

Office of Attorney General
Supplementary Materials for Senate Bill 2128
January 2025

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When choosing between Senate Bill 2128, as amended by the Attorney General, 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>.

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

Based on DOCR testimony, in mid-January 2025, of all the inmates on release status, at most 8 were sentenced for one of the many nonviolent crimes listed in the Attorney General's amended Senate Bill 2128.⁹

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.”¹⁰ 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.¹¹

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.¹² According to these statistics, violent crime in North Dakota has risen steadily over the past 10 years. For example, the number of Crimes Against Persons¹³ 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 per 100,000 people also has grown from 1,169 in 2014, to 1,383 in 2019, to 1,582 in 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.¹⁴ 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 2024.¹⁵ 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 Colby Braun, Director, DOCR, before the Senate Judiciary Committee (Jan. 22, 2025)(“Under [S.B. 2128], only 8 of the 238 inmates currently in a transitional facility would be eligible.”).

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

¹¹ Testimony of Kevin Arthaud, Administrator, Bismarck Transition Center, before the Senate Judiciary Committee (Jan. 22, 2025).

¹² See Attorney General Crime Reports, at <https://attorneygeneral.nd.gov/public-safety/crime-data/crime-and-homicide-reports/>.

¹³ 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.

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

¹⁵ Testimony of Kevin Arthaud, Administrator, Bismarck Transition Center, before the Senate Judiciary Committee (Jan. 22, 2025).

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 giving them credit each month they actually serve for the good time they earn, regardless of the department's policies.

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:

- Example:
 - Cori Willard received more than 40 days of good time per month served.
 - She received unearned credit for 210 days of good time she might have earned *if she had not been paroled*.
 - She was sentenced to a 4-year term 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 served less than 6 months.**
 - 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.

- Example:
 - Jaden Patrick received credit for more than 13 days of good time / per month served.
 - He received credit for 125 days of good time he might have earned *if he had not been paroled*.
 - He was sentenced to 4 years 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 during the 457 days he was in custody.
 - Under the statute, he should have been credited only about 75 days of good time total, assuming he did not lose any for poor behavior.

- Example:
 - Scott Michael Huber received credit for more than 11 days of good time / month served.
 - He received credit for 210 days of good time he might have earned *if he had not been paroled*.
 - He was initially paroled in May 2022 after spending roughly 33 months in prison and 40 days in jail.
 - Per DOCR's Legal Records Department, he received credit for 380 days of good time during 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. That parole was revoked in July 2024.

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.
 - What does DOCR mean when they say an inmate “successfully completes” a transition program?

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*.

RECIDIVISM

- ND DOCR’s recidivism rates remain high, despite years of the “Norway model”.
- Definitions matter. ND DOCR’s published “recidivism rates” do not include inmates who were released and then reincarcerated in:
 - County jails,
 - Federal prisons, or
 - Other states’ correctional facilities.¹

As a result, the true recidivism rate is higher than what is reported.

- 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
- Even using DOCR’s definition of recidivism, the latest 3-year rate is 40%.⁴



¹ 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.”

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>.

<p style="text-align: center;">DOCR Fiscal Note Assertions <i>(based on the unamended version of SB 2128)</i></p>	<p style="text-align: center;">Corrections and Responses</p>
<p>SB 2128 eliminates parole.</p> <p>According to the fiscal note, this accounts for almost all the costs (e.g., alternative placement, out of state transportation, FTE, contracts) that DOCR anticipates from SB 2128.</p> <p>According to DOCR, this also accounts for some savings from reduced parole supervisory staffing needs.</p>	<p>The Attorney General’s amendment clarifies that parole is available after 50% of the sentence is served.</p> <p style="background-color: yellow;">According to the fiscal note, this should eliminate most of the cost DOCR expects to incur.</p>
<p>Reducing good time to 15% of an inmate’s sentence will have a “small impact” on lengths of stay. The cost of this impact will be \$60,000 to make changes to the inmate management system.</p>	
<p>Reducing meritorious conduct sentence reduction could result in more need for staff to perform “Resident Crisis Support Team” duties that otherwise would be performed by an inmate.</p> <p>DOCR estimates this would require 4 new FTEs for an estimated cost of \$645,600 per biennium.</p>	<p>How does decreasing sentence reductions (i.e., keeping inmates longer) prevent inmates from performing duties in exchange for time off?</p> <p>Meritorious conduct time off would be reduced from 2 days/month to 1 day/month. DOCR offers no evidence that inmates would not want to earn meritorious conduct as a result. Nor does DOCR explain why 4 FTEs would be needed to staff these teams.</p>
<p>Of the 238 inmates in transition centers as of 1/10/25, only 8 would be eligible to remain there under SB 2128.</p> <p>The cost of a day in a transition center is \$79.72.</p> <p>The cost of a day in a DOCR facility is \$101.</p> <p>DOCR estimates the 230 inmates who would no longer be eligible for transition centers would remain in a DOCR facility for 90 days (half the time they’d be in a transition center) for a total net increase in cost of \$1,254,074.</p>	<p>If the inmates would no longer be eligible for the transitional facilities, then they did not commit one of the nonviolent crimes listed in our bill as exempt from the 85% rule.</p> <p style="padding-left: 40px;">Why are violent criminals spending their sentences in transition centers?</p> <p>It appears DOCR’s estimates are based on an average length of stay in a transition center of 6 months, which is the maximum time a violent offender can spend in one.</p> <p style="padding-left: 40px;">Does this mean DOCR sends every violent criminal to a transition center as soon as they’re eligible under our current laws?</p> <p>DOCR did not include the savings to counties and the state from fewer escapes and cycling fewer escapees through the criminal justice system over</p>

	<p>and over again. Per DOCR testimony before the Senate Judiciary Committee on January 22, 2025, just one transition center “normally” has 5 escapes (“walk aways”) per month.</p>
	<p>DOCR does not account for the reduction in recidivism that will occur due to inmates serving a larger percentage of the sentences judges impose.</p> <p>Inmates will have more time to participate in treatment, rehabilitation, and re-entry programs offered by DOCR and its contractors.</p> <p>Inmates cannot commit new crimes while in jail or prison.</p> <p>ND’s high recidivism rate currently imposes high costs on our counties and our state to:</p> <ul style="list-style-type: none">○ Re-arrest○ Re-charge○ Re-prosecute○ Re-try○ Re-intake○ Re-process through treatment <p>the more than 40% of inmates who commit new crimes after leaving DOCR custody under our current system.</p> <p>The fiscal note also does not account for the cost to crime victims from recidivism due to early release.</p>

DON'T BELIEVE THE MYTHS

<p align="center">S.B. 2128 (as amended by the Attorney General)</p>	<p align="center"><u>NOT S.B. 2128</u></p>
<p align="center">Truth-in-Sentencing Bill</p>	<p align="center">Mandatory-Minimum Sentencing Bill</p>
	<p align="center">Repeat of 2023 legislation</p>
<p>Judges' sentences will be respected and carried out faithfully by the corrections system</p>	<p align="center">Will take away judges' discretion</p>
<p align="center">Parole eligibility after serving 50% of sentence</p>	<p align="center">Eliminates parole</p>
	<p align="center">Parole Eligibility after serving 85% of sentence</p>
<p align="center">Nonviolent offenders can still serve their sentences in halfway houses</p>	<p align="center">Nonviolent offenders have to stay in jail or prison</p>
<p align="center">Other inmates serve 85% of their sentences in correctional facilities before being eligible for halfway houses</p>	<p align="center">Other offenders receive longer sentences</p>
<p align="center">Recovery, re-entry, treatment, counseling and other programs are still available in correctional facilities and halfway houses</p>	<p align="center">Inmates will not be able to participate in programs to get them ready to re-enter society</p>
<p align="center">Parolees and individuals on probation can still reside in halfway houses</p>	<p align="center">Parolees and individuals on probation will be homeless and have no access to re-entry programs</p>
<p align="center">Time off for good behavior must be earned before it is awarded</p>	<p align="center">There is no incentive for good behavior</p>
<p align="center">Time off for good behavior is capped at 15% of a sentence</p>	<p align="center">Time off for good behavior is not available</p>
<p align="center">Inmates will have to be "not likely to escape" before being transferred to halfway houses</p>	<p align="center">Unreasonable restrictions will be placed on the corrections system</p>
<p align="center">Violently resisting arrest, assaulting law enforcement, and felony fleeing will have 14-day or 30-day sentences</p>	<p align="center">The bill is all about imposing long mandatory minimum sentences</p>