

2015 SENATE JUDICIARY

SB 2192

2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2192
1/19/2015
22100

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Minutes:

Ch. Hogue: We will open the hearing on SB 2192.

Sen. Armstrong: Sponsor, explained bill. This bill is one of the other bills that are going to attempt to try and deal with limited jail space and continuing costs associated with overcrowding and things of that nature. It's a pretty focused bill. The language on the first page is mainly clean-up and moving the language that is struck out. It creates two subsections instead of having one large one. The language that is struck out under the new subsection 1 reappears in subsection 2. The actual heart of the bill is the little addition on the back of subsection 2, section 12.1-17-02 and that's the felony assault statute. Essentially, the bill takes C felony aggravated assault out of the 85% crime. One of the very few unique crimes in the Century Code and that it runs all the way from B misdemeanor to, in certain very limited circumstances it could actually be an A felony. There is a B misdemeanor simple assault, A misdemeanor assault, C felony agg assault and there is a B felony assault. If you deal with the 85% crimes and all those other little ones, 12.1-16-01 and 12.1-16-02 are your homicide statutes; 12.1-17-02 is your assault statute, 12.1-18 is kidnapping, the 12.1-20's are sex offenses, 12.1-22-01 is robbery. Then when you get to subdivision B of subsection 2 of 12.1-22-02 that is burglary. In that area, they already do this for the burglary statute. Only the B felonies are subject to the 85%. C felony burglaries are not. We're saying with this bill, B felony agg assault is still going to be an 85% crime. C felony agg assault would come off the 85% crime. If you look at the other crimes that are subject to the 85%, it seems to make a little more sense that way. We want 85% crimes. We want that our most serious offenders, when they go to prison, they stay in prison. However, I always call C felony agg. Assault, the "bad luck trouble charge"; the difference between an A misdemeanor assault and a C felony assault oftentimes is either how unlucky you got when you hit

someone in a bar fight. What I mean by that, is if you punch somebody and knock them out in a bar fight, it's an A misdemeanor. If you punch someone, knock them out in a bar fight, they fall down, break their leg, now it's a C felony. The B felony assaults are obviously your more serious assaults, your firearms and types of actions. All the bill does is take the C felony agg. Assault off the 85% crime and leave the 85% to the more serious charges in which I personally believe they deserve to be there.

Ch. Hogue: What does the term 85% crime mean?

Sen. Armstrong: It's often called truth-in-sentencing. When you get sentenced to an 85% crime, you have to serve 85% of your sentence. So if you get 10 years on a B felony assault, you serve 8.5 years. It models a lot of what Minnesota does on their sentencing guidelines, the federal court does that. Any sentence you get in federal court is an 85% sentence. Oftentimes when you get sentenced in ND for prison, if you're not part of an 85% crime, you essentially go on the parole track for your non-violence crimes, unless there is a minimum mandatory. There is a minimum mandatory bill started in the House. We've had some alternatives to incarceration bills here and I want a real focused area where we can start dealing with some of this to be started in the Senate so we have them going both ways. This is an issue we've already about, and will hear more about it in Committee. It's an issue; we're running out of jail and prison space.

Sen. Grabinger: I don't recall any testimony as to how much of an impact this is going to have on our prison system. Do you have any indication?

Sen. Armstrong: There will be somebody to testify to that.

Sen. Casper: Can you give a quick synopsis of this, it seems like you are saying this affects C felonies the most. What is the range on a C felony with the 85% truth-in-sentencing get applied to it. What is the length of a C-felony, can you have a 10 year sentence.

Sen. Armstrong: No, five years is the max. One year in jail on an A misdemeanor, but 2 years supervised probation. Five years on a C felony, 10 years on a B felony. There are enhancements for firearms, or special dangerous offenders, all of those apply at every level. Your basic C felony is five years.

Sen. Casper: If we pass this bill, and we are taking the C felony out of the 85%, we would still be in a position, the parole officers, the supervisor of the jail, whoever is making that decision on a release, they are still going to be in a position to make a decision to make a decision that they may still serve 85% or 100% of their sentence. So we're giving them more leeway and discretion with that crime.

Sen. Armstrong: Yes. If you don't act appropriately while you are in prison, they always have the option. Just because you go on the parole track, does not always mean that you get parole.

Ch. Hogue: Thank you. Further testimony in support.

Patrick Bohn, Director for Transitional Planning services, ND DOCR: Support (see attached #1).

Sen. Luick: One of my questions was answered by the graph on the back page about the population increase vs. the increases of an aggravated assault. On the first graph, on page 2, has most of this increase happened in the western side of the state, or is it state-wide.

Patrick Bohn: I don't have the exact data. I haven't looked at if it was western, central or eastern. I'm the clerk to the Parole Board as well. I see all of these cases when we are determining parole eligibility. Certainly the last few years, there is some impact with the oil fields out there. I don't think it explains all the growth we've seen since early 2000. That would be a distribution throughout the entire state.

Sen. Luick: What is the scope of aggravated assault, what types of crimes does that include.

Patrick Bohn: It would involve where there is serious bodily injury, so you are looking at things like broken bones, lacerations requiring stitches; trauma where there may be head injuries, damaged bodily organs. That would all be that felony type of assault. The most common crimes we see is that there was a punch, that fight, where the individual has a broken jar, fractured eye socket, those would be the most common actions that we see.

Ch. Hogue: Thank you. Further testimony in support. Testimony in opposition. Neutral testimony on SB 2192.

Ch. Hogue: Can you walk us through a typical C felony aggravated assault, what kinds of fact scenario are out there and what is typically the sentence they receive.

Gail Hagerty, South Central Judicial District: There is a real range of situations and sentences. Often domestic violence cases, during the last session you changed the law so that if there is unconscious, strangulation, that qualifies into the aggravated assault category. Usually it's some kind of broken bone, permanent disfigurement, not necessarily a cut or a slash, it has to be some kind of permanent disfigurement or scarring, those are some of the more serious bodily injury. We see a lot of those cases. I think that increased meth. use has resulted in more of an aggressive population in some situations and that's why we are seeing more of those types of cases. When I hear about a technical violation being something like not getting treatment or not following through with those requirements. I wonder if that's really a technical violation of probation. If people aren't following through and doing what their probation officer says, it's hard for me to think that is a technical violation. I don't understand that. We have a whole range of sentencing; we hear recommendations from prosecutors, and defense attorneys; often a presentence investigation is done. I don't think that people are going to prison on a first offense of that nature.

Ch. Hogue: What would be a median sentence for a C felony aggravated assault?

Gail Hagerty: I think the public would really be surprised if they know how many offenses you have before you end up being incarcerated. I think on a second or third, you might be looking at some time probably not as much as you would think. Maybe a year, 18 months depending on the circumstances. You would often get a victim impact statement and in cases of domestic violence, we're often asked by victims not to have long incarceration. Often the victim would say, "I just want him to get treatment". There are so many factors that I don't know that I can give you a typical sentence. I can tell you that I don't think people usually get out to the penitentiary if they haven't been on supervised probation and if they don't already have quite a record already.

Ch. Hogue: We will close the hearing on SB 2192.

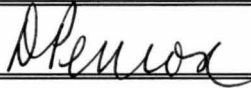
2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2192
2/9/2015
23482

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Minutes:

Ch. Hogue: We will take a look at SB 2192. What are the committee's wishes?

Sen. Armstrong: Pat Bohn from DOCR testified and Judge Gail Hagerty some questions and I think their testimony ran the gambit from the low end and one was on the high end. I think that is the issue with C felony Aggravated Assault; it runs very minor issues to more serious crimes. This is one of the bills to start establishing how we deal with our increased prison population and what we have going on. I know the states' attorney didn't testify against it. DOCR, obviously, they would like to get into this significantly more than I think they should have. This is the only class C felony with an 85%. The rest are all class B and they are significant crimes. There is a B felony agg assault and we don't change that. I think this is a good bill to start communication between the parties.

Sen. C. Nelson: I have a note that says "luck of the draw" whether you get a C felony or a A misdemeanor.

Sen. Armstrong: If you get drunk at a bar and walk outside and have a little fight and you punch the guy, it is an A misdemeanor; if you punch the guy, he slips and breaks his leg, it is a C felony. That's how assaults are based; they are based on the degree of harm; which is why we only did it with the C felony. There is "kind of harm", "harm", then "serious harm" and the "serious serious harm". You go from B misdemeanor, A misdemeanor, C felony, B felony. We're not touching the B felony; they are still staying at 85%.

Sen. C. Nelson: So because this is happened in a couple of cases, if that parking lot fight, the person falls, hits their heads and dies, then it is manslaughter, or what.

Sen. Armstrong: Yes, it would be a homicide; depending on which homicide it would be would be based on the facts. If the person falls, hits his head and goes into a coma, then it would be B felony assault. You can still charge out the B felony assault.

Sen. Casper: I move a Do Pass.

Sen. Grabinger: Second the motion.

6 YES 0 NO 0 ABSENT

DO PASS

CARRIER: Sen. Luick

Date: 2/9/15
Roll Call Vote #: 1

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTE

BILL/RESOLUTION NO. 2192

Senate JUDICIARY Committee

☐ Subcommittee

Amendment LC# or Description: _____

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. Casper Seconded By Sen. Grabinger

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 Luick

REPORT OF STANDING COMMITTEE

SB 2192: Judiciary Committee (Sen. Hogue, Chairman) recommends **DO PASS**
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2192 was placed on the
Eleventh order on the calendar.

2015 HOUSE JUDICIARY

SB 2192

2015 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

SB 2192
3/16/2015
24891

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the sentencing of offenders for aggravated assault.

Minutes:

Testimony #1

Chairman K. Koppelman: Opened the hearing on SB 2192.

Senator Armstrong: Introduced the bill. This bill takes Class C felony aggregated assault out of the 85% category for sentencing. Assault is an interesting section of the code because it is the only crime I know of that can go B misdemeanor; A misdemeanor; C felony; B felony and in certain cases A felony. It goes from simple assault to regular assault to aggravated assault. Then can be C, B or A depending on other factors. The difference between a C felony and B felony is if you suffer permanent loss or impairment of a bodily function it becomes a B felony. If this would pass just to give you an example of the other 85% crimes it would be murder, manslaughter, B felony, assault, kidnapping, sex offenses, robbery and burglary with threats. So this is really the only C felony that has the 85% crime.

Chairman K. Koppelman: When you talk about an 85% crime you are referring to the statute that is on the second page of the bill which requires you serve at least 85% of the sentence.

Senator Armstrong: Yes and we are not removing the B felony assault. There are some C felony's that are significant, but part of that is because of this statute. The more serious of the C felonies will end up being charged as a B felony. A lot of it is prosecutor discretion.

Rep. D. Larson: The judge can still assign 100% of the time if they wish. Some of these are pretty serious things. Is it only up to DOCR?

Senator Armstrong: With the C felony they can sentence them to the max. If you are talking about using a firearm the armed defender statute can apply on that and will trigger a B felony anyway. I have never seen a C felony firearm case.

Rep. D. Larson: I asked because it is under d of section 1 of this bill.

Senator Armstrong: It works in conjunction with the other one.

Rep. D. Larson: I think we are on the right track taking out some of these mandatory sentencing things, but are you concerned that we may be putting some things at DOCR discretion that should be more judge's discretion when it comes to just saying well we have too many people so on a scale of 1-10 of the bad people we have these are less than those bad people so we are going to empty some of those cells out.

Senator Armstrong: When we have mandatory sentencing the judge has no discretion. This is addressing the A misdemeanor C felony line.

Rep. K. Wallman: Would this have any impact on a courts ability to assign domestic violence prevention treatment?

Senator Armstrong: None.

Rep. G. Paur: when you opened your comments you said that this bill is attacking overcrowding. Just 30 seconds ago you said that very seldom do you see anybody incarcerated for a C felony. Am I missing something?

Senator Armstrong: No there are people who get sentencing on these. It is much rarer than you don't get a prison sentence for a B felony than a C felony. There are often cases in C felonies where you don't get a prison sentence. You can ask Patrick Bohn and he can give you the state better than I can.

Chairman K. Koppelman: I am the language that was taken out of subsection 1 and put into a new subsection 2. Is that just a language kind of thing that the counsel is doing or what is the impact of that?

Senator Armstrong: No except when you take it with a companion part on line 2 subsection 4 it is easier to break it out for the 85% statue. If it ever happens to a kid it is automatically a B felony. Any assault on somebody under 12 years old or an adult that causes permanent injury is a B felony that is subject to 85%.

Rep. L. Klemin: Is it like the shaking baby thing. Does that apply in this case?

Senator Armstrong: Yes it does but that would always be a B felony. Often times since they cause bodily harm they are charged as an A felony.

Patrick Bohn, Director for Transitional Planning Services: (See Testimony #1) (13:20-23:30)

Rep. D. Larson: What was that last statistic? What percent are even on parole after their 85%?

Pat Bohm: These are people that have probation to follow. They are not parole eligible so 27.3%.

Rep. D. Larson: That would be able to be higher because they are not at 100% of their sentence, right? But for some reason they are not being put on probation?

Pat Bohm: There could be a number of factors that go into why there is no supervision to follow. It could be they have reached that penalty so they are at five years so the court doesn't have any further authority on it. It could be the limitation of two probation periods; that could be another factor or could be just the discretion of the court.

Rep. D. Larson: Last session we went on a tour of the penitentiary one of the prisoners said let's go work on our continent restructuring. Have you found that the continent restructure; the programs they are in while they are in prison, are effective in reducing recidivism.

Pat Bohm: Those continent restricting programs are well researched with med analysis with reducing recidivism. Having that carrot out there for people to engage fully in those programs is important in their rehabilitation.

Rep. D. Larson: Has your statistics shown that the recidivism is reduced when they complete that programing?

Pat Bohm: We have been tracking our recidivism for about ten years. We got it down recently to 36%. Now I think it is going to go back up here now the way the numbers are coming together. I call 2012 the year of the syndics. I don't have the figures on that. It is a hard figure to put together with all the variables.

Rep. K. Hawken: Did you see within the last week or so about a program in a prison with bad people and they have taught them how to do coding? These people were going to leave prison and go forth. I don't think anybody should leave prison without a place to go without some hope for a job because if they do they are coming back to you. Are we doing anything along those lines? Is there something as a legislature that you need from us of the positive nature for those who can't make it.

Pat Bohm: The department does provide training now with a lot of skills we are doing now that they can take to the community now. The thing we are talking about here is giving us the ability to help them engage and find employment.

Rep. K. Hawken: So this does feed into that. I like that.

Chairman K. Koppelman: Are those jobs out there you mentioned metal work or upholstery and sewing. Are those livable wage jobs? Are you keeping up with what the market demands?

Pat Bohm: Industries is tough. There are some good things going on out there. There is a big need for wilders, woodworking and carpenter jobs.

Rep. K. Wallman: What kind of data is available not forcing violent offenders to serve 85% of their time? Do we have any data that that does reduce recidivism? How many more

violent offenders will come back to our communities with a measure of supervision and support if this bill is passed?

Pat Bohm: This is a population we have not had a chance to work with them. I don't know how many people would get patrolled. If we can engage more of those people in those programs. 18 to 24 months is the right dosage and after that you start to lose your treatment effect. The second part to your question is I don't know how many people would actually get paroled from this. They haven't been eligible for review since I have been working with the parole board. This law came into effect in 1995. I have been with the board since February of 2003. I don't know the percentage but it is going to be more than the currently is.

Rep. K. Wallman: You said 40% of the folks that are incarcerated right now would fall into the 85%.

Pat Bohm: 20% of our prison population.

Rep. K. Wallman: If this population isn't what you referred to as gladiator school I am going to assume that possibly that means that those rehabilitation efforts might be less effective on this population.

Pat Bohm: No. The higher risk more dangerous risk you get a better bang for your buck in recidivism programing. Because lower and moderate risk people are probably going to be OK without those services. 20% of the population is serving an 85% sentence. About half of those are these aggravated assault people so figure 10% are aggravated assault.

Rep. K. Wallman: So that 10% with this bill would go before the board and when they were released if they didn't serve the 85% they would have a measure of support and parole getting back into the community.

Pat Bohm: Yes. Sometimes the board will grant parole to somebody not because they necessarily deserve it, but because the victim or the public deserves it. (Gave an example)

Rep. G. Paur: 10% of the prison population is under this 85% aggravated assault. How many are C felony?

Pat Bohm: A few is a C felony accounts for most of that 10%.

Chairman K. Koppelman: So you what percentage are C felonies. I think you are saying most.

Pat Bohm: Class C almost the full 10%. Less than 1% is Class B felonies.

Rep. Lois Delmore: Are we still notifying the victim when someone is released from prison?

Pat Bohm: We notify and notify all the time. We use the SAVIN System. We are giving the victims as chance to have their say throughout the process.

Chairman K. Koppelman: Are protection orders or no contact orders typical or do they ever happen in respect to this?

Pat Bohm: Sometimes there are protection orders in place. The other thing the board can do is regardless of what the court has done, they can impose a condition putting in a no contact order and that is something we frequently do with specific victims involved.

Chairman K. Koppelman: Only for the period of time they are under supervision.

Rep. Brabandt: You made reference to Roughrider Industries. Does it compete with private industry?

Pat Bohm: The security overhead drives up our costs. It is a competitive price but limited to who we can sell to.

Rep. Brabandt: What does a cost to incarcerate a person in the state pen for one year?

Pat Bohm: Approximately \$39,000 a year.

Rep. D. Larson: As I look at this definition some of these things seem to be worrisome. When you really read what this says; some of these things are willfully and knowing so they are planning to go out and do serious injury. How do you tell and treat differently someone who has a bent on being controlling and violent?

Pat Bohm: We go through a pretty intense process and looking at the risk factors for an individual and what their treatment needs are; mental health needs and a whole litany of things. There is a period of time where they are locked up. If you support what we are asking for here you have a parole board that steps in and does a further vetting of that information to address those concerns. (Gave an example)

Rep. K. Wallman: Maybe an option is to be sure those 85% couldn't the parole board just vent them before they get out and require some supervision. Maybe we could change the law to do that?

Pat Bohm: Yes there are probably see ways you could do that. One way you could do that. HB 1367 & SB2270 that passed will help here. Having the ability for the board to set that release time and some other options of mandatory supervision upon release and how that comes about? It is better if you can have the parole board looking at those cases on the back end instead of in terms and conditions.

Rep. K. Wallman: You have testified before that sometimes prison is criminology 101. I don't understand why the supervision isn't just added at the end of the 85%?

Pat Bohm: It does give them that incentive to work on behavior change so they can at least improve their chances for favorable early release. Motivation is one of our key elements to behavior change.

Rep. D. Larson: When did 85% become 100%?

Pat Bohm: Based upon the good time law. Defenders coming to the ND Dept. of Corrections can earn up to 5 days a month for good time. That is how 100% becomes 85%.

Rep. D. Larson: I think that is effective even as a parent. I have learned in life that there truly are some monsters with those people who are truly dangerous to others; how are we going to affect the change?

Pat Bohm: It gives the board the ability to look at people and look at maybe some early release under terms and conditions that they would establish rather than right now you serve your time you walk out the door.

Chairman K. Koppelman: If the problem is after 85% there is no ability under law to supervise. If somebody earns good time whether it is under the mandatory 85%; they are released the good time law says you are done. Should it release you from supervision? Do you have an opinion on that?

Pat Bohm: I think the issue here is go back to how can we make this a win win in many ways and an opportunity to address some of the correctional resource challenges we have and address public safety through that transition piece.

Chairman K. Koppelman: If somebody earns good time then you are done. If supervision upon release is so important why could that not be part of the good time law?

Pat Bohm: Certainly you could say that. The terms and conditions would have to be addressed.

Chairman K. Koppelman: How effective is supervision?

Pat Bohm: We know people that don't have supervision recidivism at a lower rate. One of the reasons we see people come back is because the department; whether it be on parole or probation can intercede and try and help the person or address violations and seek the revocation. Supervision sometimes can add problems with the conditions.

Chairman K. Koppelman: Do you separate out violations of probation or parole versus new offenses?

Pat Bohm: Yes we do.

Chairman K. Koppelman: Is that on par with those that are not supervised then?

Pat Bohm: I don't know. There is no like group to compare.

Chairman K. Koppelman: Is there greater recidivism for those on supervision. Do you have that data?

Pat Bohm: We don't know because they are not on supervision. The only reason we know is they came back into our prison system.

Rep. K. Hawken: Do you guys do a plan with a dollar amount?

Pat Bohm: The cost of supervising somebody in the community is about \$6/day versus the \$39,000 I quoted earlier.

Opposition: None

Neutral: None

Hearing closed.

Do Pass Motion Made by Rep. Lois Delmore: Seconded by Rep. K. Hawken:

Discussion:

Rep. K. Wallman: After the alternatives to incarceration that keep coming to us I feel as a body we are struggling with making sure we are not emptying our prisons at the expense of the public.

Rep. Lois Delmore: There we good questions. This is a good bill and it will help with some things.

Chairman K. Koppelman: I struggle with this balance as well. With the Justice Reinvestment Study we will be seeing a lot more of this in two years.

Roll Call Vote: 12 Yes 0 No 1 Absent Carrier: Rep. G. Paur

Date: 3-16-15
Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 5B2192

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. Delmore Seconded By Rep. Hawken

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) 12 No 0

Absent 1

Floor Assignment Rep. Paur

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

REPORT OF STANDING COMMITTEE

SB 2192: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2192 was placed on the Fourteenth order on the calendar.

2015 TESTIMONY

SB 2192

SENATE JUDICIARY COMMITTEE
SENATOR DAVID HOGUE, CHAIRMAN
JANUARY 19, 2015

**PATRICK N. BOHN, DIRECTOR FOR TRANSITIONAL PLANNING SERVICES,
NORTH DAKOTA DEPARTMENT OF CORRECTIONS & REHABILITATION
PRESENTING TESTIMONY RE: SB 2192**

My name is Pat Bohn and I am the Director for Transitional Planning Services for the North Dakota Department of Corrections and Rehabilitation (DOCR). I am here to testify in support of Senate Bill 2192.

What this bill does:

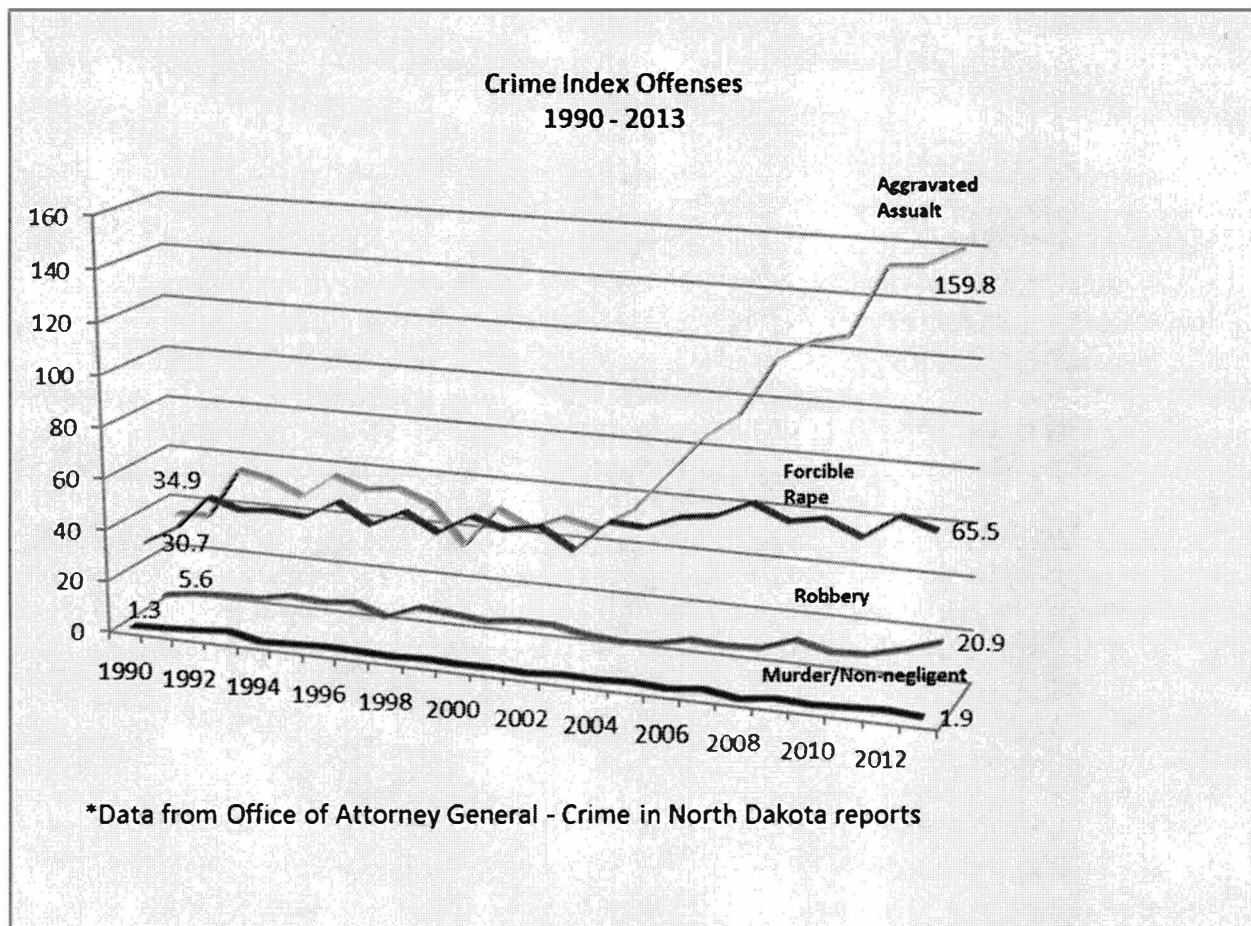
This bill proposes removing C Felony Aggravated Assault from the 85% law which mandates that individuals sentenced to a period of incarceration must serve 85% of their sentence without the benefit of parole. This change will not affect the B Felony Aggravated Assault currently in the 85% law.

Background:

The Violent Offender Incarceration and Truth-In-Sentencing Incentive Formula Grant Program (VOI/TIS) contained in the Violent Crime Control and Law Enforcement Act of 1994 provided states formula grants to build or expand correctional facilities and jails to increase secure confinement space for violent offenders. In response, in 1995 the 54th Legislative Assembly enacted N.D.C.C. section 12.1-32-09.1 which requires people to serve 85% of the court imposed sentence without the benefit of parole if convicted of committing, attempting to commit or accomplice to the criminal offenses of Murder (12.1-16-01), Manslaughter (12.1-16-02), Aggravated Assault (12.1-17-02), Kidnapping (12.1-18-01), Robbery (12.1-22-01), Gross Sexual Imposition with the use of force or the threat of the use of force that would result in the death, serious bodily injury or kidnapping (12.1-20-03 – 1(a) or 2(b)), Burglary (subdivision b of subsection 2 of section 12.1-22-02). Between 1996 and 2001 North Dakota received \$10,351,888 and used its VOI/TIS funds for the James River Correctional Center. VOI/TIS funds were also used to lease private transitional beds. (February 2012 REPORT TO CONGRESS by U.S. Department of Justices: <https://www.bja.gov/Publications/VOITIS-Final-Report.pdf>)

Why:

The implementation of the 85% law has contributed to a portion of the growth in our prison population and while the per capita rate of the crime also has dramatically increased (arrests per 100,000). Most notable, and the largest portion of our population serving a sentence under the 85% statute, is aggravated assault which has increased almost 350% since 1990 with a continuous rise commencing in the early 2000.



Solutions:

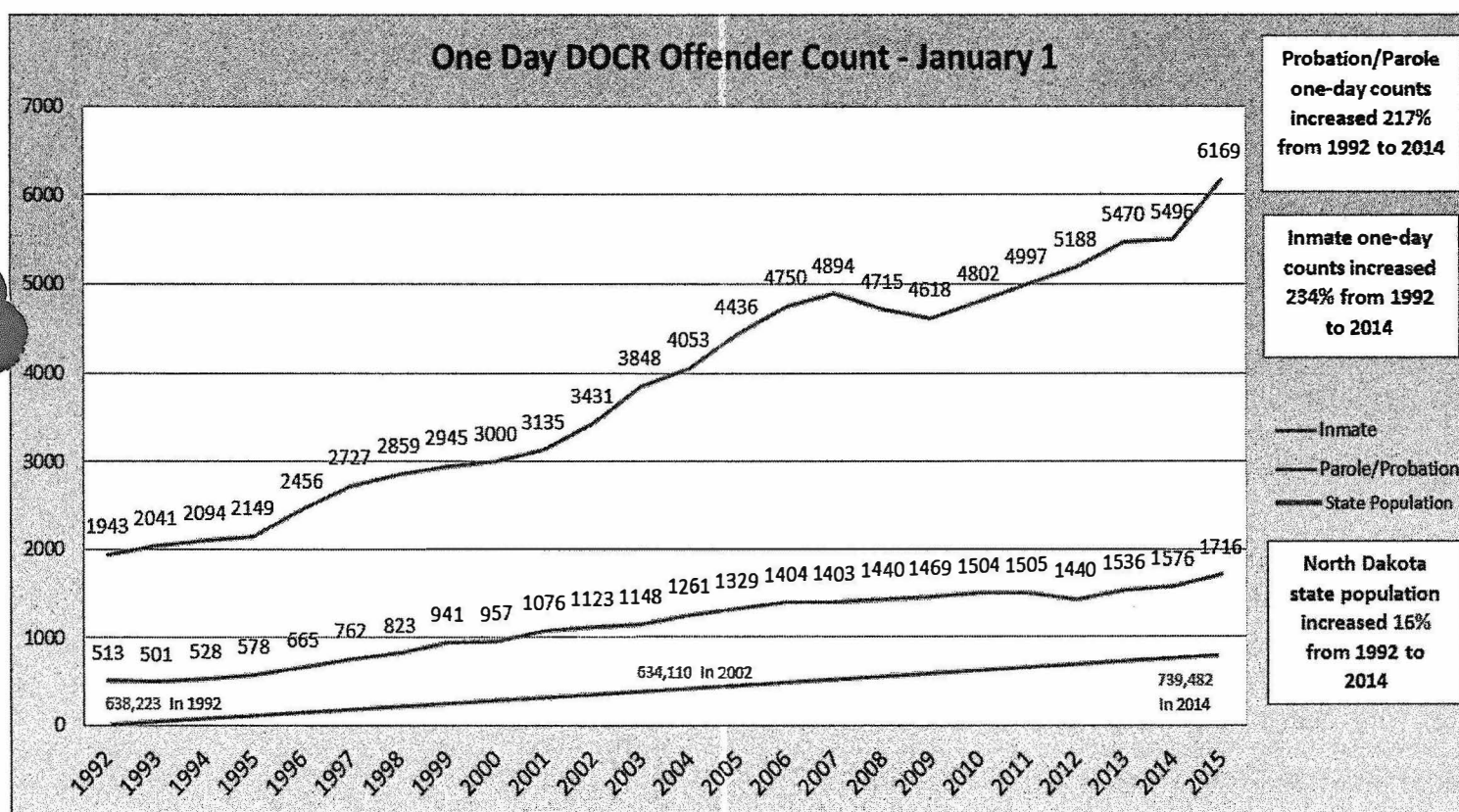
We believe that removing the aggravated assault crime from the 85% statute and making these people eligible for parole during their incarceration we will have greater chance of reducing recidivism while holding offenders accountable, maintaining and even improving public safety and reducing the likelihood of future victimization. We also believe this may have a counter effect on our increasing growth and costs in corrections. I need to be clear that I'm not saying some of these people are not dangerous and should not be incarcerated for a period of time but what I am saying is let the parole board evaluate these cases during their sentence to determine who needs to serve all or a greater portion of their sentence and who should be methodically transitioned from prison back to the community under the conditions established by the board. Let me share with you a few other interesting aspects of this law:

1. Under the 85% statute the court is not mandated to sentence the person to prison. A person convicted of aggravated assault can be placed directly on supervised probation. It would only be upon revocation of probation and a subsequent sentence to prison that would result in the execution of the 85% statute. It seems odd that this person could be deemed by the court to not need incarceration upon conviction of this offense, yet some years later, upon revocation of probation for maybe technical violations, that this person now needs to serve 85% of the sentence without benefit of parole and greater accountability via transition.

2. This applies to any subsequent probation revocation (2 period maximum) which can sometimes occur 3, 5, 10 years after the original act.

Other Initiatives and Closing:

There is no silver-bullet and we cannot change our growth and improve public safety overnight. It will take time to make systemic shifts that must come from multiple policy changes addressed from many angles and on many levels: The practice of adding and increasing criminal penalties has been a part of our culture for many decades, if not centuries, and culture change can be difficult and scary. A few things to mention that we are promoting to change our course from many angles and on many levels: 1. Reducing maximum lengths of probation for non-violent offenders, 2. Allowing the department to terminate probation early for non-violent offenders who are in substantial compliance with their probation conditions, 3. Authorization of 48 hour jail holds as an immediate consequence to violations, 4. Pretrial services pilot project and 5. Placing assessment and correctional treatment services in larger county jails.



In closing, the DOCR supports the passing of House Bill 2192.

#1
SB 2192
3-16-15

HOUSE JUDICIARY COMMITTEE
REPRESENTATIVE KIM KOPPELMAN, CHAIRMAN
MARCH 16, 2015

**PATRICK N. BOHN, DIRECTOR FOR TRANSITIONAL PLANNING SERVICES,
NORTH DAKOTA DEPARTMENT OF CORRECTIONS & REHABILITATION
PRESENTING TESTIMONY RE: SB 2192**

My name is Pat Bohn and I am the Director for Transitional Planning Services for the North Dakota Department of Corrections and Rehabilitation (DOCR). I am here to testify in support of Senate Bill 2192.

What this bill does:

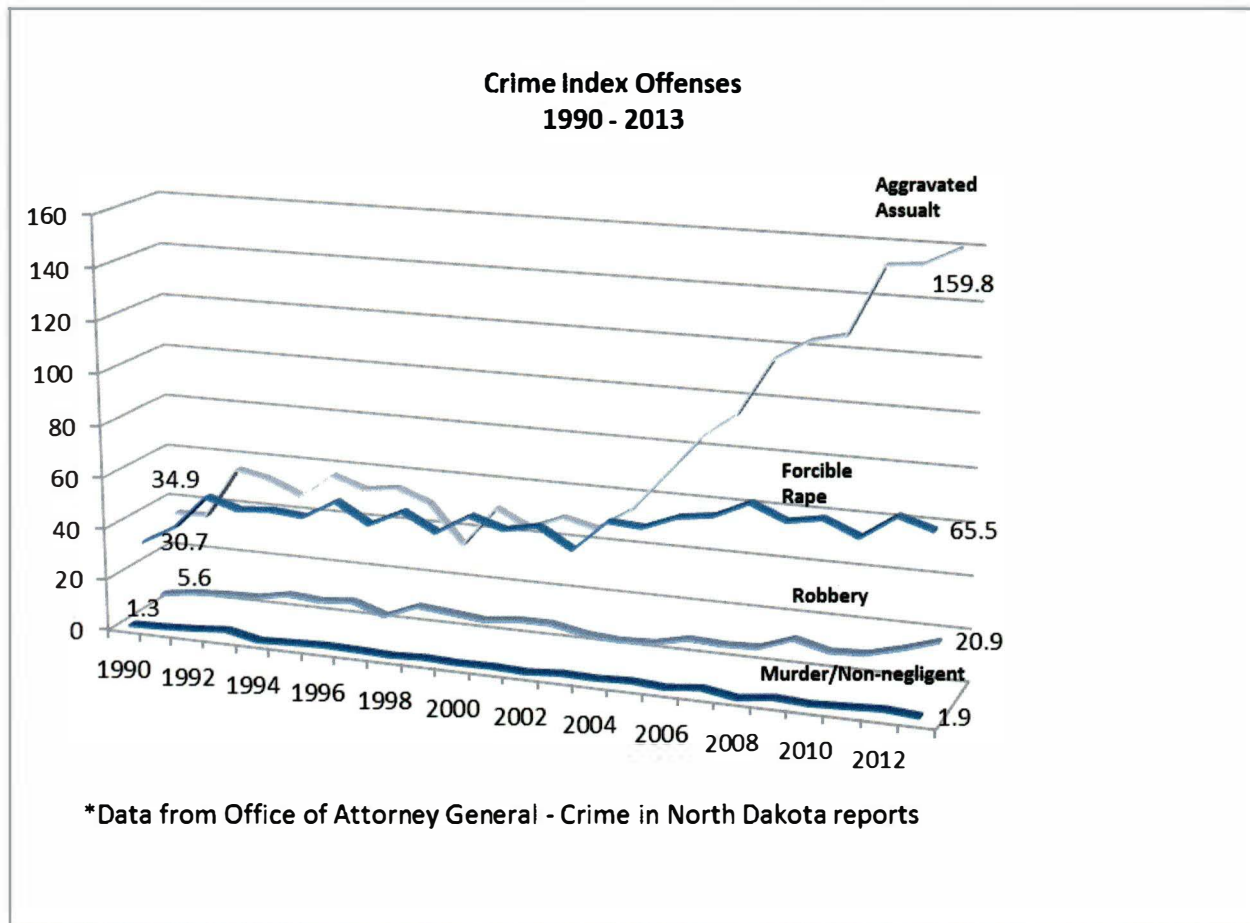
This bill proposes removing C Felony Aggravated Assault from the 85% law which mandates that individuals sentenced to a period of incarceration must serve 85% of their sentence without the benefit of parole. This change will not affect the B Felony Aggravated Assault currently in the 85% law.

Background:

The Violent Offender Incarceration and Truth-In-Sentencing Incentive Formula Grant Program (VOI/TIS) contained in the Violent Crime Control and Law Enforcement Act of 1994 provided states formula grants to build or expand correctional facilities and jails to increase secure confinement space for violent offenders. In response, in 1995 the 54th Legislative Assembly enacted N.D.C.C. section 12.1-32-09.1 which requires people to serve 85% of the court imposed sentence without the benefit of parole if convicted of committing, attempting to commit or accomplice to the criminal offenses of Murder (12.1-16-01), Manslaughter (12.1-16-02), Aggravated Assault (12.1-17-02), Kidnapping (12.1-18-01), Robbery (12.1-22-01), Gross Sexual Imposition with the use of force or the threat of the use of force that would result in the death, serious bodily injury or Kidnapping (12.1-20-03 – 1(a) or 2(b)), Burglary (subdivision b of subsection 2 of section 12.1-22-02). Between 1996 and 2001 North Dakota received \$10,351,888 and used its VOI/TIS funds for the James River Correctional Center. VOI/TIS funds were also used to lease private transitional beds. (February 2012 REPORT TO CONGRESS by U.S. Department of Justices: <https://www.bja.gov/Publications/VOITIS-Final-Report.pdf>)

Why:

The implementation of the 85% law has contributed to a portion of the growth in our prison population and over time the state's per capita aggravated assault offense rate has dramatically increased (arrests per 100,000). Most notable, and the largest portion of our population serving a sentence under the 85% statute is aggravated assault. This offense category has increased almost 350% since 1990 with a continuous rise commencing in the early 2000.



Solutions:

We believe that by removing the aggravated assault crime from the 85% statute and making these people eligible for parole review during their incarceration, we can have a greater chance of reducing recidivism while holding offenders accountable, maintaining and even improving public safety and reducing the likelihood of future victimization. We also believe this may have a counter effect on our increasing growth and costs in corrections. I need to be clear that I'm not saying some of these people have not exhibited dangerous behavior and should not be incarcerated for a period of time but what I am saying is let the parole board evaluate these cases during their sentence to determine who needs to serve all or a greater portion of their sentence and who should be methodically transitioned from prison back to the community under the conditions established by the board. Let me share with you a few other interesting aspects of this law:

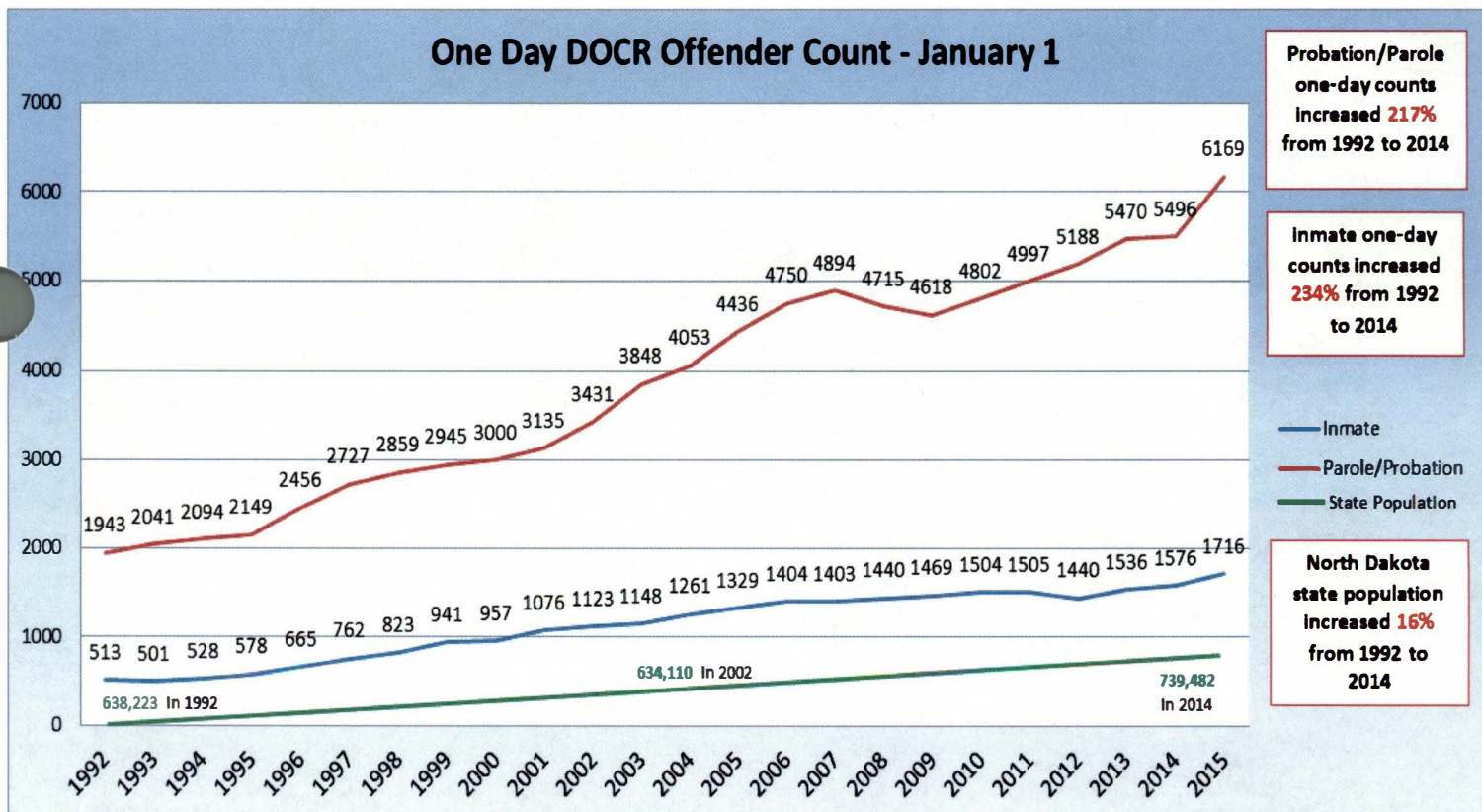
1. Under the 85% statute the court is not mandated to sentence the person to prison. A person convicted of aggravated assault can be placed directly on supervised probation. It would only be upon revocation of probation and a subsequent sentence to prison that would result in the execution of the 85% statute. It seems odd that this person could be deemed by the court to not need incarceration upon conviction of this offense, yet some years later, upon revocation of probation for maybe technical violations, that this person now

needs to serve 85% of the sentence without benefit of parole and greater accountability via transition (Reference New Probation Revocation Data)

2. This applies to any subsequent probation revocation (2 period maximum) which can sometimes occur 3, 5, 10 years after the original act (Reference Probation Revocation Data)

Other Initiatives and Closing:

There is no silver-bullet and we cannot change our growth and improve public safety overnight. It will take time to make systemic shifts that must come from multiple policy changes addressed from many angles and on many levels: The practice of adding and increasing criminal penalties has been a part of our culture for many decades, if not centuries, and culture change can be difficult and scary. A few things to mention that we are promoting to change our course from many angles and on many levels: 1. Changes to probation laws relating to length of probation and number of probation periods (SB 2027 and HB 1367) 2. Pretrial services pilot project, 3. Providing assessment and correctional treatment services in larger county jails.



In closing, the DOCR supports the passing of Senate Bill 2192.