

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2118

2001 SENATE JUDICIARY

SB 2118

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2118

Senate Judiciary Committee

☐ Conference Committee

Hearing Date January 16th, 2001

Tape Number	Side A	Side B	Meter #
1	X		40.5-49.0
1		X	0.0-12.9
Committee Clerk Signature			

Minutes: SENATOR TRAYNOR opened the hearing on SB 2118: A BILL FOR AN ACT TO AMEND AND REENACT SUBSECTION 9 OF SECTION 12.1-32-02 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO SENTENCING ALTERNATIVES.

ROBERT P. BENNETT, assistant attorney general, supports SB 2118. (testimony attached)

SENATOR NELSON I have a problem with line 15. "Order granting the petition must be served upon the bureau of criminal investigation."

ROBERT BENNETT reason "serves" is there to show that they actually had gotten it. To maintain integrity of system.

SENATOR NELSON this came through the interim committee.

ROBERT BENNETT yes.

SENATOR WATNE the very last part, "This subsection does not apply to a person convicted of violating subdivision b or c of subsection 1 of section 19-03.1-23." Does this refer to sex offenders?

ROBERT BENNETT that's the drug offenses that relates to the position or intent to sell.

SENATOR TRAYNOR are those sections the mandatory sentencing bills regarding drugs?

ROBERT BENNETT yes.

SENATOR WATNE where does this bill exclude sexual offenses?

ROBERT BENNETT this does not.

SENATOR DEVER what happens if the judge doesn't like the petition?

ROBERT BENNETT if the defendant who comes in asks for the reduction the judge may say he has not. The order would then be denied, and then he could appeal.

SENATOR TRENBEATH in line 13 "if the court finds that the person has successfully completed the term of imprisonment." Fined by what standard?

ROBERT BENNETT the standard would be by preponderance of the evidence.

SENATOR TRENBEATH wouldn't it be better to take out the assumptions?

ROBERT BENNETT yes.

SENATOR TRENBEATH what we have here is the increase load on the district court judge.

ROBERT BENNETT it may if there is a full blown court case, but this is not likely. It will work like a checklist, to simplify the process.

SENATOR TRENBEATH the district judge will be less likely to sentence for a year or less.

Aren't we trying to correct the BCI unwilling to make a decision.

ROBERT BENNETT not necessarily.

SENATOR TRENBEATH there is a statute that indicates a limit. Better BCI trying to cure hearing where we may or may not know of a notice.

ROBERT BENNETT we are at the mercy of those who bring the information to us. I agree that this may be an increased workload. There are times when probations are extended to modify it. Hearings will be quick.

SENATOR TRAYNOR closed the hearing on SB 2118 (meter # 12.9).

SENATOR TRENBEATH I would like to offer an amendment on line 13 for an insertion of the words: "by a preponderance of the evidence," after the word "finds." SENATOR WATNE seconded the amendment. Roll call vote for the amendment showed 7 YEAS, 0 NAYS, 0 ABSENT. SENATOR WATNE motioned for a DO PASS AS AMENDED, seconded by SENATOR BERCIER. Roll call vote for the amendment showed 6 YEAS, 1 NAYS, 0 ABSENT. SENATOR DEVER volunteered to carry the bill.

Date: Jan 14th

Roll Call Vote #: ~~SR 2118~~ |

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SR 2118

Senate Judiciary Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken to Amend Section 13

Motion Made By S. Trenbeath Seconded By S. Watne

Senators	Yes	No	Senators	Yes	No
Traynor, J. Chairman	<input checked="" type="checkbox"/>		Bercier, D.	<input checked="" type="checkbox"/>	
Watne, D. Vice Chairman	<input checked="" type="checkbox"/>		Nelson, C.	<input checked="" type="checkbox"/>	
Dever, D.	<input checked="" type="checkbox"/>				
Lyson, S.	<input checked="" type="checkbox"/>				
Trenbeath, T.	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			

Total (Yes) _____ No _____

Absent _____

Floor Assignment S. Dever.

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

Date: 1/15/01
Roll Call Vote # ~~2~~ 2

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2118

Senate Judiciary Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken ~~Amend~~ ~~the~~ ~~SB~~ ~~Do~~ Pass as amend

Motion Made By Watne Seconded By S. Bercier

Senators	Yes	No	Senators	Yes	No
Traynor, J. Chairman	X		Bercier, D.	X	
Watne, D. Vice Chairman	X		Nelson, C.	X	
Dever, D.	X				
Lyson, S.	X				
Trenbeath, T.		X			

Total (Yes) 6 No 1

Absent _____

Floor Assignment S. Dever

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

REPORT OF STANDING COMMITTEE (410)
January 16, 2001 8:18 a.m.

Module No: SR-06-1025
Carrier: Dever
Insert LC: 18214.0101 Title: .0200

REPORT OF STANDING COMMITTEE

SB 2118: Judiciary Committee (Sen. Traynor, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (6 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2118 was placed on the Sixth order on the calendar.

Page 1, line 13, after "finds" Insert "by a preponderance of the evidence"

Renumber accordingly

2001 HOUSE JUDICIARY

SB 2118

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2118

House Judiciary Committee

☐ Conference Committee

Hearing Date 03-07-01

Tape Number	Side A	Side B	Meter #
TAPE I		x	1698 to 6121
Committee Clerk Signature <i>Joan Diers</i>			

Minutes: Chairman DeKrey opened the hearing on SB 2118. Relating to sentencing alternatives.

Bob Bennett: Assistant Attorney General, (see attached testimony).

Rep Wrangham: What are the arguments for this being good public policy, to reduce the class of offense, why do we want this.

Bob Bennett: This bill is the outgrowth of being sentences to the state farm , he then goes to explain his point.

Vice Chr Kretschmar: Does this statute apply to the person who has served his time, could he then apply.

Bob Bennett: If they successfully completed their provision as long as fifteen years ago, it could be reduced.

Rep Onstad: If the person gets his offense reduced, are there no files at all kelp showing he was guilty of a felony.

Bob Bennett: The record will show he plead guilty to a felony and then it was reduced.

Rep Onstad: Does it make a difference if it is a misdemeanor, or A or B.

Bob Bennett: There would be no classification.

Rep Maragos: Asked for an explanation of all the felonies.

Bob Bennett: Gives the explanation.

Rep Delmore: If I do my time and screw up again, can I go through the same process.

Bob Bennett: Yes, you could. I would think that the judge would look at it though.

Rep Wrangham: There is so much confusion on filling out applications, if I have done this and pled guilty and gone through this and had it reduced, how would I answer that would I say yes because I have pled guilty.

Bob Bennett: That is exactly right.

Rep Maragos: What constitutes an arrest.

Bob Bennett: An arrest is when you are taken into custody according to state law.

Rep Disrud: How many time can an offender repeat this process.

Bob Bennett: As often as a judge wants to give the sentence of less than a year.

Rep Delmore: The judge would have access to the record that was changed.

Bob Bennett: That is correct.

Rep Maragos: This would apply only if sentenced to less then one year of a five year sentence.

Bob Bennett: Yes, actual sentence received.

Rep Maragos: If one judge gives harsh sentence and another judge gives out a lighter sentence, does that make sense.

Bob Bennett: That is not fair, but does it make sense, yes. Then goes on to explain.

Rep Maragos: Do you have to go before a judge to get a reduction of sentence.

Bob Bennett: Yes.

Rep Maragos: The judge has so much latitude in the type of sentence in the lowest felon now, would it make sense that we might give him the latitude even if it was over a year, that someone could petition for reduction.

Bob Bennett: The legislature drew the line at one year, you can change that. But this statute has been since 1981.

Rep Wrangham: Do you know if other states have laws like this.

Bob Bennett: It is difficult to gather that information from one state to another. I can say that this is not unusual across the nation.

Rep Mahoney: I don't we couldn't have both.

Bob Bennett: It is already the discretionary for the judge.

Rep Mahoney: What about preponderance of evidence.

Bob Bennett: Preponderance language was added in the Senate

Chairman DeKrey: Any further questions, thank you for appearing. Does any one else wish to testify in support, opposition, neutral, we will close the hearing on SB 2118.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2118b

House Judiciary Committee

☐ Conference Committee

Hearing Date 03-13-01

Tape Number	Side A	Side B	Meter #
TAPE I	x		3288 to 4630
Committee Clerk Signature <i>Joan Diers</i>			

Minutes: Chairman DeKrey called the committee to order on SB 2118.

DISCUSSION

Vice Chr Kretschmar explains the amendments, Sandi Tabor is there to clarify some points of the amendments.

COMMITTEE ACTION

Chairman DeKrey: what are the wishes of the committee? Rep Mahoney questions the wording on the amendment, the words or less should be removed. The committee agrees that the wording should be changed. Vice Chr Kretschmar moved the amendments, seconded by Rep Mahoney.

DISCUSSION

Chairman DeKrey: Calls for a voice vote on the amendments. Motion carries.

Rep Klemin has an amendment on line 15 page one starting at the comma and after the second word the, put in the words - court may enter an - and after the petition put in the word - which.

Rep Maragos seconds the amendment. Voice vote on the amendments, motion carries. Rep

Page 2

House Judiciary Committee

Bill/Resolution Number SB 2118

Hearing Date 03-13-01

Delmore moved a DO PASS as amend, seconded by Rep Disrud. The clerk will call the roll on a DO PASS as amend motion on SB 2118. The motion passes with a vote of 13 YES, 0 NO and 2 ABSENT. Carrier Rep Disrud.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2118

Page 1, line 11, after "year" Insert "or for more than one year but whose sentence in excess of
one year or less is suspended"

Renumber accordingly

18214.0203
Title.0300

Adopted by the Judiciary Committee
March 13, 2001

YR
3/13/01

HOUSE AMENDMENTS TO ENGROSSED SB 2118 HOUSE JUDICIARY 03-13-01
Page 1, line 11, after "year" insert "or for more than one year but whose sentence in excess of
one year is suspended"

Renumber accordingly

Date: 03-13-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB-2118

House JUDICIARY Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number 18214.0203 0300

Action Taken Do Pass as amend

Motion Made By Rep Delmore Seconded By Rep Disrud

Representatives	Yes	No	Representatives	Yes	No
CHR - Duane DeKrey	✓				
VICE CHR -- Wm E Kretschmar	✓				
Rep Curtis E Brekke					
Rep Lois Delmore	✓				
Rep Rachael Disrud	✓				
Rep Bruce Eckre	✓				
Rep April Fairfield					
Rep Bette Grande	✓				
Rep G. Jane Gunter	✓				
Rep Joyce Kingsbury	✓				
Rep Lawrence R. Klemin	✓				
Rep John Mahoney	✓				
Rep Andrew G Maragos	✓				
Rep Kenton Onstad	✓				
Rep Dwight Wrangham	✓				

Total (Yes) 13 No 0

Absent 2

Floor Assignment Rep Disrud

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

REPORT OF STANDING COMMITTEE (410)
March 13, 2001 4:55 p.m.

Module No: HR-43-5529
Carrier: Disrud
Insert LC: 18214.0203 Title: .0300

REPORT OF STANDING COMMITTEE

SB 2118, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (13 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2118 was placed on the Sixth order on the calendar.

Page 1, line 11, after "year" insert "or for more than one year but whose sentence in excess of one year is suspended"

Renumber accordingly

2001 SENATE JUDICIARY

CONFERENCE COMMITTEE

SB 2118

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2118

Senate Judiciary Committee

☐ Conference Committee

Hearing Date 30 March 2118

Tape Number	Side A	Side B	Meter #
1	x		9-end
April 4th, tape 1	x		0-7
Committee Clerk Signature			

Minutes: **Senator Trenbeath**, opened the confrence committee on SB 2118.

Rep. Kretshmar, the house added a provison to someone who would be sentenced to one year.

Any one who sentenced to an excess of one year could qaulify for a petition for a misdeamnor.

Senator Dever, Senator Traynor thought is was a good bill and wanted us to go over the amendmments. Warren Emer wanted to talk about these amendmments and thats why he is here.

Warren Emer, it's not just an issue with a department of corrections. As a practical matter this has a lot of potential to put a lot of people in prison.

Rep. Delmore, could we hear from the attorney generals office?

Bob Bennett, I know what was discussed in the house. One of the issues is about fairness.

Whether or not the entire subsection 9 should go. Was it a benefit? A harshness of a sentence of where the line is drawn. The house did draw a line and now your in a confrence committee.

Rep. Wrangham, what we're talking about here is section 9, and not the amendmments?

Bob Bennett, two purposes of here. 1, house amendments is the line drawn for individuals or should it be left where it was. It greatly impacts subsection 9. 2nd area the amendments we requested, rep. Wald's bill greatly impacts section 9.

Senator Lyson, this bill barely passed the senate. We get another shot at it.

Senator Dever, I'm not sure I understand a sentence of more than one year?

Senator Lyson, if their sentence is less than a year is is a misdemeanor.

Warren Emer, there is a fiscal problem here. Everyone will go to the state penitentiary.

John Olson, testified and explained the law as it stands now, and how it will be changed by the House amendments.

SENATOR LYSON MOTIONED TO MOVE AG AMENDMENTS, SECONDED BY SENATOR TRENBEATH. VOTE INDICATE 6 YEAS, AND 0 NAYS.

REPRESENTATIVE WRANGHAM MOTIONED TO RECEDE FROM HOUSE AMENDMENTS, SECONDED BY SENATOR LYSON. VOTE INDICATE 3 YEAS, 3 NAYS.

SENATOR TRENBEATH MOTIONED TO DELETE WHOLE BILL, EXCEPT THE AG AMENDMENTS, SECONDED BY SENATOR LYSON. VOTE INDICATED 2 YEAS, 4 NAYS.

SENATOR DEVER AGJOURNED THE MEETING UNTIL THE 4TH OF APRIL, 2001.

SENATOR TRENBEATH MOTIONED TO ADOPT OPTION 1 OF THE AG AMENDMENTS AND FOR THE HOUSE TO RECEDE FROM ITS AMENDMENTS, SECONDED BY SENATOR DELMOR. VOTE INDICATE 6 YEAS, 0 NAYS.

Proposed Amendment to
Engrossed Senate Bill 2118 With House Amendments

Page 2, line 2, after "subdivision" insert "a,"

Page 2, line 2, after "b" insert a comma

Renumber accordingly

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL 2118
WITH HOUSE AMENDMENTS
OPTION 2 - APRIL 3, 2001

Page 1, line 11, after "year" insert a comma

Page 1, line 11, after "year" remove "or for more than one"

Page 1, remove lines 12 through 19

Page 1, line 20, remove "pursuant to this subsection." and insert "the bureau of criminal investigation shall enter on that person's criminal history record information maintained pursuant to chapter 12-60 that the person's felony conviction has been reduced to a misdemeanor pursuant to this subsection. If, within six months of the completion of the term of imprisonment or probation, the bureau of criminal investigation has not received written notice of completed or pending criminal or probation revocation proceedings that disqualifies the person from a reduction of the offense to a misdemeanor, the bureau shall make the required entry in that person's criminal history record information. However, if such a written notice is received within the six month time period, no entry may be made reducing the grade of the offense if the person is disqualified from receiving a reduction because of the failure to successfully complete the term of imprisonment or the term of probation. In addition, if written notice is received by the bureau within the six month time period of any pending criminal or probation revocation proceeding, no entry may be made reducing the grade of the offense until the pending proceedings are completed and the person is not disqualified from receiving the offense-grading reduction."

Page 2, line 2, after "subdivision" insert "a."

Page 2, line 2, after "b" insert a comma

Renumber accordingly

How N.D.C.C. § 12.1-32-02(9) will read with Option 2.

9. ~~A person who is convicted of a felony and sentence to imprisonment for not more than one year is deemed to have been convicted of a misdemeanor upon successful completion of the term of imprisonment and any term of probation imposed as part of the sentence.~~ Upon successful completion of the term of imprisonment and any term of probation by a person who is convicted of a felony and sentenced to imprisonment for not more than one year, the bureau of criminal investigation shall enter on that person's criminal history record information maintained pursuant to chapter 12-60 that the person's felony conviction has been reduced to a misdemeanor pursuant to this subsection. If, within six months of the completion of the term of imprisonment or probation, the bureau of criminal investigation has not received written notice of completed or pending criminal or probation revocation proceedings that disqualifies the person from a reduction of the offense to a misdemeanor, the bureau shall make the required entry in that person's criminal history record information. However, if such a written notice is received within the six month time period, no entry may be made reducing the grade of the offense if the person is disqualified from receiving a reduction because of the failure to successfully complete the term of imprisonment or the term of probation. In addition, if written notice is received by the bureau within the six month time period of any pending criminal or probation revocation proceeding, no entry may be made

reducing the grade of the offense until the pending proceedings are completed and the person is not disqualified from receiving the offense-grading reduction. "Successful completion" of the term of imprisonment or probation means the person has not been found guilty of, or pled guilty or nolo contendere to, a violation of a criminal law of this or another state, municipality, or the federal government, committed during the term of imprisonment or probation or has not had that person's probation revoked for a violation of a condition of that probation. This subsection does not apply to a person convicted of violating subdivision a, b, or c of subsection 1 of section 19-30.1-23.

Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 218

Senate Judiciary Committee

☐ Subcommittee on _____
or
☒ Conference Committee

Legislative Council Amendment Number

Action Taken	Move AG Amendments
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Motion Made By Lyson Seconded By Tierbeath

[illegible]

Total (Yes) 6 No 0

Absent **6**

Floor Assignment

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

Roll Call Vote #: 2 Date: _____

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2118

Senate Judiciary Committee

☐ Subcommittee on _____
or _____

☒ Conference Committee

Legislative Council Amendment Number

Action Taken Rec'd from House Amendments.

Motion Made By Whangham Seconded By Hyson

[illegible]

Total (Yes) 3 No 3

Absent

Floor Assignment

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

Roll Call Vote #: 3

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 218

Senate Judiciary Committee

☐ Subcommittee on _____
or
☒ Conference Committee

Legislative Council Amendment Number

Action Taken	Delete
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Motion Made By Trenburt L Seconded By Lyson

[illegible]

Total **(Yes)** _____ **No** _____

Absent

Floor Assignment

If the vote is on an amendment, briefly indicate intent: ~~to~~ Delete House
over 45.7

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL 2118
WITH HOUSE AMENDMENTS
Option 1 - April 3, 2001

Page 1, line 6, remove the overstrike

Page 1, line 7, remove the overstrike over "~~than one year is deemed to have been convicted of a misdemeanor~~"

Page 1, line 7, after "misdemeanor" insert a period and insert immediately thereafter "However, if an order is entered revoking a probation imposed as a part of the sentence, the person must be deemed to have been convicted of a felony."

Page 1, line 9, after the period, remove "Upon successful completion of the term of"

Page 1, remove lines 10 through 24

Page 2, line 1, remove "that probation."

Page 2, line 2, after "subdivision" insert "a."

Page 2, line 2, after "b" insert a comma

Renumber accordingly

How N.D.C.C. § 12.1-32-02(9) will read with option number 1.

9. A person who is convicted of a felony and sentenced to imprisonment for not more than one year is deemed to have been convicted of a misdemeanor.

However, if an order is entered revoking a probation imposed as a part of the sentence, the person must be deemed to have been convicted of a felony. This subsection does not apply to a person convicted of violating subdivision a, b, or c of subsection 1 of section 19-03.1-23.

Roll Call Vote #: 1

Senate Jed Committee

Legislative Council Amendment Number _____

Action Taken	Move Option 1 of AG Amendments
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Motion Made By Trebeath Seconded By Delmore

[illegible]

Total (Yes) 6 No 0

Absent

Floor Assignment

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

REPORT OF CONFERENCE COMMITTEE

SB 2118, as engrossed: Your conference committee (Sens. Dever, Lyson, C. Nelson and Reps. Wrangham, Kretschmar, Delmore) recommends that the **HOUSE RECEDE** from the House amendments on SJ page 833, adopt amendments as follows, and place SB 2118 on the Seventh order:

That the House recede from its amendments as printed on page 833 of the Senate Journal and page 892 of the House Journal and that Engrossed Senate Bill No. 2118 be amended as follows:

Page 1, line 6, remove the overstrike over "~~A person who is convicted of a felony and sentenced to imprisonment for not more~~"

Page 1, line 7, remove the overstrike over "~~than one year is deemed to have been convicted of a misdemeanor~~"

Page 1, line 9, after "~~sentence~~" insert ". However, if an order is entered revoking a probation imposed as a part of the sentence, the person is deemed to have been convicted of a felony", remove the overstrike over the period, and remove "Upon successful completion of the term of"

Page 1, remove lines 10 through 23

Page 2, line 1, remove "that probation."

Page 2, line 2, after "subdivision" insert "a," and after "b" insert an underscored comma

Renumber accordingly

Engrossed SB 2118 was placed on the Seventh order of business on the calendar.

2001 TESTIMONY

SB 2118

TESTIMONY OF
ROBERT P. BENNETT,
ASSISTANT ATTORNEY GENERAL

CONCERNING SENATE BILL NO. 2118
BEFORE THE SENATE JUDICIARY COMMITTEE

Prior to 1981, a person sentenced for a felony offense to the North Dakota State Farm, which is now known as the Missouri River Correctional Center, was deemed to have been convicted of a misdemeanor. At that time, an offender could not be sentenced to the state farm for less than 30 days nor more than one year. In addition, such offenders could not have been convicted of a sexual offense, could not have served a portion of a sentence in a penitentiary upon conviction of a felony, or not had a history of moral or sexual degeneration.

As a result of this statutory provision, a person who pled or was found guilty of a felony but was sentenced to the North Dakota State Farm was, by virtue of this sentence, automatically deemed to be convicted of a misdemeanor, rather than a felony.

The 1981 Legislative Assembly, although retaining reference to the North Dakota State Farm and its limitations on the persons who could be committed to that facility, repealed this reduction of offense provision. North Dakota Century Code § 12.1-32-02 was amended to include this sentence reduction but did not limit its application to persons who were sentenced to the North Dakota State Farm. Prior to 1981 and this legislative change, a person who received a sentence of one year or less to a county or regional correctional center or to the penitentiary itself would be deemed to have been convicted of a felony. Since the law existing prior to 1981 limited a reduction of

the sentence to a misdemeanor solely to commitments to the state farm, the 1981 legislative amendments to N.D.C.C. § 12.1-32-02 extended the application of this sentence-class reduction to all offenders based upon the sentence received and not where that sentence would be served.

Although the 1981 legislation has been amended since its initial adoption, subsection 9 of N.D.C.C. § 12.1-32-02 still retains the automatic reduction of a felony offense to a misdemeanor for a sentence to a term of imprisonment for not more than one year upon successful completion of the term of imprisonment and any term of probation imposed as a part of the sentence.

Since its adoption in 1981, the sentence reduction provision has caused little problems although questions concerning its operation have arisen. The current language of this statute does not require any act to cause the reduction of the offense from a felony to a misdemeanor. This reduction is automatic upon successful completion of the sentence of imprisonment and any probation imposed as a part of that sentence.

The North Dakota Bureau of Criminal Investigation is charged by law with the duty to maintain criminal history records. When a person pleads or is found guilty of a felony offense, that event is reported to the Bureau for placement in that convicted person's criminal history record file. The information that the Bureau places in that file is that the person has pled guilty to a felony. If the Bureau receives a court order stating that the convicted person has successfully completed that person's term of imprisonment of one year

or less and any included term of probation, the Bureau will make a notation on that person's criminal history record that the offense has been reduced to a misdemeanor.

No such entry will be made by the Bureau absent receipt of a court order. Without a court order, an official or employee of the Bureau of Criminal Investigation must conclude that a convicted person had, in fact, successfully completed a term of imprisonment and any included probation. What is a "successful" completion of a term of imprisonment and probation? A convicted person may have violated laws or conditions of probation and such violations may not have been reported to the Bureau. The Bureau is not in the best position to determine whether a convicted person has, in fact, successfully completed a term of imprisonment or probation to gain the benefit of the reduction of the offense from a felony to a misdemeanor.

In past years, absent receipt of a court order, convicted persons have been advised of the provisions of the law and provided with a copy of the statutory provision should issues arise concerning whether that person had been convicted of a felony or misdemeanor in this state. The convicted person bore the responsibility to establish to a prospective employer or other person that the person had successfully completed the imprisonment or included probation. If that was the case, North Dakota state law declared that the person was convicted of a misdemeanor and not a felony.

Application of subsection 9 of section 12.1-32-02 has not presented substantial difficulties until recent months. The Bureau of Criminal Investigation has received inquiries and demands that the

Bureau change the criminal history records of persons convicted of a felony to a misdemeanor on its own volition. However, officials at the Bureau were then placed in the position of making the determination that the offender, who they have never met and have no knowledge of other than the presence of the criminal history record, successfully completed that person's imprisonment and included probation.

Senate Bill 2118 addresses these issues. Not only will this amendment to subsection 9 of section 12.1-32-02 provide continued encouragement and incentive to convicted persons to successfully complete terms of imprisonment and probation but, also, it will provide a standard to guide these persons, their attorneys, prosecuting attorneys, the courts, and the Bureau in implementation of the felony to misdemeanor reduction provision.

Page 1, lines 9 through 18 authorize the convicted person to petition the court for an order declaring that the individual has successfully completed that person's term of imprisonment or included probation. This order would be served upon the Bureau which would then make the appropriate entry on that person's criminal history record.

Page 1, lines 19 through 23 defines a successful completion of a term of imprisonment or probation. This definition will also provide a guide to all persons in implementing this statutory provision. In addition, by knowing what is expected of them to obtain this reduction of the offense from felony to a misdemeanor, there will be no question in the mind of convicted persons that they will have to affirmatively

prove, by their conduct, to a court that they are entitled to this reduction. Lapse of time alone will not result in the reduction of the offense from a felony to a misdemeanor but the court will view each person's conduct while imprisoned or on probation and make a judicial determination that the person has earned this reduction.

Senate Bill No. 2118 provides standards to guide implementation of subsection 9 of section 12.1-32-02 of the North Dakota Century Code and imposes accountability upon convicted offenders who must earn the reduction of offense from a felony to a misdemeanor by their good conduct.

TESTIMONY OF
ROBERT P. BENNETT,
ASSISTANT ATTORNEY GENERAL

CONCERNING ENGROSSED SENATE BILL NO. 2118

Prior to 1981, a person sentenced for a felony offense to the North Dakota State Farm, which is now known as the Missouri River Correctional Center, was deemed to have been convicted of a misdemeanor. At that time, an offender could not be sentenced to the state farm for less than 30 days nor more than one year. In addition, such offenders could not have been convicted of a sexual offense, could not have served a portion of a sentence in a penitentiary upon conviction of a felony, or not had a history of moral or sexual degeneration.

As a result of this statutory provision, a person who pled or was found guilty of a felony but was sentenced to the North Dakota State Farm was, by virtue of this sentence, automatically deemed to be convicted of a misdemeanor, rather than a felony.

The 1981 Legislative Assembly, although retaining reference to the North Dakota State Farm and its limitations on the persons who could be committed to that facility, repealed this reduction of offense provision. North Dakota Century Code § 12.1-32-02 was amended to include this sentence reduction but did not limit its application to persons who were sentenced to the North Dakota State Farm. Prior to 1981 and this legislative change, a person who received a sentence of one year or less to a county or regional correctional center or to the penitentiary itself would be deemed to have been convicted of a felony. Since the law existing prior to 1981 limited a reduction of the sentence to a misdemeanor solely to commitments to the state farm, the 1981 legislative amendments to N.D.C.C. § 12.1-32-02 extended the application of this

sentence-class reduction to all offenders based upon the sentence received and not where that sentence would be served.

Although the 1981 legislation has been amended since its initial adoption, subsection 9 of N.D.C.C. § 12.1-32-02 still retains the automatic reduction of a felony offense to a misdemeanor for a sentence to a term of imprisonment for not more than one year upon successful completion of the term of imprisonment and any term of probation imposed as a part of the sentence.

Since its adoption in 1981, the sentence reduction provision has caused little problems although questions concerning its operation have arisen. The current language of this statute does not require any act to cause the reduction of the offense from a felony to a misdemeanor. This reduction is automatic upon successful completion of the sentence of imprisonment and any probation imposed as a part of that sentence.

The North Dakota Bureau of Criminal Investigation is charged by law with the duty to maintain criminal history records. When a person pleads or is found guilty of a felony offense, that event is reported to the Bureau for placement in that convicted person's criminal history record file. The information that the Bureau places in that file is that the person has pled guilty to a felony. If the Bureau receives a court order stating that the convicted person has successfully completed that person's term of imprisonment of one year or less and any included term of probation, the Bureau will make a notation on that person's criminal history record that the offense has been reduced to a misdemeanor.

No such entry will be made by the Bureau absent receipt of a court order. Without a court order, an official or employee of the Bureau of Criminal Investigation

must conclude that a convicted person had, in fact, successfully completed a term of imprisonment and any included probation. What is a "successful" completion of a term of imprisonment and probation? A convicted person may have violated laws or conditions of probation and such violations may not have been reported to the Bureau. The Bureau is not in the best position to determine whether a convicted person has, in fact, successfully completed a term of imprisonment or probation to gain the benefit of the reduction of the offense from a felony to a misdemeanor.

In past years, absent receipt of a court order, convicted persons have been advised of the provisions of the law and provided with a copy of the statutory provision should issues arise concerning whether that person had been convicted of a felony or misdemeanor in this state. The convicted person bore the responsibility to establish to a prospective employer or other person that the person had successfully completed the imprisonment or included probation. If that was the case, North Dakota state law declared that the person was convicted of a misdemeanor and not a felony.

Application of subsection 9 of section 12.1-32-02 has not presented substantial difficulties until recent months. The Bureau of Criminal Investigation has received inquiries and demands that the Bureau change the criminal history records of persons convicted of a felony to a misdemeanor on its own volition. However, officials at the Bureau were then placed in the position of making the determination that the offender, who they have never met and have no knowledge of other than the presence of the criminal history record, successfully completed that person's imprisonment and included probation.

Engrossed Senate Bill 2118 addresses these issues. Not only will this amendment to subsection 9 of section 12.1-32-02 provide continued encouragement

and incentive to convicted persons to successfully complete terms of imprisonment and probation but, also, it will provide a standard to guide these persons, their attorneys, prosecuting attorneys, the courts, and the Bureau in implementation of the felony to misdemeanor reduction provision.

Page 1, lines 9 through 19 authorize the convicted person to petition the court for an order declaring that the individual has successfully completed that person's term of imprisonment or included probation. This order would be served upon the Bureau which would then make the appropriate entry on that person's criminal history record.

Page 1, line 19 through page 2, line 1, define a successful completion of a term of imprisonment or probation. This definition will also provide a guide to all persons in implementing this statutory provision. In addition, by knowing what is expected of them to obtain this reduction of the offense from felony to a misdemeanor, there will be no question in the mind of convicted persons that they will have to affirmatively prove, by their conduct, to a court that they are entitled to this reduction. Lapse of time alone will not result in the reduction of the offense from a felony to a misdemeanor but the court will view each person's conduct while imprisoned or on probation and make a judicial determination that the person has earned this reduction.

Engrossed Senate Bill No. 2118 provides standards to guide implementation of subsection 9 of section 12.1-32-02 of the North Dakota Century Code and imposes accountability upon convicted offenders who must earn the reduction of offense from a felony to a misdemeanor by their good conduct.