

**FISCAL NOTE**  
**Requested by Legislative Council**  
**04/17/2017**

Revised  
 Amendment to: HB 1041

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>			\$0	\$1,532,785	\$0	\$1,862,706
<b>Expenditures</b>			\$(1,832,456)	\$1,532,785	\$(2,640,709)	\$1,862,706
<b>Appropriations</b>			\$110,916	\$1,532,785	\$122,292	\$1,862,706

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2015-2017 Biennium	2017-2019 Biennium	2019-2021 Biennium
<b>Counties</b>			
<b>Cities</b>			
<b>School Districts</b>			
<b>Townships</b>			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Relates to probation, medical parole, grading of offenses, sentence reduction, treatment and counseling services, access to nutrition assistance program, and creation of pretrial services pilot program.

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

See attached document

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The Department of Human Services would receive \$1,532,785 of federal SNAP revenue in the 17-19 biennium and \$1,862,706 of federal SNAP revenue in the 19-21 biennium.  
 See attached document

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

Department of Corrections and Rehabilitation - NOTE that estimated fiscal impact is determined based on estimated expenditures to provide housing, meals, and medical care for 1,973 inmates for the 2017-19 biennium and 2,247 inmates for the 2019-21 biennium. The 2017-19 estimated fiscal impact is NOT based on either the 2017-19 DOCR base budget or the revised executive recommendation.

2017-19 Adult Services - (\$1,943,372) - 100% General Funds  
 2019-21 Adult Services - (\$2,763,001) - 100% General Funds

In the 17-19 biennium the Department of Human Services would incur additional grant expenditures of \$1,643,701, of which, \$110,916 would be general fund, to provide SNAP and TANF benefits to individuals convicted of a felony offense that has as an element the possession, use, or distribution of a controlled substance. For the 19-21 biennium an increase of \$1,984,998 in grant expenditures, of which \$122,292 is general fund, is anticipated.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Department of Corrections and Rehabilitation - Appropriation levels in both the base budget and the revised executive recommendation are under funded to a greater degree than the sum of the calculated savings.

Section 19 provides the Department of Human Service with a total appropriation of \$1,643,701, of which, \$110,916 would be general funds, and \$1,532,785 are federal funds to implement Sections 15 and 16. For the 19-21 biennium an appropriation increase of \$1,984,998, of which \$122,292 is general fund would be needed.

**Name:** Dave Krabbenhoft

**Agency:** Department of Corrections and Rehabilitation

**Telephone:** 701-328-6135

**Date Prepared:** 04/17/2017



NORTH DAKOTA

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& Rehabilitation

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Doug Burgum, Governor  
Leann K. Bertsch, Director

To follow is analysis for the fiscal notes relating to HB 1041.

Section 1: Moves the authority to establish criteria and administer good time in correctional facilities (county) from the presiding judge of the judicial district where the facility is located to the correctional facility administrator.

***No fiscal impact to the DOCR.***

***Per the ND Association of Counties fiscal impact to counties will be minimal.***

Section 2 and 7: Sections 2 and 7 should be looked at together. Section 2 authorizes the DOCR to credit an individual sentence reduction for time spent in custody before sentencing to the legal and physical custody of the DOCR and affirms current law which does not allow for crediting time spent on probation supervision towards incarceration. Section 7 authorizes the court to award sentence reduction of up to five days per month when establishing the jail time to be credited.

***Estimated fiscal impact to the DOCR for 2017-19 biennium is (\$411,267) and for 2019-21 biennium is (\$894,082). The fiscal impact assumes an average of 15 days will be credited to all new arrivals as of 7/1/16. Adoption of these sections will reduce the estimated average daily population by 6 for the 2017-19 biennium, and by 14 for the 2019-21 biennium.***

Section 3: Revises the current emergency parole law to more specifically medical parole for serious or terminal medical conditions and authorizes the board to grant a medical parole for individuals subject to the mandatory armed offender law and those sentenced to life and must serve a minimum of 30 years less performance based sentence reduction. This will impact an estimated one to two individuals per year. Although the number of individuals this impacts is miniscule, there may be very high costs associated with medical care for serious medical cases and end-of-life needs as well as a humane aspect that cannot be overlooked.

***Due to the variability, uncertainty, and unique circumstances surrounding the necessary medical care specific to each individual case, estimating a specific fiscal impact is impractical and could be misleading.***

Section 4: Updates mandated domestic violence treatment to include an evaluation and treatment program as determined by the court.

***No fiscal impact to the DOCR.***

Section 5: Removes the blanket inclusion for automobiles, aircraft or other motor propelled vehicles. If stolen, individual may still be charged as a C felony and the state would have to prove the value vehicle to be more than one thousand dollars.

***Not able to estimate fiscal impact, if any, to the DOCR.***

Section 8: Adds the following sanction, as a condition of probation, to the list of available intermediate measures for persons on probation with the DOCR;

One period of incarceration during a period of probation not to exceed thirty consecutive days in lieu of a petition for revocation of probation.

***Due to the variability, uncertainty, and unique circumstances surrounding the application of intermediate sanctions, estimating a specific fiscal impact is impractical and could be misleading.***

Section 9: When the court sentences an individual for a class C felony offense or an A misdemeanor it is presumed at the time of initial sentencing that the defendant is to be sentenced to probation except for an offense involving domestic violence, an offense subject to registration under section 12.1-32-15, an offense involving a firearm or dangerous weapon, explosive, or incendiary device, or if a mandatory term of incarceration is required by law.

The court can also depart from the presumption if there are aggravating factors to justify a departure and those factors are made a part of the record at the time of sentencing. Aggravating factors include:

- Any prior plea or finding of guilt of a class A misdemeanor or felony offense
- The age and vulnerability of the victim or the abuse of trust
- Threats or coercion in the commission of the offense

Section 9 does not preclude the court from deferring imposition of sentence or imposing a term of incarceration with credit for time spent in custody, so long as the execution of the sentence is suspended.

***Estimated fiscal impact to the DOCR for the 2017-19 biennium is (\$1,104,616) and for the 2019-21 biennium is (\$1,368,750). Adoption of these sections will reduce the estimated average daily population by 22 for the 2017-19 biennium and by 25 for the 2019-21 biennium.***

Sections 10: Reduces the penalty for ingestion of marijuana from an A misdemeanor to a B misdemeanor. It may have some city and county implications because the B misdemeanor could be addressed in municipal court.

***No fiscal impact to the DOCR.***

***Per the ND Association of Counties fiscal impact to counties will be minimal.***

Section 11: Reduces the penalty for ingestion of a controlled substance analog from an C felony to a A misdemeanor for a first offense and retains the penalty as an C felony any second or subsequent offense.

***No fiscal impact to the DOCR.***

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Section 12: Reduces possession of a controlled substance or possession of a controlled substance analog from a class C felony to a class A misdemeanor for a first offense and retains C felony for any second or subsequent offense. Changes the penalty enhancement provision from one thousand feet of a school to on the real property of a school.

It would also authorize the DOCR to release an individual from incarceration to a probation period upon the individual's successful completion of a drug and alcohol treatment program. It also clarifies manufacture, delivery and intent to deliver for purposes of offenses under this chapter.

***Estimated fiscal impact to the DOCR for 2017-19 biennium is (\$427,489) and for 2019-21 biennium is (\$500,169). Adoption of this section will reduce the estimated average daily population by 8 for the 2017-19 biennium, and by 9 for the 2019-21 biennium.***

Section 13: Adds as an aggravating factor, if the offense occurs during a school sponsored activity or while school is session and reduces the distance for penalty enhancement for manufacture, delivery or possession with intent to manufacture or deliver a controlled substance from one thousand feet of a preschool facility, elementary or secondary school or public career and technical education school to 300 feet of a preschool facility, elementary or secondary school or public career and technical education school. This change drops child care facilities and public or private colleges or universities from aggravating factors.

***No fiscal impact to the DOCR.***

Section 14: This section will allow the court to terminate probation when the individual completes a drug court program. This change is driven by the current DUI law which mandates a penalty of a minimum amount of time for supervised probation in the case of an A misdemeanor of one year and two years for a C felony.

***No fiscal impact to the DOCR.***

Section 15: A change to the implied consent DUI testing requirements.

***No fiscal impact to the DOCR.***

Section 16: Per the ND Department of Human Services:

Estimated fiscal impact of \$1,532,785, of which all is federal funds, due to the Department of Human Services not denying SNAP benefits to those who have been convicted of a felony offense that has as an element the possession, use, or distribution of a controlled substance. It is estimated for the 17-19 biennium approximately 450 additional individuals would receive SNAP benefits each month. The estimated individuals for the 19-21 biennium is approximately 496 at an estimated cost of \$1,862,706, of which all would be federal funds.

Section 17: Per the ND Department of Human Services:

Estimated fiscal impact of \$110,916, of which all is general fund, due to the Department of Human Services not denying TANF benefits to those who have been convicted of a felony offense that has as an element the possession, use, or distribution of a controlled substance. It is estimated for the 17-19 biennium approximately 20 additional individuals would receive TANF benefits each month. The estimated individuals for the 19-21 biennium is approximately 22 at an estimated cost of \$122,292, of which all would be general fund.

Section 18: Allows faith based organizations to provide addiction services.

***No fiscal impact to the DOCR.***

Section 19: Authorizes a pretrial services project that may reduce the number of people held in jail on bond; thereby, freeing up limited jail space.

***DOCR will provide appropriate training and technical assistance within approved agency appropriations.***

Section 20: Requires DOCR and the Supreme Court to provide a report regarding justice reinvestment initiative to legislative management and the sixty-sixth legislative assembly.

***No fiscal impact to the DOCR.***

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2017-19 Adult Services - (\$2,100,188) - 100% General Funds  
 2019-21 Adult Services - (\$2,940,736) - 100% General Funds

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***No fiscal impact to the DOCR.***

***Per the ND Association of Counties fiscal impact to counties will be minimal.***

Section 2 and 6: Sections 2 and 6 should be looked at together. Section 2 authorizes the DOCR to credit an individual sentence reduction for time spent in custody before sentencing to the legal and physical custody of the DOCR and affirms current law which does not allow for crediting time spent on probation supervision towards incarceration. Section 6 authorizes the court to award sentence reduction of up to five days per month when establishing the jail time to be credited.

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Section 5: Removes the blanket inclusion for automobiles, aircraft or other motor propelled vehicles. If stolen, individual may still be charged as a C felony and the state would have to prove the value vehicle to be more than one thousand dollars.



***Not able to estimate fiscal impact, if any, to the DOCR.***

Section 7: Adds the following sanction, as a condition of probation, to the list of available intermediate measures for persons on probation with the DOCR;

One period of incarceration during a period of probation not to exceed thirty consecutive days in lieu of a petition for revocation of probation.

***Due to the variability, uncertainty, and unique circumstances surrounding the application of intermediate sanctions, estimating a specific fiscal impact is impractical and could be misleading.***

Section 8: When the court sentences an individual for a class C felony offense or an A misdemeanor it is presumed at the time of initial sentencing that the defendant is to be sentenced to probation unless the offense is excluded from presumptive probation. Offenses excluded from presumptive probation include the following:

NDCC 12.1-06.2 – Any criminal street gang related crime

NDCC 12.1-08 - Obstruction, preventing arrest, hindering law enforcement, aiding in the consummation of a crime, bail jumping, escape, inciting or leading a riot in a correctional facility, introducing or possessing escape contraband, harboring a runaway and refusing to halt.

NDCC 12.1-09 - Tampering with a witness, informant or evidence, harassment of or communicating with jurors and eavesdropping on jury deliberations.

NDCC 12.1-16-03 – Negligent homicide

NDCC 12.1-17 – Simple assault (includes domestic) or on a peace officer, correctional officer or employee of state hospital all acting in an official capacity, assault, aggravated assault, reckless endangerment, terrorizing, menacing, criminal coercion, harassment, stalking, distribution of intimate images without or against consent, kill or injure a law enforcement animal, hazing, contact bodily fluids.

NDCC 12.1-18 – Kidnapping, felonious restraint, unlawful imprisonment, removal of child from state in violation of custody decree.

NDCC 12.1-22 – Robbery, criminal trespass, unlawful entry into a vehicle, stowing away.

NDCC 12.1-23-02.1 – Disarming or attempting to disarm a law enforcement officer.

NDCC 12.1-25 – Inciting a riot, arming rioters.

NDCC 12.1-32-15 – All registerable sex offenses and registration as a felony offender against children.

NDCC 12.1-36 – Female genital mutilation

NDCC 14-07.1-06 – Violation of a [domestic violence] protection order

In addition the exclusion from presumptive probation also includes any of the above offenses where there was attempt, accomplice to the offense or conspiracy to commit the offense, any offense involving an attempt to commit an offense involving a firearm or dangerous weapon or serving as an accomplice or conspirator to commit an offense involving a firearm or dangerous weapon, and lastly, any offense that includes a mandatory term of incarceration.

The court can also depart from the presumption if there are aggravating factors to justify a departure and those factors are made a part of the record at the time of sentencing. Aggravating factors include:

Any prior plea or finding of guilt of a class A misdemeanor or felony offense

The age and vulnerability of the victim or the abuse of trust

Threats or coercion in the commission of the offense

Section 8 does not preclude the court from deferring imposition of sentence or imposing a term of incarceration with credit for time spent in custody, so long as the execution of the sentence is suspended.

***Estimated fiscal impact to the DOCR for the 2017-19 biennium is (\$1,104,616) and for the 2019-21 biennium is (\$1,368,750). Adoption of these sections will reduce the estimated average daily population by 22 for the 2017-19 biennium and by 25 for the 2019-21 biennium.***

Sections 9: Reduces the penalty for ingestion of a controlled substance from an A misdemeanor to a B misdemeanor for a first offense and retains the penalty as an A misdemeanor for any second or subsequent offense.

***No fiscal impact to the DOCR.***

***Per the ND Association of Counties fiscal impact to counties will be minimal.***

Section 10: Reduces the penalty for ingestion of a controlled substance analog from an A misdemeanor to a B misdemeanor for a first offense and retains the penalty as an A misdemeanor for any second or subsequent offense. This has no financial impact on the DOCR. It may have some city and county implications because the B misdemeanor could be addressed in municipal court.

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Section 11: Reduces possession of a controlled substance or possession of a controlled substance analog from a class C felony to a class A misdemeanor and penalty enhancement provision from one thousand feet of a school to on the real property of a school.

It would also authorize the DOCR to release an individual from incarceration to a probation period upon the individual's successful completion of a drug and alcohol treatment program. It also clarifies manufacture, delivery and intent to deliver for purposes of offenses under this chapter.

***Estimated fiscal impact to the DOCR for 2017-19 biennium is (\$427,489) and for 2019-21 biennium is (\$500,169). Adoption of this section will reduce the estimated average daily population by 8 for the 2017-19 biennium, and by 9 for the 2019-21 biennium.***

Section 12: Reduces the distance for penalty enhancement for manufacture, delivery or possession with intent to manufacture or deliver a controlled substance from one thousand feet of a child care or preschool facility, elementary or secondary school or college to on the real property of a child care or preschool facility, elementary or secondary school or college.

***No fiscal impact to the DOCR.***

Section 13: Reduces possession of drug paraphernalia from a C felony to an A misdemeanor and marijuana paraphernalia from an A misdemeanor to a B misdemeanor. This may impact the DOCR in two ways. First, individuals convicted of a C felony drug paraphernalia are eligible for up to three years of supervised probation on initial sentence and up to a total of five years upon revocation. Individuals convicted of an A misdemeanor are eligible for up to two years of supervised probation and up to a total of three years upon revocation. This would reduce the eligible time for supervision upon initial sentence and by revocation by one year each. It would also reduce the maximum incarceration penalty from five years to one year. This change may also reduce impact on states attorneys, indigent defense counsel, jails and the courts. Misdemeanor offenses can have bail set by a bond schedule rather than having to make an appearance before the court, preliminary hearings are not required and indigent defense counsel may not be necessary if incarceration is not being considered as part of the sentence. Any fiscal implications to the aforementioned groups would have to be addressed by them.

***Estimated fiscal impact to the DOCR for 2017-19 biennium is (\$156,816) and for 2019-21 biennium is (\$177,735). Adoption of this section will reduce the estimated average daily population by 3 for the 2017-19 biennium, and by 3 for the 2019-21 biennium.***

Section 14: This section will allow the court to terminate probation when the individual completes a drug court program. This change is driven by the current DUI law which mandates a penalty of a minimum amount of time for supervised probation in the case of an A misdemeanor of one year and two years for a C felony.

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Section 15: Per the ND Department of Human Services:

Estimated fiscal impact of \$1,532,785, of which all is federal funds, due to the Department of Human Services not denying SNAP benefits to those who have been convicted of a felony offense that has as an element the possession, use, or distribution of a controlled substance. It is estimated for the 17-19 biennium approximately 450 additional individuals would receive SNAP benefits each month. The estimated individuals for the 19-21 biennium is approximately 496 at an estimated cost of \$1,862,706, of which all would be federal funds.

Section 16: Per the ND Department of Human Services:

Estimated fiscal impact of \$110,916, of which all is general fund, due to the Department of Human Services not denying TANF benefits to those who have been convicted of a felony offense that has as an element the possession, use, or distribution of a controlled substance. It is estimated for the 17-19 biennium approximately 20 additional individuals would receive TANF benefits each month. The estimated individuals for the 19-21 biennium is approximately 22 at an estimated cost of \$122,292, of which all would be general fund.

Section 17: Authorizes a pretrial services project that may reduce the number of people held in jail on bond; thereby, freeing up limited jail space.

***DOCR will provide appropriate training and technical assistance within approved agency appropriations.***

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***No fiscal impact to the DOCR.***

***Per the ND Association of Counties fiscal impact to counties will be minimal.***

Section 2 and 6: Sections 2 and 6 should be looked at together. Section 2 authorizes the DOCR to credit an individual sentence reduction for time spent in custody before sentencing to the legal and physical custody of the DOCR and affirms current law which does not allow for crediting time spent on probation supervision towards incarceration. Section 6 authorizes the court to award sentence reduction of up to five days per month when establishing the jail time to be credited.

***Estimated fiscal impact to the DOCR for 2017-19 biennium is (\$411,267) and for 2019-21 biennium is (\$894,082). The fiscal impact assumes an average of 15 days will be credited to all new arrivals as of 7/1/16. Adoption of these sections will reduce the estimated average daily population by 6 for the 2017-19 biennium, and by 14 for the 2019-21 biennium.***

Section 3: Revises the current emergency parole law to more specifically medical parole for serious or terminal medical conditions and authorizes the board to grant a medical parole for individuals subject to the mandatory armed offender law and those sentenced to life and must serve a minimum of 30 years less performance based sentence reduction. This will impact an estimated one to two individuals per year. Although the number of individuals this impacts is miniscule, there may be very high costs associated with medical care for serious medical cases and end-of-life needs as well as a humane aspect that cannot be overlooked.

***Due to the variability, uncertainty, and unique circumstances surrounding the necessary medical care specific to each individual case, estimating a specific fiscal impact is impractical and could be misleading.***

Section 4: Updates mandated domestic violence treatment to include an evaluation and treatment program as determined by the court.

***No fiscal impact to the DOCR.***

Section 5: Removes the blanket inclusion for automobiles, aircraft or other motor propelled vehicles. If stolen, individual may still be charged as a C felony and the state would have to prove the value vehicle to be more than one thousand dollars.

***Not able to estimate fiscal impact, if any, to the DOCR.***

Section 7: Adds the following sanction, as a condition of probation, to the list of available intermediate measures for persons on probation with the DOCR;

One period of incarceration during a period of probation not to exceed thirty consecutive days in lieu of a petition for revocation of probation.

***Due to the variability, uncertainty, and unique circumstances surrounding the application of intermediate sanctions, estimating a specific fiscal impact is impractical and could be misleading.***

Section 8: When the court sentences an individual for a class C felony offense or an A misdemeanor it is presumed at the time of initial sentencing that the defendant is to be sentenced to probation unless the offense is excluded from presumptive probation. Offenses excluded from presumptive probation include the following:

NDCC 12.1-06.2 – Any criminal street gang related crime

NDCC 12.1-08 - Obstruction, preventing arrest, hindering law enforcement, aiding in the consummation of a crime, bail jumping, escape, inciting or leading a riot in a correctional facility, introducing or possessing escape contraband, harboring a runaway and refusing to halt.

NDCC 12.1-09 - Tampering with a witness, informant or evidence, harassment of or communicating with jurors and eavesdropping on jury deliberations.

NDCC 12.1-16-03 – Negligent homicide

NDCC 12.1-17 – Simple assault (includes domestic) or on a peace officer, correctional officer or employee of state hospital all acting in an official capacity, assault, aggravated assault, reckless endangerment, terrorizing, menacing, criminal coercion, harassment, stalking, distribution of intimate images without or against consent, kill or injure a law enforcement animal, hazing, contact bodily fluids.

NDCC 12.1-18 – Kidnapping, felonious restraint, unlawful imprisonment, removal of child from state in violation of custody decree.

NDCC 12.1-22 – Robbery, criminal trespass, unlawful entry into a vehicle, stowing away.

NDCC 12.1-23-02.1 – Disarming or attempting to disarm a law enforcement officer.

NDCC 12.1-25 – Inciting a riot, arming rioters.

NDCC 12.1-32-15 – All registerable sex offenses and registration as a felony offender against children.

NDCC 12.1-36 – Female genital mutilation

NDCC 14-07.1-06 – Violation of a [domestic violence] protection order

In addition the exclusion from presumptive probation also includes any of the above offenses where there was attempt, accomplice to the offense or conspiracy to commit the offense, any offense involving an attempt to commit an offense involving a firearm or dangerous weapon or serving as an accomplice or conspirator to commit an offense involving a firearm or dangerous weapon, and lastly, any offense that includes a mandatory term of incarceration.

The court can also depart from the presumption if there are aggravating factors to justify a departure and those factors are made a part of the record at the time of sentencing. Aggravating factors include:

Any prior plea or finding of guilt of a class A misdemeanor or felony offense

The age and vulnerability of the victim or the abuse of trust

Threats or coercion in the commission of the offense

Section 8 does not preclude the court from deferring imposition of sentence or imposing a term of incarceration with credit for time spent in custody, so long as the execution of the sentence is suspended.

***Estimated fiscal impact to the DOCR for the 2017-19 biennium is (\$1,104,616) and for the 2019-21 biennium is (\$1,368,750). Adoption of these sections will reduce the estimated average daily population by 22 for the 2017-19 biennium and by 25 for the 2019-21 biennium.***

Sections 9: Reduces the penalty for ingestion of a controlled substance from an A misdemeanor to a B misdemeanor for a first offense and retains the penalty as an A misdemeanor for any second or subsequent offense.

***No fiscal impact to the DOCR.***

***Per the ND Association of Counties fiscal impact to counties will be minimal.***

Section 10: Reduces the penalty for ingestion of a controlled substance analog from an A misdemeanor to a B misdemeanor for a first offense and retains the penalty as an A misdemeanor for any second or subsequent offense. This has no financial impact on the DOCR. It may have some city and county implications because the B misdemeanor could be addressed in municipal court.

***No fiscal impact to the DOCR.***

***Per the ND Association of Counties fiscal impact to counties will be minimal.***

Section 11: Reduces possession of a controlled substance or possession of a controlled substance analog from a class C felony to a class A misdemeanor and penalty enhancement provision from one thousand feet of a school to on the real property of a school.

It would also authorize the DOCR to release an individual from incarceration to a probation period upon the individual's successful completion of a drug and alcohol treatment program. It also clarifies manufacture, delivery and intent to deliver for purposes of offenses under this chapter.

***Estimated fiscal impact to the DOCR for 2017-19 biennium is (\$427,489) and for 2019-21 biennium is (\$500,169). Adoption of this section will reduce the estimated average daily population by 8 for the 2017-19 biennium, and by 9 for the 2019-21 biennium.***

Section 12: Reduces the distance for penalty enhancement for manufacture, delivery or possession with intent to manufacture or deliver a controlled substance from one thousand feet of a child care or preschool facility, elementary or secondary school or college to on the real property of a child care or preschool facility, elementary or secondary school or college.

***No fiscal impact to the DOCR.***

Section 13: Reduces possession of drug paraphernalia from a C felony to an A misdemeanor and marijuana paraphernalia from an A misdemeanor to a B misdemeanor. This may impact the DOCR in two ways. First, individuals convicted of a C felony drug paraphernalia are eligible for up to three years of supervised probation on initial sentence and up to a total of five years upon revocation. Individuals convicted of an A misdemeanor are eligible for up to two years of supervised probation and up to a total of three years upon revocation. This would reduce the eligible time for supervision upon initial sentence and by revocation by one year each. It would also reduce the maximum incarceration penalty from five years to one year. This change may also reduce impact on states attorneys, indigent defense counsel, jails and the courts. Misdemeanor offenses can have bail set by a bond schedule rather than having to make an appearance before the court, preliminary hearings are not required and indigent defense counsel may not be necessary if incarceration is not being considered as part of the sentence. Any fiscal implications to the aforementioned groups would have to be addressed by them.

***Estimated fiscal impact to the DOCR for 2017-19 biennium is (\$156,816) and for 2019-21 biennium is (\$177,735). Adoption of this section will reduce the estimated average daily population by 3 for the 2017-19 biennium, and by 3 for the 2019-21 biennium.***

Section 14: This section will allow the court to terminate probation when the individual completes a drug court program. This change is driven by the current DUI law which mandates a penalty of a minimum amount of time for supervised probation in the case of an A misdemeanor of one year and two years for a C felony.



***No fiscal impact to the DOCR.***

Section 15: Per the ND Department of Human Services:

Estimated fiscal impact of \$1,532,785, of which all is federal funds, due to the Department of Human Services not denying SNAP benefits to those who have been convicted of a felony offense that has as an element the possession, use, or distribution of a controlled substance. It is estimated for the 17-19 biennium approximately 450 additional individuals would receive SNAP benefits each month. The estimated individuals for the 19-21 biennium is approximately 496 at an estimated cost of \$1,862,706, of which all would be federal funds.

Section 16: Per the ND Department of Human Services:

Estimated fiscal impact of \$110,916, of which all is general fund, due to the Department of Human Services not denying TANF benefits to those who have been convicted of a felony offense that has as an element the possession, use, or distribution of a controlled substance. It is estimated for the 17-19 biennium approximately 20 additional individuals would receive TANF benefits each month. The estimated individuals for the 19-21 biennium is approximately 22 at an estimated cost of \$122,292, of which all would be general fund.

Section 17: Authorizes a pretrial services project that may reduce the number of people held in jail on bond; thereby, freeing up limited jail space.

***DOCR will provide appropriate training and technical assistance within approved agency appropriations.***

**FISCAL NOTE**  
**Requested by Legislative Council**  
**02/08/2017**

Amendment to: HB 1041

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>			\$0	\$1,532,785	\$0	\$1,862,706
<b>Expenditures</b>			\$(1,432,824)	\$1,532,785	\$(2,261,995)	\$1,862,706
<b>Appropriations</b>			\$110,916	\$1,532,785	\$122,292	\$1,862,706

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2015-2017 Biennium	2017-2019 Biennium	2019-2021 Biennium
<b>Counties</b>			
<b>Cities</b>			
<b>School Districts</b>			
<b>Townships</b>			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Relates to probation, medical parole, grading of offenses, sentence reduction, treatment and counseling services, access to nutrition assistance program, and creation of pretrial services pilot program.

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

See attached document

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The Department of Human Services would receive \$1,532,785 of federal SNAP revenue in the 17-19 biennium and \$1,862,706 of federal SNAP revenue in the 19-21 biennium.  
 See attached document

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

Department of Corrections and Rehabilitation - NOTE that estimated fiscal impact is determined based on estimated expenditures to provide housing, meals, and medical care for 1,973 inmates for the 2017-19 biennium and 2,247 inmates for the 2019-21 biennium. The 2017-19 estimated fiscal impact is NOT based on either the 2017-19 DOCR base budget or the revised executive recommendation.

2017-19 Adult Services - (\$1,543,739) - 100% General Funds - 3.0 New FTE  
 2019-21 Adult Services - (\$2,384,287) - 100% General Funds

In the 17-19 biennium the Department of Human Services would incur additional grant expenditures of \$1,643,701, of which, \$110,916 would be general fund, to provide SNAP and TANF benefits to individuals convicted of a felony offense that has as an element the possession, use, or distribution of a controlled substance. For the 19-21 biennium an increase of \$1,984,998 in grant expenditures, of which \$122,292 is general fund, is anticipated.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Department of Corrections and Rehabilitation - Appropriation levels in both the base budget and the revised executive recommendation are under funded to a greater degree than the sum of the calculated savings.

The Department of Human Service would need an appropriation increase of \$1,643,701, of which, \$110,916 would be general fund, to the base level budget HB1012 and an increase of \$1,643,701, of which \$110,916 is general fund, to the executive budget recommendation HB1072 for the 17-19 biennium. For the 19-21 biennium an appropriation increase of \$1,984,998, of which \$122,292 is general fund would be needed.

**Name:** Dave Krabbenhoft

**Agency:** Department of Corrections and Rehabilitation

**Telephone:** 701-328-6135

**Date Prepared:** 02/09/2017



NORTH DAKOTA

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Doug Burgum, Governor  
Leann K. Bertsch, Director

To follow is analysis for the fiscal notes relating to HB 1041.

Section 1: Moves the authority to establish criteria and administer good time in correctional facilities (county) from the presiding judge of the judicial district where the facility is located to the correctional facility administrator.

***No fiscal impact to the DOCR.***

***Per the ND Association of Counties fiscal impact to counties will be minimal.***

Section 2 and 6: Sections 2 and 6 should be looked at together. Section 2 authorizes the DOCR to credit an individual sentence reduction for time spent in custody before sentencing to the legal and physical custody of the DOCR and affirms current law which does not allow for crediting time spent on probation supervision towards incarceration. Section 6 authorizes the court to award sentence reduction of up to five days per month when establishing the jail time to be credited.

***Estimated fiscal impact to the DOCR for 2017-19 biennium is (\$411,267) and for 2019-21 biennium is (\$894,082). The fiscal impact assumes an average of 15 days will be credited to all new arrivals as of 7/1/16. Adoption of these sections will reduce the estimated average daily population by 6 for the 2017-19 biennium, and by 14 for the 2019-21 biennium.***

Section 3: Revises the current emergency parole law to more specifically medical parole for serious or terminal medical conditions and authorizes the board to grant a medical parole for individuals subject to the mandatory armed offender law and those sentenced to life and must serve a minimum of 30 years less performance based sentence reduction. This will impact an estimated one to two individuals per year. Although the number of individuals this impacts is miniscule, there may be very high costs associated with medical care for serious medical cases and end-of-life needs as well as a humane aspect that cannot be overlooked.

***Due to the variability, uncertainty, and unique circumstances surrounding the necessary medical care specific to each individual case, estimating a specific fiscal impact is impractical and could be misleading.***

Section 4: Updates mandated domestic violence treatment to include an evaluation and treatment program as determined by the court.

***No fiscal impact to the DOCR.***

Section 5: Changes the threshold for a C felony theft of property or services stolen to exceed one thousand dollars to two thousand five hundred dollars and removes the blanket inclusion for automobiles, aircraft or other motor propelled vehicles.

If stolen, individual may still be charged as a C felony and the state would have to prove the value vehicle to be more than two thousand five hundred dollars.

***Not able to estimate fiscal impact, if any, to the DOCR.***

Section 7: Adds the following sanction, as a condition of probation, to the list of available intermediate measures for persons on probation with the DOCR;

One period of incarceration during a period of probation not to exceed thirty consecutive days in lieu of a petition for revocation of probation.

***Due to the variability, uncertainty, and unique circumstances surrounding the application of intermediate sanctions, estimating a specific fiscal impact is impractical and could be misleading.***

Sections 8 and 9: For the purpose of estimating fiscal impact the estimated effects section 8 and section 9 are combined. Section 8 - If the court revokes probation in cases of a suspended or deferred imposition of sentence where the allegations in the first petition for revocation of probation do not involve violence, use of a firearm or dangerous weapon, or an offense subject to registration under N.D.C.C. section 12.1-32-15 (sex offenses and child abuse) or the commission of a felony offense, then the court shall either continue the probation, require the defendant to serve up to 90 days of incarceration or revoke the probation and impose a sentence not to exceed 90 days. In all other cases, the court may revoke and impose any other sentence available at the time of initial sentencing or deferment.

Section 9 - When the court sentences an individual for a class C felony offense or an A misdemeanor it is presumed at the time of initial sentencing that the defendant is to be sentenced to probation unless the offense involves; domestic violence, stalking, human trafficking, domestic violence, child abuse, an offense involving a firearm or dangerous weapon or an offense where a mandatory term of incarceration is required by law. The court can also depart from the presumption if there are aggravating factors to justify a departure and those factors are made a part of the record at the time of sentencing. This section does not preclude the court from deferring imposition of sentence or imposing a term of incarceration with credit for time spent in custody, so long as the execution of the sentence is suspended.

***Estimated fiscal impact to the DOCR for the 2017-19 biennium is (\$1,104,616) and for the 2019-21 biennium is (\$1,368,750). Adoption of these sections will reduce the estimated average daily population by 22 for the 2017-19 biennium and by 25 for the 2019-21 biennium.***

Sections 10: Reduces the penalty for ingestion of a controlled substance from an A misdemeanor to a B misdemeanor for a first offense and retains the penalty as an A misdemeanor for any second or subsequent offense.

***No fiscal impact to the DOCR.***

***Per the ND Association of Counties fiscal impact to counties will be minimal.***

Section 11: Reduces the penalty for ingestion of a controlled substance analog from an A misdemeanor to a B misdemeanor for a first offense and retains the penalty as an A misdemeanor for any second or subsequent offense. This has no financial impact on the DOCR. It may have some city and county implications because the B misdemeanor could be addressed in municipal court.

***No fiscal impact to the DOCR.***

***Per the ND Association of Counties fiscal impact to counties will be minimal.***

**Section 12:** Reduces possession of a controlled substance or possession of a controlled substance analog from a class C felony to a class A misdemeanor and penalty enhancement provision from one thousand feet to five hundred feet of school. It would also authorize the DOCR to release an individual from incarceration to a probation period upon the individual's successful completion of a drug and alcohol treatment program. It also clarifies manufacture, delivery and intent to deliver for purposes of offenses under this chapter.

*Estimated fiscal impact to the DOCR for 2017-19 biennium is (\$427,489) and for 2019-21 biennium is (\$500,169). Adoption of this section will reduce the estimated average daily population by 8 for the 2017-19 biennium, and by 9 for the 2019-21 biennium.*

Section 13: Reduces the distance for penalty enhancement for manufacture, delivery or possession with intent to manufacture or deliver a controlled substance from one thousand feet to five hundred feet of a child care or preschool facility, elementary or secondary school or colleges.

*No fiscal impact to the DOCR.*

**Section 14:** Reduces possession of drug paraphernalia from a C felony to an A misdemeanor and marijuana paraphernalia from an A misdemeanor to a B misdemeanor. This may impact the DOCR in two ways. First, individuals convicted of a C felony drug paraphernalia are eligible for up to three years of supervised probation on initial sentence and up to a total of five years upon revocation. Individuals convicted of an A misdemeanor are eligible for up to two years of supervised probation and up to a total of three years upon revocation. This would reduce the eligible time for supervision upon initial sentence and by revocation by one year each. It would also reduce the maximum incarceration penalty from five years to one year. This change may also reduce impact on states attorneys, indigent defense counsel, jails and the courts. Misdemeanor offenses can have bail set by a bond schedule rather than having to make an appearance before the court, preliminary hearings are not required and indigent defense counsel may not be necessary if incarceration is not being considered as part of the sentence. Any fiscal implications to the aforementioned groups would have to be addressed by them.

*Estimated fiscal impact to the DOCR for 2017-19 biennium is (\$156,816) and for 2019-21 biennium is (\$177,735). Adoption of this section will reduce the estimated average daily population by 3 for the 2017-19 biennium, and by 3 for the 2019-21 biennium.*

Section 15: This section will allow the court to terminate probation when the individual completes a drug court program. This change is driven by the current DUI law which mandates a penalty of a minimum amount of time for supervised probation in the case of an A misdemeanor of one year and two years for a C felony.

*No fiscal impact to the DOCR.*

Section 16: Authorizes the expansion of the pool of qualified people to provide addiction treatment services in North Dakota according to qualifications expanded by various licensing boards.

*No fiscal impact to the DOCR.*

Section 17: Per the ND Department of Human Services:

Estimated fiscal impact of \$1,532,785, of which all is federal funds, due to the Department of Human Services not denying SNAP benefits to those who have been convicted of a felony offense that has as an element the possession, use, or distribution of a controlled substance. It is estimated for the 17-19 biennium approximately 450 additional individuals would receive SNAP benefits each month. The estimated individuals for the 19-21 biennium is approximately 496 at an estimated cost of \$1,862,706, of which all would be federal funds.

Section 18: Per the ND Department of Human Services:

Estimated fiscal impact of \$110,916, of which all is general fund, due to the Department of Human Services not denying TANF benefits to those who have been convicted of a felony offense that has as an element the possession, use, or distribution of a controlled substance. It is estimated for the 17-19 biennium approximately 20 additional individuals would receive TANF benefits each month. The estimated individuals for the 19-21 biennium is approximately 22 at an estimated cost of \$122,292, of which all would be general fund.

Section 19: Authorizes a pretrial services project that may reduce the number of people held in jail on bond; thereby, freeing up limited jail space and allowing the DOCR to supervise people on pretrial in the community.

*Estimated fiscal impact to the DOCR is dependent upon the population of the county selected for the pretrial services pilot project. For this estimate it is assumed that the DOCR would implement the pilot project in one of the higher populated counties and 3 new FTE's would be required.*

Salary and Fringe -	\$504,606	(\$4,626 per FTE per month salary plus fringe)
Operating -	<u>51,843</u>	(\$17,281 per FTE)
Total -	\$556,449	

**FISCAL NOTE**  
**Requested by Legislative Council**  
**02/08/2017**

Amendment to: HB 1041

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>			\$0	\$1,532,785	\$0	\$1,862,706
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<b>Appropriations</b>			\$110,916	\$1,532,785	\$122,292	\$1,862,706

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2015-2017 Biennium	2017-2019 Biennium	2019-2021 Biennium
<b>Counties</b>			
<b>Cities</b>			
<b>School Districts</b>			
<b>Townships</b>			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Relates to probation, medical parole, grading of offenses, sentence reduction, treatment and counseling services, access to nutrition assistance program, and creation of pretrial services pilot program.

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

See attached document

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The Department of Human Services would receive \$1,532,785 of federal SNAP revenue in the 17-19 biennium and \$1,862,706 of federal SNAP revenue in the 19-21 biennium.  
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- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

Department of Corrections and Rehabilitation - NOTE that estimated fiscal impact is determined based on estimated expenditures to provide housing, meals, and medical care for 1,973 inmates for the 2017-19 biennium and 2,247 inmates for the 2019-21 biennium. The 2017-19 estimated fiscal impact is NOT based on either the 2017-19 DOCR base budget or the revised executive recommendation.

2017-19 Adult Services - (\$1,543,739) - 100% General Funds - 3.0 New FTE  
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- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Department of Corrections and Rehabilitation - Appropriation levels in both the base budget and the revised executive recommendation are under funded to a greater degree than the sum of the calculated savings.

The Department of Human Service would need an appropriation increase of \$1,643,701, of which, \$110,916 would be general fund, to the base level budget HB1012 and an increase of \$1,643,701, of which \$110,916 is general fund, to the executive budget recommendation HB1072 for the 17-19 biennium. For the 19-21 biennium an appropriation increase of \$1,984,998, of which \$122,292 is general fund would be needed.

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**Date Prepared:** 02/09/2017



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Doug Burgum, Governor  
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To follow is analysis for the fiscal notes relating to HB 1041.

Section 1: Moves the authority to establish criteria and administer good time in correctional facilities (county) from the presiding judge of the judicial district where the facility is located to the correctional facility administrator.

***No fiscal impact to the DOCR.***

***Per the ND Association of Counties fiscal impact to counties will be minimal.***

Section 2 and 6: Sections 2 and 6 should be looked at together. Section 2 authorizes the DOCR to credit an individual sentence reduction for time spent in custody before sentencing to the legal and physical custody of the DOCR and affirms current law which does not allow for crediting time spent on probation supervision towards incarceration. Section 6 authorizes the court to award sentence reduction of up to five days per month when establishing the jail time to be credited.

***Estimated fiscal impact to the DOCR for 2017-19 biennium is (\$411,267) and for 2019-21 biennium is (\$894,082). The fiscal impact assumes an average of 15 days will be credited to all new arrivals as of 7/1/16. Adoption of these sections will reduce the estimated average daily population by 6 for the 2017-19 biennium, and by 14 for the 2019-21 biennium.***

Section 3: Revises the current emergency parole law to more specifically medical parole for serious or terminal medical conditions and authorizes the board to grant a medical parole for individuals subject to the mandatory armed offender law and those sentenced to life and must serve a minimum of 30 years less performance based sentence reduction. This will impact an estimated one to two individuals per year. Although the number of individuals this impacts is miniscule, there may be very high costs associated with medical care for serious medical cases and end-of-life needs as well as a humane aspect that cannot be overlooked.

***Due to the variability, uncertainty, and unique circumstances surrounding the necessary medical care specific to each individual case, estimating a specific fiscal impact is impractical and could be misleading.***

Section 4: Updates mandated domestic violence treatment to include an evaluation and treatment program as determined by the court.

***No fiscal impact to the DOCR.***

Section 5: Changes the threshold for a C felony theft of property or services stolen to exceed one thousand dollars to two thousand five hundred dollars and removes the blanket inclusion for automobiles, aircraft or other motor propelled vehicles.

If stolen, individual may still be charged as a C felony and the state would have to prove the value vehicle to be more than two thousand five hundred dollars.

***Not able to estimate fiscal impact, if any, to the DOCR.***

Section 7: Adds the following sanction, as a condition of probation, to the list of available intermediate measures for persons on probation with the DOCR;

One period of incarceration during a period of probation not to exceed thirty consecutive days in lieu of a petition for revocation of probation.

***Due to the variability, uncertainty, and unique circumstances surrounding the application of intermediate sanctions, estimating a specific fiscal impact is impractical and could be misleading.***

Sections 8 and 9: For the purpose of estimating fiscal impact the estimated effects section 8 and section 9 are combined. Section 8 - If the court revokes probation in cases of a suspended or deferred imposition of sentence where the allegations in the first petition for revocation of probation do not involve violence, use of a firearm or dangerous weapon, or an offense subject to registration under N.D.C.C. section 12.1-32-15 (sex offenses and child abuse) or the commission of a felony offense, then the court shall either continue the probation, require the defendant to serve up to 90 days of incarceration or revoke the probation and impose a sentence not to exceed 90 days. In all other cases, the court may revoke and impose any other sentence available at the time of initial sentencing or deferment.

Section 9 - When the court sentences an individual for a class C felony offense or an A misdemeanor it is presumed at the time of initial sentencing that the defendant is to be sentenced to probation unless the offense involves; domestic violence, stalking, human trafficking, domestic violence, child abuse, an offense involving a firearm or dangerous weapon or an offense where a mandatory term of incarceration is required by law. The court can also depart from the presumption if there are aggravating factors to justify a departure and those factors are made a part of the record at the time of sentencing. This section does not preclude the court from deferring imposition of sentence or imposing a term of incarceration with credit for time spent in custody, so long as the execution of the sentence is suspended.

***Estimated fiscal impact to the DOCR for the 2017-19 biennium is (\$1,104,616) and for the 2019-21 biennium is (\$1,368,750). Adoption of these sections will reduce the estimated average daily population by 22 for the 2017-19 biennium and by 25 for the 2019-21 biennium.***

Sections 10: Reduces the penalty for ingestion of a controlled substance from an A misdemeanor to a B misdemeanor for a first offense and retains the penalty as an A misdemeanor for any second or subsequent offense.

***No fiscal impact to the DOCR.***

***Per the ND Association of Counties fiscal impact to counties will be minimal.***

Section 11: Reduces the penalty for ingestion of a controlled substance analog from an A misdemeanor to a B misdemeanor for a first offense and retains the penalty as an A misdemeanor for any second or subsequent offense. This has no financial impact on the DOCR. It may have some city and county implications because the B misdemeanor could be addressed in municipal court.

***No fiscal impact to the DOCR.***

***Per the ND Association of Counties fiscal impact to counties will be minimal.***

**Section 12:** Reduces possession of a controlled substance or possession of a controlled substance analog from a class C felony to a class A misdemeanor and penalty enhancement provision from one thousand feet to five hundred feet of school. It would also authorize the DOCR to release an individual from incarceration to a probation period upon the individual's successful completion of a drug and alcohol treatment program. It also clarifies manufacture, delivery and intent to deliver for purposes of offenses under this chapter.

*Estimated fiscal impact to the DOCR for 2017-19 biennium is (\$427,489) and for 2019-21 biennium is (\$500,169). Adoption of this section will reduce the estimated average daily population by 8 for the 2017-19 biennium, and by 9 for the 2019-21 biennium.*

Section 13: Reduces the distance for penalty enhancement for manufacture, delivery or possession with intent to manufacture or deliver a controlled substance from one thousand feet to five hundred feet of a child care or preschool facility, elementary or secondary school or colleges.

*No fiscal impact to the DOCR.*

**Section 14:** Reduces possession of drug paraphernalia from a C felony to an A misdemeanor and marijuana paraphernalia from an A misdemeanor to a B misdemeanor. This may impact the DOCR in two ways. First, individuals convicted of a C felony drug paraphernalia are eligible for up to three years of supervised probation on initial sentence and up to a total of five years upon revocation. Individuals convicted of an A misdemeanor are eligible for up to two years of supervised probation and up to a total of three years upon revocation. This would reduce the eligible time for supervision upon initial sentence and by revocation by one year each. It would also reduce the maximum incarceration penalty from five years to one year. This change may also reduce impact on states attorneys, indigent defense counsel, jails and the courts. Misdemeanor offenses can have bail set by a bond schedule rather than having to make an appearance before the court, preliminary hearings are not required and indigent defense counsel may not be necessary if incarceration is not being considered as part of the sentence. Any fiscal implications to the aforementioned groups would have to be addressed by them.

*Estimated fiscal impact to the DOCR for 2017-19 biennium is (\$156,816) and for 2019-21 biennium is (\$177,735). Adoption of this section will reduce the estimated average daily population by 3 for the 2017-19 biennium, and by 3 for the 2019-21 biennium.*

Section 15: This section will allow the court to terminate probation when the individual completes a drug court program. This change is driven by the current DUI law which mandates a penalty of a minimum amount of time for supervised probation in the case of an A misdemeanor of one year and two years for a C felony.

*No fiscal impact to the DOCR.*

Section 16: Authorizes the expansion of the pool of qualified people to provide addiction treatment services in North Dakota according to qualifications expanded by various licensing boards.

*No fiscal impact to the DOCR.*

Section 17: Per the ND Department of Human Services:  
Estimated fiscal impact of \$1,532,785, of which all is federal funds, due to the Department of Human Services not denying SNAP benefits to those who have been convicted of a felony offense that has as an element the possession, use, or distribution of a controlled substance. It is estimated for the 17-19 biennium approximately 450 additional individuals would receive SNAP benefits each month. The estimated individuals for the 19-21 biennium is approximately 496 at an estimated cost of \$1,862,706, of which all would be federal funds.

Section 18: Per the ND Department of Human Services:  
Estimated fiscal impact of \$110,916, of which all is general fund, due to the Department of Human Services not denying TANF benefits to those who have been convicted of a felony offense that has as an element the possession, use, or distribution of a controlled substance. It is estimated for the 17-19 biennium approximately 20 additional individuals would receive TANF benefits each month. The estimated individuals for the 19-21 biennium is approximately 22 at an estimated cost of \$122,292, of which all would be general fund.

Section 19: Authorizes a pretrial services project that may reduce the number of people held in jail on bond; thereby, freeing up limited jail space and allowing the DOCR to supervise people on pretrial in the community.

*Estimated fiscal impact to the DOCR is dependent upon the population of the county selected for the pretrial services pilot project. For this estimate it is assumed that the DOCR would implement the pilot project in one of the higher populated counties and 3 new FTE's would be required.*

Salary and Fringe -	\$504,606	(\$4,626 per FTE per month salary plus fringe)
Operating -	<u>51,843</u>	(\$17,281 per FTE)
Total -	\$556,449	

**FISCAL NOTE**  
**Requested by Legislative Council**  
**12/20/2016**

Bill/Resolution No.: HB 1041

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>			\$0	\$1,532,785	\$0	\$1,862,706
<b>Expenditures</b>			\$(328,208)	\$1,532,785	\$(893,245)	\$1,862,706
<b>Appropriations</b>			\$110,916	\$1,532,785	\$122,292	\$1,862,706

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2015-2017 Biennium	2017-2019 Biennium	2019-2021 Biennium
<b>Counties</b>			
<b>Cities</b>			
<b>School Districts</b>			
<b>Townships</b>			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Relates to probation, medical parole, grading of offenses, sentence reduction, treatment and counseling services, access to nutrition assistance program, and creation of pretrial services pilot program.

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

See attached document

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The Department of Human Services would receive \$1,532,785 of federal SNAP revenue in the 17-19 biennium and \$1,862,706 of federal SNAP revenue in the 19-21 biennium.  
 See attached document

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

Department of Corrections and Rehabilitation - NOTE that estimated fiscal impact is determined based on estimated expenditures to provide housing, meals, and medical care for 1,973 inmates for the 2017-19 biennium and 2,247 inmates for the 2019-21 biennium. The 2017-19 estimated fiscal impact is NOT based on the 2017-19 DOCR executive recommendation.

2017-19 Adult Services - (\$439,124) - 100% General Funds - 3.0 New FTE  
 2019-21 Adult Services - (\$1,015,537) - 100% General Funds

In the 17-19 biennium the Department of Human Services would incur additional grant expenditures of \$1,643,701, of which, \$110,916 would be general fund, to provide SNAP and TANF benefits to individuals convicted of a felony offense that has as an element the possession, use, or distribution of a controlled substance. For the 19-21 biennium an increase of \$1,984,998 in grant expenditures, of which \$122,292 is general fund, is anticipated.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Department of Corrections and Rehabilitation - Appropriation levels in both the base budget and the executive recommendation are under funded to a greater degree than the sum of the calculated savings.

The Department of Human Service would need an appropriation increase of \$1,643,701, of which, \$110,916 would be general fund, to the base level budget HB1012 and an increase of \$1,643,701, of which \$110,916 is general fund, to the executive budget recommendation HB1072 for the 17-19 biennium. For the 19-21 biennium an appropriation increase of \$1,984,998, of which \$122,292 is general fund would be needed.

**Name:** Dave Krabbenhoft

**Agency:** Department of Corrections and Rehabilitation

**Telephone:** 701-328-6135

**Date Prepared:** 01/10/2017



NORTH DAKOTA

Department of Corrections  
& Rehabilitation

Transitional Planning Services

Patrick Bohn, Director (701) 328-6664

PO Box 1898 • 3100 Railroad Avenue • Bismarck, ND 58502-1898

Fax (701) 328-6780 • TDD 1-800-366-6888 • TTY Voice 1-800-366-6889

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Doug Burgum, Governor  
Leann K. Bertsch, Director

To follow is analysis for the fiscal notes relating to HB 1041.

Section 1: Moves the authority to establish criteria and administer good time in correctional facilities (county) from the presiding judge of the judicial district where the facility is located to the correctional facility administrator.

***No fiscal impact to the DOCR.***

***Per the ND Association of Counties fiscal impact to counties will be minimal.***

Section 2 and 6: Sections 2 and 6 should be looked at together. Section 2 authorizes the DOCR to credit an individual sentence reduction for time spent in custody before sentencing to the legal and physical custody of the DOCR and affirms current law which does not allow for crediting time spent on probation supervision towards incarceration. Section 6 authorizes the court to award sentence reduction of up to five days per month when establishing the jail time to be credited.

***Estimated fiscal impact to the DOCR for 2017-19 biennium is (\$411,267) and for 2019-21 biennium is (\$894,082). The fiscal impact assumes an average of 15 days will be credited to all new arrivals as of 7/1/16. Adoption of these sections will reduce the estimated average daily population by 6 for the 2017-19 biennium, and by 14 for the 2019-21 biennium.***

Section 3: Revises the current emergency parole law to more specifically medical parole for serious or terminal medical conditions and authorizes the board to grant a medical parole for individuals subject to the mandatory armed offender law and those sentenced to life and must serve a minimum of 30 years less performance based sentence reduction. This will impact an estimated one to two individuals per year. Although the number of individuals this impacts is miniscule, there may be very high costs associated with medical care for serious medical cases and end-of-life needs as well as a humane aspect that cannot be overlooked.

***Due to the variability, uncertainty, and unique circumstances surrounding the necessary medical care specific to each individual case, estimating a specific fiscal impact is impractical and could be misleading.***

Section 4: Updates mandated domestic violence treatment to include an evaluation and treatment program as determined by the court.

***No fiscal impact to the DOCR.***

Section 5: Changes the threshold for a C felony theft of property or services stolen to exceed one thousand dollars to two thousand five hundred dollars and removes the blanket inclusion for automobiles, aircraft or other motor propelled vehicles.



If stolen, individual may still be charged as a C felony and the state would have to prove the value vehicle to be more than two thousand five hundred dollars.

***Not able to estimate fiscal impact, if any, to the DOCR.***

Sections 7: Establishes presumptive probation for people convicted of a first time class A misdemeanor drug offense. It does allow the court some discretion to sentence an individual to prison if there are aggravating circumstances.

***No measurable fiscal impact to the DOCR.***

Sections 8: Reduces the penalty for ingestion of a controlled substance from an A misdemeanor to a B misdemeanor for a first offense and retains the penalty as an A misdemeanor for any second or subsequent offense.

***No fiscal impact to the DOCR.***

***Per the ND Association of Counties fiscal impact to counties will be minimal.***

Section 9: Reduces the penalty for ingestion of a controlled substance analog from an A misdemeanor to a B misdemeanor for a first offense and retains the penalty as an A misdemeanor for any second or subsequent offense. This has no financial impact on the DOCR. It may have some city and county implications because the B misdemeanor could be addressed in municipal court.

***No fiscal impact to the DOCR.***

***Per the ND Association of Counties fiscal impact to counties will be minimal.***

**Section 10:** Reduces possession of a controlled substance or possession of a controlled substance analog from a class C felony to a class A misdemeanor and penalty enhancement provision from one thousand feet to five hundred feet of school. It would also authorize the DOCR to release an individual from incarceration to a probation period upon the individual's successful completion of a drug and alcohol treatment program. It also clarifies manufacture, delivery and intent to deliver for purposes of offenses under this chapter.

***Estimated fiscal impact to the DOCR for 2017-19 biennium is (\$427,489) and for 2019-21 biennium is (\$500,169).***

***Adoption of this section will reduce the estimated average daily population by 8 for the 2017-19 biennium, and by 9 for the 2019-21 biennium.***

Section 11: Reduces the distance for penalty enhancement for manufacture, delivery or possession with intent to manufacture or deliver a controlled substance from one thousand feet to five hundred feet of a child care or preschool facility, elementary or secondary school or colleges.

***No fiscal impact to the DOCR.***

**Section 12:** Reduces possession of drug paraphernalia from a C felony to an A misdemeanor and marijuana paraphernalia from an A misdemeanor to a B misdemeanor. This may impact the DOCR in two ways. First, individuals convicted of a C felony drug paraphernalia are eligible for up to three years of supervised probation on initial sentence and up to a total of five years upon revocation. Individuals convicted of an A misdemeanor are eligible for up to two years of supervised probation and up to a total of three years upon revocation. This would reduce the eligible time for supervision upon initial sentence and by revocation by one year each. It would also reduce the maximum incarceration penalty from five years to one year. This change may also reduce impact on states attorneys, indigent defense counsel, jails and the courts. Misdemeanor offenses can have bail set by a bond schedule rather than having to make an appearance before the court, preliminary hearings are not required and indigent defense counsel may not be necessary if incarceration is not being considered as part of the sentence. Any fiscal implications to the aforementioned groups would have to be addressed by them.

*Estimated fiscal impact to the DOCR for 2017-19 biennium is (\$156,816) and for 2019-21 biennium is (\$177,735). Adoption of this section will reduce the estimated average daily population by 3 for the 2017-19 biennium, and by 3 for the 2019-21 biennium.*

Section 13: This section will allow the court to terminate probation when the individual completes a drug court program. This change is driven by the current DUI law which mandates a penalty of a minimum amount of time for supervised probation in the case of an A misdemeanor of one year and two years for a C felony.

*No fiscal impact to the DOCR.*

Section 14: Authorizes the expansion of the pool of qualified people to provide addiction treatment services in North Dakota according to qualifications expanded by various licensing boards.

*No fiscal impact to the DOCR.*

Section 15: Per the ND Department of Human Services:

Estimated fiscal impact of \$1,532,785, of which all is federal funds, due to the Department of Human Services not denying SNAP benefits to those who have been convicted of a felony offense that has as an element the possession, use, or distribution of a controlled substance. It is estimated for the 17-19 biennium approximately 450 additional individuals would receive SNAP benefits each month. The estimated individuals for the 19-21 biennium is approximately 496 at an estimated cost of \$1,862,706, of which all would be federal funds.

Section 16: Per the ND Department of Human Services:

Estimated fiscal impact of \$110,916, of which all is general fund, due to the Department of Human Services not denying TANF benefits to those who have been convicted of a felony offense that has as an element the possession, use, or distribution of a controlled substance. It is estimated for the 17-19 biennium approximately 20 additional individuals would receive TANF benefits each month. The estimated individuals for the 19-21 biennium is approximately 22 at an estimated cost of \$122,292, of which all would be general fund.

Section 17: Authorizes a pretrial services project that may reduce the number of people held in jail on bond; thereby, freeing up limited jail space and allowing the DOCR to supervise people on pretrial in the community.

*Estimated fiscal impact to the DOCR is dependent upon the population of the county selected for the pretrial services pilot project. For this estimate it is assumed that the DOCR would implement the pilot project in one of the higher populated counties and 3 new FTE's would be required.*

Salary and Fringe -	\$504,606 (\$4,626 per FTE per month salary plus fringe)
Operating -	<u>51,843</u> (\$17,281 per FTE)
Total -	\$556,449

**2017 HOUSE JUDICIARY**

**HB 1041**

# 2017 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Prairie Room, State Capitol

HB 1041 / HB1042

1/31/2017

27620

- Subcommittee  
 Conference Committee

Committee Clerk Signature

*Donna Whetnam*

## Explanation or reason for introduction of bill/resolution:

Relating to sentence reduction credit, medical paroles, domestic violence offender treatment, grading of theft offenses, credit for time spent in custody, terms and conditions of probation, controlled substances and controlled substance paraphernalia, addiction counseling services, and the supplemental nutrition assistance program; to provide a penalty.

## Minutes:

1

**Chairman K. Koppelman:** Invited the people on Justice Reinvestment to speak to the committee. The Justice Center is a specific center. The Justice Center is a specific disciplinary function where the CSG drill on justice issues. HB 1041 and 1042 will be two of those bills relating to this.

**Mark Pelka:** Justice Center, Deputy Director of Programs: (attachment 1) Report on Justice Reinvestment. Went through the report. The prison population grew by about 1/3 from 2005- 2015 according, to DOC all projections it's going to grow by another 1/3 between now and 2022. (stopped 23:50)

**Chairman K. Koppelman:** His staff is here to assist you. They registered as lobbyist but they did that to error on the side caution. They are here as a result of legislation we passed seeking their assistance and they continue to provide that.

**Rep. Jones:** How much time and experience do you have in other states?

**Mark Pelka:** Connecticut was the first state. Texas and Kansas came 2006-07 and the number of states since then have increased. I have done this work for 8 1/2 years.

**Rep. Klemin:** SD went through a similar process a couple years ago. Are you familiar with SD progress?

**Mark Pelka:** SD does a great job tracking and posting its progress. The legal counsel to the Governor and I have seen the South Dakota leadership to highlight as a case study a

way to use that approach to address that approach to address challenges based in the system.

South Dakota is noting reductions in the prison population, they are below the projections.

**Rep. Klemin:** So South Dakota would be a good example of how this can work?

**Mark Pelka:** Yes South Dakota is an example I would site and track.

**Rep. Klemin:** When we are talking about investments we can't do this without putting some money into something else?

**Mark Pelka:** Yes we provide that on page number 6 on the report a 5-year table for investments. Many states have provided upfront reinvestments.

**Rep. Satrom:** I am hopeful we are not just kicking the can down the road.  
I am hopefully we can address some core issues so that we can help people permanently.

**Mark Pelka:** Yes the goal is to help people. The substance abuse is costing you one way or another.

**Vice Chairman Karls:** The meeting is adjourned.

# 2017 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Prairie Room, State Capitol

HB 1041  
1/31/2017  
27654

- Subcommittee  
 Conference Committee

Committee Clerk Signature

*Donna Whetham*

## Explanation or reason for introduction of bill/resolution:

Relating to sentence reduction credit, medical paroles, domestic violence offender treatment, grading of theft offenses, credit for time spent in custody, terms and conditions of probation, controlled substances and controlled substance paraphernalia, addiction counseling services, and the supplemental nutrition assistance program; to provide for the creation of a pretrial services program pilot project within the DOCR; and to provide for a report to the legislative assembly.

## Minutes:

Attachment 1-3.

**Chairman K. Koppelman:** Opened the hearing on HB 1041.

**Samantha Kramer, Attorney with Legislative Council:** I am here with neutral testimony on HB 1041 and 1042. The only difference in HB 1042 is it removes one section that is in HB 1041. Explained the HB 1041. Section 7 in HB 1041 has the section on presumptive probation and that section is not in HB 1042. That is the only difference between the two bills. (2:20-4:52).

**Chairman K. Koppelman:** Would you explain what is presumptive probation and how that would work?

**Samantha Kramer:** Presumptive probation is an idea from Council of State Governments (CSG), Department of Corrections and other interested parties to require the court to sentence an individual who is convicted of a Class A misdemeanor offense for drug offenses and few other specifications in the section. That they would automatically be sentenced to probation.

**Samantha Kramer:** Continued going through the bill. (5:27-7:01)

**Chairman K. Koppelman:** In Section 10 page 7 the distance from the school issue, this simply changes the penalty and the distance, does this change the actual proximity whereby these people are allowed to live or does it just change the penalty?

**Samantha Kramer:** Just the penalty. Continued explaining HB 1041. (7:30-9:28)

**Chairman K. Koppelman:** In Section 14, I believe the committee has received emails on this issue, I would like to know where that came from?

**Samantha Kramer:** I believe that was a suggestion from Steve Fowler with CSG to assist the state in being able to provide the additional treatment services. Explains HB 1041. (9:38-9-53)

**Representative Roers Jones:** Do you have that all written out and will we get a copy of that.

**Samantha Kramer:** There is a copy of the outline of each section of the bill in the minutes from the last incarceration issue committee in addition to the testimony and reasoning as to what changes were made and why. I would be happy to get that to the committee. (See Attachment #1)

**Pat Bohn, Director for Transitional Planning Services for North Dakota DOCR:** Testify in support of HB 1041 and 1042. Went through the handouts. (See attachment # 2 and 3) (11:00-20:05)

**Representative Klemin:** The person in the example would have still needed the treatment so overall is there any cost saving?

**Pat Bohn:** What we can do with many of these people although there is still the cost, is shift that cost into a larger bucket and most of them are picked up under Medicaid, so it is still going to cost us money. I have an amendment on page 10 of Attachment #2 . (20:54-21:29).

**Chairman K. Koppelman:** How many people would that affect?

**Pat Bohn:** One to two, these are the really sick people and may a need a procedure that cannot be done in North Dakota. (22:39-22-23:06)

**Dr. Lisa Peterson PhD, Clinical Director, North Dakota DOCR:** (See Attachment # 2 page 9). (23:08- 25:30)

**Pat Bohn:** Continuing through attachment #1. (25:40-26:37)

**Representative Klemin:** On the theft offenses I am recalling that it was not so long ago it was increased to 1000. Wasn't that just last session?

**Pat Bohn:** It may have been two sessions ago. It was in a pretty recent time. Before that it had been left alone for a long time to reconsider.

**Chairman K. Koppelman:** Excluding the automobiles aircrafts and other motor propelled vehicles are there a lot of these that are charged when there is an older car that is not worth much money, why exclude that provision?

**Pat Bohn:** This would take that threshold where it would have to have a value of \$2500 or more. (28:00-31:00)

**Chairman K. Koppelman:** Let me take you back to Section 7 and what seems to be the departments objection to this idea. You mentioned not dictating to the court but in essence we are doing that throughout the bill by changing sentences and other elements that currently the court has some latitude on and we are telling them to do something different. It appears a good number of people would be affected by that change. What is it that is objectionable?

**Pat Bohn:** We are talking about changes to the sentencing perimeters. That section says the court shall so it gets down to the miniscule detail on a specific offense and says the court shall do this unless there is aggravating circumstances. That is the principal area we have some differences.

**Chairman K. Koppelman:** What about dollars and cents?

**Pat Bohn:** Council of state governments has done some projections. We need to wait and see and do some projections as well. (33:10-37:22)

**Representative Paur:** How does the initiated compassionate care act affect this marijuana paraphernalia?

**Pat Bohn:** I am not able to speak to that matter.

**Chairman K. Koppelman:** Section 11; do we have a typo in the drafting because it appears to strike 1000 but then the 5 is both underscored and overstruck on page 8 on Line 4? The intent there is to be 500 ft. rather than 1000?

**Pat Bohn:** That is correct. Continuing to explain the bill. (39:00-40:35).

**Chairman K. Koppelman:** On drug paraphernalia charges I have heard testimony and I know prosecutors in other parts of the state saying if we find drug paraphernalia we scrape it out to see if we can find some of the actual drug so we can charge them with possession and paraphernalia. When people enter the system are you finding that there is an unequal playing field with regards to where they come from and how they are prosecuted and is there a way we can solve that?

**Pat Bohn:** There are areas of the state there are differences around the state and I can look and know where the sentence may come from. There are differences in prosecutor's offices. That helps shape a lot of this and what the court has before it. As to how we level that playing field I think there are some ideas that could be vetted out there. I would worry about going to a sentencing grade where this is what you have to do in these situations.

**Chairman K. Koppelman:** Yes, we don't want to micromanage but we do want to make sure justice is meted out equally.

**Pat Bohn:** Continues explaining HB 1041. (42:50-44:29)



**Dr. Peterson:** The DOCR has felt the impact of the shortage of licensed addiction counselors in recent years. (see Attachment #2) reading from that. We are more concerned in solving this problem having a system that treats all the patients' needs. (44:32-47:35)

**Representative Klemin:** Quoting an email that I got from Patty Senn who said she is a member of the North Dakota Addiction Counselors Association and she says although their clinical training specializes in mental health issues, it does not include addiction. So how do you respond to that?

**Dr. Peterson:** It is on these professionals to adhere to the ethical standards already brought forth by their respective licensing boards. If they wish to specialize in that particular area. The training needs to come along with what we know about behavioral health care, a wholistic approach. In my diagnostics class in graduate school my professor said we will teach you to how to diagnose substance use disorders but in North Dakota you won't use it. I am questioning why is that, I have this training why is it my practice would be limited in that way?

**Chairman K. Koppelman:** Behavior health is a big issue and a big piece of this puzzle. The Senate has a bill that relates to this issue. The email Rep. Klemin just referenced, the point is well taken. The dilemma is how do you propose to solve this problem of lack of providers. To me there are two problems, we need effective treatment and we need enough treatment and providers. How do we solve this dilemma? 50:21

**Dr. Peterson:** I agree and I think the reality is there is no shortage of work.

**Chairman K. Koppelman:** In the language of the bill, as determined qualified by each respective licensing board so you are giving that authority to the board. We heard in the interim judges admitted to sentencing people to the penitentiary so they could get mental health or addiction treatment. Are you seeing a lot of that and is that the norm at DOCR?

**Dr. Peterson:** Yes we are seeing that. The response of the judges speaks for itself, 70% acknowledge that they sent somebody who they didn't as a high risk to the community to prison because they didn't feel they had other options. We hear it from our probation officers all the time. We recently did a survey of parole violators, and around 89% said they felt that better access to treatment would have helped them be successful.

**Chairman K. Koppelman:** Mr. Bohn before we will continue we will close the hearing on HB 1041 and open the hearing on HB 1042 and dispense with the reading of the bill title.

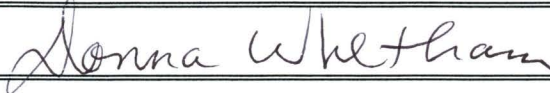
# 2017 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Prairie Room, State Capitol

HB 1041/ HB 1042  
1/31/2017  
27655

- Subcommittee  
 Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

To provide for the creation of a pretrial services program pilot project within the DOCR; to provide for a report to the legislative assembly; and to provide a penalty.

## Minutes:

Attachment 1-6.

**Chairman K. Koppelman:** Opened the hearing on HB 1042. **Did this in conjunction with HB 1041.**

**Pat Bohn, Director for Transitional Planning Services for North Dakota DOCR:** Still speaking and going over Testimony #1. This is really about people. We are focused on DOCR providing better outcome to bend these curves in DOCR. We need to change our behavior on how we address this problem. We have to look at how we allocate resources and handle crime and punishment in this country. (See attachment #1). 00:45-8:41

**Representative Satrom:** How you assess whether they are low or high?

**Pat Bohn:** We assess people insurance for if they are more likely to get into an accident, young men unmarried more likely you will pay more for your auto insurance. Same type of thing in correction, we assess people for their criminal history, age and alcohol and drug abuse, there is 10 level of domains and we can predict the likelihood that individuals within these categories are more likely to recidivate or not. We can target then strategies to reduce risk in those areas. So we give people tools to help reduce the risk and would be less likely to return to us.

**Representative Magrum:** Would we be better to have one bill here?

**Chairman K. Koppelman:** I believe we will.

**Representative Klemin:** A lot of these sections in these bills are reducing the penalty from a felony to a misdemeanor. Correspondingly it will result in a shift of the inmate population from the State Penitentiary to the County Jails, so it may reduce the cost to the state on one hand, but may increase the cost to the counties on the other hand. Have you done any projections on this?

**Pat Bohn:** They are hard to predict. Look on the fiscal note it does have some figures. I would go toward spreading the costs around. 12:25

**Representative Klemin:** If we are shifting inmates from the state to the counties because of the type of penalty that is imposed, if it reduces the cost to the state but there will be some increase to the counties.

**Pat Bohn:** If you shrink up the amount of time that is available for incarceration and supervision, that would be your bigger savings. I still think on a class A misdemeanor if they need supervision they will do that. I think some of these people are still going to come our way, whether it comes via probation or through the DOCR. It does shrink up that time in which they could keep coming back.

**Representative Klemin:** What about incarcerating the low risk offenders for a day or two, that they are more likely to reoffend. Why is that?

**Pat Bohn:** When you destabilize an individual, they lose their job and then the snow ball effect comes in and you start to lose your sense of self-worth, you go deeper into your problems, soon you lose your house. Then you might get involved in selling drugs a little bit because you don't have your job anymore.

**Chairman K. Koppelman:** Back to Rep. Klemin earlier question, your answer assumes the absence of presumptive probation because that would have an effect on that dynamic would it not? When he was talking about the shift from state to counties?

**Pat Bohn:** The presumptive probation would require the court to sentence them to probation and then depend on how that supervision goes as to whether or not they could end up in county correctional facility or state penitentiary down the road.

**Representative Magrum:** Do you look at the community service program? 16:26

**Pat Bohn:** In terms of the community service. There is no correlation to reduction in recidivism for people participating in community service. There is a sanctioning aspect that it could be part of your punishment. In terms of a work program, those things are costly because you still have to supervise people.

**Chairman K. Koppelman:** Neutral

**RaeAnn Kelsch, lobbyist for North Dakota Council of Education Leaders:** On both 1041 & 1042 we have an issue on page 8 line 4 the standard is being decreased on HB 1041 and on HB 1042 page 6 line 27. The standard is being decreased from 1000 feet to 500 feet. We are concerned about that decreasing that distance from a school. We don't think you should be allowed closer to commit your crime to a school or child care facility. That is our only concern with this bill.

**Chairman K. Koppelman:** All those provisions do is change the aggravating penalty that one could receive from violating that section. So it doesn't shrink the distance where people

can live nearer a school it merely says the penalty that can be meted out for doing that if you are a criminal is reduced.

**RaeAnn Kelsch:** As long as that is the fact then we would be ok with it. A person from DPI had the same concern.

**Chairman K. Koppelman:** I read it that way too. Any support for HB 1041/1042?

**Travis W. Finck** In support of HB 1041. (See Attachment #2). In support of HB 1042. (See Attachment #3). I am asking for an amendment which is in the materials being handed out. 21:17-22:33

**Chairman K. Koppelman:** We have no objection nor do I believe would the interim committee have to including you in the process. Further testimony in support of HB 1041/1042?

**Jackson Lofgren, President of the North Dakota Association of Criminal Defense Lawyers:** In support of HB 1041 and HB 1042. They have put two very good bills together they put a lot of work and a lot of thought into them. We went through both bill line by line and everything in these bills are positive changes. The bill reinvents how we look at certain aspects of our justice system and these are needed changes. Our traditional lock them up method was not working and we do need to make some changes. I would ask for a Do Pass on both of these bills. 23:00- 24:29

**Melissa Sobolik, Great Plains Food Bank:** In support of HB 1041 and HB 1042. (See Attachment #4) (24:58-28:00).

**Chairman K. Koppelman:** Any further support for HB 1041/ 1042? There are amendments that are done for these bills that the committee can look at.

**Marc Pelka, Deputy Director of State Initiatives at the Justice Center:** Went over some sections in the bill and gave us some background. (See Attachment #5 and 6) (29:30-48:10)

**Chairman K. Koppelman:** I am going to ask Mr. Pelka to come back after the floor session to answer any questions. Adjourned the hearing.

# 2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee  
Prairie Room, State Capitol

HB 1041/1042  
1/31/2017 PM  
27678

- Subcommittee  
 Conference Committee

Committee Clerk Signature

*Donna Whetham*

## Explanation or reason for introduction of bill/resolution:

Relating to sentence reduction credit, medical paroles, domestic violence offender treatment, grading of theft offenses, credit for time spent in custody, terms and conditions of probation, controlled substances and controlled substance paraphernalia, addiction counseling services, and the supplemental nutrition assistance program; to provide a penalty; to provide for the creation of a pretrial services program pilot project within the department of corrections and rehabilitation.

## Minutes:

Attachments 1,2,2A,3,4,5,6.

**Chairman K. Koppelman:** Reopened the hearing on HB 1041. Are there any questions on Mr. Pelka's testimony about the work the Justice Center has been doing or the Interim Committee work?

**Representative Satrom:** I appreciate the collaboration you are doing, if we get everybody going the right direction if we don't get them integrated into the communities, we have a problem. Is any of that being addressed in this or is that outside of this parameter?

**Marc Pelka:** So much of the focus here is on the reintegration into the community. That is the moment when somebody leaves a prison and is transitioned to supervision, that's when their chance of recidivism is the highest. Mr. Bohn stated the greatest proportion of people who reoffend do so in the first 6-9 months. The report we issued highlights that we front loading supervision resources during that initial period and shifting resources from people who are on lower risk to reoffend. SB 2274 the behavioral health recommendations that were in the report were the big focus of the committee but are in a separate bill and they are integral to that part.

**Representative Klemin:** How do we measure the results particularly for county jails. Do you have any recommendations so we get good data in the future? 2:39

**Marc Pelka:** In page 12-13 we addressed that in policy option 9 in a few different ways. The question that you are getting at which is how to avoid downshifting on pressures the state is facing onto the county jail level. That is why the pretrial supervisions pilot is so important because it gives counties tools to manage the growth in their systems. Letter a. involving

the creation of a centralized oversight body to guide and track implementation of justice reinvestment gives you a chance to track the results month to month. We will assist them in doing this. Page 13, letter e. we try to recognize the pressures that are hand on the budget while acknowledging the lack of data we could access regarding county jails. So we put under letter e. require all county jails to submit an annual census report. There noted some of the challenges that exist regarding getting a full release of data for a state wide tracker. Federal Government collects regular data census reports and that is one way to see where the trends are in counties.

**Representative Klemin:** You mention only 12 out of 23 jails are doing this. Maybe we should amend this bill that they all do this reporting?

**Marc Pelka:** We did not put that requirement in statue because we struggled to find support of that. The state could pursue that.

**Chairman K. Koppelman:** The Justice Center is just to make recommendations. They don't see it as their place to dictate what we should do. I respect their position. I am sorry there hasn't been more agreement to get consensus here. There are some areas of agreement in this bill and I have an amendment to look at.

**Representative Nelson:** It looks like we are putting more emphasis on the parole officers. My visualization of parole is still in the punishment model where they say don't do this or that or else. Do states do good jobs helping them integrate into the community?

**Marc Pelka:** So much of the change states are looking to achieve in recidivism comes at the probation, parole, supervision level. That part of the criminal justice system has transformed itself dramatically into one that provides the sanctioning but also the referrals to treatment. The science has developed so much on what work to change probation or the parolees behavior. We have had a chance to do focus group meetings with probation officers here and have reviewed policies and met with agency directors and have been very impressed with probation and parole supervision in North Dakota.

**Janelle Moos, Executive Director of CAWS:** In support of HB 1041 and HB 1042 (See Attachment #1) See testimony with attachments. (stopped 19:38)

**Chairman K. Koppelman:** You said you think the bill last session is working well as an indicator or heads up for the courts. Maybe you could explain that more?

**Janelle Moos:** This change provided guidance in terms of recommendations that they not send them to anger management or individual counseling. We sent information to all the judges as to why domestic violence offender treatment is more effective than anger management or individual counseling. Sometimes it is a hardship for people to get to the treatments. It goes side by side not just the statutory change to give guidance that yes if anger management is available and you can show why that is appropriate then go ahead and do so. But that has been the most significant push back. We have tried to build infrastructure but without funding and consistent standards or expectations for programs that is a challenge for everybody. There is room to figure out how can we make sure there is consistency with this program and find some funding to support those programs.

**Chairman K. Koppelman:** Do you think the potential lack of availability of the programming is why this was struck from the interim bill?

**Janelle Moos:** I did look at the interim study and I couldn't find any reference to why this was removed last session.

**Chairman K. Koppelman:** Any further testimony in support of HB 1041 and HB 1042. Seeing none is there any opposition to HB 1041 or HHB 1042?

**Kurt Snyder, Board member for North Dakota Board of Addiction Counseling Examiners:** In opposition to HB 1042 and it is only in the language in section regarding addiction counselors. (See attachment #2) Read his testimony. (23:02-29:22).

**Representative Vetter:** You are against the whole bill?

**Kurt Snyder:** It is just that section that of the bill regarding addiction counselors.

**Chairman K. Koppelman:** The testimony really applies to HB 1042 and most of us are working from HB 1041 so in the beginning of the testimony it says page 9 line 23- 26. I believe that would be page 10 line 6-9 on HB 1041. You talked about the desire to work with other professions to find similar tracks of education and accomplish dual licensure. The problem we are facing is there is a lot of discussion about treatment rather than incarceration. We don't have enough people trained to provide effective treatment. I understand on one hand licensing people that are not qualified to provide it doesn't solve the problem and the number of people practicing in the state are not sufficient to provide the treatment either. What is your solution?

**Kurt Snyder:** SB 2088 does address this. (See Attachment #2 A). Explained SB 2088 and we believe this bill is part of the solution. We have an opium crisis in the state. It is important that we get the right kind of services. There is only a 10% adherence to treatment with and abstinence only approach. With medications and medication assistance there is a 60% of adherence to treatment. The Board of Addiction Counseling Examiners felt we didn't want to produce our own legislation and we worked with Senators Lee, Anderson as well as Representative Westlind and Seibel to push the legislation forward. The bill passed 44-0.

**Dr. Julijana Nevland, Psychologist and Chair for North Dakota Board of Addiction Counseling Examiners:** I am only against the language on HB 1041 and HB 1042 but again only the language HB 1041 on page 10 line 6-9. (See Attachment #3). (34:38-40:08).

**Representative Klemin:** All of these professionals are really busy doing other things now, why would these professional want to take other course to be able to do addiction counseling?

**Dr. Nevland:** Most of the job openings I am seeing are for addiction counselors, and we have many people who are interest clinical counseling but the jobs are not always there so they are very much interested in having the dual license. They would have a better opportunity to find employment.

**Representative Klemin:** Instead of looking at all these other boards to make changes in their provisions is it possible maybe your boards could make changes in their provisions to say that all of these professionals could do addiction counseling if and set out what you would require?

**Dr. Nevland:** We do not want to push any profession towards providing that they do not believe fall in their scope of competence.

**Representative Klemin:** If you want to provide addiction counseling services here is what you need to do and put that in your rules instead of asking all these other boards to do that.

**Dr. Nevland:** We have approached boards already to see if they are interested and we would like to collaborate and create those meetings. If they are interested in pursuing addiction counseling and obtaining licensure in that area. We are willing to let them know what course work that you would need. It would be very burdensome to create a comprehensive list that would both include social workers, psychologists, family and marriage counselors because all their training differs. Each profession would require differing amounts of extra education.

**Representative Klemin:** I think you are shifting the burden to all these other boards to do that and really they maybe don't have that kind of incentive if their people are all busy already.

**Dr. Nevland:** I cannot speak for the other boards but our priority is to work with anyone who is willing to become addiction counselors and we are currently reaching out to them. In SB 2088 we have included several provisions that we think will attract more professionals into the field. We are willing to provide some leeway so that those professions can come to us and more easily become licensed.

**Representative Jones:** The wording you are opposed to here seems to say that these people are qualified to do this if it is through their respective licensing boards. It seems if you have a need and you have people willing to fill the need and you have a licensing board to work with to get the additional training that you would work with that board to make sure that criteria is met and be happy with what we are doing here. I don't know why you want this struck out?

**Dr. Nevland:** We already have a language in our law that states that no one is prohibited from practicing addiction counseling services if it falls within their scope of competence. Those boards already have the implied permission to allow their licensees to practice addiction counseling if the deem it is within their scope of practice. This language is redundant in our opinion.

**Chairman K. Koppelman:** If the language is what you already provide for what is the problem and why are you so opposed to it? Why are we getting emails for days from your cohorts objecting to it?

**Dr. Nevland:** We are opposed to our law being changed to essentially say that this profession such as social work or clinical counseling may be able to provide a service that is



addiction counseling specific. We believe that any law changes related to practice should be included in that respective professions law instead of lumping into the addiction counselors law.

**Chairman K. Koppelman:** As I read that language that you are objecting to, I think it essentially says that it says as determined qualified by each respective licensing board. One of two things has to be true. Either you are trying to protect turf, which you are denying is your objective or you are saying these other boards can do it as long as they accomplish certain competencies and that is what the bill says as I see it. I wouldn't see any problem with adding language that would specify that their boards would have to be in consultation with you. I don't see the problem?

**Dr. Nevland:** I think we are on the same page in the sense that we are not trying to restrict any board at doing what they see best and allowing their licensees to provide the services they are qualified for. We would prefer that language be in that particular boards law.

**Chairman K. Koppelman:** So we could accomplish that simply by changing this language a little bit to say as determined qualified by each respective licensing board as provided by rule by those boards. When you are saying their law you are talking about their chapter in their administrative code which is their administrative rules.

**Representative Klemin:** Instead of that language as determined qualified by each respective licensing board. What if it said if determined qualified by the board of addiction counseling examiners?

**Dr. Nevland:** We would have no objection to that language. That would be satisfactory to us.

**Chairman K. Koppelman:** What if it said as determined qualified by each respective licensing board in cooperation with the addiction counseling licensing board? I have no problem with adding you into that section because that is your expertise but you have been testifying here that you also have no objection to those boards determining it and putting it in their scope of practice, if that is the case as long as they confer with you, do you see a problem with this provision?

**Dr. Nevland:** I would have to consult with my board to get membership consensus and what their opinions are on that matter. Personally I wouldn't see an issue with that but I cannot speak on behalf of the board.

**Chairman K. Koppelman:** Any further opposition? Seeing none. Any neutral testimony on HB 1041 and HB 1042. Mr. Pelka could you come forward, the two areas we have been discussing the anger management class issue with respect to the alternative that not being the default for sentencing and this section about licensure about addiction counselors. Do you have any suggestions based on your work in North Dakota or your experience in other states as to what the objectives are?

**Marc Pelka:** On the section in HB 1041 concerning batterers, referrals and licensing, we don't expertise in this area. In the report we do have a recommendation on policy number 7,

which is on page 11. There is not alignment currently in the bill draft but it sounds from the testimony that there are some conversations to address the concerns and move forward.

**Chairman K. Koppelman:** This must have originated somewhere else, so is this DOCR language

**Marc Pelka:** I don't know who is the author of that language. The interim committee reviewed the first draft of bills to reflect the policy options that they wanted to put forward. On our end the staff of the committee tried to translate policy options we developed in concept form in the bill language. Other members of the committee put forth bill language to reflect their recommendations and discussion commenced. There was a large amount of bill language put forward so it makes it hard for me to trace the origin of the recommendation. 54:00

**Chairman K. Koppelman:** I had a number of amendments that came to me, first as bills based on the Justice centers work that succeeded the conclusion of the interim committee. There is one amendment that doesn't have objection. Proposed amendment (See Attachment #4)

**Marc Pelka:** Went over the proposed amendment and (Attachment #4, 5 and 6). Went over the handout. (58:00-1:03:25).

**Representative Klemin:** The part about the paraprofessional workforce, I don't see anything in this bill about covering that? It seemed like a good alternative to get some help on the workforce right away. Is it possible to put something like that in the bill to provide that kind of expansion relating to paraprofessionals?

**Marc Pelka:** Originally we recommended the creation of a peer support specialist position, when then learned from the Behavioral Health office that steps were already being taken to establish that position and the additional legislation would not be necessary. We talked to the DOCR director regarding what is an evolving trend across the country of states suspending but not terminating Medicaid coverage when someone is incarcerated. That is indeed the vision of building a paraprofessional workforce in the areas that are especially low in capacity for delivering treatment. Ideally you are creating a career ladder for these people, they are developing more experience and going for more training and education.

**Chairman K. Koppelman:** The question that Chairman Weisz and I visited about there is another bill introduced to drug test people receiving benefits and he was questioning if that bill would pass whether that would conflict with what we are talking about in this bill. They are really two different things. This provision of this bill deals with is to remove the lifetime ban on receiving those benefits for those convicted of a drug crime, the other bill has more to do with people who are currently using drugs. I think both bills can peacefully coexist.

**Representative Hanson:** Speaking of coexisting could we have some research done on the Compassionate Care Act for medical marijuana and how that would coexist with section 12 where it talks about reducing the offense for possessing drug paraphernalia just to make sure that it doesn't conflict?

**Chairman K. Koppelman:** Section 12 does reduce the penalty, when we were preparing this it was before that measure passed. We will have the intern look at those two issues and see how they intersect.

**Marc Pelka:** I am happy to assist with the amendment language. I think you have some amendments coming your way and we would be happy to help with them. We aim to help states and be a resource for the state to move forward and it is different in every state. The best way to overcome the input and reach consensus is by using data and collecting input from people who have information and hammering out consensus. 1:11

**Representative Magrum:** So we are going to be reducing all these offenses so there will be more people that will be out and about. What are we going to do with all these people? Are all the business people going to put them to work. Who is going to put them to work?

**Marc Pelka:** The population you are talking about those are a whole array of needs that the people in the criminal justice people have. Employment is a key item in this effort.

**Chairman K. Koppelman:** We have had to look at what is our issue and hear a lot of testimony and then sort of drill that down into policy. That is what we are trying to do. What we have heard, we have a problem with our prison population because it is growing so fast. We know that a lot of the prisoners are in there for drug and low level property crimes and also for technical violations. Then we get to the behavioral issues that relate to the drug crimes we are all trying to get a handle on this. I personally have to come to grips with is, get tough on crime, that is what we used to think and I am learning I also need to be smart on crime. It doesn't mean we have to soften every penalty but we do need to look at all these issues and bring this into a balance. We need to look where we can give judges more discretion and modify all the rest of this and see where this goes. Part of this is really about helping people get back to reentry and getting them back into society and really rehabilitate and get a new lease on life.

**Marc Pelka:** You have dedicated a lot of time on this bill. It begins first with using the data and pin point what is driving growth in recidivism and cost and population. Once there is consensus around those drivers then seeing where consensus lies on addressing it. The interim committee effort was to a bill draft together that would be ready for the legislature to review and our effort was to revise analysis and policy development to help you in that as well. The good news is that you have options in front of you. There are many states finding themselves in challenges regarding over-crowding and budget crunches and they don't the options available data to them.

**Representative Nelson:** One concern I have is it seems there are so many different groups that are running to background checks. We have a lot of people with felonies and now we are saying maybe they should have been misdemeanors. We as a society are saying maybe the prisons were a mistake. But we have the potential to build a prison without bars in our society. Then somehow punishing these people for not entering back into society. We have to be very careful when we are requiring those things.

**Chairman K. Koppelman:** I agree with you. I think we need to draw the line somewhere. There are some areas where it is people concerned about liability exposure and that is the

reason they want to do a background check but as you imply it can just be if they have a felony or something objectionable. We better not hire them or whatever the purpose of the check is. That is a valid concern. The bigger picture is trying to bend societies attitudes toward felons. The reentry piece is a big part of that and I think that is where the example of a rental property bill, we can look at how can we help felons who are truly rehabilitated have a second chance. People can change and we need keep that in mind as we think about all these issues.

**Representative Satrom:** I think housing is a big issue. According to our law you have to handle everybody in the same. You either rent to all felons or to no felons. Some should be rented to and others not. If you have that policy by mandate you are breaking the law and we are hurting ourselves by not allowing people to discriminate.

**Representative Vetter:** I like this legislation. I think this is exactly the kind of thing we should be doing. I am disturbed a little bit in the sense we are not thinking about the big picture standpoint. The very next bill we will get is basically raising the penalties for other crimes so we will empty out our prisons with some people and then put them back in with other ones. The fact that 40% of our people in prison are low level drug offenders is really shocking to me. I think something has to be done there.

**Chairman K. Koppelman:** Recess the hearing on HB 1041.

# 2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee  
Prairie Room, State Capitol

HB 1041  
2/1/2017  
27770

- Subcommittee  
 Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

To provide for the creation of a pretrial services program pilot project within the DOCR; and to provide for a report to the legislative assembly.

## Minutes:

1,2

Chairman K. Koppelman: Reopened the hearing on HB 1041.

Support:

**Trina Gress, Vice President of Community Options.** (#1) (:44-4:02) Removed 7-year penalty from TANF. I have concerns on 2279 and 1038. They may be counterproductive to what this bill is trying to do. We do support HB 1041.

**Representative Nelson:** Do you know what percentage on TANF that are now working?

**Trina Gress:** We are one of three contractors and the combined total of all three of us usually range between 60-70% that those clients we are working with are working.

**Chairman K. Koppelman:** I don't think they are conflicting bills. The first concern wouldn't conflict. This bill removes the lifetime ban against receiving those benefits for people who have been convicted of drug crimes. The other bill requires testing in order to receive the benefits. This bill would relieve some of the harshness or imprisonment on this.

Opposition: None

Neutral:

**Marc Pelka:** Passing out amendments (#2) (10:300) I gave some thought to what Rep. Klemm asked me yesterday about the reporting of jail data and I like to provide how to take action on policy actions and ideas you put forward. 12 of the 23 jails in ND are using the data system. It is voluntary for jails to use it. CEGAS developed it as a resource to counties

to provide them with information data entry system. Many of the counties that don't contribute to CEGAS has already invested in developing their own information entry case management system and those include the larger counties like Burleigh and Cass. (12:21) Explained the CEGAS system. Rep. Klemin asked why all counties did not participate in this system.

**Representative Klemin:** Did you have excess to the data from these other counties.

**Marc Pelka:** This information just came from Cass.? We relied on the aggregate numbers from the survey that the counties association does. We are always limited on what we can provide a statewide picture for within the time limits of the project.

**Representative Klemin:** You only got 10 other counties that you had no information on. This bill has a major shift of inmate population from the state to the county jails. How are we going to measure it if we cannot access this information?

**Marc Pelka:** We can get at that other than through sentencing data. We used DOCR data so the state could track in coming years how those trends are changing based on non-jail data. The oversight committee can have representation from the counties and for them to provide data to the group. Could not count costs. (17:40-21:34) Went over the amendments.

**Chairman K. Koppelman:** The amendment says page 5, replaces lines 26-30 with and it doesn't address lines 1 & 2 of page 6 which are a continuation of that presumptive probation piece. This replaces the presumptive probation piece in the original bill and that original language dealt with class A misdemeanor drug offenses and this expands it to include class C felonies. Is that the major difference?

**Marc Pelka:** The offense is exempted. The last sentence beginning with this section does not preclude; this is to identify a portion of people currently being because the lack of structure in the code sentenced to prison for a short term's behind bars and used probation where appropriate. This feedback was provided by some stakeholders regarding the process in many counties to grant credit for time served and then to release them. This would be shifted toward probation so that language tends to clarify the population meant to be addressed by the policy.

**Chairman K. Koppelman:** What types of offenses would be captured by the additional Class C felonies being included?

**Pat Bohn:** It would encompass everything in the C felony category. There are over 500 C felonies offenses in ND. It would exclude offenses involving domestic violence offense. It would be simple offense domestic violence. 12.1.17.1 would cover stalking under this would be exempted out of this. 12.1.41 human trafficking statute. We don't have any C felonies in human trafficking. You could take it out too. 14.07.1-06 is your protection order and 14.09.22 is child abuse statute. DUI is a C felony,

**Chairman K. Koppelman:** DOCR objected to the previous presumptive probation language now in this amendment coming from you we are inserting presumptive probation language and it is including some higher level offenses. What is going on?

**Pat Bohn:** We disagree with C. if you wanted to do this this is how you could do it. We said if this is something that is going to be considered by the legislature within the context of how our law is we said this is maybe the way it could work.

**Chairman K. Koppelman:** The Incarceration issues committee did the intern study in the end the end the alternatives to incarceration committee which included the same legislative member had to convene and basically bless what the other committee had done. When HB 1041 was put forward and 1042 there was a blind grasp at a bill. Everyone on the committee said this bill is not the final product. We know this will go on through the legislative session and it is going to be something we are dealing with.

**Representative Roers Jones:** You are saying this might be where DOCR and Is DOCR recommending this or not?

**Pat Bohn:** For these situations the court shall sentence these people for a period of probation unless there are aggravating circumstances that court would then have to put on the record.

**Chairman K. Koppelman:** It creates a presumption and it says that these types of offenses are probation offenses; unless there is a reason to do otherwise and then the court can find that reason.

**Pat Bohn:** No. We see it more as a mandate. The sentencing court shall sentence an individual convicted of a Class C felony. That is a mandate upon the court.

**Chairman K. Koppelman:** But the portion of the previous bill which you objected stopped the Class A misdemeanors. This that you are supporting is adding C felonies. You are saying the courts hands should not be tied.

**Pat Bohn:** We had some concerns on Section 7 was we had some concerns about that and that was what I am telling you today.

**Representative Roers Jones:** Gives us background on the 85% rule and how it is used and how it would affect DOCR. You are saying you would prefer having permissive language rather than mandatory language in this section?

**Pat Bohn:** That 85% statue has no bearing on this bill itself. The 85% rule says if you committed certain offenses you must serve this time. Explained the 85% rule.

**Chairman K. Koppelman:** DOCR has regularly advocated lesser sentencing in various types of crimes. Yet you are saying don't cramp the judges style. I find a disconnect with that.

**Pat Bohn:** By moving the offense from a C felony to an A misdemeanor you are going to change the amount of time which the individual could maximally sentenced to prison. You will move that from five years down to one year. You also are going to change the amount of time they are going to be put on probation. The maximum time for most C felonies right now is up to three years with the maximum total unlimited revocations to five when you take it to

an A misdemeanor it is two years on probation with the maximum probation period of three years. By taking those C felonies out and down to an A misdemeanor you are impacting the time that is spent in court bond. It is all those other things

**Representative Klemin:** If we pass these bills what happens to the existing prison population that is serving time for Class C felony that is now an A misdemeanor?

**Pat Bohn:** They would remain under their current sentence and punishment.

**Representative Klemin:** So they would not get the benefit because they are already in jail.

**Pat Bohn:** You do have some avenue for addressing that and it is a cumbersome process.

**Chairman K. Koppelman:** Is there any way to expand the excess to patrol in those kinds of offenses?

**Pat Bohm:** Our patrol laws are very broad now. That ability is already there.

**Representative Hanson:** Section 7 you oppose. Would you be more comfortable with Section 7 if you took out Class C felony?

**Pat Bohn:** If you did that you would be right back to where we are now.

**Representative Vetter:** Is being a felon a life sentence. Are you always a felon?

**Pat Bohn:** You are always a felon.

**Representative Jones:** What do you see as far as people opposing that change?

**Pat Bohm:** If you change the word to may you would not need this statute. This is the way it would work. You are back to where you are now.

**Chairman K. Koppelman:** It is a Class C felony if it is an assault against a peace officer. It is a Class B misdemeanor if it is not. So it is already elevated depending on what circumstances is involved. You are saying that would be excluded from the presumptive probation. The second is human trafficking. What are the others?

**Pat Bohn:** 14.07 is that filing a protection order and 14.09 is the child abuse.

**Marc Pelka:** (50:00-55:00) Continuing going through the amendment. Prison population has grown by 35%. DOCR cannot control their population. Continuing through the amendments. (55:00-1:05:00)

**Pat Bohn:** There wouldn't be a hearing officer on that. That would be an agreed to intermediate measure. You will see above in the paragraph that leads into a,b,c etc. toward the middle it says unless weighed by the court shall also provide as a condition of probation that defendant undergo various agreed to community constraints and conditions as intermediate measure of the department. What would happen is if an individual violates the



PO with their supervisor and we have a specialist that helps level the playing field throughout the state staff these as a team and figure out what is the appropriate sanction based on the violation. The it could offer them up to 30 days' incarceration in lieu of revocation. If an individual has served time they would get time served off of this.

**Representative Nelson:** Where would they serve this 30 days?

**Pat Bohn:** It would be in the county jail. We already some of this. We pay the county for this.

**Chairman K. Koppelman:** So DOCR would be paying the county for that so it is not an additional cost to them. This first second will not modify the DUI law.

**Pat Bohn:** The 5<sup>th</sup> line down where it says or when a mandatory term of incarnation if required.

**Chairman K. Koppelman:** Manifest injustice departure that we passed a couple years ago to mandatory minimums; does it apply to 85%; three strikes or all of the above?

**Pat Bohn:** Yes. Those current minimum mandatory for your drug penalties; that would be included in this group. Her is the 90 day sanctions. Those two sections have to do with deferred imposition of sentence and one has to do with the section of law that has to do with the suspended sentence. These would only be on the first petition for revocation.

**Chairman K. Koppelman:** This first recitation of those three items is for revocation on the deferred imposition. The second is for suspended sentence.

**Pat Bohn:** What do we do with 90 days. That will be the challenge of implementation Section 19: with an expiration date on it; that would be in July 2021.

**Marc Pelka:** Continued going through the proposed amendment. (1:14:00)

**Chairman K. Koppelman:** On one hand we think we are tough on crime and they serve their sentence. When we talk about reentry this would provide supervision on this.

**Marc Pelka:** Yes you are. We try to show how tough supervision is.

**Chairman K. Koppelman:** (1:16:10) Getting them into a supervised situation is better. They have an opportunity to get their feet under them and then the certain and clear sanctions then they are dealing with the consequences.

**Marc Pelka:** (1:19:05) The sunset clause is uncommon. To get this policy to carry it out would require a lot of hard work. There will be tracking and monitoring of the policies and see how it is working. I would hate to see this all vanish and all this work. Policy Option 2 refers to both probation and patrol violators. This policy report refers to both probation violators and patrol violators. DOCR and the director gave me feedback they thought putting similar policies in play for the patrol would be detrimental. There liberty concerns and there are concerns from the patrol board would be undermined by putting it into legislation. I

received a lot of confidence in the desire within the DOCR to take a look at the patrol policy end of things. There is nothing in legislation that would currently require that.

**Chairman K. Koppelman:** It might help to ask for a report on many of these things, with any revisions that occur with respect to patrol policy revision. Is that what I am hearing?

**Representative Klemin:** On this sunset clause it forces the agencies and legislature to take an advanced look at it so they can do something before the sunset. I think it would be good to have continuing reporting throughout every intern to see how this is working.

**Representative Paur:** The sunset clause would dampen the necessary enthusiasm and effort into it.

**Chairman K. Koppelman:** A sunset clause can make it go away. I would welcome DOCR or whoever, come back to us. What kind of time window are we looking at before we see results?

**Marc Pelka:** January 1, 2018 when you begin to see the impacts. This would change people currently on supervision that are applied. That is how it would begin to be carried out over time. On the oversight and tracking the Justice Center has some experience on how states have implemented these. They usually do create an oversight body. Explained the oversight body and how it works. (1:30:00)

**Representative Klemin:** On the delayed effective date; when you said January 1, 2018 are you talking about the whole bill or just these new sections?

**Marc Pelka:** We did that date for the modeling for the impacts of policy on the prison. You can decide when you want to make it effective.

**Chairman K. Koppelman:** Normally when our biannual date

**Pat Bohn:** Our concern would be the 90 days with the courts. We may need more time working with the courts. Section 8. Not in the amended version.

**Chairman K. Koppelman:** If we pass it this session you don't think there would be time for the courts to adjust.

**Pat Bohn:** My main concern is how it would all work with the 90 days and maybe needing a little more time with that in Section 8 amendment on the page 3. On those revocations on 1 & 2 page 3 there is a presumption that there would be additional probation but in Section 3 where the court could revoke and impose that 90 days there I nothing to say the court would have to have a period of probation to follow.

**Marc Pelka:** (1:36:39) I think in those rare cases where this would apply it would be somebody who has exhausted supervision all together and it not fit for supervision.

**Representative Hanson:** (1:37:44) Yesterday we got yesterday a potential amendment from the group the does indigents.

**Chairman K. Koppelman:** What this does is requires the department to establish and implement a community behavioral program to provide comprehensive community based services for individuals who have serious behavioral health conditions. As a term and condition of patrol and it goes through specifics of the program and there is an appropriation there and a legislative management study.

**Marc Pelk:** (1:43:50-1:50:00) Going through proposed amendment 17.0197.03004. Heard around the state the lack of resources. These amendments mirror HB 2274 which is the behavior health bill that is in the Senate. Mostly it was meetings between DHS, Behavioral Health, and DOCR that lead to the product.

**Representative Klemin:** Why do we want to amend the Senate Bill into the House bill? The Senate bill is still probably going to go on. What is the point?

**Chairman K. Koppelman:** Some of these amendments were part of that. The behavioral health issues and the criminal justice peace have been unrelated, but separate tracks for a while. So we knew there was a time when someone could see all the moving parts. Senator Lee lets introduce the bill on the Senate side so they can vet it and so on and counsel prepared an amendment for this bill that would mirror that. It is easier to see one bill.

**Representative Klemin:** Appropriations would have an issue with both of these still alive.

**Chairman K. Koppelman:** We could strip the appropriations section out of this. Let them know that the appropriations are in another bill. Adopt the statutory language but not sections 18, 19 & 20.

**Motion made to move the amendment .03004 by Rep. Nelson; Seconded by Rep. Karls**

Discussion:

**Representative Paur:** .03005 I also have. I think we can discard that one.

**Rep. Satrum:** Can I get a clarification of what Rep. Nelson wants to keep in there.

**Chairman K. Koppelman:** Rep. Nelson's motion is to adopt this entire amendment as we have it.

**Voice vote carried.**

**Motion made by moved DOCR amendment, leave out the sunset clause (Section 19) by Representative Vetter: Seconded by Vice Chairman Karls:**

Discussion:

**Representative Nelson:** There is no list of Class C felony's available to us. I have heartburn on this. I am comfortable with the Class A misdemeanors because that is lesser offenses

and stuff. It seems to me like leering a minor is a Class C felony and I am not so sure I want the default to be probation for leering of a minor. I would oppose this.

**Chairman K. Koppelman:** Section 7 of the bill is presumptive probation and it deals with all Class A misdemeanors. However, I do take comfort knowing DOCR has vetted this with the Justice Center. This continues to be a work in progress.

**Representative Vetter:** I think if you take the Class C felony out it loses its teeth. The child abuse maybe takes care of leering to a minor?

**Representative Nelson:** The four that I mentioned there is the stalking, trafficking, violation of a protective order and neglect of a child; but there are so many Class C felonies. I am concerned about public sentiment. I don't feel very comfortable. I was comfortable with the Class A misdemeanor, but I am concerned if it is the wrong offense and we could screw up this whole program. I don't feel comfortable when I don't know what I am including.

**Chairman K. Koppelman:**(2:04:45) The amendment specifies that except for an offense involving domestic violence and it goes through those sections we talked about there are mandatory minimum. I share some of your concerns. Class A misdemeanor has a maximum penalty of one year and a fine of \$3,000 or both. To get sentenced to the state pen it has to be more than a year.

**Pat Bohm:** (2:06:05) Where you get a year and a day that gets the felony to stick? Anything less than a year can be reduced by a function of law to a misdemeanor. Last session the length of probation changed from one year to 360 days. That had to do with some maneuvering with the interstate compact. There is a bill in the Senate to reduce the A misdemeanor from 365 to 360 and it has to do with immigration law.

**Voice vote carried.**

**Motion made to amend Page 2, line 22, after 12.-1-32-02.1 insert 12.1-32-09.1 by Representative Klemin: Seconded by Representative Vetter:**

Discussion:

**Voice vote carried.**

**Motion made to amend on page 3, line 9-13 remove the overstrike by Representative Klemin: Seconded by Representative Nelson:**

Discussion:

**Chairman K. Koppelman:** It was language that was inserted last session and it says a court cannot simply order an offender to go to anger management class unless domestic violence offender treatment is not available.

**Voice vote carried.**

**Motion made to amend page 13, line 31 insert “the commission on Legal Counsel for Indigents” by Representative Vetter: Seconded by Representative Hanson:**

Discussion: None

**Voice vote carried.**

**Chairman K. Koppelman:** If we were to add on page 10, line 9 in consolation with the Board of Addiction Counseling Examiners at the e3nd of that underscored sentence; after the word board. I asked that question if they would be in consultation with those boards. If that is not acceptable they could take that concern to the Senate.

**Motion made to move that amendment by Representative Vetter: Seconded by Representative Roers Jones:**

Discussion: None

**Voice vote carried.**

**Chairman K. Koppelman:** We will need to act on this bill Monday because of the fiscal note. We did not include Section 19 on the DOCR Justice Center amendment that we looked at. I would suggest language that requires a report including patrol violation policy revisions and I would ask the DOCR and the Dept. of Patrol and Probation shall report to the intern judiciary committee during the 2017-19 and 2019-2021 intern’s and the standing house and Senate Judiciary committees in the 66 and 67 legislative assembly of ND on the progress of the ND Justice Reinvestment Program. Will ask Kelly to work with counsel and attach that Monday, of we chose.

**Representative Klemin:** I would rather see this written.

**Representative Jones:** Mr. Bohn wanted another amendment with something to do with January 1.

**Chairman K. Koppelman:** Yes Section 8 would be effective 1-1-18.

Hearing closed.

# 2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee  
Prairie Room, State Capitol

HB 1041  
2/6/2017  
27928

- Subcommittee  
 Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

To provide for the creation of a pretrial services program pilot project within the DOCR; and to provide for a report to the legislative assembly.

## Minutes:

1,2

**Chairman K. Koppelman:** Opened the meeting on HB 1041. If a direct appropriation is \$5000 or more it needs to be out by today and re-referred to Appropriations committee. If it has a fiscal effect of \$50,000 or more then it would need to be moved out. This is something that is a work in progress. Went over the adopted amendments so far. After discussion with leadership the sense might be to strip that amendment back off the bill and allow SB 2274 to run its course. Let the behavior health stand on its own and we will deal with the criminal justice and those related issues.

**Motion made by Vice Chairman Karls to strip amendment .03004 off the bill. Seconded by Representative Klemin:**

Discussion:

**Chairman K. Koppelman:** First we need to reconsider our action. Then the next motion would have to be a separate motion.

**Voice vote carried.**

**Motion made that we take this .03004 off the bill by Vice Chairman Karls: Seconded by Representative Klemin:**

Discussion:

**Voice vote carried.**

**Kelly Johnson, Intern:** (#1, #2) Went over the information with the committee.

**Chairman K. Koppelman:** This is just something to watch as the bills go through their process and through the Senate. We have the potential amendment to the bill that would be for a report to the legislative management during the next interim and would be a good idea.

**Representative Vetter:** This is in place of the sunset?

**Chairman K. Koppelman:** DOOCR requested that and we declined to do this.

**Motion made to move the amendment by Representative Vetter: Seconded by Representative Hanson:**

Discussion:

Voice vote carried.

**Do Pass as Amended by Representative Klemin and rerefer to appropriations:  
Seconded by Representative Paur:**

Discussion:

**Roll Call Vote: 14 Yes 0 No 1 Absent Carrier: Chairman K. Koppelman:**

Closed.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1041

Page 1, line 1, after "12.1-32" insert "and a new section to chapter 54-23.3"

Page 1, line 2, after "probation" insert "and a community behavioral health plan as a term of parole or an alternative to incarceration"

Page 1, line 11, after the first semicolon insert "to provide for a legislative management study;"

Page 1, line 11, after the second semicolon insert "to provide an appropriation;"

Page 1, line 12, remove "a"

Page 1, line 13, replace "report" with "reports"

Page 1, line 13, after "assembly" insert "and the legislative management"

Page 13, after line 26, insert:

"SECTION 17. A new section to chapter 54-23.3 of the North Dakota Century Code is created and enacted as follows:

**Community behavioral health program - Reports to legislative management and governor.**

1. The department of corrections and rehabilitation shall establish and implement a community behavioral health program to provide comprehensive community-based services for individuals who have serious behavioral health conditions, as a term and condition of parole under chapter 12-59, and as a sentencing alternative under section 12.1-32-02.
2. In developing the program under this section, the department of corrections and rehabilitation shall collaborate with the department of human services to:
  - a. Establish a referral and evaluation process for access to the program.
  - b. Establish eligibility criteria that includes consideration of recidivism risk and behavioral health condition severity.
  - c. Establish discharge criteria and processes, with a goal of establishing a seamless transition to postprogram services in order to decrease recidivism.
  - d. Develop program oversight, auditing, and evaluation processes that must include:
    - (1) Oversight of case management services through the department of human services;
    - (2) Outcome and provider reporting metrics; and
    - (3) Annual reports to the legislative management and the governor on the status of the program.



- e. Establish a system through which:
- (1) The department of human services:
    - (a) Contracts with and pays behavioral health service providers; and
    - (b) Supervises, supports, and monitors referral caseloads and the provision of services by contract behavioral health service providers.
  - (2) Contract behavioral health service providers accept all eligible referrals, provide individualized care delivered through integrated multidisciplinary care teams, and continue services on an ongoing basis until discharge criteria are met.
  - (3) Contract behavioral health service providers receive payments on a per-month per-referral basis. The payment schedule must be based on a pay-for-performance model that includes consideration of identified outcomes and the level of services required.
  - (4) Contract behavioral health service providers bill third-parties for services and direct payment to the general fund.
3. The department of human services may adopt rules as necessary to implement this program.

**SECTION 18. APPROPRIATION - DEPARTMENT OF CORRECTIONS AND REHABILITATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$7,000,000, or so much of the sum as may be necessary, to the department of corrections and rehabilitation for the purposes of developing and implementing the community behavioral health program for the biennium beginning July 1, 2017, and ending June 30, 2019. The department is authorized one full-time equivalent position to establish and implement the community behavioral health program.

**SECTION 19. APPROPRIATION - DEPARTMENT OF HUMAN SERVICES.** There is appropriated from special funds derived from federal funds and other income, the sum of \$7,000,000, or so much of the sum as may be necessary, to the department of human services for the purposes of implementing the community behavioral health program, for the biennium beginning July 1, 2017, and ending June 30, 2019. The department is authorized six full-time equivalent positions to implement the community behavioral health program.

**SECTION 20. APPROPRIATION - REPORT TO LEGISLATIVE MANAGEMENT - DEPARTMENT OF HUMAN SERVICES.**

1. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$500,000, or so much of the sum as may be necessary, to the department of human services for the purposes of contracting with a public or private entity to create and initiate, and facilitate the implementation of a strategic plan to increase the availability of all types of behavioral health services in all regions of the state, for the biennium beginning July 1, 2017, and ending June 30, 2019.

2. During the 2017-18 interim, the department of human services and the contracting entity shall make annual reports to the legislative management on the status of the creation and implementation of this strategic plan, including recommendations regarding legislation needed for full implementation.

SECTION 21. LEGISLATIVE MANAGEMENT STUDY - CRIMINAL JUSTICE SYSTEM BEHAVIORAL HEALTH NEEDS. During the 2017-18 interim, the legislative management shall consider continuing its study of alternatives to incarceration, with a focus on the behavioral health needs of individuals in the criminal justice system. The study must include receipt of reports on the status, effectiveness, and sustainability of the community behavioral health program for individuals in the criminal justice system which must include caseload data, any recognized savings to the department of corrections and rehabilitation, an overview of the training requirements for contract behavioral health service providers, and recommendations. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly."

Renumber accordingly

## PROPOSED AMENDMENTS TO HOUSE BILL NO. 1041

Page 1, line 3, after "12.1-32-02," insert: "subsections 3 and 6 of section 12.1-32-07,"

Page 1, line 12, remove "and"

Page 1, line 13, after "assembly", insert "; and to provide an effective date"

Page 5, replace lines 26-30 with:

The sentencing court shall sentence an individual convicted of a class C felony offense or class A misdemeanor offense to a term of probation at the time of initial sentencing, except for an offense involving domestic violence, an offense in violation of section 12.1-17-07.1, chapter 12.1-41, sections 14-07.1-06 or 14-09-22, an offense involving a firearm or dangerous weapon, or when a mandatory term of incarceration is required by law. The sentencing court may impose a sentence to imprisonment if the sentencing court finds there are aggravating factors present to justify a departure from presumptive probation. The sentencing court shall state the aggravating factors on the record at the time of sentencing. This section does not preclude the sentencing court from deferring imposition of sentence in accordance with subsection 4 of section 12.1-32-02 or sentencing an individual to a term of incarceration with credit for time spent in custody so long as execution of the sentence is suspended.

**SECTION 8. AMENDMENT.** Subsections 3 and 6 of section 12.1-32-07 of the North Dakota Century Code are amended and enacted as follows:

The court shall provide as an explicit condition of every probation that the defendant may not possess a firearm, destructive device, or other dangerous weapon while the defendant is on probation. Except when the offense is a misdemeanor offense under section 12.1-17-01, 12.1-17-01.1, 12.1-17-05, or 12.1-17-07.1, or chapter 14-07.1, the court may waive this condition of probation if the defendant has pled guilty to, or has been found guilty of, a misdemeanor or infraction offense, the misdemeanor or infraction is the defendant's first offense, and the court has made a specific finding on the record before imposition of a sentence or a probation that there is good cause to waive the condition. The

court may not waive this condition of probation if the court places the defendant under the supervision and management of the department of corrections and rehabilitation. The court shall provide as an explicit condition of probation that the defendant may not willfully defraud a urine test administered as a condition of probation. Unless waived on the record by the court, the court shall also provide as a condition of probation that the defendant undergo various agreed-to community constraints and conditions as intermediate measures of the department of corrections and rehabilitation to avoid revocation, which may include:

- a. Community service;
  - b. Day reporting;
  - c. Curfew;
  - d. Home confinement;
  - e. House arrest;
  - f. Electronic monitoring;
  - g. Residential halfway house;
  - h. Intensive supervision program;
  - i. Up to five nonsuccessive periods of incarceration during any twelve-month period, each of which may not exceed forty-eight consecutive hours; or
  - j. Participation in the twenty-four seven sobriety program; or
  - k. One period of incarceration during a period of probation not to exceed thirty consecutive days in lieu of a petition for revocation of probation.
6. a. The court, upon notice to the probationer and with good cause, may modify or enlarge the conditions of probation at any time prior to the expiration or termination of the period for which the probation remains conditional.
- b. If the defendant violates a condition of probation at any time before the expiration or termination of the period and the petition for revocation of probation is the first petition for revocation for a violation of a condition of probation in the case and the violation does not include the commission of an offense involving violence, a firearm or dangerous weapon, or the

commission of a felony offense, or the defendant was on probation for an offense subject to registration under section 12.1-32-15, the court may continue shall:

- (1) Continue the defendant on the existing probation, with or without modifying or enlarging the conditions; ~~;~~ or ~~may~~
- (2) Require the defendant to serve up to ninety days of incarceration or the balance of the defendant's sentence, whichever is less, as a condition of probation; or
- (3) ~~revoke~~ Revoke the probation and impose a sentence not to exceed ninety days of incarceration or the balance of the defendant's sentence, whichever is less.

In any other case, the court may revoke the probation and impose any other sentence that was available under section 12.1-32-02 or 12.1-32-09 at the time of initial sentencing or deferment.

c. In the case of suspended execution of sentence, if the defendant violates a condition of probation at any time before the expiration or termination of the period and the petition for revocation of probation is the first petition for revocation for a violation of a condition of probation in the case and the violation does not include the commission of an offense involving violence, a firearm or dangerous weapon, or the commission of a felony offense, or the defendant was on probation for an offense subject to registration under section 12.1-32-15, the court may shall:

- (1) Continue the defendant on the existing probation, with or without modifying or enlarging the conditions; or
- (2) Require the defendant to serve up to ninety days of incarceration or the balance of the defendant's sentence, whichever is less, as a condition of probation; or
- (3) ~~revoke~~ Revoke the probation and impose a sentence not to exceed ninety days of incarceration or the balance of the defendant's sentence, whichever is less.

In any other case, the court may revoke the probation and cause the defendant to suffer the penalty of the sentence previously imposed upon the defendant.

Page 6, remove lines 1 and 2.

Page 14, after line 9, insert:

**SECTION 19. EXPIRATION DATE.** Sections 7 and 8 of this Act are effective through July 31, 2021, and after that date are ineffective.

Renumber accordingly.

**PROPOSED AMENDMENTS TO HOUSE BILL NO. 1042**

Page 2, line 21, after "12.1-32-02.1" insert: ", 12.1-32-09.1,"

Renumber accordingly

HOUSE BILL NO. 1041

**REPORT TO LEGISLATIVE MANAGEMENT - REPORT TO LEGISLATIVE ASSEMBLY.** The department of corrections and rehabilitation, department of parole and probation, and judiciary shall provide a report to the legislative management during the 2017-18 interim regarding the progress of the justice reinvestment initiative. The department of corrections and rehabilitation, department of parole and probation, and the judicial branch shall provide a report of the progress of the justice reinvestment initiative to the sixty sixth legislative assembly."



February 6, 2017

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1041

Page 1, line 3, after the fifth comma insert "subsections 3 and 6 of section 12.1-32-07,"

Page 1, line 12, after the semicolon insert "to provide a report to the legislative management;

Page 2, line 22, replace "section" with "sections"

Page 2, line 22, after "12.1-32-02.1" insert "and 12.1-32-09.1,"

Page 3, line 10, remove the overstrike over "~~A court may not~~"

Page 3, remove the overstrike over lines 11 through 14

Page 5, after line 22, insert:

**"SECTION 7. AMENDMENT.** Subsection 3 of section 12.1-32-07 of the North Dakota Century Code is amended and reenacted as follows:

3. The court shall provide as an explicit condition of every probation that the defendant may not possess a firearm, destructive device, or other dangerous weapon while the defendant is on probation. Except when the offense is a misdemeanor offense under section 12.1-17-01, 12.1-17-01.1, 12.1-17-05, or 12.1-17-07.1, or chapter 14-07.1, the court may waive this condition of probation if the defendant has pled guilty to, or has been found guilty of, a misdemeanor or infraction offense, the misdemeanor or infraction is the defendant's first offense, and the court has made a specific finding on the record before imposition of a sentence or a probation that there is good cause to waive the condition. The court may not waive this condition of probation if the court places the defendant under the supervision and management of the department of corrections and rehabilitation. The court shall provide as an explicit condition of probation that the defendant may not willfully defraud a urine test administered as a condition of probation. Unless waived on the record by the court, the court shall also provide as a condition of probation that the defendant undergo various agreed-to community constraints and conditions as intermediate measures of the department of corrections and rehabilitation to avoid revocation, which may include:

- a. Community service;
- b. Day reporting;
- c. Curfew;
- d. Home confinement;
- e. House arrest;
- f. Electronic monitoring;
- g. Residential halfway house;
- h. Intensive supervision program;

2/6/17 DP  
2 of 3

- i. Up to five nonsuccessive periods of incarceration during any twelve-month period, each of which may not exceed forty-eight consecutive hours; ~~or~~
- j. Participation in the twenty-four seven sobriety program; or
- k. One period of incarceration during a period of probation not to exceed thirty consecutive days in lieu of a petition for revocation of probation.

**SECTION 8. AMENDMENT.** Subsection 6 of section 12.1-32-07 of the North Dakota Century Code is amended and reenacted as follows:

- 6. a. The court, upon notice to the probationer and with good cause, may modify or enlarge the conditions of probation at any time prior to the expiration or termination of the period for which the probation remains conditional.
- b. If the defendant violates a condition of probation at any time before the expiration or termination of the period and the petition for revocation of probation is the first petition for revocation for a violation of a condition of probation in the case and the violation does not include the commission of an offense involving violence, a firearm or dangerous weapon, or the commission of a felony offense, or the defendant was on probation for an offense subject to registration under section 12.1-32-15, the court ~~may continue~~shall:

  - (1) Continue the defendant on the existing probation, with or without modifying or enlarging the conditions;
  - (2) Require the defendant to serve up to ninety days of incarceration or the balance of the defendant's sentence, whichever is less, as a condition of probation; or may revoke
  - (3) Revoke the probation and impose a sentence not to exceed ninety days of incarceration or the balance of the defendant's sentence, whichever is less. In any other case, the court may revoke the probation and impose any other sentence that was available under section 12.1-32-02 or 12.1-32-09 at the time of initial sentencing or deferment.

- c. In the case of suspended execution of sentence, if the defendant violates a condition of probation at any time before the expiration or termination of the period and the petition for revocation of probation is the first petition for revocation for a violation of a condition of probation in the case and the violation does not include the commission of an offense involving violence, a firearm or dangerous weapon, or the commission of a felony offense, or the defendant was on probation for an offense subject to registration under section 12.1-32-15, the court ~~may revoke~~shall:
  - (1) Continue the defendant on the existing probation, with or without modifying or enlarging the conditions;
  - (2) Require the defendant to serve up to ninety days of incarceration or the balance of the defendant's sentence, whichever is less, as a condition of probation; or

2/6/17 DA  
3 of 3

- (3) Revoke the probation and impose a sentence not to exceed ninety days of incarceration or the balance of the defendant's sentence, whichever is less. In any other case, the court may revoke the probation and cause the defendant to suffer the penalty of the sentence previously imposed upon the defendant.

Page 5, remove lines 26 through 30

Page 6, replace lines 1 and 2 with "The sentencing court shall sentence an individual convicted of a class C felony offense or class A misdemeanor offense to a term of probation at the time of initial sentencing, except for an offense involving domestic violence, an offense in violation of section 12.1-17-07.1, chapter 12.1-41, sections 14-07.1-06 or 14-09-22, an offense involving a firearm or dangerous weapon, or when a mandatory term of incarceration is required by law. The sentencing court may impose a sentence to imprisonment if the sentencing court finds there are aggravating factors present to justify a departure from presumptive probation. The sentencing court shall state the aggravating factors on the record at the time of sentencing. This section does not preclude the sentencing court from deferring imposition of sentence in accordance with subsection 4 of section 12.1-32-02 or sentencing an individual to a term of incarceration with credit for time spent in custody so long as execution of the sentence is suspended."

Page 10, line 9, after "board" insert "in consultation with the state board of addiction counseling examiners"

Page 13, line 31, after the second comma insert "the Commission on Legal Counsel for Indigents."

Page 14, after line 9, insert:

**"SECTION 22. JUSTICE REINVESTMENT INITIATIVE - REPORT TO LEGISLATIVE MANAGEMENT - REPORT TO LEGISLATIVE ASSEMBLY.** Before September 1, 2018, the department of corrections and rehabilitation and the supreme court shall provide a report to the legislative management regarding the progress of the justice reinvestment initiative. The department of corrections and rehabilitation and the supreme court shall provide a report on the progress of the justice reinvestment initiative to the sixty-sixth legislative assembly."

Renumber accordingly

**2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO 1041**

House   **Judiciary**   Committee

Subcommittee

Amendment LC# or Description:   17.0197.03004  

Recommendation:    Adopt Amendment  
                            Do Pass    Do Not Pass    Without Committee Recommendation  
                            As Amended                            Rerefer to Appropriations  
                            Place on Consent Calendar  
 Other Actions:        Reconsider                            \_\_\_\_\_

Motion Made By   Representative Nelson   Seconded By   Vice Chairman Karls  

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman			Rep. Hanson		
Vice Chairman Karls			Rep. Nelson		
Rep. Blum					
Rep. Johnston					
Rep. Jones					
Rep. Klemin					
Rep. Magrum					
Rep. Maragos					
Rep. Paur					
Rep. Roers-Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

Total   (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment : \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

**Voice Vote carried.**

**2017 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO 1041**

House   **Judiciary**   Committee

Subcommittee

Amendment LC# or Description:   DOCR amendment, leave out the sunset clause  

Recommendation:    Adopt Amendment  
                            Do Pass    Do Not Pass    Without Committee Recommendation  
                            As Amended                            Rerefer to Appropriations  
                            Place on Consent Calendar  
 Other Actions:        Reconsider                            \_\_\_\_\_

Motion Made By   Representative **Vetter**   Seconded By   Vice Chairman Karls  

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman			Rep. Hanson		
Vice Chairman Karls			Rep. Nelson		
Rep. Blum					
Rep. Johnston					
Rep. Jones					
Rep. Klemin					
Rep. Magrum					
Rep. Maragos					
Rep. Paur					
Rep. Roers-Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

Total   (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_ :

If the vote is on an amendment, briefly indicate intent:

**Voice Vote carried.**

**2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO 1041**

House   **Judiciary**   Committee

Subcommittee

Amendment LC# or Description:   Page 2, line 22, after 12.1-32-02.1 insert 12.1-32-09.1(Bohn amendment)  

Recommendation:    Adopt Amendment  
                            Do Pass    Do Not Pass    Without Committee Recommendation  
                            As Amended                            Rerefer to Appropriations  
                            Place on Consent Calendar

Other Actions:        Reconsider                            \_\_\_\_\_

Motion Made By   Representative Klemin   Seconded By   Rep. Vetter  

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman			Rep. Hanson		
Vice Chairman Karls			Rep. Nelson		
Rep. Blum					
Rep. Johnston					
Rep. Jones					
Rep. Klemin					
Rep. Magrum					
Rep. Maragos					
Rep. Paur					
Rep. Roers-Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

Total   (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment : \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

**Voice Vote carried.**

**2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO 1041**

House   **Judiciary**   Committee

Subcommittee

Amendment LC# or Description:   Remove on page 3, line 9-13 the overstrike (CAWS Amend)  

Recommendation:    Adopt Amendment  
                           Do Pass    Do Not Pass    Without Committee Recommendation  
                           As Amended                            Rerefer to Appropriations  
                           Place on Consent Calendar  
Other Actions:        Reconsider                            \_\_\_\_\_

Motion Made By   Representative Klemin     Seconded By   Rep. *Nelson*  

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman			Rep. Hanson		
Vice Chairman Karls			Rep. Nelson		
Rep. Blum					
Rep. Johnston					
Rep. Jones					
Rep. Klemin					
Rep. Magrum					
Rep. Maragos					
Rep. Paur					
Rep. Roers-Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

Total   (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment : \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

**Voice Vote carried.**

**2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO 1041**

House   **Judiciary**   Committee

Subcommittee

Amendment LC# or Description:   Page 13, line 31 insert "The Commission on Legal Counsel for Indigents"  

Recommendation:    Adopt Amendment  
                            Do Pass    Do Not Pass    Without Committee Recommendation  
                            As Amended                            Rerefer to Appropriations  
                            Place on Consent Calendar  
 Other Actions:        Reconsider                            \_\_\_\_\_

Motion Made By   Representative Vetter   Seconded By   Rep. Hanson  

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman			Rep. Hanson		
Vice Chairman Karls			Rep. Nelson		
Rep. Blum					
Rep. Johnston					
Rep. Jones					
Rep. Klemin					
Rep. Magrum					
Rep. Maragos					
Rep. Paur					
Rep. Roers-Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

Total   (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment : \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

**Voice Vote carried.**



**2017 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO 1041**

House   **Judiciary**   Committee

Subcommittee

Amendment LC# or Description:   Add on page 10, line 9 in consultation with the Board of  
 Addiction Counseling Examiners at the end of the underscored  
 sentence; after the word board.  

Recommendation:    Adopt Amendment  
                            Do Pass    Do Not Pass    Without Committee Recommendation  
                            As Amended                            Rerefer to Appropriations  
                            Place on Consent Calendar  
 Other Actions:        Reconsider                            \_\_\_\_\_

Motion Made By   Representative Vetter   Seconded By   Rep. Roers Jones  

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman			Rep. Hanson		
Vice Chairman Karls			Rep. Nelson		
Rep. Blum					
Rep. Johnston					
Rep. Jones					
Rep. Klemin					
Rep. Magrum					
Rep. Maragos					
Rep. Paur					
Rep. Roers-Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

Total   (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_ :

If the vote is on an amendment, briefly indicate intent:

**Voice Vote carried.**

2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO 1041

House Judiciary Committee

Subcommittee

Amendment LC# or Description: 03004 off the bill

Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar  
Other Actions:  Reconsider   

Motion Made By Rep Karls    Seconded By Rep. Klemin

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman			Rep. Hanson		
Vice Chairman Karls			Rep. Nelson		
Rep. Blum					
Rep. Johnston					
Rep. Jones					
Rep. Klemin					
Rep. Magrum					
Rep. Maragos					
Rep. Paur					
Rep. Roers-Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

*Vote carried*

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

**2017 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO 1041**

House Judiciary Committee

Subcommittee

Amendment LC# or Description: . 3004 off the bill

Recommendation:  Adopt Amendment - Remove  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar

Other Actions:  Reconsider     Remove

Motion Made By Rep. Karls    Seconded By Rep. Klemin

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman			Rep. Hanson		
Vice Chairman Karls			Rep. Nelson		
Rep. Blum					
Rep. Johnston					
Rep. Jones					
Rep. Klemin					
Rep. Magrum					
Rep. Maragos					
Rep. Paur					
Rep. Roers-Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

*Vote carried*

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

**2017 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO 1041**

House Judiciary Committee

Subcommittee

Amendment LC# or Description: Amend. for report #2

- Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar  
 Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Rep Vetter    Seconded By Rep Hanson

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman			Rep. Hanson		
Vice Chairman Karls			Rep. Nelson		
Rep. Blum					
Rep. Johnston					
Rep. Jones					
Rep. Klemin					
Rep. Magrum					
Rep. Maragos					
Rep. Paur					
Rep. Roers-Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

*Vote  
 (Handwritten signature/initials)*

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

Date: 2-6-17  
 Roll Call Vote 4

**2017 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO 1041**

House Judiciary Committee

Subcommittee

Amendment LC# or Description: 17.0197.03008

Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
 Place on Consent Calendar  
 Other Actions:  Reconsider

Motion Made By Rep. Klemin Seconded By Rep. Paur

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman	✓		Rep. Hanson	✓	
Vice Chairman Karls	✓		Rep. Nelson	✓	
Rep. Blum	✓				
Rep. Johnston	✓				
Rep. Jones	✓				
Rep. Klemin	✓				
Rep. Magrum	✓				
Rep. Maragos	✓				
Rep. Paur	✓				
Rep. Roers-Jones	✓				
Rep. Satrom	✓				
Rep. Simons	✓				
Rep. Vetter	✓				

Total (Yes) 12 No 0

Absent 1

Floor Assignment : Rep. Koppelman

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1041: Judiciary Committee (Rep. K. Koppelman, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1041 was placed on the Sixth order on the calendar.

Page 1, line 3, after the fifth comma insert "subsections 3 and 6 of section 12.1-32-07,"

Page 1, line 12, after the semicolon insert "to provide a report to the legislative management;

Page 2, line 22, replace "section" with "sections"

Page 2, line 22, after "12.1-32-02.1" insert "and 12.1-32-09.1."

Page 3, line 10, remove the overstrike over "~~A court may not~~"

Page 3, remove the overstrike over lines 11 through 14

Page 5, after line 22, insert:

**"SECTION 7. AMENDMENT.** Subsection 3 of section 12.1-32-07 of the North Dakota Century Code is amended and reenacted as follows:

3. The court shall provide as an explicit condition of every probation that the defendant may not possess a firearm, destructive device, or other dangerous weapon while the defendant is on probation. Except when the offense is a misdemeanor offense under section 12.1-17-01, 12.1-17-01.1, 12.1-17-05, or 12.1-17-07.1, or chapter 14-07.1, the court may waive this condition of probation if the defendant has pled guilty to, or has been found guilty of, a misdemeanor or infraction offense, the misdemeanor or infraction is the defendant's first offense, and the court has made a specific finding on the record before imposition of a sentence or a probation that there is good cause to waive the condition. The court may not waive this condition of probation if the court places the defendant under the supervision and management of the department of corrections and rehabilitation. The court shall provide as an explicit condition of probation that the defendant may not willfully defraud a urine test administered as a condition of probation. Unless waived on the record by the court, the court shall also provide as a condition of probation that the defendant undergo various agreed-to community constraints and conditions as intermediate measures of the department of corrections and rehabilitation to avoid revocation, which may include:
  - a. Community service;
  - b. Day reporting;
  - c. Curfew;
  - d. Home confinement;
  - e. House arrest;
  - f. Electronic monitoring;
  - g. Residential halfway house;
  - h. Intensive supervision program;

- i. Up to five nonsuccessive periods of incarceration during any twelve-month period, each of which may not exceed forty-eight consecutive hours; ~~or~~
- j. Participation in the twenty-four seven sobriety program; or
- k. One period of incarceration during a period of probation not to exceed thirty consecutive days in lieu of a petition for revocation of probation.

**SECTION 8. AMENDMENT.** Subsection 6 of section 12.1-32-07 of the North Dakota Century Code is amended and reenacted as follows:

- 6. a. The court, upon notice to the probationer and with good cause, may modify or enlarge the conditions of probation at any time prior to the expiration or termination of the period for which the probation remains conditional.
- b. If the defendant violates a condition of probation at any time before the expiration or termination of the period and the petition for revocation of probation is the first petition for revocation for a violation of a condition of probation in the case and the violation does not include the commission of an offense involving violence, a firearm or dangerous weapon, or the commission of a felony offense, or the defendant was on probation for an offense subject to registration under section 12.1-32-15, the court may ~~continue~~ shall:
  - (1) Continue the defendant on the existing probation, with or without modifying or enlarging the conditions; ~~;~~
  - (2) Require the defendant to serve up to ninety days of incarceration or the balance of the defendant's sentence, whichever is less, as a condition of probation; or may revoke
  - (3) Revoke the probation and impose a sentence not to exceed ninety days of incarceration or the balance of the defendant's sentence, whichever is less. In any other case, the court may revoke the probation and impose any other sentence that was available under section 12.1-32-02 or 12.1-32-09 at the time of initial sentencing or deferment.
- c. In the case of suspended execution of sentence, if the defendant violates a condition of probation at any time before the expiration or termination of the period and the petition for revocation of probation is the first petition for revocation for a violation of a condition of probation in the case and the violation does not include the commission of an offense involving violence, a firearm or dangerous weapon, or the commission of a felony offense, or the defendant was on probation for an offense subject to registration under section 12.1-32-15, the court may ~~revoke~~ shall:
  - (1) Continue the defendant on the existing probation, with or without modifying or enlarging the conditions;
  - (2) Require the defendant to serve up to ninety days of incarceration or the balance of the defendant's sentence, whichever is less, as a condition of probation; or
  - (3) Revoke the probation and impose a sentence not to exceed ninety days of incarceration or the balance of the defendant's sentence, whichever is less. In any other case, the court may

revoke the probation and cause the defendant to suffer the penalty of the sentence previously imposed upon the defendant."

Page 5, remove lines 26 through 30

Page 6, replace lines 1 and 2 with "The sentencing court shall sentence an individual convicted of a class C felony offense or class A misdemeanor offense to a term of probation at the time of initial sentencing, except for an offense involving domestic violence, an offense in violation of section 12.1-17-07.1, chapter 12.1-41, sections 14-07.1-06 or 14-09-22, an offense involving a firearm or dangerous weapon, or when a mandatory term of incarceration is required by law. The sentencing court may impose a sentence to imprisonment if the sentencing court finds there are aggravating factors present to justify a departure from presumptive probation. The sentencing court shall state the aggravating factors on the record at the time of sentencing. This section does not preclude the sentencing court from deferring imposition of sentence in accordance with subsection 4 of section 12.1-32-02 or sentencing an individual to a term of incarceration with credit for time spent in custody so long as execution of the sentence is suspended."

Page 10, line 9, after "board" insert "in consultation with the state board of addiction counseling examiners"

Page 13, line 31, after the second comma insert "the Commission on Legal Counsel for Indigents."

Page 14, after line 9, insert:

**"SECTION 22. JUSTICE REINVESTMENT INITIATIVE - REPORT TO LEGISLATIVE MANAGEMENT - REPORT TO LEGISLATIVE ASSEMBLY.** Before September 1, 2018, the department of corrections and rehabilitation and the supreme court shall provide a report to the legislative management regarding the progress of the justice reinvestment initiative. The department of corrections and rehabilitation and the supreme court shall provide a report on the progress of the justice reinvestment initiative to the sixty-sixth legislative assembly."

Renumber accordingly



**2017 HOUSE APPROPRIATIONS**

**HB 1041**

# 2017 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee  
Roughrider Room, State Capitol

HB 1041  
2/9/2017  
28147

- Subcommittee  
 Conference Committee

*Bergquist*

## Explanation or reason for introduction of bill/resolution:

Relating to sentence reduction credit, medical paroles, domestic violence offender treatment, grading of theft offenses, credit for time spent in custody, terms and conditions of probation, controlled substances and controlled substance paraphernalia, addiction counseling services, and the supplemental nutrition assistance program; to provide a penalty; to provide for the creation of a pretrial services program pilot project within the department of corrections and rehabilitation; to provide a report to the legislative management; and to provide for a report to the legislative assembly.

## Minutes:

**2:00 Representative K Koppelman, District 13:** HB 1041 In its original version was the work of the incarceration issues committee and the alternatives to incarceration committee in the interim. We had members of appropriation committees, judiciary committees, and human services committees; in addition to a number of folks from the real world such as; state's attorneys, law enforcement, behavior health, and others. I think in order to explain what the bill is and why it's here it's important to explain some of the history.

Over the past decade the number of people in North Dakota's prisons, jails, on probation and on patrol has grown substantially. To accommodate this growth, the state and county governments have spent 10's of millions of dollars expanding the capacity of existing and building new facilities. Unless action is taken the prison population to projected to grow 36% by 2022 at a cost of 115 million dollars to accommodate the growth using contract beds. North Dakota really took a data driven approach to address these challenges, in the past interim people across the state has worked thoughtfully and diligently to address these challenges and in 2015 we established the incarceration issues committee, we have had an alternative to incarceration committee prior to that. To receive assistance, we put in the bill the requirement that we get assistants from the justice center, and to use a data drive approach. They don't take a one size fits all approach, they went around the state and do all kinds of research. 25 other states including South Dakota, Idaho and Nebraska have used this kind of assistance to carry out similar approaches. Between August 2015 and September 2016 the incarceration issues committee met 8 times, in September meeting we approved a bill draft knowing it wouldn't be a final product.

Last month the house judiciary committee held hearing on HB 1041, the bill before you reflect the work of our committee work. The objective here is to avoid significant prison contracting cost. Last month the justice center staff released the justice reinvestment in North Dakota policy framework report. It covers the data analysis conducted during the incarceration issues committee process as well as several other policies in HB 1041. If effectively implemented the policy frame is estimated to avert approximately 4/5 of the projected growth, 659 beds by 2022. This would avoid 64 million dollars in costs. The principles in HB 1041 are that the prisons and jails should prioritize people with serious and violent offences and arrange affective options, diversions, alternatives to incarceration, effective supervision and high quality community programs and treatment should be used to hold appropriate populations accountable.

**8:15** One of the things that was done in the bill is a sentence reduction credit in section 1 of the bill, an offender can earn 1-day reduction per six days served based on good conduct.

**Chairman Delzer** How much more do they earn off this one than they did before?

**Representative J. Nelson:** I believe in discussion the way it's currently handled the time credit can only be earned in prison, this would allow during pretrial or the regional jail situation as well.

**Representative K Koppelman:** Section 3 talks about medical paroles, basically if someone is in an advanced medical condition and don't present a threat to society, they can get an early release.

**Chairman Delzer** What happens with the cost of the medical condition?

**Representative J. Nelson** I believe in some cases Medicaid expansion would cover that.

**Representative K. Koppelman:** They should be reflected in the new fiscal note.

**Representative K. Koppelman:** Section 4 deals with the mandated treatment of domestic violence offenders. Again it gives some discretion to the court. Section 5, is about graded offenses, it basically increases the dollar value that triggers certain levels of offense. Line 26 of page 3, line 4 of page 4 eliminates some of the items that were previously in law about things that were stolen. Section 6 credit for sentence reduction again. Page 6 talks about avoiding revocation. The idea is that for some offences there would be probation preferred by the court instead of incarceration but there would be swift consequences if it was revoked.

**13:00 Chairman Delzer:** The ramification would be longer than 30 days?

**Representative J. Nelson:** I think the issues that I remember, ramification takes a long time to be served. Where this can be a swifter, right after the violation of the probation.

**Chairman Delzer:** Who decides this? Probation officer or the court? And where would they serve this?

**Representative J. Nelson:** In a regional facility.

**Representative Monson** Section 5, page 4 line 4 you crossed off automobile, aircraft and other motor propelled vehicle, did you just take that out or is it covered anywhere else?

**Representative K. Koppelman:** It's taken out and the reason is, page 3 line 26, we raised the value before the class C felonies are triggered. Instead of \$1000 is \$2500 dollars.

**Chairman Delzer:** Anything over 2500 without listing items.

**15:25 Representative K. Koppelman** Section 8, if it's a first violation of probation in the case and the violation does not include violence, a firearms or dangerous weapon then the court shall continue the defendant with existing probation, require the defendant to serve up to 90 days or the balance of the sentence, whichever is less.

**Chairman Delzer** Why "*shall*" instead of "*may*"

**Koppelman:** So the judges are more consistent. Page 7 talks about suspended of sentence, if the defendant violates, at any time before the end of the probation period. Then the court shall continue the probation or can require to serve 90 days.

**Chairman Delzer:** So the courts can still do whatever they want.

**Representative K. Koppelman:** Section 9, For certain crimes it would be the presumption that certain crime would have probation as the answer. It excludes the sex crimes, violent crimes, anything with a deadly weapon. It's more drug crimes than anything else, treatment is more effective than just locking them up. Section 10 is lowering the penalty for first offense to that Class B misdemeanor and an A misdemeanor if they repeat, that has to do with controlled substance again.

**Chairman Delzer:** How is that compared to what we passed on the floor?

**Representative K. Koppelman:** That had to do with the delivery, it was the procession of marijuana within a 1000 feet within the school or daycare. Now it's not in that window, it's if you're on school grounds, in the daycare or a pound with the intent to distribute.

**Chairman Delzer** Why was that not part of this bill?

**20:45 Representative K. Koppelman:** Section 11, this has to do with substance analog, those are the designer drugs that we dealt with a few years ago, where they were formulating the drug a little differently. Section 12 and Section 13 will have to be looked at in light of the other bill passed this session. Section 14, drug paraphilia from class C to a class A misdemeanor? One of the things we learned, is this isn't equally enforced throughout the state. Section 15 talks about termination of probation, after completing a treatment program. Section 16 talks about other things that discuss counseling. This will make sure that properly trained people are offering the counselling.

**Representative J. Nelson:** Does that mirror other states around us?

**Representative K. Koppelman:** I think we just don't have enough people to do the treatment, we're just trying to broaden that field a little bit.

**Representative J. Nelson:** I would be interested to know if that is one of the problems in other states.

**Chairman Delzer:** Section 17 deals with seven years being the most recent offense.

**Representative K. Koppelman:** We are looking at reentry; how do we get them back on their feet? These people are coming back into our society.

**Chairman Delzer:** Was the department of human service ok with this?

**Maggie Anderson:** Pam is out in the hall talking about the addiction piece.

**Representative K. Koppelman:** Right now there's a life time band. We talked about this pilot program last time and we didn't do it and now it was recommended to us again.

**Chairman Delzer:** Report again? You're don't do with us yet?

**Representative K. Koppelman:** We believe this is going to be an ongoing process.

**Representative J. Nelson:** It's unfortunate that the behavioral health isn't part of this.

**Chairman Delzer:** This should have started on the senate side.

**Representative K. Koppelman:** We wanted to get it all in.

**Chairman Delzer:** This should be on the senate side. We can't until conference committee

**Representative J. Nelson:** At the time the data wasn't complete. It seemed like this was the only place that we could get it in.

**Chairman Delzer:** Further discussion?

# 2017 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee  
Roughrider Room, State Capitol

HB 1041  
2/14/2017  
28329

- Subcommittee  
 Conference Committee

*May Brucher*

## Explanation or reason for introduction of bill/resolution:

A bill relating to presumptive probation; relating to sentence reduction credit, medical paroles, domestic violence offender treatment, grading of theft offenses, credit for time spent in custody, terms and conditions of probation, controlled substances and controlled substance paraphernalia, addiction counseling services, and the supplemental nutrition assistance program; to provide a penalty; to provide for the creation of a pretrial services program pilot project within the department of corrections and rehabilitation; to provide a report to the legislative management.

## Minutes:

No attachments

**Chairman Delzer:** HB 1041 has two amendments from Representative Koppelman. Representative Kempenich, would you go over the figures?

**Representative Kempenich:** The dollar figures revenue general fund for the 2017-19 is zero and other funds is \$1,532,785, expenditures general fund is \$1,432,824, other funds increase to \$1,532,785. The date of this fiscal note is 2-8-17. It says revenue explained that the Department of Human Services would receive the \$1,532,785 of federal SNAP revenue in 2017-19 and \$1,862,706 of federal SNAP for 2019-21. On the bottom they say the expenditures for 2017-19 adult services expenditures is like amount of \$1,543,739 which is 100% general fund and three new FTEs.

**Chairman Delzer:** When we had the bill before us with Representative Koppelman, we noted there were issues with how it was listed for the counselors and that's one of his amendments, .04002. On page 12, line 19 it removed the overstrike of "nothing in this" so it would say "nothing in this chapter may be construed to prevent any individual from doing work within the standards and ethics of that person/individual."

**Representative J. Nelson:** I visited with the Department of Human Services and they referenced 43.45.06 that they have the authority with existing law.

**Chairman Delzer:** They think everything is okay?

**Representative J. Nelson:** They think we can delete the entire section.

**Chairman Delzer:** I don't think we want to leave the language the way it is; I think it creates some confusion. We can take it out if they think they have the authority to do what they need to do.

**Representative J. Nelson:** That's what they told me the other day.

**Chairman Delzer:** I think we should put the amendment on and send it over to the Senate. I think that issue would come up over there. If we take it all the way out, that is in essence, leaving it totally up to the department. Committee, it's up to you what you want to do with that. We can adopt .04002 or we can remove section 16.

**Representative Kempenich:** I will make a motion to adopt .04002. It removes most of the new language.

**Representative Schatz:** Seconded the motion.

**Chairman Delzer:** Further discussion? It removes a licensed clinical psychologist and doctoral candidate in psychology. It removes all that new language. It probably does about the same thing that Representative Nelson was talking about. I think it's alright to leave it in.

**Voice vote all in favor, motion carries.**

**Chairman Delzer:** I think we should look at .04001 which is a bigger issue. We passed the bill on the floor that took the enhanced penalty away right up to the school grounds and this does the same thing. It makes it match what we already passed on the floor. That's what this amendment does. Is there any discussion on that?

**Representative Schatz:** Made the motion to amend HB 1041 with .04001.

**Representative Boehning:** Seconded the motion.

**Chairman Delzer:** Any other discussion? We had quite a bit of discussion on this when the bill came before us. This bill was different. The second bill takes effect over the first. This matches up what we passed on the floor. It takes the enhanced portion off.

**Voice vote all in favor motion carries.**

**Representative J. Nelson:** Will we be getting an updated fiscal note?

**Chairman Delzer:** Most people have it.

**Representative J. Nelson:** I don't. I have the .03000 version.

**Chairman Delzer:** Who else doesn't have the .04000? I looked at it and it is in Laws.

**Representative J. Nelson:** The offset will be coming across from the Senate in Senator Lee's bill where the behavioral health piece will be an integral part of this whole process.

There was a group here from out of state talking about justice reinvestment. Some of the conservative people presented the work that has been done in other states and the successes that have been garnered by this reinvestment. In looking at the fiscal note, there is going to be an investment part without question, if we adopt the whole thing. I am trying to understand how we would do this if we had to implement this in stages. I don't know how you can do it in stages because you can't get the outcomes without the services. Public safety should be the number one piece. The discussion will continue once the bill is out of the House. The easiest part is HB 1041, but the next part will be more difficult merging them together.

**Chairman Delzer:** I don't disagree that there will be a lot more consternation when the behavior health part shows up. It's a shame this started on this side. It should have all been on the same side so it could have been with the corrections budget. The Human Service budget is on our side now but that's a behavior health issue too.

**Representative Meier:** Page 16 subsection 5, can Representative J. Nelson explain that a little bit more?

**Representative J. Nelson:** That's to the ability for inmates that have been released to qualify for the SNAP program as they are in the reentry process. It is part of an evidence base procedure that if they are going to be successful in the reentry process, you have to have the same opportunity as somebody without the felony conviction they may have on their record. That allows that individual to qualify for those programs. Is that TANIF as well?

**Chairman Delzer:** I am not sure about TANIF; I think all they mention was SNAP. SNAP is all federal funds and that's why the \$1.5 million is listed as other funds. TANIF would have a direct cost on the 50-50 match and that should have been reflected in the fiscal note if that was the case.

**Representative Kempenich:** In reading this it says convicted of but it doesn't say anything about if they are using again. This is where it gets to be a slippery slope. You can reinvent whatever; drugs aren't something you just decide to give up; it's a process. I think they get second, third, fourth chances and we're still here today.

**Chairman Delzer:** Certainly, I think all of us understand that before a rehab program works you have to want it to work as a patient. We have the bill before us. Are there any questions on the bill?

**Representative Vigesaa:** I just want to point out that on the back of the fiscal note it does mention TANIF as well.

**Representative J. Nelson:** I will make a motion to Do Pass as Amended.

**Representative Delmore:** I will second that motion.

**Chairman Delzer:** Further discussion?

**Representative J. Nelson:** I was on the committee that went through this. This issue included people from every aspect of the judicial law enforcement and legislative



perspectives. The one thing that doesn't show up on the fiscal note is what we do in the coming biennium, are we going to contract inmates outside of North Dakota or are we going to build another wing onto the State Penitentiary and expect different outcomes? We're not getting the outcomes we need now. I think it's proven across the country that community supervision with some of these changes can provide better outcomes with less investment from state funds, if this is implemented. I think this deserves to move on and continue the conversation in this legislative session. This is a good bill. It needs to stay alive.

**A Roll Call vote was taken. Yea: 16      Nay: 4      Absent: 1**

**Motion carries: Representative K. Koppelman will carry this bill.**

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1041

Page 12, line 19, remove the overstrike over "~~Nothing in this~~"

Page 12, line 19, remove "This"

Page 12, line 19, remove the overstrike over "~~may be construed to~~"

Page 12, line 19, remove "does not"

Page 12, line 21, after "individual" insert "is providing addiction treatment or counseling and"

Page 12, line 22, overstrike "title or by"

Page 12, line 22, after "in" insert "the practice of licensed"

Page 12, line 23, remove "A licensed clinical psychologist, a doctoral candidate in psychology,  
a"

Page 12, remove lines 24 through 27

Renumber accordingly

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1041

Page 9, line 27, overstrike ", or within"

Page 9, line 27, remove "five hundred"

Page 9, line 27, overstrike "feet"

Page 9, line 28, overstrike the opening bracket

Page 9, line 28, remove "152.4"

Page 9, line 28, overstrike "meters] of"

Page 9, line 29, overstrike "or a public career and technical education"

Page 9, line 30, overstrike "school,"

Page 9, line 30, overstrike "one"

Page 9, line 31, overstrike "ounce [28.35 grams] or less of"

Page 10, line 1, overstrike "one ounce [28.35 grams] or less of"

Page 10, line 22, overstrike ", or within"

Page 10, line 22, remove "five"

Page 10, line 23, remove "hundred"

Page 10, line 23, overstrike "feet ["

Page 10, line 23, remove "152.4"

Page 10, line 23, overstrike "meters] of,"

Page 10, line 24, overstrike the first comma and insert immediately thereafter "or a"

Page 10, line 24, overstrike ", public career"

Page 10, line 25, overstrike "and technical education school, or a public or private college or university"

Renumber accordingly

2/13/17 DGA  
1 of 2

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1041

- Page 9, line 27, overstrike ", or within"
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- Page 10, line 22, overstrike ", or within"
- Page 10, line 22, remove "five"
- Page 10, line 23, remove "hundred"
- Page 10, line 23, overstrike "feet ["
- Page 10, line 23, remove "152.4"
- Page 10, line 23, overstrike "meters] of,"
- Page 10, line 24, overstrike the first comma and insert immediately thereafter "or a"
- Page 10, line 24, overstrike ", public career"
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- Page 12, line 21, after "individual" insert "is providing addiction treatment or counseling and"
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- Page 12, line 22, after "in" insert "the practice of licensed"

2/15/17 DK

Page 12, line 23, remove "A licensed clinical psychologist, a doctoral candidate in psychology.  
a"

2 of 2

Page 12, remove lines 24 through 27

Renumber accordingly

Date: 2/14/2017  
 Roll Call Vote #: 1

**2017 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1041**

House Appropriations Committee

Subcommittee

Amendment LC# or Description: 17.0197.04002

Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar  
 Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Representative Kempenich Seconded By Representative Schatz

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer					
Representative Kempenich			Representative Streyle		
Representative: Boehning			Representative Vigesaa		
Representative: Brabandt					
Representative Brandenburg					
Representative Kading			Representative Boe		
Representative Kreidt			Representative Delmore		
Representative Martinson			Representative Holman		
Representative Meier					
Representative Monson					
Representative Nathe					
Representative J. Nelson					
Representative Pollert					
Representative Sanford					
Representative Schatz					
Representative Schmidt					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

**Motion Carries**

Date: 2/14/2017  
Roll Call Vote #: 2

**2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1041**

House Appropriations Committee

Subcommittee

Amendment LC# or Description: 17.0197.04001

Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar  
Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Representative Schatz    Seconded By Representative Boehning

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer					
Representative Kempenich			Representative Streyle		
Representative: Boehning			Representative Vigesaa		
Representative: Brabandt					
Representative Brandenburg					
Representative Kading			Representative Boe		
Representative Kreidt			Representative Delmore		
Representative Martinson			Representative Holman		
Representative Meier					
Representative Monson					
Representative Nathe					
Representative J. Nelson					
Representative Pollert					
Representative Sanford					
Representative Schatz					
Representative Schmidt					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

**Motion Carries**

Date: 2/14/2017  
 Roll Call Vote #: 3

**2017 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1041**

House Appropriations Committee

Subcommittee

Amendment LC# or Description: 17.0197 04003

Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar  
 Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Representative J. Nelson Seconded By Representative Delmore

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer		X			
Representative Kempenich		X	Representative Streyle	X	
Representative: Boehning	X		Representative Vigesaa	X	
Representative: Brabandt		X			
Representative Brandenburg		X			
Representative Kading	X		Representative Boe	X	
Representative Kreidt	A		Representative Delmore	X	
Representative Martinson	X		Representative Holman	X	
Representative Meier	X				
Representative Monson	X				
Representative Nathe	X				
Representative J. Nelson	X				
Representative Pollert	X				
Representative Sanford	X				
Representative Schatz	X				
Representative Schmidt	X				

Total (Yes) 16 No 4

Absent 1

Floor Assignment Representative K. Koppelman

If the vote is on an amendment, briefly indicate intent:

**Motion Carries**



REPORT OF STANDING COMMITTEE

HB 1041, as engrossed: Appropriations Committee (Rep. Delzer, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (16 YEAS, 4 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1041 was placed on the Sixth order on the calendar.

Page 9, line 27, overstrike ", or within"

Page 9, line 27, remove "five hundred"

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Page 12, remove lines 24 through 27

Renumber accordingly

**2017 SENATE JUDICIARY**

**HB 1041**

# 2017 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee  
Fort Lincoln Room, State Capitol

HB 1041  
3/15/2017  
29237

- Subcommittee  
 Conference Committee

Committee Clerk Signature

*M. Wacker for Sen. Fetter*

## Explanation or reason for introduction of bill/resolution:

Relating to sentence reduction credit, medical paroles, domestic violence offender treatment, grading of theft offenses, credit for time spent in custody, terms and conditions of probation, controlled substances and controlled substance paraphernalia, addiction counseling services and more

Minutes:

Testimony attached #

1,2,3,4,5,6,7

**Chairman Armstrong** called the committee to order on HB 1041. All committee members were present.

Attachment 6,7 handed out but wasn't orally testified.

**Rep. Kim Koppelman, North Dakota State Representative District 13 (0:15–18:00)**, introduced and testified in support of the bill. (see attachment 1,2).

**Chairman Armstrong (18:40)**: On Section 5, when we increase from \$1,000 to \$2500. "Has anybody gone through code and make sure we end up in the consistent language in terms of making a felony for \$2500, not just that, that would be my opinion.

**Rep. Koppelman**: "I'm not aware that anyone has done that and it probably a massive exercise. I would say it's a good question though for the justice people during the interim. I am not aware of it.

**Wayne Stenehjem, North Dakota Attorney General**, testified in support of the bill. (19.42-24:11) No written testimony. I wanted to come here to underline and emphasize the importance of this particular bill together with the other legislation you've been considering this session. You know as has been mentioned several times North Dakota faces a significant problem. Our state and local prisons are full and further growth is predicted in the next decade unless we do something. This package of bills is designed to do exactly that. Our prison population have the fourth highest percent increase in the country, between 2005 and 2014 and the 3<sup>rd</sup> highest percentage of increase in jails, between 2006 and 2013 which has caused our incarceration costs in North Dakota to sky rocket. Much of that is overcrowding, quite simply is where in the substance abuse problem that we have here in North Dakota. You are

well aware that not very long ago you invested \$64M dollars in the renovation and expansion of the State Prison, and then in a short time it was full. Now we know that in the next 5 years by 2022, it will go up another 36% unless we do something different. From the law enforcement perspective, that for the first time ever, I am starting to hear law enforcement people saying look we're not mental health workers. We are not addiction counselors, why are you expecting law enforcement officers to serve the function of addiction counselors, mental health workers instead of addressing the root problem. I think it is a well-known fact that perhaps that as many as 80% of the people who are in our prison have either mental health or addiction issues and we do not have adequate and available, affordable, treatment options for these people in North Dakota. You are considering in this Legislature a lot of very important bills. But I firmly believe that in years to come, as you look back at the 2017 session of the legislature if you act to work on and pass the bills that you have before you, people will recognize that, that was one of the most visionary, and effective kinds of work and legislation that has been passed in this session. It is that important for all of us. I give a lot of talks around the state, to different groups and whenever I talk about the issues of addiction that is tearing families apart, I can see that the people that are in the groups that I speak recognize it's a severe issue. They aren't being addressed, they can be dealt sometimes through the criminal justice system, but its unfortunately that we have judges say that I put a defendant in jail not because I thought he deserved to be incarcerated, but because that's the only place that I knew he might be able to get treatment. Instead we need a kind of comprehensive forethought that this bill together with 2015 and the other measures that are before you represent for you, so I commend to you all the effort you have put forth on all the other bills and this one in particular, but I really want to emphasize there is a crying need, we are at a fork in the road, where if we don't address these kinds of things you're going to have to do the one thing you have to do when judges send people to prison and that's expand the prison. Instead you can use that same funding in doing the right thing for the tax payer but also for these people who are addicted because if you adequately treat who have those addictions the likely hood that you're going to see them back into the criminal justice system, back in jail or back in prison, is greatly reduced. I also want to emphasize the folks from the Council of State Government who have put forth an enormous amount of work.

**Senator Larson (24:10):** "When you're talking about justice reinvestment, then you said we don't have adequate treatment for mental health and addiction services. We are looking at reducing the number of people in prison, but we're not. Where are we really investing them in the other side of the reinvestment?"

**Attorney General Stenehjem:** "You're exactly right. We have some issues due to the budget we have. 2015 is a start, it's in other legislation, that makes it a little bit easier to get into those professional addiction treatments that assist people who are wanting to get into that system. All important pieces of the whole thing. I am hopeful that some of the funding wasn't necessary, and I understand that might be possible this session to start going down the road. We'll be there. The two go hand in hand." We need to make sure that we're doing what we need to do invest in and encourage people to enter into that profession.

**Senator Larson (25:50):** "This makes me wonder if the pendulum is going to swing to far this way before we are ready for it?"

**Attorney General Stenehjem:** "I think the bills you have go a long way to get it on track. I think it will help."

**Pat Bohn, Director for Transitional Planning Services: (26:25 – 37:00),** testified in support of the bill. (see attachment 3)

**Senator Larson (30:40):** "So that portion I'm guessing coincides with putting someone back in for a day or two going up to 30 days for that swift and sure consequence we talked about before?"

**Mr. Pat Bohn:** "Yes, it's kind of hand-in-hand with that." There's a 30-day immediate measure that we could impose as the Department of Corrections parole officers, and then there is the revocation of probation where the court would be required to only sentence the person up to 90 days if they meet the criteria. Why it's important with the amendments that I have presented and written up on pg. 10 of his testimony, we need to on pg. 7 line 14, insert a 4; pg.8 after line 2, insert a 4 as well. When we help draft the amendment for the House Judiciary Committee, we had to load out because it needs to be 1,2,3,4. Then somewhere along the lines it was taken and 4 under #3 and so we actually moved that subsection 4 to be set aside otherwise it doesn't work. Four would apply to what is now 3. We do have some requirements and concerns about the mandate as well.

**Chairman Armstrong:** Which mandate though? **Mr. Pat Bohn:** The requirement that the courts sentence an individual on probation revocation to 90 days upon the first petition if there are technical violations.

**Chairman Armstrong:** It just says up to 90 days. **Mr. Pat Bohn:** Right, up to 90 days. **Chairman Armstrong:** Yes, but that is not a minimum mandatory? It's a one day. **Mr. Pat Bohn:** What it is saying is excessive thresholds. Here's where you can only sentence him up to 90 days which is in my opinion is mandatory. **Chairman Armstrong:** Mandatory cap. **Mr. Pat Bohn** continued with his testimony in reference to this bill.

**Chairman Armstrong:** (33:30) "We've been working for years to get mandatory probation on Class C felonies, and now we are doing a 180. I'm interested to hear what others will say about that issue.

**Chairman Armstrong:** "Isn't there an administrative rule that deals with this? So do we need this in the code?"

**Mr. Pat Bohn:** "No, we want it out of the code." We want it to be dealt with through administrative rule.

**Chairman Armstrong:** The Chairman of this committee is Vice-Chair of Administrative Rule.

**Chairman Armstrong:** (37:00-37:49) Pre-trial services section 19, I think one of the greatest ironies is how incredibly good the, federal governments pre-trial services program is and then they just in a get a 10 year min/man.

**Senator Larson:** (37:55) On Section 3, the medical parole, I've heard mention of this before when someone is very old and sick then we should parole them. Then what happens to them if they aren't able to medically survive day at day in prison, what's going to happen to them when they are released as a felon?

**Mr. Pat Bohn:** "The extreme cases will die most likely. We have coordinated with the family and/or hospice care or nursing home so we can get them the needed services to help. We take care of them."

**Senator Larson:** "Who pays for that?"

**Mr. Pat Bohn:** "We usually line them up with Medicare or Medicaid coverage."

**Chairman Armstrong:** "Who pays for it now?"

**Mr. Pat Bohn:** The department absorbs many of those costs over the years. Certainly with the Affordable Health Care Act, that has changed some of that, because we can get some people who can get coverage. They can get some assistance to help defer those costs. Even with that we still have costs because most often we have to have security up there with the individual, so we have labor and staff time and all of those things that go with it.

**Marc Pelka:** Deputy Director of Programs, State Initiatives Council of State Governments Justice Center (41:00–1:05:20), testified in support of the bill. (see attachment 4)

**Chairman Armstrong** (44:20): When you're talking about the average stay of offense, that's for the people who are incarcerated, not for total population that has been charged with that crime?

**Mr. Marc Pelka:** "Correct. That's for length of stay. How long you stayed within the Department of Corrections.

**Chairman Armstrong:** But the average person who is convicted of a property offense is it 12 months in prison? It is the only average people who is sentenced to prison that its 12 months.

**Mr. Marc Pelka:** Correct and Class C, too I am referring too.

**Chairman Armstrong** (50:10): Were there any discussions regarding technical violations and issues of proportionality? Are we worried to see more criminal charges coming through? Because a lot of times they use probation revocation and then don't charge the criminal charge behind it. If you are sentenced to a C felony and you're on supervised probation for possession of methamphetamine, and you get caught again with methamphetamine often times they just revoke your probation and don't charge you with the next Class C felony. Was that discussed? I don't know if you can prove a negative necessarily, but it's something to be aware of. Not all technical probation violations are created equal.

**Mr. Marc Pelka:** That's a great question. Members of law enforcement and probation and parole. DOCR has an intermediate measures grid that is implemented to provide swift or in proportional responses. The issue of proportionality came up. Wanting to make sure the type of violation, the level of risk a person has, guides the intensity of response to the person receives. They are no data that we tap into to identify how or what types of violation behavior takes place and whether those are charges in a crime or sanctioned as a violation. We relied on the anecdote of the people who work in the system and know it best.

**Chairman Armstrong (53:55):** Where did the mandatory cap up to 90 days come from or term of incarceration, whichever is less.

**Mr. Marc Pelka:** Yes. There's a philosophical discussion that I discussed with the state. The concept is how do you balance discretion with structure. He characterized this as a mandatory sentence. We don't characterize this as a mandatory sentence. It's more of a floor and a ceiling. The research shows what is less important than the total time imposed is how swiftly and certainly and proportionately you can respond and apply to it. Currently there is a long window of time that can be applied for someone following revocation. So the question we posed with the working group, so how can you divide up or part that total incarceration time and move it earlier into supervision period so that someone who is violating conditions is not being compliant even remaining on supervision without a uniform incarceration sanction until the hammer comes down, but eligible to receive up to 30 or up to 90. It costs the state less, and applies in the immediate response to the violation.

**Senator Larson: (55:40):** But why a cap on what the judge can impose?

**Mr. Marc Pelka:** So that you create a graduated number of days of person can be sanctioned violating their conditions. To make it feel real and immediate and certain that a response will be waiting for them if they violate their conditions. If systems can apply sanctions that feel is though they could be applied on that given day, and for a certain amount or definite period of time, proportional to the violation, there behavior reacts to that.

**Chairman Armstrong: (56:55):** Most revocations happen early on in probation. Revocations are directly proportional to amount of time you've been on probation. So I think the point is to sentence you to 30days immediately and try to get you to that point immediately so you stop revoking and that does make some sense in the fact that we've practiced in this area has had those clients who if they would've went to prison or been revoked for 30 days-90 days early on in their probation, they may not have got the 4.5 year sentence at the end of their probation for the max, because it is essentially the same concept of 24/7 where you test, test, test and there's an immediate consequences to your actions for pushing it all to the end and giving the max.

**Senator Larson: (58:05):** Say they forgot a week left on sentence, then that's the maximum that can be done. I worked with juveniles who have decided that its worth that risk. I wonder that's why that just, the maximum cap makes me a little curious about how really effective that might be sometimes.

**Mr. Marc Pelka (58:39)** We looked at the numbers and if people are revoked it tends to happen in the first 6 months or so. There is a declining likelihood of recidivism for people on



supervision. The greatest risk is the earliest in the term. That's why you want to make sure you have resources front loaded. Both have quality and quantity of time officers spent, treatment and sanctions. You want to be able to respond quickly if they are violating their conditions.

**Chairman Armstrong (1:05:20):** Can you explain section 5?

**Mr. Marc Pelka:** We did not do a legal analysis of all the documented related offenses. We'd be happy to assist. The issue of felony theft thresholds and those similar type that you mention, they spread wide into fraud into checks and in whole bunch of other areas.

**Senator Nelson: (1:07:55):** You said 62% of people in prison had Class C felony or less, most of which were non-violent. Right?

**Mr. Marc Pelka:** I was talking about admissions to prison. So the number of people who come into prison in the DOCR who, 62% who went to prison have a serious offense such as a Class C felony offense.

**Senator Nelson:** And then the 36% of that 62% hasn't had no priors so about 20% of the people that get entered into prison in any given year have no priors.

**Mr. Marc Pelka:** The 36% refers to people who went to prison for a Class C, who have not been sentenced before the felony probation. So no priors refer to felony probation. We would've loved to do that analysis that you suggested, looking at misdemeanor offenses or other crimes, but we didn't get the chance to look at criminal history. We could only look at data available on that and covered felony probation.

**Chairman Armstrong:** You don't know what they were originally charged with right? Just what they went into prison on.

**Mr. Marc Pelka:** Correct. We know the final extent because it was executed.

**Senator Larson:** Did you do any studies of recidivism rate after treatment and after prison?

**Mr. Marc Pelko:** No, that's a great question. We compared people sent to prison and what their recidivism rate was after release, two people sentenced to probation during the 3 years of supervision. We can get general data from DOCR regarding programs, but we don't know completion, what type of program was to really look at in fact of that. I know that DOCR has done a great deal of bringing in assessments and professional program check list and other efforts to look at the programs and their effectiveness.

**Pastor Phil Wolverton:**, North Dakota Adult and Teen Challenge, (1:12:35 -1:16:08), testified in support of the bill. No written testimony. We would encourage proportional punishment and uphold the power of second chances and will take action toward building a justice system that is restorative for those impacted by crimes. Our program in ND our Adult Teen Challenge offers professional Christ centered recovery principles. Evidence based recovery principles for complete freedom from life controlling addictions from drug and alcohol. We are in support of this because our program currently is running around 30

students. We call them students because in the process of their time there they are learning and growing in the truth. Last year we graduated 16 students, one of those 16 immediately returned to drug and alcohol. He came back into the program and received help. We are looking forward to being able to help in this manner. You really need it and it's out there right now, for drug and alcohol abuse. If you read the reports from Senator Heitkamp it's critical that we work together and make sure those in need have access for affordable long term treatment. She stated here" exactly here providing young to the treatment." We have a minimum 12- month program and it help students get back on their feet. Every student that graduates our program must be employed. Therefore, putting out there a person who is working 56 % of our students that came into our program last year, were homeless and into drug and alcohol addiction. Now as a recovering and moving forward they are able to stand up on their own two feet. We received 19 children from those students who graduated last year who came back to the parents. They are building families and building community. Thank you for considering this House bill because it is going to impact families. ND Adult Teen Challenge is here to make sure the men and women out there who are being incarcerated could come to a long term program.

**Senator Larson** (1:16:08): Do you find any barriers to people coming to your program because your faith based?

**Pastor Phil Wolverton:** Yes. It is a mandatory volunteer program because some don't want to be there because it is a faith based program.

**Senator Larson:** I've heard good reports about your success rate. Are the barriers your seeing because of the people being referred o because of the referring agency?

**Pastor Phil Wolverton:** I think the barriers are personal barriers in their beliefs. Once they have been there for a certain amount of time, the belief system that they understand that we are a Christ centered program comes to fruition and allows them to grow. Yes, we have struggles like anything else. But our success rates are over 70% currently.

**Aaron Birst,** Association of Counties, testified in support of the bill. No written testimony.

"I'll be brief and just say we support this bill." (1:17:42) We raised the money threshold for the offenses, we went through the entire code to make sure it was consistent with all the monetary thresholds, but we reduced the length of probation, we've allowed and fixed the Supreme Court challenge where we allow judges to keep people on probation, we reduced the 85% for AG assault, and in fact this year we are making that retroactive if you pass that bill, we reduced all paraphernalia drug offenses to misdemeanors, we reduced the minimum mandatories and we are currently looking at reducing other minimum mandatories not to mention not to mention in this bill. Just to shoot out to our Justice system in general including the Department of Corrections, when we look at our sister states South Dakota, they have 3869 people incarcerated now, our 1800-1900 state wide, so generally ND has been doing a very phenomenal job making sure those who should go to prison or are not going to prison. Now that being said, we can always do better. We think this bill is a step in the right direction. A couple of technical things we'd like to mention though, turning to page 7 subsection 3, speaking of Mr. Sorenson, I believe we've got this taken care of; I believe that is going to get addressed; Section 9, and also Section 10 need more clarification. I will highlight one thing that quite frankly redo a bit in the criminal justice system and that is when you have a pregnant

individual who is using, prosecutors have used ingestion of a controlled substance to put them in jail and have a high bond until they give birth. Because you cannot charge somebody for reckless endangerment or anything regarding the pregnancy, this is our work around to make sure that that child is not continuously exposed to controlled substances. If you reduce that of course then all we can do is a 30- day sentence for the 1<sup>st</sup> time. So we would have to somehow trap them a 2<sup>nd</sup> time. Just to make you aware that it might be an unintended consequence but if that is what you want to do, we understand. (1:21:31) That is what is unique in ND we've all gone around on that about why we like misdemeanors to have supervised probation in ND because we don't like to felonize people if we don't have to but we like to look over them.

**Chairman Armstrong:** (1:22:10): What are your guys saying on Class C felony presumption probation? What are the practitioners in ND saying on it?

**Mr. Aaron Birst:** We know the concept, but we aren't normally going to use. Because in our experience the people we see are cleared to fall into the aggravating factor category.

**Chairman Armstrong:** W/out defining what aggravating factors are, this seems like an issue that will be interpreted from every prosecutor and judge.

**Mr. Aaron Birst:** We would prefer that mitigating factors was more spelled out. That would be easier for us to understand.

**Chairman Armstrong:** Do you know how long that will take to figure out what those aggravating factors are? We would have to get the whole committee back together.

**Mr. Aaron Birst:** We'll leave it up to you. The State's Attorneys have taken the position that all of these bills that ultimately a conference committee will be meeting on all of these trying to blend them altogether and that is where the conference committee can pick out what they like, what they don't like. We support them using their discretion to figure that out.

**Travis Finck, Deputy Director of the ND Commission on Legal Counsel for Indigents,** briefly testified in support of the bill. (1:24:10) We are a state agency that provides attorneys when there's a constitutional statutory rule based right to do so and if they are determined to be indigent. "Just want to say we support the bill." (1:24:50)

**Mr. Marc Pelko:** Called back to the podium (1:25:20)

**Chairman Armstrong:** Was there any talk in the interim about defining aggravating factors? Is this language used in other states? Can you give us some examples? I know a lot of lawyers who are skeptical of section 9. Many concerns are raised on Section 9, how, what, when, where, why?

**Mr. Marc Pelko:**(1:26:25) So this is a hot topic because it gets us this issue to providing structure in the sentencing system while preserving this question. When our state leaders were asked to identify those drive in growth, and what opportunities through policy to avert a portion of that growth, as much of it as possible. When we looked at what is driving growth in your prison population we were really drawn toward the Class C offenses that were just

dealing input. The challenge for a policy perspective is how can you take a portion of those people and coming to prison for non-violent Class C felony offenses and shift them to another part of the system where according to the data analysis who has done can get equal or better results for recidivism, consume less cost, and enable you to shift some of those resources into community behavioral treatment. And so, the policy that what compels the presumptive probation policy in looking that how sentencing codes across the country address low level non-violent offenses. States with sentencing guidelines, which they are not popular here and I am not suggesting that you consider it, they are self- grids that are created that short your cases by offense severity and by criminal history. Based on the number of priors a person has, based on the severity of the offense, the person rams into a cell and that is a presumption that that person will receive a type of offense or forgiven a number of years or number of months for that sentence. That doesn't exist here in ND because there is no guidelines or grids, or no appellate review, its wide open discretion. So that creates challenges for states. Some other near-by states that have similar challenges with a large volume of low level non-violent offenders coming to prison whereas in SD and Nebraska and those policies use similar presumptive probation approaches. In here is to recognize the concerns that you mentioned, Mr. Chairman from practitioners which is how do I retain my individual discretion and how do we provide through this policy with greater certainty, predictability, to the state regarding growth in the prison population and cost. There is an easier probation system. So if we were in a state with sentencing guidelines you will see a lower rows based on offense severity prioritizing probation. Your people wouldn't land in there and that's how states like Kansas and North Carolina, Michigan have parole sentencing guidelines. Let's talk about non-sentencing guideline states. Aggravating factors was meant to be a general category so it is universal and make your discretion and during implementation you define through the courts what aggravating factors are. It was not meant to be restricted to a particular characteristic of a case, and in SD there was implemented as its been used generally to include such characteristics as been on probation before and hasn't been successful; has a particular issue that needs to be addressed in prison; or on a business type of offense for the safety to the victim of the community, we are going to put that person to prison. A small number of cases, have reached SD Supreme Court through Appellate review, it's been a relatively small volume of cases. One case has been decided on this topic, and it upheld the judges' decision in the individual case to impose prison not probation.

**Chairman Armstrong:** I guess the question I would have is the more you get, we don't have an intermediate level of review, so my concern would be okay the first case upholds it but then the second case and then the 3 case, and then you end up in this situation without a definition of aggravating factors. Without a definition of aggravating factors essentially all we're saying is that the judge would have to allocate to something before he sentenced them to prison. That is essentially what this says. The concern I would have over the historic nature of how are Appellate Court system works is every time one of those ends up being different, and gets appealed your creating a law of inconsistencies across the trial court program to a statute that essentially doesn't mandate anything to a judge yet creates a system where you can end up having, it might solve some DOCR problems. I think it might cause some Appellate problems as we move forward through this. "My theory on section 9 is that it needs more teeth or needs to accurately reflect I don't know. It's just a section I can't get my head around." (1:31:19)

**Mr. Marc Pelko:** We can continue this discussion too, unless.

**Mr. Marc Pelko:** Handed out an Amendment. (see attachment 5) The amendments you see here, to Section 9 ensuring is that offenses that are violent are excluded from the presumptive probation policy. This is meant to be applied to people convicted of non-violent Class C felony offenses.

**Senator Larson (1:35:15)** What about the Tannif benefit when testing positive? I think there are several people in the Senate will vote against that just because of that part. I don't know if that is anything that you considered. There are people that like the idea of somebody receiving benefits and not being able to test positive for drugs.

**Mr. Marc Pelko:** I understand where you're coming from with that. That came up in the Interim committee as was proposals were moving forward and I think the denial of benefits here applies to someone with a prior conviction for a drug penalty. It doesn't reflect current behavior, whether your testing positive or using drugs or whether you access the benefits, it's the underlying offense not the actual behavior that informs the ability to receive and a lot of the focus was made on collateral consequences. The barriers that are set on people with criminal convictions to make it harder to get a job, get a home, and reestablish and that's the aim. That's how the group reached concensus.

**Dave Krout,** Director of Administration for DOCR called up to podium to answer question. The amendment that is included on what Mr. Pelko just passed out is the necessary appropriation for Human Service so that we can implement that section. We would have the authority to expand that TANIF program to include those folds about that appropriation. It is already in the fiscal note. It came through the House; it didn't make the appropriations. Deb from Human Services indicated that those funds were necessary.

**Chairman Armstrong:** Closed the hearing on HB 1041.


# 2017 SENATE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Fort Lincoln Room, State Capitol

HB 1041 Committee Work  
3/22/2017  
29556

- Subcommittee  
 Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to sentence reduction credit, medical paroles, domestic violence offender treatment, grading of theft offenses, credit for time spent in custody, terms and conditions of probation, controlled substances and controlled substance paraphernalia, addiction counseling services and more

**Minutes:**

**Testimony attached #**

1

**Chairman Armstrong** began the discussion on HB 1041. All committee members were present.

Christmas tree version of amendment was handed out and reviewed (:10 – 10:00). (see attachment 1)

**Senator Myrdal (7:10):** "Page 9, line 9, isn't that awfully ambiguous language?"

**Chairman Armstrong:** "Yes."

**Senator Myrdal:** "Do we want that in the code?"

**Chairman Armstrong:** "Yes. Threats and coercion in criminal law aren't that ambiguous."

**Senator Larson:** "I'll move the Amendment"

**Chairman Armstrong:** "5003 as further amended?"

**Senator Larson:** "Correct."

**Senator Luick** seconded.

Discussion followed:

**Senator Luick (10:50):** "It looks to me like all the testimony we had on this bill was all in favor of the bill, and nothing really against it. So if you're thinking that these amendments are going to make it better, then I say let's do it."

**Chairman Armstrong:** "I should point out that this bill has enough in it that everybody doesn't like a little bit of it. Which probably means they did a good job over the interim since when you do reform it will never be perfect for everyone. Everybody likes the concept of this but there are organizations that don't like particular sections of this bill, and I think it's a credit to all of them that they are willing to eat some crow and deal with some things they don't like to move this package forward. It's impressive."

**Senator Larson (12:35):** "As you went through the amendments this morning, every one of them made sense to me so I don't see why we wouldn't adopt the amendments. It's a very complex bill but these amendments make sense I think we ought to vote yes on the amendments."

A Roll Call Vote was taken. Yea: 6 Nay: 0 Absent: 0.  
The motion carried.

**Senator Myrdal** motioned for Do Pass as Amended and rerefer to appropriations.

**Senator Larson** seconded.

A Roll Call Vote was taken. Yea: 6 Nay: 0 Absent: 0.  
The motion carried.

**Chairman Armstrong** carried the bill.

**Chairman Armstrong** ended the discussion on HB 1041.

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1041

- Page 1, line 4, replace "subsections" with "subsection"
- Page 1, line 4, remove "and 6"
- Page 1, line 7, remove "section 43-45-06,"
- Page 1, line 11, remove "addiction counseling services,"
- Page 1, line 14, remove "and"
- Page 1, line 14, after "assembly" insert "; to provide an appropriation; to provide an effective date; and to declare an emergency"
- Page 3, line 26, remove overstrike over "one"
- Page 3, line 26, remove "two"
- Page 3, line 26, remove "five hundred"
- Page 6, remove lines 26 through 30
- Page 7, remove lines 1 through 30
- Page 8, remove lines 1 through 5
- Page 8, after line 8 insert:  
    "1."
- Page 8, line 11, remove "involving domestic violence; an offense"
- Page 8, line 11, replace "section 12.1-17-07.1" with "chapters 12.1-06.2, 12.1-08, and 12.1-09, section 12.1-16-03"
- Page 8, line 11, remove "chapter"
- Page 8, line 12, replace "12.1-41, or sections" with "chapters 12.1-17, 12.1-18, and 12.1-22, section 12.1-23-02.1, chapter 12.1-25, an offense subject to registration under section 12.1-32-15, chapter 12.1-36, or section"
- Page 8, line 12, replace "or 14-09-22" with ", including attempt, serving as an accomplice to an offense, or conspiracy to commit the offense"
- Page 8, line 12, after the underscored semicolon insert "an attempt to commit"
- Page 8, line 13, after "weapon" insert "or serving as an accomplice or in a conspiracy to commit an offense involving a firearm or dangerous weapon"
- Page 8, line 13, remove "The sentencing court may"
- Page 8, remove lines 14 and 15
- Page 8, line 16, remove "aggravating factors on the record at the time of sentencing."
- Page 8, after line 19, insert:



- "2. This section does not apply to an offense committed under subsection 1 of section 12.1-22-02.
  
- 3. This section does not apply if the sentencing court finds there are aggravating factors present to justify a departure from presumptive probation. The sentencing court shall state the aggravating factors on the record at the time of sentencing. Aggravating factors include:
  - a. That the individual has plead guilty to, or has been found guilty of, a felony offense or class A misdemeanor offense prior to the date of the commission of the offense or offenses charged in the complaint, information, or indictment;
  - b. The age and vulnerability of the victim, whether the individual was in a position of responsibility or trust over the victim, or whether the individual abused a public position of responsibility or trust; or
  - c. If the individual used threats or coercion in the commission of the offense."

Page 12, remove lines 16 through 26

Page 16, after line 29, insert:

**"SECTION 19. APPROPRIATION - DEPARTMENT OF HUMAN SERVICES.**

There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$110,916, or so much of the sum as may be necessary, and \$1,532,785 from federal funds, or so much of the sum as may be necessary, to the department of human services for the purpose of implementing sections 15 and 16 of this Act, for the biennium beginning July 1, 2017, and ending June 30, 2019.

**SECTION 20. EFFECTIVE DATE.** Sections 7 and 8 of this Act become effective January 1, 2018.

**SECTION 21. EMERGENCY.** Sections 1 through 6 and sections 9 through 16 of this Act are declared to be an emergency measure."

Renumber accordingly

2017 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1041

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: 17.0197.05004

Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar  
Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Senator Larson Seconded By Senator Luick

Senators	Yes	No	Senators	Yes	No
Chairman Armstrong	X		Senator Nelson	X	
Vice-Chair Larson	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Osland	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

**2017 SENATE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. HB 1041**

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 Place on Consent Calendar  
 Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Senator Myrdal    Seconded By Senator Larson

Senators	Yes	No	Senators	Yes	No
Chairman Armstrong	X		Senator Nelson	X	
Vice-Chair Larson	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Osland	X				

Total (Yes) 6    No 0

Absent 0

Floor Assignment Chairman Armstrong

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1041, as reengrossed: Judiciary Committee (Sen. Armstrong, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS and BE REREFERRED to the Appropriations Committee (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Reengrossed HB 1041 was placed on the Sixth order on the calendar.

Page 1, line 4, replace "subsections" with "subsection"

Page 1, line 4, remove "and 6"

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Page 1, line 11, remove "addiction counseling services,"

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Page 7, remove lines 1 through 30

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"1."

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Page 8, line 12, replace "or 14-09-22" with ", including attempt, serving as an accomplice to an offense, or conspiracy to commit the offense"

Page 8, line 12, after the underscored semicolon insert "an attempt to commit"

Page 8, line 13, after "weapon" insert "or serving as an accomplice or in a conspiracy to commit an offense involving a firearm or dangerous weapon"

Page 8, line 13, remove "The sentencing court may"

Page 8, remove lines 14 and 15

Page 8, line 16, remove "aggravating factors on the record at the time of sentencing."

Page 8, after line 19, insert:

- "2. This section does not apply to an offense committed under subsection 1 of section 12.1-22-02.
3. This section does not apply if the sentencing court finds there are aggravating factors present to justify a departure from presumptive probation. The sentencing court shall state the aggravating factors on the record at the time of sentencing. Aggravating factors include:
  - a. That the individual has plead guilty to, or has been found guilty of, a felony offense or class A misdemeanor offense prior to the date of the commission of the offense or offenses charged in the complaint, information, or indictment;
  - b. The age and vulnerability of the victim, whether the individual was in a position of responsibility or trust over the victim, or whether the individual abused a public position of responsibility or trust; or
  - c. If the individual used threats or coercion in the commission of the offense."

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Page 16, after line 29, insert:

**"SECTION 19. APPROPRIATION - DEPARTMENT OF HUMAN SERVICES.**

There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$110,916, or so much of the sum as may be necessary, and \$1,532,785 from federal funds, or so much of the sum as may be necessary, to the department of human services for the purpose of implementing sections 15 and 16 of this Act, for the biennium beginning July 1, 2017, and ending June 30, 2019.

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**2017 SENATE APPROPRIATIONS**

**HB 1041**

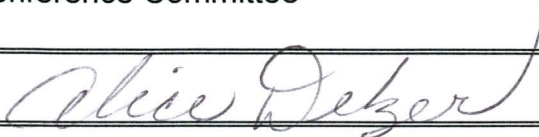
# 2017 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee  
Harvest Room, State Capitol

HB 1041  
3/28/2017  
JOB # 29736

- Subcommittee  
 Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact a new section to NCC relating to presumptive probate; relating to sentence reduction credit, medical paroles, domestic violence offender treatment, grading of theft offenses, credit for time spent in custody, terms and conditions of probation; controlled substances and controlled substance paraphernalia, addiction counseling services, and the supplemental nutrition assistance program; to provide a penalty; to provide for the creation of a pretrial services program pilot project within the DOCR; to provide a report to the legislative management; and to provide for a report to the legislative assembly. DO PASS AS AMENDED.

## Minutes:

1. Proposed Amendment # 17.0197.05005

**Chairman Holmberg:** called the Committee to order on HB 1041. Roll call was taken. All committee members were present. Chris Kadrmas, Legislative Council and Lori Laschkewitsch, OMB were also present. He talked about some bills they may take action on this morning. We will now hear 1041.

**Senator Kelly Armstrong, District 36:** (0.02.25- 1041 came out of the Justice Reinvestment project in the interim. I was not on the committee, however, I was the chair of the policy committee that sent this to you. It's been comprehensive. There are several bills going back and forth as it relates to here, there is \$110,000 appropriation and then there's a larger appropriation but it's from federal funds and I am assuming that deals with the SNAPP program. The large appropriation as it is just federal funds that we need to appropriate. But we added this request at the Department of Human Services (DHS), it would be Section 19. The appropriation was already in the bill. It was already on the fiscal note. It's just that they asked for this enabling language so we could make it happen. It is comprehensive. There is a lot of little changes, the ultimate goal is to reduce incarceration days along with the DOCR budget and dealing with some of the treatment issues. I have handed an amendment out to Senator Hogue that deals with criminal justice in that, it's the same thing in a different bill, we removed a section of the code. We missed one so I would ask that you put that amendment on the bill. It fits. It's criminal law so it's the same type of deal so it's a very noncontroversial amendment. Are there any questions?

Chairman Holmberg: This is as far as the funding is concerned, this is separate from what was in DOCR budget.

Senator Armstrong: That is correct. This is \$110,000 of general funds. Hopefully, over the long-term we will start saving a lot of money on DOCR on those types of things. We want to deliver criminal justice for efficiently.

**Chairman Holmberg:** Is there anyone else is going to say anything on how this will work. David, could you come up and share from your prospective how this is a good idea, a good investment of \$110,000?

**Dave Krabbenhoft, Director of Administration for Department of Corrections and Rehabilitation (DOCR)** \$110,000 is actually for Human Services, the general fund match on that SNAP and TANF dollars. It's a good investment because you have some people coming out of prison that don't qualify for TANF and others that do. So you have someone that's going in on a drug offense, they come in, they don't qualify. If you have someone coming out on, say a violent offense, I believe those people qualify. So this just opens that up and removes one of those barriers that you have to having people be successful once they leave incarceration and try to get their life back on track. **(0.05.41)**

**Senator Armstrong:** There are some broad-stroke issues in here with how you deal with presumptive probation and trying to deal with some things but then there is also really just common sense deals. One of those things going through this bill is allowing people to get credit for good-time when they are in county jail. If you spend 8 months in county jail prior going to trial that counts against, say you get 3 years in prison, you spent 8 months prior to going to trial you get that 8 months counts against your 3-year sentence. But you don't get good-time for county time. It's the same way we apply good-time in the state Penn. Anybody will tell you it's harder to serve county time than it is to serve penitentiary time. The difference, all you are doing is giving them good-time when they are in county and that's going to save a ton of jail bed days, which saves a ton of money and it's not even a policy change, it's just taking our policy we already have at the DOCR and applying it to the county. So there's a lot of work and it doesn't cost anybody anything and that's not controversial. It's going to save a bunch of DOCR bed days. With presumptive probation and things of that nature, there's going to be some changing of hearts and minds as we work through here. But at the end of the day, it's really expensive to incarcerate people. If you can give them 3 days out of jail, they're already getting if they are in the penitentiary. Anybody knows, I think 85% of our county jails are full of pretrial detention. That would probably be the average across the board. So everyone of those people will get good-time now while they're serving if they sentenced to a prison sentence. **(0.07.26)**

Senator Dever: I am struggling with we are going to shift from incarcerated people to treating people. I struggle with when that's appropriate and when it's not. I see in Subsection 5 of Section of 16, the Department may not deny any assistance to any individual who has been convicted of a felony that has an offense with an element of drug use. Last Saturday there was a fire in an apartment. The individual in the apartment was arrested for heroin use. So, do they set aside the arson if that is what it comes to in favor of treatment.



**Senator Armstrong:** Absolutely not. Arson is a violent crime. Arson is a 85% crime. I will say throughout the course of all of these bills you have seen there has been a very conscious effort to stay away from violent crime. When you are dealing with presumptive probation in the Class C Felony range, no, if they are convicted of arson the drug use is not an element of arson. With the SNAP program and things of that nature, what we found in the data just extrapolates this out and I know this very well. I have the women's prison in my district. The people who need it the most when they come out don't get it because they are federally barred from it and what you end up doing is just sending them right back. It's the cycle of that, at least at the women's prison, and somebody else could correct me on that, but I think there is only 1 person incarcerated in the women's prison for a violent crime. Everything else is probation revocation, drug use, non-violent crimes. Arsons of violent crime the degree they were excluded before would be excluded now would be my understanding. **(0.09.45)**

**Senator Dever:** But when they are released this is saying they are eligible for TANF without regard to their use of drugs.

**Carol Cartledge, Director of Economic Assistance with DHS:** As far as for the TANF and the SNAP program there is a 7-year limitation and it has to do with the disqualification due to a Felony drug conviction. This bill would remove that limitation to where you would be able to receive those benefits on a drug conviction only.

**Senator Dever:** That 7 year limitation is imposed by the state not the federal.

**Carol:** there is a federal disqualification due to a drug Felony conviction. States have the option to do a lesser one or not to do it at all. And that's why at one point and time it was, they were disqualified permanently and then there was legislation about 4 years ago where it was down to 7 years and this would remove that disqualification. **(0.11.14)**

**Chairman Holmberg:** I am sure the discussion during the interim revolved in large part about they come out of prison and there is no net of safety for them. I recall when we visited down in Senator Armstrong's district, down in New England some years ago, we had a panel discussion of inmates. The one had been out less than 24 hours before she sold drugs again. If there is no safety net for them, what they turn to is what got them into trouble before which is crime.

**Senator Mathern:** Often times there's a family situation and sometimes these kinds of requirements actually are harder on the family then they are on the person who violated the law. So in a sense we are punishing other people in the family for one person in the family who's had a drug violation. Passage of this bill is actually helping family members. And if family members of a person that convicted a crime can lead a more normal life it generally helps the person who is convicted of a crime to change their behavior and become useful members of the family. **(0.13.04)**

**Senator Dever:** I understand that and it would likely be the case that families are already on TANF when the jailed person gets out and it's a matter of continuing on that.

**Chairman Holmberg:** Anyone else wishing to testify on 1041? We will close the hearing on 1041 and ask Senator Hogue if he has an amendment for this bill.

**Senator Hogue:** moved Proposed Amendment # 17.0197.05005 to HB 1041. 2<sup>nd</sup> by Senator Grabinger.

**Chairman Holmberg: Discussion?** This was the corrective language that came from the chairman of Judiciary. Would you call the roll on the amendment to HB 1041?

**A Roll Call vote was taken. Yea: 14; Nay: 0; Absent: 0.**

**Chairman Holmberg:** Could we have a motion on the bill?

**Senator Wanzek: Moved a Do Pass as Amended. 2<sup>nd</sup> by Senator Mathern.**

**V. Chairman Bowman:** Where do we go with this bill in two years with this bill if it doesn't work like everybody's hoping it will work? That's my concern. Here we start another program. I know personally some people who have been incarcerated and before they get home, they should be back in prison. They just don't want to get rehabilitated and is this going to guarantee any of them is going to change because we have another program? I know we are trying to keep people out of prison but sometimes, that's the only place they can be that aren't a danger to society.

**Senator Robinson:** I think you make a good point. There are some that can benefit from this and we are looking at affecting those that we can. There will be some that will benefit from this, hopefully enough that we will have an impact on our numbers in our Correction budget. We've got to try some new things. This is an attempt to think outside the box and Senator Armstrong mentioned common sense, I think there is potential for this to work and have an impact. The numbers we will have to see in a couple of years. You make a good point. There are some you can't turn around. Let's work on those that we can.

**Senator Wanzek:** Senator Grabinger and I served on the interim committee. The whole thought process here, a lot of those that are filling up our jails are of the non-violent nature, haven't committed a violent crime, or addicted, or have behavioral health issues. And in those cases we gotta try and save enough money and not imprison them. We've got to provide some credit on offenses and re-examine the offenses and the hope is that we are not starting a new program, we're going to shift some dollars from incarcerating them to helping them get back on their feet and rehabilitated. I would agree if we come back and we don't see that trend in that direction we will have to re-examine it, but it's the hope that we are going to save money, and that's what the intent was.

**Chairman Holmberg:** And if we don't stop the curve of putting people in jail, we will have to build more jails. Counties are doing that right now. Grand Forks is looking to add a bunch of cells.

**Senator Grabinger:** These things have been tried in other states. This is just not North Dakota. This comes from practices that have taken place in other states. We heard that in our testimony in the interim committee. CSJ came in with these recommendations and suggested because they've been tried and they worked other places. There is some data behind it.

**Chairman Holmberg:** It is considered best practices, that's what the interim committee was looking at. Would you call the roll on a Do Pass as Amended on 1041?

**A Roll Call vote was taken. Yea: 14; Nay: 0; Absent: 0.**

**Chairman Holmberg:** This goes back to the Judiciary Committee. Senator Armstrong will carry the bill.

The hearing was closed on HB 1041.

CM  
3/28/17  
1 of 2

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1041

In lieu of the amendments adopted by the Senate as printed on pages 872-874 of the Senate Journal, Reengrossed House Bill No. 1041 is amended as follows:

Page 1, line 4, replace "subsections" with "subsection"

Page 1, line 4, remove "and 6"

Page 1, line 7, replace "section 43-45-06" with "subsection 2 of section 39-20-01"

Page 1, line 11, remove "addiction counseling services,"

Page 1, line 14, remove "and"

Page 1, line 14, after "assembly" insert "; to provide an appropriation; to provide an effective date; and to declare an emergency"

Page 3, line 26, remove overstrike over "one"

Page 3, line 26, remove "two"

Page 3, line 26, remove "five hundred"

Page 6, remove lines 26 through 30

Page 7, remove lines 1 through 30

Page 8, remove lines 1 through 5

Page 8, after line 8 insert:

"1."

Page 8, line 11, remove "involving domestic violence; an offense"

Page 8, line 11, replace "section 12.1-17-07.1" with "chapters 12.1-06.2, 12.1-08, and 12.1-09, section 12.1-16-03"

Page 8, line 11, remove "chapter"

Page 8, line 12, replace "12.1-41, or sections" with "chapters 12.1-17, 12.1-18, and 12.1-22, section 12.1-23-02.1, chapter 12.1-25, an offense subject to registration under section 12.1-32-15, chapter 12.1-36, or section"

Page 8, line 12, replace "or 14-09-22" with ", including attempt, serving as an accomplice to an offense, or conspiracy to commit the offense"

Page 8, line 12, after the underscored semicolon insert "an attempt to commit"

Page 8, line 13, after "weapon" insert "or serving as an accomplice or in a conspiracy to commit an offense involving a firearm or dangerous weapon"

Page 8, line 13, remove "The sentencing court may"

Page 8, remove lines 14 and 15

CR  
3/28/17  
2 of 2

Page 8, line 16, remove "aggravating factors on the record at the time of sentencing."

Page 8, after line 19, insert:

- "2. This section does not apply to an offense committed under subsection 1 of section 12.1-22-02.
- 3. This section does not apply if the sentencing court finds there are aggravating factors present to justify a departure from presumptive probation. The sentencing court shall state the aggravating factors on the record at the time of sentencing. Aggravating factors include:
  - a. That the individual has plead guilty to, or has been found guilty of, a felony offense or class A misdemeanor offense prior to the date of the commission of the offense or offenses charged in the complaint, information, or indictment;
  - b. The age and vulnerability of the victim, whether the individual was in a position of responsibility or trust over the victim, or whether the individual abused a public position of responsibility or trust; or
  - c. If the individual used threats or coercion in the commission of the offense."

Page 12, replace lines 16 through 26 with:

**"SECTION 15. AMENDMENT.** Subsection 2 of section 39-20-01 of the North Dakota Century Code is amended and reenacted as follows:

- 2. The test or tests must be administered at the direction of a law enforcement officer only after placing the individual, ~~except individuals mentioned in section 39-20-03,~~ under arrest and informing that individual that the individual is or will be charged with the offense of driving or being in actual physical control of a vehicle upon the public highways while under the influence of intoxicating liquor, drugs, or a combination thereof. For the purposes of this chapter, the taking into custody of a child under section 27-20-13 or an individual under twenty-one years of age satisfies the requirement of an arrest. The law enforcement officer shall determine which of the tests is to be used."

Page 16, after line 29, insert:

**"SECTION 20. APPROPRIATION - DEPARTMENT OF HUMAN SERVICES.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$110,916, or so much of the sum as may be necessary, and \$1,532,785 from federal funds, or so much of the sum as may be necessary, to the department of human services for the purpose of implementing sections 16 and 17 of this Act, for the biennium beginning July 1, 2017, and ending June 30, 2019.

**SECTION 21. EFFECTIVE DATE.** Sections 7 and 8 of this Act become effective January 1, 2018.

**SECTION 22. EMERGENCY.** Sections 1 through 6, 9 through 14, and 16 and 17 of this Act are declared to be an emergency measure."

Renumber accordingly

Date: 3-28-17

Roll Call Vote #: 1

**2017 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1041**

Senate Appropriations Committee

Subcommittee

Amendment LC# or Description: 17.0197.05005

- Recommendation:
- Adopt Amendment
  - Do Pass     Do Not Pass     Without Committee Recommendation
  - As Amended     Rerefer to Appropriations
  - Place on Consent Calendar
- Other Actions:     Reconsider     \_\_\_\_\_

Motion Made By Hogue    Seconded By Grabinger

Senators	Yes	No	Senators	Yes	No
Chairman Holmberg	✓		Senator Mathern	✓	
Vice Chair Krebsbach	✓		Senator Grabinger	✓	
Vice Chair Bowman	✓		Senator Robinson	✓	
Senator Erbele	✓				
Senator Wanzek	✓				
Senator Kilzer	✓				
Senator Lee	✓				
Senator Dever	✓				
Senator Sorvaag	✓				
Senator Oehlke	✓				
Senator Hogue	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

Date: 3-28-17

Roll Call Vote #: 2

2017 SENATE STANDING COMMITTEE  
ROLL CALL VOTES

BILL/RESOLUTION NO. 1041

Senate Appropriations Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

- Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
 Place on Consent Calendar  
Other Actions:  Reconsider  \_\_\_\_\_

Motion Made By Wanzek Seconded By Mathern

Senators	Yes	No	Senators	Yes	No
Chairman Holmberg	✓		Senator Mathern	✓	
Vice Chair Krebsbach	✓		Senator Grabinger	✓	
Vice Chair Bowman	✓		Senator Robinson	✓	
Senator Erbele	✓				
Senator Wanzek	✓				
Senator Kilzer	✓				
Senator Lee	✓				
Senator Dever	✓				
Senator Sorvaag	✓				
Senator Oehlke	✓				
Senator Hogue	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Judiciary (Armstrong)

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1041, as reengrossed and amended: Appropriations Committee (Sen. Holmberg, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Reengrossed HB 1041, as amended, was placed on the Sixth order on the calendar.

In lieu of the amendments adopted by the Senate as printed on pages 872-874 of the Senate Journal, Reengrossed House Bill No. 1041 is amended as follows:

Page 1, line 4, replace "subsections" with "subsection"

Page 1, line 4, remove "and 6"

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Page 8, remove lines 14 and 15



Page 8, line 16, remove "aggravating factors on the record at the time of sentencing."

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3. This section does not apply if the sentencing court finds there are aggravating factors present to justify a departure from presumptive probation. The sentencing court shall state the aggravating factors on the record at the time of sentencing. Aggravating factors include:
  - a. That the individual has plead guilty to, or has been found guilty of, a felony offense or class A misdemeanor offense prior to the date of the commission of the offense or offenses charged in the complaint, information, or indictment;
  - b. The age and vulnerability of the victim, whether the individual was in a position of responsibility or trust over the victim, or whether the individual abused a public position of responsibility or trust; or
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Renumber accordingly

**2017 CONFERENCE COMMITTEE**

**HB 1041**

# 2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee  
Prairie Room, State Capitol

HB 1041  
4/6/2017  
29981

- Subcommittee  
 Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to sentence reduction credit, medical paroles, domestic violence offender treatment, grading of theft offenses, credit for time spent in custody, terms and conditions of probation, controlled substances and controlled sub. paraphernalia, addiction counseling services and supplemental nutrition assistance program; to provide a penalty; to provide for the creation of a pretrial services program pilot project within the dept. of corrections and rehab. And to provide for a report to the Leg. Assembly.

Minutes:

1

**Attendance: Chairman Koppelman, Rep. Satrom; Rep. M. Nelson; Senator Armstrong; Senator D. Larson; Senator C. Nelson**

**Chairman K. Koppelman:** Opened the conference committee on HB 1041. This conference committee is comprised of the same conferees as two other bills; HB 1269 & SB 2149. We have had two meetings on that bill already. We are basically trying to put together one bill for the Justice Reinvestment that we have been working on for more than a year now in ND. This committee will have to determine which bills go together. We have the Senate one standing at bay and see what we do with that one. The Justice Center was present for the meeting earlier this morning on SB 2149 in the Senate, but they had to leave town. Senator Armstrong, please walk us through the marked up version of this bill.

**Senator Armstrong:** (4:20) .05005 version; We left everything the same in Sections 1,2,3,4; Section 5 went from \$2,500 for property value thief down to \$1,000. The only place it was changed from \$1,000 to \$2500 was thief. We should try and get it to \$2500 everywhere in the code; which we would have a fun research project for somebody. (#1) Presumptive probation was handed out.

**Chairman K. Koppelman:** Kelly please find in code where these dollar levels are in code on Class C. Ask DOCR to help.

**Senator Armstrong:** Reach out to the insurance department too. We did not make any changes to 6 or 7. We removed Section 8, The practical effect in some of these revocations, if you hire a lawyer you might not even get a court date for 90 days. Not all technical violations are created equal. If they only have 90 days on these instead of doing a revocation; you will start seeing more associated criminal charges. It is easier to prove the revocation because the burden is lower. Section 8 will be the presumption probation language. There are certain things in the c felony that should not presumptive probation.

**Chairman K. Koppelman:** When we look at the Justice Center's recommendation here is the whole idea presumptive probation is that #1 you are keeping some folks from going to prison who should be given an opportunity for a second chance. On the revocation side swift and certain consequences has been part of their suggestive model.

**Senator Armstrong:** Section 9; ingesting a controlled substance. The A & B misdemeanor should be looked at more. Marijuana possession is a B misdemeanor; marijuana paraphernalia is a B misdemeanor. Probably tracking all of those the same. Having a misdemeanor ingestion of the harder control substances.

**Chairman K. Koppelman:** We just past the medical marijuana bill in the house. Is there anything in that context that we need to watch in this bill?

**Senator Armstrong:** In the marijuana bill is any of the Chapter 19 marijuana crimes move to a lower level, then the offense in that chapter should follow 19. In civil issues you will go to the record you will see what was the legislative intent. In criminal issues there is no legislative intent. It is whatever is the least in the code that the defendant gets. Section 11, 12, 13, 14 we didn't change. 16 we took out. It was trying to fix an administrative rule issue by changing the century code definition. It already is in administrative rule. Section 15 we added to the bill. This will be the repeal. The new amendments everything is the same until Section 20; the money was already appropriated; this was the enabling language so the fiscal note wouldn't change.

**Senator Larson:** Section 11; we didn't change it, but I have been informed if we pass this part; we are making possession of heroin and meth and A misdemeanor?

**Senator Armstrong:** That is what Section does?

**Senator Larson:** I know we just a session ago passed legislation regarding analog's because they were killing people. I think we may have gone too far in that section.

**Senator Armstrong:** We have that school language in there too and we are conferring on that. We will probably appoint the same people on that bill too. This is making hard drugs an A misdemeanor; that is what section 7 a does.

**Chairman K. Koppelman:** We look at possession versus distribution. We are trying to divert people from being put behind bars and it is different than violent drugs. An a misdemeanor is not a light thing; it just means you are not going to prison probably. If you look at the Justice Reinvestment effort as a package; basically what we are doing with some of this is trying to divert people who are guilty of drug crimes and similar kinds of things into treatment and areas where they can be helped rather than making them felonies and putting them behind bars.

**Senator Larson:** When they are using these drugs they are not just experimenting.

**Senator Armstrong:** My concern is if you have a poison pill in one section then we need to look at these sections. My biggest concern is having the ability to have an a misdemeanor disposition. If you get caught with meth and a meth pipe; if the meth is the c felony and the pipe is the a misdemeanor and this is your 19 time in a month you have been in a courtroom you probably will not get the benefit of the a misdemeanor; but if you have never been in trouble before and you have an addiction issue, we can set down and look at this. We have done a good job creating a misdemeanor dispositions in the code which allow for negotiating in the courtroom. We are going to want to test that. I am not sure.

**Chairman K. Koppelman:** Are there aggravating penalties for repeat offenses?

**Senator Armstrong:** The vast majority of them end up with deferred sentences. Mandated addiction treatment and mandated addiction evaluation and required to follow through with recommend treatment.

**Chairman K. Koppelman:** There is higher penalties for a higher volume of the substance possession. Then they are looking at people that are likely dealers.

**Senator Armstrong:** Our concerns are more on stuff we didn't change.

**Chairman K. Koppelman:** On page 13 of the markup, the intent was to say there are people who are qualified for treatment who aren't currently doing it and he was trying to capture some of that. We did amend it so it took out the concern of the licensed addiction counselors to say these other professionals could do that, but later the DHS came to us and said that there was this other statute so we went back to this. Basically we just made sure no one was using their designation inappropriately. Whether that needs to be broaden or not I think Senator Armstrong you are correct to say it could be dealt with in administrative rule, but my response to that is we are here and if we need to do something here let's do it.

**Rep. Satrom:** Going back to Senator Larson's comment about the c felony versus the a misdemeanor; I am wondering if the Justice Center or some of our guest's here would have something where we can be data driven? I would prefer facts.

**Chairman K. Koppelman:** We do have some good expertise in the room.

**Aaron Birst, State's Attorney's Office:** I am not aware of any data that we would have. That is just a policy decision you will have to make. Going from a c felony to an a misdemeanor; that is trying to keep you out of the state pen and put them in the county jails or on probation.

**Senator Armstrong:** I think the movement we have made is incredible. If we go too far; are prosecutors going to say this is too much?

**Aaron Birst:** Yes you did hear opposition. 10% object from prosecutors. Section 9 does get the attention of prosecutors and I can tell you they were going to start emailing folks regarding this.

**Pat Bohn, DOCR:** There is no evidence to show c felony possession or paraphernalia is keeping a lid on our drug problem in this country. If these drug addicted people we are talking about here; there are so many other lateral consequences to the felony conviction that doesn't go along with the criminal conviction. If you can move that back and still have the punishment; now it is

going to be changed to 360 days; there is still the first round; there is two years of supervised probation that the person is eligible for. A lot of those same things can be accomplished within that year of potential of up to 360 days of incarnation where they get treatment with us if they need it. I don't know if we need the perpetuating piece?

**Senator Nelson:** I am concerned about a long term felony on anyone's record. Those long term things kids don't think about. If you have the lowest level felony, there is; then you have a problem. Even if we would do it; do the feds let up? I don't think so.

**Pat Bohn:** Part of the reason we took the a misdemeanor down from 365 to 360 days is to address this very issue as to how the feds see a sentence of a year or more. In the federal system they see it as a felony.

**Senator Larson:** I have a concern about giving a public message that something as lethal as meth is only a misdemeanor. Even with defense attorney's if it is a young kid the judge can decide to charge as a lesser level. If we don't have the ability to charge at a felony level in statute they can't charge at a felony level for somebody who is very recklessly sharing meth. We had people die not long ago in Grand Fork's using analog drugs. Do you see with people coming into the prison if this is something that would be a misdemeanor do you see that as being any kind of green light for people that you are dealing with this is something you need to be concerned about?

Closed.

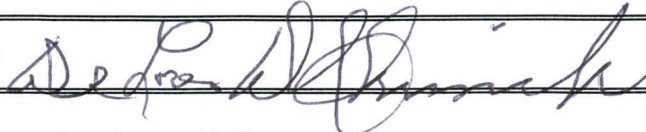
# 2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee  
Prairie Room, State Capitol

HB 1041  
4/11/2017  
30038

- Subcommittee  
 Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to sentence reduction credit, medical paroles, domestic violence offender treatment, grading of theft offenses, credit for time spent in custody, terms and conditions of probation, controlled substances and controlled sub. paraphernalia, addiction counseling services and supplemental nutrition assistance program; to provide a penalty; to provide for the creation of a pretrial services program pilot project within the dept. of corrections and rehab. And to provide for a report to the Leg. Assembly.

Minutes:

1

**Attendance:** Chairman Koppelman, Rep. Satrom; Rep. M. Nelson; Senator Armstrong; Senator D. Larson; Senator C. Nelson

**Chairman K. Koppelman:** Opened the conference committee on HB 1041. When we left last time we were talking about some possible amendments to the bill. Went over the Presumptive probation language that was handed out at the 4-6-17 meeting. They had some concerns with the lowering of drug possession charges to a Class A misdemeanor to a Class C felony. We had a lengthy discussion on those factors. We talked about the possibility of making a Class C felony on second and subsequent offenses so we are dealing with habitable people here who have had one brush with the law and have not responded in a way we would like to see. Before I even mentioned that; BCI brought it up as a possibility. The amendment that I have from legislative counsel (#1) .05007. That was the intent of this amendment.

**Senator Armstrong:** I would hope we can move this thing this afternoon and see a Christmas tree version. We should settle on the school zone bill this afternoon. Once we have that we will need to bring that language into this bill just to make sure it is consistent or take it out of this bill; whichever one works



the easiest. I did mention to you yesterday that I am concerned about the paraphernalia should track. I think you should have a B misdemeanor paraphernalia charge and A misdemeanor possession charge you could end up with the same situation we had before with marijuana. That is when any city cop arrests anybody for that charge you are going to end up fracturing off into two different court systems; having two different public defenders; having two different prosecutors. Explained municipal courts are courts of limited jurisdiction. They only take Class B misdemeanors and they only take cases from municipal law enforcement. If a city of Fargo cop arrests somebody; the B misdemeanor would go into municipal court and the A misdemeanor charge would go into district court. Let's say if you qualify for indigent; you can apply for an indigent lawyer on both cases and you will have a city prosecutor on the B misdemeanor case and a county prosecutor on the A misdemeanor case and that happens quite often. It has happened all the time with marijuana. Anytime when a municipal cop pulls you over you have two different tracking systems for those cases. When you are dealing with addiction you can have up to two years supervised probation. I think everything is moving in the right direction.

**Chairman K. Koppelman:** Why would we make paraphernalia possession the same as possession of a substance itself? We have always thought of those as a lesser and greater offense.

**Senator Armstrong:** Oddly enough with marijuana, paraphernalia was the A misdemeanor and possession was the B misdemeanor.

**Chairman K. Koppelman:** We have had some discussion on 2149 which bleed into 1041. We have the same conferences on. In our discussion on 2149; we had Mr. Pelke there from the Justice Center and we talked about a number of things in that meeting that effect HB 1041.

**Senator Armstrong:** I would like to replace Section 8 with the Presumptive probation section passed out last meeting.

**Motion Made to replace Section 8 with presumptive probation amendment by Senator Armstrong; Seconded by Rep. Nelson.**

**Roll Vote: 5 Yes 0 No 1 Absent Carried**

**Motion Made to Move .05007 amendment with the exception of the removal of Section 8 by Senator Armstrong; Seconded by Representative Nelson**

**Discussion:**

**Senator Nelson:** .5007 includes removing all of Section 8?

**Roll Call Vote: 5 Yes 0 No 1 Absent Carried**

**Chairman K. Koppelman:** Kelly will work with Legislative Counsel on this and we will look at it later. We can clarify that later. Explained to Senator Larson what we had done.

**Senator Armstrong:** The good time credit is just a technical correction. You have to be careful with enhancements. We need to put just a one level enhancement on these bills.

**Senator Larson:** There are very good reason to keep drug dealings away from schools. We know drug dealers are working at getting the younger generation into their dealings. There are excellent reasons to be concerned about drugs in school.

Closed.

# 2017 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Prairie Room, State Capitol

HB 1041  
4/12/2017  
Job 30079

- Subcommittee  
 Conference Committee

Committee Clerk Signature

*Donna Whetnam*

**Explanation or reason for introduction of bill/resolution:**

Relating to sentence reduction credit, medical paroles, domestic violence offender treatment, grading of theft offenses, credit for time spent in custody, terms and conditions of probation, controlled substances and controlled sub. paraphernalia, addiction counseling services and supplemental nutrition assistance program; to provide a penalty; to provide for the creation of a pretrial services program pilot project within the dept. of corrections and rehab. And to provide for a report to the Leg. Assembly.

**Minutes:**

Attachments 1,2,3

**Attendance:** Chairman Koppelman, Rep. Satrom; Rep. M. Nelson; Senator Armstrong; Senator C. Nelson; Senator Osland replaced Senator D. Larson.

**Chairman K. Koppelman:** Opened the conference committee on HB 1041. Handed out (Attachment #1) on \$1000 triggers throughout the code. She has done some research on that and hopefully captured what we were looking for, and then she has some language down at the bottom of the second page regarding inconsistencies in some of the bills on school zones, and I believe the conference committee on HB 1341 has completed its work, and Rep. Pollert chaired that conference committee and brought some information we can look at with respect to that. I think Senator Armstrong is aware of that as well. I don't know if you have any suggestions Sen. Armstrong on how to best respond to this.

**Senator Armstrong:** The Senate removed the \$2500 and put it back down to \$1000.

**Chairman K. Koppelman:** We wouldn't have seen our technical corrections bill I guess, because it would be a policy thing, but we are going to have to search for it. In HB 1041 where does that appear

**Senator Armstrong:** You max out with 90 days in probation. Everyone agrees the 30-day hit is a good idea. If you are on revocation, we have created in this bill; in Subsection 7 if you are in violation you have 30 days you don't get a hit for 2 year revocation down the road. There were two issues in the bill ND practitioners had problems with, one was presumptive probation language and the presumptive probation of violating probation. We removed it because you may not even get into court for 90 days; especially if you hire an attorney to fight a violation. If you have a max out sentence at 90 days where you do not pass go; they have to let you go, you are going to see more felony charges. They are treated as technical violations because the burden of proof is lower and it is easier to violate them on probation; then it is to charge them with another felony. If everyone involved knows they are going only going to get 90 days on the second probation violation; you will see more felony prosecutions. Let's see if the 30 days works; let's see if the presumption probation language work's in the other part before we bring in this 90 day as well.

**Chairman K. Koppelman:** So with the presumptive probation language we adopted the other day; walk it through how you think this will work.

**Senator Armstrong:** The presumptive probation is now so the C felony primarily you are presumed to be on probation unless the court deviates from that. If you have three technical violations and if you are going to violate you will within the first 12 months. If you serve 30 days we are cutting off larger revocations or new felony charges later. That is how the presumptive probation will work pre-trial. The second 90 days is where lawyers start getting involved. If you have three years hanging over your head on probation you might want to fight your revocation.

**Chairman K. Koppelman:** Do you believe this that injures the potential effectiveness of the whole?

**Senator Armstrong:** They were more concerned about the presumptive probation language that we were keeping into the bill than that language.

**Chairman K. Koppelman:** The Senate amendments simply removed that section; the 90-day piece and the Section 8, which we now have replaced.

Let's move to the \$1000 issue. We have the later marked version? No we don't; they are working on that. We are looking at the markup version 05007; bottom of page 3, line 27. In the original bill that was moved from \$1000 to \$2500. This is the trigger of the value of property that makes it a Class C felony. Senator Armstrong said we changed it a few years back?

**Senator Armstrong:** In 2013 we had changed it. It had been \$500 for many years.

**Chairman K. Koppelman:** Where are we with inflation? Maybe \$1000 in today's dollars might want to consider \$2500? Maybe the \$2500 is not a bad place to be. We can discuss in the committee what you feel about this.

**Senator Armstrong:** We didn't have time to find it everywhere and wanted to make it consistent. Fraud amounts should be the same.

**Senator Nelson:** There are 13 other places here. Are we going to put amendments on this bill for all those 13 places?

**Senator Armstrong:** It is a tough left to sell this change. I think it would be good public policy to do it but I don't want to lose the whole bill over it.

**Chairman K. Koppelman:** We should be consistent in law and have it the same everywhere. This has passed the House; the Senate removed it only because of this concern about consistency. Should be look at it here as part of this justice reinvestment effort to raising the bar for what really constitutes a felony; which I think it is central to everything we have been talking about and then if we want to look at any other of the statutes that might be clearly related to this kind of offense and maybe leave some of the others. It is late in the process to do that and not have hearings and let the insurance folks and everyone else weigh in.

**Senator Armstrong:** I have been telling Mark Pelka about this for two years. If you are going to look at the theft everywhere. Fraud is theft for everyone else.

**Chairman K. Koppelman:** (18:09-21:24) Discussed Justice Center roll in this in great detail and how their roll would work in the state.

**Representative Nelson:** I think right now we should leave this alone and the \$1000. A public official it is \$100. Prescription drug; doesn't matter if it is \$5 it is a Class C felony. When I look down this list and see forgery or counterfeiting; if you are not trying to defraud someone it is at \$1000. I am not sure I would

want to treat these things the same way that I would a theft. If there was a separate bill that we could look at I would be comfortable with that.

**Chairman K. Koppelman:** I agree with you; however, the \$2500 in this bill was vetted; it did pass the House. I respect Senator Armstrong and his point about it being bad public policy to have something at one level one place and another level a different place to trigger a Class C felony. You make a good point about fraud too. Theft is not a violent crime.

**Representative Nelson:** Yes, under the theft we should strive to be consistent. Things aren't always the same so I wouldn't feel bad about moving the \$2500 on this.

**Senator Armstrong:** They are all in the same chapter. What you are running into is prosecutors looking around this chapter to charge them with a lower crime. The public policy to having consistency isn't just to be consistent. It is to treat similar offenses substantially similar. I have seen the data on this theft grading. You are not going to get a general theft charge at \$2500 if they can charge fraud at \$1000. When your dollar amounts are the same then you charge the most appropriate crime; when your dollar amounts are different; depending on how you are trying to handle something and deal with it. They are in the same places in the code because they are substantially similar crimes why are the dollar amounts so different? That would be the public policy argument for it.

**Chairman K. Koppelman:** We have acceded to the Senate amendments and further amended at this point so what is \$1000 so unless there is a motion to change that we will move on to other issues. Went through the proposed amendment. (Attachment #2)

**Senator Armstrong:** Made a motion to adopt the Koppelman amendment 17.0197.05009.

**Rep. Satrom:** Seconded.

#### **Discussion:**

**Representative Nelson:** Does this mean faith based organizations would not be eligible if we do not do this amendment. Is it only faith based organization. I was concerned with the shall meaning is it really where you can look and see that this is a legitimate organization before they work with it. Those are the questions I have.

**Chairman K. Koppelman:** Maybe we could include something in the language that triggered that to demonstrate they have had success in this area etc. when you start doing that then you get into the government inspecting a faith based organization and evaluating it based on its varsity. Counsel felt we should not go there. DOCR or Human Services are not going to look at a faith based organization and say this organization has valuable services with demonstrable results before they allow them they can't exclude them. That is the intent of the amendment.

**Roll Call Vote: 6 Yes 0 No 0 Absent Passed**

**Senator Armstrong:** I have a proposed amendment to put forward. Everywhere in there where it does B misdemeanor for code consistency I am going A misdemeanor first offense; C felony second offense etc. that is a significant policy shift. That is the biggest thing this bill does. That is defelonizing possession of hard drugs for the first time. I think it is a great public policy. Everyone has to agree with it.

**Chairman K. Koppelman:** The original bill defelonized it too.

**Senator Armstrong:** We should wait for a Christmas tree bill. So we can see what we did through now. I think we should remove Section 9 of this bill. It is being dealt with in 1269.

**Chairman K. Koppelman:** (Attachment #3) passing out proposed amendment. We need to review these proposals. Kelly we have adopted 3 sets of amendments now. We need a Christmas tree to look at.

Closed.

# 2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee  
Prairie Room, State Capitol

HB 1041  
4/13/2017  
30118

- Subcommittee  
 Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to sentence reduction credit, medical paroles, domestic violence offender treatment, grading of theft offenses, credit for time spent in custody, terms and conditions of probation, controlled substances and controlled sub. paraphernalia, addiction counseling services and supplemental nutrition assistance program; to provide a penalty; to provide for the creation of a pretrial services program pilot project within the dept. of corrections and rehab. And to provide for a report to the Leg. Assembly.

Minutes:

1

**Attendance: Chairman Koppelman, Rep. Satrom; Rep. M. Nelson; Senator Armstrong; Senator Osland; Senator C. Nelson**

**Chairman K. Koppelman:(#1)** Handed out new markup .05014.

**Senator Armstrong:** Explained the proposed amendment .05014. Section 1, 2,3,4, no changes; Section 5 is still at \$1000. Section 6; Rep. Koppelman's amendment from yesterday regarding faith based on the bottom of page 5; that is a new section. Section 7,8, unchanged. Section 9 is the presumptive probation language that we accepted yesterday; Section 10 marries the ingested language that we approved in 1269; which is B misdemeanor for all marijuana; A misdemeanor for hard drug injection. Section 11; this is where all the drugs and paraphernalia will match. They will all be an A misdemeanor for first offense; sand C felony for second and subsequent offenses; that will be all drugs except marijuana. Marijuana is all B misdemeanor.

Section 12 we switched chapter to title. It says if you get caught with heroin that is an A misdemeanor; if you get caught a week later with meth; you don't get a drink at the well for every single drug you want to try. 7 a is mirroring the language under 12 starting at line 14 is mirror that we passed out in 1341.



**Chairman K. Koppelman:** In 1341 there has been some confusion there; do you want to touch on that a little bit?

**Senator Armstrong:** On 1341 there are two different sections. Section A is dealing with possession and one dealing with distribution. Section A is only dealing with possession. Section 13 is marrying the language in distribution with 1341. Section 14 we removed because that was where paraphernalia went to a B misdemeanor and an A misdemeanor and we just want the language to stay consistent to the way it is now. Section 14 is unchanged. Section 15 is unchanged until you get to 18 which is faith based language and that is Rep. Koppelman brought and that is identical to your draft and the one we did yesterday. 19, 21, 22 & 23 remain unchanged since we have been in conference committee. The only substantial change is making all things A misdemeanor and C felony all the way through the code.

**Chairman K. Koppelman:** So why are 21, 22 & 23 shaded the way they are if they are unchanged?

**Senator Armstrong:** Because this is working off the Senate version; because we are receding from our amendments and further amending. If the city cop busts someone with meth and a meth pipe; tracking all that stuff in the same court makes a whole lot more sense than splitting it up into municipal and district court. There were no municipal court judges or prosecutors on the interim committee.

**Chairman K. Koppelman:** We did discuss the \$1000. We could look at the other bill and do this. Questions about the draft seen before us? This includes the amendments we have already adopted plus amendments you are recommending, if so go over those again for us.

**Senator Armstrong:** The amendments I would be recommending would be on Section 9; presumptive probation so this is the language we accepted. Section 10 is new amendments, Section 11, and Section 12 7 a is a new amendment; section 13, removal of the old section 14 would be a new amendments and that is it.

**Chairman K. Koppelman:** Let's go back through that and spend a little more time on what you are proposing.

**Senator Armstrong:** Section 9 is the presumptive probation language; Section 10 all ingestion of marijuana would be an A misdemeanor all ingestion of hard

drugs would be an A misdemeanor; so you have the ability to do an A misdemeanor supervised probation without chagrining felonies and keep people from the felony track; but also have a little more hook over them than 30 days. This is the same language that was in 1269.

**Chairman K. Koppelman:** With these proposed amendment ingestion and possession and paraphernalia for marijuana are all B misdemeanor.

**Senator Armstrong:** When it is a felony offense for paraphernalia you hire an attorney they are going to make you test it to make sure it is actually being used for smoke the underlying offense; otherwise, I will probably be filing a motion saying how do you know it wasn't tobacco.

**Chairman K. Koppelman:** Any questions or committee discussion on Section 10?

**Senator Armstrong:** Controlled substance and analogs; first offense A misdemeanor; Seconded offense C felony. That is hard drugs. Current law it is a felony immediately. The way we got the bill from the House it was a Class B misdemeanor.

**Chairman K. Koppelman:** Isn't that what we agreed to earlier?

**Senator Armstrong:** We agreed to it but we haven't moved it. Section 11; is hard drugs. Section 12 7 a is out of HB 1341. We are dealing with possession and distribution. We added this language in 1269 to be sure it matches.

**Chairman K. Koppelman:** Are we covering our basis. I would guess we would have missed something. Questions on Section 11 & 12?

**Rep. Satrom:** We talk about analog's. We also talked about the designer drugs in SB 2096.

**Chairman K. Koppelman:** That is the things that have been sold in various chemical forms. That is the term analog to try to get at that.

**Senator Armstrong:** Two sessions ago after the State Board of Pharmacy had an emergency meeting to make new things a felony and cases were being dismissed because the State Board of Pharmacy cannot create a felony only the Legislature can create a felony so the AG's office came in and helped write a really good bill.

**Chairman K. Koppelman:** Section 13.

**Senator Armstrong:** Comes directly from the language in 1341.

**Chairman K. Koppelman:** We are really getting at people selling drugs on school grounds. What is happening is people are selling drugs on school grounds so the intent here is to say do we really need these wide areas around schools etc. What is happening is people are driving a couple blocks from a school or selling drugs and they ought to be caught and charged, but occasional law enforcement will say you were pretty close to a school we can charge you with a greater offense then we could of if we would have sold it a couple blocks the other direction. The intent is to say we probably should have enhanced penalties if you are selling on school grounds.

**Senator Armstrong:** The Senate agreed from the bill on the House.

**Chairman K. Koppelman:** If somebody is doing a drug deal at 3Am on school grounds so the idea of school being in session; it wouldn't apply unless school was in session or a school activity.

**Senator Armstrong:** This deals with enhancement.

**Chairman K. Koppelman:** Current technical schools and career schools were good reform. Section 14 we are removing it from here; put in 12 7 a.

**Senator Armstrong:** A lot of high school kids go to those schools and she felt strongly about it and everyone agreed with it.

**Chairman K. Koppelman:** Section 14 we are deleting and from the title because it will go to A Misdemeanor C felony second offense just like the drug possession charges. This is a good document to work with this.

**Motion Made the committee reconsider its action by which we acted on any amendments previously; and that we replace that action by the Motion that the Senate recede from the Senate amendments and amend as follows by adding 17.0917.05014 by Senator Nelson; Seconded by Rep. Satrom**

Discussion:

**Roll Call Vote: 6 Yes 0 No 0 Absent**

**Chairman K. Koppelman:** Do you think we should revisit 1269 or 2149?

**Senator Armstrong:** We should kill 2149. We do not need to revisit 1269. They have all got the same language.

**Closed.**

## Presumptive probation

1. The sentencing court shall sentence an individual who has pled guilty to, or has been found guilty of, a class C felony offense or class A misdemeanor offense to a term of probation at the time of initial sentencing, except for an offense involving domestic violence; an offense subject to registration under section 12.1-32-15; an offense involving a firearm, dangerous weapon, explosive or incendiary device; or if a mandatory term of incarceration is required by law.
2. The sentencing court may impose a sentence of imprisonment if the sentencing court finds there are aggravating factors present to justify a departure from presumptive probation. Aggravating factors include whether the individual has previously pled guilty to, or was found guilty of, a felony offense anywhere; the offense involved force or violence; the offense involved harassment or stalking; the individual caused serious bodily injury or substantial bodily injury to another or created a substantial risk of serious bodily injury or death to another; or the individual used threats or coercion in the commission of the offense.
3. This section does not preclude the sentencing court from deferring imposition of sentence in accordance with subsection 4 of section 12.1-32-02 or sentencing an individual to a term of incarceration with credit for time spent in custody if execution of the sentence is suspended.

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1041

That the Senate recede from its amendments as printed on pages 1289-1291 of the House Journal and pages 1000 and 1001 of the Senate Journal and that Reengrossed House Bill No. 1041 be amended as follows:

Page 1, line 4, replace "subsections" with "subsection"

Page 1, line 4, remove "and 6"

Page 1, line 7, replace "section 43-45-06" with "subsection 2 of section 39-20-01"

Page 1, line 11, remove "addiction counseling services,"

Page 1, line 14, remove "and"

Page 1, line 14, after "assembly" insert "; to provide an appropriation; to provide an effective date; and to declare an emergency"

Page 3, line 26, remove overstrike over "ææ"

Page 3, line 26, remove "two"

Page 3, line 26, remove "five hundred"

Page 6, remove lines 26 through 30

Page 7, remove lines 1 through 30

Page 8, remove lines 1 through 5

Page 8, after line 8 insert:

"1."

Page 8, line 11, remove "involving domestic violence; an offense"

Page 8, line 11, replace "section 12.1-17-07.1" with "chapters 12.1-06.2, 12.1-08, and 12.1-09, section 12.1-16-03"

Page 8, line 11, remove "chapter"

Page 8, line 12, replace "12.1-41, or sections" with "chapters 12.1-17, 12.1-18, and 12.1-22, section 12.1-23-02.1, chapter 12.1-25, an offense subject to registration under section 12.1-32-15, chapter 12.1-36, or section"

Page 8, line 12, replace "or 14-09-22" with ", including attempt, serving as an accomplice to an offense, or conspiracy to commit the offense"

Page 8, line 12, after the underscored semicolon insert "an attempt to commit"

Page 8, line 13, after "weapon" insert "or serving as an accomplice or in a conspiracy to commit an offense involving a firearm or dangerous weapon"

Page 8, line 13, remove "The sentencing court may"

Page 8, remove lines 14 and 15

Page 8, line 16, remove "aggravating factors on the record at the time of sentencing."

Page 8, after line 19, insert:

- "2. This section does not apply to an offense committed under subsection 1 of section 12.1-22-02.
3. This section does not apply if the sentencing court finds there are aggravating factors present to justify a departure from presumptive probation. The sentencing court shall state the aggravating factors on the record at the time of sentencing. Aggravating factors include:
  - a. That the individual has plead guilty to, or has been found guilty of, a felony offense or class A misdemeanor offense prior to the date of the commission of the offense or offenses charged in the complaint, information, or indictment;
  - b. The age and vulnerability of the victim, whether the individual was in a position of responsibility or trust over the victim, or whether the individual abused a public position of responsibility or trust; or
  - c. If the individual used threats or coercion in the commission of the offense."

Page 9, line 26, after "felony" insert "B misdemeanor for a first offense and a class"

Page 9, line 26, after "misdemeanor" insert "for a second or subsequent offense"

Page 12, replace lines 16 through 26 with:

**"SECTION 15. AMENDMENT.** Subsection 2 of section 39-20-01 of the North Dakota Century Code is amended and reenacted as follows:

2. The test or tests must be administered at the direction of a law enforcement officer only after placing the individual, ~~except individuals mentioned in section 39-20-03,~~ under arrest and informing that individual that the individual is or will be charged with the offense of driving or being in actual physical control of a vehicle upon the public highways while under the influence of intoxicating liquor, drugs, or a combination thereof. For the purposes of this chapter, the taking into custody of a child under section 27-20-13 or an individual under twenty-one years of age satisfies the requirement of an arrest. The law enforcement officer shall determine which of the tests is to be used."

Page 16, after line 29, insert:

**"SECTION 20. APPROPRIATION - DEPARTMENT OF HUMAN SERVICES.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$110,916, or so much of the sum as may be necessary, and \$1,532,785 from federal funds, or so much of the sum as may be necessary, to the department of human services for the purpose of implementing sections 16 and 17 of this Act, for the biennium beginning July 1, 2017, and ending June 30, 2019.

**SECTION 21. EFFECTIVE DATE.** Sections 7 and 8 of this Act become effective January 1, 2018.

**SECTION 22. EMERGENCY.** Sections 1 through 6, 9 through 14, and 16 and 17 of this Act are declared to be an emergency measure."

Renumber accordingly



PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1041

That the Senate recede from its amendments as printed on pages 1289-1291 of the House Journal and pages 1000 and 1001 of the Senate Journal and that Reengrossed House Bill No. 1041 be amended as follows:

Page 1, line 1, after "12.1-32" insert "and a new section to chapter 54-23.3"

Page 1, line 2, after "probation" insert "and faith-based organizations"

Page 1, line 3, after the fourth comma insert "subdivision c of subsection 1 of section 12.1-32-02,"

Page 1, line 9, after the second comma insert "sentencing alternatives,"

Page 5, after line 15, insert:

**"SECTION 6. AMENDMENT.** Subdivision c of subsection 1 of section 12.1-32-02 of the North Dakota Century Code is amended and reenacted as follows:

- c. A term of imprisonment, including intermittent imprisonment:
- (1) In a state correctional facility in accordance with section 29-27-07, in a regional corrections center, or in a county jail, if convicted of a felony or a class A misdemeanor.
  - (2) In a county jail or in a regional corrections center, if convicted of a class B misdemeanor.
  - (3) In a facility or program deemed appropriate for the treatment of the individual offender, including available community-based and faith-based programs.
  - (4) In the case of persons convicted of an offense who are under eighteen years of age at the time of sentencing, the court is limited to sentencing the minor defendant to a term of imprisonment in the custody of the department of corrections and rehabilitation."

Page 16, after line 9, insert:

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

**Faith-based programming.**

1. The department of corrections and rehabilitation, with contracts through the department of human services and through the implementation of the community behavioral health program, shall allow faith-based organizations to provide services to individuals who need addiction treatment services.
2. For purposes of this section "faith-based organization" means a nonprofit corporation or association operated by a religious or denominational

organization, including an organization operated for religious, educational, or charitable purposes and which is operated, supervised, or controlled by or in connection with a religious organization, or an organization that has a mission statement, policies, or practices clearly demonstrating the organization is guided or motivated by faith."

Renumber accordingly

April 13, 2017

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PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1041

That the Senate recede from its amendments as printed on pages 1289-1291 of the House Journal and pages 1000 and 1001 of the Senate Journal and that Reengrossed House Bill No. 1041 be amended as follows:

Page 1, line 1, after "12.1-32" insert "and a new section to chapter 54-23.3"

Page 1, line 2, after "probation" insert "and faith-based organizations"

Page 1, line 3, after the fourth comma insert "subdivision c of subsection 1 of section 12.1-32-02,"

Page 1, line 4, replace "subsections" with "subsection"

Page 1, line 4, remove "and 6"

Page 1, line 6, remove "section 19-03.4-03,"

Page 1, line 7, replace "section 43-45-06" with "subsection 2 of section 39-20-01"

Page 1, line 9, after the second comma insert "sentencing alternatives,"

Page 1, line 10, remove "and controlled substance paraphernalia"

Page 1, line 11, remove "addiction counseling services,"

Page 1, line 14, remove "and"

Page 1, line 14, after "assembly" insert "; to provide an appropriation; to provide an effective date; and to declare an emergency"

Page 3, line 26, remove the overstrike over "one"

Page 3, line 26, remove "two"

Page 3, line 26, remove "five hundred"

Page 5, after line 15, insert:

**"SECTION 6. AMENDMENT.** Subdivision c of subsection 1 of section 12.1-32-02 of the North Dakota Century Code is amended and reenacted as follows:

- c. A term of imprisonment, including intermittent imprisonment:
  - (1) In a state correctional facility in accordance with section 29-27-07, in a regional corrections center, or in a county jail, if convicted of a felony or a class A misdemeanor.
  - (2) In a county jail or in a regional corrections center, if convicted of a class B misdemeanor.
  - (3) In a facility or program deemed appropriate for the treatment of the individual offender, including available community-based or faith-based programs.

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- (4) In the case of persons convicted of an offense who are under eighteen years of age at the time of sentencing, the court is limited to sentencing the minor defendant to a term of imprisonment in the custody of the department of corrections and rehabilitation."

Page 6, remove lines 26 and 30

Page 7, remove lines 1 through 30

Page 8, remove lines 1 through 5

Page 8, after line 8 insert:

"1."

Page 8, line 9, replace "convicted of" with "who has pled guilty to, or has been found guilty of,"

Page 8, line 11, remove "in violation of section 12.1-17-07.1, chapter"

Page 8, line 12, replace "12.1-41, or sections 14-07.1-06 or 14-09-22" with "subject to registration under section 12.1-32-15"

Page 8, line 13, after "weapon" insert ", explosive, or incendiary device"

Page 8, after line 13, insert:

"2."

Page 8, line 15, remove "The sentencing court shall state the"

Page 8, line 16, replace "aggravating factors on the record at the time of sentencing." with "Aggravating factors include:"

- a. That the individual has pled guilty to, or has been found guilty of, a felony offense or class A misdemeanor offense prior to the date of the commission of the offense or offenses charged in the complaint, information, or indictment;
- b. The age and vulnerability of the victim, whether the individual was in a position of responsibility or trust over the victim, or whether the individual abused a public position of responsibility or trust; or
- c. If the individual used threats or coercion in the commission of the offense.

3."

Page 8, line 26, replace "for a first offense and" with "if the controlled substance is marijuana. Otherwise, the offense is"

Page 8, line 26, remove "for a"

Page 8, line 27, remove "second or subsequent offense"

Page 9, line 6, replace "B" with "A"

Page 9, line 6, replace "A misdemeanor" with "C felony"

Page 9, line 11, overstrike "chapter" and insert immediately thereafter "title"

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3084

- Page 9, line 13, overstrike "chapter" and insert immediately thereafter "title"
- Page 9, line 26, after "a" insert "class A misdemeanor for a first offense under this subsection and a"
- Page 9, line 26, remove the overstrike over "G-felony"
- Page 9, line 26, replace "A misdemeanor" with "for a second or subsequent offense under this subsection"
- Page 9, line 28, remove the overstrike over "or a"
- Page 9, line 29, remove the overstrike over "~~public career and technical education school,~~"
- Page 10, line 21, after "offense" insert "was committed during a school sponsored activity or was committed during the hours of six a.m. to ten p.m. if school is in session, the offense"
- Page 10, line 22, overstrike the second "or" and insert immediately thereafter an underscored comma
- Page 10, line 22, remove the overstrike over "~~, or within~~"
- Page 10, line 23, after the overstruck closing bracket insert "three hundred feet [91.4 meters]"
- Page 10, line 23, overstrike "child care or"
- Page 10, line 24, remove the overstrike over the first overstruck comma
- Page 10, line 24, remove "or"
- Page 10, line 24, remove the overstrike over the second overstruck comma and insert immediately thereafter "or a"
- Page 10, line 24, remove the overstrike over "~~public career and~~"
- Page 10, line 25, remove the overstrike over "~~technical education school~~"
- Page 10, remove lines 26 through 31
- Page 11, remove lines 1 through 20
- Page 12, replace lines 16 through 26 with:

**"SECTION 15. AMENDMENT.** Subsection 2 of section 39-20-01 of the North Dakota Century Code is amended and reenacted as follows:

- 2. The test or tests must be administered at the direction of a law enforcement officer only after placing the individual, ~~except individuals mentioned in section 39-20-03,~~ under arrest and informing that individual that the individual is or will be charged with the offense of driving or being in actual physical control of a vehicle upon the public highways while under the influence of intoxicating liquor, drugs, or a combination thereof. For the purposes of this chapter, the taking into custody of a child under section 27-20-13 or an individual under twenty-one years of age satisfies the requirement of an arrest. The law enforcement officer shall determine which of the tests is to be used."

Page 16, after line 29 insert:

4/13/17 DP  
4 of 4

"SECTION 18. A new section to chapter 54-23.3 of the North Dakota Century Code is created and enacted as follows:

**Faith-based programming.**

1. The department of corrections and rehabilitation, with contracts through the department of human services and through the implementation of the community behavioral health program, shall allow faith-based organizations to provide services to individuals who need addiction treatment services.
2. For purposes of this section "faith-based organization" means a nonprofit corporation or association operated by a religious or denominational organization, including an organization operated for religious, educational, or charitable purposes and which is operated, supervised, or controlled by or in connection with a religious organization, or an organization that has a mission statement, policies, or practices clearly demonstrating the organization is guided or motivated by faith."

Page 16, after line 29, insert:

**SECTION 21. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$110,916, or so much of the sum as may be necessary, and \$1,532,785 from federal funds, or so much of the sum as may be necessary, to the department of human services for the purpose of implementing sections 17 and 18 of this Act, for the period beginning with the effective date of this section, and ending June 30, 2019.

**SECTION 22. EFFECTIVE DATE.** Sections 8 and 9 of this Act become effective January 1, 2018.

**SECTION 23. EMERGENCY.** Sections 1 through 5, 7, 10 through 18, and 22 of this Act are declared to be an emergency measure."

Renumber accordingly

**2017 HOUSE CONFERENCE COMMITTEE  
 ROLL CALL VOTES**

BILL/RESOLUTION NO. HB 1041 as (re) engrossed

**House Judiciary Committee**

- Action Taken**     HOUSE accede to Senate Amendments  
 HOUSE accede to Senate Amendments and further amend  
 SENATE recede from Senate amendments  
 SENATE recede from Senate amendments and amend as follows
- Unable to agree, recommends that the committee be discharged and a new committee be appointed  
 **ADOPT AMENDMENT**

Replaced Section 8 with presumptive probation amendment.

Motion Made by: Senator Armstrong      Seconded by: Rep. M. Nelson

Representatives			Yes	No				Yes	No
	4/6	4/11				4/6	4/11		
Chairman K. Koppelman:	X	X	X			Senator Armstrong	X	X	X
Rep. Satrom	X	X	X			Senator D. Larson	X	X	--
Rep. M. Nelson	X	X	X			Senator C. Nelson	X	X	X
Total Rep. Vote						Total Senate Vote			

Vote Count      Yes: 5      No: 0      Absent: 1

House Carrier \_\_\_\_\_ Senate Carrier \_\_\_\_\_

LC Number \_\_\_\_\_ of amendment

LC Number \_\_\_\_\_ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

**2017 HOUSE CONFERENCE COMMITTEE  
 ROLL CALL VOTES**

BILL/RESOLUTION NO. HB 1041 as (re) engrossed

**House Judiciary Committee**

- Action Taken**
- HOUSE accede to Senate Amendments
  - HOUSE accede to Senate Amendments and further amend
  - SENATE recede from Senate amendments
  - SENATE recede from Senate amendments and amend as follows
  - Unable to agree, recommends that the committee be discharged and a new committee be appointed

**ADOPT AMENDMENT**

Added 17.0197.05007 amendment with the exception of the removal of Section 8.

Motion Made by: Senator Armstrong      Seconded by: Rep. M. Nelson

Representatives			Yes	No		Senators			Yes	No
	4/6	4/11					4/6	4/11		
Chairman K. Koppelman:	X	X	X			Senator Armstrong	X	X	X	
Rep. Satrom	X	X	X			Senator D. Larson	X	X	--	
Rep. M. Nelson	X	X	X			Senator C. Nelson	X	X	X	
Total Rep. Vote						Total Senate Vote				

Vote Count      Yes: 5      No: 0      Absent: 1

House Carrier \_\_\_\_\_ Senate Carrier \_\_\_\_\_

LC Number \_\_\_\_\_ of amendment

LC Number \_\_\_\_\_ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment



Date: 4/12/2017  
Roll Call Vote #: 1

**2017 HOUSE CONFERENCE COMMITTEE  
ROLL CALL VOTES**

BILL/RESOLUTION NO. HB 1041 as (re) engrossed

**House Judiciary Committee**

- Action Taken**
- HOUSE accede to Senate Amendments
  - HOUSE accede to Senate Amendments and further amend
  - SENATE recede from Senate amendments
  - SENATE recede from Senate amendments and amend as follows
  
  - Unable to agree**, recommends that the committee be discharged and a new committee be appointed
  - Adopted Amendment**

Motion Made by: Senator Armstrong Seconded by: Representative Satrom

Representatives	4/12		Yes	No	Senators			Yes	No
Chairman K. Koppelman:	X		X		Senator Armstrong	X		X	
Rep. Satrom	X		X		Senator C. Nelson	X		X	
Rep. M. Nelson	X		X		Senator Osland	X		X	
Total Rep. Vote					Total Senate Vote				

Vote Count      Yes: 6      No: 0      Absent: 0

House Carrier \_\_\_\_\_ Senate Carrier \_\_\_\_\_

LC Number 17.0197 . 05009 of amendment

LC Number \_\_\_\_\_ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment: Change Section 6 and Section 20.

Date: 4/13/2017  
 Roll Call Vote #: 1

**2017 HOUSE CONFERENCE COMMITTEE  
 ROLL CALL VOTES**

HB 1041 as (re) engrossed

**House Judiciary Committee**

- Action Taken**
- HOUSE accede to Senate Amendments
  - HOUSE accede to Senate Amendments and further amend
  - SENATE recede from Senate amendments
  - SENATE recede from Senate amendments and amend as follows
  
  - Unable to agree**, recommends that the committee be discharged and a new committee be appointed

**Reconsider**

Motion Made by: Senator Nelson Seconded by: Representative Satrom

Representatives	4/13		Yes	No	Senators	4/13		Yes	No
Chairman K. Koppelman:	X		X		Senator Armstrong	X		X	
Rep. Satrom	X		X		Senator C. Nelson	X		X	
Rep. M. Nelson	X		X		Senator Osland	X		X	
Total Rep. Vote					Total Senate Vote				

Vote Count      Yes:   6                        No:   0                        Absent:   0  

House Carrier \_\_\_\_\_ Senate Carrier \_\_\_\_\_

LC Number \_\_\_\_\_ of amendment

LC Number \_\_\_\_\_ of engrossment

Emergency clause added or deleted

Date: 4/13/2017  
Roll Call Vote #: 2

2017 HOUSE CONFERENCE COMMITTEE  
ROLL CALL VOTES

HB 1041 as (re) engrossed

House Judiciary Committee

- Action Taken  HOUSE accede to Senate Amendments  
 HOUSE accede to Senate Amendments and further amend  
 SENATE recede from Senate amendments  
 SENATE recede from Senate amendments and amend as follows  
  
 Unable to agree, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Senator Nelson Seconded by: Representative Satrom

Representatives				Yes	No	Senators				Yes	No
Chairman K. Koppelman:				X		Senator Armstrong				X	
Rep. Satrom				X		Senator C. Nelson				X	
Rep. M. Nelson				X		Senator Osland				X	
Total Rep. Vote						Total Senate Vote					

Vote Count Yes: 6 No: 0 Absent: 0

House Carrier \_\_\_\_\_ Senate Carrier \_\_\_\_\_

LC Number \_\_\_\_\_ of amendment

LC Number \_\_\_\_\_ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment: **Adding 17.0917.05014 version onto bill.**

Insert LC: 17.0197.05016  
House Carrier: K. Koppelman  
Senate Carrier: Armstrong

**REPORT OF CONFERENCE COMMITTEE**

**HB 1041, as reengrossed:** Your conference committee (Sens. Armstrong, Osland, Nelson and Reps. K. Koppelman, Satrom, M. Nelson) recommends that the **SENATE RECEDE** from the Senate amendments as printed on HJ pages 1000-1001, adopt amendments as follows, and place HB 1041 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1289-1291 of the House Journal and pages 1000 and 1001 of the Senate Journal and that Reengrossed House Bill No. 1041 be amended as follows:

Page 1, line 1, after "12.1-32" insert "and a new section to chapter 54-23.3"

Page 1, line 2, after "probation" insert "and faith-based organizations"

Page 1, line 3, after the fourth comma insert "subdivision c of subsection 1 of section 12.1-32-02,"

Page 1, line 4, replace "subsections" with "subsection"

Page 1, line 4, remove "and 6"

Page 1, line 6, remove "section 19-03.4-03,"

Page 1, line 7, replace "section 43-45-06" with "subsection 2 of section 39-20-01"

Page 1, line 9, after the second comma insert "sentencing alternatives,"

Page 1, line 10, remove "and controlled substance paraphernalia"

Page 1, line 11, remove "addiction counseling services,"

Page 1, line 14, remove "and"

Page 1, line 14, after "assembly" insert "; to provide an appropriation; to provide an effective date; and to declare an emergency"

Page 3, line 26, remove the overstrike over "one"

Page 3, line 26, remove "two"

Page 3, line 26, remove "five hundred"

Page 5, after line 15, insert:

**"SECTION 6. AMENDMENT.** Subdivision c of subsection 1 of section 12.1-32-02 of the North Dakota Century Code is amended and reenacted as follows:

- c. A term of imprisonment, including intermittent imprisonment:
  - (1) In a state correctional facility in accordance with section 29-27-07, in a regional corrections center, or in a county jail, if convicted of a felony or a class A misdemeanor.
  - (2) In a county jail or in a regional corrections center, if convicted of a class B misdemeanor.
  - (3) In a facility or program deemed appropriate for the treatment of the individual offender, including available community-based or faith-based programs.

- (4) In the case of persons convicted of an offense who are under eighteen years of age at the time of sentencing, the court is limited to sentencing the minor defendant to a term of imprisonment in the custody of the department of corrections and rehabilitation."

Page 6, remove lines 26 and 30

Page 7, remove lines 1 through 30

Page 8, remove lines 1 through 5

Page 8, after line 8 insert:

"1."

Page 8, line 9, replace "convicted of" with "who has pled guilty to, or has been found guilty of."

Page 8, line 11, remove "in violation of section 12.1-17-07.1, chapter"

Page 8, line 12, replace "12.1-41, or sections 14-07.1-06 or 14-09-22" with "subject to registration under section 12.1-32-15"

Page 8, line 13, after "weapon" insert ", explosive, or incendiary device"

Page 8, after line 13, insert:

"2."

Page 8, line 15, remove "The sentencing court shall state the"

Page 8, line 16, replace "aggravating factors on the record at the time of sentencing." with "Aggravating factors include:

- a. That the individual has plead guilty to, or has been found guilty of, a felony offense or class A misdemeanor offense prior to the date of the commission of the offense or offenses charged in the complaint, information, or indictment;
- b. The age and vulnerability of the victim, whether the individual was in a position of responsibility or trust over the victim, or whether the individual abused a public position of responsibility or trust; or
- c. If the individual used threats or coercion in the commission of the offense.

3."

Page 8, line 26, replace "for a first offense and" with "if the controlled substance is marijuana. Otherwise, the offense is"

Page 8, line 26, remove "for a"

Page 8, line 27, remove "second or subsequent offense"

Page 9, line 6, replace "B" with "A"

Page 9, line 6, replace "A misdemeanor" with "C felony"

- Page 9, line 11, overstrike "chapter" and insert immediately thereafter "title"
- Page 9, line 13, overstrike "chapter" and insert immediately thereafter "title"
- Page 9, line 26, after "a" insert "class A misdemeanor for a first offense under this subsection and a"
- Page 9, line 26, remove the overstrike over "C-felony"
- Page 9, line 26, replace "A misdemeanor" with "for a second or subsequent offense under this subsection"
- Page 9, line 28, remove the overstrike over "er-a"
- Page 9, line 29, remove the overstrike over "~~public career and technical education school,~~"
- Page 10, line 21, after "offense" insert "was committed during a school sponsored activity or was committed during the hours of six a.m. to ten p.m. if school is in session, the offense"
- Page 10, line 22, overstrike the second "or" and insert immediately thereafter an underscored comma
- Page 10, line 22, remove the overstrike over "~~, or within~~"
- Page 10, line 23, after the overstruck closing bracket insert "three hundred feet [91.4 meters]"
- Page 10, line 23, overstrike "child care or"
- Page 10, line 24, remove the overstrike over the first overstruck comma
- Page 10, line 24, remove "or"
- Page 10, line 24, remove the overstrike over the second overstruck comma and insert immediately thereafter "or a"
- Page 10, line 24, remove the overstrike over "~~public career and~~"
- Page 10, line 25, remove the overstrike over "~~technical education school~~"
- Page 10, remove lines 26 through 31
- Page 11, remove lines 1 through 20
- Page 12, replace lines 16 through 26 with:

**"SECTION 15. AMENDMENT.** Subsection 2 of section 39-20-01 of the North Dakota Century Code is amended and reenacted as follows:

2. The test or tests must be administered at the direction of a law enforcement officer only after placing the individual, ~~except individuals mentioned in section 39-20-03,~~ under arrest and informing that individual that the individual is or will be charged with the offense of driving or being in actual physical control of a vehicle upon the public highways while under the influence of intoxicating liquor, drugs, or a combination thereof. For the purposes of this chapter, the taking into custody of a child under section 27-20-13 or an individual under twenty-one years of age satisfies

Insert LC: 17.0197.05016  
House Carrier: K. Koppelman  
Senate Carrier: Armstrong

the requirement of an arrest. The law enforcement officer shall determine which of the tests is to be used."

Page 16, after line 29 insert:

"**SECTION 18.** A new section to chapter 54-23.3 of the North Dakota Century Code is created and enacted as follows:

**Faith-based programming.**

1. The department of corrections and rehabilitation, with contracts through the department of human services and through the implementation of the community behavioral health program, shall allow faith-based organizations to provide services to individuals who need addiction treatment services.
2. For purposes of this section "faith-based organization" means a nonprofit corporation or association operated by a religious or denominational organization, including an organization operated for religious, educational, or charitable purposes and which is operated, supervised, or controlled by or in connection with a religious organization, or an organization that has a mission statement, policies, or practices clearly demonstrating the organization is guided or motivated by faith."

Page 16, after line 29, insert:

"**SECTION 21. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$110,916, or so much of the sum as may be necessary, and \$1,532,785 from federal funds, or so much of the sum as may be necessary, to the department of human services for the purpose of implementing sections 17 and 18 of this Act, for the period beginning with the effective date of this section, and ending June 30, 2019.

**SECTION 22. EFFECTIVE DATE.** Sections 8 and 9 of this Act become effective January 1, 2018.

**SECTION 23. EMERGENCY.** Sections 1 through 5, 7, 10 through 18, and 22 of this Act are declared to be an emergency measure."

Renumber accordingly

Reengrossed HB 1041 was placed on the Seventh order of business on the calendar.

**2017 TESTIMONY**

**HB 1041**



HB 1041 / #1  
HB 1042 1-31-17

# Justice Reinvestment in North Dakota

## Policy Framework



JANUARY 2017

### Overview

Over the past decade, the number of people in North Dakota’s prisons and jails, on probation, and on parole has increased, and the state and county governments have spent tens of millions of dollars expanding the capacity of existing correctional facilities and building new facilities to accommodate this growth. Unless action is taken, the prison population is projected to grow by 36 percent by FY2022 at a cost of \$115 million to accommodate the projected growth.<sup>1</sup>

The increasing numbers of people admitted to prison for lower-level nonviolent offenses and people revoked from supervision are substantial drivers of prison population growth in the state. Together, these populations make up almost three-quarters of all prison admissions.<sup>2</sup> The use of prison for people who violate the conditions of their supervision and people convicted of lower-level nonviolent offenses is stretching corrections resources and limiting the state’s ability to use effective sanctions to hold its supervision population accountable. These criminal justice system challenges are exacerbated by the fact that people supervised in the community do not have access to sufficient treatment for mental illnesses and substance use disorders, which

hampers the state’s ability to reduce recidivism. North Dakota policymakers have reached a crossroads: if the state does not address the factors contributing to crime and recidivism, it will be forced to spend tens of millions more to accommodate prison population growth.

In January 2016, the state embarked on a justice reinvestment approach, and key stakeholders began working together to develop policies that will curb prison population growth by reducing the number of people in prison who have committed lower-level felony offenses and who have violated the conditions of their supervision. These policies will also ensure that people with serious behavioral health needs and those assessed as being at a high risk of reoffending receive effective post-release supervision programming, and treatment as necessary. By implementing these proposed policies, the state will avert a minimum of \$63.8 million by 2022 in costs for the contract beds that would be necessary to accommodate the projected prison population growth, and will be able to reinvest those savings in strategies that can reduce recidivism and increase public safety.

### THE INCARCERATION ISSUES COMMITTEE

In October 2015, Governor Jack Dalrymple, Chief Justice Gerald VandeWalle, Attorney General Wayne Stenehjem, Senate Majority Leader Rich Wardner, House Majority Leader Al Carlson, Senate Minority Leader Mac Schneider, House Minority Leader Kenton Onstad, and Legislative Management Chairman Raymond Holmberg requested intensive technical assistance from The Council of State Governments (CSG) Justice Center with support from The Pew Charitable Trusts and the U.S. Department of Justice’s Bureau of Justice Assistance to use a data-driven justice reinvestment approach to help the state reduce the corrections population, contain corrections spending, and reinvest a portion of the savings in strategies that can reduce recidivism and increase public safety.

JUSTICE REINVESTMENT IN NORTH DAKOTA

Passed by the North Dakota legislature and signed in 2015, HB 1165 and HB 1015 established the interbranch Incarceration Issues Committee (IIC), which was composed of state lawmakers, judiciary members, corrections officials, county attorneys, and local law enforcement executives, to study the state's criminal justice system. The 16-member committee met five times between January and September 2016 to review analyses conducted by the CSG Justice Center and discuss policy options, and has since disbanded.

The IIC developed legislation that sought to use taxpayer dollars more effectively to make the state safer. In addition to the policy framework presented in this report, members of the IIC put forth recommendations that would prioritize treatment over incarceration for people convicted of crimes related to drug use; establish medical parole for people in prison with a terminal medical condition; and modify the certification requirements for a Licensed Addiction Counselor (LAC).<sup>3</sup>

## COMMITTEE MEMBERS

### *Chairman*

Ron Carlisle, State Senator

### *Vice Chairman*

Jon O. Nelson, State Representative

### *Members*

Ron Guggisberg, State Representative

Kim Koppelman, State Representative

John Grabinger, State Senator

Terry M. Wanzek, State Senator

Leann K. Bertsch, Director, Department of Corrections and Rehabilitation

Thomas Erhardt, Southwest District Program Manager, Department of Corrections and Rehabilitation

Rozanna Larson, Ward County State's Attorney

Douglas Mattson, District Court Judge

Frank Racek, Presiding District Court Judge

Aaron Roseland, Adams County State's Attorney

Scott Steele, Golden Valley County Sheriff

Wayne Stenehjem, Attorney General

Gerald W. VandeWalle, Supreme Court Chief Justice

Randy Ziegler, Deputy Chief of Bismarck Police Department

## Data Collection

An extensive amount of data was provided to the CSG Justice Center by the North Dakota Attorney General Bureau of Criminal Investigation, the Administrative Office of the Courts, and the Department of Corrections and Rehabilitation (DOCR). In total, more than 1.5 million individual data records were analyzed, including: supervision and prison populations; length of time served in prison and on supervision; statutory and administrative

policies; and availability of treatment and programs designed to reduce recidivism. More than 160 in-person meetings and conference calls with judges, state's attorneys, public defenders, law enforcement officials, supervision officers, behavioral health service providers, victims and their advocates, advocates for people involved in the criminal justice system, local officials, and others helped provide context for the data.

## Summary of Challenges and Findings

Through its comprehensive review of state data, the Incarceration Issues Committee identified three key challenges and related findings.

### KEY CHALLENGES

- 1. Growth in prison and jail populations.** North Dakota's prison and jail populations are among the fastest growing in the country. Unless state policymakers act, the prison population is projected to increase 36 percent by FY2022. Accommodating this growth would cost at least \$115 million in new contract beds.
- 2. Ineffective and costly responses to supervision violations.** Probation and parole officers lack the means to hold people accountable by responding to violations swiftly and cost effectively and connecting people with behavioral health needs to high-quality treatment. As a result, people commit numerous violations before being revoked to prison, which is expensive and does not improve their access to treatment or other resources upon release.
- 3. Inadequate substance use treatment.** State's attorneys, judges, and other stakeholders report that drug use is common among people who commit crimes and violate the terms of their supervision, but treatment is not readily available. A shortage of community treatment options and providers impedes people's access to needed services that, when combined with effective supervision, are proven to reduce recidivism.

### KEY FINDINGS

- **North Dakota's prison population and corrections spending have grown substantially in recent years.** Between FY2005 and FY2015, the state's prison population increased 32 percent, from 1,329 to 1,751 people.<sup>4</sup> From the biennial budget years 2005 to 2015, general fund appropriations to the DOCR more than doubled, from \$83 million to \$178 million.<sup>5</sup>
- **The county jail population has nearly doubled in the past decade.** From 2005 to 2015, North Dakota's county jail population one-day count rose 83 percent, from 959 to 1,754 people. The sharpest increase occurred between 2012 and 2015, when the population shot up by 40 percent, from 1,250 people to 1,754 people.<sup>6</sup>
- **In recent years, North Dakota has spent tens of millions of dollars expanding existing prison capacity, but the state's prisons are full again, and hundreds of people are housed in contract facilities.** Although the FY2009–2011 state budget provided \$64 million for expansion of the North Dakota State Penitentiary, the prison reached capacity less than five years after construction was completed. Moreover, the state has established contracts for beds in the North Dakota State Hospital, county jails, and facilities operated by nonprofit agencies.<sup>7</sup> In FY2016, 16 percent of the prison population, or 278 people, were housed in contract beds at an estimated annual cost of \$7.6 million.<sup>8</sup>
- **Of North Dakota's 53 counties, 9 are currently engaged in construction or expansion projects for their jails.** Once completed, these new facilities will provide an anticipated 48-percent increase in statewide jail capacity.<sup>9</sup>
- **Native Americans are disproportionately represented in North Dakota's prisons.** In FY2014, Native Americans accounted for 5 percent of the state's general population but constituted 21 percent of the state's prison population.<sup>10</sup>

- **Domestic violence presents a significant threat to public safety, and current programming to address it is inadequate.** Between 2006 and 2014, 44 percent of all homicides (54 of 122 homicides) in North Dakota involved domestic violence.<sup>11</sup> Moreover, a review of domestic violence-involved fatalities identified one or both parties as having a history of alcohol or substance use, sometimes with a history of co-occurring mental illnesses, a common factor across these cases.<sup>12</sup> There are nine batterers' intervention programs across the state, but they operate with minimal oversight, and the quality of treatment varies from program to program.<sup>13</sup>
- **The number of people on probation and parole in North Dakota grew substantially in the last decade.** From FY2006 to FY2015, North Dakota's probation population increased by 39 percent (from 5,466 to 7,613 active cases), and the parole population increased 55 percent (from 484 to 751 active cases).<sup>14</sup>
- **People who fail on supervision and are revoked to prison and jail are creating a strain on county and state facilities.** In FY2014, 45 percent of probation revocations were the result of supervision violations and did not involve new criminal offenses. Of people who were revoked from probation, 33 percent were required to serve terms in jail, and another 51 percent were required to serve time in prison. In that same year, people who had been revoked from probation or parole occupied 27 percent of North Dakota's prison beds.<sup>15</sup>
- **People admitted to prison for drug and property offenses and people revoked from probation and parole make up almost three-quarters of all prison admissions.** In FY2014, convictions for drug and property offenses accounted for 33 percent of prison admissions and cost the state approximately \$19.5 million, while probation and parole revocations accounted for 38 percent of admissions and cost the state approximately \$16.7 million.<sup>16</sup> Of the total admissions to prison for new offenses, 62 percent were for Class C felonies, consisting mostly of lower-level drug and property crimes.<sup>17</sup>
- **A substantial percentage of people sentenced to prison for low-level, nonviolent offenses have not served a prior felony probation sentence.** There is no structure in place to help courts choose among prison, probation, and other sentencing options based on felony class and type of offense. In FY2014, 36 percent of people admitted to prison for nonviolent Class C felony offenses had not served a prior probation term.<sup>18</sup>
- **Many people in the criminal justice system need substance use treatment.** Supervision officers in the state estimate that 75 percent of people on supervision are in need of substance use treatment, but there are long wait periods to access these services. From FY2006 to FY2014, the number of felony sentences for drug offenses increased by 51 percent, with the sharpest increase occurring between FY2011 and FY2014 (148 percent). In FY2014, four out of five felony drug sentences were for possession.<sup>19</sup>
- **The availability of substance use treatment is not keeping pace with the level of need for all North Dakota residents.** North Dakota has the sixth-highest rate of alcohol and drug abuse in the country but is ranked 43rd in availability of treatment.<sup>20</sup> Participation in substance use treatment decreased 15 percent between 2009 and 2013 for the general population.<sup>21</sup>

## Summary of Policy Options and Impacts

The policy options listed below are designed to achieve the following goals:

- Prioritize jail and prison space for people who are convicted of serious and violent offenses.
- Strengthen supervision by focusing supervision and programming resources on people who are most likely to reoffend.
- Increase the capacity and effectiveness of community-based behavioral health services and batterers' intervention programs.

*Icons appear in the policy options section of this report to indicate which options will avert prison population growth, provide tools to reduce pressure on jails, and increase public safety and reduce recidivism.*

### POLICY OPTIONS

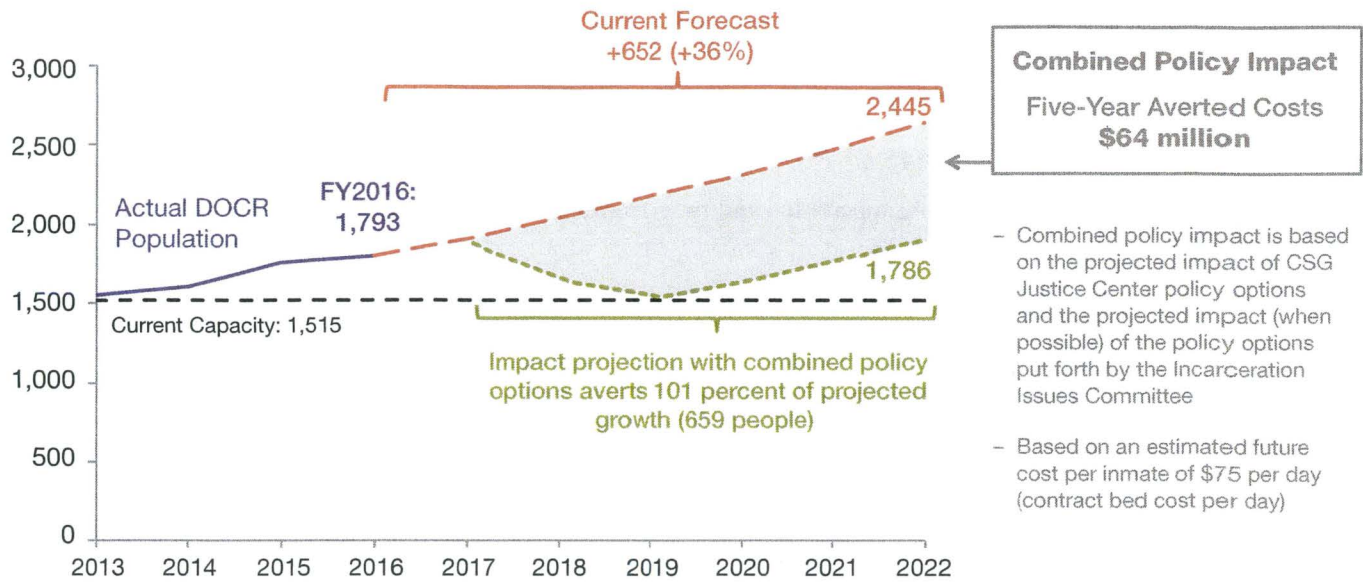
1. Use probation instead of prison to hold people who are sentenced for nonviolent Class C felony offenses accountable.
2. Respond to probation and parole violations with more effective and less costly sanctions that can reduce further violations.
3. Provide the most intensive supervision at the beginning of a person's probation term, as necessary, when risk of reoffending is highest.
4. Expand the availability of and access to community-based behavioral health services for people in the criminal justice system.
5. Establish a pretrial supervision pilot program and adopt a pretrial risk assessment tool.
6. Apply the state's existing good time policy to time served in jail as well as prison.
7. Improve the quality of and access to batterers' intervention programs.
8. Improve the ability to collect and analyze outcome and demographic data.
9. Assess, track, and ensure the sustainability of recidivism-reduction strategies and increase statewide data collection and analysis efforts.

### PROJECTED IMPACT

As a package, the policies described in this report have the potential to generate substantial savings and lower recidivism for North Dakota. By averting the projected growth in the state prison population, effective implementation of the policy framework will help the state avoid up to \$63.8 million in contract bed costs to accommodate the growing prison population by FY2022. While the DOCR currently projects the prison population to grow 46 percent, from 1,793 people in FY2016 to 2,445 people in FY2022, this policy framework is projected to avert the forecasted growth by as many as 659 people. (See Figure 1)

The CSG Justice Center projection impact analysis is based on FY2006–FY2015 DOCR prison population and admission data, DOCR probation and parole data, and court sentencing data for the same time period. Operating cost estimates are based on the DOCR FY2016 average, per-day contract bed cost of \$75. The baseline population projection assumes a rate of growth in prison admissions of 10 percent per year, based on the average rate of growth in admissions in prior years.

**FIGURE 1. PROJECTED IMPACT OF POLICY OPTIONS ON DOCR PRISON POPULATION PROJECTIONS**



**RECOMMENDED REINVESTMENT**

As the state begins to implement the legislation, it is projected to avert \$4.2 million in costs by the end of FY2018, increasing to \$63.8 million by FY2022. Averting costs associated with additional contract beds enables North Dakota’s policymakers to reinvest in expanding community-based treatment and services to address mental illness, substance use, and criminal behavior. These reinvestments will impact both public safety and public health and will contribute to sustained reductions in state general fund expenditures on corrections.<sup>22</sup>

In FY2018, an upfront investment of \$4.2 million in community-based programs and treatment and sustainability policies is recommended, growing to \$8.7 million in FY2022. The cost savings and proposed levels of reinvestment are based on a projected impact to the prison population as calculated by the CSG Justice Center in comparison to the DOCR population forecast. (See Figure 2)

**FIGURE 2. SUMMARY OF JUSTICE REINVESTMENT POLICY FRAMEWORK AVERTED COSTS AND REINVESTMENTS**

	FY2018	FY2019	FY2020	FY2021	FY2022	TOTAL	
<b>Total Averted Costs</b>	<b>\$4.2M</b>	<b>\$11.3M</b>	<b>\$14.8M</b>	<b>\$16.1M</b>	<b>\$17.4M</b>	<b>\$63.8M</b>	
<b>Reinvestments</b>	Behavioral health reinvestment	\$3.2M	\$4.7M	\$6.4M	\$7.1M	\$7.7M	\$29.0M
	Pretrial pilot program	\$265M	\$265M	\$265M	\$265M	\$265M	\$1.3M
	Improved Batterers’ Intervention Programs	\$585M	\$585M	\$585M	\$585M	\$585M	\$2.9M
	Sustainability package	\$150M	\$150M	\$150M	\$150M	\$150M	\$750M
	<b>Total Reinvestment</b>	<b>\$4.2M</b>	<b>\$5.7M</b>	<b>\$7.4M</b>	<b>\$8.1M</b>	<b>\$8.7M</b>	<b>\$34.0M</b>
<b>Projected Net Savings</b>	<b>\$0M</b>	<b>\$5.6M</b>	<b>\$7.4M</b>	<b>\$8.0M</b>	<b>\$8.7M</b>	<b>\$29.8M</b>	

## Policy Options

### POLICY OPTION 1:

Use probation instead of prison to hold people who are sentenced for nonviolent Class C felony offenses accountable.



A Class C felony encompasses more than 350 different criminal offenses, the majority of which are drug and property offenses, and carries a maximum sentence of five years.<sup>23</sup> In FY2014, 62 percent of people admitted to prison for new offenses were sentenced for a Class C felony offense.<sup>24</sup>

Outcomes for people sentenced to probation are slightly better than outcomes for people sentenced to prison: 27 percent of people who are sentenced to prison return within three years of release, and 24 percent of people sentenced to probation have their supervision revoked and are admitted to prison for a new offense or for a violation of the conditions of their supervision within the same time period.<sup>25</sup> Not only can effective probation supervision help to address a person's criminogenic needs and improve outcomes (coupled with treatment, if necessary), but probation is considerably less expensive than prison: \$4 per day per person compared to \$114 per day per person, respectively.

**This policy option creates a statutory presumption that people convicted of Class C felonies, excluding violent or sex offenses, will be sentenced to probation rather than incarceration, although judicial discretion will be retained in individual cases.** Courts will have the discretion to override the presumption if the person is sentenced to a consecutive term in prison on a more serious charge or if there are substantial and compelling reasons the defendant cannot be effectively and safely supervised in the community.

States are increasingly adopting policies to reserve prison space for people convicted of serious and violent offenses while using probation for people convicted of lower-level, nonviolent felony offenses. If a greater share of people with Class C nonviolent felony offenses received probation sentences, it would avert prison population growth and generate savings that could be reinvested in more effective supervision and community behavioral health treatment to lower recidivism.

### POLICY OPTION 2:

Respond to probation and parole violations with more effective and less costly sanctions that can reduce further violations.



Revoking people from parole and probation puts a strain on jail and prison populations. In FY2014, 58 percent of parolees and probationers who were revoked in North Dakota were sentenced to prison and 29 percent were sentenced to jail.<sup>26</sup> In the same year, parolees and probationers who were revoked to prison spent an average of 178 days and 391 days in prison, respectively, prior to being released, and made up 27 percent of the prison population.<sup>27</sup>

**This policy option limits to 90 days the time that people can be incarcerated as a sanction for a technical violation.** A technical violation of probation or parole is misconduct by a person under supervision that is not a criminal offense and generally does not result in arrest, such as failing to report for a scheduled meeting with the probation officer, missing a curfew, or testing positive for

drug or alcohol use. This option also allows people who have committed technical violations to be sanctioned in jails and alternative facilities, funded by the state, in lieu of prison. The 90-day limitation to incarceration does not apply to a probationer or parolee who commits a new crime.

Limiting the term of incarceration for people who violate conditions of their supervision but are not charged with a new crime can curb prison and jail population growth while ensuring that the degree of punishment is proportionate to the seriousness of the violation. The 90-day limitation to incarceration as a result of a technical violation provides probation officers with an intermediate sanction that can help increase accountability for people on supervision, deter recidivism, and reduce the cost of responding to supervision violations with lengthy periods of incarceration.

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### POLICY OPTION 3:

Provide the most intensive supervision at the beginning of a person's probation term, when risk of reoffending is highest.



Increase public safety and reduce recidivism

From FY2006 to FY2015, North Dakota's probation population increased by 39 percent (from 5,466 to 7,613 active cases) and its parole population increased 55 percent (from 484 to 751 active cases), straining supervision resources across the state.<sup>28</sup> Because officers supervise both probationers and parolees, increases in either population often make it difficult for officers to provide adequate supervision for the people on their caseloads and for community-based treatment and service providers to meet the needs of the supervision population due to their limited capacity.

The likelihood of failing on supervision is greatest within the first two years a person is on probation, which emphasizes the need to focus supervision and program resources on people at the beginning of their supervision terms. Fifty-one percent of people who began their probation terms in FY2012 and were admitted to prison within three years (either for a new offense or for violating conditions of

supervision) were admitted in the first year of probation. In the second year, the percentage fell to 35 percent, and in the third year the percentage fell to 14 percent.<sup>29</sup>

**This policy option requires the DOCR to systematically transition probationers to the lowest possible level of supervision (known as "diversion caseload") according to risk level and compliance.** Probationers on a low supervision level will be transferred to a diversion caseload after successfully serving 6 months, and those on a medium supervision level will be transferred after successfully serving 12 months.

People on diversion caseloads receive minimal administrative supervision. Transitioning probationers to a diversion caseload will enable supervision officers to target resources to people who are at the highest risk of reoffending during the first two years after their release.<sup>30</sup>

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### POLICY OPTION 4:

Increase the availability of and access to effective community-based behavioral health treatment for people in the criminal justice system.



Increase public safety and reduce recidivism

Stakeholders report that people on community supervision—especially those who live in rural areas—have difficulty accessing behavioral health treatment due to insufficient service capacity and an inadequate number of providers. Seventy percent of judges reported sentencing people to prison in order to connect them with mental health or substance use treatment. Probation and parole officers reported that 75 percent or more of their clients needed substance use treatment but struggled to find those services in the community.<sup>31</sup> Insufficient community-based treatment resources greatly limit the state's ability to address treatment needs, improve outcomes, and reduce recidivism, and therefore pose a challenge to public safety.

#### **A. Cultivate a network of community-based behavioral health care providers to serve people in the criminal justice system.**

Across the state, access to community-based treatment has decreased, while the need for treatment has increased.

North Dakota has the sixth-highest rate of alcohol and drug abuse in the country but is ranked 43rd in availability of treatment. In order to increase the network of community behavioral health care providers, the state must implement short-, medium-, and long-term strategies.

#### **SHORT-TERM STRATEGY**

**This policy option funds and requires the Department of Human Services (DHS) and DOCR to establish a case manager position.** A case manager is responsible for delivering community-based treatment for people with serious behavioral health needs who are also at a high risk of reoffending. Case managers typically do not require a specialized degree or certification but are entry-level positions in the professional behavioral health field. Their responsibilities include assessing and monitoring people, organizing reentry services, and coordinating care among multiple service providers, including clinicians and probation officers. Case managers are focused on



improving care coordination and eliminating gaps in care that lead to unnecessary readmissions to prison.

**This policy option also requires DHS to establish training and certification processes for peer support specialists to work in criminal justice settings.**

Peer support specialists are people recovering from severe mental illnesses or substance use disorders who are trained as counselors to help others with similar conditions. Through their experiential knowledge and familiarity with a patient's culture or community, peer support specialists can provide unique insights and assistance that professional health care providers cannot, and they can potentially reduce the use of crisis intervention services. DHS will be required to establish the basic qualifications of the peer support specialist position and develop a training module that prepares peer support specialists to deliver recovery-oriented services in partnership with professional treatment providers.

#### MEDIUM-TERM STRATEGY

**This policy option requires the development of a statewide strategic plan for increasing the number of community-based behavioral health care providers who have received the necessary education and training to work with criminal justice populations.** The strategic plan should analyze barriers to recruitment of behavioral health care providers, propose strategies for recruitment and retention, and identify key outcome metrics to be reported to the legislature on an annual basis. Community-based behavioral health care providers include certified peer support specialists, community engagement specialists, licensed substance use counselors, psychiatric nurses, and psychiatrists. By developing a strategic plan to cultivate an adequate network of appropriately trained community-based behavioral health care providers in rural areas, the state can begin to meet the behavioral health needs of people in the criminal justice system and reduce recidivism.

#### LONG-TERM STRATEGY

**This policy option requires DHS to manage the implementation of strategies to increase the number of community behavioral health providers in the**

**state, especially in rural areas.** Strategies may include the development of specialized curricula in higher education for health care workers in preparation for working with criminal justice populations. Specialized curricula can help health care workers increase their competency in working with criminal justice populations, and may attract students who have an interest in addressing both the health care and criminal justice needs of the state. Additional strategies may include: conducting outreach to promote interest in behavioral health professions in rural areas; developing scholarships and loan forgiveness programs; creating distance learning opportunities; or bolstering out-of-state recruitment and retention.

#### **B. Increase access to effective community-based behavioral health treatment for people in the criminal justice system.**

Untreated mental illnesses and substance use disorders contribute significantly to people's ongoing involvement in the criminal justice system. Research suggests that for adults with mental illnesses and substance use disorders, supervision combined with treatment is more effective at reducing recidivism than supervision alone.<sup>32</sup>

**This policy option increases access to effective community-based behavioral health treatment by establishing incentives for private health care providers to ensure that people in the criminal justice system have access to a full continuum of support services.** To encourage quality of care, private health care providers will have an opportunity to earn value-based incentives, where they receive additional funding for meeting target outcomes set by DHS.

People in the criminal justice system who have substance use and mental health treatment needs have a high likelihood of failing on probation at great cost to themselves and society. Yet many people transitioning from incarceration to probation who have behavioral health needs do not have timely access to treatment, a key component to successful reentry. By increasing access to community-based treatment services and programs, the state can help reduce recidivism and improve public health outcomes for people in the criminal justice system.

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## POLICY OPTION 5:

Establish a pretrial supervision pilot program and adopt a pretrial risk assessment tool.



Increase public safety and reduce recidivism

Provide tools to reduce pressure on jails

From 2005 to 2015, North Dakota's county jail population one-day count rose 83 percent, from 959 to 1,754 people. The sharpest increase occurred between 2012 and 2015, when the population spiked 40 percent, from 1,250 to 1,754 people.<sup>33</sup> Local criminal justice stakeholders, including sheriffs, judges, and jail administrators, identify growth in the pretrial detention population as a substantial driver of this increase.

Use of pretrial risk assessments is inconsistent in counties across the state, and, as a result, decisions to detain or release people pretrial are not always based on a defendant's risk for failure to appear in court or risk of reoffending.

**This policy option creates a pretrial supervision pilot project.** Administrators of the pilot program will be required to adopt a pretrial risk assessment tool as well as a dangerousness and/or lethality assessment for people charged with domestic violence offenses. The results of the assessment would be used to inform pretrial decisions to reduce unnecessary detentions and prioritize jail beds for people who are at a high risk of reoffending. Pretrial risk assessment results can be used to identify defendants who can be released pretrial and under what conditions, and help identify people who should be connected to

services in the community. Requiring a dangerousness and/or lethality assessment for people charged with domestic violence offenses gives judges the information they need to mandate supervision of high-risk domestic violence defendants upon their release. At the end of the 2017–2019 biennium, DOCR will be required to report outcomes from the program, including the number of and outcomes for pretrial detainees placed on supervision, disaggregated by assessed risk level.

A pretrial risk assessment can help determine a person's risk of failure to appear in court and risk of reoffending during the pretrial stage, and can also help identify people who are appropriate for release. Research shows that time in jail can increase a person's likelihood of engaging in criminal behavior: low-risk defendants have a 40-percent higher chance of committing a new crime before trial when held for 2 or 3 days compared to those held 1 day or less, and a 51-percent higher chance of committing a new crime within 2 years when held for 8 to 14 days compared to 1 day or less.<sup>34</sup> By helping counties adopt a pretrial risk assessment tool and provide pretrial supervision, the state will improve public safety, reduce jail populations, and aid counties in averting spending associated with a growing jail population.

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## POLICY OPTION 6:

Apply the state's existing good time policy to time served in jail as well as prison.



Avert prison population growth

The North Dakota Century Code (12-54.1-01) authorizes DOCR to grant good time credits, which can subtract up to five days per month from a prison sentence, according to eligibility criteria established by the agency. People are not currently eligible to accrue good time credits during the time they spend in jail awaiting trial, however. For example, a person currently sentenced to five years in prison, after having spent one year in jail awaiting the conclusion of his or her criminal case, would be transferred to DOCR to serve the remainder of his or

her sentence—four years in this case. Under the current system, the person in this example would be eligible to accrue good time credits during the four years spent in DOCR custody, but not for the entire five-year sentence.

**This policy option ensures that the state's existing good time policy applies to the total sentence imposed, including time served pretrial in jail and time served in prison.** Good time credits would be awarded to people in prison based on their participation

in court-ordered or staff-recommended treatment and education programs and good behavior exhibited while they were in county jail prior to going to prison.

Good time credits allow correctional facilities to incentivize good behavior, creating a safe and efficient way to reduce the prison population. Further, good time credits enhance public safety by encouraging rehabilitation and

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## POLICY OPTION 7:

### Improve the quality of and access to batterers' intervention programs.



Increase public safety and reduce recidivism

Batterers' intervention programs (BIPs) are court-ordered programs for people convicted of domestic violence offenses. They are neither funded by the state nor covered by traditional insurance, however, which forces participants to either pay out-of-pocket to attend or fail to follow the orders of the court. The nine BIPs throughout the state vary in quality. Although courts occasionally order anger management courses as an alternative to BIPs, these courses neither serve as an appropriate substitute for BIPs nor address the underlying issues contributing to a person's history of domestic violence.<sup>35</sup>

**This policy option provides state funding for BIPs and establishes a standards oversight committee to ensure the quality and consistency of this programming.** Increasing the number and quality of BIPs ensures that people convicted of domestic violence offenses are held accountable to court orders to participate in programs that address their risk factors. Ensuring that probationers and parolees participate in court-ordered programs is a key part of delivering effective supervision and holding people accountable.

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## POLICY OPTION 8:

### Improve the ability to collect and analyze outcome and demographic data.



Increase public safety and reduce recidivism

Each person in the North Dakota criminal justice system is assigned a statewide identification number (SID number) upon entering the criminal justice system, but this number is inconsistently used across agencies and not usually entered into the court data system. Demographic information is also missing from court records. Data collection on race and gender in North Dakota has increased in recent years, but 80 percent of sentencing records from FY2006 to FY2014 do not include the defendant's race, and 52 percent do not specify gender.

corrections agencies are able to promptly determine prior criminal history, allowing them to develop better case plans for each person. SID numbers also allow analysts to track the outcomes of each person in the system and ultimately evaluate the effectiveness of policies and practices.

#### **A. Require all criminal justice agencies to use the SID number assigned to each person who enters the criminal justice system.**

SID numbers allow for prompt and efficient communication among criminal justice agencies in the state regarding the activities of people in the system. When each person who enters the criminal justice system is assigned a unique identification number,

**This policy option recommends that the court enter a person's SID number into the court's case management system.** A SID number field already exists in the court case management system. This policy option simply encourages court clerks to systematically enter this information into the system.

#### **B. Recommend that the courts enter demographic information into the court data system for each case.**

Demographic data are collected by DOOCR. Analysis of the FY2014 prison population showed that 21 percent of the state's prison population was Native American,

while only 5 percent of the state's total resident population was Native American. Preliminary analysis suggests that Native Americans are overrepresented at other points in the state's criminal justice system and a dedicated effort to track and monitor the movement of people at various stages in the system is necessary to gain insight into the factors that may contribute to this disproportionality.

Currently, court staff have the capability to enter demographic information that exists in the judgment or other documents into the court data system when they receive a case filing, however are not required to do so, which results in high rates of incomplete data. The lack of demographic data in the court data system hinders the state's ability to understand the demographic composition of its criminal justice population and identify disproportionalities in the criminal justice system.

**This policy option recommends that the courts enter the demographic information that exists in case filing documents, including race and gender, into the court data system.** This policy option simply encourages court clerks to systematically enter this information into demographic fields that already exist in the court data system.

In taking a more targeted approach to data collection by adopting SID numbers and collecting demographic information, North Dakota will strengthen its ability for future analysis, enable cross-agency information sharing, and gain an understanding of the demographic composition of the criminal justice population. As North Dakota grows and diversifies, it will become even more important for researchers to be able to evaluate the effectiveness of various policies and practices and their impact on different populations.

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## **POLICY OPTION 9:**

**Assess, track, and ensure the sustainability of recidivism-reduction strategies, and increase statewide data collection and analysis efforts.**



Increase public safety and reduce recidivism

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### **A. Create a centralized interagency oversight body to guide and track the implementation of justice reinvestment policies.**

The Incarceration Issues Committee disbanded in September 2016 without establishing an entity to oversee the implementation of justice reinvestment policies; consequently, the state may encounter implementation challenges.

**This policy option establishes an interbranch, interagency committee to oversee the successful implementation of justice reinvestment policies in the years following enactment of legislation.** The committee will monitor implementation efforts and require the development of outcome measures and regular reporting from all agencies and stakeholders involved. The committee will also be required to review the annual impact reports from DOCR and ensure the sustained reinvestment of savings generated from the implementation of the justice reinvestment initiative.

### **B. Require DOCR to report annual data on the impact of justice reinvestment legislation.**

In order to ensure that the justice reinvestment legislation is meeting the goals set forth by the commission, North Dakota must establish a means of monitoring and reporting outcomes. Currently, there is one part-time employee who is dedicated to performing data analysis for DOCR. Various department employees, whose primary roles are not related to data or research, conduct other reporting, as assigned. This stopgap effort has resulted in unclear methodologies and conflicting numbers.

**This policy option requires DOCR to produce an annual report on the impact of the state's justice reinvestment legislation, including the extent to which the department has met implementation goals and projections concerning the prison population, the statewide recidivism rate, and other key public safety metrics.** DOCR will also be required to communicate additional fiscal needs to the legislature based on these reports.

The effective implementation of justice reinvestment policies is critical for the state to meet its goals, including averted growth in the prison population and correctional spending, and reduced recidivism. By requiring DOOCR to report annually on the impact of the legislation, the interagency oversight committee will receive substantive and measurable data to track and guide the implementation of the legislation.

### **C. Recommend that the Administrative Office of the Courts publish a comprehensive annual report on court activities.**

The Administrative Office of the Courts in North Dakota currently publishes an annual report that provides minimal statistics on court activity. The annual report typically includes the number of cases filed, number of cases in each court (traffic, criminal, juvenile, etc.), and number of jury trials.

**This policy option recommends that the Administrative Office of the Courts expand its annual report to provide statistical analyses of case hearings, dispositions, and sentences, as resources allow.** The courts will be encouraged to work with the provider of their case management system to develop system-generated reports on a regular and an ad-hoc basis.

### **D. Require state and local criminal justice agencies to adopt standardized offense codes.**

North Dakota has created a multi-agency task force to develop standardized offense codes, which are numerical references used to categorize crimes. The task force has developed a common statute table, which is scheduled for release in June 2017. But because the task force's efforts are still underway, agencies currently use varying offense codes for the same crime, complicating data collection and analysis. For example, there are more than 6,000 different DUI offense descriptions in the court data system because court administrators enter different descriptions of the offense each time, as opposed to using a standardized code to describe these DUI offenses. Some state and local agencies in North Dakota have adopted offense codes

published by the National Crime Information Center, while others use less widely accepted code references.

**This policy option requires the multi-agency task force to complete the standardization of offense codes and requires all law enforcement and criminal justice agencies to adopt and use these codes.** Once the standardization is completed, the task force is required to disseminate the offense codes to all state and local criminal justice agencies for statewide adoption. All agencies will be required to keep up with the codes and make adjustments as laws change.

Standardized offense codes will enhance the quality and timeliness of the crime data collected by criminal justice agencies as well as enable the prompt analysis of criminal justice trends.

### **E. Require all county jails to submit an annual census data report.**

The North Dakota Criminal Justice Information Sharing (ND-CJIS) program is dedicated to providing comprehensive data to criminal justice agencies in North Dakota. ND-CJIS has developed a data management system for local jails to use to track and share information about people in jail, such as demographics, charges, and booking and release dates. This is a system that is accessible to all counties at no cost and allows for reporting and analysis. Currently, only 12 out of 23 jails in North Dakota are using this data system. It is unknown what data, if any, non-participating jails are collecting or how they are collecting it.

**This policy option requires all county jails to submit an annual census data report to ND-CJIS.** Information provided would include, but not be limited to, one-day counts of jail population, demographics, average daily population, number of admissions, and estimated average length of stay. ND-CJIS will be required to synthesize the census data received from each jail into a statewide annual jail census report.

## ENDNOTES

1. North Dakota Department of Corrections and Rehabilitation (DOCR) estimated prison population projection. DOCR one-day inmate population snapshots for 2005–2007 are as of January 1 of each fiscal year. DOCR one-day inmate population snapshots for 2008–2015 and projected population snapshots for 2016–2022 are as of the last day of each fiscal year (June 30). Email correspondence between CSG Justice Center and DOCR, 2015 and 2016.
2. CSG Justice Center analysis of DOCR prison admission data files.
3. The IIC bill contained the following policies: (1) reclassify first time ingestion of a controlled substance as a class B misdemeanor, (2) reclassify first time ingestion of a controlled substance analog offense as a class B misdemeanor, (3) remove mandatory minimum sentences for drug offenses, (4) reclassify drug paraphernalia possession as a class B misdemeanor, (5) establish medical parole for certain people in prison with a terminal medical condition, (6) increase the threshold for Class C felony theft offenses, (7) reduce distance for drug offenses near a school from 1,000 to 500 feet, (8) authorize drug court to terminate probation following completion of a drug treatment program, (9) modify the credentials required to deliver addiction counseling, and (10) repeal the law preventing people with felony convictions from receiving food stamps.
4. CSG Justice Center analysis of DOCR prison one-day snapshot data files.
5. Biennial budgets run on a two-year cycle. Budget information cited here is from July 1, 2003 to June 30, 2005, with the most recent running from July 1, 2013 to June 30, 2015. Actual General Fund appropriations were \$83,458,031 for 2005 and \$178,475,785 for 2015. DOCR, Biennial Report 2003–2005. (Bismarck: NDOCR, 2005); DOCR, Biennial Report 2013–2015.
6. One-day population counts as of September 1 of each year. 2015 jail survey population information was used because it included more detailed information than previous years' surveys. Preskey Hushka, Donnell. "Behind Bars: Finding a Solution to Overcrowding in Jails." North Dakota Association of Counties (NDACo) Annual Convention. Bismarck Convention Center, Bismarck, ND. 26 October 2015.
7. Most of DOCR's contract-bed population is housed in six minimum-security transitional facilities operated by nonprofit agencies providing residential programs to people in DOCR custody who are preparing to return to the community from prison. The remaining contract-bed population is housed in county jails and the North Dakota State Hospital.
8. CSG Justice Center analysis of DOCR prison population data files; correspondence with DOCR (facility capacities and contract cost per day); this estimate assumes a daily contract bed cost of \$75.
9. Preskey Hushka, Donnell. "Behind Bars: Finding a Solution to Overcrowding in Jails." North Dakota Association of Counties (NDACo) Annual Convention. Bismarck Convention Center, Bismarck, ND. 26 October 2015.
10. Census definitions for Hispanic and Latino ethnic categories are updated from census to census, and are therefore not comparable across years. A snapshot of the 2014 population is provided to show racial/ethnic composition based on the most recent census definitions. U.S. Census Bureau, "State & County QuickFacts" retrieved on December 22, 2015, from <http://quickfacts.census.gov/qfd/states/38000.html>; CSG Justice Center analysis of DOCR prison one-day snapshot data files.
11. *Homicide in North Dakota*, reports covering years 2006 to 2014. [www.ag.nd.gov/Reports/BCIReports/CrimeHomicide/HomicideND.htm](http://www.ag.nd.gov/Reports/BCIReports/CrimeHomicide/HomicideND.htm).
12. *North Dakota Domestic Violence Fatality Report*, 2014. <https://www.ag.nd.gov/Reports/2014DVFR.pdf>.
13. *Making a Case for Batterer Treatment in North Dakota: A Judicial Resource* CAWS North Dakota.
14. CSG Justice Center analysis of DOCR supervision data.
15. CSG Justice Center analysis of DOCR supervision data and DOCR prison population snapshot data files. Of the remaining 16 percent of people whose supervision was revoked, 11 percent were returned to supervision and 5 percent had their supervision terminated.
16. CSG Justice Center analysis of DOCR prison admission and release data files and DOCR cost-per-day estimates.
17. CSG Justice Center analysis of DOCR prison admission data files.
18. CSG Justice Center analysis of DOCR prison admission data files and DOCR supervision data.
19. CSG Justice Center analysis of Administrative Office of the Courts felony sentencing data.
20. Based on state rankings of percentages of the adult population with reported dependence or abuse of illicit drugs or alcohol and mental health workforce availability. Mental Health America. "Parity of Disparity: The State of Mental Health in America," 2015. [http://www.mentalhealthamerica.net/sites/default/files/Parity or Disparity 2015 Report.pdf](http://www.mentalhealthamerica.net/sites/default/files/Parity%20or%20Disparity%202015%20Report.pdf).
21. Single-day counts reflect the number of persons who were enrolled in substance use treatment on March 31, 2009; March 31, 2010; March 31, 2011; March 30, 2012; and March 29, 2013. Substance Abuse and Mental Health Services Administration. "Behavioral Health Barometer North Dakota, 2014" <http://store.samhsa.gov/shin/content//SMA15-4895/BHBarometer-ND.pdf>.

14

22. The combined federal match for Medicaid eligible services for the target population is estimated to be 85 percent.
23. CSG Justice Center analysis of Class C Felony categories; North Dakota Century Code 12.1-32: Penalties and Sentencing.
24. CSG Justice Center analysis of DOCR prison admission data files.
25. For people released from prison in FY2012 and felony probations beginning in FY2012. CSG Justice Center analysis of DOCR supervision and prison sentence data.
26. The remaining people revoked from probation or parole were returned to supervision (9 percent) or terminated from supervision (4 percent). CSG Justice Center analysis of DOCR supervision data.
27. CSG Justice Center analysis of DOCR prison one-day snapshot and release data files.
28. CSG Justice Center analysis of DOCR supervision data.
29. Based on a cohort of probation admissions in FY2012 tracked for three years. CSG Justice Center analysis of DOCR supervision data.
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31. 2014 CSG Justice Center North Dakota Judicial Survey; CSG Justice Center Probation and Parole Officer Survey.
32. National Institute on Drug Abuse, *Principles of Drug Addiction Treatment* (2009).
33. One-day population counts as of September 1 of each year. 2015 jail survey population information was used because it included more detailed information than previous years' surveys. Preskey Hushka, Donnell. "Behind Bars: Finding a Solution to Overcrowding in Jails." North Dakota Association of Counties (NDACo) Annual Convention. Bismarck Convention Center, Bismarck, ND. 26 October 2015.
34. Lowenkamp, Christopher T, VanNostrand, Marie, and Holsinger, Alexander, "The Hidden Costs of Pretrial Detention," (Laura and John Arnold Foundation, 2013).
35. Andrew Klein, *Practical Implications of Current Domestic Violence Research for Probation Officers and Administrators* (Minneapolis, MN: Advocates for Human Potential, March, 2015).



This project was supported by Grant No. 2013-ZB-BX-K002 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, and the SMART office. Points of view or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice.

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Research and analysis described in this report has been funded in part by The Pew Charitable Trusts public safety performance project. Launched in 2006 as a project of the Pew Center on the States, the public safety performance project seeks to help states advance fiscally sound, data-driven policies and practices in sentencing and corrections that protect public safety, hold offenders accountable, and control corrections costs.

To learn more about the project, please visit [pewtrusts.org/publicsafety](http://pewtrusts.org/publicsafety).



The Council of State Governments (CSG) Justice Center is a national nonprofit organization that serves policymakers at the local, state, and federal levels from all branches of government. The CSG Justice Center provides practical, nonpartisan advice and evidence-based, consensus-driven strategies to increase public safety and strengthen communities. Points of view, recommendations, or findings stated in this document are those of the authors and do not necessarily reflect the official position or policies of The Pew Charitable Trusts, The Council of State Governments Justice Center, or The Council of State Governments' members.

For additional information about Justice Reinvestment in Montana, please visit [csgjusticecenter.org/jr/mt](http://csgjusticecenter.org/jr/mt).

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HB 1041 #1  
1-31-17

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

**COMMISSION ON ALTERNATIVES TO INCARCERATION  
JOINT MEETING WITH INCARCERATION ISSUES COMMITTEE**

Monday, September 19, 2016  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Senator Ron Carlisle, Chairman, Commission on Alternatives to Incarceration and Incarceration Issues Committee called the meeting to order at 9:00 a.m.

**Commission on Alternatives to Incarceration members present:** Senators Ron Carlisle, John Grabinger, Terry M. Wanzek; Representatives Ron Guggisberg, Kim Koppelman, Jon O. Nelson; Citizen Members Maggie D. Anderson, Leann K. Bertsch, Dan Donlin, Mark A. Friese, Duane Johnston, Justice Lisa McEvers, Jason T. Olson, Gary Rabe

**Commission on Alternatives to Incarceration members absent:** Meredith Huseby Larson, Paul D. Laney

**Incarceration Issues Committee members present:** Senators Ron Carlisle, John Grabinger, Terry M. Wanzek; Representatives Ron Guggisberg, Kim Koppelman, Jon O. Nelson; Citizen Members Leann K. Bertsch, Thomas Erhardt, Rozanna Larson, Aaron Roseland, Scott Steele, Attorney General Wayne Stenehjem, Chief Justice Gerald W. VandeWalle, Randy Ziegler

**Incarceration Issues Committee members absent:** Judge Douglas Mattson and Presiding Judge Frank Racek

**Others Present:** See Appendix A

Attorney General Wayne Stenehjem appointed himself to serve in place of Thomas L. Trenbeath at the September 19, 2016, meeting of Commission on Alternatives to Incarceration.

Chief Justice Gerald VandeWalle appointed himself to serve in place of Surrogate Judge Mary Muehlen Maring at the September 19, 2016, meeting of Commission on Alternatives to Incarceration (Appendix B).

**It was moved by Senator Grabinger, seconded by Representative Nelson, and carried on a voice vote that the minutes of the August 29, 2016, meeting of the Incarceration Issues Committee be approved as distributed.**

Chairman Carlisle said the purpose of the meeting is to forward a bill draft to the Legislative Management to be used as a starting point for discussion of issues relating to alternatives to incarceration during the 65<sup>th</sup> Legislative Assembly.

**CRIME REPORT**

Chairman Carlisle called on Attorney General Stenehjem for information (Appendix C) relating to the 2015 crime report.

Attorney General Stenehjem said data is collected from 53 county sheriffs, 53 police departments, 10 narcotics task forces, and the Highway Patrol. He said the data has been collected for decades and is useful for indicating trends in the state. He said although there is usually some positive data included in the report, the 2015 data was mostly negative. He said the overall crime rate has continued to increase as have the drug submissions to the crime laboratory for testing. The one bright spot in the report, he said, is the remarkable decrease in the number of arrests and convictions related to driving under the influence.

In response to a question from Representative Koppelman, Attorney General Stenehjem said North Dakota is seeing an increase in marijuana from states that have legalized the use of marijuana. He said the potency is far stronger and people that have a prescription from Colorado think they can use marijuana legally in North Dakota. He said legalizing medical marijuana will not make the state safer.

In response to a question from Ms. Larson, Attorney General Stenehjem said the value of property lost to crime victims is about \$23 million.

### MINORITY JUSTICE REPORT

Chairman Carlisle called on Ms. Lindsey Nieuwsma, Attorney, North Dakota Supreme Court, for a presentation regarding the recommendations of the Minority Justice Implementation Committee for justice reinvestment.

Ms. Nieuwsma said the Minority Justice Implementation Committee was created by Supreme Court Administrative Order 21 in 2012, to study racial and ethnic bias in the state. She said the 2012 report found a disproportionate representation of minorities in the state's criminal justice system. She said the committee recommends a retrieval mechanism for county data be created to allow for a more long-term detailed analysis of each aspect of the criminal justice system.

### COUNCIL OF STATE GOVERNMENTS

Chairman Carlisle called on Mr. Marc Pelka, Project Manager, Council of State Governments Justice Center, for information (Appendix D) relating to specific policy options for North Dakota.

Mr. Pelka said the Council of State Governments (CSG) has determined three major drivers of prison population growth in the state. He said property, drug offenses, and supervision revocations are driving prison population growth, supervision violations receive slow and costly responses, and substance use underlies many supervision violations and property and drug offenses.

Mr. Pelka said CSG suggests a four-prong policy framework to reduce the prison population over a period of 5 years. He said the state can avert growth by diverting people convicted of low-level drug offenses to probation, reduce recidivism costs by holding supervision violators accountable through swift, certain, and proportional sanctions, increase public safety by focusing supervision and program resources on probationers and parolees at a high risk of reoffending, and reinvesting saved funds to expand behavioral health treatment for probationers and parolees with substance abuse or mental health needs.

In response to a question from Representative Nelson, Mr. Steve Allen, Senior Policy Advisor, Council of State Governments Justice Center, said until the state is able to determine the subgroup of individuals needing treatment, it will be difficult to determine the exact number of additional treatment providers the state will need. Although the use of telemedicine works in some areas, he said, substance abuse treatment group therapy generally is most effective and efficient.

In response to a question from Senator Wanzek, Ms. Bertsch said additional responsibility will fall on probation and parole. She said although more officers are needed to keep caseloads down, if the state does not have the services to support the released individuals, it is unlikely those individuals will succeed. She said using quick sanctions, like the 90-day jail sentence, is not an option as the resources have not been built.

### BILL DRAFT

At the request of Chairman Carlisle, the Legislative Council staff reviewed a bill draft [17.0197.02000] relating to justice reinvestment.

The Legislative Council staff said the bill draft is a compilation of suggestions from CSG and the Department of Corrections and Rehabilitation (DOCR). She said Section 1 of the bill draft shifts the authority to allow sentence reduction credit from the judiciary to the facility administrator of the local correctional facility in which an individual is held. She said Section 2 of the bill draft authorizes the use of sentence reduction credit for time spent in custody. She said doing so would allow an inmate to receive up to 15 days of credit that is not currently available. She said Section 2 would allow inmates serving sentences of 6 months or less to receive up to 30 days of sentence reduction credit.

The Legislative Council staff said Section 3 amends North Dakota Century Code Section 12-59-08 to allow the parole board to consider medical parole for offenders who are not otherwise eligible for parole. She said Section 4 would amend Section 12-60-16.4 to include Class AA misdemeanors in the list of reportable offenses. She said Section 5 amends Section 12.1-17-13 to remove the court's authority to excuse an offender from completing a domestic violence offender treatment program. Section 6, she said, amends Section 12.1-23-05(3), to create a new Class AA misdemeanor offense for theft. She said Section 7 amends Section 12.1-32-08(4) to update the cross-reference to Section 12.1-23-05. She said Section 8 amends Section 12.1-32-01 to add a Class AA misdemeanor offense.

The Legislative Council staff said Section 9 amends Section 12.1-32-02(2) to require a criminal judgment to include credit for a sentence reduction. She said Sections 10 and 11 amend Sections 12.1-32-03.1 and 12.1-32-07 to update cross-references. She said Section 12 amends Section 12.1-32-07(1) to add the category of Class AA misdemeanors to the class of offenses subject to discretionary supervision. She said Section 13 creates a new section to Chapter 12.1-32, requiring presumptive probation for first-time, low-level, Class C felony offenders. Section 14 amends Section 12.1-32-09.1(1) she said, to require an offender to serve 70 percent of a sentence before being eligible for parole. She said Sections 15, 16, and 17 amend Sections 19-03.1-22.3, 19-03.1-22.5, and 19-03.1-23 to reclassify ingestion of a controlled substance from a Class A misdemeanor to an infraction, ingestion of a controlled substance analog from a Class C felony to a Class AA misdemeanor, and possession of a controlled substance or controlled substance analog from a Class C felony to a Class AA misdemeanor.

The Legislative Council staff said Section 18 amends the language in Section 19-03.1-23.1 to reduce the proximity to a school from 1,000 feet to 300 feet before an increased penalty is allowed with respect to drug offenses. She said the amendment also changes the offense classification based on past offenses. Section 19 amends Section 19-03.4-03, she said, to reduce the classifications for paraphernalia used for the consumption of controlled substances. She said Section 20 amends Section 29-03-22 to update cross-references. She said the amendment in Section 21 to Section 39-08-01(5)(f) allows the court to terminate the probation requirements of an offender when the offender completes probation. Section 22 amends Section 39-24.1-07, she said, to update cross-references. She said Section 23 amends Section 43-45-06 to authorize licensed clinical psychologists, doctoral candidates in psychology, or individuals with a master's degree in social work to provide addiction counseling services. She said Section 24 amends Section 50-06-05.1(17) to remove the prohibition against individuals who have a felony substance abuse conviction in the last 7 years from being eligible for the supplemental nutrition assistance program and Section 25 creates a pilot project for pretrial services.

Mr. Brad Cruff, District Judge, North Dakota Judge's Association, said the notion that only 19 percent of Class C felony offenders are sentenced to a period of probation is not accurate. He said the data ([Appendix E](#)) illustrates a figure closer to 54 percent of Class C felony offenders receive an initial sentence of probation.

### Sections 3, 24, and 25

Chairman Carlisle asked the committee if anyone had changes to suggest for Sections 3, 24, or 25 of the bill draft.

Ms. Anderson said Section 24 would require an additional change because the amendment in the bill draft would grant access only to some benefits. She provided the committee with the additional language ([Appendix F](#)) needed to allow access to all benefits. She said leaving the amendment as written in the bill draft would make the denial permanent without exceptions. She said the statute allows for access to benefits 7 years post conviction.

### Commission on Alternatives to Incarceration

**It was moved by Ms. Anderson, seconded by Senator Wanzek, and carried on a roll call vote that the bill draft be amended to reflect the changes presented by Ms. Anderson.** Senators Carlisle, Grabinger, and Wanzek; Representatives Guggisberg, Koppelman, and Nelson; and Citizen Members Anderson, Bertsch, Donlin, Friese, Johnston, Olson, Rabe, Attorney General Stenehjem, and Chief Justice VandeWalle voted "aye." No negative votes were cast.

### Incarceration Issues Committee

**It was moved by Representative Nelson, seconded by Senator Grabinger, and carried on a roll call vote that the bill draft be amended to reflect the changes presented by Ms. Anderson.** Senators Carlisle, Grabinger, and Wanzek and Representatives Guggisberg and Nelson voted "aye." Representative Koppelman voted "nay."

In response to a question from Representative Nelson, Ms. Bertsch said the pilot program created through Section 25 of the bill draft would require an increase of about two full-time employees per district implementing the project.

In response to a question from Senator Wanzek, Ms. Bertsch said pretrial services would help local jurisdictions because nearly 85 percent of the individuals being held in county jails have not been sentenced, but do not have the means to pay bond. She said the federal system has pretrial services and only about 15 percent of individuals remain in custody before sentencing. She said pretrial services would provide services to assist the court with background information on an individual before bond is set.

In response to a question from Senator Grabinger, Chief Justice VandeWalle said the pilot program being used in Cass County is a different type of program. He said the program in Cass County is used as a screening tool to divert people away from jail.

### Section 1

Mr. Friese said he does not think it is prudent to provide sentence reduction credit for sentences shorter than 60 days.

Ms. Katie Mosehauer, Project Manager, State Initiatives, Council of State Governments Justice Center, said the amendment was an idea from the July meeting to alleviate pressures on local jails.

In response to a question from Representative Koppelman, Ms. Bertsch said each jail administrator would be able to decide whether to participate in the good time process.

#### Commission on Alternatives to Incarceration

**It was moved by Mr. Friese, seconded by Senator Wanzek, and carried on a roll call vote that the bill draft be amended to remove "at least sixty days" from page 1, line 23.** Senators Carlisle, Grabinger, and Wanzek; Representatives Guggisberg, Koppelman, and Nelson; and Citizen Members Anderson, Bertsch, Donlin, Friese, Johnston, Olson, Rabe, Attorney General Stenehjem, and Chief Justice VandeWalle voted "aye." No negative votes were cast.

#### Incarceration Issues Committee

**It was moved by Representative Nelson, seconded by Senator Grabinger, and carried on a roll call vote that the bill draft be amended to remove "at least sixty days" from page 1, line 23.** Senators Carlisle, Grabinger, and Wanzek and Representatives Guggisberg, Koppelman, and Nelson voted "aye." No negative votes were cast.

### Section 2

#### Commission on Alternatives to Incarceration

**It was moved by Mr. Friese, seconded by Ms. Bertsch, and carried on a roll call vote that Section 2 of the bill draft be amended to remove the provision that would allow sentence reduction when the time of incarceration is 6 months or less.** Senators Carlisle, Grabinger, and Wanzek; Representatives Guggisberg, Koppelman, and Nelson; and Citizen Members Anderson, Bertsch, Donlin, Friese, Johnston, Olson, Rabe, Attorney General Stenehjem, and Chief Justice VandeWalle voted "aye." No negative votes were cast.

#### Incarceration Issues Committee

**It was moved by Representative Nelson, seconded by Senator Grabinger, and carried on a roll call vote that Section 2 of the bill draft be amended to remove the provision that would allow sentence reduction when the time of incarceration is 6 months or less.** Senators Carlisle, Grabinger, and Wanzek and Representatives Guggisberg, Koppelman, and Nelson voted "aye." No negative votes were cast.

### Sections 4 and 8

Mr. Friese said Sections 4 and 8 of the bill draft raise the larger question of whether it is appropriate to develop another offense in the Criminal Code. He said doing so may be problematic as it could have implications on federal law, which defines a felony as anything with a sentence longer than 1 year.

Representative Nelson said the concept likely will be debated during the 65<sup>th</sup> Legislative Assembly, but if the sections are eliminated from the bill draft there will be nothing left to discuss.

Representative Koppelman said it would be beneficial to leave the sections in the bill as legislators will have questions due to the drastic nature of the changes.

Ms. Bertsch said if the sections are removed, the period of incarceration for a Class A misdemeanor should remain 1 year.

#### Commission on Alternatives to Incarceration

**It was moved by Senator Grabinger, seconded by Representative Nelson, and carried on a roll call vote that the bill draft be amended to remove Sections 4 and 8.** Senators Carlisle, Grabinger, and Wanzek; Representatives Guggisberg, Koppelman, and Nelson; and Citizen Members Anderson, Bertsch, Donlin, Friese, Johnston, Olson, Rabe, Attorney General Stenehjem, and Chief Justice VandeWalle voted "aye." No negative votes were cast.

#### Incarceration Issues Committee

**It was moved by Senator Grabinger, seconded by Representative Nelson, and carried on a roll call vote that the bill draft be amended to remove Sections 4 and 8.** Senators Carlisle, Grabinger, and Wanzek and Representatives Guggisberg, Koppelman, and Nelson voted "aye." No negative votes were cast.

### Section 5

Mr. Roseland said on behalf of counties with lower population and resources, it would be a grave mistake to take out the anger management portion of Section 5.

Mr. Pelka said CSG found there is a desire for increased investment in batterers treatment programming in the state. He said he could work with victim advocates in the state to create refined language or budget recommendations.

Mr. Erhardt said it is common practice to require an assessment rather than impose a requirement for treatment.

Ms. Bertsch said an anger management program does not get at the issue going on with domestic violence. She said domestic violence programming is important because many homicides start as domestic violence situations. If the state is going to require domestic violence treatment, she said, the state must provide a level of treatment similar to the treatment provided to sex offenders.

In response to a question from Representative Nelson, Ms. Bertsch said there is a funding stream through DOCR to contract with a private entity that oversees all the sex offender treatment programs in the state.

Mr. Friese said each offense is not the same and some individuals are more amenable to treatment than others.

In response to a question from Justice McEvers, Ms. Janelle Moos, Executive Director, CAWS North Dakota, said there are domestic violence treatment providers in Cass and Burleigh Counties as well as in Williston, Minot, and Grand Forks. She said there are programs being set up in Jamestown and Devils Lake.

Mr. Allen said within the subgroup of men who batter women, there is a smaller group that is very dangerous and capable of murder. He said although it is clear the state does not have the capacity to handle all the individuals who need treatment, it would make sense to develop and invest in some policy and standards to expand availability.

#### Commission on Alternatives to Incarceration

**It was moved by Senator Grabinger, seconded by Senator Wanzek, and carried on a roll call vote that the bill draft be amended to insert "evaluation and" after "offender" and "as determined by the court" after "program" on page 3, line 31, and remove lines 4 through 6 on page 4. Senators Carlisle, Grabinger, and Wanzek; Representatives Guggisberg, Koppelman, and Nelson; and Citizen Members Anderson, Bertsch, Donlin, Friese, Johnston, Justice McEvers, Olson, Rabe, Attorney General Stenehjem, and Chief Justice VandeWalle voted "aye." No negative votes were cast.**

#### Incarceration Issues Committee

**It was moved by Representative Nelson, seconded by Senator Grabinger, and carried on a roll call vote that the bill draft be amended to insert "evaluation and" after "offender" and "as determined by the court" after "program" on page 3, line 31, and remove lines 4 through 6 on page 4. Senators Carlisle, Grabinger, and Wanzek and Representatives Guggisberg, Koppelman, and Nelson voted "aye." No negative votes were cast.**

### Section 6

#### Commission on Alternatives to Incarceration

**It was moved by Mr. Friese, seconded by Mr. Donlin, and carried on a roll call vote that the bill draft be amended to remove ", or" on page 4, line 24, and "an automobile, aircraft, or other motor-propelled vehicle" on page 4, line 25, and to remove lines 13 through 15 on page 5. Senators Carlisle, Grabinger, and Wanzek; Representatives Guggisberg and Nelson; and Citizen Members Anderson, Bertsch, Donlin, Friese, Johnston, Justice McEvers, Olson, Rabe, and Chief Justice VandeWalle voted "aye." Representative Koppelman and Citizen Member Attorney General Stenehjem voted "nay."**

#### Incarceration Issues Committee

**It was moved by Representative Nelson, seconded by Senator Grabinger, and carried on a roll call vote that the bill draft be amended to remove ", or" on page 4, line 24, and "an automobile, aircraft, or other motor-propelled vehicle" on page 4, line 25, and to remove lines 13 through 15 on page 5. Senators Carlisle, Grabinger, and Wanzek and Representatives Guggisberg and Nelson voted "aye." Representative Koppelman voted "nay."**

### Section 13

Ms. Larson said if the ultimate goal is treatment, the state should consider lowering the offense level for drug offenses rather than create presumptive probation.

In response to a question from Chief Justice VandeWalle, Mr. Pelka said CSG would be happy to help develop policy concepts to elaborate on the details like which aggravating factors would allow a judge to deviate from a presumptive probation.

Justice McEvers said most judges will sentence first time Class C felony offenders to probation.

Ms. Bertsch said most of the inmates at the State Penitentiary are imprisoned as a result of a probation revocation.

Justice McEvers said her experience does not support CSG's statement that 1 in 3 individuals admitted to the State Penitentiary have not been on probation.

#### **Commission on Alternatives to Incarceration**

**It was moved by Mr. Friese, seconded by Senator Wanzek, and carried on a roll call vote that Section 13 be removed from the bill draft.** Senators Carlisle and Wanzek and Citizen Members Anderson, Bertsch, Donlin, Friese, Johnston, Justice McEvers, Olson, and Chief Justice VandeWalle voted "aye." Senator Grabinger; Representatives Guggisberg, Koppelman, and Nelson; and Citizen Members Rabe and Attorney General Stenehjem voted "nay."

#### **Incarceration Issues Committee**

**It was moved by Representative Nelson, seconded by Senator Grabinger, and carried on a roll call vote that the bill draft be amended to replace "a class AA misdemeanor offense or a class C felony offense" with "a class A misdemeanor drug offense" on page 11, line 16, remove "class AA misdemeanor" on page 11, line 17, and to replace "offense or a felony offense" with "class A misdemeanor drug offense" on page 11, line 18.** Senators Carlisle, Grabinger, and Wanzek and Representatives Guggisberg, Koppelman, and Nelson voted "aye." No negative votes were cast.

#### **Section 14**

Chairman Carlisle said Section 12.1-32-09.1 came from a bill he originally sponsored about 20 years ago.

Ms. Bertsch said requiring an inmate to serve 85 percent of a sentence has done nothing for public safety. She said DOCR would prefer a repeal of the entire section. She said it is an administrative nightmare. She said reducing the requirement to 70 percent would require a fiscal note.

In response to a question from Representative Koppelman, Ms. Bertsch said making a repeal of the statute retroactive would be the best option because amending the statute potentially could open the doors to litigation based on errors in sentence calculations.

#### **Commission on Alternatives to Incarceration**

**It was moved by Representative Koppelman, seconded by Mr. Olson, and carried on a roll call vote that the bill draft be amended to remove Section 14.** Senators Carlisle, Grabinger, and Wanzek; Representatives Guggisberg and Koppelman; and Citizen Members Anderson, Donlin, Olson, Rabe, and Attorney General Stenehjem voted "aye." Representative Nelson and Citizen Members Bertsch, Friese, Johnston, Justice McEvers, and Chief Justice VandeWalle voted "nay."

#### **Commission on Alternatives to Incarceration**

**It was moved by Ms. Bertsch, seconded by Mr. Friese, and failed on a roll call vote that the bill draft be amended to repeal Section 12.1-32-09.1(1).** Representatives Guggisberg and Nelson and Citizen Members Anderson, Bertsch, Friese, Johnston, Justice McEvers, and Rabe voted "aye." Senators Carlisle, Grabinger, and Wanzek; Representative Koppelman; and Citizen Members Donlin, Attorney General Stenehjem, and Chief Justice VandeWalle voted "nay."

#### **Incarceration Issues Committee**

**It was moved by Representative Koppelman, seconded by Senator Wanzek, and carried on a roll call vote that the bill draft be amended to remove Section 14.** Senators Carlisle, Grabinger, and Wanzek and Representatives Guggisberg and Koppelman voted "aye." Representative Nelson voted "nay."

#### **Section 15**

In response to a question from Mr. Steele, Mr. Roseland said amending Section 19-03.1-22.3 to an infraction would make the offense level less than that of a minor in consumption.

Justice McEvers said lowering the offense level to that of an infraction would lessen the ability to correct the behavior.

Mr. Donlin said the purpose of the statute is to assist officers when an individual is apprehended and the individual may not have possession of the drug.

#### **Commission on Alternatives to Incarceration**

It was moved by Representative Koppelman, seconded by Representative Guggisberg, and carried on a roll call vote that the bill draft be amended to replace "an infraction" with "class B misdemeanor on the first offense and a class A misdemeanor on a second offense" on page 12, line 7. Senators Carlisle, Grabinger, and Wanzek; Representatives Guggisberg, Koppelman, and Nelson; and Citizen Members Anderson, Bertsch, Donlin, Friese, Johnston, Justice McEvers, Rabe, Attorney General Stenehjem, and Chief Justice VandeWalle voted "aye." Citizen member Olson voted "nay."

#### **Incarceration Issues Committee**

It was moved by Representative Koppelman, seconded by Representative Guggisberg, and carried on a roll call vote that the bill draft be amended to replace "an infraction" with "class B misdemeanor on the first offense and a class A misdemeanor on a second offense" on page 12, line 7. Senators Carlisle, Grabinger, and Wanzek and Representatives Guggisberg, Koppelman, and Nelson voted "aye." No negative votes were cast.

### **Section 16**

#### **Commission on Alternatives to Incarceration**

It was moved by Mr. Donlin, seconded by Attorney General Stenehjem, and carried on a roll call vote that the bill draft be amended to replace "class AA misdemeanor" with "class B misdemeanor on the first offense and a class A misdemeanor on a second offense" on page 12, line 16. Senators Carlisle, Grabinger, and Wanzek; Representatives Guggisberg, Koppelman, and Nelson; and Citizen Members Anderson, Bertsch, Donlin, Friese, Johnston, Justice McEvers, Olson, Rabe, Attorney General Stenehjem, and Chief Justice VandeWalle voted "aye." No negative votes were cast.

#### **Incarceration Issues Committee**

It was moved by Senator Wanzek, seconded by Representative Nelson, and carried on a roll call vote that the bill draft be amended to replace "class AA misdemeanor" with "class B misdemeanor on the first offense and a class A misdemeanor on a second offense" on page 12, line 16. Senators Carlisle, Grabinger, and Wanzek and Representatives Guggisberg, Koppelman, and Nelson voted "aye." No negative votes were cast.

### **Section 17**

#### **Commission on Alternatives to Incarceration**

It was moved by Representative Koppelman, seconded by Representative Nelson, and carried on a roll call vote that the bill draft be amended to remove the overstrike on page 12, lines 29 through 31; remove the overstrike on page 13, lines 2 through 11; remove the overstrike on page 13, lines 26 and 27; remove "may" from page 13, line 29; remove "a" on page 14, line 5; remove "not to exceed eight years" on page 14, line 6; remove "is subject" from page 14, line 9; remove "a term of" from page 14, line 9; remove "not" from page 14, line 9; remove "to exceed" from page 14, line 10; remove the overstrike from page 14, lines 16 through 19; after "offense" on page 14, line 22, insert "with respect to the offenses for the manufacture, delivery, or intent to deliver"; remove "this section" on page 14, line 24; replace "class AA misdemeanor" with "class A misdemeanor" on page 15, line 13; replace "three hundred" with "five hundred" on page 15, line 14; and replace "91.44" with "152.4" on page 15, line 15. Senators Carlisle, Grabinger, and Wanzek; Representatives Koppelman and Nelson; and Citizen Members Donlin, Johnston, Rabe, and Attorney General Stenehjem voted "aye." Representative Guggisberg and Citizen Members Anderson, Bertsch, Friese, Justice McEvers, Olson, and Chief Justice VandeWalle voted "nay."

It was moved by Representative Koppelman, seconded by Dr. Rabe, and carried on a roll call vote that the bill draft be amended to replace "this subsection" with "subsection 1 of section 19-03.1-23" on page 12, line 27. Senators Carlisle, Grabinger, and Wanzek; Representatives Guggisberg, Koppelman, and Nelson; and Citizen Members Anderson, Bertsch, Donlin, Friese, Johnston, Justice McEvers, Olson, Rabe, Attorney General Stenehjem, and Chief Justice VandeWalle voted "aye." No negative votes were cast.

#### **Incarceration Issues Committee**

It was moved by Representative Koppelman, seconded by Representative Nelson, and carried on a roll call vote that the bill draft be amended to remove the overstrike on page 12, lines 29 through 31; remove the overstrike on page 13, lines 2 through 11; remove the overstrike on page 13, lines 26 and 27; remove "may" from page 13, line 29; remove "a" on page 14, line 5; remove "not to exceed eight years" on page 14, line 6; remove "is subject" from page 14, line 9; remove "a term of" from page 14, line 9; remove "not" from page 14, line 9; remove "to exceed" from page 14, line 10; remove the overstrike from page 14, lines 16 through 19; after "offense" on page 14, line 22, insert "with respect to the offenses for the manufacture,

delivery, or intent to deliver"; remove "this section" on page 14, line 24; replace "class AA misdemeanor" with "class A misdemeanor" on page 15, line 13; replace "three hundred" with "five hundred" on page 15, line 14; and replace "91.44" with "152.4" on page 15, line 15. Senators Carlisle, Grabinger, and Wanzek and Representatives Koppelman and Nelson voted "aye." Representative Guggisberg voted "nay."

It was moved by Representative Koppelman, seconded by Representative Nelson, and carried on a roll call vote that the bill draft be amended to replace "this subsection" with "subsection 1 of section 19-03.1-23" on page 12, line 27. Senators Carlisle, Grabinger, and Wanzek and Representatives Guggisberg, Koppelman, and Nelson voted "aye." No negative votes were cast.

### Section 18

#### Commission on Alternatives to Incarceration

It was moved by Representative Nelson, seconded by Senator Wanzek, and carried on a roll call vote that the bill draft be amended to replace "three hundred" with "five hundred" and replace "91.44" with "152.4" on page 16, line 24. Senators Carlisle, Grabinger, and Wanzek; Representatives Guggisberg, Koppelman, and Nelson; and Citizen Members Anderson, Bertsch, Donlin, Friese, Johnston, Justice McEvers, Olson, Rabe, Attorney General Stenehjem, and Chief Justice VandeWalle voted "aye." No negative votes were cast.

#### Incarceration Issues Committee

It was moved by Representative Nelson, seconded by Senator Wanzek, and carried on a roll call vote that the bill draft be amended to replace "three hundred" with "five hundred" and replace "91.44" with "152.4" on page 16, line 24. Senators Carlisle, Grabinger, and Wanzek and Representatives Guggisberg, Koppelman, and Nelson voted "aye." No negative votes were cast.

### Section 19

#### Commission on Alternatives to Incarceration

It was moved by Representative Nelson, seconded by Senator Wanzek, and carried on a roll call vote that the bill draft be amended to replace "class AA misdemeanor" with "class A misdemeanor" on page 19, line 3, and remove "infraction" from page 19, line 12. Senators Carlisle, Grabinger, and Wanzek; Representatives Guggisberg, Koppelman, and Nelson; and Citizen Members Anderson, Bertsch, Friese, Johnston, Justice McEvers, Rabe, Attorney General Stenehjem, and Chief Justice VandeWalle voted "aye." Citizen Members Donlin and Olson voted "nay."

#### Incarceration Issues Committee

It was moved by Representative Nelson, seconded by Senator Wanzek, and carried on a roll call vote that the bill draft be amended to replace "class AA misdemeanor" with "class A misdemeanor" on page 19, line 3, and remove "infraction" from page 19, line 12. Senators Carlisle, Grabinger, and Wanzek and Representatives Guggisberg, Koppelman, and Nelson voted "aye." No negative votes were cast.

### Section 23

#### Commission on Alternatives to Incarceration

It was moved by Representative Nelson, seconded by Senator Wanzek, and carried on a roll call vote that the bill draft be amended to replace "master's in social work" with "licensed independent clinical social worker, or a licensed professional clinical counselor" on page 21, line 25, and to insert "as determined qualified by each respective board" on page 21, line 26. Senators Carlisle, Grabinger, and Wanzek; Representatives Guggisberg, Koppelman, and Nelson; and Citizen Members Anderson, Bertsch, Donlin, Friese, Johnston, Justice McEvers, Olson, Rabe, Attorney General Stenehjem, and Chief Justice VandeWalle voted "aye." No negative votes were cast.

#### Incarceration Issues Committee

It was moved by Representative Nelson, seconded by Senator Wanzek, and carried on a roll call vote that the bill draft be amended to replace "master's in social work" with "licensed independent clinical social worker license, or a licensed professional clinical counselor" on page 21, line 25, and to insert "as determined qualified by each respective board" on page 21, line 26. Senators Carlisle, Grabinger, and Wanzek and Representatives Guggisberg, Koppelman, and Nelson voted "aye." No negative votes were cast.

### Other Business

#### Commission on Alternatives to Incarceration

It was moved by Senator Wanzek, seconded by Senator Grabinger, and carried on a roll call vote that the bill draft, as amended, relating to justice reinvestment, be approved and recommended to the Legislative Management. Senators Carlisle, Grabinger, and Wanzek; Representatives Guggisberg, Koppelman, and Nelson; and Citizen Members Anderson, Bertsch, Donlin, Friese, Johnston, Justice McEvers, Olson, Rabe, Attorney General Stenehjem, and Chief Justice VandeWalle voted "aye." No negative votes were cast.



**Incarceration Issues Committee**

It was moved by Senator Wanzek, seconded by Representative Nelson, and carried on a roll call vote that the bill draft, as amended, relating to justice reinvestment, be approved and recommended to the Legislative Management. Senators Carlisle, Grabinger, and Wanzek and Representatives Guggisberg, Koppelman, and Nelson voted "aye." No negative votes were cast.

**Commission on Alternatives to Incarceration**

It was moved by Representative Koppelman, seconded by Senator Grabinger, and carried on a voice vote that the Chairman and the Legislative Council staff be requested to prepare a report and the bill draft recommended by the commission and to present the report and recommended bill draft to the Legislative Management.

**Incarceration Issues Committee**

It was moved by Representative Koppelman, seconded by Senator Grabinger, and carried on a voice vote that the Chairman and the Legislative Council staff be requested to prepare a report and the bill draft recommended by the committee and to present the report and recommended bill draft to the Legislative Management.

Chairman Carlisle thanked the committee and CSG for their work through the interim.

Senator Wanzek commended Chairman Carlisle on his service to the state.

**Commission on Alternatives to Incarceration**

It was moved by Representative Nelson, seconded by Representative Koppelman, and carried on a voice vote that the commission be adjourned sine die.

**Incarceration Issues Committee**

It was moved by Representative Nelson, seconded by Representative Koppelman, and carried on a voice vote that the committee be adjourned sine die.

No further business appearing, Chairman Carlisle adjourned the commission and the committee sine die at 5:15 p.m.

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Samantha E. Kramer  
Counsel

ATTACH:6

1-31-17

HOUSE JUDICIARY COMMITTEE  
REPRESENTATIVE KIM KOPPELMAN, CHAIRMAN  
JANUARY 31, 2017

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**PATRICK N. BOHN, DIRECTOR FOR TRANSITIONAL PLANNING SERVICES,  
NORTH DAKOTA DEPARTMENT OF CORRECTIONS & REHABILITATION  
PRESENTING TESTIMONY RE: HB 1041**

My name is Pat Bohn and I am the Director for Transitional Planning Services for the North Dakota Department of Corrections and Rehabilitation (DOCR). I am here to testify on behalf of the DOCR in support of House Bill 1041 with an amendment to Section 3 of the bill.

**Opening:**

There are seventeen sections in HB 1041 and some will likely draw more discussion than others. I anticipate some lively testimony and discussion surrounding proposed changes to the drug laws. I think most of us would find common ground on the principle that drugs such as methamphetamine, cocaine and heroin are bad for our society. They have negative effects on our social and moral fabric and tear down individual and public safety. Where we start to differ is how we handle the problem. We've lived three solid decades where new and enhanced penalties were implemented in an effort to thwart our growing drug problem. To this day, I hear people talking about how bad our drug problem is and I ask myself, why? Shouldn't we have our arms around this after decades of additional and enhanced penalties? Maybe we are using the wrong tool. Maybe we are using too big and expensive of a hammer when a smaller less costly one may get the same or better results.

We have seen 277% increase in the community supervision population between 1992 and 2017 and a 249% increase in the prison population during that same period. During this timeframe we have only seen an 18.8% increase in our overall state population and that is including the growth we saw during the course of the oil boom (Reference Chart 1 on page 2). Another factor playing into this equations is we have seen a 37.5% increase in the number of felony laws on the books between 1997 and 2013 (Reference Chart 2 on page 3). I ask you as you move forward on this, what is preventing us from taking steps to move in another direction because what I've outlined here is arguably a costly failure.

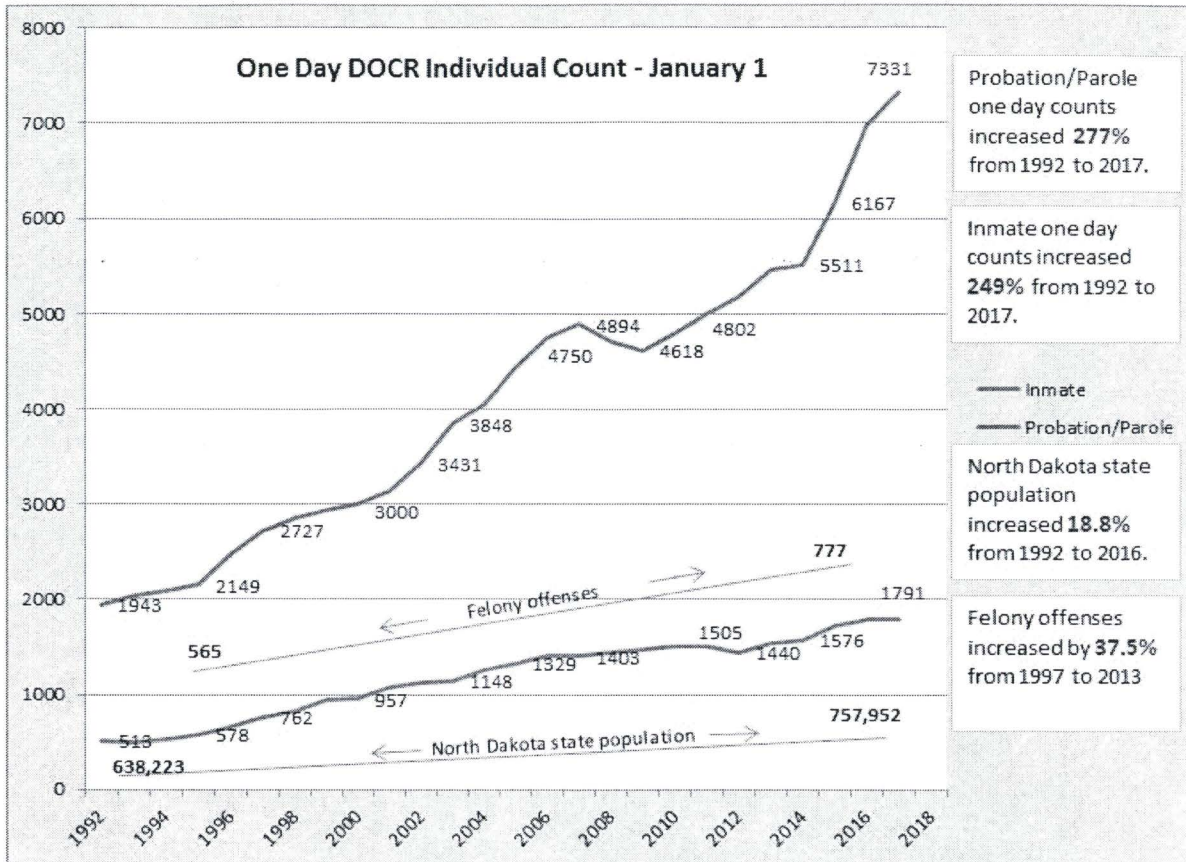


Chart 1

Percentage Change in District Court Felony Filings by Judicial District, 2009-2014

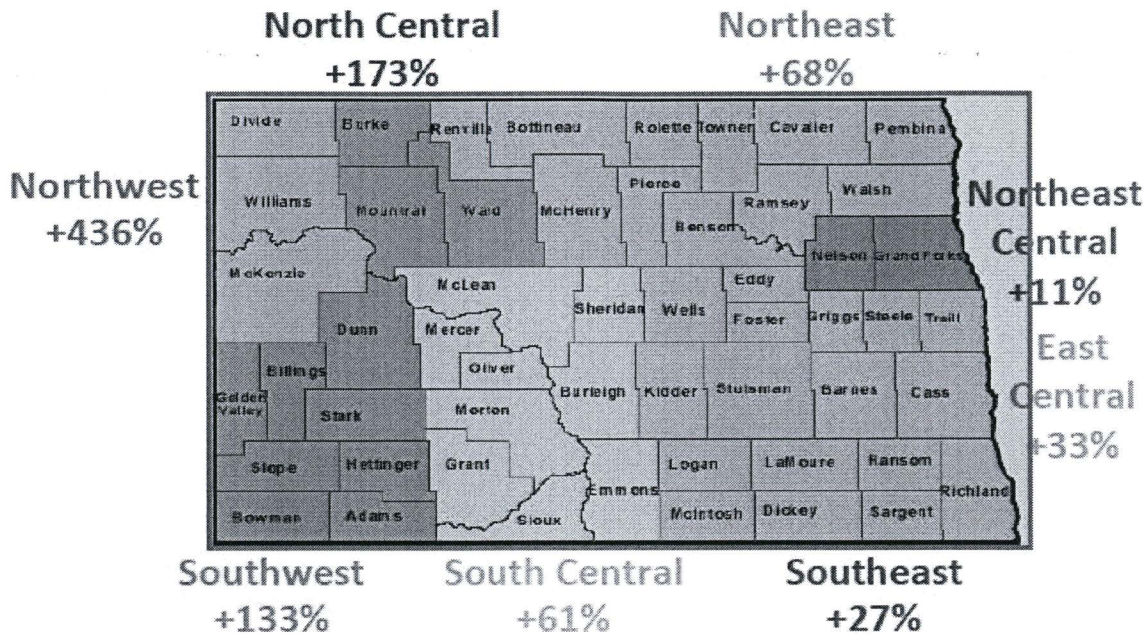


Chart 2

**What this bill does:**

Section 1 amends N.D.C.C. § 12-44.1-32 and transfers the authority to establish criteria and administer good time in regional or county correctional facilities from the presiding judge of the judicial district where the facility is located to the correctional facility administrator. This is consistent with DOCR 's administration of good time and consistent with the opinions of the North Dakota Supreme Court in State v. Trieb, 516 N.W.2d 287 (N.D. 1994) and Ostafin v. State, 1997 ND 102, 564 N.W.2d 616, that the administration of good time was a matter for the North Dakota State Penitentiary.

Sections 2 and 6 should be examined together. Section 2 amends N.D.C.C. § 12-54.1-01 and authorizes the DOCR to credit an individual with sentence reduction for time spent in custody before sentencing to the legal and physical custody of the DOCR as well as to sentences to the DOCR for six months or less. It also affirms current law which does not allow for crediting time spent on probation supervision towards incarceration. Section 6 requires the court to state the amount of sentence reduction the defendant is entitled to in the criminal judgment.

Example: The defendant is entitled to 90 days credit for time spent in custody and could be eligible for up to fifteen days of good time to be applied towards the defendant's sentence.

The DOCR believes this provides the correctional facilities another behavior management tool to help manage a portion of the population that will move on to serve their sentence at the DOCR by providing individuals an incentive to have good behavior in correctional facilities as well as a sanctioning tool for misconduct. The estimated fiscal impact to the DOCR for 2017-19 biennium is (\$411,267) and for 2019-21 biennium is (\$894,082). The fiscal impact assumes an average of 15 days will be credited to all new arrivals as of 7/1/17. Adoption of these sections will reduce the estimated average daily population by 6 for the 2017-19 biennium, and by 14 for the 2019-21 biennium.

Section 3 amends N.D.C.C. § 12-59-58 and revises the current emergency parole law to more authorize medical parole for serious or terminal medical conditions and authorizes the Parole Board to grant a medical parole for individuals subject to the mandatory armed offenders law and those sentenced to life and who must serve a minimum of 30 years less performance based sentence reduction in order to be eligible for Parole Board consideration. This amendment will impact an estimated one to two individuals per year, but although the number of individuals this impacts is small, there are usually very high costs associated with medical care for serious medical cases and end-of-life needs, as well as a humane aspect that cannot be overlooked. We would look to amend in N.D.C.C. 12.1-32-09.1 relating to 85% penalty crimes as well. It was not included in the original draft because we were having discussions about the possibility of repealing the 85% law which have since gone by the wayside.

Section 4 amends N.D.C.C. § 12.1-17-13 updates mandated domestic violence treatment to include an evaluation and treatment program as determined by the court. (See attached testimony from Dr. Lisa Peterson).

Section 5 amends N.D.C.C. § 12.1-23-05 and changes the threshold for a C felony theft of property or services stolen to exceed one thousand dollars to two thousand five hundred dollars and removes the blanket inclusion for automobiles, aircraft or other motor propelled vehicles. If stolen, they could still be charged as a C felony and the state would have to prove the value to be more than two thousand five hundred dollars. It does not take much to get one thousand dollars these days. Although it is not possible to project impacts from our data, the DOCR believes this is worthy of discussion as a way to again update this penalty threshold.

Sections 7 creates a new section to N.D.C.C. chapter 12.1-32 to establish a mandatory sentence to probation for people convicted of a first time class A misdemeanor drug offense. It does allow the court some discretion to sentence an individual to prison if there are aggravating circumstances. During the April 2016 Incarceration Issues meeting Mr. Mark Pelka with the Counsel of State Governments Justice Center testified that people in 41 percent of misdemeanor cases are sentenced to incarceration, with 83 percent of misdemeanor sentencing events involving some period of suspended sentence and supervised probation. To be fair, sometimes these sentences may be just to align credit for jail time served to a sentence.

Sections 8 amends N.D.C.C. § 19-03.1-22.3 and reduces the penalty for ingestion of a controlled substance from an A misdemeanor to a B misdemeanor for a first offense and retains the penalty as an A misdemeanor for any second or subsequent offense.

This has no financial impact on the DOCR. It may have some city and county implications because the B misdemeanor could be addressed in municipal court.

Section 9 amends subsection 1 of N.D.C.C. § 19-03.1-22.5 and reduces the penalty for ingestion of a controlled substance analog from an A misdemeanor to a B misdemeanor for a first offense and retains the penalty as an A misdemeanor for any second or subsequent offense. This also has no financial impact on the DOCR. It may have some city and county implications because again, the B misdemeanor could be addressed in municipal court.

Section 10 amends subsections 5 and 7 of N.D.C.C. § 19-03.1-23 and reduces the offense level for possession of a controlled substance or possession of a controlled substance analog from a class C felony to a class A misdemeanor and the penalty enhancement provision from one thousand feet to five hundred feet of school. It would also authorize the DOCR to release an individual from incarceration to a probation period upon the individual's successful completion of a drug and alcohol treatment program. It also clarifies manufacture, delivery and intent to deliver for purposes of offenses under this chapter. At the April 2016 Incarceration Issues meeting, Mr. Pelka reported felony sentence events doubled between 2011 and 2014, with drug offenses being the primary driver of those sentences. He reported Class C felonies are the lowest level felony yet comprise 83 percent of felony sentence events in North Dakota. He said the four western districts saw significant increases over the time period studied; however, the entire state had an increase in sentences of 23 percent. He reported the felony sentence events for drug offenses increased two and one-half times between 2011 and 2014. Forty percent of the felony offenses were drug related, 79 percent of which were for possession. In 71 percent of those cases, he said, the people were sentenced to incarceration. Twenty-five percent of felony offenses were property offenses, of which 77 percent was theft. While North Dakota had higher incarceration rates for drug offenses, he said, other states have higher sentences of probation for similar offenses. He said the overall sentencing rate for drug offenses in the United States is 33 percent.

Section 11 amends subdivision a of subsection 1 of N.D.C.C. 19-03.1-23.1 and reduces the distance for penalty enhancement for manufacture, delivery or possession with intent to manufacture or deliver a controlled substance from one thousand feet to five hundred feet of a child care or preschool facility, elementary or secondary school or colleges. The DOCR feels this would be an improvement but still believes the penalty enhancement should instead be on the real property. These perimeters encompass residences that may have existed before the qualifying entity even came into the area.

Section 12 amends N.D.C.C. § 19-03.4-03 and reduces the offense level for possession of drug paraphernalia from a C felony to an A misdemeanor and marijuana paraphernalia from an A misdemeanor to a B misdemeanor. This is currently a crime that has significant impact on the courts, correctional facilities, probation caseloads. It is arguably the most common crime I see. A change to the offense level can impact the DOCR in two ways. First, individuals convicted of a C felony drug paraphernalia are eligible for up to three years of supervised probation on initial sentence and up to a total of five years upon revocation. Individuals convicted of an A misdemeanor are eligible for up to two years of supervised probation and up to a total of three years upon

revocation. This would reduce the eligible time for supervision upon initial sentence and by revocation by one year each. It would also reduce the maximum incarceration penalty from five years to one year. This change may also reduce impact on states attorneys, indigent defense counsel, jails and the courts. Misdemeanor offenses can have bail set by a bond schedule rather than having to make an appearance before the court, preliminary hearings are not required and indigent defense counsel may not be necessary if incarceration is not being considered as part of the sentence. This also has implications to sections 5 and 10 of this bill.

Section 13 amends subdivision f of subsection 5 of N.D.C.C. § 39-08-01 allowing the court to terminate probation when the individual completes a drug court program. This change is driven by the current DUI law which mandates a penalty of a minimum amount of time for supervised probation in the case of an A misdemeanor of one year and two years for a C felony. Probation should not be necessary upon completion of drug court, but if it is, the court still has the authority to maintain the individual on probation.

Section 14 amends N.D.C.C. 43-45-06 and authorizes the expansion of the pool of qualified people to provide addiction counseling services in North Dakota according to qualifications expanded by their respective licensing boards, including licensed clinical psychologists, doctoral candidates in psychology, licensed independent social workers, or licensed professional clinical counselors. (See attached testimony from Dr. Lisa Peterson).

Sections 15 and 16 amend subsection 17 of N.D.C.C. § 50-06-05.1 and N.D.C.C. § 50-09-29 to remove the barriers currently preventing people convicted of a felony possession, use or distribution of a controlled substance from being eligible for resources under the Food Stamp Act or resources under the temporary assistance for needy families for seven years. This is another of the many and often long lasting collateral impacts of a felony conviction that may inhibit people from being able to engage in improving their lives and moving away from criminal activity. Women are often the primary caregivers for children and when convicted of a qualifying felony they are not able to access these resources for their children. Some people may try to abuse it but others really need the help up. When we place so many barriers in front of people, we actually make it a disincentive to doing the right thing and incentivize doing the wrong thing.

Section 17 authorizes a pretrial services project that may reduce the number of people held in jail on bond; thereby, freeing up limited jail space and allowing the DOCR to supervise people on pretrial in the community. The DOCR does not currently provide pretrial services and this section would simply provide the authority to establish a pretrial pilot project in one or more of the judicial districts during the next biennium. This pilot project would be a cooperative effort between the DOCR, judiciary, and local law enforcement agencies. The pretrial supervision services would focus on felony and higher risk populations.

Attached as part of my testimony you will find a research report that was done by the Laura and John Arnold Foundation (LJAF) focusing on pretrial criminal justice.

Although I would encourage everyone to review the research summary in its entirety, please allow me to summarize some of the information contained in the report.

Nationally, pretrial detainees account for more than 60% of the inmate populations in our jails. In North Dakota, that percentage is considerably higher in several of our county jail facilities. Many of these pretrial detainees are lower risk individuals, who if released from custody, would be highly unlikely to commit another crime and would be very likely to return to court for their criminal proceedings. Some of these people are moderate risk, that if properly assessed could be managed by parole and probation officers on pretrial community supervision. Lastly, some of these people are high risk and should be detained as they pose a more significant risk to commit additional crimes, commit acts of violence and not appear for court proceedings. Although our prosecutors and judges share the common goal to detain those who pose risk to public safety and release those who don't, this is generally not how the system always works. Information on the defendants' assessments of actuarial risk they pose in the community and the opportunity for supervision and management are simply not available.

Research in corrections is consistent; incarcerating low risk individuals actually increases the likelihood they will reoffend. Results of this study showed that low risk individuals who were detained for more than 24 hours were more likely to commit new crimes while their cases were pending, but also years later. They were also more likely to not show up for their court proceedings. The results were actually quite staggering and showed that low risk individuals held for just 2-3 days in jail were 40% more likely to commit new crimes before trial than those held for less than 24 hours. Those figures escalated to indicate those held for 31 days or more offended 74% more frequently. High risk individuals on the other hand, showed no increase in the likelihood of increased criminal activity if held in pretrial detention. This study supports that concept that public safety can most effectively be achieved by holding the high risk individuals in detention and releasing the lower risk.

The key to effective pretrial criminal justice services is to utilize objective data-driven risk assessments that will more accurately identify the low, moderate, and high risk individuals. Judges have done their best to identify who they believe are the high risk and violent individuals but without proper assessments to help, that is an impossible task. Given these decisions in the pretrial phase will have a tremendous impact on the likelihood of someone being sent to prison or jail, the length of time they will be sentenced, and the risk that someone will re-offend, we must do more to arrive at more informed decisions that utilize evidence-based actuarial assessments. With our ever increasing populations in the state prison system, as well as local county jail facilities, these decisions become even more important.

The goal of the DOCR is to explore starting pilot projects in one or more of our larger communities. Of course, developing a pretrial program requires resources. Additional staff is needed to provide assessments, recommendations, and pretrial supervision services.

**Closing:**



In closing, this is about people and we cannot lose sight of that aspect. The DOCR is focused on providing evidence-based and cost effective management for people in correctional custody and supervision in North Dakota. Between the 2003-2005 and the 2015-2017 biennia state correctional spending has increased by 163% from \$81.7 million to \$133.6 million.

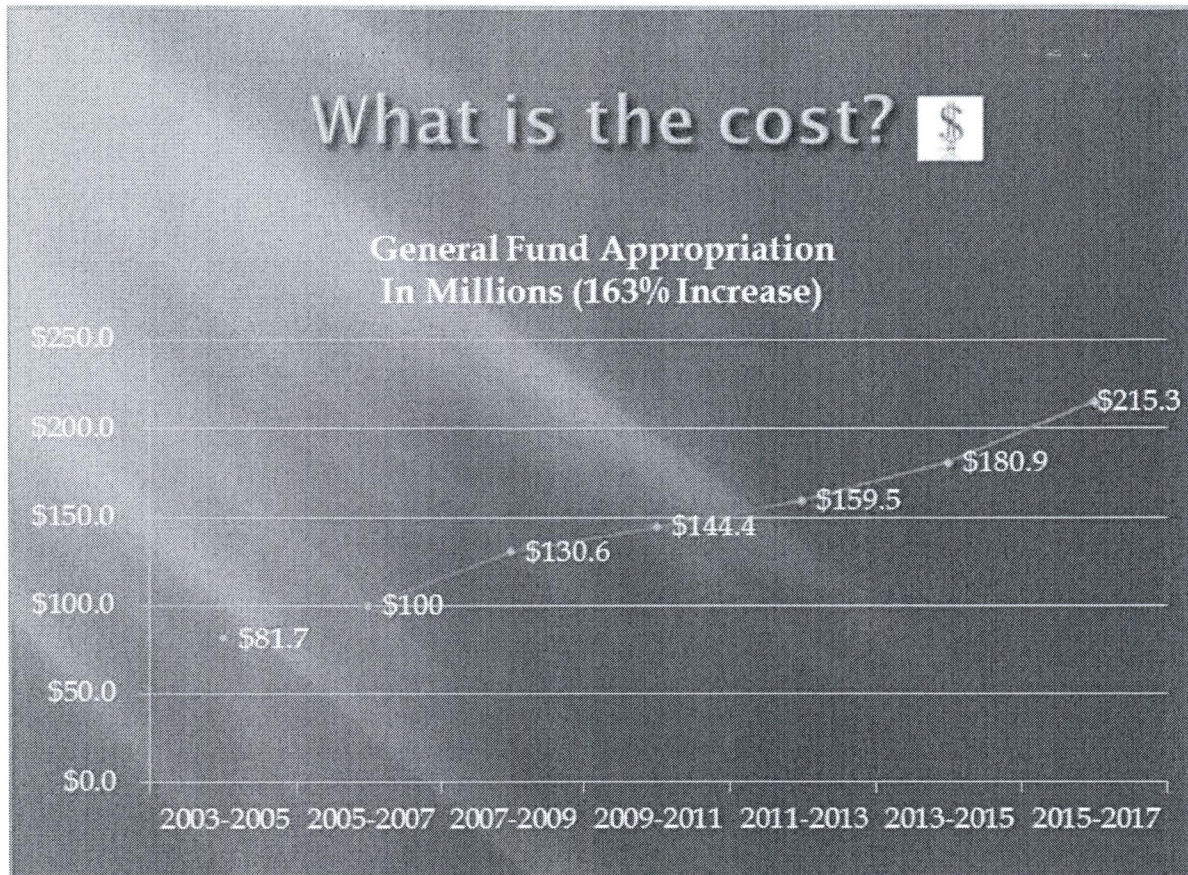


Chart 3

We must bend the curve downward on expenses and upwards on improving outcomes and the DOCR believes provisions within this bill can help us towards that end. We support HB 1041 and recommend a due pass.

**House Judiciary Committee**  
**Representative Kim Koppelman, Chairman**  
**Lisa Peterson, PhD**  
**Clinical Director**  
**North Dakota Department of Corrections and Rehabilitation**  
**Presenting Testimony in Support of House Bills 1041 and 1042**  
**Tuesday, January 31, 2017**

My name is Dr. Lisa Peterson. I am a licensed psychologist and Clinical Director with the Department of Corrections and Rehabilitation (DOCR). I am here on behalf of the DOCR to provide testimony in support of House Bill 1041, specifically sections four and 14, and my comments apply to sections four and 13 of House Bill 1042, as well.

Section four requires evaluation and treatment specific to identifying and reducing risk for future domestic violence offenses. A meta-analysis completed in 2011 (Gondolf, 2011) as an update to a 1997 project indicated that there was weak or insufficient supporting evidence for alternative approaches to domestic violence offender treatment (including individual psychodynamic approaches, stages of change models, and couples counseling). This is in contrast to strong evidence for the effectiveness of the cognitive-behavioral approach that pre-dominates structured batterer treatment programs.

The evidence to date suggests that structured programs that address dynamic risk factors associated with domestic violence recidivism including patriarchal and pro-domestic violence attitudes, anger, interpersonal dependency, and external locus of control should be part of a broader criminal justice system approach to responding to high-risk offenders (Eckhardt & Jamison, 2002; Kane, Stanger, & Riciardelli, 2001; Theodore, 1992; Gondolf, 2002). This broader approach includes empirically-based risk assessment, multilevel programming based on risk and need, supplemental referrals when needed, and court-oversight and enhanced supervision of high risk cases (Coulter & VandeWeerd, 2009; Gondolf, 2009; Visher, Newmark, & Harrell, 2008).

Regarding section 14, the DOCR has experienced the impact of the widely acknowledged shortage of Licensed Addiction Counselors in recent years, particularly in some of our more difficult to staff locations such as the James River Correctional Center and Dakota Women's Correctional Rehabilitation Center. We have, at times, questioned whether we would be able to continue to meet the substance abuse treatment needs of our clients, about 75% of whom require substance abuse treatment, due to workforce issues. We believe allowing other experienced and highly qualified professionals to provide substance abuse evaluation and treatment is vital. Each of the groups of professionals listed here is bound by ethical standards that require them to seek training, ongoing continuing education, and supervision in order to specialize in a particular area. We believe that professionals could become qualified to provide substance abuse treatment like they might for any other subspecialty. This language is also a step in the direction toward establishing comprehensive behavioral healthcare, without the substance abuse and mental health treatment silos that have plagued many systems, including North Dakota's, in the past.

**PROPOSED AMENDMENTS TO HOUSE BILL NO. 1041**

Page 2, line 22, after "12.1-32-02.1" insert: ", 12.1-32-09.1,"

Renumber accordingly

Pretrial criminal justice research commissioned by the Laura and John Arnold Foundation (LJAF) has thrown new light on how critical the earliest decisions made in the criminal justice system may be for public safety, fairness, and cost effectiveness.

## PRETRIAL CRIMINAL JUSTICE RESEARCH

Together, federal, state, and local corrections costs in the United States today exceed \$80 billion per year. Pretrial detainees account for more than 60 percent of the inmate population in our jails. The cost to incarcerate defendants pretrial has been estimated at over \$9 billion per year. Many pretrial detainees are low-risk defendants, who, if released before trial, are highly unlikely to commit other crimes and very likely to return to court. Others present moderate risks that can often be managed in the community through supervision, monitoring, or other interventions. There is, of course, a small but important group of defendants who should most often be detained because they pose significant risks of committing acts of violence, committing additional crimes, or skipping court.

The key, then, is to make sure that we accurately distinguish among the low-, moderate-, and high-risk defendants – and identify those who are at an elevated risk for violence. Moreover, it is important that, when we determine how to deal with defendants during the pretrial period, we appropriately assess what risk individual defendants pose. By making decisions in this manner, we can reduce crime, make

wise use of public resources, and make our system more just.

Although police, prosecutors, and judges share the same objectives – to detain those who pose a risk to public safety and to release those who do not – this is not how our criminal justice system currently operates. Criminal justice decisionmakers do their best to achieve these goals, but they typically do not have sufficient information about defendants, the risks they pose, or the best methods to reduce these risks. Instead, key decisions are often made in a subjective manner, based on experience and instinct, rather than on an objective, data-driven assessment of a defendant's risk level and the most effective approach to protecting public safety in each case.

For two years, LJAF has been working to improve how decisions are made during the earliest part of the criminal justice process, from the time a defendant is arrested until the case is resolved. Our strategy has been to use data, analytics, and technology to promote a transition from subjective to more objective decision-making. To that end, we are developing easy-to-use, data-driven risk assessments

for judges and prosecutors and are exploring tools to assist police in determining when to arrest an individual and when to issue a citation instead. In addition, we are pursuing research into key criminal justice issues, including the impacts of pretrial release and detention; and we are investigating the long-unanswered question of what approaches are successful at reducing future crime – and for whom they are most effective. The LJAF research released today – which was conducted in partnership with two of the nation’s leading pretrial justice researchers, Dr. Marie VanNostrand and Dr. Christopher Lowenkamp – is a key part of this effort. The central findings of these three studies are summarized below:

### The Effect of Pretrial Detention on Sentencing:

A study, using data from state courts, found that defendants who were detained for the entire pretrial period were over four times more likely to be sentenced to jail and over three times more likely to be sentenced to prison than defendants who were released at some point pending trial. And their sentences were significantly longer – almost three times as long for defendants sentenced to jail, and more than twice as long for those sentenced to prison. A separate study found similar results in the federal system.

### The Hidden Costs of Pretrial Detention:

Using statewide data from Kentucky, this study uncovered strong correlations between the length of time low- and moderate-risk defendants were

detained before trial, and the likelihood that they would reoffend in both the short- and long-term. Even for relatively short periods behind bars, low- and moderate-risk defendants who were detained for more days were more likely to commit additional crimes in the pretrial period – and were also more likely to do so during the two years after their cases ended.

### The Impact of Pretrial Supervision:

This study drew on data from two states, one eastern and one western, and found that moderate- and high-risk defendants who received pretrial supervision were significantly more likely to appear for their day in court than those who were unsupervised. In addition, long periods of supervision (more than 180 days) were related to a decrease in new criminal activity; however, no such effect was evident for supervision of 180 days or less.

These studies raise significant questions about the way our pretrial system currently works. They also demonstrate the tremendous need for additional research in this area. As part of our commitment to using data, analytics, and technology to transform the front end of the criminal justice system – what we call *Moneyballing* criminal justice – LJAF stands committed to pursuing a robust research agenda to answer these pressing questions and to make sure the system is as safe, fair, and cost-effective as possible.

Key decisions are often made in a subjective manner, based on experience and instinct, rather than on an objective, data-driven assessment of a defendant’s risk level and the most effective approach to protecting public safety in each case.

## I. THE EFFECT OF PRETRIAL DETENTION ON SENTENCING

Two recent studies funded by LJAF shed new light on the impact that a defendant's release or detention before trial can have on the eventual sentence in the case. These studies – one using data from federal courts and the other using data from state courts – demonstrate that pretrial detention is associated with an increase in the likelihood a defendant will be sentenced to jail or prison, as well as the length of incarceration.<sup>1</sup> The findings serve to underscore just how important judges' decisions regarding pretrial release and detention truly are.

The state study analyzed records of over 60,000 defendants arrested in Kentucky in 2009 and 2010. It found that defendants detained for the entire pretrial period were over four times more likely to be sentenced to jail and over three times more likely to be sentenced to prison than defendants who were released at some point pending trial. Sentences were also significantly longer – nearly three times as long for defendants sentenced to jail and more than twice as long for those sentenced to prison.

The analysis focused on the relationship between detention and sentencing. The study controlled for the other variables in the data set, meaning that defendants who were compared to one another were similar in terms of age, gender, race, marital status, risk level, offense type, incarceration history and other factors. In other words, defendants who were similar in every known way – except for their pretrial release status – had different outcomes at sentencing.

Studies demonstrate that pretrial detention is associated with an increase in the likelihood a defendant will be sentenced to jail or prison, as well as the length of incarceration.

<sup>1</sup> Jails are usually locally operated and are used to detain individuals prior to trial or can be used to incarcerate individuals who have been sentenced, typically for one year or less. Prisons are state or federally run and are used to incarcerate sentenced individuals typically for one year or more, and often for much longer.

## Impact of Pretrial Detention on State Sentencing

Compared to defendants released at some point prior to trial, defendants held for the entire pretrial detention period had:



The second study examined similar questions in the context of federal courts. The study, which is currently under review by a peer-reviewed journal, was conducted by Dr. Lowenkamp, Dr. VanNostrand, Dr. James Oleson of the University of Auckland, Timothy Cadigan of the Administrative Office of the United States Courts (retired), and Dr. John Wooldredge of the University of Cincinnati. Drawing on 1,798 cases from two United States District Courts, the research found that pretrial release reduces sentence length for all defendants, even if release is ultimately revoked due to a defendant's failure to adhere to conditions of release. Indeed, detained defendants' sentences are, on average, nearly two times longer than those of released defendants. And while defendants who were released and later revoked received longer sentences than defendants who completed pretrial release without incident, their sentences were still shorter than defendants who were never released at all. These findings were obtained while controlling for known factors.

The importance of these findings is clear when considering the state of our federal prison system. More than 110,000 defendants went through the federal court system in 2011, 86 percent of whom were sentenced to federal prison for an average sentence of almost 5½ years. Since 1980, the Bureau of Prison population has grown tenfold. The fiscal costs of this increase are staggering: Each prisoner in the system costs taxpayers between \$21,006 (minimum security) and \$33,930 (high security) annually.

## **II. THE HIDDEN COSTS OF PRETRIAL DETENTION**

The primary goal of the American criminal justice system is to protect the public. But what if, rather than protecting society, the pretrial phase of the system is actually helping to create new repeat offenders?

That is the question raised by an LJAF-funded study that analyzed data on over 153,000 defendants booked into jail in Kentucky in 2009 and 2010. The analysis showed that low-risk defendants who were detained pretrial for more than 24 hours were more likely to commit new crimes not only while their cases were pending, but also years later. In addition, they were more likely to miss their day in court. Conversely, for high-risk defendants, there was no relationship between pretrial incarceration and increased crime. This suggests that high-risk defendants can be detained before trial without compromising, and in fact enhancing, public safety and the fair administration of justice.

Judges, of course, do their best to sort violent, high-risk defendants from nonviolent, low-risk ones, but they have almost no reliable, data-driven risk assessment tools at their disposal to help them make these decisions. Fewer than 10 percent of U.S. jurisdictions use any sort of risk-assessment tools at the pretrial stage,

and many of the tools that are in use are neither data-driven nor validated. Kentucky provided a unique research opportunity because it used a validated tool that provided us with an understanding of the level of risk that individual defendants posed. While risk assessments could not be completed on approximately 30 percent of defendants, we were able to study whether, for the remaining 70 percent, the impact of pretrial detention varied depending on their risk levels.

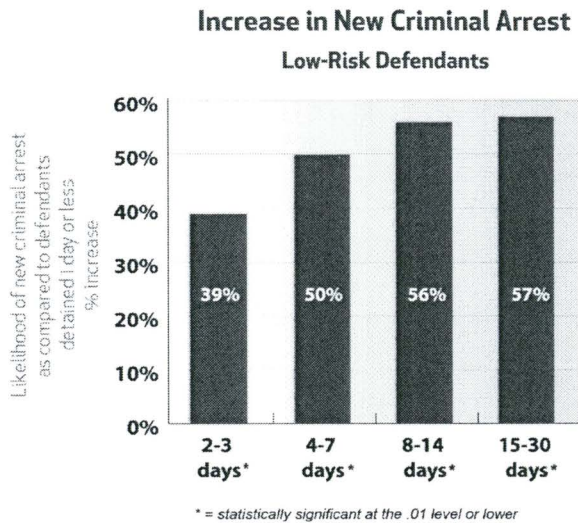
This study indicates that effectively distinguishing between low-, moderate-, and high-risk defendants at the pretrial stage could potentially enhance community safety.

The research findings are summarized below.

### **A. PRETRIAL DETENTION AND PRETRIAL OUTCOMES**

This study explored whether there is a link between time spent in pretrial detention and the commission of new criminal activity or failure to appear in court. The study looked at 66,014 cases in which the defendants were released at some point before trial, and found that even very small increases in detention time are correlated with worse pretrial outcomes. The research controlled for other known variables. The study found that, when held 2-3 days, low-risk defendants were almost 40 percent more likely to commit new crimes before trial than equivalent defendants held no more than 24 hours. The study indicates that the correlation generally escalates as the time behind bars increases: low-risk defendants who were detained for 31 days or more offended 74 percent more frequently than those who were released within 24 hours. A similar pattern held for moderate-risk defendants, though the percentage increase in rates of new criminal activity is smaller.

Interestingly, for high-risk defendants, the study found no relationship between pretrial detention and increased new criminal activity. In other words, there is no indication that detaining high-risk defendants for longer periods before trial will lead to a greater likelihood of pretrial criminal activity.

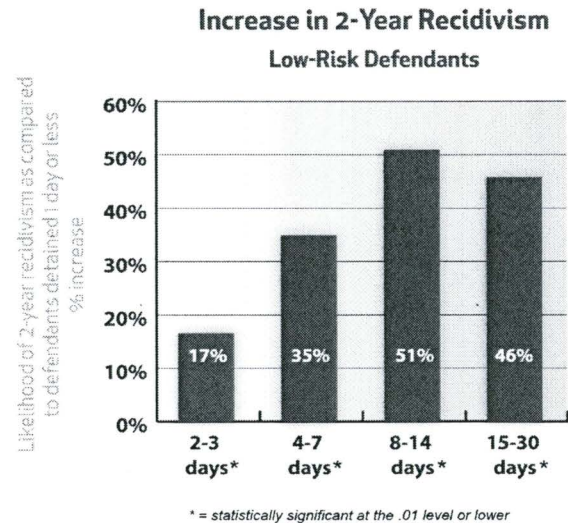


This same pattern emerged for failure to appear. Low-risk defendants held for 2-3 days were 22 percent more likely to fail to appear than similar defendants (in terms of criminal history, charge, background, and demographics) held for less than 24 hours. The number jumped to 41 percent for defendants held 15-30 days. For low-risk defendants held for more than 30 days, the study found a 31 percent increase in failure to appear. Again, however, detention was found to have no impact on high-risk defendants' rates of missing court, and for moderate-risk defendants, the effect was minimal.

## B. PRETRIAL DETENTION AND LONG-TERM RECIDIVISM

Even for relatively short periods of detention, according to the study, the longer a low-risk defendant was detained before trial, the more likely he was to commit a new crime within two years of case disposition. Specifically, controlling for other known variables, the study found that pretrial detention is associated with long-term recidivism, particularly for low-risk defendants.

For detention periods of up to 14 days, according to the study, the longer a low-risk defendant was detained before trial, the more likely he was to commit a new crime within two years of case disposition. Compared to individuals released within 24 hours of arrest, low-risk defendants held 2-3 days were 17 percent more likely to commit another crime within two years. Detention periods of 4-7 days yielded a 35 percent increase in re-offense rates. And defendants held for 8-14 days were 51 percent more likely to recidivate than defendants who were detained less than 24 hours. Although the effects began to diminish slightly beyond 14 days, low-risk defendants remained significantly more likely to reoffend in the long run as compared to defendants released within 24 hours. Again, these effects were observed among defendants who were matched on all the other measurable variables. For high-risk defendants, however, more days spent in pretrial detention were not associated with an increase in recidivism.



## C. POLICY IMPLICATIONS

In our criminal justice system today, judges frequently do not have an objective, scientific, and data-driven risk assessment to assist them in understanding the amount of risk that an individual defendant poses. Moreover, length of detention is frequently determined by factors totally unrelated to a defendant's risk level – for instance, the administrative speed with which a



given court system can process defendants. In some jurisdictions, defendants may be held up to three days before their first opportunity to go before a judge who will determine whether they are detained or released. What we see from this research is that the costs of these delays may potentially result in increased crime. The study finding regarding high-risk defendants is equally important: There appears to be no tradeoff between protecting the public during the pretrial period and improving public safety years later.

Although these studies do not demonstrate causation, they show correlations between length of detention and negative outcomes for low- and moderate-risk defendants. Additional studies are needed to further research these and other questions.

### III. THE IMPACT OF PRETRIAL SUPERVISION

Although one of the most important decisions made before a criminal trial is whether to release or detain a defendant, the need for more data-driven tools does not end there. Judges frequently assign conditions to defendants they release, which may include pretrial supervision. There are many different models of pretrial supervision, some of which include periodic calls or meetings with a pretrial services officer, drug testing or treatment, or electronic monitoring. Currently, however, judges have very little data to help them determine who to assign to supervision, and what type of supervision works best for whom. With this in mind, LJAF is pursuing a number of studies of conditions of release including pretrial supervision.

In its initial study of pretrial supervision, LJAF researchers looked at 3,925 defendants from two states, one eastern and one western, and compared 2,437 defendants who were released without supervision with 1,488 who were released with supervision. In order to determine whether the effects of supervision varied

based on defendants' risk levels, researchers used an existing validated risk assessment to assign defendants to risk categories.

The study found that moderate- and high-risk defendants who received pretrial supervision were significantly more likely to appear for their day in court. When controlling for state, gender, race, and risk, moderate-risk defendants who were supervised missed court dates 38 percent less frequently than unsupervised defendants. For high-risk defendants, the reduction was 33 percent. Analysis of various samples of the low-risk population generated inconsistent findings about the impacts of supervision on failure-to-appear rates – suggesting that the relationship between supervision for low-risk defendants and failure to appear is minimal or nonexistent.

In addition, pretrial supervision of more than 180 days was statistically related to a decrease in the likelihood of new criminal activity before case disposition. Defendants supervised pretrial for six months or more were 22 percent less likely to be arrested for new crimes before case disposition. While this finding is intriguing, the data set was not specific enough with regard to type of supervision to draw definite conclusions about the impact of supervision on new criminal activity pending case disposition.

This study is significant because it tells us that pretrial supervision may be effective in reducing failure to appear rates and, after a time, new criminal activity. However, while it appears that supervision generally helps prevent negative pretrial outcomes, details are scarce. For instance, in this study, no information was provided as to what type of supervision (minimal, moderate, or intensive) defendants received. And what types of supervision work for which defendants is something the field does not yet know. LJAF is committed to pursuing additional research in these important areas.

#### IV. CONCLUSION

This research demonstrates how critical it is to focus on the pretrial phase of the criminal justice system. Pretrial decisions made by judges, police, and prosecutors determine, as Caleb Foote stated in 1956, “mostly everything.” These studies demonstrate that pretrial decisions may impact whether or not a defendant gets sentenced to jail or prison, and for how long; that an increased length of pretrial detention for low- and moderate-risk defendants is associated with an increased likelihood that they will reoffend both during the pretrial period and two years after the conclusion of their case; and that supervision may reduce failure to appear rates and, when done for 180 days or more, new criminal activity.

As important as these findings are, however, there remains an acute need for more research in this area. Moreover, for ethical and practical reasons, it would be difficult in many instances to conduct randomized controlled trials where judges would be asked to make detention, release, and supervision decisions based on research objectives. As a result, studies such as these do not prove causation. Although the findings noted above are observational, and not causal, the correlations are so striking that they merit further research.

LJAF is committed to researching questions that have arisen in these studies, and many others. This reflects our commitment to leveraging research, data, and technology to help jurisdictions improve public safety, reduce crime, make the best use of limited resources, and ensure that the justice system is working as fairly and efficiently as possible.

The full research reports for the studies can be accessed at:  
[www.arnoldfoundation.org/research/criminaljustice](http://www.arnoldfoundation.org/research/criminaljustice).

#### About Laura and John Arnold Foundation

Laura and John Arnold Foundation is a private foundation that currently focuses its strategic investments on criminal justice, education, public accountability, and research integrity.

LJAF has offices in Houston and New York City.

#3

HB 1041  
1-31-17

17.0197.03000

**FISCAL NOTE**  
Requested by Legislative Council  
12/20/2016

Bill/Resolution No.: HB 1041

- 1 A. **State fiscal effect:** Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues			\$0	\$1,532,785	\$0	\$1,862,706
Expenditures			\$(328,208)	\$1,532,785	\$(893,245)	\$1,862,706
Appropriations			\$110,916	\$1,532,785	\$122,292	\$1,862,706

- 1 B. **County, city, school district and township fiscal effect:** Identify the fiscal effect on the appropriate political subdivision.

	2015-2017 Biennium	2017-2019 Biennium	2019-2021 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).

Relates to probation, medical parole, grading of offenses, sentence reduction, treatment and counseling services, access to nutrition assistance program, and creation of pretrial services pilot program.

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

See attached document

- 3. **State fiscal effect detail:** For information shown under state fiscal effect in 1A, please:

- A. **Revenues:** Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

The Department of Human Services would receive \$1,532,785 of federal SNAP revenue in the 17-19 biennium and \$1,862,706 of federal SNAP revenue in the 19-21 biennium.  
See attached document

- B. **Expenditures:** Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

Department of Corrections and Rehabilitation - NOTE that estimated fiscal impact is determined based on estimated expenditures to provide housing, meals, and medical care for 1,973 inmates for the 2017-19 biennium and 2,247 inmates for the 2019-21 biennium. The 2017-19 estimated fiscal impact is NOT based on the 2017-19 DOCR executive recommendation.

2017-19 Adult Services - (\$439,124) - 100% General Funds - 3.0 New FTE  
2019-21 Adult Services - (\$1,015,537) - 100% General Funds

In the 17-19 biennium the Department of Human Services would incur additional grant expenditures of \$1,643,701, of which, \$110,916 would be general fund, to provide SNAP and TANF benefits to individuals convicted of a felony offense that has as an element the possession, use, or distribution of a controlled substance. For the 19-21 biennium an increase of \$1,984,998 in grant expenditures, of which \$122,292 is general fund, is anticipated.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Department of Corrections and Rehabilitation - Appropriation levels in both the base budget and the executive recommendation are under funded to a greater degree than the sum of the calculated savings.

The Department of Human Service would need an appropriation increase of \$1,643,701, of which, \$110,916 would be general fund, to the base level budget HB1012 and an increase of \$1,643,701, of which \$110,916 is general fund, to the executive budget recommendation HB1072 for the 17-19 biennium. For the 19-21 biennium an appropriation increase of \$1,984,998, of which \$122,292 is general fund would be needed.

**Name:** Dave Krabbenhoff

**Agency:** Department of Corrections and Rehabilitation

**Telephone:** 701-328-6135

**Date Prepared:** 01/10/2017



**NORTH DAKOTA**  
**Department of Corrections  
& Rehabilitation**

**Transitional Planning Services**

Patrick Bohn, Director (701) 328-6664

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Doug Burgum, Governor  
Leann K. Bertsch, Director

To follow is analysis for the fiscal notes relating to HB 1041.

Section 1: Moves the authority to establish criteria and administer good time in correctional facilities (county) from the presiding judge of the judicial district where the facility is located to the correctional facility administrator.

***No fiscal impact to the DOCR.***

***Per the ND Association of Counties fiscal impact to counties will be minimal.***

Section 2 and 6: Sections 2 and 6 should be looked at together. Section 2 authorizes the DOCR to credit an individual sentence reduction for time spent in custody before sentencing to the legal and physical custody of the DOCR and affirms current law which does not allow for crediting time spent on probation supervision towards incarceration. Section 6 authorizes the court to award sentence reduction of up to five days per month when establishing the jail time to be credited.

***Estimated fiscal impact to the DOCR for 2017-19 biennium is (\$411,267) and for 2019-21 biennium is (\$894,082). The fiscal impact assumes an average of 15 days will be credited to all new arrivals as of 7/1/16. Adoption of these sections will reduce the estimated average daily population by 6 for the 2017-19 biennium, and by 14 for the 2019-21 biennium.***

Section 3: Revises the current emergency parole law to more specifically medical parole for serious or terminal medical conditions and authorizes the board to grant a medical parole for individuals subject to the mandatory armed offender law and those sentenced to life and must serve a minimum of 30 years less performance based sentence reduction. This will impact an estimated one to two individuals per year. Although the number of individuals this impacts is miniscule, there may be very high costs associated with medical care for serious medical cases and end-of-life needs as well as a humane aspect that cannot be overlooked.

***Due to the variability, uncertainty, and unique circumstances surrounding the necessary medical care specific to each individual case, estimating a specific fiscal impact is impractical and could be misleading.***

Section 4: Updates mandated domestic violence treatment to include an evaluation and treatment program as determined by the court.

***No fiscal impact to the DOCR.***

Section 5: Changes the threshold for a C felony theft of property or services stolen to exceed one thousand dollars to two thousand five hundred dollars and removes the blanket inclusion for automobiles, aircraft or other motor propelled vehicles.

If stolen, individual may still be charged as a C felony and the state would have to prove the value vehicle to be more than two thousand five hundred dollars.

***Not able to estimate fiscal impact, if any, to the DOCR.***

Sections 7: Establishes presumptive probation for people convicted of a first time class A misdemeanor drug offense. It does allow the court some discretion to sentence an individual to prison if there are aggravating circumstances.

***No measurable fiscal impact to the DOCR.***

Sections 8: Reduces the penalty for ingestion of a controlled substance from an A misdemeanor to a B misdemeanor for a first offense and retains the penalty as an A misdemeanor for any second or subsequent offense.

***No fiscal impact to the DOCR.***

***Per the ND Association of Counties fiscal impact to counties will be minimal.***

Section 9: Reduces the penalty for ingestion of a controlled substance analog from an A misdemeanor to a B misdemeanor for a first offense and retains the penalty as an A misdemeanor for any second or subsequent offense. This has no financial impact on the DOCR. It may have some city and county implications because the B misdemeanor could be addressed in municipal court.

***No fiscal impact to the DOCR.***

***Per the ND Association of Counties fiscal impact to counties will be minimal.***

**Section 10:** Reduces possession of a controlled substance or possession of a controlled substance analog from a class C felony to a class A misdemeanor and penalty enhancement provision from one thousand feet to five hundred feet of school. It would also authorize the DOCR to release an individual from incarceration to a probation period upon the individual's successful completion of a drug and alcohol treatment program. It also clarifies manufacture, delivery and intent to deliver for purposes of offenses under this chapter.

***Estimated fiscal impact to the DOCR for 2017-19 biennium is (\$427,489) and for 2019-21 biennium is (\$500,169). Adoption of this section will reduce the estimated average daily population by 8 for the 2017-19 biennium, and by 9 for the 2019-21 biennium.***

Section 11: Reduces the distance for penalty enhancement for manufacture, delivery or possession with intent to manufacture or deliver a controlled substance from one thousand feet to five hundred feet of a child care or preschool facility, elementary or secondary school or colleges.

***No fiscal impact to the DOCR.***

**Section 12:** Reduces possession of drug paraphernalia from a C felony to an A misdemeanor and marijuana paraphernalia from an A misdemeanor to a B misdemeanor. This may impact the DOCR in two ways. First, individuals convicted of a C felony drug paraphernalia are eligible for up to three years of supervised probation on initial sentence and up to a total of five years upon revocation. Individuals convicted of an A misdemeanor are eligible for up to two years of supervised probation and up to a total of three years upon revocation. This would reduce the eligible time for supervision upon initial sentence and by revocation by one year each. It would also reduce the maximum incarceration penalty from five years to one year. This change may also reduce impact on states attorneys, indigent defense counsel, jails and the courts. Misdemeanor offenses can have bail set by a bond schedule rather than having to make an appearance before the court, preliminary hearings are not required and indigent defense counsel may not be necessary if incarceration is not being considered as part of the sentence. Any fiscal implications to the aforementioned groups would have to be addressed by them.

**Estimated fiscal impact to the DOCR for 2017-19 biennium is (\$156,816) and for 2019-21 biennium is (\$177,735). Adoption of this section will reduce the estimated average daily population by 3 for the 2017-19 biennium, and by 3 for the 2019-21 biennium.**

Section 13: This section will allow the court to terminate probation when the individual completes a drug court program. This change is driven by the current DUI law which mandates a penalty of a minimum amount of time for supervised probation in the case of an A misdemeanor of one year and two years for a C felony.

**No fiscal impact to the DOCR.**

Section 14: Authorizes the expansion of the pool of qualified people to provide addiction treatment services in North Dakota according to qualifications expanded by various licensing boards.

**No fiscal impact to the DOCR.**

Section 15: Per the ND Department of Human Services:  
Estimated fiscal impact of \$1,532,785, of which all is federal funds, due to the Department of Human Services not denying SNAP benefits to those who have been convicted of a felony offense that has as an element the possession, use, or distribution of a controlled substance. It is estimated for the 17-19 biennium approximately 450 additional individuals would receive SNAP benefits each month. The estimated individuals for the 19-21 biennium is approximately 496 at an estimated cost of \$1,862,706, of which all would be federal funds.

Section 16: Per the ND Department of Human Services:  
Estimated fiscal impact of \$110,916, of which all is general fund, due to the Department of Human Services not denying TANF benefits to those who have been convicted of a felony offense that has as an element the possession, use, or distribution of a controlled substance. It is estimated for the 17-19 biennium approximately 20 additional individuals would receive TANF benefits each month. The estimated individuals for the 19-21 biennium is approximately 22 at an estimated cost of \$122,292, of which all would be general fund.

Section 17: Authorizes a pretrial services project that may reduce the number of people held in jail on bond; thereby, freeing up limited jail space and allowing the DOCR to supervise people on pretrial in the community.

**Estimated fiscal impact to the DOCR is dependent upon the population of the county selected for the pretrial services pilot project. For this estimate it is assumed that the DOCR would implement the pilot project in one of the higher populated counties and 3 new FTE's would be required.**

Salary and Fringe -	\$504,606 (\$4,626 per FTE per month salary plus fringe)
Operating -	<u>51,843</u> (\$17,281 per FTE)
Total -	\$556,449

HB 1041 / 1042

#1 1/31/17

HOUSE JUDICIARY COMMITTEE  
REPRESENTATIVE KIM KOPPELMAN, CHAIRMAN  
JANUARY 31, 2017

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**PATRICK N. BOHN, DIRECTOR FOR TRANSITIONAL PLANNING SERVICES,  
NORTH DAKOTA DEPARTMENT OF CORRECTIONS & REHABILITATION  
PRESENTING TESTIMONY RE: HB 1042**

My name is Pat Bohn and I am the Director for Transitional Planning Services for the North Dakota Department of Corrections and Rehabilitation (DOCR). I am here to testify on behalf of the DOCR in support of House Bill 1042 with an amendment to Section 3 of the bill.

**Opening:**

There are sixteen sections in HB 1042 and some will likely draw more discussion than others. I anticipate some lively testimony and discussion surrounding proposed changes to the drug laws. I think most of us would find common ground on the principle that drugs such as methamphetamine, cocaine and heroin are bad for our society. They have negative effects on our social and moral fabric and tear down individual and public safety. Where we start to differ is how we handle the problem. We've lived three solid decades where new and enhanced penalties were implemented in an effort to thwart our growing drug problem. To this day, I hear people talking about how bad our drug problem is and I ask myself, why? Shouldn't we have our arms around this after decades of additional and enhanced penalties? Maybe we are using the wrong tool. Maybe we are using too big and expensive of a hammer when a smaller less costly one may get the same or better results.

We have seen 277% increase in the community supervision population between 1992 and 2017 and a 249% increase in the prison population during that same period. During this timeframe we have only seen an 18.8% increase in our overall state population and that is including the growth we saw during the course of the oil boom (Reference Chart 1 on page 2). Another factor playing into this equations is we have seen a 37.5% increase in the number of felony laws on the books between 1997 and 2013 (Reference Chart 2 on page 3). I ask you as you move forward on this, what is preventing us from taking steps to move in another direction because what I've outlined here is arguably a costly failure.



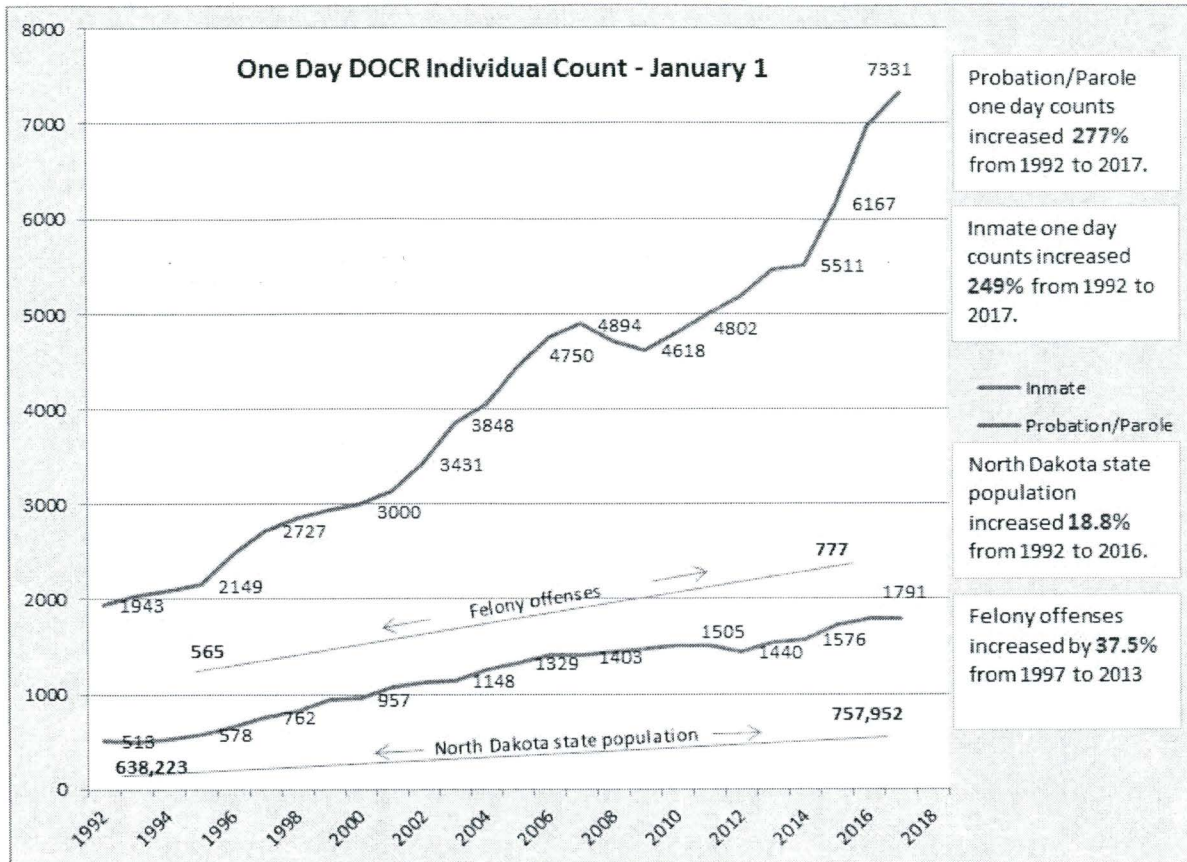


Chart 1

Percentage Change in District Court Felony Filings by Judicial District, 2009-2014

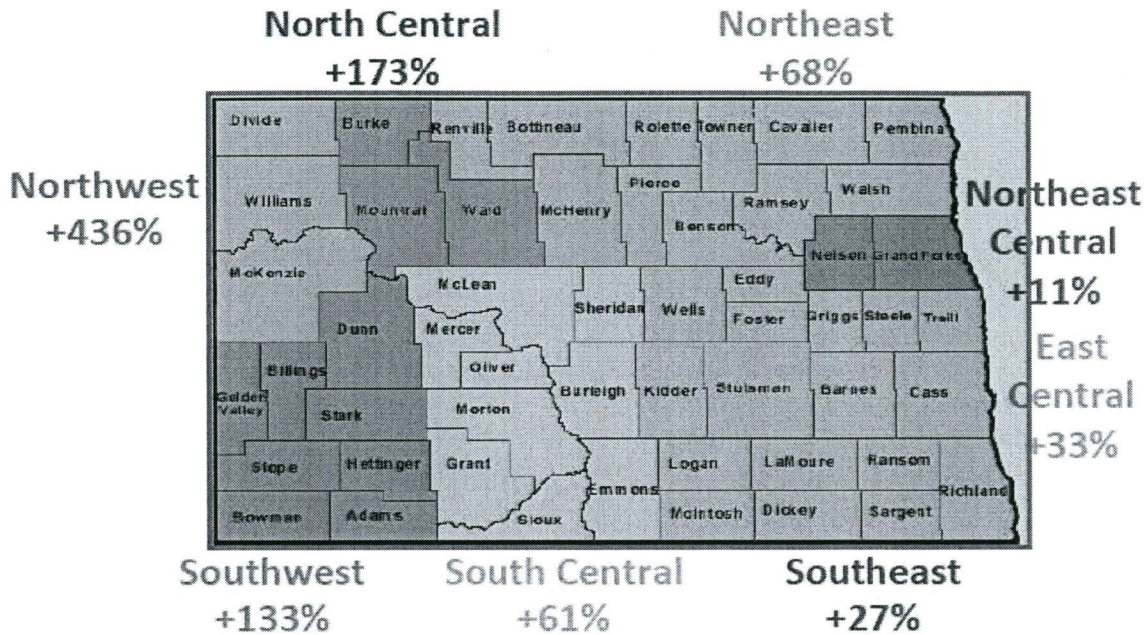


Chart 2

**What this bill does:**

Section 1 amends N.D.C.C. § 12-44.1-32 and transfers the authority to establish criteria and administer good time in regional or county correctional facilities from the presiding judge of the judicial district where the facility is located to the correctional facility administrator. This is consistent with DOCR's administration of good time and consistent with the opinions of the North Dakota Supreme Court in *State v. Trieb*, 516 N.W.2d 287 (N.D. 1994) and *Ostafin v. State*, 1997 ND 102, 564 N.W.2d 616, that the administration of good time was a matter for the North Dakota State Penitentiary.

Sections 2 and 6 should be examined together. Section 2 amends N.D.C.C. § 12-54.1-01 and authorizes the DOCR to credit an individual with sentence reduction for time spent in custody before sentencing to the legal and physical custody of the DOCR as well as to sentences to the DOCR for six months or less. It also affirms current law which does not allow for crediting time spent on probation supervision towards incarceration. Section 6 requires the court to state the amount of sentence reduction the defendant is entitled to in the criminal judgment.

Example: The defendant is entitled to 90 days credit for time spent in custody and could be eligible for up to fifteen days of good time to be applied towards the defendant's sentence.

The DOCR believes this provides the correctional facilities another behavior management tool to help manage a portion of the population that will move on to serve their sentence at the DOCR by providing individuals an incentive to have good behavior in correctional facilities as well as a sanctioning tool for misconduct. The estimated fiscal impact to the DOCR for 2017-19 biennium is (\$411,267) and for 2019-21 biennium is (\$894,082). The fiscal impact assumes an average of 15 days will be credited to all new arrivals as of 7/1/17. Adoption of these sections will reduce the estimated average daily population by 6 for the 2017-19 biennium, and by 14 for the 2019-21 biennium.

Section 3 amends N.D.C.C. § 12-59-58 and revises the current emergency parole law to more authorize medical parole for serious or terminal medical conditions and authorizes the Parole Board to grant a medical parole for individuals subject to the mandatory armed offenders law and those sentenced to life and who must serve a minimum of 30 years less performance based sentence reduction in order to be eligible for Parole Board consideration. This amendment will impact an estimated one to two individuals per year, but although the number of individuals this impacts is small, there are usually very high costs associated with medical care for serious medical cases and end-of-life needs, as well as a humane aspect that cannot be overlooked. We would look to amend in N.D.C.C. 12.1-32-09.1 relating to 85% penalty crimes as well. It was not included in the original draft because we were having discussions about the possibility of repealing the 85% law which have since gone by the wayside.

Section 4 amends N.D.C.C. § 12.1-17-13 updates mandated domestic violence treatment to include an evaluation and treatment program as determined by the court. (See attached testimony on page 9 from Dr. Lisa Peterson).

Section 5 amends N.D.C.C. § 12.1-23-05 and changes the threshold for a C felony theft of property or services stolen to exceed one thousand dollars to two thousand five hundred dollars and removes the blanket inclusion for automobiles, aircraft or other motor propelled vehicles. If stolen, they could still be charged as a C felony and the state would have to prove the value to be more than two thousand five hundred dollars. It does not take much to get one thousand dollars these days. Although it is not possible to project impacts from our data, the DOCR believes this is worthy of discussion as a way to again update this penalty threshold.

Sections 7 amends N.D.C.C. § 19-03.1-22.3 and reduces the penalty for ingestion of a controlled substance from an A misdemeanor to a B misdemeanor for a first offense and retains the penalty as an A misdemeanor for any second or subsequent offense. This has no financial impact on the DOCR. It may have some city and county implications because the B misdemeanor could be addressed in municipal court.

Section 8 amends subsection 1 of N.D.C.C. § 19-03.1-22.5 and reduces the penalty for ingestion of a controlled substance analog from an A misdemeanor to a B misdemeanor for a first offense and retains the penalty as an A misdemeanor for any second or subsequent offense. This also has no financial impact on the DOCR. It may have some city and county implications because again, the B misdemeanor could be addressed in municipal court.

Section 9 amends subsections 5 and 7 of N.D.C.C. § 19-03.1-23 and reduces the offense level for possession of a controlled substance or possession of a controlled substance analog from a class C felony to a class A misdemeanor and the penalty enhancement provision from one thousand feet to five hundred feet of school. It would also authorize the DOCR to release an individual from incarceration to a probation period upon the individual's successful completion of a drug and alcohol treatment program. It also clarifies manufacture, delivery and intent to deliver for purposes of offenses under this chapter. At the April 2016 Incarceration Issues meeting, Mr. Pelka reported felony sentence events doubled between 2011 and 2014, with drug offenses being the primary driver of those sentences. He reported Class C felonies are the lowest level felony yet comprise 83 percent of felony sentence events in North Dakota. He said the four western districts saw significant increases over the time period studied; however, the entire state had an increase in sentences of 23 percent. He reported the felony sentence events for drug offenses increased two and one-half times between 2011 and 2014. Forty percent of the felony offenses were drug related, 79 percent of which were for possession. In 71 percent of those cases, he said, the people were sentenced to incarceration. Twenty-five percent of felony offenses were property offenses, of which 77 percent was theft. While North Dakota had higher incarceration rates for drug offenses, he said, other states have higher sentences of probation for similar offenses. He said the overall sentencing rate for drug offenses in the United States is 33 percent.

Section 10 amends subdivision a of subsection 1 of N.D.C.C. 19-03.1-23.1 and reduces the distance for penalty enhancement for manufacture, delivery or possession with intent to manufacture or deliver a controlled substance from one thousand feet to five hundred feet of a child care or preschool facility, elementary or secondary school or colleges. The DOCR feels this would be an improvement but still believes the penalty enhancement should instead be on the real property. These perimeters encompass residences that may have existed before the qualifying entity even came into the area.

Section 11 amends N.D.C.C. § 19-03.4-03 and reduces the offense level for possession of drug paraphernalia from a C felony to an A misdemeanor and marijuana paraphernalia from an A misdemeanor to a B misdemeanor. This is currently a crime that has significant impact on the courts, correctional facilities, probation caseloads. It is arguably the most common crime I see. A change to the offense level can impact the DOCR in two ways. First, individuals convicted of a C felony drug paraphernalia are eligible for up to three years of supervised probation on initial sentence and up to a total of five years upon revocation. Individuals convicted of an A misdemeanor are eligible for up to two years of supervised probation and up to a total of three years upon revocation. This would reduce the eligible time for supervision upon initial sentence and by revocation by one year each. It would also reduce the maximum incarceration penalty from five years to one year. This change may also reduce impact on states attorneys, indigent defense counsel, jails and the courts. Misdemeanor offenses can have bail set by a bond schedule rather than having to make an appearance before the court, preliminary hearings are not required and indigent defense counsel may not be necessary if incarceration is not being considered as part of the sentence. This also has implications to sections 5 and 10 of this bill.

Section 12 amends subdivision f of subsection 5 of N.D.C.C. § 39-08-01 allowing the court to terminate probation when the individual completes a drug court program. This change is driven by the current DUI law which mandates a penalty of a minimum amount of time for supervised probation in the case of an A misdemeanor of one year and two years for a C felony. Probation should not be necessary upon completion of drug court, but if it is, the court still has the authority to maintain the individual on probation.

Section 13 amends N.D.C.C. 43-45-06 and authorizes the expansion of the pool of qualified people to provide addiction counseling services in North Dakota according to qualifications expanded by their respective licensing boards, including licensed clinical psychologists, doctoral candidates in psychology, licensed independent social workers, or licensed professional clinical counselors. (See attached testimony on page 9 from Dr. Lisa Peterson).

Sections 14 and 15 amend subsection 17 of N.D.C.C. § 50-06-05.1 and N.D.C.C. § 50-09-29 to remove the barriers currently preventing people convicted of a felony possession, use or distribution of a controlled substance from being eligible for resources under the Food Stamp Act or resources under the temporary assistance for needy families for seven years. This is another of the many and often long lasting collateral impacts of a felony conviction that may inhibit people from being able to engage in improving their lives and moving away from criminal activity. Women are often the primary caregivers for children and when convicted of a qualifying felony they are not able to access these resources for their children. Some people may try to abuse it but others really need the help up. When we place so many barriers in front of people, we actually make it a disincentive to doing the right thing and incentivize doing the wrong thing.

Section 16 authorizes a pretrial services project that may reduce the number of people held in jail on bond; thereby, freeing up limited jail space and allowing the DOCR to supervise people on pretrial in the community. The DOCR does not currently provide pretrial services and this section would simply provide the authority to establish a pretrial pilot project in one or more of the judicial districts during the next biennium. This pilot project would be a cooperative effort between the DOCR, judiciary, and local law enforcement agencies. The pretrial supervision services would focus on felony and higher risk populations.

Attached as part of my testimony you will find a research report that was done by the Laura and John Arnold Foundation (LJAF) focusing on pretrial criminal justice. Although I would encourage everyone to review the research summary in its entirety, please allow me to summarize some of the information contained in the report.

Nationally, pretrial detainees account for more than 60% of the inmate populations in our jails. In North Dakota, that percentage is considerably higher in several of our county jail facilities. Many of these pretrial detainees are lower risk individuals, who if released from custody, would be highly unlikely to commit another crime and would be very likely to return to court for their criminal proceedings. Some of these people are moderate risk, that if properly assessed could be managed by parole and probation officers on pretrial community supervision. Lastly, some of these people are high risk

and should be detained as they pose a more significant risk to commit additional crimes, commit acts of violence and not appear for court proceedings. Although our prosecutors and judges share the common goal to detain those who pose risk to public safety and release those who don't, this is generally not how the system always works. Information on the defendants' assessments of actuarial risk they pose in the community and the opportunity for supervision and management are simply not available.

Research in corrections is consistent; incarcerating low risk individuals actually increases the likelihood they will reoffend. Results of this study showed that low risk individuals who were detained for more than 24 hours were more likely to commit new crimes while their cases were pending, but also years later. They were also more likely to not show up for their court proceedings. The results were actually quite staggering and showed that low risk individuals held for just 2-3 days in jail were 40% more likely to commit new crimes before trial than those held for less than 24 hours. Those figures escalated to indicate those held for 31 days or more offended 74% more frequently. High risk individuals on the other hand, showed no increase in the likelihood of increased criminal activity if held in pretrial detention. This study supports that concept that public safety can most effectively be achieved by holding the high risk individuals in detention and releasing the lower risk.

The key to effective pretrial criminal justice services is to utilize objective data-driven risk assessments that will more accurately identify the low, moderate, and high risk individuals. Judges have done their best to identify who they believe are the high risk and violent individuals but without proper assessments to help, that is an impossible task. Given these decisions in the pretrial phase will have a tremendous impact on the likelihood of someone being sent to prison or jail, the length of time they will be sentenced, and the risk that someone will re-offend, we must do more to arrive at more informed decisions that utilize evidence-based actuarial assessments. With our ever increasing populations in the state prison system, as well as local county jail facilities, these decisions become even more important.

The goal of the DOCR is to explore starting pilot projects in one or more of our larger communities. Of course, developing a pretrial program requires resources. Additional staff is needed to provide assessments, recommendations, and pretrial supervision services.

**Closing:**

In closing, this is about people and we cannot lose sight of that aspect. The DOCR is focused on providing evidence-based and cost effective management for people in correctional custody and supervision in North Dakota. Between the 2003-2005 and the 2015-2017 biennia state correctional spending has increased by 163% from \$81.7 million to \$133.6 million.

# What is the cost?

## General Fund Appropriation In Millions (163% Increase)



Chart 3

We must bend the curve downward on expenses and upwards on improving outcomes and the DOCR believes provisions within this bill can help us towards that end. We support HB 1042 and recommend a due pass.

**House Judiciary Committee**  
**Representative Kim Koppelman, Chairman**  
**Lisa Peterson, PhD**  
**Clinical Director**  
**North Dakota Department of Corrections and Rehabilitation**  
**Presenting Testimony in Support of House Bills 1041 and 1042**  
**Tuesday, January 31, 2017**

My name is Dr. Lisa Peterson. I am a licensed psychologist and Clinical Director with the Department of Corrections and Rehabilitation (DOCR). I am here on behalf of the DOCR to provide testimony in support of House Bill 1041, specifically sections four and 14, and my comments apply to sections four and 13 of House Bill 1042, as well.

Section four requires evaluation and treatment specific to identifying and reducing risk for future domestic violence offenses. A meta-analysis completed in 2011 (Gondolf, 2011) as an update to a 1997 project indicated that there was weak or insufficient supporting evidence for alternative approaches to domestic violence offender treatment (including individual psychodynamic approaches, stages of change models, and couples counseling). This is in contrast to strong evidence for the effectiveness of the cognitive-behavioral approach that pre-dominates structured batterer treatment programs.

The evidence to date suggests that structured programs that address dynamic risk factors associated with domestic violence recidivism including patriarchal and pro-domestic violence attitudes, anger, interpersonal dependency, and external locus of control should be part of a broader criminal justice system approach to responding to high-risk offenders (Eckhardt & Jamison, 2002; Kane, Stanger, & Riciardelli, 2001; Theodore, 1992; Gondolf, 2002). This broader approach includes empirically-based risk assessment, multilevel programming based on risk and need, supplemental referrals when needed, and court-oversight and enhanced supervision of high risk cases (Coulter & VandeWeerd, 2009; Gondolf, 2009; Visher, Newmark, & Harrell, 2008).

Regarding section 14, the DOCR has experienced the impact of the widely acknowledged shortage of Licensed Addiction Counselors in recent years, particularly in some of our more difficult to staff locations such as the James River Correctional Center and Dakota Women's Correctional Rehabilitation Center. We have, at times, questioned whether we would be able to continue to meet the substance abuse treatment needs of our clients, about 75% of whom require substance abuse treatment, due to workforce issues. We believe allowing other experienced and highly qualified professionals to provide substance abuse evaluation and treatment is vital. Each of the groups of professionals listed here is bound by ethical standards that require them to seek training, ongoing continuing education, and supervision in order to specialize in a particular area. We believe that professionals could become qualified to provide substance abuse treatment like they might for any other subspecialty. This language is also a step in the direction toward establishing comprehensive behavioral healthcare, without the substance abuse and mental health treatment silos that have plagued many systems, including North Dakota's, in the past.



**PROPOSED AMENDMENTS TO HOUSE BILL NO. 1042**

Page 2, line 21, after "12.1-32-02.1" insert: ", 12.1-32-09.1,"

Renumber accordingly

Pretrial criminal justice research commissioned by the Laura and John Arnold Foundation (LJAF) has thrown new light on how critical the earliest decisions made in the criminal justice system may be for public safety, fairness, and cost effectiveness.

## PRETRIAL CRIMINAL JUSTICE RESEARCH

Together, federal, state, and local corrections costs in the United States today exceed \$80 billion per year. Pretrial detainees account for more than 60 percent of the inmate population in our jails. The cost to incarcerate defendants pretrial has been estimated at over \$9 billion per year. Many pretrial detainees are low-risk defendants, who, if released before trial, are highly unlikely to commit other crimes and very likely to return to court. Others present moderate risks that can often be managed in the community through supervision, monitoring, or other interventions. There is, of course, a small but important group of defendants who should most often be detained because they pose significant risks of committing acts of violence, committing additional crimes, or skipping court.

The key, then, is to make sure that we accurately distinguish among the low-, moderate-, and high-risk defendants – and identify those who are at an elevated risk for violence. Moreover, it is important that, when we determine how to deal with defendants during the pretrial period, we appropriately assess what risk individual defendants pose. By making decisions in this manner, we can reduce crime, make

wise use of public resources, and make our system more just.

Although police, prosecutors, and judges share the same objectives – to detain those who pose a risk to public safety and to release those who do not – this is not how our criminal justice system currently operates. Criminal justice decisionmakers do their best to achieve these goals, but they typically do not have sufficient information about defendants, the risks they pose, or the best methods to reduce these risks. Instead, key decisions are often made in a subjective manner, based on experience and instinct, rather than on an objective, data-driven assessment of a defendant's risk level and the most effective approach to protecting public safety in each case.

For two years, LJAF has been working to improve how decisions are made during the earliest part of the criminal justice process, from the time a defendant is arrested until the case is resolved. Our strategy has been to use data, analytics, and technology to promote a transition from subjective to more objective decision-making. To that end, we are developing easy-to-use, data-driven risk assessments

for judges and prosecutors and are exploring tools to assist police in determining when to arrest an individual and when to issue a citation instead. In addition, we are pursuing research into key criminal justice issues, including the impacts of pretrial release and detention; and we are investigating the long-unanswered question of what approaches are successful at reducing future crime – and for whom they are most effective. The LJAF research released today – which was conducted in partnership with two of the nation’s leading pretrial justice researchers, Dr. Marie VanNostrand and Dr. Christopher Lowenkamp – is a key part of this effort. The central findings of these three studies are summarized below:

### The Effect of Pretrial Detention on Sentencing:

A study, using data from state courts, found that defendants who were detained for the entire pretrial period were over four times more likely to be sentenced to jail and over three times more likely to be sentenced to prison than defendants who were released at some point pending trial. And their sentences were significantly longer – almost three times as long for defendants sentenced to jail, and more than twice as long for those sentenced to prison. A separate study found similar results in the federal system.

### The Hidden Costs of Pretrial Detention:

Using statewide data from Kentucky, this study uncovered strong correlations between the length of time low- and moderate-risk defendants were

detained before trial, and the likelihood that they would reoffend in both the short- and long-term. Even for relatively short periods behind bars, low- and moderate-risk defendants who were detained for more days were more likely to commit additional crimes in the pretrial period – and were also more likely to do so during the two years after their cases ended.

### The Impact of Pretrial Supervision:

This study drew on data from two states, one eastern and one western, and found that moderate- and high-risk defendants who received pretrial supervision were significantly more likely to appear for their day in court than those who were unsupervised. In addition, long periods of supervision (more than 180 days) were related to a decrease in new criminal activity; however, no such effect was evident for supervision of 180 days or less.

These studies raise significant questions about the way our pretrial system currently works. They also demonstrate the tremendous need for additional research in this area. As part of our commitment to using data, analytics, and technology to transform the front end of the criminal justice system – what we call *Moneyballing* criminal justice – LJAF stands committed to pursuing a robust research agenda to answer these pressing questions and to make sure the system is as safe, fair, and cost-effective as possible.

Key decisions are often made in a subjective manner, based on experience and instinct, rather than on an objective, data-driven assessment of a defendant’s risk level and the most effective approach to protecting public safety in each case.

## I. THE EFFECT OF PRETRIAL DETENTION ON SENTENCING

Two recent studies funded by LJAF shed new light on the impact that a defendant's release or detention before trial can have on the eventual sentence in the case. These studies – one using data from federal courts and the other using data from state courts – demonstrate that pretrial detention is associated with an increase in the likelihood a defendant will be sentenced to jail or prison, as well as the length of incarceration.<sup>1</sup> The findings serve to underscore just how important judges' decisions regarding pretrial release and detention truly are.

The state study analyzed records of over 60,000 defendants arrested in Kentucky in 2009 and 2010. It found that defendants detained for the entire pretrial period were over four times more likely to be sentenced to jail and over three times more likely to be sentenced to prison than defendants who were released at some point pending trial. Sentences were also significantly longer – nearly three times as long for defendants sentenced to jail and more than twice as long for those sentenced to prison.

The analysis focused on the relationship between detention and sentencing. The study controlled for the other variables in the data set, meaning that defendants who were compared to one another were similar in terms of age, gender, race, marital status, risk level, offense type, incarceration history and other factors. In other words, defendants who were similar in every known way – except for their pretrial release status – had different outcomes at sentencing.

Studies demonstrate that pretrial detention is associated with an increase in the likelihood a defendant will be sentenced to jail or prison, as well as the length of incarceration.

<sup>1</sup> Jails are usually locally operated and are used to detain individuals prior to trial or can be used to incarcerate individuals who have been sentenced, typically for one year or less. Prisons are state or federally run and are used to incarcerate sentenced individuals typically for one year or more, and often for much longer.

## Impact of Pretrial Detention on State Sentencing

Compared to defendants released at some point prior to trial, defendants held for the entire pretrial detention period had:



The second study examined similar questions in the context of federal courts. The study, which is currently under review by a peer-reviewed journal, was conducted by Dr. Lowenkamp, Dr. VanNostrand, Dr. James Oleson of the University of Auckland, Timothy Cadigan of the Administrative Office of the United States Courts (retired), and Dr. John Wooldredge of the University of Cincinnati. Drawing on 1,798 cases from two United States District Courts, the research found that pretrial release reduces sentence length for all defendants, even if release is ultimately revoked due to a defendant's failure to adhere to conditions of release. Indeed, detained defendants' sentences are, on average, nearly two times longer than those of released defendants. And while defendants who were released and later revoked received longer sentences than defendants who completed pretrial release without incident, their sentences were still shorter than defendants who were never released at all. These findings were obtained while controlling for known factors.

The importance of these findings is clear when considering the state of our federal prison system. More than 110,000 defendants went through the federal court system in 2011, 86 percent of whom were sentenced to federal prison for an average sentence of almost 5½ years. Since 1980, the Bureau of Prison population has grown tenfold. The fiscal costs of this increase are staggering: Each prisoner in the system costs taxpayers between \$21,006 (minimum security) and \$33,930 (high security) annually.

## **II. THE HIDDEN COSTS OF PRETRIAL DETENTION**

The primary goal of the American criminal justice system is to protect the public. But what if, rather than protecting society, the pretrial phase of the system is actually helping to create new repeat offenders?

That is the question raised by an LJAF-funded study that analyzed data on over 153,000 defendants booked into jail in Kentucky in 2009 and 2010. The analysis showed that low-risk defendants who were detained pretrial for more than 24 hours were more likely to commit new crimes not only while their cases were pending, but also years later. In addition, they were more likely to miss their day in court. Conversely, for high-risk defendants, there was no relationship between pretrial incarceration and increased crime. This suggests that high-risk defendants can be detained before trial without compromising, and in fact enhancing, public safety and the fair administration of justice.

Judges, of course, do their best to sort violent, high-risk defendants from nonviolent, low-risk ones, but they have almost no reliable, data-driven risk assessment tools at their disposal to help them make these decisions. Fewer than 10 percent of U.S. jurisdictions use any sort of risk-assessment tools at the pretrial stage,

and many of the tools that are in use are neither data-driven nor validated. Kentucky provided a unique research opportunity because it used a validated tool that provided us with an understanding of the level of risk that individual defendants posed. While risk assessments could not be completed on approximately 30 percent of defendants, we were able to study whether, for the remaining 70 percent, the impact of pretrial detention varied depending on their risk levels.

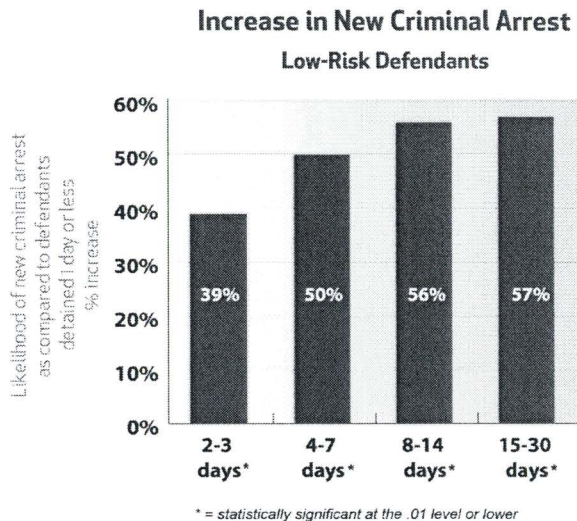
This study indicates that effectively distinguishing between low-, moderate-, and high-risk defendants at the pretrial stage could potentially enhance community safety.

The research findings are summarized below.

### **A. PRETRIAL DETENTION AND PRETRIAL OUTCOMES**

This study explored whether there is a link between time spent in pretrial detention and the commission of new criminal activity or failure to appear in court. The study looked at 66,014 cases in which the defendants were released at some point before trial, and found that even very small increases in detention time are correlated with worse pretrial outcomes. The research controlled for other known variables. The study found that, when held 2-3 days, low-risk defendants were almost 40 percent more likely to commit new crimes before trial than equivalent defendants held no more than 24 hours. The study indicates that the correlation generally escalates as the time behind bars increases: low-risk defendants who were detained for 31 days or more offended 74 percent more frequently than those who were released within 24 hours. A similar pattern held for moderate-risk defendants, though the percentage increase in rates of new criminal activity is smaller.

Interestingly, for high-risk defendants, the study found no relationship between pretrial detention and increased new criminal activity. In other words, there is no indication that detaining high-risk defendants for longer periods before trial will lead to a greater likelihood of pretrial criminal activity.

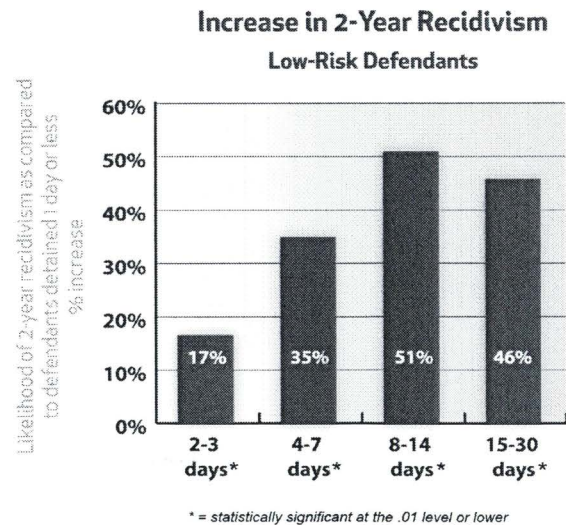


This same pattern emerged for failure to appear. Low-risk defendants held for 2-3 days were 22 percent more likely to fail to appear than similar defendants (in terms of criminal history, charge, background, and demographics) held for less than 24 hours. The number jumped to 41 percent for defendants held 15-30 days. For low-risk defendants held for more than 30 days, the study found a 31 percent increase in failure to appear. Again, however, detention was found to have no impact on high-risk defendants' rates of missing court, and for moderate-risk defendants, the effect was minimal.

## B. PRETRIAL DETENTION AND LONG-TERM RECIDIVISM

Even for relatively short periods of detention, according to the study, the longer a low-risk defendant was detained before trial, the more likely he was to commit a new crime within two years of case disposition. Specifically, controlling for other known variables, the study found that pretrial detention is associated with long-term recidivism, particularly for low-risk defendants.

For detention periods of up to 14 days, according to the study, the longer a low-risk defendant was detained before trial, the more likely he was to commit a new crime within two years of case disposition. Compared to individuals released within 24 hours of arrest, low-risk defendants held 2-3 days were 17 percent more likely to commit another crime within two years. Detention periods of 4-7 days yielded a 35 percent increase in re-offense rates. And defendants held for 8-14 days were 51 percent more likely to recidivate than defendants who were detained less than 24 hours. Although the effects began to diminish slightly beyond 14 days, low-risk defendants remained significantly more likely to reoffend in the long run as compared to defendants released within 24 hours. Again, these effects were observed among defendants who were matched on all the other measurable variables. For high-risk defendants, however, more days spent in pretrial detention were not associated with an increase in recidivism.



## C. POLICY IMPLICATIONS

In our criminal justice system today, judges frequently do not have an objective, scientific, and data-driven risk assessment to assist them in understanding the amount of risk that an individual defendant poses. Moreover, length of detention is frequently determined by factors totally unrelated to a defendant's risk level – for instance, the administrative speed with which a

given court system can process defendants. In some jurisdictions, defendants may be held up to three days before their first opportunity to go before a judge who will determine whether they are detained or released. What we see from this research is that the costs of these delays may potentially result in increased crime. The study finding regarding high-risk defendants is equally important: There appears to be no tradeoff between protecting the public during the pretrial period and improving public safety years later.

Although these studies do not demonstrate causation, they show correlations between length of detention and negative outcomes for low- and moderate-risk defendants. Additional studies are needed to further research these and other questions.

### III. THE IMPACT OF PRETRIAL SUPERVISION

Although one of the most important decisions made before a criminal trial is whether to release or detain a defendant, the need for more data-driven tools does not end there. Judges frequently assign conditions to defendants they release, which may include pretrial supervision. There are many different models of pretrial supervision, some of which include periodic calls or meetings with a pretrial services officer, drug testing or treatment, or electronic monitoring. Currently, however, judges have very little data to help them determine who to assign to supervision, and what type of supervision works best for whom. With this in mind, LJAF is pursuing a number of studies of conditions of release including pretrial supervision.

In its initial study of pretrial supervision, LJAF researchers looked at 3,925 defendants from two states, one eastern and one western, and compared 2,437 defendants who were released without supervision with 1,488 who were released with supervision. In order to determine whether the effects of supervision varied

based on defendants' risk levels, researchers used an existing validated risk assessment to assign defendants to risk categories.

The study found that moderate- and high-risk defendants who received pretrial supervision were significantly more likely to appear for their day in court. When controlling for state, gender, race, and risk, moderate-risk defendants who were supervised missed court dates 38 percent less frequently than unsupervised defendants. For high-risk defendants, the reduction was 33 percent. Analysis of various samples of the low-risk population generated inconsistent findings about the impacts of supervision on failure-to-appear rates – suggesting that the relationship between supervision for low-risk defendants and failure to appear is minimal or nonexistent.

In addition, pretrial supervision of more than 180 days was statistically related to a decrease in the likelihood of new criminal activity before case disposition. Defendants supervised pretrial for six months or more were 22 percent less likely to be arrested for new crimes before case disposition. While this finding is intriguing, the data set was not specific enough with regard to type of supervision to draw definite conclusions about the impact of supervision on new criminal activity pending case disposition.

This study is significant because it tells us that pretrial supervision may be effective in reducing failure to appear rates and, after a time, new criminal activity. However, while it appears that supervision generally helps prevent negative pretrial outcomes, details are scarce. For instance, in this study, no information was provided as to what type of supervision (minimal, moderate, or intensive) defendants received. And what types of supervision work for which defendants is something the field does not yet know. LJAF is committed to pursuing additional research in these important areas.

#### IV. CONCLUSION

This research demonstrates how critical it is to focus on the pretrial phase of the criminal justice system. Pretrial decisions made by judges, police, and prosecutors determine, as Caleb Foote stated in 1956, “mostly everything.” These studies demonstrate that pretrial decisions may impact whether or not a defendant gets sentenced to jail or prison, and for how long; that an increased length of pretrial detention for low- and moderate-risk defendants is associated with an increased likelihood that they will reoffend both during the pretrial period and two years after the conclusion of their case; and that supervision may reduce failure to appear rates and, when done for 180 days or more, new criminal activity.

As important as these findings are, however, there remains an acute need for more research in this area. Moreover, for ethical and practical reasons, it would be difficult in many instances to conduct randomized controlled trials where judges would be asked to make detention, release, and supervision decisions based on research objectives. As a result, studies such as these do not prove causation. Although the findings noted above are observational, and not causal, the correlations are so striking that they merit further research.

LJAF is committed to researching questions that have arisen in these studies, and many others. This reflects our commitment to leveraging research, data, and technology to help jurisdictions improve public safety, reduce crime, make the best use of limited resources, and ensure that the justice system is working as fairly and efficiently as possible.

The full research reports for the studies can be accessed at:  
[www.arnoldfoundation.org/research/criminaljustice](http://www.arnoldfoundation.org/research/criminaljustice).

#### About Laura and John Arnold Foundation

Laura and John Arnold Foundation is a private foundation that currently focuses its strategic investments on criminal justice, education, public accountability, and research integrity.

LJAF has offices in Houston and New York City.





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& Rehabilitation**

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Doug Burgum, Governor  
Leann K. Bertsch, Director

To follow is analysis for the fiscal notes relating to HB 1042.

Section 1: Moves the authority to establish criteria and administer good time in correctional facilities (county) from the presiding judge of the judicial district where the facility is located to the correctional facility administrator.

***No fiscal impact to the DOCR.***

***Per the ND Association of Counties fiscal impact to counties will be minimal.***

Section 2 and 6: Sections 2 and 6 should be looked at together. Section 2 authorizes the DOCR to credit an individual sentence reduction for time spent in custody before sentencing to the legal and physical custody of the DOCR and affirms current law which does not allow for crediting time spent on probation supervision towards incarceration. Section 6 authorizes the court to award sentence reduction of up to five days per month when establishing the jail time to be credited.

***Estimated fiscal impact to the DOCR for 2017-19 biennium is (\$411,267) and for 2019-21 biennium is (\$894,082). The fiscal impact assumes an average of 15 days will be credited to all new arrivals as of 7/1/16. Adoption of these sections will reduce the estimated average daily population by 6 for the 2017-19 biennium, and by 14 for the 2019-21 biennium.***

Section 3: Revises the current emergency parole law to more specifically medical parole for serious or terminal medical conditions and authorizes the board to grant a medical parole for individuals subject to the mandatory armed offender law and those sentenced to life and must serve a minimum of 30 years less performance based sentence reduction. This will impact an estimated one to two individuals per year. Although the number of individuals this impacts is miniscule, there may be very high costs associated with medical care for serious medical cases and end-of-life needs as well as a humane aspect that cannot be overlooked.

***Due to the variability, uncertainty, and unique circumstances surrounding the necessary medical care specific to each individual case, estimating a specific fiscal impact is impractical and could be misleading.***

Section 4: Updates mandated domestic violence treatment to include an evaluation and treatment program as determined by the court.

***No fiscal impact to the DOCR.***

Section 5: Changes the threshold for a C felony theft of property or services stolen to exceed one thousand dollars to two thousand five hundred dollars and removes the blanket inclusion for automobiles, aircraft or other motor propelled vehicles.

If stolen, individual may still be charged as a C felony and the state would have to prove the value vehicle to be more than two thousand five hundred dollars.

***Not able to estimate fiscal impact, if any, to the DOCR.***

Sections 7: Reduces the penalty for ingestion of a controlled substance from an A misdemeanor to a B misdemeanor for a first offense and retains the penalty as an A misdemeanor for any second or subsequent offense.

***No fiscal impact to the DOCR.***

***Per the ND Association of Counties fiscal impact to counties will be minimal.***

Section 8: Reduces the penalty for ingestion of a controlled substance analog from an A misdemeanor to a B misdemeanor for a first offense and retains the penalty as an A misdemeanor for any second or subsequent offense. This has no financial impact on the DOCR. It may have some city and county implications because the B misdemeanor could be addressed in municipal court.

***No fiscal impact to the DOCR.***

***Per the ND Association of Counties fiscal impact to counties will be minimal.***

**Section 9:** Reduces possession of a controlled substance or possession of a controlled substance analog from a class C felony to a class A misdemeanor and penalty enhancement provision from one thousand feet to five hundred feet of school. It would also authorize the DOCR to release an individual from incarceration to a probation period upon the individual's successful completion of a drug and alcohol treatment program. It also clarifies manufacture, delivery and intent to deliver for purposes of offenses under this chapter.

***Estimated fiscal impact to the DOCR for 2017-19 biennium is (\$427,489) and for 2019-21 biennium is (\$500,169). Adoption of this section will reduce the estimated average daily population by 8 for the 2017-19 biennium, and by 9 for the 2019-21 biennium.***

Section 10: Reduces the distance for penalty enhancement for manufacture, delivery or possession with intent to manufacture or deliver a controlled substance from one thousand feet to five hundred feet of a child care or preschool facility, elementary or secondary school or colleges.

***No fiscal impact to the DOCR.***

**Section 11:** Reduces possession of drug paraphernalia from a C felony to an A misdemeanor and marijuana paraphernalia from an A misdemeanor to a B misdemeanor. This may impact the DOCR in two ways. First, individuals convicted of a C felony drug paraphernalia are eligible for up to three years of supervised probation on initial sentence and up to a total of five years upon revocation. Individuals convicted of an A misdemeanor are eligible for up to two years of supervised probation and up to a total of three years upon revocation. This would reduce the eligible time for supervision upon initial sentence and by revocation by one year each. It would also reduce the maximum incarceration penalty from five years to one year. This change may also reduce impact on states attorneys, indigent defense counsel, jails and the courts. Misdemeanor offenses can have bail set by a bond schedule rather than having to make an appearance before the court, preliminary hearings are not required and indigent defense counsel may not be necessary if incarceration is not being considered as part of the sentence. Any fiscal implications to the aforementioned groups would have to be addressed by them.

***Estimated fiscal impact to the DOCR for 2017-19 biennium is (\$156,816) and for 2019-21 biennium is (\$177,735). Adoption of this section will reduce the estimated average daily population by 3 for the 2017-19 biennium, and by 3 for the 2019-21 biennium.***

Section 12: This section will allow the court to terminate probation when the individual completes a drug court program. This change is driven by the current DUI law which mandates a penalty of a minimum amount of time for supervised probation in the case of an A misdemeanor of one year and two years for a C felony.

**No fiscal impact to the DOCR.**

Section 13: Authorizes the expansion of the pool of qualified people to provide addiction treatment services in North Dakota according to qualifications expanded by various licensing boards.

**No fiscal impact to the DOCR.**

Section 14: Per the ND Department of Human Services:  
Estimated fiscal impact of \$1,532,785, of which all is federal funds, due to the Department of Human Services not denying SNAP benefits to those who have been convicted of a felony offense that has as an element the possession, use, or distribution of a controlled substance. It is estimated for the 17-19 biennium approximately 450 additional individuals would receive SNAP benefits each month. The estimated individuals for the 19-21 biennium is approximately 496 at an estimated cost of \$1,862,706, of which all would be federal funds.

Section 15: Per the ND Department of Human Services:  
Estimated fiscal impact of \$110,916, of which all is general fund, due to the Department of Human Services not denying TANF benefits to those who have been convicted of a felony offense that has as an element the possession, use, or distribution of a controlled substance. It is estimated for the 17-19 biennium approximately 20 additional individuals would receive TANF benefits each month. The estimated individuals for the 19-21 biennium is approximately 22 at an estimated cost of \$122,292, of which all would be general fund.

Section 16: Authorizes a pretrial services project that may reduce the number of people held in jail on bond; thereby, freeing up limited jail space and allowing the DOCR to supervise people on pretrial in the community.

**Estimated fiscal impact to the DOCR is dependent upon the population of the county selected for the pretrial services pilot project. For this estimate it is assumed that the DOCR would implement the pilot project in one of the higher populated counties and 3 new FTE's would be required.**

Salary and Fringe -	\$504,606 (\$4,626 per FTE per month salary plus fringe)
Operating -	<u>51,843</u> (\$17,281 per FTE)
Total -	\$556,449

#2  
HB 1041/1042  
1/31/17

House Bill 1041  
House Judiciary Committee

Testimony of Travis W. Finck  
Deputy Director N. D. Comm. On Legal Counsel for Indigents  
January 31, 2017

Good Morning, Chairman Koppelman, and members of the Committee. For the record, my name is Travis Finck. I am the Deputy Director of the North Dakota Commission on Legal Counsel for Indigents. I offer this testimony in support of HB 1041 and propose an amendment to Section 17.

The North Dakota Commission on Legal Counsel for Indigents (hereinafter "Commission"), is the agency in North Dakota tasked with providing counsel to indigent persons when there is a statutory, rule or constitutional guarantee to counsel at public expense. The Commission's "mission is to provide high quality, professional, and effective legal representation to eligible clients, consistent with the guarantees of the constitutions of the United States and North Dakota, and applicable North Dakota Statutes and Rules, at reasonable cost to the community." House Bill 1041 is the result of many hours of hard work by members of the Legislature's Interim Incarceration Issues Committee and reflects the mission of the Commission. Today the Commission on Legal Counsel supports the bill and asks to be included in the discussion going forward.

Specifically, the Commission respectfully proposes an amendment, as attached to my testimony, which provides the Commission be a partner in the pre-trial services pilot project proposed in Section 17. The Commission represents a majority of the persons charged with a felony level crime in State Courts and would provide valuable insight in developing a program to meet its intended purpose.

Respectfully Submitted:



Travis W. Finck, Deputy Director  
N.D. Comm. On Legal Counsel  
[tfinck@nd.gov](mailto:tfinck@nd.gov)  
(701) 845-8632

PROPOSED AMENDMENT TO HOUSE BILL NO. 1041

Page 13, line 31, after "the judicial branch," insert "the Commission on Legal Counsel for Indigents,"

# 3

HB 1041 / 1042

1/31/17

House Bill 1042  
House Judiciary Committee

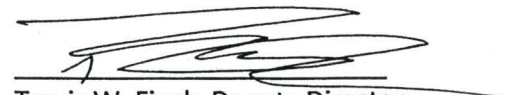
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January 31, 2017

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The North Dakota Commission on Legal Counsel for Indigents (hereinafter "Commission"), is the agency in North Dakota tasked with providing counsel to indigent persons when there is a statutory, rule or constitutional guarantee to counsel at public expense. The Commission's "mission is to provide high quality, professional, and effective legal representation to eligible clients, consistent with the guarantees of the constitutions of the United States and North Dakota, and applicable North Dakota Statutes and Rules, at reasonable cost to the community." House Bill 1042 is the result of many hours of hard work by members of the Legislature's Commission on Alternatives to Incarceration and reflects the mission of the Commission. Today the Commission on Legal Counsel supports the bill and asks to be included in the discussion going forward.

Specifically, the Commission respectfully proposes an amendment, as attached to my testimony, which provides the Commission be a partner in the pre-trial services pilot project proposed in Section 16. The Commission represents a majority of the persons charged with a felony level crime in State Courts and would provide valuable insight in developing a program to meet its intended purpose.

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PROPOSED AMENDMENT TO HOUSE BILL NO. 1042

Page 13, line 19, after "the judicial branch," insert "the Commission on Legal Counsel for Indigents,"

Testimony from Great Plains Food Bank

**HB 1041** – House Judiciary Committee

January 31, 2017

Chairman Koppelman and members of the House Judiciary Committee, I am Melissa Sobolik from the Great Plains Food Bank and I'm here today to support HB 1041.

While there are many components to the bill, I'd like to specifically address Sections 15 & 16 allowing for those convicted of drug felonies to receive Supplemental Nutrition Assistance Program (SNAP) and Temporary Assistance to Needy Families (TANF) benefits upon their release.

The federal "War on Drugs" during the 1980s into the 90s led to policies penalizing drug offenders, by denying certain federal benefits. A 1996 federal law imposed the lifetime ban for those convicted of drug crimes, but gave states the ability to opt-out entirely, which 18 states did and 27 have softened the ban, like ND to the existing 7 year ban.

Under existing law, people convicted of any other felony (rape, murder, kidnapping) are able to receive both TANF and SNAP benefits. Drug-related offenses are the only ones that trigger the disqualification.





The majority of people who are going to prison for drug crimes will return home at some point. If we want them to readjust to society and not find themselves at odds with the law, they will need some sort of support system. Upon release they likely won't have jobs and will rely on their families or friends to provide them with the basic needs of food and shelter. Our goal should be to prevent recidivism and offer them a chance to turn their life around.

When people are not allowed or able to sustain themselves, they go back to what they know. If someone is released from prison with no way to survive or a way to eat, they could go out with a sign and beg for food, or turn back to the informal economy of crime to survive.

Since 2009, the Great Plains Food Bank contracts with the State of ND to offer SNAP outreach and application assistance to low income folks across the state. Over the past year, we estimate working with 3-4 people a month who are ineligible because of their drug felony conviction. We aren't talking thousands of people, but for those 3-4 families, this will change their lives.

I encourage you to support HB 1041 and would be happy to answer any questions you have.

Thank you.

# North Dakota's Justice Reinvestment Approach

## Behavioral Health Policy and Reinvestment Package

#5  
HB 1041/1042  
1-31-17

### Expand Provider Workforce

**Rationale:** Lower correction costs and reduce recidivism by cultivating a network of community behavioral health providers to help meet treatment needs of people in the criminal justice system

#### Strengthen Para-Professional Workforce



**Case Management:** Providing assessment, case planning, referrals, care coordination and monitoring in collaboration with clinical services and probation or parole



**Peer Support Specialists:** People with lived experience of a mental illness or addiction in sustained recovery who are trained to support others

#### Create Strategic Plan



Establish committee to create a strategic plan to increase number of community behavioral health providers in the state, especially in rural areas

#### Fund and Implement Plan

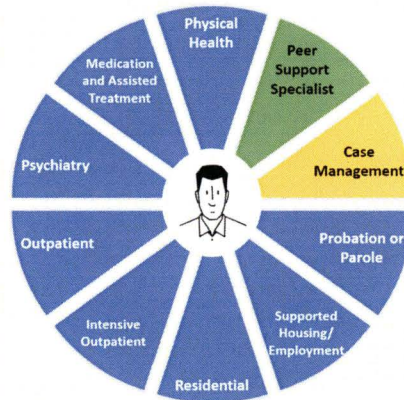


Begin investing to implement strategic behavioral health workforce plans for items such as:

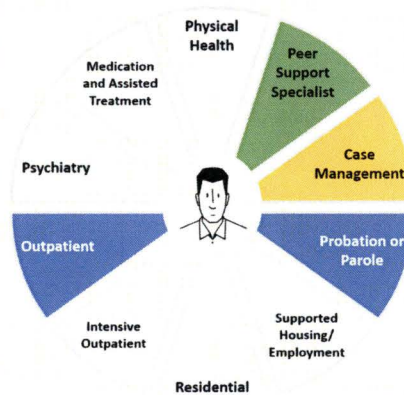
- Scholarships and loan forgiveness
- Outreach to develop interest in professions in rural areas
- Strengthening of "distance learning" opportunities
- Strengthening of behavioral health career ladders
- Supports for clinical supervision services
- Strategies for out of state recruitment and retention
- Psychiatric fellowships

### Increase Access to Services

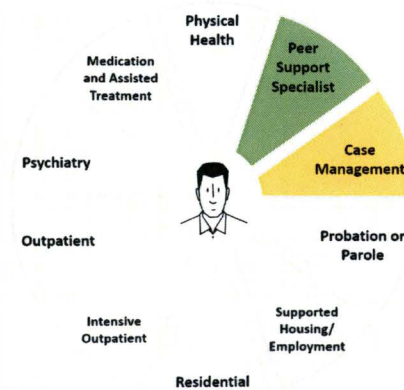
**Rationale:** Improve healthcare outcomes and reduce recidivism by 20 to 30 percent by delivering high-quality community behavioral health treatment with effective supervision \*



**Tier 1:** Comprehensive and intensive services for target population to stabilize behavioral health conditions and reduce criminal justice involvement



**Tier 2:** Moderate array of services designed to help people sustain and strengthen their early recovery and reduce their risk for recidivism



**Tier 3:** Minimal services for people to help sustain full recovery, monitor for relapse and minimize additional justice involvement

\* Washington State Institute for Public Policy, Evidence-Based Adult Corrections Programs: What Works and What Does Not, January 2006 ; D. A. Andrews and James Bonta, *The Psychology of Criminal Conduct*, 5th ed. (New Providence, NJ: Mathew and Bender & Company, Inc., 2010).

HB1041/1042  
#6  
11/31/17

**JUSTICE** ★ **CENTER**  
THE COUNCIL OF STATE GOVERNMENTS

**Testimony on House Bill 1041  
to  
The House Judiciary Committee**

**By Marc Pelka  
Deputy Director of Programs, State Initiatives  
Council of State Governments Justice Center  
January 30, 2017**

Chairman Koppelman, Vice Chairwoman Karls, and members of the House Judiciary Committee. Thank you for the opportunity to testify in support of HB 1041.

My presentation to the committee earlier this morning detailed North Dakota's justice reinvestment approach. To recap quickly:

- Over the past decade, the number of people in North Dakota's prisons and jails, and on probation and on parole, has increased, and the state and county governments have spent tens of millions of dollars expanding the capacity of existing correctional facilities and building new facilities to accommodate this growth.
- Unless action is taken, the prison population is projected to grow by 36 percent by FY2022 at a cost of \$115 million to accommodate the projected growth.<sup>1</sup>
- In October 2015, to begin a process to address these challenges, North Dakota state leaders from all three branches requested technical assistance from The Council of State Governments (CSG) Justice Center to use a data-driven justice reinvestment approach to help the state reduce a rapidly growing prison population, contain corrections spending, and reinvest savings in strategies that can reduce recidivism and increase public safety.
- Four months later, the state embarked on a justice reinvestment approach, with an interim committee, The Incarceration Issues Committee (IIC), being formed, which was composed of state lawmakers, judiciary members, corrections officials, state's attorneys, and local law enforcement executives, to study the state's criminal justice system.
- In January 2016, the state embarked on a justice reinvestment approach, and key stakeholders began working together to develop policies that will curb prison population

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<sup>1</sup> North Dakota Department of Corrections and Rehabilitation (DOCR) estimated prison population projection. DOCR one-day inmate population snapshots for 2005–2007 are as of January 1 of each fiscal year. DOCR one-day inmate population snapshots for 2008–2015 and projected population snapshots for 2016–2022 are as of the last day of each fiscal year (June 30). Email correspondence between CSG Justice Center and DOCR. 2015 and 2016.

growth by reducing the number of people in prison who have committed lower-level felony offenses and who have violated the conditions of their supervision.

- North Dakota's justice reinvestment policy framework, detailed in the *Justice Reinvestment in North Dakota: Policy Framework* report issued to the committee this morning, addresses drivers of growth in corrections populations and cost and provides the state with the financial flexibility to reinvest a portion of those savings in strategies that can reduce recidivism and increase public safety.

Between August 2015 and September 2016, the Incarceration Issues Committee met eight times, in all-day meetings. Its work built on efforts that the Commission on Alternatives to Incarceration had carried out during the 2013-2014 interim. Council of State Governments Justice Center staff presented in person at five of the Incarceration Issues Committee's meetings, covering intensive data analysis and extensive input from criminal justice system stakeholders. At the July and September meetings, the interim committee considered draft bill language, the final product of which is reflected in HB 1041.

States across the country are enacting policies that contain the principle that prisons and jails should prioritize people with serious and violent offenses. Meanwhile a range of effective options — diversion, alternatives to incarceration, probation and parole supervision, and community programs and treatment — should be available to hold appropriate populations accountable with programs and supervision responsive to the person's individual risk and needs.

The same principle underpins HB 1041. It reflects the broad look that the interim committee gave to improve the criminal justice system by restoring discretion to the system, adjusting penalties to better fit the crime, and giving counties tools to reduce jail pressures.

Criminal justice system practitioners presented to the committee that the sentencing changes in this legislation would have a positive effect in how courts discharge cases. The increase in penalties and penalty enhancements in the Century Code have a major effect on plea negotiations and the final discharge of cases, members said. In addition, the policy applies lessons learned from collateral consequences of criminal conviction, especially a felony conviction, involving employment, housing, access to services, and more.

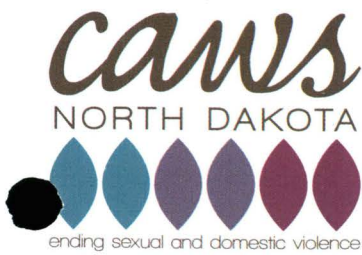
First, HB 1041 restores discretion to the system by exempting drug possession from counting toward a mandatory minimum sentence. For many members of the interim committee, taking this step toward revising mandatory minimum laws was a major advancement. HB 1041 also grants authority to the parole board to issue medical parole to an inmate who has a serious or terminal medical condition, which is an approach states have taken to carry out more compassionate options for people in prison with advanced age or medical conditions.

Second, HB 1041 adjusts penalties to better fit the crime. It addresses people with offenses involving drug use — drug possession, first-time intentional drug ingestion, and possession of drug paraphernalia — and adjusts down the penalties. This is intended to reduce the number and severity of collateral consequences a person receives following a conviction for a drug offense. These policies will reduce the number of barriers in a person's way toward transitioning from being in the criminal justice system to living a crime-free life in which they are working and paying taxes.

Third, HB 1041 gives counties tools to relieve jail pressures. Many of the previous sentencing policy changes can be estimated to relieve pressures on county jails. Although statewide jail information is unavailable, several of the counties we explored, we learned that a sizable percentage of people in jail are there awaiting trial. HB 1041 enables DOCR to establish a pretrial services program as a pilot project in at least two judicial districts. Under the pilot, counties could adopt and use pretrial risk assessment to inform decisions regarding which people held awaiting trial should remain behind bars and which could safely be undergo supervision.

Finally, interim committee members returned time and again to the lack of access to high-quality behavioral health treatment in the community. State's attorneys, judges, and other stakeholders report that drug use is common among people who commit crimes and violate the terms of their supervision. Research shows that behavioral health treatment tailored to the unique needs of people in the justice system when combined with effective supervision reduces recidivism and improves recovery outcomes. SB 2274 contains policies that would help both cultivate an adequate network of community behavioral health care practitioners and increase access to effective community-based behavioral health treatment for people in the criminal justice system. This legislation, authored by Senator Lee, received a public hearing last week in the Senate Human Services Committee.

Members of the Incarceration Issues Committee and the Commission on Alternatives to Incarceration deserve tremendous credit for the work that they, along with criminal justice system stakeholders, have done to work on these issues and develop the recommendations contained in HB 1041.



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HB #1041/1042  
1-31-17

Testimony on HB 1041  
House Judiciary Committee  
January 31, 2017

PM

My name is Janelle Moos and I am the Executive Director of the CAWS North Dakota. Our Coalition is a membership based organization that consists of 20 domestic violence and rape crisis centers that provide services to victims of domestic violence, sexual assault, and stalking in all 53 counties and the reservations in North Dakota. I'm speaking this morning on their behalf in support of HB 1041 and to offer amendments.

Domestic violence treatment (or batterers treatment) programs were originally founded in the late 1970's. There is wide variation in content, style, and length of batterer's treatment programs from small group treatment to universal prevention efforts but they all have the same goal: to hold offenders accountable for their violence and to keep victims safe from future harm. This goal is accomplished most often when a community coordinates the services available to both the offender and the victim to ensure that policies, training and curriculum all form a cohesive, consistent response to violence. One of the earliest and most well-known coordinated responses is the Domestic Abuse Intervention Project (DAIP) in the city of Duluth, MN.

Over the course of the past decade, the numbers of perpetrators arrested and prosecuted for crimes involving domestic violence have increased and courts have increasingly assumed the responsibility of holding batterers accountable through incarceration and mandated treatment. In order to align with a broad based community response to domestic violence, the North Dakota Batterer's Treatment Forum (BTF) was established in 1994 to integrate the concerns of victims, the courts, law enforcement, treatment providers in order to hold perpetrators accountable for the violence and to keep victims safe. The BTF was a joint effort initiated by the North Dakota Department of Corrections Division of Parole and Probation and has since grown to include other private and public treatment providers and victim service agencies. Throughout 1995, the BTF developed consensus on standards that they hoped would govern batterer treatment services in ND. The standards were then circulated throughout the state for feedback, finalized and then made available to service providers and judges throughout the state. A compliance application and approval process was developed in 1997 in order to foster the development and maintenance of standard-compliant programs. Today, three programs located in Grand Forks, Bismarck and Dickinson meet the standards. The BTF has continued to

meet on at least a quarterly basis to collaborate, network and train other providers across the state.

The standards and application process were revised in 2010 and educational packets were created and distributed in every judicial district to encourage more referrals to batterers' treatment. There are currently seven other communities (Minot, Williston, Devils Lake, Jamestown, Fargo, Williston and Mountain) with BT programs in development and in the process of preparing to submit applications to meet the standards.

Domestic violence offenders can change, though it is usually a difficult and gradual process requiring many types of intervention over time. DAIP programs, home of the Duluth Model, approach couples a strong, consistent criminal justice reaction with non-violence (batterer's treatment) programming has shown great success. DAIP has found that 68% of offenders who pass through the classes have not reappeared in the criminal justice system over the course of 8 years.

Chapter 12.1-17-13 under the ND Century Code currently referenced on page 3 of HB 1041 outlines the offenses that qualify an offender for domestic violence treatment and requires judges to order the offender to complete treatment unless the court makes a written finding stating why the order would be inappropriate. HB 1041 adds additional language regarding evaluation prior to ordering treatment (line 5 page 3) and removes language added during the 2015 ND Legislative Session encouraging orders to domestic violence treatment vs. anger management or individual counseling. We'd like the committee to consider adding that language back in and creating additional language regarding standards for treatment services in order to streamline and encourage effective programming while also carving out state resources to encourage the development or sustainability of treatment providers in ND.

If you look favorably upon HB 1041 I urge you to consider this bill favorably and move a DO PASS recommendation.

Thank you.

# LOCATIONS OF BATTERER TREATMENT PROGRAMS

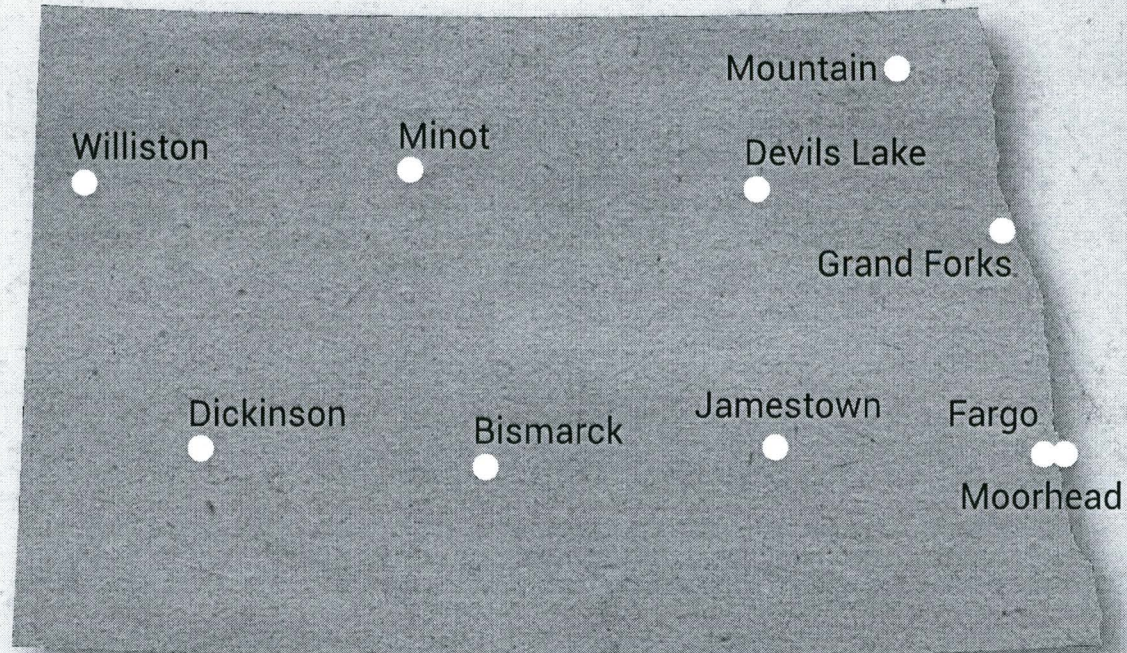
*Batterer treatment programs across the state work within the minimum guidelines for treatment providers established by the Adult Batterer Treatment Standards of North Dakota. An application process ensures programs are working with the safety of abuse victims in mind, holding batterers accountable, and facilitating change in the behavior of batterers and the overall elimination of domestic violence.*

## PLEASE NOTE:

Updates on the approval status of batterer treatment programs and any new additions will be available online at

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

Email  
[ndcaws@ndcaws.org](mailto:ndcaws@ndcaws.org)  
with questions.



## PROGRAMS CURRENTLY APPROVED

Bismarck  
Dickinson  
Grand Forks

## PROGRAMS IN PROCESS OF APPLYING

Devils Lake  
Fargo  
Jamestown  
Minot  
Moorhead  
Mountain  
Williston

PROGRAM CONTACT INFO ON REVERSE

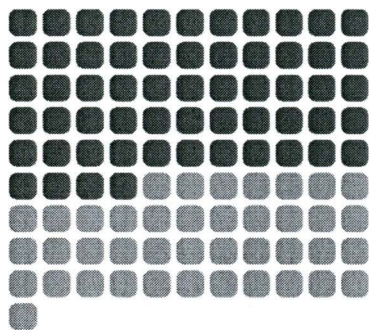




# North Dakota Domestic Violence Fatality Report 2014

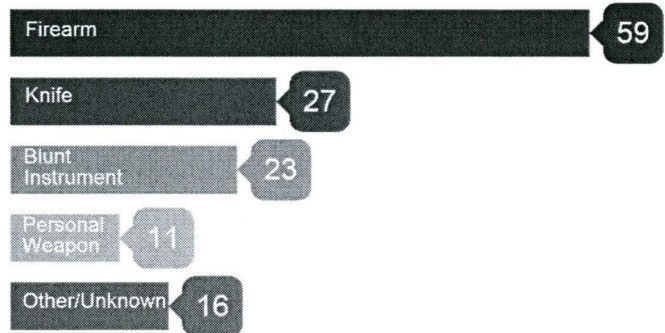
## Domestic violence deaths 1992-2014

Between 1992 and 2014, 136 people were murdered during incidents of domestic violence. Eighty victims were female, 56 male.



■ Female ■ Male

## Weapons used



Established in 2011, the Domestic Violence Fatality Review Commission reviews domestic violence deaths that have occurred in the state and recommends policies and protocols to help prevent future incidents of domestic violence and resulting fatalities.

**CONCERNS** As previously reported, several factors were common to all the fatality cases reviewed to date. Two factors were of particular concern to the Commission:



One or both parties had a history of prior domestic violence incidents [in the current and/or previous relationships]; the majority of those incidents resulted in involvement with law enforcement and the criminal justice system.



One or both parties had a history of alcohol or substance abuse sometimes in conjunction with a history of treatment for mental illness or a chronic health condition.

# Findings and Recommendations



Within the district court system, there is inconsistent application of federal & state laws and existing judicial policies requiring surrender of firearms in mental health or domestic violence cases.

**RECOMMENDATION:** Provide additional training to the district judges and states attorneys.

There is no comprehensive system to ensure the offender's timely compliance with court orders to complete batterer's, anger management, alcohol and substance abuse assessments and little to no consequence when the offender fails to complete either the required assessments or the recommended treatment.

**RECOMMENDATION:** Designate an individual within the district court system to track and report an offender's compliance with orders for assessment and completion of any recommended treatment.



All of the victims had a history of emergency or urgent care treatment for injuries consistent with domestic violence. In the majority of cases reviewed, the previously treated injuries were not reported to law enforcement.

**RECOMMENDATION:** Provide additional training to medical providers and emergency room personnel on screening for, and documenting, injuries consistent with suspected domestic violence.



When responding to a 911 call involving domestic violence, first responders may lose valuable time deciding whether there is probable cause to enter a residence or whether a search warrant is necessary. Obtaining consent to enter will buy back precious minutes that may mean the difference between life and death.

**RECOMMENDATION:** Train 911 operators and law enforcement dispatchers to obtain consent from the 911 caller for responders to enter the home. The consent obtained from the caller will provide at least "apparent" authority for the law enforcement entry and will skip the hesitation.



Domestic violence in the home affects minor children even if they are not the target of abuse. An adult victim may feel that options for leaving the abusive relationship may be limited when the abuser is a biological parent.

**RECOMMENDATION:** Law enforcement should complete a 960 if a child is present during a domestic violence incident, even if no arrest is made. The Child Protective Services manual should be revised accordingly and joint training for child protective services workers and domestic violence advocates should be convened on an annual basis.

## DOMESTIC VIOLENCE AT HOME



**48%** of abusers had a history of abusing previous partners or other adults.

**29** percentage of victims abused by a former spouse or partner

## ALCOHOL ABUSE



**38%** of new domestic violence cases involved alcohol abuse by the offender only. Another 11% of cases involved alcohol abuse by both parties

### Sources:

Annual Crime and Homicide Reports, Office of Attorney General;  
CAWS North Dakota

Office of Attorney General  
State of North Dakota

## 2015 Two-Year Re-offense Rates after New Choices – Completion between 2004 and 2013

Offenders Who Completed New Choices Between 2004 and 2013 & Law Enforcement and Court Activity 293 Offenders						
	2 year before & year of completion		2 years after completion		Decrease	
	Activity Before	# offenders with acty Before	Activity After	# offenders with acty After	% decrease in acty	% decrease in offenders with acty
LE Incident Reports	523	245	134	73	74%	70%
Charges	451	221	45	26	90%	88%
Convictions	362	223	28	20	92%	91%
Protection Orders	45	43	5	5	89%	88%

- New data suggests very positive results from offender treatment, based on reports collected from local law enforcement, the courts and CVIC's offender program. Tracking data on 293 offenders who successfully completed offender treatment between 2004 and 2013 indicated a drastic drop in system involvement during the two years after they completed treatment.
  - Domestic incident (911) reports: Offenders experienced a 70% drop in law enforcement involvement (calls made to their home because of domestic violence) two years after they completed treatment – from a total of 523 incident reports involving 245 offenders prior to completing treatment to 134 reports involving 73 offenders.
  - Domestic violence charges: Offenders had 88% decrease in criminal charges made for domestic violence within two years after they completed treatment – from a total of 451 charges on 221 offenders prior to completing treatment to 45 charges on 26 offenders.
  - Protection orders: Offenders had a 88% drop in protection orders placed on them within two years after they completed treatment – from a total of 45 orders placed upon 43 offenders prior to completing treatment to 5 orders on 5 offenders in the two years afterward.

#2  
HB 1041/1042  
1-31-17  
P.M

House Judiciary  
January 31, 2017

Chairman Koppelman and Members of the House Judiciary Committee,

My name is Kurt Snyder and I am a board member for the North Dakota Board of Addiction Counseling Examiners (NDBACE). I am here to testify against HB 1042 but only the language on page 9, lines 23 through 26. The language currently in 43-45-06. Addiction Counseling practice – Exemptions, already clearly states that our law does not prevent any individual from doing work within the standards and ethics of that profession and calling, providing they don't represent to the public, by title or use of the initials L.A.C., that the individual is engaging in addiction counseling.

Addiction is a very complicated chronic disease of the brain with both the potential for reoccurrence and recovery. This fact is supported by the American Society of Addiction Medicine, National Institute of Drug Abuse, American Medical Association and most recently by a major initiative launched by the Surgeon General of the United States in November of 2016. The science driven evidence-based care requires specialized services in addition to special preparation of the workforce. Therefore, within healthcare, addiction services are considered specialty care. However, North Dakota needs to leverage all healthcare providers to be aware and educated around the identification of addiction and relevant issues. An integrated approach promotes each profession working with the addicted population within the full scope of their practice. This includes services for those addicted and their family members in the area of prevention, screening, early intervention and understanding recovery supports for those in early recovery. This would include skills or services that were traditionally viewed as being performed by an addiction counselor. This is not a turf issue. We want more professionals engaged in working with the addicted population, but we need to be respectful of the specialized nature of addiction treatment.

North Dakota currently has workforce issues for behavioral health professionals but we need to be thoughtful about how we create access while at the same time protecting the public. Just because professions have overlap in academic preparation or training does not make those professions interchangeable. The proposed language states that these additional professions "may provide addiction counseling services". This language is too broad and erroneously infers that these professions are trained or prepared to do addiction counseling services. Admittedly, there are areas of overlap. The current language within 43-45-06 would support a psychologist completing a drug and alcohol evaluation. Psychologists are well trained in the area of evaluation and diagnosis. And yet, to make a proper recommendation, the psychologist would need to become very knowledgeable about the American Society of Addiction Medicine (ASAM) Levels of Care and the addiction counseling services delivery system. The North Dakota Board of Addiction Counseling Examiners does not want to restrict other professions from practicing

within the full scope of their profession. But again, we believe that the current code language in 43-45-06 already allows for this.

Physicians are another good example. Physicians tend to be our brightest talent and have an incredible foundation of academic and clinical training. They have within their scope of practice the ability to prescribe some of the most potent and high-powered medications for many different physical issues. Medications that are also extremely addictive. However, they receive very little training regarding addiction and as a result the United States is currently experiencing a prescription drug epidemic. The U.S., with 4.4 percent of the world's population, consumes around 70% of the world's output of powerful pain medicines. More people die from prescription drug overdoses than from all other illegal drugs combined. And currently drug overdoses has become the leading cause of unintentional deaths even outnumbering deaths from gunshot wounds or motor vehicle crashes. This example speaks volumes to the potential and real harm that can result from not fully understanding of the dynamics of addiction.

The North Dakota Board of Addiction Counseling Examiners met on January 20, 2017. The President of the North Dakota Board of Counseling Examiners joined our meeting to discuss dual licensure. We have identified that a master's degree in counseling and a master's degree in addiction only has two classes that are different and much of the training overlaps in terms of counseling skills. We believe we can bridge the differences to create tracks that will allow the individuals of each profession to become dually licensed without undue barriers and yet still protecting the public with well-prepared professionals.

The NDBACE is also addressing the current workforce issues and barriers to licensure through SB 2088 which recently passed the Senate with unanimous support. This bill will address reciprocity, training hours and barriers with other behavioral health professionals interested in the practice of addiction counseling.

Finally, the change to scope of practice for any profession should not happen outside of the laws governing the practice of that profession. If anyone wanted to look at the scope of practice for profession A, B, or C they should be able to go to the law governing that profession and see clearly the extent of their work. Therefore we believe it is inappropriate to address the scope of practice for any of these listed professions within the code regulating the practice of addiction counseling.

This concludes my testimony and I would be happy to answer any questions.

Kurt Snyder, Executive Director  
Heartview Foundation  
[kurt@heartview.org](mailto:kurt@heartview.org)  
701-751-5708

# 2A  
HB 1041/1042  
1-31-17  
pm

Sixty-fifth  
Legislative Assembly  
of North Dakota

ENGROSSED SENATE BILL NO. 2088

Introduced by

Senators Anderson, J. Lee

Representatives Seibel, Westlind

1 A BILL for an Act to create and enact a new section to chapter 43-45 of the North Dakota  
2 Century Code, relating to licensed clinical addiction counselors; and to amend and reenact  
3 sections 43-45-01, 43-45-02, 43-45-03, 43-45-04, 43-45-05, 43-45-05.1, 43-45-05.2,  
4 43-45-05.3, 43-45-05.4, 43-45-06, 43-45-07, 43-45-07.1, 43-45-07.2, and 43-45-07.3 of the  
5 North Dakota Century Code, relating to the scope of practice for addiction counselors and the  
6 licensure authority of the board of addiction counseling examiners.

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

8 **SECTION 1. AMENDMENT.** Section 43-45-01 of the North Dakota Century Code is  
9 amended and reenacted as follows:

10 **43-45-01. Definitions.**

11 As used in this chapter, unless the context or subject matter otherwise requires:

- 12 1. "Addiction counseling" means the provision of counseling or assessment of  
13 ~~persons~~individuals regarding ~~their~~the use or abuse of tobacco, nicotine, alcohol, or a  
14 ~~controlled~~other harmful substance; the engagement in gambling; or the use of any  
15 harmful substance or engagement in any harmful behavior identified by the board by  
16 rule. A substance or behavior identified by the board by rule must appear comparable  
17 to disorders recognized by the "Diagnostic and Statistical Manual of Mental  
18 Disorders", American psychiatric association, fifth edition, text revision (2013), or a  
19 future edition adopted by the board.
- 20 2. "Board" means the board of addiction counseling examiners.
- 21 3. "Clinical training" means training in addiction counseling, approved by the board.
- 22 4. "Internship" means work experience in a licensed addiction treatment facility under the  
23 supervision of a clinical supervisor registered by the board.
- 24 5. "Licensee" means an individual licensed by the board to practice addiction counseling.

1        6. "Private practice of addiction counseling" means the independent practice of addiction  
2                    counseling by a qualified individual who is self-employed on a full-time or part-time  
3                    basis and is responsible for that independent practice. Consultation services provided  
4                    to an organization or agency are not the private practice of addiction counseling.

5        **SECTION 2. AMENDMENT.** Section 43-45-02 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7        **43-45-02. Board of addiction counseling examiners - Composition.**

8        The governor shall appoint a seven-member board of addiction counseling examiners. The  
9 ~~members shall~~membership must include:

- 10        1. Five members who are ~~licensed addiction counselors~~licensees actively engaged in the  
11                    practice of addiction counseling, one of whom must be actively engaged in the private  
12                    practice of addiction counseling.  
13        2. Two members who are laypersons.

14        **SECTION 3. AMENDMENT.** Section 43-45-03 of the North Dakota Century Code is  
15 amended and reenacted as follows:

16        **43-45-03. Board member terms.**

17        The governor shall appoint new board members. Appointments must be for three-year  
18 terms, but ~~no person~~an individual may not be appointed to serve for more than two consecutive  
19 terms. Terms begin on the first day of the calendar year and end on the last day of the calendar  
20 year or until successors are appointed.

21        **SECTION 4. AMENDMENT.** Section 43-45-04 of the North Dakota Century Code is  
22 amended and reenacted as follows:

23        **43-45-04. Board power, duties, and authority.**

- 24        1. The board shall:  
25                    a. Administer and enforce the provisions of this chapter.  
26                    b. Evaluate the qualifications of applicants for a license to practice addiction  
27                    counseling and issue addiction counselor, licensed clinical addiction counselor,  
28                    and masters addiction counselor licenses under this chapter.  
29                    c. Establish ethical standards of practice for ~~persons holding a license~~a licensee to  
30                    practice addiction counseling in this state.

- 1 d. Establish continuing education requirements and approve providers of continuing
- 2 education.
- 3 e. Approve clinical training programs.
- 4 f. Register clinical trainees and addiction counselor trainees.
- 5 g. Register interns.
- 6 h. Register clinical supervisors.
- 7 i. Register licensees for private practice.
- 8 j. Approve and administer examinations.
- 9 k. Periodically evaluate initial licensure coursework requirements and clinical
- 10 training requirements to ensure the requirements are up to date and do not serve
- 11 as an undue barrier to licensure.
- 12 2. The board may:
  - 13 a. Adopt rules under chapter 28-32 to implement this chapter.
  - 14 b. Issue subpoenas, examine witnesses, and administer oaths, and may investigate
  - 15 allegations of practices violating the provisions of this chapter.
  - 16 c. Recommend prosecution for violations of this chapter to the appropriate state's
  - 17 attorney.
  - 18 d. Recommend ~~that~~ the attorney general bring civil actions to seek injunctive and
  - 19 other relief against violations of this chapter.
  - 20 e. Collect fees for examinations, initial licensures, renewal of licenses, late
  - 21 renewals, private practice registrations, renewal of private practice registrations,
  - 22 approval of continuing education providers, and administrative fees. The fees
  - 23 must be established by rule in amounts necessary to compensate the board for
  - 24 administration and enforcement of this chapter.
  - 25 f. Employ persons to assist the board in carrying out ~~its~~the board's duties under this
  - 26 chapter.

27 **SECTION 5. AMENDMENT.** Section 43-45-05 of the North Dakota Century Code is  
28 amended and reenacted as follows:

29 **43-45-05. Board meetings.**

- 30 1. The board shall meet at least quarterly. A majority of the members constitute a
- 31 quorum.



1           2. Each board member shall serve without compensation but ~~shall~~ is entitled to receive  
2           expenses as provided in section 54-06-09.

3           **SECTION 6. AMENDMENT.** Section 43-45-05.1 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5           **43-45-05.1. Initial licenses.**

6           1. The board shall issue an initial license as an addiction counselor, licensed clinical  
7           addiction counselor, or masters addiction counselor to an applicant who has met all of  
8           the following requirements:

9           a. ~~Has successfully~~ Successfully completed board-approved coursework, ~~approved~~  
10           ~~by the board,~~ at an accredited college or university.

11           b. ~~Has successfully~~ Successfully completed one or more oral or written  
12           examinations approved by the board for this purpose.

13           c. ~~Has successfully~~ Successfully completed a clinical training program approved by  
14           the board or accumulated experience as established by the board by rule.

15           d. ~~Has satisfied~~ Satisfied to the board that the applicant agrees to adhere to the  
16           code of professional conduct adopted by the board.

17           2. For the clinical training program or accumulated experience required for initial  
18           licensure, at least fifty percent of the required supervision must be provided by a  
19           supervising licensed addiction counselor, and the additional supervision may be with  
20           other professionals designated by the supervising addiction counselor and competent  
21           in the area of practice being supervised.

22           3. The board may grant reciprocity, on such terms and conditions as it may determine  
23           necessary, to an applicant for licensure who is in good standing as a licensed,  
24           approved, or certified addiction counselor, licensed clinical addiction counselor, or  
25           masters addiction counselor under the laws of another jurisdiction that imposes at  
26           least substantially the same requirements that are imposed under this chapter.

27           ~~3.4. An applicant who is denied~~ If the board denies a licensure must be notified application,  
28           the board shall notify the applicant in writing of the reasons for denial and of the  
29           applicant's right to a hearing before the board, under chapter 28-32, if a hearing is  
30           requested within thirty days.

1       **SECTION 7. AMENDMENT.** Section 43-45-05.2 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3       **43-45-05.2. Representation to the public.**

- 4       1. A person may not represent to the public that the person is an addiction counselor, a  
5       licensed clinical addiction counselor, or a masters addiction counselor or engage in the  
6       practice of addiction counseling in this state unless the person is a ~~licensed addiction-~~  
7       ~~counselor~~licensee.
- 8       2. The license issued by the board under the provisions of this chapter must be  
9       prominently displayed at the principal place of business where the ~~addiction-~~  
10      ~~counselor~~licensee practices.

11      **SECTION 8. AMENDMENT.** Section 43-45-05.3 of the North Dakota Century Code is  
12 amended and reenacted as follows:

13      **43-45-05.3. Private practice of addiction counseling.**

14      A person may not engage in the private practice of addiction counseling unless that person  
15      is an individual registered with the board as eligible for private practice under criteria  
16      established by board rule.

17      **SECTION 9. AMENDMENT.** Section 43-45-05.4 of the North Dakota Century Code is  
18 amended and reenacted as follows:

19      **43-45-05.4. Addiction counseling internship - Loan program - Revolving fund -**  
20 **Continuing appropriation.**

- 21      1. a. The Bank of North Dakota shall develop and implement a program under which  
22      loans may be provided to qualified individuals participating in a paid or unpaid  
23      internship at a licensed substance abuse treatment facility in this state, in order to  
24      obtain licensure ~~as an addiction counselor~~by the board.
- 25      b. The Bank of North Dakota shall determine all terms applicable to the time and  
26      manner in which loans made under this section must be repaid.
- 27      c. Interest on outstanding loans under this section must accrue at the Bank of North  
28      Dakota's current base rate, but may not exceed six percent per annum.
- 29      d. The maximum loan for which an applicant may qualify under this section is seven  
30      thousand five hundred dollars.

1 e. This subsection is applicable only to individuals beginning an internship after  
2 June 30, 2015.

3 2. The Bank of North Dakota shall maintain a revolving loan fund for the purpose of  
4 making loans under this section. All moneys transferred into the fund, interest upon  
5 moneys in the fund, and payments to the fund of principal and interest on loans under  
6 this section are appropriated to the Bank on a continuing basis.

7 **SECTION 10. AMENDMENT.** Section 43-45-06 of the North Dakota Century Code is  
8 amended and reenacted as follows:

9 **43-45-06. Addiction counseling practice - Exemptions.**

10 1. ~~Nothing in this~~This chapter may not be construed to prevent ~~any person~~an individual  
11 from doing work within the standards and ethics of that ~~person's~~individual's profession  
12 and calling, ~~provided if that the person~~individual does not represent to the public, by  
13 title or by use of the initials L.A.C., L.C.A.C., or M.A.C., that the ~~person~~individual is  
14 engaging in addiction counseling.

15 2. ~~Nothing in this~~This chapter may not be construed to prevent addiction counseling  
16 trainees or interns in board-approved programs from engaging in addiction counseling  
17 related to training.

18 **SECTION 11. AMENDMENT.** Section 43-45-07 of the North Dakota Century Code is  
19 amended and reenacted as follows:

20 **43-45-07. Renewal of license.**

21 1. All licenses are effective when granted by the board.

22 2. All licenses ~~of licensed addiction counselors~~issued by the board expire on December  
23 thirty-first of every odd-numbered year.

24 3. A license may be renewed by payment of the renewal fee and completion of the  
25 continuing education requirements set by the board, provided the applicant's license is  
26 not currently revoked or grounds for denial under section 43-45-07.1 do not exist.

27 4. At the time of renewal the board shall require each applicant to present satisfactory  
28 evidence ~~that the applicant has~~ completed the continuing education requirements  
29 specified by the board.

30 5. If the completed application for renewal is not received by December first of the  
31 odd-numbered year, a late fee will be charged.

1       6. If the completed application for renewal is not received on or before the expiration  
2       date, the license expires and the ~~person~~individual may not practice addiction  
3       counseling. The license may be renewed within thirty days from the date of expiration  
4       of the license if the completed application for renewal and the late fee are received  
5       within thirty days from the date of expiration of the license.

6       7. If a completed application for renewal of license is not received within thirty days from  
7       the date of expiration of the license, relicensure requires the licensee must former  
8       licenseholder to reapply for licensure.

9       8. The board may extend the renewal deadline for an applicant having proof of medical  
10      or other hardship rendering the applicant unable to meet the renewal deadline.

11      **SECTION 12. AMENDMENT.** Section 43-45-07.1 of the North Dakota Century Code is  
12      amended and reenacted as follows:

13      **43-45-07.1. Grounds for disciplinary proceedings.**

14      1. The board may deny an application; and may refuse to renew, suspend, revoke, or  
15      place on probationary status any license issued under this chapter on proof at a  
16      hearing ~~that~~ the applicant or holder of the license ~~has~~ engaged in unprofessional  
17      conduct. Unprofessional conduct includes:

18      1. a. Obtaining an initial license or renewal by means of fraud, misrepresentation, or  
19      concealment of material facts.

20      2. b. Violating rules set by the board.

21      3. c. Violating a provision of this chapter.

22      4. d. Violating the professional code of conduct as adopted by the board.

23      5. e. Being adjudged guilty of an offense determined by the board to have a direct  
24      bearing on an applicant's or holder of the license's ability to ~~serve~~provide  
25      addiction counseling to the public as ~~an addiction counselor~~ a licensee or being  
26      adjudged guilty of any offense and being insufficiently rehabilitated as determined  
27      by the board under section 12.1-33-02.1.

28      2. One year from the date of the revocation, ~~the~~ former licenseholder may make  
29      application for initial licensure.

30      **SECTION 13. AMENDMENT.** Section 43-45-07.2 of the North Dakota Century Code is  
31      amended and reenacted as follows:

1       **43-45-07.2. Reporting obligations.**

- 2       1. A person ~~who has~~with knowledge of any conduct constituting grounds for discipline  
3       under this chapter may report the violation to the board.
- 4       2. ~~The~~A hospital, clinic, or other health care ~~institution~~, facility, institution, or organization  
5       shall report to the board any action taken by the hospital, clinic, or other health care  
6       facility, institution, or organization to revoke, suspend, restrict, or condition ~~an~~  
7       ~~addiction counselor's~~a licensee's privilege to practice or treat patients in the hospital,  
8       clinic, or other health care facility or institution, or as part of the organization, any  
9       denial of privileges or any other disciplinary action.

10       **SECTION 14. AMENDMENT.** Section 43-45-07.3 of the North Dakota Century Code is  
11       amended and reenacted as follows:

12       **43-45-07.3. Complaints - Investigations.**

- 13       1. A person may file a written complaint with the board citing ~~the~~ specific allegations of  
14       unprofessional conduct by ~~an addiction counselor~~a licensee. The board shall notify the  
15       ~~addiction counselor~~licensee of the complaint and request a written response from the  
16       ~~addiction counselor~~licensee.
- 17       2. The board may investigate a complaint on its own motion, without requiring the identity  
18       of the complainant to be made a matter of public record, if the board concludes ~~that~~  
19       good cause exists for preserving the confidentiality of the complainant.
- 20       3. ~~An addiction counselor~~A licensee who is the subject of an investigation by the board  
21       shall cooperate fully with the investigation. Cooperation includes responding fully and  
22       promptly to any reasonable question raised by or on behalf of the board relating to the  
23       subject of the investigation, and providing copies of patient records when reasonably  
24       requested by the board and accompanied by the appropriate release.
- 25       4. In order to pursue the investigation, the board ~~has the power to~~may subpoena and  
26       examine witnesses and records, including patient records, and ~~to~~ copy, photograph, or  
27       take samples. ~~The board~~ may require the ~~licensed addiction counselor~~licensee to  
28       give statements under oath, to submit to a physical or mental examination, or both, by  
29       a physician or physicians and other qualified evaluation professionals selected by the  
30       board if it appears to be in the best interest of the public that this evaluation be

1           secured. A written request from the board constitutes authorization to release  
2           information. The patient records ~~that are~~ released to the board are not public records.  
3           5. Unless there is a patient release on file allowing the release of information at the  
4           public hearing, all ~~data and information, including~~ patient records, acquired by the  
5           board in ~~its~~the board's investigation are confidential ~~and closed to the public~~. All board  
6           meetings ~~wherein~~at which patient testimony or records are taken or reviewed are  
7           confidential and closed to the public. If no patient testimony or records are taken or  
8           reviewed, the remainder of the meeting is an open meeting unless a specific  
9           exemption is otherwise applicable.

10           **SECTION 15.** A new section to chapter 43-45 of the North Dakota Century Code is created  
11           and enacted as follows:

12           **Licensed clinical addiction counselor.**

- 13           1. Under section 43-45-05.1, the board shall issue an initial license as a licensed clinical  
14           addiction counselor to a qualified applicant who:  
15           a. Applies for licensure under this section before January 1, 2023;  
16           b. On December 31, 2017, was licensed in this state as an addiction counselor; and  
17           c. Completed ten thousand hours of full-time clinical experience as a licensed  
18           addiction counselor.  
19           2. The scope of practice of a licensed clinical addiction counselor is the same as the  
20           scope of practice of a masters addiction counselor.

House Judiciary  
January 31, 2017

Chairman Koppelman and Members of the House Judiciary Committee,

My name is Dr. Julijana Nevland and I am a licensed psychologist, counselor educator, and Chair of the North Dakota Board of Addiction Counseling Examiners (NDBACE). I am here to testify against HB 1041 but only the language on page 10, lines 6 through 9. The language I oppose states *"A licensed clinical psychologist, a doctoral candidate in psychology, a licensed independent clinical social worker, or a licensed professional clinical counselor may provide addiction counseling services, as qualified by each respective board."*

I am in agreement with Mr. Snyder's testimony in that our (NDBACE) law does not prevent affiliated mental health professionals from doing work within the standards and ethics of that profession. Therefore, the suggested language in HB 1041 is unnecessary and potentially harmful.

I believe I hold a somewhat unique perspective on this issue as I possess both a Master's in Clinical Counseling and a Doctorate in Psychology degrees. Neither of these programs required I complete a single course in **dynamics of addiction, psychopharmacology, or substance abuse counseling**, including American Society for Addiction Medicine (ASAM) criteria for diagnosis and treatment recommendations. Coursework in the above areas, along with addiction specific clinical training, was established as a minimum standard for safe and effective addiction counseling practice in the state of North Dakota. Although my clinical counseling and psychology training prepared me to work with individuals and groups struggling with a myriad of mental health disorders, I was not trained to provide addiction specific individual or group therapy and would not feel comfortable in doing so, without additional training in this area. It would be incorrect to assume that all doctoral level psychologists, clinical counselors, or social workers receive a minimum level of training in addiction counseling, by virtue of their degree. Some may receive this training and some may not. Allowing professionals to practice outside of their scope of competence is unethical and could create public harm, due to the complex nature of addiction treatment and recovery.

With minimal additional coursework (two or three classes) and addiction specific clinical training, I believe other Master's and Doctorate-level mental health professionals may be capable of providing addiction services. However, this decision should be left to each respective board and specified in each board's law and administrative code. Some mental health boards may have little or no interest in adding "addiction counseling services" to their scope of practice, yet are being listed in HB 1041.

The Addiction Counseling Board is currently collaborating with the Clinical Counseling Board, to create a path for dual licensure. We are thus in favor of expanding the addiction counseling workforce, but in a manner which would be responsible and assure a minimum level of academic and clinical preparation. We are very interested in working with other mental health boards who may be interested in preparing their licensees to provide "addiction counseling services."

In conclusion, I am here to oppose the aforementioned language in HB 1041 due to the following reasons:

1. The NDBACE law is explicit in that it **does not** prevent mental health professionals from providing addiction services if this skillset falls under that profession's scope of practice.
2. I believe that any law change related to scope of competence and practice should be made in that profession's own law and administrative code, not the Addiction Counseling's (NDBACE) law and administrative code.
3. Lastly, the NDBACE is currently collaborating with the Clinical Counseling Board (NDBCE) to create a path for dual licensure. I believe the future of expanding addiction counseling service lies in creating feasible and collaborative dual licensure opportunities, not fighting over turf and promoting exclusivity for the sake of exclusivity.

This concludes my testimony and I would be happy to answer any questions.



PROPOSED AMENDMENTS TO HOUSE BILL NO. 1041

Page 1, line 1, after "12.1-32" insert "and a new section to chapter 54-23.3"

Page 1, line 2, after "probation" insert "and a community behavioral health plan as a term of parole or an alternative to incarceration"

Page 1, line 11, after the first semicolon insert "to provide for a legislative management study;"

Page 1, line 11, after the second semicolon insert "to provide an appropriation;"

Page 1, line 12, remove "a"

Page 1, line 13, replace "report" with "reports"

Page 1, line 13, after "assembly" insert "and the legislative management"

Page 13, after line 26, insert:

"SECTION 17. A new section to chapter 54-23.3 of the North Dakota Century Code is created and enacted as follows:

**Community behavioral health program - Reports to legislative management and governor.**

1. The department of corrections and rehabilitation shall establish and implement a community behavioral health program to provide comprehensive community-based services for individuals who have serious behavioral health conditions, as a term and condition of parole under chapter 12-59, and as a sentencing alternative under section 12.1-32-02.
2. In developing the program under this section, the department of corrections and rehabilitation shall collaborate with the department of human services to:
  - a. Establish a referral and evaluation process for access to the program.
  - b. Establish eligibility criteria that includes consideration of recidivism risk and behavioral health condition severity.
  - c. Establish discharge criteria and processes, with a goal of establishing a seamless transition to postprogram services in order to decrease recidivism.
  - d. Develop program oversight, auditing, and evaluation processes that must include:
    - (1) Oversight of case management services through the department of human services;
    - (2) Outcome and provider reporting metrics; and



availability of all types of behavioral health services in all regions of the state, for the biennium beginning July 1, 2017, and ending June 30, 2019.

2. During the 2017-18 interim, the department of human services and the contracting entity shall make annual reports to the legislative management on the status of the creation and implementation of this strategic plan, including recommendations regarding legislation needed for full implementation.

**SECTION 21. LEGISLATIVE MANAGEMENT STUDY - CRIMINAL JUSTICE SYSTEM BEHAVIORAL HEALTH NEEDS.** During the 2017-18 interim, the legislative management shall consider continuing its study of alternatives to incarceration, with a focus on the behavioral health needs of individuals in the criminal justice system. The study must include receipt of reports on the status, effectiveness, and sustainability of the community behavioral health program for individuals in the criminal justice system which must include caseload data, any recognized savings to the department of corrections and rehabilitation, an overview of the training requirements for contract behavioral health service providers, and recommendations. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-sixth legislative assembly."

Renumber accordingly

# North Dakota's Justice Reinvestment Approach #5

## Behavioral Health Policy and Reinvestment Package

1-31-17  
pm

### Expand Provider Workforce

**Rationale:** Lower correction costs and reduce recidivism by cultivating a network of community behavioral health providers to help meet treatment needs of people in the criminal justice system

#### Strengthen Para-Professional Workforce



**Case Management:**  
Providing assessment, case planning, referrals, care coordination and monitoring in collaboration with clinical services and probation or parole



**Peer Support Specialists:**  
People with lived experience of a mental illness or addiction in sustained recovery who are trained to support others

#### Create Strategic Plan



Establish committee to create a strategic plan to increase number of community behavioral health providers in the state, especially in rural areas

#### Fund and Implement Plan



Begin investing to implement strategic behavioral health workforce plans for items such as:

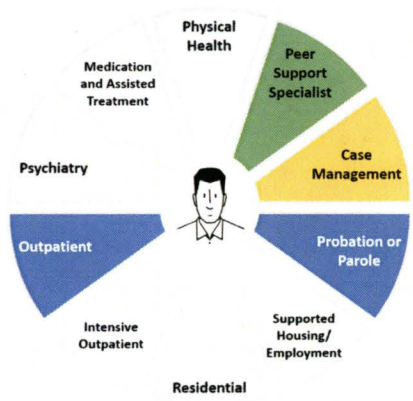
- Scholarships and loan forgiveness
- Outreach to develop interest in professions in rural areas
- Strengthening of "distance learning" opportunities
- Strengthening of behavioral health career ladders
- Supports for clinical supervision services
- Strategies for out of state recruitment and retention
- Psychiatric fellowships

### Increase Access to Services

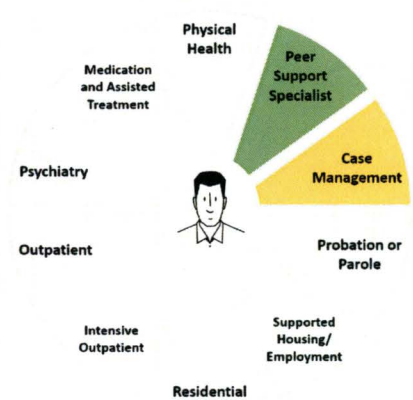
**Rationale:** Improve healthcare outcomes and reduce recidivism by 20 to 30 percent by delivering high-quality community behavioral health treatment with effective supervision \*



**Tier 1:** Comprehensive and intensive services for target population to stabilize behavioral health conditions and reduce criminal justice involvement



**Tier 2:** Moderate array of services designed to help people sustain and strengthen their early recovery and reduce their risk for recidivism



**Tier 3:** Minimal services for people to help sustain full recovery, monitor for relapse and minimize additional justice involvement

\* Washington State Institute for Public Policy, Evidence-Based Adult Corrections Programs: What Works and What Does Not, January 2006 ; D. A. Andrews and James Bonta, *The Psychology of Criminal Conduct*, 5th ed. (New Providence, NJ: Mathew and Bender & Company, Inc., 2010).

#6  
HB 1041+1042  
1-31-17

**JUSTICE★CENTER**  
THE COUNCIL OF STATE GOVERNMENTS

**Testimony on House Bill 1041  
to  
The House Judiciary Committee**

**By Marc Pelka  
Deputy Director of Programs, State Initiatives  
Council of State Governments Justice Center  
January 30, 2017**

Chairman Koppelman, Vice Chairwoman Karls, and members of the House Judiciary Committee. Thank you for the opportunity to testify in support of HB 1041.

My presentation to the committee earlier this morning detailed North Dakota's justice reinvestment approach. To recap quickly:

- Over the past decade, the number of people in North Dakota's prisons and jails, and on probation and on parole, has increased, and the state and county governments have spent tens of millions of dollars expanding the capacity of existing correctional facilities and building new facilities to accommodate this growth.
- Unless action is taken, the prison population is projected to grow by 36 percent by FY2022 at a cost of \$115 million to accommodate the projected growth.<sup>1</sup>
- In October 2015, to begin a process to address these challenges, North Dakota state leaders from all three branches requested technical assistance from The Council of State Governments (CSG) Justice Center to use a data-driven justice reinvestment approach to help the state reduce a rapidly growing prison population, contain corrections spending, and reinvest savings in strategies that can reduce recidivism and increase public safety.
- Four months later, the state embarked on a justice reinvestment approach, with an interim committee, The Incarceration Issues Committee (IIC), being formed, which was composed of state lawmakers, judiciary members, corrections officials, state's attorneys, and local law enforcement executives, to study the state's criminal justice system.
- In January 2016, the state embarked on a justice reinvestment approach, and key stakeholders began working together to develop policies that will curb prison population

<sup>1</sup> North Dakota Department of Corrections and Rehabilitation (DOCR) estimated prison population projection. DOCR one-day inmate population snapshots for 2005–2007 are as of January 1 of each fiscal year. DOCR one-day inmate population snapshots for 2008–2015 and projected population snapshots for 2016–2022 are as of the last day of each fiscal year (June 30). Email correspondence between CSG Justice Center and DOCR, 2015 and 2016.

growth by reducing the number of people in prison who have committed lower-level felony offenses and who have violated the conditions of their supervision.

- North Dakota's justice reinvestment policy framework, detailed in the *Justice Reinvestment in North Dakota: Policy Framework* report issued to the committee this morning, addresses drivers of growth in corrections populations and cost and provides the state with the financial flexibility to reinvest a portion of those savings in strategies that can reduce recidivism and increase public safety.

Between August 2015 and September 2016, the Incarceration Issues Committee met eight times, in all-day meetings. Its work built on efforts that the Commission on Alternatives to Incarceration had carried out during the 2013-2014 interim. Council of State Governments Justice Center staff presented in person at five of the Incarceration Issues Committee's meetings, covering intensive data analysis and extensive input from criminal justice system stakeholders. At the July and September meetings, the interim committee considered draft bill language, the final product of which is reflected in HB 1041.

States across the country are enacting policies that contain the principle that prisons and jails should prioritize people with serious and violent offenses. Meanwhile a range of effective options — diversion, alternatives to incarceration, probation and parole supervision, and community programs and treatment — should be available to hold appropriate populations accountable with programs and supervision responsive to the person's individual risk and needs.

The same principle underpins HB 1041. It reflects the broad look that the interim committee gave to improve the criminal justice system by restoring discretion to the system, adjusting penalties to better fit the crime, and giving counties tools to reduce jail pressures.

Criminal justice system practitioners presented to the committee that the sentencing changes in this legislation would have a positive effect in how courts discharge cases. The increase in penalties and penalty enhancements in the Century Code have a major effect on plea negotiations and the final discharge of cases, members said. In addition, the policy applies lessons learned from collateral consequences of criminal conviction, especially a felony conviction, involving employment, housing, access to services, and more.

First, HB 1041 restores discretion to the system by exempting drug possession from counting toward a mandatory minimum sentence. For many members of the interim committee, taking this step toward revising mandatory minimum laws was a major advancement. HB 1041 also grants authority to the parole board to issue medical parole to an inmate who has a serious or terminal medical condition, which is an approach states have taken to carry out more compassionate options for people in prison with advanced age or medical conditions.

Second, HB 1041 adjusts penalties to better fit the crime. It addresses people with offenses involving drug use — drug possession, first-time intentional drug ingestion, and possession of drug paraphernalia — and adjusts down the penalties. This is intended to reduce the number and severity of collateral consequences a person receives following a conviction for a drug offense. These policies will reduce the number of barriers in a person's way toward transitioning from being in the criminal justice system to living a crime-free life in which they are working and paying taxes.

Third, HB 1041 gives counties tools to relieve jail pressures. Many of the previous sentencing policy changes can be estimated to relieve pressures on county jails. Although statewide jail information is unavailable, several of the counties we explored, we learned that a sizable percentage of people in jail are there awaiting trial. HB 1041 enables DOCR to establish a pretrial services program as a pilot project in at least two judicial districts. Under the pilot, counties could adopt and use pretrial risk assessment to inform decisions regarding which people held awaiting trial should remain behind bars and which could safely be undergo supervision.

Finally, interim committee members returned time and again to the lack of access to high-quality behavioral health treatment in the community. State's attorneys, judges, and other stakeholders report that drug use is common among people who commit crimes and violate the terms of their supervision. Research shows that behavioral health treatment tailored to the unique needs of people in the justice system when combined with effective supervision reduces recidivism and improves recovery outcomes. SB 2274 contains policies that would help both cultivate an adequate network of community behavioral health care practitioners and increase access to effective community-based behavioral health treatment for people in the criminal justice system. This legislation, authored by Senator Lee, received a public hearing last week in the Senate Human Services Committee.

Members of the Incarceration Issues Committee and the Commission on Alternatives to Incarceration deserve tremendous credit for the work that they, along with criminal justice system stakeholders, have done to work on these issues and develop the recommendations contained in HB 1041.

65<sup>th</sup> Legislative Session  
House Judiciary Committee  
February 1, 2017

#1  
1041  
2-1-17

Good afternoon Chairman Koppleman and members of the Committee. My name is Trina Gress, I am Vice President of Community Options. Community Options is support of HB 1041. My testimony is in reference to section 16.

Community Options is a provider agency that contracts with various Divisions at the Department of Human Services (DHS), including Economic Assistance Division, which administers the Temporary Assistance to Needy Families (TANF). Community Options is an Employment Provider for the Job Opportunities and Basic Skills Program (JOBS) that all work eligible people must participate in when utilizing the TANF services.

HB 1041 removes the 7 year penalty drug related felony convictions, which allows a parent with a needy child to apply for TANF services. This bill will allow the individual with a felony to provide for the needy child in their home while reintegrating into the community and becoming a productive employed citizen.

While Community Options supports this bill, we do have concerns that I would like to bring to your attention. SB 2279 and HB 1308, "referred to as the TANF drug testing bills", may be counterproductive to HB 1041 & 1042. As an Employment Provider, when we see a child living in an environment with drugs, the Employment Specialist is required to complete a State Form Number 960 to report child abuse and neglect. Then the local county Protective Services will investigate the situation and there is a potential for law enforcement to intervene. Ultimately, the felon may be sent back into Department of Corrections.

In conclusion, Community Options supports HB 1041. Thank you for your time, are there any questions?

Sincerely Submitted,

Trina Gress



PROPOSED AMENDMENTS TO HOUSE BILL NO. 1041

#2  
1041  
2-6-17  
Pelike

Page 1, line 3, after "12.1-32-02," insert: "subsections 3 and 6 of section 12.1-32-07,"

Page 1, line 12, remove "and"

Page 1, line 13, after "assembly", insert "; and to provide an effective date"

Page 5, replace lines 26-30 with:

The sentencing court shall sentence an individual convicted of a class C felony offense or class A misdemeanor offense to a term of probation at the time of initial sentencing, except for an offense involving domestic violence, an offense in violation of section 12.1-17-07.1, chapter 12.1-41, sections 14-07.1-06 or 14-09-22, an offense involving a firearm or dangerous weapon, or when a mandatory term of incarceration is required by law. The sentencing court may impose a sentence to imprisonment if the sentencing court finds there are aggravating factors present to justify a departure from presumptive probation. The sentencing court shall state the aggravating factors on the record at the time of sentencing. This section does not preclude the sentencing court from deferring imposition of sentence in accordance with subsection 4 of section 12.1-32-02 or sentencing an individual to a term of incarceration with credit for time spent in custody so long as execution of the sentence is suspended.

**SECTION 8. AMENDMENT.** Subsections 3 and 6 of section 12.1-32-07 of the North Dakota Century Code are amended and enacted as follows:

The court shall provide as an explicit condition of every probation that the defendant may not possess a firearm, destructive device, or other dangerous weapon while the defendant is on probation. Except when the offense is a misdemeanor offense under section 12.1-17-01, 12.1-17-01.1, 12.1-17-05, or 12.1-17-07.1, or chapter 14-07.1, the court may waive this condition of probation if the defendant has pled guilty to, or has been found guilty of, a misdemeanor or infraction offense, the misdemeanor or infraction is the defendant's first offense, and the court has made a specific finding on the record before imposition of a sentence or a probation that there is good cause to waive the condition. The

court may not waive this condition of probation if the court places the defendant under the supervision and management of the department of corrections and rehabilitation. The court shall provide as an explicit condition of probation that the defendant may not willfully defraud a urine test administered as a condition of probation. Unless waived on the record by the court, the court shall also provide as a condition of probation that the defendant undergo various agreed-to community constraints and conditions as intermediate measures of the department of corrections and rehabilitation to avoid revocation, which may include:

- a. Community service;
  - b. Day reporting;
  - c. Curfew;
  - d. Home confinement;
  - e. House arrest;
  - f. Electronic monitoring;
  - g. Residential halfway house;
  - h. Intensive supervision program;
  - i. Up to five nonsuccessive periods of incarceration during any twelve-month period, each of which may not exceed forty-eight consecutive hours; or
  - j. Participation in the twenty-four seven sobriety program; or
  - k. One period of incarceration during a period of probation not to exceed thirty consecutive days in lieu of a petition for revocation of probation.
6. a. The court, upon notice to the probationer and with good cause, may modify or enlarge the conditions of probation at any time prior to the expiration or termination of the period for which the probation remains conditional.
- b. If the defendant violates a condition of probation at any time before the expiration or termination of the period and the petition for revocation of probation is the first petition for revocation for a violation of a condition of probation in the case and the violation does not include the commission of an offense involving violence, a firearm or dangerous weapon, or the

commission of a felony offense, or the defendant was on probation for an offense subject to registration under section 12.1-32-15, the court may continue shall:

- (1) Continue the defendant on the existing probation, with or without modifying or enlarging the conditions; ~~;~~ or ~~may~~
- (2) Require the defendant to serve up to ninety days of incarceration or the balance of the defendant's sentence, whichever is less, as a condition of probation; or
- (3) ~~revoke~~ Revoke the probation and impose a sentence not to exceed ninety days of incarceration or the balance of the defendant's sentence, whichever is less.

In any other case, the court may revoke the probation and impose any other sentence that was available under section 12.1-32-02 or 12.1-32-09 at the time of initial sentencing or deferment.

c. In the case of suspended execution of sentence, if the defendant violates a condition of probation at any time before the expiration or termination of the period and the petition for revocation of probation is the first petition for revocation for a violation of a condition of probation in the case and the violation does not include the commission of an offense involving violence, a firearm or dangerous weapon, or the commission of a felony offense, or the defendant was on probation for an offense subject to registration under section 12.1-32-15, the court may shall:

- (1) Continue the defendant on the existing probation, with or without modifying or enlarging the conditions; or
- (2) Require the defendant to serve up to ninety days of incarceration or the balance of the defendant's sentence, whichever is less, as a condition of probation; or
- (3) ~~revoke~~ Revoke the probation and impose a sentence not to exceed ninety days of incarceration or the balance of the defendant's sentence, whichever is less.

In any other case, the court may revoke the probation and cause the defendant to suffer the penalty of the sentence previously imposed upon the defendant.

Page 6, remove lines 1 and 2.

Page 14, after line 9, insert:

**SECTION 19. EXPIRATION DATE.** Sections 7 and 8 of this Act are effective through July 31, 2021, and after that date are ineffective.

Renumber accordingly.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1041

- Page 1, line 1, after "enact" insert "section 12.1-17-13.1 and"
- Page 1, line 2, after the first "to" insert "a batterers intervention oversight committee and"
- Page 1, line 3, after the first comma insert "and"
- Page 1, line 3, after the second comma insert "subsection 6 of section 12-59-15, sections"
- Page 1, line 3, remove the third comma
- Page 1, line 3, after the fifth comma insert "subsection 6 of section 12.1-32-07,"
- Page 1, line 8, after the third comma insert "presumptive probation,"
- Page 1, line 12, remove the second "and"
- Page 1, line 13, after "assembly" insert "; and to provide for a report to the legislative management"
- Page 3, after line 3, insert:

**"SECTION 4. AMENDMENT.** Subsection 6 of section 12-59-15 of the North Dakota Century Code is amended and reenacted as follows:

6. If the hearing officer determines there is probable cause to find that the parolee has violated any of the terms and conditions of parole established by the board or by the department of corrections and rehabilitation, the parolee must be returned to the physical custody of the department of corrections and rehabilitation, transferred to another correctional facility or the state hospital, or released from actual custody pursuant to such terms and conditions as may be established by the parole board or the department of corrections and rehabilitation, pending a final revocation hearing before the parole board. ¶The board may order the parolee be recommitted to the physical custody of the department of corrections and rehabilitation to serve all or part of the remaining time of the sentence which has not been served in custody if the board determines at the final revocation hearing that the parolee has violated any of the terms and conditions of parole established by the board or by the department of corrections and rehabilitation, it may order that the parolee be recommitted to the physical custody of the department of corrections and rehabilitation to serve all or part of and the violation is a felony arrest or conviction or the parolee is on parole for an offense requiring registration under section 12.1-32-15. In all other cases, the board shall order the parolee to serve the lesser of a term of ninety days in prison or the remaining time of the sentence that has not been served. The terms of incarceration provided under this subsection are not subject to good time sentence reduction and are in addition to any credit for time spent in custody."

Page 3, after line 14, insert:

"SECTION 6. Section 12.1-17-13.1 of the North Dakota Century Code is created and enacted as follows:

**12.1-17-13.1. Batterers intervention oversight committee - Reports.**

1. The batterers intervention standards oversight board consists of eleven members:
  - a. The attorney general, who shall serve as the chairman of the committee;
  - b. The director of the department of corrections and rehabilitation;
  - c. Two representatives from the domestic violence advocacy programs in the state, appointed by the chief justice of the supreme court;
  - d. A representative from the law enforcement community, appointed by the president of the North Dakota peace officer's association;
  - e. The chief justice of the supreme court;
  - f. The director of the state department of health; and
  - g. Four members appointed by the attorney general.
2. The committee shall meet at least four times each year. The first meeting must be held no later than January 1, 2018.
3. Each member may appoint a designee to attend meetings in the member's absence.
4. The committee shall establish standards for batterers intervention programs and monitor and review batterers intervention programs within the state.
5. Before July first of each even-numbered year the committee shall submit a report to the legislative management, governor, and supreme court on the standards established by the committee, the batterers intervention programs operating in the state, the source of funding of each program, and the level of compliance of each program."

Page 5, line 26, replace "Except as provided under section 12.1-32-09.1, the" with "The"

Page 5, line 27, after the first "a" insert "class C felony or a"

Page 5, line 27, remove "drug"

Page 5, line 27, remove "if the individual has"

Page 5, remove lines 28 and 29

Page 5, line 30, replace "or indictment." with:

"at the time of initial sentencing unless the offense involves domestic violence, is an offense in violation of section 12.1-17-07.1, chapter 12.1-41, sections 14-07.1-06, or 14-09-22, is an offense involving a firearm or dangerous weapon, or when a mandatory term of incarceration is required by law."

Page 6, line 2, after the underscored period insert "This section does not preclude the sentencing court from deferring imposition of sentence under subsection 4 of section 12.1-32-02 or sentencing an individual to a term of incarceration with credit for time spent in custody for a suspended sentence."

**SECTION 10. AMENDMENT.** Subsection 6 of section 12.1-32-07 of the North Dakota Century Code is amended and reenacted as follows:

6. The court, upon notice to the probationer and with good cause, may modify or enlarge the conditions of probation at any time prior to the expiration or termination of the period for which the probation remains conditional. If the defendant violates a condition of probation at any time before the expiration or termination of the period, the court may continue the defendant on the existing probation, with or without modifying or enlarging the conditions, or may revoke the probation and impose the lessor of ninety days in prison or the period remaining on the sentence. This term of incarceration is not subject to good time sentence reduction and is in addition to any credit for time spent in custody under subsection 2 of section 12.1-32-02. If the violation is a felony arrest or felony conviction or the probationer is on probation for an offense requiring registration under section 12.1-32-15, the probationer may receive any other sentence that was available under section 12.1-32-02 or 12.1-32-09 at the time of initial sentencing or deferment. In the case of suspended execution of sentence, the court may revoke the probation if the violation is a felony arrest or felony conviction or the probationer is on parole for an offense requiring registration under section 12.1-32-15 and cause the defendant to suffer the penalty of the sentence previously imposed upon the defendant."

Renumber accordingly

#1  
1041  
2-2-17

**TO:** House Judiciary Committee  
**FROM:** Kelly Johnson, Intern  
**RE:** HB 1041/HB 1042: Compassionate Care Act Impact on Bill  
**DATE:** February 1, 2017

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The current law in place is under NDCC Chapter 19-24 (definition of “usable marijuana” can be found at 19-24-02) and the bill to look at is SB 2344. Look at SB 2344 section, “Protections” (19-24-31 on page 74, starting on page 20) to see who may be allowed to use or possess medical marijuana under the Compassionate Care Act. Look at SB 2344 section “Limitation” (19-24-32 on page 76, starting on page 14) to see who may not be allowed to use or possess marijuana under the Compassionate Care Act.

If SB 2344 passes, then those who are allowed to use or possess medical marijuana would still be allowed to do so if HB 1041 passes without penalty. SB 2344 decriminalizes certain use or possession for individuals allowed under SB 2344. Allowed use or possession of marijuana may include that of a registered qualifying patient, a registered designated caregiver, a registered compassionate care center (*See* SB 2344, Page 74, “Protections” section). If SB 2344 does not pass, there will be many hard questions to answer regarding the impact of the passage of many bills currently pending (including HB 1041) because without SB 2344, use or possession is not decriminalized adequately.

Therefore, it seems that if there is use or possession of marijuana as allowed under the proposed amended version of the Compassionate Care Act, HB 1041 should not conflict with that law.



#2  
1041  
2-6-17

HOUSE BILL NO. 1041

**REPORT TO LEGISLATIVE MANAGEMENT - REPORT TO LEGISLATIVE ASSEMBLY.** The department of corrections and rehabilitation, department of parole and probation, and judiciary shall provide a report to the legislative management during the 2017-18 interim regarding the progress of the justice reinvestment initiative. The department of corrections and rehabilitation, department of parole and probation, and the judicial branch shall provide a report of the progress of the justice reinvestment initiative to the sixty sixth legislative assembly."

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# North Dakota House of Representatives

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## Testimony on House Bill 1041 Senate Judiciary Committee 3-15-17

Good Morning, Mr. Chairman and Members of the Committee. For the record, I am Rep. Kim Koppelman. I represent District 13 in West Fargo and chair the Judiciary Committee in the House. It's good to be with you today to testify in favor of House Bill 1041. In order to do so, I first need to explain what's led us up to this point.

### Criminal Justice System Challenges

Over the past decade, the number of people in North Dakota's prisons and jails, and on probation and on parole, grew substantially.

To accommodate this growth, the state and county governments spent tens of millions of dollars expanding the capacity of existing correctional facilities and building new facilities.

Unless action is taken, the prison population is projected to grow 36 percent by 2022 at a cost of \$115 million to accommodate the growth using contract beds.

### North Dakota's data-driven approach to address these challenges

People across our state have worked thoughtfully and diligently to address these challenges.

In 2015, two bills (HB 1165 and HB 1015) were passed by the legislature and signed by the governor, establishing the inter-branch Incarceration Issues Committee.

To receive assistance for our state, North Dakota state leaders from all three branches requested technical assistance from The Council of State Governments (CSG) Justice Center to use a data-driven "justice reinvestment" approach.

Twenty-five other states — including South Dakota, Idaho, and Nebraska — have used assistance to carry out similar approaches.

Between August 2015 and September 2016, the Incarceration Issues Committee met eight times. At the July and September meetings, the interim committee took up language and reached agreement on a bill draft.

Last month, the House Judiciary Committee held hearings on HB 1041. The bill before you reflects our committee's work on the bill.

### **Avoid significant prison contracting costs**

Last month CSG Justice Center staff released the *Justice Reinvestment in North Dakota: Policy Framework* report, which covers the data analysis conducted during the Incarceration Issues Committee process as well as several of the policies in HB 1041.

If effectively implemented, the policy framework is estimated to avert approximately four-fifths of the projected growth, or 659 beds, by 2022.

This would avoid \$64 million in costs.

### **Principles enshrined in HB 1041**

States across the country are enacting policies that contain the principle that prisons and jails should prioritize people with serious and violent offenses.

Meanwhile a range of effective options — diversion, alternatives to incarceration, effective supervision, and high-quality community programs and treatment — should be used to hold appropriate populations accountable and lower recidivism.

### **Increase fairness in the criminal justice system**

The increase in penalties and enhancements in the Century Code have a major effect on plea negotiations and the final discharge of cases. They also impose "collateral consequences," which people with criminal records face when looking to achieve stable supports, like employment and housing.

The Incarceration Issues Committee heard from attorneys, judges, and others who work in the criminal justice system that sentencing policy changes in this bill will make the system fairer

by lowering barriers for people striving to live crime-free lives as productive, tax-paying members of society.

### **Restore discretion to the criminal justice system so the penalty better fits the crime**

HB 1041 addresses people with offenses involving drug use — drug possession, first-time intentional drug ingestion, and possession of drug paraphernalia — and adjusts the penalties to better fit the crime.

The legislation also grants authority to the parole board to issue medical parole to an inmate who has a serious or terminal medical condition.

This is an approach states across the country have taken to carry out more compassionate options for people in prison with advanced age or medical conditions.

### **Give counties tools to relieve jail pressures.**

Many of the previous sentencing policy changes are designed to relieve pressures on county jails too.

The Incarceration Issues Committee learned that in many counties the largest number of people are there awaiting trial who haven't been convicted of an offense yet.

HB 1041 enables DOCR to establish a pretrial services program as a pilot project in at least two judicial districts.

Counties would adopt and use pretrial risk assessment to inform decisions regarding which people held awaiting trial should remain behind bars and which could safely be placed on supervision.

### **Hold people with low-level nonviolent offenses accountable with probation where appropriate**

The legislation creates a statutory presumption that people convicted of nonviolent Class C offenses be sentenced to probation rather than incarceration, although judicial discretion will be retained in individual cases.

Outcomes for people sentenced to probation are slightly better than outcomes for people sentenced to prison.<sup>1</sup> Not only can effective probation supervision help to address a person's criminogenic needs and improve outcomes, but probation is considerably less expensive than prison: \$4 per day per person compared to \$114 per day per person.

**Respond to probation violations with more effective and less costly sanctions that can reduce further violations.**

This policy provides swifter, more cost-effective responses when people violate their conditions.

The court would be able to attach up to 30 days of incarceration in response to a violation during the probation term. This means that the probation officer can use this option, and that use will need to be applied per sound agency policy and supervisory approval.

Second, it provides for a 90-day sanction for a first petition to revoke probation. Eligible populations would be sanctioned with this period and then return to supervision, where they can be held accountable with sanctions and treatment as needed.

**Reinvest a portion of \$64 million in averted costs over five years**

To increase public safety, North Dakota should combine effective high-quality behavioral health treatment with effective supervision to reduce recidivism.

State's attorneys, judges, and other stakeholders report that drug use is common among people who commit crimes and violate the terms of their supervision.

Currently, it is difficult connecting people in the criminal justice system with high-quality treatment. Many judges and probation officers are reaching for services that don't exist. Without adequate capacity, many people are being sentenced to prison in

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<sup>1</sup> 27 percent of people who are sentenced to prison return within three years of release, and 24 percent of people sentenced to probation have their supervision revoked and are admitted to prison for a new offense or for a violation of the conditions of their supervision within the same period

hope of receiving treatment. This is a costly approach and doesn't yield meaningful impacts on recidivism.

Senate Bill 2274 would "reinvest" a portion of avoided costs in high-quality community treatment. It would help cultivate an adequate network of community behavioral health care practitioners and increase access to effective community treatment

### **Track and measure results**

HB 1041 sets up performance measures and reporting requirements to track progress toward implementing these policies.

States enacting legislation that contains policy developed in a justice reinvestment approach can receive seed funding (up to a half-million dollars) from the Bureau of Justice Assistance to help kick-start implementation efforts. Also, North Dakota could receive technical assistance to help make the most of impacts under this bill.

### **Thanks to others members of the Incarceration Issues Committee and the Commission on Alternatives to Incarceration**

Interim committee members deserve tremendous credit for the yeoman's job that they, along with criminal justice system stakeholders, have done to work on these issues and develop the recommendations contained in HB 1041.

2

3/15/17

Bill Section	Page Num.	Century Code Section	Subject	Summary of Changes
1	1	12-44.1-32	[County jail] sentence reduction credits	Shifts authority for county jails to establish sentence reduction credits from the presiding judge to the jail administrator.
2	2	12-54.1-01	[State Prison] sentence reduction	Grants authority to DOCR to award credit for the time an inmate spends in custody prior to sentencing and commitment.
3	2	12-59-08	Medical parole	Grants authority to the parole board to issue medical parole to an inmate who has a serious or terminal medical condition. The parolee remains under the parole board's jurisdiction until the expiration of the sentence less any sentence reduction.
4	3	12.1-17-13	Mandated treatment of domestic violence offenders	Modifies existing statutes requiring people convicted of domestic violence offenses to complete treatment by adding that the person also undergo an evaluation.
5	3	12.1-23-05	Grading of theft offenses	Raises the Class C felony theft threshold from \$1,000 to \$2,500 for the value of the property or services stolen. Also, exempts the theft of an automobile, aircraft, or other motor-propelled vehicle from this section of the statutes.
6	5	12.1-32-02	Sentencing alternatives - credit for time in custody	Requires the criminal judgment to include, per Bill Sections 1 and 2, jail and prison sentence reduction credits.
7	5	12.1-32-07	Supervision of probationer - Conditions of probation - Revocation	Adds a single period of up to 30 days of incarceration that a probationer may be required to complete to the list of conditions a court may attach to a probation term. The 30-day period is to be applied in lieu of a petition to revoke probation.
8	5	12.1-32-08	Supervision of probationer - Conditions of probation - Revocation	On the first petition to revoke probation, the probationer is (a) to serve up to 90 days of incarceration as a violation sanction, or (b) to be revoked from supervision and serve the up-to-90-day period, or (c) to be returned to supervision. Populations excluded from the policy includes commission of an offense involving violence, a firearm or dangerous weapon, or the commission of a felony, or the person was required to register as a sex offender.
9	8	12.1-32-02	Presumptive probation	Establishes a presumption that a defendant with a Class C felony or Class A misdemeanor is sentenced to probation unless the court cites aggravating factors at the time of sentencing, in which case the court may depart from the policy and impose a prison sentence. Along with allowance for departures from the policy, a number of offenses are explicitly excluded: domestic violence, stalking, human trafficking, violation of a protection order, child abuse, an offense involving a firearm or dangerous weapon, or when a mandatory term of incarceration is required by law.
10	8	19-03.1-22.3	Ingesting a controlled substance	Reclassifies the first offense of intentional ingestion of a controlled substance from a Class A misdemeanor to a Class B misdemeanor. (Second or subsequent ingestion offenses remain Class A misdemeanors.)
11	9	19-03.1-22.5	Use of a controlled substance analog	Reclassifies the first offense of intentional ingestion of a controlled substance analog from a Class C felony to a Class B misdemeanor. Second and subsequent analog ingestion offenses would be Class A misdemeanors.

Bill Section	Page Num.	Century Code Section	Subject	Summary of Changes
12	9	19-03.1-23	Mandatory terms of imprisonment and fines - unclassified offenses - Penalties	(1) Excludes possession of a controlled substance from the list of offenses that qualify as a prior for purposes of triggering a mandatory minimum offense. (Included still are the manufacture, delivery, or intent to deliver a controlled substance.) (2) Reclassifies possession of a controlled substance or controlled substance analog from Class C felony to Class A misdemeanor. (3) Modifies the penalty enhancement, to a Class B felony, for possession of a controlled substance or controlled substance analog from within 1,000 feet of a school zone to being in or on the real property. The exception to this penalty is possession of marijuana, which carries a Class B misdemeanor. (4) Authorizes DOCR to place an individual sentenced under its custody in a drug and alcohol treatment program. After successful completion of the treatment program, DOCR is required to release the individual to probation for the remainder of the sentence. Exempted from this policy are people who
13	10	19-03.1-23.1	Increased penalties for aggravating factors in drug offenses	Modifies the distance for manufacture, delivery, or possession of a controlled substance from within 1,000 feet of a child care or preschool, elementary school, college or university to being in or on the real property.
14	10	19-03.4-03	Unlawful possession of drug paraphernalia	(1) Reclassifies possession with the intent to use of drug paraphernalia from a Class A misdemeanor to Class B misdemeanor. (2) Reduces a person with a prior conviction of possession with the intent to use of drug paraphernalia from a Class C felony to a Class A misdemeanor.
15	11	39-08-01	Persons under the influence of intoxicating liquor or any other drugs or substances not to operate vehicle	Authorizes the district court to terminate probation when a defendant completes a drug treatment program while under the supervision of a drug court program following a DUI conviction and sentence.
16	12	43-45-06	Addiction counseling practice	Modifies language to provide that (1) a person may provide addiction treatment and counseling within the standards and ethics of his or her professional calling provided he or she does not represent the work as engaging in licensed addiction counseling, and (2) clarifies that addiction counseling trainees and interns may provide addiction counseling related to their training.
17	12	50-06-05.1	Powers and duties of the department	Prohibits DHS from denying food stamps to an individual with a conviction of a felony offense that has as an element the possession, use, or distribution of a controlled substance.
18	13	50-09-29	Requirements for administration of temporary assistance for needy families.	(1) Strikes a section that denies SNAP assistance to an individual who has been convicted of a felony offense that has as its element the possession, use, or distribution of a controlled substance unless seven years has passed since the conviction. (2) Prohibits DHS from denying TANF assistance to any individual who has been convicted of a felony offense that has an element the possession, use, or distribution of a
19	16	N/A	Pretrial services division pilot project — report to legislative assembly	Permits DOCR to establish a pretrial services program as a pilot project in one or more judicial districts during the biennium. DOCR and the judicial branch are required to provide a report concerning the process and outcome measures to the sixty-sixth legislative assembly.
20	16	N/A	Justice reinvestment initiative — report to Leg. Management and the legislature	(1) Before September 1, 2018, DOCR and the Supreme Court are required to submit a progress report to Legislative Management regarding progress of the justice reinvestment initiative. (2) A progress report must also be provided to the 66th Legislative Assembly.



3/15/17

(3)

HB 1041

SENATE JUDICIARY COMMITTEE  
SENATOR KELLY ARMSTRONG, CHAIRMAN  
MARCH 15, 2017

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**PATRICK N. BOHN, DIRECTOR FOR TRANSITIONAL PLANNING SERVICES,  
NORTH DAKOTA DEPARTMENT OF CORRECTIONS & REHABILITATION  
PRESENTING TESTIMONY RE: HB 1041**

My name is Pat Bohn and I am the Director for Transitional Planning Services for the North Dakota Department of Corrections and Rehabilitation (DOCR). I am here to testify on behalf of the DOCR in support of Reengrossed House Bill 1041 with some recommended amendments to the bill.

**Opening:**

There are twenty sections in HB 1041 and some will likely draw more discussion than others. I anticipate some discussion surrounding proposed changes to the drug laws. I think most of us would find common ground on the principle that drugs such as methamphetamine, cocaine and heroin are bad for our society. They have negative effects on our social and moral fabric and tear down individual and public safety. Where we start to differ is how we handle the problem. We've had three solid decades where new and enhanced penalties were implemented in an effort to thwart our growing drug problem. To this day, I hear people talking about how bad our drug problem is and I ask myself, why? Shouldn't we have our arms around this after decades of additional and enhanced penalties? Maybe we are using the wrong methods. What if our current method is actually feeding growth?

Our country has a deeply seated culture of criminalizing behavior and incarcerating people as evidenced by the fact that while the U.S. represents about 4.4% percent of the world's population, we account for housing approximately 22% of world's prisoners. In North Dakota we have seen our prison, correctional center and community supervision populations far outpace the growth in our state's overall population. Between 1992 and 2017 we experienced a 277% increase in the parole and probation counts and a 249% increase in the prison counts, all while only having an 18.8% increase in our state's total population during that similar span of time (Reference Chart 1 on page 2). We have also seen about a 40% increase in the number of felony offenses in statute between 1993 and 2015 and a 163% increase in state spending between the 2003-2005 and the 2015-2017 biennia (Reference Chart 2 on page3). I ask you as you move forward on this, what is preventing us from taking steps to move in another direction because what I've outlined here is arguably a costly failure.

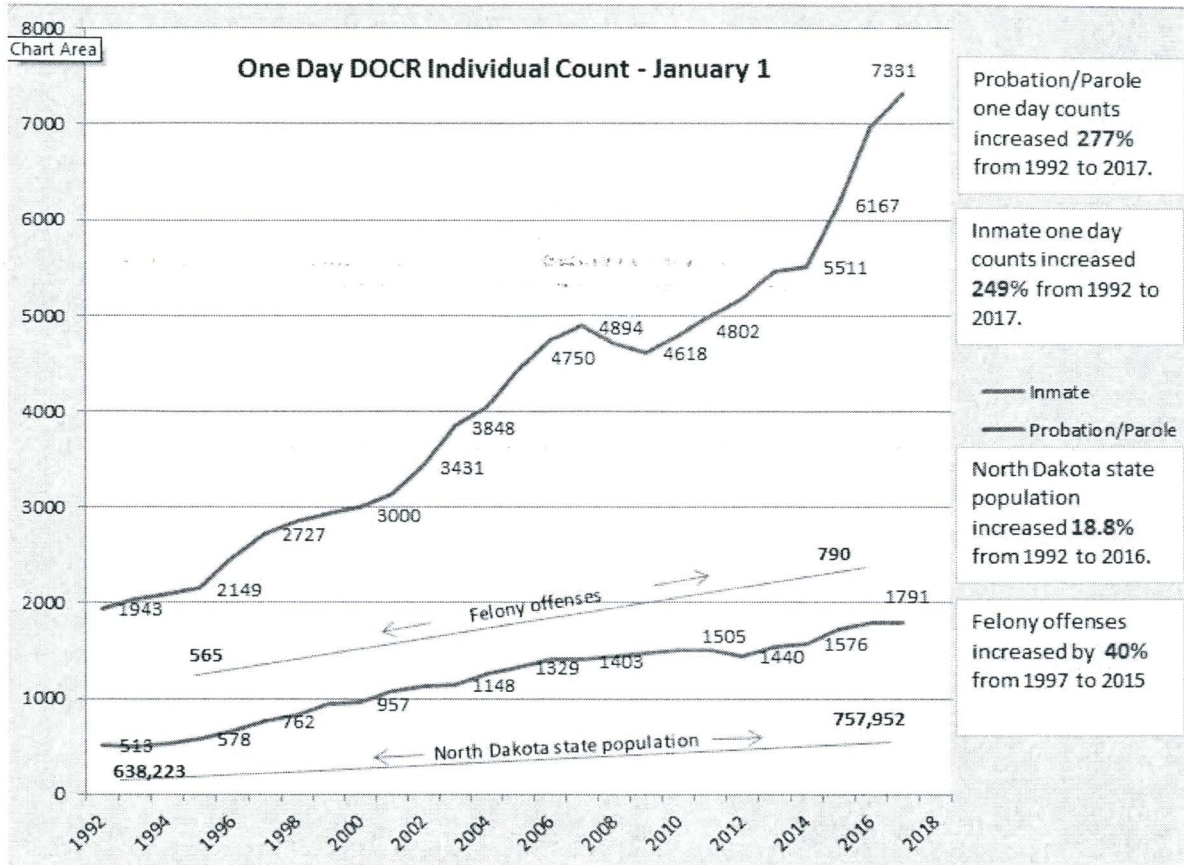


Chart 1

# What is the cost?



Chart 2

## What this bill does:

Section 1 amends N.D.C.C. § 12-44.1-32 and transfers the authority to establish criteria and administer good time in regional or county correctional facilities from the presiding judge of the judicial district where the facility is located to the correctional facility administrator. This is consistent with DOCR's administration of good time and consistent with the opinions of the North Dakota Supreme Court in *State v. Trieb*, 516 N.W.2d 287 (N.D. 1994) and *Ostafin v. State*, 1997 ND 102, 564 N.W.2d 616, that the administration of good time was a matter for the North Dakota State Penitentiary.

Sections 2 and 6 should be examined together. Section 2 amends N.D.C.C. § 12-54.1-01 and authorizes the DOCR to credit an individual with sentence reduction for time spent in custody before sentencing to the legal and physical custody of the DOCR as well as to sentences to the DOCR for six months or less. It also affirms current law which does not allow for crediting time spent on probation supervision towards incarceration. Section 6 requires the court to state the amount of sentence reduction the defendant is entitled to in the criminal judgment.

Example: The defendant is entitled to 90 days credit for time spent in custody and could be eligible for up to fifteen days of good time to be applied towards the defendant's sentence.

The DOCR believes this provides the correctional facilities another behavior management tool to help manage a portion of the population that will move on to serve their sentence at the DOCR by providing individuals an incentive to have good behavior in correctional facilities as well as a sanctioning tool for misconduct. The estimated fiscal impact to the DOCR for 2017-19 biennium is (\$411,267) and for 2019-21 biennium is (\$894,082). The fiscal impact assumes an average of 15 days will be credited to all new arrivals as of 7/1/17. Adoption of these sections will reduce the estimated average daily population by 6 for the 2017-19 biennium, and by 14 for the 2019-21 biennium.

Section 3 amends N.D.C.C. § 12-59-58 and revises the current emergency parole law to authorize medical parole for serious or terminal medical conditions and authorizes the Parole Board to grant a medical parole for individuals subject to the mandatory armed offenders law, those subject to the 85% law and those sentenced to life and who must serve a minimum of 30 years less performance based sentence reduction in order to be eligible for Parole Board consideration. This amendment will impact an estimated one to two individuals per year, but although the number of individuals this impacts is small, there are usually very high costs associated with medical care for serious medical cases and end-of-life needs, as well as a humane aspect that cannot be overlooked.

Section 4 amends N.D.C.C. § 12.1-17-13 updates mandated domestic violence treatment to include an evaluation and treatment program as determined by the court.

Section 5 amends N.D.C.C. § 12.1-23-05 and changes the threshold for a C felony theft of property or services stolen to exceed one thousand dollars to two thousand five hundred dollars and removes the blanket inclusion for automobiles, aircraft or other motor propelled vehicles. If stolen, they could still be charged as a C felony and the state would have to prove the value to be more than two thousand five hundred dollars. It does not take much to get one thousand dollars these days and not a whole lot more to get to two thousand five hundred dollars. Although it is not possible to project impacts from our data, the DOCR believes this is worthy of discussion as a way to again update this penalty threshold.

Section 7 amends subsection 3 of N.D.C.C. § 12.1-32-07 by including one period of up to thirty consecutive days in jail during a period of probation as an intermediate measure in lieu of a petition for revocation of probation. This adds another tool for officers to use as a short dunk in jail most near the time of the violations and for the individual to avoid full revocation at that time. The DOCR will reimburse the jails on a per day basis.

Section 8 amends subsection 6 of N.D.C.C. § 12.1-32-07 and mandates that upon the first petition for revocation of probation and the violations do not include commission of an offense involving violence, a firearm or dangerous weapon, or the commission of a felony, or if the probation was for an offense subject to registration under section 12.1-32-15 the court shall either continue the existing probation or require the individual to serve up to ninety days in jail as a condition of probation or revoke the probation and impose a sentence not to exceed ninety days. This sections needs to be amended by inserting on page 7 a "(4)" after line 14. The language which would become subdivision (4) must be a part of subsection 6 subdivision (b) to cover all options. As it is currently situated, it would only apply to subsection 6 subdivision (b) (3). When the amendments were submitted to the House Judiciary it was correct but in the course of drafting the

amendments it appears that legislative counsel mistakenly did not set it off as subdivision to subsection 6. This also needs to be done in subsection 6 subdivision (c). I also want to point out that if the probation is revoked and up to ninety days of incarceration is imposed, the court still has the authority to place the individual back on probation.

The department is concerned about this mandate upon the court. The department has long been opposed to all forms of mandatory sentencing. This mandatory probation was not an element that came as a recommendation from the Incarceration Issues Committee and we are concerned about the fact that there is no evidence that this will reduce recidivism and improve outcomes.

Sections 9 creates a new section to N.D.C.C. chapter 12.1-32 in that the court is mandated to sentence an individual to probation if convicted of a class A misdemeanor or C felony, except for an offense involving domestic violence, stalking, human trafficking, violating a protection order, child abuse, or an offense involving a firearm or dangerous weapon or an offense where a mandatory term of incarceration is required by law. It does allow the court some discretion to sentence an individual to prison if there are aggravating circumstances.

Sections 10 amends N.D.C.C. § 19-03.1-22.3 and reduces the penalty for ingestion of a controlled substance from an A misdemeanor to a B misdemeanor for a first offense and retains the penalty as an A misdemeanor for any second or subsequent offense. This has no financial impact on the DOCR. It may have some city and county implications because the B misdemeanor could be addressed in municipal court.

Section 11 amends subsection 1 of N.D.C.C. § 19-03.1-22.5 and reduces the penalty for ingestion of a controlled substance analog from an A misdemeanor to a B misdemeanor for a first offense and retains the penalty as an A misdemeanor for any second or subsequent offense. This also has no financial impact on the DOCR. It may have some city and county implications because again, the B misdemeanor could be addressed in municipal court.

Section 12 amends subsections 5 and 7 of N.D.C.C. § 19-03.1-23 and reduces the offense level for possession of a controlled substance or possession of a controlled substance analog from a class C felony to a class A misdemeanor and the penalty enhancement provision from one thousand feet to having to possess it on the "real property" of a school. It would also authorize the DOCR to release an individual from incarceration to a probation period upon the individual's successful completion of a drug and alcohol treatment program. It also clarifies manufacture, delivery and intent to deliver for purposes of offenses under this chapter. At the April 2016 Incarceration Issues meeting, Mr. Mark Pelka with the Council of State Governments, reported felony sentence events doubled between 2011 and 2014, with drug offenses being the primary driver of those sentences. He reported Class C felonies are the lowest level felony yet comprise 83 percent of felony sentence events in North Dakota. He said the four western districts saw significant increases over the time period studied; however, the entire state had an increase in sentences of 23 percent. He reported the felony sentence events for drug offenses increased two and one-half times between 2011 and 2014. Forty percent of the felony offenses were drug related, 79 percent of which were

for possession. In 71 percent of those cases, he said, the people were sentenced to incarceration. Twenty-five percent of felony offenses were property offenses, of which 77 percent was theft. While North Dakota had higher incarceration rates for drug offenses, he said, other states have higher sentences of probation for similar offenses. He said the overall sentencing rate for drug offenses in the United States is 33 percent.

Section 13 amends subdivision a of subsection 1 of N.D.C.C. 19-03.1-23.1 by eliminating the 1000 foot perimeter penalty enhancement for manufacture, delivery or possession with intent to manufacture or deliver a controlled substance and focusing the penalty enhancement the real property of a child care or preschool facility, elementary or secondary school or colleges.

Section 14 amends N.D.C.C. § 19-03.4-03 and reduces the offense level for possession of drug paraphernalia from a C felony to an A misdemeanor and marijuana paraphernalia from an A misdemeanor to a B misdemeanor. This is currently a crime that has significant impact on the courts, correctional facilities, probation caseloads. It is arguably the most common crime I see. A change to the offense level can impact the DOCR in two ways. First, individuals convicted of a C felony drug paraphernalia are eligible for up to three years of supervised probation on initial sentence and up to a total of five years upon revocation. Individuals convicted of an A misdemeanor are eligible for up to two years of supervised probation and up to a total of three years upon revocation. This would reduce the eligible time for supervision upon initial sentence and by revocation by one year each. It would also reduce the maximum incarceration penalty from five years to one year. This change may also reduce impact on states attorneys, indigent defense counsel, jails and the courts. Misdemeanor offenses can have bail set by a bond schedule rather than having to make an appearance before the court, preliminary hearings are not required and indigent defense counsel may not be necessary if incarceration is not being considered as part of the sentence. This also has implications to sections 5 and 12 of this bill.

Section 15 amends subdivision f of subsection 5 of N.D.C.C. § 39-08-01 allowing the court to terminate probation when the individual completes a drug court program. This change is driven by the current DUI law which mandates a penalty of a minimum amount of time for supervised probation in the case of an A misdemeanor of one year and two years for a C felony. Probation should not be necessary upon completion of drug court, but if it is, the court still has the authority to maintain the individual on probation.

Section 16 amends N.D.C.C. 43-45-06 and authorizes the expansion of the pool of qualified people to provide addiction counseling services in North Dakota according to qualifications expanded by their respective licensing boards, including licensed clinical psychologists, doctoral candidates in psychology, licensed independent social workers, or licensed professional clinical counselors. The department proposes to amend out this section and I'll let Dr. Peterson testify to that issue. (See attached testimony from Dr. Lisa Peterson).

Sections 17 and 18 amend subsection 17 of N.D.C.C. § 50-06-05.1 and N.D.C.C. § 50-09-29 to remove the barriers currently preventing people convicted of a felony possession, use or distribution of a controlled substance from being eligible for

resources under the Food Stamp Act or resources under the temporary assistance for needy families for seven years. This is another of the many and often long lasting collateral impacts of a felony conviction that may inhibit people from being able to engage in improving their lives and moving away from criminal activity. Women are often the primary caregivers for children and when convicted of a qualifying felony they are not able to access these resources for their children. Some people may try to abuse it but others really need the help up. When we place so many barriers in front of people, we actually make it a disincentive to doing the right thing and incentivize doing the wrong thing.

Section 19 authorizes a pretrial services project that may reduce the number of people held in jail on bond; thereby, freeing up limited jail space and allowing the DOCR to supervise people on pretrial in the community. The DOCR does not currently provide pretrial services and this section would simply provide the authority to establish a pretrial pilot project in one or more of the judicial districts during the next biennium. This pilot project would be a cooperative effort between the DOCR, judiciary, and local law enforcement agencies. The pretrial supervision services would focus on felony and higher risk populations.

Attached as part of my testimony you will find a research report that was done by the Laura and John Arnold Foundation (LJAF) focusing on pretrial criminal justice. Although I would encourage everyone to review the research summary in its entirety, please allow me to summarize some of the information contained in the report.

Nationally, pretrial detainees account for more than 60% of the inmate populations in our jails. In North Dakota, that percentage is considerably higher in several of our county jail facilities. Many of these pretrial detainees are lower risk individuals, who if released from custody, would be highly unlikely to commit another crime and would be very likely to return to court for their criminal proceedings. Some of these people are moderate risk, that if properly assessed could be managed by parole and probation officers on pretrial community supervision. Lastly, some of these people are high risk and should be detained as they pose a more significant risk to commit additional crimes, commit acts of violence and not appear for court proceedings. Although our prosecutors and judges share the common goal to detain those who pose risk to public safety and release those who don't, this is generally not how the system always works. Information on the defendants' assessments of actuarial risk they pose in the community and the opportunity for supervision and management are simply not available.

Research in corrections is consistent; incarcerating low risk individuals actually increases the likelihood they will reoffend. Results of this study showed that low risk individuals who were detained for more than 24 hours were more likely to commit new crimes while their cases were pending, but also years later. They were also more likely to not show up for their court proceedings. The results were actually quite staggering and showed that low risk individuals held for just 2-3 days in jail were 40% more likely to commit new crimes before trial than those held for less than 24 hours. Those figures escalated to indicate those held for 31 days or more offended 74% more frequently. High risk individuals on the other hand, showed no increase in the likelihood of increased criminal activity if held in pretrial detention. This study supports that concept

that public safety can most effectively be achieved by holding the high risk individuals in detention and releasing the lower risk.

The key to effective pretrial criminal justice services is to utilize objective data-driven risk assessments that will more accurately identify the low, moderate, and high risk individuals. Judges have done their best to identify who they believe are the high risk and violent individuals but without proper assessments to help, that is an impossible task. Given these decisions in the pretrial phase will have a tremendous impact on the likelihood of someone being sent to prison or jail, the length of time they will be sentenced, and the risk that someone will re-offend, we must do more to arrive at more informed decisions that utilize evidence-based actuarial assessments. With our ever increasing populations in the state prison system, as well as local county jail facilities, these decisions become even more important.

The goal of the DOCR is to explore starting pilot projects in one or more of our larger communities. Of course, developing a pretrial program requires resources. Additional staff is needed to provide assessments, recommendations, and pretrial supervision services and it will take some time to plan, coordinate and implement such a project.

Section 20 includes a reporting requirement on the justice reinvestment initiative by the department and the supreme court.

**Closing:**

In closing, I want to leave you with the fact that this is about people and we cannot lose sight of that aspect. The DOCR is focused on providing evidence-based and cost effective management for people in correctional custody and supervision in North Dakota. We have seen what I will call "corrections inflation" with decades of inflating corrections and criminal justice system with new, enhanced and mandatory penalties, the stacking of multiple charges and more and longer periods of incarceration and supervision upon people. Where are the positive outcomes we should have already seen from these policies? I really encourage you to look at what outcomes you expect when you vote to pass new or enhanced penalties and require a data feedback process so you can measure its outcomes. We must bend the curve downward on expenses and upwards on improving outcomes and the DOCR believes provisions within this bill can help us towards that end. The DOCR supports HB 1041 and recommends a due pass.



**Senate Judiciary Committee**  
**Senator Kelly Armstrong, Chairman**  
**Lisa Peterson, PhD**  
**Clinical Director**

**North Dakota Department of Corrections and Rehabilitation**  
**Presenting Neutral Testimony Regarding Section 16 of House Bill 1041**  
**Wednesday, March 15, 2017**

My name is Dr. Lisa Peterson. I am a licensed psychologist and Clinical Director with the Department of Corrections and Rehabilitation (DOCR). I am here on behalf of the DOCR to provide testimony regarding Section 16 of House Bill 1041. Regarding section 16, the DOCR has experienced the impact of the widely acknowledged shortage of Licensed Addiction Counselors in recent years, particularly in some of our more difficult to staff locations such as the James River Correctional Center and Dakota Women's Correctional Rehabilitation Center. We have, at times, questioned whether we would be able to continue to meet the substance abuse treatment needs of our clients, about 75% of whom require substance abuse treatment, due to workforce issues. We believe allowing other experienced and highly qualified professionals to provide substance use evaluation and treatment is vital.

In consultation with Pamela Sagness, Director of the Behavioral Health Division of the North Dakota Department of Human Service, we believe that this problem can be effectively remedied by changes to the Administrative Rule governing the licensing of substance use disorder treatment programs. The Department of Human Services plans to pursue changes to the administrative rule during the spring of 2017. We look forward to the opportunity to collaborate with the Department of Human Services to expand access to effective, quality, responsible substance use disorder treatment in our state.

**PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1041**

Page 1, line 7, remove "section 43-45-06,"

Page 7, after line 14, insert: "(4)"

Page 8, after line 2, insert: "(4)"

Page 12, remove lines 18-26

Renumber accordingly.

Pretrial criminal justice research commissioned by the Laura and John Arnold Foundation (LJAF) has thrown new light on how critical the earliest decisions made in the criminal justice system may be for public safety, fairness, and cost effectiveness.

## PRETRIAL CRIMINAL JUSTICE RESEARCH

Together, federal, state, and local corrections costs in the United States today exceed \$80 billion per year. Pretrial detainees account for more than 60 percent of the inmate population in our jails. The cost to incarcerate defendants pretrial has been estimated at over \$9 billion per year. Many pretrial detainees are low-risk defendants, who, if released before trial, are highly unlikely to commit other crimes and very likely to return to court. Others present moderate risks that can often be managed in the community through supervision, monitoring, or other interventions. There is, of course, a small but important group of defendants who should most often be detained because they pose significant risks of committing acts of violence, committing additional crimes, or skipping court.

The key, then, is to make sure that we accurately distinguish among the low-, moderate-, and high-risk defendants – and identify those who are at an elevated risk for violence. Moreover, it is important that, when we determine how to deal with defendants during the pretrial period, we appropriately assess what risk individual defendants pose. By making decisions in this manner, we can reduce crime, make

wise use of public resources, and make our system more just.

Although police, prosecutors, and judges share the same objectives – to detain those who pose a risk to public safety and to release those who do not – this is not how our criminal justice system currently operates. Criminal justice decisionmakers do their best to achieve these goals, but they typically do not have sufficient information about defendants, the risks they pose, or the best methods to reduce these risks. Instead, key decisions are often made in a subjective manner, based on experience and instinct, rather than on an objective, data-driven assessment of a defendant's risk level and the most effective approach to protecting public safety in each case.

For two years, LJAF has been working to improve how decisions are made during the earliest part of the criminal justice process, from the time a defendant is arrested until the case is resolved. Our strategy has been to use data, analytics, and technology to promote a transition from subjective to more objective decision-making. To that end, we are developing easy-to-use, data-driven risk assessments

for judges and prosecutors and are exploring tools to assist police in determining when to arrest an individual and when to issue a citation instead. In addition, we are pursuing research into key criminal justice issues, including the impacts of pretrial release and detention; and we are investigating the long-unanswered question of what approaches are successful at reducing future crime – and for whom they are most effective. The LJAF research released today – which was conducted in partnership with two of the nation’s leading pretrial justice researchers, Dr. Marie VanNostrand and Dr. Christopher Lowenkamp – is a key part of this effort. The central findings of these three studies are summarized below:

### The Effect of Pretrial Detention on Sentencing:

A study, using data from state courts, found that defendants who were detained for the entire pretrial period were over four times more likely to be sentenced to jail and over three times more likely to be sentenced to prison than defendants who were released at some point pending trial. And their sentences were significantly longer – almost three times as long for defendants sentenced to jail, and more than twice as long for those sentenced to prison. A separate study found similar results in the federal system.

### The Hidden Costs of Pretrial Detention:

Using statewide data from Kentucky, this study uncovered strong correlations between the length of time low- and moderate-risk defendants were

detained before trial, and the likelihood that they would reoffend in both the short- and long-term. Even for relatively short periods behind bars, low- and moderate-risk defendants who were detained for more days were more likely to commit additional crimes in the pretrial period – and were also more likely to do so during the two years after their cases ended.

### The Impact of Pretrial Supervision:

This study drew on data from two states, one eastern and one western, and found that moderate- and high-risk defendants who received pretrial supervision were significantly more likely to appear for their day in court than those who were unsupervised. In addition, long periods of supervision (more than 180 days) were related to a decrease in new criminal activity; however, no such effect was evident for supervision of 180 days or less.

These studies raise significant questions about the way our pretrial system currently works. They also demonstrate the tremendous need for additional research in this area. As part of our commitment to using data, analytics, and technology to transform the front end of the criminal justice system – what we call *Moneyballing* criminal justice – LJAF stands committed to pursuing a robust research agenda to answer these pressing questions and to make sure the system is as safe, fair, and cost-effective as possible.

Key decisions are often made in a subjective manner, based on experience and instinct, rather than on an objective, data-driven assessment of a defendant’s risk level and the most effective approach to protecting public safety in each case.

## I. THE EFFECT OF PRETRIAL DETENTION ON SENTENCING

Two recent studies funded by LJAF shed new light on the impact that a defendant's release or detention before trial can have on the eventual sentence in the case. These studies – one using data from federal courts and the other using data from state courts – demonstrate that pretrial detention is associated with an increase in the likelihood a defendant will be sentenced to jail or prison, as well as the length of incarceration.<sup>1</sup> The findings serve to underscore just how important judges' decisions regarding pretrial release and detention truly are.

The state study analyzed records of over 60,000 defendants arrested in Kentucky in 2009 and 2010. It found that defendants detained for the entire pretrial period were over four times more likely to be sentenced to jail and over three times more likely to be sentenced to prison than defendants who were released at some point pending trial. Sentences were also significantly longer – nearly three times as long for defendants sentenced to jail and more than twice as long for those sentenced to prison.

The analysis focused on the relationship between detention and sentencing. The study controlled for the other variables in the data set, meaning that defendants who were compared to one another were similar in terms of age, gender, race, marital status, risk level, offense type, incarceration history and other factors. In other words, defendants who were similar in every known way – except for their pretrial release status – had different outcomes at sentencing.

Studies demonstrate that pretrial detention is associated with an increase in the likelihood a defendant will be sentenced to jail or prison, as well as the length of incarceration.

<sup>1</sup> Jails are usually locally operated and are used to detain individuals prior to trial or can be used to incarcerate individuals who have been sentenced, typically for one year or less. Prisons are state or federally run and are used to incarcerate sentenced individuals typically for one year or more, and often for much longer.

## Impact of Pretrial Detention on State Sentencing

Compared to defendants released at some point prior to trial, defendants held for the entire pretrial detention period had:



The second study examined similar questions in the context of federal courts. The study, which is currently under review by a peer-reviewed journal, was conducted by Dr. Lowenkamp, Dr. VanNostrand, Dr. James Oleson of the University of Auckland, Timothy Cadigan of the Administrative Office of the United States Courts (retired), and Dr. John Wooldredge of the University of Cincinnati. Drawing on 1,798 cases from two United States District Courts, the research found that pretrial release reduces sentence length for all defendants, even if release is ultimately revoked due to a defendant's failure to adhere to conditions of release. Indeed, detained defendants' sentences are, on average, nearly two times longer than those of released defendants. And while defendants who were released and later revoked received longer sentences than defendants who completed pretrial release without incident, their sentences were still shorter than defendants who were never released at all. These findings were obtained while controlling for known factors.

The importance of these findings is clear when considering the state of our federal prison system. More than 110,000 defendants went through the federal court system in 2011, 86 percent of whom were sentenced to federal prison for an average sentence of almost 5½ years. Since 1980, the Bureau of Prison population has grown tenfold. The fiscal costs of this increase are staggering: Each prisoner in the system costs taxpayers between \$21,006 (minimum security) and \$33,930 (high security) annually.

## **II. THE HIDDEN COSTS OF PRETRIAL DETENTION**

The primary goal of the American criminal justice system is to protect the public. But what if, rather than protecting society, the pretrial phase of the system is actually helping to create new repeat offenders?

That is the question raised by an LJAF-funded study that analyzed data on over 153,000 defendants booked into jail in Kentucky in 2009 and 2010. The analysis showed that low-risk defendants who were detained pretrial for more than 24 hours were more likely to commit new crimes not only while their cases were pending, but also years later. In addition, they were more likely to miss their day in court. Conversely, for high-risk defendants, there was no relationship between pretrial incarceration and increased crime. This suggests that high-risk defendants can be detained before trial without compromising, and in fact enhancing, public safety and the fair administration of justice.

Judges, of course, do their best to sort violent, high-risk defendants from nonviolent, low-risk ones, but they have almost no reliable, data-driven risk assessment tools at their disposal to help them make these decisions. Fewer than 10 percent of U.S. jurisdictions use any sort of risk-assessment tools at the pretrial stage,

and many of the tools that are in use are neither data-driven nor validated. Kentucky provided a unique research opportunity because it used a validated tool that provided us with an understanding of the level of risk that individual defendants posed. While risk assessments could not be completed on approximately 30 percent of defendants, we were able to study whether, for the remaining 70 percent, the impact of pretrial detention varied depending on their risk levels.

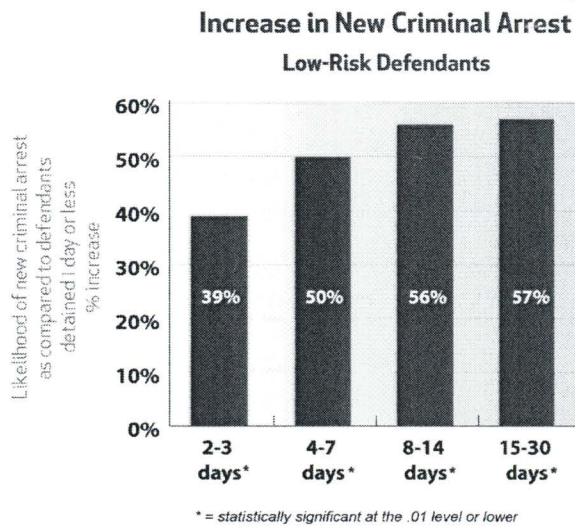
This study indicates that effectively distinguishing between low-, moderate-, and high-risk defendants at the pretrial stage could potentially enhance community safety.

The research findings are summarized below.

### **A. PRETRIAL DETENTION AND PRETRIAL OUTCOMES**

This study explored whether there is a link between time spent in pretrial detention and the commission of new criminal activity or failure to appear in court. The study looked at 66,014 cases in which the defendants were released at some point before trial, and found that even very small increases in detention time are correlated with worse pretrial outcomes. The research controlled for other known variables. The study found that, when held 2-3 days, low-risk defendants were almost 40 percent more likely to commit new crimes before trial than equivalent defendants held no more than 24 hours. The study indicates that the correlation generally escalates as the time behind bars increases: low-risk defendants who were detained for 31 days or more offended 74 percent more frequently than those who were released within 24 hours. A similar pattern held for moderate-risk defendants, though the percentage increase in rates of new criminal activity is smaller.

Interestingly, for high-risk defendants, the study found no relationship between pretrial detention and increased new criminal activity. In other words, there is no indication that detaining high-risk defendants for longer periods before trial will lead to a greater likelihood of pretrial criminal activity.

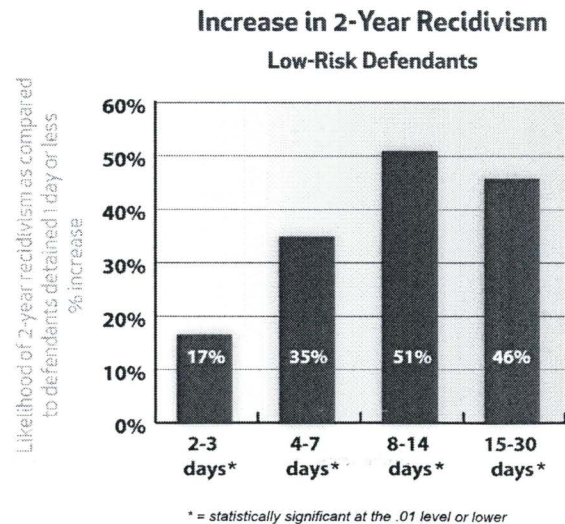


This same pattern emerged for failure to appear. Low-risk defendants held for 2-3 days were 22 percent more likely to fail to appear than similar defendants (in terms of criminal history, charge, background, and demographics) held for less than 24 hours. The number jumped to 41 percent for defendants held 15-30 days. For low-risk defendants held for more than 30 days, the study found a 31 percent increase in failure to appear. Again, however, detention was found to have no impact on high-risk defendants' rates of missing court, and for moderate-risk defendants, the effect was minimal.

## B. PRETRIAL DETENTION AND LONG-TERM RECIDIVISM

Even for relatively short periods of detention, according to the study, the longer a low-risk defendant was detained before trial, the more likely he was to commit a new crime within two years of case disposition. Specifically, controlling for other known variables, the study found that pretrial detention is associated with long-term recidivism, particularly for low-risk defendants.

For detention periods of up to 14 days, according to the study, the longer a low-risk defendant was detained before trial, the more likely he was to commit a new crime within two years of case disposition. Compared to individuals released within 24 hours of arrest, low-risk defendants held 2-3 days were 17 percent more likely to commit another crime within two years. Detention periods of 4-7 days yielded a 35 percent increase in re-offense rates. And defendants held for 8-14 days were 51 percent more likely to recidivate than defendants who were detained less than 24 hours. Although the effects began to diminish slightly beyond 14 days, low-risk defendants remained significantly more likely to reoffend in the long run as compared to defendants released within 24 hours. Again, these effects were observed among defendants who were matched on all the other measurable variables. For high-risk defendants, however, more days spent in pretrial detention were not associated with an increase in recidivism.



## C. POLICY IMPLICATIONS

In our criminal justice system today, judges frequently do not have an objective, scientific, and data-driven risk assessment to assist them in understanding the amount of risk that an individual defendant poses. Moreover, length of detention is frequently determined by factors totally unrelated to a defendant's risk level – for instance, the administrative speed with which a

given court system can process defendants. In some jurisdictions, defendants may be held up to three days before their first opportunity to go before a judge who will determine whether they are detained or released. What we see from this research is that the costs of these delays may potentially result in increased crime. The study finding regarding high-risk defendants is equally important: There appears to be no tradeoff between protecting the public during the pretrial period and improving public safety years later.

Although these studies do not demonstrate causation, they show correlations between length of detention and negative outcomes for low- and moderate-risk defendants. Additional studies are needed to further research these and other questions.

### III. THE IMPACT OF PRETRIAL SUPERVISION

Although one of the most important decisions made before a criminal trial is whether to release or detain a defendant, the need for more data-driven tools does not end there. Judges frequently assign conditions to defendants they release, which may include pretrial supervision. There are many different models of pretrial supervision, some of which include periodic calls or meetings with a pretrial services officer, drug testing or treatment, or electronic monitoring. Currently, however, judges have very little data to help them determine who to assign to supervision, and what type of supervision works best for whom. With this in mind, LJAF is pursuing a number of studies of conditions of release including pretrial supervision.

In its initial study of pretrial supervision, LJAF researchers looked at 3,925 defendants from two states, one eastern and one western, and compared 2,437 defendants who were released without supervision with 1,488 who were released with supervision. In order to determine whether the effects of supervision varied

based on defendants' risk levels, researchers used an existing validated risk assessment to assign defendants to risk categories.

The study found that moderate- and high-risk defendants who received pretrial supervision were significantly more likely to appear for their day in court. When controlling for state, gender, race, and risk, moderate-risk defendants who were supervised missed court dates 38 percent less frequently than unsupervised defendants. For high-risk defendants, the reduction was 33 percent. Analysis of various samples of the low-risk population generated inconsistent findings about the impacts of supervision on failure-to-appear rates – suggesting that the relationship between supervision for low-risk defendants and failure to appear is minimal or nonexistent.

In addition, pretrial supervision of more than 180 days was statistically related to a decrease in the likelihood of new criminal activity before case disposition. Defendants supervised pretrial for six months or more were 22 percent less likely to be arrested for new crimes before case disposition. While this finding is intriguing, the data set was not specific enough with regard to type of supervision to draw definite conclusions about the impact of supervision on new criminal activity pending case disposition.

This study is significant because it tells us that pretrial supervision may be effective in reducing failure to appear rates and, after a time, new criminal activity. However, while it appears that supervision generally helps prevent negative pretrial outcomes, details are scarce. For instance, in this study, no information was provided as to what type of supervision (minimal, moderate, or intensive) defendants received. And what types of supervision work for which defendants is something the field does not yet know. LJAF is committed to pursuing additional research in these important areas.



#### IV. CONCLUSION

This research demonstrates how critical it is to focus on the pretrial phase of the criminal justice system. Pretrial decisions made by judges, police, and prosecutors determine, as Caleb Foote stated in 1956, “mostly everything.” These studies demonstrate that pretrial decisions may impact whether or not a defendant gets sentenced to jail or prison, and for how long; that an increased length of pretrial detention for low- and moderate-risk defendants is associated with an increased likelihood that they will reoffend both during the pretrial period and two years after the conclusion of their case; and that supervision may reduce failure to appear rates and, when done for 180 days or more, new criminal activity.

As important as these findings are, however, there remains an acute need for more research in this area. Moreover, for ethical and practical reasons, it would be difficult in many instances to conduct randomized controlled trials where judges would be asked to make detention, release, and supervision decisions based on research objectives. As a result, studies such as these do not prove causation: Although the findings noted above are observational, and not causal, the correlations are so striking that they merit further research.

LJAF is committed to researching questions that have arisen in these studies, and many others. This reflects our commitment to leveraging research, data, and technology to help jurisdictions improve public safety, reduce crime, make the best use of limited resources, and ensure that the justice system is working as fairly and efficiently as possible.

The full research reports for the studies can be accessed at:  
[www.arnoldfoundation.org/research/criminaljustice](http://www.arnoldfoundation.org/research/criminaljustice).

#### About Laura and John Arnold Foundation

Laura and John Arnold Foundation is a private foundation that currently focuses its strategic investments on criminal justice, education, public accountability, and research integrity.

LJAF has offices in Houston and New York City.

# JUSTICE CENTER

THE COUNCIL OF STATE GOVERNMENTS

**Testimony on House Bill 1041**  
to  
**The Senate Judiciary Committee**

**By Marc Pelka**  
**Deputy Director of Programs, State Initiatives**  
**Council of State Governments Justice Center**  
**March 15, 2017**

Chairman Armstrong, Vice Chairwoman Larson, and members of the Senate Judiciary Committee, thank you for the opportunity to testify before you on HB 1041.

**I. North Dakota's Justice Reinvestment Approach**

Over the past decade, the number of people in North Dakota's prisons and jails on probation and on parole has increased, and the state and county governments have spent tens of millions of dollars expanding the capacity of existing correctional facilities and building new facilities to accommodate this growth. Unless action is taken, the prison population is projected to increase 36 percent, or 652 people, by FY2022.<sup>1</sup> Accommodating this growth would cost at least \$115 million in new contract beds.

In October 2015, to begin a process to address these challenges, North Dakota state leaders from all three branches requested technical assistance from The Council of State Governments (CSG) Justice Center to use a data-driven justice reinvestment approach to help the state reduce a rapidly growing prison population, contain corrections spending, and reinvest savings in strategies that can reduce recidivism and increase public safety.

Four months later, the state embarked on a justice reinvestment approach, with an interim committee, The Incarceration Issues Committee, being formed, which was composed of state lawmakers, judiciary members, corrections officials, state's attorneys, and local law enforcement executives, to study the state's criminal justice system.

Between August 2015 and September 2016, the Incarceration Issues Committee met eight times in all-day meetings. Its work built on efforts that the Commission on Alternatives to Incarceration that had occurred during the 2013-2014 interim. CSG Justice Center staff presented in person at five of the Incarceration Issues Committee's meetings, covering intensive data analysis and extensive input from criminal justice system stakeholders. At the July and September meetings, the interim committee considered draft bill language, the final product of which is reflected in HB 1041.

**II. Findings and Challenges**

By reviewing intensive data analysis and extensive stakeholder input, the committee found that:

1. The increasing numbers of people admitted to prison for lower-level nonviolent offenses and people revoked from supervision are substantial drivers of prison population growth in the state;
2. The use of prison for people who violate the conditions of their supervision and people convicted of lower-level nonviolent offenses is stretching corrections resources and limiting the state's ability to use effective sanctions to hold its supervision population accountable; and
3. These criminal justice system challenges are exacerbated by the fact that people supervised in the community do not have access to sufficient treatment for mental illnesses and substance use disorders, which hampers the state's ability to reduce recidivism.

### III. HB 1041

States across the country are enacting policies that contain the principle that prisons and jails should prioritize people with serious and violent offenses. Meanwhile, a range of effective options — diversion, alternatives to incarceration, probation and parole supervision, and community programs and treatment — should be available to hold appropriate populations accountable with programs and supervision responsive to the person's risk and type of needs.

HB 1041 prioritizes people with low-level, nonviolent offenses for probation. While retaining judicial discretion in individual cases to impose prison by citing aggravating factors, structure is added to the statutes to affirm probation as an appropriation option for people with low-level, nonviolent offenses.

In North Dakota, outcomes for people sentenced to probation are slightly better than outcomes for people sentenced to prison: 27 percent of people who are sentenced to prison return within three years of release, and 24 percent of people sentenced to probation have their supervision revoked and are admitted to prison for a new offense or for a violation of the conditions of their supervision within the same time period.<sup>ii</sup> Not only can effective probation supervision help to address a person's criminogenic needs and improve outcomes (coupled with treatment, if necessary), but probation is considerably less expensive than prison: \$4 per day per person compared to \$114 per day per person, respectively.

Another policy provides swift, cost-effective incarceration sanctions for probationers who violate their conditions of supervision. Revoking people from parole and probation puts a strain on jail and prison populations. In FY2014, 58 percent of parolees and probationers who were revoked in North Dakota were sentenced to prison and 29 percent were sentenced to jail.<sup>iii</sup> In the same year, parolees and probationers who were revoked to prison spent an average of 178 days and 391 days in prison, respectively, prior to being released, and made up 27 percent of the prison population.<sup>iv</sup>

This policy would allow courts to attach up to 30 days of incarceration that may be applied as a sanction during the probation term. Also, unless factors in the underlying offense or the violation behavior are found, the first time that a probationer violates conditions and appears before the court for a revocation hearing, he or she would be eligible to receive up to 90 days of incarceration. Limiting the term of incarceration for people who violate conditions of their supervision but are not charged with a new crime can curb prison and jail population growth while ensuring that the degree of punishment is proportionate to the seriousness of the violation.

Criminal justice system practitioners presented to the committee that the sentencing changes in this legislation would have a positive effect in how cases are discharged in the courts. The increase in penalties and penalty enhancements in the Century Code have a major effect on plea negotiations and the final discharge of cases, members said.

It adjusts penalties to better fit the crime. It addresses people with offenses involving drug use: possession, first-time intentional ingestion, and possession of paraphernalia. The is intended to reduce the number and severity of collateral consequences a person receives following a conviction for certain drug offenses. These policies will reduce the number of barriers that are erected in a person's way toward transitioning from being in the criminal justice system to living a crime-free life in which they are working and paying taxes.

Interim committee members returned time and again to the issue of the lack of access to high-quality behavioral health treatment in the community. State's attorneys, judges, and other stakeholders report that drug use is common among people who commit crimes and violate the terms of their supervision. Research shows that behavioral health treatment tailored to the unique needs of people in the justice system when combined with effective corrections supervision reduces recidivism and improves recovery outcomes. Senate Bill 2015 contains policies that would help both cultivate an adequate network of community behavioral health care practitioners and increase access to effective community-based behavioral health treatment for people in the criminal justice system.

#### **IV. Conclusion**

Members of the Incarceration Issues Committee and the Commission on Alternatives to Incarceration deserve tremendous credit for the work that they, along with criminal justice system stakeholders, have done to work on these issues and develop the recommendations contained in HB 1041.

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<sup>i</sup> Projected increase from prison population as of June 30, 2016.

<sup>ii</sup> For inmates released from prison in FY2012 and felony probations beginning in FY2012. CSG Justice Center analysis of DOCR supervision and prison sentence data.

<sup>iii</sup> The remaining people revoked from probation or parole were returned to supervision (9 percent) or terminated from supervision (4 percent). CSG Justice Center analysis of DOCR supervision data.

<sup>iv</sup> CSG Justice Center analysis of DOCR prison one-day snapshot and release data files

3/15/17

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**PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1041**

Page 1, line 14, after “assembly” add “to provide an appropriation; to provide an effective date; and to declare an emergency”

Page 8, line 11, remove “involving domestic violence; an offense”

Page 8, line 11, after “violation” insert “of chapters 12.1-06.2, 12.1-08, 12.1-09, section 12.1-16-03,

Page 8, line 11, remove “section 12.1-17-07.1,”

Page 8, line 11, replace “chapter” with “chapters 12.1-17, 12.1-18, 12.1-22 except subsection 1 of section 12.1-22-02 and sections 12.1-22-03 and 12.1-22-04, section 12.1-23-2.1, chapter 12.1-25, an offense subject to registration under section 12.1-32-15, chapter 12.1-36”

Page 8, line 12, remove “12.1-41”

Page 8, line 12, replace “sections” with “section”

Page 8, line 12, remove “14-09-22” and insert immediately thereafter “, and including attempt, accomplice, and conspiracy to commit the offenses”

Page 8, line 13, after “weapon” insert “, and including attempt, accomplice, and conspiracy to commit an offense involving a weapon”

**SECTION 21. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$110, 916, or so much of the sum as may be necessary, and there is appropriated out of federal funds, the sum of \$1,532.785, or so much of the sum as may be necessary, to the department of human services to implement sections 17 and 18 of this Act.

**SECTION 22. EFFECTIVE DATE.** Section 7, 8, and 9 of this Act is effective January 1, 2018.

**SECTION 23. EMERGENCY.** Sections 1, 2, 3, 4, 5, 6, 10, 11, 12, 13, 14, 15, 17, and 18 are declared to be an emergency.

Re-number accordingly.

# Justice Reinvestment in North Dakota

## Policy Framework



JANUARY 2017

### Overview

Over the past decade, the number of people in North Dakota’s prisons and jails, on probation, and on parole has increased, and the state and county governments have spent tens of millions of dollars expanding the capacity of existing correctional facilities and building new facilities to accommodate this growth. Unless action is taken, the prison population is projected to grow by 36 percent by FY2022 at a cost of \$115 million to accommodate the projected growth.<sup>1</sup>

The increasing numbers of people admitted to prison for lower-level nonviolent offenses and people revoked from supervision are substantial drivers of prison population growth in the state. Together, these populations make up almost three-quarters of all prison admissions.<sup>2</sup> The use of prison for people who violate the conditions of their supervision and people convicted of lower-level nonviolent offenses is stretching corrections resources and limiting the state’s ability to use effective sanctions to hold its supervision population accountable. These criminal justice system challenges are exacerbated by the fact that people supervised in the community do not have access to sufficient treatment for mental illnesses and substance use disorders, which

hampers the state’s ability to reduce recidivism. North Dakota policymakers have reached a crossroads: if the state does not address the factors contributing to crime and recidivism, it will be forced to spend tens of millions more to accommodate prison population growth.

In January 2016, the state embarked on a justice reinvestment approach, and key stakeholders began working together to develop policies that will curb prison population growth by reducing the number of people in prison who have committed lower-level felony offenses and who have violated the conditions of their supervision. These policies will also ensure that people with serious behavioral health needs and those assessed as being at a high risk of reoffending receive effective post-release supervision programming, and treatment as necessary. By implementing these proposed policies, the state will avert a minimum of \$63.8 million by 2022 in costs for the contract beds that would be necessary to accommodate the projected prison population growth, and will be able to reinvest those savings in strategies that can reduce recidivism and increase public safety.

### THE INCARCERATION ISSUES COMMITTEE

In October 2015, Governor Jack Dalrymple, Chief Justice Gerald VandeWalle, Attorney General Wayne Stenehjem, Senate Majority Leader Rich Wardner, House Majority Leader Al Carlson, Senate Minority Leader Mac Schneider, House Minority Leader Kenton Onstad, and Legislative Management Chairman Raymond Holmberg requested intensive technical assistance from The Council of State Governments (CSG) Justice Center with support from The Pew Charitable Trusts and the U.S. Department of Justice’s Bureau of Justice Assistance to use a data-driven justice reinvestment approach to help the state reduce the corrections population, contain corrections spending, and reinvest a portion of the savings in strategies that can reduce recidivism and increase public safety.

Passed by the North Dakota legislature and signed in 2015, HB 1165 and HB 1015 established the interbranch Incarceration Issues Committee (IIC), which was composed of state lawmakers, judiciary members, corrections officials, county attorneys, and local law enforcement executives, to study the state's criminal justice system. The 16-member committee met five times between January and September 2016 to review analyses conducted by the CSG Justice Center and discuss policy options, and has since disbanded.

The IIC developed legislation that sought to use taxpayer dollars more effectively to make the state safer. In addition to the policy framework presented in this report, members of the IIC put forth recommendations that would prioritize treatment over incarceration for people convicted of crimes related to drug use; establish medical parole for people in prison with a terminal medical condition; and modify the certification requirements for a Licensed Addiction Counselor (LAC).<sup>3</sup>

## COMMITTEE MEMBERS

### *Chairman*

Ron Carlisle, State Senator

### *Vice Chairman*

Jon O. Nelson, State Representative

### *Members*

Ron Guggisberg, State Representative

Kim Koppelman, State Representative

John Grabinger, State Senator

Terry M. Wanzek, State Senator

Leann K. Bertsch, Director, Department of Corrections and Rehabilitation

Thomas Erhardt, Southwest District Program Manager, Department of Corrections and Rehabilitation

Rozanna Larson, Ward County State's Attorney

Douglas Mattson, District Court Judge

Frank Racek, Presiding District Court Judge

Aaron Roseland, Adams County State's Attorney

Scott Steele, Golden Valley County Sheriff

Wayne Stenehjem, Attorney General

Gerald W. VandeWalle, Supreme Court Chief Justice

Randy Ziegler, Deputy Chief of Bismarck Police Department

## Data Collection

An extensive amount of data was provided to the CSG Justice Center by the North Dakota Attorney General Bureau of Criminal Investigation, the Administrative Office of the Courts, and the Department of Corrections and Rehabilitation (DOCR). In total, more than 1.5 million individual data records were analyzed, including: supervision and prison populations; length of time served in prison and on supervision; statutory and administrative

policies; and availability of treatment and programs designed to reduce recidivism. More than 160 in-person meetings and conference calls with judges, state's attorneys, public defenders, law enforcement officials, supervision officers, behavioral health service providers, victims and their advocates, advocates for people involved in the criminal justice system, local officials, and others helped provide context for the data.

## Summary of Challenges and Findings

Through its comprehensive review of state data, the Incarceration Issues Committee identified three key challenges and related findings.

### KEY CHALLENGES

- 1. Growth in prison and jail populations.** North Dakota's prison and jail populations are among the fastest growing in the country. Unless state policymakers act, the prison population is projected to increase 36 percent by FY2022. Accommodating this growth would cost at least \$115 million in new contract beds.
- 2. Ineffective and costly responses to supervision violations.** Probation and parole officers lack the means to hold people accountable by responding to violations swiftly and cost effectively and connecting people with behavioral health needs to high-quality treatment. As a result, people commit numerous violations before being revoked to prison, which is expensive and does not improve their access to treatment or other resources upon release.
- 3. Inadequate substance use treatment.** State's attorneys, judges, and other stakeholders report that drug use is common among people who commit crimes and violate the terms of their supervision, but treatment is not readily available. A shortage of community treatment options and providers impedes people's access to needed services that, when combined with effective supervision, are proven to reduce recidivism.

### KEY FINDINGS

- **North Dakota's prison population and corrections spending have grown substantially in recent years.** Between FY2005 and FY2015, the state's prison population increased 32 percent, from 1,329 to 1,751 people.<sup>4</sup> From the biennial budget years 2005 to 2015, general fund appropriations to the DOCR more than doubled, from \$83 million to \$178 million.<sup>5</sup>
- **The county jail population has nearly doubled in the past decade.** From 2005 to 2015, North Dakota's county jail population one-day count rose 83 percent, from 959 to 1,754 people. The sharpest increase occurred between 2012 and 2015, when the population shot up by 40 percent, from 1,250 people to 1,754 people.<sup>6</sup>
- **In recent years, North Dakota has spent tens of millions of dollars expanding existing prison capacity, but the state's prisons are full again, and hundreds of people are housed in contract facilities.** Although the FY2009–2011 state budget provided \$64 million for expansion of the North Dakota State Penitentiary, the prison reached capacity less than five years after construction was completed. Moreover, the state has established contracts for beds in the North Dakota State Hospital, county jails, and facilities operated by nonprofit agencies.<sup>7</sup> In FY2016, 16 percent of the prison population, or 278 people, were housed in contract beds at an estimated annual cost of \$7.6 million.<sup>8</sup>
- **Of North Dakota's 53 counties, 9 are currently engaged in construction or expansion projects for their jails.** Once completed, these new facilities will provide an anticipated 48-percent increase in statewide jail capacity.<sup>9</sup>
- **Native Americans are disproportionately represented in North Dakota's prisons.** In FY2014, Native Americans accounted for 5 percent of the state's general population but constituted 21 percent of the state's prison population.<sup>10</sup>



■ **Domestic violence presents a significant threat to public safety, and current programming to address it is inadequate.** Between 2006 and 2014, 44 percent of all homicides (54 of 122 homicides) in North Dakota involved domestic violence.<sup>11</sup> Moreover, a review of domestic violence-involved fatalities identified one or both parties as having a history of alcohol or substance use, sometimes with a history of co-occurring mental illnesses, a common factor across these cases.<sup>12</sup> There are nine batterers' intervention programs across the state, but they operate with minimal oversight, and the quality of treatment varies from program to program.<sup>13</sup>

■ **The number of people on probation and parole in North Dakota grew substantially in the last decade.** From FY2006 to FY2015, North Dakota's probation population increased by 39 percent (from 5,466 to 7,613 active cases), and the parole population increased 55 percent (from 484 to 751 active cases).<sup>14</sup>

■ **People who fail on supervision and are revoked to prison and jail are creating a strain on county and state facilities.** In FY2014, 45 percent of probation revocations were the result of supervision violations and did not involve new criminal offenses. Of people who were revoked from probation, 33 percent were required to serve terms in jail, and another 51 percent were required to serve time in prison. In that same year, people who had been revoked from probation or parole occupied 27 percent of North Dakota's prison beds.<sup>15</sup>

■ **People admitted to prison for drug and property offenses and people revoked from probation and parole make up almost three-quarters of all prison admissions.** In FY2014, convictions for drug and property offenses accounted for 33 percent of prison

admissions and cost the state approximately \$19.5 million, while probation and parole revocations accounted for 38 percent of admissions and cost the state approximately \$16.7 million.<sup>16</sup> Of the total admissions to prison for new offenses, 62 percent were for Class C felonies, consisting mostly of lower-level drug and property crimes.<sup>17</sup>

■ **A substantial percentage of people sentenced to prison for low-level, nonviolent offenses have not served a prior felony probation sentence.** There is no structure in place to help courts choose among prison, probation, and other sentencing options based on felony class and type of offense. In FY2014, 36 percent of people admitted to prison for nonviolent Class C felony offenses had not served a prior probation term.<sup>18</sup>

■ **Many people in the criminal justice system need substance use treatment.** Supervision officers in the state estimate that 75 percent of people on supervision are in need of substance use treatment, but there are long wait periods to access these services. From FY2006 to FY2014, the number of felony sentences for drug offenses increased by 51 percent, with the sharpest increase occurring between FY2011 and FY2014 (148 percent). In FY2014, four out of five felony drug sentences were for possession.<sup>19</sup>

■ **The availability of substance use treatment is not keeping pace with the level of need for all North Dakota residents.** North Dakota has the sixth-highest rate of alcohol and drug abuse in the country but is ranked 43rd in availability of treatment.<sup>20</sup> Participation in substance use treatment decreased 15 percent between 2009 and 2013 for the general population.<sup>21</sup>

## Summary of Policy Options and Impacts

The policy options listed below are designed to achieve the following goals:

- Prioritize jail and prison space for people who are convicted of serious and violent offenses.
- Strengthen supervision by focusing supervision and programming resources on people who are most likely to reoffend.
- Increase the capacity and effectiveness of community-based behavioral health services and batterers' intervention programs.

*Icons appear in the policy options section of this report to indicate which options will avert prison population growth, provide tools to reduce pressure on jails, and increase public safety and reduce recidivism.*

### POLICY OPTIONS

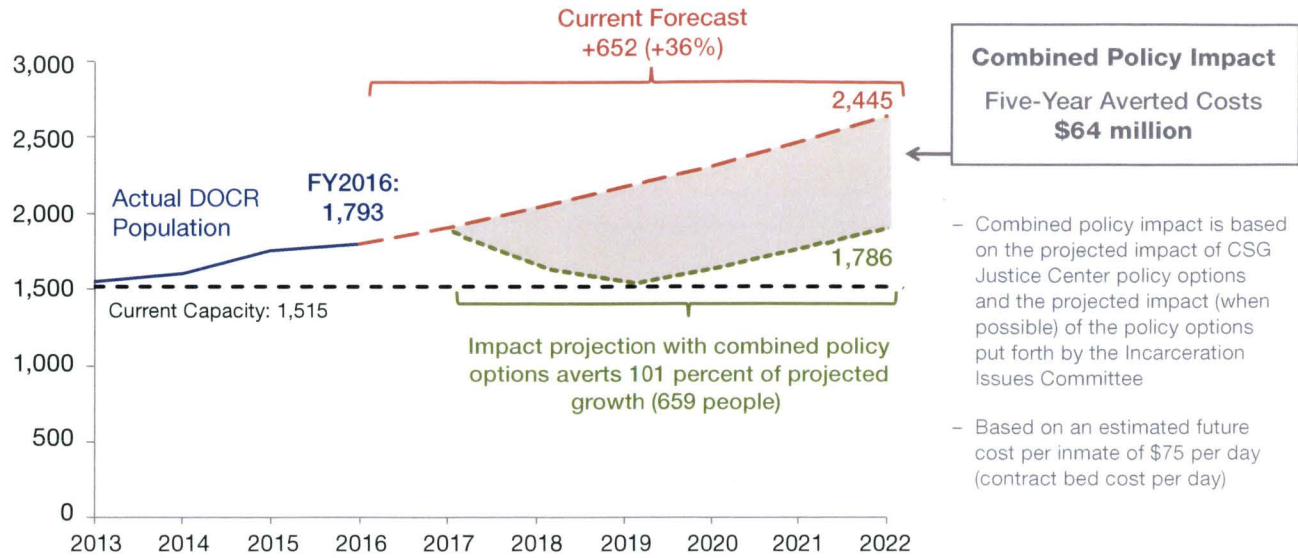
1. Use probation instead of prison to hold people who are sentenced for nonviolent Class C felony offenses accountable.
2. Respond to probation and parole violations with more effective and less costly sanctions that can reduce further violations.
3. Provide the most intensive supervision at the beginning of a person's probation term, as necessary, when risk of reoffending is highest.
4. Expand the availability of and access to community-based behavioral health services for people in the criminal justice system.
5. Establish a pretrial supervision pilot program and adopt a pretrial risk assessment tool.
6. Apply the state's existing good time policy to time served in jail as well as prison.
7. Improve the quality of and access to batterers' intervention programs.
8. Improve the ability to collect and analyze outcome and demographic data.
9. Assess, track, and ensure the sustainability of recidivism-reduction strategies and increase statewide data collection and analysis efforts.

### PROJECTED IMPACT

As a package, the policies described in this report have the potential to generate substantial savings and lower recidivism for North Dakota. By averting the projected growth in the state prison population, effective implementation of the policy framework will help the state avoid up to \$63.8 million in contract bed costs to accommodate the growing prison population by FY2022. While the DOCR currently projects the prison population to grow 36 percent, from 1,793 people in FY2016 to 2,445 people in FY2022, this policy framework is projected to avert the forecasted growth by as many as 659 people. (See Figure 1)

The CSG Justice Center projection impact analysis is based on FY2006–FY2015 DOCR prison population and admission data, DOCR probation and parole data, and court sentencing data for the same time period. Operating cost estimates are based on the DOCR FY2016 average, per-day contract bed cost of \$75. The baseline population projection assumes a rate of growth in prison admissions of 10 percent per year, based on the average rate of growth in admissions in prior years.

**FIGURE 1. PROJECTED IMPACT OF POLICY OPTIONS ON DOCR PRISON POPULATION PROJECTIONS**



**RECOMMENDED REINVESTMENT**

As the state begins to implement the legislation, it is projected to avert \$4.2 million in costs by the end of FY2018, increasing to \$63.8 million by FY2022. Averting costs associated with additional contract beds enables North Dakota’s policymakers to reinvest in expanding community-based treatment and services to address mental illness, substance use, and criminal behavior. These reinvestments will impact both public safety and public health and will contribute to sustained reductions in state general fund expenditures on corrections.<sup>22</sup>

In FY2018, an upfront investment of \$4.2 million in community-based programs and treatment and sustainability policies is recommended, growing to \$8.7 million in FY2022. The cost savings and proposed levels of reinvestment are based on a projected impact to the prison population as calculated by the CSG Justice Center in comparison to the DOCR population forecast. (See Figure 2)

**FIGURE 2. SUMMARY OF JUSTICE REINVESTMENT POLICY FRAMEWORK AVERTED COSTS AND REINVESTMENTS**

	FY2018	FY2019	FY2020	FY2021	FY2022	TOTAL	
<b>Total Averted Costs</b>	<b>\$4.2M</b>	<b>\$11.3M</b>	<b>\$14.8M</b>	<b>\$16.1M</b>	<b>\$17.4M</b>	<b>\$63.8M</b>	
<b>Reinvestments</b>	Behavioral health reinvestment	\$3.2M	\$4.7M	\$6.4M	\$7.1M	\$7.7M	\$29.0M
	Pretrial pilot program	\$265K	\$265K	\$265K	\$265K	\$265K	\$1.3M
	Improved Batterers' Intervention Programs	\$585K	\$585K	\$585K	\$585K	\$585K	\$2.9M
	Sustainability package	\$150K	\$150K	\$150K	\$150K	\$150K	\$750K
	<b>Total Reinvestment</b>	<b>\$4.2M</b>	<b>\$5.7M</b>	<b>\$7.4M</b>	<b>\$8.1M</b>	<b>\$8.7M</b>	<b>\$34.0M</b>
<b>Projected Net Savings</b>	<b>\$0M</b>	<b>\$5.6M</b>	<b>\$7.4M</b>	<b>\$8.0M</b>	<b>\$8.7M</b>	<b>\$29.8M</b>	

## Policy Options

### POLICY OPTION 1:

**Use probation instead of prison to hold people who are sentenced for nonviolent Class C felony offenses accountable.**



A Class C felony encompasses more than 350 different criminal offenses, the majority of which are drug and property offenses, and carries a maximum sentence of five years.<sup>23</sup> In FY2014, 62 percent of people admitted to prison for new offenses were sentenced for a Class C felony offense.<sup>24</sup>

Outcomes for people sentenced to probation are slightly better than outcomes for people sentenced to prison: 27 percent of people who are sentenced to prison return within three years of release, and 24 percent of people sentenced to probation have their supervision revoked and are admitted to prison for a new offense or for a violation of the conditions of their supervision within the same time period.<sup>25</sup> Not only can effective probation supervision help to address a person's criminogenic needs and improve outcomes (coupled with treatment, if necessary), but probation is considerably less expensive than prison: \$4 per day per person compared to \$114 per day per person, respectively.

**This policy option creates a statutory presumption that people convicted of Class C felonies, excluding violent or sex offenses, will be sentenced to probation rather than incarceration, although judicial discretion will be retained in individual cases.** Courts will have the discretion to override the presumption if the person is sentenced to a consecutive term in prison on a more serious charge or if there are substantial and compelling reasons the defendant cannot be effectively and safely supervised in the community.

States are increasingly adopting policies to reserve prison space for people convicted of serious and violent offenses while using probation for people convicted of lower-level, nonviolent felony offenses. If a greater share of people with Class C nonviolent felony offenses received probation sentences, it would avert prison population growth and generate savings that could be reinvested in more effective supervision and community behavioral health treatment to lower recidivism.

### POLICY OPTION 2:

**Respond to probation and parole violations with more effective and less costly sanctions that can reduce further violations.**



Revoking people from parole and probation puts a strain on jail and prison populations. In FY2014, 58 percent of parolees and probationers who were revoked in North Dakota were sentenced to prison and 29 percent were sentenced to jail.<sup>26</sup> In the same year, parolees and probationers who were revoked to prison spent an average of 178 days and 391 days in prison, respectively, prior to being released, and made up 27 percent of the prison population.<sup>27</sup>

**This policy option limits to 90 days the time that people can be incarcerated as a sanction for a technical violation.** A technical violation of probation or parole is misconduct by a person under supervision that is not a criminal offense and generally does not result in arrest, such as failing to report for a scheduled meeting with the probation officer, missing a curfew, or testing positive for

drug or alcohol use. This option also allows people who have committed technical violations to be sanctioned in jails and alternative facilities, funded by the state, in lieu of prison. The 90-day limitation to incarceration does not apply to a probationer or parolee who commits a new crime.

Limiting the term of incarceration for people who violate conditions of their supervision but are not charged with a new crime can curb prison and jail population growth while ensuring that the degree of punishment is proportionate to the seriousness of the violation. The 90-day limitation to incarceration as a result of a technical violation provides probation officers with an intermediate sanction that can help increase accountability for people on supervision, deter recidivism, and reduce the cost of responding to supervision violations with lengthy periods of incarceration.

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### **POLICY OPTION 3:**

**Provide the most intensive supervision at the beginning of a person's probation term, when risk of reoffending is highest.**



Increase public safety and reduce recidivism

From FY2006 to FY2015, North Dakota's probation population increased by 39 percent (from 5,466 to 7,613 active cases) and its parole population increased 55 percent (from 484 to 751 active cases), straining supervision resources across the state.<sup>28</sup> Because officers supervise both probationers and parolees, increases in either population often make it difficult for officers to provide adequate supervision for the people on their caseloads and for community-based treatment and service providers to meet the needs of the supervision population due to their limited capacity.

The likelihood of failing on supervision is greatest within the first two years a person is on probation, which emphasizes the need to focus supervision and program resources on people at the beginning of their supervision terms. Fifty-one percent of people who began their probation terms in FY2012 and were admitted to prison within three years (either for a new offense or for violating conditions of

supervision) were admitted in the first year of probation. In the second year, the percentage fell to 35 percent, and in the third year the percentage fell to 14 percent.<sup>29</sup>

**This policy option requires the DOCR to systematically transition probationers to the lowest possible level of supervision (known as "diversion caseload") according to risk level and compliance.**

Probationers on a low supervision level will be transferred to a diversion caseload after successfully serving 6 months, and those on a medium supervision level will be transferred after successfully serving 12 months.

People on diversion caseloads receive minimal administrative supervision. Transitioning probationers to a diversion caseload will enable supervision officers to target resources to people who are at the highest risk of reoffending during the first two years after their release.<sup>30</sup>

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### **POLICY OPTION 4:**

**Increase the availability of and access to effective community-based behavioral health treatment for people in the criminal justice system.**



Increase public safety and reduce recidivism

Stakeholders report that people on community supervision—especially those who live in rural areas—have difficulty accessing behavioral health treatment due to insufficient service capacity and an inadequate number of providers. Seventy percent of judges reported sentencing people to prison in order to connect them with mental health or substance use treatment. Probation and parole officers reported that 75 percent or more of their clients needed substance use treatment but struggled to find those services in the community.<sup>31</sup> Insufficient community-based treatment resources greatly limit the state's ability to address treatment needs, improve outcomes, and reduce recidivism, and therefore pose a challenge to public safety.

**A. Cultivate a network of community-based behavioral health care providers to serve people in the criminal justice system.**

Across the state, access to community-based treatment has decreased, while the need for treatment has increased.

North Dakota has the sixth-highest rate of alcohol and drug abuse in the country but is ranked 43rd in availability of treatment. In order to increase the network of community behavioral health care providers, the state must implement short-, medium-, and long-term strategies.

#### **SHORT-TERM STRATEGY**

**This policy option funds and requires the Department of Human Services (DHS) and DOCR to establish a case manager position.** A case manager is responsible for delivering community-based treatment for people with serious behavioral health needs who are also at a high risk of reoffending. Case managers typically do not require a specialized degree or certification but are entry-level positions in the professional behavioral health field. Their responsibilities include assessing and monitoring people, organizing reentry services, and coordinating care among multiple service providers, including clinicians and probation officers. Case managers are focused on

improving care coordination and eliminating gaps in care that lead to unnecessary readmissions to prison.

**This policy option also requires DHS to establish training and certification processes for peer support specialists to work in criminal justice settings.**

Peer support specialists are people recovering from severe mental illnesses or substance use disorders who are trained as counselors to help others with similar conditions. Through their experiential knowledge and familiarity with a patient's culture or community, peer support specialists can provide unique insights and assistance that professional health care providers cannot, and they can potentially reduce the use of crisis intervention services. DHS will be required to establish the basic qualifications of the peer support specialist position and develop a training module that prepares peer support specialists to deliver recovery-oriented services in partnership with professional treatment providers.

#### MEDIUM-TERM STRATEGY

**This policy option requires the development of a statewide strategic plan for increasing the number of community-based behavioral health care providers who have received the necessary education and training to work with criminal justice populations.**

The strategic plan should analyze barriers to recruitment of behavioral health care providers, propose strategies for recruitment and retention, and identify key outcome metrics to be reported to the legislature on an annual basis. Community-based behavioral health care providers include certified peer support specialists, community engagement specialists, licensed substance use counselors, psychiatric nurses, and psychiatrists. By developing a strategic plan to cultivate an adequate network of appropriately trained community-based behavioral health care providers in rural areas, the state can begin to meet the behavioral health needs of people in the criminal justice system and reduce recidivism.

#### LONG-TERM STRATEGY

**This policy option requires DHS to manage the implementation of strategies to increase the number of community behavioral health providers in the**

**state, especially in rural areas.** Strategies may include the development of specialized curricula in higher education for health care workers in preparation for working with criminal justice populations. Specialized curricula can help health care workers increase their competency in working with criminal justice populations, and may attract students who have an interest in addressing both the health care and criminal justice needs of the state. Additional strategies may include: conducting outreach to promote interest in behavioral health professions in rural areas; developing scholarships and loan forgiveness programs; creating distance learning opportunities; or bolstering out-of-state recruitment and retention.

#### **B. Increase access to effective community-based behavioral health treatment for people in the criminal justice system.**

Untreated mental illnesses and substance use disorders contribute significantly to people's ongoing involvement in the criminal justice system. Research suggests that for adults with mental illnesses and substance use disorders, supervision combined with treatment is more effective at reducing recidivism than supervision alone.<sup>32</sup>

**This policy option increases access to effective community-based behavioral health treatment by establishing incentives for private health care providers to ensure that people in the criminal justice system have access to a full continuum of support services.** To encourage quality of care, private health care providers will have an opportunity to earn value-based incentives, where they receive additional funding for meeting target outcomes set by DHS.

People in the criminal justice system who have substance use and mental health treatment needs have a high likelihood of failing on probation at great cost to themselves and society. Yet many people transitioning from incarceration to probation who have behavioral health needs do not have timely access to treatment, a key component to successful reentry. By increasing access to community-based treatment services and programs, the state can help reduce recidivism and improve public health outcomes for people in the criminal justice system.

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## POLICY OPTION 5:

### Establish a pretrial supervision pilot program and adopt a pretrial risk assessment tool.



Increase public safety and reduce recidivism



Provide tools to reduce pressure on jails

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From 2005 to 2015, North Dakota’s county jail population one-day count rose 83 percent, from 959 to 1,754 people. The sharpest increase occurred between 2012 and 2015, when the population spiked 40 percent, from 1,250 to 1,754 people.<sup>33</sup> Local criminal justice stakeholders, including sheriffs, judges, and jail administrators, identify growth in the pretrial detention population as a substantial driver of this increase.

Use of pretrial risk assessments is inconsistent in counties across the state, and, as a result, decisions to detain or release people pretrial are not always based on a defendant’s risk for failure to appear in court or risk of reoffending.

**This policy option creates a pretrial supervision pilot project.** Administrators of the pilot program will be required to adopt a pretrial risk assessment tool as well as a dangerousness and/or lethality assessment for people charged with domestic violence offenses. The results of the assessment would be used to inform pretrial decisions to reduce unnecessary detentions and prioritize jail beds for people who are at a high risk of reoffending. Pretrial risk assessment results can be used to identify defendants who can be released pretrial and under what conditions, and help identify people who should be connected to

services in the community. Requiring a dangerousness and/or lethality assessment for people charged with domestic violence offenses gives judges the information they need to mandate supervision of high-risk domestic violence defendants upon their release. At the end of the 2017–2019 biennium, DOCR will be required to report outcomes from the program, including the number of and outcomes for pretrial detainees placed on supervision, disaggregated by assessed risk level.

A pretrial risk assessment can help determine a person’s risk of failure to appear in court and risk of reoffending during the pretrial stage, and can also help identify people who are appropriate for release. Research shows that time in jail can increase a person’s likelihood of engaging in criminal behavior: low-risk defendants have a 40-percent higher chance of committing a new crime before trial when held for 2 or 3 days compared to those held 1 day or less, and a 51-percent higher chance of committing a new crime within 2 years when held for 8 to 14 days compared to 1 day or less.<sup>34</sup> By helping counties adopt a pretrial risk assessment tool and provide pretrial supervision, the state will improve public safety, reduce jail populations, and aid counties in averting spending associated with a growing jail population.

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## POLICY OPTION 6:

### Apply the state’s existing good time policy to time served in jail as well as prison.



Avert prison population growth

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The North Dakota Century Code (12-54.1-01) authorizes DOCR to grant good time credits, which can subtract up to five days per month from a prison sentence, according to eligibility criteria established by the agency. People are not currently eligible to accrue good time credits during the time they spend in jail awaiting trial, however. For example, a person currently sentenced to five years in prison, after having spent one year in jail awaiting the conclusion of his or her criminal case, would be transferred to DOCR to serve the remainder of his or

her sentence—four years in this case. Under the current system, the person in this example would be eligible to accrue good time credits during the four years spent in DOCR custody, but not for the entire five-year sentence.

**This policy option ensures that the state’s existing good time policy applies to the total sentence imposed, including time served pretrial in jail and time served in prison.** Good time credits would be awarded to people in prison based on their participation

in court-ordered or staff-recommended treatment and education programs and good behavior exhibited while they were in county jail prior to going to prison.

Good time credits allow correctional facilities to incentivize good behavior, creating a safe and efficient way to reduce the prison population. Further, good time credits enhance public safety by encouraging rehabilitation and

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## **POLICY OPTION 7:**

### **Improve the quality of and access to batterers' intervention programs.**



Increase public safety and reduce recidivism

Batterers' intervention programs (BIPs) are court-ordered programs for people convicted of domestic violence offenses. They are neither funded by the state nor covered by traditional insurance, however, which forces participants to either pay out-of-pocket to attend or fail to follow the orders of the court. The nine BIPs throughout the state vary in quality. Although courts occasionally order anger management courses as an alternative to BIPs, these courses neither serve as an appropriate substitute for BIPs nor address the underlying issues contributing to a person's history of domestic violence.<sup>35</sup>

### **This policy option provides state funding for BIPs and establishes a standards oversight committee to ensure the quality and consistency of this programming.**

Increasing the number and quality of BIPs ensures that people convicted of domestic violence offenses are held accountable to court orders to participate in programs that address their risk factors. Ensuring that probationers and parolees participate in court-ordered programs is a key part of delivering effective supervision and holding people accountable.

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## **POLICY OPTION 8:**

### **Improve the ability to collect and analyze outcome and demographic data.**



Increase public safety and reduce recidivism

Each person in the North Dakota criminal justice system is assigned a statewide identification number (SID number) upon entering the criminal justice system, but this number is inconsistently used across agencies and not usually entered into the court data system. Demographic information is also missing from court records. Data collection on race and gender in North Dakota has increased in recent years, but 80 percent of sentencing records from FY2006 to FY2014 do not include the defendant's race, and 52 percent do not specify gender.

corrections agencies are able to promptly determine prior criminal history, allowing them to develop better case plans for each person. SID numbers also allow analysts to track the outcomes of each person in the system and ultimately evaluate the effectiveness of policies and practices.

#### **A. Require all criminal justice agencies to use the SID number assigned to each person who enters the criminal justice system.**

SID numbers allow for prompt and efficient communication among criminal justice agencies in the state regarding the activities of people in the system. When each person who enters the criminal justice system is assigned a unique identification number,

**This policy option recommends that the court enter a person's SID number into the court's case management system.** A SID number field already exists in the court case management system. This policy option simply encourages court clerks to systematically enter this information into the system.

#### **B. Recommend that the courts enter demographic information into the court data system for each case.**

Demographic data are collected by DOCR. Analysis of the FY2014 prison population showed that 21 percent of the state's prison population was Native American,



while only 5 percent of the state's total resident population was Native American. Preliminary analysis suggests that Native Americans are overrepresented at other points in the state's criminal justice system and a dedicated effort to track and monitor the movement of people at various stages in the system is necessary to gain insight into the factors that may contribute to this disproportionality.

Currently, court staff have the capability to enter demographic information that exists in the judgment or other documents into the court data system when they receive a case filing, however are not required to do so, which results in high rates of incomplete data. The lack of demographic data in the court data system hinders the state's ability to understand the demographic composition of its criminal justice population and identify disproportionalities in the criminal justice system.

**This policy option recommends that the courts enter the demographic information that exists in case filing documents, including race and gender, into the court data system.** This policy option simply encourages court clerks to systematically enter this information into demographic fields that already exist in the court data system.

In taking a more targeted approach to data collection by adopting SID numbers and collecting demographic information, North Dakota will strengthen its ability for future analysis, enable cross-agency information sharing, and gain an understanding of the demographic composition of the criminal justice population. As North Dakota grows and diversifies, it will become even more important for researchers to be able to evaluate the effectiveness of various policies and practices and their impact on different populations.

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## **POLICY OPTION 9:**

**Assess, track, and ensure the sustainability of recidivism-reduction strategies, and increase statewide data collection and analysis efforts.**



Increase public safety and reduce recidivism

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### **A. Create a centralized interagency oversight body to guide and track the implementation of justice reinvestment policies.**

The Incarceration Issues Committee disbanded in September 2016 without establishing an entity to oversee the implementation of justice reinvestment policies; consequently, the state may encounter implementation challenges.

**This policy option establishes an interbranch, interagency committee to oversee the successful implementation of justice reinvestment policies in the years following enactment of legislation.** The committee will monitor implementation efforts and require the development of outcome measures and regular reporting from all agencies and stakeholders involved. The committee will also be required to review the annual impact reports from DOCR and ensure the sustained reinvestment of savings generated from the implementation of the justice reinvestment initiative.

### **B. Require DOCR to report annual data on the impact of justice reinvestment legislation.**

In order to ensure that the justice reinvestment legislation is meeting the goals set forth by the commission, North Dakota must establish a means of monitoring and reporting outcomes. Currently, there is one part-time employee who is dedicated to performing data analysis for DOCR. Various department employees, whose primary roles are not related to data or research, conduct other reporting, as assigned. This stopgap effort has resulted in unclear methodologies and conflicting numbers.

**This policy option requires DOCR to produce an annual report on the impact of the state's justice reinvestment legislation, including the extent to which the department has met implementation goals and projections concerning the prison population, the statewide recidivism rate, and other key public safety metrics.** DOCR will also be required to communicate additional fiscal needs to the legislature based on these reports.

The effective implementation of justice reinvestment policies is critical for the state to meet its goals, including averted growth in the prison population and correctional spending, and reduced recidivism. By requiring DOCR to report annually on the impact of the legislation, the interagency oversight committee will receive substantive and measurable data to track and guide the implementation of the legislation.

**C. Recommend that the Administrative Office of the Courts publish a comprehensive annual report on court activities.**

The Administrative Office of the Courts in North Dakota currently publishes an annual report that provides minimal statistics on court activity. The annual report typically includes the number of cases filed, number of cases in each court (traffic, criminal, juvenile, etc.), and number of jury trials.

**This policy option recommends that the Administrative Office of the Courts expand its annual report to provide statistical analyses of case hearings, dispositions, and sentences, as resources allow.** The courts will be encouraged to work with the provider of their case management system to develop system-generated reports on a regular and an ad-hoc basis.

**D. Require state and local criminal justice agencies to adopt standardized offense codes.**

North Dakota has created a multi-agency task force to develop standardized offense codes, which are numerical references used to categorize crimes. The task force has developed a common statute table, which is scheduled for release in June 2017. But because the task force's efforts are still underway, agencies currently use varying offense codes for the same crime, complicating data collection and analysis. For example, there are more than 6,000 different DUI offense descriptions in the court data system because court administrators enter different descriptions of the offense each time, as opposed to using a standardized code to describe these DUI offenses. Some state and local agencies in North Dakota have adopted offense codes

published by the National Crime Information Center, while others use less widely accepted code references.

**This policy option requires the multi-agency task force to complete the standardization of offense codes and requires all law enforcement and criminal justice agencies to adopt and use these codes.** Once the standardization is completed, the task force is required to disseminate the offense codes to all state and local criminal justice agencies for statewide adoption. All agencies will be required to keep up with the codes and make adjustments as laws change.

Standardized offense codes will enhance the quality and timeliness of the crime data collected by criminal justice agencies as well as enable the prompt analysis of criminal justice trends.

**E. Require all county jails to submit an annual census data report.**

The North Dakota Criminal Justice Information Sharing (ND-CJIS) program is dedicated to providing comprehensive data to criminal justice agencies in North Dakota. ND-CJIS has developed a data management system for local jails to use to track and share information about people in jail, such as demographics, charges, and booking and release dates. This is a system that is accessible to all counties at no cost and allows for reporting and analysis. Currently, only 12 out of 23 jails in North Dakota are using this data system. It is unknown what data, if any, non-participating jails are collecting or how they are collecting it.

**This policy option requires all county jails to submit an annual census data report to ND-CJIS.** Information provided would include, but not be limited to, one-day counts of jail population, demographics, average daily population, number of admissions, and estimated average length of stay. ND-CJIS will be required to synthesize the census data received from each jail into a statewide annual jail census report.

## ENDNOTES

1. North Dakota Department of Corrections and Rehabilitation (DOCR) estimated prison population projection. DOCR one-day inmate population snapshots for 2005–2007 are as of January 1 of each fiscal year. DOCR one-day inmate population snapshots for 2008–2015 and projected population snapshots for 2016–2022 are as of the last day of each fiscal year (June 30). Email correspondence between CSG Justice Center and DOCR, 2015 and 2016.
2. CSG Justice Center analysis of DOCR prison admission data files.
3. The IIC bill contained the following policies: (1) reclassify first time ingestion of a controlled substance as a class B misdemeanor, (2) reclassify first time ingestion of a controlled substance analog offense as a class B misdemeanor, (3) remove mandatory minimum sentences for drug offenses, (4) reclassify drug paraphernalia possession as a class B misdemeanor, (5) establish medical parole for certain people in prison with a terminal medical condition, (6) increase the threshold for Class C felony theft offenses, (7) reduce distance for drug offenses near a school from 1,000 to 500 feet, (8) authorize drug court to terminate probation following completion of a drug treatment program, (9) modify the credentials required to deliver addiction counseling, and (10) repeal the law preventing people with felony convictions from receiving food stamps.
4. CSG Justice Center analysis of DOCR prison one-day snapshot data files.
5. Biennial budgets run on a two-year cycle. Budget information cited here is from July 1, 2003 to June 30, 2005, with the most recent running from July 1, 2013 to June 30, 2015. Actual General Fund appropriations were \$83,458,031 for 2005 and \$178,475,785 for 2015. DOCR, Biennial Report 2003–2005. (Bismarck: NDOCR, 2005); DOCR, Biennial Report 2013–2015.
6. One-day population counts as of September 1 of each year. 2015 jail survey population information was used because it included more detailed information than previous years' surveys. Preskey Hushka, Donnell. "Behind Bars: Finding a Solution to Overcrowding in Jails." North Dakota Association of Counties (NDACo) Annual Convention. Bismarck Convention Center, Bismarck, ND. 26 October 2015.
7. Most of DOCR's contract-bed population is housed in six minimum-security transitional facilities operated by nonprofit agencies providing residential programs to people in DOCR custody who are preparing to return to the community from prison. The remaining contract-bed population is housed in county jails and the North Dakota State Hospital.
8. CSG Justice Center analysis of DOCR prison population data files; correspondence with DOCR (facility capacities and contract cost per day); this estimate assumes a daily contract bed cost of \$75.
9. Preskey Hushka, Donnell. "Behind Bars: Finding a Solution to Overcrowding in Jails." North Dakota Association of Counties (NDACo) Annual Convention. Bismarck Convention Center, Bismarck, ND. 26 October 2015.
10. Census definitions for Hispanic and Latino ethnic categories are updated from census to census, and are therefore not comparable across years. A snapshot of the 2014 population is provided to show racial/ethnic composition based on the most recent census definitions. U.S. Census Bureau, "State & County QuickFacts" retrieved on December 22, 2015, from <http://quickfacts.census.gov/qfd/states/38000.html>; CSG Justice Center analysis of DOCR prison one-day snapshot data files.
11. *Homicide in North Dakota*, reports covering years 2006 to 2014. [www.ag.nd.gov/Reports/BCIReports/CrimeHomicide/HomicideND.htm](http://www.ag.nd.gov/Reports/BCIReports/CrimeHomicide/HomicideND.htm).
12. *North Dakota Domestic Violence Fatality Report*, 2014. <https://www.ag.nd.gov/Reports/2014DVFR.pdf>.
13. *Making a Case for Batterer Treatment in North Dakota: A Judicial Resource* CAWS North Dakota.
14. CSG Justice Center analysis of DOCR supervision data.
15. CSG Justice Center analysis of DOCR supervision data and DOCR prison population snapshot data files. Of the remaining 16 percent of people whose supervision was revoked, 11 percent were returned to supervision and 5 percent had their supervision terminated.
16. CSG Justice Center analysis of DOCR prison admission and release data files and DOCR cost-per-day estimates.
17. CSG Justice Center analysis of DOCR prison admission data files.
18. CSG Justice Center analysis of DOCR prison admission data files and DOCR supervision data.
19. CSG Justice Center analysis of Administrative Office of the Courts felony sentencing data.
20. Based on state rankings of percentages of the adult population with reported dependence or abuse of illicit drugs or alcohol and mental health workforce availability. Mental Health America. "Parity of Disparity: The State of Mental Health in America," 2015. [http://www.mentalhealthamerica.net/sites/default/files/Parity or Disparity 2015 Report.pdf](http://www.mentalhealthamerica.net/sites/default/files/Parity%20or%20Disparity%202015%20Report.pdf).
21. Single-day counts reflect the number of persons who were enrolled in substance use treatment on March 31, 2009; March 31, 2010; March 31, 2011; March 30, 2012; and March 29, 2013. Substance Abuse and Mental Health Services Administration. "Behavioral Health Barometer North Dakota, 2014" <http://store.samhsa.gov/shin/content//SMA15-4895/BHBarometer-ND.pdf>.

22. The combined federal match for Medicaid eligible services for the target population is estimated to be 85 percent.
23. CSG Justice Center analysis of Class C Felony categories; North Dakota Century Code 12.1-32: Penalties and Sentencing.
24. CSG Justice Center analysis of DOCR prison admission data files.
25. For people released from prison in FY2012 and felony probations beginning in FY2012. CSG Justice Center analysis of DOCR supervision and prison sentence data.
26. The remaining people revoked from probation or parole were returned to supervision (9 percent) or terminated from supervision (4 percent). CSG Justice Center analysis of DOCR supervision data.
27. CSG Justice Center analysis of DOCR prison one-day snapshot and release data files.
28. CSG Justice Center analysis of DOCR supervision data.
29. Based on a cohort of probation admissions in FY2012 tracked for three years. CSG Justice Center analysis of DOCR supervision data.
30. Patrick A. Langan and David J. Levin, *Recidivism of Prisoners Released in 1994* (NCJ 193427) (Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, 2002); Matthew Durose, Alexia Cooper, and Howard Snyder, *Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010* (NCJ 244205) (Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, 2014).
31. 2014 CSG Justice Center North Dakota Judicial Survey; CSG Justice Center Probation and Parole Officer Survey.
32. National Institute on Drug Abuse, *Principles of Drug Addiction Treatment* (2009).
33. One-day population counts as of September 1 of each year. 2015 jail survey population information was used because it included more detailed information than previous years' surveys. Preskey Hushka, Donnell. "Behind Bars: Finding a Solution to Overcrowding in Jails." North Dakota Association of Counties (NDACo) Annual Convention. Bismarck Convention Center, Bismarck, ND. 26 October 2015.
34. Lowenkamp, Christopher T, VanNostrand, Marie, and Holsinger, Alexander, "The Hidden Costs of Pretrial Detention," (Laura and John Arnold Foundation, 2013).
35. Andrew Klein, *Practical Implications of Current Domestic Violence Research for Probation Officers and Administrators* (Minneapolis, MN: Advocates for Human Potential, March, 2015).



This project was supported by Grant No. 2015-ZB-BX-K001 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, and the SMART office. Points of view or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice.

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Research and analysis described in this report has been funded in part by The Pew Charitable Trusts public safety performance project. Launched in 2006 as a project of the Pew Center on the States, the public safety performance project seeks to help states advance fiscally sound, data-driven policies and practices in sentencing and corrections that protect public safety, hold offenders accountable, and control corrections costs.

To learn more about the project, please visit [pewtrusts.org/publicsafety](http://pewtrusts.org/publicsafety).



The Council of State Governments (CSG) Justice Center is a national nonprofit organization that serves policymakers at the local, state, and federal levels from all branches of government. The CSG Justice Center provides practical, nonpartisan advice and evidence-based, consensus-driven strategies to increase public safety and strengthen communities. Points of view, recommendations, or findings stated in this document are those of the authors and do not necessarily reflect the official position or policies of The Pew Charitable Trusts, The Council of State Governments Justice Center, or The Council of State Governments' members.

For additional information about Justice Reinvestment in North Dakota, please visit [csgjusticecenter.org/jr/nd](http://csgjusticecenter.org/jr/nd).

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# North Dakota's Justice Reinvestment Approach

## Behavioral Health Policy and Reinvestment Package

### Expand Provider Workforce

**Rationale:** Lower correction costs and reduce recidivism by cultivating a network of community behavioral health providers to help meet treatment needs of people in the criminal justice system

#### Strengthen Para-Professional Workforce



**Case Management:**  
Providing assessment, case planning, referrals, care coordination and monitoring in collaboration with clinical services and probation or parole



**Peer Support Specialists:**  
People with lived experience of a mental illness or addiction in sustained recovery who are trained to support others

#### Create Strategic Plan



Establish committee to create a strategic plan to increase number of community behavioral health providers in the state, especially in rural areas

#### Fund and Implement Plan

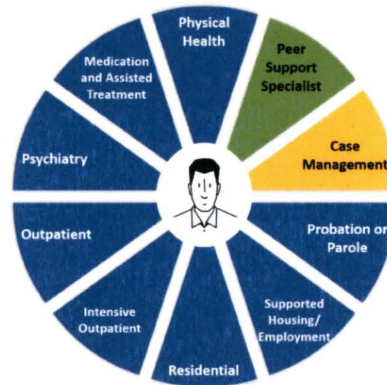


Begin investing to implement strategic behavioral health workforce plans for items such as:

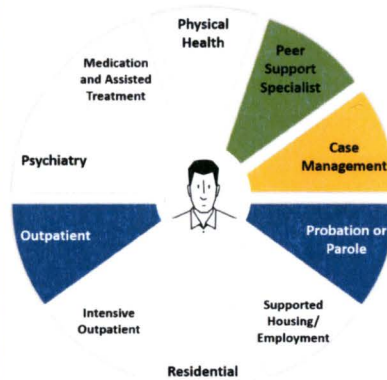
- Scholarships and loan forgiveness
- Outreach to develop interest in professions in rural areas
- Strengthening of "distance learning" opportunities
- Strengthening of behavioral health career ladders
- Supports for clinical supervision services
- Strategies for out of state recruitment and retention
- Psychiatric fellowships

### Increase Access to Services

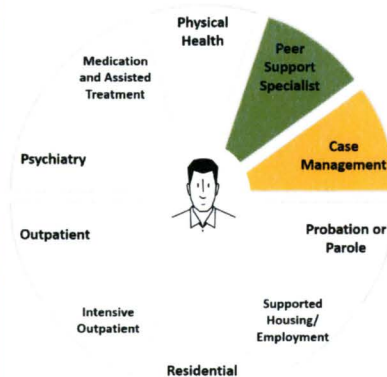
**Rationale:** Improve healthcare outcomes and reduce recidivism by 20 to 30 percent by delivering high-quality community behavioral health treatment with effective supervision \*



**Tier 1:** Comprehensive and intensive services for target population to stabilize behavioral health conditions and reduce criminal justice involvement



**Tier 2:** Moderate array of services designed to help people sustain and strengthen their early recovery and reduce their risk for recidivism



**Tier 3:** Minimal services for people to help sustain full recovery, monitor for relapse and minimize additional justice involvement

\* Washington State Institute for Public Policy, Evidence-Based Adult Corrections Programs: What Works and What Does Not, January 2006; D. A. Andrews and James Bonta, *The Psychology of Criminal Conduct*, 5th ed. (New Providence, NJ: Mathew and Bender & Company, Inc., 2010).

7

65<sup>th</sup> Legislative Session  
Senate Judiciary Committee  
March 15, 2017

Good afternoon Chairman Armstrong and members of the Committee. My name is Trina Gress, I am Vice President of Community Options. Community Options is support of HB 1041. My testimony is in reference to section 18.

Community Options is a provider agency that contracts with various Divisions at the Department of Human Services (DHS), including Economic Assistance Division, which administers the Temporary Assistance to Needy Families (TANF). Community Options is an Employment Provider for the Job Opportunities and Basic Skills Program (JOBS) that all work eligible people must participate in when utilizing the TANF services.

HB 1041 removes the 7 year penalty drug related felony convictions, which allows a parent with a needy child to apply for TANF services. This bill will allow the individual with a drug felony offense on their record to provide for the needy child in their home while reintegrating into the community and becoming a productive employed citizen.

In conclusion, Community Options supports HB 1041. Thank you for your time, are there any questions?

Sincerely Submitted,

Trina Gress

①

3/22/17

17.0197.05003

SECOND ENGROSSMENT

Sixty-fifth  
Legislative Assembly  
of North Dakota

REENGROSSED HOUSE BILL NO. 1041

Introduced by

Legislative Management

(Incarceration Issues Committee)

1 A BILL for an Act to create and enact a new section to chapter 12.1-32 of the North Dakota  
 2 Century Code, relating to presumptive probation; to amend and reenact sections 12-44.1-32,  
 3 12-54.1-01, 12-59-08, 12.1-17-13, and 12.1-23-05, subsection 2 of section 12.1-32-02,  
 4 ~~subsections~~subsection 3 and 6 of section 12.1-32-07, section 19-03.1-22.3, subsection 1 of  
 5 section 19-03.1-22.5, subsections 5 and 7 of section 19-03.1-23, subdivision a of subsection 1  
 6 of section 19-03.1-23.1, section 19-03.4-03, subdivision f of subsection 5 of section 39-08-01,  
 7 ~~section 43-45-06~~, subsection 17 of section 50-06-05.1, and section 50-09-29 of the North  
 8 Dakota Century Code, relating to sentence reduction credit, medical paroles, domestic violence  
 9 offender treatment, grading of theft offenses, credit for time spent in custody, terms and  
 10 conditions of probation, controlled substances and controlled substance paraphernalia,  
 11 ~~addiction counseling services~~, and the supplemental nutrition assistance program; to provide a  
 12 penalty; to provide for the creation of a pretrial services program pilot project within the  
 13 department of corrections and rehabilitation; to provide a report to the legislative management;  
 14 ~~and~~ to provide for a report to the legislative assembly; to provide an appropriation; to provide an  
 15 effective date; and to declare an emergency.

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

17 SECTION 1. AMENDMENT. Section 12-44.1-32 of the North Dakota Century Code is  
18 amended and reenacted as follows:

19 12-44.1-32. ~~Performance-based sentence~~Sentence reduction credit.

20 The ~~presiding judge of a judicial district in which a correctional facility is located, after~~  
 21 ~~consultation with the other judges in the district, may authorize the facility administrator to~~  
 22 ~~provide for~~An inmate sentenced to a correctional facility under this chapter is eligible to earn  
 23 ~~sentence reductions based upon performance criteria established through~~by the administrator  
 24 ~~except that sentence reductions may not be given to offenders sentenced under section~~



1 ~~12.1-32-09.1, including sentence reduction for good conduct.~~ While incarcerated in a  
2 correctional facility, an offender may earn no more than a one-day sentence reduction per six  
3 days served.

4 **SECTION 2. AMENDMENT.** Section 12-54.1-01 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6 **12-54.1-01. ~~Performance-based sentence~~Sentence reduction.**

7 Except as provided under section 12.1-32-09.1, ~~offenders~~an offender committed to the legal  
8 and physical custody of the department of corrections and rehabilitation ~~are~~is eligible to earn  
9 sentence reductions based upon performance criteria established through department and  
10 penitentiary rules. Performance criteria includes participation in court-ordered or  
11 staff-recommended treatment and education programs and good work performance. The  
12 department may credit an offender committed to the legal and physical custody of the  
13 department who is eligible for sentence reduction five days good time per month for each month  
14 of the sentence imposed. The department may ~~not~~ credit an offender with ~~any~~ sentence  
15 reduction for time spent in custody ~~prior to~~before sentencing and commitment, ~~for time~~  
16 ~~under supervised probation, or for any sentence where the incarceration time is six months or~~  
17 ~~less~~ to the legal and physical custody of the department. The department may not credit an  
18 offender with any sentence reduction for time spent on probation under the supervision and  
19 management of the department.

20 **SECTION 3. AMENDMENT.** Section 12-59-08 of the North Dakota Century Code is  
21 amended and reenacted as follows:

22 **12-59-08. ~~Emergency~~Medical paroles.**

23 ~~The~~If an inmate, including an inmate whose sentence is subject to sections 12.1-32-02.1  
24 and 12.1-32-09.1, and an inmate sentenced under subsection 1 of section 12.1-32-01, has a  
25 serious or terminal medical condition, the parole board may consider whether to grant the  
26 inmate may receive an emergency medical parole at a meeting scheduled by the chairman.  
27 ~~The board may request the inmate to personally appear before the board before the board~~  
28 ~~makes a decision whether to grant the inmate an emergency parole. The board may grant or~~  
29 ~~deny an emergency parole, or grant a conditional emergency parole, or continue its~~  
30 ~~consideration to another meeting. Two members of the parole board may grant emergency~~  
31 ~~parole, subject to terms and conditions of emergency parole that may be established by the two~~

1 ~~members of the parole board, or by the department of corrections and rehabilitation with the~~  
2 ~~approval of the parole board.~~ An inmate who receives an emergency medical parole remains  
3 under the jurisdiction of the parole board until the expiration of the maximum term or terms of  
4 imprisonment for which the inmate was sentenced, less any sentence reduction the inmate has  
5 received.

6 **SECTION 4. AMENDMENT.** Section 12.1-17-13 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8 **12.1-17-13. Mandated treatment of domestic violence offenders.**

9 The sentence for an offense under section 12.1-17-01, 12.1-17-01.1, 12.1-17-02,  
10 12.1-17-03, 12.1-17-04, or 12.1-17-05 against an actor's family or household member, as  
11 defined in subsection 4 of section 14-07.1-01, must include an order to complete a domestic  
12 violence offender evaluation and treatment program as determined by the court. A court may not  
13 order the offender to attend anger management classes or individual counseling unless a  
14 domestic violence offender treatment program is not reasonably available to the defendant and  
15 the court makes findings for the record explaining why an order to complete a domestic violence  
16 offender treatment program would be inappropriate.

17 **SECTION 5. AMENDMENT.** Section 12.1-23-05 of the North Dakota Century Code is  
18 amended and reenacted as follows:

19 **12.1-23-05. Grading of theft offenses.**

- 20 1. Notwithstanding subsection 3, theft under this chapter is a class A felony if the  
21 property or services stolen exceed fifty thousand dollars in value.
- 22 2. Notwithstanding the provisions of subsection 3, theft under this chapter is a class B  
23 felony if the property or services stolen exceed ten thousand dollars in value but do  
24 not exceed fifty thousand dollars or are acquired or retained by a threat to commit a  
25 felony.
- 26 3. Theft under this chapter is a class C felony if:
- 27 a. The property or services stolen exceed ~~one~~two thousand five hundred dollars in  
28 value;
- 29 b. The property or services stolen are acquired or retained by threat and (1) are  
30 acquired or retained by a public servant by a threat to take or withhold official  
31 action, or (2) exceed one hundred dollars in value;

Sixty-fifth  
Legislative Assembly

- 1 c. The property or services stolen exceed one hundred dollars in value and are
- 2 acquired or retained by a public servant in the course of official duties;
- 3 d. The property stolen is a firearm, ammunition, or an explosive or destructive
- 4 device, ~~or an automobile, aircraft, or other motor-propelled vehicle~~;
- 5 e. The property consists of any government file, record, document, or other
- 6 government paper stolen from any government office or from any public servant;
- 7 f. The defendant is in the business of buying or selling stolen property and the
- 8 defendant receives, retains, or disposes of the property in the course of that
- 9 business;
- 10 g. The property stolen consists of any implement, paper, or other thing uniquely
- 11 associated with the preparation of any money, stamp, bond, or other document,
- 12 instrument, or obligation of this state;
- 13 h. The property stolen consists of livestock taken from the premises of the owner;
- 14 i. The property stolen consists of a key or other implement uniquely suited to
- 15 provide access to property the theft of which would be a felony and it was stolen
- 16 to gain such access;
- 17 j. The property stolen is a card, plate, or other credit device existing for the purpose
- 18 of obtaining money, property, labor, or services on credit, or is a debit card,
- 19 electronic fund transfer card, code, or other means of access to an account for
- 20 the purposes of initiating electronic fund transfers; or
- 21 k. The property stolen is a prescription drug as defined in section 43-15.3-01.
- 22 4. All other theft under this chapter is a class A misdemeanor, unless the requirements of
- 23 subsection 5 are met.
- 24 5. Theft under this chapter of property or services of a value not exceeding five hundred
- 25 dollars is a class B misdemeanor if:
- 26 a. The theft was not committed by threat;
- 27 b. The theft was not committed by deception by one who stood in a confidential or
- 28 fiduciary relationship to the victim of the theft; and
- 29 c. The defendant was not a public servant or an officer or employee of a financial
- 30 institution who committed the theft in the course of official duties.

1           The special classification provided in this subsection applies if the offense is classified  
2           under this subsection in the charge or if, at sentencing, the required factors are  
3           established by a preponderance of the evidence.

4           6. Notwithstanding subsection 3 of section 12.1-06-01, an attempt to commit a theft  
5           under this chapter is punishable equally with the completed offense when the actor  
6           has completed all of the conduct which the actor believes necessary on the actor's  
7           part to complete the theft except receipt of the property.

8           7. For purposes of grading, the amount involved in a theft under this chapter is the  
9           highest value by any reasonable standard, regardless of the actor's knowledge of such  
10          value, of the property or services which were stolen by the actor, or which the actor  
11          believed that the actor was stealing, or which the actor could reasonably have  
12          anticipated to have been the property or services involved. Thefts committed pursuant  
13          to one scheme or course of conduct, whether from the same person or several  
14          persons, may be charged as one offense and the amounts proved to have been stolen  
15          may be aggregated in determining the grade of the offense.

16          **SECTION 6. AMENDMENT.** Subsection 2 of section 12.1-32-02 of the North Dakota  
17          Century Code is amended and reenacted as follows:

18          2. Credit against any sentence to a term of imprisonment must be given by the court to a  
19          defendant for all time spent in custody as a result of the criminal charge for which the  
20          sentence was imposed or as a result of the conduct on which such charge was based.  
21          "Time spent in custody" includes time spent in custody in a jail or mental institution for  
22          the offense charged, whether that time is spent prior to trial, during trial, pending  
23          sentence, or pending appeal. The total amount of credit the defendant is entitled to for  
24          time spent in custody and any credit for sentence reduction under section 12-44.1-32  
25          or 12-54.1-01 the defendant is entitled to must be stated in the criminal judgment.

26          **SECTION 7. AMENDMENT.** Subsection 3 of section 12.1-32-07 of the North Dakota  
27          Century Code is amended and reenacted as follows:

28          3. The court shall provide as an explicit condition of every probation that the defendant  
29          may not possess a firearm, destructive device, or other dangerous weapon while the  
30          defendant is on probation. Except when the offense is a misdemeanor offense under  
31          section 12.1-17-01, 12.1-17-01.1, 12.1-17-05, or 12.1-17-07.1, or chapter 14-07.1, the

1 court may waive this condition of probation if the defendant has pled guilty to, or has  
2 been found guilty of, a misdemeanor or infraction offense, the misdemeanor or  
3 infraction is the defendant's first offense, and the court has made a specific finding on  
4 the record before imposition of a sentence or a probation that there is good cause to  
5 waive the condition. The court may not waive this condition of probation if the court  
6 places the defendant under the supervision and management of the department of  
7 corrections and rehabilitation. The court shall provide as an explicit condition of  
8 probation that the defendant may not willfully defraud a urine test administered as a  
9 condition of probation. Unless waived on the record by the court, the court shall also  
10 provide as a condition of probation that the defendant undergo various agreed-to  
11 community constraints and conditions as intermediate measures of the department of  
12 corrections and rehabilitation to avoid revocation, which may include:

- 13 a. Community service;
- 14 b. Day reporting;
- 15 c. Curfew;
- 16 d. Home confinement;
- 17 e. House arrest;
- 18 f. Electronic monitoring;
- 19 g. Residential halfway house;
- 20 h. Intensive supervision program;
- 21 i. Up to five nonsuccessive periods of incarceration during any twelve-month  
22 period, each of which may not exceed forty-eight consecutive hours; or
- 23 j. Participation in the twenty-four seven sobriety program; or
- 24 k. One period of incarceration during a period of probation not to exceed thirty  
25 consecutive days in lieu of a petition for revocation of probation.

26 ~~SECTION 8. AMENDMENT. Subsection 6 of section 12.1-32-07 of the North Dakota~~  
27 ~~Century Code is amended and reenacted as follows:~~

- 28 ~~6. a. The court, upon notice to the probationer and with good cause, may modify or~~  
29 ~~enlarge the conditions of probation at any time prior to the expiration or~~  
30 ~~termination of the period for which the probation remains conditional.~~

1 ~~b. If the defendant violates a condition of probation at any time before the expiration~~  
2 ~~or termination of the period and the petition for revocation of probation is the first~~  
3 ~~petition for revocation for a violation of a condition of probation in the case and~~  
4 ~~the violation does not include the commission of an offense involving violence, a~~  
5 ~~firearm or dangerous weapon, or the commission of a felony offense, or the~~  
6 ~~defendant was on probation for an offense subject to registration under section~~  
7 ~~12.1-32-15, the court may continue shall:~~

8 ~~(1) Continue the defendant on the existing probation, with or without modifying~~  
9 ~~or enlarging the conditions;~~

10 ~~(2) Require the defendant to serve up to ninety days of incarceration or the~~  
11 ~~balance of the defendant's sentence, whichever is less, as a condition of~~  
12 ~~probation; or may revoke~~

13 ~~(3) Revoke the probation and impose a sentence not to exceed ninety days of~~  
14 ~~incarceration or the balance of the defendant's sentence, whichever is less.~~  
15 ~~In any other case, the court may revoke the probation and impose any other~~  
16 ~~sentence that was available under section 12.1-32-02 or 12.1-32-09 at the~~  
17 ~~time of initial sentencing or deferment.~~

18 ~~c. In the case of suspended execution of sentence, if the defendant violates a~~  
19 ~~condition of probation at any time before the expiration or termination of the~~  
20 ~~period and the petition for revocation of probation is the first petition for~~  
21 ~~revocation for a violation of a condition of probation in the case and the violation~~  
22 ~~does not include the commission of an offense involving violence, a firearm or~~  
23 ~~dangerous weapon, or the commission of a felony offense, or the defendant was~~  
24 ~~on probation for an offense subject to registration under section 12.1-32-15, the~~  
25 ~~court may revoke shall:~~

26 ~~(1) Continue the defendant on the existing probation, with or without modifying~~  
27 ~~or enlarging the conditions;~~

28 ~~(2) Require the defendant to serve up to ninety days of incarceration or the~~  
29 ~~balance of the defendant's sentence, whichever is less, as a condition of~~  
30 ~~probation; or~~

1 ~~(3) Revoke the probation and impose a sentence not to exceed ninety days of~~  
2 ~~incarceration or the balance of the defendant's sentence, whichever is less.~~  
3 ~~In any other case, the court may revoke the probation and cause the~~  
4 ~~defendant to suffer the penalty of the sentence previously imposed upon the~~  
5 ~~defendant.~~

6 **SECTION 8.** A new section to chapter 12.1-32 of the North Dakota Century Code is created  
7 and enacted as follows:

8 **Presumptive probation.**

- 9 1. The sentencing court shall sentence an individual convicted of a class C felony  
10 offense or class A misdemeanor offense to a term of probation at the time of initial  
11 sentencing, except for an offense ~~involving domestic violence; an offense~~ in violation  
12 of ~~section 12.1-17-07.1~~ chapters 12.1-06.2, 12.1-08, and 12.1-09, section 12.1-16-03,  
13 ~~chapter 12.1-41,~~ chapters 12.1-17, 12.1-18, 12.1-22, or sections 12.1-22-03,  
14 12.1-22-04, and 12.1-23-02.1, chapter 12.1-25, an offense subject to registration  
15 under section 12.1-32-15, chapter 12.1-36, or section 14-07.1-06 ~~or 14-09-22,~~  
16 including attempt, serving as an accomplice to an offense, or conspiracy to commit the  
17 offense; an attempt to commit an offense involving a firearm or dangerous weapon or  
18 serving as an accomplice or in a conspiracy to commit an offense involving a firearm  
19 or dangerous weapon; or if a mandatory term of incarceration is required by law. ~~The~~  
20 ~~sentencing court may impose a sentence of imprisonment if the sentencing court finds~~  
21 ~~there are aggravating factors present to justify a departure from presumptive~~  
22 ~~probation. The sentencing court shall state the aggravating factors on the record at the~~  
23 ~~time of sentencing.~~ This section does not preclude the sentencing court from deferring  
24 imposition of sentence in accordance with subsection 4 of section 12.1-32-02 or  
25 sentencing an individual to a term of incarceration with credit for time spent in custody  
26 if execution of the sentence is suspended.
- 27 2. This section does not apply to an offense committed under subsection 1 of section  
28 12.1-22-02.
- 29 3. This section does not apply if the sentencing court finds there are aggravating factors  
30 present to justify a departure from presumptive probation. The sentencing court shall

- 1 state the aggravating factors on the record at the time of sentencing. Aggravating  
2 factors include:  
3 a. That the individual has plead guilty to, or has been found guilty of, a felony  
4 offense or class A misdemeanor offense prior to the date of the commission of  
5 the offense or offenses charged in the complaint, information, or indictment;  
6 b. The age and vulnerability of the victim, whether the individual was in a position of  
7 responsibility or trust over the victim, or whether the individual abused a public  
8 position of responsibility or trust; or  
9 c. If the individual used threats or coercion in the commission of the offense.

10 **SECTION 9. AMENDMENT.** Section 19-03.1-22.3 of the North Dakota Century Code is  
11 amended and reenacted as follows:

12 **19-03.1-22.3. Ingesting a controlled substance - Venue for violation - Penalty.**

13 A person who intentionally ingests, inhales, or otherwise takes into the body a controlled  
14 substance, unless the substance was obtained directly from a practitioner or pursuant to a valid  
15 prescription or order of a practitioner while acting in the course of the practitioner's professional  
16 practice, is guilty of a class ~~AB~~ misdemeanor for a first offense and a class A misdemeanor for a  
17 second or subsequent offense. The venue for a violation of this section exists in either the  
18 jurisdiction in which the controlled substance was ingested, inhaled, or otherwise taken into the  
19 body or the jurisdiction in which the controlled substance was detected in the body of the  
20 accused.

21 **SECTION 10. AMENDMENT.** Subsection 1 of section 19-03.1-22.5 of the North Dakota  
22 Century Code is amended and reenacted as follows:

- 23 1. The use of controlled substance analog includes the ingestion, inhalation, absorption,  
24 or any other method of taking the controlled substance analog into the body. An  
25 individual who intentionally uses a controlled substance analog is guilty of a class ~~G~~  
26 ~~felony~~B misdemeanor for a first offense and a class A misdemeanor for a second or  
27 subsequent offense, unless the individual obtains the analog directly from a  
28 practitioner or pursuant to a valid prescription or order of a practitioner.

29 **SECTION 11. AMENDMENT.** Subsections 5 and 7 of section 19-03.1-23 of the North  
30 Dakota Century Code are amended and reenacted as follows:



- 1       5. A violation of this chapter or a law of another state or the federal government which is  
2       equivalent to an offense with respect to the manufacture, delivery, or intent to deliver a  
3       controlled substance under this chapter committed while the offender was an adult  
4       and which resulted in a plea or finding of guilt must be considered a prior offense  
5       under subsections 1, 3, and 4. The prior offense must be alleged in the complaint,  
6       information, or indictment. The plea or finding of guilt for the prior offense must have  
7       occurred before the date of the commission of the offense or offenses charged in the  
8       complaint, information, or indictment.
- 9       7. a. It is unlawful for any person to willfully, as defined in section 12.1-02-02, possess  
10       a controlled substance or a controlled substance analog unless the substance  
11       was obtained directly from, or pursuant to, a valid prescription or order of a  
12       practitioner while acting in the course of the practitioner's professional practice, or  
13       except as otherwise authorized by this chapter, but any person who violates  
14       section 12-46-24 or 12-47-21 may not be prosecuted under this subsection.  
15       Except as otherwise provided in this subsection, any person who violates this  
16       subsection is guilty of a class ~~C~~ felony A misdemeanor. If, at the time of the  
17       offense the person is in or on, ~~or within one thousand feet [300.48 meters]~~ of the  
18       real property comprising a public or private elementary or secondary school ~~or a~~  
19       ~~public career and technical education school~~, the person is guilty of a class B  
20       felony, unless the offense involves ~~one ounce [28.35 grams] or less of marijuana~~.  
21       Any person who violates this subsection regarding possession of ~~one ounce~~  
22       ~~[28.35 grams] or less of marijuana~~ is guilty of a class B misdemeanor.
- 23       b. If an individual is sentenced to the legal and physical custody of the department  
24       of corrections and rehabilitation under this subsection, the department may place  
25       the individual in a drug and alcohol treatment program designated by the  
26       department. Upon the successful completion of the drug and alcohol treatment  
27       program, the department shall release the individual from imprisonment to begin  
28       any court-ordered period of probation.
- 29       c. If the individual is not subject to any court-ordered probation, the court shall order  
30       the individual to serve the remainder of the sentence of imprisonment on  
31       supervised probation subject to the terms and conditions imposed by the court.

- 1           d. Probation under this subsection may include placement in another facility,  
2           treatment program, or drug court. If an individual is placed in another facility or  
3           treatment program upon release from imprisonment, the remainder of the  
4           sentence must be considered as time spent in custody.
- 5           e. An individual incarcerated under this subsection as a result of a second probation  
6           revocation is not eligible for release from imprisonment upon the successful  
7           completion of treatment.

8           **SECTION 12. AMENDMENT.** Subdivision a of subsection 1 of section 19-03.1-23.1 of the  
9 North Dakota Century Code is amended and reenacted as follows:

- 10           a. The offense involved the manufacture, delivery, or possession, with intent to  
11           manufacture or deliver a controlled substance in or on, ~~or within one thousand~~  
12           ~~feet [300.48 meters] of,~~ the real property comprising a child care or preschool  
13           ~~facility, or a~~ public or private elementary or secondary school, ~~public career and~~  
14           ~~technical education school, or a public or private college or university;~~

15           **SECTION 13. AMENDMENT.** Section 19-03.4-03 of the North Dakota Century Code is  
16 amended and reenacted as follows:

17           **19-03.4-03. Unlawful possession of drug paraphernalia - Penalty.**

- 18           1. A person may not use or possess with intent to use drug paraphernalia to plant,  
19           propagate, cultivate, grow, harvest, manufacture, compound, convert, produce,  
20           process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled  
21           substance in violation of chapter 19-03.1. Any person violating this subsection is guilty  
22           of a class C felony if the drug paraphernalia is used, or possessed with intent to be  
23           used, to manufacture, compound, convert, produce, process, prepare, test, or analyze  
24           a controlled substance, other than marijuana, classified in schedule I, II, or III of  
25           chapter 19-03.1.
- 26           2. A person may not use or possess with the intent to use drug paraphernalia to inject,  
27           ingest, inhale, or otherwise induce into the human body a controlled substance, other  
28           than marijuana, classified in schedule I, II, or III of chapter 19-03.1. A person violating  
29           this subsection is guilty of a class-A B misdemeanor. If a person previously has been  
30           convicted of an offense under this title, other than an offense related to marijuana, or

1 an equivalent offense from another court in the United States, a violation of this  
2 subsection is a class ~~C felony~~ A misdemeanor.

3 3. A person may not use or possess with intent to use drug paraphernalia to plant,  
4 propagate, cultivate, grow, harvest, manufacture, compound, convert, produce,  
5 process, prepare, test, analyze, pack, repack, store, contain, or conceal marijuana in  
6 violation of chapter 19-03.1. A person violating this subsection is guilty of a class A  
7 misdemeanor.

8 4. A person may not use or possess with the intent to use drug paraphernalia to ingest,  
9 inhale, or otherwise introduce into the human body marijuana in violation of  
10 chapter 19-03.1. A person violating this subsection is guilty of a class B misdemeanor.

11 **SECTION 14. AMENDMENT.** Subdivision f of subsection 5 of section 39-08-01 of the North  
12 Dakota Century Code is amended and reenacted as follows:

13 f. If the offense is subject to subdivision a or b, a municipal court or district court  
14 may not suspend a sentence, but may convert each day of a term of  
15 imprisonment to ten hours of community service for an offense subject to  
16 paragraph 2 of subdivision a. If the offense is subject to subdivision c, the district  
17 court may suspend a sentence, except for sixty days' imprisonment, under  
18 subsection 3 of section 12.1-32-02 on the condition that the defendant first  
19 undergo and complete an evaluation for alcohol and substance abuse treatment  
20 and rehabilitation. If the offense is subject to subdivision d, the district court may  
21 suspend a sentence, except for one year's imprisonment, under subsection 3 of  
22 section 12.1-32-02 on the condition that the defendant first undergo and  
23 complete an evaluation for alcohol and substance abuse treatment and  
24 rehabilitation. If the defendant is found to be in need of alcohol and substance  
25 abuse treatment and rehabilitation, the district court may order the defendant  
26 placed under the supervision and management of the department of corrections  
27 and rehabilitation and is subject to the conditions of probation under section  
28 12.1-32-07. The district court may require the defendant to complete alcohol and  
29 substance abuse treatment and rehabilitation under the direction of the drug  
30 court program as a condition of probation in accordance with rules adopted by  
31 the supreme court. The district court may terminate probation under this section

1                    when the defendant completes the drug treatment program. If the district court  
2 finds that a defendant has failed to undergo an evaluation or complete treatment  
3 or has violated any condition of probation, the district court shall revoke the  
4 defendant's probation and shall sentence the defendant in accordance with this  
5 subsection.

6 ~~SECTION 16. AMENDMENT. Section 43-45-06 of the North Dakota Century Code is~~  
7 ~~amended and reenacted as follows:~~

8 ~~43-45-06. Addiction counseling practice -- Exemptions.~~

9 ~~1. Nothing in this chapter may be construed to prevent any person~~individual ~~from doing~~  
10 ~~work within the standards and ethics of that person's~~individual's ~~profession and calling,~~  
11 ~~provided that if the person~~individual is providing addiction treatment or counseling and  
12 ~~does not represent to the public, by title or by use of the initials L.A.G., that the~~  
13 ~~person~~individual is engaging in the practice of licensed addiction counseling.

14 ~~2. Nothing in this~~This ~~chapter may be construed to~~does not ~~prevent addiction counseling~~  
15 ~~trainees or interns in board-approved programs from engaging in addiction counseling~~  
16 ~~related to training.~~

17                    **SECTION 15. AMENDMENT.** Subsection 17 of section 50-06-05.1 of the North Dakota  
18 Century Code is amended and reenacted as follows:

19            17. To act as the official agency of the state in the administration of the supplemental  
20 nutrition assistance program and to direct and supervise county administration of that  
21 program. Provided, however, that the department with the consent of the budget  
22 section of the legislative management may terminate the program if the rate of federal  
23 financial participation in administrative costs provided under Public Law 93-347 is  
24 decreased or limited, or if the state or counties become financially responsible for all or  
25 a portion of the coupon bonus payments under the Food Stamp Act. ~~Unless at least~~  
26 ~~seven years has elapsed since the most recent felony conviction that has as an~~  
27 ~~element the possession, use, or distribution of a controlled substance, the~~The  
28 ~~department shall~~may not deny assistance under the supplemental nutrition assistance  
29 program to any individual who has been convicted of a felony offense that has as an  
30 element the possession, use, or distribution of a controlled substance as defined in  
31 section 102(6) of the Controlled Substances Act [21 U.S.C. 802(6)].

1       **SECTION 16. AMENDMENT.** Section 50-09-29 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3       **50-09-29. Requirements for administration of temporary assistance for needy**  
4 **families.**

- 5       1. Except as provided in subsections 2, 3, and 4, the department of human services, in  
6 its administration of the temporary assistance for needy families program, shall:
- 7       a. Provide assistance to otherwise eligible women in the third trimester of a  
8 pregnancy;
  - 9       b. Except as provided in subdivision c, afford eligible households benefits for no  
10 more than sixty months;
  - 11       c. Exempt eligible households from the requirements of subdivision b due to mental  
12 or physical disability of a parent or child, mental or physical incapacity of a  
13 parent, or other hardship including a parent subject to domestic violence as  
14 defined in section 14-07.1-01;
  - 15       d. Unless an exemption, exclusion, or disregard is required by law, count income  
16 and assets whenever actually available;
  - 17       e. Except as provided in subdivision j, and as required to allow the state to receive  
18 funds from the federal government under title IV-A, provide no benefits to  
19 noncitizen immigrants who arrive in the United States after August 21, 1996;
  - 20       f. Limit eligibility to households with total available assets, not otherwise exempted  
21 or excluded, of a value established by the department;
  - 22       g. Exclude one motor vehicle of any value in determining eligibility;
  - 23       h. Require work activities for all household members not specifically exempted by  
24 the department of human services for reasons such as mental or physical  
25 disability of a parent or child or mental or physical incapacity of a parent;
  - 26       i. Establish goals and take action to prevent and reduce the incidence of  
27 out-of-wedlock pregnancies and establish numerical goals for reducing the  
28 illegitimacy rate for the state for periods through calendar year 2005;
  - 29       j. To the extent required to allow the state to receive funds from the federal  
30 government under title IV-A, provide benefits to otherwise eligible noncitizens  
31 who are lawfully present in the United States;

Sixty-fifth  
Legislative Assembly

- 1 k. Establish and enforce standards against program fraud and abuse;
- 2 l. Provide employment placement programs;
- 3 m. Exempt from assets and income the savings and proportionate matching funds in
- 4 individual development accounts;
- 5 n. Determine the unemployment rate of adults living in a county that includes Indian
- 6 reservation lands and a significant population of Indian individuals by using
- 7 unemployment data provided by job service North Dakota;
- 8 o. When appropriate, require household members to complete high school;
- 9 p. To the extent required to allow the state to receive funds from the federal
- 10 government under title IV-A, exempt single parents from required work activities;
- 11 q. Provide for sanctions, including termination of assistance to the household, if a
- 12 household member fails to cooperate with work requirements;
- 13 r. Provide for sanctions, including termination of assistance to the household, if a
- 14 household member fails, without good cause, to cooperate with child support
- 15 activities;
- 16 s. Deny assistance with respect to a minor child absent from the household for
- 17 more than one calendar month, except as specifically provided by the state
- 18 agency for absences;
- 19 t. Require each household to participate in developing an individual employment
- 20 plan and provide for sanctions, including termination of assistance to the
- 21 household, if adult or minor household members age sixteen or older fail to
- 22 cooperate with the terms of the individual employment plan;
- 23 u. Provide pre-pregnancy family planning services that are to be incorporated into
- 24 the temporary assistance for needy families program assessment;
- 25 v. Except in cases of pregnancy resulting from rape or incest, not increase the
- 26 assistance amount to recognize the increase in household size when a child is
- 27 born to a household member who was a recipient of assistance under this
- 28 chapter during the probable month of the child's conception;
- 29 w. Disregard earned income as an incentive allowance for no more than twelve
- 30 months; and

- 1           x. Consider, and if determined appropriate, authorize demonstration projects in  
2           defined areas which may provide benefits and services that are not identical to  
3           benefits and services provided elsewhere; and
- 4           y. ~~Unless at least seven years has elapsed since the most recent felony conviction~~  
5           ~~that has as an element the possession, use, or distribution of a controlled~~  
6           ~~substance, deny assistance to any individual who has been convicted of a felony~~  
7           ~~offense that has as an element the possession, use, or distribution of a controlled~~  
8           ~~substance as defined in section 102(6) of the Controlled Substances Act~~  
9           ~~[21 U.S.C. 802(6)].~~
- 10          2. If the secretary of the United States department of health and human services  
11          determines that funds otherwise available for the temporary assistance for needy  
12          families program in this state must be reduced or eliminated should the department of  
13          human services administer the program in accordance with any provision of  
14          subsection 1, the department of human services shall administer the program in a  
15          manner that avoids the reduction or loss.
- 16          3. If the department of human services determines, subject to the approval of the  
17          legislative management, that there is insufficient worker opportunity, due to increases  
18          in the unemployment rate, to participate in work activities, the department may  
19          administer the temporary assistance for needy families program in a manner different  
20          than provided in subsection 1.
- 21          4. If the department of human services determines, subject to the approval of the  
22          legislative management, that administration of the temporary assistance for needy  
23          families program, in the manner provided by subsection 1, causes otherwise eligible  
24          individuals to become a charge upon the counties under chapter 50-01, the  
25          department may administer the program in a manner that avoids that result.
- 26          5. The department of human services may not deny assistance to any individual who has  
27          been convicted of a felony offense that has as an element the possession, use, or  
28          distribution of a controlled substance as defined in section 102(6) of the Controlled  
29          Substance Act [21 U.S.C. 802(6)].

30           **SECTION 17. PRETRIAL SERVICES DIVISION PILOT PROJECT - REPORT TO**  
31           **LEGISLATIVE ASSEMBLY.** The department of corrections and rehabilitation may establish a

1 pretrial services program as a pilot project in one or more judicial districts during the biennium  
2 beginning July 1, 2017, and ending June 30, 2019. The pretrial services pilot project must  
3 involve coordination among the department, the judicial branch, the commission on legal  
4 counsel for indigents, and state and local law enforcement agencies for the provision of pretrial  
5 services by the department for the district courts to individuals charged with felony offenses.  
6 Pretrial services include risk assessments, background and criminal history background  
7 investigations, recommendations for conditions of pretrial release, monitoring and supervision of  
8 individuals on pretrial release for compliance with pretrial conditions to assure the individual's  
9 appearance at all court proceedings, and reporting violations of pretrial release conditions to the  
10 district court. The department and the judicial branch shall provide a report of the process and  
11 outcome measures of the pretrial services program and recommendations, together with any  
12 legislation required to implement the recommendations, to the sixty-sixth legislative assembly.

13 **SECTION 18. JUSTICE REINVESTMENT INITIATIVE - REPORT TO LEGISLATIVE**

14 **MANAGEMENT - REPORT TO LEGISLATIVE ASSEMBLY.** Before September 1, 2018, the  
15 department of corrections and rehabilitation and the supreme court shall provide a report to the  
16 legislative management regarding the progress of the justice reinvestment initiative. The  
17 department of corrections and rehabilitation and the supreme court shall provide a report on the  
18 progress of the justice reinvestment initiative to the sixty-sixth legislative assembly.

19 **SECTION 19. APPROPRIATION.** There is appropriated out of any moneys in the general  
20 fund in the state treasury, not otherwise appropriated, the sum of \$110,916, or so much of the  
21 sum as may be necessary, and \$1,532,785 from federal funds, or so much of the sum as may  
22 be necessary, to the department of human services for the purpose of implementing sections 15  
23 and 16 of this Act, for the biennium beginning July 1, 2017, and ending June 30, 2019.

24 **SECTION 20. EFFECTIVE DATE.** Sections 7 and 8 of this Act become effective January 1,  
25 2018.

26 **SECTION 21. EMERGENCY.** Sections 1 through 6 and sections 9 through 16 of this Act are  
27 declared to be an emergency measure.



HB 1041  
3-28-17  
#1  
P1

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1041

Page 1, line 6, after the third comma insert "subsection 2 of section 39-20-01,"

Page 12, after line 15, insert:

**"SECTION 16. AMENDMENT.** Subsection 2 of section 39-20-01 of the North Dakota Century Code is amended and reenacted as follows:

2. The test or tests must be administered at the direction of a law enforcement officer only after placing the individual, ~~except individuals mentioned in section 39-20-03,~~ under arrest and informing that individual that the individual is or will be charged with the offense of driving or being in actual physical control of a vehicle upon the public highways while under the influence of intoxicating liquor, drugs, or a combination thereof. For the purposes of this chapter, the taking into custody of a child under section 27-20-13 or an individual under twenty-one years of age satisfies the requirement of an arrest. The law enforcement officer shall determine which of the tests is to be used."

Renumber accordingly

#1  
1045  
4-2-17

**Presumptive probation**

1. The sentencing court shall sentence an individual who has pled guilty to, or has been found guilty of, a class C felony offense or class A misdemeanor offense to a term of probation at the time of initial sentencing, except for an offense involving domestic violence; an offense subject to registration under section 12.1-32-15; an offense involving a firearm, dangerous weapon, explosive or incendiary device; or if a mandatory term of incarceration is required by law.
2. The sentencing court may impose a sentence of imprisonment if the sentencing court finds there are aggravating factors present to justify a departure from presumptive probation. Aggravating factors include whether the individual has previously pled guilty to, or was found guilty of, a felony offense anywhere; the offense involved force or violence; the offense involved harassment or stalking; the individual caused serious bodily injury or substantial bodily injury to another or created a substantial risk of serious bodily injury or death to another; or the individual used threats or coercion in the commission of the offense.
3. This section does not preclude the sentencing court from deferring imposition of sentence in accordance with subsection 4 of section 12.1-32-02 or sentencing an individual to a term of incarceration with credit for time spent in custody if execution of the sentence is suspended.

#1  
1041  
4-11-17

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1041

That the Senate recede from its amendments as printed on pages 1289-1291 of the House Journal and pages 1000 and 1001 of the Senate Journal and that Reengrossed House Bill No. 1041 be amended as follows:

Page 1, line 4, replace "subsections" with "subsection"

Page 1, line 4, remove "and 6"

Page 1, line 7, replace "section 43-45-06" with "subsection 2 of section 39-20-01"

Page 1, line 11, remove "addiction counseling services,"

Page 1, line 14, remove "and"

Page 1, line 14, after "assembly" insert "; to provide an appropriation; to provide an effective date; and to declare an emergency"

Page 3, line 26, remove overstrike over "one"

Page 3, line 26, remove "two"

Page 3, line 26, remove "five hundred"

Page 6, remove lines 26 through 30

Page 7, remove lines 1 through 30

Page 8, remove lines 1 through 5

Page 8, after line 8 insert:

"1."

Page 8, line 11, remove "involving domestic violence; an offense"

Page 8, line 11, replace "section 12.1-17-07.1" with "chapters 12.1-06.2, 12.1-08, and 12.1-09, section 12.1-16-03"

Page 8, line 11, remove "chapter"

Page 8, line 12, replace "12.1-41, or sections" with "chapters 12.1-17, 12.1-18, and 12.1-22, section 12.1-23-02.1, chapter 12.1-25, an offense subject to registration under section 12.1-32-15, chapter 12.1-36, or section"

Page 8, line 12, replace "or 14-09-22" with ", including attempt, serving as an accomplice to an offense, or conspiracy to commit the offense"

Page 8, line 12, after the underscored semicolon insert "an attempt to commit"

Page 8, line 13, after "weapon" insert "or serving as an accomplice or in a conspiracy to commit an offense involving a firearm or dangerous weapon"

Page 8, line 13, remove "The sentencing court may"

Page 8, remove lines 14 and 15

Page 8, line 16, remove "aggravating factors on the record at the time of sentencing."

Page 8, after line 19, insert:

- "2. This section does not apply to an offense committed under subsection 1 of section 12.1-22-02.
3. This section does not apply if the sentencing court finds there are aggravating factors present to justify a departure from presumptive probation. The sentencing court shall state the aggravating factors on the record at the time of sentencing. Aggravating factors include:
  - a. That the individual has plead guilty to, or has been found guilty of, a felony offense or class A misdemeanor offense prior to the date of the commission of the offense or offenses charged in the complaint, information, or indictment;
  - b. The age and vulnerability of the victim, whether the individual was in a position of responsibility or trust over the victim, or whether the individual abused a public position of responsibility or trust; or
  - c. If the individual used threats or coercion in the commission of the offense."

Page 9, line 26, after "felony" insert "B misdemeanor for a first offense and a class"

Page 9, line 26, after "misdemeanor" insert "for a second or subsequent offense"

Page 12, replace lines 16 through 26 with:

**"SECTION 15. AMENDMENT.** Subsection 2 of section 39-20-01 of the North Dakota Century Code is amended and reenacted as follows:

2. The test or tests must be administered at the direction of a law enforcement officer only after placing the individual, ~~except individuals mentioned in section 39-20-03,~~ under arrest and informing that individual that the individual is or will be charged with the offense of driving or being in actual physical control of a vehicle upon the public highways while under the influence of intoxicating liquor, drugs, or a combination thereof. For the purposes of this chapter, the taking into custody of a child under section 27-20-13 or an individual under twenty-one years of age satisfies the requirement of an arrest. The law enforcement officer shall determine which of the tests is to be used."

Page 16, after line 29, insert:

**"SECTION 20. APPROPRIATION - DEPARTMENT OF HUMAN SERVICES.**

There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$110,916, or so much of the sum as may be necessary, and \$1,532,785 from federal funds, or so much of the sum as may be necessary, to the department of human services for the purpose of implementing sections 16 and 17 of this Act, for the biennium beginning July 1, 2017, and ending June 30, 2019.

**SECTION 21. EFFECTIVE DATE.** Sections 7 and 8 of this Act become effective January 1, 2018.

**SECTION 22. EMERGENCY.** Sections 1 through 6, 9 through 14, and 16 and 17 of this Act are declared to be an emergency measure."

Renumber accordingly

Fi  
1041  
4-12-17

**TO:** Conference Committee on HB 1041 and HB 1269

**FROM:** Kelly Johnson, Intern

**DATE:** April 10, 2017

**RE:** HB 1041 and HB 1269 Research

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**HB 1041 and HB 1269 NDCC Where \$1,000 Triggers A Felony in Code:**

12.1-23-05. Grading of theft offenses

- A felony if the property or services stolen exceed fifty thousand dollars in value
- Class C felony if: (a) the property or services stolen exceed **one thousand dollars** in value

26.1-02.1-05. Penalties – Restitution

- Insurance fraud; a violation of section 26.1-02.1-02.1 is a class A felony if the value of any property or services retained exceeds fifty thousand dollars
- (5) A class C felony if the value of any property or services retained exceeds **one thousand** dollars but does not exceed ten thousand dollars; and (6) A class A misdemeanor in all other cases.

12.1-31-07.1. Exploitation of a vulnerable adult – penalty

- 2(a): A class A felony if the value of the exploited funds, assets, or property exceeds fifty thousand dollars
- c. A class C felony if the value of the exploited funds, assets, or property is in excess of **one thousand dollars** but does not exceed ten thousand dollars

12.1-23-07. Misapplication of entrusted property

- A class A felony if the value of the property misapplied exceeds fifty thousand dollars
- A class C felony if the value of the property misapplied exceeds **one thousand dollars** but does not exceed ten thousand dollars

12.1-24-01. Forgery or counterfeiting

- "...If the value of the property exceeds fifty thousand dollars, the offense is a class A felony."
- A class C felony if: (5) The offense is committed pursuant to a scheme to defraud another or others of money or property of a value in excess of **one thousand dollars**.

12.1-21.1-04. Penalty

- Animal facility – damage or destruction. A person is guilty of a class B felony if there is damage of ten thousand dollars or more.

12.1-21-05. Criminal mischief

- A class B felony if the actor intentionally causes pecuniary loss in excess of ten thousand dollars

6-08-16(2). Issuing check without account – financial liability – penalty – exceptions

12.1-24-03. Deceptive writings.

- A class B felony if it is committed pursuant to a scheme to defraud another or others of money or property of a value in excess of ten thousand dollars.
- A class C felony if: (2) The offense is committed pursuant to a scheme to defraud another or others of money or property of a value in excess of **one thousand dollars**.

12.1-23-06. Unauthorized use of a vehicle

- The offense is a class C felony if the vehicle is an aircraft or if the value of the use of the vehicle and cost of retrieval and restoration exceeds **one thousand dollars**.
- 12.1-23-08. Defrauding secured creditors. 26.1-02.1-0
- (4) A violation of subsection 2 or 3 must be prosecuted as theft under section 12.1-23-02 or 12.1-23-04. Violation of subsection 2 or 3 is a class C felony if the property has a value of more than **one thousand dollars**, as determined under subsection 7 of section 12.1-23-05. In all other cases, violation of this section is a class A misdemeanor.
- 12.1-21-04. Release of destructive forces
- 1. A person is guilty of a class B felony if he intentionally causes a catastrophe by any means and is guilty of a class C felony if he does so willfully. 2. A person is guilty of a class C felony if he willfully creates a risk of catastrophe, although no fire, explosion, or other destruction results. 3. A person who knowingly does an act which causes or which he knows is likely to cause a catastrophe, or assents to the doing of such act, is guilty of a class C felony if he willfully fails to take reasonable measures to prevent the catastrophe. 4. Catastrophe means serious bodily injury to ten or more people or substantial damage to ten or more separate habitations or structures or property loss in excess of five hundred thousand dollars.
- 6-08-16.2. Issuing check without account – financial liability – penalty – exceptions.
- 3. A person that, for that person or an agent or representative of another, willfully as defined in section 12.1-02-02 issues any instrument is guilty of a class C felony if the instrument was for at least **one thousand dollars** or that person, agent, or representative of another, issues more than one instrument for which the aggregate total of all instruments issued exceeds one thousand dollars, and at the time of issuing the instrument, the drawer does
- 12.1-23-08. Defrauding secured creditors
- A violation of subsection 2 or 3 must be prosecuted as theft under section 12.1-23-02 or 12.1-23-04. Violation of subsection 2 or 3 is a class C felony if the property has a value of more than **one thousand dollars**, as determined under subsection 7 of section 12.1-23-05. In all other cases, violation of this section is a class A misdemeanor
- 12.1-23-11. Unauthorized use of personal identifying information – penalty
- 2. An individual is guilty of an offense if the individual uses or attempts to use any personal identifying information of another individual, living or deceased, to obtain credit, money, goods, services, or anything else of value without the authorization or consent of the other individual. The offense is a class B felony if the credit, money, goods, services, or anything else of value exceeds **one thousand dollars** in value, otherwise the offense is a class C felony. A second or subsequent offense is a class A felony
- 

**HB 1041 and HB 1229 Language Inconsistencies Regarding School Zones:**

- In HB 1041, under section 12, “or within one thousand feet” has been removed; this remains in HB 1269 under section 6
- In HB 1041, took out “public career and technical education school” [sections 11 and 12] and in HB 1269, left in “or public career and technical education school” [section 6]
- HB 1269, kept in “once ounce [or 28.35 grams] or less of marijuana” [section 6] and this is taken out of HB 1041 [section 11]

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1041

That the Senate recede from its amendments as printed on pages 1289-1291 of the House Journal and pages 1000 and 1001 of the Senate Journal and that Reengrossed House Bill No. 1041 be amended as follows:

Page 1, line 1, after "12.1-32" insert "and a new section to chapter 54-23.3"

Page 1, line 2, after "probation" insert "and faith-based organizations"

Page 1, line 3, after the fourth comma insert "subdivision c of subsection 1 of section 12.1-32-02,"

Page 1, line 9, after the second comma insert "sentencing alternatives,"

Page 5, after line 15, insert:

**"SECTION 6. AMENDMENT.** Subdivision c of subsection 1 of section 12.1-32-02 of the North Dakota Century Code is amended and reenacted as follows:

c. A term of imprisonment, including intermittent imprisonment:

- (1) In a state correctional facility in accordance with section 29-27-07, in a regional corrections center, or in a county jail, if convicted of a felony or a class A misdemeanor.
- (2) In a county jail or in a regional corrections center, if convicted of a class B misdemeanor.
- (3) In a facility or program deemed appropriate for the treatment of the individual offender, including available community-based and faith-based programs.
- (4) In the case of persons convicted of an offense who are under eighteen years of age at the time of sentencing, the court is limited to sentencing the minor defendant to a term of imprisonment in the custody of the department of corrections and rehabilitation."

Page 16, after line 9, insert:

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

**Faith-based programming.**

1. The department of corrections and rehabilitation, with contracts through the department of human services and through the implementation of the community behavioral health program, shall allow faith-based organizations to provide services to individuals who need addiction treatment services.
2. For purposes of this section "faith-based organization" means a nonprofit corporation or association operated by a religious or denominational



organization, including an organization operated for religious, educational, or charitable purposes and which is operated, supervised, or controlled by or in connection with a religious organization, or an organization that has a mission statement, policies, or practices clearly demonstrating the organization is guided or motivated by faith."

Renumber accordingly

#3  
1041  
4-12-17

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1041

That the Senate recede from its amendments as printed on pages 1289-1291 of the House Journal and pages 1000 and 1001 of the Senate Journal and that Reengrossed House Bill No. 1041 be amended as follows:

Page 1, line 4, replace "subsections" with "subsection"

Page 1, line 4, remove "and 6"

Page 1, line 7, replace "section 43-45-06" with "subsection 2 of section 39-20-01"

Page 1, line 11, remove "addiction counseling services,"

Page 1, line 14, remove "and"

Page 1, line 14, after "assembly" insert "; to provide an appropriation; to provide an effective date; and to declare an emergency"

Page 3, line 26, remove the overstrike over "one"

Page 3, line 26, remove "two"

Page 3, line 26, remove "five hundred"

Page 6, remove lines 26 through 30

Page 7, removes lines 1 through 30

Page 8, remove lines 1 through 5

Page 8, after line 8 insert

"1."

Page 8, line 9, replace "convicted" with "who has pled guilty to or has been found guilty"

Page 8, line 11, remove "in violation of section 12.1-17-07.1, chapter"

Page 8, line 12, replace "12.1-41, or sections 14-07.1-06 or 14-09-22" with "subject to registration under section 12.1-32-15"

Page 8, line 12, replace the third "or" with an underscored comma

Page 8, line 13, after "weapon" insert ", explosive, or incendiary device"

Page 8, line 13, after the underscored period insert:

"2."

Page 8, line 15, remove "The sentencing court shall state the"

Page 8, line 16, replace "aggravating factors on the record at the time of sentencing" with "Aggravating factors include whether:

- a. The individual has previously pled guilty to or was found guilty of a felony offense in or out of the state;

- b. The offense involved force or violence;
- c. The offense involved harassment or stalking;
- d. The individual caused serious bodily injury to another or created a substantial risk of serious bodily injury to another; or
- e. The individual used threats or coercion in the commission of the offense"

Page 8, line 16, after the underscored period insert:

"3."

Page 9, line 26, after "felony" insert "B misdemeanor for a first offense and a class"

Page 9, line 26, after "misdemeanor" insert "for a second or subsequent offense"

Page 12, replace lines 16 through 26 with:

**"SECTION 15. AMENDMENT.** Subsection 2 of section 39-20-01 of the North Dakota Century Code is amended and reenacted as follows:

2. The test or tests must be administered at the direction of a law enforcement officer only after placing the individual, ~~except individuals mentioned in section 39-20-03,~~ under arrest and informing that individual that the individual is or will be charged with the offense of driving or being in actual physical control of a vehicle upon the public highways while under the influence of intoxicating liquor, drugs, or a combination thereof. For the purposes of this chapter, the taking into custody of a child under section 27-20-13 or an individual under twenty-one years of age satisfies the requirement of an arrest. The law enforcement officer shall determine which of the tests is to be used."

Page 16, after line 29, insert:

**"SECTION 20. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$110,916, or so much of the sum as may be necessary, and \$1,532,785 from federal funds, or so much of the sum as may be necessary, to the department of human services for the purpose of implementing sections 16 and 17 of this Act, for the period beginning with the effective date of this section, and ending June 30, 2019.

**SECTION 21. EFFECTIVE DATE.** Sections 7 and 8 of this Act become effective January 1, 2018.

**SECTION 22. EMERGENCY.** Sections 1 through 6, 9 through 14, and 16, 17, and 20 of this Act are declared to be an emergency measure."

Renumber accordingly

#1  
1041  
4-13-17

Sixty-fifth  
Legislative Assembly  
of North Dakota

REENGROSSED HOUSE BILL NO. 1041

Introduced by

Legislative Management

(Incarceration Issues Committee)

1 A BILL for an Act to create and enact a new section to chapter 12.1-32 and a new section to  
 2 chapter 54-23.3 of the North Dakota Century Code, relating to presumptive probation and  
 3 faith-based organizations; to amend and reenact sections 12-44.1-32, 12-54.1-01, 12-59-08,  
 4 12.1-17-13, and 12.1-23-05, subdivision c of subsection 1 of section 12.1-32-02, subsection 2 of  
 5 section 12.1-32-02, ~~subsections~~subsection 3 and 6 of section 12.1-32-07, section 19-03.1-22.3,  
 6 subsection 1 of section 19-03.1-22.5, subsections 5 and 7 of section 19-03.1-23, subdivision a  
 7 of subsection 1 of section 19-03.1-23.1, ~~section 19-03.4-03~~, subdivision f of subsection 5 of  
 8 section 39-08-01, ~~section 43-45-06~~subsection 2 of section 39-20-01, subsection 17 of section  
 9 50-06-05.1, and section 50-09-29 of the North Dakota Century Code, relating to sentence  
 10 reduction credit, medical paroles, domestic violence offender treatment, grading of theft  
 11 offenses, sentencing alternatives, credit for time spent in custody, terms and conditions of  
 12 probation, controlled substances ~~and controlled substance paraphernalia~~, ~~addiction counseling~~  
 13 ~~services~~, and the supplemental nutrition assistance program; to provide a penalty; to provide for  
 14 the creation of a pretrial services program pilot project within the department of corrections and  
 15 rehabilitation; to provide a report to the legislative management; ~~and~~ to provide for a report to  
 16 the legislative assembly; to provide an appropriation; to provide an effective date; and to declare  
 17 an emergency.

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

19 **SECTION 1. AMENDMENT.** Section 12-44.1-32 of the North Dakota Century Code is  
20 amended and reenacted as follows:

21 **12-44.1-32. ~~Performance-based sentence~~ Sentence reduction credit.**

22 ~~The presiding judge of a judicial district in which a correctional facility is located, after~~  
23 ~~consultation with the other judges in the district, may authorize the facility administrator to~~  
24 ~~provide for~~ An inmate sentenced to a correctional facility under this chapter is eligible to earn

1 sentence reductions based upon performance criteria established throughby the administrator  
2 ~~except that sentence reductions may not be given to offenders sentenced under section~~  
3 ~~12.1-32-09.1, including sentence reduction for good conduct.~~ While incarcerated in a  
4 correctional facility, an offender may earn no more than a one-day sentence reduction per six  
5 days served.

6 **SECTION 2. AMENDMENT.** Section 12-54.1-01 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8 **12-54.1-01. ~~Performance-based sentence~~ Sentence reduction.**

9 Except as provided under section 12.1-32-09.1, ~~offenders~~ an offender committed to the legal  
10 and physical custody of the department of corrections and rehabilitation ~~are~~ is eligible to earn  
11 sentence reductions based upon performance criteria established through department and  
12 penitentiary rules. Performance criteria includes participation in court-ordered or  
13 staff-recommended treatment and education programs and good work performance. The  
14 department may credit an offender committed to the legal and physical custody of the  
15 department who is eligible for sentence reduction five days good time per month for each month  
16 of the sentence imposed. The department may ~~not~~ credit an offender with ~~any~~ sentence  
17 reduction for time spent in custody ~~prior to~~ before sentencing and commitment, ~~for time~~  
18 ~~under supervised probation, or for any sentence where the incarceration time is six months or~~  
19 ~~less~~ to the legal and physical custody of the department. The department may not credit an  
20 offender with any sentence reduction for time spent on probation under the supervision and  
21 management of the department.

22 **SECTION 3. AMENDMENT.** Section 12-59-08 of the North Dakota Century Code is  
23 amended and reenacted as follows:

24 **12-59-08. ~~Emergency~~ Medical paroles.**

25 ~~The~~ if an inmate, including an inmate whose sentence is subject to sections 12.1-32-02.1  
26 and 12.1-32-09.1, and an inmate sentenced under subsection 1 of section 12.1-32-01, has a  
27 serious or terminal medical condition, the parole board may consider whether an grant the  
28 inmate may receive an emergency a medical parole at a meeting scheduled by the chairman.  
29 ~~The board may request the inmate to personally appear before the board before the board~~  
30 ~~makes a decision whether to grant the inmate an emergency parole. The board may grant or~~  
31 ~~deny an emergency parole, or grant a conditional emergency parole, or continue its~~

1 ~~consideration to another meeting. Two members of the parole board may grant emergency~~  
2 ~~parole, subject to terms and conditions of emergency parole that may be established by the two~~  
3 ~~members of the parole board, or by the department of corrections and rehabilitation with the~~  
4 ~~approval of the parole board. An inmate who receives an emergency medical parole remains~~  
5 under the jurisdiction of the parole board until the expiration of the maximum term or terms of  
6 imprisonment for which the inmate was sentenced, less any sentence reduction the inmate has  
7 received.

8 **SECTION 4. AMENDMENT.** Section 12.1-17-13 of the North Dakota Century Code is  
9 amended and reenacted as follows:

10 **12.1-17-13. Mandated treatment of domestic violence offenders.**

11 The sentence for an offense under section 12.1-17-01, 12.1-17-01.1, 12.1-17-02,  
12 12.1-17-03, 12.1-17-04, or 12.1-17-05 against an actor's family or household member, as  
13 defined in subsection 4 of section 14-07.1-01, must include an order to complete a domestic  
14 violence offender evaluation and treatment program as determined by the court. A court may not  
15 order the offender to attend anger management classes or individual counseling unless a  
16 domestic violence offender treatment program is not reasonably available to the defendant and  
17 the court makes findings for the record explaining why an order to complete a domestic violence  
18 offender treatment program would be inappropriate.

19 **SECTION 5. AMENDMENT.** Section 12.1-23-05 of the North Dakota Century Code is  
20 amended and reenacted as follows:

21 **12.1-23-05. Grading of theft offenses.**

- 22 1. Notwithstanding subsection 3, theft under this chapter is a class A felony if the  
23 property or services stolen exceed fifty thousand dollars in value.
- 24 2. Notwithstanding the provisions of subsection 3, theft under this chapter is a class B  
25 felony if the property or services stolen exceed ten thousand dollars in value but do  
26 not exceed fifty thousand dollars or are acquired or retained by a threat to commit a  
27 felony.
- 28 3. Theft under this chapter is a class C felony if:
  - 29 a. The property or services stolen exceed ~~one~~two thousand ~~five hundred~~ dollars in  
30 value;

- 1           b. The property or services stolen are acquired or retained by threat and (1) are  
2           acquired or retained by a public servant by a threat to take or withhold official  
3           action, or (2) exceed one hundred dollars in value;
- 4           c. The property or services stolen exceed one hundred dollars in value and are  
5           acquired or retained by a public servant in the course of official duties;
- 6           d. The property stolen is a firearm, ammunition, or an explosive or destructive  
7           device, ~~or an automobile, aircraft, or other motor propelled vehicle~~;
- 8           e. The property consists of any government file, record, document, or other  
9           government paper stolen from any government office or from any public servant;
- 10          f. The defendant is in the business of buying or selling stolen property and the  
11          defendant receives, retains, or disposes of the property in the course of that  
12          business;
- 13          g. The property stolen consists of any implement, paper, or other thing uniquely  
14          associated with the preparation of any money, stamp, bond, or other document,  
15          instrument, or obligation of this state;
- 16          h. The property stolen consists of livestock taken from the premises of the owner;
- 17          i. The property stolen consists of a key or other implement uniquely suited to  
18          provide access to property the theft of which would be a felony and it was stolen  
19          to gain such access;
- 20          j. The property stolen is a card, plate, or other credit device existing for the purpose  
21          of obtaining money, property, labor, or services on credit, or is a debit card,  
22          electronic fund transfer card, code, or other means of access to an account for  
23          the purposes of initiating electronic fund transfers; or
- 24          k. The property stolen is a prescription drug as defined in section 43-15.3-01.
- 25          4. All other theft under this chapter is a class A misdemeanor, unless the requirements of  
26          subsection 5 are met.
- 27          5. Theft under this chapter of property or services of a value not exceeding five hundred  
28          dollars is a class B misdemeanor if:  
29                  a. The theft was not committed by threat;  
30                  b. The theft was not committed by deception by one who stood in a confidential or  
31                  fiduciary relationship to the victim of the theft; and

1 c. The defendant was not a public servant or an officer or employee of a financial  
2 institution who committed the theft in the course of official duties.

3 The special classification provided in this subsection applies if the offense is classified  
4 under this subsection in the charge or if, at sentencing, the required factors are  
5 established by a preponderance of the evidence.

6 6. Notwithstanding subsection 3 of section 12.1-06-01, an attempt to commit a theft  
7 under this chapter is punishable equally with the completed offense when the actor  
8 has completed all of the conduct which the actor believes necessary on the actor's  
9 part to complete the theft except receipt of the property.

10 7. For purposes of grading, the amount involved in a theft under this chapter is the  
11 highest value by any reasonable standard, regardless of the actor's knowledge of such  
12 value, of the property or services which were stolen by the actor, or which the actor  
13 believed that the actor was stealing, or which the actor could reasonably have  
14 anticipated to have been the property or services involved. Thefts committed pursuant  
15 to one scheme or course of conduct, whether from the same person or several  
16 persons, may be charged as one offense and the amounts proved to have been stolen  
17 may be aggregated in determining the grade of the offense.

18 **SECTION 6. AMENDMENT.** Subdivision c of subsection 1 of section 12.1-32-02 of the  
19 North Dakota Century Code is amended and reenacted as follows:

20 c. A term of imprisonment, including intermittent imprisonment:

21 (1) In a state correctional facility in accordance with section 29-27-07, in a  
22 regional corrections center, or in a county jail, if convicted of a felony or a  
23 class A misdemeanor.

24 (2) In a county jail or in a regional corrections center, if convicted of a class B  
25 misdemeanor.

26 (3) In a facility or program deemed appropriate for the treatment of the  
27 individual offender, including available community-based or faith-based  
28 programs.

29 (4) In the case of persons convicted of an offense who are under eighteen  
30 years of age at the time of sentencing, the court is limited to sentencing the



1                                    minor defendant to a term of imprisonment in the custody of the department  
2                                    of corrections and rehabilitation.

3            **SECTION 7. AMENDMENT.** Subsection 2 of section 12.1-32-02 of the North Dakota  
4 Century Code is amended and reenacted as follows:

5            2.    Credit against any sentence to a term of imprisonment must be given by the court to a  
6                                    defendant for all time spent in custody as a result of the criminal charge for which the  
7                                    sentence was imposed or as a result of the conduct on which such charge was based.  
8                                    "Time spent in custody" includes time spent in custody in a jail or mental institution for  
9                                    the offense charged, whether that time is spent prior to trial, during trial, pending  
10                                    sentence, or pending appeal. The total amount of credit the defendant is entitled to for  
11                                    time spent in custody and any credit for sentence reduction under section 12-44.1-32  
12                                    or 12-54.1-01 the defendant is entitled to must be stated in the criminal judgment.

13            **SECTION 8. AMENDMENT.** Subsection 3 of section 12.1-32-07 of the North Dakota  
14 Century Code is amended and reenacted as follows:

15            3.    The court shall provide as an explicit condition of every probation that the defendant  
16                                    may not possess a firearm, destructive device, or other dangerous weapon while the  
17                                    defendant is on probation. Except when the offense is a misdemeanor offense under  
18                                    section 12.1-17-01, 12.1-17-01.1, 12.1-17-05, or 12.1-17-07.1, or chapter 14-07.1, the  
19                                    court may waive this condition of probation if the defendant has pled guilty to, or has  
20                                    been found guilty of, a misdemeanor or infraction offense, the misdemeanor or  
21                                    infraction is the defendant's first offense, and the court has made a specific finding on  
22                                    the record before imposition of a sentence or a probation that there is good cause to  
23                                    waive the condition. The court may not waive this condition of probation if the court  
24                                    places the defendant under the supervision and management of the department of  
25                                    corrections and rehabilitation. The court shall provide as an explicit condition of  
26                                    probation that the defendant may not willfully defraud a urine test administered as a  
27                                    condition of probation. Unless waived on the record by the court, the court shall also  
28                                    provide as a condition of probation that the defendant undergo various agreed-to  
29                                    community constraints and conditions as intermediate measures of the department of  
30                                    corrections and rehabilitation to avoid revocation, which may include:  
31                                    a.    Community service;

- 1           b. Day reporting;
- 2           c. Curfew;
- 3           d. Home confinement;
- 4           e. House arrest;
- 5           f. Electronic monitoring;
- 6           g. Residential halfway house;
- 7           h. Intensive supervision program;
- 8           i. Up to five nonsuccessive periods of incarceration during any twelve-month
- 9           period, each of which may not exceed forty-eight consecutive hours; or
- 10          j. Participation in the twenty-four seven sobriety program; or
- 11          k. One period of incarceration during a period of probation not to exceed thirty
- 12          consecutive days in lieu of a petition for revocation of probation.

13 ~~— SECTION 8. AMENDMENT. Subsection 6 of section 12.1 32-07 of the North Dakota~~  
14 ~~Century Code is amended and reenacted as follows:~~

- 15 ~~— 6. a. The court, upon notice to the probationer and with good cause, may modify or~~  
16 ~~enlarge the conditions of probation at any time prior to the expiration or~~  
17 ~~termination of the period for which the probation remains conditional.~~
- 18 ~~— b. If the defendant violates a condition of probation at any time before the expiration~~  
19 ~~or termination of the period and the petition for revocation of probation is the first~~  
20 ~~petition for revocation for a violation of a condition of probation in the case and~~  
21 ~~the violation does not include the commission of an offense involving violence, a~~  
22 ~~firearm or dangerous weapon, or the commission of a felony offense, or the~~  
23 ~~defendant was on probation for an offense subject to registration under section~~  
24 ~~12.1 32-15, the court may continue shall:~~
- 25 ~~— (1) Continue the defendant on the existing probation, with or without modifying~~  
26 ~~or enlarging the conditions;~~
- 27 ~~— (2) Require the defendant to serve up to ninety days of incarceration or the~~  
28 ~~balance of the defendant's sentence, whichever is less, as a condition of~~  
29 ~~probation; or may revoke~~
- 30 ~~— (3) Revoke the probation and impose a sentence not to exceed ninety days of~~  
31 ~~incarceration or the balance of the defendant's sentence, whichever is less.~~

1 ~~In any other case, the court may revoke the probation and impose any other~~  
2 ~~sentence that was available under section 12.1-32-02 or 12.1-32-09 at the~~  
3 ~~time of initial sentencing or deferment.~~

4 ~~c. In the case of suspended execution of sentence, if the defendant violates a~~  
5 ~~condition of probation at any time before the expiration or termination of the~~  
6 ~~period and the petition for revocation of probation is the first petition for~~  
7 ~~revocation for a violation of a condition of probation in the case and the violation~~  
8 ~~does not include the commission of an offense involving violence, a firearm or~~  
9 ~~dangerous weapon, or the commission of a felony offense, or the defendant was~~  
10 ~~on probation for an offense subject to registration under section 12.1-32-15, the~~  
11 ~~court may revoke~~shall:

12 ~~(1) Continue the defendant on the existing probation, with or without modifying~~  
13 ~~or enlarging the conditions;~~

14 ~~(2) Require the defendant to serve up to ninety days of incarceration or the~~  
15 ~~balance of the defendant's sentence, whichever is less, as a condition of~~  
16 ~~probation; or~~

17 ~~(3) Revoke the probation and impose a sentence not to exceed ninety days of~~  
18 ~~incarceration or the balance of the defendant's sentence, whichever is less.~~  
19 ~~In any other case, the court may revoke the probation and cause the~~  
20 ~~defendant to suffer the penalty of the sentence previously imposed upon the~~  
21 ~~defendant.~~

22 **SECTION 9.** A new section to chapter 12.1-32 of the North Dakota Century Code is created  
23 and enacted as follows:

24 **Presumptive probation.**

25 1. The sentencing court shall sentence an individual ~~convicted~~who has pled guilty to, or  
26 has been found guilty of, of a class C felony offense or class A misdemeanor offense  
27 to a term of probation at the time of initial sentencing, except for an offense involving  
28 domestic violence; an offense ~~in violation of section 12.1-17-07.1, chapter 12.1-41, or~~  
29 sections ~~14-07.1-06 or 14-09-22~~subject to registration under section 12.1-32-15; an  
30 offense involving a firearm or dangerous weapon, ~~explosive, or incendiary device~~; or if  
31 a mandatory term of incarceration is required by law.

1       2.   The sentencing court may impose a sentence of imprisonment if the sentencing court  
2       finds there are aggravating factors present to justify a departure from presumptive  
3       probation. ~~The sentencing court shall state the aggravating factors on the record at the~~  
4       ~~time of sentencing.~~ Aggravating factors include:

5       a.   That the individual has plead guilty to, or has been found guilty of, a felony  
6       offense or class A misdemeanor offense prior to the date of the commission of  
7       the offense or offenses charged in the complaint, information, or indictment;

8       b.   The age and vulnerability of the victim, whether the individual was in a position of  
9       responsibility or trust over the victim, or whether the individual abused a public  
10      position of responsibility or trust; or

11      c.   If the individual used threats or coercion in the commission of the offense.

12      3.   This section does not preclude the sentencing court from deferring imposition of  
13      sentence in accordance with subsection 4 of section 12.1-32-02 or sentencing an  
14      individual to a term of incarceration with credit for time spent in custody if execution of  
15      the sentence is suspended.

16      **SECTION 10. AMENDMENT.** Section 19-03.1-22.3 of the North Dakota Century Code is  
17      amended and reenacted as follows:

18      **19-03.1-22.3. Ingesting a controlled substance - Venue for violation - Penalty.**

19      A person who intentionally ingests, inhales, or otherwise takes into the body a controlled  
20      substance, unless the substance was obtained directly from a practitioner or pursuant to a valid  
21      prescription or order of a practitioner while acting in the course of the practitioner's professional  
22      practice, is guilty of a class AB misdemeanor for a first offense and if the controlled substance is  
23      marijuana. Otherwise, the offense is a class A misdemeanor ~~for a second or subsequent~~  
24      offense. The venue for a violation of this section exists in either the jurisdiction in which the  
25      controlled substance was ingested, inhaled, or otherwise taken into the body or the jurisdiction  
26      in which the controlled substance was detected in the body of the accused.

27      **SECTION 11. AMENDMENT.** Subsection 1 of section 19-03.1-22.5 of the North Dakota  
28      Century Code is amended and reenacted as follows:

29      1.   The use of controlled substance analog includes the ingestion, inhalation, absorption,  
30      or any other method of taking the controlled substance analog into the body. An  
31      individual who intentionally uses a controlled substance analog is guilty of a class G

1 felony ~~B~~A misdemeanor for a first offense and a class ~~A misdemeanor~~C felony for a  
2 second or subsequent offense, unless the individual obtains the analog directly from a  
3 practitioner or pursuant to a valid prescription or order of a practitioner.

4 **SECTION 12. AMENDMENT.** Subsections 5 and 7 of section 19-03.1-23 of the North  
5 Dakota Century Code are amended and reenacted as follows:

6 5. A violation of this ~~chapter~~title or a law of another state or the federal government which  
7 is equivalent to an offense with respect to the manufacture, delivery, or intent to deliver  
8 a controlled substance under this ~~chapter~~title committed while the offender was an  
9 adult and which resulted in a plea or finding of guilt must be considered a prior offense  
10 under subsections 1, 3, and 4. The prior offense must be alleged in the complaint,  
11 information, or indictment. The plea or finding of guilt for the prior offense must have  
12 occurred before the date of the commission of the offense or offenses charged in the  
13 complaint, information, or indictment.

14 7. a. It is unlawful for any person to willfully, as defined in section 12.1-02-02, possess  
15 a controlled substance or a controlled substance analog unless the substance  
16 was obtained directly from, or pursuant to, a valid prescription or order of a  
17 practitioner while acting in the course of the practitioner's professional practice, or  
18 except as otherwise authorized by this chapter, but any person who violates  
19 section 12-46-24 or 12-47-21 may not be prosecuted under this subsection.  
20 Except as otherwise provided in this subsection, any person who violates this  
21 subsection is guilty of a class A misdemeanor for a first offense under this  
22 subsection and a class C felony ~~A misdemeanor~~for a second or subsequent  
23 offense under this subsection. If, at the time of the offense the person is in or on,  
24 ~~or within one thousand feet [300.48 meters]~~ of the real property comprising a  
25 public or private elementary or secondary school or a public career and technical  
26 education school, the person is guilty of a class B felony, unless the offense  
27 involves ~~one ounce [28.35 grams]~~ or less of marijuana. Any person who violates  
28 this subsection regarding possession of ~~one ounce [28.35 grams]~~ or less of  
29 marijuana is guilty of a class B misdemeanor.

30 b. If an individual is sentenced to the legal and physical custody of the department  
31 of corrections and rehabilitation under this subsection, the department may place

- 1           the individual in a drug and alcohol treatment program designated by the  
2           department. Upon the successful completion of the drug and alcohol treatment  
3           program, the department shall release the individual from imprisonment to begin  
4           any court-ordered period of probation.
- 5           c. If the individual is not subject to any court-ordered probation, the court shall order  
6           the individual to serve the remainder of the sentence of imprisonment on  
7           supervised probation subject to the terms and conditions imposed by the court.
- 8           d. Probation under this subsection may include placement in another facility,  
9           treatment program, or drug court. If an individual is placed in another facility or  
10           treatment program upon release from imprisonment, the remainder of the  
11           sentence must be considered as time spent in custody.
- 12           e. An individual incarcerated under this subsection as a result of a second probation  
13           revocation is not eligible for release from imprisonment upon the successful  
14           completion of treatment.

15           **SECTION 13. AMENDMENT.** Subdivision a of subsection 1 of section 19-03.1-23.1 of the  
16 North Dakota Century Code is amended and reenacted as follows:

- 17           a. The offense was committed during a school sponsored activity or was committed  
18           during the hours of six a.m. to ten p.m. if school is in session, the offense  
19           involved the manufacture, delivery, or possession, with intent to manufacture or  
20           deliver a controlled substance in ~~or, on, or within one thousand feet [300.48~~  
21           ~~meters]~~ three hundred feet [91.4 meters] of, the real property comprising a ~~child~~  
22           ~~care or~~ preschool facility, ~~or a~~ public or private elementary or secondary school,  
23           or a public career and technical education school, ~~or a public or private college or~~  
24           ~~university;~~

25           ~~**SECTION 14. AMENDMENT.** Section 19-03.4-03 of the North Dakota Century Code is~~  
26 ~~amended and reenacted as follows:~~

27           ~~**19-03.4-03. Unlawful possession of drug paraphernalia – Penalty.**~~

- 28           ~~1. A person may not use or possess with intent to use drug paraphernalia to plant,~~  
29           ~~propagate, cultivate, grow, harvest, manufacture, compound, convert, produce,~~  
30           ~~process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled~~  
31           ~~substance in violation of chapter 19-03.1. Any person violating this subsection is guilty~~

1 of a class C felony if the drug paraphernalia is used, or possessed with intent to be  
2 used, to manufacture, compound, convert, produce, process, prepare, test, or analyze  
3 a controlled substance, other than marijuana, classified in schedule I, II, or III of  
4 chapter 19-03.1.

5 ~~2. A person may not use or possess with the intent to use drug paraphernalia to inject,~~  
6 ~~ingest, inhale, or otherwise induce into the human body a controlled substance, other~~  
7 ~~than marijuana, classified in schedule I, II, or III of chapter 19-03.1. A person violating~~  
8 ~~this subsection is guilty of a class A B misdemeanor. If a person previously has been~~  
9 ~~convicted of an offense under this title, other than an offense related to marijuana, or~~  
10 ~~an equivalent offense from another court in the United States, a violation of this~~  
11 ~~subsection is a class C felony A misdemeanor.~~

12 ~~3. A person may not use or possess with intent to use drug paraphernalia to plant,~~  
13 ~~propagate, cultivate, grow, harvest, manufacture, compound, convert, produce,~~  
14 ~~process, prepare, test, analyze, pack, repack, store, contain, or conceal marijuana in~~  
15 ~~violation of chapter 19-03.1. A person violating this subsection is guilty of a class A~~  
16 ~~misdemeanor.~~

17 ~~4. A person may not use or possess with the intent to use drug paraphernalia to ingest,~~  
18 ~~inhale, or otherwise introduce into the human body marijuana in violation of~~  
19 ~~chapter 19-03.1. A person violating this subsection is guilty of a class B misdemeanor.~~

20 **SECTION 14. AMENDMENT.** Subdivision f of subsection 5 of section 39-08-01 of the North  
21 Dakota Century Code is amended and reenacted as follows:

- 22 f. If the offense is subject to subdivision a or b, a municipal court or district court  
23 may not suspend a sentence, but may convert each day of a term of  
24 imprisonment to ten hours of community service for an offense subject to  
25 paragraph 2 of subdivision a. If the offense is subject to subdivision c, the district  
26 court may suspend a sentence, except for sixty days' imprisonment, under  
27 subsection 3 of section 12.1-32-02 on the condition that the defendant first  
28 undergo and complete an evaluation for alcohol and substance abuse treatment  
29 and rehabilitation. If the offense is subject to subdivision d, the district court may  
30 suspend a sentence, except for one year's imprisonment, under subsection 3 of  
31 section 12.1-32-02 on the condition that the defendant first undergo and

1 complete an evaluation for alcohol and substance abuse treatment and  
2 rehabilitation. If the defendant is found to be in need of alcohol and substance  
3 abuse treatment and rehabilitation, the district court may order the defendant  
4 placed under the supervision and management of the department of corrections  
5 and rehabilitation and is subject to the conditions of probation under section  
6 12.1-32-07. The district court may require the defendant to complete alcohol and  
7 substance abuse treatment and rehabilitation under the direction of the drug  
8 court program as a condition of probation in accordance with rules adopted by  
9 the supreme court. The district court may terminate probation under this section  
10 when the defendant completes the drug treatment program. If the district court  
11 finds that a defendant has failed to undergo an evaluation or complete treatment  
12 or has violated any condition of probation, the district court shall revoke the  
13 defendant's probation and shall sentence the defendant in accordance with this  
14 subsection.

15 ~~SECTION 16. AMENDMENT. Section 43-45-06 of the North Dakota Century Code is~~  
16 ~~amended and reenacted as follows:~~

17 ~~43-45-06. Addiction counseling practice - Exemptions.~~

18 ~~1. Nothing in this chapter may be construed to prevent any person~~individual ~~from doing~~  
19 ~~work within the standards and ethics of that person's~~individual's ~~profession and calling,~~  
20 ~~provided that if the person~~individual is providing addiction treatment or counseling and  
21 ~~does not represent to the public, by title or by use of the initials L.A.C., that the~~  
22 ~~person~~individual is engaging in the practice of licensed addiction counseling.

23 ~~2. Nothing in this~~This ~~chapter may be construed to~~does not ~~prevent addiction~~  
24 ~~counseling trainees or interns in board-approved programs from engaging in addiction~~  
25 ~~counseling related to training.~~

26 **SECTION 15. AMENDMENT.** Subsection 2 of section 39-20-01 of the North Dakota  
27 Century Code is amended and reenacted as follows:

- 28 2. The test or tests must be administered at the direction of a law enforcement officer  
29 only after placing the individual, ~~except individuals mentioned in section 39-20-03,~~  
30 under arrest and informing that individual that the individual is or will be charged with  
31 the offense of driving or being in actual physical control of a vehicle upon the public



1 highways while under the influence of intoxicating liquor, drugs, or a combination  
2 thereof. For the purposes of this chapter, the taking into custody of a child under  
3 section 27-20-13 or an individual under twenty-one years of age satisfies the  
4 requirement of an arrest. The law enforcement officer shall determine which of the  
5 tests is to be used.

6 **SECTION 16. AMENDMENT.** Subsection 17 of section 50-06-05.1 of the North Dakota  
7 Century Code is amended and reenacted as follows:

8 17. To act as the official agency of the state in the administration of the supplemental  
9 nutrition assistance program and to direct and supervise county administration of that  
10 program. Provided, however, that the department with the consent of the budget  
11 section of the legislative management may terminate the program if the rate of federal  
12 financial participation in administrative costs provided under Public Law 93-347 is  
13 decreased or limited, or if the state or counties become financially responsible for all or  
14 a portion of the coupon bonus payments under the Food Stamp Act. ~~Unless at least~~  
15 ~~seven years has elapsed since the most recent felony conviction that has as an~~  
16 ~~element the possession, use, or distribution of a controlled substance, the~~The  
17 department ~~shall~~may not deny assistance under the supplemental nutrition assistance  
18 program to any individual who has been convicted of a felony offense that has as an  
19 element the possession, use, or distribution of a controlled substance as defined in  
20 section 102(6) of the Controlled Substances Act [21 U.S.C. 802(6)].

21 **SECTION 17. AMENDMENT.** Section 50-09-29 of the North Dakota Century Code is  
22 amended and reenacted as follows:

23 **50-09-29. Requirements for administration of temporary assistance for needy**  
24 **families.**

- 25 1. Except as provided in subsections 2, 3, and 4, the department of human services, in  
26 its administration of the temporary assistance for needy families program, shall:
- 27 a. Provide assistance to otherwise eligible women in the third trimester of a  
28 pregnancy;
  - 29 b. Except as provided in subdivision c, afford eligible households benefits for no  
30 more than sixty months;

- 1 c. Exempt eligible households from the requirements of subdivision b due to mental
- 2 or physical disability of a parent or child, mental or physical incapacity of a
- 3 parent, or other hardship including a parent subject to domestic violence as
- 4 defined in section 14-07.1-01;
- 5 d. Unless an exemption, exclusion, or disregard is required by law, count income
- 6 and assets whenever actually available;
- 7 e. Except as provided in subdivision j, and as required to allow the state to receive
- 8 funds from the federal government under title IV-A, provide no benefits to
- 9 noncitizen immigrants who arrive in the United States after August 21, 1996;
- 10 f. Limit eligibility to households with total available assets, not otherwise exempted
- 11 or excluded, of a value established by the department;
- 12 g. Exclude one motor vehicle of any value in determining eligibility;
- 13 h. Require work activities for all household members not specifically exempted by
- 14 the department of human services for reasons such as mental or physical
- 15 disability of a parent or child or mental or physical incapacity of a parent;
- 16 i. Establish goals and take action to prevent and reduce the incidence of
- 17 out-of-wedlock pregnancies and establish numerical goals for reducing the
- 18 illegitimacy rate for the state for periods through calendar year 2005;
- 19 j. To the extent required to allow the state to receive funds from the federal
- 20 government under title IV-A, provide benefits to otherwise eligible noncitizens
- 21 who are lawfully present in the United States;
- 22 k. Establish and enforce standards against program fraud and abuse;
- 23 l. Provide employment placement programs;
- 24 m. Exempt from assets and income the savings and proportionate matching funds in
- 25 individual development accounts;
- 26 n. Determine the unemployment rate of adults living in a county that includes Indian
- 27 reservation lands and a significant population of Indian individuals by using
- 28 unemployment data provided by job service North Dakota;
- 29 o. When appropriate, require household members to complete high school;
- 30 p. To the extent required to allow the state to receive funds from the federal
- 31 government under title IV-A, exempt single parents from required work activities;

- 1 q. Provide for sanctions, including termination of assistance to the household, if a  
2 household member fails to cooperate with work requirements;
- 3 r. Provide for sanctions, including termination of assistance to the household, if a  
4 household member fails, without good cause, to cooperate with child support  
5 activities;
- 6 s. Deny assistance with respect to a minor child absent from the household for  
7 more than one calendar month, except as specifically provided by the state  
8 agency for absences;
- 9 t. Require each household to participate in developing an individual employment  
10 plan and provide for sanctions, including termination of assistance to the  
11 household, if adult or minor household members age sixteen or older fail to  
12 cooperate with the terms of the individual employment plan;
- 13 u. Provide pre-pregnancy family planning services that are to be incorporated into  
14 the temporary assistance for needy families program assessment;
- 15 v. Except in cases of pregnancy resulting from rape or incest, not increase the  
16 assistance amount to recognize the increase in household size when a child is  
17 born to a household member who was a recipient of assistance under this  
18 chapter during the probable month of the child's conception;
- 19 w. Disregard earned income as an incentive allowance for no more than twelve  
20 months; and
- 21 x. Consider, and if determined appropriate, authorize demonstration projects in  
22 defined areas which may provide benefits and services that are not identical to  
23 benefits and services provided elsewhere; and
- 24 ~~y. Unless at least seven years has elapsed since the most recent felony conviction~~  
25 ~~that has as an element the possession, use, or distribution of a controlled~~  
26 ~~substance, deny assistance to any individual who has been convicted of a felony~~  
27 ~~offense that has as an element the possession, use, or distribution of a controlled~~  
28 ~~substance as defined in section 102(6) of the Controlled Substances Act~~  
29 ~~[21 U.S.C. 802(6)].~~
- 30 2. If the secretary of the United States department of health and human services  
31 determines that funds otherwise available for the temporary assistance for needy

1 families program in this state must be reduced or eliminated should the department of  
2 human services administer the program in accordance with any provision of  
3 subsection 1, the department of human services shall administer the program in a  
4 manner that avoids the reduction or loss.

5 3. If the department of human services determines, subject to the approval of the  
6 legislative management, that there is insufficient worker opportunity, due to increases  
7 in the unemployment rate, to participate in work activities, the department may  
8 administer the temporary assistance for needy families program in a manner different  
9 than provided in subsection 1.

10 4. If the department of human services determines, subject to the approval of the  
11 legislative management, that administration of the temporary assistance for needy  
12 families program, in the manner provided by subsection 1, causes otherwise eligible  
13 individuals to become a charge upon the counties under chapter 50-01, the  
14 department may administer the program in a manner that avoids that result.

15 5. The department of human services may not deny assistance to any individual who has  
16 been convicted of a felony offense that has as an element the possession, use, or  
17 distribution of a controlled substance as defined in section 102(6) of the Controlled  
18 Substance Act [21 U.S.C. 802(6)].

19 **SECTION 18.** A new section to chapter 54-23.3 of the North Dakota Century Code is  
20 created and enacted as follows:

21 **Faith-based programming.**

22 1. The department of corrections and rehabilitation, with contracts through the  
23 department of human services and through the implementation of the community  
24 behavioral health program, shall allow faith-based organizations to provide services to  
25 individuals who need addiction treatment services.

26 2. For purposes of this section "faith-based organization" means a nonprofit corporation  
27 or association operated by a religious or denominational organization, including an  
28 organization operated for religious, educational, or charitable purposes and which is  
29 operated, supervised, or controlled by or in connection with a religious organization, or  
30 an organization that has a mission statement, policies, or practices clearly  
31 demonstrating the organization is guided or motivated by faith.

1       **SECTION 19. PRETRIAL SERVICES DIVISION PILOT PROJECT - REPORT TO**

2       **LEGISLATIVE ASSEMBLY.** The department of corrections and rehabilitation may establish a  
3 pretrial services program as a pilot project in one or more judicial districts during the biennium  
4 beginning July 1, 2017, and ending June 30, 2019. The pretrial services pilot project must  
5 involve coordination among the department, the judicial branch, the commission on legal  
6 counsel for indigents, and state and local law enforcement agencies for the provision of pretrial  
7 services by the department for the district courts to individuals charged with felony offenses.  
8 Pretrial services include risk assessments, background and criminal history background  
9 investigations, recommendations for conditions of pretrial release, monitoring and supervision of  
10 individuals on pretrial release for compliance with pretrial conditions to assure the individual's  
11 appearance at all court proceedings, and reporting violations of pretrial release conditions to the  
12 district court. The department and the judicial branch shall provide a report of the process and  
13 outcome measures of the pretrial services program and recommendations, together with any  
14 legislation required to implement the recommendations, to the sixty-sixth legislative assembly.

15       **SECTION 20. JUSTICE REINVESTMENT INITIATIVE - REPORT TO LEGISLATIVE**

16       **MANAGEMENT - REPORT TO LEGISLATIVE ASSEMBLY.** Before September 1, 2018, the  
17 department of corrections and rehabilitation and the supreme court shall provide a report to the  
18 legislative management regarding the progress of the justice reinvestment initiative. The  
19 department of corrections and rehabilitation and the supreme court shall provide a report on the  
20 progress of the justice reinvestment initiative to the sixty-sixth legislative assembly.

21       **SECTION 21. APPROPRIATION.** There is appropriated out of any moneys in the general  
22 fund in the state treasury, not otherwise appropriated, the sum of \$110,916, or so much of the  
23 sum as may be necessary, and \$1,532,785 from federal funds, or so much of the sum as may  
24 be necessary, to the department of human services for the purpose of implementing sections 17  
25 and 18 of this Act, for the period beginning with the effective date of this section, and ending  
26 June 30, 2019.

27       **SECTION 22. EFFECTIVE DATE.** Sections 8 and 9 of this Act become effective January 1,  
28 2018.

29       **SECTION 23. EMERGENCY.** Sections 1 through 5, 7, 10 through 18, and 22 of this Act are  
30 declared to be an emergency measure.

Sixty-fifth  
Legislative Assembly  
of North Dakota

## REENGROSSED HOUSE BILL NO. 1041

Introduced by

Legislative Management

(Incarceration Issues Committee)

1 A BILL for an Act to create and enact a new section to chapter 12.1-32 and a new section to  
 2 chapter 54-23.3 of the North Dakota Century Code, relating to presumptive probation and  
 3 faith-based organizations; to amend and reenact sections 12-44.1-32, 12-54.1-01, 12-59-08,  
 4 12.1-17-13, and 12.1-23-05, subdivision c of subsection 1 of section 12.1-32-02, subsection 2 of  
 5 section 12.1-32-02, ~~subsections~~subsection 3 and 6 of section 12.1-32-07, section 19-03.1-22.3,  
 6 subsection 1 of section 19-03.1-22.5, subsections 5 and 7 of section 19-03.1-23, subdivision a  
 7 of subsection 1 of section 19-03.1-23.1, section 19-03.4-03, subdivision f of subsection 5 of  
 8 section 39-08-01, ~~section 43-45-06~~subsection 2 of section 39-20-01, subsection 17 of section  
 9 50-06-05.1, and section 50-09-29 of the North Dakota Century Code, relating to sentence  
 10 reduction credit, medical paroles, domestic violence offender treatment, grading of theft  
 11 offenses, sentencing alternatives, credit for time spent in custody, terms and conditions of  
 12 probation, controlled substances and controlled substance paraphernalia, ~~addiction counseling~~  
 13 ~~services~~, and the supplemental nutrition assistance program; to provide a penalty; to provide for  
 14 the creation of a pretrial services program pilot project within the department of corrections and  
 15 rehabilitation; to provide a report to the legislative management; ~~and~~ to provide for a report to  
 16 the legislative assembly; to provide an appropriation; to provide an effective date; and to declare  
 17 an emergency.

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

19 **SECTION 1. AMENDMENT.** Section 12-44.1-32 of the North Dakota Century Code is  
 20 amended and reenacted as follows:

21 **12-44.1-32. ~~Performance-based sentence~~Sentence reduction credit.**

22 The presiding judge of a judicial district in which a correctional facility is located, after  
 23 consultation with the other judges in the district, may authorize the facility administrator to  
 24 provide forAn inmate sentenced to a correctional facility under this chapter is eligible to earn

1 sentence reductions based upon ~~performance~~ criteria established ~~through~~by the administrator  
2 ~~except that sentence reductions may not be given to offenders sentenced under section~~  
3 12.1-32-09.1, including sentence reduction for good conduct. While incarcerated in a  
4 correctional facility, an offender may earn no more than a one-day sentence reduction per six  
5 days served.

6 **SECTION 2. AMENDMENT.** Section 12-54.1-01 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8 **12-54.1-01. Performance-based sentenceSentence reduction.**

9 Except as provided under section 12.1-32-09.1, ~~offenders~~an offender committed to the legal  
10 and physical custody of the department of corrections and rehabilitation ~~are~~is eligible to earn  
11 sentence reductions based upon performance criteria established through department and  
12 penitentiary rules. Performance criteria includes participation in court-ordered or  
13 staff-recommended treatment and education programs and good work performance. The  
14 department may credit an offender committed to the legal and physical custody of the  
15 department who is eligible for sentence reduction five days good time per month for each month  
16 of the sentence imposed. The department may ~~not~~ credit an offender with ~~any~~ sentence  
17 reduction for time spent in custody ~~prior to~~before ~~sentences~~sentencing and commitment, ~~for time~~  
18 ~~under supervised probation, or for any sentence where the incarceration time is six months or~~  
19 ~~less~~ to the legal and physical custody of the department. The department may not credit an  
20 offender with any sentence reduction for time spent on probation under the supervision and  
21 management of the department.

22 **SECTION 3. AMENDMENT.** Section 12-59-08 of the North Dakota Century Code is  
23 amended and reenacted as follows:

24 **12-59-08. EmergencyMedical paroles.**

25 ~~The~~if an inmate, including an inmate whose sentence is subject to sections 12.1-32-02.1  
26 and 12.1-32-09.1, and an inmate sentenced under subsection 1 of section 12.1-32-01, has a  
27 serious or terminal medical condition, the parole board may ~~consider whether~~ grant the  
28 inmate ~~may receive an emergency~~ a medical parole at a meeting ~~scheduled by the chairman.~~  
29 The board may request the inmate to personally appear before the board ~~before the board~~  
30 makes a decision ~~whether to grant the inmate an emergency parole.~~ The board may grant or  
31 deny an emergency parole, or grant a conditional emergency parole, or continue its

1 ~~consideration to another meeting. Two members of the parole board may grant emergency~~  
2 ~~parole, subject to terms and conditions of emergency parole that may be established by the two~~  
3 ~~members of the parole board, or by the department of corrections and rehabilitation with the~~  
4 ~~approval of the parole board. An inmate who receives an emergency medical parole remains~~  
5 ~~under the jurisdiction of the parole board until the expiration of the maximum term or terms of~~  
6 ~~imprisonment for which the inmate was sentenced, less any sentence reduction the inmate has~~  
7 ~~received.~~

8 **SECTION 4. AMENDMENT.** Section 12.1-17-13 of the North Dakota Century Code is  
9 amended and reenacted as follows:

10 **12.1-17-13. Mandated treatment of domestic violence offenders.**

11 The sentence for an offense under section 12.1-17-01, 12.1-17-01.1, 12.1-17-02,  
12 12.1-17-03, 12.1-17-04, or 12.1-17-05 against an actor's family or household member, as  
13 defined in subsection 4 of section 14-07.1-01, must include an order to complete a domestic  
14 violence offender evaluation and treatment program as determined by the court. A court may not  
15 order the offender to attend anger management classes or individual counseling unless a  
16 domestic violence offender treatment program is not reasonably available to the defendant and  
17 the court makes findings for the record explaining why an order to complete a domestic violence  
18 offender treatment program would be inappropriate.

19 **SECTION 5. AMENDMENT.** Section 12.1-23-05 of the North Dakota Century Code is  
20 amended and reenacted as follows:

21 **12.1-23-05. Grading of theft offenses.**

- 22 1. Notwithstanding subsection 3, theft under this chapter is a class A felony if the  
23 property or services stolen exceed fifty thousand dollars in value.
- 24 2. Notwithstanding the provisions of subsection 3, theft under this chapter is a class B  
25 felony if the property or services stolen exceed ten thousand dollars in value but do  
26 not exceed fifty thousand dollars or are acquired or retained by a threat to commit a  
27 felony.
- 28 3. Theft under this chapter is a class C felony if:
  - 29 a. The property or services stolen exceed onetwo thousand five hundred dollars in  
30 value;



- 1           b. The property or services stolen are acquired or retained by threat and (1) are  
2           acquired or retained by a public servant by a threat to take or withhold official  
3           action, or (2) exceed one hundred dollars in value;
- 4           c. The property or services stolen exceed one hundred dollars in value and are  
5           acquired or retained by a public servant in the course of official duties;
- 6           d. The property stolen is a firearm, ammunition, or an explosive or destructive  
7           device, ~~or an automobile, aircraft, or other motor-propelled vehicle;~~
- 8           e. The property consists of any government file, record, document, or other  
9           government paper stolen from any government office or from any public servant;
- 10          f. The defendant is in the business of buying or selling stolen property and the  
11          defendant receives, retains, or disposes of the property in the course of that  
12          business;
- 13          g. The property stolen consists of any implement, paper, or other thing uniquely  
14          associated with the preparation of any money, stamp, bond, or other document,  
15          instrument, or obligation of this state;
- 16          h. The property stolen consists of livestock taken from the premises of the owner;
- 17          i. The property stolen consists of a key or other implement uniquely suited to  
18          provide access to property the theft of which would be a felony and it was stolen  
19          to gain such access;
- 20          j. The property stolen is a card, plate, or other credit device existing for the purpose  
21          of obtaining money, property, labor, or services on credit, or is a debit card,  
22          electronic fund transfer card, code, or other means of access to an account for  
23          the purposes of initiating electronic fund transfers; or
- 24          k. The property stolen is a prescription drug as defined in section 43-15.3-01.
- 25      4. All other theft under this chapter is a class A misdemeanor, unless the requirements of  
26      subsection 5 are met.
- 27      5. Theft under this chapter of property or services of a value not exceeding five hundred  
28      dollars is a class B misdemeanor if:
  - 29          a. The theft was not committed by threat;
  - 30          b. The theft was not committed by deception by one who stood in a confidential or  
31          fiduciary relationship to the victim of the theft; and

1 c. The defendant was not a public servant or an officer or employee of a financial  
2 institution who committed the theft in the course of official duties.

3 The special classification provided in this subsection applies if the offense is classified  
4 under this subsection in the charge or if, at sentencing, the required factors are  
5 established by a preponderance of the evidence.

6 6. Notwithstanding subsection 3 of section 12.1-06-01, an attempt to commit a theft  
7 under this chapter is punishable equally with the completed offense when the actor  
8 has completed all of the conduct which the actor believes necessary on the actor's  
9 part to complete the theft except receipt of the property.

10 7. For purposes of grading, the amount involved in a theft under this chapter is the  
11 highest value by any reasonable standard, regardless of the actor's knowledge of such  
12 value, of the property or services which were stolen by the actor, or which the actor  
13 believed that the actor was stealing, or which the actor could reasonably have  
14 anticipated to have been the property or services involved. Thefts committed pursuant  
15 to one scheme or course of conduct, whether from the same person or several  
16 persons, may be charged as one offense and the amounts proved to have been stolen  
17 may be aggregated in determining the grade of the offense.

18 **SECTION 6. AMENDMENT.** Subdivision c of subsection 1 of section 12.1-32-02 of the  
19 North Dakota Century Code is amended and reenacted as follows:

20 c. A term of imprisonment, including intermittent imprisonment:

21 (1) In a state correctional facility in accordance with section 29-27-07, in a  
22 regional corrections center, or in a county jail, if convicted of a felony or a  
23 class A misdemeanor.

24 (2) In a county jail or in a regional corrections center, if convicted of a class B  
25 misdemeanor.

26 (3) In a facility or program deemed appropriate for the treatment of the  
27 individual offender, including available community-based or faith-based  
28 programs.

29 (4) In the case of persons convicted of an offense who are under eighteen  
30 years of age at the time of sentencing, the court is limited to sentencing the

1                                    minor defendant to a term of imprisonment in the custody of the department  
2                                    of corrections and rehabilitation.

3            **SECTION 7. AMENDMENT.** Subsection 2 of section 12.1-32-02 of the North Dakota  
4 Century Code is amended and reenacted as follows:

- 5            2.    Credit against any sentence to a term of imprisonment must be given by the court to a  
6                                    defendant for all time spent in custody as a result of the criminal charge for which the  
7                                    sentence was imposed or as a result of the conduct on which such charge was based.  
8                                    "Time spent in custody" includes time spent in custody in a jail or mental institution for  
9                                    the offense charged, whether that time is spent prior to trial, during trial, pending  
10                                    sentence, or pending appeal. The total amount of credit the defendant is entitled to for  
11                                    time spent in custody and any credit for sentence reduction under section 12-44.1-32  
12                                    or 12-54.1-01 the defendant is entitled to must be stated in the criminal judgment.

13            **SECTION 8. AMENDMENT.** Subsection 3 of section 12.1-32-07 of the North Dakota  
14 Century Code is amended and reenacted as follows:

- 15            3.    The court shall provide as an explicit condition of every probation that the defendant  
16                                    may not possess a firearm, destructive device, or other dangerous weapon while the  
17                                    defendant is on probation. Except when the offense is a misdemeanor offense under  
18                                    section 12.1-17-01, 12.1-17-01.1, 12.1-17-05, or 12.1-17-07.1, or chapter 14-07.1, the  
19                                    court may waive this condition of probation if the defendant has pled guilty to, or has  
20                                    been found guilty of, a misdemeanor or infraction offense, the misdemeanor or  
21                                    infraction is the defendant's first offense, and the court has made a specific finding on  
22                                    the record before imposition of a sentence or a probation that there is good cause to  
23                                    waive the condition. The court may not waive this condition of probation if the court  
24                                    places the defendant under the supervision and management of the department of  
25                                    corrections and rehabilitation. The court shall provide as an explicit condition of  
26                                    probation that the defendant may not willfully defraud a urine test administered as a  
27                                    condition of probation. Unless waived on the record by the court, the court shall also  
28                                    provide as a condition of probation that the defendant undergo various agreed-to  
29                                    community constraints and conditions as intermediate measures of the department of  
30                                    corrections and rehabilitation to avoid revocation, which may include:  
31                                    a.    Community service;

- 1           b. Day reporting;
- 2           c. Curfew;
- 3           d. Home confinement;
- 4           e. House arrest;
- 5           f. Electronic monitoring;
- 6           g. Residential halfway house;
- 7           h. Intensive supervision program;
- 8           i. Up to five nonsuccessive periods of incarceration during any twelve-month
- 9           period, each of which may not exceed forty-eight consecutive hours; or
- 10          j. Participation in the twenty-four seven sobriety program; or
- 11          k. One period of incarceration during a period of probation not to exceed thirty
- 12          consecutive days in lieu of a petition for revocation of probation.

13        ~~SECTION 8. AMENDMENT. Subsection 6 of section 12.1-32-07 of the North Dakota~~  
14        ~~Century Code is amended and reenacted as follows:~~

- 15        ~~6. a. The court, upon notice to the probationer and with good cause, may modify or~~  
16        ~~enlarge the conditions of probation at any time prior to the expiration or~~  
17        ~~termination of the period for which the probation remains conditional.~~
- 18        ~~b. If the defendant violates a condition of probation at any time before the expiration~~  
19        ~~or termination of the period and the petition for revocation of probation is the first~~  
20        ~~petition for revocation for a violation of a condition of probation in the case and~~  
21        ~~the violation does not include the commission of an offense involving violence, a~~  
22        ~~firearm or dangerous weapon, or the commission of a felony offense, or the~~  
23        ~~defendant was on probation for an offense subject to registration under section~~  
24        ~~12.1-32-15, the court may continue shall:~~
- 25        ~~(1) Continue the defendant on the existing probation, with or without modifying~~  
26        ~~or enlarging the conditions;:~~
- 27        ~~(2) Require the defendant to serve up to ninety days of incarceration or the~~  
28        ~~balance of the defendant's sentence, whichever is less, as a condition of~~  
29        ~~probation; or may revoke~~
- 30        ~~(3) Revoke the probation and impose a sentence not to exceed ninety days of~~  
31        ~~incarceration or the balance of the defendant's sentence, whichever is less.~~

1 ~~In any other case, the court may revoke the probation and impose any other~~  
2 ~~sentence that was available under section 12.1-32-02 or 12.1-32-09 at the~~  
3 ~~time of initial sentencing or deferment.~~

4 ~~c. In the case of suspended execution of sentence, if the defendant violates a~~  
5 ~~condition of probation at any time before the expiration or termination of the~~  
6 ~~period and the petition for revocation of probation is the first petition for~~  
7 ~~revocation for a violation of a condition of probation in the case and the violation~~  
8 ~~does not include the commission of an offense involving violence, a firearm or~~  
9 ~~dangerous weapon, or the commission of a felony offense, or the defendant was~~  
10 ~~on probation for an offense subject to registration under section 12.1-32-15, the~~  
11 ~~court may revoke shall:~~

12 ~~(1) Continue the defendant on the existing probation, with or without modifying~~  
13 ~~or enlarging the conditions;~~

14 ~~(2) Require the defendant to serve up to ninety days of incarceration or the~~  
15 ~~balance of the defendant's sentence, whichever is less, as a condition of~~  
16 ~~probation; or~~

17 ~~(3) Revoke the probation and impose a sentence not to exceed ninety days of~~  
18 ~~incarceration or the balance of the defendant's sentence, whichever is less.~~  
19 ~~In any other case, the court may revoke the probation and cause the~~  
20 ~~defendant to suffer the penalty of the sentence previously imposed upon the~~  
21 ~~defendant.~~

22 **SECTION 9.** A new section to chapter 12.1-32 of the North Dakota Century Code is created  
23 and enacted as follows:

24 **Presumptive probation.**

25 1. The sentencing court shall sentence an individual convicted who has pled guilty to, or  
26 has been found guilty of a class C felony offense or class A misdemeanor offense to a  
27 term of probation at the time of initial sentencing, except for an offense involving  
28 domestic violence; an offense in violation of section 12.1-17-07.1, chapter 12.1-41, or  
29 sections 14-07.1-06 or 14-09-22 subject to registration under section 12.1-32-15; an  
30 offense involving a firearm or dangerous weapon, explosive, or incendiary device; or if  
31 a mandatory term of incarceration is required by law.

- 1        2. The sentencing court may impose a sentence of imprisonment if the sentencing court  
2        finds there are aggravating factors present to justify a departure from presumptive  
3        probation. ~~The sentencing court shall state the aggravating factors on the record at the~~  
4        ~~time of sentencing.~~ Aggravating factors include:  
5        a. That the individual has plead guilty to, or has been found guilty of, a felony  
6        offense or class A misdemeanor offense prior to the date of the commission of  
7        the offense or offenses charged in the complaint, information, or indictment;  
8        b. The age and vulnerability of the victim, whether the individual was in a position of  
9        responsibility or trust over the victim, or whether the individual abused a public  
10       position of responsibility or trust; or  
11       c. If the individual used threats or coercion in the commission of the offense.  
12       3. This section does not preclude the sentencing court from deferring imposition of  
13       sentence in accordance with subsection 4 of section 12.1-32-02 or sentencing an  
14       individual to a term of incarceration with credit for time spent in custody if execution of  
15       the sentence is suspended.

16        **SECTION 10. AMENDMENT.** Section 19-03.1-22.3 of the North Dakota Century Code is  
17 amended and reenacted as follows:

18        **19-03.1-22.3. Ingesting a controlled substance - Venue for violation - Penalty.**

19        A person who intentionally ingests, inhales, or otherwise takes into the body a controlled  
20 substance, unless the substance was obtained directly from a practitioner or pursuant to a valid  
21 prescription or order of a practitioner while acting in the course of the practitioner's professional  
22 practice, is guilty of a class AB misdemeanor for a first offense and a class A misdemeanor for a  
23 second or subsequent offense. The venue for a violation of this section exists in either the  
24 jurisdiction in which the controlled substance was ingested, inhaled, or otherwise taken into the  
25 body or the jurisdiction in which the controlled substance was detected in the body of the  
26 accused.

27        **SECTION 11. AMENDMENT.** Subsection 1 of section 19-03.1-22.5 of the North Dakota  
28 Century Code is amended and reenacted as follows:

- 29        1. The use of controlled substance analog includes the ingestion, inhalation, absorption,  
30 or any other method of taking the controlled substance analog into the body. An  
31 individual who intentionally uses a controlled substance analog is guilty of a class G

1 ~~felony~~B misdemeanor for a first offense and a class A misdemeanor for a second or  
2 subsequent offense, unless the individual obtains the analog directly from a  
3 practitioner or pursuant to a valid prescription or order of a practitioner.

4 **SECTION 12. AMENDMENT.** Subsections 5 and 7 of section 19-03.1-23 of the North  
5 Dakota Century Code are amended and reenacted as follows:

6 5. A violation of this ~~chapter~~title or a law of another state or the federal government which  
7 is equivalent to an offense with respect to the manufacture, delivery, or intent to deliver  
8 a controlled substance under this ~~chapter~~title committed while the offender was an  
9 adult and which resulted in a plea or finding of guilt must be considered a prior offense  
10 under subsections 1, 3, and 4. The prior offense must be alleged in the complaint,  
11 information, or indictment. The plea or finding of guilt for the prior offense must have  
12 occurred before the date of the commission of the offense or offenses charged in the  
13 complaint, information, or indictment.

14 7. a. It is unlawful for any person to willfully, as defined in section 12.1-02-02, possess  
15 a controlled substance or a controlled substance analog unless the substance  
16 was obtained directly from, or pursuant to, a valid prescription or order of a  
17 practitioner while acting in the course of the practitioner's professional practice, or  
18 except as otherwise authorized by this chapter, but any person who violates  
19 section 12-46-24 or 12-47-21 may not be prosecuted under this subsection.  
20 Except as otherwise provided in this subsection, any person who violates this  
21 subsection is guilty of a class ~~C~~felony B misdemeanor for a first offense and a  
22 class A misdemeanor for a second or subsequent offense under this subsection.  
23 If, at the time of the offense the person is in or on, ~~or within one thousand feet~~  
24 ~~[300.48 meters]~~ of the real property comprising a public or private elementary or  
25 secondary school ~~or a public career and technical education school~~, the person is  
26 guilty of a class B felony, unless the offense involves ~~one ounce [28.35 grams]~~ or  
27 ~~less of~~ marijuana. Any person who violates this subsection regarding possession  
28 of ~~one ounce [28.35 grams]~~ or ~~less of~~ marijuana is guilty of a class B  
29 misdemeanor.

30 b. If an individual is sentenced to the legal and physical custody of the department  
31 of corrections and rehabilitation under this subsection, the department may place

1           the individual in a drug and alcohol treatment program designated by the  
2           department. Upon the successful completion of the drug and alcohol treatment  
3           program, the department shall release the individual from imprisonment to begin  
4           any court-ordered period of probation.

5           c. If the individual is not subject to any court-ordered probation, the court shall order  
6           the individual to serve the remainder of the sentence of imprisonment on  
7           supervised probation subject to the terms and conditions imposed by the court.

8           d. Probation under this subsection may include placement in another facility,  
9           treatment program, or drug court. If an individual is placed in another facility or  
10          treatment program upon release from imprisonment, the remainder of the  
11          sentence must be considered as time spent in custody.

12          e. An individual incarcerated under this subsection as a result of a second probation  
13          revocation is not eligible for release from imprisonment upon the successful  
14          completion of treatment.

15          **SECTION 13. AMENDMENT.** Subdivision a of subsection 1 of section 19-03.1-23.1 of the  
16 North Dakota Century Code is amended and reenacted as follows:

17           a. The offense involved the manufacture, delivery, or possession, with intent to  
18           manufacture or deliver a controlled substance in or on, ~~or within one thousand~~  
19           ~~feet [300.48 meters] of,~~ the real property comprising a child care or preschool  
20           ~~facility, or a public or private elementary or secondary school, public career and~~  
21           ~~technical education school, or a public or private college or university;~~

22          **SECTION 14. AMENDMENT.** Section 19-03.4-03 of the North Dakota Century Code is  
23 amended and reenacted as follows:

24          **19-03.4-03. Unlawful possession of drug paraphernalia - Penalty.**

25           1. A person may not use or possess with intent to use drug paraphernalia to plant,  
26           propagate, cultivate, grow, harvest, manufacture, compound, convert, produce,  
27           process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled  
28           substance in violation of chapter 19-03.1. Any person violating this subsection is guilty  
29           of a class C felony if the drug paraphernalia is used, or possessed with intent to be  
30           used, to manufacture, compound, convert, produce, process, prepare, test, or analyze



1 a controlled substance, other than marijuana, classified in schedule I, II, or III of  
2 chapter 19-03.1.

3 2. A person may not use or possess with the intent to use drug paraphernalia to inject,  
4 ingest, inhale, or otherwise induce into the human body a controlled substance, other  
5 than marijuana, classified in schedule I, II, or III of chapter 19-03.1. A person violating  
6 this subsection is guilty of a class A\_B misdemeanor. If a person previously has been  
7 convicted of an offense under this title, other than an offense related to marijuana, or  
8 an equivalent offense from another court in the United States, a violation of this  
9 subsection is a class-~~C~~ felony A misdemeanor.

10 3. A person may not use or possess with intent to use drug paraphernalia to plant,  
11 propagate, cultivate, grow, harvest, manufacture, compound, convert, produce,  
12 process, prepare, test, analyze, pack, repack, store, contain, or conceal marijuana in  
13 violation of chapter 19-03.1. A person violating this subsection is guilty of a class A  
14 misdemeanor.

15 4. A person may not use or possess with the intent to use drug paraphernalia to ingest,  
16 inhale, or otherwise introduce into the human body marijuana in violation of  
17 chapter 19-03.1. A person violating this subsection is guilty of a class B misdemeanor.

18 **SECTION 15. AMENDMENT.** Subdivision f of subsection 5 of section 39-08-01 of the North  
19 Dakota Century Code is amended and reenacted as follows:

20 f. If the offense is subject to subdivision a or b, a municipal court or district court  
21 may not suspend a sentence, but may convert each day of a term of  
22 imprisonment to ten hours of community service for an offense subject to  
23 paragraph 2 of subdivision a. If the offense is subject to subdivision c, the district  
24 court may suspend a sentence, except for sixty days' imprisonment, under  
25 subsection 3 of section 12.1-32-02 on the condition that the defendant first  
26 undergo and complete an evaluation for alcohol and substance abuse treatment  
27 and rehabilitation. If the offense is subject to subdivision d, the district court may  
28 suspend a sentence, except for one year's imprisonment, under subsection 3 of  
29 section 12.1-32-02 on the condition that the defendant first undergo and  
30 complete an evaluation for alcohol and substance abuse treatment and  
31 rehabilitation. If the defendant is found to be in need of alcohol and substance

1 abuse treatment and rehabilitation, the district court may order the defendant  
2 placed under the supervision and management of the department of corrections  
3 and rehabilitation and is subject to the conditions of probation under section  
4 12.1-32-07. The district court may require the defendant to complete alcohol and  
5 substance abuse treatment and rehabilitation under the direction of the drug  
6 court program as a condition of probation in accordance with rules adopted by  
7 the supreme court. The district court may terminate probation under this section  
8 when the defendant completes the drug treatment program. If the district court  
9 finds that a defendant has failed to undergo an evaluation or complete treatment  
10 or has violated any condition of probation, the district court shall revoke the  
11 defendant's probation and shall sentence the defendant in accordance with this  
12 subsection.

13 ~~SECTION 16. AMENDMENT. Section 43-45-06 of the North Dakota Century Code is~~  
14 ~~amended and reenacted as follows:~~

15 ~~43-45-06. Addiction counseling practice - Exemptions.~~

16 ~~1. Nothing in this chapter may be construed to prevent any person~~individual ~~from doing~~  
17 ~~work within the standards and ethics of that person's~~individual's ~~profession and calling,~~  
18 ~~provided that if the person~~individual is providing addiction treatment or counseling and  
19 ~~does not represent to the public, by title or by use of the initials L.A.C., that the~~  
20 ~~person~~individual is engaging in the practice of licensed addiction counseling.

21 ~~2. Nothing in this~~This ~~chapter may be construed to~~does not prevent ~~addiction~~  
22 ~~counseling trainees or interns in board-approved programs from engaging in addiction~~  
23 ~~counseling related to training.~~

24 **SECTION 16. AMENDMENT.** Subsection 2 of section 39-20-01 of the North Dakota  
25 Century Code is amended and reenacted as follows:

- 26 2. The test or tests must be administered at the direction of a law enforcement officer  
27 only after placing the individual, ~~except individuals mentioned in section 39-20-03,~~  
28 under arrest and informing that individual that the individual is or will be charged with  
29 the offense of driving or being in actual physical control of a vehicle upon the public  
30 highways while under the influence of intoxicating liquor, drugs, or a combination  
31 thereof. For the purposes of this chapter, the taking into custody of a child under

1 section 27-20-13 or an individual under twenty-one years of age satisfies the  
2 requirement of an arrest. The law enforcement officer shall determine which of the  
3 tests is to be used.

4 **SECTION 17. AMENDMENT.** Subsection 17 of section 50-06-05.1 of the North Dakota  
5 Century Code is amended and reenacted as follows:

- 6 17. To act as the official agency of the state in the administration of the supplemental  
7 nutrition assistance program and to direct and supervise county administration of that  
8 program. Provided, however, that the department with the consent of the budget  
9 section of the legislative management may terminate the program if the rate of federal  
10 financial participation in administrative costs provided under Public Law 93-347 is  
11 decreased or limited, or if the state or counties become financially responsible for all or  
12 a portion of the coupon bonus payments under the Food Stamp Act. ~~Unless at least~~  
13 ~~seven years has elapsed since the most recent felony conviction that has as an~~  
14 ~~element the possession, use, or distribution of a controlled substance, the~~The  
15 department ~~shall~~may not deny assistance under the supplemental nutrition assistance  
16 program to any individual who has been convicted of a felony offense that has as an  
17 element the possession, use, or distribution of a controlled substance as defined in  
18 section 102(6) of the Controlled Substances Act [21 U.S.C. 802(6)].

19 **SECTION 18. AMENDMENT.** Section 50-09-29 of the North Dakota Century Code is  
20 amended and reenacted as follows:

21 **50-09-29. Requirements for administration of temporary assistance for needy**  
22 **families.**

- 23 1. Except as provided in subsections 2, 3, and 4, the department of human services, in  
24 its administration of the temporary assistance for needy families program, shall:
- 25 a. Provide assistance to otherwise eligible women in the third trimester of a  
26 pregnancy;
  - 27 b. Except as provided in subdivision c, afford eligible households benefits for no  
28 more than sixty months;
  - 29 c. Exempt eligible households from the requirements of subdivision b due to mental  
30 or physical disability of a parent or child, mental or physical incapacity of a

- 1 parent, or other hardship including a parent subject to domestic violence as  
2 defined in section 14-07.1-01;
- 3 d. Unless an exemption, exclusion, or disregard is required by law, count income  
4 and assets whenever actually available;
- 5 e. Except as provided in subdivision j, and as required to allow the state to receive  
6 funds from the federal government under title IV-A, provide no benefits to  
7 noncitizen immigrants who arrive in the United States after August 21, 1996;
- 8 f. Limit eligibility to households with total available assets, not otherwise exempted  
9 or excluded, of a value established by the department;
- 10 g. Exclude one motor vehicle of any value in determining eligibility;
- 11 h. Require work activities for all household members not specifically exempted by  
12 the department of human services for reasons such as mental or physical  
13 disability of a parent or child or mental or physical incapacity of a parent;
- 14 i. Establish goals and take action to prevent and reduce the incidence of  
15 out-of-wedlock pregnancies and establish numerical goals for reducing the  
16 illegitimacy rate for the state for periods through calendar year 2005;
- 17 j. To the extent required to allow the state to receive funds from the federal  
18 government under title IV-A, provide benefits to otherwise eligible noncitizens  
19 who are lawfully present in the United States;
- 20 k. Establish and enforce standards against program fraud and abuse;
- 21 l. Provide employment placement programs;
- 22 m. Exempt from assets and income the savings and proportionate matching funds in  
23 individual development accounts;
- 24 n. Determine the unemployment rate of adults living in a county that includes Indian  
25 reservation lands and a significant population of Indian individuals by using  
26 unemployment data provided by job service North Dakota;
- 27 o. When appropriate, require household members to complete high school;
- 28 p. To the extent required to allow the state to receive funds from the federal  
29 government under title IV-A, exempt single parents from required work activities;
- 30 q. Provide for sanctions, including termination of assistance to the household, if a  
31 household member fails to cooperate with work requirements;

- 1           r. Provide for sanctions, including termination of assistance to the household, if a  
2           household member fails, without good cause, to cooperate with child support  
3           activities;
- 4           s. Deny assistance with respect to a minor child absent from the household for  
5           more than one calendar month, except as specifically provided by the state  
6           agency for absences;
- 7           t. Require each household to participate in developing an individual employment  
8           plan and provide for sanctions, including termination of assistance to the  
9           household, if adult or minor household members age sixteen or older fail to  
10          cooperate with the terms of the individual employment plan;
- 11          u. Provide pre-pregnancy family planning services that are to be incorporated into  
12          the temporary assistance for needy families program assessment;
- 13          v. Except in cases of pregnancy resulting from rape or incest, not increase the  
14          assistance amount to recognize the increase in household size when a child is  
15          born to a household member who was a recipient of assistance under this  
16          chapter during the probable month of the child's conception;
- 17          w. Disregard earned income as an incentive allowance for no more than twelve  
18          months; and
- 19          x. Consider, and if determined appropriate, authorize demonstration projects in  
20          defined areas which may provide benefits and services that are not identical to  
21          benefits and services provided elsewhere; and
- 22          y. ~~Unless at least seven years has elapsed since the most recent felony conviction~~  
23          ~~that has as an element the possession, use, or distribution of a controlled~~  
24          ~~substance, deny assistance to any individual who has been convicted of a felony~~  
25          ~~offense that has as an element the possession, use, or distribution of a controlled~~  
26          ~~substance as defined in section 102(6) of the Controlled Substances Act~~  
27          ~~[21 U.S.C. 802(6)].~~
- 28          2. If the secretary of the United States department of health and human services  
29          determines that funds otherwise available for the temporary assistance for needy  
30          families program in this state must be reduced or eliminated should the department of  
31          human services administer the program in accordance with any provision of

- 1 subsection 1, the department of human services shall administer the program in a  
2 manner that avoids the reduction or loss.
- 3 3. If the department of human services determines, subject to the approval of the  
4 legislative management, that there is insufficient worker opportunity, due to increases  
5 in the unemployment rate, to participate in work activities, the department may  
6 administer the temporary assistance for needy families program in a manner different  
7 than provided in subsection 1.
- 8 4. If the department of human services determines, subject to the approval of the  
9 legislative management, that administration of the temporary assistance for needy  
10 families program, in the manner provided by subsection 1, causes otherwise eligible  
11 individuals to become a charge upon the counties under chapter 50-01, the  
12 department may administer the program in a manner that avoids that result.
- 13 5. The department of human services may not deny assistance to any individual who has  
14 been convicted of a felony offense that has as an element the possession, use, or  
15 distribution of a controlled substance as defined in section 102(6) of the Controlled  
16 Substance Act [21 U.S.C. 802(6)].

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

19 **Faith-based programming.**

- 20 1. The department of corrections and rehabilitation, with contracts through the  
21 department of human services and through the implementation of the community  
22 behavioral health program, shall allow faith-based organizations to provide services to  
23 individuals who need addiction treatment services.
- 24 2. For purposes of this section "faith-based organization" means a nonprofit corporation  
25 or association operated by a religious or denominational organization, including an  
26 organization operated for religious, educational, or charitable purposes and which is  
27 operated, supervised, or controlled by or in connection with a religious organization, or  
28 an organization that has a mission statement, policies, or practices clearly  
29 demonstrating the organization is guided or motivated by faith.

30 **SECTION 20. PRETRIAL SERVICES DIVISION PILOT PROJECT - REPORT TO**  
31 **LEGISLATIVE ASSEMBLY.** The department of corrections and rehabilitation may establish a

1 pretrial services program as a pilot project in one or more judicial districts during the biennium  
2 beginning July 1, 2017, and ending June 30, 2019. The pretrial services pilot project must  
3 involve coordination among the department, the judicial branch, the commission on legal  
4 counsel for indigents, and state and local law enforcement agencies for the provision of pretrial  
5 services by the department for the district courts to individuals charged with felony offenses.  
6 Pretrial services include risk assessments, background and criminal history background  
7 investigations, recommendations for conditions of pretrial release, monitoring and supervision of  
8 individuals on pretrial release for compliance with pretrial conditions to assure the individual's  
9 appearance at all court proceedings, and reporting violations of pretrial release conditions to the  
10 district court. The department and the judicial branch shall provide a report of the process and  
11 outcome measures of the pretrial services program and recommendations, together with any  
12 legislation required to implement the recommendations, to the sixty-sixth legislative assembly.

13 **SECTION 21. JUSTICE REINVESTMENT INITIATIVE - REPORT TO LEGISLATIVE**

14 **MANAGEMENT - REPORT TO LEGISLATIVE ASSEMBLY.** Before September 1, 2018, the  
15 department of corrections and rehabilitation and the supreme court shall provide a report to the  
16 legislative management regarding the progress of the justice reinvestment initiative. The  
17 department of corrections and rehabilitation and the supreme court shall provide a report on the  
18 progress of the justice reinvestment initiative to the sixty-sixth legislative assembly.

19 **SECTION 22. APPROPRIATION.** There is appropriated out of any moneys in the general  
20 fund in the state treasury, not otherwise appropriated, the sum of \$110,916, or so much of the  
21 sum as may be necessary, and \$1,532,785 from federal funds, or so much of the sum as may  
22 be necessary, to the department of human services for the purpose of implementing sections 17  
23 and 18 of this Act, for the period beginning with the effective date of this section, and ending  
24 June 30, 2019.

25 **SECTION 23. EFFECTIVE DATE.** Sections 8 and 9 of this Act become effective January 1,  
26 2018.

27 **SECTION 24. EMERGENCY.** Sections 1 through 5, 7, 10 through 18, and 22 of this Act are  
28 declared to be an emergency measure.