

FISCAL NOTE
Requested by Legislative Council
01/07/2019

Revised
 Bill/Resolution No.: HB 1183

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

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 Biennium
Counties			
Cities			
School Districts			
Townships			

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

HB1183 may impact sentencing practices but DOCR can't estimate resultant sentence length. A positive impact is expected; decrease in average sentence lengths, less prison bed days used leads to less correctional resources needed. Current count of people serving a min mandatory drug sentence- 34

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

n/a

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

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

n/a

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

Not determinable

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

Not determinable

Name: Dave Krabbenhoft

Agency: DOCR

Telephone: 701-328-6135

Date Prepared: 01/13/2019

FISCAL NOTE
Requested by Legislative Council
01/07/2019

Bill/Resolution No.: HB 1183

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

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 Biennium
Counties			
Cities			
School Districts			
Townships			

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

HB1183 may impact sentencing practices but DOCR can't estimate resultant sentence length. A positive impact is expected; decrease in average sentence lengths, less prison bed days used leads to less correctional resources needed. Current count of people serving a min mandatory drug sentence-286

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

n/a

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

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

n/a

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

Not determinable

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

Not determinable

Name: Dave Krabbenhoft

Agency: DOCR

Telephone: 701-328-6135

Date Prepared: 01/13/2019

2019 HOUSE JUDICIARY COMMITTEE

HB 1183

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1183
1/21/2019
31150

☐ Subcommittee
☐ Conference Committee

Committee Clerk: DeLores D. Shimek

Explanation or reason for introduction of bill/resolution:

Relating to mandatory sentences for offenses relating to controlled substances; and relating to deferred imposition of sentence and suspension of sentence.

Minutes:

1, 2

Chairman K. Koppelman: Opened the hearing on HB 1183.

Rep. Kading: Introduced this bill. (Attachment #1) Went through his handout.

Rep. McWilliams: What have other states done? What has been the result of that?

Rep. Kading: I am not aware of what other states have done.

Chairman K. Koppelman: Went through the bill and referred to mandatory minimum sentence. 1:20-3:30)

Rep. Kading: The change came in 2015 when the state said we are going to allow discretion for judges. The manifest injustice that is a high standard and it requires the judge to report that to the state administrator. I don't think there is any other charge out there where you have to report like that. if we are going to give judges discretion we need to give them discretion.

Representative Jones: What do the judges say?

Rep. Kading: I have not had any conversations with judges.

Pat Bohn, Director Transitional Planning Service for ND Corrections and Rehabilitation: (Attachment #2) Went through the testimony. (5:10-11:40)

Rep. Hanson: You support the bill right.

Pat Bohn: Yes I support the bill.

Representative Jones: What do the judges think?

Pat Bohn: Overall they are supportive. They want the discretion on sentencing.

Representative Jones: You say there was only one case where the judge deviated from what he was supposed to and went through that process. Do you know what that case was?

Pat Bohn: No I don't.

Rep. McWilliams: Do you know of any correlation between the amount of time someone spends in prison versus the recidivistic rate?

Pat Bohn: The longer the prison stays; the greater the degree of recidivism.

Chairman K. Koppelman: The fiscal note is blank, but it may have a positive impact.

Pat Bohn: I think the prosecutor has a number of things to use already and still there.

Chairman K. Koppelman: We did cut these significantly last sessions for most of these offenses. Should there be something like this for the bigger fish?

Pat Bohn: The judiciary can already do that.

Chairman K. Koppelman: Do we need to be careful so the pendulum will swing too far the other way?

Pat Bohn: This change I do not believe that this would impact public safety. The goal was to reduce the amount of drug use and availability. Our drug probable may be bigger than it was before. We have not seen the benefits we thought we would.

Rep. Jones: We have a lot of different things going on in the state with the oil field and the boom.

Opposition: None

Neutral: None

Hearing closed.

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee

Prairie Room, State Capitol

HB 1183

2/12/2019

No Recording

☐ Subcommittee

☐ Conference Committee

Committee Clerk: Delores D. Shimek

Explanation or reason for introduction of bill/resolution:

Relating to mandatory sentences for offenses relating to controlled substances; and relating to deferred imposition of sentence and suspension of sentence.

Minutes:

Chairman Koppelman: Opened the meeting on HB 1183.

Do Pass Motion Made by Rep. Rick Becker; Seconded by Rep. Magrum

Discussion: None

Roll Call Vote: 11 Yes 3 No 0 Absent Carrier: Rep. Magrum

Closed.

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1183

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 Becker Seconded By Magrum

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	✓				
Rep. Satrom	✓				
Rep. Simons	✓				
Rep. Vetter	✓				

Total (Yes) 11 No 3

Absent 0

Floor Assignment Rep. Magrum

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

REPORT OF STANDING COMMITTEE

HB 1183: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **DO PASS**
(11 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). HB 1183 was placed on the
Eleventh order on the calendar.

2019 SENATE JUDICIARY

HB 1183

2019 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1183
2/27/2019
#32890 (31:02)

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Meghan Pegel

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact subsection 1 of section 12.1-32-02.1, sections 19-03.1-23 and 19-03.1-23.4, paragraph 3 of subdivision e of subsection 1 of section 19-03.1-36, subdivision e of subsection 5 of section 19-03.1-36, subsection 1 of section 19-03.1-45, subsection 2 of section 29-29.5-08, and subsection 29 of section 40-05-02 of the North Dakota Century Code, relating to mandatory sentences for offenses relating to controlled substances; and to repeal section 19-03.1-23.2 of the North Dakota Century Code, relating to deferred imposition of sentence and suspension of sentence.

Minutes:

1 Attachment

Chair Larson begins discussion on HB 1183. Senator Osland was absent.

Patrick Bohn, Director of Parole and Probation for the ND Department of Corrections and Rehabilitation, testifies in favor (see attachment #1)

(6:45) Tom Kading, District 45 Representative, testifies in favor

Representative Kading: This bill rids the Century Code of minimum mandatory specifically on offenses regarding controlled substances. In 1995, minimum mandatories and truth in sentencing was introduced in North Dakota, some based on different policy initiatives and some based on federal funds. Federal funds on truth in sentencing was about 10 million over a couple of years. That is not what this bill addresses.

Chair Larson: I introduced a bill in 1989 on mandatory minimum sentencing for drug dealers, and none of that came into my reasoning for doing it. We passed it, but the governor vetoed it.

Representative Kading: It was the era of tough on crime and some of the penalties were increasing on different types of crime. We nearly tripled the prison population from 95-2018, but we have trickled down a little bit this last year. In 2015 there were conversations to remove some of these minimum mandatories. Passed legislation said the court can deviate if it found a manifest injustice by imposing the minimum mandatory. Only one case has been deviated since then, perhaps because the manifest injustice standard is relatively high and

judges have an additional requirement to report that to the supreme court administrator; it's a little more work on their end. I know there are a lot of various factors that come into play, but these increased sentences on this particular subset of crime doesn't seem to be doing anything except making sure we have a strong prison population. The bill does not reduce the amount that can be sentenced to the individual; rather it puts in the discretion of the judge. Pages 2 and 3 remove the language requiring minimum mandatories on controlled substance offenses. Ultimately this bill does not address what should or shouldn't be legal in terms of a controlled substance; it simply addresses the fact that we should be giving the discretion to the judge rather than statutorily increasing the prison sentence handed down to the individuals who commit these offenses.

Chair Larson: On page 5, why do you want to remove the drug addiction evaluation portion?

Representative Kading: I don't recall why we addressed that. When I drafted this bill, I worked with the Department of Corrections. They might be able to answer that.

(11:35) Mr. Bohn continues testimony

Bohn: These minimum mandatories push the wait of the case into the hands of the prosecutor. They do use this as another leveraging tool in plea agreements, and those plea agreements go on outside of the eyes of the public and the judiciary. I think this puts the authority back to where it really does belong. I know sometimes judges get critiqued from the decisions they make, but they're good people who want to do the right things. We should let the judges decide who needs to be sentenced and for how long. This doesn't change the penalty that's available to the court, but it does give the full discretion back to the court without having to raise to this great level of a manifested justice to deviate from the minimum mandatory.

Senator Luick: What is the penalty if it's a return or first time offender?

Bohn: It depends. It ranges anywhere from 5 years for a class c felony up to life or a AA felony. All of these delivery and manufacture crimes are at least a felony.

Senator Bakke: Is it anywhere that it's mandatory that they go through drug and alcohol counseling- anything to work on their addictions?

Bohn: It's standard for the courts to look at a chemical addiction evaluation, sometimes so much so that it becomes overdone. They're ordering those when there's any indication that there could be chemical issue behind the crime that they're before the court on.

Senator Bakke: When I met with the Judiciary people in Grand Forks prior to coming to Bismarck, they said their number one concern is if they could have treatment centers available for these people, they wouldn't have to send as many to the prisons. Is this a deficit in our system?

Bohn: That's been a long-standing issue that people are sent to prison for treatment. We've tried to work with the judiciary to educate them on other alternatives. We know by research that treatment in the community has better outcomes instead of in an institution. Institutions are very controlled environments; they're in this vacuum while they're going through

treatment until they're released. Whereas if they do treatment while they're in the community, they have a social support system to help them through that issue. It's a double-edged sword, especially for our opiate and methamphetamine users who actually need to be in an institution at least temporarily.

Chair Larson: Do you know why we remove the drug addiction evaluation portion?

(17:45) Ken Sorenson, Legal Counsel for DOC

Sorenson: if you look at the language in subsection 8, the language authorizes the court to order the evaluation already. The last sentence is a mandatory evaluation in some situations, but the rest of the language already authorizes the court to order that evaluation for any violation of this section.

Senator Luick: On the last page of your testimony, you talk about the 1000 yards of a school. Would that be taken out as well or are we looking at leaving that?

Bohn: That was dealt with the last session. This would not change any of those distances. We addressed that in the last session, a lot of it was dealing with real property. This would not change any of those terms of the violation of the law

Senator Luick: It would do away with minimum mandatory on all of it?

Bohn: Correct.

Vice Chairman Dwyer: Now states are reevaluating and that by going to this, they're having better luck with these folks.

Bohn: Yes, they've realized that they're not getting the outcomes that they've sought in terms of reduction in delivery and manufacture of drugs. This is a trend across the rest of the country- moving away from minimum mandatories. Most people don't know what the minimum mandatory is for a particular crime. Our laws should result in something happening for the betterment of society if we're going to punish people this way. If it's not working and it's merely costing us more money and lives, that's a problem. We run into issues in this country where we have corrections inflation in which if 6 months didn't work, we use a year, and if a year didn't work, we jump to 3 years. We're not measuring the outcome in terms of is this impacting public safety and reducing the crimes that we're trying to target with these types of penalties?

Chair Larson: It seems that it was only one session ago that the Attorney General came to this committee and said that we needed to add fentanyl. He came to us with an alarming number of kids that were dying from overdoses. The people you exclude from this bill are pretty serious people that are being sentenced to a mandatory sentence if they're convicted of these particular crimes. I recall in 1989, the reason that that legislation was brought forward was because there were a lot of people and law enforcement that noticed that there were certain judges back in those days that were known to let people go. When someone was being charged with a judge offense, they knew which judge to appeal to have their case heard in front of. It was an effort to try to make sure that if someone committed certain crimes, they would serve time; they can be assured that while it doesn't matter if you buy the best

attorney, if you do the crime you'll do the time. There's a little bit more to the story other than we're just locking up too many people and it's not impacting the number.

Bohn: There certainly are some bad actors out there, but we have a lot of good judges that make good decisions. I don't know if we should legislate these penalties for a few judges that occasionally may go a different direction than what the public thinks.

Chair Larson: The specific two judges that were brought to us as an example are not on the bench anymore. I trust our judges.

Senator Myrdal: This legislation is essentially proposing to leave the discretion to the judiciary. There's bad actors everywhere, but it seems to me that we should trust our judiciary. We're taking out what's binding the judges. If you have someone selling fentanyl, the judge will be aware of the severity.

Bohn: Correct, along with the fact that we've been doing this for 20+ years and it hasn't yielded the dividends.

Senator Myrdal: Imprisonment means protection for society but also rehabilitation for the offender.

Bohn: I'd say the primary reason is rehabilitation; we want people to be productive citizens. We know that about 98% of our population is coming back into our community sometimes, so that's our primary goal.

Senator Luick: Minnesota has a sentence to service program. Does ND have something equivalent to that?

Bohn: I'm not familiar.

Senator Luick: I'm a contractor and do a lot of work in Minnesota. With some of my projects, inmates came from Fergus Falls to help roof buildings and such.

Bohn: These individuals are not actually incarcerated at all. With work release, these people are incarcerated then go out to their job for a day or week. ND has had a community service program operated in various places in the state for about 3 decades that I'm aware of. That will probably be the closest to what you're talking about. They get in touch with a community service agency for placement, monitoring of the hours, etc. That's fully available to the courts in this state.

Chair Larson closes the hearing on HB 1183.

2019 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1183
2/27/2019
#32903 (10:35)

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Meghan Pegel

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact subsection 1 of section 12.1-32-02.1, sections 19-03.1-23 and 19-03.1-23.4, paragraph 3 of subdivision e of subsection 1 of section 19-03.1-36, subdivision e of subsection 5 of section 19-03.1-36, subsection 1 of section 19-03.1-45, subsection 2 of section 29-29.5-08, and subsection 29 of section 40-05-02 of the North Dakota Century Code, relating to mandatory sentences for offenses relating to controlled substances; and to repeal section 19-03.1-23.2 of the North Dakota Century Code, relating to deferred imposition of sentence and suspension of sentence.

Minutes:

No Attachments

Chair Larson begins discussion on HB 1183. Senator Osland was absent.

Senator Myrdal: The Department of Corrections are the experts on this. It's usually the lesser offenders. The judges should know the severity of it, and we shouldn't bind them. I support it.

Senator Bakke: The one thing I would like to see mandatory is that they would have to undergo drug and alcohol treatment, but I believe that's up to the judges' discretion as well.

Chair Larson: Yes. I feel inclined to leave this up to the judges' discretion. If we find at a later time that they're not doing their due diligence, then we will change. I think we went too far with creating mandatory minimums in the past.

Senator Bakke: I agree. This isn't fixing the problem. They need a place that they can sentence them to get help for their addiction. I would like to be able to give that option to the judges, but I don't think we have that.

Senator Myrdal: Sessions ago we gave discretion for judges to sentence these offenders to jail or Teen Challenge or other organizations, and that has changed a lot of people's lives.

Senator Bakke: When you throw them in jail, you're just putting a Band-Aid on the problem, but if you're sending them someplace where you're dealing with the problem, then you're making a difference. That's what we should be about.

Senator Luick: Last session we found out that these individuals that come back through that processes end up leaving there worse than what they were when they came in simply because they've educated themselves with the hardliners that are already there. It goes backwards on us too.

(6:10) Chair Larson: In the past there was a concern about the revolving door of some of the same offenders and simply trying to get them off the streets. I think we need to be able to have some confidence in our judges recognize that.

Senator Luick: What kind of treatment facilities do we have in this state?

Chair Larson: There are residential ones, and most of them are out-patient. The regional human service centers and private providers like Heartview provide service. Teen challenge also seems to be one of the most effective treatment programs that we have.

Senator Luick: They only work with teens?

Chair Larson: No. It started nationally as a teen program, but it also includes adults.

Senator Myrdal: David Wilkerson who started Teen Challenge was a radical, great guy.

Vice Chairman Dwyer: One of the hardening things about this is some of the other states that have tried this, it's provided the outcomes that they're looking for. I also support it.

Senator Bakke: We have a lot of private and out-patient treatment centers, but what we're really missing is an in-patient, intense drug rehabilitation center in this state.

Chair Larson: We used to have that at the state hospital, but that kind of fizzled.

Senator Bakke: Grand Forks has the Ruth Meiers Adolescent Center, but that's more for teens who have difficulties with the law in addition to alcohol and drug issues. I don't think we have a state-owned facility for that.

Chair Larson: We do in Cando.

Senator Myrdal: We have a facility state-owned in Grafton that's sitting half empty. We could do that in Grafton.

Senator Luick: Motions for a Do Pass.

Senator Myrdal: Seconds.

A Roll Call Vote was Taken: 5 yeas, 0 nays, 1 absent. Motion carries.

Senator Bakke will carry the bill.

**2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1183**

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 Luick Seconded By Senator Myrdal

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) 5 No 0

Absent 1

Floor Assignment Senator Bakke

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

REPORT OF STANDING COMMITTEE

HB 1183: Judiciary Committee (Sen. D. Larson, Chairman) recommends **DO PASS**
(5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1183 was placed on the
Fourteenth order on the calendar.

2019 TESTIMONY

HB 1183

#1
HB 1183
1-21-19
r71

Mr. Chairman and members of the committee, I am Representative Tom Kading from Fargo.

Before you is House Bill 1183. HB 1183 is a bill that rids Century Code of minimum mandatory sentences for offenses regarding controlled substance abuse.

Minimum Mandatory History

In 1995, North Dakota passed Minimum Mandatories and Truth in Sentencing laws. This was the era when tough on crime was a popular concept and many states embraced it. Since 1995 our prison population has tripled.

In 1995 it was: 578

In 2018 it was: 1,673

In 2018 we have 289% of that in 1995.

Our overall population has grown by only 16.6%

In 2015 conversations started to talk about removing. A bill was passed where the court can deviate if court found on record a manifest injustice by imposing minimum mandatory. Only 1 has been deviated. This is a very high standard and judges have the additional responsibility to report it to state court administrator.

Minimum mandatories were further limited in 2017 when they were peeled back to about ½ the sentences for the most part.

I know there are a lot of various factors, but this increased sentence doesn't seem to be doing anything but ensure a strong prison population.

This bill, does not reduce the amount that can be sentenced rather it gives discretion to judge.

Walk through bill

Pages 2 and 3 remove the language requiring minimum mandatory for Controlled Substance offenses.

Conclusion

This bill does not address what should or shouldn't be legal in terms of Controlled Substances, what it does address is the fact that we shouldn't be taking away the discretion of judges and therefore statutorily increasing the prison sentences handed down to those with addictions.

Please support HB 1183.

HOUSE JUDICIARY COMMITTEE
REPRESENTATIVE KIM KOPPELMAN, CHAIRMAN
JANUARY 21, 2019

#2
HB 1183
1-22-19
FJ1

PATRICK N. BOHN, DIRECTOR FOR TRANSITIONAL PLANNING SERVICES, NORTH DAKOTA
DEPARTMENT OF CORRECTIONS & REHABILITATION
PRESENTING TESTIMONY RE: HB 1183

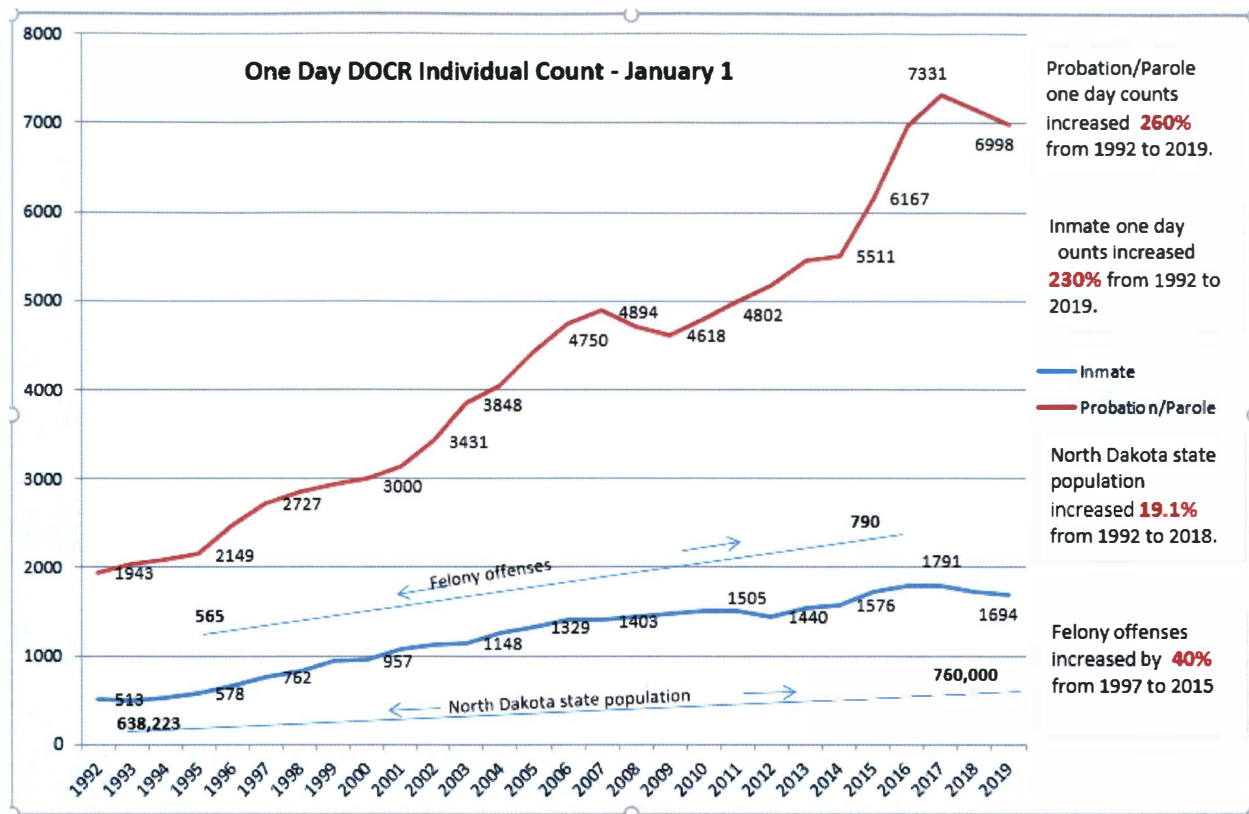
My name is Pat Bohn and I am the Director for Transitional Planning Services for the North Dakota Department of Corrections and Rehabilitation (DOCR). I am here to testify on behalf of the department in opposition to HB 1183.

HB 1183 (Mandatory Minimums)

HB 1183: A BILL for an Act to amend and reenact subsection 1 of section 12.1-32-02.1, sections 19-03.1-23 and 19-03.1-23.4, paragraph 3 of subdivision e of subsection 1 of section 19-03.1-36, subdivision e of subsection 5 of section 19-03.1-36, subsection 1 of section 19-03.1-45, subsection 2 of section 29-29.5-08, and subsection 29 of section 40-05-02 of the North Dakota Century Code, relating to mandatory sentences for offenses relating to controlled substances; and to repeal section 19-03.1-23.2 of the North Dakota Century Code, relating to deferred imposition of sentence and suspension of sentence.

North Dakota's Recent Efforts

- In 2015, HB 1030 authorized judges to deviate from the minimum mandatory if the court determined on the record that there would be a "manifest injustice" imposed upon a defendant by imposing the minimum mandatory sentence. It also set forth a reporting requirement upon the court should the court deviate below the minimum mandatory.
- In 2017, SB 2149 reduced the minimum mandatory drug penalties by almost half for about ten offenses.
- 36 serving in 2013. 34 serving in 2019.



Helpful Background Facts

- There are ten times as many people in state prisons for drug offenses today than there were in 1980.¹
- Mandatory minimums, at least on the federal level, were initially intended for “major drug traffickers,” but they have ended up being used against defendants in low-level drug crimes.²

Mandatory Minimums

Mandatory minimum sentences do not reduce crime or enhance public safety.³

- Mandatory minimum sentences do not seem to have a significant deterrent effect. The certainty of punishment is a greater cause of deterrence than severity.⁴
- Mandatory minimum sentences do not reduce crime through incapacitation, especially in drug-related crimes, where low-level offenders can easily be “replaced” by other low-level actors.⁵

¹ “Drug Policy.” *The Sentencing Project*, <https://www.sentencingproject.org/issues/drug-policy/>. Accessed 18 Jan 2019.

² “Mandatory Minimums and Sentencing Reform.” *Criminal Justice Policy Foundation*, <https://www.cjpf.org/mandatory-minimums/>. Accessed 18 Jan 2019.

³ “Reforming Mandatory Minimums.” *Law Enforcement Leaders*, <http://lawenforcementleaders.org/issues/reforming-mandatory-minimums/>. Accessed 18 Jan 2019.

⁴ Bernick, Evan and Paul Larkin. “Minimum Sentences: The Arguments for and Against Potential Reforms.” *Crime and Justice Report*, 10 Feb 2014, The Heritage Foundation, <https://www.heritage.org/crime-and-justice/report/reconsidering-mandatory-minimum-sentences-the-arguments-and-against>. Accessed 18 Jan 2019.

⁵ Beck, Allen J. and Alfred Blumstein. “Population Growth in U.S. Prisons, 1980—1996,” *Crime and Justice*. Volume 26, 1999.

- #2
HB1183
1-21-19
pg 3
- Studies show that reducing prison sentences has a minimal to zero impact on overall crime rates.⁶
 - Longer prison sentences are associated with a small increase in recidivism.⁷

Mandatory minimums are—according to the organization of Law Enforcement Leaders—“overly punitive.”⁸ The Criminal Justice Policy Foundation Executive Director Eric Sterling who helped write federal mandatory minimum sentencing laws for drug and gun crimes, now opposes the laws because they compromise the opportunity to achieve justice in individual cases.⁹

Mandatory minimums impose a significant financial burden on the state by causing unnecessarily long prison sentences.

Mandatory minimum sentences do not eliminate sentencing disparities, as intended. Instead, they transfer discretion from judges to prosecutors.¹⁰

There are a variety of reasons why sentencing discretion ought not be left to prosecutors:

- There are institutional pressures on prosecutors to achieve convictions with the longest possible sentences, reducing the incentive for prosecutors to use their discretion.¹¹
- Prosecutors have argued that they can use mandatory minimums as a tool to encourage cooperation among defendants, but the rate of cooperation is overstated, remaining about the same as the average rate in all federal cases.¹²

Mandatory minimums scare defendants into pleading guilty rather than letting the facts of their case be heard in trial. 95% of federal drug defendants plead guilty.¹³

Several states have altered their mandatory minimum laws, and the results have been heartening.

- New York: In 1973 New York enacted harsh mandatory minimum sentencing laws for drug possession cases. The prison population in the state increased by 600% in the decades after. In the 2000's, New York revised and then reversed the mandatory minimum sentencing laws for low-level drug offences. Since 2009, the number of people incarcerated and the lengths of their sentences have decreased, and disparities between white and minorities have diminished.¹⁴ Violent crime rates and property crime rates in New York have fallen faster than the national average since 1999.¹⁵

⁶ Ghandnoosh, Nazgol and Marc Mauer. “Fewer Prisoners, Less Crime: A Tale of Three States.” *The Sentencing Project*, 23 July 2014, <https://www.sentencingproject.org/publications/fewer-prisoners-less-crime-a-tale-of-three-states/>. Accessed 18 Jan 2019.

⁷ Ghandnoosh.

⁸ “Reforming Mandatory Minimums.”

⁹ “Mandatory Minimums and Sentencing Reform.”

¹⁰ Bernick.

¹¹ See *Reevaluating the Effectiveness of Mandatory Minimum Sentences: Hearing Before the S. Comm. on the Judiciary*, 113th Cong. 4 (2013)

¹² Cassell, Paul G. and Eric Luna. “Mandatory Minimalism.” *Cardozo Law Review*, Vol 32, Issue 1, 2010.

¹³ “Mandatory Minimums and Sentencing Reform.”

¹⁴ “Reforming Mandatory Minimums.”

¹⁵ Ghandnoosh.

#2
HB1183
1-21-19
pg 4

- Kentucky: In 1992, Kentucky enacted mandatory minimum sentencing laws for cases of drug possession within 1,000 yards of schools. In the coming decades, the prison population increased. In 2011, Kentucky passed a bill that would only allow mandatory minimums for drug possessions within 1,000 feet (rather than 1,000 yards) of the school. The prison population dropped by more than 1400 in one year and saved the state \$20,000 per person annually. Kentucky's crime rate is at an all-time low.¹⁶
- New Jersey: New Jersey's prison population peaked in 1999. In the early 2000's, the New Jersey State Attorney General issued guidelines to increase judicial discretion in sentencing. The state senate also passed a bill giving judges discretion to sentence individuals below the mandatory minimums of the school zone law, including retroactively. The state prison population fell 26% between 1999 and 2012. And violent crime rates and property crime rates in New Jersey have fallen faster than the national average since 1999.¹⁷
- South Carolina and Rhode Island have also eliminated some mandatory minimum sentences for drug offenses in recent years.¹⁸

I encourage you to support this change and put sentencing back where it belongs with the courts and take another step towards modifying policies that have contributed to increases prison populations and accelerated government spending.

¹⁶ "Reforming Mandatory Minimums."

¹⁷ Ghandnoosh.

¹⁸ "Mandatory Minimums and Sentencing Reform."

SENATE JUDICIARY COMMITTEE
SENATOR DIANE LARSON, CHAIRMAN
FEBRUARY 27, 2019

PATRICK N. BOHN, DIRECTOR OF PAROLE & PROBATION, NORTH DAKOTA DEPARTMENT OF
CORRECTIONS & REHABILITATION
PRESENTING TESTIMONY RE: HB 1183

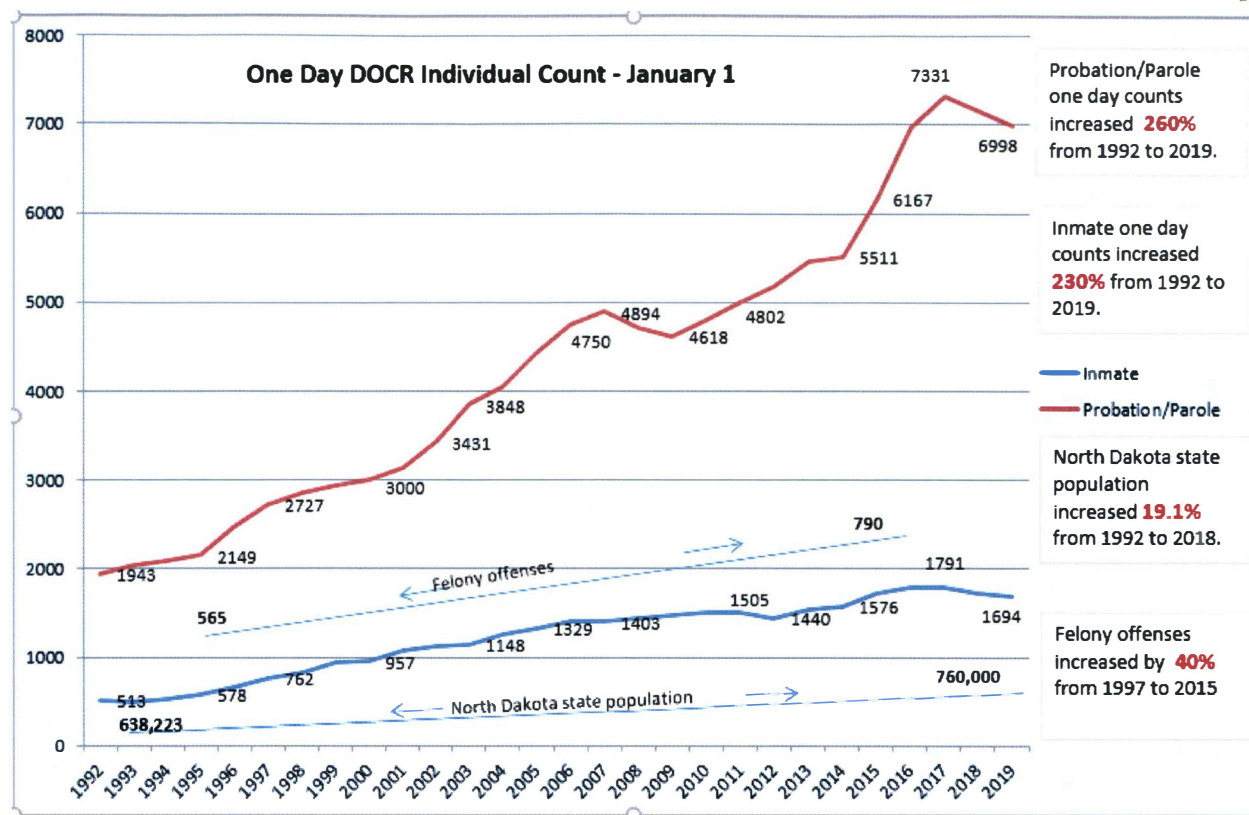
My name is Pat Bohn and I am the Director for Parole and Probation in the North Dakota Department of Corrections and Rehabilitation (DOCR). I am here to testify on behalf of the department in support of HB 1183.

HB 1183 (Mandatory Minimums)

HB 1183: A BILL for an Act to amend and reenact subsection 1 of section 12.1-32-02.1, sections 19-03.1-23 and 19-03.1-23.4, paragraph 3 of subdivision e of subsection 1 of section 19-03.1-36, subdivision e of subsection 5 of section 19-03.1-36, subsection 1 of section 19-03.1-45, subsection 2 of section 29-29.5-08, and subsection 29 of section 40-05-02 of the North Dakota Century Code, relating to mandatory sentences for offenses relating to controlled substances; and to repeal section 19-03.1-23.2 of the North Dakota Century Code, relating to deferred imposition of sentence and suspension of sentence.

North Dakota's Recent Efforts

- In 2015, HB 1030 authorized judges to deviate from the minimum mandatory if the court determined on the record that there would be a "manifest injustice" imposed upon a defendant by imposing the minimum mandatory sentence. It also set forth a reporting requirement upon the court should the court deviate below the minimum mandatory.
- In 2017, SB 2149 reduced the minimum mandatory drug penalties by almost half for about ten offenses.
- 36 serving in 2013. 34 serving in 2019.



Helpful Background Facts

- There are ten times as many people in state prisons for drug offenses today than there were in 1980.¹
- Mandatory minimums, at least on the federal level, were initially intended for “major drug traffickers,” but they have ended up being used against defendants in low-level drug crimes.²

Mandatory Minimums

Mandatory minimum sentences do not reduce crime or enhance public safety.³

- Mandatory minimum sentences do not seem to have a significant deterrent effect. The certainty of punishment is a greater cause of deterrence than severity.⁴
- Mandatory minimum sentences do not reduce crime through incapacitation, especially in drug-related crimes, where low-level offenders can easily be “replaced” by other low-level actors.⁵

¹ “Drug Policy.” *The Sentencing Project*, <https://www.sentencingproject.org/issues/drug-policy/>. Accessed 18 Jan 2019.

² “Mandatory Minimums and Sentencing Reform.” *Criminal Justice Policy Foundation*, <https://www.cjpf.org/mandatory-minimums/>. Accessed 18 Jan 2019.

³ “Reforming Mandatory Minimums.” *Law Enforcement Leaders*, <http://lawenforcementleaders.org/issues/reforming-mandatory-minimums/>. Accessed 18 Jan 2019.

⁴ Bernick, Evan and Paul Larkin. “Minimum Sentences: The Arguments for and Against Potential Reforms.” *Crime and Justice Report*, 10 Feb 2014, The Heritage Foundation, <https://www.heritage.org/crime-and-justice/report/reconsidering-mandatory-minimum-sentences-the-arguments-and-against>. Accessed 18 Jan 2019.

⁵ Beck, Allen J. and Alfred Blumstein. “Population Growth in U.S. Prisons, 1980—1996,” *Crime and Justice*. Volume 26, 1999.

- Studies show that reducing prison sentences has a minimal to zero impact on overall crime rates.⁶
- Longer prison sentences are associated with a small increase in recidivism.⁷

Mandatory minimums are—according to the organization of Law Enforcement Leaders—“overly punitive.”⁸ The Criminal Justice Policy Foundation Executive Director Eric Sterling who helped write federal mandatory minimum sentencing laws for drug and gun crimes, now opposes the laws because they compromise the opportunity to achieve justice in individual cases.⁹

Mandatory minimums impose a significant financial burden on the state by causing unnecessarily long prison sentences.

Mandatory minimum sentences do not eliminate sentencing disparities, as intended. Instead, they transfer discretion from judges to prosecutors.¹⁰

There are a variety of reasons why sentencing discretion ought not be left to prosecutors:

- There are institutional pressures on prosecutors to achieve convictions with the longest possible sentences, reducing the incentive for prosecutors to use their discretion.¹¹
- Prosecutors have argued that they can use mandatory minimums as a tool to encourage cooperation among defendants, but the rate of cooperation is overstated, remaining about the same as the average rate in all federal cases.¹²

Mandatory minimums scare defendants into pleading guilty rather than letting the facts of their case be heard in trial. 95% of federal drug defendants plead guilty.¹³

Several states have altered their mandatory minimum laws, and the results have been heartening.

- New York: In 1973 New York enacted harsh mandatory minimum sentencing laws for drug possession cases. The prison population in the state increased by 600% in the decades after. In the 2000's, New York revised and then reversed the mandatory minimum sentencing laws for low-level drug offences. Since 2009, the number of people incarcerated and the lengths of their sentences have decreased, and disparities between white and minorities have diminished.¹⁴ Violent crime rates and property crime rates in New York have fallen faster than the national average since 1999.¹⁵

⁶ Ghandnoosh, Nazgol and Marc Mauer. “Fewer Prisoners, Less Crime: A Tale of Three States.” *The Sentencing Project*, 23 July 2014, <https://www.sentencingproject.org/publications/fewer-prisoners-less-crime-a-tale-of-three-states/>. Accessed 18 Jan 2019.

⁷ Ghandnoosh.

⁸ “Reforming Mandatory Minimums.”

⁹ “Mandatory Minimums and Sentencing Reform.”

¹⁰ Bernick.

¹¹ *See Reevaluating the Effectiveness of Mandatory Minimum Sentences: Hearing Before the S. Comm. on the Judiciary*, 113th Cong. 4 (2013)

¹² Cassell, Paul G. and Eric Luna. “Mandatory Minimalism.” *Cardozo Law Review*, Vol 32, Issue 1, 2010.

¹³ “Mandatory Minimums and Sentencing Reform.”

¹⁴ “Reforming Mandatory Minimums.”

¹⁵ Ghandnoosh.

- Kentucky: In 1992, Kentucky enacted mandatory minimum sentencing laws for cases of drug possession within 1,000 yards of schools. In the coming decades, the prison population increased. In 2011, Kentucky passed a bill that would only allow mandatory minimums for drug possessions within 1,000 feet (rather than 1,000 yards) of the school. The prison population dropped by more than 1400 in one year and saved the state \$20,000 per person annually. Kentucky's crime rate is at an all-time low.¹⁶
- New Jersey: New Jersey's prison population peaked in 1999. In the early 2000's, the New Jersey State Attorney General issued guidelines to increase judicial discretion in sentencing. The state senate also passed a bill giving judges discretion to sentence individuals below the mandatory minimums of the school zone law, including retroactively. The state prison population fell 26% between 1999 and 2012. And violent crime rates and property crime rates in New Jersey have fallen faster than the national average since 1999.¹⁷
- South Carolina and Rhode Island have also eliminated some mandatory minimum sentences for drug offenses in recent years.¹⁸

I encourage you to support this change and put sentencing back where it belongs with the courts.

¹⁶ "Reforming Mandatory Minimums."

¹⁷ Ghandnoosh.

¹⁸ "Mandatory Minimums and Sentencing Reform."