TESTIMONY OF REP. LAWRENCE R. KLEMIN
SENATE JUDCIARY COMMITTEE
HOUSE BILL NO. 1417
MARCH 19, 2025

Members of the Senate Judiciary Committee. I am Lawrence R. Klemin, Representative for District 47 in Bismarck. I am here today to testify in support of House Bill No. 1417, relating to parole and probation violations and court fees. This bill is the second in the package of three bills that represent North Dakota's next phase of criminal justice reform.

As I mentioned in my testimony on HB 1425, these bills continue our state's 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.

The proposals in HB 1417 stem from an interim study aiming to improve ND's reentry outcomes. Here's a recap of the key findings from the study's Final Report:

- ND's prison population is rising while nationally it is declining.
- Drug and alcohol offenses and revocations are the primary drivers of the increase.
- People of color 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.
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Overview of HB1417

HB 1417 is focused on two aspects of our criminal justice system: community supervision and indigent defense.

The bill includes the following proposals:

- Community Supervision Consistency: The bill updates definitions and develops tiered sentencing recommendations for supervision violations due to technical violations for a more consistent response. The bill also eliminates supervision fees to improve the opportunity for a successful transition into the community.
- Indigent Defense Best Practices: The bill eliminates the application fee for indigent defense and the ability to request reimbursement of public defense costs. The American Bar Association recommends these changes as best practices for public defense agencies.
- Study other fees: The bill asks Legislative Management to conduct an interim study to further examine other fees, their collection rate, their impact on state revenue, and their impact on justice-involved people.

Community Supervision Consistency

ND's prison population is increasing while most state prison populations across the country are decreasing. From 2011 to 2021, state prison populations in the US **fell by**

about 25%, but ND's **grew by** just over 18%. This growth continued with a 36% increase from Dec 31, 2020, to Dec. 31, 2023. In contrast to the prison population trends in ND, crime rates have remained relatively stable. Violent crime was slightly higher (2%) in ND in 2022 compared to 2013, but this trend matches the rest of the country for that period. Violent crime rates have notably decreased for both ND and the US since their peak in 2020 with ND's violent crime decreasing 15% and the national rate decreasing 4%. This context is helpful to keep in mind when considering ND's recent prison population trends.

The interim study revealed that one of the key drivers of our growing prison population is community supervision violations. This encompasses probation and parole violations.

Admissions to prison from community supervision violations have grown significantly over the years. From 2014 to 2023, admissions for probation violations increased 65%, accounting for one-third of admissions in 2023. Together, parole and probation violations comprised about 38% of admissions in 2014 and increased to 48% of all admissions in 2023.

To address this issue, HB 1417 proposes a **more consistent approach for community supervision revocations**. The bill does the following:

- Updates and adds **definitions** related to community supervision
- Develops **tiered sentencing recommendations**, so the court and parole board consider graduated sanctions for supervision violations that are specifically for technical violations
- **Eliminates supervision fees**, which are $55 a month, to improve the opportunity for a successful transition into the community

Here's how these proposals are reflected in the bill:

Definitions

Section 2 updates definitions.

Section 2 adds definitions for three terms used in supervision work that have not been defined in our state law previously: "absconded," "responsivity factors," and "technical violation". It also modernizes the existing definition for "risk assessment." Because so many supervision revocations are due to technical violations and absconding, these two new definitions are important.

Additionally, the decision to revoke probation is made by a judge, while the decision to revoke parole is made by the Parole Board. Having definitions clarified in Century Code ensures that partners across the criminal justice system are using the same terms.

The term "absconded" is when someone willfully avoids supervision by making their whereabouts unknown or fails to report to a supervising authority. This is defined in DOCR agency policy, but there was not a matching definition in state statute.

The term "technical violation" is also used frequently in supervision work but there is not a definition in state statute. A technical violation means a violation of a condition of probation or parole that does not involve a new crime, such as participation in the 24x7 sobriety program or the use of electronic monitoring. To be clear, a technical violation is NOT a new criminal offense or absconding.

The term "responsivity factors" refers to a person's ability to respond - either favorably or unfavorably - to a treatment goal. This is commonly considered in the case plan for a person who is being supervised by DOCR to better promote reentry success.

The term "risk assessment" has been updated to reflect the use of a validated, standardized actuarial tool that identifies the risk factors that a person might reoffend and the responsivity factors, which - when addressed - can reduce the likelihood of reoffending.

Section 3 is a technical correction for a part of century code that referred to the old subsection number in the definitions section.

Tiered Sentencing Recommendations for Supervision Violations

The next portion of this proposal develops tiered sentencing recommendations, so the court and parole board consider graduated sanctions for parole and probation violations that are specifically for technical violations.

Section 1 is related to violations of parole conditions, providing the **parole board** with guidance to order tiered sentencing for initial and subsequent revocations. Subsection 1 provides that the parole board "**after considering graduated sanctions" *may*** issue a warrant for the arrest of the parole. Graduated sanctions are not mandatory. Subsection 6 states that the parole board **may** impose a graduated sanction. The parole board can also impose some other appropriate sanction, such as ordering the parolee to serve the remaining time of the sentence. This exercise of discretion enables the parole board to balance the need for more consistency in sentencing based on the facts of the case.

Section 4 is related to violations of probation conditions, providing the court with guidance to impose tiered sentencing for initial and subsequent revocations.

These sections both say that an individual,, following a decision by the **court or parole board** to revoke supervision due to a technical violation, may be subject to 15 days in jail for their first revocation, up to 30 days in jail for the second revocation, and up to 90 days for the third. For their fourth and any subsequent violations, the remaining sentence will be imposed. This also codifies DOCR's current practice of using intermediate interventions and incentives prior to revocation.

Cost control benefits

Together, the tiered sentencing recommendations for technical violations and the clarify in definitions will help us control admissions to state prisons and local jails.

Supervision Fees

Section 4 eliminates the $55 per month supervision fee. That would result in a decrease of $1.5 million in revenue to DOCR over two years, and this is already reflected in the DOCR budget in SB 2015. DOCR tries to collect $6 million in supervision fees every two years, but the collection rate is only about 25%, so only $1.5 million is typically collected. DOCR has said it spends close to $1 million administering the fees and trying to collect the fees.

Indigent Defense Best Practices

People have a constitutional right to a public defender when charged with a crime if they can't afford a lawyer. The North Dakota Commission on Legal Counsel for Indigents provides public defenders to eligible people.

The American Bar Association says that jurisdictions should not charge an application fee for public defense services, nor should persons who qualify for public defense services be required to contribute or reimburse defense services.

The ND Commission on Legal Counsel for Indigents supports these two best practices by eliminating the application fee and the ability for the court to recoup defense costs.

Section 5 and 6 removes the ability for the court to request reimbursement of indigent defense costs. Recoupment is rare. In the 2021-23 biennium, the courts collected $343,000, which was returned to the general fund. The fiscal note on this bill estimates a reduction of $340,000 for the upcoming biennium.

Section 6 removes the $**35 application fee** for someone to receive a public defender. This fee also generates minimal revenue. In the 2021-23 biennium, our Indigent Defense agency collected $312,000 from application fees, which was deposited in the indigent defense administrative fund. The fiscal note on this bill estimates a reduction of $310,000 for the upcoming biennium. The bill adds an **appropriation of $310,000** to the Commission on Legal Counsel for Indigents **to replace the reduction in revenu**e due to the elimination of the application fee.

Study Other Fees

Section 7 proposes that Legislative Management further study other court fees. Other court fees could include travel permits, pre-sentence investigations, the treatment court program, electronic monitoring, alcohol monitoring and the 24x7 program.

The goals of this bill are to ensure public safety while saving tax dollars, make the best use of our overcrowded prison and jails, and improve lives. This bill is supported by the Governor and numerous state agencies and other organizations.

Closing

In summary, HB 1417 aims to create a more consistent response to violations of community supervision - updating definitions, creating tiered sentencing recommendations, and eliminating supervision fees. It proposes that we follow ABA best practices for public defense by eliminating application fees; and it asks us to further study fees that are charged to justice-involved individuals.

The goals of this bill are to ensure public safety while saving tax dollars, make the best use of our overcrowded prisons and jails, and improve lives.

I'll take any questions you may have. The Crime & Justice Institute is also available to answer questions about the study process and the information that led to this bill. Please recommend “do pass” on HB1417. Thank you.

Response to HB1417 Opposition Testimony is attached as Appendix B for your review.

Rep. Lawrence R. Klemin
District 47, Bismarck