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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 being 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.