the general funds. Our officers are general funded. We provide those officers to the drug court and coordinate that. The judiciary has their staff assigned through the general fund, so there aren't any more federal dollars that are supporting these programs at the present time. It's a combination of agencies that are contributing.

Senator Bakke: It's basically done through different budgets putting in personnel, but there's no overhead cost for the program as such? There isn't a line item?

Bohn: That's correct; it's absorbed within the current agencies. Our officers are dedicated drug court officers. The prosecutors, defense bar and treatment are probably the only staff that are full time drug court.

Vice Chairman Dwyer: Is there any proposed additional funding for drug courts in rural areas?

Bohn: Right now there isn't, but we are exploring opportunities.

Chair Larson closes the hearing on HB 1164.

2019 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1164
3/4/2019
#33100 (2:22)

- Subcommittee
 Conference Committee

Committee Clerk: Meghan Pegel

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact two new subsections to section 19-03.1-23 of the North Dakota Century Code, relating to drug court participation; to amend and reenact subsection 9 of section 12.1-32-02 and section 39-08-01.5 of the North Dakota Century Code, relating to drug court participation; and to provide a penalty.

Minutes:

No Attachments

Chair Larson begins discussion on HB 1164. Senator Osland was absent.

Vice Chairman Dwyer: Do Pass
Senator Luick: Seconds.

Senator Myrdal: I think it's a great program, but I am always deeply concerned about bills and language in Century Code that only serve a portion of the citizenry, as no one in my district will be served by this legislation. I will vote for the bill, but I will probably stand up and comment about this on the floor.

Chair Larson: I certainly agree with the need to expand this program.

Senator Bakke: At some point, we should look at putting some state money into it so we can expand it into other areas of the state.

Chair Larson: In a larger population area, it's a lot easier to justify the time and money, but it is too bad because everybody could benefit from this.

A Roll Call Vote was Taken: 5 yeas, 0 nays, 1 absent. Motion carries.

Chair Larson will carry the bill.

**2019 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1164**

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Vice Chairman Dwyer Seconded By Senator Luick

Senators	Yes	No	Senators	Yes	No
Chair Larson	X		Senator Bakke	X	
Vice Chair Dwyer	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Osland	AB				

Total (Yes) 5 No 0

Absent 1

Floor Assignment Chair Larson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1164: Judiciary Committee (Sen. D. Larson, Chairman) recommends **DO PASS** (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1164 was placed on the Fourteenth order on the calendar.

2019 TESTIMONY

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House Judiciary Committee
Representative, Kim Koppelman, Chairman
HB 1164
Reduction of Sentences upon Successful Completion of Drug Court

Testimony of Rep. Shannon Roers Jones, Sponsor

Two of the most basic components of Drug Court are accountability and treatment. In Fargo, they work in conjunction with the Department of Human Services and Prairie St John's in providing chemical dependency treatment to our participants. Drug Court is a voluntary program. Participants submit applications, and the State's Attorney's Office serves as "gatekeeper" with regard to which applications are referred on for screening. At screening, probation officers share with each applicant just exactly what is expected of a participant in Drug Court. It's actually not uncommon at that time for applicants to decide to withdraw their application... the Cass County presiding Judge likes to describe Drug Court as "probation on steroids". Typically, applicants recognize very quickly that this isn't something they'll be able to fake their way through. In order to be considered for Drug Court, an applicant must be diagnosed as chemically dependent and must be willing to comply with recommendations for treatment. Upon approval, the majority of Cass County participants enter Intensive Outpatient Programming at Prairie. The IOP program requires participation three hours a night, three nights a week. Drug Court is absolutely unique in that every participant remains in some form of CD treatment for the entire duration of their time in the program. At the time of graduation, a participant will have successfully completed a minimum of a full year of consistent chemical dependency programming. In addition to treatment, each participant is required to participate in community support meetings of their choice at least twice a week, and they must obtain a sponsor and maintain weekly contact with that sponsor. Each Drug Court team consists of a District Court judge, a prosecutor from the State's Attorney's office, a defense attorney, an addiction counselor, a mental health specialist, and a probation officer. The teams meet weekly (and email or have phone conversations almost daily) to share information and update the Judge and each other on each participant's individual progress. Participation in treatment, drug/alcohol testing results, and overall adherence to conditions of probation are all closely monitored. We employ a system of incentives and sanctions in response to participant behaviors.

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Participants are in the Drug Court Program for a minimum of 1 year. There are 25 participants allowed in the program. The Drug Court Program has three phases in which there are requirements in each phase. Each phase is a minimum of 4 months. The requirements are as follows during each phase:

Phase 1

- Attend 1 Drug Court session per week.
- Provide a minimum of two alcohol and or drug tests per week.
- To report to their assigned probation officer as instructed.
- Meet financial obligations: i.e. court costs, restitution, child support, 24/7 costs, etc... as decided on by the Drug Court Team.
- Maintain stable housing approved by the DC Team.
- Maintain stable employment, training, and or education approved by the DC Team.
- Maintain a curfew as imposed by the DC Team.
- If all these requirements are met in the first 4 months the participant will be moved to Phase 2.

Phase 2

- Attend Drug Court every 2 weeks.
- Provide a minimum of 1 alcohol or drug test per week.
- To report to the assigned Probation Officer as instructed.
- To meet financial obligations: i.e. court costs, restitution, child support, 24/7 costs, etc... as decided on by the DC Team.
- To maintain stable housing approved by the DC Team.
- Maintain stable employment, training, and or education approved by the DC Team.
- If all these requirements are met in the first 4 months the participant will be moved to Phase 3.

Phase 3

- Attend Drug Court every 3 weeks.
- To provide a minimum of two alcohol and or drug tests per month.
- To report to the assigned Probation Officer as instructed.
- To meet financial obligations: i.e. court costs, restitution, child support, 24/7 costs, etc... as decided by the DC Team.
- If all the requirements are met in Phase 3 the participant Graduates from the program.

To: Senate Judiciary Committee

Chair: Sen. Diane Larson

Date: March 4, 2019

Re: Testimony in support of House Bill 1164

My name is Tanya Johnson Martinez, and I am an Assistant Cass County State's Attorney. I write this letter in support of House Bill 1164.

I have been a prosecutor member of the East Central Judicial District for approximately 10 years. Our drug court team attends annual multi-day conferences in continuing legal education to stay up to date on the latest research and best practices. We intermingle with courts across North Dakota and South Dakota. The entire drug court team participates in these events as often as possible – sometimes more difficult for our judges, prosecutors and defense attorney¹ because of trial dockets.

As you will hear in testimony from Probation Officer Mark Hendrickson, drug court is an extremely rigorous program. It is the most intensively supervised community-based treatment program offered in the state. The amount of time and effort it takes for an offender to successfully navigate the requirements of drug court is often shocking to a person learning of the structure of the program for the first time. By the time an offender graduates from drug court, they have proven themselves capable of long-term sobriety.

House Bill 1164 provides an opportunity for those convicted of felonies to have their conviction converted to a misdemeanor offense upon successful completion of a supreme court sanctioned drug court program. Why is this so important? The barriers to accessing basic life necessities, including employment, education and housing are greatly impeded by a criminal record.

We have created this incredible program that provides a foundation for lasting sobriety. It is unfortunate that graduates of such an intense, year plus long program, are unleashed into the world with felony forever branded onto their permanent record.

Drug court incorporates somewhat of a carrot/stick approach. No better incentive could be offered than the opportunity to avoid lifetime felony status. And the mandates of drug court are much more than a rubber stamp of approval. Successful completion requires hard work, determination, and a dedicated drug court team to provide services needed to get through the difficult times.

Thank you for considering my letter of support.

Tanya Johnson Martinez, Assistant Cass County State's Attorney

¹ Best Practices, Volume 2, as put forth by the National Association of Drug Court Professionals, p. 38, endorses a The Drug Court team comprises representatives from all partner agencies involved in the creation of the program, including, but not limited to, a judge or judicial officer, program coordinator, prosecutor, defense counsel representative, treatment representative, community supervision officer, and law enforcement officer. We have no funding for defense counsel, so one attorney, Richard Edinger, volunteers 8-10 hours a month *pro bono*.

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Senate Judiciary Committee
Sen. Diane Larson Chairperson
March 4, 2019

MARK HENDRICKSON, DRUG COURT OFFICER, ND PAROLE & PROBATION
NORTH DAKOTA DEPARTMENT OF CORRECTIONS & REHABILITATION
PRESENTING TESTIMONY RE: HB 1164

1. Probation officers in ND are sworn law enforcement officers, and are obligated to enforce known violations of the law (violations will be discovered and addressed through prosecution or drug court protocols).
2. Overview of phases, 25 participants, treatment requirements, minimum year-long program, fulltime employment/education, weekly court attendance, weekly probation meetings, weekly drug testing, community support meetings, 24/7 requirements and multiple requirements every day.
3. A participants disposition can directly impact their ability to meet life's obligations in the future.
 - a. Participant Examples.

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House Bill 1164
Senate Judiciary Committee

Testimony Presented by Sara Behrens
Staff Attorney, State Court Administrator's Office
March 4, 2019

Good morning Chair Larson and members of the committee. My name is Sara Behrens and I am a staff attorney with the State Court Administrator's Office. I provide this testimony for informational purposes only. Adult drug courts have been in operation in North Dakota for over a decade. The first was in Bismarck beginning in 2001. Adult drug court is a treatment-oriented, highly supervised program targeted to non-violent offenders with substance abuse problems. Drug court is voluntary and offenders must apply to be accepted into the program. Candidates must have multiple prior misdemeanor or felony drug offenses, or three or more DUIs. The currently charged offense must be at least a class A misdemeanor. However, candidates may qualify if the current offense is the candidate's first felony offense, but there is a demonstrable history of substance abuse.

Once in the program, participants must appear for regular (typically weekly) court appearances. The participants must be active in treatment, including individual and group treatment. While in the program, the participants may receive assistance

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with education, skills assessments, referrals for vocational training and job placement. The length of the program will vary for each participant and will depend on the participant's progress. However, the program will last at least one year for each participant.

There are currently five drug courts in North Dakota: two in Fargo, one in Grand Forks, one in Bismarck, and one in Minot. There is also a "treatment court" in Wahpeton overseen by Judge Brade Cruff. Judge Cruff's drug court is not state-funded, however. Instead, it is funded by a grant from the National Highway and Transportation Administration. The future of Judge Cruff's court is unknown as the funding is not guaranteed to continue. The East Central Judicial District requested a third drug court, but did not receive funding support from the Department of Corrections and Rehabilitation.

Having only the five drug courts limits the number of individuals who will be eligible to take advantage of the offense reduction. Unfortunately, it is not feasible to have offenders in one county take part in drug court in another county due to transportation and supervision issues. Additionally, there is a lack of treatment facilities in other areas of the state. To make the aims of this bill beneficial to a greater number of individuals, funding for additional drug courts and more treatment facilities will be required.