

Senate Judiciary Committee
Senator Diane Larson, CHAIR
January 21, 2025

NORTH DAKOTA DEPARTMENT OF CORRECTIONS AND REHABILITATION
PRESENTING TESTIMONY IN OPPOSITION OF SENATE BILL 2128

Chair Larson and members of the Senate Judiciary Committee, I am Colby Braun, Director of the North Dakota Department of Corrections and Rehabilitation (DOCR). Today, I submit this verbal and written testimony in opposition of Senate Bill 2128.

Thank you for the opportunity to discuss this bill and the impact it will have on public and prison safety in North Dakota. Our mission at the DOCR is transforming lives, influencing change, and strengthening community through a vision of healthy and productive neighbors, a safe North Dakota. We enhance public safety by providing effective correctional management and rehabilitative services and fostering successful reintegration into society. Public and prison safety is a top priority. Incarceration temporarily incapacitates people from the public, holding them accountable for their actions and rehabilitation addresses the root cause of criminal behavior. Both are equally important to prevent future crime. We use evidence-based programming that targets substance abuse, mental health, education, and employment skills to prepare people for a successful reentry into the community, enhancing long-term prison and public safety.

We recognize that public safety is not the sole responsibility of the correctional system, but is a shared commitment among communities, policy makers, law enforcement and service providers. The DOCR collaborates with stakeholders to establish transitional housing, employment, and community-based support systems for people reentering society. These partnerships play a pivotal role in addressing the challenges of homelessness, unemployment, and untreated mental health issues which contribute to criminal behavior.

In 2018, President Donald J. Trump enacted The First Step Act, a criminal justice reform law aimed at improving fairness and reducing recidivism in the Federal prison system. The First Step Act reduced sentences that created disparities; allowed eligible inmates to earn credits for early release to home confinement or halfway houses through participation in rehabilitative programs; improved prison conditions; reduced mandatory minimum sentences; broadened judges' discretion in sentencing and increased funding for education, job training and recidivism-reduction programs to help inmates successfully reenter society. Senate Bill 2128 moves North Dakota closer to what the federal system was like prior to the enactment of the First Step Act. It ignores research and places the fiscal burden on taxpayers by focusing solely on prison capacity while eliminating reentry opportunities for most adults in custody.

As the Director of the DOCR, I am obligated under 54-23.3-02 (6) "To work with local and state entities to develop alternatives to incarceration or conventional incarceration for those offenders who can be dealt with more effectively in less restrictive, community-based facilities and programs." Transitional facilities are private facilities or county jails that contract with the DOCR to provide transitional opportunities for parolees and minimum custody inmates. These facilities are pivotal in providing life skills, substance abuse treatment, employment opportunities, budgeting skills, and improving offenders' success as they reintegrate into society. The inmates provide local communities with a workforce, pay taxes, and repayment of financial debt to society like fines, fees, child support, and restitution. The proposed definition of "eligible offender" in this bill removes transitional facility or county jail work release placements for most of the DOCR inmate population. On January 9, 2025, there were 238 men and women serving their sentence in a transitional facility. Under this bill, only 8 of the 238 inmates currently in a transitional facility would be eligible. Only those who committed the described offenses or those who lost good time would be eligible for a reentry program. Generally, those who lose good time do not meet criteria for a transitional facility. To put this

into perspective, upon passage of this bill we would immediately need an additional Missouri River Correction Center and Heart River Correction Center to house these 230 inmates.

Selection and placement in a transitional facility is a complex and calculated process with multiple reviews and approvals established through validated risk tools, policy and procedures. The management and operation of transitional facilities have decades of experience with positive outcomes. Nearly 80% of inmates who participate in an adult transition program at a transitional facility successfully complete. Of those who aren't successful; half are returned to prison for disciplinary reasons and half are returned to prison for non-disciplinary reasons such as medical needs or recent filing of old felony charges. Nearly \$100,000 of fines, fees and restitution were paid in 2024 and over \$400,000 paid in room and board by those residing in a transitional facility. This bill eliminates the successful outcomes while putting the financial burden onto taxpayers and further overcrowding the prison and jail facilities, straining resources, and creating an environment ripe for increased violence.

Section 9, Truth in Sentencing, will negatively impact prison and public safety. Research has shown that truth in sentencing laws will increase infractions in prison resulting in more violence and creating a more dangerous environment for staff and inmates, increase recidivism and reduce participation in rehabilitative and educational programming.

Section 9 of this bill eliminates parole eligibility for nearly every person sentenced to the DOCR. Only those who lose good time and exceed 85% of their sentence will have an opportunity for parole. Historically, the Parole Board has not granted parole to individuals with poor institutional conduct.

The proposed truth in sentencing law and the new definition of eligible offender in Senate Bill 2128 will disproportionately penalize non-violent offenders by eliminating reentry

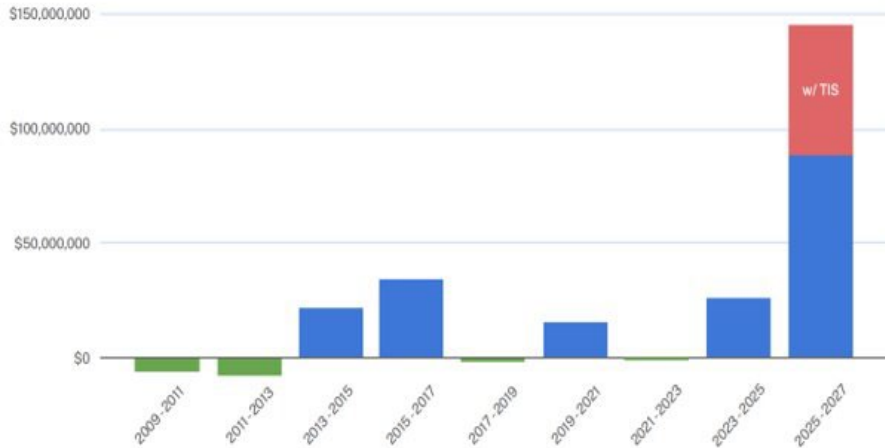
resources and opportunities that are critical for successful reintegration. These changes will significantly impact people in poverty, minorities and especially women. It will disproportionately impact Native American citizens who are already disproportionately represented in our prison system.

Approximately 484 people, or 60% of people granted parole in 2024, were paroled to a transitional facility because they didn't have another residence approved by a parole officer. They had nowhere else to go. Public safety requires people to have their basic needs met. This bill eliminates a supported progression from prison to the community. DOCR will not have the authority to place a person in a step-down program and parole will not be an option for most inmates. According to the National Law Center of Homeless and Poverty, people who have been incarcerated are 10 times more likely than the general public to be homeless, and those who are homeless are 11 times more likely to interact with law enforcement. If the DOCR does not have placement authority for reentry housing, homelessness will increase.

Annually, approximately 80 individuals with significant mental health diagnosis need transition from a DOCR facility through a transitional facility. The Mental Health Release and Integration Committee collaborates with transitional facility staff to ensure continuity of care, including access to provider appointments and necessary medications. Supportive housing plays a critical role in enhancing reentry outcomes, promoting individual well-being, and ensuring community safety. This bill will eliminate this transitional housing option for many of these individuals, forcing them into homelessness or reliance on shelters upon release, with limited support or supervision.

North Dakota is very intentional about where it makes its investments. Last session, the state committed to making various strategic investments, primarily capital, that are more than twice the typical budget increase that we've seen at any time in the history of the DOCR. SB

2128 will push us that much further to add what would be an additional \$56 million in this biennium .

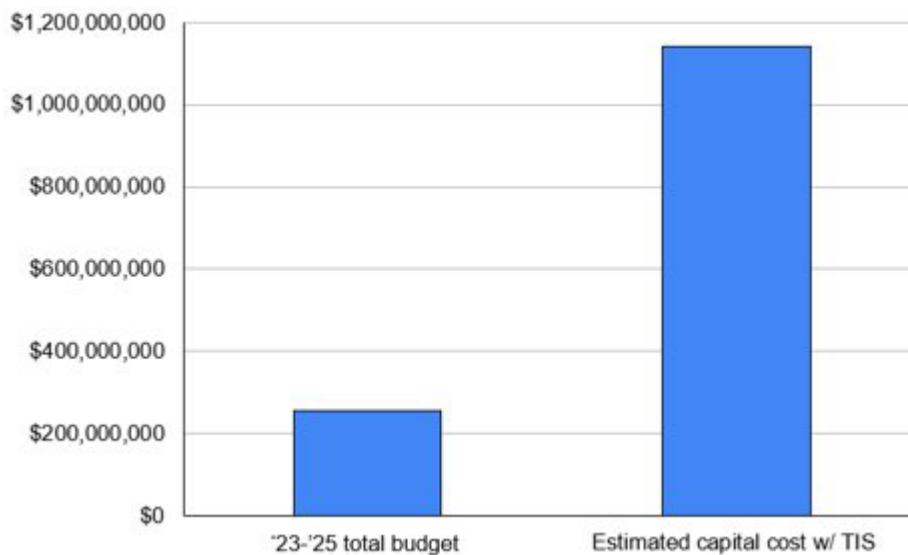


The bar graph above shows the change in legislative appropriation between biennia in North Dakota for the general fund of ND DOCR, going back to 2009 through 2027. The green bars are years where the two-year cycle has a lower total budget legislative appropriation than the prior two-year cycle.

The blue bars indicate an increase of 10 to 30 million dollars prior to the 2025-2027 biennium, which was already projected to be much higher relative to the prior biennia because of capital investments. The red portion of the bar displays the additional amount in which that variance would be driven by truth in sentencing specifically (The red piece is \$56.7 million impact removing parole in FY25-27.)

The fiscal note provided an estimated biennial cost to rent bed space. The below graph takes into consideration that North Dakota may not want to have to pay millions of dollars per biennium for renting bed space and may choose to build or convert beds to support the increase demand. The graph compares an estimated capital cost to expand DOCR's capacity against DOCR's current biennial budget. With more time and analysis, we could be more precise in our

fiscal estimate. For this demonstration, I will use the new women's facility cost as a source for capital costs, (\$161 million for 304 new beds). That's an average cost of \$529,605 per bed, and the projections in the fiscal note for this truth in sentencing measure suggests that there would be an estimated required additional number of beds relative to today of 2,139 beds by FY 2028. If you use the estimated capital costs per bed of \$529,605 for that number of additional beds, it is over a billion dollars.



You can see these estimated capital costs are four times higher than the current biennia's total budget. These numbers could change depending upon use of facility space throughout the state, but this is a good early preview of what credible capital costs could be.

Chair Larson and members of the Senate Judiciary Committee, I want to close by emphasizing the tremendous strides the North Dakota Department of Corrections and Rehabilitation has made over the years in ensuring public and prison safety. Our staff are dedicated professionals working tirelessly with some of the most vulnerable, challenging, and high-risk individuals in the state. They have successfully balanced accountability with rehabilitation, fostering transformation that ultimately leads to safer communities.

The elimination of the parole board, transitional facilities, and reentry programs, coupled with the implementation of an 85% truth-in-sentencing standard, would erase decades of progress, placing undue strain on prison resources, increasing recidivism, and ultimately endangering public safety.

The North Dakota DOCR has long been a model for balancing justice with humanity. Let us not undo that progress by adopting policies that research has shown to be ineffective and harmful. I urge this committee to carefully consider the long-term safety, financial, and human impacts of Senate Bill 2128 and to reject it in its current form.

Thank you for your time and commitment to the safety of all North Dakotans. I stand for any questions.