

2023 HOUSE HUMAN SERVICES

HB 1138

2023 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee Pioneer Room, State Capitol

HB 1138
1/9/2023

Relating to a mental health diversion pilot program in the southeast judicial district; to provide for a report to the legislative management; and to provide an expiration date.

Chairman Weisz called the meeting to order at 3:14pm.

Chairman Robin Weisz, Vice Chairman Matthew Ruby, Reps. Karen A. Anderson, Mike Beltz, Clayton Fegley, Kathy Frelich, Dawson Holle, Dwight Kiefert, Carrie McLeod, Todd Porter, Brandon Prichard, Karen M. Rohr, Jayme Davis, and Gretchen Dobervich. All present.

Discussion Topics:

- Addressing mental health issues
- Impact of incarceration on mental health
- Determining mental health issues
- Mental health courts
- Similarity to drug courts
- Community-based mental health services

Rep. Satrom introduced HB 1138 with supportive testimony (#12671).

Travis Finck, Executive Director of the North Dakota Commission on Legal Counsel for Indigents, offered testimony in support of bill (#12607).

Carlotta McCleary, the Executive Director of the ND Federation of Families for Children's Mental Health, offered testimony in opposition to HB 1138 (#12669)

Dan Cramer, psychologist and Clinical Director of the behavior health clinics with the Department of Health and Human Services, offered testimony in opposition to bill (#12668).

Chairman Weisz adjourned the meeting at 3:57pm.

Phillip Jacobs, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee Pioneer Room, State Capitol

HB 1138
1/17/2023

Relating to a mental health diversion pilot program in the southeast judicial district; to provide for a report to the legislative management; and to provide an expiration date.

Chairman Weisz called the meeting to order at 2:51 PM.

Chairman Robin Weisz, Vice Chairman Matthew Ruby, Reps. Karen A. Anderson, Mike Beltz, Clayton Fegley, Kathy Frelich, Dawson Holle, Dwight Kiefert, Carrie McLeod, Todd Porter, Brandon Prichard, Karen M. Rohr, Jayme Davis, and Gretchen Dobervich. All present.

Discussion Topics:

- Committee work
- Amendment
- Collaboration with the Supreme Court
- Mental health court programs
- Drug and veterans court programs
- Designated district for pilot program
- Mental health treatment

Chairman Weisz called for a discussion on HB 1138. (#20633)

Rep. Rohr moved to adopt amendment (23.0352.01003) to HB 1138. (#20631) (#20632).

Seconded by Vice Chairman Ruby.

Motion carries by voice vote.

Vice Chairman Ruby moved a do pass as amended on HB 1138.

Seconded by Rep. Anderson.

Roll Call Vote:

Representatives	Vote
Representative Robin Weisz	Y
Representative Matthew Ruby	Y
Representative Karen A. Anderson	Y
Representative Mike Beltz	Y
Representative Jayme Davis	Y
Representative Gretchen Dobervich	Y
Representative Clayton Fegley	Y

Representative Kathy Frelich	Y
Representative Dawson Holle	N
Representative Dwight Kiefert	Y
Representative Carrie McLeod	Y
Representative Todd Porter	Y
Representative Brandon Prichard	N
Representative Karen M. Rohr	Y

Motion carries 12-2-0.

Carried by Rep. Beltz.

Chairman Weisz adjourned the meeting at 3:17 PM.

Phillip Jacobs, Committee Clerk

January 17, 2023

JA 1/17/23

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1138

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact subsection 1 of section 12.1-32-02 and sections 19-03.1-23 and 39-08-01.5 of the North Dakota Century Code, relating to a mental health court program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 12.1-32-02 of the North Dakota Century Code is amended and reenacted as follows:

1. Every person convicted of an offense who is sentenced by the court must be sentenced to one or a combination of the following alternatives, unless the sentencing alternatives are otherwise specifically provided in the statute defining the offense or sentencing is deferred under subsection 4:
 - a. Payment of the reasonable costs of the person's prosecution.
 - b. Probation.
 - 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.
 - d. A fine.
 - e. Restitution for damages resulting from the commission of the offense.
 - f. Restoration of damaged property or other appropriate work detail.
 - g. Commitment to an appropriate licensed public or private institution for treatment of alcoholism, drug addiction, or mental disease or defect.
 - h. Commitment to a sexual offender treatment program.
 - i. Drug court program. A drug court is a district court supervised treatment program approved by the supreme court which combines

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judicial supervision with alcohol and drug testing and substance use disorder treatment in a licensed treatment program. The supreme court may adopt rules, including rules of procedure, for drug court programs.

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- j. Veterans treatment docket. A veterans treatment docket is a district court supervised docket approved by the supreme court which combines judicial supervision with licensed treatment programs to treat substance use disorders, mental health conditions, behavioral health conditions, traumatic brain injuries, military sexual trauma, and co-occurring disorders. The supreme court may adopt rules, including rules of procedure, for veterans treatment dockets.
- k. Completion of a restorative justice program. For purposes of this section, "restorative justice program" means a system of justice which focuses on the rehabilitation of offenders through reconciliation with victims and the community at large.
- l. Mental health court program. A mental health court is a district court supervised treatment program approved by the supreme court which combines judicial supervision with mental health services and treatment in a licensed treatment program. The supreme court may adopt rules, including rules of procedure, for mental health court programs.

Except as provided by section 12.1-32-06.1, sentences imposed under this subsection may not exceed in duration the maximum sentences of imprisonment provided by section 12.1-32-01, section 12.1-32-09, or as provided specifically in a statute defining an offense. This subsection does not permit the unconditional discharge of an offender following conviction. A sentence under subdivision e or f must be imposed in the manner provided in section 12.1-32-08. If the person is sentenced to a term of imprisonment, the court may prohibit the person from contacting the victim during the term of imprisonment. For purposes of this subsection, "victim" means victim as defined in section 12.1-34-01.

SECTION 2. AMENDMENT. Section 19-03.1-23 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-23. Prohibited acts - Penalties.

- 1. Except as authorized by this chapter, it is unlawful for a person to willfully, as defined in section 12.1-02-02, manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance, or to deliver, distribute, or dispense a controlled substance by means of the internet, but a person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection. A person who violates this subsection with respect to:
 - a. A controlled substance classified in schedule I or II which is a narcotic drug, or methamphetamine, is guilty of a class B felony.
 - b. Any other controlled substance classified in schedule I, II, or III, or a controlled substance analog, except marijuana or tetrahydrocannabinol is guilty of a class B felony.

- # 1/27/23
- c. Marijuana, tetrahydrocannabinol, or a substance classified in schedule IV, is guilty of a class C felony.
 - d. A substance classified in schedule V, is guilty of a class A misdemeanor.
 2. A prior misdemeanor conviction under subsection 7 or a prior conviction under subsection 3 or 4 of section 19-03.4-03 may not be considered a prior offense under subsection 1.
 3. Except as authorized by this chapter, it is unlawful for any person to willfully, as defined in section 12.1-02-02, create, deliver, distribute, or dispense a counterfeit substance by means of the internet or any other means, or possess with intent to deliver, a counterfeit substance by means of the internet or any other means, but any person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection. Any person who violates this subsection with respect to:
 - a. A counterfeit substance classified in schedule I, II, or III, is guilty of a class B felony.
 - b. A counterfeit substance classified in schedule IV, is guilty of a class C felony.
 - c. A counterfeit substance classified in schedule V, is guilty of a class A misdemeanor.
 4. A person at least eighteen years of age who solicits, induces, intimidates, employs, hires, or uses a person under eighteen years of age to aid or assist in the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance for the purpose of receiving consideration or payment for the manufacture or delivery of any controlled substance is guilty of a class B felony. It is not a defense to a violation of this subsection that the defendant did not know the age of a person protected under this subsection.
 5. Except for a prior conviction equivalent to a misdemeanor violation of subsection 7 or a prior conviction under subsection 3 or 4 of section 19-03.4-03, a violation of this title or a law of another state or the federal government which is equivalent to an offense with respect to the manufacture, delivery, or intent to deliver a controlled substance under this title committed while the offender was an adult and which resulted in a plea or finding of guilt must be considered a prior offense under subsection 1. The prior offense must be alleged in the complaint, information, or indictment. The plea or finding of guilt for the prior offense must have occurred before the date of the commission of the offense or offenses charged in the complaint, information, or indictment.
 6. It is unlawful for a person to willfully, as defined in section 12.1-02-02:
 - a. Serve as an agent, intermediary, or other entity that causes the internet to be used to bring together a buyer and seller to engage in the delivery, distribution, or dispensing of a controlled substance in a manner not authorized by this chapter; or

- b. Offer to fill or refill a prescription for a controlled substance based solely on a consumer's completion of an online medical questionnaire.

A person who violates this subsection is guilty of a class C felony.

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- 7. a. It is unlawful for any person to willfully, as defined in section 12.1-02-02, possess a controlled substance or a controlled substance analog unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, or except as otherwise authorized by this chapter, but any person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection.
- b. Except as otherwise provided in this subsection, any person who violates this subsection is guilty of a class A misdemeanor for the first offense under this subsection and a class C felony for a second or subsequent offense under this subsection.
- c. If, at the time of the offense the person is in or on the real property comprising a public or private elementary or secondary school or a public career and technical education school, the person is guilty of a class B felony, unless the offense involves marijuana or tetrahydrocannabinol.
- d. A person who violates this subsection by possessing:
 - (1) Marijuana:
 - (a) In an amount of less than one-half ounce [14.175 grams] is guilty of an infraction.
 - (b) At least one-half ounce [14.175 grams] but not more than 500 grams of marijuana is guilty of a class B misdemeanor.
 - (c) More than 500 grams of marijuana is guilty of a class A misdemeanor.
 - (2) Tetrahydrocannabinol:
 - (a) In an amount less than two grams is guilty of an infraction.
 - (b) At least two grams but not more than six grams of tetrahydrocannabinol is guilty of a class B misdemeanor.
 - (c) More than six grams of tetrahydrocannabinol is guilty of a class A misdemeanor.
- e. If an individual is sentenced to the legal and physical custody of the department of corrections and rehabilitation under this subsection, the department may place the individual in a drug and alcohol treatment program designated by the department. Upon the successful completion of the drug and alcohol treatment program, the department shall release the individual from imprisonment to begin any court-ordered period of probation.

- f. If the individual is not subject to any court-ordered probation, the court shall order the individual to serve the remainder of the sentence of imprisonment on supervised probation subject to the terms and conditions imposed by the court. 4 1/17/23
- g. Probation under this subsection may include placement in another facility, treatment program, drug court, mental health court, or veterans treatment docket. If an individual is placed in another facility or treatment program upon release from imprisonment, the remainder of the sentence must be considered as time spent in custody.
- h. An individual incarcerated under this subsection as a result of a second probation revocation is not eligible for release from imprisonment upon the successful completion of treatment.
- i. A person who violates this subsection regarding possession of five or fewer capsules, pills, or tablets of a schedule II, III, IV, or V controlled substance or controlled substance analog is guilty of a class A misdemeanor.
8. Except as provided by section 19-03.1-45, a court may order a person who violates this chapter or chapter 19-03.4 to undergo a drug addiction evaluation by a licensed addiction counselor. The evaluation must indicate the prospects for rehabilitation and whether addiction treatment is required. If ordered, the evaluation must be submitted to the court before imposing punishment for a felony violation or a misdemeanor violation.
9. If a person pleads guilty or is found guilty of a first offense regarding possession of one ounce [28.35 grams] or less of marijuana or two grams or less of tetrahydrocannabinol and a judgment of guilt is entered, a court, upon motion, shall seal the court record of that conviction if the person is not subsequently convicted within two years of a further violation of this chapter. Once sealed, the court record may not be opened even by order of the court.
10. Upon successful completion of a drug court program, mental health court program, or veterans treatment docket, a person who has been convicted of a felony under this section and sentenced to drug court, mental health court, or veterans treatment docket is deemed to have been convicted of a misdemeanor.
11. If a person convicted of a misdemeanor under this section is sentenced to drug court, mental health court, or veterans treatment docket and successfully completes a drug court program, mental health court, or veterans treatment docket, the court shall dismiss the case and seal the file in accordance with section 12.1-32-07.2.
12. If an individual under the age of twenty-one pleads guilty or is found guilty of a first offense regarding possession of one-half ounce [14.175 grams] or less of marijuana, the court also may sentence the individual to an evidence-based alcohol and drug education program operated under rules adopted by the department of human services under section 50-06-44. For a second or subsequent offense regarding possession of one-half ounce [14.175 grams] or less of marijuana, the court also shall sentence the individual to an evidence-based alcohol and drug education program

operated under rules adopted by the department of health and human services under section 50-06-44.

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SECTION 3. AMENDMENT. Section 39-08-01.5 of the North Dakota Century Code is amended and reenacted as follows:

39-08-01.5. Partial suspension of sentence for drug court program, mental health court program, or veterans treatment docket completion.

1. Notwithstanding section 39-08-01, all but ten days of the minimum mandatory sentence required for a defendant charged with a third or subsequent violation of section 39-08-01 may be suspended on the condition the defendant successfully completes a drug court program, mental health court program, or veterans treatment docket approved by the supreme court.
2. Upon successful completion of a drug court program, mental health court program, or veterans treatment docket, a defendant convicted of a felony under section 39-08-01 and sentenced to drug court, mental health court, or veterans treatment docket is deemed to have been convicted of a misdemeanor.
3. If a defendant convicted of a misdemeanor under section 39-08-01 is sentenced to drug court, mental health court, or veterans treatment docket and successfully completes a drug court program, mental health court, or veterans treatment docket, the court shall dismiss the case and seal the file in accordance with section 12.1-32-07.2."

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1138: Human Services Committee (Rep. Weisz, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1138 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact subsection 1 of section 12.1-32-02 and sections 19-03.1-23 and 39-08-01.5 of the North Dakota Century Code, relating to a mental health court program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 12.1-32-02 of the North Dakota Century Code is amended and reenacted as follows:

1. Every person convicted of an offense who is sentenced by the court must be sentenced to one or a combination of the following alternatives, unless the sentencing alternatives are otherwise specifically provided in the statute defining the offense or sentencing is deferred under subsection 4:
 - a. Payment of the reasonable costs of the person's prosecution.
 - b. Probation.
 - 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.
 - d. A fine.
 - e. Restitution for damages resulting from the commission of the offense.
 - f. Restoration of damaged property or other appropriate work detail.
 - g. Commitment to an appropriate licensed public or private institution for treatment of alcoholism, drug addiction, or mental disease or defect.
 - h. Commitment to a sexual offender treatment program.
 - i. Drug court program. A drug court is a district court supervised treatment program approved by the supreme court which combines judicial supervision with alcohol and drug testing and substance use disorder treatment in a licensed treatment program. The supreme

court may adopt rules, including rules of procedure, for drug court programs.

- j. Veterans treatment docket. A veterans treatment docket is a district court supervised docket approved by the supreme court which combines judicial supervision with licensed treatment programs to treat substance use disorders, mental health conditions, behavioral health conditions, traumatic brain injuries, military sexual trauma, and co-occurring disorders. The supreme court may adopt rules, including rules of procedure, for veterans treatment dockets.
- k. Completion of a restorative justice program. For purposes of this section, "restorative justice program" means a system of justice which focuses on the rehabilitation of offenders through reconciliation with victims and the community at large.
- l. Mental health court program. A mental health court is a district court supervised treatment program approved by the supreme court which combines judicial supervision with mental health services and treatment in a licensed treatment program. The supreme court may adopt rules, including rules of procedure, for mental health court programs.

Except as provided by section 12.1-32-06.1, sentences imposed under this subsection may not exceed in duration the maximum sentences of imprisonment provided by section 12.1-32-01, section 12.1-32-09, or as provided specifically in a statute defining an offense. This subsection does not permit the unconditional discharge of an offender following conviction. A sentence under subdivision e or f must be imposed in the manner provided in section 12.1-32-08. If the person is sentenced to a term of imprisonment, the court may prohibit the person from contacting the victim during the term of imprisonment. For purposes of this subsection, "victim" means victim as defined in section 12.1-34-01.

SECTION 2. AMENDMENT. Section 19-03.1-23 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-23. Prohibited acts - Penalties.

- 1. Except as authorized by this chapter, it is unlawful for a person to willfully, as defined in section 12.1-02-02, manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance, or to deliver, distribute, or dispense a controlled substance by means of the internet, but a person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection. A person who violates this subsection with respect to:
 - a. A controlled substance classified in schedule I or II which is a narcotic drug, or methamphetamine, is guilty of a class B felony.
 - b. Any other controlled substance classified in schedule I, II, or III, or a controlled substance analog, except marijuana or tetrahydrocannabinol is guilty of a class B felony.
 - c. Marijuana, tetrahydrocannabinol, or a substance classified in schedule IV, is guilty of a class C felony.
 - d. A substance classified in schedule V, is guilty of a class A misdemeanor.

2. A prior misdemeanor conviction under subsection 7 or a prior conviction under subsection 3 or 4 of section 19-03.4-03 may not be considered a prior offense under subsection 1.
3. Except as authorized by this chapter, it is unlawful for any person to willfully, as defined in section 12.1-02-02, create, deliver, distribute, or dispense a counterfeit substance by means of the internet or any other means, or possess with intent to deliver, a counterfeit substance by means of the internet or any other means, but any person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection. Any person who violates this subsection with respect to:
 - a. A counterfeit substance classified in schedule I, II, or III, is guilty of a class B felony.
 - b. A counterfeit substance classified in schedule IV, is guilty of a class C felony.
 - c. A counterfeit substance classified in schedule V, is guilty of a class A misdemeanor.
4. A person at least eighteen years of age who solicits, induces, intimidates, employs, hires, or uses a person under eighteen years of age to aid or assist in the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance for the purpose of receiving consideration or payment for the manufacture or delivery of any controlled substance is guilty of a class B felony. It is not a defense to a violation of this subsection that the defendant did not know the age of a person protected under this subsection.
5. Except for a prior conviction equivalent to a misdemeanor violation of subsection 7 or a prior conviction under subsection 3 or 4 of section 19-03.4-03, a violation of this title or a law of another state or the federal government which is equivalent to an offense with respect to the manufacture, delivery, or intent to deliver a controlled substance under this title committed while the offender was an adult and which resulted in a plea or finding of guilt must be considered a prior offense under subsection 1. The prior offense must be alleged in the complaint, information, or indictment. The plea or finding of guilt for the prior offense must have occurred before the date of the commission of the offense or offenses charged in the complaint, information, or indictment.
6. It is unlawful for a person to willfully, as defined in section 12.1-02-02:
 - a. Serve as an agent, intermediary, or other entity that causes the internet to be used to bring together a buyer and seller to engage in the delivery, distribution, or dispensing of a controlled substance in a manner not authorized by this chapter; or
 - b. Offer to fill or refill a prescription for a controlled substance based solely on a consumer's completion of an online medical questionnaire.

A person who violates this subsection is guilty of a class C felony.
7.
 - a. It is unlawful for any person to willfully, as defined in section 12.1-02-02, possess a controlled substance or a controlled substance analog unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, or except as otherwise authorized by this chapter, but any person who

violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection.

- b. Except as otherwise provided in this subsection, any person who violates this subsection is guilty of a class A misdemeanor for the first offense under this subsection and a class C felony for a second or subsequent offense under this subsection.
- c. If, at the time of the offense the person is in or on the real property comprising a public or private elementary or secondary school or a public career and technical education school, the person is guilty of a class B felony, unless the offense involves marijuana or tetrahydrocannabinol.
- d. A person who violates this subsection by possessing:
 - (1) Marijuana:
 - (a) In an amount of less than one-half ounce [14.175 grams] is guilty of an infraction.
 - (b) At least one-half ounce [14.175 grams] but not more than 500 grams of marijuana is guilty of a class B misdemeanor.
 - (c) More than 500 grams of marijuana is guilty of a class A misdemeanor.
 - (2) Tetrahydrocannabinol:
 - (a) In an amount less than two grams is guilty of an infraction.
 - (b) At least two grams but not more than six grams of tetrahydrocannabinol is guilty of a class B misdemeanor.
 - (c) More than six grams of tetrahydrocannabinol is guilty of a class A misdemeanor.
- e. If an individual is sentenced to the legal and physical custody of the department of corrections and rehabilitation under this subsection, the department may place the individual in a drug and alcohol treatment program designated by the department. Upon the successful completion of the drug and alcohol treatment program, the department shall release the individual from imprisonment to begin any court-ordered period of probation.
- f. If the individual is not subject to any court-ordered probation, the court shall order the individual to serve the remainder of the sentence of imprisonment on supervised probation subject to the terms and conditions imposed by the court.
- g. Probation under this subsection may include placement in another facility, treatment program, drug court, mental health court, or veterans treatment docket. If an individual is placed in another facility or treatment program upon release from imprisonment, the remainder of the sentence must be considered as time spent in custody.

- h. An individual incarcerated under this subsection as a result of a second probation revocation is not eligible for release from imprisonment upon the successful completion of treatment.
 - i. A person who violates this subsection regarding possession of five or fewer capsules, pills, or tablets of a schedule II, III, IV, or V controlled substance or controlled substance analog is guilty of a class A misdemeanor.
 8. Except as provided by section 19-03.1-45, a court may order a person who violates this chapter or chapter 19-03.4 to undergo a drug addiction evaluation by a licensed addiction counselor. The evaluation must indicate the prospects for rehabilitation and whether addiction treatment is required. If ordered, the evaluation must be submitted to the court before imposing punishment for a felony violation or a misdemeanor violation.
 9. If a person pleads guilty or is found guilty of a first offense regarding possession of one ounce [28.35 grams] or less of marijuana or two grams or less of tetrahydrocannabinol and a judgment of guilt is entered, a court, upon motion, shall seal the court record of that conviction if the person is not subsequently convicted within two years of a further violation of this chapter. Once sealed, the court record may not be opened even by order of the court.
 10. Upon successful completion of a drug court program, mental health court program, or veterans treatment docket, a person who has been convicted of a felony under this section and sentenced to drug court, mental health court, or veterans treatment docket is deemed to have been convicted of a misdemeanor.
 11. If a person convicted of a misdemeanor under this section is sentenced to drug court, mental health court, or veterans treatment docket and successfully completes a drug court program, mental health court, or veterans treatment docket, the court shall dismiss the case and seal the file in accordance with section 12.1-32-07.2.
 12. If an individual under the age of twenty-one pleads guilty or is found guilty of a first offense regarding possession of one-half ounce [14.175 grams] or less of marijuana, the court also may sentence the individual to an evidence-based alcohol and drug education program operated under rules adopted by the department of human services under section 50-06-44. For a second or subsequent offense regarding possession of one-half ounce [14.175 grams] or less of marijuana, the court also shall sentence the individual to an evidence-based alcohol and drug education program operated under rules adopted by the department of health and human services under section 50-06-44.

SECTION 3. AMENDMENT. Section 39-08-01.5 of the North Dakota Century Code is amended and reenacted as follows:

39-08-01.5. Partial suspension of sentence for drug court program, mental health court program, or veterans treatment docket completion.

1. Notwithstanding section 39-08-01, all but ten days of the minimum mandatory sentence required for a defendant charged with a third or subsequent violation of section 39-08-01 may be suspended on the condition the defendant successfully completes a drug court program, mental health court program, or veterans treatment docket approved by the supreme court.

2. Upon successful completion of a drug court program, mental health court program, or veterans treatment docket, a defendant convicted of a felony under section 39-08-01 and sentenced to drug court, mental health court, or veterans treatment docket is deemed to have been convicted of a misdemeanor.
3. If a defendant convicted of a misdemeanor under section 39-08-01 is sentenced to drug court, mental health court, or veterans treatment docket and successfully completes a drug court program, mental health court, or veterans treatment docket, the court shall dismiss the case and seal the file in accordance with section 12.1-32-07.2."

Renumber accordingly

2023 SENATE JUDICIARY

HB 1138

2023 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

HB 1138
3/22/2023

A bill relating to a mental health court program.

9:06 AM Chairman Larson opened the meeting. Chairman Larson and Senators Myrdal, Luick, Estenson, Sickler, Paulson and Braunberger are present. Senator Paulson stepped out of the meeting at 9:15 AM to introduce another bill.

Discussion Topics:

- Treatment services
- Recidivism
- Diversion programs
- Specialty courts
- Incentives

9:06 AM Representative Bernie Satrom introduced the bill and testified. #26198.

9:14 AM Travis Finck, Executive Director, North Dakota Commission on Legal Counsel for Indigents, testified in favor of the bill. #26218.

9:25 AM Chairman Larson closed the public hearing.

9:26 AM Senator Luick moved to Do Pass the bill and Rerefer to the Appropriations Committee. Motion seconded by Senator Braunberger.

9:26 AM Roll call vote is taken.

Senators	Vote
Senator Diane Larson	Y
Senator Bob Paulson	AB
Senator Jonathan Sickler	Y
Senator Ryan Braunberger	Y
Senator Judy Estenson	Y
Senator Larry Luick	Y
Senator Janne Myrdal	N

Motion passes 5-1-1.

Senator Braunberger will carry the bill.
This bill does not affect workforce development.

9:32 AM Chairman Larson closed the meeting.

Rick Schuchard, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1138, as engrossed: Judiciary Committee (Sen. Larson, Chairman) recommends DO PASS and BE REREFERRED to the Appropriations Committee (5 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). Engrossed HB 1138 was rereferred to the Appropriations Committee. This bill does not affect workforce development.

2023 SENATE APPROPRIATIONS

HB 1138

2023 SENATE STANDING COMMITTEE MINUTES

Appropriations - Human Resources Division Roughrider Room, State Capitol

HB 1138
3/28/2023

Relating to a mental health court program.

9:22 AM Chairman Dever opened the meeting.

Members present: Senators Dever, Davison, Burckhard, Mathern, Kreun.

Discussion topics:

- Committee action

9:33 AM Senator Mathern moved DO PASS.

9:33 AM Senator Davison seconded.

Roll call vote.

Senators	Vote
Senator Dick Dever	Y
Senator Randy A. Burckhard	Y
Senator Kyle Davison	Y
Senator Curt Kreun	Y
Senator Tim Mathern	Y

Motion passed. 5-0-0

Senator Mathern will carry the bill.

9:34 AM Chairman Dever closed the meeting.

Justin Boone on behalf of Susan Huntington, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee Roughrider Room, State Capitol

HB 1138
3/31/2023

Relating to a mental health court program.

11:17 AM Chairman Bekkedahl opened the meeting on HB 1138.

Members present: Senators Bekkedahl, Krebsbach, Burckhard, Davison, Dever, Dwyer, Erbele, Kreun, Meyer, Roers, Schaible, Sorvaag, Vedaa, Wanzek, Rust, and Mathern.

Discussion Topics:

- Committee action

11:17 AM Senator Mathern introduced the bill.

11:19 AM Senator Mathern moved DO PASS.
Senator Dever seconded the motion.

Senators	Vote
Senator Brad Bekkedahl	Y
Senator Karen K. Krebsbach	Y
Senator Randy A. Burckhard	Y
Senator Kyle Davison	Y
Senator Dick Dever	Y
Senator Michael Dwyer	Y
Senator Robert Erbele	Y
Senator Curt Kreun	Y
Senator Tim Mathern	Y
Senator Scott Meyer	A
Senator Jim P. Roers	Y
Senator David S. Rust	Y
Senator Donald Schaible	Y
Senator Ronald Sorvaag	Y
Senator Shawn Vedaa	Y
Senator Terry M. Wanzek	Y

Motion passed 15-0-1

Senator Braunberger will carry the bill.

11:22 AM Chairman Bekkedahl closed the meeting.

Justin Boone on behalf of Kathleen Hall, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1138, as engrossed: Appropriations Committee (Sen. Bekkedahl, Chairman) recommends **DO PASS** (15 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1138 was placed on the Fourteenth order on the calendar. This bill does not affect workforce development.

TESTIMONY

HB 1138

HB 1138
68th Legislative Assembly
House Human Services Committee
January 9, 2023
Testimony of Travis W. Finck, Executive Director NDCLCI in Support

Chairman Weisz, members of the House Human Services Committee, I rise today on behalf of the Commission on Legal Counsel for Indigents in support of HB 1138. The Commission on Legal Counsel is the state agency responsible for the provision of legal services for individuals when there is a constitutional, statutory or rule based right to counsel.

As part of our mission, the Commission was deeply involved in the reform efforts last session dealing with how the Courts are responding to the increase in mental health cases we were seeing in criminal courts. The undersigned had the great fortune of representing the state of North Dakota on a Task Force to Examine State Court Response to Mental Health spearheaded by the National Center on State Courts. Diverting cases from jail time and providing services is a vast improvement over the incarcerate and give them treatment there model.

My work with the National Center allowed me to view several different models across the country and how different courts are responding to the crisis. North Dakota has created a Supreme Court committee chaired by the Honorable Brad Cruff, a district court judge in the Southeast Judicial District. I again have the privilege of serving on that committee. As a group, we have examined several different projects and have worked with others on at least one other pilot attempt to deal with the unique challenges these cases can present. Thus, I appreciate this bill allowing the Court to help establish rules and would suggest the court assign that duty to our working group. I truly believe providing services to those in need makes fiscal sense and will provide for a safer community.

Diverting nonviolent cases with defendants experiencing crisis only makes sense. A person in crisis needs our help, they don't need to be jailed. As Mahatma Gandhi once said, "the true measure in

society can be found in how it treats its most vulnerable members". For all the reasons state herein, the Commission supports HB 1138.

Respectfully Submitted:

A handwritten signature in black ink, appearing to read "Travis W. Finck", written over a horizontal line.

Travis W. Finck, Executive Director
(701) 845-8632
tfinck@nd.gov

Testimony
House Bill No. 1138
Human Services Committee
Representative Robin Weisz, Chairman
January 9, 2023

Good afternoon, Chairman Weisz and members of the Committee. My name is Dan Cramer. I am a psychologist and Clinical Director of the behavioral health clinics (regional human service centers) with the Department of Health and Human Services (Department).

I am here today to testify in opposition to House Bill 1138 as currently presented. Although the Department is in support of diversion programs, we cannot support this Bill at this time due to lack of clarity on eligibility, resource impact, and program and service requirements.

To address first the issue of scope of need, I would call the committee's attention to page 1 lines 10-15 where "Eligible Individual" is defined. Based on this definition, an individual may be eligible for the diversion program if they have committed an eligible non-violent offense and have a prior diagnosed mental illness or are suspected by the law enforcement officer involved or prosecutor of having a mental illness or disability. Definition is further expanded on page 1 from lines 18-22 to include a broad range of mental health and cognitive disorders.

Data available through the National Institute of Mental Health estimated in 2020 that 21% of adults have had a mental illness in the previous year. If definition is expanded from previous year, to any "prior diagnosis" as is defined in this Bill, it is suspected that the prevalence would likely be higher than this 21%.

The definition of eligibility in this Bill, when considered with available prevalence data, would support the potential for a significant count of eligible individuals being referred to the pilot program, without identification of how resources will be provided to adequately serve the needs of these individuals. Additionally of note is the specific mention of “cognitive disorders” within the eligible list of diagnoses. This would seem to indicate that individuals who have an intellectual disability, without accompanying mental health disorder, would be considered eligible for this program. Given the unique needs of individuals with a cognitive disorder, in comparison to those with mental illness, it is suspected that a primary treatment program may not be sufficient to meet needs of all individuals and indeed a second or alternative program may need to be established. Additionally, if an individual’s primary need is intellectual disability, it is unclear if an alternative treatment facility beyond the human service centers may be required, for example Life Skills and Transition Center or the North Dakota State Hospital.

Finally, I have some concern that the eligibility requirements within the Bill do not require presence of current and active mental illness or disability, instead requiring only a history of diagnosis. Further, the eligibility requirements do not require that the mental illness or disability likely contributed to the commission of the criminal behavior. If this causal relationship is not identified as present, or at least considered likely present, there I question whether the treatment of the mental illness would impact the likelihood of the individual participating in future criminal behavior. Finally, there is no identified requirement for assessment that substantiates psychiatric need and that the person would likely benefit from treatment. This type of assessment and determination

is typical as an admission criterion when entering into a treatment program.

My second concern is lack of clear definition as it relates to what constitutes the diversion pilot program: On page 2, lines 21-25, the Bill notes "the court shall order an eligible defendant to enter a treatment facility certified by the department of health and human services as a voluntary admission patient or other appropriate treatment facility in the community for screening services and treatment. The court shall stay any further proceeding until the release of the defendant and facilitate the defendant's admission into an appropriate program." Based on this definition, it is unclear how decision is made regarding what treatment facility would be providing the treatment services, whether this is the client's choice or whether it is a decision made as part of the "Screening Services" identified on page 2, line 23. Further, it is unclear if there are specific expectations around what constitutes treatment services within the pilot program. Specifically, is there an expectation of a residential component? In other words, is there expectation that all individuals referred to human service centers would be admitted to the crisis residential unit? Additionally, is there a curriculum or set program that all individuals would be expected to receive, or would services be individualized to type, and intensity of service based on unique client assessment? Finally, page 2, lines 1 and 2 state, "into appropriate case management and mental health services." It is unclear to what extent case management services may be separate from other treatment services. In the case of individuals with a developmental disability, case management may or may not already be provided and if this is a new service who would provide that resource? Clarity around expectations of type, intensity, and length of service will be critical in understanding what

resources are required to implement and would bring clarity of expectation to potential treatment providers.

Also, page 2 lines 21-22 identifies "treatment facility certified by the department" however the Department does not certify mental health programs. Addiction programs are required to be licensed by the Department however, mental health programs are not.

Finally, it is important to be clear that treatment providers are unable to seek reimbursement through third party payors for individuals who are court ordered into service. As a result, the resource and financial demands that would be required to meet expectations of this Bill, could not be offset by revenue. I point this out again to highlight a need for funding to address the required resource demand to implement this program with quality and effectiveness.

In summary, the Department is in support of Diversion programs. Indeed, within the Southeast District there have been great examples of partnership to meet the needs of justice involved individuals who have behavioral health disorders. It is our belief that this pilot program has merit, however, we cannot support at this time due to lack of clarity regarding eligibility, resource impact, and program and service requirements. It is hoped, with increased work to define and assure appropriately dedicated resource, that there will be opportunity to implement a mental health diversion pilot program in the southeast judicial district.

This concludes my testimony. I would be happy to try to answer any questions the committee may have. Thank you.



HB 1138 Testimony
House Human Services Committee
Representative Weisz, Chairman
January 9, 2023

Chairman Weisz and Members of the Committee, I am Carlotta McCleary, the Executive Director of the ND Federation of Families for Children's Mental Health (NDFFCMH), which is a parent run organization that focuses on the needs of children and youth with emotional, behavioral, or mental health needs and their families. I am also the Executive Director for Mental Health America of ND (MHAND) which is a consumer-run organization whose mission is to promote mental health through education, advocacy, understanding, and access to quality care for all individuals.

In so far as mental health courts are used to reduce the number of persons with mental illnesses in prisons and jails and the criminal justice system, we support the creation and evolution of mental health courts. Although we do not ascribe such intentions to the authors of the bill, we want to be clear that mental health courts cannot and should not be used as a substitute for a comprehensive community-based mental health system of care. With that understanding, we have a series of principles that we believe should be the foundation for a North Dakota mental health court.

- Comprehensive mental health outreach: access to community-based mental health services for all people needs to be improved and should not depend on the existence of mental health courts. Equally effective services should be assured for the treatment needs of persons not accused of crimes.
- Meaningful diversion: Meaningful diversion would require that when appropriate, no charges would be filed, and the individual is diverted directly to treatment without entering the criminal justice system. In the alternative, when charges have been filed, criminal proceedings should be deferred for a set period, usually not exceeding a year. Dismissal of criminal charges would then be guaranteed after a set period of successful treatment participation.

- No requirement for a guilty plea: A guilty plea should not be required to enter a mental health court program. This requirement precludes diversion from the criminal justice system at the earliest possible point in time and further criminalizes a person because of his or her mental illnesses.
- Voluntary/non-coercive: While the threat of criminal charges influences any decision, participation in any mental health diversion program should involve the same level of voluntary choice required of a criminal plea. Adequate notice and informed consent is critical when participants are choosing between incarceration in a traditional court system and diversion. No one should have to decide whether or not to accept diversion unless the terms and the nature of the proposed treatment plan have been fully discussed and documented.
- Community coalitions: The development of community coalitions, including partnerships between criminal justice, mental health and substance abuse treatment agencies, is essential to successful diversion programs. Such coalitions also should be involved in the creation and oversight of mental health courts. People using mental health services and family members affected by mental illness need to be included in all such coalitions to assure that they address the real barriers to effective mental health treatment in the community.
- Handling relapses in the court setting: Relapses are inevitable during the recovery process. As such, an individual's time under jurisdiction of the mental health court should not be extended as a result of these relapses.
- Right to refuse treatment: the qualified right of a person with mental illness accused of a crime to refuse a particular treatment, including a particular medication, should be protected in a manner at least as protective of the person in treatment as the civil commitment process. A process should be established to review treatment refusals of persons diverted from the criminal justice system so that any decision to reinstate charges is made in an informed manner after all reasonable alternatives have been exhausted.

- Maximum diversion: pre-booking diversion should be assured for all persons accused of crimes for whom a voluntary mental health treatment plan is a reasonable alternative to the use of criminal sanctions. Timely and accurate mental health screening and evaluation is the single most critical element in a successful diversion program. Mental health courts may be helpful in assuring such diversion, but should never be the only way, or even the primary way, that it can occur.
- Least restrictive alternative: All persons participating in diversion programs should be treated in the least restrictive alternative manner available, and all unnecessary institutionalization should be avoided. Jails are generally an inappropriate place for persons waiting for diversion as jail experiences tend to exacerbate underlying symptoms of mental illnesses. Long jail stays should be avoided in all diversion cases.
- Advocate/Counselor: In addition to competent legal counsel in any criminal case, an experienced counselor, who may be a peer or other non-lawyer counselor, independent of any treatment facility, should be available to help the accused person to reach an informed decision. This person should also serve as an advocate to ensure that necessary services that have been mandated as part of a treatment plan are provided in a timely and appropriate manner. Consumer advocacy groups may take on this important role.
- Confidentiality: Networking to find an appropriate treatment setting, without safeguards, could compromise client confidentiality. Systems must be put in place to ensure confidentiality from the time that a person enters a mental health program.
- Cultural and linguistic competence: Cultural and linguistic competence is essential to treatment success. We believe that services must be tailored to the specific needs of communities and individuals in order to effectively address public health problems.
- Comprehensive outreach and training: Community coalitions need to reach out to all criminal justice system personnel and ensure that training is

provided at all levels to deal with issues of mental illness, wherever and whenever they occur.

- Co-Occurring disorders: In addition, people with co-occurring disorders, and especially substance abuse, must be treated in an integrated way, so that substance abuse is not an impediment to diversion.
- Convening Role: The focus of mental health courts should be on convening prosecution, probation, treatment and social services agencies to promote interagency collaboration in the interest of the individual. The focus should not be on the use of criminal sanctions to compel treatment.
- Consolidation and coordination of cases: Cases should be consolidated to assure that the individual is the focus rather than the case. Centralized, coordinated case management and a single treatment plan are needed to avoid fragmentation, with or without a mental health court.
- Evaluation: Timely monitoring of court processes, waiting lists, and consumer outcomes are essential to ensure that mental health courts are responding appropriately to persons with mental illness, that waiting lists are kept to a minimum, and that treatment providers are held accountable for consumer outcomes.

In conclusion, MHAND and NDFFCMH support the use of mental health courts, but it is important to consider how such courts are designed and how they interact with the greater mental health system of care. We would not want to, for instance, create a mental health court system that is used to criminalize persons with mental illness for “lifestyle offenses,” including homelessness. If that is a temptation among some, we urge North Dakota to rebuild its community-based mental health services instead. In addition to mental health courts, there are many other successful and innovative ways to divert persons with mental illnesses from the criminal justice system, including the creation of law enforcement-mental health liaison programs, increased training of law enforcement personnel and a general improvement in the funding and effectiveness of community mental health services.

Thank you for time. I would be happy to answer any questions that you may have.

Carlotta McCleary

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HB1138

Good Afternoon Chairman Weisz, Vice Chair Ruby and Human Services Committee,

For the record I am Bernie Satrom and I am honored to serve the great people of District 12 in Jamestown and NE Stutsman County.

Today I bring before you HB1138 which is a bill which provides for a pilot program for a Mental Health Court. This was a bill which came up as part of a discussion with a local judge.

Presently our state has a Drug Court which has been very helpful in providing accountability for offenders and help them get their lives back on track. It ultimately saves our state money and helps develop productive neighbors and citizens.

I believe that the Mental Health Court pilot program would provide the same kind of benefits.

A recent study reported that 83.7% of people screened positive for mental illness prior to being booked into jail.

Mental Health Diversion programs divert people with mental health disorders from the Criminal Justice System into appropriate treatment.

Putting those people in jail does not address the issue. Incarcerating individuals with mental illness, fills our jails, prolongs mental illness and potentially turns them into criminals.

The Mental Health Diversion Team could consist of Human Services counselor, prosecutor, probation officer, a law enforcement officer, defendant's guardian . I would defer to the wisdom of the people in this room on who should be included. I would guess that they would meet weekly to assess the status of the participants.

The Mental health concept works

One of our neighboring states reported that recidivism rates have dropped 62% since incorporating this tool.

Opportunity to address mental health problems in their infancy rather than allowing it to grow and get more serious.

Mental Health Courts save money versus warehousing people in jail.

Mental Health Courts Lowers recidivism

Mental Health Courts Address mental health issues before they become more entrenched or serious.

Mental Health Courts help people become healthy productive citizens and neighbors.

HB1138 could make a Difference. Thank you for your time. I would stand for any questions.

23.0352.01003

Sixty-eighth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1138

Introduced by

Representatives Satrom, Karls, Klemin, Schauer, Vigesaa

Senator Conley

1 A BILL ~~for an Act to create and enact a new section to chapter 27-05 of the North Dakota~~
 2 ~~Century Code, relating to a mental health diversion pilot program in the southeast judicial~~
 3 ~~district; to provide for a report to the legislative management; and to provide an expiration~~
 4 ~~date.~~ for an Act to amend and reenact subsection 1 of section 12.1-32-02 and sections
 5 19-03.1-23 and 39-08-01.5 of the North Dakota Century Code, relating to a mental health court
 6 program.

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

8 **SECTION 1.** ~~A new section to chapter 27-05 of the North Dakota Century Code is created~~
 9 ~~and enacted as follows:~~

10 ~~— **Southeast judicial district mental health diversion pilot program - Report to**~~
 11 ~~**legislative management.**~~

12 ~~— 1. As used in this section:~~

13 ~~— a. "Eligible individual" means an individual who allegedly committed an eligible~~
 14 ~~offense and has a prior diagnosis of mental illness or for whom a law~~
 15 ~~enforcement officer or prosecutor has a reasonable belief the individual has a~~
 16 ~~mental illness based on behaviors or symptoms exhibited during the commission~~
 17 ~~of the offense, while in custody, or based on information provided by family~~
 18 ~~members or associates during the investigation of the offense.~~

19 ~~— b. "Eligible offense" means a nonviolent misdemeanor offense or a nonviolent class~~
 20 ~~C felony.~~

21 ~~— c. "Mental illness" means a mental disorder classified within the most recent edition~~
 22 ~~of the American psychiatric association's diagnostic and statistical manual of~~
 23 ~~mental disorders, including anxiety disorders, cognitive disorders, adjustment~~

1 ~~disorders, schizophrenia and other psychotic disorders, bipolar disorder,~~
2 ~~depression, and posttraumatic stress disorder.~~

3 ~~2. The southeast judicial district may establish a mental health diversion pilot program~~
4 ~~under which the district court diverts an eligible individual from the criminal justice~~
5 ~~system and into appropriate case management and mental health services as early as~~
6 ~~possible following an interaction with law enforcement in which the individual is alleged~~
7 ~~to have committed an eligible offense.~~

8 ~~3. A criminal case within the southeast judicial district involving an eligible individual~~
9 ~~charged with an eligible offense may be assigned or transferred to the mental health~~
10 ~~diversion pilot program before arraignment.~~

11 ~~a. A motion for transfer to the mental health diversion pilot program may be made~~
12 ~~by the eligible individual's defense attorney or the prosecutor. The motion must~~
13 ~~be accompanied by documentation or testimony in support of the transfer and the~~
14 ~~motion must be heard by the judge assigned to the mental health diversion pilot~~
15 ~~program who shall make the final determination of a defendant's eligibility.~~

16 ~~b. Unless specifically objected to by defense counsel and except for the providing of~~
17 ~~documentation relating to the defendant's mental health status and all available~~
18 ~~statements and police reports, any transfer of a defendant to the mental health~~
19 ~~diversion pilot program is deemed a waiver of the defendant's right to a speedy~~
20 ~~trial and formal discovery.~~

21 ~~c. If the assigned judge determines the defendant is mentally ill or disabled, the~~
22 ~~defendant is eligible for the mental health diversion pilot program.~~

23 ~~d. A defendant's right to a speedy trial may be reinstated upon written demand to~~
24 ~~the court of the defendant's voluntary withdrawal from the program.~~

25 ~~4. The court shall order an eligible defendant to enter a treatment facility certified by the~~
26 ~~department of health and human services as a voluntary admission patient or other~~
27 ~~appropriate treatment facility in the community for screening services and treatment.~~
28 ~~The court shall stay any further proceeding until the release of the defendant and~~
29 ~~facilitate the defendant's admission into an appropriate program.~~

30 ~~5. If a defendant willfully fails to comply with the terms of the court order issued for the~~
31 ~~defendant's treatment or care, the defendant must be returned to custody.~~

1 ~~6. Upon successful completion of the mental health diversion pilot program, a defendant~~
2 ~~convicted of a nonviolent class C felony and transferred to the mental health diversion~~
3 ~~pilot program is deemed to have been convicted of a misdemeanor.~~

4 ~~7. If a defendant convicted of a nonviolent misdemeanor is transferred to the mental~~
5 ~~health diversion pilot program and successfully completes the program, the court shall~~
6 ~~dismiss the case and seal the file in accordance with section 12.1-32-07.2.~~

7 ~~8. The supreme court may adopt rules necessary to implement this section.~~

8 ~~9. Before July first of each even-numbered year, the southeast judicial district shall report~~
9 ~~and make recommendations to the legislative management on the status,~~
10 ~~effectiveness, performance, and sustainability of the pilot program established under~~
11 ~~this section.~~

12 ~~**SECTION 2. EXPIRATION DATE.** This Act is effective through July 31, 2027, and after that~~
13 ~~date is ineffective.~~

14 **SECTION 1. AMENDMENT.** Subsection 1 of section 12.1-32-02 of the North Dakota
15 Century Code is amended and reenacted as follows:

- 16 1. Every person convicted of an offense who is sentenced by the court must be
17 sentenced to one or a combination of the following alternatives, unless the sentencing
18 alternatives are otherwise specifically provided in the statute defining the offense or
19 sentencing is deferred under subsection 4:
- 20 a. Payment of the reasonable costs of the person's prosecution.
 - 21 b. Probation.
 - 22 c. A term of imprisonment, including intermittent imprisonment:
 - 23 (1) In a state correctional facility in accordance with section 29-27-07, in a
24 regional corrections center, or in a county jail, if convicted of a felony or a
25 class A misdemeanor.
 - 26 (2) In a county jail or in a regional corrections center, if convicted of a class B
27 misdemeanor.
 - 28 (3) In a facility or program deemed appropriate for the treatment of the
29 individual offender, including available community-based or faith-based
30 programs.

1 (4) In the case of persons convicted of an offense who are under eighteen
2 years of age at the time of sentencing, the court is limited to sentencing the
3 minor defendant to a term of imprisonment in the custody of the department
4 of corrections and rehabilitation.

5 d. A fine.

6 e. Restitution for damages resulting from the commission of the offense.

7 f. Restoration of damaged property or other appropriate work detail.

8 g. Commitment to an appropriate licensed public or private institution for treatment
9 of alcoholism, drug addiction, or mental disease or defect.

10 h. Commitment to a sexual offender treatment program.

11 i. Drug court program. A drug court is a district court supervised treatment program
12 approved by the supreme court which combines judicial supervision with alcohol
13 and drug testing and substance use disorder treatment in a licensed treatment
14 program. The supreme court may adopt rules, including rules of procedure, for
15 drug court programs.

16 j. Veterans treatment docket. A veterans treatment docket is a district court
17 supervised docket approved by the supreme court which combines judicial
18 supervision with licensed treatment programs to treat substance use disorders,
19 mental health conditions, behavioral health conditions, traumatic brain injuries,
20 military sexual trauma, and co-occurring disorders. The supreme court may adopt
21 rules, including rules of procedure, for veterans treatment dockets.

22 k. Completion of a restorative justice program. For purposes of this section,
23 "restorative justice program" means a system of justice which focuses on the
24 rehabilitation of offenders through reconciliation with victims and the community
25 at large.

26 l. Mental health court program. A mental health court is a district court supervised
27 treatment program approved by the supreme court which combines judicial
28 supervision with mental health services and treatment in a licensed treatment
29 program. The supreme court may adopt rules, including rules of procedure, for
30 mental health court programs.

1 Except as provided by section 12.1-32-06.1, sentences imposed under this subsection
2 may not exceed in duration the maximum sentences of imprisonment provided by
3 section 12.1-32-01, section 12.1-32-09, or as provided specifically in a statute defining
4 an offense. This subsection does not permit the unconditional discharge of an offender
5 following conviction. A sentence under subdivision e or f must be imposed in the
6 manner provided in section 12.1-32-08. If the person is sentenced to a term of
7 imprisonment, the court may prohibit the person from contacting the victim during the
8 term of imprisonment. For purposes of this subsection, "victim" means victim as
9 defined in section 12.1-34-01.

10 **SECTION 2. AMENDMENT.** Section 19-03.1-23 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **19-03.1-23. Prohibited acts - Penalties.**

- 13 1. Except as authorized by this chapter, it is unlawful for a person to willfully, as defined
14 in section 12.1-02-02, manufacture, deliver, or possess with intent to manufacture or
15 deliver, a controlled substance, or to deliver, distribute, or dispense a controlled
16 substance by means of the internet, but a person who violates section 12-46-24 or
17 12-47-21 may not be prosecuted under this subsection. A person who violates this
18 subsection with respect to:
- 19 a. A controlled substance classified in schedule I or II which is a narcotic drug, or
20 methamphetamine, is guilty of a class B felony.
 - 21 b. Any other controlled substance classified in schedule I, II, or III, or a controlled
22 substance analog, except marijuana or tetrahydrocannabinol is guilty of a class B
23 felony.
 - 24 c. Marijuana, tetrahydrocannabinol, or a substance classified in schedule IV, is
25 guilty of a class C felony.
 - 26 d. A substance classified in schedule V, is guilty of a class A misdemeanor.
- 27 2. A prior misdemeanor conviction under subsection 7 or a prior conviction under
28 subsection 3 or 4 of section 19-03.4-03 may not be considered a prior offense under
29 subsection 1.
- 30 3. Except as authorized by this chapter, it is unlawful for any person to willfully, as
31 defined in section 12.1-02-02, create, deliver, distribute, or dispense a counterfeit

1 substance by means of the internet or any other means, or possess with intent to
2 deliver, a counterfeit substance by means of the internet or any other means, but any
3 person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this
4 subsection. Any person who violates this subsection with respect to:

5 a. A counterfeit substance classified in schedule I, II, or III, is guilty of a class B
6 felony.

7 b. A counterfeit substance classified in schedule IV, is guilty of a class C felony.

8 c. A counterfeit substance classified in schedule V, is guilty of a class A
9 misdemeanor.

10 4. A person at least eighteen years of age who solicits, induces, intimidates, employs,
11 hires, or uses a person under eighteen years of age to aid or assist in the
12 manufacture, delivery, or possession with intent to manufacture or deliver a controlled
13 substance for the purpose of receiving consideration or payment for the manufacture
14 or delivery of any controlled substance is guilty of a class B felony. It is not a defense
15 to a violation of this subsection that the defendant did not know the age of a person
16 protected under this subsection.

17 5. Except for a prior conviction equivalent to a misdemeanor violation of subsection 7 or
18 a prior conviction under subsection 3 or 4 of section 19-03.4-03, a violation of this title
19 or a law of another state or the federal government which is equivalent to an offense
20 with respect to the manufacture, delivery, or intent to deliver a controlled substance
21 under this title committed while the offender was an adult and which resulted in a plea
22 or finding of guilt must be considered a prior offense under subsection 1. The prior
23 offense must be alleged in the complaint, information, or indictment. The plea or
24 finding of guilt for the prior offense must have occurred before the date of the
25 commission of the offense or offenses charged in the complaint, information, or
26 indictment.

27 6. It is unlawful for a person to willfully, as defined in section 12.1-02-02:

28 a. Serve as an agent, intermediary, or other entity that causes the internet to be
29 used to bring together a buyer and seller to engage in the delivery, distribution, or
30 dispensing of a controlled substance in a manner not authorized by this chapter;

31 or

1 b. Offer to fill or refill a prescription for a controlled substance based solely on a
2 consumer's completion of an online medical questionnaire.

3 A person who violates this subsection is guilty of a class C felony.

4 7. a. It is unlawful for any person to willfully, as defined in section 12.1-02-02, possess
5 a controlled substance or a controlled substance analog unless the substance
6 was obtained directly from, or pursuant to, a valid prescription or order of a
7 practitioner while acting in the course of the practitioner's professional practice, or
8 except as otherwise authorized by this chapter, but any person who violates
9 section 12-46-24 or 12-47-21 may not be prosecuted under this subsection.

10 b. Except as otherwise provided in this subsection, any person who violates this
11 subsection is guilty of a class A misdemeanor for the first offense under this
12 subsection and a class C felony for a second or subsequent offense under this
13 subsection.

14 c. If, at the time of the offense the person is in or on the real property comprising a
15 public or private elementary or secondary school or a public career and technical
16 education school, the person is guilty of a class B felony, unless the offense
17 involves marijuana or tetrahydrocannabinol.

18 d. A person who violates this subsection by possessing:

19 (1) Marijuana:

20 (a) In an amount of less than one-half ounce [14.175 grams] is guilty of
21 an infraction.

22 (b) At least one-half ounce [14.175 grams] but not more than 500 grams
23 of marijuana is guilty of a class B misdemeanor.

24 (c) More than 500 grams of marijuana is guilty of a class A misdemeanor.

25 (2) Tetrahydrocannabinol:

26 (a) In an amount less than two grams is guilty of an infraction.

27 (b) At least two grams but not more than six grams of
28 tetrahydrocannabinol is guilty of a class B misdemeanor.

29 (c) More than six grams of tetrahydrocannabinol is guilty of a class A
30 misdemeanor.

- 1 e. If an individual is sentenced to the legal and physical custody of the department
2 of corrections and rehabilitation under this subsection, the department may place
3 the individual in a drug and alcohol treatment program designated by the
4 department. Upon the successful completion of the drug and alcohol treatment
5 program, the department shall release the individual from imprisonment to begin
6 any court-ordered period of probation.
- 7 f. If the individual is not subject to any court-ordered probation, the court shall order
8 the individual to serve the remainder of the sentence of imprisonment on
9 supervised probation subject to the terms and conditions imposed by the court.
- 10 g. Probation under this subsection may include placement in another facility,
11 treatment program, drug court, mental health court, or veterans treatment docket.
12 If an individual is placed in another facility or treatment program upon release
13 from imprisonment, the remainder of the sentence must be considered as time
14 spent in custody.
- 15 h. An individual incarcerated under this subsection as a result of a second probation
16 revocation is not eligible for release from imprisonment upon the successful
17 completion of treatment.
- 18 i. A person who violates this subsection regarding possession of five or fewer
19 capsules, pills, or tablets of a schedule II, III, IV, or V controlled substance or
20 controlled substance analog is guilty of a class A misdemeanor.
- 21 8. Except as provided by section 19-03.1-45, a court may order a person who violates
22 this chapter or chapter 19-03.4 to undergo a drug addiction evaluation by a licensed
23 addiction counselor. The evaluation must indicate the prospects for rehabilitation and
24 whether addiction treatment is required. If ordered, the evaluation must be submitted
25 to the court before imposing punishment for a felony violation or a misdemeanor
26 violation.
- 27 9. If a person pleads guilty or is found guilty of a first offense regarding possession of
28 one ounce [28.35 grams] or less of marijuana or two grams or less of
29 tetrahydrocannabinol and a judgment of guilt is entered, a court, upon motion, shall
30 seal the court record of that conviction if the person is not subsequently convicted

1 within two years of a further violation of this chapter. Once sealed, the court record
2 may not be opened even by order of the court.

3 10. Upon successful completion of a drug court program, mental health court program, or
4 veterans treatment docket, a person who has been convicted of a felony under this
5 section and sentenced to drug court, mental health court, or veterans treatment docket
6 is deemed to have been convicted of a misdemeanor.

7 11. If a person convicted of a misdemeanor under this section is sentenced to drug court,
8 mental health court, or veterans treatment docket and successfully completes a drug
9 court program, mental health court, or veterans treatment docket, the court shall
10 dismiss the case and seal the file in accordance with section 12.1-32-07.2.

11 12. If an individual under the age of twenty-one pleads guilty or is found guilty of a first
12 offense regarding possession of one-half ounce [14.175 grams] or less of marijuana,
13 the court also may sentence the individual to an evidence-based alcohol and drug
14 education program operated under rules adopted by the department of human
15 services under section 50-06-44. For a second or subsequent offense regarding
16 possession of one-half ounce [14.175 grams] or less of marijuana, the court also shall
17 sentence the individual to an evidence-based alcohol and drug education program
18 operated under rules adopted by the department of health and human services under
19 section 50-06-44.

20 **SECTION 3. AMENDMENT.** Section 39-08-01.5 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **39-08-01.5. Partial suspension of sentence for drug court program, mental health**
23 **court program, or veterans treatment docket completion.**

- 24 1. Notwithstanding section 39-08-01, all but ten days of the minimum mandatory
25 sentence required for a defendant charged with a third or subsequent violation of
26 section 39-08-01 may be suspended on the condition the defendant successfully
27 completes a drug court program, mental health court program, or veterans treatment
28 docket approved by the supreme court.
- 29 2. Upon successful completion of a drug court program, mental health court program, or
30 veterans treatment docket, a defendant convicted of a felony under section 39-08-01

1 | and sentenced to drug court, [mental health court](#), or veterans treatment docket is
2 | deemed to have been convicted of a misdemeanor.
3 | 3. If a defendant convicted of a misdemeanor under section 39-08-01 is sentenced to
4 | drug court, [mental health court](#), or veterans treatment docket and successfully
5 | completes a drug court program, [mental health court](#), or veterans treatment docket,
6 | the court shall dismiss the case and seal the file in accordance with section
7 | 12.1-32-07.2.

23.0352.01003
Title.02000

Adopted by the House Human Services
Committee

January 17, 2023

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1138

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact subsection 1 of section 12.1-32-02 and sections 19-03.1-23 and 39-08-01.5 of the North Dakota Century Code, relating to a mental health court program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 12.1-32-02 of the North Dakota Century Code is amended and reenacted as follows:

1. Every person convicted of an offense who is sentenced by the court must be sentenced to one or a combination of the following alternatives, unless the sentencing alternatives are otherwise specifically provided in the statute defining the offense or sentencing is deferred under subsection 4:
 - a. Payment of the reasonable costs of the person's prosecution.
 - b. Probation.
 - 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.
 - d. A fine.
 - e. Restitution for damages resulting from the commission of the offense.
 - f. Restoration of damaged property or other appropriate work detail.
 - g. Commitment to an appropriate licensed public or private institution for treatment of alcoholism, drug addiction, or mental disease or defect.
 - h. Commitment to a sexual offender treatment program.
 - i. Drug court program. A drug court is a district court supervised treatment program approved by the supreme court which combines

judicial supervision with alcohol and drug testing and substance use disorder treatment in a licensed treatment program. The supreme court may adopt rules, including rules of procedure, for drug court programs.

- j. Veterans treatment docket. A veterans treatment docket is a district court supervised docket approved by the supreme court which combines judicial supervision with licensed treatment programs to treat substance use disorders, mental health conditions, behavioral health conditions, traumatic brain injuries, military sexual trauma, and co-occurring disorders. The supreme court may adopt rules, including rules of procedure, for veterans treatment dockets.
- k. Completion of a restorative justice program. For purposes of this section, "restorative justice program" means a system of justice which focuses on the rehabilitation of offenders through reconciliation with victims and the community at large.
- l. Mental health court program. A mental health court is a district court supervised treatment program approved by the supreme court which combines judicial supervision with mental health services and treatment in a licensed treatment program. The supreme court may adopt rules, including rules of procedure, for mental health court programs.

Except as provided by section 12.1-32-06.1, sentences imposed under this subsection may not exceed in duration the maximum sentences of imprisonment provided by section 12.1-32-01, section 12.1-32-09, or as provided specifically in a statute defining an offense. This subsection does not permit the unconditional discharge of an offender following conviction. A sentence under subdivision e or f must be imposed in the manner provided in section 12.1-32-08. If the person is sentenced to a term of imprisonment, the court may prohibit the person from contacting the victim during the term of imprisonment. For purposes of this subsection, "victim" means victim as defined in section 12.1-34-01.

SECTION 2. AMENDMENT. Section 19-03.1-23 of the North Dakota Century Code is amended and reenacted as follows:

19-03.1-23. Prohibited acts - Penalties.

- 1. Except as authorized by this chapter, it is unlawful for a person to willfully, as defined in section 12.1-02-02, manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance, or to deliver, distribute, or dispense a controlled substance by means of the internet, but a person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection. A person who violates this subsection with respect to:
 - a. A controlled substance classified in schedule I or II which is a narcotic drug, or methamphetamine, is guilty of a class B felony.
 - b. Any other controlled substance classified in schedule I, II, or III, or a controlled substance analog, except marijuana or tetrahydrocannabinol is guilty of a class B felony.

- c. Marijuana, tetrahydrocannabinol, or a substance classified in schedule IV, is guilty of a class C felony.
 - d. A substance classified in schedule V, is guilty of a class A misdemeanor.
2. A prior misdemeanor conviction under subsection 7 or a prior conviction under subsection 3 or 4 of section 19-03.4-03 may not be considered a prior offense under subsection 1.
3. Except as authorized by this chapter, it is unlawful for any person to willfully, as defined in section 12.1-02-02, create, deliver, distribute, or dispense a counterfeit substance by means of the internet or any other means, or possess with intent to deliver, a counterfeit substance by means of the internet or any other means, but any person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection. Any person who violates this subsection with respect to:
 - a. A counterfeit substance classified in schedule I, II, or III, is guilty of a class B felony.
 - b. A counterfeit substance classified in schedule IV, is guilty of a class C felony.
 - c. A counterfeit substance classified in schedule V, is guilty of a class A misdemeanor.
4. A person at least eighteen years of age who solicits, induces, intimidates, employs, hires, or uses a person under eighteen years of age to aid or assist in the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance for the purpose of receiving consideration or payment for the manufacture or delivery of any controlled substance is guilty of a class B felony. It is not a defense to a violation of this subsection that the defendant did not know the age of a person protected under this subsection.
5. Except for a prior conviction equivalent to a misdemeanor violation of subsection 7 or a prior conviction under subsection 3 or 4 of section 19-03.4-03, a violation of this title or a law of another state or the federal government which is equivalent to an offense with respect to the manufacture, delivery, or intent to deliver a controlled substance under this title committed while the offender was an adult and which resulted in a plea or finding of guilt must be considered a prior offense under subsection 1. The prior offense must be alleged in the complaint, information, or indictment. The plea or finding of guilt for the prior offense must have occurred before the date of the commission of the offense or offenses charged in the complaint, information, or indictment.
6. It is unlawful for a person to willfully, as defined in section 12.1-02-02:
 - a. Serve as an agent, intermediary, or other entity that causes the internet to be used to bring together a buyer and seller to engage in the delivery, distribution, or dispensing of a controlled substance in a manner not authorized by this chapter; or

- b. Offer to fill or refill a prescription for a controlled substance based solely on a consumer's completion of an online medical questionnaire.

A person who violates this subsection is guilty of a class C felony.

- 7. a. It is unlawful for any person to willfully, as defined in section 12.1-02-02, possess a controlled substance or a controlled substance analog unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of the practitioner's professional practice, or except as otherwise authorized by this chapter, but any person who violates section 12-46-24 or 12-47-21 may not be prosecuted under this subsection.
- b. Except as otherwise provided in this subsection, any person who violates this subsection is guilty of a class A misdemeanor for the first offense under this subsection and a class C felony for a second or subsequent offense under this subsection.
- c. If, at the time of the offense the person is in or on the real property comprising a public or private elementary or secondary school or a public career and technical education school, the person is guilty of a class B felony, unless the offense involves marijuana or tetrahydrocannabinol.
- d. A person who violates this subsection by possessing:
 - (1) Marijuana:
 - (a) In an amount of less than one-half ounce [14.175 grams] is guilty of an infraction.
 - (b) At least one-half ounce [14.175 grams] but not more than 500 grams of marijuana is guilty of a class B misdemeanor.
 - (c) More than 500 grams of marijuana is guilty of a class A misdemeanor.
 - (2) Tetrahydrocannabinol:
 - (a) In an amount less than two grams is guilty of an infraction.
 - (b) At least two grams but not more than six grams of tetrahydrocannabinol is guilty of a class B misdemeanor.
 - (c) More than six grams of tetrahydrocannabinol is guilty of a class A misdemeanor.
- e. If an individual is sentenced to the legal and physical custody of the department of corrections and rehabilitation under this subsection, the department may place the individual in a drug and alcohol treatment program designated by the department. Upon the successful completion of the drug and alcohol treatment program, the department shall release the individual from imprisonment to begin any court-ordered period of probation.

- f. If the individual is not subject to any court-ordered probation, the court shall order the individual to serve the remainder of the sentence of imprisonment on supervised probation subject to the terms and conditions imposed by the court.
 - g. Probation under this subsection may include placement in another facility, treatment program, drug court, mental health court, or veterans treatment docket. If an individual is placed in another facility or treatment program upon release from imprisonment, the remainder of the sentence must be considered as time spent in custody.
 - h. An individual incarcerated under this subsection as a result of a second probation revocation is not eligible for release from imprisonment upon the successful completion of treatment.
 - i. A person who violates this subsection regarding possession of five or fewer capsules, pills, or tablets of a schedule II, III, IV, or V controlled substance or controlled substance analog is guilty of a class A misdemeanor.
8. Except as provided by section 19-03.1-45, a court may order a person who violates this chapter or chapter 19-03.4 to undergo a drug addiction evaluation by a licensed addiction counselor. The evaluation must indicate the prospects for rehabilitation and whether addiction treatment is required. If ordered, the evaluation must be submitted to the court before imposing punishment for a felony violation or a misdemeanor violation.
9. If a person pleads guilty or is found guilty of a first offense regarding possession of one ounce [28.35 grams] or less of marijuana or two grams or less of tetrahydrocannabinol and a judgment of guilt is entered, a court, upon motion, shall seal the court record of that conviction if the person is not subsequently convicted within two years of a further violation of this chapter. Once sealed, the court record may not be opened even by order of the court.
10. Upon successful completion of a drug court program, mental health court program, or veterans treatment docket, a person who has been convicted of a felony under this section and sentenced to drug court, mental health court, or veterans treatment docket is deemed to have been convicted of a misdemeanor.
11. If a person convicted of a misdemeanor under this section is sentenced to drug court, mental health court, or veterans treatment docket and successfully completes a drug court program, mental health court, or veterans treatment docket, the court shall dismiss the case and seal the file in accordance with section 12.1-32-07.2.
12. If an individual under the age of twenty-one pleads guilty or is found guilty of a first offense regarding possession of one-half ounce [14.175 grams] or less of marijuana, the court also may sentence the individual to an evidence-based alcohol and drug education program operated under rules adopted by the department of human services under section 50-06-44. For a second or subsequent offense regarding possession of one-half ounce [14.175 grams] or less of marijuana, the court also shall sentence the individual to an evidence-based alcohol and drug education program

operated under rules adopted by the department of health and human services under section 50-06-44.

SECTION 3. AMENDMENT. Section 39-08-01.5 of the North Dakota Century Code is amended and reenacted as follows:

39-08-01.5. Partial suspension of sentence for drug court program, mental health court program, or veterans treatment docket completion.

1. Notwithstanding section 39-08-01, all but ten days of the minimum mandatory sentence required for a defendant charged with a third or subsequent violation of section 39-08-01 may be suspended on the condition the defendant successfully completes a drug court program, mental health court program, or veterans treatment docket approved by the supreme court.
2. Upon successful completion of a drug court program, mental health court program, or veterans treatment docket, a defendant convicted of a felony under section 39-08-01 and sentenced to drug court, mental health court, or veterans treatment docket is deemed to have been convicted of a misdemeanor.
3. If a defendant convicted of a misdemeanor under section 39-08-01 is sentenced to drug court, mental health court, or veterans treatment docket and successfully completes a drug court program, mental health court, or veterans treatment docket, the court shall dismiss the case and seal the file in accordance with section 12.1-32-07.2."

Renumber accordingly

PROPOSED AMENDMENT TO HOUSE BILL 1138
68th Legislative Assembly
House Human Services Committee
January 9, 2023

Page 2, remove lines 28-30

Page 3, line 1, after "nonviolent" insert "felony or misdemeanor"

Renumber accordingly

HB1138

Good Morning Chair Larson and members of Judiciary,

For the record I am Bernie Satrom and I am honored to serve the great people of District 12 in Jamestown and NE Stutsman County

The initial version of the bill set up a Mental Health pilot program which had some issues. This bill was amended with the help of the key stakeholders to help and not hinder the process.

In this bill A mental health court is a district court supervised treatment program approved by the supreme court which combines judicial supervision with mental health services and treatment in a licensed treatment program. This bill says that The supreme court may adopt rules, including rules of procedure, for mental health court programs.

Presently our state has a Drug Court which has been very helpful in providing accountability for offenders and help them get their lives back on track. It ultimately saves our state money and helps develop productive neighbors and citizens. I would encourage you to visit one at some point. It is exciting to see the tough love, accountability and life changes that are accomplished in this process.

A recent study reported that 83.7% of people screened positive for mental illness prior to being booked into jail.

Mental Health Diversion programs divert people with mental health disorders from the Criminal Justice System into appropriate treatment.

Failure to address mental health issues helps no one. Putting those people in jail does not address the issue. Incarcerating individuals with mental illness, fills our jails, prolongs mental illness and potentially turns them into criminals.

The Mental health court concept works

One of our neighboring states reported that recidivism rates have dropped 62% for this population since incorporating mental health courts.

Mental health courts give us the Opportunity to address mental health problems in their infancy rather than allowing it to grow and get more serious.

Mental Health Courts save money versus warehousing people in jail.

Mental Health Courts Lowers recidivism

Mental Health Courts help people become healthy productive citizens and neighbors.

HB1138 could make a Difference. I would stand for any questions.

HB 1138
68th Legislative Assembly
House Judiciary Committee
March 22, 2023
Testimony of Travis W. Finck, Executive Director NDCLCI in Support

Madam Chair Larson, members of the Senate Judiciary Committee, I rise today on behalf of the Commission on Legal Counsel for Indigents in support of HB 1138. The Commission on Legal Counsel is the state agency responsible for the provision of legal services for individuals when there is a constitutional, statutory or rule based right to counsel.

As part of our mission, the Commission was deeply involved in the reform efforts last session dealing with how the Courts are responding to the increase in mental health cases we were seeing in criminal courts. Diverting cases from jail time and providing services is a vast improvement over the incarcerate and give them treatment their model.

Diverting nonviolent cases with defendants in a mental health crisis only makes sense. A person in crisis needs our help, they don't need to be jailed. As Mahatma Gandhi once said, "the true measure in society can be found in how it treats its most vulnerable members". For all the reasons state herein, the Commission supports HB 1138.

Respectfully Submitted:



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