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HOUSE BILL NO. 1417

FEBRUARY 5, 2025

Members of the House Judiciary Committee:

I am Kathleen K. Murray, Assistant Attorney General, and I appear on behalf of the Attorney General in opposition of House Bill 1417.

Section 1 of House Bill 1417 amends N.D.C.C. § 12-59-15(1) by adding after considering graduated sanctions and incentives used in response to a violation under section 12.1-32-07. It uses the term “considering” but this will become a mandate later in 12.1-32-07 as it is a limited mandate for revocations and probation violations. Additionally, in Section 1 it amends N.D.C.C. § 12-59-15(6)(b) by adding the language for a parole breach technical violation. This makes it mandatory to have to go through graduated sanctions for parole violations. By doing so it will result in even less Parolees being revoked for violations. Currently DOCR seldom revokes parole and rarely returns Defendants to jail for parole violations. For a first-time parole violation review it is 15 days, second review is thirty days, third review is ninety days, and fourth review may finally revoke the sentence.

Section 2 of House Bill amends N.D.C.C. § 12.1-01-04(1) by adding the definition of abscond. By adding this this language, it appears to require that the Defendant needs to have an appointment to miss an appointment with a probation officer. The Defendant is able to provide a false location within the State, and then actually be located outside of the area or state, and this

does not appear to be defined as absconding. Moreover, the Defendant could provide a known address, and be located at the address, but just never answer the door or be found, and this would not be defined as absconding because an address was provided. Presently, it is the Defendant's responsibility for contacting DOCR, and it is absconding if they fail to contact DOCR or do not respond to phone calls. Basically it requires DOCR to be actively looking for the Defendant rather than the Defendant taking off and just never reporting and never calling. With the limited definition of absconding, most Defendants would be able to refuse to report without it being considered absconding.

Section 2 amends N.D.C.C. § 12.1-01-04(33) by adding the language of technical violations. It appears to be most probation conditions would be technical violations even very serious ones, and here are some examples of what might be considered a technical violation, as follows:

- A sex offender having contact with children (this is not a criminal offense but a standard sex offender probation condition, but children are at risk)
- A sex offender having an undisclosed phone or computer with access to the internet
- A probationer refusing a probation search
- A 4th offense DUI offender drinking (potentially 24/7 violations of having alcohol)
- A probationer refusing to attend treatment (DV Offender Treatment Program, Chemical Dependency, or otherwise court ordered services)
- A probationer failing an intermediate measure
- A probationer possessing a dangerous weapon (as compared to a firearm)
- A probationer willfully defrauding a UA (24/7 violations for drug patch violations)
- A probationer leaving the state without permission
- A drug offender associating with other dealers or users without permission from probation

Section 3 is simply a housekeeping amendment to be consistent with the changes in numbering of the statute.

Section 4 amends N.D.C.C. § 12.1-32-07(2) by taking away the Courts discretion over sentences and conditions of probation. This places all authority and discretion with DOCR based upon standardized risk assessments done by DOCR and may not be case specific by the local level that work with the Defendant's matters. This also takes away the State's Attorney's discretion and

ability to offer plea agreements and specific conditions of probation for individuals per case specific conditions. This amendment deletes the condition that the Probationer is not to commit other offenses during probation, to waive costs for supervision costs and hardship authority, and reducing Defendant's costs to civil judgment because the Defendant does not have those costs. What is recommended to replace those deletions would be an individual case plan for every defendant placed on probation. By doing so this will place a significant burden on the State's Attorneys. Another replacement suggestion is the DOCR Risk Assessment to determine the case plan. DOCR presently handles the PSIs for felony cases which take more than 60 days to complete. This change will also place all the costs for probation upon the State, County, and City not the Defendant.

In addition, to Section 4 suggests amendments to N.D.C.C. § 12.1-32-07(6) regarding the Authority for absconding, and this provides the DOCR with having authority to place a hold on the Defendant for absconding, with DOCR having the ability to petition to revoke for absconding, and allowing the authority to DOCR to use an intermediate measure for absconding. This would lead to less revocations for absconding, and creating another layer to the process by holds and/or intermediate measures, leading to not revoking a probationer based upon absconding.

Also, Section 4 amends N.D.C.C. § 12.1-32-07(9) regarding the technical violations with graduated sanctions, and it basically has to be the fourth petition to revoke if the sentence will be more than 90 days for probation violations based. This amendment has the following actions:

- Limits Court revocations to continue or modify probation for technical violations.
- Limits Court revocations to 1st petition, 15 days, 2nd petition, 30 days, 3rd petition, 90 days, and 4th petition would be able to revoke the sentence.
- Tiered approach will require more court time and court appearances
- Courts rarely revoke on 1st petition currently .
- Courts rarely revoke while new charges are pending, and instead wait for the convictions on the new probation violations.
- Currently, Probation Officers do not notify Law Enforcement and State's Attorney when there are probation violations, including new offenses.
- Probation Officers have to get permission from DOCR supervisor to file petitions and so, there is usually a long laundry list of violations (10-15 violations), after months of violations.

- Courts rarely revoke probation for technical violations, but rather continue or stay revocation proceedings.
- This places a HEAVY BURDEN on local jails for any issues with Defendants
- This places a HEAVY BURDEN on Law Enforcement as there is no way to enforce probation conditions, as some courts do not allow Disobedience of a Judicial Order for probation violations, and the Defendants are able to continue committing violations.
- This places a HEAVY BURDEN on State's Attorneys to try to bring multiple court proceedings and multiple petitions for revocations with minimal jail time.
- This places a Burden on the Community to keep having to deal with multiple violations with no accountability for Defendants that violate conditions of probation.
- There is a SAFETY RISK to the Community as Defendants will have no reason to follow conditions of probation as there are no real sanctions, and if there are sanctions, the sanctions do not occur for months later.

Section 4 amends N.D.C.C. § 12.1-32-07(13) and it will provide DOCR with total discretion over revocations. This allows DOCR to create graduated sanctions, with sanctions being presumptions, and eventually becoming mandatory. With allowing DOCR control, it creates more discretion for incentives, and these incentives would be in addition to Good Time Credit. DOCR's graduated sanctions and incentives will weaken probation conditions to effectively not having a penalty for probation violations.

Section 5 amends N.D.C.C. § 12.1-32-08(8) and the amendments would remove the indigent defense cost reimbursements. Removing this eradicates the ability of the Court to require the Defendant to reimburse the indigent defense costs. Deletion of this section places the costs for indigent defense costs and attorney's fees upon the State, County and City. The suggested amendment to N.D.C.C. § 12.1-32-08(9) also removes the Defendants from having to pay or reimburse Attorney's fees, and instead places these Attorney's Fees costs back upon the State, County and City.

Section 7 creates a legislative study regarding Court Fees, Fines and Costs.