

2025 HOUSE JUDICIARY

HB 1417

2025 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

HB 1417
2/5/2025

Relating to parole and probation violations and court fees; to provide for a legislative management study; to provide a penalty; and to provide an appropriation.

10:03 a.m. Vice-Chairman Vetter opened the hearing.

Members Present: Chairman Klemin, Vice-Chairman Karls, Vice-Chairman Vetter, Representatives Christianson, Henderson, Hoverson, McLeod, S. Olson, Satrom, Tveit, Wolff, Schneider

Members Absent: Representatives Johnston, VanWinkle

Discussion Topics:

- Current penalties for missing or refusing to pay court fees
- Parole and probation related fees

10:04 a.m. Representative Lawrence Klemin, North Dakota Representative for District 47, introduced the bill and provided testimony #34366, #34367, #34882.

10:19 a.m. Sister Kathleen Atkinson, Director of Ministry on the Margins, testified in favor and provided testimony #35332.

10:23 a.m. Colby Braun, Director of the Department of Corrections and Rehabilitations, testified in favor and provided testimony #34428.

10:32 a.m. Travis Finck, Executive Director of the North Dakota Commission on Legal Counsel for Indigents, testified in favor and provided testimony #34945.

Additional written testimony:

Joan Bachman, West Fargo, North Dakota, submitted testimony in favor #33499

Maria Neset, Office of the Governor, submitted testimony in favor #34860

Mary Mergler, Fines and Fees Justice Center, submitted testimony in favor #34874

Rozanna Larson, State's Attorney for Ward County, submitted testimony in opposition #36569

Kathleen Murray, Assistant Attorney General, submitted testimony in opposition #36577

10:36 a.m. Chairman Klemin closed the hearing.

Wyatt Armstrong, Committee Clerk

HB1417

Thank you for allowing me to share my thoughts in support of this bill.

I do not understand the requirements for parole nor the relationship between the offender and the parole officer. I do know that the young man I have mentored over the years has had parole revoked at least once for charges of violating parole that he felt were unjust and that were made because the parole officer just didn't like him. He is a nonviolent felon, charged for drugs and theft. He poses no threat to the general population.

Joan Bachman, RN(ret), LNHA(ret), RHIT(ret), BSBA



North Dakota House of Representatives

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COMMITTEES:

Judiciary, Chairman
Political Subdivisions

TESTIMONY OF REP. LAWRENCE R. KLEMIN HOUSE JUDICIARY COMMITTEE HOUSE BILL NO. 1417 FEBRUARY 5, 2025

Members of the House 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

Let's first look at **Section 2**, which **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. Examples of these conditions are listed on page 9 of the bill, 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.

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 say that a person, 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 part of the proposal also codifies DOCR's current practice of using intermediate interventions and incentives prior to revocation.

I want to emphasize that Sections 1 and 4 say the parole board and court may order tiered sentencing (not shall). This enables us to balance the need for more consistency in sentencing with the need for discretion based on the facts of the case.

As we developed the bill, there were questions whether the system limits the number of revocations to a maximum of two. HB 1417 refers to four because the limit of two was removed in 2015.

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. The chart attached to my testimony shows the estimated growth in our state prison and the corresponding costs to taxpayers if we continue on our current track. This proposal is a critical way to control those growing costs going forward.

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 (SB 2015).

DOCR tries collect \$6 million in supervision fees every two years, but the collection rate is typically 22-25% 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. As some say, let's not spend dollars to chase dimes.

Instead of starting every interaction with a request for the monthly supervision fee, our parole and probation officers would like to focus on coaching the people they supervise to help them be more successful as they transition from incarceration to the community. Having to discuss the financial obligation takes time away from addressing more pertinent issues such as substance use recovery, improving family relationships, employment and skill building.

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 these public defenders to eligible people.

The American Bar Association's Ten Principles of a Public Defense Delivery System 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 eliminate the ability for the court to request reimbursement of indigent defense costs. Recoupment requests are rare. In the 2021-23 biennium, the courts collected \$343,000, which is returned to the general fund. The fiscal note on this bill estimates a reduction of \$340,000 for the upcoming biennium.

Section 6 eliminates 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 is deposited in the indigent defense administrative fund. The fiscal note on this bill estimates a reduction of \$310,000 for the upcoming biennium.

There are two proposed amendments related to this portion of the bill. First, we need to remove the overstrike on page 19, lines 7-11. Striking out that text would eliminate the fund in which a variety of fees are deposited, so we need to keep that fund unless all related fees are eliminated. Second, we are requesting that the committee add an appropriation of \$310,000 to the Commission on Legal Counsel for Indigents to replace the reduction in revenue due to the elimination of the application fee. This agency is underfunded as it is, so it is critical that we replace these operations funds.

Study Other Fees

The last aspect of HB 1417 is found in **Section 7**, which 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 Reentry Work Group that conducted the interim study did not examine these additional fees, but felt it was important to look at the rate of collection of these fees, how these fees impact state revenue, and how these fees impact justice-involved individuals.

There is also a proposed amendment to this section to fix a typo in the bill.

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.

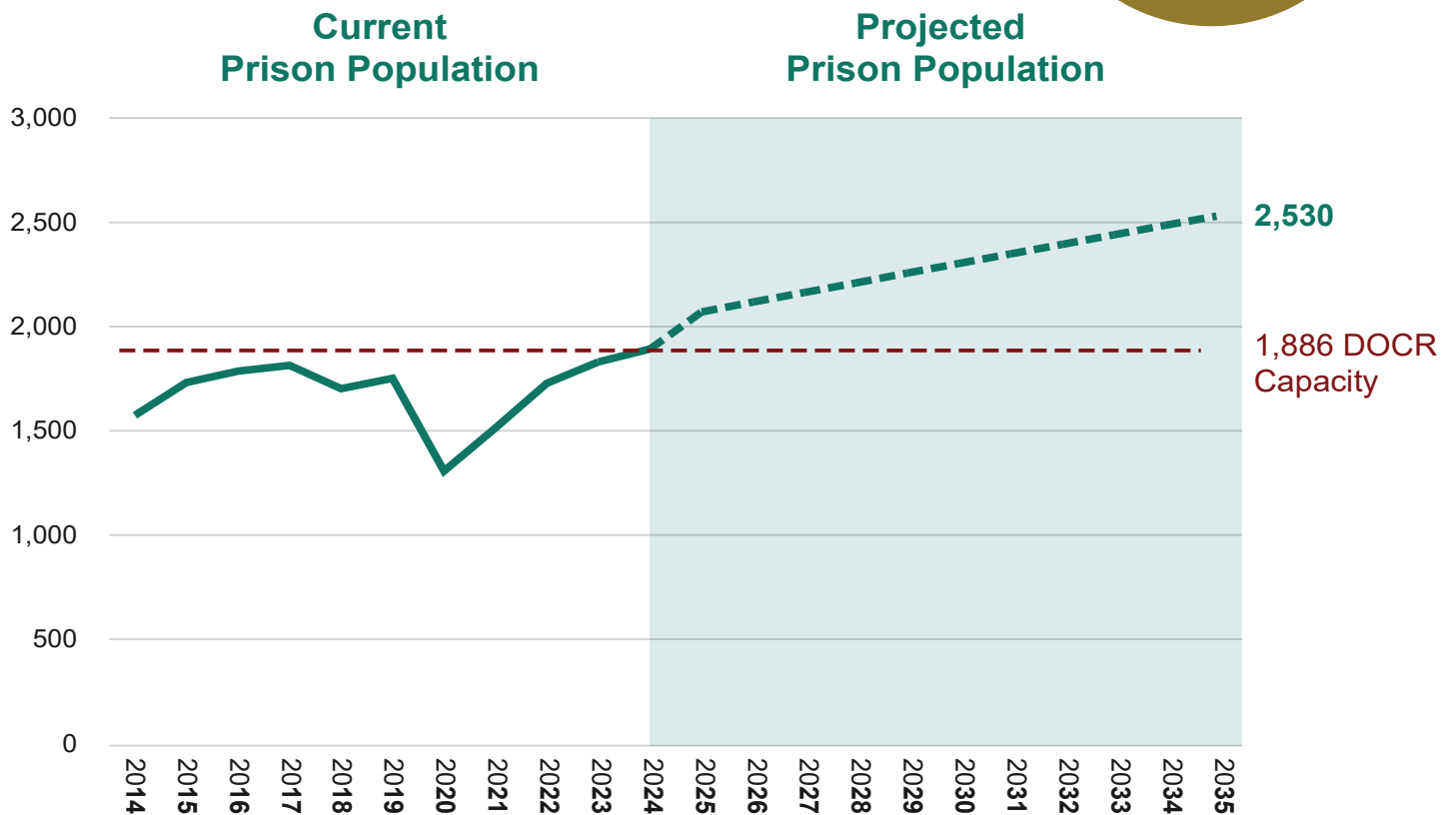
The goals of this bill are to ensure public safety while saving tax dollars, make the best use of our overcrowded prisons and jails, and improve lives.

Like the last bill, I'll take any questions you have, and the Crime & Justice Institute is also available to answer questions about the study process and the information that led to the proposed policies in this bill.

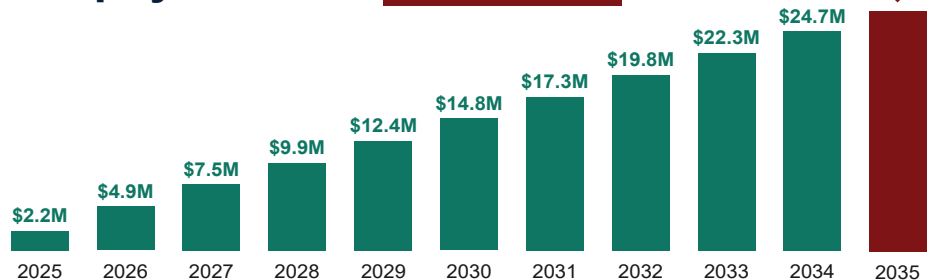
Rep. Lawrence R. Klemin
District 47, Bismarck

North Dakota Prison Population Projected to Grow 38% Over Next Decade

Exceeding Capacity by Over 600 People



Projected Prison Population Growth Will Cost North Dakota Taxpayers Over \$27 Million



\$

Not Factoring in the Growing Costs of

- + Medical
- + Behavioral Health
- + Education
- + Staff Salaries

Source: DOCR population forecasts, using estimated per diem bed cost of \$148

**HOUSE JUDICIARY COMMITTEE
REPRESENTATIVE LAWRENCE KLEMIN, CHAIR
FEBRUARY 5, 2025**

**NORTH DAKOTA DEPARTMENT OF CORRECTIONS AND REHABILITATION
PRESENTING TESTIMONY IN SUPPORT OF HOUSE BILL 1417**

Chair Klemin and members of the House Judiciary Committee, I am Colby Braun, Director of the North Dakota Department of Corrections and Rehabilitation (DOCR). Today, I submit this verbal and written testimony in support of House Bill 1417.

While most state prison populations across the country are decreasing, North Dakota's prison population is increasing. A significant number of North Dakota's prison admissions stem from community supervision violations and alcohol and drug offenses. House Bill 1417 addresses issues related to supervision violations and financial obligations.

Section 1 proposes that in response to an alleged violation of the terms and conditions of parole the DOCR director may issue a warrant for arrest after considering graduated sanctions and incentives used in response to a violation. This approach is consistent with best practices outlined in the DOCR's Managing Behavior - Field Manual for Behavior Change, which provides a framework for responding to both prosocial and noncompliant behaviors, including supervision violations. This section also establishes tiered periods of incarceration that may be applied for technical violations of parole, allowing for more severe sanctions when appropriate.

Section 2 provides definitions for "Absconded," and "Technical Violations." Under current law, there are no consistent definitions for these terms. By providing clear definitions, this section will improve the identification and tracking of supervision failures related to absconding and technical violations. It will also ensure greater consistency when responding to such violations.

Section 4 proposes the removal of supervision fees as a condition of probation. The DOCR currently bills approximately \$6 million in supervision fees per biennium with a collection rate around 25%, amounting to roughly \$1.5 million. Many individuals under supervision face

other financial obligations, such as fines, fees, and restitution, and also encounter challenges in securing stable housing and employment. By eliminating the assessment of supervision fees, this bill allows supervising staff to focus on addressing more critical issues that support positive behavior change and reduce recidivism.

Additionally, Section 4 grants the DOCR the authority to issue an "authority to hold" when a probationer has absconded from supervision. This provision would enable the individual to be held upon apprehension and allow supervising staff to meet with the individual, to determine the appropriate course of action including the possibility of dismissing the authority to hold, implementing intermediate measures, or initiating a petition for revocation.

Section 4 also proposes that, upon the revocation of probation for a technical violation only, the court may impose a tiered period of incarceration based on the number of prior revocations. While this provision encourages graduated responses, it does not preclude the court from imposing a longer period of incarceration if the circumstances warrant it.

Finally, Section 4 indicates the DOCR shall use a matrix system of graduated sanctions and incentives and apply the presumptive sanctions and incentives for the appropriate supervision violation and success. This approach is consistent with best practices outlined in the DOCR's Managing Behavior - Field Manual for Behavior Change.

Section 7 proposes that legislative management consider studying court fines and fees, and the overall impact on a defendant. Justice-involved individuals often face financial challenges that make it difficult to meet basic needs. While paying restitution is crucial, competing financial obligations can complicate this. The Department of Corrections and Rehabilitation (DOCR) supports the proposed study on court fines and fees to better understand and address these issues.

House Bill 1417 provides a thoughtful approach to addressing the challenges within our correctional system, particularly regarding supervision violations and financial obligations. By considering graduated sanctions, defining technical violations more clearly, and eliminating

supervision fees, this bill creates opportunities for more effective supervision and promotes behavior change. This concludes my testimony on House Bill 1417, I will stand for any questions.

Re-Entry House Bills
Lt. Governor Michelle Strinden
House Judiciary Committee
Rep. Lawrence Klemin, chair
February 5, 2025
Room 327 B

Good morning, Chair Klemin, and members of the House Judiciary Committee. For the record, my name is Michelle Strinden, Lieutenant Governor for the State of North Dakota. I am here on behalf of the Armstrong administration to speak in support of HB 1425, HB 1417 and HB1549.

Over the interim, I had the opportunity to participate as a member of the Reentry Study Work Group, which laid the groundwork for these three bills that you will hear more about this morning. For over a year, I was at the table with a team of legislators, Department of Corrections and Rehabilitation and Department of Health and Human Service leaders, court system and county jail experts, and community reentry partners who examined data findings from our state's criminal justice system. This work group discussed the next steps our state can take toward our

longstanding goals of improving public safety through rehabilitation, reentry and recovery.

As this committee is aware, this interim study follows years of progress our state has made to ensure the people who enter our criminal justice system leave the system better than when they entered it. I am proud our state has emerged as a national leader for our commitment to recovery and reentry. When North Dakotans talk about "reentry," we aren't just talking about the process of a person leaving prison; we are talking about everything that happens before prison: coordinated efforts by law enforcement and behavioral health practitioners to respond to crises, addressing addiction and mental illness that contribute to criminal activity, and establishing a system of accountability and care that keeps our communities safe.

Our Work Group kept this in mind as we closely examined our criminal justice system data over the course of several months. It won't surprise anyone to hear our prison population has been growing, pushing our DOC facilities and some county jails to their maximum capacities. But a finding from this study that stood out to me is that many residents continue to enter our prisons for

drug and alcohol offenses. We also found racial disparities in our system, specifically an overrepresentation of Black and Native American residents in our prisons. These are outcomes the Armstrong administration is committed to improving. Thanks to my fellow Work Group members who spent their summer diving into data, research, and examples of successful strategies from other states, I know we have a strong roadmap to help us get there.

The recommendations across these three bills support local law enforcement and prosecutors in using deflection and diversion practices – effectively interrupting misconduct early and intervening with treatment resources in cases where addiction and mental illness are the root cause. Provisions in these bills will also reduce barriers to reentry faced by people on community supervision; promote culturally responsive programming for people moving through the justice system; and support cross-agency collaboration to help justice-involved people secure medical coverage and state identification. The bottom line is we want to prepare those leaving the justice system to be ready to

join our workforce, become our neighbors, attend our churches, and make our state better.

We have been on the right trajectory with our reentry and recovery focus for the past decade, and the policies included in HB 1425, HB 1417, and HB 1549 are the natural next step to improve public safety for our communities. Our administration urges the committee to support a "do pass" on all three bills. Thank you for your time and I am open to questions.



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Written Testimony in Support of H.B. 1417

To: Representative Lawrence R. Klemin, Chair
Representative Karen Karls, Vice Chair
Members of the North Dakota House Judiciary Committee

From: Mary Mergler
Fines & Fees Justice Center

Date: February 4, 2025

The Fines and Fees Justice Center (FFJC) submits this testimony in support of H.B. 1417, and we thank Chairman Klemin, Senator Davison, Representative Hanson, Senator Larson and Representative Stemen for filing this critically important legislation. H.B. 1417 would eliminate several fees that are charged to people who have been charged with or convicted of a criminal offense in North Dakota: a \$55 per month supervision fee, a \$35 indigent defense application fee, and reimbursement of the costs of appointed defense counsel (collectively referred to as “criminal justice fees” in this testimony). It would also require a study of court fines and fees in the interim. Finally, H.B. 1417 would make improvements to probation and parole supervision. While we support the intent of this bill related to probation and parole supervision, this testimony is focused solely on the provisions of the bill related to fines and fees, given that is our organization’s focus and area of expertise.

Eliminating these criminal justice fees would improve outcomes for people who have been involved in the system, making it more likely they would be able to successfully reenter their communities and avoid rearrest, as well as help North Dakota families who are financially struggling to meet their most basic needs. **FFJC urges the Committee to support H.B. 1417 and eliminate these criminal justice fees in North Dakota.**

Criminal Justice Fees Are Imposed on North Dakotans who Cannot Afford Them

The vast majority of people charged with crimes in North Dakota are low income. Nationally, an estimated four in five people who are charged with a crime are too poor to afford an attorney and qualify to have a public defender appointed to represent them.¹ More than half

¹ See Marea Beeman et al., *At What Cost?: Findings From an Examination Into the Imposition of Public Defense System Fees* at 3, National Legal Aid & Defender Association (2022), available at https://www.nlada.org/sites/default/files/NLADA_At_What_Cost.pdf?v=2.0 (hereinafter “At What Cost?”).

of people who are incarcerated had virtually no annual earnings three years preceding their incarceration, and for those that were employed, their median earnings were about \$6,300 annually.²

After being convicted of a crime, a person will experience a significant reduction in their lifetime earnings. People who were convicted of a felony and incarcerated for some period of time experience the greatest decrease: they will earn approximately \$480,000 less over the course of their lifetime compared to someone who was not involved in the criminal justice system.³

Overwhelmingly, people who are charged with and convicted of crimes do not have the financial resources to pay for anything beyond their basic needs. Yet, they are still charged huge amounts of fees related to their system involvement in North Dakota, including fees for the cost of their defense counsel, court costs, supervision fees, and other fees.

Importantly, these criminal justice fees are distinct from fines. **Fines are intended as a form of punishment. On the other hand, fees are not intended to serve as punishment and are only intended to generate revenue for the government.** Criminal justice fees are unjust in that they operate as a tax, attempting to force those people who are least able to pay to fund the justice system, rather than evenly distributing the financial burden among everyone that the criminal justice system serves.

While North Dakota is not alone in charging fees to people in the criminal justice system, a rapidly growing number of states are recognizing the harms inflicted by such fees and have begun to eliminate them. In recent years:

- Three states have eliminated fees related to public defenders or appointed counsel, joining the seven other states that already do not charge such fees.
- Five states have eliminated some court costs and assessments.
- Six states have eliminated fees related to probation supervision and/or parole supervision.
- Nine states have eliminated some types of fees charged to people who are incarcerated, including room and board fees, medical copays and phone call fees.

² Adam Looney, *Work and opportunity before and after incarceration*, The Brookings Institution (2018), available at https://www.brookings.edu/wp-content/uploads/2018/03/es_20180314_looneyincarceration_final.pdf.

³ Terry-Ann Craigie et al., *Conviction, Imprisonment, and Lost Earnings: How Involvement with the Criminal Justice System Deepens Inequality*, The Brennan Center (2020), available at <https://www.brennancenter.org/our-work/research-reports/conviction-imprisonment-and-lost-earnings-how-involvement-criminal>.

- At least 24 states have eliminated all or some of the fees assessed against youth and their families in the juvenile justice system.⁴

Increasingly, states are recognizing that fees harm public safety and harm families, while being an inefficient and problematic source of funding for the criminal justice system.

Fees are a Barrier to Successful Reentry and Damage Community Safety

After people have been incarcerated or punished by the criminal justice system, they deserve a meaningful second chance to rebuild their lives. When returning citizens are able to gain financial stability, their chances of avoiding rearrest and further criminal justice system contact decreases dramatically. **However, fees are a widely recognized barrier to successful reentry. They trap people in a perpetual cycle of debt and punishment, making successful reentry exponentially more difficult and increasing recidivism.**⁵

Finding a job after incarceration is particularly challenging. An estimated 3 in 5 formerly incarcerated people are unemployed,⁶ and individuals with a criminal record are only half as likely to get a callback or job offer.⁷ Only 55% of people have any reported earnings at all in the calendar year following their incarceration.⁸ Of the 55% with earnings, the median income is \$10,990 – i.e., less than \$1,000 per month.⁹ Only 1 in 5 people have jobs in which they make more than \$15,000 in the year following their incarceration.¹⁰

Nonpayment of fees prolongs people's involvement with the criminal justice system, making it impossible to move on. When people do not pay the fines and fees they owe, a warrant may be issued for their arrest and they may even be incarcerated for nonpayment of fees: a recent study found nearly 1 in 5 people with fines and fees from criminal cases served some amount of time in jail due to nonpayment.¹¹

⁴ For a list of state and local governments that have eliminated fees, visit the End Justice Fees campaign website, www.endjusticefees.org/reform. For a list of all states that fully or partially eliminated juvenile justice fines and fees, see <https://debtfreejustice.org/our-impact>.

⁵ See, e.g., U.S. Dept. of Justice Office of the Associate Attorney General, *Dear Colleague Letter to Courts Regarding Fines and Fees for Youth and Adults* at 3 (Apr. 20, 2023), available at https://www.justice.gov/d9/press-releases/attachments/2023/04/20/doj_fines_and_fees_dear_colleague_letter_final_with_signatures_0.pdf (hereinafter DOJ Dear Colleague Letter).

⁶ Leah Wang & Wanda Bertram, *New data on formerly incarcerated people's employment reveal labor market injustices*, Prison Policy Institute (2022), available at <https://www.prisonpolicy.org/blog/2022/02/08/employment/>.

⁷ Caroline Cohn et al., *The High Cost of a Fresh Start: A State-by-State Analysis of Court Debt as a Bar to Record Clearing*, National Consumer Law Center (2022), available at <https://www.nclc.org/resources/the-high-cost-of-a-fresh-start-a-state-by-state-analysis-of-court-debt-as-a-bar-to-record-clear/>.

⁸ Adam Looney, *Work and opportunity before and after incarceration*, The Brookings Institution (2018), available at https://www.brookings.edu/wp-content/uploads/2018/03/es_20180314_looneyincarceration_final.pdf.

⁹ *Id.*

¹⁰ *Id.*

¹¹ See, e.g., Aravind Boddupalli, *How Fines and Fees Impact Family Well-Being*, Urban Institute-Brookings Institution Tax Policy Center (2024), available at <https://www.taxpolicycenter.org/publications/how-fines-and-fees-impact-family-well-being/full> (hereinafter

The nonpayment of criminal justice fees can also lead directly to consequences that make getting hired for a job much more difficult – which in turn, is a barrier to them ever paying their fees. For example, not paying fees is a barrier to expungement and record sealing.¹² They may also endure years of court involvement when fees go unpaid, causing them to miss work repeatedly.¹³

Research has shown that higher amounts of fees owed were linked to increases in returning citizens being rearrested for a new offense.¹⁴ Fear of the profound consequences of not paying these fees can lead people to criminal activity to get the money to resolve their debt. A survey of more than 900 people with court debt found nearly two in five people reported engaging in illegal activities for purposes of paying their court debt, with similar results found in a second survey.¹⁵ **Eliminating criminal justice fees would reduce the amount of debt that people owe after criminal justice system involvement, and hence reduce the pressure people feel to pay these fees or suffer the consequences, ultimately improving public safety overall.**

Criminal Justice Fees Burden Entire Families, Not Just People Charged with Crimes

While criminal justice fees are technically assessed against individuals who have been charged with a crime, the costs are inevitably borne by entire households – children, spouses, parents and other dependents. Families are most often the primary source of support for people who are reentering communities after incarceration, and those families are also the ones footing the bill for outstanding fees while their loved one tries to reestablish their life and find stable employment. One study across 14 states found that in more than 3 in 5 cases, family members were the ones primarily responsible for paying what the fees of their incarcerated loved one, and the majority of families reported they

“Fines and Fees Impact”). See also Johann D. Gaebler et al., *Forgotten But Not Gone: A Multi-State Analysis of Modern-Day Debt Imprisonment*, PLoS ONE 18(9): e0290397, available at <https://doi.org/10.1371/journal.pone.0290397>; At What Cost?, *supra* n.1 at 13.

¹² Caroline Cohn et al., *The High Cost of a Fresh Start: A State-by-State Analysis of Court Debt as a Bar to Record Clearing*, Nat’l Consumer Law Ctr (2022), available at <https://www.nclc.org/resources/the-high-cost-of-a-fresh-start-a-state-by-state-analysis-of-court-debt-as-a-bar-to-record-clear/>.

¹³ At What Cost?, *supra* n. 1 at 13.

¹⁴ Michael Ostermann et al., *Reframing the debate on legal financial obligations and crime: How accruing monetary sanctions impacts recidivism*, *Criminology*, Vol. 62, Issue 2, 331-363 (May 2024) DOI: 10.1111/1745-9125.12375; Tyler Giles, *The Government Revenue, Recidivism and Financial Health Effects of Criminal Fines and Fees*, Working Paper, available at <https://sites.google.com/view/tylertgiles/research?authuser=0>.

¹⁵ Alabama Appleseed et al., *Under Pressure: How fines and fees hurt people, undermine public safety, and drive Alabama’s racial wealth divide* (2018) available at <https://www.alabamaappleseed.org/underpressure>. See also Fines and Fees Justice Center, *The Impact of New Mexico’s Fines and Fees: Interim Survey Results* (2023), available at https://finesandfeesjusticecenter.org/content/uploads/2023/01/New-Mexico-Survey-DIGITAL_2023.pdf.

could not afford what was owed.¹⁶ Of the family members responsible for paying, 83% were women.¹⁷

Families regularly forgo basic necessities, like food, rent, and medical care, to pay fees owed to the justice system, fearing the consequences of nonpayment, like arrest and incarceration of their loved one.¹⁸ A 2023 study by the Fines and Fees Justice Center and the Wilson Center for Science and the Law at Duke University found that 1 in 3 adults in the U.S. had fine or fee debt in the previous 10 years.¹⁹ Of those with debt, more than 1 in 3 had challenges obtaining food as a result, and more than 1 in 4 reported the debt causing hardships related to housing.²⁰ **Another recent study looked at families owing court and incarceration-related fees, and the financial devastation was even more profound: 57% of families experienced food insecurity and 29% reported difficulty paying housing costs** (compared to 25% and 8% of families who did not owe fines and fees).²¹ Elimination of criminal justice fees would provide immediate financial relief to families, putting money back into their budgets to meet the essential needs of everyone in the household, including food, housing and healthcare.

Criminal Justice Fees Assessed are an Ineffective, Unreliable Way to Fund the Justice System

Collection rates of criminal justice fees are very low given that these fees are assessed against people who do not have the financial resources to pay them. Only a fraction of what is assessed is ever collected.²² For example, the collection rate of the supervision fees that would be eliminated by this bill is only 25%. While collection rates vary based on the type of fees and the jurisdiction, studies from across the country have documented dismal collection rates.²³ Nationally, there is more than \$27 billion in unpaid fines and fees outstanding.²⁴ With so many fees going uncollected, the amount collected from criminal

¹⁶ Saneta deVunono-powell et al., *Who Pays? The True Cost of Incarceration on Families* at 13-14, Ella Baker Center (2015), available at <https://ellabakercenter.org/wp-content/uploads/2022/09/Who-Pays-exec-summary.pdf>.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Fines and Fees Justice Center & Wilson Center for Science and Justice at Duke Law, *Debt Sentence: How Fines And Fees Hurt Working Families* (2023), available at <https://finesandfeesjusticecenter.org/articles/debt-sentence-how-fines-and-fees-hurt-working-families/>.

²⁰ *Id.*

²¹ *Fines and Fees Impact*, supra n. 22 at 11.

²² See, e.g., Matthew Menendez et al., *The Steep Costs of Criminal Justice Fees and Fines*, The Brennan Center (2019), available at brennancenter.org/sites/default/files/2019-11/2019_10_Fees%26Fines_Final5.pdf (hereinafter “Steep Costs”); Lauren-Brooke Eisen, *Paying for Your Time: How Charging Inmates Fees Behind Bars May Violate the Excessive Fines Clause*, Brennan Center (Jul. 31, 2024), available at <https://www.brennancenter.org/our-work/research-reports/paying-your-time-how-charging-inmates-fees-behind-bars-may-violate>.

²³ *Id.* See also Paige Wanner et al., *Legal Financial Obligations in Washington State: Final Report*, Washington Institute for Public Policy (December 2022).

²⁴ Brianna Hammons, *Tip of the Iceberg: How Much Criminal Justice Debt does the U.S. Really Have?* Fines and Fees Justice Center, 5 (Apr. 2021), available at <https://finesandfeesjusticecenter.org/articles/tip-of-the-iceberg-how-much-criminal-justice-debt-does-the-u-s-really-have/>.

justice fees is a tiny drop in the bucket of state revenue and only a fraction of the costs of the justice system. This revenue stream is also unreliable, ebbing and flowing based on external factors, and dependent upon crimes being committed to generate revenue.

Additionally, there are enormous costs associated with the collection of fees charged in the criminal justice system. **One study showed that on average it costs 121 times more to collect one dollar of criminal justice fees than it does to collect one dollar of tax revenue.**²⁵ In counties across Texas, New Mexico and Florida, more than 40% of each dollar collected went towards collection costs, and in some cases, counties actually spent more to collect the fees than they were raising in revenue.²⁶ In another study in Washington State, the state recouped less than 30% of every dollar spent on collections.²⁷

Reliance on fee revenue may misdirect law enforcement and court resources away from true safety concerns, instead forcing them to chase uncollectable debts. **Research shows that every 1% increase in revenue from fines and fees corresponds with a 6% decrease in the violent crime clearance rate and an 8% decrease in the property crime clearance rate.**²⁸ Police resources are limited and focusing them on fee collection puts public safety at risk. Revenue generation also generates greater distrust of law enforcement within communities, making people less likely to report crime and cooperate with police.²⁹

In short, the current framework of levying unaffordable fees on people least able to afford them is failing. The criminal justice system is an essential government service that works to ensure that people follow the law and are held accountable when they do not. Attempting to transfer the costs of the system to the people least able to afford it through fees puts the effectiveness and efficiency of this critically important system at risk.

The Solution: H.B. 1417 Eliminates Harmful Fees

The assessment of criminal justice fees, including supervision fees and counsel fees, is a failed attempt to transfer the costs of the criminal justice system to those least able to afford those costs. People who are returning to their families and communities after incarceration and system involvement are saddled with enormous debt that is a major barrier to their successful reentry. H.B. 1417 would eliminate certain criminal justice fees, thereby improving reentry outcomes and public safety, and providing immediate relief to families struggling to meet their basic needs. It would also require a study of fines and fees

²⁵ *Steep Costs*, *supra* n. 5.

²⁶ *Id.*

²⁷ Wanner, *supra* n. 23.

²⁸ Rebecca Goldstein et al., *Exploitative Revenues, Law Enforcement, and the Quality of Government Services*, *Urban Affairs Review* (August 2018): 1-27, 4-5 & 17.

²⁹ See, e.g., U.S. Dep't of Justice, *Investigation of the Ferguson Police Department*, March 4, 2015, 1-2, available at

https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf.

assessed in the system, thereby providing greater transparency into the fines and fees assessed and the impact that they are having on North Dakotans.

We appreciate the Committee's attention to this critical issue and urge you to support H.B. 1417. Do not hesitate to contact me with any follow up questions or requests for additional information.

Respectfully submitted,

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About the Fines & Fees Justice Center

The Fines and Fees Justice Center is a national hub for information, advocacy, and collaboration for the reform of fines and fees. Our mission is to eliminate fees in the justice system, ensure that fines are equitably imposed, and end abusive collection practices. Fines and fees in the justice system hurt millions of Americans – entrenching poverty, exacerbating racial disparities, diminishing trust in our courts and police, and trapping people in perpetual cycles of punishment. FFJC spearheads the bipartisan End Justice Fees coalition, which supports the elimination of fees that are charged in the justice system. These fees operate as a regressive tax, forcing those least able to pay to fund the justice system rather than evenly distributing the burden among everyone that it serves. Learn more about our work at www.finesandfeesjusticecenter.org and www.endjusticefees.org.

25.1150.01001
Title.

Prepared by the Legislative Council
staff for Representative Klemin
February 4, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

HOUSE BILL NO. 1417

Introduced by

Representatives Klemin, Stemen, Hanson

Senators Davison, Larson

1 A BILL for an Act to amend and reenact sections 12-59-15 and 12.1-01-04, subdivision b of
2 subsection 3 of section 12.1-22-01, and sections 12.1-32-07, 12.1-32-08, and 29-07-01.1 of the
3 North Dakota Century Code, relating to parole and probation violations and court fees; to
4 provide for a legislative management study; to provide a penalty; and to provide an
5 appropriation.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 **SECTION 1. AMENDMENT.** Section 12-59-15 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **12-59-15. Breach of parole - Hearings - Order of recommitment.**

- 10 1. When it is alleged that a parolee has violated any of the terms or conditions of parole
11 established by the parole board or by the department of corrections and rehabilitation,
12 the director of the department of corrections and rehabilitation may issue a warrant for
13 the arrest of the parolee after considering graduated sanctions and incentives used in
14 response to a violation under section 12.1-32-07.
- 15 2. Upon issuance of a warrant of arrest for a parole violation, the running of the time
16 period of parole must be suspended until the parole board issues a final order under
17 this section. The parolee is entitled to credit for time spent in physical custody from the
18 time of arrest until the time the parole board issues a final order.
- 19 3. The parolee is entitled to a preliminary hearing, as promptly as is convenient after the
20 arrest and reasonably near the place of the alleged violation or arrest, to determine

whether there is probable cause to find that the parolee violated any of the terms and conditions of parole established by the board or by the department of corrections and rehabilitation.

4. The preliminary hearing must be conducted before the director of the department of corrections and rehabilitation or other hearing officer authorized by the director. The preliminary hearing must be conducted by a disinterested hearing officer not directly involved in the supervision of the parolee or by the person bringing the allegation of a parole violation.

5. If the hearing officer determines there is probable cause to find that the parolee has violated any of the terms and conditions of parole established by the board or by the department of corrections and rehabilitation, the board may redetermine the time remaining in the period of parole to reflect any portion of the period during which the parolee was not under supervision or not in the custody of law enforcement personnel in the state.

6. If the hearing officer determines there is probable cause to find that the parolee has violated any of the terms and conditions of parole established by the board or by the department of corrections and rehabilitation, the parolee must be returned to the physical custody of the department of corrections and rehabilitation, transferred to another correctional facility or the state hospital, or released from actual custody pursuant to such terms and conditions as may be established by the parole board or the department of corrections and rehabilitation, pending a final revocation hearing before the parole board. If the board determines at the final revocation hearing that the parolee has violated any:

a. Any of the terms and conditions of parole established by the board or by the department of corrections and rehabilitation, if the board may order that the parolee be recommitted to the physical custody of the department of corrections and rehabilitation to serve all or part of the remaining time of the sentence that has not been served in custody.

b. A technical violation of parole, as defined in section 12.1-01-04, the board may order the parolee be recommitted to the physical custody of the department of corrections and rehabilitation to serve fifteen days for a first violation, up to thirty

days for a second violation, up to ninety days for a third violation, and the full remaining time of the sentence that has not been served in custody for a fourth and subsequent violation.

7. At any hearing pursuant to this section a record must be made and the parolee shall have:

a. Written notice of the purpose of the hearing and the alleged violations.

b. The opportunity to be heard in person and present witnesses and documentary evidence.

c. The opportunity to confront and cross-examine adverse witnesses, unless the hearing officer determines that confrontation would create a risk of harm to the witness.

d. A written statement as to the reasons for the decision.

8. When the board determines the parolee has absconded, as defined in section 12.1-01-04, from supervision, the board may order the parolee to pay the costs of being returned to the board. Moneys recovered under this subsection must be remitted to the department of corrections and rehabilitation.

SECTION 2. AMENDMENT. Section 12.1-01-04 of the North Dakota Century Code is amended and reenacted as follows:

12.1-01-04. General definitions.

As used in this title, unless a different meaning plainly is required:

1. "Absconded" means when a probationer, parolee, participant in a pretrial services program, or participant in a prosecution-led diversion program willfully avoids supervision by making their whereabouts unknown or fails to report to a supervising authority.

2. "Act" or "action" means a bodily movement, whether voluntary or involuntary.

~~2.3.~~ "Acted", "acts", and "actions" include, where relevant, "omitted to act" and "omissions to act".

~~3.4.~~ "Actor" includes, where relevant, a person guilty of an omission.

~~4.5.~~ "Bodily injury" means any impairment of physical condition, including physical pain.

~~5.6.~~ "Court" means any of the following courts: the supreme court, a district court, and where relevant, a municipal court.

- 1 ~~6-7.~~ "Dangerous weapon" includes any switchblade or gravity knife, machete, scimitar,
2 stiletto, sword, or dagger; any billy, blackjack, sap, bludgeon, cudgel, metal knuckles,
3 or sand club; any slingshot; any bow and arrow, crossbow, or spear; any weapon that
4 will expel, or is readily capable of expelling, a projectile by the action of a spring,
5 compressed air, or compressed gas including any such weapon, loaded or unloaded,
6 commonly referred to as a BB gun, air rifle, or ~~GO₂~~CO₂ gun; and any projector of a
7 bomb or any object containing or capable of producing and emitting any noxious liquid,
8 gas, or substance.
- 9 ~~7-8.~~ "Destructive device" means any explosive, incendiary or poison gas bomb, grenade,
10 mine, rocket, missile, or similar device.
- 11 ~~8-9.~~ "Explosive" means gunpowders, powders used for blasting, all forms of high
12 explosives, blasting materials, fuses (other than electric circuit breakers), detonators
13 and other detonating agents, smokeless powders, and any chemical compounds,
14 mechanical mixture, or other ingredients in such proportions, quantities, or packing
15 that ignition by fire, by friction, by concussion, by percussion, or by detonation of the
16 compound, or material, or any part thereof may cause an explosion.
- 17 ~~9-10.~~ "Firearm" means any weapon that will expel, or is readily capable of expelling, a
18 projectile by the action of an explosive and includes any such weapon, loaded or
19 unloaded, commonly referred to as a pistol, revolver, rifle, gun, machine gun, shotgun,
20 bazooka, or cannon.
- 21 ~~40-11.~~ "Force" means physical action.
- 22 ~~44-12.~~ "Government" means:
- 23 a. The government of this state or any political subdivision of this state;
- 24 b. Any agency, subdivision, or department of the state or any political subdivision of
25 the state, including the executive, legislative, and judicial branches;
- 26 c. Any corporation or other entity established by law to carry on any governmental
27 function; and
- 28 d. Any commission, corporation, or agency established by statute, compact, or
29 contract between or among governments for the execution of intergovernmental
30 programs.

- 1 ~~42.13.~~ "Governmental function" includes any activity that one or more public servants are
2 legally authorized to undertake on behalf of government.
- 3 ~~43.14.~~ "Harm" means loss, disadvantage, or injury to the person affected, and includes loss,
4 disadvantage, or injury to any other person in whose welfare the person affected is
5 interested.
- 6 ~~44.15.~~ "Included offense" means an offense:
7 a. That is established by proof of the same or less than all the facts required to
8 establish commission of the offense charged;
9 b. That consists of criminal facilitation of or an attempt or solicitation to commit the
10 offense charged; or
11 c. That differed from the offense charged only in that it constitutes a less serious
12 harm or risk of harm to the same person, property, or public interest, or because
13 a lesser degree of culpability suffices to establish its commission.
- 14 ~~45.16.~~ "Includes" should be read as if the phrase "but is not limited to" were also set forth.
- 15 ~~46.17.~~ "Law enforcement officer" or "peace officer" means a public servant authorized by law
16 or by a government agency or branch to enforce the law and to conduct or engage in
17 investigations or prosecutions for violations of law.
- 18 ~~47.18.~~ "Local" means of or pertaining to any political subdivision of the state.
- 19 ~~48.19.~~ "Manifest injustice" means a specific finding by the court that the imposition of
20 sentence is unreasonably harsh or shocking to the conscience of a reasonable
21 individual, with due consideration of the totality of circumstances.
- 22 ~~49.20.~~ "Offense" means conduct for which a term of imprisonment or a fine is authorized by
23 statute after conviction.
- 24 ~~20.21.~~ "Official action" includes a decision, opinion, recommendation, vote, or other exercise
25 of discretion by any government agency.
- 26 ~~24.22.~~ "Official proceeding" means a proceeding heard or which may be heard before any
27 government agency or branch or public servant authorized to take evidence under
28 oath, including any referee, hearing examiner, commissioner, notary, or other person
29 taking testimony or a deposition in connection with any such proceeding.
- 30 ~~22.23.~~ "Omission" means a failure to act.

- 1 ~~23-24.~~ As used in this title and in sections outside this title which define offenses, "person"
2 includes, where relevant, a corporation, limited liability company, partnership,
3 unincorporated association, or other legal entity. When used to designate a party
4 whose property may be the subject of action constituting an offense, the word "person"
5 includes a government that may lawfully own property in this state.
- 6 ~~24-25.~~ "Political subdivision" as used in this title and in any statute outside this title which
7 defines an offense means a county, city, school district, township, and any other local
8 governmental entity created by law.
- 9 ~~25-26.~~ "Possesses" means an individual has:
10 a. Direct physical control of something on or around the individual's person; or
11 b. The power and intention to exercise control over something accessible to but not
12 on or around the individual's person.
- 13 ~~26-27.~~ "Public servant" as used in this title and in any statute outside this title which defines
14 an offense means any officer or employee of government, including law enforcement
15 officers, whether elected or appointed, and any person participating in the
16 performance of a governmental function. The term does not include witnesses.
- 17 ~~27-28.~~ "Responsivity factors" means characteristics of an individual which affect the
18 individual's ability to respond favorably or unfavorably to a treatment goal.
- 19 ~~29.~~ "Risk assessment" means an initial phase with a secondary process approved by the
20 department of health and human services for the evaluation of the likelihood a person
21 that committed an offense will commit another similar offense a validated, standardized
22 actuarial tool used to identify potential risk factors that increase the likelihood an
23 individual will reoffend and responsivity factors, when addressed, reduce the likelihood
24 an individual will reoffend. The initial phase is an assessment tool that is administered
25 by a trained ~~probation and parole officer~~ corrections professional. A predetermined
26 score on the initial phase initiates the secondary process, approved by the department
27 of health and human services, that ~~includes~~ may include a clinical interview,
28 psychological testing, and verification through collateral information or
29 psychophysiological testing, or both. The department of health and human services
30 shall perform the secondary process of the risk assessment.

1 ~~28-30.~~ "Serious bodily injury" means bodily injury that creates a substantial risk of death or
2 which causes serious permanent disfigurement, unconsciousness, extreme pain,
3 permanent loss or impairment of the function of any bodily member or organ, a bone
4 fracture, or impediment of air flow or blood flow to the brain or lungs.

5 ~~29-31.~~ "Signature" includes any name, mark, or sign written or affixed with intent to
6 authenticate any instrument or writing.

7 ~~30-32.~~ "Substantial bodily injury" means a substantial temporary disfigurement, loss, or
8 impairment of the function of any bodily member or organ.

9 ~~31-33.~~ "Technical violation" means a violation of a condition of probation or parole which does
10 not involve:

11 a. An arrest or a summons issued by a peace officer;

12 b. A criminal offense;

13 c. A violation of a protection order or order prohibiting contact; or

14 d. Absconding.

15 ~~34.~~ "Thing of value" or "thing of pecuniary value" means a thing of value in the form of
16 money, tangible or intangible property, commercial interests, or anything else the
17 primary significance of which is economic gain to the recipient.

18 ~~32-35.~~ "Tier 1 mental health professional" has the same meaning as provided under section
19 25-01-01.

20 **SECTION 3. AMENDMENT.** Subdivision b of subsection 3 of section 12.1-22-01 of the
21 North Dakota Century Code is amended and reenacted as follows:

22 b. "Dangerous weapon" means a weapon defined in ~~subsection 6 of section~~
23 12.1-01-04 or a weapon the possession of which under the circumstances
24 indicates an intent or readiness to inflict serious bodily injury.

25 **SECTION 4. AMENDMENT.** Section 12.1-32-07 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **12.1-32-07. Supervision of probationer - Conditions of probation - Revocation.**

28 1. When the court imposes probation upon conviction for a felony offense subject to
29 section 12.1-32-09.1 or 12.1-32-02.1, a second or subsequent violation of section
30 12.1-17-07.1, a second or subsequent violation of any domestic violence protection
31 order, a violation of chapter 12.1-41, a violation of section 14-09-22, or a felony

1 offense under chapter 39-08, the court shall place the defendant under the supervision
2 and management of the department of corrections and rehabilitation. When the court
3 imposes probation upon conviction or order of disposition in all other felony cases, the
4 court may place the defendant under the supervision and management of the
5 department of corrections and rehabilitation. In class A misdemeanor cases, the court
6 may place the defendant under the supervision and management of the department of
7 corrections and rehabilitation or other responsible party. In all other cases, the court
8 may place the defendant under the supervision and management of a community
9 corrections program other than the department of corrections and rehabilitation. A
10 community corrections program means a program for the supervision of a defendant,
11 including monitoring and enforcement of terms and conditions of probation set by the
12 court.

- 13 2. ~~The conditions of probation must be such as the court in its discretion deems~~
14 ~~reasonably necessary to ensure that the defendant will lead a law-abiding life or to~~
15 ~~assist the defendant to do so. The court shall provide as an explicit condition of every~~
16 ~~probation that the defendant not commit another offense during the period for which~~
17 ~~the probation remains subject to revocation. The court shall order supervision costs~~
18 ~~and fees of not less than fifty-five dollars per month unless the court makes a specific~~
19 ~~finding on record that the imposition of fees will result in an undue hardship. If the~~
20 ~~offender has not paid the full amount of supervision fees and costs before completion~~
21 ~~or termination of probation, the court may issue an order, after opportunity for hearing,~~
22 ~~to determine the amount of supervision fees and costs that are unpaid. The order may~~
23 ~~be filed, transcribed, and enforced by the department of corrections and rehabilitation~~
24 ~~in the same manner as civil judgments rendered by a district court of this state~~The
25 department of corrections and rehabilitation may administer a risk assessment for the
26 evaluation of each defendant when placed under the supervision and management of
27 the department of corrections and rehabilitation. The results of the risk assessment
28 may be used to set a level of supervision and management and develop an
29 individualized case plan for the defendant. The case plan may include a list of
30 responsivity factors and a plan to address any risk factors identified in the risk
31 assessment.

- 1 3. The court shall provide as an explicit condition of every probation that the defendant
2 may not possess a firearm, destructive device, or other dangerous weapon while the
3 defendant is on probation. Except when the offense is a misdemeanor offense under
4 section 12.1-17-01, 12.1-17-01.1, 12.1-17-01.2, 12.1-17-05, or 12.1-17-07.1, or
5 chapter 14-07.1, the court may waive this condition of probation if the defendant has
6 pled guilty to, or has been found guilty of, a misdemeanor or infraction offense, the
7 misdemeanor or infraction is the defendant's first offense, and the court has made a
8 specific finding on the record before imposition of a sentence or a probation that there
9 is good cause to waive the condition. The court may not waive this condition of
10 probation if the court places the defendant under the supervision and management of
11 the department of corrections and rehabilitation. The court shall provide as an explicit
12 condition of probation that the defendant may not willfully defraud a urine test
13 administered as a condition of probation. Unless waived on the record by the court,
14 the court shall also provide as a condition of probation that the defendant undergo
15 various agreed-to community constraints and conditions as intermediate measures of
16 the department of corrections and rehabilitation to avoid revocation, which may
17 include:
- 18 a. Community service;
 - 19 b. Day reporting;
 - 20 c. Curfew;
 - 21 d. Home confinement;
 - 22 e. House arrest;
 - 23 f. Electronic monitoring;
 - 24 g. Residential halfway house;
 - 25 h. Intensive supervision program;
 - 26 i. Up to five nonsuccessive periods of incarceration during any twelve-month
27 period, each of which may not exceed forty-eight consecutive hours;
 - 28 j. Participation in the twenty-four seven sobriety program; or
 - 29 k. One period of incarceration during a period of probation not to exceed thirty
30 consecutive days in lieu of a petition for revocation of probation.

- 1 4. When imposing a sentence to probation, probation in conjunction with imprisonment,
2 or probation in conjunction with suspended execution or deferred imposition of
3 sentence, the court may impose such conditions as it deems appropriate and may
4 include any one or more of the following:
- 5 a. Work faithfully at a suitable employment or faithfully pursue a course of study or
6 of career and technical education training that will equip the defendant for
7 suitable employment.
- 8 b. Undergo available medical or psychiatric treatment and remain in a specified
9 institution if required for that purpose.
- 10 c. Attend or reside in a facility established for the instruction, recreation, or
11 residence of persons on probation.
- 12 d. Support the defendant's dependents and meet other family responsibilities.
- 13 e. Make restitution or reparation to the victim of the defendant's conduct for the
14 damage or injury which was sustained or perform other reasonable assigned
15 work. When restitution, reparation, or assigned work is a condition of probation,
16 the court shall proceed as provided in subsection 1 or 2, as applicable, of section
17 12.1-32-08.
- 18 f. Pay a fine imposed after consideration of the provisions of section 12.1-32-05.
- 19 g. Refrain from excessive use of alcohol or any use of narcotics or of another
20 dangerous or abusable drug without a prescription.
- 21 h. Permit the probation officer to visit the defendant at reasonable times at the
22 defendant's home or elsewhere.
- 23 i. Remain within the jurisdiction of the court, unless granted permission to leave by
24 the court or the probation officer.
- 25 j. Answer all reasonable inquiries by the probation officer and promptly notify the
26 probation officer of any change in address or employment.
- 27 k. Report to a probation officer at reasonable times as directed by the court or the
28 probation officer.
- 29 l. Submit to a medical examination or other reasonable testing for the purpose of
30 determining the defendant's use of narcotics, marijuana, or other controlled
31 substance whenever required by a probation officer.

- 1 m. Refrain from associating with known users or traffickers in narcotics, marijuana,
2 or other controlled substances.
- 3 n. Submit the defendant's person, place of residence, or vehicle to search and
4 seizure by a probation officer at any time of the day or night, with or without a
5 search warrant.
- 6 o. Serve a term of imprisonment of up to one-half of the maximum term authorized
7 for the offense of which the defendant was convicted.
- 8 p. Reimburse the costs and expenses determined necessary for the defendant's
9 adequate defense when counsel is appointed or provided at public expense for
10 the defendant. When reimbursement of indigent defense costs and expenses is
11 imposed as a condition of probation, the court shall proceed as provided in
12 subsection 4 of section 12.1-32-08.
- 13 q. Provide community service for the number of hours designated by the court.
- 14 r. Refrain from any subscription to, access to, or use of the internet.
- 15 5. When the court imposes a sentence to probation, probation in conjunction with
16 imprisonment, or probation in conjunction with suspended execution or deferred
17 imposition of sentence, the defendant must be given a certificate explicitly setting forth
18 the conditions on which the defendant is being released.
- 19 6. When it is alleged a probationer has absconded from supervision, the department of
20 corrections and rehabilitation may issue an authority to hold until the probationer is
21 apprehended. The department may dismiss the authority to hold, implement
22 intermediate measures, or initiate a petition for revocation.
- 23 6.7. The court, upon notice to the probationer and with good cause, may modify or enlarge
24 the conditions of probation at any time before the expiration or termination of the
25 period for which the probation remains conditional. If the defendant violates a
26 condition of probation at any time before the expiration or termination of the period, the
27 court may continue the defendant on the existing probation, with or without modifying
28 or enlarging the conditions, or may revoke the probation and impose any other
29 sentence that was available under section 12.1-32-02 or 12.1-32-09 at the time of
30 initial sentencing or deferment.

1 ~~7.8.~~ The court may continue or modify probation conditions or revoke probation for a
2 violation of probation conditions occurring before the expiration or termination of the
3 period of probation notwithstanding that the order of the court is imposed after the
4 expiration or termination has occurred. The petition for revocation must be issued
5 within sixty days of the expiration or termination of probation.

6 9. The court may continue or modify probation conditions or revoke probation for a
7 technical violation as defined in section 12.1-01-04. The court, only upon revoking a
8 term of probation for a technical violation, may impose a term of incarceration as
9 follows:

- 10 a. Fifteen days for a first revocation;
11 b. Up to thirty days for a second revocation;
12 c. Up to ninety days for a third revocation; or
13 d. The full remaining time of the sentence that has not been served in custody for a
14 fourth or subsequent revocation.

15 ~~8.10.~~ Jurisdiction over a probationer may be transferred from the court that imposed the
16 sentence to another court of this state with the concurrence of both courts. Retransfers
17 of jurisdiction may also occur in the same manner. The court to which jurisdiction has
18 been transferred under this subsection may exercise all powers permissible under this
19 chapter over the defendant.

20 ~~9.11.~~ Notwithstanding any other provision of law, the court may authorize the defendant to
21 assist law enforcement officers in an investigation of a criminal offense upon the terms
22 and conditions as the court may require by written order. The court shall hold a
23 hearing in camera before issuing an order under this subsection. The order must be
24 sealed and is subject to inspection only upon order of the court.

25 ~~10.12.~~ The department of corrections and rehabilitation shall provide written notice to a
26 defendant who is in the department's physical custody of any untried petition for
27 revocation against the defendant of which the department has notice and of the
28 defendant's right to make a request for final disposition of the petition.

- 29 a. Upon notice of an untried petition for revocation of probation, the defendant may
30 request final disposition of the petition. The defendant's request must be in
31 writing and name the court in which the petition for revocation of probation is

1 pending and the prosecuting official charged with the duty of prosecuting the
2 petition.

3 b. The defendant shall submit the request to the department. The department shall
4 certify the term of commitment under which the defendant is being held, the time
5 the defendant has served on the sentence, the time remaining to be served,
6 sentence reduction credit the defendant has earned, the defendant's eligibility for
7 parole, and whether the parole board has made a decision regarding the
8 defendant's parole.

9 c. The department shall send by registered mail, return receipt requested, one copy
10 of the request and certificate to the court and one copy to the prosecuting official
11 to whom the request and certificate is addressed.

12 d. The petition for revocation of probation must be brought to the court for hearing
13 within ninety days after the receipt of the request and certificate by the court and
14 prosecuting official. If the petition is not brought to the court for hearing within the
15 ninety days, the court shall dismiss the petition with prejudice.

16 e. The parties may stipulate for a continuance or the court may grant a continuance
17 upon a showing of good cause by either party for a petition under this subsection.

18 f. If the defendant escapes from custody subsequent to the defendant's execution
19 of a request for final disposition of a petition for revocation, the request is
20 considered void.

21 13. The department shall use a matrix system of graduated sanctions and incentives and
22 apply the presumptive sanctions and incentives for the appropriate supervision
23 violations and successes.

24 **SECTION 5. AMENDMENT.** Section 12.1-32-08 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **12.1-32-08. Hearing prior to ordering restitution, reparation, or reimbursement of**
27 **indigent defense costs and expenses - Conditions - Collection of restitution for**
28 **insufficient funds checks - Continuing appropriation.**

29 1. The court, when sentencing a person adjudged guilty of criminal activities that have
30 resulted in pecuniary damages, in addition to any other sentence the court may
31 impose, shall order that the defendant make restitution to the victim or other recipient

as determined by the court. Restitution must include payment to the owner of real property that is contaminated by the defendant in the manufacturing of methamphetamine for the cost of removing the contamination and returning the property to the property's condition before contamination and to any other person that has incurred costs in decontaminating the property.

2. If the court has retained jurisdiction after the sentencing hearing for claims of restitution, to make a claim for restitution, the victim shall submit information by affidavit or declaration and, as applicable, documentary evidence within the time specified in the order. The information submitted must describe the items or elements of loss, itemize the total dollar amounts of restitution claimed, and present facts and evidence sufficient to support a finding the restitution is directly related to the offense and the amount awarded. The prosecutor shall serve the defendant with a copy of the information submitted by the victim no later than sixty days following sentencing.
3. The defendant may challenge restitution but must do so by requesting a hearing within thirty days of being served with the written notification of the amount of restitution requested. The hearing request must be made in writing and filed with the court. If no hearing is requested, the court may enter a judgment ordering restitution. A defendant may not challenge restitution after the thirty-day time period has passed.
4. In determining the amount of restitution, the court shall take into account the reasonable damages sustained by the victim or victims of the criminal offense, which damages are limited to those directly related to the criminal offense and expenses actually sustained as a direct result of the defendant's criminal action. This can include an amount equal to the cost of necessary and related professional services and devices relating to physical, psychiatric, and psychological care. The defendant may be required as part of the sentence imposed by the court to pay the prescribed treatment costs for a victim of a sexual offense as defined in chapters 12.1-20 and 12.1-27.2. The court shall fix the amount of restitution or reparation and shall fix the manner of performance of any condition or conditions of probation established pursuant to this subsection. The court may order the defendant to disclose income and assets on forms developed by the state court administrator to facilitate the setting of an appropriate payment plan. The court shall order restitution be paid to the division of

adult services for any benefits the division has paid or may pay to the victim under chapter 54-23.4 unless the court, on the record, directs otherwise. Any payments made pursuant to the order must be deducted from damages awarded in a civil action arising from the same incident.

5. An order that a defendant make restitution or reparation as a sentence or condition of probation, unless the court directs otherwise, may be filed without filing fee, transcribed, and enforced by the person entitled to the restitution or reparation or by the division of adult services in the same manner as civil judgments rendered by the courts of this state may be enforced. Upon thirty days' written notice to the victim's last known address, the court may order the judgment imposing a duty to pay restitution or reparation be docketed in the same manner as a civil judgment under section 29-26-22.1.

6. When the restitution ordered by the court under subsection 1 is the result of a finding that the defendant issued a check or draft without sufficient funds or without an account, the court shall impose as costs the greater of the sum of ten dollars or an amount equal to twenty-five percent of the amount of restitution ordered. The costs imposed under this subsection, however, may not exceed one thousand dollars. The state-employed clerks of district court shall remit the funds collected as costs under this subsection to the state treasurer for deposit in the restitution collection assistance fund. The funds deposited into the restitution collection assistance fund are appropriated to the judicial branch on a continuing basis for the purpose of defraying expenses incident to the collection of restitution, including operating expenses and the compensation of additional necessary personnel. The state's attorneys and county-employed clerks of district court shall remit the funds collected as costs under this subsection to the county treasurer to be deposited in the county general fund.

7. The court may order the defendant to perform reasonable assigned work as a condition of probation, which assigned work need not be related to the offense charged, but must not be solely for the benefit of a private individual other than the victim.

~~8. Under section 12.1-32-07, the court may order that the defendant reimburse indigent defense costs and expenses as a condition of probation.~~

- 1 a. ~~Unless it finds that there is no likelihood that the defendant is or will be able to~~
2 ~~pay attorney's fees and expenses, the court, in its judgment of conviction, and in~~
3 ~~any order or amended judgment following a revocation or other postjudgment~~
4 ~~proceeding, shall notify the defendant, the defendant's probation officer, and the~~
5 ~~prosecuting attorney of the presumed amount of costs and expenses to be~~
6 ~~reimbursed, as determined by the commission on legal counsel for indigents, and~~
7 ~~of the right to a hearing on the reimbursement amount. The reimbursement~~
8 ~~amount must include an application fee imposed under section 29-07-01.1 if the~~
9 ~~fee has not been paid before disposition of the case and the court has not waived~~
10 ~~payment of the fee.~~
- 11 b. ~~If the defendant or prosecutor requests a hearing within thirty days of receiving~~
12 ~~notice under this subdivision, the court shall schedule a hearing at which the~~
13 ~~actual amount of attorney's fees and expenses must be shown. In determining~~
14 ~~the amount and method of reimbursement, the court shall consider the financial~~
15 ~~resources of the defendant and the nature of the burden that reimbursement of~~
16 ~~costs and expenses will impose.~~
- 17 c. ~~A defendant who is required to reimburse indigent defense costs and expenses~~
18 ~~as a condition of probation and who is not willfully in default in that~~
19 ~~reimbursement may at any time petition the court that imposed the condition to~~
20 ~~waive reimbursement of all or any portion of the costs and expenses. If the court~~
21 ~~is satisfied that reimbursement of the amount due will impose undue hardship on~~
22 ~~the defendant or the defendant's immediate family, the court may waive~~
23 ~~reimbursement of all or any portion of the amount due or modify the method of~~
24 ~~payment.~~
- 25 d. ~~If at any time the court finds that the defendant is able to reimburse costs and~~
26 ~~expenses and has willfully failed to do so, the court may continue, modify, or~~
27 ~~enlarge the conditions of probation or revoke probation as provided in~~
28 ~~subsection 6 or 7, as applicable, of section 12.1-32-07.~~
- 29 9. ~~If the court finds that the defendant is unable to pay a fine, supervision fee,~~
30 ~~reimbursement for indigent defense costs and expenses, or restitution or reparations,~~
31 ~~the court may order the defendant to perform reasonable assigned work in lieu of all or~~

part of a fine, ~~a supervision fee, reimbursement for indigent defense costs and expenses,~~ or restitution or reparations. The defendant may not perform reasonable assigned work in lieu of restitution or reparations unless the person entitled to restitution or reparations has consented in writing or on the record.

SECTION 6. AMENDMENT. Section 29-07-01.1 of the North Dakota Century Code is amended and reenacted as follows:

29-07-01.1. Payment of expenses for defense of indigents ~~--Reimbursement of indigent defense costs and expenses--~~ Indigent defense administration fund - Continuing appropriation.

1. Lawyers provided to represent indigent persons must be compensated at a reasonable rate to be determined by the commission on legal counsel for indigents. Expenses necessary for the adequate defense of an indigent person prosecuted in district court, other than for a violation of a home rule county's ordinance, when approved by the commission, must be paid by the state. Expenses necessary for the adequate defense of an indigent person prosecuted for violation of a home rule county's ordinance must be paid by the home rule county. Expenses necessary for the adequate defense of an indigent person prosecuted in municipal court, when approved by the judge, must be paid by the city in which the alleged offense took place. The city shall also pay the expenses in any matter transferred to district court pursuant to section 40-18-06.2 or 40-18-15.1, in any appeal taken to district court from a judgment of conviction in municipal court pursuant to section 40-18-19, and in an appeal or postconviction matter seeking relief from a conviction resulting from violation of a municipal ordinance. A defendant requesting representation by counsel at public expense, or for whom counsel provided at public expense without a request is considered appropriate by the court, shall submit an application for indigent defense services. ~~For an application for indigent defense services in the district court, a nonrefundable application fee of thirty-five dollars must be paid at the time the application is submitted. The district court may extend the time for payment of the fee or may waive or reduce the fee if the court determines the defendant is financially unable to pay all or part of the fee. If the application fee is not paid before disposition of the case, the fee amount must be added to the amount to be reimbursed under this~~

1 ~~section. Application fees collected under this subsection must be forwarded for deposit~~
2 ~~in the indigent defense administration fund established under subsection 4.~~

3 2. ~~A defendant for whom counsel is provided at public expense, subject to this~~
4 ~~subsection, shall reimburse the state, home rule county, or city such sums as the~~
5 ~~state, home rule county, or city expends on the defendant's behalf.~~

6 a. ~~At the time counsel is provided for a defendant, the court shall advise the~~
7 ~~defendant of the defendant's potential obligation to reimburse the appropriate~~
8 ~~governmental entity the amounts expended on behalf of the defendant.~~

9 b. ~~Unless it finds that there is no likelihood that the defendant is or will be able to~~
10 ~~pay attorney's fees and expenses, the court, in its judgment of conviction, and in~~
11 ~~any order or amended judgment entered following a revocation or other~~
12 ~~postjudgment proceeding, shall order the defendant to reimburse the presumed~~
13 ~~amount of indigent defense costs and expenses, as determined by the~~
14 ~~commission, and shall notify the defendant of the right to a hearing on the~~
15 ~~reimbursement amount. If the defendant or prosecutor requests a hearing within~~
16 ~~thirty days of receiving notice under this subdivision, the court shall schedule a~~
17 ~~hearing at which the actual amount of attorney's fees and expenses must be~~
18 ~~shown. In determining the amount of reimbursement and method of payment, the~~
19 ~~court shall consider the financial resources of the defendant and the nature of the~~
20 ~~burden that reimbursement of costs and expenses will impose.~~

21 c. ~~A defendant who is required to reimburse indigent defense costs and expenses~~
22 ~~and who is not willfully in default in that reimbursement may at any time petition~~
23 ~~the court to waive reimbursement of all or any portion of the attorney's fees and~~
24 ~~expenses. If the court is satisfied that reimbursement of the amount due will~~
25 ~~impose undue hardship on the defendant or the defendant's immediate family,~~
26 ~~the court may waive reimbursement of all or any portion of the amount due or~~
27 ~~modify the method of payment.~~

28 3. ~~The attorney general, the state's attorney of the home rule county, or the prosecuting~~
29 ~~attorney of the city in which the alleged offense took place, if reimbursement has not~~
30 ~~been received, shall seek civil recovery of any amounts expended on the defendant's~~
31 ~~behalf anytime the attorney general, state's attorney, or city attorney determines the~~

1 person for whom counsel was appointed may have funds to repay the state, home rule
2 county, or city within six years of the date such amount was paid on that person's
3 behalf. A person against whom civil recovery is sought under this subsection is entitled
4 to all exemptions accorded to other judgment debtors. The attorney general, state's
5 attorney, or prosecuting attorney may contract with a private sector collection agency
6 for assistance in seeking recovery of such funds. Before referring the matter to a
7 collection agency, the state's attorney shall notify the person who is the subject of the
8 collection action.

9 4. The indigent defense administration fund is a special fund in the state treasury. The
10 state treasurer shall deposit in the fund all application fees collected under
11 subsection 1. All moneys in the indigent defense administration fund are appropriated
12 on a continuing basis to the commission on legal counsel for indigents to be used in
13 the administration of the indigent defense system.

14 **SECTION 7. LEGISLATIVE MANAGEMENT STUDY - COURT FINES AND FEES.** During
15 the ~~2024-25~~2025-26 interim, the legislative management shall consider studying court fines and
16 fees, including fines and fees relating to travel permits, presentence investigations, the drug
17 court program, electronic monitoring, alcohol monitoring, and the twenty-four seven sobriety
18 program. The study must consider the total amount collected; rate of fees collected, including
19 any money expended to collect the fines and fees; an evaluation of practices in other states;
20 and the overall impacts on a defendant. The legislative management shall report its findings and
21 recommendations, together with any legislation required to implement the recommendations, to
22 the seventieth legislative assembly.

23 **SECTION 8. APPROPRIATION - COMMISSION ON LEGAL COUNSEL FOR**
24 **INDIGENTS - OPERATING COSTS.** There is appropriated out of any moneys in the general
25 fund in the state treasury, not otherwise appropriated, the sum of \$310,000, or so much of the
26 sum as may be necessary, to the commission on legal counsel for indigents for the purpose of
27 operating costs to replace lost revenue from the removal of the indigent defense application
28 fees, for the biennium beginning July 1, 2025, and ending June 30, 2027.

HB 1417
69th Legislative Assembly
House Judiciary Committee
February 5, 2025
Testimony of Travis W. Finck, Executive Director, NDCLCI

Chairman Klemin, members of the House Judiciary Committee, my name is Travis Finck and I am the Executive Director for the North Dakota Commission on Legal Counsel for Indigents. The Commission is the state agency responsible for the delivery of indigent defense services in North Dakota. I rise today on behalf of the Commission to provide testimony in support of House Bill 1417.

The Commission has followed the efforts of the interim legislative committee working on these important issues. We have had an opportunity to collaborate with other stakeholders in the criminal legal system. This bill and others you will hear related to the interim study are bills that are researched to North Dakota data, are methods that have shown positive results in addressing issues North Dakota is facing. Additionally, this bill is a result of discussion and collaboration in the interim.

The Commission supports efforts of the interim committee and now the 69th Legislative Assembly to work towards implementing smart reforms to address issues in our criminal legal system. Specifically, the Commission would like to speak as to the fees being eliminated in this bill in section 5 and section 6 of the bill. In Section 5, HB 1417 seeks to eliminate NDCC 12.1-32-08 which allows a court to order a defendant to reimburse the cost of indigent defense attorney being provided. The Right to an Attorney is a right guaranteed to all in the Sixth Amendment of the United States Constitution. The right to counsel for indigent persons has been a basic tenant of constitutional law since 1963. However, 42 states, including North Dakota, still have an option to order you to pay for exercising your constitutional right.ⁱ This reimbursement is not collected by our agency nor is it used to fund our agency, rather, the collections from this section go back into the general fund. The Commission feels it is appropriate to eliminate these fees.

Section 6 of the bill deals with another fee on exercising your constitutional right to counsel, and that is a fee of \$35 simply for apply for a public defender. This fee is collected

by the Court and then deposited in our special fund. Collections on this fee equate to \$310,000 for the biennium. The Commission supports the amendment to eliminate the fee, leave the special fund in place, and replace ongoing collections of \$310,000 per biennium with general fund dollars. Currently, only 18 states have upfront fees for public defense.ⁱⁱ These fees serve as potential barriers to a constitutionally guaranteed service the State of North Dakota is required to provide. For that reason, the Commission supports the removal.

For the reasons states herein, the Commission requests a DO PASS recommendation on House Bill 1417.

Respectfully Submitted:



Travis W. Finck
Executive Director, NDCLCI

ⁱ <https://www.nlada.org/public-defense-system-fees?dataset=2>

ⁱⁱ *Id.*

Kathleen Atkinson, OSB
701.426.8747

Wednesday, February 5, 2025
HB 1417
House Judiciary Committee

Mister Chairman and Members of the House Judiciary Committee,
Thank you for the opportunity to speak today.

My name is Sister Kathleen Atkinson. I serve as the director of *Ministry on the Margins* and have been part of the ND Reentry Study Work Group. I speak in favor of HB 1417 because it addresses systemic structures that jeopardize and demoralize a person trying to successfully navigate reentry from prison. In particular, I would like to address the financial burdens that significantly impact the poor.

I want to tell you about Art (Real person. Fabricated name). He was a leader and mentor while serving in the Marine Corp and he showed those skills while in prison. Art worked at a prison job and saved his money for release. At the time of release, Art had over a thousand dollars saved up; far more money than most inmates. He acquired cheap housing and found work.

All looked successful, though challenging, and then I saw defeat enter Art's eyes. He was presented with fees from his trial and court expenses. He began to pay them off but could not keep up and was threatened with jail time for nonpayment. A monthly supervision fee of \$55 does not seem like much – for me it's probably just my coffee money - but for someone working minimum wage, that is an entire 8-hour day. Electronic monitoring added cost. Required anger management classes added cost. Not only were his original savings quickly depleted, but various fees were taking a major percentage of his salary. Required classes and meetings during the workday were cutting into available work hours, frustrating both Art and his employer.

As he went deeper into debt, he began to question if he would ever become free; Art fell into remembrances of prison success and was tempted to just let go and slip back into that world. But that is not the purpose of our Department of Corrections and Rehabilitation. The mission of the DOCR is to be about *transforming lives, influencing change, and strengthening community*. It is to expect change and identify barriers to successful reentry – whether they come from the individual himself or from the system established to help him. When fees and costs like those identified in HB 1417 become a burden to a justice-involved individual, it not only sets them up for failure. It impacts a family relying on his or her income. It increases recidivism...not for a new crime but for loss of a pathway out of bondage.

And it creates one more person caught in a cycle which is costing us far too much in finances and in human life.

HB 1417 offers one way to break that cycle.

HB 1417

Chairperson Lawrence Klemin
Committee Members

From: Rozanna C Larson
Ward County State's Attorney

RE: House Bill 1417

Chairperson Klemin and Members of the Committee,

This is my written testimony OPPOSING HB 1417. I am the State's Attorney for Ward County and have been a prosecutor for 27 years.

HB 1417 is part of a group of bills created to control the population of offenders remanded to the custody of DOCR. I am not unsympathetic to the demands that are put on DOCR, both with the rate of incarceration and the number of offenders placed on supervised probation. For as long as I have been a prosecutor, prison/jail space has been an issue. Throughout the years, during the interim, legislature has had studies and committees to address the issues relating to inmate population. These studies related to recidivism, criminology, and risk assessments etc. One of the bigger studies, during my tenure as a prosecutor, was with Justice Reinvestment Initiative. (hereinafter (JRI)). I was part of this committee. This testimony is not aimed at undoing or criticizing the efforts made from the JRI study.

History of legislation addressing incarceration issues

Due to the recommendations of the JRI were a number of sentencing changes. The focus of these changes was aimed at addressing the prison population. The JRI specifically identified addiction and mental health issues to be a contributing factor to recidivism and criminology. As a result of this "insight", in 2017 changes were made to NDCC 19-03.1-23 and other controlled substance statutes. These changes included reducing the level of offense for drug dealers (NDCC 19-03.1-23) from class A felony to Class B felony, for substances other than marijuana. First offense possession of drugs and paraphernalia for controlled substances, other than marijuana, was reduced to a Class A misdemeanor, subsequent offenses remained a Class C felony. In 2019 legislature went further and eliminated all mandatory sentences for drug dealers.

In addition to amending NDCC 19-03.1-23 as part of the reform recommendations by JRI, amendments were made to NDCC 12.1-32-07, the statute that HB 1417 seeks to change in a significant manner. In 2017 legislation amended NDCC 12.1-32-07 to reduce the number of years an offender could be placed on supervised probation. Apart from certain specific types of violent offenders, or offenders identified in 12.1-32-15 (sex offenders), the longest period of time a person can be initially placed on probation for a felony offense was reduced from 5 years to 3 years. There was also legislation that added the authority, as an intermediate measure, to DOCR probation officer to sanction an offender up to 30 days incarceration in lieu of filing a petition to revoke probation. (I'm not certain this intermediate measure has been used).

Another change made in 2017, based upon recommendation of the JRI, was Presumptive Probation, NDCC 12.1-32-07.4. The primary purpose of presumptive probation was to reduce the rate of incarceration. Apart from some specific offenses, and specific “aggravating factors” offenders charged with a Class A misdemeanor or Class C felony presumptively receive probation, no incarceration. In 2019 class C felony aggravated assault was eliminated from 12.1-32-09.1 (85% rule) making the offense a presumptive probation offense.

As stated, this purpose of this testimony is not to undo the efforts that have been made to address the rate of incarceration or opportunities created to assist offenders to avoid felony convictions and address underlying issues or causes of their criminal behavior.

However, I will point out that despite these efforts, and despite the opportunities created, crime does not stop, the rate or demand on incarceration may have been delayed, but the need continues. This is clearly evidenced by the number of counties that have invested millions of dollars expanding local jails. Williams, McKenzie, Southwest Correctional Center, Burleigh Morton Detention Center, Mountrail, Ward, Grand Forks and Cass Counties have all expended the funds to expand and provide additional incarceration space. This was done to provide for the safety of the respective communities, the demand for incarceration, and the lack of space at DOCR.

Opposition to 1417

The population of these local correctional centers has been growing exponentially just as the population at DOCR. The population includes pretrial inmates as well as those serving a sentence. All the people currently incarcerated are there based upon the authority and discretion of a Judge. Judges have statutory authority, discretion and obligation to ensure the safety of the community. Judges make decisions regarding bond conditions, (pretrial orders) and sentences based upon specific facts of a case, plea agreements, recommendations from prosecutors, and arguments made. The Judges, prosecutor and defense counsel are the ones that know each of the offenders, the specifics of each case and any special considerations to be made for defendants at sentencing, including probation conditions. HB 1417 aims to take away that discretion when it comes to probation conditions and revocations.

The purpose of probation is to hold offenders accountable and to have supervision to ensure safety of the community and that the court’s orders are followed. The conditions of probation are ordered by the Court, as provided for by statute. Keep in mind there are a lot of times offenders are repeat offenders. It is also not uncommon for an offender to be on probation for more than one file. In fact it is common that someone can be on probation for two or 3 files.

HB 1417 creates “graduated” sanctions for violations of probation (NDCC 12.1-32-07). It also adds a definition for “technical violations” of probation. HB 1417 takes away the discretion of the Court and prosecutor when it comes to probation revocations. The practical result of HB 1417 is that for many probation violators, they will NEVER serve the balance of the original sentence. This is due to the fact most of violations of probation would be deemed “technical violations.” -- ie: Failure to follow the Court’s order.

The reasons for opposing HB 1417 are much the same as I stated in my testimony against HB 1425. It comes down to truth in reporting by DOCR. Currently DOCR has complete discretion when deciding when to report violations to the Court and State's Attorneys (ie: file a petition to revoke). What DOCR does not have currently is discretion in determining the conditions of probation, or what the consequences are if there is a petition to revoke. (Section 4 sub. 2) Currently that determination is at the discretion of the Court.

HB 1417 distinguishes between "violations" and "technical violations." HB 1417 mandates the consequences for "first" "second" etc. violation. HB 1417 makes nearly all violations of probation "technical" violations. The exceptions are 1) an arrest or summons (ie: new crime), 2) criminal offense 3) violation of a protection order or an order prohibiting contact and 4) absconding. I would point out, in regard to "absconding" (failure to report), it is not unusual for this to not be immediately reported, or for a petition to revoke not be filed for several months. Technical violations are everything else. Failed drug tests, failure to obtain evaluations, failure to engage in services or complete them etc. All things ordered to assist the offender in addressing addiction and/or mental health issues.

Here is the issue. DOCR already has unbridled discretion, when a probationer has technical violation, they are not reported immediately. DOCR, with its discretion, may or may not impose "intermediate measures." This is provided for currently in NDCC 12.1-32-07. The Court and the SAs are not told about these technical violations or intermediate measures being imposed until such time as those measures have failed as well. Most often, when a petition to revoke is filed there have been numerous technical violations. The allegations on the petition often reference back to several months (1-9) of violations. If HB 1417 passes, this petition would be considered the "first" violation. The mandated consequence would be 15 days.

The process for a petition to revoke is this – the petition comes to the SA office, we sign it, it gets filed with the Court. An order to apprehend the offender is issued. When they get picked up they make an appearance before the Master Court Judge. The offender is advised of the petition and the allegations. The offender is advised they have a right to an attorney. Bail Bond is set. The revocation hearing must be held with the sentencing Judge. The hearing is often set the next month. Assuming there are no continuances (which often occurs), a hearing on the petition is likely held one month to 3 months after the offender makes an "initial appearance" on the petition and gets an attorney appointed.

My point being for the "first" violation/petition, it is not uncommon for the offender to have already been on probation for over a year. The MAXIMUM time a defendant can be on probation is 3 years. A FOURTH PETITION will never be filed, as the probation period will have run. HB 1417 essentially is designed so that probationers with "technical violations" will never be sentenced back to DOCR.

I would also point out, on "first" petitions to revoke probation it is very seldom the offender will actually be sentenced to DOCR. This is due to the discretion of the Court, and the recommendations of the prosecutor and defense counsel. This is especially true for "technical violations." It is not unusual for the Court to order (again) offenders to obtain addiction

evaluations, engage in services etc. as a bond condition, before the revocation hearing. If the offender has begun services or completed them, it is not unusual for the petition to be dismissed or the offender to be placed back on supervision without any further incarceration.

HB 1417 calls for “local sentences.” This puts an additional burden on local jails that are already full.

HB 1417 Section 4, sub 2 takes the discretion of determining the conditions of probation away from the Court’s discretion and places it with DOCR. DOCR will then do a “risk assessment.” A couple (probably more) of things are wrong with this.

FIRST, this will delay sentencing and cause further hearings and a burden on the Courts’ already packed docket. Change of plea can occur at any time. Defendants are not required to give notice of intent to change their plea. Sentencings often occur simultaneously to the change of plea. Sentences include probation conditions. Case law, (Supreme Court) and statute explicitly states that probation conditions must be read in court to the defendant (or waived). The defendant must sign those conditions before leaving court at sentencing. As proposed in HB 1417, the “assessment” would have to be completed before sentencing, or the “conditions” they determine to be appropriate could be found to be not enforceable.

SECONDLY. I have a real issue with DOCR making this determination based on a “risk assessment” they created. Currently they use this risk assessment tool for pretrial services. The defendants are then put into three categories, “low, moderate, or high” . When they are low and moderate, often that only requires the defendants to “call in.” There is no face to face, no weekly check-ins with drug testing, no home visits, no searches etc. So once again there is already a built-in problem that those on probation with low/moderate risk rating may be hiding violations because DOCR would not actually be supervising defendants in a manner the public assumes is being done.

HB 1417 gives DOCR complete authority in managing defendants and determining what is a violation, technical violation and WHEN (and IF) those violations ever get reported to the Court and the SAs. It is the SAs and the Court that hear from the public and victims of crime when offenders are not being held responsible and accountable. It is the SAs that must answer the victims’ questions and concerns when they don’t get restitution that is ordered or see the offender out on the streets. One example of DOCRs failure to report violations was just brought to my attention. There was a defendant sentenced for Possession with Intent to Deliver (meth) and placed on probation in December 2023. In January 2025 he was arrested again for Delivery of Fentanyl, Possession with Intent to Deliver and Tampering with evidence. While reviewing the file for discovery the ASA contacted this probation officer. The ASA was told by the officer this defendant has been doing “horribly” on probation. The officer told the ASA that the officer has had to “chase him down” to have contact with him. (sounds like absconding). The ASA also learned, based on the evidence in this case it would appear he has been dealing drug the entire time while he was on probation. Yet, despite the officer admitting the supervision has been “horrible” there has been no notice to us as prosecutors or a petition filed to revoke his probation.

Finally, regarding “new crimes.” In this jurisdiction our Courts will not revoke probation if the allegations are “only” new crimes committed, until such time as the “new crime” has been resolved. (ie: found guilty or plead guilty) This is due to a Supreme Court decision stating the “preferred procedure” is to allow the new offenses to be resolved so the defendant’s “right to remain silent” is not violated at a revocation hearing. I don’t know what the practice is in other districts. The practical result is the offender will be placed on probation on the new offense, the former probation will be closed.

I would appreciate a DO NOT PASS vote to HB 1417 Giving DOCR complete control, without accountability or transparency in reporting all violations does not create safer communities. Currently there is no requirement for DOCR to report violations.



Drew H. Wrigley
ATTORNEY GENERAL

STATE OF NORTH DAKOTA
OFFICE OF ATTORNEY GENERAL
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TESTIMONY OF KATHLEEN K. MURRAY
OFFICE OF ATTORNEY GENERAL
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.

2025 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

HB 1417
2/10/2025

Relating to parole and probation violations and court fees; to provide for a legislative management study; to provide a penalty; and to provide an appropriation.

10:09 a.m. Chairman Klemin opened the hearing.

Members Present: Chairman Klemin, Vice-Chairman Karls, Vice-Chairman Vetter, Representatives Christianson, Henderson, Hoverson, Johnston, McLeod, S. Olson, Satrom, Tveit, VanWinkle, Wolff, Schneider

Discussion Topics:

- North Dakota imprisonment rate
- Committee action

10:12 a.m. Representative Karls moved to adopt amendment LC: 25.1150.01001.
(Proposed on Feb 5, 2025, testimony #34882)

10:12 a.m. Representative Vetter seconded the motion.

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	Y
Representative Steve Vetter	Y
Representative Nels Christianson	Y
Representative Donna Henderson	Y
Representative Jeff Hoverson	Y
Representative Daniel Johnston	Y
Representative Carrie McLeod	Y
Representative SuAnn Olson	Y
Representative Bernie Satrom	Y
Representative Mary Schneider	Y
Representative Bill Tveit	Y
Representative Lori VanWinkle	N
Representative Christina Wolff	N

10:14 a.m. Motion passed 12-2-0

10:14 a.m. Representative Vetter moved a Do Pass as Amended and rerefer to Appropriations.

10:14 a.m. Representative Schneider seconded the motion.

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	Y
Representative Steve Vetter	Y
Representative Nels Christianson	Y
Representative Donna Henderson	N
Representative Jeff Hoverson	N
Representative Daniel Johnston	N
Representative Carrie McLeod	N
Representative SuAnn Olson	Y
Representative Bernie Satrom	Y
Representative Mary Schneider	Y
Representative Bill Tveit	N
Representative Lori VanWinkle	N
Representative Christina Wolff	N

10:16 a.m. Motion failed 7-7-0

10:16 a.m. Representative VanWinkle moved a Do Not Pass and rerefer to Appropriations.

10:16 a.m. Representative Wolff seconded the motion.

Representatives	Vote
Representative Lawrence R. Klemin	N
Representative Karen Karls	N
Representative Steve Vetter	N
Representative Nels Christianson	N
Representative Donna Henderson	Y
Representative Jeff Hoverson	Y
Representative Daniel Johnston	N
Representative Carrie McLeod	Y
Representative SuAnn Olson	N
Representative Bernie Satrom	N
Representative Mary Schneider	N
Representative Bill Tveit	Y
Representative Lori VanWinkle	Y
Representative Christina Wolff	Y

10:21 a.m. Motion failed 6-8-0

10:22 a.m. Representative Johnston moved a No Committee Recommendation as Amended and rerefer to Appropriations.

10:22 a.m. Representative Karls seconded the motion.

Representatives	Vote
Representative Lawrence R. Klemin	N
Representative Karen Karls	Y
Representative Steve Vetter	N
Representative Nels Christianson	Y
Representative Donna Henderson	Y
Representative Jeff Hoverson	Y
Representative Daniel Johnston	Y
Representative Carrie McLeod	Y
Representative SuAnn Olson	Y
Representative Bernie Satrom	N
Representative Mary Schneider	N
Representative Bill Tveit	Y
Representative Lori VanWinkle	Y
Representative Christina Wolff	Y

10:23 a.m. Motion passed 10-4-0

10:24 a.m. Representative Johnston will carry the bill.

(Upon further discussion Chairman Klemin will carry the bill.)

10:26 a.m. Chairman Klemin closed the hearing.

Wyatt Armstrong, Committee Clerk

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

HOUSE BILL NO. 1417

Introduced by

Representatives Klemin, Stemen, Hanson

Senators Davison, Larson

2-10-25

JB 10/19

1 A BILL for an Act to amend and reenact sections 12-59-15 and 12.1-01-04, subdivision b of
2 subsection 3 of section 12.1-22-01, and sections 12.1-32-07, 12.1-32-08, and 29-07-01.1 of the
3 North Dakota Century Code, relating to parole and probation violations and court fees; to
4 provide for a legislative management study; to provide a penalty; and to provide an
5 appropriation.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 **SECTION 1. AMENDMENT.** Section 12-59-15 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **12-59-15. Breach of parole - Hearings - Order of recommitment.**

- 10 1. When it is alleged that a parolee has violated any of the terms or conditions of parole
11 established by the parole board or by the department of corrections and rehabilitation,
12 the director of the department of corrections and rehabilitation may issue a warrant for
13 the arrest of the parolee after considering graduated sanctions and incentives used in
14 response to a violation under section 12.1-32-07.
- 15 2. Upon issuance of a warrant of arrest for a parole violation, the running of the time
16 period of parole must be suspended until the parole board issues a final order under
17 this section. The parolee is entitled to credit for time spent in physical custody from the
18 time of arrest until the time the parole board issues a final order.
- 19 3. The parolee is entitled to a preliminary hearing, as promptly as is convenient after the
20 arrest and reasonably near the place of the alleged violation or arrest, to determine

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1 whether there is probable cause to find that the parolee violated any of the terms and
2 conditions of parole established by the board or by the department of corrections and
3 rehabilitation.

4 4. The preliminary hearing must be conducted before the director of the department of
5 corrections and rehabilitation or other hearing officer authorized by the director. The
6 preliminary hearing must be conducted by a disinterested hearing officer not directly
7 involved in the supervision of the parolee or by the person bringing the allegation of a
8 parole violation.

9 5. If the hearing officer determines there is probable cause to find that the parolee has
10 violated any of the terms and conditions of parole established by the board or by the
11 department of corrections and rehabilitation, the board may redetermine the time
12 remaining in the period of parole to reflect any portion of the period during which the
13 parolee was not under supervision or not in the custody of law enforcement personnel
14 in the state.

15 6. If the hearing officer determines there is probable cause to find that the parolee has
16 violated any of the terms and conditions of parole established by the board or by the
17 department of corrections and rehabilitation, the parolee must be returned to the
18 physical custody of the department of corrections and rehabilitation, transferred to
19 another correctional facility or the state hospital, or released from actual custody
20 pursuant to such terms and conditions as may be established by the parole board or
21 the department of corrections and rehabilitation, pending a final revocation hearing
22 before the parole board. If the board determines at the final revocation hearing that the
23 parolee has violated any:

24 a. Any of the terms and conditions of parole established by the board or by the
25 department of corrections and rehabilitation, ~~if the board~~ may order that the
26 parolee be recommitted to the physical custody of the department of corrections
27 and rehabilitation to serve all or part of the remaining time of the sentence that
28 has not been served in custody.

29 b. A technical violation of parole, as defined in section 12.1-01-04, the board may
30 order the parolee be recommitted to the physical custody of the department of
31 corrections and rehabilitation to serve fifteen days for a first violation, up to thirty

AB 3019

1 days for a second violation, up to ninety days for a third violation, and the full
2 remaining time of the sentence that has not been served in custody for a fourth
3 and subsequent violation.

4 7. At any hearing pursuant to this section a record must be made and the parolee shall
5 have:

- 6 a. Written notice of the purpose of the hearing and the alleged violations.
7 b. The opportunity to be heard in person and present witnesses and documentary
8 evidence.
9 c. The opportunity to confront and cross-examine adverse witnesses, unless the
10 hearing officer determines that confrontation would create a risk of harm to the
11 witness.
12 d. A written statement as to the reasons for the decision.

13 8. When the board determines the parolee has absconded, as defined in section
14 12.1-01-04, from supervision, the board may order the parolee to pay the costs of
15 being returned to the board. Moneys recovered under this subsection must be remitted
16 to the department of corrections and rehabilitation.

17 **SECTION 2. AMENDMENT.** Section 12.1-01-04 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **12.1-01-04. General definitions.**

20 As used in this title, unless a different meaning plainly is required:

21 1. "Absconded" means when a probationer, parolee, participant in a pretrial services
22 program, or participant in a prosecution-led diversion program willfully avoids
23 supervision by making their whereabouts unknown or fails to report to a supervising
24 authority.

25 2. "Act" or "action" means a bodily movement, whether voluntary or involuntary.

26 ~~2-3.~~ "Acted", "acts", and "actions" include, where relevant, "omitted to act" and "omissions
27 to act".

28 ~~3-4.~~ "Actor" includes, where relevant, a person guilty of an omission.

29 ~~4-5.~~ "Bodily injury" means any impairment of physical condition, including physical pain.

30 ~~5-6.~~ "Court" means any of the following courts: the supreme court, a district court, and
31 where relevant, a municipal court.

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- 1 ~~6-7.~~ "Dangerous weapon" includes any switchblade or gravity knife, machete, scimitar,
2 stiletto, sword, or dagger; any billy, blackjack, sap, bludgeon, cudgel, metal knuckles,
3 or sand club; any slingshot; any bow and arrow, crossbow, or spear; any weapon that
4 will expel, or is readily capable of expelling, a projectile by the action of a spring,
5 compressed air, or compressed gas including any such weapon, loaded or unloaded,
6 commonly referred to as a BB gun, air rifle, or ~~CO₂~~CO₂ gun; and any projector of a
7 bomb or any object containing or capable of producing and emitting any noxious liquid,
8 gas, or substance.
- 9 ~~7-8.~~ "Destructive device" means any explosive, incendiary or poison gas bomb, grenade,
10 mine, rocket, missile, or similar device.
- 11 ~~8-9.~~ "Explosive" means gunpowders, powders used for blasting, all forms of high
12 explosives, blasting materials, fuses (other than electric circuit breakers), detonators
13 and other detonating agents, smokeless powders, and any chemical compounds,
14 mechanical mixture, or other ingredients in such proportions, quantities, or packing
15 that ignition by fire, by friction, by concussion, by percussion, or by detonation of the
16 compound, or material, or any part thereof may cause an explosion.
- 17 ~~9-10.~~ "Firearm" means any weapon that will expel, or is readily capable of expelling, a
18 projectile by the action of an explosive and includes any such weapon, loaded or
19 unloaded, commonly referred to as a pistol, revolver, rifle, gun, machine gun, shotgun,
20 bazooka, or cannon.
- 21 ~~10-11.~~ "Force" means physical action.
- 22 ~~11-12.~~ "Government" means:
- 23 a. The government of this state or any political subdivision of this state;
- 24 b. Any agency, subdivision, or department of the state or any political subdivision of
25 the state, including the executive, legislative, and judicial branches;
- 26 c. Any corporation or other entity established by law to carry on any governmental
27 function; and
- 28 d. Any commission, corporation, or agency established by statute, compact, or
29 contract between or among governments for the execution of intergovernmental
30 programs.

- 1 ~~12-13.~~ "Governmental function" includes any activity that one or more public servants are
2 legally authorized to undertake on behalf of government.
- 3 ~~13-14.~~ "Harm" means loss, disadvantage, or injury to the person affected, and includes loss,
4 disadvantage, or injury to any other person in whose welfare the person affected is
5 interested.
- 6 ~~14-15.~~ "Included offense" means an offense:
7 a. That is established by proof of the same or less than all the facts required to
8 establish commission of the offense charged;
9 b. That consists of criminal facilitation of or an attempt or solicitation to commit the
10 offense charged; or
11 c. That differed from the offense charged only in that it constitutes a less serious
12 harm or risk of harm to the same person, property, or public interest, or because
13 a lesser degree of culpability suffices to establish its commission.
- 14 ~~15-16.~~ "Includes" should be read as if the phrase "but is not limited to" were also set forth.
- 15 ~~16-17.~~ "Law enforcement officer" or "peace officer" means a public servant authorized by law
16 or by a government agency or branch to enforce the law and to conduct or engage in
17 investigations or prosecutions for violations of law.
- 18 ~~17-18.~~ "Local" means of or pertaining to any political subdivision of the state.
- 19 ~~18-19.~~ "Manifest injustice" means a specific finding by the court that the imposition of
20 sentence is unreasonably harsh or shocking to the conscience of a reasonable
21 individual, with due consideration of the totality of circumstances.
- 22 ~~19-20.~~ "Offense" means conduct for which a term of imprisonment or a fine is authorized by
23 statute after conviction.
- 24 ~~20-21.~~ "Official action" includes a decision, opinion, recommendation, vote, or other exercise
25 of discretion by any government agency.
- 26 ~~21-22.~~ "Official proceeding" means a proceeding heard or which may be heard before any
27 government agency or branch or public servant authorized to take evidence under
28 oath, including any referee, hearing examiner, commissioner, notary, or other person
29 taking testimony or a deposition in connection with any such proceeding.
- 30 ~~22-23.~~ "Omission" means a failure to act.

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- 1 ~~23-24.~~ As used in this title and in sections outside this title which define offenses, "person"
- 2 includes, where relevant, a corporation, limited liability company, partnership,
- 3 unincorporated association, or other legal entity. When used to designate a party
- 4 whose property may be the subject of action constituting an offense, the word "person"
- 5 includes a government that may lawfully own property in this state.
- 6 ~~24-25.~~ "Political subdivision" as used in this title and in any statute outside this title which
- 7 defines an offense means a county, city, school district, township, and any other local
- 8 governmental entity created by law.
- 9 ~~25-26.~~ "Possesses" means an individual has:
- 10 a. Direct physical control of something on or around the individual's person; or
- 11 b. The power and intention to exercise control over something accessible to but not
- 12 on or around the individual's person.
- 13 ~~26-27.~~ "Public servant" as used in this title and in any statute outside this title which defines
- 14 an offense means any officer or employee of government, including law enforcement
- 15 officers, whether elected or appointed, and any person participating in the
- 16 performance of a governmental function. The term does not include witnesses.
- 17 ~~27-28.~~ "Responsivity factors" means characteristics of an individual which affect the
- 18 individual's ability to respond favorably or unfavorably to a treatment goal.
- 19 ~~29.~~ "Risk assessment" means an initial phase with a secondary process approved by the
- 20 department of health and human services for the evaluation of the likelihood a person
- 21 that committed an offense will commit another similar offense a validated, standardized
- 22 actuarial tool used to identify potential risk factors that increase the likelihood an
- 23 individual will reoffend and responsivity factors, when addressed, reduce the likelihood
- 24 an individual will reoffend. The initial phase is an assessment tool that is administered
- 25 by a trained ~~probation and parole officer~~ corrections professional. A predetermined
- 26 score on the initial phase initiates the secondary process, approved by the department
- 27 of health and human services, that includes may include a clinical interview,
- 28 psychological testing, and verification through collateral information or
- 29 psychophysiological testing, or both. The department of health and human services
- 30 shall perform the secondary process of the risk assessment.

- 1 ~~28-30.~~ "Serious bodily injury" means bodily injury that creates a substantial risk of death or
2 which causes serious permanent disfigurement, unconsciousness, extreme pain,
3 permanent loss or impairment of the function of any bodily member or organ, a bone
4 fracture, or impediment of air flow or blood flow to the brain or lungs.
- 5 ~~29-31.~~ "Signature" includes any name, mark, or sign written or affixed with intent to
6 authenticate any instrument or writing.
- 7 ~~30-32.~~ "Substantial bodily injury" means a substantial temporary disfigurement, loss, or
8 impairment of the function of any bodily member or organ.
- 9 ~~31-33.~~ "Technical violation" means a violation of a condition of probation or parole which does
10 not involve:
- 11 a. An arrest or a summons issued by a peace officer;
12 b. A criminal offense;
13 c. A violation of a protection order or order prohibiting contact; or
14 d. Absconding.
- 15 34. "Thing of value" or "thing of pecuniary value" means a thing of value in the form of
16 money, tangible or intangible property, commercial interests, or anything else the
17 primary significance of which is economic gain to the recipient.
- 18 ~~32-35.~~ "Tier 1 mental health professional" has the same meaning as provided under section
19 25-01-01.

20 **SECTION 3. AMENDMENT.** Subdivision b of subsection 3 of section 12.1-22-01 of the
21 North Dakota Century Code is amended and reenacted as follows:

- 22 b. "Dangerous weapon" means a weapon defined in ~~subsection 6 of section~~
23 12.1-01-04 or a weapon the possession of which under the circumstances
24 indicates an intent or readiness to inflict serious bodily injury.

25 **SECTION 4. AMENDMENT.** Section 12.1-32-07 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **12.1-32-07. Supervision of probationer - Conditions of probation - Revocation.**

- 28 1. When the court imposes probation upon conviction for a felony offense subject to
29 section 12.1-32-09.1 or 12.1-32-02.1, a second or subsequent violation of section
30 12.1-17-07.1, a second or subsequent violation of any domestic violence protection
31 order, a violation of chapter 12.1-41, a violation of section 14-09-22, or a felony

APB 9/8/19

1 offense under chapter 39-08, the court shall place the defendant under the supervision
2 and management of the department of corrections and rehabilitation. When the court
3 imposes probation upon conviction or order of disposition in all other felony cases, the
4 court may place the defendant under the supervision and management of the
5 department of corrections and rehabilitation. In class A misdemeanor cases, the court
6 may place the defendant under the supervision and management of the department of
7 corrections and rehabilitation or other responsible party. In all other cases, the court
8 may place the defendant under the supervision and management of a community
9 corrections program other than the department of corrections and rehabilitation. A
10 community corrections program means a program for the supervision of a defendant,
11 including monitoring and enforcement of terms and conditions of probation set by the
12 court.

- 13 2. ~~The conditions of probation must be such as the court in its discretion deems~~
14 ~~reasonably necessary to ensure that the defendant will lead a law-abiding life or to~~
15 ~~assist the defendant to do so. The court shall provide as an explicit condition of every~~
16 ~~probation that the defendant not commit another offense during the period for which~~
17 ~~the probation remains subject to revocation. The court shall order supervision costs~~
18 ~~and fees of not less than fifty-five dollars per month unless the court makes a specific~~
19 ~~finding on record that the imposition of fees will result in an undue hardship. If the~~
20 ~~offender has not paid the full amount of supervision fees and costs before completion~~
21 ~~or termination of probation, the court may issue an order, after opportunity for hearing,~~
22 ~~to determine the amount of supervision fees and costs that are unpaid. The order may~~
23 ~~be filed, transcribed, and enforced by the department of corrections and rehabilitation~~
24 ~~in the same manner as civil judgments rendered by a district court of this state.~~The
25 department of corrections and rehabilitation may administer a risk assessment for the
26 evaluation of each defendant when placed under the supervision and management of
27 the department of corrections and rehabilitation. The results of the risk assessment
28 may be used to set a level of supervision and management and develop an
29 individualized case plan for the defendant. The case plan may include a list of
30 responsivity factors and a plan to address any risk factors identified in the risk
31 assessment.

8/13 9/26/19

- 1 3. The court shall provide as an explicit condition of every probation that the defendant
2 may not possess a firearm, destructive device, or other dangerous weapon while the
3 defendant is on probation. Except when the offense is a misdemeanor offense under
4 section 12.1-17-01, 12.1-17-01.1, 12.1-17-01.2, 12.1-17-05, or 12.1-17-07.1, or
5 chapter 14-07.1, the court may waive this condition of probation if the defendant has
6 pled guilty to, or has been found guilty of, a misdemeanor or infraction offense, the
7 misdemeanor or infraction is the defendant's first offense, and the court has made a
8 specific finding on the record before imposition of a sentence or a probation that there
9 is good cause to waive the condition. The court may not waive this condition of
10 probation if the court places the defendant under the supervision and management of
11 the department of corrections and rehabilitation. The court shall provide as an explicit
12 condition of probation that the defendant may not willfully defraud a urine test
13 administered as a condition of probation. Unless waived on the record by the court,
14 the court shall also provide as a condition of probation that the defendant undergo
15 various agreed-to community constraints and conditions as intermediate measures of
16 the department of corrections and rehabilitation to avoid revocation, which may
17 include:
- 18 a. Community service;
 - 19 b. Day reporting;
 - 20 c. Curfew;
 - 21 d. Home confinement;
 - 22 e. House arrest;
 - 23 f. Electronic monitoring;
 - 24 g. Residential halfway house;
 - 25 h. Intensive supervision program;
 - 26 i. Up to five nonsuccessive periods of incarceration during any twelve-month
27 period, each of which may not exceed forty-eight consecutive hours;
 - 28 j. Participation in the twenty-four seven sobriety program; or
 - 29 k. One period of incarceration during a period of probation not to exceed thirty
30 consecutive days in lieu of a petition for revocation of probation.

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- 1 4. When imposing a sentence to probation, probation in conjunction with imprisonment,
2 or probation in conjunction with suspended execution or deferred imposition of
3 sentence, the court may impose such conditions as it deems appropriate and may
4 include any one or more of the following:
- 5 a. Work faithfully at a suitable employment or faithfully pursue a course of study or
6 of career and technical education training that will equip the defendant for
7 suitable employment.
- 8 b. Undergo available medical or psychiatric treatment and remain in a specified
9 institution if required for that purpose.
- 10 c. Attend or reside in a facility established for the instruction, recreation, or
11 residence of persons on probation.
- 12 d. Support the defendant's dependents and meet other family responsibilities.
- 13 e. Make restitution or reparation to the victim of the defendant's conduct for the
14 damage or injury which was sustained or perform other reasonable assigned
15 work. When restitution, reparation, or assigned work is a condition of probation,
16 the court shall proceed as provided in subsection 1 or 2, as applicable, of section
17 12.1-32-08.
- 18 f. Pay a fine imposed after consideration of the provisions of section 12.1-32-05.
- 19 g. Refrain from excessive use of alcohol or any use of narcotics or of another
20 dangerous or abusable drug without a prescription.
- 21 h. Permit the probation officer to visit the defendant at reasonable times at the
22 defendant's home or elsewhere.
- 23 i. Remain within the jurisdiction of the court, unless granted permission to leave by
24 the court or the probation officer.
- 25 j. Answer all reasonable inquiries by the probation officer and promptly notify the
26 probation officer of any change in address or employment.
- 27 k. Report to a probation officer at reasonable times as directed by the court or the
28 probation officer.
- 29 l. Submit to a medical examination or other reasonable testing for the purpose of
30 determining the defendant's use of narcotics, marijuana, or other controlled
31 substance whenever required by a probation officer.

- 1 m. Refrain from associating with known users or traffickers in narcotics, marijuana,
2 or other controlled substances.
- 3 n. Submit the defendant's person, place of residence, or vehicle to search and
4 seizure by a probation officer at any time of the day or night, with or without a
5 search warrant.
- 6 o. Serve a term of imprisonment of up to one-half of the maximum term authorized
7 for the offense of which the defendant was convicted.
- 8 p. Reimburse the costs and expenses determined necessary for the defendant's
9 adequate defense when counsel is appointed or provided at public expense for
10 the defendant. When reimbursement of indigent defense costs and expenses is
11 imposed as a condition of probation, the court shall proceed as provided in
12 subsection 4 of section 12.1-32-08.
- 13 q. Provide community service for the number of hours designated by the court.
- 14 r. Refrain from any subscription to, access to, or use of the internet.
- 15 5. When the court imposes a sentence to probation, probation in conjunction with
16 imprisonment, or probation in conjunction with suspended execution or deferred
17 imposition of sentence, the defendant must be given a certificate explicitly setting forth
18 the conditions on which the defendant is being released.
- 19 6. When it is alleged a probationer has absconded from supervision, the department of
20 corrections and rehabilitation may issue an authority to hold until the probationer is
21 apprehended. The department may dismiss the authority to hold, implement
22 intermediate measures, or initiate a petition for revocation.
- 23 ~~6-7.~~ The court, upon notice to the probationer and with good cause, may modify or enlarge
24 the conditions of probation at any time before the expiration or termination of the
25 period for which the probation remains conditional. If the defendant violates a
26 condition of probation at any time before the expiration or termination of the period, the
27 court may continue the defendant on the existing probation, with or without modifying
28 or enlarging the conditions, or may revoke the probation and impose any other
29 sentence that was available under section 12.1-32-02 or 12.1-32-09 at the time of
30 initial sentencing or deferment.

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1 ~~7-8.~~ The court may continue or modify probation conditions or revoke probation for a
2 violation of probation conditions occurring before the expiration or termination of the
3 period of probation notwithstanding that the order of the court is imposed after the
4 expiration or termination has occurred. The petition for revocation must be issued
5 within sixty days of the expiration or termination of probation.

6 9. The court may continue or modify probation conditions or revoke probation for a
7 technical violation as defined in section 12.1-01-04. The court, only upon revoking a
8 term of probation for a technical violation, may impose a term of incarceration as
9 follows:

10 a. Fifteen days for a first revocation;

11 b. Up to thirty days for a second revocation;

12 c. Up to ninety days for a third revocation; or

13 d. The full remaining time of the sentence that has not been served in custody for a
14 fourth or subsequent revocation.

15 ~~8-10.~~ Jurisdiction over a probationer may be transferred from the court that imposed the
16 sentence to another court of this state with the concurrence of both courts. Retransfers
17 of jurisdiction may also occur in the same manner. The court to which jurisdiction has
18 been transferred under this subsection may exercise all powers permissible under this
19 chapter over the defendant.

20 ~~9-11.~~ Notwithstanding any other provision of law, the court may authorize the defendant to
21 assist law enforcement officers in an investigation of a criminal offense upon the terms
22 and conditions as the court may require by written order. The court shall hold a
23 hearing in camera before issuing an order under this subsection. The order must be
24 sealed and is subject to inspection only upon order of the court.

25 ~~10-12.~~ The department of corrections and rehabilitation shall provide written notice to a
26 defendant who is in the department's physical custody of any untried petition for
27 revocation against the defendant of which the department has notice and of the
28 defendant's right to make a request for final disposition of the petition.

29 a. Upon notice of an untried petition for revocation of probation, the defendant may
30 request final disposition of the petition. The defendant's request must be in
31 writing and name the court in which the petition for revocation of probation is

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- 1 pending and the prosecuting official charged with the duty of prosecuting the
2 petition.
- 3 b. The defendant shall submit the request to the department. The department shall
4 certify the term of commitment under which the defendant is being held, the time
5 the defendant has served on the sentence, the time remaining to be served,
6 sentence reduction credit the defendant has earned, the defendant's eligibility for
7 parole, and whether the parole board has made a decision regarding the
8 defendant's parole.
- 9 c. The department shall send by registered mail, return receipt requested, one copy
10 of the request and certificate to the court and one copy to the prosecuting official
11 to whom the request and certificate is addressed.
- 12 d. The petition for revocation of probation must be brought to the court for hearing
13 within ninety days after the receipt of the request and certificate by the court and
14 prosecuting official. If the petition is not brought to the court for hearing within the
15 ninety days, the court shall dismiss the petition with prejudice.
- 16 e. The parties may stipulate for a continuance or the court may grant a continuance
17 upon a showing of good cause by either party for a petition under this subsection.
- 18 f. If the defendant escapes from custody subsequent to the defendant's execution
19 of a request for final disposition of a petition for revocation, the request is
20 considered void.

21 13. The department shall use a matrix system of graduated sanctions and incentives and
22 apply the presumptive sanctions and incentives for the appropriate supervision
23 violations and successes.

24 **SECTION 5. AMENDMENT.** Section 12.1-32-08 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **12.1-32-08. Hearing prior to ordering restitution, reparation, or reimbursement of**
27 **indigent defense costs and expenses - Conditions - Collection of restitution for**
28 **insufficient funds checks - Continuing appropriation.**

- 29 1. The court, when sentencing a person adjudged guilty of criminal activities that have
30 resulted in pecuniary damages, in addition to any other sentence the court may
31 impose, shall order that the defendant make restitution to the victim or other recipient

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- 1 as determined by the court. Restitution must include payment to the owner of real
2 property that is contaminated by the defendant in the manufacturing of
3 methamphetamine for the cost of removing the contamination and returning the
4 property to the property's condition before contamination and to any other person that
5 has incurred costs in decontaminating the property.
- 6 2. If the court has retained jurisdiction after the sentencing hearing for claims of
7 restitution, to make a claim for restitution, the victim shall submit information by
8 affidavit or declaration and, as applicable, documentary evidence within the time
9 specified in the order. The information submitted must describe the items or elements
10 of loss, itemize the total dollar amounts of restitution claimed, and present facts and
11 evidence sufficient to support a finding the restitution is directly related to the offense
12 and the amount awarded. The prosecutor shall serve the defendant with a copy of the
13 information submitted by the victim no later than sixty days following sentencing.
- 14 3. The defendant may challenge restitution but must do so by requesting a hearing within
15 thirty days of being served with the written notification of the amount of restitution
16 requested. The hearing request must be made in writing and filed with the court. If no
17 hearing is requested, the court may enter a judgment ordering restitution. A defendant
18 may not challenge restitution after the thirty-day time period has passed.
- 19 4. In determining the amount of restitution, the court shall take into account the
20 reasonable damages sustained by the victim or victims of the criminal offense, which
21 damages are limited to those directly related to the criminal offense and expenses
22 actually sustained as a direct result of the defendant's criminal action. This can include
23 an amount equal to the cost of necessary and related professional services and
24 devices relating to physical, psychiatric, and psychological care. The defendant may
25 be required as part of the sentence imposed by the court to pay the prescribed
26 treatment costs for a victim of a sexual offense as defined in chapters 12.1-20 and
27 12.1-27.2. The court shall fix the amount of restitution or reparation and shall fix the
28 manner of performance of any condition or conditions of probation established
29 pursuant to this subsection. The court may order the defendant to disclose income and
30 assets on forms developed by the state court administrator to facilitate the setting of
31 an appropriate payment plan. The court shall order restitution be paid to the division of

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- 1 adult services for any benefits the division has paid or may pay to the victim under
2 chapter 54-23.4 unless the court, on the record, directs otherwise. Any payments
3 made pursuant to the order must be deducted from damages awarded in a civil action
4 arising from the same incident.
- 5 5. An order that a defendant make restitution or reparation as a sentence or condition of
6 probation, unless the court directs otherwise, may be filed without filing fee,
7 transcribed, and enforced by the person entitled to the restitution or reparation or by
8 the division of adult services in the same manner as civil judgments rendered by the
9 courts of this state may be enforced. Upon thirty days' written notice to the victim's last
10 known address, the court may order the judgment imposing a duty to pay restitution or
11 reparation be docketed in the same manner as a civil judgment under section
12 29-26-22.1.
- 13 6. When the restitution ordered by the court under subsection 1 is the result of a finding
14 that the defendant issued a check or draft without sufficient funds or without an
15 account, the court shall impose as costs the greater of the sum of ten dollars or an
16 amount equal to twenty-five percent of the amount of restitution ordered. The costs
17 imposed under this subsection, however, may not exceed one thousand dollars. The
18 state-employed clerks of district court shall remit the funds collected as costs under
19 this subsection to the state treasurer for deposit in the restitution collection assistance
20 fund. The funds deposited into the restitution collection assistance fund are
21 appropriated to the judicial branch on a continuing basis for the purpose of defraying
22 expenses incident to the collection of restitution, including operating expenses and the
23 compensation of additional necessary personnel. The state's attorneys and
24 county-employed clerks of district court shall remit the funds collected as costs under
25 this subsection to the county treasurer to be deposited in the county general fund.
- 26 7. The court may order the defendant to perform reasonable assigned work as a
27 condition of probation, which assigned work need not be related to the offense
28 charged, but must not be solely for the benefit of a private individual other than the
29 victim.
- 30 8. ~~Under section 12.1-32-07, the court may order that the defendant reimburse indigent~~
31 ~~defense costs and expenses as a condition of probation.~~

- 1 a. ~~Unless it finds that there is no likelihood that the defendant is or will be able to~~
2 ~~pay attorney's fees and expenses, the court, in its judgment of conviction, and in~~
3 ~~any order or amended judgment following a revocation or other postjudgment~~
4 ~~proceeding, shall notify the defendant, the defendant's probation officer, and the~~
5 ~~prosecuting attorney of the presumed amount of costs and expenses to be~~
6 ~~reimbursed, as determined by the commission on legal counsel for indigents, and~~
7 ~~of the right to a hearing on the reimbursement amount. The reimbursement~~
8 ~~amount must include an application fee imposed under section 29-07-01.1 if the~~
9 ~~fee has not been paid before disposition of the case and the court has not waived~~
10 ~~payment of the fee.~~
- 11 b. ~~If the defendant or prosecutor requests a hearing within thirty days of receiving~~
12 ~~notice under this subdivision, the court shall schedule a hearing at which the~~
13 ~~actual amount of attorney's fees and expenses must be shown. In determining~~
14 ~~the amount and method of reimbursement, the court shall consider the financial~~
15 ~~resources of the defendant and the nature of the burden that reimbursement of~~
16 ~~costs and expenses will impose.~~
- 17 c. ~~A defendant who is required to reimburse indigent defense costs and expenses~~
18 ~~as a condition of probation and who is not willfully in default in that~~
19 ~~reimbursement may at any time petition the court that imposed the condition to~~
20 ~~waive reimbursement of all or any portion of the costs and expenses. If the court~~
21 ~~is satisfied that reimbursement of the amount due will impose undue hardship on~~
22 ~~the defendant or the defendant's immediate family, the court may waive~~
23 ~~reimbursement of all or any portion of the amount due or modify the method of~~
24 ~~payment.~~
- 25 d. ~~If at any time the court finds that the defendant is able to reimburse costs and~~
26 ~~expenses and has willfully failed to do so, the court may continue, modify, or~~
27 ~~enlarge the conditions of probation or revoke probation as provided in~~
28 ~~subsection 6 or 7, as applicable, of section 12.1-32-07.~~
- 29 9. ~~If the court finds that the defendant is unable to pay a fine, supervision fee,~~
30 ~~reimbursement for indigent defense costs and expenses, or restitution or reparations,~~
31 ~~the court may order the defendant to perform reasonable assigned work in lieu of all or~~

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1 part of a fine, a supervision fee, reimbursement for indigent defense costs and
2 expenses, or restitution or reparations. The defendant may not perform reasonable
3 assigned work in lieu of restitution or reparations unless the person entitled to
4 restitution or reparations has consented in writing or on the record.

5 **SECTION 6. AMENDMENT.** Section 29-07-01.1 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **29-07-01.1. Payment of expenses for defense of indigents – Reimbursement of**
8 ~~indigent defense costs and expenses~~ - **Indigent defense administration fund - Continuing**
9 **appropriation.**

10 1. Lawyers provided to represent indigent persons must be compensated at a
11 reasonable rate to be determined by the commission on legal counsel for indigents.
12 Expenses necessary for the adequate defense of an indigent person prosecuted in
13 district court, other than for a violation of a home rule county's ordinance, when
14 approved by the commission, must be paid by the state. Expenses necessary for the
15 adequate defense of an indigent person prosecuted for violation of a home rule
16 county's ordinance must be paid by the home rule county. Expenses necessary for the
17 adequate defense of an indigent person prosecuted in municipal court, when
18 approved by the judge, must be paid by the city in which the alleged offense took
19 place. The city shall also pay the expenses in any matter transferred to district court
20 pursuant to section 40-18-06.2 or 40-18-15.1, in any appeal taken to district court from
21 a judgment of conviction in municipal court pursuant to section 40-18-19, and in an
22 appeal or postconviction matter seeking relief from a conviction resulting from violation
23 of a municipal ordinance. A defendant requesting representation by counsel at public
24 expense, or for whom counsel provided at public expense without a request is
25 considered appropriate by the court, shall submit an application for indigent defense
26 services. ~~For an application for indigent defense services in the district court, a~~
27 ~~nonrefundable application fee of thirty-five dollars must be paid at the time the~~
28 ~~application is submitted. The district court may extend the time for payment of the fee~~
29 ~~or may waive or reduce the fee if the court determines the defendant is financially~~
30 ~~unable to pay all or part of the fee. If the application fee is not paid before disposition~~
31 ~~of the case, the fee amount must be added to the amount to be reimbursed under this~~

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- 1 ~~section. Application fees collected under this subsection must be forwarded for deposit~~
2 ~~in the indigent defense administration fund established under subsection 4.~~
- 3 2. ~~A defendant for whom counsel is provided at public expense, subject to this~~
4 ~~subsection, shall reimburse the state, home rule county, or city such sums as the~~
5 ~~state, home rule county, or city expends on the defendant's behalf.~~
- 6 a. ~~At the time counsel is provided for a defendant, the court shall advise the~~
7 ~~defendant of the defendant's potential obligation to reimburse the appropriate~~
8 ~~governmental entity the amounts expended on behalf of the defendant.~~
- 9 b. ~~Unless it finds that there is no likelihood that the defendant is or will be able to~~
10 ~~pay attorney's fees and expenses, the court, in its judgment of conviction, and in~~
11 ~~any order or amended judgment entered following a revocation or other~~
12 ~~postjudgment proceeding, shall order the defendant to reimburse the presumed~~
13 ~~amount of indigent defense costs and expenses, as determined by the~~
14 ~~commission, and shall notify the defendant of the right to a hearing on the~~
15 ~~reimbursement amount. If the defendant or prosecutor requests a hearing within~~
16 ~~thirty days of receiving notice under this subdivision, the court shall schedule a~~
17 ~~hearing at which the actual amount of attorney's fees and expenses must be~~
18 ~~shown. In determining the amount of reimbursement and method of payment, the~~
19 ~~court shall consider the financial resources of the defendant and the nature of the~~
20 ~~burden that reimbursement of costs and expenses will impose.~~
- 21 c. ~~A defendant who is required to reimburse indigent defense costs and expenses~~
22 ~~and who is not willfully in default in that reimbursement may at any time petition~~
23 ~~the court to waive reimbursement of all or any portion of the attorney's fees and~~
24 ~~expenses. If the court is satisfied that reimbursement of the amount due will~~
25 ~~impose undue hardship on the defendant or the defendant's immediate family,~~
26 ~~the court may waive reimbursement of all or any portion of the amount due or~~
27 ~~modify the method of payment.~~
- 28 3. ~~The attorney general, the state's attorney of the home rule county, or the prosecuting~~
29 ~~attorney of the city in which the alleged offense took place, if reimbursement has not~~
30 ~~been received, shall seek civil recovery of any amounts expended on the defendant's~~
31 ~~behalf anytime the attorney general, state's attorney, or city attorney determines the~~

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1 ~~person for whom counsel was appointed may have funds to repay the state, home rule~~
2 ~~county, or city within six years of the date such amount was paid on that person's~~
3 ~~behalf. A person against whom civil recovery is sought under this subsection is entitled~~
4 ~~to all exemptions accorded to other judgment debtors. The attorney general, state's~~
5 ~~attorney, or prosecuting attorney may contract with a private sector collection agency~~
6 ~~for assistance in seeking recovery of such funds. Before referring the matter to a~~
7 ~~collection agency, the state's attorney shall notify the person who is the subject of the~~
8 ~~collection action.~~

- 9 4. The indigent defense administration fund is a special fund in the state treasury. The
10 state treasurer shall deposit in the fund all application fees collected under
11 subsection 1. All moneys in the indigent defense administration fund are appropriated
12 on a continuing basis to the commission on legal counsel for indigents to be used in
13 the administration of the indigent defense system.

14 **SECTION 7. LEGISLATIVE MANAGEMENT STUDY - COURT FINES AND FEES.** During
15 the ~~2024-25~~2025-26 interim, the legislative management shall consider studying court fines and
16 fees, including fines and fees relating to travel permits, presentence investigations, the drug
17 court program, electronic monitoring, alcohol monitoring, and the twenty-four seven sobriety
18 program. The study must consider the total amount collected; rate of fees collected, including
19 any money expended to collect the fines and fees; an evaluation of practices in other states;
20 and the overall impacts on a defendant. The legislative management shall report its findings and
21 recommendations, together with any legislation required to implement the recommendations, to
22 the seventieth legislative assembly.

23 **SECTION 8. APPROPRIATION - COMMISSION ON LEGAL COUNSEL FOR**
24 **INDIGENTS - OPERATING COSTS.** There is appropriated out of any moneys in the general
25 fund in the state treasury, not otherwise appropriated, the sum of \$310,000, or so much of the
26 sum as may be necessary, to the commission on legal counsel for indigents for the purpose of
27 operating costs to replace lost revenue from the removal of the indigent defense application
28 fees, for the biennium beginning July 1, 2025, and ending June 30, 2027.

**REPORT OF STANDING COMMITTEE
HB 1417**

Judiciary Committee (Rep. Klemin, Chairman) recommends **AMENDMENTS** ([25.1150.01001](#)) and when so amended, recommends the measure **BE PLACED ON THE CALENDAR WITHOUT RECOMMENDATION** and **BE REREFERRED** to the **Appropriations Committee** (10 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). HB 1417 was placed on the Sixth order on the calendar.

2025 HOUSE APPROPRIATIONS

HB 1417

2025 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee Roughrider Room, State Capitol

HB 1417
2/19/2025

Relating to parole and probation violations and court fees; to provide for a legislative management study; to provide a penalty; and to provide an appropriation.

11:38 a.m. Chairman Vigesaa-Opened the meeting.

Members present: Chairman Vigesaa, Vice Chairman Kempenich, Representatives Anderson, Berg, Bosch, Brandenburg, Fisher, Hanson, Louser, Martinson, Meier, Mitskog, Monson, Murphy, Nathe, Nelson, O'Brien, Pyle, Richter, Sanford, Stemen, Swiontek, Wagner

Discussion Topics:

- Revocations
- Eliminate Fees

11:39 a.m. Representative Klemin Introduced the bill and submitted testimony #38074.

11:48 a.m. Chairman Vigesaa closed the meeting for 1417.

Krystal Eberle for Risa Berube, Committee Clerk

HB 1417 House Appropriations Rep. Lawrence R. Klemin Feb.19, 2025

House Bill No. 1417, relating to parole and probation violations and court fees, is the second of the three bills for criminal justice reform.

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

ND's prison population is increasing while most state prison populations across the US are decreasing. 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.

Tiered Sentencing Recommendations for Supervision Violations

The bill develops tiered sentencing recommendations, so the court and parole board can 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.

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 say that a person, following a decision by the court or the 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 revocation. For the fourth violation the remaining sentence will be imposed.

Section 2 updates definitions.

Section 2 adds definitions for three terms used in supervision work that have not been defined in our state law: The terms are "absconded," "responsivity factors," and

"technical violation". It also modernizes the existing definition for "risk assessment." Many supervision revocations are due to technical violations and absconding.

Section 3 corrects a cross reference.

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 reflected in the DOCR budget in SB 2015. DOCR tries 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.

Sections 5 and 6 eliminate 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 eliminates 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 is deposited in the indigent defense administrative fund. The fiscal note on this bill estimates a reduction of \$310,000 for the upcoming biennium.

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.

Section 8 of the bill adds an appropriation of \$310,000 to the Commission on Legal Counsel for Indigents to replace the reduction in revenue due to the elimination of the application fee.

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.

FISCAL NOTE
HOUSE BILL NO. 1417
LC# 25.1150.02000
02/11/2025

1 - State Fiscal Effect

Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.

	2023-2025 Biennium		2025-2027 Biennium		2027-2029 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			\$(340,000)	\$(1,810,000)	\$(340,000)	\$(1,810,000)
Expenditures			\$1,500,000	\$(1,500,000)	\$1,500,000	\$(1,500,000)
Appropriations			\$310,000			

2 - County, City, School District, and Township Fiscal Effect

Identify the fiscal effect on the appropriate political subdivision.

	2023-2025 Biennium	2025-2027 Biennium	2027-2029 Biennium
Counties			
Cities			
School Districts			
Townships			

3 - Bill and Fiscal Impact Summary

Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).

This bill removes the assessment of supervision fees, the indigent defense services application fee, and reimbursement of indigent costs and expenses.

4 - Fiscal Impact Sections Detail

Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.

DOCR: Page 8, section 4 removes \$55/month supervision fee charge. DOCR bills approximately \$6 million in supervision fees per biennium with a collection rate of around 25% or \$1,500,000. DOCR addressed the loss of special fund revenue of \$1.5 million by switching funding needs to general funds in SB 2015.

Courts: Section 5 removes the reimbursement of indigent defense costs and expenses resulting in a general fund

revenue reduction of \$340,000 per biennium. Section 6 removes the indigent defense application fee resulting in a \$310,000 per biennium reduction of revenues to the indigent defense administration fund. This fund is used for operations of the ND Commission on Legal Counsel for Indigents.

5 - Revenues Detail

For information shown under state fiscal effect in 1 or 2, please explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

DOCR: Page 8, section 4 removes \$55/month supervision fee charge. DOCR bills approximately \$6 million in supervision fees per biennium with a collection rate of around 25% or \$1,500,000. DOCR proposed covering the loss of special fund revenue of \$1.5 million by switching funding needs to general funds in SB 2015.

Courts: Section 5 removes the reimbursement of indigent defense costs and expenses resulting in a general fund revenue reduction of \$340,000 per biennium. Section 6 removes the indigent defense application fee resulting in a \$310,000 per biennium reduction of revenues to the indigent defense administration fund. This fund is used for operations of the ND Commission on Legal Counsel for Indigents.

6 - Expenditures Detail

For information shown under state fiscal effect in 1 or 2, please explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

DOCR: Adults under supervision face many financial obligations due to their offense, including fines, court fees and costs, and restitution. The client/Parole Officer relationship could be improved if the parole officer and other office staff didn't have to remind the clients of their supervision fees each meeting. Having to discuss the financial obligation takes time away from addressing more pertinent issues such as substance use recovery, improving family relationships, employment, and skill building. As well, clients on parole and probation face huge obstacles funding and keeping stable employment that meets their financial needs.

Supervision fees may be added to the violation allegations at a revocation hearing, but they do not play a part in the reason officers are filing for revocation. These balances are referred to collections. Our collection rate is around 25% for supervision fees.

Necessary resources for the implementation: DOCR will need general funds for the loss of special fund collection to continue to pay for transport officer salaries. This was proposed in SB 2015.

7 - Appropriations Detail

For information shown under state fiscal effect in 1 or 2, please explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.

DOCR will need general funds for the loss of special fund collections to continue to pay for transport officer salaries. This was proposed in SB 2015.

Engrossed HB 1417 provides a general fund appropriation of \$310,000 to the Commission on Legal Counsel for Indigents to replace the lost revenue from the removal of the indigent defense application fee.

Contact Information

Name: Don Wolf

Agency: ND Court System

Telephone: 7013283509

Date Prepared: 01/21/2025

2025 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee Roughrider Room, State Capitol

HB 1417
2/21/2025

A BILL for an Act to amend and reenact sections 12-59-15 and 12.1-01-04, subdivision b of subsection 3 of section 12.1-22-01, and sections 12.1-32-07, 12.1-32-08, and 29-07-01.1 of the North Dakota Century Code, relating to parole and probation violations and court fees; to provide for a legislative management study; to provide a penalty; and to provide an appropriation.

4:57 p.m. Chairman Vigesaa opened the meeting.

Members present: Chairman Vigesaa, Representatives Anderson, Berg, Bosch, Brandenburg, Fisher, Hanson, Louser, Martinson, Meier, Monson, Murphy, Nathe, Nelson, O'Brien, Pyle, Richter, Stemen, Swiontek, Wagner

Members absent: Vice Chairman Kempenich, Representatives: Mitskog, Sanford.

Discussion Topics:

- Committee Action

5:08 p.m. Representative J. Nelson moved a Do Pass.

5:09 p.m. Representative Stemen seconded the motion.

5:08 p.m. Roll Call Vote

Representatives	Vote
Representative Don Vigesaa	Y
Representative Keith Kempenich	AB
Representative Bert Anderson	Y
Representative Mike Berg	Y
Representative Glen Bosch	Y
Representative Mike Brandenburg	Y
Representative Jay Fisher	Y
Representative Karla Rose Hanson	Y
Representative Scott Louser	N
Representative Bob Martinson	Y
Representative Lisa Meier	Y
Representative Alisa Mitskog	AB
Representative David Monson	Y
Representative Eric J. Murphy	Y
Representative Mike Nathe	Y
Representative Jon O. Nelson	Y
Representative Emily O'Brien	Y
Representative Brandy L. Pyle	Y

Representative David Richter	Y
Representative Mark Sanford	AB
Representative Gregory Stemen	Y
Representative Steve Swiontek	Y
Representative Scott Wagner	Y

5:09 p.m. Motion passed 19-1-3. Representative Klemin will carry.

5:09 p.m. Chairman Vigesaa closed the meeting.

Krystal Eberle for Risa Berube, Committee Clerk

**REPORT OF STANDING COMMITTEE
ENGROSSED HB 1417 ([25.1150.02000](#))**

Appropriations Committee (Rep. Vigesaa, Chairman) recommends **DO PASS** (19 YEAS, 1 NAY, 3 ABSENT OR EXCUSED AND NOT VOTING). HB 1417 was placed on the Eleventh order on the calendar.

2025 SENATE JUDICIARY

HB 1417

2025 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee Peace Garden Room, State Capitol

HB 1417
3/19/2025

Relating to parole and probation violations and court fees; to provide for a legislative management study; to provide a penalty; and to provide an appropriation.

10:01 a.m. Chair Larson opened the hearing.

Members present:

Chair Larson, Vice Chairman Paulson, Senators: Castaneda, Luick, Myrdal, Braunberger.
Senator Cory absent.

Discussion Topics:

- Community supervision reforms
- Indigent defense practices
- Crime statistics and trends
- Technical violations in probation
- Diversion and deflection programs

10:01 a.m. Representative Klemin introduced the bill and submitted testimony in favor #42944 and #42943.

10:17 a.m. Travis Finck, Executive Director, ND Commission on Legal Counsel for Indigents, testified in favor and submitted testimony #42909.

10:41 a.m. Celeste Gander, Crime and Justice Institute, testified in favor.

10:48 a.m. Kimberlee J. Hegvic, Cass County State's Attorney, testified in favor.

11:01 a.m. Robyn Schmalenberger, Reentry Program Manager, ND Department of Corrections and Rehabilitation, testified in favor and submitted testimony #42478.

11:10 a.m. Jonathan Holth, Commissioner, Recovery & Reentry State of ND, testified in favor and submitted testimony #42934.

11:13 a.m. Sister Kathleen Atkinson, Executive Director, Ministry on the Margins, testified in favor and submitted testimony #42870.

11:17 a.m. Drew Wrigley, Attorney General, testified in opposition and submitted testimony #43121.

Additional written testimony:

Nathan Mickelson, Prison Reentry Manager, Ministry on the Margins, submitted testimony in favor #41527.

Michelle Strinden, Lt. Governor, Office of the Governor, submitted testimony in favor #42385.

Mary Mergler, Fines & Fees Justice Center, submitted testimony in favor #42500.

Adam J. Martin, CEO, F5 Project, submitted testimony in favor #42950.

Rozanna C. Larson, Ward County State's Attorney, submitted testimony in opposition #42781.

11:30 a.m. Chair Larson closed the hearing.

Kendra McCann, Committee Clerk

**MINISTRY ON THE MARGINS****PO Box 3065****201 N 24th St, Bismarck, ND 58501****701-223-6315 • MinistryOnTheMargins.org**

Madam Chair Larson and members of the Senate Judiciary Committee,

My name is Nathan Mickelson, the Prison Reentry Manager at Ministry on the Margins (MOTM), a nonprofit in Bismarck - Mandan started by Sister Kathleen Atkinson. Our reentry program focuses on identifying and delivering the much-needed resources to those re-entering society after a period of incarceration. Since beginning with Ministry, I have worked synergistically with the DOCR in several aspects both inside and outside the walls from teaching classes, attending community resource fairs, pre-release planning with case workers to a reentry supper club, a Bismarck – Mandan prison Re-entry coalition and even a community reentry resource sharing event to identify and streamline organizational resources.

I am writing testimony today in support of HB 1417 which focuses on supervision violations, fees, and indigent defense. Too often, those reentering society already face extreme financial challenges from incarceration alone. Being without meaningful employment, unable to establish credit, and typically coming from a poor financial situation to begin, current supervision fees and application fees for indigent defense are unrealistic in their application and collection. When prioritizing needs and barriers in my area of work, supervision fees receive little to no attention from the PO nor the case manager as they are far from what is needed to survive such as food, employment, housing, and treatment. The last thing on their mind is compliance with an unnecessary \$55 monthly supervision fee. Additionally, focusing on life prioritized barriers takes time, often several months, compounding supervision fees which are rarely ever collected. This then begs the question, what is the purpose of these to begin with? As they say, “you can’t get blood from a turnip.”

Currently, pursuant to NDCC Sec. 29-07-01.1, there is a \$35 application fee which is due at the time an application is filed in a criminal case, in District Court for indigent defense services. The individual requesting services must accomplish two things: the party must have a right to counsel, and they must be “indigent.” This burden of proof is on the applicant and after that criterion is met, they must pay a \$35 application fee. Charging an “indigent” individual seems like an oxymoron. How can we charge someone a fee which, after proving they themselves are indigent, by that definition cannot pay? I support the study of other fees, such as the rate of collection of the aforementioned fees, the impact on revenue and on justice-related individuals for more realistic opportunities.



MINISTRY ON THE MARGINS

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Finally, a tiered sentencing approach for technical supervision violations will provide guidance and direction for courts, flexibility in the court's discretion, a more consistent response and updates current definitions.

I strongly encourage the Senate Judiciary Committee to process with a DO PASS of HB 1417.

Thank you for your consideration.

Nate Mickelson

Prison Reentry Manager

Ministry on the Margins

701-390-4000

nathan@ministryonthemargins.org

Re-Entry House Bills
Lt. Governor Michelle Strinden
Senate Judiciary Committee
Sen. Diane Larson, chair
March 19, 2025
Peace Garden

Good morning, Chair Larson and members of the Senate Judiciary Committee. For the record, my name is Michelle Strinden, Lieutenant Governor for the State of North Dakota. I am here on behalf of the Armstrong administration to speak in support of HB 1425, HB 1417 and HB1549. We want to express gratitude to the legislators for leading the effort to champion these bills.

Over the interim, I had the opportunity to participate as a member of the Reentry Study Work Group, which laid the groundwork for these three bills that you will hear more about this morning. For over a year, I was at the table with a team of legislators, Department of Corrections and Rehabilitation and Department of Health and Human Service leaders, court system and county jail experts, and community reentry partners who examined data findings from our state's criminal justice system. This work group discussed the next steps our state can take toward our

longstanding goals of improving public safety through rehabilitation, reentry and recovery.

As this committee is aware, this interim study follows years of progress our state has made to ensure the people who enter our criminal justice system leave the system better than when they entered it. I am proud our state has emerged as a national leader for our commitment to recovery and reentry. When North Dakotans talk about "reentry," we aren't just talking about the process of a person leaving prison; we are talking about everything that happens before prison: coordinated efforts by law enforcement and behavioral health practitioners to respond to crises, addressing addiction and mental illness that contribute to criminal activity, and establishing a system of accountability and care that keeps our communities safe.

Our Work Group kept this in mind as we closely examined our criminal justice system data over the course of several months. It won't surprise anyone to hear our prison population has been growing, pushing our DOC facilities and some county jails to their maximum capacities. But a finding from this study that stood out to me is that many residents continue to enter our prisons for

drug and alcohol offenses. We also found racial disparities in our system, specifically an overrepresentation of Black and Native American residents in our prisons. These are outcomes the Armstrong administration is committed to improving. Thanks to my fellow Work Group members who spent their summer diving into data, research, and examples of successful strategies from other states, I know we have a strong roadmap to help us get there.

The recommendations across these three bills support local law enforcement and prosecutors in using deflection and diversion practices – effectively interrupting misconduct early and intervening with treatment resources in cases where addiction and mental illness are the root cause. Provisions in these bills will also reduce barriers to reentry faced by people on community supervision; promote culturally responsive programming for people moving through the justice system; and support cross-agency collaboration to help justice-involved people secure medical coverage and state identification. The bottom line is we want to prepare those leaving the justice system to be ready to

join our workforce, become our neighbors, attend our churches, and make our state better.

We have been on the right trajectory with our reentry and recovery focus for the past decade, and the policies included in HB 1425, HB 1417, and HB 1549 are the natural next step to improve public safety for our communities. Our administration urges the committee to support a “do pass” on all three bills. That concludes my testimony and thank you for your time.

**Senate Judiciary Committee
Senator Diane Larson, CHAIR
March 19, 2025**

**NORTH DAKOTA DEPARTMENT OF CORRECTIONS AND REHABILITATION
PRESENTING TESTIMONY IN SUPPORT OF HOUSE BILL 1417**

Chair Larson and members of the Senate Judiciary Committee, I am Robyn Schmalenberger, and I serve as the Reentry Program Manager for the North Dakota Department of Corrections and Rehabilitation (DOCR). Today, I submit this verbal and written testimony in support of House Bill 1417.

As highlighted in the findings of the North Dakota Justice Reinvestment Initiative Reentry Workgroup, our state continues to face challenges related to rising prison admissions, particularly driven by alcohol and drug-related offenses, as well as revocations. House Bill 1417 aims to build on our ongoing efforts by promoting effective, evidence-based community supervision.

Section 1 of the bill proposes that when an individual is alleged to have violated parole conditions, the DOCR Director may issue an arrest warrant after considering the use of graduated sanctions and incentives. This process is consistent with the best practices described in the DOCR's *Managing Behavior - Field Manual for Behavior Change*, which provides a framework for managing both prosocial and noncompliant behaviors, including supervision violations. Additionally, this section proposes tiered periods of incarceration the Parole Board may consider for technical violations. This does not preclude the Parole Board from imposing other sanctions or periods of incarceration other than the proposed durations, maintaining the flexibility to apply sanctions in proportion to the seriousness of the violation.

Section 2 defines the terms "Absconded" and "Technical Violations," which are currently not clearly defined in state law. Providing definitions will improve the identification, tracking, and consistent response to absconding and technical violations.

Section 4 proposes eliminating supervision fees as a condition of probation. Currently, the DOCR bills approximately \$6 million in supervision fees every biennium, but only around \$1.5

million is collected. Many individuals under supervision are already dealing with substantial financial obligations, such as restitution, fines, and other fees, while also struggling to meet basic needs like housing, transportation, food, and supporting their families. By removing supervision fees, we reduce one financial burden. Additionally, this change would enable staff to focus their attention and resources toward more critical issues that promote positive behavior change and reduce the likelihood of reoffending.

This section also gives the DOCR the authority to issue an "authority to hold" for individuals who abscond from supervision. This provision allows the individual to be detained upon apprehension, giving supervision staff the opportunity to meet with the individual to assess the situation and determine the next steps based on the circumstances surrounding the absconding, including the potential dismissal of the authority to hold, implementing intermediate measures, or pursuing a revocation petition.

Section 4 directs the DOCR to use a matrix system of graduated sanctions and incentives for probation supervision violations and success. This process is consistent with best practices set forth in the DOCR *Managing Behavior - Field Manual for Behavior Change* which is currently utilized.

Section 4 also proposes tiered periods of incarceration that the court, only upon revoking a term of probation for a technical violation, may impose. This does not preclude the court from imposing other sanctions or periods of incarceration other than the proposed durations, maintaining the flexibility to apply sanctions in proportion to the seriousness of the violation.

Section 7 recommends that legislative management consider a study of court fines and fees including the total amount collected, money expended to collect, an evaluation of practices in other states, and the impact on individuals involved in the justice system. The DOCR supports this proposed study to better understand these challenges and explore potential solutions.

House Bill 1417 provides an evidence-based approach that fosters consistency and prioritizes resources to address supervision violations and financial obligations. Thank you for your consideration, and I stand for any questions.



Written Testimony in Support of H.B. 1417

To: Senator Diane Larson, Chair
Senator Bob Paulson, Vice Chair
Members of the North Dakota Senate Judiciary Committee

From: Mary Mergler, Fines & Fees Justice Center

Date: March 17, 2025

The Fines and Fees Justice Center (FFJC) submits this testimony in support of H.B. 1417, and we thank Chairman Larson, Senator Davison, Chairman Klemin, Representative Hanson, and Representative Stemen for introducing this critically important legislation. H.B. 1417 would eliminate several fees that are routinely charged to people who have been charged with or convicted of a criminal offense in North Dakota: (i) a \$55 per month supervision fee, (ii) a \$35 indigent defense application fee, and (iii) reimbursement of the costs of appointed defense counsel (collectively referred to as “criminal justice fees” in this testimony). It would also require a study of court fines and fees in the interim. Finally, H.B. 1417 would make improvements to probation and parole supervision. While FFJC supports the intent of this bill related to probation and parole supervision, this testimony is focused solely on the provisions of the bill related to fees, given that is our organizational focus and area of expertise.

Eliminating criminal justice fees would improve outcomes for people who have been involved in the system, making it more likely they would be able to successfully reenter their communities and avoid rearrest. It would also help North Dakota families who are financially struggling to meet their most basic needs. **FFJC urges the Committee to support H.B. 1417 and eliminate these criminal justice fees in North Dakota.**

Criminal Justice Fees Are Imposed on North Dakotans who Cannot Afford Them

The vast majority of people charged with crimes in North Dakota are low income, and finding employment after system involvement is difficult. Nationally, an estimated four in five people who are charged with a crime are too poor to afford an attorney and qualify to have a public defender appointed to represent them.¹ More than half of people who are incarcerated nationwide had virtually no annual earnings three years preceding their

¹ See Marea Beeman et al., *At What Cost?: Findings From an Examination Into the Imposition of Public Defense System Fees* at 3, National Legal Aid & Defender Association (2022), available at https://www.nlada.org/sites/default/files/NLADA_At_What_Cost.pdf?v=2.0 (hereinafter “At What Cost?”).

incarceration, and for those that were employed, their median annual earnings were about \$6,300.²

After being convicted of a crime, the average person will experience a significant reduction in their lifetime earnings. People who were convicted of a felony and incarcerated for some period of time experience the greatest decrease: they will earn approximately \$480,000 less over the course of their lifetime compared to someone who was not involved in the criminal justice system.³

Overwhelmingly, people who are charged with and convicted of crimes do not have the financial resources to pay for anything beyond their basic needs. Yet, they are still charged huge amounts of fees related to their system involvement in North Dakota, including fees for the cost of their defense counsel, court costs, supervision fees, and other fees.

Importantly, these criminal justice fees are distinct from fines. **Fines are intended as a form of punishment. On the other hand, fees are not intended to serve as punishment and are only intended to generate revenue for the government.** Criminal justice fees are unjust in that they operate as a tax, attempting to force those people who are least able to pay to fund the justice system, rather than distributing the financial burden among everyone that the criminal justice system serves.

While North Dakota is not alone in charging fees to people in the criminal justice system, a rapidly growing number of states are recognizing the harms inflicted by such fees and have begun to eliminate them. In recent years:

- Three states have eliminated fees related to public defenders or appointed counsel, joining the seven other states that already do not charge such fees.
- Five states have eliminated some court costs and assessments.
- Six states have eliminated fees related to probation and/or parole supervision.
- Nine states have eliminated some types of fees charged to people who are incarcerated, including room and board fees, medical copays and phone call fees.
- At least 24 states have eliminated all or some of the fees assessed against youth and their families in the juvenile justice system.⁴

² Adam Looney, *Work and opportunity before and after incarceration*, The Brookings Institution (2018), available at https://www.brookings.edu/wp-content/uploads/2018/03/es_20180314_looneyincarceration_final.pdf.

³ Terry-Ann Craigie et al., *Conviction, Imprisonment, and Lost Earnings: How Involvement with the Criminal Justice System Deepens Inequality*, The Brennan Center (2020), available at <https://www.brennancenter.org/our-work/research-reports/conviction-imprisonment-and-lost-earnings-how-involvement-criminal>.

⁴ For a list of state and local governments that have eliminated fees, visit the End Justice Fees campaign website, www.endjusticefees.org/reform. For a list of all states that fully or partially eliminated juvenile justice fines and fees, see <https://debtfreejustice.org/our-impact>.

Increasingly, states are recognizing that fees harm public safety and harm families, while being an inefficient and problematic source of funding for the criminal justice system.

Fees are a Barrier to Successful Reentry and Damage Community Safety

After people have been incarcerated or punished by the criminal justice system, they deserve a meaningful second chance to rebuild their lives. When returning citizens are able to gain financial stability, their chances of avoiding rearrest and further criminal justice system contact decreases dramatically – enhancing the safety of the entire community. **However, fees are a widely recognized barrier to successful reentry. They trap people in a perpetual cycle of debt and punishment, making successful reentry exponentially more difficult and increasing recidivism.**⁵

Finding a job after incarceration is particularly challenging. An estimated 3 in 5 formerly incarcerated people are unemployed,⁶ and individuals with a criminal record are only half as likely to get a callback or job offer.⁷ Nationally, only 55% of people have any reported earnings at all in the calendar year following their incarceration.⁸ Of the 55% with earnings, the median income is \$10,990 – i.e., less than \$1,000 per month.⁹ Only 1 in 5 people have jobs in which they make more than \$15,000 in the year following their incarceration.¹⁰

Nonpayment of fees prolongs people's involvement with the criminal justice system, making it impossible to move on. When people do not pay the fines and fees they owe, a warrant may be issued for their arrest, and they may even be incarcerated for nonpayment of fees: a recent study found nearly 1 in 5 people with fines and fees from criminal cases nationwide served some amount of time in jail due to nonpayment.¹¹

⁵ See, e.g., U.S. Dept. of Justice Office of the Associate Attorney General, *Dear Colleague Letter to Courts Regarding Fines and Fees for Youth and Adults* at 3 (Apr. 20, 2023), available at https://www.justice.gov/d9/press-releases/attachments/2023/04/20/doj_fines_and_fees_dear_colleague_letter_final_with_signatures_0.pdf (hereinafter DOJ Dear Colleague Letter).

⁶ Leah Wang & Wanda Bertram, *New data on formerly incarcerated people's employment reveal labor market injustices*, Prison Policy Institute (2022), available at <https://www.prisonpolicy.org/blog/2022/02/08/employment/>.

⁷ Caroline Cohn et al., *The High Cost of a Fresh Start: A State-by-State Analysis of Court Debt as a Bar to Record Clearing*, National Consumer Law Center (2022), available at <https://www.nclc.org/resources/the-high-cost-of-a-fresh-start-a-state-by-state-analysis-of-court-debt-as-a-bar-to-record-clear/>.

⁸ Adam Looney, *Work and opportunity before and after incarceration*, The Brookings Institution (2018), available at https://www.brookings.edu/wp-content/uploads/2018/03/es_20180314_looneyincarceration_final.pdf.

⁹ *Id.*

¹⁰ *Id.*

¹¹ See, e.g., Aravind Boddupalli, *How Fines and Fees Impact Family Well-Being*, Urban Institute-Brookings Institution Tax Policy Center (2024), available at <https://www.taxpolicycenter.org/publications/how-fines-and-fees-impact-family-well-being/full> (hereinafter “*Fines and Fees Impact*”). See also Johann D. Gaebler et al., *Forgotten But Not Gone: A Multi-State Analysis of Modern-Day Debt Imprisonment*, PLoS ONE 18(9): e0290397, available at <https://doi.org/10.1371/journal.pone.0290397>; At What Cost?, *supra* n.1 at 13.

The nonpayment of criminal justice fees can also lead directly to consequences that make getting hired for a job much more difficult – which in turn, is a barrier to them ever paying their fees. For example, not paying fees is a barrier to expungement and record sealing.¹² People may also endure years of court involvement when fees go unpaid, causing them to miss work repeatedly.¹³

Research has shown that higher amounts of fees owed are linked to increases in returning citizens being rearrested for a new offense.¹⁴ Fear of the profound consequences of not paying these fees can lead people to criminal activity to get the money to resolve their debt. A survey of more than 900 people with court debt found nearly two in five people reported engaging in illegal activities for purposes of paying their court debt, with similar results found in a second survey.¹⁵ **Eliminating criminal justice fees would reduce the amount of debt that people owe after criminal justice system involvement, and hence reduce the pressure people feel to pay these fees or suffer the consequences, ultimately improving public safety overall.**

Criminal Justice Fees Burden Entire Families, Not Just People Charged with Crimes

While criminal justice fees are technically assessed against individuals who have been charged with a crime, the costs are inevitably borne by entire households – children, spouses, parents and other dependents. Families are most often the primary source of support for people who are reentering communities after incarceration, and those families are also the ones footing the bill for outstanding fees while their loved one tries to reestablish their life and find stable employment. One study across 14 states found that in more than 3 in 5 cases, family members were the ones primarily responsible for paying what the fees of their incarcerated loved one, and the majority of families reported they could not afford what was owed.¹⁶ Of the family members responsible for paying, more than 4 in 5 were women.¹⁷

¹² Caroline Cohn et al., *The High Cost of a Fresh Start: A State-by-State Analysis of Court Debt as a Bar to Record Clearing*, Nat'l Consumer Law Ctr (2022), available at <https://www.nclc.org/resources/the-high-cost-of-a-fresh-start-a-state-by-state-analysis-of-court-debt-as-a-bar-to-record-clear/>.

¹³ *At What Cost?*, supra n. 1 at 13.

¹⁴ Michael Ostermann et al., *Reframing the debate on legal financial obligations and crime: How accruing monetary sanctions impacts recidivism*, *Criminology*, Vol. 62, Issue 2, 331-363 (May 2024) DOI: 10.1111/1745-9125.12375; Tyler Giles, *The Government Revenue, Recidivism and Financial Health Effects of Criminal Fines and Fees*, Working Paper, available at <https://sites.google.com/view/tylertgiles/research?authuser=0>.

¹⁵ Alabama Appleseed et al., *Under Pressure: How fines and fees hurt people, undermine public safety, and drive Alabama's racial wealth divide* (2018) available at <https://www.alabamaappleseed.org/underpressure>. See also Fines and Fees Justice Center, *The Impact of New Mexico's Fines and Fees: Interim Survey Results* (2023), available at https://finesandfeesjusticecenter.org/content/uploads/2023/01/New-Mexico-Survey-DIGITAL_2023.pdf.

¹⁶ Saneta deVuono-powell et al., *Who Pays? The True Cost of Incarceration on Families* at 13-14, Ella Baker Center (2015), available at <https://ellabakercenter.org/wp-content/uploads/2022/09/Who-Pays-exec-summary.pdf>.

¹⁷ *Id.*

Families regularly forgo basic necessities, like food, rent, and medical care, to pay fees owed to the justice system, fearing the consequences of nonpayment, like arrest and reincarceration of their loved one.¹⁸ A 2023 study by the Fines and Fees Justice Center and the Wilson Center for Science and the Law at Duke University found that 1 in 3 adults in the U.S. had fine or fee debt in the previous 10 years.¹⁹ Of those with debt, more than 1 in 3 had challenges obtaining food as a result, and more than 1 in 4 reported the debt causing hardships related to housing.²⁰ **Another recent study looked at families owing court and incarceration-related fees, and the financial devastation was even more profound: 57% of families owing fees experienced food insecurity and 29% reported difficulty paying housing costs** (compared to 25% and 8% of families who did not owe fines and fees).²¹ Elimination of criminal justice fees would provide immediate financial relief to families, putting money back into their budgets to meet the essential needs of everyone in the household, including food, housing and healthcare.

Criminal Justice Fees Assessed are an Ineffective, Unreliable Way to Fund the Justice System

Collection rates of criminal justice fees are very low given that these fees are assessed against people who do not have the financial resources to pay them. Only a fraction of what is assessed is ever collected.²² For example, the collection rate of the supervision fees that would be eliminated by H.B. 1417 is only 25%.²³ While collection rates vary based on the type of fees and the jurisdiction, studies from across the country have documented dismal collection rates.²⁴ Nationally, there is more than \$27 billion in unpaid fines and fees outstanding.²⁵ With so many fees going uncollected, the amount collected from criminal justice fees is a tiny drop in the bucket of state revenue and only a fraction of the costs of the justice system. This revenue stream is also unreliable, ebbing and flowing based on external factors, and dependent upon crimes being committed to generate revenue.

¹⁸ *Id.*

¹⁹ Fines and Fees Justice Center & Wilson Center for Science and Justice at Duke Law, *Debt Sentence: How Fines And Fees Hurt Working Families* (2023), available at <https://finesandfeesjusticecenter.org/articles/debt-sentence-how-fines-and-fees-hurt-working-families/>.

²⁰ *Id.*

²¹ *Fines and Fees Impact*, *supra* n. 11.

²² See, e.g., Matthew Menendez et al., *The Steep Costs of Criminal Justice Fees and Fines*, The Brennan Center (2019), available at brennancenter.org/sites/default/files/2019-11/2019_10_Fees%26Fines_Final5.pdf (hereinafter “Steep Costs”); Lauren-Brooke Eisen, *Paying for Your Time: How Charging Inmates Fees Behind Bars May Violate the Excessive Fines Clause*, Brennan Center (Jul. 31, 2024), available at <https://www.brennancenter.org/our-work/research-reports/paying-your-time-how-charging-inmates-fees-behind-bars-may-violate>.

²³ Fiscal Note to House Bill No. 1417, LC# 25,1150.02000, Feb. 11, 2025 (“DOCR bills approximately \$6 million in supervision fees per biennium with a collection rate of around 25% or \$1,500,000.”).

²⁴ See, e.g., *Steep Costs*, *supra* n. 22; Paige Wanner et al., *Legal Financial Obligations in Washington State: Final Report*, Washington Institute for Public Policy (December 2022).

²⁵ Brianna Hammons, *Tip of the Iceberg: How Much Criminal Justice Debt does the U.S. Really Have?* Fines and Fees Justice Center, 5 (Apr. 2021), available at <https://finesandfeesjusticecenter.org/articles/tip-of-the-iceberg-how-much-criminal-justice-debt-does-the-u-s-really-have/>.

Additionally, there are enormous costs associated with the collection of fees charged in the criminal justice system. **One study showed that on average it costs 121 times more to collect one dollar of criminal justice fees than it does to collect one dollar of tax revenue.**²⁶ In counties across Texas, New Mexico and Florida, more than 40% of each dollar collected went towards collection costs, and in some cases, counties actually spent more to collect the fees than they were raising in revenue.²⁷ In another study in Washington State, the state recouped less than 30% of every dollar spent on collections.²⁸

Reliance on fee revenue may misdirect law enforcement and court resources away from true safety concerns, instead forcing them to chase uncollectable debts. **Research shows that every 1% increase in revenue from fines and fees corresponds with a 6% decrease in the violent crime clearance rate and an 8% decrease in the property crime clearance rate.**²⁹ **Police resources are limited and focusing them on fee collection puts public safety at risk.** Revenue generation also generates greater distrust of law enforcement within communities, making people less likely to report crime and cooperate with police.³⁰

In short, the current framework of levying unaffordable fees on people least able to afford them is failing. The criminal justice system is an essential government service that works to ensure that people follow the law and are held accountable when they do not. Attempting to transfer the costs of the system to the people least able to afford it through fees puts the effectiveness and efficiency of this critically important system at risk.

The Solution: H.B. 1417 Eliminates Harmful Fees

The assessment of criminal justice fees, including supervision fees and counsel fees, is a misguided attempt to transfer the costs of the criminal justice system to those least able to afford those costs. People who are returning to their families and communities after incarceration and system involvement are saddled with enormous debt that is a major barrier to their successful reentry. **H.B. 1417 would eliminate certain criminal justice fees, thereby improving reentry outcomes and the safety of entire communities, and providing immediate relief to families struggling to meet their basic needs.** It would also require a study of fines and fees assessed in the system, thereby providing greater transparency into the fines and fees assessed and the impact that they are having on North Dakotans.

²⁶ *Steep Costs*, *supra* n. 22.

²⁷ *Id.*

²⁸ Wanner, *supra* n. 24.

²⁹ Rebecca Goldstein et al., *Exploitative Revenues, Law Enforcement, and the Quality of Government Services*, Urban Affairs Review (Aug. 2018), available at https://www.law.nyu.edu/sites/default/files/upload_documents/YOU_policing.pdf.

³⁰ See, e.g., U.S. Dep't of Justice, *Investigation of the Ferguson Police Department*, March 4, 2015, 1-2, available at https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf.

We appreciate the Committee's attention to this critical issue and urge you to support H.B. 1417. Do not hesitate to contact me with any follow up questions or requests for additional information.

Respectfully submitted,

Mary Mergler
Fines & Fees Justice Center
mmergler@ffjc.us
(703) 919-3866

About the Fines & Fees Justice Center

The Fines and Fees Justice Center is a national hub for information, advocacy, and collaboration for the reform of fines and fees. Our mission is to eliminate fees in the justice system, ensure that fines are equitably imposed, and end abusive collection practices. Fines and fees in the justice system hurt millions of Americans – entrenching poverty, exacerbating racial disparities, diminishing trust in our courts and police, and trapping people in perpetual cycles of punishment. FFJC spearheads the bipartisan End Justice Fees coalition, which supports the elimination of fees that are charged in the justice system. These fees operate as a regressive tax, forcing those least able to pay to fund the justice system rather than evenly distributing the burden among everyone that it serves. Learn more about our work at www.finesandfeesjusticecenter.org and www.endjusticefees.org.

HB 1417

Hearing date: March 19, 2025

Senate Judiciary Committee 2025 ND Legislature

Chairperson Diane Larson
Committee Members

From: Rozanna C Larson
Ward County State's Attorney

RE: House Bill 1305

Chairperson Larson and Members of the Committee,
This is my written testimony in favor of House Bill 1225 and ask the committee submits a DO PASS vote. I am the State's Attorney for Ward County and have been a prosecutor for 27 years.

This is my written testimony OPPOSING HB 1417. I am the State's Attorney for Ward County and have been a prosecutor for 27 years.

HB 1417 is part of a group of bills created to control the population of offenders, which is remanded to the custody of DOCR. I am not unsympathetic to the demands that are put on DOCR, both with the rate of incarceration and the number of offenders placed on supervised probation. For as long as I have been a prosecutor, prison/jail space has been an issue. Throughout the years, during the interim, legislature has had studies and committees to address the issues relating to inmate population. These studies are related to recidivism, criminology, and risk assessments etc. One of the bigger studies, during my tenure as a prosecutor, was with Justice Reinvestment Initiative. (hereinafter (JRI)). I was part of this committee. This testimony is not aimed at undoing or criticizing the efforts made by the JRI study.

History of legislation addressing incarceration issues

Due to the recommendations of the JRI were a number of sentencing changes. The focus of these changes was aimed at addressing the prison population. The JRI specifically identified addiction and mental health issues to be a contributing factor to recidivism and criminology. As a result of this "insight", in 2017 changes were made to NDCC 19-03.1-23 and other controlled substance statutes. These changes included reducing the level of offense for drug dealers (NDCC 19-03.1-23) from class A felony to Class B felony, for substances other than marijuana. First offense possession of drugs and paraphernalia for controlled substances, other than marijuana, was reduced to a Class A misdemeanor, subsequent offenses remained a Class C felony. In 2019 legislature went further and eliminated all mandatory sentences for drug dealers.

In addition to amending NDCC 19-03.1-23 as part of the reform recommendations by JRI, amendments were made to NDCC 12.1-32-07, the statute that HB 1417 seeks to change in a significant manner. In 2017 legislation amended NDCC 12.1-32-07 to reduce the number of

years an offender could be placed on supervised probation. Apart from certain specific types of violent offenders, or offenders identified in 12.1-32-15 (sex offenders), the longest period of time a person can be initially placed on probation for a felony offense was reduced from 5 years to 3 years. There was also legislation that added the authority, as an intermediate measure, to DOCR probation officer to sanction an offender up to 30 days incarceration in lieu of filing a petition to revoke probation. (I'm not certain this intermediate measure has been used).

Another change made in 2017, based upon recommendation of the JRI, was Presumptive Probation, NDCC 12.1-32-07.4. The primary purpose of presumptive probation was to reduce the rate of incarceration. Apart from some specific offenses, and specific "aggravating factors" offenders charged with a Class A misdemeanor or Class C felony presumptively receive probation, no incarceration. In 2019 class C felony aggravated assault was eliminated from 12.1-32-09.1 (85% rule) making the offense a presumptive probation offense.

As stated, this purpose of this testimony is not to undo the efforts that have been made to address the rate of incarceration or opportunities created to assist offenders to avoid felony convictions and address underlying issues or causes of their criminal behavior.

However, I will point out that despite these efforts, and despite the opportunities created, crime does not stop, the rate or demand on incarceration may have been delayed, but the need continues. This is clearly evidenced by the number of counties that have invested millions of dollars expanding local jails. Williams, McKenzie, Southwest Correctional Center, Burleigh Morton Detention Center, Mountrail, Ward, Grand Forks and Cass Counties have all expended the funds to expand and provide additional incarceration space. This was done to provide for the safety of the respective communities, the demand for incarceration, and the lack of space at DOCR.

Opposition to 1417

The population of these local correctional centers has been growing exponentially just as the population at DOCR. The population includes pretrial inmates as well as those serving a sentence. All the people currently incarcerated are there based upon the authority and discretion of a Judge. Judges have statutory authority, discretion and obligation to ensure the safety of the community. Judges make decisions regarding bond conditions, (pretrial orders) and sentences based upon specific facts of a case, plea agreements, recommendations from prosecutors, and arguments made. The Judges, prosecutor and defense counsel are the ones that know each of the offenders, the specifics of each case and any special considerations to be made for defendants at sentencing, including probation conditions. HB 1417 aims to take away that discretion when it comes to probation conditions and revocations.

The purpose of probation is to hold offenders accountable and to have supervision to ensure safety of the community and that the court's orders are followed. The conditions of probation are ordered by the Court, as provided for by statute. Keep in mind there are a lot of times offenders are repeat offenders. It is also not uncommon for an offender to be on probation for more than one file. In fact it is common that someone can be on probation for two or 3 files.

HB 1417 creates “graduated” sanctions for violations of probation (NDCC 12.1-32-07). It also adds a definition for “technical violations” of probation. HB 1417 takes away the discretion of the Court and prosecutor when it comes to probation revocations. The practical result of HB 1417 is that for many probation violators, they will NEVER serve the balance of the original sentence. This is due to the fact most of violations of probation would be deemed “technical violations.” -- ie: Failure to follow the Court’s order.

The reasons for opposing HB 1417 are much the same as I stated in my testimony against HB 1425. It comes down to truth in reporting by DOCR. Currently DOCR has complete discretion when deciding when to report violations to the Court and State’s Attorneys (ie: file a petition to revoke). What DOCR does not have currently is discretion in determining the conditions of probation, or what the consequences are if there is a petition to revoke. (Section 4 sub. 2) Currently that determination is at the discretion of the Court.

HB 1417 distinguishes between “violations” and “technical violations.” HB 1417 mandates the consequences for “first” “second” etc. violation. HB 1417 makes nearly all violations of probation “technical” violations. The exceptions are 1) an arrest or summons (ie: new crime), 2) criminal offense 3) violation of a protection order or an order prohibiting contact and 4) absconding. I would point out, in regard to “absconding” (failure to report), it is not unusual for this to not be immediately reported, or for a petition to revoke not be filed for several months. Technical violations are everything else. Failed drug tests, failure to obtain evaluations, failure to engage in services or complete them etc. All things ordered to assist the offender in addressing addiction and/or mental health issues.

Here is the issue. DOCR already has unbridled discretion, when a probationer has technical violation, they are not reported immediately. DOCR, with its discretion, may or may not impose “intermediate measures.” This is provided for currently in NDCC 12.1-32-07. The Court and the SAs are not told about these technical violations or intermediate measures being imposed until such time as those measures have failed as well. Most often, when a petition to revoke is filed there have been numerous technical violations. The allegations on the petition often reference back to several months (1-9) of violations. If HB 1417 passes, this petition would be considered the “first” violation. The mandated consequence would be 15 days.

The process for a petition to revoke is this – the petition comes to the SA office, we sign it, it gets filed with the Court. An order to apprehend the offender is issued. When they get picked up they make an appearance before the Master Court Judge. The offender is advised of the petition and the allegations. The offender is advised they have a right to an attorney. Bail Bond is set. The revocation hearing must be held with the sentencing Judge. The hearing is often set the next month. Assuming there are no continuances (which often occurs), a hearing on the petition is likely held one month to 3 months after the offender makes an “initial appearance” on the petition and gets an attorney appointed.

My point being for the “first” violation/petition, it is not uncommon for the offender to have already been on probation for over a year. The MAXIMUM time a defendant can be on probation is 3 years. A FOURTH PETITION will never be filed, as the probation period will have run. HB 1417 essentially is designed so that probationers with “technical violations” will

never be sentenced back to DOCR. Please see attached Petition for Revocation on a defendant that just appeared in court. His revocation hearing will not be for another 5 weeks. Please take particular note of when he was sentenced, and when he first violated his conditions of probation. Specifically, the first allegation was “failure to report” (absconding). Yet there was no petition to revoke filed at that point, so a warrant could be issued to locate the defendant. There are 14 allegations of violations. This is the FIRST petition. This is not a “outlier” this is a typical petition. Another point of interest with this specific defendant, he is on probation for three files in Ward County. He was also on probation in Burleigh County. The only reason he made his appearance in Ward County, just yesterday (March 17) is because he has been sentenced to DORC on a new charge of Burglary. The defendant has now filed a detainer so he can have his probation revoked and serve his sentences concurrently with the new sentence. Please note all the technical violations, new crimes, and absconding that has occurred. This is DOCR supervision. This bill unleashes more authority with little to no oversight. DOCR does not answer to the public, the local prosecutor does. It is the local prosecutor that has to explain to victim’s of crimes why the offender has not had their probation revoked the FIRST time they violate. (or the second, third....).

I would also point out, on “first” petitions to revoke probation it is very seldom the offender will actually be sentenced to DOCR. This is due to the discretion of the Court, and the recommendations of the prosecutor and defense counsel. This is especially true for “technical violations.” It is not unusual for the Court to order (again) offenders to obtain addiction evaluations, engage in services etc. as a bond condition, before the revocation hearing. If the offender has begun services or completed them, it is not unusual for the petition to be dismissed or the offender to be placed back on supervision without any further incarceration.

HB 1417 calls for “local sentences.” This puts an additional burden on local jails that are already full.

HB 1417 Section 4, sub 2 takes the discretion of determining the conditions of probation away from the Court’s discretion and places it with DOCR. DOCR will then do a “risk assessment.” A couple (probably more) of things are wrong with this.

FIRST, this will delay sentencing and cause further hearings and a burden on the Courts’ already packed docket. Change of plea can occur at any time. Defendants are not required to give notice of intent to change their plea. Sentencings often occur simultaneously to the change of plea. Sentences include probation conditions. Case law, (Supreme Court) and statute explicitly states that probation conditions must be read in court to the defendant (or waived). The defendant must sign those conditions before leaving court at sentencing. As proposed in HB 1417, the “assessment” would have to be completed before sentencing, or the “conditions” they determine to be appropriate could be found to be not enforceable.

SECONDLY. I have a real issue with DOCR making this determination based on a “risk assessment” they created. Currently they use this risk assessment tool for pretrial services. The defendants are then put into three categories, “low, moderate, or high” . When they are low and moderate, often that only requires the defendants to “call in.” There is no face to face, no weekly check-ins with drug testing, no home visits, no searches etc. So once again there is already a

built-in problem that those on probation with low/moderate risk rating may be hiding violations because DOCR would not actually be supervising defendants in a manner the public assumes is being done.

HB 1417 gives DOCR complete authority in managing defendants and determining what is a violation, technical violation and WHEN (and IF) those violations ever get reported to the Court and the SAs. It is the SAs and the Court that hear from the public and victims of crime when offenders are not being held responsible and accountable. It is the SAs that must answer the victims' questions and concerns when they don't get restitution that is ordered or see the offender out on the streets. One example of DOCRs failure to report violations was just brought to my attention. There was a defendant sentenced for Possession with Intent to Deliver (meth) and placed on probation in December 2023. In January 2025 he was arrested again for Delivery of Fentanyl, Possession with Intent to Deliver and Tampering with evidence. While reviewing the file for discovery the ASA contacted this probation officer. The ASA was told by the officer this defendant has been doing "horribly" on probation. The officer told the ASA that the officer has had to "chase him down" to have contact with him. (sounds like absconding). The ASA also learned, based on the evidence in this case it would appear he has been dealing drug the entire time while he was on probation. Yet, despite the officer admitting the supervision has been "horrible" there has been no notice to us as prosecutors or a petition filed to revoke his probation.

Finally, regarding "new crimes." In this jurisdiction our Courts will not revoke probation if the allegations are "only" new crimes committed, until such time as the "new crime" has been resolved. (ie: found guilty or plead guilty) This is due to a Supreme Court decision stating the "preferred procedure" is to allow the new offenses to be resolved so the defendant's "right to remain silent" is not violated at a revocation hearing. I don't know what the practice is in other districts. The practical result is the offender will be placed on probation on the new offense, the former probation will be closed.

I would appreciate a DO NOT PASS vote to HB 1417 Giving DOCR complete control, without accountability or transparency in reporting all violations does not create safer communities. Currently there is no requirement for DOCR to report violations.

STATE OF NORTH DAKOTA
COUNTY OF WARD

)
) ss.

IN DISTRICT COURT
NORTH CENTRAL JUDICIAL DISTRICT

State of North Dakota,

Plaintiff

vs.

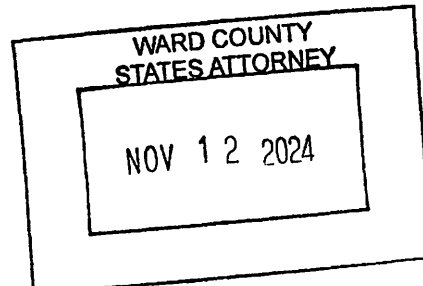
Brandon Lee Decoteau,

Defendant

)
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) ss.
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Criminal No. 51-2023-CR-02021
SA File No.

PETITION FOR
REVOCATION OF PROBATION



TO: THE HONORABLE Richard L. Hagar, Judge of the District Court, North Central Judicial District.

[1] That on the 16th day of February, 2024, the above named Defendant was convicted of the charge(s): Burglary - Class C Felony.

The state of North Dakota, by Dan Donlin petitions the Court as follows:

[2] To find the Defendant in violation of the conditions of the Defendant's probation and rule accordingly, which may include the revocation of the Defendant's probation.

[3] The Defendant has violated the following conditions of the Defendant's probation:

Allegation #1: The Defendant has violated Condition #15 of the Appendix A in that the Defendant failed to report to his Probation Officer as directed. Specifically, the Defendant did not appear for a scheduled office visit on or about April 15, 2024. Evidence of this is officer knowledge and DOCR documentation.

Allegation #2: The Defendant has violated Condition #12 of the Appendix A in that the Defendant used a controlled substance(s), specifically Defendant tested positive for Meth and admitted to using Fentanyl at his Evaluation Intake at Heartview on or about March 27, 2024. Evidence of this is a Heartview email and DOCR documentation.

Allegation #3: The Defendant has violated Condition #15 of the Appendix A in that the Defendant failed to report to his Probation Officer as directed. Specifically, the Defendant did not call his PO on or about April 17, 2024 to schedule an office visit as he was instructed to on or about April 16, 2024. Evidence of this is officer knowledge and DOCR documentation.

E-Filed 11/15/24

E-Mailed _____

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Allegation #4: The Defendant has violated Condition #12 of the Appendix A in that on or about May 2, 2024, the Defendant admitted using a controlled substance(s). Specifically, Defendant admitted to using Methamphetamine “about five (5) days ago, smoked a little” and admitted to using Marijuana “about three (3) days ago, smoked a couple joints.” The Defendant admitted to “using Marijuana daily, smoking a couple joints 2-3 times/day.” Evidence of this is Officer knowledge and DOCR documentation.

Allegation #5: The Defendant has violated Condition #17 of the Appendix A in that the Defendant failed to be truthful with his Probation Officer. Specifically, on or about May 2, 2024, the Defendant told his PO he “got a fulltime job about 3-4 days ago at Marlins as a cook.” On or about June 21, 2024 PO called Marlins, spoke with an Assistant Manager who advised the Defendant is not working there and has never worked there. Evidence of this is officer knowledge and DOCR documentation.

Allegation #6: The Defendant has violated Condition #21 of the Appendix A in that the Defendant failed to follow through and complete recommended addiction treatment. Specifically, the Defendant was unsuccessfully discharged from Heartview, on or about June 13, 2024, “due to lack of attendance and non-compliance with program expectation.” Evidence of this is Heartview Discharge Letter, officer knowledge and DOCR documentation.

Allegation #7: The Defendant has violated Condition #15 of the Appendix A in that the Defendant failed to report to his Probation Officer as directed. Specifically, the Defendant did not appear for a scheduled office visit on or about July 3, 2024. Evidence of this is officer knowledge and DOCR documentation.

Allegation #8: The Defendant has violated Condition #17 of the Appendix A in that the Defendant failed to report changes of his address as directed. Specifically, the Defendant did not inform his PO of changes to his address, saying he was “avoiding you because we lost our trailer in a fire that someone else started but they're trying to blame me, I'm sick, has had no home since about three (3) weeks ago, been staying here and there and at hotels when I have the money but has been staying in my car mostly.” Evidence of this is officer knowledge and DOCR documentation.

Allegation #9: The Defendant has violated Condition #1 of the Appendix A in that the Defendant pled guilty to Refusing to Halt (MB) in Mandan Municipal Court on or about July 31, 2024; the offense occurred on or about June 22, 2024. Evidence of this is in the Complaint and Judgment documents for MA-2024-CR-00251, officer knowledge and DOCR documentation.

Allegation #10: The Defendant has violated Condition #1 of the Appendix A in that the Defendant pled guilty to Driving Under Suspension (MB) in Bismarck Municipal Court on or about July 31, 2024; the offense occurred on or about May 30, 2024. Evidence of this is in the Complaint and Judgment documents for BI-2024-CR-02100, officer knowledge and DOCR documentation.

Allegation #11: The Defendant has violated Condition #15 of the Appendix A in that the Defendant failed to report to his Probation Officer as directed. Specifically, the Defendant, on or about August 7, 2024, called to reschedule his scheduled office visit to August 15, 2024. The Defendant failed to show for the visit, but texted his PO an hour and twenty minutes after the scheduled meeting that he was in the hospital ER. On or about August 18, 2024 PO texted the Defendant to call and schedule an appointment for the following week; Defendant's phone number was no longer working. Evidence of this is officer knowledge and DOCR documentation.

Allegation #12: The Defendant has violated Condition #1 of the Appendix A in that the Defendant pled guilty to Driving Under Suspension (MB) in Bismarck Municipal Court on or about October 4, 2024; the offense occurred on or about August 11, 2024. Evidence of this is in the Complaint and Judgment documents for BI-2024-CR-03141, officer knowledge and DOCR documentation.

Allegation #13: The Defendant has violated Condition #1 of the Appendix A in that the Defendant pled guilty to Driving under suspension-4th or subsequent off in 5yrs (MA) in Morton County District Court on or about October 4, 2024; the offense occurred on or about June 7, 2024. Evidence of this is in the Complaint and Judgment documents for 30-2024-CR-00792, officer knowledge and DOCR documentation.

Allegation #14: The Defendant has violated Condition #15 of the Appendix A in that the Defendant failed to report to his Probation Officer as directed. Specifically, the Defendant was told by his PO on or about October 4, 2024 to contact him upon his release from jail to schedule an appointment by the end of next week, October 11, 2024. The Defendant was released from jail on or about October 8, 2024 and as of the date of filing this petition, the Defendant has not contacted his PO, nor the P&P Office to schedule an appointment. Evidence of this is officer knowledge and DOCR documentation.

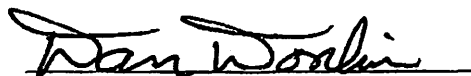
[4] To impose any sentence authorized by law.

[5] That the source of your Petitioner's information and grounds for your Petitioner's belief are based upon the following:

Officer's personal knowledge, court records and DOCR documentation.

[6] WHEREFORE, your Petitioner prays that the Court order any Sheriff or Constable of this State to apprehend the Defendant and to bring the Defendant before the Court to show cause why the

probation herein should not be revoked, the Defendant sentenced and for such other remedy the Court deems proper.

A handwritten signature in black ink, appearing to read "Dan Donlin", written over a horizontal line.

PETITIONER

Dan Donlin

601 Channel Dr.

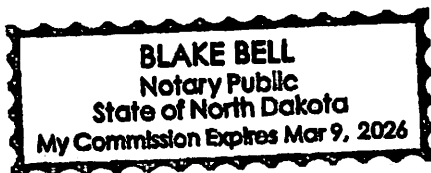
Bismarck, ND 58504

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF WARD)

[7] Dan Donlin, being duly sworn deposes and says that he is the Petitioner herein; that he has read the foregoing Petition and knows the contents thereof; that the same is true of his knowledge except as to the matters there in stated to be alleged upon information and belief; and that as to those matters he believes it to be true.

Dan Donlin
PETITIONER

Subscribed and sworn to before me this 8th day of November, 2024.



[Signature]
NOTARY PUBLIC
Burleigh County, ND

The undersigned prosecuting attorney concurs with the foregoing petition.

11/14/24

Breezy Schmidt
Assistant Ward County States Attorney 07035
PO Box 5005
Minot, ND 58702
701-857-6480
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Breezy Schmidt

Kathleen Atkinson, OSB
701.426.8747

Wednesday, March 18, 2025
HB 1417
Senate Judiciary Committee

Madam Chair and Members of the Senate Judiciary Committee,
Thank you for the opportunity to speak today.

My name is Sister Kathleen Atkinson. I serve as the director of *Ministry on the Margins* and have been part of the ND Reentry Study Work Group. I speak in favor of HB 1417 because it addresses systemic structures that jeopardize and demoralize a person trying to successfully navigate reentry from prison. In particular, I would like to address the financial burdens that significantly impact the poor.

I want to tell you about Art (Real person. Fabricated name). He was a leader and mentor while serving in the Marine Corp and he showed those skills while in prison. Art worked at a prison job and saved his money for release. At the time of release, Art had over a thousand dollars saved up; far more money than most inmates. He acquired cheap housing and found work.

All looked successful, though challenging, and then I saw defeat enter Art's eyes. He was presented with fees from his trial and court expenses. He began to pay them off but could not keep up and was threatened with jail time for nonpayment. A monthly supervision fee of \$55 does not seem like much – for me it's probably just my coffee money - but for someone working minimum wage, that is an entire 8-hour day. Electronic monitoring added cost. Required anger management classes added cost. Not only were his original savings quickly depleted, but various fees were taking a major percentage of his salary. Required classes and meetings during the workday were cutting into available work hours, frustrating both Art and his employer.

As he went deeper into debt, he began to question if he would ever become free; Art fell into remembrances of prison success and was tempted to just let go and slip back into that world. But that is not the purpose of our Department of Corrections and Rehabilitation. The mission of the DOCR is to be about *transforming lives, influencing change, and strengthening community*. It is to expect change and identify barriers to successful reentry – whether they come from the individual himself or from the system established to help him. When fees and costs like those identified in HB 1417 become a burden to a justice-involved individual, it not only sets them up for failure. It impacts a family relying on his or her income. It increases recidivism...not for a new crime but for loss of a pathway out of bondage.

And it creates one more person caught in a cycle which is costing us far too much in finances and in human life.

HB 1417 offers one way to break that cycle.

Engrossed HB 1417
69th Legislative Assembly
Senate Judiciary Committee
March 19, 2025
Testimony of Travis W. Finck, Executive Director, NDCLCI

Madam Chair Larson, Members of the Senate Judiciary Committee, my name is Travis Finck and I am the Executive Director for the North Dakota Commission on Legal Counsel for Indigents. The Commission is the state agency responsible for the delivery of indigent defense services in North Dakota. I rise today on behalf of the Commission to provide testimony in support of House Bill 1417.

The Commission has followed the efforts of the interim legislative committee working on these important issues. We have had an opportunity to collaborate with other stakeholders in the criminal legal system. This bill and others you will hear related to the interim study are bills that are researched to North Dakota data and are methods that have shown positive results in addressing issues North Dakota is facing. Additionally, this bill is a result of discussion and collaboration.

The Commission supports efforts of the interim committee and now the 69th Legislative Assembly to work towards implementing smart reforms to address issues in our criminal legal system. Specifically, the Commission would like to speak as to the fees being eliminated in this bill in section 5 and section 6 of the bill. In Section 5, HB 1417 seeks to eliminate NDCC 12.1-32-08 which allows a court to order a defendant to reimburse the cost of indigent defense attorney being provided. The Right to an Attorney is a right guaranteed to all in the Sixth Amendment of the United States Constitution. The right to counsel for indigent persons has been a basic tenant of constitutional law since 1963. However, 42 states, including North Dakota, still have an option to order you to pay for exercising your constitutional right.ⁱ This reimbursement is not collected by our agency nor is it used to fund our agency, rather, the collections from this section go back into the general fund. The Commission feels it is appropriate to eliminate these fees.

Section 6 of the bill deals with another fee on exercising your constitutional right to counsel, and that is a fee of \$35 simply for apply for a public defender. This fee is collected

by the Court and then deposited in our special fund. Collections on this fee equate to \$310,000 for the biennium. The Commission supports the amendment to eliminate the fee, leave the special fund in place, and replace ongoing collections of \$310,000 per biennium with general fund dollars. Currently, only 18 states have upfront fees for public defense.ⁱⁱ These fees serve as potential barriers to a constitutionally guaranteed service the State of North Dakota is required to provide. Furthermore, the American Bar Association in its 10 Principles of a Public Defense Delivery System, Principle 5 provides “Public defense should be provided at no cost to any person who is financially unable to obtain adequate representation without substantial burden or undue hardship. Persons should be screened for eligibility in a manner that ensures information provided remains confidential. The process of applying for public defense services should not be complicated or burdensome, and persons in custody or receiving public assistance should be deemed eligible for public defense services absent contrary evidence. Jurisdictions should not charge an application fee for public defense services, nor should persons who qualify for public defense services be required to contribute to or reimburse defense services.”

For the reasons states herein, the Commission requests a DO PASS recommendation on Engrossed House Bill 1417.

Respectfully Submitted:



Travis W. Finck
Executive Director, NDCLCI

ⁱ <https://www.nlada.org/public-defense-system-fees?dataset=2>

ⁱⁱ Id.

HB 1417
Commissioner Jonathan Holth
Senate Judiciary Committee
Senator Diane Larson, Chair
March 19th, 2025 Peace Garden Room

Good morning, Madam Chair Larson, and members of the Senate Judiciary Committee.

For the record, my name is Jonathan Holth, Commissioner of Recovery and Re-entry for the State of North Dakota. As you are aware, the Armstrong administration supports the package of three bills that came out of the interim study on reentry. I stand before you to share our support of HB 1417, the second bill included in this comprehensive package, which focuses on community supervision consistency and best practices.

Something that we talk about all the time in my line of work is that the road to recovery and reentry **is not linear**. You heard me say in my testimony on 1425 that I've never met someone who has found meaningful recovery alone. Well, I've also never met anyone in meaningful recovery who has the same journey as someone else. No two treatment paths are the same. You may have heard people say that relapse or setbacks are a part of recovery. I am not one that believes that, however, setbacks and mistakes are possible, especially for people on probation and parole who are navigating a list of conditions while juggling other parts of life. What matters most is what happens after the setback – how do we hold someone accountable while simultaneously setting them on the right path towards success? This is something that North Dakota's judges and Parole Board members are confronted with when deciding to revoke probation or parole after someone has violated a condition but has not committed a new crime. HB 1417 offers guidance on how we can use staggered periods of custody as a sanction for a *technical violation* without imposing the remaining balance of the sentence. While these recommendations are not mandatory, they can offer some consistency in our responses to non-criminal misconduct in a way that is more proportionate to the circumstances of the violation and less exhaustive of our prison and jail resources.

HB 1417 also helps us conserve resources and focus more on reentry and recovery by eliminating certain criminal justice fees that are not impacting state or local revenue in a meaningful way or helping people get back on their feet. The reentry experts who participated in the interim study have identified that our state is not benefitting from the \$55 community supervision fee that DOCR imposes, nor from the reimbursement or application fees that our court system can impose on people who are indigent. There are better ways to hold people accountable, and I am confident that HB 1417 will allow our officers to spend more time coaching the people on their caseloads to help them change their behaviors instead of playing the role of a debt collector. In this vein, the legislation also includes a study to evaluate criminal fees on a broader level to help the state identify where we are not getting a return on our investment.

HB 1417 demonstrates smart, responsible policymaking, and like HB 1425, it has been vetted by people who have worked in the spaces of reentry and recovery in North Dakota for many years.

Our administration urges the committee to support a “do pass” recommendation on HB 1417. Thank you for your time and I will stand for questions.

Appendix B – Klemin Response to Opposition Testimony on HB 1417

Community Supervision Sanctions & Incentives

Section 1 amends the law concerning parole violations by adding language directing DOCR to consider graduated sanctions and incentives before issuing a warrant to arrest an individual for a parole violation

Claims: While this section uses the term “considering,” it will become a mandate later in 12.1-32-07. This bill allows DOCR to create graduated sanctions, with sanctions becoming presumptions, eventually becoming mandatory.

- **Response:** There are two aspects of Section 1 that need to be clarified to respond to this concern. The very first part of Section 1 (lines 10-14) requires DOCR to *consider* graduated responses that address the violation behavior in lieu of revocation – so this is a step that happens before the Parole Board revokes parole. This is a practice that DOCR already has in place for people on probation. In part 3 of 12.1-32-07, it is required that a probationer undergo “various agreed-to community constraints” to avoid revocation (unless the court waives the requirement). One of the primary goals of this bill is to promote community supervision consistency, and this provision helps accomplish that by replicating a practice currently used prior to probation revocations and applying it to parole cases. *Note: it may be helpful to offer amending the “graduated sanction” language here, updating it to “intermediate measures” or “various agreed-to community constraints” to match the language that is used in 12.1-32-07, section 3.*

These “graduated sanctions and incentives” are distinct from the tiered sentencing recommendations that are outlined in part 6 (b) of Section 1 (page 2, lines 28-31, and page 3 lines 1-2). The tiered sentencing recommendations provide guidance for how long to detain someone for a technical violation after the Parole Board has made the decision to revoke the parole. The recommended custody terms vary based on the instance of the violation (escalating in severity when misconduct escalates). The custodial terms are not mandatory.

Section 4 of the bill does include a mandatory component, but it applies to DOCR’s pre-revocation practices outlined in part 1 of section 1 (lines 10-14). The mandate is specifically for DOCR to use a “matrix system” when considering graduated sanctions and incentives. Again, this happens before the Parole Board decides to

revoke. The goal of a matrix system is to help ensure that consistent, appropriate responses are used when addressing the conduct of people who are supervised by DOCR (whether it is offering an incentive to someone who has exhibited positive behavior or using a sanction in response to negative behavior).

Claim: “This [bill] makes it mandatory to go through graduated sanctions for parole violations.”

- **Response:** HB 1417 does **not** require the Parole Board to take any specific action on technical violations. Instead, section 1 (part 6(b)) of the bill permits the Board to use incarceration terms that gradually increase in length depending on the severity of the violation. The tiered responses outlined in this bill are guidelines based on the recommendations of organizations like the American Parole and Probation Association, which has pioneered evidence-based practices for responding to technical violations in many jurisdictions with no reduction in public safety.

Claim: Graduated sanctions will result in even less parolees being revoked for violations.

- **Response:** This policy is designed to reduce revocations specifically for technical violations. Data findings from the interim study on Reentry indicated that revocations for technical violations are a driver of prison admissions in North Dakota. Admissions for community supervision violations amounted to a total of a third of prison admissions in 2023 – and technical violations represented nearly three-quarters of parole revocations and two-thirds of probation revocations that same year. This bill provides guidelines for limiting the use of prison and jail stays for violations that are less severe.

Claim: Currently DOCR seldom revokes parole and rarely sends defendants to jail for parole violations.

- **Response:** Data findings from the interim study process revealed that parole revocations are resulting in prison admissions. In 2023, 15% of prison admissions were due to parole violations. Community supervision revocations (probation and parole combined) made up nearly half of all prison admissions in 2023.

Claim: “it basically has to be a fourth petition to revoke if the sentence has to be more than 90 days for probation violations.”

- **Response:** The decision to revoke probation is up to the judge, and the tiered sentencing recommendations do not force a judge to apply a custodial sanction. In North Dakota, use of the word “may” in the Century Code confers a right or a privilege, while use of the word “shall” confers an obligation or duty. This bill says a

court "may" impose the gradual penalties of 15 days for a first technical violation revocation, 30 for a second, 90 for a third, or the remaining sentence for a fourth or subsequent – nothing in the bill creates a new duty or obligation to impose a custodial stay in response to a technical violation.

It is also important to note that this tiered sentencing recommendation is specifically for technical violations. The goal of this policy is to offer escalating penalties as a tool for a judge to use when making the decision to revoke someone who needs to be taught a lesson, but who is not a danger to the community. This can help ensure that our prison and jail resources are being prioritized for the people who are dangerous.

Claim: This places a heavy burden on courts, law enforcement, State's Attorneys and local jails as it will create more docket events, require more revocation petitions, and there will be no way to enforce probation conditions.

- **Response:** This policy notably came from a recommendation made during the interim study on reentry where the courts, law enforcement, State's Attorneys and local jails were represented. The reentry study findings demonstrated that revocations for technical violations are contributing to prison admissions, and already placing a burden by adding to corrections costs. The Work Group agreed that tailoring sanctions to align with the severity of the violation conduct was a smart way to hold people who have violated accountable without exhausting prison and jail resources.

Claim: There is a safety risk because defendants will have no reason to follow parole conditions.

- **Response:** Thirty-four states¹ have implemented caps on sentences for non-criminal community supervision violations in some form, including nearby states like Wyoming² and Nebraska.³ These caps are not an untested theory which could result in decreased public safety – they are the standard, evidence-based practice that a majority of states have adopted in order to control corrections costs and respond effectively to supervision violations.

Claim: [HB 1417] gives DOCR more discretion to create incentives in addition to good time. These sanctions and incentives will weaken probation conditions to effectively not having a penalty for probation violations.

¹ [Limiting Incarceration for Technical Violations of Probation and Parole](#)

² See WY Stat. § 7-13-1803 & § 13-1802

³ See NRS § 29-2266.03 & § 29-2266

- **Response:** The “incentives” contemplated include common best practices such as positive feedback and motivational interviewing – not a substitute or addition to good time. The practice of earning supervision good time – “compliance credits” – are not included in this bill.

Absconding

Claim: The defendant could provide a known address, or a false location, and this would not be defined as absconding because an address was provided. With the limited definition of absconding, most defendants would be able to refuse to report without it being considered absconding. This definition also seems to imply that the defendant “needs to have an appointment to miss an appointment with a probation officer.”

- **Response:** This bill creates a definition of absconding, which did not previously exist in Century Code. The definition importantly includes a “willful” intent to abscond where the supervisee “avoids supervision by making their whereabouts unknown or fails to report to a supervising authority.” The above examples (a false address, refusing to report from a known address) would constitute absconding under the new definition, because they are *intentional* acts by the supervisee.

Additionally, “failing to report to a supervising authority” should adequately cover circumstances where the defendant fails to contact the supervising officer (as mentioned in the oppositional testimony), as well as cases where the supervising officer is actively looking for the individual. The language does not state that absconding is limited to when a scheduled appointment has been missed.

Claim: Allowing DOCR to use a hold and consider intermediate measures for absconding would lead to less revocations for absconding.

- **Response:** This allows DOCR to distinguish between people who are failing to report because they are *willfully* attempting to evade justice, and people who are failing to report because they are experiencing an obstacle to compliance (perhaps a behavioral health issue, for example). Intermediate measures allow officers to respond appropriately to any situation, including with support if necessary – and DOCR retains the right to petition for revocation in cases of willful resistance.

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Technical Violations

Claim: The following circumstances would be considered technical violations ineligible for revocation:

- Sex offender having contact with children
 - A sex offender having an undisclosed phone or computer with access to the internet
 - A probationer refusing to attend treatment (DV, CD, or otherwise)
 - A probationer failing an intermediate measure
 - A 4th offense DUI offender drinking
 - A probationer possessing a dangerous weapon
 - A probationer willfully defrauding a UA
 - A probationer leaving the state without permission
- **Response:** In North Dakota, use of the word “may” in the Century Code confers a right or a privilege, while use of the word “shall” confers an obligation or duty. This bill says a court “may” imposing tiered sentencing in the case of a probation violation – nothing in the bill creates a new duty or obligation to do so. Under HB 1417, the Parole Board or a court could fully revoke supervision for any of the above-referenced examples of concerning violations. This bill does not tie the hands of any sentencing body – just the opposite, it provides more options to deal with a range of violations, from the most serious matters, like those above, to less serious instances of non-criminal behavior that may not justify full revocation.

Risk assessments

Claim: This bill takes away courts’ discretion over sentences and conditions of probation.

- **Response:** This bill adopts a data-driven and evidence-based approach to supervision conditions. Research shows that community supervision conditions which are not tailored to the assessed needs of the defendant increase corrections costs, result in unnecessary prison admissions and can even increase recidivism, as time spent in custody is a criminogenic risk. HB 1417 requires the use of validated risk assessments to determine factors which increase likelihood of success, as well as pose potential obstacles. The language is permissive rather than mandatory – the relevant section says DOCR “may administer a risk assessment for the evaluation of each defendant.” Nothing would prevent the imposition of standard conditions, like refraining from committing new offenses.

Claim: DOCR Risk assessments may not “be case specific by the local level and that work with the defendant’s matters.”

- **Response:** This bill updates the risk assessment definition to ensure that assessments are a “validated, standardized actuarial tool used to identify potential risk factors that increase the likelihood an individual will reoffend and responsivity factors, when addressed, reduce the likelihood an individual will reoffend.” A “validated” risk assessment is one that is responsive to local context and a defendant’s specific needs.

Claim: This takes away State’s Attorneys’ discretion to offer plea agreements involving specific conditions of probation.

- **Response:** Nothing in the bill removes a State’s Attorney’s ability to offer a plea agreement predicated on a specific condition, or a court’s ability to impose such a condition.

Claim: An individual case plan for each defendant will place significant burden on the State’s Attorneys.

- **Response:** State’s Attorneys will continue to be free to propose conditions in any case as they see fit. State’s Attorneys’ offices will not be responsible for creating case plans. In fact, research suggests that conditions which are tailored to an individual’s risk and responsivity factors will lead to reduced recidivism and fewer revocations – resulting in less burden on State’s Attorneys offices.

Claim: Courts rarely revoke on a first petition currently, and rarely revoke if new charges are pending, instead waiting for convictions.

- **Response:** Before the changes in this bill and after, a judge or Parole Board continues to decide the most appropriate response to a technical violation. This bill simply provides those sentencing bodies with additional tools.

Fees

Claim: This bill eradicates the court’s ability to require the defendant to reimburse for costs of indigent defense, and places those costs on the state county and city.

- **Response:** People have a constitutional right to a public defender when charged with a crime if they cannot afford a lawyer, and right now in North Dakota an indigent defendant can be required to reimburse for their representation fees. The American Bar Association's Ten Principles of a Public Defense Delivery System 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." Members of the Reentry Study Work Group who represented many different areas of our state's criminal justice system agreed that removing this fee for indigent people is a logical step for North Dakota.

**TESTIMONY OF REP. LAWRENCE R. KLEMIN
SENATE JUDICIARY 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.

•
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 revenue** 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

03/18/2025



FROM THE DESK OF ADAM MARTIN FOUNDER AND CEO OF F5 PROJECT

Chair Larson and members of the Senate Judiciary Committee,

I am writing to express my support for HB 1417. I see this legislation as a significant advancement in criminal justice and creating a better environment for reentry.

Thank you for taking the time to read my testimony.

Sincerely,

Adam Martin, Founder and CEO of F5 Project



701.210.2491



info@f5project.org



www.f5project.org



1122 1st Ave N
Fargo, ND 58102

Crimes Against Person including Robbery



2025 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee Peace Garden Room, State Capitol

HB 1417
3/25/2025

Relating to parole and probation violations and court fees; to provide for a legislative management study; to provide a penalty; and to provide an appropriation.

10:07 a.m. Chair Larson opened the hearing.

Members present:

Chair Larson, Vice Chairman Paulson, Senators: Castaneda, Cory, Luick, Myrdal, Braunberger.

Discussion Topics:

- Graduated sanctions and incentives
- Technical violations

10:09 a.m. Senator Paulson introduced proposed amendment LC# 25.1150.02001 and submitted testimony #43746.

10:11 a.m. Senator Paulson moved amendment LC# 25.1150.02001.

10:12 a.m. Senator Luick seconded.

Voice Vote - Motion Passed.

10:12 a.m. Senator Luick moved a Do Pass as amended and rerefer to Appropriations committee.

10:12 a.m. Senator Paulson seconded the motion.

Senators	Vote
Senator Diane Larson	Y
Senator Bob Paulson	Y
Senator Ryan Braunberger	Y
Senator Jose L. Castaneda	Y
Senator Claire Cory	Y
Senator Larry Luick	Y
Senator Janne Myrdal	A

Motion Passed 6-0-1.

10:14 a.m. Committee updated Senator Myrdal on HB 1417.

10:15 a.m. Senator Paulson will carry the bill.

Senate Judiciary Committee

HB 1417

3/25/2025

Page 2

10:15 a.m. Chair Larson closed the hearing.

Kendra McCann, Committee Clerk

Sixty-ninth
Legislative Assembly
of North Dakota

**PROPOSED AMENDMENTS TO
FIRST ENGROSSMENT**

VC 3/25/25
10F19

ENGROSSED HOUSE BILL NO. 1417

Introduced by

Representatives Klemin, Stemen, Hanson

Senators Davison, Larson

1 A BILL for an Act to amend and reenact sections 12-59-15 and 12.1-01-04, subdivision b of
2 subsection 3 of section 12.1-22-01, and sections 12.1-32-07, 12.1-32-08, and 29-07-01.1 of the
3 North Dakota Century Code, relating to parole and probation violations and court fees; to
4 provide for a legislative management study; to provide a penalty; and to provide an
5 appropriation.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 **SECTION 1. AMENDMENT.** Section 12-59-15 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **12-59-15. Breach of parole - Hearings - Order of recommitment.**

- 10 1. When it is alleged that a parolee has violated any of the terms or conditions of parole
11 established by the parole board or by the department of corrections and rehabilitation,
12 the director of the department of corrections and rehabilitation may issue a warrant for
13 the arrest of the parolee ~~after considering graduated sanctions and incentives used in~~
14 ~~response to a violation under section 12.1-32-07.~~
- 15 2. Upon issuance of a warrant of arrest for a parole violation, the running of the time
16 period of parole must be suspended until the parole board issues a final order under
17 this section. The parolee is entitled to credit for time spent in physical custody from the
18 time of arrest until the time the parole board issues a final order.
- 19 3. The parolee is entitled to a preliminary hearing, as promptly as is convenient after the
20 arrest and reasonably near the place of the alleged violation or arrest, to determine

whether there is probable cause to find that the parolee violated any of the terms and conditions of parole established by the board or by the department of corrections and rehabilitation.

4. The preliminary hearing must be conducted before the director of the department of corrections and rehabilitation or other hearing officer authorized by the director. The preliminary hearing must be conducted by a disinterested hearing officer not directly involved in the supervision of the parolee or by the person bringing the allegation of a parole violation.
5. If the hearing officer determines there is probable cause to find that the parolee has violated any of the terms and conditions of parole established by the board or by the department of corrections and rehabilitation, the board may redetermine the time remaining in the period of parole to reflect any portion of the period during which the parolee was not under supervision or not in the custody of law enforcement personnel in the state.
6. If the hearing officer determines there is probable cause to find that the parolee has violated any of the terms and conditions of parole established by the board or by the department of corrections and rehabilitation, the parolee must be returned to the physical custody of the department of corrections and rehabilitation, transferred to another correctional facility or the state hospital, or released from actual custody pursuant to such terms and conditions as may be established by the parole board or the department of corrections and rehabilitation, pending a final revocation hearing before the parole board. If the board determines at the final revocation hearing that the parolee has violated any:

a. Any of the terms and conditions of parole established by the board or by the department of corrections and rehabilitation, ~~if the board~~ may order that the parolee be recommitted to the physical custody of the department of corrections and rehabilitation to serve all or part of the remaining time of the sentence that has not been served in custody.

b. A technical violation of parole, as defined in section 12.1-01-04, the board may order the parolee be recommitted to the physical custody of the department of corrections and rehabilitation to serve fifteen days for a first violation, up to thirty

~~days for a second violation, up to ninety days for a third violation, and the full remaining time of the sentence that has not been served in custody for a fourth and subsequent violation.~~

7. At any hearing pursuant to this section a record must be made and the parolee shall have:

- a. Written notice of the purpose of the hearing and the alleged violations.
- b. The opportunity to be heard in person and present witnesses and documentary evidence.
- c. The opportunity to confront and cross-examine adverse witnesses, unless the hearing officer determines that confrontation would create a risk of harm to the witness.
- d. A written statement as to the reasons for the decision.

8. ~~When~~ If the board determines the parolee has absconded, as defined in section 12.1-01-04, from supervision, the board may order the parolee to pay the costs of being returned to the board. Moneys recovered under this subsection must be remitted to the department of corrections and rehabilitation.

SECTION 2. AMENDMENT. Section 12.1-01-04 of the North Dakota Century Code is amended and reenacted as follows:

12.1-01-04. General definitions.

As used in this title, unless a different meaning plainly is required:

1. "Absconded" means when a probationer, parolee, participant in a pretrial services program, or participant in a prosecution-led diversion program willfully avoids supervision by making their whereabouts unknown or fails to report to a supervising authority.
2. "Act" or "action" means a bodily movement, whether voluntary or involuntary.
- 2-3. "Acted", "acts", and "actions" include, where relevant, "omitted to act" and "omissions to act".
- 3-4. "Actor" includes, where relevant, a person guilty of an omission.
- 4-5. "Bodily injury" means any impairment of physical condition, including physical pain.
- 5-6. "Court" means any of the following courts: the supreme court, a district court, and where relevant, a municipal court.

- 1 ~~6-7.~~ "Dangerous weapon" includes any switchblade or gravity knife, machete, scimitar,
2 stiletto, sword, or dagger; any billy, blackjack, sap, bludgeon, cudgel, metal knuckles,
3 or sand club; any slingshot; any bow and arrow, crossbow, or spear; any weapon that
4 will expel, or is readily capable of expelling, a projectile by the action of a spring,
5 compressed air, or compressed gas including any such weapon, loaded or unloaded,
6 commonly referred to as a BB gun, air rifle, or ~~CO₂~~CO₂ gun; and any projector of a
7 bomb or any object containing or capable of producing and emitting any noxious liquid,
8 gas, or substance.
- 9 ~~7-8.~~ "Destructive device" means any explosive, incendiary or poison gas bomb, grenade,
10 mine, rocket, missile, or similar device.
- 11 ~~8-9.~~ "Explosive" means gunpowders, powders used for blasting, all forms of high
12 explosives, blasting materials, fuses (other than electric circuit breakers), detonators
13 and other detonating agents, smokeless powders, and any chemical compounds,
14 mechanical mixture, or other ingredients in such proportions, quantities, or packing
15 that ignition by fire, by friction, by concussion, by percussion, or by detonation of the
16 compound, or material, or any part thereof may cause an explosion.
- 17 ~~9-10.~~ "Firearm" means any weapon that will expel, or is readily capable of expelling, a
18 projectile by the action of an explosive and includes any such weapon, loaded or
19 unloaded, commonly referred to as a pistol, revolver, rifle, gun, machine gun, shotgun,
20 bazooka, or cannon.
- 21 ~~10-11.~~ "Force" means physical action.
- 22 ~~11-12.~~ "Government" means:
23 a. The government of this state or any political subdivision of this state;
24 b. Any agency, subdivision, or department of the state or any political subdivision of
25 the state, including the executive, legislative, and judicial branches;
26 c. Any corporation or other entity established by law to carry on any governmental
27 function; and
28 d. Any commission, corporation, or agency established by statute, compact, or
29 contract between or among governments for the execution of intergovernmental
30 programs.

- 1 ~~42-13.~~ "Governmental function" includes any activity that one or more public servants are
2 legally authorized to undertake on behalf of government.
- 3 ~~43-14.~~ "Harm" means loss, disadvantage, or injury to the person affected, and includes loss,
4 disadvantage, or injury to any other person in whose welfare the person affected is
5 interested.
- 6 ~~44-15.~~ "Included offense" means an offense:
7 a. That is established by proof of the same or less than all the facts required to
8 establish commission of the offense charged;
9 b. That consists of criminal facilitation of or an attempt or solicitation to commit the
10 offense charged; or
11 c. That differed from the offense charged only in that it constitutes a less serious
12 harm or risk of harm to the same person, property, or public interest, or because
13 a lesser degree of culpability suffices to establish its commission.
- 14 ~~45-16.~~ "Includes" should be read as if the phrase "but is not limited to" were also set forth.
- 15 ~~46-17.~~ "Law enforcement officer" or "peace officer" means a public servant authorized by law
16 or by a government agency or branch to enforce the law and to conduct or engage in
17 investigations or prosecutions for violations of law.
- 18 ~~47-18.~~ "Local" means of or pertaining to any political subdivision of the state.
- 19 ~~48-19.~~ "Manifest injustice" means a specific finding by the court that the imposition of
20 sentence is unreasonably harsh or shocking to the conscience of a reasonable
21 individual, with due consideration of the totality of circumstances.
- 22 ~~49-20.~~ "Offense" means conduct for which a term of imprisonment or a fine is authorized by
23 statute after conviction.
- 24 ~~20-21.~~ "Official action" includes a decision, opinion, recommendation, vote, or other exercise
25 of discretion by any government agency.
- 26 ~~21-22.~~ "Official proceeding" means a proceeding heard or which may be heard before any
27 government agency or branch or public servant authorized to take evidence under
28 oath, including any referee, hearing examiner, commissioner, notary, or other person
29 taking testimony or a deposition in connection with any such proceeding.
- 30 ~~22-23.~~ "Omission" means a failure to act.

- 1 ~~23-24.~~ As used in this title and in sections outside this title which define offenses, "person"
2 includes, where relevant, a corporation, limited liability company, partnership,
3 unincorporated association, or other legal entity. When used to designate a party
4 whose property may be the subject of action constituting an offense, the word "person"
5 includes a government that may lawfully own property in this state.
- 6 ~~24-25.~~ "Political subdivision" as used in this title and in any statute outside this title which
7 defines an offense means a county, city, school district, township, and any other local
8 governmental entity created by law.
- 9 ~~25-26.~~ "Possesses" means an individual has:
10 a. Direct physical control of something on or around the individual's person; or
11 b. The power and intention to exercise control over something accessible to but not
12 on or around the individual's person.
- 13 ~~26-27.~~ "Public servant" as used in this title and in any statute outside this title which defines
14 an offense means any officer or employee of government, including law enforcement
15 officers, whether elected or appointed, and any person participating in the
16 performance of a governmental function. The term does not include witnesses.
- 17 ~~27-28.~~ "Responsivity factors" means characteristics of an individual which affect the
18 individual's ability to respond favorably or unfavorably to a treatment goal.
- 19 ~~29.~~ "Risk assessment" means ~~an initial phase with a secondary process approved by the~~
20 ~~department of health and human services for the evaluation of the likelihood a person~~
21 ~~that committed an offense will commit another similar offense~~ a validated, standardized
22 actuarial tool used to identify potential risk factors that increase the likelihood an
23 individual will reoffend and responsivity factors, when addressed, reduce the likelihood
24 an individual will reoffend. The initial phase is an assessment tool that is administered
25 by a trained ~~probation and parole officer~~ corrections professional. A predetermined
26 score on the initial phase initiates the secondary process, approved by the department
27 of health and human services, that includes may include a clinical interview,
28 psychological testing, and verification through collateral information or
29 psychophysiological testing, or both. The department of health and human services
30 shall perform the secondary process of the risk assessment.

1 ~~28-30.~~ "Serious bodily injury" means bodily injury that creates a substantial risk of death or
 2 which causes serious permanent disfigurement, unconsciousness, extreme pain,
 3 permanent loss or impairment of the function of any bodily member or organ, a bone
 4 fracture, or impediment of air flow or blood flow to the brain or lungs.

5 ~~29-31.~~ "Signature" includes any name, mark, or sign written or affixed with intent to
 6 authenticate any instrument or writing.

7 ~~30-32.~~ "Substantial bodily injury" means a substantial temporary disfigurement, loss, or
 8 impairment of the function of any bodily member or organ.

9 ~~31-33.~~ "Technical violation" means a violation of a condition of probation or parole which does
 10 not involve:

11 a. An arrest or a summons issued by a peace officer;

12 b. A criminal offense;

13 c. A violation of a protection order or order prohibiting contact; or

14 d. Absconding.

15 ~~34.~~ "Thing of value" or "thing of pecuniary value" means a thing of value in the form of
 16 money, tangible or intangible property, commercial interests, or anything else the
 17 primary significance of which is economic gain to the recipient.

18 ~~32-35-34.~~ "Tier 1 mental health professional" has the same meaning as provided under
 19 section 25-01-01.

20 **SECTION 3. AMENDMENT.** Subdivision b of subsection 3 of section 12.1-22-01 of the
 21 North Dakota Century Code is amended and reenacted as follows:

22 b. "Dangerous weapon" means a weapon defined in ~~subsection 6 of section~~
 23 12.1-01-04 or a weapon the possession of which under the circumstances
 24 indicates an intent or readiness to inflict serious bodily injury.

25 **SECTION 4. AMENDMENT.** Section 12.1-32-07 of the North Dakota Century Code is
 26 amended and reenacted as follows:

27 **12.1-32-07. Supervision of probationer - Conditions of probation - Revocation.**

28 1. When the court imposes probation upon conviction for a felony offense subject to
 29 section 12.1-32-09.1 or 12.1-32-02.1, a second or subsequent violation of section
 30 12.1-17-07.1, a second or subsequent violation of any domestic violence protection
 31 order, a violation of chapter 12.1-41, a violation of section 14-09-22, or a felony

1 offense under chapter 39-08, the court shall place the defendant under the supervision
2 and management of the department of corrections and rehabilitation. When the court
3 imposes probation upon conviction or order of disposition in all other felony cases, the
4 court may place the defendant under the supervision and management of the
5 department of corrections and rehabilitation. In class A misdemeanor cases, the court
6 may place the defendant under the supervision and management of the department of
7 corrections and rehabilitation or other responsible party. In all other cases, the court
8 may place the defendant under the supervision and management of a community
9 corrections program other than the department of corrections and rehabilitation. A
10 community corrections program means a program for the supervision of a defendant,
11 including monitoring and enforcement of terms and conditions of probation set by the
12 court.

- 13 2. ~~The conditions of probation must be such as the court in its discretion deems~~
14 ~~reasonably necessary to ensure that the defendant will lead a law-abiding life or to~~
15 ~~assist the defendant to do so. The court shall provide as an explicit condition of every~~
16 ~~probation that the defendant not commit another offense during the period for which~~
17 ~~the probation remains subject to revocation. The court shall order supervision costs~~
18 ~~and fees of not less than fifty-five dollars per month unless the court makes a specific~~
19 ~~finding on record that the imposition of fees will result in an undue hardship. If the~~
20 ~~offender has not paid the full amount of supervision fees and costs before completion~~
21 ~~or termination of probation, the court may issue an order, after opportunity for hearing,~~
22 ~~to determine the amount of supervision fees and costs that are unpaid. The order may~~
23 ~~be filed, transcribed, and enforced by the department of corrections and rehabilitation~~
24 ~~in the same manner as civil judgments rendered by a district court of this state.~~
25 The department of corrections and rehabilitation may administer a risk assessment for the
26 evaluation of each defendant when placed under the supervision and management of
27 the department of corrections and rehabilitation. The results of the risk assessment
28 may be used to set a level of supervision and management and develop an
29 individualized case plan for the defendant. The case plan may include a list of
30 responsivity factors and a plan to address any risk factors identified in the risk
31 assessment.

- 1 3. The court shall provide as an explicit condition of every probation that the defendant
2 may not possess a firearm, destructive device, or other dangerous weapon while the
3 defendant is on probation. Except when the offense is a misdemeanor offense under
4 section 12.1-17-01, 12.1-17-01.1, 12.1-17-01.2, 12.1-17-05, or 12.1-17-07.1, or
5 chapter 14-07.1, the court may waive this condition of probation if the defendant has
6 pled guilty to, or has been found guilty of, a misdemeanor or infraction offense, the
7 misdemeanor or infraction is the defendant's first offense, and the court has made a
8 specific finding on the record before imposition of a sentence or a probation that there
9 is good cause to waive the condition. The court may not waive this condition of
10 probation if the court places the defendant under the supervision and management of
11 the department of corrections and rehabilitation. The court shall provide as an explicit
12 condition of probation that the defendant may not willfully defraud a urine test
13 administered as a condition of probation. Unless waived on the record by the court,
14 the court shall also provide as a condition of probation that the defendant undergo
15 various agreed-to community constraints and conditions as intermediate measures of
16 the department of corrections and rehabilitation to avoid revocation, which may
17 include:
- 18 a. Community service;
 - 19 b. Day reporting;
 - 20 c. Curfew;
 - 21 d. Home confinement;
 - 22 e. House arrest;
 - 23 f. Electronic monitoring;
 - 24 g. Residential halfway house;
 - 25 h. Intensive supervision program;
 - 26 i. Up to five nonsuccessive periods of incarceration during any twelve-month
27 period, each of which may not exceed forty-eight consecutive hours;
 - 28 j. Participation in the twenty-four seven sobriety program; or
 - 29 k. One period of incarceration during a period of probation not to exceed thirty
30 consecutive days in lieu of a petition for revocation of probation.

- 1 4. When imposing a sentence to probation, probation in conjunction with imprisonment,
2 or probation in conjunction with suspended execution or deferred imposition of
3 sentence, the court may impose such conditions as it deems appropriate and may
4 include any one or more of the following:
- 5 a. Work faithfully at a suitable employment or faithfully pursue a course of study or
6 of career and technical education training that will equip the defendant for
7 suitable employment.
- 8 b. Undergo available medical or psychiatric treatment and remain in a specified
9 institution if required for that purpose.
- 10 c. Attend or reside in a facility established for the instruction, recreation, or
11 residence of persons on probation.
- 12 d. Support the defendant's dependents and meet other family responsibilities.
- 13 e. Make restitution or reparation to the victim of the defendant's conduct for the
14 damage or injury which was sustained or perform other reasonable assigned
15 work. When restitution, reparation, or assigned work is a condition of probation,
16 the court shall proceed as provided in subsection 1 or 2, as applicable, of section
17 12.1-32-08.
- 18 f. Pay a fine imposed after consideration of the provisions of section 12.1-32-05.
- 19 g. Refrain from excessive use of alcohol or any use of narcotics or of another
20 dangerous or abusable drug without a prescription.
- 21 h. Permit the probation officer to visit the defendant at reasonable times at the
22 defendant's home or elsewhere.
- 23 i. Remain within the jurisdiction of the court, unless granted permission to leave by
24 the court or the probation officer.
- 25 j. Answer all reasonable inquiries by the probation officer and promptly notify the
26 probation officer of any change in address or employment.
- 27 k. Report to a probation officer at reasonable times as directed by the court or the
28 probation officer.
- 29 l. Submit to a medical examination or other reasonable testing for the purpose of
30 determining the defendant's use of narcotics, marijuana, or other controlled
31 substance whenever required by a probation officer.

- 1 m. Refrain from associating with known users or traffickers in narcotics, marijuana,
2 or other controlled substances.
- 3 n. Submit the defendant's person, place of residence, or vehicle to search and
4 seizure by a probation officer at any time of the day or night, with or without a
5 search warrant.
- 6 o. Serve a term of imprisonment of up to one-half of the maximum term authorized
7 for the offense of which the defendant was convicted.
- 8 p. Reimburse the costs and expenses determined necessary for the defendant's
9 adequate defense when counsel is appointed or provided at public expense for
10 the defendant. When reimbursement of indigent defense costs and expenses is
11 imposed as a condition of probation, the court shall proceed as provided in
12 subsection 4 of section 12.1-32-08.
- 13 q. Provide community service for the number of hours designated by the court.
- 14 r. Refrain from any subscription to, access to, or use of the internet.
- 15 5. When the court imposes a sentence to probation, probation in conjunction with
16 imprisonment, or probation in conjunction with suspended execution or deferred
17 imposition of sentence, the defendant must be given a certificate explicitly setting forth
18 the conditions on which the defendant is being released.
- 19 ~~6. When it is alleged a probationer has absconded from supervision, the department of~~
20 ~~corrections and rehabilitation may issue an authority to hold until the probationer is~~
21 ~~apprehended. The department may dismiss the authority to hold, implement~~
22 ~~intermediate measures, or initiate a petition for revocation.~~
- 23 6.7. The court, upon notice to the probationer and with good cause, may modify or enlarge
24 the conditions of probation at any time before the expiration or termination of the
25 period for which the probation remains conditional. If the defendant violates a
26 condition of probation at any time before the expiration or termination of the period, the
27 court may continue the defendant on the existing probation, with or without modifying
28 or enlarging the conditions, or may revoke the probation and impose any other
29 sentence that was available under section 12.1-32-02 or 12.1-32-09 at the time of
30 initial sentencing or deferment.

1 ~~7.8.~~ The court may continue or modify probation conditions or revoke probation for a
2 violation of probation conditions occurring before the expiration or termination of the
3 period of probation notwithstanding that the order of the court is imposed after the
4 expiration or termination has occurred. The petition for revocation must be issued
5 within sixty days of the expiration or termination of probation.

6 ~~9. The court may continue or modify probation conditions or revoke probation for a~~
7 ~~technical violation as defined in section 12.1-01-04. The court, only upon revoking a~~
8 ~~term of probation for a technical violation, may impose a term of incarceration as~~
9 ~~follows:~~

10 ~~a. Fifteen days for a first revocation;~~

11 ~~b. Up to thirty days for a second revocation;~~

12 ~~c. Up to ninety days for a third revocation; or~~

13 ~~d. The full remaining time of the sentence that has not been served in custody for a~~
14 ~~fourth or subsequent revocation.~~

15 ~~8.10.~~ Jurisdiction over a probationer may be transferred from the court that imposed the
16 sentence to another court of this state with the concurrence of both courts. Retransfers
17 of jurisdiction may also occur in the same manner. The court to which jurisdiction has
18 been transferred under this subsection may exercise all powers permissible under this
19 chapter over the defendant.

20 ~~9.11.~~ Notwithstanding any other provision of law, the court may authorize the defendant to
21 assist law enforcement officers in an investigation of a criminal offense upon the terms
22 and conditions as the court may require by written order. The court shall hold a
23 hearing in camera before issuing an order under this subsection. The order must be
24 sealed and is subject to inspection only upon order of the court.

25 ~~10.12.~~ The department of corrections and rehabilitation shall provide written notice to a
26 defendant who is in the department's physical custody of any untried petition for
27 revocation against the defendant of which the department has notice and of the
28 defendant's right to make a request for final disposition of the petition.

29 a. Upon notice of an untried petition for revocation of probation, the defendant may
30 request final disposition of the petition. The defendant's request must be in
31 writing and name the court in which the petition for revocation of probation is

- 1 pending and the prosecuting official charged with the duty of prosecuting the
2 petition.
- 3 b. The defendant shall submit the request to the department. The department shall
4 certify the term of commitment under which the defendant is being held, the time
5 the defendant has served on the sentence, the time remaining to be served,
6 sentence reduction credit the defendant has earned, the defendant's eligibility for
7 parole, and whether the parole board has made a decision regarding the
8 defendant's parole.
- 9 c. The department shall send by registered mail, return receipt requested, one copy
10 of the request and certificate to the court and one copy to the prosecuting official
11 to whom the request and certificate is addressed.
- 12 d. The petition for revocation of probation must be brought to the court for hearing
13 within ninety days after the receipt of the request and certificate by the court and
14 prosecuting official. If the petition is not brought to the court for hearing within the
15 ninety days, the court shall dismiss the petition with prejudice.
- 16 e. The parties may stipulate for a continuance or the court may grant a continuance
17 upon a showing of good cause by either party for a petition under this subsection.
- 18 f. If the defendant escapes from custody subsequent to the defendant's execution
19 of a request for final disposition of a petition for revocation, the request is
20 considered void.

21 ~~13. The department shall use a matrix system of graduated sanctions and incentives and~~
22 ~~apply the presumptive sanctions and incentives for the appropriate supervision~~
23 ~~violations and successes.~~

24 **SECTION 5. AMENDMENT.** Section 12.1-32-08 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **12.1-32-08. Hearing prior to ordering restitution, reparation, or reimbursement of**
27 **indigent defense costs and expenses - Conditions - Collection of restitution for**
28 **insufficient funds checks - Continuing appropriation.**

- 29 1. The court, when sentencing a person adjudged guilty of criminal activities that have
30 resulted in pecuniary damages, in addition to any other sentence the court may
31 impose, shall order that the defendant make restitution to the victim or other recipient

- 1 as determined by the court. Restitution must include payment to the owner of real
2 property that is contaminated by the defendant in the manufacturing of
3 methamphetamine for the cost of removing the contamination and returning the
4 property to the property's condition before contamination and to any other person that
5 has incurred costs in decontaminating the property.
- 6 2. If the court has retained jurisdiction after the sentencing hearing for claims of
7 restitution, to make a claim for restitution, the victim shall submit information by
8 affidavit or declaration and, as applicable, documentary evidence within the time
9 specified in the order. The information submitted must describe the items or elements
10 of loss, itemize the total dollar amounts of restitution claimed, and present facts and
11 evidence sufficient to support a finding the restitution is directly related to the offense
12 and the amount awarded. The prosecutor shall serve the defendant with a copy of the
13 information submitted by the victim no later than sixty days following sentencing.
- 14 3. The defendant may challenge restitution but must do so by requesting a hearing within
15 thirty days of being served with the written notification of the amount of restitution
16 requested. The hearing request must be made in writing and filed with the court. If no
17 hearing is requested, the court may enter a judgment ordering restitution. A defendant
18 may not challenge restitution after the thirty-day time period has passed.
- 19 4. In determining the amount of restitution, the court shall take into account the
20 reasonable damages sustained by the victim or victims of the criminal offense, which
21 damages are limited to those directly related to the criminal offense and expenses
22 actually sustained as a direct result of the defendant's criminal action. This can include
23 an amount equal to the cost of necessary and related professional services and
24 devices relating to physical, psychiatric, and psychological care. The defendant may
25 be required as part of the sentence imposed by the court to pay the prescribed
26 treatment costs for a victim of a sexual offense as defined in chapters 12.1-20 and
27 12.1-27.2. The court shall fix the amount of restitution or reparation and shall fix the
28 manner of performance of any condition or conditions of probation established
29 pursuant to this subsection. The court may order the defendant to disclose income and
30 assets on forms developed by the state court administrator to facilitate the setting of
31 an appropriate payment plan. The court shall order restitution be paid to the division of

- 1 adult services for any benefits the division has paid or may pay to the victim under
2 chapter 54-23.4 unless the court, on the record, directs otherwise. Any payments
3 made pursuant to the order must be deducted from damages awarded in a civil action
4 arising from the same incident.
- 5 5. An order that a defendant make restitution or reparation as a sentence or condition of
6 probation, unless the court directs otherwise, may be filed without filing fee,
7 transcribed, and enforced by the person entitled to the restitution or reparation or by
8 the division of adult services in the same manner as civil judgments rendered by the
9 courts of this state may be enforced. Upon thirty days' written notice to the victim's last
10 known address, the court may order the judgment imposing a duty to pay restitution or
11 reparation be docketed in the same manner as a civil judgment under section
12 29-26-22.1.
- 13 6. When the restitution ordered by the court under subsection 1 is the result of a finding
14 that the defendant issued a check or draft without sufficient funds or without an
15 account, the court shall impose as costs the greater of the sum of ten dollars or an
16 amount equal to twenty-five percent of the amount of restitution ordered. The costs
17 imposed under this subsection, however, may not exceed one thousand dollars. The
18 state-employed clerks of district court shall remit the funds collected as costs under
19 this subsection to the state treasurer for deposit in the restitution collection assistance
20 fund. The funds deposited into the restitution collection assistance fund are
21 appropriated to the judicial branch on a continuing basis for the purpose of defraying
22 expenses incident to the collection of restitution, including operating expenses and the
23 compensation of additional necessary personnel. The state's attorneys and
24 county-employed clerks of district court shall remit the funds collected as costs under
25 this subsection to the county treasurer to be deposited in the county general fund.
- 26 7. The court may order the defendant to perform reasonable assigned work as a
27 condition of probation, which assigned work need not be related to the offense
28 charged, but must not be solely for the benefit of a private individual other than the
29 victim.
- 30 8. ~~Under section 12-1-32-07, the court may order that the defendant reimburse indigent~~
31 ~~defense costs and expenses as a condition of probation.~~

- 1 a. ~~Unless it finds that there is no likelihood that the defendant is or will be able to~~
2 ~~pay attorney's fees and expenses, the court, in its judgment of conviction, and in~~
3 ~~any order or amended judgment following a revocation or other postjudgment~~
4 ~~proceeding, shall notify the defendant, the defendant's probation officer, and the~~
5 ~~prosecuting attorney of the presumed amount of costs and expenses to be~~
6 ~~reimbursed, as determined by the commission on legal counsel for indigents, and~~
7 ~~of the right to a hearing on the reimbursement amount. The reimbursement~~
8 ~~amount must include an application fee imposed under section 29-07-01.1 if the~~
9 ~~fee has not been paid before disposition of the case and the court has not waived~~
10 ~~payment of the fee.~~
- 11 b. ~~If the defendant or prosecutor requests a hearing within thirty days of receiving~~
12 ~~notice under this subdivision, the court shall schedule a hearing at which the~~
13 ~~actual amount of attorney's fees and expenses must be shown. In determining~~
14 ~~the amount and method of reimbursement, the court shall consider the financial~~
15 ~~resources of the defendant and the nature of the burden that reimbursement of~~
16 ~~costs and expenses will impose.~~
- 17 c. ~~A defendant who is required to reimburse indigent defense costs and expenses~~
18 ~~as a condition of probation and who is not willfully in default in that~~
19 ~~reimbursement may at any time petition the court that imposed the condition to~~
20 ~~waive reimbursement of all or any portion of the costs and expenses. If the court~~
21 ~~is satisfied that reimbursement of the amount due will impose undue hardship on~~
22 ~~the defendant or the defendant's immediate family, the court may waive~~
23 ~~reimbursement of all or any portion of the amount due or modify the method of~~
24 ~~payment.~~
- 25 d. ~~If at any time the court finds that the defendant is able to reimburse costs and~~
26 ~~expenses and has willfully failed to do so, the court may continue, modify, or~~
27 ~~enlarge the conditions of probation or revoke probation as provided in~~
28 ~~subsection 6 or 7, as applicable, of section 12.1-32-07.~~
- 29 9. ~~If the court finds that the defendant is unable to pay a fine, supervision fee,~~
30 ~~reimbursement for indigent defense costs and expenses, or restitution or reparations,~~
31 ~~the court may order the defendant to perform reasonable assigned work in lieu of all or~~

part of a fine, a supervision fee, reimbursement for indigent defense costs and expenses, or restitution or reparations. The defendant may not perform reasonable assigned work in lieu of restitution or reparations unless the person entitled to restitution or reparations has consented in writing or on the record.

SECTION 6. AMENDMENT. Section 29-07-01.1 of the North Dakota Century Code is amended and reenacted as follows:

29-07-01.1. Payment of expenses for defense of indigents – Reimbursement of indigent defense costs and expenses - Indigent defense administration fund - Continuing appropriation.

1. Lawyers provided to represent indigent persons must be compensated at a reasonable rate to be determined by the commission on legal counsel for indigents. Expenses necessary for the adequate defense of an indigent person prosecuted in district court, other than for a violation of a home rule county's ordinance, when approved by the commission, must be paid by the state. Expenses necessary for the adequate defense of an indigent person prosecuted for violation of a home rule county's ordinance must be paid by the home rule county. Expenses necessary for the adequate defense of an indigent person prosecuted in municipal court, when approved by the judge, must be paid by the city in which the alleged offense took place. The city shall also pay the expenses in any matter transferred to district court pursuant to section 40-18-06.2 or 40-18-15.1, in any appeal taken to district court from a judgment of conviction in municipal court pursuant to section 40-18-19, and in an appeal or postconviction matter seeking relief from a conviction resulting from violation of a municipal ordinance. A defendant requesting representation by counsel at public expense, or for whom counsel provided at public expense without a request is considered appropriate by the court, shall submit an application for indigent defense services. ~~For an application for indigent defense services in the district court, a nonrefundable application fee of thirty-five dollars must be paid at the time the application is submitted. The district court may extend the time for payment of the fee or may waive or reduce the fee if the court determines the defendant is financially unable to pay all or part of the fee. If the application fee is not paid before disposition of the case, the fee amount must be added to the amount to be reimbursed under this~~

- 1 ~~section. Application fees collected under this subsection must be forwarded for deposit~~
2 ~~in the indigent defense administration fund established under subsection 4.~~
- 3 2. ~~A defendant for whom counsel is provided at public expense, subject to this~~
4 ~~subsection, shall reimburse the state, home rule county, or city such sums as the~~
5 ~~state, home rule county, or city expends on the defendant's behalf.~~
- 6 a. ~~At the time counsel is provided for a defendant, the court shall advise the~~
7 ~~defendant of the defendant's potential obligation to reimburse the appropriate~~
8 ~~governmental entity the amounts expended on behalf of the defendant.~~
- 9 b. ~~Unless it finds that there is no likelihood that the defendant is or will be able to~~
10 ~~pay attorney's fees and expenses, the court, in its judgment of conviction, and in~~
11 ~~any order or amended judgment entered following a revocation or other~~
12 ~~postjudgment proceeding, shall order the defendant to reimburse the presumed~~
13 ~~amount of indigent defense costs and expenses, as determined by the~~
14 ~~commission, and shall notify the defendant of the right to a hearing on the~~
15 ~~reimbursement amount. If the defendant or prosecutor requests a hearing within~~
16 ~~thirty days of receiving notice under this subdivision, the court shall schedule a~~
17 ~~hearing at which the actual amount of attorney's fees and expenses must be~~
18 ~~shown. In determining the amount of reimbursement and method of payment, the~~
19 ~~court shall consider the financial resources of the defendant and the nature of the~~
20 ~~burden that reimbursement of costs and expenses will impose.~~
- 21 c. ~~A defendant who is required to reimburse indigent defense costs and expenses~~
22 ~~and who is not willfully in default in that reimbursement may at any time petition~~
23 ~~the court to waive reimbursement of all or any portion of the attorney's fees and~~
24 ~~expenses. If the court is satisfied that reimbursement of the amount due will~~
25 ~~impose undue hardship on the defendant or the defendant's immediate family,~~
26 ~~the court may waive reimbursement of all or any portion of the amount due or~~
27 ~~modify the method of payment.~~
- 28 3. ~~The attorney general, the state's attorney of the home rule county, or the prosecuting~~
29 ~~attorney of the city in which the alleged offense took place, if reimbursement has not~~
30 ~~been received, shall seek civil recovery of any amounts expended on the defendant's~~
31 ~~behalf anytime the attorney general, state's attorney, or city attorney determines the~~

1 ~~person for whom counsel was appointed may have funds to repay the state, home rule~~
2 ~~county, or city within six years of the date such amount was paid on that person's~~
3 ~~behalf. A person against whom civil recovery is sought under this subsection is entitled~~
4 ~~to all exemptions accorded to other judgment debtors. The attorney general, state's~~
5 ~~attorney, or prosecuting attorney may contract with a private sector collection agency~~
6 ~~for assistance in seeking recovery of such funds. Before referring the matter to a~~
7 ~~collection agency, the state's attorney shall notify the person who is the subject of the~~
8 ~~collection action.~~

- 9 4. The indigent defense administration fund is a special fund in the state treasury. The
10 state treasurer shall deposit in the fund all application fees collected under
11 subsection 1. All moneys in the indigent defense administration fund are appropriated
12 on a continuing basis to the commission on legal counsel for indigents to be used in
13 the administration of the indigent defense system.

14 **SECTION 7. LEGISLATIVE MANAGEMENT STUDY - COURT FINES AND FEES.** During
15 the 2025-26 interim, the legislative management shall consider studying court fines and fees,
16 including fines and fees relating to travel permits, presentence investigations, the drug court
17 program, electronic monitoring, alcohol monitoring, and the twenty-four seven sobriety program.
18 The study must consider the total amount collected; rate of fees collected, including any money
19 expended to collect the fines and fees; an evaluation of practices in other states; and the overall
20 impacts on a defendant. The legislative management shall report its findings and
21 recommendations, together with any legislation required to implement the recommendations, to
22 the seventieth legislative assembly.

23 **SECTION 8. APPROPRIATION - COMMISSION ON LEGAL COUNSEL FOR**
24 **INDIGENTS - OPERATING COSTS.** There is appropriated out of any moneys in the general
25 fund in the state treasury, not otherwise appropriated, the sum of \$310,000, or so much of the
26 sum as may be necessary, to the commission on legal counsel for indigents for the purpose of
27 operating costs to replace lost revenue from the removal of the indigent defense application
28 fees, for the biennium beginning July 1, 2025, and ending June 30, 2027.

**REPORT OF STANDING COMMITTEE
ENGROSSED HB 1417**

Judiciary Committee (Sen. Larson, Chairman) recommends **AMENDMENTS** ([25.1150.02001](#)) and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (6 YEAS, 0 NAYS, 1 ABSENT OR EXCUSED AND NOT VOTING). HB 1417 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

25.1150.02001
Title.

Prepared by the Legislative Council
staff for Senator Paulson
March 25, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO FIRST ENGROSSMENT

ENGROSSED HOUSE BILL NO. 1417

Introduced by

Representatives Klemin, Stemen, Hanson

Senators Davison, Larson

1 A BILL for an Act to amend and reenact sections 12-59-15 and 12.1-01-04, subdivision b of
2 subsection 3 of section 12.1-22-01, and sections 12.1-32-07, 12.1-32-08, and 29-07-01.1 of the
3 North Dakota Century Code, relating to parole and probation violations and court fees; to
4 provide for a legislative management study; to provide a penalty; and to provide an
5 appropriation.

6 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

7 **SECTION 1. AMENDMENT.** Section 12-59-15 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 12-59-15. Breach of parole - Hearings - Order of recommitment.

- 10 1. When it is alleged that a parolee has violated any of the terms or conditions of parole
11 established by the parole board or by the department of corrections and rehabilitation,
12 the director of the department of corrections and rehabilitation may issue a warrant for
13 the arrest of the parolee ~~after considering graduated sanctions and incentives used in~~
14 ~~response to a violation under section 12.1-32-07.~~
- 15 2. Upon issuance of a warrant of arrest for a parole violation, the running of the time
16 period of parole must be suspended until the parole board issues a final order under
17 this section. The parolee is entitled to credit for time spent in physical custody from the
18 time of arrest until the time the parole board issues a final order.
- 19 3. The parolee is entitled to a preliminary hearing, as promptly as is convenient after the
20 arrest and reasonably near the place of the alleged violation or arrest, to determine

whether there is probable cause to find that the parolee violated any of the terms and conditions of parole established by the board or by the department of corrections and rehabilitation.

4. The preliminary hearing must be conducted before the director of the department of corrections and rehabilitation or other hearing officer authorized by the director. The preliminary hearing must be conducted by a disinterested hearing officer not directly involved in the supervision of the parolee or by the person bringing the allegation of a parole violation.

5. If the hearing officer determines there is probable cause to find that the parolee has violated any of the terms and conditions of parole established by the board or by the department of corrections and rehabilitation, the board may redetermine the time remaining in the period of parole to reflect any portion of the period during which the parolee was not under supervision or not in the custody of law enforcement personnel in the state.

6. If the hearing officer determines there is probable cause to find that the parolee has violated any of the terms and conditions of parole established by the board or by the department of corrections and rehabilitation, the parolee must be returned to the physical custody of the department of corrections and rehabilitation, transferred to another correctional facility or the state hospital, or released from actual custody pursuant to such terms and conditions as may be established by the parole board or the department of corrections and rehabilitation, pending a final revocation hearing before the parole board. If the board determines at the final revocation hearing that the parolee has violated ~~any~~:

~~a. Any~~ of the terms and conditions of parole established by the board or by the department of corrections and rehabilitation, ~~it~~the board may order that the parolee be recommitted to the physical custody of the department of corrections and rehabilitation to serve all or part of the remaining time of the sentence that has not been served in custody.

~~b. A technical violation of parole, as defined in section 12.1-01-04, the board may order the parolee be recommitted to the physical custody of the department of corrections and rehabilitation to serve fifteen days for a first violation, up to thirty~~

~~days for a second violation, up to ninety days for a third violation, and the full
remaining time of the sentence that has not been served in custody for a fourth
and subsequent violation.~~

7. At any hearing pursuant to this section a record must be made and the parolee shall have:

- a. Written notice of the purpose of the hearing and the alleged violations.
- b. The opportunity to be heard in person and present witnesses and documentary evidence.
- c. The opportunity to confront and cross-examine adverse witnesses, unless the hearing officer determines that confrontation would create a risk of harm to the witness.
- d. A written statement as to the reasons for the decision.

8. When the board determines the parolee has absconded, as defined in section 12.1-01-04, from supervision, the board may order the parolee to pay the costs of being returned to the board. Moneys recovered under this subsection must be remitted to the department of corrections and rehabilitation.

SECTION 2. AMENDMENT. Section 12.1-01-04 of the North Dakota Century Code is amended and reenacted as follows:

12.1-01-04. General definitions.

As used in this title, unless a different meaning plainly is required:

1. "Absconded" means when a probationer, parolee, participant in a pretrial services program, or participant in a prosecution-led diversion program willfully avoids supervision by making their whereabouts unknown or fails to report to a supervising authority.
2. "Act" or "action" means a bodily movement, whether voluntary or involuntary.
- 2.3. "Acted", "acts", and "actions" include, where relevant, "omitted to act" and "omissions to act".
- 3.4. "Actor" includes, where relevant, a person guilty of an omission.
- 4.5. "Bodily injury" means any impairment of physical condition, including physical pain.
- 5.6. "Court" means any of the following courts: the supreme court, a district court, and where relevant, a municipal court.

- 1 ~~6-7.~~ "Dangerous weapon" includes any switchblade or gravity knife, machete, scimitar,
2 stiletto, sword, or dagger; any billy, blackjack, sap, bludgeon, cudgel, metal knuckles,
3 or sand club; any slingshot; any bow and arrow, crossbow, or spear; any weapon that
4 will expel, or is readily capable of expelling, a projectile by the action of a spring,
5 compressed air, or compressed gas including any such weapon, loaded or unloaded,
6 commonly referred to as a BB gun, air rifle, or ~~GO₂~~CO₂ gun; and any projector of a
7 bomb or any object containing or capable of producing and emitting any noxious liquid,
8 gas, or substance.
- 9 ~~7-8.~~ "Destructive device" means any explosive, incendiary or poison gas bomb, grenade,
10 mine, rocket, missile, or similar device.
- 11 ~~8-9.~~ "Explosive" means gunpowders, powders used for blasting, all forms of high
12 explosives, blasting materials, fuses (other than electric circuit breakers), detonators
13 and other detonating agents, smokeless powders, and any chemical compounds,
14 mechanical mixture, or other ingredients in such proportions, quantities, or packing
15 that ignition by fire, by friction, by concussion, by percussion, or by detonation of the
16 compound, or material, or any part thereof may cause an explosion.
- 17 ~~9-10.~~ "Firearm" means any weapon that will expel, or is readily capable of expelling, a
18 projectile by the action of an explosive and includes any such weapon, loaded or
19 unloaded, commonly referred to as a pistol, revolver, rifle, gun, machine gun, shotgun,
20 bazooka, or cannon.
- 21 ~~40-11.~~ "Force" means physical action.
- 22 ~~44-12.~~ "Government" means:
23 a. The government of this state or any political subdivision of this state;
24 b. Any agency, subdivision, or department of the state or any political subdivision of
25 the state, including the executive, legislative, and judicial branches;
26 c. Any corporation or other entity established by law to carry on any governmental
27 function; and
28 d. Any commission, corporation, or agency established by statute, compact, or
29 contract between or among governments for the execution of intergovernmental
30 programs.

- 1 ~~42.13.~~ "Governmental function" includes any activity that one or more public servants are
2 legally authorized to undertake on behalf of government.
- 3 ~~43.14.~~ "Harm" means loss, disadvantage, or injury to the person affected, and includes loss,
4 disadvantage, or injury to any other person in whose welfare the person affected is
5 interested.
- 6 ~~44.15.~~ "Included offense" means an offense:
7 a. That is established by proof of the same or less than all the facts required to
8 establish commission of the offense charged;
9 b. That consists of criminal facilitation of or an attempt or solicitation to commit the
10 offense charged; or
11 c. That differed from the offense charged only in that it constitutes a less serious
12 harm or risk of harm to the same person, property, or public interest, or because
13 a lesser degree of culpability suffices to establish its commission.
- 14 ~~45.16.~~ "Includes" should be read as if the phrase "but is not limited to" were also set forth.
- 15 ~~46.17.~~ "Law enforcement officer" or "peace officer" means a public servant authorized by law
16 or by a government agency or branch to enforce the law and to conduct or engage in
17 investigations or prosecutions for violations of law.
- 18 ~~47.18.~~ "Local" means of or pertaining to any political subdivision of the state.
- 19 ~~48.19.~~ "Manifest injustice" means a specific finding by the court that the imposition of
20 sentence is unreasonably harsh or shocking to the conscience of a reasonable
21 individual, with due consideration of the totality of circumstances.
- 22 ~~49.20.~~ "Offense" means conduct for which a term of imprisonment or a fine is authorized by
23 statute after conviction.
- 24 ~~20.21.~~ "Official action" includes a decision, opinion, recommendation, vote, or other exercise
25 of discretion by any government agency.
- 26 ~~24.22.~~ "Official proceeding" means a proceeding heard or which may be heard before any
27 government agency or branch or public servant authorized to take evidence under
28 oath, including any referee, hearing examiner, commissioner, notary, or other person
29 taking testimony or a deposition in connection with any such proceeding.
- 30 ~~22.23.~~ "Omission" means a failure to act.

- 1 ~~23-24.~~ As used in this title and in sections outside this title which define offenses, "person"
2 includes, where relevant, a corporation, limited liability company, partnership,
3 unincorporated association, or other legal entity. When used to designate a party
4 whose property may be the subject of action constituting an offense, the word "person"
5 includes a government that may lawfully own property in this state.
- 6 ~~24-25.~~ "Political subdivision" as used in this title and in any statute outside this title which
7 defines an offense means a county, city, school district, township, and any other local
8 governmental entity created by law.
- 9 ~~25-26.~~ "Possesses" means an individual has:
10 a. Direct physical control of something on or around the individual's person; or
11 b. The power and intention to exercise control over something accessible to but not
12 on or around the individual's person.
- 13 ~~26-27.~~ "Public servant" as used in this title and in any statute outside this title which defines
14 an offense means any officer or employee of government, including law enforcement
15 officers, whether elected or appointed, and any person participating in the
16 performance of a governmental function. The term does not include witnesses.
- 17 ~~27-28.~~ "Responsivity factors" means characteristics of an individual which affect the
18 individual's ability to respond favorably or unfavorably to a treatment goal.
- 19 ~~29.~~ "Risk assessment" means an initial phase with a secondary process approved by the
20 department of health and human services for the evaluation of the likelihood a person
21 that committed an offense will commit another similar offense a validated, standardized
22 actuarial tool used to identify potential risk factors that increase the likelihood an
23 individual will reoffend and responsivity factors, when addressed, reduce the likelihood
24 an individual will reoffend. The initial phase is an assessment tool that is administered
25 by a trained ~~probation and parole officer~~ corrections professional. A predetermined
26 score on the initial phase initiates the secondary process, approved by the department
27 of health and human services, that ~~includes~~ may include a clinical interview,
28 psychological testing, and verification through collateral information or
29 psychophysiological testing, or both. The department of health and human services
30 shall perform the secondary process of the risk assessment.

1 ~~28-30.~~ "Serious bodily injury" means bodily injury that creates a substantial risk of death or
2 which causes serious permanent disfigurement, unconsciousness, extreme pain,
3 permanent loss or impairment of the function of any bodily member or organ, a bone
4 fracture, or impediment of air flow or blood flow to the brain or lungs.

5 ~~29-31.~~ "Signature" includes any name, mark, or sign written or affixed with intent to
6 authenticate any instrument or writing.

7 ~~30-32.~~ "Substantial bodily injury" means a substantial temporary disfigurement, loss, or
8 impairment of the function of any bodily member or organ.

9 ~~31-33. "Technical violation" means a violation of a condition of probation or parole which does~~
10 ~~not involve:~~

11 ~~_____ a. An arrest or a summons issued by a peace officer;~~

12 ~~_____ b. A criminal offense;~~

13 ~~_____ c. A violation of a protection order or order prohibiting contact; or~~

14 ~~_____ d. Absconding.~~

15 ~~_____ 34.~~ "Thing of value" or "thing of pecuniary value" means a thing of value in the form of
16 money, tangible or intangible property, commercial interests, or anything else the
17 primary significance of which is economic gain to the recipient.

18 ~~32-35-34.~~ "Tier 1 mental health professional" has the same meaning as provided under
19 section 25-01-01.

20 **SECTION 3. AMENDMENT.** Subdivision b of subsection 3 of section 12.1-22-01 of the
21 North Dakota Century Code is amended and reenacted as follows:

22 b. "Dangerous weapon" means a weapon defined in ~~subsection 6 of section~~
23 12.1-01-04 or a weapon the possession of which under the circumstances
24 indicates an intent or readiness to inflict serious bodily injury.

25 **SECTION 4. AMENDMENT.** Section 12.1-32-07 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **12.1-32-07. Supervision of probationer - Conditions of probation - Revocation.**

28 1. When the court imposes probation upon conviction for a felony offense subject to
29 section 12.1-32-09.1 or 12.1-32-02.1, a second or subsequent violation of section
30 12.1-17-07.1, a second or subsequent violation of any domestic violence protection
31 order, a violation of chapter 12.1-41, a violation of section 14-09-22, or a felony

1 offense under chapter 39-08, the court shall place the defendant under the supervision
2 and management of the department of corrections and rehabilitation. When the court
3 imposes probation upon conviction or order of disposition in all other felony cases, the
4 court may place the defendant under the supervision and management of the
5 department of corrections and rehabilitation. In class A misdemeanor cases, the court
6 may place the defendant under the supervision and management of the department of
7 corrections and rehabilitation or other responsible party. In all other cases, the court
8 may place the defendant under the supervision and management of a community
9 corrections program other than the department of corrections and rehabilitation. A
10 community corrections program means a program for the supervision of a defendant,
11 including monitoring and enforcement of terms and conditions of probation set by the
12 court.

- 13 2. ~~The conditions of probation must be such as the court in its discretion deems~~
14 ~~reasonably necessary to ensure that the defendant will lead a law-abiding life or to~~
15 ~~assist the defendant to do so. The court shall provide as an explicit condition of every~~
16 ~~probation that the defendant not commit another offense during the period for which~~
17 ~~the probation remains subject to revocation. The court shall order supervision costs~~
18 ~~and fees of not less than fifty-five dollars per month unless the court makes a specific~~
19 ~~finding on record that the imposition of fees will result in an undue hardship. If the~~
20 ~~offender has not paid the full amount of supervision fees and costs before completion~~
21 ~~or termination of probation, the court may issue an order, after opportunity for hearing,~~
22 ~~to determine the amount of supervision fees and costs that are unpaid. The order may~~
23 ~~be filed, transcribed, and enforced by the department of corrections and rehabilitation~~
24 ~~in the same manner as civil judgments rendered by a district court of this state~~The
25 department of corrections and rehabilitation may administer a risk assessment for the
26 evaluation of each defendant when placed under the supervision and management of
27 the department of corrections and rehabilitation. The results of the risk assessment
28 may be used to set a level of supervision and management and develop an
29 individualized case plan for the defendant. The case plan may include a list of
30 responsivity factors and a plan to address any risk factors identified in the risk
31 assessment.

- 1 3. The court shall provide as an explicit condition of every probation that the defendant
2 may not possess a firearm, destructive device, or other dangerous weapon while the
3 defendant is on probation. Except when the offense is a misdemeanor offense under
4 section 12.1-17-01, 12.1-17-01.1, 12.1-17-01.2, 12.1-17-05, or 12.1-17-07.1, or
5 chapter 14-07.1, the court may waive this condition of probation if the defendant has
6 pled guilty to, or has been found guilty of, a misdemeanor or infraction offense, the
7 misdemeanor or infraction is the defendant's first offense, and the court has made a
8 specific finding on the record before imposition of a sentence or a probation that there
9 is good cause to waive the condition. The court may not waive this condition of
10 probation if the court places the defendant under the supervision and management of
11 the department of corrections and rehabilitation. The court shall provide as an explicit
12 condition of probation that the defendant may not willfully defraud a urine test
13 administered as a condition of probation. Unless waived on the record by the court,
14 the court shall also provide as a condition of probation that the defendant undergo
15 various agreed-to community constraints and conditions as intermediate measures of
16 the department of corrections and rehabilitation to avoid revocation, which may
17 include:
- 18 a. Community service;
 - 19 b. Day reporting;
 - 20 c. Curfew;
 - 21 d. Home confinement;
 - 22 e. House arrest;
 - 23 f. Electronic monitoring;
 - 24 g. Residential halfway house;
 - 25 h. Intensive supervision program;
 - 26 i. Up to five nonsuccessive periods of incarceration during any twelve-month
27 period, each of which may not exceed forty-eight consecutive hours;
 - 28 j. Participation in the twenty-four seven sobriety program; or
 - 29 k. One period of incarceration during a period of probation not to exceed thirty
30 consecutive days in lieu of a petition for revocation of probation.

- 1 4. When imposing a sentence to probation, probation in conjunction with imprisonment,
2 or probation in conjunction with suspended execution or deferred imposition of
3 sentence, the court may impose such conditions as it deems appropriate and may
4 include any one or more of the following:
- 5 a. Work faithfully at a suitable employment or faithfully pursue a course of study or
6 of career and technical education training that will equip the defendant for
7 suitable employment.
- 8 b. Undergo available medical or psychiatric treatment and remain in a specified
9 institution if required for that purpose.
- 10 c. Attend or reside in a facility established for the instruction, recreation, or
11 residence of persons on probation.
- 12 d. Support the defendant's dependents and meet other family responsibilities.
- 13 e. Make restitution or reparation to the victim of the defendant's conduct for the
14 damage or injury which was sustained or perform other reasonable assigned
15 work. When restitution, reparation, or assigned work is a condition of probation,
16 the court shall proceed as provided in subsection 1 or 2, as applicable, of section
17 12.1-32-08.
- 18 f. Pay a fine imposed after consideration of the provisions of section 12.1-32-05.
- 19 g. Refrain from excessive use of alcohol or any use of narcotics or of another
20 dangerous or abusable drug without a prescription.
- 21 h. Permit the probation officer to visit the defendant at reasonable times at the
22 defendant's home or elsewhere.
- 23 i. Remain within the jurisdiction of the court, unless granted permission to leave by
24 the court or the probation officer.
- 25 j. Answer all reasonable inquiries by the probation officer and promptly notify the
26 probation officer of any change in address or employment.
- 27 k. Report to a probation officer at reasonable times as directed by the court or the
28 probation officer.
- 29 l. Submit to a medical examination or other reasonable testing for the purpose of
30 determining the defendant's use of narcotics, marijuana, or other controlled
31 substance whenever required by a probation officer.

- 1 m. Refrain from associating with known users or traffickers in narcotics, marijuana,
2 or other controlled substances.
- 3 n. Submit the defendant's person, place of residence, or vehicle to search and
4 seizure by a probation officer at any time of the day or night, with or without a
5 search warrant.
- 6 o. Serve a term of imprisonment of up to one-half of the maximum term authorized
7 for the offense of which the defendant was convicted.
- 8 p. Reimburse the costs and expenses determined necessary for the defendant's
9 adequate defense when counsel is appointed or provided at public expense for
10 the defendant. When reimbursement of indigent defense costs and expenses is
11 imposed as a condition of probation, the court shall proceed as provided in
12 subsection 4 of section 12.1-32-08.
- 13 q. Provide community service for the number of hours designated by the court.
- 14 r. Refrain from any subscription to, access to, or use of the internet.
- 15 5. When the court imposes a sentence to probation, probation in conjunction with
16 imprisonment, or probation in conjunction with suspended execution or deferred
17 imposition of sentence, the defendant must be given a certificate explicitly setting forth
18 the conditions on which the defendant is being released.
- 19 ~~6. When it is alleged a probationer has absconded from supervision, the department of~~
20 ~~corrections and rehabilitation may issue an authority to hold until the probationer is~~
21 ~~apprehended. The department may dismiss the authority to hold, implement~~
22 ~~intermediate measures, or initiate a petition for revocation.~~
- 23 6.7. The court, upon notice to the probationer and with good cause, may modify or enlarge
24 the conditions of probation at any time before the expiration or termination of the
25 period for which the probation remains conditional. If the defendant violates a
26 condition of probation at any time before the expiration or termination of the period, the
27 court may continue the defendant on the existing probation, with or without modifying
28 or enlarging the conditions, or may revoke the probation and impose any other
29 sentence that was available under section 12.1-32-02 or 12.1-32-09 at the time of
30 initial sentencing or deferment.

1 ~~7.8.~~ The court may continue or modify probation conditions or revoke probation for a
2 violation of probation conditions occurring before the expiration or termination of the
3 period of probation notwithstanding that the order of the court is imposed after the
4 expiration or termination has occurred. The petition for revocation must be issued
5 within sixty days of the expiration or termination of probation.

6 ~~9. The court may continue or modify probation conditions or revoke probation for a~~
7 ~~technical violation as defined in section 12.1-01-04. The court, only upon revoking a~~
8 ~~term of probation for a technical violation, may impose a term of incarceration as~~
9 ~~follows:~~

10 ~~a. Fifteen days for a first revocation;~~

11 ~~b. Up to thirty days for a second revocation;~~

12 ~~c. Up to ninety days for a third revocation; or~~

13 ~~d. The full remaining time of the sentence that has not been served in custody for a~~
14 ~~fourth or subsequent revocation.~~

15 ~~8.10.~~ Jurisdiction over a probationer may be transferred from the court that imposed the
16 sentence to another court of this state with the concurrence of both courts. Retransfers
17 of jurisdiction may also occur in the same manner. The court to which jurisdiction has
18 been transferred under this subsection may exercise all powers permissible under this
19 chapter over the defendant.

20 ~~9.11.~~ Notwithstanding any other provision of law, the court may authorize the defendant to
21 assist law enforcement officers in an investigation of a criminal offense upon the terms
22 and conditions as the court may require by written order. The court shall hold a
23 hearing in camera before issuing an order under this subsection. The order must be
24 sealed and is subject to inspection only upon order of the court.

25 ~~10.12.~~ The department of corrections and rehabilitation shall provide written notice to a
26 defendant who is in the department's physical custody of any untried petition for
27 revocation against the defendant of which the department has notice and of the
28 defendant's right to make a request for final disposition of the petition.

29 a. Upon notice of an untried petition for revocation of probation, the defendant may
30 request final disposition of the petition. The defendant's request must be in
31 writing and name the court in which the petition for revocation of probation is

1 pending and the prosecuting official charged with the duty of prosecuting the
2 petition.

3 b. The defendant shall submit the request to the department. The department shall
4 certify the term of commitment under which the defendant is being held, the time
5 the defendant has served on the sentence, the time remaining to be served,
6 sentence reduction credit the defendant has earned, the defendant's eligibility for
7 parole, and whether the parole board has made a decision regarding the
8 defendant's parole.

9 c. The department shall send by registered mail, return receipt requested, one copy
10 of the request and certificate to the court and one copy to the prosecuting official
11 to whom the request and certificate is addressed.

12 d. The petition for revocation of probation must be brought to the court for hearing
13 within ninety days after the receipt of the request and certificate by the court and
14 prosecuting official. If the petition is not brought to the court for hearing within the
15 ninety days, the court shall dismiss the petition with prejudice.

16 e. The parties may stipulate for a continuance or the court may grant a continuance
17 upon a showing of good cause by either party for a petition under this subsection.

18 f. If the defendant escapes from custody subsequent to the defendant's execution
19 of a request for final disposition of a petition for revocation, the request is
20 considered void.

21 ~~13. The department shall use a matrix system of graduated sanctions and incentives and~~
22 ~~apply the presumptive sanctions and incentives for the appropriate supervision~~
23 ~~violations and successes.~~

24 **SECTION 5. AMENDMENT.** Section 12.1-32-08 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **12.1-32-08. Hearing prior to ordering restitution, reparation, or reimbursement of**
27 **indigent defense costs and expenses - Conditions - Collection of restitution for**
28 **insufficient funds checks - Continuing appropriation.**

29 1. The court, when sentencing a person adjudged guilty of criminal activities that have
30 resulted in pecuniary damages, in addition to any other sentence the court may
31 impose, shall order that the defendant make restitution to the victim or other recipient

as determined by the court. Restitution must include payment to the owner of real property that is contaminated by the defendant in the manufacturing of methamphetamine for the cost of removing the contamination and returning the property to the property's condition before contamination and to any other person that has incurred costs in decontaminating the property.

2. If the court has retained jurisdiction after the sentencing hearing for claims of restitution, to make a claim for restitution, the victim shall submit information by affidavit or declaration and, as applicable, documentary evidence within the time specified in the order. The information submitted must describe the items or elements of loss, itemize the total dollar amounts of restitution claimed, and present facts and evidence sufficient to support a finding the restitution is directly related to the offense and the amount awarded. The prosecutor shall serve the defendant with a copy of the information submitted by the victim no later than sixty days following sentencing.
3. The defendant may challenge restitution but must do so by requesting a hearing within thirty days of being served with the written notification of the amount of restitution requested. The hearing request must be made in writing and filed with the court. If no hearing is requested, the court may enter a judgment ordering restitution. A defendant may not challenge restitution after the thirty-day time period has passed.
4. In determining the amount of restitution, the court shall take into account the reasonable damages sustained by the victim or victims of the criminal offense, which damages are limited to those directly related to the criminal offense and expenses actually sustained as a direct result of the defendant's criminal action. This can include an amount equal to the cost of necessary and related professional services and devices relating to physical, psychiatric, and psychological care. The defendant may be required as part of the sentence imposed by the court to pay the prescribed treatment costs for a victim of a sexual offense as defined in chapters 12.1-20 and 12.1-27.2. The court shall fix the amount of restitution or reparation and shall fix the manner of performance of any condition or conditions of probation established pursuant to this subsection. The court may order the defendant to disclose income and assets on forms developed by the state court administrator to facilitate the setting of an appropriate payment plan. The court shall order restitution be paid to the division of

adult services for any benefits the division has paid or may pay to the victim under chapter 54-23.4 unless the court, on the record, directs otherwise. Any payments made pursuant to the order must be deducted from damages awarded in a civil action arising from the same incident.

5. An order that a defendant make restitution or reparation as a sentence or condition of probation, unless the court directs otherwise, may be filed without filing fee, transcribed, and enforced by the person entitled to the restitution or reparation or by the division of adult services in the same manner as civil judgments rendered by the courts of this state may be enforced. Upon thirty days' written notice to the victim's last known address, the court may order the judgment imposing a duty to pay restitution or reparation be docketed in the same manner as a civil judgment under section 29-26-22.1.

6. When the restitution ordered by the court under subsection 1 is the result of a finding that the defendant issued a check or draft without sufficient funds or without an account, the court shall impose as costs the greater of the sum of ten dollars or an amount equal to twenty-five percent of the amount of restitution ordered. The costs imposed under this subsection, however, may not exceed one thousand dollars. The state-employed clerks of district court shall remit the funds collected as costs under this subsection to the state treasurer for deposit in the restitution collection assistance fund. The funds deposited into the restitution collection assistance fund are appropriated to the judicial branch on a continuing basis for the purpose of defraying expenses incident to the collection of restitution, including operating expenses and the compensation of additional necessary personnel. The state's attorneys and county-employed clerks of district court shall remit the funds collected as costs under this subsection to the county treasurer to be deposited in the county general fund.

7. The court may order the defendant to perform reasonable assigned work as a condition of probation, which assigned work need not be related to the offense charged, but must not be solely for the benefit of a private individual other than the victim.

~~8. Under section 12.1-32-07, the court may order that the defendant reimburse indigent defense costs and expenses as a condition of probation.~~

- 1 a. ~~Unless it finds that there is no likelihood that the defendant is or will be able to~~
2 ~~pay attorney's fees and expenses, the court, in its judgment of conviction, and in~~
3 ~~any order or amended judgment following a revocation or other postjudgment~~
4 ~~proceeding, shall notify the defendant, the defendant's probation officer, and the~~
5 ~~prosecuting attorney of the presumed amount of costs and expenses to be~~
6 ~~reimbursed, as determined by the commission on legal counsel for indigents, and~~
7 ~~of the right to a hearing on the reimbursement amount. The reimbursement~~
8 ~~amount must include an application fee imposed under section 29-07-01.1 if the~~
9 ~~fee has not been paid before disposition of the case and the court has not waived~~
10 ~~payment of the fee.~~
- 11 b. ~~If the defendant or prosecutor requests a hearing within thirty days of receiving~~
12 ~~notice under this subdivision, the court shall schedule a hearing at which the~~
13 ~~actual amount of attorney's fees and expenses must be shown. In determining~~
14 ~~the amount and method of reimbursement, the court shall consider the financial~~
15 ~~resources of the defendant and the nature of the burden that reimbursement of~~
16 ~~costs and expenses will impose.~~
- 17 c. ~~A defendant who is required to reimburse indigent defense costs and expenses~~
18 ~~as a condition of probation and who is not willfully in default in that~~
19 ~~reimbursement may at any time petition the court that imposed the condition to~~
20 ~~waive reimbursement of all or any portion of the costs and expenses. If the court~~
21 ~~is satisfied that reimbursement of the amount due will impose undue hardship on~~
22 ~~the defendant or the defendant's immediate family, the court may waive~~
23 ~~reimbursement of all or any portion of the amount due or modify the method of~~
24 ~~payment.~~
- 25 d. ~~If at any time the court finds that the defendant is able to reimburse costs and~~
26 ~~expenses and has willfully failed to do so, the court may continue, modify, or~~
27 ~~enlarge the conditions of probation or revoke probation as provided in~~
28 ~~subsection 6 or 7, as applicable, of section 12.1-32-07.~~
- 29 9. ~~If the court finds that the defendant is unable to pay a fine, supervision fee,~~
30 ~~reimbursement for indigent defense costs and expenses, or restitution or reparations,~~
31 ~~the court may order the defendant to perform reasonable assigned work in lieu of all or~~

1 part of a fine, ~~a supervision fee, reimbursement for indigent defense costs and~~
2 ~~expenses,~~ or restitution or reparations. The defendant may not perform reasonable
3 assigned work in lieu of restitution or reparations unless the person entitled to
4 restitution or reparations has consented in writing or on the record.

5 **SECTION 6. AMENDMENT.** Section 29-07-01.1 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **29-07-01.1. Payment of expenses for defense of indigents ~~--Reimbursement of~~**
8 **~~indigent defense costs and expenses - Indigent defense administration fund - Continuing~~**
9 **appropriation.**

- 10 1. Lawyers provided to represent indigent persons must be compensated at a
11 reasonable rate to be determined by the commission on legal counsel for indigents.
12 Expenses necessary for the adequate defense of an indigent person prosecuted in
13 district court, other than for a violation of a home rule county's ordinance, when
14 approved by the commission, must be paid by the state. Expenses necessary for the
15 adequate defense of an indigent person prosecuted for violation of a home rule
16 county's ordinance must be paid by the home rule county. Expenses necessary for the
17 adequate defense of an indigent person prosecuted in municipal court, when approved
18 by the judge, must be paid by the city in which the alleged offense took place. The city
19 shall also pay the expenses in any matter transferred to district court pursuant to
20 section 40-18-06.2 or 40-18-15.1, in any appeal taken to district court from a judgment
21 of conviction in municipal court pursuant to section 40-18-19, and in an appeal or
22 postconviction matter seeking relief from a conviction resulting from violation of a
23 municipal ordinance. A defendant requesting representation by counsel at public
24 expense, or for whom counsel provided at public expense without a request is
25 considered appropriate by the court, shall submit an application for indigent defense
26 services. ~~For an application for indigent defense services in the district court, a~~
27 ~~nonrefundable application fee of thirty-five dollars must be paid at the time the~~
28 ~~application is submitted. The district court may extend the time for payment of the fee~~
29 ~~or may waive or reduce the fee if the court determines the defendant is financially~~
30 ~~unable to pay all or part of the fee. If the application fee is not paid before disposition~~
31 ~~of the case, the fee amount must be added to the amount to be reimbursed under this~~

1 ~~section. Application fees collected under this subsection must be forwarded for deposit~~
2 ~~in the indigent defense administration fund established under subsection 4.~~

3 2. ~~A defendant for whom counsel is provided at public expense, subject to this~~
4 ~~subsection, shall reimburse the state, home rule county, or city such sums as the~~
5 ~~state, home rule county, or city expends on the defendant's behalf.~~

6 a. ~~At the time counsel is provided for a defendant, the court shall advise the~~
7 ~~defendant of the defendant's potential obligation to reimburse the appropriate~~
8 ~~governmental entity the amounts expended on behalf of the defendant.~~

9 b. ~~Unless it finds that there is no likelihood that the defendant is or will be able to~~
10 ~~pay attorney's fees and expenses, the court, in its judgment of conviction, and in~~
11 ~~any order or amended judgment entered following a revocation or other~~
12 ~~postjudgment proceeding, shall order the defendant to reimburse the presumed~~
13 ~~amount of indigent defense costs and expenses, as determined by the~~
14 ~~commission, and shall notify the defendant of the right to a hearing on the~~
15 ~~reimbursement amount. If the defendant or prosecutor requests a hearing within~~
16 ~~thirty days of receiving notice under this subdivision, the court shall schedule a~~
17 ~~hearing at which the actual amount of attorney's fees and expenses must be~~
18 ~~shown. In determining the amount of reimbursement and method of payment, the~~
19 ~~court shall consider the financial resources of the defendant and the nature of the~~
20 ~~burden that reimbursement of costs and expenses will impose.~~

21 c. ~~A defendant who is required to reimburse indigent defense costs and expenses~~
22 ~~and who is not willfully in default in that reimbursement may at any time petition~~
23 ~~the court to waive reimbursement of all or any portion of the attorney's fees and~~
24 ~~expenses. If the court is satisfied that reimbursement of the amount due will~~
25 ~~impose undue hardship on the defendant or the defendant's immediate family,~~
26 ~~the court may waive reimbursement of all or any portion of the amount due or~~
27 ~~modify the method of payment.~~

28 3. ~~The attorney general, the state's attorney of the home rule county, or the prosecuting~~
29 ~~attorney of the city in which the alleged offense took place, if reimbursement has not~~
30 ~~been received, shall seek civil recovery of any amounts expended on the defendant's~~
31 ~~behalf anytime the attorney general, state's attorney, or city attorney determines the~~

1 person for whom counsel was appointed may have funds to repay the state, home rule-
2 county, or city within six years of the date such amount was paid on that person's-
3 behalf. A person against whom civil recovery is sought under this subsection is entitled-
4 to all exemptions accorded to other judgment debtors. The attorney general, state's-
5 attorney, or prosecuting attorney may contract with a private sector collection agency-
6 for assistance in seeking recovery of such funds. Before referring the matter to a-
7 collection agency, the state's attorney shall notify the person who is the subject of the-
8 collection action.

- 9 4. The indigent defense administration fund is a special fund in the state treasury. The
10 state treasurer shall deposit in the fund all application fees collected under
11 subsection 1. All moneys in the indigent defense administration fund are appropriated
12 on a continuing basis to the commission on legal counsel for indigents to be used in
13 the administration of the indigent defense system.

14 **SECTION 7. LEGISLATIVE MANAGEMENT STUDY - COURT FINES AND FEES.** During
15 the 2025-26 interim, the legislative management shall consider studying court fines and fees,
16 including fines and fees relating to travel permits, presentence investigations, the drug court
17 program, electronic monitoring, alcohol monitoring, and the twenty-four seven sobriety program.
18 The study must consider the total amount collected; rate of fees collected, including any money
19 expended to collect the fines and fees; an evaluation of practices in other states; and the overall
20 impacts on a defendant. The legislative management shall report its findings and
21 recommendations, together with any legislation required to implement the recommendations, to
22 the seventieth legislative assembly.

23 **SECTION 8. APPROPRIATION - COMMISSION ON LEGAL COUNSEL FOR**
24 **INDIGENTS - OPERATING COSTS.** There is appropriated out of any moneys in the general
25 fund in the state treasury, not otherwise appropriated, the sum of \$310,000, or so much of the
26 sum as may be necessary, to the commission on legal counsel for indigents for the purpose of
27 operating costs to replace lost revenue from the removal of the indigent defense application
28 fees, for the biennium beginning July 1, 2025, and ending June 30, 2027.

2025 SENATE APPROPRIATIONS

HB 1417

2025 SENATE STANDING COMMITTEE MINUTES

Appropriations - Education and Environment Division Sakakawea Room, State Capitol

HB 1417
4/3/2025

A BILL for an Act to amend and reenact sections of the North Dakota Century Code, relating to parole and probation violations and court fees; to provide for a legislative management study; to provide a penalty; and to provide an appropriation.

2:48 p.m. Chairman Sorvaag called the meeting to order.

Members Present: Chairman Ronald Sorvaag, Senator Cole Conley, Senator Donald Schaible, Senator Paul J. Thomas, Senator Scott Meyer.

Discussion Topics:

- Indigent Representation Fee.
- Barriers to re-entry.

2:48 p.m. Travis Fink, Executive Director, Commission on Legal Counsel for Indigents, introduced the bill in favor and answered committee questions.

2:57 p.m. Robyn Schmalenberger, Reentry Program Manager, DOCR, testified in favor and answered committee questions.

3:00 p.m. Chairman Sorvaag closed the meeting.

Steven Hall, Committee Clerk

2025 SENATE STANDING COMMITTEE MINUTES

Appropriations - Education and Environment Division Sakakawea Room, State Capitol

HB 1417
4/3/2025

A BILL for an Act to amend and reenact sections of the North Dakota Century Code, relating to parole and probation violations and court fees; to provide for a legislative management study; to provide a penalty; and to provide an appropriation.

3:14 p.m. Chairman Sorvaag called the meeting to order.

Members Present: Chairman Ronald Sorvaag, Senator Cole Conley, Senator Donald Schaible, Senator Paul J. Thomas, Senator Scott Meyer.

Discussion Topics:

- Types of Admissions into ND prisons.
- Community Supervisions.
- Elimination of fees.

3:14 p.m. Representative Klemin, District 47, testified in favor an submitted testimony #44648 and #44649.

3:20 p.m. Chairman Sorvaag closed the meeting.

Steven Hall, Committee Clerk

HB 1417
Senate Appropriations: Education & Environment Subdivision
Rep. Lawrence R. Klemin
April 3, 2025

House Bill 1417, relating to parole and probation definitions and criminal justice fees, is the second of the three bills aimed at improving reentry practices in our criminal justice system. The bill was worked on in the Senate Judiciary Committee and received a unanimous “do pass” recommendation as amended.

ND's prison population is increasing while most state prison populations across the US are decreasing. Admissions to prison for 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.

HB 1417 includes several provisions to improve community supervision practices in North Dakota. The bill does the following:

1. Updates and adds definitions to Century Code related to community supervision
2. Eliminates certain fees to improve an individual's opportunity for a successful transition into the community.

Parole Hearings and Definitions

- **Section 1** incorporates the new definition of absconding into the parole hearing statute.
- **Section 2** introduces definitions for two terms relevant to community supervision that are not defined in our state law: "absconded" and "responsivity factors." The bill also updates the existing definition of "risk assessment."

With some individuals returning to prison for “absconding,” having clearly defined terms is crucial for both individuals under supervision and those responsible for enforcing accountability.

It is also worth noting that having definitions helps our state agencies track data better. As I mentioned, the senate just passed HB 1549, which includes a study on improving criminal justice data collection and sharing. Adding key terms to our Century Code helps all criminal justice partners use the same dictionary when tracking data.

- **Section 3** provides a cross reference.

Case Evaluation and Supervision Fees

- **Section 4** allows DOCR to perform a risk assessment and case evaluation before supervision terms are set by a judge – this gives the court the

information it needs to tailor conditions and goals that are appropriate and responsive to both the supervisee's success and the needs of the community.

- **Section 4** also eliminates the \$55 per month supervision fee. This would result in a \$1.5 million decrease in revenue to DOCR over two years. DOCR attempts to collect \$6 million in supervision fees every two years; however, the collection rate is typically 22-25%, resulting in only \$1.5 million being collected. DOCR has said it spends nearly \$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 individuals.

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.

- **Sections 5 and 6** eliminate the ability of 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** eliminates 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 is deposited in the indigent defense administrative fund. The fiscal note on this bill estimates a reduction of \$310,000 for the upcoming biennium.

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.
- **Section 8** of the bill adds an appropriation of \$310,000 to the Commission on Legal Counsel for Indigents to offset the revenue reduction due to the elimination of the application fee.

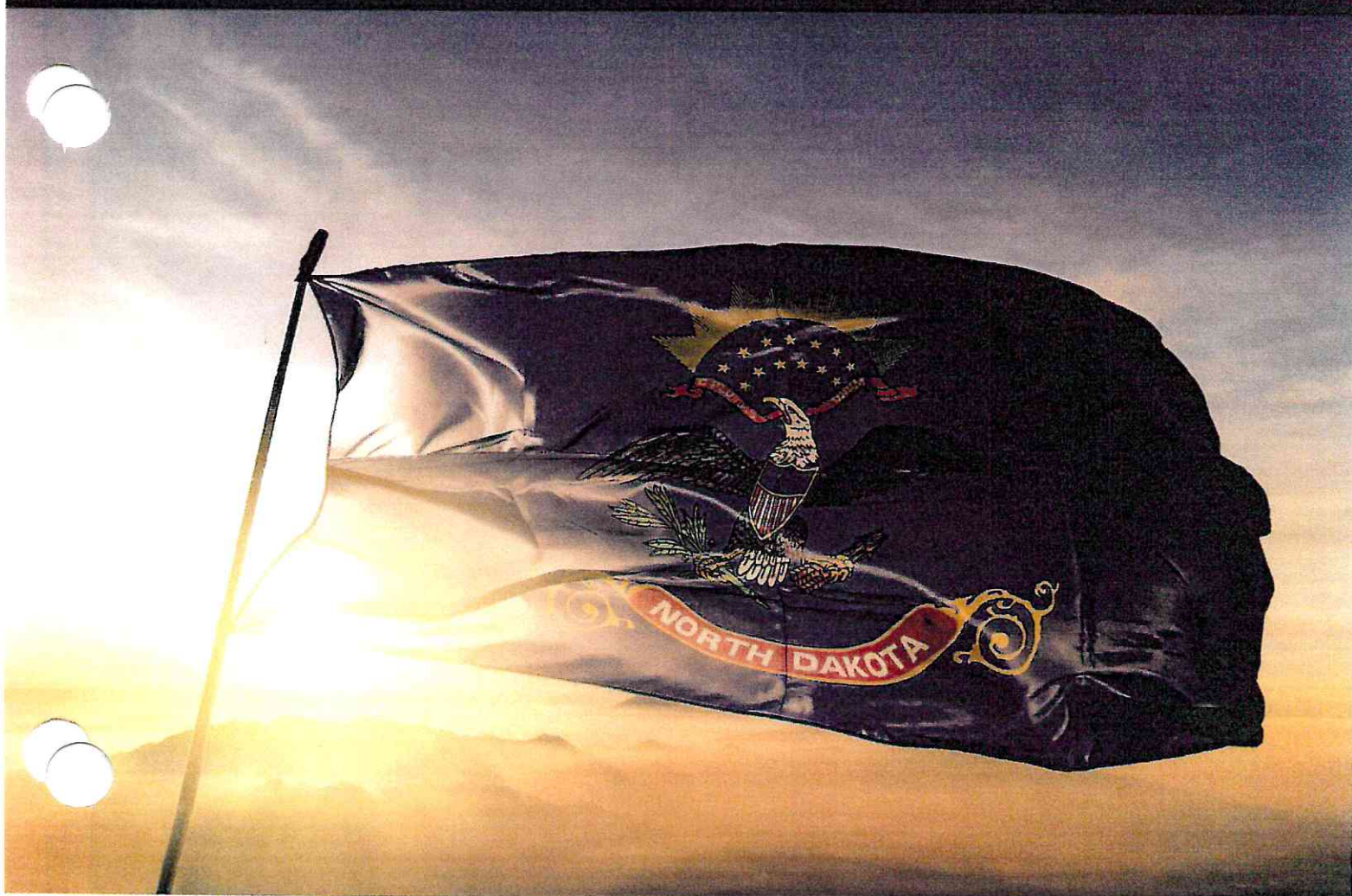
The goals of this bill are to ensure public safety while saving tax dollars, make the best use of our overcrowded prisons and jails, and improve lives. This bill is supported by the Governor, numerous state agencies, and other organizations.

Rep. Lawrence R. Klemin
District 47, Bismarck

North Dakota

Justice Reinvestment Initiative
Reentry Study Work Group

October 2024



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Work Group Membership

The North Dakota Justice Reinvestment Reentry Study Work Group (Work Group) included 15 members representing many different agencies, organizations, partnerships, and leaders involved in reentry work throughout the state. The members listed below were involved in evaluating key criminal justice data findings, research, and best practices in other states to ultimately form recommendations for improving reentry outcomes in North Dakota.

Adam Anderson

Deputy Director of Transitional Planning Services, Department of Corrections and Rehabilitation (DOCR)

Sister Kathleen Atkinson

Founder, Ministry on the Margins

Lisa Bjergaard

Director of Juvenile Services, DOCR

Representative Jayme Davis

District 9A, Rolette

Phillip Davis

Director for Workforce Services, Job Service North Dakota (JSND)

Captain Andrew Frobig

Jail Administrator, Cass County Jail (Fargo, ND)

Steven Hall (Work Group Chair)

Director of Transitional Planning Services, DOCR

Representative Karla Rose Hanson

District 44, Fargo

Scott Johnson

Deputy State Court Administrator, North Dakota Court System

Senator Judy Lee

District 13, West Fargo

Attorney Ashley Lies

Executive Director, ND State's Attorneys' Association and Eddy County State's Attorney

Adam Martin

Founder, F5 Project

Maria Neset

Senior Policy Advisor, Governor Doug Burgum

Pam Sagness

Executive Director of Behavioral Health, Department of Health and Human Services (DHHS)

Representative Michelle Strinden

Chair, Interim Juvenile Justice Committee
District 41, Fargo

Acknowledgements

With the support of the Crime and Justice Institute (CJI), the Work Group conducted interviews and roundtable discussions with more than 100 stakeholders across North Dakota to learn more about pressing reentry needs and opportunities in the state. Representatives from the following groups provided critical information, insight, and assistance throughout the Justice Reinvestment Initiative process:

Bismarck Police Department

Bismarck Transition Center

Burleigh County Sheriff Office

Burleigh-Morton Detention Center

Cass County Jail

Center Inc., Fargo

Center Inc., Mandan

Commission on Legal Counsel for Indigents

F5 Project

Free Through Recovery

Good Road Recovery Center

Heart River/Bridges of Hope

Hope Manor

Human Services Research Institute

Job Service North Dakota

Management and Training Corporation

Ministry on the Margins

Minot Area Recovery Community Organization

NATIVE, Inc.

North Dakota Council on Abused Women's Services

North Dakota Department of Corrections and Rehabilitation, including the offices of Administrative Services, the Special Assistance Unit, Education Services, Parole and Probation, Pre-trial Services, Specialty Court Coordination, and Transitional Planning Services

North Dakota Department of Health and Human Services including Behavioral Health Division, Regional Human Service Centers

North Dakota Indian Affairs Commission

North Dakota Peace Officers Association

Office of Governor Doug Burgum

Office of the Cass County State's Attorney

Office of the North Dakota Attorney General Criminal Division

State of North Dakota Courts including State Court Administration, Specialty Court Judges, and District Court Judges

Executive Summary

North Dakota's prison population is growing at an alarming rate, against national trends. As the number of incarcerated adults in the U.S. declined by approximately 25 percent between 2011 and 2021, North Dakota's prison population increased by over 18 percent.¹ More pressingly, much of North Dakota's prison population growth has occurred in just the past few years. According to data from the Department of Correction and Rehabilitation (DOCR), from 2020 to 2023, the prison population climbed from 1,401 to 1,899—an increase of 36 percent.² As a result, DOCR facilities have become overwhelmed, leading county jails to operate as overflow centers for state-sentenced individuals.

Recognizing the urgency of this issue, the 68th Legislative Assembly passed House Concurrent Resolution (HCR) 3026 in 2023 authorizing an interim study to assess the landscape of reentry services in the state and identify research-based strategies to improve reentry outcomes.³ To implement the mandates of HCR 2036, North Dakota Governor Doug Burgum, Senator Donald Schaible, Representative Dennis Johnson, and Supreme Court Chief Justice Jon Jensen, requested technical assistance through the Justice Reinvestment Initiative (JRI) grant funded by the Bureau of Justice Assistance (BJA), a component of the Department of Justice's Office of Justice Programs, to establish the North Dakota Justice Reinvestment Initiative Reentry Study Work Group ("Work Group"). With assistance from the Crime and Justice Institute (CJI), the Work Group discovered:

- North Dakota's prison population growth is driven by a 10 percent increase in admissions over the past decade.
- Admissions are largely comprised of community supervision violations (48 percent in 2023) and alcohol and drug offenses (36 percent in 2023).
- Significantly, Black and Native American individuals are entering DOCR and beginning community supervision at higher rates, as well as have higher percentages of supervision revocations.
- Unmet behavioral health needs drive the majority of community supervision revocations as well as admissions to prison.

These findings are the foundation of the Work Group's 26 comprehensive recommendations outlined in the following report. Their recommendations are encompassed by five central goals:

1. **Expanding pathways to alternatives to incarceration** including diversion programs for courts and deflection protocols for law enforcement;
2. **Decreasing the number of individuals entering prison due to a drug or alcohol offense, or revocation from supervision** including tiered sentencing for low-level offenses,

graduated sanctions for community supervision, and expanded presumption of probation to allow for community-based treatment;

3. **Reducing racial disparities in the criminal justice system** including collection of data about racial disparities and recruitment of community liaisons;
4. **Further supporting successful transition back into the community by increasing access to housing and healthcare** including expanded access to Medicaid for justice-involved people, and more housing resources for reentering North Dakotans; and
5. **Increasing cross-agency collaboration between system partners** including streamlined data collection across agencies and improved coordination between service providers and community supervisors.

Work Group Background

The North Dakota Justice Reinvestment Initiative Reentry Study Work Group (“Work Group”) included 15 stakeholders representing the state’s legislature, DOCR, the Department of Health & Human Services (DHHS), as well as courts, county jails, and direct service providers.

The group first convened in the fall of 2023 and met five times throughout 2024 to conduct a rigorous review of statewide prison and community supervision data, evaluate existing policies and programming, identify research-based practices, and engage in detailed policy discussions.

From the outset, the Work Group followed a wholistic approach when considering “reentry.” Rather than proceeding with the traditional understanding that reentry occurs upon release from prison, the group expanded their reentry definition to include productive reengagement with the community after *any* level of involvement with the criminal justice system. To discuss the complexities of reentry across North Dakota’s justice system, the Work Group split into two subcommittees focusing on (1) the front-end of system, including responses to crime and crises, pretrial diversion, and court system processing, and (2) the back-end of the system, including programming and treatment opportunities for people in custody, release planning, housing, healthcare, and the general transition from custody back to the community.

By examining the multiple entry points into the system, the Work Group was able to identify evidence-based alternatives to incarceration at every level of interaction that served the goals of accountability, public safety, and rehabilitation.

National/State Context

While most state prison populations across the country are decreasing, North Dakota's prison population is increasing.⁴ Between 2020 and 2021, North Dakota had the largest percent increase in prison population in the country, slightly over 20 percent.⁵ From 2011 to 2021, state prison populations in the United States fell by about 25 percent, but North Dakota's grew by just over 18 percent.⁶ This growth has continued with a 36 percent increase from December 31, 2020, to December 31, 2023.⁷ These trends are also reflected in imprisonment rates, with North Dakota's adult imprisonment rate increasing since 2013, compared to the nation's decreasing rate.⁸ As North Dakota's incarcerated population increased, defying national trends, the state's community supervision population also displayed different changes than those found nationally. On December 31, 2021, North Dakota's parole population declined more than the national average (about 11 percent compared to about seven percent), and the probation population increased almost three percent while the national average decreased nearly three percent compared to December 30, 2020.⁹

Despite the prison population trends in North Dakota, crime rates have remained relatively stable and have followed overall national trends.¹⁰ From 2013 to 2022, both North Dakota and the United States saw slight increases in their violent crime rates, an increase of approximately two percent for North Dakota and three percent nationally.¹¹ However, violent crime rates have decreased for both North Dakota and the United States since their peak in 2020, with North Dakota's violent crime rate decreasing 15 percent, and the national rate decreasing four percent. In 2022, North Dakota's violent crime rate ranked 35th out of all states, lower than their neighbors Minnesota (33rd), South Dakota (22nd), and Montana (16th). From 2013 to 2022, the national property crime rate decreased 28 percent, while North Dakota's property crime rate decreased six percent.¹²

As a result of its swelling prison population, North Dakota's correction's budget has increased 64 percent over the past four years, reaching upwards of \$445 million.¹³ The major increases in the most recent biennium budget are due to a \$131.2 million allocation for building a new women's facility and \$2.05 million to remodel and improve other facilities.¹⁴ Excluding these special funds, however, the budget has still increased approximately 16 percent since the 2017-2019 biennium.¹⁵

Another critical consideration to make when evaluating prison population trends is the composition of the incarcerated population compared to the general population. Nationally, certain racial groups are overrepresented within the incarcerated population. Black individuals had an incarceration rate of 1,196 per 100,000 residents and Native American individuals had

2025 SENATE STANDING COMMITTEE MINUTES

Appropriations - Education and Environment Division Sakakawea Room, State Capitol

HB 1417
4/7/2025

A BILL for an Act to amend and reenact sections of the North Dakota Century Code, relating to parole and probation violations and court fees; to provide for a legislative management study; to provide a penalty; and to provide an appropriation.

3:17 p.m. Chairman Sorvaag called the meeting to order.

Members Present: Chairman Ronald Sorvaag, Senator Cole Conley, Senator Donald Schaible, Senator Paul J. Thomas, Senator Scott Meyer.

Discussion Topics:

- Loss of revenue from Indigent Defense.

3:18 p.m. Senator Schaible discussed funding changes to bill, removal of appropriations.

3:21 p.m. Senator Schaible moved to adopt amendment to remove section 8 from the bill LC# 25.1150.02002.

3:21 p.m. Senator Thomas Seconded the motion.

Senators	Vote
Senator Ronald Sorvaag	Y
Senator Cole Conley	Y
Senator Scott Meyer	Y
Senator Donald Schaible	Y
Senator Paul J. Thomas	Y

Motion Passed: 5-0-0.

3:22 p.m. Senator Schaible moved a Do Pass as amended.

3:22 p.m. Senator Thomas Seconded.

Senators	Vote
Senator Ronald Sorvaag	Y
Senator Cole Conley	Y
Senator Scott Meyer	Y
Senator Donald Schaible	Y
Senator Paul J. Thomas	Y

Motion Passed: 5-0-0. Senator Conley will carry the bill.

Additional written testimony:

Senator Conley submitted testimony in favor #44763.

3:22 p.m. Chairman Sorvaag closed the meeting.

Steven Hall, Committee Clerk

25.1150.02002
Title.
Fiscal No. 1

Prepared by the Legislative Council
staff for Senate Appropriations -
Education and Environment Division
Committee

April 7, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO FIRST ENGROSSMENT

ENGROSSED HOUSE BILL NO. 1417

Introduced by

Representatives Klemin, Stemen, Hanson

Senators Davison, Larson

In place of the amendments (25.1150.02001) adopted by the Senate, House Bill No. 1417 is amended by amendment (25.1150.02002) as follows:

- 1 A BILL for an Act to amend and reenact sections 12-59-15 and 12.1-01-04, subdivision b of
- 2 subsection 3 of section 12.1-22-01, and sections 12.1-32-07, 12.1-32-08, and 29-07-01.1 of the
- 3 North Dakota Century Code, relating to parole and probation violations and court fees; to
- 4 provide for a legislative management study; and to provide a penalty; ~~and to provide an~~
- 5 ~~appropriation.~~

6 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

7 **SECTION 1. AMENDMENT.** Section 12-59-15 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 12-59-15. Breach of parole - Hearings - Order of recommitment.

- 10 1. When it is alleged that a parolee has violated any of the terms or conditions of parole
- 11 established by the parole board or by the department of corrections and rehabilitation,
- 12 the director of the department of corrections and rehabilitation may issue a warrant for
- 13 the arrest of the parolee ~~after considering graduated sanctions and incentives used in~~
- 14 ~~response to a violation under section 12.1-32-07.~~
- 15 2. Upon issuance of a warrant of arrest for a parole violation, the running of the time
- 16 period of parole must be suspended until the parole board issues a final order under
- 17 this section. The parolee is entitled to credit for time spent in physical custody from the
- 18 time of arrest until the time the parole board issues a final order.

- 1 3. The parolee is entitled to a preliminary hearing, as promptly as is convenient after the
2 arrest and reasonably near the place of the alleged violation or arrest, to determine
3 whether there is probable cause to find that the parolee violated any of the terms and
4 conditions of parole established by the board or by the department of corrections and
5 rehabilitation.
- 6 4. The preliminary hearing must be conducted before the director of the department of
7 corrections and rehabilitation or other hearing officer authorized by the director. The
8 preliminary hearing must be conducted by a disinterested hearing officer not directly
9 involved in the supervision of the parolee or by the person bringing the allegation of a
10 parole violation.
- 11 5. If the hearing officer determines there is probable cause to find that the parolee has
12 violated any of the terms and conditions of parole established by the board or by the
13 department of corrections and rehabilitation, the board may redetermine the time
14 remaining in the period of parole to reflect any portion of the period during which the
15 parolee was not under supervision or not in the custody of law enforcement personnel
16 in the state.
- 17 6. If the hearing officer determines there is probable cause to find that the parolee has
18 violated any of the terms and conditions of parole established by the board or by the
19 department of corrections and rehabilitation, the parolee must be returned to the
20 physical custody of the department of corrections and rehabilitation, transferred to
21 another correctional facility or the state hospital, or released from actual custody
22 pursuant to such terms and conditions as may be established by the parole board or
23 the department of corrections and rehabilitation, pending a final revocation hearing
24 before the parole board. If the board determines at the final revocation hearing that the
25 parolee has violated any;
26 ~~a.~~ Any of the terms and conditions of parole established by the board or by the
27 department of corrections and rehabilitation, ~~it~~the board may order that the
28 parolee be recommitted to the physical custody of the department of corrections
29 and rehabilitation to serve all or part of the remaining time of the sentence that
30 has not been served in custody.

1 ~~b. A technical violation of parole, as defined in section 12.1-01-04, the board may~~
2 ~~order the parolee be recommitted to the physical custody of the department of~~
3 ~~corrections and rehabilitation to serve fifteen days for a first violation, up to thirty~~
4 ~~days for a second violation, up to ninety days for a third violation, and the full~~
5 ~~remaining time of the sentence that has not been served in custody for a fourth~~
6 ~~and subsequent violation.~~

7 7. At any hearing pursuant to this section a record must be made and the parolee shall
8 have:

- 9 a. Written notice of the purpose of the hearing and the alleged violations.
10 b. The opportunity to be heard in person and present witnesses and documentary
11 evidence.
12 c. The opportunity to confront and cross-examine adverse witnesses, unless the
13 hearing officer determines that confrontation would create a risk of harm to the
14 witness.
15 d. A written statement as to the reasons for the decision.

16 8. ~~When~~If the board determines the parolee has absconded, as defined in section
17 12.1-01-04, from supervision, the board may order the parolee to pay the costs of
18 being returned to the board. Moneys recovered under this subsection must be remitted
19 to the department of corrections and rehabilitation.

20 **SECTION 2. AMENDMENT.** Section 12.1-01-04 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **12.1-01-04. General definitions.**

23 As used in this title, unless a different meaning plainly is required:

24 1. "Absconded" means when a probationer, parolee, participant in a pretrial services
25 program, or participant in a prosecution-led diversion program willfully avoids
26 supervision by making their whereabouts unknown or fails to report to a supervising
27 authority.

28 2. "Act" or "action" means a bodily movement, whether voluntary or involuntary.

29 ~~2.3.~~ "Acted", "acts", and "actions" include, where relevant, "omitted to act" and "omissions
30 to act".

31 ~~3.4.~~ "Actor" includes, where relevant, a person guilty of an omission.

1 ~~4.5.~~ "Bodily injury" means any impairment of physical condition, including physical pain.

2 ~~5.6.~~ "Court" means any of the following courts: the supreme court, a district court, and
3 where relevant, a municipal court.

4 ~~6.7.~~ "Dangerous weapon" includes any switchblade or gravity knife, machete, scimitar,
5 stiletto, sword, or dagger; any billy, blackjack, sap, bludgeon, cudgel, metal knuckles,
6 or sand club; any slingshot; any bow and arrow, crossbow, or spear; any weapon that
7 will expel, or is readily capable of expelling, a projectile by the action of a spring,
8 compressed air, or compressed gas including any such weapon, loaded or unloaded,
9 commonly referred to as a BB gun, air rifle, or ~~CO₂~~CO₂ gun; and any projector of a
10 bomb or any object containing or capable of producing and emitting any noxious liquid,
11 gas, or substance.

12 ~~7.8.~~ "Destructive device" means any explosive, incendiary or poison gas bomb, grenade,
13 mine, rocket, missile, or similar device.

14 ~~8.9.~~ "Explosive" means gunpowders, powders used for blasting, all forms of high
15 explosives, blasting materials, fuses (other than electric circuit breakers), detonators
16 and other detonating agents, smokeless powders, and any chemical compounds,
17 mechanical mixture, or other ingredients in such proportions, quantities, or packing
18 that ignition by fire, by friction, by concussion, by percussion, or by detonation of the
19 compound, or material, or any part thereof may cause an explosion.

20 ~~9.10.~~ "Firearm" means any weapon that will expel, or is readily capable of expelling, a
21 projectile by the action of an explosive and includes any such weapon, loaded or
22 unloaded, commonly referred to as a pistol, revolver, rifle, gun, machine gun, shotgun,
23 bazooka, or cannon.

24 ~~10.11.~~ "Force" means physical action.

25 ~~11.12.~~ "Government" means:

- 26 a. The government of this state or any political subdivision of this state;
27 b. Any agency, subdivision, or department of the state or any political subdivision of
28 the state, including the executive, legislative, and judicial branches;
29 c. Any corporation or other entity established by law to carry on any governmental
30 function; and

d. Any commission, corporation, or agency established by statute, compact, or contract between or among governments for the execution of intergovernmental programs.

~~42.13.~~ "Governmental function" includes any activity that one or more public servants are legally authorized to undertake on behalf of government.

~~43.14.~~ "Harm" means loss, disadvantage, or injury to the person affected, and includes loss, disadvantage, or injury to any other person in whose welfare the person affected is interested.

~~44.15.~~ "Included offense" means an offense:

a. That is established by proof of the same or less than all the facts required to establish commission of the offense charged;

b. That consists of criminal facilitation of or an attempt or solicitation to commit the offense charged; or

c. That differed from the offense charged only in that it constitutes a less serious harm or risk of harm to the same person, property, or public interest, or because a lesser degree of culpability suffices to establish its commission.

~~45.16.~~ "Includes" should be read as if the phrase "but is not limited to" were also set forth.

~~46.17.~~ "Law enforcement officer" or "peace officer" means a public servant authorized by law or by a government agency or branch to enforce the law and to conduct or engage in investigations or prosecutions for violations of law.

~~47.18.~~ "Local" means of or pertaining to any political subdivision of the state.

~~48.19.~~ "Manifest injustice" means a specific finding by the court that the imposition of sentence is unreasonably harsh or shocking to the conscience of a reasonable individual, with due consideration of the totality of circumstances.

~~49.20.~~ "Offense" means conduct for which a term of imprisonment or a fine is authorized by statute after conviction.

~~20.21.~~ "Official action" includes a decision, opinion, recommendation, vote, or other exercise of discretion by any government agency.

~~24.22.~~ "Official proceeding" means a proceeding heard or which may be heard before any government agency or branch or public servant authorized to take evidence under

1 oath, including any referee, hearing examiner, commissioner, notary, or other person
2 taking testimony or a deposition in connection with any such proceeding.

3 ~~22-23.~~ "Omission" means a failure to act.

4 ~~23-24.~~ As used in this title and in sections outside this title which define offenses, "person"
5 includes, where relevant, a corporation, limited liability company, partnership,
6 unincorporated association, or other legal entity. When used to designate a party
7 whose property may be the subject of action constituting an offense, the word "person"
8 includes a government that may lawfully own property in this state.

9 ~~24-25.~~ "Political subdivision" as used in this title and in any statute outside this title which
10 defines an offense means a county, city, school district, township, and any other local
11 governmental entity created by law.

12 ~~25-26.~~ "Possesses" means an individual has:

- 13 a. Direct physical control of something on or around the individual's person; or
14 b. The power and intention to exercise control over something accessible to but not
15 on or around the individual's person.

16 ~~26-27.~~ "Public servant" as used in this title and in any statute outside this title which defines
17 an offense means any officer or employee of government, including law enforcement
18 officers, whether elected or appointed, and any person participating in the
19 performance of a governmental function. The term does not include witnesses.

20 ~~27-28.~~ "Responsivity factors" means characteristics of an individual which affect the
21 individual's ability to respond favorably or unfavorably to a treatment goal.

22 ~~29.~~ "Risk assessment" means an initial phase with a secondary process approved by the
23 department of health and human services for the evaluation of the likelihood a person
24 that committed an offense will commit another similar offense a validated, standardized
25 actuarial tool used to identify potential risk factors that increase the likelihood an
26 individual will reoffend and responsivity factors, when addressed, reduce the likelihood
27 an individual will reoffend. The initial phase is an assessment tool that is administered
28 by a trained ~~probation and parole officer~~ corrections professional. A predetermined
29 score on the initial phase initiates the secondary process, approved by the department
30 of health and human services, that ~~includes~~ may include a clinical interview,
31 psychological testing, and verification through collateral information or

1 psychophysiological testing, or both. The department of health and human services
2 shall perform the secondary process of the risk assessment.

3 ~~28-30.~~ "Serious bodily injury" means bodily injury that creates a substantial risk of death or
4 which causes serious permanent disfigurement, unconsciousness, extreme pain,
5 permanent loss or impairment of the function of any bodily member or organ, a bone
6 fracture, or impediment of air flow or blood flow to the brain or lungs.

7 ~~29-31.~~ "Signature" includes any name, mark, or sign written or affixed with intent to
8 authenticate any instrument or writing.

9 ~~30-32.~~ "Substantial bodily injury" means a substantial temporary disfigurement, loss, or
10 impairment of the function of any bodily member or organ.

11 ~~31-33. "Technical violation" means a violation of a condition of probation or parole which does~~
12 ~~not involve:~~

13 ~~—— a. An arrest or a summons issued by a peace officer;~~

14 ~~—— b. A criminal offense;~~

15 ~~—— c. A violation of a protection order or order prohibiting contact; or~~

16 ~~—— d. Absconding.~~

17 ~~—— 34.~~ "Thing of value" or "thing of pecuniary value" means a thing of value in the form of
18 money, tangible or intangible property, commercial interests, or anything else the
19 primary significance of which is economic gain to the recipient.

20 ~~32-35-34.~~ "Tier 1 mental health professional" has the same meaning as provided under
21 section 25-01-01.

22 **SECTION 3. AMENDMENT.** Subdivision b of subsection 3 of section 12.1-22-01 of the
23 North Dakota Century Code is amended and reenacted as follows:

24 b. "Dangerous weapon" means a weapon defined in ~~subsection 6 of section~~
25 12.1-01-04 or a weapon the possession of which under the circumstances
26 indicates an intent or readiness to inflict serious bodily injury.

27 **SECTION 4. AMENDMENT.** Section 12.1-32-07 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **12.1-32-07. Supervision of probationer - Conditions of probation - Revocation.**

30 1. When the court imposes probation upon conviction for a felony offense subject to
31 section 12.1-32-09.1 or 12.1-32-02.1, a second or subsequent violation of section

12.1-17-07.1, a second or subsequent violation of any domestic violence protection order, a violation of chapter 12.1-41, a violation of section 14-09-22, or a felony offense under chapter 39-08, the court shall place the defendant under the supervision and management of the department of corrections and rehabilitation. When the court imposes probation upon conviction or order of disposition in all other felony cases, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation. In class A misdemeanor cases, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation or other responsible party. In all other cases, the court may place the defendant under the supervision and management of a community corrections program other than the department of corrections and rehabilitation. A community corrections program means a program for the supervision of a defendant, including monitoring and enforcement of terms and conditions of probation set by the court.

2. ~~The conditions of probation must be such as the court in its discretion deems reasonably necessary to ensure that the defendant will lead a law-abiding life or to assist the defendant to do so. The court shall provide as an explicit condition of every probation that the defendant not commit another offense during the period for which the probation remains subject to revocation. The court shall order supervision costs and fees of not less than fifty-five dollars per month unless the court makes a specific finding on record that the imposition of fees will result in an undue hardship. If the offender has not paid the full amount of supervision fees and costs before completion or termination of probation, the court may issue an order, after opportunity for hearing, to determine the amount of supervision fees and costs that are unpaid. The order may be filed, transcribed, and enforced by the department of corrections and rehabilitation in the same manner as civil judgments rendered by a district court of this state.~~ The department of corrections and rehabilitation may administer a risk assessment for the evaluation of each defendant ~~when~~ placed under the supervision and management of the department of corrections and rehabilitation. The results of the risk assessment may be used to set a level of supervision and management and develop an individualized case plan for the defendant. The case plan may include a list of

responsivity factors and a plan to address any risk factors identified in the risk
assessment.

3. The court shall provide as an explicit condition of every probation that the defendant may not possess a firearm, destructive device, or other dangerous weapon while the defendant is on probation. Except when the offense is a misdemeanor offense under section 12.1-17-01, 12.1-17-01.1, 12.1-17-01.2, 12.1-17-05, or 12.1-17-07.1, or chapter 14-07.1, the court may waive this condition of probation if the defendant has pled guilty to, or has been found guilty of, a misdemeanor or infraction offense, the misdemeanor or infraction is the defendant's first offense, and the court has made a specific finding on the record before imposition of a sentence or a probation that there is good cause to waive the condition. The court may not waive this condition of probation if the court places the defendant under the supervision and management of the department of corrections and rehabilitation. The court shall provide as an explicit condition of probation that the defendant may not willfully defraud a urine test administered as a condition of probation. Unless waived on the record by the court, the court shall also provide as a condition of probation that the defendant undergo various agreed-to community constraints and conditions as intermediate measures of the department of corrections and rehabilitation to avoid revocation, which may include:
- a. Community service;
 - b. Day reporting;
 - c. Curfew;
 - d. Home confinement;
 - e. House arrest;
 - f. Electronic monitoring;
 - g. Residential halfway house;
 - h. Intensive supervision program;
 - i. Up to five nonsuccessive periods of incarceration during any twelve-month period, each of which may not exceed forty-eight consecutive hours;
 - j. Participation in the twenty-four seven sobriety program; or

1 k. One period of incarceration during a period of probation not to exceed thirty
2 consecutive days in lieu of a petition for revocation of probation.

3 4. When imposing a sentence to probation, probation in conjunction with imprisonment,
4 or probation in conjunction with suspended execution or deferred imposition of
5 sentence, the court may impose such conditions as it deems appropriate and may
6 include any one or more of the following:

7 a. Work faithfully at a suitable employment or faithfully pursue a course of study or
8 of career and technical education training that will equip the defendant for
9 suitable employment.

10 b. Undergo available medical or psychiatric treatment and remain in a specified
11 institution if required for that purpose.

12 c. Attend or reside in a facility established for the instruction, recreation, or
13 residence of persons on probation.

14 d. Support the defendant's dependents and meet other family responsibilities.

15 e. Make restitution or reparation to the victim of the defendant's conduct for the
16 damage or injury which was sustained or perform other reasonable assigned
17 work. When restitution, reparation, or assigned work is a condition of probation,
18 the court shall proceed as provided in subsection 1 or 2, as applicable, of section
19 12.1-32-08.

20 f. Pay a fine imposed after consideration of the provisions of section 12.1-32-05.

21 g. Refrain from excessive use of alcohol or any use of narcotics or of another
22 dangerous or abusable drug without a prescription.

23 h. Permit the probation officer to visit the defendant at reasonable times at the
24 defendant's home or elsewhere.

25 i. Remain within the jurisdiction of the court, unless granted permission to leave by
26 the court or the probation officer.

27 j. Answer all reasonable inquiries by the probation officer and promptly notify the
28 probation officer of any change in address or employment.

29 k. Report to a probation officer at reasonable times as directed by the court or the
30 probation officer.

- 1 l. Submit to a medical examination or other reasonable testing for the purpose of
2 determining the defendant's use of narcotics, marijuana, or other controlled
3 substance whenever required by a probation officer.
- 4 m. Refrain from associating with known users or traffickers in narcotics, marijuana,
5 or other controlled substances.
- 6 n. Submit the defendant's person, place of residence, or vehicle to search and
7 seizure by a probation officer at any time of the day or night, with or without a
8 search warrant.
- 9 o. Serve a term of imprisonment of up to one-half of the maximum term authorized
10 for the offense of which the defendant was convicted.
- 11 p. Reimburse the costs and expenses determined necessary for the defendant's
12 adequate defense when counsel is appointed or provided at public expense for
13 the defendant. When reimbursement of indigent defense costs and expenses is
14 imposed as a condition of probation, the court shall proceed as provided in
15 subsection 4 of section 12.1-32-08.
- 16 q. Provide community service for the number of hours designated by the court.
- 17 r. Refrain from any subscription to, access to, or use of the internet.
- 18 5. When the court imposes a sentence to probation, probation in conjunction with
19 imprisonment, or probation in conjunction with suspended execution or deferred
20 imposition of sentence, the defendant must be given a certificate explicitly setting forth
21 the conditions on which the defendant is being released.
- 22 ~~6. When it is alleged a probationer has absconded from supervision, the department of~~
23 ~~corrections and rehabilitation may issue an authority to hold until the probationer is~~
24 ~~apprehended. The department may dismiss the authority to hold, implement~~
25 ~~intermediate measures, or initiate a petition for revocation.~~
- 26 6.7. The court, upon notice to the probationer and with good cause, may modify or enlarge
27 the conditions of probation at any time before the expiration or termination of the
28 period for which the probation remains conditional. If the defendant violates a
29 condition of probation at any time before the expiration or termination of the period, the
30 court may continue the defendant on the existing probation, with or without modifying
31 or enlarging the conditions, or may revoke the probation and impose any other

1 sentence that was available under section 12.1-32-02 or 12.1-32-09 at the time of
2 initial sentencing or deferment.

3 ~~7.8.~~ The court may continue or modify probation conditions or revoke probation for a
4 violation of probation conditions occurring before the expiration or termination of the
5 period of probation notwithstanding that the order of the court is imposed after the
6 expiration or termination has occurred. The petition for revocation must be issued
7 within sixty days of the expiration or termination of probation.

8 ~~9. The court may continue or modify probation conditions or revoke probation for a~~
9 ~~technical violation as defined in section 12.1-01-04. The court, only upon revoking a~~
10 ~~term of probation for a technical violation, may impose a term of incarceration as~~
11 ~~follows:~~

12 ~~a. Fifteen days for a first revocation;~~

13 ~~b. Up to thirty days for a second revocation;~~

14 ~~c. Up to ninety days for a third revocation; or~~

15 ~~d. The full remaining time of the sentence that has not been served in custody for a~~
16 ~~fourth or subsequent revocation.~~

17 ~~8.10.~~ Jurisdiction over a probationer may be transferred from the court that imposed the
18 sentence to another court of this state with the concurrence of both courts. Retransfers
19 of jurisdiction may also occur in the same manner. The court to which jurisdiction has
20 been transferred under this subsection may exercise all powers permissible under this
21 chapter over the defendant.

22 ~~9.11.~~ Notwithstanding any other provision of law, the court may authorize the defendant to
23 assist law enforcement officers in an investigation of a criminal offense upon the terms
24 and conditions as the court may require by written order. The court shall hold a
25 hearing in camera before issuing an order under this subsection. The order must be
26 sealed and is subject to inspection only upon order of the court.

27 ~~10.12.~~ The department of corrections and rehabilitation shall provide written notice to a
28 defendant who is in the department's physical custody of any untried petition for
29 revocation against the defendant of which the department has notice and of the
30 defendant's right to make a request for final disposition of the petition.

- a. Upon notice of an untried petition for revocation of probation, the defendant may request final disposition of the petition. The defendant's request must be in writing and name the court in which the petition for revocation of probation is pending and the prosecuting official charged with the duty of prosecuting the petition.
- b. The defendant shall submit the request to the department. The department shall certify the term of commitment under which the defendant is being held, the time the defendant has served on the sentence, the time remaining to be served, sentence reduction credit the defendant has earned, the defendant's eligibility for parole, and whether the parole board has made a decision regarding the defendant's parole.
- c. The department shall send by registered mail, return receipt requested, one copy of the request and certificate to the court and one copy to the prosecuting official to whom the request and certificate is addressed.
- d. The petition for revocation of probation must be brought to the court for hearing within ninety days after the receipt of the request and certificate by the court and prosecuting official. If the petition is not brought to the court for hearing within the ninety days, the court shall dismiss the petition with prejudice.
- e. The parties may stipulate for a continuance or the court may grant a continuance upon a showing of good cause by either party for a petition under this subsection.
- f. If the defendant escapes from custody subsequent to the defendant's execution of a request for final disposition of a petition for revocation, the request is considered void.

~~13. The department shall use a matrix system of graduated sanctions and incentives and apply the presumptive sanctions and incentives for the appropriate supervision violations and successes.~~

SECTION 5. AMENDMENT. Section 12.1-32-08 of the North Dakota Century Code is amended and reenacted as follows:

12.1-32-08. Hearing prior to ordering restitution, reparation, or reimbursement of indigent defense costs and expenses - Conditions - Collection of restitution for insufficient funds checks - Continuing appropriation.

1. The court, when sentencing a person adjudged guilty of criminal activities that have resulted in pecuniary damages, in addition to any other sentence the court may impose, shall order that the defendant make restitution to the victim or other recipient as determined by the court. Restitution must include payment to the owner of real property that is contaminated by the defendant in the manufacturing of methamphetamine for the cost of removing the contamination and returning the property to the property's condition before contamination and to any other person that has incurred costs in decontaminating the property.
2. If the court has retained jurisdiction after the sentencing hearing for claims of restitution, to make a claim for restitution, the victim shall submit information by affidavit or declaration and, as applicable, documentary evidence within the time specified in the order. The information submitted must describe the items or elements of loss, itemize the total dollar amounts of restitution claimed, and present facts and evidence sufficient to support a finding the restitution is directly related to the offense and the amount awarded. The prosecutor shall serve the defendant with a copy of the information submitted by the victim no later than sixty days following sentencing.
3. The defendant may challenge restitution but must do so by requesting a hearing within thirty days of being served with the written notification of the amount of restitution requested. The hearing request must be made in writing and filed with the court. If no hearing is requested, the court may enter a judgment ordering restitution. A defendant may not challenge restitution after the thirty-day time period has passed.
4. In determining the amount of restitution, the court shall take into account the reasonable damages sustained by the victim or victims of the criminal offense, which damages are limited to those directly related to the criminal offense and expenses actually sustained as a direct result of the defendant's criminal action. This can include an amount equal to the cost of necessary and related professional services and devices relating to physical, psychiatric, and psychological care. The defendant may be required as part of the sentence imposed by the court to pay the prescribed

1 treatment costs for a victim of a sexual offense as defined in chapters 12.1-20 and
2 12.1-27.2. The court shall fix the amount of restitution or reparation and shall fix the
3 manner of performance of any condition or conditions of probation established
4 pursuant to this subsection. The court may order the defendant to disclose income and
5 assets on forms developed by the state court administrator to facilitate the setting of
6 an appropriate payment plan. The court shall order restitution be paid to the division of
7 adult services for any benefits the division has paid or may pay to the victim under
8 chapter 54-23.4 unless the court, on the record, directs otherwise. Any payments
9 made pursuant to the order must be deducted from damages awarded in a civil action
10 arising from the same incident.

11 5. An order that a defendant make restitution or reparation as a sentence or condition of
12 probation, unless the court directs otherwise, may be filed without filing fee,
13 transcribed, and enforced by the person entitled to the restitution or reparation or by
14 the division of adult services in the same manner as civil judgments rendered by the
15 courts of this state may be enforced. Upon thirty days' written notice to the victim's last
16 known address, the court may order the judgment imposing a duty to pay restitution or
17 reparation be docketed in the same manner as a civil judgment under section
18 29-26-22.1.

19 6. When the restitution ordered by the court under subsection 1 is the result of a finding
20 that the defendant issued a check or draft without sufficient funds or without an
21 account, the court shall impose as costs the greater of the sum of ten dollars or an
22 amount equal to twenty-five percent of the amount of restitution ordered. The costs
23 imposed under this subsection, however, may not exceed one thousand dollars. The
24 state-employed clerks of district court shall remit the funds collected as costs under
25 this subsection to the state treasurer for deposit in the restitution collection assistance
26 fund. The funds deposited into the restitution collection assistance fund are
27 appropriated to the judicial branch on a continuing basis for the purpose of defraying
28 expenses incident to the collection of restitution, including operating expenses and the
29 compensation of additional necessary personnel. The state's attorneys and
30 county-employed clerks of district court shall remit the funds collected as costs under
31 this subsection to the county treasurer to be deposited in the county general fund.

- 1 7. The court may order the defendant to perform reasonable assigned work as a
2 condition of probation, which assigned work need not be related to the offense
3 charged, but must not be solely for the benefit of a private individual other than the
4 victim.
- 5 8. ~~Under section 12.1-32-07, the court may order that the defendant reimburse indigent~~
6 ~~defense costs and expenses as a condition of probation.~~
- 7 a. ~~Unless it finds that there is no likelihood that the defendant is or will be able to~~
8 ~~pay attorney's fees and expenses, the court, in its judgment of conviction, and in~~
9 ~~any order or amended judgment following a revocation or other postjudgment~~
10 ~~proceeding, shall notify the defendant, the defendant's probation officer, and the~~
11 ~~prosecuting attorney of the presumed amount of costs and expenses to be~~
12 ~~reimbursed, as determined by the commission on legal counsel for indigents, and~~
13 ~~of the right to a hearing on the reimbursement amount. The reimbursement~~
14 ~~amount must include an application fee imposed under section 29-07-01.1 if the~~
15 ~~fee has not been paid before disposition of the case and the court has not waived~~
16 ~~payment of the fee.~~
- 17 b. ~~If the defendant or prosecutor requests a hearing within thirty days of receiving~~
18 ~~notice under this subdivision, the court shall schedule a hearing at which the~~
19 ~~actual amount of attorney's fees and expenses must be shown. In determining~~
20 ~~the amount and method of reimbursement, the court shall consider the financial~~
21 ~~resources of the defendant and the nature of the burden that reimbursement of~~
22 ~~costs and expenses will impose.~~
- 23 c. ~~A defendant who is required to reimburse indigent defense costs and expenses~~
24 ~~as a condition of probation and who is not willfully in default in that~~
25 ~~reimbursement may at any time petition the court that imposed the condition to~~
26 ~~waive reimbursement of all or any portion of the costs and expenses. If the court~~
27 ~~is satisfied that reimbursement of the amount due will impose undue hardship on~~
28 ~~the defendant or the defendant's immediate family, the court may waive~~
29 ~~reimbursement of all or any portion of the amount due or modify the method of~~
30 ~~payment.~~

d. ~~If at any time the court finds that the defendant is able to reimburse costs and expenses and has willfully failed to do so, the court may continue, modify, or enlarge the conditions of probation or revoke probation as provided in subsection 6 or 7, as applicable, of section 12.1-32-07.~~

9. ~~If the court finds that the defendant is unable to pay a fine, supervision fee, reimbursement for indigent defense costs and expenses, or restitution or reparations, the court may order the defendant to perform reasonable assigned work in lieu of all or part of a fine, a supervision fee, reimbursement for indigent defense costs and expenses, or restitution or reparations. The defendant may not perform reasonable assigned work in lieu of restitution or reparations unless the person entitled to restitution or reparations has consented in writing or on the record.~~

SECTION 6. AMENDMENT. Section 29-07-01.1 of the North Dakota Century Code is amended and reenacted as follows:

29-07-01.1. Payment of expenses for defense of indigents -~~Reimbursement of indigent defense costs and expenses~~ - Indigent defense administration fund - Continuing appropriation.

1. Lawyers provided to represent indigent persons must be compensated at a reasonable rate to be determined by the commission on legal counsel for indigents. Expenses necessary for the adequate defense of an indigent person prosecuted in district court, other than for a violation of a home rule county's ordinance, when approved by the commission, must be paid by the state. Expenses necessary for the adequate defense of an indigent person prosecuted for violation of a home rule county's ordinance must be paid by the home rule county. Expenses necessary for the adequate defense of an indigent person prosecuted in municipal court, when approved by the judge, must be paid by the city in which the alleged offense took place. The city shall also pay the expenses in any matter transferred to district court pursuant to section 40-18-06.2 or 40-18-15.1, in any appeal taken to district court from a judgment of conviction in municipal court pursuant to section 40-18-19, and in an appeal or postconviction matter seeking relief from a conviction resulting from violation of a municipal ordinance. A defendant requesting representation by counsel at public expense, or for whom counsel provided at public expense without a request is

1 considered appropriate by the court, shall submit an application for indigent defense
2 services. ~~For an application for indigent defense services in the district court, a~~
3 ~~nonrefundable application fee of thirty-five dollars must be paid at the time the~~
4 ~~application is submitted. The district court may extend the time for payment of the fee~~
5 ~~or may waive or reduce the fee if the court determines the defendant is financially~~
6 ~~unable to pay all or part of the fee. If the application fee is not paid before disposition~~
7 ~~of the case, the fee amount must be added to the amount to be reimbursed under this~~
8 ~~section. Application fees collected under this subsection must be forwarded for deposit~~
9 ~~in the indigent defense administration fund established under subsection 4.~~

10 2. ~~A defendant for whom counsel is provided at public expense, subject to this~~
11 ~~subsection, shall reimburse the state, home rule county, or city such sums as the~~
12 ~~state, home rule county, or city expends on the defendant's behalf.~~

13 a. ~~At the time counsel is provided for a defendant, the court shall advise the~~
14 ~~defendant of the defendant's potential obligation to reimburse the appropriate~~
15 ~~governmental entity the amounts expended on behalf of the defendant.~~

16 b. ~~Unless it finds that there is no likelihood that the defendant is or will be able to~~
17 ~~pay attorney's fees and expenses, the court, in its judgment of conviction, and in~~
18 ~~any order or amended judgment entered following a revocation or other~~
19 ~~postjudgment proceeding, shall order the defendant to reimburse the presumed~~
20 ~~amount of indigent defense costs and expenses, as determined by the~~
21 ~~commission, and shall notify the defendant of the right to a hearing on the~~
22 ~~reimbursement amount. If the defendant or prosecutor requests a hearing within~~
23 ~~thirty days of receiving notice under this subdivision, the court shall schedule a~~
24 ~~hearing at which the actual amount of attorney's fees and expenses must be~~
25 ~~shown. In determining the amount of reimbursement and method of payment, the~~
26 ~~court shall consider the financial resources of the defendant and the nature of the~~
27 ~~burden that reimbursement of costs and expenses will impose.~~

28 c. ~~A defendant who is required to reimburse indigent defense costs and expenses~~
29 ~~and who is not willfully in default in that reimbursement may at any time petition~~
30 ~~the court to waive reimbursement of all or any portion of the attorney's fees and~~
31 ~~expenses. If the court is satisfied that reimbursement of the amount due will~~

1 impose undue hardship on the defendant or the defendant's immediate family,
2 the court may waive reimbursement of all or any portion of the amount due or
3 modify the method of payment.

4 3. ~~The attorney general, the state's attorney of the home rule county, or the prosecuting~~
5 ~~attorney of the city in which the alleged offense took place, if reimbursement has not~~
6 ~~been received, shall seek civil recovery of any amounts expended on the defendant's~~
7 ~~behalf anytime the attorney general, state's attorney, or city attorney determines the~~
8 ~~person for whom counsel was appointed may have funds to repay the state, home rule~~
9 ~~county, or city within six years of the date such amount was paid on that person's~~
10 ~~behalf. A person against whom civil recovery is sought under this subsection is entitled~~
11 ~~to all exemptions accorded to other judgment debtors. The attorney general, state's~~
12 ~~attorney, or prosecuting attorney may contract with a private sector collection agency~~
13 ~~for assistance in seeking recovery of such funds. Before referring the matter to a~~
14 ~~collection agency, the state's attorney shall notify the person who is the subject of the~~
15 ~~collection action.~~

16 4. The indigent defense administration fund is a special fund in the state treasury. The
17 state treasurer shall deposit in the fund all application fees collected under
18 subsection 1. All moneys in the indigent defense administration fund are appropriated
19 on a continuing basis to the commission on legal counsel for indigents to be used in
20 the administration of the indigent defense system.

21 **SECTION 7. LEGISLATIVE MANAGEMENT STUDY - COURT FINES AND FEES.** During
22 the 2025-26 interim, the legislative management shall consider studying court fines and fees,
23 including fines and fees relating to travel permits, presentence investigations, the drug court
24 program, electronic monitoring, alcohol monitoring, and the twenty-four seven sobriety program.
25 The study must consider the total amount collected; rate of fees collected, including any money
26 expended to collect the fines and fees; an evaluation of practices in other states; and the overall
27 impacts on a defendant. The legislative management shall report its findings and
28 recommendations, together with any legislation required to implement the recommendations, to
29 the seventieth legislative assembly.

30 ~~**SECTION 8. APPROPRIATION - COMMISSION ON LEGAL COUNSEL FOR**~~
31 ~~**INDIGENTS - OPERATING COSTS.** There is appropriated out of any moneys in the general~~

- 1 ~~fund in the state treasury, not otherwise appropriated, the sum of \$310,000, or so much of the~~
- 2 ~~sum as may be necessary, to the commission on legal counsel for indigents for the purpose of~~
- 3 ~~operating costs to replace lost revenue from the removal of the indigent defense application~~
- 4 ~~fees, for the biennium beginning July 1, 2025, and ending June 30, 2027.~~

STATEMENT OF PURPOSE OF AMENDMENT:**House Bill No. 1417 - Comm. on Legal Counsel for Indigents - Senate Action**

	Base Budget	House Version	Senate Changes	Senate Version
Comm. on Legal Counsel for Indigents		\$310,000	(\$310,000)	
Total all funds	\$0	\$310,000	(\$310,000)	\$0
Less estimated income	0	0	0	0
General fund	\$0	\$310,000	(\$310,000)	\$0
FTE	0.00	0.00	0.00	0.00

Department 188 - Comm. on Legal Counsel for Indigents - Detail of Senate Changes

	Reduces Funding for Comm. on Legal Counsel for Indigents¹	Total Senate Changes
Comm. on Legal Counsel for Indigents	(\$310,000)	(\$310,000)
Total all funds	(\$310,000)	(\$310,000)
Less estimated income	0	0
General fund	(\$310,000)	(\$310,000)
FTE	0.00	0.00

¹ Funding of \$310,000 from the general fund added by the House to replace revenue from the elimination of indigent defense application fees for the Commission on Legal Counsel for Indigents is removed by the Senate.

2025 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee Harvest Room, State Capitol

HB 1417
4/9/2025

A BILL for an Act to amend and reenact sections 12-59-15 and 12.1-01-04, subdivision b of subsection 3 of section 12.1-22-01, and sections 12.1-32-07, 12.1-32-08, and 29-07-01.1 of the North Dakota Century Code, relating to parole and probation violations and court fees; to provide for a legislative management study; to provide a penalty; and to provide an appropriation.

9:03 a.m. Chairman Bekkedahl opened the hearing.

Members Present: Chairman Bekkedahl, Vice-Chairman Erbele, and Senators Burckhard, Cleary, Conley, Davison, Dever, Dwyer, Magrum, Mathern, Meyer, Schaible, Sickler, Sorvaag, Thomas, Wanzek.

Discussion Topics:

- Updated Fiscal Note and Impact
- Fees and Fee Waivers

9:03 a.m. Senator Conley introduced the bill and submitted testimony #44836.

9:04 a.m. Senator Conley moved amendment LC 25.1150.02002.

9:04 a.m. Senator Burckhard seconded the motion.

Senators	Vote
Senator Brad Bekkedahl	Y
Senator Robert Erbele	Y
Senator Randy A. Burckhard	Y
Senator Sean Cleary	Y
Senator Cole Conley	Y
Senator Kyle Davison	Y
Senator Dick Dever	Y
Senator Michael Dwyer	Y
Senator Jeffery J. Magrum	Y
Senator Tim Mathern	Y
Senator Scott Meyer	Y
Senator Donald Schaible	Y
Senator Jonathan Sickler	Y
Senator Ronald Sorvaag	Y
Senator Paul J. Thomas	Y
Senator Terry M. Wanzek	Y

Motion Passed 16-0-0.

9:07 a.m. Senator Conley moved a Do Pass as Amended.

9:07 a.m. Senator Sorvaag seconded the motion.

Senators	Vote
Senator Brad Bekkedahl	Y
Senator Robert Erbele	Y
Senator Randy A. Burckhard	Y
Senator Sean Cleary	Y
Senator Cole Conley	Y
Senator Kyle Davison	Y
Senator Dick Dever	Y
Senator Michael Dwyer	Y
Senator Jeffery J. Magrum	N
Senator Tim Mathern	Y
Senator Scott Meyer	Y
Senator Donald Schaible	Y
Senator Jonathan Sickler	N
Senator Ronald Sorvaag	Y
Senator Paul J. Thomas	Y
Senator Terry M. Wanzek	Y

Motion Passed 14-2-0.

Senator Paulson will carry the bill.

9:14 a.m. Chairman Bekkedahl closed the hearing.

Elizabeth Reiten, Committee Clerk

April 7, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

**PROPOSED AMENDMENTS TO
FIRST ENGROSSMENT**

ENGROSSED HOUSE BILL NO. 1417

CO
4/7/25
10fz1

Introduced by

Representatives Klemin, Stemen, Hanson

Senators Davison, Larson

In place of the amendments (25.1150.02001) adopted by the Senate, Engrossed House Bill No. 1417 is amended by amendment (25.1150.02002) as follows:

- 1 A BILL for an Act to amend and reenact sections 12-59-15 and 12.1-01-04, subdivision b of
2 subsection 3 of section 12.1-22-01, and sections 12.1-32-07, 12.1-32-08, and 29-07-01.1 of the
3 North Dakota Century Code, relating to parole and probation violations and court fees; to
4 provide for a legislative management study; and to provide a penalty; ~~and to provide an~~
5 ~~appropriation.~~

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 **SECTION 1. AMENDMENT.** Section 12-59-15 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **12-59-15. Breach of parole - Hearings - Order of recommitment.**

- 10 1. When it is alleged that a parolee has violated any of the terms or conditions of parole
11 established by the parole board or by the department of corrections and rehabilitation,
12 the director of the department of corrections and rehabilitation may issue a warrant for
13 the arrest of the parolee ~~after considering graduated sanctions and incentives used in~~
14 ~~response to a violation under section 12.1-32-07.~~
- 15 2. Upon issuance of a warrant of arrest for a parole violation, the running of the time
16 period of parole must be suspended until the parole board issues a final order under
17 this section. The parolee is entitled to credit for time spent in physical custody from the
18 time of arrest until the time the parole board issues a final order.

- 1 3. The parolee is entitled to a preliminary hearing, as promptly as is convenient after the
2 arrest and reasonably near the place of the alleged violation or arrest, to determine
3 whether there is probable cause to find that the parolee violated any of the terms and
4 conditions of parole established by the board or by the department of corrections and
5 rehabilitation.
- 6 4. The preliminary hearing must be conducted before the director of the department of
7 corrections and rehabilitation or other hearing officer authorized by the director. The
8 preliminary hearing must be conducted by a disinterested hearing officer not directly
9 involved in the supervision of the parolee or by the person bringing the allegation of a
10 parole violation.
- 11 5. If the hearing officer determines there is probable cause to find that the parolee has
12 violated any of the terms and conditions of parole established by the board or by the
13 department of corrections and rehabilitation, the board may redetermine the time
14 remaining in the period of parole to reflect any portion of the period during which the
15 parolee was not under supervision or not in the custody of law enforcement personnel
16 in the state.
- 17 6. If the hearing officer determines there is probable cause to find that the parolee has
18 violated any of the terms and conditions of parole established by the board or by the
19 department of corrections and rehabilitation, the parolee must be returned to the
20 physical custody of the department of corrections and rehabilitation, transferred to
21 another correctional facility or the state hospital, or released from actual custody
22 pursuant to such terms and conditions as may be established by the parole board or
23 the department of corrections and rehabilitation, pending a final revocation hearing
24 before the parole board. If the board determines at the final revocation hearing that the
25 parolee has violated any;
26 ~~a. Any~~ of the terms and conditions of parole established by the board or by the
27 department of corrections and rehabilitation, ~~if the board~~ may order that the
28 parolee be recommitted to the physical custody of the department of corrections
29 and rehabilitation to serve all or part of the remaining time of the sentence that
30 has not been served in custody.

~~b. A technical violation of parole, as defined in section 12.1-01-04, the board may order the parolee be recommitted to the physical custody of the department of corrections and rehabilitation to serve fifteen days for a first violation, up to thirty days for a second violation, up to ninety days for a third violation, and the full remaining time of the sentence that has not been served in custody for a fourth and subsequent violation.~~

7. At any hearing pursuant to this section a record must be made and the parolee shall have:

- a. Written notice of the purpose of the hearing and the alleged violations.
- b. The opportunity to be heard in person and present witnesses and documentary evidence.
- c. The opportunity to confront and cross-examine adverse witnesses, unless the hearing officer determines that confrontation would create a risk of harm to the witness.
- d. A written statement as to the reasons for the decision.

8. ~~When~~If the board determines the parolee has absconded, as defined in section 12.1-01-04, from supervision, the board may order the parolee to pay the costs of being returned to the board. Moneys recovered under this subsection must be remitted to the department of corrections and rehabilitation.

SECTION 2. AMENDMENT. Section 12.1-01-04 of the North Dakota Century Code is amended and reenacted as follows:

12.1-01-04. General definitions.

As used in this title, unless a different meaning plainly is required:

1. "Absconded" means when a probationer, parolee, participant in a pretrial services program, or participant in a prosecution-led diversion program willfully avoids supervision by making their whereabouts unknown or fails to report to a supervising authority.
2. "Act" or "action" means a bodily movement, whether voluntary or involuntary.
- 2-3. "Acted", "acts", and "actions" include, where relevant, "omitted to act" and "omissions to act".
- 3-4. "Actor" includes, where relevant, a person guilty of an omission.

1 ~~4.5.~~ "Bodily injury" means any impairment of physical condition, including physical pain.

2 ~~5.6.~~ "Court" means any of the following courts: the supreme court, a district court, and
3 where relevant, a municipal court.

4 ~~6.7.~~ "Dangerous weapon" includes any switchblade or gravity knife, machete, scimitar,
5 stiletto, sword, or dagger; any billy, blackjack, sap, bludgeon, cudgel, metal knuckles,
6 or sand club; any slingshot; any bow and arrow, crossbow, or spear; any weapon that
7 will expel, or is readily capable of expelling, a projectile by the action of a spring,
8 compressed air, or compressed gas including any such weapon, loaded or unloaded,
9 commonly referred to as a BB gun, air rifle, or ~~CO₂~~ CO₂ gun; and any projector of a
10 bomb or any object containing or capable of producing and emitting any noxious liquid,
11 gas, or substance.

12 ~~7.8.~~ "Destructive device" means any explosive, incendiary or poison gas bomb, grenade,
13 mine, rocket, missile, or similar device.

14 ~~8.9.~~ "Explosive" means gunpowders, powders used for blasting, all forms of high
15 explosives, blasting materials, fuses (other than electric circuit breakers), detonators
16 and other detonating agents, smokeless powders, and any chemical compounds,
17 mechanical mixture, or other ingredients in such proportions, quantities, or packing
18 that ignition by fire, by friction, by concussion, by percussion, or by detonation of the
19 compound, or material, or any part thereof may cause an explosion.

20 ~~9.10.~~ "Firearm" means any weapon that will expel, or is readily capable of expelling, a
21 projectile by the action of an explosive and includes any such weapon, loaded or
22 unloaded, commonly referred to as a pistol, revolver, rifle, gun, machine gun, shotgun,
23 bazooka, or cannon.

24 ~~10.11.~~ "Force" means physical action.

25 ~~11.12.~~ "Government" means:

- 26 a. The government of this state or any political subdivision of this state;
27 b. Any agency, subdivision, or department of the state or any political subdivision of
28 the state, including the executive, legislative, and judicial branches;
29 c. Any corporation or other entity established by law to carry on any governmental
30 function; and

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1 d. Any commission, corporation, or agency established by statute, compact, or
2 contract between or among governments for the execution of intergovernmental
3 programs.

4 ~~12.13.~~ "Governmental function" includes any activity that one or more public servants are
5 legally authorized to undertake on behalf of government.

6 ~~13.14.~~ "Harm" means loss, disadvantage, or injury to the person affected, and includes loss,
7 disadvantage, or injury to any other person in whose welfare the person affected is
8 interested.

9 ~~14.15.~~ "Included offense" means an offense:

10 a. That is established by proof of the same or less than all the facts required to
11 establish commission of the offense charged;

12 b. That consists of criminal facilitation of or an attempt or solicitation to commit the
13 offense charged; or

14 c. That differed from the offense charged only in that it constitutes a less serious
15 harm or risk of harm to the same person, property, or public interest, or because
16 a lesser degree of culpability suffices to establish its commission.

17 ~~15.16.~~ "Includes" should be read as if the phrase "but is not limited to" were also set forth.

18 ~~16.17.~~ "Law enforcement officer" or "peace officer" means a public servant authorized by law
19 or by a government agency or branch to enforce the law and to conduct or engage in
20 investigations or prosecutions for violations of law.

21 ~~17.18.~~ "Local" means of or pertaining to any political subdivision of the state.

22 ~~18.19.~~ "Manifest injustice" means a specific finding by the court that the imposition of
23 sentence is unreasonably harsh or shocking to the conscience of a reasonable
24 individual, with due consideration of the totality of circumstances.

25 ~~19.20.~~ "Offense" means conduct for which a term of imprisonment or a fine is authorized by
26 statute after conviction.

27 ~~20.21.~~ "Official action" includes a decision, opinion, recommendation, vote, or other exercise
28 of discretion by any government agency.

29 ~~21.22.~~ "Official proceeding" means a proceeding heard or which may be heard before any
30 government agency or branch or public servant authorized to take evidence under

1 oath, including any referee, hearing examiner, commissioner, notary, or other person
2 taking testimony or a deposition in connection with any such proceeding.

3 ~~22-23.~~ "Omission" means a failure to act.

4 ~~23-24.~~ As used in this title and in sections outside this title which define offenses, "person"
5 includes, where relevant, a corporation, limited liability company, partnership,
6 unincorporated association, or other legal entity. When used to designate a party
7 whose property may be the subject of action constituting an offense, the word "person"
8 includes a government that may lawfully own property in this state.

9 ~~24-25.~~ "Political subdivision" as used in this title and in any statute outside this title which
10 defines an offense means a county, city, school district, township, and any other local
11 governmental entity created by law.

12 ~~25-26.~~ "Possesses" means an individual has:

- 13 a. Direct physical control of something on or around the individual's person; or
14 b. The power and intention to exercise control over something accessible to but not
15 on or around the individual's person.

16 ~~26-27.~~ "Public servant" as used in this title and in any statute outside this title which defines
17 an offense means any officer or employee of government, including law enforcement
18 officers, whether elected or appointed, and any person participating in the
19 performance of a governmental function. The term does not include witnesses.

20 ~~27-28.~~ "Responsivity factors" means characteristics of an individual which affect the
21 individual's ability to respond favorably or unfavorably to a treatment goal.

22 ~~29.~~ "Risk assessment" means an initial phase with a secondary process approved by the
23 department of health and human services for the evaluation of the likelihood a person
24 that committed an offense will commit another similar offense a validated, standardized
25 actuarial tool used to identify potential risk factors that increase the likelihood an
26 individual will reoffend and responsivity factors, when addressed, reduce the likelihood
27 an individual will reoffend. The initial phase is an assessment tool that is administered
28 by a trained ~~probation and parole officer~~ corrections professional. A predetermined
29 score on the initial phase initiates the secondary process, approved by the department
30 of health and human services, that ~~includes~~ may include a clinical interview,
31 psychological testing, and verification through collateral information or

1 psychophysiological testing, or both. The department of health and human services
2 shall perform the secondary process of the risk assessment.

3 ~~28-30.~~ "Serious bodily injury" means bodily injury that creates a substantial risk of death or
4 which causes serious permanent disfigurement, unconsciousness, extreme pain,
5 permanent loss or impairment of the function of any bodily member or organ, a bone
6 fracture, or impediment of air flow or blood flow to the brain or lungs.

7 ~~29-31.~~ "Signature" includes any name, mark, or sign written or affixed with intent to
8 authenticate any instrument or writing.

9 ~~30-32.~~ "Substantial bodily injury" means a substantial temporary disfigurement, loss, or
10 impairment of the function of any bodily member or organ.

11 ~~31-33. "Technical violation" means a violation of a condition of probation or parole which does~~
12 ~~not involve:~~

13 ~~a. An arrest or a summons issued by a peace officer;~~

14 ~~b. A criminal offense;~~

15 ~~c. A violation of a protection order or order prohibiting contact; or~~

16 ~~d. Absconding.~~

17 ~~34.~~ "Thing of value" or "thing of pecuniary value" means a thing of value in the form of
18 money, tangible or intangible property, commercial interests, or anything else the
19 primary significance of which is economic gain to the recipient.

20 ~~32-35-34.~~ "Tier 1 mental health professional" has the same meaning as provided under
21 section 25-01-01.

22 **SECTION 3. AMENDMENT.** Subdivision b of subsection 3 of section 12.1-22-01 of the
23 North Dakota Century Code is amended and reenacted as follows:

24 b. "Dangerous weapon" means a weapon defined in ~~subsection 6 of section~~
25 12.1-01-04 or a weapon the possession of which under the circumstances
26 indicates an intent or readiness to inflict serious bodily injury.

27 **SECTION 4. AMENDMENT.** Section 12.1-32-07 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **12.1-32-07. Supervision of probationer - Conditions of probation - Revocation.**

30 1. When the court imposes probation upon conviction for a felony offense subject to
31 section 12.1-32-09.1 or 12.1-32-02.1, a second or subsequent violation of section

12.1-17-07.1, a second or subsequent violation of any domestic violence protection order, a violation of chapter 12.1-41, a violation of section 14-09-22, or a felony offense under chapter 39-08, the court shall place the defendant under the supervision and management of the department of corrections and rehabilitation. When the court imposes probation upon conviction or order of disposition in all other felony cases, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation. In class A misdemeanor cases, the court may place the defendant under the supervision and management of the department of corrections and rehabilitation or other responsible party. In all other cases, the court may place the defendant under the supervision and management of a community corrections program other than the department of corrections and rehabilitation. A community corrections program means a program for the supervision of a defendant, including monitoring and enforcement of terms and conditions of probation set by the court.

2. ~~The conditions of probation must be such as the court in its discretion deems reasonably necessary to ensure that the defendant will lead a law-abiding life or to assist the defendant to do so. The court shall provide as an explicit condition of every probation that the defendant not commit another offense during the period for which the probation remains subject to revocation. The court shall order supervision costs and fees of not less than fifty-five dollars per month unless the court makes a specific finding on record that the imposition of fees will result in an undue hardship. If the offender has not paid the full amount of supervision fees and costs before completion or termination of probation, the court may issue an order, after opportunity for hearing, to determine the amount of supervision fees and costs that are unpaid. The order may be filed, transcribed, and enforced by the department of corrections and rehabilitation in the same manner as civil judgments rendered by a district court of this state.~~ The department of corrections and rehabilitation may administer a risk assessment for the evaluation of each defendant when placed under the supervision and management of the department of corrections and rehabilitation. The results of the risk assessment may be used to set a level of supervision and management and develop an individualized case plan for the defendant. The case plan may include a list of

responsivity factors and a plan to address any risk factors identified in the risk assessment.

3. The court shall provide as an explicit condition of every probation that the defendant may not possess a firearm, destructive device, or other dangerous weapon while the defendant is on probation. Except when the offense is a misdemeanor offense under section 12.1-17-01, 12.1-17-01.1, 12.1-17-01.2, 12.1-17-05, or 12.1-17-07.1, or chapter 14-07.1, the court may waive this condition of probation if the defendant has pled guilty to, or has been found guilty of, a misdemeanor or infraction offense, the misdemeanor or infraction is the defendant's first offense, and the court has made a specific finding on the record before imposition of a sentence or a probation that there is good cause to waive the condition. The court may not waive this condition of probation if the court places the defendant under the supervision and management of the department of corrections and rehabilitation. The court shall provide as an explicit condition of probation that the defendant may not willfully defraud a urine test administered as a condition of probation. Unless waived on the record by the court, the court shall also provide as a condition of probation that the defendant undergo various agreed-to community constraints and conditions as intermediate measures of the department of corrections and rehabilitation to avoid revocation, which may include:
- a. Community service;
 - b. Day reporting;
 - c. Curfew;
 - d. Home confinement;
 - e. House arrest;
 - f. Electronic monitoring;
 - g. Residential halfway house;
 - h. Intensive supervision program;
 - i. Up to five nonsuccessive periods of incarceration during any twelve-month period, each of which may not exceed forty-eight consecutive hours;
 - j. Participation in the twenty-four seven sobriety program; or

k. One period of incarceration during a period of probation not to exceed thirty consecutive days in lieu of a petition for revocation of probation.

4. When imposing a sentence to probation, probation in conjunction with imprisonment, or probation in conjunction with suspended execution or deferred imposition of sentence, the court may impose such conditions as it deems appropriate and may include any one or more of the following:

a. Work faithfully at a suitable employment or faithfully pursue a course of study or of career and technical education training that will equip the defendant for suitable employment.

b. Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose.

c. Attend or reside in a facility established for the instruction, recreation, or residence of persons on probation.

d. Support the defendant's dependents and meet other family responsibilities.

e. Make restitution or reparation to the victim of the defendant's conduct for the damage or injury which was sustained or perform other reasonable assigned work. When restitution, reparation, or assigned work is a condition of probation, the court shall proceed as provided in subsection 1 or 2, as applicable, of section 12.1-32-08.

f. Pay a fine imposed after consideration of the provisions of section 12.1-32-05.

g. Refrain from excessive use of alcohol or any use of narcotics or of another dangerous or abusable drug without a prescription.

h. Permit the probation officer to visit the defendant at reasonable times at the defendant's home or elsewhere.

i. Remain within the jurisdiction of the court, unless granted permission to leave by the court or the probation officer.

j. Answer all reasonable inquiries by the probation officer and promptly notify the probation officer of any change in address or employment.

k. Report to a probation officer at reasonable times as directed by the court or the probation officer.

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- 1 I. Submit to a medical examination or other reasonable testing for the purpose of
- 2 determining the defendant's use of narcotics, marijuana, or other controlled
- 3 substance whenever required by a probation officer.
- 4 m. Refrain from associating with known users or traffickers in narcotics, marijuana,
- 5 or other controlled substances.
- 6 n. Submit the defendant's person, place of residence, or vehicle to search and
- 7 seizure by a probation officer at any time of the day or night, with or without a
- 8 search warrant.
- 9 o. Serve a term of imprisonment of up to one-half of the maximum term authorized
- 10 for the offense of which the defendant was convicted.
- 11 p. Reimburse the costs and expenses determined necessary for the defendant's
- 12 adequate defense when counsel is appointed or provided at public expense for
- 13 the defendant. When reimbursement of indigent defense costs and expenses is
- 14 imposed as a condition of probation, the court shall proceed as provided in
- 15 subsection 4 of section 12.1-32-08.
- 16 q. Provide community service for the number of hours designated by the court.
- 17 r. Refrain from any subscription to, access to, or use of the internet.
- 18 5. When the court imposes a sentence to probation, probation in conjunction with
- 19 imprisonment, or probation in conjunction with suspended execution or deferred
- 20 imposition of sentence, the defendant must be given a certificate explicitly setting forth
- 21 the conditions on which the defendant is being released.
- 22 ~~6. When it is alleged a probationer has absconded from supervision, the department of~~
- 23 ~~corrections and rehabilitation may issue an authority to hold until the probationer is~~
- 24 ~~apprehended. The department may dismiss the authority to hold, implement~~
- 25 ~~intermediate measures, or initiate a petition for revocation.~~
- 26 6.7. The court, upon notice to the probationer and with good cause, may modify or enlarge
- 27 the conditions of probation at any time before the expiration or termination of the
- 28 period for which the probation remains conditional. If the defendant violates a
- 29 condition of probation at any time before the expiration or termination of the period, the
- 30 court may continue the defendant on the existing probation, with or without modifying
- 31 or enlarging the conditions, or may revoke the probation and impose any other

1 sentence that was available under section 12.1-32-02 or 12.1-32-09 at the time of
2 initial sentencing or deferment.

3 ~~7.8.~~ The court may continue or modify probation conditions or revoke probation for a
4 violation of probation conditions occurring before the expiration or termination of the
5 period of probation notwithstanding that the order of the court is imposed after the
6 expiration or termination has occurred. The petition for revocation must be issued
7 within sixty days of the expiration or termination of probation.

8 ~~9. The court may continue or modify probation conditions or revoke probation for a~~
9 ~~technical violation as defined in section 12.1-01-04. The court, only upon revoking a~~
10 ~~term of probation for a technical violation, may impose a term of incarceration as~~
11 ~~follows:~~

12 ~~a. Fifteen days for a first revocation;~~

13 ~~b. Up to thirty days for a second revocation;~~

14 ~~c. Up to ninety days for a third revocation; or~~

15 ~~d. The full remaining time of the sentence that has not been served in custody for a~~
16 ~~fourth or subsequent revocation.~~

17 ~~8.10.~~ Jurisdiction over a probationer may be transferred from the court that imposed the
18 sentence to another court of this state with the concurrence of both courts. Retransfers
19 of jurisdiction may also occur in the same manner. The court to which jurisdiction has
20 been transferred under this subsection may exercise all powers permissible under this
21 chapter over the defendant.

22 ~~9.11.~~ Notwithstanding any other provision of law, the court may authorize the defendant to
23 assist law enforcement officers in an investigation of a criminal offense upon the terms
24 and conditions as the court may require by written order. The court shall hold a
25 hearing in camera before issuing an order under this subsection. The order must be
26 sealed and is subject to inspection only upon order of the court.

27 ~~10.12.~~ The department of corrections and rehabilitation shall provide written notice to a
28 defendant who is in the department's physical custody of any untried petition for
29 revocation against the defendant of which the department has notice and of the
30 defendant's right to make a request for final disposition of the petition.

- a. Upon notice of an untried petition for revocation of probation, the defendant may request final disposition of the petition. The defendant's request must be in writing and name the court in which the petition for revocation of probation is pending and the prosecuting official charged with the duty of prosecuting the petition.
- b. The defendant shall submit the request to the department. The department shall certify the term of commitment under which the defendant is being held, the time the defendant has served on the sentence, the time remaining to be served, sentence reduction credit the defendant has earned, the defendant's eligibility for parole, and whether the parole board has made a decision regarding the defendant's parole.
- c. The department shall send by registered mail, return receipt requested, one copy of the request and certificate to the court and one copy to the prosecuting official to whom the request and certificate is addressed.
- d. The petition for revocation of probation must be brought to the court for hearing within ninety days after the receipt of the request and certificate by the court and prosecuting official. If the petition is not brought to the court for hearing within the ninety days, the court shall dismiss the petition with prejudice.
- e. The parties may stipulate for a continuance or the court may grant a continuance upon a showing of good cause by either party for a petition under this subsection.
- f. If the defendant escapes from custody subsequent to the defendant's execution of a request for final disposition of a petition for revocation, the request is considered void.

~~13. The department shall use a matrix system of graduated sanctions and incentives and apply the presumptive sanctions and incentives for the appropriate supervision violations and successes.~~

SECTION 5. AMENDMENT. Section 12.1-32-08 of the North Dakota Century Code is amended and reenacted as follows:

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12.1-32-08. Hearing prior to ordering restitution, reparation, or reimbursement of indigent defense costs and expenses - Conditions - Collection of restitution for insufficient funds checks - Continuing appropriation.

1. The court, when sentencing a person adjudged guilty of criminal activities that have resulted in pecuniary damages, in addition to any other sentence the court may impose, shall order that the defendant make restitution to the victim or other recipient as determined by the court. Restitution must include payment to the owner of real property that is contaminated by the defendant in the manufacturing of methamphetamine for the cost of removing the contamination and returning the property to the property's condition before contamination and to any other person that has incurred costs in decontaminating the property.
2. If the court has retained jurisdiction after the sentencing hearing for claims of restitution, to make a claim for restitution, the victim shall submit information by affidavit or declaration and, as applicable, documentary evidence within the time specified in the order. The information submitted must describe the items or elements of loss, itemize the total dollar amounts of restitution claimed, and present facts and evidence sufficient to support a finding the restitution is directly related to the offense and the amount awarded. The prosecutor shall serve the defendant with a copy of the information submitted by the victim no later than sixty days following sentencing.
3. The defendant may challenge restitution but must do so by requesting a hearing within thirty days of being served with the written notification of the amount of restitution requested. The hearing request must be made in writing and filed with the court. If no hearing is requested, the court may enter a judgment ordering restitution. A defendant may not challenge restitution after the thirty-day time period has passed.
4. In determining the amount of restitution, the court shall take into account the reasonable damages sustained by the victim or victims of the criminal offense, which damages are limited to those directly related to the criminal offense and expenses actually sustained as a direct result of the defendant's criminal action. This can include an amount equal to the cost of necessary and related professional services and devices relating to physical, psychiatric, and psychological care. The defendant may be required as part of the sentence imposed by the court to pay the prescribed

1 treatment costs for a victim of a sexual offense as defined in chapters 12.1-20 and
2 12.1-27.2. The court shall fix the amount of restitution or reparation and shall fix the
3 manner of performance of any condition or conditions of probation established
4 pursuant to this subsection. The court may order the defendant to disclose income and
5 assets on forms developed by the state court administrator to facilitate the setting of
6 an appropriate payment plan. The court shall order restitution be paid to the division of
7 adult services for any benefits the division has paid or may pay to the victim under
8 chapter 54-23.4 unless the court, on the record, directs otherwise. Any payments
9 made pursuant to the order must be deducted from damages awarded in a civil action
10 arising from the same incident.

11 5. An order that a defendant make restitution or reparation as a sentence or condition of
12 probation, unless the court directs otherwise, may be filed without filing fee,
13 transcribed, and enforced by the person entitled to the restitution or reparation or by
14 the division of adult services in the same manner as civil judgments rendered by the
15 courts of this state may be enforced. Upon thirty days' written notice to the victim's last
16 known address, the court may order the judgment imposing a duty to pay restitution or
17 reparation be docketed in the same manner as a civil judgment under section
18 29-26-22.1.

19 6. When the restitution ordered by the court under subsection 1 is the result of a finding
20 that the defendant issued a check or draft without sufficient funds or without an
21 account, the court shall impose as costs the greater of the sum of ten dollars or an
22 amount equal to twenty-five percent of the amount of restitution ordered. The costs
23 imposed under this subsection, however, may not exceed one thousand dollars. The
24 state-employed clerks of district court shall remit the funds collected as costs under
25 this subsection to the state treasurer for deposit in the restitution collection assistance
26 fund. The funds deposited into the restitution collection assistance fund are
27 appropriated to the judicial branch on a continuing basis for the purpose of defraying
28 expenses incident to the collection of restitution, including operating expenses and the
29 compensation of additional necessary personnel. The state's attorneys and
30 county-employed clerks of district court shall remit the funds collected as costs under
31 this subsection to the county treasurer to be deposited in the county general fund.

- 1 7. The court may order the defendant to perform reasonable assigned work as a
- 2 condition of probation, which assigned work need not be related to the offense
- 3 charged, but must not be solely for the benefit of a private individual other than the
- 4 victim.
- 5 8. ~~Under section 12.1-32-07, the court may order that the defendant reimburse indigent~~
- 6 ~~defense costs and expenses as a condition of probation.~~
- 7 a. ~~Unless it finds that there is no likelihood that the defendant is or will be able to~~
- 8 ~~pay attorney's fees and expenses, the court, in its judgment of conviction, and in~~
- 9 ~~any order or amended judgment following a revocation or other postjudgment~~
- 10 ~~proceeding, shall notify the defendant, the defendant's probation officer, and the~~
- 11 ~~prosecuting attorney of the presumed amount of costs and expenses to be~~
- 12 ~~reimbursed, as determined by the commission on legal counsel for indigents, and~~
- 13 ~~of the right to a hearing on the reimbursement amount. The reimbursement~~
- 14 ~~amount must include an application fee imposed under section 29-07-01.1 if the~~
- 15 ~~fee has not been paid before disposition of the case and the court has not waived~~
- 16 ~~payment of the fee.~~
- 17 b. ~~If the defendant or prosecutor requests a hearing within thirty days of receiving~~
- 18 ~~notice under this subdivision, the court shall schedule a hearing at which the~~
- 19 ~~actual amount of attorney's fees and expenses must be shown. In determining~~
- 20 ~~the amount and method of reimbursement, the court shall consider the financial~~
- 21 ~~resources of the defendant and the nature of the burden that reimbursement of~~
- 22 ~~costs and expenses will impose.~~
- 23 c. ~~A defendant who is required to reimburse indigent defense costs and expenses~~
- 24 ~~as a condition of probation and who is not willfully in default in that~~
- 25 ~~reimbursement may at any time petition the court that imposed the condition to~~
- 26 ~~waive reimbursement of all or any portion of the costs and expenses. If the court~~
- 27 ~~is satisfied that reimbursement of the amount due will impose undue hardship on~~
- 28 ~~the defendant or the defendant's immediate family, the court may waive~~
- 29 ~~reimbursement of all or any portion of the amount due or modify the method of~~
- 30 ~~payment.~~

d. ~~If at any time the court finds that the defendant is able to reimburse costs and expenses and has willfully failed to do so, the court may continue, modify, or enlarge the conditions of probation or revoke probation as provided in subsection 6 or 7, as applicable, of section 12.1-32-07.~~

9. ~~If the court finds that the defendant is unable to pay a fine, supervision fee, reimbursement for indigent defense costs and expenses, or restitution or reparations, the court may order the defendant to perform reasonable assigned work in lieu of all or part of a fine, a supervision fee, reimbursement for indigent defense costs and expenses, or restitution or reparations. The defendant may not perform reasonable assigned work in lieu of restitution or reparations unless the person entitled to restitution or reparations has consented in writing or on the record.~~

SECTION 6. AMENDMENT. Section 29-07-01.1 of the North Dakota Century Code is amended and reenacted as follows:

29-07-01.1. Payment of expenses for defense of indigents – ~~Reimbursement of indigent defense costs and expenses~~ - Indigent defense administration fund - Continuing appropriation.

1. Lawyers provided to represent indigent persons must be compensated at a reasonable rate to be determined by the commission on legal counsel for indigents. Expenses necessary for the adequate defense of an indigent person prosecuted in district court, other than for a violation of a home rule county's ordinance, when approved by the commission, must be paid by the state. Expenses necessary for the adequate defense of an indigent person prosecuted for violation of a home rule county's ordinance must be paid by the home rule county. Expenses necessary for the adequate defense of an indigent person prosecuted in municipal court, when approved by the judge, must be paid by the city in which the alleged offense took place. The city shall also pay the expenses in any matter transferred to district court pursuant to section 40-18-06.2 or 40-18-15.1, in any appeal taken to district court from a judgment of conviction in municipal court pursuant to section 40-18-19, and in an appeal or postconviction matter seeking relief from a conviction resulting from violation of a municipal ordinance. A defendant requesting representation by counsel at public expense, or for whom counsel provided at public expense without a request is

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considered appropriate by the court, shall submit an application for indigent defense services. ~~For an application for indigent defense services in the district court, a nonrefundable application fee of thirty five dollars must be paid at the time the application is submitted. The district court may extend the time for payment of the fee or may waive or reduce the fee if the court determines the defendant is financially unable to pay all or part of the fee. If the application fee is not paid before disposition of the case, the fee amount must be added to the amount to be reimbursed under this section. Application fees collected under this subsection must be forwarded for deposit in the indigent defense administration fund established under subsection 4.~~

2. ~~A defendant for whom counsel is provided at public expense, subject to this subsection, shall reimburse the state, home rule county, or city such sums as the state, home rule county, or city expends on the defendant's behalf.~~

a. ~~At the time counsel is provided for a defendant, the court shall advise the defendant of the defendant's potential obligation to reimburse the appropriate governmental entity the amounts expended on behalf of the defendant.~~

b. ~~Unless it finds that there is no likelihood that the defendant is or will be able to pay attorney's fees and expenses, the court, in its judgment of conviction, and in any order or amended judgment entered following a revocation or other postjudgment proceeding, shall order the defendant to reimburse the presumed amount of indigent defense costs and expenses, as determined by the commission, and shall notify the defendant of the right to a hearing on the reimbursement amount. If the defendant or prosecutor requests a hearing within thirty days of receiving notice under this subdivision, the court shall schedule a hearing at which the actual amount of attorney's fees and expenses must be shown. In determining the amount of reimbursement and method of payment, the court shall consider the financial resources of the defendant and the nature of the burden that reimbursement of costs and expenses will impose.~~

e. ~~A defendant who is required to reimburse indigent defense costs and expenses and who is not willfully in default in that reimbursement may at any time petition the court to waive reimbursement of all or any portion of the attorney's fees and expenses. If the court is satisfied that reimbursement of the amount due will~~

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1 impose undue hardship on the defendant or the defendant's immediate family,
2 the court may waive reimbursement of all or any portion of the amount due or
3 modify the method of payment.

4 3. ~~The attorney general, the state's attorney of the home rule county, or the prosecuting~~
5 ~~attorney of the city in which the alleged offense took place, if reimbursement has not~~
6 ~~been received, shall seek civil recovery of any amounts expended on the defendant's~~
7 ~~behalf anytime the attorney general, state's attorney, or city attorney determines the~~
8 ~~person for whom counsel was appointed may have funds to repay the state, home rule~~
9 ~~county, or city within six years of the date such amount was paid on that person's~~
10 ~~behalf. A person against whom civil recovery is sought under this subsection is entitled~~
11 ~~to all exemptions accorded to other judgment debtors. The attorney general, state's~~
12 ~~attorney, or prosecuting attorney may contract with a private sector collection agency~~
13 ~~for assistance in seeking recovery of such funds. Before referring the matter to a~~
14 ~~collection agency, the state's attorney shall notify the person who is the subject of the~~
15 ~~collection action.~~

16 4. The indigent defense administration fund is a special fund in the state treasury. The
17 state treasurer shall deposit in the fund all application fees collected under
18 subsection 1. All moneys in the indigent defense administration fund are appropriated
19 on a continuing basis to the commission on legal counsel for indigents to be used in
20 the administration of the indigent defense system.

21 **SECTION 7. LEGISLATIVE MANAGEMENT STUDY - COURT FINES AND FEES.** During
22 the 2025-26 interim, the legislative management shall consider studying court fines and fees,
23 including fines and fees relating to travel permits, presentence investigations, the drug court
24 program, electronic monitoring, alcohol monitoring, and the twenty-four seven sobriety program.
25 The study must consider the total amount collected; rate of fees collected, including any money
26 expended to collect the fines and fees; an evaluation of practices in other states; and the overall
27 impacts on a defendant. The legislative management shall report its findings and
28 recommendations, together with any legislation required to implement the recommendations, to
29 the seventieth legislative assembly.

30 ~~**SECTION 8. APPROPRIATION - COMMISSION ON LEGAL COUNSEL FOR**~~
31 ~~**INDIGENTS - OPERATING COSTS.** There is appropriated out of any moneys in the general~~

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- 1 ~~fund in the state treasury, not otherwise appropriated, the sum of \$310,000, or so much of the~~
- 2 ~~sum as may be necessary, to the commission on legal counsel for indigents for the purpose of~~
- 3 ~~operating costs to replace lost revenue from the removal of the indigent defense application~~
- 4 ~~fees, for the biennium beginning July 1, 2025, and ending June 30, 2027.~~

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STATEMENT OF PURPOSE OF AMENDMENT:**House Bill No. 1417 - Comm. on Legal Counsel for Indigents - Senate Action**

	Base Budget	House Version	Senate Changes	Senate Version
Comm. on Legal Counsel for Indigents		\$310,000	(\$310,000)	
Total all funds	\$0	\$310,000	(\$310,000)	\$0
Less estimated income	0	0	0	0
General fund	\$0	\$310,000	(\$310,000)	\$0
FTE	0.00	0.00	0.00	0.00

Department 188 - Comm. on Legal Counsel for Indigents - Detail of Senate Changes

	Reduces Funding for Comm. on Legal Counsel for Indigents ¹	Total Senate Changes
Comm. on Legal Counsel for Indigents	(\$310,000)	(\$310,000)
Total all funds	(\$310,000)	(\$310,000)
Less estimated income	0	0
General fund	(\$310,000)	(\$310,000)
FTE	0.00	0.00

¹ Funding of \$310,000 from the general fund added by the House to replace revenue from the elimination of indigent defense application fees for the Commission on Legal Counsel for Indigents is removed by the Senate.

**REPORT OF STANDING COMMITTEE
ENGROSSED AND AMENDED HB 1417**

Appropriations Committee (Sen. Bekkedahl, Chairman) recommends **AMENDMENTS** ([25.1150.02002](#)) and when so amended, recommends **DO PASS** (14 YEAS, 2 NAYS, 0 ABSENT OR EXCUSED AND NOT VOTING). Engrossed HB 1417, as amended, was placed on the Sixth order on the calendar. This bill does not affect workforce development.

4-8-25

25.1150.02002
Title.
Fiscal No. 1

Prepared by the Legislative Council
staff for Senate Appropriations -
Education and Environment Division
Committee

April 7, 2025

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Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO FIRST ENGROSSMENT

ENGROSSED HOUSE BILL NO. 1417

Introduced by

Representatives Klemin, Stemen, Hanson

Senators Davison, Larson

In place of the amendments (25.1150.02001) adopted by the Senate, House Bill No. 1417 is amended by amendment (25.1150.02002) as follows:

- 1 A BILL for an Act to amend and reenact sections 12-59-15 and 12.1-01-04, subdivision b of
- 2 subsection 3 of section 12.1-22-01, and sections 12.1-32-07, 12.1-32-08, and 29-07-01.1 of the
- 3 North Dakota Century Code, relating to parole and probation violations and court fees; to
- 4 provide for a legislative management study; and to provide a penalty; ~~and to provide an~~
- 5 ~~appropriation.~~

6 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

- 7 **SECTION 1. AMENDMENT.** Section 12-59-15 of the North Dakota Century Code is
- 8 amended and reenacted as follows:

9 **12-59-15. Breach of parole - Hearings - Order of recommitment.**

- 10 1. When it is alleged that a parolee has violated any of the terms or conditions of parole
- 11 established by the parole board or by the department of corrections and rehabilitation,
- 12 the director of the department of corrections and rehabilitation may issue a warrant for
- 13 the arrest of the parolee ~~after considering graduated sanctions and incentives used in~~
- 14 ~~response to a violation under section 12.1-32-07.~~
- 15 2. Upon issuance of a warrant of arrest for a parole violation, the running of the time
- 16 period of parole must be suspended until the parole board issues a final order under
- 17 this section. The parolee is entitled to credit for time spent in physical custody from the
- 18 time of arrest until the time the parole board issues a final order.

- 1 3. The parolee is entitled to a preliminary hearing, as promptly as is convenient after the
2 arrest and reasonably near the place of the alleged violation or arrest, to determine
3 whether there is probable cause to find that the parolee violated any of the terms and
4 conditions of parole established by the board or by the department of corrections and
5 rehabilitation.
- 6 4. The preliminary hearing must be conducted before the director of the department of
7 corrections and rehabilitation or other hearing officer authorized by the director. The
8 preliminary hearing must be conducted by a disinterested hearing officer not directly
9 involved in the supervision of the parolee or by the person bringing the allegation of a
10 parole violation.
- 11 5. If the hearing officer determines there is probable cause to find that the parolee has
12 violated any of the terms and conditions of parole established by the board or by the
13 department of corrections and rehabilitation, the board may redetermine the time
14 remaining in the period of parole to reflect any portion of the period during which the
15 parolee was not under supervision or not in the custody of law enforcement personnel
16 in the state.
- 17 6. If the hearing officer determines there is probable cause to find that the parolee has
18 violated any of the terms and conditions of parole established by the board or by the
19 department of corrections and rehabilitation, the parolee must be returned to the
20 physical custody of the department of corrections and rehabilitation, transferred to
21 another correctional facility or the state hospital, or released from actual custody
22 pursuant to such terms and conditions as may be established by the parole board or
23 the department of corrections and rehabilitation, pending a final revocation hearing
24 before the parole board. If the board determines at the final revocation hearing that the
25 parolee has violated ~~any~~;
26 ~~a.~~ Any of the terms and conditions of parole established by the board or by the
27 department of corrections and rehabilitation, ~~if the board~~ may order that the
28 parolee be recommitted to the physical custody of the department of corrections
29 and rehabilitation to serve all or part of the remaining time of the sentence that
30 has not been served in custody.

1 ~~b. A technical violation of parole, as defined in section 12.1-01-04, the board may~~
2 ~~order the parolee be recommitted to the physical custody of the department of~~
3 ~~corrections and rehabilitation to serve fifteen days for a first violation, up to thirty~~
4 ~~days for a second violation, up to ninety days for a third violation, and the full~~
5 ~~remaining time of the sentence that has not been served in custody for a fourth~~
6 ~~and subsequent violation.~~

7 7. At any hearing pursuant to this section a record must be made and the parolee shall
8 have:

- 9 a. Written notice of the purpose of the hearing and the alleged violations.
10 b. The opportunity to be heard in person and present witnesses and documentary
11 evidence.
12 c. The opportunity to confront and cross-examine adverse witnesses, unless the
13 hearing officer determines that confrontation would create a risk of harm to the
14 witness.
15 d. A written statement as to the reasons for the decision.

16 8. ~~When~~^{If} the board determines the parolee has absconded, as defined in section
17 12.1-01-04, from supervision, the board may order the parolee to pay the costs of
18 being returned to the board. Moneys recovered under this subsection must be remitted
19 to the department of corrections and rehabilitation.

20 **SECTION 2. AMENDMENT.** Section 12.1-01-04 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **12.1-01-04. General definitions.**

23 As used in this title, unless a different meaning plainly is required:

24 1. "Absconded" means when a probationer, parolee, participant in a pretrial services
25 program, or participant in a prosecution-led diversion program willfully avoids
26 supervision by making their whereabouts unknown or fails to report to a supervising
27 authority.

28 2. "Act" or "action" means a bodily movement, whether voluntary or involuntary.

29 ~~2-3.~~ "Acted", "acts", and "actions" include, where relevant, "omitted to act" and "omissions
30 to act".

31 ~~3-4.~~ "Actor" includes, where relevant, a person guilty of an omission.

- 1 ~~4.5.~~ "Bodily injury" means any impairment of physical condition, including physical pain.
- 2 ~~5.6.~~ "Court" means any of the following courts: the supreme court, a district court, and
- 3 where relevant, a municipal court.
- 4 ~~6.7.~~ "Dangerous weapon" includes any switchblade or gravity knife, machete, scimitar,
- 5 stiletto, sword, or dagger; any billy, blackjack, sap, bludgeon, cudgel, metal knuckles,
- 6 or sand club; any slingshot; any bow and arrow, crossbow, or spear; any weapon that
- 7 will expel, or is readily capable of expelling, a projectile by the action of a spring,
- 8 compressed air, or compressed gas including any such weapon, loaded or unloaded,
- 9 commonly referred to as a BB gun, air rifle, or ~~CO₂~~CO₂ gun; and any projector of a
- 10 bomb or any object containing or capable of producing and emitting any noxious liquid,
- 11 gas, or substance.
- 12 ~~7.8.~~ "Destructive device" means any explosive, incendiary or poison gas bomb, grenade,
- 13 mine, rocket, missile, or similar device.
- 14 ~~8.9.~~ "Explosive" means gunpowders, powders used for blasting, all forms of high
- 15 explosives, blasting materials, fuses (other than electric circuit breakers), detonators
- 16 and other detonating agents, smokeless powders, and any chemical compounds,
- 17 mechanical mixture, or other ingredients in such proportions, quantities, or packing
- 18 that ignition by fire, by friction, by concussion, by percussion, or by detonation of the
- 19 compound, or material, or any part thereof may cause an explosion.
- 20 ~~9.10.~~ "Firearm" means any weapon that will expel, or is readily capable of expelling, a
- 21 projectile by the action of an explosive and includes any such weapon, loaded or
- 22 unloaded, commonly referred to as a pistol, revolver, rifle, gun, machine gun, shotgun,
- 23 bazooka, or cannon.
- 24 ~~10.11.~~ "Force" means physical action.
- 25 ~~11.12.~~ "Government" means:
- 26 a. The government of this state or any political subdivision of this state;
- 27 b. Any agency, subdivision, or department of the state or any political subdivision of
- 28 the state, including the executive, legislative, and judicial branches;
- 29 c. Any corporation or other entity established by law to carry on any governmental
- 30 function; and

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1 d. Any commission, corporation, or agency established by statute, compact, or
2 contract between or among governments for the execution of intergovernmental
3 programs.

4 ~~42.13.~~ "Governmental function" includes any activity that one or more public servants are
5 legally authorized to undertake on behalf of government.

6 ~~43.14.~~ "Harm" means loss, disadvantage, or injury to the person affected, and includes loss,
7 disadvantage, or injury to any other person in whose welfare the person affected is
8 interested.

9 ~~44.15.~~ "Included offense" means an offense:

10 a. That is established by proof of the same or less than all the facts required to
11 establish commission of the offense charged;

12 b. That consists of criminal facilitation of or an attempt or solicitation to commit the
13 offense charged; or

14 c. That differed from the offense charged only in that it constitutes a less serious
15 harm or risk of harm to the same person, property, or public interest, or because
16 a lesser degree of culpability suffices to establish its commission.

17 ~~45.16.~~ "Includes" should be read as if the phrase "but is not limited to" were also set forth.

18 ~~46.17.~~ "Law enforcement officer" or "peace officer" means a public servant authorized by law
19 or by a government agency or branch to enforce the law and to conduct or engage in
20 investigations or prosecutions for violations of law.

21 ~~47.18.~~ "Local" means of or pertaining to any political subdivision of the state.

22 ~~48.19.~~ "Manifest injustice" means a specific finding by the court that the imposition of
23 sentence is unreasonably harsh or shocking to the conscience of a reasonable
24 individual, with due consideration of the totality of circumstances.

25 ~~49.20.~~ "Offense" means conduct for which a term of imprisonment or a fine is authorized by
26 statute after conviction.

27 ~~20.21.~~ "Official action" includes a decision, opinion, recommendation, vote, or other exercise
28 of discretion by any government agency.

29 ~~24.22.~~ "Official proceeding" means a proceeding heard or which may be heard before any
30 government agency or branch or public servant authorized to take evidence under

1 oath, including any referee, hearing examiner, commissioner, notary, or other person
2 taking testimony or a deposition in connection with any such proceeding.

3 ~~22-23.~~ "Omission" means a failure to act.

4 ~~23-24.~~ As used in this title and in sections outside this title which define offenses, "person"
5 includes, where relevant, a corporation, limited liability company, partnership,
6 unincorporated association, or other legal entity. When used to designate a party
7 whose property may be the subject of action constituting an offense, the word "person"
8 includes a government that may lawfully own property in this state.

9 ~~24-25.~~ "Political subdivision" as used in this title and in any statute outside this title which
10 defines an offense means a county, city, school district, township, and any other local
11 governmental entity created by law.

12 ~~25-26.~~ "Possesses" means an individual has:

- 13 a. Direct physical control of something on or around the individual's person; or
14 b. The power and intention to exercise control over something accessible to but not
15 on or around the individual's person.

16 ~~26-27.~~ "Public servant" as used in this title and in any statute outside this title which defines
17 an offense means any officer or employee of government, including law enforcement
18 officers, whether elected or appointed, and any person participating in the
19 performance of a governmental function. The term does not include witnesses.

20 ~~27-28.~~ "Responsivity factors" means characteristics of an individual which affect the
21 individual's ability to respond favorably or unfavorably to a treatment goal.

22 ~~29.~~ "Risk assessment" means ~~an initial phase with a secondary process approved by the~~
23 ~~department of health and human services for the evaluation of the likelihood a person~~
24 ~~that committed an offense will commit another similar offense~~ a validated, standardized
25 actuarial tool used to identify potential risk factors that increase the likelihood an
26 individual will reoffend and responsivity factors, when addressed, reduce the likelihood
27 an individual will reoffend. The initial phase is an assessment tool that is administered
28 by a trained ~~probation and parole officer~~ corrections professional. A predetermined
29 score on the initial phase initiates the secondary process, approved by the department
30 of health and human services, that includes ~~may include~~ a clinical interview,
31 psychological testing, and verification through collateral information or

1 psychophysiological testing, or both. The department of health and human services
2 shall perform the secondary process of the risk assessment.

3 ~~28-30.~~ "Serious bodily injury" means bodily injury that creates a substantial risk of death or
4 which causes serious permanent disfigurement, unconsciousness, extreme pain,
5 permanent loss or impairment of the function of any bodily member or organ, a bone
6 fracture, or impediment of air flow or blood flow to the brain or lungs.

7 ~~29-31.~~ "Signature" includes any name, mark, or sign written or affixed with intent to
8 authenticate any instrument or writing.

9 ~~30-32.~~ "Substantial bodily injury" means a substantial temporary disfigurement, loss, or
10 impairment of the function of any bodily member or organ.

11 ~~31-33.~~ ~~"Technical violation" means a violation of a condition of probation or parole which does~~
12 ~~not involve:~~

13 ~~a. An arrest or a summons issued by a peace officer;~~

14 ~~b. A criminal offense;~~

15 ~~c. A violation of a protection order or order prohibiting contact; or~~

16 ~~d. Absconding.~~

17 ~~34.~~ "Thing of value" or "thing of pecuniary value" means a thing of value in the form of
18 money, tangible or intangible property, commercial interests, or anything else the
19 primary significance of which is economic gain to the recipient.

20 ~~32-35.~~ 34. "Tier 1 mental health professional" has the same meaning as provided under
21 section 25-01-01.

22 **SECTION 3. AMENDMENT.** Subdivision b of subsection 3 of section 12.1-22-01 of the
23 North Dakota Century Code is amended and reenacted as follows:

24 b. "Dangerous weapon" means a weapon defined in ~~subsection 6 of section~~
25 12.1-01-04 or a weapon the possession of which under the circumstances
26 indicates an intent or readiness to inflict serious bodily injury.

27 **SECTION 4. AMENDMENT.** Section 12.1-32-07 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **12.1-32-07. Supervision of probationer - Conditions of probation - Revocation.**

30 1. When the court imposes probation upon conviction for a felony offense subject to
31 section 12.1-32-09.1 or 12.1-32-02.1, a second or subsequent violation of section

- 1 12.1-17-07.1, a second or subsequent violation of any domestic violence protection
2 order, a violation of chapter 12.1-41, a violation of section 14-09-22, or a felony
3 offense under chapter 39-08, the court shall place the defendant under the supervision
4 and management of the department of corrections and rehabilitation. When the court
5 imposes probation upon conviction or order of disposition in all other felony cases, the
6 court may place the defendant under the supervision and management of the
7 department of corrections and rehabilitation. In class A misdemeanor cases, the court
8 may place the defendant under the supervision and management of the department of
9 corrections and rehabilitation or other responsible party. In all other cases, the court
10 may place the defendant under the supervision and management of a community
11 corrections program other than the department of corrections and rehabilitation. A
12 community corrections program means a program for the supervision of a defendant,
13 including monitoring and enforcement of terms and conditions of probation set by the
14 court.
- 15 2. ~~The conditions of probation must be such as the court in its discretion deems~~
16 ~~reasonably necessary to ensure that the defendant will lead a law-abiding life or to~~
17 ~~assist the defendant to do so. The court shall provide as an explicit condition of every~~
18 ~~probation that the defendant not commit another offense during the period for which~~
19 ~~the probation remains subject to revocation. The court shall order supervision costs~~
20 ~~and fees of not less than fifty five dollars per month unless the court makes a specific~~
21 ~~finding on record that the imposition of fees will result in an undue hardship. If the~~
22 ~~offender has not paid the full amount of supervision fees and costs before completion~~
23 ~~or termination of probation, the court may issue an order, after opportunity for hearing,~~
24 ~~to determine the amount of supervision fees and costs that are unpaid. The order may~~
25 ~~be filed, transcribed, and enforced by the department of corrections and rehabilitation~~
26 ~~in the same manner as civil judgments rendered by a district court of this state.~~
27 The
28 department of corrections and rehabilitation may administer a risk assessment for the
29 evaluation of each defendant ~~when~~ placed under the supervision and management of
30 the department of corrections and rehabilitation. The results of the risk assessment
31 may be used to set a level of supervision and management and develop an
 individualized case plan for the defendant. The case plan may include a list of

1 responsivity factors and a plan to address any risk factors identified in the risk
2 assessment.

- 3 3. The court shall provide as an explicit condition of every probation that the defendant
4 may not possess a firearm, destructive device, or other dangerous weapon while the
5 defendant is on probation. Except when the offense is a misdemeanor offense under
6 section 12.1-17-01, 12.1-17-01.1, 12.1-17-01.2, 12.1-17-05, or 12.1-17-07.1, or
7 chapter 14-07.1, the court may waive this condition of probation if the defendant has
8 pled guilty to, or has been found guilty of, a misdemeanor or infraction offense, the
9 misdemeanor or infraction is the defendant's first offense, and the court has made a
10 specific finding on the record before imposition of a sentence or a probation that there
11 is good cause to waive the condition. The court may not waive this condition of
12 probation if the court places the defendant under the supervision and management of
13 the department of corrections and rehabilitation. The court shall provide as an explicit
14 condition of probation that the defendant may not willfully defraud a urine test
15 administered as a condition of probation. Unless waived on the record by the court,
16 the court shall also provide as a condition of probation that the defendant undergo
17 various agreed-to community constraints and conditions as intermediate measures of
18 the department of corrections and rehabilitation to avoid revocation, which may
19 include:
- 20 a. Community service;
 - 21 b. Day reporting;
 - 22 c. Curfew;
 - 23 d. Home confinement;
 - 24 e. House arrest;
 - 25 f. Electronic monitoring;
 - 26 g. Residential halfway house;
 - 27 h. Intensive supervision program;
 - 28 i. Up to five nonsuccessive periods of incarceration during any twelve-month
 - 29 period, each of which may not exceed forty-eight consecutive hours;
 - 30 j. Participation in the twenty-four seven sobriety program; or

- 1 k. One period of incarceration during a period of probation not to exceed thirty
2 consecutive days in lieu of a petition for revocation of probation.
- 3 4. When imposing a sentence to probation, probation in conjunction with imprisonment,
4 or probation in conjunction with suspended execution or deferred imposition of
5 sentence, the court may impose such conditions as it deems appropriate and may
6 include any one or more of the following:
- 7 a. Work faithfully at a suitable employment or faithfully pursue a course of study or
8 of career and technical education training that will equip the defendant for
9 suitable employment.
- 10 b. Undergo available medical or psychiatric treatment and remain in a specified
11 institution if required for that purpose.
- 12 c. Attend or reside in a facility established for the instruction, recreation, or
13 residence of persons on probation.
- 14 d. Support the defendant's dependents and meet other family responsibilities.
- 15 e. Make restitution or reparation to the victim of the defendant's conduct for the
16 damage or injury which was sustained or perform other reasonable assigned
17 work. When restitution, reparation, or assigned work is a condition of probation,
18 the court shall proceed as provided in subsection 1 or 2, as applicable, of section
19 12.1-32-08.
- 20 f. Pay a fine imposed after consideration of the provisions of section 12.1-32-05.
- 21 g. Refrain from excessive use of alcohol or any use of narcotics or of another
22 dangerous or abusable drug without a prescription.
- 23 h. Permit the probation officer to visit the defendant at reasonable times at the
24 defendant's home or elsewhere.
- 25 i. Remain within the jurisdiction of the court, unless granted permission to leave by
26 the court or the probation officer.
- 27 j. Answer all reasonable inquiries by the probation officer and promptly notify the
28 probation officer of any change in address or employment.
- 29 k. Report to a probation officer at reasonable times as directed by the court or the
30 probation officer.

- 1 l. Submit to a medical examination or other reasonable testing for the purpose of
- 2 determining the defendant's use of narcotics, marijuana, or other controlled
- 3 substance whenever required by a probation officer.
- 4 m. Refrain from associating with known users or traffickers in narcotics, marijuana,
- 5 or other controlled substances.
- 6 n. Submit the defendant's person, place of residence, or vehicle to search and
- 7 seizure by a probation officer at any time of the day or night, with or without a
- 8 search warrant.
- 9 o. Serve a term of imprisonment of up to one-half of the maximum term authorized
- 10 for the offense of which the defendant was convicted.
- 11 p. Reimburse the costs and expenses determined necessary for the defendant's
- 12 adequate defense when counsel is appointed or provided at public expense for
- 13 the defendant. When reimbursement of indigent defense costs and expenses is
- 14 imposed as a condition of probation, the court shall proceed as provided in
- 15 subsection 4 of section 12.1-32-08.
- 16 q. Provide community service for the number of hours designated by the court.
- 17 r. Refrain from any subscription to, access to, or use of the internet.
- 18 5. When the court imposes a sentence to probation, probation in conjunction with
- 19 imprisonment, or probation in conjunction with suspended execution or deferred
- 20 imposition of sentence, the defendant must be given a certificate explicitly setting forth
- 21 the conditions on which the defendant is being released.
- 22 ~~6. When it is alleged a probationer has absconded from supervision, the department of~~
- 23 ~~corrections and rehabilitation may issue an authority to hold until the probationer is~~
- 24 ~~apprehended. The department may dismiss the authority to hold, implement~~
- 25 ~~intermediate measures, or initiate a petition for revocation.~~
- 26 6.7. The court, upon notice to the probationer and with good cause, may modify or enlarge
- 27 the conditions of probation at any time before the expiration or termination of the
- 28 period for which the probation remains conditional. If the defendant violates a
- 29 condition of probation at any time before the expiration or termination of the period, the
- 30 court may continue the defendant on the existing probation, with or without modifying
- 31 or enlarging the conditions, or may revoke the probation and impose any other

1 sentence that was available under section 12.1-32-02 or 12.1-32-09 at the time of
2 initial sentencing or deferment.

3 ~~7.8.~~ The court may continue or modify probation conditions or revoke probation for a
4 violation of probation conditions occurring before the expiration or termination of the
5 period of probation notwithstanding that the order of the court is imposed after the
6 expiration or termination has occurred. The petition for revocation must be issued
7 within sixty days of the expiration or termination of probation.

8 ~~9. The court may continue or modify probation conditions or revoke probation for a~~
9 ~~technical violation as defined in section 12.1-01-04. The court, only upon revoking a~~
10 ~~term of probation for a technical violation, may impose a term of incarceration as~~
11 ~~follows:~~

12 ~~a. Fifteen days for a first revocation;~~

13 ~~b. Up to thirty days for a second revocation;~~

14 ~~c. Up to ninety days for a third revocation; or~~

15 ~~d. The full remaining time of the sentence that has not been served in custody for a~~
16 ~~fourth or subsequent revocation.~~

17 ~~8.10.~~ Jurisdiction over a probationer may be transferred from the court that imposed the
18 sentence to another court of this state with the concurrence of both courts. Retransfers
19 of jurisdiction may also occur in the same manner. The court to which jurisdiction has
20 been transferred under this subsection may exercise all powers permissible under this
21 chapter over the defendant.

22 ~~9.11.~~ Notwithstanding any other provision of law, the court may authorize the defendant to
23 assist law enforcement officers in an investigation of a criminal offense upon the terms
24 and conditions as the court may require by written order. The court shall hold a
25 hearing in camera before issuing an order under this subsection. The order must be
26 sealed and is subject to inspection only upon order of the court.

27 ~~10.12.~~ The department of corrections and rehabilitation shall provide written notice to a
28 defendant who is in the department's physical custody of any untried petition for
29 revocation against the defendant of which the department has notice and of the
30 defendant's right to make a request for final disposition of the petition.

- 1 a. Upon notice of an untried petition for revocation of probation, the defendant may
- 2 request final disposition of the petition. The defendant's request must be in
- 3 writing and name the court in which the petition for revocation of probation is
- 4 pending and the prosecuting official charged with the duty of prosecuting the
- 5 petition.
- 6 b. The defendant shall submit the request to the department. The department shall
- 7 certify the term of commitment under which the defendant is being held, the time
- 8 the defendant has served on the sentence, the time remaining to be served,
- 9 sentence reduction credit the defendant has earned, the defendant's eligibility for
- 10 parole, and whether the parole board has made a decision regarding the
- 11 defendant's parole.
- 12 c. The department shall send by registered mail, return receipt requested, one copy
- 13 of the request and certificate to the court and one copy to the prosecuting official
- 14 to whom the request and certificate is addressed.
- 15 d. The petition for revocation of probation must be brought to the court for hearing
- 16 within ninety days after the receipt of the request and certificate by the court and
- 17 prosecuting official. If the petition is not brought to the court for hearing within the
- 18 ninety days, the court shall dismiss the petition with prejudice.
- 19 e. The parties may stipulate for a continuance or the court may grant a continuance
- 20 upon a showing of good cause by either party for a petition under this subsection.
- 21 f. If the defendant escapes from custody subsequent to the defendant's execution
- 22 of a request for final disposition of a petition for revocation, the request is
- 23 considered void.

24 ~~13. The department shall use a matrix system of graduated sanctions and incentives and~~

25 ~~apply the presumptive sanctions and incentives for the appropriate supervision~~

26 ~~violations and successes.~~

27 **SECTION 5. AMENDMENT.** Section 12.1-32-08 of the North Dakota Century Code is

28 amended and reenacted as follows:

12.1-32-08. Hearing prior to ordering restitution, reparation, or reimbursement of indigent defense costs and expenses - Conditions - Collection of restitution for insufficient funds checks - Continuing appropriation.

1. The court, when sentencing a person adjudged guilty of criminal activities that have resulted in pecuniary damages, in addition to any other sentence the court may impose, shall order that the defendant make restitution to the victim or other recipient as determined by the court. Restitution must include payment to the owner of real property that is contaminated by the defendant in the manufacturing of methamphetamine for the cost of removing the contamination and returning the property to the property's condition before contamination and to any other person that has incurred costs in decontaminating the property.
2. If the court has retained jurisdiction after the sentencing hearing for claims of restitution, to make a claim for restitution, the victim shall submit information by affidavit or declaration and, as applicable, documentary evidence within the time specified in the order. The information submitted must describe the items or elements of loss, itemize the total dollar amounts of restitution claimed, and present facts and evidence sufficient to support a finding the restitution is directly related to the offense and the amount awarded. The prosecutor shall serve the defendant with a copy of the information submitted by the victim no later than sixty days following sentencing.
3. The defendant may challenge restitution but must do so by requesting a hearing within thirty days of being served with the written notification of the amount of restitution requested. The hearing request must be made in writing and filed with the court. If no hearing is requested, the court may enter a judgment ordering restitution. A defendant may not challenge restitution after the thirty-day time period has passed.
4. In determining the amount of restitution, the court shall take into account the reasonable damages sustained by the victim or victims of the criminal offense, which damages are limited to those directly related to the criminal offense and expenses actually sustained as a direct result of the defendant's criminal action. This can include an amount equal to the cost of necessary and related professional services and devices relating to physical, psychiatric, and psychological care. The defendant may be required as part of the sentence imposed by the court to pay the prescribed

- 1 treatment costs for a victim of a sexual offense as defined in chapters 12.1-20 and
2 12.1-27.2. The court shall fix the amount of restitution or reparation and shall fix the
3 manner of performance of any condition or conditions of probation established
4 pursuant to this subsection. The court may order the defendant to disclose income and
5 assets on forms developed by the state court administrator to facilitate the setting of
6 an appropriate payment plan. The court shall order restitution be paid to the division of
7 adult services for any benefits the division has paid or may pay to the victim under
8 chapter 54-23.4 unless the court, on the record, directs otherwise. Any payments
9 made pursuant to the order must be deducted from damages awarded in a civil action
10 arising from the same incident.
- 11 5. An order that a defendant make restitution or reparation as a sentence or condition of
12 probation, unless the court directs otherwise, may be filed without filing fee,
13 transcribed, and enforced by the person entitled to the restitution or reparation or by
14 the division of adult services in the same manner as civil judgments rendered by the
15 courts of this state may be enforced. Upon thirty days' written notice to the victim's last
16 known address, the court may order the judgment imposing a duty to pay restitution or
17 reparation be docketed in the same manner as a civil judgment under section
18 29-26-22.1.
- 19 6. When the restitution ordered by the court under subsection 1 is the result of a finding
20 that the defendant issued a check or draft without sufficient funds or without an
21 account, the court shall impose as costs the greater of the sum of ten dollars or an
22 amount equal to twenty-five percent of the amount of restitution ordered. The costs
23 imposed under this subsection, however, may not exceed one thousand dollars. The
24 state-employed clerks of district court shall remit the funds collected as costs under
25 this subsection to the state treasurer for deposit in the restitution collection assistance
26 fund. The funds deposited into the restitution collection assistance fund are
27 appropriated to the judicial branch on a continuing basis for the purpose of defraying
28 expenses incident to the collection of restitution, including operating expenses and the
29 compensation of additional necessary personnel. The state's attorneys and
30 county-employed clerks of district court shall remit the funds collected as costs under
31 this subsection to the county treasurer to be deposited in the county general fund.

- 1 7. The court may order the defendant to perform reasonable assigned work as a
2 condition of probation, which assigned work need not be related to the offense
3 charged, but must not be solely for the benefit of a private individual other than the
4 victim.
- 5 8. ~~Under section 12.1-32-07, the court may order that the defendant reimburse indigent~~
6 ~~defense costs and expenses as a condition of probation.~~
- 7 a. ~~Unless it finds that there is no likelihood that the defendant is or will be able to~~
8 ~~pay attorney's fees and expenses, the court, in its judgment of conviction, and in~~
9 ~~any order or amended judgment following a revocation or other postjudgment~~
10 ~~proceeding, shall notify the defendant, the defendant's probation officer, and the~~
11 ~~prosecuting attorney of the presumed amount of costs and expenses to be~~
12 ~~reimbursed, as determined by the commission on legal counsel for indigents, and~~
13 ~~of the right to a hearing on the reimbursement amount. The reimbursement~~
14 ~~amount must include an application fee imposed under section 29-07-01.1 if the~~
15 ~~fee has not been paid before disposition of the case and the court has not waived~~
16 ~~payment of the fee.~~
- 17 b. ~~If the defendant or prosecutor requests a hearing within thirty days of receiving~~
18 ~~notice under this subdivision, the court shall schedule a hearing at which the~~
19 ~~actual amount of attorney's fees and expenses must be shown. In determining~~
20 ~~the amount and method of reimbursement, the court shall consider the financial~~
21 ~~resources of the defendant and the nature of the burden that reimbursement of~~
22 ~~costs and expenses will impose.~~
- 23 c. ~~A defendant who is required to reimburse indigent defense costs and expenses~~
24 ~~as a condition of probation and who is not willfully in default in that~~
25 ~~reimbursement may at any time petition the court that imposed the condition to~~
26 ~~waive reimbursement of all or any portion of the costs and expenses. If the court~~
27 ~~is satisfied that reimbursement of the amount due will impose undue hardship on~~
28 ~~the defendant or the defendant's immediate family, the court may waive~~
29 ~~reimbursement of all or any portion of the amount due or modify the method of~~
30 ~~payment.~~

1 d. ~~If at any time the court finds that the defendant is able to reimburse costs and~~
2 ~~expenses and has willfully failed to do so, the court may continue, modify, or~~
3 ~~enlarge the conditions of probation or revoke probation as provided in~~
4 ~~subsection 6 or 7, as applicable, of section 12.1-32-07.~~

5 9. If the court finds that the defendant is unable to pay a fine, ~~supervision fee,~~
6 ~~reimbursement for indigent defense costs and expenses,~~ or restitution or reparations,
7 the court may order the defendant to perform reasonable assigned work in lieu of all or
8 part of a fine, ~~a supervision fee, reimbursement for indigent defense costs and~~
9 ~~expenses,~~ or restitution or reparations. The defendant may not perform reasonable
10 assigned work in lieu of restitution or reparations unless the person entitled to
11 restitution or reparations has consented in writing or on the record.

12 **SECTION 6. AMENDMENT.** Section 29-07-01.1 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **29-07-01.1. Payment of expenses for defense of indigents -**~~Reimbursement of~~
15 ~~indigent defense costs and expenses - Indigent defense administration fund - Continuing~~
16 **appropriation.**

17 1. Lawyers provided to represent indigent persons must be compensated at a
18 reasonable rate to be determined by the commission on legal counsel for indigents.
19 Expenses necessary for the adequate defense of an indigent person prosecuted in
20 district court, other than for a violation of a home rule county's ordinance, when
21 approved by the commission, must be paid by the state. Expenses necessary for the
22 adequate defense of an indigent person prosecuted for violation of a home rule
23 county's ordinance must be paid by the home rule county. Expenses necessary for the
24 adequate defense of an indigent person prosecuted in municipal court, when approved
25 by the judge, must be paid by the city in which the alleged offense took place. The city
26 shall also pay the expenses in any matter transferred to district court pursuant to
27 section 40-18-06.2 or 40-18-15.1, in any appeal taken to district court from a judgment
28 of conviction in municipal court pursuant to section 40-18-19, and in an appeal or
29 postconviction matter seeking relief from a conviction resulting from violation of a
30 municipal ordinance. A defendant requesting representation by counsel at public
31 expense, or for whom counsel provided at public expense without a request is

- 1 considered appropriate by the court, shall submit an application for indigent defense
2 services. For an application for indigent defense services in the district court, a
3 nonrefundable application fee of thirty-five dollars must be paid at the time the
4 application is submitted. The district court may extend the time for payment of the fee
5 or may waive or reduce the fee if the court determines the defendant is financially
6 unable to pay all or part of the fee. If the application fee is not paid before disposition
7 of the case, the fee amount must be added to the amount to be reimbursed under this
8 section. Application fees collected under this subsection must be forwarded for deposit
9 in the indigent defense administration fund established under subsection 4.
- 10 2. A defendant for whom counsel is provided at public expense, subject to this
11 subsection, shall reimburse the state, home rule county, or city such sums as the
12 state, home rule county, or city expends on the defendant's behalf.
- 13 a. At the time counsel is provided for a defendant, the court shall advise the
14 defendant of the defendant's potential obligation to reimburse the appropriate
15 governmental entity the amounts expended on behalf of the defendant.
- 16 b. Unless it finds that there is no likelihood that the defendant is or will be able to
17 pay attorney's fees and expenses, the court, in its judgment of conviction, and in
18 any order or amended judgment entered following a revocation or other
19 postjudgment proceeding, shall order the defendant to reimburse the presumed
20 amount of indigent defense costs and expenses, as determined by the
21 commission, and shall notify the defendant of the right to a hearing on the
22 reimbursement amount. If the defendant or prosecutor requests a hearing within
23 thirty days of receiving notice under this subdivision, the court shall schedule a
24 hearing at which the actual amount of attorney's fees and expenses must be
25 shown. In determining the amount of reimbursement and method of payment, the
26 court shall consider the financial resources of the defendant and the nature of the
27 burden that reimbursement of costs and expenses will impose.
- 28 c. A defendant who is required to reimburse indigent defense costs and expenses
29 and who is not willfully in default in that reimbursement may at any time petition
30 the court to waive reimbursement of all or any portion of the attorney's fees and
31 expenses. If the court is satisfied that reimbursement of the amount due will

1 impose undue hardship on the defendant or the defendant's immediate family,
2 the court may waive reimbursement of all or any portion of the amount due or
3 modify the method of payment.

4 3. The attorney general, the state's attorney of the home rule county, or the prosecuting
5 attorney of the city in which the alleged offense took place, if reimbursement has not
6 been received, shall seek civil recovery of any amounts expended on the defendant's
7 behalf anytime the attorney general, state's attorney, or city attorney determines the
8 person for whom counsel was appointed may have funds to repay the state, home rule
9 county, or city within six years of the date such amount was paid on that person's
10 behalf. A person against whom civil recovery is sought under this subsection is entitled
11 to all exemptions accorded to other judgment debtors. The attorney general, state's
12 attorney, or prosecuting attorney may contract with a private sector collection agency
13 for assistance in seeking recovery of such funds. Before referring the matter to a
14 collection agency, the state's attorney shall notify the person who is the subject of the
15 collection action.

16 4. The indigent defense administration fund is a special fund in the state treasury. The
17 state treasurer shall deposit in the fund all application fees collected under
18 subsection 1. All moneys in the indigent defense administration fund are appropriated
19 on a continuing basis to the commission on legal counsel for indigents to be used in
20 the administration of the indigent defense system.

21 **SECTION 7. LEGISLATIVE MANAGEMENT STUDY - COURT FINES AND FEES.** During
22 the 2025-26 interim, the legislative management shall consider studying court fines and fees,
23 including fines and fees relating to travel permits, presentence investigations, the drug court
24 program, electronic monitoring, alcohol monitoring, and the twenty-four seven sobriety program.
25 The study must consider the total amount collected; rate of fees collected, including any money
26 expended to collect the fines and fees; an evaluation of practices in other states; and the overall
27 impacts on a defendant. The legislative management shall report its findings and
28 recommendations, together with any legislation required to implement the recommendations, to
29 the seventieth legislative assembly.

30 ~~**SECTION 8. APPROPRIATION - COMMISSION ON LEGAL COUNSEL FOR**~~
31 ~~**INDIGENTS - OPERATING COSTS.**~~ There is appropriated out of any moneys in the general

Sixty-ninth
Legislative Assembly

- 1 ~~fund in the state treasury, not otherwise appropriated, the sum of \$310,000, or so much of the~~
- 2 ~~sum as may be necessary, to the commission on legal counsel for indigents for the purpose of~~
- 3 ~~operating costs to replace lost revenue from the removal of the indigent defense application~~
- 4 ~~fees, for the biennium beginning July 1, 2025, and ending June 30, 2027.~~

STATEMENT OF PURPOSE OF AMENDMENT:**House Bill No. 1417 - Comm. on Legal Counsel for Indigents - Senate Action**

	Base Budget	House Version	Senate Changes	Senate Version
Comm. on Legal Counsel for Indigents		\$310,000	(\$310,000)	
Total all funds	\$0	\$310,000	(\$310,000)	\$0
Less estimated income	0	0	0	0
General fund	\$0	\$310,000	(\$310,000)	\$0
FTE	0.00	0.00	0.00	0.00

Department 188 - Comm. on Legal Counsel for Indigents - Detail of Senate Changes

	Reduces Funding for Comm. on Legal Counsel for Indigents¹	Total Senate Changes
Comm. on Legal Counsel for Indigents	(\$310,000)	(\$310,000)
Total all funds	(\$310,000)	(\$310,000)
Less estimated income	0	0
General fund	(\$310,000)	(\$310,000)
FTE	0.00	0.00

¹ Funding of \$310,000 from the general fund added by the House to replace revenue from the elimination of indigent defense application fees for the Commission on Legal Counsel for Indigents is removed by the Senate.