

**2019 HOUSE JUDICIARY COMMITTEE**

**HB 1258**

# 2019 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Prairie Room, State Capitol

HB 1258  
1/23/2019  
31298

- Subcommittee  
 Conference Committee

Committee Clerk: DeLores D. Shimek by Nicole Klamam
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## **Explanation or reason for introduction of bill/resolution:**

Creation of a pretrial services program pilot project within the DOCR; to provide for a report to the legislative assembly; and to provide an appropriation.

## **Minutes:**

6
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**Chairman K Koppelman:** Opened the hearing on HB 1258.

**Rep. Karla Rose Hanson:** Introduced HB, (**Attachment #1**) Read supporting testimony.  
Stopped 7:30

**Representative Gary Paur:** Looking at the fiscal note. There will be 75,000 expenditures and I agree there will be a savings but won't that be on the county level?

**Rep. Hanson:** That is correct.

**Representative Shannon Roers Jones:** Do you have detail on the appropriation amount; where it comes from and what you would do with it.

**Rep. Hanson:** Seven people would be hired.

**Rep. Roers Jones:** Can you give us background on the jurisdictions and background on this bill.

**Rep. Hanson:** I'm uncertain if the jurisdictions have been decided. I do believe they want to place them in a rural area, urban area and close to tribal community.

**Travis Finck:** Deputy Director ND on the Commission on Legal Counsel for Indigents: (**Attachment #2 includes overhead**) Went through the overhead.  
Stopped 22:25

**Vice Chairman Karen Karls:** What about the common ordinary crimes where the victim is most relieved that the perpetrator is in jail. What is the guarantee that they won't do more harm?

**Travis Finck:** What is the difference they are released based upon assessment or the value of cash. They are still accused; they are not found guilty. However, the court can set conditions of their release, like no contact.

**Representative Rick Becker:** The ND story makes me angry. With regard on how this would work; the savings with be realized by the counties?

**Travis Finck:** I believe we would also see savings at a state level as well. Less court time with less bond reduction hearings, so less time in front of a judge, court reporter and clerk which may be state employees. Save time with indigent defense. But mostly on the county level.

**Rep. Becker:** Where would the fully implemented program be funded? 100% by the state or shared with the counties?

**Travis Finck:** Depends on the state. MT came up with a pool of state funds and allowed the counties to petition for some of that based on different things. I think public safety would increase in the case of a pretrial monitoring program pilot.

**Chairman Koppelman:** Can we quantify a fiscal note?

**Travis Finck:** I'm uncertain how we could quantify it because these are individualized assessments with individual results. This is not a guarantee the person is going to be released.

**Chairman Koppelman:** Further Testimony?

**Pat Bohn,** Director of Parole and Probation in ND DOCR: (Attachment #3) Went over testimony. Over the years I have seen young people who have a brush with the law they will just plead guilty, but they don't realize the ramifications for that. Savings I can see down the road how this can help us. The department stands in support of this bill.  
**Stopped 41:05**

**Rep. Paur:** We have the pretrial services in code. Basically this bill funds it?

**Pat Bohn:** Correct. There are no changes from what is in code.

**Representative Aaron McWilliams:** Has the ability to pay bail shifted in the last twenty years, giving course to further incarcerations?

**Pat Bohn:** Subjectively, I think there has been a shift across this country and state. Today if you are arrested, the community sees you guilty of committing a crime and its almost as though you must prove you haven't.

**Representative Terry Jones:** Looking at pretrial recidivism It looks like the statistics are stacked. If you have people getting out with no more than 24 hours it's obvious there will be less recidivism because there is less risk.  
How much of these numbers are based on that portion vs the portion that are sitting in jail?

**Pat Bohn:** Recidivism data might be subjective.

**Representative Jones:** You are asking us for \$750,000 to move that forward. How much can the DOCR come up with for the pilot program?

**Pat Bohn:** I have 93 officers supervising 7,000 people. I don't have any great savings for you or any other contributions at this time.

**Chairman K. Koppelman:** The budgets present a problem.

**Pat Bohn:** That is why it is a pilot program just to see how it will work.

**Rep. Jones:** I like this program.

**Representative Jeffery Magrum:** Based on your figures 7,000 people in corrections and Rep Hanson said \$88.00 a day. Is that an accurate figure that it would be over \$600,000 a day?

**Pat Bohn:** What Rep. Hanson spoke to was the average cost in the county jail. What I spoke, 7000 are either people are under supervision, in the department of corrections either on parole or probation.

I have tracked the jail population for a while. Typically, the county jail population almost mirrors the state penitentiary populations.

**Rep. Magrum:** Is there any way to get a rough fiscal note

**Pat Bohn:** A rough fiscal note would be a roll of the dice.

**Chairman K. Koppelman:** We heard from Mr. Finck that people have trouble with their jobs after arrest. How much of that is because they are not present and how much of that is because they are under arrest?

**Pat Bohn:** Part of it is unavailability. Maybe it is employers prospective which again we have lost the innocent until proven guilty fundamentals.

**Travis Finck:** With the employment we found there are quite a few employers that are favorable to employees on pretrial status because it's knowledge insurance for the employer that the employee will be coming to work or there's real consequences.

**Chairman K. Koppelman:** Can you provide some information on bail bondsman?

**Travis Finck:** I can tell you there is a hesitation nationwide for the use of bail bondsman; they should not have to. The federal system doesn't have a monetary bail.

**Chairman K. Koppelman:** To what degree do defense attorneys have to say plead guilty and work a deal with the court?

**Travis Finck:** One of the hardest conversations to have with a client if I have received a plea deal that requires a guilty plea. Or even if I'm just aware of what "this judge" typically does.

**Andrew Frobig,** Cass County Sheriff's office: (See Attachment #4) Support testimony  
0:60:00-0:01:04

**Chairman K. Koppelman:** Thank you for your good work. I am especially excited about the jail chaplains introduced at your facility. Rather than a punishment model, we are looking at a corrections model.

**Andrew Frobig:** I appreciate that very much we have tried to use the opportunities as they present themselves. So many of our inmates have outstanding matters in other counties throughout the state. Unfortunately, because of the appearance system, I can't let people go until those issues are resolved. There would be a stronger case for a state run program to be able to influence state courts in getting those issues combined and dealt with.

**Rep. Jones:** How many people have you offered this to?

**Andrew Frobig:** 3-5 people per week, so about 130 people.

**Donnell Preskey,** NDACo: Verbal support testimony given (**Attachment #5**)  
Also provided **Attachment 6**, Chad Peterson written testimony, not present for verbal  
(Stopped 1:13:04)

**Chairman K. Koppelman:** Further supporting testimony? Opposition testimony? Neutral testimony? Seeing none. What are the wishes of the Committee?

**Rep. Roers Jones:** Moved Do Pass on HB 1258 and Rerefer to Appropriations.

**Rep. Satrom** Seconded

**Clerk:** Motion Carries Do Pass on HB 1258 and Rerefer to Appropriations.

Votes: Yes 13      No 0      Absent 1

**Rep. Roers Jones:** Carrier of HB 1258.

Hearing closed.

**2019 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
HB1258**

House   **Judiciary**   Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

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

Motion Made By   Rep. Roers Jones   Seconded By   Rep. Satrom  

<b>Representatives</b>	<b>Yes</b>	<b>No</b>	<b>Representatives</b>	<b>Yes</b>	<b>No</b>
Chairman Koppelman	X		Rep. Buffalo	A	
Vice Chairman Karls	X		Rep. Karla Rose Hanson	X	
Rep. Becker	X				
Rep. Terry Jones	X				
Rep. Magrum	X				
Rep. McWilliams	X				
Rep. B. Paulson	X				
Rep. Paur	X				
Rep. Roers Jones	X				
Rep. Satrom	X				
Rep. Simons	X				
Rep. Vetter					

Total   (Yes)   13                             No   0  

Absent   1  

Floor Assignment   Representative Roers Jones  

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

Motion Carries

**REPORT OF STANDING COMMITTEE**

**HB 1258: Judiciary Committee (Rep. K. Koppelman, Chairman)** recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1258 was rereferred to the **Appropriations Committee**.

**2019 HOUSE APPROPRIATIONS**

**HB 1258**

# 2019 HOUSE STANDING COMMITTEE MINUTES

**Appropriations Committee**  
Roughrider Room, State Capitol

HB1258  
1/31/2019  
31905

- Subcommittee  
 Conference Committee

Committee Clerk Risa Bergquist

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

**A BILL for an Act to provide for the creation of a pretrial services program pilot project within the department of corrections and rehabilitation; to provide for a report to the legislative assembly; and to provide an appropriation.**

Minutes:

**Chairman Delzer:** Calls the meeting to order for HB 1258

**Representative K. Koppelman:** I am going to have Representative Roers Jone present this to the committee.

**Chairman Delzer:** I thought we had a pilot project before?

**Representative K. Koppelman:** We did pass it last session as part of the justice reinvestment effort however because it was not funded it didn't occur. This bill is because we still feel the need is there but we need it funded.

**Chairman Delzer:** My understanding that there is turn back in the department of corrections so why didn't they do it?

**Representative K. Koppelman:** I was not aware of the turn back.

**Representative J. Nelson:** There is turn back in the DOC budget but of the 7 million there is about 2 mill and they would like to use that in the new program.

**Chairman Delzer:** They could have come to the emergency committee to get permission to move that, if they really wanted to do the program, this bill appropriates another 750 thousand.

**Representative J. Nelson:** I think it was more about not having time to get this pilot program set up. It was in just one district.

**Chairman Delzer:** This bill actually does 3 districts.

**3:50 Representative Roers Jones:** It was approved but it wasn't founded. There was 1 county that began to implement pretrial services that was Cass county. Of those services implemented there were 130 people participate and of those people there was only 3 that didn't not show up for the trial. The point of the pretrial services is so that if they are not able to post cash bond they are not required to stay in jail until their trial. North Dakota has a significantly higher than average % of people that are incarcerated awaiting trials. It's around 80% and the national average is about 62% and that averages about 88 a day per person. The appropriation is to create a blueprint so they can roll this out to the remaining counties, it's intended to create the additional hours and staff, the services they would be providing would be risk assessments, background checks, recommendations for conditions for pretrial releases this is so people that are at low risk of reoffending can maintain them homes, jobs and families while they are awaiting trial.

**Chairman Delzer:** If Cass County did this, where did they get the money?

**Representative Roers Jones:** I don't believe they used any extra money.

**Chairman Delzer:** We are going to find out where they got the money from and if they already did this then why do we need a pilot program?

**Representative Roers Jones:** They need the pilot program so they can roll it out to more counties that may not have the resources to do it otherwise.

**7:10 Representative J. Nelson:** The money that Cass County was able to use was the money that they would have spent on housing these people.

**Chairman Delzer:** Would this have to be done in the judicial branch? You're also dealing with this in the budget?

**Representative J. Nelson:** Yes, in some cases, it's the county that is responsible for the housing for some of these inmates.

**Chairman Delzer:** We've got this before us and we will have to work it with HB 1015. I would guess that most of that would fall on the county, should we be covering something that the county should be covering?

**Representative K. Koppelman:** That's a good point, this is DOCR budget and it looks like it is strictly for staff.

**Chairman Delzer:** Well we will look closer at this when we hear HB 1015, if there's no further discussion we'll close this hearing.

# 2019 HOUSE STANDING COMMITTEE MINUTES

**Appropriations Committee**  
Roughrider Room, State Capitol

HB 1258  
2/11/2019  
32543

- Subcommittee  
 Conference Committee

Committee Clerk: Risa Bergquist

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

**A BILL for an Act to provide for the creation of a pretrial services program pilot project within the department of corrections and rehabilitation; to provide for a report to the legislative assembly**

**Minutes:**

**Chairman Delzer:** This is a bill that sets up a pilot, pretrial services program pilot project. Repot to the assembly, it has an appropriation of 750 thousand and I think we should amend that out just to be on the safe side.

**Representative J. Nelson:** Yes, it's included in the amended version of the corrections bill. It was in their budget and we passed that along. There's 750 thousand dollars are 7 FTEs included in that line item.

**Chairman Delzer:** Did you give them 7 FTEs?

**Representative J. Nelson:** This will be used in four judicial districts in the state, although they haven't been named yet I am sure that one of them will be in the south east district, there will be at least tone rural district and I would guess the south central would be one of the prime areas as well. This was the number they said they needed to make it successful.

**Chairman Delzer:** It's the counties that will reap the benefits so why are we paying the FTEs and run it through the department of corrections?

**Representative J. Nelson:** They have the experience in setting this up. This benefits all of us, it goes along with the justice reinvestment piece, that we begin to address some of the issue at arrest and before sentencing. If we don't do it, it's more likely they will end up in the state system.

**Chairman Delzer:** There is no fiscal note for this because it's a direct appropriation, did you ask how things are going in Cass County?

**Representative J. Nelson:** In the overview they talked about Cass County but this would be the whole district not just county. I don't remember if we got anything that I could report to you today.

**Chairman Delzer:** I would appreciate it if you could get ahold of someone and see what some of those questions before we take it up with corrections.

**Representative Bellew:** Its says 3 districts and you are doing it for 4?

**Representative J. Nelson:** The end game is 4, that would include Cass county.

**Representative Schmidt:** If this is a pilot project then why are there created 7 FTE positions, are these temporary full time positions?

**Representative J. Nelson:** If they are not needed we wouldn't fund them. The likelihood that this won't be a successful program isn't very likely.

**Chairman Delzer:** If we are going to call it a pilot project we should add a sun set to it.

**Representative J. Nelson:** This was included in the current biennium they just didn't get it implemented because of lack of personal.

**Chairman Delzer:** Let's go ahead and mend out section 2 of the bill, lines 21-24 on page 1 and lines 1-4 on page 2.

**Representative J. Nelson: Motion to move that amendment.**

**Representative Meier: Second**

**Chairman Delzer:** Motion to remove section of the bill, any further discussion? Hearing none we will take a **voice vote, all in favor, motion carries.** We have the amended bill before us.

**Representative J. Nelson: I will make a Do Not Pass as Amended**

**Representative Meier: Second**

**Chairman Delzer:** Any further discussion on the Do Not Pass? We will take a roll call vote.

**A Roll Call vote was taken. Yea: 20 Nay: 0 Absent: 1**

**Motion Carries Representative J. Nelson will carry the bill.**

**Chairman Delzer:** With that we will close this meeting.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1258

Page 1, line 2, after the first semicolon insert "and"

Page 1, line 2, remove the second semicolon

Page 1, line 3, remove "and to provide an appropriation"

Page 1, remove lines 21 through 24

Page 2, remove lines 1 through 4

Renumber accordingly

**STATEMENT OF PURPOSE OF AMENDMENT:**

This amendment removes an appropriation to the Department of Corrections and Rehabilitation relating to a pretrial services pilot project.

Date: 2/11/2019  
 Roll Call Vote #: 1

**2019 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1258**

House Appropriations Committee

Subcommittee

Amendment LC# or Description: Remove section 2 of the bill

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

Motion Made By Representative J. Nelson    Seconded By Representative Meier

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer					
Representative Kempenich					
Representative Anderson			Representative Schobinger		
Representative Beadle			Representative Vigesaa		
Representative Bellew					
Representative Brandenburg					
Representative Howe			Representative Boe		
Representative Kreidt			Representative Holman		
Representative Martinson			Representative Mock		
Representative Meier					
Representative Monson					
Representative Nathe					
Representative J. Nelson					
Representative Sanford					
Representative Schatz					
Representative Schmidt					

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

Absent \_\_\_\_\_

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

**Voice Vote/Motion Carries**

Date: 2/11/2019  
 Roll Call Vote #: 2

**2019 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. HB 1258**

House Appropriations Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

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

Motion Made By Representative J. Nelson Seconded By Representative Meier

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer	X				
Representative Kempenich	X				
Representative Anderson	X		Representative Schobinger	X	
Representative Beadle	X		Representative Vigesaa	X	
Representative Bellew	X				
Representative Brandenburg	X				
Representative Howe	X		Representative Boe	X	
Representative Kreidt	X		Representative Holman	X	
Representative Martinson	X		Representative Mock	X	
Representative Meier	X				
Representative Monson	A				
Representative Nathe	X				
Representative J. Nelson	X				
Representative Sanford	X				
Representative Schatz	X				
Representative Schmidt	X				

Total (Yes) 20 No 0

Absent 1

Floor Assignment Representative J. Nelson

**Motion Carries**

**REPORT OF STANDING COMMITTEE**

**HB 1258: Appropriations Committee (Rep. Delzer, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (20 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1258 was placed on the Sixth order on the calendar.

Page 1, line 2, after the first semicolon insert "and"

Page 1, line 2, remove the second semicolon

Page 1, line 3, remove "and to provide an appropriation"

Page 1, remove lines 21 through 24

Page 2, remove lines 1 through 4

Renumber accordingly

**STATEMENT OF PURPOSE OF AMENDMENT:**

This amendment removes an appropriation to the Department of Corrections and Rehabilitation relating to a pretrial services pilot project.

**2019 TESTIMONY**

**HB 1258**

#1  
HB 1258  
1-23-19  
Pg. 1

## Pretrial Services Pilot Program -- HB 1258

### House Judiciary Committee - Jan. 23, 2019 Testimony from Rep. Karla Rose Hanson, District 44

Mr. Chairman and members of the Judiciary Committee.

I'm here today to introduce to you House Bill 1258, which funds a pretrial services pilot program.

Many of you on the committee will remember the criminal justice reforms we passed in 2017 - a package of bills called justice reinvestment. An impetus of these reforms was to curb our runaway spending on prisons and jails because of sharp increases in those populations. We realized that a high majority of those who get entangled in the criminal justice system have an addiction, a mental health diagnosis or both, and we realized couldn't incarcerate our way out of that problem. We had to reform.

During the 2017 session, we reduced the penalties on non-violent drug offenses, so people spent less time behind bars. We also created programming that offered behavioral health services and other supports to those leaving prison and re-entering our community in order to reduce recidivism -- so fewer people came through the revolving door back to jail or prison. It's still early, but indications are that these reforms we passed are having successful outcomes.

As part of the justice reinvestment reforms, the legislature approved House Bill 1041 in 2017, which authorized a pretrial services program -- but we did not fund it. This bill would fund a pilot program, saving money long-term and giving more defendants their liberty while their case is being processed.

"Pretrial" means the period of time after a person has been arrested and before their case has been disposed of - before they enter a plea or they're found not guilty or guilty and sentenced.

Our top goal during this pretrial period should always be to ensure public safety. Additionally, we want to assure future court appearances.

People who have just committed murder or who are highly likely to abscond will likely be held on a very high bail amount, while those who are a low risk to public safety and who are likely to appear at future court dates may be released on their personal recognizance. The high majority of defendants in the middle have an automatic bail amount set based on the specific offense they were charged with.

However, too often, a defendant stays in jail after arrest simply because he or she can't afford a few hundred dollars in money bail. Coming up with a \$500 bail might as well be a million dollars to a lot of people.

We often see a low-risk person detained solely because they lack the ability to pay, losing their liberty while their case is being processed -- while wealthy defendants could simply purchase their freedom during the pretrial period even if there is a risk to public safety or failure to appear.

#1  
HB 1258  
1/23/19  
PS. 2

A key part of any pretrial program is objectively assessing if a defendant is a risk to public safety and their likelihood to appear at future court dates. Then we use that information to decide if they are detained or released pretrial - rather than setting an automatic bail amount based on a specific charge.

If they are a low-risk defendant, rather than spending a large amount of taxpayer dollars to jail them simply because they can't afford bail, we can instead spend a small amount of money to supervise them in a variety of ways, including electronically, to ensure future court appearances.

Additionally, we could take the successful ideas from programs like Free Through Recovery, the reforms that we passed last year for people who are leaving prison -- and apply those support concepts in the pretrial stage so that we can get more people connected to behavioral health services earlier.

Here in ND, we spend an average of \$88 per day per person to house someone in a county or regional jail.

The majority of jail populations consists of pretrial detainees. Nationally, the average is 62%. The rate is even higher in North Dakota's county and regional jails. When we discussed justice reinvestment in 2017, the CSG researchers said that jail administrators and sheriffs identified growth in the pretrial detention population as a major driver of the significant spike in our county jail population. This is a problem we need to address. It is an area ripe for reform.

Not all the pretrial detainees will be eligible for a pretrial release program, but many would be.

If implemented correctly with the right resources, pre-trial services could reduce county/regional jail population – or at least curb growth – and ultimately reduce the recidivism rates.

There is an initial investment with establishing a pilot program. But doing this will serve as a blue print for our counties so they don't have to reinvent the wheel 53 times. Ultimately this will save taxpayer dollars. And - it is the right thing to do, separate and apart from the financial benefits.

You should also know that there exists a group appointed by the ND Supreme Court called the Minority Justice Implementation Committee, representing a variety of perspectives from the criminal justice arena. For the last year, I had the privilege of serving on MJJ's pretrial reform subcommittee, and we produced a report this past fall recommending we move forward on these very ideas discussed today.

The idea of pretrial reform has a lot of support from different corners and I expect you'll hear that in the testimony that follows me.

I hope this committee will build on the successful justice reforms we passed during the last session and give a do-pass recommendation to HB 1258 to fund a pretrial services pilot program.

Thank you.

#2  
HB 1258  
1/23/19

House Bill 1258  
House Judiciary  
Testimony of Travis W. Finck  
Deputy Director N. D. Comm. On Legal Counsel for Indigents  
January 23, 2019

Chairman Koppelman, members of the House Judiciary, my name is Travis Finck, I am the Deputy Director of the Commission on Legal Counsel for Indigents, and on behalf of the commission, I rise in support of House Bill 1258 in relation to the establishment of a pilot program for a pre-trial service program.

The Commission on Legal Counsel supports the creation of a pre-trial service program to address the problem of pre-trial incarceration. The time is right for North Dakota to address pre-trial issues, and we are not alone. In 2013 the Conference of State Court Administrators (COSCA) issued a policy paper, *Evidence-Based Pretrial Release*, which urges that “Court leaders promote, collaborate toward and accomplish the adoption of evidence-based assessment of risk in setting pretrial release conditions.”<sup>1</sup> Later in 2013, the Conference of Chief Justices issued a resolution endorsing the COSCA policy. Similar groups have noticed the importance of the movement and have signed on including but not limited to American Bar Association, National Association of Counties, American Jail Association, International Association of Chiefs of Police, American Council of Chief Defenders, Association of Prosecuting Attorneys, and American Probation and Parole Association.

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<sup>1</sup> Conference of State Court Administrators, *Evidence-Based Pretrial Release* (2012–2013 Policy Paper), p. 2, <http://cosca.ncsc.org/%7E/media/Microsites/Files/COSCA/Policy%20Papers/Evidence%20Based%20Pre-Trial%20Release%20-Final.ashx>.

#2  
#B 1258  
1/23/19

Nationally, states such as Montana, Texas, New Jersey, New Mexico, Alaska, Arizona, California, Indiana, and Maryland amongst many others have recently addressed bail reform in different manners. In 2017, the Pre-Trial Justice Institute titled “The State of Pretrial Justice in America” surveyed reform attempts in different jurisdictions and graded states pre-trial systems based upon pre-trial detention rate, use of a validated pretrial assessment and the functional elimination of money bail. North Dakota regrettably was graded as an F.

The citizens of North Dakota deserve better than an F grade. The Constitution of the United States of America guarantees individuals charged with a crime the right to due process of law. Inherent within due process is the right be presumed innocent until proven guilty. This is a basic tenant of American Jurisprudence. The Constitution of the State of North Dakota provides that all persons shall be madeailable by sufficient surety. Further, Court rules provide a magistrate must order the person released pending trial on the person's personal recognizance or on execution of an unsecured appearance bond in an amount specified by the magistrate, unless the magistrate determines, in the exercise of the magistrate's discretion, that unconditional release will not reasonably assure the appearance of the person as required.

Despite the Constitutional and rule-based requirements, across the State of North Dakota, different Judicial Districts have created bail schedules for specific crimes which treat defendants’ differently depending on where they are arrested. The Bail schedules allow a defendant arrested of a specific charge to post the listed bail for that crime and be released from jail. If you are unable to post the bond/bail, the defendant is brought before the Court to have a new bail set. In some circumstances, this current practice runs dangerously close to being afoul of the United States’ Supreme Court case law holding incarceration of defendants solely because of their inability to pay for their release, whether through fines, fees or a cash bond, violates the Equal

Protection Clause of the 14<sup>th</sup> Amendment. *See Tate v. Short*, 401 U.S. 395, 398 (1971); *Williams v. Illinois*, 399 U.S. 235, 240-41 (1970); *Smith v. Bennett*, 365 U.S. 708, 709 (1961). The Circuit Courts have also addressed the issue of the constitutionality of a monetary reliant bail system. *See Pugh v. Rainwater*, 572 F.2d 1053, 1056 (5<sup>th</sup> Cir. 1978) (en banc) (holding “imprisonment solely because of indigent status is invidious discrimination and not constitutionally permissible).

Currently, different jurisdictions are in fact in the midst of or on the tail of constitutional challenges to their bail systems. In California, *In Re Humphrey*, 19 Cal. App. 5<sup>th</sup> 1006 (Ct.App. 2018), was a constitutional challenge to California’s bail system. The facts of that case present as a 63-year-old San Francisco resident who was detained because he could not come up with secured money bail. The Defendant faced allegation he had followed a 79-year fellow resident of a senior home, and threatened him, stole \$7 (the alleged victim gave him two and he stole 5) and a bottle of cologne. Because Mr. Humphrey had a history of substance abuse, his bond was set at \$600,000. The bond was later reduced in the case to \$350,000. The Court of Appeals in California held a financial condition of release, set at an unattainable level, is the equivalent of de facto pre-trial detention or the same as setting no bail at all. Citing *Santosky v. Kramer*, 455 U.S. 74 (1982), the Court further held: “an arrestee’s pretrial liberty interest, protected under the due process clause, is “a fundamental interest second only to life itself in terms of constitutional importance”. The California legislature has been tracking along with bail reform in their state and with SB 10, which passed the legislature, money bail in California will be effectively eliminated in October of 2019 when implemented.

Another case example is from Texas, and found in *O’Donnell v. Harris County Texas*, 882 F.3d 528, 545 (5<sup>th</sup> Cir. 2018). Maranda Lynn O’Donnell was arrested for driving without a license, a misdemeanor. She had to pay \$2500 to be released, according to a bond schedule,

which she was unable to come up with. Ms. O'Donnell sued Harris County for their bond practices. U.S. District Court Judge Lee Rosenthal of the U.S. District Court for the Southern District of Texas issued a 193-page opinion making several important findings:

- Judge Rosenthal found as a matter of fact that secured money bail does not improve court appearance or public safety relative to simple alternatives
- “magistrates may not impose a secured bail solely for the purpose of detaining the accused. And, when the accused is indigent, setting a secured bail will, in most cases, have the same effect as a detention order.”
- It boils down to this: when a poor defendant and one who has money is arrested on a similar charge with similar facts, but the poor defendant must sit in jail solely due to his financial situation, due process is violated!

This case has been up and down several times with a continuation of the Federal District Court and the Fifth Circuit disagreeing with the appropriate remedy, while the 5<sup>th</sup> Circuit has affirmed the legal holdings regarding the constitutionality of bond.

In closing, we would request North Dakota make active efforts to create a pretrial system balancing public safety, the reappearance of defendants for future court dates, and the rights of the accused. The use of a monetary bail system does not ensure public safety as risk is not defined or objectively measured. Rather, it allows those with the resources to purchase freedom and those without to suffer the harm of pretrial detention. The only persons that seemingly benefit from money bail systems are bonding agencies who collect a fee for posting bond on behalf of an individual. Adoption of a risk-based, validated objective pretrial assessment and supervision system would gather information about each individual defendant so the judicial officer making release determination can do so based upon individual risk assessment.

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Furthermore, a supervisory release would provide the Court with more options for release and the ability to tailor a plan based upon individual needs.

The adoption of an effective risk-based pretrial system provides benefit not only to the accused but also the community. It would potentially allow for preventative detention for the most dangerous offenders not allowing them to purchase freedom. Further, it would allow those at low risk to be released to work within the community, maintain housing, support of their families and address risk factors under supervision.

Mr. Chairman, members of the committee, for all the reasons stated herein, I respectfully request a DO PASS recommendation.

Respectfully submitted:

  
Travis W. Finck, Deputy Director  
N.D. Commission on Legal Counsel  
(701) 845-8632, tfinck@nd.gov

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# Some of the Numbers:

- A 2016 Federal Reserve Board study found that 47 percent of Americans would have to sell property or go into debt to come up with \$400 for an emergency expense like a bail fee. <sup>1</sup>
- In 1990, the percentage of pretrial detainees was about 50%, but in 2007, the pretrial detainee population increased to 62% of the jail population<sup>2</sup>
- The United States of America has approximately 615,000 serving time in County Jail
- Approximately 465,000 of the those serving time in County Jail have not been convicted

## COST OF PRETRIAL DETENTION

### Financial:

- Often times, an individual detained pre-trial will lose their job
  - If they lose their job, some research suggests serving time reduces hourly wages for men by 11%, annual employment by nine weeks, and annual earnings by 40%<sup>3</sup>
  - Increased cost of time spent by indigent defense contractors
  - The Cost of a day in jail varies widely, but ranges anywhere from approximately \$65 dollars per day to as much as \$200 per day, depending on the facility
    - In FY 2015, the average cost of incarceration of federal inmates was \$87.61

### Social:

- Cost to Detainee
  - Low Risk offenders can and will often learn anti-social behaviors from higher risk inmates
  - A Recent Study on Harris County Texas found similarly situated Defendant's were 25% more likely to plead guilty if incarcerated than those out of custody, 43% more likely to be sentenced to jail, and receive Jail sentences that are more than twice as long on average<sup>4</sup>
  - detention imposes significant yet difficult-to-quantify costs on individuals, including the loss of liberty, dignity, damaged reputation, standing in the community, and disruptions to family life and other relationships<sup>5</sup>

→Example

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## CASE LAW

O'Donnell v. Harris County Texas, 882 F.3d 528, 545( 5<sup>th</sup> Cir. 2018)

- Maranda Lynn O'Donnell was arrested for driving without a license, a misdemeanor
- She had to pay \$2500 in order to be released, which she was unable to come up with
- Ms. O'Donnell sued Harris County for their bond practices
- U.S. District Court Judge Lee Rosenthal of the U.S. District Court for the Southern District of Texas issued a 193 page Opinion
  - Judge Rosenthal found as a matter of fact that secured money bail does not improve court appearance or public safety relative to simple alternatives
  - "magistrates may not impose a secured bail solely for the purpose of detaining the accused. And, when the accused is indigent, setting a secured bail will, in most cases, have the same effect as a detention order."
  - It boils down to this: when a poor defendant and one who has money is arrested on a the a similar charge with similar facts, but the poor defendant has to sit in jail solely due to his financial situation, due process is violated!

In sum, the essence of the district court's equal protection analysis can be boiled down to the following: take two misdemeanor arrestees who are identical in every way—same charge, same criminal backgrounds, same circumstances, etc.—except that one is wealthy and one is indigent. Applying the County's current custom and practice, with their lack of individualized assessment and mechanical application of the secured bail schedule, both arrestees would almost certainly receive identical secured bail amounts. One arrestee is able to post bond, and the other is not. As a result, the wealthy arrestee is less likely to plead guilty, more likely to receive a shorter sentence or be acquitted, and less likely to bear the social costs of incarceration. The poor arrestee, by contrast, must bear the brunt of all of these, simply because he has less money than his wealthy counterpart. The district court held that this violates the equal protection clause, and we agree."

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In Re Humphrey, 19 Cal. App. 5<sup>th</sup> 1006 (Ct.App. 2018)

- 64 year old San Francisco resident was detained because he could not come up with secured money bail
- Faced allegation he had followed a 79 year fellow resident of a senior home, and threatened him, stole \$7 and a bottle of cologne
- Because Mr. Humphrey had a history of substance abuse, bond was set at \$600,000
  - It was later reduced to \$350,000
- Held a financial condition of release, set at an unattainable level, is the equivalent of de facto pre trial detention.
  - Citing Santosky v. Kramer, 455 U.S. 74 (1982), the Court further held: "an arrestee's pretrial liberty interest, protected under the due process clause, is "a fundamental interest second only to life itself in terms of constitutional importance". In Re Humphrey, 19 Cal.App. 5<sup>th</sup> at 1037.

## Now is the Time for reforming bail in North Dakota

- There is national support for reform of the bail system in our country. In 2013 the Conference of State Court Administrators (COSCA) issued a policy paper, *Evidence-Based Pretrial Release*, which urges that "Court leaders promote, collaborate toward and accomplish the adoption of evidence-based assessment of risk in setting pretrial release conditions." Later in 2013, the Conference of Chief Justices issued a resolution endorsing the COSCA policy Conference of State Court Administrators.
- 67 current and former District and State's Attorneys, state Attorney's General, U.S. Attorneys, AUSA's and DOJ officials representing 30 states and district of Columbia filed Amicus Brief in O'Donnell supporting pre-trial reform
- Many states including New Jersey, New Mexico to name a few have taken on this reform. Montana, has just recently instituted their own version of pre-trial release

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## REFERENCES

- 1: Neal Gabler, *The Secret Shame of Middle-Class Americans*, The Atl. (May 2016)
- 2: Shima Baradaran Baughman & Frank L. McIntyre, *Predicting Violence*, 90 TEX. L. REV, 497, 551 note 2 (2012)
- 3: Shima Baradaran Baughman, *Costs of Pretrial Detention*, 97 Boston Univ. L. REV. 1, 5 (citing PEW CHARITABLE TRS., COLLATERAL COSTS: INCARCERATION'S EFFECT ON ECONOMIC MOBILITY (2010)
- 4: Paul Heaton, Sandra Mayson & Megan Stevenson, *The Downstream Consequences of Pre-Trial Detention*, 69 STAN. L. REV. 711 711 (2017)
- 5: Shima Baughman, *Costs of Pretrial Detention*, 97 Boston Univ. L. REV. 1, 5

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HOUSE JUDICIARY COMMITTEE  
REPRESENTATIVE KIM KOPPELMAN, CHAIRMAN

JANUARY 23, 2019

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PATRICK N. BOHN, DIRECTOR, NORTH DAKOTA DEPARTMENT OF CORRECTIONS & REHABILITATION –  
PAROLE AND PROBATION

PRESENTING TESTIMONY RE: HB 1258

My name is Pat Bohn and I am the Director of Parole and Probation in the North Dakota Department of Corrections and Rehabilitation (DOCR). I am here to testify on behalf of the department in support of HB 1258.

*HB 1258: A BILL for an Act to provide for the creation of a pretrial services program pilot project within the department of corrections and rehabilitation; to provide for a report to the legislative assembly; and to provide an appropriation.*

**North Dakota's Recent Efforts**

- HB 1041 signed into law. Section 19 authorized a pretrial services pilot project in one or more judicial districts but there was no additional funding authorized to hire staff and implement a pilot project.

**Background**

- Upwards of 85% of people in some North Dakota jails are awaiting trial. (This is significantly higher than the national average of 60%.<sup>1</sup>)
- Nationally, the pretrial population accounted for 95% of the jail population growth between 2000 and 2014.<sup>2</sup>
- Many of the people detained pretrial are awaiting hearings for low-level, non-violent offenses.<sup>3</sup>

**Pretrial Detention**

**Pre-trial detention imposes a significant financial burden on local communities.** Across the nation, local communities spend at least \$14 billion/year to detain people pre-conviction.<sup>4</sup> With

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<sup>1</sup> "Why We Need Pretrial Reform." *Pretrial Justice Institute*. The Pretrial Justice Institute, <https://www.pretrial.org/get-involved/learn-more/why-we-need-pretrial-reform/>. Accessed 17 Jan 2019.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

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a large portion of jail detainees in North Dakota awaiting trial, pretrial detention puts a strain on county resources.

**Local systems are unable to provide adequate care for people in their custody.** Many of the people passing through the jail system are in need of mental health care, substance abuse programming, and other services. Nationally, one in five people in jail has a serious mental illness. Local systems often do not have the resources to provide the services that people need.<sup>5</sup>

**Just a few days in jail can cause people to lose their jobs, lose their homes, lag behind in school, miss medical and mental health treatments, and lose custody of their children.**

**Longer pretrial detention periods increase the likelihood of recidivism, both pretrial and post-disposition.**

- Pretrial recidivism:  
Low-risk defendants held for 2-3 days are almost 40% more likely to commit new crimes pretrial than their counterparts who are held no more than 24 hours.<sup>6</sup>
- Post-conviction recidivism:  
Detaining a defendant for a period of more than two days pretrial increases the likelihood of recidivism post-conviction. When low-risk defendants are held for 8-14 days, they are 51% more likely to commit another crime within two years after case disposition than their counterparts who are held for no more than 24 hours.<sup>7</sup>

**Longer pretrial detention periods increase the likelihood of (lengthy) incarceration:**

- Low-risk defendants who are detained for the entire pretrial period are 5.41 times more likely to be sentenced to jail and 3.76 times more likely to be sentenced to prison than low-risk defendants who are released at some point during the pretrial period.<sup>8</sup>
- Moderate and high-risk defendants who are detained for the entire pretrial period are roughly 3 times more likely to be sentenced to jail or prison time than their counterparts who are released at some point during the pretrial period.<sup>9</sup>

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<sup>5</sup> Ibid.

<sup>6</sup> Lowenkamp, Christopher T., et al. "The Hidden Costs of Pretrial Detention." *The Laura and John Arnold Foundation*, Nov 2013, p. 3, [https://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF\\_Report\\_hidden-costs\\_FNL.pdf](https://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF_Report_hidden-costs_FNL.pdf). Accessed 17 Jan 2019.

<sup>7</sup> Ibid.

<sup>8</sup> Lowenkamp, Christopher T., et al. "Investigating the Impact of Pretrial Detention on Sentencing Outcomes." *The Laura and John Arnold Foundation*, Nov 2013, p. 4, [https://static.prisonpolicy.org/scans/ljaf/LJAF\\_Report\\_state-sentencing\\_FNL.pdf](https://static.prisonpolicy.org/scans/ljaf/LJAF_Report_state-sentencing_FNL.pdf). Accessed 17 Jan 2019.

<sup>9</sup> Ibid.

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- Defendants who are detained for the entire trial period are given longer prison sentences than their counterparts who are released at some point during the pretrial period.<sup>10</sup>

**Longer pre-trial detention periods are associated with failing to appear for court, particularly for low-risk defendants.<sup>11</sup>**

**Pretrial detention, particularly as a result of the inability to pay bond in a cash bail system, results in inconsistencies and inequalities.**

- The cash bail system forces indigent defendants to be detained while wealthy defendants go free. Studies show that nationally, 38% of felony defendants are detained for the entire pretrial period, and 90% of those defendants are detained *solely because of their inability to afford bail*—not because the defendant is necessarily a high risk. Meanwhile, wealthy defendants who may pose a higher risk and compromise public safety go free.<sup>12</sup>
- Across the nation, women are less likely to be able to afford their bail than men.<sup>13</sup> As a result, the cash bail system can create disparities between pretrial detention for men and women.
- In some rural counties, courts meet less frequently, leading to longer pre-trial periods. As a result, defendants in these counties are detained for longer periods than defendants in other counties, undermining consistency and equality across the state.

**Pretrial detention undermines liberty.**

- The United States criminal justice system is built on the notion that the government's power to impose itself in the lives of citizens be limited, and that citizens do not suffer unjustly at the hands of the state. Detainment is one of the greatest impositions that the government can inflict, and it ought to be used only in circumstances of true necessity. Blanket pretrial detention inevitably results in the unnecessary detainment of individuals.
- Courts have ruled that each defendant must receive an individual determination that the pretrial conditions assigned to him are necessary to ensure that he appears in court and that the public is protected.<sup>14</sup> Blanket pretrial detention undermines the right to individual assessments.

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<sup>10</sup> Ibid.

<sup>11</sup> Lowenkamp, et al. "The Hidden Costs of Pretrial Detention." P 4.

<sup>12</sup> Schnacke, Timothy R. "Fundamentals of Bail," National Institute of Corrections," September 2014, p. 11.

<sup>13</sup> "Why We Need Pretrial Reform."

<sup>14</sup> VanNostrand, Marie, et al. "The Science of Pretrial Release Recommendations and Supervision." *Pretrial Justice Institute*, June 2011, p. 5.

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**The use of bail bondsmen deepens financial hardship without enhancing public safety or providing services.** When people cannot afford to post bail, they often turn to bail bondsmen, who pay their bail and charge a percentage of the amount.

- The fees charged by bail bondsmen pose a significant financial burden on individuals who are already struggling financially.
- Bail bondsmen do not provide the risk assessments and supervision needed to enhance public safety.
- Bail bondsmen do not provide mental health, substance abuse and other services that many people need pretrial.

### Benefits of Pretrial Services

**Pretrial Services would eliminate the problems presented above by implementing a risk assessment process for each defendant and establishing pretrial conditions and services based on the needs of the defendant and the community.**

**Pretrial services will enhance public safety by ensuring that defendants who are dangers to themselves and the community receive the attention they need.**

Several states and counties have begun providing **pretrial supervision** as one of the services they offer. Pretrial supervision can involve phone calls or meetings with officers, drug testing or treatment, or electronic monitoring. Initial studies have shown pretrial supervision to be successful. According to these studies:

- Moderate and high-risk defendants who receive pretrial supervision are more likely to appear for court than those who do not receive pretrial supervision. (The relationship between pretrial supervision and court appearance for low-risk defendants is minimal or non-existent.)<sup>15</sup>
- Pretrial supervision of more than 180 days decreases the likelihood of new criminal activity prior to case disposition.<sup>16</sup>

Many states and the U.S. federal government have also implemented **pretrial diversion** programs, many of which have been successful.<sup>17</sup> Different states divert defendants at various stages of the pretrial process; some states divert defendants pre-charge while others divert them after being charged but before court. In many places, successful completion of a diversion program—which often includes mental health and substance abuse programming—will impact how the defendant is ultimately charged and sentenced; the defendant enters the program with the understanding that, if successful, his case will be dropped or his sentence reduced.

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<sup>15</sup> "Pretrial Criminal Justice Research," *The Laura and John Arnold Foundation*. p. 6.

<sup>16</sup> *Ibid*, p. 6

<sup>17</sup> "Diversion Programs in America's Criminal Justice System: A Report by the Center for Prison Reform." *Center for Prison Reform*, August 2015, p. 10.

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- Nationally, diversion programs have reduced jail time for offenders from an average of 173 days to an average of 40 days.<sup>18</sup>
- In Alabama defendants who enter pretrial diversion programs have up to 43% lower recidivism rates.<sup>19</sup>
- In Illinois, only 8% of defendants who completed their diversion program reoffended compared to the 50% who were given more traditional sentences by the court.<sup>20</sup>
- In New York, only 11% of participants in a diversion housing program reoffended and only 8% became homeless again.<sup>21</sup>
- Washington State’s diversion program reduced criminal activity by 20%.<sup>22</sup>

While **risk assessments** have thus far had mixed results, researchers have suggested that continued development of better assessment tools may help reduce pretrial incarceration rates as desired.<sup>23</sup> The DOCR remains committed to closely monitoring the effects of risk assessment tools and ensuring that they are meeting the bill’s ultimate aims.

A range of national organizations support pretrial services (including risk assessments and fair detention practices). Some of these organizations include:

- The National Sheriff’s Association
- The International Association of Chiefs of Police
- The National Association of Counties
- The American Probation and Parole Association
- The National Judicial College
- The American Bar Association
- The American Jail Association
- The National Association of Criminal Defense Lawyers
- The American Council of Chief Defenders
- The Association of Prosecuting Attorneys
- The Conference of State Court Administrators
- The Conference of Chief Justices<sup>24</sup>

I encourage you to support this bill and establish a pretrial services system that will enhance public safety, provide people with greater access to the resources they need, and create a more just and equitable system.

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<sup>18</sup> Ibid.

<sup>19</sup> Ibid, p. 13.

<sup>20</sup> Ibid, p. 14.

<sup>21</sup> Ibid, p. 15.

<sup>22</sup> Ibid, p. 16.

<sup>23</sup> Stevenson, Megan. “Assessing Risk Assessment in Action,” December 8, 2017, p. 60.

<sup>24</sup> Schnacke, p. 74.

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Representative Kim Koppelman, Chair  
Representative Karen Karls, Vice Chair  
House Judiciary Committee – Prairie Room

Capt. Andrew R. Frobig, Jail Administrator, Cass County Sheriff's Office

Monday January 23, 2019

Support for Senate Bill No. 1258 – Pilot Pre-Trial Services Project

Chairman Koppelman and members of the committee,

I appear before you today as the Administrator of the Cass County Jail, and I wish to offer my support for HB 1258.

I am a firm believer in the concept that delivery of services is a far more effective approach to criminal behavior, and welcome the opportunity for this state to prove that effectiveness through this pilot project. Since this bill does not direct which judicial districts will ultimately be selected, I offer this testimony on the assumption that my own district will not be one of the participants, while still advocating for its passage.

During the last session a similar bill was approved, but no appropriations were made. It is certainly my hope that this year will be different. If the cost of this pilot is of concern, I would like to offer some perspective. This bill allots 7 FTE positions to run this pilot. In my jail, I need 6 FTE Corrections Officers just to run one housing unit of 48 inmates 24 hours per day.

In 2017, after the state budget was set without appropriation for this program, I encouraged my department to move forward on its own, and in 2018 we launched our Community Supervision Unit. While we initially focused only on sentenced inmates, in the fall of 2018 I was able to gain the support, and the permission, of our local district judges to allow inmates with low bail amounts of \$500 or less to participate. Since approximately September of 2018, we have been placing inmates who are unable to raise their bail.

Our program operates many of the functions that are called for in this bill. We conduct risk assessments, needs assessments, background investigations, set release conditions, and connect participants with services based on their assessment results.

Our program runs with two dedicated staff and 1 supervisor. While we have not yet been operational long enough to establish clear data, our results to date are flat out astonishing. Out of over 120 participants, only three have absconded, and only one is still at large. I don't have data for the overall rate of failure to appear for those who post bail, but considering how many bench warrants are served in Cass County I have to believe the percentage who fail to appear is much higher. We've also failed and returned to jail an additional 16 people. These numbers are a testament not only to programming success, but also to our ability to actively monitor and intervene when necessary.

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I will add that I believe the success of our local program is due to the active engagement of my staff. The deputies assigned to this program actively work to establish relationships with community services and providers to meet all of the identified needs of participants. They maintain regular contact at least weekly with each participant. They have worked to establish permanent housing for homeless participants, they have partnered with treatment providers to enroll participants more quickly, and they have partnered with local education programs, the United Way, and even private employers to provide job skills training.

I do not see in this bill any requirement for this level of engagement, the bill also does not restrict such engagement, and I do believe this type of engagement is a critical component of our success so far. I find that the participants become more engaged, feel pride in their progress, and that the courts both appreciate and react positively to the progress that the participants have demonstrated. Collectively, these things increase the appearance rate, and show a marked departure compared to the outcomes of those who simply post bail and await their next hearing.

Cash Bail is an increasingly controversial topic throughout the United States, to the point that some jurisdictions are eliminating it completely, while others have had their practices challenged in court. In North Dakota, at least in Cass County, many bail amounts are set in conjunction with what the court cost and penalties would ultimately be, and it is an unfortunate reality that those with financial means typically are released, and those without are typically held in jail. While not everyone would be a candidate for any pilot program, whomever is targeted by this pilot stands a much greater chance of establishing progress before their next court appearance rather than languishing in jail simply because they cannot afford bail. This pilot project, whatever it's final form, provides this state an opportunity to test changes before they are imposed on us.

I thank you for your time and your consideration of these remarks.

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Testimony Prepared for the  
**House Judiciary**  
January 22, 2019  
By: Donnell Preskey, NDACo

**RE: SUPPORT for HB 1258 Funding for Pretrial Services**

Good morning Chairman Koppleman and committee members, I am Donnell Preskey with the North Dakota Association of Counties. In that position, I serve as Executive Director for the Sheriff's and Deputies Association. We stand in support of funding pretrial services but would like to see further exploration of how the funding could be utilized by local public safety agencies. The Sheriff's most definitely want to be involved in the creation and implementation of a pretrial services program as this is a local government responsibility.

Counties everyday see how individuals end up in our jails due to the lack of services in their community. We have heard how pretrial services across the country have curbed jail populations.

Pretrial supervision would allow counties more options in releasing low risk individuals while they are awaiting sentencing. Currently, the most widely used tools for pretrial monitoring is 24/7 and GPS monitoring. Pretrial supervision would allow for low-risk individuals to be released so they can continue to work, keep their home, support their families and hopefully start working to address the issue that led them to being arrested. Inmates who are awaiting trial or sentencing who are the most dangerous and can't post bond would remain in jail.

Back to my initial statement concerning who would implement this program. Where this comes from is the understanding that in our criminal justice system, the state's involvement begins when an inmate is sentenced on a felony to more than one year in prison and is sentenced to the custody of the Department of Corrections and Rehabilitation (DOCR). Prior to that, it is the responsibility of local public safety agencies. The individual is arrested by police officers or sheriff's deputies, booked and housed in the county jail, prosecuted by a county state's attorney and sentenced by a district judge.

Cass County started a pretrial services program in 2018. The Cass County Jail Administrator is here to share more about the Community Supervision Unit initiated through the jail. They have had successful outcomes with the program.

I would like you to consider running this funding through a grant process to our county and regional jails to incentivize them to create and implement a pretrial services program. Provide the resource for our county jails to provide this service and allow for local control.

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Testimony to the  
**House Judiciary Committee**  
January 23, 2019  
Vice Chairman Chad Peterson, Cass County Commission

**Regarding: House Bill 1258 – Pretrial Service Funding**

Representative Koppelman and committee members, I am Chad Peterson, Vice Chairman of the Cass County Commission. As one of my national appointments, I also serve on the National Association of Counties (NACo) Justice and Public Safety Committee. I support House Bill 1258 that would fund a pretrial pilot project.

In recent years, we have learned the way we are doing corrections can be improved through innovation. One area we often forget is that we often need to address the reason for the crime. One example on the national level is NACo's Stepping Up Initiative (<https://stepuptogether.org>) that's focuses on incarceration and people with mental illness. Cass has funded a number of programs that start down this innovative path, but we continue to learn every year. So far, the result of our actions have been a reduced jail population count. This benefits those in custody, the families of those in custody, and the taxpayer.

As it stands, the potential for pretrial funding accomplishes a number of things that encourage and support innovation. Here are just a few of the many positive outcomes:

**1. Pretrial services ensure we have more room for the true criminal.**

When judged on a criteria of, 'will they show up for court and will they stay out of legal trouble while their case is being resolved', a disproportionate number of incarcerated people should not even be in the jail. The negative impacts of being incarcerated could be wide ranging from things as simple as being unable to afford bail to the extremes of mental health and/or substance abuse issues. Mental health and substance abuse issues cannot be addressed when we simply put them in the concrete box and release them when they are done 'serving their time'. They get no guidance and are destined to come back over-and-over. This service could help divert them to the help they need. It often makes no sense to incarcerate those that can't afford bail, but are of no risk to their neighbors.

**2. Pretrial services save taxpayer money.**

The monetary cost of incarceration is massive when compared to releasing individuals that can be trusted and are of no risk. Or worse, jailing people because of repeated offenses when those individuals could have been helped in other ways. Over time, targeted pretrial services helps avoid recidivism and thus lower the bed counts.

**3. Pretrial services prevent a potential downward spiral.**

It keeps those that shouldn't be 'in the system' from ever entering it. How many times have you heard, "I had to go to jail to become a criminal?" It's not *just* a saying, it's the truth. A week in jail could easily cost someone their job or needlessly affect their home lives compounding what is already a bad situation. And don't forget, these people have not been convicted of anything yet.

**4. Pretrial services; we have to start somewhere.**

Done well, the flexibility a pretrial allows can help ensure success for those arrested and prevent needless incarcerations. These successes will also help create a set of data that can be used to validate and grow or evolve the innovation.

The list of positive benefits could easily continue. I'd be happy to talk more about the items listed above and any others any time you wish. Again, I support House Bill 1258 that would fund a pretrial pilot project.