HB 1104 – Relating to Sentencing of Violent Offenders
Testimony of Representative Zachary Ista, District 43 (Co-Sponsor)
January 12, 2021

Chairman Klemin and Members of the House Judiciary Committee:

I write in support of HB 1104. This bill continues to ensure that our most violent criminal offenders serve substantial portions of their prisons sentences while allowing greater flexibility for the Department of Corrections and Rehabilitation to grant parole for inmates if warranted.

I support this bill for three reasons: 1) it maintains the requirement that violent offenders serve a substantial portion of their sentences before becoming eligible for parole, 2) it makes sure anyone who commits a Class AA felony is subject to this rule, and 3) it reasonably increases DOCR's flexibility to grant parole earlier in a prison term in appropriate circumstances.

Under current law, NDCC § 12.1-32-09.1 requires certain violent offenders to serve at least 85% of a sentence of incarceration before being eligible for parole. This "85% rule" applies only to the worst of the worst criminal offenses: murder, manslaughter, kidnapping, robbery, and certain aggravated assaults, burglaries, and rapes. Victims of these crimes deserve swift and certain justice. Prosecutors rely on this tool to achieve such justice. And both society and crime victims alike deserve the peace of mind that comes with knowing a violent offender will serve a substantial portion of his sentence before release. This bill preserves these important principles.

HB 1104 further adds to the list of crimes subject to the percentage of sentence rule by making sure all Class AA felonies—the most serious class of crimes in the Century Code—are all included. Current law fails to subject some of the most awful crimes imaginable to the current 85% rule. Most disturbingly, each of the offenses currently missing from the present rule involve unconscionable crimes against minors. To remedy that, this bill adds the following offenses to the list of crimes for which an offender would be required to serve a substantial portion of a sentence before becoming parole eligible: continuous sexual abuse of a minor, sex trafficking of a minor, forced labor of a minor, and sexual servitude of a minor. Adding these heinous crimes to the sentencing law is necessary to give prosecutors their full complement of tools to ensure justice for victims of such crimes.

As the members of the Committee may know, I practice as a county prosecutor when not serving in the Legislature. And if I were coming before you wearing only my prosecutor hat, I might urge the Committee only to add the above-listed crimes and otherwise leave the 85% rule undisturbed. I understand why prosecutors feel passionate about fully preserving that important tool for the most serious offenses. Frankly, there are some crimes for which even serving 100% of a sentence is inadequate. So it is my strong hope and belief that the Parole Board will take seriously the concerns of prosecutors and victims when deciding whether a violent offender who committed atrocious crimes is deserving of early release under the proposed change of law.

But just as there are certain offenders for whom early release is never appropriate, there are also incarcerated offenders for whom serving a minimum 85% of their sentence serves no meaningful rehabilitative purpose nor furthers justice for victims in a way that could not be achieved through

a 65% rule instead. That is why I believe changing the sentencing requirement to a 65% rule appropriately balances the interests of prosecutors and victims in ensuring justice with the State's competing interests of encouraging prisoner rehabilitation and being sound stewards of state funds allocated to DOCR. Such a change, in my estimate, would not tilt the scales too far away from accountability for violent crime. Indeed one reason I have co-sponsored this proposal is because it maintains a 65% rule rather than further chipping away at current law or even scrapping the rule altogether. For that reason, I would urge the committee to resist lowering the 65% any further, as any additional downward departure would, I believe, put too little emphasis on the need for certitude in sentencing.

Under HB1104, violent offenders still would have to serve a very substantial portion of their sentences before even becoming eligible for parole. And even then, the parole board would still consider the perspective of victims and any evidence (or lack thereof) of rehabilitation before granting early release. By lowering the rule to 65% of a sentence, DOCR would gain flexibility to consider parole for inmates who have, through their own actions while incarcerated, demonstrated a true commitment to rehabilitation. By permitting certain inmates to become eligible for parole earlier, this proposal may even incentivize prisoners to commit more deeply to their own rehabilitation. Of course, incarceration of individuals requires a substantial investment of state financial resources. This proposal acknowledges the financial impact of long-term incarceration on state coffers by allowing earlier parole for certain inmates who, in the Department's and Parole Board's assessment, may have reached maximum benefits from the rehabilitation services offered during incarceration.

For each of these foregoing reasons, I believe this bill is an appropriate compromise that continues to protect victims and public safety while adding appropriate flexibility to our state's carceral systems. That is why I urge the Committee to recommend a Do Pass on HB1104.