

**HOUSE JUDICIARY COMMITTEE
REPRESENTATIVE LAWRENCE KLEMIN, CHAIRMAN
JANUARY 12, 2019**

**STEVEN HALL, DIRECTOR, TRANSITIONAL PLANNING SERVICES,
NORTH DAKOTA DEPARTMENT OF CORRECTIONS & REHABILITATION
PRESENTING TESTIMONY HOUSE BILL 1104**

Chairman Klemin and members of the Judiciary Committee, my name is Steven Hall, and I am the Director for Transitional Planning Services within the North Dakota Department of Corrections and Rehabilitation (DOCR). I am here to testify on behalf of the department in support of House Bill 1104.

In part, House Bill 1104 reduces the portion of a sentence that an individual who has been convicted of a crime subject to the truth in sentencing (in Section 12.1-32-09.1 of the North Dakota Century Code) must serve before the individual becomes eligible to be considered for parole from 85% to 65%. It also provides a retroactive application to August 1, 1995.

During the Clinton era, the Violent Offender Incarceration and Truth-In-Sentencing Incentive Formula Grant Program (VOI/TIS) contained in the Violent Crime Control and Law Enforcement Act of 1994 provided states with formula grants to build or expand correctional facilities and jails to increase secure confinement space for violent offenders. Provisions in the bill incentivized states to incarcerate more people for longer periods of time. In response, in 1995, the 54th Legislative Assembly enacted North Dakota Century Code Section 12.1-32-09.1, which required individuals to serve 85% of the court imposed sentence before becoming eligible for parole if they had been convicted of committing, attempting to commit, or being an accomplice to several violent

criminal offenses. Between 1996 and 2001, North Dakota received \$10,351,888 in Federal funds and used its VOI/TIS funds for the James River Correctional Center, which opened in 1998. VOI/TIS funds were also used to lease private transitional beds.

In the last two legislative sessions, North Dakota made changes to the truth in sentencing statute to eliminate its applicability to C Felony Aggravated Assault convictions and to revocations of probation. However, the requirement to serve 85% of the sentence prior to parole eligibility continues to apply to several other offenses.

Currently, due to the seriousness of the offenses subject to the requirement to serve 85% of the sentence prior to parole eligibility, individuals serving these sentences tend to have lengthy sentences. Generally, parole is an important tool to help incarcerated individuals, particularly those with longer sentences, transition back into the community in a way that maximizes the likelihood they will not recidivate and, therefore, enhances public safety.

Unfortunately, individuals required to serve 85% before they are parole eligible almost always get released prior to parole eligibility because their good time release date is earlier than their parole eligibility date, so they must be released on their theoretical parole eligibility date. Thus, the DOCR is prevented from using parole to enhance public safety in these situations. Because courts are not required to place individuals on probation after incarceration for these 85% truth-in-sentencing offenses, (except for GSI with force which requires a minimum of five years' probation), it is possible for individuals who do not get the opportunity for parole to be released directly from prison without time on supervision. If individuals were to be parole board eligible after 65% instead, the Parole Board would have flexibility to view the details of

individuals' situations and take steps to reduce their risk, such as paroling individuals to a specific location to enhance the probability of their success and to ensure the individuals are subject to conditions likely needed for their success. Please keep in mind that an individual's behavior during their incarceration can impact their good time release date.

For example, an individual sentenced to a straight 10 years for a Robbery offense with no probation to follow would have no opportunity for community supervision. Currently, the individual would be eligible for transition to the DOCR minimum-security facility at Missouri River Correction Center (MRCC) once he is down to his last 42 months of his sentence depending on his institutional behavior and programming needs. An institutional case manager will work with the individual to create a plan for reentry. During the last six months of his sentence he would be eligible for work release from MRCC, and that would be the end of his transition until his release at 8 ½ years or 85% of his sentence. The individual would have no opportunity to transition to appropriate housing or to learn to manage his behavior in the community effectively prior to release.

Reducing the portion of a sentence an individual is required to serve prior to parole eligibility from 85% to 65% can improve outcomes and reduce barriers to reentry. By making individuals with these sentences eligible for parole during their incarceration, the DOCR has a greater chance of engaging them in treatment and other prosocial programs. Fewer release opportunities discourage individuals from following prison rules and engaging in treatment, education or job training opportunities. Conversely, the possibility for parole incentivizes better behavior and engagement.

Additionally, when individuals are monitored during their transition, they can be connected to local community resources during their reentry. Parole and probation officers can target specific ways to engage individuals to reduce their risk of recidivism, including Core Correctional Practices, engagement in Free Through Recovery, and Intermediate Measures. These targeted interventions are evidenced-based, meaning they are proven to reduce risk. They allow the DOCR to hold individuals accountable in a way that affects their behavior positively; to help transition them back to our communities safely; to reduce the likelihood of future victimization; and to increase their chances of contributing positively to our communities.

I need to stress the point, not all violent individuals will be sufficiently rehabilitated to begin parole after 65% of their sentences have been served. However, when it is appropriate, it is beneficial to transition individuals using parole. House Bill 1104 authorizes the Parole Board to evaluate these cases during their sentence, assess how well individuals have prepared themselves for return to our communities, and use parole as a tool to support more effective transitions to the community, when appropriate.

The North Dakota Parole Board is also supportive of this change. I've attached a letter from the Chairman, H. Patrick Weir, which reflects the support. House Bill 1104 is a solid continuation of criminal justice reform in the state of North Dakota.

Chairman Klemin and committee members, I ask that you support House Bill 1104.

CHAIRMAN
Mr. H. Patrick Weir

CLERK
Steven Hall



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To the Chair of the House Judiciary Committee, Lawrence Klemin, and committee members.

I am H. Patrick Weir, Chairman of the North Dakota Parole Board. I am writing this letter on behalf of the parole board members in support of HB 1104. This bill proposes changing the 85% penalty to 65% for a sentence to prison for all crimes that fall under the 85% penalty.

We believe by changing the requirement for people who are subject to the 85% statute we can improve outcomes. By making these people eligible for parole during their incarceration we will have greater chance of reducing recidivism while holding people accountable, maintaining and maybe even improving public safety and reducing the likelihood of future victimization. Some of these people are dangerous and should be incarcerated for a period of time. We are of the belief that you should allow the parole board to evaluate these cases during their sentence and analyze the prospects of methodically transitioning them from prison back to the community under the conditions established by the board. This may lessen the probability of releasing someone directly from prison without an adequate transitional plan.

The North Dakota Parole Board strives to make well informed evidence based decisions that will provide people opportunities to change, transition, and become productive members of our communities.

Respectfully,

A handwritten signature in cursive script that reads "H. Patrick Weir".

H. Patrick Weir
Chairman ND Parole Board