

2021 HOUSE JUDICIARY

HB 1104

2021 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

HB 1104
1/12/2021

Relating to sentencing violent offenders; and to provide for retroactive application.

Chairman Klemin called the meeting to order at 9:00 AM.

Present: Representatives Klemin, Karls, Buffalo, Christensen, Cory, K Hanson, Jones, Magrum, Paulson, Paur, Roers Jones, Satrom, Vetter and Becker.

Discussion Topics:

- Parole eligibility
- Recommended Amendment
- Reduction of time served

Rep. Doberevich: introduced the bill. #629

Steven Hall, director, Transitional Planning Services, ND Department of Corrections and Rehabilitation #516

Rep. Ista: Testimony #466

Stephane Dassinger, appearing for Chiefs of Police Association of ND and Deputy Director and attorney for ND League of Cities #559

Aaron Birst, ND Association of Counties, Oral testimony

Travis Finck, Executive Director of ND Commission on Legal Counsel for Indigents. Testimony #503

Additional Written Testimony:

#366, #367, #368, #373, #376, #414, #520, #565, #571, #589, #590, #592, #1288, #1289, #2300

Subcommittee appointed: Chairman Roers Jones, Rep. T. Jones, and Rep. K. Hanson to meet and report back on HB 1104.

Hearing closed at 9:35am.

Delores Shimek, Committee Clerk

HB 1104 Reduction of Time Served for Violent Offenders from 85% to 65%
Testimony of Representative Gretchen Dobervich
January 12, 2021

Good Morning Chairman Klemin and Members of the House Judiciary Committee,

For the record my name is Representative Gretchen Dobervich, I represent District 11 in Fargo. I come before you with a constituent requested amendment to section 12.1-32-09.1 of the North Dakota Century Code, relating to sentencing violent offenders. This bill was heard and passed by the House Judiciary Committee in the 2019 Legislative Session. It failed to pass the House Floor vote.

Currently, a citizen serving a sentence for a violent crime committed in North Dakota must serve 85% of their sentence before they are eligible for a hearing before the parole board. This bill seeks to reduce the time served to 65%.

When the House Chamber voted on the bill in the 2019 Session, I voted against the bill. My vote was based on wanting a safe community for all of us, I was also naïve. This Summer a constituent called me regarding her son, who is currently serving a prison sentence for a violent crime in which four of fifteen people involved in a physical altercation were charged with various crimes, including murder related to the tragic death of one of the people involved. Her story compelled me to look deeper into sentencing and parole eligibility.

Research has shown that "hard on crime" maximum penalty sentencing has not deterred crime in the United States. While our best approaches are addressing the social determinants of health and prevention, early intervention and continued supports for behavioral health, this will take time and investment of resources, and we will not see instant change.

HB 1104 does not guarantee someone who has committed a violent crime will be released from prison, it provides the opportunity for earlier consideration. This in turn offers the Department of Correction time to appropriately assist individuals in the process of reentry into communities increasing chances of community safety and personal success, versus good time/earned early release, which occurs prior to the 85% sentencing, and shortens the time period for transition services.

Thank you for the opportunity to come before you today and for your consideration of HB 1104. Mr. Chairman and member of the committee I stand for questions.

**HOUSE JUDICIARY COMMITTEE
REPRESENTATIVE LAWRENCE KLEMIN, CHAIRMAN
JANUARY 12, 2019**

**STEVEN HALL, DIRECTOR, TRANSITIONAL PLANNING SERVICES,
NORTH DAKOTA DEPARTMENT OF CORRECTIONS & REHABILITATION
PRESENTING TESTIMONY HOUSE BILL 1104**

Chairman Klemin and members of the Judiciary Committee, 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 House Bill 1104.

In part, House Bill 1104 reduces the portion of a sentence that an individual who has been convicted of a crime subject to the truth in sentencing (in Section 12.1-32-09.1 of the North Dakota Century Code) must serve before the individual becomes eligible to be considered for parole from 85% to 65%. It also provides a retroactive application to August 1, 1995.

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 with 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 North Dakota Century Code Section 12.1-32-09.1, which required individuals to serve 85% of the court imposed sentence before becoming eligible for parole if they had been convicted of committing, attempting to commit, or being an accomplice to several violent

criminal offenses. 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, which opened in 1998. VOI/TIS funds were also used to lease private transitional beds.

In the last two legislative sessions, North Dakota made changes to the truth in sentencing statute to eliminate its applicability to C Felony Aggravated Assault convictions and to revocations of probation. However, the requirement to serve 85% of the sentence prior to parole eligibility continues to apply to several other offenses.

Currently, due to the seriousness of the offenses subject to the requirement to serve 85% of the sentence prior to parole eligibility, individuals serving these sentences tend to have lengthy sentences. Generally, parole is an important tool to help incarcerated individuals, particularly those with longer sentences, transition back into the community in a way that maximizes the likelihood they will not recidivate and, therefore, enhances public safety.

Unfortunately, individuals required to serve 85% before they are parole eligible almost always get released prior to parole eligibility because their good time release date is earlier than their parole eligibility date, so they must be released on their theoretical parole eligibility date. Thus, the DOCR is prevented from using parole to enhance public safety in these situations. Because courts are not required to place individuals on probation after incarceration for these 85% truth-in-sentencing offenses, (except for GSI with force which requires a minimum of five years' probation), it is possible for individuals who do not get the opportunity for parole to be released directly from prison without time on supervision. If individuals were to be parole board eligible after 65% instead, the Parole Board would have flexibility to view the details of

individuals' situations and take steps to reduce their risk, such as paroling individuals to a specific location to enhance the probability of their success and to ensure the individuals are subject to conditions likely needed for their success. Please keep in mind that an individual's behavior during their incarceration can impact their good time release date.

For example, an individual sentenced to a straight 10 years for a Robbery offense with no probation to follow would have no opportunity for community supervision. Currently, the individual would be eligible for transition to the DOCR minimum-security facility at Missouri River Correction Center (MRCC) once he is down to his last 42 months of his sentence depending on his institutional behavior and programming needs. An institutional case manager will work with the individual to create a plan for reentry. During the last six months of his sentence he would be eligible for work release from MRCC, and that would be the end of his transition until his release at 8 ½ years or 85% of his sentence. The individual would have no opportunity to transition to appropriate housing or to learn to manage his behavior in the community effectively prior to release.

Reducing the portion of a sentence an individual is required to serve prior to parole eligibility from 85% to 65% can improve outcomes and reduce barriers to reentry. By making individuals with these sentences eligible for parole during their incarceration, the DOCR has a greater chance of engaging them in treatment and other prosocial programs. Fewer release opportunities discourage individuals from following prison rules and engaging in treatment, education or job training opportunities. Conversely, the possibility for parole incentivizes better behavior and engagement.

Additionally, when individuals are monitored during their transition, they can be connected to local community resources during their reentry. Parole and probation officers can target specific ways to engage individuals to reduce their risk of recidivism, including Core Correctional Practices, engagement in Free Through Recovery, and Intermediate Measures. These targeted interventions are evidenced-based, meaning they are proven to reduce risk. They allow the DOCR to hold individuals accountable in a way that affects their behavior positively; to help transition them back to our communities safely; to reduce the likelihood of future victimization; and to increase their chances of contributing positively to our communities.

I need to stress the point, not all violent individuals will be sufficiently rehabilitated to begin parole after 65% of their sentences have been served. However, when it is appropriate, it is beneficial to transition individuals using parole. House Bill 1104 authorizes the Parole Board to evaluate these cases during their sentence, assess how well individuals have prepared themselves for return to our communities, and use parole as a tool to support more effective transitions to the community, when appropriate.

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. House Bill 1104 is a solid continuation of criminal justice reform in the state of North Dakota.

Chairman Klemin and committee members, I ask that you support House Bill 1104.

CHAIRMAN
Mr. H. Patrick Weir

CLERK
Steven Hall



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

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

To the Chair of the House Judiciary Committee, Lawrence Klemin, and committee members.

I am H. Patrick Weir, Chairman of the North Dakota Parole Board. I am writing this letter on behalf of the parole board members in support of HB 1104. This bill proposes changing the 85% penalty to 65% for a sentence to prison for all crimes that fall under the 85% penalty.

We believe by changing the requirement for people who are subject to the 85% statute we can improve outcomes. By making these people eligible for parole during their incarceration we will have greater chance of reducing recidivism while holding people accountable, maintaining and maybe 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 you should allow the parole board to evaluate these cases 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 may 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 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
Chairman ND Parole Board

HB 1104 – Relating to Sentencing of Violent Offenders
Testimony of Representative Zachary Ista, District 43 (Co-Sponsor)
January 12, 2021

Chairman Klemin and Members of the House Judiciary Committee:

I write in support of HB 1104. This bill continues to ensure that our most violent criminal offenders serve substantial portions of their prison sentences while allowing greater flexibility for the Department of Corrections and Rehabilitation to grant parole for inmates if warranted.

I support this bill for three reasons: 1) it maintains the requirement that violent offenders serve a substantial portion of their sentences before becoming eligible for parole, 2) it makes sure anyone who commits a Class AA felony is subject to this rule, and 3) it reasonably increases DOCR's flexibility to grant parole earlier in a prison term in appropriate circumstances.

Under current law, NDCC § 12.1-32-09.1 requires certain violent offenders to serve at least 85% of a sentence of incarceration before being eligible for parole. This "85% rule" applies only to the worst of the worst criminal offenses: murder, manslaughter, kidnapping, robbery, and certain aggravated assaults, burglaries, and rapes. Victims of these crimes deserve swift and certain justice. Prosecutors rely on this tool to achieve such justice. And both society and crime victims alike deserve the peace of mind that comes with knowing a violent offender will serve a substantial portion of his sentence before release. This bill preserves these important principles.

HB 1104 further adds to the list of crimes subject to the percentage of sentence rule by making sure all Class AA felonies—the most serious class of crimes in the Century Code—are all included. Current law fails to subject some of the most awful crimes imaginable to the current 85% rule. Most disturbingly, each of the offenses currently missing from the present rule involve unconscionable crimes against minors. To remedy that, this bill adds the following offenses to the list of crimes for which an offender would be required to serve a substantial portion of a sentence before becoming parole eligible: continuous sexual abuse of a minor, sex trafficking of a minor, forced labor of a minor, and sexual servitude of a minor. Adding these heinous crimes to the sentencing law is necessary to give prosecutors their full complement of tools to ensure justice for victims of such crimes.

As the members of the Committee may know, I practice as a county prosecutor when not serving in the Legislature. And if I were coming before you wearing only my prosecutor hat, I might urge the Committee only to add the above-listed crimes and otherwise leave the 85% rule undisturbed. I understand why prosecutors feel passionate about fully preserving that important tool for the most serious offenses. Frankly, there are some crimes for which even serving 100% of a sentence is inadequate. So it is my strong hope and belief that the Parole Board will take seriously the concerns of prosecutors and victims when deciding whether a violent offender who committed atrocious crimes is deserving of early release under the proposed change of law.

But just as there are certain offenders for whom early release is never appropriate, there are also incarcerated offenders for whom serving a minimum 85% of their sentence serves no meaningful rehabilitative purpose nor furthers justice for victims in a way that could not be achieved through

a 65% rule instead. That is why I believe changing the sentencing requirement to a 65% rule appropriately balances the interests of prosecutors and victims in ensuring justice with the State's competing interests of encouraging prisoner rehabilitation and being sound stewards of state funds allocated to DOCR. Such a change, in my estimate, would not tilt the scales too far away from accountability for violent crime. Indeed one reason I have co-sponsored this proposal is because it maintains a 65% rule rather than further chipping away at current law or even scrapping the rule altogether. For that reason, I would urge the committee to resist lowering the 65% any further, as any additional downward departure would, I believe, put too little emphasis on the need for certitude in sentencing.

Under HB1104, violent offenders still would have to serve a very substantial portion of their sentences before even becoming eligible for parole. And even then, the parole board would still consider the perspective of victims and any evidence (or lack thereof) of rehabilitation before granting early release. By lowering the rule to 65% of a sentence, DOCR would gain flexibility to consider parole for inmates who have, through their own actions while incarcerated, demonstrated a true commitment to rehabilitation. By permitting certain inmates to become eligible for parole earlier, this proposal may even incentivize prisoners to commit more deeply to their own rehabilitation. Of course, incarceration of individuals requires a substantial investment of state financial resources. This proposal acknowledges the financial impact of long-term incarceration on state coffers by allowing earlier parole for certain inmates who, in the Department's and Parole Board's assessment, may have reached maximum benefits from the rehabilitation services offered during incarceration.

For each of these foregoing reasons, I believe this bill is an appropriate compromise that continues to protect victims and public safety while adding appropriate flexibility to our state's carceral systems. That is why I urge the Committee to recommend a Do Pass on HB1104.

January 12, 2021

House Judiciary Committee

HB 1104

Rep. Lawrence R. Klemin, Chair

For the record, I am Stephanie Dassinger. I am appearing on behalf of the Chiefs of Police Association of North Dakota. I am also the deputy director and attorney for the North Dakota League of Cities.

The Chiefs of Police appear today in opposition to HB 1104. The North Dakota Chiefs of Police Association believes reducing the percentage of sentenced time that an offender must serve for murder, manslaughter, aggravated assault, kidnapping, gross sexual imposition (rape), robbery, and burglary sends the wrong message and disregards the will of the people of North Dakota. Alternatives to incarceration and sentence reductions have their place. These serious offenses do not warrant those alternatives.

It is the Chiefs' experience that probation and parole revocations are occurring less frequently, for various reasons. Additionally, drug crimes and lower-level violent crimes are receiving lighter and lighter sentences. The Chiefs believe these two realities are conditioning repeat offenders to be more emboldened. Alternative programs are limited or non-existent for even low-level offenses. The Chiefs believe if this bill passes, and North Dakota's most dangerous offenders are routinely released early with little accountability, it will lead to tragic yet predictable outcomes.

Please note that this bill also adds the offenses of continuous sexual abuse of a child, human trafficking, labor trafficking and sexual servitude to the list of offenses where an offender must serve a minimum percentage of his or her imposed sentence. The Chiefs do not oppose that change in the bill.

For the reasons state above, the Chiefs of Police request a Do Not Pass recommendation on HB 1104.

Thank you for your consideration.

HB 1104
House Judiciary Committee
January 12, 2021
Testimony of Travis W. Finck, Executive Director, NDCLCI

Chairman Klemin, members of the House Judiciary Committee, my name is Travis Finck and I am the executive director for the North Dakota Commission on Legal Counsel for Indigents. The Commission is the state agency responsible for the delivery of indigent defense in North Dakota. I rise today to provide neutral testimony on HB 1104.

The Commission has some concern regarding the constitutionality, as written, of section 2 of HB 1104. Section two of this bill allows for retroactive application to judgments and convictions for offenses subject to NDCC §12.1-32-09.1. However, section one of the bill adds additional crimes to the list of crimes requiring an offender to serve a portion of time prior to eligibility for parole. Therefore, as currently written, an individual who was convicted of one of those new additions and sentenced to prison, would have their sentence modified making them ineligible for parole. Whereas, currently they are not subject to the 85% requirement. The Commission believes this would be in violation of the Ex Post Facto clause of the U.S. Constitution Article 1, Section 10.

Therefore, the Commission respectfully requests the committee consider the implication of section two and potential ex post facto concerns. A simple amendment may fix the ex post facto concerns.

Thank you for your time and consideration, I would stand for any questions.

Respectfully Submitted:

A handwritten signature in black ink, appearing to read 'T. Finck', with a large, sweeping horizontal stroke above it.

Travis W. Finck

Executive Director, NDCLCI

RE: HB 1104

I would like to express my support of HB 1104 regarding North Dakota's sentencing of violent offenders from the current rule of 85% of their sentence to 65% of the sentence. There have been a lot of changes in the ND penal system in the last few years – some positive and some not. As the mother of one of these offenders, I am more aware of some of these changes than the average citizen. Understandably, there are many people who believe a violent offender should be serving 100% of their sentence and be glad they can "get away with 85%".

Our family has come into contact with many of the inmates at NDSP and their families since our introduction to the judicial system in November of 2003. There have been many non-violent sentenced inmates that have been there, were released on parole and shortly thereafter were back at NDSP for another violation or a parole violation. Unfortunately, for some of them it seems as though the doors at NDSP are revolving. The general feeling of the longtime inmates is that they have no desire to repeat a violent offense and end up back at NDSP. We are aware of only one inmate that served more than 10 years that ended up back at NDSP due to another offense.

Please consider reducing the rule of 85% to 65% for those offenders who have NOT been involved in any violent behaviors during their incarceration; possibly leaving this decision to the Department of Corrections based on an individual basis. It would certainly give a long term inmate something to work toward. For these inmates a second chance would be valued very highly and not taken lightly.

Thank you for your consideration and, hopefully, your support and passage of HB 1104.

Rhonda Schmidkunz

I am respectfully requesting your support of HB 1104. I urge the passing of this bill because the son of a close friend has been incarcerated at the Ward County jail and the ND State Penitentiary for over 17 years. Zac Schmidkunz tries to be productive and has taken college courses when offered by the NDSP. Zac and many other inmates are not dangerous or a threat to public safety and are not likely to be repeat offenders.

Roger Wahus

I am respectfully requesting your support of HB 1104. I urge the passing of this bill because the son of a close friend has been incarcerated at the Ward County jail and the ND State Penitentiary for over 17 years. Zac Schmidkunz tries to be productive and has taken college courses when offered by the NDSP. Zac and many other inmates are not dangerous or a threat to public safety and are not likely to be repeat offenders.

Penny Wahus

To All Concerned Legislators:

I am writing to you in support of HB 1104 for the following reasons:

- A. Citizens incarcerated for a crime for an extended period of time can choose to use their sentence for either self improvement upon reentry into society or retain negative behaviors which is why they were incarcerated.
 - 1. One indicator of their self improvement is their positive behavior exhibited while in prison. This is indicative through their evaluations provided by the guards and supervisors in various departments the citizen is involved in.
 - 2. Another indicator is their willingness to be productive by choosing to work in a life skills area, dedication to provide a quality product, and by setting high goals for their self motivation and improvement.
- B. Citizens who exhibit society accepted behaviors and beliefs should be given a reprieve of the time on their sentence as an incentive to not just serve out their sentence, but to work harder to earn their re-entry into society earlier.
 - 1. A reduction of the present minimum time that must be served of 85% of their sentence would be a huge incentive for prisoners to “see the light at the end of the tunnel” and give them a positive reason to stay focused on their goal.
 - 2. Dropping the minimum time from the currently 85% to a proposed 65% would be that huge work incentive for the inmates.
 - 3. Inmates with specific training, talents, and vocations would be valuable additions to society looking for citizens with those talents and work ethic.
- C. The benefits to society of an earlier release would be multifold.
 - 1. Trained candidates for specific positions are in high demand in our workforce.
 - 2. The income earned by the new hire will provide monetary benefits for property owners, businesses, and recreational facilities.
 - 3. The cost to us taxpayers would be less due to decreased populations in the prison, less facility addition cost, and more employees paying their fair share of taxes and fees.

To sum up my belief in passing a reduction in a minimum sentence requirement, I state that with positive recommendations from guards and supervisors, inmates will have the incentive to be released earlier than 85% of their original sentence served.

I ask and urge you to give careful consideration to this very important proposed legislation. It will make a world of difference for the inmates, their families, and friends. We need their talents and time. Reward them for their time served. Please vote to pass HB 1104

Thank you for your time, consideration, and dedication to managing our great state.

Sincerely,

Craig M. Eraas

I am respectfully requesting your support of HB 1104. Currently inmates are required to serve 85% of their sentence. HB1104 will change the rule to 65%. I urge the passing of this bill because a friend, a fellow church member has been incarcerated for 17 plus years. He would be released in approximately two years instead of eight plus years. Zach Schmidkunz has never been unruly , violent, or even uncooperative. He works at Roughrider Industry and has taken college courses. Zach and many other inmates are not dangerous or a threat to public safety and are NOT likely to be repeat offenders. Inmates who have served 65% of their sentence are redeemable and can become assets to our community.

I respectfully ask that you support HB1104. My great nephew, Zach Schmidkunz, was very young when incarcerated in the North Dakota State Penitentiary. If required to serve 85% of his sentence he will serve another 8 years. If HB1104 is implemented he would need to serve another 2 years. Zach and many others who were so young when convicted could have additional years to be active, contributing members of society should HB1104 be passed. Zach has been a model prisoner as have many others currently serving long sentences for crimes committed many years ago. They are not the same people they were then. HB1104 would redeem them and return them to society. Thank you for reading my testimony. – Cheryl L. Cutsforth

January 12, 2021

Testimony to the **House Judiciary Committee**

By Jackson Lofgren on behalf of the ND Association of Criminal Defense Lawyers

HB 1104-Neutral Testimony

Chairman Klemin and Committee Members:

My name is Jackson Lofgren and I represent the ND Association of Criminal Defense Lawyers. The NDACDL is made up of lawyers who dedicate at least a portion of their practice to criminal defense. The mission of the NDACDL is “to promote justice and due process...” and “...promote the proper and fair administration of criminal justice within the State of North Dakota. We are offering neutral testimony regarding HB 1104

During the “Tough on Crime” era of the 1990s the Federal government offered states incentive grants to expand their prison capacity and ensure certain offenders served longer sentences. With Federal money to be had North Dakota enacted an eighty-five percent requirement for “violent offenses” in 1995 with the adoption of N.D.C.C. §12.1-32-09.1.

The sentencing policies of the 1980s and 1990s have caused the American prison population to increase by 222% from 1980 to 2010. Currently, there are roughly 2.3 million Americans in prison with another 4.6 million under probation or parole supervision. The United States incarcerates far more individuals than any other country. What is even more problematic is there is little evidence to support the idea that longer sentences promote deterrence or reduce recidivism rates.

We therefore support HB 1104 to the extent it provides individuals convicted of offenses under N.D.C.C. §12.1-32-09.1 with the opportunity to see the Parole Board earlier. The prospect of a meaningful parole will hopefully provide incentive for these individuals to avail themselves of the programming available through the North Dakota Department of Corrections and Rehabilitation and leave prison with the tools they need.

Our only concern with the bill is the language in Section 2 which applies the proposed changes retroactively. House Bill 1104 adds several new offenses to the list of “violent offenses” under N.D.C.C. §12.1-32-09.1. For offenses currently subject to the eighty-five percent requirement this is not an issue. For the new offenses added to N.D.C.C. §12.1-32-09.1 the retroactive application would likely be unconstitutional under the ex post facto clause of the United States Constitution. The United States Supreme Court has found statutes which retroactively limit a sentenced inmate’s ability to earn early release are unconstitutional. See Weaver v. Graham, 450 U.S. 24, 101 S. Ct. 960 (1981).

Thank You,

/s/ *Jackson J. Lofgren*

Jackson Lofgren

To Whom It May Concern,

I am writing in support of North Dakota House Bill 1104 being passed. I request the State's support as well, shown in the form of reducing the rule of 85% for violent offenders to 65% or less.

The majority of violent offenders who are serving 85% are typically residents who have good behavior and do not get written up. They have families who are supportive and visit regularly. They work on having proper parameters and systems set in place for when their release date arrives. Many of these inmates are released after serving 85% with no additional support systems other than what they have set up individually. They do not have case managers helping them learn how to live outside the walls or following up with them to make sure they are making the right choices to move forward. This is a system that is set up to fail. Why not reduce the rule of 85%, release violent offenders who have maintained appropriate behaviors while serving time earlier and set up a monitoring system to help them walk the path of becoming beneficial citizens. Reduce the rule of 85% and create programs that are beneficial to the State, the violent offender, the offender's family and also the victim's family.

From the day many violent offenders begin serving a sentence within the walls of the North Dakota State Penitentiary, they are working on self improvements with their release date in mind and restitution for their victim's family. And yet, an earlier release date is not an option in any way shape or form. Drug offenders and sex offenders do not have to follow the rule of 85% and are provided opportunities for earlier release dates with good time and other options. And yet, these are the majority of inmates who are constantly in trouble within the walls. They are the majority of inmates who reoffend and return to the system time and again; it is not violent offenders who typically reoffend once released. They do not want to return. They are striving to be better.

It is time to reduce the rule of 85%. Let's reduce our prison population by creating valuable and productive citizens who can be released into society in less time than 85% of a sentence. Rehabilitation within prison in the form of counseling, self-improvement programs, faith based programs, family support, education on all levels and also ongoing programs once released will be valuable and worthwhile.

Instead of being a benefit to North Dakota the rule of 85% has instead institutionalized violent offenders that could be rehabilitated and made it harder for them to reenter society. Let's reduce the 85% rule to 65% and actually correct and rehabilitate.

Thank you for your consideration of passing North Dakota House Bill 1104.

Sincerely,

Kathryn Schmidkunz Arneson

The Sister of a Violent Offender Within NDSP Serving a 40 Year Sentence

To Whom It May Concern,

This letter is in regards to and support of North Dakota HB 1104, reducing the rule of 85% to 65% and how it can be used more effectively and beneficially for violent offenders and the state.

The 85% rule was initially implemented to get federal funding and deter criminals. The federal funding has led to North Dakota increasing an already full prison system. This in turn causes the need to expand facilities in order to meet the capacity problem. As a taxpayer, I would prefer to see my hard earned money go towards the releasing of violent offenders at the 65% mark of their sentence rather than watching the state institutionalize them to a deeper level while maintaining the 85% rule. I would prefer to see funding go towards the rehabilitation of violent offenders than financing additional facilities and housing increased populations. Not only are the institutions overpopulated they are understaffed. The financial burden to the state that the rule of 85% has caused needs to be considered on all levels.

Our First Lady of North Dakota is a strong advocate for drug and alcohol addiction programs. Could these programs be tied into the DOCR to create better rehabilitation for our inmates, regardless of the crime? This could potentially lead to less reoffending and a better support system upon release. If the rule of 85% was reduced to 65% violent offenders could benefit from these programs as well.

Everyone loves a story of overcoming. Why not make North Dakota the birthplace of actual correcting and rehabilitating within our correctional system. Please, reduce the rule of 85% to 65% and witness many of the valuable men and women sitting behind bars become great assets to North Dakota.

Sincerely,

Mr. Tracy W. Arneson
Brother-in-Law To An Inmate Serving 85%

P.O. Box 345
Fort Thompson, SD 57339
December 18, 2020

North Dakota State Legislators

Re: North Dakota prison sentence reform

Greetings, Ruth & colleagues:

Holidays are busy times and we appreciate the time, effort and energy you and your colleagues have (will) put forth to ensure justice and equality within your state and prison systems.

My prayers go out to inmates who were locked down due to this pandemic. Prayers go out to staff, administrators and lawmakers as well who strive to ensure safety for citizens.

As a prison tribal liaison for our Dakota Hunkpati tribal band, I see, feel and hear inmates' remorse, truth and sometimes denial-trauma in their voices, spirits and actions when I am invited to their spiritual conferences and pow-wows. I have witnessed true humbleness, sincerity and respect within these circles which have helped me on my journey. Most of all I learned powerful lessons about humanity from all walks of life. As such, I am willing to give testimony

I sincerely request you, Ruth, and your colleagues look at North Dakota's prison sentence reform proposal from all areas (including people's voices), step forward and be known **as the lawmakers who passed and initiated a prison sentence reform** which will give inmates a chance to become productive members of society. Perhaps a pilot program of selected inmates could be implemented. Most of all, I pray and hope my son Allen Rencountre is given that opportunity, as well as others.

Sincerely,

Belinda F. Joe, Dakota Hunkpati

**Support Testimony
House Bill 1104
House Judiciary Committee
January 12, 2021**

Chairman Klemin and members of the House Judiciary Committee, my name is Ruth Buffalo, District 27, House Representative. Since the last legislative session, I have been consistently contacted by constituents regarding the 85% rule. I have heard numerous personal accounts of first time offenders who were intoxicated with drugs and alcohol, many of whom came to North Dakota to work in the oil fields. One story comes to mind, a first-time offender, didn't know what kind of drugs they were given, blacked out and physically assaulted someone. In the last legislative session, I did vote against this bill, I am an advocate for violence prevention, however, after learning more about individuals' personal stories, I felt compelled to do more research. What I have learned is this, here in North Dakota, we are struggling to help the people who need help the most. We are lacking in adequate funding for access to behavioral health services in a timely manner. Everyone deserves to receive the help they need when they need it. Everyone. We must do better. I do not believe incarceration is the answer, many return from behind bars emotionally scarred for life based off the trauma they face behind bars. Everyone deserves a second chance and quite honestly we are failing the individuals who need the help the most. We need adequate funding to access behavioral health services to help people who need it the most.

Thank you for your time.

MARCH 23, 2020

GREETINGS MRS. BUFFALO

I WOULD LIKE TO ASK SOME QUESTIONS CONCERNING THE NATIVE PRISONERS IN THE NORTH DAKOTA PRISON. A LOT OF OUR NATIVE WARRIORS ARE INCARCIRATED FOR A LOT OF YEARS OR EITHER GET LIFE FOR THEIR CRIMES THAT SHOULD NOT PERTAIN TO THAT MUCH TIME. I WOULD LIKE TO ASK IF THE (EIGHTY PERCENT RULE) WILL BE REINTRODUCED TO THE LEGISLATURES AGAIN. MY BROTHER HAS BEEN IN THE BISMARCK PRISON FOR ELEVEN YEARS FOR A CRIME OF ATTEMPTED MURDER WHICH HE DID NOT REMEMBER DOING. HE WAS ON DRUGS & ALCOHOL AT THE TIME HE NEVER USE TO DO DRUGS WHEN HE WAS HOME. MY BROTHER IS FROM FT. THOMPSON, SD AND HE FINISHED HIGH SCHOOL WAS INTO SPORTS & HIS NATIVE CULTURE AS OUR PARENTS REALLY PUSHED OUR TRADITIONAL WAYS ON US. OUR FATHER WAS A TRADITIONAL DANCER AND HAD HIS OWN DRUM GROUP. OUR PARENTS MADE STAR QUILTS & ALL THE FAMILIES DANCING OUTFITS & EVEN DID ALL THE BEADWORK.

WE WERE VERY LUCKY TO HAVE SUCH SPECIAL PARENTS THAT REALLY LOVED & WERE THERE FOR US. ESPECIALLY TEACHING US OUR TRADITIONAL VALUES. MY BROTHER IS A HARD WORKER SINCE HE GRADUATED FROM SCHOOL HE WAS ALWAYS WORKING AND HELPING PEOPLE THAT NEEDED HIS HELP HE NEVER TURNED ANYONE AWAY. HE IS A BIG MAN WITH A BIG HEART AND A BIG SMILE, HE WAS OUR DAD'S PRIDE & JOY AND OUR MOM'S AS HE WAS THE ONLY SON. I PERSONALLY BELIEVE THAT MY BROTHER DID ENOUGH TIME FOR HIS CRIME AS IT WAS A RACIAL THING THAT SHOULD NOT HAVE HAPPENED. WE PRAY FOR THE VICTIM AS HE IS THE ONE THAT NEEDS SPECIAL PRAYERS MAYBE SOMEDAY HE WILL RECEIVE THEM AS TUKUNSILA FORGIVES EVERYONE WE JUST HAVE TO ASK. MY BROTHER HAS NEVER HURT ANYONE OR HAS HE NEVER DONE ANYTHING IN HIS LIFE LIKE THIS BEFORE AS IT WAS NOT MY BROTHER IT WAS THE ALCOHOL & DRUGS THAT CAUSED MY BROTHER TO BE WHERE HE DOES NOT DESERVE TO BE. WE NO LONGER HAVE OUR PARENTS WITH US AND WE NEED OUR BROTHER HOME WITH US. I WOULD LIKE TO REQUEST IF THIS BILL CAN BE PRESENTED AGAIN AND IF YOU & THE OTHERS CAN VOTE 'YES' SO OUR BROTHER CAN COME HOME TO US. WE WOULD REALLY APPRECIATE YOUR HELP IN THIS MATTER AND MAY GOD BLESS YOU.

THANK YOU

ELLA RENCOUNTRE

PO BOX #474

FT THOMPSON, SD 57339

21.0400.01001
Title.

Prepared by the Legislative Council staff for
Representative Roers Jones
January 12, 2021

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1104

Page 2, after line 9, insert:

"SECTION 2. AMENDMENT. Section 12.1-32-09.1 of the North Dakota Century Code is amended and reenacted as follows:

12.1-32-09.1. Sentencing of violent offenders.

1. Except as provided under section 12-48.1-02 and pursuant to rules adopted by the department of corrections and rehabilitation, an offender who is convicted of a crime in violation of section 12.1-16-01, 12.1-16-02, subsection 2 of section 12.1-17-02, section 12.1-18-01, subdivision a of subsection 1 or subdivision b of subsection 2 of section 12.1-20-03, section 12.1-22-01, subdivision b of subsection 2 of section 12.1-22-02, or an attempt to commit the offenses, and who receives a sentence of imprisonment is not eligible for release from confinement on any basis until ~~eighty-fivesixty-five~~ sixty-five percent of the sentence imposed by the court has been served or the sentence is commuted.
2. 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.
3. 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.
4. An offender who is convicted of a class C felony in violation of section 12.1-17-02, or an attempt to commit the offense, and who has received a sentence of imprisonment or a sentence of imprisonment upon revocation of probation before August 1, 2015, is eligible to have the offender's sentence considered by the parole board.
5. Notwithstanding subsection 4, this section does not apply to a sentence imposed upon revocation of probation.

SECTION 3. APPLICATION. Section 1 of this Act applies to judgments of conviction for offenses subject to section 12.1-32-09.1 entered on or after the effective date of this Act."

Page 2, line 10, replace "This" with "Section 2 of this"

Renumber accordingly

Sixty-seventh
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1104

Introduced by

Representatives Dobervich, Buffalo, Ista, Kading, Roers Jones, Schneider

Senator Mathern

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

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

- 4 **SECTION 1. AMENDMENT.** Section 12.1-32-09.1 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **12.1-32-09.1. Sentencing of violent offenders.**

- 7 1. Except as provided under section 12-48.1-02 and pursuant to rules adopted by the
8 department of corrections and rehabilitation, an offender who is convicted of a crime in
9 violation of section 12.1-16-01, 12.1-16-02, subsection 2 of section 12.1-17-02, section
10 12.1-18-01, subdivision a of subsection 1 or subdivision b of subsection 2 of section
11 12.1-20-03, section 12.1-20-03.1 and the offender is at least twenty-two years of age
12 at the time of the offense, section 12.1-22-01, subdivision b of subsection 2 of section
13 12.1-22-02, subsection 3 of section 12.1-41-02, subsection 3 of section 12.1-41-03,
14 subdivision a of subsection 1 of section 12.1-41-04, or an attempt to commit the
15 offenses, and who receives a sentence of imprisonment is not eligible for release from
16 confinement on any basis until ~~eighty-five~~sixty-five percent of the sentence imposed by
17 the court has been served or the sentence is commuted.
- 18 2. In the case of an offender who is sentenced to a term of life imprisonment with
19 opportunity for parole under subsection 1 of section 12.1-32-01, the term "sentence
20 imposed" means the remaining life expectancy of the offender on the date of
21 sentencing. The remaining life expectancy of the offender must be calculated on the
22 date of sentencing, computed by reference to a recognized mortality table as
23 established by rule by the supreme court.

3. 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.
4. An offender who is convicted of a class C felony in violation of section 12.1-17-02, or an attempt to commit the offense, and who has received a sentence of imprisonment or a sentence of imprisonment upon revocation of probation before August 1, 2015, is eligible to have the offender's sentence considered by the parole board.
5. Notwithstanding subsection 4, this section does not apply to a sentence imposed upon revocation of probation.

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4. An offender who is convicted of a class C felony in violation of section 12.1-17-02, or an attempt to commit the offense, and who has received a sentence of imprisonment

1 or a sentence of imprisonment upon revocation of probation before August 1, 2015, is
2 eligible to have the offender's sentence considered by the parole board.

3 5. Notwithstanding subsection 4, this section does not apply to a sentence imposed upon
4 revocation of probation.

5 **SECTION 3. APPLICATION.** Section 1 of this Act applies to judgments of conviction for
6 offenses subject to section 12.1-32-09.1 entered on or after the effective date of this Act.

7 **SECTION 4. RETROACTIVE APPLICATION.** ~~This~~Section 2 of this Act applies retroactively
8 to judgments of conviction for offenses subject to section 12.1-32-09.1 entered after July 31,
9 1995.

I am respectfully requesting your support of HB 1104. Currently, inmates are required to serve 85% of their sentence. HB 1104 will change the rule to 65%. I urge the passing of this bill because my son who was/has been incarcerated at the Ward County Jail and the North Dakota State Penitentiary for seventeen plus years would be released in approximately two years (65%) instead of eight plus years (85%). Zach has never been unruly, uncooperative or violent. Instead, Zach tries to be productive by working at Roughrider Industry and has taken college courses when offered by the NDSP.

Zach, and many other inmates, are not dangerous or a threat to public safety and are NOT likely to be repeat offenders. Inmates who have served 65% of their sentence, without incident, are redeemable, not disposable.

Statistics show that inmates serving long sentences for violent crime have a lower recidivism rate than non-violent offenders and after serving at least fifteen years in prison, the recidivism rate drops to almost zero.

Finally, I again urge you to support and pass this legislation.

2021 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

HB 1104
1/13/2021
Subcommittee Hearing

Relating to sentencing violent offenders; and to provide for retroactive application
--

Rep. Roers Jones opened the meeting at 2:30 PM

Members present: Rep. Roers, Jones, Rep. T. Jones, Rep. K. Hanson

Discussion Topics:

- Bill conflicts
- Proposed amendment
21.0400.01001

Rep T Jones moved for amendment 21.0400.01001, seconded by Rep. K. Hanson.
Voice vote, motion carried.

Rep. Roers Jones adjourned at 2:55.

Delores Shimek, Committee Clerk

RF
1/19/21

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1104

Page 1, line 2, after the semicolon insert "to provide for application;"

Page 2, after line 9, insert:

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Renumber accordingly

2021 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

HB 1104
1/18/2021

Relating to sentencing violent offenders; and to provide for retroactive application
--

Chairman Klemin called the meeting to order at 4:19PM.

Present: Representatives Klemin, Karls, Buffalo, Christensen, Cory, K Hanson, Jones, Magrum, Paulson, Paur, Roers Jones, Satrom, and Vetter. Absent: Rep Becker

Discussion Topics:

- Victim's rights
- Effects of sentence dispersing
- Impacts of violent crimes
- Sentencing requirements

Rep Roers Jones moved amendment 21.0400.01001, seconded by Rep. T. Jones
Voice vote, motion carried.

Rep Christensen moved a Do Not Pass as Amended, seconded by Rep Magrum.

Representatives	Vote
Chairman Klemin	Y
Vice Chairman Karls	Y
Rep Becker	AB
Rep. Christensen	Y
Rep. Cory	Y
Rep T. Jones	N
Rep Magrum	Y
Rep Paulson	Y
Rep Paur	Y
Rep Roers Jones	N
Rep B. Satrom	AB
Rep Vetter	Y
Rep Buffalo	N
Rep K. Hanson	N

Motion carried. 8-4-2 Rep Magrum is carrier.

Chairman Klemin adjourned at 4:50 PM.

Delores Shimek, Committee Clerk

RF
1/19/21

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REPORT OF STANDING COMMITTEE

HB 1104: Judiciary Committee (Rep. Klemin, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (8 YEAS, 4 NAYS, 2 ABSENT AND NOT VOTING). HB 1104 was placed on the Sixth order on the calendar.

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