



# North Dakota Legislative Council

Prepared for the Judiciary Committee  
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## ASSESSMENT OF PRETRIAL SERVICE PROGRAMS - BACKGROUND MEMORANDUM

Section 5 of House Bill No. 1425 (2025) ([appendix](#)) directs the Legislative Management to study 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 a review of 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.

### BACKGROUND

House Bill No. 1041 (2017) directed the Department of Corrections and Rehabilitation to establish a pretrial services program as a pilot project in one or more judicial districts during the 2017-19 biennium. The pretrial services pilot project required coordination among the Department of Corrections and Rehabilitation, the judicial branch, the Commission on Legal Counsel for Indigents, and state and local law enforcement agencies for individuals charged with felony offenses. The pretrial service program was required to include risk assessments for defendants, background and criminal history background investigations, recommendations for conditions of pretrial release, monitoring and supervision of defendants on pretrial release for compliance with pretrial conditions, to assure the defendant's appearance at all court proceedings, and to report violations of pretrial related conditions to the district court.

House Bill No. 1015 (2019) appropriated \$755,034 of ongoing funding from the general fund and provided 7 full-time equivalent (FTE) positions for the pretrial service pilot program. The Department of Corrections and Rehabilitation were required to establish a pretrial services program as a pilot project in three judicial districts of the state during the 2019-21 biennium. The bill directed the department and the judicial branch to collaborate with each other and with the Commission on Legal Counsel for Indigents and county and regional corrections to develop guidelines and procedures for the administration of a pretrial service program for individuals charged with felony and misdemeanor offenses in district court. The bill required the department and the judicial branch to provide a report regarding the process and outcome measures of the pretrial services program. In 2020, a pretrial services pilot project was launched in the East Central, North Central, and South Central Judicial Districts.

The Department of Corrections and Rehabilitation Review Committee received testimony during the 2020-21 interim regarding the pretrial services pilot project indicating the goal of pretrial services was to reduce incarceration, criminal activity, and failures to appear at a trial while connecting defendants with services in the community. Pretrial services include collection and analysis of defendant information, provision of information to the court, and supervision of defendants. Testimony also indicated the pilot project would randomly select defendants in the North Central, South Central, and East Central Judicial Districts to receive pretrial services with the intention to be more selective in the population of defendants selected to receive pretrial services in the future. Since its launch, the pilot project has expanded to include the Northeast Judicial District with the expansion into Devils Lake.

The 2021 Legislative Assembly provided an additional \$882,352 in funding from the general fund for 5 new FTE positions to provide a total of \$1,637,386. The 2023 Legislative Assembly added \$754,765 from the general fund for 3 new FTE positions for pretrial services. The 2023 Legislative Assembly also appropriated \$1,000,000 one-time funding and an FTE position for a prosecution-led diversion supervision pilot program.

### **ELIGIBILITY FOR PRETRIAL SERVICES**

To be eligible for pretrial services, a defendant must be in custody and may not be on supervised probation or parole. If a defendant is identified as being on supervision from another jurisdiction, every effort will be made by the Department of Corrections and Rehabilitation to notify the jurisdiction through appropriate channels. Additionally, to be eligible for the program a defendant must be a North Dakota resident with an address in a pretrial judicial district, must reconcile all outstanding warrants or holds from other jurisdictions, be charged with an offense of a Class A misdemeanor or greater, and be in district court. Pretrial services are eligible only for new cases in a jurisdiction participating in the program.

### **PRETRIAL RELEASE PROCESS**

The pretrial process is initiated at the point of arrest or alternatively at the point of citation and summons. The pretrial process continues until adjudication of the pending charge or case. If a citation or summons is issued, the booking and release decision process can be skipped with the summons or citation serving as a promise to appear in court. If probable cause exists to believe that the arrested person has committed a criminal offense, a complaint or information must be filed in the county where the offense was allegedly committed. A copy of the complaint or information must be given within a reasonable time to the arrested person and to any magistrate before whom the arrested person is brought.

#### **Initial Appearance**

At the initial appearance, the magistrate or judge must inform the defendant of the charge against the defendant and the defendant's rights, including the right to be admitted to bail under Rule 46 of the North Dakota Rules of Criminal Procedure. The magistrate must order the person released pending trial on the person's personal recognizance or on execution of an unsecured appearance bond in an amount specified by the magistrate, unless the magistrate determines, in the exercise of the magistrate's discretion, that unconditional releases will not reasonably assure the appearance of the person as required.

#### **Factors for Determining Bond**

In determining conditions of release that will reasonably assure appearance of a person, the magistrate, based on available information, must consider the following:

- The nature and circumstances of the offense charged;
- The weight of the evidence against the person;
- The person's family ties, employment, financial resources, character, and mental condition;
- The length of the person's residence in the community;
- The person's record of convictions;
- The person's record of appearance at court proceedings or of flight to avoid prosecution or failure to appear voluntarily at court proceedings; and
- The nature and seriousness of the danger to any person or the community posed by the person's release.

#### **Conditions of Release**

If the magistrate concludes an unconditional release is not appropriate, the magistrate may impose any release conditions that will reasonably assure the appearance of the person for trial including:

- Placing the person in the custody of a designated person or organization agreeing to supervise the person;
- Requiring the person to maintain employment, or, if unemployed, to actively seek employment;
- Requiring the person to maintain or begin an educational program;
- Placing restrictions on the travel, association, or place of abode of the person during the period of release;
- Requiring the person to avoid all contact with an alleged victim of the crime or with a potential witness who may testify concerning the offense;
- Requiring the person to report on a regular basis to a designated law enforcement agency, or any other agency;
- Requiring the person to comply with a specified curfew;
- Requiring the person to refrain from possessing a firearm, destructive device, or other dangerous weapon;
- Requiring the person to refrain from any use of alcohol, or any use of a narcotic drug or other controlled substance without a prescription by a licensed medical practitioner;
- Requiring the person to undergo available medical, psychological, or psychiatric treatment, including treatment for drug or alcohol dependency, and to remain in a specified institution if required for that purpose;
- Requiring the execution of an appearance bond in a specified amount and the deposit with the court of cash or other security as directed, in an amount not to exceed 10 percent of the amount of the bond, which deposit must be returned on performance of the release conditions;
- Requiring the execution of a bail bond with sufficient solvent sureties, or the deposit of cash in lieu of a bail bond; or
- Imposing any other conditions reasonably necessary to assure appearance as required, including a condition requiring the return of the person to custody after a specified time of day.

### **Review Hearing**

A person for whom release conditions are imposed who continues to be detained 48 hours after the release hearing due to an inability to meet the conditions may, upon request, have the conditions reviewed by a magistrate. A magistrate ordering the release of a person on any condition specified in a release order may amend the order at any time to impose additional or different conditions of release.

### **PRETRIAL NATIONAL POLICY - USE OF FINANCIAL CONDITIONS**

In most states, financial conditions of release are available to courts when setting release conditions for defendants. Recently, states have begun limiting the scope of cases and circumstances in which financial conditions may be used by the courts. This is due to increasing numbers of individuals being held in custody during the pretrial process.

Illinois is the first and only state to completely eliminate financial conditions in 2023. States like New York have enacted laws limiting, but not eliminating, financial conditions of release. Additionally, New York has the broadest laws restricting financial conditions of release by prohibiting financial release conditions in most misdemeanor and nonviolent felony cases. Colorado prohibits the use of financial conditions of release in most traffic and petty cases unless payment results in a timelier release of the individual.

Other states continue to limit the impact of financial conditions of release. Texas enacted laws that contain a presumption of inability to pay in certain cases, if an individual cannot make bond after 48 hours. New Hampshire and Mississippi prohibit courts from imposing a financial condition that would result in detention solely because of inability to pay.

States have funded research to evaluate pretrial systems and the use of financial conditions. A new Minnesota law instructs the Minnesota Justice Research Center to study a report on pretrial practices, including the use of bail as a condition of pretrial release. Vermont also enacted a law that instructs the state sentencing commission to identify the conditions that would be required to move toward the elimination of the use of financial conditions of release and make a recommendation as to whether money bail should be eliminated in the state.

Under North Dakota law, an individual is presumed to be released without bond. If a judge determines that unconditional release will not reasonably assure the appearance of the individual, the court is required to consider several factors including the individual's financial resources when determining a bond amount.

### **RECENT LEGISLATION REGARDING BAIL SCHEDULE**

During the 68<sup>th</sup> legislative session the Legislative Assembly passed House Bill No. 1453 (2023) which directed the North Dakota Supreme Court to create a uniform bail schedule in cooperation with the state district courts to apply when an individual has been taken into custody and has not yet appeared before the district court for violation of a state offense. The bill provides factors the Supreme Court must consider when setting the standard bail amounts and provides the court with the discretion to adjust the standard bail amount as needed or at the request of the district court.

The Supreme Court, in response, enacted Rule 63 of the North Dakota Supreme Court Administrative Rules to apply to the period from the initial detention of a defendant until the defendant is seen by a judicial officer. The rule acknowledges the initial determination is made by law enforcement and correctional facilities and not by the court regarding whether to arrest and hold a person alleged to have committed a crime until that person can be seen by a judicial officer. Because of this, Administrative Rule 63 is suggestive only and is not binding upon law enforcement and correctional facilities.

### **SUGGESTED STUDY APPROACH**

The committee may want to receive testimony from the Department of Corrections and Rehabilitation, the Supreme Court, district court judges, the North Dakota Association of Counties, and the North Dakota Sheriffs' Association regarding a review of 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, and the costs and saving associated with the programs operating in the state and opportunities to reinvest savings to improve re-entry outcomes.

ATTACH: 1