

2019 HOUSE JUDICIARY

HB 1051

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee Prairie Room, State Capitol

HB 1051
1/7/2019
30482

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: DeLores D. Shimek by Marjorie Conley

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact section 12.1-32-09.1 of the North Dakota Century Code, relating to sentencing violent offenders; and to provide for retroactive application.

Minutes:

Attachment 1-2

Chairman K. Koppelman: Opened the hearing on HB 1051.

Rep. Roers Jones: Introduced the bill. It will help us reduce the number of people we send to jail.

Patrick Bohn, Director ND Parole & Probation: 3:00- 9:30 (Attachment #1) Read his Testimony and went over his handouts. Discussed the process now and how it works now with transition to help the public.

Rep. Vetter: How will this bill provide a safety net; what would change?

Patrick Bohn: If you are sent to prison we do have the support of the parole board.

Chairman K. Koppelman: Mr. Bohn explain how the probations work.

Patrick Bohn: When the court sentences an individual the court can establish the terms and conditions. If there are violations, they can be brought back to the court and they can take a revocation action and resentence.

Rep. Vetter: They have a certain amount of time left on their sentence.

Patrick Bohn: They are placed on parole.

Rep. Vetter: I see that we are talking about violent people now. My concern if they are violent people isn't that the ones we want in prison?

Patrick Bohn: Yes that is true.

Chairman K. Koppelman: Probation is on the front end and parole is on the back end.

Patrick Bohn: Yes you are correct.

Rep. Paur: What are those seven offenses?

Patrick Bohn: Referred to testimony. (See Attachment 2) C Felony has been taken out of the 85% statute.

Rep. McWilliams: What do you see as the impact ?

Patrick Bohn: We are not talking about numbers; but not a significant impact.

Rep. Jones: I like the idea while they are in prison having the incentive of 85%.

Patrick Bohn: Explain the prison laws now.

Rep. Jones: Wants further discussion with Patrick Bohn.

Vice Chairman Karls: Law enforcement felt they work very hard to put these criminals behind bars and can you see the struggle. I have a problem with 85%.

Patrick Bohn: There is a lot of punishment going on and how do we prepare them for coming back.

Chairman K. Koppelman: In the last few years we have done justice reinvestment and went over what has been done before regarding this issue.

Patrick Bohn: If we are not getting what we want out of it then we need to do more prevention.

Rep. McWilliams: Has there been any research done on the recidivism rates on those who have had their probation revoked versus those that have served out their time.

Patrick Bohn: No

Opposition: None presented.

Hearing closed.

Chairman K. Koppelman: Reopened the hearing.

Rep. Vetter: If they are violent I cannot decide.

Rep. Jones: The bill talks about violation and probation.

Rep. Becker: Motion for do pass on HB1051.

Rep. Hanson: Seconded.

A Roll Call vote was taken Yes 10 No 3 Absent 1. Do pass carried.

Rep. McWilliams: Will carry the bill.

Chairman K. Koppelman: Closed hearing.

Date: 1-7-19
Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES ^{HB}
BILL/RESOLUTION NO. 1051

House 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 Rep. Becker Seconded By Rep. Hanson

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman	✓		Rep. Buffalo		✓
Vice Chairman Karls		✓	Rep. Karla Rose Hanson	✓	
Rep. Becker	✓				
Rep. Terry Jones	✓				
Rep. Magrum		✓			
Rep. McWilliams	✓				
Rep. B. Paulson	✓				
Rep. Paur	✓				
Rep. Roers Jones	14 PM				
Rep. Satrom	✓				
Rep. Simons	✓				
Rep. Vetter	✓				

Total (Yes) 10 No 3

Absent 1

Floor Assignment Rep McWilliams

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

REPORT OF STANDING COMMITTEE

HB 1051: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **DO PASS**
(10 YEAS, 3 NAYS, 1 ABSENT AND NOT VOTING). HB 1051 was placed on the
Eleventh order on the calendar.

2019 SENATE JUDICIARY

HB 1051

2019 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1051
3/5/2019
#33173 (23:51)

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Meghan Pegel

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact section 12.1-32-09.1 of the North Dakota Century Code, relating to sentencing violent offenders; and to provide for retroactive application

Minutes:

2 Attachments

Chair Larson opens the hearing on HB 1051. Senator Osland was absent.

Shannon Roers Jones, District 46 Representative, testifies in favor

Representative Roers Jones: This bill makes a slight change to the 85% rule. 85% rule applies to the requirement that for certain crimes including murder, manslaughter, aggravated assault, kidnapping, robbery, gross sexual imposition with force or weapon or burglary with force or weapon, that you must serve at least 85% of your sentence before you're eligible for parole. On the second page, lines 5-6 says that in certain instances where a judge could sentence someone to probation rather than incarceration, if there is a technical violation of their probation where the probation is revoked, in that instance, you wouldn't be required to serve 85% of the entire sentence. It only applies to probation revocations.

Senator Luick: Please explain the retroactive part.

Representative Roers Jones: What the DOCR is hoping to do is have this be available for people who are currently sentenced under the 85% rule to probation, so that if in the future there was a probation revocation for a technical reason- for example if they fail to check in as they need.

(3) Steven Hall, Director for Transitional Planning Services for ND DOCR, testifies in favor (see attachment #1-2)

Chair Larson: We don't have a mandatory minimum sentence; we're just saying that when they get a sentence from a judge for this, they must serve their 85% for those crimes. Is that correct?

Hall: If it's one of the crimes listed, they must serve 85% without parole.

Senator Luick: Currently?

Hall: Correct, and that is on the initial sentence and on revocation of probation that they would have to serve 85%.

(7:25) Mr. Hall continues testimony.

Chair Larson: so they have to serve 85% of the time. Then they can be out on parole after that 85%?

Hall: They would not be parole eligible unless they have lost some of their good time. At this time, their good time release date would be before the 85% date.

Senator Myrdal: You say that under the 85% statute, the court may not mandate sentence to a person for incarceration.

Hall: Correct. They can sentence them directly to probation.

Senator Myrdal: If revocation of that probation on let's say 10 years later for some technical thing, they go in for 85% under that.

Chair Larson: Someone did something terrible and the judge says they have to go to prison for 10 years. That means they have to be in prison for 8.5 years before they can go to parole the way I understood it. Is that accurate?

Hall: People are allotted good time by ND Century Code. The good time calculation equates to 83.6% of their sentence, so if they're allotted all of their good time, it still doesn't meet the 85%, so they're 85% date is longer. If an individual were to lose good time while they're in the facility, and it pushes that date passed the 85% date, then that person could be parole eligible.

Chair Larson: Say they get sentenced to 10 years. If they do good time, they can be done in 8.5 years, but if they're not allotted good time, they could go beyond the 10 years?

Hall: They could go beyond the 8.5 years up to the 10 years in incarceration.

Chair Larson: The motivation for the good time in my opinion was to behave yourself so you can get out early.

Hall: Exactly.

Senator Bakke: Let's say that someone serves their 8 years and is on parole, they break parole and go back in. Now they have to serve out the additional sentence up to 8.5?

Hall: In these current cases where if they are released on their 85% date, they would not be on parole. They may have probation supervision if it was part of their original sentence. If the court did not sentence a period of probation to follow the incarceration, just a straight sentence, when they release on the 85%, then they're not on supervision.

Chair Larson: Then if they reoffend, they have to go back and serve the rest of the sentence?

Hall: If that individual did have probation and part of the sentence was suspended, that could occur. If they had a straight sentence to 10 years with no probation to follow, they would have served their 8.5 years and been released. They would then serve any new time on that new crime.

Vice Chairman Dwyer: Is this bill just dealing with the probation?

Hall: This is only dealing with probation revocation on the 85% crimes.

(12:50) Mr. Hall continues testimony.

(18:05) Senator Myrdal: Even though these seem like horrific crimes, under this 85% statute as it stands now, the court is not mandated to sentence them to prison. They can put them on probation. Is that correct?

Hall: Except for the GSI case, the court could.

Senator Myrdal: Let's say the judge under his discretion sees that person does not need to go to jail. If that person has a technical violation of that probation, they're automatically under current law under that 85%.

Hall: Correct. They would then need to serve 85% on that probation revocation.

Senator Myrdal: If the judge saw the case and thinks they're okay to be out, but they did a technical violation and are now locked up for x amount of days or years, that doesn't make sense to me. It seems like what you're asking is for the discretion to be with the parole board, judges and legal system instead of having it bound like this in the law as it relates to probation revocations.

Hall: Correct. This would give the parole board the opportunity to take a look at the case and evaluate how they've done within the institution, what treatment programs they've gone through and what their reentry plan is. They also may dictate where that person may transition to such as a halfway house or maybe to a community where the victim doesn't live. They would have more authority.

Vice Chairman Dwyer: We're only dealing with probation revocation; we're not eliminating the 85% statute.

Hall: Correct.

Senator Luick: What does the acronym NDIBR stand for?

Hall: The North Dakota Incident Based Reporting.

Senator Bakke: Someone is in prison and they go out on parole and break it. Is it 85% of their original sentence or their parole sentence for breaking parole?

Hall: In our current situation, the people that have committed these crimes would not be eligible for parole unless they had institutional behavior which impacted their good time release date and put it passed their 85% date. In a probation case, if somebody was sentenced to an additional two years on a probation revocation, then they would need to serve 85% of that probation revocation sentence.

Chair Larson closes the hearing on HB 1051.

Vice Chairman Dwyer: Motions for a Do Pass.

Senator Luick: Seconds.

A Roll Call Vote was Taken: 4 yeas, 1 nay, 1 absent. Motion carries.

Vice Chairman Dwyer will carry the bill.

**2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1051**

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 Vice Chairman Dwyer Seconded By Senator Luick

Senators	Yes	No	Senators	Yes	No
Chair Larson		X	Senator Bakke	X	
Vice Chair Dwyer	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Osland	AB				

Total (Yes) 4 No 1

Absent 1

Floor Assignment Vice Chairman Dwyer

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

REPORT OF STANDING COMMITTEE

HB 1051: Judiciary Committee (Sen. D. Larson, Chairman) recommends **DO PASS**
(4 YEAS, 1 NAYS, 1 ABSENT AND NOT VOTING). HB 1051 was placed on the
Fourteenth order on the calendar.

2019 TESTIMONY

HB 1051

#1
HB1051
1-7-19

**HOUSE JUDICIARY COMMITTEE
REPRESENTATIVE KIM KOPPELMAN, CHAIRMAN
JANUARY 7, 2019**

**PATRICK N. BOHN, DIRECTOR, NORTH DAKOTA PAROLE & PROBATION,
NORTH DAKOTA DEPARTMENT OF CORRECTIONS & REHABILITATION
PRESENTING TESTIMONY RE: HB 1051**

My name is Pat Bohn and I am the Director for North Dakota Parole and Probation within the North Dakota Department of Corrections and Rehabilitation (DOCR). I am here to testify on behalf of the department in support of HB 1051.

What this bill does:

This bill proposes eliminating the 85% component for a sentence to prison upon revocation of probation for all crimes subject to the penalty and it has a retroactive application to August 1, 1995.

Background:

During the Clinton era 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. Provisions in the bill incentivized states to incarcerate more people for longer periods of time. In response, in 1995 the 54th Legislative Assembly enacted N.D.C.C. section 12.1-32-09.1 which required 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 with the use of force or a weapon while encountering the inhabitants (subdivision b of subsection 2 of section 12.1-22-02). Between 1996 and 2001 North Dakota received \$10,351,888 in Federal funds and used its VOI/TIS funds for the James River Correctional Center (Opened in 1998). 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>) I want to point out that in the last two legislative sessions changes were made that effectively eliminated the 85% penalty from C Felony Aggravated Assault, which was by far the most common offense subject to the penalty.

Current Situation:

Of the approximately 1690 people in prison and about 7000 on supervision this will impact many people who are currently in prison as well as those who may find themselves in prison in the future, subsequent to a revocation of probation.

Proposed Solution:

We believe by removing the 85% penalty upon revocation we can improve outcomes and reduce another barrier to reentry. By making these people eligible for parole during their incarceration, we will have greater chance of engaging them in treatment programs while holding people accountable, maintaining and maybe even improving public safety, transitioning them back to our communities and reducing the likelihood of future victimization. I need to be clear that we are not saying some of these people are not dangerous and should not be incarcerated for a period of time. We are saying you should authorize the parole board to evaluate these cases during their sentence, assess how they have prepared themselves for return to our communities and recognize that people can change. Let me share with you a few other interesting aspects of this law:

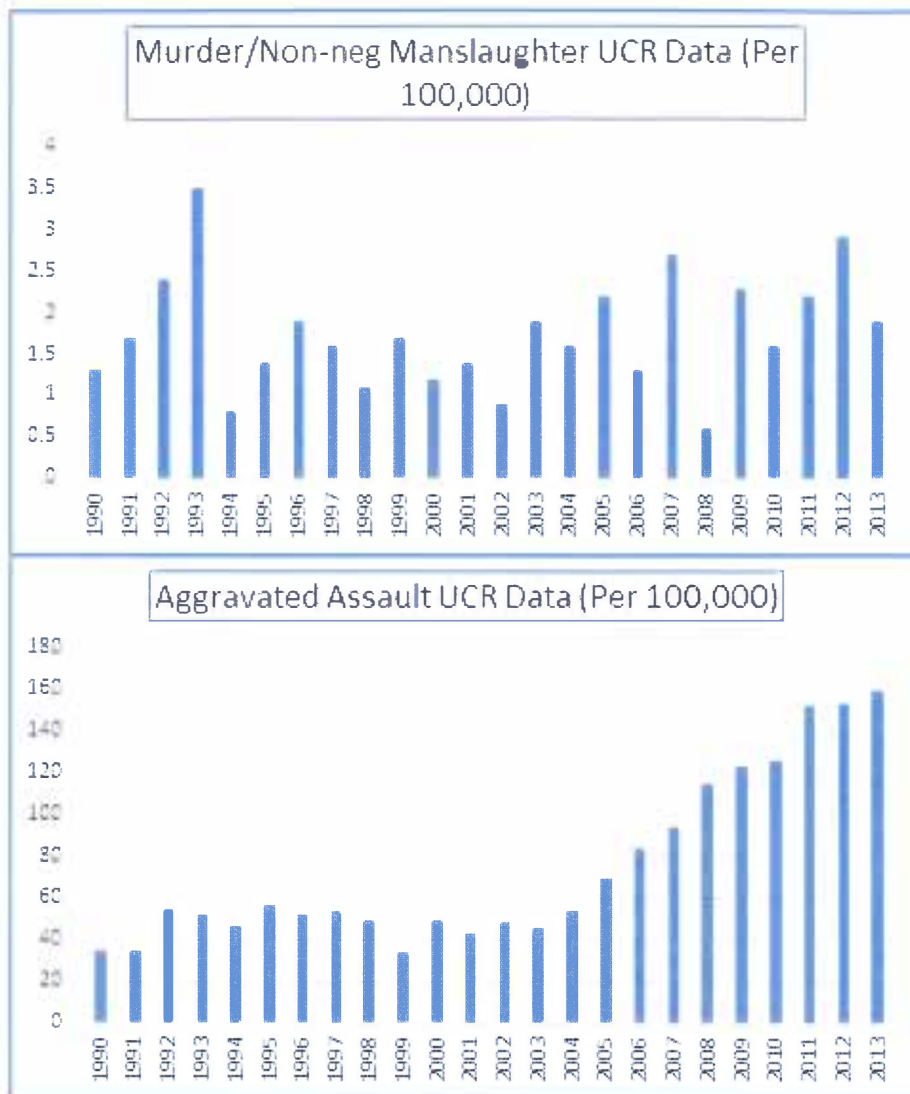
1. Under the 85% statute, the court is not mandated to sentence the person to a period of incarceration. A person convicted of robbery can be placed directly on supervised probation (unless a weapon was used and found to be an element of the crime at the time of sentencing). It would only be upon revocation of probation and a subsequent sentence to prison that would result in the execution of the 85% statute. It's counterintuitive 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, this person now needs to serve 85% of the sentence without benefit of parole.
2. This applies to any subsequent probation revocation which can sometimes occur 3, 5, or 10 years after the original act.
3. The court is not required to place an individual on probation subsequent to an initial prison sentence, except for GSI with force which requires a minimum of five years and A Misdemeanor and C Felony DUI. People can leave prison with little transition, no support and no services. (Blaine Ellis story)
4. Motivational enhancement. Eliminating release options actually gives people less incentive to follow prison rules or take advantage of treatment, education or job training opportunities.
5. Court hearings challenging the computation. (1 year and 2-year revocation resentence example): $365 \times .85 = 310$. $730 \times .85 = 620$.

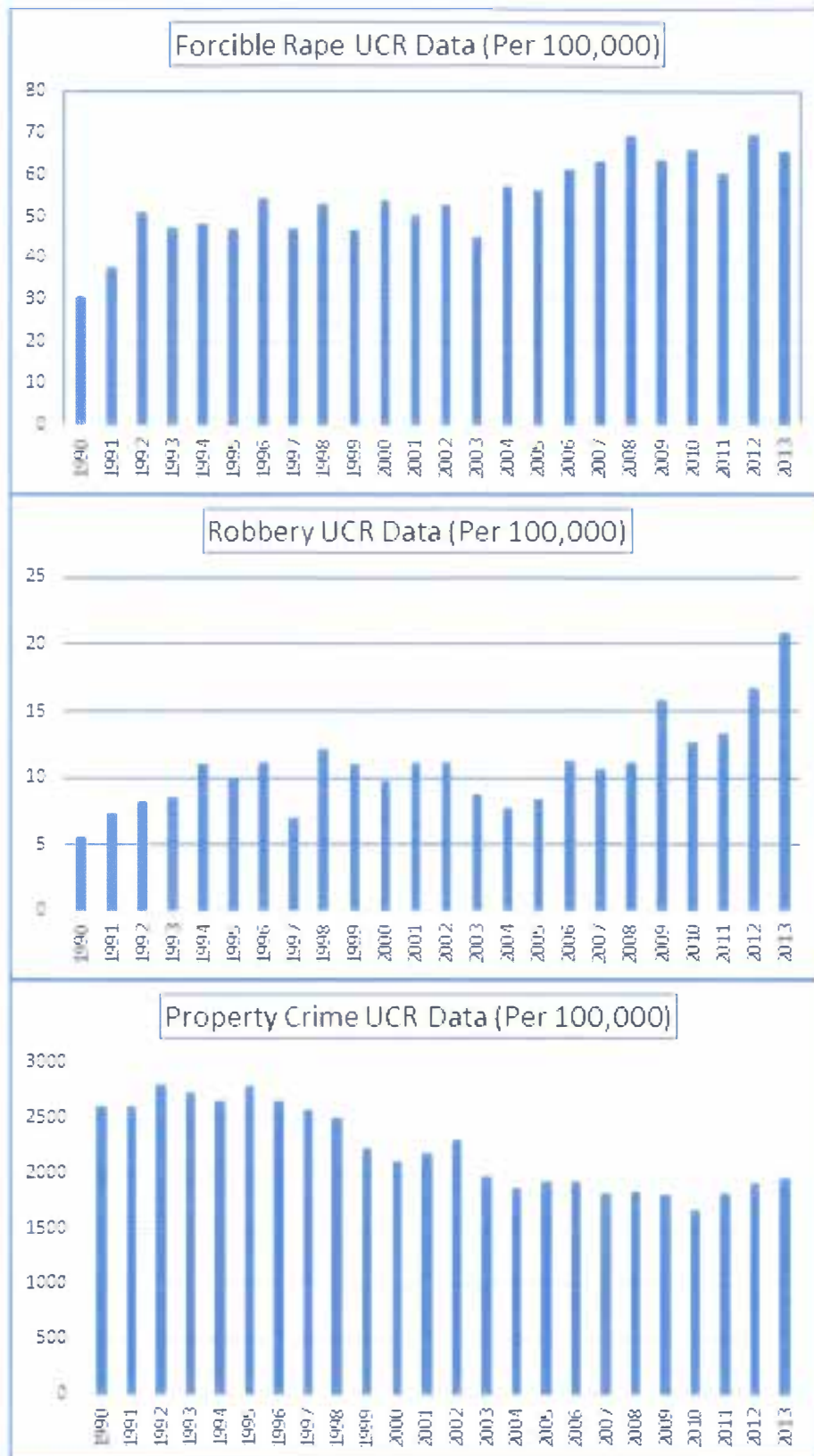
Resentence: 2 years credit for 1 year = $620 - 55 = 565$

Furthermore, and compellingly is the data and the comments by law enforcement tell us this law is not making us safer. The following data is from the ND Attorney General Crime Reports for the years 1990-2017. In 2014 the reporting methodologies were changed, so from 1990 through 2013 the data is compiled using the Uniform Crime Reporting method (UCR) and from 2010 through 2017 the data is compiled using the North Dakota Incident Based Reporting method (ND IBR). There was cross-over period from 2010 through 2013 where both reporting methods were utilized.

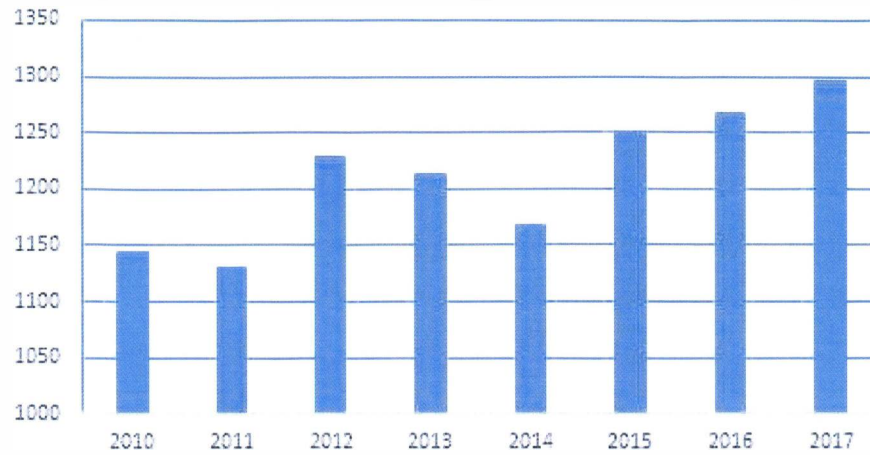
The seven 85% crimes created when the law went in to effect on August 1, 1995 were: Murder, Manslaughter, Aggravated Assault, Kidnapping, Robbery, Gross Sexual Imposition with Force/Threat/Coercion and Burglary with Weapon/Menace/Intimidate. As I mentioned, C Felony Aggravated Assault (which was the largest group of the 85% crimes) is no longer subject to the 85% statute. In the UCR reporting, they do not capture incidences of Kidnapping or 85% Burglary. You can see the data and trends. As I mentioned, if 85% is to somehow impact public safety and reduce violent crime, the data indicates that is not working. If you want more information on the ND IBRs data graphs, I'm including a link so you can look at the last report (2017) and see more

information on the reporting categories, rather than trying to insert all of it in this testimony. <https://attorneygeneral.nd.gov/sites/ag/files/documents/2017-CrimeReport.pdf>

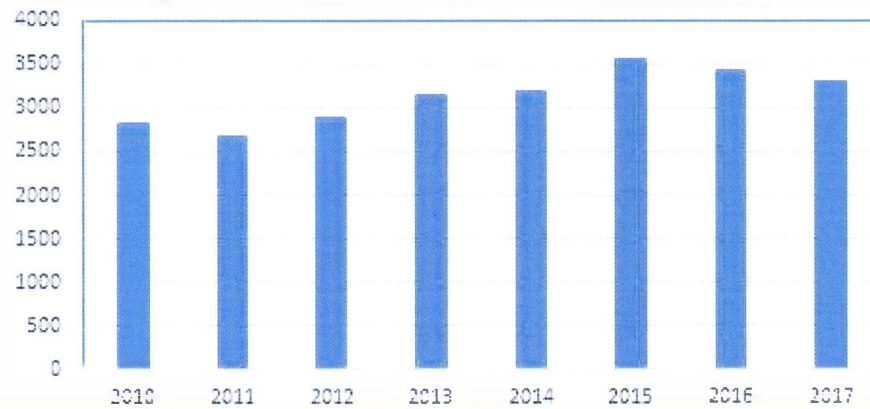




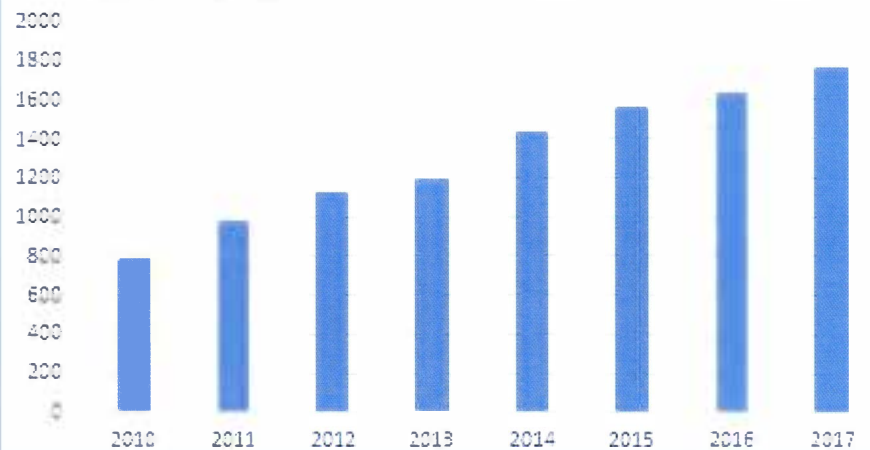
Crimes Against Person NIBRS Data (Per 100,000)



Crimes Against Property NIBRS Data (Per 100,000)



Crimes Against Society NIBRS Data (Per 100,000)



The North Dakota Parole Board is also supportive of this change. I've attached a letter from the Chairman, H. Patrick Weir, which reflects the support. In closing, there is no evidence that the 85% penalty reduces crime. Furthermore, this ineffective law has contributed to the growth of the prison population, is a barrier to effective reentry and exacts a human toll that is difficult to measure. If you have any questions, I'd be glad to try and answer them.

CHAIRMAN
Mr. H. Patrick Weir

BOARD MEMBERS
Ms. Carmelita Lamb
Mr. Jackson Lofgren
Ms. Darla Des Lauriers
Ms. Rachel Bruner
Mr. Keith Witt



#2
#B1051
1-7-19
CLERK
Steven Hall

NORTH DAKOTA PAROLE BOARD
P.O. Box 1898
Bismarck, North Dakota 58502-1898
Fax 701-328-6780

HOUSE BILL 1051
HOUSE JUDICIARY COMMITTEE
JANUARY 7, 2019

TO: Kim Koppleman, Chair of the House Judiciary Committee, Kim Koppelman, and
Members of the House Judiciary Committee.

I am H. Patrick Weir, Chairman of the North Dakota Parole Board. I am writing this letter on behalf of the North Dakota Parole Board in support of HB 1051. This bill proposes to negate the 85% penalty for a sentence to prison upon revocation of probation for all offenses subject to the 85% imprisonment requirements under N.D.C.C. § 12.1-32-09.1.

The Parole Board believes that by removing the requirement that people are subject to the 85% imprisonment requirements of N.D.C.C. § 12.1-32-09.1, upon revocation of probation, the Parole Board can improve outcomes. By making these people eligible for parole during their incarceration, the Parole Board will have greater chance of reducing recidivism while holding people accountable, maintaining, and even improving public safety and reducing the likelihood of future victimization. Some of these people are dangerous and should be incarcerated for a period of time. We are of the belief that the Legislative Assembly should allow the Parole Board to evaluate these individuals during their sentence and analyze the prospects of methodically transitioning them from prison back to the community under the conditions established by the board. This will lessen the probability of releasing someone directly from prison without an adequate transitional plan.

The North Dakota Parole Board strives to make well informed evidence based decisions that will provide people the opportunities to change, transition, and become productive members of our communities.

Respectfully,

Handwritten signature of H. Patrick Weir.
H. Patrick Weir, Chairperson

#1
HB 1051
3.5.19

**SENATE JUDICIARY COMMITTEE
SENATOR DIANE LARSON, CHAIRMAN
MARCH 5, 2019**

**STEVEN HALL, DIRECTOR, TRANSITIONAL PLANNING SERVICES, NORTH
DAKOTA DEPARTMENT OF CORRECTIONS & REHABILITATION
PRESENTING TESTIMONY RE: HB 1051**

My name is Steven Hall and I am the Director for Transitional Planning Services within the North Dakota Department of Corrections and Rehabilitation (DOCR). I am here to testify on behalf of the department in support of HB 1051.

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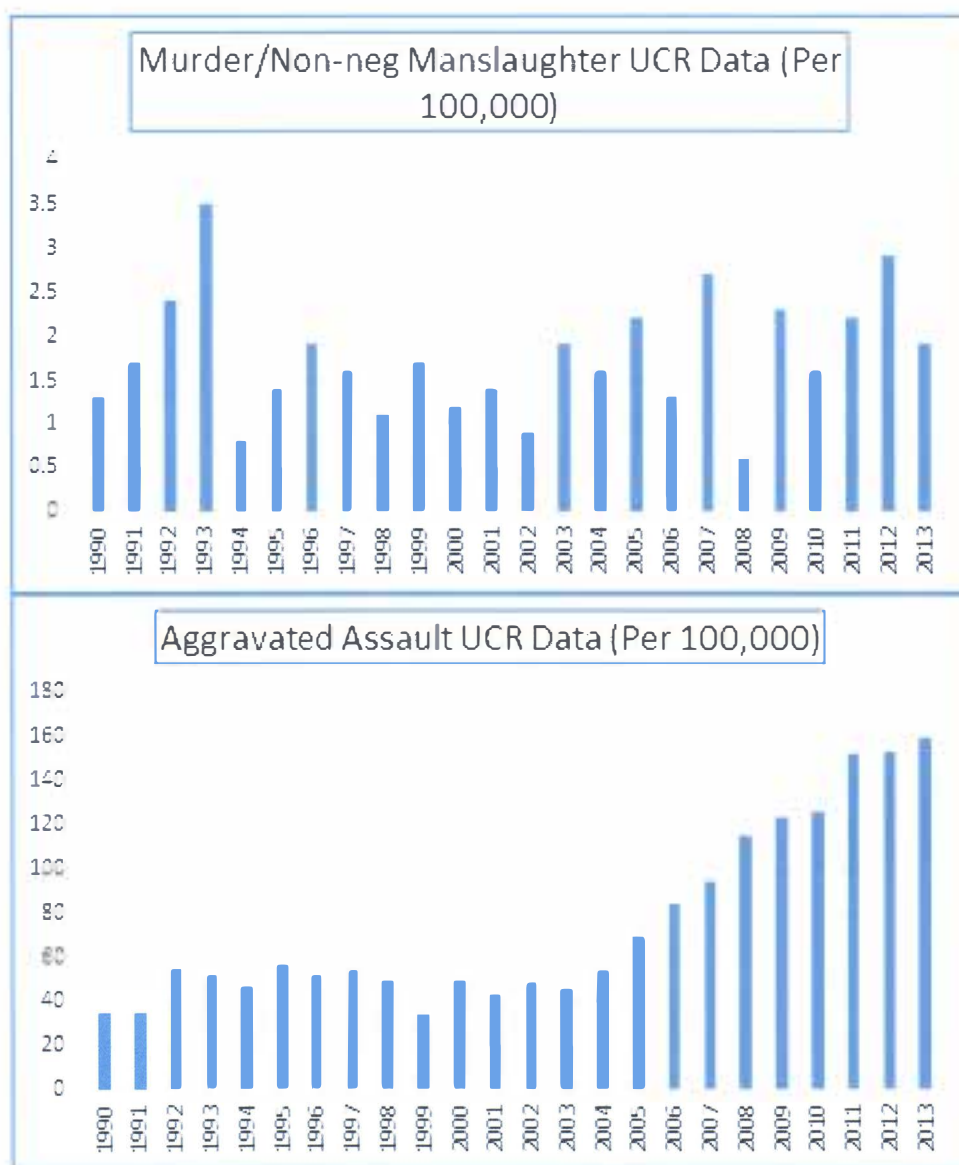
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2. This applies to any subsequent probation revocation which can sometimes occur 3, 5, or 10 years after the original act.
3. The court is not required to place an individual on probation subsequent to an initial prison sentence, except for GSI with force which requires a minimum of five years and A Misdemeanor and C Felony DUI. People can leave prison with little transition, no support and no services. If parole board eligible, the board can parole offenders to specific location to enhance the probability of their success and to avoid an offender release directly
4. Motivational enhancement. Eliminating release options actually gives people less incentive to follow prison rules or take advantage of treatment, education or job training opportunities.
5. Court hearings challenging the computation. An example of this would be individual sentenced to one year in prison released on probation and then on a probation revocation he/she is sentenced to two years with credit for one year served. The defense counsel has argued that the individual should receive the 365 days credit for the one year, however, he/she would have served 310 days of that sentence if you presume they did not lose any good time according to the 85% sentence calculation. In this scenario the individual would be receiving credit for 55 days that he/she did not serve in custody. The total time served would be 565 days vs. 620 days for an individual serving 85% of a two year sentence.

(1 year and 2-year revocation resentence example): $365 \times .85 = 310$. $730 \times .85 = 620$.
Resentence: 2 years credit for 1 year = $620 - 55 = 565$

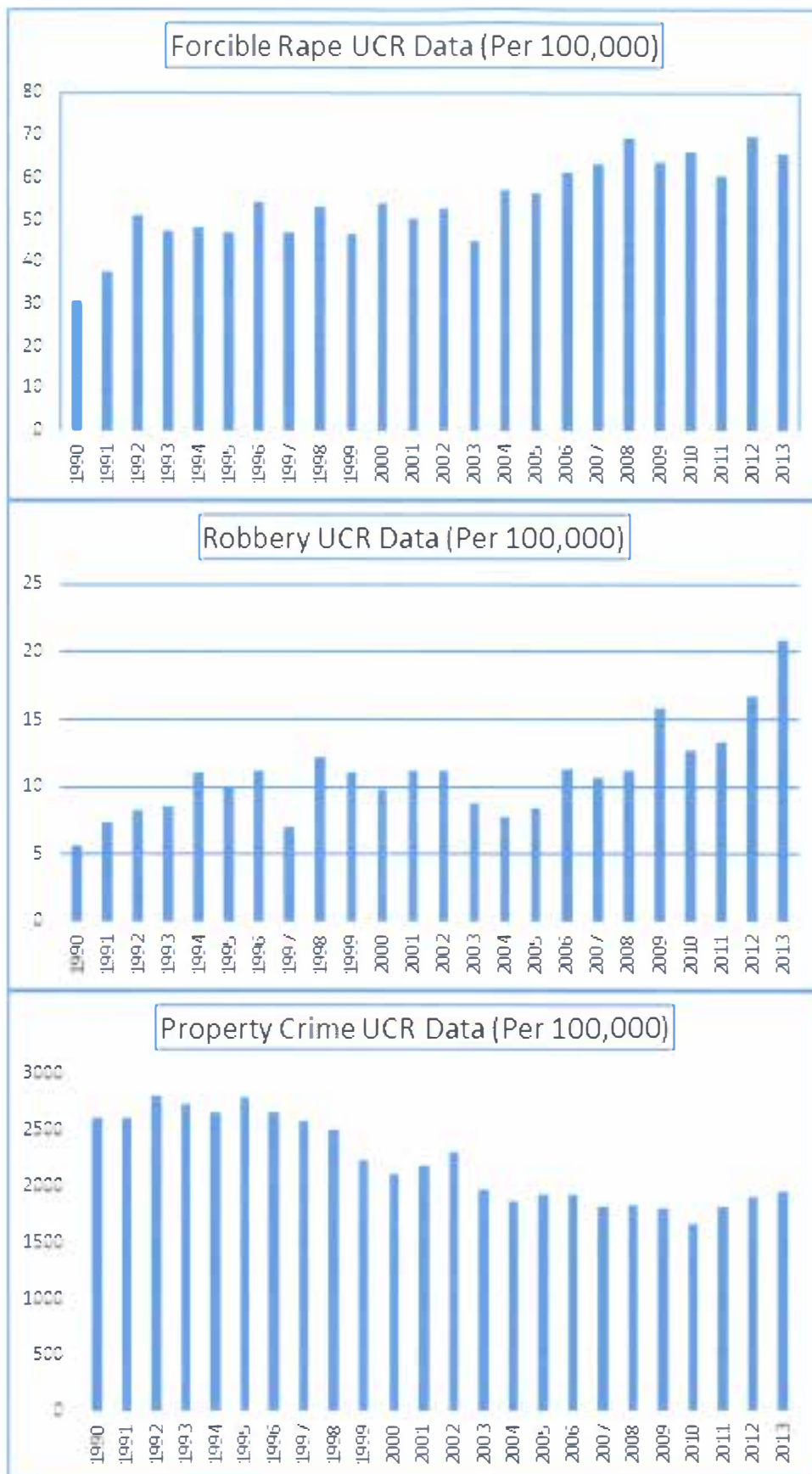
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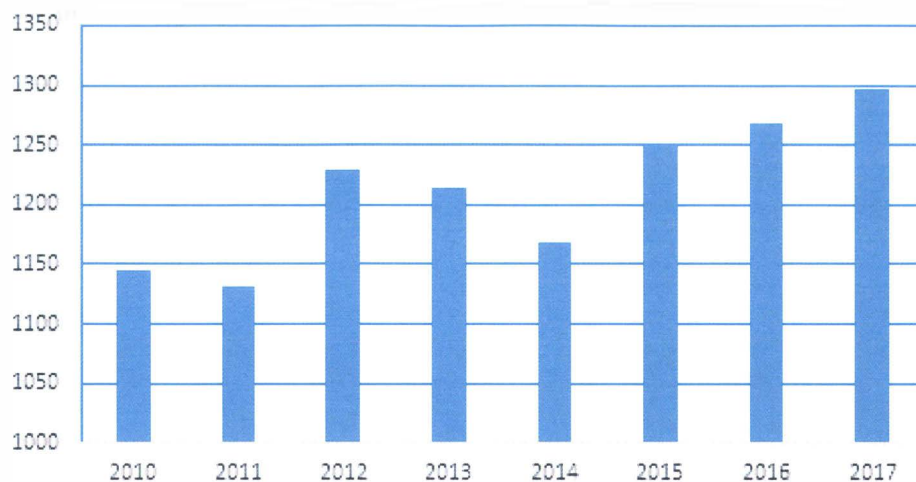


#1
HB 1051
3.5.19

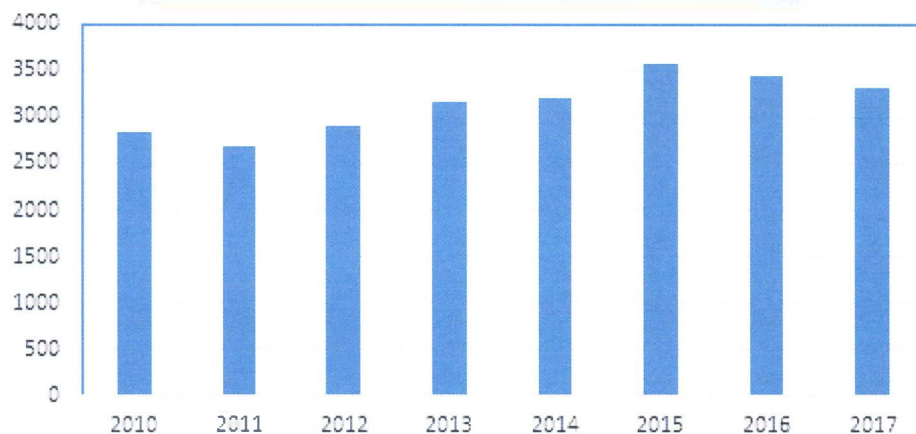


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HB 1051
3.5.19

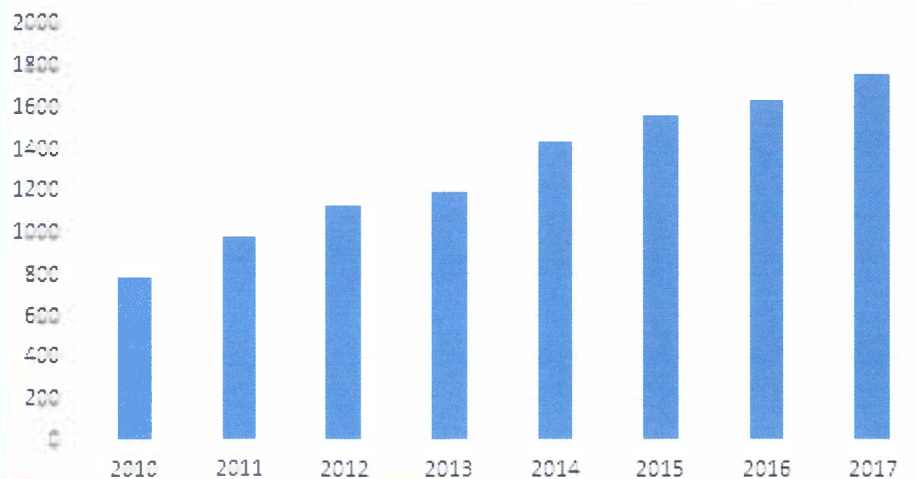
Crimes Against Person NIBRS Data (Per 100,000)



Crimes Against Property NIBRS Data (Per 100,000)



Crimes Against Society NIBRS Data (Per 100,000)



#1
HB 1051
3.5.19

The North Dakota Parole Board is also supportive of this change. I've attached a letter from the Chairman, H. Patrick Weir, which reflects the support. Once again I would like to state that this will allow the parole consideration and release planning for this individuals. In closing, there is no evidence that the 85% penalty reduces crime. Furthermore, this ineffective law has contributed to the growth of the prison population, is a barrier to effective reentry and exacts a human toll that is difficult to measure. If you have any questions, I'd be glad to try and answer them.

CHAIRMAN
Mr. H. Patrick Weir

BOARD MEMBERS

*Ms. Carmelita Lamb
Mr. Jackson Lofgren
Ms. Darla Des Lauriers
Ms. Rachel Bruner
Mr. Keith Witt*



CLERK
Steven Hall

#2
HB 1051
3.5.19

NORTH DAKOTA PAROLE BOARD
P.O. Box 1898
Bismarck, North Dakota 58502-1898
Fax 701-328-6780

HOUSE BILL 1051
SENATE JUDICIARY COMMITTEE
March 5, 2019

TO: Diane Larson, Chair of the Senate Judiciary Committee, Diane Larson, and Members of the House Judiciary Committee.

I am H. Patrick Weir, Chairman of the North Dakota Parole Board. I am writing this letter on behalf of the North Dakota Parole Board in support of HB 1051. This bill proposes to negate the 85% penalty for a sentence to prison upon revocation of probation for all offenses subject to the 85% imprisonment requirements under N.D.C.C. § 12.1-32-09.1.

The Parole Board believes that by removing the requirement that people are subject to the 85% imprisonment requirements of N.D.C.C. § 12.1-32-09.1, upon revocation of probation, the Parole Board can improve outcomes. By making these people eligible for parole during their incarceration, the Parole Board will have greater chance of reducing recidivism while holding people accountable, maintaining, and even improving public safety and reducing the likelihood of future victimization. Some of these people are dangerous and should be incarcerated for a period of time. We are of the belief that the Legislative Assembly should allow the Parole Board to evaluate these individuals during their sentence and analyze the prospects of methodically transitioning them from prison back to the community under the conditions established by the board. This will lessen the probability of releasing someone directly from prison without an adequate transitional plan.

The North Dakota Parole Board strives to make well informed evidence based decisions that will provide people the opportunities to change, transition, and become productive members of our communities.

Respectfully,

A handwritten signature in cursive script that reads "H. Patrick Weir".
H. Patrick Weir, Chairperson