

2017 HOUSE JUDICIARY

HB 1121

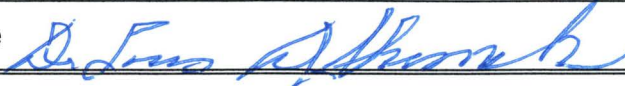
2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1121
1/10/2017
26737

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to sentencing violent offenders.

Minutes:

1

Chairman K. Koppelman: Opened the hearing on HB 1121.

Pat Bohn, Director for Transitional Planning Services for ND Dept. of Corrections & Rehabilitation: (DOCR) See Testimony #1. (:50-4:42) If you look on page 1, line 9 of the bill we are proposing to overstrike on and insert immediately thereafter effective as of.

Representative Klemin: Could you give us a couple of examples of how this would work with people and their mortality table and their life and how it would work.

Pat Bohn: If you have a 25-year-old who committed a murder and that table says life expectancy is 75 years so when he comes through the balance of his sentence if the mortality table is 50 years; you take 85% of 50 and you get 42.5 years so that individual would have to serve 42.5 years before they would become eligible for patrol.

Representative Klemin: Let's assume a person convicted of a double A felony is 75 and the life expectancy is 75; then what?

Pat Bohn: Then it is going to be short. We have another thing in statue and it is preceded the 85% law and that law is that the individual must also serve a minimum of 30 years less good time from the date they walk through the prison gates. So an individual who is 75 the minimum sentence would be 25 years so he would be 100 years old leaving the prison.

Representative Klemin: You are taking 80% of the 30 years?

Pat Bohm: No it is a separate law so we default to the other law and we always take the longest of those two dates.

Representative Klemin: The is assuming he met the good time requirement.

Chairman K. Koppelman: Could you explain what the good time law is?

Pat Bohn: (9:21) The good conduct is based on good conduct in the facility and that is driven by things like compliance with any programs in prison and you can earn good time or loose good time depending on your actions. You also can lose good time for misconduct.

Representative Paur: What precipitated this bill?

Mark Bohn: There was a question that Birch Burdick out of Fargo was asking what the 85% computation would be if the individual received a life sentence. We thought after looking at this that we need to have this coming from the court and we went back and looked at the judgements and there was nothing there and has some conversation with state court administration so it was a case that started this. I did look at our caseload and nobody would be eligible for patrol even without the computation just assuming what the 85% would be on the mortality table.

Representative Paur: Have you discussed this in detail and have the courts blessing?

Mark Bohm: Yes we have had some conversations with the state court administrator and I think the term she used in June was she didn't think anybody would want to arm wrestle us for it.

Representative Nelson: The good time thing, does also affect a guy with 42.5 with life expectancy does he still gain so is it 42.5 less good time?

Mark Bohn: It would be 45.5. You just take the 85%.

Representative Roers Jones: Is there any objections by the courts? There is no change in how the calculations are being done; it is a matter of who is doing the calculations.

Mark Bohn: That is correct.

Representative Satrom: How do you deal with terminal illness?

Mark Bohn: We have proposal this session on a medical patrol who would make these people eligible under the 85% law.

Chairman K. Koppelman: (14:26) I understand life expectancy changes depending on how old you are today and your generation. Will these be modified that way?

Mark Bohn: Yes. These 16 people I talked about would be best served by using the mortality table that is in current rule and then look to establish an update any future to account for those things as well as changes in the mortality tables.

Opposition: None

House Judiciary Committee

HB 1121

January 10, 2017

Page 3

Closed

2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB1121 1-10-17 #2
1/10/2017
26749

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to sentencing violent offenders.,

Minutes:

Chairman K. Koppelman: Committee work on the bill HB1121. We are not going to act on this bill yet because there are still some amendments pending, but we can attach this amendment now and then hold onto it.

Motion made to change line 9, after the word calculated adding effective as of and striking the word on move that amendment by Rep. Maragos; Seconded by Rep. Hanson

Voice vote carried.

Meeting closed.

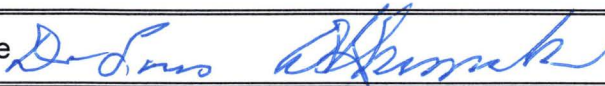
2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1121
1/11/2017
26809

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to sentencing violent offenders.

Minutes:

1

Chairman K. Koppelman: We had added the amendment on this bill. Passed out the proposed amendment #1 and went over it. Explained the reason on rule of law and the administrative rules committee. (2:00-7:46)

Motion made to move the amendment by Rep. Nelson; Seconded by Rep. Magrum.

Discussion:

Representative Klemin: If you look at the bill on lines 10 & 11 it says computed by reference to a recognized mortality table. Then when you look at the amendment it says tables. The word tables should be table.

Chairman K. Koppelman: I think she made it plural and Legislative Counsel has done this and should have a reason to have it single.

Representative Nelson: We are using one table for one offender so I don't think there is a problem.

Chairman K. Koppelman: If you look at the bill it is looking at one offender it must be calculated as of the date of sentencing. Then it recognizes one mortality table as established by rule by the Dept. of Corrections and Rehabilitation so we are dealing with one individual being subject to one sentence being subject to one mortality table.

Representative Vetter: That is the point I am trying to make too. I was an insurance agent and am aware of this.

Representative Simons: It is according to ethic group as well.

Chairman K. Koppelman: Now all they have to go by is gender differences and white versus back. They don't even have Hispanic or native American and other types of ethnic differences and that is being developed probably by the Census Department.

Representative Klemin: I think the tense should be the same on both parts of this bill.

Chairman K. Koppelman: I disagree because it is dealing with a specific singular and offender and sentence and a specific rule and that would be the case for each defender so there is one table that applies to that offender, but there are many tables that they are going to be adopting by rule.

VOICE VOTE CARRIED.

Do Pass as Amended by Rep. Maragos; Seconded by Rep. Simons

Roll Call Vote: 15 Yes 0 No 0 Absent Carrier: Rep. Blum

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1121

Page 1, line 1, after "12.1-32-09.1" insert "and subsection 2 of section 28-32-01"

Page 1, line 2, after "offenders" insert "and the definition of administrative agencies"

Page 1, after line 11, insert:

"SECTION 2. AMENDMENT. Subsection 2 of section 28-32-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Administrative agency" or "agency" means each board, bureau, commission, department, or other administrative unit of the executive branch of state government, including one or more officers, employees, or other persons directly or indirectly purporting to act on behalf or under authority of the agency. An administrative unit located within or subordinate to an administrative agency must be treated as part of that agency to the extent it purports to exercise authority subject to this chapter. The term administrative agency does not include:
 - a. The office of management and budget except with respect to rules made under section 32-12.2-14, rules relating to conduct on the capitol grounds and in buildings located on the capitol grounds under section 54-21-18, rules relating to the classified service as authorized under section 54-44.3-07, and rules relating to state purchasing practices as required under section 54-44.4-04.
 - b. The adjutant general with respect to the department of emergency services.
 - c. The council on the arts.
 - d. The state auditor.
 - e. The department of commerce with respect to the division of economic development and finance.
 - f. The dairy promotion commission.
 - g. The education factfinding commission.
 - h. The educational technology council.
 - i. The board of equalization.
 - j. The board of higher education.
 - k. The Indian affairs commission.
 - l. The industrial commission with respect to the activities of the Bank of North Dakota, North Dakota housing finance agency, public finance authority, North Dakota mill and elevator association, North Dakota farm finance agency, the North Dakota transmission authority, and the North Dakota pipeline authority.

- m. The department of corrections and rehabilitation except with respect to ~~the~~
 - (1) The activities of the division of adult services under chapter 54-23.4; and
 - (2) Offender life expectancy mortality tables under subsection 2 of section 12.1-32-09.1.
- n. The pardon advisory board.
- o. The parks and recreation department.
- p. The parole board.
- q. The state fair association.
- r. The attorney general with respect to activities of the state toxicologist and the state crime laboratory.
- s. The board of university and school lands except with respect to activities under chapter 47-30.1.
- t. The administrative committee on veterans' affairs except with respect to rules relating to the supervision and government of the veterans' home and the implementation of programs or services provided by the veterans' home.
- u. The industrial commission with respect to the lignite research fund except as required under section 57-61-01.5.
- v. The attorney general with respect to guidelines adopted under section 12.1-32-15 for the risk assessment of sexual offenders, the risk level review process, and public disclosure of information under section 12.1-32-15.
- w. The commission on legal counsel for indigents.
- x. The attorney general with respect to twenty-four seven sobriety program guidelines and program fees.
- y. The industrial commission with respect to approving or setting water rates under chapter 61-40."

Renumber accordingly

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1121

Page 1, line 1, after "12.1-32-09.1" insert "and subsection 2 of section 28-32-01"

Page 1, line 2, after "offenders" insert "and the definition of administrative agencies"

Page 1, line 9, overstrike "on" and insert immediately thereafter "as of"

Page 1, after line 11, insert:

"SECTION 2. AMENDMENT. Subsection 2 of section 28-32-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Administrative agency" or "agency" means each board, bureau, commission, department, or other administrative unit of the executive branch of state government, including one or more officers, employees, or other persons directly or indirectly purporting to act on behalf or under authority of the agency. An administrative unit located within or subordinate to an administrative agency must be treated as part of that agency to the extent it purports to exercise authority subject to this chapter. The term administrative agency does not include:
 - a. The office of management and budget except with respect to rules made under section 32-12.2-14, rules relating to conduct on the capitol grounds and in buildings located on the capitol grounds under section 54-21-18, rules relating to the classified service as authorized under section 54-44.3-07, and rules relating to state purchasing practices as required under section 54-44.4-04.
 - b. The adjutant general with respect to the department of emergency services.
 - c. The council on the arts.
 - d. The state auditor.
 - e. The department of commerce with respect to the division of economic development and finance.
 - f. The dairy promotion commission.
 - g. The education factfinding commission.
 - h. The educational technology council.
 - i. The board of equalization.
 - j. The board of higher education.
 - k. The Indian affairs commission.
 - l. The industrial commission with respect to the activities of the Bank of North Dakota, North Dakota housing finance agency, public finance authority, North Dakota mill and elevator association, North Dakota

farm finance agency, the North Dakota transmission authority, and the North Dakota pipeline authority.

- m. The department of corrections and rehabilitation except with respect to the:
 - (1) The activities of the division of adult services under chapter 54-23.4; and
 - (2) Offender life expectancy mortality tables under subsection 2 of section 12.1-32-09.1.
- n. The pardon advisory board.
- o. The parks and recreation department.
- p. The parole board.
- q. The state fair association.
- r. The attorney general with respect to activities of the state toxicologist and the state crime laboratory.
- s. The board of university and school lands except with respect to activities under chapter 47-30.1.
- t. The administrative committee on veterans' affairs except with respect to rules relating to the supervision and government of the veterans' home and the implementation of programs or services provided by the veterans' home.
- u. The industrial commission with respect to the lignite research fund except as required under section 57-61-01.5.
- v. The attorney general with respect to guidelines adopted under section 12.1-32-15 for the risk assessment of sexual offenders, the risk level review process, and public disclosure of information under section 12.1-32-15.
- w. The commission on legal counsel for indigents.
- x. The attorney general with respect to twenty-four seven sobriety program guidelines and program fees.
- y. The industrial commission with respect to approving or setting water rates under chapter 61-40."

Renumber accordingly

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1121

House Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: Line 9, after the word calculated adding effective as of and striking the word on.

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 Representative Maragos: Seconded By Rep. Hanson

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman			Rep. Hanson		
Vice Chairman Karls			Rep. Nelson		
Rep. Blum					
Rep. Johnston					
Rep. Jones					
Rep. Klemin					
Rep. Magrum					
Rep. Maragos					
Rep. Paur					
Rep. Roers-Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Voice vote carried.

**2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1121**

House **Judiciary** Committee

☐ Subcommittee

Amendment LC# or Description: 17.8075.01002

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 Representative Nelson Seconded By Rep. Magrum

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman			Rep. Hanson		
Vice Chairman Karls			Rep. Nelson		
Rep. Blum					
Rep. Johnston					
Rep. Jones					
Rep. Klemin					
Rep. Magrum					
Rep. Maragos					
Rep. Paur					
Rep. Roers-Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____ :

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

VOICE VOTE CARRIED

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1121

House Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: 17.8075.01003.

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 Representative Maragos Seconded By Rep. Simons

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman	X		Rep. Hanson	X	
Vice Chairman Karls	X		Rep. Nelson	X	
Rep. Blum	X				
Rep. Johnston	X				
Rep. Jones	X				
Rep. Klemin	X				
Rep. Magrum	X				
Rep. Maragos	X				
Rep. Paur	X				
Rep. Roers-Jones	X				
Rep. Satrom	X				
Rep. Simons	X				
Rep. Vetter	X				

Total (Yes) 15 No 0

Absent 0

Floor Assignment : Rep. Blum

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

REPORT OF STANDING COMMITTEE

HB 1121: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1121 was placed on the Sixth order on the calendar.

Page 1, line 1, after "12.1-32-09.1" insert "and subsection 2 of section 28-32-01"

Page 1, line 2, after "offenders" insert "and the definition of administrative agencies"

Page 1, line 9, overstrike "on" and insert immediately thereafter "as of"

Page 1, after line 11, insert:

"SECTION 2. AMENDMENT. Subsection 2 of section 28-32-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Administrative agency" or "agency" means each board, bureau, commission, department, or other administrative unit of the executive branch of state government, including one or more officers, employees, or other persons directly or indirectly purporting to act on behalf or under authority of the agency. An administrative unit located within or subordinate to an administrative agency must be treated as part of that agency to the extent it purports to exercise authority subject to this chapter. The term administrative agency does not include:
 - a. The office of management and budget except with respect to rules made under section 32-12.2-14, rules relating to conduct on the capitol grounds and in buildings located on the capitol grounds under section 54-21-18, rules relating to the classified service as authorized under section 54-44.3-07, and rules relating to state purchasing practices as required under section 54-44.4-04.
 - b. The adjutant general with respect to the department of emergency services.
 - c. The council on the arts.
 - d. The state auditor.
 - e. The department of commerce with respect to the division of economic development and finance.
 - f. The dairy promotion commission.
 - g. The education factfinding commission.
 - h. The educational technology council.
 - i. The board of equalization.
 - j. The board of higher education.
 - k. The Indian affairs commission.
 - l. The industrial commission with respect to the activities of the Bank of North Dakota, North Dakota housing finance agency, public finance authority, North Dakota mill and elevator association, North Dakota farm finance agency, the North Dakota transmission authority, and the North Dakota pipeline authority.

- m. The department of corrections and rehabilitation except with respect to the:
 - (1) The activities of the division of adult services under chapter 54-23.4; and
 - (2) Offender life expectancy mortality tables under subsection 2 of section 12.1-32-09.1.
- n. The pardon advisory board.
- o. The parks and recreation department.
- p. The parole board.
- q. The state fair association.
- r. The attorney general with respect to activities of the state toxicologist and the state crime laboratory.
- s. The board of university and school lands except with respect to activities under chapter 47-30.1.
- t. The administrative committee on veterans' affairs except with respect to rules relating to the supervision and government of the veterans' home and the implementation of programs or services provided by the veterans' home.
- u. The industrial commission with respect to the lignite research fund except as required under section 57-61-01.5.
- v. The attorney general with respect to guidelines adopted under section 12.1-32-15 for the risk assessment of sexual offenders, the risk level review process, and public disclosure of information under section 12.1-32-15.
- w. The commission on legal counsel for indigents.
- x. The attorney general with respect to twenty-four seven sobriety program guidelines and program fees.
- y. The industrial commission with respect to approving or setting water rates under chapter 61-40."

Renumber accordingly

2015 SENATE JUDICIARY

HB 1121

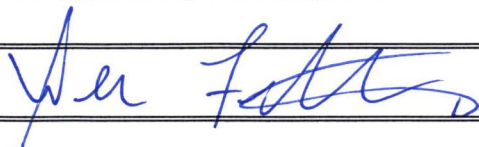
2017 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1121
2/14/2017
28338

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to sentencing violent offenders and the definition of administrative agencies.

Minutes:

Testimony attached #

1

Chairman Armstrong called the committee to order on HB 1121. All committee members were present.

Patrick N Bohn, Director of Transitional Planning Services for the North Dakota Department of Corrections and Rehabilitation (DOCR), testified in support of the bill. (see attachment 1)

Sally Holewa, State Court Administrator, testified in support of the bill. No written testimony.

Sally Holewa discussed how she is for changing 85% or getting rid of it all together, but for today's purposes she has no objection to the DOCR doing calculations or adopting a mortality table.

Chairman Armstrong: "So if DOCR did this and we put this in the code we wouldn't have to worry about this moving forward, correct?"

Sally Holewa: "Correct."

Chairman Armstrong: "I'm assuming these cases exist for people who got sentenced to life but weren't told what life actually meant?"

Sally Holewa: "Correct."

Chairman Armstrong: "There are varying degrees of life sentences in North Dakota? Do you know the different kinds?"

Sally Holewa: "Right, and no, I'm not all familiar with sentencing in North Dakota."

Pat Bohn, called back up to the podium

Senator Osland: "Can you talk a little bit about the 77 people there for a life sentence?"

Pat Bohn: "Yes, sir."

Senator Osland: "Now we touched on a few things here, are those 36 prevented from parole?"

Pat Bohn: "Yeah, the difference between the 77 and 36 is 41. Those 41 have the possibility of being paroled, the 36 don't. And for those 41 that do have the possibility of being paroled, there's 16 of them that fall within the 85% law that was passed in 1995. Would you like me to go over the different life sentences in North Dakota?"

Chairman Armstrong: "Absolutely."

Pat Bohn: "One is life without the possibility of a parole, at that point, the only avenue for any relief is if the Governor steps in to pardon or commute you. The other is that if the offense was committed before 1995, the law says they must serve 30 years as good time. The next group is for those who committed their first offense on or after August 1st of 1995, and that we have to look at a couple things: the 30 years as good time, and then you use the mortality table and figure out what 85% of life is, and then from there, the (indistinguishable) of those two dates is when they become parole eligible."

Chairman Armstrong: "The minimum for life sentence is 25 no matter what though, correct?"

Pat Bohn: "Correct."

John V. Emter, North Dakota citizen, testified in support of the bill. No written testimony.

"I just want to say that I know innocent people in jail who shouldn't be in there. Who were never really proven guilty, and I know a few of them. They should be out of prison. There are hundreds of innocent people in prison, but you can't prove them innocent so they can't get out. This bill will help them."

Chairman Armstrong closed the hearing on HB 1121.

No motions were made.

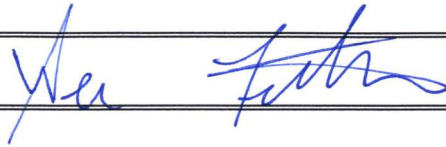
2017 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1121 Committee Work
2/14/2017
28340

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to sentencing violent offenders and the definition of administrative agencies.

Minutes: **No written testimony.**

Chairman Armstrong began the discussion on HB 1121. All committee members were present.

No discussion; a motion was made instantly.

Senator Nelson motioned Do Not Pass. **Senator Osland** seconded.

A Roll Call Vote was taken. Yea: 6 Nay: 0 Absent: 0.
The motion carried.

Senator Nelson carried the bill.

**2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1121**

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 Senator Nelson Seconded By Senator Osland

Senators	Yes	No	Senators	Yes	No
Chairman Armstrong	X		Senator Nelson	X	
Vice-Chair Larson	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Osland	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Nelson

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

REPORT OF STANDING COMMITTEE

HB 1121, as engrossed: Judiciary Committee (Sen. Armstrong, Chairman) recommends
DO NOT PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed HB 1121 was placed on the Fourteenth order on the calendar.

2017 TESTIMONY

HB 1121

1121
#1
1-10-17

HOUSE JUDICIARY COMMITTEE
REPRESENTATIVE KIM KOPPELMAN, CHAIRMAN
JANUARY 10, 2017

PATRICK N. BOHN, DIRECTOR FOR TRANSITIONAL PLANNING SERVICES,
NORTH DAKOTA DEPARTMENT OF CORRECTIONS & REHABILITATION
PRESENTING TESTIMONY RE: HB 1121

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 on behalf of the department in support of House Bill 1121 with an amendment which I will explain later.

What this bill does:

This bill transfers the responsibility and authority from the court to the department of corrections and rehabilitation to determine the remaining life expectancy of an individual sentenced to a term of life imprisonment with the opportunity for parole using a mortality table established by rule.

Background:

Effective August 1, 1995 anyone who committed a violent offense listed in 12.1-32-09.1 must serve 85% of the sentence without the benefit of parole. Between August 1, 1995 and July 31, 1997 there was no statutory direction on how to compute parole eligibility for those sentenced to life in prison with the benefit of parole and subject to the 85% law. In 1997, House Bill 1089 was passed (remains current law) and stated the following:

In the case of an offender who is sentenced to a term of life imprisonment with opportunity for parole under subsection 1 of section 12.1-32-01, the term "sentence imposed" means the remaining life expectancy of the offender on the date of sentencing. The remaining life expectancy of the offender must be calculated on the date of sentencing, computed by reference to a recognized mortality table as established by rule by the supreme court. Notwithstanding this section, an offender sentenced under subsection 1 of section 12.1-32-01 may not be eligible for parole until the requirements of that subsection have been met.

It wasn't until February 9, 2005 that the ND Supreme Court adopted Administrative Rule 51 which states: In determining the sentence imposed upon a violent offender in accordance with N.D.C.C. Section 12.1-32-09.1, the trial court shall compute the remaining life expectancy of the offender by reference to Table A (Expectation of life by age, race, and sex) of the United States Life Tables, 2002, included in the National Vital Statistics Reports prepared by the National Center for Health Statistics (Center for Disease Control and Prevention)

Current Situation:

The ND DOCR Currently has about 77 people serving a life sentence of which 41 have the possibility of parole and of those, 16 would need to have their parole eligibility computed using the mortality table. To date, I'm not aware of any criminal judgments or

other orders from the court in which the parole eligibility date has been computed and recorded by the court.

Going Forward:

If the law is changed, as proposed, we would move forward with establishing a policy on the mortality table and how to compute eligibility and then apply those computations to each individual. If you decide not to do this, we need the courts to review the cases 16 cases I mentioned and issue an order indicating the date of parole eligibility.

In closing, if you have any questions, I'd be glad to try and answer them.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1121

Page 1, line 9, overstrike "on" and insert immediately thereafter "effective as of"

Renumber accordingly

1121
#1
1-10-17

#1
1121
1-11-17

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1121

Page 1, line 1, after "12.1-32-09.1" insert "and subsection 2 of section 28-32-01"

Page 1, line 2, after "offenders" insert "and the definition of administrative agencies"

Page 1, after line 11, insert:

"SECTION 2. AMENDMENT. Subsection 2 of section 28-32-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Administrative agency" or "agency" means each board, bureau, commission, department, or other administrative unit of the executive branch of state government, including one or more officers, employees, or other persons directly or indirectly purporting to act on behalf or under authority of the agency. An administrative unit located within or subordinate to an administrative agency must be treated as part of that agency to the extent it purports to exercise authority subject to this chapter. The term administrative agency does not include:
 - a. The office of management and budget except with respect to rules made under section 32-12.2-14, rules relating to conduct on the capitol grounds and in buildings located on the capitol grounds under section 54-21-18, rules relating to the classified service as authorized under section 54-44.3-07, and rules relating to state purchasing practices as required under section 54-44.4-04.
 - b. The adjutant general with respect to the department of emergency services.
 - c. The council on the arts.
 - d. The state auditor.
 - e. The department of commerce with respect to the division of economic development and finance.
 - f. The dairy promotion commission.
 - g. The education factfinding commission.
 - h. The educational technology council.
 - i. The board of equalization.
 - j. The board of higher education.
 - k. The Indian affairs commission.
 - l. The industrial commission with respect to the activities of the Bank of North Dakota, North Dakota housing finance agency, public finance authority, North Dakota mill and elevator association, North Dakota farm finance agency, the North Dakota transmission authority, and the North Dakota pipeline authority.

- #1
1121
1-11-17
- m. The department of corrections and rehabilitation except with respect to the:
 - (1) The activities of the division of adult services under chapter 54-23.4; and
 - (2) Offender life expectancy mortality tables under subsection 2 of section 12.1-32-09.1.
 - n. The pardon advisory board.
 - o. The parks and recreation department.
 - p. The parole board.
 - q. The state fair association.
 - r. The attorney general with respect to activities of the state toxicologist and the state crime laboratory.
 - s. The board of university and school lands except with respect to activities under chapter 47-30.1.
 - t. The administrative committee on veterans' affairs except with respect to rules relating to the supervision and government of the veterans' home and the implementation of programs or services provided by the veterans' home.
 - u. The industrial commission with respect to the lignite research fund except as required under section 57-61-01.5.
 - v. The attorney general with respect to guidelines adopted under section 12.1-32-15 for the risk assessment of sexual offenders, the risk level review process, and public disclosure of information under section 12.1-32-15.
 - w. The commission on legal counsel for indigents.
 - x. The attorney general with respect to twenty-four seven sobriety program guidelines and program fees.
 - y. The industrial commission with respect to approving or setting water rates under chapter 61-40."

Renumber accordingly

① HB 1121 2/14/17

SENATE JUDICIARY COMMITTEE
SENATOR KELLY ARMSTRONG, CHAIRMAN
FEBRUARY 14, 2017

PATRICK N. BOHN, DIRECTOR FOR TRANSITIONAL PLANNING SERVICES,
NORTH DAKOTA DEPARTMENT OF CORRECTIONS & REHABILITATION
PRESENTING TESTIMONY RE: HB 1121

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 on behalf of the department in support of House Bill 1121 as originally submitted.

What this bill does:

This bill transfers the responsibility and authority from the court to the department of corrections and rehabilitation to determine the remaining life expectancy of an individual sentenced to a term of life imprisonment with the opportunity for parole using a mortality table established by rule.

Background:

Effective August 1, 1995 anyone who committed a violent offense listed in 12.1-32-09.1 must serve 85% of the sentence without the benefit of parole. Between August 1, 1995 and July 31, 1997 there was no statutory direction on how to compute parole eligibility for those sentenced to life in prison with the benefit of parole and subject to the 85% law. In 1997, House Bill 1089 was passed (remains current law) and stated the following:

In the case of an offender who is sentenced to a term of life imprisonment with opportunity for parole under subsection 1 of section 12.1-32-01, the term "sentence imposed" means the remaining life expectancy of the offender on the date of sentencing. The remaining life expectancy of the offender must be calculated on the date of sentencing, computed by reference to a recognized mortality table as established by rule by the supreme court. Notwithstanding this section, an offender sentenced under subsection 1 of section 12.1-32-01 may not be eligible for parole until the requirements of that subsection have been met.

It wasn't until February 9, 2005 that the ND Supreme Court adopted Administrative Rule 51 which states: In determining the sentence imposed upon a violent offender in accordance with N.D.C.C. Section 12.1-32-09.1, the trial court shall compute the remaining life expectancy of the offender by reference to Table A (Expectation of life by age, race, and sex) of the United States Life Tables, 2002, included in the National Vital Statistics Reports prepared by the National Center for Health Statistics (Center for Disease Control and Prevention)

Current Situation:

The ND DOCR currently has about 77 people serving a life sentence of which 41 have the possibility of parole and of those, 16 would need to have their parole eligibility computed using the mortality table. To date, I'm not aware of any criminal judgments or

other orders from the court in which the parole eligibility date has been computed and recorded by the court.

Going Forward:

If the law is changed, as originally proposed, we would move forward with establishing a policy on the mortality table and how to compute eligibility and then apply those computations to each individual. If you decide not to do this, the courts need to review the 16 cases I mentioned and issue an order indicating the date of parole eligibility.

On page 2, lines 19-21 relating to administrative rule were amended in by the House Judiciary. We are asking to amend out those lines or we ask that you recommend do not pass on this bill. The department is exempt from the Administrative Agencies Practices Act (AAPA), with the exception of matters relating to crime victims compensation, and the parole board is exempt and we do not want to start having administrative rule creep into either system.

If you have any questions, I'd be glad to try and answer them.