

**2025 HOUSE JUDICIARY**

**HB 1425**

# 2025 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Room JW327B, State Capitol

HB 1425  
2/5/2025

Relating to prosecution-led diversion programs, deflection process, and supervision for presentence programs; to provide for a legislative management study; and to provide for an appropriation.

9:00 a.m. Chairman Klemin called the meeting to order.

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

Members Absent: Representative VanWinkle

## **Discussion Topics:**

- Current North Dakota pre-trial services
- Offenses covered by the bill
- Effectiveness of prison mental health and addiction programs

9:01 a.m. Lieutenant Governor Michelle Strinden, Lieutenant Governor of North Dakota, testified in favor and provided testimony #34859.

9:08 a.m. Representative Lawrence Klemin, North Dakota Representative for District 47, testified in favor and provided testimony #34368, #34858, #34863, #34867, #34884.

9:33 a.m. Travis Finck, Executive Director of the North Dakota Commission on Legal Counsel for Indigents, testified in favor and provided testimony #34944.

9:37 a.m. Sister Kathleen Atkinson, Director of Ministry on the Margins, testified in favor and provided testimony #35294.

9:44 a.m. Donnell Preskey, North Dakota Association of Counties, testified in favor.

9:46 a.m. Kimberlee Hegvik, Cass County State's Attorney, testified in favor and provided testimony #34815.

9:58 a.m. Colby Braun, Director of the Department of Corrections and Rehabilitation, testified in favor and provided testimony #34427.

## **Additional written testimony:**

Joan Bachman, West Fargo, North Dakota, submitted testimony in favor #33498

Ashley Lies, Executive Director of the North Dakota State's Attorney's Association, submitted testimony in favor #34474

Rozanna Larson, Ward County State's Attorney, submitted testimony in opposition #34006

Judiciary Committee

HB 1425

Feb 5, 2025

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10:02 am. Chairman Klemin closed the hearing.

*Wyatt Armstrong, Committee Clerk*

HB1425

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

My knowledge of DOC(R?) is limited to my mentorship (surrogate Grandma) of a three time nonviolent male felon who is just over 30 years old. I don't understand the logic for time spent in jail after an arrest and before a court hearing – weeks or months later. I thought we were to presume innocence until proven guilty.

This initial jail time introduces the arrestee to a whole new set of “criminals”, may result in job loss, will result in disruption of home life, may result in lost housing. It was very sad for me to see young moms or moms-to-be visiting a young man in Cass County Jail. So much better to hurry up the decision regarding the charges and offer support before or instead of incarceration. Overall cost to the taxpayer will be less in the long run if we re-direct the lives of arrestees through ambitious support services and case managers or even mentors. This could make a difference to the supposed thousands of unfilled jobs in North Dakota if the Department of Commerce were involved.

I believe that most of those arrested began life with more chaos than security. Passage of this bill can diminish the likelihood of the next generation also dealing with more chaos than security.

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



HB 1425

Chairperson Lawrence Klemin  
Committee Members

From: Rozanna C Larson  
Ward County State's Attorney

RE: House Bill 1425

Chairperson Klemin and Members of the Committee,

This is my written testimony OPPOSING HB 1425. I am the State's Attorney for Ward County and have been a prosecutor for 27 years.

When pretrial services were first introduced and adopted by legislators, I was in favor of the program. I truly believed it would be a good tool to assist offenders in getting connected with services they may need such as mental health, chemical addiction, employment, housing etc. This is what we were told pretrial services would be doing. Essentially assisting offenders to obtain the services they needed prior to any sentencing. The goal was to get offenders help in an effort to avoid jail/prison time and to help them to become better neighbors without uprooting them from their community.

What has actually happened is not any of the above. What has actually been happening is another "arm" of DOCR not reporting violations as required by the Bail Order.

I recently had an offender on pretrial services who is charged with manslaughter. The offender ordered to participate in the 24/7 sobriety program. He was allowed to participate by utilizing the remote breath test. It was not until the offender had violated 21 times that the PTS officer notified this office of the violations. When questioned about the failure to notify this office I was provided with a couple of different explanations. One was, the officer attempted to use "intermediate measures." The other was, the officer was not notified of the missed tests and/or was told the missed tests were "made up." I was also told the PTS officer had a conversation with the offenders attorney (but not the State) in an attempt to get the offender back in compliance. The testimony from the PTS officer was this conversation took place at least a month before the State was notified.

I can't speak to other jurisdictions that have PTS currently. Here in Ward County, I also know the offenders are not receiving mental health or chemical addiction services unless they are specifically ordered to by the court. It was my understanding that was the original goal of PTS, they would be supervising offenders, assessing what their needs were and assisting them in obtaining those services. This is not what is occurring. They are simply "monitoring" whether or not the Bail Order is being followed.

I'm truly disappointed in what could have been a good program for offenders and the safety of the community. The reality of what has come about is another arm of DOCR that is not accountable to the Courts or the State and failing to provide the services promised.

I have other concerns with this bill as well.

Specifically, the "Prosecution-led diversion program." The bill does indicate the "State's Attorney for each county may create and administer a prosecution-led diversion program. In practice the word "may" becomes a "shall" (a mandate) for all State's Attorneys within the State. If a State's Attorney does not provide a "prosecution-led diversion program, that State's Attorney will be facing equal-protection/equal-treatment arguments of similarly situated defendants in different counties.

The other concern I have with HB 1425 is the "Deflection Process." This process puts the onus on local governments and law enforcement to provide services and assessments that are not available in communities. It requires law enforcement to become mental health experts. It requires "participant follow ups" but does not identify who is in charge of these follow ups. There is NOTHING that mandates the offenders actually participate in "deflection program." There is NOTHING in the bill that provides for any Court Order requiring the offenders to participate or what occurs if they do not. HB 1425 mandates participation from Law Enforcement and Behavioral Health Service providers, but not the offenders. How is this going to be enforced?

This is a bill that is attempting to deflect from prosecution and reduce jail population. It is a bill that seemingly is trying to address behavioral health. It is a bill that actually does not help the people it is trying to help, but puts more burden on law enforcement and prosecutors.

For all the reasons stated above, I request that the House Judiciary Committee give a "Do Not Pass" recommendation on HB 1425.



# North Dakota House of Representatives

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## **Representative Lawrence R. Klemin**

District 47  
3929 Valley Drive  
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## **COMMITTEES:**

Judiciary, Chairman  
Political Subdivisions

### **TESTIMONY OF REP. LAWRENCE R. KLEMIN HOUSE JUDICIARY COMMITTEE HOUSE BILL NO. 1425 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 1425, relating to prosecution-led diversion programs, deflection process, and supervision for presentence programs. This bill is the first in a package of three bills you'll hear today that represent North Dakota's next phase of criminal justice reform.

#### **Overview: How these bills fit into ND's Justice Reinvestment Journey**

For the last eight years, North Dakota has been on a 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.

North Dakota's journey started in 2015 when we started a data-driven Justice Reinvestment Initiative. The result of that work was a set of reforms the ND Legislature passed in 2017, which aimed to contain ND's growing spending on correctional facilities, reduce recidivism and increase public safety. That legislation reduced penalties for certain low-level, non-violent offenses and reinvested some of the savings to create Free Through Recovery, a successful outcomes-driven program to address the fact that most incarcerated individuals have addiction and mental health issues.

The three bills you'll hear today are the next step on our Justice Reinvestment journey.

Two years ago, this committee passed HCR 3026 to study how we can further improve reentry outcomes for people leaving incarceration. North Dakota has a wide range of strong reentry efforts from public entities such as the Department of Corrections and Rehabilitation, the Department of Health and Human Services and Job Service, as well as private entities such as F5 and Ministry on the Margins. Even with these efforts, ND's recidivism rate is about 40%. Existing reentry services aim to connect people to services to help with their transition but can be an insufficient patchwork.

As you know, roughly 95% of people who are incarcerated in North Dakota's prisons and jails are eventually released – so they return to being our neighbors. North Dakota releases about 1,400 people from its state prison system every year, plus thousands more from our county jails. The state has a strong interest in ensuring our neighbors can be as successful as possible, becoming part of the workforce and thriving in their communities and with their families.

The reentry study occurred in 2024 with assistance from the Crime & Justice Institute, a national non-partisan policy-focused organization. The assistance was funded by a federal Justice Reinvestment Initiative grant from the U.S. Department of Justice.

We formed a Reentry Study Work Group, a team of 15 leaders from the legislature, DOCR, DHHS, court system, county jails, community reentry service providers, and other entities. The Work Group discussed the research conducted by CJI, which included a deep data analysis and 100+ stakeholder interviews. The Final Report has been uploaded with my testimony.

Key findings from the report included:

- ND's prison population is rising while nationally it is declining.
- Admissions to prison are going up and drug and alcohol offenses and revocations are the primary drivers of the increase.
- People of color, particularly Black and Native individuals, 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.

The Reentry Study Work Group then evaluated and prioritized research-based best practices that could address these findings. It identified about two dozen proposals to address the issues highlighted by the report. Some of those proposals will be implemented as policy or practice changes within state agencies, other proposals require a state statute change by the legislature, and some ideas will not move forward until more stakeholder conversations occur. The three bills before you today represent a sub-set of the recommendations that require a change to state law.

All three bills share these common goals:

- Ensure public safety
- Make the best use of our prison and jail beds so we have capacity for our most serious offenders
- Save taxpayer dollars by controlling the expected ongoing growth of admissions
- Improve the lives of justice-involved individuals

### ***Explanation of HB1425: Overview***

Now that you have an overview of the Justice Reinvestment Initiative, I'll explain Bill #1.

HB 1425 targets the "front-end" of reentry, including strengthening deflection, diversion, and pretrial services to expand pathways to alternatives to incarceration.

Think of the "front-end" of reentry as a continuum of efforts that provide earlier off-ramps. These off-ramps prevent people from going deep into the criminal justice system, often before they are sentenced.

This range of pre-sentencing processes and programs exists today, but they aren't used as frequently as they could be, so this bill aims to strengthen them.

There are three parts to this bill:

- Prosecution-led Diversion Program
- Deflection Process
- Pretrial Services

***Prosecution-led Diversion Program:***

Diversion programs are a tool for prosecutors to connect low-level offenders to resources and address their criminal behavior without depleting court system resources.

A prosecution-led diversion program gives eligible defendants an opportunity to have their prosecution suspended and their charges dismissed if they do not commit a new offense during the duration of their program participation.

Examples of scenarios that might be handled by this diversion program include cases where a person possesses a small amount of an illegal substance due to their addiction and a prosecutor agrees that treatment will be more helpful in their recovery journey than a conviction.

State's Attorneys in ND have the authority to run such a program today but face barriers to doing so - specifically the lack of supervision resources to ensure participants are following through with program requirements. For example, a supervisor -- similar to a parole officer -- could help provide a connection to a treatment provider in the community and follow-up with the individual to make sure they made it to their appointment and are participating in treatment programming.

HB 1425 strengthens counties' ability to do prosecution-led diversion programs.

The bill would establish a pilot program in three counties for a prosecution-led diversion program. To accomplish that, it authorizes DOCR to supervise these program participants and appropriates funds to DOCR for their supervision. It also appropriates funds to DHHS for treatment and other services for the participants.

The prosecution-led diversion program is covered in **Sections 1, 3, 4, 6 and 8:**

- Section 1 codifies court Rule 32.2 of the North Dakota Rules of Criminal Procedure, which authorizes county prosecutors to offer a diversion program. The bill also says that any county that establishes such a program must have written guidelines and eligibility criteria.

- Section 3 gives the DOCR the authority to provide supervision to people who participate in this and other pre-sentencing programs.
- Section 4 sets up a pilot program for the supervision aspect of the prosecution-led diversion program.
- Section 6 requests an appropriation to DOCR of \$1 million for 7 FTEs to staff the supervision aspect of the pilot program.
- Section 8 requests an appropriation to DHHS of \$750,000 for the services aspect of the pilot program.

### **Filling a gap**

This proposal directly responds to one of the gaps that the Reentry Work Group identified during its interim study.

The report said North Dakota has notably fewer standardized "off-ramps" directing people away from criminal justice system involvement, especially early on. Deflection practices are not standard and there are few formal protocols offering guidance to law enforcement officers who respond to someone with behavioral health issues.

Recommendation #5 of the Reentry Work Group's Final Report (pages 23 and 24) outlines the finding that most diversion opportunities in our state happen later in the court system process. Rather than connecting people to treatment, resources, and accountability shortly after they encounter the justice system, we are processing people through the court system and sentencing them to either probation or prison to access treatment.

We know from the study that a high volume of people convicted of drug or alcohol offenses are still entering the prison system. In 2023, over a third of prison admissions were for those offenses (see page 10 of the Final Report).

The proposal in this bill is not to get that number down to zero, but rather to support prosecutors in holding people accountable while aiding them in their recovery to ultimately prevent future instances of crime.

### ***Deflection Process:***

Deflection is a process that can be used by law enforcement, behavioral health providers and other community partners to connect a person with behavioral health needs with treatment and other services rather than putting them in jail.

The interviews during the interim study revealed that law enforcement wanted enhanced clarity when connecting someone to treatment in lieu of arrest. For example, they wanted to know the roles and responsibilities of the different entities that collaborate to help a person in crisis, and they wanted to clarify protocols for following up with these individuals after they have been stabilized.

The deflection process aspect of this bill is covered in **Section 2:**

- It defines "deflection process" and creates the authority for local communities to establish a deflection process.
- It says that if a community does establish a deflection process, law enforcement and behavioral health shall collaborate on that process and establish minimum standards for protocols, training and data collection. If this bill passes, the Crime & Justice Institute will share best practices on protocols, training resources and data guidelines so communities don't have to recreate the wheel.
- The bill also exempts law enforcement and behavioral health providers who engage in deflection from civil liability with the purpose of encouraging them to use deflection when appropriate.

The bill doesn't create a deflection program or physical centers for deflection; these are local decisions. We need to maintain flexibility based on the community's size and resources. For example, the Fargo Police Department might want to enhance their partnership with the crisis services offered by the Southeast Human Services Center, while a small town like Langdon would have a different deflection process that fits its needs and level of services available in its community.

This section connects to recommendation #2 in the Work Group's Final Report (page 22) and is backed by research showing that deflection can be effective not only in de-escalating behavioral health crises, but in reducing the likelihood that someone becomes involved in the justice system in the future.

### ***Pretrial Services:***

The ND Legislature created a Pretrial Services pilot program in 2019, which rolled out in 2020 and has expanded since then.

ND's Pretrial Services Program involves people after they are charged with a crime and before their case is complete - which can take many weeks or months. It is not always necessary to incarcerate defendants who are not a danger to public safety or a risk of failing to appear on future court dates while they wait for their case to proceed. But sometimes defendants can't afford even a small amount of bail, so they sit in jail, which costs taxpayer dollars and has a negative impact on their employment, housing and family situations.

Rather than being in jail during their pretrial period, the Pretrial Services Program enables eligible defendants to be in the community so they can continue to work, be with their family and get treatment if needed. The program screens potential participants and establishes community supervision strategies and opportunities to connect defendants to resources.

The last evaluation of ND's Pretrial Services Program was done in December 2020, shortly after it rolled out. While leaders across ND have shared positive feedback on the impact Pretrial Services is having, including relief on jail populations, it is important to do another formal, data-driven evaluation of the cost savings and other benefits of this program and to identify potential improvements.

The pretrial services aspect of HB 1425 is covered in **Sections 5 and 7**:

- Section 5: requests Legislative Management to consider studying the cost savings resulting from ND's current pretrial services program.
- Section 7: appropriate \$55,000 for a third-party to conduct the study.

A finding from the Reentry Study was the very fact that the Pretrial Services Program has not been evaluated since its expansion from a pilot to a statewide initiative. The need to evaluate the Pretrial Services Program is referenced within recommendation #6 in the final report (page 24). Having more data on the outcomes of this program will allow us to make more informed decisions about the program, including if we are saving money by not keeping so many people in jail pretrial, and if so, where those dollars can be reinvested.

### ***Proposed Amendments to Bill #1***

Committee, you'll see proposed amendments to HB 1425, which were discussed with stakeholders after the bill was filed.

On pages 1 and 2, we change "person requiring treatment" (which has a narrow definition in state statute) to a broader term: "a person with behavioral health conditions."

The second change is regarding how we spend the appropriation for the supervision aspect of the pilot program for the prosecutor-led diversion program. The original language of the bill modeled the supervision pilot program after the Pretrial Services pilot that the ND Legislature passed in 2019. For that program, the DOCR hired one FTE right away for the full two years of the biennium to stand up the program, then an additional 6 FTEs in the second year to provide pretrial assessments and services in three judicial districts.

After HB 1425 was filed, stakeholders from DOCR and DHHS and county State's Attorneys met to discuss a different approach, other than using 7 FTEs. The total appropriation is still \$1 million but we are taking a more flexible approach, using contractors instead of hiring 6 FTEs in the second year of the biennium.

Stakeholders agreed that one FTE (or a full-time temporary position) would be valuable to oversee the development of the pilot, facilitate the collaboration between stakeholders, collect data and administer contracts with third-party providers. But instead of hiring 6 additional FTEs to provide the supervision, the group felt that using third-party providers to provide monitoring and service connections would enable more speed (counties that are ready could start sooner) and more flexibility (to accommodate the ramping up and down of volume and need). The other benefit to this approach is that we are not growing government with six ongoing FTEs before we do a proof of concept. After the pilot is underway, we can assess the results and see if this approach



is the most workable and successful or if we need to look at a different approach. The amendment also enables counties that are ready to start sooner than July 2026.

The changes to page 4 line 14 ("be dedicated to" versus "prioritize") would enable county prosecutors to leverage any additional capacity with these resources for other monitoring needs, including following up with defendants charged with lower-level misdemeanors to ensure they are completing their court-ordered requirements.

### ***Closing***

In summary, HB 1425 targets the "front-end" of reentry, by strengthening our state's deflection process, diversion programs, and pretrial services program, so we can expand pathways to alternatives to incarceration. The goals of this bill are to ensure public safety while saving tax dollars, making the best use of our overcrowded prisons and jails, and improving lives.

A wide variety of stakeholders had input on these proposals, and you'll hear testimony from many of them today. I will try to answer any questions you have. The Crime & Justice Institute is also available to answer detailed questions about the Work Group's process, analysis and findings, and best practices in other states.

Rep. Lawrence R. Klemin  
District 47, Bismarck

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

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**NORTH DAKOTA DEPARTMENT OF CORRECTIONS AND REHABILITATION  
PRESENTING TESTIMONY IN SUPPORT OF HOUSE BILL 1425**

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 1425.

During the 2023 legislative session, the North Dakota legislature passed House Concurrent Resolution (HCR) 3026, which established the North Dakota Justice Reinvestment Initiative Reentry Study Work Group. This group identified research-based strategies that would improve reentry practices and outcomes and maximize the state's resources to ensure the greatest return on taxpayer investments. Among the key findings was the importance of expanding pathways to alternatives to incarceration, which is addressed in House Bill 1425.

**Section 1** of House Bill 1425 would enact a new section of chapter 11-16 of the North Dakota Century Code relating to the creation and administration of prosecution-led diversion programs. Implementation would be at the discretion of each county's state's attorney. Participation in a prosecution-led diversion program would allow eligible individuals to address the underlying issues contributing to their behavior by engaging in appropriate programs in their communities, help them retain family and community support, reduce the collateral consequences of a criminal conviction, and reduce the likelihood of them entering further into the criminal justice system. In addition, prosecution-led diversion programs would reduce the strain on court resources.

**Section 4** indicates the Department of Corrections and Rehabilitation shall establish a prosecution-led supervision pilot program in three counties within the state during the 2025-2027 biennium. This Initiative would involve collaboration between the DOCR, participating counties

and other partners. The DOCR is dedicated to supporting the implementation of these pilot programs, including helping develop guidelines and procedures for their administration. Additionally, the DOCR will collaborate with the selected counties and partners on program implementation, as well as assist with data collection and reporting outcomes to legislative management.

**Section 5** proposes a legislative management study of pretrial service programs during the 2025-26 interim regarding the costs and savings associated with pretrial service program operating in the state and opportunities to reinvest savings to improve reentry outcomes. Pretrial service programs were implemented in the state in 2020 and the DOCR supports this study to assess effectiveness and identify areas for improvement.

**Section 7** includes an appropriation of \$55,000 for the purpose of contracting for consulting services for the pretrial service study provided in section 5.

I ask that you support this proposed bill to expand pathways to alternatives to incarceration. Thank you for your time and consideration. I stand for any questions.

## North Dakota State's Attorneys' Association

February 3, 2025

**To:** House Judiciary Committee  
Hon. Chairman Klemin  
Hon. Vice-Chairs Karls and Vetter  
Members of the Committee

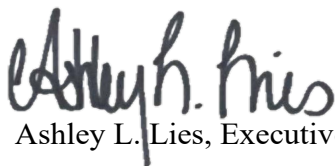
**RE: House Bill No. 1425**

Chairman Klemin, Vice-Chairs Karls and Vetter, and Members of the House Judiciary Committee:

The North Dakota State's Attorneys' Association (NDSAA) is submitting this letter requesting a **DO PASS** to House Bill 1425.

The NDSAA supports the ability of a state's attorney to choose to establish a prosecution-led diversion program without it being mandated for all state's attorneys.

On behalf of the North Dakota State's Attorneys:

A handwritten signature in dark ink, appearing to read "Ashley L. Lies". The signature is fluid and cursive, with the first name being the most prominent.

Ashley L. Lies, Executive Director

**State's Attorney's Office**

Kimberlee J. Hegvik  
State's Attorney

February 5, 2025

**Testimony in Support of House Bill 1425**

Chairman Klemin and members of the House Judiciary Committee,

My name is Kimberlee J. Hegvik, and I am the elected State's Attorney in Cass County. Prior to my election in 2022, I served as an Assistant Cass County State's Attorney for nearly 17 years.

Today I am here to voice my support for HB 1425.

I have been actively involved in problem-solving courts for my entire career as a prosecutor. I have served on juvenile and adult drug court multidisciplinary teams, attended national trainings, and assisted with re-writes of both juvenile drug court manuals and adult drug court manuals. Problem-solving courts are effective because they utilize research based best practices.

For several years in my career, I prosecuted juvenile delinquency cases. The juvenile court system in North Dakota is exceptional. The juvenile courts use data to make informed decisions for children who commit delinquent offenses, and utilize restorative justice principles to carry out their mission of promoting public safety, holding juvenile offenders accountable, and increasing the capacity of juveniles to contribute productively to their community.

Working within problem-solving courts and the juvenile justice system has shaped my belief that non-traditional approaches to behavior-modification can be highly successful. I want to help people with substance use and mental health disorders get connected to services before they become deeply involved with the criminal justice system. I want to find ways to hold people accountable for their behavior while making the best and most efficient use of the resources available. In cases where diversion is appropriate, I want outcomes that benefit the offender and the community more than traditional prosecution methods.

Many legal organizations recognize the need for and importance of Deflection and Diversion. The United States Department of Justice, American Bar Association, National District Attorneys' Association, All Rise (formerly The National Association of Drug Court Professionals), Association of Prosecuting Attorneys, and others all offer guidance and support of deflection and diversion. Successful programs exist throughout the United States.

I first learned of deflection while attending a Federal Department of Justice Violent Crime Reduction Summit. Law enforcement agencies spend a significant amount of time interacting with people who suffer from mental illness and substance use disorders. These individuals often catch the attention of law enforcement through minor violations like public intoxication, trespassing, or disturbing the peace. Traditionally, officers have had to choose between arresting and doing nothing. Neither option addresses the root cause of the behavior. Deflection gives law enforcement a third option: immediate referral to services to address the individual's needs without entrance into the criminal justice system.



Justice is not a one size fits all. Diversion is not appropriate for every case, just as incarceration is not appropriate for every defendant. Prosecutors need to be able to use all the tools in our toolbox to achieve justice for each case and defendant. The National District Attorneys' Association's National Prosecution Standards on diversion state that prosecutors should urge the establishment and maintenance of diversion programs. The American Bar Association Standards on Diversion state "[d]iversion programs are consistent with efforts to: reduce collateral consequences; address over-criminalization; reduce incarceration; curtail the burden on and investment in the criminal legal system; and, eradicate racial disparities in arrests, charging, sentencing, and incarceration."

Rule 32.2 of the North Dakota Rules of Criminal Procedure authorizes pretrial diversions. Despite the existing rule, Cass County lacks the resources to monitor people whose cases are appropriate for diversion. The DOCR is not currently authorized to provide monitoring for people who are pre-trial other than through the pre-trial services program, which is separate and apart from diversion. If Cass County doesn't have a way to monitor it, there is a high likelihood that other counties in North Dakota also struggle with the supervision part of the diversion equation. The pilot project portion of this bill would provide funding for monitoring.

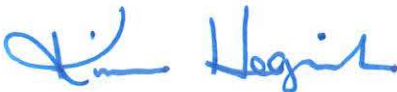
A key to the success of diversion is swift availability of appropriate services. This bill provides funding for the Department of Health and Human Services to make services available to people who participate in diversion programs. Behavior modification research shows that consequences are most meaningful when they occur close in time to the behavior to be changed. Research has shown that faster legal proceedings can lead to lower recidivism. Timely legal processes also increase the public's perception of the legitimacy of the legal system.

Last summer, consultants from Aequitas, a national organization that supports prosecutors in their efforts to achieve justice, performed an assessment for my office. One of their initial suggestions was to focus on establishing diversion practices. Our lack of supervisory options and timely access to services were barriers that halted our ability to further explore diversion at that time.

I am excited about this legislation and the meaningful changes it could create. If passed, I will be actively seeking selection as one of the three pilot sites. My office will work diligently to establish a diversion program based on research and best practices. Two years from now, I intend to be back in Bismarck, data in hand, showing the success achieved by investing in diversion and deflection.

Thank you for your time and consideration.

Sincerely,



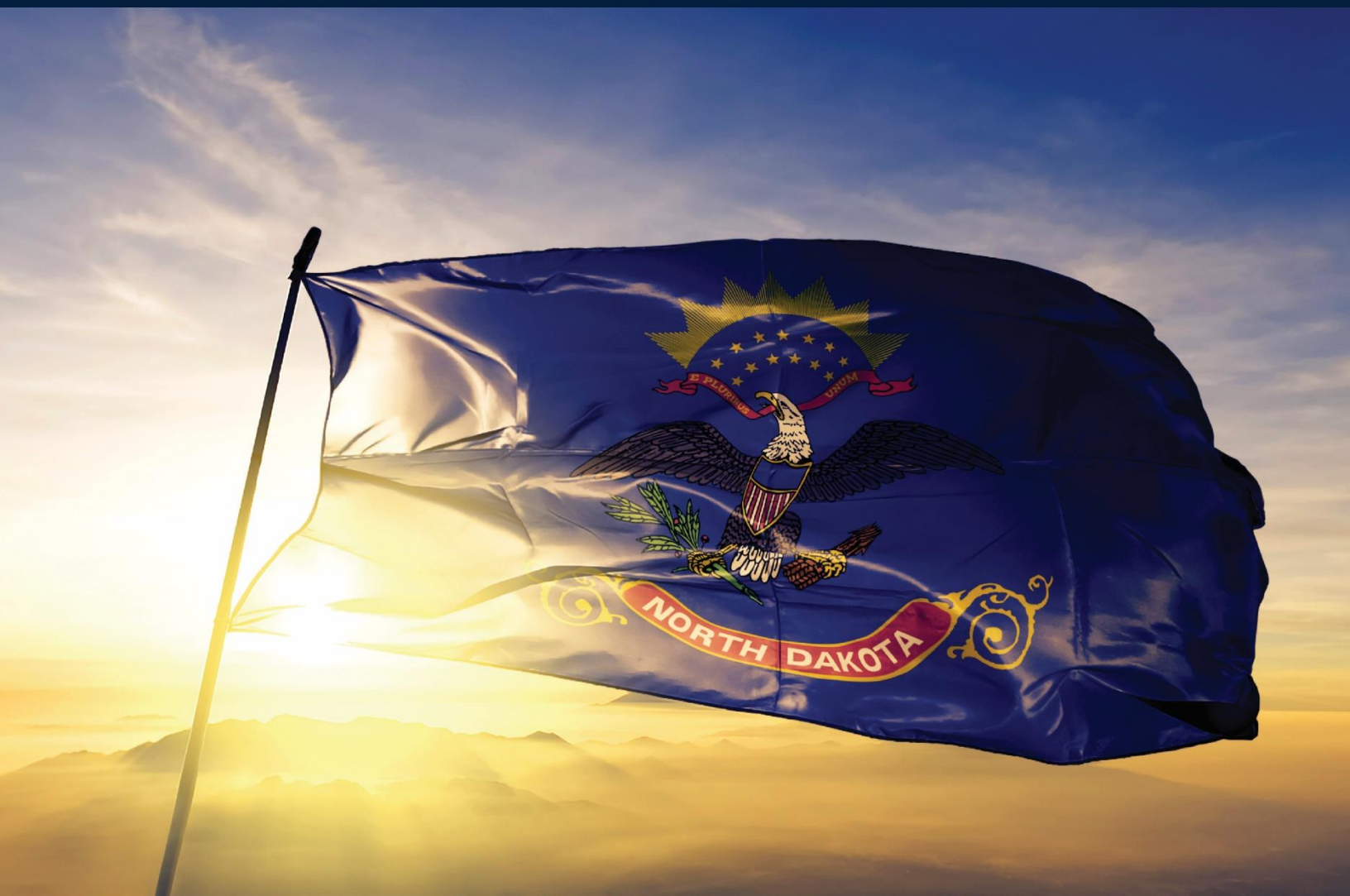
Kimberlee J Hegvik  
Cass County State's Attorney

# North Dakota

## Justice Reinvestment Initiative Reentry Study Work Group

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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 Frobeg**

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

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**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.<sup>1</sup> 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.<sup>2</sup> 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 68<sup>th</sup> 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.<sup>3</sup> To implement the mandates of HCR 3036, 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.<sup>4</sup> Between 2020 and 2021, North Dakota had the largest percent increase in prison population in the country, slightly over 20 percent.<sup>5</sup> 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.<sup>6</sup> This growth has continued with a 36 percent increase from December 31, 2020, to December 31, 2023.<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup>

Despite the prison population trends in North Dakota, crime rates have remained relatively stable and have followed overall national trends.<sup>10</sup> 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.<sup>11</sup> 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 35<sup>th</sup> out of all states, lower than their neighbors Minnesota (33<sup>rd</sup>), South Dakota (22<sup>nd</sup>), and Montana (16<sup>th</sup>). From 2013 to 2022, the national property crime rate decreased 28 percent, while North Dakota's property crime rate decreased six percent.<sup>12</sup>

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.<sup>13</sup> 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.<sup>14</sup> Excluding these special funds, however, the budget has still increased approximately 16 percent since the 2017-2019 biennium.<sup>15</sup>

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

an incarceration rate of 1,042 per 100,000 residents in 2022.<sup>16</sup> However, these rates have steadily declined since 2012, by about 36 percent for Black individuals and about 18 percent for Native Americans.<sup>17</sup> In contrast, North Dakota has experienced increasing rates of incarceration for their Black and Native American populations. By 2022, Black North Dakotans were incarcerated at rates five times higher than white North Dakotans and Native Americans were incarcerated at eight times the rate.<sup>18</sup> The increasing presence of people of color, specifically Native Americans, within DOCR highlights North Dakota's unique challenges compared to national trends.

Lastly, another significant factor where North Dakota distinguishes itself, is the prevalence of behavioral health needs across the state. DHHS estimated in 2021 that approximately 21 percent of North Dakota adults met the criteria for a substance use disorder (SUD) in the last year, putting North Dakota in the top 10 states in the nation for rates of SUD and higher than the national rate (18 percent).<sup>19</sup> This rate was also highest amongst its neighbors in the Midwest region, as other states had a prevalence between 18 and 20 percent.<sup>20</sup> State mental health data displayed similar trends, as North Dakota's rates of any mental illness and serious mental illness were higher than the national average in 2021. Approximately 26 percent of the state population met the criteria for having any mental illness compared to 23 percent for the nation.<sup>21</sup> In addition, about 6.5 percent met the criteria for having a serious mental illness within the past year in 2021 compared to roughly 5.9 percent nationally.<sup>22</sup>

## Key Findings

Despite having similar crime trends to the United States, North Dakota's prison population grew over the past decade. Focusing on the most recent decade of data, the Work Group identified the key characteristics of North Dakota's prison population and recent growth. These include:

- An increase in admissions to state prison, and a growth of the community supervision population;
- A high prevalence of individuals incarcerated for drug- and alcohol-related offenses;
- A steady growth in admissions for community supervision revocations, particularly probation revocations;
- An over-representation of Black and Native American populations within DOCR prisons, on community supervision, and with their supervision cases<sup>i</sup> revoked to prison; and
- A high prevalence of behavioral health needs, specifically substance use, across all levels of North Dakota's criminal justice system.

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<sup>i</sup> Supervision cases refer to an individual's specific parole or probation term, which can overlap with others.

## Prison Admissions and Community Supervision Population Grew

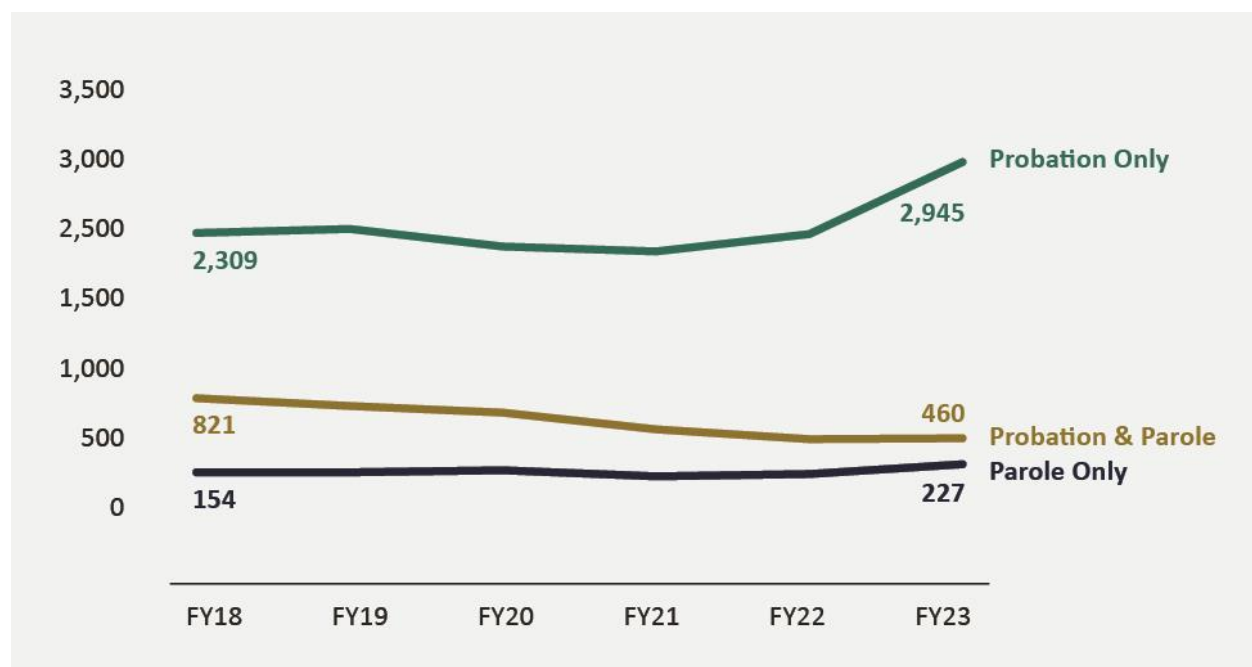
As noted above, North Dakota's prison population has grown significantly over the past several years. The Work Group determined that this growth is largely driven by increased admissions into state prisons. From 2014 to 2023, admissions to DOCR fluctuated, as shown in Figure 1 below. The increase, however, is most pronounced in the years following the COVID-19 pandemic, a growth of approximately 24 percent. Overall, from 2014 to 2023, admissions to prison increased approximately 10 percent.

**Figure 1.** Admissions by FY, 2014-2023



Like prison admissions, the community supervision population also grew over the years as displayed in Figure 2 below. For all years, probation-only supervision periods were the most common form of community supervision and grew from 2018 to 2023. Probation-only supervision periods accounted for two-thirds of all supervision cases and grew 28 percent from 2018 to 2023. While supervision terms that include both supervision types (parole and probation) decreased 44 percent since 2018, parole-only periods nearly doubled since 2021 and were the highest in 2023 since 2014.

**Figure 2.** Supervision Cases by Supervision Type per FY, 2018-2023



Understanding prison admission and community supervision growth trends inherently involves evaluating the intercepts of the criminal justice system that happen prior to sentencing. In North Dakota, there are notably few standardized offramps directing people away from criminal justice system involvement, which is significant. Statewide guidance for using alternative responses (i.e. citation or summons) in lieu of arrest is limited. As a result, some law enforcement agencies in the state use arrest-alternatives for a broader range of low-level offenses, particularly in areas of the state where the local jail is at capacity, while others do not.

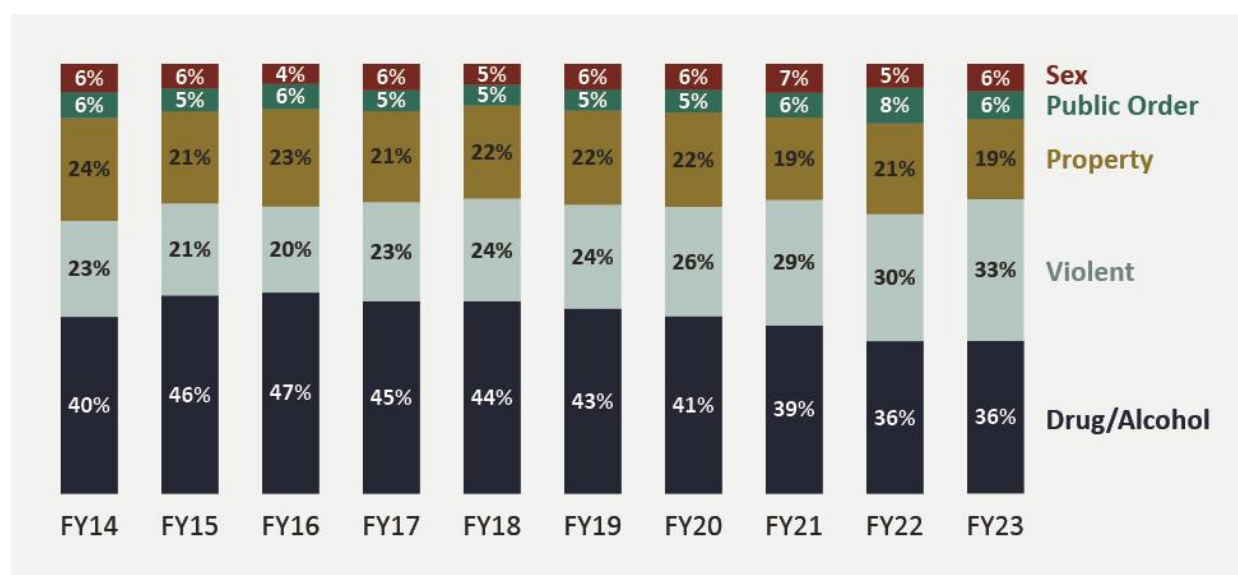
There are also no laws or statewide standards monitoring deflection or encouraging law enforcement to divert people with behavioral health needs to treatment rather than relying on legal system resources. Deflection practices across the state are not standard and ultimately depend on the relationships established between local law enforcement, regional Human Service Centers, and other detoxification centers and crisis stabilization centers (where available), which vary by jurisdiction. With few formal protocols offering guidance to law enforcement officers, often the only option for responding to someone whose behavioral health issues lead to disruptive or illegal conduct is arrest, detention and, ultimately, increased exposure to the correctional system.



## High Prevalence of Individuals Incarcerated for Drug- and Alcohol-related Offenses

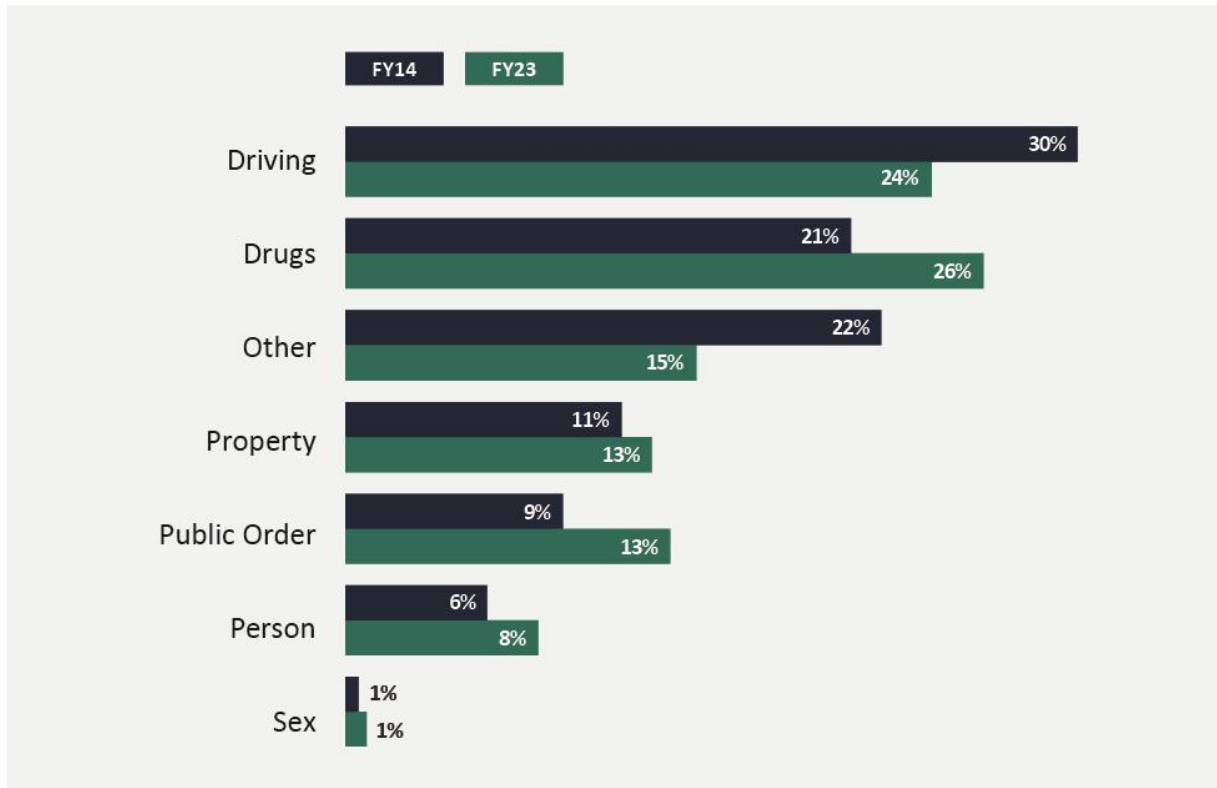
The Work Group looked closer to see what types of offenses comprised most admissions into prison shown in Figure 3 below. Drug and alcohol offenses were consistently the largest proportion of admissions, accounting for anywhere from over one-third to nearly half of all admissions in every year of analysis. Admissions for violent offenses increased over the past decade, up 58 percent; however, alcohol and drug offenses remain the largest category of offenses admitted to state prisons.

**Figure 3.** Admissions by Most Serious Offense per FY, 2014-2023



In addition, court filings also indicate a higher prevalence of drug-related cases in 2023 compared to 2014. As seen in Figure 4 below, cases with a drug offense as the most serious offense increased from 2014 to 2023, accounting for more than one-quarter of cases in 2023. While driving offenses were most common in 2014, accounting for just under one-third of cases filed, they accounted for less than one-quarter of cases in 2023.

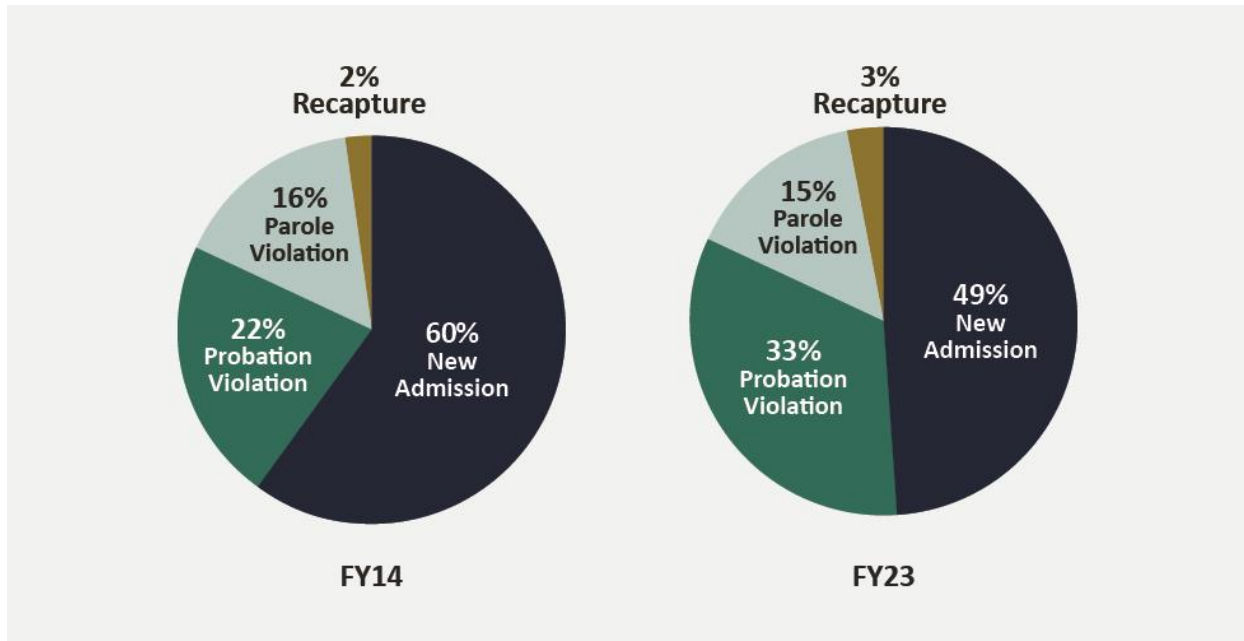
**Figure 4.** Most Serious Offense Category at Filing, FY14 (N = 58,113) & FY23 (N = 46,430)



### Community Supervision Violations Drive Admissions Growth

The other significant trend the Work Group discovered related to prison admissions was the growth in the number of admissions that were due to community supervision violations, displayed in Figure 5 below. From 2014 to 2023, admissions for probation violations increased approximately 65 percent, accounting for one-third of admissions in 2023. Combined with parole violations, violations for community supervision comprised about 38 percent of admissions in 2014 and increased to almost half of admissions in 2023.

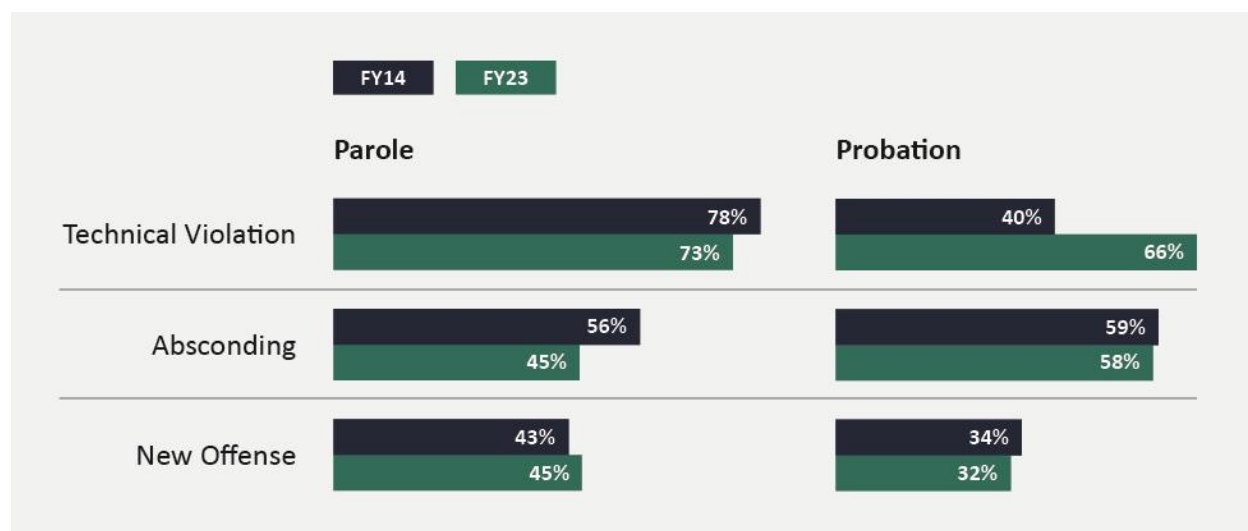
**Figure 5. Admissions by Admission Type per FY, 2014-2023**



*Revocations Primarily for Absconding and Technical Violations.*

For both probation and parole cases, new offenses were the least frequent reason for revocation, as seen in Figure 6 below. Technical violations represented nearly three-quarters of parole revocations and two-thirds of probation revocations in 2023. However, their frequency decreased slightly for parole cases and increased for probation cases from 2018 to 2023. New offenses remained relatively steady for both parole and probation cases and were more common for parole cases, comprising slightly under half of parole revocations and about a third of probation revocations. In 2023, absconding was more common than new offenses for probation revocations, but about the same for parole revocations. As supervising officers can select multiple reasons for revocations, many cases are revoked on more than one revocation type. For probation in 2023, the most common reason for revocation was a combination of technical violations and absconding, comprising 24 percent of revocations. Technical violation-only revocations were also common at 20 percent and absconding only revocations at 23 percent. In contrast, only three percent were due to a new offense-only, and a third of total probation revocations involved a new offense.

**Figure 6.** Revocations by Supervision Type and Reason, FY18 & FY23



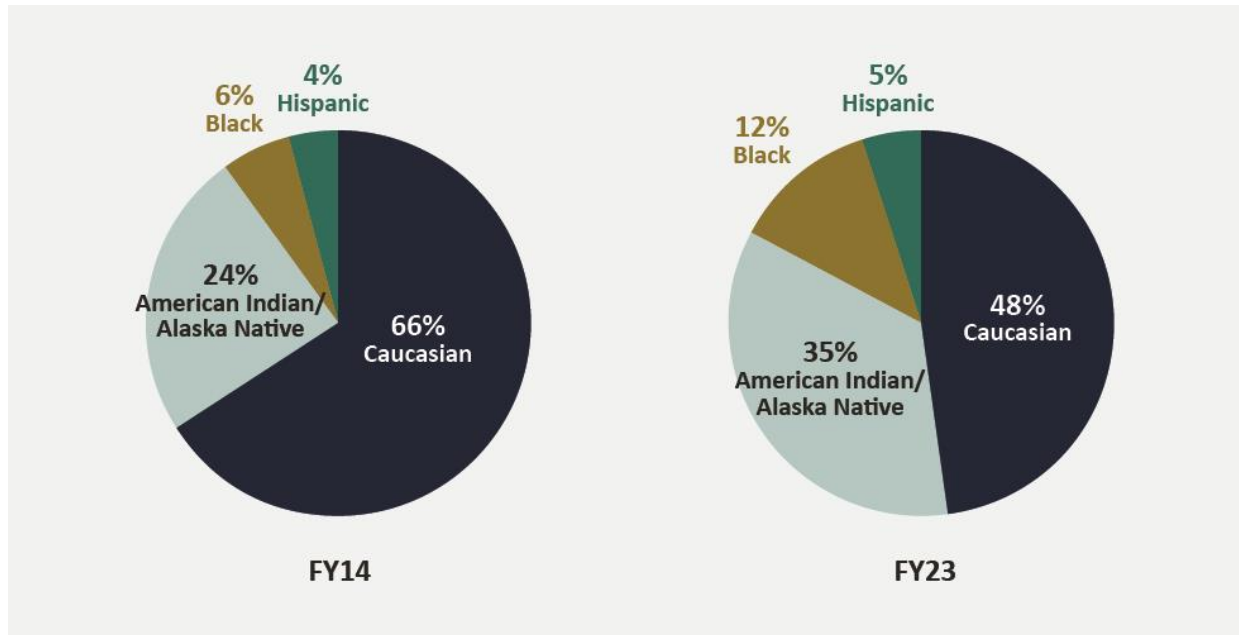
## Increasing Presence of Black and Native Individuals in Prison and on Community Supervision

From 2014 to 2023, North Dakota's general population experienced shifts in demographics, as there was a slight decrease in those who identified as white (not Hispanic or Latino) and slight increases in people of color.<sup>23</sup> Despite these shifts, North Dakota's criminal justice system displays certain racial disparities that outpace the general population trends.

### *More People of Color Were Admitted to Prison and Started Supervision Periods.*

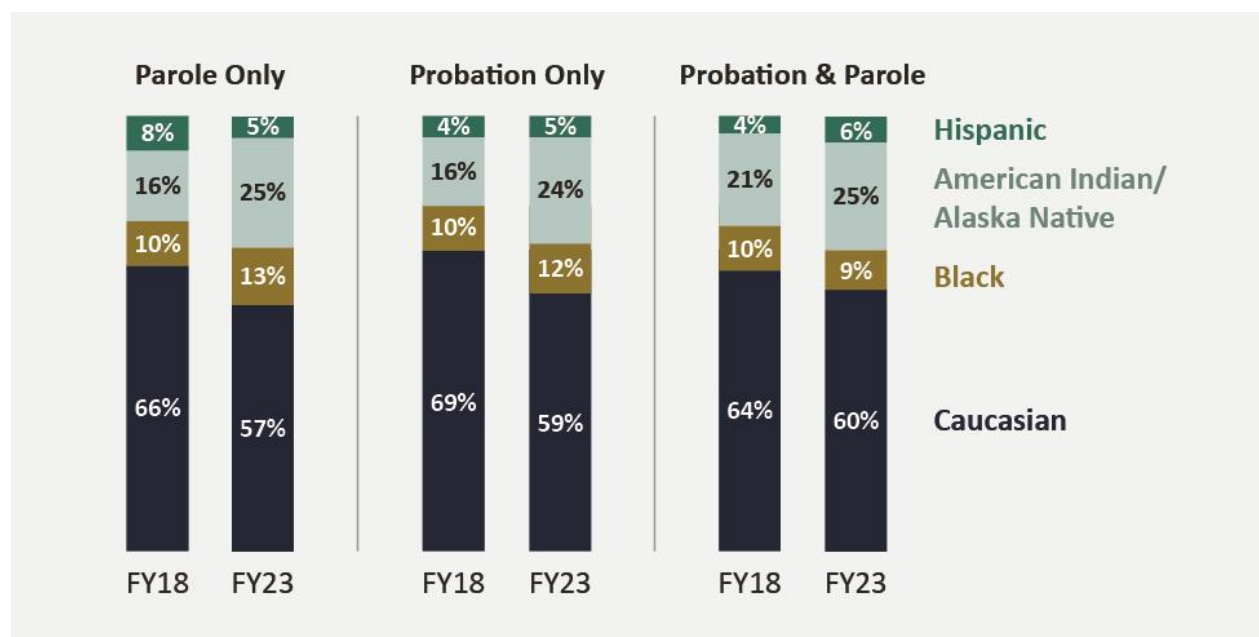
As prison admissions increased over the years, more people of color were admitted in 2023 than 2014, shown in Figure 7 below. While white admissions were the majority for every year, their proportion decreased across the decade with 21 percent fewer white admissions in 2023 than in 2014. At the same time, admissions for people of color, specifically Black and Native individuals, increased. Admissions for Native individuals increased approximately 61 percent from 2014 to 2023 and admissions for Black individuals were 120 percent higher in 2023 than 2014.

**Figure 7. Admissions by Race per FY, 2014-2023**



In addition to making up a larger proportion of prison admissions, there were more people of color on supervision in 2023 than in 2018, shown in Figure 8 below. A greater proportion of Native individuals were on every type of supervision in 2023 than in 2018 and represented a quarter of all supervision cases in 2023, even as Native individuals represented about 5 percent of North Dakota’s general population in 2023.<sup>24</sup> In addition, a higher proportion of Black individuals began parole- or probation-only supervision periods in 2023 compared to 2018. Like Native individuals, Black individuals are overrepresented in the supervision population as they accounted for about 3 percent of North Dakota’s general population in 2023.<sup>25</sup>

**Figure 8.** Supervision Period Starts by Supervision Type and by Race, FY18 & FY23

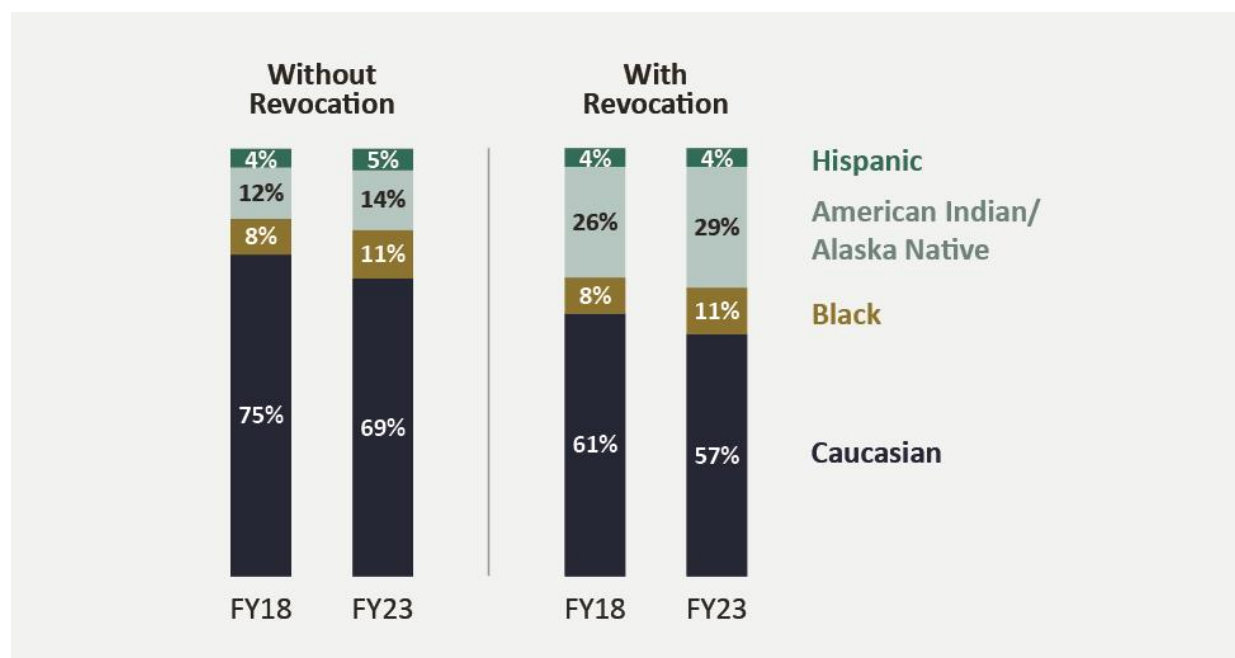


*Supervision Revocations More Prominent for People of Color.*

In addition, probation revocations were more frequent for Native individuals compared to other racial groups as displayed in Figure 9 below. For every year from 2018 to 2023, white individuals were more successful completing supervision than Native individuals. Specifically, more than twice as many Native individuals terminated supervision<sup>ii</sup> with a revocation than those who successfully completed supervision. This compares to White individuals who more successfully terminated their supervision without a revocation more frequently in 2023 than 2018.

<sup>ii</sup> Termination indicates the end of an individual's time on supervision, when all their supervision cases have terminated. Terminations include expirations (also known as positive terminations), revocations (also known as negative terminations), absconders, returned to the original state, and others.

**Figure 9.** Probation Period Ends by Race, 2018 & 2023



## High Prevalence of Behavioral Health Needs Contributes to System Involvement

In general, North Dakota has a high need for behavioral health treatment. DHHS estimated in 2021 that within the last year 21 percent of North Dakota adults met the criteria for a SUD.<sup>26</sup> In addition, North Dakota experienced a 214 percent increase in the drug overdose mortality rate from 6.3 per 100,000 individuals in 2014 to 19.8 per 100,000 individuals in 2022.<sup>27</sup> While this rate is lower than the national rate (32.6 per 100,000 individuals<sup>28</sup>), North Dakota's rate has increased more since 2014 than all three of its neighbors (i.e., South Dakota, Montana, and Minnesota).<sup>29</sup> DHHS also estimated in 2021 that within the last year 26 percent of North Dakota adults met the criteria for any mental illness and 6.5 percent of North Dakota adults met the criteria for having a serious mental illness.<sup>30</sup> These behavioral health needs were emphasized throughout areas of North Dakota's criminal justice system.

### *Substance Use Issues Are a Major Underlying Concern for Community Supervision Population.*

A common theme found amongst those under supervision was the significance of substance use issues. These issues were highlighted in every facet of an individual's supervision period, from their underlying offense to their new offense revocation.

For both parole and probation cases in 2023, possession of either drug paraphernalia or controlled substances were the most common underlying offenses. Drug-related offenses were the most common offense type for those on supervision in 2023, with about half of the 20 most

common offenses being drug- or alcohol-related and the next most common offense being property offenses at 20 percent.

Another relevant finding is that in-prison behavioral health treatment programming is prioritized in the months leading up to an individual's release or their review by the parole board. This is done, in part, to help residents transfer the skills learned in treatment to the community setting. While DOCR does ensure that residents receive access to their ordered treatment prior to their release, access to treatment is based on a recommendation made by the DOCR Case Planning Committee and is often dependent on the timeline of an individual's stay. This means that residents may be waiting to access programming for an extended period before their release date nears. Once their programming begins, individuals can also be removed from programming in response to certain institutional behavior, which may result in being placed on a waitlist to regain access to treatment.

Substance use issues were also identified as a need within a person's Level of Service Inventory-Revised (LSI-R) case plan. The LSI-R is a risk/needs assessment tool used to identify an individual's criminogenic risk to recidivate.<sup>31</sup> Research has found that a substance use disorder is a criminogenic risk factor that increases the likelihood of someone to reengage with the criminal justice system. In an LSI-R case plan, the case manager will select the most relevant risk domain to address from an individual's LSI-R assessment. Alcohol/Drugs and Accommodation were the most common risk domains selected for those starting supervision in 2023, indicating that substance use needs were a prevalent risk factor. Alcohol/Drugs was selected for about two-thirds of probation cases and about 13 percent of parole cases. These findings highlight that regardless of the underlying offense, substance use needs are identified by case managers as primary areas to address to reduce recidivism.

In addition, substance use needs were identified in those who engage in Free Through Recovery (FTR). FTR is a community-based behavioral health program designed to increase recovery support services to individuals involved with the criminal justice system with behavioral health concerns. FTR participants are referred by their supervising officer and must meet eligibility requirements before admittance to the program. To be eligible for FTR, individuals must be 18 years old, be involved with the criminal justice system or at risk for future involvement, have a behavioral health condition, and display concerns or challenges in areas of daily living (housing, employment, recovery support, etc.). FTR admissions, shown in Figure 10 below, increased around 263 percent, from 506 admissions in 2018 to 1,832 admissions in 2023. Of those admitted to FTR, 88 percent received a substance use diagnosis in 2019 and 94 percent received a substance use diagnosis in 2023. FTR discharges also increased from 2019 to 2023, and 94 percent of discharges in 2023 were given a substance use diagnoses at some point during their time in FTR. These findings emphasize the continued and growing prevalence of substance use needs within the supervision population.



**Figure 10.** Number of FTR Admissions by FY, 2018-2023



Finally, substance use issues among the community supervision population can manifest in the types of new offenses for which individuals' cases are revoked. In 2023, 29 percent of parole revocations and 17 percent of probation revocations involved a new drug or alcohol offense. For specific types of offenses, about half of all parole cases and almost one-third of all probation cases revoked in 2023 were for possession/ingestion of a controlled substance, as shown in Table 1. Most often, amphetamines were the primary drug involved in the new offense, accounting for 24 percent of new offenses for parole revocations and 9 percent of new offenses for probation revocations. The new offenses that are primarily drug- or alcohol-related, especially possession, underline the importance of addressing substance use needs to reduce individuals' risk of recidivism and reentry into the DOCR.

**Table 1.** New Offenses for Revoked Parole and Probation Cases, FY23

New Offense	Offense Type	Number of Offenses in 2023	% of Offenses in 2023	% of Cases with New Offenses Revoked in 2023
Parole				
Possession/Ingestion of Controlled Substance	Drug/Alcohol	72	26%	49%
Delivery of Controlled Substance	Drug/Alcohol	31	11%	21%
Narcotic Equip-Possess	Drug/Alcohol	25	9%	17%
Flight To Avoid/Escape	Public Order	19	7%	13%
Reckless Endangerment	Violent	19	7%	13%
Probation				
Possession/Ingestion of Controlled Substance	Drug/Alcohol	220	17%	31%
Narcotic Equip-Possess	Drug/Alcohol	131	10%	18%
Theft	Property	86	7%	12%
Simple Assault	Violent	59	5%	8%
Drive Under Suspension	Public Order	55	4%	8%
Criminal Trespass	Property	52	4%	7%

### *Possession and Low-Level Drug Offenses Driving DOCR Admission.*

In addition to drug and alcohol offenses being prevalent in the community supervision population, these trends were also evident in the prison population. As previously noted, the Work Group found that drug and alcohol offenses were the most common for admissions in every year from 2014 to 2023 (Figure 3). Specifically, drug possession offenses accounted for approximately 42 percent of all drug and alcohol admissions and for 21 percent of all admissions to DOCR in 2023. In addition, about 19 percent of admissions in 2023 had more than one prior admission for possession, indicating several individuals returning to DOCR with multiple possession offenses. Combining possession with other low-level drug offenses (e.g., ingesting a controlled substance, conspiracy to deliver a controlled substance, attempt to acquire controlled substance by deception, etc.) indicated that 15 percent of total admissions entered DOCR in 2023 for the first time. These offenses accounted for 43 percent of all admissions for drug and alcohol offenses in 2023, indicating their prevalence for admissions to DOCR.

Jails are an additional avenue for behavioral health support, as they are a common sentencing facility<sup>iii</sup> for drug cases. In 2023, approximately 42 percent of drug cases were sentenced to only a jail facility, while nearly half of drug cases were sentenced to a jail facility in addition to some other facility, such as a corrections facility, probation, or all three. In 2023, drug cases also made up almost one-quarter of all sentences to a jail facility (22 percent). For all sentences, drug cases represented 22 to 48 percent of all cases sentenced to jail and some other combination of sentencing facility.

### *Limited Options for Diversion into Treatment Across the State.*

A comprehensive evaluation of reentry in a criminal justice system involves exploring the pathways into the criminal justice system and what offramps exist to connect people to treatment and community support before they reach incarceration. Pre-adjudication and diversion options are notably limited across the state. Pretrial diversion is authorized by North Dakota's Rules of Criminal Procedure, and rehabilitative programming and treatment may be ordered as an agreed upon condition of diversion.<sup>32</sup> However, there are few robust programs in place for diversion, and there is an emphasized need for diversion programs tailored to addressing mental illness and chemical dependency – to meet the needs of the population that is entering the court system.

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<sup>iii</sup> Sentencing facilities include any venue an individual has been sentenced to by a judge, with the most common being jails, corrections facilities, and probation. Judges can also sentence individuals to any combination of these venues.

# Recommendations

In addition to these system findings, the Work Group examined evidence-based best practices and real-world examples from other states and jurisdictions to develop recommendations tailored to the needs of North Dakotans. Their analysis resulted in 26 recommendations intended to advance the following five overarching goal areas:

1. Expand Pathways to Alternatives to Incarceration;
2. Decrease the Number of Individuals Entering Prison Due to a Drug or Alcohol Offense, or Revocation from Supervision;
3. Reduce Racial Disparities in the Criminal Justice System;
4. Further Support Successful Transition Back into the Community by Increasing Access to Housing and Healthcare; and
5. Increase Cross-agency Collaboration Between System Partners.

It is important to acknowledge that the Work Group's efforts exist on the latest end of a continuum of reentry improvements in North Dakota. The recommendations in this report not only illuminate models and approaches that have yet to be implemented in North Dakota but build on the years of work that state and local officials have invested in constructing successful reentry initiatives. The Work Group recognizes the steadfast commitment of state leaders to utilizing evidence-based reentry policy to reduce recidivism and improve public safety.

## Goal 1: Expand Pathways to Alternatives to Incarceration

### **Recommendation 1: Authorize citations in lieu of arrest for non-traffic offenses in statute and create presumption for misdemeanor offenses**

North Dakota's Century Code only authorizes officers to issue citations in lieu of arrest for certain traffic violations.<sup>iv33</sup> Many states, such as Minnesota, Tennessee, and Kentucky have enacted policies that expand the use of citations to misdemeanor offenses to ensure that law enforcement resources are reserved for serious and violent individuals.<sup>34</sup> Research has found that standardizing practices for the use of citations both enhances officer efficiency<sup>35</sup> and creates greater consistency in law enforcement responses.

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<sup>iv</sup> N.D.R. Crim. P. Rule 5(e) permits the court to accept a compliant or summons in lieu of requiring an appearance before a magistrate "whether an arrest is made or not, for an offense that occurs in an officer's presence or for a motor vehicle or game and fish offense."

### **The Work Group Recommends:**

- *Codifying authority in Century Code for law enforcement to issue citation in lieu of arrest for misdemeanor offenses.*
- *Creating a statutory presumption of citation in lieu of arrest for misdemeanor offenses.*

### **Recommendation 2: Establish statewide deflection<sup>v</sup> standards for law enforcement agencies**

North Dakota currently provides limited guidance on law enforcement-led deflection practices.<sup>36</sup> Through interviews, law enforcement officers expressed a desire for more clarity in applying deflection practices, particularly the roles and responsibilities of different crisis response collaborators (law enforcement, healthcare professionals, and other community support entities). Research finds that law enforcement-led deflection efforts both effectively support individuals in crisis and often prevent the need for a carceral response but also function to reduce the likelihood of future offending.<sup>37</sup> In response to these findings, jurisdictions such as Illinois have defined the term “deflection programs” in statute to clarify the goals of these programs<sup>38</sup> and others, such as Ohio, have created statewide standards to support local agencies in developing their own crisis response policies.<sup>39</sup> Many states have partnered with the Treatment and Alternatives for Safe Communities (TASC) national organization to create such standards and assistance in implementing them.<sup>40</sup>

### **The Work Group Recommends:**

- *Codifying authority in Century Code for law enforcement to deflect individuals in crisis to hospitals, treatment centers or other locations for stabilization purposes.*
- *Establishing statewide guidelines recommending all North Dakota law enforcement agencies to create written standard operating procedures for crisis response and the use of arrest alternatives.*

### **Recommendation 3: Formalize local coalitions involved in responses to crises and low-level crime in the community**

Currently, there is inconsistent collaboration among local crisis response partners due to factors such as resource availability and law enforcement practices in different regions of the state. Interviews suggest that the result is often additional burdens on law enforcement. A specific example noted was the current lack of awareness of program bed space or eligibility criteria. This in turn makes it difficult to identify options when law enforcement encounters a person in crisis.

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<sup>v</sup> Deflection, also known as “pre-arrest diversion,” is an approach to either community-based or law enforcement-based intervention that is designed to reduce criminal justice system exposure for individuals with behavioral health needs.

To improve collaborations, many jurisdictions have formalized coalitions to enhance communication and streamline processes. A common example of this is the Law Enforcement Assisted Diversion/ Let Everyone Advance with Dignity (LEAD) Program, established in King County, Washington and now implemented in over fifty local jurisdictions across the country. Studies have demonstrated that effective partnerships, specifically for individuals with substance use disorder, can reduce the strain on law enforcement officers and can also reduce the harm and stigma associated with being in crisis.<sup>41</sup>

#### **The Work Group Recommends:**

- *Incentivizing the creation of formal partnerships between local partners including law enforcement, mental health service providers, housing officials, hospital and emergency room administrators, advocacy groups, other criminal justice personnel, community members, etc.*
- *Developing guidelines, standards of practice, or other agreements to govern collaboration among the partners involved.*

#### **Recommendation 4: Expand presumptive probation policy**

In North Dakota, there is a presumption of probation for eligible individuals convicted of first-time class C felony and class A misdemeanor offenses.<sup>42vi</sup> However, class C felony convictions are responsible for the majority of prison admissions in North Dakota – they accounted for about 65 percent of admissions in 2023.

Other states have addressed growing prison admissions by widening eligibility criteria with respect to presumptive sentences for community supervision. For example, Nevada law authorizes probation for any first or second class E felony conviction.<sup>43</sup>

#### **The Work Group Recommends:**

- *Expanding presumptive probation to second class C felonies and class A misdemeanor convictions.*

#### **Recommendation 5: Establish court-led pre-adjudicatory diversion programs & incentivize counties to establish prosecution-led diversion programs**

Pre-adjudication diversion programs in North Dakota are scarce. While court rule authorizes the use of pretrial diversion,<sup>44</sup> State’s Attorney offices, even in the areas of the state with the most

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<sup>vi</sup> This presumption notably excludes offenses involving domestic violence, firearm or weapons offenses, offenses against children and sexual offenses, and other more serious or dangerous convictions. Even for eligible offenses, judges can depart from the presumption and sentence someone to prison, if “aggravating factors” are present, for example, if the individual has pleaded guilty to, or been found guilty of, a prior felony or class A misdemeanor.

resources, do not have robust prosecutor-led diversion programs to connect people to treatment and support in lieu of formal prosecution. Moreover, virtually all court-based treatment options occur only after adjudication.<sup>45</sup> As North Dakota has a high prevalence of SUD and a large majority of individuals who enter the state's criminal justice system are convicted of an alcohol or drug offense, it is notable that treatment opportunities are not available for people entering the court system until after they have been sentenced.

In other states and jurisdictions, pre-adjudicatory diversion options are used as an incentive for participation. District Attorney's offices in Texas and Arizona, have established prosecutor-led diversion programs for individuals with drug or alcohol abuse or mental health issues, alongside other specific needs, and offenses.<sup>46</sup> The national Association of Prosecuting Attorneys has even developed prosecution-led diversion tool kit to help local offices establish such programs.<sup>47</sup> Additionally, Ramsey County, Minnesota and Bernalillo County, New Mexico are examples of local court systems that offer treatment courts access both pre- and post-adjudication.<sup>48</sup>

### **The Work Group Recommends:**

- *Incentivizing counties to establish prosecutor-led diversion opportunities through State's Attorney Offices.*
- *Authorizing pre-disposition use of treatment courts in statute.*

### **Recommendation 6: Limit the use of cash bail for cases released to pretrial supervision and evaluate savings from pretrial supervision program**

Under North Dakota's Rules of Criminal Procedure, judges can impose a range of pretrial release conditions to reasonably assure an individual appears in court, including ordering supervision.<sup>49</sup> Interviews indicate that, while judges are increasingly utilizing this option, there are many cases where cash bond is ordered in addition to pretrial supervision. This is in turn leading to fewer individuals being released because they cannot afford the bond and more individuals entering North Dakota's jails. North Dakota's jail population increased by 56 percent between 2005 and 2019,<sup>50</sup> and by 2019, 76 percent of the state's jail population was held pretrial.<sup>51</sup>

Many states and jurisdictions have stopped relying on financial conditions like bail, aligning with research findings that the practice of imposing money bond does not increase the likelihood of court appearances and is associated with a higher rate of rearrest.<sup>52</sup> In Arkansas, for example, state law requires that money bail may only be set after the judicial officer determines that no other conditions can reasonably ensure the defendant's appearance in court.<sup>53</sup> Nine states, including Alaska, Illinois, Iowa, Nebraska, New Mexico, Tennessee, and Wyoming have adopted either a presumption or requirement of release on the least restrictive conditions possible.<sup>54</sup>

### **The Work Group Recommends:**

- *Limiting the imposition of financial conditions in pretrial decisions and creating the presumption that pretrial supervision will not be coupled with money bond.*
- *Educating court actors (trainings, guidelines, etc.) on pretrial supervision uses and best practices; specifically, materials on how to release people pretrial with the least restrictive means possible to ensure safety.*
- *Conduct an updated outcomes study of DOCR's pretrial services supervision program.*

## **Goal 2: Decrease the Number of Individuals Entering Prison Due to a Drug or Alcohol Offense, or Revocation from Supervision**

### **Recommendation 7: Make the second instance of drug possession a class A misdemeanor, in order to reduce prison admissions**

Under current law, the first instance of possession of a controlled substance under a certain amount is a class A misdemeanor offense, the maximum penalty for which is 360 days in a county jail.<sup>55</sup> The second and subsequent offense, however, is a class C felony - which can result in up to five years in prison.<sup>56</sup> Individuals convicted of felony possession continue to comprise a large portion of DOCR's prison admissions. In 2023, 36 percent of admissions to DOCR custody were for a drug or alcohol offense, 43 percent of which were due to a possession offense. Research has overwhelmingly demonstrated that particularly for individuals convicted of drug offenses, incarceration does not reduce recidivism more effectively than non-custodial responses.<sup>57</sup>

Other states, like Utah, have addressed the problem of possession offenses driving prison admissions by establishing a tiered approach to how possession offenses are classified that includes more than a single misdemeanor offense. In Utah, the first two offenses are misdemeanors, and then subsequent offenses are higher felonies. As a result of this policy, Utah's state prison system saw an 88 percent decrease in the number of admissions for felony drug possession between 2015-2021,<sup>58</sup> accompanied by a declining number of drug cases brought in lower courts and in jails.<sup>59</sup>

### **The Work Group Recommends:**

- *Making the second instance of drug possession a class A misdemeanor, in order to reduce prison admissions.*

### **Recommendation 8: Develop a tiered response model to supervision violations that includes sanctions and incentives**

Currently, North Dakota law contains some intermediate sanctions in response to community supervision violations - including incarceration for up to 30 days, or up to five 48-hour periods



of incarceration per 12 months.<sup>60</sup> While DOCR's behavior modification manual contains a range of responses that officers can use, it doesn't consider responsivity factors that present barriers to success on supervision or many rewards for pro-social conduct. Revocations are a main driver of DOCR prison admissions; in 2023, nearly half of prison admissions were for community supervision revocations. Additionally, admissions for revocations have increased 65 percent between 2014 and 2023.

To more effectively respond to supervision violations, many states such as Nevada have created a tiered approach to violations that includes an escalation of carceral days after a certain number of violations.<sup>61</sup> Nevada also requires that a risk and needs assessment be conducted for each person entering probation in order to determine responsivity factors.<sup>62</sup> Research shows that sanctions which are swift, certain, and proportionate are the most effective method of changing behavior during community supervision.<sup>63</sup>

### **The Work Group Recommends:**

- *Adopting a graduated response matrix with escalating periods of detention beyond the current 30 days for an initial violation, to be used in conjunction with responsivity factors identified in a risk and needs assessment.*
- *Offering training to court practitioners including judges, prosecutors, defense counsel, and DOCR P&P supervisors on violation intervention best practices including intermediate sanctions and graduated responses.*

### **Recommendation 9: Establish clear definitions of “absconding” and “technical violations” in statute**

Under current law, North Dakota has no consistent definition for absconding or technical violations – agencies have their respective definitions. For example, DOCR's absconding definition is based on an interstate compact agreement, which considers someone absconded when they no longer reside at their last known address and have not been located 72 hours after staff has investigated all reasonable leads.<sup>64</sup> This definition is not mirrored in statute and there is also no statutory definition for technical violations of supervision.

The lack of statutory guidance for absconding and other technical violations is leading to inconsistent identification and tracking of these supervision failures. This is significant as technical violations and absconding are the primary drivers of probation revocations resulting in prison admission; in 2023, 66 percent of revocation prison admissions were for technical violations, and 58 percent were for absconding.

Montana and North Carolina laws state that, in order to abscond, the supervisee must “deliberately” and “willfully” avoid supervision.<sup>65</sup> Virginia specifies instances of conduct which amount to technical violations in its revocation statute, including failure to report a new arrest, failure to follow instructions, and failure to refrain from substance use.<sup>66</sup> Defining technical violations and absconding in century code, and distinguishing willful avoidance of obligations

from mere non-reporting, allows judges to respond with precision and apply an appropriate intervention or sanction, rather than a blanket revocation.

**The Work Group Recommends:**

- *Adopting definitions of technical violations into Century Code for probation and parole supervision.*
- *Adopting a statutory definition of absconding for probation and parole supervision that includes a willful intent to evade supervision.*
- *DOCR evaluate the 72-hour minimum timeline for the absconding definition in DOCR internal policy to determine if an extended timeline is necessary.*

**Recommendation 10: Update data collection practices relating to violations**

The Work Group noted that accurately tracking data to identify trends and challenges as they emerge is an important criminal justice practice. DOCR staff have identified opportunities to track technical violations through the system with greater precision. This is significant given the prevalence of North Dakotans entering prison because of supervision revocations.

**The Work Group Recommends:**

- *DOCR identify data collection needs and implement collection best practices related to revocation in its case-management system.*
- *Tracking revocation admissions data to distinguish between technical violation admissions and new offense admissions to identify trends.*

**Recommendation 11: Limit or eliminate imposition of court fines and fees, with the exception of victim restitution**

In North Dakota, Century Code requires that in all criminal cases except infractions, an administration fee of \$125-\$900 will be imposed based on the level of offense, in addition to monthly supervision fee of \$55.<sup>xxviii</sup> The Code additionally requires individuals seeking indigent defense services to pay a \$35 application fee for their representation – and potentially additional reimbursement to the state, county, or city providing the indigent defense support.<sup>67</sup>

Research shows that court fines and fees can act as a barrier to reentry by reducing a person's ability to afford housing and necessities, and that these hardships disproportionately affect minority communities.<sup>xxix</sup> States like Washington,<sup>68</sup> New Jersey,<sup>69</sup> and New Mexico have passed legislation to eliminate some or all post-adjudication fines and fees.<sup>70</sup> In some states that have maintained financial obligations for supervision, policies have been implemented to limit the use of continued supervision or incarceration as a response to failure to pay. Virginia, for example, prohibits extension of supervision due to failure to make full payment of fines and fees.<sup>71</sup>

### **The Work Group Recommends:**

- *Eliminating probation fees and defense application fees.*
- *Prohibiting extended supervision terms due to failure to pay fines and fees.*
- *Prohibiting incarceration due to failure to pay fines and fees.*

### **Recommendation 12: Evaluate current practices and the programming needs of the jail population across the state**

The Work Group recognized that jails play a vital role in reentry efforts by providing programming and services to people who will return to the community after a relatively short period of confinement. However, the group found that programming and treatment are inconsistently available in jails across North Dakota. Some states, like Tennessee, have addressed this challenge by providing grant funding to local jails for the purpose of implementing and improving evidence-based programming.<sup>72</sup> In states like Maryland, some jails operate therapeutic housing units that provide comprehensive behavioral health services including peer counseling.<sup>73</sup> Research has found that investing in evidence-based correctional programs, particularly education and vocational programs, is one of the most effective methods to reduce recidivism.<sup>74</sup>

### **The Work Group Recommends:**

- *Establishing a statewide grant program to provide evidence-based programming to county jails.*
- *Creating a uniform evaluation and validation process, data collection methodology and standards for jail programming.*
- *Expanding culturally-responsive treatment alternatives, like sweat lodges, to local jails.*

## **Goal 3: Reduce Racial Disparities in the Criminal Justice System**

### **Recommendation 13: Require the Minority Justice Implementation Committee to annually report to the North Dakota Supreme Court and the Legislature their recommendations for mitigating racial disparities in the court system**

Both Native and Black individuals are overrepresented in North Dakota's criminal justice system. Between 2014 and 2023, prison admissions increased from 24 percent to 35 percent for Native individuals and from 6 percent to 12 percent for Black individuals. These disparities are not limited to admissions, as revocations from community supervision are also significantly higher for Native individuals.

State leaders have recognized the need to study these trends and address racial disparities at the initial stages of North Dakota's system to mitigate its adverse effects. Over a decade ago,

the state Supreme Court established a Minority Justice Implementation Committee made up of representatives from various agencies and justice system roles, including DOCR and the Indian Affairs Commission. The Committee's responsibilities include developing recommendations related to studying racial bias, monitoring progress, and seeking funding sources for the implementation of recommendations.<sup>75</sup> Other states have created similar groups; Vermont established the Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel through legislation in 2017.<sup>76</sup>

#### **The Work Group Recommends:**

- *Updating committee duties to include a report to the North Dakota Supreme Court and the Legislature on findings from this study and recommendations to mitigate racial disparities.*

#### **Recommendation 14: Employ a Native liaison or liaisons within Parole and Probation**

While there is at least one probation officer in North Dakota whose primary role is to supervise individuals on the Standing Rock Reservation, there is a lack of a consistent, coordinated approach between the state's tribes and DOCR's Parole and Probation Services. This has manifested in more than twice as many Native individuals having at least one revocation than other racial groups.

Surrounding states have begun considering how to effectively supervise and improve supervision outcomes for Native individuals. South Dakota has reimaged parole supervision through a pilot program that hinges on a partnership between the South Dakota Department of Corrections and Sisseton-Wahpeton Oyate (SWO) reservation. This partnership allows a tribal parole agent to oversee a caseload of individuals residing on SWO tribal lands and has produced positive outcomes, including an increase in the parole success rate for this population.<sup>77</sup>

#### **The Work Group Recommends:**

- *In conjunction with tribal partners, designing an enhanced community supervision model that employs a Native liaison or liaisons to North Dakota's five tribes.*
- *Standardizing this model within DOCR agency policy.*
- *Identifying intended outcomes from use of this model and a plan for measuring progress.*

#### **Recommendation 15: Identify culturally responsive training opportunities for officers through consultation with tribal system partners**

Currently, DOCR encourages the use of guest speakers and supplementary sessions with guest lecturers on culturally responsive trainings. However, there is a lack of a strong partnership between DOCR and tribal representatives to ensure consistent and robust training efforts for staff. This is apparent in the experiences of individuals who have had contact with North

Dakota's justice system, who report a lack of access or awareness to culturally responsive services and support.

According to the American Probation and Parole Association's national supervision standards, case planning, interventions, and treatment options "should be chosen for individuals based on their responsivity factors," including cultural background.<sup>78</sup> This is particularly important in North Dakota, as demonstrated by the data above, as both Native and Black individuals are overrepresented in the state's justice system.

#### **The Work Group Recommends:**

- *Identifying culturally responsive training opportunities for parole and probation officers through consultation with tribal partners and other identified community groups.*
- *Incorporating culturally responsive approaches into DOCR policies and standard practices.*

#### **Recommendation 16: Design a reentry program in conjunction with tribal partners that is responsive to the specific needs of the Native population and rural communities**

There is a lack of coordinated effort between DOCR and tribal partners to support reentry, despite the specific reentry challenges for the Native population referenced in qualitative interviews. For example, many Native Americans who are released from incarceration must decide between returning to reservations, which can make meeting supervision requirements difficult (e.g., reporting to a supervising officer), or remaining in urban communities without familial and cultural supports. Compounding this issue is the rural nature of many of North Dakota's communities (including tribal lands). Stakeholders identified transportation as a common barrier in these regions.

Other states have responded to these challenges through implementation of reentry programs specific to the needs of Native populations. Arizona's Pascua Yaqui Tribe Reentry Program helps participants integrate Yaqui culture and traditions into the reentry process through reentry planning while incarcerated and continued support upon release. The program's team collaborates with other system stakeholders (e.g., parole/probation officers) to support reentry success.<sup>79</sup>

#### **The Work Group Recommends:**

- *Establishing a partnership between DOCR, tribal agencies, and rural community partners to identify the specific needs of Native individuals and North Dakotans in rural communities, including barriers upon reentry.*
- *Develop a pilot reentry program that is responsive to these needs.*

## **Goal 4: Further Support Successful Transition Back into the Community by Increasing Access to Housing and Healthcare**

### **Recommendation 17: Provide vouchers for people exiting DOCR custody to pay for housing**

In North Dakota, most system stakeholders recognized lack of housing as one of the most prevalent barriers to successful reintegration. Data showed that a growing number of individuals are unhoused at the start of periods of community supervision.

The North Dakota Rent Help (NDRH) Housing Stabilization Program provides up to six months of rental assistance for eligible households based on the median income for the county and household size. However, housing assistance that specifically targets the justice system involved population is lacking. Research consistently points to the lack of safe and stable housing as a major barrier to success upon reentry.<sup>80</sup>

#### **The Work Group Recommends:**

- *Expanding the eligibility criteria and funding for the existing Rent Help program to explicitly include those leaving incarceration.*

### **Recommendation 18: Improve coordination between housing providers for justice-involved individuals, increase education about available housing, and establish a pilot housing program for people with sex offenses**

While there is some housing assistance available for the justice-involved population in North Dakota, including the Housing Stabilization Program referenced above, there is a lack of consistent knowledge of available opportunities for this population among system stakeholders. Specifically, the Work Group noted that there is a dearth of housing options for individuals with sex offenses in the state.

#### **The Work Group Recommends:**

- *Improving coordination between housing providers across the state.*
- *Developing educational materials for incarcerated individuals and the general public about available housing assistance.*
- *Developing a pilot housing program for individuals with sex offenses.*

### **Recommendation 19: Reduce liability for landlords to lease dwellings to people with criminal convictions**

In North Dakota, the Opening Doors Landlord Risk Mitigation Fund allows participating landlords to claim up to \$2,000 for qualifying damages or unpaid rent losses. However, this program is not specific to the justice-involved population.

Other states have adopted statutes to address barriers to housing specifically for the justice-involved population by reducing liability for landlords renting to individuals with criminal convictions. Texas law provides that a landlord is not liable for leasing a dwelling to someone convicted of nonviolent offenses.<sup>81</sup>

#### **The Work Group Recommends:**

- *Adopting a statute that reduces liability for landlords to incentivize them to rent to justice-involved individuals.*

#### **Recommendation 20: Expand access to expungement**

North Dakota has a mechanism for requesting the sealing of criminal records for any misdemeanor three years after conviction when someone has not been convicted of new offenses, or five years after felony conviction with no subsequent convictions (excluding violent felonies and sex offenses).<sup>82</sup> Century Code also allows for the sealing upon request of convictions for certain specific offenses or circumstances, like crimes of prostitution committed by victims of trafficking,<sup>83</sup> operating a vehicle under the influence,<sup>84</sup> or possession of small amounts of marijuana.<sup>85</sup> This process is not automatic, and individuals who qualify must navigate the application process through the court system.<sup>86</sup>

Research finds that a criminal record can be a barrier in all aspects of reentry, including applying for a job and accessing housing.<sup>87</sup> Other states, such as Michigan, have taken steps to automate expungement to increase access to record clearing for certain offense types.<sup>88</sup>

#### **The Work Group Recommends:**

- *Developing educational materials to inform individuals with a criminal record about the process of record sealing.*
- *Conducting a legislative study to examine the possibility of automating this process.*

## **Goal 5: Increase Cross-agency Collaboration Between System Partners**

#### **Recommendation 21: Reinstate Medicaid benefits for incarcerated individuals earlier and create a data sharing portal to ensure DHHS is promptly notified when someone's Medicaid is suspended due to incarceration and when they have been released**

Federal law has historically prohibited enrolling incarcerated people in Medicaid.<sup>89</sup> However, the federal government has increasingly acknowledged the critical need of Medicaid for such individuals. As such, the Consolidated Appropriations Act of 2024 has since prohibited states from terminating Medicaid during periods of confinement instead of terminating coverage and encouraged states to instead only suspend it.<sup>90</sup> In North Dakota, interviews note that DOCR re-



enrolls eligible individuals seven days prior to their release, but there are often delays in coverage between someone's release date and their re-enrollment. Research has shown that continuity of care is important for avoiding recidivism<sup>91</sup>, particularly when someone is struggling with substance use disorder – delays in care and treatment can be a criminogenic risk.

States and Counties have begun to explore different solutions to this challenge. Bernalillo County Jail, New Mexico's largest jail, established a data portal system that alerts the state's Department of Health and Human Services when someone is released from jail and needs their Medicaid benefits reactivated – automating this process results in less wait times for re-enrollment, which leads to better health outcomes and less recidivism. Establishing the infrastructure for data sharing with statewide Medicaid agencies will also assist in the required implementation of Section 5121 of the Consolidated Appropriations Act of 2023 which provides Medicaid coverage for young adults formerly in foster care (aged 18-26) who are incarcerated.<sup>92</sup>

#### **The Work Group Recommends:**

- *Adopting a policy that allows incarcerated North Dakotans to apply for Medicaid coverage sooner to address barriers to accessing care upon release.*
- *DOCR and DHHS partner to create an automated notification system informing DHHS when a qualifying individual is within 45 days of their release date, so that their Medicaid Special Enrollment Period (SEP) form can be filled out and processed more timely, in order to ensure that their re-admission to Medicaid occurs as close to their release date as possible.*

#### **Recommendation 22: Apply for the Medicaid Section 1115 Reentry Waiver**

National statistics highlight the prevalence of behavioral health needs among the justice-involved population. In a 2016 study, the Bureau of Justice Statistics estimated that more than half of state prisoners in the U.S. had some indication of a mental health problem and about half met the criteria for substance use disorder within the 12 months prior to entering prison.<sup>93</sup>

Through use of the Section 1115 Reentry Waiver, states like Montana, Illinois, Kentucky, Oregon, Utah, and Vermont have been authorized to provide Medicaid coverage to incarcerated persons prior to their impending release.<sup>94</sup> Workgroup members recognized the benefit of potential use of this waiver in ensuring continuity of care for individuals preparing to leave incarceration.

#### **The Work Group Recommends:**

- *Initiating the Medicaid Section 1115 Reentry Waiver.*
- *Applying for federal technical assistance designed to prepare states to implement changes related to the Section 1115 Reentry Waiver.*



### **Recommendation 23: Partner with the Department of Transportation to provide access to driver's licenses for incarcerated individuals**

In North Dakota, 37 percent of individuals released from custody in 2023 did not have a driver's license. Women were far more likely to be released without a license than men; just 10 percent of women versus 73 percent of men were released with a license in 2023. Native people had the lowest proportion of individuals released with licenses of any ethnic group – 44 percent of Native people released in 2023 had no driver's license, versus 33 percent of White North Dakotans.

Research has shown that individuals who are released lacking identification and the ability to legally drive face significant obstacles to securing employment, housing, benefits, banking, and medical care.<sup>95</sup> Stakeholders reported that a lack of drivers' licenses in North Dakota is significantly acute in rural areas, where court appointments, access to treatment, and proximity to employment opportunities necessitated the use of a vehicle. Georgia addressed this challenge by passing legislation allowing for coordination between the state motor vehicle and correctional departments to issue IDs to people leaving custody.<sup>96</sup>

#### **The Work Group Recommends:**

- *Requiring in statute that North Dakota Department of Transportation (NDDOT) and DOCR partner to provide North Dakotans leaving custody with a driver's license or other state-issued identification upon release.*
- *Ensuring a consistent practice across DOCR where staff work with incarcerated people whose release date is approaching to determine license eligibility, address any existing obstacles, and assist with applications.*

### **Recommendation 24: Develop a standard practice of coordination between probation or parole officers, care coordinators, and peer supporters to support people on supervision and respond to supervision challenges in the Free Through Recovery (FTR) Program**

While the FTR program has grown considerably since it was established in 2018 with increased program completions, completion rates remain lowest for individuals whose supervision periods included both parole and probation (P&P). The Work Group identified opportunities to increase coordination between P&P agents supervising FTR participants and staff.

#### **The Work Group Recommends:**

- *Developing standards and practices for P&P supervisors for coordinating responses to FTR participant supervision violations with the supervisee's assigned behavioral healthcare providers and peer support specialists.*

**Recommendation 25: Create a statewide commission to serve as a clearinghouse for criminal justice data and facilitate data-sharing and uniform practices between state and local partner agencies**

The Work Group identified multiple opportunities to improve data collection practices at criminal justice and partnering agencies. System partners use a wide variety of content management systems – sometimes even within the same agency, which impedes data sharing capability.

This challenge is not unique to North Dakota and has been a barrier for states and jurisdictions across the nation that are looking to use data to inform criminal justice system decisions. Utah created a Criminal Justice Data Management Task Force, consisting of representatives from many agencies, to address data interoperability and tracking issues across the state.<sup>97</sup> The Task Force was charged with making recommendations related to improving and standardizing data retention and collection. A data management task force in North Dakota could similarly study opportunities for improved data collection, with the goal of improving reentry outcomes.

**The Work Group Recommends:**

- *Forming a Criminal Justice Data Management Task Force charged with making recommendations related to:*
  - *Identifying and updating data points that need to be tracked by criminal justice and partner agencies, including the Department of Health and Human Services' Behavioral Health Division.*
  - *Standardizing the format of data collection and retention.*
  - *Automating the collection, storage, and dissemination of the data.*
  - *Connecting the various records systems used throughout the state so that data can be shared between criminal justice agencies and with policymakers.*

**Recommendation 26: Create regional reentry coordinating councils**

In North Dakota, stakeholders reported significant regional variation regarding coordination between system partners throughout the experience of reentry. Interviews noted that in particularly more urban locations like Fargo, there is some level of regular communication between agencies, behavioral health providers, and treatment services, but in other more rural areas regular coordination is uncommon. States like Utah have responded to the challenge of irregular collaboration by instituting local criminal justice coordinating councils (CJCCs).<sup>98</sup> These CJCCs collect, share and analyze data related to the criminal justice system, including arrest, jail and prison admission rates, court case resolution times, and community supervision outcomes, so that local stakeholders can discuss and identify emerging issues and formulate policy accordingly.

The Work Group agreed unanimously that using data to drive criminal justice policymaking at both the state and local level was the best practice. Regional CJCCs could create a statewide data-driven framework for addressing issues related to crime and justice at the local level.

### **The Work Group Recommends:**

- *Creating local CJCCs in every judicial district, consisting of stakeholders from law enforcement, courts, jail administration, behavioral health professionals, and community reentry support partners.*
- *Creating uniform standards for data collection for each criminal justice coordinating council.*
- *Requiring regular meetings by CJCCs to review and analyze data in their communities.*

## **Conclusion**

While North Dakota has spent the last decade making transformative changes to its justice system, with a particular focus on rehabilitation, the state continues to experience growth in its prison population. In recognition of this, the Work Group dedicated hours to reviewing best practices, research findings, relevant state examples, and data findings from the state criminal justice system – culminating in the 26 responsive solutions outlined above to improve reentry outcomes across the state.

The Work Group’s findings and recommendations reflect the fact that the comprehensive nature of reentry requires an equally comprehensive approach to improving outcomes. As this report demonstrates, reentry is not solely the province or responsibility of law enforcement, the courts, and corrections. Instead, improved outcomes for people exiting the criminal justice system require a lasting partnership between state agencies responsible for portfolios that range from healthcare to housing, law enforcement officers, court practitioners, legislators, and service providers – as well as a commitment to collecting and analyzing data that informs appropriate interventions.

North Dakota is well-positioned to further the improvements made to the state’s criminal justice system over the last decade through advancement of these comprehensive, data-and research-driven recommendations.

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<sup>1</sup> Bureau of Justice Statistics (BJS), *Prisoners in 2011*. Table 2; Bureau of Justice Statistics (BJS), *Prisoners in 2021*, Table 2. [Prisoners in 2011 \(ojp.gov\)](https://www.ojp.gov/prisoners); [Prisoners in 2021 – Statistical Tables \(ojp.gov\)](https://www.ojp.gov/prisoners)

<sup>2</sup> North Dakota Department of Corrections and Rehabilitation, *DOCR Adult Services Prison Population Information* (Bismarck, ND: 2024), 1, [2023 12 31 FACT SHEET.pdf \(nd.gov\)](https://www.nd.gov/documents/2023-12-31-FACT-SHEET.pdf).

<sup>3</sup> ND HCR 3026 (2023).

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- <sup>4</sup> Bureau of Justice Statistics (BJS), *Prisoners in 2021 – Statistical Tables* (Washington, D.C.: 2020), Figure 3, [Prisoners in 2021 – Statistical Tables \(ojp.gov\)](#).
- <sup>5</sup> BJS, *Prisoners in 2021*, Table 2.
- <sup>6</sup> Bureau of Justice Statistics (BJS), *Prisoners in 2011*. Table 2; Bureau of Justice Statistics (BJS), *Prisoners in 2021*, Table 2. [Prisoners in 2011 \(ojp.gov\)](#); [Prisoners in 2021 – Statistical Tables \(ojp.gov\)](#)
- <sup>7</sup> North Dakota Department of Corrections and Rehabilitation, *DOCR Adult Services Prison Population Information* (Bismarck, ND: 2024), 1, [2023 12 31 FACT SHEET.pdf \(nd.gov\)](#).
- <sup>8</sup> BJS, *Prisoners Series: 2014, 2016, 2018, 2020, 2022* (Washington, D.C.), Table 7, [Search Publications | Bureau of Justice Statistics \(ojp.gov\)](#).
- <sup>9</sup> Danielle Kaebler, *Probation and Parole in the United States, 2020 & 2021*, (Washington, D.C.), Appendix Table 6, 9, and 10, <https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/ppus21.pdf>.
- <sup>10</sup> “United States and North Dakota Property and Violent Crime Rates,” FBI Crime Data Explorer, accessed June 2024, [CDE \(cjis.gov\)](#).
- <sup>11</sup> Ibid.
- <sup>12</sup> Ibid.
- <sup>13</sup> North Dakota Office of Management and Budget, *Approved State Budget* (Bismarck, ND: 2019-2023), <https://www.omb.nd.gov/financial-transparency/state-budget>.
- <sup>14</sup> North Dakota Office of Management and Budget, *2023-2025 Approved State Budget*, 109.
- <sup>15</sup> North Dakota Office of Management and Budget, *2023-2025 Approved State Budget*, 4.
- <sup>16</sup> BJS, *Prisoners in 2022 – Statistical Tables* (Washington, D.C.: 2023), Table 6, [Prisoners in 2022 – Statistical Tables \(ojp.gov\)](#)
- <sup>17</sup> Ibid.
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**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.

# SUMMARY OF REENTRY BILLS: HB 1425, HB 1417, HB 1549

**Overall Goal:** *Make better use of ND's prison & jail beds by being smart on crime*

**Reentry Study Report:** With assistance from the Crime & Justice Institute, a team of 15 leaders from the legislature, DOCR, DHHS, court system, county jails, and community reentry service providers met as the “Reentry Study Work Group” to discuss important data findings from North Dakota’s criminal justice system and make recommendations for improving reentry outcomes in the state. Key findings included:

- ✓ ND’s prison population is rising while nationally it is declining.
- ✓ Drug/alcohol offenses and revocations are the primary drivers of the increase.
- ✓ People of color, particularly Black and Native individuals 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.

**Policy Recommendations:** The Reentry Study Work Group identified about two dozen policies to address the issues highlighted by the report. Some will move forward as proposed legislation, some will be implemented as policy/practice changes within state agencies, and some will not move forward until more stakeholder conversations occur.

**Goals:** The recommendations aim to ensure public safety, make the best use of our prison and jail beds so we have capacity for our most serious offenders, save taxpayer dollars by controlling the expected ongoing growth of admissions, and improve the lives of justice-involved individuals.

**Legislative Proposals:** Several of the Reentry Study Work Group’s recommendations are represented in 3 proposed bills that require a change to North Dakota’s statute.

## HB 1425:

Targets the "front-end" of reentry, including strengthening the continuum of deflection, diversion, and pretrial services to expand pathways to alternatives to incarceration.

- **Deflection Program:** If a community establishes a deflection program, law enforcement & behavioral health shall collaborate and establish standard protocols, training & data collection processes.
- **Prosecution-led Diversion Program:** Counties that establish a prosecution-led diversion program shall establish guidelines and eligibility criteria. Appropriates funds for DOCR to run a pilot program in three counties for the supervision of prosecution-led diversion program participants and appropriates funds to DHHS for services to participants.
- **Pretrial Services:** Appropriates funds to study the cost savings of this program.

# SUMMARY OF REENTRY BILLS: HB 1425, HB 1417, HB 1549

## HB 1417:

Focuses on supervision violations and indigent defense (public defenders).

- **Revocations:** Develops tiered sentencing recommendations for supervision violations due to technical violations for a more consistent response and updates definitions.
- **Eliminate fees:** Eliminates supervision fees (\$55/month) and the application fee for indigent defense (\$35) and the court's ability to request reimbursement of public defense costs.
- **Study other fees:** Examines other fees, including the rate collected and the impact on revenue and on justice-involved individuals.

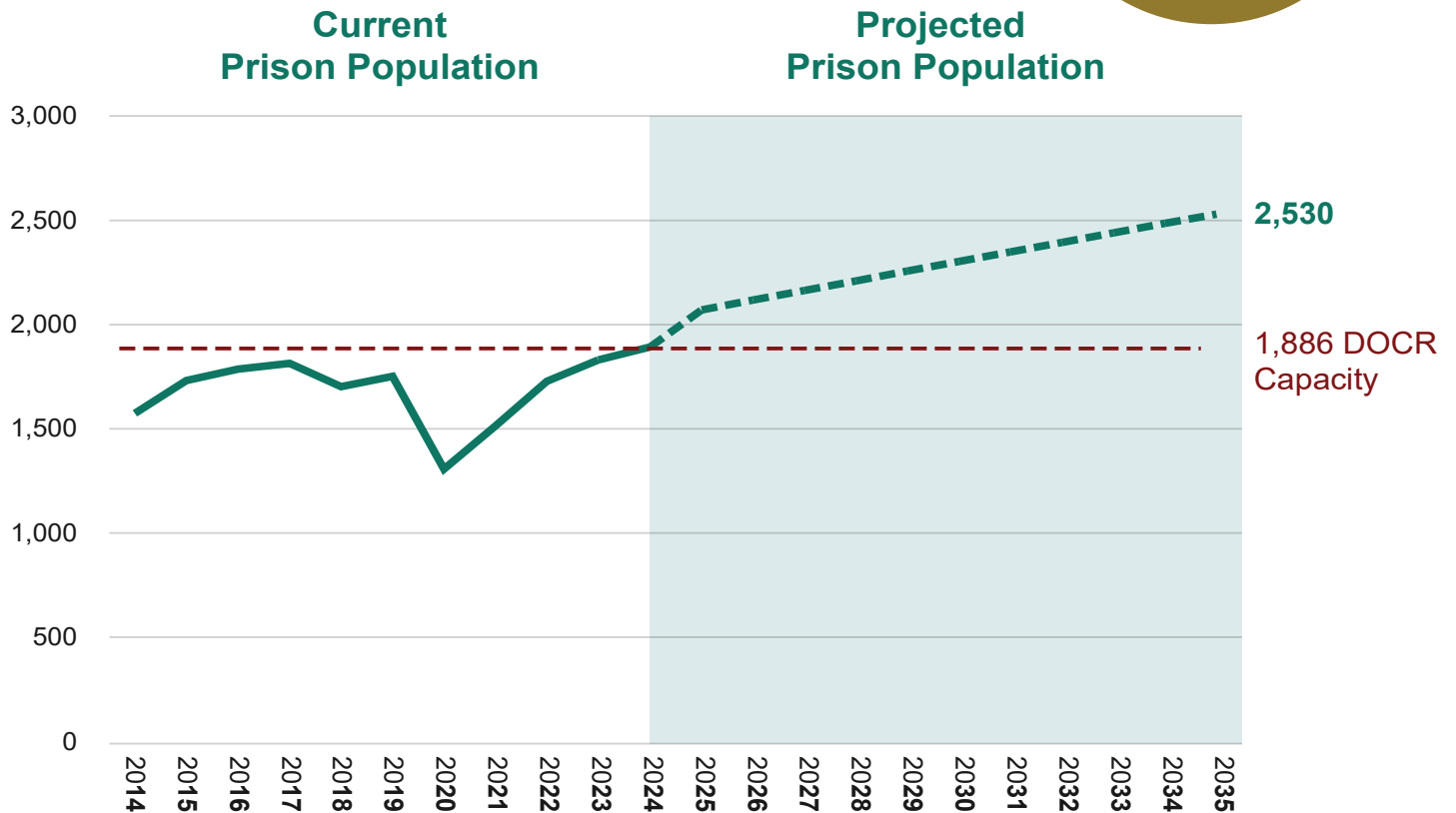
## HB 1549:

Focuses on "back-end" of reentry, including stronger collaborations that support successful transitions back into the community.

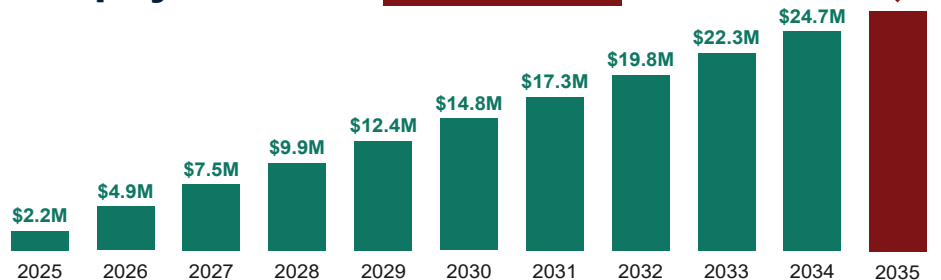
- **Correctional facility program grants:** Creates a grant program for local jails to help them improve their programming/reentry efforts. Establishes a grant committee and appropriates \$1.5m for grants.
- **Medicaid & IDs:** Requires the DOCR to partner with DOT to offer people leaving prison a state-issued ID and to partner with DHHS to offer eligible people Medicaid assistance or other programs.
- **Reduce racial disparities:** Creates a reentry program for Native Americans through a partnership between ND's tribes and DOCR. Requires the Minority Justice Implementation Committee to summarize its work in an annual report to legislative management.
- **Expand housing resources for the justice-involved population:** Creates a task force to collaborate with housing stakeholders to examine housing assistance for those leaving incarceration to prevent homelessness, housing for sexual offenders, sober housing, and low-barrier housing.
- **Improve data:** Requires DOCR and its system partners to examine our criminal justice data collection, retention, and dissemination and make recommendations for tracking uniform data points, standardizing data collection and sharing, and improving data connectivity between system partners.
- **Study:** Examines the potential of expanding access to criminal record sealing including automation.
- **Subgrants:** Requires the DOCR to apply for federal justice reinvestment implementation grants to help fund coordination and implementation of reentry policies and programs.

# 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

25.1149.01001  
Title.

Prepared by the Legislative Council  
staff for Representative Klemin  
February 3, 2025

Sixty-ninth  
Legislative Assembly  
of North Dakota

## PROPOSED AMENDMENTS TO

### HOUSE BILL NO. 1425

Introduced by

Representatives Klemin, Hanson, Stemen

Senators Davison, Larson

1 A BILL for an Act to create and enact a new section to chapter 11-16, a new chapter to title 12,  
2 and two new sections to chapter 54-23.3 of the North Dakota Century Code, relating to  
3 prosecution-led diversion programs, deflection process, and supervision for presentence  
4 programs; to provide for a legislative management study; and to provide for an appropriation.

#### 5 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

6 **SECTION 1.** A new section to chapter 11-16 of the North Dakota Century Code is created  
7 and enacted as follows:

#### 8 **Prosecution-led diversion program.**

- 9 1. The state's attorney for each county may create and administer a prosecution-led  
10 diversion program if, after due consideration of any crime victim's rights and subject to  
11 approval from the court, the prosecuting attorney and the defendant agree to suspend  
12 prosecution for a period of time after which the case will be dismissed under rule 32.2  
13 of the North Dakota Rules of Criminal Procedure on condition that the defendant not  
14 commit any new criminal offense during the period of the agreement.  
15 2. Each county that establishes a prosecution-led diversion program shall establish  
16 written guidelines for the program and minimum eligibility criteria.

17 **SECTION 2.** A new chapter to title 12 of the North Dakota Century Code is created and  
18 enacted as follows:

1       **Definition.**

2       As used in this chapter, "deflection process" means a procedure for facilitating an  
3       assessment, service or treatment in lieu of incarceration, criminal charges, or unnecessary  
4       admissions to the emergency department when a peace officer or first responder is directed to  
5       intervene with an individual ~~requiring treatment~~with a behavioral health condition, including a  
6       substance use disorder or mental health disorder, with or without the presence of criminal  
7       activity.

8       **Individual ~~requiring treatment~~with a behavioral health condition - Assistance -**  
9       **Medical care.**

10       A peace officer, as defined under section 12-63-01, may transport or refer an individual to a  
11       local hospital, detoxification center, community behavioral health center, or other appropriate  
12       treatment facility. A tier 1b mental health professional, as defined under section 25-01-01, of a  
13       local hospital may hold that individual for treatment up to seventy-two hours.

14       **Deflection process - Regional authority and planning.**

- 15       1. A local government, law enforcement agency, or other first responder agency may  
16       establish a deflection process in partnership with one or more licensed providers of  
17       behavioral health services or substance use disorder treatment services, subject to the  
18       provisions of this section. A deflection process must include participation from a law  
19       enforcement agency and behavioral health service provider.
- 20       2. A deflection process must include procedures for:
- 21       a. The identification, screening, and assessment of its participants;
- 22       b. Case management and treatment facilitation;
- 23       c. Participant followups;
- 24       d. Law enforcement, first responder, and treatment provider training;
- 25       e. The collection and evaluation of data for:
- 26           (1) Demographics of program participants;
- 27           (2) The number of law enforcement interactions that result in a treatment  
28           referral; and
- 29           (3) The time between initial law enforcement interaction and treatment service;  
30           and



- 1       3. A deflection process must include a performance management system with key  
2       performance indicators. Key performance indicators may include the:  
3       a. Rate of treatment engagement within thirty days of initial contact;  
4       b. Duration of treatment involvement; and  
5       c. Number of subsequent law enforcement interactions for individuals referred to  
6       treatment.

7       **Exemption from civil liability.**

8       A local government agency, law enforcement agency, peace officer, first responder, or  
9       employee of the agency, a behavioral health provider, or a public or private entity acting in good  
10      faith, is not liable for civil damages as a result of an act or omission in providing services under  
11      this section, unless the act or omission constitutes willful and wanton misconduct.

12      **SECTION 3.** A new section to chapter 54-23.3 of the North Dakota Century Code is created  
13      and enacted as follows:

14      **Supervision for presentence programs.**

15      The department of corrections and rehabilitation has the authority to supervise a defendant  
16      while the defendant is participating in a prosecution-led, or pretrial diversion program under  
17      section 1 of this Act or rule 32.2 of the North Dakota Rules of Criminal Procedure, or any other  
18      pretrial services program.

19      **SECTION 4.** A new section to chapter 54-23.3 of the North Dakota Century Code is created  
20      and enacted as follows:

21      **Prosecution-led diversion supervision pilot program - Report.**

- 22      1. The department of corrections and rehabilitation shall establish a prosecution-led  
23      diversion supervision program as a pilot project in three counties in the state during  
24      the biennium beginning July 1, 2025, and ending June 30, 2027.  
25      2. ~~During the first year of the biennium~~Beginning July 1, 2025, the department shall  
26      collaborate with the department of health and human services, North Dakota  
27      association of counties, county state's attorneys, the commission on legal counsel for  
28      indigent defense, county and regional correctional facilities, and public and private  
29      treatment providers to develop guidelines and procedures for the administration of the  
30      prosecution-led diversion supervision program.

3. The department of corrections and rehabilitation shall select three counties for a pilot project and ~~implement the program no later than July 1, 2026~~ enter contracts with third-party providers in partnership with the pilot counties to provide supervision, including monitoring and connection to services .

4. The department of corrections and rehabilitation shall implement the program no later than July 1, 2026.

5. Before June 30, 2027, the department, in collaboration with the three pilot counties, shall report to legislative management regarding the process and outcome of the prosecution-led diversion program and any recommendations for future legislation.

#### **SECTION 5. LEGISLATIVE MANAGEMENT STUDY - PRETRIAL SERVICE PROGRAMS.**

During the 2025-26 interim, the legislative management shall consider studying costs and savings associated with pretrial service programs operating in the state and opportunities to reinvest savings to improve re-entry outcomes. The study must include the effect of pretrial services on admissions to county jail, detention facilities, medical costs of participants, rate of failure to appear in court, rate of recidivism, and rate of participation in treatment programs. The study must identify opportunities for counties, courts, and state agencies to invest cost-savings associated with pretrial services in programs, treatment, and services that will further reduce recidivism and promote public health. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the seventieth legislative assembly.

#### **SECTION 6. APPROPRIATION - DEPARTMENT OF CORRECTIONS AND REHABILITATION - PROSECUTION-LED DIVERSION SUPERVISION PILOT PROGRAM -**

**FULL-TIME EQUIVALENT POSITIONS - ONE-TIME FUNDING.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$1,000,000, or so much of the sum as may be necessary, to the department of corrections and rehabilitation, for the purpose of hiring ~~seven~~one full-time equivalent ~~positions~~position and ~~creating~~contracting with third-party providers for a prosecution-led diversion supervision pilot program, for the biennium beginning July 1, 2025, and ending June 30, 2027. The personnel hired pursuant to this section must ~~be dedicated to~~prioritize the prosecution-led diversion supervision pilot program. The funding provided under this section is considered a one-time funding item.

1       **SECTION 7. APPROPRIATION - DEPARTMENT OF CORRECTIONS AND**  
2       **REHABILITATION - PRETRIAL SERVICE PROGRAMS COST-SAVINGS STUDY - ONE-TIME**  
3       **FUNDING.** There is appropriated out of any moneys in the general fund in the state treasury,  
4       not otherwise appropriated, the sum of \$55,000, or so much of the sum as may be necessary, to  
5       the department of corrections and rehabilitation, for the purpose of contracting for consulting  
6       services for the study provided in section 5 of this Act, for the biennium beginning July 1, 2025,  
7       and ending June 30, 2027. The funding provided under this section is considered a one-time  
8       funding item.

9       **SECTION 8. APPROPRIATION - DEPARTMENT OF HEALTH AND HUMAN SERVICES -**  
10      **PROSECUTION-LED DIVERSION TREATMENT SERVICES - ONE-TIME FUNDING.** There is  
11      appropriated out of any moneys in the general fund in the state treasury, not otherwise  
12      appropriated, the sum of \$750,000, or so much of the sum as may be necessary, to the  
13      department of health and human services, for the purpose of providing treatment services for  
14      participants in the prosecution-led diversion program, for the biennium beginning July 1, 2025,  
15      and ending June 30, 2027. The funding provided under this section is considered a one-time  
16      funding item.

HB 1425  
69<sup>th</sup> 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 1425.

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 69<sup>th</sup> Legislative Assembly to work towards implementing smart reforms to address issues in our criminal legal system. Section 1 sets up a program to allow for prosecution led diversion programs. According to a report from the National Conference of State Legislatures, 19 states have now implemented prosecution led diversion programs.<sup>i</sup> These programs allow those in the trenches to establish programs that work best in their jurisdictions.

Section 2 of HB 1425 establishes deflection programs. According to the National Conference of State Legislatures, Research has shown eight benefits to deflection programs:

- Breaking the costly cycle of justice-system involvement for eligible individuals.
- Increasing cross-system collaboration to create new pathways to community-based services.
- Enhancing relations between community members and law enforcement.
- Decreasing crime, incarceration and recidivism rates.

- Lessening the burden on justice systems.
- Improving public health and safety.
- Ensuring equal access to deflection programs regardless of race, income or geography.
- Saving taxpayer dollars.<sup>ii</sup>

The final sections of HB 1425 deal with pre-trial supervision and supervision on the diversion and deflection programs. The Commission has been a partner with the Department of Corrections and Rehabilitation since the beginning in establishing pre-trial service programs in North Dakota. These programs are vital and should be expanded in North Dakota. Research shows even a single day of detention on a pre-trial status can destabilize employment<sup>iii</sup>, can lead to longer sentences<sup>iv</sup>, distrust in the legal system and increase in the likelihood of future criminal involvement<sup>v</sup>.

For the reasons states herein, the Commission requests a DO PASS recommendation on House Bill 1425.

Respectfully Submitted:



Travis W. Finck  
Executive Director, NDCLCI

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<sup>i</sup> Widgery, Amber; The Legislative Primer Series for Front-End Justice: Deflection and Diversion, National Conference of State Legislatures (August 2023). Found at <https://documents.ncsl.org/wwwncsl/Criminal-Justice/Deflection-Diversion-f02.pdf>

<sup>ii</sup> Id.

<sup>iii</sup> Smith, Sandra Susan; Federal Probation 86.3 (December 2022):p. 11-18

<sup>iv</sup> Digard, Leon and Elizabeth Swavola; Justice Denied: The Harmful and Lasting Effects of Pretrial Detention, Vera Institute of Justice (April 2019). Found at <https://vera-institute.files.svdcn.com/production/downloads/publications/Justice-Denied-Evidence-Brief.pdf>

<sup>v</sup> Id.

Kathleen Atkinson, OSB  
701.426.8747

Wednesday, February 5, 2025  
HB 1425  
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 am a teacher by background and realized something when I first visited Kellen (Real person. Fabricated name) in jail. He was jailed for missing the deadline to inform his PO he had a new job. Kellen had started work, worked as many hours as possible, and forgot to call in as required. Now he was incarcerated and lost his job because of it. My frustration tempered as I watched Kellen fidget, listened to him bounce from topic to topic. I asked him about other experiences with the law and learned he had been part of the Criminal Justice system since middle school. Rash decision-making. Hyperactivity. Impulsive behavior. Use of alcohol and drugs to quiet his mind. The teacher in me realized Kellen was on the Autism Spectrum with ADHD; had he been in the educational system we would have provided Kellen with an IEP (Individualized Education Program), medication, and assistance for his mental health balance. Since he was in the Justice/Corrections system, he was being treated with incarceration, fines, limited avenues for his excessive energy and a cycle of being labeled a 'troublemaker.' (Side note: I recently read that 3-5% of the general population would have this diagnosis while 43% of the prison population is considered AuDHD).

Justin (Real person. Fabricated name) and I were visiting late one night at the Ministry Coffee House. He told me this story: He was 5 years old when he was invited by his dad to 'leave the little kids' and come join the men. So proud to be invited, he was handed his first beer at that early age. Just a sip. Then he built up his tolerance. Then he stayed at the men's circle and began to use other drugs; by 16 Justin's dad had died, he had dropped out of school, he had become the man of the family, his addiction had taken over his life. By 17 he was tried as an adult because of his history of run-ins with the police. And now he is homeless, with a felony record, and trying to find a job and stay sober.

**IF THE ONLY TOOL YOU HAVE IS A HAMMER, IT IS TEMPTING TO TREAT EVERYTHING AS IF IT WERE A NAIL.**

HB 1425 provides other tools than jail or prison. **A strong continuum of deflection and diversion** provides alternatives to incarceration as a means to stop the cycle by addressing the root cause. Undiagnosed and untreated behavioral health issues addressed *prior* to incarceration. Addiction treatment and recovery required as an alternative to incarceration rather than *at the end of or after* time served. **Pretrial services** that allow a person to continue to work, live in a supportive environment, and establish positive patterns of behavior rather than sit in jail awaiting trial when they are not a danger to society. These are important collaborative efforts for rehabilitation of a person without getting them further into the criminal justice cycle. Lives can be changed rather than locked up. Money can be spent on treatment. Someone who is employed can continue to be a taxpayer rather than a tax burden.

And hammers can be used only in the serious cases when needed.

# 2025 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Room JW327B, State Capitol

HB 1425  
2/5/2025

Relating to prosecution-led diversion programs, deflection process, and supervision for presentence programs; to provide for a legislative management study; and to provide for an appropriation.
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4:04 p.m. Chairman Klemin opened the hearing.

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

Members Absent: Representatives McLeod, Satrom, VanWinkle

**Discussion Topics:**

- Increase of North Dakota prison population
- Date appropriations become effective
- Success rate of government led diversion programs

4:26 p.m. Travis Finck, Executive Director of the North Dakota Commission on Legal Counsel for Indigents, answered committee questions.

4:45 p.m. Chairman Klemin closed the hearing.

*Wyatt Armstrong, Committee Clerk*

# 2025 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Room JW327B, State Capitol

HB 1425  
2/10/2025

Relating to prosecution-led diversion programs, deflection process, and supervision for presentence programs; to provide for a legislative management study; and to provide for an appropriation.

10:00 a.m. Chairman Klemin opened the hearing.

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

## **Discussion Topics:**

- Committee Action

10:02 a.m. Representative Karls moved to Amend LC: 25.1149.01001 (proposed during the February 5, 2025 hearing, testimony #34884)

10:02 a.m. Representative Vetter seconded the motion.

<b>Representatives</b>	<b>Vote</b>
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	Y
Representative Christina Wolff	Y

10:07 a.m. Motion passed 14-0-0

10:07 a.m. Representative Karls moved a Do Pass as Amended and rerefer to Appropriations.

10:07 a.m. Representative Schneider seconded the motion.



<b>Representatives</b>	<b>Vote</b>
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	Y
Representative Carrie McLeod	N
Representative SuAnn Olson	Y
Representative Bernie Satrom	Y
Representative Mary Schneider	Y
Representative Bill Tveit	Y
Representative Lori VanWinkle	N
Representative Christina Wolff	N

10:08 a.m. Motion passed 9-5-0

10:08 a.m. Chairman Klemin will carry the bill.

10:08 a.m. Chairman Klemin closed the hearing.

*Wyatt Armstrong, Committee Clerk*

Sixty-ninth  
Legislative Assembly  
of North Dakota

**PROPOSED AMENDMENTS TO**

**HOUSE BILL NO. 1425**

Introduced by

Representatives Klemin, Hanson, Stemen

Senators Davison, Larson

2-10-25  
JB 1085

1 A BILL for an Act to create and enact a new section to chapter 11-16, a new chapter to title 12,  
2 and two new sections to chapter 54-23.3 of the North Dakota Century Code, relating to  
3 prosecution-led diversion programs, deflection process, and supervision for presentence  
4 programs; to provide for a legislative management study; and to provide for an appropriation.

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

6 **SECTION 1.** A new section to chapter 11-16 of the North Dakota Century Code is created  
7 and enacted as follows:

8 **Prosecution-led diversion program.**

9 1. The state's attorney for each county may create and administer a prosecution-led  
10 diversion program if, after due consideration of any crime victim's rights and subject to  
11 approval from the court, the prosecuting attorney and the defendant agree to suspend  
12 prosecution for a period of time after which the case will be dismissed under rule 32.2  
13 of the North Dakota Rules of Criminal Procedure on condition that the defendant not  
14 commit any new criminal offense during the period of the agreement.

15 2. Each county that establishes a prosecution-led diversion program shall establish  
16 written guidelines for the program and minimum eligibility criteria.

17 **SECTION 2.** A new chapter to title 12 of the North Dakota Century Code is created and  
18 enacted as follows:

JB 2085

1     **Definition.**

2     As used in this chapter, "deflection process" means a procedure for facilitating an  
3     assessment, service or treatment in lieu of incarceration, criminal charges, or unnecessary  
4     admissions to the emergency department when a peace officer or first responder is directed to  
5     intervene with an individual ~~requiring treatment~~ with a behavioral health condition, including a  
6     substance use disorder or mental health disorder, with or without the presence of criminal  
7     activity.

8     **Individual ~~requiring treatment~~ with a behavioral health condition - Assistance -**  
9     **Medical care.**

10    A peace officer, as defined under section 12-63-01, may transport or refer an individual to a  
11    local hospital, detoxification center, community behavioral health center, or other appropriate  
12    treatment facility. A tier 1b mental health professional, as defined under section 25-01-01, of a  
13    local hospital may hold that individual for treatment up to seventy-two hours.

14    **Deflection process - Regional authority and planning.**

- 15    1. A local government, law enforcement agency, or other first responder agency may  
16    establish a deflection process in partnership with one or more licensed providers of  
17    behavioral health services or substance use disorder treatment services, subject to the  
18    provisions of this section. A deflection process must include participation from a law  
19    enforcement agency and behavioral health service provider.
- 20    2. A deflection process must include procedures for:
- 21    a. The identification, screening, and assessment of its participants;
- 22    b. Case management and treatment facilitation;
- 23    c. Participant followups;
- 24    d. Law enforcement, first responder, and treatment provider training;
- 25    e. The collection and evaluation of data for:
- 26       (1) Demographics of program participants;
- 27       (2) The number of law enforcement interactions that result in a treatment  
28       referral; and
- 29       (3) The time between initial law enforcement interaction and treatment service;  
30       and



103 3 of 5

- 1       3. A deflection process must include a performance management system with key  
2       performance indicators. Key performance indicators may include the:  
3       a. Rate of treatment engagement within thirty days of initial contact;  
4       b. Duration of treatment involvement; and  
5       c. Number of subsequent law enforcement interactions for individuals referred to  
6       treatment.

7       **Exemption from civil liability.**

8       A local government agency, law enforcement agency, peace officer, first responder, or  
9       employee of the agency, a behavioral health provider, or a public or private entity acting in good  
10      faith, is not liable for civil damages as a result of an act or omission in providing services under  
11      this section, unless the act or omission constitutes willful and wanton misconduct.

12      **SECTION 3.** A new section to chapter 54-23.3 of the North Dakota Century Code is created  
13      and enacted as follows:

14      **Supervision for presentence programs.**

15      The department of corrections and rehabilitation has the authority to supervise a defendant  
16      while the defendant is participating in a prosecution-led, or pretrial diversion program under  
17      section 1 of this Act or rule 32.2 of the North Dakota Rules of Criminal Procedure, or any other  
18      pretrial services program.

19      **SECTION 4.** A new section to chapter 54-23.3 of the North Dakota Century Code is created  
20      and enacted as follows:

21      **Prosecution-led diversion supervision pilot program - Report.**

- 22      1. The department of corrections and rehabilitation shall establish a prosecution-led  
23      diversion supervision program as a pilot project in three counties in the state during  
24      the biennium beginning July 1, 2025, and ending June 30, 2027.  
25      2. ~~During the first year of the biennium~~ Beginning July 1, 2025, the department shall  
26      collaborate with the department of health and human services, North Dakota  
27      association of counties, county state's attorneys, the commission on legal counsel for  
28      indigent defense, county and regional correctional facilities, and public and private  
29      treatment providers to develop guidelines and procedures for the administration of the  
30      prosecution-led diversion supervision program.

JB 405

- 1       3. The department of corrections and rehabilitation shall select three counties for a pilot  
2       project and ~~implement the program no later than July 1, 2026~~ enter contracts with third-  
3       party providers in partnership with the pilot counties to provide supervision, including  
4       monitoring and connection to services.  
5       4. The department of corrections and rehabilitation shall implement the program no later  
6       than July 1, 2026.  
7       5. Before June 30, 2027, the department, in collaboration with the three pilot counties,  
8       shall report to legislative management regarding the process and outcome of the  
9       prosecution-led diversion program and any recommendations for future legislation.

10       **SECTION 5. LEGISLATIVE MANAGEMENT STUDY - PRETRIAL SERVICE PROGRAMS.**

11       During the 2025-26 interim, the legislative management shall consider studying costs and  
12       savings associated with pretrial service programs operating in the state and opportunities to  
13       reinvest savings to improve re-entry outcomes. The study must include the effect of pretrial  
14       services on admissions to county jail, detention facilities, medical costs of participants, rate of  
15       failure to appear in court, rate of recidivism, and rate of participation in treatment programs. The  
16       study must identify opportunities for counties, courts, and state agencies to invest cost-savings  
17       associated with pretrial services in programs, treatment, and services that will further reduce  
18       recidivism and promote public health. The legislative management shall report its findings and  
19       recommendations, together with any legislation required to implement the recommendations, to  
20       the seventieth legislative assembly.

21       **SECTION 6. APPROPRIATION - DEPARTMENT OF CORRECTIONS AND**

22       **REHABILITATION - PROSECUTION-LED DIVERSION SUPERVISION PILOT PROGRAM -**

23       **FULL-TIME EQUIVALENT POSITIONS - ONE-TIME FUNDING.** There is appropriated out of  
24       any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of  
25       \$1,000,000, or so much of the sum as may be necessary, to the department of corrections and  
26       rehabilitation, for the purpose of hiring ~~seven~~one full-time equivalent ~~positions~~position and  
27       ~~creating~~contracting with third-party providers for a prosecution-led diversion supervision pilot  
28       program, for the biennium beginning July 1, 2025, and ending June 30, 2027. The personnel  
29       hired pursuant to this section must ~~be dedicated to~~prioritize the prosecution-led diversion  
30       supervision pilot program. The funding provided under this section is considered a one-time  
31       funding item.



1       **SECTION 7. APPROPRIATION - DEPARTMENT OF CORRECTIONS AND**  
2       **REHABILITATION - PRETRIAL SERVICE PROGRAMS COST-SAVINGS STUDY - ONE-TIME**  
3       **FUNDING.** There is appropriated out of any moneys in the general fund in the state treasury,  
4       not otherwise appropriated, the sum of \$55,000, or so much of the sum as may be necessary, to  
5       the department of corrections and rehabilitation, for the purpose of contracting for consulting  
6       services for the study provided in section 5 of this Act, for the biennium beginning July 1, 2025,  
7       and ending June 30, 2027. The funding provided under this section is considered a one-time  
8       funding item.

9       **SECTION 8. APPROPRIATION - DEPARTMENT OF HEALTH AND HUMAN SERVICES -**  
10      **PROSECUTION-LED DIVERSION TREATMENT SERVICES - ONE-TIME FUNDING.** There is  
11      appropriated out of any moneys in the general fund in the state treasury, not otherwise  
12      appropriated, the sum of \$750,000, or so much of the sum as may be necessary, to the  
13      department of health and human services, for the purpose of providing treatment services for  
14      participants in the prosecution-led diversion program, for the biennium beginning July 1, 2025,  
15      and ending June 30, 2027. The funding provided under this section is considered a one-time  
16      funding item.

**REPORT OF STANDING COMMITTEE  
HB 1425**

**Judiciary Committee (Rep. Klemin, Chairman)** recommends **AMENDMENTS** ([25.1149.01001](#)) and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (9 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING). HB 1425 was placed on the Sixth order on the calendar.

**2025 HOUSE APPROPRIATIONS**

**HB 1425**



# 2025 HOUSE STANDING COMMITTEE MINUTES

## **Appropriations Committee** Roughrider Room, State Capitol

HB 1425  
2/19/2025

Relating to prosecution-led diversion programs, deflection process, and supervision for presentence programs; to provide for a legislative management study; and to provide for an appropriation

11:12 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:**

- New Program
- Over capacity with criminals
- Curve admissions

11:13 a.m. Representative Klemin Introduced the bill and submitted testimony #38073 and #38078.

11:24 Colby Braun, Director, North Dakota Department of Corrections and Rehabilitation, answered questions for the committee.

11:26 a.m. Pam Sagness, Executive Director for Behavioral Health, Department of Health and Human Services answered questions for the committee.

11:38 a.m. Chairman Vigesaa closed the meeting.

*Krystal Eberle for Risa Berube, Committee Clerk*

**HB 1425 House Appropriations Rep. Lawrence R. Klemin Feb. 19, 2025**

HB 1425 is the first of three bills relating to criminal justice reform. These bills are supported by Governor Armstrong, who mentioned them in his State of the State Address. They are also supported by the Department of Corrections and Rehabilitation, the Department of Health and Human Services, Job Service North Dakota, the North Dakota State's Attorneys Association, the North Dakota Commission on Legal Counsel for Indigents, Ministry on the Margins, and other organizations and individuals.

HB 1425 relates to prosecution-led diversion programs, a deflection process, and supervision for presentence programs.

For the last eight years, North Dakota has been working 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.

Two years ago, the Legislature passed HCR 3026 to study how we can further improve reentry outcomes for people leaving incarceration. ND's recidivism rate is about 40%. We have serious overcrowding in our prison and jails. We can either develop programs to reduce recidivism and divert people from incarceration, or we can spend millions to expand the State Prison and build more county jails.

Roughly 95% of people who are incarcerated in North Dakota's prison and jails are eventually released. North Dakota releases about 1,400 people from the state prison system every year, plus thousands more from our county jails. The state has a strong interest in ensuring the returning prisoners can be as successful as possible, becoming part of the workforce and good neighbors.

All three bills share these common goals:

- Ensure public safety
- Make the best use of our prison and jail beds so that we have capacity for our most serious offenders
- Save taxpayer dollars by controlling the ongoing growth of admissions
- Improve the lives of justice-involved individuals

HB 1425 targets the "front-end" of reentry.

There are three parts to this bill:

- Prosecution-led Diversion Program
- Deflection Process
- Pretrial Services

**Prosecution-Led Diversion Program**

A prosecution-led diversion program gives eligible defendants an opportunity to have their prosecution suspended and their charges dismissed if they do not commit a new offense during the duration of their program participation.

The prosecution-led diversion program is covered in Sections 1, 3, 4, 6 and 8: HB 1425 strengthens counties' ability to do prosecution-led diversion programs.

The bill would establish a **pilot program in three counties** for a prosecution-led diversion program. To accomplish that end, it authorizes DOCR to supervise these program participants and appropriates funds to DOCR for their supervision. It also appropriates funds to DHHS for treatment and other services for the participants.

- **Section 1** codifies court Rule 32.2 of the North Dakota Rules of Criminal Procedure, which authorizes county prosecutors to offer a diversion program. The bill also says that any county that establishes such a program must have written guidelines and eligibility criteria.
- **Section 3** gives the DOCR the authority to provide supervision to people who participate in this and other pre-sentencing programs.
- **Section 4** sets up a **pilot program** in three counties for the supervision aspect of the prosecution-led diversion program.
- **Section 6** requests an appropriation to DOCR of \$1 million for 1 FTE to staff the supervision aspect of the pilot program, to oversee the development of the pilot program, to facilitate the collaboration between stakeholders, collect data, and administer contracts with third-party providers. Third-party providers would provide monitoring and service connections. **Expense details:** 1 FTE / \$270,314: Program Manager for biennium (\$259,504 salary and benefits + \$10,810 operating expenses).
- **Section 8** requests an appropriation to DHHS of \$750,000 for the services aspect of the pilot program. DOCR estimate based on past work with Free Through Recovery and Pretrial Services pilot in 2019.

## **Deflection**

Deflection is a process that can be used by law enforcement, behavioral health providers and other community partners to connect a person with behavioral health needs with treatment and other services rather than putting them in jail.

The deflection process is covered in **Section 2:**

- It defines "deflection process" and creates the authority for local communities to establish a deflection process.
- It says that if a community does establish a deflection process, law enforcement and behavioral health must collaborate on that process and establish minimum standards for protocols, training and data collection.
- The bill also exempts law enforcement and behavioral health providers who engage in deflection from civil liability with the purpose of encouraging them to use deflection when appropriate.

## **Pretrial Services:**

The pretrial services aspect of HB 1425 is covered in **Sections 5 and 7:**



- **Section 5:** requests Legislative Management to consider studying the cost savings resulting from ND's current pretrial services program.
- **Section 7** appropriates \$55,000 for a third-party to conduct the study based on DOCR estimate.

The Pretrial Services Program enables eligible defendants to be in the community so they can continue to work, be with their family, and get treatment if needed. The program screens potential participants and establishes community supervision strategies and opportunities to connect defendants to resources.

In summary, HB 1425 targets the "front-end" of reentry, by strengthening our state's deflection process, diversion programs, and pretrial services program, so we can expand pathways to alternatives to incarceration. The goals of this bill are to ensure public safety while saving tax dollars, making the best use of our overcrowded prison and jails, and improving lives.

# SUMMARY OF REENTRY BILLS: HB 1425, HB 1417, HB 1549

**Overall Goal:** *Make better use of ND's prison & jail beds by being smart on crime*

**Reentry Study Report:** With assistance from the Crime & Justice Institute, a team of 15 leaders from the legislature, DOCR, DHHS, court system, county jails, and community reentry service providers met as the “Reentry Study Work Group” to discuss important data findings from North Dakota’s criminal justice system and make recommendations for improving reentry outcomes in the state. Key findings included:

- ✓ ND’s prison population is rising while nationally it is declining.
- ✓ Drug/alcohol offenses and revocations are the primary drivers of the increase.
- ✓ People of color, particularly Black and Native individuals 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.

**Policy Recommendations:** The Reentry Study Work Group identified about two dozen policies to address the issues highlighted by the report. Some will move forward as proposed legislation, some will be implemented as policy/practice changes within state agencies, and some will not move forward until more stakeholder conversations occur.

**Goals:** The recommendations aim to ensure public safety, make the best use of our prison and jail beds so we have capacity for our most serious offenders, save taxpayer dollars by controlling the expected ongoing growth of admissions, and improve the lives of justice-involved individuals.

**Legislative Proposals:** Several of the Reentry Study Work Group’s recommendations are represented in 3 proposed bills that require a change to North Dakota’s statute.

## HB 1425:

Targets the “front-end” of reentry, including strengthening the continuum of deflection, diversion, and pretrial services to expand pathways to alternatives to incarceration.

- **Deflection Program:** If a community establishes a deflection program, law enforcement & behavioral health shall collaborate and establish standard protocols, training & data collection processes.
- **Prosecution-led Diversion Program:** Counties that establish a prosecution-led diversion program shall establish guidelines and eligibility criteria. Appropriates funds for DOCR to run a pilot program in three counties for the supervision of prosecution-led diversion program participants and appropriates funds to DHHS for services to participants.
- **Pretrial Services:** Appropriates funds to study the cost savings of this program.



# SUMMARY OF REENTRY BILLS: HB 1425, HB 1417, HB 1549

## HB 1417:

Focuses on supervision violations and indigent defense (public defenders).

- **Revocations:** Develops tiered sentencing recommendations for supervision violations due to technical violations for a more consistent response and updates definitions.
- **Eliminate fees:** Eliminates supervision fees (\$55/month) and the application fee for indigent defense (\$35) and the court's ability to request reimbursement of public defense costs.
- **Study other fees:** Examines other fees, including the rate collected and the impact on revenue and on justice-involved individuals.

## HB 1549:

Focuses on "back-end" of reentry, including stronger collaborations that support successful transitions back into the community.

- **Correctional facility program grants:** Creates a grant program for local jails to help them improve their programming/reentry efforts. Establishes a grant committee and appropriates \$1.5m for grants.
- **Medicaid & IDs:** Requires the DOCR to partner with DOT to offer people leaving prison a state-issued ID and to partner with DHHS to offer eligible people Medicaid assistance or other programs.
- **Reduce racial disparities:** Creates a reentry program for Native Americans through a partnership between ND's tribes and DOCR. Requires the Minority Justice Implementation Committee to summarize its work in an annual report to legislative management.
- **Expand housing resources for the justice-involved population:** Creates a task force to collaborate with housing stakeholders to examine housing assistance for those leaving incarceration to prevent homelessness, housing for sexual offenders, sober housing, and low-barrier housing.
- **Improve data:** Requires DOCR and its system partners to examine our criminal justice data collection, retention, and dissemination and make recommendations for tracking uniform data points, standardizing data collection and sharing, and improving data connectivity between system partners.
- **Study:** Examines the potential of expanding access to criminal record sealing including automation.
- **Subgrants:** Requires the DOCR to apply for federal justice reinvestment implementation grants to help fund coordination and implementation of reentry policies and programs.

# 2025 HOUSE STANDING COMMITTEE MINUTES

## Appropriations Committee Roughrider Room, State Capitol

HB 1425  
2/19/2025

Relating to prosecution-led diversion programs, deflection process, and supervision for presentence programs; to provide for a legislative management study; and to provide for an appropriation

7:51 p.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:

- Committee action

7:52 p.m. Representative Bosch moved a Do Pass.

7:52 p.m. Representative Pyle seconded the motion.

### Roll Call Vote

Representatives	Vote
Representative Don Vigesaa	Y
Representative Keith Kempenich	Y
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	Y
Representative David Monson	Y
Representative Eric J. Murphy	Y
Representative Mike Nathe	Y
Representative Jon O. Nelson	N
Representative Emily O'Brien	Y
Representative Brandy L. Pyle	Y
Representative David Richter	Y
Representative Mark Sanford	Y
Representative Gregory Stemen	Y

Representative Steve Swiontek	Y
Representative Scott Wagner	Y

8:15 p.m. Motion Passed 21-2-0. Representative Klemin will carry.

8:18 p.m. Chairman Vigesaa adjourned the meeting.

*Krystal Eberle for Risa Berube, Committee Clerk*



**REPORT OF STANDING COMMITTEE  
ENGROSSED HB 1425 ([25.1149.02000](#))**

**Appropriations Committee (Rep. Vigesaa, Chairman)** recommends **DO PASS** (21 YEAS, 2 NAYS, 0 ABSENT OR EXCUSED AND NOT VOTING). HB 1425 was placed on the Eleventh order on the calendar.

**2025 SENATE JUDICIARY**

**HB 1425**

# 2025 SENATE STANDING COMMITTEE MINUTES

## Judiciary Committee Peace Garden Room, State Capitol

HB 1425  
3/19/2025

Relating to prosecution-led diversion programs, deflection process, and supervision for presentence programs; to provide for a legislative management study; and to provide for an appropriation.

9:00 a.m. Chair Larson opened the meeting.

Members present:

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

### **Discussion Topics:**

- Rehabilitation and reentry programs
- Deflection and diversion strategies
- Racial disparities
- Discretion in treatment decisions
- Accountability and liability in programs

9:01 a.m. Michelle Strinden, Lt. Governor, Office of the Governor, testified in favor and submitted testimony #42384.

9:05 a.m. Representative Lawrence R. Klemin, NDLA, testified in favor and submitted testimony #42940 and #42941.

9:30 a.m. Representative Todd Porter testified in favor and submitted testimony #42492.

9:38 a.m. Robyn Schmalenberger, Reentry Program Manager, ND Department of Corrections and Rehabilitation, testified in favor and submitted testimony #42477.

9:43 a.m. Sister Kathleen Atkinson, Executive Director, Ministry on the Margins, testified in favor and submitted testimony #42867.

9:50 a.m. Jaclyn Hall, Executive Director, ND Association for Justice, testified in opposition and submitted testimony #42967.

9:54 a.m. Jonathan Holth, Commissioner of Recovery & Reentry, State of ND, testified in favor and submitted testimony #42933.

### **Additional written testimony:**

Adam J. Martin, CEO, F5 Project, submitted testimony in favor #42949.

Kimberlee J. Hegvik, Cass County State's Attorney, Cass County State's Attorney's Office, submitted testimony in favor #42911.

Travis Finck, Executive Director, ND Commission on Legal Counsel for Indigents, submitted testimony in favor #42908.

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

*Kendra McCann, Committee Clerk*

**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 DOCR 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**

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**NORTH DAKOTA DEPARTMENT OF CORRECTIONS AND REHABILITATION  
PRESENTING TESTIMONY IN SUPPORT OF HOUSE BILL 1425**

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 1425.

In 2023, the North Dakota Legislature passed House Concurrent Resolution 3026, directing an interim study on improving reentry outcomes, leading to the formation of the Justice Reinvestment Initiative Reentry Study Work Group. After a thorough and data driven assessment, the Workgroup identified key areas for improvement, including expanding access to alternatives to incarceration. These alternatives, such as prosecution-led diversion programs proposed in House Bill 1425, address public safety while maximizing taxpayer investments.

Section 1 proposes that the state's attorney in each county may create and administer a prosecution-led diversion program. These programs are designed to allow eligible individuals, identified by the state's attorney, the opportunity to engage in rehabilitative services as early as possible and the opportunity to have their case dismissed if they do not commit new criminal offenses during the period of the agreement. By offering treatment options and community-based support, diversion programs address the root cause of criminal behavior. This approach allows individuals to preserve important community and family ties, maintain employment, and avoid the long-term consequences associated with a criminal conviction.

Diversion programs also alleviate pressure on our judicial system by diverting eligible individuals away from formal prosecution and court proceedings, conserving valuable judicial resources.

Section 4 outlines the creation of a prosecution-led diversion supervision pilot program in three counties during the 2025-2027 biennium. The pilot programs will involve collaboration between county state's attorneys, the North Dakota Association of Counties, the commission on legal counsel for indigent defense, county and regional correctional facilities, the Department of Health and Human Services, the DOCR, and public and private treatment providers. Contracts with third-party providers will be developed to connect participants with services and monitor progress. The DOCR is committed to supporting the implementation of these pilots by facilitating collaboration between the involved entities, assisting with development of operational guidelines, collecting data, and reporting outcomes to legislative management.

These pilot programs will offer insights into how prosecution-led diversion, which includes services and monitoring, can operate within North Dakota's justice system. The data gathered will help identify effective practices and highlight opportunities to further collaborate to improve public safety and reentry outcomes statewide.

Section 5 proposes a legislative management study during the 2025-2026 interim to evaluate the state's pretrial service programs, which were implemented in 2020. This study will provide a comprehensive assessment of their effectiveness and identify areas for improvement. Section 7 allocates \$55,000 to contract for consulting services to support this evaluation. The DOCR supports this study, as the data collected, and recommendations will provide information on the impact of pretrial services and offer guidance on how services can be improved.

I respectfully ask for your support for House Bill 1425. This bill will help address the root causes of criminal behavior, provide accountability, and create a more cost-effective system that benefits both individuals and the state.

Thank you for your time and consideration. I stand for any questions

25.1149.02002  
Title.

Prepared by the Legislative Council  
staff for Representative Porter  
March 5, 2025

Sixty-ninth  
Legislative Assembly  
of North Dakota

## **PROPOSED AMENDMENTS TO FIRST ENGROSSMENT**

### **ENGROSSED HOUSE BILL NO. 1425**

Introduced by

Representatives Klemin, Hanson, Stemen

Senators Davison, Larson

1 A BILL for an Act to create and enact a new section to chapter 11-16, a new chapter to title 12,  
2 and two new sections to chapter 54-23.3 of the North Dakota Century Code, relating to  
3 prosecution-led diversion programs, deflection process, and supervision for presentence  
4 programs; to provide for a legislative management study; and to provide for an appropriation.

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

6 **SECTION 1.** A new section to chapter 11-16 of the North Dakota Century Code is created  
7 and enacted as follows:

#### **8 Prosecution-led diversion program.**

9 1. The state's attorney for each county may create and administer a prosecution-led  
10 diversion program if, after due consideration of any crime victim's rights and subject to  
11 approval from the court, the prosecuting attorney and the defendant agree to suspend  
12 prosecution for a period of time after which the case will be dismissed under rule 32.2  
13 of the North Dakota Rules of Criminal Procedure on condition that the defendant not  
14 commit any new criminal offense during the period of the agreement.

15 2. Each county that establishes a prosecution-led diversion program shall establish  
16 written guidelines for the program and minimum eligibility criteria.

17 **SECTION 2.** A new chapter to title 12 of the North Dakota Century Code is created and  
18 enacted as follows:

1       **Definition.**

2       As used in this chapter, "deflection process" means a procedure for facilitating an  
3       assessment, service or treatment in lieu of incarceration, criminal charges, or unnecessary  
4       admissions to the emergency department when a peace officer or first responder is directed to  
5       intervene with an individual with a behavioral health condition, including a substance use  
6       disorder or mental health disorder, with or without the presence of criminal activity.

7       **Individual with a behavioral health condition - Assistance - Medical care.**

8       A peace officer, as defined under section 12-63-01, may transport or refer an individual to a  
9       local hospital, detoxification center, community behavioral health center, or other appropriate  
10      treatment facility. A tier 1b mental health professional, as defined under section 25-01-01, of a  
11      local hospital may hold that individual for treatment up to seventy-two hours.

12      **Deflection process - Regional authority and planning.**

13      1. A local government, law enforcement agency, or other first responder agency may  
14      establish a deflection process in partnership with one or more licensed providers of  
15      behavioral health services or substance use disorder treatment services, subject to the  
16      provisions of this section. A deflection process must include participation from a law  
17      enforcement agency and behavioral health service provider.

18      2. A deflection process must include procedures for:

- 19          a. The identification, screening, and assessment of its participants;  
20          b. Case management and treatment facilitation;  
21          c. Participant followups;  
22          d. Law enforcement, first responder, and treatment provider training;  
23          e. The collection and evaluation of data for:  
24              (1) Demographics of program participants;  
25              (2) The number of law enforcement interactions that result in a treatment  
26              referral; and  
27              (3) The time between initial law enforcement interaction and treatment service;  
28              and.

29      3. A deflection process must include a performance management system with key  
30      performance indicators. Key performance indicators may include the:

- 31          a. Rate of treatment engagement within thirty days of initial contact;

b. Duration of treatment involvement; and

c. Number of subsequent law enforcement interactions for individuals referred to treatment.

**Exemption from civil liability.**

A local government agency, law enforcement agency, peace officer, first responder, or employee of the agency, a behavioral health provider, firefighter, fire department, emergency medical service personnel, emergency medical service agency, hospital, clinic, or a public or private entity acting in good faith, is not liable for civil damages as a result of an act or omission in providing services under this section, unless the act or omission constitutes willful and wanton misconduct or gross negligence.

**SECTION 3.** A new section to chapter 54-23.3 of the North Dakota Century Code is created and enacted as follows:

**Supervision for presentence programs.**

The department of corrections and rehabilitation has the authority to supervise a defendant while the defendant is participating in a prosecution-led, or pretrial diversion program under section 1 of this Act or rule 32.2 of the North Dakota Rules of Criminal Procedure, or any other pretrial services program.

**SECTION 4.** A new section to chapter 54-23.3 of the North Dakota Century Code is created and enacted as follows:

**Prosecution-led diversion supervision pilot program - Report.**

1. The department of corrections and rehabilitation shall establish a prosecution-led diversion supervision program as a pilot project in three counties in the state during the biennium beginning July 1, 2025, and ending June 30, 2027.
2. Beginning July 1, 2025, the department shall collaborate with the department of health and human services, North Dakota association of counties, county state's attorneys, the commission on legal counsel for indigent defense, county and regional correctional facilities, and public and private treatment providers to develop guidelines and procedures for the administration of the prosecution-led diversion supervision program.

- 1        3. The department of corrections and rehabilitation shall select three counties for a pilot  
2        project and enter contracts with third-party providers in partnership with the pilot  
3        counties to provide supervision, including monitoring and connection to services.  
4        4. The department of corrections and rehabilitation shall implement the program no later  
5        than July 1, 2026.  
6        5. Before June 30, 2027, the department, in collaboration with the three pilot counties,  
7        shall report to legislative management regarding the process and outcome of the  
8        prosecution-led diversion program and any recommendations for future legislation.

9        **SECTION 5. LEGISLATIVE MANAGEMENT STUDY - PRETRIAL SERVICE PROGRAMS.**

10       During the 2025-26 interim, the legislative management shall consider studying costs and  
11       savings associated with pretrial service programs operating in the state and opportunities to  
12       reinvest savings to improve re-entry outcomes. The study must include the effect of pretrial  
13       services on admissions to county jail, detention facilities, medical costs of participants, rate of  
14       failure to appear in court, rate of recidivism, and rate of participation in treatment programs. The  
15       study must identify opportunities for counties, courts, and state agencies to invest cost-savings  
16       associated with pretrial services in programs, treatment, and services that will further reduce  
17       recidivism and promote public health. The legislative management shall report its findings and  
18       recommendations, together with any legislation required to implement the recommendations, to  
19       the seventieth legislative assembly.

20       **SECTION 6. APPROPRIATION - DEPARTMENT OF CORRECTIONS AND**  
21       **REHABILITATION - PROSECUTION-LED DIVERSION SUPERVISION PILOT PROGRAM -**  
22       **FULL-TIME EQUIVALENT POSITIONS - ONE-TIME FUNDING.**

23       There is appropriated out of  
24       any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of  
25       \$1,000,000, or so much of the sum as may be necessary, to the department of corrections and  
26       rehabilitation, for the purpose of hiring one full-time equivalent position and contracting with  
27       third-party providers for a prosecution-led diversion supervision pilot program, for the biennium  
28       beginning July 1, 2025, and ending June 30, 2027. The personnel hired pursuant to this section  
29       must prioritize the prosecution-led diversion supervision pilot program. The funding provided  
30       under this section is considered a one-time funding item.

30       **SECTION 7. APPROPRIATION - DEPARTMENT OF CORRECTIONS AND**  
31       **REHABILITATION - PRETRIAL SERVICE PROGRAMS COST-SAVINGS STUDY - ONE-TIME**

1 **FUNDING.** There is appropriated out of any moneys in the general fund in the state treasury,  
2 not otherwise appropriated, the sum of \$55,000, or so much of the sum as may be necessary, to  
3 the department of corrections and rehabilitation, for the purpose of contracting for consulting  
4 services for the study provided in section 5 of this Act, for the biennium beginning July 1, 2025,  
5 and ending June 30, 2027. The funding provided under this section is considered a one-time  
6 funding item.

7 **SECTION 8. APPROPRIATION - DEPARTMENT OF HEALTH AND HUMAN SERVICES -**

8 **PROSECUTION-LED DIVERSION TREATMENT SERVICES - ONE-TIME FUNDING.** There is  
9 appropriated out of any moneys in the general fund in the state treasury, not otherwise  
10 appropriated, the sum of \$750,000, or so much of the sum as may be necessary, to the  
11 department of health and human services, for the purpose of providing treatment services for  
12 participants in the prosecution-led diversion program, for the biennium beginning July 1, 2025,  
13 and ending June 30, 2027. The funding provided under this section is considered a one-time  
14 funding item.

Kathleen Atkinson, OSB

Wednesday, March 18, 2025

HB 1425

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 am a teacher by background and realized something when I first visited Kellen (Real person. Fabricated name) in jail. He was jailed for missing the deadline to inform his PO he had a new job. Kellen had started work, worked as many hours as possible, and forgot to call in as required. Now he was incarcerated and lost his job because of it. My frustration was tempered as I watched Kellen fidget, listened to him bounce from topic to topic. I asked him about other experiences with the law and learned he had been part of the Criminal Justice system since middle school. Rash decision-making. Hyperactivity. Impulsive behavior. Use of alcohol and drugs to quiet his mind. The teacher in me realized Kellen was on the Autism Spectrum with ADHD; had he been in the educational system we would have provided Kellen with an IEP (Individualized Education Program), medication, and assistance for his mental health balance. Since he was in the Justice/Corrections system, he was being treated with incarceration, fines, limited avenues for his excessive energy and a cycle of being labeled a ‘troublemaker.’ (Side note: I recently read that 3-5% of the general population would have this diagnosis while 43% of the prison population is considered AuDHD).

Justin (Real person. Fabricated name) and I were visiting late one night at the Ministry Coffee House. He told me this story: He was 5 years old when he was invited by his dad to ‘leave the little kids’ and come join the men. So proud to be invited, he was handed his first beer at that early age. Just a sip. Then he built up his tolerance. Then he stayed at the men’s circle and began to use other drugs; by 16 Justin’s dad had died, he had dropped out of school, he had become the man of the family, his addiction had taken over his life. By 17 he was tried as an adult because of his history of run-ins with the police. And now he is homeless, with a felony record, and trying to find a job and stay sober.

**IF THE ONLY TOOL YOU HAVE IS A HAMMER, IT IS TEMPTING TO TREAT EVERYTHING AS IF IT WERE A NAIL.**

HB 1425 provides other tools than jail or prison. **A strong continuum of deflection and diversion** provides alternatives to incarceration as a means to stop the cycle by addressing the root cause. Undiagnosed and untreated behavioral health issues addressed *prior* to incarceration. Addiction treatment and recovery required as an alternative to incarceration rather than *at the end of or after* time served. **Pretrial services** that allow a person to continue to work, live in a supportive environment, and establish positive patterns of behavior rather than sit in jail awaiting trial when they are not a danger to society. These are important collaborative efforts for rehabilitation of a person without getting them further into the criminal justice cycle. Lives can be changed rather than locked up. Money can be spent on treatment. Someone who is employed can continue to be a taxpayer rather than a tax burden.

And hammers can be used only in the serious cases when needed.



Engrossed HB 1425  
69<sup>th</sup> 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 1425.

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 69<sup>th</sup> Legislative Assembly to work towards implementing smart reforms to address issues in our criminal legal system. Section 1 sets up a program to allow for prosecution led diversion programs. According to a report from the National Conference of State Legislatures, 19 states have now implemented prosecution led diversion programs.<sup>i</sup> These programs allow those in the trenches to establish programs that work best in their jurisdictions.

Section 2 of HB 1425 establishes deflection programs. According to the National Conference of State Legislatures, Research has shown eight benefits to deflection programs:

- Breaking the costly cycle of justice-system involvement for eligible individuals.
- Increasing cross-system collaboration to create new pathways to community-based services.
- Enhancing relations between community members and law enforcement.
- Decreasing crime, incarceration and recidivism rates.

- Lessening the burden on justice systems.
- Improving public health and safety.
- Ensuring equal access to deflection programs regardless of race, income or geography.
- Saving taxpayer dollars.<sup>ii</sup>

The final sections of HB 1425 deal with pre-trial supervision and supervision on the diversion and deflection programs. The Commission has been a partner with the Department of Corrections and Rehabilitation since the beginning in establishing pre-trial service programs in North Dakota. These programs are vital and should be expanded in North Dakota. Research shows even a single day of detention on a pre-trial status can destabilize employment<sup>iii</sup>, can lead to longer sentences<sup>iv</sup>, distrust in the legal system and increase in the likelihood of future criminal involvement<sup>v</sup>.

For the reasons states herein, the Commission requests a DO PASS recommendation on House Bill 1425.

Respectfully Submitted:



Travis W. Finck  
Executive Director, NDCLCI

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<sup>i</sup> Widgery, Amber; The Legislative Primer Series for Front-End Justice: Deflection and Diversion, National Conference of State Legislatures (August 2023). Found at <https://documents.ncsl.org/wwwncsl/Criminal-Justice/Deflection-Diversion-f02.pdf>

<sup>ii</sup> Id.

<sup>iii</sup> Smith, Sandra Susan; Federal Probation 86.3 (December 2022):p. 11-18

<sup>iv</sup> Digard, Leon and Elizabeth Swavola; Justice Denied: The Harmful and Lasting Effects of Pretrial Detention, Vera Institute of Justice (April 2019). Found at <https://vera-institute.files.svdcn.com/production/downloads/publications/Justice-Denied-Evidence-Brief.pdf>

<sup>v</sup> Id.

March 18, 2025

## Testimony in Support of House Bill 1425

Chairwoman Larson and members of the Senate Judiciary Committee,

My name is Kimberlee J. Hegvik, and I am the elected State's Attorney in Cass County. Prior to my election in 2022, I served as an Assistant Cass County State's Attorney for nearly 17 years.

Today I am here to voice my support for HB 1425.

I have been actively involved in problem-solving courts for my entire career as a prosecutor. I have served on juvenile and adult drug court multidisciplinary teams, attended national trainings, and assisted with re-writes of both juvenile drug court manuals and adult drug court manuals. Problem-solving courts are effective because they utilize research based best practices.

For several years in my career, I prosecuted juvenile delinquency cases. The juvenile court system in North Dakota is exceptional. The juvenile courts use data to make informed decisions for children who commit delinquent offenses, and utilize restorative justice principles to carry out their mission of promoting public safety, holding juvenile offenders accountable, and increasing the capacity of juveniles to contribute productively to their community.

Working within problem-solving courts and the juvenile justice system has shaped my belief that non-traditional approaches to behavior-modification can be highly successful. I want to help people with substance use and mental health disorders get connected to services before they become deeply involved with the criminal justice system. I want to find ways to hold people accountable for their behavior while making the best and most efficient use of the resources available. In cases where diversion is appropriate, I want outcomes that benefit the offender and the community more than traditional prosecution methods.

Many legal organizations recognize the need for and importance of Deflection and Diversion. The United States Department of Justice, American Bar Association, National District Attorneys' Association, All Rise (formerly The National Association of Drug Court Professionals), Association of Prosecuting Attorneys, and others all offer guidance and support of deflection and diversion. Successful programs exist throughout the United States.

I first learned of deflection while attending a Federal Department of Justice Violent Crime Reduction Summit. Law enforcement agencies spend a significant amount of time interacting with people who suffer from mental illness and substance use disorders. These individuals often catch the attention of law enforcement through minor violations like public intoxication, trespassing, or disturbing the peace. Traditionally, officers have had to choose between arresting and doing nothing. Neither option addresses the root cause of the behavior. Deflection gives law enforcement a third option: immediate referral to services to address the individual's needs without entrance into the criminal justice system.

Justice is not a one size fits all. Diversion is not appropriate for every case, just as incarceration is not appropriate for every defendant. Prosecutors need to be able to use all the tools in our toolbox to achieve justice for each case and defendant. The National District Attorneys' Association's National Prosecution Standards on diversion state that prosecutors should urge the establishment and maintenance of diversion programs. The American Bar Association Standards on Diversion state "[d]iversion programs are consistent with efforts to: reduce collateral consequences; address over-criminalization; reduce incarceration; curtail the burden on and investment in the criminal legal system; and, eradicate racial disparities in arrests, charging, sentencing, and incarceration."

Rule 32.2 of the North Dakota Rules of Criminal Procedure authorizes pretrial diversions. Despite the existing rule, Cass County lacks the resources to monitor people whose cases are appropriate for diversion. The DOCR is not currently authorized to provide monitoring for people who are pre-trial other than through the pre-trial services program, which is separate and apart from diversion. If Cass County doesn't have a way to monitor it, there is a high likelihood that other counties in North Dakota also struggle with the supervision part of the diversion equation. The pilot project portion of this bill would provide funding for monitoring.

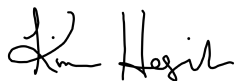
A key to the success of diversion is swift availability of appropriate services. This bill provides funding for the Department of Health and Human Services to make services available to people who participate in diversion programs. Behavior modification research shows that consequences are most meaningful when they occur close in time to the behavior to be changed. Research has shown that faster legal proceedings can lead to lower recidivism. Timely legal processes also increase the public's perception of the legitimacy of the legal system.

Last summer, consultants from Aequitas, a national organization that supports prosecutors in their efforts to achieve justice, performed an assessment for my office. One of their initial suggestions was to focus on establishing diversion practices. Our lack of supervisory options and timely access to services were barriers that halted our ability to further explore diversion at that time.

I am excited about this legislation and the meaningful changes it could create. If passed, I will be actively seeking selection as one of the three pilot sites. My office will work diligently to establish a diversion program based on research and best practices. Two years from now, I intend to be back in Bismarck, data in hand, showing the success achieved by investing in diversion and deflection.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Kim Hegvik". The signature is fluid and cursive, with the first name "Kim" and last name "Hegvik" clearly distinguishable.

Kimberlee J Hegvik  
Cass County State's Attorney

**HB 1425**  
**Commissioner Jonathan Holth**  
Senate Judiciary Committee  
Senator Diane Larson, Chair  
March 19<sup>th</sup>, 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. You have already heard from Lieutenant Governor Michelle Strinden about the Armstrong administration's support of the reentry bill package that came from the interim study process. This morning, I am here to discuss some specific reasons our administration supports each of these bills, beginning with HB 1425.

As you all heard in the Governor's State of the State address, my new role as the Commissioner of Recovery and Re-entry involves operationalizing the relationships between the Legislature, DOCR, county jails, law enforcement, the judicial system, our tribal partners, addiction counselors, and all other partners who play a role in helping people get the services they need to stay safe in our communities. A key part of this role includes thinking about the population that is leaving prisons and jails and setting them up for success in the community, but perhaps an even *more significant* portion of this role involves coordinating interventions that set people up on their road to recovery *before they ever touch the prison system*.

HB 1425 is a bill that offers practical solutions to help people access services that can ultimately change their trajectories and guide them away from the criminal justice system. It is no secret that the spectrum of recovery and reentry work starts before an individual finds themselves in DOCR's custody, and this bill highlights a few different ways to bolster the interventions we have already adopted in North Dakota and make them even more effective.

First, the policy in this bill related to "deflection" acknowledges that our law enforcement officers and first responders are often the first wave of care that a person experiencing a behavioral health crisis receives, and these responders play a critical role in making sure that person is brought somewhere safe where they can receive help. I would like to say that it's a simple process to connect someone to treatment at this stage of intervention, but the reality is that care coordination can be very complex and looks different across the state depending on the resources available and the partnerships in place in the community. By defining "deflection process," HB 1425 offers some structure to local care coordination processes where deflection efforts are already happening and aims to prevent people who need treatment and follow-up care from slipping through the cracks after their first interaction with law enforcement or first responders.

HB 1425 also supports prosecutors in monitoring people that they have selected to participate in diversion programming. As a person in recovery, I will be the first to tell you that recovery is an impossible journey to embark on alone. Even when you are ready to make a change, the barriers and stigma that exist make that a challenge, and that's where community support truly becomes critical. In my nearly 17 years in long-term recovery, I have had the privilege of meeting thousands of others who have found the joy that recovery can bring. However, I have yet to meet a single person in meaningful recovery that has done it alone.

The pilot program in this bill helps prosecutors collaborate with local community navigators to assist participants in getting to their appointments and completing their treatment. This policy is not about being soft on people who have committed dangerous crimes – those are not the people we’re talking about with this policy. This is about giving someone who needs help the right support system to help them address their struggles before those struggles take over their lives.

The final aspect of this bill that our administration supports is evaluating the pretrial services program. This is a logical step that will help our state understand the program's outcomes so we can make better decisions about program improvements.

In conclusion, I want to emphasize that the key components I’ve highlighted in this bill are not new ideas for North Dakotans, nor do they change the way we are currently approaching recovery and reentry in our state. This bill turns our attention to the very beginning of the criminal justice system, where community recovery and reentry efforts are already taking place, and it offers another layer of support to those efforts. The Governor said himself that this administration backs policy efforts that move “addiction and recovery resources upstream – investing in diversion and deflection programs on the front end of the justice system” to save taxpayers money and keep our communities safe. HB 1425 does exactly that.

Thank you for your time. Our administration urges a “do pass” recommendation on HB 1425 and I will stand for any questions the committee has.

**TESTIMONY OF REP. LAWRENCE R. KLEMIN  
SENATE JUDICIARY COMMITTEE  
HOUSE BILL NO. 1425  
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 1425, relating to prosecution-led diversion programs, deflection process, and supervision for presentence programs. This bill is the first in a package of three bills you'll hear today that represent North Dakota's next phase of criminal justice reform.

**Overview: How these bills fit into ND's Justice Reinvestment Journey**

For the last eight years, North Dakota has been on a 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.

North Dakota's journey started in 2015 when we started a data-driven Justice Reinvestment Initiative. The result of that work was a set of reforms the ND Legislature passed in 2017, which aimed to contain ND's growing spending on correctional facilities, reduce recidivism and increase public safety. The legislation reduced penalties for certain low-level, non-violent offenses and reinvested some of the savings to create Free Through Recovery, a successful outcomes-driven program to address the fact that most incarcerated individuals have addiction and mental health issues.

The three bills you'll hear today are the next step on our Justice Reinvestment journey.

Two years ago, this Legislature passed HCR 3026 to study how we can further improve reentry outcomes for people leaving incarceration. North Dakota has a wide range of strong reentry efforts from public entities such as the Department of Corrections and Rehabilitation, the Department of Health and Human Services and Job Service, as well as private entities such as F5 and Ministry on the Margins. Even with these efforts, ND's recidivism rate is about 40%. Existing reentry services aim to connect people to services to help with their transition but can be an insufficient patchwork.

Roughly 95% of people who are incarcerated in North Dakota's prisons and jails are eventually released – so they return to being our neighbors. North Dakota releases about 1,400 people from its state prison system every year, plus thousands more from our county jails. The state has a strong interest in ensuring our neighbors can be as successful as possible, becoming part of the workforce and thriving in their communities and with their families.

The reentry study occurred in 2024 with assistance from the Crime & Justice Institute (CJI), a national non-partisan policy-focused organization. The assistance was funded by a federal Justice Reinvestment Initiative grant from the U.S. Department of Justice.

We formed a Reentry Study Work Group, a team of 15 leaders from the legislature, DOCR, DHHS, court system, county jails, community reentry service providers, and other entities. The Work Group discussed the research conducted by CJI, which included a deep data analysis and 100+ stakeholder interviews. The Final Report dated October 2024 was uploaded to the testimony on HB 1425 on February 9, 2025, and is available online

Key findings from the report included:

- ND's prison population is rising while nationally it is declining.
- Admissions to prison are going up and drug and alcohol offenses and revocations are the primary drivers of the increase.
- People of color, particularly Black and Native individuals, 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.

The Reentry Study Work Group then evaluated and prioritized research-based best practices that could address these findings. It identified about two dozen proposals to address the issues highlighted by the report. Some of those proposals will be implemented as policy or practice changes within state agencies, other proposals require a state statute change by the legislature, and some ideas will not move forward until more stakeholder conversations occur. The three bills before you today represent a sub-set of the recommendations that require a change to state law.

All three bills share these common goals:

- Ensure public safety
- Make the best use of our prison and jail beds so we have capacity for our most serious offenders
- Save taxpayer dollars by controlling the expected ongoing growth of admissions
- Improve the lives of justice-involved individuals

HB 1425 targets the "front-end" of reentry. There are three parts to this bill:

- Prosecution-led Diversion Program
- Deflection Process
- Pretrial Services

### **Prosecution-Led Diversion Program**

A prosecution-led diversion program gives eligible defendants an opportunity to have their prosecution suspended and their charges dismissed if they do not commit a new offense during the duration of their program participation. HB 1425 strengthens counties' ability to do prosecution-led diversion programs.

**Section 1** codifies court Rule 32.2 of the North Dakota Rules of Criminal Procedure, which authorizes county prosecutors to offer a diversion program. The bill also says that any county that establishes such a program must have written guidelines and eligibility criteria.



**Section 3** gives the DOCR the authority to provide supervision to people who participate in this and other pre-sentencing programs.

**Section 4** sets up a **pilot program in three counties** for the supervision of the prosecution-led diversion program.

**Section 6** requests an **appropriation to DOCR of \$1 million** for 1 FTE to staff the supervision of the pilot program, to oversee the development of the pilot program, to facilitate the collaboration between stakeholders, collect data, and to administer contracts with third-party providers (\$270,314). The appropriation will also cover a charge for software (\$50,000). Local third-party providers paid from the appropriation (\$679,686) would monitor the participants' compliance with the diversion program in the counties and would connect them to behavioral health and treatment services.

**Section 8** requests an **appropriation to DHHS of \$750,000** for the services aspect of the pilot program.

## **Deflection**

Deflection is a process that can be used by law enforcement, behavioral health providers and other community partners to connect a person who has behavioral health needs with treatment and other services rather than putting them in jail.

The deflection process is covered in **Section 2:**

It defines "deflection process" and creates the authority for local communities to establish a deflection process.

It says that if a local community does establish a deflection process, law enforcement and behavioral health must collaborate on that process and establish minimum standards for protocols, training and data collection.

The bill also exempts law enforcement, first responders and behavioral health providers who engage in deflection from civil liability with the purpose of encouraging them to use deflection when appropriate. There is a proposed amendment to this provision from Rep. Porter that expands upon the first responders covered by this exemption. We have no objection to this proposed amendment.

## **Pretrial Services:**

The pretrial services aspect of HB 1425 is covered in **Sections 5 and 7:**

**Section 5:** requests Legislative Management to consider studying the cost savings resulting from ND's current pretrial services program. The study will identify opportunities for improvements so we can address any concerns.

**Section 7 appropriates \$55,000** for a third-party to conduct the study.

The Pretrial Services Program enables eligible defendants to be in the community so they can continue to work, be with their family, and get treatment if needed. The program screens potential participants and establishes community supervision strategies and opportunities to connect defendants to resources.

## **Closing**

In summary, HB 1425 targets the "front-end" of reentry, by strengthening our state's deflection process, diversion programs, and pretrial services program, so we can expand pathways to alternatives to incarceration. The goals of this bill are to ensure public safety while saving tax dollars, making the best use of our overcrowded prison and jails, and improving lives.

A wide variety of stakeholders had input on these proposals, and you'll hear testimony from many of them today. I will try to answer any questions you have. The Crime & Justice Institute is also available to answer detailed questions about the Work Group's process, analysis and findings, and best practices in other States.

Response to Opposition Testimony on HB 1425 is attached as Appendix A for your review.

Rep. Lawrence R. Klemin  
District 47, Bismarck

## Appendix A to Klemin Testimony on HB 1425

### Response to [Testimony in Opposition to H.B. 1425](#)

#### Prosecutor-led Diversion

**Claim:** Pretrial Services isn't working. *The goal [of pretrial services] was to get offenders help in an effort to avoid jail/prison time and to help them become better neighbors...what is actually happening is another 'arm' of DOCR not reporting violations as required by the bail order...I recently had an offender on pretrial services who is charged with manslaughter. He was ordered to participate in a 24/7 sobriety program, and allowed to utilize a remote breath test. It was not until he violated 21 times that the PTS officer notified this office of violations.*

- Response:** The concern raised in the state's attorney's testimony is related to DOCR's pretrial services program, which was piloted in 2020 and has since expanded to a statewide effort. To be very clear, nothing in HB 1425 alters or expands pretrial services. ND's current pretrial services program provides certain defendants with supervision through DOCR's Probation and Parole division while they are awaiting a court date. People in this program are being formally prosecuted, but they have entered an agreement with the prosecutor that they can be supervised in the community instead of sitting in jail while they wait for their case to process. This is distinctly different from the program included in HB 1425. HB 1425's prosecutor-led diversion program supports local prosecutors in selecting candidates to receive treatment as a response to their behavior, in lieu of being processed through the court system. The population that would be selected for prosecutor-led diversion is different than the population that might be released pretrial while they are being formally processed through the court system. With that said, this prosecutor-led diversion program is not replacing or altering any aspect of the DOCR pretrial services program.

HB1425 does however, call for a study of the pretrial services program to identify challenges like the ones mentioned in the oppositional testimony, and determine overall success. The purpose of this study is to use data to better understand how the program is working and where improvements should be made, which appears to be a top concern for the individual who submitted this testimony.

**Claim:** *In Ward County, offenders are not receiving mental health or addiction services unless they are ordered by the court. It was my understanding that this was the original goal of pretrial supervision, they would be supervising offenders, assessing what their needs*

were and assisting them in obtaining those services. This is not what's occurring – they are simply “monitoring” whether the bail order is being followed.

- **Response:** Again, the concern outlined here is related to DOCR's pretrial services program. No part of HB 1425 alters or expands pretrial services.

That said, elements of HB 1425 do respond directly to the concern raised in this oppositional testimony related to better assisting people in obtaining treatment services. The prosecutor-led diversion program in HB 1425 allows each state's attorney to determine the eligibility requirements for their diversion program, and select defendants for program participation. The diversion program provides both a framework for connection to services by contracting with local organizations to monitor participants and help them navigate their treatment requirements, and an incentive to receive those services (the promise of a dismissal of charges upon successful completion).

**Claim:** *The bill does indicate that the state's attorney for each county may create and administer a prosecution led diversion program. In practice, “may” becomes “shall”... if a state's attorney does not offer a prosecution led diversion program, that state's attorney will be facing equal protection/equal treatment arguments of similarly situated defendants in different counties.*

- **Response:** There are currently more than 500 prosecutor-led diversion programs active across the country, many of which are years or even decades old. Nothing would preclude a defendant from making such arguments on federal constitutional grounds today. Moreover, North Dakota Court rule 32.2 already allows for diversion programs – nothing in this bill grants authority (or increases liability) that does not already exist.

### **Deflection programs**

**Claim:** *The deflection process puts the onus on local governments and law enforcement to provide services and assessments that are not available in communities. It requires law enforcement to become mental health experts. It requires participant follow ups but does not identify who is in charge of those follow-ups. There is NOTHING that mandates that offenders actually participate in “deflection programs.” There is NOTHING in the bill that provides for any court order requiring offenders to participate or what occurs if they do not. HB 1425 mandates participation from law enforcement and behavioral health service providers, but not the offenders. How is it going to be enforced?*

- **Response:** HB 1425 does not require local governments or law enforcement agencies to use deflection practices or to provide any specific services or assessments. Rather, the “deflection process” outlined in the bill provides a framework for agencies who wish to reduce their law enforcement burden and costs by funneling people whose low-level criminal conduct is driven by acute behavioral health crisis rather than anti-social behavior into the appropriate treatment response. The general framework in the bill is intentional – for example, the bill does not identify who is required for “follow-ups” because it allows each agency to determine the appropriate protocols, based on the needs and resources of the community. In contrast to diversion programs, deflection programs happen at the pre-court involvement stage (before there are any charges filed against an individual). There is no court order because court involvement would negate the purpose of the program, which is to avoid unnecessary use of court and law enforcement resources by offering behavioral health support in lieu of arrest.

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 1425. I see this legislation as a significant advancement in what I like to refer to as "Truth in Reentry." Enhanced collaboration among agencies, courts, and service providers is crucial for achieving better outcomes.

We have witnessed remarkable success, not only in North Dakota but also across the nation, with pretrial release programs and treatment and drug courts. These initiatives have proven particularly effective when they partner with organizations and incorporate peer support. I believe that by fostering these collaborations, we can further improve the reentry process and support individuals in their journey toward successful reintegration.

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](mailto:info@f5project.org)



[www.f5project.org](http://www.f5project.org)



1122 1st Ave N  
Fargo, ND 58102



**North Dakota Association for Justice**  
PO Box 365  
Mandan, ND 58554  
*The Trial Lawyers of North Dakota*

Jaclyn Hall, Executive Director  
jaclyn@ndaj.org

Madam Chair Larson and members of the Senate Judiciary Committee, my name is Jaci Hall, Executive Director of the North Dakota Association for Justice. Today I am here in support of prosecutor led diversion projects, but not in support of blanket immunity for those involved in the program or the additional groups in Representative Porter's proposed amendment.

HB1425 provides the pathway for Prosecutor-Led diversion projects in North Dakota. The purpose of these programs is to provide an alternative to traditional prosecution for individuals who commit lower-level offenses, often focusing on rehabilitation and support services to reduce recidivism.

Successful programs rely on effective coordination of support services and engagement with participants rather than immunity for employees. They do not require immunity to be successful.

How can a program be successful if all employees are given immunity and there is no recourse if they are not doing their job correctly? Why should they care about the outcome of these individuals?

The state of North Dakota provides protections for municipalities, state agencies, nonprofits and medical providers through caps and other limitations. Adding additional levels of immunity is not needed. **Through all the testimony that has been provided, the only reference to immunity is to encourage them to use deflection. Immunity is not a marketing tool and should be provided with caution.**

Recommendations by the Justice Reinvestment Initiative Reentry Study Work Group also did not include immunity for those providing services. This leads me to believe the immunity provision in HB1425 is not needed for these programs to work.

Today I ask the committee to remove lines 1-3 on page 4. This program is new and there will be tweaks and adjustments going forward. If a concern arises that requires immunity to be readdressed, so be it. Please give this project time to develop with honest, sufficient data. Immunity blurs the outcomes and can taint the success this project will have.

Thank you for your time and I will stand for questions.

# 2025 SENATE STANDING COMMITTEE MINUTES

## Judiciary Committee Peace Garden Room, State Capitol

HB 1425  
3/25/2025

Relating to prosecution-led diversion programs, deflection process, and supervision for presentence programs; to provide for a legislative management study; and to provide for an appropriation.

4:04 p.m. Chair Larson opened the hearing.

Members present:

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

### Discussion Topics:

- Commission compensation
- Deflection process definition
- Criminal activity thresholds

4:06 p.m. Senator Castaneda introduced proposed amendment LC# 25.1149.02003, explained the amendment and submitted testimony #43804.

4:12 p.m. Senator Castaneda moved amendment LC# 25.1149.02003.

4:12 p.m. Senator Luick seconded.

4:13 p.m. Voice Vote - Motion Passed.

4:14 p.m. Senator Castaneda moved a Do Pass as amended and rerefer to Appropriation committee.

4:14 p.m. Senator Luick seconded the motion.

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

Motion Passed 5-2-0.

4:14 p.m. Senator Castaneda will carry the bill.

4:15 p.m. Committee discussion on upcoming schedule.



4:16 p.m. Chair Larson closed the hearing.

*Kendra McCann, Committee Clerk*

Sixty-ninth  
Legislative Assembly  
of North Dakota

**PROPOSED AMENDMENTS TO  
FIRST ENGROSSMENT**

**ENGROSSED HOUSE BILL NO. 1425**

Introduced by

Representatives Klemin, Hanson, Stemen

Senators Davison, Larson

1 A BILL for an Act to create and enact a new section to chapter 11-16, a new chapter to title 12,  
2 and two new sections to chapter 54-23.3 of the North Dakota Century Code, relating to  
3 prosecution-led diversion programs, deflection process, and supervision for presentence  
4 programs; to provide for a legislative management study; to provide for a legislative  
5 management report; and to provide for an appropriation.

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

7 **SECTION 1.** A new section to chapter 11-16 of the North Dakota Century Code is created  
8 and enacted as follows:

9 **Prosecution-led diversion program.**

- 10 1. The state's attorney for each county may create and administer a prosecution-led  
11 diversion program if, after due consideration of any crime victim's rights and subject to  
12 approval from the court, the prosecuting attorney and the defendant agree to suspend  
13 prosecution for a period of time after which the case will be dismissed under rule 32.2  
14 of the North Dakota Rules of Criminal Procedure on condition that the defendant not  
15 commit any new criminal offense during the period of the agreement.  
16 2. Each county that establishes a prosecution-led diversion program shall establish  
17 written guidelines for the program and minimum eligibility criteria.

18 **SECTION 2.** A new chapter to title 12 of the North Dakota Century Code is created and  
19 enacted as follows:

1       **Definition.**

2       As used in this chapter, "deflection process" means a procedure for facilitating an  
3       assessment, service or treatment in lieu of incarceration, criminal charges, or unnecessary  
4       admissions to the emergency department when a peace officer or first responder is directed to  
5       intervene with an individual with a behavioral health condition, including a substance use  
6       disorder or mental health disorder, with or without the presence of criminal activity, unless the  
7       criminal activity involves bodily injury to another human or damage to personal property.

8       **Individual with a behavioral health condition - Assistance - Medical care.**

9       A peace officer, as defined under section 12-63-01, may transport or refer an individual to a  
10      local hospital, detoxification center, community behavioral health center, or other appropriate  
11      treatment facility. A tier 1b mental health professional, as defined under section 25-01-01, of a  
12      local hospital may hold that individual for treatment up to seventy-two hours.

13      **Deflection process - Regional authority and planning.**

- 14      1. A local government, law enforcement agency, or other first responder agency may  
15      establish a deflection process in partnership with one or more licensed providers of  
16      behavioral health services or substance use disorder treatment services, subject to the  
17      provisions of this section. A deflection process must include participation from a law  
18      enforcement agency and behavioral health service provider.
- 19      2. A deflection process must include procedures for:
- 20          a. The identification, screening, and assessment of its participants;
- 21          b. Case management and treatment facilitation;
- 22          c. Participant followups;
- 23          d. Law enforcement, first responder, and treatment provider training;
- 24          e. The collection and evaluation of data for:
- 25              (1) Demographics of program participants;
- 26              (2) The number of law enforcement interactions that result in a treatment  
27              referral; and
- 28              (3) The time between initial law enforcement interaction and treatment service.
- 29      3. A deflection process must include a performance management system with key  
30      performance indicators. Key performance indicators may include the:
- 31          a. Rate of treatment engagement within thirty days of initial contact;

b. Duration of treatment involvement; and

c. Number of subsequent law enforcement interactions for individuals referred to treatment.

~~**Exemption from civil liability.**~~

~~A local government agency, law enforcement agency, peace officer, first responder, or employee of the agency, a behavioral health provider, or a public or private entity acting in good faith, is not liable for civil damages as a result of an act or omission in providing services under this section, unless the act or omission constitutes willful and wanton misconduct.~~

**SECTION 3.** A new section to chapter 54-23.3 of the North Dakota Century Code is created and enacted as follows:

**Supervision for presentence programs.**

The department of corrections and rehabilitation has the authority to supervise a defendant while the defendant is participating in a prosecution-led, or pretrial diversion program under section 1 of this Act or rule 32.2 of the North Dakota Rules of Criminal Procedure, or any other pretrial services program.

**SECTION 4.** A new section to chapter 54-23.3 of the North Dakota Century Code is created and enacted as follows:

**Prosecution-led diversion supervision pilot program - Report.**

1. The department of corrections and rehabilitation shall establish a prosecution-led diversion supervision program as a pilot project in three counties in the state during the biennium beginning July 1, 2025, and ending June 30, 2027.

2. Beginning July 1, 2025, the department shall collaborate with the department of health and human services, North Dakota association of counties, county state's attorneys, the commission on legal counsel for indigent defense, county and regional correctional facilities, and public and private treatment providers to develop guidelines and procedures for the administration of the prosecution-led diversion supervision program.

3. The department of corrections and rehabilitation shall select three counties for a pilot project and enter contracts with third-party providers in partnership with the pilot counties to provide supervision, including monitoring and connection to services.



4. The department of corrections and rehabilitation shall implement the program no later than ~~July~~ January 1, 2026.

5. Before ~~June 30~~ January 1, 2027, the department, in collaboration with the three pilot counties, shall report to legislative management regarding the process and outcome of the prosecution-led diversion program and any recommendations for future legislation.

**SECTION 5. LEGISLATIVE MANAGEMENT STUDY - PRETRIAL SERVICE PROGRAMS.**

During the 2025-26 interim, the legislative management shall consider studying costs and savings associated with pretrial service programs operating in the state and opportunities to reinvest savings to improve re-entry outcomes. The study must include the effect of pretrial services on admissions to county jail, detention facilities, medical costs of participants, rate of failure to appear in court, rate of recidivism, and rate of participation in treatment programs. The study must identify opportunities for counties, courts, and state agencies to invest cost-savings associated with pretrial services in programs, treatment, and services that will further reduce recidivism and promote public health. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the seventieth legislative assembly.

**SECTION 6. APPROPRIATION - DEPARTMENT OF CORRECTIONS AND REHABILITATION - PROSECUTION-LED DIVERSION SUPERVISION PILOT PROGRAM - FULL-TIME EQUIVALENT POSITIONS - ONE-TIME FUNDING.**

There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$1,000,000, or so much of the sum as may be necessary, to the department of corrections and rehabilitation, for the purpose of hiring one full-time equivalent position and contracting with third-party providers for a prosecution-led diversion supervision pilot program, for the biennium beginning July 1, 2025, and ending June 30, 2027. The personnel hired pursuant to this section must prioritize the prosecution-led diversion supervision pilot program. The funding provided under this section is considered a one-time funding item.

**SECTION 7. APPROPRIATION - DEPARTMENT OF CORRECTIONS AND REHABILITATION - PRETRIAL SERVICE PROGRAMS COST-SAVINGS STUDY - ONE-TIME FUNDING.**

There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$55,000, or so much of the sum as may be necessary, to the department of corrections and rehabilitation, for the purpose of contracting for consulting

1 services for the study provided in section 5 of this Act, for the biennium beginning July 1, 2025,  
2 and ending June 30, 2027. The funding provided under this section is considered a one-time  
3 funding item.

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6 appropriated out of any moneys in the general fund in the state treasury, not otherwise  
7 appropriated, the sum of \$750,000, or so much of the sum as may be necessary, to the  
8 department of health and human services, for the purpose of providing treatment services for  
9 participants in the prosecution-led diversion program, for the biennium beginning July 1, 2025,  
10 and ending June 30, 2027. The funding provided under this section is considered a one-time  
11 funding item.

**REPORT OF STANDING COMMITTEE  
ENGROSSED HB 1425**

**Judiciary Committee (Sen. Larson, Chairman)** recommends **AMENDMENTS** ([25.1149.02003](#)) and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (5 YEAS, 2 NAYS, 0 ABSENT OR EXCUSED AND NOT VOTING). HB 1425 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

25.1149.02003  
Title.

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

Sixty-ninth  
Legislative Assembly  
of North Dakota

## **PROPOSED AMENDMENTS TO FIRST ENGROSSMENT**

### **ENGROSSED HOUSE BILL NO. 1425**

Introduced by

Representatives Klemin, Hanson, Stemen

Senators Davison, Larson

1 A BILL for an Act to create and enact a new section to chapter 11-16, a new chapter to title 12,  
2 and two new sections to chapter 54-23.3 of the North Dakota Century Code, relating to  
3 prosecution-led diversion programs, deflection process, and supervision for presentence  
4 programs; to provide for a legislative management study; to provide for a legislative  
5 management report; and to provide for an appropriation.

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

7 **SECTION 1.** A new section to chapter 11-16 of the North Dakota Century Code is created  
8 and enacted as follows:

##### **9 Prosecution-led diversion program.**

- 10 1. The state's attorney for each county may create and administer a prosecution-led  
11 diversion program if, after due consideration of any crime victim's rights and subject to  
12 approval from the court, the prosecuting attorney and the defendant agree to suspend  
13 prosecution for a period of time after which the case will be dismissed under rule 32.2  
14 of the North Dakota Rules of Criminal Procedure on condition that the defendant not  
15 commit any new criminal offense during the period of the agreement.  
16 2. Each county that establishes a prosecution-led diversion program shall establish  
17 written guidelines for the program and minimum eligibility criteria.

18 **SECTION 2.** A new chapter to title 12 of the North Dakota Century Code is created and  
19 enacted as follows:



1       **Definition.**

2       As used in this chapter, "deflection process" means a procedure for facilitating an  
3       assessment, service or treatment in lieu of incarceration, criminal charges, or unnecessary  
4       admissions to the emergency department when a peace officer or first responder is directed to  
5       intervene with an individual with a behavioral health condition, including a substance use  
6       disorder or mental health disorder, with or without the presence of criminal activity, unless the  
7       criminal activity involves bodily injury to another human or damage to personal property.

8       **Individual with a behavioral health condition - Assistance - Medical care.**

9       A peace officer, as defined under section 12-63-01, may transport or refer an individual to a  
10      local hospital, detoxification center, community behavioral health center, or other appropriate  
11      treatment facility. A tier 1b mental health professional, as defined under section 25-01-01, of a  
12      local hospital may hold that individual for treatment up to seventy-two hours.

13      **Deflection process - Regional authority and planning.**

- 14      1. A local government, law enforcement agency, or other first responder agency may  
15      establish a deflection process in partnership with one or more licensed providers of  
16      behavioral health services or substance use disorder treatment services, subject to the  
17      provisions of this section. A deflection process must include participation from a law  
18      enforcement agency and behavioral health service provider.
- 19      2. A deflection process must include procedures for:
- 20          a. The identification, screening, and assessment of its participants;
- 21          b. Case management and treatment facilitation;
- 22          c. Participant followups;
- 23          d. Law enforcement, first responder, and treatment provider training;
- 24          e. The collection and evaluation of data for:
- 25              (1) Demographics of program participants;
- 26              (2) The number of law enforcement interactions that result in a treatment  
27              referral; and
- 28              (3) The time between initial law enforcement interaction and treatment service;  
29              and
- 30      3. A deflection process must include a performance management system with key  
31      performance indicators. Key performance indicators may include the:

- a. Rate of treatment engagement within thirty days of initial contact;
- b. Duration of treatment involvement; and
- c. Number of subsequent law enforcement interactions for individuals referred to treatment.

~~**Exemption from civil liability.**~~

~~A local government agency, law enforcement agency, peace officer, first responder, or employee of the agency, a behavioral health provider, or a public or private entity acting in good faith, is not liable for civil damages as a result of an act or omission in providing services under this section, unless the act or omission constitutes willful and wanton misconduct.~~

**SECTION 3.** A new section to chapter 54-23.3 of the North Dakota Century Code is created and enacted as follows:

**Supervision for presentence programs.**

The department of corrections and rehabilitation has the authority to supervise a defendant while the defendant is participating in a prosecution-led, or pretrial diversion program under section 1 of this Act or rule 32.2 of the North Dakota Rules of Criminal Procedure, or any other pretrial services program.

**SECTION 4.** A new section to chapter 54-23.3 of the North Dakota Century Code is created and enacted as follows:

**Prosecution-led diversion supervision pilot program - Report.**

1. The department of corrections and rehabilitation shall establish a prosecution-led diversion supervision program as a pilot project in three counties in the state during the biennium beginning July 1, 2025, and ending June 30, 2027.
2. Beginning July 1, 2025, the department shall collaborate with the department of health and human services, North Dakota association of counties, county state's attorneys, the commission on legal counsel for indigent defense, county and regional correctional facilities, and public and private treatment providers to develop guidelines and procedures for the administration of the prosecution-led diversion supervision program.
3. The department of corrections and rehabilitation shall select three counties for a pilot project and enter contracts with third-party providers in partnership with the pilot counties to provide supervision, including monitoring and connection to services.

4. The department of corrections and rehabilitation shall implement the program no later than ~~July~~January 1, 2026.

5. Before ~~June 30~~January 1, 2027, the department, in collaboration with the three pilot counties, shall report to legislative management regarding the process and outcome of the prosecution-led diversion program and any recommendations for future legislation.

**SECTION 5. LEGISLATIVE MANAGEMENT STUDY - PRETRIAL SERVICE PROGRAMS.**

During the 2025-26 interim, the legislative management shall consider studying costs and savings associated with pretrial service programs operating in the state and opportunities to reinvest savings to improve re-entry outcomes. The study must include the effect of pretrial services on admissions to county jail, detention facilities, medical costs of participants, rate of failure to appear in court, rate of recidivism, and rate of participation in treatment programs. The study must identify opportunities for counties, courts, and state agencies to invest cost-savings associated with pretrial services in programs, treatment, and services that will further reduce recidivism and promote public health. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the seventieth legislative assembly.

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**2025 SENATE APPROPRIATIONS**

**HB 1425**

# 2025 SENATE STANDING COMMITTEE MINUTES

## Appropriations - Education and Environment Division Sakakawea Room, State Capitol

HB 1425  
4/3/2025

A BILL for an Act to create and enact a new section to the North Dakota Century Code, relating to prosecution-led diversion programs, deflection process, and supervision for presentence programs; to provide for a legislative management study; to provide for a legislative management report; and to provide for an appropriation.

3:00 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:**

- Diversion and Deflection Programs.
- Pre-Trial Service Program.

3:00 p.m. Travis Fink, Executive Director, Commission on Legal Counsel for Indigents, introduced the bill in favor and answered committee questions.

3:06 p.m. Robyn Schmalenberger, Reentry Program Manager, DOCR, testified in favor and answered committee questions.

3:12 p.m. Representative Klemin, District 47, submitted testimony in favor #44644 and #44645 and #44647 and referenced HB 1417.

3:21 p.m. Chairman Sorvaag closed the meeting.

*Steven Hall, Committee Clerk*

**HB 1425****Senate Appropriations: Education & Environment Subdivision****Rep. Lawrence R. Klemin****April 3, 2025**

HB 1425 is the first of three bills relating to criminal justice reform. One bill in this package, HB1549, did not have an appropriation and passed out of the Senate earlier this week. The other bill, HB 1417, is also on your calendar for this afternoon. These bills are supported by Governor Armstrong, who mentioned them in his State of the State Address. Lt. Gov. Strinden testified in support of them. They are also supported by the Department of Corrections and Rehabilitation, the Department of Health and Human Services, Job Service North Dakota, the North Dakota State's Attorneys Association, the North Dakota Commission on Legal Counsel for Indigents, Ministry on the Margins, and other organizations and individuals.

For the last eight years, North Dakota has been working 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.

Two years ago, the Legislature passed HCR 3026 to study how we can further improve reentry outcomes for people leaving incarceration. ND's recidivism rate is about 40%. We have serious overcrowding in our prison and jails. We can either develop programs to reduce recidivism and divert people from incarceration, or we can spend millions to expand the State Prison and build more county jails.

Roughly 95% of people who are incarcerated in North Dakota's prison and jails are eventually released. North Dakota releases about 1,400 people from the state prison system every year, plus thousands more from our county jails. The state has a strong interest in ensuring that the returning prisoners can be as successful as possible, becoming part of the workforce and good neighbors.

All three bills share these common goals:

Ensure public safety

Make the best use of our prison and jail beds so that we have capacity for our most serious offenders. The State Prison is currently overcrowded and exercised its authority last October to limit the admission of new prisoners.

Save taxpayer dollars by controlling the ongoing growth of admissions

Improve the lives of justice-involved individuals

HB 1425 targets the "front-end" of reentry.

There are three parts to this bill:

1. Prosecution-led Diversion Program
2. Deflection Process
3. Pretrial Services



## **Prosecution-Led Diversion Program**

A prosecution-led diversion program gives eligible defendants an opportunity to have their prosecution suspended and their charges dismissed if they do not commit a new offense during the duration of their program participation. HB 1425 strengthens counties' ability to do prosecution-led diversion programs.

**Section 1** codifies court Rule 32.2 of the North Dakota Rules of Criminal Procedure, which authorizes county prosecutors to offer a diversion program. The bill also says that any county that establishes such a program must have written guidelines and eligibility criteria.

**Section 3** gives the DOCR the authority to provide supervision to people who participate in this and other pre-sentencing programs.

**Section 4** sets up a **pilot program in three counties** for the supervision of the prosecution-led diversion program.

**Section 6** requests an **appropriation to DOCR of \$1 million** for 1 FTE to staff the supervision of the pilot program, to oversee the development of the pilot program, to facilitate the collaboration between stakeholders, collect data, and to administer contracts with third-party providers. Local third-party providers paid from the appropriation would monitor the participants' compliance with the diversion program in the counties and would connect them to behavioral health and treatment services.

**Section 8** requests an **appropriation to DHHS of \$750,000** for the services aspect of the pilot program.

## **Deflection**

Deflection is a process that can be used by law enforcement, behavioral health providers and other community partners to connect a person who has behavioral health needs with treatment and other services rather than putting them in jail.

The deflection process is covered in **Section 2**:

It defines "deflection process" and creates the authority for local communities to establish a deflection process.

It says that if a local community does establish a deflection process, law enforcement and behavioral health must collaborate on that process and establish minimum standards for protocols, training and data collection.

The bill also exempts law enforcement and behavioral health providers who engage in deflection from civil liability with the purpose of encouraging them to use deflection when appropriate.

## **Pretrial Services:**

The pretrial services aspect of HB 1425 is covered in **Sections 5 and 7**:

**Section 5**: requests Legislative Management to consider studying the cost savings resulting from ND's current pretrial services program.



**Section 7 appropriates \$55,000** for a third-party to conduct the study.

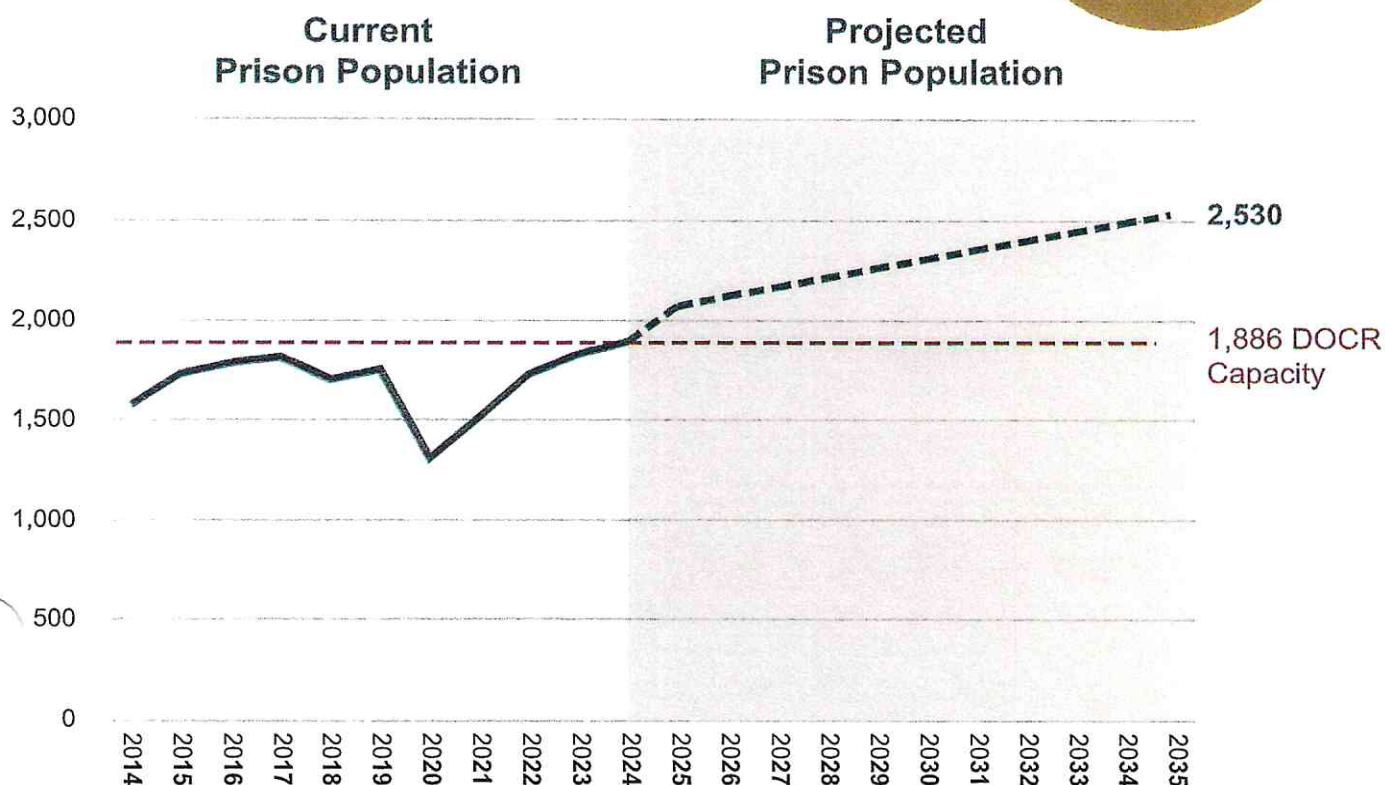
The Pretrial Services Program enables eligible defendants to be in the community so they can continue to work, be with their family, and get treatment if needed. The program screens potential participants and establishes community supervision strategies and opportunities to connect defendants to resources.

In summary, HB 1425 targets the "front-end" of reentry, by strengthening our state's deflection process, diversion programs, and pretrial services program, so we can expand pathways to alternatives to incarceration. The goals of this bill are to ensure public safety while saving tax dollars, making the best use of our overcrowded prison and jails, and improving lives.

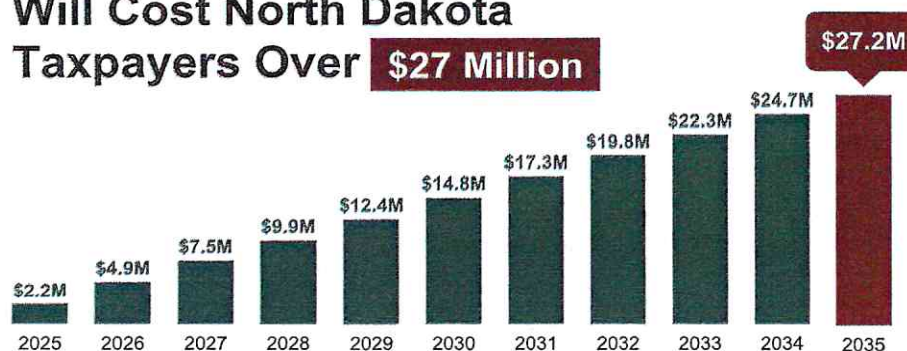
Rep. Lawrence R. Klemin  
District 47, Bismarck

# 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



## SUMMARY OF REENTRY BILLS: HB 1425, HB 1417, HB 1549

**Overall Goal:** *Make better use of ND's prison & jail beds by being smart on crime*

**Reentry Study Report:** With assistance from the Crime & Justice Institute, a team of 15 leaders from the legislature, DOCR, DHHS, court system, county jails, and community reentry service providers met as the “Reentry Study Work Group” to discuss important data findings from North Dakota’s criminal justice system and make recommendations for improving reentry outcomes in the state. Key findings included:

- ✓ ND’s prison population is rising while nationally it is declining.
- ✓ Drug/alcohol offenses and revocations are the primary drivers of the increase.
- ✓ People of color, particularly Black and Native individuals 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.

**Policy Recommendations:** The Reentry Study Work Group identified about two dozen policies to address the issues highlighted by the report. Some will move forward as proposed legislation, some will be implemented as policy/practice changes within state agencies, and some will not move forward until more stakeholder conversations occur.

**Goals:** The recommendations aim to ensure public safety, make the best use of our prison and jail beds so we have capacity for our most serious offenders, save taxpayer dollars by controlling the expected ongoing growth of admissions, and improve the lives of justice-involved individuals.

**Legislative Proposals:** Several of the Reentry Study Work Group’s recommendations are represented in 3 proposed bills that require a change to North Dakota’s statute.

### HB 1425:

Targets the “front-end” of reentry, including strengthening the continuum of deflection, diversion, and pretrial services to expand pathways to alternatives to incarceration.

- **Deflection Process:** If a community establishes a deflection program, law enforcement & behavioral health shall collaborate and establish standard protocols, training & data collection processes.
- **Prosecution-led Diversion Program:** Counties that establish a prosecution-led diversion program shall establish guidelines and eligibility criteria. Appropriates funds for DOCR to run a pilot program in three counties for the supervision of prosecution-led diversion program participants and appropriates funds to DHHS for services to participants.
- **Pretrial Services:** Appropriates funds to evaluate this program.

# SUMMARY OF REENTRY BILLS: HB 1425, HB 1417, HB 1549

HB 1417:

Focuses on community supervision definitions and criminal fees

- **Definitions:** Updates definition of “risk assessment” and adds definition for “responsivity factors,” which are identified by a risk assessment. Also provides a definition for when someone has “absconded” from supervision.
- **Eliminate fees:** Eliminates supervision fees (\$55/month) and the application fee for indigent defense (\$35) and the court’s ability to request reimbursement of public defense costs.
- **Study other fees:** Examines other fees, including the rate collected and the impact on revenue and on justice-involved individuals.

HB 1549:

Focuses on “back-end” of reentry, including stronger collaborations that support successful transitions back into the community.

- **Correctional facility program grants:** Creates a grant program for local jails to help them improve their programming/reentry efforts and establishes a grant committee to oversee the program.
- **Medicaid & IDs:** Requires the DOCR to partner with DOT to offer people leaving prison a state-issued ID and to partner with DHHS to offer eligible people Medicaid assistance or other programs.
- **Expand housing resources for the justice-involved population:** Creates a task force to collaborate with housing stakeholders to examine housing assistance for those leaving incarceration to prevent homelessness, housing for sexual offenders, sober housing, and low-barrier housing.
- **Improve data:** Requires DOCR and its system partners to examine our criminal justice data collection, retention, and dissemination and make recommendations for tracking uniform data points, standardizing data collection and sharing, and improving data connectivity between system partners.
- **Study:** Examines the potential of expanding access to criminal record sealing including automation.
- **Subgrants:** Requires the DOCR to apply for federal justice reinvestment initiative implementation grants to help fund coordination and implementation of reentry policies and programs.

# 2025 SENATE STANDING COMMITTEE MINUTES

## Appropriations - Human Resources Division Harvest Room, State Capitol

HB 1425  
4/8/2025

Relating to prosecution-led diversion programs, deflection process, and supervision for presentence programs; to provide for a legislative management study; to provide for a legislative management report; and to provide for an appropriation.

3:15 p.m. Chairman Dever opened the hearing.

Members present: Chairman Dever and Senators Cleary, Davison, Magrum and Mathern.

### Discussion Topics:

- Prosecution-Led Diversion Programs
- Deflection Process
- Pretrial Services

3:15 p.m. Representative Lawrence R. Klemin, introduced the bill, testified in favor and submitted testimony #44795, #44796, #44798 and #44799.

3:28 p.m. Senator Mathern started discussion.

3:37 p.m. Keith Mantz, Financial Analyst, LC, testified neutral.

3:45 p.m. Travis Finck, Director, ND Commission of Legal Counsel for Indigents, testified in favor.

3:57 a.m. Senator Magrum moved a Do Pass.

3:57 a.m. Senator Cleary seconded the motion.

Senators	Vote
Senator Dick Dever	Y
Senator Sean Cleary	Y
Senator Kyle Davison	Y
Senator Jeffrey J. Magrum	Y
Senator Tim Mathern	Y

Motion passed 5-0-0.

Chairman Dever will carry the bill.

3:59 p.m. Chairman Dever closed the hearing.

*Joan Bares, Committee Clerk*



HB 1425  
4-8-25

## HB 1425

### Senate Appropriations Human Resources Division

Rep. Lawrence R. Klemin

April 8, 2025

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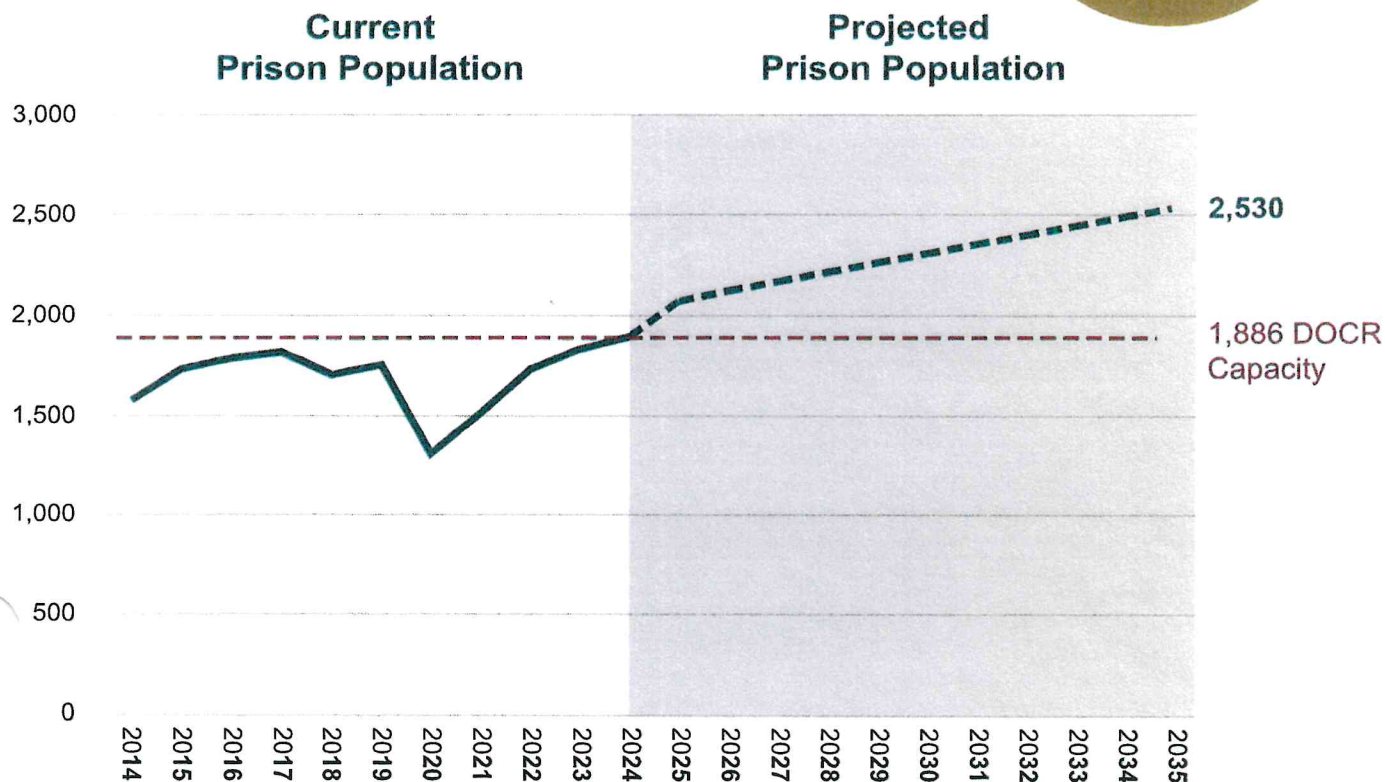
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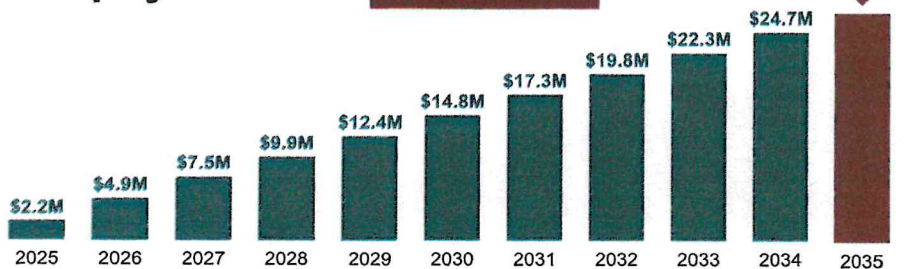


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- ✓ People of color, particularly Black and Native individuals are disproportionately represented.
- ✓ People leaving incarceration face barriers to success such as affordable housing, behavioral health care, gaps in Medicaid access, and a lack of state-issued IDs.

**Policy Recommendations:** The Reentry Study Work Group identified about two dozen policies to address the issues highlighted by the report. Some will move forward as proposed legislation, some will be implemented as policy/practice changes within state agencies, and some will not move forward until more stakeholder conversations occur.

**Goals:** The recommendations aim to ensure public safety, make the best use of our prison and jail beds so we have capacity for our most serious offenders, save taxpayer dollars by controlling the expected ongoing growth of admissions, and improve the lives of justice-involved individuals.

**Legislative Proposals:** Several of the Reentry Study Work Group's recommendations are represented in 3 proposed bills that require a change to North Dakota's statute.

### HB 1425:

Targets the "front-end" of reentry, including strengthening the continuum of deflection, diversion, and pretrial services to expand pathways to alternatives to incarceration.

- **Deflection Process:** If a community establishes a deflection program, law enforcement & behavioral health shall collaborate and establish standard protocols, training & data collection processes.
- **Prosecution-led Diversion Program:** Counties that establish a prosecution-led diversion program shall establish guidelines and eligibility criteria. Appropriates funds for DOCR to run a pilot program in three counties for the supervision of prosecution-led diversion program participants and appropriates funds to DHHS for services to participants.
- **Pretrial Services:** Appropriates funds to evaluate this program.



# SUMMARY OF REENTRY BILLS: HB 1425, HB 1417, HB 1549

HB 1417:

Focuses on community supervision definitions and criminal fees

- **Definitions:** Updates definition of “risk assessment” and adds definition for “responsivity factors,” which are identified by a risk assessment. Also provides a definition for when someone has “absconded” from supervision.
- **Eliminate fees:** Eliminates supervision fees (\$55/month) and the application fee for indigent defense (\$35) and the court’s ability to request reimbursement of public defense costs.
- **Study other fees:** Examines other fees, including the rate collected and the impact on revenue and on justice-involved individuals.

HB 1549:

Focuses on “back-end” of reentry, including stronger collaborations that support successful transitions back into the community.

- **Correctional facility program grants:** Creates a grant program for local jails to help them improve their programming/reentry efforts and establishes a grant committee to oversee the program.
- **Medicaid & IDs:** Requires the DOCR to partner with DOT to offer people leaving prison a state-issued ID and to partner with DHHS to offer eligible people Medicaid assistance or other programs.
- **Expand housing resources for the justice-involved population:** Creates a task force to collaborate with housing stakeholders to examine housing assistance for those leaving incarceration to prevent homelessness, housing for sexual offenders, sober housing, and low-barrier housing.
- **Improve data:** Requires DOCR and its system partners to examine our criminal justice data collection, retention, and dissemination and make recommendations for tracking uniform data points, standardizing data collection and sharing, and improving data connectivity between system partners.
- **Study:** Examines the potential of expanding access to criminal record sealing including automation.
- **Subgrants:** Requires the DOCR to apply for federal justice reinvestment initiative implementation grants to help fund coordination and implementation of reentry policies and programs.

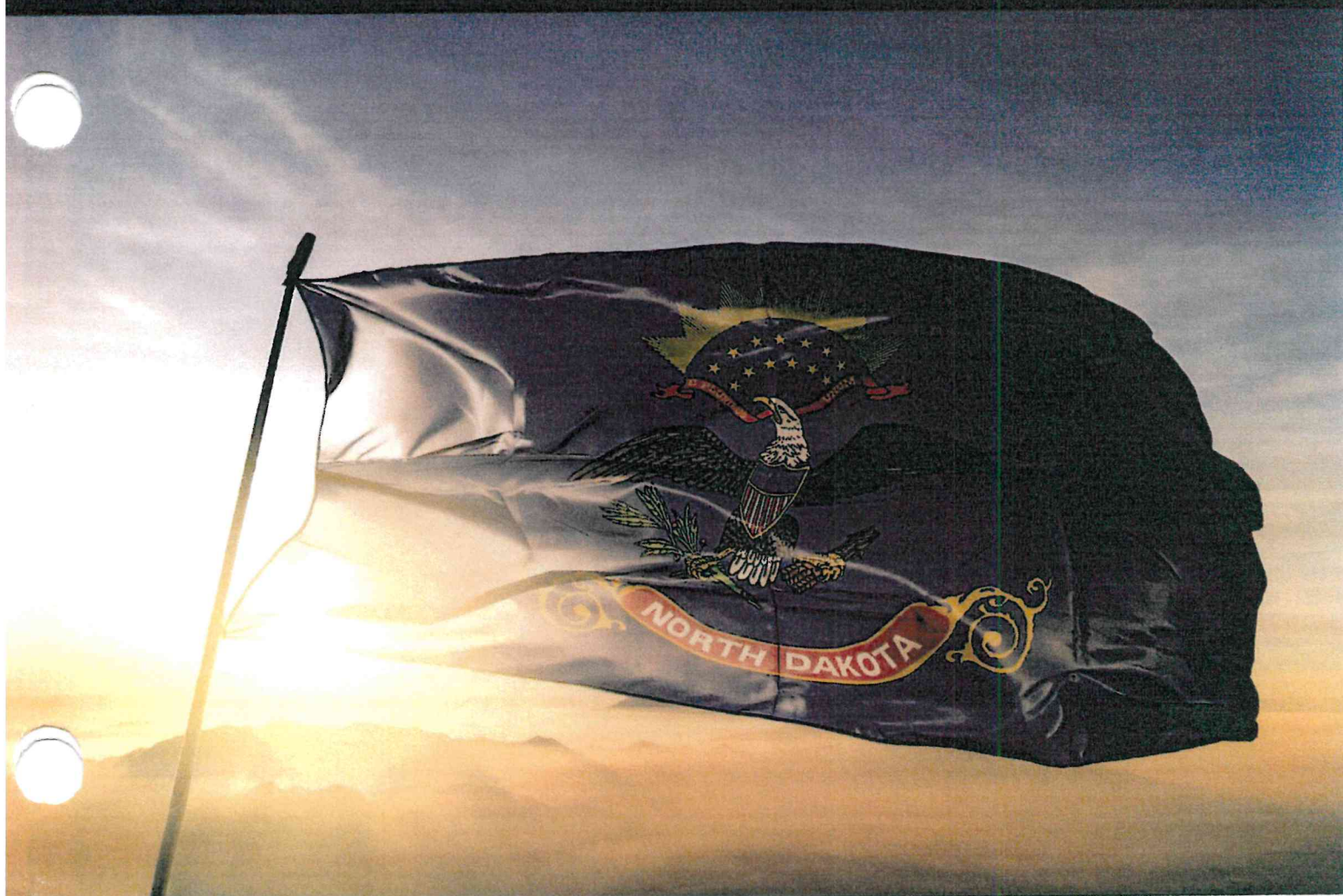


# North Dakota

## Justice Reinvestment Initiative Reentry Study Work Group

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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 Frobis**

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.<sup>1</sup> 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.<sup>2</sup> 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 68<sup>th</sup> 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.<sup>3</sup> 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.<sup>4</sup> Between 2020 and 2021, North Dakota had the largest percent increase in prison population in the country, slightly over 20 percent.<sup>5</sup> 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.<sup>6</sup> This growth has continued with a 36 percent increase from December 31, 2020, to December 31, 2023.<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup>

Despite the prison population trends in North Dakota, crime rates have remained relatively stable and have followed overall national trends.<sup>10</sup> 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.<sup>11</sup> 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 35<sup>th</sup> out of all states, lower than their neighbors Minnesota (33<sup>rd</sup>), South Dakota (22<sup>nd</sup>), and Montana (16<sup>th</sup>). From 2013 to 2022, the national property crime rate decreased 28 percent, while North Dakota's property crime rate decreased six percent.<sup>12</sup>

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.<sup>13</sup> 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.<sup>14</sup> Excluding these special funds, however, the budget has still increased approximately 16 percent since the 2017-2019 biennium.<sup>15</sup>

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 Committee Harvest Room, State Capitol

HB 1425  
4/10/2025

A BILL for an Act to create and enact a new section to chapter 11-16, a new chapter to title 12, and two new sections to chapter 54-23.3 of the North Dakota Century Code, relating to prosecution-led diversion programs, deflection process, and supervision for presentence programs; to provide for a legislative management study; to provide for a legislative management report; and to provide for an appropriation.

8:07 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:

- Funding Source
- Deflection Process
- Pilot Program and Results
- Policy Clarification
- FTE Appropriation

8:07 a.m. Senator Dever introduced the bill.

8:12 a.m. Senator Mathern moved to amend by changing the funding source from the general fund to the SIIF fund.

8:12 a.m. Senator Magrum 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
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Motion Passed 16-0-0.

8:12 a.m. Senator Dever moved a Do Pass as Amended.

8:13 a.m. Senator Davison seconded the motion.

<b>Senators</b>	<b>Vote</b>
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	N
Senator Ronald Sorvaag	Y
Senator Paul J. Thomas	N
Senator Terry M. Wanzek	Y

Motion Passed 14-2-0.

Senator Castaneda will carry the bill.

8:21 a.m. Chairman Bekkedahl closed the hearing.

*Elizabeth Reiten, Committee Clerk*



25.1149.02004  
Title.04000  
Fiscal No. 1

Prepared by the Legislative Council  
staff for Senate Appropriations  
Committee

April 10, 2025

Sixty-ninth  
Legislative Assembly  
of North Dakota

## PROPOSED AMENDMENTS TO FIRST ENGROSSMENT

CO  
4/10/25  
1 of 7

### ENGROSSED HOUSE BILL NO. 1425

Introduced by

Representatives Klemin, Hanson, Stemen

Senators Davison, Larson

*In place of the amendment (25.1149.02003) adopted by the Senate, Engrossed House Bill No. 1425 is amended by amendment (25.1149.02004) as follows:*

- 1 A BILL for an Act to create and enact a new section to chapter 11-16, a new chapter to title 12,  
2 and two new sections to chapter 54-23.3 of the North Dakota Century Code, relating to  
3 prosecution-led diversion programs, deflection process, and supervision for presentence  
4 programs; to provide for a legislative management study; to provide for a legislative  
5 management report; and to provide an appropriation.

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

- 7 **SECTION 1.** A new section to chapter 11-16 of the North Dakota Century Code is created  
8 and enacted as follows:

9 **Prosecution-led diversion program.**

- 10 1. The state's attorney for each county may create and administer a prosecution-led  
11 diversion program if, after due consideration of any crime victim's rights and subject to  
12 approval from the court, the prosecuting attorney and the defendant agree to suspend  
13 prosecution for a period of time after which the case will be dismissed under rule 32.2  
14 of the North Dakota Rules of Criminal Procedure on condition that the defendant not  
15 commit any new criminal offense during the period of the agreement.  
16 2. Each county that establishes a prosecution-led diversion program shall establish  
17 written guidelines for the program and minimum eligibility criteria.

- 18 **SECTION 2.** A new chapter to title 12 of the North Dakota Century Code is created and

1       **Definition.**

2       As used in this chapter, "deflection process" means a procedure for facilitating an  
3       assessment, service, or treatment in lieu of incarceration, criminal charges, or unnecessary  
4       admissions to the emergency department ~~when~~ if a peace officer or first responder is directed to  
5       intervene with an individual with a behavioral health condition, including a substance use  
6       disorder or mental health disorder, with or without the presence of criminal activity, ~~unless the~~  
7       criminal activity involves bodily injury to another human or damage to personal property.

8       **Individual with a behavioral health condition - Assistance - Medical care.**

9       A peace officer, as defined under section 12-63-01, may transport or refer an individual to a  
10      local hospital, detoxification center, community behavioral health center, or other appropriate  
11      treatment facility. A tier 1b mental health professional, as defined under section 25-01-01, of a  
12      local hospital may hold that individual for treatment up to seventy-two hours.

13      **Deflection process - Regional authority and planning.**

- 14      1. A local government, law enforcement agency, or other first responder agency may  
15      establish a deflection process in partnership with one or more licensed providers of  
16      behavioral health services or substance use disorder treatment services, subject to the  
17      provisions of this section. A deflection process must include participation from a law  
18      enforcement agency and behavioral health service provider.
- 19      2. A deflection process must include procedures for:
- 20          a. The identification, screening, and assessment of its participants;
- 21          b. Case management and treatment facilitation;
- 22          c. Participant followups;
- 23          d. Law enforcement, first responder, and treatment provider training;
- 24          e. The collection and evaluation of data for:
- 25              (1) Demographics of program participants;
- 26              (2) The number of law enforcement interactions that result in a treatment  
27              referral; and
- 28              (3) The time between initial law enforcement interaction and treatment service.
- 29      3. A deflection process must include a performance management system with key  
30      performance indicators. Key performance indicators may include the:
- 31          a. Rate of treatment engagement within thirty days of initial contact;



b. Duration of treatment involvement; and

c. Number of subsequent law enforcement interactions for individuals referred to treatment.

~~**Exemption from civil liability.**~~

~~A local government agency, law enforcement agency, peace officer, first responder, or employee of the agency, a behavioral health provider, or a public or private entity acting in good faith, is not liable for civil damages as a result of an act or omission in providing services under this section, unless the act or omission constitutes willful and wanton misconduct.~~

**SECTION 3.** A new section to chapter 54-23.3 of the North Dakota Century Code is created and enacted as follows:

**Supervision for presentence programs.**

The department of corrections and rehabilitation has the authority to supervise a defendant while the defendant is participating in a prosecution-led, or pretrial diversion program under section 1 of this Act or rule 32.2 of the North Dakota Rules of Criminal Procedure, or any other pretrial services program.

**SECTION 4.** A new section to chapter 54-23.3 of the North Dakota Century Code is created and enacted as follows:

**Prosecution-led diversion supervision pilot program - Report.**

1. The department of corrections and rehabilitation shall establish a prosecution-led diversion supervision program as a pilot project in three counties in the state during the biennium beginning July 1, 2025, and ending June 30, 2027.

2. Beginning July 1, 2025, the department shall collaborate with the department of health and human services, North Dakota association of counties, county state's attorneys, the commission on legal counsel for indigent defense, county and regional correctional facilities, and public and private treatment providers to develop guidelines and procedures for the administration of the prosecution-led diversion supervision program.

3. The department of corrections and rehabilitation shall select three counties for a pilot project and enter contracts with third-party providers in partnership with the pilot counties to provide supervision, including monitoring and connection to services.

- 1       4.   The department of corrections and rehabilitation shall implement the program no later  
2       than ~~July~~ January 1, 2026.
- 3       5.   Before ~~June 30~~ January 1, 2027, the department, in collaboration with the three pilot  
4       counties, shall report to legislative management regarding the process and outcome of  
5       the prosecution-led diversion program and any recommendations for future legislation.

6       **SECTION 5. LEGISLATIVE MANAGEMENT STUDY - PRETRIAL SERVICE PROGRAMS.**

7   During the 2025-26 interim, the legislative management shall consider studying costs and  
8   savings associated with pretrial service programs operating in the state and opportunities to  
9   reinvest savings to improve re-entry outcomes. The study must include the effect of pretrial  
10   services on admissions to county jail, detention facilities, medical costs of participants, rate of  
11   failure to appear in court, rate of recidivism, and rate of participation in treatment programs. The  
12   study must identify opportunities for counties, courts, and state agencies to invest cost-savings  
13   associated with pretrial services in programs, treatment, and services that will further reduce  
14   recidivism and promote public health. The legislative management shall report its findings and  
15   recommendations, together with any legislation required to implement the recommendations, to  
16   the seventieth legislative assembly.

17       **SECTION 6. APPROPRIATION - DEPARTMENT OF CORRECTIONS AND**

18   **REHABILITATION - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND -**

19   **PROSECUTION-LED DIVERSION SUPERVISION PILOT PROGRAM - FULL-TIME**

20   **EQUIVALENT POSITIONS - ONE-TIME FUNDING.** There is appropriated out of any moneys in  
21   the ~~general~~ strategic investment and improvements fund in the state treasury, not otherwise  
22   appropriated, the sum of \$1,000,000, or so much of the sum as may be necessary, to the  
23   department of corrections and rehabilitation, for the purpose of hiring one full-time equivalent  
24   position and contracting with third-party providers for a prosecution-led diversion supervision  
25   pilot program, for the biennium beginning July 1, 2025, and ending June 30, 2027. The  
26   personnel hired pursuant to this section must prioritize the prosecution-led diversion supervision  
27   pilot program. The appropriation provided under this section is considered a one-time funding  
28   item.

29       **SECTION 7. APPROPRIATION - DEPARTMENT OF CORRECTIONS AND**

30   **REHABILITATION - STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - PRETRIAL**

31   **SERVICE PROGRAMS COST-SAVINGS STUDY - ONE-TIME FUNDING.** There is



1 | appropriated out of any moneys in the ~~general~~strategic investment and improvements fund in  
2 | the state treasury, not otherwise appropriated, the sum of \$55,000, or so much of the sum as  
3 | may be necessary, to the department of corrections and rehabilitation, for the purpose of  
4 | contracting for consulting services for the study provided in section 5 of this Act, for the  
5 | biennium beginning July 1, 2025, and ending June 30, 2027. The appropriation provided under  
6 | this section is considered a one-time funding item.

7 | **SECTION 8. APPROPRIATION - DEPARTMENT OF HEALTH AND HUMAN SERVICES -**  
8 | **STRATEGIC INVESTMENT AND IMPROVEMENTS FUND - PROSECUTION-LED**

9 | **DIVERSION TREATMENT SERVICES - ONE-TIME FUNDING.** There is appropriated out of  
10 | any moneys in the ~~general~~strategic investment and improvements fund in the state treasury, not  
11 | otherwise appropriated, the sum of \$750,000, or so much of the sum as may be necessary, to  
12 | the department of health and human services, for the purpose of providing treatment services  
13 | for participants in the prosecution-led diversion program, for the biennium beginning July 1,  
14 | 2025, and ending June 30, 2027. The appropriation provided under this section is considered a  
15 | one-time funding item.

6 of 7

**STATEMENT OF PURPOSE OF AMENDMENT:****House Bill No. 1425 - Summary of Senate Action**

	Base Budget	House Version	Senate Changes	Senate Version
Department of Health and Human Services				
Total all funds	\$0	\$750,000	\$0	\$750,000
Less estimated income	0	0	750,000	750,000
General fund	\$0	\$750,000	(\$750,000)	\$0
FTE	0.00	0.00	0.00	0.00
Department of Corrections and Rehab.				
Total all funds	\$0	\$1,055,000	\$0	\$1,055,000
Less estimated income	0	0	1,055,000	1,055,000
General fund	\$0	\$1,055,000	(\$1,055,000)	\$0
FTE	0.00	1.00	0.00	1.00
Bill total				
Total all funds	\$0	\$1,805,000	\$0	\$1,805,000
Less estimated income	0	0	1,805,000	1,805,000
General fund	\$0	\$1,805,000	(\$1,805,000)	\$0
FTE	0.00	1.00	0.00	1.00

**House Bill No. 1425 - Department of Health and Human Services - Senate Action**

	Base Budget	House Version	Senate Changes	Senate Version
Diversion treatment services		\$750,000		\$750,000
Total all funds	\$0	\$750,000	\$0	\$750,000
Less estimated income	0	0	750,000	750,000
General fund	\$0	\$750,000	(\$750,000)	\$0
FTE	0.00	0.00	0.00	0.00

**Department 325 - Department of Health and Human Services - Detail of Senate Changes**

	Adjusts Funding for Diversion Treatment Services <sup>1</sup>	Total Senate Changes
Diversion treatment services		
Total all funds	\$0	\$0
Less estimated income	750,000	750,000
General fund	(\$750,000)	(\$750,000)
FTE	0.00	0.00

<sup>1</sup> One-time funding of \$750,000 for diversion treatment services is adjusted from the general fund to the strategic investment and improvements fund.

**House Bill No. 1425 - Department of Corrections and Rehab. - Senate Action**

7047

	Base Budget	House Version	Senate Changes	Senate Version
Diversion supervision		\$1,000,000		\$1,000,000
Pretrial services study		55,000		55,000
Total all funds	\$0	\$1,055,000	\$0	\$1,055,000
Less estimated income	0	0	1,055,000	1,055,000
General fund	\$0	\$1,055,000	(\$1,055,000)	\$0
FTE	0.00	1.00	0.00	1.00

**Department 530 - Department of Corrections and Rehab. - Detail of Senate Changes**

	Adjusts Funding for Diversion Supervision and Pretrial Service Study <sup>1</sup>	Total Senate Changes
Diversion supervision		
Pretrial services study		
Total all funds	\$0	\$0
Less estimated income	1,055,000	1,055,000
General fund	(\$1,055,000)	(\$1,055,000)
FTE	0.00	0.00

<sup>1</sup> One-time funding for diversion supervision (\$1,000,000) and a pretrial services study (\$55,000) is adjusted from the general fund to the strategic investment and improvements fund.

**REPORT OF STANDING COMMITTEE  
ENGROSSED AND AMENDED HB 1425**

**Appropriations Committee (Sen. Bekkedahl, Chairman)** recommends **AMENDMENTS** ([25.1149.02004](#)) and when so amended, recommends **DO PASS** (14 YEAS, 2 NAYS, 0 ABSENT OR EXCUSED AND NOT VOTING). Engrossed HB 1425, as amended, was placed on the Sixth order on the calendar. This bill does not affect workforce development.