

FISCAL NOTE
Requested by Legislative Council
12/19/2014

Amendment to: HB 1030

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill would allow for exceptions where a judge may impose a sentence that is less than the mandatory minimum specified by law.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

There would be no fiscal impact to the court system. There may be incarceration cost savings to the Department of Corrections and Rehabilitation, but that amount can not be determined. The incarceration levels in local jails could be higher or lower due to changes in sentencing, but this amount also can not be determined.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

N/A

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

N/A

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

N/A

Name: Don Wolf

Agency: ND Court System

Telephone: 328-3509

Date Prepared: 12/22/2014

FISCAL NOTE
Requested by Legislative Council
12/19/2014

Amendment to: HB 1030

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12/19/2014

Bill/Resolution No.: HB 1030

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2015 HOUSE JUDICIARY

HB 1030

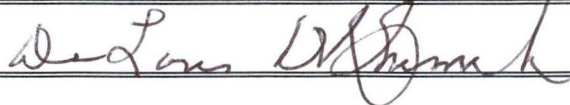
2015 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1030
1/13/2015
21926

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to exceptions from mandatory minimum sentences; relating to the definition of manifest injustice.

Minutes:

Testimony #1, Handout #2

Chairman K.Koppelman: Opened the hearing on HB 1030 with testimony in support.

John Bjornson, Legislative Council: Neutral testimony. (See Testimony #1) (1:51-8:24)

Rep. D. Larson: I was here in 1989 when I sponsored a bill for mandatory sentencing for drug dealers and when I put that bill together there were a lot of citizens that had gathered and had tracked the track record of certain judges and how many of the criminals asked for a change of venue to have that particular judge because they knew that they wouldn't be sentenced and how certain people with drug charges particularly that were distributing drugs were getting charged and recharged without ever being taken off the streets. It passed the House and Senate and Governor Sinner vetoed the bill. The following session is when it passed. I see there are some good safe guards in there in reporting the deviations etc. but was any concern expressed during the interim committee about the effect that that may have putting pressure on certain judges to be the one that is easy on crime.

John Bjornson: I think the mandatory sentence bill was one of the first bills I drafted when I started working here. We did have a retired district judge from Bismarck that came in and asked that the mandatory sentencing be eliminated because they felt it took away the discretions of judges to do this. I don't recall any discussion of judging feeling pressured other than the fact that if the reporting requirements were individualized and put on the internet that there might be some impact on judges ability to exercise that discretion. I think the courts have put a lot of this and they wanted flexibility to work on individualized cases.

Rep. D. Larson: This group that has asked me to draft this bill in 1989 had even had made charts and you could really see the disparity between the judge's rulings on those particular

rulings particularly with drug dealing. There was evidence there that there was one judge in particular that pretty notarized for letting anybody drug related off.

John Bjornson: I believe one setting judge mentioned that people that are incarcerated probably have had a number of chances. Judges I think do exercise some degree of discretion throughout the process. If they are incarcerated there is very good reason for it. The commission did receive information broken down by judicial district that addressed and also by county addressed incarceration by county and Burleigh County incarcerates substantially more people than any other county including Cass County. The data was not broken down enough where anyone could draw a firm conclusion. We could provide you with some of the background for that.

Rep. L. Klemin: Didn't you prepare a background memorandum minimum sentencing?

John Bjornson: Yes we did.

Rep. K. Wallman: Was the bill regarding armed forces and incarcerations and they talked about special courts and veterans court. Did you discuss that?

John Bjornson: The commission during the interim did not get into that discussion. Under this bill the judge would have some discretion to deviate from a mandatory term of imprisonment. The status provided if a person was caught for a drug offense on the street here they would like be close to a school and may be subject to an 8 year term. This would allow the judge to say that is fine but there are other circumstances and maybe a three year term or some other length of term would be appropriate.

Chairman K.Koppelman: Did the commission contemplate venue shopping at all or discuss that idea and was there any concern raised that that could be an outcome of this?

John Bjornson: That was not an issue that was addressed.

Chairman K.Koppelman: When you read the mandate of the commission you said something about alternatives to incarcerations for other than drug offenses. I did not see exclusion for drug offenses in the bill?

John Bjornson: The Commission has a statutory directive to study alternatives and to look at mandatory sentences. Last session SB2340 was amended into a study and that study was to look at alternatives for incarceration for first time felony offenses that were none violent, excluding the distribution of drugs. That study was assigned to the Commission to be part of its general study.

Chairman K.Koppelman: So the intent of the study was to exclude the distribution of drugs, but the Commission has a broader charge than that so that did not need to be exclusion in the bill that came out of the Commission's work. Is that right?

John Bjornson: Yes

Rep. L. Klemin: If the judge threw out the sentence that would be subject to appeal by the prosecutor, wouldn't it?

John Bjornson: Yes that would be an option. (Handout #2) Commission on Alternatives to Incarceration: Sentencing Data

Rep. L. Klemin: I serve on the Commission on Alternatives to Incarceration since the commission was formed some eight years ago. We have spent a lot of money building a prison out there and it is already full. Alternatives certainly are something that has to be considered. Especially with drug offenders since they are usually there because they are addicted and treatment might be a better alternative. Went over the bill. (22:12-26:53) I do not think this section will be used a lot. This is a long ways from repealing mandatory minimums which we were encouraged to do, but the Commission decided that just not what we wanted to do. We just wanted to provide a safety value for some situations that could arise. I would encourage you to give good consideration to this bill and I would be happy to try and answer any questions.

Rep. G. Paur: In some cases doesn't the prosecuting attorney has some latitude in the charges brought against the defendant? Isn't that already a safety value?

Rep. L. Klemin: That is true. Typically what happens is they may charge several different crimes because there might be a particular conduct that falls in the definition of one crime which is very serious and as you go down the list it also applies to other crimes. We do have the situation where the prosecutor can elect not to charge someone with the most serious crime, but that doesn't happen all the time. Usually they just charge them with everything and one of those might stick depending on what the jury finds in the end. Most of these cases are going to go to a jury to decide.

Rep. K. Hawken: I do not like that fact that a young man is considered a sex offender for life and they were both young consenting people at the time. He was found guilty and is forever a sex offender. The judge had no leeway and that is still that way.

Rep. L. Klemin: We did discuss all of these exceptions to that and that was one we included. Sexual contact with a minor is still not going to be allowed under this. There were some others, but I don't remember them. The Commission felt this one should stay in there.

Rep. K. Wallman: We are talking about safety values; is it a safety value if a first time felony is convicted and appeals on the basis of manifest injustice? So that is a safety value as well.

Rep. L. Klemin: I suppose they could appeal it and that might be one of the arguments they might make to the Supreme Court. Under existing law probably every double a felony gets appealed.

Rep. K. Wallman: If our population and crime is going up probably that tax payers should be fined. I am inclined not to pass this because if there is already a safety value in place

for a felony could appeal on the basis of what we are saying is the safety value manifest injustice and I think that is good enough.

Rep. L. Klemin: Double A felon's are murder. Manifest Injustice under existing law only applies in the place of an AA felony.

Rep. Brabandt: The definition of manifest injustice says it means a specific finding by the court. Meaning who specially?

Rep. L. Klemin: The court would be the judge presiding in the particular case.

Rep. K. Hawken: Asked for a cheat sheet from the Attorney General's office that listed all the crimes and what they all were and I would like that.

Chairman K.Koppelman: If the bill were to pass there could be some leeway for drug traffic where it appeared to be the will of the Legislature last session saying this is not an area where we wanted to go. Did your committee consider that at all?

Rep. L. Klemin: We did not get into that kind of discussion. When you look at the criteria in order for a judge to make this kind of deviation; it is very stiff criteria and the judge has to make it on the record at the time of sentencing. If someone is a drug trafficker; you look at all the history pertaining to the offender and this is how the judge determines his sentencing.

Chairman K.Koppelman: With respect to the name of the Commission: it is called the Commission on Alternatives to Incarceration, which implies an either or and what we are talking about here is not that. This is not where there is a mandatory minimum sentence and the court is going to let somebody go free; it is something where the mandatory minimum sentence is extremely harsh for the crime and that court is going to say we are going to reduce that a bit.

Rep. L. Klemin: We are considering reducing our sentencing perhaps, but it would still be incarceration, but maybe not the twenty years.

Chairman K.Koppelman: Seems to me when we dealt with some of the sex offender legislation over the years that there was an exception made in regard to minors when there is a certain spread in age? There was four and five in law now. If you have a 21 year old or a 19 year old and a 14 year old there is a four year window that is there.

Rep. Mary Johnson: The motor vehicle does define manifest injustice. The judge has leeway to reduce the sentence, but also sentence somebody to treatment like they do for DUI's depending on the totality of the circumstances. Is that true of the Section 4?

Rep. L. Klemin: Yes I would say it is.

Rep. Mary Johnson: Discussed cruel and unusual punishment and how it works depending on competency is in question the judge would have leeway to reduce sentencing and suggest some treatment.

Rep. L. Klemin: If the judge finds on the record these criteria that are set out in this act in Section 4 then he can do that. A defendant can appeal saying it is a manifest in justice for him to go to jail. The Supreme Court is very reluctant to substitute its discursions for that of the judge and jury and the district court. They will only do that in situation in which they find there has been an abuse of discretion.

Chairman K.Koppelman: Did the commission consider issues about how are we doing in ND with regard to preparing people to reenter society?

Rep. L. Klemin: Yes. There was a lot of time spent on rehabilitation and people coming back into society and what we can do about that. It was noted that the ND State Penitentiary is Crime University. You go there and you come back out with a lot more education on how to be a criminal. We did discuss alternatives in other situation that for a first time nonviolent felony offences mostly with drugs maybe the best thing to do is not to send somebody to prison. Rather get them into treatment so they could become productive members of society again. We did look at all of those options and the commission has a ton of information on this stuff. Leon Birch, the director talked about these quite a bit and also Pat Bohn from the transitional services of the DOC. Those are not part of this bill.

Dan Donlin, Chief of Police with Bismarck Police Department: Also a setting member on the Alternatives to Incarceration Commission: Judge Accountability was discussed whether it was the smaller jurisdictions that felt they weren't getting the justice because the judges would let people off for political decisions. That is the purpose of Rep. Klemin putting in that posting on the web to at least have the judges held accountable if they are making that decision it is out there for their constituents' to see. Treatment was definitely discussed. There is a need for treatment facilities for the amount of people that need the treatment. Until the treatment options and facilities are available some people just need to go to jail.

Chairman K.Koppelman: Judges don't like mandatory minimums since they want to be able to make the decisions. What has been your experience in law enforcement when you department has had to arrest someone?

Dan Donlin: Is there a flea bargaining kind of thing going on with the courts where there is an effort to try to avoid that? They can lower that now and the heavier hitter drug traffic cases are not an option.

Allan Onstad, ND Association for Justice: Discussed the fact that an 18 year old man or woman put in prison would do nothing for that person in jail for society. Somebody did something really dumb this is where this type of opportunity would apply. There are better ways to correct the problem rather than 8 years in prison.

Rep. K. Wallman: (mike not on)

Allan Onstad: For those first time offenders is 8 years. I don't think that is a deterrent. A young person has no idea they are going to prison for 8 years.

Jennifer Cook, ACLU: Gave background information: Born and raised in ND. Graduated. Had two sons and started working for Magistrate Judge Karen Klein, US Federal Court. I have seen criminal defendants and civil cases alike. Drug offenders are generally addicts. Addicts need treatment. You do receive treatment in prison, but as other have testified today have said you also get an education on how to be a criminal 101. There is no evidence that mandatory minimum penalties deter criminals; especially for young offenders or first time offenders. The ACLU has many partners on this and one of the main goals is to combat mass incarceration. Discussed judge shopping and really the attorneys have the choice on a civil complaint. On a criminal charge the charge is brought in the place in the city or county where that criminal act was committed so the prosecutor has the discretion of charging that defendant out and then that defendant is charged. That case is assigned to a judge so there is no judge shopping. Judges are elected by their constituents and they can vote to remove them from office. A judge must make a record of how and why they sentence a criminal. There are items the judge must consider under the manifest injustice standard. It is not an easy standard to meet. This bill is more a safety value. I think this bill is a good step forward on doing this and giving judge's discretion.

Chairman K.Koppelman: Do you find the terminology unusually harsh or shocking to the conscience to a reasonable individual in any way and trying to define morals? Are they the same general terms that are tough to grasp?

Jennifer Cook: I do agree they are tough to grasp terminology.

Opposition: None

Hearing closed.

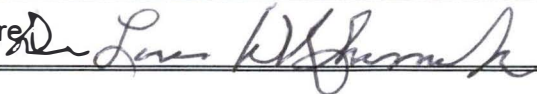
2015 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB1030
1/19/2015
22116

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Minutes:

Proposed amendment #1 & 2

Chairman K.Koppelman opened the meeting on HB1030. This bill deals with exceptions to minimum mandatory sentences.

Rep. G. Paur: (proposed amendment #1) went over the proposed changes. (1:50-2:50) this proposed amendment removes the five year period.

Rep. G. Paur Made a Motion to Move the amendment; Seconded by Rep. D. Larson:

Discussion:

Rep. P. Anderson: So if an 18 year old gets charged with something and when they are 30 years old they get charged with something similar this wouldn't apply?

Rep. G. Paur: No the exemption wouldn't apply.

Rep. L. Klemin: There was a reason for the five years but now I cannot think what it was. The issue here is once you have been convicted of something that is forever. I am not sure that is right. Maybe if you wanted to change the period of time.

Rep. Kretschmar: In the Commission meetings during the interim there was discussion and someone had suggested ten years and they finally agreed in putting in five years. I do think forever is a little too long.

Chairman K.Koppelman: If the amendment fails we could consider another time period.

Rep. D. Larson: This means the next time the period is actually caught and it also means this is the next time based on all the circumstances this is the charge that is being brought to the court so there are some other protections already built into our legal process.

Rep. Lois Delmore: So we are saying if the offense is not similar but an equal crime it really doesn't matter. That is why I think what is in this bill now is probably adequate for what we need.

Voice vote failed.

Chairman K.Koppelman: Further discussion.

Rep. G. Paur: (Proposed amendment #2) this one changes the five year period to a ten year period.

Chairman K.Koppelman: If the bill would go forward as it is the House were to pass it this kind of thing could be considered in the Senate. That is what leads to a conference committee then so if there are differences in the versions of the bill it could be worked out there. Explained the process.

Rep. G. Paur Made a Motion to Move the amendment; Seconded by Rep. Maragos

Discussion:

Rep. G. Paur: If you are 18 years old and commit an offense this would provide a get out of jail free card until you are 28. That should be sufficient time and you should reach enough maturity and enough experience to where you are going to change your ways.

Rep. P. Anderson: It sounds like the Commission decided and I am going to go along with what they decided.

Rep. Mary Johnson: The section applies if the perpetrator were 22. A five year look back would take it back. Then a ten year look back would that take it the minor that maybe closed?

Chairman K.Koppelman: It would not apply for the purposes of mandatory minimum.

Rep. D. Larson: With the Uniform Juvenile Court, when they turn 18 their record is closed at that point. That does not carry forward unless the crime reaches the level it is so egregious that they are tried in an adult court.

Rep. Mary Johnson: Rep. Klemin you are assured that juvenile record will not be considered?

Rep. L. Klemin: Rep. Larson explained it correctly. If the situation was egregious enough that the person was tried as an adult that might be different but then I would say one of these exceptions might apply.

Rep. Mary Johnson: I am unconvinced that juvenile records are sealed. I would prefer to stay with the five year back window.

Rep. D. Larson: This is the area I worked for 22 years with the juvenile court and police department and I know that there were juveniles that had committed some crimes as 18 year olds were applying to West Point and they admitted their offense on their application and they tried to get information showing that they had completely everything required of

House Judiciary Committee

HB 1030

January 19, 2015

Page 3

them and there was nothing available to be able to release. They just shred those reports now after the child has turned 18.

Voice vote failed.

Motion Made to Do Pass by Rep. Lois Delmore: Seconded by Rep. Mary Johnson:

Vote: 10 Yes 2 No 1 Absent Carrier: Rep. Kretschmar

15.0283.01001
Title.

Prepared by the Legislative Council staff for
Representative Paur
January 14, 2015

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1030

Page 3, line 12, after "defendant" insert "previously"

Page 3, line 12, remove "during the"

Page 3, line 13, remove "five-year period before the commission of the offense"

Renumber accordingly

15.0283.01002
Title.

Prepared by the Legislative Council staff for
Representative Paur
January 14, 2015

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1030

Page 3, line 13, replace "five-year" with "ten-year"

Renumber accordingly

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB1030

House JUDICIARY Committee

☐ Subcommittee ☐ Conference Committee

Amendment LC# or Description: 15.0283.01001

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. G. Paur Seconded By Rep. D. Larson:

Representative	Yes	No	Representative	Yes	No
Chairman K. Koppelman			Rep. Pamela Anderson		
Vice Chairman Karls			Rep. Delmore		
Rep. Brabandt			Rep. K. Wallman		
Rep. Hawken					
Rep. Mary Johnson					
Rep. Klemin					
Rep. Kretschmar					
Rep. D. Larson					
Rep. Maragos					
Rep. Paur					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 1/19/2015
Roll Call Vote #: 7

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1030

House JUDICIARY Committee

☐ Subcommittee ☐ Conference Committee

Amendment LC# or Description: 15.0283.01002

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
Other Actions: ☐ Reconsider ☐

Motion Made By Rep. G. Paur Seconded By Rep. Maragos

Representative	Yes	No	Representative	Yes	No
Chairman K. Koppelman			Rep. Pamela Anderson		
Vice Chairman Karls			Rep. Delmore		
Rep. Brabandt			Rep. K. Wallman		
Rep. Hawken					
Rep. Mary Johnson					
Rep. Klemin					
Rep. Kretschmar					
Rep. D. Larson					
Rep. Maragos					
Rep. Paur					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

**2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL NO. HB 1030**

House JUDICIARY Committee

☐ Subcommittee ☐ Conference Committee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. Lois Delmore: Seconded By Rep. Mary Johnson:

Representative	Yes	No	Representative	Yes	No
Chairman K. Koppelman	X		Rep. Pamela Anderson	X	
Vice Chairman Karls	X		Rep. Delmore	X	
Rep. Brabandt	X		Rep. K. Wallman	X	
Rep. Hawken	X				
Rep. Mary Johnson	X				
Rep. Klemin	X				
Rep. Kretschmar	X				
Rep. D. Larson		X			
Rep. Maragos	---				
Rep. Paur		X			

Total (Yes) 10 No 2

Absent 1

Floor Assignment Rep. Kretschmar

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1030: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **DO PASS**
(10 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). HB 1030 was placed on the
Eleventh order on the calendar.

2015 SENATE JUDICIARY

HB 1030

2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1030

3/4/2015

24282

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Openrose

Minutes:

Ch. Hogue: We will open the hearing on HB 1030.

John Bjornson, Legislative Council: This bill came from the Commission on Alternatives to Incarceration, which acts as an interim committee. It is unique in that it's set up by statute. It has its term actually set by statute as well, and is due to expire in 2017. It has been renewed twice. The commission consists of six legislators, representatives of law enforcement, the judicial branch, the Director of Corrections, Director of the Dept. of Human Services, representative of counties, states attorney association. It has a larger non-legislative membership than legislator members. The commission's statutory directive is to find alternatives to incarceration; looking at mandatory sentencing, the commission is also assigned to study last interim as a result of legislation from last interim that addressed mandatory sentencing with respect to drug sentences. This bill deals with mandatory sentencing. The first section, the second and the third section are the preliminary background for it. Section 1 defines manifest injustice. Manifest injustice was defined in the code in one other place. It was under the Motor Vehicle Code definitions in 39-01. It defines manifest injustice under the criminal code. There was a section 19 of section 12.1-01-04; it was a subsection that had been repealed in the past so we amended that section. It leads to the fourth section of the bill. Sections 2 and 3 are cross-references in other sections of the criminal code to manifest injustice where they referred to the definition in 39-01-01. The sections 2 and 3 are overstriking the reference to the 39-01-01 definition and making those references to manifest injustice in the criminal code apply to the definition that we are putting in section one of the bill. In section 4, deals with mandatory sentences; it says that when the court is sentencing an individual who is convicted of a violation for which there is a mandatory minimum sentence, the court may depart from the applicable mandatory

minimum sentence if the court, in giving due regard to the nature of the crime, history and character of the defendant, and the defendant's chances of a successful rehabilitation finds a compelling reason on the record that imposition of the mandatory minimum sentence would result in manifest injustice to the defendant and that the mandatory minimum sentence is not necessary for the protection of the public. It's giving the court this additional flexibility to depart from the mandatory minimum sentence if the court finds that there may be a manifest injustice and that the sentence is unnecessary for the protection of the public. However, that flexibility is limited in subsection 2 of this section, which provides that the flexibility would not apply if the defendant willfully used, attempted to use, or threatened to use serious physical force against another individual or cause serious bodily injury of another individual in the commission of this offense, the defendant used a firearm or other dangerous weapon in a manner that caused bodily injury during the commission of the offense; the defendant committed an offense that involved any sexual contact against a minor, or the defendant has been convicted of a substantially similar offense during the five year period before commission of the offense. Subsection 3 states that if a judge does depart from a mandatory minimum, the judge is to report that departure to the state court administrator, and the state court administrator will be required to make available in electronic form and on the internet an annual report by July 1 of each year that addresses the total number of departures from mandatory minimum sentences. As a matter of background, during the interim the bill originally had more information that was going to be provided, more detailed information, and there was a belief that it wasn't necessary to point to individual judges that are departing from mandatory minimums where this would be a comprehensive report that would just state that this was the number of cases where the court departed from mandatory minimums that year.

Sen. Armstrong: I'm looking at page 3, subsection 2 and I'm trying to figure out what mandatory minimum this would apply to in ND. If you take out all the crimes of violence, which a, b, and c do, then the only other mandatory minimums that I'm aware of, are drug crimes and (d) seems to take away those as well.

John Bjornson: There was some discussion around that issue and I think your initial assessment is accurate that it would generally apply to the drug crimes. I don't think there are any mandatory minimum for some of the serious DUI offenses as well. Originally I believe the draft had a 10 year look back and the point was made by a defense attorney on the commission that would

essentially eliminate probably almost all instances of departures so the commission decided to go to the five year point and the impact I couldn't tell you that.

Ch. Hogue: I'm aware of a couple mandatory minimums; do we have a list anywhere that tells us what all the mandatory minimums are.

John Bjornson: I don't have a specific list but I could get you a copy or I could help the intern get a copy of the new report from the commission and part of that report addresses the statutory mandatory minimums.

Ch. Hogue: That list will be helpful. Thank you. Further testimony in support.

Rep. Lawrence Klemin: I served on the Commission on Alternatives to Incarceration. This bill is a start. We had a lot of discussion in that commission during its meetings on what would be and what wouldn't be covered under this bill. During the interim, we had retired Judge Wefald, who testified before the commission and suggested that the most appropriate thing to do would be to take out all mandatory sentences and leave it to the discretion of the judges as to how to impose sentences. The commission wasn't willing to do that. This bill has a safety valve so that there are going to be cases that come up where people will say, a mandatory sentence imposed on someone isn't right in this case because of whatever reason. But the court wouldn't have any ability to deviate from that, but under this bill, the court would in those kinds of cases. This may not affect a lot of people in this state, but it's going to affect some. I think we need to look at the issue that we got really tough on crime during the '80s and early '90s and we increased the penalties on a lot of things. We came up with a lot of mandatory minimum sentences. Maybe we got too tough. Since then, we've taken some of those class C felonies that we imposed and put them back into class A misdemeanors like they were before. This bill is a safety valve that will cover some cases. We did have a lot of discussion over some of these exceptions. Ultimately, the bill is what we agreed on. There were some that wanted more stringent exceptions and some that wanted less stringent exceptions. I think the goal is to have justice where it is best served and that's why we have that definition of manifest injustice, which as Mr. Bjornson said, came out of the motor vehicle code. It's the same definition; we moved it into the criminal code because it made sense to do that. It's still in the motor vehicle code too. The Commission on Alternatives to Incarceration had a lot of discussion about doing a further study of the issues relating to sentencing and penalties and a variety of things. The Commission has encouraged the Governor, through a

letter from the chairman of the Commission to apply to the Bureau of Justice Assistance, and the Charitable Trust to do a comprehensive study of penalties, sentencing and other things in ND. I also have sponsored a bill, HB 1165, relating to a justice reinvestment initiative and this is what was discussed in our Commission meetings. I put that in bill form to get the ball moving so that passed the House very handily and hope that it will pass the Senate as well. That provides for us to apply to the Dept of Justice and the Charitable trust to do that study if they accept us, and then they would finance some of the costs that Congress has budgeted for that in the past. To date, 17 states have gone through a justice reinvestment initiative study, including SD which just finished one in 2013. The other states that have done this, they've made a lot of changes to their laws relating to such things as mandatory sentencing so we may come up with something else as a result of that study. We had a couple of instances where the court could already deviate from a mandatory minimum, which is right in this bill.

Sen. Armstrong: Was the conversation mostly on drug minimum mandatories; the non-violent crimes.

Rep. Klemin: It probably was and we do have some other bills on that too that came out of the Commission.

Ch. Hogue: Thank you. Further testimony in support. Testimony in opposition. Neutral testimony. We will close the hearing.

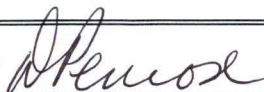
2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1030
3/24/2015
25362

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Minutes:

Ch. Hogue: Let's take a look at HB 1030.

Sen. Armstrong: Explained the amendments. The language on the bottom of page 2, through page 3, line 21, specifically subsection 2; the exclusions were more than the rule. We can't find a reasonable scenario that this law would actually be implemented in the court system, because the exclusions are so many. The minimum mandatories on drug offenses are all for second or subsequent offenses. If you've had a similar offense in the last five years it won't affect the sentence. There is no practical benefit to it. I took out all of it, and in 19-03.1, all I did was add the non-violent drug charges that have minimum mandatories. On page 3, line 3, excluded any time a firearm was involved. We're only dealing with non-violent drug crimes and we are still leaving the minimum mandatories in place. We're just allowing for a judge to deviate from "manifest injustice". Instead of having all of these exclusions, let's go to the one area where we know there's no violence, probably addiction and give them the option. The reason that I removed the reporting requirement is because in two years we won't need the reporting requirement. Every prosecutor and defense attorney, in our committee and in the interim sessions in Alternatives to Incarceration will be able to tell you all across the state who is doing it and who's not doing it. Is it being abused, do we need to tighten it up. That reporting language is kind of federal takeaway language; they do that on sentencing guidelines. If a firearm is involved, you don't get the benefit of this action. It would only be non-violent drug offenses with minimum mandatories. I tried to keep it as narrow as possible to get all the players to support it. (#1)

Sen. Grabinger: It was mandatory that they send something. We went back and forth that one. I don't have a problem with eliminating the reporting requirement.

Ch. Hogue: You are on Alternatives to Incarceration (directed to Sen. Grabinger).

Sen. Grabinger: Yes.

Ch. Hogue: Was there any discussion on this bill that the exceptions are so many that it is overshadowing the rule; that we're not accomplishing anything with this bill.

Sen. Grabinger: I don't know if the discussion went there. My recollection is that there was discussion and this came on behalf of a judge requesting this. Their hands were tied. I think that this was an effort to open the door. We didn't want to go too far on mandatory minimums. The effort was to open the door.

Ch. Hogue: I know this will go to conference committee. Basically, we're saying because over a period of several sessions, the legislature had said that the judges aren't providing harsh enough sentences. We're going to start putting these minimum mandatories in place. We've done that. Now we're kind of going back, at least for non-violent drug offenders.

Sen. Armstrong: The minimum mandatories are still in place. They have to have a finding on the record of "manifest injustice". The national trend, for many years, was minimum mandatories and tough on crime. I think there is definitely a pushback on minimum mandatory sentencing primarily for non-violent offenses, because people are figuring out that it's really expensive to lock people up for a very long time.

Sen. Nelson: How prevalent is manifest injustice.

Ch. Hogue: It depends on the judge.

Sen. Armstrong: And the arguments made. You can argue it in any case. I would guess in a lot of these cases, you will either get some kind of negotiated deal where they will both come in and say that they have 3 little kids, mom's in a wheelchair and this is "manifest injustice" or it will be a part of the argument at sentencing.

Sen. Nelson: But the definition wasn't repealed in 1975.

Sen. Armstrong: No.

Sen. Luick: I move the amendments.

Sen. Armstrong: Second the motion.

Ch. Hogue: We will take a voice vote. Motion carried. We now have the bill before us as amended.

Sen. Luick: I move a Do Pass as Amended.

Sen. Armstrong: Second the motion.

6 YES 0 NO 0 ABSENT DO PASS AS AMENDED

CARRIER: Sen. Armstrong

March 24, 2015

JD
3/24/15

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1030

Page 2, line 28, after "violation" insert "in chapter 19-03.1"

Page 3, line 4, remove the colon

Page 3, remove lines 5 through 16

Page 3, line 17, replace "mandatory minimum sentences" with "the individual is sentenced under section 12.1-32-02.1"

Renumber accordingly

Date: 3/24/15
Voice Vote # 1

2015 SENATE STANDING COMMITTEE
VOICE VOTE
BILL/RESOLUTION NO. 1030

Senate Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: Armstrong Amendment (#1)

Recommendation: ☒ Adopt Amendment

☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation

☐ As Amended ☐ Rerefer to Appropriations

☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Seconded By

Motion Made By Sen. Luick

Sen. Armstrong

Senators	Yes	No	Senators	Yes	No
Ch. Hogue			Sen. Grabinger		
Sen. Armstrong			Sen. C. Nelson		
Sen. Casper					
Sen. Luick					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Voice Vote: Motion Carried

Date: 3/24/15

Roll Call Vote #: 2

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTE

BILL/RESOLUTION NO. 1030

Senate

JUDICIARY

Committee

☐ Subcommittee

Amendment LC# or Description: 15.0283.01003 02000

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Sen. Luick Seconded By Sen. Armstrong

Senators	Yes	No	Senators	Yes	No
Chairman Hogue	✓		Sen. Grabinger	✓	
Sen. Armstrong	✓		Sen. C. Nelson	✓	
Sen. Casper	✓				
Sen. Luick	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Armstrong

REPORT OF STANDING COMMITTEE

HB 1030: Judiciary Committee (Sen. Hogue, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1030 was placed on the Sixth order on the calendar.

Page 2, line 28, after "violation" insert "in chapter 19-03.1"

Page 3, line 4, remove the colon

Page 3, remove lines 5 through 16

Page 3, line 17, replace "mandatory minimum sentences" with "the individual is sentenced under section 12.1-32-02.1"

Renumber accordingly

2015 CONFERENCE COMMITTEE

HB 1030

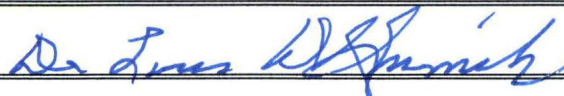
2015 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1030
4/13/2015
26058

☐ Subcommittee
☒ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to exceptions from mandatory minimum sentences; relating to the definition of manifest injustice.

Minutes:

Handouts #1,#2,#3

Chairman Kretschmar: Opened the conference committee hearing at 10:30AM. All members of the committee are present. This bill came out of the Commission on Alternatives to Sentencing and it was in theory to give the judges a little bit of leeway in certain cases where you would think it was too harsh to give the mandatory sentences that are provided in our statutes. They could make a record and show the reasons why they are departing from them. I would ask the Senate committee as to the amendments they put on it.

Senator Armstrong: With the exceptions in the rule it essentially swallowed the rule. Because of the way the exceptions were written there was no minimum mandatory sentencing that we currently have in ND that would apply to it. We just put drug crimes in there because they are the only non-violent minimum mandatory's we have in the code and we made sure it didn't apply to any drug crime that used a firearm. Only the non-violent drug crime minimum mandatories would apply. It opened it up a little more than the House sent to us, but not a lot more because it was only those crimes. It would catch if the judge would allow it enough crimes so that data to see if we wanted to move forward for this to find out if this really is opened up a little. The way it was originally written was really good, but there were just no crimes that it applied to.

Rep. L. Klemin: It was the intention of the Commission of Incarceration. This would be a safety valve act in situations where the court could articulate this would be a manifest injustice to oppose mandatory sentencing on a particular individual. We recognized it wouldn't apply very broadly. I can see where the exceptions in the house bills. (See handouts 1, 2, 3). With the limitation only to drug crimes that maybe we are narrowing it a little bit too much too. I can see where the exceptions we had in the House bill so now with just drug crimes except it doesn't apply where there is an armed defender; that chapter 19-03.1 I handed out one section of that statute it also talks about situations in which the court

could find extenuating for mitigating circumstances which would justify suspension rather than mandatory prison terms. Limiting it to drug crimes which the chapter on Uniform Controlled Substances Act has a provision that does this. I think maybe we limited more with this bill too so I guess Senator Armstrong you said you opened it up a little bit more; I was thinking maybe you closed it a little bit more.

Senator Armstrong: I do believe under current mandatory minimum mandatory law the exclusions in the original bill limited it to drug crimes anyway because they are the only ones that are non-violent. In addition to that with on subsection D you cut out most of the drug crimes as well because the only time minimum mandatories apply in the drug crime is it is a second or subsequent offense. I think the way it was originally written the only crime it could apply would be a drug crime where a firearm wasn't involved and a prior conviction was over five years old. We took the five year thing off was the only difference in the bill and added guns back in. The Senate took the five year thing off to open it up a little bit. We just cited the one chapter it could apply to.

Rep. L. Klemin: What about the provision in 19-03.1-23.2 which allows the court to give a deferred or suspended sentence even if there is mandatory sentence if it is first violation? Are you saying this bill would allow the same thing for a second violation?

Senator Armstrong: This statute handed out does almost nothing. This bill is pretty narrow in scope.

Rep. L. Klemin: Seems like we are really not doing much. It seems like we are both saying neither the original House bill nor the Senate amendments accomplishes a whole lot.

Is there some other way we could address this?

Senator Armstrong: When you get into the second and subsequent offenses in our drug code there are significant minimum mandatory sentences. By the time you have got caught dealing three times we are going to throw you in jail. As it is currently written it doesn't do a ton, but it does allow you to make some of those arguments in your second subsequent non-violent drug offenses. It does open it up more than the original bill because of removing the timeline.

Rep. L. Klemin: How would we know if it is being used at all you also deleted the part about the judge recording that they were doing this?

Senator Armstrong: We talked about that. It tracks with the federal language debating from the minimum mandatory sentences with very similar language. ND is a small enough state that we know all the players between Aaron Burst and the people who lobby for the judge and the court concerned it putting it in my area at all. I don't think that would be a deal breaker for the Senate side at all.

Rep. L. Klemin: The recording was to give us an idea whether it was being used or not. So I am thinking rather than relying on memory of people coming before a committee if we just had some kind of report from the Supreme Court then it would be easier to follow.

Senator Armstrong: I would be comfortable with that.

Senator Nelson: You are saying put subsection 3 back in and you are OK with the rest of the bill?

Rep. L. Klemin: I am saying the new language you put at the end under 12.1-32-02.1 put that up there right after on subsection 2; saying subsection 1 does not apply if that one doesn't and leave subsection 3 the way it was?

Senator Armstrong: We would be comfortable with that. We have enhancements within schools that come into play a lot and the vast majority of those cases have nothing to do with the school they are located near. You could see them getting off the enhancement and just going to the regular minimum mandatory in there. This is really a small step, but there are areas where it will definitely be attempted to be utilized.

Rep. L. Klemin: Let's look at some of these other sections you took out? Like with the sexual contact with a minor. What is the problem with that as an exception?

Senator Armstrong: We just cited to the drug code so none of those would apply anymore.

Rep. K. Wallman: You took out the exceptions because they are already in code somewhere else and you wanted this mandatory minimum sentence manifest injustice to only apply to the drug portion of the code?

Senator Armstrong: Originally it could only apply to the drug code anyway. That is how it came to us anyhow. This is just a different way of writing it.

Rep. K. Wallman: I would prefer to leave subsection 2 in and section 4; subsection 3 which were already discussed. I think it is useful to have it spelled out.

Rep. L. Klemin: I am not sure I followed you what you wanted to take out?

Rep. K. Wallman: I like a,b,c spelled out. That those would continue to be mandatory minimum sentence.

Senator Armstrong: When you only cited to 19-03.1 which is the change on page 2, line 28. I think Rep. Wallman and I are saying the same thing. The level of detail that occurs on page 3 no longer is necessary once you do that on page 2. They only apply in that section of the code. None of those exceptions exist in 19 which is the drug code. If you keep subsection b in the exception then the bill really doesn't do anything. I agree a b and c should stay in.

Rep. L. Klemin: Following your rational on these things why did we put in the reference to armed defenders then?

Senator Armstrong: The Senate put it in to try to honor what the House alternative you sent us. Any time a firearm is involved if it is not a crime of violence it sure could be in a

hurry. Without that in there you would see a lot more blow back from prosecutors and law enforcement. We are trying to start dealing with some of these issues and we would prefer to have everybody on the same side when we start so we can come back with data that says crime rates aren't going up. The state's attorney helped us work on the amendments in the Senate and they were comfortable with them.

Chair Kretschmar: I am looking at 02000 do we are we should keep section 1?
In section 2 are there any changes we would propose?

Rep. L. Klemin: Sections 2 & 3 are just cross references. The traffic laws have definition of manifest injustice that we borrowed for this and put it into the criminal code so in sections 2 & 3 we don't need to cross reference the traffic.

Senator Armstrong: That was to make sure the exemptions to the minimum mandatory didn't apply to DUI because we just passed that bill two years ago. I don't think they would be necessary in this bill anymore if we did the changes to 3 & 4.

Rep. L. Klemin: When working with version 2000 we are adding back in subsection 3 on the reporting. So we are taking what the Senate had and putting the reporting.

Motion Made for the Senate to recede from the Senate amendments and amend by Senator Armstrong and further amend; Seconded by Rep. L. Klemin:

Discussion: None

Rep. L. Klemin: So the end product with look like the Senate bill in Subsection 3 on reporting added in.

Roll Call Vote: 6 Yes 0 No 0 Absent.

Adjourned.

April 13, 2015

SL
4/13/15

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1030

That the Senate recede from its amendments as printed on page 1216 of the House Journal and pages 921 and 922 of the Senate Journal and that House Bill No. 1030 be amended as follows:

Page 2, line 28, after "violation" insert "in chapter 19-03.1"

Page 3, line 4, remove the colon

Page 3, remove lines 5 through 12

Page 3, line 13, replace "five-year period before the commission of the offense" with "the individual is sentenced under section 12.1-32-02.1"

Renumber accordingly

Date: 4/13/2015
Roll Call Vote #: 1

2015 HOUSE CONFERENCE COMMITTEE
ROLL CALL VOTES

BILL. HB 1030

House Judiciary Committee

- Action Taken ☐ HOUSE accede to Senate Amendments
☐ HOUSE accede to Senate Amendments and further amend
☐ SENATE recede from Senate amendments
☒ SENATE recede from Senate amendments and amend as follows

☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

Motion Made by:

Sen. Armstrong

Seconded by:

Rep. Klemin

Representatives					Senators				
	<u>4</u>			Yes	No		<u>1</u>		
Rep. Kretschmar (Chair)	<u>✓</u>			<u>✓</u>		Senator Armstrong	<u>✓</u>		
Rep. L. Klemin:	<u>✓</u>			<u>✓</u>		Senator Luick	<u>✓</u>		
Rep. K. Wallman:	<u>✓</u>			<u>✓</u>		Senator Carolyn Nelson	<u>✓</u>		
Total Rep. Vote						Total Senate Vote			

Vote Count

Yes: 6

No: 0

Absent: 0

House Carrier

No Carriers

Senate Carrier

No Carriers

LC Number

15.0283.01004

of amendment

LC Number

03000

of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

REPORT OF CONFERENCE COMMITTEE

HB 1030: Your conference committee (Sens. Armstrong, Luick, Nelson and Reps. Kretschmar, Klemin, Wallman) recommends that the **SENATE RECEDE** from the Senate amendments as printed on HJ page 1216, adopt amendments as follows, and place HB 1030 on the Seventh order:

That the Senate recede from its amendments as printed on page 1216 of the House Journal and pages 921 and 922 of the Senate Journal and that House Bill No. 1030 be amended as follows:

Page 2, line 28, after "violation" insert "in chapter 19-03.1"

Page 3, line 4, remove the colon

Page 3, remove lines 5 through 12

Page 3, line 13, replace "five-year period before the commission of the offense" with "the individual is sentenced under section 12.1-32-02.1"

Renumber accordingly

HB 1030 was placed on the Seventh order of business on the calendar.

2015 TESTIMONY

HB 1030

COMMISSION ON ALTERNATIVES TO INCARCERATION

1781030
1-13-15
pg 1

The Commission on Alternatives to Incarceration was created by 2005 House Bill No. 1473. The bill, which was codified as North Dakota Century Code Section 54-35-24, required the Chairman of the Legislative Management to select the Chairman and Vice Chairman of the commission and provided for the membership of the commission as follows:

1. Three members appointed by the Governor, one of whom must be an academic researcher with specialized knowledge of criminal justice sentencing practices and sentencing alternatives;
2. The Attorney General or the Attorney General's designee;
3. Two members appointed by the Chief Justice of the Supreme Court;
4. The Director of the Department of Corrections and Rehabilitation;
5. The Director of the Department of Human Services;
6. Two local law enforcement officers appointed by the Attorney General;
7. One state's attorney appointed by the North Dakota State's Attorneys Association;
8. Three members of the House of Representatives, two of whom must be selected by the leader representing the majority faction of the House of Representatives and one of whom must be selected by the leader representing the minority faction of the House of Representatives;
9. Three members of the Senate, two of whom must be selected by the leader representing the majority faction of the Senate and one of whom must be selected by the leader representing the minority faction of the Senate; and
10. One representative of the North Dakota Association of Counties appointed by the Association of Counties.

Section 54-35-24 requires the commission to study sentencing alternatives, mandatory sentences, treatment options, the expanded use of problem-solving courts, home monitoring, and other related issues. That section requires the commission to provide to the Governor information and recommendations for the Governor's consideration in time for inclusion of the recommendations in the biennial executive budget.

In addition to its statutory study directive, the Legislative Management assigned to the commission the responsibility to conduct the study directed by 2013 Senate Bill No. 2340. That bill provided for a study of the sentencing alternatives to incarceration for first-time offenses that are nonviolent, excluding the distribution of drugs.

Commission members were Senators Ron Carlisle (Chairman), John Grabinger, and Margaret Sitte; Representatives Lawrence R. Klemin, William E. Kretschmar, and Marie Strinden; Governor's appointees Dan Donlin, Mark A. Friese, and Dr. Gary Rabe; Attorney General's designee Thomas L. Trenbeath; Chief Justice's appointees Surrogate Judge Mary Muehlen Maring and Justice Lisa McEvers; Director of the Department of Corrections and Rehabilitation Leann K. Bertsch; Director of the Department of Human Services Maggie D. Anderson; Attorney General's law enforcement officer appointees Paul D. Laney and Jason T. Olson; North Dakota State's Attorneys Association appointee Meredith Huseby Larson; and North Dakota Association of Counties' appointee Duane Johnston.

The commission submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2014. The Legislative Management accepted the report for submission to the 64th Legislative Assembly.

BACKGROUND

Department of Corrections and Rehabilitation

In 2013 the Legislative Assembly appropriated \$180,915,389 from the general fund and \$36,134,922 from other funds for the Department of Corrections and Rehabilitation for the 2013-15 biennium, which is an increase of approximately 13 percent over the 2011-13 biennium appropriation. The appropriation for the department provided for an increase of 20 full-time equivalent (FTE) positions, which increased the total number of FTE positions within the department to 814.29.

The appropriation included \$26,002,845, a decrease of \$1,600,000 from the 2011-13 biennium appropriation, for contract housing and transitional facilities for male inmates housed at the Missouri River Correctional Center, county jails, and private facilities. The 2013-15 appropriation to the department also included \$8,966,204 to contract to house

HB 1030
1-13-15
ERG 2

female inmates at the Dakota Women's Correctional and Rehabilitation Center, which is an increase of \$507,521 from the 2011-13 biennium appropriation.

Adult Services Division

Section 12-47-01 provides for the establishment of the State Penitentiary. The main prison complex in Bismarck houses maximum and medium security male inmates. As of the end of December 2013, the State Penitentiary housed 696 male inmates. The James River Correctional Center in Jamestown is classified as a medium security housing facility and, as of the end of December 2013, housed 419 male inmates. The Missouri River Correctional Center is south of Bismarck and has no fences or barriers to contain the inmates. The Missouri River Correctional Center has approximately 150 prison beds and houses minimum security male inmates whose sentences are not less than 30 days nor more than one year. As of the end of December 2013, the Missouri River Correctional Center housed 142 inmates. The division offers addiction treatment services, a sex offender treatment program, and mental health programs through its treatment department. The division's education program offers a variety of education programs, skills training, and vocational programs. In addition, the division offers work experience through Roughrider Industries.

Parole and Probation Division

The department has 15 offices across the state staffed by parole and probation officers who manage offenders on parole or supervised probation and complete presentence investigations when ordered by courts. The officers supervise offender compliance with the supervision conditions and provide cognitive, behavioral, and other forms of counseling services.

The division manages the Tompkins Rehabilitation and Corrections Center; operates or participates in drug court programs, global positioning monitoring of offenders, drug and alcohol testing of offenders, and monitoring of sex offenders; and contracts for services with halfway houses and the Bismarck Transition Center to provide transition services.

The Tompkins Rehabilitation and Corrections Center is a Department of Corrections and Rehabilitation-funded program at the State Hospital. The center consists of three 30-bed wards--one ward (30 beds) for females and two wards (60 beds) for males. As of the end of December 2013, the center housed a total of 66 inmates.

Dakota Women's Correctional and Rehabilitation Center

During the 2003-05 biennium, the Department of Corrections and Rehabilitation began to contract with the Dakota Women's Correctional and Rehabilitation Center in New England to house its female inmates. The Dakota Women's Correctional and Rehabilitation Center is owned and operated by the Southwest Multi-County Correction Center Board. The prison at the Dakota Women's Correctional and Rehabilitation Center consists of a 70-bed minimum security unit, a 40-bed medium security unit, and a 16-bed orientation unit. In May 2006, a five-bed high security unit was added to the facility. As of the end of December 2013, the Dakota Women's Correctional and Rehabilitation Center housed 120 state inmates.

Division of Juvenile Services/Community Services and Youth Correctional Center

The Division of Juvenile Services has eight regional offices serving the eight human service regions across the state and is staffed to provide supervision to juveniles committed by the courts. The division also oversees the Youth Correctional Center, which is located west of Mandan and is the state's secure juvenile correctional institution. The Youth Correctional Center serves as a secure detention and rehabilitation facility for adjudicated juveniles who require the most restrictive placement and maximum staff supervision and provides appropriate programming to address delinquent behavior.

Juvenile programming at the Youth Correctional Center includes drug and alcohol programming; child psychiatric and psychological services; sex offender programming; a pretreatment program for juveniles who are difficult to manage; and a security intervention group program to inform, educate, and provide juveniles with alternatives to gang activity and gang affiliation. The Youth Correctional Center provides adjudicated adolescents an opportunity to complete or progress toward completing their education coursework while in residence through an accredited junior high and high school.

Penalties for Nonviolent Crimes

Mandatory Minimum Sentences in North Dakota

During the 1980s and early 1990s, many states, including North Dakota, enacted laws providing for mandatory minimum sentences for certain offenses. Mandatory minimum sentencing laws require a judge to impose a sentence of at least a specified length if certain criteria are met. The proponents of mandatory minimum sentencing laws contended the certainty and severity of the mandatory minimum sentences would reduce crime by deterring individuals from committing crimes and keeping criminals incarcerated longer. However, critics of the laws argued the

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requirements unduly removed discretion from judges and would ultimately result in significant increases in the number of individuals incarcerated.

In 1983 the Legislative Assembly enacted Senate Bill No. 2373, which established mandatory minimum terms of imprisonment for offenders with multiple driving while under the influence offenses. The Legislative Assembly in 2013 House Bill No. 1302 increased the mandatory minimum sentences for driving under the influence offenses.

In 1993 the Legislative Assembly enacted House Bill No. 1062, which established mandatory minimum terms of imprisonment for the manufacture, delivery, or possession with the intent to deliver certain controlled substances. The bill amended Section 19-03.1-23 to provide specified minimum sentencing requirements based upon the classification of the controlled substance and whether the offender had previous offenses. The bill also established mandatory minimum sentences if the violation occurred within 1,000 feet of a school and if the offender was over the age of 21 and used a minor in the commission of the crime. Additionally, the bill amended Section 12.1-32-02.1 to impose mandatory sentences if the offender possessed a dangerous weapon or firearm while in the course of committing the offense. The bill created Section 19-03.1-23.2, which prohibits a court from deferring imposition of a sentence and from suspending a mandatory term unless the court finds the offense was the defendant's first violation and extenuating or mitigating circumstances exist to justify the suspension.

Subsequent Legislative Assemblies, including the 2005 Legislative Assembly, have established minimum mandatory sentences for sex offenders and imposed requirements with respect to the service of sentences.

Section 12.1-32-09.1, which was enacted by the Legislative Assembly in 1995 and amended in 1997, provides an individual convicted of a crime that classifies the individual as a violent offender and who is sentenced to imprisonment is not eligible for release from confinement on any basis until 85 percent of the sentence imposed by the court has been served or the sentence is commuted.

Section 12.1-20-03.1, which was enacted by the Legislative Assembly in 1997 and amended in 2005, prohibits a court from deferring imposition of a sentence of an individual convicted of the continuous sexual abuse of a child. In 2005 the Legislative Assembly in House Bill No. 1313 further provided if, as a result of injuries sustained during the course of the offense classified as gross sexual imposition, the victim dies, the offense is a Class AA felony, for which the maximum penalty of life imprisonment without parole must be imposed.

In 2005 the Legislative Assembly enacted Senate Bill No. 2341, which provided for the establishment of a pilot project in Pembina, Walsh, and Grand Forks Counties effective three months from the date of receipt of a federal grant for meth treatment applied for by the Department of Human Services. The bill provided when an individual located in Walsh, Pembina, or Grand Forks County pled guilty or was found guilty of a felony violation of Section 19-03.1-23(6) and that individual had not previously pled guilty or been found guilty of any offense involving the use, possession, manufacture, or delivery of a controlled substance or of any other felony offense, the court would be required to impose a period of probation of not less than 18 months in conjunction with a suspended execution of a sentence of imprisonment, a sentence to probation, or an order deferring imposition of sentence. The bill further provided upon a plea or finding of guilt of the individual, the court would be required to order a presentence investigation, including a drug and alcohol evaluation conducted by a licensed addiction counselor. If the licensed addiction counselor recommended treatment, the court was required to order the individual to participate in an addiction program licensed by the Department of Human Services as a condition of the probation. The court was then required to commit the individual to treatment through a licensed addiction program for up to 18 months until the individual would be determined suitable for discharge by the court. In 2007 the Legislative Assembly expanded the assessment and treatment program statewide in House Bill No. 1015.

Incarceration Rates and Mandatory Sentences

According to the 2013 Department of Corrections and Rehabilitation inmate population report, the number of inmates incarcerated for minimum mandatory sentences has increased from 92 at the end of 2008 to 99 at the end of 2013. The population of inmates incarcerated under the 85 percent "truth-in-sentencing" law increased from 234 at the end of 2008 to 308 at the end of 2013. The following table compiled by the department summarizes the inmate population on December 31, 2013, compared with the same time during the previous five calendar years:

Inmate Count on December 31, 2013 (Minimum Mandatory)						
Offense	2008	2009	2010	2011	2012	2013
DUI/APC	19	15	22	21	24	10
Driving under suspension	2	0	1	0	0	0
Drug offenses (not alcohol)	22	28	31	35	37	31
Reckless endangerment	2	0	2	2	0	0
Assault	8	9	11	15	11	9
Burglary with weapon	0	0	0	0	0	0

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Inmate Count on December 31, 2013 (Minimum Mandatory)							
Offense	2008	2009	2010	2011	2012	2013	
Felonious restraint	0	0	0	0	0	0	0
Kidnapping	1	1	1	1	1	1	1
Sex offense	3	5	8	9	8	10	10
Terrorizing	8	7	5	8	10	14	14
Robbery	12	9	7	6	5	9	9
Negligent homicide	0	0	2	2	1	1	1
Manslaughter	1	1	1	1	0	0	0
Murder	12	11	11	13	14	14	14
Felon in possession of a firearm	0	1	0	1	0	0	0
Offender registration violation	2	2	3	3	3	0	0
Total	92	89	105	117	114	99	

Inmate Count on December 31 (85% Truth-In-Sentencing)						
	2008	2009	2010	2011	2012	2013
Number of inmates having 85% TIS	234	233	265	274	280	308
Average sentence in months	91	97	96	99	111	101

Fiscal Year Admissions of 85% Truth-in-sentencing Inmates						
	Fiscal Year 2008	Fiscal Year 2009	Fiscal Year 2010	Fiscal Year 2011	Fiscal Year 2012	Fiscal Year 2013
Number of inmates having 85% TIS	77	80	85	96	85	112
Average sentence in months	49.66	45.86	45.31	43.59	55.32	39.25

2011-12 Interim Study Recommendations and 2013 Legislation

During the 2011-12 interim, the commission received reports from the Department of Corrections and Rehabilitation and the Department of Human Services regarding programs and initiatives implemented and administered by those entities. In addition, the commission examined issues related to the penalties and the monetary thresholds for determining whether a theft offense is a felony. The commission also studied driving under suspension offenses and penalties and the imposition of fees upon offenders by the courts.

2013-15 Budget Recommendation

The commission recommended the Governor include increased funding in the executive budget for the Robinson Recovery Center, including funding specifically addressing the expansion of beds available for female clients. The 2013 Legislative Assembly increased funding for the Robinson Recovery Center by \$296,000 for the 2013-15 biennium.

Temporary Restricted License Legislation

The commission recommended and the Legislative Assembly enacted 2013 House Bill No. 1027 to provide additional flexibility to the Department of Transportation in providing temporary restricted licenses; expand the potential uses of a temporary restricted license to include use for attendance at an appropriate licensed addiction treatment program or a treatment program ordered by a court or to use as necessary to prevent the substantial deprivation of the educational, medical, or nutritional needs of the offender or an immediate family member of the offender; and authorize a court to dismiss a charge for driving under suspension if the defendant provides proof the defendant has obtained reinstatement of the operator's license within 60 days after the date of the offense.

TESTIMONY AND COMMISSION CONSIDERATIONS

Department of Corrections and Rehabilitation

The commission received reports from representatives of the Department of Corrections and Rehabilitation regarding programs and initiatives at the department which provide alternatives to incarceration or which are intended to keep offenders from reoffending.

Prison Populations and Sentencing

Representatives of the Department of Corrections and Rehabilitation presented the commission with information regarding changes and trends in prison populations and sentencing data. Since 1992, the population of the state has increased approximately 13 percent. However, over that same period, the annual number of inmate admissions for the department has tripled. Under 2013 Senate Bill 2015, the department was authorized to refuse to admit inmates sentenced to the physical custody of the department when the admission of inmates will exceed the maximum operational capacity of the penitentiary and its affiliated facilities and result in the department exceeding its authorized legislative appropriation for contracting for housing inmates in other correctional facilities. Representatives of the

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department indicated that although most of the state prison facilities are at or near capacity, the department has not had to implement the prison management plan to address a situation in which a prison bed is not available.

Representatives of the department presented the commission with data analyzing sentences imposed throughout the eight judicial districts and data relating to admissions by county. The data indicated most offenders under the supervision of the department have been sentenced to terms of less than three years. For the year 2013, the analysis indicated the number of admissions from Burleigh County exceeded the total number of admissions from the next two highest counties combined--Grand Forks and Cass Counties. Although it was indicated additional analysis would be necessary, it was suggested prosecutorial decisions and sentencing practices were likely explanations for the significantly higher number of admissions from Burleigh County.

Recidivism Reduction

The commission received reports from representatives of the Department of Corrections and Rehabilitation relating to efforts to reduce recidivism. The department underwent an evaluation of its programs from outside observers to examine the capacity and content of the programs and how closely the programs meet principles of effective intervention. The purpose of the evaluation was to measure whether the programs have the capability to deliver evidence-based interventions and services for offenders and to evaluate the extent to which the programs meet the principles of risk, need, responsivity, and treatment. The results of the evaluation indicated the 3 male prison facilities were highly effective in adhering to risk responsivity principles and the programs were within the top 18 percent of correctional programs audited.

The department has developed programs to address conflict resolution, alternatives to violence in relationships, sex offender treatment, and coping skills. In addition, the department is equipped to provide individual interventions and provides cognitive behavioral interventions for substance abuse. Beyond the programs for incarcerated offenders, the department has implemented evidence-based programs to reduce recidivism for offenders on community supervision. The department has trained all probation officers in core correctional practices designed to provide more effective supervision. Those practices include developing and implementing an actuarial assessment with a structured case plan, providing structured interventions based on risk and need, exercising effective reinforcement and use of authority, helping build relationship skills and problem-solving skills, and implementing anti-criminal modeling and cognitive restructuring.

Representatives of the department provided testimony indicating recidivism may be reduced by strengthening probation and alternative sentencing options. Evidence-based practices indicate low-risk offenders on probation are less likely to reoffend when supervised probation is limited in length and the supervision is focused on positive reinforcement programs while continuing to allow for quick and effective sanctions for probation violations. To address recidivism, representatives of the department recommended several probation and sentencing options to:

1. Enhance the ability of probation officers to impose immediate sanctions in the form of a 48-hour jail hold for probation violations;
2. Allow early discharge from probation for compliance with the terms of probation;
3. Allow for the conversion of restitution orders to civil judgments to allow discharge and repayment of restitution after discharge;
4. Reduce the maximum length of probation for misdemeanors and reduce the maximum length of probation for felonies, except for crimes of violence and sex offenses;
5. Eliminate the requirement that any portion of a suspended felony sentence must be on supervised probation, unless otherwise required by law; and
6. Create a state reinvestment fund to assist local detention centers implement evidence-based practices and treatment programs.

The commission considered a bill draft to reduce the length of probation for most felony offenses, except sex offenses and violent crimes, from five years to three years; reduce the length of probation for misdemeanor offenses from two years to 360 days; provide the maximum length of probation extension for violating the conditions of probation is 360 days; allow a court to authorize the Department of Corrections and Rehabilitation to terminate supervision after 18 months if the offender has complied with the conditions of probation; and allow a period of incarceration not to exceed 48 hours as an alternative to a revocation of probation.

Concerns were expressed by some members of the commission with respect to the provision of the bill draft which authorizes a 48-hour period of incarceration as an alternative to revocation. The concerns generally involved whether the period of incarceration would violate due process rights of probationers and whether granting the decision to incarcerate to someone other than a judge would be an unlawful delegation of authority. However, proponents of the

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proposals indicated that because the period of incarceration in lieu of revocation would be a condition of probation imposed by the court, there would be no constitutional concerns and the process would be similar to that already in place for parole violators. In addition, it was argued, revocations would be reduced and the court system as well as probationers would benefit. To address concerns regarding unlimited use of the 48-hour hold provisions, proponents of the bill draft proposed limiting 48-hour holds for an individual to five times in a 12-month period.

Representatives of the Department of Corrections and Rehabilitation provided testimony relating to restitution orders and the impact on department resources related to probation revocations due to failure to fulfill probation conditions related to restitution. Because a significant number of probation revocations are due to failure to fully comply with restitution orders, department officials suggested probation officers often are forced to act as collection agents. A representative of the department suggested a potential solution could be the creation of crime victim compensation fund for property crimes. However, members of the commission expressed concerns regarding the appearance of such a fund placing the burden for reimbursement of criminal acts on the taxpayers rather than the offenders.

The commission received information from the State Court Administrator regarding the amount of restitution assessed and collected. On February 20, 2014, the court system had an accounts receivable balance of ordered restitution of \$25,676,201. However, that amount did not include amounts assessed in Burleigh and Grand Forks Counties and included partial amounts assessed in Cass and Ward Counties. The report indicated uncollectable restitution was estimated to be \$17,372,569.

The commission considered a resolution draft to provide for a Legislative Management study of restitution for criminal acts. Commission members generally agreed that a full study of issues related to restitution would be helpful in exploring potential solutions to the concerns expressed with respect to the impact of restitution orders.

Local Evidence-Based Programs

Although an offender may be incarcerated in a local jail or detention center for up to one year, an offender in such a facility has no access to the recidivism reduction and treatment services provided by the Department of Corrections and Rehabilitation. Representatives of the department presented the commission information regarding opportunities to develop partnerships with local detention centers for the implementation of evidence-based programs and services. One option presented for consideration was the creation of a state reinvestment fund designed to allow counties to apply for funding to support local programs.

The commission also received information regarding efforts by the department to establish a pilot program to work with the Burleigh and Cass County Jails to implement programs and services at the jails which are designed to reduce recidivism. It was suggested demonstrated success with the pilot program could be the basis for expansion of the efforts to other local jails and detention facilities. A representative of the department informed the commission that the department had applied for a federal grant to assist in the effort to expand recidivism reduction programs to local jails and detention centers.

Department of Human Services

The commission received reports regarding programs under the supervision of the Department of Human Services, including programs undertaken in cooperation with the Department of Corrections and Rehabilitation and various contract programs.

Robinson Recovery Center

The department continues to contract with the Robinson Recovery Center for residential treatment services. The commission received a report indicating the Robinson Recovery Center utilized the additional funding provided by the 2013 Legislative Assembly to increase the number of beds available to female clients from 10 to 15, and that the additional beds were filled within a week after completion of the renovation allowing for the additional beds. The center had an occupancy rate of approximately 90 percent during 2013 and a representative of the center indicated a similar occupancy rate is expected to be maintained in the foreseeable future. Although a majority of the admissions to the center continue to be from the human service region including Fargo, a growing number of admissions are coming from the western portion of the state. According to the report, almost 50 percent of the clients admitted were addicted to meth. The center's rate of successful completion of the program increased from approximately 35 percent in fiscal year 2012 to 39 percent in the 12 months prior to August 2013. It was reported the majority of those not successfully completing treatment either left against professional advice or were discharged by the facility for behavioral or compliance issues. The report indicated an increasing number of individuals in the state are in need of long-term, residential treatment for addiction to drugs and alcohol. In addition, addiction counselors are seeing an increase in the use of meth and heroin. A representative of the center informed the commission there is a severe lack of residential treatment services for women with children. Although the entity that operates the center also operates a residential program for women with children, that program receives no funding from the state.

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Tompkins Rehabilitation and Corrections Center

The Tompkins Rehabilitation and Corrections Center is located at the State Hospital and operated by the Department of Human Services in collaboration with the Department of Corrections and Rehabilitation. According to a report from a representative of the center, the center has consistently ranked in the top 15 percent of similar programs nationally. The center provides a cognitive behavioral treatment approach utilizing cognitive restructuring groups to reduce risks to reoffend. The report indicated the percentage of individuals who successfully complete treatment and who do not reoffend within six months is more than double the national average. The success of the program has been attributed to the length of the program. In addition to the 100 days of residential treatment, aftercare treatment extends the care to a total of six months to a year.

Southeast Human Service Center

The commission received a report regarding the services provided by the Southeast Human Service Center, including contract services. The center has collaborated with the Cass County Jail to provide case management and mental health services for incarcerated individuals. In addition to the postbooking services through the jail program, the center has participated with law enforcement and private mental health providers to provide training to law enforcement officers to assist the law enforcement officers in identifying individuals in need of community services and helping those individuals with obtaining treatment with the purpose of addressing mental health issues before incarceration. The representative of the center also reported regarding the implementation of an integrated dual-diagnosis treatment multidisciplinary team structure designed to reduce institutionalization, reduce violence and suicide, and improve physical health, function, and family relationships of participants. The measured outcomes over the first 48 months of that initiative indicated a 29 percent decrease in emergency room admissions, a 40 percent decrease in crisis bed days, a 70 percent decrease in long-term hospitalization, an 87 percent decrease in respite care bed days, a 90 percent decrease in acute psychiatric hospital days, and a 98 percent decrease in days incarcerated.

The commission received testimony from representatives of private mental health and addiction treatment services providers in the Fargo area, including a report regarding the Region 5 mobile crisis team project. The Southeast Human Service Center collaborates with the private provider to address urgent mental health needs in the region through on-call staff. During the first eight months of the program, the team received an average of over 12 calls per month. According to the report, 97 of the 99 calls were resolved without the need to access alternative placements or higher levels of care. Although the cost of the crisis team is approximately \$10,000 per month, it was stated the estimated cost of psychiatric hospitalization of 50 percent of the individuals seeking help would likely be nearly three times that amount.

Contract Services

The commission received reports from representatives of the Department of Human Services regarding services for which the department contracts. Included within the reports were lists of each program or service provided by the department or a contractor and an inventory of the services provided. Representatives of the department also updated the commission regarding ongoing stakeholder meetings conducted by the department which were intended to determine the needs throughout the various human service regions. Among the most common needs identified were additional addiction treatment services, adolescent residential options, crisis and transitional living, and housing for individuals who are chronically homeless, sex offenders, or felons.

Addiction Counselor Shortage

The commission received testimony from private service providers and representatives of the Department of Human Services regarding the difficulty in hiring and retaining addiction counselors. The commission was informed wages for addiction counselors are generally lower than other health professionals. In addition, the number of hours of supervised training for licensing of an addiction counselor in North Dakota is higher than in Montana and Minnesota. A representative of the Board of Addiction Counseling Examiners stated the shortage of addiction counselors is a nationwide problem and is expected to worsen. Although 1,400 hours of supervised training are required by the board, 85 percent of the states, including South Dakota, require more than 2,000 hours of supervised training.

A representative of the department informed the commission the regional human service centers had approximately a dozen open addiction counselor positions, a majority of which were in the western portion of the state. The department has implemented numerous recruitment and retention strategies to address the shortage. Among those strategies were providing recruitment bonuses, paying moving expenses for new hires, assisting in the licensure and reciprocity process, providing retention bonuses, reviewing compensation and classifications for addiction counselor positions, and paying for training through a tuition reimbursement program. In addition, the department began to utilize an addiction technician classification to allow new hires to complete the required training hours while working toward initial licensure.

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Commission Tours

The commission toured several facilities operated by the Department of Human Services and by vendors under contract with the department, including the Tompkins Rehabilitation and Corrections Center and the Robinson Recovery Center and several crisis and transitional living facilities in Fargo and Jamestown.

Judicial Branch

The commission received reports and information regarding various Judicial Branch programs and issues of concern to representatives of the court system.

Minority Justice Implementation Committee

The commission received a report regarding evidence-based sentencing from a representative of the Supreme Court Minority Justice Implementation Committee. The committee was working to implement recommendations made by the Supreme Court's Race and Bias Commission, including initiating evidence-based sentencing to address implicit bias based on minority status. Although in reviewing statistics regarding race and sentencing in the state, regional variations were noted, bias was not found to exist on a statewide basis. Tools used in other levels of the criminal justice process, which can be implemented in the sentencing process to assist judges in crafting better sentences that promote objectivity, provide cost-savings, reduce recidivism, and deliver an appropriate level of services, include risk and needs assessment tools, actuarial tools that measure risk, and clinical tools that measure criminogenic needs.

Drug Courts

The commission received a report regarding the challenges faced by drug courts and the individuals participating in the drug court process. The shortage of addiction counselors has become a concern with respect to the operation and potential expansion of both juvenile and adult drug courts. It was reported that standards for effective operation of drug courts require evidence-based practices. However, not all drug courts in the state have had access to services utilizing evidence-based practices.

With respect to juvenile drug courts, several additional challenges were identified. Those challenges include the lack of adolescent inpatient and crisis stabilization beds, a lack of affordable and accessible treatment options, and the limited availability of psychiatric services for adolescents. With respect to adult drug courts, the challenges identified include difficulty in obtaining or maintaining appropriate housing, the cost of chemical dependency evaluations, the cost of defense counsel for participants, insurance carriers not covering the cost of treatment beyond the traditional 24 day programs, and the impact of the changes in driving under the influence laws enacted by the 2013 Legislative Assembly--the required mandatory jail time reduces the incentive to participate in drug court.

Sentencing Practices

The commission received reports from district court judges regarding sentencing practices. Although it was stated the goal of a judge is to make the best use of resources to optimize public safety, one judge testified additional resources are necessary to allow for assessment of individuals as they are detained and to implement a plan while eliminating waiting times for evaluations and treatment. In addition, judges stated additional resources for treatment services would be beneficial in tailoring sentences to the needs of offenders. It was argued judges must have the flexibility to adjust programs and individualize dispositions. In individualizing dispositions, judges will review the nature of the offense and the background and criminal record of the defendant, recommendations from the prosecution and defense, the statement of the defendant at sentencing, and a crime victim impact statement. A judge from the south central judicial district informed the commission judges in Burleigh County order a greater number of presentence investigations than judges in Cass County. After reviewing Burleigh County case files, the judge reported that judges rarely sentenced a defendant to a period of incarceration longer than that recommended by the presentence report.

HOPE Program

The commission received a report from a district judge regarding Hawaii's Opportunity Probation with Enforcement (HOPE) program. The HOPE program is designed to impose an immediate sanction for probation or parole violations. Under the program, an offender taken into custody for an alleged violation must see the judge within 24 to 48 hours. Sanctions for a violation generally range from two to seven days in jail, which may be served on weekends or holidays or with work release to accommodate probationers who are employed. The program is intended to keep an offender employed and out of the State Penitentiary while holding the offender accountable for any violation of a parole or probation condition.

Mandatory Transfers from Juvenile to Adult Court

The commission received information from the State Court Administrator regarding mandatory transfers of juveniles from juvenile court to adult court under Section 27-20-34. Under that section, a child 14 years old or older is transferred to adult court for the offense of murder or attempted murder; gross sexual imposition or the attempted gross sexual imposition of a victim by force or by threat of imminent death, serious bodily injury, or kidnapping; or the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance, except for the

manufacture, delivery, or possession with intent to manufacture or deliver marijuana in an amount less than one pound; or the gratuitous delivery of a controlled substance not a narcotic drug or meth which is a singular and isolated event involving an amount of controlled substance sufficient solely for a single personal use. The commission was informed that between 2009 and 2013, there were 41 cases in which jurisdiction was mandatorily transferred to adult court. From 2011 through 2013, there were 21 mandatory transfers, 9 of which involved drug offenses. Of those 21 cases, 7 of the juveniles were not sentenced to any jail time and 6 were placed under the custody of the Department of Corrections and Rehabilitation.

The commission considered a bill draft to eliminate the mandatory transfer of a juvenile to adult court for the offenses related to manufacture, delivery, or possession of controlled substances. Proponents of the bill draft pointed out the proposal only removes the mandatory transfer requirement, and judges will continue to maintain authority to transfer a juvenile to adult court if the judge believes the transfer is necessary and warranted.

Other Reports

Community Service Programs

The commission received reports regarding the operation and activities of community service programs. Community service programs were formed in North Dakota in 1993 to provide community-based alternatives to incarceration and allow juvenile and adult offenders to perform court-ordered community service obligations for the benefit of nonprofit organizations and local communities. Initially, the state provided funding to assist in establishing the programs. However, the Department of Corrections and Rehabilitation ceased providing the grants after June 30, 2006, due to reductions in funding and prioritization of programs. The 2011 Legislative Assembly, through Senate Bill No. 2275, appropriated \$375,000 from the general fund for the biennium to support the community service programs. In 2013 the Legislative Assembly included within the appropriation for the Office of Management and Budget \$375,000 in funding for support of community service programs. In addition to the state funding, the programs have received funding from local governments and from participation fees imposed on offenders ordered to perform community service.

A representative of community service programs informed the commission that 2,638 offenders performed community service in 2013, with 41 percent of the offenders performing community service in Fargo. In 2013 a total of 74,053 hours of community service were completed with a noncash value to the worksites of \$592,383. The report concluded that the hours of community service performed in 2013 saved 9,256 days of prison or jail service, which at an estimated cost of \$65 per day provided a savings of \$601,680.

Mentorship Programs

The commission received a report from a representative of Big Brothers Big Sisters of Bismarck-Mandan regarding mentorship programs and the efforts of Big Brothers Big Sisters to mentor children of incarcerated parents. The committee was informed the program received a 3-year grant from the United States Department of Justice to mentor children of incarcerated parents, and by the end of the grant period, over 50 percent of the children served by the program had a parent who was incarcerated.

The commission received a report from a representative of the Heart River Bridges of Hope Reentry Ministry which recruits volunteers, primarily from churches, to create teams of mentors to work with youth at the Youth Correctional Center. The primary goal of the program is to help youth transition to a faith community upon discharge from the center, with the added goals of reducing recidivism and providing a positive social network for the youth.

Cass County Jail Initiative

The commission received reports from representatives of the Cass County Jail regarding the jail diversion program. In 2007 Cass County was awarded a \$250,000 grant to plan and implement a postbooking, jail-based program targeting offenders with a specific diagnosis and whose nonviolent offense is a product of a treatable mental illness. The Cass County Jail has collaborated with the Southeast Human Service Center for mental health services and also has hired a full-time clinical mental health coordinator at the jail to conduct assessments, refer mentally ill offenders to treatment providers, and make referrals to prosecutors for consideration of dismissal of charges or a deferred or suspended sentence.

The commission requested the Cass County Sheriff to provide the commission with information regarding the potential expansion of the program to other counties. The commission was informed the cost of starting similar programs should be reduced because there is a model to follow. However, the key to implementing such a program is dependent upon the participation of law enforcement, the courts, prosecutors, and defense attorneys and upon the availability of community services and qualified professionals.

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The Pew Charitable Trusts

The commission received a report from a representative of The Pew Charitable Trusts regarding sentencing and corrections policies. In addition, the commission was provided information regarding The Pew Charitable Trusts public safety performance project and the initiatives undertaken in other states, including South Dakota, to improve public safety, hold offenders accountable, and control corrections costs. The initiative in South Dakota resulted in legislation that is expected to significantly reduce the projected growth of prison populations in the state. The commission was informed the South Dakota initiative involved a bipartisan effort through all three branches of government. An initiative of that type generally lasts about one year during which data experts review all aspects of the criminal justice and correctional systems in the state and present an update to a bipartisan interbranch task force which then identifies priorities and develops policy solutions.

Mandatory Sentences and Sentencing Alternatives for First-Time Nonviolent Felony Offenses

Representatives of the Department of Corrections and Rehabilitation brought to the commission proposals to address penalties for offenses related to abuse and neglect of a child, possession of drug paraphernalia, and ingestion of a controlled substance.

Under Section 14-09-22, the crimes of abuse and neglect of a child are classified as Class C felonies unless the victim is under the age of six, in which case the offense is a Class B felony. Representatives of the department proposed splitting the offenses of abuse of a child and neglect of a child into separate statutory provisions and eliminating the Class B felony penalty for the offense of neglect of a child.

The commission considered a bill draft to implement the proposal to separate the offenses of abuse and neglect of a child. The proponents of the bill draft contended the proposal would clearly define the difference between the offenses and would clarify areas of confusion regarding requirements to register as an offender against children, which is not required for the offense of neglect of a child.

Representatives of the department testified there are a significant number of offenders who are incarcerated for the offenses of possession of drug paraphernalia and ingestion of a controlled substance. If an individual who has an addiction admits to having a relapse, a probation officer is faced with the decision of whether to arrest the individual who is under supervision simply because of the admission to having a relapse. It also was contended prosecutors have not used the ingestion statute responsibly and too many individuals on probation are being incarcerated for admitting to a relapse while not actually being found in possession of a controlled substance. In addition, it was suggested that individuals on probation have been charged with the crime of being in possession of drug paraphernalia because they have failed to clean all items defined as paraphernalia out of their residences.

The commission considered a bill draft to reduce the penalty for possession of drug paraphernalia from a Class C felony to a Class A misdemeanor for most drugs, reduce the penalty for possession of drug paraphernalia for marijuana from a Class A misdemeanor to a Class B misdemeanor, repeal the statutory provision that makes it a criminal offense to ingest a controlled substance, and remove the requirement that a court impose a period of probation of not less than 18 months for a person who has plead guilty or been found guilty of a felony violation for drug possession and provide a judge discretion with respect to the length of the probation within those statutory limits. Proponents of the bill draft contended the offense for ingestion of a controlled substance is not enforced uniformly throughout the state and the trend in other states has been to repeal ingestion statutes. In addition, it was argued, the severity of the penalties for ingestion and for possession of drug paraphernalia have provided prosecutors with a tool to force plea agreements which has affected resources throughout the criminal justice system and filled correctional facilities with individuals who are generally not a great threat to public safety.

Because of concerns with respect to opposition from law enforcement and prosecutors, commission members were reluctant to recommend repeal of the ingestion statute without additional study. Members of the commission also expressed concerns with respect to the proposed changes to the drug paraphernalia penalties. Representatives of law enforcement agencies argued that the penalty for possession of drug paraphernalia should be equivalent to the penalty for possession of the associated drug.

Because members of the commission generally agreed that further consideration of changing the penalties for possession of drug paraphernalia is needed, the commission considered a second bill draft addressing the penalties for possession of drug paraphernalia which was based upon 2013 Senate Bill No. 2319, which failed to pass. The bill draft would not change the penalty for possession of paraphernalia used to manufacture a controlled substance, but would reduce the penalty for possession of paraphernalia intended for the use of a controlled substance from a Class C felony to a Class A misdemeanor and reduce the penalty for possession of paraphernalia for the use of marijuana from a Class A misdemeanor to a Class B misdemeanor.

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RECOMMENDATIONS

Supervision and Probation Bill

The commission recommends Senate Bill No. 2027 to reduce the length of probation for most felony offenses, except sex offenses and violent crimes, from five years to three years; reduce the length of probation for misdemeanor offenses from two years to 360 days; provide the maximum length of probation extension for violating the conditions of probation is 360 days; allow a court to authorize the Department of Corrections and Rehabilitation to terminate supervision after 18 months if the offender has complied with the conditions of probation; and allow up to 5 nonsuccessive periods of incarceration within a 12-month period, which may not exceed 48 hours, as an alternative to a revocation of probation.

Legislative Management Study of Restitution Resolution

The commission recommends House Concurrent Resolution 3002 to provide for a Legislative Management study of restitution for criminal acts.

Transfer of Juveniles to Adult Court Bill

The commission recommends Senate Bill No. 2028 to eliminate the mandatory transfer of a juvenile to adult court for offenses related to manufacture, delivery, or possession of controlled substances.

Abuse and Neglect of a Child Bill

The commission recommends House Bill No. 1029 to separate the offenses of abuse of a child and neglect of a child into different statutory provisions and eliminate the Class B felony penalty for the offense of neglect of a child.

Term of Probation Bill

The commission recommends Senate Bill No. 2029 to remove the requirement that a court impose a period of probation of not less than 18 months for a person who has plead guilty or been found guilty of a felony violation for drug possession, and to provide a judge discretion with respect to the length of the probation within those statutory limits.

Possession of Drug Paraphernalia Penalties Bill

The commission recommends Senate Bill No. 2030 to reduce the penalty for possession of paraphernalia intended for the use of a controlled substance from a Class C felony to a Class A misdemeanor and reduce the penalty for possession of paraphernalia for the use of marijuana from a Class A misdemeanor to a Class B misdemeanor.

Departures from Mandatory Sentences Bill

The commission recommends House Bill No. 1030 to allow a court to depart from a mandatory minimum sentence if the court, in giving due regard to the nature of the crime, history and character of the defendant, and the defendant's chances of successful rehabilitation, finds a compelling reason on the record that imposition of the mandatory minimum sentence would result in manifest injustice to the defendant and that the mandatory minimum sentence is not necessary for the protection of the public.

Executive Budget Recommendations

The commission recommends the Governor include additional funding in the executive budget for the 2015-17 biennium to provide residential treatment program beds statewide, with an emphasis on additional beds in the western portion of the state.

The commission recommends the Governor include in the executive budget funding to replicate the Cass County Jail diversion project in other areas of the state.

The commission recommends the Governor include funding in the executive budget for a study of evidence-based practices used by the Department of Corrections and Rehabilitation, the Department of Human Services, and other agencies which are intended to reduce incarceration and recidivism.

The commission expresses its support for funding of appropriate treatment services to support the Department of Human Services and the Department of Corrections and Rehabilitation in meeting identified treatment service gaps.

The commission expresses its support for increased funding of community service supervision grants.

Other Statements and Recommendations

The commission encourages the judicial branch to examine implementing a pilot program similar to the HOPE program.

The commission recommends the Governor contact The Pew Charitable Trusts to propose a collaborative effort to implement a justice reform study in the state.

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The commission discussed the criminal offense of endangerment of a child or vulnerable adult and the impact of the provisions relating to exposure to marijuana. The commission considered a bill draft that would have revised the definition of a controlled substance to provide that a controlled substance does not include less than one ounce of marijuana, revised the definition of drug paraphernalia to remove its applicability to marijuana paraphernalia, and removed references to exposure of a child or vulnerable adult to a controlled substance or drug paraphernalia. Representatives of the Department of Human Services testified that the change with respect to exposure of a child to controlled substance would impact the definition of a deprived child and the ability of prosecutors to terminate parental rights. Commission members also expressed concerns with respect to the changes in the definition of a controlled substance.

The commission received testimony from a retired district judge relating to mandatory sentences. The judge testified that although the population of the state increased less than 7 percent between 1984 and 2013, the inmate population in the state increased by more than 360 percent and that much of that increase is likely the result of drug offenses. The judge contended that mandatory sentencing requirements have taken away the ability of judges to apply appropriate sentences based upon the unique circumstances of each individual crime and defendant.

Commission members extensively discussed mandatory sentencing provisions and to what extent judges should have flexibility in determining appropriate sentences for various offenses for which mandatory sentences are required by statute.

A member of the commission distributed for the commission's consideration a bill draft that would have allowed an offender to request a court to reduce a mandatory term of imprisonment for a controlled substance violation. The bill draft was based upon proposed federal legislation.

The commission considered a bill draft based upon a proposal submitted by representatives of the Department of Corrections and Rehabilitation, which would have removed the mandatory imprisonment provisions with respect to the manufacture, delivery, or possession of controlled substances and changed the penalty for the manufacture, delivery, or possession of a controlled substance within 1,000 feet of a school from an eight-year term of imprisonment to a term of not to exceed eight years if the court determined there was a nexus between the offense and the real property comprising the school.

Proponents of the bill draft argued the 1,000-foot threshold and enhanced sentence was unnecessary and served as a tool for prosecutors to obtain guilty pleas. Because most areas in most cities are located within 1,000 feet of a school or other property covered by the 1,000-foot threshold, it was argued the provision has the effect of allowing a prosecutor to charge a defendant with the offense in most circumstances in which a defendant is caught within a city. Proponents of the bill draft contended the mandatory sentence requirements take power out of the hands of judges and shift power to prosecutors who are not neutral and objective.

Opponents of the bill draft contended the state has an important interest in keeping controlled substances away from schools. In addition, they contended, mandatory sentences are a key tool necessary to fight the trafficking of drugs. Opponents of the bill draft expressed concerns with taking too large of a step in removing all the mandatory sentences for controlled substances offenses.

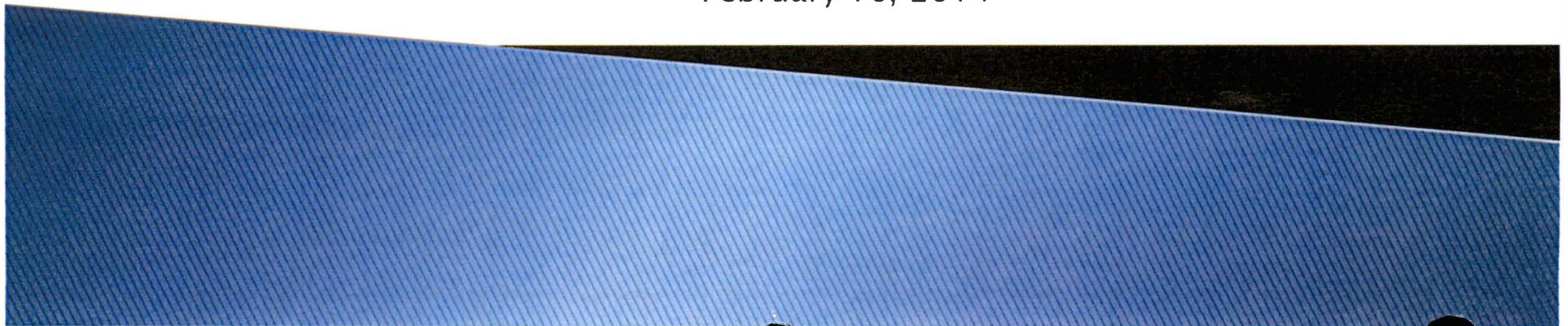
The commission considered a bill draft to allow a court to depart from an applicable mandatory minimum sentence if the court, in giving due regard to the nature of the crime, history and character of the defendant, and the defendant's chances of successful rehabilitation, finds a compelling reason on the record that imposition of the mandatory minimum sentence would result in manifest injustice to the defendant and that the mandatory minimum sentence is not necessary for the protection of the public. However, the bill would not allow a court to depart from a mandatory sentence if the defendant used force or caused serious bodily injury during the commission of the offense or used a dangerous weapon during the commission of the offense or if the defendant has been convicted of a substantially similar offense during the 10 years before the commission of the offense. The bill draft also would have required an annual report regarding departures from mandatory sentences and reinvestment of savings from the departures to advance evidence-based practices to reduce recidivism.

Proponents of the bill draft contended the proposal would provide a judge discretion in sentencing nonviolent offenders. Members of the commission expressed concerns with respect to the reporting of departures from mandatory sentences and the impact the reporting requirement may have on the willingness of judges to exercise that discretion. In addition, there were questions raised regarding the feasibility of determining savings attributable to departures from mandatory sentences. There also were questions concerning the impact of the exception that would not allow a departure from a mandatory sentence if the defendant had been convicted of a substantially similar crime within the previous 10 years. It was argued that exception would likely affect most defendants subject to a mandatory sentence.

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Commission on Alternatives to Incarceration: Sentencing Data

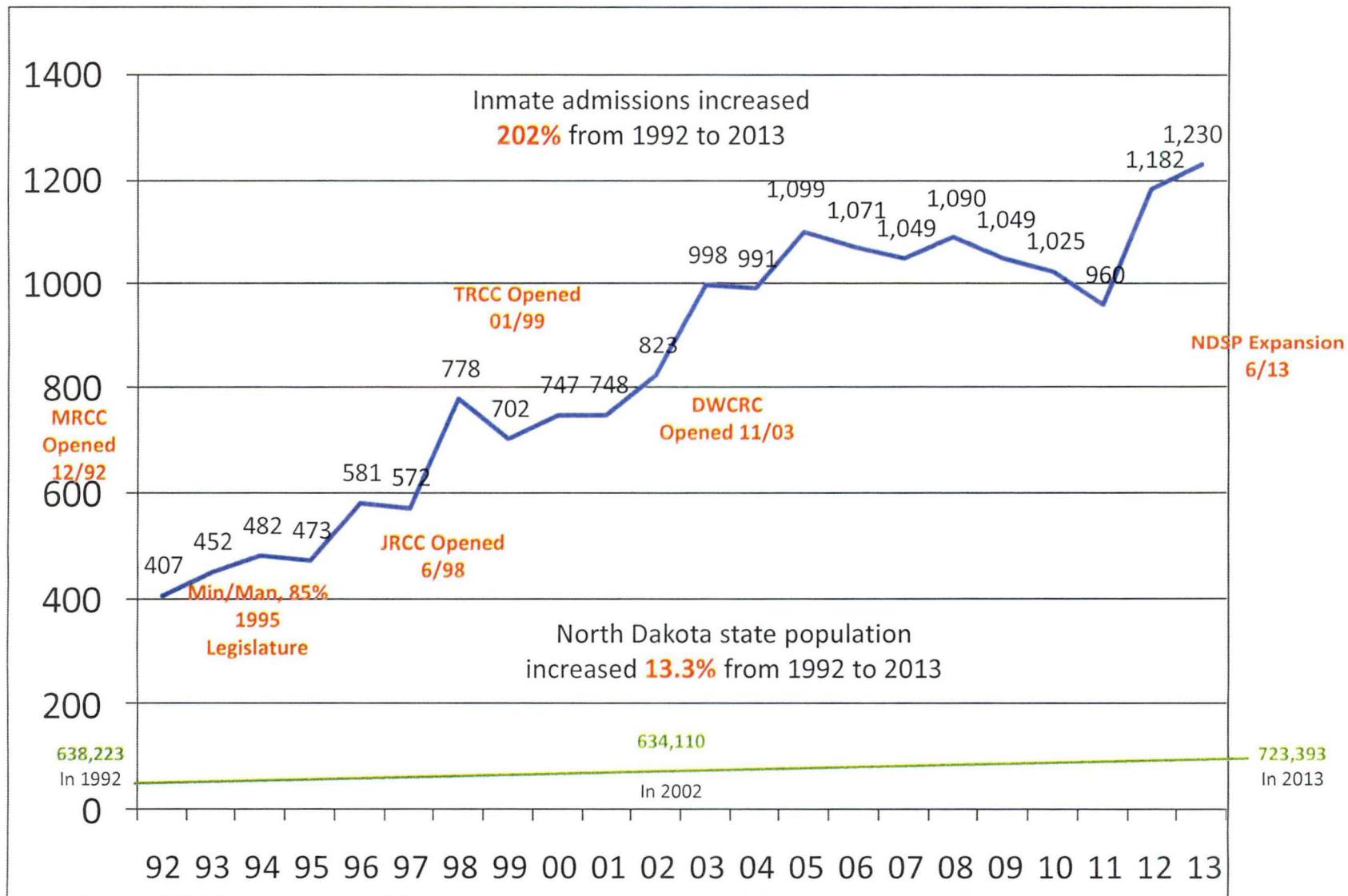
By: Pat Bohn
Director: Transitional Planning Services
ND DOCR
February 10, 2014



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pg 2

Inmate Admissions by Calendar Year

(The same inmate can be admitted more than once during a calendar year)



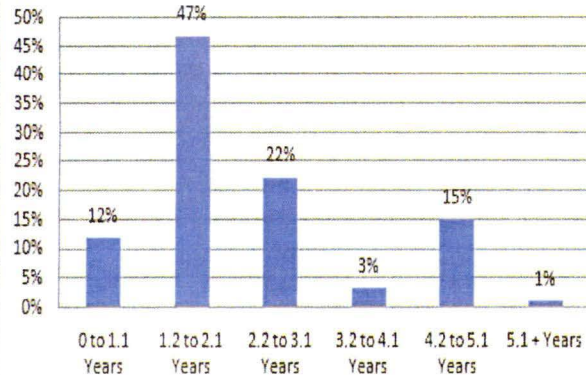
Lengths of Probation Sentences

- ▶ Examined sentences to DOCR-supervised probation starting 1/1/08 to 12/31/12 (5 years of data).
- ▶ Conducted a sentence length analysis by offense count.
- ▶ Organized by judicial district and counted the frequency of sentences to a particular length of time.

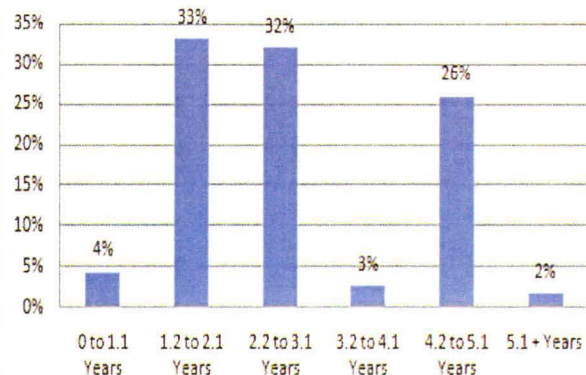


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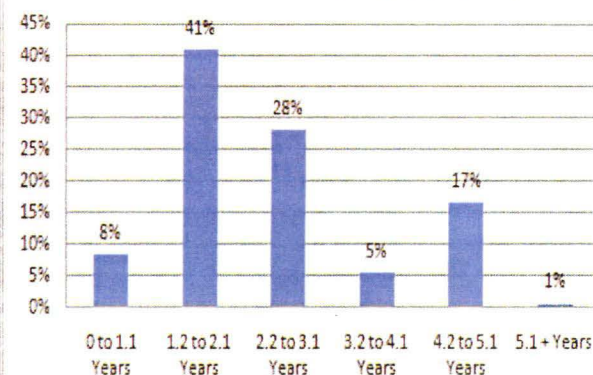
Statewide Sentence Frequency (5 year)



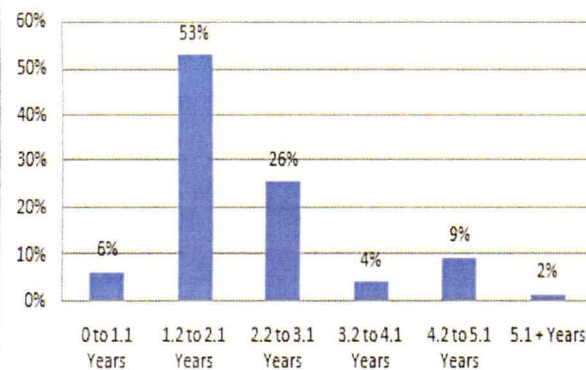
NWJD Sentence Frequency (5 Year)



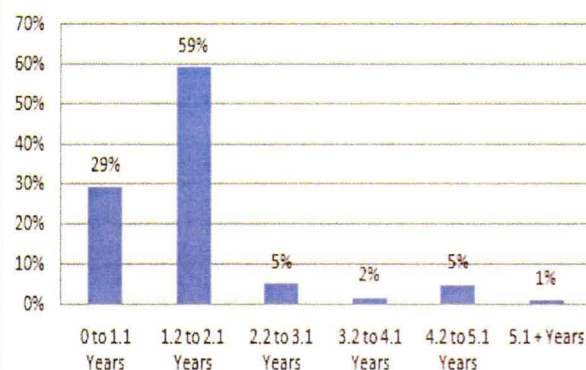
NEJD Sentence Frequency (5 year)



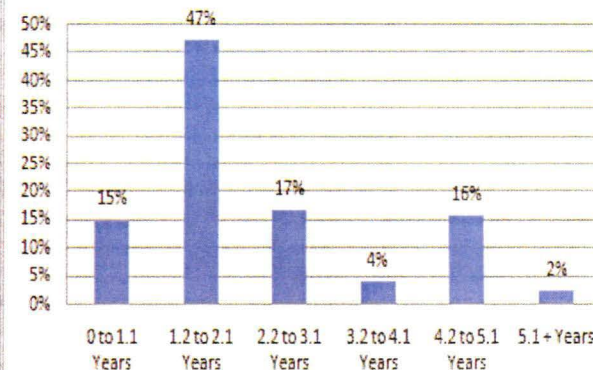
NECJD Sentence Frequency (5 Year)



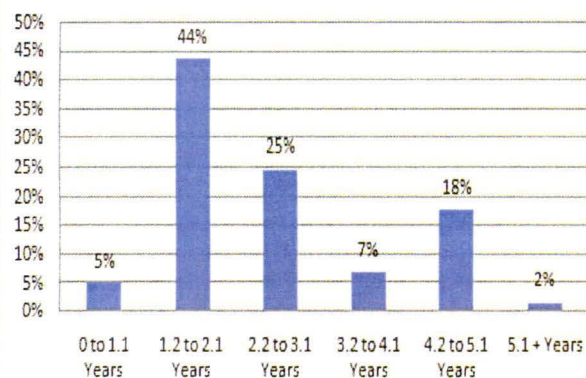
ECJD Sentence Frequency (5 year)



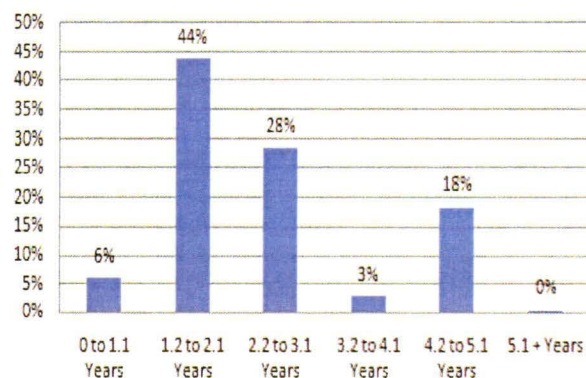
SEJD Sentence Frequency (5 Year)



SWJD Sentence Frequency (5 Year)



SCJD Sentence Frequency (5 Year)



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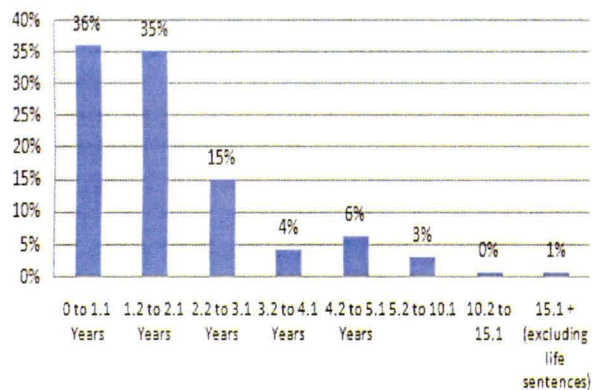
Lengths of Prison Sentences

- ▶ Examined sentences to prison starting 1/1/08 to 12/31/12 (5 years of data).
- ▶ Conducted a sentence length analysis by offense count.
- ▶ Organized by judicial district and counted the frequency of sentences to a particular length of time.

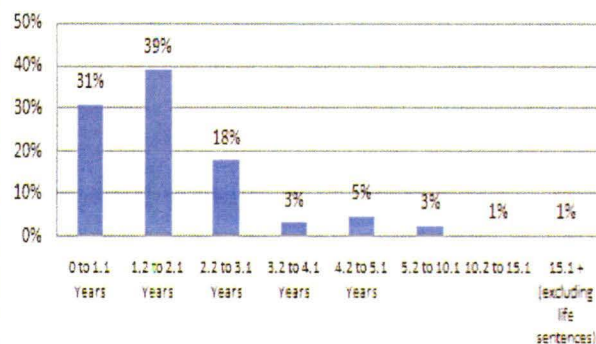


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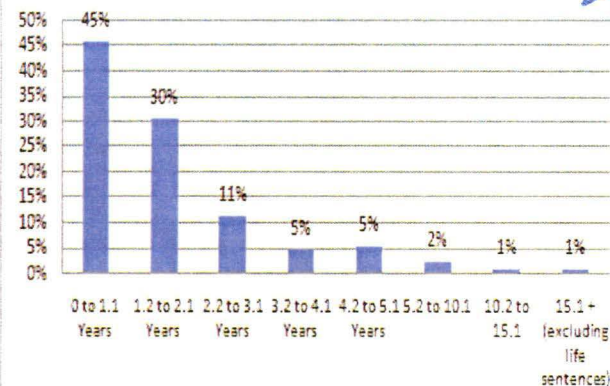
Statewide Prison Sentence Frequency (5 Year)



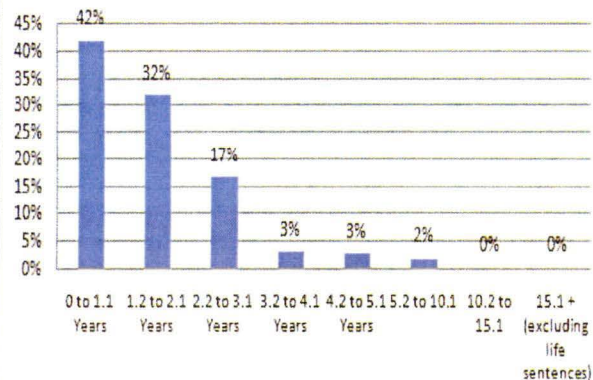
NWJD Prison Sentence Frequency (5 Year)



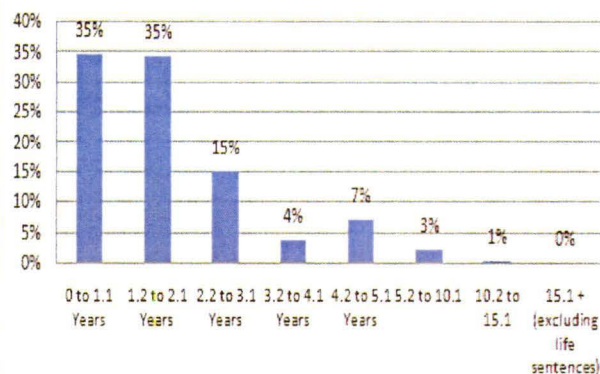
NEJD Prison Sentence Frequency (5 Year)



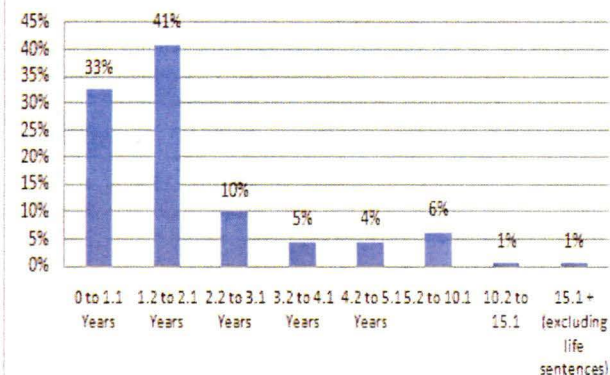
NECD Prison Sentence Frequency (5 Year)



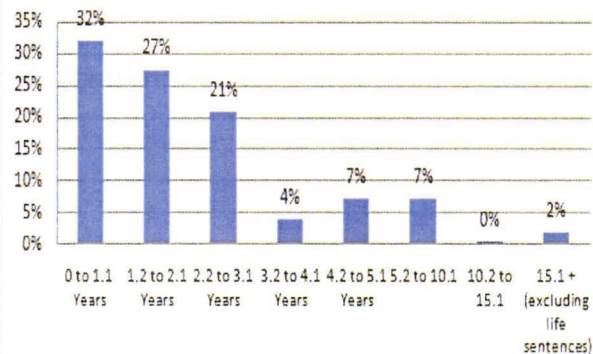
ECJD Prison Sentence Frequency (5 Year)



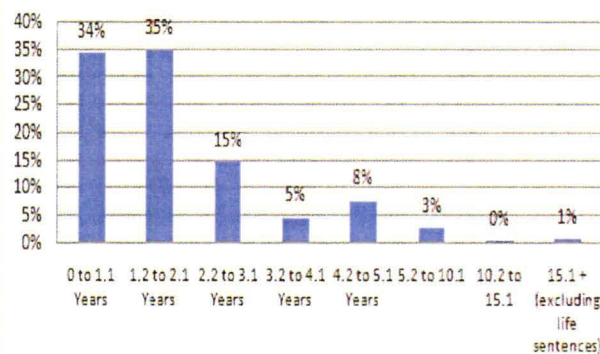
SEJD Prison Sentence Frequency (5 Year)



SWJD Prison Sentence Frequency (5 Year)

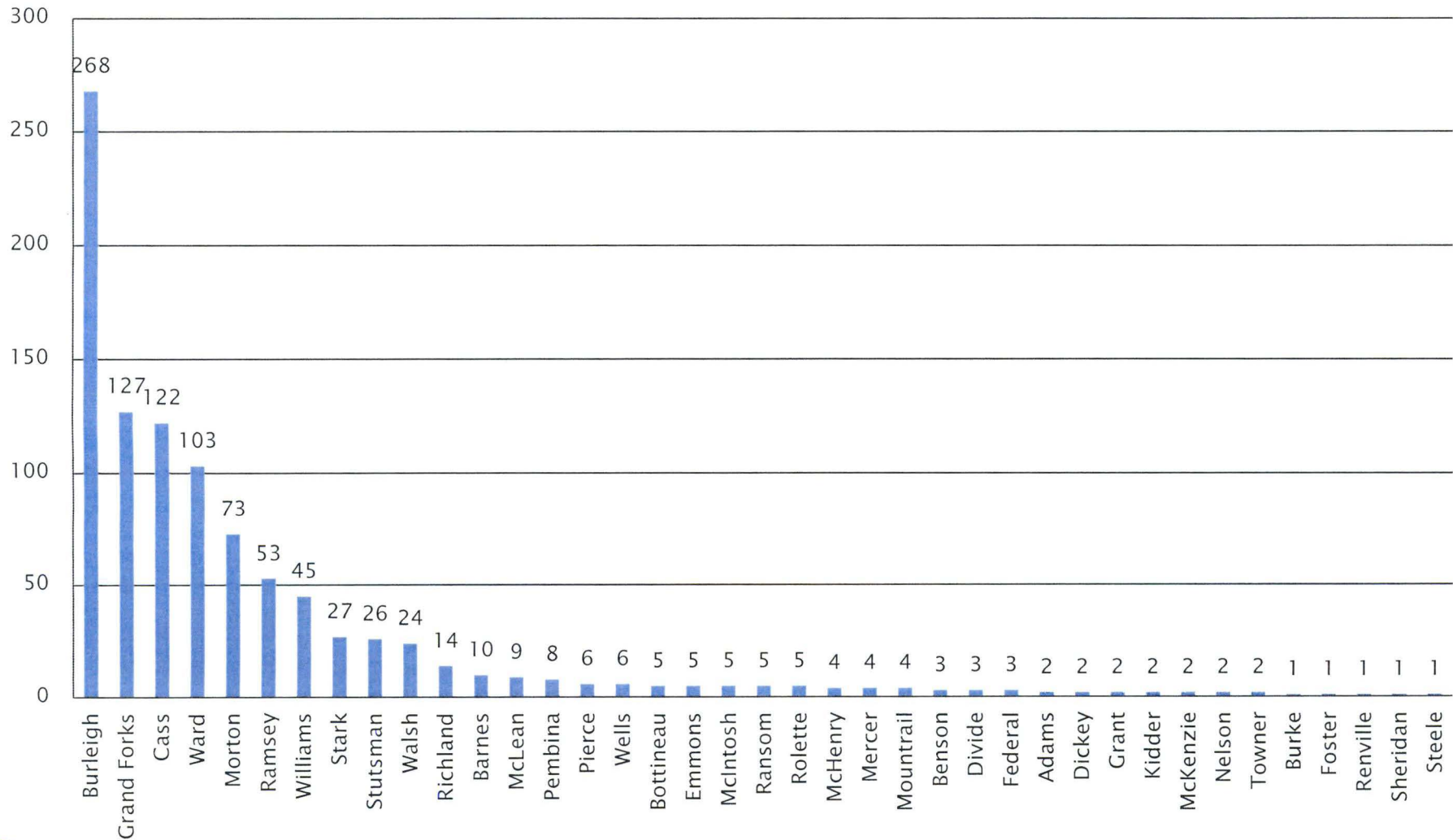


SCJD Prison Sentence Frequency (5 Year)



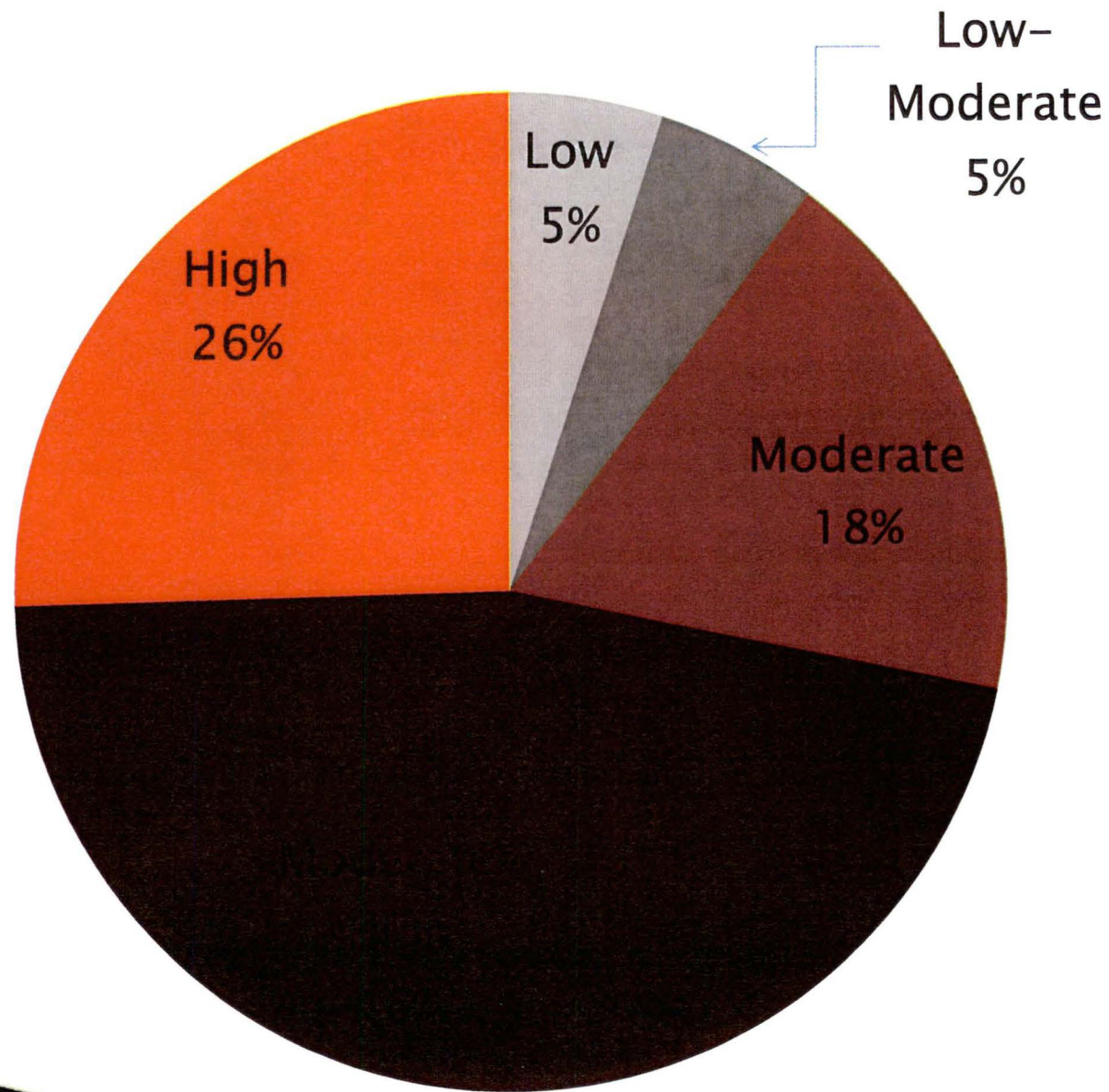
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CY 2013 Admissions to DOCR by County



2/5/2014 Inmate LSI-R Risk Profile (Male & Female)

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n=1,536

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Prison Management Plan

- ▶ The 2013 Legislature in (**Senate Bill 2015 section 6**) authorized the DOCR to establish a prison population management plan based on:
 - Authorized Budgeted Capacity
 - Authorized Legislative Appropriation for Contract Housing



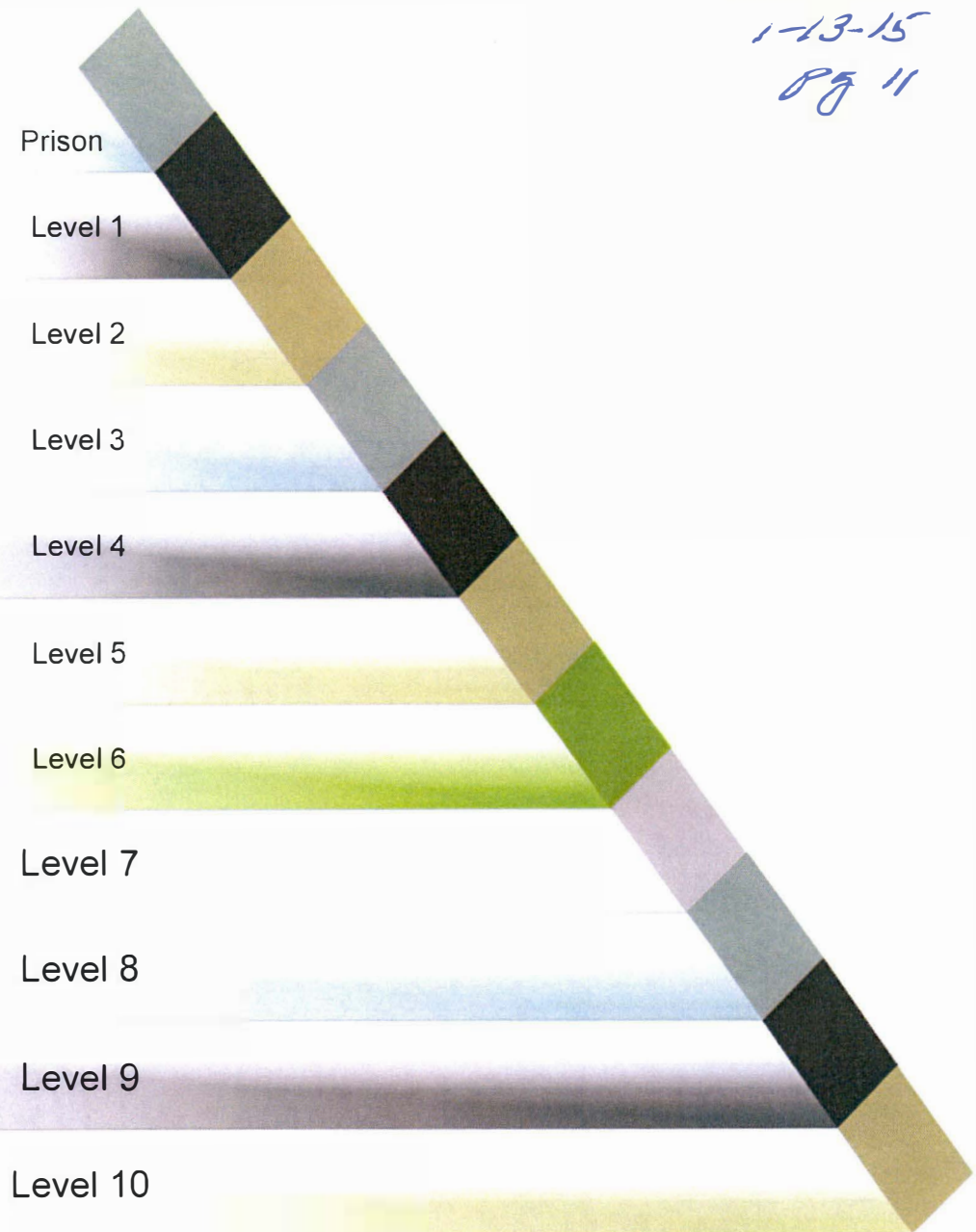
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DOCR Capacity

Housing Unit	Count
NDSP	814
JRCC	417
MRCC	151
DWCRC	126
Total Beds	1513

Prison Management Plan

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Prison Management Plan Criteria

Priority	Offense Level	Violent or Nonviolent
Level 1	Felony AA	Violent
Level 2	Felony A	Violent
Level 3	Felony B	Violent
Level 4	Felony AA	Nonviolent
Level 5	Felony A	Nonviolent
Level 6	Felony C	Violent
Level 7	Felony B	Nonviolent
Level 8	Misdemeanor A	Violent
Level 9	Felony C	Nonviolent
Level 10	Misdemeanor A	Nonviolent

Male and Female Counts 12/31/2013

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Inmate Count on December 31 (Crime Type)

Offense	2008	2009	2010	2011	2012	2013
Violent Offenders (Excluding Sexual)	450	430	457	470	507	536
Sex Offenders	243	233	258	260	252	251
Property, Status and Other	384	443	413	351	384	373
Drug Offenders (Includes Alcohol)	393	398	377	359	393	415
Drug - Deliver, Manufacture or Intent	218	235	228	234	256	247
Drug - Simple Possession	149	140	119	100	109	136
Drug - Alcohol	26	23	30	25	28	32

Male and Female Counts 12/31/2013

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Inmate Count on December 31 (Minimum Mandatory)

Offense	2008	2009	2010	2011	2012	2013
DUI/APC	19	15	22	21	24	10
Drug Offenses (Not Alcohol)	22	28	31	35	37	31
Total	92	89	105	117	114	99

Inmate Count on December 31 (85% Truth-In-Sentencing)

	2008	2009	2010	2011	2012	2013
Number of Inmates Having 85% TIS	234	233	265	274	280	308
Average Sentence In Months	91	97	96	99	111	101

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Female Only (Admissions)

Number Of Fiscal Year Admissions by Crime Type

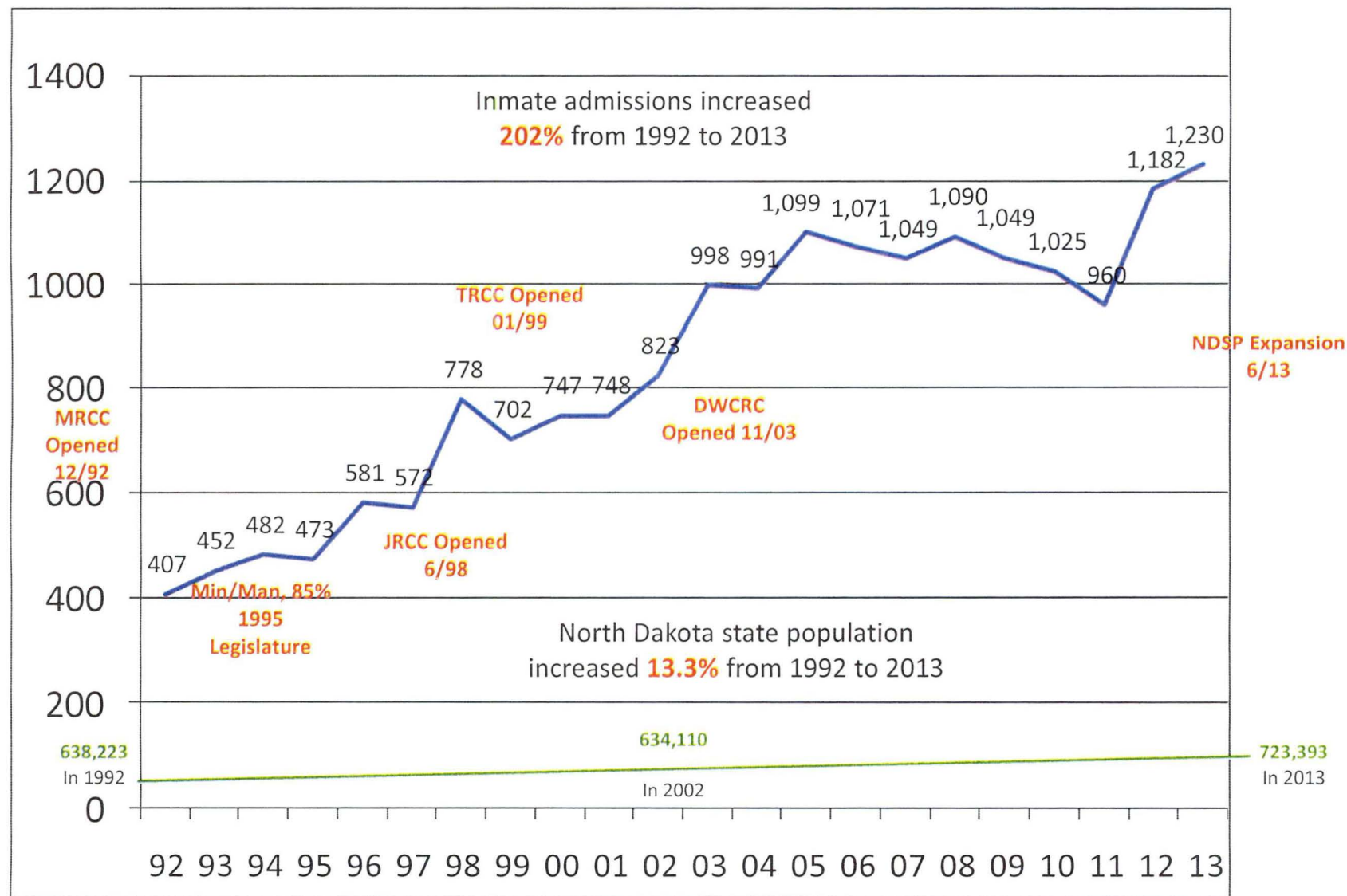
	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013
All Inmates	169	157	176	167	176	212
Violent (Non-Sexual)	28	37	41	45	27	53
Sex Offenders	1	0	0	3	1	4
Drug & Alcohol Offenders	64	62	66	56	80	88
Property, Status & Other	76	58	69	63	68	67



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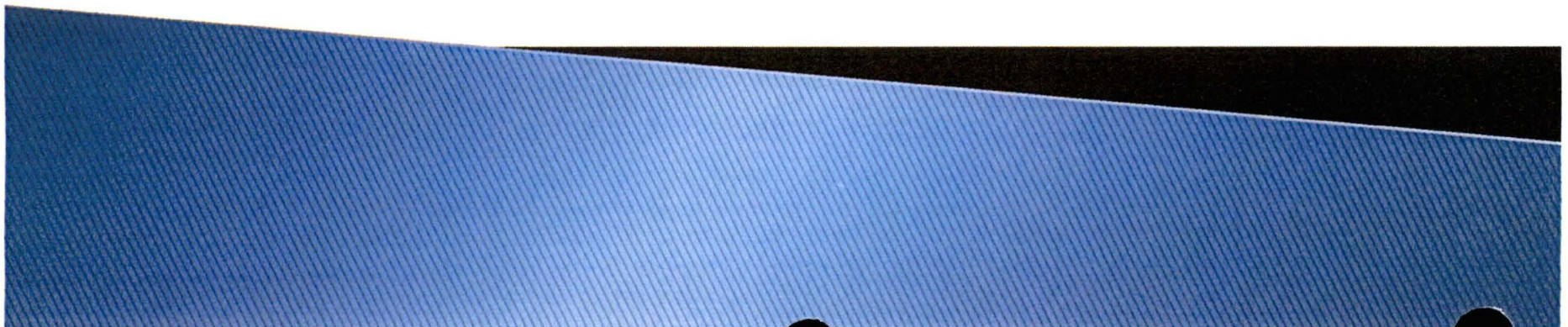
Inmate Admissions by Calendar Year

(The same inmate can be admitted more than once during a calendar year)



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Second Chance Act Comprehensive Statewide Adult Recidivism Reduction Planning Program



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GOAL

- ▶ Goal: Reduce statewide recidivism through a multi-year, multi-phased approach to create state centers of excellence that can serve as national models and increase public safety.
 - Reduce recidivism for the county level target population by 50% over 5 years.



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North Dakota Statewide Recidivism Reduction

2nd Chance Grant

Implementing Evidence Based Practices at Burleigh and Cass County Jails

The ND DOCR is collaborating with Burleigh and Cass Counties to develop a strategic recidivism reduction plan. The plan is to replicate evidence based practices implemented on the state level in the county jails. The grant process is two-part including a planning phase and implementation phase. The current services and programs offered at each county jail will be evaluated as well as recidivism defined and tracked. Following this analysis, a plan of what evidence based practices will be best suited to the county setting will be selected and a plan of how to implement said practices will be developed.

Stakeholders

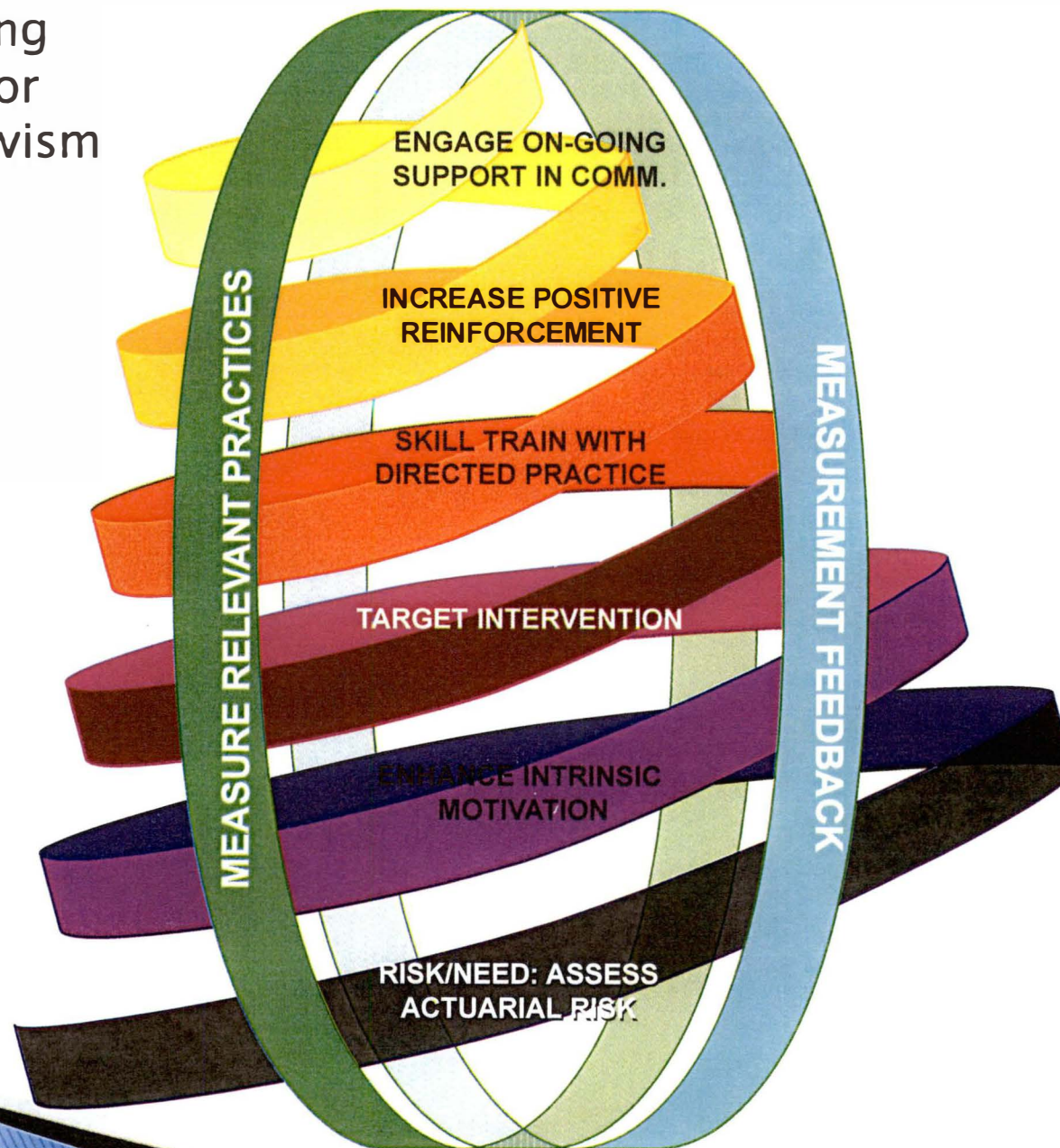
Burleigh County Jail
Cass County Jail
Transition from Prison to Community Initiative (TPCI) Steering Committee
Local Reentry Teams
Commission on Alternatives to Incarceration (*pending approval by the commission*)
Human Service Providers

Proposed Plan

Evidence based practices to reduce recidivism on the county level includes the creation of a behavior modification system, the execution of actuarial assessments, delivery of skill-based treatment programs, development of staff skills in motivational interviewing, correctional practices, and cognitive behavioral interventions, as well as engaging ongoing support in the community to aid in successful transition from jail to community.

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Eight Guiding Principles for Risk/Recidivism Reduction



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OBJECTIVES

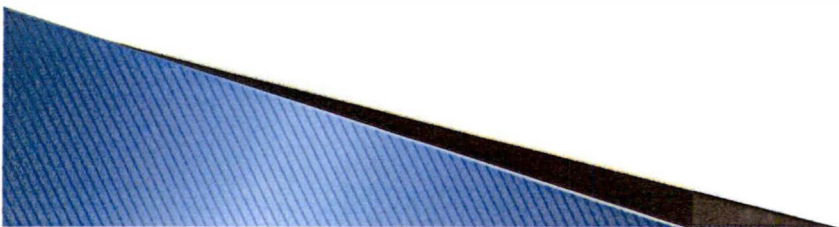
- ▶ Focus on individuals most likely to recidivate
- ▶ Use evidence-based programs proven to work and ensure high-quality service delivery
- ▶ Deploy supervision policies and practices that balance sanctions and treatment
- ▶ Target places where crime and recidivism rates are the highest



IMPLEMENTATION – PHASE II

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- ▶ Implementation awards of up to four jurisdictions up to \$3 million each (pending appropriations)
- ▶ Allows states to implement the plans put together during the planning phase
- ▶ Expectation of adhering to EBP and rigorous research efforts



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PROGRAM DESIGN CONCEPT



Proxy within
5 days

LSI-R within
14 days if
Proxy Score
Qualifies

CD
Evaluation if
offense or
LSI-R domain
qualifies

LSI-R 24 <
and time
allows

LSI-R under
24

Behavior
Modification
Motivational
Enhancement
CBISA or T4C
Structured
Case
Management

Behavior
Modification
Motivational
Enhancement

Discharge
Planning:
Mental
Health
Employ.
Housing

Target
Population:

Adult Males
and Females

LSI-R 24 <

Drug Para,
DUI/APC, Prob
Viol. Other
(bond)

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VISION: LONG TERM

- ▶ Demonstrate state correctional cost savings through recidivism reduction on the local level.
- ▶ Reinvest state savings into counties through grants or formulas to maintain or replicate these recidivism reduction strategies.



15.0283.01001
Title.

Prepared by the Legislative Council staff for
Representative Paur

January 14, 2015

#1
HB1030
1-15-15

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1030

Page 3, line 12, after "defendant" insert "previously"

Page 3, line 12, remove "during the"

Page 3, line 13, remove "five-year period before the commission of the offense"

Renumber accordingly

15.0283.01002
Title.

Prepared by the Legislative Council staff for
Representative Paur

January 14, 2015

#2
HB 1030
1-19-15

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1030

Page 3, line 13, replace "five-year" with "ten-year"

Renumber accordingly

PROPOSED AMENDMENTS TO HB 1030

1 A BILL for an Act to create and enact a new section to chapter 12.1-32 of the North
2 Dakota Century Code, relating to exceptions from mandatory minimum sentences; to
3 amend and reenact subsection 19 of section 12.1-01-04, subdivision a of subsection
4 3 of section 12.1-20-03, and subsection 2 of section 12.1-32-07.1 of the North
5 Dakota Century Code, relating to the definition of manifest injustice.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 **SECTION 1. AMENDMENT.** Subsection 19 of section 12.1-01-04 of the North
8 Dakota Century Code is amended and reenacted as follows:

9 19. Repealed by S.L. 1975, ch. 116, § 33 "Manifest injustice" means a specific
10 finding by the court that the imposition of sentence is unreasonably harsh
11 or shocking to the conscience of a reasonable individual, with due
12 consideration of the totality of circumstances.

13 **SECTION 2. AMENDMENT.** Subdivision a of subsection 3 of section 12.1-20-03
14 of the North Dakota Century Code is amended and reenacted as follows:

15 a. An offense under this section is a class AA felony if in the course of
16 the offense the actor inflicts serious bodily injury upon the victim, if
17 the actor's conduct violates subdivision a of subsection 1, or if the
18 actor's conduct violates subdivision d of subsection 1 and the actor
19 was at least twenty-two years of age at the time of the offense. For
20 any conviction of a class AA felony under subdivision a of
21 subsection 1, the court shall impose a minimum sentence of twenty
22 years' imprisonment, with probation supervision to follow the
23 incarceration. The court may deviate from the mandatory sentence
24 if the court finds that the sentence would impose a manifest
25 injustice ~~as defined in section 39-01-01~~ and the defendant has
26 accepted responsibility for the crime or cooperated with law
27 enforcement. However, a defendant convicted of a class AA

1 felony under this section may not be sentenced to serve less than
2 five years of incarceration.

3 **SECTION 3. AMENDMENT.** Subsection 2 of section 12.1-32-07.1 of the North
4 Dakota Century Code is amended and reenacted as follows:

5 2. Whenever a person has been placed on probation pursuant to subsection
6 4 of section 12.1-32-02, the court at any time, when the ends of justice will
7 be served, and when reformation of the probationer warrants, may
8 terminate the period of probation and discharge the person so held. A
9 person convicted of gross sexual imposition under subdivision a of
10 subsection 1 of section 12.1-20-03 is not entitled to early termination
11 of probation pursuant to this section, unless the court finds after at least
12 eight years of supervised probation that further supervision would impose
13 a manifest injustice as defined in section 39-01-01. Every defendant who
14 has fulfilled the conditions of probation for the entire period, or who has
15 been discharged from probation prior to termination of the probation
16 period, may at any time be permitted in the discretion of the court to
17 withdraw the defendant's plea of guilty. The court may in its discretion set
18 aside the verdict of guilty. In either case, the court may dismiss the
19 information or indictment against the defendant. The court may, upon its
20 own motion or upon application by the defendant and before dismissing
21 the information or indictment, reduce to a misdemeanor a felony
22 conviction for which the plea of guilty has been withdrawn or set aside.
23 The defendant must then be released from all penalties and disabilities
24 resulting from the offense or crime of which the defendant has been
25 convicted except as provided by sections 12.1-32-15 and 62.1-02-01.

26 ~~SECTION 4. A new section to chapter 12.1-32 of the North Dakota Century Code~~
27 ~~is created and enacted as follows:~~

28 **Mandatory sentences -- Exceptions.**

29 1. In addition to any other provision of law, when sentencing an individual
30 convicted of a violation for which there is a mandatory minimum sentence,
31 the court may depart from the applicable mandatory minimum sentence if

1 the court, in giving due regard to the nature of the crime, history and
2 character of the defendant, and the defendant's chances of successful
3 rehabilitation, finds a compelling reason on the record that imposition of
4 the mandatory minimum sentence would result in manifest injustice to
5 the defendant and that the mandatory minimum sentence is not necessary
6 for the protection of the public.

7 2. Subsection 1 does not apply if:

- 8 a. The defendant willfully used, attempted to use, or threatened to use
9 serious physical force against another individual or caused serious
10 bodily injury of another individual;
11 b. The defendant intentionally used a firearm or other dangerous
12 weapon in a manner that caused bodily injury during the
13 commission of the offense;
14 c. The defendant committed an offense that involved any sexual
15 contact against a minor; or
16 d. The defendant has been convicted of a substantially similar offense
17 during the five-year period before the commission of the offense.

18 3. Upon departing from a mandatory minimum sentence, a judge shall report
19 to the state court administrator who shall make available in electronic form
20 and on the world wide web an annual report by July 1 of each year on the
21 total number of departures from mandatory minimum sentences.

22 **SECTION 4.** A new section to chapter 12.1-32 of the North Dakota Century Code
23 is created and enacted as follows:

24 **Mandatory sentences - Exceptions .**

- 25 1. In addition to any other provision of law, when sentencing an individual
26 convicted of a violation in chapter 19-03.1 for which there is a mandatory
27 minimum sentence, the court may depart from the applicable mandatory
28 minimum sentence if the court, in giving due regard to the nature of the
29 crime, history and character of the defendant, and the defendant's
30 chances of successful rehabilitation, finds a compelling reason on the
31 record that imposition of the mandatory minimum sentence would result in

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- 1 manifest injustice to the defendant and that the mandatory minimum
- 2 sentence is not necessary for the protection of the public.
- 3 2. Subsection 1 does not apply if the individual is sentenced under 12.1-32-
- 4 02.1.
- 5 ~~3. Upon departing from a mandatory minimum sentence, a judge shall~~
- 6 ~~report to the state court administrator who shall make available in~~
- 7 ~~electronic form and on the world wide web an annual report by July~~
- 8 ~~1 of each year on the total number of departures from mandatory~~
- 9 ~~minimum sentences.~~

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Mandatory Minimum Sentences in North Dakota

During the 1980s and early 1990s, many states, including North Dakota, enacted laws providing for mandatory minimum sentences for certain offenses. Mandatory minimum sentencing laws require a judge impose a sentence of at least a specified length if certain criteria are met. The proponents of mandatory minimum sentencing laws contended the certainty and severity of the mandatory minimum sentences would reduce crime by deterring individuals from committing crimes and keeping criminals incarcerated longer. However, critics of the laws argued the requirements unduly removed discretion from judges and would ultimately result in significant increases in the number of individuals incarcerated.

In 1983 the Legislative Assembly enacted Senate Bill No. 2373, which established mandatory minimum terms of imprisonment for offenders with multiple driving while under the influence offenses. The Legislative Assembly in 2013 House Bill No. 1302 increased the mandatory minimum sentences for driving under the influence offenses.

In 1993 the Legislative Assembly enacted House Bill No. 1062, which established mandatory minimum terms of imprisonment for the manufacture, delivery, or possession with the intent to deliver certain controlled substances. The bill amended Section 19-03.1-23 to provide specified minimum sentencing requirements based upon the classification of the controlled substance and whether the offender had previous offenses. The bill also established mandatory minimum sentences if the violation occurred within 1,000 feet of a school and if the offender were over the age of 21 and used a minor in the commission of the crime. Additionally, the bill amended Section 12.1-32-02.1 to impose mandatory sentences if the offender possessed a dangerous weapon or firearm while in the course of committing the offense. The bill created Section 19-03.1-23.2, which prohibits a court from deferring imposition of a sentence and from suspending a mandatory term unless the court finds the offense was the defendant's first violation and extenuating or mitigating circumstances exist to justify the suspension.

Subsequent Legislative Assemblies, including the 2005 Legislative Assembly, have established minimum mandatory sentences for sexual offenders and imposed requirements with respect to the service of sentences.

Section 12.1-32-09.1, which was enacted by the Legislative Assembly in 1995 and amended in 1997, provides an individual convicted of a crime that classifies the individual as a violent offender and who is sentenced to imprisonment is not eligible for release from confinement on any basis until 85 percent of the sentence imposed by the court has been served or the sentence is commuted.

Section 12.1-20-03.1, which was enacted by the Legislative Assembly in 1997 and amended in 2005, prohibits a court from deferring imposition of a sentence of an individual convicted of the continuous sexual abuse of a child. In 2005 the Legislative Assembly, in House Bill No. 1313, further provided if, as a result of injuries sustained during the course of the offense classified as gross sexual imposition, the victim dies, the offense is a Class AA felony, for which the maximum penalty of life imprisonment without parole must be imposed.

In 2005 the Legislative Assembly enacted Senate Bill No. 2341, which provided for the establishment of a pilot project in Pembina, Walsh, and Grand Forks Counties effective three months from the date of receipt of a federal grant for methamphetamine treatment applied for by the Department of Human Services. The bill provided when an individual located in Walsh, Pembina, or Grand Forks County pled guilty or was found guilty of a felony violation of Section 19-03.1-23(6) and that individual had not previously pled guilty or been found guilty of any offense involving the use, possession, manufacture, or delivery of a controlled substance or of any other felony offense, the court would be required to impose a period of probation of not less than 18 months in conjunction with a suspended execution of a sentence of imprisonment, a sentence to probation, or an order deferring imposition of sentence. The bill further provided upon a plea or finding of guilt of the individual, the court would be required to order a presentence investigation, including a drug and alcohol evaluation conducted by a licensed addiction counselor. If the licensed addiction counselor recommended treatment, the court was required to order the individual to participate in an addiction program licensed by the Department of Human Services as a condition of the probation. The court was then required to commit the individual to treatment through a licensed addiction program for up to 18 months until the individual would be determined suitable for discharge by the court. In 2007 the Legislative Assembly expanded the assessment and treatment program statewide in House Bill No. 1015.

Incarceration Rates and Mandatory Sentences

In August 2013 the Attorney General of the United States announced the Justice Department will no longer pursue mandatory minimum sentences for nonviolent drug offenders who have no connections with large criminal organizations, gangs, or cartels. The Attorney General stated federal prisons are operating at nearly 40 percent

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19-03.1-23.2. Mandatory terms of imprisonment — Deferred or suspended sentence limited.

Whenever a mandatory term of imprisonment is prescribed as a penalty for violation of this chapter, the court may not defer imposition of sentence, nor may the court suspend any part of a specified mandatory term, either at the time of or after the imposition of the sentence, unless the court first finds that the offense was the defendant's first violation of this chapter, chapter 19-03.2, or chapter 19-03.4 and that extenuating or mitigating circumstances exist which justify a suspension. The court shall announce the circumstances that justify a suspension in open court when sentence is imposed and recite these circumstances in the sentence or order suspending part of the sentence.

History.

S.L. 1993, ch. 128, § 4; 2001, ch. 214, § 5; 2001, ch. 215, § 2.

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12.1-32-02.1. Mandatory prison terms for armed offenders.

1. Notwithstanding any other provision of this title, a term of imprisonment must be imposed upon an offender and served without benefit of parole when, in the course of committing an offense, the offender inflicts or attempts to inflict bodily injury upon another, threatens or menaces another with imminent bodily injury with a dangerous weapon, explosive, destructive device, or firearm, or possesses or has within immediate reach and control a dangerous weapon, explosive, destructive device, or firearm while in the course of committing an offense under subsection 1, 2, or, except for the simple possession of marijuana, 6 of section 19-03.1-23. This requirement applies only when possession of a dangerous weapon, explosive, destructive device, or firearm has been charged and admitted or found to be true in the manner provided by law, and must be imposed as follows:

a. If the offense for which the offender is convicted is a class A or class B felony, the court shall impose a minimum sentence of four years' imprisonment.

b. If the offense for which the offender is convicted is a class C felony, the court shall impose a minimum sentence of two years' imprisonment.

2. This section applies even when being armed is an element of the offense for which the offender is convicted.

3. An offender serving a sentence subject to this section may be eligible to participate in a release program under section 12-48.1-02 during the last six months of the offender's sentence.

History.

S.L. 1977, ch. 127, § 1; 1983, ch. 170, § 1; 1993, ch. 128, § 2; 2003, ch. 111, § 1; 2011, ch. 101, § 2.

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