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DESCRIPTION

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Deanna Ballin
Operator's Signature

10/22/03

Date

2003 SENATE JUDICIARY

SB 2355

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10/22/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2355

Senate Judiciary Committee

☐ Conference Committee

Hearing Date 02/05/03

Tape Number	Side A	Side B	Meter #
3	X		0.0 - 32.8
Committee Clerk Signature <i>Maria L. Salberg</i>			

Minutes: Senator John T. Traynor, Chairman, called the meeting to order. Roll call was taken and all committee members present. Sen. Traynor requested meeting starts with testimony on the bill:

Testimony Support of SB 2355

Sen Lee Introduced the bill (tape 3, side 1 meter 0.1)

Senator Dick Dever referenced the 4.2 million dollar fiscal note.

Senator Dick Dever - Upon looking at the fiscal note; I question the horrendous cost to initiate this 60% of time spent, how much below 60% of time is now being served? I would like to address this as we proceed.

Fritz Femgen - States' Attorney Stutsman (meter 1.8) Attachment #1 Discussed a case he experienced. The term "Imprisonment" is different by what the Judge orders depending on the Facility placed and a new program T.R.C.U. Community Service instead of prison time.

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Page 2
Senate Judiciary Committee
Bill/Resolution Number SB 2355
Hearing Date 02/05/03

Court makes a sentence and the Department of Corrections changes that sentence. How much does it cost to retry a criminal?

Senator Dick Dever - Bismarck, (meter 9.8) Stated support of ND Sheriff's and Deputies Assoc.

Cynthia Felen - Burleigh Co. Asst. State Attorney (meter 10) Discussed frustration of chasing after the same people. A Prosecutor makes a recommendation, Judges make a decision and department of correction does there own thing.

Sited Example (meter 11) Court ordered 18 months and he served 2 months. I wanted this repeat offender to serve at least 60% of his time, not 20%!

Senator John T. Traynor, Chairman stated that confinement did not seem to stop him

Senator Dick Dever discussed with Cynthia County Jail time - full sentences served to State Pen time half the time served. (meter 16.6) "Catch & Release"

Richard Reah - State Attorney (meter 18.8) Discussed the dollars that are spent each time a person is recharged for the same crime i.e.; apprehending, holding, trial attorney, judges and paperwork. Reality is-time is not even close to time being served. "Catch and Release" is what we call the TRCU program!

Barry Mayor - Fraternal Order of Police (meter 20.7) discussed his support and frustration when having worked a case spending a lot of time on it and you see him back on the street!

Testimony in opposition of SB 2355

Elaine Little - Director Department of Corrections and Rehabilitation (meter 22.2) Read

Attachment #3 Discussed TRCU Program and the earlier problems we had with this program that we have hoped to have corrected. This bill would eliminate this program and community placement.

Deanna Hallen
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10/22/03
Date

Page 3

Senate Judiciary Committee

Bill/Resolution Number SB 2355

Hearing Date 02/05/03

Senator Thomas L. Trenbeath referenced mandatory minimum and mandatory sentence.

Testimony Neutral to SB 2355

None

Senator John T. Traynor, Chairman closed the hearing

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10/22/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2355

Senate Judiciary Committee

☐ Conference Committee

Hearing Date 02/12/03

Tape Number	Side A	Side B	Meter #
1	X		10 - 18.5
Committee Clerk Signature			

Minutes: Senator Stanley W. Lyson, Vice Chairman, called the meeting to order. Roll call was taken and not all committee members present. Sen. Lyson requested meeting starts with committee work on the bill:

Senator Thomas L. Trenbeath (meter 10.0) discussed that "one size" does not fit all. There is a department set up for the purposes of determining when a person should be paroled. They can do that on an individual bases and do it subjectively. This would be against this.

Sen. Lyson agreed and discussed (meter 11) that this bill is a result of the early trials of the TRCU program problems. These should be rectified at this point. Senator Carolyn Nelson wanted to know what can be done to stop this cavalier "treatment and release" attitude.

Discussion (meter 12.0)

Senator Dick Dever further discussed Co. Jail time Vs State Penitentiary time.

Noted was the great inflation of the fiscal note

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Page 2

Senate Judiciary Committee

Bill/Resolution Number SB 2355

Hearing Date 02/12/03

Senator Carolyn Nelson discussed that if this fiscal was true what is the state really charging for the average stay of an inmate!

Motion Made to DO NOT PASS SB 2355 by Senator Thomas L. Trenbeath and seconded by Senator Dennis Bercier

Roll Call Vote: 4 Yes. 1 No. 1 Absent

Motion Passed

Floor Assignment SEN. LYSON

Senator Stanley W. Lyson, Vice Chairman closed the hearing

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Dennis Bercier
Operator's Signature

10/22/03

Date

FISCAL NOTE

Requested by Legislative Council
01/28/2003

Bill/Resolution No.: SB 2355

1A. 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.

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$4,209,748		\$4,209,748	
Appropriations			\$4,209,748		\$4,209,748	

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

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. Narrative: Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.

Senate bill 2355 would require every individual sentenced to the custody of the Department of Corrections and Rehabilitation to serve at least 60% of the sentence imposed by the courts in conventional incarceration. If this bill is implemented it will result in longer prison stays. Longer prison stays equate to the need for additional prison beds. Due to the fact the DOCR is operating and expects to continue to operate at capacity, the need for additional beds created by this bill can only be satisfied by contracting for prison beds outside of the DOCR system.

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.

As noted in 1a above, the DOCR estimates the cost to implement this bill at \$4,209,748 for the 03-05. This amount was arrived at by sampling individuals released from the conventional incarceration during calendar year 2002. The sample was then used to determine the total number of extra days that would have been served if 60% of the sentence would have been served in conventional incarceration. This computation resulted in the determination that an additional 42,097 bed days per year would be needed if this bill were implemented. Again due to the fact the DOCR is and expects to continue to be at capacity these additional bed days would have to be contracted for outside of the DOCR system. Using an estimated contract rate of \$50 per day per inmate this results in an biennial expenditure totaling \$4,209,748.

C. Appropriations: Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

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In order to implement this bill in the 2003-05 biennium the DOCR would need \$4,209,748 in general funds to be added to the 2003-05 DOCR executive recommendation.

Name:	Dave Krabbenhoft	Agency:	DOCR
Phone Number:	328-6135	Date Prepared:	01/30/2003

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Dennis Wallis
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10/22/03

Date

Date: February 12, 2003
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2355

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DO NOT PASS

Motion Made By Senator Thomas L. Trenbeath Seconded By Sen. Bercier

Senators	Yes	No	Senators	Yes	No
Sen. John T. Traynor - Chairman	A	A	Sen. Dennis Bercier	X	
Sen. Stanley Lyson - Vice Chair	X		Sen. Carolyn Nelson	X	
Sen. Dick Dever		X			
Sen. Thomas L. Trenbeath	X				

Total (Yes) FOUR No ONE

Absent ONE

Floor Assignment Senator Stanley W. Lyson, Vice Chairman

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

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10/22/03
Date

REPORT OF STANDING COMMITTEE (410)
February 12, 2003 12:32 p.m.

Module No: SR-27-2393
Carrier: Lyson
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
SB 2355: Judiciary Committee (Sen. Traynor, Chairman) recommends **DO NOT PASS**
(4 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). SB 2355 was placed on the
Eleventh order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-27-2393

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2003 TESTIMONY

SB 2355

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10/22/03
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Tape 3
Side 1

Att #1

February 5, 2003

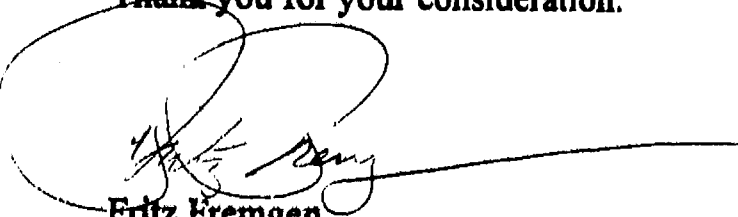
RE: SB 2355, Truth in Sentencing Bill, aka 60% bill

Dear Senator:

Enclosed please find the following:

1. Copy of SB 2355
2. Point paper explaining why SB 2355 was drafted.
3. Resolution in support of the bill signed by:
The North Dakota State's Attorneys Association,
North Dakota Peace Officers Association,
North Dakota Sheriffs & Deputies Association,
North Dakota Chiefs of Police Association,
North Dakota Fraternal Order of Police,
North Dakota Game Wardens Association, and the
North Dakota Troopers Association.
4. Resolution in support of bill signed by North Dakota State's Attorney's Association
5. Five one page descriptions of incidents when an inmate was released far too soon.

Thank you for your consideration.


Fritz Fremgen
State's Attorney
Stutsman County

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10/22/03
Date

30647.0200

Fifty-eighth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2355

Introduced by
Senators G. Lee, Dever

1 A BILL for an Act to create and enact a new section to chapter 12.1-32 of the North Dakota
2 Century Code, relating to mandatory service of periods of imprisonment.

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

4 **SECTION 1.** A new section to chapter 12.1-32 of the North Dakota Century Code is
5 created and enacted as follows:

6 **Mandatory service of periods of imprisonment.** Every individual convicted of an
offense who is sentenced by the court to the custody of the department of corrections and
rehabilitation to serve a period of imprisonment shall serve at least sixty percent of the sentence in
9 conventional incarceration. An individual who is committed to the custody of the department to
10 serve a period of imprisonment may not be authorized for parole, community placement,
11 diversion, or any other type of less restrictive alternative to conventional incarceration in a jail,
12 penitentiary, affiliated facility, or correctional center until the person has been incarcerated for at
13 least sixty percent of the period of imprisonment.

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Date

SB 2355
TRUTH IN SENTENCING BILL
AKA 60% BILL

This is not a new mandatory minimum.

- This bill does not force a judge to order a particular sentence.
- It in no way tells a judge how the judge must sentence a defendant.
- This bill makes sure that when a judge sentences a defendant to prison, the convict serves at least 60% of that time behind bars before the Department of Corrections is allowed to release the convict back to the community.

Why was this bill drafted? As it stands right now, when a judge sentences a defendant to "imprisonment" with the North Dakota Department of Corrections, that defendant often won't serve even half that sentence behind bars. As it stands now, the Department of Corrections considers the "Community Placement Program," in which the inmate is placed back into the community and lives at home, to be "imprisonment." We don't think eating your morning raisin bran at home at your own breakfast table is "imprisonment;" we think it is probation.

The current system wastes resources. Your law enforcement officer investigates the crime, your prosecutor litigates it, you pay for the defendant's court appointed attorney, and your elected judge orders the defendant to serve "imprisonment." Despite all the resources that go into obtaining these sentences the Department of Corrections can release that convict from behind bars before the convict serves even a third of the sentence. A "catch and release" program is good for fisherman who have fun catching the same fish time and again; but this revolving door at the Department of Corrections is a waste of local law enforcement, prosecutorial, and judicial resources.

We support treatment programs. Treatment programs are good; we just don't think a convict should have a 2 or 3 year sentence reduced to only 6 or 8 months behind bars for participating in a treatment program. The inmate should serve at least 60% of the sentence behind bars before being eligible for an early release.

The current system is misleading. The public reads in the newspaper that a defendant was sentenced to serve x number of years. Six or eight months later, when the Department of Corrections releases the convict in exchange for participating in a treatment program, it is done without any notice to the official newspaper in the jurisdiction where the convict was sentenced.

Who is behind this bill? The North Dakota State's Attorneys Association, the North Dakota Peace Officers Association, the North Dakota Sheriffs & Deputies Association, the North Dakota Chiefs of Police Association, the North Dakota Fraternal Order of Police, the North Dakota Game Wardens Association, and the North Dakota Troopers Association have all signed a resolution supporting this bill. We ask you to join us in putting some truth in sentencing.

RESOLUTION

COMBINED LAW ENFORCEMENT ASSOCIATIONS

Introduced by: Sheriff Scott W. Busching, North Dakota Sheriffs and Deputies Association, on the 23rd of April 2002 and seconded by Chad Hagen, North Dakota Fraternal Order of Police, on the same date.

RESOLUTION IN SUPPORT OF A TRUTH IN SENTENCING BILL

Be it resolved by the combined law enforcement associations of North Dakota that:

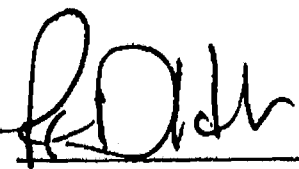
WHEREAS: North Dakota entities that provide for public safety and law enforcement, including the North Dakota Peace Officers Association, the North Dakota Sheriffs & Deputies Association, the North Dakota Chiefs of Police Association, the North Dakota Fraternal Order of Police, the North Dakota State's Attorneys Association, the North Dakota Troopers Association, and North Dakota Game Wardens Association, have combined to identify issues of mutual concern worthy of their united support;

WHEREAS: Members of these entities expend personal and public resources to counteract, detect, and/or prosecute crime in an effort to maintain the peace and dignity of the State of North Dakota;

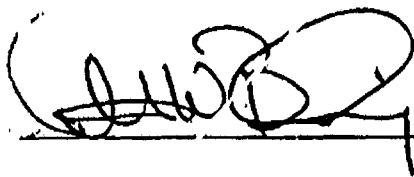
WHEREAS: Once a defendant is convicted of a crime, a duly elected judge of the State of North Dakota may order the defendant to serve a specified term of imprisonment with the North Dakota Department of Corrections and Rehabilitation;

WHEREAS: We believe defendants sentenced to serve a period of imprisonment with the North Dakota Department of Corrections should in fact serve most of that period of imprisonment behind bars; not in a diversion program, in "community placement", or another program that results in the evisceration of the punishment feature of the sentence;

NOW, THEREFORE, IT IS RESOLVED, that the law enforcement associations meeting together to advance issues of mutual concern, support passage of a bill that requires a defendant sentenced to the North Dakota Department of Corrections and Rehabilitation to serve at least 60% of that sentence in conventional incarceration.



North Dakota Peace Officers Association



North Dakota Sheriffs & Deputies Assoc.

Chuck Pratt
President
North Dakota Chiefs of Police Association

Chas. H. Pratt
President
for ND FOP
North Dakota Fraternal Order of Police

Burt D. Bunde
President
North Dakota State's Attorneys Association

Eugene J. Massi
PRESIDENT
North Dakota Game Wardens Association

W. H. H. H.
President
North Dakota Troopers Association

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10/22/03
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NORTH DAKOTA STATE'S ATTORNEYS' ASSOCIATION

RESOLUTION

Introduced by: Barb Whelan, State's Attorney, Pembina County, on the 24th of January 2002,
and seconded by Wayne Jones, State's Attorney, Ransom County, on the same date.

RESOLUTION IN SUPPORT OF A TRUTH IN SENTENCING BILL

Be it resolved by the members of the North Dakota State's Attorneys' Association that:

WHEREAS: A defendant who has been convicted of a criminal offense by guilty plea or a guilty verdict from a jury or a judge, will appear for sentencing before a judge, in a court of law, open to the public;

WHEREAS: The sentence may include an order to serve a specified term of imprisonment with the North Dakota Department of Corrections and Rehabilitation;

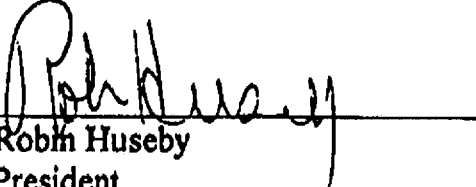
WHEREAS: The prosecution, and some members of the public, expect defendants who are sentenced to a period of imprisonment to actually serve most of that period of imprisonment behind bars;

WHEREAS: Under the provisions of NDCC § 54-23.3-02, a purpose of the department of corrections and rehabilitation is to develop alternatives to conventional incarceration;


WHEREAS: Some of these alternatives to conventional incarceration have caused substantial reductions in the actual period of incarceration served by the defendant;

WHEREAS: The State's Attorneys support programs to rehabilitate inmates but oppose programs that substantially shorten the amount of time behind bars to which the defendant was sentenced;

NOW, THEREFORE, IT IS RESOLVED, that the prosecutors of the North Dakota State's Attorneys' Association support a bill that requires a defendant sentenced to the North Dakota Department of Corrections and Rehabilitation to serve at least 60% of that sentence in conventional incarceration.


Robm Huseby
President

North Dakota State's Attorneys' Association


Birch Burdick
Treasurer

North Dakota State's Attorneys' Association

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10/22/03

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Stutsman County State's Attorney's Office

Fritz Fremgen, State's Attorney

Leo Ryan, Chief Assistant State's Attorney

Aaron G. Birst, Assistant State's Attorney

Joan Y. Halvorson, M.Ed. Victim/Witness Coordinator

Cindy Schauer, Administrative Coordinator

Stutsman County Courthouse
12nd Ave. S.E.
Westtown, N.D. 58401

Phone: (701) 252-6688
Fax: (701) 251-6369

April 11, 2002

RE: Cases in support of 60% bill

Dear Mr. Stenehjem:

BARNES AND FEDERAL SENTENCES TO RUN CONCURRENTLY

Mr. Clayton Henke and Ms. Tamara Berg were involved with meth in Valley City in 1997. Their financial involvement with a meth operation lead to the Federal money laundering conviction and a 57 month federal sentences. Besides that, Henke and Berg were convicted in Barnes County (97-K-071 & 97-K-074 respectively) on possession with intent to deliver marijuana charges. Henke & Berg's Barnes County sentences and Federal sentences were to run concurrently.

BOTH ALREADY HAD FELONY CONVICTIONS

Before the Federal money laundering convictions and the Barnes County possession with intent to deliver (PWID) convictions, Berg had a felony (PWID) conviction and Henke had a delivery conviction.

WHILE RELEASED, THEY COMMIT ANOTHER FELONY

Having been sentenced on the Barnes County charges, Henke and Berg were released pending their 20 September 1997 report to the Barnes County Sheriff's Office for transport to the NDDOCR to commence service of the Barnes and Federal sentences. Two days prior to their report date, Henke and Berg worked together to deliver marijuana to a Stutsman County Correctional Center inmate.


PROSECUTION ASKS FOR CONSECUTIVE TIME & JUDGES ORDER IT

Since Henke and Berg had already received concurrent treatment on the money laundering and Barnes County PWID sentences, I recommended consecutive time for the Stutsman County delivery incident. Both Judge Simonson, in Henke's case, and Judge Bekken, in Berg's case, agreed and ran the Stutsman County sentences consecutive to the Federal and Barnes sentences.

DEPARTMENT OF CORRECTIONS GIVES COMMUNITY PLACEMENT, NO JAIL

Before either Henke or Berg served so much as a single day of their consecutive sentence with the North Dakota Department of Corrections, the Director of the Department of Corrections and Rehabilitation, decided to place both Henke and Berg on community placement (released into the community to live at home). As a result, neither will serve a single day of their six month sentence with the North Dakota Department of Corrections.

Sincerely,


Fritz Fremgen
State's Attorney
Stutsman County

*I believe Henke ended up
serving about 4 weeks
of the 6 month sentence
before he was released to
community placement*

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10/22/03
Date

Fritz Fremgen

From: "Rick Volk" <rivolk@pioneer.state.nd.us>
To: "Fritz Fremgen" <ffremgen@state.nd.us>
Sent: Friday, February 15, 2002 8:08 AM
Subject: early DOCR release

Fritz:

I'm just returning to work after a few days of sick leave. Sorry for not responding earlier. I believe I have a good scenario for you.

Alan Gilbertson was convicted of 10 felonies and 1 misdemeanor - mainly property crimes (Burglary, Theft By Deception, Unlawful Entry into Motor Vehicle, etc) - and sentenced to a 2 year term of imprisonment. He caused almost \$30,000 in damage to property. He was one of the original entrants into TRCU. He was sentenced in October, 1999, reported to jail in November, 1999, and was released by February, 2000, after completing the TRCU program. In total, he served no more than 120 days of his 2 year sentence. He was released to the community at that time on a community placement/parole situation. My understanding of his placement into TRCU was because his crimes were non-violent, property crimes.

In September, 2001, Mr. Gilbertson was arrested for Accomplice to Criminal Mischief after he and a couple of buddies began smashing automobile windows and taillights at Bismarck Auto. They did over \$5000 damage to the vehicles. Gilbertson ultimately pled guilty to this offense, had his probation revoked in the other matters, and is now serving a 5 year jail sentence.

I can't say this latest crime would not have happened had Mr. Gilbertson served his entire 2 year sentence, as I believe he would have been released from the that sentence prior to the date of the incident when good time is factored in. However, the 120 days or so that he served certainly had no effect on his behavior. Ultimately, he went back to engaging in the same type of criminal activity as before.

If you need further information on this case, please contact me.

Sincerely,

Rick L. Volk
Assistant State's Attorney
Burleigh County

PIERCE COUNTY
STATE'S ATTORNEY

Galen J. Mack
State's Attorney

FEB 13 2002

P.O. Box 196
120 SE 2nd St.
Rugby, ND 58368
Tele. (701)776-5246
Fax (701)776-5180

February 11, 2002

Fritz Fremgen
Stutsman County States Attorney
511 2nd Ave. SE
Jamestown ND 58502-5521

FAX: 701-251-1603

RE: "Catch & Release"

Dear Fritz:

I write concerning your fax of February 7th, which I received this afternoon. Please consider the following:

Defendant:	Brenda Ebach
County:	Pierce (98-K-068)
Offense:	Theft (Class C Felony)
Sentencing:	February 1999
Sentence:	2 years incarceration
	- to run concurrent with approx. 6 other
	theft convictions from McHenry County;
	- sentenced by plea agreement;
Released:	90 days after commencement of jail
	- State officials 1 st helped the defendant
	draft & submit a motion to reduce
	the criminal sentence, which the court
	denied.
	- State released defendant approx. 1.75
	years early (i.e., after serving
	90 days) regardless of the plea
	agreement & the court's rejection of
	the motion to dismiss;
	- Pierce County notified of release on the
	day of release.

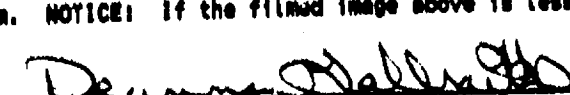
I know that sentences and recommendations for sentences have been reduced and compromised as a result of the early releases of prisoners. I want the citizens of this state, and victims of crimes, to know that there is "truth in sentencing" and that the NDDOC will discontinue "re-sentencing" prisoners. Sentencing is the prerogative of the court. Thank you for your consideration.

Sincerely,


Galen J. Mack
Pierce County State's Attorney

GJM/mjg

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FEB 22 2002

Case Summary: Brian Carl Anderson

March 9, 1999, Brian Carl Anderson committed the offenses of Possession of Stolen Property (motor vehicle) (class C felony) and Driving While License Suspended (class B misdemeanor). Prior to sentencing, Anderson bonded out of jail and on March 27, 1999, he committed additional offenses: Possession of Stolen Property (motor vehicle) (class C felony); Driving While Under The Influence (3rd offense w/in 5 years) (class A misdemeanor); Driving While License Suspended (class A misdemeanor); and Fleeing A Peace Officer (class A misdemeanor). On May 24, 1999, Anderson pled guilty to the March 9 offenses and was sentenced by Judge Frank Racek to twenty-four months straight time with the Dept. of Corrections and Rehabilitation for the possession of stolen property offense and 30 days straight time for the DUS offense. On June 1, 1999, Anderson pled guilty to the March 27 offenses and was sentenced to twenty-four months with the DOCR for the possession of stolen property, and one year straight time on the DUI, DUS, and Fleeing offenses. All sentences to run concurrently and concurrent with the previously imposed sentence.

On June 25, 1999, Tracy Stein and Rick Hoekstra sent the Cass County State's Attorney's Office a notice that Anderson had been selected to participate in the NDDOCR 60 day Revocation Treatment Program. On June 28, 1999, the Cass County State's Attorneys Office sent a reply to Stein/Hoekstra indicating its strong opposition to Anderson's participation in the revocation treatment program. The State's main reason for opposing Anderson's participation in the program was because of Anderson's lengthy criminal history. (Anderson had 16 misdemeanor convictions for offenses occurring between 1995 and 1999).

Anderson did participate in the revocation treatment program and was put on community placement on August 27, 1999.

November 29, 1999, Anderson had contact with his probation officer at which time, his probation officer detected alcohol on Anderson's breath. The probation officer gave Anderson an alcosensor test and it revealed that Anderson had indeed consumed alcohol. The result was a .05 alcohol concentration at approximately 10:00 a.m. As a repercussion, Anderson was sent back to the James River Correctional Center for seven days and then brought back to Fargo on Tuesday, December 7, 1999, to continue with his community placement. On December 8, 1999, Anderson was arrested and charged with Simple Assault on a Peace Officer (class C felony); Terrorizing (class C felony); DUI (class A misdemeanor); and DUS (class A misdemeanor).

Jennifer L. Thompson
Assistant Cass County State's Attorney
Cass County Courthouse
P.O. Box 2806
Fargo, ND 58108

Office of State's Attorney
County of Rolette

FEB 28 2002

Mary O'Donnell
State's Attorney

Box 1079
Rolla, ND 58367
Phone 701-477-3169
Fax 701-477-0178

February 26, 2002

Fritz Fremgen
Stutsman County State's Attorney
511 2nd Ave. SE
Jamestown, ND 58401

Dear Fritz:

I am in receipt of your fax regarding the early release of inmates.

The following is a case summary that you can forward to Sandi Tabor.

Defendant: Matthew Phelps

40-98-CR5372: Possession of a Controlled Substance (F)C
Mr. Phelps was sentenced on January 14, 1999 to one year and one day to
DOCR, suspended for 3 years, supervised probation.

40-98-CR5238: Possession of a Controlled Substance (F)C amended to
Possession of a Controlled Substance (MJ) in a Motor Vehicle (M)A
Mr. Phelps was sentenced on January 14, 1999 to pay \$200.00 in fines, 90 days
in county jail, suspended for 2 years, unsupervised probation.

40-98-CR5239: Possession of Drug Paraphernalia
Mr. Phelps was sentenced on January 14, 1999 to pay fines of \$200.00.

40-98-CR5320: Possession of a Controlled Substance (MJ) in a Motor
Vehicle
Mr. Phelps was sentenced on January 14, 1999 to pay \$200.00 in fines; serve 90
days in the county jail, suspended for 2 years, unsupervised probation.

40-98-CR5321: Possession of Drug Paraphernalia
Mr. Phelps was sentenced on January 14, 1999 to pay fines of \$200.00; serve 30
day in the county jail, suspended for 2 years, unsupervised probation.

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Mr. Fritz Fremgen
February 26, 2002
Page 2

40-98-CR5317: Driving Under Suspension
Mr. Phelps was sentenced on January 14, 1999 to pay fines of \$200.00.

40-98-CR5351: Possession of Controlled Substance (M)A
Mr. Phelps was sentenced on January 14, 1999 to serve 90 days in county jail with 60 days suspended for 2 years, \$200.00 fines, unsupervised probation.

On March 9, 1999 he was convicted in Towner County for DUI and DUS. A Petition for Revocation of Probation was filed on 3/15/99. On March 26, 1999 bond was set at \$10,000. The alternative was electronic surveillance.

On June 4, 1999 an Amended Petition for Revocation of Probation was filed because the defendant was convicted of Simple Assault and Disorderly Conduct in the City of Cando, and on June 3, 1999 the defendant was found using alcohol.

He was sentenced on June 17, 1999 to 2 years at DOCR. He was placed in the Revocation Treatment Program at the James River Correctional Center. In September, 1999 the defendant and Parole Officer filed a Motion for Reduction of Sentence. Defendant was released from Revocation Center on 9/10/99.

On November 18, 1999 while defendant was being placed under arrest for violation of probation, he escaped. Charged with Preventing Arrest and Escape.

1/31/00 sentenced to 1 year and one day at DOCR consecutive to the 2 year sentence he was currently serving.

Defendant released November 12, 2001.

I hope this information is helpful.

Sincerely,



Mary K. O'Donnell
Rolette Co. States Attorney

MKO/dh

ATT # 2



"Scott Busching"
<ScottB@co.williams.
nd.us>

To: <slyson@state.nd.us>
cc:
Subject: SB 2355

02/03/2003 09:40 AM

Stan,

I see that SB 2355 is coming up for a hearing. That is the truth in sentencing bill. I will not be able to make it for the hearing but I recall that the ND Sheriff's and Deputies Association were in support of this bill. Would you be so kind as to enter this into the record for me.

Scott Busching

Williams County Sheriff

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DEPARTMENT OF CORRECTIONS AND REHABILITATION

3303 East Main, PO Box 1888 • Bismarck, ND 58502-1888
(701) 328-6300 • FAX (701) 328-8851 • TDD 1-800-395-6888
Website: www.discovernd.com/docr

Testimony on Senate Bill 2355
Senate Judiciary Committee
Senator Traynor, Chairman
February 05, 2003

The Department of Corrections and Rehabilitation (DOCR) is testifying in opposition to SB2355. We believe that this bill would tremendously increase the cost of the DOCR's budget for the housing of inmates (over \$2 million per year). Additionally this bill would remove the flexibility of both the parole board and the DOCR to manage the inmate population in a fiscally responsible way while still keeping in mind public safety. Many of the inmates today that are released before they have served 60% of their prison sentence are those inmates who are nonviolent and have a drug or alcohol addiction. The department provides alcohol and drug addiction treatment programs as well as cognitively based programs to these offenders early in their sentence and then successfully reintegrates them back into their communities either on the community placement program or on parole.

Inmates who have a history of violence in their background or who are sex offenders continue to serve a majority of their prison sentences. As indicated by a study conducted by SRT, Inc., a corrections consulting company hired by the Legislative Council Corrections Committee during the 2001-2002 interim to do a comprehensive study of the DOCR, inmates on the average serve 68.4% of their prison sentence before being released to parole or DOCR programs. In reality, SB 2355 would not have an impact on when violent offenders or sex offenders are released from prison. They already serve considerably more of their sentence than would be required under SB2355. However, the inmates affected by this bill are those that are the lower risk inmate that can be successfully treated and returned to the community and held accountable there. Inmates most affected by this bill are those that participate in the Thompkins Rehabilitation and Corrections Unit, the Bismarck Transition Center, and who are very low risk and paroled early by the parole board.

I will explain one of the programs, the Thompkins Rehabilitation and Corrections Unit (TRCU), and how it would be affected by Senate Bill 2355. Presently all inmates coming into the penitentiary are screened by a multidisciplinary team that develops a case plan for the inmate and makes recommendations as to the type of treatment and other programs that are most appropriate for the inmate. If an inmate is a probation violator or first time prison inmate, a drug or alcohol offender, nonviolent and has a sentence of less than two years to serve, that inmate may be recommended to the TRCU. The TRCU is a 100-120 day intensive alcohol and drug addiction program

Division of Juvenile Services (DJS)/Administration - 701-328-6390
DJS/North Dakota Youth Correctional Center - 701-867-1400

Prisons Division - 701-328-8100
Division of Field Services - 701-328-8190

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coupled with an intensive cognitive change program. Prior to sending the inmate to the TRCU the DOCR asks for input from both the sentencing judge and the states attorney involved in the case. The DOCR does not send the inmate to the TRCU unless the sentencing judge agrees. In the past two years the sentencing judge has rarely objected to an inmate's placement at the TRCU, in fact, many judges now state in the court order that they would recommend TRCU placement if the offender meets the DOCR's criteria for placement. If the states attorney objects to a TRCU placement for an inmate, the department often delays placement of the inmate in the TRCU. If the inmate successfully completes the TRCU program he is moved back to the community on a community placement or parole status. The TRCU has had much success in addressing alcohol and drug problems and criminal thinking patterns with offenders. The recidivism rate of offenders that participate in the TRCU is considerably lower than for the general probationer. Senate Bill 2355 would eliminate one of the primary purposes of the TRCU - to reduce the cost and length of prison stay for non-violent alcohol and drug offenders. If SB2355 was passed, the TRCU could only be utilized as a back end program. The TRCU along with the Community Placement Program and early parole for low risk offenders was strongly supported by the Legislative Council Corrections Committee.

The DOCR is working towards becoming a "What Works" agency in all of its operations. The TRCU and other community programs such as the Transition Center in Bismarck follow what research has shown works with offenders. SB 2355 would prevent the DOCR from managing this low risk inmate population as it does today. Many of the benefits derived from these programs, including a large cost savings in inmate housing costs, would be lost under SB 2355. In addition to higher inmate housing costs, research indicates longer prison-stays for low risk inmates actually increase the recidivism rate for them.

Senate Bill 2355 would be costly and significantly reduce the flexibility the DOCR has to manage the inmate population in not just a safe, but also in a cost effective manner. I urge a "Do Not Pass" on the bill.

Submitted by
Elaine Little, Director

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