



January 21, 2025

Madam Chair Larson and members of the Senate Judiciary Committee,

Thank you for organizing this hearing and allowing us to share our opposition to SB 2128.

Background

Our organizations are conservative and Christian-based public policy groups with a long history of advocating for social welfare and safer communities. As conservatives, we also believe in limiting the size and scope of government, reducing unnecessary spending of the taxpayers' money, and preserving the idea that government closest to the voters is most responsive to their needs. It is in this context that we write to express our concerns about [SB 2128](#).

Issue Overview

As drafted, SB 2128 makes substantial changes to the state's penal code. The bill mandates that individuals serve 85% of their sentence in prison (known as "Truth in Sentencing" or "TIS"). It would preclude time spent in halfway houses or transitional facilities from counting toward the sentence imposed. SB 2128 would reduce the ability of the Department of Corrections to offer incentives to get inmates to participate in proven anti-recidivism programming such as addiction treatment, job training, or mental health programs. Finally, it would establish mandatory minimums for certain offenses, including fleeing a peace officer and assaulting one. Those convicted of either fleeing or assaulting a law enforcement officer would have to serve the mandatory minimum sentence, imposed consecutively to any underlying sentences.

The [Fiscal Note for SB 2128](#) indicates that it would increase government spending by \$197,505,517 between 2025-2029. This equates to an annual increase in spending of approximately \$49.4 million a year.

So-Called "Truth in Sentencing"

With respect to the 85% requirement, we have seen similar TIS provisions in use in other states. However, there has been very little quality research assessing the outcomes driven by minimum time served requirements. Indeed, according to the data analytics firm [Recidiviz in a 2022 review](#):

Because there are few credible papers that estimate causal effects of TIS laws on outcomes for justice-involved individuals, we find it important to highlight the highest quality research on this topic to best inform decision makers. These two natural experiments from two different states find effectively the same unintended and critical consequences. ***Truth in Sentencing reduces incentives to complete rehabilitative programming, increases risk to safety for correctional officers and individuals in prison, and increases recidivism. If the goal of TIS is to increase public safety, these consequences may cause the policy to backfire.*** (Emphasis added.)

Eliminating Incentives for Anti-Recidivism Programming

According to the North Dakota Department of Corrections, the [state's recidivism rate remains stubbornly high](#) at approximately 40%. Because every case of re-offending means another crime, another victim, and often another costly prison cell, reducing recidivism is the key to cutting crime *and* unnecessary spending.

Indeed, that was [the working principle](#) behind President Trump's signature criminal justice bill, [the First Step Act](#). First Step provides a mechanism for prisoners to earn credits towards early release to home confinement by taking anti-recidivism programming. Six years later, it is clear that the Trump approach has worked.

An [analysis conducted in December 2024 by the non-partisan Council on Criminal Justice](#) indicated that similarly situated inmates who had taken programming under the First Step Act and earned early release had a 55% lower recidivism rate compared to those who did not.

We believe the most effective path to recidivism reduction in North Dakota is to adopt an approach similar to that used by President Trump to improve performance of the federal system. That is, create incentives to encourage inmates to do the hard work of self-improvement so that they leave prison ready to work and become law abiding members of the community. Unfortunately, SB 2128 does just the opposite. It would prohibit the use of earn time credits to incentivize anti-recidivism programming, which will almost certainly lead to an increase in the number of repeat offenders.

Imposition of Mandatory Minimums

SB 2128 would set mandatory minimum sentences for certain crimes – including evading and assaulting a law enforcement officer. To be clear, we have no compunction about holding people accountable for their actions. Evading a police officer is serious. Assaulting one is even more so. People who act in such a way merit meaningful punishments ... to be issued by trial judges, not the prosecutors.

Taking the discretion out of the hands of judges under the rubric of mandatory minimums is seductively simple. However, reliance on mandatory minimums is a one-size-fits-all solution to a criminal problem. Such an approach to sentencing not only removes needed flexibility in the system to actually do justice, it predictably [leads to higher incarceration costs and prison overcrowding](#).

Every crime is unique because individual victims, defendants, and case circumstances are unique. Our belief is that judges should have the power to mete out sentences based on all the facts and circumstances. In fact, that is why we pay judges; to use their judgment to do justice rather than apply a mathematical formula. If a judge is too harsh or too lenient, there is recourse at the ballot box.

Conclusion

While well intended, SB 2128 would have negative consequences for the taxpayers and residents of North Dakota. It would prohibit incentives that have been proven to reduce recidivism. And it would likely lead to higher incarceration costs to be borne by the taxpayers. All without any definitive proof that it would lead to safer communities. We urge you to reject this legislation and stand ready to work with you on legislation that is beneficial to North Dakotans safety and prosperity.

Thank you for your attention and consideration to this critical issue,

Patrick Plein, CPAC



David Bowser, Faith & Freedom Coalition

