

SENATE APPROPRIATIONS HUMAN RESOURCE DIVISION COMMITTEE
SENATOR DICK DEVER, CHAIR
FEBRUARY 18, 2025

NORTH DAKOTA DEPARTMENT OF CORRECTIONS AND REHABILITATION
PRESENTING TESTIMONY ON SENATE BILL 2128 FISCAL NOTE

Chairman Dever and members of the Senate Appropriations Human Resource Division Committee, I am Colby Braun, Director of the North Dakota Department of Corrections and Rehabilitation (DOCR). I am requesting some additional time to provide this written and verbal testimony on the Senate Bill 2128's fiscal note.

You have been hearing that SB 2128 targets violent criminals – I am here to explain today how it in fact targets and greatly reduces our public safety. Supporters claim this bill is about punishing violent offenders, but in practice it is designed to shut the door on the investments in rehabilitation and redemption that are proven to make our communities safe.

SB 2128 does not address violent crime. It denies people the opportunity and incentive to rebuild their lives. This bill keeps non-violent offenders incarcerated longer and denies them access to rehabilitative services. This is a disservice to victims of crime. It makes us less safe. It also forces taxpayers to spend \$225 million more on a system that refuses to invest in real solutions.

Justice should be accountability and second chances, not endless punishment with no way out. But in the case of SB 2128, the punishment is the point. The writers of this legislation very clearly stated their position in their testimony before the Senate Judiciary Committee, "Punishment is a bedrock of our criminal justice system. Punishment. Punishment."

What you're not hearing from the champions of SB 2128 is that our current laws do in fact ensure harsh punishment for violent offenders. No matter the claims of the writers of this bill, violent offenders will be the **least** impacted by this legislation. North Dakota law already mandates that violent offenders, or those convicted of murder, manslaughter, class B felony

aggravated assault, kidnapping, gross sexual imposition by force, robbery, and burglary involving a weapon or bodily injury, must serve at least 85 percent of their sentence (see N.D.C.C. § 12.1-32-09.1). Additionally, those who inflict or attempt to inflict bodily injury while using a firearm or dangerous weapon face mandatory minimum sentences without the possibility of parole and serve 100 percent of the sentence minus credit for time served and performance-based sentence reduction credits (see N.D.C.C. § 12.1-32-02.1).

SB 2128 extends this harsh punishment to virtually everyone in our prisons, regardless of their offense or criminal history. SB 2128 bars 90 percent of people sentenced to the DOCR from participating in rehabilitation programs, education, vocational training, and drug and mental health treatment until they have completed 85 percent of their sentences. That ban takes away any incentive for people in prison to try to improve themselves. The vast majority of people in our prisons will be released and returned to the community as our neighbors. The net effect of SB 2128 is to send people home from prison worse off than when they came into prison. This will lead to increased crime and victimization. It will lead to more court cases and court costs. It will increase our prison population and force us to build more prisons. This bill will actually cost our state hundreds of millions of dollars for taxpayers. The harshest part is that SB 2128 costs a fortune and what we get for that cost is that we make everyone less safe.

Some of the people SB 2128 endangers are correctional officers. Any correctional officer will confirm what common sense tells us: "Idle hands are the devil's workshop." When we put people in prison and give them nothing to do and no incentive to improve themselves, misconduct goes up. Rule-breaking goes up. Violence goes up. This creates a more unstable, dangerous work environment for correctional officers and the people we are trying to rehabilitate. Our correctional officers want to help the people they supervise to grow and change in positive ways. We already have a hard time recruiting, hiring, and retaining staff. No one wants to work in a place where they don't feel safe and don't feel like they're making a difference.

Based on the definitions in SB 2128 the North Dakota Department of Corrections and Rehabilitation will not be able to provide educational, treatment, or rehabilitative services in the Missouri River Correctional Center, the Heart River Correctional Center, the James River Correctional Center, or the Dakota Women's Correctional Rehab Center. The only way we could even house offenders in these institutions would be to eliminate all rehabilitative programming we offer in these locations. This legislation would turn the Department of Corrections **and Rehabilitation** into the Department of Warehousing and Neglecting. This is bad for all North Dakotans.

This bill also has an even greater impact on female offenders. As noted, with this bill North Dakota will not have any female facility where education, counseling or other programs can be offered. We need to make sure women in prison receive the programming they need so that they can return home and support their families and, most importantly, their children. Locking women up longer with no programming will harm North Dakota families.

Even the parts of SB 2128 that look sensible are, in fact, dangerous. Page 3, lines 9 – 12 state, "The director of the department of corrections and rehabilitation may participate in programs in which eligible offenders may be gainfully employed or participate in an educational or other rehabilitation program." Importantly less than 10 percent of individuals meet the definition. This is text that sounds sensibly designed, but in fact means that very few people in North Dakota's corrections and rehabilitation system are eligible for rehabilitation prior to serving 85 percent of their sentence. It is likely that people will be released prior to completing court ordered rehabilitative programming. That means we'll be sending more people back to the community in the same or worse condition they were in when they came to us.

The Attorney General has claimed, wrongly, that the \$270 million fiscal note for SB 2128 is too high. If anything, the fiscal note's cost estimate is too low. The fiscal note does not include the increased costs of new crimes and recidivism from failing to rehabilitate people, the court and prosecution costs of those new crimes, victim restitution, and new prison construction. The

math on prisons is simple: keep more people inside longer, and your prison population will eventually increase so much that you need to build more facilities. To put some perspective on this, our new women's facility will cost taxpayers \$166 million to build. North Dakota has also faced lawsuits in the past over equal protection issues involved in failing to provide adequate programming to women, and the costs and settlements of new lawsuits caused by SB 2128 are also not included in this fiscal note.

The Attorney General's claim that the true costs of SB 2128 are lower than the fiscal note is based on the mistaken assumption that our parole board will grant parole to everyone the first time they become eligible for it, under the bill's 50 percent time served mark. In reality, the parole board has been very consistent in denying parole – and virtually always does so for those who do not complete recommended or court-ordered rehabilitative programming. The parole board is right not to grant parole to people who haven't participated in programming that would help them safely re-enter our community. But for SB 2128 to cost less than the \$270 million fiscal note we are providing it would require the parole board to release a large number of people without a chance to participate in any rehabilitative programming, education, or drug or mental health treatment. This will set these individuals up for failure. Even if the parole board did become more lenient in their releases without programming, the cost-savings from those releases would come with the cost of more new crimes. Paroling people from prison with no programming is a recipe for reoffending.

With respect to the Attorney General, his opinion matters on topics within his jurisdiction, like prosecuting crimes – but my expertise is on what we do with people once he is done with them. Based on my experience and on research and data, I can promise you that locking people up longer with less rehabilitation guarantees more crime and enormous costs. SB 2128 moves North Dakota in the wrong direction on public safety and fiscal responsibility.

SB 2128 is an expensive bill that makes our communities less safe. That is bad policy for our state. That is more fear and harm in our communities and homes. This bill targets

rehabilitation and second chances, ultimately forcing a significant fiscal burden on taxpayers. I am happy to answer any questions you have about the bill's language, the fiscal note and what it means in practice for my agency, my employees, and people in prison.