

Truth in Sentencing

Testimony and Materials

In Support of

Senate Bill 2128

Six Main Categories of SB 2128 Provisions

Truth in Sentencing

- Parole and release eligibility for crimes subject to the current 85% law are not changed.
- Inmates who committed other violent crimes or drug trafficking offenses:
 - Can be paroled anytime after serving 50% of their sentence;
 - If they're not paroled, they can be released from confinement in a DOCR facility (*not transitional facility*) after serving 85% of their sentence.

Eligible Offenders

- **Eligible offenders** (nonviolent offenders who are sentenced to prison)
 - Not subject to the Truth in Sentencing Provisions
 - Can serve their time in transitional facilities if DOCR or the parole board approves
 - Can participate in work release and other release programs if DOCR or the parole board approves
- Other offenders:
 - Are subject to the Truth in Sentencing Provisions
 - Can serve their time in any DOCR facility (except transitional facilities until released or serve 85%)
 - Can participate in education, work, rehabilitation, and treatment programs on site at DOCR facilities

Sentence Reductions

- "Good time" must be **earned before** it is awarded.
 - **Up to 5 days/month** (currently 5 days/month)
 - Capped at 15% (currently about 16%)
- Meritorious sentence reductions must be for meritorious conduct.
 - Not for operational flexibility, which is available elsewhere
 - 1 day/month on top of "good time" (currently 2 days/month)

Release Programs

- SB 2128 adds “not likely to escape” to the list of criteria for an inmate to meet before being eligible for a release program where they can be out in the community, unsecured.
- Eligibility determinations for release programs must have a reliable basis.
- DOCR must document inmates’ violations of rules for release programs.
- DOCR must set criteria for revoking an inmate’s participation in release programs.

Law Enforcement Protections

- **Preventing arrest** (felony) – 14 days consecutive sentence
- **Assaulting a peace officer or corrections officer** (felony) – 30 days consecutive sentence
- **Felony fleeing** – 30 days consecutive sentence and possible 6 months’ impoundment of vehicle

General Provisions

- SB 2128 clarifies what a “transitional facility” is.
- Inmates can be moved from one facility to another for safety, security, discipline, or medical care
- DOCR must provide a basic report. to the Legislative Council and Attorney General.

6 Main Categories of SB 2128 Provisions

1. Truth In Sentencing

Parole and release eligibility for crimes subject to the current 85% law are not changed.

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Other offenders:

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Meritorious sentence reductions must be for meritorious conduct.

- Not for "special control and security"-- operational flexibility is available elsewhere
- 1 day/month on top of "good time" (currently 2 days/month)

4. Release Programs (work release, etc)

Eligibility for release programs:

- SB 2128 adds “not likely to escape” to the list of criteria for an inmate to meet before being eligible for a release program where they can be out in the community, unsecured.
- Eligibility determinations must have a reliable basis.

DOCR must set criteria for revoking an inmate’s participation in release programs.

DOCR must document inmates’ violations of rules for release programs.

5. Law Enforcement Protections

Preventing arrest (felony) – 14 days consecutive sentence

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6. General Provisions

Clarify what a “transitional facility” is

Inmates can be moved from one facility to another for safety, security, discipline, or medical care.

Requires DOCR to provide a basic report to Legislative Council and Attorney General

NORTH DAKOTA
OFFICE OF THE
ATTORNEY GENERAL

MARCH 2025

HOUSE JUDICIARY COMMITTEE

TRUTH IN SENTENCING FOR VIOLENT
CRIME AND DRUG TRAFFICKING

SB 2128

Slide Topics

- Work and study that led to SB 2128 (slide 3)
- Why SB 2128 is necessary - Key findings (slides 4-10)
- What Truth In Sentencing means, and does not mean, in SB 2128 (slides 11-16, esp. slide 12)
- Other provisions in SB 2128 (slides 17-21)
- Partial list of available resources, documentation, and other support materials (slides 22-23)

SB 2128 Development

Almost 2 years of work and research:

- ❖ Meetings with DOCR administrators and employees
- ❖ Tours of DOCR facilities and transitional facilities
- ❖ Conversations with inmates
- ❖ Meetings with Law Enforcement Officers
- ❖ Meetings with former Parole and Probation Officers
- ❖ Meetings with State’s Attorneys and Assistant State’s Attorneys
- ❖ Meetings with Legislators
- ❖ Analyses of DOCR Information, Documents, Website, and other Materials
- ❖ Research on the history of North Dakota’s criminal laws
- ❖ Research on the effects of different types of sentencing laws
- ❖ Research on other states’ criminal laws and trends in “correcting” the pendulum swing

Why SB 2128 is Necessary - Key Findings (1)

Violent crime numbers and rates have risen steadily for 10 years.*

There are **4,000 more violent crimes per year** now than 10 yrs ago.
This number of violent crimes increased 43%.

There are more violent crimes **per capita** than 10 years ago.
The per capita rate increased 34.82%.

Recidivism is well above 40%*
– higher than many, if not most, states.

DOCR's recidivism statistic is 40%, but that's because DOCR **chooses not to include** inmates who return to federal prison, county jails, or other states' correctional facilities.

Inmates spend a small percentage – sometimes less than 10% – of their sentences* in prison.*

Prosecutors, defendants, judges, and law enforcement officers understand this, and at least some sentences and plea deals explicitly take this into account.

* see the Annual Crime Reports built on data from ND law enforcement agencies, the Fact Sheet on Recidivism, DOCR website on recidivism, CSG data sheets, and Testimony from Dennis Ingold and Claire Ness to the Senate Judiciary Committee

Key Findings (2)

Inmates, including violent inmates, are sent to live in transitional facilities (TFs) during their sentences – often within months.*

Transitional facilities are not secure, and inmates are not closely monitored when they are out in the community.*

Law enforcement officers are frustrated by the ‘revolving door’ of violent criminals and the increases in assaults, resisting arrest, and dangerous fleeing.

DOCR could not provide data on % of sentences spent in TFs.

Some of the examples from prosecutors:

- 4-year sentence for Fentanyl conspiracy – sent to TF after 190 days
- 535-day sentence for death caused by DUI – sent to TF after 85 days (escaped)
- 3-year sentence for drug charges – sent to TF after 143 days (escaped)

Bismarck Transition Center testified: *“normally, it could be 5 walk-aways a month. And that’s an expectation. Our doors are not locked. ... They can walk away from any job that they want. ... People are going to walk away.”*

Ex: fentanyl dealer also sentenced for terrorizing with dangerous weapon and theft

4/2/24 - Sent to TF in Fargo

5/20/24 - Placed on “full restrictions” at TF

5/28/24 - He simply walked away

6/5/24 – He fled from Fargo PD but was caught with an illegal handgun

Sentences for assaulting officers or fleeing are **concurrent** (“freebies”).

Ex: offender sentenced for felony fleeing

1/31/24 – sent to TF

2/24/25 – allowed to leave for work release and simply did not return

3/19/24 – arrested for car theft and drug possession

Key Findings (3)

In practice, “**good time**” is awarded up front based on an inmate’s entire sentence, regardless of how much time is actually served.*

This pads the “**good time**” and “**time served**” statistics reported by DOCR. Per DOCR, “good time” continues to be awarded after an offender is paroled.

The current 85% rule does not include many types of violent crimes and does not require inmates to serve their sentences in the prison.

Some rapes, some aggravated assaults, some burglaries, assault, continuous child sexual abuse, terrorizing, human trafficking, and other violent crimes are **not included** in that statute.

Drug trafficking is **not included** in that statute.

Current research shows that spending more time in prison **reduces** recidivism.*

Current research specifically identifies the errors and unreliability in the types of studies that opposition testimony has relied on.

Opponents of SB 2128 do not offer solutions – only criticism based on flawed or inapplicable research.

* see the Annual Crime Reports built on data from ND law enforcement agencies, the Fact Sheet on Recidivism, Testimony from Dennis Ingold to the Senate Judiciary Committee, and Supplemental Testimony from the Attorney General’s Office on research studies provided to the Senate Judiciary Committee

Key Findings (4)

DOC's definition of "success" or "successful completion" is not what you or your constituents would expect, and those statistics are unreliable.*

If an offender is on parole or probation for 3 cases and commits a felony, and DOCR chooses to revoke his probation for only 1 of the 3 cases – the other 2 cases are deemed "successfully completed" – and that offender counts as a 66.7% success rate.

In 2024, at least 65% of parolees who absconded were deemed to have successfully completed parole or are in process to be "successful".

A supervisor can deny a Parole and Probation Officer's (PO's) request to take an offender into custody for parole violations.

DOC's "Transitional Planning Services" can deny a PO's recommendation to impose intermediate measures on an offender.

DOC says it does not collect data on the frequency of these denials.

POs and former POs reported that they are penalized for requesting too many revocations for offenders who violate parole or probation conditions.

Based on research and experience, states are now moving away from the lax practices of the past 10-12 years and toward a more moderate, common sense approach to criminal justice.

Pendulum is swinging back from the "reform" / "reinvestment" / prison "abolition" movement because data show it did not work.

Reformers pushed the idea that prison admissions are inherently bad. Now, the focus is shifting back to reducing violent crime so the *need* for prison admissions is reduced.

* see the Fact Sheet on DOC's Definition of Success

In light of the findings, we asked:

What objective, verifiable outcomes have improved for North Dakota in exchange for our investment in the criminal justice model that evolved over the past 10-12 years?

If inmates are “better prepared to return to society” under the system we have now, why is recidivism so high?

Changes are needed.

Truth in Sentencing under SB 2128

- ❖ Protects our communities from violent criminals and drug traffickers
- ❖ Respects judges' discretion and sentences
- ❖ Keeps education, work, rehabilitation, and treatment for inmates
- ❖ Keeps parole, commutations, and pardons
- ❖ Will be implemented gradually and prospectively
- ❖ Improves transparency for policymakers and the public
- ❖ **Not** the same as mandatory minimum sentencing

Truth in
Sentencing*
under SB 2128
simply means:

*Applies only to crimes charged
after the bill's effective date

The subset of violent crimes subject
to the current 85% requirement are
not changed.

For other violent crimes and drug trafficking:

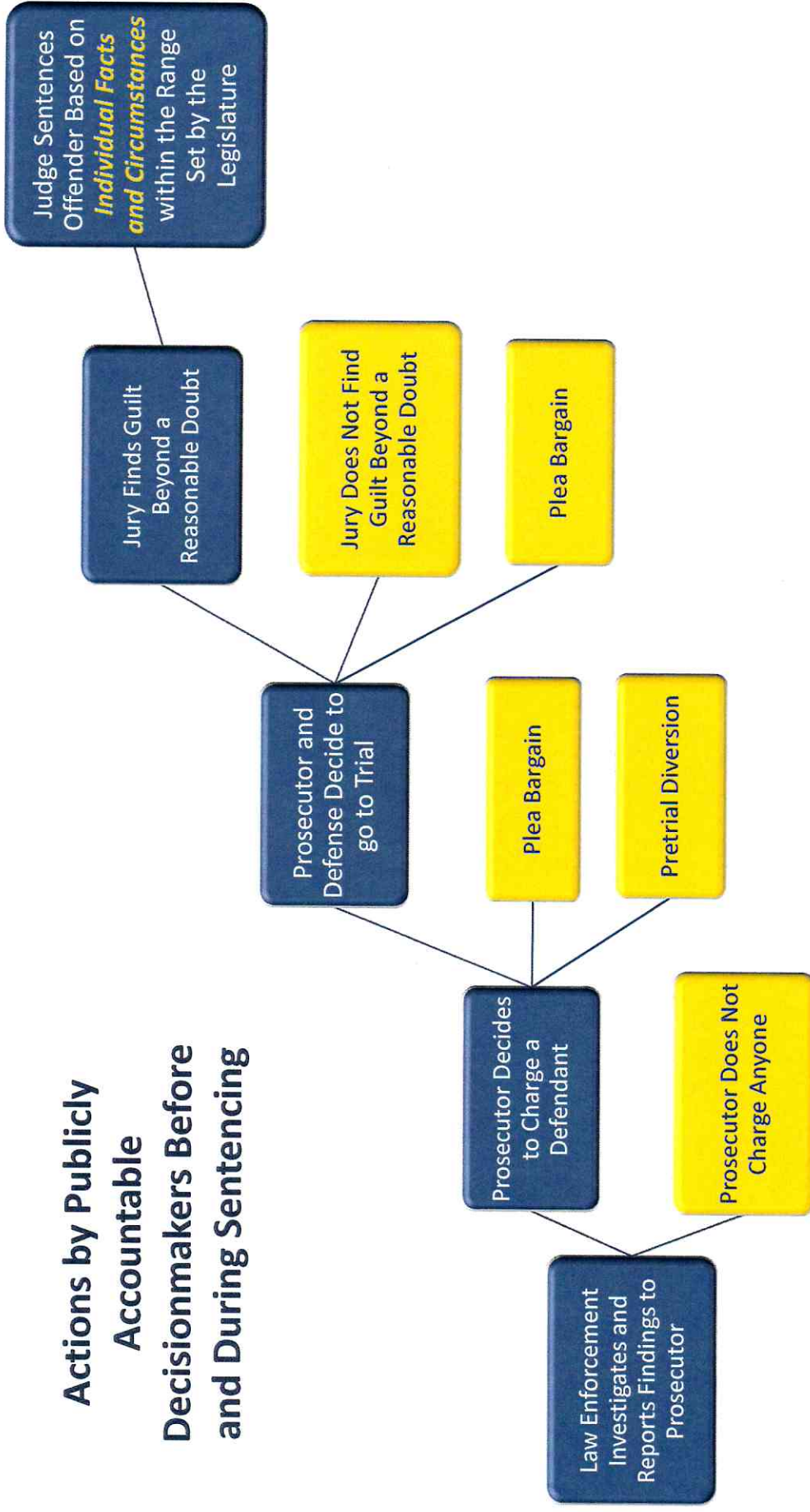
An inmate can be paroled by the
Parole Board anytime after serving
50% of their sentence.

If an inmate is not paroled, they
can be released from a DOCR
facility after serving 85% of their
sentence.

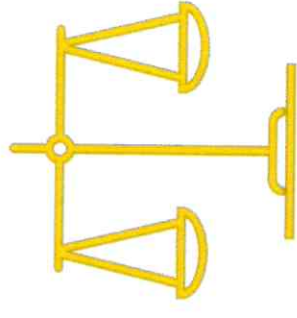
Ask the people in your districts:

Is it too much to ask for a violent criminal or drug trafficker to serve **half** of the sentence a judge ordered them to serve?

Actions by Publicly Accountable Decisionmakers Before and During Sentencing



The extensive, public process that results in a prison sentence should not be undone by anonymous individuals who are not accountable to the public for their decisions.



Misconceptions about SB 2128

Despite what you may have heard, the other provisions in SB 2128:

- ❖ Will not strip DOCR of its ability to treat and rehabilitate inmates
- ❖ Will not prevent DOCR from providing education and work opportunities to inmates
- ❖ Will not empty transitional facilities
- ❖ Often align with DOCR policies or statements, even if not with DOCR practices

Other Parts of SB 2128 (1 of 5)

General provisions:

- ❖ Clarify what a “transitional facility” is
- ❖ Inmates can be moved from one facility to another for safety, security, discipline, or medical care.
- ❖ Requires DOCR to provide a basic report to Legislative Council and Attorney General
 - The Governor can require DOCR reports whenever he chooses.

Other Parts of SB 2128 (2 of 5)

Sentence reductions:

- ❖ “Good time” must be earned before it is awarded.
 - **Up to 5 days/month** (currently 5 days/month)
 - Capped at 15% (currently about 16%)
- ❖ Meritorious sentence reductions must be for meritorious conduct.
 - Not for “special control and security” -- operational flexibility is available elsewhere
 - 1 day/month on top of “good time” (currently 2 days/month)

Other Parts of SB 2128 (3 of 5)

Release programs:

- ❖ Eligibility for release programs:
 - SB 2128 adds “not likely to escape” to the list of criteria for an inmate to meet before being eligible for a release program where they can be out in the community, unsecured
 - Eligibility determinations must have a reliable basis
- ❖ DOCR must set criteria for revoking an inmate’s participation in release programs
- ❖ DOCR must document inmates’ violations of rules for release programs

Other Parts of SB 2128 (4 of 5)

Law enforcement protections:

- ❖ **Preventing arrest** (felony) – 14 days consecutive sentence
- ❖ **Assaulting a peace officer or corrections officer** (felony) – 30 days consecutive sentence
- ❖ **Felony fleeing** – 30 days consecutive sentence and possible 6 months’ impoundment of vehicle
 - Willfully operating the vehicle in a manner constituting an inherent risk of death or serious bodily injury to a third person, or
 - Willfully fleeing during or after the commission of a felony

Other Parts of SB 2128 (5 of 5)

Eligible offenders:

- ❖ “Eligible offenders” (nonviolent/not drug traffickers):
 - Are not subject to the truth-in-sentencing provisions
 - Can serve their time in transitional facilities if DOCR or the parole board approves
 - Can participate in work release and other release programs if DOCR or the parole board approves
- ❖ Other offenders (violent/drug traffickers):
 - Are subject to the truth-in-sentencing provisions
 - Can serve their time in any DOCR facility (except transitional facilities until released or serve 85%)
 - Can participate in education, work, rehabilitation, and treatment programs on site

Some of the Resources Available to You

The handouts summarize some of our findings, mostly based on DOCR documents and testimony, and include:

- Fact Sheets on:
 - Transitional facilities
 - DOCR's Good Time calculations (practice vs. policy)
 - DOCR's definition of "success" or "successful completion"
 - Recidivism in North Dakota
 - Time Served by inmates
- Do North Dakotans have the corrections system they deserve?
- Facts vs. Myths about SB 2128
- What objective, verifiable outcomes do we have from investing heavily in our current system?
- Supplemental testimony on the flaws in the research cited in opposition testimony

Some of the Resources Available to You

- Emails from Burleigh County State's Attorney supporting SB 2128 and including:
 - Lots of data on escapees from transitional facilities
 - DOCR practices that let inmates out after serving a small fraction of their sentences
 - Case involving brutal rape committed by Edward Harper, who was out of prison early
- Email from Cass County Sheriff supporting SB 2128
- Letters of Support for SB 2128 from:
 - Chiefs of Police Association of ND
 - ND Sheriffs' Association
 - ND Peace Officers Association

Suspect arrested after fleeing in stolen vehicle in Fargo

Bismarck man pleads guilty to dozens of rape and drug dealing charges

Two arrested in connection with Williston shooting

Man in custody after robbery, stand-off near Stark County Courthouse

LOCAL NEWS

Minot man with firearm threatens neighbors, police

Bismarck Police seize more than 20,000 fentanyl pills

TOP STORIES

Bismarck man out on bond severely beats neighbor, assaults woman, resists arrest

North Dakota an enticing target for deadly fentanyl; Detroit pipeline still an issue

Man dies after exchange of gunfire with Dickinson police officer

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Charged with 45 felonies involving sexual acts against minors in Ward County

Downtown Fargo standoff suspect previously convicted of murder, other violent crimes

Royal Rockefeller spent nearly 20 years in prison in Minnesota for beating a stranger to death in 1995. Since 2022, he's racked up 11 felony and misdemeanor convictions in Cass County.

DICKINSON, ND (KXNET) — A woman who was wanted for charges of aggravated assault and reckless endangerment has been arrested.

Thank You

When choosing between Senate Bill 2128 with the Attorney General's amendment, and our current corrections system, consider:

After years of investing heavily in the “Norway model” and policies that some people call “smart on crime,” what objective, verifiable outcomes have improved for North Dakota?

- The recidivism rate is over 40%.¹
- Violent crime rates have increased steadily, both numerically and as a rate per 100,000 residents.²
- Drug use and addiction are unmoved and continue to impact thousands of our residents.³
- Law enforcement officers and agencies are frustrated by the corrections system, have difficulty recruiting and retaining personnel, are assaulted more often, and have asked policymakers for changes to reduce the “revolving door” of criminals for several years.
- The public is alarmed by the prevalence of violent crime and its impact on the quality of life in North Dakota.

¹ See handout on *Recidivism*, based on DOCR data found on the DOCR website.

² See Attorney General Crime Reports, at <https://attorneygeneral.nd.gov/public-safety/crime-data/crime-and-homicide-reports/>.

³ See ND DHHS Behavioral Health Reports, at <https://www.hhs.nd.gov/behavioral-health/data>.

DOCR's Definitions of "Success" and "Successful Completion"

DOCR says many of the offenders under its supervision "successfully complete" their time, but what does that really mean?

Based on DOCR's own written and oral answers to questions:

- If an offender is on probation and commits several probation violations, can DOCR say the probation was successfully completed?
 - Yes, this appears to be common.
- What if the violations were so numerous or extreme that the offender was given "intermediate measures" as a punishment? Does DOCR still say the probation was completed successfully?
 - Yes
- Many offenders are on parole or probation for multiple cases at once. Even if an offender's parole or probation in 1 case is revoked, can DOCR count the others as successful?
 - Yes
 - **Example:** Frank is on probation for 3 cases at the same time and commits multiple probation violations. DOCR has Frank's probation revoked in only 1 of the cases.
 - DOCR counts Frank's other 2 cases as successfully completed.
 - DOCR says Frank's 3 cases have a 66.7% success rate.
 - The revocation rate for Frank's cases is 33.3%.
 - *Keep in mind: DOCR basically controls revocations and can determine their own "success" rate. If they do not initiate revocations and do not report violations to prosecutors, revocations will not occur.*
- If an offender absconds from a transitional facility and is returned by law enforcement, can DOCR say the offender successfully completed their time in the transitional facility?
 - Yes
 - For example, just for parolees, DOCR's own testimony shows:
 - 13% of parolees in transitional facilities abscondedⁱⁱ in 2024. (4 of the parolees who absconded in 2024 remain at large.)
 - DOCR says at least 65% of parolees who **absconded** from transitional facilities in 2024 "**successfully completed**" parole or are in process to successfully complete parole.

Marquis Smith

- Pled guilty to 2 Counts Class A Felony – Gross Sexual Imposition with sexual contact on a child under 15
- Sentenced to 20 years (15 suspended) with 5 years of probation
- 10/30/18 – arrived at the state prison
- 3/9/21 (approximately) – released from prison to Bismarck Transition Center (parole)
- **While living at the Bismarck Transition Center:**
 - Worked at Dairy Queen where he met the mother of young children. He eventually moved in with her, even though it violated probation conditions. Those children eventually became victims of his.
- 4/7/21 – committed a new Gross Sexual Imposition on child under 15, based on charging documents
- 10/1/21 – committed new sex offenses on the children he lived with
- 3/21/22 – returned to prison
 - The probation period for the 2018 GSIs continued to run (not revoked), at least through 7/20/23 and may be eligible for “successful completion”.
- Later sentenced to federal prison

Jazmine Power

- 1/10/20 - Sentenced to 2 years in prison for burglary
- 4/2020 – Sent to a transitional facility as an inmate
- 5/22/20 – escaped transitional facility
- “Successfully” completed probation on multiple cases while she was a fugitive
- February 2025 – arrested in Oregon

Jeffrey Lee Buckmeier and Dustin Ray Fredrickson

- Each was on supervised probation for sex offenses against minors
 - Buckmeier: Luring minors
 - Fredrickson: Sex abuse of a 13 year old and a 14 year old, and failing to register as a sex offender
- Each committed new crimes while on supervised probation
 - Buckmeier: almost 12,000 images and videos of child sex abuse materials involving children as young as 3 months
 - Fredrickson: Images of child sex abuse materials involving children as young as 11 years
- Probation was not revoked and may have run (or still be running) “successfully”.

¹ A Parole and Probation supervisor can deny a Parole and Probation Officer’s request to take an offender into custody for parole violations. And Transitional Planning Services can deny a Parole or Probation Officer’s

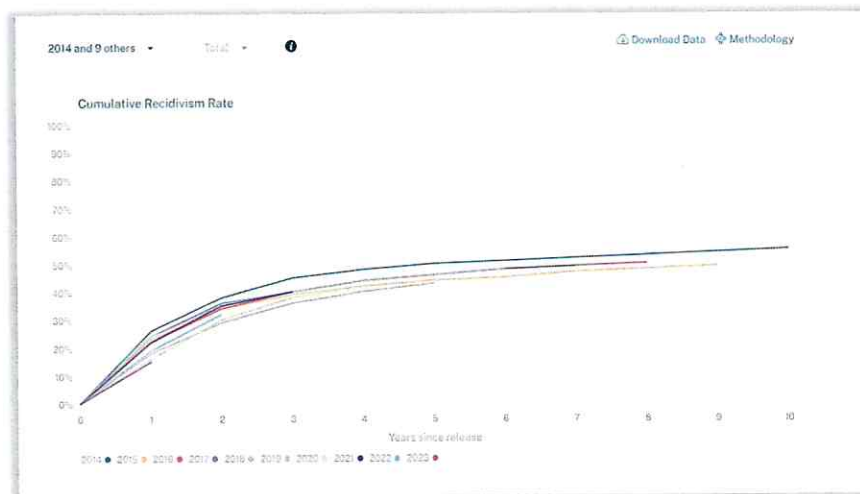
recommendation to impose intermediate measures on an offender. These denials can make DOCR's "success" rates appear higher, even though the officers who work most closely with the offenders and know them best believe the denied actions are necessary. When asked how often this occurs, DOCR replied that it does not collect this data.

" DOCR's definition of an absconder requires a 72-hour waiting period. ***"An adult under supervision can be classified as an absconder when parole and probation staff has verified that the individual no longer resides at their last known address. Parole and probation staff has checked other reasonable leads including the individual's employer, if there is one, and the adult under supervision has not been located for a period of 72 hours."***

RECIDIVISM

- The actual recidivism rate in ND is much higher than 40%.
- DOCR's recidivism rates remain high, despite years of the current system sometimes called the "Norway model".
- Even using DOCR's definition of recidivism, the latest rate published by DOCR is 40%.¹
 - DOCR testified that it uses a 3-year recidivism rate.²
 - DOCR also testified that its definition of recidivism is not standard across other states.³
- Definitions matter, especially when they are not shared with policy makers. In its definition of "recidivism," **DOCR has chosen not to include** inmates who were released from custody and then reincarcerated in:
 - County jails,
 - Federal prisons, or
 - Other states' correctional facilities.⁴

As a result, the true recidivism rate in ND is much higher than 40%.



¹ DOCR Public Dashboard, <https://dashboard.docr.nd.gov/us-nd/narratives/prison/7>.

² Testimony of Colby Braun, Director, DOCR, before the Senate Judiciary Committee on SB 2128 (Jan. 22, 2025).
³ Testimony of Colby Braun, Director, DOCR, before the Senate Judiciary Committee on SB 2128 (Jan. 22, 2025).

⁴ DOCR Public Dashboard, <https://dashboard.docr.nd.gov/us-nd/narratives/prison/7>, Methodology: "This data reports reincarceration recidivism rates, which is [sic] the proportion of individuals released from a ND DOCR facility that return to a ND DOCR facility at some point in the future."

DOCR'S ILLUSORY "GOOD TIME" CALCULATIONS

DOCR's good time calculations and the resultant "time served" statistics are not what they seem.

Under N.D.C.C. § 12-54.1-01, an inmate can earn 5 days of good time for each month of the sentence that was "imposed" by meeting "performance criteria established through department and penitentiary rules."

However, in practice, DOCR gives each inmate a lump sum of good time at the beginning of their sentence based on the totality of the sentence, rather than giving them credit each month they actually serve for the good time they earn, regardless of the department's policies.

DOCR's emails and communications to prosecutors document this practice.

Also, according to DOCR, they continue to award "good time" to offenders after the offenders are paroled, effectively reducing the time the offenders are monitored after being released from custody.

However, the North Dakota Supreme Court has said the "good time" statute, "Section 12-54.1-01, N.D.C.C., grants the Department of Corrections the discretion to reduce an offender's sentence each month the offender is in custody."¹

Maximum good time calculations appear to be included in the "time served" statistics that DOCR provides, even if the inmates were paroled or otherwise left confinement before the good time could actually be earned.

This appears to be one way DOCR's "time served" statistics are inflated.

DOCR staff have provided examples of the way they calculate good time incorrectly, including the examples on page 2:

¹ *State v. Williamson*, 2024 ND 7, ¶ 8 (N.D. 2024) (emphasis added).

Cori Willard received more than 40 days of good time per month in custody.

- She was given a **4-year sentence** in April 2022.
- She was paroled in September 2022, after spending **157 days in custody.**
- Per DOCR's Legal Records Department, she received "240 days DOCR good time credit and 5 days earned good time applied to her sentence."
 - Under the statute, in 6 months, she should have been credited only 30 days of good time, assuming she did not lose any for poor behavior.
 - DOCR explained the 240 days of good time credit was based on her 4-year sentence, even though she spent less than 11% of that sentence in custody.
 - DOCR said she "did not lose any good time" from the 240-day total.
 - DOCR said the additional 5 days of good time credit were "meritorious credit" for participating in a crisis intervention team.

Jaden Patrick received credit for more than 13 days of good time / per month in custody.

- He was given a **4-year sentence** for an A felony (dealing fentanyl).
- He **served 31.3%** of his sentence (176 days in jail and 281 days in prison) before he was paroled.
- Per DOCR's Legal Records Department, he received credit for **200 days of good time for the 457 days he was in custody.**
 - Under the statute, he should have been credited only about 75 days of good time, assuming he did not lose any for poor behavior.

Scott Michael Huber received credit for more than 11 days of good time / month in custody.

- He was given a **7-year sentence** for his 3rd and 4th drug trafficking cases.
- He was initially paroled in May 2022 after spending roughly 33 months in prison and 40 days in jail (**approximately 40%** of his sentence).
- Per DOCR's Legal Records Department, he received credit for **380 days of good time for the roughly 34 months he was in custody.**
 - Under the statute, he should have been credited only about 170 days of good time, assuming he did not lose any for poor behavior.
- Huber's parole was revoked in October 2023. He was paroled again the next month.
- His second parole also was revoked, in July 2024, after he was charged in a new drug conspiracy case.

TIME SERVED

Law enforcement officers, prosecutors, and other North Dakotans often talk about the “**revolving door**” of criminals.

- Criminals reappear in the community far earlier than their sentences dictate, then commit new crimes and go back to jail.

Judges make comments on and off the record about DOCR greatly reducing the time inmates spend incarcerated compared to their sentences, even when time spent in transition centers is included.

- *“A two year sentence means you're only going to be out there for two, three months.”*
- *“The Department of Corrections has their own policy on how much time you're going to serve,” Weiler explained, per the Associated Press. “These are not mandatory minimums, which means that you're probably going to serve a small portion of that 28 years and be out on parole, so that'll ... give you an opportunity to have a second chance that Deputy Martin does not have, nor does his family have.”*

“Time served” calculations are inflated because they are based on inflated figures. When calculating the “time served” for an inmate, DOCR includes:

- Time an individual spends incarcerated, PLUS time spent out of confinement, in transitional facilities, and
- Good time and meritorious conduct time.
 - Good time is inflated. See the handout on *Good Time*.
 - Transitional facilities are not incarceration. Most inmates in transition centers have complete access to the community during the day. Walking away from a transitional facility is not hard and not uncommon. See the handout on *Transitional Facilities*.

Examples of actual time served:

- Josiah Anderson
Conspiracy to deliver a controlled substance – 4 year sentence
Time served in jail or prison – 190 days or 13% of his sentence
- Kevin Luke
Dealing fentanyl (2 cases) – 2 year sentence
Time served in jail or prison – 52 days or 7.1% of his sentence
- Cori Willard
Second time possessing meth with intent to deliver – 4 year sentence
Time served in jail or prison – 71 days or 4.9% of her sentence
- Cory Reis
Fourth drug dealing offense (while on parole) – 5 year sentence
Time served in jail or prison – 701 days or 38.4% of his sentence

TRANSITIONAL FACILITIES

- Transitional facilities function similarly to dorms that provide drug and other counseling services.
- Most inmates in transitional facilities participate in a variety of release programs.
 - Inmates can leave the transitional facilities for the day.
 - These inmates are out in the community and appear no different from noninmates.
 - If they go somewhere other than their work location during the day, the transition center may not discover this for many days.
- Inmates on work release rarely have drug testing when they return to the transition center at night.
- An inmate may be placed in a release program (to be out in the community each day), even if no one has determined whether the inmate is not likely to escape.
- An inmate may be placed in a release program even if it is not in the best interests of the community or public.
- According to DOCR, not all who walk away (escape) from transitional facilities have been returned.

DOCR Testimony¹ and Statements on Transitional facilities

- As of January 23, the Bismarck location (BTC) has 123 “residents” -- 101 inmates and 22 who are on parole or probation.
 - 87 work in Bismarck or Mandan.
- From BTC, “normally, it could be 5 walk-aways [escapes] a month. And that’s an expectation. Our doors are not locked. ... They can walk away from any job that they want. ... People are going to walk away.”
 - DOCR could not provide data on how long it takes to recover walk-aways or how many walk-aways are not recaptured.
- “We do have staff that go and physically check on the residents at their job sites.” However, in 2024, based on DOCR testimony and using a low estimate of 90 individuals on release at a given time, physical checks occurred about once every 9 or 10 days per individual.
- During 2024, BTC administered 1,201 urinalysis tests, including tests administered to each individual when they first arrive at the facility. That’s 3.3 tests per days for the facility. If the average head count was 120, that’s an average of 1 drug test every 10 days per individual.
- “On January 9, there were 238 men and women serving their sentence in a transitional facility. Under [SB 2128], only 8 of the 238 inmates currently in a transitional facility would be eligible.”
 - That means, at most, only 8 of the 238 were sentenced for one of the many nonviolent offenses listed in Section 3 of the bill.
- The people who run transition programs “have decades of positive outcomes.”
 - What are the “positive outcomes” and how are they measured?

- “Nearly 80% of inmates who participate in an adult transition program at a transitional facility successfully complete.”
 - The recidivism rate for DOCR, based on its own misleading definitions, is 40%.² So “successfully complete” cannot mean that those inmates do not recidivate.
 - SEE the FACT SHEET on DOCR’s Definition of SUCCESS and SUCCESSFULLY COMPLETE.
 - An inmate who escapes can be deemed to have “successfully completed.”
 - An inmate who commits multiple violations can be deemed to have “successfully completed.”

Examples of Transition Center Walk-Aways (Escapes)

- Kadar Pearson
 - Dealing fentanyl, terrorizing with a dangerous weapon, theft, and refusal to halt
 - Sentence should have run to October 25, 2025, minus good time if earned
 - Served about 24% of sentence in prison
 - On April 2, 2024, he was transferred to a transition center in Fargo
 - On May 20, 2024, the center placed him on “full restrictions” for an incident
 - On May 28, 2024, he “walked away” after staff tried to talk him out of leaving
 - On June 5, 2024, he fled from Fargo PD and was caught with an illegal handgun
- Mark Conica
 - 2 counts of robbery
 - Sentence should have run to February 2027, minus good time if earned
 - Served 149 days in prison
 - On July 26, 2024, he was transferred to a transition center
 - On July 29, 2024, he was allowed to leave for work release and did not return
- Jesse White Eagle
 - High speed chase/felony fleeing
 - Sentence should have run to October 2025, minus good time if earned
 - Served about 2 months in prison
 - On January 31, 2024, he was transferred to a transition center
 - On February 14, 2024, he went out on work release and “failed to return”
 - On March 19, 2024, he was arrested for car theft and drug possession

¹ Testimony provided by Colby Braun and Kevin Arthaud at the Senate Judiciary Committee hearing on Senate Bill 2128 on January 22, 2025, either orally or in writing.

² See the handout on *Recidivism*.

Do North Dakotans Have the State Corrections System They Deserve?

1. What is the rate of recidivism in North Dakota?

- a. 29%
- b. 36%
- c. 40%
- d. **More than 40% but DOCR does not track the actual rate of recidivism**

DOCR publishes the percentage of its inmates who return only to DOCR facilities¹ and uses the 3-year rate as their measurement of recidivism.² The most current 3-year rate using DOCR's definition of recidivism is 40%.³ But the actual rate of recidivism in North Dakota is even higher because DOCR's rate does **not** include:

- Former DOCR inmates who are sent to federal prisons;
- Former DOCR inmates who are sent to county jails;
- Former DOCR inmates who are sent to other states' correctional facilities; and
- Former DOCR inmates who are sent back to DOCR facilities after more than 3 years.⁴

2. Inmates who committed violent crimes are free to be out in our communities, unsecured, while serving their sentences, even if it has not been determined that (1) letting them free during the day is in the best interests of the public or (2) they do not pose a high risk of escape.

- a. **True**
- b. False

Regardless of the crime committed,⁵ DOCR⁶ can transfer an inmate to a halfway house (also called a transitional facility) and let that inmate come and go each day – without any security – on a release program. DOCR can do this even if they decide it is simply in the best interests of the inmate or DOCR.⁷ DOCR does not need to assess the inmate's likelihood of escaping into the community.⁸

3. **Transitional facilities and release programs are secure. Inmates can't just walk away and blend into the community.**

- a. True
- b. **False**

The director of one transitional facility under contract with DOCR testified that “normally” 5 inmates walk away from his facility per month and that “that’s an expectation.” He stated “our doors are not locked ... people are going to walk away.”⁹ He was unable to provide information about how many of the inmates who walk away are not recaptured and how long it takes to recapture an inmate after walking away when asked.¹⁰ Prosecutors have provided abundant information on individuals “walking away” from these facilities.

4. **After years of investing in treatment programs, re-entry programs, the “Norway model,” and policies called “smart on crime,” are our communities safer?**

- a. Yes, violent crime rates have gone down in North Dakota over the past 10 years.
- b. **No, violent crime rates have gone up in North Dakota over the past 10 years.**
- c. There hasn't been a change in violent crime rates in North Dakota over the past 10 years.

Crime statistics are methodically reported by law enforcement agencies throughout North Dakota each year according to rigorous standards to ensure consistency from year to year.¹¹ According to these statistics, violent crime in North Dakota has risen steadily over the past 10 years. For example, the number of Crimes Against Persons¹² committed in 2023 (12,403) was 2.9 percent higher than the number of Crimes Against Person committed in 2022 (12,060). In 2019, that number was 10,539. In 2014, that number was 8,645.

This is not due to population growth because the rate of Crimes Against Persons and robbery per 100,000 people also has grown over 34% from 2014 to 2023.

5. **With all the talk about the need for substance abuse treatment, rehabilitation services, and addressing the root causes of crime, inmates who are out in the community all day are physically checked on and have a rigorous check-in process at night that includes drug testing to ensure they stay compliant with their treatment programs.**

- a. True
- b. **False**

Drug treatment programs are important for many inmates, and there's a lot of talk about them when people say our current system is “smart on crime.” But DOCR does not conduct daily drug tests on inmates in transitional facilities, including inmates who are in the community each day without supervision.

Based on DOCR data, a transitional facility with a maximum capacity of 140 residents (and a current head count of 123) administered only 1,201 urinalysis tests throughout all of 2024, including a drug test upon arrival for each individual.¹³ That equates to 3.3 drug tests per day total. Even if the facility averages only 120 residents per day, that means each resident is drug tested only about once every 10 days.

Also based on DOCR data, a transitional facility completed 3,407 physical checks on its residents who were on release programs in the community through 2024.¹⁴ Even if only 90 of its residents are on release programs, each of them is physically checked on in the community only once every 9-10 days to ensure they are where they're supposed to be.

¹ The "Methodology" for the recidivism statistics on the DOCR website states: "This data reports reincarceration recidivism rates, which is the proportion of individuals released from a ND DOCR facility that return to a ND DOCR facility at some point in the future." The graphics indicate the rate for each year after release.

² Testimony of Colby Braun, Director, DOCR, before the Senate Judiciary Committee (Jan. 22, 2025) (also noting other states do not use the DOCR definition as a standard measurement).

³ DOCR website (<https://dashboard.docr.nd.gov/us-nd/narratives/prison/7>) showing the most recent 3-year recidivism rate using the DOCR definition is "40%" ("444 of 1102").

⁴ Based on DOCR's website (<https://dashboard.docr.nd.gov/us-nd/narratives/prison/7>), the rate of recidivism increases each year an inmate has been out of prison.

⁵ See N.D.C.C. 12-47-18.1. There is no limit on the crimes currently. Many of the inmates in halfway houses now did not commit any of the many nonviolent crimes listed in S.B. 2128. Testimony of Colby Braun, Director, DOCR, before the Senate Judiciary Committee (Jan. 22, 2025).

⁶ Or, in cases when the sentence is more than 10 years, the Parole Board makes this decision.

⁷ See N.D.C.C. 12-47-18.1.

⁸ See N.D.C.C. 12-47-18.1 and 12-48.1-01.

⁹ Testimony of Kevin Arthaud, Administrator, Bismarck Transition Center, before the Senate Judiciary Committee (Jan. 22, 2025).

¹⁰ Testimony of Kevin Arthaud, Administrator, Bismarck Transition Center, before the Senate Judiciary Committee (Jan. 22, 2025).

¹¹ See Attorney General Crime Reports, at <https://attorneygeneral.nd.gov/public-safety/crime-data/crime-and-homicide-reports/>.

¹² This figure does not even include data for robberies, which are classified as offenses against property despite the element of violence against a person required to meet the definition of robbery.

¹³ Testimony of Kevin Arthaud, Administrator, Bismarck Transition Center, before the Senate Judiciary Committee (Jan. 22, 2025).

¹⁴ Testimony of Kevin Arthaud, Administrator, Bismarck Transition Center, before the Senate Judiciary Committee (Jan. 22, 2025).

DON'T BELIEVE THE MYTHS

S.B. 2128	NOT S.B. 2128
Truth-in-Sentencing Bill	Mandatory-Minimum Sentencing Bill
Judges' sentences will be respected and carried out faithfully by the corrections system	Will take away judges' discretion
Parole eligibility for violent inmates ¹ sentenced to prison after they serve 50% of sentence	Eliminates parole
Nonviolent offenders can still serve their sentences in halfway houses	Nonviolent offenders have to stay in jail or prison
Other inmates ¹ sentenced to prison will serve 85% of their sentences in correctional facilities before being eligible for halfway houses	Other offenders receive longer sentences
Does not change the current 85% law for the small number of crimes it covers Adds truth in sentencing for other types of rape, other types of aggravated assault, human trafficking, drug trafficking, gang crimes, coerced abortion, continuous sexual abuse of a child, sexual assault, terrorism, terrorizing, and other crimes, and keeps violent criminals out of halfway houses	Is not necessary because ND already has an "85% law" for a subset of some violent crimes
Recovery, re-entry, treatment, counseling and other programs are <u>still available</u> in correctional facilities and halfway houses	Inmates will not be able to participate in programs to get them ready to re-enter society
Parolees and individuals on probation can still reside in halfway houses, and judges can make residence in halfway houses a probation condition	Parolees and individuals on probation will be homeless and have no access to re-entry programs
Time off for good behavior must be earned before it is awarded	There is no incentive for good behavior
Inmates will have to be "not likely to escape" before being transferred to halfway houses	Unreasonable restrictions will be placed on the corrections system
Violently resisting arrest, assaulting law enforcement, and felony fleeing will have consecutive 14-day or 30-day sentences added to their prison time	The bill is all about imposing long mandatory minimum sentences
	Inmates will have to be sent back to jails to serve their 14-day or 30-day sentences

¹ Inmates sentenced under the current 85% law will still be subject to that law.

Rehabilitate First, Release Second

rather than pushing dangerous policies, reformers should focus their efforts on making prisons better at “correcting” individuals.

/ From the Magazine / Public Safety, Politics and law

Nov 16 2023

Criminal-justice reform advocates claim that prison is a failure—that it doesn’t reduce or deter crime and that it presents a host of ethical challenges as well. Some argue the case on moral grounds, examining the racial and class demographics of the prison population; others point to overcrowding, institutional violence, and deteriorating conditions within prisons; and still others complain about the exorbitant expense of prisons, which cost over \$80 billion nationwide each year. The assumption of prison failure drives reformers’ push for shorter sentences, expanded early release and parole, and alternatives to incarceration.

The problem for reformers is that this assumption is deeply flawed, and many of their policy priorities require considerable obfuscation of criminal-justice data. For example, while the National Institute of Justice, the research arm of the U.S. Department of Justice, claims that “prison sentences (particularly long sentences) are unlikely to deter future crime,” another arm of the DOJ, the Bureau of Justice Statistics, disagrees. In an analysis of prisoners released in 2012 from 34 states who were rearrested within five years, BJS found that those who served longer sentences for the same types of crimes were rearrested at lower rates than those who served shorter sentences. The difference was greater than 8 percentage points, representing tens of thousands of fewer crimes committed.

Many reform advocates dispute the theory that steeper punishments deter future crimes. While it is true that most research shows that long prison sentences do not prevent new criminals from committing crimes, that finding does not apply to criminals who have gone to prison already. The empirical reality is that people who served longer sentences in every category of crime re-offend at considerably lower rates than those serving shorter sentences. For violent offenders, the differential between re-offense rates are staggering: shorter-sentence offenders are 28 percent more likely to get rearrested than longer-sentence offenders.

Why do longer sentences have such an effect? A key reason is that age is inversely correlated with crime: older people commit less crime than younger people. Longer-sentence offenders are more likely to leave prison at an older age than are shorter-sentence offenders. The connection between longer sentences and lower re-offense rates presents a steep obstacle for reform advocates. The data contradict the advocates’ assurances that expanded parole and early-release programs, as well as shorter sentences in general, will not undermine public safety.

Rather than pushing dangerous policies, reformers could more productively focus their efforts on improving rehabilitation within prisons. For example, meta-studies have shown that cognitive behavioral therapy programs, which help criminals develop strategies to counter antisocial decision-making, are effective at reducing future crime among participants. Facilities such as Maine State Prison have seen success in terms of both desistance from crime and employment outcomes from their robust vocational programs, which include woodworking, metalworking, and upholstery shops. Advocating for more effective and accountable prison-based rehabilitation makes much more sense than simply curbing the use of prison without accounting for its effect on crime.

The preponderance of data exposes the flaws in conventional reform priorities and suggests a more sensible, politically achievable, and empirically sound goal: making prisons better at achieving their intended purpose of “correcting” individuals—even if that means that prisoners must take the longer way home.

Devon Kurtz is the public-safety policy director at the Cicero Institute.

Photo: Yellow Dog Productions/iStock

Some Recent Examples of Inmates who Escaped DC Minimum Security Custody or Transitional Facility

		Original Conviction	Approx. % Sentence Served Before Moved to Transitional Facility (if applicable and if known)	Known Offenses Committed while the offender should have been in custody
Pearson	Kadar	Poss. Of CS w/Intent to Deliver-Fentanyl (FB), Theft-Firearm-Ammunition (Class C Felony), Refusal to Halt (Class B Misdemeanor), and Theft (Class B Misdemeanor).	24% Granted parole in Feb. 2024 to become effective June 6, 2024 Moved to Centre, Inc. on April 2, 2024, and escaped before parole became effective	Escape (FC) from Centre, Inc. Unlawful Poss. Of a Firearm (FC), and Refusal to Halt (MB) Indicted by U.S. Attorney's Office
Conica	Mark	Robbery x 2 (FC)	28%	Escape (FC) from BTC
Perry	Richard	Gross Sexual Imposition (FAA), Aggravated Assault (FC)		Luring Minors by Computer x 5 (FB)
White Eagle	Jesse	Fleeing (FC), Theft x 2 (FC), Poss. Of CS (FC)		Escape (FC), Theft (FC), Poss. Of Drug Paraphernalia
Whitetail	Milo	Contact by Bodily Fluids or Excrement (FC)		Murder (FAA)
Allen	Terrance	Delivery of drugs within 1000 feet of school, drug paraphernalia		Escape from BTC
Barnett	Joseph	Unauthorized Use of a Vehicle, Felony fleeing in a vehicle	27%	Escape from BTC
Bender	Thomas	Facilitating counterfeiting	21%	Escape from BTC
Black	Mariah	4 th DUI, 4 th DUS, felony drug paraphernalia	25%	Escape from BTC
Bredahl	Christopher	Poss. With intent to deliver (2 revocations), paraphernalia, possession	13%	Escape from BTC
Brown	Russell	Terrorizing with weapon	Placed at MRCC	Escape from MRCC (within one month)

			(a minimum custody facility) immediately	
Camp	Preston	Forgery, poss. With intent to deliver	55% (first sentence) 50% (second sentence)	Escape from BTC
Chamberlain	Brett	Theft (4 cases)	16%	Escape from BTC
Charvat	Jasin	Probation revocations on a Domestic Violence Protection Order violation and drug paraphernalia	29%	Escape from BTC
Corn	David	Preventing arrest, poss. With intent to deliver, unauthorized use of vehicle	Placed at MRCC (a minimum custody facility) after serving 8% of sentence	Escape from MRCC
Fresse Cortes	Melving	2 nd revocation on Endangering by fire (vehicle and occupied apartment building)	15%	Escape from BTC
Harris	David	Assault law enforcement officer, preventing arrest, drug paraphernalia, breaking into vehicles	50% or 63%	Escape from BTC
Hoffmann	Jonathan	Burglary, theft, drug poss.		Escape from MRCC
Meyer	Alexander	Poss with intent to deliver with a firearm, felon in poss. Of firearm, theft of firearm, conspiracy to commit theft, theft		Escape from MRCC
Lange	Justice	Negligent homicide, child neglect, parole revocation on 4 counts of conspiracy to commit robbery	50%	Escape from BTC
Royce	Robert	Fleeing in a vehicle, aggravated reckless driving, concealed weapon, leaving the scene of accident involving injury, provocation revocation on trespass into residence, assault	28%	Escape from BTC
Waanatan	William	2 nd revocation on DUI causing death	16%	Escape from BTC

Some Recent Examples of Individuals on **Parole or Probation** Under DOCR Supervision who Reoffended
(in recent newspaper articles)

	Parole	Probation	Original Conviction	Offense Committed while under DOCR Supervision
Engesser		Y	DUI 4th (FC), Fleeing (FC)	DUI 4th (FC), Fleeing (FC), Reckless Endangerment (FC)
Huesers	Y	Y	Poss. Of CS-Heroin (FC), Poss. Of CS-Meth (FC), Poss. Of Drug Paraphernalia (FC)	Burglary (FB), Unlawful Entry Vehicle (FC), Theft (FC) x 2, Conspiracy (FC) x 3, Fleeing (FC)
Richards	Y		Poss. Of Drug Paraphernalia (FC), Duty in Accident Involving Death or Serious Injury (FC)	Fleeing (FC), DUI-Drugs (MB), DUS-4th (MA), Reckless Endangerment (MA)
Brennan	Y	Y	Poss. Of Drug Paraphernalia (FC)	Fleeing (FC), Reckless Endangerment (FC), Poss. Of CS-Meth (FC), Refusal to Halt (MB), Criminal Vehicular Injury (FC), Duty in Accident Involving Death or Serious Injury (FC)
Hadley		Y	Domestic Violence-Serious Bodily Injury (FC)	Murder (FAA)
Smith	Y	Y	Poss. w/Intent to Deliver-Meth (FB), Poss. Of a CS-Heroin (FC), Poss. Of Drug Paraphernalia (FC)	Poss. w/Intent to Deliver-Meth (FB), Mirinal Mischief (FB), PCS (FC), Simple Assault LE (FC), Fleeing (FC), Preventing Arrest (FC), Reckless Endangerment (FC), Carrying a Concealed Weapon (MA), various MB offenses
Wiedmer	Y		Actual Physical Control of a Motor Vehicle (FC)	Assault (MA), Theft (FC), Breaking into a Vehicle x 2 (FC), Poss. Of Stolen Property (FC), Aggravated Assault-LE (FB), Fleeing x 2 (FC), Preventing Arrest (FC), Attempting to Disarm LE Officer (FC), Reckless Endangerment (MA)
Bartlette		Y	Attempted Criminal Trespass (MA), Poss. Of a CS-Meth (FC), Poss. Of Drug Paraphernalia (FC)	Murder (FAA)
Helm	Y		Criminal Trespass (FC), Poss. Of Drug Paraphernalia (FC) x 2, Poss. Of CS-Meth (FC), Contact by Bodily Fluids-LE (FC), Preventing Arrest (FC)	Conspiracy to Deliver CS-Fentanyl (FB), Tampering w/Informants in Criminal Investigation (FC)

Smith	Thomas	Y	Y	Poss. Of CS w/Intent to Manufacture/Deliver-Meth x 2 (FAA), Conspiracy to Deliver a CS x 2 (FA)	Poss. Of CS-Meth (FC), Poss. w/Intent to Deliver-Meth (FB), Poss. Of Drug Paraphernalia (FC)
Lee	Donnie	Y		Domestic Violence-Serious Bodily Injury (FC), Simple Assault-Peace Officer or Correctional Officer (FC)	Domestic Violence (FC), Domestic Violence x 3 (MA), Violation of Order Prohibiting Contact x 2 (MA), False Information to LE (MA), Simple Assault-Peace Officer x 2 (FC), Contact by Bodily Fluids-LE (FC), Preventing Arrest (FC), Theft (FC), Theft (FB), Poss. of CS-Meth (FC), Poss. of Drug Paraphernalia (FC), Poss. of 5 or fewer Sched. II, III, IV, or CSA pills (MA), Criminal Mischief (MB), Leaving the Scene of Property Crash (MB), Reckless Driving (MB)
Huber	Scott	Y		Poss. Of CS w/Intent to Deliver x 4 (FB), Poss. Of Drug Paraphernalia x 2 (FC)	Poss. Of CS-Meth (FC), Conspiracy to Deliver CS-Fentanyl (FB)
Vandeusen	Randolph	Y	Y	Theft (FC), Reckless Endangerment (FC), Fleeing (FC)	Poss. Of CS w/Intent to Manufacture/Deliver-Fentanyl (FB)
Kessel	Steven	Y	Y	Domestic Violence-Serious Bodily Injury (FC)	Criminal Vehicular Injury (FC), DUS-Alcohol Related (MB)
Lauer	Colton	Y	Y	Fleeing (FC), Poss. Of Drug Paraphernalia (FC), False Information to LE (MA), Unauthorized Use MV (FC)	Fleeing x 2 (FC), Reckless Endangerment (FC), Poss. Of Drug Paraphernalia (FC), Refusal to Halt (MB)
Williams	Benjamin	Y		Reckless Endangerment (FC) (Shooting Incident)	Murder (FAA), Possession of Firearm by Felon (FC)
Frederick	Demoris	Y	Y	Aggravated Assault (FC),	Poss. Of CS w/Intent to Manufacture/Deliver x 3 (FB), Poss. Of Drug Para (FC), Fleeing (FC), Attempt to Tamper w/Physical Evidence (FC), Poss. Of CS-Meth (FC), Carrying a Concealed Weapon (MA), Poss. Of Firearm by Felon (FC)
Johnson	Kyle		Y	Possession of Drug Paraphernalia (FC)	Poss. Of Firearm by Felon x 2, Poss. Of CS w/Intent to Distribute-Meth, Poss. and Discharge of a Firearm in Furtherance of a Drug Trafficking Crime (Federal prosecution)
Merritt	Tyler	Y	Y	Theft (FB), Theft (FC), Fleeing x 2 (FC), Reckless Endangerment x 2 (FC), Poss. Of CS w/Intent to Manufacture/Deliver-	Fleeing (FC), Poss. Of CS-Fentanyl (FC), Poss. Of Drug Paraphernalia (FC), Criminal Mischief (FC), DUI-Drugs (MB), Preventing Arrest (FC)

Blackcloud	Richard				Meth (FA), Poss. Of Drug Paraphernalia (FC), Poss. Of a Short Barreled Shotgun or Rifle (FC)	Poss. Of Drug Paraphernalia (FC), Poss. Of CS (MA)
Galaviz	Amos	Y	Y	Y	Fleeing (FC), Reckless Endangerment (FC), Poss. Of Drug Paraphernalia (MA), Unauthorized Use of a Vehicle (MA), Refusal to Halt (MB)	Poss. Of CS w/Intent to Manufacture/Deliver x 2 (FB), Poss. of Firearm by Felon (FC), Poss. of Drug Paraphernalia x 2 (FC), Fleeing (FC), Reckless Driving (MB), DUR (MB), Refusal to Halt (MB)
Reynolds	Samuel			Y	Conspiracy to Commit Theft (FC), Theft (FC)	Possession of a Controlled Substance (FC), Possession of Drug Paraphernalia (FC), Poss. Of Firearm by Felon (FC)
Morin	Garret			Y	Accomplice to Reckless Endangerment (FC) (Drive by shooting)	Attempted Murder (FA), Aggravated Assault-Serious Bodily Injury (FC)(In custody, not yet charged-stabbing)
Smith	Marquis	Y			Gross Sexual Imposition-Sexual Contact-Victim <15 years (FA) x 2	Promoting Obscene Performance by a Minor (FA); Use of a Minor in Sexual Performance (FA); Luring Minors by Computer (FB)

SENATE APPROPRIATIONS COMMITTEE
FEBRUARY 17, 2025

TESTIMONY OF CLAIRE NESS
OFFICE OF ATTORNEY GENERAL
SENATE BILL 2128

Chairman Dever and Members of the Committee:

For the record, my name is Claire Ness. I am the Chief Deputy Attorney General, and I am here on behalf of the Attorney General's Office in support of Senate Bill 2128.

To start, I'd like to draw your attention to the fact sheets about the bill and the information on which it is founded. The Attorney General's Office has found that several inaccurate narratives about the bill have been circulating. In order for you to assess the appropriateness of the fiscal note, we wanted to ensure you have an honest accounting of what the bill does and does not do, based on documented data and information.

We also need to consider the costs of the current criminal justice system. SB 2128 resulted from intensive research, meetings, and discussions with law enforcement officers, State's Attorneys, DOCR administrators and employees, and others. The key findings from that work were distilled into the packet of materials provided to you. What we found is that – over the many years of investing heavily in the expensive “Norway” model – the DOCR has received a tremendous amount of discretion in how they carry out their responsibilities. In return for that investment and autonomy, the Legislative Assembly – and the state as a whole – should receive objective measurements of success. But we don't have them. Instead:

- Violent crime and violent crime rates have increased¹;

¹ See the annual crime and homicide reports documenting crime statistics reported by North Dakota law enforcement agencies at <https://attorneygeneral.nd.gov/public-safety/crime-data/crime-and-homicide-reports/>.

- Drug use and addiction rates are increasing²;
- More than 40% of prisoners recidivate,³ costing the state and counties money for repeat arrests, investigations, prosecutions, trials, and sentencing hearings;
- Law enforcement officers and prosecutors are frustrated by the expensive and dangerous revolving door of criminals who are on our streets and recommitting crimes before their previous sentences are served⁴; and
- Our neighbors are concerned about the prevalence of crime in their communities.

When evaluating SB 2128, the Attorney General's Office urges you to consider the comparative costs, savings, and returns from both the state's current investment in corrections and rehabilitation and the investment that would be made under this bill. Buying a bicycle is not a good investment if you need a car.

Inaccurate assumptions are the basis for the fiscal note.

The first fiscal note prepared by DOCR was based on an assumption that parole would be eliminated under SB 2128. After the parole issue was clarified, the fiscal note should have decreased as a result. However, the second fiscal note is about 37% higher than the first. A careful review of the second fiscal note reveals that most of its costs are based primarily on 3 inaccurate assumptions:

² The rate of illegal substance use in North Dakota, as reported by the ND DHHS, rose again between the 2023 report and the 2025 report. The rate of illegal drug use (other than marijuana) increased from 2.83% to 3.46%, and the rate of marijuana use increased from 10.4% to 11.97%. ND DHHS's *Behavioral Health in North Dakota: Data Book 2023* and *Behavioral Health in North Dakota: Data Book 2025*, at <https://www.hhs.nd.gov/behavioral-health/data>.

³ DOCR testified it defines recidivism as returning to DOCR facility within 3 years of release. DOCR's website states 40% of offenders released from ND state prison facilities were returned to those prisons within 3 years. If you add the number of those offenders who were returned to federal prison, county jails, and other states' prisons, the total recidivism rate exceeds 40% and likely exceeds it by a significant margin. DOCR has not provided data on the exact recidivism rate when those facilities are included.

⁴ See, e.g., the testimony of Dennis Ingold and the testimony of Jason Stugelmeyer in support of SB 2128 to the Senate Judiciary Committee on January 21, 2025.

1. DOCR will have to return inmates who currently reside in transitional facilities back to prison.
2. Parole will not be available for inmates.
3. Inmate labor will have to be replaced by civilians.

The second fiscal note contains other presumptions that do not seem to be supported by data, but this testimony will focus on those three main faulty assumptions.

(1) DOCR will not have to return inmates who currently reside in transitional facilities back to prison.

In the first sentence of the second fiscal note, DOCR says the “bill removes DOCR’s authority to house inmates in transitional facilities, requiring residents to return to prison.” This is not accurate for at least two reasons.

One, during the first hearing on the bill, this office presented an amendment (which is still available on the legislative website for SB 2128 as document 30506) as well as written and oral testimony describing each section of the bill. The amendment contains an Application clause showing the bill is prospective only. It will not impact current inmates, and it will affect DOCR only gradually as new inmates serve their sentences. The Application clause also was described on page 13 of my testimony, which I read during that first hearing. My testimony also stated that the bill probably would be prospective even without the Application clause (because of Due Process and other considerations). To avoid any confusion, however, the Application clause was always part of the amendment that the Senate Judiciary Committee adopted.

Two, inmates can still reside in transitional facilities, as can individuals on parole and probation. Inmates who committed the nonviolent crimes exempted from the 85% requirement can be transferred to transitional facilities at any time during their sentences, provided they meet DOCR’s criteria. Other inmates who committed violent crimes can be transferred to transitional

facilities after they have safely served 85% of their sentences. To say that inmates cannot be housed in transitional facilities under the bill is not correct.

Late last week, Senator Castaneda and I discovered that Legislative Council had removed the Application clause from the amendment and the engrossed version of the bill that they posted online. I understand that Senator Castaneda and Senator Larson had the Legislative Council replace that clause. To the extent this incident caused confusion for DOCR, I would ask the committee to request an updated fiscal note adjusting the costs accordingly.

(2) and (3) Parole will be available, and civilians will not have to replace inmate labor.

DOCR estimates that approximately \$67 million for FY 25-27 and \$155 million for FY 27-29 will be incurred because inmates will not be eligible for parole. This is not accurate. Parole will not be eliminated. Also, DOCR's first fiscal note - based on the assumption that parole was eliminated - had a total cost that was tens of millions of dollars less than the amount in the second fiscal note that DOCR attributes to the supposed lack of parole.

SB 2128 says inmates are eligible for parole after serving 50% of their sentences. (This is significantly less than our more liberal neighbor, Minnesota, which requires inmates to serve 2/3 of their sentences.⁵) DOCR's argument seems to be that work, education, and rehabilitation programs will not be allowed in DOCR facilities under SB 2128 - and that this will make inmates poor candidates for parole even after they have served 50% of their sentences. DOCR then uses a model suggesting that only 5% of parole-eligible inmates will be paroled. DOCR also adds almost \$17 million to the second fiscal note for replacing inmate labor with civilian labor. Additionally,

⁵ See Minnesota Department of Corrections website on Community Supervision, at www.mn.gov/doc/community-supervision/. ("Individuals serve two-thirds of their prison sentence incarcerated and the remaining third on supervised release.")

DOCR states about \$2.5 million will be incurred by housing parolees in transitional facilities to participate in programs after they are released from prison.

Throughout the weeks of testimony and discussion on Senate Bill 2128, the Attorney General's Office has consistently stated that the bill:

“will not take away any offender's opportunity to participate in rehabilitation programs or programs that help an offender prepare for reentry to the community. Those programs can continue to be offered in prison and other correctional facilities. The Attorney General's Office supports these types of programs and for years has offered to support requests for the resources to ensure they can continue.”⁶

Senate Judiciary Committee members also understood these programs would continue to be available in the prison and other DOCR facilities.

There was no indication that DOCR believed work, education, and rehabilitation programs would be eliminated in correctional facilities until they issued the second fiscal note – after the Senate Judiciary Committee had closed the proceedings on the bill. Had DOCR believed a clarification in the bill language was necessary, they should have raised that issue to the committee so the clarification could be made. Everyone involved intended for the programs to continue, and a clarification would have been simple and easily approved by the committee.

By waiting until after the committee's work concluded, **DOCR is adding approximately \$242 million to the second fiscal note based on an argument that the bill will have an impact that absolutely no one thought it would have and no one intended.** The Attorney General's

⁶ Testimony of Claire Ness in support of Senate Bill 2128 to the Senate Judiciary Committee on January 21, 2025.

Office asks that the Appropriations Committee either adopt a minor, clarifying amendment to satisfy DOCR's concerns or disregard the \$242 million in costs DOCR says will be attributable to the alleged elimination of parole and these programs.

SB 2128 also will result in savings.

As noted above, our current system has produced a recidivism rate that is higher than 40% and has not slowed the rate of substance abuse that contributes to our crime rate. That means close to half of all inmates return to a correctional facility within 3 years. The cost to the state and our counties from these repeated arrests, investigations, prosecutions, trials, and sentencing hearings must be tremendous. Although DOCR says it does not have data on this, a significant amount of those crimes would not occur while inmates serve their sentences in secure settings. Moreover, inmates who are able to participate in treatment and rehabilitation programs for longer periods of time may be less likely to recidivate at all. Finally, the deterrent effect of actually having to serve at least half of a sentence may reduce the incidence of violent crime.

The other costs to society – the impact on public safety and security – also should be considered when determining the value of SB 2128.

SENATE JUDICIARY COMMITTEE
JANUARY 27, 2025

SUPPLEMENTARY TESTIMONY OF
THE OFFICE OF ATTORNEY GENERAL

IN SUPPORT OF
SENATE BILL 2128

Senator Larson and Members of the Committee:

During the hearings on Senate Bill 2128, as amended by the Attorney General, you heard multiple opponents of the bill claim that longer sentences do not deter crime, increase recidivism, make prisons unsafe, or some combination of these notions. These claims do not withstand scrutiny.

While many agenda-driven groups have made claims like these, the studies they cite are flawed and do not apply to the bill under consideration. When the relevant research is viewed more comprehensively, a different picture emerges. This is especially true when the studies' shortcomings are not hidden.

When inmates spend more time in prison, as they would under a law that requires them to serve a larger percentage of their judge-imposed sentences, they have more time to participate in rehabilitation, treatment, and re-entry programs. They also are unable to commit crimes while in prison and are more likely to be deterred from committing future crimes after release. These are some of the reasons that – contrary to testimony offered by opponents of Senate Bill 2128 – more recent and robust studies often show a reduction in recidivism when inmates are in prison for longer periods of time.

Opponents of Senate Bill 2128 Presented a Distorted View of the Research

During the hearing on Senate Bill 2128, opponents of the bill who testified about research findings relied on flawed and inapplicable research. When they extrapolated findings from these studies and tried to project them onto Senate Bill 2128, they were comparing apples to oranges.

For example, the opponents of the bill often conflated truth-in-sentencing with mandatory minimum sentencing. These are very different practices, and studies on them are not interchangeable. Additionally, truth-in-sentencing can mean many things, and not all studies on truth-in-sentencing would be applicable to Senate Bill 2128.

Also, many studies in this area fail to control for variables (such as age, sex, etc.) that distort their results. When those variables are not controlled, it is difficult to account for their effects on the studied population, even if the studies try to do so with mathematical modeling.

Opponents of the bill who testified about research findings should have identified the limitations of that research – why it does not predict the outcomes of Senate Bill 2128 – rather than imply the research is conclusive.

Opponents of the bill also painted an extremely one-sided and inaccurate picture of the research into the effect of incarceration on recidivism and criminal behavior. They neglected to notify the committee that many studies, especially recent studies, demonstrate a reduction in recidivism from longer incarceration times. Studies are not nearly as conclusive and one-sided as opponents of the bill testified.

In June 2022, the United States Sentencing Commission issued a study report titled *Length of Incarceration and Recidivism*. As part of its study, the Commission reviewed preexisting research on this issue and found much of it was flawed. The Commission's report stated:

Empirical research on the relationship between length of incarceration and recidivism is limited and presents mixed results. Of the studies that have been published, many are dated (*e.g.*, conducted prior to 2000), use less rigorous research designs, or present results on the relationship between incarceration and recidivism as a sub-analysis within a broader study. Further, a number of the prior studies have methodological deficiencies relating to not appropriately controlling for offender age and, therefore, are not considered valid.¹

Similarly, a detailed and extensive study of existing research by the Criminal Justice Legal Foundation in 2022 noted significant limitations to earlier research on this topic.

Overall, the effect of incarceration length on recidivism appears too heterogeneous to draw universal conclusions, and findings are inconsistent across studies due to methodological limitations. For example, many study samples are skewed toward people with shorter sentences while others include confounds that render results invalid. Of the studies reviewed, some suggested that longer sentences provide additional deterrent benefits in the aggregate, though some studies also had null effects. None suggested a strong aggregate-level criminogenic effect.²

The authors identified several specific problems with earlier research on this topic. Randomized controlled trials (the gold standard) would be unethical for prisoners. Controlling for other variables impacting recidivism or violence is almost impossible. Criminals with longer sentences may be more violent, male, and younger than those with shorter sentences, and those factors may influence recidivism rates. Moreover, there are different methods to measure recidivism, so consistency across studies and studied populations is lacking.

Researchers from Loyola University who studied Illinois' truth-in-sentencing laws also identified some inherent problems in relying on the existing research.

Given the fact that the impact of the law appears to vary from state to state, depending on the offenses covered under [truth-in-sentencing] and the overall sentencing structure and/or courtroom culture in place, it is clear that analyses need to be done on a state-by-state basis to take into account the nuances of each state's [truth-in-sentencing] law and sentencing structure to assess impact on sentence lengths and/or lengths of time to serve.³

Conclusory study findings offered to the committee in hearings on Senate Bill 2128 simply painted an inaccurate picture.

More Time in Incarceration Has Been Shown to Reduce Recidivism and Reduce Violence in Prison

There are at least three ways that requiring an inmate to serve more of the sentence imposed by a judge can reduce the risk of recidivism.

1. Deterrence: The inmate will realize the cost of committing a crime is higher than the reward.
2. Incapacitation: The inmate cannot commit new crimes while in prison.
3. Rehabilitation: The inmate will have more time to be rehabilitated through treatment programs, education, re-entry programs, and other services available in prison.

Studies have found these impacts increase as the amount of time incarcerated increases.⁴ The reduction in recidivism from incapacitation is self-evident. And some researchers have commented on the need for increased incarceration time to have a rehabilitative effect on criminals.⁵

The 2022 Criminal Justice Legal Foundation study report included citations to many research reports that found reductions in recidivism from increases in incarceration time, although fewer studies showed no difference.

The United States Sentencing Commission's 2022 study, which controlled for many of the variables that plague earlier studies, found that "offenders serving longer sentences had a lower likelihood of recidivism and took longer to recidivate."⁶ Specifically, offenders who were incarcerated between 60 and 120 months had about an 18% reduction in recidivism compared to those with shorter sentences. Offenders who were incarcerated more than 120 months had about a 29% reduction in recidivism compared to those with shorter sentences.⁷

The Commission's findings were not an outlier. The findings "were almost identical for both the 2010 cohort studied in [the 2022] publication and the 2005 cohort studied in the Commission's previous publication."⁸

Also, in Appendix A of the Commission's report, there is a review of literature on this topic. Many of the studies listed in the appendix demonstrated a reduction in recidivism correlated with longer times in prison.

¹ United States Sentencing Commission, *Length of Incarceration and Recidivism*, p. 3 (June 2022).

² Berger, Elizabeth, and Scheidegger, Kent, *Sentence Length and Recidivism: A Review of the Research*, Criminal Justice Legal Foundation, p. 2 (June 2022) (emphasis added).

³ David E. Olson, Ph.D. et al., *FINAL REPORT: The Impact of Illinois' Truth-in-Sentencing Law on Sentence Lengths, Time to Serve and Disciplinary Incidents of Convicted Murderers and Sex Offenders*, Loyola University Chicago, Department of Criminal Justice, Prepared for The Illinois Criminal Justice Information Authority (June 2009) (emphasis added).

⁴ E.g., Wei Long, 2016. *Does Longer Incarceration Deter or Incapacitate Crimes? New Evidence from Truth-in-Sentencing Reform*, Working Papers 1607, Tulane University, Department of Economics. ("We observe statistically significant -7 percent deterrent effect of TIS on growth of violent crime two years after its passage. A series of placebo tests confirm the robustness of the estimates and inferences. In the long-run, additional incapacitative effect also becomes significant, making the treatment effect of TIS even greater in magnitude. Even though insignificant in the first two years after TIS was passed, growth of non-violent property crime rates decreases by 7 percent in the long-run in TIS states, indicating relative greater importance of incapacitative effect which locks up offenders who commit both types of crimes. A rough approximation shows that TIS is an economically efficient method to decrease crimes.")

⁵ Al Weswasi, E., Sivertsson, F., Bäckman, O. et al., *Does sentence length affect the risk for criminal recidivism? A quasi-experimental study of three policy reforms in Sweden*, *J Exp Criminal* 19, 971–999 (2023).

⁶ United States Sentencing Commission, at p. 19, 20.

⁷ United States Sentencing Commission, at p. 19, 20.

⁸ United States Sentencing Commission, at p. 22.

⁹ Olson, at p. 5-6.

¹⁰ Olson, at p. 17.

SENATE JUDICIARY COMMITTEE
JANUARY 21, 2025

TESTIMONY OF CLAIRE NESS
OFFICE OF ATTORNEY GENERAL
SENATE BILL NO. 2128

Chairman Larson and members of the Committee:

For the record, my name is Claire Ness. I am the Chief Deputy Attorney General, and I am here on behalf of the Attorney General's Office in support of Senate Bill 2128, our **Truth-in-Sentencing Bill**. The Attorney General regrets he is unable to be here today because he is returning from President Trump's inauguration. I respectfully ask that you keep the hearing on this bill open so he may complete our office's presentation in support of the bill upon his return.

My testimony today has 2 parts:

First, I will explain how each section of the bill – including the amendment that we have distributed – operates. Based on media reports and questions we have received, there seem to be several misperceptions about the bill that we can clear up.

Second, I will describe the underlying goals of the bill and the values of the Attorney General's Office and our great state that are advanced by this bill.

Throughout my testimony, I also will describe some of the voluminous background data and information that demonstrate why passing this bill is a critical step toward reducing crime in our communities.

Our office has worked with, and incorporated feedback from, State's Attorneys, law enforcement personnel, legislators, and others to develop this bill, and we look forward to working with members of the Legislative Assembly on the bill during the session.

How the Bill, as Amended, Operates

Section 1

Section 1 of Senate Bill 2128 makes two changes to definitions in Chapter 12-44.1 of the North Dakota Century Code (N.D.C.C.). The first is to clarify that the term “correctional facility” does not include transitional centers, and the second is to define “transitional facilities”. The definition of “transitional facility” in the bill reflects publicly available information from the Department of Corrections and Rehabilitation (DOCR).

Transitional facilities – sometimes called transition centers or halfway houses – are structurally, operationally, and in almost all ways distinct from commonly understood “correctional facilities” (jails and prisons). Transitional facilities function similarly to staffed dormitories or apartments that offer on-site counseling or other services. Most individuals who live there are free to check-out of, and check-in to, the transitional facility, so they can spend their days unsecured in the community. DOCR informed us these individuals are not required to undergo daily drug testing when they return to the facility in the evening.

Section 2

Under Section 2, the Legislative Assembly will have authority to establish common sense and public safety guardrails for transferring prisoners among DOCR facilities. For example, DOCR will have to abide by statutory limits on transfers of prisoners to facilities that have little or no security.

Currently, under N.D.C.C. 12-47-18.1, the Director of DOCR has vast, unilateral power to take a prisoner from the penitentiary and transfer them to the dorm-like setting of a transitional facility, regardless of the risk to the community. The Director can do this for just about any

reason, as long as the Director subjectively thinks it is a good idea for “the public, the offender, or the department.” That word “or” in the statute is key. Even if transferring a prisoner to a halfway house is not in the public’s best interest, the Director now can legally order it as long as the Director thinks the transfer would be good for either the prisoner or DOCR.

DOCR may tell you that would never happen because it might risk public safety. We would welcome that testimony because it would mean that Section 2 of this bill is simply what we all agree should be codified in law.

Section 3

Section 3 is first and foremost a public safety measure. Under current law, the Director of DOCR has authority to approve work release programs and other release programs for offenders in DOCR custody. The Director also has the power to contract with transitional facilities to house offenders in release programs. These offenders have the privilege of being out and about in our communities without guards or other security measures. So it is critical that they do not pose a danger to others.

Section 3 of SB 2128 identifies which offenders may participate in these release programs and live in transitional facilities. For clarity, it uses the term “eligible offender” to identify these individuals and then defines that term.

An “eligible offender” is an offender who has:

- Served 85 percent of their sentence; or
- Had their sentence commuted; or
- Is serving a sentence only for a nonviolent crime listed in Section 3.
 - Computer fraud (12.1-06.1-08)

- Perjury (12.1-11-01)
- Fraudulent practice in urine testing (12.1-11-07)
- Interception of wire or oral communications (12.1-15-02)
- Trafficking in intercepting devices (12.1-15-03)
- Property damage by fire or explosion (12.1-21-02(1)(c))
- Negligent act resulting in fire (12.1-21-03.1)
- Property damage by criminal mischief (12.1-21-05(1)(b))
- Interference with telephone during emergency call (12.1-21-06.1)
- Stowing away (12.1-22-05)
- Theft (12.1-23-02)
- Theft of lost property (12.1-23-04)
- Misapplication of entrusted property (12.1-23-07)
- Defrauding secured creditors (12.1-23-08)
- Forgery or counterfeiting (12.1-24-01)
- Simple drug possession (19-03.1-23(7))
- Possession of drug paraphernalia (19-03.4-03), or
- DUI (39-08-01).

Section 3 also serves an important transparency purpose. It requires DOCR to give the Attorney General and the Legislative Council quarterly reports of eligible offenders. This transparency measure will help everyone decipher the “time served” statistics from DOCR. Time spent in transitional facilities when offenders are allowed to check-out and check-in during the day is actually included in an offender’s “time served,” as calculated by DOCR. The reports

required in Section 3 of this bill will give you a window into how much of each sentence is spent, not in cells, but in the community.

Section 4

Section 4 of the bill provides common sense transparency and accountability regarding offenders' eligibility for release programs and transitional facilities. Keep in mind, offenders in these programs and facilities have the privilege to be in our communities without security, and the vast majority of us do not know who they are.

Under Section 4 of SB 2128, 4 changes will be made:

1. Before an offender can participate in these programs, DOCR must be able to determine "with a high degree of reliability" – meaning, the determination must be based on an objective, reliable assessment – that the offender is not a high security risk, is not likely to commit a crime of violence, is "not likely to escape," and is likely to be rehabilitated by the program.
 - Under current law, DOCR's decision that an offender can participate in a release program and live in a halfway house does not have to have any objective or reliable basis at all. DOCR may say they already use reliable data; if so, there should be no objection to Section 4.
 - Also under current law, DOCR can allow an offender who is likely to escape (or, really, just "walk away," which is how it is described) to participate in these programs. DOCR does not even have to consider this issue before granting the privilege of participating in release programs.

2. The Parole Board will have better information from DOCR about the offenders in release programs.
 - Under current law, the Parole Board may approve, disapprove, or defer action on the DOCR Director's decision to let an offender participate in a release program. The Parole Board should know, based on reliable and objective information, whether they will be a high security risk, are likely to escape, are likely to commit violent crimes, etc. Section 4 will require DOCR to make reliable assessments of all these factors so the Parole Board will have better information for its decisions.
3. The Parole Board will set common sense criteria for revoking an offender's participation in a release program.
 - For example, if an offender in a release program breaks a rule indicating they are likely to commit a crime of violence or are likely to try to escape, DOCR will have to end the offender's participation in the release program.
 - Under current law, revoking an offender's participation in a release program is completely discretionary, even if continued participation is likely to result in harm to a member of the public. It is hard to imagine why anyone would object to establishing these kinds of practical and obvious limits on release programs, especially when they are weighed against public safety.
4. Grants of short leave could not be stacked to give one offender more than 72 hours of leave at a given time.
 - Under current law, offenders may be granted leave up to 72 hours by the DOCR Director (for offenders with sentences of 10 years or less) or by the

Parole Board (for other offenders). There is no prohibition now on granting back-to-back leave.

Section 5

Section 5 is a critical piece of this legislation. Although the current law regarding “good time” given to offenders seems straightforward, we have found that it is not applied the way most people think it is. Section 5 will make the law crystal clear. Under Section 5:

- Offenders will actually have to “satisfactorily fulfill” performance criteria before earning good time;
- Depending on how well they fulfill those criteria, offenders may receive “up to” 5 days per month of good time, giving DOCR more flexibility to enforce the performance criteria;
- Good time will be capped at 15 percent of an offender’s sentence.
- Good time will have to be “earned” by offenders for time they actually “served.”
 - Currently, according to documents from DOCR’s staff, in practice even if contrary to policy, when an offender enters DOCR custody, DOCR awards the full amount of good time for the entire sentence imposed on the offender. Good time is not earned month-by-month, although theoretically it could be lost. If the offender is released early for parole (or another reason), the amount of good time is not reduced. Using these methods, DOCR gave at least one offender 40 days of good time per month of time actually served. That is just one example. This inflated amount of good time then appears to be included in the statistics you see regarding the amount of “time served” by offenders in DOCR custody.

Section 6

Section 6 of the bill will reduce the amount of time that can be taken off an offender's sentence for meritorious conduct from two days to one day per month. It also states that meritorious conduct sentence reductions will no longer be used as a special control or security measure. Such measures relate to DOCR operational needs and not meritorious conduct. Calling them meritorious conduct lacks transparency and muddies data.

DOCR claims this provision will cost the state \$645,600 per biennium for 4 new employees because offenders will no longer want to participate on resident crisis support teams when doing so will reduce their sentences by one day per month instead of two days per month. The Attorney General's Office is not aware of any evidence for this.

Sections 7 and 8

Sections 7 and 8 of the bill are similar to provisions we brought forward in 2023 at the urging of law enforcement officers around the state. Being punched, beaten, kicked, or otherwise assaulted is not part of an officer's job, and these assaults should not go unpunished. You can talk to just about any law enforcement officer in the state, and they will tell you about the dramatic increase in the rate of attacks on, and injuries to, law enforcement in recent years. Officers deserve serious deterrence for these crimes and serious penalties for the people who commit them.

In 2023, we heard that criminals already get sentences for these crimes, and it was just as misleading then as it is now. These sentences almost always are concurrent sentences, meaning

they are served at the same time as the criminal's other sentences. In other words, the sentences are freebies for the criminals.

Section 7 will make the sentence for preventing arrest at least 14 days' imprisonment, and, if there is a sentence for an underlying conviction, the 14-day sentence would have to run consecutively to it. Keep in mind, to get this sentence, the criminal has to create a substantial risk of bodily injury to someone besides himself, or do something serious enough to justify the use of substantial force to overcome his resistance to the arrest.

Section 8 will make the sentence for assaulting a peace officer, correctional officer, or other emergency personnel listed in N.D.C.C. 12.1-17-01(2)(a) at least 30 days' imprisonment. If there is a sentence for an underlying conviction, the 30-day sentence would have to run consecutively to it. To get this sentence, the criminal has to willfully cause bodily injury to someone or negligently cause bodily injury to someone with a weapon that is likely to cause death or serious bodily injury.

Section 9

Section 9 of the bill contains public safety guardrails on release programs and, in response to many of the comments we have received, removes certain offenders guilty of drug possession from existing mandatory minimum sentencing. Section 9 amends N.D.C.C. 12.1-32-02.1, the current statute that requires a subset of armed offenders to be sentenced to minimum 2-year or 4-year sentences if prosecutors surmount the additional hurdles embedded in the statute. Currently, these offenders can serve up to 25 percent (6 months) of their sentences, or more when you factor in good time awarded by the DOCR, in transitional facilities on work release,.

Section 9 of the bill will clarify that these violent offenders are not “eligible offenders” as defined in N.D.C.C. 12-48.1-01(2)(b) in Section 3. However, they will be eligible for participation in release programs and transitional facilities after serving 85 percent of their sentences under N.D.C.C. 12-48.1-01(2)(a) in Section 3.

Section 9 also removes certain offenders convicted of felony drug possession from the list of individuals currently subject to the minimum sentencing provisions of N.D.C.C. 12.1-32-02.1. Under current law, if an individual who is prohibited by law from having a firearm is found to possess both a firearm and illegal drugs for their individual use, that individual is subject to the minimum sentences in N.D.C.C. 12.1-32-02.1. Section 9 would remove those individuals from that statute. This change does not affect penalties for illegal drug manufacturers or dealers.

Section 10

Section 10 of SB 2128 will provide real Truth-In-Sentencing. Our criminal justice system rightly gives the Legislative Assembly the power to decide the sentencing ranges for each type of crime – and gives judges the power to sentence offenders found guilty of those crimes by juries of their peers. North Dakotans elect legislators and judges to public office – investing you with your lawful authority and the accountability for exercising it.

Those same citizens believe criminals generally serve their sentences in secured settings that keep us all safe. However, over the past several years, a tremendous amount of bureaucratic discretion has been given to DOCR to move criminals to transitional facilities, to give them unsecured access to our communities, and to award them unearned good time. The pendulum has swung far to the left in our state.

Shortly after filing SB 2128, the Attorney General decided to add a clarifying amendment to Section 10 enhancing the state's parole system because Parole Board members are public officials with accountability to the public for their decisions. That provision is included in our amendment and in my description of this section.

Section 10 will bring common sense, transparent, truth-in-sentencing back to our criminal justice system by setting a floor on the percentage of each sentence a criminal must serve in jail or prison. North Dakotans are surprised when they learn this isn't already the law and are even more surprised to find out what percentage of each sentence a criminal spends in jail or prison. The phrase "time served" has a very different meaning to our citizens than it does to many people familiar with our corrections system. One judge noted recently that a defendant sentenced to two years would serve "two, three months."

Under Section 10 of SB 2128, an offender – with a few exceptions – may:

- Be paroled after 50 percent of their sentence (not including good time) is served;
- Be released after serving a commuted sentence;
- Be released after being pardoned; or
- Be transferred to a transitional facility after 85 percent of their sentence is served.

The exceptions I mentioned are for currently existing requirements for some violent offenders who already have to serve 85 percent of their sentences and a new requirement for dangerous special offenders and habitual offenders, both of which are defined in N.D.C.C. 12.1-32-09, to do the same. Also, as described in Section 3 of the bill, offenders sentenced for the nonviolent crimes listed in Section 3 may be transferred to transitional facilities and granted the privilege of participating in release programs before serving 85 percent of their sentences.

I'd like to address a red herring we have heard about truth-in-sentencing. Section 10 of SB 2128 will not take away any offender's opportunity to participate in rehabilitation programs or programs that help an offender prepare for reentry to the community. Those programs can continue to be offered in prison and other correctional facilities. The Attorney General's Office supports these types of programs and for years has offered to support requests for the resources to ensure they can continue.

Section 11

Similarly to Sections 7 and 8, Section 11 responds to an alarm raised by law enforcement officers around the state for years. Fleeing from law enforcement is an urgent, dangerous, and escalating problem in our state, and we are all on notice from law enforcement that this is due to the lack of consequences for people who flee. We introduced an almost-identical provision to Section 11 in 2023, and, since that time, we have experienced tragic examples of how fleeing can impact officers and their communities.

Section 11 would provide a minimum 30-day sentence for felony fleeing as defined in N.D.C.C. 39-10-71, and the sentence would have to be consecutive to any sentence for an underlying conviction. Also, a State's Attorney could ask a judge to impound a vehicle used in fleeing for up to six months. The State's Attorney and the judge would both be able to consider the individual circumstances of the case and would not be required to request or order the impoundment.

Section 12

To avoid any confusion or litigation, we added an application clause for SB 2128 so the changes it makes will apply to individuals who are charged after then bill takes effect. Although we believe this would be the outcome without the application clause, the clause will provide certainty for affected individuals.

Goals and Values that Compel Passage of SB 2128

Because all of us here love this state and care deeply about the people who live here, we owe it to them to do the hard work necessary to bring down our steadily rising crime statistics. And, yes, methodically collected data from North Dakota's law enforcement agencies prove that they are rising. Everywhere we go, we hear from family, friends, neighbors, and concerned citizens about crime in our communities.

Personally, I moved home to North Dakota to raise my son – a fifth generation North Dakotan – after years of school and work in other states because this is the best place to live and raise a family. We can still make changes to reverse the crime trends we see. Doing so will require the accountability, transparency, and truthfulness in SB 2128.

Accountability

The critical foundation of the work we must do is accountability. Power and authority must remain with the people who are accountable for it.

As SB 2128 demonstrates, the Attorney General's Office is committed to preserving the power of the Legislative Assembly to establish sentencing ranges and the authority of judges to impose sentences that will be faithfully carried out by DOCR.

Each time legislators vote on statutes containing sentencing ranges, they are accountable to their constituents for their decisions.

Judges also are accountable to voters (and subject to Supreme Court rulings) for their sentencing decisions. Judges have particularized training and expertise, and they are present throughout trials and plea hearings. In each case, the judge has a unique, in-depth understanding of the law, context, and nuances that inform their sentence.

The Legislative Assembly's votes and judges' sentences should not be supplanted by a bureaucracy that can release the offender into the community after a fraction of the sentence is served.

Transparency and Truthfulness

Accountability in our criminal justice system cannot be maintained without transparency and truthfulness comprised of at least the following elements that SB 2128 will address.

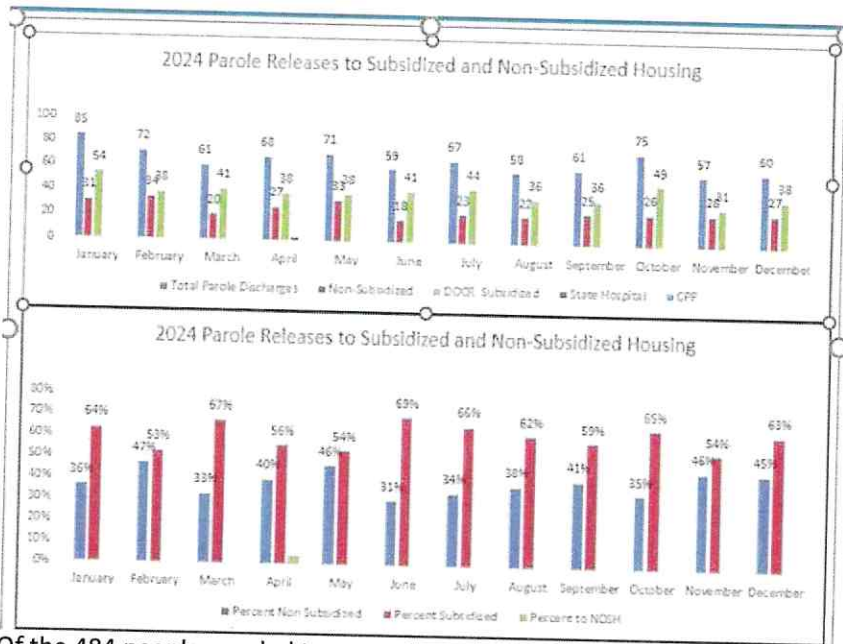
- Words have to have commonly understood definitions.
 - Some relevant terms do not have straightforward meanings now. For example:
 - According to DOCR, their published "recidivism" rates only include offenders who were released from DOCR and are returned to DOCR. The recidivism rates do not include offenders who were released from DOCR and then were sentenced to county jails, federal prison, or other states' jails or prisons. The true recidivism rate is therefore higher than what is published.
 - You may have heard that offenders already serve on average, 70-, 80-, or 85 percent of their sentences. However, as calculated by DOCR,

“time served” includes time spent in transitional facilities where offenders have daily check-in/check-out privileges so they can be out and about in the community, as well as inflated calculations of “good time” (as discussed in my testimony for Section 5 of the bill).

- Outcomes have to be clear, objectively measured, and meaningful.
 - For example, there do not seem to be objective, documented statistics showing that the last several years of the “Norway model” have significantly reduced crime, reduced true recidivism, reduced the number of offenders in prison, or reduced assaults on corrections officers.
- Data and statistics have to be easily available and based on fully described methodologies. For example:
 - Crimes committed by offenders on work release or other release programs should be thoroughly documented, and statistics on these crimes should be readily available, especially to legislators and law enforcement personnel.
 - The rate at which DOCR inmates are prosecuted and sentenced for new crimes after release – regardless of whether they are sentenced to DOCR, county jails, federal prison, or other states’ prisons – should be documented and readily available.
 - The public should be made aware every time an offender “walks away” or absconds from a transitional facility.

- The cost of crimes committed by offenders in DOCR custody and crimes committed by offenders released from DOCR custody – including the costs to apprehend, charge, prosecute, try, reprocess, and rehouse the offenders – should be calculated to determine the true financial costs of the current system.

Thank you for your time today. The Attorney General's Office is always available to discuss these issues and provide additional information, and we urge you to vote for a "DO PASS" on Senate Bill 2128. With that, I'd be happy to answer your questions.



484 paroles to a transitional facility in 2024



Of the 484 people paroled to a transitional facility:

Centre 35 paroles, BTC 28 paroles for a total of 64 total paroles absconded from a TF in 2024.

63 (13%) people absconded from the transitional program while there on parole

Absconder - An adult under supervision can be classified as an absconder when parole and probation staff has verified that the individual no longer resides at their last known address. Parole and probation staff has checked other reasonable leads including the individual's employer, if there is one, and the adult under supervision has not been located for a period of 72 hours.

Intermediate Measure (IM): Community constraints used as strategies to address violations of supervision conditions. Strategies may address risk control, risk reduction or both. This also includes adult under supervision agreed to conditions or programs that may be implemented by the DOCR when an individual violates supervision conditions in lieu of initiating revocation proceedings.

Of the 63 who absconded from a transitional facility while on parole:

5 received intermediate measures and continued at the facility. They did not receive any new criminal charges. Successfully completed parole.

7 received intermediate measures. They did not have any new criminal charges. They continue on parole.

1 was taken back into custody and waiting for action by the February Parole Board. This person had no new criminal charges.

7 were allowed to remain at reported residence after reestablishing consistent PO contact. They did not receive new charges, and remain on parole.

9 were allowed to remain at reported residence after reestablishing consistent PO contact. They did not receive new charges, and successfully completed parole.

9 were allowed to remain at reported residence after reestablishing consistent PO contact. They did not receive new charges. They successfully completed parole.

1 was allowed to remain at reported residence after reestablishing consistent PO contact. They did receive new drug possession charge, but bonded out and parole has since expired.

1 received a new charge of driving an unlit watercraft. He received intermediate measures, but was allowed to remain on parole through successful completion.

4 remain at large, but at this point they do not have new criminal charges.

1 Died

11 were revoked from parole and didn't receive new charges.

1 was revoked from parole and received a new endangerment of child or vulnerable adult charge.

1 was revoked from parole and received a new drug possession charge and drug para possession charge.

1 was revoked from parole and received a new charge of theft of property.

1 was taken back into custody and waiting for action by the February Parole Board. They received a new charge of false information to law enforcement.

1 was revoked from parole and received a new class A misdemeanor charge for preventing arrest.

1 was revoked from parole and received a new charge for terrorizing, trespass and DUS.

1 was revoked from parole and received a new charge for Refusal to Halt-Non Motor Vehicle

What happens after someone absconds on parole?