

2011 HOUSE JUDICIARY

HB 1028

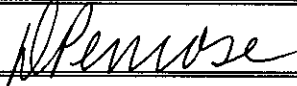
# 2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee  
Prairie Room, State Capitol

HB 1028  
January 11, 2011  
12733

☐ Conference Committee

Committee Clerk Signature



## Minutes:

Chairman DeKrey: We will open the hearing on HB 1028.

Sen. John Warner: Sponsor, support the bill (see attached testimony).

John Bjornson, Legislative Council staff: I was counsel during the interim for this commission. I will give you a little background. The commission was approached by representatives of the Department of Corrections and Rehabilitation, who posed this scenario essentially where certain offenders, those who have to serve 85% of their sentences, are those who are under some other type of minimum mandatory sentence, have to serve that sentence, but because of the law, and interpretation of the law, they were not allowed the opportunity to participate in certain transition programs which would help them transition back into the community more effectively and education or work release type programs. The intent was to not change their sentence in any way, but to allow them the opportunity to participate in a work release or transition program within the last portion of their sentence, the last six months of their sentence. This would better prepare them for entering the community again once that mandatory term was up. The key is, it doesn't reduce their sentence in any way, but it does help transition them into the community. This was, as Sen. Warner said, there are certain offenses that don't apply, obviously if a person is to serve a life term with no chance of parole, there's no point in putting them in a work release program; so obviously it doesn't apply to them. I suspect that there may be some questions in section 3, there are a lot of references to certain section numbers. This is the 85% sentences, those are generally sentences that have involved some sort of physical harm, assault cases, aggravated assault, kidnapping, gross sexual imposition that involves force; those types of offenses. Those are why people are required to serve 85% of their sentence, in this particular section.

Rep. Steiner: Can you describe a work release program; it's not where they put on an ankle bracelet and they go home is it.

John Bjornson: The release programs that this is contemplating are some type of work release program perhaps. I don't think they are contemplating ankle bracelets; it's not a full release, it's someone who is going into the community, learning a skill and returning to the facility in the evening.

Rep. Koppelman: If I'm understanding this correctly, the net effect it would have would be for sentences where 15% of the sentence is shorter than the 6 month period, it would allow those folks to participate; in other words, let's say someone has a one year sentence, they could participate if this bill passes, in a work release after serving half that sentence, whereas current law would require them to serve 85% first.

John Bjornson: In general, you are following it correctly. Once they've served their 85% and, likely are eligible for release, they are out the door. This would say that in that last 6 months before that, the Dept. may allow them to participate in a work release type program or a transition type program. It's just addressing that last portion of their term, before that release date. As Sen. Warner indicated, the key really is that the Dept. "may" do it, it gives the Dept. discretion. They only have so many spots available, as I understand it, and they are pretty judicious in deciding who is eligible for a work release program.

Rep. Koppelman: Well that is where my confusion is then. In Sen. Warner's testimony, it says that this would clear up an ambiguity in the law, which forbids offenders who have not yet met the requirement to serve 85% of the sentence or to a minimum mandatory sentence under current law from participating in work or education release programs. My reading of that implies that these are folks who are supposed to serve 85% of their sentence before participating in a program like this, not before their release. If that is the case, then an offender who is sentenced to a year would have to serve 85% of that year currently, before being on work release. If this law passes, they could serve 6 months or half that sentence before they could participate, not before the release date, or am I missing that.

John Bjornson: My understanding is, I don't think we are talking about a one year sentence here, that we are talking about people who are in for four years or that type of sentence; we are talking about more serious offenses if they have the 85%. They serve 85% of their sentence, and then they are eligible for release. They are not eligible at any time before they have served the 85%. Let's say that they have served the 85%, and if everything is good to go, they enter a community without this transition. This would say, in that last six months before you hit that 85% mark, you have the opportunity to participate in a transition type of program.

Rep. Klemin: I wanted to follow up on that response. I think the section we are dealing with here that's being amended in section 2 of the bill, has to do with mandatory prison terms. At the bottom of page 2, you will see that if it's a class A or B felony, the minimum sentence is four years imprisonment; at the top of page 3, if it's a class C felony, the minimum sentence is two years imprisonment. So we are not dealing with sentences that are shorter than two years.

Rep. Koppelman: My reference to a year was just an example. Even in a two year sentence, we would be dealing with 25% of the sentence versus 15%. The crux of the matter, given what Sen. Warner said and what Mr. Bjornson just said, is the question of whether we are dealing with release after 85% or participation in these programs after 85%. I think we need to get that cleared up from either statute or from corrections.

Chairman DeKrey: Thank you. Further testimony in support of HB 1028. Testimony in opposition. We will close the hearing. What are the committee's wishes in regard to HB 1028.

Rep. Koppelman: I would like to have some clarification from the Dept of Corrections.

Chairman DeKrey: We will get in contact with Dept of Corrections and have them come on Wednesday, hopefully at 9:00 a.m. to give us more information about this bill.

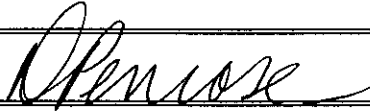
# 2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee  
Prairie Room, State Capitol

HB 1028  
January 12, 2011  
12843

☐ Conference Committee

Committee Clerk Signature



## Minutes:

Chairman DeKrey: We're going to take a quick look at 1028 because Corrections is here, and we're going to finish up that hearing from 1/11/2011.

Pat Bohn, Director, Transitional Planning Services, Dept. of Corrections and Rehabilitation: I am here at the request of the Director of DOCR to answer questions that came up yesterday at the hearing.

Rep. Koppelman: Would you walk us through, if this bill were to pass, how it would change things versus how they are now in terms of this work release.

Pat Bohn: Right now when someone is sentenced under the mandatory minimum without benefit of parole for armed offenders or 85% offenders; 85% are truth in sentencing offenders that was passed back in 1993, which prohibits them from being eligible for any parole consideration or any other programming: work programming, transitional programming, educational programming, outside of the DOCR. This bill would make those offenders eligible for those services to aid in their transition in the last six months of their incarceration.

Rep. Koppelman: So where does the 85% come in. I had a little bit of confusion about the 85%. Are there some requirements that they have to serve 85% of their sentence, so what would this specifically change.

Pat Bohn: As I understand it, anyone who is sentenced to the DOCR for murder, manslaughter, aggravated assault, kidnapping, robbery, gross sexual imposition with use of force, or burglary with a weapon or entering a premise with menacing the inhabitants are required by law to serve 85% of their sentence without the benefit of parole, or any other release programming. This bill would make those offenders eligible for work or education release according to DOCR rules during the last six months of their sentence.

Rep. Koppelman: so we would change current law to make it possible for those folks to do work release earlier, but not be released earlier.

Pat Bohn: It would make the offender eligible for work or education release, not necessarily earlier because they had never been eligible. It would make them eligible, yes.

Rep. Koppelman: So based on the offenses you just listed, is that these are violent or serious offenders in many cases, who have not had this opportunity before, so this is a pretty significant policy change, in terms of letting those offenders out during the day for a few hours at a time. What is the opinion of the DOCR, and how will it relate to the safety of the citizens.

Pat Bohn: The DOCR is testifying neutral on this bill. I think it's coming through the Alternatives Commission. In March 2010, Robin Schmallenberger, who was the warden of the transitional facilities, at that time, is now the warden of the ND State Prison. I had been asked to come and testify before the Alternatives Commission on Transition facilities. One of the things that was pointed out during her testimony, at the time, is the difficulty that people who have 85% or minimum mandatories without the benefit of parole, have in transitioning back to the communities once their sentence expires, they have difficulty in obtaining employment, paying bills, housing, etc. After that, I was asked to come back to the Commission and provide some additional information on the implications of 85% in minimum mandatories without benefit of parole. After that, the Commission asked that I work with Legislative Council on putting together a bill draft that they would look at and consider submitting to this body.

Rep. Koppelman: So your involvement from the Dept. with this interim committee was not necessarily giving your best judgment as to whether or not this is a good idea, it was simply working out the technical side of a bill that would provide for it.

Pat Bohn: Correct.

Rep. Koppelman: So what is your opinion on the substance of the bill.

Pat Bohn: My professional opinion is that, I think, it would be a good thing. Rep. Kretschmar was a former parole board member, and now Ch. DeKrey is currently on the Pardon Advisory Board. There is a lot of difficulty in transitioning people back from prison to the community at the expiration of the sentence. Of course, when you've been locked up for quite a while, your income has been limited, if not about \$0, often there is difficulty in finding housing because there are a number of laws out there that prohibit felons and dangerous offenders, drug dealers from accessing housing. I would say that this is a way to help reduce recidivism. Research indicates that programming: work, education, cognitive behavioral therapies, and chemical treatment, help reduce the likelihood of recidivism for offenders. This is just one of the components that I think could help bolster the way we plan for release for individuals in trying to maintain a safer community here in ND.

Rep. Koppelman: So, if this were to become law, would DOCR or the Parole Board make the decision on who is eligible for this programming.

Pat Bohn: It would be the DOCR that would make the decision. There would be eligibility that we already have for work and education release programs that they would be plugged into.

Rep. Koppelman: So you believe that DOCR could do a better job of working with the employers and convincing them to hire someone who is still in prison or jail at night, for example, versus letting them out at the end of their sentence with no supervision. I think reentry is important and I think it is something for us to pay attention to, but I'm just not sure how all of this works in terms of hiring an offender.

Pat Bohn: We do not go out and solicit employers to hire offenders. We've always left that to the offenders to make contacts in the community and do some job searching. That's been something they have to do and then we work back, once that employer has said yes, we're interested in that individual, then we work with them regarding some of the technicalities of how the work release program works.

Chairman DeKrey: My question is, do you have any kind of an estimate on the numbers of offenders that you would be talking about. I know when we do Pardon Board business, a lot of times we get into the fact that the offender won't cooperate and do work and education programming, because they do want to time-out, because if they time-out, then nobody watches them once they go out the door. Whereas if they get into these programs, then they are still under supervisor so they actually have to voluntarily do it, and you also have to think that person is a fit for the program, so in my mind I'm guessing that this is going to be small number.

Pat Bohn: Yes, that is true. It's going to be a small number. There are people that they don't want to be participating in some programs, they want to do their time and get out, be free and clear. For those people that would volunteer, that are interested in the programming, and for those that would meet our criteria for placement in the community, now you've whittled it down some more, that would be the population we are after. I do have to say, in 2007, we hadn't had all our numbers updated, keep in mind that I am using the testimony I provided to the Alternatives Commission, over a half a year ago. We had received 209 inmates who were serving an 85% sentence. The number of people who are serving minimum mandatories, without the benefit of parole, those are armed offenders, is much smaller than that. I wouldn't guess it is more than about 15-20 people, at any given time in our department.

Rep. Kingsbury: As I'm searching here, I'm concerned about if there is some type of evaluation at the end of this release program that would tell you whether this person was eligible to actually be paroled, or anything in the program that would stop the program and have them not be eligible in the midst of it. I mean if you had any red flags that would come up that would tell you that this person wasn't ready to go out and adapt a work release program.

Pat Bohn: I think what you are getting at is some of the evaluation criteria and ongoing monitoring. We do have established criteria for eligibility into the program, and there continues to be monitoring between the work release staff and the onsite employer and the offender/employee regarding their behavior, progress, and conduct in the community and at any given time they can be removed from that program; not only remove them but move to a higher level of custody, because we are talking about releasing offenders out through, most often, it's going to be our minimum security facility, Missouri River Correctional Facility.

Rep. Boehning: The question I've got, are they going released for work release out of the penitentiary and be in a half-way house for the last six months.

Pat Bohn: This wouldn't be out of a half-way house at all. Because we are still saying that they aren't eligible for any of the half-way house placements. This is the way the law is written. The only thing this bill allows us to do, as DOCR, is put these offenders out on work or education release during the last six months of their sentence. That would be from, for instance, from the MRCC, where we operate work release out of. We don't have work release programs out of the ND State Prison, the maximum security facility, or a medium security facility in Jamestown, and it would also allow for work release out of the Dakota Women's Correctional Facility, for those women who are in minimum custody down there. If we had someone out in jail transition, because jails still qualify for housing our 85% in minimum mandatory, that they could do work release out of that facility. For instance, if someone was returning to Stark County, had this type of sentence, we could work with Stark County on work release and reintegrate them, give them those opportunities to get back into their local community near the end of their sentence; to better prepare them for release.

Rep. Boehning: One of the concerns that I have, is there going to be a charge to the inmate when they are in minimum security out there, how are they going to get to town and back. Are you providing transportation, do they pay for the transportation, are those additional costs paid by the inmate or the State.

Pat Bohn: They do pay a work release fee. It depends on the DOCR, but I don't have the figures for that. Out in the county jail, they have work release fees that they would have to pay the county. As far as transportation goes, we provide that for anyone who is on work or education release.

Rep. Delmore: Would you say, however, that this program in the way that it works, it gives them a better means of coming out of there and being ready to be more productive citizens. I would think that it would be an incentive for those people that are going out to do this, that they can look at that and say "I'm getting ready to go back to the community and be productive, perhaps than just serving my sentence." Would you say that that is one of the advantages.



Pat Bohn: Yes, these are people that, if they qualify, have met our minimum custody standards, demonstrated good behavior in the institutions, have been compliant with any programs that we've afforded to them or required from them such as mental health services, medications, chemical addiction programming, and those types of things. Yes, I can see it as very much of an incentive to accomplish those things to get to here. Certainly, at the end of six months, there's been punishment that has been served, and now we have to get to the reality that, no matter what happens, we're not keeping them any longer than this expiration date, and the better we can prepare people to hit that expiration date, the more likely it is for them to be successful and for our communities to remain safe in ND.

Rep. Klemin: First of all, by way of comment, I should say that the Commission on Alternatives to Incarceration that was mentioned, is not just made up of legislators. I am one of the legislators on the Commission. There were two representatives, two senators, and there are representatives from a number of the state agencies, including LeAnn Bertsch, Director of Dept. of Corrections, the police are represented on there, sheriffs, county commissions, states attorneys, and a number of other people with some other state agencies as well. One of the goals of the Commission on Alternatives to Incarceration, as the name applies, is to look at what are alternatives. How can we get people back into society or sooner with a better chance of being rehabilitated, or how can we reduce the cost to the state to keep expanding the prisons, etc. As I understand this particular bill, this kind of fills a gap, where certain people who were not eligible before, but could be eligible now, but the people who participate in that, including this new group, would have to apply to the DOCR to be able to participate, and then the DOCR has eligibility criteria that you look at to determine whether that person should be participating in some programming. They can't be high risk offenders, they can't be a person who is likely to commit a crime again while they are out doing this programming. They have to be likely to be rehabilitated as part of this process, and they have to agree to abide by various terms that the DOCR imposes. Is that how it works.

Pat Bohn: Yes.

Rep. Klemin: So just because someone might become eligible under this program, it doesn't mean that they're going to apply, and if they do apply it's not a given that they are going to be accepted. The DOCR has all of these things to look at.

Pat Bohn: You are absolutely correct.

Rep. Boehning: Of the offenses you listed an offender would have to do 85% of the sentence, of those that are eligible for the 85%, how many serve the full sentence, or more than the 85%.

Pat Bohn: I don't have that number, I'm not exactly sure. I would say that a majority of them serve the 85% and a smaller % that actually serve between 85% to

the max of 100%. Most of them are incentivized, of course, just by earning their good time; maintain good behavior.

Rep. Steiner: Do you have a way of tracking these people if they disappear in a community, out of work release. Do they have a bracelet on them, or do you track them.

Pat Bohn: We do have the ability, if we feel it is necessary, to put them on GPS monitor. So that is a resource; we can do it. We have a little bit of difficulty sometimes, because it works well in the community, but of course, when we get down into our facilities, big block buildings, receptive is not always the best. That would be a resource. We wouldn't put everybody on it, but that's a resource. Again, it's assessing risk and looking at the type of individual we have out there, their prior record, current offenses, actuarial risk scores that we use. All of those types of things, psychological, program progress, all of those factors roll into us deciding whether they would be that person that needs GPS. I think, for the most part, if we start getting to that point, we might say that they might be too great a risk if we think we have to put them on that type of monitoring; it wouldn't preclude us from doing it.

Chairman DeKrey: Thank you. We will close the hearing. Let's take a look at HB 1028. Is there discussion on this bill.

Rep. Delmore: I move a Do Pass.

Rep. Beadle: Second the motion.

**14 YES 0 NO 0 ABSENT**

**DO PASS**

**CARRIER: Rep. Beadle**

Date: 11/12/11  
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1028

House JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment  
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Delmore Seconded By Rep. Beadle

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Guggisberg	✓	
Rep. Beadle	✓		Rep. Hogan	✓	
Rep. Boehning	✓		Rep. Onstad	✓	
Rep. Brabandt	✓				
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				
Rep. Maragos	✓				
Rep. Steiner	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Beadle

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

**REPORT OF STANDING COMMITTEE**

**HB 1028: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS**  
(14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1028 was placed on the  
Eleventh order on the calendar.

2011 SENATE JUDICIARY

HB 1028

# 2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee  
Fort Lincoln Room, State Capitol

HB1028  
3/2/11  
Job #14838

☐ Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to offender eligibility for release programs.

Minutes:

## Senator Nething – Chairman

**John Bjornson** – Legislative Council – Counsel for the Commission on Alternatives to Incarceration Interim Committee. He is neither for or against the bill but explains the bill and its changes by section. He said this commission is responsible for looking at all avenues to address the problems with incarceration. He says this bill is to address an issue that certain offenders are being released into the community without being prepared adequately to deal with their release. The Dept. of Corrections has determined that certain offenders are not eligible for work release or education release programs. He said that includes violent offenders or offenders that used a firearm. They are required to serve 85% of their sentence before being eligible for any release from confinement. The idea of this bill is to allow on terms set by the correction system to be appropriate that an offender be eligible for these release programs.

**Senator Nething** - Asks Mr. Bjornson to walk through the sections.

**Bjornson** – Explains the changes by section. This allows them into a work release program when their sentence is at 85%. He says they wouldn't be kept any longer.

**Senator Lyson** – Says most of these people are getting good time already when they are in the penitentiary.

**Bjornson** – Says the way he understands it the offender must serve 85% notwithstanding their goodtime. This bill is asking that they must participate in a work release program so that it prepares them for reentry into the community. This is a privilege granted by the Dept of Corrections not a right. They have guidelines set to see who is eligible and at what point.

**Senator Site** – Questions section 12.

**Bjornson** – Says under current law they have to serve 85% law and the Dept. of Corrections will make the determination whether they can participate in work release programs.

Opposition - -

Close the hearing on HB1028

Committee discussion

**Senator Olafson** moves for a do pass

**Senator Sorvaag** seconds

**Discussion**

Senator Lyson says there are judges to sentence people and policies at the penitentiary for what they can do. He thinks this is just another attempt to take away from what the courts decided to do and put into the hands of people who are not trained as a legal counselor. Senator Nething discusses the changes by section. He thinks they mean that the offender has to serve 85% of the sentence. Senator Olafson understands this to be an option for the Dept. of Correction. Senator Lyson says he has a problem with that because they are making judgements that have the courts have already made.

Roll call vote

5 yes, 1 no

Motion passes

**Senator Nething** will carry

Date: 3/2/11  
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1028

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment  
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Olafson Seconded By Senator Sorvaag

Senators	Yes	No	Senators	Yes	No
Dave Nething - Chairman	X		Carolyn Nelson	X	
Curtis Olafson - V. Chairman	X				
Stanley Lyson		X			
Margaret Sitte	X				
Ronald Sorvaag	X				

Total (Yes) 5 No 1

Absent \_\_\_\_\_

Floor Assignment Senator Nething

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



**REPORT OF STANDING COMMITTEE**

**HB 1028: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS**  
(5 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). HB 1028 was placed on the  
Fourteenth order on the calendar.

2011 TESTIMONY

HB 1028

House Bill 1028  
Testimony of Senator John Warner  
Hearing before the House Judiciary Committee  
11 January 2011

Mr. Chairman, members of the committee,

This bill originated in the legislative interim Commission on Alternatives to Incarceration. The Commission is unusual in that it is one of only two interim committees that contain members of other governmental bodies, in fact, legislators are a minority on the Commission.

The meat of this bill appears on page 3, line 5-7 where it states "an offender serving a sentence subject to this section may be eligible to participate in a release program under section 12-48.1-02 during the last six months of the offender's sentence".

This would clear up an ambiguity in the law which forbids offenders who have not yet met the requirement to serve 85 percent of a sentence or to a minimum mandatory sentence under current law from participating in work or education release programs. On longer sentences, those longer than four or five years the 85 percent requirement and the six month window are not in conflict but on the vast majority of sentences, those of first offenders or those incarcerated for drug offences the 85 percent rule prevents them from the more extended, supervised release which has been shown to improve reintroduction into society and reduce recidivism.

The language on page 1, lines 7-9 places a limiter on those offenders who would be eligible for such work release by exempting "an offender sentenced to a penalty of life imprisonment without the opportunity for parole as the result of conviction of a class AA felony under section 12.1-20-03 or of murder under section 12.1-16-01".

Mr. Chairman, members of the committee, this change to existing law would allow the Department of Corrections to write rules that would allow for an orderly, monitored transition back into society. I would ask for your support for this concept by giving HB 1028 a Do Pass recommendation.