

## Amendment 25.8109.01001

### Quick Comparison to AG's Amendment/Bill

- Removes truth-in-sentencing (that required inmates to serve 85% of sentence)
- Restricts judges' discretion and options in a new section of the bill
- Quicker parole eligibility – Eligibility after serving 45% of a sentence instead of 50% of a sentence (see discussion on Section 5)
- Quicker eligibility for **violent** criminals to be moved to transitional facilities (with all the security risks) – Eligibility after serving about 62% of a sentence instead of 85% of a sentence
  - AG's amendment/bill allows **nonviolent** offenders to still be housed in transitional facilities without the 85% threshold
- Gives DOCR discretion to transfer inmates for almost any reason, regardless of whether it's in the public's best interest or needed for safety, security, discipline, or medical care.
  - AG's amendment/bill allows transfers between jails/prisons for “safety, security, discipline, or medical care”
- Increases Good Time from 15% to 25%
  - Current Good Time is approximately 16% (when awarded correctly)
- Applies new penalty for fleeing to all fleeing, not just felony fleeing
- Does not remove simple possession from current (very limited) 85% statute
- Does not include Application Clause that makes the bill prospective only

### Purposes of the Amendment

The discussed rationale for the amendment was:

- Under the Attorney General's amendment/bill, some transitional facilities will not be full and may have to close.
  - What is DOCR's evidence for this?
    - Nonviolent offenders can still serve their sentences in transitional facilities under the Attorney General's amendment/bill.
    - We heard testimony there are more people on probation or parole who need housing and support services that can be offered in transitional facilities.
- Drug counseling and other treatment programs won't be offered in prisons and must be offered in transitional facilities.

- DOCR acknowledges they offer these programs in prison and correctional facilities now. They said they would need to request additional funds to increase staffing for the programs under the Attorney General's amendment/bill. This is in line with the push for more funding and support for these services from several entities.

### **Section 2 (moving inmates to different facilities)**

Section 2 would allow DOCR to transfer prisoners to any correctional facility whenever they want, even when:

- It is not in the best interests of the public;
- It is not necessary for safety or security;
- It is not necessary for discipline;
- It is not necessary for medical care.

DOCR said this change was needed to ensure violent offenders were not accidentally sent to low-level security facilities or vice versa. HOWEVER –

The Attorney General's amendment already allows DOCR the flexibility to transfer prisoners between correctional facilities based on "safety, security, discipline, or medical care."

- Also, NDCC 29-27-07 also allows this flexibility, and more, for prisoners convicted of felonies or class A misdemeanors.
  - *To be consistent with the AG's amendment, and because it is referenced in other statutes, NDCC 29-27-07 should have the last phrase deleted after the word "medical care" to avoid the problem highlighted above.<sup>1</sup>*

### **Section 3 (eligibility for transitional facilities)**

- Section 3 would allow eligible inmates to be moved to a transitional facility after serving 85% of their "term of imprisonment" **after the increased amount of good time reductions have been made.**
  - Even a violent criminal could be moved to a transitional facility after serving about 63-64% of their sentence in prison.
    - "Good time" is currently 5 days/months or about 16-17% of a sentence.
    - The amendment would increase Good Time to 8 days/month (in Section 5) with a combined cap of 25% of the inmate's sentence.
    - The phrase "term of imprisonment" should be defined so it does not become subject to bureaucratic interpretation.

- The amendment uses “sentence” in some places. What is the difference in DOCR’s view?
- By adding in the reference to NDCC 29-27-07, DOCR would have the ability to transfer prisoners whenever they want, even when:
  - It is not in the best interests of the public;
  - It is not necessary for safety or security;
  - It is not necessary for discipline;
  - It is not necessary for medical care.

**Section 4 (Conditions of eligibility for participation in release programs)**

This appears to be unchanged.

**Section 5 (Good time calculations)**

This would increase good time to 8 days/month with a total cap at 25% of the sentence.

- Currently, good time is 5 days/month (about 16-17% of a sentence).

**Section 6 (Meritorious conduct sentence reductions)**

This appears to be unchanged.

**Section 7 (Parole at 45% of a sentence)**

- Parole would be available after an inmate serves **45% of their sentence**.
- Section 7 allows for parole after 60% of a sentence has been served **after the increased amount of good time reductions have been made**.
  - This would lead to earlier parole eligibility than the Attorney General’s amendment, despite appearing to do the opposite.
  - After the increased good time has been awarded, an inmate will have served 75% of their sentence.
    - 60% of 75% of the sentence is 45% of the sentence.
- Also, by adding in the reference to NDCC 29-27-07, DOCR would have the ability to transfer prisoners whenever they want, even when:
  - It is not in the best interests of the public;
  - It is not necessary for safety or security;

- It is not necessary for discipline;
- It is not necessary for medical care.

### **Section 8 (Preventing arrest)**

This appears to be unchanged from Section 7 in the Attorney General's amendment/bill.

### **Section 9 (Assaulting officers)**

This appears to be unchanged from Section 8 in the Attorney General's amendment/bill.

### **Section 10 (Sentencing alternatives available to judges)**

This section is not in the Attorney General's amendment/bill. This section of law provides options for judges, and the Attorney General's amendment/bill does is focused on respect for judge's decisions and carrying them out faithfully. These changes seem counterproductive or unnecessary.

Why is there the addition of "or minimum terms of" imprisonment in Section 10? It does not appear to be necessary but makes the bill look like it is a mandatory minimum bill. Without the amendment, judges already have discretion to impose terms of imprisonment.

Why is the judge's option to *sentence* someone to a community-based program in Section 10 removed? It unnecessarily ties judges' hands.

Why are there the changes on page 11, lines 11-12? If they are unnecessary now, why would we need them under the bill?

**Truth-in-Sentencing (REMOVED)** There seems to be NO provision in this amendment for offenders to serve any threshold amount of their sentence other than the 45% of their sentence to obtain eligibility for parole.

The amendment **removes**:

- The Attorney General's truth-in-sentencing provisions, and
- The Attorney General's definition of "confinement," which would ensure DOCR did not transfer inmates to transitional facilities before the Legislative Assembly determined was appropriate.

The amendment also **puts back**:

- Simple possession of drugs into the state's current 85% law.

- That law applies only to a handful of crimes committed by an armed offender, and it imposes additional requirements (beyond the crime itself) that prosecutors have to prove.
- Based on prosecutors' input, the Attorney General removed simple possession of drugs from that law in his amendment/bill.
- By taking out Section 9 of the Attorney General's amendment/bill, simple possession would remain in the 85% law.

### **Section 11 (Fleeing)**

Section 11 omits the word "felony" from the Attorney General's amendment/bill. That word was used to ensure that the penalty would not apply to misdemeanor fleeing.

### **Application Clause**

The amendment **removes** the application clause that makes the Attorney General's amendment/bill prospective only.

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### **1 § 29-27-07. Commitment of offenders to department of corrections and rehabilitation--Place of confinement**

1. If a judge of the district court imposes a term of imprisonment to a state correctional facility upon conviction of a felony or a class A misdemeanor, the judge may not designate a state correctional facility in which the offender is to be confined but shall commit the offender to the legal and physical custody of the department of corrections and rehabilitation.

2. After assuming custody of the convicted person, the department of corrections and rehabilitation may transfer the inmate from one correctional facility to another for the purposes of safety, security, discipline, medical care, ~~or if the department determines it is in the best interest of the public, the inmate, or the department.~~