2025 SENATE JUDICIARY

SB 2128

2025 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

SB 2128
1/21/2025

Relating to transparent sentencing of criminal offenders, work release eligibility and conditions for criminal offenders, sentences for assaulting and fleeing from law enforcement officers, and sentences for preventing arrest; to provide a legislative management report; and to provide a penalty.

11:02 a.m. Chair Larson opened the hearing.

Members present:
Chair Larson, Vice Chairman Paulson, Senators: Castaneda, Cory, Luick, Myrdal, Braunberger.

Discussion Topics:

- Transparency in sentencing practices
- Public safety concerns
- Definitions of correctional facilities
- Eligibility criteria for release programs

11:03 a.m. Claire Ness, Chief Deputy Attorney General, testified in favor and submitted testimony #30504 and #30506.

11:36 a.m. Dennis Ingold, Senior Assistant State's Attorney for Burleigh Country, testified in favor and submitted #30310.

11:51 a.m. Jason Stugelmeyer, Deputy Chief, testified in favor.

11:57 a.m. Andrew Myer, Criminal Justice Professor, University of Cincinnati Corrections Institute, testified as neutral and submitted testimony #30208.

12:04 p.m. Chair Larson closed the hearing.

Kendra McCann, Committee Clerk

Chairwoman Larsen and members of the committee, my name is Dr. Andrew Myer. I am here to provide neutral testimony on the impacts of SB2128. I am a tenured criminal justice professor and a research fellow with the University of Cincinnati Corrections Institute. I have over 20 years of experience evaluating and conducting research in correctional settings. I have worked with over a dozen state correctional agencies and dozens of community correctional agencies nationwide. I have published over a dozen peer-reviewed academic articles, most of which relate to the correctional system. I have also written over a hundred technical reports to assist correctional agencies in reducing recidivism.

I believe it is critically important to examine the impacts of proposed legislation from a neutral scientific perspective. To that end, I would like to present you with an overview of what we know about the impacts of passing mandatory minimums, just as SB2128 proposes, on crime (community safety) and prison safety.

First, research demonstrates that mandatory minimum laws do not reduce crime in our communities. Empirical research has (1) evaluated changes in crime levels within a state over time (i.e., pre and post-testing) as well as (2) compared states that pass this law to states that do not pass these laws (Roman, 2022; Sundt & Boppre, 2021; The Council on Criminal Justice, 2023; Tonry, 2013; Tonry, 2014; Tonry, 2016; Tonry, 2017; Tonry, 2019). The most rigorous methodological studies consistently show these laws fail to reduce crime.

As a professor of criminal justice, I realize that this finding is often surprising to people. How could locking people up not reduce crime? Mandatory minimum laws try to impact behaviors via deterrence and incapacitation. Three things are necessary for deterrence to work—certainty (a person *will* be caught), celerity (the person will be punished quickly), and severity (the punishment is appropriate for the crime).

It is not easy to establish accountability for crimes via certainty in punishment. This is because not all crimes are solved, and the clearance rates for crimes fluctuate and are influenced by many factors. Let's focus on violent crimes. For context, in 2023, the clearance rate for violent crime in North Dakota was an impressive 57%, a ten-year high up from a low of 49% in 2017 (FBI Crime Data Explorer, 2024). Robbery and aggravated assault clearance rates are routinely around 30-40% clearance rates. Thus, one cannot guarantee certainty in punishment, reducing any deterrable impact of a law. Furthermore, celerity is challenging to manipulate because our courts are designed to protect due process rights. This leaves one element that we can manipulate more readily—severity. This is concerning because we already have historically lengthy sentences, and the cost of increasing sentence lengths is substantial. Unsurprisingly, a meta-analysis of 40 studies of deterrent-based approaches demonstrated no consistent reductions in recidivism (Pratt et al. 2006).

One could argue that removing those convicted under mandatory minimums from society should impact crime. To calculate the impact that incarceration has on crime, one must account for many factors, including the number of crimes that would have been committed had the individual been in society. These are not static variables; their impact changes over time and is a function of age, offense, and substance use/abuse history, to name a few. Empirical research

from criminologists, sociologists, and economists estimates that crime could be reduced by 10% by **doubling** the prison population (see Spelman, 2000).

This takes me to my second empirical observation is that mandatory minimum sentencing practices are costly. Research has shown that defendants facing longer sentences often reject plea deals and select trials. Thus, more trials, longer trials, and more court resources are needed (see Tsuchimoto & Dusek, 2009). In addition, longer stays in prison result in more taxpayer dollars spent on longer prison stays (see Shepherd, 2002)—*which do not lead to reductions in crime*. These problems are further exacerbated by limiting parole. Research on parole shows significant reductions in recidivism compared to those who max out their sentences (Ostermann, 2012, 2013, 2015; Schlager & Robbins 2008; Vito, Higgins, & Tewksbury, 2017). These findings, along with the findings related to a lack of impact on crime, suggest that there is a minimal return on one's investment.

My third point to the committee is that mandatory minimums impact prison safety. Since mandatory minimums were introduced, this has been a consistent finding (see Memory et al. 1999). Increasing the length of time served while restricting opportunities for release directly impacts the functioning of prisons, not only in terms of cost but also in terms of safety. Research on mandatory minimums has demonstrated that those individuals sentenced under mandatory minimum laws have more disciplinary infractions for violent, property, drugs, and disorderly misconduct compared to those not sentenced under mandatory minimum laws. This finding was held from the first month in prison to 4 years later (Bales et al. 2012). In addition, mandatory minimums can lead to overcrowding. This makes an already difficult job even more dangerous for correctional workers. Overcrowding has been empirically demonstrated to make prisons more dangerous; violence in prisons increases for staff and inmates, which impacts their physical and mental health; rehabilitation, healthcare, and education services are diminished because of security concerns (see Baggio et al. 2020; MacDonald, 2018). Many states that experience overcrowding conditions are subject to lawsuits (Guetzkow & Schoon, 2015).

In summary, a review of the empirical research demonstrates that mandatory minimums (1) do not reduce crime, (2) are exceedingly costly to state budgets, and (3) create prisons that are more dangerous for staff and inmates.

I thank the committee for their time. I am happy to answer any questions from the committee.

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January 20, 2025
Testimony in Support of Senate Bill 2128

My name is Dennis Ingold, and I am a Senior Assistant State's Attorney for Burleigh County. I am the supervisor of our office's drug division. In that role, I prosecute drug offenses, including drug dealing and drug possession, but I also prosecute violent offenses, sex offenses, and driving offenses, among others. Before becoming a prosecutor, I worked in private practice for more than seven years, and I defended criminal cases as part of that work. Because Senate Bill 2128 addresses a critical public safety concern – the early release of offenders, including violent offenders, drug dealers, and sex offenders, from North Dakota's prisons – I strongly urge a **DO PASS** on SB2128. Although I also support the minimum sentences included in this bill, I will focus my testimony on the "truth in sentencing" provisions within SB2128. To demonstrate why this bill is important and timely, here are some examples of what happens when there is no truth in sentencing:

A methamphetamine dealer is caught with nearly a pound of methamphetamine. This being her second drug dealing offense, she agrees, under a plea agreement, to serve four years in prison. She appeals to the North Dakota Supreme Court, which affirms her conviction. She moves the District Court to reduce her sentence, which the Court denies. She is ordered to report to prison to serve her sentence. Having served 8 days in jail before her pretrial release while the case was pending, she is scheduled to serve nearly all of the four years remaining on her sentence. Despite having nearly all of those four years to serve, she is kept at the prison for 64 days. When you add her jail and prison days together, they total 72 days of a four-year (1,460 day) sentence. That is **4.9%**. This is on a Class A felony drug dealing offense (her second offense for drug dealing).[1]

A Michigan resident is sentenced to two years in prison in one drug conspiracy case, and is sentenced to one year and one day in prison on a second fentanyl dealing case, to be served at the same time. So, he is scheduled to serve two years. He has credit for 20 days served in jail. He is kept at the prison for 35 days of his two-year sentence. When you add his jail and prison days together, they total 55 days of his two-year (730 day) sentence. That is **7.5%**.[2] Also of note is that, after leaving the prison, this offender served 192 days at Bismarck Transition Center (BTC) on "inmate status" before being paroled. That is 26.3% of his sentence and would be reported by DOCR as time served in a "DOCR facility" before parole. By including that time on "inmate status" at a halfway house as time served at a "DOCR facility," his reported time served would jump to 33.8%. And if he was given credit for all his good time (120 days on a two-year sentence), his reported time "served" would jump to **50.3%**, despite the fact that he spent only **7.5%** of his sentence in jail or prison. To illustrate how the percentages of time served differ based on what is considered time "served," here is a comparison for this case:

Time served by offender sentenced to two years at DOCR		
	Time Served	**DOCR Calculations**
Total sentence to DOCR	730 days	730 days
Time served in jail	20 days (2.7%)	20 days (2.7%)
Time served in prison	35 days (4.8%)	35 days (4.8%)
Time at halfway house on "inmate status"	---------	192 days (26.3%)
Good time	10 days (1.4%)	120 days (16.4%)
Time Served	65 days (**8.9%**)	367 days (**50.3%**)

[1] State v. Willard, 08-2020-CR-03052.
[2] State v. Luke, 08-2021-CR-03150 and 08-2021-CR-03153.

A three-time convicted drug dealer is sentenced to five years in prison on his **fourth** drug dealing offense. He serves 407 days in jail while the case pending. After pleading guilty, he is sentenced to five years in prison. He serves an additional 6 days in jail awaiting transfer to DOCR. After being sentenced to five years in prison, he is kept at the prison for 288 days. When you add his jail and prison days together, they total 701 days of a five-year (1,825 day) sentence. That is **38.4%** of actual time served on a ***fourth drug dealing offense***.[3]

A Michigan resident is convicted of a drug conspiracy and is sentenced to four years in prison. He has credit for 121 days served in jail awaiting trial. After being sentenced, he serves an additional 3 days in jail awaiting transfer to DOCR. He is kept at the prison for 67 days. When you add his jail and prison days together, they total 191 days of a four-year (1,460 day) sentence. That is **13.1%**.[4]

A man convicted of Endangering by Fire or Explosion, who was originally given a probation sentence, is revoked on probation and again sentenced to probation. He is again revoked on probation and is sentenced to three years in prison. He has credit for 130 days in jail. He serves an additional 2 days in jail awaiting transfer to prison. He serves **29 days** at the prison before being transferred to the Bismarck Transition Center. While at BTC, he is allowed to leave, unsupervised, to look for work. He never returns and is charged with escape.[5] This inmate was actually serving time for this case *and* a felony theft case at the time. When you add his jail and prison days together, they total 161 days. So, he served **14.7%** actual time of his three-year sentence for Endangering by Fire or Explosion after being revoked twice on probation.

A Michigan resident is caught with more than fifty-six grams of fentanyl (enough fentanyl to kill thousands of people) and is sentenced to four years in prison on a Class A felony. He has credit for 176 days in jail. He serves an additional day in jail after being sentenced. After being transferred to prison, he serves 280 days at the prison. When you add his jail and prison days together (457), he served **31.3%** actual time in jail or prison for a Class A felony fentanyl offense. Despite only serving 457 days, according to DOCR personnel, he "earned" 200 days good time.[6]

From the above examples, it is clear that good time is currently being awarded, not earned. This is because of N.D.C.C. § 12-54.1-01, which states that the DOCR "may credit an offender committed to the legal and physical custody of the department who is eligible for sentence reduction five days good time per month for each month of the *sentence imposed*." Despite the earlier sentence in that statute that says "an offender committed to the legal and physical custody of the department of corrections and rehabilitation is eligible *to earn sentence*

[3] State v. Reis, 08-2019-CR-03395.
[4] State v. Anderson, 08-2022-CR-01859.
[5] State v. Fresse Cortes, 30-2022-CR-00975.
[6] State v. Patrick, 08-2023-CR-01417.

reductions based upon performance criteria established through department and penitentiary rules[,]" the DOCR credits offenders with good time "up front" and takes it away for bad behavior, rather than awarding the good time as it is actually earned.

To demonstrate how this inflates time served percentages, consider the case of a methamphetamine dealer who is sentenced to four years in prison for a *second* methamphetamine dealing offense. His total sentence is 1,460 days (four years). He serves 485 days in a "DOCR facility" (which includes halfway houses). That is 33.3%. Despite that, he is awarded 240 days good time, which is all the good time he could have earned if he served all four years (48 months x 5 days per month = 240 days). So, he is awarded all of his good time despite serving only a third of his sentence. As such, his reported time served jumps to 49% (33% in a "DOCR facility" and 16% "good time"), despite that he served far less than that percentage in a jail, prison, or by good time *earned*. In this case, if he was awarded 1/3 of his good time (for serving 33.3% of his sentence in a "DOCR" facility), that would be 5.5% good time (80 days on a 1,460-day sentence). Adding that 5.5% good time to his time served in a "DOCR facility," his time served, and good time earned, goes down to 38.8%.

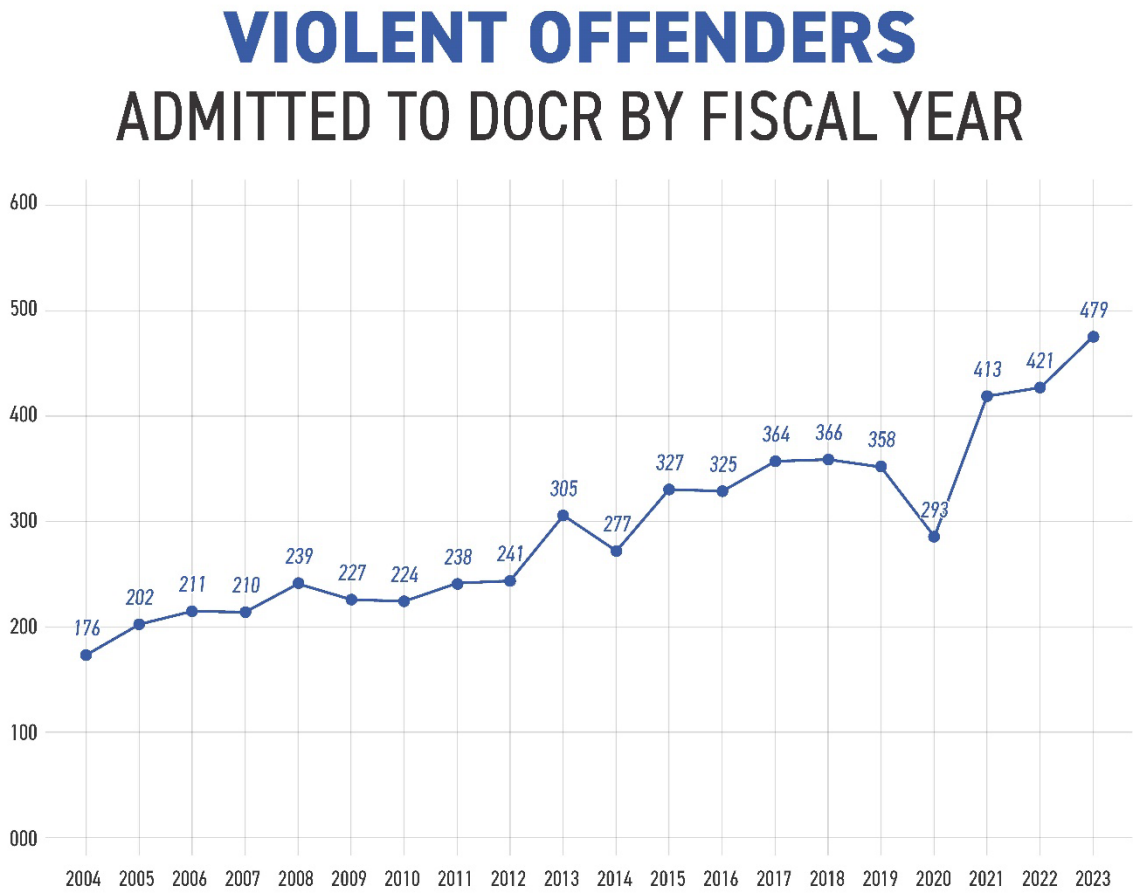
Why does this matter? Because, if this offender would have been required to serve his sentence, he would not have been able to commit the crime he committed while back in the community: a **third** methamphetamine dealing offense, this time with a stolen firearm.[7]

The cases discussed above are just some of the many cases that demonstrate the problem; SB2128 is the solution. This bill would require offenders like those listed above to serve a minimum of fifty percent of their sentences before being paroled. This bill would require that time to be served in confinement, not at a halfway house. And, this bill would require offenders to actually earn their good time, rather than having all of it awarded to them up front.

To have a fully-informed discussion on this bill, we have to understand who is being sentenced to the DOCR and why they are there. Violent crime has skyrocketed in North Dakota. In fact, there was a **98.7% increase** in violent crime arrests in North Dakota from 2010 to 2023. In 2010, there were 456 arrestees for violent crime[8]; in 2023, there were 906[9]. The number of violent crimes committed with firearms increased **193.3%** during that time, increasing from 45 in 2010[10] to 132 in 2023.[11]

[7] State v. Gist, 08-2021-CR-01149 and 08-2024-CR-00627.
[8] https://crimestats.nd.gov/tops/report/violent-crimes/north-dakota/2010
[9] https://crimestats.nd.gov/tops/report/violent-crimes/north-dakota/2023
[10] https://crimestats.nd.gov/tops/report/violent-crimes/north-dakota/2010
[11] https://crimestats.nd.gov/tops/report/violent-crimes/north-dakota/2023

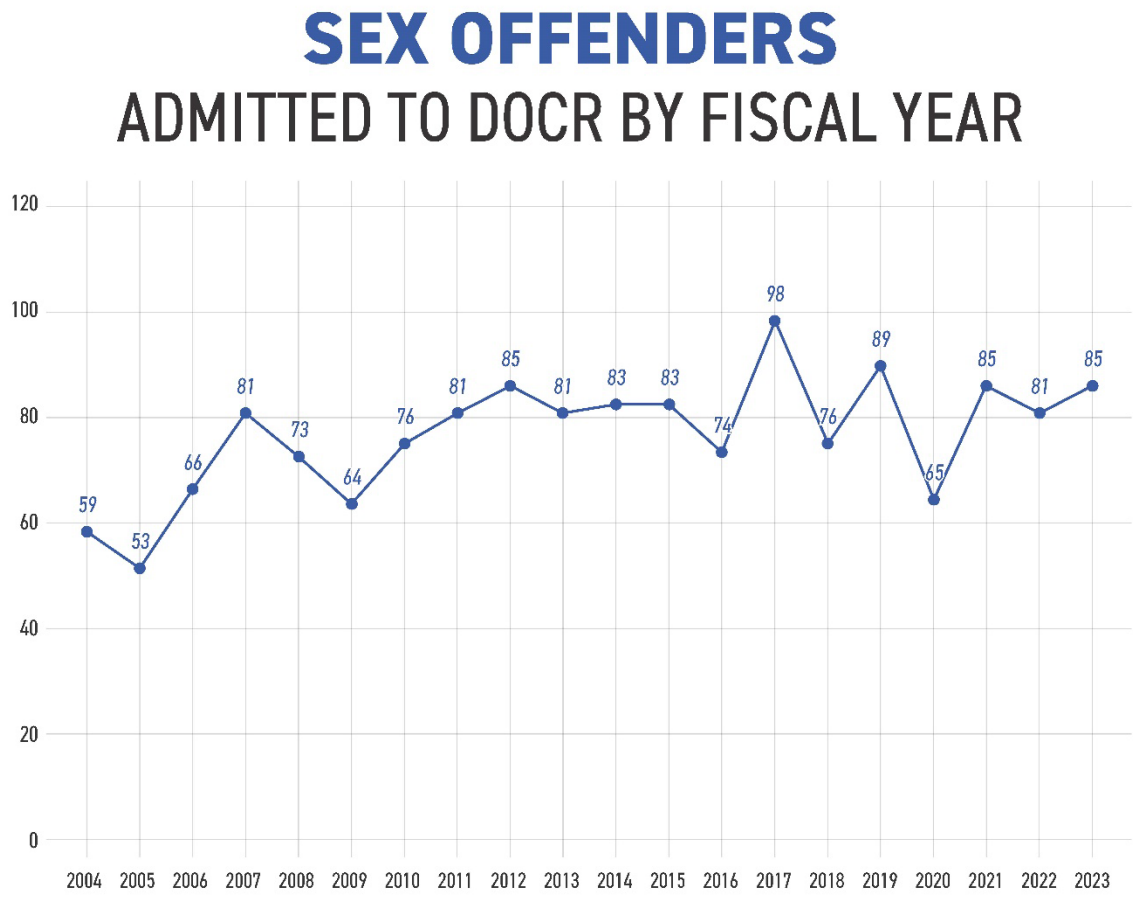
Because of this dramatic increase in violent crime, the number of violent offenders committed to the DOCR has also increased dramatically[12]:



As the chart above shows, there were **more than two-and-a-half times** the number of violent offenders admitted to DOCR custody in fiscal year 2023 than there were in fiscal year 2004. In fiscal year 2004, there were 176 violent offenders admitted to DOCR custody.[13] In fiscal year 2023, there were 479 violent offenders admitted to DOCR custody.[14] That is a **172.2%** increase.

[12] DOCR Fact Sheets, available at: https://www.docr.nd.gov/reports-and-statistics
[13] https://www.docr.nd.gov/sites/www/files/documents/statistics/factsheets/2009%2012%2031%20FACT%20SHEET.pdf
[14] https://www.docr.nd.gov/sites/www/files/documents/statistics/factsheets/2023%2012%2031%20FACT%20SHEET.pdf

At the same time, the number of sex offenders admitted to DOCR custody has also increased[15]:

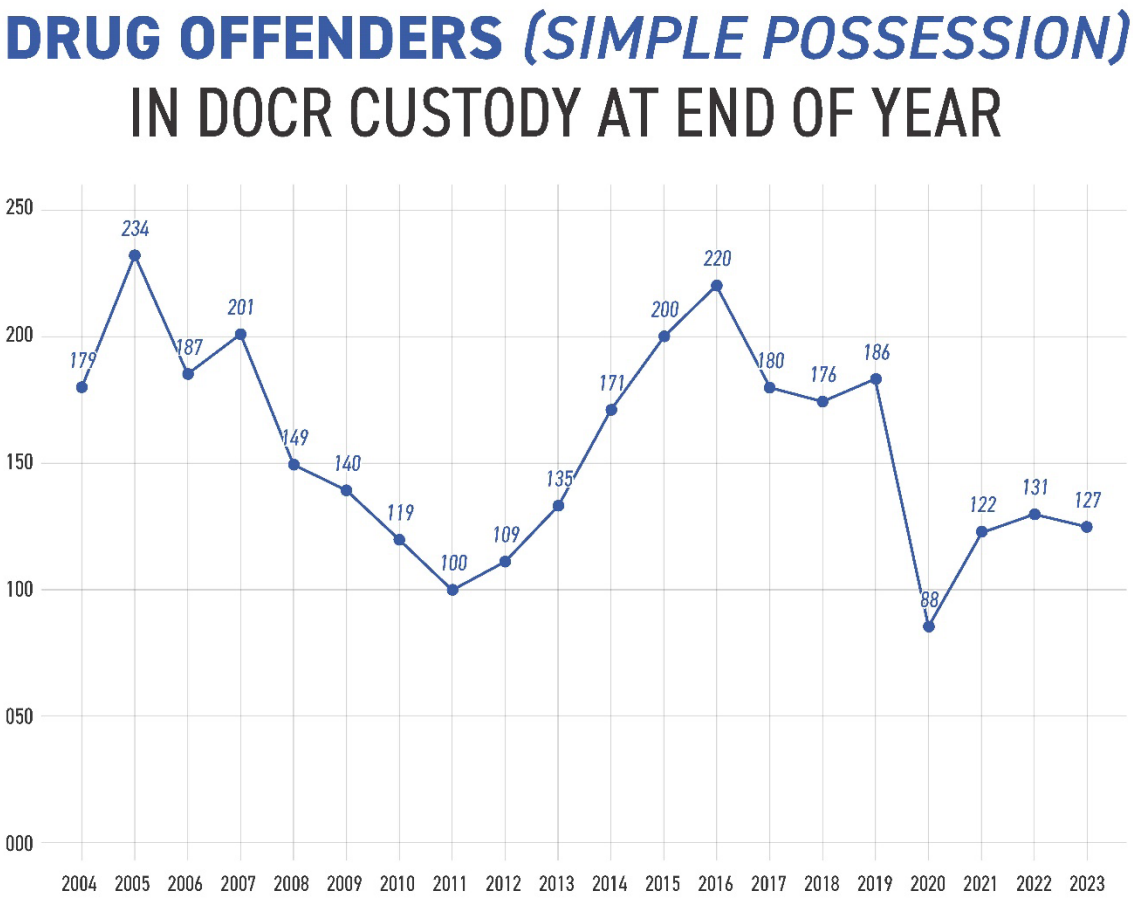


In fiscal year 2004, there were 59 sex offenders admitted to DOCR custody.[16] In fiscal year 2023, there were 86 sex offenders admitted to DOCR custody.[17] That is a **45.8%** increase.

Also based on DOCR data, we know that far fewer people are now being sentenced to prison for drug and alcohol offenses. Between fiscal year 2004 and fiscal year 2023, the number of people admitted to DOCR custody for drug and alcohol offenses increased 19.5%.[18] But since fiscal year 2015, the year of the justice reinvestment initiative, the number of people admitted to DOCR custody for drug and alcohol offenses has decreased 28.1%.[19]

[15] DOCR Fact Sheets, available at: https://www.docr.nd.gov/reports-and-statistics
[16] https://www.docr.nd.gov/sites/www/files/documents/statistics/factsheets/2009%2012%2031%20FACT%20SHEET.pdf
[17] https://www.docr.nd.gov/sites/www/files/documents/statistics/factsheets/2023%2012%2031%20FACT%20SHEET.pdf
[18] Compare https://www.docr.nd.gov/sites/www/files/documents/statistics/factsheets/2009%2012%2031%20FACT%20SHEET.pdf to https://www.docr.nd.gov/sites/www/files/documents/statistics/factsheets/2023%2012%2031%20FACT%20SHEET.pdf
[19] Compare https://www.docr.nd.gov/sites/www/files/documents/statistics/factsheets/2015_FACT_SHEET.pdf to https://www.docr.nd.gov/sites/www/files/documents/statistics/factsheets/2023%2012%2031%20FACT%20SHEET.pdf

Although the DOCR fact sheets do not break down drug offender admissions to DOCR by crime type (drug dealing versus drug possession), the DOCR fact sheets show that the percentage of people serving sentences in DOCR custody for drug possession has *decreased* dramatically[20]:



There were actually fewer people serving DOCR sentences for simple drug possession on December 31, 2023 than there were on December 31, 2004. In fact, the number of people serving prison sentences for simple drug possession decreased **29.1%** from December 31, 2004 to December 31, 2023.[21] Between December 31, 2015, the year of the justice reinvestment initiative, and December 31, 2023, the number of people service prison sentences for simple drug possession decreased **36.5%**.[22]

[20] DOCR Fact Sheets, available at: https://www.docr.nd.gov/reports-and-statistics
[21] Compare https://www.docr.nd.gov/sites/www/files/documents/statistics/factsheets/2009%2012%2031%20FACT%20SHEET.pdf to https://www.docr.nd.gov/sites/www/files/documents/statistics/factsheets/2023%2012%2031%20FACT%20SHEET.pdf
[22] Compare https://www.docr.nd.gov/sites/www/files/documents/statistics/factsheets/2015_FACT_SHEET.pdf to https://www.docr.nd.gov/sites/www/files/documents/statistics/factsheets/2015_FACT_SHEET.pdf

Because North Dakota is incarcerating far fewer people for drug possession than it was twenty years ago, the percentage of DOCR prisoners serving sentences for simple drug possession decreased from 13.5% on December 31, 2004, to only 6.7% on December 31, 2023.[23] As such, on December 31, 2023, only 6.7% of all DOCR inmates were serving a sentence for simple drug possession. This is likely because of the increased focus on steering people toward treatment courts and alternatives to incarceration.

And, there were actually *less* people serving DOCR sentences for drug dealing on December 31, 2023 (252)[24] than there were on December 31, 2004 (254).[25] As a percentage of the total DOCR inmate population, drug dealers made up only 13.3% of that population on December 31, 2023, as opposed to 19.1% of the total population on December 31, 2004.

Based on those numbers, North Dakota incarcerates fewer people for drug dealing now than it did twenty years ago, despite that we are facing the greatest drug threat this country has ever faced – fentanyl.[26] Drug overdose deaths in the United States more than doubled from 2015 to 2022,[27] yet the number of drug dealers in North Dakota prisons decreased 14.3% during that time.

Based on all of this data, two things are clear. First, the increase in prison population is *not* because North Dakota is incarcerating more drug offenders, especially not because it is incarcerating more drug possession defendants. Second, North Dakota judges are sending the right people – violent offenders, sex offenders, and drug dealers – to prison. This bill, SB2128, will ensure that those offenders serve a reasonable portion of their sentences before being released back into our communities.

Those opposed to the truth-in-sentencing portion of this bill may argue that requiring violent offenders, sex offenders, and drug dealers to serve a certain percentage of their sentences discourages them from engaging in programming to earn early release. To see the effects of truth-in-sentencing, we can look to Virginia, a state with one of the lowest recidivism rates in the county. According to a report by the Virginia Criminal Sentencing Commission, the body tasked with administering felony sentencing guidelines used in Virginia, the following results were achieved during the first ten years after Virginia passed its truth-in-sentencing law:

- Violent felons are spending significantly more time in prison
- There are fewer repeat violent offenders
- Prison population growth has slowed
- The overall crime rate has been declining
- The violent crime rate also has been decreasing[28]

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[23] Compare https://www.docr.nd.gov/sites/www/files/documents/statistics/factsheets/2009%2012%2031%20FACT%20SHEET.pdf to https://www.docr.nd.gov/sites/www/files/documents/statistics/factsheets/2023%2012%2031%20FACT%20SHEET.pdf
[24] https://www.docr.nd.gov/sites/www/files/documents/statistics/factsheets/2023%2012%2031%20FACT%20SHEET.pdf
[25] https://www.docr.nd.gov/sites/www/files/documents/statistics/factsheets/2009%2012%2031%20FACT%20SHEET.pdf
[26] https://www.dea.gov/press-releases/2024/05/09/dea-releases-2024-national-drug-threat-assessment#:~:text=Fentanyl%20and%20other%20synthetic%20opioids,and%20most%20urgent%20drug%20threat
[27] https://nida.nih.gov/sites/default/files/images/fig1-2024.jpg
[28] http://www.vcsc.virginia.gov/ReptCdPDFfinal.pdf

Virginia passed its 85% truth-in-sentencing law in 1995 and saw the above benefits after only ten years. Almost thirty years later, on September 24, 2024, Virginia Department of Corrections announced that it had, for the eleventh year in a row, either the lowest or second lowest recidivism rate in the nation. (19%).[29] According to testimony submitted to the Senate Workforce Development Committee last session, North Dakota's recidivism rate is approximately 40%.[30]

Virginia recently amended its truth-in-sentencing laws to allow *some* inmates to earn enhanced sentence credits to earn release after serving 67% of their sentence rather than having to serve 85%.[31] According to the Office of the Attorney General for the Commonwealth of Virginia, the result has been alarming:

"In FY2023, 9,638 inmates were released under the EESC program. **Of the 9,638 inmates thus released, 2,725 have been re-arrested, for a re-arrest rate of 28.27%.** Re-arrest offenses in FY2023 for EESC offenders include 3 capital murders, 8 first-degree murders, 4 second-degree murders, 48 abductions, 28 rapes and other felony sexual assaults, 38 robberies, 167 felony assaults, and 88 weapons offenses. In contrast, **of the 2,252 inmates released under the standard earned sentence credit system, only 459 have been rearrested, resulting in a re-arrest rate of 20.38%.** More specifically, according to VDOC, "The rates of releases re-arrested within three months were significantly higher for those with [enhanced earned sentence credit] status (672, 7.0%) than those with the old [earned sentence credit] status (123, 5.5%)."[32]

As such, according to the Office of the Attorney General for the Commonwealth of Virginia and the Virginia Department of Corrections, re-arrest rates are actually *higher* for offenders released after serving 67% of their sentence as opposed to those serving 85% of their sentence.

And as for the argument that longer sentences do not reduce recidivism, the data is not nearly as one-sided as some people argue. In fact, the United States Sentencing Commission, the body that "establishes and amends [federal] sentencing guidelines for the judicial branch and assists the other branches in developing effective and efficient crime policy"[33] – has consistently found that longer sentences actually *reduce* recidivism. According to a 2023 study by that commission, sentences exceeding five years in length reduce recidivism (the federal system is a "truth-in-sentencing system):

- In both studies, the odds of recidivism were lower for federal offenders sentenced to more than 60 months incarceration compared to a matched group of offenders receiving shorter sentences.
- The odds of recidivism were approximately 29 percent lower for federal offenders sentenced to more than 120 months incarceration compared to a matched group of federal offenders receiving shorter sentences.

[29] https://vadoc.virginia.gov/news-press-releases/2024/vadoc-announces-lowest-recidivism-rate-in-more-than-20-years/
[30] https://ndlegis.gov/assembly/68-2023/testimony/SWKF-3026-20230323-26348-F-HANSON_KARLA.pdf
[31] https://files.constantcontact.com/d3e83e11901/3e4cd65a-5ff3-4879-bfb8-dcd190aafb06.pdf?rdr=true
[32] https://files.constantcontact.com/d3e83e11901/3e4cd65a-5ff3-4879-bfb8-dcd190aafb06.pdf?rdr=true; https://www.oag.state.va.us/media-center/news-releases/2757-june-9-2024-attorney-general-miyares-addresses-data-on-enhanced-earned-sentence-credits
[33] https://www.ussc.gov/

- The odds of recidivism were approximately 18 percent lower for offenders sentenced to more than 60 months up to 120 months incarceration compared to a matched group of federal offenders receiving shorter sentences.[34]

As such, bare assertions that "the data" shows that truth-in-sentencing does not increase public safety should be carefully scrutinized. Data collected from federal offenders – often the most serious drug dealers or sex offenders – shows that truth in sentencing plays an important role in reducing recidivism. And data from Virginia – a state with one of the lowest recidivism rates in the country – reinforces that conclusion.

The opposition will argue that truth-in-sentencing increases the prison population. That may happen. But the people in prison will be the violent offenders, drug dealers, sex offenders, and other offenders sentenced to prison by North Dakota judges. In written testimony opposing SB 2107 in the 2023 session, the North Dakota Association of Criminal Defense Lawyers noted that "our Legislature has historically resisted the temptation to insert a host of minimum mandatory into our law – instead relying on our exceptionally well qualified judges to fashion appropriate sentences under existing law."[35] The bill before the Committee now – SB 2128 – reinforces that trust in North Dakota's judges by requiring violent offenders, sex offenders, and drug dealers sentenced by those judges to serve 50% of their sentences before being released back into our communities.

I strongly urge a **DO PASS**.

Thank you for your consideration.

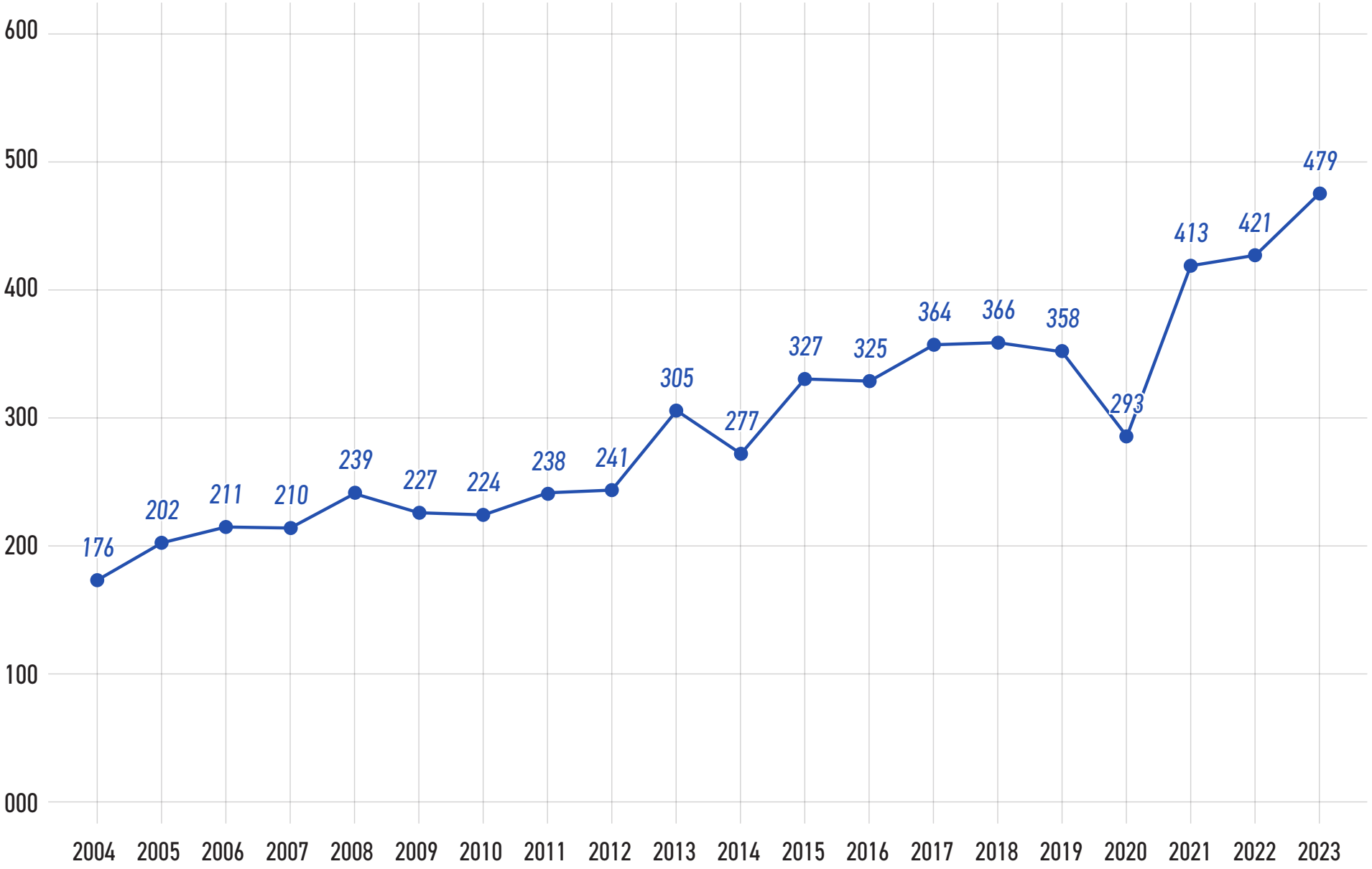
[34] https://www.ussc.gov/research/research-reports/length-incarceration-and-recidivism-2022
[35] https://ndlegis.gov/assembly/68-2023/testimony/HJUD-2107-20230314-24659-A-WALSTAD_JESSE_H.pdf

Offenders Admitted to DOCR Custody by Crime Type for fiscal years 2004 – 2023

Source: DOCR Fact Sheets, available at https://www.docr.nd.gov/reports-and-statistics

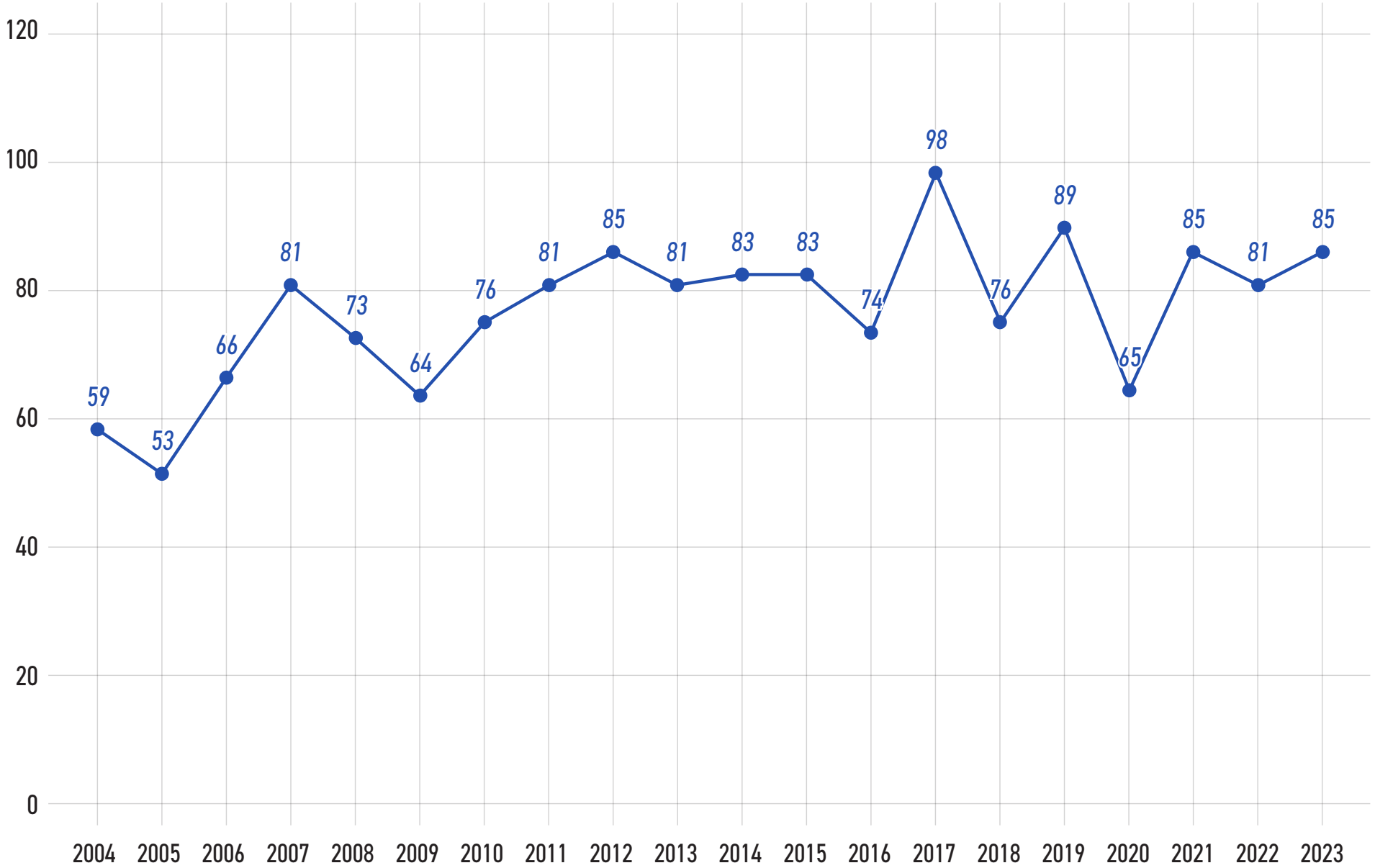
VIOLENT OFFENDERS

ADMITTED TO DOCR BY FISCAL YEAR



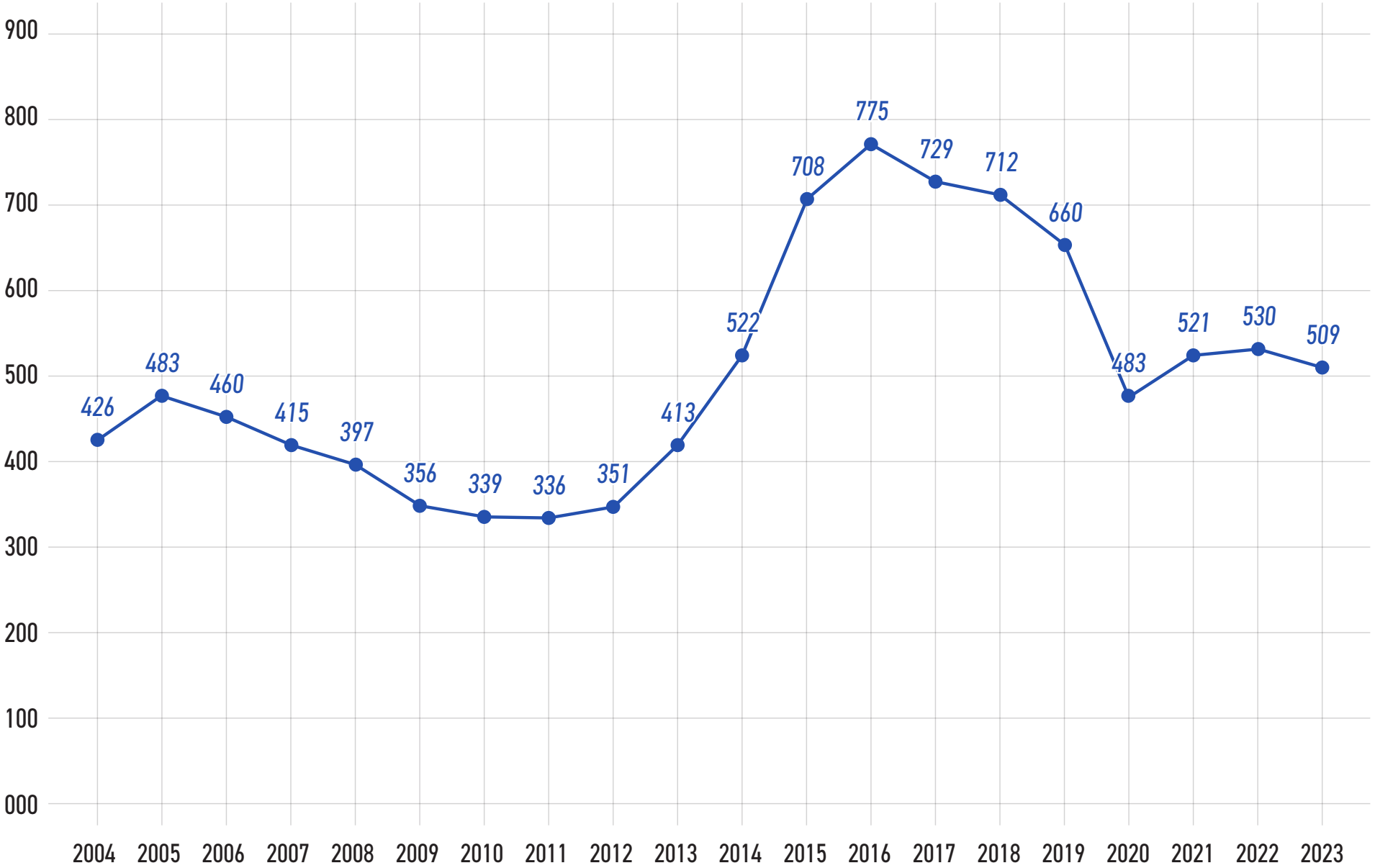
SEX OFFENDERS

ADMITTED TO DOCR BY FISCAL YEAR



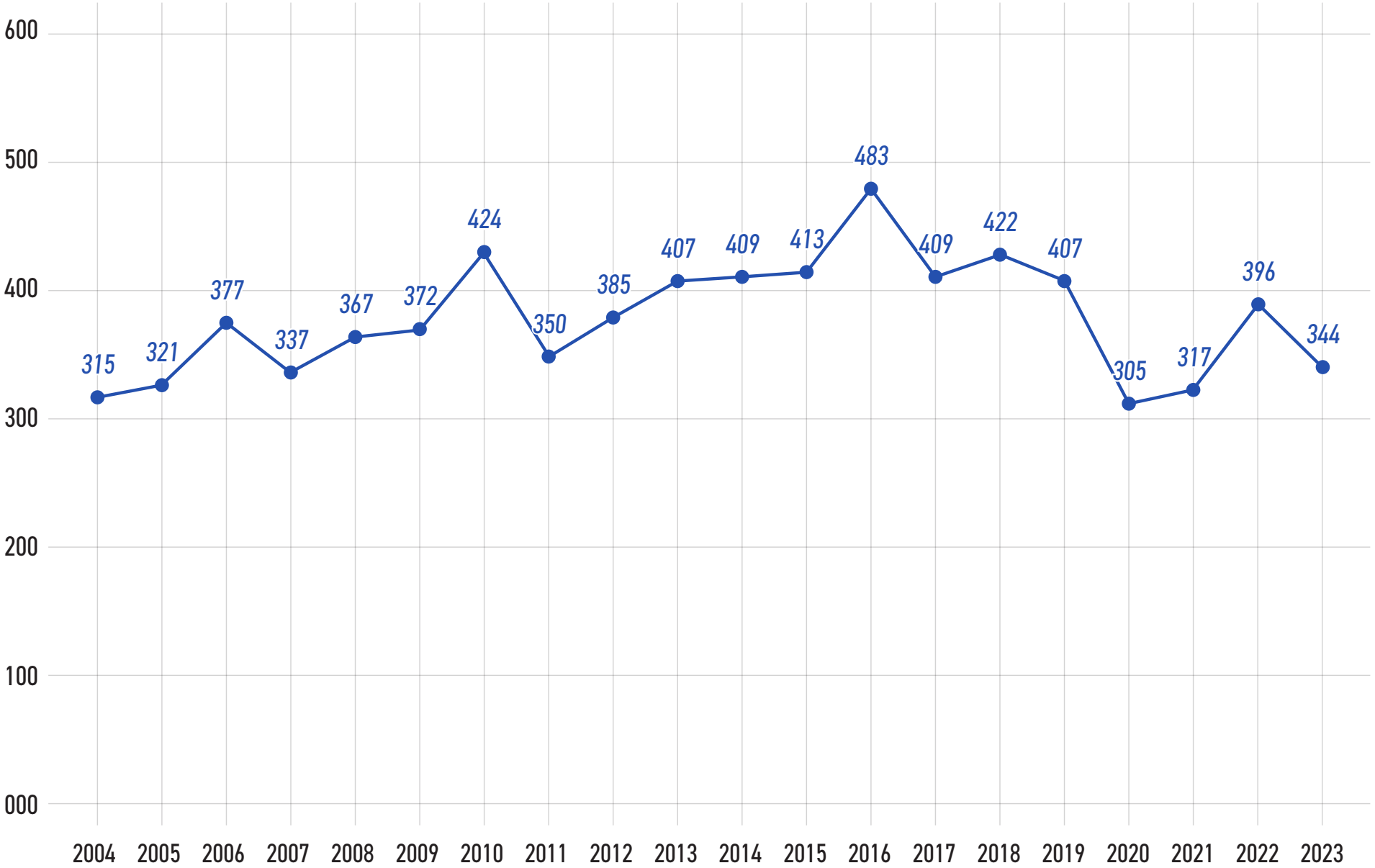
DRUG & ALCOHOL OFFENDERS

ADMITTED TO DOCR BY FISCAL YEAR



PROPERTY, STATUS, & OTHER OFFENDERS

ADMITTED TO DOCR BY FISCAL YEAR

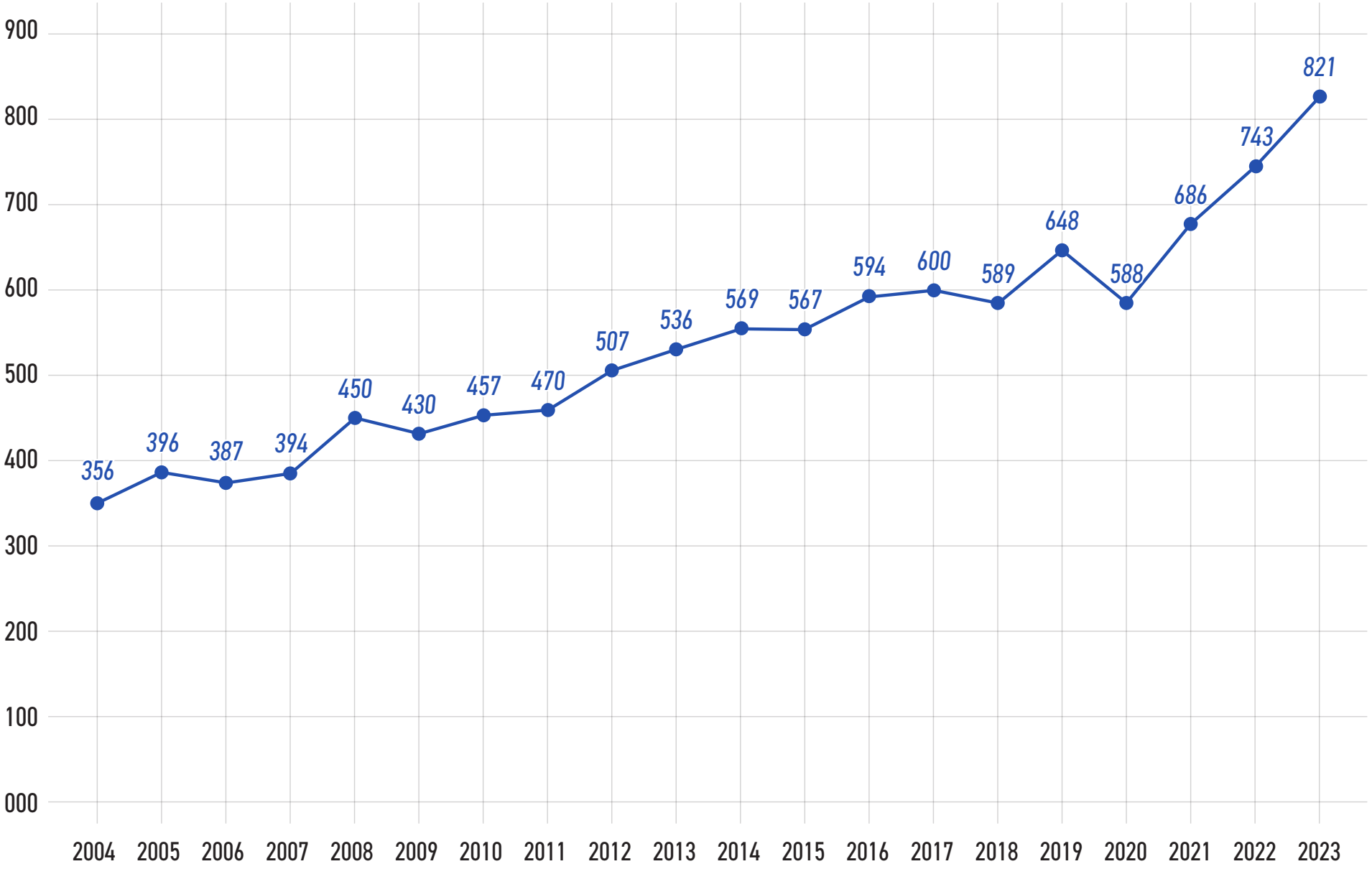


Offenders in DOCR Custody at End of Year

2004 – 2023

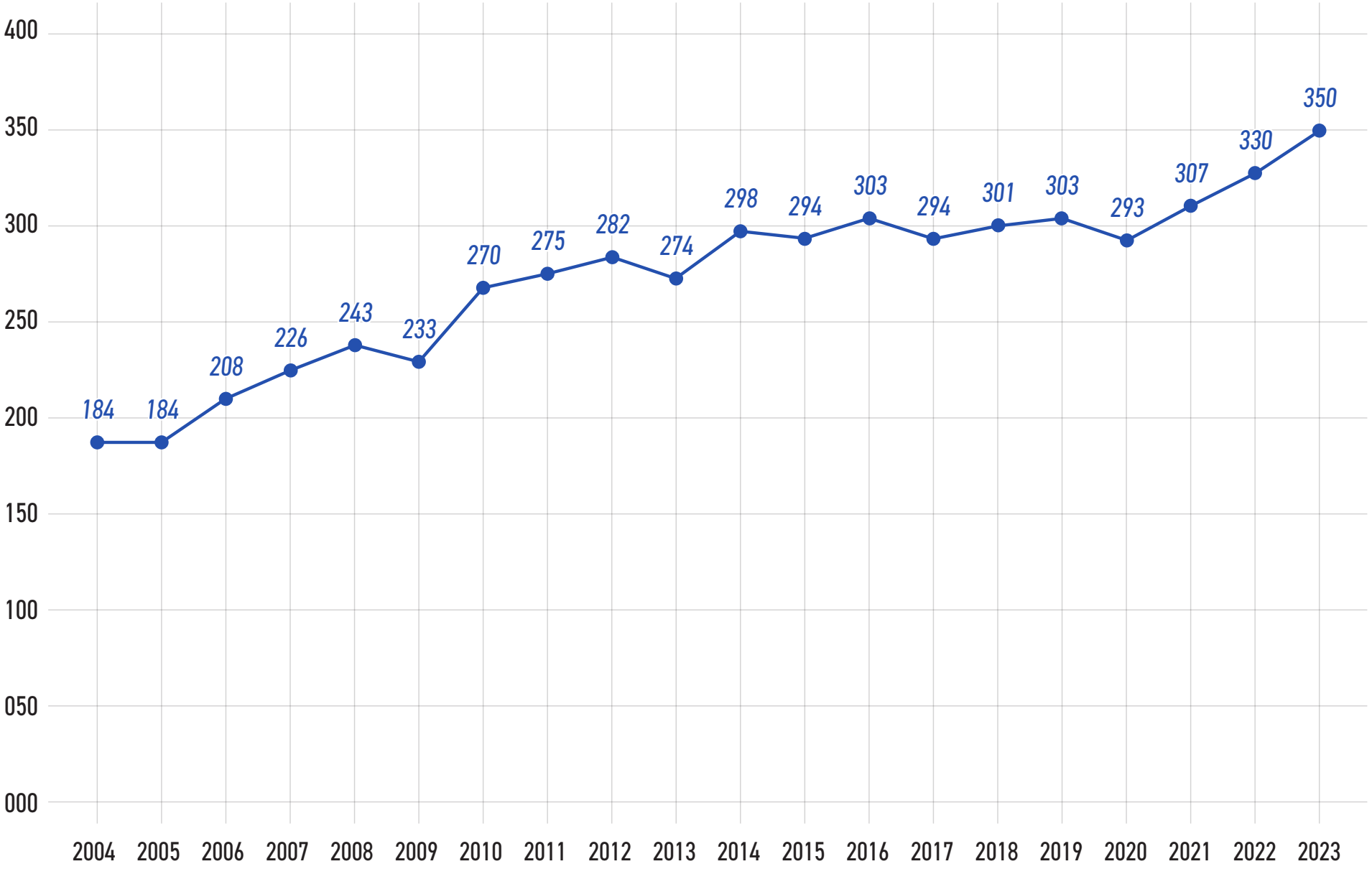
Source: DOCR Fact Sheets, available at https://www.docr.nd.gov/reports-and-statistics

VIOLENT OFFENDERS
IN DOCR CUSTODY AT END OF YEAR



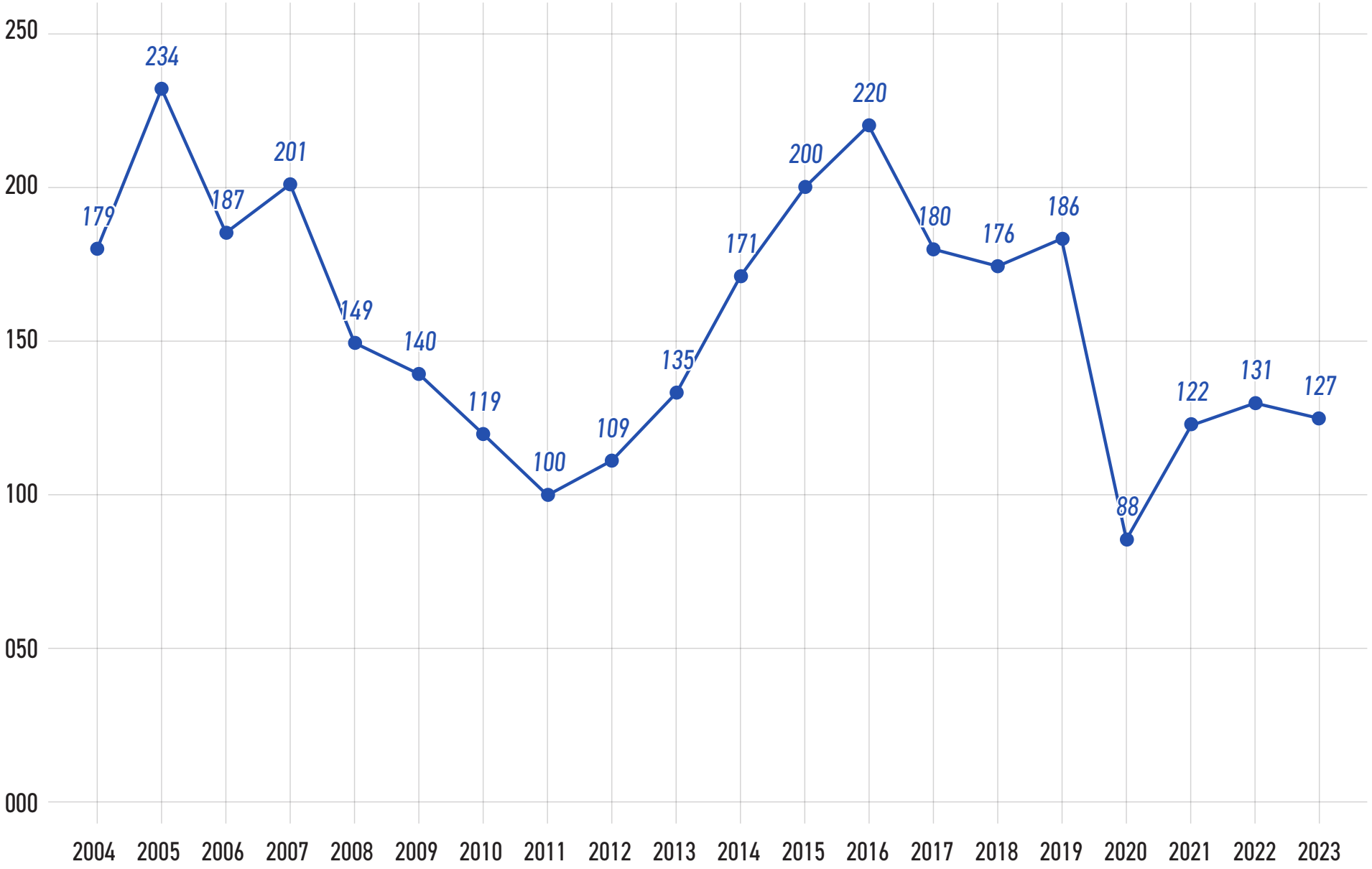
SEX OFFENDERS

IN DOCR CUSTODY AT END OF YEAR



DRUG OFFENDERS *(SIMPLE POSSESSION)*

IN DOCR CUSTODY AT END OF YEAR



DOCR FACT SHEETS

2009
DOCR Adult Services Inmate Population Information
(DOCR fact sheet)
available at:
https://www.docr.nd.gov/sites/www/files/documents/statistics/factsheets/2009%2012%2031%20FACT%20SHEET.pdf

DOCR Adult Services Inmate Population Information

Inmate Population on December 31, 2009 (Male and Female)

TOTAL COUNT: 1,504

NDSP 523, JRCC 414, MRCC 144, DWCRC 124, Non Traditional Beds 299

Non-Traditional Bed Breakdown:

Correctional Centers (Jails) 47, Interstate Compact 21, TRCC 81 BTC 72, MTP 27, FTP 23, NCCRC 26 YCC 2

Average Inmate Population, Arrivals, Releases and One Day Counts

	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Average Daily Population	1,252.76	1,335.51	1,402.04	1,408.49	1,436.78	1,451.19
Admissions	976	1,059	1,114	1,043	1,076	1,019
Releases	908	984	1,115	1,006	1,046	1,028
Inmate Count on December 31	1,329	1,404	1,403	1,440	1,470	1,504

Inmate Count on December 31 (Crime Type)

Offense	12/31/2004	12/31/2005	12/31/2006	12/31/2007	12/31/2008	12/31/2009
Violent Offenders (Excluding Sexual)	356	396	387	394	450	430
Sex Offenders	184	184	208	226	243	233
Property, Status and Other	323	291	333	359	384	443
Drug Offenders (Includes Alcohol)	466	533	475	461	393	398
Drug - Deliver, Manufacture or Intent	254	267	259	238	218	235
Drug - Simple Possession	179	234	187	201	149	140
Drug - Alcohol	33	32	29	22	26	23

Inmate Count on December 31 (Minimum Mandatory)

Offense	12/31/2004	12/31/2005	12/31/2006	12/31/2007	12/31/2008	12/31/2009
DUI/APC	32	12	13	4	19	15
Driving Under Suspension	1	0	0	2	2	0
Drug Offenses (Not Alcohol)	44	50	47	28	22	28
Reckless Endangerment	3	3	2	1	2	0
Assault	7	8	8	8	8	9
Burglary With Weapon	1	2	2	1	0	0
Felonious Restraint	1	1	0	0	0	0
Kidnapping	1	2	2	1	1	1
Sex Offense	4	5	3	2	3	5
Terrorizing	4	5	4	1	8	7
Robbery	20	21	12	8	12	9
Negligent Homicide	2	1	0	0	0	0
Manslaughter	4	4	3	1	1	1
Murder *	11	10	14	12	12	11
Felon in Possession of a Firearm	0	0	0	0	0	1
Offender Registration Violation	0	0	0	1	2	2
Total	135	124	110	70	92	89

* There are 50 males and 2 females with a life sentence (not all are minimum mandatory sentences)

5.92% of the inmate population on December 31, 2009 had a minimum mandatory sentence.

Inmate Count on December 31 (85% Truth-In-Sentencing)

	12/31/2004	12/31/2005	12/31/2006	12/31/2007	12/31/2008	12/31/2009
Number of Inmates Having 85% TIS	166	169	189	187	234	233
Average Sentence In Months	112	95	94	91	91	97

Average Sentence Does Not Include Inmates With Life Sentences

DOCR Prisons Division Inmate Population Information (Male and Female)						
Fiscal Year Admissions Of 85% Truth-In-Sentencing Inmates						
	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Number of Inmates	54	65	49	70	77	80
Average Sentence In Months	39.44	50.83	47.29	62.21	49.66	45.86
Average Sentence Does Not Include Inmates With Life Sentences						
Number Of Fiscal Year Admissions by Crime Type						
	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
All Inmates	976	1,059	1,114	1,043	1,076	1,019
Violent (Non-Sexual)	176	202	211	210	239	227
Sex Offenders	59	53	66	81	73	64
Drug & Alcohol Offenders	426	483	460	415	397	356
Property, Status & Other	315	321	377	337	367	372
Average Sentence Imposed By Court (Fiscal Year, Crime Type, In Months, Excludes Life Sentences)						
	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
All Inmates	25.68	26.37	28.52	31.42	28.40	29.90
Violent (Non-Sexual)	25.32	31.96	31.73	40.04	29.46	32.30
Sex Offenders	60.02	46.75	45.97	66.20	61.74	62.97
Drug & Alcohol Offenders	25.29	25.44	27.60	28.06	27.63	29.89
Property, Status and Other	19.96	20.94	24.85	22.00	21.93	22.87
Number Of Fiscal Year Admissions By Length Of Court Imposed Sentence						
	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Less Than One Year	89	79	61	58	53	45
One Year to Less Than Five Years	797	892	944	871	919	865
Five Years to Less Than Ten years	65	70	89	79	80	79
Ten Years to Less Than Twenty Years	19	11	12	21	15	17
Twenty Years or More	6	7	8	14	9	13

NOTE: The average sentence is that sentence imposed by the court. It does not take into account such things as good time, credit for time served, parole relief or any other method of shortening the sentence except Pardon Advisory Board recommendations adopted by the Governor (which can actually change the sentence). The average sentence is reported in months to two decimal points.

Data is based on the "controlling sentence" for offenders who are admitted for multiple crimes.

NDSP = North Dakota State Penitentiary. **JRCC** = James River Correctional Center. **MRCC** = Missouri River Correctional Center.

TRCC = Tompkins Rehabilitation Correctional Center. **BTC** = Bismarck Transition Center. **MTP** = Male Transition Program. **FTP** = Female Transition Program. **DWCRC** = Dakota Women's Correctional Rehabilitation Center (New England). **HACTC** = Heart of America Correctional and Treatment Center (Rugby). **YCC** = Youth Correctional Center.

Please note that that definitions for much of this report have been consistent for several years. However, the period for this report is now a fiscal year instead of a calendar year. ASCA PBMS information may be available in separate reports and uses definitions from the Association of State Correctional Administrators.

DOCR Adult Services Inmate Population Information

Inmate Population on December 31, 2009 (Female Only)

TOTAL COUNT: 174

NDSP 0, JRCC 0, MRCC 0, DWCRC 124, Non Traditional Beds 50

Non-Traditional Bed Breakdown:

Correctional Centers (Jails) 0, Interstate Compact 0, TRCC 27, BTC 0, MTP 0, FTP 23, NCCRC 0, YCC 0

Average Inmate Population, Arrivals, Releases and One Day Counts

	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Average Daily Population	114.30	135.22	156.71	157.52	149.05	157.58
Admissions	129	169	208	161	169	157
Releases	112	143	198	179	156	150
Inmate Count on December 31	129	155	165	147	160	174

Inmate Count on December 31 (Crime Type)

Offense	12/31/2004	12/31/2005	12/31/2006	12/31/2007	12/31/2008	12/31/2009
Violent Offenders (Excluding Sexual)	23	29	32	27	37	45
Sex Offenders	1	0	2	3	1	1
Property, Status and Other	40	37	57	57	64	64
Drug Offenders (Includes Alcohol)	65	89	74	60	58	64
Drug - Deliver, Manufacture or Intent	30	32	33	32	30	33
Drug - Simple Possession	33	57	39	27	27	29
Drug - Alcohol	2	0	2	1	1	2

Inmate Count on December 31 (Minimum Mandatory)

Offense	12/31/2004	12/31/2005	12/31/2006	12/31/2007	12/31/2008	12/31/2009
DUI/APC	2	0	1	0	1	1
Driving Under Suspension	0	0	0	0	1	0
Drug Offenses (Not Alcohol)	7	4	3	2	3	1
Reckless Endangerment / Reckless Driving	0	1	1	0	0	0
Assault	0	0	0	2	0	0
Burglary With Weapon	0	0	0	0	0	0
Felonious Restraint	0	0	0	0	0	0
Kidnapping	0	0	0	0	0	0
Sex Offense	0	0	0	0	0	0
Terrorizing	0	0	0	0	0	0
Robbery	3	2	2	0	0	0
Negligent Homicide	0	0	0	0	0	0
Manslaughter	1	1	1	1	1	1
Murder *	0	0	0	0	0	0
Felon in Possession of a Firearm	0	0	0	0	0	0
Offender Registration Violation	0	0	0	0	0	0
Total	13	8	8	5	6	3

* There are 2 females with a life sentence (not all murder were minimum mandatory sentences)

1.7% of the female inmate population on December 31, 2009 had a minimum mandatory sentence.

Inmate Count on December 31 (85% Truth-In-Sentencing)

	12/31/2004	12/31/2005	12/31/2006	12/31/2007	12/31/2008	12/31/2009
Number of Inmates Having 85% TIS	10	9	12	9	15	12
Average Sentence In Months	122	129	106	136	91	108

Average Sentence Does Not Include Inmates With Life Sentences

DOCR Prisons Division Inmate Population Information (Female Only)						
Fiscal Year Admissions Of 85% Truth-In-Sentencing Inmates						
	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Number of Inmates	3	3	7	2	4	7
Average Sentence In Months	34.00	16.00	62.57	132.00	24.00	21.71
Average Sentence Does Not Include Inmates With Life Sentences						
Number Of Fiscal Year Admissions by Crime Type						
	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
All Inmates	129	169	208	161	169	157
Violent (Non-Sexual)	16	16	30	22	28	37
Sex Offenders	1	1	1	1	1	0
Drug & Alcohol Offenders	74	93	109	81	64	62
Property, Status & Other	38	59	68	57	76	58
Average Sentence Imposed By Court (Fiscal Year, Crime Type, In Months, Excludes Life Sentences)						
	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
All Inmates	19.57	20.49	24.71	26.37	22.81	24.78
Violent (Non-Sexual)	20.62	20.19	28.17	32.28	26.48	22.43
Sex Offenders	15.00	24.00	36.00	240.00	12.00	0.00
Drug & Alcohol Offenders	19.40	21.06	24.86	25.56	22.90	23.67
Property, Status and Other	19.57	19.61	22.77	21.50	21.57	25.58
Number Of Fiscal Year Admissions By Length Of Court Imposed Sentence						
	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Less Than One Year	15	21	13	10	4	6
One Year to Less Than Five Years	108	142	183	140	156	139
Five Years to Less Than Ten years	6	6	11	8	8	11
Ten Years to Less Than Twenty Years	0	0	0	1	0	1
Twenty Years or More	0	0	1	2	1	0

NOTE: The average sentence is that sentence imposed by the court. It does not take into account such things as good time, credit for time served, parole relief or any other method of shortening the sentence except Pardon Advisory Board recommendations adopted by the Governor (which can actually change the sentence). The average sentence is reported in months to two decimal points.

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DOCR Adult Services Inmate Population Information

Inmate Population on December 31, 2009 (Male Only)

TOTAL COUNT: 1,330

NDSP 523, JRCC 414, MRCC 144, DWCRC 0, Non Traditional Beds 249

Non-Traditional Bed Breakdown:

Correctional Centers (Jails) 47, Interstate Compact 21, TRCC 54, BTC 72, MTP 27, FTP 0, HACTC 26, YCC 2

Average Inmate Population, Arrivals, Releases and One Day Counts

	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Average Daily Population	1,138.46	1,200.29	1,245.33	1,250.97	1,287.73	1,293.62
Admissions	847	890	906	882	907	862
Releases	796	841	917	827	890	878
Inmate Count on December 31	1,200	1,249	1,238	1,293	1,310	1,330

Inmate Count on December 31 (Crime Type)

Offense	12/31/2004	12/31/2005	12/31/2006	12/31/2007	12/31/2008	12/31/2009
Violent Offenders (Excluding Sexual)	333	367	355	367	413	385
Sex Offenders	183	184	206	223	242	232
Property, Status and Other	283	254	276	302	320	379
Drug Offenders (Includes Alcohol)	401	444	401	401	335	334
Drug - Deliver, Manufacture or Intent	224	235	226	206	188	202
Drug - Simple Possession	146	177	148	174	122	111
Drug - Alcohol	31	32	27	21	25	21

Inmate Count on December 31 (Minimum Mandatory)

Offense	12/31/2004	12/31/2005	12/31/2006	12/31/2007	12/31/2008	12/31/2009
DUI/APC	30	12	12	4	18	14
Driving Under Suspension	1	0	0	2	1	0
Drug Offenses (Not Alcohol)	37	46	44	26	19	27
Reckless Endangerment / Reckless Driving	3	2	1	1	2	0
Assault	7	8	8	6	8	9
Burglary With Weapon	1	2	2	1	0	0
Felonious Restraint	1	1	0	0	0	0
Kidnapping	1	2	2	1	1	1
Sex Offense	4	5	3	2	3	5
Terrorizing	4	5	4	1	8	7
Robbery	17	19	10	8	12	9
Negligent Homicide	2	1	0	0	0	0
Manslaughter	3	3	2	0	0	0
Murder *	11	10	14	12	12	11
Felon in Possession of a Firearm	0	0	0	0	0	1
Offender Registration Violation	0	0	0	1	2	2
Total	122	116	102	65	86	86

* There are 50 males with a life sentence (not all are minimum mandatory sentences)

6.5% of the male inmate population on December 31, 2009 had a minimum mandatory sentence.

Inmate Count on December 31 (85% Truth-In-Sentencing)

	12/31/2004	12/31/2005	12/31/2006	12/31/2007	12/31/2008	12/31/2009
Number of Inmates Having 85% TIS	156	160	177	178	219	221
Average Sentence In Months	111	93	93	89	91	96

Average Sentence Does Not Include Inmates With Life Sentences

DOCR Prisons Division Inmate Population Information (Male Only)						
Fiscal Year Admissions Of 85% Truth-In-Sentencing Inmates						
	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Number of Inmates	51	62	42	68	73	73
Average Sentence In Months	39.78	52.54	44.74	60.06	51.08	48.21
Average Sentence Does Not Include Inmates With Life Sentences						
Number Of Fiscal Year Admissions by Crime Type						
	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
All Inmates	847	890	906	882	907	862
Violent (Non-Sexual)	160	186	181	188	211	190
Sex Offenders	58	52	65	80	72	64
Drug & Alcohol Offenders	352	390	351	334	333	294
Property, Status & Other	277	262	309	280	291	314
Average Sentence Imposed By Court (Fiscal Year, Crime Type, In Months, Excludes Life Sentences)						
	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
All Inmates	26.58	27.49	29.40	32.34	29.51	30.84
Violent (Non-Sexual)	25.64	32.98	32.32	40.96	30.13	34.28
Sex Offenders	60.80	47.19	46.12	64.00	62.43	62.97
Drug & Alcohol Offenders	26.53	26.48	28.45	28.66	28.54	30.82
Property, Status and Other	20.02	21.24	25.30	22.10	22.03	22.37
Number Of Fiscal Year Admissions By Length Of Court Imposed Sentence						
	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Less Than One Year	74	58	48	48	49	39
One Year to Less Than Five Years	689	750	761	731	763	726
Five Years to Less Than Ten years	59	64	78	71	72	68
Ten Years to Less Than Twenty Years	19	11	12	20	15	16
Twenty Years or More	6	7	7	12	8	13

NOTE: The average sentence is that sentence imposed by the court. It does not take into account such things as good time, credit for time served, parole relief or any other method of shortening the sentence except Pardon Advisory Board recommendations adopted by the Governor (which can actually change the sentence). The average sentence is reported in months to two decimal points.

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2015
DOCR Adult Services Inmate Population Information
(DOCR fact sheet)
available at:
https://www.docr.nd.gov/sites/www/files/documents/statistics/factsheets/2015_FACT_SHEET.pdf

DOCR Adult Services Inmate Population Information

Inmate Population on December 31, 2015 (Male and Female)

TOTAL COUNT: 1795

NDSP **756**, JRCC **439**, MRCC **150**, DWCRC **123**, Non Traditional Beds **327**

Non-Traditional Bed Breakdown:

Correctional Centers (Jails) **37**, Interstate Compact **23**, TRCC **97**, BTC **91**, GFC **11**, MTPFAR **33**, MTPMDN **15**, FTPFAR **4**, FTPMDN **7**, LRRP **9**

Year	2010	2011	2012	2013	2014	2015
Inmate Count on December 31	1505	1440	1536	1576	1718	1795

Inmate Count on December 31 (Crime Type)

Offense	2010	2011	2012	2013	2014	2015
Violent Offenders (Excluding Sexual)	457	470	507	536	569	567
Sex Offenders	270	275	282	274	298	294
Property and Other Public Order Offenders	401	336	354	351	349	386
Drug & Alcohol Offenders	377	359	393	415	502	548
Drug - Deliver, Manufacture or Intent	228	234	256	247	258	294
Drug - Possession Only	119	100	109	136	171	200
Alcohol - DUI, APC	30	25	28	32	73	55

Inmate Count on December 31 (Minimum Mandatory)

Offense	2010	2011	2012	2013	2014	2015
Breaking Into a Motor Vehicle	0	0	0	0	1	1
DUI/Actual Physical Control	22	21	24	10	2	0
Driving Under Suspension	1	0	0	0	0	0
Drug Offenses (Not Alcohol)	31	35	37	31	26	22
Reckless Endangerment	2	2	0	0	3	1
Assault	11	15	11	9	5	3
Burglary With Weapon	0	0	0	0	0	1
Felonious Restraint	0	0	0	0	0	0
Kidnapping	1	1	1	1	0	0
Sex Offense	8	9	8	10	11	9
Terrorizing	5	8	10	14	6	1
Robbery	7	6	5	9	11	11
Negligent Homicide	2	2	1	1	1	1
Manslaughter	1	1	0	0	0	0
Murder *	11	13	14	14	16	17
Felon in Possession of a Firearm	0	1	0	0	0	1
Offender Registration Violation	3	3	3	0	0	0
Total	105	117	114	99	82	68

* There are **76** males and **2** females with a life sentence (not all are minimum mandatory sentences)

3.79% of the inmate population on December 31, 2015 had a minimum mandatory sentence.

Inmate Count on December 31 (85% Truth-In-Sentencing)

	2010	2011	2012	2013	2014	2015
Number of Inmates Having 85% TIS	265	274	280	308	318	304
Average Sentence In Months	96	99	111	101	100	121

Average Sentence Does Not Include Inmates With Life Sentences

DOCR Adult Services Inmate Population Information (Male and Female)

Average Inmate Population, Admissions, Releases by Fiscal Year

	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY2015
Average Daily Population	1478.29	1477.26	1459.68	1528.65	1567.87	1696.26

Admissions	1063	1005	1062	1206	1290	1531
Releases	1003	1036	1049	1141	1229	1389

Fiscal Year Admissions Of 85% Truth-In-Sentencing Inmates						
	FY 2010	FY 2011	FY 2012	FY 2013	FY2014	FY2015
Number of Inmates	85	96	85	112	101	112
Average Sentence In Months	45.31	43.59	55.32	39.25	51.62	46.09
Average Sentence Does Not Include Inmates With Life Sentences						

Number Of Fiscal Year Admissions by Crime Type						
	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY2015
All Inmates	1063	1005	1062	1206	1290	1531
Violent Offenders (Non-Sexual)	224	238	241	305	277	327
Sex Offenders	76	81	85	81	83	83
Drug & Alcohol Offenders	339	336	351	413	522	708
Property and Other Public Order Offenders	424	350	385	407	408	413

Average Sentence Imposed By Court (Fiscal Year, Crime Type, In Months, Excludes Life Sentences)						
	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY2015
All Inmates	31.29	33.55	31.74	31.26	34.31	32.74
Violent (Non-Sexual)	32.84	42.34	34.73	29.45	43.56	35.04
Sex Offenders	71.09	67.91	64.08	81.88	75.29	72.60
Drug & Alcohol Offenders	31.20	31.30	31.09	28.96	29.68	29.35
Property and Other Public Order Offenders	23.35	21.93	23.48	25.06	25.70	28.15

Number Of Fiscal Year Admissions By Length Of Court Imposed Sentence						
	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY2015
Less Than One Year	56	50	57	39	23	33
One Year to Less Than Five Years	892	826	892	1038	1114	1294
Five Years to Less Than Ten years	80	91	78	93	104	144
Ten Years to Less Than Twenty Years	22	23	23	16	27	35
Twenty Years or More	13	15	12	20	22	25

NOTE: The average sentence is that sentence imposed by the court. It does not take into account such things as good time, credit for time served, parole relief or any other method of shortening the sentence except Pardon Advisory Board recommendations adopted by the Governor (which can actually change the sentence). The average sentence is reported in months to two decimal points.

Data is based on the "controlling sentence" for offenders who are admitted for multiple crimes. Controlling sentence is the longest sentence ordered by the court that has not expired.

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DOCR Adult Services Inmate Population Information

Inmate Population on December 31, 2015 (Female Only)

TOTAL COUNT: 208

NDSP **0**, JRCC **0**, MRCC **0**, DWCRC **123**, Non Traditional Beds **85**

Non-Traditional Bed Breakdown:

Correctional Centers (Jails) **2**, TRCC **29** BTC **38**, FTPFAR **4**, FTPMDN **7**, LRRP **5**

Year	2010	2011	2012	2013	2014	2015
Inmate Count on December 31	179	148	171	157	204	208

Inmate Count on December 31 (Crime Type)

Offense	2010	2011	2012	2013	2014	2015
Violent Offenders (Excluding Sexual)	51	47	48	42	53	54
Sex Offenders	2	4	5	6	8	8
Property and Other Public Order Offenders	69	41	56	43	41	51
Drug & Alcohol Offenders	57	56	62	66	102	95
Drug - Deliver, Manufacture or Intent	20	32	34	37	44	46
Drug - Possession Only	33	23	25	27	51	46
Alcohol - DUI, APC	4	1	3	2	7	3

Inmate Count on December 31 (Minimum Mandatory)

Offense	2010	2011	2012	2013	2014	2015
Breaking Into a Motor Vehicle	0	0	0	0	0	0
DUI/Actual Physical Control	2	1	3	1	1	0
Driving Under Suspension	0	0	0	0	0	0
Drug Offenses (Not Alcohol)	1	4	5	6	5	3
Reckless Endangerment / Reckless Driving	0	0	0	0	0	0
Assault	1	2	2	1	0	0
Burglary With Weapon	0	0	0	0	0	0
Felonious Restraint	0	0	0	0	0	0
Kidnapping	0	0	0	0	0	0
Sex Offense	0	0	0	0	0	0
Terrorizing	0	0	0	0	0	0
Robbery	0	0	0	1	1	1
Negligent Homicide	0	0	0	0	0	0
Manslaughter	1	1	0	0	0	0
Murder *	0	0	0	0	0	0
Felon in Possession of a Firearm	0	0	0	0	0	0
Offender Registration Violation	0	0	0	0	0	0
Total	5	8	10	9	7	4

* There are **2** females with a life sentence (not all are minimum mandatory sentences)

1.92% of the female inmate population on December 31, 2015 had a minimum mandatory sentence.

Inmate Count on December 31 (85% Truth-In-Sentencing)

	2010	2011	2012	2013	2014	2015
Number of Inmates Having 85% TIS	15	18	20	16	21	22
Average Sentence In Months	109	96	93	102	100	119

Average Sentence Does Not Include Inmates With Life Sentences

DOCR Prisons Adult Services Inmate Population Information (Female Only)

Average Inmate Population, Admissions, Releases by Fiscal Year

	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Average Daily Population	167.37	171.54	154.33	172.55	170.15	199.17

Admissions	176	167	176	212	214	287
Releases	165	186	168	199	216	252

Fiscal Year Admissions Of 85% Truth-In-Sentencing Inmates						
	FY 2010	FY 2011	FY 2012	FY 2013	2014	FY 2015
Number of Inmates	4	8	4	11	8	10
Average Sentence In Months	58.50	27.50	126.00	24.00	33.38	60.28
Average Sentence Does Not Include Inmates With Life Sentences						

Number Of Fiscal Year Admissions by Crime Type						
	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
All Inmates	176	167	176	212	214	287
Violent Offenders (Non-Sexual)	41	45	27	53	38	55
Sex Offenders	0	3	1	4	1	2
Drug & Alcohol Offenders	66	56	80	88	114	159
Property and Other Public Order Offenders	69	63	68	67	61	71

Average Sentence Imposed By Court (Fiscal Year, Crime Type, In Months, Excludes Life Sentences)						
	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
All Inmates	25.20	24.22	30.66	26.55	24.80	30.73
Violent (Non-Sexual)	29.93	24.80	34.79	28.49	27.29	32.58
Sex Offenders	0.00	42.00	36.00	93.00	60.00	37.56
Drug & Alcohol Offenders	27.85	26.52	34.97	26.65	25.11	31.06
Property and Other Public Order Offenders	19.87	20.92	23.87	20.79	22.07	28.38

Number Of Fiscal Year Admissions By Length Of Court Imposed Sentence						
	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Less Than One Year	8	9	7	5	5	4
One Year to Less Than Five Years	159	150	148	198	198	259
Five Years to Less Than Ten years	6	7	16	7	10	16
Ten Years to Less Than Twenty Years	3	1	3	0	1	5
Twenty Years or More	0	0	2	2	0	3

NOTE: The average sentence is that sentence imposed by the court. It does not take into account such things as good time, credit for time served, parole relief or any other method of shortening the sentence except Pardon Advisory Board recommendations adopted by the Governor (which can actually change the sentence). The average sentence is reported in months to two decimal points.

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DOCR Adult Services Inmate Population Information

Inmate Population on December 31, 2015 (Male Only)

TOTAL COUNT: 1587

NDSP **756**, JRCC **439**, MRCC **150**, DWCRC **0**, Non Traditional Beds **242**

Non-Traditional Bed Breakdown:

Correctional Centers (Jails) **35**, Interstate Compact **23**, TRCC **68**, BTC **53**, GFC **11**, MTPFAR **33**, MTPMDN **15**, LRRP **4**

Year	2010	2011	2012	2013	2014	2015
Inmate Count on December 31	1326	1292	1365	1419	1514	1587

Inmate Count on December 31 (Crime Type)

Offense	2010	2011	2012	2013	2014	2015
Violent Offenders (Excluding Sexual)	406	423	459	494	516	513
Sex Offenders	268	271	277	268	290	286
Property and Other Public Order Offenders	332	295	298	308	308	335
Drug & Alcohol Offenders	320	303	331	349	400	453
Drug - Deliver, Manufacture or Intent	208	202	222	210	214	248
Drug - Possession Only	86	77	84	109	120	154
Alcohol - DUI, APC	26	24	25	30	66	52

Inmate Count on December 31 (Minimum Mandatory)

Offense	2010	2011	2012	2013	2014	2015
Breaking Into a Motor Vehicle	0	0	0	0	1	1
DUI/Actual Physical Control	20	20	21	9	1	0
Driving Under Suspension	1	0	0	0	0	0
Drug Offenses (Not Alcohol)	30	31	32	25	21	19
Reckless Endangerment / Reckless Driving	2	2	0	0	3	1
Assault	10	13	9	8	5	3
Burglary With Weapon	0	0	0	0	0	1
Felonious Restraint	0	0	0	0	0	0
Kidnapping	1	1	1	1	0	0
Sex Offense	8	9	8	10	11	9
Terrorizing	5	8	10	14	6	1
Robbery	7	6	5	8	10	10
Negligent Homicide	2	2	1	1	1	1
Manslaughter	0	0	0	0	0	0
Murder *	11	13	14	14	16	17
Felon in Possession of a Firearm	0	1	0	0	0	1
Offender Registration Violation	3	3	3	0	0	0
Total	100	109	104	90	75	64

* There are 76 males with a life sentence (not all are minimum mandatory sentences)

4.03% of the male inmate population on December 31, 2015 had a minimum mandatory sentence.

Inmate Count on December 31 (85% Truth-In-Sentencing)

	2010	2011	2012	2013	2014	2015
Number of Inmates Having 85% TIS	250	256	260	292	297	282
Average Sentence In Months	95	100	112	101	99	123

Average Sentence Does Not Include Inmates With Life Sentences

DOCR Adult Services Inmate Population Information (Male Only)

Average Inmate Population, Admissions, Releases by Fiscal Year

	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Average Daily Population	1310.92	1305.72	1305.35	1356.10	1397.72	1497.09

Admissions	887	838	886	994	1076	1244
Releases	838	850	881	942	1013	1137

Fiscal Year Admissions Of 85% Truth-In-Sentencing Inmates						
	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Number of Inmates	81	88	81	101	93	102
Average Sentence In Months	44.64	45.07	51.83	40.91	53.19	44.70
Average Sentence Does Not Include Inmates With Life Sentences						

Number Of Fiscal Year Admissions by Crime Type						
	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
All Inmates	887	838	886	994	1076	1244
Violent Offenders (Non-Sexual)	183	193	214	252	239	272
Sex Offenders	76	78	84	77	82	81
Drug & Alcohol Offenders	273	280	271	325	408	549
Property and Other Public Order Offenders	355	287	317	340	347	342

Average Sentence Imposed By Court (Fiscal Year, Crime Type, In Months, Excludes Life Sentences)						
	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
All Inmates	32.51	35.42	31.95	32.27	36.21	33.20
Violent (Non-Sexual)	33.5	46.48	34.73	29.65	46.16	35.54
Sex Offenders	71.09	68.92	64.42	81.30	75.48	73.46
Drug & Alcohol Offenders	32.01	32.26	29.95	29.57	30.96	28.86
Property and Other Public Order Offenders	24.02	22.15	23.39	26.20	26.34	28.11

Number Of Fiscal Year Admissions By Length Of Court Imposed Sentence						
	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Less Than One Year	48	41	50	34	18	29
One Year to Less Than Five Years	733	676	744	840	916	1035
Five Years to Less Than Ten Years	74	84	62	86	94	128
Ten Years to Less Than Twenty Years	19	22	20	16	26	30
Twenty Years or More	13	15	10	18	22	22

NOTE: The average sentence is that sentence imposed by the court. It does not take into account such things as good time, credit for time served, parole relief or any other method of shortening the sentence except Pardon Advisory Board recommendations adopted by the Governor (which can actually change the sentence). The average sentence is reported in months to two decimal points.

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2023
DOCR Adult Services Prison Population Information
(DOCR fact sheet)
available at:
https://www.docr.nd.gov/sites/www/files/documents/statistics/factsheets/2023%2012%2031%20FACT%20SHEET.pdf

DOCR Adult Services Prison Population Information

Prison Population on December 31, 2023 (Male and Female)

TOTAL COUNT: 1899

NDSP **801,** HRCC 56, JRCC **475**, MRCC **190**, DWCRC **130,** Non Traditional Beds **247**

Non-Traditional Bed Breakdown:

Correctional Centers (Jails) **85**, Interstate Compact **19**, BTC **65,** GFC **10**, MTPFAR **29**, MTPMDN **13**

FTPFAR **22**, FTPMDN **4**

Year	2018	2019	2020	2021	2022	2023
Admissions - Calendar Year	1527	1530	936	1491	1451	1431
Releases - Calendar Year	1555	1431	1329	1203	1323	1349
Prison Count on December 31	1695	1794	1401	1689	1817	1899

Prison Count on December 31 (Crime Type)

Offense	2018	2019	2020	2021	2022	2023
Violent Offenders (Excluding Sexual)	589	648	588	686	743	821
Sex Offenders	301	303	293	307	330	350
Property and Other Public Order Offenders	313	345	202	312	337	318
Drug & Alcohol Offenders	492	498	318	384	407	410
Drug - Deliver, Manufacture or Intent	286	277	208	244	251	252
Drug - Possession Only	176	186	88	122	131	127
Alcohol - DUI, APC	30	35	22	18	25	31

Prison Count on December 31 (Minimum Mandatory)

Offense	2018	2019	2020	2021	2022	2023
Child Abuse	0	0	0	0	0	17
DUI/Actual Physical Control	0	0	0	0	0	15
Refusing to Submit to Chemical Testing	0	0	0	0	0	1
Drug Offenses (Not Alcohol)	1	0	0	0	1	19
Reckless Endangerment	1	0	0	0	1	9
Aggravated Assault/Conspiracy	17	20	20	26	31	41
Att Commit Simple Assault-PO/Corr Officer	0	0	0	0	0	1
Burglary With Weapon	4	4	3	4	4	2
Felonious Restraint	0	1	1	0	0	0
Kidnapping	0	0	0	0	0	0
Sex Offenses	17	12	15	17	16	46
Terrorizing	14	19	17	16	16	24
Robbery	16	18	17	18	17	16
Criminal Vehicular Injury	0	0	0	0	0	2
Negligent Homicide/Criminal Vehicular Homicide	3	2	2	2	2	10
Manslaughter	1	2	4	6	6	6
Murder/Attempted Murder/Conspiracy	25	31	29	42	47	40
Offender Registration Violation	0	0	0	0	0	3
Total	111	118	116	136	145	252

13.27% of the prison population on December 31, 2023 had a minimum mandatory sentence.

Prison Count on December 31 (85% Truth-In-Sentencing)

	2018	2019	2020	2021	2022	2023
Number of Offenders Having 85% TIS (includes Life)	261	241	244	290	293	299
Average Sentence In Years (excludes Life)	12.90	15.85	15.95	16.18	15.69	16.56

Prison Count on December 31 (Life Sentences)

	2018	2019	2020	2021	2022	2023
Life With Parole	43	42	42	42	43	48
Life Without Parole	41	41	41	46	52	57
Total	84	83	83	88	95	105

DOCR Adult Services Prison Population Information (Male and Female)

Average Prison Population, Admissions, Releases by Fiscal Year

	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Average Daily Population	1760.97	1716.50	1698.82	1453.17	1693.76	1800.87
Admissions	1576	1514	1146	1336	1428	1418
Releases	1681	1444	1540	1085	1312	1316

Number Of Fiscal Year Admissions by Crime Type

	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
All Admissions	1576	1514	1146	1336	1428	1418
Violent Offenders (Non-Sexual)	366	358	293	413	421	479
Sex Offenders	76	89	65	85	81	86
Drug & Alcohol Offenders	712	660	483	521	530	509
Property and Other Public Order Offenders	422	407	305	317	396	344

Average Sentence Imposed By Court (Fiscal Year, Crime Type, In Years, Excludes Life Sentences)

	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
All Admissions	2.57	2.56	2.89	2.80	2.78	3.16
Violent Offenders (Non-Sexual)	2.91	2.54	3.17	3.03	3.35	3.37
Sex Offenders	5.54	6.10	8.16	5.72	6.62	8.78
Drug & Alcohol Offenders	2.33	2.36	2.45	2.48	2.40	2.62
Property and Other Public Order Offenders	2.15	2.14	2.20	2.25	2.21	2.30

Number Of Fiscal Year Admissions By Length Of Court Imposed Sentence

	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Less Than One Year	43	41	37	26	38	42
One Year to Less Than Five Years	1342	1315	955	1149	1214	1174
Five Years to Less Than Ten years	147	115	103	108	126	138
Ten Years to Less Than Twenty Years	25	28	31	38	24	36
Twenty Years or More	19	15	20	15	26	28

NOTE: The average sentence is that sentence imposed by the court. It does not take into account such things as good time, credit for time served, parole relief or any other method of shortening the sentence except Pardon Advisory Board recommendations adopted by the Governor (which can actually change the sentence). The average sentence is reported in years to two decimal points.

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DOCR Adult Services Prison Population Information

Prison Population on December 31, 2023 (Female Only)

TOTAL COUNT: 243

NDSP **0**, HRCC **56**, JRCC **0**, MRCC **0**, DWCRC **130**, Non Traditional Beds **57**

Non-Traditional Bed Breakdown:

Correctional Centers (Jails) **9**, BTC **22**, FTPFAR **22**, FTPMDN **4**

Year	2018	2019	2020	2021	2022	2023
Admissions - Calendar Year	296	310	198	286	302	301
Releases - Calendar Year	299	297	245	248	269	291
Prison Count on December 31	196	209	162	200	233	243

Prison Count on December 31 (Crime Type)

Offense	2018	2019	2020	2021	2022	2023
Violent Offenders (Excluding Sexual)	59	63	57	83	90	110
Sex Offenders	5	6	7	5	4	4
Property and Other Public Order Offenders	34	43	28	47	53	46
Drug & Alcohol Offenders	98	97	70	65	86	83
Drug - Deliver, Manufacture or Intent	49	46	43	36	41	48
Drug - Possession Only	47	48	24	26	41	31
Alcohol - DUI, APC	2	3	3	3	4	4

Prison Count on December 31 (Minimum Mandatory)

Offense	2018	2019	2020	2021	2022	2023
Child Abuse	0	0	0	0	0	8
DUI/Actual Physical Control	0	0	0	0	0	0
Refusing to Submit to Chemical Testing	0	0	0	0	0	0
Drug Offenses (Not Alcohol)	1	0	0	0	1	1
Reckless Endangerment	1	1	0	1	2	1
Aggravated Assault/Conspiracy	2	1	1	6	6	8
Att Commit Simple Assault-PO/Corr Officer	0	0	0	0	0	0
Burglary With Weapon	0	0	0	0	0	0
Felonious Restraint	0	0	0	0	0	0
Kidnapping	0	0	0	0	0	0
Sex Offenses	0	0	0	0	0	2
Terrorizing	0	0	1	1	0	1
Robbery	0	0	0	0	1	1
Criminal Vehicular Injury	0	0	0	0	0	0
Negligent Homicide/Criminal Vehicular Homicide	0	0	0	0	0	1
Manslaughter	0	1	1	3	3	2
Murder/Attempted Murder/Conspiracy	0	1	1	2	2	3
Offender Registration Violation	0	0	0	0	0	0
Total	0	0	0	0	0	28

11.5% of the female prison population on December 31, 2023 had a minimum mandatory sentence.

Prison Count on December 31 (85% Truth-In-Sentencing)

	2018	2019	2020	2021	2022	2023
Number of Offenders Having 85% TIS (includes Life)	17	13	13	15	27	22
Average Sentence In Years (excludes Life)	11.75	15.46	14.35	16.77	11.31	15.13

Prison Count on December 31 (Life Sentences)

	2018	2019	2020	2021	2022	2023
Life With Parole	1	1	1	1	2	4
Life Without Parole	3	2	2	2	2	2
Total	4	3	3	3	4	6

DOCR Prisons Adult Services Prison Population Information (Female Only)

Average Prison Population, Admissions, Releases by Fiscal Year

	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Average Daily Population	205.14	207.28	196.60	160.05	199.74	223.55
Admissions	300	301	236	259	291	294
Releases	309	279	339	198	266	278

Number Of Fiscal Year Admissions by Crime Type

	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
All Females	300	301	236	259	291	294
Violent Offenders (Non-Sexual)	65	62	54	66	89	87
Sex Offenders	1	2	0	2	0	3
Drug & Alcohol Offenders	169	173	130	136	133	136
Property and Other Public Order Offenders	65	64	52	55	69	68

Average Sentence Imposed By Court (Fiscal Year, Crime Type, In Years, Excludes Life Sentences)

	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
All Females	2.57	2.01	2.18	2.21	2.25	2.42
Violent Offenders (Non-Sexual)	2.54	1.93	2.50	2.73	2.66	2.20
Sex Offenders	8.00	6.50	0	3.25	0	9.83
Drug & Alcohol Offenders	2.07	1.98	2.16	1.95	2.08	2.48
Property and Other Public Order Offenders	1.87	2.01	1.92	2.20	2.03	2.27

Number Of Fiscal Year Admissions By Length Of Court Imposed Sentence

	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Less Than One Year	11	12	7	4	12	10
One Year to Less Than Five Years	271	280	214	243	260	254
Five Years to Less Than Ten years	13	6	11	8	15	24
Ten Years to Less Than Twenty Years	2	2	3	4	2	4
Twenty Years or More	3	1	1	0	2	2

NOTE: The average sentence is that sentence imposed by the court. It does not take into account such things as good time, credit for time served, parole relief or any other method of shortening the sentence except Pardon Advisory Board recommendations adopted by the Governor (which can actually change the sentence). The average sentence is reported in years to two decimal points.

Data is based on the "controlling sentence" for offenders who are admitted for multiple crimes. Controlling sentence is the longest sentence ordered by the court that has not expired.

NDSP - North Dakota State Penitentiary. **JRCC -** James River Correctional Center. **MRCC** - Missouri River Correctional Center. **HRCC** - Heart River Correctional Center. DWCRC - Dakota Women's Correctional Rehabilitation Center (New England). BTC - Bismarck Transition Center. CPP - Community Placement Program. MTP - Male Transition Program (Fargo & Mandan). FTP - Female Transition Program (Fargo & Mandan). GFC - Grand Forks Centre. LRRP - Lake Region Re-entry Program (Devils Lake).

DOCR Adult Services Prison Population Information

Prison Population on December 31, 2023 (Male Only)

TOTAL COUNT: 1656

NDSP **801**, JRCC **475**, MRCC **190**, Non Traditional Beds **190**

Non-Traditional Bed Breakdown:

Correctional Centers (Jails) **76**, Interstate Compact **19**, BTC **43**, GFC **10**, MTPFAR **29**, MTPMDN **13**

Year	2018	2019	2020	2021	2022	2023
Admissions - Calendar Year	1231	1220	738	1205	1149	1130
Releases - Calendar Year	1256	1134	1084	955	1054	1058
Prison Count on December 31	1499	1585	1239	1489	1584	1656

Prison Count on December 31 (Crime Type)

Offense	2018	2019	2020	2021	2022	2023
Violent Offenders (Excluding Sexual)	530	585	531	603	653	711
Sex Offenders	296	297	286	302	326	346
Property and Other Public Order Offenders	279	302	174	265	284	272
Drug & Alcohol Offenders	394	401	248	319	321	327
Drug - Deliver, Manufacture or Intent	237	231	165	208	210	204
Drug - Possession Only	129	138	64	96	90	96
Alcohol - DUI, APC	28	32	19	15	21	27

Prison Count on December 31 (Minimum Mandatory)

Offense	2018	2019	2020	2021	2022	2023
Child Abuse	0	0	0	0	0	9
DUI/Actual Physical Control	0	0	0	0	0	15
Refusing to Submit to Chemical Testing	0	0	0	0	0	1
Drug Offenses (Not Alcohol)	14	7	6	10	13	18
Reckless Endangerment	2	5	6	7	5	8
Aggravated Assault/Conspiracy	15	19	19	20	25	33
Att Commit Simple Assault-PO/Corr Officer	0	0	0	0	0	1
Burglary With Weapon	4	4	3	4	4	2
Felonious Restraint	0	1	1	0	0	0
Kidnapping	0	0	0	0	0	0
Sex Offenses	17	12	15	17	16	44
Terrorizing	14	19	16	15	16	23
Robbery	16	18	17	18	16	15
Criminal Vehicular Injury	0	0	0	0	0	2
Negligent Homicide/Criminal Vehicular Homicide	3	2	2	2	2	9
Manslaughter	1	1	3	3	3	4
Murder/Attempted Murder/Conspiracy	25	30	28	40	45	37
Offender Registration Violation	0	0	0	0	0	3
Total	111	118	116	136	145	224

13.53% of the male prison population on December 31, 2023 had a minimum mandatory sentence.

Prison Count on December 31 (85% Truth-In-Sentencing)

	2018	2019	2020	2021	2022	2023
Number of Offenders Having 85% TIS (includes Life)	244	228	231	275	266	277
Average Sentence In Years (excludes Life)	12.98	15.87	16.05	16.14	16.20	16.68

Prison Count on December 31 (Life Sentences)

	2018	2019	2020	2021	2022	2023
Life With Parole	42	41	41	41	41	44
Life Without Parole	38	39	39	44	50	55
Total	80	80	80	85	91	99

DOCR Adult Services Prison Population Information (Male Only)

Average Prison Population, Admissions, Releases by Fiscal Year

	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Average Daily Population	1555.83	1509.22	1502.22	1293.12	1494.02	1577.32
Admissions	1276	1213	910	1077	1137	1124
Releases	1372	1165	1201	887	1046	1038

Number Of Fiscal Year Admissions by Crime Type

	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
All Males	1276	1213	910	1077	1137	1124
Violent Offenders (Non-Sexual)	301	296	239	347	332	392
Sex Offenders	75	87	65	83	81	83
Drug & Alcohol Offenders	543	487	353	385	397	373
Property and Other Public Order Offenders	357	343	253	262	327	276

Average Sentence Imposed By Court (Fiscal Year, Crime Type, In Years, Excludes Life Sentences)

	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
All Males	2.52	2.70	2.95	2.94	2.91	3.36
Violent Offenders (Non-Sexual)	2.99	2.66	3.33	3.08	3.54	3.62
Sex Offenders	5.51	6.09	8.16	5.78	6.62	8.75
Drug & Alcohol Offenders	2.41	2.50	2.54	2.67	2.51	2.67
Property and Other Public Order Offenders	2.20	2.17	2.26	2.26	2.24	2.31

Number Of Fiscal Year Admissions By Length Of Court Imposed Sentence

	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Less Than One Year	32	29	30	22	26	32
One Year to Less Than Five Years	1071	1035	741	906	954	920
Five Years to Less Than Ten Years	134	109	92	100	111	114
Ten Years to Less Than Twenty Years	23	26	28	34	22	32
Twenty Years or More	16	14	19	15	24	26

NOTE: The average sentence is that sentence imposed by the court. It does not take into account such things as good time, credit for time served, parole relief or any other method of shortening the sentence except Pardon Advisory Board recommendations adopted by the Governor (which can actually change the sentence). The average sentence is reported in years to two decimal points.

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SENATE JUDICIARY COMMITTEE
JANUARY 21, 2025

TESTIMONY OF CLAIRE NESS
OFFICE OF ATTORNEY GENERAL
SENATE BILL NO. 2128

Chairman Larson and members of the Committee:

For the record, my name is Claire Ness. I am the Chief Deputy Attorney General, and I am here on behalf of the Attorney General's Office in support of Senate Bill 2128, our **Truth-in-Sentencing Bill**. The Attorney General regrets he is unable to be here today because he is returning from President Trump's inauguration. I respectfully ask that you keep the hearing on this bill open so he may complete our office's presentation in support of the bill upon his return.

My testimony today has 2 parts:

First, I will explain how each section of the bill – including the amendment that we have distributed – operates. Based on media reports and questions we have received, there seem to be several misperceptions about the bill that we can clear up.

Second, I will describe the underlying goals of the bill and the values of the Attorney General's Office and our great state that are advanced by this bill.

Throughout my testimony, I also will describe some of the voluminous background data and information that demonstrate why passing this bill is a critical step toward reducing crime in our communities.

Our office has worked with, and incorporated feedback from, State's Attorneys, law enforcement personnel, legislators, and others to develop this bill, and we look forward to working with members of the Legislative Assembly on the bill during the session.

How the Bill, as Amended, Operates

Section 1

Section 1 of Senate Bill 2128 makes two changes to definitions in Chapter 12-44.1 of the North Dakota Century Code (N.D.C.C.). The first is to clarify that the term "correctional facility" does not include transitional centers, and the second is to define "transitional facilities". The definition of "transitional facility" in the bill reflects publicly available information from the Department of Corrections and Rehabilitation (DOCR).

Transitional facilities – sometimes called transition centers or halfway houses – are structurally, operationally, and in almost all ways distinct from commonly understood "correctional facilities" (jails and prisons). Transitional facilities function similarly to staffed dormitories or apartments that offer on-site counseling or other services. Most individuals who live there are free to check-out of, and check-in to, the transitional facility, so they can spend their days unsecured in the community. DOCR informed us these individuals are not required to undergo daily drug testing when they return to the facility in the evening.

Section 2

Under Section 2, the Legislative Assembly will have authority to establisih common sense and public safety guardrails for transferring prisoners among DOCR facilities. For example, DOCR will have to abide by statutory limits on transfers of prisoners to facilities that have little or no security.

Currently, under N.D.C.C. 12-47-18.1, the Director of DOCR has vast, unilateral power to take a prisoner from the penitentiary and transfer them to the dorm-like setting of a transitional facility, regardless of the risk to the community. The Director can do this for just about any

reason, as long as the Director subjectively thinks it is a good idea for "the public, the offender, **or** the department." That word "or" in the statute is key. Even if transferring a prisoner to a halfway house is not in the public's best interest, the Director now can legally order it as long as the Director thinks the transfer would be good for either the prisoner or DOCR.

DOCR may tell you that would never happen because it might risk public safety. We would welcome that testimony because it would mean that Section 2 of this bill is simply what we all agree should be codified in law.

Section 3

Section 3 is first and foremost a public safety measure. Under current law, the Director of DOCR has authority to approve work release programs and other release programs for offenders in DOCR custody. The Director also has the power to contract with transitional facilities to house offenders in release programs. These offenders have the privilege of being out and about in our communities without guards or other security measures. So it is critical that they do not pose a danger to others.

Section 3 of SB 2128 identifies which offenders may participate in these release programs and live in transitional facilities. For clarity, it uses the term "eligible offender" to identify these individuals and then defines that term.

An "eligible offender" is an offender who has:

- Served 85 percent of their sentence; or
- Had their sentence commuted; or
- Is serving a sentence only for a nonviolent crime listed in Section 3.
    - Computer fraud (12.1-06.1-08)

- Perjury (12.1-11-01)
- Fraudulent practice in urine testing (12.1-11-07)
- Interception of wire or oral communications (12.1-15-02)
- Trafficking in intercepting devices (12.1-15-03)
- Property damage by fire or explosion (12.1-21-02(1)(c))
- Negligent act resulting in fire (12.1-21-03.1)
- Property damage by criminal mischief (12.1-21-05(1)(b))
- Interference with telephone during emergency call (12.1-21-06.1)
- Stowing away (12.1-22-05)
- Theft (12.1-23-02)
- Theft of lost property (12.1-23-04)
- Misapplication of entrusted property (12.1-23-07)
- Defrauding secured creditors (12.1-23-08)
- Forgery or counterfeiting (12.1-24-01)
- Simple drug possession (19-03.1-23(7))
- Possession of drug paraphernalia (19-03.4-03), or
- DUI (39-08-01).

Section 3 also serves an important transparency purpose. It requires DOCR to give the Attorney General and the Legislative Council quarterly reports of eligible offenders. This transparency measure will help everyone decipher the "time served" statistics from DOCR. Time spent in transitional facilities when offenders are allowed to check-out and check-in during the day is actually included in an offender's "time served," as calculated by DOCR. The reports

required in Section 3 of this bill will give you a window into how much of each sentence is spent, not in cells, but in the community.

Section 4

Section 4 of the bill provides common sense transparency and accountability regarding offenders' eligibility for release programs and transitional facilities. Keep in mind, offenders in these programs and facilities have the privilege to be in our communities without security, and the vast majority of us do not know who they are.

Under Section 4 of SB 2128, 4 changes will be made:

1. Before an offender can participate in these programs, DOCR must be able to determine "with a high degree of reliability" – meaning, the determination must be based on an objective, reliable assessment – that the offender is not a high security risk, is not likely to commit a crime of violence, is "not likely to escape," and is likely to be rehabilitated by the program.
    - Under current law, DOCR's decision that an offender can participate in a release program and live in a halfway house does not have to have any objective or reliable basis at all. DOCR may say they already use reliable data; if so, there should be no objection to Section 4.
    - Also under current law, DOCR can allow an offender who is likely to escape (or, really, just "walk away," which is how it is described) to participate in these programs. DOCR does not even have to consider this issue before granting the privilege of participating in release programs.

2. The Parole Board will have better information from DOCR about the offenders in release programs.

    - Under current law, the Parole Board may approve, disapprove, or defer action on the DOCR Director's decision to let an offender participate in a release program. The Parole Board should know, based on reliable and objective information, whether they will be a high security risk, are likely to escape, are likely to commit violent crimes, etc. Section 4 will require DOCR to make reliable assessments of all these factors so the Parole Board will have better information for its decisions.

3. The Parole Board will set common sense criteria for revoking an offender's participation in a release program.

    - For example, if an offender in a release program breaks a rule indicating they are likely to commit a crime of violence or are likely to try to escape, DOCR willl have to end the offender's participation in the release program.
    - Under current law, revoking an offender's participation in a release program is completely discretionary, even if continued participation is likely to result in harm to a member of the public. It is hard to imagine why anyone would object to establishing these kinds of practical and obvious limits on release programs, especially when they are weighed against public safety.

4. Grants of short leave could not be stacked to give one offender more than 72 hours of leave at a given time.

    - Under current law, offenders may be granted leave up to 72 hours by the DOCR Director (for offenders with sentences of 10 years or less) or by the

Parole Board (for other offenders). There is no prohibition now on granting back-to-back leave.

Section 5

Section 5 is a critical piece of this legislation. Although the current law regarding "good time" given to offenders seems straightforward, we have found that it is not applied the way most people think it is. Section 5 will make the law crystal clear. Under Section 5:

- Offenders will actually have to "satisfactorily fulfill" performance criteria before earning good time;
- Depending on how well they fulfill those criteria, offenders may receive "up to" 5 days per month of good time, giving DOCR more flexibility to enforce the performance criteria;
- Good time will be capped at 15 percent of an offender's sentence.
- Good time will have to be "earned" by offenders for time they actually "served."
    - Currently, according to documents from DOCR's staff, in practice even if contrary to policy, when an offender enters DOCR custody, DOCR awards the full amount of good time for the entire sentence imposed on the offender. Good time is not earned month-by-month, although theoretically it could be lost. If the offender is released early for parole (or another reason), the amount of good time is not reduced. Using these methods, DOCR gave at least one offender 40 days of good time per month of time actually served. That is just one example. This inflated amount of good time then appears to be included in the statistics you see regarding the amount of "time served" by offenders in DOCR custody.

Section 6

Section 6 of the bill will reduce the amount of time that can be taken off an offender's sentence for meritorious conduct from two days to one day per month. It also states that meritorious conduct sentence reductions will no longer be used as a special control or security measure. Such measures relate to DOCR operational needs and not meritorious conduct. Calling them meritorious conduct lacks transparency and muddies data.

DOCR claims this provision will cost the state $645,600 per biennium for 4 new employees because offenders will no longer want to participate on resident crisis support teams when doing so will reduce their sentences by one day per month instead of two days per month. The Attorney General's Office is not aware of any evidence for this.

Sections 7 and 8

Sections 7 and 8 of the bill are similar to provisions we brought forward in 2023 at the urging of law enforcement officers around the state. Being punched, beaten, kicked, or otherwise assaulted is not part of an officer's job, and these assaults should not go unpunished. You can talk to just about any law enforcement officer in the state, and they will tell you about the dramatic increase in the rate of attacks on, and injuries to, law enforcement in recent years. Officers deserve serious deterrence for these crimes and serious penalties for the people who commit them.

In 2023, we heard that criminals already get sentences for these crimes, and it was just as misleading then as it is now. These sentences almost always are concurrent sentences, meaning

they are served at the same time as the criminal's other sentences. In other words, the sentences are freebies for the criminals.

Section 7 will make the sentence for preventing arrest at least 14 days' imprisonment, and, if there is a sentence for an underlying conviction, the 14-day sentence would have to run consecutively to it. Keep in mind, to get this sentence, the criminal has to create a substantial risk of bodily injury to someone besides himself, or do something serious enough to justify the use of substantial force to overcome his resistance to the arrest.

Section 8 will make the sentence for assaulting a peace officer, correctional officer, or other emergency personnel listed in N.D.C.C. 12.1-17-01(2)(a) at least 30 days' imprisonment. If there is a sentence for an underlying conviction, the 30-day sentence would have to run consecutively to it. To get this sentence, the criminal has to willfully cause bodily injury to someone or negligently cause bodily injury to someone with a weapon that is likely to cause death or serious bodily injury.

Section 9

Section 9 of the bill contains public safety guardrails on release programs and, in response to many of the comments we have received, removes certain offenders guilty of drug possession from existing mandatory minimum sentencing. Section 9 amends N.D.C.C. 12.1-32-02.1, the current statute that requires a subset of armed offenders to be sentenced to minimum 2-year or 4-year sentences if prosecutors surmount the additional hurdles embedded in the statute. Currently, these offenders can serve up to 25 percent (6 months) of their sentences, or more when you factor in good time awarded by the DOCR, in transitional facilities on work release,.

Section 9 of the bill will clarify that these violent offenders are not "eligible offenders" as defined in N.D.C.C. 12-48.1-01(2)(b) in Section 3. However, they will be eligible for participation in release programs and transitional facilities after serving 85 percent of their sentences under N.D.C.C. 12-48.1-01(2)(a) in Section 3.

Section 9 also removes certain offenders convicted of felony drug possession from the list of individuals currently subject to the minimum sentencing provisions of N.D.C.C. 12.1-32-02.1. Under current law, if an individual who is prohibited by law from having a firearm is found to possess both a firearm and illegal drugs for their individual use, that individual is subject to the minimum sentences in N.D.C.C. 12.1-32-02.1. Section 9 would remove those individuals from that statute. This change does not affect penalties for illegal drug manufacturers or dealers.

Section 10

Section 10 of SB 2128 will provide real Truth-In-Sentencing. Our criminal justice system rightly gives the Legislative Assembly the power to decide the sentencing ranges for each type of crime – and gives judges the power to sentence offenders found guilty of those crimes by juries of their peers. North Dakotans elect legislators and judges to public office – investing you with your lawful authority and the accountability for exercising it.

Those same citizens believe criminals generally serve their sentences in secured settings that keep us all safe. However, over the past several years, a tremendous amount of bureaucratic discretion has been given to DOCR to move criminals to transitional facilities, to give them unsecured access to our communities, and to award them unearned good time. The pendulum has swung far to the left in our state.

Shortly after filing SB 2128, the Attorney General decided to add a clarifying amendment to Section 10 enhancing the state's parole system because Parole Board members are public officials with accountability to the public for their decisions. That provision is included in our amendment and in my description of this section.

Section 10 will bring common sense, transparent, truth-in-sentencing back to our criminal justice system by setting a floor on the percentage of each sentence a criminal must serve in jail or prison. North Dakotans are surprised when they learn this isn't already the law and are even more surprised to find out what percentage of each sentence a criminal spends in jail or prison. The phrase "time served" has a very different meaning to our citizens than it does to many people familiar with our corrections system. One judge noted recently that a defendant sentenced to two years would serve "two, three months."

Under Section 10 of SB 2128, an offender – with a few exceptions – may:

- Be paroled after 50 percent of their sentence (not including good time) is served;
- Be released after serving a commuted sentence;
- Be released after being pardoned; or
- Be transferred to a transitional facility after 85 percent of their sentence is served.

The exceptions I mentioned are for currently existing requirements for some violent offenders who already have to serve 85 percent of their sentences and a new requirement for dangerous special offenders and habitual offenders, both of which are defined in N.D.C.C. 12.1-32-09, to do the same. Also, as described in Section 3 of the bill, offenders sentenced for the nonviolent crimes listed in Section 3 may be transferred to transitional facilities and granted the privilege of participating in release programs before serving 85 percent of their sentences.

I'd like to address a red herring we have heard about truth-in-sentencing. Section 10 of SB 2128 will not take away any offender's opportunity to participate in rehabilitation programs or programs that help an offender prepare for reentry to the community. Those programs can continue to be offered in prison and other correctional facilities. The Attorney General's Office supports these types of programs and for years has offered to support requests for the resources to ensure they can continue.

Section 11

Similarly to Sections 7 and 8, Section 11 responds to an alarm raised by law enforcement officers around the state for years. Fleeing from law enforcement is an urgent, dangerous, and escalating problem in our state, and we are all on notice from law enforcement that this is due to the lack of consequences for people who flee. We introduced an almost-identical provision to Section 11 in 2023, and, since that time, we have experienced tragic examples of how fleeing can impact officers and their communities.

Section 11 would provide a minimum 30-day sentence for felony fleeing as defined in N.D.C.C. 39-10-71, and the sentence would have to be consecutive to any sentence for an underlying conviction. Also, a State's Attorney could ask a judge to impound a vehicle used in fleeing for up to six months. The State's Attorney and the judge would both be able to consider the individual circumstances of the case and would not be required to request or order the impoundment.

Section 12

To avoid any confusion or litigation, we added an application clause for SB 2128 so the changes it makes will apply to individuals who are charged after then bill takes effect. Although we believe this would be the outcome without the application clause, the clause will provide certainty for affected individuals.

Goals and Values that Compel Passage of SB 2128

Because all of us here love this state and care deeply about the people who live here, we owe it to them to do the hard work necessary to bring down our steadily rising crime statistics. And, yes, methodically collected data from North Dakota's law enforcement agencies prove that they are rising. Everywhere we go, we hear from family, friends, neighbors, and concerned citizens about crime in our communities.

Personally, I moved home to North Dakota to raise my son – a fifth generation North Dakotan – after years of school and work in other states because this is the best place to live and raise a family. We can still make changes to reverse the crime trends we see. Doing so will require the accountability, transparency, and truthfulness in SB 2128.

Accountability

The critical foundation of the work we must do is accountability. Power and authority must remain with the people who are accountable for it.

As SB 2128 demonstrates, the Attorney General's Office is committed to preserving the power of the Legislative Assembly to establish sentencing ranges and the authority of judges to impose sentences that will be faithfully carried out by DOCR.

Each time legislators vote on statutes containing sentencing ranges, they are accountable to their constituents for their decisions.

Judges also are accountable to voters (and subject to Supreme Court rulings) for their sentencing decisions. Judges have particularized training and expertise, and they are present throughout trials and plea hearings. In each case, the judge has a unique, in-depth understanding of the law, context, and nuances that inform their sentence.

The Legislative Assembly's votes and judges' sentences should not be supplanted by a bureaucracy that can release the offender into the community after a fraction of the sentence is served.

Transparency and Truthfulness

Accountability in our criminal justice system cannot be maintained without transparency and truthfulness comprised of at least the following elements that SB 2128 will address.

- Words have to have commonly understood definitions.
    - Some relevant terms do not have straightforward meanings now. For example:
        - According to DOCR, their published "recidivism" rates only include offenders who were released from DOCR and are returned to DOCR. The recidivism rates do not include offenders who were released from DOCR and then were sentenced to county jails, federal prison, or other states' jails or prisons. The true recidivism rate is therefore higher than what is published.
        - You may have heard that offenders already serve on average, 70-, 80-, or 85 percent of their sentences. However, as calculated by DOCR,

"time served" includes time spent in transitional facilities where offenders have daily check-in/check-out privileges so they can be out and about in the community, as well as inflated calculations of "good time" (as discussed in my testimony for Section 5 of the bill).

- Outcomes have to be clear, objectively measured, and meaningful.
    - For example, there do not seem to be objective, documented statistics showing that the last several years of the "Norway model" have significantly reduced crime, reduced true recidivism, reduced the number of offenders in prison, or reduced assaults on corrections officers.

- Data and statistics have to be easily available and based on fully described methodologies. For example:
    - Crimes committed by offenders on work release or other release programs should be thoroughly documented, and statistics on these crimes should be readily available, especially to legislators and law enforcement personnel.
    - The rate at which DOCR inmates are prosecuted and sentenced for new crimes after release – regardless of whether they are sentenced to DOCR, county jails, federal prison, or other states' prisons – should be documented and readily available.
    - The public should be made aware every time an offender "walks away" or absconds from a transitional facility.

- The cost of crimes committed by offenders in DOCR custody and crimes committed by offenders released from DOCR custody – including the costs to apprehend, charge, prosecute, try, reprocess, and rehouse the offenders – should be calculated to determine the true financial costs of the current system.

Thank you for your time today. The Attorney General's Office is always available to discuss these issues and provide additional information, and we urge you to vote for a "DO PASS" on Senate Bill 2128. With that, I'd be happy to answer your questions.

25.8109.01000

Sixty-ninth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2128

Introduced by

Judiciary Committee

(At the request of the Attorney General)

A BILL for an Act to amend and reenact sections 12-44.1-01, 12-47-18.1, 12-48.1-01, 12-48.1-02, 12-54.1-01, 12-54.1-03, 12.1-08-02, 12.1-17-01, 12.1-32-02.1, 12.1-32-09.1, and 39-10-71 of the North Dakota Century Code, relating to transparent sentencing of criminal offenders, work release eligibility and conditions for criminal offenders, sentences for assaulting and fleeing from law enforcement officers, and sentences for preventing arrest; to provide a legislative management report; ~~and~~ to provide a penalty~~.~~, and to provide for an application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-44.1-01 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-01. Definitions.

As used in this chapter:

1. "Administrator" means the sheriff, chief of police, administrator, superintendent, director, or other individual serving as the chief executive officer of a correctional facility.
2. "Adult lockup" means a secure temporary-hold nonresidential facility that does not hold individuals overnight and includes a facility with cuffing rails or cuffing benches.
3. "Correctional facility" means a city or county jail or detention center, regional corrections center, or juvenile detention center for the detention or confinement of persons in accordance with law. The use of the term does not imply and may not be used to require the provision of services including treatment, counseling, career and technical education, or other educational services, except as may otherwise be required or provided for under this chapter. The term does not include transitional facilities.

4. "Correctional facility staff" means correctional personnel with titles such as jailer, deputy, counselor, correctional officer, or any other title, whose duties include the ongoing supervision of inmates in a correctional facility.
5. "Court holding facility" means a secure facility, other than an adult correctional facility or adult lockup, used to temporarily detain individuals before or after a detention hearing or other court proceedings, and is not used to detain individuals overnight.
6. "Individual justice planning" means a process to identify, accommodate, and develop appropriate consequences for behaviors caused by or related to an individual's mental or cognitive impairment.
7. "Inmate" means any individual, whether sentenced or unsentenced, who is detained or confined in a correctional facility. The term does not include an individual who is under the supervision of the correctional facility and is supervised under home detention, electronic monitoring, or a similar program that does not involve physical detention or confinement in the facility.
8. "Jail" means a correctional facility, including a county or city jail or a regional corrections center.
9. "Juvenile detention center" means a publicly maintained correctional facility for the detention of juveniles. The term does not include the North Dakota youth correctional center.
10. "Regional corrections center" means a correctional facility established and maintained by more than one county or city, or a combination of counties and cities, for the confinement of inmates.
11. "Trained correctional facility staff" means correctional personnel who have completed a course of training approved by the peace officer standards and training board.
12. "Transitional facility" means an organization or facility, operating under contract, in partnership with, or under the direction of the department of corrections and rehabilitation or a correctional facility, which offers education, counseling, or other programs, with minimum security housing, for offenders.

SECTION 2. AMENDMENT. Section 12-47-18.1 of the North Dakota Century Code is amended and reenacted as follows:

12-47-18.1. Transfer of persons between correctional facilities.

~~The~~Subject to statutory limitations, the director of the department of corrections and

rehabilitation may transfer an offender to any facility under the department's control or contract to transfer an offender to another correctional facility for purposes of safety, security, discipline, or medical care~~, or when the director determines it may be in the best interests of the public, the offender, or the department.~~

SECTION ~~23~~34. AMENDMENT. Section 12-48.1-01 of the North Dakota Century Code is amended and reenacted as follows:

12-48.1-01. ~~Director may provide certain~~Work release and education or rehabilitation services for offenders.

1. The director of the department of corrections and rehabilitation may participate in programs in which eligible offenders committed to the legal and physical custody of the department may be gainfully employed or participate in an educational or other rehabilitation program either in or outside facilities under the control of the department. ~~The~~For eligible offenders, the director may obtain or contract with separate facilities with minimum security for housing offenders granted release privileges. In areas where facilities are not within reasonable proximity of the place of employment or training of an offender so released, the director may arrange for the housing of the offender in local confinement facilities.
2. For purposes of this chapter, an "eligible offender" means an offender who:
   a. In accordance with section 12.1-32-09.1, has served eighty-five percent of the offender's sentence of imprisonment or had the offender's sentences commuted; or
   b. Is serving a sentence only for one or more violations of section 12.1-06.1-08, 12.1-11-01, 12.1-11-07, 12.1-15-02, or 12.1-15-03; subdivision c of subsection 1 of section 12.1-21-02; section 12.1-21-03.1; subdivision b of subsection 1 of section 12.1-21-05; section 12.1-21-06.1, 12.1-22-05, 12.1-23-02, 12.1-23-04, 12.1-23-07, 12.1-23-08, or 12.1-24-01; subsection 7 of section 19-03.1-23; or section 19-03.4-03 or 39-08-01.
3. The department of corrections and rehabilitation shall provide to the attorney general and the legislative ~~management~~ council each quarter a report, including the names, locations, and sentences of each individual who meets the criteria in subdivision b of subsection 2.

SECTION ~~34~~35. AMENDMENT. Section 12-48.1-02 of the North Dakota Century Code is amended and reenacted as follows:

12-48.1-02. Conditions of ~~eligibility for~~participation in release programs.

1. An eligible offender, except 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, may ~~be eligible for programs~~participate in a program outside ~~facilities~~a facility under the control of the department of corrections and rehabilitation when the department determines, with a high degree of reliability, the eligible offender is not a high security risk, not likely to commit a crime of violence, not likely to escape, and is likely to be rehabilitated by such program. An eligible offender may apply to the director of the department for permission to participate in such programs.

2. The director of the department may authorize participation in outside programs fo an eligible offender who has ten years or less remaining on a sentence and has been committed to the legal and physical custody of the department. The parole board, with the approval of the director of the department, may authorize participation in outside programs for eligible offenders who have more than ten years remaining on a sentence and have been committed to the legal and physical custody of the department.

3. The offender shall submit a signed application which must include a statement that the eligible offender agrees to abide by all terms and conditions of the particular plan adopted for the eligible offender, and must include such other information as the parole board or the director of the department may require.

4. The parole board may approve, disapprove, or defer action on an application approved by the director of the department. The director of the department or the parole board may revoke approval of the application at any time after granting the application. The department shall prescribe rules of conduct and treatment for all eligible offenders on release programs and shall prescribe objective and subjective criteria for which revocation of approval to participate in release programs is mandatory. A rule violation indicating the eligible offender likely will commit a crime of violence or is likely to attempt to escape must result in revocation of approval to participate in release programs. The department shall document all violations of the rules of conduct and treatment.

5. The director of the department may grant short leaves, not to exceed seventy-two hours, to eligible offenders who have been committed to the legal and physical

custody of the department for ten years or less. The parole board, upon the approval of the director of the department, may grant short leaves, not to exceed seventy-two hours, to offenders committed to the legal and physical custody of the department for more than ten years. Short leaves granted under this subsection may not be granted consecutively to the same individual.

6. All rules adopted by the parole board and the director of the department relating to release programs and short leaves must conform, to the extent allowable by law, with executive order no. 11755 issued by the President of the United States.

SECTION ~~4.~~5. AMENDMENT. Section 12-54.1-01 of the North Dakota Century Code is amended and reenacted as follows:

12-54.1-01. Sentence reduction for good time.

~~Except as provided under~~Subject to the requirements of section 12.1-32-09.1, an offender committed to the legal and physical custody of the department of corrections and rehabilitation is eligible to earn sentence reductions based upon satisfactory fulfillment of performance criteria established through department and penitentiary rules. Performance criteria ~~includes~~must include participation in court-ordered or staff-recommended treatment and education programs and good work performance. The department may credit an offender committed to the legal and physical custody of the department who is eligible for sentence reduction up to five days good time per month for each month of the sentence ~~imposed~~served, up to a maximum of fifteen percent of the offender's sentence. Sentence reductions may not be awarded before they are earned. The department may credit an offender with sentence reduction for time spent in custody before sentencing and commitment to the legal and physical custody of the department. The department may not credit an offender with any sentence reduction for time spent on probation under the supervision and management of the department.

SECTION ~~5.~~6. AMENDMENT. Section 12-54.1-03 of the North Dakota Century Code is amended and reenacted as follows:

12-54.1-03. Meritorious conduct sentence reduction.

~~Except as provided under section 12.1-32-09.1, offenders~~Offenders committed to the legal and physical custody of the department of corrections and rehabilitation may receive a lump sum or a monthly rate of meritorious conduct sentence reduction for outstanding performance or heroic acts ~~or as a special control and security measure~~, as provided by penitentiary and department rules and upon written recommendation of a department multidisciplinary team. Meritorious sentence reductions are in addition to sentence reductions under section

12-54.1-01 and may be made only after a written recommendation is made by the warden and approved by the director of the department. Any sentence reduction ~~for special control or security measures~~under this section may not exceed ~~two days~~one day good time per month per offender.

SECTION ~~6.~~7. AMENDMENT. Section 12.1-08-02 of the North Dakota Century Code is amended and reenacted as follows:

12.1-08-02. Preventing arrest or discharge of other duties.

~~1.~~ A person is guilty of a class A misdemeanor if, with intent to prevent a public servant from effecting an arrest of himself or another for a misdemeanor or infraction, or from discharging any other official duty, he creates a substantial risk of bodily injury to the public servant or to anyone except himself, or employs means justifying or requiring substantial force to overcome resistance to effecting the arrest or the discharge of the duty. A person is guilty of a class C felony if, with intent to prevent a public servant from effecting an arrest of himself or another for a class A, B, or C felony, he creates a substantial risk of bodily injury to the public servant or to anyone except himself, or employs means justifying or requiring substantial force to overcome resistance to effecting such an arrest.

~~2.~~1. It is a defense to a prosecution under this section that the public servant was not acting lawfully, but it is no defense that the defendant mistakenly believed that the public servant was not acting lawfully. A public servant executing a warrant or other process in good faith and under color of law shall be deemed to be acting lawfully.

2. A conviction under this section carries a penalty of at least fourteen days' imprisonment and, if there is an underlying conviction, the imprisonment must be consecutive to any sentence of imprisonment for the underlying conviction.

SECTION ~~7.~~8. AMENDMENT. Section 12.1-17-01 of the North Dakota Century Code is amended and reenacted as follows:

12.1-17-01. Simple assault.

1. A person is guilty of an offense if that person:
   a. Willfully causes bodily injury to another human being; or
   b. Negligently causes bodily injury to another human being by means of a firearm, destructive device, or other weapon, the use of which against a human being is likely to cause death or serious bodily injury.
2. The offense is:
   a. A class C felony when the victim is a peace officer or correctional institution

employee acting in an official capacity, which the actor knows to be a fact; an employee of the state hospital acting in the course and scope of employment, which the actor knows to be a fact, and the actor is an individual committed to or detained at the state hospital pursuant to chapter 25-03.3; a person engaged in a judicial proceeding; or a member of a municipal or volunteer fire department or emergency medical services personnel unit or emergency department worker in the performance of the member's duties.

b. A class B misdemeanor except as provided in subdivision a.

c. A conviction under subdivision a carries a penalty of at least thirty days' imprisonment and, if there is an underlying conviction, the imprisonment must be consecutive to any sentence of imprisonment for the underlying conviction.

SECTION ~~8.~~9. AMENDMENT. Section 12.1-32-02.1 of the North Dakota Century Code is amended and reenacted as follows:

12.1-32-02.1. Mandatory prison terms for armed offenders.

1. Notwithstanding any other provision of this title, a term of imprisonment must be imposed upon an offender and served without benefit of parole when:
   a. In the course of committing an offense, the offender inflicts or attempts to inflict bodily injury upon another, threatens or menaces another with imminent bodily injury with a dangerous weapon, explosive, destructive device, or firearm; or
   b. An offender prohibited from possessing a firearm under section 62.1-02-01 possesses a firearm while in the course of committing any felony offense under subsection 1~~,~~ or 3~~, or 7~~ of section 19-03.1-23.
2. This requirement applies only when possession of a dangerous weapon, explosive, destructive device, or firearm has been charged and admitted or found to be true in the manner provided by law, and must be imposed as follows:
   a. If the offense for which the offender is convicted is a class AA, class A, or class B felony, the court shall impose a minimum sentence of four years' imprisonment.
   b. If the offense for which the offender is convicted is a class C felony, the court shall impose a minimum sentence of two years' imprisonment.

3. This section applies even when being armed is an element of the offense for which the offender is convicted.
4. This section applies even if the offender is prosecuted for a violation of section 62.1-02-01 for the same conduct.
5. 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~~is not an eligible offender under subdivision b of subsection 2 of section 12-48.1-01.

SECTION ~~9.~~10. AMENDMENT. Section 12.1-32-09.1 of the North Dakota Century Code is amended and reenacted as follows:

12.1-32-09.1. ~~Sentencing of violent offenders~~Truth in sentencing.

1. Except as provided under section 12-48.1-01 and 12-48.1-02 ~~and pursuant to rules adopted by the department of corrections and rehabilitation~~and ~~12-54.1-03~~, an offender who is sentenced as a dangerous special offender or habitual offender under section 12.1- 32-09, or is convicted of a crime in violation of section 12.1-16-01, 12.1-16-02, subsection 2 of section 12.1-17-02, section 12.1-18-01, subdivision a of subsection 1 or subdivision b of subsection 2 of section 12.1-20-03, section 12.1-22-01, subdivision b of subsection 2 of section 12.1-22-02, or an attempt to commit the offenses, and who receives a sentence of imprisonment is not eligible for release from confinement on any basis until eighty-five percent of the sentence imposed by the court has been served or the sentence is commuted. All other offenders are not eligible for release from confinement on any basis until the earliest of:
   a. Fifty percent, not including any time credited pursuant to 12-54.1-01, of the sentence imposed by the court has been served and the offender is paroled;
   b. The offender's sentence has been commuted and the offender has served the commuted sentence;
   c. Eighty-five percent of the sentence imposed by the court has been served; or
   d. The offender is pardoned.
2. In the case of an offender who is sentenced to a term of life imprisonment with opportunity for parole under subsection 1 of section 12.1-32-01, the term "sentence imposed" means the remaining life expectancy of the offender on the date of sentencing. The remaining life expectancy of the offender must be calculated on the

date of sentencing, computed by reference to a recognized mortality table as established by rule by the supreme court.

3. Notwithstanding this section, an offender sentenced under subsection 1 of section 12.1-32-01 may not be eligible for parole until the requirements of that subsection have been met.

4. ~~An offender who is convicted of a class C felony in violation of section 12.1-17-02, or an attempt to commit the offense, and who has received a sentence of imprisonment or a sentence of imprisonment upon revocation of probation before August 1, 2015, is eligible to have the offender's sentence considered by the parole board.~~"Confinement" does not include placement or residence in a transitional facility, halfway house, or other organization or facility, operating under contract, in partnership with, or under the direction of the department of corrections and rehabilitation or other correctional facility, that offers education, counseling, or other programs, with minimum security housing, for offenders.

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

SECTION ~~10.~~11. AMENDMENT. Section 39-10-71 of the North Dakota Century Code is amended and reenacted as follows:

39-10-71. Fleeing or attempting to elude a peace officer - Penalty.

1. A driver of a motor vehicle who willfully fails or refuses to bring the vehicle to a stop, or who otherwise flees or attempts to elude, in any manner, a pursuing police vehicle or peace officer, when given a visual or audible signal to bring the vehicle to a stop, is guilty of a:

a. Class A misdemeanor for a first offense and a class C felony for a subsequent offense within three years;

b Class C felony if the driver violates this section while willfully fleeing during or after the commission of a felony; or

c. Class C felony if, at any time during the flight or pursuit, the driver willfully operates the vehicle in a manner constituting an inherent risk of death or serious bodily injury to a third person.

2. A signal complies with this section if the signal is perceptible to the driver and:

a. If given from a vehicle, the signal is given by hand, voice, emergency light, or

siren, and the stopping vehicle is appropriately marked showing it to be an official police vehicle; or

b. If not given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the officer is in uniform or prominently displays the officer's badge of office.

3. A felony conviction under this section carries a penalty of at least thirty days' imprisonment and, if there is an underlying conviction, the imprisonment must be consecutive to any sentence of imprisonment for the underlying conviction.

4. Upon a motion by a state's attorney, a court may order that a motor vehicle used in the commission of a violation of this section be impounded by a peace officer for up to six months.

SECTION 12. APPLICATION. Sections 1, 2, 3, 4, 5, 6, 9, and 10 of this Act apply to individuals who are charged after July 31, 2025, with violations subject to the provisions of this Act.

2025 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

SB 2128
1/22/2025

Relating to transparent sentencing of criminal offenders, work release eligibility and conditions for criminal offenders, sentences for assaulting and fleeing from law enforcement officers, and sentences for preventing arrest; to provide a legislative management report; and to provide a penalty.

2:15 p.m. Chair Larson opened the hearing.

Members present:
Chair Larson, Vice Chairman Paulson, Senators: Castaneda, Cory, Luick, Myrdal, Braunberger.

Discussion Topics:

- Truth in sentencing implications
- Rehabilitation and reentry programs
- Public safety concerns
- Minimum mandatory sentences
- Recidivism rates

2:16 p.m. Scott Peyton, Prison Fellowship, Director Government Affairs, testified in opposition and submitted testimony #29786.

2:24 p.m. Drew Wrigley, Attorney General, testified in favor and submitted testimony #32559 and #32560.

3:02 p.m. Stephanie Engebretson, Chiefs of Police Association of ND, testified in favor and submitted testimony #30316.

3:03 p.m. Calvin Benson, ND Peace Officer's Association, testified in favor.

3:04 p.m. Travis Finck, Executive Director, ND Commission on Legal Counsel for Indigents, testified in opposition and submitted testimony #30366.

3:29 p.m. Kevin Arthaud, Administrator, Bismarck Transition Center, testified in opposition and submitted testimony #30000.

3:42 p.m. Adam Martin, CEO, F5 Project, testified in opposition and submitted testimony #29951.

3:48 p.m. Colby Braun, Director, ND Department of Corrections and Rehabilitation, testified in opposition and submitted testimony #30448, #30449 and #30977.

4:20 p.m. Perry Smith, Founder, A.D.A.P.T. Electronic Monitoring LLC, testified in opposition.

4:25 p.m. Jesse Walstad, Representative & Criminal Defense Attorney, NDACDL, testified in opposition and submitted testimony #30402.

Additional written testimony:

Brad Brekke, Owner & CEO, ADAPT Electronic Monitoring, LLC, submitted testimony in opposition #30372.

Patrick D. Purtill, Exec VP and General Counsel, Unify.Us, submitted testimony in opposition #29615.

Rachel A. Wright, National Policy Director, Right on Crime, submitted testimony in opposition #29798.

Jason Pye, Due Process Institute, submitted testimony in opposition #29818.

Patrick Plein, Director, Nolan Center for Justice of CPAC, submitted testimony in opposition #30054.

Gail L. Schmidkunz submitted testimony in opposition #30336.

Rhonda J. Schmidkunz submitted testimony in opposition #30337.

Curtiss M. Heidebrink, Program Director, F5 Project, submitted testimony in opposition #30383.

Josh Helmer, Executive Director, Centre, Inc., submitted testimony in opposition #30777.

4:45 p.m. Chair Larson adjourned.

Kendra McCann, Committee Clerk

Unify.Us

January 16, 2025

The Honorable Kelly Armstrong
Governor of North Dakota
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505

The Honorable David Hogue
North Dakota Senate Majority Leader
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505

The Honorable Robin Weisz
Speaker
North Dakota House of Representatives
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505

Re: ***SB 2128***

Gentlemen:

Unify.Us is a new addition to the public policy community and is engaged in work across the country to strengthen our economy, our families, and our communities. A merger of economic and faith driven conservatives, we were formed by former principals of the American Conservative Union (better known as "CPAC") and the Faith & Freedom Coalition.

The founders of Unify.Us have more than 50 years of collective experience as grass roots activists. Our team also has a significant record on criminal justice policy. Unify's President, Timothy Head, was formerly the Executive Director of the Faith & Freedom Coalition. Prior to that, Tim was one of the key staffers in the Texas legislature that developed the Justice Reinvestment Initiative, a policy framework that changed the way conservatives have dealt with crime, punishment, and incarceration in 33 states across the country.

Our Chief Operating Officer, David Safavian, was formerly the long-time general counsel and executive vice president at CPAC. He served in the George W. Bush White House and as a chief of staff for a Republican Member of Congress from Utah who was senior on the House Judiciary Committee.

For the past ten years I was Director is Legislative Affairs for the Faith & Freedom Coalition where I worked with the first Trump Administration to craft and pass the First Step Act to reduce criminal recidivism and promote public safety. Prior to that I spent three years as Special Assistant to the U.S. Deputy Attorney General where I managed drafting and implementation of regulatory reforms and pilot grant programs and served on the Attorney General's Prisoner Reentry Working Group, the President's Prisoner Reentry Initiative Group, and the Strategic Management Council's Subcommittee on Violent Crime and Gangs.

Given our backgrounds, we wanted to reach out to express our views on SB2128. In short, we have serious concerns about this piece of legislation. Broadly speaking, the bill would do three things:

(1) *Imposition of Mandatory Minimum Sentences.* SB2128 would reduce the ability of judges to mete out sentences that reflect the individual facts and circumstances of each case before them by establishing mandatory minimum sentences for certain crimes. Our view is that mandatory minimums are an inflexible and formulaic approach to justice. Our criminal justice system relies on judges to oversee court proceedings and apply their own judgment to the circumstances of each case at sentencing. Given North Dakota's political culture, we have no concerns about judges failing to reflect the community ethos on crime and punishment. But SB2128 would create a one-way ratchet on sentence imposition and increase the number of prisoners behind bars, regardless of mitigating circumstances in any individual case.

(2) *Limit the Ability of Department of Corrections Officials to Effectively Manage ND Prisons.* SB2128 would establish a so-called "Truth in Sentencing" policy that would severely constrain NDDOC. Not only would it essentially lengthen prison terms by not counting time in half-way houses and on home confinement, but it would also prohibit the use of "earned time credits" to encourage good behavior. This latter effect is particularly important. In prison systems across the country, inmates are incentivized to participate in alcohol and drug treatment, mental health programs, and vocational or other educational programs. The incentives often take the form of credits that can be used to reduce the number of days in prison. Such incentives have been shown to reduce recidivism, which makes communities safer. And because earned time credits are generally forfeited if a prisoner violates the rules while behind bars, these incentives also make prisons safer for corrections officers and inmates alike.

(3) *Increase Government Spending of Taxpayers' Money*. Our understanding is that SB2128 would increase state spending on corrections by approximately $197 million over four years. Given that there is little recent quality research validating the beneficial impact of either mandatory minimums or Truth in Sentencing, it is difficult to justify the increased spending. Moreover, adding nearly $200 million in new corrections outlays can only make it more difficult for the legislature to pursue Governor Armstrong's laudable proposal to eliminate property taxes in the state.

We note one area where we agree in principle with the sponsors of SB2128: addressing fleeing or assaulting a police officer. These are serious crimes that put our law enforcement officers – and ultimately the community – at greater risk. The legislature should provide clear guidance to the state's judiciary that stern sentences are appropriate. So long as judges have the ability to grant departures from sentencing guidelines in the interests of justice (and requiring the rationale for any such downward departures to be put on the public record), we have no problem with increasing the penalties for both evasion of and assault on a police officer.

As you consider SB2128, we appreciate your taking our views into account. We anticipate more regular engagement in North Dakota, and hope to establish an active grassroots presence in the state in the coming months. In the interim, please feel free to contact me at ppurtill@unifyus.us with any questions or comments.

Respectfully,



Patrick D. Purtill
Executive Vice President
and General Counsel

PRISON FELLOWSHIP

Seek justice. Love mercy. Restore hope.

January 21, 2025

North Dakota Legislative Council
State Capitol
Senate Judiciary Committee
600 East Boulevard Avenue
Bismarck, ND 58505

Dear Committee Members,

Thank you for the opportunity to provide written testimony in opposition of SB2128.

With nearly 50 years of experience encountering Jesus with men and women behind bars, Prison Fellowship® is a leading national voice shaping the public debate on justice. We mobilize Christians and equip policymakers to advocate for federal and state justice reforms that advance proportional punishment, constructive corrections culture, and second chances. Our guiding principles are rooted in the biblical call to seek justice, love mercy, and restore hope. We are writing to express significant concerns about the proposed policies in SB2128, especially those related to earned compliance credits, parole eligibility, and the creation of mandatory minimums.

Prison Fellowship operates the Prison Fellowship Academy ® in North Dakota at no expense to taxpayers. The Academy uses targeted curriculum, compassionate coaches, and a restorative community to replace participants' criminal thinking and behaviors with renewed purpose and biblically based life principles. Graduates complete the yearlong program as change agents and good citizens inside and outside of prison. Such impactful programming is only possible because of the strong foundation this body has created for the North Dakota Department of Corrections and Rehabilitation (DOCR), focusing on accountability, victim restoration, and ensuring that individuals leave prison as better men and women than when they entered.

To be clear, our concerns do not mean we believe individuals should avoid accountability for their actions. On the contrary, crime demands accountability, and punishment must be proportional. However, the proposed mandatory minimums, elimination of parole eligibility, and reductions in early release credits risk creating unnecessary barriers to successful reentry while failing to enhance public safety meaningfully.

Justice requires us to demand outcomes that effectively reduce crime and enhance public safety. However, policies relying heavily on incarceration for nonviolent, low-risk offenses often harden individuals, making them a greater risk to society upon release. Prisons serve an essential role by incapacitating dangerous individuals, but they are not the appropriate solution for every individual who has committed a crime.

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prisonfellowship.org

Mandatory minimums, often synonymous with so-called "truth in sentencing," were widely adopted in the 1980s and 1990s with the goal of being tough on crime.[1] Yet, history and research demonstrate these policies did not achieve their intended outcomes.[2] By contrast, the bipartisan Federal First Step Act provides a roadmap for effective reform. This legislation, championed by President-elect Trump, expanded good time credits, reduced recidivism, and showed that reform is not only possible but also beneficial for public safety, families, and communities.[3]

North Dakota has an opportunity to seek justice wisely by promoting policies that encourage personal responsibility, equip individuals for successful reentry, and respect those who have been harmed by crime. A justice system that aligns with mercy acknowledges that transformation is possible and that helping individuals address barriers to reentry—such as housing, employment, and transportation—keeps families together and reduces recidivism.

We urge you to consider the unintended consequences of Senate Bill 2128 and to pursue policies that advance proportional punishment while fostering hope and healing. True justice not only holds individuals accountable but also paves the way for them to make amends, rebuild their lives, and contribute to safer communities.

At Prison Fellowship, we are committed to partnering with you to achieve these goals. Together, we can seek justice, love mercy, and restore hope for all North Dakotans.

Sincerely,

Scott E. Peyton
Director, Government Affairs
Prison Fellowship

[1] Ram Subramanian & Ruth Delaney, *Playbook for Change? States Reconsider Mandatory Sentences*, Vera Institute of Justice (Feb. 2014), https://www.prisonpolicy.org/scans/vera/mandatory-sentences-policy-report-v2b.pdf.
[2] FAMM, *"Truth in Sentencing" Paying More Money to Make Our Communities Less Safe*, Families Against Mandatory Minimums (April 2024), https://famm.org/wp-content/uploads/2024/04/FAMM-Truth-in-Sentencing-Fact-Sheet.pdf.
[3] First Step Act of 2018, S. 756, 115th Cong. (2018); DOJ, *First Step Act Annual Report*, U.S. Department of Justice (June 2024), https://www.ojp.gov/pdffiles1/nij/309223.pdf.

Right On CRIME

January 17, 2025

Re: SB 2128

Dear members of the Senate Judiciary Committee:

I write to you today to express concern about the policies included in SB 2128, recently introduced by the Senate Judiciary Committee of North Dakota's Legislative Assembly.[1] Right On Crime is a national campaign of the Texas Public Policy Foundation that supports conservative criminal justice solutions resulting in less crime, fewer victims, and safer communities. Right On Crime believes prison systems should function to not only punish and deter dangerous offenders and career criminals, but should also help nonviolent, low-risk offenders reenter society successfully, ending the cycle of recidivism through rehabilitation. It is with these principles in mind that Right On Crime urges the North Dakota Legislative Assembly to consider amending SB 2128 to ensure some discretion continues to exists in sentencing.

Several sections of SB 2128 restrict or eliminate discretion in prison release—commonly referred to as truth-in-sentencing laws. Since 1995, North Dakota has had a version of truth-in-sentencing laws requiring most violent offenders to serve 85% of their prison term.[2] However, SB 2128 dramatically expands the reach of truth-in-sentencing, expanding the 85% time served requirement to almost every felony offense.

While truth-in-sentencing is often touted as a pro-public safety policy, it instead has been proven to prevent meaningful opportunities to reduce recidivism and increase public safety.

First, truth-in-sentencing laws remove incentives for people to rehabilitate themselves while incarcerated. SB 2128's provisions mean that after completing 85% of a sentence, you are released no matter whether you have meaningfully contributed to your rehabilitation while incarcerated and are a low risk to public safety. Under truth-in-sentencing, an offender can sit in a cell for the entire sentence and still be released without taking a class, learning a trade, or doing anything to educate themselves to prepare to succeed upon release. The lack of incentives to rehabilitate not only hampers reentry but can also lead to worse behavior while incarcerated. If SB 2818 passes, North Dakotans behind bars will have no incentive to prepare for a better life beyond prison.

More than 95% of inmates are eventually released from incarceration and reenter society. However, the length of time someone spent in prison has no impact on public safety or crime prevention upon release. Researchers have found no evidence that long sentences discourage people from committing crimes.[3] In fact, it is the *certainty* of being caught, not the length of the punishment, that deters crime.[4] Recent research has even concluded that truth-in-sentencing laws are associated with higher recidivism.[5]

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[1] https://ndlegis.gov/assembly/69-2025/regular/bill-overview/bo2128.html?bill_year=2025&bill_number=2128.
[2] North Dakota Century Code Section 12.1-32-09.1.
[3] U.S. Department of Justice, Office of Justice Programs, National Institute of Justice (2016). Five Things About Deterrence. https://www.ojp.gov/pdffiles1/nij/247350.pdf.
[4] *Id*.
[5] Macdonald, D.C. (2024). *Truth in Sentencing, Incentives and Recidivism*, https://direct.mit.edu/rest/article-abstract/doi/10.1162/rest_a_01538/125419/Truth-in-Sentencing-Incentives-and-Recidivism?redirectedFrom=PDF.

So truth-in-sentencing laws are not supported by data or research to improve public safety, and may even have the opposite effect.

Second, the bill's language is too broad, covering nearly all felony convictions in the state. This would treat a non-violent offender suffering from substance use disorder and a violent predator the same. Truth-in-sentencing removes discretion for judges to consider the specific crime, the individual's unique circumstances, and any considerations for long-term, positive outcomes for the offender, victim, and society. A less rigid sentencing framework will allow sentences to remain consistent but tailored to individual needs.

A number of other states have truth-in-sentencing laws in place despite little evidence of their efficacy. For example, Arizona has had truth in sentencing laws since 1994. Since its implementation, corrections costs have skyrocketed. In fact, Arizona taxpayers have spent over $1.3 billion per year on incarceration.[6] But the return on investment has been dismal. In fact, today, there are more people incarcerated in Arizona than before truth-in-sentencing laws were implemented and the recidivism rates are higher.[7] Similarly in Georgia, when truth-in-sentencing laws replaced parole, there was a 15% increase in prison rule violations, a 14% decline in rehabilitative program participation, and 5-7% increase in recidivism rates.[8]

Right On Crime recommends that the North Dakota Legislative Assembly works to improve SB 2128 by either eliminating or dramatically revising the language that expands truth-in-sentencing laws. It is our joint goal to create a safer and more prosperous future for North Dakotans and we believe that we can. Changes to SB 2128 can be made to make our communities safer. Right On Crime appreciates your consideration and we stand at the ready to be of assistance on this legislation and other criminal justice issues.

Sincerely,

Rachel Wright
National Policy Director

[6] https://rightoncrime.com/wp-content/uploads/2022/02/Truth-In-Sentencing_OnePager_20220211.pdf
[7] *Id*.
[8] Kuziemko, I. (2013). How should inmates be released from prison? An assessment of parole versus fixed-sentence regimes, The Quarterly Journal of Economics, 128(1), 371–424. https://kuziemko.scholar.princeton.edu/sites/g/files/toruqf3996/files/kuziemko/files/inmates_release.pdf.

January 17, 2025

Re: SB 2128

Madam Chair Larson and Members of the Senate Judiciary Committee,

We, the undersigned organizations, write to express our strong opposition to SB 2128. While we share a commitment to ensuring public safety and accountability, SB 2128 introduces punitive sentencing policies that are not only counterproductive but also impose significant budgetary, economic, and societal costs. SB 2128 undermines rehabilitation and weakens the potential of the economic workforce.

The imposition of a so-called "truth in sentencing" (TIS) requirement for all sentences eliminates critical opportunities for rehabilitation and reintegration. By excluding halfway houses and transitional facilities from the definition of "corrections facilities," this provision ensures prolonged incarceration without addressing underlying causes of criminal behavior. The opportunity of employment in transitional facilities is directly related to an individual's risk of recidivism.

Extensive research demonstrates that longer sentences do not deter crime but, by decreasing incentives for rehabilitation, instead increase recidivism rates and make prisons less safe. For example, an April 2024 study of Arizona's "truth in sentencing" requirement found an increase in rule infractions, a decrease in educational enrollment, and an increase in recidivism. As the author notes, "TIS runs contrary to public policy aimed at reducing reoffending among those convicted and incarcerated."[1]

Mandatory minimum sentences for offenses such as fleeing a peace officer creates a one-size-fits-all sentencing regime for a prison system that is already overcrowded and overburdened. Mandating that sentences run consecutively results in disproportionately harsh outcomes for low-level and nonviolent offenders, particularly those with mental health or substance use disorders. Consecutive sentencing requirements further strain the North Dakota corrections system at a moment when the Department of Corrections and Rehabilitation is already prioritizing admissions because of prison overcrowding.[2]

The anticipated costs of implementing these provisions is substantial—nearly $50 million per year over four years. Prolonged incarceration, reduced opportunities for early release, and increased administrative burdens will strain North Dakota's correctional system and divert resources from evidence-based strategies that effectively reduce recidivism and enhance public safety. In addition, the bill's mandatory quarterly reporting requirements will further increase administrative expenses without meaningful benefits.

Instead of enacting SB 2128, we urge the legislature to preserve powerful incentives for rehabilitation while incarcerated and retain judicial discretion to ensure sentences reflect the unique circumstances of each case. SB 2128 represents a regressive step in criminal justice policy that prioritizes punishment over rehabilitation at a steep cost to taxpayers and North Dakota's overburdened prisons. We urge you to reject this bill and instead support initiatives that promote fairness, rehabilitation, and public safety.

We welcome the opportunity to discuss alternative approaches and collaborate on policies that foster a more equitable and effective justice system.

If you have any questions about our position on SB 2128, please contact Due Process Institute Vice President Jason Pye at jason@idueprocess.org.

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[1] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4806765
[2] https://www.nd.gov/news/nd-docr-enters-prioritization-inmates-admissions-continue-exceed-capacity-state-run

Sincerely,

Jason Pye
Vice President, Due Process Institute

Daniel Landsman
Vice President of Policy, FAMM

Lauren Krisai
Executive Director, Justice Action Network

Sarah Anderson
Associate Director, Criminal Justice & Civil Liberties, R Street Institute

01/19/2025

FROM THE DESK OF ADAM MARTIN FOUNDER AND CEO OF F5 PROJECT

Subject: Opposition Letter for SB 2128

Chair Larson and esteemed members of the Senate Judiciary Committee,

My name is Adam Martin, and I am the Founder and CEO of the F5 Project. Since our inception in 2017, our mission has been to break the cycle of crime, addiction, and isolation by providing individualized care that fosters resilience and restores hope. Through our comprehensive housing initiatives, jail and prison programs, and care coordination within the Free Through Recovery framework, F5 Project has successfully supported over 30,000 individuals impacted by the justice system across North Dakota.

Today, I am here to testify in opposition to SB 2128, and I would like to present several logical and objective reasons for my stance.

Firstly, there have been no successful outcomes associated with Truth in Sentencing laws. Several states, including North Carolina, Arizona, and Florida, have enacted similar legislation, and the results have been concerning. All three states have seen increases in prison infractions, violations, and crime rates within their communities. This trend is particularly alarming in overcrowded jails and prisons, like those in North Dakota.

Additionally, data from the Criminal Justice Institute specifically regarding North Dakota's incarceration rates indicates that individuals who serve longer sentences often recidivate at higher rates compared to those who have shorter sentences. This is especially true for individuals who have engaged in effective reentry plans and participated in rehabilitation programs while incarcerated.

The North Dakota Department of Corrections and Rehabilitation (DOCR) has made remarkable strides in rehabilitation over the past decade. Participation in reentry programs, such as Free Through Recovery, has been linked to lower recidivism rates. Since 2018, F5 Project has achieved a 75% success rate for participants in Free Through Recovery, underscoring the value of investing in reentry efforts and demonstrating a better return on investment for North Dakota compared to prolonged incarceration.

Decreasing participation in prison programming will ultimately lead to less safe prisons and communities. These programs are vital for fostering relationships between incarcerated individuals and outside agencies, allowing for the development of personalized reentry plans. Restricting access to these programs until individuals have served 85% of their sentences

01/19/2025

FROM THE DESK OF ADAM MARTIN FOUNDER AND CEO OF F5 PROJECT

would significantly diminish engagement, reduce incentives, and hinder effective planning for those who will eventually be released.

While the intention of the bill centers on public and officer safety, evidence from other states indicates that the opposite effect may occur. Personally, I have been convicted of crimes that, under this bill, would have mandated lengthy prison sentences and required me to serve 85% of my time. However, I have never been incarcerated because current laws empower judges to make individualized decisions based on the unique circumstances of each case. I was fortunate enough to be granted the opportunity for treatment instead of prison. As a result, I am proud to say that I have turned my life around, founded a nonprofit that has successfully helped many individuals reintegrate into society following brief stints in jail or prison, and recently received a pardon from Governor Burgum, with unanimous approval from the pardon advisory board.

Thank you for considering the implications of this bill and its potential impact on our communities and the individuals within them.

Adam Martin, Founder and CEO of F5 Project



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January 19, 2025

The Honorable Kelly Armstrong
Governor of North Dakota
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505

The Honorable David Hogue
North Dakota Senate Majority Leader
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505

The Honorable Robin Weisz
Speaker
North Dakota House of Representatives
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505

RE: SB2128

Community, Counseling and Correctional Services, Inc. (CCCS, Inc.) is a private, not-for-profit, 501-c(3) corporation. It was incorporated in 1983, with its' headquarters in Butte, Montana. They have been providing services for local, state, and federal agencies since 1983.

The Bismarck Transition Center (BTC) is one of 13 sites operated by CCCS, Inc. in Washington, Montana and North Dakota. We are accredited by the American Correctional Association. We have been contracted by the ND Department of Corrections since 2002 to provide a full range of services to adult offenders.

I have been the Administrator of the Bismarck Transition Center since December 1, 2010. I have spent my entire career in corrections, which began in 1981. I have held progressively responsible positions within the ND DOC&R and the Federal Bureau of Prisons.

This bill will have a negative impact on the residents who reside at the Bismarck Transition Center, citizens of North Dakota, local businesses in the Bismarck/Mandan area and the staff who are employed here.

The mission statement of CCCS, Inc. states: "CCCS is a team of individuals dedicated to meeting the human service needs of youths and adults to promote healthy living through treatment, training and supervision."

In line with our mission statement, the Bismarck Transition Center provides the following core practices to assist residents as they transition into the community:

Treatment Programming

Treatment programming at the Bismarck Transition Center includes Drug/Alcohol treatment, Thinking for a Change and Aftercare. During calendar year 2024, 43 residents completed Thinking for a Change, 71 residents completed drug/alcohol treatment and 48 residents completed Aftercare.

The Women's Treatment and Recovery Unit was opened in September 2023. This unit was created at the request of the ND DOC&R. It is a 90 day, secured, highly structured, therapeutic treatment unit. The unit houses 20 residents. Programs offered include: Seeking Safety, Responsive Risk Reduction for Women, Living Skills, Anger Management, Beyond Trauma and Living in Balance. A Parenting group will be added in the near future.

Within this program, residents gain coping skills to help them deal with traumas, triggers for relapse and overall well-being. Since its inception, 81 women have successfully completed the program.

Case Management

Case Managers are assigned to each resident prior to their arrival. They work with each resident until the day they are discharged.

Many residents come to the Bismarck Transition Center with only the clothes on their back. Case Managers assist them in obtaining clothing from clothing closets in the community, such as Seeds of Hope or Community Action.

All residents are required to gain employment while housed here. Many residents arrive without any form of identification or social security card - both of which are required to obtain employment. Case Managers assist in this process. As of today's date, 87 residents are employed by local businesses throughout the Bismarck/Mandan communities. The bulk of these residents are employed in the food service, construction and hospitality industries. Residents are employed at the same rate of pay as any other employee.

Case Managers assist residents in obtaining employment. Residents are given a list of employers in Bismarck/Mandan who hire felons, they assist residents applying for jobs on-line and we provide transportation to Job Service.

Residents of the Bismarck Transition Center are responsible for their own health care and medications. Within the first week of a resident's arrival, Case Managers provide application forms for Medicare and assist them to fill it out, if needed.

Some residents are required to attend treatment service in the community. Case Managers assist in this process. Community resources that are frequently used are: Heartview Foundation, Blessed Builders and Summit.

Residents are required to turn in all money earned while they are at the Bismarck Transition Center. Residents turn in a weekly budget request to their Case Manager for approval. The goal of this process is to teach residents how to budget money and to save for their discharge. Additionally, residents are required to pay 10% of their earnings towards fines, fees and restitution. During calendar year 2024, residents paid $39,314.83 to fines, fees and restitution.

Residents are required to pay room and board during their stay. Room and board is deducted from their budget each week. Money collected from residents helps reduce the daily per diem rate the ND DOCR is charged.

Residents who are starting over and are looking for an apartment will normally need money for a deposit and first month's rent. Case Managers assist residents applying for ND rent help, food stamps and provide them a list of different food pantries in the community.

Some residents request to be discharged to a sober living house. Case Managers assist residents filling out the applications to sober living houses, such as: Blessed Builders, F5 Project, Hope Manor, Serenity Bridge and Tied for Second.

During calendar year 2024, 189 residents discharged successfully.

Security

Public safety is at the forefront of every operational decision made. This begins in the referral and screening processes prior to a residents' acceptance as a resident of BTC. Each resident goes through a referral process that is initiated by ND DOCR staff. BTC staff review each referral and determine if the referral is appropriate for BTC.

BTC meets with an Advisory Board on an annual basis. Members of the Advisory Board include: Dave Draovitch, Chief, Bismarck Police Department; Kelly Leben, Sheriff, Burleigh County; Kyle Kirchmeier, Sheriff, Morton County; Lance Anderson, Warden, Transitional Facilities, DOC&R and Mike Wetsch, Chair, Criminal Justice Department, United Tribes Technical College. The Advisory Board is provided with updates concerning facility operations. Additionally, concerns board members have regarding BTC are discussed.

Residents are required to submit a weekly schedule to their Case Manager for approval. Once their schedule is approved, residents are restricted to the scheduled activities and locations on their schedule. Residents are held accountable for following their weekly schedule through physical and phone checks, which our security staff complete. During physical checks, BTC staff enter the business and speak to managers related to the resident's work performance. During calendar year 2024, staff completed 3,407 physical checks on residents at their jobs or participating in treatment programming in the community.

All residents returning to BTC from the community receive a breathalyzer test and a pat search. During calendar year 2024, staff conducted 17,139 breathalyzer tests and 28,812 pat searches.

All residents are required to submit a urinalysis test upon arrival and throughout their stay at BTC. During calendar 2024, residents submitted 1,201 urinalysis tests. Residents who are not at their designated location, receive a positive breathalyzer or urinalysis test or attempt to bring contraband into the facility are subject to progressive disciplinary action, up to and including, removal from the facility and/or receiving new criminal charges. The referring agency is always consulted prior to removing a resident from the facility.

Resident's behavior is continually monitored throughout their stay at BTC. Residents who violate facility rules are subject to disciplinary action, up to and including, removal from the facility.

This bill, as written, will have the following impact on BTC residents, staff, ND DOCR and the Bismarck/Mandan communities:

- It will eliminate the transitional opportunities that residents now receive at BTC. Residents who successfully discharge from BTC have completed treatment programming, are employed, have money and they have a discharge address that is not to a homeless shelter. The chances of their successful reentry into the community are much greater, than if they didn't have this opportunity.

- The ND DOCR will lose 140 resident beds that they currently use. All of the beds at BTC are cheaper than the per diem expense the ND DOCR currently pays.

- Local businesses will lose 87 resident employees.

- CCCS, Inc. will lose 53 BTC employees.

- Local businesses will no longer receive revenue generated from the operation of BTC.

As the Administrator of BTC, I firmly believe in the role that BTC plays related to Public Safety. Residents who complete our program are leaving with the tools they need to be successful. Residents who complete our program may be our neighbors someday.

Sincerely,

Arthaud

Kevin Arthaud, Administrator
Bismarck Transition Center

January 21, 20025

Madam Chair Larson and members of the Senate Judiciary Committee,

Thank you for organizing this hearing and allowing us to share our opposition to SB 2128.

Background

Our organizations are conservative and Christian-based public policy groups with a long history of advocating for social welfare and safer communities. As conservatives, we also believe in limiting the size and scope of government, reducing unnecessary spending of the taxpayers' money, and preserving the idea that government closest to the voters is most responsive to their needs. It is in this context that we write to express our concerns about SB 2128.

Issue Overview

As drafted, SB 2128 makes substantial changes to the state's penal code. The bill mandates that individuals serve 85% of their sentence in prison (known as "Truth in Sentencing" or "TIS"). It would preclude time spent in halfway houses or transitional facilities from counting toward the sentence imposed. SB 2128 would reduce the ability of the Department of Corrections to offer incentives to get inmates to participate in proven anti-recidivism programming such as addiction treatment, job training, or mental health programs. Finally, it would establish mandatory minimums for certain offenses, including fleeing a peace officer and assaulting one. Those convicted of either fleeing or assaulting a law enforcement officer would have to serve the mandatory minimum sentence, imposed consecutively to any underlying sentences.

The Fiscal Note for SB 2128 indicates that it would increase government spending by $197,505,517 between 2025-2029. This equates to an annual increase in spending of approximately $49.4 million a year.

So-Called "Truth in Sentencing"

With respect to the 85% requirement, we have seen similar TIS provisions in use in other states. However, there has been very little quality research assessing the outcomes driven by minimum time served requirements. Indeed, according to the data analytics firm Recidiviz in a 2022 review:

> Because there are few credible papers that estimate causal effects of TIS laws on outcomes for justice-involved individuals, we find it important to highlight the highest quality research on this topic to best inform decision makers. These two natural experiments from two different states find effectively the same unintended and critical consequences. ***Truth in Sentencing reduces incentives to complete rehabilitative programming, increases risk to safety for correctional officers and individuals in prison, and increases recidivism. If the goal of TIS is to increase public safety, these consequences may cause the policy to backfire.*** (Emphasis added.)

Eliminating Incentives for Anti-Recidivism Programming

According to the North Dakota Department of Corrections, the state's recidivism rate remains stubbornly high at approximately 40%. Because every case of re-offending means another crime, another victim, and often another costly prison cell, reducing recidivism is the key to cutting crime *and* unnecessary spending.

Indeed, that was the working principle behind President Trump's signature criminal justice bill, the First Step Act. First Step provides a mechanism for prisoners to earn credits towards early release to home confinement by taking anti-recidivism programming. Six years later, it is clear that the Trump approach has worked.

An analysis conducted in December 2024 by the non-partisan Council on Criminal Justice indicated that similarly situated inmates who had taken programming under the First Step Act and earned early release had a 55% lower recidivism rate compared to those who did not.

We believe the most effective path to recidivism reduction in North Dakota is to adopt an approach similar to that used by President Trump to improve performance of the federal system. That is, create incentives to encourage inmates to do the hard work of self-improvement so that they leave prison ready to work and become law abiding members of the community. Unfortunately, SB 2128 does just the opposite. It would prohibit the use of earn time credits to incentivize anti-recidivism programming, which will almost certainly lead to an increase in the number of repeat offenders.

Imposition of Mandatory Minimums

SB 2128 would set mandatory minimum sentences for certain crimes – including evading and assaulting a law enforcement officer. To be clear, we have no compunction about holding people accountable for their actions. Evading a police officer is serious. Assaulting one is even more so. People who act in such a way merit meaningful punishments … to be issued by trial judges, not the prosecutors.

Taking the discretion out of the hands of judges under the rubric of mandatory minimums is seductively simple. However, reliance on mandatory minimums is a one-size-fits-all solution to a criminal problem. Such an approach to sentencing not only removes needed flexibility in the system to actually do justice, it predictably leads to higher incarceration costs and prison overcrowding.

Every crime is unique because individual victims, defendants, and case circumstances are unique. Our belief is that judges should have the power to mete out sentences based on all the facts and circumstances. In fact, that is why we pay judges; to use their judgment to do justice rather than apply a mathematical formula. If a judge is too harsh or too lenient, there is recourse at the ballot box.

Conclusion

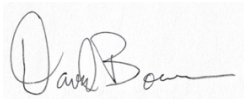
While well intended, SB 2128 would have negative consequences for the taxpayers and residents of North Dakota. It would prohibit incentives that have been proven to reduce recidivism. And it would likely lead to higher incarceration costs to be borne by the taxpayers. All without any definitive proof that it would lead to safer communities. We urge you to reject this legislation and stand ready to work with you on legislation that is beneficial to North Dakotans safety and prosperity.

Thank you for your attention and consideration to this critical issue,

Patrick Plein, CPAC



David Bowser, Faith & Freedom Coalition



January 21, 2024
Senate Judiciary Committee
SB 2128
Senator Diane Larson, Chair

For the record, I am Stephanie Dassinger Engebretson. I am appearing on behalf of the Chiefs of Police Association of North Dakota. I am also the deputy director and attorney for the North Dakota League of Cities. The Chiefs of Police appear in support of SB 2128.

SB 2128 is a good step towards addressing concerns that are at the top of the minds of the Chiefs of Police. First, it ensures that the sentences of individuals sentenced to the custody of the North Dakota Department of Corrections are carried out in a transparent manner. It also ensures that most individuals who are convicted serve the majority of their sentences in prison.

Next, the bill adds additional penalty provisions for preventing arrest, assaulting a police officer, and fleeing or attempting to elude a peace officer. Conduct constituting those charges has become quite prevalent and defendants convicted of those crimes often do not have any additional punishment for the listed offenses that are incredibly dangerous to law enforcement officers.

As this bill addresses many major concerns of law enforcement, the Chiefs of Police Association of North Dakota respectfully requests a Do Pass recommendation on SB 2128.

January 20, 2025

Senator Larson and Judiciary Committee,
I am writing to express my opposition to SB2128. Statistics have shown that there is less inmate recidivism when inmates are involved in programs that provide behavior modification treatment or training. Bringing inmates back from transitional placements will have a very negative outcome. Transitional programs and behavior modification programs such as Restoring Promise motivate inmates to make personal behavioral improvements and provide coping mechanisms to help inmates not to re-offend when they are released.

Forcing inmates to serve 85% of their sentence without any chance of having their sentence commuted will only cause additional disruptive and uncooperative behavior from inmates who would otherwise serve their time without causing trouble.

My son was sentenced to serve 85% of a 30-year sentence. He has less than five years left to meet the 85% requirement. For twenty-one years, Zach has been cooperative and taken advantage of the programs that I've already mentioned, but most importantly, he is determined to be a positive influence to the younger inmates with upcoming release dates. Zach is a mentor for the Restoring Promise program. If you check NDSP statistics, there is a lower incidence of inmates reoffending after being part of this program.

I mention all of this because for over twenty one years, Zach has held on to the hope that each time that he was eligible to go before the pardon board, they might take into consideration reducing Zach's sentence because Zach has been a model prisoner and made a difference with his mentees and other inmates that he has contact with.

If SB2128 were to become law, it would take away any motivation for an inmate to better themselves and would only contribute to behavior problems within the inmate population.

Mr. Gail L. Schmidkunz
Minot ND

January 20, 2025

Senator Larson and the Judiciary Committee/SB 2128

I am the mother of a long-term resident of the North Dakota State Penitentiary. Over the past 20+ years we have seen so many positive changes in the Department of Corrections, many started by the former warden and now director of the Department of Corrections and Rehabilitation, Colby Braun.

Realizing that the percentage of residents being released and becoming a neighbor of mine or yours is quite high. As a resident of Minot and the State of North Dakota I would definitely prefer that person to have gone through rehabilitation programs, incentive programs along with classes to improve themselves while they have been incarcerated. Hopefully, by NOT having mandatory sentences it would allow the Department of Corrections to make decisions on a case by case basis as they work with each individual on a daily basis. By having the mandatory sentences with no incentives to improve themselves seems to me to be a detriment to releasing good, productive citizens rather than bitter, angry people that will be my neighbor. It would seem to me that treating the residents like a human being rather than just an inmate number would produce decent releasees.

During the last Legislative Session there were committee hearings held at NDSP where the legislators could see all the positive programs for the residents. We heard several positive comments at that time. We've talked to other parents who are seeing the results of a positive atmosphere rather than a negative place.

I don't know all the statistics regarding recidivism but throughout the years we've been visiting there, we've seen very little return of guys that have been able to participate in transitional housing or at the Missouri River Correctional Center. My belief is that is the result of positive programs at NDSP and the re-entry training in the transitional housing or MRCC. Please do NOT pass this bill on mandatory sentences. People change and can be rehabilitated but those decisions should be made by the ones most closely working with the residents on a daily basis.

My son would not be affected by this decision either way but I would hate to see mandatory sentencing without regard for changes in someone who knows they need to repay society and many times would be better doing that as a tax paying, productive citizen in my neighborhood. I trust that DOCR would be making good decisions and not allow someone to be released who is not fit to be part of society.

Thank you for your consideration.

Rhonda Schmidkunz

69th Legislative Assembly
Senate Judiciary Committee
January 21, 2025
Testimony of Travis W. Finck in Opposition to SB 2128

Madam Chair, members of the Senate Judiciary Committee, my name is Travis Finck and I am the Executive Director for the Commission on Legal Counsel for Indigents. We are the state agency responsible for delivery of public defense services in the great state of North Dakota. On behalf of the Commission, I rise in opposition to Senate Bill 2128.

Truth in Sentencing has been tried. This provides us with a lot of research showing Truth in Sentencing to be a failed policy. Research consistently shows no public safety benefit[i] to increased incarceration and that longer sentences do not deter[ii] crime. Research also shows that Truth in Sentencing reduces incentives[iii] for incarcerated people to complete rehabilitative programming, increases safety risks for people in prison and corrections officers, and increases recidivism. The fiscal note in this case shows Truth in Sentencing in North Dakota will also cost taxpayers with no discernible benefit.

Here are some examples of states who have tried and failed the dangerous experiment considered in SB 2128.

In 2022, Tennessee passed SB 2248. Tennessee's Department of Corrections projects that the resulting increases in incarceration will cost taxpayers at least $40 million over the next 8 years. In Tennessee, the American Conservative Union opposed the Truth in Sentencing bill. In fact, people on both sides of the aisle understood that investing in prisons is an ineffective, wasteful, and dangerous approach to public safety.

Georgia required 90% of the sentence to be served. Research in Georgia showed Gerogia's truth in sentencing caused greater crime upon reentry, significantly higher reincarceration rates, and more resource expenditures from overall increased imprisonment.

In Arizona, in 1993, those convicted of felonies are required to serve 85% of their sentence. Research out of Arizona shows truth in sentencing caused the same problems.

Studies in these states show truth in sentencing doesn't address the problem it is being proposed for. It does however increase the likelihood of reoffending, increases risk to those in prison, and increases the risk to prison guards.

Particularly as it applies to the Commission, we are concerned this bill will cause more trials and cause them to be delayed. In Mississippi, for example, when Truth in Sentencing was passed, to avoid delays and unfair sentencing "the court community--judges, prosecutors, and public defenders--has adjusted its sentencing behavior to maintain what

is seen as proportionality in punishment in the face of a mandatory sentencing policy passed at the legislative level".[iv] This necessarily would need to be the case in North Dakota given the lack of resources available to prosecutors, judges and defense attorneys.

North Dakota's prisons and jails are already full. DOCR is already on deferred admission. If those sentenced to prison will now be ineligible for early release, DOCR will not be able to manage a population. County jails will be full of DOCR inmates. What will be the effect of this on immediate community safety? When someone is arrested on a domestic dispute, and all the jails are full of DOCR inmates, where will they be held to promote safety of the alleged victim?

In closing, the United States is the most punitive nation on Earth, and it isn't even close. In fact, If North Dakota were a nation unto itself, we would incarcerate a similar number of individuals per 100,000 people as Turkmenistan. North Dakota's incarceration rate is more than all other countries in NATO. Yet, we continue to hear we are growing unsafe in the community. Clearly if the community is less safe, incarceration is not working.

Truth in sentencing has been tried and has repeatedly shown to be ineffective.[v] I would hope we can learn from history and not make the same mistake. For the reasons stated herein, the Commission respectfully requests a DO NOT PASS recommendation.

Respectfully submitted:



Travis W. Finck
Executive Director, NDCLCI

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[i] Stemen, Don, Department of Criminal Justice and Criminology, Loyola University Chicago; The Prison Paradox: More Incarceration will Not Make Us Safer; July 2017. https://vera-institute.files.svdcdn.com/production/downloads/publications/for-the-record-prison-paradox_02.pdf (a copy of which is attached).

[ii] U.S. Dept. of Justice, Office of Justice Programs *National Institute of Justice*; Five Things About Deterrence, May 2016. https://www.ojp.gov/pdffiles1/nij/247350.pdf (a copy of which is attached).

[iii] Green-Lowe, Evan, Recidiviz; The consequences of Truth in Sentencing; April 2022. https://www.recidiviz.org/updates/the-consequences-of-truth-in-sentencing (a copy of which is attached).

[iv] Peter B. Wood; R. Gregory Dunaway; Journal of *Punishment & Society* Volume: 5 Issue: 2 Dated: April 2003 Pages: 139-154 Consequences of Truth-in-Sentencing: The Mississippi Case (abstract); April 2003.

[v] "Truth in Sentencing" Paying More Money to Make Our Communities *Less* Safe; Families Against Mandatory Minimums Fact Sheet, April 2024. (a copy of which is attached).

For the Record

The Prison Paradox: More Incarceration Will Not Make Us Safer

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Summary*

Despite two decades of declining crime rates and a decade of efforts to reduce mass incarceration, some policymakers continue to call for tougher sentences and greater use of incarceration to reduce crime.[1] It may seem intuitive that increasing incarceration would further reduce crime: incarceration not only prevents future crimes by taking people who commit crime "out of circulation" (incapacitation), but it also may dissuade people from committing future crimes out of fear of punishment (deterrence).[2] In reality, however, increasing incarceration rates has a minimal impact on reducing crime and entails significant costs:

- Increases in incarceration rates have a small impact on crime rates and each additional increase in incarceration rates has a smaller impact on crime rates than previous increases.[3]
- Any crime reduction benefits of incarceration are limited to property crime. Research consistently shows that higher incarceration rates are not associated with lower violent crime rates.[4]
- Incarceration may *increase* crime in certain circumstances. In states with high incarceration rates and neighborhoods with concentrated incarceration, the increased use of incarceration may be associated with increased crime.[5]
- Incarceration is expensive. The United States is spending heavily on jails and prisons and under-investing in less expensive, more effective ways to reduce and prevent crime.[6]

* This brief uses the broad term "incarceration," which can encompass confinement in both prisons and jails. Much of the research conducted to date, however, examines imprisonment only, and not incarceration in America's jails.

Why won't more incarceration reduce crime?

Incarceration has a marginal impact on crime

There is a very weak relationship between higher incarceration rates and lower crime rates. Although studies differ somewhat, most of the literature shows that between 1980 and 2000, each 10 percent increase in incarceration rates was associated with just a 2 to 4 percent lower crime rate.[7] Since then, only one empirical analysis (a study that requires corroboration) has examined the relationship between incarceration and crime.[8] Overall, the increased use of incarceration through the 1990s accounted for between 6 and 25 percent of the total reduction in crime rates.[9] Since 2000, however, the increased use of incarceration accounted for nearly zero percent of the overall reduction in crime.[10]

This means that somewhere between 75 and 100 percent of

About these briefs

Public policy—including decisions related to criminal justice and immigration—has far-reaching consequences, but too often is swayed by political rhetoric and unfounded assumptions. The Vera Institute of Justice has created a series of briefing papers to provide an accessible summary of the latest evidence concerning justice-related topics. By summarizing and synthesizing existing research, identifying landmark studies and key resources, and, in some cases, providing original analysis of data, these briefs offer a balanced and nuanced examination of some of the significant justice issues of our time.

the reduction in crime rates since the 1990s is explained by other factors. Research has shown that the aging population, increased wages, increased employment, increased graduation rates, increased consumer confidence, increased law enforcement personnel, and changes in policing strategies were associated with lower crime rates and, collectively, explain more of the overall reduction in crime rates than does incarceration.[11]

Incarceration has a diminishing impact on crime

The relationship between higher incarceration rates and lower crime rates is weak, and is getting weaker.[12] Research shows that each additional increase in incarceration rates will be associated with a smaller and smaller reduction in crime rates.[13] This is because individuals convicted of serious or repeat offenses receive prison sentences even when overall rates of incarceration are low. To continue to increase incarceration rates requires that prisons be used for individuals convicted of lower-level or infrequent offenses as well. Thus, since the early 1990s, the crime reduction benefits of additional prison expansion have been smaller and more expensive to achieve.[14] This diminishing impact of incarceration also explains the lack of crime reduction benefits of higher incarceration rates through the 2000s. Increases in correctional populations when incarceration rates are already high have less impact on crime than increases in populations when incarceration rates are low.[15]

Incarceration has little to no effect on violent crime

The weak association between higher incarceration rates and lower crime rates applies almost entirely to property crime.[16] Research consistently shows that higher incarceration rates are not associated with lower violent crime rates.[17] This is because the expansion of incarceration primarily means that larger numbers of individuals convicted of nonviolent, "marginal" offenses—drug offenses and low-level property offenses, as well as those who are convicted of "infrequent" offenses—are imprisoned.[18] Those convicted of violent and repeat offenses are likely to receive prison sentences regardless of the incarceration rate. Thus, increasing incarceration rates for those convicted of nonviolent, marginal offenses does nothing to impact the violent crime rate.[19]

Incarceration will increase crime in states and communities with already high incarceration rates

Although it may seem counterintuitive, research has shown that incarceration may actually increase crime. At the state level, there may be an "inflection point" where increases in state incarceration rates are associated with higher crime rates.[20] This state-level phenomenon mirrors a similar occurrence in specific neighborhoods, where communities may reach an incarceration "tipping point" after which future increases in incarceration lead to higher crime rates.[21] The argument is that high rates of imprisonment break down the social and family bonds that guide individuals away from crime, remove adults who would otherwise nurture children, deprive communities of income, reduce future income potential, and engender a deep resentment toward the legal system; thus, as high incarceration becomes concentrated in certain neighborhoods, any potential public safety benefits are outweighed by the disruption to families and social groups that would help keep crime rates low.[22]

At the individual level, there is also some evidence that incarceration itself is criminogenic, meaning that spending time in jail or prison actually increases a person's risk of engaging in crime in the future.[23] This may be because people learn criminal habits or develop criminal networks while incarcerated, but it may also be because of the collateral consequences that derive from even short periods of incarceration, such as loss of employment, loss of stable housing, or disruption of family ties.[24]

Incarceration is an expensive way to achieve little public safety

The United States incarcerated 1.2 million more people in prison in 2000 than in 1975 to achieve little public safety benefit. By 2000, the incarceration rate was 270 percent higher than in 1975, but the violent crime rate was nearly identical to the rate in 1975 and the property crime rate was nearly 20 percent lower than in 1975. Put another way, the United States was spending roughly $33 billion on incarceration in 2000 for essentially the same level of public safety it achieved in 1975 for $7.4 billion—nearly a quarter of the cost.[25] But the costs of high incarceration rates go well beyond the financial costs to government. Mass incarceration also imposes significant social, cultural, and political costs on individuals, families, and communities.[26] Incarceration reduces employment opportunities, reduces earnings, limits

economic mobility and, perhaps more importantly, has an intergenerational impact that increases the chances that children of incarcerated parents will live in poverty and engage in delinquent behavior.[27]

What can policymakers do to reduce crime without the use of incarceration?

Prior research indicates several factors associated with lower crime rates: aging population, increased wages, increased employment, increased graduation rates, increased consumer confidence, increased law enforcement personnel, and changes in policing strategies.[28] Policymakers have many tools at their disposal to address crime rates based on these factors in the long term. They can implement policies that require investment outside the criminal justice system to increase graduation rates, employment, income, or consumer confidence. But there are short-term solutions to reducing crime as well. Research points to several criminal justice practices that policymakers can adopt that are more effective and less expensive than incarceration at reducing crime.

Use community crime prevention strategies

Several policing and community-engagement strategies can reduce the incidence of crime in local jurisdictions.[29] Place-based problem-oriented policing approaches, for example, significantly reduce crime rates; such approaches involve carefully analyzing crime and disorder in small geographic areas and addressing such problems through tailor-made solutions, such as situational crime prevention measures (repairing fences, improving lighting, erecting road barriers) and community improvements (removing graffiti, nuisance abatement).[30] Similarly, several jurisdictions also have renewed efforts to implement and improve community policing approaches—such as working with business owners to identify neighborhood problems, conducting citizen surveys and outreach, and improving recreational opportunities for youth—in order to engage more closely with communities to identify and solve crime problems. Evaluations show that such programs can reduce both violent and property crimes.[31]

To address violent crime, several jurisdictions have implemented focused deterrence strategies that 1) identify high-risk individuals who are responsible for a disproportionate share of violent crime, 2) advise such individuals that they will be subjected to intensified enforcement if they continue to engage in violence, and 3) provide targeted individuals with access to social services. Evaluations of such programs have shown significant reductions in violent crime, including homicides and gun-related offenses.[32] Finally, several studies also have shown that jurisdictions working with residents to increase collective crime prevention techniques or to implement situational crime prevention techniques can reduce property crimes in targeted neighborhoods.[33]

Increase the availability and use of alternative-to-incarceration programs

Several types of alternative-to-incarceration programs that offer supportive services (like mental health, substance abuse, employment, housing, Medicaid, public benefits, and community health centers) can reduce criminal activity among participants.[34] For example, law enforcement-led diversion programs that divert individuals at the point of arrest and prosecution-led diversion programs that divert individuals either pre-charge or defer prosecution post-charge have been shown to reduce future criminal activity of program participants.[35] Several meta-analyses show that participation in drug courts—specialized courts that combine drug treatment with supervision to reduce drug use and drug-related crime—can significantly reduce recidivism among participants.[36] Research also suggests that other specialty courts may reduce criminal activity of targeted groups. Mental health courts, for example, combine treatment-oriented and problem-solving strategies to reduce recidivism and contact with the criminal justice system among individuals with mental health issues.[37] Juvenile diversion programs divert youth out of traditional criminal case processing and into a variety of alternatives, including restorative justice programs, community service, substance abuse treatment, skills-building programs, or family treatment.[38]

Employ community corrections approaches

Several community corrections approaches, which provide supervision and services to individuals in the community post-conviction, can reduce criminal activity among participants without the use of incarceration.[39] Reducing caseloads for probation officers and focusing on evidence-based practices like risk/needs assessments, separate specialized caseloads, intensive wraparound services, and comprehensive case management can significantly reduce re-arrest rates

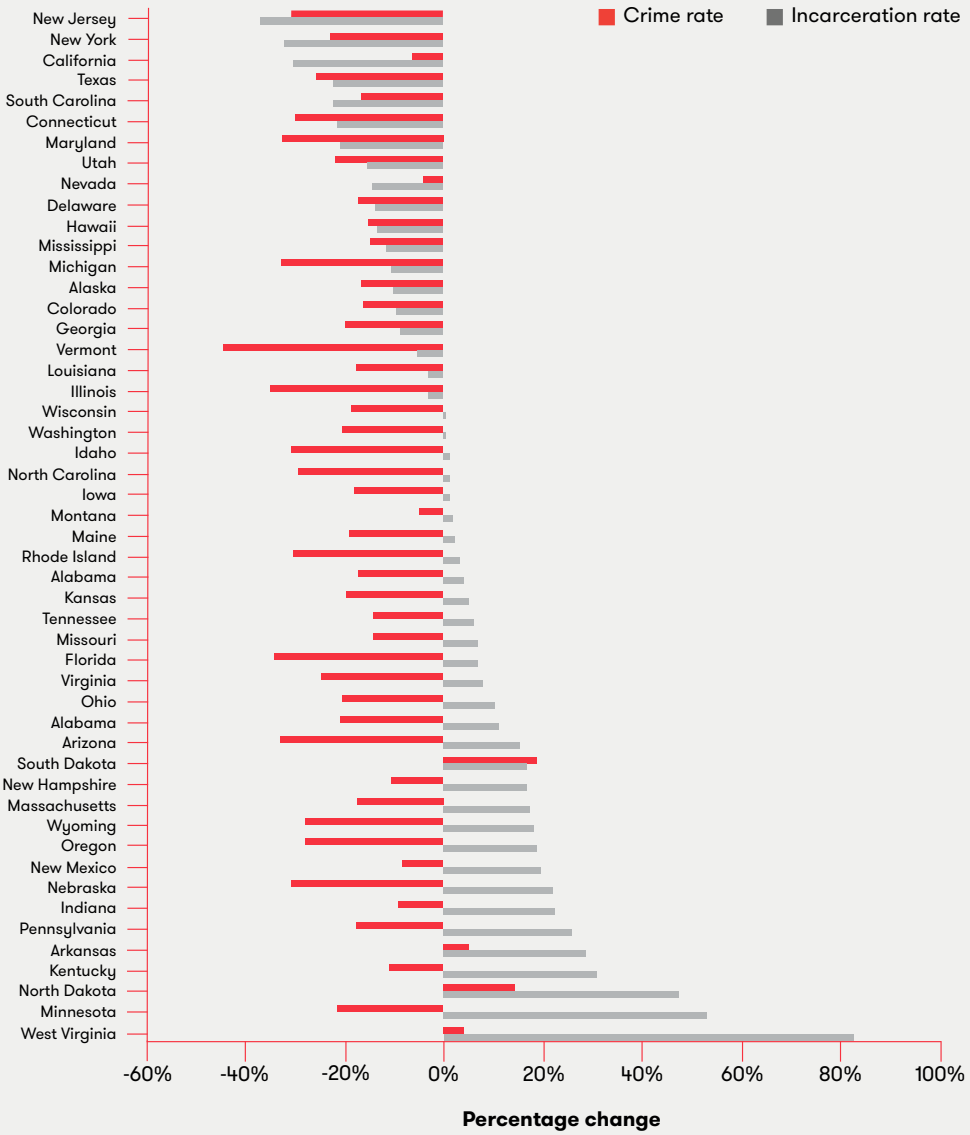
among high-risk probationers.[40] In addition, community supervision programs that target moderate- and high-risk adults and incorporate cognitive behavioral therapy have been shown to reduce recidivism rates among program participants.[41] Investment in reentry programs for those already incarcerated, such as pre-release programming and aftercare services, in-prison therapeutic communities, and transitional planning, can significantly reduce criminal activity of those released from incarceration.[42]

It is possible to reduce incarceration and crime

Experiences in several states offer evidence that policymakers can reduce crime without increasing imprisonment. In fact, 19 states reduced both imprisonment and crime rates over the last 15 years.[43] (See Figure 1 below.) These states represent a diverse cross-section of the United States, including large states like Texas and small states like Alaska; Northeastern states like Connecticut and Midwestern states like Michigan; Southern states like Louisiana and Western states like Hawaii. Socially liberal states like New York,

Figure 1

Percent change in state crime rates and imprisonment rates, 2000-2015.



wealthy states like Maryland, and states with low crime rates like Vermont simultaneously reduced incarceration and crime rates, but so did socially conservative states like Utah, economically distressed states like Mississippi, and states with high crime rates like Nevada.

The experiences across states also indicate that the relationship between incarceration and crime is neither predictable nor consistent. The state with the largest decrease in incarceration rates—New Jersey (with a 37 percent decrease between 2000 and 2015)—also experienced a 30 percent decrease in crime rates during the same period. The state with the largest increase in incarceration rates—West Virginia (with an 83 percent increase between 2000 and 2015)—also experienced a 4 percent increase in crime rates. Among the 10 states with the largest decreases in crime rates between 2000 and 2015, five also reduced incarceration rates.[44] Indeed, the state with the largest decrease in crime rates—Vermont—also reduced incarceration rates. Between 2000 and 2015, only four states—Arkansas, North Dakota, South Dakota, and West Virginia—experienced increases in crime rates, and all four also experienced increased incarceration rates.

The practices and programs adopted at the state and local levels in many of these states—community-based crime prevention, innovative policing strategies, diversion, and community corrections programs—likely explain these disparate trends in incarceration rates and crime rates over the last 15 years. As national policymakers call for increased incarceration and many state and local policymakers feel pressure to introduce measures to keep crime rates low, officials would do well to look toward states that have reduced both incarceration and crime for examples of innovation.

Conclusion

After 25 years of consistently declining crime rates, policymakers continue to feel pressure to introduce measures to address even small upticks in crime. This is understandable—policymakers should seek solutions to the problems of violence and embrace practices and policies that can keep crime rates low. Filling the nation's prisons is not one of them. The impact of incarceration on crime is limited and has been diminishing for several years. Increased incarceration has no effect on violent crime and may actually lead to higher crime rates when incarceration is concentrated in certain communities. Instead, policymakers can reduce crime without continuing to increase the social, cultural, and political costs of mass incarceration by investing in more effective and efficient crime reduction strategies that seek to engage the community, provide needed services to those who are criminally involved, and begin to address the underlying causes of crime.

Resources

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Endnotes

1 The crime rate is defined as the number of crimes reported to police per 100,000 people, based on the Uniform Crime Reports produced annually by the Federal Bureau of Investigation. When analysts or the media refer to the "crime rate," they generally mean the index crime rate, which is based on a set of seven violent and property crimes—murder and non-negligent manslaughter, forcible rape, aggravated assault, robbery, burglary, larceny-theft, and motor vehicle theft. Analysts may also use the violent crime rate (which is based only on the crimes of murder and non-negligent manslaughter, forcible rape, aggravated assault, and robbery) or the property crime rate (which is based only on the crimes of burglary, larceny-theft, and motor vehicle theft). See Federal Bureau of Investigation, "UCR Offense Definitions," https://perma.cc/SF7A-SM9F. Violent and property crime rates both declined roughly 50 percent between their peak in 1992 and 2015. For crime rates through 2013, see Federal Bureau of Investigation, "Uniform Crime Reporting Statistics, State and National Estimates by Year," https://perma.cc/LHV6-2G3R. For crime rates in 2014 and 2015, see Federal Bureau of Investigation, "2015 Crime in the United States," Table 1, https://perma.cc/BW2M-JBC6. For a review of state sentencing and corrections reforms aimed at reducing the size of state prison populations, see Rebecca Silber, Ram Subramanian, and Maia Spotts, *Justice in Review: New Trends in State Sentencing and Corrections 2014-2015* (New York: Vera Institute of Justice, 2016), https://perma.cc/RX3U-K9R3; Ram Subramanian, Rebecka Moreno, and Sharyn Broomhead, *Recalibrating Justice: A Review of 2013 State Sentencing and Corrections Trends* (New York: Vera Institute of Justice, 2014), https://perma.cc/L2D2-YUAA; Ram Subramanian and Rebecka Moreno, *Drug War Détente? A Review of State-level Drug Law Reform, 2009-2013* (New York: Vera Institute of Justice, 2014), https://perma.cc/N2SF-LH86; and Christine S. Scott-Hayward, *The Fiscal Crisis in Corrections: Rethinking Policies and Practices* (New York: Vera Institute of Justice, 2009), https://perma.cc/AMT6-6U44. For policymaker statements on crime, see, e.g., Jeff Sessions, "Being soft on sentencing means more violent crime. It's time to get tough again," *Washington Post*, June 16, 2017 (arguing for the use of mandatory sentences and prison for drug offenses), https://perma.cc/7GJA-A6ZU; see also Rachel Weiner and Sari Horwitz, "Sessions Vows Crackdown on Drug Dealing and Gun Crime," *Washington Post*, March 15, 2017, https://perma.cc/Z28L-Y8TR; Office of the Attorney General, Memorandum for All Federal Prosecutors, "Department Charging and Sentencing Policy," May 10, 2017 (directing federal prosecutors to "charge and pursue the most serious, readily provable offense…[defined as] those that carry the most substantial guidelines sentence, including mandatory minimum sentences" and requiring prosecutors to "disclose to the sentencing court all facts that impact the sentencing guidelines or mandatory minimum sentences"), https://www.justice.gov/opa/press-release/file/965896/download.

2 For a review of research examining the incapacitative and deterrent effects of incarceration, see Jeremy Travis and Bruce Western (eds.), *The Growth of Incarceration in the United States: Exploring Causes and Consequences* (Washington, DC: The National Research Council, 2014), https://perma.cc/D2Q6-7HEJ.

3 The incarceration rate is defined as the number of sentenced persons in prison per 100,000 people. Analysts use either the national incarceration rate (the number of sentenced persons in state or federal prison per 100,000 U.S. population) or state incarceration rates (the number of sentenced persons in a particular state's prisons per 100,000 state population). By definition, this figure does not include the nation's jail populations. For more information about the U.S. jail population, see Bureau of Justice Statistics, "Data Collection: Annual Survey of Jails," https://perma.cc/D7QZ-CM46. For the impact of increased incarceration rates on crime rates, see, generally, James Austin and Tony Fabelo, *The Diminishing Returns of Increased Incarceration: A Blueprint to Improve Public Safety and Reduce Costs* (Washington, DC: JFA Institute, 2004), https://perma.cc/N9K7; Jenni Gainsborough and Marc Mauer, *Diminishing Returns: Crime and Incarceration in the 1990s* (Washington, DC: The Sentencing Project, 2000), https://perma.cc/HV5E-J4YQ; Steven Raphael and Michael A. Stoll, *A New Approach to Reducing Incarceration While Maintaining Low Rates of Crime* (Washington, DC: The Hamilton Project, 2014), https://perma.cc/46B2-6G4M.

4 For reviews of studies examining the relationship between incarceration and crime in the 1990s, see Don Stemen, *Reconsidering Incarceration: New Directions for Reducing Crime* (New York: Vera Institute of Justice, 2007), 4 (describing studies that showed no relationship or a very weak relationship between incarceration rates and violent crime rates through the 1990s), https://perma.cc/T8PJ-QBCD; Oliver Roeder, Lauren-Brook Eisen, and Julia Bowling, *What Caused the Crime Decline?* (New York: Brennan Center for Justice, 2017) (analyzing incarceration rates and crime rates through 2015 and showing no relationship between incarceration rates and crime rates in the 2000s), https://perma.cc/NTL9-5Z24.

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6 John J. Donohue III, "Assessing the Relative Benefits of Incarceration: The Overall Change over the Previous Decades and the Benefits on the Margin," in *Do Prisons Make Us Safer? The Benefits and Costs of the Prison Boom*, edited by Steven Raphael and Michael Stoll (New York: Russell Sage Foundation, 2009) (arguing that "social spending" on programs such as preschool and early-childhood education, family therapy, programs for juvenile delinquents, and labor-market interventions could generate greater reductions in crime at a lower social cost than incarceration).

7 See Don Stemen, *Reconsidering Incarceration* (2007); and Oliver Roeder, Lauren-Brook Eisen, and Julia Bowling, *What Caused the Crime Decline?* (2017).

8 Ibid. Roeder, Eisen, and Bowling, 2017.

9 William Spelman, "The Limited Importance of Prison Expansion," in *The Crime Drop in America*, edited by Alfred Blumstein and Joel Wallman (Cambridge, England: Cambridge University Press, 2000) (finding that 25 percent of the decrease in index crime rates in the 1990s was explained by higher incarceration rates); in contrast, see Oliver Roeder, Lauren-Brook Eisen, and Julia Bowling, *What Caused the Crime Decline?* (2017), 23 (arguing that once the diminishing returns of incarceration are accounted for, only 6 percent of the decrease in property crime rates and 0 percent of the decrease in violent crime rates in the 1990s were explained by higher incarceration rates; however, the authors note that even for property crime, higher incarceration could account for anywhere from 0 to 12 percent of the decline).

10 Ibid. Roeder, Eisen, and Bowling, 2017, 23 (stating that "increased incarceration accounted for less than one one-hundredth of the decline of property crime in the 2000s…[and] had no observable effect on the violent crime decline … in the 2000s").

11 For reviews of studies examining the relationship between these factors and crime, see Don Stemen, *Reconsidering Incarceration* (2007). For a review and reanalysis of these factors see Oliver Roeder, Lauren-Brook Eisen, and Julia Bowling, *What Caused the Crime Decline?* (2017) (finding that lower unemployment rates, higher per capita income, higher consumer confidence, lower alcohol consumption, aging population, and the introduction of COMPSTAT were associated with lower crime rates). For the results of specific studies, see, e.g., Hope Corman and H. Naci Mocan, "A Time-Series Analysis of Crime, Deterrence, and Drug Abuse in New York City," *American Economic Review* 90, no. 3 (2000), 584-604 (finding a significant effect of increased numbers of law enforcement officers on lower burglary and robbery rates); Steven D. Levitt, "Using Electoral Cycles in Police Hiring to Estimate the Effect of Police on Crime: Reply," *American Economic Review* 92, no. 4 (2002), 1244-50 (finding a significant effect of increased numbers of law enforcement officers on property and violent crime rates), https://perma.cc/XZ87-5849; Steven Raphael and Rudolf Winter-Ebmer, "Identifying the Effect of Unemployment on Crime," *Journal of Law and Economics* 44, no. 1 (2001), 259-83 (finding that higher unemployment rates were associated with higher property crime rates and that higher per capita income was associated with lower violent crime rates); Steven D. Levitt, "Alternative Strategies for Identifying the Link between Unemployment and Crime," *Journal of Quantitative Criminology* 17, no. 4 (2001), 377-90 (finding that higher unemployment rates were associated with higher property crime rates); Raymond V. Liedka, Anne Morrison Piehl, and Bert Useem, "The Crime-Control Effect of Incarceration" (2006) (finding that higher per capita income was associated with lower crime rates); Richard Rosenfeld and Robert Fornango, "The Impact of Economic Conditions on Robbery and Property Crime: The Role of Consumer Sentiment," *Criminology* 45, no. 4 (2007), 735-69 (finding that increased consumer confidence was associated with lower rates of robbery, burglary, larceny, and motor vehicle theft rates); Sara Markowitz, *An Economic Analysis of Alcohol, Drugs, and Violent Crime in the National Crime Victimization Survey* (Cambridge, MA: National Bureau of Economic Research, 2000) (finding that increases in the number of alcohol distribution outlets is associated with increased probability of assault), https://perma.cc/4XUB-L3A4; Lance Lochner and Enrico Moretti, "The Effect of Education on Crime: Evidence from Prison Inmates, Arrests, and Self-Reports," *American Economic Review* 94, no. 1 (2004), 155-89 (finding that increases in individuals' education levels are associated with lower crime rates).

12 This is generally referred to as the "diminishing marginal returns" of incarceration. See, e.g., James F. Austin and Tony Fabelo, *The Diminishing Returns of Increased Incarceration* (2004); Jenni Gainsborough and Marc Mauer, *Diminishing Returns* (2000); Steven Raphael and Michael Stoll, *A New Approach to Reducing Incarceration* (2004); Franklin Zimring and Gordon Hawkins, *Crime Is Not the Problem: Lethal Violence in America* (Oxford, England: Oxford University Press, 1997).

13 See, e.g., Oliver Roeder, Lauren-Brook Eisen, and Julia Bowling, *What Caused the Crime Decline?* (2017), 18-19 (the authors look across states and demonstrate the diminishing marginal returns of increases in incarceration over time); see also Steven D. Levitt, "Understanding Why Crime Fell in the 1990s: Four Factors that Explain the Decline and Six that Do Not," *Journal of Economic Perspectives* 18, no. 1 (2004), 163-90; Ilyana Kuziemko and Steven D. Levitt, "An Empirical Analysis of Imprisoning Drug Offenders,"

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14 Washington State Institute for Public Policy, *The Criminal Justice System in Washington State* (2003). Washington State, for example, concluded that while more incarceration had led to less crime in the state in the 1990s, the benefits of additional prison expansion would be smaller and more expensive to achieve. Specifically, the state concluded that an increase in the incarceration rate in 2003 prevented considerably fewer crimes than did previous similar size increases in the state's prison population. The state further concluded that while incarcerating individuals convicted of violent and high-volume property offenses continued to generate more benefits than costs, each additional person incarcerated for these crimes would result in fewer prevented crimes than previous persons. Washington even found that increasing the incarceration rate for people convicted of drug offenses in the 1990s actually cost more than the average value of the crimes prevented by their imprisonment and was, thus, no longer cost-effective.

15 Raymond V. Liedka, Anne Morrison Piehl, and Bert Useem, *The Crime-Control Effect of Incarceration* (2006) (finding that increases in prison populations in states with already large prison populations have less impact on crime than increases in states with smaller prison populations; states experience "accelerating declining marginal returns"—meaning that the percent reduction in crime gets ever smaller with larger prison populations. The authors concluded that increases in incarceration rates are associated with lower crime rates at low levels of imprisonment, but the size of that association shrinks as incarceration rates get bigger).

16 See, e.g., Oliver Roeder, Lauren-Brook Eisen, and Julia Bowling, *What Caused the Crime Decline?* (2017) (re-analyzing data from previous studies and analyzing data from 2000 to 2015; finding either no relationship between incarceration rates and violent crime rates or a very small relationship).

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19 Ibid.

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21 For a theoretical discussion of this phenomenon, see Dina R. Rose and Todd R. Clear, "Incarceration, Social Capital, and Crime: Implications for Social Disorganization Theory," *Criminology* 36, no. 3 (1998), 441-80. For empirical studies confirming an association between higher incarceration rates and higher crime rates, see, e.g., Todd R. Clear et al.,"Coercive Mobility and Crime:

A Preliminary Examination of Concentrated Incarceration and Social Disorganization," *Justice Quarterly* 20, no. 1 (2003), 33-64; Brian C. Renauer et al.,"Tipping the Scales of Justice: The Effect of Overincarceration on Neighborhood Violence," *Criminal Justice Policy Review* 17, no. 3 (2006), 362-79. For a review of empirical research confirming these findings, see Todd R. Clear, "The Effects of High Imprisonment Rates on Communities" (2008) at 118-20.

22 See generally Todd R. Clear, "The Effects of High Imprisonment Rates on Communities" (2008).

23 See, e.g., José Cid, "Is Imprisonment Criminogenic? A Comparative Study of Recidivism Rates between Prison and Suspended Prison Sanctions," *European Journal of Criminology* 6, no. 6 (2009), 459-80 (finding that individuals given suspended sentences had a lower risk of reconviction than those given custodial sentences); Cassia Spohn and David Holleran, "The Effect of Imprisonment on Recidivism Rates of Felony Offenders: A Focus on Drug Offenders," *Criminology* 40, no. 2 (2002), 329-58 (finding that individuals sentenced to prison had higher recidivism rates and recidivated more quickly than individuals sentenced to probation); Lynne M. Vieraitis, Tomislav V. Kovandzic, and Thomas B. Marvell, "The Criminogenic Effects of Imprisonment: Evidence from State Panel Data, 1974–2002," *Criminology & Public Policy* 6, no. 3 (2007), 589-622 (finding that increased prison releases are associated with higher crime rates and arguing that this is due to the criminogenic effects of prison). Some research suggests that even short terms of incarceration in jail can increase an individual's likelihood of engaging in future criminal activity. See, e.g., Paul S. Heaton, Sandra G. Mayson, and Megan Stevenson, "The Downstream Consequences of Misdemeanor Pretrial Detention," *Stanford Law Review* 69, no. 3 (2017), 711-96 (finding those individuals detained pretrial were more likely than individuals not detained to commit future crime, suggesting that detention may have a criminogenic effect); Arpit Gupta, Christopher Hansman, and Ethan Frenchman, "The Heavy Costs of High Bail: Evidence from Judge Randomization," *Journal of Legal Studies* 45, no. 2 (2016), 471-505 (finding that pretrial detention increases the likelihood of recidivism); and Christopher T. Lowenkamp, Marie VanNostrand, and Alexander Holsinger, *The Hidden Costs of Pretrial Detention* (New York: Laura and John Arnold Foundation, 2013) (finding that pretrial detention increases the likelihood of future criminal activity for low- and moderate-risk individuals), https://perma.cc/PP44-T5CN.

24 For a discussion of the criminogenic effects of incarceration, see, e.g., Bruce Western, *Punishment and Inequality in America* (New York: Russell Sage Foundation, 2006), 161; and Lynne M. Vieraitis, Tomislav V. Kovandzic, and Thomas B. Marvell, "The Criminogenic Effects of Imprisonment" (2007). For a discussion of collateral factors affecting recidivism, see, e.g., Christy Visher, Jennifer Yahner, and Nancy La Vigne, *Life After Prison: Tracking the Experiences of Male Prisoners Returning to Chicago, Cleveland, and Houston* (Washington, DC: The Urban Institute, 2010) (finding that those individuals with employment, stable housing, and strong family ties were less likely to recidivate after release from prison), https://perma.cc/82QC-UNVW.

25 These data include only state expenditures on corrections: 1975 expenditures were $2.2 billion; adjusted for inflation, this would have totaled $7.4 billion in 2000. For expenditures in 1975, see U.S. Department of Justice, Law Enforcement Assistance Administration, and U.S. Bureau of the Census, *Expenditure and Employment Data for the Criminal Justice System, 1975* (Washington, DC: U.S. Government Printing Office, 1977), 271, Table 40. For expenditures in 2000, see Bureau of Justice Statistics, "Justice Expenditure and Employment Extracts, 2000," December 1, 2003, Table 9 (Justice system expenditure of state governments by activity and character and object, fiscal 2000), available for download at http://www.bjs.gov/index.cfm?ty=pbdetail&iid=1028.

26 See, e.g., The Pew Charitable Trusts, *Collateral Costs: Incarceration's Effect on Economic Mobility* (Washington, DC: Pew Charitable Trusts, 2010), https://perma.cc/XHL8-KHVA

27 Ibid.

28 For reviews of studies examining the relationship between these factors and crime, see Don Stemen, *Reconsidering Incarceration* (2007); and Oliver Roeder, Lauren-Brook Eisen, and Julia Bowling, *What Caused the Crime Decline?* (2017).

29 For a list of community crime prevention programs that have been evaluated and reviewed to be effective, see National Institute of Justice, Office of Justice Programs, CrimeSolutions.gov, https://www.crimesolutions.gov.

30 Such approaches fall under the general category of "hot spots" or place-based policing. However, place-based policing can involve either traditional policing strategies, such as increased patrols and aggressive enforcement, or problem-oriented policing approaches, which involve efforts by police to address the underlying causes of crime in targeted areas by relying on non-traditional problem-solving policing strategies. Research indicates that place-based problem-oriented approaches are much more effective than place-based traditional policing approaches. For a meta-analysis of 10 hot spot policing programs, see, Anthony A. Braga, Andrew V. Papachristos, and David M. Hureau, "The Effects of Hot Spots Policing on Crime: An Updated Systematic Review and Meta-Analysis," *Justice Quarterly* 31, no. 4 (2014), 633-63. Braga et al., found that problem-oriented policing approaches (police-led efforts to change the underlying conditions at hot spots that lead

to recurring crime problems and involve non-traditional strategies for addressing crime problems) were twice as effective at reducing crime than traditional policing approaches (such as vehicle patrols, foot patrols, or crackdowns). See also Bruce Taylor, Christopher S. Koper, and Daniel J. Woods, "A randomized controlled trial of different policing strategies at hot spots of violent crime," *Journal of Experimental Criminology* 7, no. 2 (2011), 149-81 (finding that problem-oriented policing strategies were associated with a 33 percent decrease in violent crime).

31 See, e.g., Nicholas Corsaro et al., "The Impact of Drug Market Pulling Levers Policing on Neighborhood Violence: An Evaluation of the High Point Drug Market Intervention," *Criminology & Public Policy* 11, no. 2 (2012), 167-99 (finding that a community policing approach to address open air drug markets in High Point, North Carolina reduced violent incidents in target areas; although violent crime decreased in the target areas, it increased city-wide, suggesting limitations with the approach).

32 See, e.g., Nicholas Corsaro and Robin S. Engel, "Most Challenging of Contexts," *Criminology & Public Policy* 14, no. 3 (2015), 471-505 (finding that a focused deterrence program in New Orleans that identified high-risk individuals and targeted them for enforcement and services reduced violent crime rates).

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34 For a list of diversion programs that have been evaluated and reviewed to be effective, see National Institute of Justice, Office of Justice Programs, CrimeSolutions.gov.

35 For an analysis of one law enforcement-led diversion program, see, e.g., Susan E. Collins, Heather S. Lonczak, and Seema L. Clifasefi, *LEAD Program Evaluation: Recidivism Report* (Seattle, WA: University of Washington, 2015), (finding that Seattle's law enforcement-led diversion program (LEAD) reduced both short-term and long-term recidivism among participants) https://perma.cc/RH4U-VLD4. The LEAD program in Seattle was established in 2011 to divert individuals suspected of low-level drug and prostitution offenses at arrest into case management and supportive services instead of jail and prosecution. For a description of other law enforcement-led diversion programs, see Center for Health and Justice at TASC, *No Entry: A National Survey of Criminal Justice Diversion Programs and Initiatives* (Chicago: Center for Health and Justice at TASC, 2013), https://perma.cc/XV5U-VAG2. For more on prosecutor-led diversion programs, see, e.g., Kit R. Van Stelle, Janae Goodrich, and Stephanie Kroll, *Treatment Alternatives and Diversion (TAD) Program: Participant Outcome Evaluation and Cost-Benefit Report (2007-2013)* (Madison, WI: University of Wisconsin Population Health Institute, 2014), 11, (finding that participation in prosecutorial diversion reduced recidivism rates among program participants) https://perma.cc/7FNS-8738; Paul Dynia and Hung-En Sung, "The Safety and Effectiveness of Diverting Felony Drug Offenders to Residential Treatment as Measured by Recidivism," *Criminal Justice Policy Review* 11, no. 4 (2000), 299-311 (finding lower recidivism rates among Drug Treatment Alternative-to-Prison (DTAP) program participants); and Steven Belenko et al., "Recidivism Among High-Risk Drug Felons: A Longitudinal Analysis Following Residential Treatment," Journal of Offender Rehabilitation 40, no. 1/2 (2004), 105-32 (finding that participants in DTAP had lower recidivism rates and delayed time to recidivism). Although few evaluations of either prosecutorial diversion or deferral programs exist, such programs are promising alternatives to traditional prosecution. For a description of other prosecution-led diversion programs, see Center for Health and Justice at TASC, *No Entry* (2013).

36 See, e.g., Steve Aos et al., *The Comparative Costs and Benefits of Programs to Reduce Crime* (Olympia, WA: Washington State Institute for Public Policy, 2001) (reviewing 26 studies and finding lower recidivism rates among drug court participants compared to individuals not in drug court), https://perma.cc/ZXY3-YWTT; Elizabeth Drake, *Chemical Dependency: A Review of the Evidence*

and Benefit-Cost Findings (Olympia, WA: Washington State Institute for Public Policy, 2012) (reviewing 55 studies and finding lower recidivism rates among drug court participants compared to individuals not in drug court), https://perma.cc/LT5N-97GM; Eric L. Sevigny, Brian K. Fuleihan, and Frank V. Ferdik, "Do Drug Courts Reduce the Use of Incarceration?: A Meta-Analysis," *Journal of Criminal Justice* 41, no. 6 (2013), 416-25 (reviewing 11 studies and finding lower odds of reincarceration among drug court participants compared to individuals not in drug court); Ojmarrh Mitchell et al., *Drug Courts' Effects on Criminal Offending for Juveniles and Adults* (Oslo, Norway: The Campbell Collaboration, 2012) (reviewing 92 studies of adult drug courts and finding lower recidivism rates among drug court participants compared to individuals not in drug court), https://perma.cc/7X8R-J75K; Shelli B. Rossman et al., *The Multi-Site Adult Drug Court Evaluation: The Impact of Drug Courts, Volume 4* (Washington, DC: U.S. Dept. of Justice, 2011) (finding that drug courts reduced self-reported engagement in criminal activity but did not significantly reduce re-arrest), https://www.ncjrs.gov/pdffiles1/nij/grants/237112.pdf. Some, however, have raised a note of caution about over-reliance on drug courts, citing methodological problems in drug court evaluations, eligibility requirements that may bias outcomes, and lack of scalability to accommodate large numbers of participants. See, e.g., Drug Policy Alliance, *Drug Courts Are Not the Answer: Toward a Health-Centered Approach to Drug Use* (Washington, DC: Drug Policy Alliance, 2011), https://perma.cc/P5UH-TC56.

37 See, e.g., Christine M. Sarteschi, Michael G. Vaughn, and Kevin Kim, "Assessing the Effectiveness of Mental Health Courts: A Quantitative Review," *Journal of Criminal Justice* 39, no. 1 (2011), 12-20 (reviewing 18 studies and finding that participation in mental health courts may have a moderate effect on reducing recidivism); Stephanie Lee et al., *Return on Investment: Evidence-Based Options to Improve Statewide Outcomes* (Olympia, WA: Washington State Institute for Public Policy, 2012) (reviewing six studies and finding that mental health courts may have a small effect on reducing recidivism); and Washington State Institute of Public Policy, *Mental Health Courts* (Olympia, WA: Washington State Institute of Public Policy, 2012), https://perma.cc/3P58-TQYK; in contrast, see, e.g., Jennifer K. Molloy, Christian M. Sarver, and Robert P. Butters, *Utah Cost of Crime: Mental Health Court (Adult) – Technical Report* (Salt Lake City, UT: University of Utah, Utah Criminal Justice Center 2012), 4-5 (reviewing six studies and finding participation in mental health courts had no significant effect on recidivism), https://perma.cc/X8G9-EYQA.

38 See, e.g., Holly A. Wilson and Robert D. Hoge, "The Effect of Youth Diversion Programs on Recidivism: A Meta-Analytic Review," *Criminal Justice and Behavior* 40, no. 5 (2013), 497-518 (reviewing 45 studies and finding that youth diverted out of the system had lower recidivism rates than youth prosecuted through traditional prosecution); in contrast, see, e.g., Craig S. Schwalbe et al., "A Meta-Analysis of Experimental Studies of Diversion Programs for Juvenile Offenders," *Clinical Psychology Review* 32, no. 1 (2012), 26-33 (reviewing 28 studies and finding no significant difference in recidivism rates of youth participating in diversion compared to youth not participating in diversion).

39 For a list of community corrections programs that have been evaluated and reviewed to be effective, see National Institute of Justice, Office of Justice Programs, CrimeSolutions.gov.

40 See, e.g., Sarah Kuck Jalbert et al., *A Multisite Evaluation of Reduced Probation Caseload Size in an Evidence-Based Practice Setting* (Cambridge, MA: Abt Associates, Inc., 2011) (evaluating programs in Iowa and Oklahoma and finding that reduced caseloads, when combined with other evidence-based supervision practices, can lead to improved recidivism outcomes), https://www.ncjrs.gov/pdffiles1/nij/grants/234596.pdf. For a list of such evidence-based practices, see ibid. at 21.

41 Stephanie Lee et al., *Return on Investment* (2012) (reviewing 32 studies and finding that moderate- and high-risk adults under supervision who received cognitive behavioral therapy were significantly less likely to commit crime, compared with those who did not receive cognitive behavioral therapy); and Washington State Institute for Public Policy, *Cognitive Behavioral Therapy (high and moderate risk adult offenders)* (Olympia, WA: Washington State Institute for Public Policy, 2012), https://perma.cc/7DB3-KPK8.

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planning, and post-release services reduced re-arrest rates for participants).

43 For crime rates through 2013, see Federal Bureau of Investigation, "Uniform Crime Reporting Statistics, State and national estimates by year." For crime rates in 2014 and 2015, see Federal Bureau of Investigation, "2015 Crime in the United States," Table 1. For state incarceration rates in 2000, see Allen J. Beck and Paige M. Harrison, *Prisoners in 2000* (Washington, DC: Bureau of Justice Statistics, 2001), Table 3, https://perma.cc/Y4BA-GEK2; for state incarceration rates in 2015, see E. Ann Carson and Elizabeth Anderson, *Prisoners in 2015* (Washington, DC: Bureau of Justice Statistics, 2016), Table 6, https://perma.cc/K4ZV-9YTB.

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FIVE THINGS ABOUT

DETERRENCE



Deter would-be criminals by using scientific evidence about human behavior and perceptions about the costs, risks and rewards of crime.

1. The *certainty* of being caught is a vastly more powerful deterrent than the punishment.

Research shows clearly that the chance of being caught is a vastly more effective deterrent than even draconian punishment.

2. Sending an individual convicted of a crime to prison isn't a very effective way to deter crime.

Prisons are good for punishing criminals and keeping them off the street, but prison sentences (particularly long sentences) are unlikely to deter future crime. Prisons actually may have the opposite effect: Inmates learn more effective crime strategies from each other, and time spent in prison may desensitize many to the threat of future imprisonment.

See "Understanding the Relationship Between Sentencing and Deterrence" for additional discussion on prison as an ineffective deterrent.

3. Police deter crime by increasing the perception that criminals will be caught and punished.

The police deter crime when they do things that strengthen a criminal's perception of the certainty of being caught. Strategies that use the police as "sentinels," such as hot spots policing, are particularly effective. A criminal's behavior is more likely to be influenced by seeing a police officer with handcuffs and a radio than by a new law increasing penalties.

4. Increasing the severity of punishment does little to deter crime.

Laws and policies designed to deter crime by focusing mainly on increasing the severity of punishment are ineffective partly because criminals know little about the sanctions for specific crimes.

More severe punishments do not "chasten" individuals convicted of crimes, and prisons may exacerbate recidivism.

See "Understanding the Relationship Between Sentencing and Deterrence" for additional discussion on the severity of punishment.

5. There is no proof that the death penalty deters criminals.

According to the National Academy of Sciences, "Research on the deterrent effect of capital punishment is uninformative about whether capital punishment increases, decreases, or has no effect on homicide rates."

In his 2013 essay, "Deterrence in the Twenty-First Century," Daniel S. Nagin succinctly summarized the current state of theory and empirical knowledge about deterrence. The information in this publication is drawn from Nagin's essay with additional context provided by NIJ and is presented here to help those who make policies and laws that are based on science.

Source: Daniel S. Nagin, "Deterrence in the Twenty-First Century," in *Crime and Justice: A Review of Research*, vol. 42: Crime and Justice in America: 1975-2025, ed. Michael Tonry, Chicago: University of Chicago Press, 2013.[1]

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NIJ's "Five Things About Deterrence" summarizes a large body of research related to deterrence of crime into five points. Two of the five things relate to the impact of sentencing on deterrence — "Sending an individual convicted of a crime to prison isn't a very effective way to deter crime" and "Increasing the severity of punishment does little to deter crime." Those are simple assertions, but the issues of punishment and deterrence are far more complex. This addendum to the original "Five Things" provides additional context and evidence regarding those two statements.

It is important to note that while the assertion in the original "Five Things" focused only on the impact of sentencing on deterring the commission of future crimes, a prison sentence serves two primary purposes: punishment and incapacitation. Those two purposes combined are a linchpin of United States sentencing policy, and those who oversee sentencing or are involved in the development of sentencing policy should always keep that in mind.

"Sending an individual convicted of a crime to prison isn't a very effective way to deter crime."

Prison is an important option for incapacitating and punishing those who commit crimes, but the data show long prison sentences do little to deter people from committing future crimes.

Viewing the findings of research on severity effects in their totality, there is evidence suggesting that short sentences may be a deterrent. However, a consistent finding is that increases in already lengthy sentences produce at best a very modest deterrent effect.

A very small fraction of individuals who commit crimes — about 2 to 5 percent — are responsible for 50 percent or more of crimes.[2] Locking up these individuals when they are young and early in their criminal careers could be an effective strategy to preventing crime if we could identify who they are. The problem is: we can't. We have tried to identify the young people most likely to commit crimes in the future, but the science shows we can't do it effectively.

It is important to recognize that many of these individuals who offend at higher rates may already be incarcerated because they put themselves at risk of apprehension so much more frequently than individuals who offend at lower rates.

"Increasing the severity of punishment does little to deter crime."

To clarify the relationship between the severity of punishment and the deterrence of future crimes, you need to understand:

- The lack of any "chastening" effect from prison sentences,
- That prisons may exacerbate recidivism,
- The different impacts of the certainty versus the severity of punishment on deterrence, and
- That individuals grow out of criminal activity as they age.

More severe punishments do not "chasten" individuals convicted of crimes.

Some policymakers and practitioners believe that increasing the severity of the prison experience enhances the "chastening" effect, thereby making individuals convicted of an offense less likely to commit crimes in the future. In fact, scientists have found no evidence for the chastening effect.

Deterrence and Incapacitation

There is an important distinction between deterrence and incapacitation. Individuals behind bars cannot commit additional crime — this is incarceration as incapacitation. Before someone commits a crime, he or she may fear incarceration and thus refrain from committing future crimes — this is incarceration as deterrence.

Prisons may exacerbate recidivism.

Research has found evidence that prison can exacerbate, not reduce, recidivism. Prisons themselves may be schools for learning to commit crimes. In 2009, Nagin, Cullen and Jonson published a review of evidence on the effect of imprisonment on reoffending.[3] The review included a sizable number of studies, including data from outside the U.S. The researchers concluded:

> "… compared to non-custodial sanctions, incarceration has a null or mildly criminogenic impact on future criminal involvement. We caution that this assessment is not sufficiently firm to guide policy, with the exception that it calls into question wild claims that imprisonment has strong specific deterrent effects."

Certainty has a greater impact on deterrence than severity of punishment.

Severity refers to the length of a sentence. Studies show that for most individuals convicted of a crime, short to moderate prison sentences may be a deterrent but longer prison terms produce only a limited deterrent effect. In addition, the crime prevention benefit falls far short of the social and economic costs.

Certainty refers to the likelihood of being caught and punished for the commission of a crime. Research underscores the more significant role that *certainty* plays in deterrence than severity — it is the certainty of being caught that deters a person from committing crime, not the fear of being punished or the severity of the punishment. Effective policing that leads to swift and certain (but not necessarily severe) sanctions is a better deterrent than the threat of incarceration. In addition, there is no evidence that the deterrent effect increases when the likelihood of conviction increases. Nor is there any evidence that the deterrent effect increases when the likelihood of imprisonment increases.

A person's age is a powerful factor in deterring crime.

Even those individuals who commit crimes at the highest rates begin to change their criminal behavior as they age. The data show a steep decline at about age 35.[4] A more severe (i.e., lengthy) prison sentence for convicted individuals who are naturally aging out of crime does achieve the goal of punishment and incapacitation. But that incapacitation is a costly way to deter future crimes by aging individuals who already are less likely to commit those crimes by virtue of age.

1. "Five Things About Deterrence" is available at https://ncjrs.gov/pdffiles1/nij/247350.pdf.
2. Mulvey, Edward P., *Highlights from Pathways to Desistance: A Longitudinal Study of Serious Adolescent Offenders,* Juvenile Justice Fact Sheet, Washington, DC: U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, March 2011, NCJ 230971. Available at https://www.ncjrs.gov/pdffiles1/ojjdp/230971.pdf.
3. Nagin, Daniel S., Francis T. Cullen and Cheryl Lero Johnson, "Imprisonment and Reoffending," *Crime and Justice: A Review of Research*, vol. 38, ed. Michael Tonry, Chicago: University of Chicago Press, 2009: 115-200.
4. Sampson, Robert. J., John H. Laub and E.P. Eggleston, "On the Robustness and Validity of Groups," *Journal of Quantitative Criminology* 20 (1) (2004): 37-42.

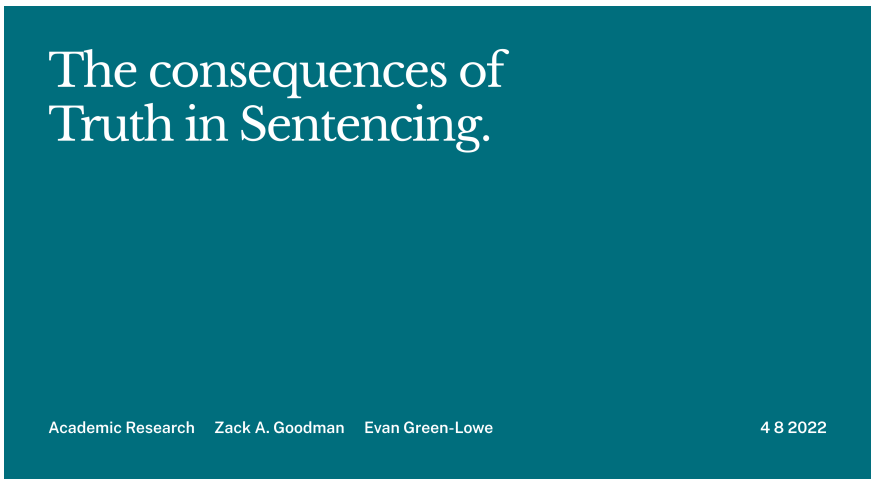
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The consequences of Truth in Sentencing

Evan Green-Lowe

April 8, 2022

Research



[1] We considered papers published in the past two decades in reputable peer-reviewed journals as well as working papers submitted for publication. Among these, we only reviewed papers whose authors

analyze experiments or natural experiments in the United States.

This is the first part in a three-part series Recidiviz has written summarizing recent high-quality academic work about policies and programs that affect justice-involved individuals. The goal is to make research more accessible to practitioners, helping them make evidence-based decisions. As always, we welcome thoughts and feedback.

In 33 of 51 states in America, most prison sentences are not fixed. People can reduce the length of their sentence by completing vocational programs, treatment, or education. Determinate sentencing laws, often called “Truth in Sentencing” (TIS) laws, change this dynamic by requiring incarcerated people to serve a fixed or “determinate” portion of their sentence.

Tennessee House Bill 2656 and Senate Bill 2248, currently being deliberated at the time of this writing, would require people convicted of any of 14 types of felonies to serve 100% of their sentence in prison. Recidiviz recently analyzed the expected impact of the proposed legislation. Before we could project impact, we needed to read up on the effects of TIS laws in other states.

Reviewing existing research

To help us model the impact of the proposed legislation, we read up on how TIS laws have already impacted other states. We set a high bar for studies included in our review. We only included studies that were recently published in reputable peer-reviewed journals or are currently being reviewed. We excluded observational studies that use correlational (as opposed to causal) evidence and those whose methods were unclear or no longer considered

Despite identifying hundreds of articles using a snowballing approach, only a few met the bar we set for quality and credibility. Two studies checked all of our boxes[1] — one from Georgia, another from Arizona.

The Georgia natural experiment

In this paper, Ilyana Kuziumko studies Georgia's now defunct "90% policy" that required incarcerated people convicted of select offenses to spend at least 90% of their sentence in prison before becoming eligible for parole. Notably, this policy only affected people who were convicted after January 1, 1998. Consider two individuals who committed the same offense on the same day, but one was convicted in December of 1997, while the

other faced longer court delays and was convicted in January of 1998. The person convicted in December may have become eligible for parole after serving 1/3 of her sentence while the person convicted in January would have to spend 90%+ of her sentence in prison.

Kuziumko exploits this natural experiment — comparing outcomes on either side of the policy implementation date — to measure the causal effect of TIS on outcomes like time served and recidivism. As you might expect, she finds that Georgia's TIS reform increased the amount of time incarcerated individuals spent in prison and reduced the amount of time spent on parole.

However, the policy carried an unintended consequence. Before the 90% policy, incarcerated people could be released to parole sooner through good behavior or completion of rehabilitative programs (GED courses, drug treatment, etc). Georgia's determinate sentencing policy removed an important incentive to complete these programs, leading to lower completion rates and more disciplinary infractions. In addition to creating a more dangerous environment inside facilities, **TIS caused greater crime upon reentry, significantly higher reincarceration rates, and more resource expenditures overall from increased imprisonment.**

The Arizona natural experiment

A recent working paper by David MacDonald examines a similar policy in Arizona that went into effect in 1993 and required those convicted of felonies occurring after January 1, 1994 to spend at least 85% of their sentence in prison. Unlike in Georgia, Arizona judges were influenced by the policy: they responded by decreasing sentence lengths given to affected defendants, resulting in no net change in time spent incarcerated. But like those in Georgia, incarcerated people in Arizona also lost an incentive to complete rehabilitative programs, resulting in much lower participation.

In Georgia, TIS changed two things: it lengthened time served, and it reduced program participation. In Arizona, TIS only reduced program completion — time served did not change. But MacDonald finds that **TIS in Arizona caused the same criminogenic effects as observed in Georgia. This time, however, we know it was the reduction in rehabilitative programming that increased recidivism.**

Conclusion

Because there are few credible papers that estimate causal effects of TIS laws on outcomes for justice-involved individuals, we find it important to highlight the highest quality research on this topic to best inform decision makers. These two natural experiments from two different states find effectively the same unintended and critical consequences. **Truth in Sentencing reduces incentives to complete rehabilitative programming, increases risk to safety for correctional officers and individuals in prison, and increases recidivism**. If the goal of TIS is to increase public safety, these consequences may cause the policy to backfire.

The evidence in these two papers points towards rehabilitative programming — and incentives to complete them — as important drivers of successful reentry. While more research needs to be done to understand which programs work best and for whom, it is clear that preserving earlier release as an incentive to complete rehabilitative programming may both improve reentry success and lower taxpayer costs. Our synthesis underscores that legislators have an opportunity to improve outcomes for their state's citizens through both sentence credits and increased participation in rehabilitative programming.

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"Truth in Sentencing"
Paying *More* Money to Make Our Communities *Less* Safe

"Truth in Sentencing" (TIS) laws require people to serve a certain percentage of their sentence (for example 80%) behind bars. This greatly limits and prevents both the individual and the correction system's ability to reduce time in prison through good behavior and completion of rehabilitative programming. TIS laws may sound appealing, but in reality, they make communities less safe by taking away a vital corrections tool, increasing recidivism, and wasting resources on unnecessary incarceration – money that can't be spent preventing crime.

TIS laws remove incentives for people to rehabilitate themselves while incarcerated, leading to worse behavior in prison and higher recidivism once people are released. Good behavior and programming credits are important tools for corrections staff.

- When Arizona eliminated parole and earned time credits in 1993, prison rule violations increased by 50 percent, enrollment in educational programs dropped by 20 percent, and the reoffending rate jumped 4.8 percentage points.[1]
- When Georgia limited parole eligibility in 1998, there was a 15 percent increase in prison rule violations, 14 percent decline in rehabilitative program participation, and 5- to 7-point increase in the recidivism rate.[2]

TIS laws are unlikely to prevent crime.

- Researchers have found no evidence that severe sentencing policies discourage people from engaging in criminal activity.[3]
- It is the certainty of being caught and swiftly punished, not the length of punishment, that deters crime.[4]
- The vast majority of people who commit crimes – even very serious crimes – naturally grow out of criminal behavior as they mature. TIS laws keep many people incarcerated long past the point at which they have become low risk for reoffending.[5]

TIS laws waste money.

- Keeping people in prison without a public safety benefit is extremely expensive, wasting resources that could otherwise be invested in crime prevention. For example:

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[1] Macdonald, D.C. (2024). *Truth in Sentencing, Incentives and Recidivism*, Working Paper. https://www.dropbox.com/s/8d0xha35vxvsrgs/Macdonald_TIS.pdf?e=2&dl=0 .

[2] Kuziemko, I. (2013). *How should inmates be released from prison? An assessment of parole versus fixed-sentence regimes*, The Quarterly Journal of Economics, 128(1), 371–424. https://kuziemko.scholar.princeton.edu/sites/g/files/toruqf3996/files/kuziemko/files/inmates_release.pdf.

[3] U.S. Department of Justice, Office of Justice Programs, National Institute of Justice (2016). *Five Things About Deterrence*. https://www.ojp.gov/pdffiles1/nij/247350.pdf.

[4] Id.

[5] Prescott, J.J., Pyle, B., and Starr, S.B. (2020). *Understanding Violent-Crime Recidivism*. Notre Dame Law Review, 95:4, 1643-1698, 1688. http://ndlawreview.org/wp-content/uploads/2020/05/9.-Prescott-et-al..pdf.

- Arkansas' TIS law, passed in 2023, is expected to cost the state $164 million over 10 years.[6]
- South Dakota's TIS law, also passed in 2023, is expected to require $21.5 million additional Department of Corrections spending over 26 years,[7] a huge sum in a state with an average daily prison population of less than 3,500 people and an overall population of only slightly over 900,000 people.

Last updated 4/22/24

[6] *Impact Assessment for SB495 Sponsored by Senator Gilmore*, Arkansas Sentencing Commission. https://www.arkleg.state.ar.us/Home/FTPDocument?path=%2FAssembly%2F2023%2F2023R%2FFiscal+Impacts%2FSB495-Other1.pdf.

[7] *Prison/Jail Population Cost Estimate Statement: Senate Bill 146*, Ninety-Eighth Session, 2023 South Dakota Legislature, https://mylrc.sdlegislature.gov/api/Documents/246627.pdf. Hult, J. (2023), *Truth in sentencing cost: $21.5 million*, South Dakota Searchlight, https://southdakotasearchlight.com/2023/02/08/truth-in-sentencing-cost-21-5-million/.

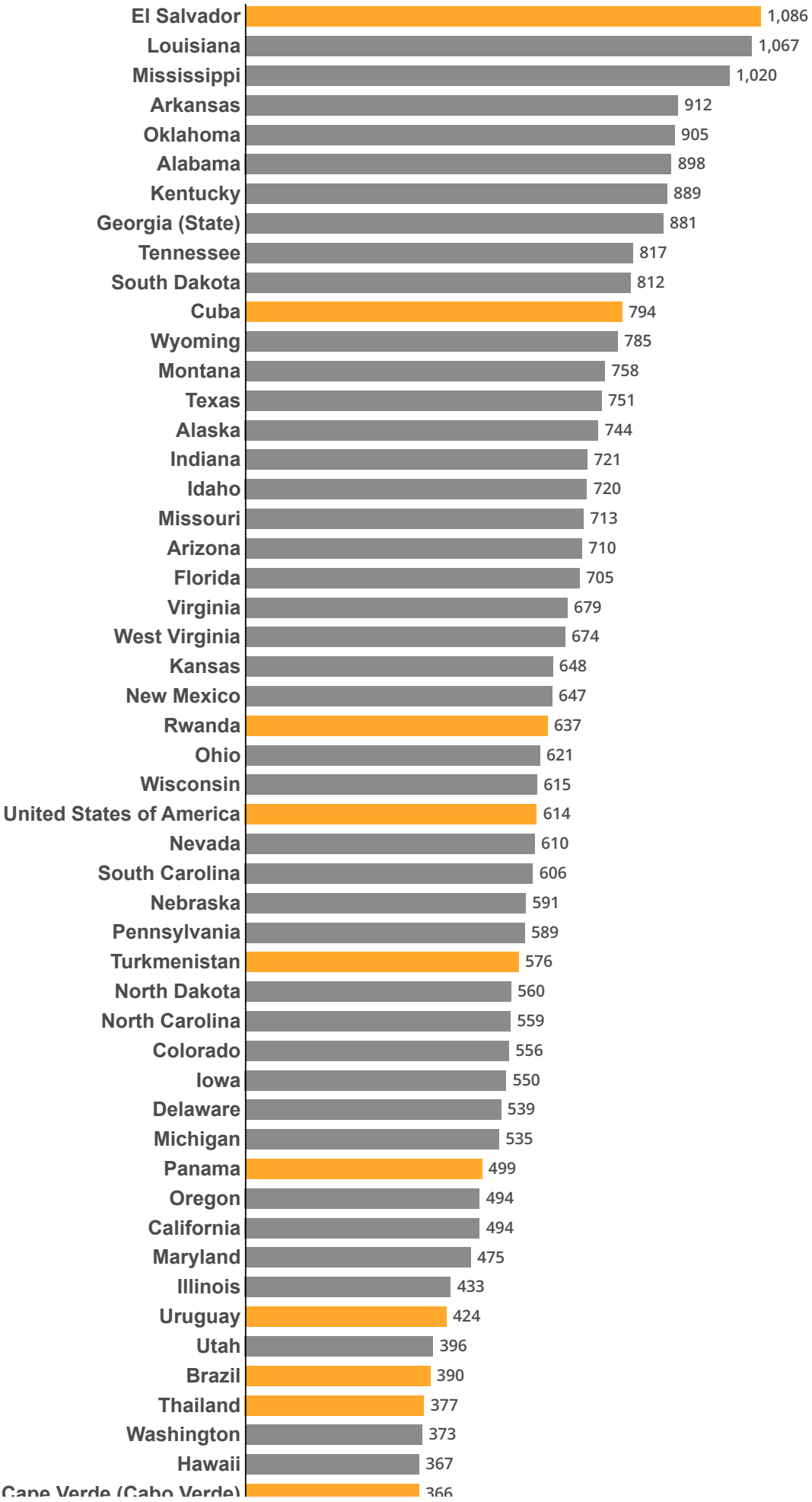
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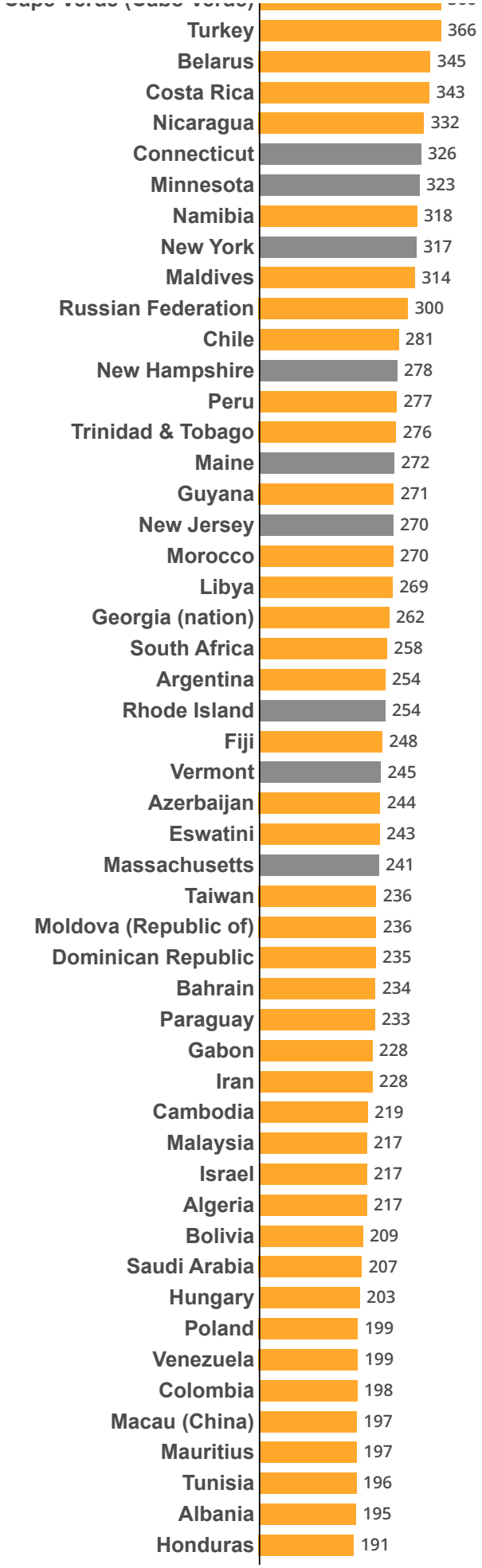
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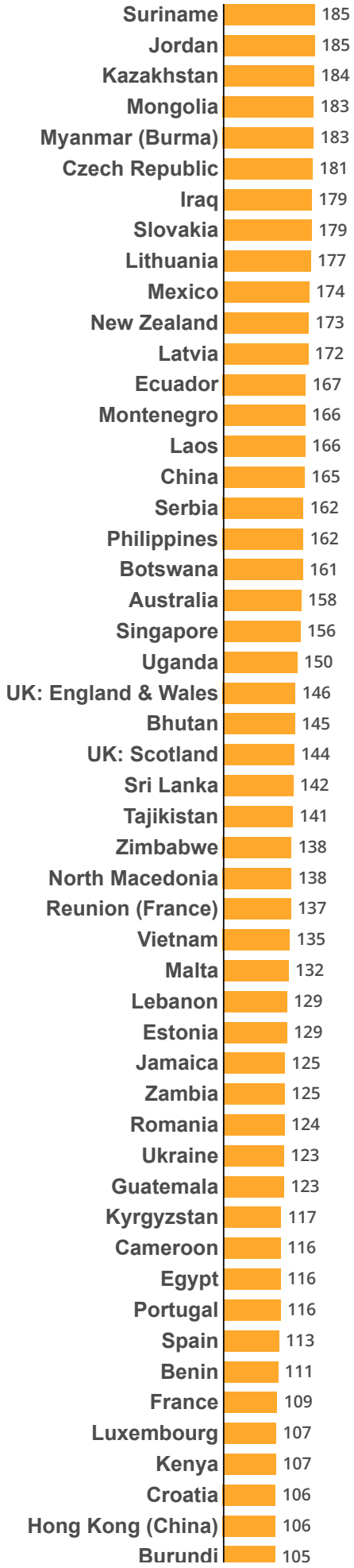
by Emily Widra
June 2024

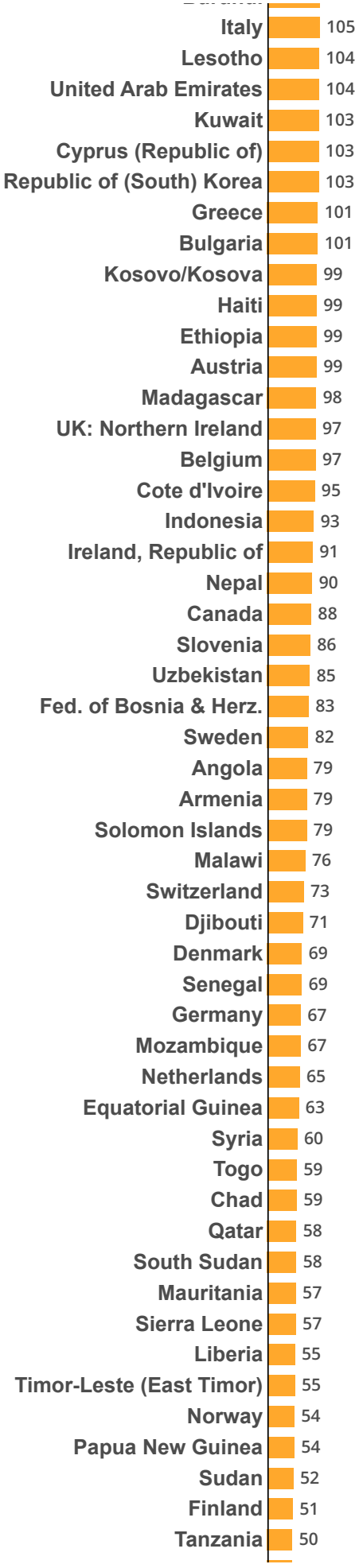
The U.S. has the highest incarceration rate of any independent democracy on earth — worse, *every single state* incarcerates more people per capita than most nations. In the global context, even "progressive" U.S. states like New York and Massachusetts appear as extreme as Louisiana and Mississippi in their use of prisons and jails.

World Incarceration Rates If Every U.S. State Were A Country


El Salvador 1,086
Louisiana 1,067
Mississippi 1,020
Arkansas 912
Oklahoma 905
Alabama 898
Kentucky 889
Georgia (State) 881
Tennessee 817
South Dakota 812
Cuba 794
Wyoming 785
Montana 758
Texas 751
Alaska 744
Indiana 721
Idaho 720
Missouri 713
Arizona 710
Florida 705
Virginia 679
West Virginia 674
Kansas 648
New Mexico 647
Rwanda 637
Ohio 621
Wisconsin 615
United States of America 614
Nevada 610
South Carolina 606
Nebraska 591
Pennsylvania 589
Turkmenistan 576
North Dakota 560
North Carolina 559
Colorado 556
Iowa 550
Delaware 539
Michigan 535
Panama 499
Oregon 494
California 494
Maryland 475
Illinois 433
Uruguay 424
Utah 396
Brazil 390
Thailand 377
Washington 373
Hawaii 367
Cape Verde (Cabo Verde) 366


Turkey 366
Belarus 345
Costa Rica 343
Nicaragua 332
Connecticut 326
Minnesota 323
Namibia 318
New York 317
Maldives 314
Russian Federation 300
Chile 281
New Hampshire 278
Peru 277
Trinidad & Tobago 276
Maine 272
Guyana 271
New Jersey 270
Morocco 270
Libya 269
Georgia (nation) 262
South Africa 258
Argentina 254
Rhode Island 254
Fiji 248
Vermont 245
Azerbaijan 244
Eswatini 243
Massachusetts 241
Taiwan 236
Moldova (Republic of) 236
Dominican Republic 235
Bahrain 234
Paraguay 233
Gabon 228
Iran 228
Cambodia 219
Malaysia 217
Israel 217
Algeria 217
Bolivia 209
Saudi Arabia 207
Hungary 203
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Colombia 198
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Latvia 172
Ecuador 167
Montenegro 166
Laos 166
China 165
Serbia 162
Philippines 162
Botswana 161
Australia 158
Singapore 156
Uganda 150
UK: England & Wales 146
Bhutan 145
UK: Scotland 144
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Haiti 99
Ethiopia 99
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Madagascar 98
UK: Northern Ireland 97
Belgium 97
Cote d'Ivoire 95
Indonesia 93
Ireland, Republic of 91
Nepal 90
Canada 88
Slovenia 86
Uzbekistan 85
Fed. of Bosnia & Herz. 83
Sweden 82
Angola 79
Armenia 79
Solomon Islands 79
Malawi 76
Switzerland 73
Djibouti 71
Denmark 69
Senegal 69
Germany 67
Mozambique 67
Netherlands 65
Equatorial Guinea 63
Syria 60
Togo 59
Chad 59
Qatar 58
South Sudan 58
Mauritania 57
Sierra Leone 57
Liberia 55
Timor-Leste (East Timor) 55
Norway 54
Papua New Guinea 54
Sudan 52
Finland 51
Tanzania 50

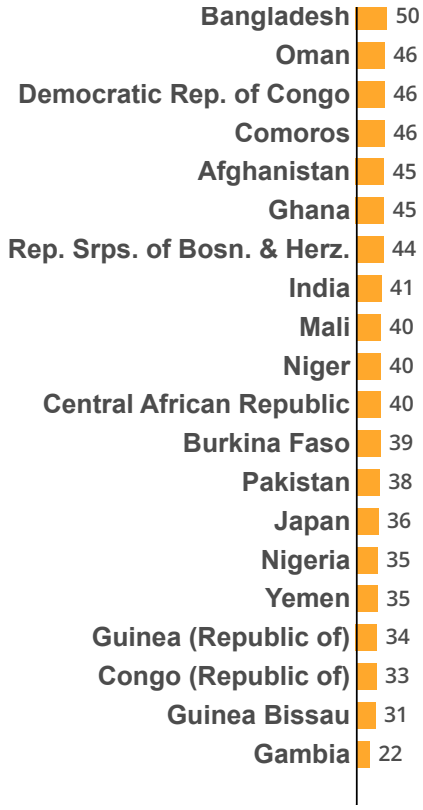


Figure 1. *This graph shows the number of people in state prisons, local jails, federal prisons, and other systems of confinement from each U.S. state and territory per 100,000 people in that state or territory and the incarceration rate per 100,000 in all countries with a total population of at least 500,000.*

The graphic above charts the incarceration rates of every U.S. state and territory alongside those of the other nations of the world. Looking at each state in the global context reveals that, in every part of the country, incarceration is out of step with the rest of the world.

If we imagine every state as an independent nation, as in the graph above, every state appears extreme. While El Salvador has an incarceration rate higher than any U.S. state,[1] nine states have the next highest incarceration rates in the world, followed by Cuba. Overall, 24 U.S. states and three nations (El Salvador, Cuba, and Rwanda)[2] have incarceration rates even higher than the national incarceration rate of the United States. Massachusetts, the state with the lowest incarceration rate in the nation, would rank 30th in the world with an incarceration rate higher than Iran, Colombia, and all the founding NATO nations.

In fact, many of the countries that rank alongside the *least* punitive U.S. states, such as Turkmenistan, Belarus, Russia, and Azerbaijan, have authoritarian or dictatorial governments, but the U.S. — the land of the free — still incarcerates more people per capita than almost every other nation. Importantly, high incarceration rates have little impact on violence and crime.

Even states like North Dakota, with incarceration rates below the national average, continue to lock people up at *more than double* the rates of some of our closest international allies:

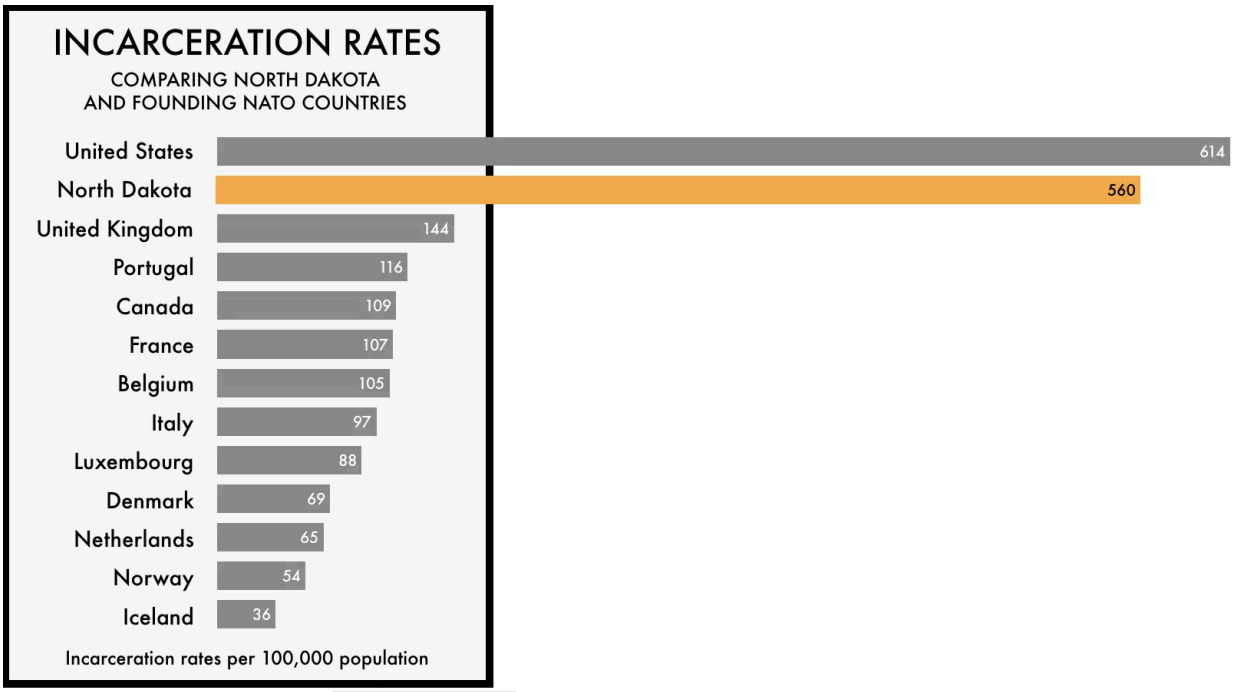


Figure 2. *Compare another state:* North Dakota *or compare just the U.S. with its peers.*

Conclusion

For decades, the U.S. has been engaged in a globally unprecedented experiment to make every part of its criminal legal system more expansive and more punitive. As a result, incarceration has become the nation's default response to crime, with, for example, 70 percent of convictions resulting in confinement[3] — far more than other developed nations with comparable crime rates.[4] As we've discussed, the U.S.' high incarceration rates are **not** a rational response to high crime rates. Instead, they represent the aftermath of racist policies like the "war on drugs," as well as politically expedient responses to public fears and perceptions about crime and violence.

Today, the United States is at an inflection point. In 2020, after protests of the murder of George Floyd, some glimmers of hope emerged that the country was finally ready to end the failed experiment of mass incarceration. However, more recently, many public officials have called for a return to the harmful policies of the past. The choices made in the coming years will determine whether the United States will finally bring its incarceration rate in line with the other nations that it considers its peers. For that, all states will have to aim higher, striving to be not just better than the worst U.S. states, but among the most fair and just in the world.

Methodology

Like our report *Mass Incarceration: The Whole Pie*, this report takes a comprehensive view of confinement in the United States that goes beyond the commonly-reported statistics by more than 100,000 people to offer a fuller picture of this country's different and overlapping systems of confinement.

This broader universe of confinement includes criminal legal system-involved youth held in juvenile residential facilities, people detained by the U.S. Marshals Service (many pretrial), people detained for immigration offenses, people convicted of sex-related offenses who are indefinitely detained or committed in "civil commitment centers" *after* completing a sentence, and those committed to psychiatric hospitals as a result of criminal charges or convictions. They are not typically included in the official statistics that aggregate data about prison and jails for the simple reason that these facilities are largely separate from the state and local systems of adult prisons and jails. That definitional distinction is relevant to the people who run prisons and jails, but is irrelevant to the advocates and policymakers who must confront the overuse of confinement by all of the various parts of the legal systems in the United States.

To provide the most up-to-date assessment of incarceration rates in every state, we use the most recent datasets available. We included these confined populations in the total incarceration rate of the United States and, wherever state-level data made it possible, in state incarceration rates. In most states, these additions have a small impact on the total rate, and they don't impact the rankings by more than one or two positions for any state. In a few places, however, these other systems of confinement merit closer attention. For example, although Minnesota has one of the lowest overall incarceration rates, Minnesota is second only to the much larger state of California for civil commitment and detention of people convicted of sex-related offenses. Other states — including Wyoming, West Virginia, Alaska, Oregon, and Rhode Island — confine enough children that incarcerated youth account for more than 2.5% of the state's incarcerated population. One state, Wyoming, incarcerates enough youth to increase their statewide incarceration rate by almost 30 people per 100,000.

As a result of our choice to take a broader view of incarceration, this report creates a unique U.S. dataset that offers a complete look at all kinds of criminal legal system-related confinement in each state. We explain our specific data sources in more detail below and provide the raw data for the component parts of our calculations in two appendices to this report:

Appendices

- Appendix Table 1: State Data
- Appendix Table 2: Country Data

Detailed data notes and sources

For the 50 U.S. states, we calculated incarceration rates per 100,000 total population that reflect our holistic view of confinement, which include:

- people in state prison in each state,
- people in local jails in each state,
- people in federal prison from each state,
- people held by the U.S. Marshals Service from each state,
- people held in jails in Indian Country in each state,
- youth held in "juvenile justice" facilities from each state,
- criminal legal system-involved people involuntarily committed to other kinds of confinement in each state (i.e. people convicted of sex-related offenses held under "civil commitment" laws and people held in state psychiatric hospitals because of criminal charges or convictions.)

The raw data are available the accompanying appendix tables and the individual sources were as follows:

- **State prisons and local jails:** In previous iterations of this report, we used the *Correctional Populations in the United States* series which provided a combined state prison and local jail count for each state that avoided double-counting people held in the physical custody of jails on behalf of state prison systems. Unfortunately, these data were not published by state in the 2020, 2021, or 2022 versions of the Bureau of Justice Statistics report, so we replicated the methodology used in that series with the *Prisoners in 2022 — Statistical Tables* and *Census of Jails, 2019* data to calculate comparable populations, as explained below.
    - **State prisons:** The Bureau of Justice Statistics publishes the jurisdictional state prison populations in Table 2 of *Prisoners in 2022 — Statistical Tables*. These population totals include people held under the jurisdiction of state prison systems that are confined in local jails.
    - **Local jails:** The Bureau of Justice Statistics publishes the confined population of local jails by state in the *Census of Jails, 2019*. However, because (a) many jails "rent" space to state prison systems and (b) these systems report data differently,[5] we adjusted the jail data to avoid

double-counting people held in jails under the jurisdiction of a state prison system. We subtracted the number of people held in local jails for state prison systems as reported in Table 14 of *Prisoners in 2022* from the confined populations reported in the *Census of Jails*. Given this adjustment, our jail populations reported in the Appendix Table 1 reflect the jurisdictional, confined jail population of each state.

- **Federal prisons**: While federal prosecutions are nominally the result of federal policy, we attribute federal convictions to individual states in part because federal prosecutions affect state residents and in part because federal prosecutions are often coordinated with state prosecutors and state law enforcement. (In this way, our methodology departs from the way the Bureau of Justice Statistics calculates state rates. In *Correctional Populations in the United States, 2022*, people detained by or for the U.S. Marshals Service are not included at all, and other people incarcerated under federal jurisdiction are included in the total national incarceration rate but do not affect state incarceration rates.)

  To develop estimates of the number of people in federal prison from each state, we developed a ratio of the state of legal residence for the Bureau of Prisons population as of March 27, 2021 — based on our FOIA request — and applied it to the total federal prison population of 158,7033 reported by the Federal Bureau of Prisons as of May 31, 2024.

- **U.S. Marshals Service**: The U.S. Marshals Service provided its most recent estimated population count in a February 2023 response to our FOIA request, reporting the projected average daily population for fiscal year 2023. While we did not have state of residence information for this custody population, we used the same ratio to reallocate these 60,439 people to states as we did for those under BOP jurisdiction. We reasoned that all people under federal jurisdiction, regardless of status (convicted, pretrial, or in transit), would likely come from the states in similar proportions.

- **Indian country jails:** The Annual Survey of Jails in Indian Country, 2022 reports the confined population of adults and youth held in jails in Indian country in June 2022 by state. Six operational facilities did not report a population in 2022, so we substituted Annual Survey of Jails in Indian Country, 2021 data for these facilities (Tohono O'odham Adult Detention Center in Arizona, Colorado River Indian Tribes Adult and Juvenile Detention Centers in Arizona, Lac Vieux Desert Police Department Adult and Juvenile Holding Facility in Michigan, Fort Peck Indian Youth Service Center in Montana, and Medicine Root Detention Center in South Dakota).

- **Youth confinement:** Because the United States confines large numbers of youth through its "juvenile justice" system, we included these youth in our national and state incarceration rates. Youth confined in places other than prison are not included in other countries' incarceration rates in this report, but their inclusion would not change other countries' rates much anyway,[6] while the 24,894 confined youth in the U.S. add 7 incarcerated people per 100,000 population to the national rate. We did not make these adjustments for any other countries' incarceration rates because for most countries, these data are not available or are not comparable to the system of youth confinement in the U.S.

  For youth in the U.S., the National Center for Juvenile Justice published the number of people younger than 21 in residential facilities by state[7] as of October 27, 2021 based on the results of the Census of Juveniles in Residential Placement (CJRP). We included the national total of 24,894 in the national incarceration rate, but the totals for the states do not match the U.S total due to rounding for anonymity. (For more on this population, see our more detailed report Youth Confinement: The Whole Pie.)

- Criminal legal system-related **involuntary commitment**:

- **State psychiatric hospitals** confine people committed by courts after being found "not guilty by reason of insanity" (NGRI) or, in some states, "guilty but mentally ill" (GBMI) and others held for pretrial evaluation or for treatment as "incompetent to stand trial" (IST). The Treatment Advocacy Center's 2024 report *Prevention over Punishment*, reporting findings from their 2023 survey that 18,948 people were confined to state psychiatric hospitals for criminal legal reasons. Minnesota did not report the relevant data to the Treatment Advocacy Center (TAC), but we found a 2022 report to the legislature where the state's Department of Human Services' Direct Care and Treatment Administration reported a census of 276 people in the care of the "forensic services" on June 30, 2021. Combined with the results reported in the TAC report, 24,894 people are confined to state psychiatric hospitals for criminal legal reasons in the U.S.

- **Civil detention and commitment:** At least 20 states and the federal government operate facilities for the purposes of detaining people convicted of sex-related crimes after their sentences are complete. These facilities and the confinement there are technically civil, but in reality are quite like prisons. People under civil commitment are held in custody continuously from the time they start serving their sentence at a correctional facility through their confinement in the civil facility. The civil commitment counts come from an annual survey conducted by the Sex Offender Civil Commitment Programs Network shared by SOCCPN President Shan Jumper. Counts for most states are from the 2023 survey, but for states that did not participate in 2023, we included the most recent figures available: California's count is as of 2022; Nebraska's is from 2018; South Carolina's is from 2021; and the federal Bureau of Prisons' count is from 2017.

Three additional categories of confinement are included in the national incarceration rate for the United States, but not in state rates, because state-level data were not available:

- **Territorial prisons**: The total jurisdictional populations under the authority of the U.S. Territories of American Samoa, Guam, and the U.S. Virgin Islands, and U.S. Commonwealths of Northern Mariana Islands and Puerto Rico are reported in Table 25 of *Prisoners in 2022 — Statistical Tables*, reporting data for December 31, 2022.

- **Immigration detention**: The currently detained population of 39,111 in Immigration and Customs Enforcement (ICE) detention comes from ICE's FY 2024 ICE Statistics spreadsheet as of March 14, 2024. The count of 8,724 youth in Office of Refugee Resettlement (ORR) custody comes from the Unaccompanied Alien Children (UAC) Program Fact Sheet, reporting the population as of March 1, 2024.

- **Military prisons**: The incarcerated populations under the jurisdictions of the U.S. military branches (a total of 1,105 people) are reported in Table 23 of *Prisoners in 2022 — Statistical Tables*, reporting data for December 31, 2022.

Population data for each state, used to calculate the incarceration rates, reflect the total resident population on July 1, 2023 for all 50 states, Puerto Rico, and the District of Columbia as reported in the Census Bureau's Annual Estimates of the Resident Population for the United States: April 1, 2020 — July 1, 2023. The April 1, 2020 populations of the American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands were published in the U.S. Census Bureau's 2020 Island Areas Censuses Demographic and Housing Characteristics Summary File (DHC).

For the **incarceration rates of other countries**, we used the most recent incarceration rate data available from the Institute for Criminal Policy Research's World Prison Brief in March 2024. For this report, we decided to accept the World Prison Brief's definition of country, choosing to exclude countries only for reasons of population size. To make the comparisons more meaningful to U.S. states, we've chosen to include only independent nations with total populations of more than 500,000 people.

In order to make the graph comparing the founding NATO nations to individual states, however, we had to make two exceptions to this policy. First, we included Iceland, which is a founding NATO member, even though its population is below 500,000. We also aggregated the total incarcerated and total population data for the three separate nations of England and Wales, Scotland and Northern Island, into the one member of NATO, the United Kingdom.

A note about the District of Columbia and U.S. territories: This report focuses on comparing individual states to other countries, so we chose to not include the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, or the U.S. Virgin Islands in the main graphic in this report, although we did make separate NATO comparison graphics for these places. However, the incarceration data for D.C. and the territories, where they exist, are in Appendix Table 1: State Data and the final incarceration rate calculations for D.C. and the territories are:

Jurisdiction	Incarceration Rate
District of Columbia	816
U.S. Virgin Islands	651
American Samoa	606
Guam	502
Northern Mariana Islands	400
Puerto Rico	343

Editors note: This report was updated on July 11, 2024 to correct a mathematical error in the calculation of the overall, national incarceration rate of the United States.

Acknowledgements

All Prison Policy Initiative reports are collaborative endeavors, but this report builds on the successful collaborations of the 2014, 2016, 2018, and 2021 versions. The Prison Policy Initiative is grateful for data artist Josh Begley's original visual structure and for the Institute for Crime & Justice Policy Research's aggregated world incarceration data in the invaluable World Prison Brief.

This report was made possible thanks to the generous support of our individual donors across the country who support justice reform.

About the author

Emily Widra is a Senior Research Analyst at the Prison Policy Initiative. She is the organization's expert on health and safety issues behind bars, including the coronavirus in prisons and HIV prevalence in prisons. Her other research includes examining the high mortality rates of people on probation and parole, highlighting the counterproductive practice of locking up older adults, and assessing how prisons and jails provide punishment instead of treatment for people who use substances.

About the Prison Policy Initiative

The non-profit, non-partisan Prison Policy Initiative was founded in 2001 to expose the broader harm of mass criminalization and spark advocacy campaigns to create a more just society. The organization is known for its visual breakdown of mass incarceration in the U.S., as well as its data-rich analyses of how U.S. states vary in their use of punishment. Alongside reports like these, the organization leads the nation's fight to keep the prison system from exerting undue influence on the political process (a.k.a. prison gerrymandering) and played a leading role in protecting the families of incarcerated people from the predatory prison and jail telephone industry and the video calling industry.

Footnotes

1. Sharp-eyed readers may notice that, in past versions of this report, the U.S. had the highest incarceration rate of all countries (among those with populations of at least 500,000 people). However, the latest international incarceration data indicates that El Salvador incarcerates more people per capita than any other nation or any U.S. state. This reflects a recent dramatic increase in incarceration in El Salvador, rather than any meaningful policy change to reduce incarceration in the United States (although, as we've reported, the U.S. incarceration rate also dropped as a result of temporary court slowdowns and changes related to the COVID-19 pandemic). In our 2021 report, El Salvador's January 2021 incarceration rate was 562 per 100,000 as reported by the World Prison Brief. As of May 2022, the incarceration rate has practically doubled to 1,086 per 100,000 people and the prison population itself has doubled. In the past few years, El Salvador has been "run as a police state" with military and police indefinitely detaining people without providing a reason or access to a lawyer. The current incarceration rate in El Salvador is likely much higher than it was in May 2022, considering the nation has incarcerated more than 72,000 additional people between March 2022 and September 2023, but El Salvador has not formally disclosed any more recent prison population data. ↩

2. Previous iterations of this report relied on Cuba's 2012 prison population, as new data had not been published in years. As of this report, Cuba released a new prison population count of 90,000 incarcerated people as of January 2020, a significant increase from their 2012 prison population of 57,000 people. While there is little information available about how, why, or when the prison population in Cuba increased so dramatically, it is likely that lengthy prison sentences and the continued government surveillance and arbitrary detention of activists and dissidents have contributed to the increased prison population in the last decade. Because this updated prison population is from 2020, it's likely — particularly given the most recent changes to the penal code — that the incarceration rate in Cuba is even higher in 2024.

   In 2020, the incarceration rate in Rwanda was 515 per 100,000, and the most recent data from August 2023 reveals that the prison population has increased by over 20,000 people and the most recent incarceration rate is 637 per 100,000, making Rwanda the third and final nation with a higher incarceration rate than the United States. Rwanda's prison population has been increasing over the past few decades, with thousands of people detained in connection with the 1994 genocide and an unknown number of imprisoned political opponents. In 2023, the U.S. Department of State reported a number of credible reports of arbitrary detention, unlawful interference with privacy, serious restrictions on free expression, and overly restrictive laws, likely contributing to the ballooning prison population in Rwanda. ↩

3. This statistic comes from a 2008 U.N. report comparing responses to crime in Europe and North America from 1995-2004. While this data point is now twenty years old, we are unaware of any more recent research that addresses the number of convictions resulting in confinement in the U.S. and other comparable nations. ↩

4. For example, Canada, England and Wales, Finland, and Germany are more likely to use fines and/or warnings instead of incarceration. ↩

5. There are two different ways to look at incarcerated populations: by custody or jurisdiction. The custody population refers to the number of incarcerated people physically held by an authority (i.e., someone physically detained in a local jail is in the custody of the local jail). The jurisdictional population reflects the legal authority under which someone is incarcerated, regardless of the type of correctional facility they are in. This means that there are people in the physical custody of local jails, but who are under the jurisdictional authority of another agency, such as another county's jail system, the federal government (including the U.S. Marshals Service, immigration authorities, and the Bureau of Prisons), or state agencies (namely the state prison system). For more information on detainers and holds in local jails, see our June 2024 publication on local jail populations. ↩

6. Italy's national incarceration rate, for instance, would increase by 2 people per 100,000 if we incorporated juvenile populations reported in the Italian Department of Juvenile and Community Justice Office's report, "Minors and young adults in the care of juvenile service: Statistical analysis of data, 2022." Canada's incarceration rate would only increase by 1.3 per 100,000 based on the juvenile average daily population in custody of 500 youth in 2022-2023 as reported by Statistics Canada and the national population reported by the World Prison Brief. In England and Wales, 262 youth are already included in the national data provided by the World Prison Brief, but juveniles in other kinds of facilities (including Secure Training Centres and Local Authority Secure Children's Homes) in England and Wales are not included in their data. Including these additional 138 youth would increase the overall rate for England and Wales by less than 1 person per 100,000. ↩

7. According to the National Center for Juvenile Justice, the national total excludes youth held in tribal facilities and the reported state is the "the state where the offense was committed." ↩

ADAPT
Electronic Monitoring, LLC

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1/20/2025

Subject: Opposition Letter for SB 2128

Chair Larson and members of the Senate Judiciary Committee,

My name is Brad Brekke and I am the Owner and CEO of ADAPT Electronic Monitoring. I have been involved with electronic monitoring as an EMS officer for 20 years and have owned this company since ADAPT Inc. dissolved in late 2023. I am testifying against SB 2128 and have some reasons to inform you why I am strongly against this bill.

Every individual and every case that a court deals with are different. Crimes are different and so are the individuals that are involved. The Judges in North Dakota have done a great job of doing what is fair and what is right for each individual case that they preside over. Having mandatory almost maximum sentences that each individual would have to be incarcerated would not allow the judges to do what is best for that individual to help keep them out of the system in the future.

Allowing the Judges to make decisions on sentencing and doing what is best for the safety of the community and for the individual that has committed a crime is of the utmost importance. There is not one type of sentencing that fits every individual. Incarceration is a necessity and for some is the only option to keep our communities safe and the people of our communities safe. Limiting the Judges to only incarceration options will be extremely hard on the detention centers that house these individuals. The detention centers in the state are already full and past capacity in many areas, imposing incarceration for every individual is only going to make that worse for the detention centers. The court system needs to have other options, there are other options that are out there now, whether it be a transition center or electronic monitoring or other means. If this bill passes, I think a lot of these options will disappear with it.

Electronic Monitoring allows the individuals to keep their jobs, keep their families together, and allows them to continue on with their lives. The individual has made a mistake and if they are still able to keep their jobs and keep their families, they are going to be less likely to commit another crime and stay in the system. The very structured system of electronic monitoring allows the individual to go to work to maintain their employment, and allows them to continue with other effective programming in the community that has proven to help them be successful. While on electronic monitoring, they are able to attend religious activities, AA/NA meetings, treatment and various other court ordered items such as 24/7 or other community services that can help them in their lives. Outside of those things and necessities, they are required to be home where they can still have the support of their families.

Electronic monitoring also saves the taxpayers and the state of North Dakota money. Every individual that is on electronic monitoring pays for the cost of the monitoring. The individual that is convicted of

the crime pays for the sentence that was imposed on them by the courts. The individual is still working and with their family and is paying for the service that is provided, which saves the state a lot of money for each day that they are not in the detention centers. Adapt Inc. and Adapt Electronic Monitoring LLC, have monitored over 12,000 individuals on electronic monitoring since 2007. Adapt has had over 96 percent of its individuals complete their sentence successfully. Conservatively, daily incarceration costs are at $150 per day, Adapt worked with roughly 1,000 individuals in 2024, this program has saved North Dakota Counties and tax payers nearly $1.5 million dollars in incarceration costs in 2024.

- ADAPT has monitored over 12,000 Clients since 2007, each client averaging about 23 days per case for a total of 276,000 days of monitoring since 2007. In these past 18 years, this program has saved close to $41.4 Million in incarceration costs to Cities, Counties and State and Federal Entities

I do agree that some people need to be incarcerated in order to keep people and communities safe. However, I feel that this bill, restricts the judgment of the tremendous Judges that we have in North Dakota that try to do what is right for the individual that is convicted of a crime. Every individual is different and the Judges do a great job of ensuring public safety; while also trying to make sure an individual is able to move on with their lives in a positive manner.

I am unfortunately unable to be there tomorrow for the hearing, however, Perry Smith, who is cosigning this letter with me is available and will be there. Perry is the former owner of ADAPT Inc., that provided this service to the communities in North Dakota for over two decades. Thank you for considering the implications and restrictions that this bill may cause on the people that live in our state.

Brad Brekke

Brad Brekke

Owner/CEO of Adapt Electronic Monitoring LLC

Perry Smith

Perry Smith

Former Owner/CEO of Adapt Inc.

Madam Chair Larson and Members of the Senate Judiciary Committee

My name is Curtiss Heidebrink, I am the program director of F5 Project's Akisni Warrior Lodge in James River Correctional Center (JRCC). A groundbreaking culturally rooted therapeutic community centered in the Indigenous culture. Akisni focuses on the intergenerational transmission of trauma, addiction recovery, healthy communication and revitalizing the Native cultures of the plains people. Like the many transformative programs F5 Project offers, the Akisni Warrior Lodge aims to reduce recidivism and promote change and hope.

I am writing to express my deep concerns and opposition to SB 2128, which I believe poses significant risks to the rehabilitation and reentry process for justice-involved individuals. As someone with firsthand experience of incarceration and the challenges faced during that time, I can speak to the importance of programs and opportunities that promote personal growth and community reentry. SB 2128 will reduce active and meaningful involvement in rehabilitative programs and disrupt crucial reentry processes such as parole and transitional housing, exacerbating the very issues it seeks to address. Programs like these are vital for successful reintegration, providing structure, support, and hope for a better future. Disrupting these pathways would add stress to an already overburdened and overcrowded prison system.

One of my greatest concerns with SB 2128 is that it removes judicial discretion and the ability for courts to make case-by-case decisions. By imposing rigid sentencing requirements, the bill eliminates incentives for individuals to pursue personal growth and positive change while incarcerated. This can lead to unintended consequences, including an increase in violent behavior among those serving long sentences with no hope of early release. Without the prospect of parole or other incentives, individuals may lose motivation to engage in rehabilitative efforts, potentially turning nonviolent offenders into violent ones during their incarceration.

My own story illustrates the profound impact that meaningful reentry opportunities can have on an individual's life. I was sentenced to serve an 18-month in the NDDOCR and was released on parole early. That opportunity marked the beginning of my journey toward personal transformation and community contribution. With support from reentry programs and a chance to rebuild my life, I have been able to make a positive impact in my community and even within the justice system itself, including at the James River Correctional Center (JRCC). Had SB 2128 been in effect during my time of incarceration, my trajectory might have been very different.

I urge you to consider the broader implications of SB 2128. Rather than fostering public safety, it risks creating a cycle of hopelessness and violence within our prison system. By taking away opportunities for rehabilitation and removing judicial discretion, this bill undermines the very principles of justice and fairness.

Thank you for your time and attention to this critical matter.

Curtiss Heidebrink, Akisni Program Director

January 20, 2025
Testimony to the **Senate Judiciary Committee**
Submitted By: Jesse Walstad on behalf of the ND Association of Criminal Defense Lawyers
Testimony **in Opposition to S.B. 2128**

Chairwoman Larson and Members of the Senate Judiciary Committee:

My name is Jesse Walstad and I represent the ND Association of Criminal Defense Lawyers. The NDACDL is made up of lawyers throughout our state who dedicate a portion of their practice to criminal defense. The mission of the NDACDL is "to promote justice and due process" and to "promote the proper and fair administration of criminal justice within the State of North Dakota." With that mission in mind, the NDACDL **opposes S.B. 2128** and recommends a **DO NOT PASS** from the Senate Judiciary Committee.

Minimum Mandatory Sentences DO NOT Prevent Future Crime

S.B. 2128 would create minimum mandatory sentences for Fleeing (30-day minimum), Simple Assault on an officer, EMT, firefighter, or Emergency Room staff member (30-day minimum), and Preventing Arrest (14-day minimum). While protecting our law enforcement and emergency services personnel is of paramount importance, minimum mandatory sentencing is a demonstrably failed experiment our preceding Legislatures have wisely declined to endorse.

During the 1980s and 1990s the Federal government and many states added minimum mandatory sentences. By way of example, Illicit drug crimes, particularly in the federal code, are riddled with minimum mandatory sentences. Decades later, drug offenses continue to increase in frequency and severity across the United States. Except for particularly egregious offenses, our Legislature has historically refused to insert a host of minimum mandatory into our law, wisely relying on our exceptionally well qualified judges to fashion appropriate sentences under existing law.

Our Legislature's reluctance to follow the failed minimum mandatory trend of decades past was sound judgement. Data gathered over several decades establishes that minimum mandatory sentences failed to prevent or deter crime while simultaneously expanding our national prison population by 500% over the past forty years. For this reason, many states and the federal government have been reforming and reducing their minimum mandatory sentences in recent years.[1] S.B. 2128 threatens to move North Dakota in opposition to the trend away from minimum mandatory sentencing. The Legislature should not accept this invitation to adopt a demonstrably failed sentencing system.

Our State's Attorneys and judiciary have no difficulty distinguishing between cases meriting imprisonment and those meriting leniency. S.B. 2128 will deprive our judiciary and our State's Attorneys of the wise and seasoned discretion they use to ensure justice is done in every case. A credible justice system contains sentencing safeguards to ensure a just and fair outcome tailored to the circumstances of each case. Personally, and on behalf of the NDACDL, I trust our judges to dispense justice based on the facts of each case as applied to the sentencing factors and I strongly urge

[1] The trend away from minimum mandatory sentences is exemplified by the First Step Act of 2018. There, a bipartisan Congress opened the door for the federal judiciary to depart from certain severe sentencing requirements, eliminate stacking of mandatory minimums, and reduce the three strikes law. In doing so, it transferred some measure of sentencing discretion back to the federal judges who are best situated to fashion fair and just sentences based on the unique circumstances of each case.

this committee to deny the flawed invitation to arbitrarily limit our judge's discretion by implementing the minimum mandatory sentences proposed in S.B. 2128.

Judicial and prosecutorial discretion is particularly important when you consider the exceptionally broad range of conduct, from honest mistakes to extreme public dangers, that falls within each of the offenses addressed under S.B. 2128. I have had clients charged with preventing arrest or interfering for exercising their lawful right to refuse questioning or deny entry in the absence of a warrant. One client was charged with interfering with a law enforcement function after his foot became stuck under the front seat of a police cruiser preventing his immediate exit when directed. Under S.B. 2128 those and countless other situations would serve no less than two weeks in jail.

Another client, a doctoral level professional, was moving his car out of a short-term parking zone during a snowstorm. He didn't brush the snow off his car, hoping the wind from driving would do so. An officer immediately initiated his emergency lights because the license plate and windows were snow covered. The client drove three blocks before he saw the officer's emergency lights. When he did, he stopped immediately. He was charged with fleeing. Compare that incident to one in which a suspect leads four agencies on a 3-county high speed pursuit through several cities. Does our criminal justice system benefit from a mandatory 30-day jail sentence and lasting record of conviction from an honest mistake by a person who has no criminal record?

Another client was charged with simple assault on an officer when the officer suffered what he described as an "abrasion" to his pinky finger while placing them in handcuffs. Another, while intoxicated to the brink of consciousness unintentionally jerked his foot hitting an EMT on the hip while lying in an ambulance gurney, the EMT was uninjured, but the client was a charged with simple assault on an emergency worker. Under S.B. 2128, each would receive a 30-day jail sentence.

Those in favor assert minimum mandatories will disincentivize commission of these offenses. First, data shows minimum mandatories have little if any deterrent effect, even in premeditated offenses such as drug distribution, child porn, and planned violent crimes. Secondly, these offenses - obstruction, fleeing, simple assault on an officer - are not premeditated offenses. They are impulsive offenses with little if any corresponding forethought. If minimum mandatories don't deter premeditated offenses, it is illogical to assume they would have any deterrent effect on low level impulse crimes. The claimed deterrent effect is speculative at best, and contrary to abundant data.

What we can predict with certainty is an immediate and dramatic increase in the number of trials, the number of inmates, and the vast amount of resources required to implement S.B. 2128. Those negative externalities are foreseeable and undeniable. If passed SB 2128 will place imminent and substantial resource demands on our courts, our State's Attorneys, our indigent defense commission, and our prison system. All of which are already at or over capacity.

When mandatory sentences are in play the attorneys and judges working on a case are arbitrarily restricted in their ability to resolve cases justly and amicably. When faced with minimum mandatory sentences defendants often have no incentive to enter a guilty plea, because they will receive the same sentence if convicted by a jury that they would if they plead guilty. Each jury trial is a considerable use of state and personal resources. The vast majority of criminal cases don't proceed to trial because the current law provides latitude for the parties and the court to agree on appropriate

sentences on a case-by-case basis. Minimum mandatory sentences create an arbitrary negotiating floor precluding agreement and unnecessarily consuming scarce justice system resources.

The insinuation that North Dakota judges are soft on crime or fail to recognize and appropriately punish dangerous or repeat offenders, is categorically false. S.B. 2128 would require severe one-size fits all sentencing without any regard for the circumstances of the case or whether the defendant is a habitual or dangerous offender. Arbitrarily limiting judicial discretion will result in unnecessarily harsh sentences in low-level cases, while the sentencing outcomes in egregious cases will likely go unchanged.

The bottom line is the collective wisdom and experience of our judiciary enforcing our current sentencing laws ensures justice can exist in each case. S.B. 2128 would deny tailored justice to the lowest level offenders, without materially effecting egregious offenders. The costs and negative consequences of minimum mandatory sentencing need not be endured when we have an exceptional prosecutor's bar and judiciary with the discretion to fashion appropriate sentences to the facts of each case. The NDACDL strongly urges this committee to trust our judges, our prosecutors, and our law by voting **DO NOT PASS** on the minimum mandatories proposed in S.B. 2128.

Evidence-Based Sentence Reduction and Rehabilitative Tools <u>DO</u> Prevent Future Crime

S.B. 2128 also proposes substantial changes to N.D.C.C. §§ 12-48.1-01 and 2, which severely limit the seasoned and informed discretion of the director of the DOCR, by codifying extremely narrow "eligibility" criteria, and mandating quarterly reporting of each eligible offender within the DOCR by name. It would also elevate the DOCR's threshold determination for participation in release programs to "a high degree of reliability" without providing any guidance as to what that means, or how it differs from the current determination.

In practice the changes would substantially decrease access to valuable and cost effective rehabilitative and transitional tools. It would effectively abolish Electronic Home Monitoring ("EHM") and community placement transitional options, both which have been exceedingly effective in ensuring accountability while the expense is borne by the offender, not the public. It would also divest sheriffs of authority to use programs like Cass County's Community Placement Program which has been exceedingly successful, and very cost effective.

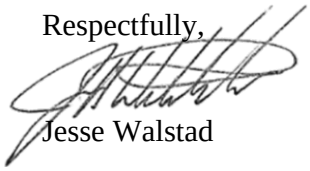
S.B. 2128, would also move North Dakota in stark opposition to national trends, by amending N.D.C.C. § 12-54.1-01 to arbitrarily cap good time credit "to a maximum of fifteen percent of the offender's sentence." This essentially eliminates good time credit in any meaningful way when coupled with the "truth in sentencing" amendment proposed to N.D.C.C. § 12.1-32-09.1 that converts every criminal offense into an 85% offense. It would also reduce meritorious conduct sentence reductions by half.

Each of these proposed changes directly conflicts with national trends and the policy of the incoming presidential administration, as demonstrated by the First Step Act and other efforts to incentivize good behavior, rehabilitation, and successful transition among inmate populations. The national trend favoring access to rehabilitation and evidence-based sentence reduction should not be ignored by our Legislature. As outlined in the written testimony of many others in opposition, every

credible major study has concluded that minimum mandatory sentences and reduced access to evidence-based sentence reduction increases, rather than decreases recidivism rates. The post-conviction amendments proposed by S.B. 2128 are not based on the data and stand in stark contrast to the evidence-based sentence reduction advances North Dakota, our Courts, and our DOCR have made over the past decade.

Coupling S.B. 2128's vast expansion of 85% offenses, and corresponding reduction in good time credit, with decreased access to rehabilitative and transitional tools is a recipe for disaster. As an example, an inmate would be released after serving 85% of their sentence, while simultaneously having substantially limited access to rehabilitative and transitional tools and no evidence based motivation to utilize them. Studies demonstrate that without meaningful access to transitional and rehabilitative assistance the odds of successful post-sentence reintegration are substantially diminished and the likelihood of recidivism is correspondingly increased. The NDACDL strongly urges this committee to trust our judges, our corrections professionals, and the wealth of statistical information favoring evidence-based sentence reduction by voting **DO NOT PASS** on S.B. 2128.

Respectfully,



Jesse Walstad

DOCR Adult Services Prison Population Information

Prison Population on December 31, 2023 (Male and Female)

TOTAL COUNT: 1899

NDSP **801,** HRCC 56, JRCC **475**, MRCC **190**, DWCRC **130,** Non Traditional Beds **247**

Non-Traditional Bed Breakdown:

Correctional Centers (Jails) **85**, Interstate Compact **19**, BTC **65,** GFC **10**, MTPFAR **29**, MTPMDN **13**

FTPFAR **22**, FTPMDN **4**

Year	2018	2019	2020	2021	2022	2023
Admissions - Calendar Year	1527	1530	936	1491	1451	1431
Releases - Calendar Year	1555	1431	1329	1203	1323	1349
Prison Count on December 31	1695	1794	1401	1689	1817	1899

Prison Count on December 31 (Crime Type)

Offense	2018	2019	2020	2021	2022	2023
Violent Offenders (Excluding Sexual)	589	648	588	686	743	821
Sex Offenders	301	303	293	307	330	350
Property and Other Public Order Offenders	313	345	202	312	337	318
Drug & Alcohol Offenders	492	498	318	384	407	410
Drug - Deliver, Manufacture or Intent	286	277	208	244	251	252
Drug - Possession Only	176	186	88	122	131	127
Alcohol - DUI, APC	30	35	22	18	25	31

Prison Count on December 31 (Minimum Mandatory)

Offense	2018	2019	2020	2021	2022	2023
Child Abuse	0	0	0	0	0	17
DUI/Actual Physical Control	0	0	0	0	0	15
Refusing to Submit to Chemical Testing	0	0	0	0	0	1
Drug Offenses (Not Alcohol)	1	0	0	0	1	19
Reckless Endangerment	1	0	0	0	1	9
Aggravated Assault/Conspiracy	17	20	20	26	31	41
Att Commit Simple Assault-PO/Corr Officer	0	0	0	0	0	1
Burglary With Weapon	4	4	3	4	4	2
Felonious Restraint	0	1	1	0	0	0
Kidnapping	0	0	0	0	0	0
Sex Offenses	17	12	15	17	16	46
Terrorizing	14	19	17	16	16	24
Robbery	16	18	17	18	17	16
Criminal Vehicular Injury	0	0	0	0	0	2
Negligent Homicide/Criminal Vehicular Homicide	3	2	2	2	2	10
Manslaughter	1	2	4	6	6	6
Murder/Attempted Murder/Conspiracy	25	31	29	42	47	40
Offender Registration Violation	0	0	0	0	0	3
Total	111	118	116	136	145	252

13.27% of the prison population on December 31, 2023 had a minimum mandatory sentence.

Prison Count on December 31 (85% Truth-In-Sentencing)

	2018	2019	2020	2021	2022	2023
Number of Offenders Having 85% TIS (includes Life)	261	241	244	290	293	299
Average Sentence In Years (excludes Life)	12.90	15.85	15.95	16.18	15.69	16.56

Prison Count on December 31 (Life Sentences)

	2018	2019	2020	2021	2022	2023
Life With Parole	43	42	42	42	43	48
Life Without Parole	41	41	41	46	52	57
Total	84	83	83	88	95	105

DOCR Adult Services Prison Population Information (Male and Female)

Average Prison Population, Admissions, Releases by Fiscal Year

	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Average Daily Population	1760.97	1716.50	1698.82	1453.17	1693.76	1800.87
Admissions	1576	1514	1146	1336	1428	1418
Releases	1681	1444	1540	1085	1312	1316

Number Of Fiscal Year Admissions by Crime Type

	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
All Admissions	1576	1514	1146	1336	1428	1418
Violent Offenders (Non-Sexual)	366	358	293	413	421	479
Sex Offenders	76	89	65	85	81	86
Drug & Alcohol Offenders	712	660	483	521	530	509
Property and Other Public Order Offenders	422	407	305	317	396	344

Average Sentence Imposed By Court (Fiscal Year, Crime Type, In Years, Excludes Life Sentences)

	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
All Admissions	2.57	2.56	2.89	2.80	2.78	3.16
Violent Offenders (Non-Sexual)	2.91	2.54	3.17	3.03	3.35	3.37
Sex Offenders	5.54	6.10	8.16	5.72	6.62	8.78
Drug & Alcohol Offenders	2.33	2.36	2.45	2.48	2.40	2.62
Property and Other Public Order Offenders	2.15	2.14	2.20	2.25	2.21	2.30

Number Of Fiscal Year Admissions By Length Of Court Imposed Sentence

	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Less Than One Year	43	41	37	26	38	42
One Year to Less Than Five Years	1342	1315	955	1149	1214	1174
Five Years to Less Than Ten years	147	115	103	108	126	138
Ten Years to Less Than Twenty Years	25	28	31	38	24	36
Twenty Years or More	19	15	20	15	26	28

NOTE: The average sentence is that sentence imposed by the court. It does not take into account such things as good time, credit for time served, parole relief or any other method of shortening the sentence except Pardon Advisory Board recommendations adopted by the Governor (which can actually change the sentence). The average sentence is reported in years to two decimal points.

Data is based on the "controlling sentence" for offenders who are admitted for multiple crimes. Controlling sentence is the longest sentence ordered by the court that has not expired.

NDSP - North Dakota State Penitentiary. **JRCC -** James River Correctional Center. **MRCC** - Missouri River Correctional Center. **HRCC** - Heart River Correctional Center. DWCRC - Dakota Women's Correctional Rehabilitation Center (New England). BTC - Bismarck Transition Center. CPP - Community Placement Program. MTP - Male Transition Program (Fargo & Mandan). FTP - Female Transition Program (Fargo & Mandan). GFC - Grand Forks Centre. LRRP - Lake Region Re-entry Program (Devils Lake).

DOCR Adult Services Prison Population Information

Prison Population on December 31, 2023 (Female Only)

TOTAL COUNT: 243

NDSP **0**, HRCC **56,** JRCC **0**, MRCC **0**, DWCRC **130,** Non Traditional Beds **57**

Non-Traditional Bed Breakdown:

Correctional Centers (Jails) **9**, BTC **22**, FTPFAR **22**, FTPMDN **4**

Year	2018	2019	2020	2021	2022	2023
Admissions - Calendar Year	296	310	198	286	302	301
Releases - Calendar Year	299	297	245	248	269	291
Prison Count on December 31	196	209	162	200	233	243

Prison Count on December 31 (Crime Type)

Offense	2018	2019	2020	2021	2022	2023
Violent Offenders (Excluding Sexual)	59	63	57	83	90	110
Sex Offenders	5	6	7	5	4	4
Property and Other Public Order Offenders	34	43	28	47	53	46
Drug & Alcohol Offenders	98	97	70	65	86	83
Drug - Deliver, Manufacture or Intent	49	46	43	36	41	48
Drug - Possession Only	47	48	24	26	41	31
Alcohol - DUI, APC	2	3	3	3	4	4

Prison Count on December 31 (Minimum Mandatory)

Offense	2018	2019	2020	2021	2022	2023
Child Abuse	0	0	0	0	0	8
DUI/Actual Physical Control	0	0	0	0	0	0
Refusing to Submit to Chemical Testing	0	0	0	0	0	0
Drug Offenses (Not Alcohol)	1	0	0	0	1	1
Reckless Endangerment	1	1	0	1	2	1
Aggravated Assault/Conspiracy	2	1	1	6	6	8
Att Commit Simple Assault-PO/Corr Officer	0	0	0	0	0	0
Burglary With Weapon	0	0	0	0	0	0
Felonious Restraint	0	0	0	0	0	0
Kidnapping	0	0	0	0	0	0
Sex Offenses	0	0	0	0	0	2
Terrorizing	0	0	1	1	0	1
Robbery	0	0	0	0	1	1
Criminal Vehicular Injury	0	0	0	0	0	0
Negligent Homicide/Criminal Vehicular Homicide	0	0	0	0	0	1
Manslaughter	0	1	1	3	3	2
Murder/Attempted Murder/Conspiracy	0	1	1	2	2	3
Offender Registration Violation	0	0	0	0	0	0
Total	0	0	0	0	0	28

11.5% of the female prison population on December 31, 2023 had a minimum mandatory sentence.

Prison Count on December 31 (85% Truth-In-Sentencing)

	2018	2019	2020	2021	2022	2023
Number of Offenders Having 85% TIS (includes Life)	17	13	13	15	27	22
Average Sentence In Years (excludes Life)	11.75	15.46	14.35	16.77	11.31	15.13

Prison Count on December 31 (Life Sentences)

	2018	2019	2020	2021	2022	2023
Life With Parole	1	1	1	1	2	4
Life Without Parole	3	2	2	2	2	2
Total	4	3	3	3	4	6

DOCR Prisons Adult Services Prison Population Information (Female Only)

Average Prison Population, Admissions, Releases by Fiscal Year

	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Average Daily Population	205.14	207.28	196.60	160.05	199.74	223.55
Admissions	300	301	236	259	291	294
Releases	309	279	339	198	266	278

Number Of Fiscal Year Admissions by Crime Type

	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
All Females	300	301	236	259	291	294
Violent Offenders (Non-Sexual)	65	62	54	66	89	87
Sex Offenders	1	2	0	2	0	3
Drug & Alcohol Offenders	169	173	130	136	133	136
Property and Other Public Order Offenders	65	64	52	55	69	68

Average Sentence Imposed By Court (Fiscal Year, Crime Type, In Years, Excludes Life Sentences)

	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
All Females	2.57	2.01	2.18	2.21	2.25	2.42
Violent Offenders (Non-Sexual)	2.54	1.93	2.50	2.73	2.66	2.20
Sex Offenders	8.00	6.50	0	3.25	0	9.83
Drug & Alcohol Offenders	2.07	1.98	2.16	1.95	2.08	2.48
Property and Other Public Order Offenders	1.87	2.01	1.92	2.20	2.03	2.27

Number Of Fiscal Year Admissions By Length Of Court Imposed Sentence

	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Less Than One Year	11	12	7	4	12	10
One Year to Less Than Five Years	271	280	214	243	260	254
Five Years to Less Than Ten years	13	6	11	8	15	24
Ten Years to Less Than Twenty Years	2	2	3	4	2	4
Twenty Years or More	3	1	1	0	2	2

NOTE: The average sentence is that sentence imposed by the court. It does not take into account such things as good time, credit for time served, parole relief or any other method of shortening the sentence except Pardon Advisory Board recommendations adopted by the Governor (which can actually change the sentence). The average sentence is reported in years to two decimal points.

Data is based on the "controlling sentence" for offenders who are admitted for multiple crimes. Controlling sentence is the longest sentence ordered by the court that has not expired.

NDSP - North Dakota State Penitentiary. **JRCC -** James River Correctional Center. **MRCC** - Missouri River Correctional Center. **HRCC** - Heart River Correctional Center. DWCRC - Dakota Women's Correctional Rehabilitation Center (New England). BTC - Bismarck Transition Center. CPP - Community Placement Program. MTP - Male Transition Program (Fargo & Mandan). FTP - Female Transition Program (Fargo & Mandan). GFC - Grand Forks Centre. LRRP - Lake Region Re-entry Program (Devils Lake).

DOCR Adult Services Prison Population Information

Prison Population on December 31, 2023 (Male Only)

TOTAL COUNT: 1656

NDSP **801, J**RCC **475**, MRCC **190**, Non Traditional Beds **190**

Non-Traditional Bed Breakdown:

Correctional Centers (Jails) **76**, Interstate Compact **19,** BTC **43**, GFC **10**, MTPFAR **29**, MTPMDN **13**

Year	2018	2019	2020	2021	2022	2023
Admissions - Calendar Year	1231	1220	738	1205	1149	1130
Releases - Calendar Year	1256	1134	1084	955	1054	1058
Prison Count on December 31	1499	1585	1239	1489	1584	1656

Prison Count on December 31 (Crime Type)

Offense	2018	2019	2020	2021	2022	2023
Violent Offenders (Excluding Sexual)	530	585	531	603	653	711
Sex Offenders	296	297	286	302	326	346
Property and Other Public Order Offenders	279	302	174	265	284	272
Drug & Alcohol Offenders	394	401	248	319	321	327
Drug - Deliver, Manufacture or Intent	237	231	165	208	210	204
Drug - Possession Only	129	138	64	96	90	96
Alcohol - DUI, APC	28	32	19	15	21	27

Prison Count on December 31 (Minimum Mandatory)

Offense	2018	2019	2020	2021	2022	2023
Child Abuse	0	0	0	0	0	9
DUI/Actual Physical Control	0	0	0	0	0	15
Refusing to Submit to Chemical Testing	0	0	0	0	0	1
Drug Offenses (Not Alcohol)	14	7	6	10	13	18
Reckless Endangerment	2	5	6	7	5	8
Aggravated Assault/Conspiracy	15	19	19	20	25	33
Att Commit Simple Assault-PO/Corr Officer	0	0	0	0	0	1
Burglary With Weapon	4	4	3	4	4	2
Felonious Restraint	0	1	1	0	0	0
Kidnapping	0	0	0	0	0	0
Sex Offenses	17	12	15	17	16	44
Terrorizing	14	19	16	15	16	23
Robbery	16	18	17	18	16	15
Criminal Vehicular Injury	0	0	0	0	0	2
Negligent Homicide/Criminal Vehicular Homicide	3	2	2	2	2	9
Manslaughter	1	1	3	3	3	4
Murder/Attempted Murder/Conspiracy	25	30	28	40	45	37
Offender Registration Violation	0	0	0	0	0	3
Total	111	118	116	136	145	224

13.53% of the male prison population on December 31, 2023 had a minimum mandatory sentence.

Prison Count on December 31 (85% Truth-In-Sentencing)

	2018	2019	2020	2021	2022	2023
Number of Offenders Having 85% TIS (includes Life)	244	228	231	275	266	277
Average Sentence In Years (excludes Life)	12.98	15.87	16.05	16.14	16.20	16.68

Prison Count on December 31 (Life Sentences)

	2018	2019	2020	2021	2022	2023
Life With Parole	42	41	41	41	41	44
Life Without Parole	38	39	39	44	50	55
Total	80	80	80	85	91	99

DOCR Adult Services Prison Population Information (Male Only)

Average Prison Population, Admissions, Releases by Fiscal Year

	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Average Daily Population	1555.83	1509.22	1502.22	1293.12	1494.02	1577.32
Admissions	1276	1213	910	1077	1137	1124
Releases	1372	1165	1201	887	1046	1038

Number Of Fiscal Year Admissions by Crime Type

	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
All Males	1276	1213	910	1077	1137	1124
Violent Offenders (Non-Sexual)	301	296	239	347	332	392
Sex Offenders	75	87	65	83	81	83
Drug & Alcohol Offenders	543	487	353	385	397	373
Property and Other Public Order Offenders	357	343	253	262	327	276

Average Sentence Imposed By Court (Fiscal Year, Crime Type, In Years, Excludes Life Sentences)

	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
All Males	2.52	2.70	2.95	2.94	2.91	3.36
Violent Offenders (Non-Sexual)	2.99	2.66	3.33	3.08	3.54	3.62
Sex Offenders	5.51	6.09	8.16	5.78	6.62	8.75
Drug & Alcohol Offenders	2.41	2.50	2.54	2.67	2.51	2.67
Property and Other Public Order Offenders	2.20	2.17	2.26	2.26	2.24	2.31

Number Of Fiscal Year Admissions By Length Of Court Imposed Sentence

	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Less Than One Year	32	29	30	22	26	32
One Year to Less Than Five Years	1071	1035	741	906	954	920
Five Years to Less Than Ten Years	134	109	92	100	111	114
Ten Years to Less Than Twenty Years	23	26	28	34	22	32
Twenty Years or More	16	14	19	15	24	26

NOTE: The average sentence is that sentence imposed by the court. It does not take into account such things as good time, credit for time served, parole relief or any other method of shortening the sentence except Pardon Advisory Board recommendations adopted by the Governor (which can actually change the sentence). The average sentence is reported in years to two decimal points.

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Senate Judiciary Committee
Senator Diane Larson, CHAIR
January 21, 2025

NORTH DAKOTA DEPARTMENT OF CORRECTIONS AND REHABILITATION PRESENTING TESTIMONY IN OPPOSITION OF SENATE BILL 2128

Chair Larson and members of the Senate Judiciary Committee, I am Colby Braun, Director of the North Dakota Department of Corrections and Rehabilitation (DOCR). Today, I submit this verbal and written testimony in opposition of Senate Bill 2128.

Thank you for the opportunity to discuss this bill and the impact it will have on public and prison safety in North Dakota. Our mission at the DOCR is transforming lives, influencing change, and strengthening community through a vision of healthy and productive neighbors, a safe North Dakota. We enhance public safety by providing effective correctional management and rehabilitative services and fostering successful reintegration into society. Public and prison safety is a top priority. Incarceration temporarily incapacitates people from the public, holding them accountable for their actions and rehabilitation addresses the root cause of criminal behavior. Both are equally important to prevent future crime. We use evidence-based programming that targets substance abuse, mental health, education, and employment skills to prepare people for a successful reentry into the community, enhancing long-term prison and public safety.

We recognize that public safety is not the sole responsibility of the correctional system, but is a shared commitment among communities, policy makers, law enforcement and service providers. The DOCR collaborates with stakeholders to establish transitional housing, employment, and community-based support systems for people reentering society. These partnerships play a pivotal role in addressing the challenges of homelessness, unemployment, and untreated mental health issues which contribute to criminal behavior.

In 2018, President Donald J. Trump enacted The First Step Act, a criminal justice reform law aimed at improving fairness and reducing recidivism in the Federal prison system. The First Step Act reduced sentences that created disparities; allowed eligible inmates to earn credits for early release to home confinement or halfway houses through participation in rehabilitative programs; improved prison conditions; reduced mandatory minimum sentences; broadened judges' discretion in sentencing and increased funding for education, job training and recidivism-reduction programs to help inmates successfully reenter society. Senate Bill 2128 moves North Dakota closer to what the federal system was like prior to the enactment of the First Step Act. It ignores research and places the fiscal burden on taxpayers by focusing solely on prison capacity while eliminating reentry opportunities for most adults in custody.

As the Director of the DOCR, I am obligated under 54-23.3-02 (6) "To work with local and state entities to develop alternatives to incarceration or conventional incarceration for those offenders who can be dealt with more effectively in less restrictive, community-based facilities and programs." Transitional facilities are private facilities or county jails that contract with the DOCR to provide transitional opportunities for parolees and minimum custody inmates. These facilities are pivotal in providing life skills, substance abuse treatment, employment opportunities, budgeting skills, and improving offenders' success as they reintegrate into society. The inmates provide local communities with a workforce, pay taxes, and repayment of financial debt to society like fines, fees, child support, and restitution. The proposed definition of "eligible offender" in this bill removes transitional facility or county jail work release placements for most of the DOCR inmate population. On January 9, 2025, there were 238 men and women serving their sentence in a transitional facility. Under this bill, only 8 of the 238 inmates currently in a transitional facility would be eligible. Only those who committed the described offenses or those who lost good time would be eligible for a reentry program. Generally, those who lose good time do not meet criteria for a transitional facility. To put this

into perspective, upon passage of this bill we would immediately need an additional Missouri River Correction Center and Heart River Correction Center to house these 230 inmates.

Selection and placement in a transitional facility is a complex and calculated process with multiple reviews and approvals established through validated risk tools, policy and procedures. The management and operation of transitional facilities have decades of experience with positive outcomes. Nearly 80% of inmates who participate in an adult transition program at a transitional facility successfully complete. Of those who aren't successful; half are returned to prison for disciplinary reasons and half are returned to prison for non-disciplinary reasons such as medical needs or recent filing of old felony charges. Nearly $100,000 of fines, fees and restitution were paid in 2024 and over $400,000 paid in room and board by those residing in a transitional facility. This bill eliminates the successful outcomes while putting the financial burden onto taxpayers and further overcrowding the prison and jail facilities, straining resources, and creating an environment ripe for increased violence.

Section 9, Truth in Sentencing, will negatively impact prison and public safety. Research has shown that truth in sentencing laws will increase infractions in prison resulting in more violence and creating a more dangerous environment for staff and inmates, increase recidivism and reduce participation in rehabilitative and educational programming.

Section 9 of this bill eliminates parole eligibility for nearly every person sentenced to the DOCR. Only those who lose good time and exceed 85% of their sentence will have an opportunity for parole. Historically, the Parole Board has not granted parole to individuals with poor institutional conduct.

The proposed truth in sentencing law and the new definition of eligible offender in Senate Bill 2128 will disproportionately penalize non-violent offenders by eliminating reentry

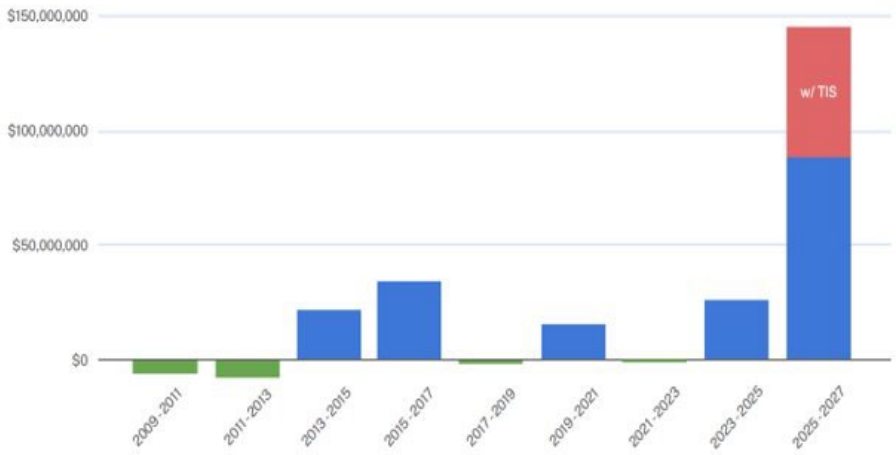
resources and opportunities that are critical for successful reintegration. These changes will significantly impact people in poverty, minorities and especially women. It will disproportionately impact Native American citizens who are already disproportionately represented in our prison system.

Approximately 484 people, or 60% of people granted parole in 2024, were paroled to a transitional facility because they didn't have another residence approved by a parole officer. They had nowhere else to go. Public safety requires people to have their basic needs met. This bill eliminates a supported progression from prison to the community. DOCR will not have the authority to place a person in a step-down program and parole will not be an option for most inmates. According to the National Law Center of Homeless and Poverty, people who have been incarcerated are 10 times more likely than the general public to be homeless, and those who are homeless are 11 times more likely to interact with law enforcement. If the DOCR does not have placement authority for reentry housing, homelessness will increase.

Annually, approximately 80 individuals with significant mental health diagnosis need transition from a DOCR facility through a transitional facility. The Mental Health Release and Integration Committee collaborates with transitional facility staff to ensure continuity of care, including access to provider appointments and necessary medications. Supportive housing plays a critical role in enhancing reentry outcomes, promoting individual well-being, and ensuring community safety. This bill will eliminate this transitional housing option for many of these individuals, forcing them into homelessness or reliance on shelters upon release, with limited support or supervision.

North Dakota is very intentional about where it makes its investments. Last session, the state committed to making various strategic investments, primarily capital, that are more than twice the typical budget increase that we've seen at any time in the history of the DOCR. SB

2128 will push us that much further to add what would be an additional $56 million in this biennium .

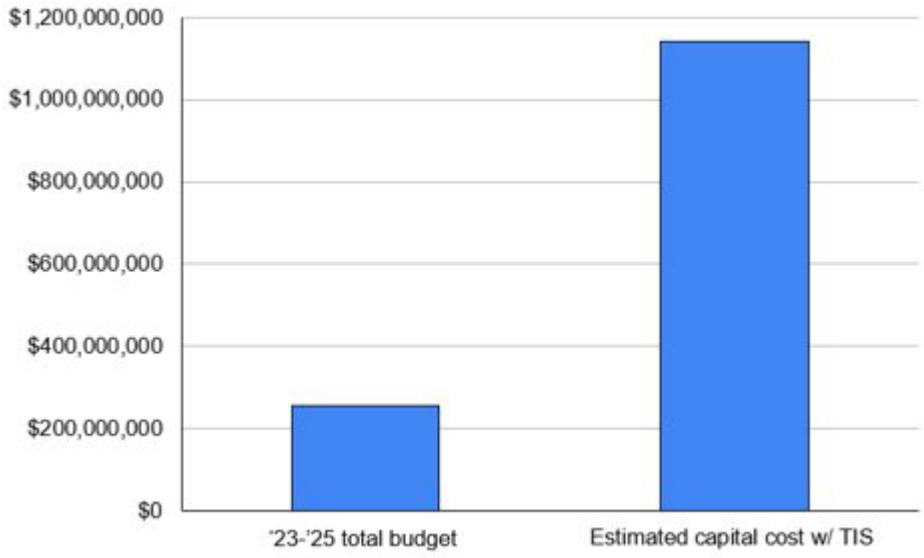


The bar graph above shows the change in legislative appropriation between biennia in North Dakota for the general fund of ND DOCR, going back to 2009 through 2027. The green bars are years where the two-year cycle has a lower total budget legislative appropriation than the prior two-year cycle.

The blue bars indicate an increase of 10 to 30 million dollars prior to the 2025-2027 biennium, which was already projected to be much higher relative to the prior biennia because of capital investments. The red portion of the bar displays the additional amount in which that variance would be driven by truth in sentencing specifically (The red piece is $56.7 million impact removing parole in FY25-27.)

The fiscal note provided an estimated biennial cost to rent bed space. The below graph takes into consideration that North Dakota may not want to have to pay millions of dollars per biennium for renting bed space and may choose to build or convert beds to support the increase demand. The graph compares an estimated capital cost to expand DOCR's capacity against DOCR's current biennial budget. With more time and analysis, we could be more precise in our

fiscal estimate. For this demonstration, I will use the new women's facility cost as a source for capital costs, ($161 million for 304 new beds). That's an average cost of $529,605 per bed, and the projections in the fiscal note for this truth in sentencing measure suggests that there would be an estimated required additional number of beds relative to today of 2,139 beds by FY 2028. If you use the estimated capital costs per bed of $529,605 for that number of additional beds, it is over a billion dollars.



You can see these estimated capital costs are four times higher than the current biennia's total budget. These numbers could change depending upon use of facility space throughout the state, but this is a good early preview of what credible capital costs could be.

Chair Larson and members of the Senate Judiciary Committee, I want to close by emphasizing the tremendous strides the North Dakota Department of Corrections and Rehabilitation has made over the years in ensuring public and prison safety. Our staff are dedicated professionals working tirelessly with some of the most vulnerable, challenging, and high-risk individuals in the state. They have successfully balanced accountability with rehabilitation, fostering transformation that ultimately leads to safer communities.

The elimination of the parole board, transitional facilities, and reentry programs, coupled with the implementation of an 85% truth-in-sentencing standard, would erase decades of progress, placing undue strain on prison resources, increasing recidivism, and ultimately endangering public safety.

The North Dakota DOCR has long been a model for balancing justice with humanity. Let us not undo that progress by adopting policies that research has shown to be ineffective and harmful. I urge this committee to carefully consider the long-term safety, financial, and human impacts of Senate Bill 2128 and to reject it in its current form.

Thank you for your time and commitment to the safety of all North Dakotans. I stand for any questions.

Centre

January 15, 2025

North Dakota Legislative Council
State Capitol
Senate Judiciary Committee
600 East Boulevard Avenue
Bismarck, ND 58505

Re: Opposition to SB 2128

Senate Judiciary Committee:

Over the past 40 years, Centre has been a leading provider of residential reentry services in North Dakota and a proud partner of the North Dakota Department of Corrections and Rehabilitation (NDDOCR) in providing rehabilitative services to justice-involved individuals reintegrating to society. As an agency, Centre has prided itself on implementing evidence-based programming to improve outcomes for program participants, reduce recidivism, and positively impact community safety. One of the agency's most recent strategic planning session goals is to prioritize putting agency resources into evidence-based programming and participating in ongoing assessments conducted by qualified NDDCOR personnel to ensure progress is made on implementing tactics designed to reduce recidivism.

While Centre supports aspects of SB 2128, which aim to increase penalties for individuals who commit aggressive or violent offenses toward law enforcement and those who flee or attempt to elude law enforcement, other aspects, which aim to change the criteria for individuals who qualify to participate in transitional facilities, such as those Centre operates in Fargo, Grand Forks, and Mandan, would be detrimental to the successful reintegration of justice-involved individuals to our communities and would negatively impact community safety, while also being fiscally irresponsible.

Individuals screened by the NDDOCR and deemed appropriate for referral to Centre's transitional programming receive a wide array of services aimed at ensuring accountability and providing support as they reintegrate into society. Examples of these services include individual case management to identify goals to address an individual's most significant risk areas, skill-building groups, individual and group substance abuse services, which include random alcohol and drug screening.

Centre's policies and procedures maintain fidelity to community corrections best practices. As an agency that also contracts with the Federal Bureau of Prisons and North Dakota Department of Health and Human Services, Centre participates in numerous announced and unannounced audits annually to ensure contractual compliance and effective delivery of services. The agency also utilizes an internal quality control program to analyze and assess the effectiveness of its policies, procedures, and programming. Centre employees receive ongoing training in Core Correctional Practices, Nonviolent Crisis Prevention and Intervention, CPR, First Aid, Emergency Response, Identifying Suicide Risk, and Searches and Inspection to name a few. In addition to training, Centre has expansive safety and security measures in place to ensure resident accountability and quick communication with referral sources and local law enforcement to ensure a swift response to noncompliance with program rules.

3501 Westrac Drive Fargo, ND 58103	123 15th Street North Fargo, ND 58102	100 6th Avenue Southeast Mandan, ND 58554	201 4th Street South Grand Forks, ND 58201	309 Washington Avenue Suite 3 South Williston, ND 58801
P: (701) 365-4199 F: (701) 365-4190	P: (701) 237-9340 F: (701) 373-8357	P: (701) 663-8228 F: (701) 663-0912	P: (701) 746-6303 F: (701) 746-7713	P: (701) 987-3047 F: (701) 800-8828

In 2024, Centre received 232 DOCR Inmate admissions and had 161 discharges. Of those 161 discharges, 114 (70.8%) were successful with 103 (90%) of those successfully discharged releasing to stable housing. Also, of the 161 discharges, 133 (82%) were employed at the time of discharge. Participants on DOCR Inmate status were administered 21,145 alcohol tests with 21,144 (99.995%) being negative and 2,295 drug screens with 2,231 (97.2%) being negative. Centre also received 216 DOCR Parole admissions in 2024 and discharged 348 from programming. Of those 348 discharges, 267 (76.7%) were successful with 234 (87.6%) of those successfully discharged releasing to stable housing. Also, of the 348 discharges, 247 (71.0%) were employed at the time of discharge. Participants on DOCR Parole status were administered 33,363 alcohol tests with 33,354 (99.97%) being negative and 3,651 drug screens with 3,504 (96.0%) being negative.

Between DOCR Inmate and DOCR Parole participants in 2024, a total of $30,218.89 in restitution, $100,555.64 in fines, and $675,677.20 in room and board was paid by participants, which helped to alleviate the burden for North Dakota taxpayers. It is also important to point out that during this period, Centre's DOCR participants discharged with a total of $877,761 in their personal accounts. Stable housing, employment, and financial security are paramount in improving the likelihood of a successful reintegration.

In summary, while we agree with SB 2128's aim to increase penalties for violence against law enforcement and fleeing or eluding law enforcement, the widespread negative ramifications of SB 2128's intention to significantly reduce the opportunity of justice-involved individuals to be referred to transitional facilities to receive services which improve the likelihood of a successful reintegration to our communities and reduce recidivism cannot be understated. With that, we respectfully request that the Senate Judiciary Committee vote DO NOT PASS on SB 2128.

Sincerely,

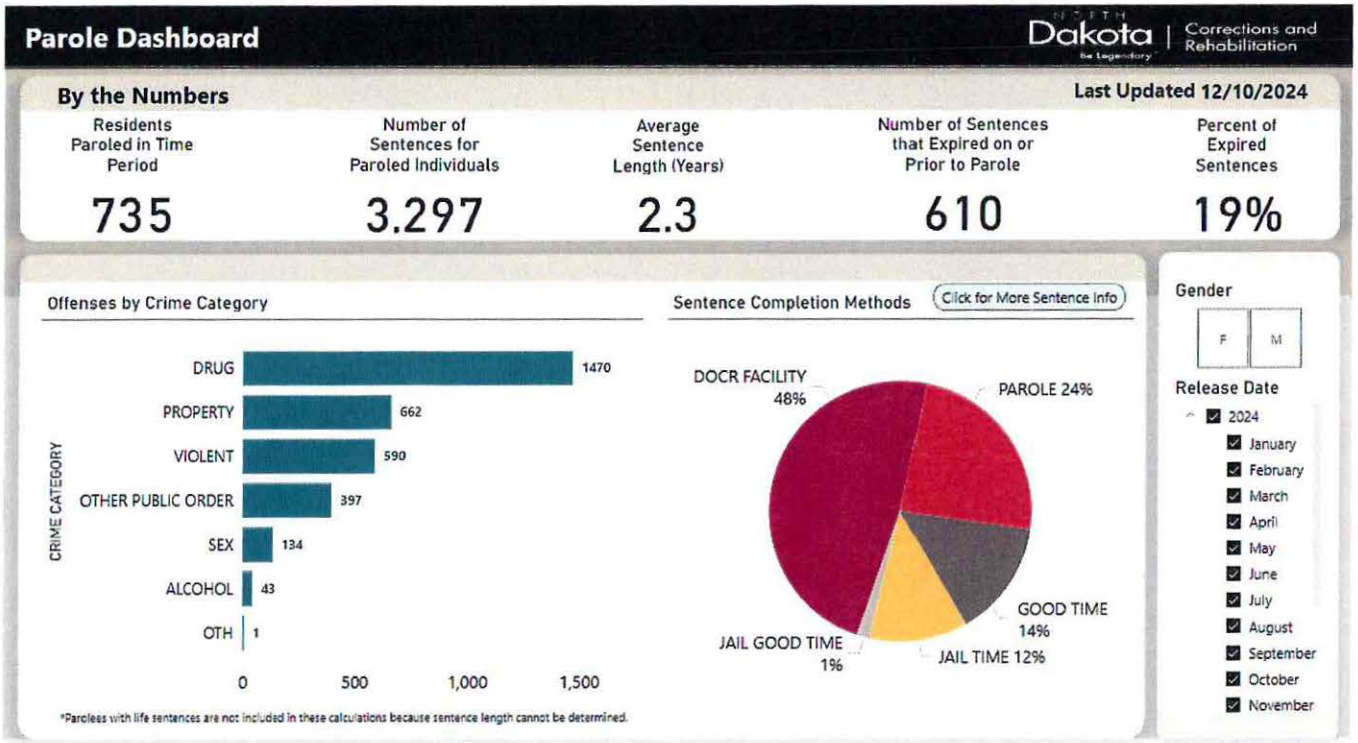
Josh Helmer

Josh Helmer
Executive Director

Section 9 – Parole Board

- The members of the North Dakota Parole Board are appointed by the Governor for a term of three years. During the Fifty-Sixth Legislative Assembly the Parole Board was expanded from three to six members, three members serve at each monthly Parole Board meeting.
- The mission of the Board is to conduct informed and fair hearings on cases subject to the jurisdiction of the Board and take appropriate action to ensure public and victim safety and to reduce the likelihood of future criminal behavior of people by providing opportunities for rehabilitation.
- 78% of people successfully completed parole in 2024.
- Parole Officers provide supervision and accountability and support to those returning to society.
- Violations in a direct threat to public safety are handled swiftly and immediate enforcement action.

Section 9. Amendment 12.1-32-09.1 – Truth in Sentencing

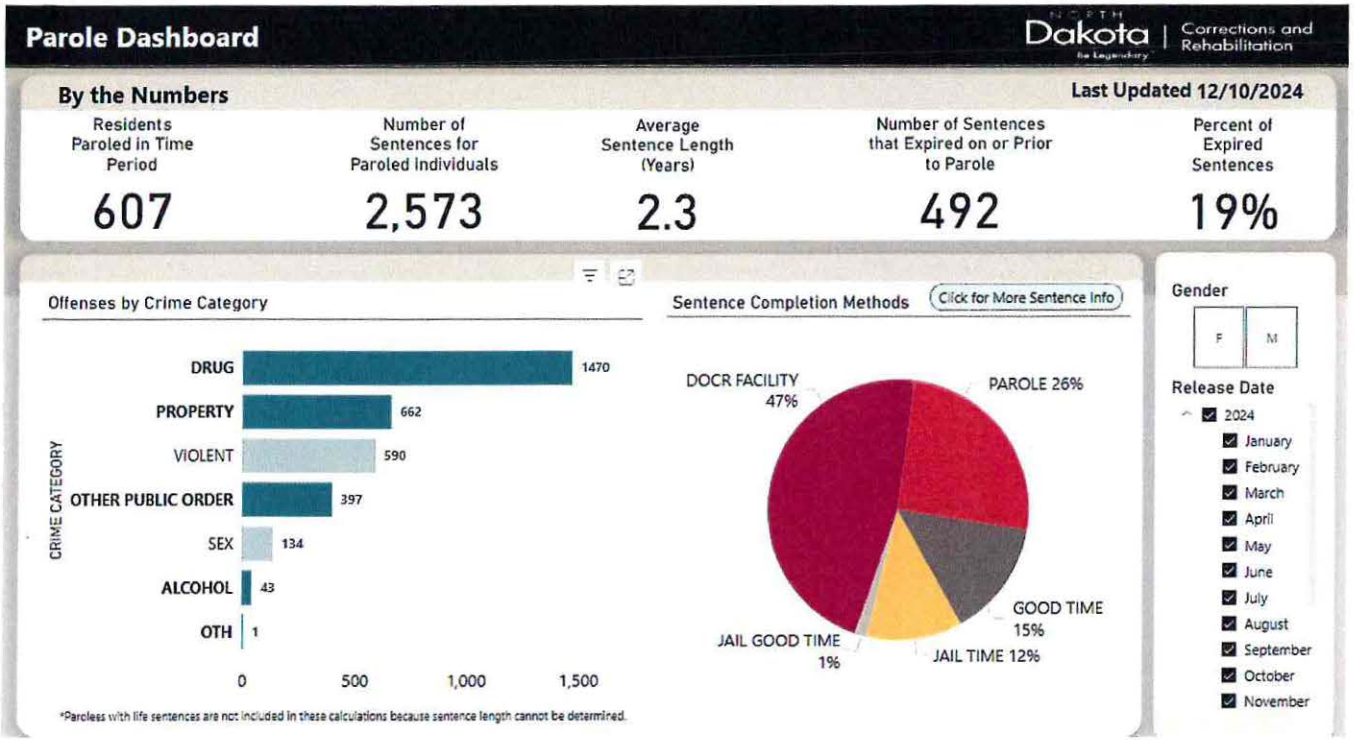


For ALL crimes by people released on parole in 2024

- 60% served at DOCR or Jail Facility
- 15% Good Time
- 24% Parole

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Section 9. Amendment 12.1-32-09.1 – Truth in Sentencing

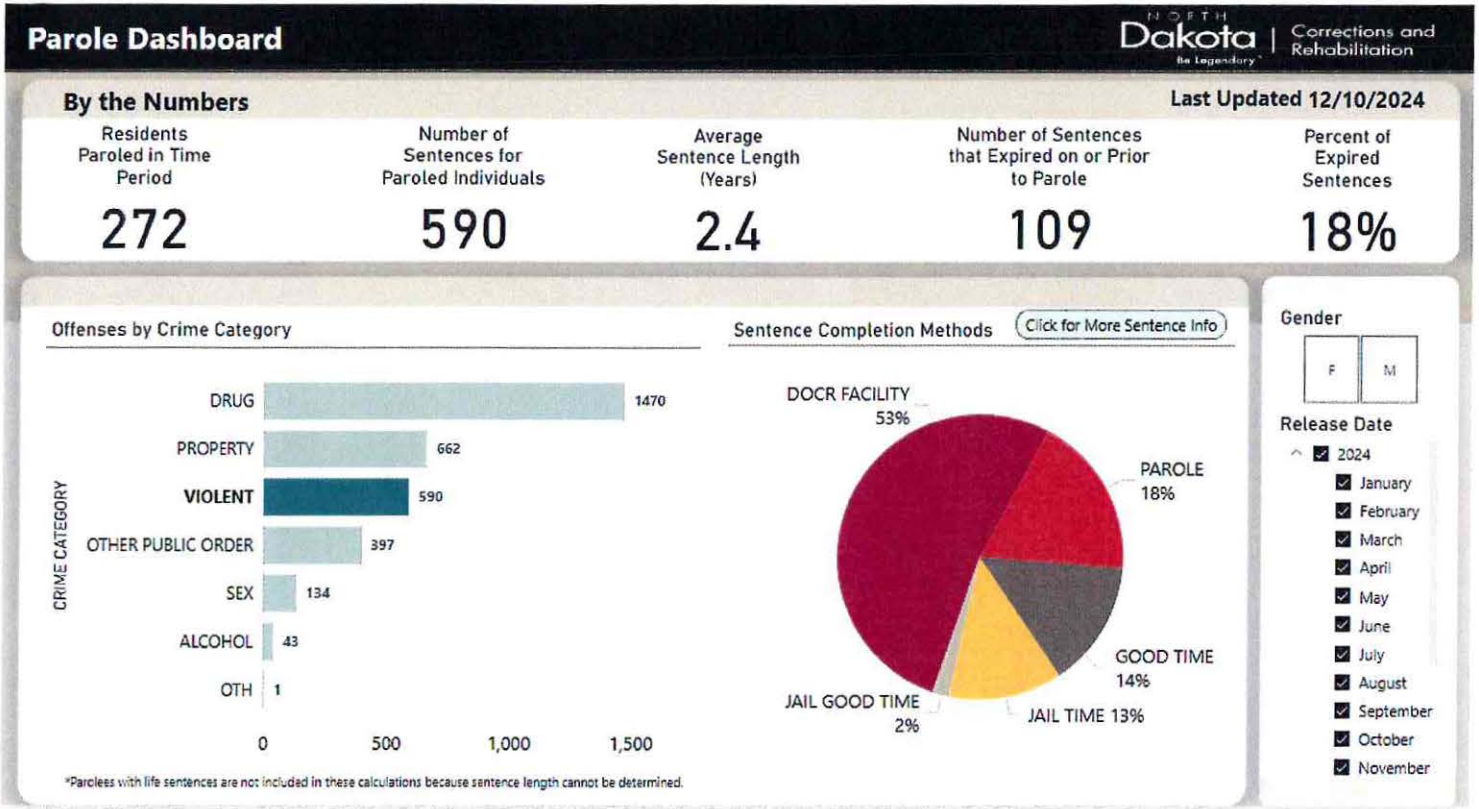


For crimes other than Violent or Sex released on parole in 2024

- 59% served at DOCR or Jail Facility
- 16% Good Time
- 26% Parole

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Be Legendary.

Section 9. Amendment 12.1-32-09.1 – Truth in Sentencing

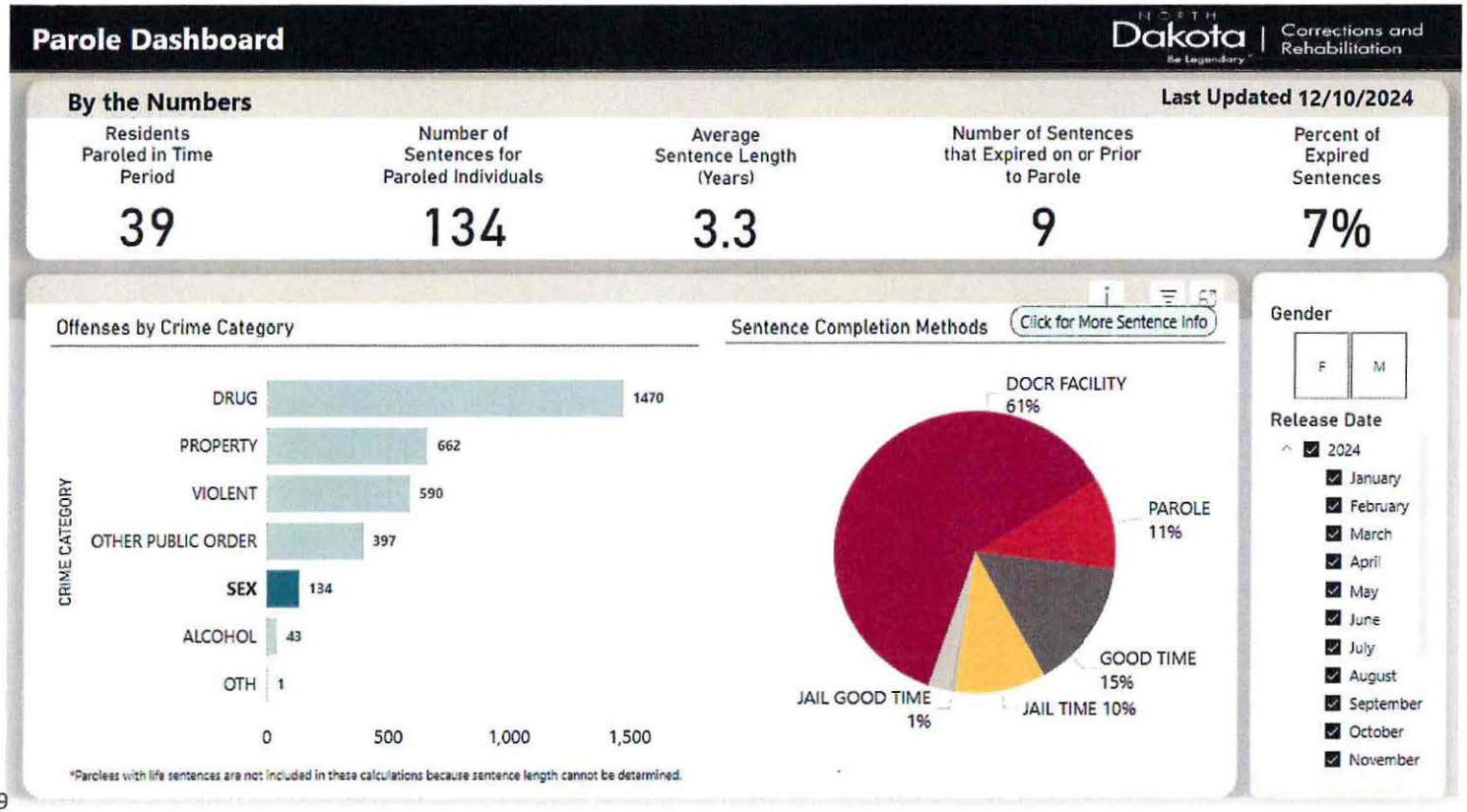


For VIOLENT crimes by people released on parole in 2024 (NDCC 12.1-32-09.1 and NDCC 12.1-32-01.1 do not apply)

- 66% served at DOCR or Jail Facility
- 16% Good Time
- 18% Parole

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Section 9. Amendment 12.1-32-09.1 – Truth in Sentencing

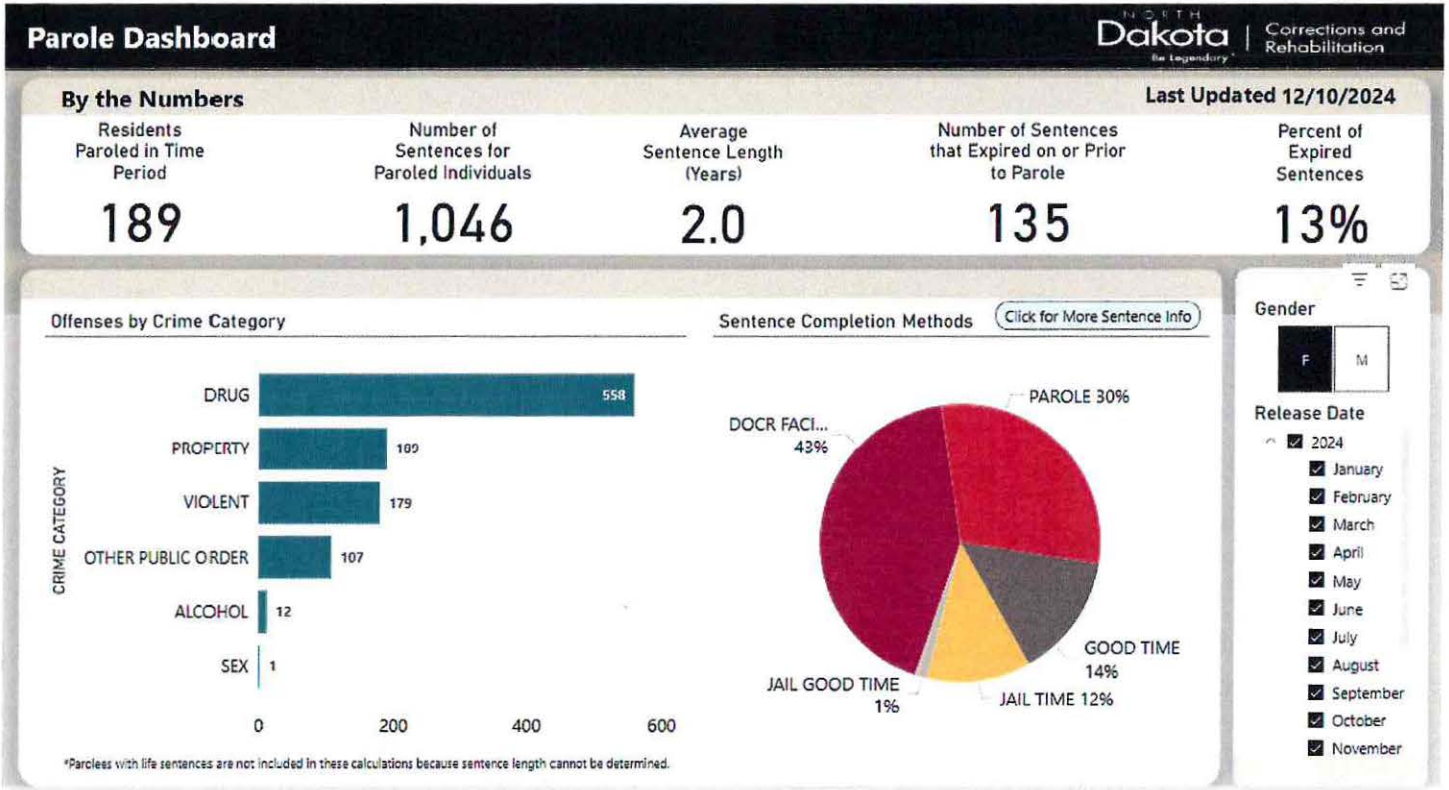


For SEX crimes by people released on parole in 2024

- 71% served at DOCR or Jail Facility
- 16% Good Time
- 11% Parole

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Section 9. Amendment 12.1-32-09.1 – Truth in Sentencing



For ALL crimes by FEMALES released on parole in 2024

- 55% served at DOCR or Jail Facility
- 15% Good Time
- 30% Parole

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Section 9 – Truth in Sentencing

Since 1997, 94% of the 2,269 people in ND with 85% requirement served at least 85% of their sentence or the required minimum mandatory sentence.

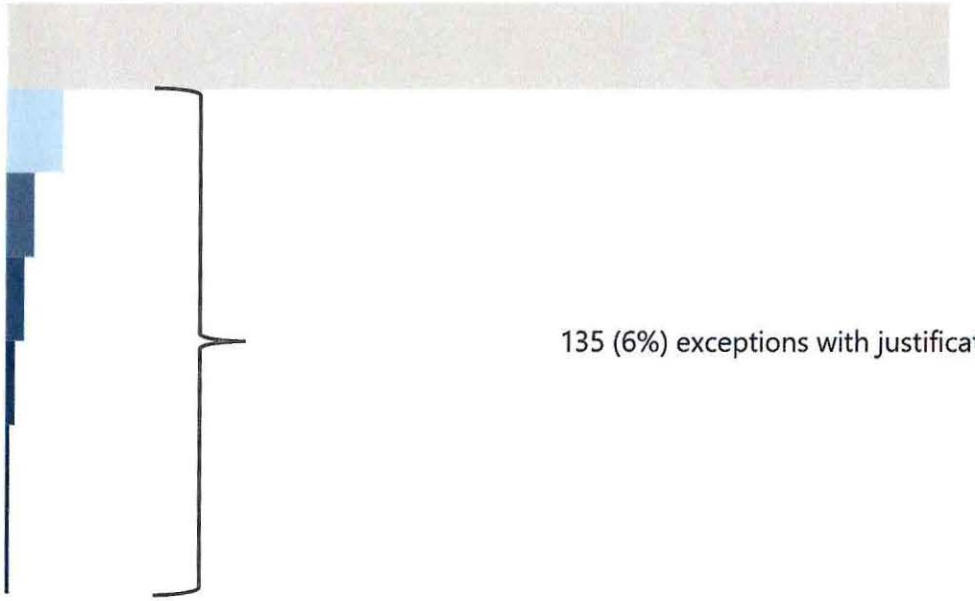
What happened to the other 6%?



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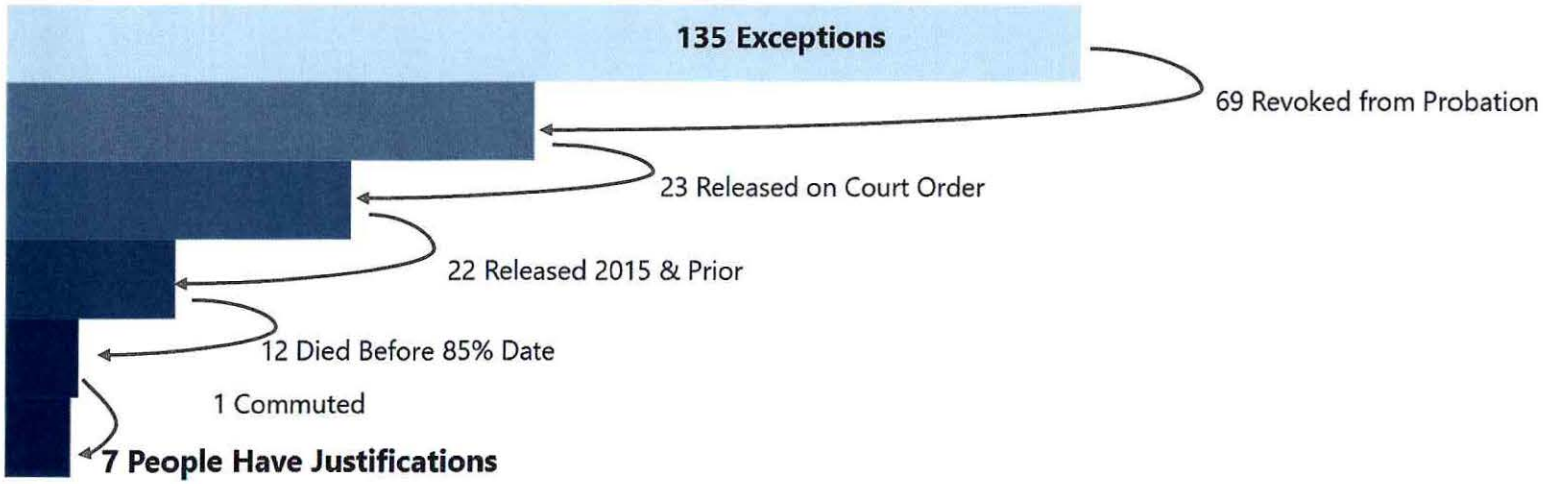
Section 9 – Truth in Sentencing

Of 2,269 individuals, 6% of individuals have distinct justifications for serving less than 85% or required minimum mandatory sentences.



Section 9 – Truth in Sentencing

There are 7 justifications in breaking down the 135 individuals that served less than 85% or minimum mandatory sentence.



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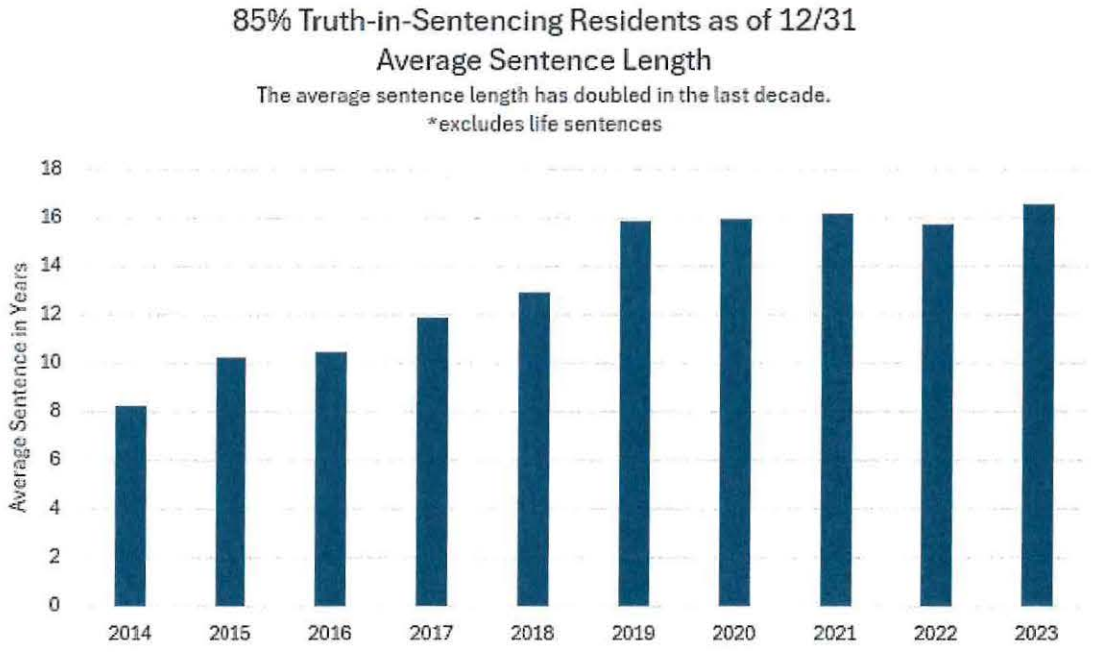
Section 9 – Truth in Sentencing

7 people with Singular Justifications

Offense Date	Crime Description	Min/Man	Release Reason	85% Rel Date	Final Sent Expiration Date	Release Date ▲	Days Served Elsewhere
2/11/1996	ROBBERY	N	STATUS_CHANGE	6/5/2006	2/28/2007	5/21/2002	-1,476
2/25/2002	ROBBERY	N	TRANSFER	9/24/2005	1/12/2006	2/18/2004	-584
9/8/1997	GROSS SEX. IMP. W/FORCE	N	TRANSFER_TO_OTHER_JURISDICTION	6/30/2014	4/9/2017	6/24/2009	-1,832
1/1/2006	ROBBERY	N	TRANSFER_TO_OTHER_JURISDICTION	12/24/2023	2/17/2027	2/3/2016	-2,881
11/6/2005	MURDER	N	TRANSFER_TO_OTHER_JURISDICTION	3/10/2017	11/30/2018	11/2/2017	237
4/26/2017	AGGRAVATED ASSAULT	Y	TRANSFER_TO_OTHER_JURISDICTION		5/2/2032	6/29/2022	-980
4/26/2017	MANSLAUGHTER	Y	TRANSFER_TO_OTHER_JURISDICTION		5/2/2032	6/29/2022	-980

Prison Population Truth-in-Sentencing

The average sentence length for Truth-In-Sentencing (TIS) has doubled from 8 years in 2014 to 16.56 years in 2023. The number of inmates having 85% TIS is about the same hovering around 300 which is 6% lower than the high of 318 in 2014.



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Office of Attorney General
Supplementary Materials for Senate Bill 2128
January 2025

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1. Your Choice: Weighing North Dakota's Criminal Justice Outcomes
2. Do North Dakotans Have the State Corrections System They Deserve?
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5. Transitional Facilities Fact Sheet
6. Recidivism Fact Sheet
7. DOCR Fiscal Note Analysis
8. Facts vs. Myths About SB 2128

When choosing between Senate Bill 2128, as amended by the Attorney General, and our current corrections system, consider:

After years of investing heavily in the "Norway model" and policies that some people call "smart on crime," what objective, verifiable outcomes have improved for North Dakota?

- The recidivism rate is over 40%.[1]
- Violent crime rates have increased steadily, both numerically and as a rate per 100,000 residents.[2]
- Drug use and addiction are unmoved and continue to impact thousands of our residents.[3]
- Law enforcement officers and agencies are frustrated by the corrections system, have difficulty recruiting and retaining personnel, are assaulted more often, and have asked policymakers for changes to reduce the "revolving door" of criminals for several years.
- The public is alarmed by the prevalence of violent crime and its impact on the quality of life in North Dakota.

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[1] See handout on *Recidivism*, based on DOCR data found on the DOCR website.
[2] See Attorney General Crime Reports, at https://attorneygeneral.nd.gov/public-safety/crime-data/crime-and-homicide-reports/.
[3] See ND DHHS Behavioral Health Reports, at https://www.hhs.nd.gov/behavioral-health/data.

Do North Dakotans Have the State Corrections System They Deserve?

1. **What is the rate of recidivism in North Dakota?**
   a. **29%**
   b. **36%**
   c. **40%**
   d. **More than 40% but DOCR does not track the actual rate of recidivism**

DOCR publishes the percentage of its inmates who return only to DOCR facilities[1] and uses the 3-year rate as their measurement of recidivism.[2] The most current 3-year rate using DOCR's definition of recidivism is 40%.[3] But the actual rate of recidivism in North Dakota is even higher because DOCR's rate does **not** include:

- Former DOCR inmates who are sent to federal prisons;
- Former DOCR inmates who are sent to county jails;
- Former DOCR inmates who are sent to other states' correctional facilities; and
- Former DOCR inmates who are sent back to DOCR facilities after more than 3 years.[4]

2. **Inmates who committed violent crimes are free to be out in our communities, unsecured, while serving their sentences, even if it has not been determined that (1) letting them free during the day is in the best interests of the public or (2) they do not pose a high risk of escape.**
   a. **True**
   b. **False**

Regardless of the crime committed,[5] DOCR[6] can transfer an inmate to a halfway house (also called a transitional facility) and let that inmate come and go each day – without any security – on a release program. DOCR can do this even if they decide it is simply in the best interests of the inmate or DOCR.[7] DOCR does not need to assess the inmate's likelihood of escaping into the community.[8]

Based on DOCR testimony, in mid-January 2025, of all the inmates on release status, at most 8 were sentenced for one of the many nonviolent crimes listed in the Attorney General's amended Senate Bill 2128.[9]

3. **Transitional facilities and release programs are secure. Inmates can't just walk away and blend into the community.**
    a. **True**
    b. **False**

    The director of one transitional facility under contract with DOCR testified that "normally" 5 inmates walk away from his facility per month and that "that's an expectation." He stated "our doors are not locked … people are going to walk away."[10] He was unable to provide information about how many of the inmates who walk away are not recaptured and how long it takes to recapture an inmate after walking away when asked.[11]

4. **After years of investing in treatment programs, re-entry programs, the "Norway model," and policies called "smart on crime," are our communities safer?**
    a. **Yes, violent crime rates have gone down in North Dakota over the past 10 years.**
    b. **No, violent crime rates have gone up in North Dakota over the past 10 years.**
    c. **There hasn't been a change in violent crime rates in North Dakota over the past 10 years.**

    Crime statistics are methodically reported by law enforcement agencies throughout North Dakota each year according to rigorous standards to ensure consistency from year to year.[12] According to these statistics, violent crime in North Dakota has risen steadily over the past 10 years. For example, the number of Crimes Against Persons[13] committed in 2023 (12,403) was 2.9 percent higher than the number of Crimes Against Person committed in 2022 (12,060). In 2019, that number was 10,539. In 2014, that number was 8,645.

    This is not due to population growth because the rate of Crimes Against Persons per 100,000 people also has grown from 1,169 in 2014, to 1,383 in 2019, to 1,582 in 2023.

5. **With all the talk about the need for substance abuse treatment, rehabilitation services, and addressing the root causes of crime, inmates who are out in the community all day are physically checked on and have a rigorous check-in process at night that includes drug testing to ensure they stay compliant with their treatment programs.**
    a. **True**
    b. **False**

    Drug treatment programs are important for many inmates, and there's a lot of talk about them when people say our current system is "smart on crime." But DOCR does not conduct daily

drug tests on inmates in transitional facilities, including inmates who are in the community each day without supervision.

Based on DOCR data, a transitional facility with a maximum capacity of 140 residents (and a current head count of 123) administered only 1,201 urinalysis tests throughout all of 2024, including a drug test upon arrival for each individual.[14] That equates to 3.3 drug tests per day total. Even if the facility averages only 120 residents per day, that means each resident is drug tested only about once every 10 days.

Also based on DOCR data, a transitional facility completed 3,407 physical checks on its residents who were on release programs in the community through 2024.[15] Even if only 90 of its residents are on release programs, each of them is physically checked on in the community only once every 9-10 days to ensure they are where they're supposed to be.

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[1] The "Methodology" for the recidivism statistics on the DOCR website states: "This data reports reincarceration recidivism rates, which is the proportion of individuals released from a ND DOCR facility that return to a ND DOCR facility at some point in the future." The graphics indicate the rate for each year after release.
[2] Testimony of Colby Braun, Director, DOCR, before the Senate Judiciary Committee (Jan. 22, 2025) (also noting other states do not use the DOCR definition as a standard measurement).
[3] DOCR website (https://dashboard.docr.nd.gov/us-nd/narratives/prison/7) showing the most recent 3-year recidivism rate using the DOCR definition is "40%" ("444 of 1102").
[4] Based on DOCR's website (https://dashboard.docr.nd.gov/us-nd/narratives/prison/7), the rate of recidivism increases each year an inmate has been out of prison.
[5] See N.D.C.C. 12-47-18.1. There is no limit on the crimes currently. Many of the inmates in halfway houses now did not commit any of the many nonviolent crimes listed in S.B. 2128. Testimony of Colby Braun, Director, DOCR, before the Senate Judiciary Committee (Jan. 22, 2025).
[6] Or, in cases when the sentence is more than 10 years, the Parole Board makes this decision.
[7] See N.D.C.C. 12-47-18.1.
[8] See N.D.C.C. 12-47-18.1 and 12-48.1-01.
[9] Testimony of Colby Braun, Director, DOCR, before the Senate Judiciary Committee (Jan. 22, 2025)("Under [S.B. 2128], only 8 of the 238 inmates currently in a transitional facility would be eligible.").
[10] Testimony of Kevin Arthaud, Administrator, Bismarck Transition Center, before the Senate Judiciary Committee (Jan. 22, 2025).
[11] Testimony of Kevin Arthaud, Administrator, Bismarck Transition Center, before the Senate Judiciary Committee (Jan. 22, 2025).
[12] See Attorney General Crime Reports, at https://attorneygeneral.nd.gov/public-safety/crime-data/crime-and-homicide-reports/.
[13] This figure does not even include data for robberies, which are classified as offenses against property despite the element of violence against a person required to meet the definition of robbery.
[14] Testimony of Kevin Arthaud, Administrator, Bismarck Transition Center, before the Senate Judiciary Committee (Jan. 22, 2025).
[15] Testimony of Kevin Arthaud, Administrator, Bismarck Transition Center, before the Senate Judiciary Committee (Jan. 22, 2025).

DOCR'S ILLUSORY "GOOD TIME" CALCULATIONS

DOCR's good time calculations and the resultant "time served" statistics are not what they seem.

Under N.D.C.C. § 12-54.1-01, an inmate can earn 5 days of good time for each month of the sentence that was "imposed" by meeting "performance criteria established through department and penitentiary rules."

However, in practice, DOCR gives each inmate a lump sum of good time at the beginning of their sentence based on the totality of the sentence, rather giving them credit each month they actually serve for the good time they earn, regardless of the department's policies.

Maximum good time calculations appear to be included in the "time served" statistics that DOCR provides, even if the inmates were paroled or otherwise left confinement before the good time could actually be earned.

This appears to be one way DOCR's "time served" statistics are inflated.

DOCR staff have provided examples of the way they calculate good time incorrectly, including:

- Example:
  - Cori Willard received more than 40 days of good time per month served.
    - She received unearned credit for 210 days of good time she might have earned *if she had not been paroled*.
  - She was sentenced to a 4-year term in April 2022.
  - She was paroled in September 2022, after spending 157 days in custody.
  - Per DOCR's Legal Records Department, she received "240 days DOCR good time credit and 5 days earned good time applied to her sentence."
    - Under the statute, in 6 months, she should have been credited only 30 days of good time, assuming she did not lose any for poor behavior.
    - DOCR explained the 240 days of good time credit was based on her 4-year sentence, even though she served less than 6 months.
    - DOCR said she "did not lose any good time" from the 240-day total.
    - DOCR said the additional 5 days of good time credit were "meritorious credit" for participating in a crisis intervention team.

- Example:
    - Jaden Patrick received credit for more than 13 days of good time / per month served.
        - He received credit for 125 days of good time he might have earned *if he had not been paroled*.
    - He was sentenced to 4 years for an A felony (dealing fentanyl).
    - He served 31.3% of his sentence (176 days in jail and 281 days in prison) before he was paroled.
    - Per DOCR's Legal Records Department, he received credit for 200 days of good time during the 457 days he was in custody.
        - Under the statute, he should have been credited only about 75 days of good time total, assuming he did not lose any for poor behavior.

- Example:
    - Scott Michael Huber received credit for more than 11 days of good time / month served.
        - He received credit for 210 days of good time he might have earned *if he had not been paroled*.
    - He was initially paroled in May 2022 after spending roughly 33 months in prison and 40 days in jail.
    - Per DOCR's Legal Records Department, he received credit for 380 days of good time during the roughly 34 months he was in custody.
        - Under the statute, he should have been credited only about 170 days of good time, assuming he did not lose any for poor behavior.
    - Huber's parole was revoked in October 2023. He was paroled again the next month. That parole was revoked in July 2024.

TIME SERVED

Law enforcement officers, prosecutors, and other North Dakotans often talk about the "**revolving door**" of criminals.

- Criminals reappear in the community far earlier than their sentences dictate, then commit new crimes and go back to jail.

Judges make comments on and off the record about DOCR greatly reducing the time inmates spend incarcerated compared to their sentences, even when time spent in transition centers is included.

- "*A two year sentence means you're only going to be out there for two, three months*."
- "*The Department of Corrections has their own policy on how much time you're going to serve," Weiler explained, per the Associated Press. "These are not mandatory minimums, which means that you're probably going to serve a small portion of that 28 years and be out on parole, so that'll … give you an opportunity to have a second chance that Deputy Martin does not have, nor does his family have*."

"Time served" calculations are inflated because they are based on inflated figures. When calculating the "time served" for an inmate, DOCR includes:

- Time an individual spends incarcerated, PLUS time spent out of confinement, in transitional facilities, and
- Good time and meritorious conduct time.
  - Good time is inflated. See the handout on *Good Time*.
  - Transitional facilities are not incarceration. Most inmates in transition centers have complete access to the community during the day. Walking away from a transitional facility is not hard and not uncommon. See the handout on *Transitional Facilities*.

Examples of actual time served:

- Josiah Anderson
  Conspiracy to deliver a controlled substance – 4 year sentence
  Time served in jail or prison – 190 days or 13% of his sentence

- Kevin Luke
  Dealing fentanyl (2 cases) – 2 year sentence
  Time served in jail or prison – 52 days or 7.1% of his sentence

- Cori Willard
  Second time possessing meth with intent to deliver – 4 year sentence
  Time served in jail or prison – 71 days or 4.9% of her sentence

- Cory Reis
  Fourth drug dealing offense (while on parole) – 5 year sentence
  Time served in jail or prison – 701 days or 38.4% of his sentence

TRANSITIONAL FACILITIES

- Transitional facilities function similarly to dorms that provide drug and other counseling services.
- Most inmates in transitional facilities participate in a variety of release programs.
    - Inmates can leave the transitional facilities for the day.
    - These inmates are out in the community and appear no different from noninmates.
    - If they go somewhere other than their work location during the day, the transition center may not discover this for many days.
- Inmates on work release rarely have drug testing when they return to the transition center at night.
- An inmate may be placed in a release program (to be out in the community each day), even if no one has determined whether the inmate is not likely to escape.
- An inmate may be placed in a release program even if it is not in the best interests of the community or public.
- According to DOCR, not all who walk away (escape) from transitional facilities have been returned.

DOCR Testimony[1] and Statements on Transitional facilities

- As of January 23, the Bismarck location (BTC) has 123 "residents" -- 101 inmates and 22 who are on parole or probation.
    - 87 work in Bismarck or Mandan.
- From BTC, "normally, it could be 5 walk-aways [escapes] a month. And that's an expectation. Our doors are not locked. … They can walk away from any job that they want. … People are going to walk away."
    - DOCR could not provide data on how long it takes to recover walk-aways or how many walk-aways are not recaptured.
- "We do have staff that go and physically check on the residents at their job sites." However, in 2024, based on DOCR testimony and using a low estimate of 90 individuals on release at a given time, physical checks occurred about once every 9 or 10 days per individual.
- During 2024, BTC administered 1,201 urinalysis tests, including tests administered to each individual when they first arrive at the facility. That's 3.3 tests per days for the facility. If the average head count was 120, that's an average of 1 drug test every 10 days per individual.
- "On January 9, there were 238 men and women serving their sentence in a transitional facility. Under [SB 2128], only 8 of the 238 inmates currently in a transitional facility would be eligible."
    - That means, at most, only 8 of the 238 were sentenced for one of the many nonviolent offenses listed in Section 3 of the bill.
- The people who run transition programs "have decades of positive outcomes."
    - What are the "positive outcomes" and how are they measured?

- "Nearly 80% of inmates who participate in an adult transition program at a transitional facility successfully complete."
    - The recidivism rate for DOCR, based on its own misleading definitions, is 40%.[2] So "successfully complete" cannot mean that those inmates do not recidivate.
    - What does DOCR mean when they say an inmate "successfully completes" a transition program?

Examples of Transition Center Walk-Aways (Escapes)

- Kadar Pearson
    - Dealing fentanyl, terrorizing with a dangerous weapon, theft, and refusal to halt
    - Sentence should have run to October 25, 2025, minus good time if earned
    - Served about 24% of sentence in prison
    - On April 2, 2024, he was transferred to a transition center in Fargo
    - On May 20, 2024, the center placed him on "full restrictions" for an incident
    - On May 28, 2024, he "walked away" after staff tried to talk him out of leaving
    - On June 5, 2024, he fled from Fargo PD and was caught with an illegal handgun

- Mark Conica
    - 2 counts of robbery
    - Sentence should have run to February 2027, minus good time if earned
    - Served 149 days in prison
    - On July 26, 2024, he was transferred to a transition center
    - On July 29, 2024, he was allowed to leave for work release and did not return

- Jesse White Eagle
    - High speed chase/felony fleeing
    - Sentence should have run to October 2025, minus good time if earned
    - Served about 2 months in prison
    - On January 31, 2024, he was transferred to a transition center
    - On February 14, 2024, he went out on work release and "failed to return"
    - On March 19, 2024, he was arrested for car theft and drug possession

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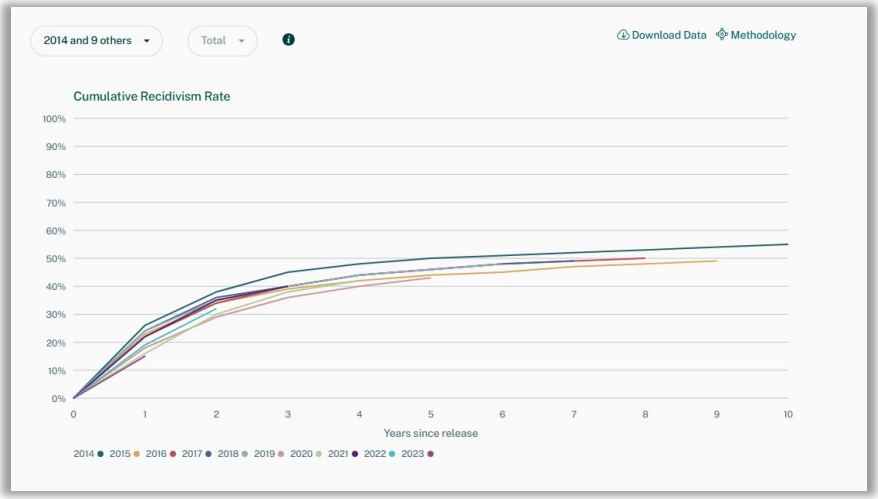
[1] Testimony provided by Colby Braun and Kevin Arthaud at the Senate Judiciary Committee hearing on Senate Bill 2128 on January 22, 2025, either orally or in writing.
[2] See the handout on *Recidivism*.

RECIDIVISM

- ND DOCR's recidivism rates remain high, despite years of the "Norway model".
- Definitions matter. ND DOCR's published "recidivism rates" do not include inmates who were released and then reincarcerated in:
    - County jails,
    - Federal prisons, or
    - Other states' correctional facilities.[1]

  As a result, the true recidivism rate is higher than what is reported.

- DOCR testified that it uses a 3-year recidivism rate.[2] DOCR also testified that its definition of recidivism is not standard across other states.[3]
- Even using DOCR's definition of recidivism, the latest 3-year rate is 40%.[4]



[1] DOCR Public Dashboard, https://dashboard.docr.nd.gov/us-nd/narratives/prison/7, Methodology: "This data reports reincarceration recidivism rates, which is [sic] the proportion of individuals released from a ND DOCR facility that return to a ND DOCR facility at some point in the future."
[2] Testimony of Colby Braun, Director, DOCR, before the Senate Judiciary Committee on SB 2128 (Jan. 22, 2025).
[3] Testimony of Colby Braun, Director, DOCR, before the Senate Judiciary Committee on SB 2128 (Jan. 22, 2025).
[4] DOCR Public Dashboard, https://dashboard.docr.nd.gov/us-nd/narratives/prison/7.

DOCR Fiscal Note Assertions *(based on the unamended version of SB 2128)*	**Corrections and Responses**
SB 2128 eliminates parole. According to the fiscal note, this accounts for almost all the costs (e.g., alternative placement, out of state transportation, FTE, contracts) that DOCR anticipates from SB 2128. According to DOCR, this also accounts for some savings from reduced parole supervisory staffing needs.	The Attorney General's amendment clarifies that parole is available after 50% of the sentence is served. According to the fiscal note, this should eliminate most of the cost DOCR expects to incur.
Reducing good time to 15% of an inmate's sentence will have a "small impact" on lengths of stay. The cost of this impact will be $60,000 to make changes to the inmate management system.	
Reducing meritorious conduct sentence reduction ***could*** result in more need for staff to perform "Resident Crisis Support Team" duties that otherwise would be performed by an inmate. DOCR estimates this would require 4 new FTEs for an estimated cost of $645,600 per biennium.	How does decreasing sentence reductions (i.e., keeping inmates longer) ***prevent*** inmates from performing duties in exchange for time off? Meritorious conduct time off would be reduced from 2 days/month to 1 day/month. DOCR offers no evidence that inmates would not want to earn meritorious conduct as a result. Nor does DOCR explain why 4 FTEs would be needed to staff these teams.
Of the 238 inmates in transition centers as of 1/10/25, only 8 would be eligible to remain there under SB 2128. The cost of a day in a transition center is $79.72. The cost of a day in a DOCR facility is $101. DOCR estimates the 230 inmates who would no longer be eligible for transition centers would remain in a DOCR facility for 90 days (half the time they'd be in a transition center) for a total net increase in cost of $1,254,074.	If the inmates would no longer be eligible for the transitional facilities, then they did not commit one of the nonviolent crimes listed in our bill as exempt from the 85% rule. Why are violent criminals spending their sentences in transition centers? It appears DOCR's estimates are based on an average length of stay in a transition center of 6 months, which is the maximum time a violent offender can spend in one. Does this mean DOCR sends every violent criminal to a transition center as soon as they're eligible under our current laws? DOCR did not include the savings to counties and the state from fewer escapes and cycling fewer escapees through the criminal justice system over

	and over again. Per DOCR testimony before the Senate Judiciary Committee on January 22, 2025, just one transition center "normally" has 5 escapes ("walk aways") per month.
	DOCR does not account for the reduction in recidivism that will occur due to inmates serving a larger percentage of the sentences judges impose. Inmates will have more time to participate in treatment, rehabilitation, and re-entry programs offered by DOCR and its contractors. Inmates cannot commit new crimes while in jail or prison. ND's high recidivism rate currently imposes high costs on our counties and our state to: ○ Re-arrest ○ Re-charge ○ Re-prosecute ○ Re-try ○ Re-intake ○ Re-process through treatment the more than 40% of inmates who commit new crimes after leaving DOCR custody under our current system. The fiscal note also does not account for the cost to crime victims from recidivism due to early release.

DON'T BELIEVE THE MYTHS

S.B. 2128 (as amended by the Attorney General)	***NOT*** **S.B. 2128**
Truth-in-Sentencing Bill	Mandatory-Minimum Sentencing Bill
	Repeat of 2023 legislation
Judges' sentences will be respected and carried out faithfully by the corrections system	Will take away judges' discretion
Parole eligibility after serving 50% of sentence	Eliminates parole
	Parole Eligibility after serving 85% of sentence
Nonviolent offenders can still serve their sentences in halfway houses	Nonviolent offenders have to stay in jail or prison
Other inmates serve 85% of their sentences in correctional facilities before being eligible for halfway houses	Other offenders receive longer sentences
Recovery, re-entry, treatment, counseling and other programs are still available in correctional facilities and halfway houses	Inmates will not be able to participate in programs to get them ready to re-enter society
Parolees and individuals on probation can still reside in halfway houses	Parolees and individuals on probation will be homeless and have no access to re-entry programs
Time off for good behavior must be earned before it is awarded	There is no incentive for good behavior
Time off for good behavior is capped at 15% of a sentence	Time off for good behavior is not available
Inmates will have to be "not likely to escape" before being transferred to halfway houses	Unreasonable restrictions will be placed on the corrections system
Violently resisting arrest, assaulting law enforcement, and felony fleeing will have 14-day or 30-day sentences	The bill is all about imposing long mandatory minimum sentences

SENATE JUDICIARY COMMITTEE
JANUARY 27, 2025

SUPPLEMENTARY TESTIMONY OF
THE OFFICE OF ATTORNEY GENERAL

IN SUPPORT OF
SENATE BILL 2128

Senator Larson and Members of the Committee:

During the hearings on Senate Bill 2128, as amended by the Attorney General, you heard multiple opponents of the bill claim that longer sentences do not deter crime, increase recidivism, make prisons unsafe, or some combination of these notions. These claims do not withstand scrutiny.

While many agenda-driven groups have made claims like these, the studies they cite are flawed and do not apply to the bill under consideration. When the relevant research is viewed more comprehensively, a different picture emerges. This is especially true when the studies' shortcomings are not hidden.

When inmates spend more time in prison, as they would under a law that requires them to serve a larger percentage of their judge-imposed sentences, they have more time to participate in rehabilitation, treatment, and re-entry programs. They also are unable to commit crimes while in prison and are more likely to be deterred from committing future crimes after release. These are some of the reasons that – contrary to testimony offered by opponents of Senate Bill 2128 – more recent and robust studies often show a reduction in recidivism when inmates are in prison for longer periods of time.

Opponents of Senate Bill 2128 Presented a Distorted View of the Research

During the hearing on Senate Bill 2128, opponents of the bill who testified about research findings relied on flawed and inapplicable research. When they extrapolated findings from these studies and tried to project them onto Senate Bill 2128, they were comparing apples to oranges.

For example, the opponents of the bill often conflated truth-in-sentencing with mandatory minimum sentencing. These are very different practices, and studies on them are not interchangeable. Additionally, truth-in-sentencing can mean many things, and not all studies on truth-in-sentencing would be applicable to Senate Bill 2128.

Also, many studies in this area fail to control for variables (such as age, sex, etc.) that distort their results. When those variables are not controlled, it is difficult to account for their effects on the studied population, even if the studies try to do so with mathematical modeling.

Opponents of the bill who testified about research findings should have identified the limitations of that research – why it does not predict the outcomes of Senate Bill 2128 – rather than imply the research is conclusive.

Opponents of the bill also painted an extremely one-sided and inaccurate picture of the research into the effect of incarceration on recidivism and criminal behavior. They neglected to notify the committee that many studies, especially recent studies, demonstrate a reduction in recidivism from longer incarceration times. Studies are not nearly as conclusive and one-sided as opponents of the bill testified.

In June 2022, the United States Sentencing Commission issued a study report titled *Length of Incarceration and Recidivism*. As part of its study, the Commission reviewed preexisting research on this issue and found much of it was flawed. The Commission's report stated:

> Empirical research on the relationship between length of incarceration and recidivism is limited and presents mixed results. Of the studies that have been published, many are dated (*e.g.*, conducted prior to 2000), use less rigorous research designs, or present results on the relationship between incarceration and recidivism as a sub-analysis within a broader study. Further, a number of the prior studies have methodological deficiencies relating to not appropriately controlling for offender age and, therefore, are not considered valid.[1]

Similarly, a detailed and extensive study of existing research by the Criminal Justice Legal Foundation in 2022 noted significant limitations to earlier research on this topic.

> Overall, the effect of incarceration length on recidivism appears too heterogeneous to draw universal conclusions, and findings are inconsistent across studies due to methodological limitations. For example, many study samples are skewed toward people with shorter sentences while others include confounds that render results invalid. Of the studies reviewed, some suggested that longer sentences provide additional deterrent benefits in the aggregate, though some studies also had null effects. None suggested a strong aggregate-level criminogenic effect.[2]

The authors identified several specific problems with earlier research on this topic. Randomized controlled trials (the gold standard) would be unethical for prisoners. Controlling for other variables impacting recidivism or violence is almost impossible. Criminals with longer sentences may be more violent, male, and younger than those with shorter sentences, and those factors may influence recidivism rates. Moreover, there are different methods to measure recidivism, so consistency across studies and studied populations is lacking.

Researchers from Loyola University who studied Illinois' truth-in-sentencing laws also identified some inherent problems in relying on the existing research.

> Given the fact that the impact of the law appears to vary from state to state, depending on the offenses covered under [truth-in-sentencing] and the overall sentencing structure and/or courtroom culture in place, it is clear that analyses need to be done on a state-by-state basis to take into account the nuances of each state's [truth-in-sentencing] law and sentencing structure to assess impact on sentence lengths and/or lengths of time to serve.[3]

Conclusory study findings offered to the committee in hearings on Senate Bill 2128 simply painted an inaccurate picture.

More Time in Incarceration Has Been Shown to Reduce Recidivism and Reduce Violence in Prison

There are at least three ways that requiring an inmate to serve more of the sentence imposed by a judge can reduce the risk of recidivism.

1. Deterrence: The inmate will realize the cost of committing a crime is higher than the reward.
2. Incapacitation: The inmate cannot commit new crimes while in prison.
3. Rehabilitation: The inmate will have more time to be rehabilitated through treatment programs, education, re-entry programs, and other services available in prison.

Studies have found these impacts increase as the amount of time incarcerated increases.[4] The reduction in recidivism from incapacitation is self-evident. And some researchers have commented on the need for increased incarceration time to have a rehabilitative effect on criminals.[5]

The 2022 Criminal Justice Legal Foundation study report included citations to many research reports that found reductions in recidivism from increases in incarceration time, although fewer studies showed no difference.

The United States Sentencing Commission's 2022 study, which controlled for many of the variables that plague earlier studies, found that "offenders serving longer sentences had a lower likelihood of recidivism and took longer to recidivate."[6] Specifically, offenders who were incarcerated between 60 and 120 months had about an 18% reduction in recidivism compared to those with shorter sentences. Offenders who were incarcerated more than 120 months had about a 29% reduction in recidivism compared to those with shorter sentences.[7]

The Commission's findings were not an outlier. The findings "were almost identical for both the 2010 cohort studied in [the 2022] publication and the 2005 cohort studied in the Commission's previous publication."[8]

Also, in Appendix A of the Commission's report, there is a review of literature on this topic. Many of the studies listed in the appendix demonstrated a reduction in recidivism correlated with longer times in prison.

A study of Illinois' truth-in-sentencing (TIS) law on murderers and sex offenders found that longer sentences correlated to a reduction in violence in prison.

> Among the overall sample of murderers included in the analyses of disciplinary incidents, the average number of disciplinary tickets was 22. When multivariate statistical analyses were performed to isolate the influence of TIS on the overall number of disciplinary incidents/tickets, the analyses revealed that murderers subject to TIS *receiving an average of almost 5 fewer tickets*, on average, than non-TIS inmates. Additional analyses revealed that TIS had no statistical relationship with whether or not the inmate received a disciplinary ticket for a *serious* incident: roughly 55 percent of both TIS and non-TIS murderers had a ticket for a serious incident. Serious incidents were defined as any offenses that carry a maximum penalty of one year of loss or restriction of privileges, grade reduction, good time revocation and/or segregation, and included offenses in [sic] such as violent assaults or participation in a security threat group. Similarly, TIS had no statistical relationship with whether or not the inmate received a disciplinary ticket for an assault, against either another inmate or staff, with roughly 19 percent of both TIS and non-TIS murderers receiving a ticket for any assault.[9] …
>
> Further, the existing literature on inmate disciplinary patterns, particularly for those convicted of murder, appears to suggest that longer lengths of time to serve may actually *reduce* the incidence and nature of institutional violence by inmates, and that other inmate characteristics, such as age, need to be statistically controlled.[10]

Conclusions

Studies on the relationships among truth-in-sentencing, incarceration time, recidivism, and violence in prison have significant limitations and are not universally applicable.

The research cited by critics of Senate Bill 2128, as amended by the Attorney General, almost certainly is not applicable to the contents of this bill. The limited utility of that research – and the flaws in the methods used in such research – have been highlighted by several major studies in the past few years. The shortcomings of the studies should have been addressed in the testimony to the committee.

Recent research – that attempts to control for confounding variables and is transparent about its applicability – generally shows that longer incarceration times correlate to decreased recidivism (or does not show an impact) and has shown a reduction in violence in prison.

[1] United States Sentencing Commission*, Length of Incarceration and Recidivism*, p. 3 (June 2022).
[2] Berger, Elizabeth, and Scheidegger, Kent, *Sentence Length and Recidivism: A Review of the Research*, Criminal Justice Legal Foundation, p. 2 (June 2022) (emphasis added).
[3] David E. Olson, Ph.D. et al., *FINAL REPORT: The Impact of Illinois' Truth-in-Sentencing Law on Sentence Lengths, Time to Serve and Disciplinary Incidents of Convicted Murderers and Sex Offenders*, Loyola University Chicago, Department of Criminal Justice, Prepared for The Illinois Criminal Justice Information Authority (June 2009) (emphasis added).
[4] E.g., Wei Long, 2016. *Does Longer Incarceration Deter or Incapacitate Crimes? New Evidence from Truth-in-Sentencing Reform*, Working Papers 1607, Tulane University, Department of Economics. ("We observe statistically significant -7 percent deterrent effect of TIS on growth of violent crime two years after its passage. A series of placebo tests confirm the robustness of the estimates and inferences. In the long-run, additional incapacitative effect also becomes significant, making the treatment effect of TIS even greater in magnitude. Even though insignificant in the first two years after TIS was passed, growth of non-violent property crime rates decreases by 7 percent in the long-run in TIS states, indicating relative greater importance of incapacitative effect which locks up offenders who commit both types of crimes. A rough approximation shows that TIS is an economically efficient method to decrease crimes.")
[5] Al Weswasi, E., Sivertsson, F., Bäckman, O. et al*., Does sentence length affect the risk for criminal recidivism? A quasi-experimental study of three policy reforms in Sweden*, J Exp Criminal 19, 971–999 (2023).
[6] United States Sentencing Commission, at p. 19, 20.
[7] United States Sentencing Commission, at p. 19, 20.
[8] United States Sentencing Commission, at p. 22.
[9] Olson, at p. 5-6.
[10] Olson, at p. 17.

LENGTH OF INCARCERATION AND RECIDIVISM

UNITED STATES SENTENCING COMMISSION
June 2022

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INTRODUCTION

INTRODUCTION

The United States Sentencing Commission ("the Commission") began studying recidivism shortly after the enactment of the Sentencing Reform Act (SRA) of 1984.[1] Understanding federal offender recidivism was central to the Commission's initial work. The Commission's various studies on recidivism advance its mission of conducting research on sentencing issues related to the purposes of sentencing set forth in the SRA.[2] Exemplifying this, the criminal history provisions in the *Guidelines Manual* were developed, in part, based on information regarding federal offenders' risk of recidivism.[3] Information about recidivism is also relevant to the Commission's obligation to formulate sentencing policy that "reflect[s], to the extent practicable, advancement[s] in knowledge of human behavior as it relates to the criminal justice process."[4]

In 2021, the Commission began its second multi-publication recidivism series.[5] The first publication, *Recidivism of Federal Offenders Released in 2010*, provides a broad overview of recidivism amongst 32,135 federal offenders either released from federal prison or sentenced to a term of probation in 2010.[6] The Commission also released three reports that examined recidivism among specific groups of federal offenders: *Recidivism of Federal Firearms Offenders Released in 2010*, *Recidivism of Federal Drug Trafficking Offenders Released in 2010*, and *Recidivism of Federal Violent Offenders Released in 2010*.[7] The fifth and sixth publications in the series examine the recidivism of federal offenders receiving Federal Bureau of Prisons programming while incarcerated, *Recidivism and Federal Bureau of Prisons Programs: Drug Program Participants Released in 2010*, and *Recidivism and Federal Bureau of Prisons Programs: Vocational Program Participants Released in 2010*.[8]

This study, the seventh in the recidivism series, examines the relationship between length of incarceration and recidivism. In 2020, the Commission published its initial comprehensive study on length of incarceration and recidivism. In that study, which examined offenders released in 2005, the Commission found that federal offenders receiving sentences of more than 60 months were less likely to recidivate compared to a similar group of offenders receiving shorter sentences.[9] This study replicates the prior analysis, however, it examines a more current cohort of federal offenders released in 2010.

This study empirically explores three potential relationships that may exist between length of incarceration and recidivism:

Relationship	Description
Incarceration is preventative.	As the length of incarceration increases the likelihood of recidivism decreases.
Incarceration is criminogenic.	As the length of incarceration increases the likelihood of recidivism increases.
No relationship between incarceration and recidivism.	No statistically significant relationship between length of incarceration and recidivism is identified.[10]

Empirical research on the relationship between length of incarceration and recidivism is limited and presents mixed results.[11] Of the studies that have been published, many are dated (*e.g.*, conducted prior to 2000), use less rigorous research designs, or present results on the relationship between incarceration and recidivism as a sub-analysis within a broader study.[12] Further, a number of the prior studies have methodological deficiencies relating to not appropriately controlling for offender age and, therefore, are not considered valid.[13]

Most studies examining the association between length of incarceration and recidivism examine state offenders.[14] Of the thirteen relevant studies identified (Appendix A), only two focused on the federal offender population.[15] The first study, Rhodes et al. (2018) found that longer prison terms modestly reduce recidivism.[16] Specifically, the likelihood of recidivism was reduced by approximately one percent for every 7.5-month increase in sentence length.[17] In the second study, the Commission found that federal offenders receiving sentences of more than 60 months incarceration had lower odds of recidivism when compared to similar offenders receiving shorter sentences.[18] Specifically, the odds of recidivism were approximately 30 percent lower for offenders incarcerated for more than 120 months and approximately 17 percent lower for offenders incarcerated for more than 60 months up to 120 months.[19] The Commission did not find any statistically significant relationship between length of incarceration and recidivism for offenders incarcerated for less than 60 months.[20]

The purpose of this report is to expand on the limited research examining length of incarceration and recidivism in the federal offender population and, thereby, inform policymakers.[21]

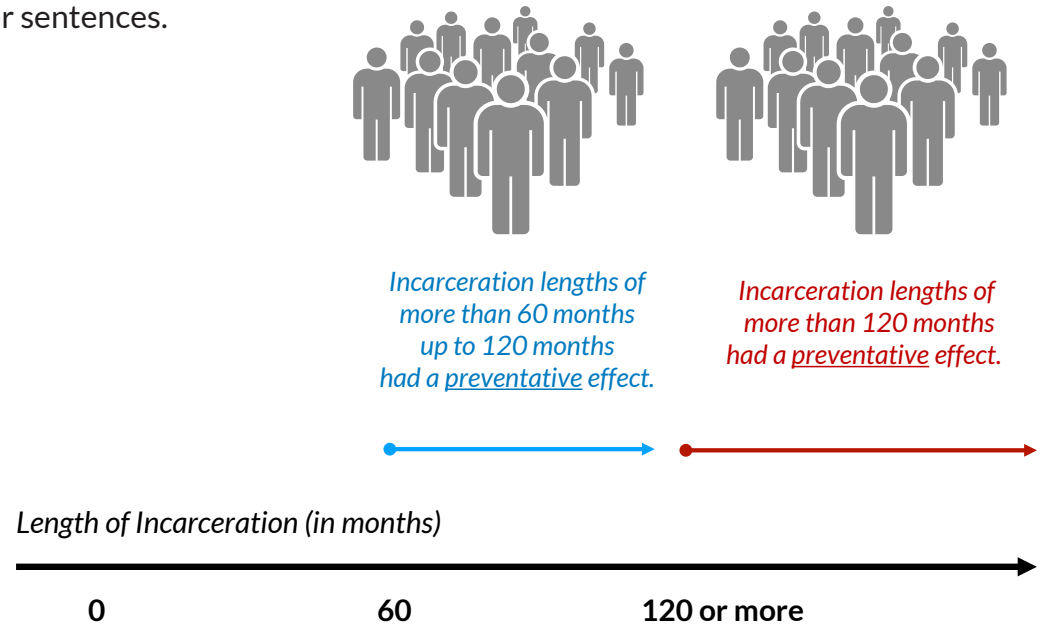
KEY FINDINGS

1 The results of this study, examining federal offenders released in 2010, are almost identical to the findings established in prior Commission research examining federal offenders released in 2005. In both studies, the odds of recidivism were lower for federal offenders sentenced to more than 60 months incarceration compared to a matched group of offenders receiving shorter sentences.

2 The odds of recidivism were approximately 29 percent lower for federal offenders sentenced to more than 120 months incarceration compared to a matched group of federal offenders receiving shorter sentences.

3 The odds of recidivism were approximately 18 percent lower for offenders sentenced to more than 60 months up to 120 months incarceration compared to a matched group of federal offenders receiving shorter sentences.

4 For federal offenders sentenced to 60 months or less incarceration, the Commission did not find any statistically significant differences in recidivism.



SCOPE OF ANALYSIS

This report uses data from the Commission, Federal Bureau of Investigation (FBI), Federal Bureau of Prisons (BOP), and the Administrative Office of the United States Courts (AO) to analyze the recidivism of federal offenders released from federal prison or sentenced to probation in 2010. The offenders in the study cohort were identified in cooperation with the BOP and the AO. The BOP provided identifying information, release dates, and other pertinent information for the Commission to identify offenders released from prison. The AO provided identifying information, some revocation information, and other pertinent information for offenders sentenced to probation. The Commission compiled the identifying information for these offenders to obtain criminal records in partnership with the FBI.

The data used in this report combines data regularly collected by the Commission[22] with data compiled as part of a data sharing agreement with the FBI's Criminal Justice Information Services Division.[23] Through an agreement with the FBI, the Commission collected and processed criminal history records from all state and federal agencies for the offenders in the study.[24] The Commission then combined the criminal history record data with offender and offense related data collected by the Commission.

Study Cohort

This study examines 32,135 federal offenders who satisfied the following criteria:

- United States citizens;
- Re-entered the community during 2010 after discharging their sentence of incarceration or by commencing a term of probation;
- Not reported dead, escaped, or detained;
- Have valid FBI numbers which could be located in criminal history repositories (in at least one state, the District of Columbia, or federal records).

Defining and Measuring Recidivism

Recidivism "refers to a person's relapse into criminal behavior, often after the person receives sanctions or undergoes intervention for a previous crime."[25] Recidivism measures can provide policymakers with information regarding the relative threat to public safety posed by various types of offenders, and the effectiveness of some public safety initiatives in deterring crime and rehabilitating offenders.[26] Recidivism measures are used by numerous public safety agencies to measure program performance and inform policy decisions on issues such as pretrial detention, prisoner classification and programming, and offender supervision in the community.[27]

Two measures are foundational to recidivism research, both of which can impact the outcomes of recidivism analyses. The first measure is the *type of event* used to indicate a relapse into criminal behavior. Recidivism is typically measured by criminal acts that resulted in the rearrest, reconviction, or reincarceration of an offender.[28] The Commission used rearrest for this study for several reasons. Rearrest is the most common measure of recidivism used by federal agencies in recent recidivism studies.[29] Federal agencies are using rearrest as the primary measure because it is a more reliable measure than reconviction or reincarceration due to the incomplete nature of disposition data.[30] Criminal records often fail to include information pertaining to reconviction

or reincarceration because jurisdictions inconsistently report them. The records compiled for this study reflect this inconsistency. For example, records for 44.1 percent of rearrest charges had no associated disposition information.

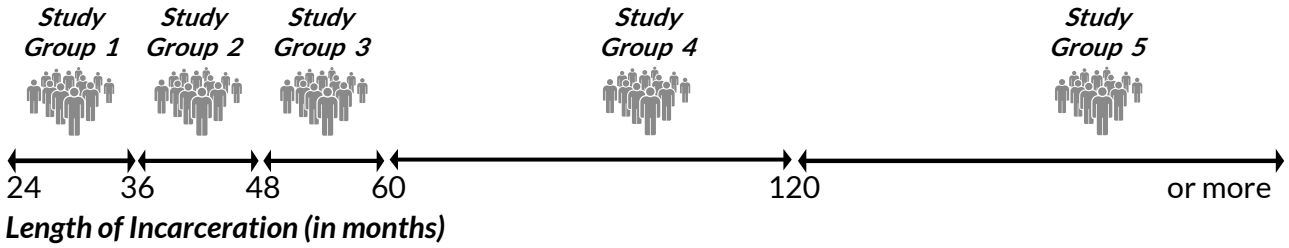
Using rearrest does result in higher recidivism rates than reconviction or reincarceration. Not only are rearrests more consistently reported, but also the evidentiary standard for an arrest (probable cause) is less stringent than the evidentiary standard for a conviction and, therefore, incarceration (beyond a reasonable doubt). Because not all arrests result in conviction or incarceration, rearrests can overstate recidivism.[31]

The second component of measuring recidivism is the *follow-up period*; the period of time over which events are counted following re-entry into the community. After a starting event—in this study, release from prison into the community or placement on probation—recidivism events are documented through the end of the follow-up period. The length of the follow-up period varies across recidivism studies. Due to limitations on available data, some studies follow offenders for as little as six months. Other studies follow offenders for several years. Tracking offenders for a longer duration provides a more accurate estimate of recidivism or desistance from crime.[32] For this study, the Commission used an eight-year follow-up period.

METHODOLOGY

This study analyzes five ordered study groups receiving different lengths of incarceration (Figure 1). The Commission determined the length of incarceration interval for each study group based on natural timeframes and available sample size. The first three study groups are composed of offenders sentenced within one-year intervals: more than 24 months up to 36 months; more than 36 months up to 48 months; and more than 48 months up to 60 months. The fourth and fifth groups required larger timeframes due to a smaller number of offenders in each group. This study used five-to-ten and greater than ten years as the boundaries to align with five-year clustering often seen in federal mandatory minimum sentences.[33]

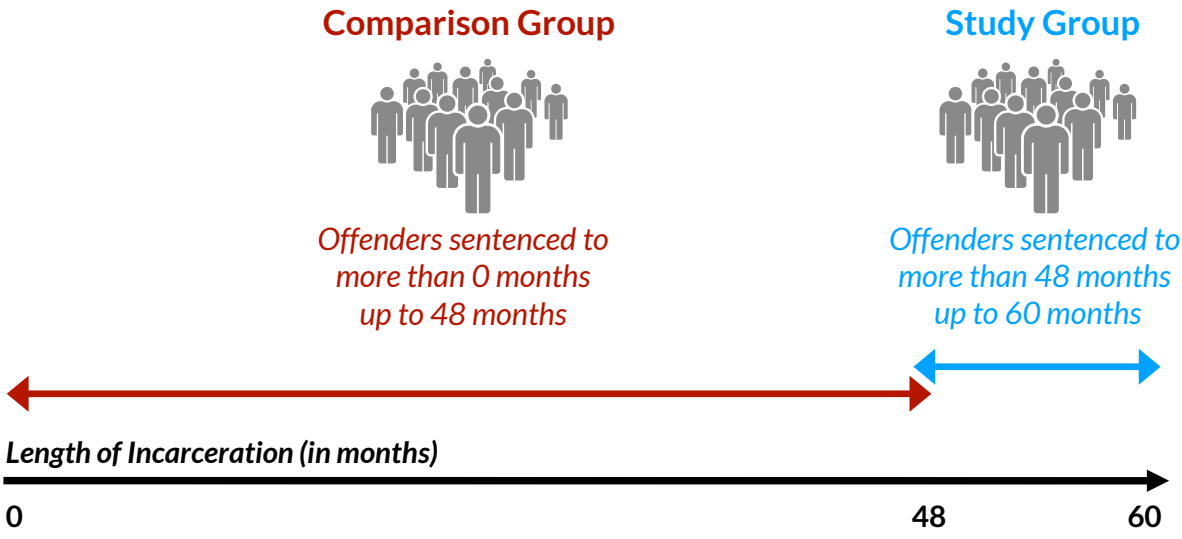
FIGURE 1.



Study Group	Length of Incarceration
1	>24-36 months
2	>36-48 months
3	>48-60 months
4	>60-120 months
5	>120 months

The Commission compared the recidivism rate of offenders in each study group to the recidivism rate of a similar group of offenders receiving shorter lengths of incarceration. For example, this study compared the recidivism rate of offenders incarcerated for more than 48 months up to 60 months to the recidivism rate of a similar group of offenders incarcerated for 48 months or less (Figure 2). This process was replicated for each of the five study groups (Figure 1).

FIGURE 2.



Doubly Robust Estimation

This study utilized a two-stage research process to analyze the relationship between length of incarceration and recidivism. In the first stage, the Commission created a comparison group for each study group through matching and weighting. In the second stage, the Commission used an outcome regression model—in this case multiple logistic regression—to estimate the effect of length of incarceration on recidivism. This two-stage process of creating comparison groups and then utilizing regression modeling results in a *doubly robust estimation*, which is particularly powerful in that only one of the two models needs to be correctly specified to obtain unbiased estimates.[34]

Creating Comparison Groups Using Matching and Weighting

The first stage of the analysis focused on creating a similar comparison group for each study group (Figure 1). When creating a comparison group, researchers must consider two important factors: the necessary degree of similarity between study and comparison groups, and sample size. The study group and comparison group must be sufficiently similar on select attributes to isolate the effect of the variable of interest (*i.e.*, length of incarceration) on the outcome variable (*i.e.*, recidivism). Colloquially, this is often described as comparing *apples-to-apples*. The attributes selected by the researcher, called control variables, are generally important variables that are perceived to influence the outcome. For example, if the study and comparison groups have similar proportions of males, any difference in recidivism rates observed would not be attributed to gender. Here, the researcher would have *controlled* for gender in their model. Ideally, groups being compared would be identical on all attributes except for the variable of interest.

Sample size is also important because statistical tests require sufficiently large sample sizes to detect existing relationships. This is referred to as *power* in statistics. Larger unbiased samples provide better estimates of how similar individuals not involved in the study will perform (*i.e.*, generalize results). Therefore, in addition to similarity between groups, researchers must be cognizant of ensuring sufficient sample size exists to detect a relationship between the variables of interest and the outcome variable.

In this study, the Commission used *propensity score matching* to create

comparison groups. Matching creates a comparison group by identifying individuals who are similar on key attributes determined by the researcher. The researcher specifies the level of precision for matches. As the level of precision increases, it becomes more difficult to identify matches and, therefore, the sample size shrinks. Thus, researchers must balance the level of precision in matching with the subsequent sample size. With weighting, generally, individuals in the comparison group who are similar to individuals in the study group are given more weight than individuals who are dissimilar. As the level of similarity between matches increases, the weights increase.[35] One advantage of weighting, as compared to matching with a high degree of precision (*e.g.*, exact matching), is that it often results in a larger sample size because individuals with some dissimilarity will remain in the study but receive less weight.

The Commission chose to determine the length of incarceration for each study group and then create a matched comparison group for each study group. By determining the study groups' length of incarceration first and then developing comparison groups second, this study preserves the natural characteristics of offenders serving various lengths of incarceration. For example, in general, fraud offenders receive shorter sentences than drug trafficking offenders. This means the composition of offenders serving sentences longer than 120 months will, understandably, be different than the composition of offenders serving sentences of 24 to 36 months of incarceration. While there will be some variation in the characteristics of offenders in each study group (*i.e.*, at various lengths of incarceration), the differences between study groups and comparison groups will be minimal due to matching and weighting.

With either matching or weighting, the first step is to determine which attributes must be controlled for. Researchers have identified five principal attributes that studies on length of incarceration and recidivism should address: age, gender, race, prior criminal history, and instant offense type.[36] These prior research studies have principally examined the recidivism of offenders sentenced in state courts.[37] In prior studies, the Commission has confirmed that these factors are also associated with the recidivism of federal offenders. Specifically, as offenders' age-at-release increases recidivism decreases;[38] male offenders have higher recidivism rates than female offenders;[39] as an offender's criminal history category increases their recidivism rate increases;[40] and the type

of instant offense is associated with recidivism (*e.g.*, drug trafficking offenders have higher recidivism rates than fraud offenders).[41]

Additionally, prior Commission research has identified associations between education level, violence, and weapons offenses, with recidivism. The Commission found that offenders with higher levels of education have lower recidivism rates than offenders with lower levels of education.[42] The Commission has also found that offenders who used violence in conjunction with the instant offense or in prior offenses have higher rates of recidivism than offenders who have never used violence in connection with an offense.[43] Additionally, the Commission has found that offenders who commit weapons offenses have higher recidivism rates than offenders who commit other offenses.[44] Based on the Commission's prior research, and that conducted by other researchers, this report controls for the attributes listed in Table 1.

As noted, the research design utilized a combination of matching and weighting to create comparison groups. This study used exact matching to balance the following principal attributes: age-at-release, gender, race, criminal history category, and primary sentencing guideline. Therefore, the study group and comparison group were identical

TABLE 1.

Control Attributes and Variables

Exact Match	Weighted
Age-at-release	High school completion
Gender	Violent offense
Race	Weapons offense
Criminal history category (CHC)	Received substantial assistance departure
Instant offense type (sentencing guideline)	Received safety valve adjustment

on these attributes. Weighting was used to balance the remaining attributes: high school completion, violent offense, weapons offense, received substantial assistance, and received safety valve adjustment.[45]

After matching and weighting, the study and comparison groups were assessed to confirm the groups were sufficiently similar. To assess the similarity between study and comparison group, the Commission confirmed the Standardized Mean Difference (SMD) between each study and comparison group was less than the conventional 0.1 threshold.[46] The overall SMD between study and comparison groups for each analysis ranged from 0.02 to 0.08. Therefore, with respect to the attributes in Table 1, the study and comparison groups were extremely similar.

Regression Modeling

After establishing the comparison groups, the Commission used multiple logistic regression to estimate the relationship between length of incarceration and recidivism. Logistic regression is a modeling technique used to analyze the relationship between attributes (*e.g.*, length of incarceration, age, gender, etc.) and a binary response variable (*e.g.*, recidivism).[47] In this study, logistic regression was used to analyze the relationship between length of incarceration and recidivism while controlling for the attributes listed in Table 1.

Logistic regression estimates are often reported as an *odds ratio*. In this study, the odds ratio represents the odds of recidivism for the study group as compared to the odds of recidivism for the comparison group. An odds ratio of one indicates no difference in recidivism between the groups. An odds

The Commission's research design utilized a combination of matching and weighting to create comparison groups.

ratio less than one indicates the study group had lower odds of recidivism than the comparison group. An odds ratio greater than one indicates the study group had greater odds of recidivism than the comparison group.[48]

In addition to producing an estimate, each estimate is tested for statistical significance. Testing estimates for statistical significance can be analogized to the burden of proof consideration in a criminal trial. The significance test begins with the premise that there is no relationship between the variables being tested, in this study length of incarceration and recidivism, similar to the premise that a defendant is innocent until proven guilty. In statistics, this presumption of innocence is referred to as the null hypothesis. The researcher collects data, or evidence, which is then judged to determine if the results of the analysis could have happened by random chance. In statistics, the threshold of beyond a reasonable doubt is usually numerically defined with a *p-value*. The p-value numerically defines the degree of evidence required to reject the null hypothesis (*i.e.*, no relationship exists between length of incarceration and recidivism). In this study, the Commission used the conventional threshold of 0.05 to denote statistical significance. Thus, if the p-value is less than 0.05 we reject the null hypothesis and consider the results to be indirect evidence that a relationship between the variable of interest and outcome—length of incarceration and recidivism in this study—exists.

RESEARCH FINDINGS

RESEARCH FINDINGS

As noted, the Commission identified the study groups first and then created comparison groups to preserve the natural composition of offenders sentenced to various lengths of incarceration. The comparison groups were composed of offenders who were similar, based on matching and weighting, and had a shorter length of incarceration.[49]

In addition to achieving extremely similar study and comparison groups through matching and weighting, this study retained a large sample size. When creating matched comparison groups, it is natural to lose some portion of the study group. Overall, a large proportion, between 75.4 and 92.2 percent, of the study group was retained after matching for each analysis.

The sample size for individual analysis ranged from 2,598 to 8,578 offenders and the total sample size for the study was 22,928 (Figure 3).

FIGURE 3.

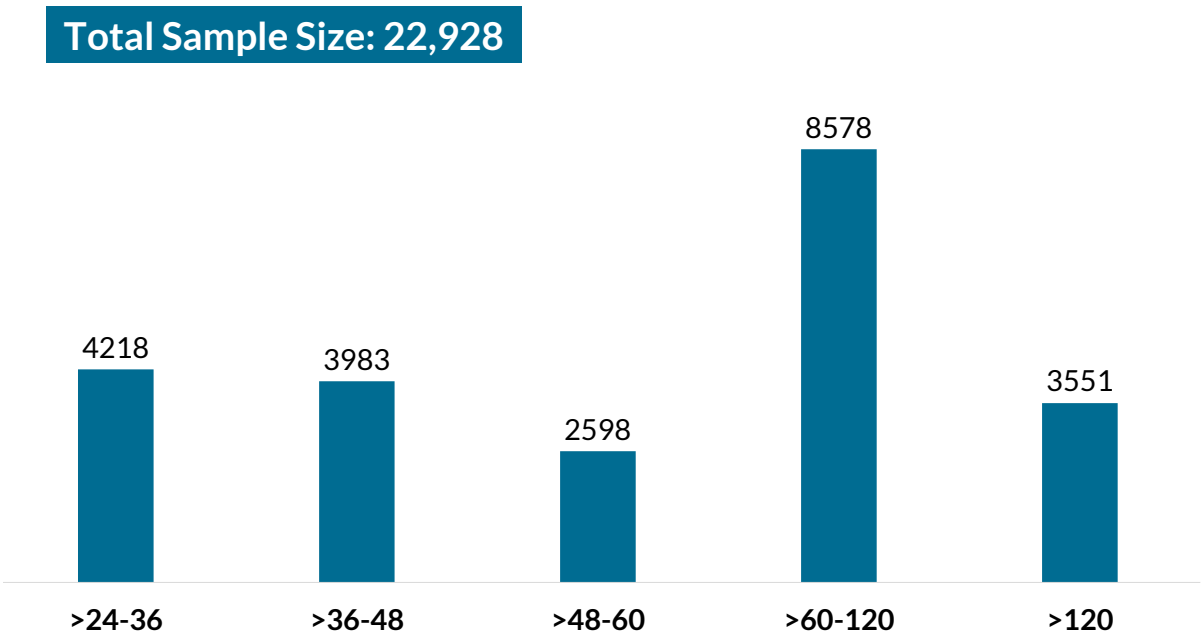


Table 2 provides information on the median length of incarceration for each study and comparison group. Differences in the median length of incarceration range from 13.0 to 76.0 months. As the length of incarceration for the study group increased, the difference in median sentences increased. For example, the differences in median sentence for the first study and comparison group (>24 to 36 months) was 13.0 months, while the difference in median sentence imposed for the last study group (>120 months) was 76.0 months.

Table 3 provides information on the five principal offender characteristics that are exactly matched between the study and comparison groups. Prior research examining sentence length and offender recidivism identified a minimum set of control variables: age, gender, race, prior criminal history, and instant offense type.[50] Due to the importance of these attributes, the Commission used exact matching for these control variables. Consequently, the study group and comparison groups were identical on each of these attributes. For example, for the >24 to 36 months analysis, offenders in the study and comparison groups had average ages of 35.8 years, 86.7 percent of each group was male, 65.5 percent of each group was White, etc.

As expected, the composition of offenders varied between the study groups with different lengths of incarceration. As the length of incarceration increased, the proportion of males increased, the proportion of Black offenders increased, the severity of CHC increased, and the proportion of §2D1.1 offenders increased (Table 3).

TABLE 2.

Median Incarceration Length of Study and Comparison Groups

Group	Study Group	Comparison Group
>24 to 36 Months	28.0	15.0
>36 to 48 Months	40.0	24.0
>48 to 60 Months	51.0	33.0
>60 to 120 Months	78.0	39.0
>120 Months	160.0	84.0

TABLE 3.

Exact Matched Characteristics

Attributes	Length Of Incarceration >24-36 Months	>36-48 Months	>48-60 Months	>60-120 Months	>120 Months
Age (years)					
Mean Age	35.8	36.0	36.4	37.3	41.0
Gender (%)					
Male	86.7	88.8	90.7	92.6	96.5
Race (%)					
White	65.5	59.5	56.3	52.1	33.2
Black	30.6	36.6	40.6	45.9	66.0
Other	4.0	3.8	3.1	2.0	0.8
Criminal History Category (%)					
CHC I	53.5	47.8	37.8	29.6	16.1
CHC II	10.4	8.5	10.2	13.8	11.1
CHC III	18.4	16.6	15.9	20.4	19.0
CHC IV	10.3	13.0	12.4	11.8	14.0
CHC V	3.0	6.4	10.5	8.6	8.2
CHC VI	4.4	7.6	13.3	15.8	31.6
Principal Guidelines (%)					
§2D1.1	41.2	48.2	50.5	71.7	81.6
§2B1.1	18.8	12.1	8.3	2.7	0.0
§2B3.1	0.4	2.1	2.4	3.0	8.7
§2K2.1	20.0	25.9	31.1	15.9	6.8
§2L1.1	4.9	1.5	0.5	0.1	0.0
Other	14.6	10.2	7.3	6.6	2.8

The Commission used a multiple weighted logistic regression to estimate the effect of length of incarceration on recidivism. The results were mixed across the various study groups (Table 4). For offenders sentenced to 60 months or less, there was no statistically significant effect. For offenders sentenced to more than 60 months, there was a statistically significant preventative effect.

Offenders incarcerated for more than 60 months up to 120 months had a statistically significant preventative relationship between length of incarceration and recidivism. Specifically, the regression model estimated the odds of recidivism for offenders incarcerated for more than 60 months up to 120 months was approximately 18 percent lower than the odds of recidivism for the comparison group receiving shorter sentences (Figure 4). In addition to estimating the likelihood of recidivism, the Commission analyzed time-to-rearrest. The average time-to-rearrest for the study group was 861 days while the average time-to-rearrest for the comparison group was 807 days.[51] Thus, offenders serving longer sentences had a lower likelihood of recidivism and took longer to recidivate.

TABLE 4.

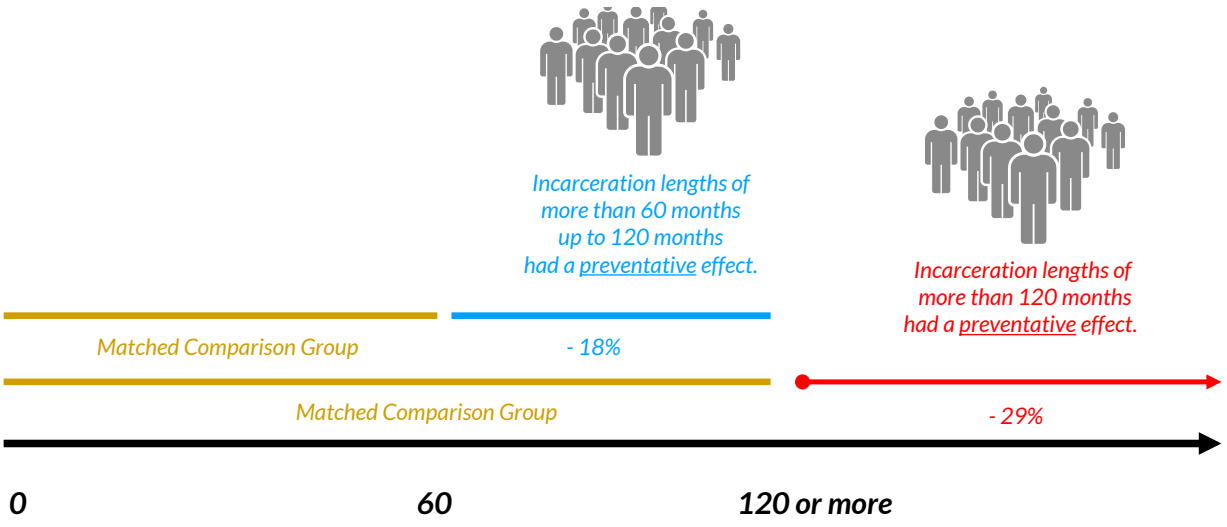
Weighted Multiple Logistic Regression Results

	Likelihood of Recidivism
>24 to 36 Months	+ 7%
>36 to 48 Months	- 2%
>48 to 60 Months	- 1%
>60 to 120 Months	- 18% ***
>120 Months	- 29% ***

p-values: * $p \leq .05$; ** $p \leq .01$; *** $p \leq .001$

Offenders incarcerated for more than 120 months had a statistically significant preventative relationship between length of incarceration and recidivism. Specifically, the regression model estimated the odds of recidivism for individuals incarcerated for more than 120 months was approximately 29 percent lower than the odds of recidivism for the comparison group receiving shorter sentences (Figure 4).[52] In addition to estimating the likelihood of recidivism, the Commission analyzed time-to-rearrest. The average time-to-rearrest for the study group was 915 days while the average time-to-rearrest for the comparison group was 852 days.[53] Thus, offenders serving longer sentences had a lower likelihood of recidivism and took longer to recidivate.

FIGURE 4.



COMPARISON OF 2010 AND 2005 RELEASE COHORTS

COMPARISON OF 2010 AND 2005 RELEASE COHORTS

In 2020, the Commission published *Length of Incarceration and Recidivism*, which examined the relationship between length of incarceration and recidivism for offenders released in 2005.[54] The 2020 study included two research designs: (1) a design using propensity score matching and weighted multiple logistic regression, and (2) a design using non-bipartite matching and multiple logistic regression.

For this study, the Commission replicated the first research design—propensity score matching and weighted multiple logistic regression—examining offenders released in 2010. Using this research design, the findings were almost identical for both the 2010 cohort studied in this publication and the 2005 cohort studied in the Commission's previous publication. Specifically, findings were only statistically significant for offenders sentenced to more than 60 months incarceration, and those effect sizes were identical (Table 5). In both studies, offenders sentenced to more than 60 months up to 120 months were approximately 18 percent less likely to recidivate relative to a comparison group receiving shorter lengths of incarceration. Offenders sentenced to more than 120 months were approximately 29 percent less likely to recidivate relative to a comparison group receiving a shorter sentence of incarceration.

TABLE 5.

Weighted Multiple Logistic Regression Results

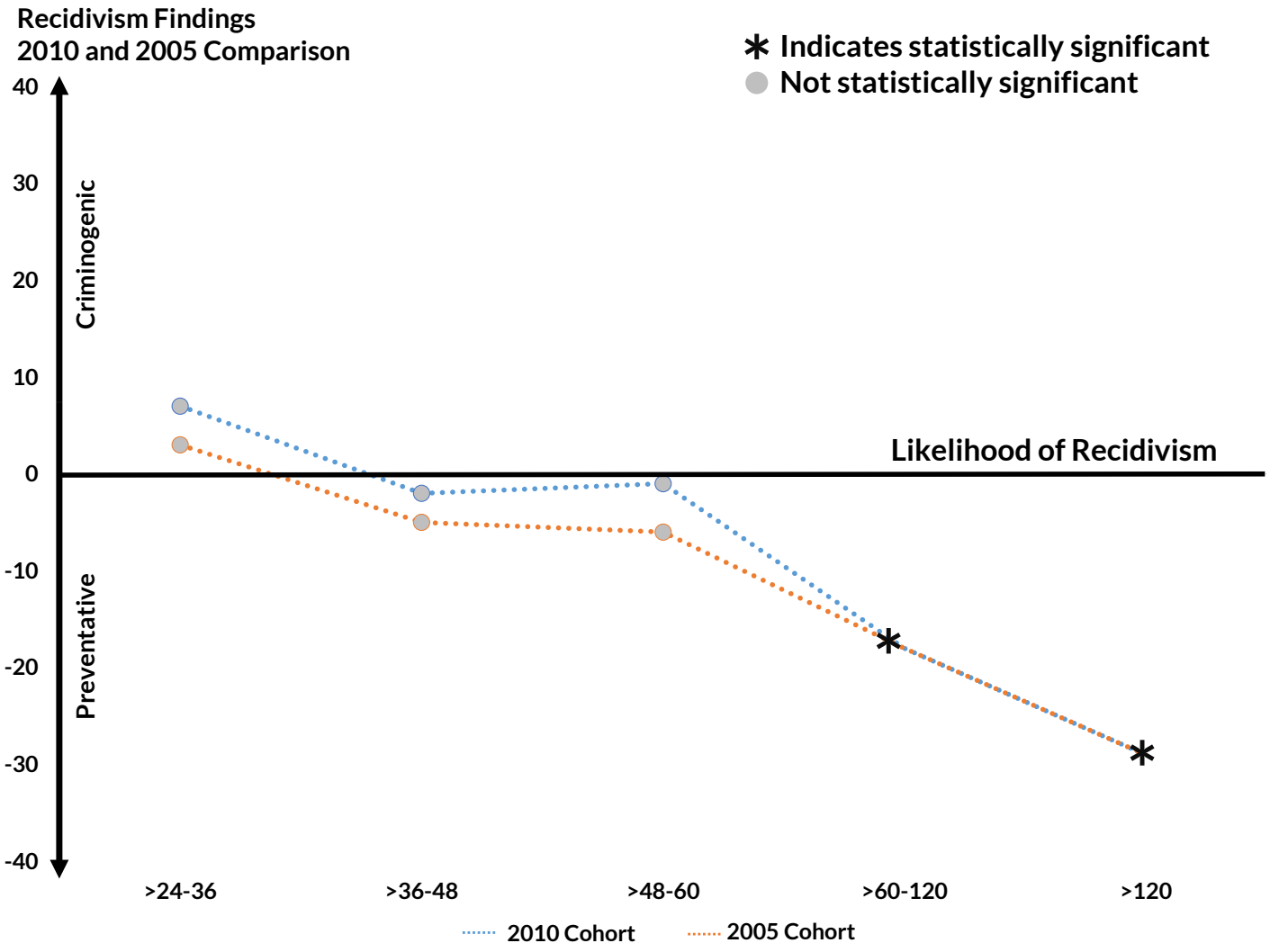
	Likelihood of Recidivism	
	2010 Cohort	2005 Cohort
>24 to 36 Months	+ 7%	+ 3%
>36 to 48 Months	- 2%	- 5%
>48 to 60 Months	- 1%	- 6%
>60 to 120 Months	- 18% ***	- 18% **
>120 Months	- 29% ***	- 29% ***

p-values: * $p \leq .05$; ** $p \leq .01$; *** $p \leq .001$

Figure 5 graphs the model estimates for federal offenders released in 2005—the original study—and 2010. The plot shows the similarity in model estimates for all study groups and denotes the statistically significant estimates, represented by asterisks, for offenders sentenced to more than 60 months incarceration. Thus, the findings remain stable between the two studies analyzing the 2005 and 2010 release cohorts.

As noted, the Commission also used an alternative research design in its previous study released in 2020. The alternative research design used non-bipartite matching to create comparison groups that exactly matched all characteristics in Table 1, except for age-at-release which could vary by one year, then used multiple logistic regression to estimate the effect of sentence length on recidivism.[55] While these alternative designs are not described in this publication, the Commission did confirm that analysis of the 2010 offender cohort using the same alternative research design yielded similar results.[56]

FIGURE 5.


Recidivism Findings
2010 and 2005 Comparison
* Indicates statistically significant
Not statistically significant
40
30
20
10
0
-10
-20
-30
-40
Criminogenic
Preventative
Likelihood of Recidivism
>24-36
>36-48
>48-60
>60-120
>120
2010 Cohort
2005 Cohort

CONCLUSION

CONCLUSION

This study examined offenders released from federal prison or sentenced to probation in 2010. The study used a combination of matching, weighting, and multiple logistic regression to estimate the effect of length of incarceration on recidivism.

The Commission found a statistically significant preventative effect for offenders sentenced to more than 60 months incarceration. Specifically, offenders sentenced to more than 60 months incarceration had lower odds of recidivism as compared to similar offenders receiving shorter sentences. The odds of recidivism were approximately 18 percent lower for offenders sentenced to more than 60 months up to 120 months incarceration compared to a matched group of federal offenders receiving shorter sentences. The odds of recidivism were approximately 29 percent lower for federal offenders sentenced to more than 120 months incarceration compared to a matched group of federal offenders receiving shorter sentences. In the 2010 release cohort, approximately 41 percent of offenders received sentences of more than 60 months incarceration.

The Commission found no statistically significant effect for offenders sentenced to 60 months, or less, incarceration. Consequently, the Commission has no basis to conclude that incarceration for 60 months or less has a criminogenic or preventative effect. In the 2010 release cohort, approximately 59 percent of offenders received sentences of 60 months or less incarceration.

The current research findings were similar to the findings established in the original study, *Length of Incarceration and Recidivism*, which examined offenders released in 2005. In the original study, using a comparable research design, offenders sentenced to more than 60 months incarceration had a statistically significant preventative effect.

In conclusion, this study found that offenders confined for longer periods of incarceration had lower odds of recidivism, however, those odds were only substantively lower for offenders sentenced to lengthy incarceration terms. The findings suggest the preventative effect of length of incarceration on recidivism was only realized for offenders sentenced to more than 60 months incarceration.

APPENDICES

APPENDIX A

Appendix A provides a review of published literature on the relationship between length of incarceration and recidivism.

Literature Review

There have been numerous studies, and two comprehensive literature reviews, examining the association between length of incarceration and recidivism.

In 2009, Nagin et al. completed a thorough review of existing literature on the relationship between incarceration length and recidivism.[57] The review examined two experimental studies and 17 nonexperimental studies (three matched studies and 14 regression studies).[58] Conclusions were not drawn from the 14 regression studies due to fundamental analytical flaws in the study design, specifically, sensitivity in the regression-based studies related to specification errors in modeling the relationship between age and offending.[59] Nagin and his co-authors concluded "there [was] little convincing evidence on the dose-response relationship between time spent in confinement and reoffending rate."[60]

Following that review, only a small number of methodologically rigorous studies examining the relationship between length of incarceration and recidivism have been conducted. In 2021, Berger et al. completed an updated literature review and concluded that the literature on length of incarceration and recidivism continues to be somewhat inconsistent, with some studies finding no effect on recidivism, while other studies indicating increased prison length reduces recidivism, albeit in some studies only slightly.[61] These mixed results may be explained, in part, by the use of varying methodologies (*e.g.*, propensity score matching, regression discontinuity design, etc.) and the examination of varying research populations (*e.g.*, juvenile, state, or federal offender populations).

A brief synopsis of the primary studies examining the association between length of incarceration and recidivism are presented here.

Jaman et al. (1972) examined the recidivism rate of male burglars who received sentences longer than 25 months with a similar group of burglars who served 24 months or less.[62] The study used by-variable matching to control for a number of offender attributes.[63] The authors followed offenders for 6, 12, and 24 months post-release.[64] They found that offenders who served longer sentences

had a higher recidivism rate, however, the difference was only statistically significant for a 24-month post-release follow-up period.[65]

Kraus (1981) examined juvenile offenders serving varying incarceration lengths.[66] Juvenile offenders were separated into three distinct age groupings: 9-12, 13, and 14-15.[67] The study matched on a variety of offender attributes (*e.g.*, age, sex, offense, and prior record).[68] Kraus found longer confinement was associated with higher recidivism for two age groups and lower recidivism for the third age group. None of the study findings were statistically significant.[69]

Berecochea et al. (1981) examined a sample of felony male offenders in California who had their incarceration sentences reduced by six months.[70] The recidivism rate of the offenders receiving the six-month reduction was higher than the recidivism rate of offenders not benefiting from a sentence reduction.[71] Thus, offenders receiving longer prison sentences had lower recidivism rates. However, this effect was not statistically significant.[72]

Deschenes et al. (1995) compared the recidivism rates of incarcerated offenders serving their full sentence to offenders receiving a reduction in incarceration time due to placement on Intensive Community Supervision (ICS).[73] While all study offenders were originally incarcerated, the comparison group had a reduced incarceration period due to placement on ICS. The study found "similar rates of rearrest among those who were diverted from prison and those who remained in prison . . . [the] rates were not significantly different".[74]

Loughran et al. (2009) used longitudinal data from a sample of serious juvenile offenders to explore the relationship between length of stay in institutional placement and future rearrests.[75] The study used propensity score matching to balance several offender attributes across treatment and comparison groups.[76] The study found no evidence that varying doses of length of stay affect future rearrests in either a criminogenic or preventative direction.[77]

Green et al. (2010) examined more than 1,000 defendants sentenced in the District of Columbia Superior Court.[78] They exploited a pseudo-randomization strategy between nine judges and argued that variation in judicial discretion resulted in random variation in sentence lengths. Offenders were tracked for four years post-release.[79] The study found that "incarceration seems to have little net effect on the likelihood of subsequent rearrest".[80]

Snodgrass et al. (2011) examined the felony reconviction rate of more than 4,500 prisoners in the Netherlands.[81] The study used propensity score matching to create balanced groups on a variety of offender attributes.[82] The majority of

the offenders in the study, 86 percent, were sentenced to less than one year of incarceration.[83] Offenders were grouped into two categories, *low-dose* and *high-dose*, for comparison. Overall, *low-dose* offenders were convicted of .033 more felonies per year as compared to similar *high-dose* offenders.[84] However, the observed preventative effect was not statistically significant.[85]

Kuziemko (2012) examined the impact of length of incarceration on recidivism for more than 17,000 parolees in Georgia.[86] The author used an instrumental variable to account for imbalance on several attributes (*e.g.*, prior incarceration, offense severity, etc.).[87] Offenders were tracked for a three-year follow-up period to determine if they returned to prison for a new crime. The study found that lengthier sentences were associated with a decrease in recidivism of 1.3 percent per additional month of incarceration served.[88] Further, Kuziemko analyzed a subgroup of 519 offenders released early to curb prison overcrowding. In this subgroup, lengthier sentences were associated with a 3.2 percent decrease in return to prison for each additional month served.[89] In a later reexamination of the data, Roodman (2017) found a trivial impact of length of incarceration on recidivism.[90]

Meade et al. (2012) estimated the dose-response relationship between time served in prison and odds of recidivism for 1,989 offenders released from prison in Ohio.[91] The study used propensity score matching to create balanced groups of offenders serving various lengths of incarceration.[92] The study found that offenders confined for lengthier terms of incarceration had lower odds of recidivism. The authors note, the findings suggest an inverse effect of length of incarceration on recidivism which was realized after offenders were incarcerated for at least 60 months.[93] Offenders serving at least 60 months had statistically significant lower odds of recidivism as compared to similar offenders serving less time.[94]

Roach et al. (2015) examined between 7,700 and 8,780 felony offenders sentenced in Seattle.[95] Offenders committed lower-level felony offenses as indicated by an overall average sentence length of nine months.[96] The authors argued that variation in judicial discretion would result in random variation in sentence lengths.[97] Offenders were tracked for three years post-release and recidivism was defined as being resentenced for a new felony offense.[98] Roach et al. found that increased sentence

length was associated with a decrease in recidivism rates. Specifically, three-year felony recidivism rates decreased by approximately one percent for each additional month of incarceration imposed.[99]

Mears et al. (2016) examined the felony reconviction rates of more than 90,000 inmates released from Florida prisons.[100] The authors used propensity scores to balance various offender attributes.[101] The average length of incarceration in the cohort was 24 months.[102] The effect of incarceration length on recidivism varied across different incarceration lengths. Specifically, incarceration lengths of less than one year were associated with increased recidivism but the effect plateaued after one year post-release; incarceration lengths of one to two years were associated with a slight decrease in recidivism rates compared to offenders serving between six and twelve months incarceration which plateaued after two years post-release; incarceration lengths of three to five years had no effect on recidivism; and incarceration lengths of six years or more were associated with a slow consistent decline in recidivism (however, this model had issues with larger standard errors).[103]

Rhodes et al. (2018) used a regression discontinuity design and instrumental variable identification strategy to examine the dose-response relationship between prison length of stay and recidivism for a large sample of federal offenders.[104] The study found that longer prison terms were associated with a slight decrease in recidivism during a three-year follow-up period. Specifically, Rhodes and his co-authors found that a 7.5-month increase in incarceration length was associated with a one percent decrease in recidivism.[105]

Cotter (2020) examined the dose-response relationship between sentence length and rearrest for a large cohort of offenders released from federal prison in 2005.[106] The study used several different matching approaches (*e.g.*, propensity score matching) and multiple logistic regression to estimate the relationship between length of incarceration and recidivism.[107] The study found that incarceration lengths of more than 60 months were associated with a reduction in recidivism. Specifically, offenders sentenced to more than 60 months of incarceration had lower odds of recidivism relative to a comparable group of offenders receiving shorter sentences.[108]

APPENDIX B

Appendix B provides information on the process utilized to create the foundational analytical data for this study.

Datafile Creation Methodology

The Commission entered into a data sharing agreement with the FBI's Criminal Justice Information Services (CJIS) Division and the Administrative Office of the United States Courts (AO) to provide the Commission with secure electronic access to criminal history records through CJIS's Interstate Identification Index (III) and International Justice and Public Safety Network (NLETS). Results received using this system provide an individual's Criminal History Record Information (CHRI) maintained by all U.S. states, the District of Columbia, U.S. territories, and federal agencies. Once the raw CHRI was obtained, the Commission organized and standardized the arrest and court disposition information into an analytical dataset. The resulting data contained CHRI for 32,135 offenders with valid identifying information who were released in 2010.

A. Identifying the Study Cohort

The study cohort included all federal offenders who were U.S. citizens and released from federal prison after serving a sentence of imprisonment or placed on probation in 2010. For offenders released from prison, the Federal Bureau of Prisons (BOP) provided release dates and identifying information for all offenders released in 2010. The Commission identified offenders placed on probation in 2010 and, with the assistance of the AO, identified and removed offenders who died while on supervised release during the recidivism follow-up period.

B. Processing the Criminal History Record Information

The Commission entered into a data sharing agreement with the FBI's CJIS Division and the AO to acquire electronic records of offender CHRI. The AO extracted offender CHRI through its Access to Law Enforcement System (ATLAS), which provides an interface to III and NLETS. The III allows authorized agencies to determine whether any federal or state repository has CHRI on an individual. Agencies can then securely access specific state CHRI through NLETS. As a result, ATLAS collects CHRI from all state and federal agencies.

The ATLAS system returns the literal text in the RAP sheets in the format in which the original records appear: dates of criminal justice system actions

(*e.g.*, arrests); offense categories which indicate the charges in the terminology used by that agency (*e.g.*, text strings or numeric categories); subsequent action tied to arrest charges (*e.g.*, charges filed by prosecutors, court findings of guilt, etc.); and sentencing and corrections information. All of these records are subject to availability from the originating source.

The ATLAS system also "parses" records from RAP sheets received from all 50 states, the District of Columbia, and federal agencies. Parsing records involves organizing key data elements into logical components, for example: arrest, court, and correctional events. Key data elements include offender identifiers, dates of key actions (*e.g.*, arrests and convictions), the criminal charges, and outcomes such as convictions and sentencing information when provided by the courts. The parsing process collates the multi-state records into a uniform structure, regardless of the state, for all individuals with a valid FBI number who were found in one or more repositories across the country.

C. Standardizing the Criminal Records

After acquiring offender CHRI, the Commission contracted with Integrity One Partners (IOP) to consolidate records for each offender and remove duplicative or extraneous material.[109] Following this preliminary process, IOP utilized a crosswalk created for the Commission's prior recidivism research[110] to standardize offense codes across states and federal agencies. The crosswalk was updated to standardize new offense codes not mapped in the original crosswalk. The crosswalk standardizes arrest and court codes, regardless of originating sources, into a common framework for analysis. This step was needed because criminal records repositories are primarily designed to store records in ways that accurately reflect the requirements of each state or federal repository, such as the criminal code for that jurisdiction. As a result, any two repositories are likely to use many unique text strings to indicate the nature of the criminal charges and actions taken in response to those charges. Thus, standardizing the offense information was necessary for cross-jurisdictional analysis.

Within each arrest cycle, arrest charges were categorized using standardized codes. A charge severity index was created which incorporates both criminal law classification (*e.g.*, felony or misdemeanor) and offense severity. Offenses were first classified into one of 98 standardized subcategories. These categories were then further grouped for analytical purposes into one of 20 major crime categories in ranking order by severity.[111] For each offender, the most severe major crime category was identified in their arrest information. The rearrest categories and their underlying subcategories are provided in Table B-1.

Table B-1. Rearrest Offense Categories and Charges

Murder	*Murder of public officer*
	Murder
	Attempted murder
	Unspecified manslaughter/homicide
	Nonnegligent manslaughter/homicide
Sexual Assault	*Rape*
	Forcible sodomy
	Fondling
	Statutory rape
	Luring minor by computer
	Other sexual assault
	Sexual assault unspecified
Robbery	*Armed robbery*
	Robbery unspecified
	Unarmed robbery
Assault	*Aggravated/felony assault*
	Simple/misdemeanor assault
	Assault unspecified
	Assault of public officer
	Intimidation
	Hit and run driving with bodily injury
	Intimidating a witness
Other Violent	*Kidnapping*
	Blackmail/Extortion
	Rioting
	Child abuse
	Other violent offense
	Arson
Drug Trafficking	*Trafficking cocaine/crack*
	Trafficking heroin
	Trafficking marijuana
	Trafficking methamphetamine
	Trafficking other/unspecified controlled substance
Burglary	*Burglary*

Larceny	*Motor vehicle theft* *Grand/felony larceny* *Petty/misdemeanor larceny* *Larceny unspecified* *Receiving stolen property* *Trafficking stolen property* *Unauthorized use of vehicle*
Fraud	*Fraud/forgery* *Identity theft* *Embezzlement* *Bribery*
Other Property	*Destruction of property* *Hit and run with property damage* *Trespassing* *Possession of burglary tools* *Other property offense*
Drug Possession	*Possession of cocaine/crack* *Possession of heroin* *Possession of marijuana* *Possession of methamphetamine* *Possession of other/unspecified controlled substance*
Other Drug	*Unspecified cocaine/crack offense* *Unspecified heroin offense* *Unspecified marijuana offense* *Unspecified methamphetamine offense* *Unspecified other/unspecified drug offense*
Weapon	*Weapon offense*
Other Sex Offense	*Morals offense* *Indecent exposure* *Commercialized vice* *Contributing to the delinquency of a minor*
DUI/DWI	*Driving while intoxicated/under the influence, substance unspecified* *Driving while intoxicated/under the influence, alcohol* *Driving while intoxicated/under the influence, drugs*
Immigration	*Immigration offense*

Administration of Justice Offenses	*Escape from custody* *Flight to avoid prosecution* *Warrant* *Contempt of court* *Failure to appear* *Violation of restraining order* *Other court offense* *Prison contraband offense* *Sex offender registry offense* *Obstruction of justice*
Probation/Parole/ Supervised Release Violation	*Parole violation* *Unspecified probation/parole violation* *Probation violation*
Public Order Offenses	*Family-related offense* *Drunkenness/vagrancy/disorderly conduct* *Invasion of privacy* *Liquor law violation* *Other public order offense* *Curfew violation*
Other/Unspecified Offenses	*Vehicular manslaughter/homicide* *Negligent (involuntary) manslaughter/homicide* *Habitual offender* *Runaway* *Truancy* *Ungovernability* *Status liquor law violation* *Miscellaneous status offense* *Other offense* *Unspecified inchoate offense* *Military offense* *Not applicable* *Unspecified offense*

APPENDIX C

Regression Model Tables

Appendix C provides information on the regression models for each study group, including: estimate, standard error, odds ratio, and 95-percent confidence interval.

TABLE C-1.

Study Cohort: >24-36 Months						
Term	**Estimate**	**S.E.**	**Odds Ratio Exp(B)**		**95% CI**	
					Lower	**Upper**
(Intercept)	1.819	0.455				
Research Group						
Study vs. Comparison	0.064	0.076	1.07		0.92	1.24
Age-at-Release						
Age	-0.068	0.024	0.93	**	0.89	0.98
Age^2	0.000	0.000	1.00		1.00	1.00
Gender						
Female vs. Male	-0.332	0.110	0.72	**	0.58	0.89
Race						
Black vs. White	0.191	0.083	1.21	*	1.03	1.43
Other vs. White	0.245	0.197	1.28		0.87	1.88
High School Completion						
Yes vs. No	-0.578	0.078	0.56	***	0.48	0.65
Criminal History Category						
CHC II vs. CHC I	0.902	0.128	2.47	***	1.92	3.17
CHC III vs. CHC I	1.162	0.115	3.20	***	2.55	4.00
CHC IV vs. CHC I	1.770	0.147	5.87	***	4.40	7.83
CHC V vs. CHC I	1.834	0.238	6.26	***	3.93	9.98
CHC VI vs. CHC I	2.569	0.227	13.06	***	8.37	20.36
Guideline						
§2B1.1 vs. §2D1.1	-0.132	0.131	0.88		0.68	1.13
§2B3.1 vs. §2D1.1	-0.394	0.545	0.67		0.23	1.96
§2K2.1 vs. §2D1.1	0.248	0.122	1.28	*	1.01	1.63
§2L1.1 vs. §2D1.1	0.675	0.198	1.96	***	1.33	2.89
Other vs. §2D1.1	0.028	0.139	1.03		0.78	1.35
Violence						
Yes vs. No	0.626	0.216	1.87	**	1.22	2.86
Weapons Adjustment						
Yes vs. No	-0.141	0.180	0.87		0.61	1.23
Substantial Assistance						
Yes vs. No	-0.269	0.095	0.76	**	0.63	0.92
Safety Valve						
Yes vs. No	0.090	0.129	1.09		0.85	1.41
-2 Log Likelihood	-2557					
McFadden Pseudo R^2	0.209					
N	4,218					

Response Variable: recidivism (rearrest)

p-values: * p ≤ .05; ** p ≤ .01; *** p ≤ .001

TABLE C-2.

Study Cohort: >36-48 Months					
			Odds Ratio	95% CI	
Term	**Estimate**	**S.E.**	**Exp(B)**	**Lower**	**Upper**
(Intercept)	2.631	0.500			
Research Group					
Study vs. Comparison	-0.015	0.077	0.98	0.85	1.14
Age-at-Release					
Age	-0.114	0.026	0.89 ***	0.85	0.94
Age^2	0.001	0.000	1.00 **	1.00	1.00
Gender					
Female vs. Male	-0.381	0.121	0.68 **	0.54	0.87
Race					
Black vs. White	0.240	0.083	1.27 **	1.08	1.50
Other vs. White	0.187	0.190	1.21	0.83	1.75
High School Completion					
Yes vs. No	-0.338	0.081	0.71 ***	0.61	0.83
Criminal History Category					
CHC II vs. CHC I	0.600	0.149	1.82 ***	1.36	2.44
CHC III vs. CHC I	1.166	0.132	3.21 ***	2.48	4.16
CHC IV vs. CHC I	1.518	0.159	4.56 ***	3.34	6.24
CHC V vs. CHC I	1.641	0.198	5.16 ***	3.50	7.62
CHC VI vs. CHC I	2.268	0.190	9.66 ***	6.65	14.03
Guideline					
§2B1.1 vs. §2D1.1	-0.231	0.143	0.79	0.60	1.05
§2B3.1 vs. §2D1.1	0.315	0.352	1.37	0.69	2.73
§2K2.1 vs. §2D1.1	0.357	0.129	1.43 **	1.11	1.84
§2L1.1 vs. §2D1.1	0.104	0.326	1.11	0.59	2.10
Other vs. §2D1.1	0.072	0.154	1.07	0.79	1.45
Violence					
Yes vs. No	0.349	0.249	1.42	0.87	2.31
Weapons Adjustment					
Yes vs. No	-0.212	0.169	0.81	0.58	1.13
Substantial Assistance					
Yes vs. No	-0.112	0.094	0.89	0.74	1.08
Safety Valve					
Yes vs. No	-0.140	0.135	0.87	0.67	1.13
-2 Log Likelihood	-2409				
McFadden Pseudo R^2	0.197				
N	3,983				

Response Variable: recidivism (rearrest)

p-values: * $p \leq .05$; ** $p \leq .01$; *** $p \leq .001$

TABLE C-3.

Study Cohort: >48-60 Months						
			Odds Ratio		95% CI	
Term	**Estimate**	**S.E.**	**Exp(B)**		**Lower**	**Upper**
(Intercept)	3.390	0.706				
Research Group						
Study vs. Comparison	-0.009	0.095	0.99		0.82	1.19
Age-at-Release						
Age	-0.148	0.036	0.86	***	0.80	0.93
Age^2	0.001	0.000	1.00	**	1.00	1.00
Gender						
Female vs. Male	-0.618	0.169	0.54	***	0.39	0.75
Race						
Black vs. White	0.114	0.102	1.12		0.92	1.37
Other vs. White	0.237	0.259	1.27		0.76	2.10
High School Completion						
Yes vs. No	-0.526	0.100	0.59	***	0.49	0.72
Criminal History Category						
CHC II vs. CHC I	0.487	0.189	1.63	**	1.12	2.35
CHC III vs. CHC I	1.142	0.178	3.13	***	2.21	4.44
CHC IV vs. CHC I	1.788	0.213	5.98	***	3.94	9.07
CHC V vs. CHC I	2.300	0.243	9.98	***	6.19	16.07
CHC VI vs. CHC I	2.642	0.221	14.03	***	9.10	21.64
Guideline						
§2B1.1 vs. §2D1.1	-0.500	0.200	0.61	*	0.41	0.90
§2B3.1 vs. §2D1.1	0.226	0.396	1.25		0.58	2.73
§2K2.1 vs. §2D1.1	0.000	0.151	1.00		0.74	1.34
§2L1.1 vs. §2D1.1	0.207	0.713	1.23		0.30	4.98
Other vs. §2D1.1	0.145	0.208	1.16		0.77	1.74
Violence						
Yes vs. No	0.188	0.269	1.21		0.71	2.04
Weapons Adjustment						
Yes vs. No	-0.076	0.192	0.93		0.64	1.35
Substantial Assistance						
Yes vs. No	-0.253	0.117	0.78	*	0.62	0.98
Safety Valve						
Yes vs. No	-0.041	0.184	0.96		0.67	1.38
-2 Log Likelihood	-1482					
McFadden Pseudo R^2	0.213					
N	2,598					

Response Variable: recidivism (rearrest)

p-values: * $p \leq .05$; ** $p \leq .01$; *** $p \leq .001$

TABLE C-4.

Study Cohort: >60-120 Months						
			Odds Ratio		95% CI	
Term	Estimate	S.E.	Exp(B)		Lower	Upper
(Intercept)	3.100	0.403				
Research Group						
Study vs. Comparison	-0.203	0.056	0.82	***	0.73	0.91
Age-at-Release						
Age	-0.137	0.020	0.87	***	0.84	0.91
Age^2	0.001	0.000	1.00	***	1.00	1.00
Gender						
Female vs. Male	-0.294	0.094	0.75	**	0.62	0.90
Race						
Black vs. White	0.154	0.052	1.17	**	1.05	1.29
Other vs. White	0.013	0.172	1.01		0.72	1.42
High School Completion						
Yes vs. No	-0.332	0.051	0.72	***	0.65	0.79
Criminal History Category						
CHC II vs. CHC I	0.602	0.086	1.83	***	1.54	2.16
CHC III vs. CHC I	1.021	0.080	2.78	***	2.37	3.25
CHC IV vs. CHC I	1.396	0.096	4.04	***	3.35	4.87
CHC V vs. CHC I	1.674	0.114	5.33	***	4.26	6.67
CHC VI vs. CHC I	2.093	0.100	8.11	***	6.66	9.88
Guideline						
§2B1.1 vs. §2D1.1	-0.081	0.157	0.92		0.68	1.25
§2B3.1 vs. §2D1.1	0.481	0.229	1.62	*	1.03	2.54
§2K2.1 vs. §2D1.1	0.542	0.086	1.72	***	1.45	2.04
§2L1.1 vs. §2D1.1	1.090	0.754	2.98		0.68	13.05
Other vs. §2D1.1	0.317	0.105	1.37	**	1.12	1.69
Violence						
Yes vs. No	0.138	0.180	1.15		0.81	1.63
Weapons Adjustment						
Yes vs. No	0.061	0.070	1.06		0.93	1.22
Substantial Assistance						
Yes vs. No	-0.171	0.065	0.84	**	0.74	0.96
Safety Valve						
Yes vs. No	-0.006	0.097	0.99		0.82	1.20
-2 Log Likelihood	-4832					
McFadden Pseudo R^2	0.215					
N	8,578					

Response Variable: recidivism (rearrest)

p-values: * $p \leq .05$; ** $p \leq .01$; *** $p \leq .001$

TABLE C-5.

Study Cohort: >120 Months					
			Odds Ratio	95% CI	
Term	Estimate	S.E.	Exp(B)	Lower	Upper
(Intercept)	4.065	0.777			
Research Group					
Study vs. Comparison	-0.340	0.082	0.71 ***	0.61	0.84
Age-at-Release					
Age	-0.187	0.036	0.83 ***	0.77	0.89
Age^2	0.001	0.000	1.00 ***	1.00	1.00
Gender					
Female vs. Male	-0.251	0.210	0.78	0.52	1.17
Race					
Black vs. White	0.100	0.082	1.11	0.94	1.30
Other vs. White	0.183	0.440	1.20	0.51	2.85
High School Completion					
Yes vs. No	-0.055	0.075	0.95	0.82	1.10
Criminal History Category					
CHC II vs. CHC I	0.948	0.154	2.58 ***	1.91	3.49
CHC III vs. CHC I	1.156	0.138	3.18 ***	2.43	4.16
CHC IV vs. CHC I	1.358	0.147	3.89 ***	2.91	5.19
CHC V vs. CHC I	1.732	0.172	5.65 ***	4.03	7.93
CHC VI vs. CHC I	2.133	0.137	8.44 ***	6.45	11.04
Guideline					
§2B1.1 vs. §2D1.1	-0.106	0.262	0.98	0.39	1.41
§2B3.1 vs. §2D1.1	0.337	0.323	1.40	0.74	2.64
§2K2.1 vs. §2D1.1	0.758	0.170	2.13 ***	1.53	2.98
Other vs. §2D1.1	0.230	0.241	1.26	0.78	2.02
Violence					
Yes vs. No	-0.139	0.301	0.87	0.48	1.57
Weapons Adjustment					
Yes vs. No	0.165	0.087	1.18	1.00	1.40
Substantial Assistance					
Yes vs. No	0.218	0.306	1.24	0.68	2.26
Safety Valve					
Yes vs. No	0.231	0.325	1.26	0.67	2.38
-2 Log Likelihood	-2032				
McFadden Pseudo R^2	0.213				
N	3,551				

Response Variable: recidivism (rearrest)

p-values: * $p \leq .05$; ** $p \leq .01$; *** $p \leq .001$

ENDNOTES

ENDNOTES

1 *See, e.g.*, U.S. Sent'g Comm'n, Supplementary Report on the Initial Sentencing Guidelines and Policy Statements (1987); Kim Steven Hunt & Andrew Peterson, U.S. Sent'g Comm'n, Recidivism Among Offenders Receiving Retroactive Sentence Reductions: The 2007 Crack Cocaine Amendment (2014); U.S. Sent'g Comm'n, Report to the Congress: Federal Child Pornography Offenses 293–310 (2012); Linda Drazga Maxfield, Miles Harer, Timothy Drisko, Christine Kitchens, Sara Meacham & Matthew Iaconetti, U.S. Sent'g Comm'n, A Comparison of the Federal Sentencing Guidelines Criminal History Category and the U.S. Parole Commission Salient Factor Score (2005); Linda Drazga Maxfield, Miles Harer, Timothy Drisko, Christine Kitchens & Sara Meacham, U.S. Sent'g Comm'n, Recidivism and the "First Offender" (2004); Linda Drazga Maxfield, Miles Harer, Timothy Drisko, Christine Kitchens & Sara Meacham, U.S. Sent'g Comm'n, Measuring Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines (2004). Commission materials cited herein are available on the Commission's website at www.ussc.gov.

2 *See* Sentencing Reform Act of 1984, Pub. L. No. 98–473, § 212(a), 98 Stat. 1837, 1987 (codified as amended in 18 U.S.C. § 3553(a)).

3 *See* U.S. Sent'g Comm'n, *Guidelines Manual*, Ch.4, Pt.A, intro. comment. (Nov. 2021) [hereinafter USSG].

4 28 U.S.C. § 991(b)(1)(C).

5 In 2016, the Commission began its first multi-publication recidivism series which culminated with seven publications. *See* Kim Steven Hunt & Robert Dumville, U.S. Sent'g Comm'n, Recidivism Among Federal Offenders: A Comprehensive Overview (2016) [hereinafter 2016 Recidivism Overview Report]; Tracey Kyckelhahn & Trishia Cooper, U.S. Sent'g Comm'n, The Past Predicts the Future: Criminal History and Recidivism of Federal Offenders (2017) [hereinafter 2017 Recidivism Criminal History Report]; Kim Steven Hunt & Billy Easley II, U.S. Sent'g Comm'n, The Effects of Aging on Recidivism Among Federal Offenders (2017) [hereinafter 2017 Recidivism Age Report]; Louis Reedt, Kim Steven Hunt, James L. Parker, Melissa K. Reimer & Kevin T. Maass, U.S. Sent'g Comm'n, Recidivism Among Federal Drug Trafficking Offenders (2017); Kim Steven Hunt, Matthew J. Iaconetti & Kevin T. Maass, U.S. Sent'g Comm'n, Recidivism Among Federal Violent Offenders (2019) [hereinafter 2019 Recidivism Violence Report]; Matthew J. Iaconetti, Tracey Kyckelhahn & Mari McGilton, U.S. Sent'g Comm'n, Recidivism Among Federal Firearms Offenders (2019) [hereinafter 2019 Recidivism Firearms Report]; Ryan Cotter, U.S. Sent'g Comm'n, Length of Incarceration and Recidivism (2020) [hereinafter 2020 Recidivism Incarceration Report].

6 Ryan Cotter, Courtney Semisch & David Rutter, U.S. Sent'g Comm'n, Recidivism of Federal Offenders Released in 2010 (2021).

7 Tracey Kyckelhahn, Kristen Sharpe & Amanda Kerbel, U.S. Sent'g Comm'n, Recidivism of Federal Firearms Offenders Released in 2010 (2021); Vera M. Kachnowski, Melissa K. Reimer, Kevin T. Maass, Christine Kitchens & Kevin Blackwell, U.S. Sent'g Comm'n, Recidivism of Federal Drug Trafficking Offenders Released in 2010 (2022); Courtney R. Semisch, Cassandra Syckes & Landyn Rookard, U.S. Sent'g Comm'n, Recidivism of Federal Violent Offenders Released in 2010 (2022).

8 Kristin M. Tennyson, Ross Thomas, Tessa Guiton & Alyssa Purdy, U.S. Sent'g Comm'n, Recidivism and Federal Bureau of Prisons Programs: Drug Program Participants Released in 2010 (2022); Kristin M. Tennyson, Ross Thomas, Tessa Guiton & Alyssa Purdy, U.S. Sent'g Comm'n, Recidivism and Federal Bureau of Prisons Programs: Vocational Program Participants Released in 2010 (2022).

9 2020 Recidivism Incarceration Report, *supra* note 5, at 30.

10 While various statistical models may predict either a preventative or criminogenic relationship between length of incarceration and recidivism, those relationships may not be statistically significant.

Statistical significance indicates that the relationship observed, preventative or criminogenic, is unlikely to be a false positive (*i.e.*, indicating there is a relationship when, in fact, there is not). Statistical significance is important in that it provides a degree of certainty that an observed relationship is, in fact, not a false positive. Thus, it is possible that no statistically significant relationship between length of incarceration and recidivism is identified.

11 See Appendix A for a review of the literature on length of incarceration and recidivism.

12 *See*, *e.g.*, Daniel S. Nagin, Francis T. Cullen & Cheryl Lero Jonson, *Imprisonment and Reoffending*, 38 Crime & Just. 115, 169 (2009). A number of the regression studies examining length of incarceration and recidivism were designed to answer a different research question; time served was included only as a control variable, rather than explanatory variable. *Id.* at 168–69.

13 *Imprisonment and Reoffending* notes that conclusions regarding the relationship between length of incarceration and recidivism cannot be drawn from a number of the regression studies because of fundamental analytical flaws. Specifically, the regression studies are flawed in their model specification of the relationship between age and reoffending. *Id.* at 175.

14 See Appendix A for a review of the literature on length of incarceration and recidivism. Only two studies focusing on federal offenders were identified.

15 *See supra* note 14.

16 *See* William Rhodes, Gerald G. Gaes, Ryan Kling & Christopher Cutler, *Relationship Between Prison Length of Stay and Recidivism: A Study Using Regression Discontinuity and Instrumental Variables with Multiple Break Points*, 17 Criminology & Pub. Pol'y 731, 758 (2018).

17 *Id.*

18 *See* 2020 Recidivism Incarceration Report, *supra* note 5, at 30.

19 *Id.*

20 *Id.*

21 *See* Nagin et al., *supra* note 12, at 121 (concluding that "existing research [on the impact of imprisonment on subsequent recidivism] is not nearly sufficient for making firm evidence-based conclusions for either science or public policy").

22 The Commission collects and analyzes data on federal sentences to carry out its various statutory responsibilities. As authorized by Congress, the Commission's numerous research responsibilities include: (1) the establishment of a research and development program to serve as a clearinghouse and information center for the collection, preparation, and dissemination of information on federal sentencing practices; (2) the publication of data concerning the sentencing process; (3) the systematic collection and dissemination of information concerning sentences actually imposed and the relationship of such sentences to the sentencing factors in 18 U.S.C. § 3553(a); and (4) the systematic collection and dissemination of information regarding the effectiveness of sentences imposed. *See* 28 U.S.C. § 995(a)(12), (14)–(16). The Commission collects information for every federal felony and Class A misdemeanor offense sentenced each year. Sentencing courts are statutorily required to submit five sentencing documents to the Commission within 30 days of entry of judgment in a criminal case, including: (1) the charging document; (2) the plea agreement; (3) the Presentence Report; (4) the Judgment and Commitment Order; and (5) the Statement of Reasons form. *See* 28 U.S.C. § 994(w)(1). For each case in its Individual Offender Datafile, the Commission routinely collects case identifiers, sentencing data, demographic variables, statutory information, the complete range of court guideline application decisions, and departure and variance information from these documents.

23 The data used to conduct the analyses in this report includes information obtained pursuant to an interagency agreement with the FBI, which prohibits the Commission from releasing the dataset.

24 Appendix B provides a detailed description of the data collection methodology.

25 Nat'l Inst. of Just., U.S. Dep't of Just., *Recidivism*, https://nij.ojp.gov/topics/corrections/recidivism (last visited Mar. 3, 2022); *see also* Michael D. Maltz, Recidivism 1, 54 (2001) [hereinafter Maltz].

26 *See* Maltz, *supra* note 25, at 7–20; *see also* Ryan King & Brian Elderbroom, Urb. Inst., Improving Recidivism as a Performance Measure (2014).

27 *See*, *e.g.*, Christopher T. Lowenkamp, Marie VanNostrand & Alexander Holsinger, Investigating the Impact of Pretrial Detention on Sentencing Outcomes (2013).

28 *See* Maltz, *supra* note 25, at 61–64; s*ee also* Nat'l Inst. of Just., U.S. Dep't of Just., *Measuring Recidivism* (Feb. 20, 2008), https://nij.ojp.gov/topics/articles/measuring-recidivism.

29 *See*, *e.g.*, Mariel Alper, Matthew R. Durose & Joshua Markman, Bureau of Just. Stat., U.S. Dep't of Just., Update on Prisoner Recidivism: A 9-Year Follow-up Period (2005–2014) (2018) [hereinafter Alper]; Admin. Off. of the U.S. Cts., *Just the Facts: Post-Conviction Supervision and Recidivism* (Oct. 22, 2018), https://www.uscourts.gov/news/2018/10/22/just-facts-post-conviction-supervision-and-recidivism#chart1; William Rhodes, Christina Dyous, Ryan Kling, Dana Hunt & Jeremy Luallen, Abt Assocs., Recidivism of Offenders on Federal Community Supervision (2012).

30 *See* Maltz, *supra* note 25, at 55–60.

31 *See id.* at 56–58.

32 *See* Alper, *supra* note 29, at 14.

33 *See*, *e.g.*, 18 U.S.C. § 924(c)(1)(A)(i) (providing a five-year mandatory minimum for offenders convicted of using or carrying a firearm during and in relation to, or possessing a firearm in furtherance of, a crime of violence or drug trafficking crime); 18 U.S.C. § 2252(b)(1) (providing a five-year mandatory minimum for offenders convicted of receipt, distribution, and possession with the intent to distribute or sell child pornography); *see also* U.S. Sent'g Comm'n, An Overview of Mandatory Minimum Penalties in the Federal Criminal Justice System (2017).

34 *See* Michele Jonsson Funk, Daniel Westreich, Chris Wiesen, Til Sturmer, M. Alan Brookhart & Marie Davidian, *Doubly Robust Estimation of Causal Effects*, 173 Am. J. Epidemiology 761, 761–67 (2011).

35 Weights were created using a logistic link function with linear propensity score.

36 *See* Nagin et al., *supra* note 12, at 136, 142 (identifying five principal attributes that studies examining length of incarceration and recidivism should control for: age, sex, race, conviction offense, and prior record).

37 *See supra* note 14.

38 *See* 2017 Recidivism Age Report, *supra* note 5, at 3; 2016 Recidivism Overview Report, *supra* note 5, at A-1.

39 *See* 2016 Recidivism Overview Report, *supra* note 5, at A-1.

40 *See* 2017 Recidivism Criminal History Report, *supra* note 5, at 7; 2016 Recidivism Overview Report, *supra* note 5, at A-1.

41 *See* 2016 Recidivism Overview Report, *supra* note 5, at A-1.

42 *See id.*

43 *See* 2019 Recidivism Violence Report, *supra* note 5, at 3.

44 *See* 2019 Recidivism Firearms Report, *supra* note 5, at 4; 2016 Recidivism Overview Report, *supra* note 5, at A-1.

45 *See* USSG §§5C1.2, 5K1.1 (guidelines defining both safety valve and substantial assistance).

46 *See* Peter C. Austin, *An Introduction to Propensity Score Methods for Reducing the Effects of Confounding in Observational Studies*, 46 Multivariate Behav. Rsch. 399, 412 (2011). The threshold for weighting balance is 0.1 standardized mean differences. *Id.* This means the study and comparison groups should not have a standardized mean difference greater than 0.1 after matching and weighting.

47 *See* Daniel L. Rubinfeld, *Reference Guide on Multiple Regression*, *in* Reference Manual on Scientific Evidence 303 (3d ed. 2011) (providing an overview of regression modeling).

48 Appendix C provides the Odds Ratios for each research model.

49 For each of the study cohorts, balance was achieved between the study and comparison groups. The standardized mean differences between study and comparison groups ranged from 0.02 to 0.08; all below the conventional threshold of 0.1. See *supra* note 46 and accompanying text for discussion on the conventional 0.1 threshold.

50 *See supra* note 36 and accompanying text.

51 The difference in average time to rearrest was statistically significant. Welch's two sample t-test was used to test for statistical significance: t = -2.00, df = 2091, p = 0.03.

52 For the full regression models, including estimates for all study cohorts, see Appendix C.

53 The difference in average time to rearrest was not statistically significant. Welch's two sample t-test was used to test for statistical significance: t = -2.00, df = 1139, p = 0.09.

54 2020 Recidivism Incarceration Report, *supra* note 5.

55 *See id.* at 16-23

56 Employing the first variation of the alternative research design on the 2010 cohort, the Commission found a preventative effect for offenders sentenced to more than 120 months, however, that effect was not statistically significant. For offenders sentenced to more than 120 months, the unstandardized Beta weight for the study group was: B = -0.245, SE = 0.202, p = 0.225, [Exp(B) = 0.78, 95% CI (0.53, 1.16)]. In the second variation, the Commission found a statistically significant preventative effect for offenders sentenced to more than 60 months incarceration. For offenders sentenced to more than 60 up to 120 months, the unstandardized Beta weight for the study group was: B = -0.151, SE = 0.065, p < 0.05, [Exp(B) = 0.86, 95% CI (0.76, 0.98)]. For offenders sentenced to more than 120 months, the unstandardized Beta weight for the study group was: B = -0.294, SE = 0.081, p < 0.001, [Exp(B) = 0.75, 95% CI (0.64, 0.87)].

57 *See* Nagin et al., *supra* note 12.

58 *Id.* at 169.

59 *Id.* at 175.

60 *Id.* at 183.

61 Elizabeth Berger & Kent S. Scheidegger, Crim. Just. Legal Found., Sentence Length and Recidivism: A Review of the Research 27 (2021).

62 Dorothy R. Jaman, Robert M. Dickover & Lawrence A. Bennett, *Parole Outcome as a Function of Time Served*, 12 Brit. J. Criminology 5 (1972).

63 *Id.* at 6.

64 *Id.* at 29.

65 *Id.* at 19.

66 J. Kraus, *The Effects of Committal to a Special School for Truants*, 25 Int'l J. Offender Therapy & Compar. Criminology 130 (1981).

67 *Id.* at 133 tbl.2.

68 *Id.* at 131–32.

69 *Id.* at 133–34.

70 John E. Berecochea & Dorothy R. Jaman, Rsch. Div., Cal. Dep't of Corr., Time Served in Prison and Parole Outcome: An Experimental Study (1981).

71 *See* Nagin et al., *supra* note 12, at 167–69.

72 *Id.* at 169.

73 Elizabeth Piper Deschenes, Susan Turner & Joan Petersilia, *A Dual Experiment in Intensive Community Supervision: Minnesota's Prison Diversion and Enhanced Supervised Release Programs*, 75 Prison J. 330 (1995).

74 *Id.* at 352.

75 Thomas A. Loughran, Edward P. Mulvey, Carol A. Schubert, Jeffrey Fagan, Alex R. Piquero & Sandra H. Losoya, *Estimating a Dose-Response Relationship Between Length of Stay and Future Recidivism in Serious Juvenile Offenders*, 47 Criminology 699 (2009).

76 *Id.* at 716.

77 *Id.* at 726–29.

78 Donald P. Green & Daniel Winik, *Using Random Judge Assignment to Estimate the Effects of Incarceration and Probation on Recidivism Among Drug Offenders*, 48 Criminology 357 (2010).

79 *Id.* at 363.

80 *Id.* at 381.

81 G. Matthew Snodgrass, Arjan A. J. Blokland, Amelia Haviland, Paul Nieuwbeerta & Daniel S. Nagin, *Does the Time Cause the Crime? An Examination of the Relationship Between Time Served and Reoffending in the Netherlands*, 49 Criminology 1149 (2011).

82 *Id.* at 1162–67.

83 *Id.* at 1179.

84 *Id.* at 1166, 1173.

85 *Id.* at 1178–79.

86 Ilyana Kuziemko, *How Should Inmates Be Released From Prison? An Assessment of Parole Versus Fixed-Sentence Regimes*, 128 Q.J. Econ. 371 (2013).

87 *Id.* at 391 tbl.II, 392.

88 *Id.* at 393.

89 *Id.* at 394–95.

90 David Roodman, Open Philanthropy Project, The Impacts of Incarceration on Crime 101–15 (2017).

91 Benjamin Meade, Benjamin Steiner, Matthew Makarios & Lawrence Travis, *Estimating a Dose-Response Relationship Between Time Served in Prison and Recidivism*, 50 J. Rsch. Crime & Delinq. 525 (2012).

92 *Id.* at 534–35.

93 *Id.* at 539–42.

94 *Id.*

95 Michael Roach & Max Schanzenbach, The Effect of Prison Sentence Length on Recidivism: Evidence from Random Judicial Assignment (2015).

96 *Id.* at 2.

97 *Id.* at 1.

98 *Id.* at 6.

99 *Id.* at 11–12.

100 Daniel P. Mears, Joshua C. Cochran, William D. Bales & Avinash S. Bhati, *Recidivism and Time Served in Prison*, 106 J. Crim. L. & Criminology 83 (2016).

101 *Id.* at 102.

102 *Id.* at 101.

103 *Id.* at 118–23.

104 Rhodes et al., *supra* note 16, at 758.

105 *Id.*

106 2020 Recidivism Incarceration Report, *supra* note 5.

107 *Id.* at 8–9.

108 *Id.* at 30.

109 Instances of arrest or sentencing that appeared to be duplicates of existing events were removed by IOP. Minor offenses (*e.g.*, speeding) and arrest entries occurring outside of the eight-year follow-up period were removed and, therefore, not used to ascertain recidivism.

110 *See* 2016 Recidivism Overview Report, *supra* note 5, Appendix B.

111 The major crime categories, as ranked by the Commission, beginning with the most serious were: murder, violent sexual assault/rape, robbery, assault, other violent offense, drug trafficking, burglary, larceny, fraud, other property offense, drug possession, other drug offense, weapons offense, other sex offense, driving under the influence, immigration, administration of justice offense, probation/parole/supervised release violation, other public order offense, and other unspecified offense. *See infra* Table B-1.



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Sentence Length and Recidivism: A Review of the Research

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Abstract

In response to prison overcrowding concerns in recent years, many U.S. officials have undertaken efforts to reduce sentence lengths for certain crimes. However, it is unclear how these changes affect recidivism rates. Among the research on incarceration and recidivism, the majority of studies compare custodial with noncustodial sentences, while fewer examine the impact of varying incarceration lengths. This article reviews the research on the latter. Overall, the effect of incarceration length on recidivism appears too heterogeneous to draw universal conclusions, and findings are inconsistent across studies due to methodological limitations. For example, many study samples are skewed toward people with shorter sentences while others include confounds that render results invalid. Of the studies reviewed, some suggested that longer sentences provide additional deterrent benefits in the aggregate, though some studies also had null effects. None suggested a strong aggregate-level criminogenic effect. We argue that a conclusion that longer sentences have a substantial criminogenic effect, large enough to offset incapacitative effects, cannot be justified by the existing literature.

Keywords: sentencing, incarceration, prison, recidivism, sentencing policy, deterrence, custodial sentence

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INTRODUCTION

There is currently a high degree of public interest regarding how length of incarceration affects recidivism rates of released offenders. The interest is particularly strong in Los Angeles, where the recently-elected District Attorney has adopted policies that sharply reduce sentence lengths by omitting allegations that would otherwise increase sentences beyond the base sentence for the crime.[1] The policies require that allegations be omitted from charging documents altogether, seemingly so that judges can no longer use them to justify lengthier sentences. The policies are supported with a statement regarding empirical research in the field: "While initial incarceration prevents crime through incapacitation, studies show that each additional sentence year causes a 4 to 7 percent increase in recidivism that eventually outweighs the incapacitation benefit."[2] Despite the plural "studies" alluded to, only one unpublished manuscript is actually cited.[3] The manuscript's findings are in contrast with other research, and the methodology is not fully comparable to past literature. It is concerning that such a drastic policy change is based on only one study without full consideration of the evidence base.

Michael Mueller-Smith's findings have not been published in academic research, yet his claim that longer periods of incarceration disproportionately increase risk for recidivism has attracted prominent support from people within the academic community. For example, the dean of the U.C. Berkeley Law School co-authored a newspaper opinion piece where he asserted that sentence enhancement "approaches have exacerbated recidivism, creating more victims of crime."[4] A hyperlink in the online version of the article links to Mueller-Smith as authority for the assertion. A "friend of the court" brief filed in litigation over the policies, by one of the same co-authors, makes a similar assertion also citing the 2015 article.[5]

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Although Gascón's stated objective is to improve criminal justice policy based on empirical research, it is unclear whether Mueller-Smith's findings[6] hold when considering the wider body of research. Specifically, there is not much consistency supporting these claims throughout the entire breadth of research.[7] In fact, the assertion that lengthier sentences result in greater likelihood of reoffending contrasts sharply with findings from the last thorough review of the literature on the subject.[8] When considering the consistency and strength of findings across numerous studies, Daniel Nagin, Francis Cullen, and Cheryl Jonson[9] found "little convincing evidence on the dose-response relationship between time spent in confinement and reoffending rate." This article is 12 years old, though.

In 2022, a new review was published by Charles Loeffler and Daniel Nagin[10] that examined the relationship between incarceration experiences and recidivism. However, this review did not focus on the impact of varying sentence lengths. Rather, they focused on exposure to incarceration in general, and many of the studies reviewed compared custodial with non-custodial sentences. While they did find some recidivism reduction effects[11], the review did not tell us much about how varying lengths of incarceration affect recidivism.

An updated review of the literature of the last 12 years focused on the "dose-response relationship between time spent in confinement and the reoffending rate" is therefore needed.

I. DIFFICULTIES IN MEASUREMENT

Nagin, Cullen, and Jonson appear to have been writing for a larger audience than just researchers in their field, as they described the problems of measuring effects in criminal justice that need explanation for that broader audience. This article will follow a similar path, with frequent references to Nagin, Cullen, and Jonson for the "long form" explanation.

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In the physical sciences, it is generally possible to test a hypothesis with a tightly controlled experiment that eliminates all variables except those of interest. As we move to living things, individual variation in the test subjects becomes inevitable. As we move up the evolutionary ladder, ethical constraints become more restrictive. For studies actively involving humans, informed consent of the participants is required. Past studies with unwilling or uninformed subjects, such as the infamous Tuskegee Experiment,[12] are regarded with horror today.[13]

In medicine and social sciences, the randomized controlled trial (RCT) is often considered the "gold standard" for assessing the effectiveness of a policy, program, or intervention. In an RCT, researchers assign participants at random to either a treatment group or a control group. The treatment group receives the intervention or "treatment" to be evaluated. The control group receives a comparison intervention – typically either through the form of an alternative treatment, a "business-as-usual" treatment, or a placebo treatment (i.e., a "dummy treatment") that does nothing. The element of randomization is the key strength of this design that sets it apart from others, making it a true experiment rather than a quasi-experiment.[14] In contrast, an observational study design would simply compare those receiving a treatment with those who did not, based on data from participant records. In the latter, assignment is not random nor is it controlled by the researcher, which introduces a higher probability of bias known as "selection bias" that can compromise the generalizability of results.

These seemingly minute differences in study procedures have important ramifications for policy, because studies on similar topics with different methodological approaches often find contrasting results. This is also typical of the research assessing the relationship between

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imprisonment and recidivism, with different methodological procedures often resulting in mixed findings. There are several challenges in studying the relationship between imprisonment and recidivism. First, in circumstances related to incarceration, it is not ethical to assign people at random, so an RCT is not possible. Thus, any research on this topic needs to be quasi-experimental at best, with the resulting challenges in being able to ascertain causality. Though there are many types of quasi-experiments, and some designs resemble an RCT but lack random assignment. Without randomization, it is challenging to sufficiently control for the impact of outside factors, making it more difficult to ascertain a clear causal relationship between two things.[15] This is because a quasi-experiment can only minimize differences that are *observable*, while unobservable differences remain unknown.[16] In contrast, a well-executed RCT will ensure that both unobservable and observable characteristics are randomly balanced out between groups. Thus, quasi-experimental designs have lower causal validity than RCTs. That is, they are less able to demonstrate cause-and-effect relationships rather than mere correlations. There is also considerable variation in the approaches used to methodologically control for the impact of important characteristics (e.g., offending history), which can result in mixed findings. Finally, there are many ways of measuring recidivism, making it more complicated to compare results across studies.

Regarding quasi-experiments, studies are stronger when researchers have discretion to assign participants to groups and decide data collection and measurement procedures.[17] Nagin, Cullen, and Jonson encourage researchers to seek such opportunities. Researchers can take steps to strengthen their quasi-experiments and increase their causal validity, namely by: 1) strategically assigning subjects to groups in a way that minimizes observable differences

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between groups, or, when this is not possible, 2) using statistical controls to account for any observed differences between groups.[18]

One common approach to strategic assignment is a "matched-pairs" design, where participants who differ on an outcome of interest are paired based on other shared factors, and one person from each pair is randomly assigned to each group. While matched-pairs designs are not random, they tend to generate treatment and control groups that are statistically similar[19] that is more akin to that of an RCT. Some studies of imprisonment have used variations of this process where a courthouse randomly assigns cases to judges based on a random drawing.[20] Other times, authors may statistically account for observed differences between groups. This is often done by balancing groups using propensity score modeling (PSM), instrumental variables, or through incorporation of statistical controls for relevant variables. When done well, these methods have greater causal validity that are more akin to that of an RCT.

Observational studies are those where a researcher looks at the effect of an intervention (e.g., imprisonment) but does not interfere or try to influence outcomes; that is, they have no control over assignment to groups.[21] These studies can be retrospective (where past records are examined) or prospective (where data is collected in real-time during the study).[22] The differences between an observational study and an RCT were dramatically demonstrated to the general public during the Covid-19 pandemic.[23] Early observational studies raised hopes that a widely available and inexpensive drug, hydroxychloroquine, might be a promising treatment for Covid-19,[24] though multiple RCTs have since demonstrated otherwise.[25] Nonetheless, preliminary findings were touted in an unpublished manuscript[26] and circulated to millions on social media,[27] eventually leading to a rapid increase in off-label use of the drug.[28] This example

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is one of many where policy has outpaced empirical research, only to be met with lackluster results.[29]

A "natural experiment" refers to a design where researchers take advantage of some outside event (e.g., natural disaster, policy change, economic change) that produces measurable impacts, though it is not a "true" experiment. In natural experiments, researchers have no way of assigning people to groups -- thus, the groups are likely to differ from each other. However, when groups do differ from each other, researchers can partially compensate for this problem by including statistical adjustments to account for differences between groups. One example of a natural experiment is the 2009 revision to New York's Rockefeller Drug Laws and the impact on recidivism rates for drug offenders.[30] A more relevant example is a study by Francesco Drago, Roberto Galbiati, and Pietro Vertova[31] that examined recidivism patterns among offenders released from prison as a result of a bill passed by the Italian Parliament. We discuss this study in more detail in section II.

A key benefit of the RCT is higher causal validity, i.e., the ability to infer that one thing caused another, which is stronger than just detecting a correlation.[32] To argue causality between two things, such as incarceration and recidivism, one must eliminate every alternative explanation for that relationship. Randomization limits the possibility that alternative explanations exist, because the design ensures that unmeasured factors will be randomly distributed and therefore not affect results. In nonrandomized studies, the treatment group and the control group may be different, and efforts to control for those differences are hampered by the reality that the differing factors may be numerous, unmeasurable, or even unknown. With truly random assignment and a large sample, variation among participants is less critical because

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any differences will average out between groups and therefore not impact results.[33] If there are differences between groups, then these differences should be "controlled for" using statistical techniques.

The same is true in the study of crime and punishment.[34] A well-conducted randomized experiment with a large enough sample provides an assurance that the treatment group and the control group differ in no way other than the treatment, an assurance that observational studies cannot provide. However, in circumstances such as incarceration, it is typically not ethical to consider RCTs.[35] For example, there would be an obvious ethical problem in assigning people to arbitrary sentence lengths at random, particularly for serious crimes deserving severe punishment. How many people would give informed consent to being sentenced to five or ten years in prison, at random? Even if consenting defendants could be found, the individuals consenting would likely be so atypical that it would introduce additional bias to the design.[36] Further, one must consider how the public, and especially the victims, would react. With this in consideration, it is not surprising that Nagin, Cullen, and Jonson[37] found only two actual experiments doing so, mostly using old data, and only one of which involved serious adult offenders. They found the evidence from this group of studies weak due to the data and sampling constraints, coupled with the fact that many of the findings were not statistically significant.[38] Additionally, the methodologies were not consistent, and many of the studies reviewed by Nagin, Cullen, and Jonson[39] do not examine incarceration length as its own variable. It is often confounded with offense type, criminal history, or other factors. The Nagin et al. review is discussed in further detail below.

Selection bias is a major challenge when assessing the causal impact of incarceration on

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reoffending. This is because judges might be more likely to apply lengthier sentences for more serious criminals, so people who are selected for longer sentences will naturally differ from those with shorter sentences. Many studies attempt to account for selection bias using matching techniques or through applying statistical controls for things like offense type and prior records. However, these approaches are still susceptible to unmeasured factors.

Some recent studies exploit naturally occurring variability in the use of incarceration, reducing selection bias. This is often in the form of random assignment of cases to judges, which helps ensure that both unmeasured and measured case characteristics (e.g., criminal history, offense seriousness) are the same across judges. Judges with identical caseloads but differential use of incarceration can then be compared to see if recidivism differences are related to differences in sentence length. However, in this method the cases are not assigned at random to different "treatments" (i.e., length of incarceration) but rather to a factor that is correlated with but one step removed from the variable of interest.

Another way to exploit naturally occurring variability in sentence length is by relying on pre-existing sentencing grids that guide judges' sentencing decisions. This type of design compares cases above and below the relevant guideline thresholds, assuming that offenders on each side of the cutoff are similar to each other in most ways except sentence length.[40]

Understanding the degree to which research designs can vary provides insight into how studies on similar topics can come to different conclusions. The research assessing the relationship between imprisonment and recidivism follows a similar pattern, with different methodologies often resulting in varying findings.[41] Admittedly, there are several challenges in the research. First, many of the designs include "confounds," or variables that are directly

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aligned with the variable of interest. Even in the best research study, confounds can render results invalid. Second, most of the studies are skewed toward samples of lower-level offenders and those with shorter sentence lengths, which may not be generalizable to serious/violent offenders with longer sentence lengths. Third, there are many different ways of measuring recidivism, which can affect findings. For example, re-arrest rates tend to be higher than re-incarceration rates, so studies relying on the former will naturally have higher recidivism outcomes. In contrast, if re-incarceration rates include returns to prison for parole violations (not new crimes), then re-incarceration rates may trend higher than re-arrest rates. Follow-up timeframes also vary across studies, with lengthier follow-up periods leaning toward higher recidivism rates. These inconsistencies make it complicated to compare outcomes across studies.[42] We explain this in more detail below followed by examples from research.

When thinking about evidence-based policy, we have to consider the quality of the research evaluations being used to determine effectiveness, how effectiveness is being defined and measured, and how consistent the results are across a variety of methodologies, geographies, and contexts.[43] Recall how difficult causality is to prove. It is easier to demonstrate that two things are *correlated*; it is much more difficult to demonstrate that one *caused* the other.[44] Considering the impact of incarceration and recidivism, for example, it is unlikely that an empirical straightforward explanation exists. It is more likely that people respond to policy changes in a variety of ways that may or may not be directly or indirectly related to recidivism risk.[45] This is much different from claiming a causal relationship between two factors.

Even as evidence-based policy has gained some acceptance in the field, some policies such as Gascón's[46] are based on selectively cited research rather than the full breadth of research

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as a whole. When this happens, the policy relevance of research findings declines rapidly.[47] The U.S. criminal justice system has a lengthy history of rapid policy change without comprehensively assessing the empirical evidence, often resulting in damaging consequences that are difficult if not impossible to reverse. While reliance on empirical research is critical for effective policymaking, it depends on the quality of the studies, the consistency of the results, and other contextual factors across time and place.[48] Further, no matter how sound a study methodology is, no one study on its own provides a basis for policy transformation. Though, a series of consistent findings across studies with sound methodologies may do so.[49]

II. EFFECTS OF PUNISHMENT ON CRIME

Punishment is thought to affect crime in various ways, which are often referred to as purposes of punishment.

Deterrence. One key purpose that underlies many penal policies and crime control efforts is deterrence.[50] This can be in the form of specific deterrence or general deterrence. Specific deterrence is when the painful experience of being punished convinces an individual to refrain from crime in the future to avoid repeating the experience.[51] General deterrence, in contrast, is when the knowledge of others' punishments deters would-be offenders from committing crime due to fear of receiving a similar punishment.[52]

Incapacitation. Incapacitation is another key purpose of punishment that involves removing an individual from society, typically via long-term confinement or death. This physically prevents a person from committing crimes, or at least limits his targets to those inside the prison.[53]

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Rehabilitation. Rehabilitative efforts refer to any experiences (e.g., drug treatment programs, vocational training) that attempt to positively alter one's behavior, ideally transforming the offender into a person who will refrain from crime for reasons other than incapacitation or fear of punishment.[54] The inverse of rehabilitation is a criminogenic effect, or the notion that prison is a school for crime and people come out more crime-prone than when they went in.[55] Many of these theories argue that interactions and socialization within prisons can lead to the learning of criminal behavior from fellow inmates.[56] However, this effect tends to be more relevant to lower-level offenders who are more similar to offenders sentenced to probation.[57] All of these effects are possible, and sorting them out is one of the major challenges of research in this area.[58]

As mentioned, some of the explanation for inconsistency of findings is 1) heterogeneity in response to punishment for different types of offenders; 2) differences in study design, measurement, geography, and other methodological factors; and 3) variation in the degree to which policies are actually enforced/implemented.[59] Not surprisingly, crime reduction impacts tend to be stronger when programs are successfully implemented, something that is not always easy to control or monitor.

The next section will briefly describe what is known about general deterrence and incapacitation, followed by a review of the literature on the post-release effects specific to the individual.

A. General Deterrence.

General deterrence is based on the basic principle of human behavior that if the cost of doing something outweighs the reward, then fewer people will do it.[60] The principle is so basic

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that the debatable question is not whether a deterrent effect exists, but only how strong it is.[61] There is also little doubt that deterrent effects include components of both how severe the punishment is and how likely it is to be imposed.[62] Obviously, a punishment would have no significant deterrent effect if it was so mild as to be inconsequential or if it was never imposed. Considering the empirical evidence from a wide range of studies on deterrence theory, research has consistently shown presence of a deterrent effect of punishment in at least some contexts.[63] For example, a study by Eric Helland and Alexander Tabarrok[64] examined California's widely-known "three strikes" law by comparing post-sentencing criminal activity for people convicted of a strikable offense with a group of similar offenders who were *tried* for their third strikable offense but were instead convicted of a non-strikable offense. In addition to California, the study examined people within New York, Illinois (both which did not have three strikes laws), and Texas (which had a similar three-strikes law that preceded California). Regression models found that the legislation significantly reduced three-year felony arrest rates by 17-20% among criminals with two strikes in California and Texas – the states with three-strikes laws – but not in Illinois or New York.

Other studies have explored the effect of sentence enhancements on recidivism. Daniel Kessler and Steven Levitt[65] examined the changes in California crime rates following the passage of a voter initiative in 1982 that provided enhanced sentences for repeat offenders of certain crimes.[66] Kessler and Levitt[67] determined that enhancement-eligible crimes in California dropped four percent in the first year after enactment, compared to the overall national trend. This drop could not be an incapacitative effect because the persons sentenced for these crimes would not have begun the enhanced part of the sentence; this suggested that the drop was a

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deterrent effect. Similar legislation on sentencing enhancements for gun crimes was studied by David Abrams,[68] who found that gun use enhancements reduced gun-related robberies by an average of 6.6%, 14.8%, and 17.9% when examined at one, two, and three years after enactment, respectively. Abrams[69] also found small reductions in gun-related assaults, an average drop of 1.81% and 0.82% after two and three years, respectively.

Francesco Drago, Roberto Galbiati, and Pietro Vertova[70] studied an unusual type of natural experiment in which sentence enhancements for recidivism were applied irrespective of criminal history and current offense, meaning that the impact of sentence enhancements could be examined independently of criminal history and offense characteristics. Under an Italian clemency law passed in 2006, a cohort of inmates were released from prison early on the condition that if they offended again within five years, the time subtracted from their sentence would be added on to a new sentence for any subsequent crime. People in this cohort had varying lengths of time remaining on their sentence (ranging from one month to three years), so they were subject to sentence enhancements of various lengths, should they reoffend. Drago and colleagues[71] examined database records for 25,800 of these individuals to study the deterrent effect on future offending. They found that those threatened with lengthier enhancements were somewhat less likely to reoffend within the seven months initially following release.[72] Specifically, a one-month increase in anticipated punishment lowered the probability of re-imprisonment by about 0.16%.[73]

There is considerable room for disagreement about deterrence,[74] but the legitimate disagreement is about the magnitude and conditioning of the effect, not the existence of an effect.[75] Arguments that punishments always deter and never deter are equally and oppositely

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wrong. Given that sanctions do have some deterrent effects, eliminating them altogether would produce some increase in crime. A policy argument for eliminating sanctions would require justification that the elimination would produce benefits sufficient to offset the additional crimes. Policymakers often fail to consider the potential unintended effects of expeditious policy change. This is an important oversight that can undercut the effectiveness of any policy. For example, mass release of prisoners is one approach to reducing the prison population. However, this could negatively impact public safety if done too rapidly without adequate consideration of recidivism risk.

B. Incapacitation.

Incapacitation is the most obvious effect of punishment on crime. In most cases, everyone outside of the prison walls will be safe from any further crimes by a given criminal who has been removed from society.[76] The existence of an incapacitative effect is not debatable. Estimating the magnitude is not a simple task, and requires estimating the crimes that would be committed by the prisoners if they were either released or never incarcerated for their crimes. Not surprisingly, this is hard to do without error. Due to the difficulties involved in formulating such a prediction, it is difficult to ensure that treatment and comparison groups are comparable in this regard. This presents a significant methodological challenge in constructing an adequate comparison group.

Alex Piquero and Alfred Blumstein[77] note that estimates of the incapacitative effect "vary markedly from study to study." This may be an understatement. The primary factor in dispute is the estimated number of crimes per year committed by a criminal who would have otherwise been imprisoned. However, the overall estimate is largely irrelevant to questions of sentence

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enhancement policy because individual rates of crime commission vary widely. Research shows that a small percentage of habitual offenders are likely responsible for a large portion of crime,[78] and their offending trajectory may differ from nonhabitual offenders.[79]

High-rate chronic offenders appear to be a small percentage of offenders whose offending trajectory generally follows an age-crime curve,[80] but with an overall higher likelihood to recidivate than lower-rate offenders.[81] Other research suggests that this effect may be pronounced for violent offenders (such as those using weapons), who have been found to be re-arrested at higher rates and for more serious crimes than nonviolent offenders.[82] This difference was the most pronounced for those identified as "career offenders,"[83] suggesting that a small number of offenders are likely responsible for a large portion of crime. Data from the U.S. Sentencing Commission also shows that seriousness of offense is linked to increased recidivism rates.[84]

One implication for future research would be to learn how to better identify these high-rate chronic offenders. In theory, substantial crime reduction could be achieved by incarcerating a relatively small number of prolific offenders, a phenomenon known as "selective incapacitation." In practice though, identifying those most likely to reoffend is not a precise exercise.[85] Further, if the factors used to identify prolific offenders are not related to culpability, longer sentences for those identified may be unjust.[86]

Despite these issues, there is no doubt that incapacitation plays an important role in public safety, as even the foremost opponents of "mass incarceration" agree. According to Alfred Blumstein,[87] "Incapacitation through imprisonment is probably the only effective means of restraining the violent crimes committed by some individuals otherwise out of social control."

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The key question, then, is whether the incapacitative benefit for "individuals otherwise out of social control" is outweighed by a criminogenic effect – i.e., whether longer sentences will actually increase recidivism rates. In the next section of this paper, we review the research to determine whether it is rigorous enough to answer this question. The research reviewed includes studies published prior to March 2022.

III. INCARCERATION AND POST-RELEASE RECIDIVISM

The effects of incarceration on a prisoner's post-release recidivism includes at least four conceptually different mechanisms: rehabilitation, general deterrence, specific deterrence, and criminogenic effects, as described in section II. To understand the big-picture relationship between incarceration and recidivism, though, it is not necessary to separate these mechanisms. Thus, the research often attempts to examine the overall correlation between incarceration and subsequent offending while statistically controlling for other factors.[88]

Aggregate trends in recidivism rates are highlighted in a Bureau of Justice Statistics (BJS) report[89] that examined recidivism patterns of 73,600 federal prisoners from 24 states, with a lengthy follow-up period of ten years. Criminal history records, prison admissions/release data, and arrest records were used to provide information about offending patterns and recidivism. Among the sample, 80.5% were arrested at least once for a new crime (i.e., not a parole violation) during the ten years following release, and 40% were re-arrested for a violent crime. The report did not focus on incarceration length of stay specifically, though length of stay was examined in a prior report by Ryan Cotter[90] that is discussed in more detail below.

A. The Nagin, Cullen, and Jonson 2009 Review.

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For research before 2009, we already have the benefit of a thorough review.[91] Nagin, Cullen, and Jonson[92] reviewed 5 studies that used random assignment, 11 quasi-experiments,[93] and 31 regression-based studies. This review highlights a key distinction between two sentencing decisions: (1) whether to sentence the defendant to prison or jail at all, rather than a noncustodial sentence such as a fine or probation; and (2) for those sentenced to incarceration, how long the sentence will be. The two are not the same, each with a different causal mechanism,[94] and studies of these different effects should be considered separately.[95] Only the second of these is relevant to the current article.

The first topic of inquiry involves offenders who are on the "policy margin between prison and probation sentences."[96] These offenders tend to have less serious current convictions and fewer if any prior convictions. Going to jail for any time at all disrupts family, social, and employment relationships followed by social stigma, all of which is more likely to interfere with resumption of lawful employment for a first-time or less serious offender than it is for repeat violent offenders.[97] In comparison, there are more serious offenders who do not fit within this "policy margin," for whom probation is clearly not an appropriate sentence. Offenders who might be better candidates for probation are those who are first-time offenders or those convicted of non-violent offenses.

In contrast, offenders who are not candidates for probation typically have committed especially grave crimes or are already repeat offenders.[98] Sentence enhancements, which can increase the penalty for certain crimes, typically are applied for offenders with prior felony convictions or those who are particularly culpable, wanton, or cruel.[99] For example, a robbery with a gun presents a greater threat to safety than a robbery committed without a weapon (or

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with a less lethal weapon), and thus is eligible for an enhanced sentence.[100] In this case, the use of a gun increases an offender's culpability and therefore justifies a harsher punishment. Prior felony convictions are also often used as a justification for an enhanced sentence, because criminal history tends to generally indicate a higher recidivism risk.[101] For example, in California, one who commits a crime on the state's "serious felony" list after one or more previous convictions for crimes on the same list may be eligible to receive an enhanced sentence.[102]

As the purpose of this article is to discuss the relationship between sentence length and recidivism, the studies discussing "the effect of custodial versus noncustodial sanctions"[103] are pertinent only to the extent they have other implications. The studies examining "the effect of sentence length on reoffending" are more directly relevant, though there are fewer of them.[104]

Among the studies reviewed by Nagin, Cullen, and Jonson[105] that specifically examined the impact of sentence length on recidivism, there were three total experimental designs across two articles (one study combined both experiments into one paper).[106] One showed non-statistically significant deterrent effects.[107] The other article published results from two experiments in the same paper, and showed increased recidivism among inmates randomly selected for a shorter sentence.[108] However, results from the latter are invalid due to various methodological issues discussed below, and do not add value to our current review.

John Berecochea and Dorothy Jaman [109] used an experimental design to examine recidivism rates among a sample of inmates convicted of various violent and non-violent offenses, all of whom had received a set parole date but still had six months or more remaining on their sentence. The jurisdiction used a random number table to allocate inmates to two groups,

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one of which would have their parole dates advanced by six months (thereby reducing their length of stay by six months). Randomization was successful, generating two groups that were comparable with each other. Average time served was about 35 months, with a difference of 6.6 months between groups (reflective of treatment group status). Recidivism was measured at one-, two-, and three-year follow-ups by a binary indicator of returning to prison (for either a court conviction, new felony, or for a parole violation) vs. not returning to prison. At the end of the first year, slightly more of the early release group returned to prison (34%) than the control group (28%). At the end of two years, 47% of the early release group had returned to prison, compared to 40% of the control group. These effects showed a slight deterrent effect of lengthier sentences on recidivism, however, neither of these differences were statistically significant and there was no sizable deterrent nor criminogenic effect either way.

Elizabeth Deschenes, Susan Turner, and Joan Petersilia[110] conducted two randomized experiments to evaluate the effectiveness of two intensive supervision programs (ISPs) in Minnesota. The two programs were intensive community supervision (ICS) and intensive supervised release (ISR), both of which diverted people to community supervision in lieu of prison time. The former was a true diversion program that diverted people from incarceration prior to their prison sentence, while the latter was more akin to an early release program. The offenders were male, and the majority were arrested for theft, burglary, or probation violations, all of whom were facing or serving prison time of 27 months or less. The authors compared the number of days in confinement for: 1) ICS (the true diversion program) vs. ICS control, and 2) ISR (the early release program) vs. ISR control.

Recidivism was quantified by proportions of people arrested or re-incarcerated for a new

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arrest or technical violation. Data on arrests, technical violations, and criminal histories was obtained at six- and 12-month follow-ups, as well as 24-month follow-ups for the ICS groups only. Randomization was successful, and groups in both experiments were statistically equivalent on criminal history at baseline. Unfortunately, though, prison length of stay is only a minor consideration in this study. On its face, the study by Deschenes et al.[111] actually appears to be a study of community supervision versus confinement, where length of incarceration was only considered as a minor point. In addition, all of the sentence lengths are very short and measured in days, so this is certainly a limited measure of "length of stay."

The ICS program was a true diversion program in that it diverted people from prison to the community as part of their sentence, while people in the ISR program were already incarcerated and diverted to the community during the last six months of their sentence (by being released early). In the ICS comparisons, offenders (n~248) experienced significantly different lengths of incarceration (an average of 108 days and 220 days for the ICS and control group, respectively) prior to being randomly assigned into groups. At the two-year follow-up (only available for ICS groups), there were no significant differences in terms of re-incarceration rates (about 50% in each group) nor re-arrests for new crimes (about 60% in each group). However, the only reason why groups differed in terms of time served (a difference of about four months) is because one group was purposefully diverted. Given these considerations, it seems that differences regarding time served is confounded with the treatment group.

The ISR program was an early release group that released people early from prison if they had six months or less remaining on their sentence. Individuals who had six months or less remaining on their prison sentence (n~350) were randomly assigned to either finish their

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sentence or be released early. Both groups served an average of 44 days in confinement. Unfortunately, because groups served similar amounts of time in confinement, it is not possible to ascertain a causal relationship between length of stay and recidivism. In addition, there were no statistically significant differences between groups regarding one-year re-arrest rates (15% and 21% for treatment and control, respectively) or the likelihood of returning to prison (about 50% for both groups).

In the Nagin et al.[112] review, there were three quasi-experimental designs,[113] though the overall "results of these studies are quite varied."[114] Indeed.

Dorothy Jaman, Robert Dickover, and Lawrence Bennett[115] conducted a quasi-experimental matching study using a sample of 390 parolees from California prisons. All participants had been incarcerated for first-degree robbery or second-degree burglary, and data were collected from four periods in parolees' lives: pre-institutional, admission, release, and first two years on parole. Participants were matched on a number of factors related to parole outcome (e.g., offense category, age), generating 75 matched pairs for the first-degree robbery group and 120 matched pairs for the second-degree burglary group. For each pair, one person served more than the median time of 45 months, considered the "high dose" group, while the other person in the pair served less than the median, considered the "low dose" group. For both offense types, treatment and comparison groups were similar to each other on all observed factors, except for time spent in confinement. Unfortunately though, the groups likely differed on some unobserved factors. Specifically, this study examined a time and place where parole board discretion would have heavily impacted release decisions. Parole boards' release decisions are made based on a deliberate effort to predict whether someone would reoffend, and there are likely myriad factors

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examined by the parole board that are not controlled for in this study. This increases the risk that groups might differ in an important way.

For first-degree robbery, the men in the low dose group served 36 months (3 years) on average and those in the high dose group served 65 months (5 years) on average. The authors were then able to compare the two categories of 'time served' and the relationship with recidivism at six months, one year, and two years post-release. Recidivism was measured by unsuccessful parole outcome, meaning that the person returned to prison. The authors found small criminogenic effects on re-incarceration rates for the high dose group for all follow-ups. The difference between groups at the six-month follow-up was non-significant (4% and 8% for low dose and high dose groups, respectively). However, at the one-year follow-up, re-incarceration rates were 6.7% for the low dose group and 16.1% for the high dose group (a statistically significant difference). At the two-year follow up, the difference was still statistically significant, with 37.4% those in the high dose group being re-incarcerated, compared with 18% of those in the low dose group.

In the second-degree burglary group, the average time spent in confinement was 24 months (2 years). The average time served was 16 months for the low dose group and 36 months for the high dose group. The low dose group was less likely to return to prison than the high dose group; however, this was not significant until the two-year follow-up. At six months, the low dose group had a lower average percentage of returning to prison (14.2%) than the high dose group (11.7%). At the one-year follow-up, the low dose group had a slightly lower rate of returning to prison (24.2%) than those in the high dose group (25.8%). While the findings from the first two follow-ups were not statistically significant, a statistically significant criminogenic

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effect emerged at the two-year follow-up, with the low dose group having a significantly lower rate of returning to prison (42%) than those in the high dose group (46.7%).

In other words, this study suggested a criminogenic effect of longer sentences. However, the sample was limited to robbery and burglary offenders with an average time served of 27 months, so it is hard to know whether these results would extend to more serious criminals or those serving longer sentences. Further, these results could have been impacted by unobserved factors related to parole board discretion, as discussed above.

J. Kraus[116] conducted a quasi-experimental matched-pairs study using a sample of 446 juvenile offenders convicted mostly of theft and burglary. This study primarily compared probationers with non-probationers regarding recidivism rates, and a 'length of stay' variable was included as part of the analysis. Kraus first used several demographic variables and data from criminal records on offense type and the number and length of stays in institutions to create 233 matched pairs of offenders. Then, he continued to collect data on recidivism for five years post-release. Due to the different severity levels of the offenses, the sentence lengths varied by offense type, which was used as a proxy for time served. Though, as measured, "time served" was actually indicative of offense type rather than measuring the actual impact of length of confinement.

Relatedly, this study seemed to compare differences in recidivism across different offenses, rather than actually examining differences in incarceration length. Findings suggested that some juveniles might experience higher numbers of criminal offenses after committal to an institution, but this effect was based on offense type. For example, offenders convicted of "stealing and burglarizing" were less likely to recidivate after spending time in prison, but there

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were no differences regarding recidivism rates for motor vehicle theft, assault, and sexual offenses. However, offense type is highly correlated with length of confinement, so the impact of time served is not clearly isolated in this particular study. Due to this confound, there are no valid results that can be drawn from this study regarding the impact of time served on recidivism. Additionally, most of the offenders were juveniles serving sentences of less than two years, limiting generalizability of the sample.

A longitudinal quasi-experiment by Loughran and colleagues[117] examined recidivism rates among 921 juvenile offenders from two large cities. Most of them had been convicted of a felony, though they all had relatively short sentences (the maximum sentence was 15 months). Recidivism was measured by post-confinement re-arrest rates and self-reported re-offending, with data collected at six-month intervals for the first three years and annually for the fourth year. The main analyses compared probationers with non-probationers, but a portion of the analysis examined the marginal benefits for longer length of stay once the institutional placement decision had been made. The authors tested two iterations of dosage categories; the first iteration included four dosage categories (i.e., 0-6 months, 6-10 months, 10-13 months, and >13 months) and the second iteration included five dosage categories (i.e., 0-3 months, 3-6 months, 6-9 months, 9-12 months, and >12 months). For both iterations, dosage categories were compared to each other to examine whether different lengths of stay impacted future offending.

Overall, they found little impacts of longer length of stay and future rates of re-arrest or self-reported offending. Re-arrest rates were lower for people serving more than three months and for those serving 13 months or more (for the in-between categories, rates appeared more similar). However, the samples for each of these categories were so small that the statistical

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power was quite low. In addition, 28 out of 66 important covariates (e.g., offending history, exposure to violence, legal cynicism, and association with antisocial peers) were statistically different between dosage categories, hampering the validity of these comparisons. Due to the low statistical power and the lack of statistical equivalence between categories, the study did not show strong support for either a deterrent effect or a criminogenic effect resulting from longer lengths of confinement.

Based on the Nagin et al.[118] review, there is little evidence to support criminogenic effects related to longer periods of incarceration. First, these studies tended to compare confinement vs. non-confinement and typically only included length of stay as a minor point. Secondly, the studies are compounded by a number of methodological issues, such that only three of the six high-quality studies reviewed by Nagin et al.[119] are actually helpful for understanding how differences in time served affect recidivism. The bottom line is that as of 2009, "there [was] little convincing evidence on the dose-response relationship between time spent in confinement and reoffending rate."[120] That is, studies did not clearly demonstrate that longer prison sentences increased recidivism.[121]

B. Subsequent Research.

As discussed above, estimating the causal relationship between length of incarceration and recidivism is difficult for a variety of reasons,[122] and only a handful of methodologically rigorous studies have attempted to do so since the 2009 review.[123] The findings are still mixed, providing little conclusive evidence for or against the specific deterrent effects of imprisonment. Of the studies published since, three employed judge-assignment pseudo-randomization strategies and collected data of key variables after the randomization.[124] Eight studies exploited

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natural experiments and relied on pre-existing data while attempting to control for other factors using methods such as propensity score matching (PSM), instrumental variables, or controlling for observed factors in statistical models.[125] Finally, one study re-examined data from two of the prior studies but with different analytical strategies.[126]

Sarah Walker and Jerald Herting[127] examined 22,276 matched pairs of juvenile cases that were filed in 32 court jurisdictions in a northwest state from January 2002 through December 2015. One-year recidivism was measured by two binary indicators: whether the youth had a court filing for a misdemeanor within 12 months, or whether they had a court filing for a felony within 12 months. The main analysis compared those who were detained pretrial with those who were not, while controlling for factors such as prior record, offense severity, and demographics. When number of days in jail was included as a predictor variable, the authors found a small, statistically significant increase of 1% in felony recidivism per day of incarceration. However, sentence length is confounded with pretrial detainment in this case, as any differences in length of stay would be attributable to differences in pretrial detainment. Because the types of offenders being detained pretrial are likely different from those that are released, it is very unlikely that the effects of days in jail could be untangled from the effects of pretrial detainment itself. In addition, the number of days spent in jail was heavily skewed, with a range of .03 to 362 days, a mean of 8 days, and a mode of 2 days, which prohibits any valid comparisons across varying sentence lengths. Thus, the results do not add value to the current paper.

Randi Hjalmarsson and Matthew Lindquist[128] examined the impact of two Swedish early release reforms in 1993 and 1999 that held prison sentences constant but increased the share of time inmates were required to serve from one-half to two-thirds. This created natural variation in

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days served, which allowed the authors to compare individuals with the same sentence length who served different amounts of time incarcerated. The sample was comprised of 46,800 individuals who began their sentences between 1992 and 2001. Original sentence lengths ranged from 4-48 months, and the average sentence length was 11.7 months. Those exposed to the reform served an additional 46 days in jail, on average. Recidivism was measured in three ways: any conviction, more than one conviction, and any return to prison. This was measured at 12, 24, and 36 months.

The authors employed a regression model that examined the impact of sentence length on recidivism while controlling for various related factors (e.g., offense history, offense type). Results showed that people who were affected by the legislation had lower rates of recidivism across all three follow-ups. Specifically, reform exposure significantly decreased the rate of people with one new conviction at 12 months by -.015 (though this was not statistically significant at 24 or 36 months). Reform exposure was also associated with significant declines in return to prison rates when measured at 12 months (-.029) and 24 months (-.020), but not at 36 months. This reduction was driven by property offenders, older offenders, those with prior incarcerations, and those with no recent history of employment. The authors also found beneficial labor effects and improvements in long-term health outcomes for people affected by the reform. These effects were driven by specific at-risk populations (e.g., people with pre-incarceration mental health problems). The authors argued that these people benefitted from in-prison health and treatment services, which could explain why increased length of stay was associated with better outcomes.

Benjamin Meade, Benjamin Steiner, Matthew Makarios, and Lawrence Travis[129]

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examined one-year felony re-arrest rates using a quasi-experimental design with a sample of nearly 2,000 parolees in Ohio. Offenders were all released at the same time following statewide changes in parole statutes, but differentiated in terms of time served. The goal of the study was to isolate the impact of time served (measured by the categories: <1 year, 1-2 years, 2-3 years, 3-5 years, and >5 years) on felony re-arrest rates. Because groups naturally occurred and likely differed from each other, the authors used pre-existing data to generate propensity scores to balance groups on important factors (e.g., prior convictions). The average effect for time served on recidivism suggested that individuals who served longer sentences in prison had lower rates of recidivism. The results showed that the odds of felony re-arrest were highest among those serving between one and two years. In comparison, those serving less than one year had slightly decreased odds of re-arrest. Similarly, those serving two years or more also had decreased odds of re-arrest. Aside from the people serving less than one year, the odds of re-arrest decreased as time served increased. This deterrent effect was statistically significant for those serving more than five years.

Meade and colleagues[130] opine that potentially longer prison terms may deter people from committing more serious crimes rather than being deterred from committing crime altogether. Regardless, it is possible that offense history and seriousness of the initial crime may confound with recidivism rates, making it difficult to isolate the impact of length of stay on its own. Importantly though, the observation of initial deterrent effects (for those serving less than one year), followed by criminogenic effects (for those serving one to two years), followed again by deterrent effects (for those serving more than two years) suggests that the relationship may be curvilinear rather than linear. This has important implications for research, particularly for

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studies that rely on samples with short sentences. If time served increases criminogenic effects up until the point of two years, this means that studies examining offenders serving two years or less will be prone to finding criminogenic effects. Moreover, if a curvilinear relationship does exist, it will not be fully captured in studies that rely on offenders with overall short sentences. Another important consideration is that offenders with short sentences are typically less serious offenders, and these findings are may not be applicable to more serious offenders who typically serve longer sentences.

Daniel Mears, Joshua Cochran, William Bales, and Avinash Bhati[131] studied the recidivism patterns among a cohort of more than 90,000 violent and non-violent inmates released from Florida prisons. The study was a quasi-experiment where authors examined the impact of time served (in months) on one-, two-, and three-year felony re-conviction rates. Groups were naturally occurring and were not similar to each other at the outset. The authors sought to remedy this by generating propensity scores with pre-existing data that balanced groups on variables related to time served. Among the whole sample, the average time served was two years, and 47% of inmates were re-convicted of a new felony offense within three years post-release. Similar to Meade et al.,[132] Mears et al.[133] were interested in how linear models and curvilinear models can yield different results. The authors estimated multiple time series models that hypothesized various positive, negative, and curvilinear offending trajectories. Each model included specifications regarding the direction of the hypothesized relationship between variables and included various covariates in the model to control for pre-incarceration differences between groups. The authors compared results across the three iterations to look for consistencies.

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They found similar results across all trajectory iterations, but there were a few interesting caveats. For people serving less than one year, an initial criminogenic effect emerged with significant increases in felony re-conviction rates at the one-year follow-up. However, this was not significant in subsequent follow-ups. For people serving one to two years, a deterrent effect emerged, with significant decreases in recidivism rates at one- and two-year follow-ups. Deterrent benefits tapered off once terms exceeded two years, resulting in no criminogenic or deterrent effect after this point. Results were consistent across all models, though actual estimates varied. Similar to Meade et al.,[134] Mears et al.[135] found initial criminogenic effects followed by deterrent effects, suggesting that the relationship between time served and recidivism may be curvilinear (rather than linear). Mears et al.[136] described the curvilinear relationship as an "inverse U-shape."

The finding of a curvilinear relationship has important implications for research and may explain a lot of the mixed findings. If length of stay initially increases recidivism *before* decreasing it, studies with samples that are skewed toward shorter sentence lengths may not capture the curvilinear relationship, particularly those relying only on linear models. Thus, they are unable to observe the subsequent deterrent effect that occurs as sentence lengths increase and are prone to finding criminogenic effects. Further, some research that has used samples with wider variations in sentence length[137] have found similar results suggesting a curvilinear relationship. While more research is certainly warranted, Mears and colleagues[138] argue that lengthier sentences may be justified in some circumstances to achieve retributive goals or a stronger deterrent benefit.

William Rhodes, Gerald Gaes, Ryan Kling, and Christopher Cutler[139] examined the dose-

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response relationship between prison length of stay and re-incarceration rates among a large sample of federal offenders. All offenders were convicted of various violent and non-violent felonies or misdemeanors and sentenced under the U.S. Sentencing Guidelines. The federal guidelines consist of a grid system of pre-determined sentence ranges that are based on offense seriousness and criminal history, which the authors leveraged as a proxy for criminal history and offense seriousness. Then, the authors generated an instrumental variable that balanced groups on criminal history and other baseline factors. Average time served for the whole sample ranged from 2 weeks to 18.6 years, and the wide range in time served allowed for observation of a wide range of offenders, a key benefit to this study. Rhodes et al.[140] measured recidivism using re-incarceration rates. At the three-year follow-up, they found small but significant deterrent benefits. Recidivism decreased about 1% for every additional 7.5 month increase in sentence length. Regression results with and without instrumental variable specification were consistent.

Three studies employed judge-randomization strategies, where defendants were randomly assigned to judges based on a random drawing. In these studies, defendants assigned to one judge are considered a group. In theory, judges differ on certain characteristics (e.g., some judges are more lenient than others) that could lead to disparate sentences across similar offenders. As a result, the defendants are similar enough to each other to make comparisons, but would differ in terms of sentence length depending on which judge they are randomly assigned to. Then, defendants assigned to a lenient judge can be compared to similar defendants assigned to a more punitive judge. In this way, similar defendants with different incarceration lengths can be compared to each other.

Michael Roach and Max Schanzenbach[141] employed a judge-randomization strategy with

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a cohort of nearly 8,000 lower-level felony offenders and 25 judges within a Seattle courthouse. All offenders in the sample pled guilty under one judge, and then were randomly assigned to a new judge for sentencing.[142] Under state sentencing guidelines, judges have a fair amount of discretion to depart from recommended sentencing ranges for crimes of low severity and for first-time offenders.[143] Among offenders in the sample, the average offense seriousness level was fairly low (2 out of a possible 16), meaning that judges would have ample opportunity to depart from recommended sentencing ranges, if desire. The authors contended that this wide variation in judicial discretion resulted in "random" variation in prison sentences. The average sentence was nine months, and the 74% of imposed sentences were less than 12 months. Recidivism was measured based on whether an offender was sentenced for any new felony at one, two, and three years post-release. When controlling for differences between groups, the authors found a deterrent effect of lengthier sentences on re-sentencing rates, with an average decrease of about one percentage point per each additional month of incarceration.[144] While deterrent benefits were evident across all three follow-ups, the majority of effects occurred within the first year.

Manudeep Bhuller, Gordon Dahl, Kartine Løken, and Magne Mogstad[145] conducted a study that examined 33,500 criminal cases that were randomly assigned to 500 judges in Norway. Judges differed in their stringency when sentencing defendants, which generated natural variation in sentence length. Judge incarceration stringency was based on the judge's average incarceration rate, which reflected their overall propensity toward custodial sentences. Judge sentence length severity was defined as the average sentence length across a judge's caseload. The average length of time spent incarcerated was six months, and over 90% of people were serving less than one year. Importantly, this is much shorter than the average prison time in

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the United States, which is approximately three years.

The authors examined the impact on recidivism using judge incarceration stringency as an instrumental variable, along with various statistical controls for demographics and type of crime. Based on the models, imprisonment exposure significantly decreased the chances that someone would receive new charges; the average reduction was 11 charges per person. This was statistically significant at two years and five years post-release. The decline was driven by individuals who were not working prior to incarceration but then participated in programs aimed at improving employability and earnings. When sentence length stringency was included in the model, results did not change much. This model revealed that increasing a sentence by 250 days resulted in small but statistically significant increases (ranging from .02 to .05) in future charges when measured at two years and five years post-release. Further analysis revealed large correlations between judge incarceration and sentence length stringency, which could explain why the latter only minimally impacted results.

Donald Green and Daniel Winik[146] also used a judge-randomization strategy with 1,000 offenders and nine judges/courtrooms from the District of Columbia superior courts. All of the offenders were convicted of drug-related felonies, and most had prior offenses. The average sentence length for the sample was one year, with a maximum of four years. Defendants were randomly assigned to judges. The researchers examined whether defendants assigned to punitive judges were more likely to be re-arrested than those assigned to lenient judges (presumably because judges impose different sentence lengths). The nine judges did tend to vary in sentencing tendencies as expected; some judges were more lenient than others, resulting in a range of administered sentences from five to 12 months across judges.

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While the authors refer to the process as random, it is not technically random because there is some discretion within the court regarding judicial calendar assignment. The authors mitigate this by comparing the groups at the outset to assess their similarities on several factors (e.g. criminal history, offense type, demographics). The groups were statistically similar, and the researchers also controlled for the impact of these factors using an instrumental variable. Green and Winik[147] measured recidivism using four-year felony and misdemeanor re-arrest rates. They initially found a criminogenic effect of lengthier sentences, suggesting that on average, each additional month of incarceration increased the four-year re-arrest rate by about two percentage points. This effect was not statistically significant, though, and it disappeared when an instrumental variable was added to the model. Instead, statistically significant (yet small) deterrent effects emerged, suggesting that each additional month of incarceration lowered the probability of recidivism by .006.

In a 2017 study, David Roodman re-analyzed Green and Winik's[148] data. Roodman[149] applied a slightly different design upon questioning whether the two groups in Green and Winik's[150] study were actually fully comparable. Roodman[151] used the same courtroom/judge assignment as the prior study, but when running regression models, he included additional specifications, measures of recidivism, and multiple follow-up periods. He measured recidivism using re-conviction rates for felony crimes and re-arrest rates for felonies and misdemeanors.

Results were less robust than the original study and varied based on recidivism measure. Roodman[152] found criminogenic effects when looking at four-year re-arrest rates, but found deterrent effects when looking at four-year re-conviction rates. Specifically, he found that each additional month of incarceration was associated with a 1.3% *increase* in re-arrest rates and a

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.04% *reduction* in felony re-conviction rates. It is not entirely surprising that the results varied by outcome measure; re-arrest rates are often higher than re-conviction rates due to the lower burden of proof required to arrest. The deterrent effect also seemed to go hand-in-hand with certain variables, such as participation in therapeutic programs or the ability to maintain employment. For example, people who received job training after being incarcerated experienced decreased recidivism rates. The author also examined whether results changed over time by examining different follow-up times (up to four years), though this did not impact results.

Considering all variations of analyses of Green and Winik's[153] data, some of the findings showed associations between deterrent effects and longer incarceration time. Though, effect sizes were minimal in both Green and Winik's[154] initial study and Roodman's[155] replication study. It is not uncommon to see smaller effect sizes and nonsignificant effects when the research design is strengthened, as Roodman[156] did here. Unfortunately, the sentences for all offenders were relatively short (approximately one year), so the study would not be able to sufficiently capture any "inverse U-shaped" effects, nor would it capture deterrent benefits associated with lengthier periods of incarceration. The significant deterrent effect is also independently related to participation in rehabilitative programs, such as job training, which may explain some of the mixed findings.

Ilyana Kuziemko[157] examined the relationship between time served and re-incarceration rates among state parolees released in Georgia. She used four different quasi-experiments, three of which found correlations between time served and recidivism rates. Based on the results, she concluded that spending more time in prison significantly reduced recidivism, with each additional month of time served reducing the probability of return to prison by one to three

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percentage points at the three-year follow-up. The first part of the study included a large cohort of parolees while the second part of the study focused on a subgroup that was released following a specific statute.

For the first part of the study, Kuziemko[158] exploited state parole guidelines that release prisoners based on a "recidivism risk" calculation, i.e., the sentencing grid; this is typically indicative of time served. Georgia's pre-existing risk classification system served as a proxy of time served to make strategic comparisons within a large sample of prisoners (n=17,000) who were released over a period of nearly 30 years (1981-2007). Kuziemko[159] compared similar nonviolent convicts entering prison on either side of the calculated "high-risk" cutoff. Among the 17,000 convicts, time served ranged from seven months to ten years, with an average of approximately 33 months (2.75 years). On average, offenders had about 0.8 prior incarcerations, and their offense severity levels ranged from one through four on a scale of 20. When assessed at the three-year follow-up, there was a non-significant deterrent effect of lengthier sentences, with a 1.3% decrease in re-incarceration rates (for a new crime) per additional month served. Prior incarcerations also positively impacted recidivism rates. For every additional prior incarceration, three-year re-incarceration rates increased significantly by .039%. She examined models with and without control variables, and not surprisingly, the models with control variables were methodologically stronger but resulted in findings that were less robust.

Second, Kuziemko[160] examined a subgroup of these nonviolent offenders (n=519) who were released as a result of 1981 state statutes. She tested whether those with different sentence lengths (recommended per the grid system) varied in regard to three-year re-incarceration rates. The recidivism risk calculation was a proxy to roughly account for time served, and the author

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constructed an instrumental variable to balance factors between groups. On average, the 519 offenders had about 0.53 prior incarcerations, had served 13 months in confinement (ranging from one month to six years), and were released about five months early. At the three-year follow-up, 36% had returned to prison for a new crime. Using two regression models (with and without control variables), the author found that lengthier sentences were associated with a significant decrease in re-incarceration rates, a reduction of approximately 3.2% per additional month served.

Roodman[161] also examined Kuziemko's[162] data using similar methods, but with alternative model specifications and different measures of recidivism. Recidivism was measured using two measures at the three-year follow-up: 1) return to prison for a new crime (not a parole violation), and 2) re-conviction rates for new, serious crimes (excluding parole violations). Further, Roodman introduced an important predictor variable – the sentence *commute* time, i.e., the recommended sentence minus the actual sentence served. Roodman's[163] re-analysis of the data found similar results to Kuziemko,[164] but results were less robust. Overall, Roodman[165] found evidence of a deterrent effect related to lengthier sentences; they were associated with an average decrease of 1.3% in re-incarceration rates (for a new crime) per every additional month served. This effect was not statistically significant, though.

Roodman[166] also re-analyzed Kuziemko's[167] data on the subgroup of offenders released after 1981 changes in statutes. He employed regressions that compared the five years before the policy change with four years after the policy change. Roodman[168] included another measure of recidivism (i.e., total recidivism, measured by felony re-conviction or re-incarceration). When accounting for control variables, Roodman[169] found both criminogenic and deterrent effects. He

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found that every additional month served statistically significantly decreased return-to-prison rates by .0031% on average, but this changed to a criminogenic effect when considering *total* recidivism rates (i.e., re-incarceration and re-conviction rates combined). In other words, a criminogenic effect emerged when recidivism was measured using re-incarceration, but flipped to a deterrent effect when *total* recidivism rates were considered. It isn't surprising that total recidivism rates trend higher than re-incarceration rates though, due to the higher burden of proof required for incarceration. While the effect sizes in this particular study were small, different measures of recidivism may be one reason why results vary.

Matthew Snodgrass, Arjan Blokland, Amelia Haviland, Paul Nieuwbeerta, and Daniel Nagin[170] employed a quasi-experimental study to examine the relationship between time served and recidivism for 4,683 prisoners in the Netherlands. All prisoners had been convicted of felony violent, property, or drug offenses. Data were collected from inmate records and recidivism was measured using three-year felony re-conviction rates. The authors used interquartile ranges of sentence length to create incarceration dosage categories, and they balanced categories on important factors (e.g., criminal history, offense type) using propensity scores. The authors were unable to balance groups across four important variables, which were subsequently included as statistical controls: age at first felony conviction, number of violent offenses, maximum possible punishment, and proportion convicted of a violent offense.

Dosage categories were compared with each other (i.e., <1 month, 1-2 months, 2-3 months, 3-6 months, 6-12 months, and >12 months). Offenders were classified as low dose if their sentence was on the lower end of the interquartile range and classified as high dose if their sentence was on the higher end of the range. The average length of incarceration was relatively

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short at 6.7 months, with 86% of sentences being less than one year. When measured at the three-year follow-up, a deterrent effect emerged, though it was not statistically significant. High dose offenders faced .033 fewer felony re-convictions per year than comparable low dose offenders (re-conviction rates were .384 and .416, respectively). Based on these results, incarceration length seemed to have no real deterrent or criminogenic effect. However, this sample was limited to people with short sentence lengths, and results may not generalize to people with lengthier sentences.

Although not peer-reviewed, one of the most recent studies examining sentence length and recidivism was conducted by Ryan Cotter[171] of the U.S. Sentencing Commission. The author used two different designs and four modeling approaches to estimate the impact of different sentence lengths (i.e., 2-3 years, 3-4 years, 4-5 years, 5-10 years, and >10 years) on eight-year re-arrest rates. The sample was 25,400 offenders released from federal prison, and the author used pre-existing data from FBI records to collect information on recidivism rates and criminal history. In the first design, Cotter[172] matched approximately 13,000 offenders into pairs to generate comparable groups. In the second design, the author used matching *and* weighting (in an attempt to retain a larger sample size, a total of 16,800) to generate comparable groups. Both procedures were successful in generating groups that were fairly similar to each other with the exception of sentence length. The first design compared people sentenced from 12-36 months with comparable offenders who were sentenced 48-60 months. The second design compared people sentenced to 48-60 months with comparable offenders who were serving 12-36 months less time relative to their matched counterpart. The author then used a series of regression models to study the impact on re-arrest rates for new crimes and technical violations. The models

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included statistical controls for important variables (e.g., age at release, race, criminal history, high school completion, violent offense, weapons offense), strengthening the design.

Cotter[173] found evidence of deterrent effects for certain length of stay categories. For example, offenders who were incarcerated for more than five years had significantly lower recidivism rates when compared with similar offenders with shorter incarceration terms. Consistently across all four models, incarceration terms that exceeded ten years were significantly associated with lower eight-year re-arrest rates (the decrease ranged from 30-45% depending on the model). In two of the four models (those with larger sample sizes), incarceration terms that exceeded five years were significantly associated with a 17% reduction in eight-year re-arrest rates relative to the offenders serving sentences that were 12-36 months shorter. When examining incarceration terms between two and five years, none of the models revealed significant criminogenic or deterrent effects. Terms that lasted one to two years were sometimes consistent with reductions in recidivism, but this effect was not statistically significant and varied across the designs.[174]

Cotter[175] found that people with sentences of less than six months had the lowest average re-arrest rates (42%), followed by those serving ten years or more (50%), those serving two to five years (55%), and finally those serving five to ten years (56%). Overall, Cotter[176] found a non-significant criminogenic effect for terms of two to three years, followed by a null effect for terms of three to five years, and a significant deterrent effect for terms of five years or more. The initial criminogenic effects followed by deterrent effects as sentence length increased suggests again (similar to Meade et al., 2013 and Mears et al., 2016)[177] that the relationship between time served and recidivism is curvilinear.

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The table in Appendix A summarizes information on the studies reviewed, with information on their adequacy in being able to determine cause and effect. Regarding study design, randomization is ideal for the purpose of generating comparable groups. If this is not possible, the next best option is to strategically create statistically comparable groups (e.g., by using a matched-pairs design or purposive assignment). When the groups are not statistically similar, authors must remedy this problem as best they can by controlling for factors that differ between groups as well as variables that are theoretically related to the primary outcome. If authors fail to do this, or are unable to do so adequately, it significantly decreases the causal validity of the design. Types of statistical adjustments (e.g., propensity score matching, instrumental variable identification, or regression-based statistical adjustments) can control for many but not all differences between groups. This paper only discusses studies that meet the above criteria, and results are summarized in Table 1 (see Appendix A).

VI. CONCLUSION

A total of 19 high-quality studies were included in the current review, though four did not add value to our conclusions due to methodological limitations.[178] Of the 15 applicable studies, there was one experimental design[179] and 14 quasi-experimental designs. Of the quasi-experimental designs, four used judge-assignment pseudo-randomization strategies.[180] All of the designs either met the criteria for statistical equivalence between groups, or they applied statistical controls to account for differences between groups.[181] Eight studies suggested an aggregate deterrent effect in their results,[182] five of which were statistically significant, but effect sizes were small.[183] Two studies suggested a significant aggregate criminogenic effect,[184] but one

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of these studies suffered from a confound that rendered results meaningless.[185] Five studies had mixed results, suggesting both criminogenic and deterrent effects of lengthier sentences,[186] with one study[187] finding mixed effects based on the recidivism measure used.

Of the five studies with mixed findings, four of the studies found similar trends in the trajectory of re-offending. These studies showed initial criminogenic effects for those serving shorter-than-average sentences (generally, less than two years). After a certain threshold of time served, deterrent effects emerged. This suggests that the relationship between time served and recidivism may follow a curvilinear or "inverse U-shape" pattern (i.e., a pattern that increases and then decreases) rather than a linear pattern. The suggestion of a curvilinear pattern of recidivism has important implications for both research and policy. Many studies rely on linear models and samples of offenders with short sentence lengths (typically less than two years), and thus are unable to capture the additional deterrent benefits that may occur once incarceration length exceeds a certain threshold. The more recent research suggesting a curvilinear relationship also might explain why research has found so many mixed findings regarding the impact of time served on recidivism.

In summary, considering both the Nagin, Cullen, and Jonson[188] review as well as subsequent literature regarding time served on recidivism, findings are still inconclusive. Many studies do find a deterrent effect of lengthier sentences, but these studies have small effect sizes and are not always statistically significant. Many other studies have found mixed effects, suggesting that deterrent effects may be more associated with sentences exceeding two years. However, the study methodologies vary in terms of their approaches and limitations (see Table 1; Appendix A), which could explain some of the mixed results. In addition, studies span

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different geographical jurisdictions and use inconsistent measures of recidivism (e.g., re-arrest vs. re-incarceration), which can condition findings. Third, most people examined in these studies had short sentence lengths, so the results may not extend to people with lengthier sentences. In addition, for studies examining people with short sentence lengths, results are unable to capture whether potential curvilinear relationships.

Research has not fully unpacked the complex relationship between length of incarceration and recidivism. Overall, some important considerations remain unclear. First, it remains unknown whether shorter prison sentences would result in the same sense of retribution for the victim as well as society. Second, it is unclear whether shorter prison sentences would counterbalance public safety gains achieved from incapacitation or deterrence. Third, identifying recidivism risk remains a daunting and complex task,[189] mostly because many factors independent of sentence length may influence one's likelihood to recidivate. Some of these factors include age,[190] offense history,[191] post-release social supports,[192] experiences in prison,[193] and factors associated with post-release supervision.[194]

At present there is no substantial evidence that a criminogenic effect exists in the aggregate. Indeed, in the peer-reviewed literature, there is somewhat more evidence of a deterrent effect from longer sentences.

The literature on the impact of incarceration on recidivism is admittedly limited by important methodological considerations and inconsistencies across studies. Perhaps the most important implication from the research is best summarized by Mears, Cochran, and Cullen:[195]

> "We argue that a better understanding of the heterogeneity of incarceration—including the types and sequences of sanctions and experiences that occur before,

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> during, and after imprisonment—and of incarceration effects among different groups is important for two reasons. First, it can assist with assessing the salience of prior research on the effects of incarceration on recidivism. Second, it serves to identify conceptual and methodological challenges that must be addressed to provide credible assessments of incarceration effects…. [I]ncarceration likely exerts a variable effect depending on the nature of the prison experience…including prior sanction history, and the specific populations subject to imprisonment."

Considering the research on incarceration and recidivism, there is evidence suggesting that certain punishments may effectively deter crime, though the methodologies used to evaluate these effects vary. So far, the research appears mixed, with no studies finding a large aggregate-level criminogenic effect associated with longer sentences. This review demonstrates why true evidence-based practice should involve a critical examination of the breadth and depth of the existing empirical research rather than "cherry-picking" results from a study or two. The policy relevance of a study varies widely based on context, and policymakers would benefit from considering the totality of findings across studies and the various contexts to which they apply before enacting rapid policy change.

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Appendix A. Table 1.

Citation	Design	Sample Characteristics	Recidivism Measure	Results	Limitations
Berecochea et al. (1981)	Random assignment to two groups; those who had their sentence lengths reduced by 6 months and those who did not Groups were statistically similar; no statistical adjustments needed	Parolees convicted of various violent and non-violent offenses Average time served = 34.6 months	Re-incarceration rates Follow-up: 1, 2, and 3 years	Non-significant deterrent effect of lengthier sentences at all follow-ups	May not be generalizable to people serving >35 months
Deschenes, Turner, and Petersilia (1995a)	Random assignment to a diversion program (ICS) vs. prison. Groups were statistically similar; no statistical adjustments needed	Theft/burglary offenders and probation violators facing sentences <=20 months Average time served = 108 days for ICS and 220 days for incarceration	Re-arrest rates Proportion of people re-incarcerated Follow-ups: 6 months, 1 year, and 2 years	Significant deterrent effect of lengthier sentence at all follow-ups, though the finding is confounded with treatment group status The prison control group had significantly fewer technical violations than the ICS group. However, this is likely a byproduct of custodial sentences vs. non-custodial	The findings are irrelevant for our conclusions. While the prison control group had fewer technical violations than the ICS group, this finding is confounded with the fact that people cannot receive technical violations while in prison.
Deschenes, Turner, and Petersilia (1995b)	Random assignment to an early release diversion program (ISR) vs. prison. Groups were statistically similar; no statistical adjustments needed	Theft/burglary offenders and probation violators facing sentences <=20 months Average time served = 44 days for both groups	Re-arrest rates Proportion of people re-incarcerated Follow-ups: 6 months and 1 year	Null effects at all follow-ups Groups did not differ on average re: 'time served' variable and authors did not break down comparisons across adjacent sentence length categories	The findings are irrelevant for our conclusions There is no variation in average time served, and authors do not break down information on adjacent categories

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Jaman, Dickover, & Bennett (1972)	Quasi experiment matched-pairs design comparing recidivists with non-recidivists Groups were statistically similar; no statistical adjustments needed	Robbery and burglary offenders Average time served = 27 months	Re-incarceration rates Follow-ups: 6 months, 1 year, and 2 years	Non-significant criminogenic effect at 6 months among robbers Significant criminogenic effect at years 1 and 2 among robbers Non-significant criminogenic effect at 6 months and 1 year among burglars Significant criminogenic effect at 2 years among burglars	May not be generalizable beyond burglary/robbery offenders or those serving sentences >3 years Possibility that naturally occurring groups differ on unobserved or unmeasured factors
Kraus (1974)	Quasi-experiment matched-pairs design comparing probationers with non-probationers Groups were not statistically similar; remedied with statistical adjustments	Juvenile offenders convicted mostly of theft or burglary Most had previously served <2 years in confinement	Re-conviction/re-institutionalization rates Follow-up: 5 years	Mixed effects conditional on offense type Null effects for motor vehicle theft, assault, and sexual offenses. Significant criminogenic effects for stealing and burglary offenses Significant criminogenic effects for first-time offenders	An identified confound weakens the study design, rendering findings irrelevant. With the identified confound, the study is akin to comparing offense types. The only variation in 'time served' results from different offenses receiving different penalties. In other words, 'time served' is confounded with offense type, so the effects of each cannot be disentangled.

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Loughran et al. (2009)	Quasi-experiment comparing recidivists with non-recidivists Groups were not statistically similar; remedied slightly but not completely with propensity score matching	Serious felony-level juvenile offenders All were serving sentences <=15 months	Re-arrest rates Self-reported re-offending Follow-ups: every 6 months for 3 years, then one follow-up in the 4th year	Mixed effects at all follow-ups Significant criminogenic effect for people serving < 3 months Null effect for people serving 3-13 months Significant deterrent effect for people serving >=13 months	May not be generalizable to adults or those serving >15 months Criminogenic and deterrent effects should be interpreted with caution, as they contained large degrees of error due to small sample sizes Propensity score matching was not entirely successful and groups were not entirely similar
Meade et al. (2013)	Quasi-experiment comparing recidivists with non-recidivists Groups were not statistically similar; remedied with propensity score matching and statistical adjustments	Felony-level drug and property offenders Average time served = 2 years	Felony re-arrest rates Follow-up: 1 year	Mixed effects Significant criminogenic effect associated with shorter sentences, up until the point of 2 years Significant deterrent effect emerged once time served exceeded 2 years Deterrent effects were strongest for those serving five years or more	May not be generalizable beyond property and drug offenders or those serving >2 years Initial criminogenic effects followed by deterrent effects suggests that the relationship may be curvilinear (rather than linear). This has important implications for research.

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Mears et al. (2016)	Quasi-experiment comparing recidivists with non-recidivists Groups were not statistically similar; remedied with propensity score matching	Various violent and nonviolent offenders Average time served = 2 years	Felony re-conviction rates Follow-ups: 1 year, 2 years, and 3 years	Mixed effects at 1- and 2-year follow-ups Significant criminogenic effect for people serving less than one year at one-year follow-up Significant deterrent effect for people serving 1-2 years at 1 and 2-year follow-ups Null effect for people serving more than 2 years	May not be generalizable to those serving >2 years Initial criminogenic effects followed by deterrent effects suggests that the relationship may be curvilinear (rather than linear). This has important implications for research.
Green & Winik (2010)	Random assignment to harsh vs. lenient judges Groups were statistically similar; statistical adjustments also included	Felony-level drug offenders Average sentence = 1 year	Re-arrest rates for any misdemeanor or felony Follow-up: 4 years	Significant deterrent effect On average, each additional month of incarceration significantly lowered the probability of recidivism There was an initial non-significant criminogenic effect, but it disappeared when statistical adjustments were included	May not be generalizable to non-drug offenders or those serving >1 year

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Roodman (2017a) *Note: Roodman re-examined Green and Winik's (2010) earlier data*	Random assignment to harsh vs. lenient judges Groups were not statistically similar; remedied with statistical adjustments	Felony-level drug offenders Average sentence = 1 year	General re-arrest rates (misdemeanor or felony arrest or re-conviction) Felony re-arrest rates Felony re-conviction rates Follow-up: 4 years	Mixed effects conditional on recidivism measure Significant deterrent effect on felony re-conviction rates Significant criminogenic effect on general re-arrest rates (i.e., re-arrest *or* re-conviction) Significant deterrent effect related to participation in rehabilitative programs, such as job training.	May not be generalizable to non-drug offenders or those serving >1 year
Snodgrass et al. (2011)	Quasi experiment comparing low dose incarceration with high dose incarceration categories Groups were not statistically similar; remedied with propensity scores and statistical adjustments	Felony-level violent, drug, or property offenders Average sentence = 6.7 months	Felony re-conviction rates Probability of re-conviction Follow-up: 3 years	Non-significant deterrent effect People serving longer periods of incarceration faced fewer felony re-convictions per year after release (non-significant)	May not be generalizable to people serving >6.7 months
Cotter (2020a)	Quasi-experiment matched-pairs design comparing recidivists with non-recidivists Groups were statistically similar to each other; no statistical adjustments needed	Various violent and nonviolent offenders Time served ranged from 6 months to 10 years	Re-arrest rates (including technical violations) Follow-up: 8 years	Mixed effects Non-significant criminogenic effect for terms of 2-3 years Null effect for people serving 3-5 years	May not be generalizable to people serving >10 years Initial criminogenic effects followed by deterrent effects suggests that the relationship may be curvilinear (rather than linear). This has important implications for research.

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				Significant deterrent effect for terms of 5 years or more	
Cotter (2020b)	Quasi-experiment matched-pairs design (with weighting) comparing recidivists with non-recidivists Groups were not statistically similar to each other; remedied with statistical adjustments	Various violent and nonviolent offenders Time served ranged from 6 months to 10 years	Re-arrest rates (including technical violations) Follow-up: 8 years	Mixed effects Non-significant criminogenic effect for terms of 2-3 years Null effect for people serving 5 years or less Significant deterrent effect for terms of 5-10 years and terms of more than 10 years	May not be generalizable to people serving >10 years Initial criminogenic effects followed by deterrent effects suggests that the relationship may be curvilinear (rather than linear). This has important implications for research.
Rhodes et al. (2018)	Quasi-experiment comparing recidivists with non-recidivists Groups were not statistically similar; remedied with statistical adjustments	Various violent and non-violent offenders convicted of serious felonies or misdemeanors Average time served across criminal history and offense seriousness categories ranged from 2 weeks to 18.6 years	Re-incarceration rates Follow-up: 3 years	Significant deterrent effect On average, recidivism decreased significantly for every 7.5 month increase in sentence length	Incarceration length varies widely among the sample and is also examined in the aggregate only. Thus, it is difficult to compare adjacent 'time served' categories

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Roach & Schanzenbach (2015)	Random assignment to harsh vs. lenient judges Groups were not statistically similar; remedied with statistical adjustments	Lower-level felony offenders Average sentence = 9 months	Re-sentence for any new felony offense Follow-ups: 1 year, 2 years, and 3 years	Significant deterrent effect at all follow-ups On average, re-sentencing rates decreased significantly for each additional month served Most recidivism effects occurred within the first year	May not be generalizable to high-level felony offenders or those serving >9 months
Kuziemko (2012)	Quasi-experiment comparing recidivists with non-recidivists for a full sample and one subgroup Groups were not statistically similar; remedied with statistical adjustments	Non-violent prisoners Average time served (full sample) = 33 months Average time served (subgroup) = 13 months	Return to prison for a new crime (i.e., not a parole violation) Follow-up: 3 years	Non-significant deterrent effect for the full sample Significant deterrent effect for subgroup	The sample may not be generalizable to violent offenders The full sample may not be generalizable to offenders serving >33 months. The subgroup may not be generalizable to offenders serving >13 months.
Roodman (2017b) *Note: Roodman re-examined of Kuziemko's (2012) data*	Quasi-experiment comparing recidivists with non-recidivists for a full sample and one subgroup Groups were not statistically similar; remedied with statistical adjustments Roodman (2017) added additional model specifications, outcome measures, and predictor variables	Non-violent prisoners Average time served (full sample) = 33 months Average time served (subgroup) = 13 months	Re-incarceration rates (excluding parole violations) Total recidivism rates, measured by re-conviction and re-incarceration for serious crimes (excluding parole violations) Follow-up: 3 years	Non-significant deterrent effect of lengthier sentences for the full sample Mixed effects for the subgroup, depending on recidivism measure Significant but small deterrent effect of lengthier sentences on re-incarceration rates among the subgroup Significant but small criminogenic effect of lengthier sentences on	The sample may not be generalizable to violent offenders The full sample may not be generalizable to offenders serving >33 months. The subgroup may not be generalizable to offenders serving >13 months.

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				total recidivism rates among the subgroup	
Bhuller et al. (2016)	Random assignment to harsh vs. lenient judges Offenders were not statistically similar; remedied with statistical adjustments	Various violent and non-violent offenders in Norway Average time served = 6 months	New criminal charges (rates) Follow-ups: 2 years and 5 years	Significant but small deterrent effect of lengthier sentences on new criminal charges at 2- and 5-year follow-ups	The sample may not be generalizable to the United States or those serving >6 months Binary incarceration exposure was highly correlated with time served, so the true effect of time served is less clear
Walker & Herting (2020)	Quasi-experiment matched-pairs design comparing people who were detained pretrial vs. those who were not Offenders were not statistically similar; remedied with statistical adjustments	Juvenile offenders Average time served = 2 days	Court filing for a new misdemeanor (rate) Court filing for a new felony (rates) Follow-up: 1 year	Significant but small criminogenic effect of lengthier sentences (due to being detained pretrial) on felony court filings Every additional day of incarceration was associated with an approximate 1% increase in felony recidivism	An identified confound weakens the study design, rendering findings irrelevant. With the identified confound, the study is akin to comparing pretrial detainment vs. not detained. The sample may not be generalizable to adult offenders or those serving >1 year The 'time served' variable is heavily skewed, such that the majority of the sample served one week or less
Hjalmarsson & Lindquist (2020)	Quasi-experiment comparing people serving one-half of their sentence vs. people serving two-thirds of their sentence	Various violent and non-violent offenders in Sweden	One new conviction (rates) Re-incarceration rates	Significant but small deterrent effect of lengthier sentences on one new conviction at 1-year follow-up	The sample may not be generalizable to the United States or to those serving >1 year

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	Offenders were not statistically similar; remedied with statistical adjustments	Average time served = 11.7 months	Follow-ups: 1 year, 2 years, and 3 years	Significant but small deterrent effect of lengthier sentences on re-incarceration at 1- and 2- year follow-ups	

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[64] Eric Helland & Alexander Tabarrok, *Does Three Strikes Deter? A Nonparametric Estimation,* 42 J. Hum. Res. 309 (2007).

[65] Daniel Kessler & Steven D. Levitt, *Using Sentence Enhancements to Distinguish Between Deterrence and Incapacitation*, J. L. & Econ. 343 (1999).

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[67] Kessler & Levitt, *supra* note 65.

[68] Abrams, *supra* note 58.

[69] *Id*.

[70] Drago, Galbieti, & Vertova, *supra* note 31.

[71] *Id*.

[72] Unfortunately, the researchers did not examine long-term impacts on recidivism rates. Future research would benefit from a replication study with a longer follow-up period to ascertain sustainability of benefits. Sustainability is another key consideration when thinking about a policy's effectiveness, however that is out of the scope of this work.

[73] Drago, Galbieti, & Vertova, *supra* note 31.

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[84] Kim S. Hunt & Billy Easley II, *The Effects of Aging on Recidivism Among Federal Offenders*, Technical Report, United States Sentencing Commission (2017); Hunt, Iaconetti, & Maass, *supra* note 79; Iaconetti, Kyckelhahn, and McGilton, *supra* note 82.

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[86] Eckhouse et al., *supra* note 85; Piquero & Blumstein, *supra* note 77.

[87] Alfred Blumstein, *Prisons: A Policy Challenge*, Crime: Public Policies for Crime Control 480 (J. Wilson and J. Petersilia, eds. 2002).

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[100] Cal. Pen. Code § 12022.5.

[101] Hunt & Easley II, *supra* note 84; Lussier & Davies, *supra* note 78.

[102] Cal. Pen. Code § 1170.12(a). "Prior record of convictions is also generally relevant to the sentencing decision and is perhaps the best predictor of reoffending rate." Nagin, Cullen, & Jonson, *supra* note 7, at 137.

[103] Nagin, Cullen, & Jonson, *supra* note 7, at 143.

[104] *Id*. at 167.

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[117] Loughran et al., *supra* note 115.

[118] Nagin, Cullen, & Jonson, *supra* note 7.

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[120] *Id*.

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[151] Roodman, *supra* note 41.

[152] *Id*.

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[155] Roodman, *supra* note 41.

[156] *Id*.

[157] Kuziemko, *supra* note 127.

[158] *Id*.

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[160] *Id*.

[161] Roodman, *supra* note 41.

[162] Kuziemko, *supra*, note 127.

[163] Roodman, *supra* note 41.

[164] Kuziemko, *supra* note 127.

[165] Roodman, *supra* note 41.

[166] *Id*.

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[167] Kuziemko, *supra* note 127.

[168] Roodman, *supra* note 41.

[169] *Id*.

[170] Snodgrass et al., *supra* note 127.

[171] Cotter, *supra* note 92.

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[173] *Id*.

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[185] Walker & Herting, *supra* note 129.

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Does sentence length affect the risk for criminal recidivism? A quasi-experimental study of three policy reforms in Sweden

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Abstract

Objectives This study examines the relationship between incarceration time and post-release recidivism among first-time incarcerated adult offenders.

Methods A quasi-experimental design was adopted consisting of three policy reforms that were treated as separate natural experiments. While holding imposed sentence length constant, these policy reforms either decreased or increased the required share of a sentence inmates needed to be incarcerated before being eligible for parole. Data consisted of large-scale administrative records containing all convictions for the Swedish cohorts born in 1958 and later.

Results Results indicate that neither increased nor decreased incarceration time had a statistically significant effect on post-release recidivism, irrespective of how recidivism was measured.

Conclusions Findings reveal little evidence for incarceration time having a criminogenic or specific preventive effect on post-release recidivism.

Keywords Incarceration length · Recidivism · Parole · Quasi-experiment

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Introduction

Sweden has long been perceived as being moderate in terms of penal attitudes, but over recent decades "tough on crime" policies have challenged this "Scandinavian exceptionalism" (Pratt, 2008; von Hofer & Tham, 2013). The themes that are currently prominent on the political agenda in Sweden indicate that a Swedish version of the "punitive turn" has emerged, which also has been expressed in multiple Swedish Government Official Reports (SOU), with examples including proposals for longer sentences for serious offenses and recidivism (SOU, 2021a; SOU, 2021b), harsher penalties for young adults (SOU, 2018), and the abolition or severe restriction of early release from prison (SOU, 2017). Consequently, the Swedish Prison and Probation Service predict a 40% expansion in prison capacity by 2030 (Kriminalvården, 2021b). This increasing trust among policymakers in the ability of incarceration and longer prison sentences to reduce crime has refocused the spotlight on the longstanding theoretical discussion on the criminogenic versus deterrent effects of prison.

Although the literature on the consequences of imprisonment is extensive, most research on the effects of incarceration on recidivism has analyzed the dichotomy of incarceration versus non-custodial sanctions (for systematic reviews on the effects of incarceration, see, e.g., Villettaz et al., 2015; Petrich et al. 2021). Research that explicitly addresses the effects of the length of incarceration is more limited, and those studies that do exist show inconsistent findings, making it difficult to draw any overall conclusions (Berger & Scheidegger, 2021; Nagin et al., 2009). A considerable amount of the research on the effects of incarceration times has been conducted in a US context, where sentencing lengths are at the higher end of the spectrum, which has subsequently led scholars to stress the importance of research based on European data (Durlauf & Nagin, 2011).

In this article, we analyze how the length of imprisonment affects recidivism for individuals who are incarcerated for the first time. We utilize three Swedish legislation reforms that may be treated as natural experiments. The reforms in question are the 1983, 1993, and 1999 parole reforms, which all either decreased or increased the amount of time an inmate was required to serve in prison prior to release on parole. The analyses are based on large-scale administrative data containing all convictions for the Swedish cohorts born in 1958 and later.

Theoretical background: from deterrent to criminogenic effects

Theories of punishment in general, and of imprisonment in particular, can be separated into two very different categories, from which two opposing hypotheses can be generated: one maintains that prison has crime deterrent effects, while the other predicts that prison has criminogenic effects.

Deterrence theory focuses on two main types of deterrence: *general* and *specific* deterrence, with incarceration playing a crucial role in relation to both

(Nagin, 1978). General deterrence can be defined as the crime preventive effect in the general public from the threat of a criminal sanction. Specific deterrence, on the other hand, focuses on the deterrent effect on the individual who experiences a sanction. Since the present study analyzes the expected deterrent effect of having experienced varying increases or decreases in sentence lengths, our focus is solely on specific deterrence. Within specific deterrence, three mechanisms can explain how incarceration may prevent recidivism. First, isolating an individual interrupts a criminal career, creating an *incapacitation effect* (Zimring & Hawkins, 1995). For an individual, however, the size of this effect decreases with time as a result of the well-known curvilinear relationship between age and crime (Hirschi & Gottfredson, 1983). Second, the experience of enduring a prison sanction might itself have a deterrent effect, preventing post-release recidivism due to concerns about being reincarcerated (Nagin et al., 2009; von Hirsch et al., 1999). Third, various correctional intervention programs may *rehabilitate* inmates and serve to inhibit an individual's criminal tendencies (Lipsey & Cullen, 2007). Many of these interventions require sentence lengths to be sufficiently long, and increasing sentence lengths may enable more inmates to participate in rehabilitative interventions (see for example Bhuller et al., 2020; Hjalmarsson & Lindquist, 2020). Since this study does not aim to estimate incapacitation effects, the mechanisms that may be present are rehabilitation and deterrence (for empirical evidence regarding incapacitation effects, see Miles & Ludwig, 2007; Piquero & Blumstein, 2007; Wermink et al., 2013). It should be noted, however, that we do not have access to data that would allow us to distinguish rehabilitative from deterrent effects.

Another set of theories suggests that a prison sentence may have (unintended) criminogenic effects. One strand of these theories describes how prisons are "schools of crime" where criminal skills are exchanged and learned within close-knit groups of individuals (see Bayer et al., 2009; Nygaard Andersen, 2019; Roxell, 2016). Adapting to prison conditions may therefore involve a normative and collective process among inmates who become socialized into embracing deviant attitudes. Inmates who are imprisoned for longer periods may potentially become even more entrenched in their criminogenic attitudes and exposed to wider anti-social networks.

Being subjected to prison may also result in a societal reaction in the form of labeling and stigmatization (Becker, 1963; Braithwaite, 1989). The mechanisms behind possible criminogenic effects of this type of labeling are twofold: First, treating and labeling an individual as a "criminal" has consequences for the self-image of the offender, who risks internalizing the criminal identity and subsequently acting in ways that are in line with this identity. Increasing sentence lengths could, accordingly, result in an even stronger internalization of the criminal identity, thus affecting post-release recidivism risks (see Harris, 1975). Furthermore, it has been suggested that an individual is more susceptible to labeling and stigmatization at the beginning of a criminal career and that the first experience of incarceration is more likely to result in such consequences than reincarceration (Motz et al., 2020; Walters, 2003). Second, society's collective discomfort with offenders may limit work opportunities for former inmates (e.g., Apel & Sweeten, 2010; Bäckman et al., 2018). Extensive

periods of incarceration could exacerbate this effect, as ties to conventional society are further diminished, which may result in weaker social bonds both to individuals (e.g., family, friends, co-workers) and institutions (e.g., workplaces and organizations) that could otherwise potentially prevent the individual from recidivating (Sampson & Laub, 1997).

Lastly, there is a third strand of literature that argues that incarceration length has a minimal effect on offenders' post-release recidivism risks (Gendreau et al., 1999). In this line of research, recidivism risks are instead explained by various background characteristics and pre-incarceration risk factors. Because inmates are a highly selected group characterized by addiction problems and resource deficiencies in areas such as education, employment, and health (Nilsson, 2003), deterrent interventions may therefore not have the desired effect on recidivism (Bäckman et al., 2018).

The relationship between incarceration length and recidivism

In this section, we review the literature on the effects of incarceration length and pay particular attention to more recent quasi-experimental studies. Broadly, these studies utilize natural experiments or various matching designs to identify the relationship between incarceration length on recidivism.

A systematic review by Nagin et al. (2009) has played an important role regarding the approaches employed in more recent studies estimating the effects of incarceration length. In this review, the authors concluded that the bulk of the pre-existing literature suffered from serious methodological shortcomings. Large parts of this literature, which had been dominated by regression-based studies, suffered from issues regarding selection bias and limitations regarding the interpretation of causality. Moreover, the outcomes from these studies were remarkably heterogeneous and the authors, therefore, refrained from drawing any overall conclusions regarding the then available research. Following this review, and in line with a general discussion regarding the "causal revolution" (Sampson et al., 2013), increasing focus has been directed at the use of quasi-experimental evidence in discussions of the causal impact of incarceration length.

The first of more recent quasi-experimental studies on the effects of incarceration length was conducted by Loughran et al. (2009), who used propensity score matching to enable comparisons between juvenile offenders from two US counties who had been sentenced to varying prison terms. The results indicated no effect of incarceration length on either re-arrest rates or self-reported offending during a 2-year follow-up. Snodgrass et al. (2011) used propensity score matching with data on Dutch offenders between 12 and 40 years of age at sentencing. The authors found little evidence of a relationship between the length of prison stays and 3-year reconviction rates. Also utilizing the propensity score methodology on Dutch data, but only for adult offenders, Wermink et al. (2018) studied the short-term effects (6-month follow-up period) of sentences that were on average 4.1 months in length, and found no effects on reoffending, reconviction, or reincarceration. Using data on individuals released from Florida prisons, and using matching techniques, Mears et al. (2016)

found that longer periods in prison were initially associated with a greater risk for reconviction, but that these effects disappeared approximately 2 years after release, underscoring the importance of longer follow-up periods, since effects may dissipate over time.

Meade et al. (2013) utilized propensity score matching with data on individuals released under post-release supervision in Ohio and compared offenders that were differentiated in terms of sentence length and found no effect on the odds for rearrest during a 1-year follow-up period for offenders who had served less than 5 years. Although the authors found a small effect for offenders who had been sentenced to 5 years or more, the mechanism behind this effect was unclear, and the authors discuss that it might be due to maturation. Using parametric survival models on a dataset comprising inmates from several US states, Rydberg and Clark (2016) replicated parts of the study by Meade and colleagues. For those serving long sentences, exceeding 4 years, they found that increasing incarceration lengths reduced reconviction risks. Increased incarceration length was, however, associated with an increased risk for reincarceration due to technical violations. Since their results were heterogeneous with respect to the type of recidivism measure and crime type, the authors refrained from drawing any firm conclusions. Roach and Schanzenbach (2015) made use of the randomization of offenders to judges that occurs within a courthouse in Seattle. A two-stage least square regression analysis revealed that for each additional month incarcerated, reconviction rates decreased by 1%. This estimate was robust to the length of follow-up periods (1, 2, or 3 years). On average, the sentence lengths among inmates were relatively short (median 3 months), however, and the study was limited to offenders who had entered a guilty plea, which may have introduced some selection bias. Rhodes et al. (2018) exploited the quasi-experimental setting created by the US Sentencing Guidelines and employed an instrumental variable approach, finding that an average increase of 7.5 months in the length of incarceration reduced the 3-year reincarceration rate from 20% to approximately 19%. Because of this small impact, the authors concluded that small reductions in average incarceration lengths are possible with only minimal effects on recidivism.

Tollenaar et al. (2014) analyzed a Dutch policy reform that increased the length of incarceration for high-frequency offenders. Utilizing propensity score matching, the authors found that increasing sentence lengths for highly active offenders reduced 2-year reconviction rates by between 12 and 16%. Because offenders who had been subjected to the reform were a very problematic group characterized by addiction, unemployment, and mental health problems, the authors argued that correctional rehabilitation interventions might be a potential mechanism underlying the observed effects.

In the Scandinavian context, we are only aware of one study on the effect of incarceration length on crime (Hjalmarsson & Lindquist, 2020). The study's primary focus was not, however, directed at recidivism, but rather at health outcomes. Hjalmarsson and Lindquist's paper is of particular relevance for the present study since they too exploited the 1993 and 1999 parole reforms in Sweden. Their analyses revealed health-promotive effects of an increase in incarceration length. Regarding recidivism, the authors found that the increase in the length of incarceration produced by the reforms on average decreased recidivism. These effects were strongest

for reincarceration within 12 months, which decreased by 2.9 percentage points, and for the prevalence of two or more reconvictions within 36 months, which decreased by 2.5 percentage points.[1]

A striking conclusion with regard to the more recent quasi-experimental studies is that although research designs have improved, the overall evidence remains somewhat unclear, with some studies yielding null effects and others pointing to the existence of a minor deterrent effect. Further, there are also issues regarding the generalizability in recent studies. Not only have few studies been conducted outside the USA, but the findings are also often based on specific populations of offenders, such as juveniles or inmates sentenced within a specific court system. Furthermore, quasi-experimental approaches often estimate local treatment effects at the threshold. Utilizing local estimates does increase the possibility of identifying a causal relationship, but it may also result in generalization difficulties because offenders at the threshold constitute a specific offender population. These limitations highlight the need for further studies on the effects of incarceration length across a range of contexts and groups of offenders.

The Swedish parole institution and the background to the natural experiments

In this study, we utilize three distinct reforms from 1983, 1993, and 1999, which changed the legislation concerning the required share of a sentence inmates needed to be incarcerated before being eligible for parole. Prior to 1983, inmates were eligible for discretionary parole, with the law requiring an inmate to have served two-thirds of the sentence prior to parole, although under special circumstances parole could be granted after half the sentence. In practice, discretionary parole was based on sentence length. Long-term inmates who had been sentenced to more than 24 months were eligible for parole after half their sentence. Although inmates serving between 2 and 24 months could be eligible for parole after half their prison sentence, hardly anyone serving a sentence of 2 to 12 months was released after half the sentence, but rather after two-thirds (SOU, 1981).[2] Parole was granted at some point between half and two-thirds of the sentence for inmates serving 13 to 24 months.

On July 1, 1983, the "half-time reform" was enacted, which replaced discretionary parole and introduced mandatory release on parole after serving half the prison sentence for inmates who had been sentenced to 4 months or more (proposition 1982/83:85). This affected all individuals who were either already incarcerated on

[1] Although both our own and Hjalmarsson's and Lindqvist's study employ Swedish parole reforms to study the effects of variations in the length of incarceration, the studies differ in several respects. Besides the fact that our study focuses on recidivism, we (i) utilize natural experiments that both decreased and increased incarceration time, (ii) have access to individuals' full criminal record histories, (iii) evaluate the long-term effect of incarceration length, and (iv) direct particular attention at individuals receiving a prison sentence for the first time. See the section on data, sample, and measures for further information.

[2] Inmates were required to spend at least 2 months in prison, which means that inmates sentenced to less than 3 months often spent more than two-thirds of their sentence incarcerated.

the date of the reform's introduction, or who were incarcerated thereafter. In addition to a decrease in the required incarceration time prior to parole, the length of the period of post-release supervision was also reduced, from 1–3 years to 1 year. One important rationale for the implementation of mandatory parole was the legal uncertainty created by the discretionary parole system that had been in place prior to 1983.

The reform became the subject of substantial criticism and was repealed on July 1, 1993 (proposition 1992/93:4). All inmates sentenced to between 4 and 23 months were subsequently required to serve two-thirds of their prison sentence prior to release on parole. For long-term inmates serving 24 months or more, parole was still granted after half the prison sentence. In order to avoid threshold effects in the implementation of a system involving parole after both half and two-thirds of the sentence, a graduation scale was implemented for sentences of 13 to 23 months (proposition 1992/93:4).[3]

On January 1, 1999, the parole legislation was changed once again (proposition 1997/98:96). Long-term inmates serving 24 months or more were subsequently subject to the same parole rules as short-term inmates. All those serving sentences of more than 1 month were now eligible for parole after two-thirds of their sentence. Unlike the 1983 reform, the 1993 and 1999 parole legislations were applied to offenders based on whether the date of their conviction came before or after the date of the reforms' introduction, and the extent of post-release supervision was, likewise, not changed by either the 1993 or 1999 reform and was set at 12 months regardless of the sentence length.

Figure 1 illustrates the expected change in required incarceration time before parole. For example, individuals sentenced to 12 months in prison for crimes committed after the 1993 reform are required to spend 2 additional months in prison (8 months in total) in comparison to individuals who are sentenced to 12 months during the half-time reform (6 months in total). Note that their imposed sentence lengths of 12 months are identical. The only difference is the amount of required incarceration time before parole.

The fact that parole has sometimes been discretionary and sometimes mandatory introduces some uncertainty with respect to how the reforms actually played out in terms of required prison time before parole. Using prison data, Hjalmarsson and Lindquist (2020) were, however, able to show that the 1993 and 1999 reforms both were implemented as intended and that required incarceration time before parole was increased from half-time to two-thirds.

The parole reforms of 1983, 1993, and 1999 are here treated as natural experiments in which the post-reform group has been "treated" with an either increase or decrease in the length of incarceration, while the pre-reform group acts as a control group. The study design is presented in Fig. 2 and is described further in our data, sample, and measures section.

[3] The scale employed was 8 months plus one-third of the sentence length that exceeded 12 months. For example, an inmate sentenced to 15 months was released on parole after 8 months plus 1 month.

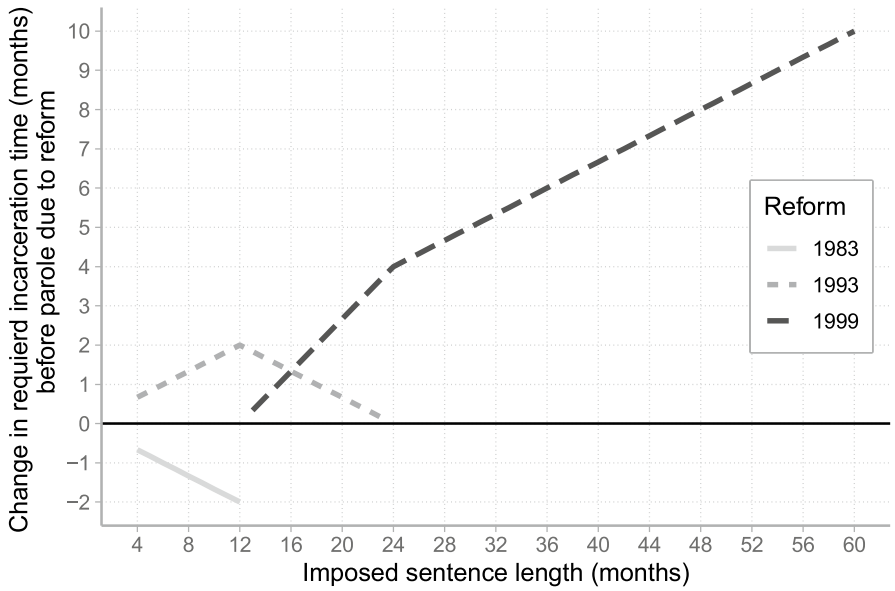


Fig. 1 The 1983, 1993, and 1999 parole reforms' effect on required time served before being eligible for parole. Notes: each reform effect should be read as the change (in months) when going from prior parole law. On July 1, 1983, parole laws were changed so that offenders sentenced to 2–24 months in prison were required to serve at least half the sentence before being eligible for parole, from previously two-thirds of the sentence. Parole laws were then again changed on July 1, 1993, requiring offenders sentenced to 4–23 months in prison to serve two-thirds of the sentence. On January 1, 1999, a reform was enacted that targeted inmates sentenced to more than 24 months in prison that required them to serve two-thirds of the sentence before being eligible for parole, from previously half of the sentence

Data, samples, and measures

Data

The study data were drawn from the convictions register maintained by the Swedish National Council for Crime Prevention (BRÅ), and cover the period 1973 to 2017. [4] This means that we have the entire conviction histories of all cohorts born after 1957 (the age of criminal responsibility is 15 in Sweden). From this register, we have extracted data on the date of the offense, the date of conviction, offense type, sanction type, and sentence length (in days). In order to censor the dataset, we have also collected data on dates of death and emigration

[4] This study was preregistered at Open Science. See https://osf.io/br875. The linking of the various registers and the anonymization of the dataset have been carried out by Statistics Sweden (SCB). The dataset is stored on, and has been analyzed via, the system used by Statistics Sweden to make microdata available for online research (MONA). Due to the Swedish Public Access to Information and Secrecy Act, microdata cannot be made publicly available.

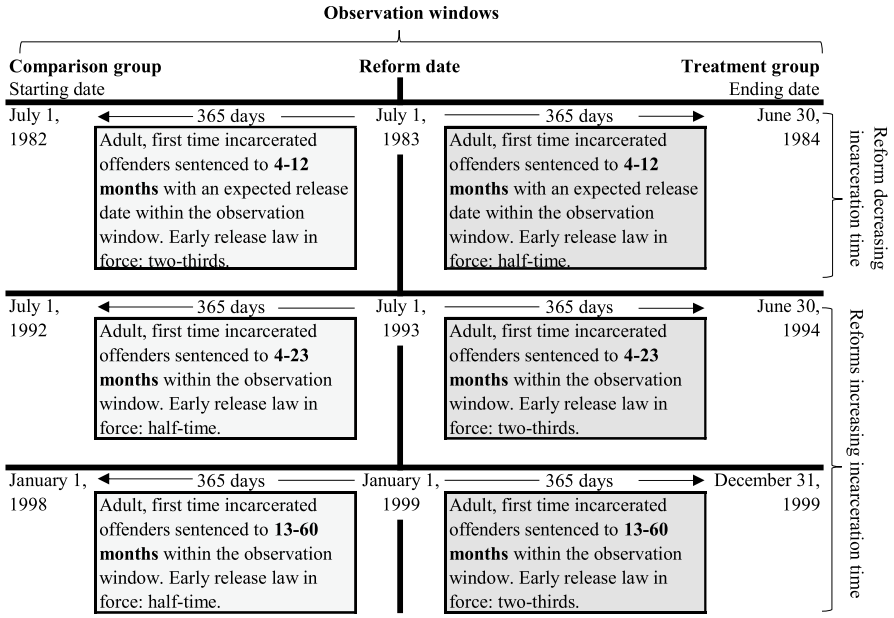


Fig. 2 Inclusion criteria and study design relative to the 1983, 1993, and 1999 parole reforms

from the Total Population Register (RTB) maintained by Statistics Sweden (SCB).[5]

Our attention is directed at offenders who have been imprisoned for the first time. For these individuals, who tend to be younger, incarceration may be more consequential than it is for individuals with multiple experiences of imprisonment (Baćak et al., 2019; Nieuwbeerta et al., 2009). Focusing on first-time incarcerated individuals also enables us to circumvent the feedback effect between imprisonment and crime. Because we are interested in isolating the effect of incarceration length, excluding the potential influence of previous exposure to incarceration is beneficial.

Analytic samples

Three different reform samples were created (see Fig. 2), one for each reform year. The reform samples were selected on the basis of five inclusion criteria. First, for the 1993 and 1999 reforms, individuals *convicted* within 12 months after the reform (July 1, 1993, and January 1, 1999) were assigned to the treatment group, while individuals sentenced during the 12 months prior to the reform were assigned to the control group. Because the 1983 reform affected all individuals

[5] We are able to link data from these registers by using the Swedish personal identification number, which is based on the individual's date of birth and an additional four-digit identification number. Statistics Sweden produces an anonymized pseudo-key to avoid the identification of specific individuals.

who were incarcerated on the day the reform was introduced — which was not the case for the subsequent reforms — the inclusion criteria are slightly different for the 1983 reform sample. Here the treatment group consists of individuals who had an expected *release date* within 12 months after the reform (July 1, 1983), while the control group comprises individuals who had an expected release date during the 12 months prior to the reform. Since our data consist of offenders in the cohorts born after 1957, our design entails certain age restrictions. This is most apparent for the 1983 reform, where the maximum age is restricted to 25 years old (i.e., those born in 1958). Second, because of the way in which the 1983 reform was implemented, offenders who were convicted prior to the reform but who had a release date subsequent to the reform were released after serving somewhere between half and two-thirds of their sentence. We exclude these offenders due to the risk for measurement error in their exposure to treatment. Third, each reform impacted specific sentence lengths in a way that varied from reform to reform, and we have therefore only included the following sentence lengths: The 1983 reform allows for estimates of the effect of a decrease in incarceration time (on average, an expected 36-day decrease) for sentences of 4 to 12 months (n = 654); the 1993 reform allows for estimates of the effect of an increase in incarceration time (on average, an expected 36-day increase) for sentences of 4 to 23 months (n = 1,688); the 1999 reform allows for estimates of the effect of an increase in incarceration time (on average, an expected 115-day increase) for sentences of between 12 and 60 months (n = 637). The upper limit of 60 months has been imposed because there are too few observations above this threshold. Fourth, the offender had no prior prison sentences (but could have a prior conviction history involving non-custodial sanctions). Fifth, the offender was not below the age of 18 at the time of the offense. In Sweden, offenders under the age of 18 are in general not sentenced to prison but rather to institutional care outside the prison system.

Outcome variables

We measure three outcome variables: *reconviction*, *reincarceration*, and *recidivism frequency*, with time at risk starting from the *expected* release date and capped at 10 years. We calculate the expected release date by taking the date on which a conviction comes into force, and adding the length of the imposed prison sentence with parole subtracted. As a result of time spent in pre-trial detention, this will not yield perfect estimates, but there is no reason to expect the potential errors, due to this factor, to vary between treatment and control groups. *Reconviction* measures whether an individual has been reconvicted for a post-release offense, *reincarceration* measures whether an individual has been convicted of an offense that led to a new prison sentence, and *recidivism frequency* is a count variable that measures the total number of offenses included in post-release convictions. Descriptive statistics for all variables are included in Table 1.

Table 1 Comparison between treatment and control group on background characteristics in the three reform samples. $N = 3002$

	1983 reform			1993 reform			1999 reform		
	Pre-reform (control group) Mean	Post-reform (treatment group) Mean	Diff.	Pre-reform (control group) Mean	Post-reform (treatment group) Mean	Diff.	Pre-reform (control group) Mean	Post-reform (treatment group) Mean	Diff.
First prison sanction									
Age at crime	21.19	21.55	0.36**	24.28	24.87	0.6**	25.82	25.80	-0.01
Imposed sentence lengths (days)	214.47	210.28	−4.19	260.38	264.82	4.44	740.05	786.48	46.43
Criminal history up to and including first prison sanction									
Conviction frequency	5.52	5.48	−0.04	4.27	4.20	−0.07	3.68	3.56	-0.12
Crime frequency	23.05	22.32	−0.73	14.98	14.68	−0.30	12.42	12.74	0.33
Age of onset	17.18	17.52	0.34	18.67	18.92	0.25	19.34	19.04	-0.31
Crime mix (frequency)									
Violent	1.35	1.23	−0.12	1.87	2.13	0.27*	1.94	2.58	0.64*
Sex	0.03	0.03	0.00	0.10	0.11	0.01	0.19	0.23	0.04
Property	12.70	11.60	−1.10	6.26	5.76	−0.50	4.41	4.01	-0.40
Fraud	1.18	1.26	0.09	1.35	1.23	−0.12	1.03	0.89	-0.14
Vandalism	1.06	0.78	−0.28	0.63	0.71	0.08	0.53	0.47	-0.06
Traffic	3.93	4.61	0.68	2.31	2.48	0.17	1.69	1.64	-0.05
Narcotics	1.20	1.29	0.09	0.70	0.68	−0.03	1.01	1.48	0.46*
Demographic background									
Female	0.05	0.06	0.01	0.07	0.08	0.01	0.08	0.07	-0.01
Born in Sweden	0.89	0.91	0.02	0.86	0.87	0.01	0.82	0.82	0.00
Censoring									

Table 1 (continued)

	1983 reform			1993 reform			1999 reform		
	Pre-reform (control group) Mean	Post-reform (treatment group) Mean	Diff.	Pre-reform (control group) Mean	Post-reform (treatment group) Mean	Diff.	Pre-reform (control group) Mean	Post-reform (treatment group) Mean	Diff.
Age at follow-up	49.80	50.51	0.71	46.36	46.32	−0.04	43.33	42.34	-0.99
Deceased in 2017	0.30	0.28	−0.02	0.13	0.11	−0.02	0.09	0.12	0.03
Age at decease	41.97	40.50	−1.47	38.51	37.48	−1.02	34.94	37.82	2.88
N	322	334		884	815		313	334	

Notes: * $p < .05$, ** $p < .01$

Independent variables

A dummy variable has been constructed indicating whether the offender was exposed to a reform or was subject to the parole legislation in force prior to the reform. This variable is used to estimate the reduced-form effect of being "treated" by a parole reform.

The continuous variable measuring imposed sentence length was transformed into a categorized ordinal variable, with sentence lengths being categorized differently for each of the three reforms. The following categories were created to include a sufficient number of offenders in each: for the 1983 reform, 4–5 months (n = 375), and 6–12 months (n = 279); for the 1993 reform, 4–5 months (n = 785), 6–12 months (n = 645), and 13–23 months (n = 258); for the 1999 reform, 13–23 months (n = 314), 24–36 months (n = 197), and 37–60 months (n = 126).

In the adjusted models, we control for the following criminal justice variables: age and age squared at first conviction, prior conviction frequency, prior crime frequency by offense type (violent, sex, property, fraud, vandalism, traffic, narcotics), number of prison days imposed for the first prison sanction, conviction month, and age at the time of the offense that resulted in the first prison sentence. In addition, we include the following demographic controls: sex and whether or not the offender was born in Sweden.

Analytical strategy

We employ event history analysis to analyze recidivism measured in terms of reconviction or reincarceration, and each reform is treated separately. Event history analysis allows for an estimation of the time it takes for a criminal event to occur measured from a given "at-risk" starting point (see, e.g., DeJong, 1997; Sivertsson, 2016). In essence, the length of time between two criminal events is used to estimate the hazard for recidivism, which is assumed to measure the strength of recidivism tendencies (Allison, 2014). This approach handles right-censored data with ease, which is particularly useful when using long follow-up periods. In the current study, we analyze recidivism over a 10-year period. The data are right-censored at the time of emigration, death, or the end of the period of time at risk. We utilize the precision provided by daily information on convictions, and analyze reconviction in a continuous time, where the time to reconviction is calculated as the number of days between the date of expected release from prison and a new conviction.

We estimate non-parametric Kaplan-Meier cumulative probability functions to illustrate "the speed" of recidivism over the follow-up period between the treatment and control groups in a bivariate fashion, and we employ Cox proportional hazard regression to model the association between reform exposure and recidivism. We furthermore employ Cox proportional hazard regression in relation to

different subsets of categorized sentence lengths. This stratification by imposed sentence length enables us both to analyze the groups that were most impacted by the reforms in terms of increases/decreases in incarceration length prior to parole, and also whether incremental adjustments in incarceration length accelerate or decelerate recidivism timing.

Further, we use negative binomial regression to estimate the recidivism frequency.[6] Negative binomial regression is preferred over Poisson regression for our data structure, since a likelihood-ratio chi-square test indicated that the dependent variable is over-dispersed (Osgood, 2000). In contrast to the Cox-regression analyses, the negative binomial model requires that the offender had been alive and had not emigrated throughout the follow-up period.

Reform implementation and methodological considerations

Because the conviction date and not the date of the offense determined whether an individual was affected by the 1993 and 1999 reforms, the possibility of offender "self-selection" is not a particular concern in relation to the effects of these reforms. This is even less of a concern in relation to the 1983 reform, since in this case the reform was not implemented on the basis of individuals' offense or conviction dates (see the earlier section on the Swedish parole institution). However, judges might hypothetically hasten or delay a conviction in order to ensure that an offender was convicted on one side of the reform date or the other. Appendix Fig. 5b and e do indeed show that fewer conviction decisions were made during the days following the 1993 and 1999 reforms, which might indicate a preference for allowing offenders to receive half-time parole rather than two-thirds parole. However, when comparing the reform years with the surrounding years, we do not find any deviating patterns (see Appendix Fig. 5). Instead, the sorting that does seem to occur is not because of preference but more likely an annual period effect with fewer convictions during the summer months. One concern regarding our identification strategy is its assumption that the reforms only create variation in the length of incarceration and not in the imposed sentence length. One possible way the reforms might indirectly affect imposed sentence length would be if judges wished to counter the effects of the reforms. For example, in order to minimize the effect of the 1993 or 1999 reforms, judges might use their discretion and sentence offenders convicted after these reforms to shorter sentences. We have plotted the distribution of the length of imposed prison sentences separately for the treatment and control groups for all 3 reform years and see no evidence of differences in sentencing patterns between these groups (see Appendix Fig. 6).

Our quasi-experimental design may be susceptible to period effects that might produce differences between treatment and control groups that are not related to the reforms. While there is, most certainly, a multitude of developments going on in each observation window, we are unaware of any particular phenomenon that could

[6] As a result of the presence of extreme outliers, our count variable has been winsorized at the 95th percentile.

produce systematically different effects for treatment and control groups. As a way of checking for period effects, we have nonetheless compared groups who were sentenced to prison for the first time prior to and after the reform date, but who were sentenced to prison terms that were not affected by a reform (either because the sentence was too short or too long). We have also performed "placebo tests," specifying the parole reform dates as instead having occurred 1 year prior to and 1 year after the actual reform years. A further test for robustness is done by expanding the time window from 1 to 2 years prior to and after the reforms, thus increasing the total time window to 4 years. The outcomes from these sensitivity tests will be presented in "Results" and accessed in the supplementary material.

As was noted earlier in the section on the Swedish parole institution, the length of post-release supervision decreased with the 1983 reform. This might affect the comparison between the treatment and control groups in two ways. The longer parole supervision prior to the reform might have made individuals less prone to crime following their release, but it might also have resulted in recidivism being detected more frequently and more easily in this group by comparison with the treatment group.[7] For these reasons, the outcomes from the 1983 reform analyses should be interpreted with some caution.[8]

Results

Table 1 presents a comparison of demographic characteristics and criminal justice contacts between the treatment and control groups for the three reform samples. The groups are overall similar, but with some exceptions. The treatment groups for the 1983 and 1993 reforms are 4–7 months older at their age of onset than their control groups. This is expected, however, since our data consist of the cohorts born after 1957 and as a result of the temporal order of the design, the treatment groups are allowed to be 1 year older. Because of this, we control for age at crime in the adjusted model but also perform a robustness check that minimizes age differences between the treatment and control group. There is virtually no difference between treatment and control groups in the age of criminal onset in any of the reform years. The only statistically significant difference in prior crimes is observed in the 1993 reform sample where the treatment group has on average been convicted of 0.3 more violent crimes and in the 1999 reform sample, where the control group has on average been convicted of 0.6 fewer violent crimes, and 0.5 fewer narcotics crimes. Despite the overall similarity between treatment and control groups in the three reform samples, there are nonetheless slight differences, and to ensure that these do

[7] See the discussion by Roodman (2017) concerning what he refers to as "parole bias," and who argues that potential differences in recidivism rates among those serving different sentence lengths may be due to differences in the duration of post-release supervision.

[8] In an effort to control away potential bias produced by the variation in the length of supervision periods, we performed a sensitivity analysis with respect to the 1983 reform, with a shorter follow-up period. The results from an analysis where the follow-up period was reduced to 1 year did not deviate from the results from the 10-year follow-up analysis (Supplementary Table 5).

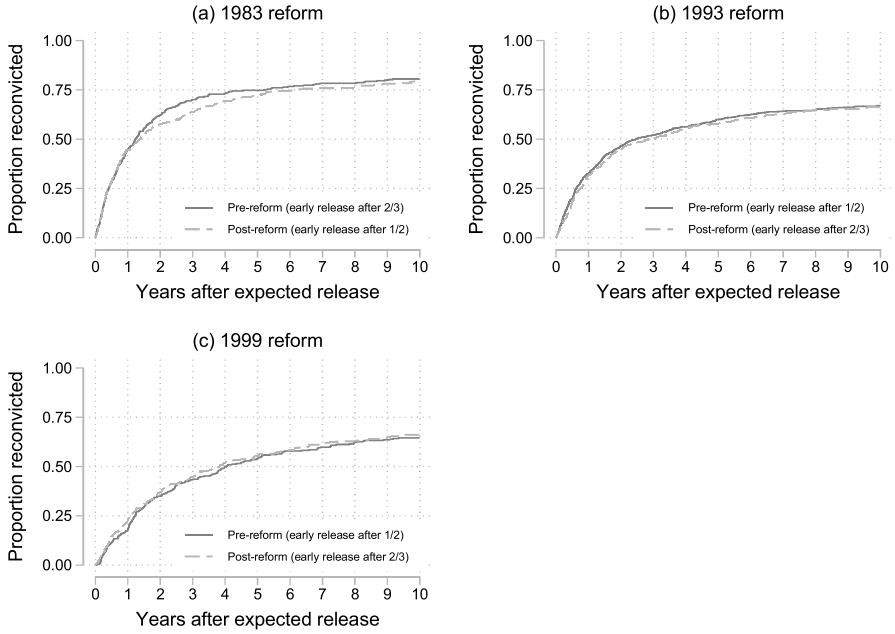


Fig. 3 **a–c** Cumulative reconviction probabilities for 1983 parole reform sample (**a**), 1993 parole reform sample (**b**), and 1999 parole reform sample (**c**) for treatment (post-reform) and control group (pre-reform)

not bias our estimates, we have controlled for these characteristics when estimating the average effect of the respective reforms on recidivism.

Before turning to our regression analysis, we first explore the extent to which our treatment and control groups have been reconvicted over a 10-year follow-up period. Figure 3 presents estimated Kaplan-Meier cumulative probability functions by treatment and control group in the three reform samples. It may first be noted that the reconviction risk in these first-time imprisonment groups is generally high, irrespective of group membership. As indicated by the steep increase over the first years following expected release, the hazard for recidivism is highest during the years immediately following release, after which it declines. This pattern replicates the conventional wisdom in recidivism research (e.g., Nygaard Andersen & Skardhamar, 2017). It is also noteworthy that although there are differences in the reconviction risk between treatment and control groups, the differences are relatively small with the largest difference between the cumulative curves is found for the 1999 sample, where the treatment group's reconviction risk is 1.5 percentage points higher than that of the control group. A similar small difference between treatment and control group is observed when recidivism is measured as reincarceration (see Appendix Fig. 7).[9]

[9] One interesting deviation is, however, that the temporary differences between the reconviction curves for the treatment and control groups that occur 1–5 years after the expected release in the 1983 reform (see Appendix Fig. 7a) are not observable when recidivism is measured as reincarceration.

Table 2 Cox regression models predicting the risk for recidivism in three reform samples. Hazard ratios (HR) and confidence intervals (CI)

	Reconviction						Reincarceration					
	Model 1			Model 2			Model 1			Model 2		
	HR	CI 95%		HR	CI 95%		HR	CI 95%		HR	CI 95%	
1983 reform												
Pre-reform	1			1			1			1		
Post-reform	0.940	0.792	1.117	1.045	0.875	1.248	0.957	0.781	1.172	0.990	0.801	1.223
1993 reform												
Pre-reform	1			1			1			1		
Post-reform	0.959	0.852	1.078	0.961	0.853	1.082	0.948	0.818	1.098	0.935	0.805	1.086
1999 reform												
Pre-reform	1			1			1			1		
Post-reform	1.053	0.868	1.278	1.052	0.859	1.289	0.989	0.774	1.262	1.050	0.813	1.356

Model 1: unadjusted. Model 2: adjusted for age at crime, squared age at crime, imposed prison days, conviction month, prior conviction frequency, prior crime frequency by crime type (violent, sex, property, fraud, vandalism, traffic, narcotic), age of first convicted crime, and whether the offender was born in Sweden, and sex. Each estimate represents results from a separate regression

*$p < .05$

Moving on to the regression models, Table 2 presents unadjusted and adjusted estimates from Cox regression models by reform sample on the hazards for reconviction and reincarceration. The estimates from the unadjusted models are parameterizations of the Kaplan-Meier curves in terms of hazard ratios (HR). For example, the difference of 1.2 percentage points in the absolute reconviction risk that we noted between the treatment and control group in the 1983 sample (Fig. 3) is equivalent to a 6% lower (unadjusted) hazard for the treatment group. For the adjusted model, the 1983 treatment group has a 4.5% increase in reconviction risk. In the adjusted models for the 1993 and 1999 reforms — where incarceration time prior to parole release was increased — we see contradictory outcomes with a 3.9% decrease in reconviction risk for the 1993 treatment group and a 5.2% increase in reconviction risk for the 1999 treatment group. In general, the patterns are repeated when we instead look at the hazard of reincarceration in the right-hand side panel. Common to all estimates in Table 2 is, furthermore, that they are small and far from reaching statistical significance at the $p < .05$ alpha level.

Moving on to Fig. 4, we examine the relationship between the different categories of incarceration lengths and post-release reconviction. The figure should be read as reflecting a stratification of sentence lengths that were all impacted in various ways by a parole reform in terms of either a decrease or an increase in incarceration time, with the control groups used as a reference (see Fig. 1 for the size of the changes for specific sentence lengths). For example, the 4–5-month group in Fig. 4a were subject to an imposed sentence of 4–5 months, and as a result of the 1983 reform experienced a decrease of approximately 3 weeks in their period of incarceration. The adjusted HR for this group is 1.041, which means that a decrease of approximately

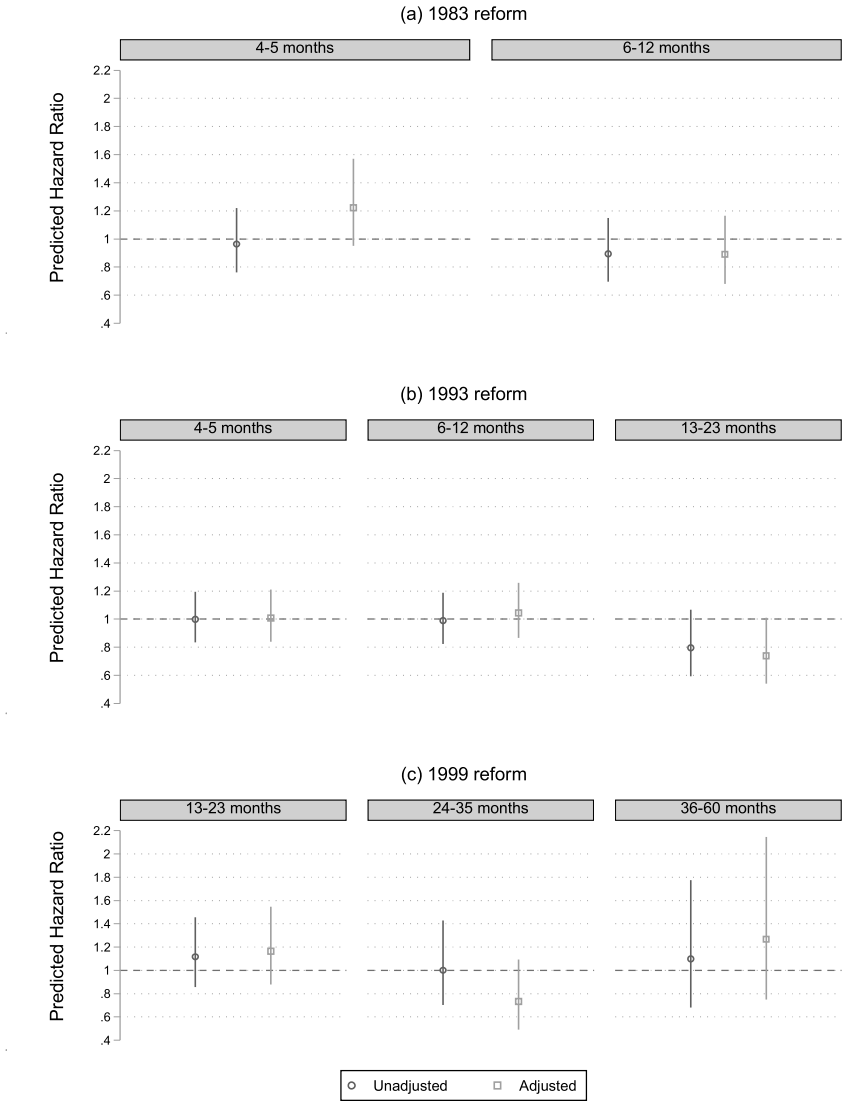


Fig. 4 **a–c** Cox regression models predicting the risk for reconviction in 1983 parole reform sample (**a**), 1993 parole reform sample (**b**), and 1999 parole reform sample (**c**). Adjusted hazard ratios accompanied by 95% confidence intervals

3 weeks in incarceration time for individuals sentenced to 4–5 months resulted in a 4.1% higher reconviction risk. All three reforms display inconsistent patterns, with estimates going in both directions and none being statistically significant. We nonetheless see a 16.4% decrease in the risk for reconviction in Fig. 4b when incarceration time was increased for inmates with the longest sentence lengths in the 1993

reform, of 13–23 months. For the group who were subject to the longest imposed sentence lengths in the 1999 reform (Fig. 4c), and who were accordingly also subject to the largest increase in incarceration time, we see an increase in the reconviction risk of 26.1%. Overall, it is difficult to draw any general conclusions regarding the relationship between categories of incarceration length and recidivism, in part as a result of the fluctuating pattern in the hazard for recidivism, but also because of the large standard errors.

For recidivism frequency, Table 3 presents estimates in terms of average marginal effects and incidence rate ratios (IRR). Over the course of the 10-year follow-up period, we see that ~4 more offenses (IRR: 1.187) were committed when incarceration time was decreased in the 1983 treatment group. When incarceration time was increased, we see an increase of 0.2 offenses during the 10-follow-up period for the 1999 treatment group (IRR: 1.025) and practically no effect on recidivism frequency for the 1993 treatment group. Again, none of the coefficients are statistically significant at the $p < 0.05$ alpha level.

Sensitivity analyses

To obtain a better understanding of the robustness of our results, we performed a series of sensitivity analyses. First, we looked at recidivism among offenders who are within the observation window (1 year on either side of the reform date) but who were not affected by the reforms because their sentences were either too short or too long (Supplementary Fig. 1). Second, we investigated if any notable changes could be obtained in our estimates by extending the observation window and thus increasing the number of offenders in our data (Supplementary Table 1). Third, we subjected our sample to various restrictions (such as age restrictions) to maximize comparability between the treatment and control groups Supplementary Table 2). Fourth, we constructed placebo reforms 1 year prior to and 1 year after each actual reform (Supplementary Table 3). None of these sensitivity tests revealed any notable changes in the results, and all estimates remained non-significant.

Discussion

In this study, we have exploited three separate natural experiments in order to measure the effect of incarceration time on recidivism (measured as reconviction, reincarceration, and recidivism frequency) among offenders incarcerated for the first time, using an extensive follow-up period of 10 years. The use of prison and sentence lengths varies widely between cultural contexts. In Sweden, the average sentence in 2020 was 13.5 months (Kriminalvården, 2021a), which can be contrasted with USA, where the average time served in federal prisons in 2012 was 37.5 months (Motivans, 2015). Only a small number of studies utilizing quasi-experimental designs have been conducted outside USA, which means that the scholarly knowledge concerning more moderate penal contexts is limited. Our results contribute to the discussion on the individual preventive effect of incarceration time, particularly

Table 3 Negative binomial regression models predicting recidivism frequency in three reform samples and with 3-year and 10-year follow-up time. Incidence rate ratios (IRR), marginal effects, and confidence intervals (CI)

	Follow-up: 3 years						Follow-up: 10 years					
	IRR	CI 95%		Marginal effect	CI 95%		IRR	CI 95%		Marginal effect	CI 95%	
Reform												
1983	1.074	0.875	1.317	0.55	−1.02	2.12	1.187	0.962	1.466	4.11	−1.02	9.23
1993	0.986	0.837	1.162	−0.09	−1.15	0.97	1.003	0.856	1.175	0.06	−2.95	3.07
1999	0.896	0.663	1.212	−0.29	−1.08	0.51	1.025	0.785	1.338	0.20	−1.92	2.31

Coefficients adjusted for age at crime, squared age at crime, imposed prison days, conviction month, prior conviction frequency, prior crime frequency by crime type (violent, sex, property, fraud, vandalism, traffic, narcotic), age of first convicted crime, whether the offender was born in Sweden, and sex. Each estimate represents results from a separate regression

*$p < .05$

with regard to the relatively unexplored effect of changes in mid-to-lower range sentences.

Utilizing large-scale administrative data containing all convictions for Swedish cohorts born after 1957, we find little evidence that increasing or decreasing the length of incarceration has a specific preventive effect on post-release offending. We were unable to detect any statistically significant effects of incarceration time, irrespective of how recidivism was measured or whether there was an increase or decrease in the time spent incarcerated. A less restrictive interpretation of the results would suggest that increasing incarceration time for short-term sentences (of less than 2 years) did not *increase* post-release recidivism, regardless of how it was measured, and instead showed a tendency towards minor decreases in recidivism. For long-term sentences of 2 years and more, the effects were the opposite, with tendencies towards an increase in recidivism when incarceration time was increased. The effects of a decrease in incarceration time were too heterogeneous (depending on how recidivism was operationalized) to draw any conclusions regarding tendencies. With regard to the relationship between categorizations of sentence length and recidivism, we found no clear relationship, with non-significant effects in both directions. It could be argued that for some sentence lengths observed in this study, the reforms only had a relatively minor impact (see Fig. 1) and that such small changes in incarceration time may not be sufficient to produce post-release effects. While we do acknowledge that this could be the case for some inmates, increases as low as 1 additional month of incarceration have still been proved to produce post-release effects on, for example, labor market attachment (Landersø, 2015), health outcomes (Hjalmarsson & Lindquist, 2020), and recidivism (Kuziemko, 2012). This suggests that the mechanisms that impact post-release behavior could be active even at minor changes in incarceration time.

As has been noted, European research on the effect of incarceration length is scarce, but previous studies have found no effect when analyzing Dutch offenders (Snodgrass et al., 2011; Wermink et al., 2018), and instances where there was a decrease in recidivism following increased incarceration time among Swedish offenders (Hjalmarsson & Lindquist, 2020). Although our observed null effect echoes the results of Wermink et al. (2018), since their data were limited to offenders sentenced to between 1 week and 15 months, there are difficulties when comparing the results. At the same time, we do observe a similar null effect for the sentence lengths of 4–5 and 6–12 months, which are partly comparable to the sentence lengths studied by Wermink et al. (2018). Further, our findings are in line with those of other second-generation studies that have examined the effects of incarceration time, and that have also found a null effect (Loughran et al., 2009; Meade et al., 2013; Mears et al., 2016; Rhodes et al., 2018; Rydberg & Clark, 2016).

As described by Mears et al. (2015), heterogeneity can be found not only in post-release effects but also in terms of the heterogeneity of in-prison experiences (i.e., treatment heterogeneity), which might explain both why some recent quasi-experimental studies have found recidivism-reducing effects (Kuziemko, 2012; Roach & Schanzenbach, 2015), but also the instances of recidivism-preventive tendencies noted in our study. Hjalmarsson and Lindquist (2020), for example, show that when incarcerated, participation in health programs could

help to reduce recidivism (see also Bhuller et al., 2020; Lipsey & Cullen, 2007). Variation in participation and inmate programs may thus act as confounders and contribute to outcome heterogeneity between penal contexts, which suggests a need for further analyses to pinpoint why the effects of increased incarceration time vary. As noted by Hjalmarsson and Lindquist (2020), for some incarceration lengths, it may be that an increase in incarceration time enables participation in effective rehabilitating programs which would otherwise not be possible. The Swedish context is particular in the sense that the Scandinavian penal institutions are known for being rehabilitation-oriented with comprehensive in-prison health care and programs for education and vocational training (see Pratt & Eriksson, 2014; Ugelvik & Dullum, 2012; von Hofer & Tham, 2013). From an international point of view, Swedish prisons have one of the highest per inmate expenditures and this is in part due to the small-scale prisons, a low staff-to-inmate ratio, and the extensive rehabilitating programs. Alongside the relatively small prison population, these are features that may affect the extent to which the results reported above are generalizable to countries outside the Scandinavian context. On a similar note, because of national differences in the criminal sanction system inmate composition and thus recidivism risks differ between countries. For example, traffic offenses in Norway are punished by incarceration far more often than in Sweden (Kristoffersen, 2013), and drug possession and drug use are criminalized in Sweden as opposed to the Netherlands (Chatwin, 2003).

Before discussing the policy implications of this study, a number of limitations need to be addressed. First, because of the negative relationship between age and criminal participation (i.e., the age-crime curve), age may have a confounding effect when analyzing recidivism. In our study, this is primarily an issue for those individuals who experienced the largest increase in incarceration time (see Fig. 1), producing an age gap between the treatment and control groups at the time when the offenders were released. Second, with regard to a more general discussion concerning internal validity and unobserved confounding, it should be mentioned that although we have utilized natural experiments to minimize the influence of confounders and selection effects, we cannot rule out the existence of such biases.[10] This issue is the most prominent concern in relation to the design employed in this study, since the treatment group is observed on average 1 year after the comparison group. Because our study design limits us from controlling for period effects, we cannot with certainty rule the effect from the general crime decline in convictions witnessed in Sweden during the study period (Bäckman et al., 2020). Third, our reliance on natural experiments has meant that we have been limited to those few occasions on which these have occurred in Sweden. It would be methodological preferable if these natural experiments had been more recent in order to minimize the limitations to generalizability associated with possible differences in how the correctional services operate, but also general societal, economic, and legal changes. Examples of the latter

[10] As described in the section on the Swedish parole institution, Hjalmarsson and Lindquist (2020) evaluated whether the 1993 and 1999 reforms could be used as a natural experiments, and found that they could.

are the criminalization of the purchase of sex (Levy, 2014) and zero-tolerance drug policies (Lenke & Olsson, 2002), both part of a general trend toward a more punitive crime policy (Tham, 2001). To some extent, these changes may limit the comparability between reforms since the time distance between them have potentially resulted in variation with respect to the composition of the inmate population over the three reform periods. Fourth, although the results regarding different categories of incarceration lengths provide us with important knowledge with regard to nonlinearity, stratifying incarceration lengths in this way involves a loss of precision in our estimates, which can be seen in the large confidence intervals. Fifth, because we do not have exact dates on prison entry and release, we are limited to approximations of the release date (see outcome variables section). The estimation of release dates could produce bias if there were a reason to believe that the period between receiving a conviction and starting one's sentence differed between the periods before and after a given reform. However, we have no reason to expect any systematic differences between the treatment and control groups in any of the reform samples. Sixth, because treatment heterogeneity may be critical to the understanding of confounders that might impact treatment effects, differences in quality or intensity of prison programs (and other in-prison experiences) may be an issue when generalizing our results to penal contexts that vary from the Swedish correctional system, in terms of both sanctioning policies and also the emphasis on rehabilitation. At the same time, other parts of Western and Northern Europe have similar policies and conditions, and a similar focus on rehabilitation, and thus generalizability should be possible to a broader context than just Sweden.

Limitations aside, the policy implications of this study are not clear. In general, the issue of the effectiveness and crime-reducing potential of custodial sanctions and longer incarceration times is complex with heterogeneous effects depending on offender characteristics and the environment in which the inmate is held. An increase in incarceration time could allow for further rehabilitative interventions for some at-risk individuals serving shorter sentence lengths, but this presupposes that the environment in which they are incarcerated has the resources to correctly identify at-risk individuals, and sufficient social and health programs. In contrast to non-custodial sanctions, incarcerating offenders with no prior prison record is, however, associated with increased post-release recidivism risks (Nieuwbeerta et al., 2009; Toman et al., 2015; Walters, 2003). In addition, there is evidence from Scandinavia showing crime-reducing benefits of electronic monitoring among individuals who have not previously been incarcerated (Andersen & Telle, 2019). From a policy perspective, redirecting individuals without prison records to alternative sanctions may therefore be a more effective means of reducing crime, as well as being more cost-effective. As suggested by this study, the overall crime-control benefits of increasing incarceration time for first-time incarcerated offenders may be questioned.

Appendix

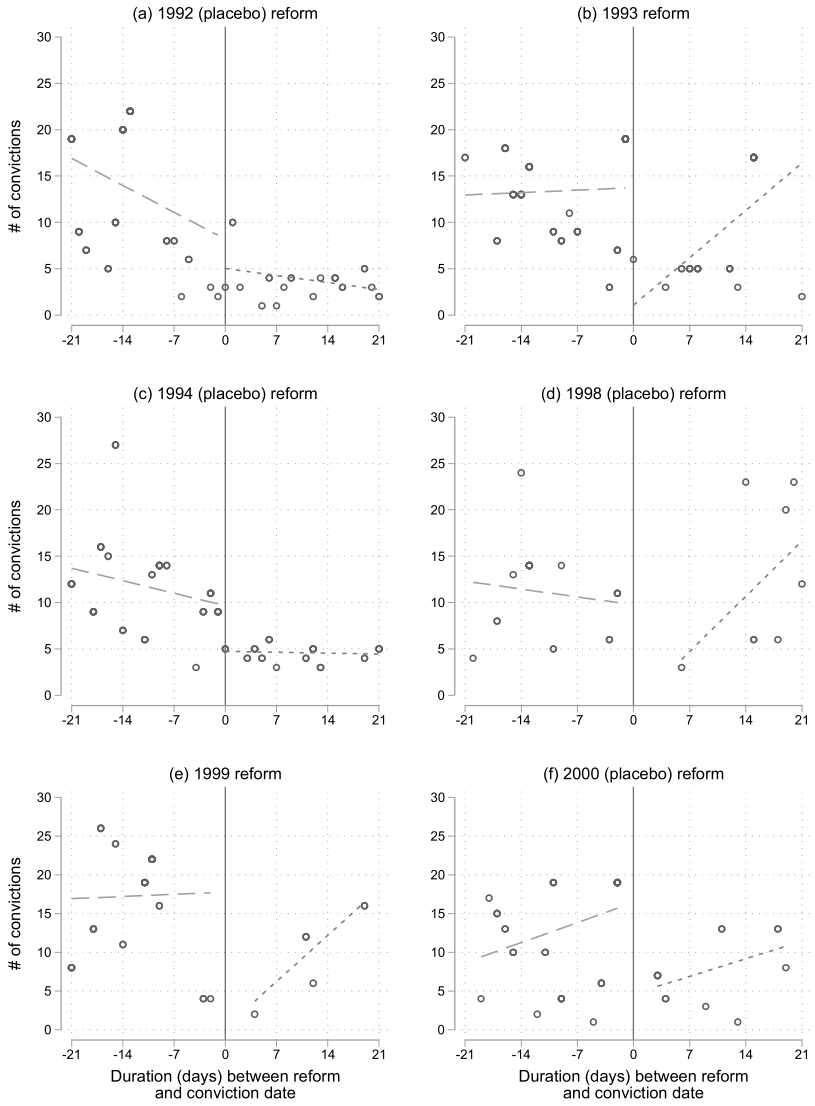


Fig. 5 **a–f** Number of convictions (per day) prior and after July 1, 1992, placebo reform (**a**), July 1, 1993, parole reform (**b**), July 1, 1994, placebo reform (**e**), January 1, 1998, placebo reform (**d**) January 1, 1999, parole reform (**e**), and January 1, 2000, placebo reform (**f**)

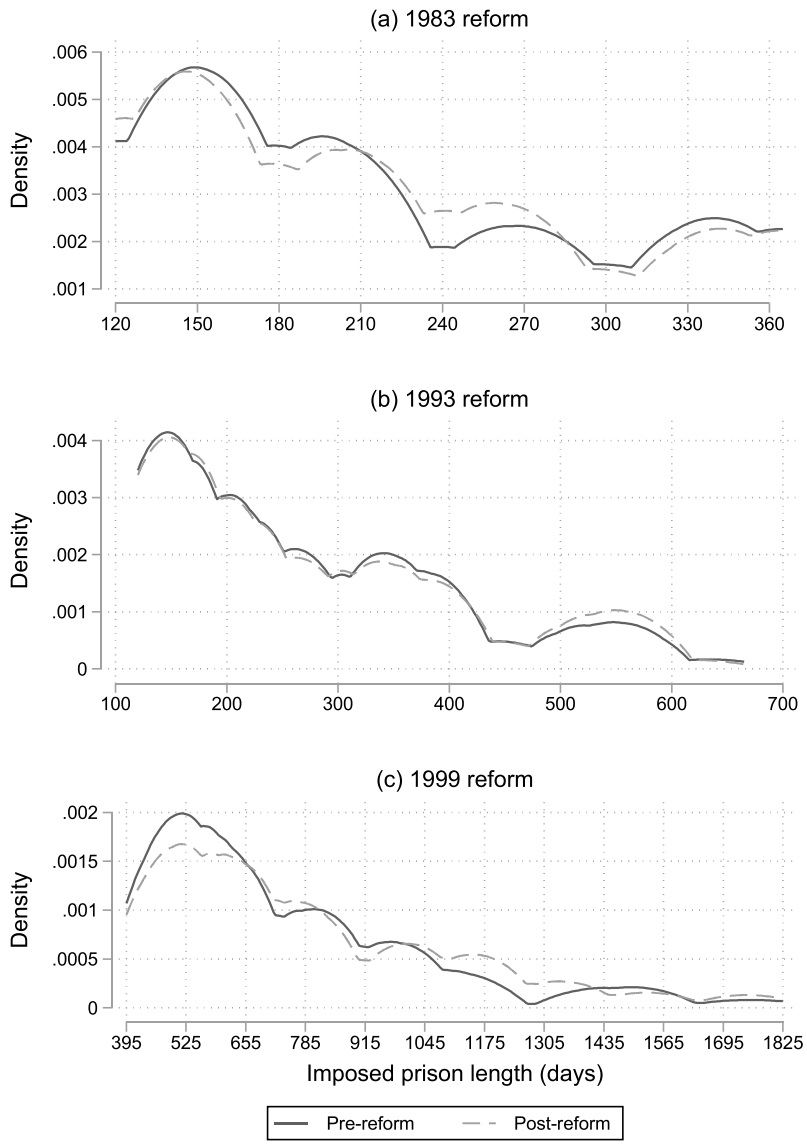


Fig. 6 **a–c** Densities of imposed sentence length in 1983 parole reform (**a**), 1993 parole reform (**b**), and 1999 parole reform (**c**) for treatment (post-reform) and control group (pre-reform). Only sentence lengths that are affected by the reforms are presented

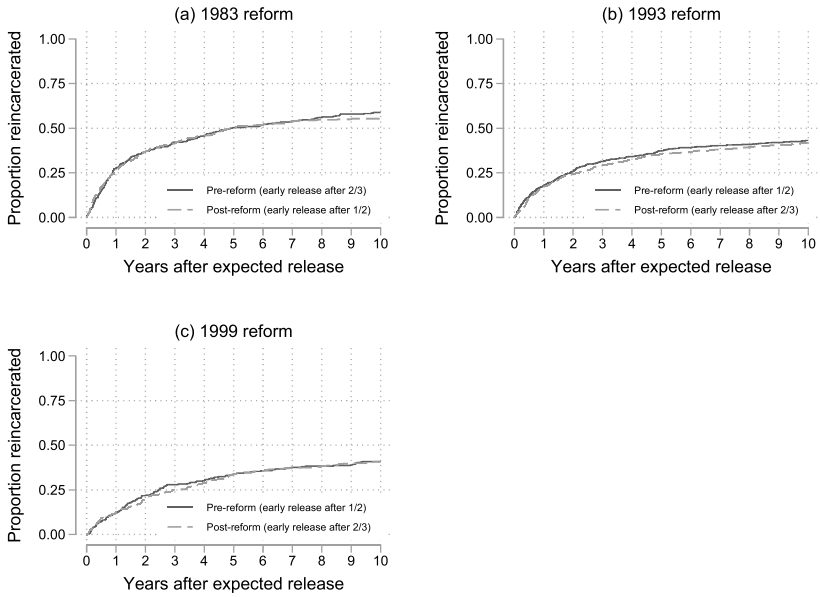


Fig. 7 **a–c** Cumulative reincarceration probabilities for 1983 parole reform sample (**a**), 1993 parole reform sample (**b**), and 1999 parole reform sample (**c**) for treatment (post-reform) and control group (pre-reform)

Supplementary Information The online version contains supplementary material available at https://doi.org/10.1007/s11292-022-09513-1.

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TRUTH IN SENTENCING

FLORIDA SHERIFFS RESEARCH INSTITUTE
JANUARY 2020

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INTRODUCTION

Nearly 50 years ago, Florida's sheriffs were talking about the importance of criminals serving their full court-imposed prison sentences. It was an important issue then and it remains a big deal today because sheriffs have seen the benefits of a system where there is "Truth in Sentencing."

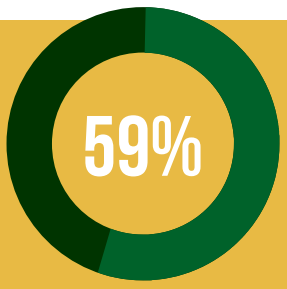
As you will read on the following page, former Leon County Sheriff Raymond Hamlin described in great detail in a 1975 issue of the Sheriff's Star about the need for "truth in sentencing" to ensure criminals serve their full time. Almost 20 years later, sheriffs saw their persistent work realized when Florida passed its version of Truth in Sentencing – the Stop Turning Out Prisoners (S.T.O.P.) Act, which now ensures all criminals sentenced to the Department of Corrections must serve at least 85% of their time behind bars before being eligible for release.

Lately, the S.T.O.P Act has been criticized by opponents who claim that because of that Act, inmates have no incentive to behave well while incarcerated, and that the law should be changed to 65%. We disagree with this proposition because rewarding inmate misbehavior with early release is illogical.

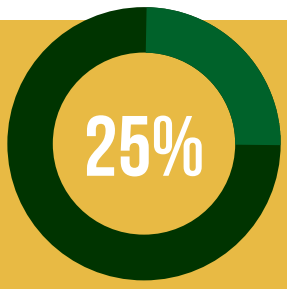
On one hand, advocates for reduction in the law requiring that inmates serve at least 85% of the judge-imposed sentence also advocate for the elimination of minimum mandatory sentences. These advocates opine that judges should be allowed to sentence, and that judges should not be hamstrung by minimum mandatory sentences because minimum mandatory sentences lead to unfair results for criminals. These advocates further argue that judges are best poised to make the right decision about the length of sentence that should be imposed on a criminal defendant based upon the judge's analysis of the facts and law, and that sentencing should not be dictated by statute.

They cannot have it both ways by arguing that a judge's well-informed sentence is paramount to fairness and correct sentencing, while at the same time advocating to gut the judge's sentence. Reducing a judge's sentence to 65% of the imposed time flies in the face of the well-informed sanction for criminal activity imposed by the court and results in "false sentencing." If a judge imposes a sentence, it should be served (with certain gain time considerations) and not gutted to put a convicted felon back out on the street early. Over 95% of the inmates in the Florida Department of Corrections are repeat offenders with histories of wreaking havoc on the law-abiding citizens. It is unfair to their victims and future victims by releasing these criminals earlier than the judge determined appropriate.

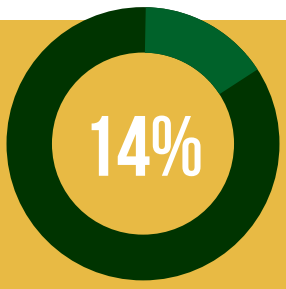
The S.T.O.P. Act, and the investments made in building more prison bed space, has not turned out to be as draconian as opponents claim. The end result of the S.T.O.P. Act, and criminals serving their full-time, has been safer neighborhoods and as the research shows - offenders less likely to commit new crimes.



Total crime index per 100,000 residents decreased 59% from 1997 to 2017 *(Florida Statistical Analysis Center, 2017)*



Incarceration rate has decreased by 25% since 2014 *(Florida Policy Institute, 2019)*



Florida's jail population dropped 14% from 2012 to 2017 *(Florida Department of Corrections, n.d.)*

HISTORY

Truth in Sentencing (TIS) refers to the practice of requiring a prisoner to serve a pre-determined amount of the court-imposed sentence in prison. Starting in the 1970s, critics of the then-used indeterminate sentencing scheme saw disparities in sentencing, leniency by judges, and the failure of the rehabilitation model as unfair and inefficient (Sabol, Rosich, Kane, Kirk, & Dubin, 2002). In response, sentencing reform legislation in the 1980s and early 1990s included:

1. **A shift to determinant sentencing (a process where the court assigns a set prison term to a convicted offender);**
2. **Restrictions or abolition of parole and good time credits;**
3. **Reduction of judicial discretion;**
4. **Emphasis on diversion programs and intermediate sanction for nonviolent offenders;**
5. **Greater emphasis on incapacitation and deterrence; and**
6. **The Crime Control Model of criminal justice *(Sabol, Rosich, Kane, Kirk, & Dubin, 2002).***

Federal legislation passed in 1994 as part of the Violent Crime Control and Law Enforcement Act aimed to support sentencing reform by providing states with grants to expand their prison capacity if they imposed TIS requirements on violent offenders. The Federal TIS Incentive Grant Program was based on the 85% rule, meaning that states were to have or pass laws requiring serious violent offenders to serve at least 85% of their imposed sentences in prison *(Rosich & Kane, 2005)*. Since October 1, 1995, Florida Statute 944.275 has mandated that all state prisoners must serve no less than 85% of their sentence.

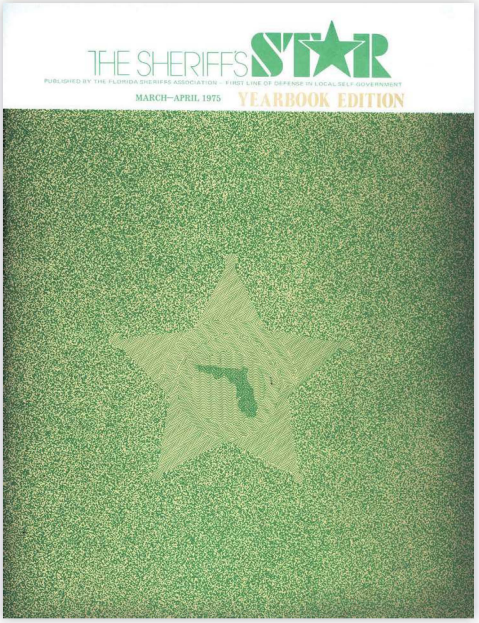
Eighteen states and the District of Columbia now require prisoners serve 85% of their sentence. An additional 22 states require prisoners serve a mandatory sentence of more or less than 85%. Just twelve states have no truth in sentencing law. The sentencing requirements for each state are listed in Table 1.

ON TRUTH IN SENTENCING (REPRINTED FROM THE MARCH-APRIL 1975 EDITION OF THE SHERIFF'S STAR)

TAMPA – Leon County Sheriff Raymond Hamlin told a criminal justice conference he was concerned about a lack of "truth in sentencing" and frustrated with a system that convicts too few and paroles too many.

He said judges, juries and attorneys do not get the full impact of serious and violent crimes. "The judge sits in a clean courtroom and everybody is clean and the prisoner's got religion; but law enforcement officers see the criminal and victim where the crime has taken place. We see the criminal nearest the crime, where he portrays himself as he really is."

Hamlin added that sentences handed down by judges usually bear little resemblance to the time actually served. He said if an individual is given a 10-year sentence, he rarely ever serves the full 10 years and is likely to be paroled in three and half years.



DETERMINANT SENTENCING REQUIREMENTS BY STATE (TABLE 1)

STATE	85%	DETERMINATE	INDETERMINATE	RELEASE REQUIREMENT
Alabama	X		X	Some offenses eligible for parole after 1/3 of sentence or 10 years, whichever is less.
Arizona	X	X		
Arkansas		X		100% for violent felonies. 70% for other crimes.
California	X	X		
Connecticut	X		X	
Deleware		X		75%
Florida	**X**	**X**		
Georgia	X	X		85% for violent crimes. Certain other crimes serve 50%, 75%, and 100% based on the offense.
Idaho		X		100%
Illinois		X		Inmates serve 50%, 75%, 85%, or 100% of their sentence based on the offense.
Indiana	X	X		85% for violent crimes. 80% for nonviolent and some drug crimes.
Iowa	X		X	70% of maximum sentence for violent crimes. sexual predator or forcible felonies which carry an 85% or 70% mandatory sentence.
Kansas	X	X		
Kentucky	X		X	
Louisiana	X		X	
Maine		X		Time served is at the discretion of the judge.
Minnesota	X	X		
Mississippi		X		50% for violent offenses. 25% for other offenses.
Montana		X		Eligible for parole after serving 25% of the sentence.
New Mexico		X		
North Carolina	X	X		
Ohio		X		
Oklahoma	X	X		
Oregon		X		80%
South Carolina	X		X	
Virginia	X	X		
Washington	X	X		
Wisconsin		X		100% with no parole.

* Georgia and Indiana cannot be verified.

* The following states have indeterminate sentencing: Alaska, Colorado, Hawaii, Maryland, Massachusetts, Michigan, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Dakota, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Vermont, West Virginia and Wyoming.

* Full chart located at the link: http://flsheriffs.org/uploads/docs/TIS_by_state.xlsb_.xlsx

ARRESTS, SENTENCING, INCARCERATION AND RELEASE

Sentencing in Florida is based on a points system that scores the primary offense, any additional offenses, any prior record, victim injury and any enhancements. Each crime is assigned a point value, and any additional points are added to achieve a final sentencing score. The total score required for a non-prison sanction is 44 points or less. A score of more than 44 points may result in a prison sentence. According to an Office of Program Policy Analysis and Government Accountability (2019) report, "96% of felony sentences...are the result of offenders' pleas" and "it is common for sentences to be below the recommended minimum sentence" (p. 3). A list of crimes and the points assessed for those crimes is displayed in Table 2. The chart illustrates that many felonies and first-time offenses (not including murder) do not result in a prison sentence.

Nationally and in Florida, the confined population has been steadily declining for some time. Kaeble and Glaze (2016) reported the national prison population dropped for the ninth straight year in 2016 and fell 18% from 2007 to 2016. These figures represent the lowest prisoner population levels since 1993 (Kaeble & Glaze, 2016).

These figures follow national and state crime trends. Nationally, violent crime and property crime have decreased 19% (Federal Bureau of Investigation, n.d.). Florida experienced a decrease in violent and property crime between 2012 to 2017 of 9.5% and 13% respectively (Florida Department of Law Enforcement, n.d.). The total number of arrests in Florida decreased 17.4% between 2014 and 2018 despite a population increase of 6.4% during the same time period (Florida Department of Law Enforcement, 2019a). Florida's incarceration and crime rates compared with other states is included in Table 3.

CRIME AND SCORESHEET POINTS (TABLE 2)

CRIME	FELONY LEVEL	SCORESHEET POINTS	SANCTION
1st degree murder	1st degree	116	Prison
Trafficking in cocaine	1st degree	56	Prison
Aggravated battery	2nd degree	56	Prison
Burglary to an occupied dwelling	2nd degree	36	Non-prison
Burglary to an unoccupied dwelling	3rd degree	22	Non-prison
Possession of cocaine	3rd degree	16	Non-prison
Robbery, no weapon	2nd degree	36	Non-prison
Possession of cannabis, > 20 grams	3rd degree	4	Non-prison
Battery on a 1st responder	3rd degree	22	Non-prison
Grand Theft, less than $5,000	3rd degree	10	Non-prison

According to the Florida Department of Corrections (2018a), 56% of Florida's inmate population was incarcerated for a violent crime in the fiscal year 2017-2018. Violent burglaries accounted for 73% of all burglaries. The top 20 crimes for which prisoners are incarcerated account for 59.2% of the prison population, with the largest offense being burglary to an occupied dwelling (8% of the total prison population). These top 20 crimes are listed in Table 4.

Prisoners convicted of violent crimes comprise the majority (32%) of all Florida prisoners released annually. Property crimes and drug crimes account for 31% and 22.5% of annual releases in Florida. From 2015-2018, more state inmates were released for property (3.8%) and drug crimes (1.5%) than were admitted (Florida Department of Corrections, 2018).

STATE INCARCERATION FIGURES PER 100,000 FOR 2017 (TABLE 3)

STATE	INCARCERATION RATE**	CRIME RATE***		NUMBER OF PRISONERS**	ADMISSIONS**	RELEASES**
		VIOLENT	PROPERTY			
TX	553	410	2,367	162,523	76,877	77,196
GA	506	326	2,573	53,667	16,699	15,210
AL	486	519	2,817	27,608	12,170	13,624
FL	**466**	**384**	**2,281**	**94,722***	**28,189**	**30,467**
CA	328	447	2,350	131,039	37,077	36,203
NY	249	350	1,440	49,461	20,421	21,667

*as of October, 2019.
**Bureau of Justice Statistics, Prisoners in 2017, https://www.bjs.gov/content/pub/pdf/p17.pdf
*** FBI Uniform Crime Report, 2018. Table 4, Crime in the U.S.

TOP OFFENSES RESULTING IN PRISON INCARCERATION (TABLE 4)

OFFENSE	PRISONERS*	% OF TOTAL POPULATION
Burglary to an occupied dwelling	7,562	8.0
Murder, 1st degree	7,257	7.6
Murder, 2nd degree	5,782	6.1
Aggravated Assault with a weapon	4,234	4.4
Cocaine possession	4,044	4.2
Molesting a juvenile less than 12 years old, offender 18 or older	3,554	3.7
Burglary to an occupied structure	3,413	3.6
Committing a felony while armed with a gun	3,219	3.3
Aggravated battery with a deadly weapon	3,126	3.3
Robbery with a gun	2,501	2.6
Armed Burglary	1,859	2.0
Sale/Manufacture/Delivery of cocaine	1,858	2.0
Burglary with assault on a person	1,705	1.8
Battery on a 1st responder (LEO, firefighter, EMT)	1,459	1.5
Grand Theft, less than $5,000	1,331	1.4
Aggravated battery	1,320	1.4
Robbery without a gun	1,272	1.3
Murder, during the commission of a felony	1,038	1.0%
Total prisoners/% of total population	**56,534**	**59.2%**

*as of October, 2019.

WHY TRUTH IN SENTENCING MATTERS: PERSPECTIVE OF A FLORIDA SHERIFF WHO WAS ALSO A VICTIM

By Flagler County Sheriff Rick Staly



On July 31, 1978 as a young Orange County Deputy Sheriff I was shot 3 times saving the life of a fellow deputy during a disturbance call. The suspect, Jackson LeGree, Jr. was also shot and taken into custody. I am alive only because I was wearing my personally purchased protective armor. The emergency room doctor told me I would not have survived the shot to my chest had the armor not stopped the bullet. I still have the scars on my chest and right arm from my assailant's bullets. The suspect also survived.

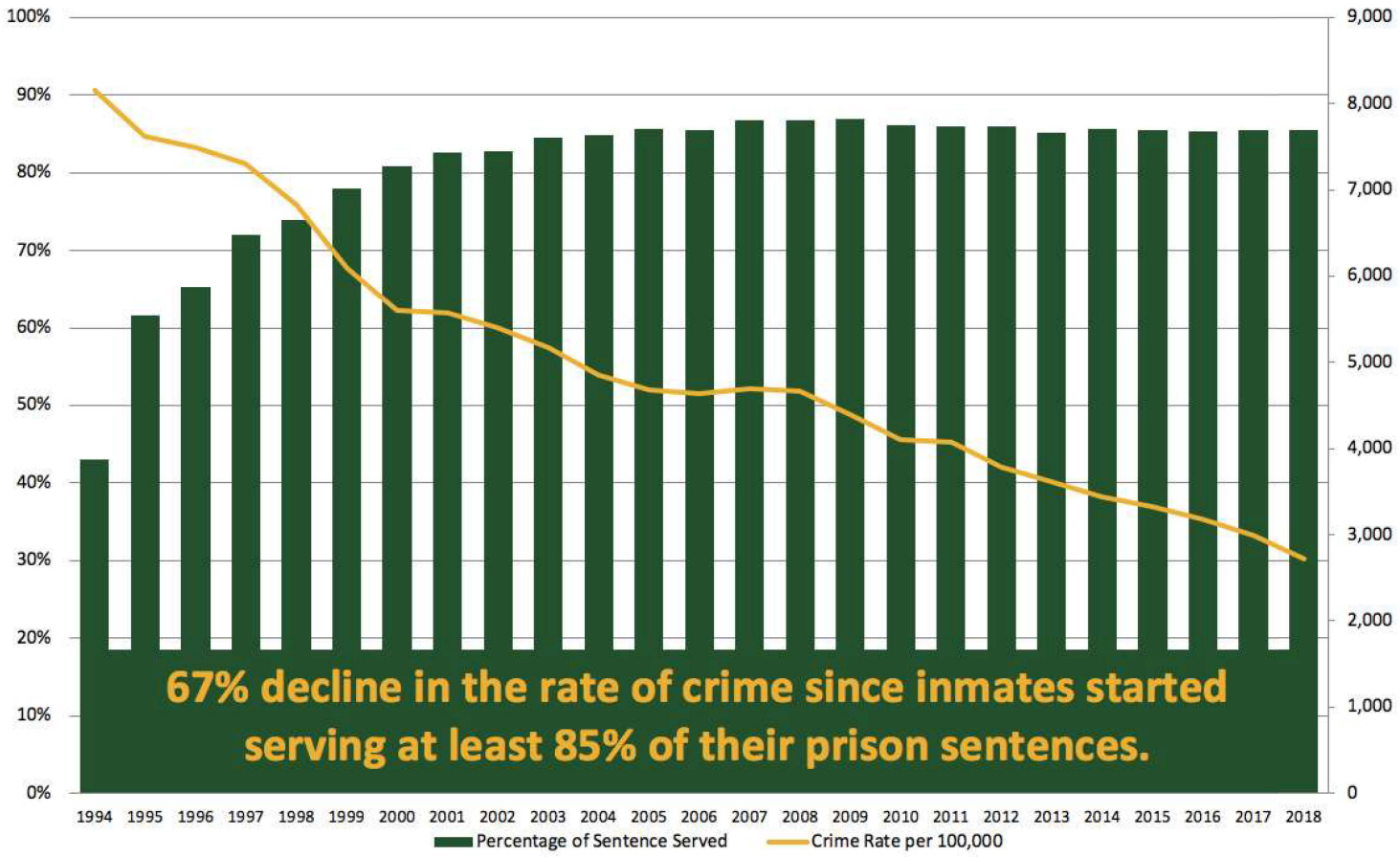
Almost two years later the suspect went to trial. On May 27, 1980, after a full week of trial the jury found LeGree guilty of: Count 1 - Attempted First Degree Murder; Count 2 - Aggravated Assault; and Count 3 - Resisting Arrest with Violence. LeGree was sentence to 20 years in Florida Department of Corrections (DOC)—or so I was told. However, LeGree was released on September 1, 1988 after serving just 8.5 years of a 20-year sentence for almost killing a law enforcement officer. In reality, he served only about 40% of his sentence because Florida had yet to enact a "Truth in Sentencing" law.

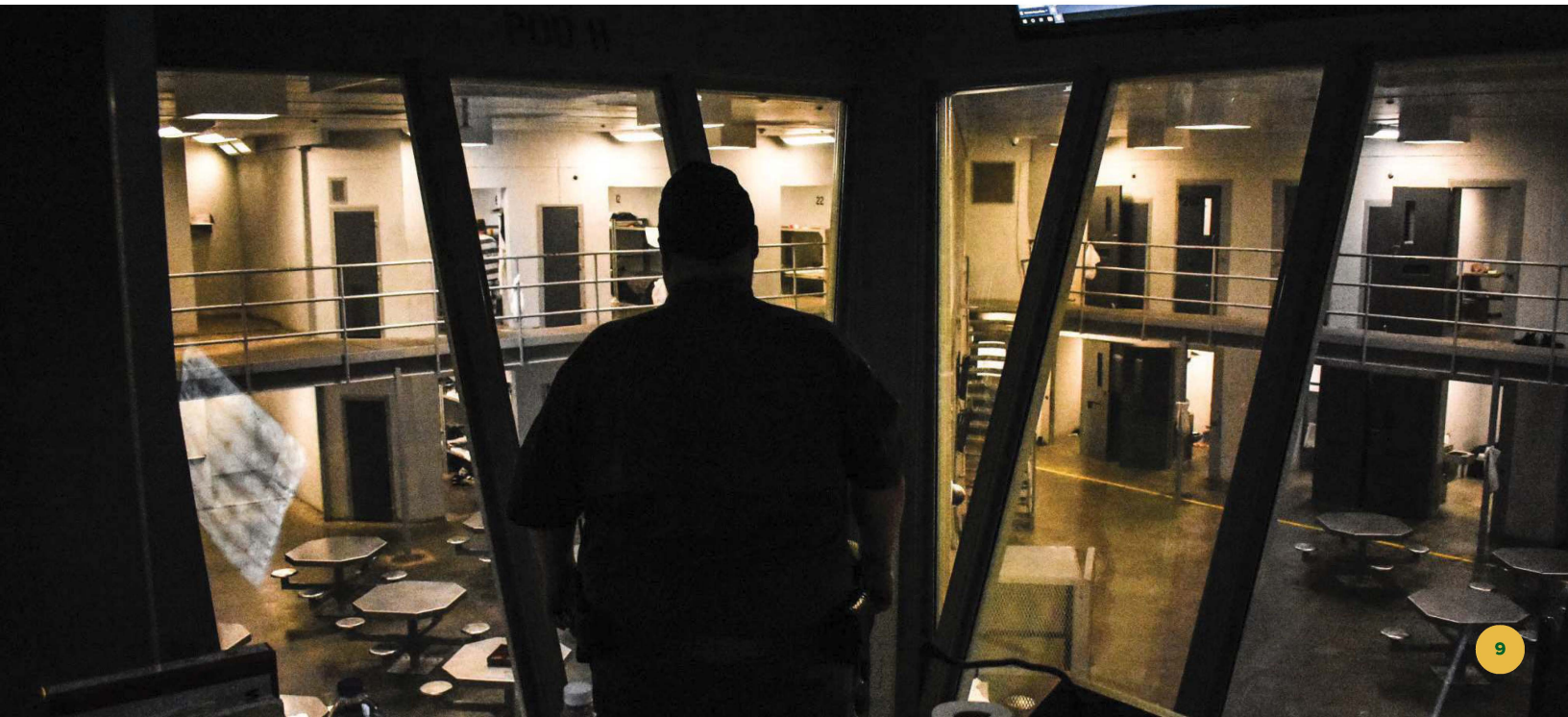
Since LaGree's release he has been arrested for selling cocaine. He pled guilty and was sentenced to 3 months in the Orange County Jail with credit for 98 days. Less than 2 years later he was arrested for misdemeanor possession of marijuana. He pled Nolo Contendre. Sentencing records show no jail sentence. Then less than 2 years later he was arrested for not having a driver's license. Adjudication was withheld and he paid a total of $434 in court costs and fines. Then in 2011 he was arrested for burglary, plea bargained down to Trespassing, pled Nolo Contendre and was sentenced to 2 days in jail, which was actually time served, and 12 months' probation.

As you can see this is a career criminal, maybe not by statute definition, but from the eyes of his victim he fit the definition. Since his release he continued committing crimes (and the crimes listed are only the ones he was caught on), but the court system treated him like a minor offender with no significant prior criminal history.

Florida's 85% law (Truth in Sentencing) was passed because of cases like mine. Florida has a 50-year low in crime partly because more criminals are having to serve their full amount of their court-ordered sentence. As a victim of crime, a 45-year Florida Law Enforcement Officer and current Sheriff, lessening the terms of incarceration for offenders will be disingenuous to the duty we all share for public safety. It will make Florida more dangerous for our citizens, our visitors and for law enforcement officers protecting our cities and counties.

Percentage of Sentence Served in Prison Compared to Crime Rate
Florida's 85% Law





RECIDIVISM IN FLORIDA AND EFFECT OF TIS ON RECIDIVISM

The Florida Department of Corrections defines recidivism as a return to prison, either upon conviction for a new crime or administrative action, within 3 years of an inmate's prison release (Florida Department of Corrections, 2018b). It's important to note that defining recidivism varies state by state, and even nationally. In Florida, this definition does not include any rearrests or time sentenced to the county jail - only if the offender is convicted and sentenced to felony state probation or state prison. According to a Florida Department of Corrections report (2018b), recidivism is influenced by many factors including:

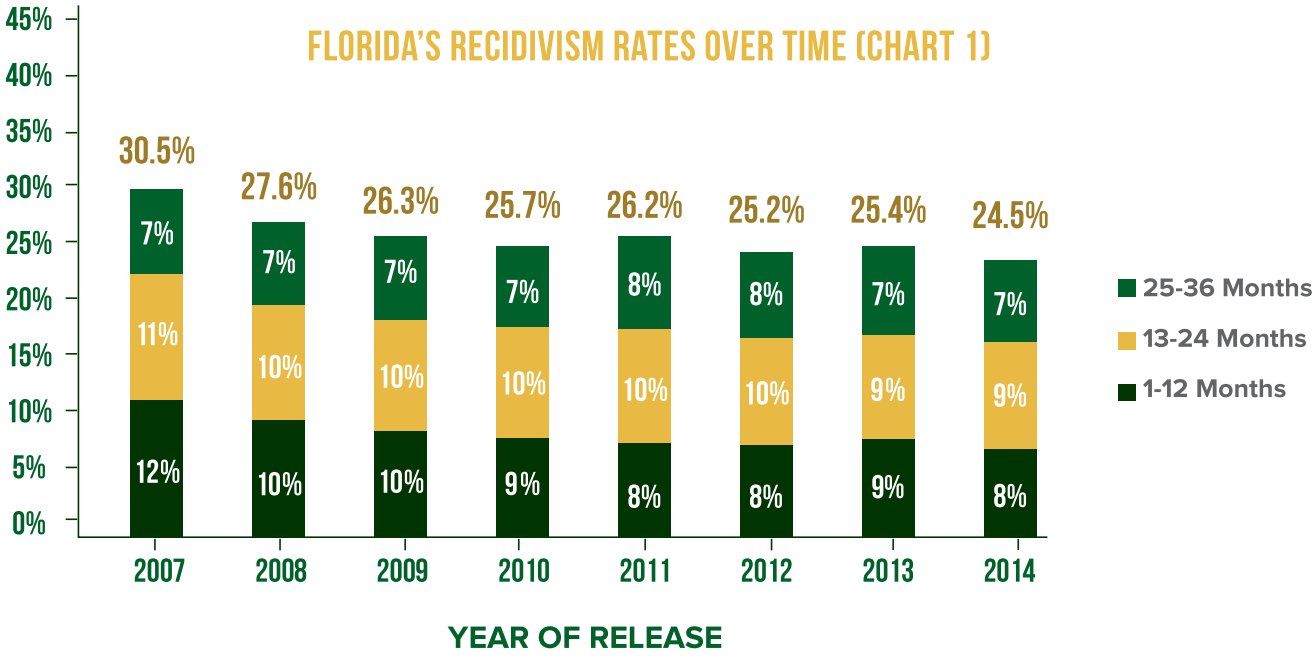
- **Post-release supervision**
- **Number of prior prison commitments**
- **Age upon release**
- **Number of disciplinary reports while in prison**
- **Number of other nonviolent offenses within five years prior to admission**
- **Number of burglary offenses before release**
- **Number of theft offenses before release**

- Nationally, **68%** of prisoners were arrested for a new crime within three years of their release *(Alper, Durose, & Markman, 2018)*

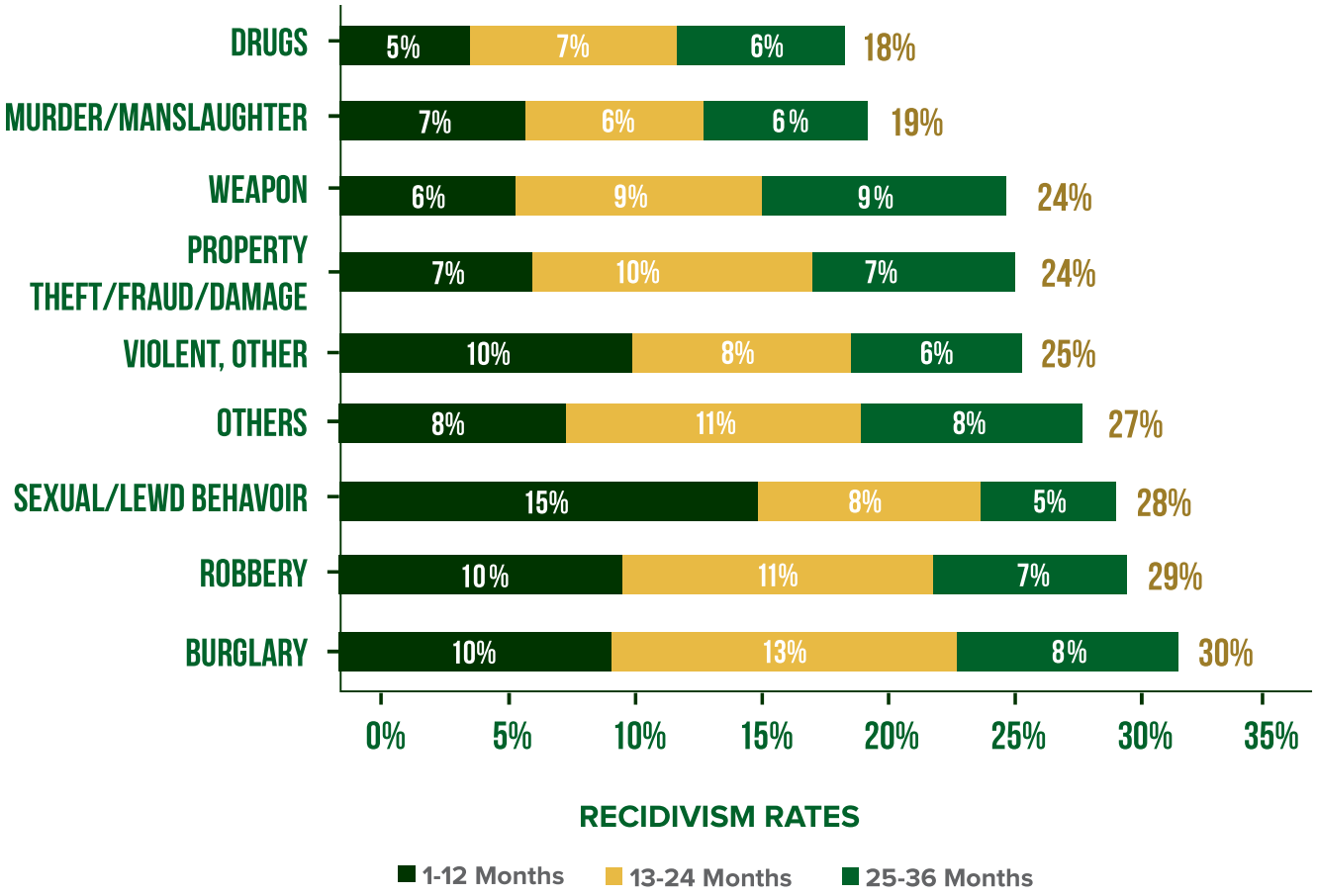


- In Florida, the three-year recidivism rate has dropped from **30.5%** in 2007 to **24.5%** in 2014 *(Florida Department of Corrections, 2018b)*

FLORIDA'S RECIDIVISM RATES OVER TIME (CHART 1)



RECIDIVISM RATES BY PRIMARY OFFENSE - 2014 RELEASES (CHART 2)



Inmates who served time for burglary have the highest recidivism rate (30%) (Florida Department of Corrections, 2018b). Robbery (29%), sexual/lewd behavior (28%), and other violent crimes (25%) not including murder/manslaughter have higher recidivism rates than the three-year recidivism rate for 2014 (24.5%) (Florida Department of Corrections, 2018b). Chart 2 illustrates Florida's recidivism rate by primary offense.

Recently, there has been a push for taking inmates out of prison and placing them on community supervision. The problem with this scenario is that these inmates will probably fare no better than if they were incarcerated because probation officers already have large caseloads with little worthwhile rehabilitative interaction with offenders. In an examination of post-release community supervision and recidivism, Clark et. al. (2015) reported that supervised offenders were as much as 20% more likely to be arrested for a felony and 360% more likely to be reincarcerated than those with no community supervision. This may be due, in part, to probation officers spending little time with offenders and prioritizing enforcement over rehabilitation (Bonta, et al, 2008).

Technical violations related to post-release supervision are a significant contributor to Florida's prison population. Fewer prisoners are incarcerated for drug crimes (12.7%) in Florida's prisons than those imprisoned for supervision violations (17%). A report published by the Council of State Governments Justice Center (2019) also noted that:

> *On any given day in Florida, 16,558 people are incarcerated as a result of a supervision violation at an annual cost to the state of $330 million. Technical supervision violations account for $145 million of this total amount, and new offense supervision violations make up $185 million. These figures do not account for the substantial local costs of keeping people in jail for supervision violations.*

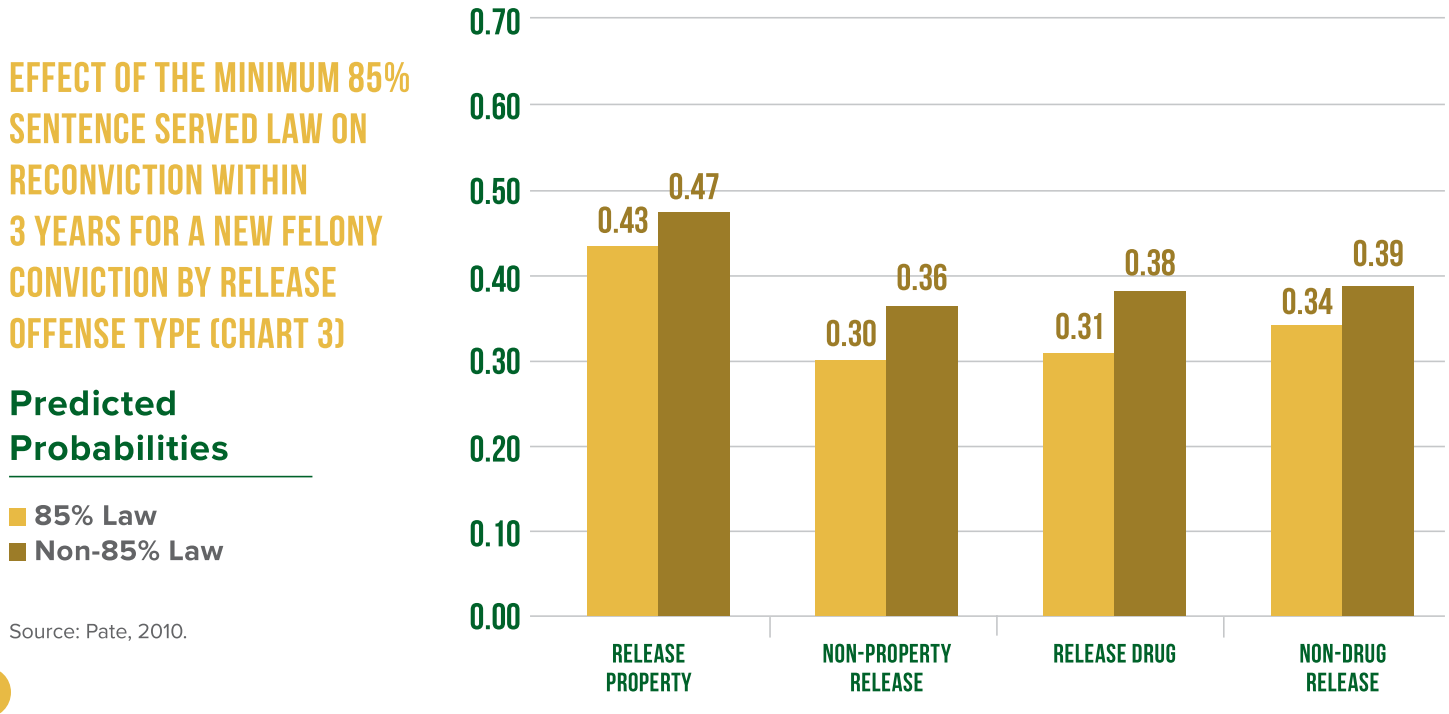
THE EFFECT OF TIS ON RECIDIVISM

Two studies exist using a sample of inmates from the Florida Department of Corrections that conclude TIS laws have had a positive impact on reducing crime and recidivism. These studies are most appropriate for this report due to their focus on Florida's prison population.

Pate (2010) analyzed the effectiveness of Florida's TIS law on recidivism by examining a cohort of 182,929 cases obtained from the Florida Department of Corrections. These inmates were released from the Florida prison system between January 1, 1995 and December 31, 2005. Pate (2010) used binary logistic regression, which measures the effect of a variable (85% sentencing) on other variables (likelihood of recidivism). Pate (2010) could not be more clear in her findings: "Sentencing offenders to serve at least 85% of the court-imposed sentence does reduce the probability of recidivism" (Pate, 2010, p. 71). Specific findings suggest TIS reduces reoffending among drug offenders, violent offenders, young offenders, and others. (Pate, 2010, p.72). These findings are illustrated in Chart 3.

A similar study (Bales, Gaes, Blomberg, & Pate, 2010) supports Pate's (2010) findings. Bales, Gaes, Blomberg, and Pate (2010) analyzed Florida arrest records and recidivism data to determine the impact of Florida's 85% TIS laws on recidivism and if these laws are more effective at reducing recidivism than the state's previous sentencing policies. The analysis shows, on average, a 13% reduction in recidivism and a 20% reduction in reimprisonment. The effect increases with the length of the sentence. For a prisoner serving a 10-year sentence, the reductions for recidivism and reimprisonment are 52% and 60% respectively. At the time, the authors concluded that 85% TIS had not resulted in longer prison sentences or prison overcrowding but rather an increase in felony convictions. The authors suggest pessimistic conclusions in the literature related to determinant sentencing could be premature (Bales, Gaes, Blomberg, & Pate, 2010).

EFFECT OF THE MINIMUM 85% SENTENCE SERVED LAW ON RECONVICTION WITHIN 3 YEARS FOR A NEW FELONY CONVICTION BY RELEASE OFFENSE TYPE (CHART 3)



Source: Pate, 2010.

HB 189/SB 394/SB 572 & THE MYTH OF THE "NONVIOLENT" OFFENDER

Senator Bracy (SB 394), Senator Brandes (SB 572), and Representative Hart (HB 189) have filed bills for the 2020 legislative session that will shorten the amount of time served by a convicted felon from 85% of the full sentence to just 65%. Their goal is to release 10,000 convicted felons, which represents about 11% of the state's 94,722 inmates. Their bills use loose definitions of what constitutes a "nonviolent" offender. Just 1% of Florida's total prison population are first-time, nonviolent offenders. The overwhelming majority of all prisoners—over 95%—are violent, repeat offenders with a history of criminal behavior.

The table below displays the number of inmates currently incarcerated who would be affected by the passage of these bills and the number of prisoners who are true first-time offenders. The table clearly illustrates that nonviolent offenders are rarely incarcerated in the state's prisons for a first offense. Even when accounting for violent crimes (murder, aggravated battery, robbery, kidnapping, sexual battery, and burglary), first-time offenders represent just 4.8% of the total prison population.

TOP 10 CRIMES ELIGIBLE FOR EARLY RELEASE UNDER HB 189/SB 394/SB 572	# OF INMATES (AS OF NOVEMBER 30, 2019)	# OF 1ST-TIME DOC INMATES (AS OF NOVEMBER 30, 2019)
Sale of illegal drugs while armed	3,881	0
Trafficking in stolen property	2,250	79
Sale/manufacturing/delivery of cocaine	2,170	110
Burglary to an occupied structure	1,871	400
Grand theft of up to $5,000	1,023	27
Drug trafficking (4-14 grams)	924	69
Fleeing from a law enforcement officer with no regard	865	46
Possession of cocaine	864	15
Possession of a control substance/other*	836	30
Trafficking of cocaine up to 200 grams	835	61
ADDITIONAL "NONVIOLENT" CRIMES ELIGIBLE FOR EARLY RELEASE		
Sex offender failing to comply PSIA	701	51
Selling/manufacturing/delivering a controlled substance within 1,000 feet of a school	700	105
Possession of child pornography	635	118
Leaving a crash scene involving a death	164	38
4th or subsequent felony DUI conviction	146	18
Promoting a sexual performance by a child	107	16

*Includes any controlled substance that is not GHB, MDMA, Cocaine, Heroin, Opium or Marijuana

[1] Analysis of Florida Department of Corrections, Nov, 2019 data.

FLORIDA'S PRISONS ARE NOT FULL OF FIRST-TIME DRUG OFFENDERS

Drug crime is not what's driving Florida's prison population. It's violent crime and repeat offenders. For all the attention we pay to people convicted of drug crimes, they make up only 13 percent of the prison population. Over half (60%) the people convicted for the first time have been convicted of a violent crime; more than half of those convicted of violence—or 40 percent of all people convicted for the first-time—have been convicted of the most serious violent crimes: murder/manslaughter, sexual battery, robbery, kidnapping, and aggravated assault/battery[1]. Repeat offenders account for 95% of the total population of Florida's prisons.

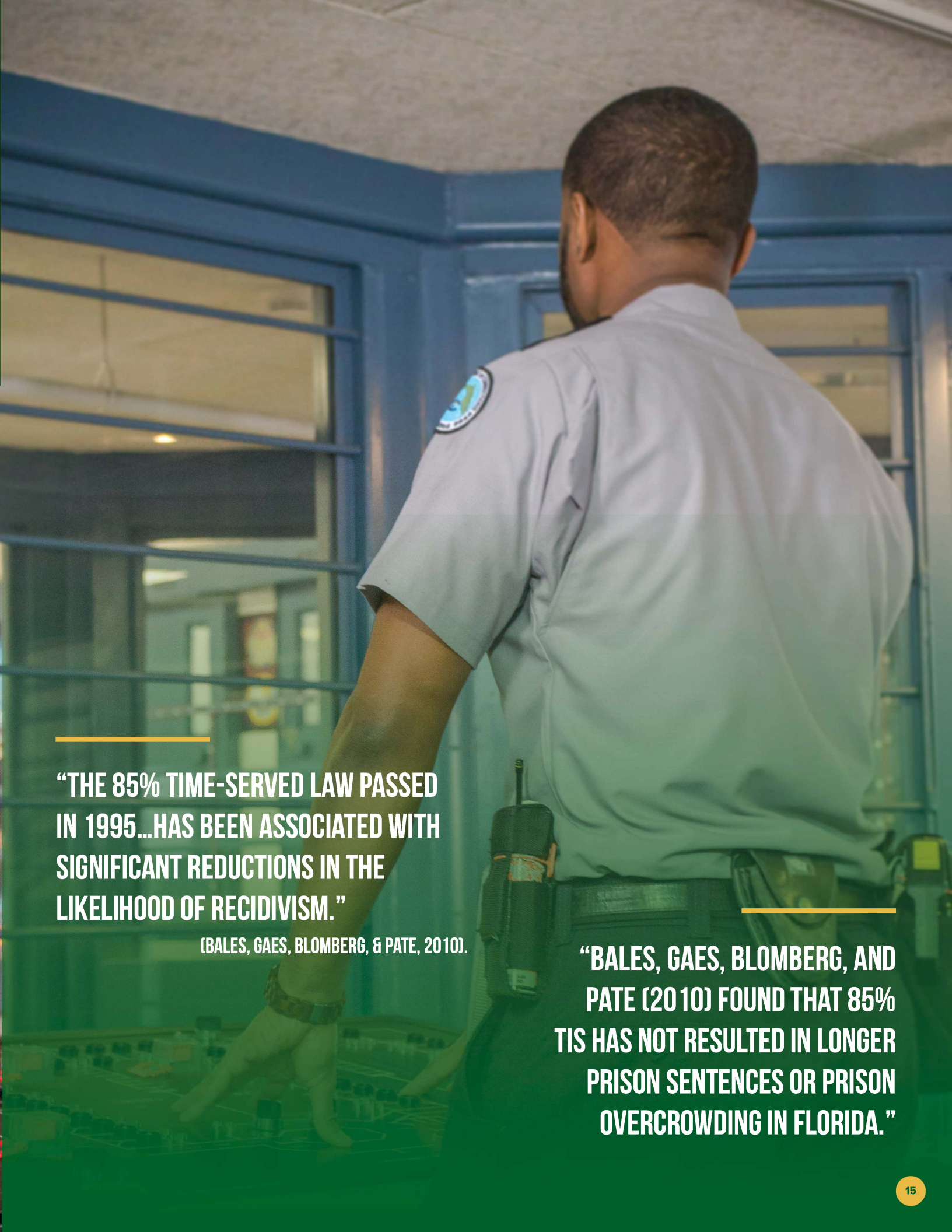
FIRST-TIME OFFENDERS WITH NO PREVIOUS CONVICTIONS

	PRISONERS	% TOTAL POPULATION[2]
1. All drug crimes	**793**	**0.83%**
a. Trafficking	408	0.43
b. Manufacture/sale/delivery	320	0.33
c. Possession	65	0.0628
2. Marijuana crimes	**41**	**0.042%**
a. Trafficking	29	0.030
b. Manufacture/sale/delivery	12	0.012
c. Possession	0	0
3. Cocaine crimes	**234**	**0.24%**
a. Trafficking	109	0.43
b. Manufacture/sale/delivery	110	0.33
c. Possession	15	0.0628
4. Heroin crimes	**76**	**0.08%**
a. Trafficking	47	0.049
b. Manufacture/sale/delivery	26	0.027
c. Possession	3	0.0031

"REPEAT OFFENDERS ACCOUNT FOR 95% OF THE TOTAL POPULATION OF FLORIDA'S PRISONS."

[1] Adapted from Pfaff, John (Aug. 14, 2019). What Democrats Get Wrong About Prison Reform. Politico. Retrieved from https://www.politico.com/magazine/story/2019/08/14/what-democrats-get-wrong-about-prison-reform-227623.

[2] Percentages based on an analysis of Florida Department of Corrections data of first-time offenders. based on a total prison population of 94,700 as of October, 2019



"THE 85% TIME-SERVED LAW PASSED IN 1995...HAS BEEN ASSOCIATED WITH SIGNIFICANT REDUCTIONS IN THE LIKELIHOOD OF RECIDIVISM."

(BALES, GAES, BLOMBERG, & PATE, 2010).

"BALES, GAES, BLOMBERG, AND PATE (2010) FOUND THAT 85% TIS HAS NOT RESULTED IN LONGER PRISON SENTENCES OR PRISON OVERCROWDING IN FLORIDA."

EFFECT OF TIS ON CRIME

Following the national trend, Florida has experienced a 60% drop in Total Index Crimes between 1998 and 2018 despite an almost 40% increase in population during the same period (Florida Department of Law Enforcement, 2019b). Violent crime, which accounted for 14.4% of all crime, dropped 39.7% and property crime, which accounted for 85.6% of all crime, decreased 45.2% (Florida Department of Law Enforcement, 2019b). Chart 4 depicts the change in total index crimes over time.

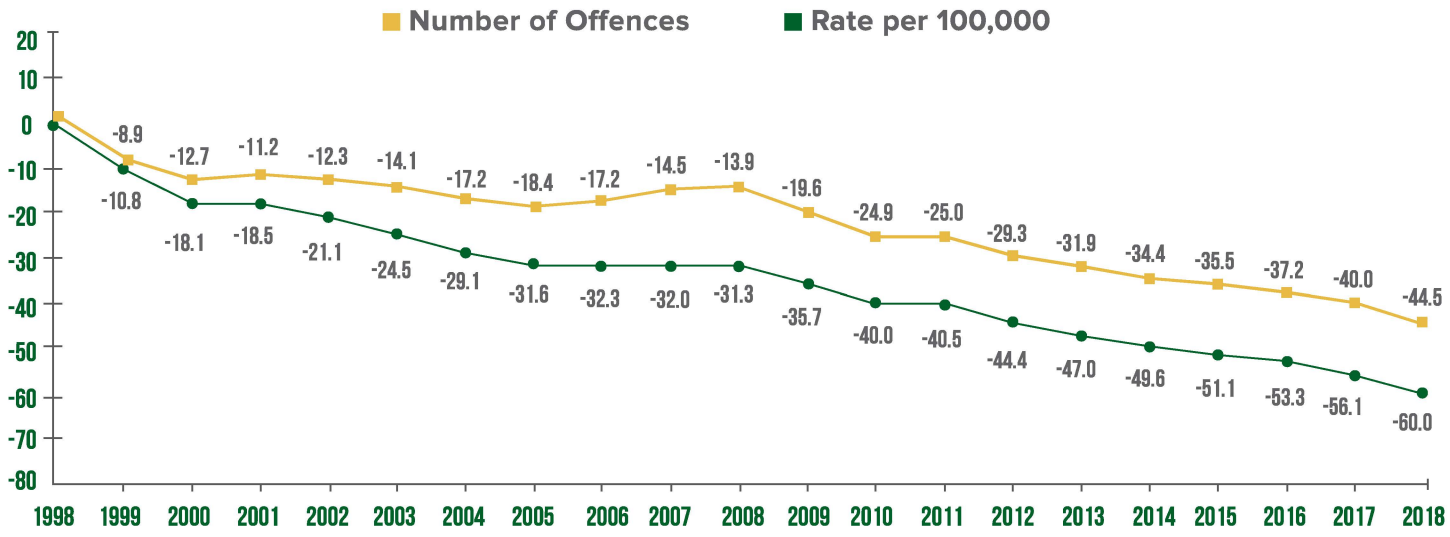
Shepherd (2002) found that TIS laws deter violent offenders and increase the probability of arrest. He concluded the laws decreased murders by 16%, aggravated assaults by 12%, robberies by 24% and rapes by 12%. In an analysis of large, urban areas, Ross (2012) found a decrease in violent crime of 8.7% and a reduction of property crime by 7.1%. Similarly, Long's (2018) analysis of states with TIS laws revealed statistically significant reductions in both violent and property crimes. Murder and robbery rates declined almost immediately, while property crimes were slower to exhibit a significant decline (Long, 2018).

In an analysis of 19 years of state data, Marvell and Moody (1994) found that prison population growth leads to lower crime rates. Steven Levitt (2004), the most prominent scholar in this area of study and the William B. Ogden Distinguished Service Professor of Economics at the University of Chicago, credits the rising prison population with reducing crime through incapacitation and deterrence stating, "the evidence linking increased punishment to lower crime rates is very strong" (p.178). Levitt (2004) found increased incarceration accounted for a reduction in homicide and violent crime of 12% and a reduction in property crime of 8%. In an earlier study that included data from Florida prisons, Levitt (1996) similarly reported an increase in prison population substantially reduces violent crime by 10% and property crime by 7%. Additionally, Levitt (1996) concluded "increased prison populations appear to substantially reduce crime" (p. 348) citing the addition of one prisoner eliminates approximately 15 crimes per year. Marvell and Moody (1994) observed that incarceration averts 17 index crimes per prisoner. Spelman (2000) observed doubling the prison population would reduce crime between 20 and 40 percent.

Between 1998 and 2018

- Florida has experienced a **60%** drop in Total Index Crime despite an almost **40%** population increase
- Violent crime decreased **39.7%**
- Property crime decreased **45.2%**
- Truth in Sentencing laws decreased murders by **16%**, aggravated assaults by **12%**, robberies by **24%**, and rapes by **12%**

CHANGE IN TOTAL INDEX CRIME IN FLORIDA OVER TIME (CHART 4)





CONCLUSION

Determinant sentencing and 85% Truth in Sentencing are used in most states. The extant literature on the effects of Truth in Sentencing is mixed. Several empirical studies suggest Truth in Sentencing reduces recidivism (Pate, 2010; Bales, Gaes, Blomberg, & Pate, 2010) and crime (Shepherd, 2002; Ross, 2012), while others find questionable (Mears, Cochran, Bales, & Bhati, 2016) or opposite effects (Cochran, Mears, & Bales, 2014). Still others suggest longer prison sentences reduce crime (Marvell & Moody, 1994; Levitt, 1996; Spelman, 2000; Levitt, 2004). Finally, Florida prisons house mostly violent offenders (58%). From 2015 to 2018, more nonviolent offenders were released from Florida prisons than were committed. While many factors influence recidivism and crime, Florida's crime rate has dropped for two decades, and both jail and prison populations have declined.

Despite being third-largest state in the U.S., with an additional annual tourist population of almost 125 million visitors (VisitFlorida, 2019), Florida's crime rate and incarceration rate are significantly lower than many smaller states. The notion that Florida's prisons are overcrowded with first-time, nonviolent offenders is not reflected in the data. Many nonviolent, felony offenders are diverted from prison through the statutorily created Pre-Trial Intervention program and other treatment-based diversion programs. Additionally, while some offenders are incarcerated for nonviolent crimes, aggravating factors, such as previous offenses, likely have resulted in a prison sentence. The data could not be clearer: Florida's 85% truth in sentencing laws coupled with the state's incarceration model has resulted in a lower crime rate and lower incarceration rate than many other states.

"THE DATA COULD NOT BE CLEARER: FLORIDA'S 85% TRUTH IN SENTENCING LAWS COUPLED WITH THE STATE'S INCARCERATION MODEL HAS RESULTED IN A LOWER CRIME RATE AND LOWER INCARCERATION RATE THAN MANY OTHER STATES."

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FINAL REPORT

The Impact of Illinois' Truth-in-Sentencing Law on Sentence Lengths, Time to Serve and Disciplinary Incidents of Convicted Murderers and Sex Offenders

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Executive Summary

Truth-in-sentencing (TIS) policies require those convicted and sentenced to prison to serve at least 85 percent of their court-imposed sentence, and often results in inmates serving longer periods of incarceration. Although the move to increase sentence lengths and time served for violent offenders through TIS types of laws in the United States began in the late 1980s, the federal TIS legislation passed in 1994 and the federal TIS Incentive Grant Program initiated in 1996 were associated with many states adopting laws that required those sentenced to prison for various violent crimes to serve at least 85 percent of their sentence (Rosich & Kane, 2005). Although most criminal justice practitioners, and convicted offenders, were well aware that most inmates only served a fraction—35 to 50 percent--of their sentence, the increasingly punitive sentiment during the early 1990s, associated with a relatively high rate of violent crime, brought the issue of this disparity between sentences imposed and time served to light and prompted the increased passage of TIS laws. Following the passage of the federal TIS grant program, Illinois formed a Truth-in-Sentencing Commission to examine Illinois' current sentencing policies and determined that the state should adopt its own version of TIS. Illinois adopted its version of TIS in August 1995 (State Fiscal Year 1996), which requires those convicted of murder to serve 100 percent of their sentence, those convicted of criminal sexual assault to serve at least 85 percent of their sentence, and those sentenced to prison for other violent crimes involving great bodily harm to also serve at least 85 percent of their sentence. Prior to the implementation of TIS in Illinois, those sentenced to prison for murder and criminal sexual assault served, on average, less than 40 percent of their sentences as a result of the various Good Conduct Credit (GCC), Meritorious Good Time (MGT), and Supplemental Meritorious Good Time (SMGT) reductions (Illinois Criminal Justice Information Authority, 1994).

However, the proposed implementation of TIS in Illinois was also met with some concern and criticism, including: 1) the potential for increased inmate assaults and rule violations due to fewer incentives to behave, 2) an overly burdensome financial impact if the law actually resulted in inmates spending more time in prison than before TIS, or 3) no change whatsoever in the amount of time served in prison due to criminal justice practitioners (judges, prosecutors and defense attorneys) merely reducing sentences proportionally, thereby resulting in those sentenced to prison still serving the same time behind bars (Illinois Criminal Justice Information Authority, 1994:2). Concerns raised by the Illinois Department of Corrections (IDOC) included the fiscal impact if the law resulted in inmates actually serving longer sentences, as well as concerns regarding the behavior of inmates and the safety of staff if those sentenced to prison for serious crimes had no incentive (i.e., good conduct credit) to follow institutional rules. On the other hand, many argued that the fiscal impact projections by the IDOC were exaggerated and the logic of longer lengths of stay in prison flawed. TIS opponents argued that the actual length of time inmates spent in prison would remain the same if judges adjusted their sentences to be consistent with the amount of time offenders served before TIS was implemented. After 15 years of actual experience with TIS in Illinois, and thousands of offenders being sentenced under the law, the current study sought to answer two of the key questions regarding the implementation and impact of Illinois' TIS law as it pertains to convicted murderers and sex offenders: 1) has TIS changed the sentence lengths and lengths of time to serve in prison for murderers and sex offenders, and if so, to what degree, and 2) has TIS had an influence on the extent and nature of disciplinary infractions of inmates admitted to prison for murder and sex offenses subject to the law, and if so, to what degree.

Impact of TIS on Sentences & Lengths of Time to Serve for Murderers

The first set of analyses sought to merely examine the overall pattern of sentences imposed on those convicted of murder in Illinois between SFY 1989 and 2008, including analyses of the mean and median sentences imposed (for determinate sentences), and the proportion of offenders that received sentences beyond the statutory maximum of 60 years. From these analyses, a number of patterns were evident that have implications for understanding the potential impact of TIS on murder sentences. First, using multivariate analyses that statistically controlled for the influence of age, race, gender, marital status, education level, if the inmate has children, gang membership, prior criminal history, and jurisdiction of sentencing (independent variables) on the sentence lengths (dependent variable), we found that TIS was associated with, on average, a 3.9 year *reduction* in the mean *sentence* length of those that received determinate sentences (i.e., excluding natural life or death sentences). In other words, once you statistically take into account the effects of the independent variables and adjust for the pre-TIS trend in sentencing, TIS resulted in a decrease of 3.9 years on the average *sentence* imposed on murderers, or about a 10 percent reduction in sentence lengths. However, a more practical way to examine the impact of TIS is by considering the *actual amount of time* that will be required to be served by those convicted of murder. Substituting the time to serve for the sentence imposed reveals that those subject to TIS are expected, on average, to serve 17 years *more* in prison than those not subject to TIS after statistically controlling for the other variables in the analyses. Thus, while TIS did reduce the length of *sentences* imposed on convicted murderers *to some degree*, the decrease was nowhere near what some believed it would be (i.e., that sentences would be cut nearly in half to account for the fact that 100 percent will be served under TIS as opposed to the 50 percent served under the old law).

The next set of analyses sought to determine if the TIS law was associated with any change in the likelihood that a convicted murderer would receive a sentence beyond the statutory maximum of 60 years. Under Illinois law, a sentence beyond the statutory maximum, or a sentence of natural life or death in the case of murder, can be sought when specific, aggravating circumstances are present. Again using multivariate analyses to statistically control for other factors, a generally consistent pattern emerged: those subject to TIS were *less likely* to receive a sentence beyond 60 years (relative to the pre-TIS group as well as relative to those convicted during the same time period but not subject to the law). Specifically, those subject to TIS were 57 percent *less likely* to receive a sentence of more than 60 years (including natural life or death sentences) than those sentenced prior to TIS. Looked at another way, roughly 25 percent of convicted murderers not subject to TIS received a sentence beyond the statutory maximum of 60 years, compared to 17 percent of those subject to TIS.

Taking these findings into account, our analyses regarding the impact of TIS on murder sentences revealed two substantial findings, which have considerable implications: 1) the average determinate sentence imposed on convicted murderers was reduced *only slightly* as a result of TIS, resulting in offenders serving much longer periods of time in prison, and 2) TIS appears to have reduced the use (or need) to impose sentences beyond the statutory maximum of 60 years. Thus, the passage of TIS has dramatically increased the *actual amount* of time those convicted of murder will spend in prison, and as a result, the cost per murder sentence imposed in Illinois dramatically increased as a result of TIS. In addition to longer periods of incarceration, and therefore higher costs, a much larger proportion of convicted murderers in Illinois will now serve the rest of their life in prison, despite the fact that the actual imposition of natural life sentences has been reduced due to TIS. Because the

lengths of time to serve in prison increased so much as a result of TIS, it is projected that 30 percent (886 of the 3,000 murderers sentenced under TIS) of all inmates convicted of murder and subject to TIS will not be eligible for release until after their 75th birthday--the average life expectancy of males in the United States. However, while 30 percent of murderers sentenced under TIS received sentences that will result in them most likely spending the rest of their life in prison, only a small proportion of these were explicit "natural life" or "death" sentences. Of all the murderers sentenced under TIS and projected to be in prison beyond their 75th birthday, only 13 percent had a "natural life" or "death" sentence imposed by the court. By comparison, pre-TIS, only 15 percent of all convicted murderers received a sentence that would keep them in prison beyond their 75th birthday, and almost all of these (90 percent) were court-imposed sentences of "natural life" or "death."

Impact of TIS on Sentences & Lengths of Time to Serve for Class X Sex Offenders

Analyses similar to those performed to examine the impact of TIS on murder sentences were performed to examine the impact of TIS on the sentence lengths of those convicted of aggravated criminal sexual assault. The average sentence imposed on Class X sex offenders pre-TIS was 13.5 years. Using multivariate statistical analyses similar to those in the murder analyses, we found that TIS was associated with a slight *reduction* in the mean sentence length by approximately 6 months. Thus, the impact of TIS on the sentence lengths and lengths of time to serve for sex offenders is somewhat similar to that seen with convicted murderers, although to a lesser degree due to the sentence lengths involved. Still, as a result of TIS, convicted Class X sex offenders are now serving substantially longer periods of incarceration than they did pre-TIS. On average, those sex offenders subject to TIS will serve an average of 9.7 years in prison, compared to the roughly 6.2 years those sentenced prior to TIS served.

Impact of TIS on Disciplinary Incidents and Sanctions for Murderers

To determine if TIS had an impact on the extent and nature of disciplinary incidents among murderers in Illinois, data were obtained that allowed for the tracking of disciplinary incidents for a cohort of murderers admitted to prison in Illinois between July 1999 and June 2001. Disciplinary data included those recorded through March 2008, so the average amount of time inmates were at risk of having a disciplinary incident was 8 years. Within the sample of murderers tracked were 300 inmates subject to TIS and 550 that were eligible for day-for-day good conduct credit. The specific disciplinary outcomes examined included: total number of disciplinary tickets, any serious incident (yes or no), any assaults (yes or no), assaults of staff (yes or no), and assaults of other inmates (yes or no).

Among the overall sample of murderers included in the analyses of disciplinary incidents, the average number of disciplinary tickets was 22. When multivariate statistical analyses were performed to isolate the influence of TIS on the overall number of disciplinary incidents/tickets, the analyses revealed that murderers subject to TIS *receiving an average of almost 5 fewer tickets*, on average, than non-TIS inmates. Additional analyses revealed that TIS had no statistical relationship with whether or not the inmate received a disciplinary ticket for a *serious* incident: roughly 55 percent of both TIS and non-TIS murderers had a ticket for a serious incident. Serious incidents were defined as any offenses that carry a maximum penalty of one year of loss or restriction of privileges, grade reduction, good time revocation and/or segregation, and included offenses in such

as violent assaults or participation in a security threat group. Similarly, TIS had no statistical relationship with whether or not the inmate received a disciplinary ticket for an assault, against either another inmate or staff, with roughly 19 percent of both TIS and non-TIS murderers receiving a ticket for any assault. Analyses were also performed to determine if an inmate's TIS status had any influence on the types of sanctions imposed by IDOC for disciplinary incidents. Among the sample of murderers, the most prevalent form of sanction imposed on those receiving disciplinary tickets was loss of commissary privileges, and no statistical difference was noted between those murderers subject to TIS and those not: roughly 90 percent of both groups lost their commissary privileges for a period of time as a result of a disciplinary incident. For the other forms of punishment, including placement in segregation, loss of gym/yard privileges, and loss of good conduct credit, no statistical differences were identified based on the inmates' TIS status.

Thus, based on these analyses, there were few differences between those murderers subject to TIS and those not subject to TIS in terms of their disciplinary records, particularly in terms of assaults on staff and other inmates.

Impact of TIS on Disciplinary Incidents and Sanctions for Class X Sex Offenders

Similar analyses were performed to determine if TIS had an impact on the extent and nature of disciplinary incidents among Class X sex offenders in Illinois, with data obtained that allowed for the tracking of disciplinary incidents for a cohort of sex offenders admitted to prison in Illinois between July 1999 and June 2001. Disciplinary data included that recorded through March 2008, so the average amount of time inmates were at risk of having a disciplinary incident was 8 years. Within the sample of sex offenders tracked were 806 inmates subject to TIS and 599 that were eligible for day-for-day good conduct credit. Overall, the analyses showed no statistical difference in the average number of disciplinary tickets between Class X sex offenders subject to TIS and those not subject to TIS (an average of roughly 22 incidents for each group). As with the analyses of convicted murderers, among the Class X sex offenders there was no statistical relationship between whether they were subject to TIS whether or not the inmate received a disciplinary ticket for a serious offense, including assaults against staff or other inmates, and most forms of sanction imposed on disciplinary incidents.

Conclusions

As a result of the examination of sentences imposed, time to serve, and disciplinary incidents, the following general conclusions were reached. First, the length of court-imposed sentences changed very little as a result of Illinois' Truth-in-Sentencing law, and as a result, the length of time *to be served* by those convicted of murder and aggravated criminal sexual assault in Illinois has increased dramatically. For those convicted of murder, these increased lengths of time to serve has resulted in a much larger proportion of these offenders that will not be eligible for release until after their 75th birthday. Although the length of time to serve among sex offenders has also increased, because the sentence lengths are not as long as those imposed on murderers, the impact of TIS on the projected age of offenders at release did not change as substantially. Thus, while many believed that sentence lengths under TIS would change (be reduced) dramatically to take into account the fact that a larger proportion of the sentence would be served, this has not occurred, and those sentenced under TIS are serving up to twice as long in prison as they did prior to TIS. Second, TIS does not appear to have

had any influence over the extent and nature of disciplinary incidents of murderers and sex offenders in Illinois' prisons. Prior to TIS there were concerns that inmates with little opportunity to earn good conduct credit would engage in more, and more serious, disciplinary incidents. Our analyses revealed that this has not occurred, with inmates subject to TIS having similar patterns of disciplinary infractions as those not subject to TIS.

INTRODUCTION

Truth-in-sentencing, or TIS, reflects the public policy designed to address what many see as a misleading disparity between the sentences imposed on convicted felons and the actual amount of time they serve in prison. As a result of prison inmates being eligible to receive good-conduct credit and other sentence reductions, those sentenced to prison in the United States and released during 1990 were found to have served, on average, only 38 percent of their court-imposed sentence, although the proportion of time served was slightly higher for those convicted of murder (43 percent) and rape (45 percent) (Ditton & Wilson, 1999: 8). Part of this disparity between sentence length and amount of time actually served is the result of statutory provisions that allow prison officials to give inmates good conduct credit, usually one day off of their sentence for each day they follow prison rules (i.e., day-for-day good conduct credit). Many point to this provision as an important behavior management tool correctional administrators use to provide inmates with an incentive to follow rules.

In addition, some states, including Illinois, have allowed correctional officials to further reduce lengths of stay in prison through additional types of good conduct credits, such as Meritorious Good Time (MGT) and Supplemental Meritorious Good Time (SMGT). In Illinois, MGT and SMGT were primarily put in place in response to prison crowding conditions and the need to reduce prison populations (Illinois Task Force on Crime and Corrections, 1993), and allowed most inmates to receive an additional 180 days off of their sentence. In addition, Illinois also created a provision designed as an incentive for prison inmates to participate in rehabilitative programming, known as Earned Good Conduct Credit (EGCC), whereby inmates could earn an additional one-half day off their sentence for each day they participated in drug treatment and vocational training. Thus, the ability of correctional administrators to reduce the actual amount of time served for court imposed prison sentences was seen not only as an effective tool for increasing inmate compliance with rules and allowing for early release to control prison populations, but also, in the case of EGCC, providing inmates with an incentive to rehabilitate themselves through program participation. Evidence that inmates are motivated by these types of incentives, such as EGCC, have been documented in the ongoing evaluation of the Illinois Department of Corrections' Sheridan Correctional Center (Olson, 2005), which found inmates earning EGCC were more likely to comply with program requirements

and complete the program successfully than those not eligible for EGCC.

Despite the fact that most criminal justice practitioners, and convicted offenders, were well aware that most inmates only served a fraction of their sentence, the increasingly punitive sentiment during the early 1990s, associated with a relatively high rate of violent crime, brought the issue of this disparity between sentences imposed and time served to light. Further, although the move to increase sentence lengths and time served for violent offenders through Truth-in-Sentencing (TIS) types of laws in the United States began in the late 1980s, the federal TIS legislation passed in 1994 and the federal TIS Incentive Grant Program initiated in 1996 were associated with many states adopting laws that required those sentenced to prison for various violent crimes to serve at least 85 percent of their sentence (Rosich & Kane, 2005). Illinois adopted its version of TIS in August 1995 (State Fiscal Year 1996), which requires those convicted of murder to serve 100 percent of their sentence, those convicted of criminal sexual assault to serve at least 85 percent of their sentence, and those sentenced to prison for other violent crimes involving great bodily harm to also serve at least 85 percent of their sentence. Prior to the implementation of TIS in Illinois, those sentenced to prison for murder and criminal sexual assault served, on average, less than 40 percent of their sentences as a result of the various GCC, MGT, and SMGT reductions (Illinois Criminal Justice Information Authority, 1994).

The support for TIS in Illinois and elsewhere in the country came from the belief that the law would achieve crime reduction and increase public satisfaction with the criminal justice system. In Illinois, supporters believed crime rates would be reduced by inmates being kept off the streets for longer periods of time, and thereby being released at an older age, which was correlated with lower recidivism rates (Illinois Criminal Justice Information Authority, 1994). This long-term reduction in crime, it was argued, would result in lower expenditures by the components of the criminal justice system (Illinois Criminal Justice Information Authority, 1994:2). This logic of reduced crime as a result of longer sentences and deterrence was also argued in other states, and in Virginia these assumptions were examined by researchers and found to be "conceptually sound and conservative" (Ostrom, Cheesman, Jones, Peterson & Kauder, 2001:2). In addition, proponents felt that the "integrity of the criminal justice system would be strengthened" (Illinois Criminal Justice Information Authority, 1994:2) since large differences between the imposed sentences and actual

time served "breed disrespect for the system among offenders, victims and the general public" (Illinois Criminal Justice Information Authority, 1994:2). Through TIS, it was believed, this disparity would be eliminated and public satisfaction with the justice system would be enhanced.

However, the proposed implementation of TIS was also met with some concern and criticism, including: 1) the potential for increased inmate assaults and rule violations due to fewer incentives to behave, 2) an overly burdensome financial impact if the result actually resulted in inmates spending more time in prison than before TIS, or 3) no change whatsoever in the amount of time served in prison due to criminal justice practitioners (judges, prosecutors and defense attorneys) merely reducing sentences proportionally, thereby resulting in those sentenced to prison still serving the same time behind bars (Illinois Criminal Justice Information Authority, 1994:2). Concerns raised by the Illinois Department of Corrections (IDOC) included the fiscal impact if the law resulted in inmates actually serving longer sentences, as well as concerns regarding the behavior of inmates and the safety of staff if those sentenced to prison for serious crimes had no incentive (i.e., good conduct credit) to follow institutional rules. In terms of cost, IDOC projections in 1998 on the cost to expand TIS to all non-probationable violent felonies exceeded $500 million over ten years (Illinois Truth-in-Sentencing Commission, 1998:25). On the other hand, many argued that the fiscal impact projections by the IDOC were exaggerated and the logic of longer lengths of stay in prison was flawed. TIS opponents argued that the actual length of time inmates spent in prison would remain the same if judges adjusted their sentences to be consistent with the amount of time offenders served before TIS was implemented. Despite these concerns, TIS in Illinois was implemented in 1995.[1]

As described earlier, it was projected by policy makers and practitioners that this law could result in either longer lengths of incarceration, if sentencing practices did not change, or similar lengths of time served, but higher proportions of the court-imposed sentences being served, if sentence lengths

[1] Although passed and signed into law in 1995 (with an effective date of August 1, 1995), a legal challenge to the law was quickly filed challenging the legislative procedure used to pass the TIS law. Concern over this challenge led the Illinois legislature to re-pass a new version of the law, ensuring procedural processes were followed, and the new version of TIS was signed into law with an effective date of June 18, 1998 (State Fiscal Year 1998). During this period between the first version being passed and in effect and the new version being passed (August 1995 to June 1998), offenders were being sentenced under the original version of TIS. The Illinois Supreme Court ultimately ruled the original TIS law unconstitutional (the one effective August 1995) due to it violating the single subject rule for legislation. As a result of the original law being overturned, all those sentenced under the old law had their sentences automatically changed to allow them to earn good conduct credit similar to that pre-TIS.

were adjusted downward to take into account the effect of TIS. For those sentenced to prison under TIS, they must serve between 85 and 100 percent of their court-imposed sentence, and thus, it was argued by some that the law would reduce crime by incarcerating serious offenders for a longer period of time. The two most serious types of criminals included under this dimension of the law are murderers (who must serve 100 percent of their sentence) and Class X felony sex offenders (those convicted of aggravated criminal sexual assault and predatory criminal sexual assault who must serve 85 percent of their sentence). For those convicted of murder, state law requires that they receive a prison sentence of between 20 and 60 years, or when specific aggravating circumstances are present, a determinate sentence of more than 60 years is allowable, as is a sentence of life in prison or the death penalty. Prior to the implementation of TIS in Illinois (i.e., 1995), the average prison *sentence* length for those convicted of murder was 35 years and the projected average amount of time served for those offenders was slightly less than 17 years (Illinois Department of Corrections, 2001). Thus, depending on how sentence lengths are influenced by the prospect of TIS, the end result could be longer lengths of time served in prison (which is what proponents of the law hoping to incapacitate offenders longer argued would be the benefit), the same lengths of time served in prison (which is what opponents argued would happen as a result of changing sentencing practices), or somewhere in between.

However, after 15 years of actual experience with TIS in Illinois, and thousands of offenders being sentenced under the law, relatively little research regarding the implementation, impact or characteristics of those sentenced under TIS in Illinois has been conducted, and nationally these assessments have been limited. The exception to this in Illinois is a brief summary included in the Illinois Department of Corrections' Annual Statistical Presentation, which provides information on how many inmates are serving sentences under TIS, the average time they have served, and the amount of time left to serve (Illinois Department of Corrections, 2005). Thus, despite the concerns raised by many leading up to the passage of the law, and the potential impact the law was projected to have from fiscal and staff safety perspectives, relatively little systematic assessment of the law has occurred. The current research is designed to fill this gap and represents the only effort to systematically examine the impact that TIS in Illinois has had on sentence lengths, lengths of time to serve, and inmate disciplinary incidents.

Thus, the current study seeks to answer two of the key questions regarding the implementation of Illinois' TIS law as it pertains to convicted murderers and sex offenders: 1) has TIS changed the sentence lengths and lengths of time to serve in prison for murderers and sex offenders, and if so, to what degree, and 2) has TIS had an influence on the extent and nature of disciplinary infractions of inmates admitted to prison for murder and sex offenses subject to the law, and if so, to what degree.

LITERATURE REVIEW

Although truth-in-sentencing types of policies were implemented in many states during the 1980s, it was not until the federal law was passed during the 1990s that the implementation and impact of the law received much attention from researchers. Further, given that many states did not implement the TIS law until the 1990s, many analyses done during that time were premature and were not able to determine the full impact on sentencing and inmate behaviors due to little time elapsing between implementation and evaluation. For the most part, the literature can be divided into three categories: 1) assessments that attempted to examine, at a national level, the impact of TIS on sentencing practices and prison management issues, 2) research designed to assess the implementation and impact of TIS in specific states, and 3) theoretical and philosophical discussions on TIS from the standpoint of being overly punitive, reducing judicial discretion, and equity in sentencing. Although important, this latter area regarding the theoretical and philosophical implications of TIS is not examined in the current report. Despite the considerable change that TIS potentially had on sentencing practices, lengths of time served, and inmate management issues, the literature to date on the implementation and impact of TIS is relatively sparse.

In general, the research that has sought to answer the question regarding how TIS has changed sentencing practices is mixed, and appears to vary from state to state depending on how the state's sentencing laws were structured. For example, in an evaluation of the implementation of TIS in Massachusetts, researchers found very little change in actual *sentences* imposed in the pre- versus post-TIS sentences, but a measurable increase in the *projected length of time to serve* (Massachusetts Sentencing Commission, 2000). In Virginia, evaluators discovered that *sentences* for non-violent offenders were lower, but actual time served *remained the same* under TIS. On the other hand, for violent offenders, both sentence lengths *and* projected time to serve *increased* (Ostrom, Cheesman, Jones, Peterson & Kauder, 2001). In examining TIS in Mississippi, researchers concluded that the response by the court community to TIS has been to adjust sentences to maintain the historic "proportionality in punishment," or same average number of years served in prison. Moreover, they found considerable variation in the enforcement of TIS geographically across the state (Wood & Dunaway, 2003). Thus, in some of the evaluations it was determined that TIS was indeed associated with longer lengths of time in prison, while others found no impact, either due to deliberate changes

in the sentencing structures (i.e., Virginia for non-violent offenders) or changing practices by courtroom practitioners when it came to sentencing, as in the case of Mississippi.

There has also been some limited research that has sought to examine the impact of TIS on changes in the overall size of the prison population. For example, a 2002 study conducted by Sabol, et al. (2002) was concerned with the overall effects of TIS on the prison population size in seven different jurisdictions, one of which was Illinois. In answering one of their research questions, they found that TIS reform had a larger impact on prison populations than did other factors, such as changes in demographic characteristics of offenders or states and the types of offenses resulting in prison sentences.

Given the fact that the impact of the law appears to vary from state to state, depending on the offenses covered under TIS and the overall sentencing structure and/or courtroom culture in place, it is clear that analyses need to be done on a state-by-state basis to take into account the nuances of each state's TIS law and sentencing structure to assess impact on sentence lengths and/or lengths of time to serve. Indeed, it may also be important to examine the impact of TIS across different types of jurisdictions within the same state, as there is evidence from Illinois that the application and use of certain types of criminal sentences—ranging from capital punishment to the imposition of fines--vary between Cook County (Chicago), suburban and downstate urban counties and rural jurisdictions. For example, research in Illinois by Pierce & Radelet (2002) found greater use of death sentences in rural jurisdictions than more urban areas after statistically controlling for other variables. Similarly, Olson & Ramker (2001) found the odds of having financial conditions ordered as part of probation sentences were higher in rural jurisdictions in Illinois than more urban counties after statistically controlling for other variables.

Similarly, when researchers sought to examine the degree to which TIS has produced management issues for prisons associated with the hypothesized reduction in good conduct incentives, the findings are mixed and limited. For example, in a national study completed in 2003, Turner, Hickman, Green & Fain found some evidence that TIS was associated with higher levels of prison management *concerns*. However, their conclusions are tentative due to the aggregation at a national level, the data only being collected shortly after the implementation of TIS, and the fact that they

were asking administrators about their *perceptions* rather than having actual data available regarding increased incidents or disciplinary problems associated with the law. However, empirical evidence indicating the adverse impact of TIS on disciplinary incidents is evident from research conducted in two states. In separate studies regarding the impact of TIS on inmate behaviors in South Carolina and North Carolina researchers found that those sentenced under TIS did have more behavioral problems and violated prison rules at higher rates and more quickly than did similar inmates admitted to prison sentenced under the old, non-TIS law (North Carolina Criminal Justice Analysis Center, 1998; Fowler et. al., 2002). Specifically, in North Carolina, using multivariate techniques (Cox Regression and Negative Binomial Regression) and controlling for various inmate characteristics, researchers found that those sentenced under North Carolina's version of Truth-in-Sentencing (referred to as the Structured Sentencing Act, or SSA) had a weighted disciplinary violation rate almost 20 percent higher than the non-Truth-in-Sentencing inmates (North Carolina Criminal Justice Analysis Center, 1998). Further, those sentenced under North Carolina's version of TIS also had much higher rate for assaultive offenses within the institutions—71 percent higher—than those sentenced under the "old" law (Ibid). Similar findings were also reached when researchers examined the impact of TIS on inmate behavior in South Carolina. Specifically, Fowler et. al. (2002) found that inmates sentenced under South Carolina's version of TIS were more likely to have disciplinary infractions than those not sentenced under TIS, and that the time-to-infraction was much shorter for the TIS versus the non-TIS inmates, after statistically controlling for offense type, age, length of time to serve and admission date.

In addition to there being some limited research that has examined the relationship between TIS laws and inmate behaviors, there is a much more extensive body of literature that has examined other correlates of inmate disciplinary incidents. For example, some of the extant research on inmate misbehavior comes from that done in other specific states and has tended to focus on comparing the behavior of long term inmates with that of short term inmates. However, there is little or no regard for the TIS status of inmates. For instance, a study conducted by Cunningham, Sorensen and Reidy (2005) in a Missouri state prison sought to determine which risk factors best predict assaultive violence compared across three categories of prisoners: term inmates (inmates serving a specific length of time), inmates serving life sentences, and inmates sentenced to death. Their findings noted that as inmates get older, they are less likely to exhibit assaultive violence. Interestingly, they found

that inmates sentenced to life were 51 percent *less likely* than term inmates to commit a violent assault, and that death-sentenced inmates were 45 percent *less likely* to commit a violent assault while in prison relative to inmates serving a specific term. Thus, while it would appear from these findings that those inmates "with nothing to lose" (i.e., those sentenced to life or death) were less likely to be assaultive, it is important to note that those sentenced to life in the Cunningham et. al (2005) study still had a chance at release by way of parole, and thus may have been less likely to be assaultive given this hope of release.

In a similar study that sought to gauge the effects that "no hope of release" would have on inmates, Sorensen and Wrinkle (1996) conducted a similar study, also in Missouri, comparing the assaultive violence incidents of death-sentenced and life without parole (LWOP) inmates to inmates serving life with the possibility of parole. Using bivariate statistical analyses, Sorensen and Wrinkle found that LWOP inmates were significantly less likely to receive disciplinary infractions for assaultive behavior than inmates serving life with parole. However, in multivariate analyses, these distinctions did not hold up. Their multivariate models found that type of sentence (death, LWOP, or life with parole) did not contribute significantly to the prediction of disciplinary violations, or assaultive behavior. They did, however, find a curvilinear distribution of disciplinary infractions for LWOP inmates, suggesting that the prevalence of disciplinary infractions is high at the beginning of a long sentence, hits a peak in this early period, and then declines once an LWOP inmate settles in to the prison routine. Separate analyses of these data collected in Missouri by Sorensen, Wrinkle and Gutierrez (1998) noted that the highest risk inmates for assaultive offenses were most likely to be young and African-American. Consistent with Sorensen and Wrinkle (1996), their results showed that inmates with no hope of parole do not represent a greater threat to the security of prisons. Instead, they found that more attention should be paid to inmates who do have a chance at release, as their rates of misconduct are higher.

A more recent study in Florida by Cunningham and Sorensen (2006) looked at the same types of inmates by sentence, but also included some TIS offenders in the sample serving at least 85 percent of their sentence. In the study, Cunningham and Sorensen (2006) came to similar conclusions as the previously noted studies. Generally, they found that inmates serving less than 20 years had the highest rates of assaultive behavior. More specifically, they found that shorter-term inmates (10-14

years) had the highest rates of assaultive behavior, followed by inmates serving 15-19 years. Longer-term inmates, especially LWOP inmates had much lower rates of assaultive behaviors. There are some caveats with this study, however. It should be noted that some of the longer-term inmates may have been transferred to lower security classifications, leaving a cohort that was more violent to begin with.

Finally, Berk, Kriegler and Baek (2006) conducted a study in California in order to create a model to forecast which inmates would be most likely to engage in serious misconduct. Using multivariate techniques, the study found the length of sentence to be the biggest predictive factor for serious misconduct, followed by age at first arrest and gang affiliation. Consistent with the studies mentioned above, inmates serving *shorter* sentences (6-10 years in this case) were much *more likely* to be involved in serious misconduct. As well, Berk et al. (2006) also found that younger inmates were much more likely to be involved in serious misconduct.

Thus, while some research has sought to examine the implementation and impact of TIS in the U.S. and across specific, individual states, the findings appear to be limited and parochial. What is available, however, suggests that these types of analyses need to be carried out on a state-by-state basis in order to accurately assess impact and account for unique aspects of TIS laws across the states, and the degree to which courtroom personnel have the capacity to negate the intentions of the law through the use of their discretion when it comes to sentencing. Similarly, in terms of the impact of TIS on institutional behaviors of inmates, there have only been a handful of studies that have examined this dimension of the policy. Although the two studies cited here from North and South Carolina would appear to support the notion that TIS has increased the frequency and nature of inmate disciplinary incidents, the populations subject to TIS in those states appears to be quite broad (i.e., all violent offenders), and therefore requires replication in other states and with more specific offenses targeted under the TIS laws. Further, the existing literature on inmate disciplinary patterns, particularly for those convicted of murder, appears to suggest that longer lengths of time to serve may actually *reduce* the incidence and nature of institutional violence by inmates, and that other inmate characteristics, such as age, need to be statistically controlled.

METHODOLOGY

The methodology that was used to examine TIS in Illinois builds upon the methods used in TIS assessments in other states, and also advances the knowledge due to the unique nature of Illinois' law and its implementation. Given the limited examination of TIS in Illinois, and the fact that each year new crimes are considered for inclusion under the TIS sentencing provisions, it is hoped that this formal, independent evaluation of the impact of Illinois' Truth-in-Sentencing law can inform and guide future policy and practice in Illinois. Specifically, the current research sought to answer the following two research questions:

1) Has the implementation of Truth-in-Sentencing affected sentence lengths/projected lengths of time to serve among those sentenced to prison in Illinois for murder and Class X sex offenses (i.e., aggravated criminal sexual assault and predatory criminal sexual assault), and if so, how?

2) Have those sentenced under Truth-in-Sentencing for murder and Class X sex offenses been more likely to be involved in disciplinary incidents, particularly for assaultive behaviors, than those not subject to Truth-in-Sentencing, and if so, how?

Data Sources

All of the data used in the current analyses were provided to the research team by the Illinois Department of Corrections (IDOC), and come from administrative records collected and maintained by IDOC during the normal processing of adult inmates. Among the data provided for the evaluation was offender-level information collected during the admission of the inmate into IDOC (i.e., from IDOC admissions data files), including the inmate's demographic characteristics, marital and education status, gang involvement, current conviction offense and sentence imposed, county of conviction, prior prison sentences, and whether they were subject to TIS or not. These data were provided for every adult inmate admitted to IDOC from State Fiscal Year (SFY) 1989 through SFY 2008. These years cover the period from July 1988 through June 2008. The number of murderers included in these data totaled 9,102 and the number of inmates sentenced for Class X sex offenses totaled 7,150.

In addition to these admissions data, offender-level data were also provided regarding the disciplinary history of a smaller sub-sample of the group described above. Specifically, for those adult inmates admitted to IDOC during SFY 2000 and 2001 for murder (N=849) or aggravated criminal sexual assault (N=641), detailed, case-level data for each disciplinary incident from the date of their admission through March 2008 were obtained, including the date of the incident, a description of the incident, and the sanction imposed for the incident. These data were merged with the data obtained from the admissions files for those inmates included in this sub-sample of inmates selected for the analyses of institutional rule violations.

The way the Illinois' TIS law was written, only those whose crime was *committed* after the effective date of the legislation (August 1995) were subjected to the 85 to 100 percent requirement. Thus, given how long some of the more serious crimes take to adjudicate, during the period after the effective date of the TIS law (August 1995) judges were sentencing some murders and sex offenders under the old law (which allowed for good conduct credit to be earned) and the new TIS law (which eliminated or severely limited the amount of good-conduct credit that could be earned). This unique situation provided for an opportunity to conduct a natural experiment of the effect TIS had on sentence lengths: there is clearly a pre-TIS time period, but there is also a time period where defendants being sentenced for similar crimes and subject to different laws related to the ability to earn good conduct credits.

Methodology Used to Examine Impact of TIS on Sentence Length and Length of Time to Serve

For the first research question, if TIS is actually going to result in inmates sentenced for serious crimes being incarcerated for a longer period of time--the objective of many TIS proponents--then there cannot be dramatic reductions in the sentences imposed in the courts in response to TIS restrictions or plea bargaining involving reduced charges. As described in the literature review, evidence from some states, such as Mississippi, has found that court practitioners, including judges, prosecutors and defense attorneys, have responded to TIS by altering their sentence lengths so that, in the end, the length of time spent in prison under TIS is the same as pre-TIS (Wood and Dunaway, 2003). However, the Woods & Dunaway (2003) conclusions were reached through surveys and interviews with practitioners, not examination of actual data on sentence lengths imposed pre- and

post-TIS. In other states, such as Virginia, *ensuring* that non-violent offenders did not serve longer in prison as a result of TIS was *intentionally and directly addressed* by reducing the sentences allowed under sentencing guidelines for these crimes, while for violent crimes, lengths of time to serve were *increased* (and assured) by an upward shift in sentencing guidelines.

In Illinois, however, given that there are no narrow sentencing guidelines when it comes to murder and Class X sex offenses (murderers can receive a prison sentence of between 20 and 60 years without aggravating circumstances and those convicted of Class X sex offenses can receive 6 to 30 years without additional aggravating circumstances), there is the potential that courtroom personnel could maintain historic lengths of time to serve in prison by adjusting their sentencing practices similar to that purported in Mississippi. For example, the average prison sentence imposed on those convicted of murder in Illinois during 1994 (prior to TIS) was 35 years, and the offender would (without Truth-in-Sentencing) serve roughly one-half of that sentence, or 17.5 years. So, if in sentencing the average murderer the judges' intent was for them to spend 17.5 years in prison, under TIS they could impose a sentence of 20 years (with 100 percent of that being served) and come close to achieving their goal of 17.5 years "behind bars." Similarly, the average prison sentence imposed on those convicted of Aggravated Criminal Sexual Assault in 1994 was 13.1 years, and that offender would be expected to serve roughly 7.5 years. Given the allowable sentencing range of 6 to 30 years for Class X felonies, and the requirement under TIS that these offenders serve 85 percent of their sentence, the same objective of 7.5 years "behind bars" (the pre-TIS average) could be achieved by sentencing them to 9 years (9 years X .85 = 7.6 years behind bars).[2]

In examining the impact of TIS on sentence lengths, prior research confirms that it is important to also statistically control for other offender characteristics when examining variation in sentence lengths. For example, Huang, Finn, Ruback and Friedman (1996) found older, better-educated males

[2] One additional dimension of sentencing sex offenders that could come into play is the potential of plea bargaining, which could result in charges being reduced from Class X to Class 1 felonies (i.e., reduced from Aggravated Criminal Sexual Assault, a Class X felony, to Criminal Sexual Assault, a Class 1 felony). Although both would require that 85 percent of the sentence be served, the allowable sentencing ranges for Class 1 felonies is 4 to 15 years, as opposed to the 6 to 30 years for Class X felonies. Although possible, it is unlikely that murder charges would be altogether dropped during plea bargaining. Our analyses were not able to include the impact of potential plea bargaining on reductions from Class X sex offenses to Class 1 felonies, and it is unlikely to be an issue in the trial and conviction of first degree murderers.

convicted of a violent crime received longer sentence lengths than those with other characteristics. Research has also suggested that sentences imposed in suburban and rural areas tend to be longer than those imposed in urban areas (Austin, 1991), partly explained by the fact that less urban areas tend to have less serious crime, and therefore courts respond more punitively due to the rarity and social outrage of crimes like murder and rape. Also consistent in the literature is the pattern that the more extensive an individual's criminal history, the longer their prison sentence.

Thus, in the current analyses of the impact of TIS on sentence lengths and lengths of time to serve, we will answer the question of whether sentence lengths of murderers and Class X sex offenders were affected by the implementation of TIS after statistically controlling for other factors that have been found to influence sentence lengths, such as age, race, gender, marital status, education level, if the inmate has children, gang membership, prior criminal history, and jurisdiction of sentencing. In order to accomplish this, we will employ multivariate regression techniques, including ordinary least squares (OLS) regression for analyses of changes in the sentence lengths imposed and logistic regression to examine the impact of the law on the use of sentences over the statutory maximums.

In addition to statistically controlling for age, race, gender, education level, marital status, having children, prior prison admissions, prior criminal history and sentencing jurisdiction, in order to determine the extent to which TIS has independently changed sentence lengths, a variable was created to identify those offenders sentenced under TIS and those sentenced under the law that allowed day-for-day good conduct credit. Specifically, we created an interaction term/variable to group the sentenced offenders into 1 of three groups: 1) those sentenced prior to the passage of the TIS law in Illinois (i.e., those cases sentenced prior to 1997, the reference group); 2) those sentenced who were subject to TIS; and 3) those *sentenced* when TIS was effective, *but were not subject to the law* (i.e., committed their crime prior to the effective date of the legislation). The reason to group the cases into one of these three categories was based on the belief that if judges were imposing sentences on those subject to TIS, and taking into account how long the offender would be serving, that it would potentially have an effect on the sentences they were handing down during the same time period to those who were not subject to the law. Indeed, Emerson (1983) found that judges were affected by the nature of the cases that they sentenced in assigning sentences to individual cases. Their sentencing decisions thus were affected by what types of cases preceded a case. Based

on this research, it is theorized that when judges were sentencing separate offenders, but similar types of cases, under the "old" law and "new" TIS laws, there may be some influence on the sentences imposed. In other words, if a judge was sentencing one murderer under TIS today, and then tomorrow was sentencing another under the old law, the two cases and sentences imposed may affect each other.

In addition to examining the impact TIS had on sentence lengths, we also examined the extent to which TIS changed the use of sentences beyond the statutory maximums. Specifically, we examined whether or not TIS was associated with a reduced proportion of murder and Class X sex offense cases with sentence lengths in excess of the statutory maximum (i.e., 20-60 year range for those convicted of murder and 6-30 years for those convicted of aggravated criminal sexual assault). Under Illinois law, a sentence beyond the statutory maximum, or a sentence of natural life or death in the case of murder, can be sought when specific, aggravating circumstances are present. The hypothesis and potential impact of TIS as it relates to sentences above the statutory maximum, or of natural life and death in murder cases, is that prior to TIS, the maximum sentence that could be imposed on murder without proving aggravating circumstances was 60 years, which, with good conduct credit would translate to 30 years in prison. Thus, for a 30-year-old murderer, odds are they would be released from prison before their death (i.e., they would be 60 years old). If the prosecutor wanted to ensure that this individual would not be released from prison, they would need to prove to the judge that aggravating circumstances were present in order to achieve a projected age of release from prison beyond the typical life expectancy (i.e., 70 or 80 years old). However, with TIS, and a 30 year old convicted murderer, it would now be possible to impose a veritable "life" sentence by sentencing them to prison for 60 years, which under TIS, would require the full 60 years to be served, resulting in that inmate not being eligible for release until the age of 90. To examine this potential change, we used logistic regression to examine the degree to which TIS is associated with a shift towards within-range sentence lengths as opposed to sentences beyond the maximum, after statistically controlling for other offender characteristics. Table 1a summarizes the characteristics of the samples used in the analyses of the sentences imposed on convicted murderers and sex offenders (those cases covering the period from SFY 1989 through SFY 2008).

Table 1a
Demographic, Socio-Economic and Criminal History Characteristics of Sentence Analysis Sample

	Murder Sentences N=9,218	**Class X Sex Offender Sentences N=7,150**
Age	27.08	32.55
Race		
White	17.3%	40.3%
Non-White	82.7%	59.7%
Total	100.0%	100.0%
Gender		
Male	94%	99.2%
Female	6%	0.8%
Total	100.0%	100.0%
Marital Status		
Married/Common Law	14.6%	27.4%
Single/Divorced	85.4%	72.6%
Total	100.0%	100.0%
Education Level		
No HS/GED	61.1%	52.2%
HS/GED	38.9%	47.8%
Total	100.0%	100.0%
Children		
None	50.7%	48.3%
One or More	49.3%	51.7%
Total	100.0%	100.0%
Gang Member		
No	60.1%	81.1%
Yes	39.9%	18.9%
Total	100.0%	100.0%
Region of Illinois		
Cook County	74.3%	54%
Collar County	6.9%	11%
Other Metropolitan Statistical Area	12.8%	18.9%
Rural Area	6%	16.2%
Total	100.0%	100.0%
Prior Prison Sentences		
None	72.6%	75%
One or More	27.4%	25%
Total	100.0%	100.0%
Truth-in-Sentencing		
Pre-TIS	45.8%	48.4%
Non-TIS	21.4%	12.2%
TIS	32.8%	39.3%
Total	100.0%	100.0%

Methodology Used to Examine Impact of TIS on Inmate Disciplinary Incidents

Because data regarding the disciplinary incidents of inmates in Illinois was not automated statewide at all facilities prior to 1999, we included only those inmates admitted to prison in Illinois for murder and sex offenses between July 1999 and June 2001 in our sample to determine if TIS has any impact on the extent and nature of disciplinary incidents. In addition to including many of the same independent variables as used in the analyses of sentence length (i.e., age, race, gender, marital status, education level, if the inmate has children, gang membership, prior criminal history, and jurisdiction of sentencing, and a dummy variable to indicate if they were subject to TIS), we also included information about how long they were projected to serve in prison (sentence imposed, minus any jail credits and minus any good conduct credit they could potentially earn), length of time served, and the security level of the facility they were housed in. In the analyses, we also performed analyses substituting the security level of the facility with dummy variables for the actual facilities (i.e., Stateville, Pontiac, etc). However, because some individual facilities had very small numbers of cases, the ability to statistically control for the specific facility was limited. All of the independent variables were examined in bivariate analyses to check for multicolinearity and none of the correlations were found to be large enough for this to be a concern in the multivariate analyses.

In terms of the dependent variable, or the institutional disciplinary incidents, we created and examined a number of different measures, including: the total number of disciplinary incidents (a ratio-level measure), an indication of any "serious incidents" (coded as a dichotomous variable, 0=none, 1=1 or more), an indication of any assaults on staff (coded as a dichotomous variable), any assaults on other inmates (coded as a dichotomous variable), and any assaults (combining staff and inmate assaults, and coded as a dichotomous variable). The determination of a "serious incident" was based on a review of IDOC's disciplinary procedures (Illinois Administrative Code, 2003), and the identification of offenses that could result in the most severe sanctions. Based on this review, serious offenses were defined as 100- and 500-level offenses (i.e., assaults and other violent offenses, and violating a state or federal law; and involvement in a security threat group activities). Table 1b summarizes the characteristics of the sub-samples used in the analyses of the disciplinary incidents among those convicted of murder and sex offenses.

Table 1b
Demographic, Socio-Economic and Criminal History Characteristics of Disciplinary Record Analysis Sub-Sample

	Murder Disciplinary Incidents (N=849)	Class X Sex Offender Disciplinary Incidents (N=1,405)
Age	26.56	32.27
Race		
White	16.7%	40.2%
Non-White	83.3%	59.8%
Total	100.0%	100.0%
Gender		
Male	92.7%	99.4%
Female	7.3%	0.6%
Total	100.0%	100.0%
Marital Status		
Married/Common Law	9%	21.8%
Single/Divorced	91%	78.2%
Total	100.0%	100.0%
Education Level		
No HS/GED	58.8%	54.6%
HS/GED	41.2%	45.4%
Total	100.0%	100.0%
Children		
None	75.4%	74.7%
One or More	24.6%	25.3%
Total	100.0%	100.0%
Gang Member		
No	63%	83.8%
Yes	37%	16.2%
Total	100.0%	100.0%
Region of Illinois		
Cook County	75.4%	52.2%
Collar County	5.9%	11.5%
Other Metropolitan Statistical Area	10.4%	15.6%
Rural Area	8.4%	20.7%
Total	100.0%	100.0%
Prior Prison Sentences		
None	73.4%	77.2%
One or More	26.6%	22.8%
Total	100.0%	100.0%
Truth-in-Sentencing		
Non-TIS	65%	42.6%
TIS	35%	57.4%
Total	100.0%	100.0%

RESULTS & FINDINGS: IMPACT OF TIS ON SENTENCE LENGTH AND TIME TO SERVE

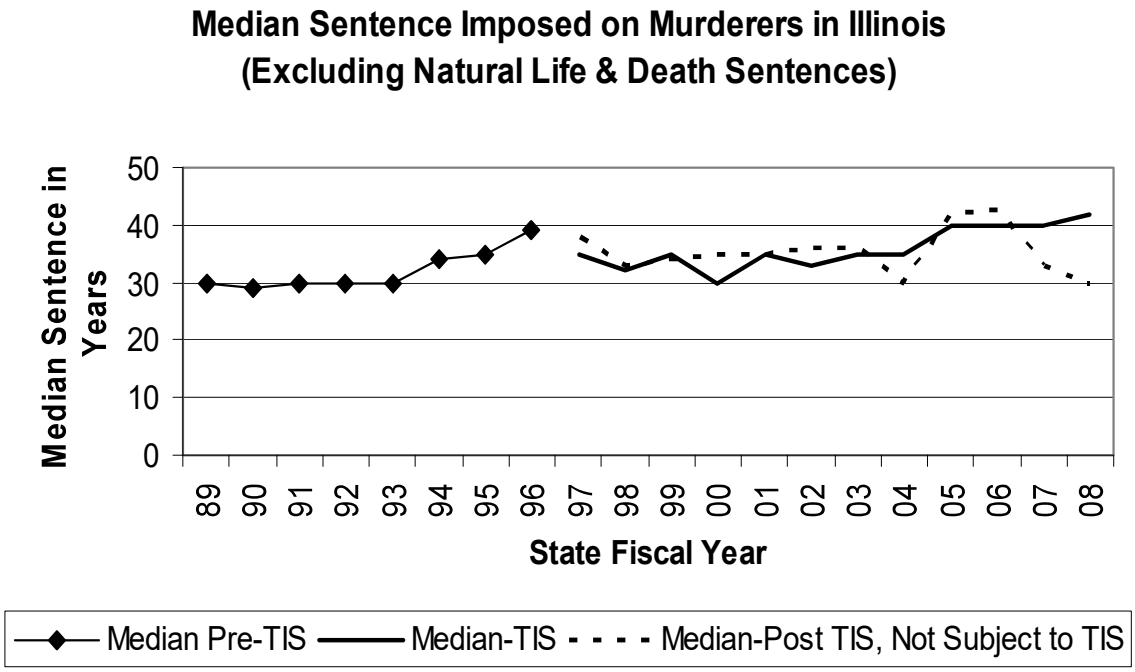
Results and Findings from the Analyses of the Impact of TIS on Sentence Length and Time to Serve for Convicted Murderers

The first set of analyses sought to merely examine the overall pattern of sentences imposed on convicted murderers in Illinois between SFY 1989 and 2008, including analyses of the mean and median sentences imposed (for determinate sentences), and the proportion of murderers that received sentences beyond the statutory maximum of 60 years. These analyses were performed so as to separate out, or distinguish between the sentences imposed prior to the implementation of TIS, those murder sentences that were subject to TIS, and those murderers sentenced after TIS had been implemented, but who were not eligible due to the fact that their crime occurred prior to the passage of the law.

From these analyses, a number of patterns were evident that have implications for understanding the potential impact of TIS on murder sentences. First is the fact that in the years leading up to the passage of TIS in Illinois, the mean and median sentences imposed on convicted murderers that received a determinate sentence (i.e., excluding natural life or death sentences) was increasing (Figure 1). As seen in Figure 1, between SFY 1989 and 1993, the median sentence length imposed on murderers given a determinate sentence was 30 years. However, beginning in 1994, which is when the federal government passed its own version of TIS and increasing attention was being paid to the issue of TIS in the United States and in Illinois, the median sentences imposed on murderers in Illinois began to increase. By SFY 1996, the year before Illinois passed its TIS law, the median sentence lengths imposed on convicted murderers in Illinois had increased to 39 years.[3]

[3] When examining the impact of TIS on sentence lengths, the first thing that needed to be examined was the pre-TIS trend in sentence lengths. Examining the correlation between sentence length (only those 20-60 years) and year (1989-1996), Pearson's r was .18. When examined in a regression model, for each additional year, sentence lengths increased by .87 years ($t=8.6$, $p<.001$). Thus, it appeared that prior to the implementation of TIS in 1997 there was a trend of increased sentence lengths being imposed on murderers in Illinois independent of the effect of the other variables.

Figure 1



The other pattern evident from the analyses of median sentence lengths over time was that following the passage of TIS, the median sentence lengths of those subject to the law, as well as those not subject to the law, appeared to decrease slightly and the upward trend in sentence lengths stopped, at least up until the last few years included in the analyses. By SFY 2008, the median sentence imposed on murderers subject to TIS had increased back to the pre-TIS level in SFY 1996. The trend in the median sentence imposed on those sentenced after the TIS law, but not subject to TIS, becomes statistically unstable after SFY 2003 due to there being relatively few cases in the analyses after that point. Aggregating all of the sentences imposed between SFY 1997 and 2008, the median sentence imposed on those convicted of murder and subject to TIS was 35 years (mean of 38.3 years). For those murderers sentenced after TIS was implemented, but not subject to the law, the median sentence imposed was 35 years (mean of 39.3 years). Thus, without any statistical controls other than whether or not the murderer was subject to TIS indicates the mean and median sentences imposed on convicted murderers subject to TIS were only *slightly lower* than the sentences imposed pre-TIS and when compared to those sentenced after TIS but who were not subject to the law.

The next step of the analyses involved performing bivariate analyses to determine if there were any relationships between the sentence imposed (in years) and the proposed independent variables, including: age, race, gender, marital status, education level, if the inmate has children, gang membership, prior criminal history, and jurisdiction of sentencing. Following the bivariate analyses, multivariate analyses were also conducted to examine the impact of TIS on sentence lengths, while also statistically controlling for the other variables that could influence or change the lengths of sentences imposed on convicted murderers. Those offenders sentenced to natural life or death were not included in these analyses.

In the bivariate analyses, all independent variables revealed statistically significant relationships with sentence length, although not all variables displayed strong relationships to sentence length (Table 2). Further, the fact that statistically significant relationships were found is not necessarily that surprising given the large sample size being used. Specifically, we found that older inmates were more likely to receive longer sentences, although it was a weak relationship (Spearman's rho=.068, $p<.001$). Also, females received shorter sentences than males (32.7 years compared to 38.2 years, respectively), and although this difference was statistically significant ($F=41.87$, $p<.001$), it was relatively weak (Spearman's rho=.092, $p<.001$). Similarly, when race was coded into three categories (white, African-American, and Hispanic/other) a statistically significant difference in sentence lengths across the three groups was evident ($F=18.32$, $p<.001$). Specifically, white defendants received longer mean sentences (40.6 years) than African-American (37.6 years) and Hispanic/other inmates (36.6 years). Marital status was also related to sentence length, with married inmates receiving longer sentences, on average, than unmarried inmates (39.7 years compared to 38.3 years, respectively; $F=4.1$, $p<.05$). Those convicted murderers that had a high school diploma or GED received longer average sentences than those without a high school education (39.2 years compared to 37.8 years, respectively; $F=7.56$, $p<.01$). Also, inmates who had at least one child received longer average sentences than those without children (39 years versus 36.8 years, respectively; $F=29.6$, $p<.001$). Further, inmates who were gang members received longer sentences than non-members (38.8 years compared to 37.2 years, respectively; $F=14.2$, $p<.001$). Where an offender was convicted also had a statistical relationship with mean sentence length. Convicted murderers sentenced outside of Cook County received longer mean sentences than their counterparts in Cook County (43.3 years for the Collar Counties, 39.9 years for other Metropolitan Statistical

Areas, 41.6 years for Micropolitan Statistical Areas versus 36.8 years for Cook County; F=31.6, p<.001). Finally, murderers with prior incarcerations received longer mean sentences than those with no prior incarcerations (42.7 years versus 36.2 years, respectively; F=193.0, p<.001).

Table 2

Average Sentences Imposed on Those Convicted of Murder Excluding Life and Death Sentences

	Mean Sentence Length (in Years)
Total	37.88, (sd) 18.60
Age* ** (26.72 years) Spearman's Rho=.069, p<.001	
Gender* ** F=41.87, p <.001; Spearman=.092, p<.001	
Female	32.72, (sd) 15.70
Male	38.22, (sd) 18.72
Race* ** F=18.32, p<.001	
White	40.64, (sd) 23.17
African-American	37.56, (sd) 17.99
Hispanic/Other	36.57, (sd) 15.53
Marital Status* F=4.1, p<.05; Spearman=.011, p=.39	
Married/Common Law	39.66, (sd) 24.48
Divorced/Single	38.27, (sd) 18.11
Education Level** F=7.56, p<.01; Spearman=.023, p=.084	
HS Diploma or GED	39.24, (sd) 22.57
No HS Diploma or GED	37.78, (sd) 17.21
Children* ** F=29.6, p<.001; Spearman=.057, p<.001	
None	36.78, (sd) 16.89
1 or More	39.02, (sd) 20.15
Gang Member* ** F=14.18, p<.001; Spearman=.064, p<.001	
No	37.24, (sd) 19.54
Yes	38.82, (sd) 17.06
Region of Illinois* ** F=31.57, p<.001	
Cook County/Chicago	36.82, (sd) 17.41
Collar County	43.26, (sd) 20.63
Other Metropolitan Statistical Area	39.86, (sd) 23.81
Micropolitan Statistical Area	41.6, (sd) 16.71
Prior Prison Sentences* ** F=193, p<.001; Spearman=.147, p<.001	
None	36.2, (sd) 16.57
One or More	42.68, (sd) 22.75
Truth-in-Sentencing* ** F=11.65, p<.001	
Pre-TIS	36.83, (sd) 18.29
Non TIS	39.3, (sd) 22.58
TIS	38.32, (sd) 15.83

* p<.05, ** p<.01, *** p<.001

When all of these variables were included in the multivariate model, plus a trend variable to account for the pre-TIS trend of increasing sentence lengths and the variable indicating the TIS status of the offender (pre-TIS, TIS and post-TIS but not subject to TIS), we found that TIS was associated with a 3.9 year reduction in the mean sentence length (Appendix 1). In other words, once you statistically take into account the effect of the offender's age, race, gender, marital status, education level, if the inmate has children, gang membership, prior criminal history, jurisdiction of sentencing, and adjust for the pre-TIS trend in sentencing, TIS resulted in a decrease of 3.9 years on the average sentence imposed on murderers.[4] Given the average murder sentence, this reduction translates into a 10.3 percent reduction in sentence lengths. Thus, while TIS did reduce the length of sentences imposed on convicted murderers *to some degree*, the decrease was nowhere near what some believed it would be (i.e., that sentences would be cut nearly in half to account for the fact that 100 percent will be served under TIS as opposed to the 50 percent served under the old law). Another way the impact of TIS can be considered is by looking at the actual amount of time that will be required to be served by those convicted of murder. Substituting the time to serve for the sentence length reveals that those subject to TIS are expected, on average, to serve 17 years longer in prison than those not subject to TIS after statistically controlling for the other variables in the analyses.

Impact of TIS on Murder Sentences Beyond the Statutory Maximum

The next set of analyses sought to determine if the TIS law was associated with any change in the likelihood that a convicted murderer would receive a sentence beyond the statutory maximum of 60 years. Under Illinois law, a sentence beyond the statutory maximum, or a sentence of natural life or death in the case of murder, can be sought when specific, aggravating circumstances are present. As described previously, the hypothesis and potential impact of TIS as it relates to sentences above the statutory maximum, or of natural life and death in murder cases, is that prior to TIS, the maximum sentence that could be imposed on murder without proving aggravating circumstances was 60 years, which, with good conduct credit would translate to 30 years in prison. Thus, for a 30-year-old murderer, odds are they would be released from prison before their death (i.e., they would be 60 years old). If the prosecutor wanted to ensure that this individual would not be released from prison,

[4] When the model was rerun using a logarithmic transformation of the dependent variable to account for the slight skew in sentences, the results were consistent. Specifically, TIS was associated with an 8 percent reduction in the sentence imposed on convicted murderers.

they would need to prove to the judge that aggravating circumstances were present in order to achieve a projected age of release from IDOC beyond the typical life expectancy (i.e., 70 or 80 years old). However, with TIS, and a 30 year old convicted murderer, it would now be possible to impose a veritable "life" sentence by sentencing them to IDOC for 60 years, which under TIS would require the full 60 years to be served, resulting in that inmate not being eligible for release until the age of 90.

Similar to the analyses of mean and median sentences imposed on the determinate sentences, we also performed time series analyses to determine if there were any changes during the period included in the analyses (SFY 1989 to 2008) in the proportion of murderers receiving sentences beyond the 60 year maximum (including determinate sentences of more than 60 years, plus natural life or a death sentence), and these analyses were performed so as to separate out, or distinguish between the sentences imposed prior to the implementation of TIS, those murder sentences that were subject to TIS, and those murderers sentenced after TIS had been implemented, but who were not eligible due to the fact that their crime occurred prior to the passage of the law. Unlike the findings from the analyses of median sentence lengths pre-TIS, we did not detect any noticeable trend leading up to the passage of TIS in the proportion of murderers given sentences beyond the statutory maximum. Between SFY 1989 and 1996, roughly 25 percent of convicted murderers received a sentence beyond the statutory maximum of 60 years, and most of these were sentences of natural life (498 of the 879 sentences beyond the statutory maximum). Among those subject to TIS, on the other hand, a much smaller proportion of convicted murderers have received a sentence beyond the statutory maximum (17 percent). Further, among those sentenced after TIS was passed, but who were not subject to it due to having committed their crime prior to the law, 17.4 percent were given sentences beyond the statutory maximum. Thus, the bivariate analyses would suggest that offenders subject to TIS are *less likely* than those murderers sentenced pre-TIS to get a sentence beyond the statutory maximum, whereas those murderers sentenced post-TIS, but not subject to the law, were *more likely* to receive a sentence beyond the statutory maximum than pre-TIS.

As with the analyses of determinate sentences, multivariate analyses were performed to examine the impact of TIS on the likelihood of a sentence beyond the statutory maximum after statistically controlling for other variables. Before these analyses were performed, however, bivariate analyses

examining the relationship between the type of sentence imposed (20-60 years versus 61 or more years/natural life/death) and the independent variables were performed. As seen in Table 3, there were statistically significant, although relatively weak, relationships between the sentence and offender age (older more likely to get sentence beyond 60 years), gender (males more likely to get a sentence beyond 60 years), race (whites more likely to get sentence beyond 60 years), education level (those with higher levels of education more likely to get sentence beyond 60 years), prior prison sentences (those with at least 1 prior prison sentence more likely to get sentence beyond 60 years), and where the offender was convicted (those convicted outside of Chicago/Cook County more likely to get a sentence beyond 60 years).

When multivariate analyses using logistic regression were performed in order to statistically control for the other independent variables, a generally consistent pattern emerged: those subject to TIS were *less likely* to receive a sentence beyond 60 years (relative to the pre-TIS group as well as relative to those convicted during the same time period but not subject to the law). For example, after statistically controlling for the age, race, gender, education level, marital status, gang membership, having children, prior prison sentences and jurisdiction where conviction occurred, those subject to TIS were 57 percent *less likely* to receive a sentence of more than 60 years than those sentenced prior to TIS. On the other hand, those sentenced post-TIS, but not subject to the law, were not any more or less likely to receive a sentence beyond 60 years when compared to those sentenced pre-TIS or those subject to TIS, after statistically controlling for the effect of the other variables.[5]

[5] The amount of jail time was included as an independent variable and was intended to measure how long the case took to dispose. Thus, jail time was a proxy for the complexity or seriousness of the case (i.e., the longer to dispose of, theoretically the more complex, and potentially more likely to involve a jury trail).

Table 3
Comparison of Demographic, Socio-Economic and Criminal History Characteristics Among Those Sentenced to Less than 61 years versus 61+ years (or life, or death)

	Sentenced to 20-60 years	**Sentenced to 61+ years, or receiving Life or Death Sentence**	**Total**
Total	76.9%	23.1%	100%
Age* ** (Mean, Years) F=115, p<.001	26.5	28.9	27.1
Gender*	X^2=15.72, 1df, p<.001, Phi=.04 p<.001		
Female	83.9%	16.1%	100%
Male	76.5%	23.5%	100%
Race* **	X^2 =94.75, 2df, p<.001, Cramer's V=.10, p<.001		
White	68.3%	31.7%	100%
African-American	77.8%	22.2%	100%
Hispanic/Other	82.7%	17.3%	100%
Marital Status**	X^2 =8.69, 1df, p<.01, Phi=.04, p<.01		
Married/Common Law	72%	28%	100%
Divorced/Single	76.3%	23.7%	100%
Education Level* **	X^2 =27.07, 1df, p<.001, Phi=.07, p<.001		
HS Diploma or GED	72%	28%	100%
No HS Diploma or GED	77.7%	22.3%	100%
Children* **	X^2 =22.36, 1df, p<.001, Phi=.05, p<.001		
None	79%	21%	100%
1 or More	74.8%	25.2%	100%
Gang Member	X^2=.948, 1df, p=.330		
No	77.3%	22.7%	100%
Yes	76.4%	23.6%	100%
Region of Illinois* **	X^2=127.28, 3df, p<.001, Cramer's V=.12, p<.001		
Cook County/Chicago	79.8%	20.2%	100%
Collar County	66.6%	33.4%	100%
Other Metropolitan Statistical Area	71%	29%	100%
Rural Area	66.4%	33.6%	100%
Prior Prison Sentence* **	X^2 =198.37, 1df, p<.001, Phi=.15, p<.001		
None	80.7%	19.3%	100%
One or More	66.8%	33.2%	100%
Truth-in-Sentencing* **	X^2=78.95, 2df, p<.001, Cramer's V=.09, p<.001		
Pre-TIS	75.4%	24.6%	100%
Non TIS	73.4%	26.6%	100%
TIS	82.9%	17.1%	100%

* p<.05, ** p<.01, *** p<.001

Thus, our analyses regarding the impact of TIS on murder sentences revealed two substantial findings, which have considerable implications: 1) the average determinate sentence imposed on convicted murderers was reduced *only slightly* as a result of TIS, resulting in offenders serving much longer periods of time in prison, and 2) TIS appears to have reduced the use (or need) to impose sentences beyond the statutory maximum of 60 years. Thus, the passage of TIS has dramatically increased the *actual amount* of time those convicted of murder will spend in prison, and as a result, the cost per murder sentence imposed in Illinois dramatically increased as a result of TIS. Specifically, among those who received a determinate sentence (i.e., excluding natural life and death sentences), TIS was associated with an average increase of 18 years of time to serve compared to pre-TIS. Using current dollar costs of incarceration in Illinois, and not including any construction costs, the average annual cost to incarcerate an adult in prison is $22,622 (Illinois Department of Corrections, 2005). Thus, the average cost for incarceration in prison *per murder sentence* pre-TIS was roughly $400,409 (annual cost of incarcerate per inmate of $22,622 multiplied by the average length of time to serve of 17.7 years). By comparison, the average cost for incarceration in prison per murder sentence under TIS is roughly $816,600 (annual cost per inmate multiplied by average length of time to serve of 36.1 years).

In addition to longer periods of incarceration, and therefore higher costs, a much larger proportion of convicted murderers in Illinois will now serve the rest of their life in prison, despite the fact that the actual imposition of natural life sentences has been reduced due to TIS. Because the lengths of time to serve in prison increased so much as a result of TIS, it is projected that 30 percent (886 of the 3,000 sentenced under TIS) of all inmates convicted of murder and subject to TIS will not be eligible for release until after their 75th birthday--the average life expectancy of males in the United States (CDC). However, while 30 percent of murderers sentenced under TIS received sentences that will result in them most likely spending the rest of their life in prison, only a small proportion of these were explicit "natural life" or "death" sentences. Of all the murderers sentenced under TIS and projected to be in prison beyond their 75th birthday, only 13 percent (117/886) had a "natural life" or "death" sentence imposed by the court. By comparison, pre-TIS, only 15 percent of all convicted murderers (627/4,198) received a sentence that would keep them in prison beyond their 75th birthday, and almost all of these (90 percent or 564/627) were court-imposed sentences of "natural life" or "death." Further, to achieve these sentences of natural life or death, the prosecution had to

prove aggravating circumstances that would allow for the imposition of these sentences.

Impact of TIS on the Sentences Imposed on Sex Offenders

Analyses similar to those performed to examine the impact of TIS on murder sentences were performed to examine the impact of TIS on the sentence lengths of those convicted of aggravated criminal sexual assault. Specifically, we first examined the overall trends in mean and median sentences imposed on those convicted of Class X felony sex offenses (aggravated criminal sexual assault and predatory criminal sexual assault) over time, distinguishing between the TIS-eligible offenders as well as the post-TIS offenders who were ineligible for TIS due to the timing of their offense. Excluded from these analyses were sex offenders that received either natural life sentences or who were sentenced as sexually dangerous persons (SDP) due to the inability to quantify the sentence length in these cases. However, natural life and SDP cases accounted for a very small number of the Class X sex offenders sentenced during the time period examined (12 of the 1,405).

During the time period leading up to the passage of TIS in Illinois, no discernable trend in the mean or median sentence length of those convicted of Class X felony sex offenses in Illinois were evident. The average sentence imposed on Class X sex offenders pre-TIS was 13.5 years. By comparison, among those subject to TIS, the mean sentence length was slightly shorter (12.5 years), and among those sex offenders sentenced post-TIS but not subject to the law, the mean sentence length was just over 13.5 years.

Prior to performing multivariate analyses to examine the impact of TIS on the sentence lengths of sex offenders, bivariate analyses were performed between the independent variables—similar to those used in analyses of murder sentences-- and the sentence length (Table 4). The offender's age, race, educational attainment, having a child, gang status, and prior prison sentences were all found to be statistically related to the mean sentence length. Older Class X sex offenders received longer sentences, on average, although this was a fairly weak relationship (Spearman's rho=.135, $p<.001$). When race was analyzed in three categories (white, African-American and Hispanic/other), it was statistically related to sentence length ($F=23.43$, $p<.001$). It was found that African-Americans received longer sentences (13.6 years) than whites (12.9 years) and Hispanic/other offenders (11.3

years). Educational attainment was also statistically related to sentence length for Class X sex offenders ($F=3.5$, $p<.10$). Offenders who had a high school education received slightly longer sentences than those without a high school diploma or GED (13.7 years versus 13.2 years). Whether or not an offender had children was also statistically significant ($F=47.6$, $p<.001$). Offenders who had at least one child received longer mean sentences than those without children (13.7 years versus 12.2 years, respectively), although this was a weak relationship (Spearman's rho=.092, $p<.001$). Similarly, an offender's gang status was statistically related to sentence length ($F=88.52$, $p<.001$), with gang members receiving longer mean sentences than non-members (15.2 years versus 12.5 years, respectively; Spearman's rho=.096, $p<.01$). Further, a Class X sex offender's prior prison sentences were found to be statistically related to sentence length ($F=456.5$, $p<.001$). Offenders with at least one prior prison sentence received a mean sentence of 17.1 years, compared to a mean of 11.6 years for those without a prior prison sentence. The relationship between prior prison sentences and sentence length for sex offenders was stronger than the other relationships found, but still relatively weak (Spearman's rho=.241, $p<.001$).

When all of these variables were included in the multivariate model, plus the variable indicating the TIS status of the offender (pre-TIS, TIS and post-TIS but not subject to TIS), we found that TIS was associated with a slight reduction in the mean sentence length of approximately .51 years (i.e., roughly 6 months shorter) (Appendix 2). It does not appear that those sentenced after the TIS law, but who were not subject to it, experienced any change or difference in sentence lengths than did those sentenced pre-TIS. In other words, once you statistically take into account the effect of the offender's age, race, gender, marital status, education level, if the inmate has children, gang membership, prior criminal history, and jurisdiction of sentencing, TIS resulted in a decrease of 0.5 years on the average sentence imposed on Class X sex offenders. Thus, while TIS did reduce the length of sentences imposed on convicted sex offenders to some degree, the decrease was nowhere near what some believed it would be (i.e., that sentences would be cut dramatically to account for the fact that 85 percent will be served under TIS as opposed to the 50 percent served under the old law).

Table 4
Average Sentences Imposed on Those Convicted of Class X Sex Offenses, Excluding Life Sentences and Finding of Sexually Dangerous Person

	Mean Sentence Length (in Years)
Total	12.98, (sd) 9.56
Age*** (32.45 years) Spearman=.135, p<.001	
Gender F=.332, p=.565	
Female	12.23, (sd) 9.42
Male	12.99, (sd) 9.55
Race*** F=23.43, p<.001	
White	12.88, (sd) 8.75
African-American	13.64, (sd) 10.62
Hispanic/Other	11.32, (sd) 8.00
Marital Status F=2.5, p=.114	
Married/Common Law	13.07, (sd) 9.61
Divorced/Single/Widower	13.55, (sd) 10.09
Education Level F=3.5, p<.10	
HS Diploma or GED	13.68, (sd) 9.87
No HS Diploma or GED	13.16, (sd) 9.99
Children*** F=47.6, p<.001; Spearman=.092, p<.001	
None	12.17, (sd) 8.88
1 or More	13.74, (sd) 10.1
Gang Member*** F=88.52, p<.001; Spearman=.096, p<.001	
No	12.47, (sd) 8.95
Yes	15.2, (sd) 11.61
Region of Illinois F=1.42, p=.234	
Cook County/Chicago	12.85, (sd) 10.14
Collar County	12.65, (sd) 8.61
Other Metropolitan Statistical Areas	13.46, (sd) 8.65
Rural Areas	12.87, (sd) 8.65
Prior Prison Sentences*** F=456.50, p<.001; Spearman=.241, p<.001	
None	11.64, (sd) 8.01
One or More	17.13, (sd) 12.37
Truth-in-Sentencing*** F=5.87, p<.001	
Pre-TIS	13.16, (sd) 10.23
Non TIS	13.68, (sd) 10.59
TIS	12.54, (sd) 8.25

* p<.05, ** p<.01, *** p<.001

Logistic regression analyses were also performed to examine if the TIS law had any impact on the use of sentences beyond the statutory maximum (i.e., more than the 30 years generally allowable for Class X felonies). Using the same independent variables as described above, the TIS-status did not have any statistically significant effect on the imposition of a sentence beyond the 30 year maximum, and is most likely due to the relatively low prevalence of these types of sentences in general. As described previously, only about 5 percent of all Class X sex offenders received a sentence beyond the 30 year maximum pre-TIS, and among those subject to TIS, the prevalence of these sentences were also quite rare (i.e., 4 percent of all Class X felony sex offense TIS sentences). Thus, the impact of TIS on the sentence lengths and lengths of time to serve for sex offenders is somewhat similar to that seen with convicted murderers, although to a lesser degree due to the sentence lengths involved. Still, as a result of TIS, convicted Class X sex offenders are now serving substantially longer periods of incarceration than they did pre-TIS. On average, those sex offenders subject to TIS will serve an average of 9.7 years in prison, compared to the roughly 6.2 years those sentenced prior to TIS served, as well as those sentenced after the TIS law but who were not subject to the law. As a result, the average at release for sex offenders subject to TIS will be roughly 42 years old, compared to an average age at release of 38 for those sentenced pre-TIS. Thus, although there was an increase in the length of time served as a result of TIS for sex offenders, and a subsequent increase in the average age at release, it was nowhere near the magnitude of the increased time served for convicted murderers as a result of TIS and it did not have the kind of impact on age at release and likelihood of dying in prison prior to release as did the TIS law for murderers.

RESULTS & FINDINGS FROM ANALYSES OF IMPACT OF TIS ON DISCIPLINARY INCIDENTS

Impact of TIS on Disciplinary Incidents for Murderers

To determine if TIS had an impact on the extent and nature of disciplinary incidents among murderers in Illinois, data were obtained that allowed for the tracking of disciplinary incidents for a cohort of murderers admitted to prison in Illinois between July 1999 and June 2001. Disciplinary data included those recorded through March 2008, so the average amount of time inmates were at risk of having a disciplinary incident was 8 years. Within the sample of murderers tracked were 300 inmates subject to TIS and 550 that were eligible for day-for-day good conduct credit. The specific disciplinary outcomes examined included: total number of disciplinary tickets, any serious incident (yes or no), any assaults (yes or no), assaults of staff (yes or no), and assaults of other inmates (yes or no). Analyses included bivariate comparisons of inmate characteristics, including whether the inmate was subject to TIS or not, and each of these different measures of disciplinary incidents. Below is a description of the findings from each set of these bivariate analyses as well as a summary of the multivariate models tested to examine the effect of TIS on each measure of institutional rule violations.

Impact of TIS on the Total Number of Disciplinary Incidents on Murderers

Bivariate analyses were performed to determine if there was any statistical relationship between inmate characteristics, including whether they were subject to TIS, and the total *number* of disciplinary tickets (Table 5). With respect to the TIS status of the inmate, the bivariate analyses indicated that inmates who were not subject to TIS averaged 26.75 disciplinary tickets, compared to an average of 18.06 tickets for TIS inmates ($F=25.45$, $p<.001$). Thus, the bivariate analyses suggest that TIS offenders have *fewer disciplinary incidents*, on average, than inmates not subject to TIS.

In addition, there were also statistically significant relationships between number of disciplinary tickets and the inmate's age, gender, race, education level, gang membership, region of Illinois where the inmate was from, projected time to serve, and facility security level. Specifically, female inmates averaged 42.4 disciplinary tickets, compared to 20.5 for males ($F=56.9$, $p<.001$), which ,ay

potentially be explained by differences in the recording of disciplinary incidents between male and female facilities. African-American inmates had an average of 23.4 disciplinary tickets, compared to 21.1 per Hispanic inmate and 17.4 for white inmates ($F=4.12$, $p<.05$). Similarly, inmates with no high-school diploma/GED averaged 25.9 disciplinary tickets, whereas those with a high-school diploma/GED averaged 19.6 tickets ($F=3.91$, $p<.05$). Similarly, gang members had an average of 23.7 tickets, compared to 21 for non-gang members ($F=3.06$, $p<.10$). Inmates from more populous areas of Illinois averaged higher numbers of disciplinary tickets than inmates from other areas, with Cook County inmates averaging 23, "collar" county inmates averaging 19.8, and inmates from other Metropolitan Statistical Areas averaging 21.1, compared to an average of 13.7 disciplinary tickets for inmates from Micropolitan Statistical Areas, and a mean of 15.8 for inmates from all other areas of Illinois ($F=2.13$, $p<.10$). Facility security level was also statistically related to average number of disciplinary tickets. Inmates in medium security (level 4) facilities averaged 37.13 tickets, compared to 20.4 tickets for maximum security (level 1) inmates, 25.8 for secure medium (level 2) inmates, 22.6 for high medium (level 3) inmates, and 13.25 for high minimum (level 5) inmates ($F=6.64$, $p<.001$). A statistically significant relationship was also evident in the comparison of inmate age and the number of disciplinary tickets, with younger inmates having more tickets (Spearman's $Rho=-.364$, $p<.001$). Finally, a statistically significant relationship between the number of disciplinary tickets an inmate received and the projected length of time they have to serve was found. Inmates with shorter projected sentences were found to have more disciplinary tickets (Spearman's $Rho=-.351$, $p<.001$). On the other hand, no statistical relationship was found between number of tickets and marital status, whether or not they had children, and prior prison sentences.

Table 5
Average Number of Disciplinary Tickets Received by Those Convicted of Murder

	Mean Number of Disciplinary Tickets
Total	22.02, (sd) 21.68
Age* ** (26.56 years) Spearman=-.364, p<.001	
Gender* ** F=56.90, p<.001	
Female	42.43, (sd) 48.57
Male	20.52, (sd) 17.35
Race ** F=6.93, p<.01	
White	17.39, (sd) 27.02
Non-White	22.88, (sd) 20.46
Race 2* F=4.12, p<.05	
White	17.39, (sd) 27.02
African-American	23.38, (sd) 21.00
Hispanic/Other	21.13, (sd) 18.43
Marital Status F=1.93, p=.166	
Married/Common Law	16.11, (sd) 11.37
Divorced/Single	23.42, (sd) 27.63
Education Level* F=3.91, p<.05	
HS Diploma or GED	19.58, (sd) 24.63
No HS Diploma or GED	25.86, (sd) 28.96
Children F=.381, p=.537	
None	22.29, (sd) 20.19
1 or More	21.19, (sd) 25.85
Gang Member F=3.06, p=.08	
No	21.00, (sd) 22.58
Yes	23.74, (sd) 20.00
Region of Illinois F=2.13, p=.075	
Cook County/Chicago	23.01, (sd) 21.27
Collar County	19.78, (sd) 16.89
Other Metropolitan Statistical Areas	21.13, (sd) 29.82
Micropolitan Statistical Areas	13.67, (sd) 11.65
All Other Areas	15.81, (sd) 14.32
Prior Prison Sentences F=2.65, p=.104	
None	22.75, (sd) 22.34
One or More	19.92, (sd) 19.55
TIS* ** F=25.45, p<.001	
Non TIS	26.75, (sd) 21.86
TIS	18.06, (sd) 21.04

Projected Time to Serve* ** (33.69 years) Spearman=-.351, p<.001	
Actual Time Served* ** (7.73 years) Spearman=.122, p<.001	
Facility Security Level* ** F=6.64, p<.001	
Maximum	20.40, (sd) 19.48
Secure Medium	25.80, (sd) 17.15
High Medium	22.60, (sd) 23.57
Medium	37.13, (sd) 45.79
High Minimum	13.25, (sd) 12.47

* p<.05, ** p<.01, *** p<.001

Multivariate analyses were also conducted in order to more accurately determine which variables had an independent impact on the numbers of disciplinary tickets received among the sample of murderers, and also to determine the impact of TIS while statistically controlling for the other variables associated with the number of disciplinary incidents. The first ordinary least squares (OLS) regression model for murder offenders included the independent variables for age at admission, projected time to serve in years, actual years served, gender, race as a dichotomous variable (white or non-white), marital status (married or not married), whether or not the offender had children, educational attainment (HS/GED or no HS/GED), gang status, area where they were sentenced (Cook or non-Cook), whether or not they were previously admitted to prison, the security level of their institution (maximum or other), and whether or not they were subject to TIS. This model was found to be statistically significant at the p<.001 level, with an R^2 of .188 and an adjusted R^2 of .175.

Of the 13 independent variables in this model, six were found to be statistically significant. Age at admission (p<.001) was inversely related to total number of tickets. For every year older an offender was, he or she could expect to receive .6 fewer disciplinary tickets (B=-.559). As well, for every year longer an offender was projected to serve (p<.005), he or she could expect to receive .1 fewer disciplinary tickets (B=-.094). On the other hand, for every year longer that an offender had actually served (p<.05), he or she could expect to receive 1.3 more disciplinary tickets (B=1.29). Gender had the strongest impact on the total number of tickets an offender received (N=553, p<.001; Beta=-.322). Male murder offenders could expect to receive about 28 fewer tickets than female murder offenders (N=8,664; B=-27.56). The security level of the offender's parent institution was also significantly related to total number of tickets received (p<.10), with offenders not in maximum

security receiving 3 fewer tickets than maximum security offenders (B=-3.14). Finally, an offender's status as TIS ($p<.005$) was also related to fewer disciplinary tickets, with TIS offenders *receiving almost 5 fewer tickets*, on average, than non-TIS inmates (B=-4.67). (See Appendix 3)

Impact of TIS on the Prevalence of "Serious" Incidents among Murderers

Bivariate analyses were also performed to determine if there was any statistical relationship, and if so, the strength of that relationship, between inmate characteristics, including whether they were subject to TIS, and whether or not the inmate received a disciplinary ticket for a serious incident (Table 6). Serious incidents were defined as any offenses that carry a maximum penalty of one year of loss or restriction of privileges, grade reduction, good time revocation and/or segregation. Offenses in this category range from violent assaults to participation in a security threat group or unauthorized organization. No statistically significant difference was noted between murderers subject to TIS and those not subject to TIS, with approximately 53 percent of both groups receiving a ticket for a serious incident.

On the other hand, there was a statistically significant relationship between receipt of a ticket for a serious incident and the inmate's age, race, education level, gang membership, and the security level of their institution. Specifically, younger inmates were more likely to have a serious violation, with the mean age of 24.8, compared to 28.1 for those with no serious incidents ($F=31.1$, $p<.001$). Non-white inmates were more likely than whites to have received a ticket for a serious incident (56 percent versus 40 percent, respectively) ($X^2=11.06$, 1df, $p<.001$), although the strength of the relationship was relatively weak (Phi=.12, $p<.001$). Similarly, inmates without a high-school diploma/GED were more likely than those with a high-school diploma/GED to have had a serious incident (56 percent versus 43 percent, respectively; $X^2=5.2$, 1df, $p<.05$), although the strength of the relationship was relatively weak (Phi=.13, $p<.05$). Inmates identified as gang members were more likely than non-gang members to have received a ticket for a serious incident (61 percent versus 50 percent, respectively; $X^2=9.5$, $p<.01$), and the strength of the relationship was weak (Phi=.11, 1df, $p<.01$). Finally, inmates in higher-security institutions were more likely to receive a ticket for a serious incident (57 percent for maximum security inmates and 52 percent for secure medium inmates, compared to 38 percent for high medium, 39 percent for medium, and 0 percent for high

minimum; X^2=16.67, 4df, p<.01). However, this was also a relatively weak relationship (Cramer's V=.143, p<.01). No statistical relationship was found between receipt of a ticket for a serious incident and inmate gender, marital status, whether or not they had children, the region of Illinois where they were from, prior prison sentences, projected time to serve and, as noted before, whether or not they were subject to TIS.

Table 6
Comparison of Demographic, Socio-Economic and Criminal History Characteristics among Murderers with No Serious Offenses and Those with at Least One Serious Offense

	No "Serious" Offenses	**One or More "Serious" Offenses**	**Total**
Total	46.3%	53.7%	849
Age* ** (Mean, Years) F=31.13, p<.001	28.11	24.83	26.34
Gender	X^2 =1.27, 1df, p=.260		
Female	53.6%	46.4%	100%
Male	45.8%	54.2%	100%
Race* **	X^2 =11.06, 1df, p<.001, Phi=.116, p<.001		
White	59.8%	40.2%	100%
Non-White	43.8%	56.2%	100%
Race 2 **	X^2 =11.74, 2df, p<.01, Cramer's V=.120, p<.01		
White	59.8%	40.2%	100%
African-American	44.7%	55.3%	100%
Hispanic/Other	40.9%	59.1%	100%
Marital Status	X^2 =.170, 1df, p=.680		
Married/Common Law	53.6%	46.4%	100%
Divorced/Single	49.5%	50.5%	100%
Education Level*	X^2 =5.22, 1df, p<.05, Phi=.131, p<.05		
HS Diploma or GED	57.3%	42.7%	100%
No HS Diploma or GED	44.0%	56.0%	100%
Children	X^2 =1.61, 1df, p=.204		
None	45.1%	54.9%	100%
1 or More	50.3%	49.7%	100%
Gang Member **	X^2 =9.54, 1df, p<.01, Phi=.108, p<.01		
No	50.5%	49.5%	100%

Yes	39.3%	60.7%	100%
Region of Illinois	X^2=5.04, 4df, p=.283		
Cook County/Chicago	44.3%	55.7%	100%
Collar County	50.0%	50.0%	100%
Other Metropolitan Statistical Area	51.2%	48.8%	100%
Micropolitan Statistical Area	57.1%	42.9%	100%
All Other Areas	57.1%	42.9%	100%
Prior Prison Sentence	X^2 =.123, 1df, p=.725		
None	46.0%	54.0%	100%
One or More	47.4%	52.6%	100%
Projected time to Serve (Mean Years) F=2.08, p=.150	32	34.93	33.57
Truth-in-Sentencing	X^2=.165, 4df, p=.685		
No	43.2%	56.8%	100%
Yes	44.8%	55.2%	100%
Security Level of Institution**	X^2=16.67, 4df, p<.01, Cramer's V=.143, p<.01		
Maximum	43.0%	57.0%	100%
Secure Medium	48.2%	51.8%	100%
High Medium	61.9%	38.1%	100%
Medium	60.5%	39.5%	100%
High Minimum	100.0%	0.0%	100%
Time Served (Mean Years)* F=6.35, p<.05	7.65	7.85	7.76

* p<.05, ** p<.01, *** p<.001

Analyses were also performed to examine the relationship between the *number* of serious incidents and inmate characteristics and whether the inmate was subject to TIS. No statistical relationship was found between the number of serious incidents among the murderers and whether they were subject to TIS. However, as with the analyses of whether or not the inmate received any tickets for serious incidents (i.e., dichotomous indication of yes or no), there were statistically significant differences in the average number of serious incidents and the inmates' race, number of children, gang involvement, and their institution's security level. Specifically, Hispanic inmates had an average of 1.56 serious incidents, compared to 1.18 per African-American inmate and .95 for white inmates (F=4.08, p<.05). Similarly, inmates with no children averaged 1.31 serious incidents, whereas those with at least one child had .92 serious incidents (F=6.8, p<.01). This was a weak relationship, with

Spearman's Rho=.08, with p<.05. Similarly, gang members had an average of 1.57 serious incidents, compared to 1.01 for non-gang members (F=18.1, p<.001), although this was a weak relationship as well (Spearman's Rho=.15, p<.001). Once again, inmates in higher-security institutions averaged more serious incidents. Maximum security inmates averaged 1.33 and secure medium inmates averaged 1.02, while high medium inmates averaged .83, medium inmates averaged .84, and high minimum inmates had 0 (F=2.46, p=.044). As with the dichotomous analysis, a statistically significant relationship was evident in the comparison of inmate age and the number of serious incidents, with younger inmates having more serious incidents (Spearman's Rho=-.25, p<.001). A relationship was also found between the projected time to serve and number of serious incidents, although it was weak (Spearman's Rho=.064, p<.10).

Consistent with the comparison made with the serious incident as a dichotomous variable, no statistical relationship was found between the number of tickets for a serious incident and inmate gender, marital status, the region of Illinois where they were from, prior prison sentences, and, as already noted, whether or not they were subject to TIS. Thus, in the multivariate analyses of any serious incident (i.e., a dichotomous variable using logistic regression) and of the number of serious incidents (i.e., a ratio-level variable using ordinary least squares regression), the TIS variable was not statistically related to whether or not the inmate received a ticket for a serious incident or the number of tickets for serious incidents

Impact of TIS on the Prevalence of Assaults by Murderers

Bivariate and multivariate analyses were also performed to determine if there was any statistical relationship, and if so, the strength of that relationship, between inmate characteristics, including whether they were subject to TIS, and whether or not the inmate received a disciplinary ticket for any assault (Table 7). No statistically significant differences were noted between murderers subject to TIS and those that were not, with roughly 19 percent of both groups receiving a disciplinary ticket for an assault. On the other hand, among the sample of offenders sentenced to IDOC for murder, there were statistically significant relationships between receipt of a ticket for any assault and the inmate's age and gang membership. Specifically, younger inmates were more likely to have received a disciplinary ticket for assault, with a mean age of 24.2, compared to 26.8 for those with no assaults

(F=11.4, p<.005). Similarly, inmates identified as gang members were more likely than non-gang members to have received a ticket for any assault (23 percent versus 16 percent, respectively), but the strength of the relationship was weak (Phi=.09, p<.05). No statistical relationships, however, were found between receipt of a ticket for any assault and inmate gender, race, marital status, education level, whether or not they had children, the region of Illinois where they were from, prior prison sentences, projected time to serve and, as indicated previously, whether or not they were subject to TIS.

Table 7
Comparison of Demographic, Socio-Economic and Criminal History Characteristics among Murderers with No Assaults and at Least One Assault

	No Assaults	**One or More Assaults**	**Total**
Total	81.7%	18.3%	100%
Age* ** (Mean, Years) F=11.35, p<.001	26.81	24.22	26.34
Gender	X^2 =.007, 1df, p=.936		
Female	82.1%	17.9%	100%
Male	81.7%	18.3%	100%
Race	X^2 =1.10, 1df, p=.295		
White	85.0%	15.0%	100%
Non-White	81.1%	18.9%	100%
Race 2	X^2 =1.58, 2df, p=.453		
White	85.0%	15.0%	100%
African-American	81.7%	18.3%	100%
Hispanic/Other	79.2%	20.8%	100%
Marital Status	X^2 =.010, 1df, p=.919		
Married/Common Law	82.1%	17.9%	100%
Divorced/Single	81.4%	18.6%	100%
Education Level	X^2 =1.083, 1df, p=.298		
HS Diploma or GED	83.9%	16.1%	100%
No HS Diploma or GED	79.1%	20.9%	100%
Children	X^2 =.174, 1df, p=.676		
None	81.4%	18.6%	100%
1 or More	82.7%	17.3%	100%
Gang Member*	X^2 =6.21, 1df, p<.05, Phi=.087, p<.05		

No	84.3%	15.7%	100%
Yes	77.4%	22.6%	100%
Region of Illinois 2	X^2=3.82, 4df, p=.431		
Cook County/Chicago	81.9%	18.1%	100%
Collar County	78.3%	21.7%	100%
Other Metropolitan Statistical Area	82.1%	17.9%	100%
Micropolitan Statistical Area	95.2%	4.8%	100%
All Other Areas	76.2%	23.8%	100%
Prior Prison Sentence	X^2 =.347, 1df, p=.556		
None	82.2%	17.8%	100%
One or More	80.4%	19.6%	100%
Projected time to Serve (Mean Years) F=.150, p=.699	33.76	32.74	33.57
Truth-in-Sentencing	X^2=.008, 1df, p=.931		
No	80.7%	19.3%	100%
Yes	81.0%	19.0%	100%
Security Level of Institution	X^2=1.74, 4df, p=.784		
Maximum	81.3%	18.7%	100%
Secure Medium	80.7%	19.3%	100%
High Medium	82.5%	17.5%	100%
Medium	86.8%	13.2%	100%
High Minimum	100.0%	0.0%	100%
Time Served (Mean, Years) F=.882, p=.348	7.74	7.84	7.76

* p<.05, ** p<.01, *** p<.001

Analyses were also performed to examine the relationship between the *number* of assaults and inmate characteristics. As with the analyses of whether or not the inmate received any tickets for assault (i.e., dichotomous indication of yes or no), there were statistically significant differences in the average number of assaults and the inmates' age and gang involvement. Specifically, gang members had an average of .35 assaults, compared to .24 for non-gang members (F=2.9, p<.1). A statistically significant relationship was evident in the comparison of inmate age and the number of assaults, with younger inmates having more assaults (Spearman's Rho=-.134, p<.001). Also consistent with the comparison made with the assaults as a dichotomous variable, no statistical relationship was found between the number of tickets for assault and inmate gender, race, marital status, education level, whether or not they had children, the region of Illinois where they were from,

prior prison sentences, projected time to serve and whether or not they were subject to TIS.

The analyses also examined separately the prevalence and patterns of assaults specifically against IDOC staff as well as assaults committed by inmates against other inmates, and examined if the inmate's TIS status was at all related to these forms of violence. The prevalence of staff assaults was low for both TIS and non-TIS murderers, with fewer than 9 percent of both groups receiving a ticket for assaulting a staff member and no statistically significant differences between the TIS and non-TIS inmates was evident. Although the prevalence of assaults of other inmates was slightly higher—at roughly 12 percent—there were also no statistically significant differences between the TIS and non-TIS inmates. In the multivariate analyses of any assault (i.e., a dichotomous variable using logistics regression) and of the number of assaults (i.e., a ratio-level variable using ordinary least squares regression), the TIS variable was not statistically related to whether or not the inmate received a ticket for a serious incident or the number of tickets for serious incidents. Similar findings were evident when the specific nature of the assault (staff assaults or assaults on other inmates) was examined between TIS and non-TIS inmates.

Impact of TIS on the Sanctions Imposed on Murderers with Disciplinary Incidents

Analyses were also performed to determine if an inmate's TIS status had any influence on the types of sanctions imposed by IDOC for disciplinary incidents, including placement in segregation, loss of good conduct credit, loss of commissary privileges, and loss of gym/yard privileges. As with the analyses described above, bivariate and multivariate analyses were performed to determine if the inmate's TIS status had an independent relationship to any of these sanctions being imposed.

Among the sample of murderers, the most prevalent form of sanction imposed on those receiving disciplinary tickets was loss of commissary privileges, and no statistical difference was noted between those murderers subject to TIS and those not: roughly 90 percent of both groups lost their commissary privileges for a period of time as a result of a disciplinary incident. For the other forms of punishment, including placement in segregation, loss of gym/yard privileges, and loss of good conduct credit, no statistical differences were identified based on the inmates' TIS status.

Impact of TIS on Disciplinary Incidents for Class X Sex Offenders

To determine if TIS had an impact on the extent and nature of disciplinary incidents among Class X sex offenders in Illinois, data were obtained that allowed for the tracking of disciplinary incidents for a cohort of sex offenders admitted to prison in Illinois between July 1999 and June 2001. Disciplinary data included that recorded through March 2008, so the average amount of time inmates were at risk of having a disciplinary incident was 8 years. Within the sample of sex offenders tracked were 806 inmates subject to TIS and 599 that were eligible for day-for-day good conduct credit. The specific disciplinary outcomes examined included: total number of disciplinary tickets, any serious incident (yes or no), any assaults (yes or no), assaults of staff (yes or no), and assaults of other inmates (yes or no). Analyses included bivariate comparisons of inmate characteristics, including whether the inmate was subject to TIS or no, and each of these different measures of disciplinary incidents. Below is a description of the findings from each set of these bivariate analyses as well as a summary of the multivariate models tested to examine the effect of TIS on each measure of institutional rule violations.

Impact of TIS on the Total Number of Disciplinary Incidents for Sex Offenders

Bivariate analyses were performed to determine if there was any statistical relationship between inmate characteristics, including whether they were subject to TIS, and the total *number* of disciplinary tickets among the sample of sex offenders (Table 8). No statistically significant relationship was found between the number of tickets for a serious incident and whether or not they were subject to TIS: among both the TIS and non-TIS inmates the average number of disciplinary tickets was roughly 23. As well, no statistical relationship was found between the number of tickets and whether or not they had children, prior prison sentences, or their projected time to serve.

Among the sample of offenders sentenced to IDOC for Class X sex offenses, there was a statistically significant relationship between number of disciplinary tickets and an inmate's age, gender, race, marital status, educational attainment, gang status, and the region of Illinois where they were from. Specifically, younger inmates were more likely to have higher numbers of disciplinary tickets (Spearman's Rho=-.513, $p<.001$). Female inmates far outpaced their male counterparts in mean

number of disciplinary tickets, with females having a mean of 49.8, compared to 22.5 for males (F=5.17, p<.05). This statistical relationship held even with the very small number of females (N=5) in this population. African-American inmates had an average of 29.8 tickets, compared to 17.9 per white inmate and 17.5 for Hispanic inmates (F=15.41, p<.001). Inmates who were divorced or single averaged 25.2 tickets, compared to 14.1 for those who were married (F=7.63, p<.01). Similarly, inmates with no high-school diploma/GED averaged 28.8 disciplinary tickets, whereas those with a high-school diploma/GED had 16.8 tickets (F=9.35, p<.005). As well, gang members had an average of 33.6 disciplinary tickets, compared to 20.8 for non-gang members (F=17.56, p<.001). Finally, the region of Illinois where an inmate was from was found to be statistically related to total number of disciplinary tickets. Inmates from Cook County averaged 26 tickets, while those from the collar counties averaged 18.6, those from other metropolitan statistical areas averaged 20.3, those from micropolitan statistical areas averaged 22.8, and those from all other areas averaged 18.4 tickets (F=2.34, p<.10).

Table 8

Average Number of Disciplinary Tickets Received by Those Convicted of Class X Sex Offenses

	Mean Number of Disciplinary Tickets
Total	23.19, (sd) 32.75
Age* ** (32.27 years) Spearman=-.513, p<.001	
Gender* F=5.17, p<.05	
Female	49.8, (39.34 sd)
Male	22.51, (26.62 sd)
Race* ** F=26.22, p<.001	
White	17.43, (31.27 sd)
Non-White	26.90, (33.17 sd)
Race 2* ** F=15.41, p<.001	
White	17.86, (27.75 sd)
African-American	29.84, (28.19 sd)
Hispanic/Other	17.46, (14.94 sd)
Marital Status** F=7.63, p<.01	
Married/Common Law	14.08, (22.89 sd)
Divorced/Single	25.18, (26.49 sd)
Education Level* F=9.35, p<.05	
HS Diploma or GED	16.80, (19.97 sd)

No HS Diploma or GED	28.76, (34.95 sd)
Children F=2.47, p=.117	
None	23.70, (27.86 sd)
1 or More	19.64, (22.97 sd)
Gang Member* ** F=17.56, p<.001	
No	20.83, (26.37 sd)
Yes	33.57, (26.87 sd)
Region of Illinois F=2.34, p=.054	
Cook County/Chicago	26.04, (26.15 sd)
Collar County	18.59, (19.12 sd)
Other Metropolitan Statistical Areas	20.31, (24.1 sd)
Micropolitan Statistical Areas	22.80, (42.63 sd)
All Other Areas	18.41, (28.64 sd)
Prior Prison Sentences F=2.29, p=.13	
None	21.84, (27.75 sd)
One or More	25.82, (23.15 sd)
TIS F=.11, p=.745	
Non TIS	22.19, (32 sd)
TIS	22.97, (24.25 sd)
Projected Time to Serve (7.91 years) Spearman=.031, p=.451	

* p<.05, ** p<.01, *** p<.001

Impact of TIS on the Prevalence of "Serious" Incidents among Sex Offenders

Bivariate analyses were performed to determine if there was any statistical relationship, and if so, the strength of that relationship, between inmate characteristics, including whether they were subject to TIS, and whether or not the inmate received a disciplinary ticket for a serious incident among the sample of sex offenders (Table 9). In the bivariate analyses, we found that inmates subject to TIS were more likely to have one or more serious incidents than non-TIS inmates (34.9 percent versus 27.6 percent, respectively; X^2=3.06, 1df, p<.10), although in the multivariate model that controlled for amount of time served, among other things, the inmates' TIS status was no longer associated with the prevalence of serious incidents. Thus, the relationship between serious incidents and the inmate's TIS status in the bivariate relationship is primarily due to the fact that sex offenders subject to TIS in the sample were incarcerated for a longer period of time, and therefore had more of an "opportunity" to engage in a serious incident. The multivariate analyses found that for every additional year a sex offender spent in prison, the likelihood of their getting a ticket for a serious

incident increased 12 percent.

In addition, statistically significant relationships between receipt of a ticket for a serious incident and the inmate's age, race, marital status, whether or not they had children, gang membership, prior prison sentence, projected time to serve, and security level of the facility were also found. Specifically, younger offenders were more likely than older inmates to have received a ticket for a serious incident with the average age of an inmate who received a ticket being 28.96 and the average age of those not receiving tickets being 33.78 ($F=26.66$, $p<.001$). Similarly, non-white inmates were more likely than white inmates to have had a serious incident (37.8 percent versus 26.3 percent, respectively) ($X^2=7.85$, 1 df, $p=.005$), although the strength of the relationship was relatively weak (Phi=.115, $p=.005$). An inmate's marital status also had a statistically significant relationship with the occurrence of a serious offense as divorced/single inmates were more likely to have received a ticket than married inmates (34.3 percent versus 19.2 percent, respectively) ($X^2=4.38$, 1df, $p<.05$), however this relationship was weak (Phi=.132, $p<.05$). Inmates who had no children were more likely to have a serious incident compared to those with at least one child (34.7 percent versus 26.2 percent, respectively; $X^2=3.52$, 1df, $p<.10$). However, this was a relatively weak relationship (Phi=-.007, $p<.10$). In addition, inmates identified as gang members were more likely than non-gang members to have received a ticket for a serious incident (47.2 percent versus 30.1 percent, respectively), and the strength of the relationship was weak (Phi=.129, $p<.005$). Prior prison sentence also had a significant relationship with the likelihood of an inmate receiving a ticket as those with prior sentences were more likely than those without to have received a ticket for a serious incident (41.8 percent versus 30.1 percent, respectively) ($X^2=6.46$, 1df, $p<.05$), while this relationship was weak (Phi=.104, $p<.05$). An inmate's projected time to serve was also statistically significant, with those having one or more serious incidents having longer mean sentences than those with no serious incidents (9.4 years versus 7.7 years, respectively; $F=12.14$, $p<.005$). Finally, inmates housed in the highest security level facility were more likely to have received a ticket for a serious incident than those housed in lower security facilities (54.2 percent versus 15.9 percent, respectively) ($X^2=40.63$, 4df, $p<.001$) and this relationship was relatively weak (Cramer's V=.262, $p<.001$). On the other hand, no statistical relationship was found between receipt of a ticket for a serious incident and inmate gender, education level, or the region of Illinois where they were from.

Table 9
Comparison of Demographic, Socio-Economic and Criminal History Characteristics among Class X Sex Offenders with No Serious Offenses and at Least One Serious Offense

	No Serious Offenses	**One or More Serious Offenses**	**Total**
Total	66.8%	33.2%	100%
Age* ** (Mean, Years) F=26.66, p<.001	33.78	28.96	32.27
Gender	X^2 =1.71,1df, p=.192		
Female	40.0%	60.0%	100%
Male	67.5%	32.5%	100%
Race**	X^2 =7.85,1df, p<.01, Phi=.115, p=.005		
White	73.7%	26.3%	100%
Non-White	62.8%	37.8%	100%
Race 2*	X^2 =9.05, 2df, p<.05, Cramer's V=.123, p<.05		
White	73.7%	26.3%	100%
African-American	61.0%	39.0%	100%
Hispanic/Other	67.0%	33.0%	100%
Marital Status*	X^2 =4.38, 1df, p<.05, Phi=.132, p<.05		
Married/Common Law	80.8%	19.2%	100%
Divorced/Single	65.7%	34.3%	100%
Education Level	X^2 =.015, 1df, p=.901		
HS Diploma or GED	68.4%	31.6%	100%
No HS Diploma or GED	67.6%	32.4%	100%
Children	X^2 =3.52, 1df, p=.061		
None	65.3%	34.7%	100%
1 or More	73.8%	26.2%	100%
Gang Member**	X^2 =9.96, 1df, p<.01, Phi=.129, p<.01		
No	69.8%	30.2%	100%
Yes	52.8%	47.2%	100%
Region of Illinois	X^2=5.9, 4df, p=.207		
Cook County/Chicago	63.3%	36.7%	100%
Collar County	65.4%	34.6%	100%
Other Metropolitan Statistical Area	72.7%	27.3%	100%
Micropolitan Statistical Area	76.9%	23.1%	100%
All Other Areas	71.3%	28.8%	100%

Prior Prison Sentence*	X^2 =6.46, 1df, p<.05, Phi=.104, p<.05		
None	69.9%	30.1%	100%
One or More	58.2%	41.8%	100%
Projected time to Serve (Mean, Years)** F=12.14, p<.01	7.676	9.427	100%
Truth-in-Sentencing	X^2=3.06, 1df, p=.08		
No	72.4%	27.6%	100%
Yes	65.1%	34.9%	100%
Security Level*** X^2=40.63, 4df, p<.001, Cramer's V=.262, p<.001			
Maximum	45.8%	54.2%	100%
Secure Medium	53.0%	47.0%	100%
High Medium	69.8%	30.2%	100%
Medium	75.7%	24.3%	100%
High Minimum	84.1%	15.9%	100%

* p<.05, ** p<.01, *** p<.001

Multivariate analyses were conducted in order to more accurately determine which variables have the greatest impact on the prevalence of serious incidents, while statistically controlling for certain factors. The first model included independent variables for age at admission, projected time to serve in years, actual years served, gender, race in three categories (white, African-American and Hispanic/other), marital status, whether or not the offender had children, educational attainment, gang status, area where they were sentenced, whether or not they were previously admitted to prison, the security level of their institution, and whether or not they were subject to TIS. The dependent variable in the first model was whether or not an offender committed a serious offense, as defined above. This first model was found to be statistically significant at the p<.001 level, with an R^2 of .159 and a pseudo-R^2 of .221. The independent variables improved the predictive ability of this model from 67.3 percent to 70.5 percent.

Of the 13 independent variables, seven were found to be statistically significant when other factors were controlled. Age at admission (p<.001) was statistically significant, and it was found that for every year older an offender is, his or her likelihood of receiving a disciplinary ticket for a serious offense decreases by about 5 percent (odds ratio of .955). The amount of time that an offender has served was also significant (p<.05). It was found that for every year longer that an inmate served, his or her chances of receiving a disciplinary ticket for a serious offense increased by about 12

percent (odds ratio of 1.121). Further, whether or not an offender had children ($p<.10$) acted as a protective factor against receiving a ticket for a serious offense. Offenders who had at least one child were over 40 percent less likely to receive a ticket for a serious offense (odds ratio of .593). In some cases, where an offender was sentenced also had an impact on his or her likelihood of being ticketed for a serious offense. It was found that offenders sentenced in metropolitan statistical areas other than Cook County were about 45 percent less likely to receive a ticket for a serious offense than those coming from Cook County (odds ratio of .548). As well, the security level of the institution where these Class X sex offenders were housed was also found to be statistically significant. Inmates housed in high medium facilities ($p<.005$) were 60 percent less likely to have a ticket for a serious offense than their counterparts in maximum security facilities (odds ratio of .397). Those housed in medium security facilities ($p<.001$) were about 74 percent less likely to have a serious offense ticket than those in maximum security (odds ratio of .259). Finally, the most influential variable in this model ($p<.001$; Wald=21.4) was found to be placement in a high minimum security facility. Compared to maximum security inmates, those placed in high minimum were 85 percent less likely to be ticketed for a serious offense.

Impact of TIS on the Prevalence of Assaults by Sex Offenders

Bivariate and multivariate analyses were also performed to determine if there was any statistical relationship, and if so, the strength of that relationship, between inmate characteristics, including whether they were subject to TIS, and whether or not the inmate received a disciplinary ticket for any assault (Table 10). No statistically significant differences were noted between sex offenders subject to TIS and those that were not, with roughly 8 to 10 percent of both groups receiving a disciplinary ticket for an assault. This lack of a statistical relationship between TIS status and assaults was also evident in the multivariate analyses, as well as when assaults specifically against staff were examined (roughly 4 to 6 percent of both groups received tickets for this) and assaults against other inmates (with roughly 6 percent of both groups receiving tickets for this).

Table 10
Comparison of Demographic, Socio-Economic and Criminal History Characteristics among Class X Sex Offenders with No Assaults and at Least One Assault

	No Assaults	One or More Assaults	Total
Total	89.8%	10.2%	100%
Age* ** (Mean, Years) F=11.44, p<.001	32.95	27.87	32.27
Gender*	X^2 =5.45, 1df, p<.05, Phi=-.093 p<.05		
Female	60.0%	40.0%	100%
Male	90.7%	9.3%	100%
Race*	X^2 =6.52, 1df, p<.05, Phi=.102, p<.05		
White	94.0%	6.0%	100%
Non-White	87.9%	12.1%	100%
Race 2* **	X^2 =16.11, 2df, p<.001, Cramer's V=.16, p<.001		
White	94.0%	6.0%	100%
African-American	84.9%	15.1%	100%
Hispanic/Other	95.3%	4.7%	100%
Marital Status* **	X^2 =8.52, 1df, p<.001, Phi=.18, p<.001		
Married/Common Law	100.0%	0.0%	100%
Divorced/Single	86.4%	13.6%	100%
Education Level	X^2 =1.22, 1df, p=.27		
HS Diploma or GED	91.4%	8.6%	100%
No HS Diploma or GED	87.0%	13.0%	100%
Children	X^2 =.162, 1df, p=.687		
None	90.2%	9.8%	100%
1 or More	91.3%	8.7%	100%
Gang Member* **	X^2 =13.53, 1df, p<.001, Phi=.146, p<.001		
No	92.3%	7.7%	100%
Yes	80.4%	19.6%	100%
Region of Illinois	X^2=6.92, 4df, p=.14		
Cook County/Chicago	89.3%	10.7%	100%
Collar County	87.4%	12.6%	100%
Other Metropolitan Statistical Area	90.4%	9.6%	100%
Micropolitan Statistical Area	90.2%	9.8%	100%
All Other Areas	97.8%	2.2%	100%
Prior Prison Sentence* **	X^2 =11.981, 1df, p<.001, Phi=.138, p<.001		

None	92.7%	7.3%	100%
One or More	83.2%	16.8%	100%
Projected time to Serve (Mean Years) F=2.36, p=.125	8.036	9.26	100%
Truth-in-Sentencing	X^2=.972, 1df, p=.324		
No	92.2%	7.8%	100%
Yes	89.7%	10.3%	100%
Security Level* ** X^2=19.36, 4df, p<.001, Cramer's V=.18, p<.001			
Maximum	79.6%	20.4%	100%
Secure Medium	85.1%	14.9%	100%
High Medium	92.3%	7.7%	100%
Medium	92.4%	7.6%	100%
High Minimum	96.3%	3.7%	100%

* p<.05, ** p<.01, *** p<.001

Impact of TIS on the Sanctions Imposed on Sex Offenders with Disciplinary Incidents

As with the examination of the disciplinary incidents of the murderers, analyses were also performed with the sex offender sample to determine if an inmate's TIS status had any influence on the types of sanctions imposed by IDOC for disciplinary incidents, including placement in segregation, loss of good conduct credit, loss of commissary privileges, and loss of gym/yard privileges. As with the analyses described above, bivariate and multivariate analyses were performed to determine if the inmate's TIS status had an independent relationship to any of these sanctions being imposed.

Among the sample of sex offenders, the most prevalent form of sanction imposed on those receiving disciplinary tickets was loss of commissary privileges, and no statistical difference was noted between those sex offenders subject to TIS and those not: roughly 80 percent of both groups lost their commissary privileges for a period of time as a result of a disciplinary incident. For the punishments of placement in segregation and loss of gym/yard privileges, again, differences between the TIS and non-TIS inmate were not evident. Finally, and interestingly, when comparisons of whether or not the inmate lost good conduct credit and their TIS status were made, we found that those inmates subject to TIS were more likely than those not subject to TIS to lose good conduct credit. This pattern was also evident in the multivariate analyses performed. This is interesting to

note because there were not any substantive differences noted in the prevalence or pattern of disciplinary incidents among the TIS and non-TIS sex offenders, and sex offenders subject to TIS are only eligible to earn up to a 15 percent reduction in their sentence (i.e., 85 percent must be served under TIS) as opposed to the non-TIS sex offenders, who can earn up to 50 percent off of their sentence through good conduct credits.

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APPENDIX 1

Ordinary Least Squares Results for Analyses of Murder Sentence Lengths (in Years)

OLS Results for Maximum Sentence Length for Murder

	Unstandardized Coefficients		**Standardized Coefficients**		
	B	**S. E.**	**Beta**	**t**	**Sig.**
Constant* **	37.590	1.396		26.920	0.000
Admission Age in Years	0.048	0.026	0.023	1.845	0.065
Gender (Female=0, Male=1) * **	6.081	0.868	0.079	7.003	0.000
Race (White=0, Non-White=1) * **	-2.370	0.620	-0.047	-3.826	0.000
**Marital Status (Single=0, Married=1) ** **	2.769	1.034	0.047	2.677	0.007
Education Level (No High-School/GED=0, High-School or GED=1)	0.547	0.700	0.015	0.781	0.435
**Children (None=0, 1 or more=1) ** **	1.302	0.497	0.035	2.620	0.009
Gang Status (None=0, 1=Yes)	-0.118	0.472	-0.003	-0.251	0.802
Region of Illinois (Rest of Illinois=0, Cook County=1)* **	-3.334	0.521	-0.077	-6.403	0.000
Prior Prison Sentences (None=0, 1 or more=1) * **	4.938	0.520	0.117	9.505	0.000
Year Trend 1989...1996 and 1997-2008* **	1.101	0.137	0.161	8.031	0.000
Not TIS Relative to Pre-TIS	-1.648	0.857	-0.036	-1.923	0.055
TIS Relative to Pre-TIS* **	-3.941	0.798	-0.101	-4.938	0.000

* p<.05, ** p<.01, *** p<.001

Logistic Regression Results for Murder Sentences

Logistic Regression Results with Dependent Variable as Maximum Sentence at or under Statutory Maximum (Coded as 0) or over Statutory Maximum, Including Life and Death (Coded as 1)

	B	S.E.	Wald	df	Sig.	Exp(B)
Age at Admission* **	0.021	0.003	39.563	1	0.000	1.021
Gender						
Female (reference)						
Male***	0.468	0.139	11.292	1	0.001	1.597
Race						
White (reference)***			29.834	2	0.000	
African-American***	-0.350	0.080	19.130	1	0.000	0.705
Hispanic/Other***	-0.589	0.114	26.732	1	0.000	0.555
Marital Status						
Single/Divorced (reference)			0.382	2	0.826	
Married/Common Law	0.055	0.090	0.369	1	0.544	1.056
Education Level						
No HS/GED (reference)			3.550	2	0.170	
HS/GED	0.127	0.070	3.294	1	0.070	1.135
Children						
No Children (reference)						
One or More Children	-0.029	0.070	0.168	1	0.682	0.972
Gang Status						
No Affiliation (reference)						
Affiliated	-0.121	0.067	3.195	1	0.074	0.886
Region of Illinois						
Cook County (reference)***			67.783	3	0.000	
Collar County***	0.705	0.102	47.542	1	0.000	2.023
Other Metro Area***	0.459	0.084	29.787	1	0.000	1.582
Rural Area***	0.472	0.120	15.590	1	0.000	1.603
Prior Prison Sentences						
No Prior Sentences (reference)						
One or More Sentences***	0.688	0.068	102.105	1	0.000	1.990
Truth-in-Sentencing						
Pre-TIS (reference)***			143.742	2	0.000	
Non-TIS	-0.023	0.081	0.081	1	0.776	0.977
TIS***	-0.835	0.074	125.886	1	0.000	0.434
Constant* **	-2.540	0.172	217.086	1	0.000	0.079

* p<.05, ** p<.01, *** p<.001

APPENDIX 2

Ordinary Least Squares Results for Analyses of Class X Sex Offender Sentence Lengths (in Years)

OLS Results for Maximum Sentence Length for Class X Sex Offenders

	Unstandardized Coefficients		**Standardized Coefficients**		
	B	**S.E.**	**Beta**	**t**	**Sig.**
Constant* **	9.693	1.335		7.261	0.000
Admission Age in Years * **	0.069	0.011	0.081	6.460	0.000
Gender (Female=0, Male=1)	-0.187	1.289	-0.002	-0.145	0.884
Race (White=0, Non-White=1)	0.157	0.278	0.008	0.563	0.574
Marital Status (Single=0, Married=1)	-0.078	0.520	-0.003	-0.149	0.881
Education Level (No High-School/GED=0, High-School or GED=1)	0.125	0.407	0.006	0.308	0.758
**Children (None=0, 1 or more=1) ** **	0.451	0.280	0.024	1.611	0.107
Gang Status (None=0, 1=Yes)* **	1.041	0.323	0.042	3.229	0.001
Region of Illinois (Rest of Illinois=0, Cook County=1)	-0.508	0.269	-0.026	-1.888	0.059
Prior Prison Sentences (None=0, 1 or more=1) * **	4.954	0.282	0.223	17.578	0.000
Not TIS Relative to Pre-TIS	0.274	0.385	0.009	0.711	0.477
TIS Relative to Pre-TIS*	-0.505	0.251	-0.026	-2.011	0.044

* p<.05, ** p<.01, *** p<.001

APPENDIX 3

Ordinary Least Squares Results for Analyses of Murder Disciplinary Tickets

OLS Results for Total Disciplinary Tickets Received by Murder Offenders

	Unstandardized Coefficients		**Standardized Coefficients**		
	B	**S.E.**	**Beta**	**t**	**Sig.**
Constant* **	56.870	6.493		8.759	0.000
Admission Age in Years * **	-0.559	0.095	-0.217	-5.909	0.000
Projected Time to Serve in Years * **	-0.094	0.027	-0.125	-3.470	0.001
Years Served *	1.297	0.590	0.071	2.197	0.028
Gender (Female=0, Male=1) * **	-27.562	3.034	-0.322	-9.084	0.000
Race (White=0, Non-White=1)	2.057	2.108	0.034	0.976	0.329
Marital Status (Single=0, Married=1)	0.534	4.050	0.004	0.132	0.895
Children (None=0, 1 or more=1)	-2.803	2.055	-0.055	-1.364	0.173
Education Level (No High-School/GED=0, High-School or GED=1)	-1.643	2.277	-0.027	-0.722	0.471
Gang Status (None=0, 1=Yes)	2.453	1.669	0.055	1.470	0.142
Region of Illinois (Rest of Illinois=0, Cook County=1)	0.818	1.844	0.016	0.443	0.658
Prior Prison Sentences (None=0, 1 or more=1)	2.567	2.126	0.052	1.208	0.228
Maximum Security (No=0, Yes=1)	-3.144	1.796	-0.065	-1.751	0.080
**Truth-in-Sentencing (No=0, Yes=1) ** **	-4.666	1.599	-0.103	-2.919	0.004

R^2=.188, Adjusted R^2=.175; Model F=14.125, p<.001

p<.05, ** p<.01, *** p<.001

2025 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

SB 2128
2/5/2025

Relating to transparent sentencing of criminal offenders, work release eligibility and conditions for criminal offenders, sentences for assaulting and fleeing from law enforcement officers, and sentences for preventing arrest; to provide a legislative management report; and to provide a penalty.

8:01 a.m. Chair Larson opened the meeting.

Members present:
Chair Larson, Vice Chairman Paulson, Senators: Castaneda, Cory, Luick, Myrdal, Braunberger.

Discussion Topics:

- Treatment availability in correctional facilities
- Transitional care for offenders
- Recidivism rates and implications
- Sentencing guidelines and time served
- Public safety and offender rehabilitation

8:02 a.m. Senator Castaneda updated the committee on the bill, answered questions on possible changes and submitted testimony #38386.

8:27 a.m. Attorney General Drew Wrigley testified as neutral.

8:37 a.m. Committee discussion on prison sentencing reforms and accountability.

8:46 a.m. Chair Larson closed the hearing.

Kendra McCann, Committee Clerk

Amendment 25.8109.01001

Quick Comparison to AG's Amendment/Bill

- Removes truth-in-sentencing (that required inmates to serve 85% of sentence)
- Restricts judges' discretion and options in a new section of the bill
- Quicker parole eligibility – Eligibility after serving 45% of a sentence instead of 50% of a sentence (see discussion on Section 5)
- Quicker eligibility for **violent** criminals to be moved to transitional facilities (with all the security risks) – Eligibility after serving about 62% of a sentence instead of 85% of a sentence
    - AG's amendment/bill allows **nonviolent** offenders to still be housed in transitional facilities without the 85% threshhold
- Gives DOCR discretion to transfer inmates for almost any reason, regardless of whether it's in the public's best interest or needed for safety, security, discipline, or medical care.
    - AG's amendment/bill allows transfers between jails/prisons for "safety, security, discipline, or medical care"
- Increases Good Time from 15% to 25%
    - Current Good Time is approximately 16% (when awarded correctly)
- Applies new penalty for fleeing to all fleeing, not just felony fleeing
- Does not remove simple possession from current (very limited) 85% statute
- Does not include Application Clause that makes the bill prospective only

Purposes of the Amendment

The discussed rationale for the amendment was:

- Under the Attorney General's amendment/bill, some transitional facilities will not be full and may have to close.
    - What is DOCR's evidence for this?
        - **Nonviolent offenders** can still serve their sentences in transitional facilities under the Attorney General's amendment/bill.
        - We heard testimony there are more people on probation or parole who need housing and support services that can be offered in transitional facilities.
- Drug counseling and other treatment programs won't be offered in prisons and must be offered in transitional facilities.

- DOCR acknowledges they offer these programs in prison and correctional facilities now. They said they would need to request additional funds to increase staffing for the programs under the Attorney General's amendment/bill. This is in line with the push for more funding and support for these services from several entities.

Section 2 (moving inmates to different facilities)

Section 2 would allow DOCR to transfer prisoners to any correctional facility whenever they want, even when:

- It is not in the best interests of the public;
- It is not necessary for safety or security;
- It is not necessary for discipline;
- It is not necessary for medical care.

DOCR said this change was needed to ensure violent offenders were not accidentally sent to low-level security facilities or vice versa. HOWEVER –

The Attorney General's amendment already allows DOCR the flexibility to transfer prisoners between correctional facilities based on "safety, security, discipline, or medical care."

- Also, NDCC 29-27-07 also allows this flexibility, and more, for prisoners convicted of felonies or class A misdemeanors.
  - ***To be consistent with the AG's amendment, and because it is referenced in other statutes, NDCC 29-27-07 should have the last phrase deleted after the word "medical care" to avoid the problem highlighted above.***[1]

Section 3 (eligibility for transitional facilities)

- Section 3 would allow eligible inmates to be moved to a transitional facility after serving 85% of their "term of imprisonment" ***after the increased amount of good time reductions have been made***.
  - Even a violent criminal could be moved to a transitional facility after serving about 63-64% of their sentence in prison.
    - "Good time" is currently 5 days/months or about 16-17% of a sentence.
    - The amendment would increase Good Time to 8 days/month (in Section 5) with a combined cap of 25% of the inmate's sentence.
    - The phrase "term of imprisonment" should be defined so it does not become subject to bureaucratic interpretation.

- The amendment uses "sentence" in some places. What is the difference in DOCR's view?

- By adding in the reference to NDCC 29-27-07, DOCR would have the ability to transfer prisoners whenver they want, even when:
    - It is not in the best interests of the public;
    - It is not necessary for safety or security;
    - It is not necessary for discipline;
    - It is not necessary for medical care.

Section 4 (Conditions of eligibility for participation in release programs)

This appears to be unchanged.

Section 5 (Good time calculations)

This would increase good time to 8 days/month with a total cap at 25% of the sentence.

- Currently, good time is 5 days/month (about 16-17% of a sentence).

Section 6 (Meritorious conduct sentence reductions)

This appears to be unchanged.

Section 7 (Parole at 45% of a sentence)

- Parole would be available after an inmate serves ***45% of their sentence***.
- Section 7 allows for parole after 60% of a sentence has been served ***after the increased amount of good time reductions have been made***.
    - This would lead to earlier parole eligibility than the Attorney General's amendment, despite appearing to do the opposite.
    - After the increased good time has been awarded, an inmate will have served 75% of their sentence.
        - 60% of 75% of the sentence is 45% of the sentence.
- Also, by adding in the reference to NDCC 29-27-07, DOCR would have the ability to transfer prisoners whenver they want, even when:
    - It is not in the best interests of the public;
    - It is not necessary for safety or security;

- It is not necessary for discipline;
- It is not necessary for medical care.

Section 8 (Preventing arrest)

This appears to be unchanged from Section 7 in the Attorney General's amendment/bill.

Section 9 (Assaulting officers)

This appears to be unchanged from Section 8 in the Attorney General's amendment/bill.

Section 10 (Sentencing alternatives available to judges)

This section is not in the Attorney General's amendment/bill. This section of law provides options for judges, and the Attorney General's amendment/bill does is focused on respect for judge's decisions and carrying them out faithfully. These changes seem counterproductive or unnecessary.

Why is there the addition of "or minimum terms of" imprisonment in Section 10? It does not appear to be necessary but makes the bill look like it is a mandatory minimum bill. Without the amendment, judges already have discretion to impose terms of imprisonment.

Why is the judge's option to *sentence* someone to a community-based program in Section 10 removed? It unnecessarily ties judges' hands.

Why are there the changes on page 11, lines 11-12? If they are unnecessary now, why would we need them under the bill?

Truth-in-Sentencing (REMOVED) There seems to be NO provision in this amendment for offenders to serve any threshhold amount of their sentence other than the 45% of their sentence to obtain eligibility for parole.

The amendment **removes**:

- The Attorney General's truth-in-sentencing provisions, and
- The Attorney General's definition of "confinement," which would ensure DOCR did not transfer inmates to transitional facilities before the Legsilative Assembly determined was appropriate.

The amendment also **puts back**:

- Simple possession of drugs into the state's current 85% law.

- That law applies only to a handful of crimes committed by an armed offender, and it imposes additional requirements (beyond the crime itself) that prosecutors have to prove.

- Based on prosecutors' input, the Attorney General removed simple possession of drugs from that law in his amendment/bill.

- By taking out Section 9 of the Attorney General's amendment/bill, simple possession would remain in the 85% law.

Section 11 (Fleeing)

Section 11 omits the word "felony" from the Attorney General's amendment/bill. That word was used to ensure that the penalty would not apply to misdemeanor fleeing.

Application Clause

The amendment **removes** the application clause that makes the Attorney General's amendment/bill prospective only.

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[1] **§ 29-27-07. Commitment of offenders to department of corrections and rehabilitation--Place of confinement**

1. If a judge of the district court imposes a term of imprisonment to a state correctional facility upon conviction of a felony or a class A misdemeanor, the judge may not designate a state correctional facility in which the offender is to be confined but shall commit the offender to the legal and physical custody of the department of corrections and rehabilitation.
2. After assuming custody of the convicted person, the department of corrections and rehabilitation may transfer the inmate from one correctional facility to another for the purposes of safety, security, discipline, medical care~~, or if the department determines it is in the best interest of the public, the inmate, or the department~~.

2025 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

SB 2128
2/5/2025

Relating to transparent sentencing of criminal offenders, work release eligibility and conditions for criminal offenders, sentences for assaulting and fleeing from law enforcement officers, and sentences for preventing arrest; to provide a legislative management report; and to provide a penalty.

3:46 p.m. Chair Larson opened the hearing.

Members present:
Chair Larson, Vice Chairman Paulson, Senators: Castaneda, Cory, Luick, Myrdal, Braunberger.

Discussion Topics:

- Section by section analysis
- Judges sentencing
- Nonviolent criminals
- Probation

3:49 p.m. Clair Ness, Chief Deputy Attorney General, testified as neutral and answered questions.

4:01 p.m. Senator Luick moved to adopt amendment LC# 25.8109.01002.

4:01 p.m. Senator Myrdal seconded.

4:02 p.m. Voice Vote - Motion Passed.

4:03 p.m. Senator Luick moved a Do Pass as Amended and Rerefer to Appropriations.

4:03 p.m. Senator Myrdal seconded the motion.

Senators	Vote
Senator Diane Larson	Y
Senator Bob Paulson	N
Senator Ryan Braunberger	N
Senator Jose L. Casteneda	Y
Senator Claire Cory	N
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Motion Passed 4-3-0.

4:04 p.m. Senator Myrdal will carry the bill.

4:06 p.m. Chair Larson adjourned the meeting.

Kendra McCann, Committee Clerk

25.8109.01002
Title.02000

Adopted by the Judiciary Committee

February 5, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

2-5-25

SENATE BILL NO. 2128

JB 1 of 10

Introduced by

Judiciary Committee

(At the request of the Attorney General)

A BILL for an Act to amend and reenact sections 12-44.1-01, 12-47-18.1, 12-48.1-01, 12-48.1-02, 12-54.1-01, 12-54.1-03, 12.1-08-02, 12.1-17-01, 12.1-32-02.1, 12.1-32-09.1, and 39-10-71 of the North Dakota Century Code, relating to transparent sentencing of criminal offenders, transfer of persons between correctional facilities, work release eligibility and conditions for criminal offenders, sentences for assaulting and fleeing from law enforcement officers, and sentences for preventing arrest; to provide a legislative management report; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-44.1-01 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-01. Definitions.

As used in this chapter:

1. "Administrator" means the sheriff, chief of police, administrator, superintendent, director, or other individual serving as the chief executive officer of a correctional facility.
2. "Adult lockup" means a secure temporary-hold nonresidential facility that does not hold individuals overnight and includes a facility with cuffing rails or cuffing benches.
3. "Correctional facility" means a city or county jail or detention center, regional corrections center, or juvenile detention center for the detention or confinement of persons in accordance with law. The use of the term does not imply and may not be

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used to require the provision of services including treatment, counseling, career and technical education, or other educational services, except as may otherwise be required or provided for under this chapter. The term does not include transitional facilities.

4. "Correctional facility staff" means correctional personnel with titles such as jailer, deputy, counselor, correctional officer, or any other title, whose duties include the ongoing supervision of inmates in a correctional facility.

5. "Court holding facility" means a secure facility, other than an adult correctional facility or adult lockup, used to temporarily detain individuals before or after a detention hearing or other court proceedings, and is not used to detain individuals overnight.

6. "Individual justice planning" means a process to identify, accommodate, and develop appropriate consequences for behaviors caused by or related to an individual's mental or cognitive impairment.

7. "Inmate" means any individual, whether sentenced or unsentenced, who is detained or confined in a correctional facility. The term does not include an individual who is under the supervision of the correctional facility and is supervised under home detention, electronic monitoring, or a similar program that does not involve physical detention or confinement in the facility.

8. "Jail" means a correctional facility, including a county or city jail or a regional corrections center.

9. "Juvenile detention center" means a publicly maintained correctional facility for the detention of juveniles. The term does not include the North Dakota youth correctional center.

10. "Regional corrections center" means a correctional facility established and maintained by more than one county or city, or a combination of counties and cities, for the confinement of inmates.

11. "Trained correctional facility staff" means correctional personnel who have completed a course of training approved by the peace officer standards and training board.

12. "Transitional facility" means an organization or facility, operating under contract, in partnership with, or under the direction of the department of corrections and

rehabilitation or a correctional facility, which offers education, counseling, or other programs, with minimum security housing, for offenders.

SECTION 2. AMENDMENT. Section 12-47-18.1 of the North Dakota Century Code is amended and reenacted as follows:

12-47-18.1. Transfer of persons between correctional facilities.

~~The~~Subject to statutory limitations, the director of the department of corrections and rehabilitation may transfer an offender to any facility under the department's control or contract to transfer an offender to another correctional facility for purposes of safety, security, discipline, or medical care~~, or when the director determines it may be in the best interests of the public, the offender, or the department~~.

SECTION 3. AMENDMENT. Section 12-48.1-01 of the North Dakota Century Code is amended and reenacted as follows:

12-48.1-01. ~~Director may provide certain~~Work release and education or rehabilitation services for offenders.

1. The director of the department of corrections and rehabilitation may participate in programs in which eligible offenders committed to the legal and physical custody of the department may be gainfully employed or participate in an educational or other rehabilitation program either in or outside facilities under the control of the department. ~~The~~For eligible offenders, the director may obtain or contract with separate facilities with minimum security for housing offenders granted release privileges. In areas where facilities are not within reasonable proximity of the place of employment or training of an offender so released, the director may arrange for the housing of the offender in local confinement facilities.
2. For purposes of this chapter, an "eligible offender" means an offender who:
   a. In accordance with section 12.1-32-09.1, has served eighty-five percent of the offender's sentence of imprisonment or had the offender's sentences commuted; or
   b. Is serving a sentence only for one or more violations of section 12.1-06.1-08, 12.1-11-01, 12.1-11-07, 12.1-15-02, or 12.1-15-03; subdivision c of subsection 1 of section 12.1-21-02; section 12.1-21-03.1; subdivision b of subsection 1 of section 12.1-21-05; section 12.1-21-06.1, 12.1-22-05, 12.1-23-02, 12.1-23-04,

JB 4 of 10

12.1-23-07, 12.1-23-08, or 12.1-24-01; subsection 7 of section 19-03.1-23; or section 19-03.4-03 or 39-08-01.

3. The department of corrections and rehabilitation shall provide to the attorney general and the legislative ~~management~~council each quarter a report, including the names, locations, and sentences of each individual who meets the criteria in subdivision b of subsection 2.

SECTION 4. AMENDMENT. Section 12-48.1-02 of the North Dakota Century Code is amended and reenacted as follows:

12-48.1-02. Conditions of ~~eligibility for~~participation in release programs.

1. An eligible offender, except 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, may ~~be eligible for programs~~participate in a program outside ~~facilities~~a facility under the control of the department of corrections and rehabilitation when the department determines, with a high degree of reliability, the eligible offender is not a high security risk, not likely to commit a crime of violence, not likely to escape, and is likely to be rehabilitated by such program. An eligible offender may apply to the director of the department for permission to participate in such programs.
2. The director of the department may authorize participation in outside programs for an eligible offender who has ten years or less remaining on a sentence and has been committed to the legal and physical custody of the department. The parole board, with the approval of the director of the department, may authorize participation in outside programs for eligible offenders who have more than ten years remaining on a sentence and have been committed to the legal and physical custody of the department.
3. The offender shall submit a signed application which must include a statement that the eligible offender agrees to abide by all terms and conditions of the particular plan adopted for the eligible offender, and must include such other information as the parole board or the director of the department may require.
4. The parole board may approve, disapprove, or defer action on an application approved by the director of the department. The director of the department or the

parole board may revoke approval of the application at any time after granting the application. The department shall prescribe rules of conduct and treatment for all eligible offenders on release programs and shall prescribe objective and subjective criteria for which revocation of approval to participate in release programs is mandatory. A rule violation indicating the eligible offender likely will commit a crime of violence or is likely to attempt to escape must result in revocation of approval to participate in release programs. The department shall document all violations of the rules of conduct and treatment.

5. The director of the department may grant short leaves, not to exceed seventy-two hours, to eligible offenders who have been committed to the legal and physical custody of the department for ten years or less. The parole board, upon the approval of the director of the department, may grant short leaves, not to exceed seventy-two hours, to offenders committed to the legal and physical custody of the department for more than ten years. Short leaves granted under this subsection may not be granted consecutively to the same individual.

6. All rules adopted by the parole board and the director of the department relating to release programs and short leaves must conform, to the extent allowable by law, with executive order no. 11755 issued by the President of the United States.

SECTION 5. AMENDMENT. Section 12-54.1-01 of the North Dakota Century Code is amended and reenacted as follows:

12-54.1-01. Sentence reduction for good time.

~~Except as provided under~~Subject to the requirements of section 12.1-32-09.1, an offender committed to the legal and physical custody of the department of corrections and rehabilitation is eligible to earn sentence reductions based upon satisfactory fulfillment of performance criteria established through department and penitentiary rules. Performance criteria ~~includes~~must include participation in court-ordered or staff-recommended treatment and education programs and good work performance. The department may credit an offender committed to the legal and physical custody of the department who is eligible for sentence reduction up to five days good time per month for each month of the sentence ~~imposed~~served, up to a maximum of fifteen percent of the offender's sentence. Sentence reductions may not be awarded before they are earned. The department may credit an offender with sentence reduction for time spent in

custody before sentencing and commitment to the legal and physical custody of the department. The department may not credit an offender with any sentence reduction for time spent on probation under the supervision and management of the department.

SECTION 6. AMENDMENT. Section 12-54.1-03 of the North Dakota Century Code is amended and reenacted as follows:

12-54.1-03. Meritorious conduct sentence reduction.

~~Except as provided under section 12.1-32-09.1, offenders~~Offenders committed to the legal and physical custody of the department of corrections and rehabilitation may receive a lump sum or a monthly rate of meritorious conduct sentence reduction for outstanding performance or heroic acts ~~or as a special control and security measure~~, as provided by penitentiary and department rules and upon written recommendation of a department multidisciplinary team. Meritorious sentence reductions are in addition to sentence reductions under section 12-54.1-01 and may be made only after a written recommendation is made by the warden and approved by the director of the department. Any sentence reduction ~~for special control or security measures~~under this section may not exceed ~~two days~~one day good time per month per offender.

SECTION 7. AMENDMENT. Section 12.1-08-02 of the North Dakota Century Code is amended and reenacted as follows:

12.1-08-02. Preventing arrest or discharge of other duties.

~~1.~~ A person is guilty of a class A misdemeanor if, with intent to prevent a public servant from effecting an arrest of himself or another for a misdemeanor or infraction, or from discharging any other official duty, he creates a substantial risk of bodily injury to the public servant or to anyone except himself, or employs means justifying or requiring substantial force to overcome resistance to effecting the arrest or the discharge of the duty. A person is guilty of a class C felony if, with intent to prevent a public servant from effecting an arrest of himself or another for a class A, B, or C felony, he creates a substantial risk of bodily injury to the public servant or to anyone except himself, or employs means justifying or requiring substantial force to overcome resistance to effecting such an arrest.

~~2.~~1. It is a defense to a prosecution under this section that the public servant was not acting lawfully, but it is no defense that the defendant mistakenly believed that the

public servant was not acting lawfully. A public servant executing a warrant or other process in good faith and under color of law shall be deemed to be acting lawfully.

2. A conviction under this section carries a penalty of at least fourteen days' imprisonment and, if there is an underlying conviction, the imprisonment must be consecutive to any sentence of imprisonment for the underlying conviction.

SECTION 8. AMENDMENT. Section 12.1-17-01 of the North Dakota Century Code is amended and reenacted as follows:

12.1-17-01. Simple assault.

1. A person is guilty of an offense if that person:
   a. Willfully causes bodily injury to another human being; or
   b. Negligently causes bodily injury to another human being by means of a firearm, destructive device, or other weapon, the use of which against a human being is likely to cause death or serious bodily injury.
2. The offense is:
   a. A class C felony when the victim is a peace officer or correctional institution employee acting in an official capacity, which the actor knows to be a fact; an employee of the state hospital acting in the course and scope of employment, which the actor knows to be a fact, and the actor is an individual committed to or detained at the state hospital pursuant to chapter 25-03.3; a person engaged in a judicial proceeding; or a member of a municipal or volunteer fire department or emergency medical services personnel unit or emergency department worker in the performance of the member's duties.
   b. A class B misdemeanor except as provided in subdivision a.
   c. A conviction under subdivision a carries a penalty of at least thirty days' imprisonment and, if there is an underlying conviction, the imprisonment must be consecutive to any sentence of imprisonment for the underlying conviction.

SECTION 9. AMENDMENT. Section 12.1-32-02.1 of the North Dakota Century Code is amended and reenacted as follows:

12.1-32-02.1. Mandatory prison terms for armed offenders.

1. Notwithstanding any other provision of this title, a term of imprisonment must be imposed upon an offender and served without benefit of parole when:

a. In the course of committing an offense, the offender inflicts or attempts to inflict bodily injury upon another, threatens or menaces another with imminent bodily injury with a dangerous weapon, explosive, destructive device, or firearm; or

b. An offender prohibited from possessing a firearm under section 62.1-02-01 possesses a firearm while in the course of committing any felony offense under subsection 1~~,~~ or 3~~, or 7~~ of section 19-03.1-23.

2. This requirement applies only when possession of a dangerous weapon, explosive, destructive device, or firearm has been charged and admitted or found to be true in the manner provided by law, and must be imposed as follows:

a. If the offense for which the offender is convicted is a class AA, class A, or class B felony, the court shall impose a minimum sentence of four years' imprisonment.

b. If the offense for which the offender is convicted is a class C felony, the court shall impose a minimum sentence of two years' imprisonment.

3. This section applies even when being armed is an element of the offense for which the offender is convicted.

4. This section applies even if the offender is prosecuted for a violation of section 62.1-02-01 for the same conduct.

5. 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~~is not an eligible offender under subdivision b of subsection 2 of section 12-48.1-01.

SECTION 10. AMENDMENT. Section 12.1-32-09.1 of the North Dakota Century Code is amended and reenacted as follows:

12.1-32-09.1. ~~Sentencing of violent offenders~~Truth in sentencing.

1. Except as provided under ~~section~~sections 12-48.1-01 and 12-48.1-02~~ and pursuant to rules adopted by the department of corrections and rehabilitation~~12-54.1-03, an offender who is sentenced as a dangerous special offender or habitual offender under section 12.1-32-09, or is convicted of a crime in violation of section 12.1-16-01, 12.1-16-02, subsection 2 of section 12.1-17-02, section 12.1-18-01, subdivision a of subsection 1 or subdivision b of subsection 2 of section 12.1-20-03, section 12.1-22-01, subdivision b of subsection 2 of section 12.1-22-02, or an attempt to

commit the offenses, and who receives a sentence of imprisonment is not eligible for release from confinement on any basis until eighty-five percent of the sentence imposed by the court has been served or the sentence is commuted. All other offenders are not eligible for release from confinement on any basis until:

a. Fifty percent of the sentence imposed by the court is served, not including any time credited under section 12-54.1-01, and the offender is paroled;

b. The offender's sentence is commuted and the offender served the commuted sentence;

c. Eighty-five percent of the sentence imposed by the court is served; or

d. The offender is pardoned.

2. In the case of an offender who is sentenced to a term of life imprisonment with opportunity for parole under subsection 1 of section 12.1-32-01, the term "sentence imposed" means the remaining life expectancy of the offender on the date of sentencing. The remaining life expectancy of the offender must be calculated on the date of sentencing, computed by reference to a recognized mortality table as established by rule by the supreme court.

3. Notwithstanding this section, an offender sentenced under subsection 1 of section 12.1-32-01 may not be eligible for parole until the requirements of that subsection have been met.

~~4. An offender who is convicted of a class C felony in violation of section 12.1-17-02, or an attempt to commit the offense, and who has received a sentence of imprisonment or a sentence of imprisonment upon revocation of probation before August 1, 2015, is eligible to have the offender's sentence considered by the parole board.~~

4. For purposes of this section "confinement" does not include placement or residence in a transitional facility, halfway house, or other organization or facility, operating under contract, in partnership with, or under the direction of the department of corrections and rehabilitation or other correctional facility, that offers education, counseling, or other programs, with minimum security housing, for offenders.

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

SECTION 11. AMENDMENT. Section 39-10-71 of the North Dakota Century Code is amended and reenacted as follows:

39-10-71. Fleeing or attempting to elude a peace officer - Penalty.

1. A driver of a motor vehicle who willfully fails or refuses to bring the vehicle to a stop, or who otherwise flees or attempts to elude, in any manner, a pursuing police vehicle or peace officer, when given a visual or audible signal to bring the vehicle to a stop, is guilty of a:
   a. Class A misdemeanor for a first offense and a class C felony for a subsequent offense within three years;
   b. Class C felony if the driver violates this section while willfully fleeing during or after the commission of a felony; or
   c. Class C felony if, at any time during the flight or pursuit, the driver willfully operates the vehicle in a manner constituting an inherent risk of death or serious bodily injury to a third person.
2. A signal complies with this section if the signal is perceptible to the driver and:
   a. If given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the stopping vehicle is appropriately marked showing it to be an official police vehicle; or
   b. If not given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the officer is in uniform or prominently displays the officer's badge of office.
3. A felony conviction under this section carries a penalty of at least thirty days' imprisonment and, if there is an underlying conviction, the imprisonment must be consecutive to any sentence of imprisonment for the underlying conviction.
4. Upon a motion by a state's attorney, a court may order that a motor vehicle used in the commission of a violation of this section be impounded by a peace officer for up to six months.

REPORT OF STANDING COMMITTEE
SB 2128

Judiciary Committee (Sen. Larson, Chairman) recommends **AMENDMENTS (25.8109.01002)** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (4 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). SB 2128 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

2025 SENATE APPROPRIATIONS

SB 2128

2025 SENATE STANDING COMMITTEE MINUTES

Appropriations - Human Resources Division
Harvest Room, State Capitol

SB 2128
2/18/2025

Relating to transparent sentencing of criminal offenders, transfer of persons between correctional facilities, work release eligibility and conditions for criminal offenders, sentences for assaulting and fleeing from law enforcement officers, and sentences for preventing arrest; to provide a legislative management report; and to provide a penalty.

9:00 a.m. Chairman Dever opened the hearing.

Members Present: Chairman Dever, Senators Cleary, Davison, Magrum and Mathern

Discussion Topics:

- Fiscal Note Appropriateness
- Clarification of Inaccurate Assumptions
- Inmate Qualifications for Transitional Centers
- Management of Violent Criminals
- Honoring Judge Sentencing
- Clarification of Good Time Accrual Guidelines
- Inmate Treatment, Education and Rehabilitation

9:00 a.m. Claire Ness, Chief Deputy Attorney General, Attorney General's Office, introduced the draft amendment, testified in favor and submitted testimony #37999 and #37983.

10:17 a.m. Travis Finck, Executive Director, ND Commission on Legal Counsel for Indigents, testified in opposition.

10:33 a.m. Chairman Dever recessed.

10:40 a.m. Chairman Dever reconvened.

10:45 a.m. Colby Braun, Director, ND Department of Corrections and Rehabilitation (DOCR), testified in opposition and submitted testimony #37986, #37987 and #37988.

11:05 a.m. Claire Ness, Chief Deputy Attorney General, Attorney General's Office, testified in favor.

11:30 a.m. Colby Braun, Director, DOCR, testified in favor.

11:46 a.m. Sargeant Rebecca Haack, DOCR, testified in favor.

12:00 a.m. Chairman Dever closed the hearing.

Joan Bares, Committee Clerk

SB 2128
2-18-25

SENATE APPROPRIATIONS COMMITTEE
FEBRUARY 17, 2025

TESTIMONY OF CLAIRE NESS
OFFICE OF ATTORNEY GENERAL
SENATE BILL 2128

Chairman Dever and Members of the Committee:

For the record, my name is Claire Ness. I am the Chief Deputy Attorney General, and I am here on behalf of the Attorney General's Office in support of Senate Bill 2128.

To start, I'd like to draw your attention to the fact sheets about the bill and the information on which it is founded. The Attorney General's Office has found that several inaccurate narratives about the bill have been circulating. In order for you to assess the appropriateness of the fiscal note, we wanted to ensure you have an honest accounting of what the bill does and does not do, based on documented data and information.

We also need to consider the costs of the current criminal justice system. SB 2128 resulted from intensive research, meetings, and discussions with law enforcement officers, State's Attorneys, DOCR administrators and employees, and others. The key findings from that work were distilled into the packet of materials provided to you. What we found is that – over the many years of investing heavily in the expensive "Norway" model – the DOCR has received a tremendous amount of discretion in how they carry out their responsibilities. In return for that investment and autonomy, the Legislative Assembly – and the state as a whole – should receive objective measurements of success. But we don't have them. Instead:

- Violent crime and violent crime rates have increased[1];

[1] *See* the annual crime and homicide reports documenting crime statistics reported by North Dakota law enforcement agencies at https://attorneygeneral.nd.gov/public-safety/crime-data/crime-and-homicide-reports/.

- Drug use and addiction rates are increasing[2];
- More than 40% of prisoners recidivate,[3] costing the state and counties money for repeat arrests, investigations, prosecutions, trials, and sentencing hearings;
- Law enforcement officers and prosecutors are frustrated by the expensive and dangerous revolving door of criminals who are on our streets and recommitting crimes before their previous sentences are served[4]; and
- Our neighbors are concerned about the prevalence of crime in their communities.

When evaluating SB 2128, the Attorney General's Office urges you to consider the comparative costs, savings, and returns from both the state's current investment in corrections and rehabilitation and the investment that would be made under this bill. Buying a bicycle is not a good investment if you need a car.

Inaccurate assumptions are the basis for the fiscal note.

The first fiscal note prepared by DOCR was based on an assumption that parole would be eliminated under SB 2128. After the parole issue was clarified, the fiscal note should have decreased as a result. However, the second fiscal note is about 37% higher than the first. A careful review of the second fiscal note reveals that most of its costs are based primarily on 3 inaccurate assumptions:

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[2] The rate of illegal substance use in North Dakota, as reported by the ND DHHS, rose again between the 2023 report and the 2025 report. The rate of illegal drug use (other than marijuana) increased from 2.83% to 3.46%, and the rate of marijuana use increased from 10.4% to 11.97%. ND DHHS's *Behavioral Health in North Dakota: Data Book 2023* and *Behavioral Health in North Dakota: Data Book 2025,* at https://www.hhs.nd.gov/behavioral-health/data.

[3] DOCR testified it defines recidivism as returning to DOCR facility within 3 years of release. **DOCR's website states 40% of offenders released from ND state prison facilities were returned to those prisons within 3 years. If you add the number of those offenders who were returned to federal prison, county jails, and other states' prisons, the total recidivism rate exceeds 40%** and likely exceeds it by a significant margin. DOCR has not provided data on the exact recidivism rate when those facilities are included.

[4] *See, e.g.,* the testimony of Dennis Ingold and the testimony of Jasoon Stugelmeyer in support of SB 2128 to the Senate Judiciary Committee on January 21, 2025.

1. DOCR will have to return inmates who currently reside in transitional facilities back to prison.
2. Parole will not be available for inmates.
3. Inmate labor will have to be replaced by civilians.

The second fiscal note contains other presumptions that do not seem to be supported by data, but this testimony will focus on those three main faulty assumptions.

(1) DOCR will not have to return inmates who currently reside in transitional facilities back to prison.

In the first sentence of the second fiscal note, DOCR says the "bill removes DOCR's authority to house inmates in transitional facilities, requiring residents to return to prison." This is not accurate for at least two reasons.

One, during the first hearing on the bill, this office presented an amendment (which is still available on the legislative website for SB 2128 as document 30506) as well as written and oral testimony describing each section of the bill. The amendment contains an Application clause showing the bill is prospective only. It will not impact current inmates, and it will affect DOCR only gradually as new inmates serve their sentences. The Application clause also was described on page 13 of my testimony, which I read during that first hearing. My testimony also stated that the bill probably would be prospective even without the Application clause (because of Due Process and other considerations). To avoid any confusion, however, the Application clause was always part of the amendment that the Senate Judiciary Committee adopted.

Two, inmates can still reside in transitional facilities, as can individuals on parole and probation. Inmates who committed the nonviolent crimes exempted from the 85% requirement can be transferred to transitional facilities at any time during their sentences, provided they meet DOCR's criteria. Other inmates who committed violent crimes can be transferred to transitional

facilities after they have safely served 85% of their sentences. To say that inmates cannot be housed in transitional facilities under the bill is not correct.

Late last week, Senator Castaneda and I discovered that Legislative Council had removed the Application clause from the amendment and the engrossed version of the bill that they posted online. I understand that Senator Castaneda and Senator Larson had the Legislative Council replace that clause. To the extent this incident caused confusion for DOCR, I would ask the committee to request an updated fiscal note adjusting the costs accordingly.

(2) and (3) Parole will be available, and civilians will not have to replace inmate labor.

DOCR estimates that approximately $67 million for FY 25-27 and $155 million for FY 27-29 will be incurred because inmates will not be eligible for parole. This is not accurate. Parole will not be eliminated. Also, DOCR's first fiscal note - based on the assumption that parole was eliminated – had a total cost that was tens of millions of dollars less than the amount in the second fiscal note that DOCR attributes to the supposed lack of parole.

SB 2128 says inmates are eligible for parole after serving 50% of their sentences. (This is significantly less than our more liberal neighbor, Minnesota, which requires inmates to serve 2/3 of their sentences.[5]) DOCR's argument seems to be that work, education, and rehabilitation programs will not be allowed in DOCR facilities under SB 2128 – and that this will make inmates poor candidates for parole even after they have served 50% of their sentences. DOCR then uses a model suggesting that only 5% of parole-eligible inmates will be paroled. DOCR also adds almost $17 million to the second fiscal note for replacing inmate labor with civilian labor. Additionally,

[5] *See* Minnesota Department of Corrections website on Community Supervision, at www.mn.gov/doc/community-supervision/. ("Individuals serve two-thirds of their prison sentence incarcerated and the remaining third on supervised release.")

DOCR states about $2.5 million will be incurred by housing parolees in transitional facilities to participate in programs after they are released from prison.

Throughout the weeks of testimony and discussion on Senate Bill 2128, the Attorney General's Office has consistently stated that the bill:

> "will not take away any offender's opportunity to participate in rehabilitation programs or programs that help an offender prepare for reentry to the community. Those programs can continue to be offered in prison and other correctional facilities. The Attorney General's Office supports these types of programs and for years has offered to support requests for the resources to ensure they can continue."[6]

Senate Judiciary Committee members also understood these programs would continue to be available in the prison and other DOCR facilities.

There was no indication that DOCR believed work, education, and rehabilitation programs would be eliminated in correctional facilities until they issued the second fiscal note – after the Senate Judiciary Committee had closed the proceedings on the bill. Had DOCR believed a clarification in the bill language was necessary, they should have raised that issue to the committee so the clarification could be made. Everyone involved intended for the programs to continue, and a clarification would have been simple and easily approved by the committee.

By waiting until after the committee's work concluded, **DOCR is adding approximately $242 million to the second fiscal note based on an argument that the bill will have an impact that absolutely no one thought it would have and no one intended**. The Attorney General's

[6] Testimony of Claire Ness in support of Senate Bill 2128 to the Senate Judiciary Committee on January 21, 2025.

Office asks that the Appropriations Committee either adopt a minor, clarifying amendment to satisfy DOCR's concerns or disregard the $242 million in costs DOCR says will be attributable to the alleged elimination of parole and these programs.

SB 2128 also will result in savings.

As noted above, our current system has produced a recidivism rate that is higher than 40% and has not slowed the rate of substance abuse that contributes to our crime rate. That means close to half of all inmates return to a correctional facility within 3 years. The cost to the state and our counties from these repeated arrests, investigations, prosecutions, trials, and sentencing hearings must be tremendous. Although DOCR says it does not have data on this, a significant amount of those crimes would not occur while inmates serve their sentences in secure settings. Moreover, inmates who are able to participate in treatment and rehabilitation programs for longer periods of time may be less likely to recidivate at all. Finally, the deterrent effect of actually having to serve at least half of a sentence may reduce the incidence of violent crime.

The other costs to society – the impact on public safety and security – also should be considered when determining the value of SB 2128.

SENATE APPROPRIATIONS HUMAN RESOURCE DIVISION COMMITTEE
SENATOR DICK DEVER, CHAIR
FEBRUARY 18, 2025

NORTH DAKOTA DEPARTMENT OF CORRECTIONS AND REHABILITATION PRESENTING TESTIMONY ON SENATE BILL 2128 FISCAL NOTE

Chairman Dever and members of the Senate Appropriations Human Resource Division Committee, I am Colby Braun, Director of the North Dakota Department of Corrections and Rehabilitation (DOCR). I am requesting some additional time to provide this written and verbal testimony on the Senate Bill 2128's fiscal note.

You have been hearing that SB 2128 targets violent criminals – I am here to explain today how it in fact targets and greatly reduces our public safety. Supporters claim this bill is about punishing violent offenders, but in practice it is designed to shut the door on the investments in rehabilitation and redemption that are proven to make our communities safe.

SB 2128 does not address violent crime. It denies people the opportunity and incentive to rebuild their lives. This bill keeps non-violent offenders incarcerated longer and denies them access to rehabilitative services. This is a disservice to victims of crime. It makes us less safe. It also forces taxpayers to spend $225 million more on a system that refuses to invest in real solutions.

Justice should be accountability and second chances, not endless punishment with no way out. But in the case of SB 2128, the punishment is the point. The writers of this legislation very clearly stated their position in their testimony before the Senate Judiciary Committee, "Punishment is a bedrock of our criminal justice system. Punishment. Punishment."

What you're not hearing from the champions of SB 2128 is that our current laws do in fact ensure harsh punishment for violent offenders. No matter the claims of the writers of this bill, violent offenders will be the **least** impacted by this legislation. North Dakota law already mandates that violent offenders, or those convicted of murder, manslaughter, class B felony

aggravated assault, kidnapping, gross sexual imposition by force, robbery, and burglary involving a weapon or bodily injury, must serve at least 85 percent of their sentence (see N.D.C.C. § 12.1-32-09.1). Additionally, those who inflict or attempt to inflict bodily injury while using a firearm or dangerous weapon face mandatory minimum sentences without the possibility of parole and serve 100 percent of the sentence minus credit for time served and performance-based sentence reduction credits (see N.D.C.C. § 12.1-32-02.1).

SB 2128 extends this harsh punishment to virtually everyone in our prisons, regardless of their offense or criminal history. SB 2128 bars 90 percent of people sentenced to the DOCR from participating in rehabilitation programs, education, vocational training, and drug and mental health treatment until they have completed 85 percent of their sentences. That ban takes away any incentive for people in prison to try to improve themselves. The vast majority of people in our prisons will be released and returned to the community as our neighbors. The net effect of SB 2128 is to send people home from prison worse off than when they came into prison. This will lead to increased crime and victimization. It will lead to more court cases and court costs. It will increase our prison population and force us to build more prisons. This bill will actually cost our state hundreds of millions of dollars for taxpayers. The harshest part is that SB 2128 costs a fortune and what we get for that cost is that we make everyone less safe.

Some of the people SB 2128 endangers are correctional officers. Any correctional officer will confirm what common sense tells us: "Idle hands are the devil's workshop." When we put people in prison and give them nothing to do and no incentive to improve themselves, misconduct goes up. Rule-breaking goes up. Violence goes up. This creates a more unstable, dangerous work environment for correctional officers and the people we are trying to rehabilitate. Our correctional officers want to help the people they supervise to grow and change in positive ways. We already have a hard time recruiting, hiring, and retaining staff. No one wants to work in a place where they don't feel safe and don't feel like they're making a difference.

Based on the definitions in SB 2128 the North Dakota Department of Corrections and Rehabilitation will not be able to provide educational, treatment, or rehabilitative services in the Missouri River Correctional Center, the Heart River Correctional Center, the James River Correctional Center, or the Dakota Women's Correctional Rehab Center. The only way we could even house offenders in these institutions would be to eliminate all rehabilitative programming we offer in these locations. This legislation would turn the Department of Corrections **and Rehabilitation** into the Department of Warehousing and Neglecting. This is bad for all North Dakotans.

This bill also has an even greater impact on female offenders. As noted, with this bill North Dakota will not have any female facility where education, counseling or other programs can be offered. We need to make sure women in prison receive the programming they need so that they can return home and support their families and, most importantly, their children. Locking women up longer with no programming will harm North Dakota families.

Even the parts of SB 2128 that look sensible are, in fact, dangerous. Page 3, lines 9 – 12 state, "The director of the department of corrections and rehabilitation may participate in programs in which eligible offenders may be gainfully employed or participate in an educational or other rehabilitation program." Importantly less than 10 percent of individuals meet the definition. This is text that sounds sensibly designed, but in fact means that very few people in North Dakota's corrections and rehabilitation system are eligible for rehabilitation prior to serving 85 percent of their sentence. It is likely that people will be released prior to completing court ordered rehabilitative programming. That means we'll be sending more people back to the community in the same or worse condition they were in when they came to us.

The Attorney General has claimed, wrongly, that the $270 million fiscal note for SB 2128 is too high. If anything, the fiscal note's cost estimate is too low. The fiscal note does not include the increased costs of new crimes and recidivism from failing to rehabilitate people, the court and prosecution costs of those new crimes, victim restitution, and new prison construction. The

math on prisons is simple: keep more people inside longer, and your prison population will eventually increase so much that you need to build more facilities. To put some perspective on this, our new women's facility will cost taxpayers $166 million to build. North Dakota has also faced lawsuits in the past over equal protection issues involved in failing to provide adequate programming to women, and the costs and settlements of new lawsuits caused by SB 2128 are also not included in this fiscal note.

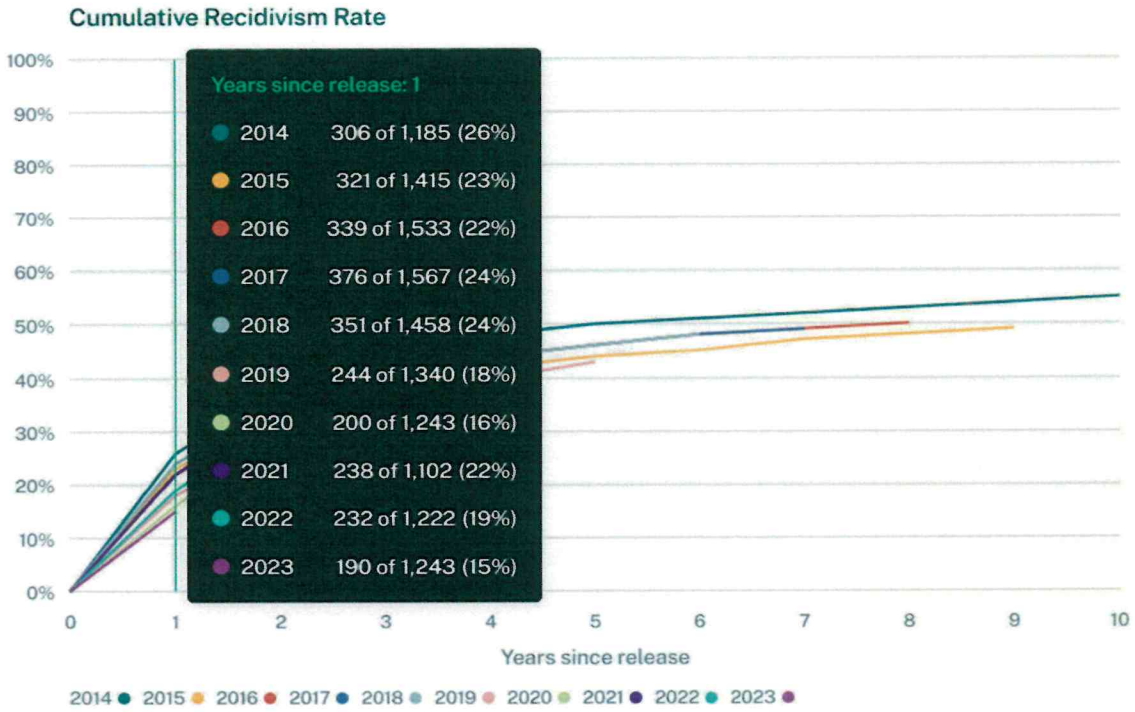
The Attorney General's claim that the true costs of SB 2128 are lower than the fiscal note is based on the mistaken assumption that our parole board will grant parole to everyone the first time they become eligible for it, under the bill's 50 percent time served mark. In reality, the parole board has been very consistent in denying parole – and virtually always does so for those who do not complete recommended or court-ordered rehabilitative programming. The parole board is right not to grant parole to people who haven't participated in programming that would help them safely re-enter our community. But for SB 2128 to cost less than the $270 million fiscal note we are providing it would require the parole board to release a large number of people without a chance to participate in any rehabilitative programming, education, or drug or mental health treatment. This will set these individuals up for failure. Even if the parole board did become more lenient in their releases without programming, the cost-savings from those releases would come with the cost of more new crimes. Paroling people from prison with no programming is a recipe for reoffending.

With respect to the Attorney General, his opinion matters on topics within his jurisdiction, like prosecuting crimes – but my expertise is on what we do with people once he is done with them. Based on my experience and on research and data, I can promise you that locking people up longer with less rehabilitation guarantees more crime and enormous costs. SB 2128 moves North Dakota in the wrong direction on public safety and fiscal responsibility.

SB 2128 is an expensive bill that makes our communities less safe. That is bad policy for our state. That is more fear and harm in our communities and homes. This bill targets

rehabilitation and second chances, ultimately forcing a significant fiscal burden on taxpayers. I am happy to answer any questions you have about the bill's language, the fiscal note and what it means in practice for my agency, my employees, and people in prison.

One-Year Snapshot on Recidivism



How many people end up back in prison? — Prison — North Dakota — Spotlight by Recidiviz

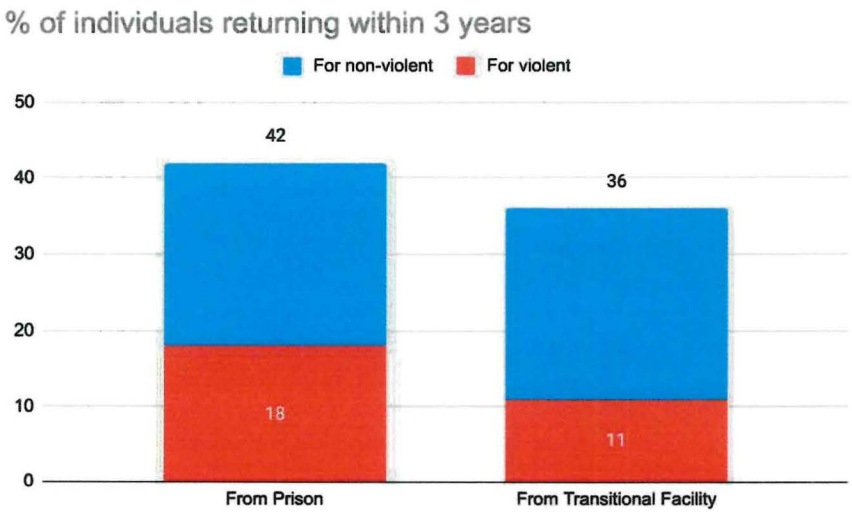
Returns to NDDOCR for violent bookings

1. Of individuals in NDDOCR on a violent (85% minimum) booking, **8% return** to NDDOCR on a 2nd or more violent booking after participation in a Transitional Facility.

2. Of individuals in NDDOCR on a non-violent booking, **2% return** to NDDOCR on a violent booking after participation in a Transitional Facility.

Inmates who participate in Transitional Facilities are Less Likely to commit new offenses within 3 years

This is particularly true for violent offenses



SB 2128
2-10-25

Fiscal No[illegible] 2128 Summary

NORTH Dakota Be Legendary.
Corrections and Rehabilitation

Expense/Saving	FY25-27	FY27-29	Section
Return Transitional Facility Residents to DOCR facilities	$ 1,254,074		Section 2
Restrict employment, education and rehabilitation	$ 18,164,427	$ 18,164,427	Section 3
Development to change good time calculation	$ 60,000		Section 5
Meritorious Good Time	$ 1,291,200	$ 1,291,200	Section 6
Preventing Arrest - 184 for 14 days	$ 381,248	$ 381,248	Section 7
Simple Assault - 154 for 30 days	$ 683,760	$ 683,760	Section 8
Truth In Sentencing	$ 67,687,872	$ 156,831,191	Section 10
Out of State Transportation	$ 577,876	$ 577,876	Section 10
Out of State Staff for Transportation	$ 645,600	$ 645,600	Section 10
Contract Mgmt & Operational Oversight	$ 881,184	$ 881,184	Section 10
Fleeing - 223 for 30 days	$ 990,120	$ 990,120	Section 11
TOTAL	**$ 90,746,057**	**$ 178,575,302**	

Section 3 Analysis

	Monthly Salary	Monthly Benefits	Total Monthly	# of staff needed		One-time Oper Costs	# months in Biennium	Total for 25-27 BI	
Maintenance staff	$ 5,531	$ 1,936	$ 7,467	5	$ 37,334	$10,810	24	$ 950,072	2 to MRCC, 3 JRCC
Barber	$ 3,500	$ 1,225	$ 4,725	6	$ 28,350	$10,810	24	$ 745,260	2 NDSP, 2 JRCC, 1 MRCC, 1 HRCC
Janitor	$ 3,524	$ 1,233	$ 4,757	20	$ 95,148	$10,810	24	$ 2,499,752	8 NDSP, 8 JRCC, 2 MRCC, 2 HRCC
Yard Crew Worker	$ 3,400	$ 1,190	$ 4,590	21	$ 96,390	$10,810	24	$ 2,540,370	8 NDSP, 5 JRCC, 5 MRCC, 3 HRCC
Cook/Servers	$ 4,450	$ 1,558	$ 6,008	40	$ 240,300	$10,810	24	$ 6,199,600	15 NDSP, 15 JRCC, 5 MRCC, 5 HRC
Librarian	$ 5,379	$ 1,883	$ 7,262	4	$ 29,047	$10,810	24	$ 740,358	1 at each facility
Certified Nursing Assistant	$ 4,036	$ 1,413	$ 5,449	1	$ 5,449	$10,810	24	$ 141,576	4-5 CNAS + Caregivers
Property Officer	$ 4,630	$ 1,621	$ 6,251	4	$ 25,002	$10,810	24	$ 643,288	2 NDSP, 1 JRCC, 1 MRCC/HRCC
Laundry	$ 3,524	$ 1,233	$ 4,757	12	$ 57,084	$10,810	24	$ 1,499,736	4 NDSP, 4 JRCC, 2 MRCC, 2 HRCC
Commissary/Warehouse	$ 3,700	$ 1,233	$ 4,933	7	$ 34,531	$10,810	24	$ 904,414	Central Office Function
				124		**$ 108,100**		**$ 16,864,427**	
								$ 16,864,427	

RRI would no longer function due to labor, education and rehabilitation restrictions.

	Annual Impact	Total for 25-27 BI
Lost profit from operations	$ 400,000	$ 800,000
Commissary	$ 250,000	$ 500,000
Total Biennial Impact for Section 3		**$ 18,164,427**

Fiscal Impact on the state 21-23
Expenses are from ND suppliers
Dumpsters

CURREN UNT (1/31/2025)	2,097		DOCR Capacity	1,626
Column1	FY25	FY26	FY27	Fy28
ADMISSIONS	**1,420**	**1,420**	**1,420**	**1,420**
RELEASES BY COHORT				
Old Admissions - parole*	1,342	156	124	98
Releases of New Admissions under 2128	42	336	630	924
People Paroled	17	31	46	61
TOTAL RELEASED	**1,401**	**524**	**800**	**1,083**
POPULATION END OF YEAR	**2,116**	**3,012**	**3,632**	**3,969**
Non DOCR Bed Expense	$ 17,887,267	$ 50,601,408	$ 73,231,774	$ 85,533,869
Biennial Non DOCR Bed Expense		$ 68,488,675		$ 158,765,643
TOTAL BED EXPENSE		$ 68,488,675		$ 158,765,643
Account for good time and reduce 100% sentence total to 97.7% (good time credit)		**$ 66,913,435**		**$ 155,114,033**

Transitional Housing costs for those Paroled				
Parolees in Transitional Facilities	17	31	46	61
Average Transitional Facility Cost	$ 89.09	$ 89.09	$ 89.09	$ 89.09
Days in Facility	180	180	180	180
	$ 269,387	$ 505,050	$ 740,713	$ 976,445
TRANSITIONAL HOUSING EXPENSE AFTER PAROLE		**$ 774,437**		**$ 1,717,158**
Total Expense of Section 10 TIS		**$ 67,687,872**		**$ 156,831,191**

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Corrections and Rehabilitation

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Corrections and Rehabilitation

Offense_Code	Offense_Description	Eligible Offense
0602A	FACILITATION OF THEFT	Eligible
06042105	CONSPIRACY TO COMMIT CRIMINAL MISCHIEF	Eligible
06042302	CONSPIRACY TO COMMIT THEFT	Eligible
06042401	CONSPIRACY TO COMMIT FORGERY	Eligible
06108	COMPUTER FRAUD	Eligible
1101	PERJURY	Eligible
12.1-11-07	FRAUDULENT PRACTICE IN URINE TESTING	Eligible
12.1-23-02(1)	ATTEMPTED THEFT-$1,000-$10,000	Eligible
12.1-23-02(1)1	ATTEMPTED THEFT-$10,000-$50,000	Eligible
12.1-23-02(1)A	ACCOMPLICE TO THEFT	Eligible
12.1-24-01(1)(B)	COUNTERFEITING-UTTERS/POSSESS COUNTERFEI	Eligible
12121061	INTER W/TELEPHONE DURING EMERGENCY CALL	Eligible
122401	CONSPIRACY TO COMMIT COUNTERFEITING	Eligible
124721	CONTROLLED SUBSTANCES PROHIBITED	Eligible
1502	INTERCEPTION OF WIRE OR ORAL COMMUN.	Eligible
1503	TRAFFIC IN INTERCEPTING DEVICES	Eligible
1903103L	POSS OF METH MANUFACTURING EQUIPMENT	Eligible
1903107	POSSESSION OF A CONTROLLED SUBSTANCE	Eligible
1903107H	UNLAWFUL POSSESSION CONTROLLED SUBSTANCE	Eligible
1903107J	CONSPIRACY TO POSS. A CONTROLLED SUB	Eligible
2102	ENDANGERING BY FIRE EXPLOSION	Eligible
2103	NEGLIGENT ACT RESULTING IN FIRE	Eligible
2105	CRIMINAL MISCHIEF	Eligible
2105A	ACCOMPLICE, CRIMINAL MISCHIEF	Eligible
2205	STOWING AWAY	Eligible
2302	THEFT OF PROPERTY	Eligible
2304	THEFT PROP, LOST, MISLAID, DEL. BY ACCID	Eligible
2305	THEFT BY DECEPTION	Eligible
2307	MISAPPLICATION OF ENTRUSTED PROPERTY	Eligible
2308	DEFRAUDING SECURED CREDITORS	Eligible
2401	FORGERY	Eligible
24011	COUNTERFEITING	Eligible
31103	POSSESSION OF DRUG PARAPHERNALIA	Eligible
31103A	UNLAWFUL POSS OF DRUG PARAPHERNALIA	Eligible
390801	DUI	Eligible
390801-3	DUI - 3RD OFFENSE	Eligible
390801-4	DUI - 4TH OFFENSE	Eligible
390801-5	DUI - 5TH OFFENSE	Eligible
390801-6	REFUSAL TO SUBMIT TO CHEMICAL TESTING	Eligible
390801-7	ACTUAL PHYSICAL CONTROL - 4TH OFFENSE	Eligible
390801-8	DUI - 6TH OFFENSE	Eligible
390801-9	DUI - 7TH OFFENSE	Eligible
390802	ACTUAL PHYSICAL CONTROL	Eligible

SB 2128
2-18-25

Proposed Amendment to Engrossed Senate Bill No. 2128

Sixty-ninth
Legislative Assembly
of North Dakota

FIRST ENGROSSMENT

ENGROSSED SENATE BILL NO. 2128

Introduced by

Judiciary Committee

(At the request of the Attorney General)

A BILL for an Act to amend and reenact sections 12-44.1-01, 12-47-18.1, 12-48.1-01, 12-48.1-02, 12-54.1-01, 12-54.1-03, 12.1-08-02, 12.1-17-01, 12.1-32-02.1, 12.1-32-09.1, and 39-10-71 of the North Dakota Century Code, relating to transparent sentencing of criminal offenders, transfer of persons between correctional facilities, work release eligibility and conditions for criminal offenders, sentences for assaulting and fleeing from law enforcement officers, and sentences for preventing arrest; to provide a legislative management report; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-44.1-01 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-01. Definitions.

As used in this chapter:

1. "Administrator" means the sheriff, chief of police, administrator, superintendent, director, or other individual serving as the chief executive officer of a correctional facility.
2. "Adult lockup" means a secure temporary-hold nonresidential facility that does not hold individuals overnight and includes a facility with cuffing rails or cuffing benches.
3. "Correctional facility" means a city or county jail or detention center, regional corrections center, or juvenile detention center for the detention or confinement of persons in accordance with law. The use of the term does not imply and may not be used to require the provision of services including treatment, counseling, career and technical education, or other educational services, except as may otherwise be

required or provided for under this chapter. The term does not include transitional facilities.

4. "Correctional facility staff" means correctional personnel with titles such as jailer, deputy, counselor, correctional officer, or any other title, whose duties include the ongoing supervision of inmates in a correctional facility.

5. "Court holding facility" means a secure facility, other than an adult correctional facility or adult lockup, used to temporarily detain individuals before or after a detention hearing or other court proceedings, and is not used to detain individuals overnight.

6. "Individual justice planning" means a process to identify, accommodate, and develop appropriate consequences for behaviors caused by or related to an individual's mental or cognitive impairment.

7. "Inmate" means any individual, whether sentenced or unsentenced, who is detained or confined in a correctional facility. The term does not include an individual who is under the supervision of the correctional facility and is supervised under home detention, electronic monitoring, or a similar program that does not involve physical detention or confinement in the facility.

8. "Jail" means a correctional facility, including a county or city jail or a regional corrections center.

9. "Juvenile detention center" means a publicly maintained correctional facility for the detention of juveniles. The term does not include the North Dakota youth correctional center.

10. "Regional corrections center" means a correctional facility established and maintained by more than one county or city, or a combination of counties and cities, for the confinement of inmates.

11. "Trained correctional facility staff" means correctional personnel who have completed a course of training approved by the peace officer standards and training board.

12. "Transitional facility" means ~~an organization~~a halfway house, assessment center, reentry facility, transitional living facility, or similar facility, operating under contract, in partnership with, or under the direction of the department of corrections and rehabilitation or a correctional facility, which offers education, counseling, or other programs, with unsecured or minimum security housing, for offenders.

SECTION 2. AMENDMENT. Section 12-47-18.1 of the North Dakota Century Code is amended and reenacted as follows:

12-47-18.1. Transfer of persons between correctional facilities.

~~The~~Subject to statutory limitations, the director of the department of corrections and rehabilitation may transfer an offender to any facility under the department's control or contract to transfer an offender to another correctional facility for purposes of safety, security, discipline, or medical care~~, or when the director determines it may be in the best interests of the public, the offender, or the department~~.

SECTION 3. AMENDMENT. Section 12-48.1-01 of the North Dakota Century Code is amended and reenacted as follows:

12-48.1-01. ~~Director may provide certain~~Work release and education or rehabilitation services for offenders.

1. The director of the department of corrections and rehabilitation may participate in programs in which ~~eligible offenders~~ an offender committed to the legal and physical custody of the department may be gainfully employed or participate in an educational or other rehabilitation program ~~either in or outside facilities~~ in the facility under the control of the department in which the offender resides.

   ~~The~~For eligible offenders, the director may obtain or contract with separate facilities with minimum security for housing offenders granted release privileges. In areas where facilities are not within reasonable proximity of the place of employment or training of an eligible offender so released, the director may arrange for the housing of the offender in local confinement facilities.

2. For purposes of this chapter, an "eligible offender" means an offender who:
   a. In accordance with section 12.1-32-09.1, has served eighty-five percent of the offender's sentence of imprisonment or had the offender's sentences commuted; or
   b. Is serving a sentence only for one or more violations of section 12.1-06.1-08, 12.1-11-01, 12.1-11-07, 12.1-15-02, or 12.1-15-03; subdivision c of subsection 1 of section 12.1-21-02; section 12.1-21-03.1; subdivision b of subsection 1 of section 12.1-21-05; section 12.1-21-06.1, 12.1-22-05, 12.1-23-02, 12.1-23-04, 12.1-23-07, 12.1-23-08, or 12.1-24-01; subsection 7 of section 19-03.1-23; or section 19-03.4-03 or 39-08-01.

3. The department of corrections and rehabilitation shall provide to the attorney general and the legislative council each quarter a report, including the names, locations, and sentences of each individual who meets the criteria in subdivision b of subsection 2.

SECTION 4. AMENDMENT. Section 12-48.1-02 of the North Dakota Century Code is amended and reenacted as follows:

12-48.1-02. Conditions of ~~eligibility for~~participation in release programs.

1. An eligible offender, except 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, may ~~be eligible for programs~~participate in a program outside ~~facilities~~a facility under the control of the department of corrections and rehabilitation when the department determines, with a high degree of reliability, the eligible offender is not a high security risk, not likely to commit a crime of violence, not likely to escape, and is likely to be rehabilitated by such program. An eligible offender may apply to the director of the department for permission to participate in such programs.
2. The director of the department may authorize participation in outside programs for an eligible offender who has ten years or less remaining on a sentence and has been committed to the legal and physical custody of the department. The parole board, with the approval of the director of the department, may authorize participation in outside programs for eligible offenders who have more than ten years remaining on a sentence and have been committed to the legal and physical custody of the department.
3. The offender shall submit a signed application which must include a statement that the eligible offender agrees to abide by all terms and conditions of the particular plan adopted for the eligible offender, and must include such other information as the parole board or the director of the department may require.
4. The parole board may approve, disapprove, or defer action on an application approved by the director of the department. The director of the department or the parole board may revoke approval of the application at any time after granting the application. The department shall prescribe rules of conduct and treatment for all eligible offenders on release programs and shall prescribe objective and subjective

criteria for which revocation of approval to participate in release programs is mandatory. A rule violation indicating the eligible offender likely will commit a crime of violence or is likely to attempt to escape must result in revocation of approval to participate in release programs. The department shall document all violations of the rules of conduct and treatment.

5. The director of the department may grant short leaves, not to exceed seventy-two hours, to eligible offenders who have been committed to the legal and physical custody of the department for ten years or less. The parole board, upon the approval of the director of the department, may grant short leaves, not to exceed seventy-two hours, to offenders committed to the legal and physical custody of the department for more than ten years. Short leaves granted under this subsection may not be granted consecutively to the same individual.

6. All rules adopted by the parole board and the director of the department relating to release programs and short leaves must conform, to the extent allowable by law, with executive order no. 11755 issued by the President of the United States.

SECTION 5. AMENDMENT. Section 12-54.1-01 of the North Dakota Century Code is amended and reenacted as follows:

12-54.1-01. Sentence reduction for good time.

~~Except as provided under~~Subject to the requirements of section 12.1-32-09.1, an offender committed to the legal and physical custody of the department of corrections and rehabilitation is eligible to earn sentence reductions based upon satisfactory fulfillment of performance criteria established through department and penitentiary rules. Performance criteria ~~includes~~must include participation in court-ordered or staff-recommended treatment and education programs and good work performance. The department may credit an offender committed to the legal and physical custody of the department who is eligible for sentence reduction up to five days good time per month for each month of the sentence ~~imposed~~served, up to a maximum of fifteen percent of the offender's sentence. Sentence reductions may not be awarded before they are earned. The department may credit an offender with sentence reduction for time spent in custody before sentencing and commitment to the legal and physical custody of the department. The department may not credit an offender with any sentence reduction for time spent on probation under the supervision and management of the department.

SECTION 6. AMENDMENT. Section 12-54.1-03 of the North Dakota Century Code is amended and reenacted as follows:

12-54.1-03. Meritorious conduct sentence reduction.

~~Except as provided under section 12.1-32-09.1, offenders~~Offenders committed to the legal and physical custody of the department of corrections and rehabilitation may receive a lump sum or a monthly rate of meritorious conduct sentence reduction for outstanding performance or heroic acts ~~or as a special control and security measure~~, as provided by penitentiary and department rules and upon written recommendation of a department multidisciplinary team. Meritorious sentence reductions are in addition to sentence reductions under section 12-54.1-01 and may be made only after a written recommendation is made by the warden and approved by the director of the department. Any sentence reduction ~~for special control or security measures~~under this section may not exceed ~~two days~~one day good time per month per offender.

SECTION 7. AMENDMENT. Section 12.1-08-02 of the North Dakota Century Code is amended and reenacted as follows:

12.1-08-02. Preventing arrest or discharge of other duties.

~~1.~~ A person is guilty of a class A misdemeanor if, with intent to prevent a public servant from effecting an arrest of himself or another for a misdemeanor or infraction, or from discharging any other official duty, he creates a substantial risk of bodily injury to the public servant or to anyone except himself, or employs means justifying or requiring substantial force to overcome resistance to effecting the arrest or the discharge of the duty. A person is guilty of a class C felony if, with intent to prevent a public servant from effecting an arrest of himself or another for a class A, B, or C felony, he creates a substantial risk of bodily injury to the public servant or to anyone except himself, or employs means justifying or requiring substantial force to overcome resistance to effecting such an arrest.

~~2.~~1. It is a defense to a prosecution under this section that the public servant was not acting lawfully, but it is no defense that the defendant mistakenly believed that the public servant was not acting lawfully. A public servant executing a warrant or other process in good faith and under color of law shall be deemed to be acting lawfully.

2. A conviction under this section carries a penalty of at least fourteen days' imprisonment and, if there is an underlying conviction, the imprisonment must be consecutive to any sentence of imprisonment for the underlying conviction.

SECTION 8. AMENDMENT. Section 12.1-17-01 of the North Dakota Century Code is amended and reenacted as follows:

12.1-17-01. Simple assault.

1. A person is guilty of an offense if that person:
   a. Willfully causes bodily injury to another human being; or
   b. Negligently causes bodily injury to another human being by means of a firearm, destructive device, or other weapon, the use of which against a human being is likely to cause death or serious bodily injury.
2. The offense is:
   a. A class C felony when the victim is a peace officer or correctional institution employee acting in an official capacity, which the actor knows to be a fact; an employee of the state hospital acting in the course and scope of employment, which the actor knows to be a fact, and the actor is an individual committed to or detained at the state hospital pursuant to chapter 25-03.3; a person engaged in a judicial proceeding; or a member of a municipal or volunteer fire department or emergency medical services personnel unit or emergency department worker in the performance of the member's duties.
   b. A class B misdemeanor except as provided in subdivision a.
   c. A conviction under subdivision a carries a penalty of at least thirty days' imprisonment and, if there is an underlying conviction, the imprisonment must be consecutive to any sentence of imprisonment for the underlying conviction.

SECTION 9. AMENDMENT. Section 12.1-32-02.1 of the North Dakota Century Code is amended and reenacted as follows:

12.1-32-02.1. Mandatory prison terms for armed offenders.

1. Notwithstanding any other provision of this title, a term of imprisonment must be imposed upon an offender and served without benefit of parole when:

a. In the course of committing an offense, the offender inflicts or attempts to inflict bodily injury upon another, threatens or menaces another with imminent bodily injury with a dangerous weapon, explosive, destructive device, or firearm; or

b. An offender prohibited from possessing a firearm under section 62.1-02-01 possesses a firearm while in the course of committing any felony offense under subsection 1~~,~~ or 3~~, or 7~~ of section 19-03.1-23.

2. This requirement applies only when possession of a dangerous weapon, explosive, destructive device, or firearm has been charged and admitted or found to be true in the manner provided by law, and must be imposed as follows:

a. If the offense for which the offender is convicted is a class AA, class A, or class B felony, the court shall impose a minimum sentence of four years' imprisonment.

b. If the offense for which the offender is convicted is a class C felony, the court shall impose a minimum sentence of two years' imprisonment.

3. This section applies even when being armed is an element of the offense for which the offender is convicted.

4. This section applies even if the offender is prosecuted for a violation of section 62.1-02-01 for the same conduct.

5. 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~~is not an eligible offender under subdivision b of subsection 2 of section 12-48.1-01.

SECTION 10. AMENDMENT. Section 12.1-32-09.1 of the North Dakota Century Code is amended and reenacted as follows:

12.1-32-09.1. ~~Sentencing of violent offenders~~Truth in sentencing.

1. Except as provided under ~~section~~sections 12-48.1-01 and 12-48.1-02 ~~and pursuant to rules adopted by the department of corrections and rehabilitation~~, an offender who is sentenced as a dangerous special offender or habitual offender under section 12.1-32-09, or is convicted of a crime in violation of section 12.1-16-01, 12.1-16-02, subsection 2 of section 12.1-17-02, section 12.1-18-01, subdivision a of subsection 1 or subdivision b of subsection 2 of section 12.1-20-03, section 12.1-22-01, subdivision b of subsection 2 of section 12.1-22-02, or an attempt to commit the

offenses, and who receives a sentence of imprisonment is not eligible for release from confinement on any basis until eighty-five percent of the sentence imposed by the court has been served or the sentence is commuted. All other offenders are not eligible for release from confinement on any basis until:

a. Fifty percent of the sentence imposed by the court is served, not including any time credited under section 12-54.1-01, and the offender is paroled;

b. The offender's sentence is commuted and the offender served the commuted sentence;

c. Eighty-five percent of the sentence imposed by the court is served; or

d. The offender is pardoned.

2. In the case of an offender who is sentenced to a term of life imprisonment with opportunity for parole under subsection 1 of section 12.1-32-01, the term "sentence imposed" means the remaining life expectancy of the offender on the date of sentencing. The remaining life expectancy of the offender must be calculated on the date of sentencing, computed by reference to a recognized mortality table as established by rule by the supreme court.

3. Notwithstanding this section, an offender sentenced under subsection 1 of section 12.1-32-01 may not be eligible for parole until the requirements of that subsection have been met.

4. ~~An offender who is convicted of a class C felony in violation of section 12.1-17-02, or an attempt to commit the offense, and who has received a sentence of imprisonment or a sentence of imprisonment upon revocation of probation before August 1, 2015, is eligible to have the offender's sentence considered by the parole board.~~

~~5. Notwithstanding subsection 4, this section does not apply to a sentence imposed upon revocation of probation.~~For purposes of this section "confinement" does not include placement or residence in a transitional facility, halfway house, or ~~other organization or~~ similar facility, operating under contract, in partnership with, or under the direction of the department of corrections and rehabilitation or other correctional facility, ~~that offers education, counseling, or other programs,~~ with unsecured or minimum security housing, ~~for offenders.~~

5. Notwithstanding subsection 4, placement or residence at the James River correctional center, Missouri River correctional center, Heart River correctional center, or

Dakota women's correctional and rehabilitation center, or county jail is "confinement" for purposes of this section, provided the order to place the inmate in the center or jail is approved by an identifiable employee of the department of corrections and rehabilitation after the employee determines, with reasonable certainty, that the placement will not pose a danger to the public.

SECTION 11. AMENDMENT. Section 39-10-71 of the North Dakota Century Code is amended and reenacted as follows:

39-10-71. Fleeing or attempting to elude a peace officer - Penalty.

1. A driver of a motor vehicle who willfully fails or refuses to bring the vehicle to a stop, or who otherwise flees or attempts to elude, in any manner, a pursuing police vehicle or peace officer, when given a visual or audible signal to bring the vehicle to a stop, is guilty of a:
   a. Class A misdemeanor for a first offense and a class C felony for a subsequent offense within three years;
   b. Class C felony if the driver violates this section while willfully fleeing during or after the commission of a felony; or
   c. Class C felony if, at any time during the flight or pursuit, the driver willfully operates the vehicle in a manner constituting an inherent risk of death or serious bodily injury to a third person.
2. A signal complies with this section if the signal is perceptible to the driver and:
   a. If given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the stopping vehicle is appropriately marked showing it to be an official police vehicle; or
   b. If not given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the officer is in uniform or prominently displays the officer's badge of office.
3. A felony conviction under this section carries a penalty of at least thirty days' imprisonment and, if there is an underlying conviction, the imprisonment must be consecutive to any sentence of imprisonment for the underlying conviction.
4. Upon a motion by a state's attorney, a court may order that a motor vehicle used in the commission of a violation of this section be impounded by a peace officer for up to six months.

2025 SENATE STANDING COMMITTEE MINUTES

Appropriations - Human Resources Division
Harvest Room, State Capitol

SB 2128
2/20/2025

Relating to transparent sentencing of criminal offenders, transfer of persons between correctional facilities, work release eligibility and conditions for criminal offenders, sentences for assaulting and fleeing from law enforcement offices, and sentences for preventing arrest.

9:30 a.m. Chairman Dever opened the hearing.

Discussion Topics:

- Inmate Qualification to Participate in Programs.
- Good Time Calculation
- Suicidal Watch Program
- Extra Cost of Days in Prison

9:33 a.m. Grant Gader, Fiscal Analyst, LC, testified neutral.

9:39 a.m. Clair Ness, Deputy Attorney General, introduced amendment LC 25.8109.02002, testified in favor and submitted testimony #38195.

9:40 a.m. Senator Mathern moved amendment LC 25.8109.02002.

9:40 a.m. Senator Davison seconded the motion.

Voice Vote: Motion Passed.

9:45 a.m. Colby Braun, Director, Department of Corrections and Rehabilitation (DOCR), testified in opposition and provided testimony on fiscal note and submitted testimony #38197.

10:15 a.m. Senator Mathern moved a Do Not Pass as Amended.

10:20 a.m. Senator Cleary seconded the motion.

Senators	Vote
Senator Dick Dever	Y
Senator Sean Cleary	Y
Senator Kyle Davison	Y
Senator Jeffery J. Magrum	A
Senator Tim Mathern	Y

Motion Passed 4-0-1.

Chairman Dever will carry the bill.

10:27 a.m. Chairman Dever closed the hearing.

Joan Bares, Committee Clerk

25.8109.02002
Title.

Prepared by the Legislative Council staff for Senator Paulson
February 18, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO FIRST ENGROSSMENT

ENGROSSED SENATE BILL NO. 2128

Introduced by

Judiciary Committee

(At the request of the Attorney General)

A BILL for an Act to amend and reenact sections 12-44.1-01, 12-47-18.1, 12-48.1-01, 12-48.1-02, 12-54.1-01, 12-54.1-03, 12.1-08-02, 12.1-17-01, 12.1-32-02.1, 12.1-32-09.1, and 39-10-71 of the North Dakota Century Code, relating to transparent sentencing of criminal offenders, transfer of persons between correctional facilities, work release eligibility and conditions for criminal offenders, sentences for assaulting and fleeing from law enforcement officers, and sentences for preventing arrest; to provide a legislative management report; ~~and~~ to provide a penalty; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-44.1-01 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-01. Definitions.

As used in this chapter:

1. "Administrator" means the sheriff, chief of police, administrator, superintendent, director, or other individual serving as the chief executive officer of a correctional facility.
2. "Adult lockup" means a secure temporary-hold nonresidential facility that does not hold individuals overnight and includes a facility with cuffing rails or cuffing benches.
3. "Correctional facility" means a city or county jail or detention center, regional corrections center, or juvenile detention center for the detention or confinement of persons in accordance with law. The use of the term does not imply and may not be

used to require the provision of services including treatment, counseling, career and technical education, or other educational services, except as may otherwise be required or provided for under this chapter. The term does not include transitional facilities.

4. "Correctional facility staff" means correctional personnel with titles such as jailer, deputy, counselor, correctional officer, or any other title, whose duties include the ongoing supervision of inmates in a correctional facility.

5. "Court holding facility" means a secure facility, other than an adult correctional facility or adult lockup, used to temporarily detain individuals before or after a detention hearing or other court proceedings, and is not used to detain individuals overnight.

6. "Individual justice planning" means a process to identify, accommodate, and develop appropriate consequences for behaviors caused by or related to an individual's mental or cognitive impairment.

7. "Inmate" means any individual, whether sentenced or unsentenced, who is detained or confined in a correctional facility. The term does not include an individual who is under the supervision of the correctional facility and is supervised under home detention, electronic monitoring, or a similar program that does not involve physical detention or confinement in the facility.

8. "Jail" means a correctional facility, including a county or city jail or a regional corrections center.

9. "Juvenile detention center" means a publicly maintained correctional facility for the detention of juveniles. The term does not include the North Dakota youth correctional center.

10. "Regional corrections center" means a correctional facility established and maintained by more than one county or city, or a combination of counties and cities, for the confinement of inmates.

11. "Trained correctional facility staff" means correctional personnel who have completed a course of training approved by the peace officer standards and training board.

12. "Transitional facility" means ~~an organization~~a halfway house, assessment center, re-entry facility, transitional living facility, or similar facility, operating under contract, in partnership with, or under the direction of the department of corrections and

rehabilitation or a correctional facility, which offers education, counseling, or other programs, with unsecured or minimum security housing, for offenders.

SECTION 2. AMENDMENT. Section 12-47-18.1 of the North Dakota Century Code is amended and reenacted as follows:

12-47-18.1. Transfer of persons between correctional facilities.

~~The~~Subject to statutory limitations, the director of the department of corrections and rehabilitation may transfer an offender to any facility under the department's control or contract to transfer an offender to another correctional facility for purposes of safety, security, discipline, or medical care~~, or when the director determines it may be in the best interests of the public, the offender, or the department~~.

SECTION 3. AMENDMENT. Section 12-48.1-01 of the North Dakota Century Code is amended and reenacted as follows:

12-48.1-01. ~~Director may provide certain~~Work release and education or rehabilitation services for offenders.

1. The director of the department of corrections and rehabilitation may participate in programs in which ~~eligible offenders~~an offender committed to the legal and physical custody of the department may be gainfully employed or participate in an educational or other rehabilitation program ~~either in or outside facilities~~in the facility under the control of the department in which the offender resides. ~~The~~For eligible offenders, the director may obtain or contract with separate facilities with minimum security for housing offenders granted release privileges. In areas where facilities are not within reasonable proximity of the place of employment or training of an eligible offender so released, the director may arrange for the housing of the offender in local confinement facilities.
2. For purposes of this chapter, an "eligible offender" means an offender who:
   a. In accordance with section 12.1-32-09.1, has served eighty-five percent of the offender's sentence of imprisonment or had the offender's sentences commuted; or
   b. Is serving a sentence only for one or more violations of section 12.1-06.1-08, 12.1-11-01, 12.1-11-07, 12.1-15-02, or 12.1-15-03; subdivision c of subsection 1 of section 12.1-21-02; section 12.1-21-03.1; subdivision b of subsection 1 of

section 12.1-21-05; section 12.1-21-06.1, 12.1-22-05, 12.1-23-02, 12.1-23-04, 12.1-23-07, 12.1-23-08, or 12.1-24-01; subsection 7 of section 19-03.1-23; or section 19-03.4-03 or 39-08-01.

3. The department of corrections and rehabilitation shall provide to the attorney general and the legislative council each quarter a report, including the names, locations, and sentences of each individual who meets the criteria in subdivision b of subsection 2.

SECTION 4. AMENDMENT. Section 12-48.1-02 of the North Dakota Century Code is amended and reenacted as follows:

12-48.1-02. Conditions of ~~eligibility for~~participation in release programs.

1. An eligible offender, except 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, may ~~be eligible for programs~~participate in a program outside ~~facilities~~a facility under the control of the department of corrections and rehabilitation when the department determines, with a high degree of reliability, the eligible offender is not a high security risk, not likely to commit a crime of violence, not likely to escape, and is likely to be rehabilitated by such program. An eligible offender may apply to the director of the department for permission to participate in such programs.
2. The director of the department may authorize participation in outside programs for an eligible offender who has ten years or less remaining on a sentence and has been committed to the legal and physical custody of the department. The parole board, with the approval of the director of the department, may authorize participation in outside programs for eligible offenders who have more than ten years remaining on a sentence and have been committed to the legal and physical custody of the department.
3. The offender shall submit a signed application which must include a statement that the eligible offender agrees to abide by all terms and conditions of the particular plan adopted for the eligible offender, and must include such other information as the parole board or the director of the department may require.
4. The parole board may approve, disapprove, or defer action on an application approved by the director of the department. The director of the department or the

parole board may revoke approval of the application at any time after granting the application. The department shall prescribe rules of conduct and treatment for all eligible offenders on release programs and shall prescribe objective and subjective criteria for which revocation of approval to participate in release programs is mandatory. A rule violation indicating the eligible offender likely will commit a crime of violence or is likely to attempt to escape must result in revocation of approval to participate in release programs. The department shall document all violations of the rules of conduct and treatment.

5. The director of the department may grant short leaves, not to exceed seventy-two hours, to eligible offenders who have been committed to the legal and physical custody of the department for ten years or less. The parole board, upon the approval of the director of the department, may grant short leaves, not to exceed seventy-two hours, to offenders committed to the legal and physical custody of the department for more than ten years. Short leaves granted under this subsection may not be granted consecutively to the same individual.

6. All rules adopted by the parole board and the director of the department relating to release programs and short leaves must conform, to the extent allowable by law, with executive order no. 11755 issued by the President of the United States.

SECTION 5. AMENDMENT. Section 12-54.1-01 of the North Dakota Century Code is amended and reenacted as follows:

12-54.1-01. Sentence reduction for good time.

~~Except as provided under~~Subject to the requirements of section 12.1-32-09.1, an offender committed to the legal and physical custody of the department of corrections and rehabilitation is eligible to earn sentence reductions based upon satisfactory fulfillment of performance criteria established through department and penitentiary rules. Performance criteria ~~includes~~must include participation in court-ordered or staff-recommended treatment and education programs and good work performance. The department may credit an offender committed to the legal and physical custody of the department who is eligible for sentence reduction up to five days good time per month for each month of the sentence ~~imposed~~served, up to a maximum of fifteen percent of the offender's sentence. Sentence reductions may not be awarded before they are earned. The department may credit an offender with sentence reduction for time spent in

custody before sentencing and commitment to the legal and physical custody of the department. The department may not credit an offender with any sentence reduction for time spent on probation under the supervision and management of the department.

SECTION 6. AMENDMENT. Section 12-54.1-03 of the North Dakota Century Code is amended and reenacted as follows:

12-54.1-03. Meritorious conduct sentence reduction.

~~Except as provided under section 12.1-32-09.1, offenders~~Offenders committed to the legal and physical custody of the department of corrections and rehabilitation may receive a lump sum or a monthly rate of meritorious conduct sentence reduction for outstanding performance or heroic acts ~~or as a special control and security measure~~, as provided by penitentiary and department rules and upon written recommendation of a department multidisciplinary team. Meritorious sentence reductions are in addition to sentence reductions under section 12-54.1-01 and may be made only after a written recommendation is made by the warden and approved by the director of the department. Any sentence reduction ~~for special control or security measures~~under this section may not exceed ~~two days~~one day good time per month per offender.

SECTION 7. AMENDMENT. Section 12.1-08-02 of the North Dakota Century Code is amended and reenacted as follows:

12.1-08-02. Preventing arrest or discharge of other duties.

~~1.~~ A person is guilty of a class A misdemeanor if, with intent to prevent a public servant from effecting an arrest of himself or another for a misdemeanor or infraction, or from discharging any other official duty, he creates a substantial risk of bodily injury to the public servant or to anyone except himself, or employs means justifying or requiring substantial force to overcome resistance to effecting the arrest or the discharge of the duty. A person is guilty of a class C felony if, with intent to prevent a public servant from effecting an arrest of himself or another for a class A, B, or C felony, he creates a substantial risk of bodily injury to the public servant or to anyone except himself, or employs means justifying or requiring substantial force to overcome resistance to effecting such an arrest.

~~2.~~1. It is a defense to a prosecution under this section that the public servant was not acting lawfully, but it is no defense that the defendant mistakenly believed that the

public servant was not acting lawfully. A public servant executing a warrant or other process in good faith and under color of law shall be deemed to be acting lawfully.

2. A conviction under this section carries a penalty of at least fourteen days' imprisonment and, if there is an underlying conviction, the imprisonment must be consecutive to any sentence of imprisonment for the underlying conviction.

SECTION 8. AMENDMENT. Section 12.1-17-01 of the North Dakota Century Code is amended and reenacted as follows:

12.1-17-01. Simple assault.

1. A person is guilty of an offense if that person:
   a. Willfully causes bodily injury to another human being; or
   b. Negligently causes bodily injury to another human being by means of a firearm, destructive device, or other weapon, the use of which against a human being is likely to cause death or serious bodily injury.
2. The offense is:
   a. A class C felony when the victim is a peace officer or correctional institution employee acting in an official capacity, which the actor knows to be a fact; an employee of the state hospital acting in the course and scope of employment, which the actor knows to be a fact, and the actor is an individual committed to or detained at the state hospital pursuant to chapter 25-03.3; a person engaged in a judicial proceeding; or a member of a municipal or volunteer fire department or emergency medical services personnel unit or emergency department worker in the performance of the member's duties.
   b. A class B misdemeanor except as provided in subdivision a.

~~c.~~3. A conviction under subdivision a of subsection 2 carries a penalty of at least thirty days' imprisonment and, if there is an underlying conviction, the imprisonment must be consecutive to any sentence of imprisonment for the underlying conviction.

SECTION 9. AMENDMENT. Section 12.1-32-02.1 of the North Dakota Century Code is amended and reenacted as follows:

12.1-32-02.1. Mandatory prison terms for armed offenders.

1. Notwithstanding any other provision of this title, a term of imprisonment must be imposed upon an offender and served without benefit of parole when:

a. In the course of committing an offense, the offender inflicts or attempts to inflict bodily injury upon another, threatens or menaces another with imminent bodily injury with a dangerous weapon, explosive, destructive device, or firearm; or

b. An offender prohibited from possessing a firearm under section 62.1-02-01 possesses a firearm while in the course of committing any felony offense under subsection 1~~,~~ or 3~~, or 7~~ of section 19-03.1-23.

2. This requirement applies only when possession of a dangerous weapon, explosive, destructive device, or firearm has been charged and admitted or found to be true in the manner provided by law, and must be imposed as follows:

a. If the offense for which the offender is convicted is a class AA, class A, or class B felony, the court shall impose a minimum sentence of four years' imprisonment.

b. If the offense for which the offender is convicted is a class C felony, the court shall impose a minimum sentence of two years' imprisonment.

3. This section applies even when being armed is an element of the offense for which the offender is convicted.

4. This section applies even if the offender is prosecuted for a violation of section 62.1-02-01 for the same conduct.

5. 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~~is not an eligible offender under subdivision b of subsection 2 of section 12-48.1-01.

SECTION 10. AMENDMENT. Section 12.1-32-09.1 of the North Dakota Century Code is amended and reenacted as follows:

12.1-32-09.1. ~~Sentencing of violent offenders~~Truth in sentencing.

1. Except as provided under ~~section~~sections 12-48.1-01 and 12-48.1-02 ~~and pursuant to rules adopted by the department of corrections and rehabilitation~~, an offender who is sentenced as a dangerous special offender or habitual offender under section 12.1-32-09, or is convicted of a crime in violation of section 12.1-16-01, 12.1-16-02, subsection 2 of section 12.1-17-02, section 12.1-18-01, subdivision a of subsection 1 or subdivision b of subsection 2 of section 12.1-20-03, section 12.1-22-01, subdivision b of subsection 2 of section 12.1-22-02, or an attempt to commit the

offenses, and who receives a sentence of imprisonment is not eligible for release from confinement on any basis until eighty-five percent of the sentence imposed by the court has been served or the sentence is commuted. All other offenders are not eligible for release from confinement on any basis until:

a. Fifty percent of the sentence imposed by the court is served, not including any time credited under section 12-54.1-01, and the offender is paroled;

b. The offender's sentence is commuted and the offender served the commuted sentence;

c. Eighty-five percent of the sentence imposed by the court is served; or

d. The offender is pardoned.

2. In the case of an offender who is sentenced to a term of life imprisonment with opportunity for parole under subsection 1 of section 12.1-32-01, the term "sentence imposed" means the remaining life expectancy of the offender on the date of sentencing. The remaining life expectancy of the offender must be calculated on the date of sentencing, computed by reference to a recognized mortality table as established by rule by the supreme court.

3. Notwithstanding this section, an offender sentenced under subsection 1 of section 12.1-32-01 may not be eligible for parole until the requirements of that subsection have been met.

4. ~~An offender who is convicted of a class C felony in violation of section 12.1-17-02, or an attempt to commit the offense, and who has received a sentence of imprisonment or a sentence of imprisonment upon revocation of probation before August 1, 2015, is eligible to have the offender's sentence considered by the parole board.~~

~~5.~~ ~~Notwithstanding subsection 4, this section does not apply to a sentence imposed upon revocation of probation.~~For purposes of this section "confinement" does not include placement or residence in a transitional facility, halfway house, or ~~other organization or~~similar facility, operating under contract, in partnership with, or under the direction of the department of corrections and rehabilitation or other correctional facility, ~~that offers education, counseling, or other programs,~~ with unsecured or minimum security housing~~, for offenders~~.

5. Notwithstanding subsection 4, placement or residence at the James River correctional center, Missouri River correctional center, Heart River correctional center, or Dakota women's correctional and rehabilitation center, or county jail is "confinement" for purposes of this section, provided the order to place the inmate in the center or jail is approved by an identifiable employee of the department of corrections and rehabilitation after the employee determines, with reasonable certainty, the placement will not pose a danger to the public.

SECTION 11. AMENDMENT. Section 39-10-71 of the North Dakota Century Code is amended and reenacted as follows:

39-10-71. Fleeing or attempting to elude a peace officer - Penalty.

1. A driver of a motor vehicle who willfully fails or refuses to bring the vehicle to a stop, or who otherwise flees or attempts to elude, in any manner, a pursuing police vehicle or peace officer, when given a visual or audible signal to bring the vehicle to a stop, is guilty of a:
   a. Class A misdemeanor for a first offense and a class C felony for a subsequent offense within three years;
   b. Class C felony if the driver violates this section while willfully fleeing during or after the commission of a felony; or
   c. Class C felony if, at any time during the flight or pursuit, the driver willfully operates the vehicle in a manner constituting an inherent risk of death or serious bodily injury to a third person.
2. A signal complies with this section if the signal is perceptible to the driver and:
   a. If given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the stopping vehicle is appropriately marked showing it to be an official police vehicle; or
   b. If not given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the officer is in uniform or prominently displays the officer's badge of office.
3. A felony conviction under this section carries a penalty of at least thirty days' imprisonment and, if there is an underlying conviction, the imprisonment must be consecutive to any sentence of imprisonment for the underlying conviction.

4. Upon a motion by a state's attorney, a court may order that a motion vehicle used in the commission of a violation of this section be impounded by a peace officer for up to six months.

SECTION 12. APPLICATION. Sections 1, 2, 3, 4, 5, 6, 9, and 10 of this Act apply to individuals who are charged after July 31, 2025, with violations subject to the provisions of this Act.

SB 2128
2-20-25

SENATE APPROPRIATIONS HUMAN RESOURCE DIVISION COMMITTEE
SENATOR DICK DEVER, CHAIR
FEBRUARY 20, 2025

NORTH DAKOTA DEPARTMENT OF CORRECTIONS AND REHABILITATION
PRESENTING TESTIMONY ON SENATE BILL 2128 FISCAL NOTE

Chairman Dever and members of the Senate Appropriations Human Resource Division Committee, I am Colby Braun, Director of the North Dakota Department of Corrections and Rehabilitation (DOCR). I am here to provide testimony on the fiscal note for Senate Bill 2128.

The Facts of Senate Bill 2128:

1. No matter how restrictive this bill is – 95% of people who come to prison, will be our neighbor.
2. Violence in North Dakota will increase.
    a. 92% of violent offenders who reenter society through a transitional facility do not commit another violent act returning them to a ND prison.
    b. 98% of non-violent offenders who reenter society through a transitional facility do not commit a violent act returning them to a ND prison.
    c. A violent offender released directly to society from prison rather than going through a transitional facility is 39% more likely to return to a ND prison for committing another violent crime.
3. One of the key elements of this bill is to take away one of the best mechanisms we have for reducing violent crime. The result is that if we pass this bill, there will be more victims of crime.
4. Recidivism in North Dakota will increase.
    a. Regardless of whether the crime is considered violent or non-violent, people who reenter society through a transitional facility are 14% less likely to return to prison in 3 years.

5. North Dakota prison and jail employees will be less safe.
    a. Removing incentives for making good choices will increase violence in prison. The current design of good time incentivizes personal responsibility. Under this bill individuals who are not yet eligible for treatment will lose their incentive to maintain good behavior within our prison walls.
6. To go directly from prison back to normal life is dramatic. Coaching people through this return to society is what reduces reoffending and the likelihood of violence.
7. Fewer people will be released with drug and alcohol treatment completed. 306 people completed drug and alcohol treatment in a transitional facility last year. DOCR doesn't have the space or personnel to meet the new demand for treatment. Historically, DOCR has had a difficult time to recruit addiction counselors.
8. The specific language of this bill ignores the reality of what we can provide. A person MUST be working AND participating in education AND participating in court-ordered treatment or staff-recommended treatment. We do not have enough jobs for every person, so people are on a waiting list for employment. Approximately 35% of people in prison need a GED. Treatment programs are offered to inmates when they are nearing release, if resources are available. It will be rare that a person will be participating in all three at the same time. This means that the current language of the bill will disincentivize people from participating in education or vocational or treatment programs. The mindset will become, since the state can't support me to do all three, and since I don't benefit from doing 1 or 2, I'll just do nothing at all. As we have said before, idle hands are the devil's workshop.

Fiscal Note SB 2128 Summary

Expense/Saving	FY25-27	FY27-29	Section
Return Transitional Facility Residents to DOCR facilities	$ 1,254,074		Section 2
Restrict employment, education and rehabilitation	$ 2,045,192	$ 2,045,192	Section 3
Development to change good time calculation	$ 180,000		Section 5
Meritorious Credit	$ 1,291,200	$ 1,291,200	Section 6
Preventing Arrest - 184 for 14 days	$ 381,248	$ 381,248	Section 7
Simple Assault - 154 for 30 days	$ 683,760	$ 683,760	Section 8
Confinement Increase in Cost from Transitional Facilities to DOCR	$ 6,836,990	$ 6,836,990	Section 10
Parole Board Restriction - 50% Sentence Served	$ 10,019,500	$ 10,019,500	Section 10
LACs to replace those in Transitional Facilities	$ 1,617,850	$ 1,617,850	Section 10
Fleeing - 223 for 30 days	$ 990,120	$ 990,120	Section 11
TOTAL	**$ 22,691,965**	**$ 21,257,890**	

Other Societal/State Fiscal Impact	FY25-27	FY27-29	Impacted Entity
Lost fines/fees/restitution from work	$ 600,000	$ 600,000	Victim Impact
Lost Taxes (Federal, Social Security & Medicare)	$ 1,550,727	$ 1,550,727	Federal & State Impact
Lost Child Support	$ 1,923,470	$ 1,923,470	State/Family Impact
TOTAL	**$ 4,074,197**	**$ 4,074,197**	

Section 3:

Offenders can work in the facilities where they reside.
The work below is done by offenders living at a facility and working at another facility outside of their living space.

These positions would be required to hire from the general public as the work could not longer be completed using inmate labor.

Section 3 Analysis

	Monthly Salary	Monthly Benefits	Total Monthly	# of staff needed		One-time Oper Costs	# months in Biennium	Total for 25-27 BI	
Janitor	$ 3,200	$ 1,120	$ 4,320	1	$ 4,320	$10,810	24	$ 114,490	NDSP
Yard Crew Worker	$ 3,400	$ 1,190	$ 4,590	4	$ 18,360	$10,810	24	$ 451,450	NDSP
Yard Crew Worker	$ 3,400	$ 1,190	$ 4,590	2	$ 9,180	$10,810	24	$ 231,130	YCC
Yard Crew Worker	$ 3,400	$ 1,190	$ 4,590	0.5	$ 2,295	$ 10,810	24	$ 65,890	JRCC/JRMU (other 0.5 is work done for NDSH)
RRI Warehouse/Installers	$ 5,165	$ 1,808	$ 6,973	7	$ 48,809	$10,810	24	$ 1,182,232	Rough Rider
Total Biennial Impact				**14.5**		**$ 54,050**		**$ 2,045,192**	

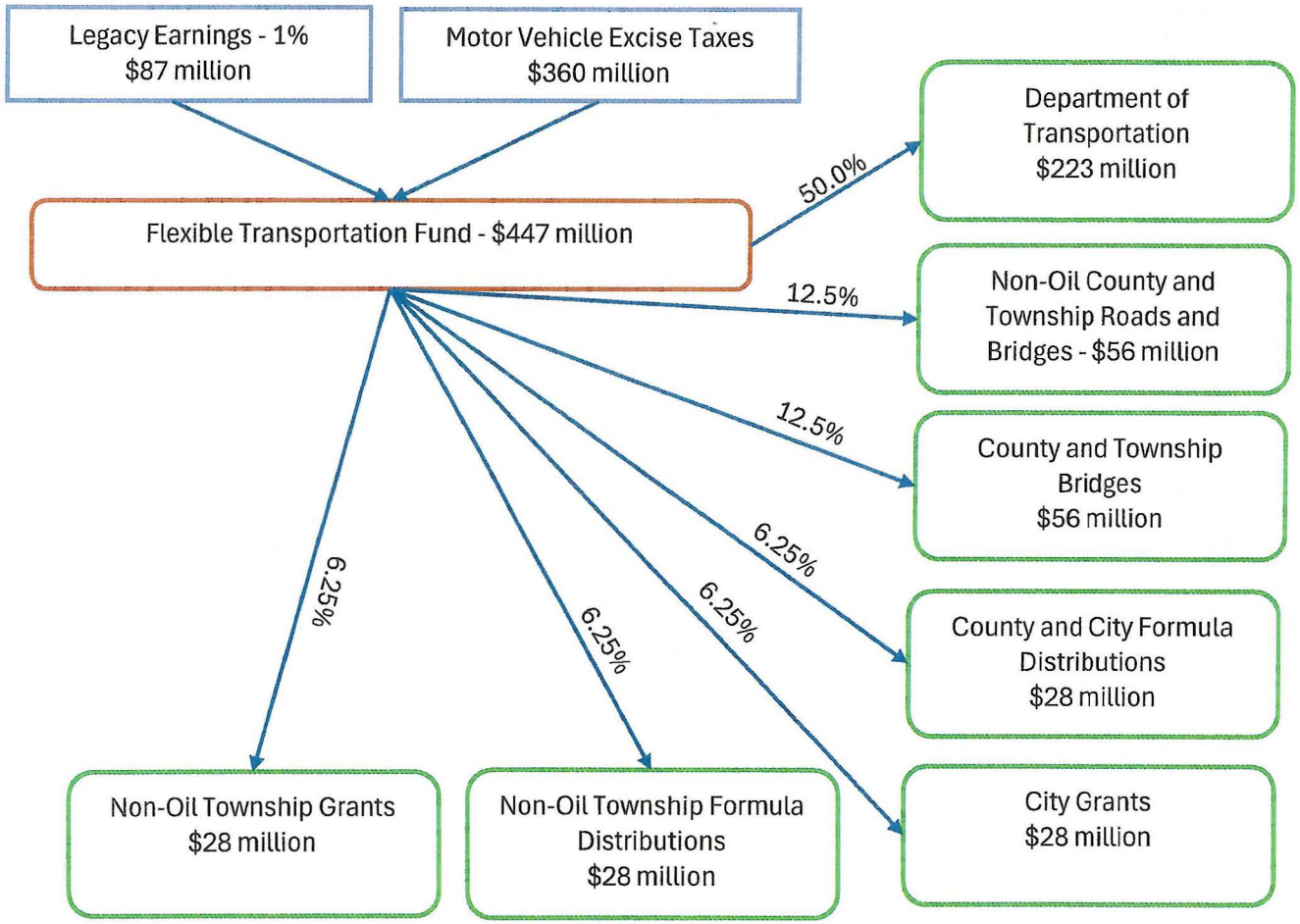
Amendment 10 - Confinement & Parole Board Restrictions

	FY25-27	FY27-29
Confinement - Remove access to Transitional Facilities	$ 6,836,990	$ 6,836,990
LAC's for 306 people (previously provided at TFs)	$ 1,617,850	$ 1,617,850
50% of sentence must be served before parole	$ 10,019,500	$ 10,019,500
Total Fiscal Impact	**$ 18,474,340**	**$ 18,474,340**

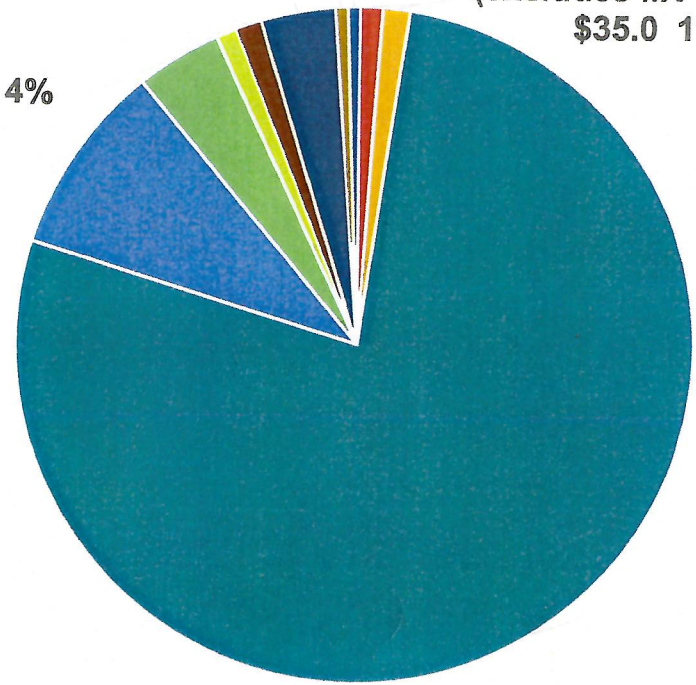
	Monthly Salary	Monthly Benefits	Total Monthly	# of staff needed		One-time Oper Costs	# months in Biennium	Total for 25-27 BI
LACs for 306 people	$ 6,200	$ 2,170	$ 8,370	8	$ 66,960	$10,810	24	$ 1,617,850

PAROLE BOARD RESTRICTIONS	Number of Days between Parole Release and 50% of Sentence Served	Cost Per Day	Expense to keep up to 50% of sentence
Released on Parole 2023-2024	100,195	$ 100	$ 10,019,500

Proposed Flexible Transporation Fund Allocations



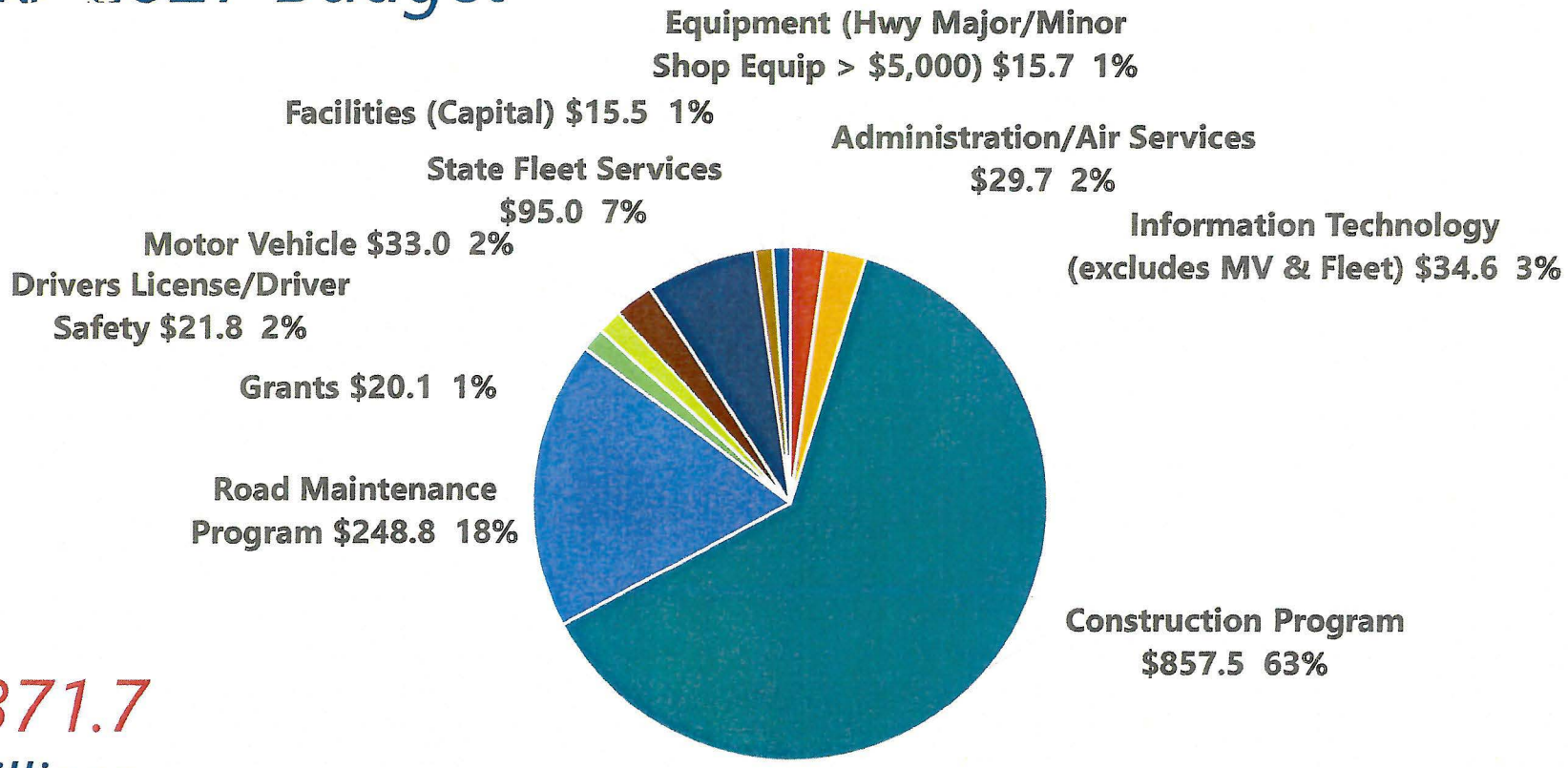
NDDOT ALL FUNDS | *With Senate Amendments*
2025-2027 Budget



$2,698.9
In millions

NDDOT SPECIAL FUNDS | *With Senate Amendments*

2025-2027 Budget

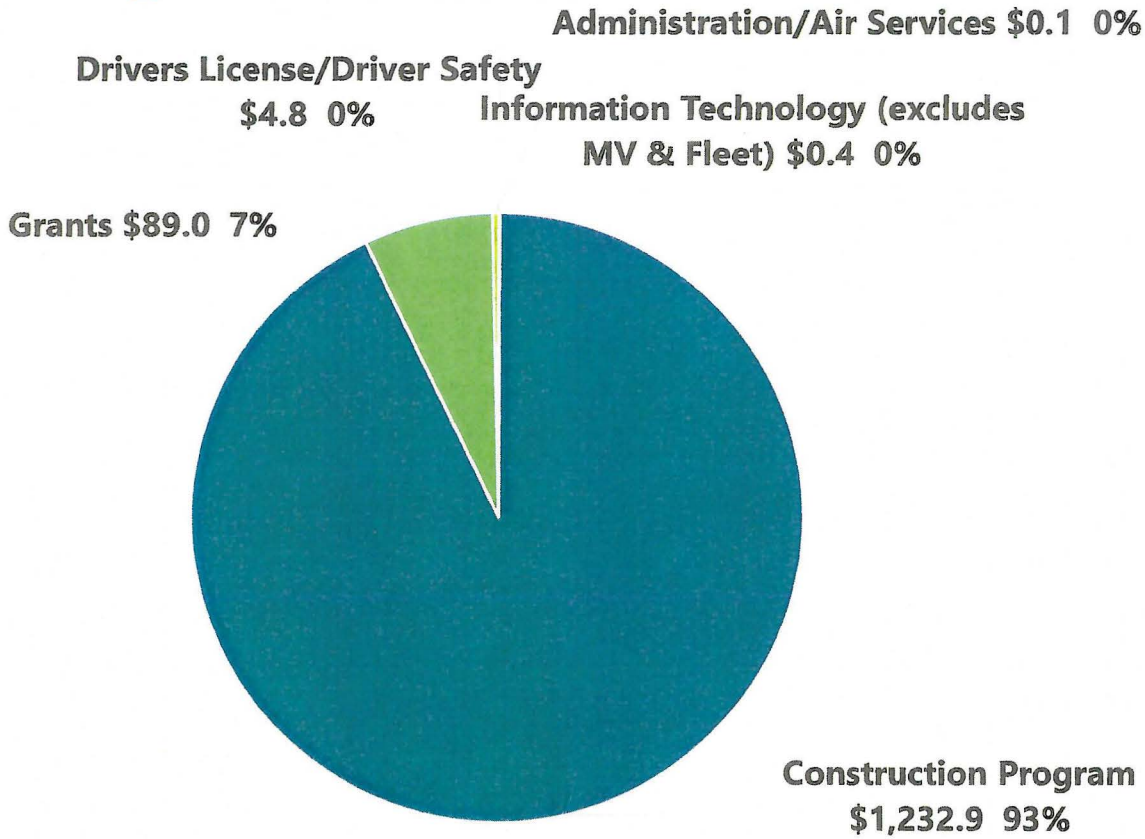


$1,371.7

In millions

NDDOT FEDERAL FUNDS | *With Senate Amendments*

2025-2027 Budget



$1,327.2
In millions

2025 SENATE STANDING COMMITTEE MINUTES

Appropriations Committee
Harvest Room, State Capitol

SB 2128
2/21/2025

Relating to transparent sentencing of criminal offenders, transfer of persons between correctional facilities, work release eligibility and conditions for criminal offenders, sentences for assaulting and fleeing from law enforcement officers, and sentences for preventing arrest; to provide a legislative management report; and to provide a penalty.

11:18 a.m. Chairman Bekkedahl opened the hearing.

Members Present: Chairman Bekkedahl, Vice-Chairman Erbele, and Senators Burckhard, Cleary, Conley, Davison, Dever, Dwyer, Magrum, Mathern, Meyer, Schaible, Sickler, Sorvaag, Thomas, Wanzek.

Discussion Topics:

- Fiscal Impact
- DOCR Residents' Location of Time Served
- Transitional Facilities' Importance

11:20 a.m. Senator Dever introduced the bill and submitted testimony #38370.

11:22 a.m. Senator Dever moved amendment LC 25.8109.02002.

11:22 a.m. Senator Mathern seconded the motion.

Senators	Vote
Senator Brad Bekkedahl	Y
Senator Robert Erbele	Y
Senator Randy A. Burckhard	Y
Senator Sean Cleary	Y
Senator Cole Conley	Y
Senator Kyle Davison	Y
Senator Dick Dever	Y
Senator Michael Dwyer	Y
Senator Jeffery J. Magrum	Y
Senator Tim Mathern	Y
Senator Scott Meyer	Y
Senator Donald Schaible	Y
Senator Jonathan Sickler	Y
Senator Ronald Sorvaag	Y
Senator Paul J. Thomas	Y
Senator Terry M. Wanzek	Y

Motion Passed 16-0-0.

11:28 a.m. Senator Cleary referenced previously submitted testimony #38197.

11:37 a.m. Senator Davison moved a Do Not Pass as Amended.

11:37 a.m. Senator Cleary seconded the motion.

Senators	Vote
Senator Brad Bekkedahl	Y
Senator Robert Erbele	Y
Senator Randy A. Burckhard	Y
Senator Sean Cleary	Y
Senator Cole Conley	N
Senator Kyle Davison	Y
Senator Dick Dever	Y
Senator Michael Dwyer	Y
Senator Jeffery J. Magrum	N
Senator Tim Mathern	Y
Senator Scott Meyer	Y
Senator Donald Schaible	N
Senator Jonathan Sickler	N
Senator Ronald Sorvaag	N
Senator Paul J. Thomas	N
Senator Terry M. Wanzek	N

Motion Passed 9-7-0.

Senator Myrdal will carry the bill.

11:43 a.m. Chairman Bekkedahl adjourned the meeting.

Elizabeth Reiten, Committee Clerk

25.8109.02002
Title.03000

Prepared by the Legislative Council staff for Senator Paulson
February 18, 2025

2-21-25

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO FIRST ENGROSSMENT

ENGROSSED SENATE BILL NO. 2128

Introduced by

Judiciary Committee

(At the request of the Attorney General)

A BILL for an Act to amend and reenact sections 12-44.1-01, 12-47-18.1, 12-48.1-01, 12-48.1-02, 12-54.1-01, 12-54.1-03, 12.1-08-02, 12.1-17-01, 12.1-32-02.1, 12.1-32-09.1, and 39-10-71 of the North Dakota Century Code, relating to transparent sentencing of criminal offenders, transfer of persons between correctional facilities, work release eligibility and conditions for criminal offenders, sentences for assaulting and fleeing from law enforcement officers, and sentences for preventing arrest; to provide a legislative management report; ~~and~~ to provide a penalty; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-44.1-01 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-01. Definitions.

As used in this chapter:

1. "Administrator" means the sheriff, chief of police, administrator, superintendent, director, or other individual serving as the chief executive officer of a correctional facility.
2. "Adult lockup" means a secure temporary-hold nonresidential facility that does not hold individuals overnight and includes a facility with cuffing rails or cuffing benches.
3. "Correctional facility" means a city or county jail or detention center, regional corrections center, or juvenile detention center for the detention or confinement of persons in accordance with law. The use of the term does not imply and may not be

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used to require the provision of services including treatment, counseling, career and technical education, or other educational services, except as may otherwise be required or provided for under this chapter. The term does not include transitional facilities.

4. "Correctional facility staff" means correctional personnel with titles such as jailer, deputy, counselor, correctional officer, or any other title, whose duties include the ongoing supervision of inmates in a correctional facility.

5. "Court holding facility" means a secure facility, other than an adult correctional facility or adult lockup, used to temporarily detain individuals before or after a detention hearing or other court proceedings, and is not used to detain individuals overnight.

6. "Individual justice planning" means a process to identify, accommodate, and develop appropriate consequences for behaviors caused by or related to an individual's mental or cognitive impairment.

7. "Inmate" means any individual, whether sentenced or unsentenced, who is detained or confined in a correctional facility. The term does not include an individual who is under the supervision of the correctional facility and is supervised under home detention, electronic monitoring, or a similar program that does not involve physical detention or confinement in the facility.

8. "Jail" means a correctional facility, including a county or city jail or a regional corrections center.

9. "Juvenile detention center" means a publicly maintained correctional facility for the detention of juveniles. The term does not include the North Dakota youth correctional center.

10. "Regional corrections center" means a correctional facility established and maintained by more than one county or city, or a combination of counties and cities, for the confinement of inmates.

11. "Trained correctional facility staff" means correctional personnel who have completed a course of training approved by the peace officer standards and training board.

12. "Transitional facility" means ~~an organization~~a halfway house, assessment center, re-entry facility, transitional living facility, or similar facility, operating under contract, in partnership with, or under the direction of the department of corrections and

rehabilitation or a correctional facility, which offers education, counseling, or other programs, with unsecured or minimum security housing, for offenders.

SECTION 2. AMENDMENT. Section 12-47-18.1 of the North Dakota Century Code is amended and reenacted as follows:

12-47-18.1. Transfer of persons between correctional facilities.

~~The~~Subject to statutory limitations, the director of the department of corrections and rehabilitation may transfer an offender to any facility under the department's control or contract to transfer an offender to another correctional facility for purposes of safety, security, discipline, or medical care~~, or when the director determines it may be in the best interests of the public, the offender, or the department~~.

SECTION 3. AMENDMENT. Section 12-48.1-01 of the North Dakota Century Code is amended and reenacted as follows:

12-48.1-01. ~~Director may provide certain~~Work release and education or rehabilitation services for offenders.

1. The director of the department of corrections and rehabilitation may participate in programs in which ~~eligible offenders~~an offender committed to the legal and physical custody of the department may be gainfully employed or participate in an educational or other rehabilitation program ~~either in or outside facilities~~in the facility under the control of the department in which the offender resides. ~~The~~For eligible offenders, the director may obtain or contract with separate facilities with minimum security for housing offenders granted release privileges. In areas where facilities are not within reasonable proximity of the place of employment or training of an eligible offender so released, the director may arrange for the housing of the offender in local confinement facilities.
2. For purposes of this chapter, an "eligible offender" means an offender who:
   a. In accordance with section 12.1-32-09.1, has served eighty-five percent of the offender's sentence of imprisonment or had the offender's sentences commuted; or
   b. Is serving a sentence only for one or more violations of section 12.1-06.1-08, 12.1-11-01, 12.1-11-07, 12.1-15-02, or 12.1-15-03; subdivision c of subsection 1 of section 12.1-21-02; section 12.1-21-03.1; subdivision b of subsection 1 of

4/6/11

section 12.1-21-05; section 12.1-21-06.1, 12.1-22-05, 12.1-23-02, 12.1-23-04, 12.1-23-07, 12.1-23-08, or 12.1-24-01; subsection 7 of section 19-03.1-23; or section 19-03.4-03 or 39-08-01.

3. The department of corrections and rehabilitation shall provide to the attorney general and the legislative council each quarter a report, including the names, locations, and sentences of each individual who meets the criteria in subdivision b of subsection 2.

SECTION 4. AMENDMENT. Section 12-48.1-02 of the North Dakota Century Code is amended and reenacted as follows:

12-48.1-02. Conditions of ~~eligibility for~~participation in release programs.

1. An eligible offender, except 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, may ~~be eligible for programs~~participate in a program outside ~~facilities~~a facility under the control of the department of corrections and rehabilitation when the department determines, with a high degree of reliability, the eligible offender is not a high security risk, not likely to commit a crime of violence, not likely to escape, and is likely to be rehabilitated by such program. An eligible offender may apply to the director of the department for permission to participate in such programs.
2. The director of the department may authorize participation in outside programs for an eligible offender who has ten years or less remaining on a sentence and has been committed to the legal and physical custody of the department. The parole board, with the approval of the director of the department, may authorize participation in outside programs for eligible offenders who have more than ten years remaining on a sentence and have been committed to the legal and physical custody of the department.
3. The offender shall submit a signed application which must include a statement that the eligible offender agrees to abide by all terms and conditions of the particular plan adopted for the eligible offender, and must include such other information as the parole board or the director of the department may require.
4. The parole board may approve, disapprove, or defer action on an application approved by the director of the department. The director of the department or the

Sub 11

parole board may revoke approval of the application at any time after granting the application. The department shall prescribe rules of conduct and treatment for all eligible offenders on release programs and shall prescribe objective and subjective criteria for which revocation of approval to participate in release programs is mandatory. A rule violation indicating the eligible offender likely will commit a crime of violence or is likely to attempt to escape must result in revocation of approval to participate in release programs. The department shall document all violations of the rules of conduct and treatment.

5. The director of the department may grant short leaves, not to exceed seventy-two hours, to eligible offenders who have been committed to the legal and physical custody of the department for ten years or less. The parole board, upon the approval of the director of the department, may grant short leaves, not to exceed seventy-two hours, to offenders committed to the legal and physical custody of the department for more than ten years. Short leaves granted under this subsection may not be granted consecutively to the same individual.

6. All rules adopted by the parole board and the director of the department relating to release programs and short leaves must conform, to the extent allowable by law, with executive order no. 11755 issued by the President of the United States.

SECTION 5. AMENDMENT. Section 12-54.1-01 of the North Dakota Century Code is amended and reenacted as follows:

12-54.1-01. Sentence reduction for good time.

~~Except as provided under~~Subject to the requirements of section 12.1-32-09.1, an offender committed to the legal and physical custody of the department of corrections and rehabilitation is eligible to earn sentence reductions based upon satisfactory fulfillment of performance criteria established through department and penitentiary rules. Performance criteria ~~includes~~must include participation in court-ordered or staff-recommended treatment and education programs and good work performance. The department may credit an offender committed to the legal and physical custody of the department who is eligible for sentence reduction up to five days good time per month for each month of the sentence ~~imposed~~served, up to a maximum of fifteen percent of the offender's sentence. Sentence reductions may not be awarded before they are earned. The department may credit an offender with sentence reduction for time spent in

custody before sentencing and commitment to the legal and physical custody of the department. The department may not credit an offender with any sentence reduction for time spent on probation under the supervision and management of the department.

SECTION 6. AMENDMENT. Section 12-54.1-03 of the North Dakota Century Code is amended and reenacted as follows:

12-54.1-03. Meritorious conduct sentence reduction.

~~Except as provided under section 12.1-32-09.1, offenders~~Offenders committed to the legal and physical custody of the department of corrections and rehabilitation may receive a lump sum or a monthly rate of meritorious conduct sentence reduction for outstanding performance or heroic acts ~~or as a special control and security measure~~, as provided by penitentiary and department rules and upon written recommendation of a department multidisciplinary team. Meritorious sentence reductions are in addition to sentence reductions under section 12-54.1-01 and may be made only after a written recommendation is made by the warden and approved by the director of the department. Any sentence reduction ~~for special control or security measures~~under this section may not exceed ~~two days~~one day good time per month per offender.

SECTION 7. AMENDMENT. Section 12.1-08-02 of the North Dakota Century Code is amended and reenacted as follows:

12.1-08-02. Preventing arrest or discharge of other duties.

~~1.~~ A person is guilty of a class A misdemeanor if, with intent to prevent a public servant from effecting an arrest of himself or another for a misdemeanor or infraction, or from discharging any other official duty, he creates a substantial risk of bodily injury to the public servant or to anyone except himself, or employs means justifying or requiring substantial force to overcome resistance to effecting the arrest or the discharge of the duty. A person is guilty of a class C felony if, with intent to prevent a public servant from effecting an arrest of himself or another for a class A, B, or C felony, he creates a substantial risk of bodily injury to the public servant or to anyone except himself, or employs means justifying or requiring substantial force to overcome resistance to effecting such an arrest.

~~2.~~1. It is a defense to a prosecution under this section that the public servant was not acting lawfully, but it is no defense that the defendant mistakenly believed that the

public servant was not acting lawfully. A public servant executing a warrant or other process in good faith and under color of law shall be deemed to be acting lawfully.

2. A conviction under this section carries a penalty of at least fourteen days' imprisonment and, if there is an underlying conviction, the imprisonment must be consecutive to any sentence of imprisonment for the underlying conviction.

SECTION 8. AMENDMENT. Section 12.1-17-01 of the North Dakota Century Code is amended and reenacted as follows:

12.1-17-01. Simple assault.

1. A person is guilty of an offense if that person:
   a. Willfully causes bodily injury to another human being; or
   b. Negligently causes bodily injury to another human being by means of a firearm, destructive device, or other weapon, the use of which against a human being is likely to cause death or serious bodily injury.
2. The offense is:
   a. A class C felony when the victim is a peace officer or correctional institution employee acting in an official capacity, which the actor knows to be a fact; an employee of the state hospital acting in the course and scope of employment, which the actor knows to be a fact, and the actor is an individual committed to or detained at the state hospital pursuant to chapter 25-03.3; a person engaged in a judicial proceeding; or a member of a municipal or volunteer fire department or emergency medical services personnel unit or emergency department worker in the performance of the member's duties.
   b. A class B misdemeanor except as provided in subdivision a.

~~c.~~3. A conviction under subdivision a of subsection 2 carries a penalty of at least thirty days' imprisonment and, if there is an underlying conviction, the imprisonment must be consecutive to any sentence of imprisonment for the underlying conviction.

SECTION 9. AMENDMENT. Section 12.1-32-02.1 of the North Dakota Century Code is amended and reenacted as follows:

12.1-32-02.1. Mandatory prison terms for armed offenders.

1. Notwithstanding any other provision of this title, a term of imprisonment must be imposed upon an offender and served without benefit of parole when:

a. In the course of committing an offense, the offender inflicts or attempts to inflict bodily injury upon another, threatens or menaces another with imminent bodily injury with a dangerous weapon, explosive, destructive device, or firearm; or

b. An offender prohibited from possessing a firearm under section 62.1-02-01 possesses a firearm while in the course of committing any felony offense under subsection 1~~,~~ or 3~~, or 7~~ of section 19-03.1-23.

2. This requirement applies only when possession of a dangerous weapon, explosive, destructive device, or firearm has been charged and admitted or found to be true in the manner provided by law, and must be imposed as follows:

a. If the offense for which the offender is convicted is a class AA, class A, or class B felony, the court shall impose a minimum sentence of four years' imprisonment.

b. If the offense for which the offender is convicted is a class C felony, the court shall impose a minimum sentence of two years' imprisonment.

3. This section applies even when being armed is an element of the offense for which the offender is convicted.

4. This section applies even if the offender is prosecuted for a violation of section 62.1-02-01 for the same conduct.

5. 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~~is not an eligible offender under subdivision b of subsection 2 of section 12-48.1-01.

SECTION 10. AMENDMENT. Section 12.1-32-09.1 of the North Dakota Century Code is amended and reenacted as follows:

12.1-32-09.1. ~~Sentencing of violent offenders~~Truth in sentencing.

1. Except as provided under ~~section~~sections 12-48.1-01 and 12-48.1-02 ~~and pursuant to rules adopted by the department of corrections and rehabilitation~~, an offender who is sentenced as a dangerous special offender or habitual offender under section 12.1-32-09, or is convicted of a crime in violation of section 12.1-16-01, 12.1-16-02, subsection 2 of section 12.1-17-02, section 12.1-18-01, subdivision a of subsection 1 or subdivision b of subsection 2 of section 12.1-20-03, section 12.1-22-01, subdivision b of subsection 2 of section 12.1-22-02, or an attempt to commit the

offenses, and who receives a sentence of imprisonment is not eligible for release from confinement on any basis until eighty-five percent of the sentence imposed by the court has been served or the sentence is commuted. All other offenders are not eligible for release from confinement on any basis until:

a. Fifty percent of the sentence imposed by the court is served, not including any time credited under section 12-54.1-01, and the offender is paroled;

b. The offender's sentence is commuted and the offender served the commuted sentence;

c. Eighty-five percent of the sentence imposed by the court is served; or

d. The offender is pardoned.

2. In the case of an offender who is sentenced to a term of life imprisonment with opportunity for parole under subsection 1 of section 12.1-32-01, the term "sentence imposed" means the remaining life expectancy of the offender on the date of sentencing. The remaining life expectancy of the offender must be calculated on the date of sentencing, computed by reference to a recognized mortality table as established by rule by the supreme court.

3. Notwithstanding this section, an offender sentenced under subsection 1 of section 12.1-32-01 may not be eligible for parole until the requirements of that subsection have been met.

4. ~~An offender who is convicted of a class C felony in violation of section 12.1-17-02, or an attempt to commit the offense, and who has received a sentence of imprisonment or a sentence of imprisonment upon revocation of probation before August 1, 2015, is eligible to have the offender's sentence considered by the parole board.~~

~~5.~~ ~~Notwithstanding subsection 4, this section does not apply to a sentence imposed upon revocation of probation.~~For purposes of this section "confinement" does not include placement or residence in a transitional facility, halfway house, or ~~other organization or~~similar facility, operating under contract, in partnership with, or under the direction of the department of corrections and rehabilitation or other correctional facility, ~~that offers education, counseling, or other programs,~~ with unsecured or minimum security housing~~, for offenders~~.

5. Notwithstanding subsection 4, placement or residence at the James River correctional center, Missouri River correctional center, Heart River correctional center, or Dakota women's correctional and rehabilitation center, or county jail is "confinement" for purposes of this section, provided the order to place the inmate in the center or jail is approved by an identifiable employee of the department of corrections and rehabilitation after the employee determines, with reasonable certainty, the placement will not pose a danger to the public.

SECTION 11. AMENDMENT. Section 39-10-71 of the North Dakota Century Code is amended and reenacted as follows:

39-10-71. Fleeing or attempting to elude a peace officer - Penalty.

1. A driver of a motor vehicle who willfully fails or refuses to bring the vehicle to a stop, or who otherwise flees or attempts to elude, in any manner, a pursuing police vehicle or peace officer, when given a visual or audible signal to bring the vehicle to a stop, is guilty of a:
   a. Class A misdemeanor for a first offense and a class C felony for a subsequent offense within three years;
   b. Class C felony if the driver violates this section while willfully fleeing during or after the commission of a felony; or
   c. Class C felony if, at any time during the flight or pursuit, the driver willfully operates the vehicle in a manner constituting an inherent risk of death or serious bodily injury to a third person.
2. A signal complies with this section if the signal is perceptible to the driver and:
   a. If given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the stopping vehicle is appropriately marked showing it to be an official police vehicle; or
   b. If not given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the officer is in uniform or prominently displays the officer's badge of office.
3. A felony conviction under this section carries a penalty of at least thirty days' imprisonment and, if there is an underlying conviction, the imprisonment must be consecutive to any sentence of imprisonment for the underlying conviction.

4. Upon a motion by a state's attorney, a court may order that a motor vehicle used in the commission of a violation of this section be impounded by a peace officer for up to six months.

SECTION 12. APPLICATION. Sections 1, 2, 3, 4, 5, 6, 9, and 10 of this Act apply to individuals who are charged after July 31, 2025, with violations subject to the provisions of this Act.

REPORT OF STANDING COMMITTEE
ENGROSSED SB 2128

Appropriations Committee (Sen. Bekkedahl, Chairman) recommends **AMENDMENTS (25.8109.02002)** and when so amended, recommends **DO NOT PASS** (9 YEAS, 7 NAYS, 0 ABSENT OR EXCUSED AND NOT VOTING). SB 2128 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

2-21-25

25.8109.02002
Title.

Prepared by the Legislative Council
staff for Senator Paulson
February 18, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO
FIRST ENGROSSMENT

ENGROSSED SENATE BILL NO. 2128

Introduced by

Judiciary Committee

(At the request of the Attorney General)

A BILL for an Act to amend and reenact sections 12-44.1-01, 12-47-18.1, 12-48.1-01, 12-48.1-02, 12-54.1-01, 12-54.1-03, 12.1-08-02, 12.1-17-01, 12.1-32-02.1, 12.1-32-09.1, and 39-10-71 of the North Dakota Century Code, relating to transparent sentencing of criminal offenders, transfer of persons between correctional facilities, work release eligibility and conditions for criminal offenders, sentences for assaulting and fleeing from law enforcement officers, and sentences for preventing arrest; to provide a legislative management report; ~~and~~ to provide a penalty; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-44.1-01 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-01. Definitions.

As used in this chapter:

1. "Administrator" means the sheriff, chief of police, administrator, superintendent, director, or other individual serving as the chief executive officer of a correctional facility.
2. "Adult lockup" means a secure temporary-hold nonresidential facility that does not hold individuals overnight and includes a facility with cuffing rails or cuffing benches.
3. "Correctional facility" means a city or county jail or detention center, regional corrections center, or juvenile detention center for the detention or confinement of persons in accordance with law. The use of the term does not imply and may not be

used to require the provision of services including treatment, counseling, career and technical education, or other educational services, except as may otherwise be required or provided for under this chapter. The term does not include transitional facilities.

4. "Correctional facility staff" means correctional personnel with titles such as jailer, deputy, counselor, correctional officer, or any other title, whose duties include the ongoing supervision of inmates in a correctional facility.

5. "Court holding facility" means a secure facility, other than an adult correctional facility or adult lockup, used to temporarily detain individuals before or after a detention hearing or other court proceedings, and is not used to detain individuals overnight.

6. "Individual justice planning" means a process to identify, accommodate, and develop appropriate consequences for behaviors caused by or related to an individual's mental or cognitive impairment.

7. "Inmate" means any individual, whether sentenced or unsentenced, who is detained or confined in a correctional facility. The term does not include an individual who is under the supervision of the correctional facility and is supervised under home detention, electronic monitoring, or a similar program that does not involve physical detention or confinement in the facility.

8. "Jail" means a correctional facility, including a county or city jail or a regional corrections center.

9. "Juvenile detention center" means a publicly maintained correctional facility for the detention of juveniles. The term does not include the North Dakota youth correctional center.

10. "Regional corrections center" means a correctional facility established and maintained by more than one county or city, or a combination of counties and cities, for the confinement of inmates.

11. "Trained correctional facility staff" means correctional personnel who have completed a course of training approved by the peace officer standards and training board.

12. "Transitional facility" means ~~an organization~~a halfway house, assessment center, re-entry facility, transitional living facility, or similar facility, operating under contract, in partnership with, or under the direction of the department of corrections and

rehabilitation or a correctional facility, which offers education, counseling, or other programs, with unsecured or minimum security housing, for offenders.

SECTION 2. AMENDMENT. Section 12-47-18.1 of the North Dakota Century Code is amended and reenacted as follows:

12-47-18.1. Transfer of persons between correctional facilities.

~~The~~Subject to statutory limitations, the director of the department of corrections and rehabilitation may transfer an offender to any facility under the department's control or contract to transfer an offender to another correctional facility for purposes of safety, security, discipline, or medical care~~, or when the director determines it may be in the best interests of the public, the offender, or the department~~.

SECTION 3. AMENDMENT. Section 12-48.1-01 of the North Dakota Century Code is amended and reenacted as follows:

12-48.1-01. ~~Director may provide certain~~Work release and education or rehabilitation services for offenders.

1. The director of the department of corrections and rehabilitation may participate in programs in which ~~eligible offenders~~an offender committed to the legal and physical custody of the department may be gainfully employed or participate in an educational or other rehabilitation program ~~either in or outside facilities~~in the facility under the control of the department in which the offender resides. ~~The~~For eligible offenders, the director may obtain or contract with separate facilities with minimum security for housing offenders granted release privileges. In areas where facilities are not within reasonable proximity of the place of employment or training of an eligible offender so released, the director may arrange for the housing of the offender in local confinement facilities.
2. For purposes of this chapter, an "eligible offender" means an offender who:
   a. In accordance with section 12.1-32-09.1, has served eighty-five percent of the offender's sentence of imprisonment or had the offender's sentences commuted; or
   b. Is serving a sentence only for one or more violations of section 12.1-06.1-08, 12.1-11-01, 12.1-11-07, 12.1-15-02, or 12.1-15-03; subdivision c of subsection 1 of section 12.1-21-02; section 12.1-21-03.1; subdivision b of subsection 1 of

section 12.1-21-05; section 12.1-21-06.1, 12.1-22-05, 12.1-23-02, 12.1-23-04, 12.1-23-07, 12.1-23-08, or 12.1-24-01; subsection 7 of section 19-03.1-23; or section 19-03.4-03 or 39-08-01.

3. The department of corrections and rehabilitation shall provide to the attorney general and the legislative council each quarter a report, including the names, locations, and sentences of each individual who meets the criteria in subdivision b of subsection 2.

SECTION 4. AMENDMENT. Section 12-48.1-02 of the North Dakota Century Code is amended and reenacted as follows:

12-48.1-02. Conditions of ~~eligibility for~~participation in release programs.

1. An eligible offender, except 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, may ~~be eligible for programs~~participate in a program outside ~~facilities~~a facility under the control of the department of corrections and rehabilitation when the department determines, with a high degree of reliability, the eligible offender is not a high security risk, not likely to commit a crime of violence, not likely to escape, and is likely to be rehabilitated by such program. An eligible offender may apply to the director of the department for permission to participate in such programs.
2. The director of the department may authorize participation in outside programs for an eligible offender who has ten years or less remaining on a sentence and has been committed to the legal and physical custody of the department. The parole board, with the approval of the director of the department, may authorize participation in outside programs for eligible offenders who have more than ten years remaining on a sentence and have been committed to the legal and physical custody of the department.
3. The offender shall submit a signed application which must include a statement that the eligible offender agrees to abide by all terms and conditions of the particular plan adopted for the eligible offender, and must include such other information as the parole board or the director of the department may require.
4. The parole board may approve, disapprove, or defer action on an application approved by the director of the department. The director of the department or the

parole board may revoke approval of the application at any time after granting the application. The department shall prescribe rules of conduct and treatment for all eligible offenders on release programs and shall prescribe objective and subjective criteria for which revocation of approval to participate in release programs is mandatory. A rule violation indicating the eligible offender likely will commit a crime of violence or is likely to attempt to escape must result in revocation of approval to participate in release programs. The department shall document all violations of the rules of conduct and treatment.

5. The director of the department may grant short leaves, not to exceed seventy-two hours, to eligible offenders who have been committed to the legal and physical custody of the department for ten years or less. The parole board, upon the approval of the director of the department, may grant short leaves, not to exceed seventy-two hours, to offenders committed to the legal and physical custody of the department for more than ten years. Short leaves granted under this subsection may not be granted consecutively to the same individual.

6. All rules adopted by the parole board and the director of the department relating to release programs and short leaves must conform, to the extent allowable by law, with executive order no. 11755 issued by the President of the United States.

SECTION 5. AMENDMENT. Section 12-54.1-01 of the North Dakota Century Code is amended and reenacted as follows:

12-54.1-01. Sentence reduction for good time.

~~Except as provided under~~Subject to the requirements of section 12.1-32-09.1, an offender committed to the legal and physical custody of the department of corrections and rehabilitation is eligible to earn sentence reductions based upon satisfactory fulfillment of performance criteria established through department and penitentiary rules. Performance criteria ~~includes~~must include participation in court-ordered or staff-recommended treatment and education programs and good work performance. The department may credit an offender committed to the legal and physical custody of the department who is eligible for sentence reduction up to five days good time per month for each month of the sentence ~~imposed~~served, up to a maximum of fifteen percent of the offender's sentence. Sentence reductions may not be awarded before they are earned. The department may credit an offender with sentence reduction for time spent in

custody before sentencing and commitment to the legal and physical custody of the department. The department may not credit an offender with any sentence reduction for time spent on probation under the supervision and management of the department.

SECTION 6. AMENDMENT. Section 12-54.1-03 of the North Dakota Century Code is amended and reenacted as follows:

12-54.1-03. Meritorious conduct sentence reduction.

~~Except as provided under section 12.1-32-09.1, offenders~~Offenders committed to the legal and physical custody of the department of corrections and rehabilitation may receive a lump sum or a monthly rate of meritorious conduct sentence reduction for outstanding performance or heroic acts ~~or as a special control and security measure~~, as provided by penitentiary and department rules and upon written recommendation of a department multidisciplinary team. Meritorious sentence reductions are in addition to sentence reductions under section 12-54.1-01 and may be made only after a written recommendation is made by the warden and approved by the director of the department. Any sentence reduction ~~for special control or security measures~~under this section may not exceed ~~two days~~one day good time per month per offender.

SECTION 7. AMENDMENT. Section 12.1-08-02 of the North Dakota Century Code is amended and reenacted as follows:

12.1-08-02. Preventing arrest or discharge of other duties.

~~1.~~ A person is guilty of a class A misdemeanor if, with intent to prevent a public servant from effecting an arrest of himself or another for a misdemeanor or infraction, or from discharging any other official duty, he creates a substantial risk of bodily injury to the public servant or to anyone except himself, or employs means justifying or requiring substantial force to overcome resistance to effecting the arrest or the discharge of the duty. A person is guilty of a class C felony if, with intent to prevent a public servant from effecting an arrest of himself or another for a class A, B, or C felony, he creates a substantial risk of bodily injury to the public servant or to anyone except himself, or employs means justifying or requiring substantial force to overcome resistance to effecting such an arrest.

~~2.~~1. It is a defense to a prosecution under this section that the public servant was not acting lawfully, but it is no defense that the defendant mistakenly believed that the

public servant was not acting lawfully. A public servant executing a warrant or other process in good faith and under color of law shall be deemed to be acting lawfully.

2. A conviction under this section carries a penalty of at least fourteen days' imprisonment and, if there is an underlying conviction, the imprisonment must be consecutive to any sentence of imprisonment for the underlying conviction.

SECTION 8. AMENDMENT. Section 12.1-17-01 of the North Dakota Century Code is amended and reenacted as follows:

12.1-17-01. Simple assault.

1. A person is guilty of an offense if that person:
   a. Willfully causes bodily injury to another human being; or
   b. Negligently causes bodily injury to another human being by means of a firearm, destructive device, or other weapon, the use of which against a human being is likely to cause death or serious bodily injury.
2. The offense is:
   a. A class C felony when the victim is a peace officer or correctional institution employee acting in an official capacity, which the actor knows to be a fact; an employee of the state hospital acting in the course and scope of employment, which the actor knows to be a fact, and the actor is an individual committed to or detained at the state hospital pursuant to chapter 25-03.3; a person engaged in a judicial proceeding; or a member of a municipal or volunteer fire department or emergency medical services personnel unit or emergency department worker in the performance of the member's duties.
   b. A class B misdemeanor except as provided in subdivision a.

~~c.~~3. A conviction under subdivision a of subsection 2 carries a penalty of at least thirty days' imprisonment and, if there is an underlying conviction, the imprisonment must be consecutive to any sentence of imprisonment for the underlying conviction.

SECTION 9. AMENDMENT. Section 12.1-32-02.1 of the North Dakota Century Code is amended and reenacted as follows:

12.1-32-02.1. Mandatory prison terms for armed offenders.

1. Notwithstanding any other provision of this title, a term of imprisonment must be imposed upon an offender and served without benefit of parole when:

a. In the course of committing an offense, the offender inflicts or attempts to inflict bodily injury upon another, threatens or menaces another with imminent bodily injury with a dangerous weapon, explosive, destructive device, or firearm; or

b. An offender prohibited from possessing a firearm under section 62.1-02-01 possesses a firearm while in the course of committing any felony offense under subsection 1~~,~~ or 3~~, or 7~~ of section 19-03.1-23.

2. This requirement applies only when possession of a dangerous weapon, explosive, destructive device, or firearm has been charged and admitted or found to be true in the manner provided by law, and must be imposed as follows:

a. If the offense for which the offender is convicted is a class AA, class A, or class B felony, the court shall impose a minimum sentence of four years' imprisonment.

b. If the offense for which the offender is convicted is a class C felony, the court shall impose a minimum sentence of two years' imprisonment.

3. This section applies even when being armed is an element of the offense for which the offender is convicted.

4. This section applies even if the offender is prosecuted for a violation of section 62.1-02-01 for the same conduct.

5. 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~~is not an eligible offender under subdivision b of subsection 2 of section 12-48.1-01.

SECTION 10. AMENDMENT. Section 12.1-32-09.1 of the North Dakota Century Code is amended and reenacted as follows:

12.1-32-09.1. ~~Sentencing of violent offenders~~Truth in sentencing.

1. Except as provided under ~~section~~sections 12-48.1-01 and 12-48.1-02 ~~and pursuant to rules adopted by the department of corrections and rehabilitation~~, an offender who is sentenced as a dangerous special offender or habitual offender under section 12.1-32-09, or is convicted of a crime in violation of section 12.1-16-01, 12.1-16-02, subsection 2 of section 12.1-17-02, section 12.1-18-01, subdivision a of subsection 1 or subdivision b of subsection 2 of section 12.1-20-03, section 12.1-22-01, subdivision b of subsection 2 of section 12.1-22-02, or an attempt to commit the

offenses, and who receives a sentence of imprisonment is not eligible for release from confinement on any basis until eighty-five percent of the sentence imposed by the court has been served or the sentence is commuted. All other offenders are not eligible for release from confinement on any basis until:

a. Fifty percent of the sentence imposed by the court is served, not including any time credited under section 12-54.1-01, and the offender is paroled;

b. The offender's sentence is commuted and the offender served the commuted sentence;

c. Eighty-five percent of the sentence imposed by the court is served; or

d. The offender is pardoned.

2. In the case of an offender who is sentenced to a term of life imprisonment with opportunity for parole under subsection 1 of section 12.1-32-01, the term "sentence imposed" means the remaining life expectancy of the offender on the date of sentencing. The remaining life expectancy of the offender must be calculated on the date of sentencing, computed by reference to a recognized mortality table as established by rule by the supreme court.

3. Notwithstanding this section, an offender sentenced under subsection 1 of section 12.1-32-01 may not be eligible for parole until the requirements of that subsection have been met.

~~4. An offender who is convicted of a class C felony in violation of section 12.1-17-02, or an attempt to commit the offense, and who has received a sentence of imprisonment or a sentence of imprisonment upon revocation of probation before August 1, 2015, is eligible to have the offender's sentence considered by the parole board.~~

~~5. Notwithstanding subsection 4, this section does not apply to a sentence imposed upon revocation of probation.~~For purposes of this section "confinement" does not include placement or residence in a transitional facility, halfway house, or ~~other organization or~~similar facility, operating under contract, in partnership with, or under the direction of the department of corrections and rehabilitation or other correctional facility, ~~that offers education, counseling, or other programs,~~ with unsecured or minimum security housing~~, for offenders~~.

5. Notwithstanding subsection 4, placement or residence at the James River correctional center, Missouri River correctional center, Heart River correctional center, or Dakota women's correctional and rehabilitation center, or county jail is "confinement" for purposes of this section, provided the order to place the inmate in the center or jail is approved by an identifiable employee of the department of corrections and rehabilitation after the employee determines, with reasonable certainty, the placement will not pose a danger to the public.

SECTION 11. AMENDMENT. Section 39-10-71 of the North Dakota Century Code is amended and reenacted as follows:

39-10-71. Fleeing or attempting to elude a peace officer - Penalty.

1. A driver of a motor vehicle who willfully fails or refuses to bring the vehicle to a stop, or who otherwise flees or attempts to elude, in any manner, a pursuing police vehicle or peace officer, when given a visual or audible signal to bring the vehicle to a stop, is guilty of a:
   a. Class A misdemeanor for a first offense and a class C felony for a subsequent offense within three years;
   b. Class C felony if the driver violates this section while willfully fleeing during or after the commission of a felony; or
   c. Class C felony if, at any time during the flight or pursuit, the driver willfully operates the vehicle in a manner constituting an inherent risk of death or serious bodily injury to a third person.
2. A signal complies with this section if the signal is perceptible to the driver and:
   a. If given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the stopping vehicle is appropriately marked showing it to be an official police vehicle; or
   b. If not given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the officer is in uniform or prominently displays the officer's badge of office.
3. A felony conviction under this section carries a penalty of at least thirty days' imprisonment and, if there is an underlying conviction, the imprisonment must be consecutive to any sentence of imprisonment for the underlying conviction.

4. Upon a motion by a state's attorney, a court may order that a motor vehicle used in the commission of a violation of this section be impounded by a peace officer for up to six months.

SECTION 12. APPLICATION. Sections 1, 2, 3, 4, 5, 6, 9, and 10 of this Act apply to individuals who are charged after July 31, 2025, with violations subject to the provisions of this Act.

2025 HOUSE JUDICIARY

SB 2128

2025 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

SB 2128
3/24/2025

Relating to transparent sentencing of criminal offenders, transfer of persons between correctional facilities, work release eligibility and conditions for criminal offenders, sentences for assaulting and fleeing from law enforcement officers, and sentences for preventing arrest; to provide a legislative management report; to provide a penalty; and to provide for application.

8:59 a.m. Chairman Klemin called the meeting to order.

Members Present: Chairman Klemin, Vice-Chairman Karls, Vice-Chairman Vetter, Representatives Christianson, Henderson, Hoverson, Johnston, McLeod, S. Olson, Satrom, Tveit, VanWinkle, Wolff, Schneider

Discussion Topics:

- North Dakota violent crime rates
- North Dakota transition centers
- Prison overpopulation
- North Dakota recidivism rate

9:01 a.m. Drew Wrigley, North Dakota Attorney General, testified in favor and provided testimony #43666.

9:31 a.m. Claire Ness, North Dakota Deputy Attorney General, testified in favor and provided testimony #43630, #43662.

9:36 a.m. Dennis Ingold, Senior Assistant State's Attorney at Burleigh County State's Attorney's Office, testified in favor and provided testimony #43522.

9:47 a.m. Christopher Huard, Detective at the Wahpeton Police Department, testified in favor and provided testimony #43489.

9:55 a.m. Dennis Ingold, Senior Assistant State's Attorney at Burleigh County State's Attorney's Office, answered committee questions

9:58 a.m. Rozanna Larson, Ward County State's Attorney, testified in favor and provided testimony #43512.

10:06 a.m. Colby Braun, Director of the North Dakota Department of Corrections and Rehabilitation, testified in opposition and provided testimony #43614, #43615, #43616.

10:27 a.m. Scott Peyton, Director of Government Affairs at Prison Fellowship, testified in opposition and provided testimony #43419.

10:39 a.m. Robert Vallie, Concerned Citizen from District 46, testified in opposition and provided testimony #43617.

10:52 a.m. Travis Finck, Executive Director of North Dakota Commission on Legal Counsel for Indigents, testified in opposition and provided testimony #43606.

10:57 a.m. Dr. Lisa Peterson, Psychologist, testified in opposition and provided testimony #43495.

11:11 a.m. Stephanie Engebretson, Chiefs of Police Association of North Dakota, testified in favor and provided testimony #43598.

11:18 a.m. Frank Senn, Chief of Police for the City of Beulah, testified in favor.

11:25 a.m. Jeremy Ensrud, Assistant Attorney General at the North Dakota Attorney General's Office, testified in favor.

11:29 a.m. Jesse Walstad, North Dakota Association of Criminal Defense Lawyers, testified in opposition and provided testimony #43455.

11:46 a.m. Ann Melton, Executive Director of Consensus Council, testified in opposition and provided testimony #43547.

Additional written testimony:
Matthew Anderson, Chief of Police at the Wahpeton Police Department, submitted testimony in favor #43498
David Zimmer, Public Safety Policy Fellow with Center of the American Experiment North Dakota, submitted testimony in favor #43532.
Rachel Wright, National Policy Director for Right on Crime, submitted testimony in opposition #43442.
Nathan Mickelson, Prison Reentry Manager for Ministry on the Margins, submitted testimony in opposition #43452
Josh Helmer, Executive Director for Centre, Inc., submitted testimony in opposition #43497
Patrick Purtill, Executive Vice President and General Counsel for Unify.US, submitted testimony in opposition #43597
Allison Wanner, Clinical Addiction Counselor at the Southwest Multi County Correctional Center Community Treatment Program, submitted testimony in opposition #43458
Jesse Kubesh, Reentry Advocate and Peer Support Specialist, submitted testimony in opposition #43515
Adam Martin, CEO of the F5 Project, submitted testimony in opposition #43525
Skyler Larson, Shift Seargent at Missouri River Correctional Center, submitted testimony in opposition #43529
Patrick Plein, Director of the Conservative Political Action Coalition, submitted testimony in opposition #43626.
Nathan Tebay, Minto, North Dakota, submitted testimony in opposition #43693

11:52 a.m. Chairman Klemin closed the hearing.

Wyatt Armstrong, Committee Clerk

PRISON FELLOWSHIP

Seek justice. Love mercy. Restore hope.

March 21, 2025

North Dakota Legislative Council
House Judiciary Committee
600 East Boulevard Avenue
Bismarck, ND 58505

Dear Chairman Klemin and House Judiciary Committee Members,

Thank you for the opportunity to provide written testimony in opposition to SB2128.

With nearly 50 years of experience encountering Jesus with men and women behind bars, Prison Fellowship® is a leading national voice shaping the public debate on justice. We mobilize Christians and equip policymakers to advocate for federal and state justice reforms that advance proportional punishment, constructive corrections culture, and second chances. Our guiding principles are rooted in the biblical call to seek justice, love mercy, and restore hope.

We are writing to express significant concerns about the proposed policies in SB2128, especially those related to the elimination of earned compliance credits for nonviolent offenses, access to prison programming, and restricted parole eligibility.

To be clear, our concerns do not mean we believe individuals should avoid accountability for their actions. On the contrary, crime demands accountability, and punishment must be proportional. However, the unintended consequences of SB2128 risk creating unnecessary barriers to successful reintegration while failing to meaningfully enhance public safety.

A correctional system that prioritizes both accountability and rehabilitation ensures individuals have the tools to successfully reintegrate into society. North Dakota has been a leader in advancing policies that promote transformation behind bars. For example, Prison Fellowship operates the Prison Fellowship Academy ® in North Dakota at no expense to taxpayers. The Academy uses a targeted curriculum, compassionate coaches, and a restorative community to replace participants' criminal thinking and behaviors with renewed purpose and biblically based life principles. Graduates complete the yearlong program as change agents and good citizens inside and outside of prison. Such impactful programming is only possible because of the strong foundation this body has created for the North Dakota Department of Corrections and Rehabilitation (DOCR), focusing on accountability, victim restoration, and ensuring that individuals leave prison as better men and women than when they entered.

Justice requires us to demand outcomes that effectively reduce crime and enhance public safety. However, policies relying heavily on incarceration for nonviolent, low-risk offenses often

harden individuals, making them a greater risk to society upon release. Under SB2128, an overwhelming number of non-violent offenses would be ineligible for critical reintegration programming. One of the goals of SB 2128 is to address rising crime rates in North Dakota. According to data from the Attorney General's *Crime in North Dakota, 2023* report, there has been a decrease in crime rates for both Group A and B offenses.[1] Additionally, North Dakota's crime rate is 29% lower than the US average.[2] There is certainly room for improvement, and one victim is one too many. Good policy should include and incentivize rehabilitation and reintegration opportunities for those who are incarcerated, ensuring they return to society as good neighbors, rather than greater risks. Prisons serve an essential role by incapacitating dangerous individuals, but they are not the appropriate solution for every individual who has committed a crime.

SB2128 also proposes "truth in sentencing" policies that were widely adopted in the 1980s and 1990s with the goal of being tough on crime.[3] Yet, history and research demonstrate these policies did not achieve their intended outcomes.[4] By contrast, the bipartisan Federal First Step Act provides a roadmap for effective reform. This legislation, championed by President Trump in his first term, expanded good time credits, reduced recidivism, and showed that reform is not only possible but also beneficial for public safety, families, and communities.[5]

North Dakota has an opportunity to seek justice wisely by promoting policies that encourage personal responsibility, equip individuals for successful reentry, and respect those who have been harmed by crime. A justice system that aligns with mercy acknowledges that transformation is possible, and that helping individuals address barriers to reentry—such as housing, employment, and transportation—keeps families together and reduces recidivism.

We urge you to consider the unintended consequences of SB2128 and to pursue policies that advance proportional punishment while fostering hope and healing. True justice not only holds individuals accountable but also paves the way for them to make amends, rebuild their lives, and contribute to safer communities.

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[1] Drew H. Wrigley, *Crime in North Dakota, 2023*, North Dakota Office of Attorney General (2024), https://attorneygeneral.nd.gov/wp-content/uploads/2024/06/2023-CrimeReport.pdf.
[2] CSG Justice Center, *North Dakota data on violent crime and arrests*, The Council of State Governments, https://projects.csgjusticecenter.org/tools-for-states-to-address-crime/50-state-crime-data/?state=nd (last visited March 2025).
[3] Ram Subramanian & Ruth Delaney, *Playbook for Change? States Reconsider Mandatory Sentences*, Vera Institute of Justice (Feb. 2014), https://www.prisonpolicy.org/scans/vera/mandatory-sentences-policy-report-v2b.pdf.
[4] FAMM, *"Truth in Sentencing" Paying More Money to Make Our Communities Less Safe*, Families Against Mandatory Minimums (April 2024), https://famm.org/wp-content/uploads/2024/04/FAMM-Truth-in-Sentencing-Fact-Sheet.pdf.
[5] First Step Act of 2018, S. 756, 115th Cong. (2018); DOJ, *First Step Act Annual Report*, U.S. Department of Justice (June 2024), https://www.ojp.gov/pdffiles1/nij/309223.pdf.

PRISON FELLOWSHIP

Seek justice. Love mercy. Restore hope.

At Prison Fellowship, we are committed to partnering with you to achieve these goals. Together, we can seek justice, love mercy, and restore hope for all North Dakotans.

Sincerely,

Scott E. Peyton
Director, Government Affairs
Prison Fellowship

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March 21, 2025

Re: SB 2128

Chairman Klemin and Members of the House Judiciary Committee

I write to you today to express concern about the policies included in SB 2128, which recently passed out of the North Dakota Senate.[1] Right On Crime is a national campaign of the Texas Public Policy Foundation that supports conservative criminal justice solutions resulting in less crime, fewer victims, and safer communities. Right On Crime believes prison systems should function to not only punish and deter dangerous offenders and career criminals, but should also help nonviolent, low-risk offenders reenter society successfully, ending the cycle of recidivism through rehabilitation. It is with these principles in mind that Right On Crime urges the North Dakota Legislative Assembly to consider amending SB 2128 to ensure some discretion continues to exists in sentencing.

Several sections of SB 2128 restrict or eliminate discretion in prison release—commonly referred to as truth-in-sentencing laws. Since 1995, North Dakota has had a version of truth-in-sentencing laws requiring most violent offenders to serve 85% of their prison term.[2] However, SB 2128 dramatically expands the reach of truth-in-sentencing, expanding the 85% time served requirement to almost every felony offense.

While truth-in-sentencing is often touted as a pro-public safety policy, it instead has been proven to prevent meaningful opportunities to reduce recidivism and increase public safety.

First, truth-in-sentencing laws remove incentives for people to rehabilitate themselves while incarcerated. SB 2128's provisions mean that after completing 85% of a sentence, people can be released no matter whether they have meaningfully contributed to their rehabilitation while incarcerated and are a low risk to public safety. Under truth-in-sentencing, offenders can sit in a cell for the entire sentence and still be released without taking a class, learning a trade, or doing anything to educate themselves to prepare to succeed upon release. The lack of incentives to rehabilitate not only hampers reentry but can also lead to worse behavior while incarcerated. If SB 2128 becomes law, North Dakotans behind bars will have no incentive to prepare for a better life beyond prison.

More than 95% of inmates are eventually released from incarceration and reenter society. However, the length of time someone spent in prison has no impact on public safety or crime prevention upon release. Researchers have found no evidence that long sentences discourage people from committing crimes.[3] In fact, it is the *certainty* of being caught, not the length of the punishment, that deters crime.[4] Recent research has even concluded that truth-in-sentencing laws are associated with higher recidivism.[5]

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[1] https://ndlegis.gov/assembly/69-2025/regular/bill-overview/bo2128.html?bill_year=2025&bill_number=2128.
[2] North Dakota Century Code Section 12.1-32-09.1.
[3] U.S. Department of Justice, Office of Justice Programs, National Institute of Justice (2016). Five Things About Deterrence. https://www.ojp.gov/pdffiles1/nij/247350.pdf.
[4] *Id*.
[5] Macdonald, D.C. (2024). *Truth in Sentencing, Incentives and Recidivism*, https://direct.mit.edu/rest/article-abstract/doi/10.1162/rest_a_01538/125419/Truth-in-Sentencing-Incentives-and-Recidivism?redirectedFrom=PDF.

So truth-in-sentencing laws are not supported by data or research to improve public safety, and may even have the opposite effect.

Second, the bill's language is too broad, covering nearly all felony convictions in the state. This would treat a non-violent offender suffering from substance use disorder and a violent predator the same. Truth-in-sentencing removes discretion for judges to consider the specific crime, the individual's unique circumstances, and any considerations for long-term, positive outcomes for the offender, victim, and society. A less rigid sentencing framework will allow sentences to remain consistent but tailored to individual needs.

A number of other states have truth-in-sentencing laws in place despite little evidence of their efficacy. For example, Arizona has had truth in sentencing laws since 1994. Since its implementation, corrections costs have skyrocketed. In fact, Arizona taxpayers have spent over $1.3 billion per year on incarceration.[6] But the return on investment has been dismal. In fact, today, there are more people incarcerated in Arizona than before truth-in-sentencing laws were implemented and the recidivism rates are higher.[7] Similarly in Georgia, when truth-in-sentencing laws replaced parole, there was a 15% increase in prison rule violations, a 14% decline in rehabilitative program participation, and 5-7% increase in recidivism rates.[8]

Right On Crime recommends that the North Dakota House Judiciary Committee and entire chamber works to improve SB 2128 by either eliminating or dramatically revising the language that expands truth-in-sentencing laws. It is our joint goal to create a safer and more prosperous future for North Dakotans and we believe that we can. Changes to SB 2128 can be made to make our communities safer.

Right On Crime appreciates your consideration and we stand at the ready to be of assistance on this legislation and other criminal justice issues. For any further questions, please contact me at rwright@rightoncrime.com.

Sincerely,

Rachel Wright
National Policy Director
Right On Crime

[6] https://rightoncrime.com/wp-content/uploads/2022/02/Truth-In-Sentencing_OnePager_20220211.pdf
[7] *Id*.
[8] Kuziemko, I. (2013). *How should inmates be released from prison? An assessment of parole versus fixed-sentence regimes*, The Quarterly Journal of Economics, 128(1), 371–424. https://kuziemko.scholar.princeton.edu/sites/g/files/toruqf3996/files/kuziemko/files/inmates_release.pdf.

ministry
ON THE MARGINS

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Dear Chairperson Klemin and Members of House Judiciary Committee,

My name is Nathan Mickelson, the Prison Reentry Manager at Ministry on the Margins, a nonprofit with a dedicated reentry program for men and women reentering society after a period of incarceration. I was given the opportunity to provide testimony before the House Appropriations - Human Resource Division at North Dakota State Penitentiary (NDSP) on March 18th on SB 2015 on the DOCR's budget and need for continued financial support. I am in strong opposition to SB 2128. Furthermore, I would strongly recommend to the members of the committee to take into consideration the testimony presented by several NDSP residents during SB 2015 which is ***highly relevant*** to SB 2128, in particular Mr. Nathan TeBay. These hearings at NDSP for SB 2015 were the *only platform where NDSP residents could provide in-person testimony*. Their voices, concerns, families, and lives need to be considered as many of these residents will one day be our neighbors.

As an individual integrally involved in rehabilitating ex-offenders and having gone through my own successful reentry, I have a challenging time believing this bill would be enacted or even quite frankly, even considered. SB 2128 is simply a draconian throwback to "get tough on crime" and we all know how that worked. While I certainly support incarceration when needed, swift action on violent offenses and public safety, people deserve a second chance, to have the opportunity to rebuild their lives. Briefly, SB 2128 aims to change several key aspects of our Century Code, namely by narrowing down who would be eligible for work release, education and rehabilitative programming by establishing an "eligible offender" as stated in the title of 12-48.1-01 subs 2. This new definition would deprive most of the prison population of these much-needed rehabilitation opportunities relied on for successful reentry and to maintain public safety. Several long term and productive DOCR work release programs would be severely affected and essentially shut down, including Roughrider Industries.

SB 2128 also requires a minimum timed served of at least 50% for every resident before they can be considered for parole. Resident treatment, education or programming are keystones in successful reentry and rehabilitation, serving as proof to the parole board they are working on their rehabilitation. Anyone not an "eligible offender," according to the language, appears to be unable to take part in any programming prior to the 50%. The Parole board would likely not consider anyone without programming for parole.

SB 2128 also reduces good time by capping it at 5 days per month for each sentence served up to a maximum of 15% of the offender's sentence. The current statue does not cap a resident's good time or meritorious conduct. If a resident is following all DOCR's requirements for good time, why, must I ask, would we cap this individual's good time or incentive to continue being a successful, safe resident? Good time is more valuable to the residents than many of us could ever

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understand. If you take away residents' incentive and hope, I know firsthand this leads to violence, an increase in incidents and safety concerns for all the staff and residents.

Lastly, I want to say I am a full supporter of law enforcement, the job they do, the risks they take in protecting the public, and the stress imparted by such a difficult job. My brother, father and I have worked closely with all forms of first responders and law enforcement in past, present and future and will continue to do so. I support and applaud those sections about penalties and sanctions for those putting their lives at risk, especially habitual offenders. My only question would be, why would these sections be part of a bill taking aim at the DOCR? This could be a separate bill in itself.

As a successful individual with firsthand experience in the reentry process, I will continue to hold my head high, encourage those I work with and to contribute to the rehabilitative community.

I strongly urge the House Judiciary Committee for a DO NOT PASS on SB 2128.

Regards,

Nate Mickelson

Prison Reentry Manager

Ministry on the Margins

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March 16, 2025
Testimony to the **House Judiciary Committee**
Submitted By: Jesse Walstad on behalf of the ND Association of Criminal Defense Lawyers
Testimony **in Opposition to S.B. 2128**

Chairman Klemin and Members of the Senate Judiciary Committee:

My name is Jesse Walstad and I represent the ND Association of Criminal Defense Lawyers. The NDACDL is made up of lawyers throughout our state who dedicate a portion of their practice to criminal defense. The mission of the NDACDL is "to promote justice and due process" and to "promote the proper and fair administration of criminal justice within the State of North Dakota." With that mission in mind, the NDACDL **opposes S.B. 2128** and recommends a **DO NOT PASS** from the House Judiciary Committee.

Minimum Mandatory Sentences DO NOT Prevent Future Crime

S.B. 2128 would create minimum mandatory sentences for Fleeing (30-day minimum), Simple Assault on an officer, EMT, firefighter, or Emergency Room staff member (30-day minimum), and Preventing Arrest (14-day minimum). While protecting our law enforcement and emergency services personnel is of paramount importance, minimum mandatory sentencing is a demonstrably failed experiment our preceding Legislatures have wisely declined to endorse.

During the 1980s and 1990s the federal government and many states added minimum mandatory sentences. By way of example, illicit drug crimes, particularly in the federal code, are riddled with minimum mandatory sentences. Decades later, drug offenses continue to increase in frequency and severity across the United States. Scholarly analysis of data obtained from failed state and federal minimum mandatory systems over the past four decades proves minimum mandatories do not disincentivize criminal activity but do dramatically increase justice system costs.[1] Except for particularly egregious offenses, our Legislature has historically refused to insert a host of minimum mandatory into our law, wisely relying on our exceptionally well qualified judges to fashion appropriate sentences under existing law.

Our Legislature's reluctance to follow the failed minimum mandatory trend of decades past was sound judgement. Data gathered over several decades establishes that minimum mandatory sentences failed to prevent or deter crime while simultaneously expanding our national prison population by 500% over the past forty years. For this reason, many states and the federal government have been reforming and reducing their minimum mandatory sentences in recent years.[2] S.B. 2128 threatens to move North Dakota in opposition to the trend away from minimum mandatory sentencing. The Legislature should not accept this invitation to adopt a demonstrably failed sentencing system.

Our State's Attorneys and judiciary have no difficulty distinguishing between cases meriting imprisonment and those meriting leniency. S.B. 2128 would deprive our judiciary and our State's

[1] Testimony of Dr. Andrew Myer, criminal justice professor and a research fellow with the University of Cincinnati Corrections Institute, in opposition to S.B. 2128. (#30208).
[2] The trend away from minimum mandatory sentences is exemplified by the First Step Act of 2018. There, a bipartisan Congress opened the door for the federal judiciary to depart from certain severe sentencing requirements, eliminate stacking of mandatory minimums, and reduce the three strikes law. In doing so, it transferred some measure of sentencing discretion back to the federal judges who are best situated to fashion fair and just sentences based on the unique circumstances of each case.

Attorneys of the wise and seasoned discretion they use to ensure justice is done in every case. A credible justice system contains sentencing safeguards to ensure a just and fair outcome tailored to the circumstances of each case. Personally, and on behalf of the NDACDL, I trust our judges to dispense justice based on the facts of each case as applied to the sentencing factors and I strongly urge the House Judiciary to deny the flawed invitation to arbitrarily limit our judge's discretion by implementing the minimum mandatory sentences proposed in S.B. 2128.

Judicial and prosecutorial discretion is particularly important when you consider the exceptionally broad range of conduct, from honest mistakes to extreme public dangers, that fall within each of the offenses addressed under S.B. 2128. I have had clients charged with preventing arrest or interfering for exercising their lawful right to refuse questioning or deny entry in the absence of a warrant. One client was charged with interfering with a law enforcement function after their foot became stuck under the front seat of a police cruiser preventing his immediate exit. Under S.B. 2128 those and countless other trivial situations would serve no less than two weeks in jail.

Another client, a doctoral level professional, was moving his car out of a short-term parking zone during a snowstorm. He didn't brush the snow off his car, hoping the wind from driving would do so. An officer immediately initiated his emergency lights because the license plate and windows were snow covered. The client drove three blocks before he saw the officer's emergency lights. When he did, he stopped immediately. He was charged with fleeing. Compare that incident to one in which a suspect leads four agencies on a 3-county high speed pursuit through several cities. Does our criminal justice system benefit from a mandatory 30-day jail sentence and lasting record of conviction from an honest mistake by a person who has no criminal record?

Another client was charged with simple assault on an officer when the officer suffered what he described as an "abrasion" to his pinky finger while placing them in handcuffs. Another, while intoxicated to the brink of consciousness unintentionally jerked their foot hitting an EMT on the hip while lying in an ambulance gurney, the EMT was uninjured, but the client was a charged with simple assault on an emergency worker. Under S.B. 2128, each would receive a 30-day jail sentence.

Those in favor assert minimum mandatories will disincentivize commission of these offenses. First, data proves minimum mandatories have little if any deterrent effect,[3] even in premeditated offenses such as drug distribution, child porn, and planned violent crimes. Secondly, these offenses - obstruction, fleeing, simple assault on an officer - are not premeditated offenses. They are impulsive offenses committed with forethought. If minimum mandatories do not deter premeditated offenses, it is illogical to assume they would have any deterrent effect on low level impulse crimes. The claimed deterrent effect is speculative at best, and contrary to abundant data.

What can be predicted with certainty is an immediate and dramatic increase in the number of trials, the number of inmates, and the vast resources required to implement S.B. 2128. Those negative externalities are foreseeable and inescapable. If passed S.B. 2128 will place imminent and substantial

[3] Stemen, Don, Dept, of Criminal Justice and Criminology, Loyola University; *The Prison Paradox: More Incarceration will Not Make Us Safer*; July 2017. https://vera-institute.files.svdcdn.com/production/downloads/publications/for-the-record-prison-paradox_02.pdf

resource demands on our courts, our State's Attorneys, our indigent defense commission, and our prison system. All of which are already at or over capacity.

When mandatory sentences are in play the attorneys and judges working on a case are arbitrarily restricted in their ability to resolve cases justly and amicably. When faced with minimum mandatory sentences defendants often have no incentive to enter a guilty plea, because they will likely receive the same sentence if convicted by a jury that they would if they plead guilty. Each jury trial is a considerable use of state and personal resources. The vast majority of criminal cases do not proceed to trial because the current law provides sufficient latitude for the parties and the court to agree on appropriate sentences in most cases. Minimum mandatory sentences create an arbitrary negotiating floor precluding agreement and unnecessarily consuming scarce justice system resources.

The insinuation that North Dakota judges are soft on crime or fail to recognize and appropriately punish dangerous or repeat offenders, is categorically false. S.B. 2128 would require severe one-size fits all sentencing without regard for the circumstances of the case or whether the defendant is a habitual or dangerous offender. Arbitrarily limiting judicial discretion will result in unnecessarily harsh sentences in low-level cases, while the sentencing outcomes in egregious cases will likely go unchanged.

The bottom line is the collective wisdom and experience of our judiciary enforcing our current sentencing laws ensures justice can be done in each case. S.B. 2128 would deny tailored justice to the lowest level offenders, without materially effecting egregious offenders. The costs and negative consequences of minimum mandatory sentencing need not be endured when we have an exceptional prosecutor's bar and judiciary with the discretion to fashion appropriate sentences to the facts of each case. The NDACDL strongly urges this committee to trust our judges, our prosecutors, and our law by voting **DO NOT PASS** on the minimum mandatories proposed in S.B. 2128.

Evidence-Based Sentence Reduction and Rehabilitative Tools <u>DO</u> Prevent Future Crime

S.B. 2128 also proposes substantial changes to N.D.C.C. §§ 12-48.1-01 and 2, which severely limit the seasoned and informed discretion of the director of the DOCR, by codifying extremely narrow "eligibility" criteria, and mandating quarterly reporting of each eligible offender within the DOCR by name. It would also elevate the DOCR's threshold determination for participation in release programs to "a high degree of reliability" without providing any guidance as to what that means, or how it differs from the current determination. Moreover, S.B. 2128 would move North Dakota in opposition to national trends, by amending N.D.C.C. § 12-54.1-01 to arbitrarily cap good time credit, essentially eliminating evidence-based sentence reduction incentives.

There is no evidence to support the errant proposition that longer sentences deter future crime.[4] In reality, S.B. 2128 would dramatically increase the cost to the taxpayers, without any proof or credible promise of increased safety or decreased crime.[5] Truth in Sentencing statutes in other States have proven to "reduce[] incentives to complete rehabilitative programming, increase[] risk to safety

[4] U.S. Dept. of Justice, Office of Justice Programs National Institute of Justice; *Five Things About Deterrence*, May 2016. https://www.ojp.gov/pdffiles1/nij/247350.pdf.

[5] "Truth in Sentencing" *Paying More Money to Make Our Communities Less Safe*; Families Against Mandatory Minimums Fact Sheet, April 2024. FAMM-Truth-in-Sentencing-Fact-Sheet.pdf

for correctional officers and individuals in prison, and increase[] recidivism."[6] DOCR Director Colby Braun opines, and the NDACDL strongly agrees, evidence-based sentence reduction strategies, couples with rehabilitative and transitional tools best serve the people of North Dakota, and provide the best chance at long term positive results throughout our justice system and across our state.

S.B. 2128 would substantially decrease access to valuable and cost effective rehabilitative and transitional tools. It would effectively abolish Electronic Home Monitoring ("EHM") and community placement transitional options, both which have been exceedingly effective in ensuring accountability while the expense is borne by the offender, not the public.[7] It would divest sheriffs of authority to use programs like Cass County's Community Placement Program which has been exceedingly successful, and very cost effective. The "truth in sentencing" portions of S.B. 2128 would have an immediate devastating impact on the network of rehabilitation and transitional resources in communities across our state. These programs change, and in many cases, save our citizens' lives. Adam Martin, of the F5 Project, offered compelling firsthand proof that evidence-based sentence reduction and reentry centers reduce recidivism. *See* (#29951). He testified that the F5 Project has a 75% success rate for participants who go through Free Through Recovery. Kevin Arthaud, of the Bismarck Transition Center, testified that not only would S.B. 2128 deprive many inmates of the valuable transitional and rehabilitation services currently offered, it would also deprive local businesses of employees in transition, and jeopardize the sustainability of transition centers. *See* (#3000). Said another way, S.B. 2128 would have an immediate detrimental economic impact on families and communities across the state. Those negative economic externalities go far beyond the basic costs estimated in the fiscal note.

Each of S.B. 2128's proposed changes directly conflict with national trends and the policy of the presidential administration, as demonstrated by the First Step Act and other efforts to incentivize good behavior, rehabilitation, and successful transition among inmate populations. The national trend favoring access to rehabilitation and evidence-based sentence reduction should not be ignored by our Legislature. Testimony from the American Conservative Union CPAC – Faith and Freedom Coalition opposes S.B. 2128 and encourages the Legislature to follow President Trump's approach under the First Step Act, demonstrating that inmates who earned early release had a 55% lower recidivism rate. *See* (#30054). Right on Crime, a conservative criminal justice campaign by the Texas Public Policy Foundation, offered testimony in opposition to S.B. 2128 focused on the importance of incentivized inmate rehabilitation to end the cycle of recidivism, and the danger of truth in sentencing models. *See* (#29798). Right on Crime opines that deprivation of evidence-based sentence reduction incentives, as offered under S.B. 2128, directly harms successful post sentence transition and causes worse behavior during incarceration. Importantly, that other states with Truth in Sentencing laws have little evidence of their efficacy. In Arizona for example, taxpayers have spent $1.3 billion per year on incarceration, while the effectiveness of "truth in sentencing" has been dismal.[8]

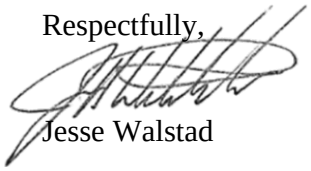
The post-conviction amendments proposed by S.B. 2128 stand in stark contrast to the evidence-based sentence reduction advances North Dakota and our DOCR have made over the past decade. Coupling S.B. 2128's vast expansion of 85% offenses, and corresponding reduction in good

[6] Green-Lowe, Evan, Recidivisz; *The consequences of Truth in Sentencing;* April 2022. https://www.recidiviz.org/updates/the-consequences-of-truth-in-sentencing.
[7] Testimony of ADAPT Electronic Monitoring LLC in Opposition to S.B. 2128 (#30372).
[8] Macdonald, D.C. (2024). *Truth in Sentencing, Incentives and Recidivism*, Truth in Sentencing, Incentives and Recidivism | The Review of Economics and Statistics | MIT Press

time credit, with decreased access to rehabilitative and transitional tools is a recipe for disaster. As an example, an inmate would be released after serving 85% of their sentence, while simultaneously having substantially limited access to rehabilitative and transitional tools and no evidence-based motivation to utilize them. Studies demonstrate that without meaningful access to transitional and rehabilitative assistance the odds of successful post-sentence reintegration are substantially diminished, and the likelihood of recidivism is correspondingly increased.

For all of these reasons, the NDACDL strongly urges this committee to trust our judges, our corrections professionals, and the wealth of statistical information favoring evidence-based sentence reduction by voting **DO NOT PASS** on S.B. 2128.

Respectfully,



Jesse Walstad

Chairman Klemin and members of the House Judiciary Committee, my name is Allison Wanner, and I am a Licensed Clinical Addiction Counselor at the Southwest Multi County Correctional Center (SWMCCC) Community Treatment Program. I am here today to talk about SB2128 and how it would negatively impact my current clients. SWMCCC currently has a contracted program with the ND DOCR to provide transitional services including work release and substance abuse treatment for residents moving back to Western North Dakota.

Work release inmates in our program are required to maintain employment, complete necessary chemical dependency evaluations, and follow recommended programming which help them successfully reintegrate into society. Without such programs, many face barriers like job rejections, housing instability, social stigma and increased the risk of reoffending.

Facilities in the state are already at capacity or over capacity. So my question is, where are they going to go? New facilities will need to be built, but that takes time and money. The new HRCC would cost of $166,000,000. Of the 230 inmates that would need to be sent back, 70 of them are females. They would need temporary housing until the new Heart River Correctional Center (HRCC) is built. This new facility would not be built until October 2027, that is over 2 years away. In addition, that would leave 160 men that would need temporary housing as well. They would be removed not only from my work release program, but other transitional programming across the state. They would need to be placed in secure temporary housing such as jails, awaiting the approval a new male facility, which could cost the state another $498,000,000. This is a concern and something to strongly think about if SB2128 were to be implemented.

Data from the 2 years that our program has been in existence shows that 20 clients have been paroled, 20 clients have been able to establish stable housing prior to release and 19 clients left the program employed. Out of the 20 clients, 4 have received new legal charges, none of which were violent.

So how would this negatively impact our current clients on the work release program? Returning inmates who have secured stable employment and are actively saving for their release would significantly hinder their progress. Successful reintegration into society is critical, and removing access to work release programs could have profound negative effects on their mental and physical well-being, as well as their behavior. These individuals were previously deemed trustworthy enough to participate in transitional programs, and revoking that opportunity may lead to feelings of abandonment and distrust. Many inmates have experienced significant trauma, and disrupting their reintegration process could exacerbate these challenges, ultimately increasing the risk of recidivism.

I'd like to end my testimony with a few statements from current and past clients that participated in the work release program at SWMCCC County Jail:

“I want to share my story with the committee as someone who has experienced both sides of the correctional system. I once worked as a correctional officer at the North Dakota State Penitentiary (NDSP), however, due to poor choices surrounding my struggle with alcohol, that I do take complete responsibility for, I now have found myself on the other side of the bars. Today, I am under the supervision of the DOCR, and participating in the SWMCCC work release program. This program has been extremely helpful in helping me obtain opportunities to reintegrate back into society. It has given me the opportunity to rebuild my work ethic, gain financial stability and repair relationships that may have been broken, due to my struggles with alcohol. It has also given me a strong sense of purpose. Through work release, I have been able to reconnect with responsibilities, establish positive routines, and regain the confidence in my ability to be a productive member of society. The impact of the program goes far beyond employment. It has helped me stay focused on my recovery, providing me with a support system within my community due to the ability to attend AA and NA meetings on a regular basis, and allowed me to make amends for my past mistakes. It has also given me hope- something I had lost for a long time. I am beyond grateful for the opportunity the DOCR has given me, to participate in the work release program, complete my treatment that I needed and to regain stability again, so I can move forward from my past. I no longer allow the past to define who I am, and with the work release program I am now creating a foundation in which I am defining my future and my future successes. The work release program that I am part of gives individuals like me, who was a successful member in society, working for the state, a second chance, but also helps contribute to a safer and stronger community. It has opened doors for me, to make changes for my future, in which revolves around being more involved in the recovery community and possibly even making it a future career for me”.

“The work release program is very beneficial to all inmates who want to positively change their lives. There are numerous companies in our community that help out with a variety of different jobs and skills in the workforce. It helped me get my foot in the door to re-enter society with all kinds of different programs. Each program is specific to your needs. It also helps with being able to save funds and prepare for release upon completion of sentencing. The ladies at SWMCCC are very helpful with anything and everything you can expect to need before your release. Such as community programs like NA and AA and connects to felon friendly place to live, peer support and guidance. As an ex-convict I was grateful for the opportunity to participate in the program. It helped the transition from jail to the community successfully and I was able to prosper. Without it I do not know how I would have been able to get where I am at today”.

In closing, I want to thank you for allowing me to testify and I ask that you move a do not pass on SB 2128.

Testimony in Support of Senate Bill No. 2128
Presented to the Sixty-ninth Legislative Assembly of North Dakota
Given by Christopher Huard, Detective, Wahpeton Police Department
03/24/2025

Chairperson and Members of the Committee:

Good morning. I would like to start by extending a thank you for the opportunity to speak today in my support of Senate Bill No. 2128.

My name is Christopher Huard. I serve as a Detective for the Wahpeton Police Department here in North Dakota. In addition to being an experienced investigator, I also serve as a Field Training Officer, Instructor of Police Subjects, an International Association of Chiefs of Police Drug Recognition Expert, and a Sniper on the Southern Valley Special Response Team. I am here today to speak in strong support of Senate Bill No. 2128, which represents a crucial step forward for law enforcement, the criminal justice system, and most importantly, the victims of heinous crimes.

To law enforcement, Senate Bill No. 2128 acknowledges a reality faced every day across our great state-violence against law enforcement. When an individual assaults a law enforcement officer or flees during or after the commission of a felony, the risk to everyone escalates-officers, bystanders, and the suspects themselves.

SB 2128 sends a clear message: assaulting North Dakota peace officers, correctional staff, EMTs, and other public servants WILL NOT be tolerated. The inclusion of minimum mandatory penalties for these offenses is not about "vengeance"-it's about deterrence, accountability, and respect for the rule of law.

When suspects run from law enforcement-especially during or after committing a felony-it is not a minor offense. It is reckless and dangerous. SB 2128 rightly upgrades penalties for those who flee peace officers, especially when their driving conduct threatens lives. Furthermore, it requires that these sentences be served consecutively, ensuring that serious criminal conduct is not lumped into a single, watered-down penalty.

To our community: As law enforcement officers, we do our part to investigate crimes and apprehend offenders. All too often, we hear from victims and community members who are shocked to learn that the sentence handed down in court is not the sentence actually served. A tragic example from Wahpeton is the death of Bailey Bernstein.

On October 12, 2023, while out for a walk with her mother on 11th Avenue South in Wahpeton, Bailey Jo Bernstein was struck by the vehicle of Chad James Olson. Instead of rendering aid to Bailey, Chad drove away, leaving her to die in front of her mother. Bailey was transported to the hospital where, on October 15, 2023, she succumbed to her injuries.

Through the investigation, it was determined that Olson was under the influence of alcohol at the time of the crash. Through a plea agreement, Olson pled guilty to Criminal Vehicular Homicide and Duty in Accident Involving Death or Injury and was sentenced to a term of 10 years of confinement at the North Dakota Department of Corrections and Rehabilitation-five years to be served, with three years of supervised probation, credit for 342 days of time served, and $10,000 in restitution. Currently, Chad Olson is NOT incarcerated, despite pleading guilty to a violent, senseless, and horrific crime that took the life of a 20-year-old Wahpeton woman. As of October 2024-less than six months after his transfer to ND DOCR-he is no longer in custody. This is, quite simply, an injustice and a failure of current practices.

Also from Wahpeton is the extensive violent criminal history of Shadrach Aho-an individual who, for years, terrorized the citizens and law enforcement officers of Wahpeton. Aho's criminal profile includes multiple counts of Patronizing a Minor for Commercial Sexual Activity - With Intent to Engage with a Minor, Solicitation of a Minor - Victim under 15, Interference with Telephone During Emergency Call, and Violation of a Domestic Violence Protection Order, which occurred while he was incarcerated at the ND DOCR.

Aho has repeatedly demonstrated extreme violence toward both law enforcement and civilians, requiring massive law enforcement responses and the activation of the Southern Valley Special Response Team. Until his most recent incarceration and subsequent admission to the North Dakota State Psychiatric Hospital, Aho's actions were a revolving door in and out of jail and the ND DOCR-allowing him to continue to recidivate in the absence of any meaningful rehabilitation.

Senate Bill 2128 addresses these frustrations by requiring violent offenders to serve at least 85% of their sentence, restoring integrity to the criminal justice system and providing peace of mind to victims and the public.

Let us be clear: Senate Bill 2128 is NOT anti-rehabilitation. In fact, SB 2128 supports structured, earned opportunities for low-risk, nonviolent offenders to participate in work release and educational programs. These tools are important and, when used appropriately, can reduce recidivism and help individuals return to society better and healthier than before. What this bill does is ensure that dangerous or high-risk offenders are not released early without proper review and safeguards.

At the end of the day, this legislation is about balance. SB 2128 balances rehabilitation with responsibility. It balances second chances with public safety. And most importantly, it gives law enforcement officers like me-and the communities we serve-greater confidence in a justice system that is working the way it should.

I urge the members of this body to pass SB 2128 to ensure justice is not only promised – but delivered – for every victim, officer, and citizen of North Dakota.

Thank you.

House Judiciary
Representative Lawrence R. Klemin, Chairman
SB 2128 – In Opposition
March 24, 2025

Lisa Peterson-Gustafson, PhD, LP

Good morning, Chairman Klemin and members of the committee. My name is Dr. Lisa Peterson, I have been a licensed clinical psychologist since 2012 and reside here in Bismarck, North Dakota. I have worked my entire career in corrections, including a pre-doctoral internship with the Federal Bureau of Prisons, ten years with the DOCR, and then transitioning to the private sector in 2021. Throughout my time in graduate school and as a licensed psychologist, in addition to corrections, I have worked in almost every aspect of the behavioral health system in North Dakota; however, I'm not representing any agency today. I took annual leave from my current position to speak in opposition to SB 2128 as a concerned citizen of North Dakota, albeit one with specific education and experience in these topics.

I will focus on two aspects of this bill: The first is in potentially limiting access to work, education, and treatment programming for incarcerated people and the second is limiting access to supported re-entry services, particularly for those who have served lengthy sentences. Much work has been done in North Dakota over the past 15 years to make a term of incarceration as transformative as possible and to ensure that people leaving prison are set up for success. There is rhetoric about "the Norway Model" being a softer approach, but what is often lost in those conversation is that it is an approach that significantly raises expectations for incarcerated adults. It endeavors to make sure incarcerated adults have the same responsibilities as free adults to the extent possible and provide opportunities for them to grow in work ethic, dependability, integrity, and accountability – values we hold dear as North Dakotans.

We do not want incarcerated people, especially those who have perpetrated violent crimes, to be restricted from starting educational, work, and treatment programs for any portion of their sentence. That creates a situation in which they are often literally lying around doing nothing. Bored people cause problems – especially bored people with a propensity for violence. We want them to use every possible minute of their incarceration to become better citizens and DOCR has created a prison system that allows for that to take place. Many prison systems do not, and they have substantially higher rates of violent crime inside their prisons, including toward staff, and substantially higher recidivism rates. Prohibiting people from engaging in productive activity during incarceration is less safe for staff and less safe for our communities. I understand previous versions of this bill did just that and would caution against any attempt to prescribe when people can start engaging in productive activity during incarceration.

Despite DOCR's work in raising expectations for incarcerated adults, the transition from prison is still very challenging for many people, especially those that have served a lengthier term. North Dakota has been working on effective re-entry and transition for more than 20 years. North Dakota was one of the first states chosen in 2004 to participate in the National Institute of Corrections Transition from Prison to Community Initiative. The North Dakota legislature formed an Alternatives to Incarceration Commission in 2005 that worked for 15 years and encouraged the DOCR and other

levels of government to develop effective alternatives to incarceration, transition centers being one of them.

Even with the best re-entry plans in place, moving from the level of structure and support provided by a prison to a life at liberty can feel like jumping off of a cliff without a parachute and often results in poor outcomes without adequate support. A meta-analysis examining eight studies conducted by Wong and colleagues in 2019 indicated that halfway house residents are 1.27 times less likely to recidivate than people on general parole or people released with no supervision. Transitional facilities help individuals secure safe housing, become employed, work through strained relationships, find healthy coping skills, build up their financial resources, and test out increasing freedom. Anyone in a transitional facility who doesn't meet the expectations of their placement there can be taken back to prison immediately, so it gives us an opportunity to see how the person is going to handle being in the community with significantly greater expectations and supervision than parole or probation alone can realistically provide.

There has been much discussion about people walking away from these facilities and the fears we may have that a transitional facility resident will commit a violent crime during their re-entry phase when they could have still been in a secure prison instead. Try as I might, I could not locate any example in an online search of available news media and other public records of a transitional facility resident in North Dakota perpetrating a violent crime during their stay, either while they were at the facility or after walking away. I found one concerning example from 2018 of a federal case in which an individual who had been convicted of murder only one year prior was furloughed at Centre, Inc. in Fargo for a mental health evaluation and fled the facility, but he was not reported to have committed a new offense during the escape.

There may be contrary information that I do not have access to, but in listening to previous testimony on this bill I have not heard of even one specific case in which the DOCR's decision to place someone at a transitional facility resulted in the commission of a new violent crime. There is language in this bill that is not clearly defined that relates to DOCR determining with "a high degree of reliability" that the person will basically be safe to reside in the facility and I would argue they are already doing that. In short, in terms of limiting who can receive supported re-entry services and when, this bill is proposing a costly and detrimental solution to a problem that does not exist. Thank you for your time and I'm happy to answer any questions you may have.

Centre

Chairman Klemin & Members of the House Judiciary Committee,

My name is Josh Helmer, and I serve as the Executive Director for Centre, Inc., a North Dakota non-profit that has provided re-entry and transitional services for justice-involved individuals since 1976. We contract with the ND Department of Corrections and Rehabilitation (DOCR) and the Federal Bureau of Prisons, operating programs in Fargo, Grand Forks, Mandan, and Williston, with nearly 190 employees statewide. Our mission is to provide rehabilitative services that promote social reintegration.

Concerns with SB 2128:
If Senate Bill 2128 passes as currently amended, it will **severely limit access to re-entry and transitional services** for individuals exiting North Dakota's prison system.
Specifically:

- **Section 3 ("Eligible Offender")** excludes individuals with a broad range of non-violent offenses—such as driving under suspension or drug ingestion—from ever participating in transitional facilities. This means over **90% of inmates** will no longer be eligible for transitional placement, no matter their progress or earned time.
- **Section 10 ("Confinement")** prevents the DOCR from placing ineligible individuals in transitional facilities, effectively eliminating their access to critical re-entry programs.

Public Safety & Fiscal Concerns:
Transitional facilities provide **essential drug and alcohol treatment** to DOCR inmates. If this bill passes, the Parole Board will face two choices for most inmates:

1. **Release them directly into the community without treatment**, increasing recidivism.
2. **Keep them in prison longer**, at a much higher taxpayer cost.

Evidence-based research, including the summary of research from Dr. Myers in written testimony on this bill, demonstrates that **Truth in Sentencing laws without re-entry support do not increase public safety, reduce recidivism, or save money**.

Why Transitional Programs Work:
Centre, Inc.'s programs focus on **accountability, employment, and rehabilitation**. In 2024 alone:

- **71% of DOCR inmates and 77% of DOCR parolees** successfully completed the program.

3501 Westrac Drive
Post Office Box 1269
Fargo, ND 58107-1269
(701) 365-4199
FAX (701) 365-4180

100 6th Avenue Southeast
Mandan, ND 58554
(701) 663-8228
FAX (701) 663-0912

123 15th Street North
Fargo, ND 58102
(701) 237-9340
FAX (701) 373-8357

201 4th Street South
Grand Forks, ND 58201
(701) 746-6303
FAX (701) 746-7713

- **90% of program graduates secured stable housing**, reducing homelessness upon release.
- **Over $800,000 in personal savings** was accumulated by participants, helping them reintegrate successfully.
- Participants contributed over **$800,000 toward restitution, fines, and room and board**, reducing taxpayer burdens.

Safety & Oversight:
Contrary to some claims, Centre, Inc.'s facilities are **not shelters or traditional halfway houses**. They operate under strict security protocols, including **24/7 staff monitoring and video surveillance**. Residents follow **strict schedules**, and law enforcement has **full access** to our facilities, as documented in signed Memorandums of Understanding with police departments and their participation in Centre, Inc's quarterly Community Relations Board meetings.

Conclusion:
While Centre, Inc. supports SB 2128's provisions to increase penalties for violent offenses against law enforcement, **its restrictions on transitional facilities will have serious unintended consequences**. Without access to structured re-entry programs, more individuals will **return to crime, increasing victimization and reducing public safety**. The fiscal impact will also be significant, as longer incarcerations will **cost taxpayers more without improving outcomes**.

For these reasons, I **strongly urge a "Do Not Pass" vote on SB 2128**.

Thank you for your time.

Sincerely,



Josh Helmer,
Executive Director

WAHPETON POLICE DEPARTMENT

920 3rd Avenue North • Wahpeton, ND 58075 • Phone: 701.642.7722 • Fax 701.642.7842

Protect and Serve

Chairman Klemin and Members of the House Judiciary Committee,

I, Chief Matthew Anderson, representing the Wahpeton Police Department, am submitting testimony in favor of SB 2128 and in support of Truth in Sentencing in North Dakota.

I get asked far too often by victims and citizens the question of why the offender is already out or why the offender didn't get any prison time. This is happening in our community and every other community around North Dakota.

SB 2128 addresses those issues head on by requiring those individuals found guilty by a Judge or jury to serve 50% of their imposed sentence prior to being eligible for parole. If a qualified parole board finds the inmate not fit for parole, that inmate serves 85% of their sentence.

SB 2128 allows offenders to participate in education, work, rehabilitation and treatment programs on site and under the direction of DOCR.

SB 2128 changes the way good time and meritorious sentence reductions are applied.

SB 2128 addresses release programs and holds inmates accountable to the public.

SB 2128 addresses acts of violence against law enforcement officers and holds the individual accountable with consecutive sentencing instead of concurrent sentences.

SB 2128 more importantly addresses the glaring issue of inmates released from prison after serving a fraction of their sentence for the most violent crimes committed against our citizens. SB 2128 addresses Truth in Sentencing and holds those found guilty accountable for their actions.

I respectfully ask for a Do Pass.

Thank you,

Chief Matthew Anderson

SB 2128

Hearing date: March 24, 2025

Senate Judiciary Committee 2025 ND Legislature

Chairperson Diane Larson
Committee Members

From: Rozanna C Larson
Ward County State's Attorney

RE: Senate Bill 2128

Chairperson Larson and Members of the Committee,

This is my written testimony requesting approval of SB 2128. I am the State's Attorney for Ward County and have been a prosecutor for 27 years.

SB 2128 has been called the "truth in sentencing" bill. I know the concern is the impact this will have on DOCR population and the costs. I am not unsympathetic to the demands that are put on DOCR, both with the rate of incarceration and the number of offenders placed on supervised probation. For as long as I have been a prosecutor, prison/jail space has been an issue. "Catch and Release" has been phrase used over the years. Requests for the expansion of the State Penitentiary were made for several sessions before being approved. In 2013 the new wing was opened, but a 3-tier portion of the old prison was torn down. In 2013, given the increase in crime, it was full nearly the day the doors opened.

Throughout the years, during the interim, legislature has had studies and committees to address the issues relating to inmate population. These studies are related to recidivism, criminology, and risk assessments etc. One of the bigger studies, during my tenure as a prosecutor, was with Justice Reinvestment Initiative. (hereinafter (JRI). I was part of this committee.

History of legislation addressing incarceration issues

Due to the recommendations of the JRI were several sentencing changes. The focus of these changes was aimed at addressing the prison population. The JRI specifically identified addiction and mental health issues to be a contributing factor to recidivism and criminology. As a result of this "insight", in 2017 changes were made to NDCC 19-03.1-23 and other controlled substance statues. These changes included reducing the level of offense for drug dealers (NDCC 19-03.1-23) from class A felony to Class B felony, for substances other than marijuana. First offense possession of drugs and paraphernalia for controlled substances, other than marijuana, was reduced to a Class A misdemeanor, subsequent offenses remained a Class C felony. In 2019 legislature went further and eliminated all mandatory sentences for drug dealers.

In addition to amending NDCC 19-03.1-23 as part of the reform recommendations by JRI, amendments were made to NDCC 12.1-32-07, the statute that HB 1417 seeks to change in a significant manner. In 2017 legislation amended NDCC 12.1-32-07 to reduce the number of years an offender could be placed on supervised probation. Apart from certain specific types of violent offenders, or offenders identified in 12.1-32-15 (sex offenders), the longest period of time a person can be initially placed on probation for a felony offense was reduced from 5 years to 3 years. There was also legislation that added the authority, as an intermediate measure, to DOCR probation officer to sanction an offender up to 30 days incarceration in lieu of filing a petition to revoke probation. (I'm not certain this intermediate measure has been used).

Another change made in 2017, based upon recommendation of the JRI, was Presumptive Probation, NDCC 12.1-32-07.4. The primary purpose of presumptive probation was to reduce the rate of incarceration. Apart from some specific offenses, and specific "aggravating factors" offenders charged with a Class A misdemeanor or Class C felony presumptively receive probation, no incarceration. Legislature also reduce the level offense for first offense drug and paraphernalia possession. In 2019 class C felony aggravated assault was eliminated from 12.1-32-09.1 (85% rule) making the offense a presumptive probation offense.

As stated, this purpose of this testimony is not to undo the efforts that have been made to address the rate of incarceration or opportunities created to assist offenders to avoid felony convictions and address underlying issues or causes of their criminal behavior.

However, I will point out that despite these efforts, and despite the opportunities created, crime does not stop, the rate or demand on incarceration may have been delayed, but the need continues. This is clearly evidenced by the number of counties that have invested millions of dollars expanding local jails. Williams, McKenzie, Southwest Correctional Center, Burleigh Morton Detention Center, Mountrail, Ward, Grand Forks and Cass Counties have all expended the funds to expand and provide additional incarceration space. This was done to provide for the safety of the respective communities, the demand for incarceration, and the lack of space at DOCR.

Ward County Stats – filings in court

Year	felonies	misdemeanor	trials scheduled	trials held
2011*	990	5,189*	285	11
2016	1,324	2,058	488	40
2018*	1,066	2,185	536	33
2020*	1,246	1,952	834	16
2021	1,169	1,837	677	15
2022	1,048	1,964	797	13
2023	1,097	2,351	792	23
2024	729	1,830	792	23

*2011 Minot flooded, we also had 6 murders, the misdemeanor number includes infractions
*2018 the new laws took effect, presumptive probation,

*2020 COVID

Probation stats for Ward County

Year	petitions	DOCR	local	prob.	new crimes	absconded
2011	72	23	10	12		30
2016	519/218*				44.5%	129
2018	455	79	44	22	37%	149
2020	274	53	64	18	30.3%	160
2021	252	79	86	10	34.1%	168
2022	290	82	78	37	35.5%	195
2023	318	48	84	16	31.9%	148
2024	244	58	65	23	29.5%	167

*2016 probation records indicated 519 cases closed, there were 218 revocations

Over the years, as State's Attorney, my sentencing recommendations have changed. They have changed for several reasons. Some are due because the laws have changed. Presumptive probation has been mandated, most minimum mandatory sentences have been eliminated, some of that change has come from listening to testimony in past legislative sessions. Such as taking into consideration addiction and mental health issues, crafting supervision conditions to address these issues. Criminal history, the type of offense committed, victim input are also considerations. Lack of space is also a consideration. What really impacts recommendations is the actual incarceration time the offender will serve. These factors are considered on probation revocations also. When an offender's probation is revoked, they can re-sentenced up to the maximum they could have been originally, or something less. On all revocation orders, they receive credit for the time they have already served. For example, if the original sentence committed an offender to DOCR to serve 2 years, the revocation order gives that offender credit for 2 years previously served, no matter if that sentence is served in the community or in a correctional facility.

As a prosecutor my options for sentencing recommendations (for non-life sentences) are: deferred imposition with probation, misdemeanor dispositions (felony becomes a misdemeanor) with probation, felony disposition with probation, serving local jail sentence with probation to follow, or serving a DOCR sentence with probation to follow, flat sentence, or a fine/costs. (currently there is proposed legislation eliminating most of the costs assessed), or a combination of jail/fines/probation. Probation sentences are not all supervised. Most misdemeanor probation is unsupervised. Clearly based on the above numbers, not all recommendations include jail time, local or DOCR.

This testimony is not aimed at undoing or criticizing the efforts made by the JRI study. But it is aimed at the continued theme that has become the mantra against any talk of expansion, "We can't build ourselves out of the growth." I am here to tell you, the time has come, we can't ignore what is resulting from this mantra, offenders are not deterred. Offenders are not deterred because they know if they are sentenced to serve any time at DOCR, they will only serve a fraction of that time in the correctional facility due to the increasing numbers.

I have listened to testimony regarding length of sentences, and incarceration at many sessions. I have heard testimony to this committee that incarceration makes offenders worse, that it doesn't work. I ask you, if this claim is true, then why do offenders want to keep their charges in State court rather than going into Federal court? Federal charges, with sentencing guidelines, the offenders know they will serve significant time. They know if their case stays in the State court, they will serve considerably less time than what is imposed. (this is for certain drug cases, CSAM cases etc).

Prosecutors have been blamed for the growth in the incarceration. We are accused of recommending too harsh sentences. Our state's population has grown, recidivism and public safety are ignored as factors. Prosecutors take all the things I have mentioned into consideration. However, prosecutors only have so much time. We must triage all our cases and balance the safety of the community and victims with resources. You see the number of trials that are scheduled, the number that are held. That comes from recommendations and considerations of all the factors I mentioned, especially keeping in mind the increase in the incarceration rate. Recommendations to DORC are not taken lightly. Those recommendations and sentences are imposed to those that have exhausted local resources, or is fitting for the offense that was committed.

The Courts also take all those factors into account when ultimately sentencing a defendant. Now with the deferred admission set by DOCR, the Courts are taking that into consideration even more with all the sentences. The Courts, especially on probation revocations, want to sentence offenders to a facility where they will be forced to complete services, addiction counseling, anger management, etc. They know a local sentence will not accomplish that goal. Unfortunately, they also know that given DOCR's practice the offender will not receive the services they should be and have been ordered to complete before they are released back into the community.

So, I ask you to support and pass SB 2128. Force DOCR to live up to its name, provide the REHABILITATION the public expects it to provide, before the offender is released. By requiring the offender to serve 50% of the imposed sentence in an actual correctional facility, there will be actual time to complete services. It will also serve as a deterrent that presently doesn't exist.

HP LaserJet Pro M501dn

Job Storage

Job Storage Description

Job Storage allows you to send the print job to the printer and have it stored there until you print it from the printer's control panel. Some Job Storage jobs allow an optional PIN to be associated with the job for extra security.

Job Storage USB Installation

To enable Job Storage, you must first insert a dedicated USB storage device (with at least 16GB of memory) in the rear USB slot. This USB storage device will hold the Job Storage jobs sent to the printer. If this USB storage device is removed, Job Storage will be disabled on the printer.

Insert the USB drive in the rear USB slot and follow the instructions on the control panel. This USB drive will be dedicated to Job Storage. If this device has a front USB slot, The front USB slot will not work for Job Storage.

1. The USB cover may need to be removed to reveal the USB slot on some printer models. If there is a cover, remove it.

2. Insert a USB drive with at least 16GB of memory.

3. Follow the Control Panel messages to format the USB drive for Job Storage.

You may need to update your printer driver if you do not find the "Job Storage" tab after enabling the feature in the printer. Go to the following URL for instructions on how to update the printer driver.

http://www.hp.com/support/jobstorage

House Judiciary Committee
Representative Lawrence Klemin, CHAIR
March 24, 2025

Chair Klemin and members of the House Judiciary Committee, I am Jesse Kubesh. Today, I submit this testimony in opposition of SB2128.

I want to share my personal story of overcoming addiction and successfully transitioning back into society. I believe that by telling my story, I can contribute to the ongoing conversation about addiction recovery, the challenges people face in reintegrating into society, and the policies that can help others like me.

For many years, I struggled with addiction. It affected every aspect of my life, including my relationships, my career, and my overall sense of self-worth. I made some very bad decisions which eventually led to being incarcerated for theft.

Through determination, support from loved ones, and the help of rehabilitation programs, I took the first step toward recovery. While in prison (MRCC) I worked in the Rough Rider Warehouse delivering furniture all over the state of North Dakota and then I was selected to work at the Bismarck State College doing Grounds Maintenance while I served out my sentence. Having these responsibilities gave me a newfound confidence in myself. I started facilitating Narcotics Anonymous meetings, I

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successfully completed drug & alcohol treatment and I tutored others going through treatment programs.

It wasn't easy, and there were many moments when I questioned whether I would ever be able to regain control of my life. But with persistence and support, I started to build the foundation for a healthier future.

One of the most significant challenges I faced was reintegrating into society. However, I came out prison with a full time job at the Bismarck State College which helped! Any problems I ran into in my reintegration phase I was able to solve on my own or had amazing resources (Bismarck Transition Center) and support systems to help navigate these challenges.

Today, I am proud to say that I have successfully rebuilt my life. I am still employed at the Bismarck State College but no longer in the Grounds Maintenance Department, I was promoted to Instructor/ Lab Assistant in the Carpentry/Residential Construction Department. I completed Peer Support Training and received my Peer Support Certification. I sponsor 4 individuals and mentor an additional 3 people. I have my own place and bought a car. I'm also taking college classes at BSC. I have learned invaluable lessons about resilience, the power of community, and the importance of second chances.

While I am incredibly proud of my journey, I know that many others face obstacles that make it difficult to overcome addiction and reintegrate successfully into society. I believe we need more support, including more transitional living facilities, sober living, expanded work release programs and more peer support services. These resources are essential to helping people like me transition from recovery to a productive, fulfilling life.

I am reaching out today to encourage you to consider supporting policies and initiatives that promote recovery, reduce the stigma of addiction, and provide people with the resources they need to thrive.

Thank you for taking the time to hear my story. I hope that by sharing my experience, I can help bring attention to the challenges of addiction recovery and reintegration. I truly believe that with the right policies and support, we can help many others experience the success I have.

Thank you. I can answer any questions you may have.

My name is Dennis Ingold, and I am a Senior Assistant State's Attorney for Burleigh County. I strongly urge a **DO PASS** on SB2128.

Our system should be one in which victims of crime, defendants, members of the public, law enforcement, judges, prosecutors, and defense attorneys have clear expectations as to how much of a sentence a criminal defendant will serve if that defendant is sentenced to serve time at the DOCR. In its current form, our law allows the DOCR nearly unlimited and unchecked discretion to transfer inmates between facilities, including halfway houses, as early as DOCR decides to do so. That might be after an inmate serves 5%, 10% or 15% of a sentence, even if that sentence is for dealing fentanyl or methamphetamine, terrorizing, escape, assault, theft, burglary, reckless endangerment, bail jumping, or nearly any other offense.

Under our current law, there are very few offenses, and even few violent offenses, that require an inmate to serve 85% of his or her sentence prior to release. This bill would require some offenders, like drug dealers, violent offenders, and sex offenders, to serve 50% of their sentence before being eligible for parole. It would still incentivize inmates to engage in rehabilitation to be released at 50% of their sentence, while bringing accountability and transparency to our sentencing system.

I have attached approximately 20 case examples taken from data I collected or received from DOCR. As these cases show, it is not uncommon for inmates, especially drug dealers, to serve 10% to 20% of their sentences (or less) before being transferred to halfway houses or before being paroled. For example, a fentanyl trafficker with multiple prior drug dealing convictions out of Illinois was only kept at the prison for 38 days of the remaining approximately 3 years of his sentence on a Class A Felony fentanyl offense. For another example, an inmate serving a 1 year and 1 day sentence for Terrorizing (minus 7 days jail credit), was transferred to a halfway house after only serving 30 days at the prison. These cases are not outliers; they are examples of what happens when there is no truth in sentencing.

The debate on SB2128 does not have to be a debate about accountability versus rehabilitation. Our criminal justice system can, and should, focus on both. Virginia's sentencing system focuses on both. Virginia is a "truth-in-sentencing" state (85% for felony offenses) that also focuses on providing rehabilitative services while inmates are incarcerated. There is accountability *and* rehabilitation. And, as a result, Virginia consistently has either the lowest or second-lowest level of recidivism in the country. Our recidivism rate is nearly 40%, while Virginia's is 19%. Our system, like theirs, should include both accountability and rehabilitation.

I have enclosed my written testimony before the Senate Judiciary Committee, along with case examples.

I strongly urge a **DO PASS**.

Thank you for your consideration.

January 20, 2025
Testimony in Support of Senate Bill 2128

My name is Dennis Ingold, and I am a Senior Assistant State's Attorney for Burleigh County. I am the supervisor of our office's drug division. In that role, I prosecute drug offenses, including drug dealing and drug possession, but I also prosecute violent offenses, sex offenses, and driving offenses, among others. Before becoming a prosecutor, I worked in private practice for more than seven years, and I defended criminal cases as part of that work. Because Senate Bill 2128 addresses a critical public safety concern – the early release of offenders, including violent offenders, drug dealers, and sex offenders, from North Dakota's prisons – I strongly urge a **DO PASS** on SB2128. Although I also support the minimum sentences included in this bill, I will focus my testimony on the "truth in sentencing" provisions within SB2128. To demonstrate why this bill is important and timely, here are some examples of what happens when there is no truth in sentencing:

A methamphetamine dealer is caught with nearly a pound of methamphetamine. This being her second drug dealing offense, she agrees, under a plea agreement, to serve four years in prison. She appeals to the North Dakota Supreme Court, which affirms her conviction. She moves the District Court to reduce her sentence, which the Court denies. She is ordered to report to prison to serve her sentence. Having served 8 days in jail before her pretrial release while the case was pending, she is scheduled to serve nearly all of the four years remaining on her sentence. Despite having nearly all of those four years to serve, she is kept at the prison for 64 days. When you add her jail and prison days together, they total 72 days of a four-year (1,460 day) sentence. That is **4.9%**. This is on a Class A felony drug dealing offense (her second offense for drug dealing).[1]

A Michigan resident is sentenced to two years in prison in one drug conspiracy case, and is sentenced to one year and one day in prison on a second fentanyl dealing case, to be served at the same time. So, he is scheduled to serve two years. He has credit for 20 days served in jail. He is kept at the prison for 35 days of his two-year sentence. When you add his jail and prison days together, they total 55 days of his two-year (730 day) sentence. That is **7.5%**.[2] Also of note is that, after leaving the prison, this offender served 192 days at Bismarck Transition Center (BTC) on "inmate status" before being paroled. That is 26.3% of his sentence and would be reported by DOCR as time served in a "DOCR facility" before parole. By including that time on "inmate status" at a halfway house as time served at a "DOCR facility," his reported time served would jump to 33.8%. And if he was given credit for all his good time (120 days on a two-year sentence), his reported time "served" would jump to **50.3%**, despite the fact that he spent only **7.5%** of his sentence in jail or prison. To illustrate how the percentages of time served differ based on what is considered time "served," here is a comparison for this case:

Time served by offender sentenced to two years at DOCR		
	Time Served	**DOCR Calculations**
Total sentence to DOCR	730 days	730 days
Time served in jail	20 days (2.7%)	20 days (2.7%)
Time served in prison	35 days (4.8%)	35 days (4.8%)
Time at halfway house on "inmate status"	---------	192 days (26.3%)
Good time	10 days (1.4%)	120 days (16.4%)
Time Served	65 days (**8.9%**)	367 days (**50.3%**)

[1] State v. Willard, 08-2020-CR-03052.
[2] State v. Luke, 08-2021-CR-03150 and 08-2021-CR-03153.

A three-time convicted drug dealer is sentenced to five years in prison on his **fourth** drug dealing offense. He serves 407 days in jail while the case pending. After pleading guilty, he is sentenced to five years in prison. He serves an additional 6 days in jail awaiting transfer to DOCR. After being sentenced to five years in prison, he is kept at the prison for 288 days. When you add his jail and prison days together, they total 701 days of a five-year (1,825 day) sentence. That is **38.4%** of actual time served on a ***fourth drug dealing offense***.[3]

A Michigan resident is convicted of a drug conspiracy and is sentenced to four years in prison. He has credit for 121 days served in jail awaiting trial. After being sentenced, he serves an additional 3 days in jail awaiting transfer to DOCR. He is kept at the prison for 67 days. When you add his jail and prison days together, they total 191 days of a four-year (1,460 day) sentence. That is **13.1%**.[4]

A man convicted of Endangering by Fire or Explosion, who was originally given a probation sentence, is revoked on probation and again sentenced to probation. He is again revoked on probation and is sentenced to three years in prison. He has credit for 130 days in jail. He serves an additional 2 days in jail awaiting transfer to prison. He serves **29 days** at the prison before being transferred to the Bismarck Transition Center. While at BTC, he is allowed to leave, unsupervised, to look for work. He never returns and is charged with escape.[5] This inmate was actually serving time for this case *and* a felony theft case at the time. When you add his jail and prison days together, they total 161 days. So, he served **14.7%** actual time of his three-year sentence for Endangering by Fire or Explosion after being revoked twice on probation.

A Michigan resident is caught with more than fifty-six grams of fentanyl (enough fentanyl to kill thousands of people) and is sentenced to four years in prison on a Class A felony. He has credit for 176 days in jail. He serves an additional day in jail after being sentenced. After being transferred to prison, he serves 280 days at the prison. When you add his jail and prison days together (457), he served **31.3%** actual time in jail or prison for a Class A felony fentanyl offense. Despite only serving 457 days, according to DOCR personnel, he "earned" 200 days good time.[6]

From the above examples, it is clear that good time is currently being awarded, not earned. This is because of N.D.C.C. § 12-54.1-01, which states that the DOCR "may credit an offender committed to the legal and physical custody of the department who is eligible for sentence reduction five days good time per month for each month of the *sentence imposed*." Despite the earlier sentence in that statute that says "an offender committed to the legal and physical custody of the department of corrections and rehabilitation is eligible *to earn sentence*

[3] State v. Reis, 08-2019-CR-03395.
[4] State v. Anderson, 08-2022-CR-01859.
[5] State v. Fresse Cortes, 30-2022-CR-00975.
[6] State v. Patrick, 08-2023-CR-01417.

reductions based upon performance criteria established through department and penitentiary rules[,]" the DOCR credits offenders with good time "up front" and takes it away for bad behavior, rather than awarding the good time as it is actually earned.

To demonstrate how this inflates time served percentages, consider the case of a methamphetamine dealer who is sentenced to four years in prison for a *second* methamphetamine dealing offense. His total sentence is 1,460 days (four years). He serves 485 days in a "DOCR facility" (which includes halfway houses). That is 33.3%. Despite that, he is awarded 240 days good time, which is all the good time he could have earned if he served all four years (48 months x 5 days per month = 240 days). So, he is awarded all of his good time despite serving only a third of his sentence. As such, his reported time served jumps to 49% (33% in a "DOCR facility" and 16% "good time"), despite that he served far less than that percentage in a jail, prison, or by good time *earned*. In this case, if he was awarded 1/3 of his good time (for serving 33.3% of his sentence in a "DOCR" facility), that would be 5.5% good time (80 days on a 1,460-day sentence). Adding that 5.5% good time to his time served in a "DOCR facility," his time served, and good time earned, goes down to 38.8%.

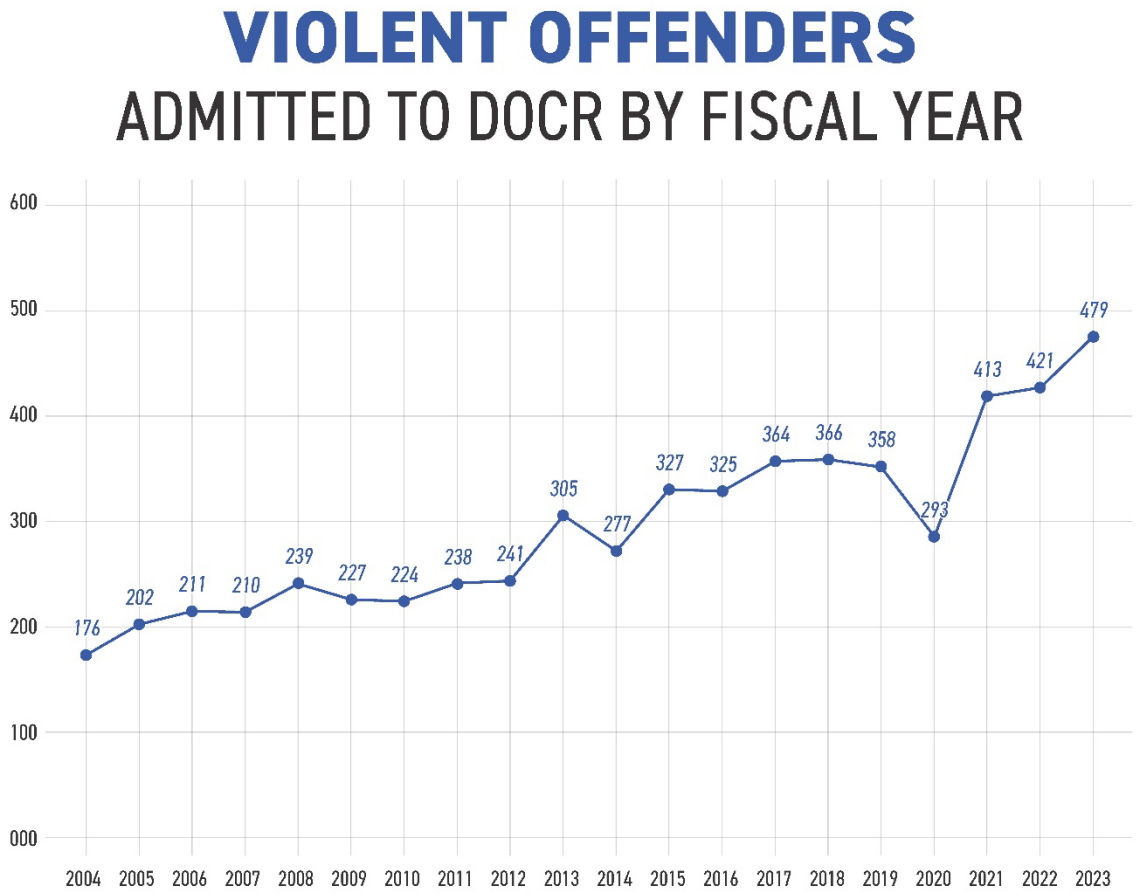
Why does this matter? Because, if this offender would have been required to serve his sentence, he would not have been able to commit the crime he committed while back in the community: a **third** methamphetamine dealing offense, this time with a stolen firearm.[7]

The cases discussed above are just some of the many cases that demonstrate the problem; SB2128 is the solution. This bill would require offenders like those listed above to serve a minimum of fifty percent of their sentences before being paroled. This bill would require that time to be served in confinement, not at a halfway house. And, this bill would require offenders to actually earn their good time, rather than having all of it awarded to them up front.

To have a fully-informed discussion on this bill, we have to understand who is being sentenced to the DOCR and why they are there. Violent crime has skyrocketed in North Dakota. In fact, there was a **98.7% increase** in violent crime arrests in North Dakota from 2010 to 2023. In 2010, there were 456 arrestees for violent crime[8]; in 2023, there were 906[9]. The number of violent crimes committed with firearms increased **193.3%** during that time, increasing from 45 in 2010[10] to 132 in 2023.[11]

[7] State v. Gist, 08-2021-CR-01149 and 08-2024-CR-00627.
[8] https://crimestats.nd.gov/tops/report/violent-crimes/north-dakota/2010
[9] https://crimestats.nd.gov/tops/report/violent-crimes/north-dakota/2023
[10] https://crimestats.nd.gov/tops/report/violent-crimes/north-dakota/2010
[11] https://crimestats.nd.gov/tops/report/violent-crimes/north-dakota/2023

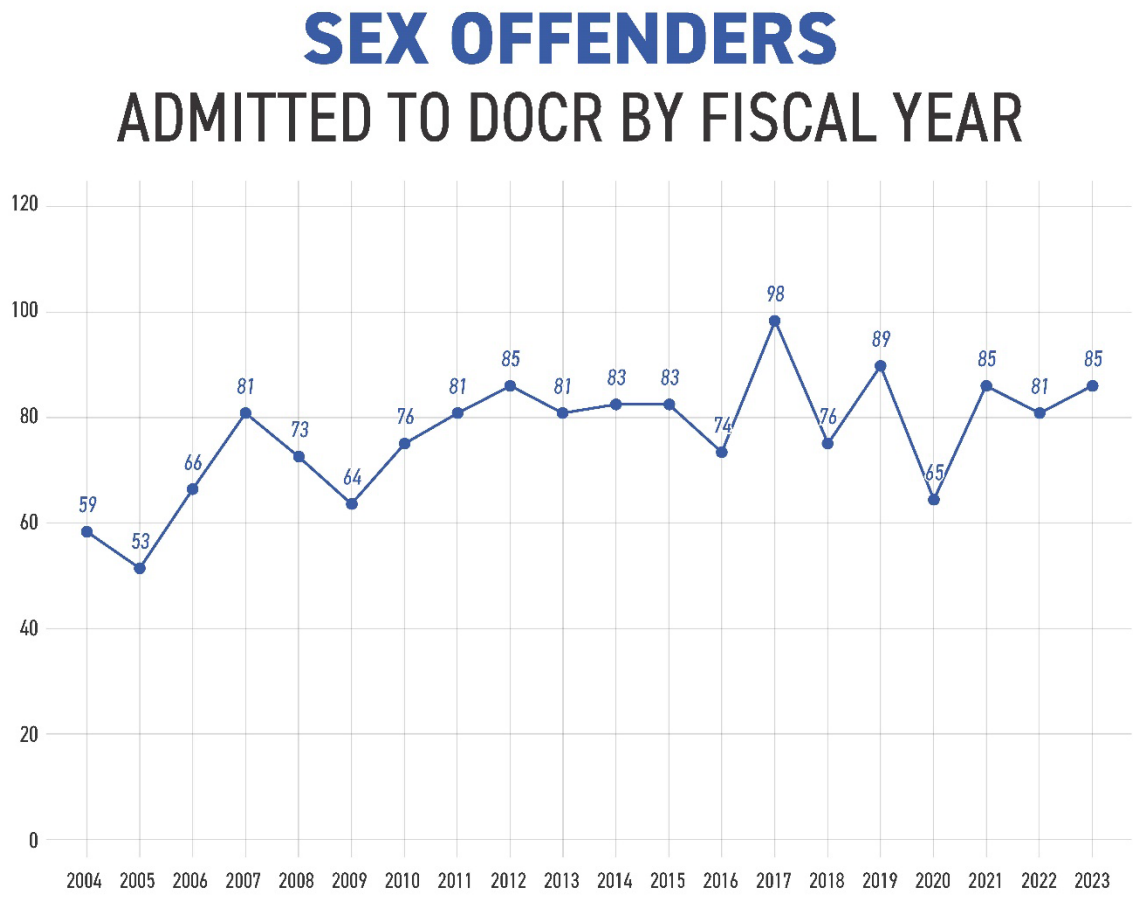
Because of this dramatic increase in violent crime, the number of violent offenders committed to the DOCR has also increased dramatically[12]:



As the chart above shows, there were **more than two-and-a-half times** the number of violent offenders admitted to DOCR custody in fiscal year 2023 than there were in fiscal year 2004. In fiscal year 2004, there were 176 violent offenders admitted to DOCR custody.[13] In fiscal year 2023, there were 479 violent offenders admitted to DOCR custody.[14] That is a **172.2%** increase.

[12] DOCR Fact Sheets, available at: https://www.docr.nd.gov/reports-and-statistics
[13] https://www.docr.nd.gov/sites/www/files/documents/statistics/factsheets/2009%2012%2031%20FACT%20SHEET.pdf
[14] https://www.docr.nd.gov/sites/www/files/documents/statistics/factsheets/2023%2012%2031%20FACT%20SHEET.pdf

At the same time, the number of sex offenders admitted to DOCR custody has also increased[15]:

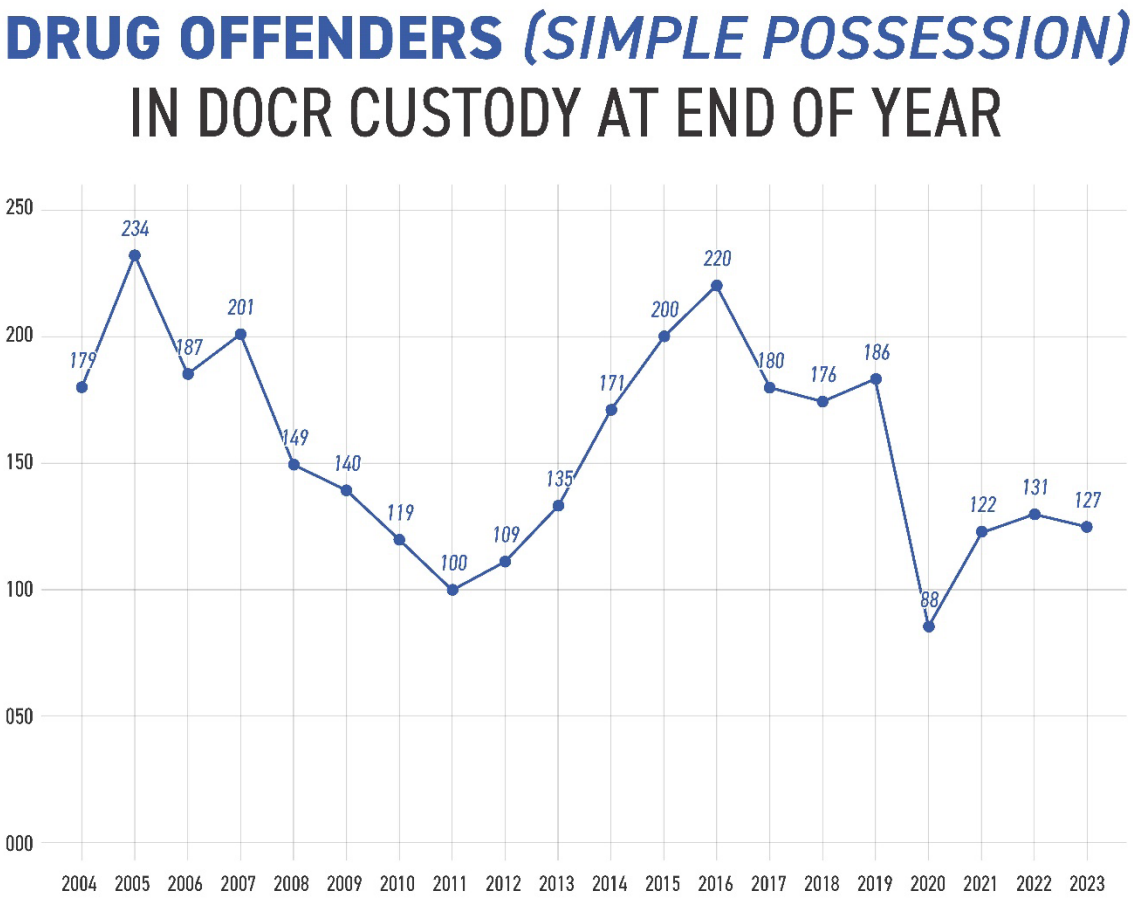


In fiscal year 2004, there were 59 sex offenders admitted to DOCR custody.[16] In fiscal year 2023, there were 86 sex offenders admitted to DOCR custody.[17] That is a **45.8%** increase.

Also based on DOCR data, we know that far fewer people are now being sentenced to prison for drug and alcohol offenses. Between fiscal year 2004 and fiscal year 2023, the number of people admitted to DOCR custody for drug and alcohol offenses increased 19.5%.[18] But since fiscal year 2015, the year of the justice reinvestment initiative, the number of people admitted to DOCR custody for drug and alcohol offenses has decreased 28.1%.[19]

[15] DOCR Fact Sheets, available at: https://www.docr.nd.gov/reports-and-statistics
[16] https://www.docr.nd.gov/sites/www/files/documents/statistics/factsheets/2009%2012%2031%20FACT%20SHEET.pdf
[17] https://www.docr.nd.gov/sites/www/files/documents/statistics/factsheets/2023%2012%2031%20FACT%20SHEET.pdf
[18] Compare https://www.docr.nd.gov/sites/www/files/documents/statistics/factsheets/2009%2012%2031%20FACT%20SHEET.pdf to https://www.docr.nd.gov/sites/www/files/documents/statistics/factsheets/2023%2012%2031%20FACT%20SHEET.pdf
[19] Compare https://www.docr.nd.gov/sites/www/files/documents/statistics/factsheets/2015_FACT_SHEET.pdf to https://www.docr.nd.gov/sites/www/files/documents/statistics/factsheets/2023%2012%2031%20FACT%20SHEET.pdf

Although the DOCR fact sheets do not break down drug offender admissions to DOCR by crime type (drug dealing versus drug possession), the DOCR fact sheets show that the percentage of people serving sentences in DOCR custody for drug possession has *decreased* dramatically[20]:



There were actually fewer people serving DOCR sentences for simple drug possession on December 31, 2023 than there were on December 31, 2004. In fact, the number of people serving prison sentences for simple drug possession decreased **29.1%** from December 31, 2004 to December 31, 2023.[21] Between December 31, 2015, the year of the justice reinvestment initiative, and December 31, 2023, the number of people service prison sentences for simple drug possession decreased **36.5%**.[22]

[20] DOCR Fact Sheets, available at: https://www.docr.nd.gov/reports-and-statistics
[21] Compare https://www.docr.nd.gov/sites/www/files/documents/statistics/factsheets/2009%2012%2031%20FACT%20SHEET.pdf to https://www.docr.nd.gov/sites/www/files/documents/statistics/factsheets/2023%2012%2031%20FACT%20SHEET.pdf
[22] Compare https://www.docr.nd.gov/sites/www/files/documents/statistics/factsheets/2015_FACT_SHEET.pdf to https://www.docr.nd.gov/sites/www/files/documents/statistics/factsheets/2015_FACT_SHEET.pdf

Because North Dakota is incarcerating far fewer people for drug possession than it was twenty years ago, the percentage of DOCR prisoners serving sentences for simple drug possession decreased from 13.5% on December 31, 2004, to only 6.7% on December 31, 2023.[23] As such, on December 31, 2023, only 6.7% of all DOCR inmates were serving a sentence for simple drug possession. This is likely because of the increased focus on steering people toward treatment courts and alternatives to incarceration.

And, there were actually *less* people serving DOCR sentences for drug dealing on December 31, 2023 (252)[24] than there were on December 31, 2004 (254).[25] As a percentage of the total DOCR inmate population, drug dealers made up only 13.3% of that population on December 31, 2023, as opposed to 19.1% of the total population on December 31, 2004.

Based on those numbers, North Dakota incarcerates fewer people for drug dealing now than it did twenty years ago, despite that we are facing the greatest drug threat this country has ever faced – fentanyl.[26] Drug overdose deaths in the United States more than doubled from 2015 to 2022,[27] yet the number of drug dealers in North Dakota prisons decreased 14.3% during that time.

Based on all of this data, two things are clear. First, the increase in prison population is *not* because North Dakota is incarcerating more drug offenders, especially not because it is incarcerating more drug possession defendants. Second, North Dakota judges are sending the right people – violent offenders, sex offenders, and drug dealers – to prison. This bill, SB2128, will ensure that those offenders serve a reasonable portion of their sentences before being released back into our communities.

Those opposed to the truth-in-sentencing portion of this bill may argue that requiring violent offenders, sex offenders, and drug dealers to serve a certain percentage of their sentences discourages them from engaging in programming to earn early release. To see the effects of truth-in-sentencing, we can look to Virginia, a state with one of the lowest recidivism rates in the county. According to a report by the Virginia Criminal Sentencing Commission, the body tasked with administering felony sentencing guidelines used in Virginia, the following results were achieved during the first ten years after Virginia passed its truth-in-sentencing law:

- Violent felons are spending significantly more time in prison
- There are fewer repeat violent offenders
- Prison population growth has slowed
- The overall crime rate has been declining
- The violent crime rate also has been decreasing[28]

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[23] Compare https://www.docr.nd.gov/sites/www/files/documents/statistics/factsheets/2009%2012%2031%20FACT%20SHEET.pdf to https://www.docr.nd.gov/sites/www/files/documents/statistics/factsheets/2023%2012%2031%20FACT%20SHEET.pdf
[24] https://www.docr.nd.gov/sites/www/files/documents/statistics/factsheets/2023%2012%2031%20FACT%20SHEET.pdf
[25] https://www.docr.nd.gov/sites/www/files/documents/statistics/factsheets/2009%2012%2031%20FACT%20SHEET.pdf
[26] https://www.dea.gov/press-releases/2024/05/09/dea-releases-2024-national-drug-threat-assessment#:~:text=Fentanyl%20and%20other%20synthetic%20opioids,and%20most%20urgent%20drug%20threat
[27] https://nida.nih.gov/sites/default/files/images/fig1-2024.jpg
[28] http://www.vcsc.virginia.gov/ReptCdPDFfinal.pdf

Virginia passed its 85% truth-in-sentencing law in 1995 and saw the above benefits after only ten years. Almost thirty years later, on September 24, 2024, Virginia Department of Corrections announced that it had, for the eleventh year in a row, either the lowest or second lowest recidivism rate in the nation. (19%).[29] According to testimony submitted to the Senate Workforce Development Committee last session, North Dakota's recidivism rate is approximately 40%.[30]

Virginia recently amended its truth-in-sentencing laws to allow *some* inmates to earn enhanced sentence credits to earn release after serving 67% of their sentence rather than having to serve 85%.[31] According to the Office of the Attorney General for the Commonwealth of Virginia, the result has been alarming:

"In FY2023, 9,638 inmates were released under the EESC program. **Of the 9,638 inmates thus released, 2,725 have been re-arrested, for a re-arrest rate of 28.27%.** Re-arrest offenses in FY2023 for EESC offenders include 3 capital murders, 8 first-degree murders, 4 second-degree murders, 48 abductions, 28 rapes and other felony sexual assaults, 38 robberies, 167 felony assaults, and 88 weapons offenses. In contrast, **of the 2,252 inmates released under the standard earned sentence credit system, only 459 have been rearrested, resulting in a re-arrest rate of 20.38%.** More specifically, according to VDOC, "The rates of releases re-arrested within three months were significantly higher for those with [enhanced earned sentence credit] status (672, 7.0%) than those with the old [earned sentence credit] status (123, 5.5%)."[32]

As such, according to the Office of the Attorney General for the Commonwealth of Virginia and the Virginia Department of Corrections, re-arrest rates are actually *higher* for offenders released after serving 67% of their sentence as opposed to those serving 85% of their sentence.

And as for the argument that longer sentences do not reduce recidivism, the data is not nearly as one-sided as some people argue. In fact, the United States Sentencing Commission, the body that "establishes and amends [federal] sentencing guidelines for the judicial branch and assists the other branches in developing effective and efficient crime policy"[33] – has consistently found that longer sentences actually *reduce* recidivism. According to a 2023 study by that commission, sentences exceeding five years in length reduce recidivism (the federal system is a "truth-in-sentencing system):

- In both studies, the odds of recidivism were lower for federal offenders sentenced to more than 60 months incarceration compared to a matched group of offenders receiving shorter sentences.
- The odds of recidivism were approximately 29 percent lower for federal offenders sentenced to more than 120 months incarceration compared to a matched group of federal offenders receiving shorter sentences.

[29] https://vadoc.virginia.gov/news-press-releases/2024/vadoc-announces-lowest-recidivism-rate-in-more-than-20-years/
[30] https://ndlegis.gov/assembly/68-2023/testimony/SWKF-3026-20230323-26348-F-HANSON_KARLA.pdf
[31] https://files.constantcontact.com/d3e83e11901/3e4cd65a-5ff3-4879-bfb8-dcd190aafb06.pdf?rdr=true
[32] https://files.constantcontact.com/d3e83e11901/3e4cd65a-5ff3-4879-bfb8-dcd190aafb06.pdf?rdr=true; https://www.oag.state.va.us/media-center/news-releases/2757-june-9-2024-attorney-general-miyares-addresses-data-on-enhanced-earned-sentence-credits
[33] https://www.ussc.gov/

- The odds of recidivism were approximately 18 percent lower for offenders sentenced to more than 60 months up to 120 months incarceration compared to a matched group of federal offenders receiving shorter sentences.[34]

As such, bare assertions that "the data" shows that truth-in-sentencing does not increase public safety should be carefully scrutinized. Data collected from federal offenders – often the most serious drug dealers or sex offenders – shows that truth in sentencing plays an important role in reducing recidivism. And data from Virginia – a state with one of the lowest recidivism rates in the country – reinforces that conclusion.

The opposition will argue that truth-in-sentencing increases the prison population. That may happen. But the people in prison will be the violent offenders, drug dealers, sex offenders, and other offenders sentenced to prison by North Dakota judges. In written testimony opposing SB 2107 in the 2023 session, the North Dakota Association of Criminal Defense Lawyers noted that "our Legislature has historically resisted the temptation to insert a host of minimum mandatory into our law – instead relying on our exceptionally well qualified judges to fashion appropriate sentences under existing law."[35] The bill before the Committee now – SB 2128 – reinforces that trust in North Dakota's judges by requiring violent offenders, sex offenders, and drug dealers sentenced by those judges to serve 50% of their sentences before being released back into our communities.

I strongly urge a **DO PASS**.

Thank you for your consideration.

[34] https://www.ussc.gov/research/research-reports/length-incarceration-and-recidivism-2022
[35] https://ndlegis.gov/assembly/68-2023/testimony/HJUD-2107-20230314-24659-A-WALSTAD_JESSE_H.pdf

CASE EXAMPLES

DEFENDANT:
KENDRICK LYONES

CASE#: 27-2021-CR-01095

CHARGE:
POSSESSION WITH INTENT DELIVER – FENTANYL – 40 GRAMS OR MORE

OFFENSE LEVEL:
CLASS A FELONY

CHARGE:
POSSESSION WITH INTENT TO DELIVER – METHAMPHETAMINE

OFFENSE LEVEL:
CLASS B FELONY

SENTENCE:
4 YEARS

JAIL CREDIT:
225 DAYS

DAYS AT NDSP:
38 DAYS

Mr. Lyones arrived at NDSP on May 22, 2023 to serve the remaining approximately 40 months of his sentence for these two drug dealing offenses. He was transferred to a halfway house in Fargo on June 29, 2023. That is **38 days**.

If only jail and prison days are counted, Mr. Lyones served 263 days of a 1,460-day sentence on a Class A felony fentanyl offense. That is **18.0%**.

Mr. Lyones remained at the halfway house until his parole on November 1, 2023. As such, even if time spent in a halfway house is counted as "time served," he only served about 6 months of the 40 months he had left on his sentence when he arrived at DOCR.

According to the affidavit of probable cause in this case, task force officers seized approximately 1,250 fentanyl pills, approximately $15,000 cash, and about 40 grams of methamphetamine from Mr. Lyones. Also according to the affidavit, Mr. Lyones' criminal history includes multiple prior drug dealing convictions out of Cook County, Illinois.

DEFENDANT:
RODNEY SPICER

CASE#: 03-2020-CR-00056

CHARGE:
RECKLESS ENDANGERMENT – EXTREME INDIFFERENCE

OFFENSE LEVEL:
CLASS C FELONY

SENTENCE:
5 YEARS *CONSECUTIVE* TO THREE OTHER CASES

JAIL CREDIT:
57 DAYS

DAYS AT PRISON:
207 DAYS FROM DATE OF SENTENCING

CASE#: 03-2020-CR-00058

CHARGE:
POSSESSION OF METHAMPHETAMINE WITH INTENT TO DELIVER

OFFENSE LEVEL:
CLASS B FELONY

SENTENCE:
5 YEARS *CONSECUTIVE* TO THREE OTHER CASES

PRIOR CREDIT:
57 DAYS

DAYS AT PRISON:
207 DAYS FROM DATE OF SENTENCING

On October 25, 2021, Mr. Spicer was sentenced to 18 months in prison for Fleeing a Peace Officer – Vehicle – Risk of Death or Serious Bodily Injury in case 09-2020-CR-04614. Mr. Spicer had credit for 93 days served.

Also on October 25, 2021, Mr. Spicer was sentenced to 18 months in prison for Fleeing a Peace Officer – Vehicle – 2nd or subsequent offense in case 09-2020-CR-04616. Mr. Spicer had credit for 93 days served.

Also on October 25, 2021, Mr. Spicer was sentenced to 18 months in prison for Fleeing a Peace Officer – Vehicle – 2nd or subsequent offense in case 09-2021-CR-03713. As such, Mr. Spicer had about 15 months left to serve on his **three** fleeing sentences as of October 25, 2021.

Mr. Spicer was on probation in cases 03-2020-CR-00056 and 03-2020-CR-00058 when he committed the three fleeing offenses listed above. As a result, his probation was revoked, and, on June 3, 2022, he was sentenced to 5 years in prison in cases 03-2020-CR-00056 and 03-2020-CR-00058. The 5-year sentences in these two cases were ordered to run **consecutively** to his 18-month sentences in the three fleeing cases. Nevertheless, only six months after being sentenced to 5 years **consecutive**, he was transferred to a halfway house. That transfer occurred on December 27, 2022. According to DOCR records, he was paroled out of the halfway house on April 25, 2023. His sentences in 08-2020-CR-00056 and 03-2020-CR-00058, if served, would have kept him in custody until at least 2026.

On August 6, 2023, less than 4 months after being paroled, Mr. Spicer committed the offense of Aggravated Assault. According to the incident report, three individuals, including Mr. Spicer, knocked the victim unconscious and continued to strike the victim after the victim was motionless on the ground. Mr. Spicer was sentenced to 30 months for the assault in case 09-2023-CR-03672 on November 27, 2023. Witnesses told officers that they thought the victim was dead when the assault ended. As of March 20, 2025, Mr. Spicer is serving his sentences at Missouri River Correctional Center, a Minimum Low security level facility.

DEFENDANT:
KEVIN LUKE

CASE#: 08-2021-CR-03150

CHARGE:
POSSESSION OF FENTANYL WITH INTENT TO DELIVER

OFFENSE LEVEL:
CLASS B FELONY

SENTENCE:
2 YEARS

JAIL CREDIT:
20 DAYS

DAYS AT PRISON:
35 DAYS

CASE#: 08-2021-CR-03153

CHARGE:
CONSPIRACY TO POSSESS FENTANYL WITH INTENT TO DELIVER

OFFENSE LEVEL:
CLASS B FELONY

SENTENCE:
1 YEAR AND 1 DAY

PRIOR CREDIT:
14 DAYS

DAYS AT PRISON:
35 DAYS

Mr. Luke served 55 days of a 2-year sentence in case 08-2021-CR-03150, or **7.5%** of actual time served in jail or prison.

Mr. Luke served 49 days of a 1 year and 1 day sentence in case 08-2021-CR-03153, or **13.4%** of actual time in jail or prison.

In cases 08-2021-CR-03153 and 08-2021-CR-03160 involving Mr. Luke and Ms. Gipp as co-defendants, according to the affidavit of probable cause, Mr. Luke directed another individual to transport fentanyl pills from Detroit, Michigan to Bismarck. That co-defendant told law enforcement that he brought approximately 2,000 to 3,000 fentanyl pills to Bismarck.

Task force officers found approximately 140 fentanyl pills in Ms. Gipp's apartment where she was located with two children. She told task force officers she planned to continue to sell fentanyl pills and "bleed this town dry" and "leak this town of money." Ms. Gipp made those statements six months after being placed on probation for Possession of Oxycodone with Intent to Deliver in case 08-2020-CR-02544.

On May 23, 2022, Ms. Gipp was sentenced to serve 3 years in prison as part of the conspiracy with Mr. Luke. She had credit for 20 days served in jail. Ms. Gipp was transferred to a halfway house on December 14, 2022. As such, she served 225 days in jail or prison of a 1,095-day sentence on a second drug dealing offense. That is **20.5%.**

CONTINUED ON NEXT PAGE...

DEFENDANT:
LACEY GIPP

CASE#: 08-2021-CR-03160

CHARGE:
POSSESSION OF FENTANYL WITH INTENT TO DELIVER

OFFENSE LEVEL:
CLASS B FELONY

CHARGE:
CHILD NEGLECT

OFFENSE LEVEL:
CLASS C FELONY

SENTENCE:
3 YEARS

JAIL CREDIT:
20 DAYS

DAYS AT PRISON:
205 DAYS

According to publicly available federal court documents, Ms. Gipp has since signed plea agreements in two new drug cases, both of which were charged in federal court. In one case, Ms. Gipp agreed to plead guilty to Conspiracy to Distribute and Possess with Intent to Distribute Controlled Substances. In the other case, Ms. Gipp agreed to plead guilty to Conspiracy to Distribute and Possess with Intent to Distribute Controlled Substances (400 grams or more fentanyl – mixture), Money Laundering Conspiracy, and Maintaining a Drug-Involved Premises.

According to the plea agreement filed in federal court, the Conspiracy to Distribute and Possess with Intent to Distribute Controlled Substances (400 grams or more fentanyl – mixture) count carries a 10-year mandatory minimum sentence. If Ms. Gipp is sentenced to federal prison, she will not be considered to have recidivated by DOCR because she did not return to a DOCR facility.

DEFENDANT:
CORI WILLARD

CASE#: 08-2020-CR-03052

CHARGE:
POSSESSION OF MORE THAN 50 GRAMS OF METHAMPHETAMINE WITH INTENT TO DELIVER

OFFENSE LEVEL:
CLASS A FELONY

CHARGE:
POSSESSION OF OXYCODONE WITH INTENT TO DELIVER

OFFENSE LEVEL:
CLASS B FELONY

SENTENCE:
4 YEARS

JAIL CREDIT:
8 DAYS

DAYS AT PRISON:
64 DAYS

Ms. Willard served 72 days in jail or prison of a 1,460-day sentence for dealing methamphetamine and oxycodone. That is **4.9%**.

This was Ms. Willard's second methamphetamine dealing conviction. She was on probation for the first methamphetamine dealing offense when she committed the offenses in 08-2020-CR-03052. Despite this being a second drug dealing offense, and despite being on probation for the first offense when she committed this one, she served about 5% of her sentence in jail or prison. This was after she motioned the district court to reduce her sentence, which was denied.

She was caught with nearly one pound of methamphetamine in this case.

DEFENDANT:
DEREK FUGLEM

CASE#: 18-2019-CR-01198

CHARGE:
AGGRAVATED ASSAULT

OFFENSE LEVEL:
CLASS C FELONY

SENTENCE:
1 YEAR

JAIL CREDIT:
0 DAYS

DAYS AT PRISON:
0 DAYS

Mr. Fuglem was ordered to serve this one-year sentence **consecutive** to another aggravated assault case, 18-2019-CR-00899. Mr. Fuglem was supposed to serve his one-year sentence in case 18-2019-CR-00899 **consecutive** to a four-year sentence in case 18-2019-CR-00605.

According to DOCR records, Mr. Fuglem served **0 days** of the 365-day sentence for aggravated assault in case 18-2019-CR-01198. DOCR records indicate he received 60 days good time and 305 days of parole days.

Also according to DOCR records, Mr. Fuglem served only 147 days of the 365-day sentence for aggravated assault in case 18-2019-CR-00899.

Mr. Fuglem's prior felony criminal history included the following fourteen felony convictions:

46-09-K-00106 – Unauthorized Use of a Vehicle

46-09-K-00109 – Fleeing or Attempting to Elude Police

46-2010-CR-00109 - Theft of Property (Possession)

49-2010-CR-00377 - Breaking into A Vehicle

18-2011-CR-01622 - Theft of Property

20-2012-CR-00044 - Breaking into A Vehicle

32-2013-CR-00050 - Theft of Property

32-2013-CR-00077 - Reckless Endangerment

18-2013-CR-02544 - Theft of Property

49-2013-CR-00285 - Theft of Property

18-2017-CR-00430 - Possession of Controlled Substance

18-2017-CR-00842 - Theft of Property

49-2017-CR-00074 – Burglary

18-2017-CR-00865 - Theft of Property

DEFENDANT:
STEVEN WHITE

CASE#: 36-2023-CR-00280

CHARGE:
TERRORIZING

OFFENSE LEVEL:
CLASS C FELONY

SENTENCE:
1 YEAR AND 1 DAY

JAIL CREDIT:
7 DAYS

DAYS AT PRISON:
30 DAYS

On June 20, 2023, Mr. White was sentenced to 1 year and 1 day in prison for Terrorizing. He had credit for 7 days served in jail.

According to DOCR records, Mr. White arrived at NDSP to serve his sentence on July 19, 2023. He was transferred to a halfway house in Mandan on August 18, 2023. That is **30 days.**

As such, if only jail and prison days are counted, he served 37 days of a 1 year and 1 day sentence for terrorizing. That is **10.1%.**

On November 29, 2023, Mr. White was paroled to the same halfway house (where he had already been transferred three months earlier).

DEFENDANT:
DANIEL SWARTOUT

CASE#: 36-2022-CR-00055

CHARGE:
ESCAPE

OFFENSE LEVEL:
CLASS C FELONY

SENTENCE:
1 YEAR AND 1 DAY

JAIL CREDIT:
43 DAYS

DAYS AT DOCR:
4 DAYS

On April 6, 2022, Mr. Swartout's probation was revoked and he was sentenced to 2 years in prison, with credit for 145 days served, for Failure to Register as a Sexual Offender in case 36-2021-CR-00646. As such, Mr. Swartout had a 730-day sentence, of which he had served 145 days in jail. That left 585 days, minus good time, left to be served.

On April 21, 2022, Mr. Swartout was sentenced to 1 year and 1 day in prison for Escape in case 36-2022-CR-00055. Mr. Swartout had credit for 43 days served in jail. As such, he had 323 days, minus good time, left to be served. The sentence was to run **consecutively** to the 2-year sentence in 36-2022-CR-00055. As such, Mr. Swartout had approximately 908 days (2.5 years) left to serve in these two cases as of April 2022.

Mr. Swartout was paroled out on August 8, 2023. According to DOCR records, Mr. Swartout served **4 days** in DOCR custody on the 1 year and 1 day sentence for Escape in case 36-2022-CR-00055. Together with his jail credit, he served 47 days in jail or prison on the Escape charge, or **12.8%.**

DEFENDANT:
LISA KOEHMSTEDT

CASE#: 09-2022-CR-04171

CHARGE:
THEFT – TAKE – OVER $50,000

OFFENSE LEVEL:
CLASS A FELONY

SENTENCE:
2 YEARS

JAIL CREDIT:
2 DAYS

DAYS AT PRISON:
50 DAYS

On June 19, 2023, Ms. Koehmstedt pled guilty to the Class A felony offense of Theft – Take – Over $50,000 and was sentenced to 2 years in prison. She received credit for 2 days served. She served an additional day while waiting to be transferred to the prison.

Ms. Koehmstedt arrived at DOCR on June 20, 2023. At that time, she had served 3 days of her 2-year sentence. Ms. Koehmstedt was transferred to a halfway house on August 9, 2023, after only serving a total **53 days** in jail or prison of a 730-day sentence. As such, Ms. Koehmstedt served **7.3%** of her sentence in jail or prison.

Ms. Koehmstedt was transferred to the halfway house on August 9, 2023, despite the district court denying her motion for a reduction of sentence on August 4, 2023, just 5 days before her transfer. In the order denying her request for a reduction of sentence, the district court noted that Ms. Koehmstedt "caused serious harm in committing her offense. And the Defendant committed a very similar offense in the past." The court noted that Ms. Koehmstedt had previously stolen over $10,000 from a prior employer and stole over $70,000 from an employer in this case.

She was housed at the halfway house until she was paroled out on October 20, 2023. As such, even if time in a halfway house is counted as "time served," Ms. Koehmstedt served only 122 days of her 2-year sentence on a Class A felony offense.

DEFENDANT:
TIMMIE SMITH

CASE#: 09-2023-CR-00676

CHARGE:
POSSESSION WITH INTENT TO DELIVER – FENTANYL

OFFENSE LEVEL:
CLASS B FELONY

CHARGE:
POSSESSION WITH INTENT TO DELIVER – HEROIN

OFFENSE LEVEL:
CLASS B FELONY

SENTENCE:
2 YEARS

JAIL CREDIT:
14 DAYS

DAYS AT NDSP:
67 DAYS

CASE#: 09-2023-CR-01566

CHARGE:
POSSESSION WITH INTENT TO DELIVER – FENTANYL

OFFENSE LEVEL:
CLASS B FELONY

CHARGE:
TAMPERING WITH PHYSICAL EVIDENCE

OFFENSE LEVEL:
CLASS C FELONY

SENTENCE:
2 YEARS

PRIOR CREDIT:
2 DAYS

DAYS AT NDSP:
67 DAYS

On August 7, 2023, Mr. Smith pled guilty in two drug dealing cases. In case 09-2023-CR-00676, Mr. Smith pled guilty to possessing heroin and fentanyl with intent to deliver. He was sentenced to 2 years with credit for 14 days. In 09-2023-CR-01566, he pled guilty to possessing fentanyl with intent to deliver. He was sentenced to 2 years with credit for 2 days served.

Mr. Smith arrived at NDSP on August 10, 2023, three days after he was sentenced. He was paroled out on October 16, 2023, after serving only **67 days** at the prison on two drug dealing cases, both of which involved fentanyl and one of which involved heroin.

In case 09-2023-CR-00676, Mr. Smith served 81 days of a 730-day sentence, or **11.1%.** In case 09-2023-CR-01566, Mr. Smith served 69 days of a 730-day sentence, or **9.5%.**

Parole Board records available at https://www.docr.nd.gov/sites/www/files/documents/parole_pardon/Parole/Minutes%20%26%20Result%20Upload/October%202023%20PB%20Results%20and%20minutes.pdf indicate that he was paroled not to a halfway house, but "[t]o his approved plan with his wife in Fargo, ND."

DEFENDANT:
SHANELL AZURE

CASE#: 51-2019-CR-01158

CHARGE:
POSSESSION WITH INTENT TO DELIVER – HEROIN

OFFENSE LEVEL:
CLASS B FELONY

SENTENCE:
3 YEARS

PRIOR CREDIT:
2 YEARS

DAYS IN PRISON:
6 DAYS

CASE#: 51-2018-CR-02336

CHARGE:
POSSESSION OF METHAMPHETAMINE WITH INTENT TO DELIVER

OFFENSE LEVEL:
CLASS B FELONY

SENTENCE:
3 YEARS

PRIOR CREDIT:
2 YEARS

DAYS IN PRISON:
48 DAYS

In case 51-2019-CR-01158, Ms. Azure's probation was revoked, and the court sentenced her to 3 years in prison with credit for 2 years served. That sentencing occurred on January 19, 2023.

Ms. Azure was paroled out on January 25, 2023. That was **6 days** after being sentenced to a year to serve on a revocation of her probation for dealing heroin. As such, Ms. Azure served **1.6%** of her year to serve in case 51-2019-CR-01158.

In case 51-2018-CR-02336, Ms. Azure's probation was revoked, and the court sentenced her to 3 years in prison with credit for 2 years served. That sentencing occurred on December 8, 2022. Ms. Azure was paroled out on January 25, 2023. That was **48 days** after being sentenced to a year to serve on a revocation of her probation for dealing methamphetamine. As such, Ms. Azure served **13.2%** of her year to serve in case 51-2018-CR-02336.

Ms. Azure was not sent to a halfway house. Parole Board records available at https://www.docr.nd.gov/sites/www/files/documents/parole_pardon/Parole/Minutes%20%26%20Result%20Upload/January%202023%20PB%20results%20and%20minutes.pdf indicate that she was paroled "[t]o her approved plan with her mother in Belcourt, ND."

DEFENDANT:
KELLY COPELAND

CASE#: 02-2022-CR-00380

CHARGE:
FAILURE TO APPEAR AFTER RELEASE – BAIL JUMPING – FELONY OFFENSE

OFFENSE LEVEL:
CLASS C FELONY

SENTENCE:
21 MONTHS

JAIL CREDIT:
32 DAYS

DAYS AT PRISON:
41 DAYS

Ms. Copeland arrived at the prison on December 8, 2022, to serve her 21-month sentence (minus 32 days jail credit) for felony bail jumping. She was transferred to a halfway house on January 18, 2023, just **41 days** after arriving at the prison.

If just jail and prison days are counted, she served 73 days of a 630-day sentence for felony bail jumping. That is **11.6%**.

She was also serving sentences in three other cases for felony drug offenses.

Her criminal history included Possession of Methamphetamine with Intent to Deliver (09-2019-CR-00926).

DEFENDANT:
TERRI ZEPHIER

CASE#: 51-2017-CR-00150

CHARGE:
POSSESSION OF METHAMPHETAMINE WITH INTENT TO DELIVER

OFFENSE LEVEL:
CLASS A FELONY

SENTENCE:
3 YEARS

JAIL CREDIT:
79 DAYS

DAYS AT PRISON:
36 DAYS FROM DATE OF SENTENCING

On February 7, 2023, Ms. Zephier's probation was revoked in this case, and she was sentenced to 3 years in prison with credit for 79 days served.

On March 15, 2023, just **36 days** after being sentenced to 3 years to serve, Ms. Zephier was transferred to a halfway house. On May 26, 2023, Ms. Zephier was paroled to the same halfway house (where she had already been transferred two months earlier).

If only jail and prison days are counted, Ms. Zephier served 115 days of a 1,095-day sentence or **10.5%** actual time served on a probation revocation for a Class A Felony methamphetamine dealing offense.

DEFENDANT:
CORY REIS

CASE#: 08-2019-CR-03395

CHARGE:
POSSESSION OF METHAMPHETMINE WITH INTENT TO DELIVER

OFFENSE LEVEL:
CLASS B FELONY

CHARGE:
ATTEMPTED POSSESSION OF HEROIN WITH INTENT TO DELIVER

OFFENSE LEVEL:
CLASS B FELONY

SENTENCE:
5 YEARS

JAIL CREDIT:
413 DAYS

DAYS AT PRISON:
288 DAYS

This was Mr. Reis' *fourth* drug dealing offense. His days served in jail or prison totaled 701 days of an 1,825-day sentence. That is **38.4%** for a *fourth* drug dealing offense. His criminal history also included a conviction for burglary.

DEFENDANT:
JOSIAH ANDERSON

CASE#: 08-2022-CR-01859

CHARGE:
CONSPIRACY TO POSSESS FENTANYL OR OXYCODONE WITH INTENT TO DELIVER

OFFENSE LEVEL:
CLASS B FELONY

SENTENCE:
4 YEARS

JAIL CREDIT:
121 DAYS

DAYS AT PRISON:
67 DAYS

Mr. Anderson was sentenced to 4 years in prison for possessing fentanyl and/or oxycodone with intent to deliver. He had credit for 121 days served in jail. He served another 3 days while awaiting transfer to the prison.

He was only kept at the prison for **67 days**. As such, he served a total of 191 days in jail or prison of a 1,460-sentence. That is **13.1%**.

DEFENDANT:
JERRY EIDEM

CASE#: 09-2021-CR-02945

CHARGE:
POSSESSION WITH INTENT TO DELIVER – METHAMPHETAMINE

OFFENSE LEVEL:
CLASS B FELONY

SENTENCE:
1 YEAR AND 1 DAY

JAIL CREDIT:
5 DAYS

DAYS AT NDSP:
49 DAYS

CASE#: 09-2021-CR-02867

CHARGE:
BURGLARY

OFFENSE LEVEL:
CLASS C FELONY

CHARGE:
THEFT

OFFENSE LEVEL:
CLASS C FELONY

SENTENCE:
1 YEAR AND 1 DAY

JAIL CREDIT:
5 DAYS

DAYS AT NDSP:
49 DAYS

Mr. Eidem arrived at NDSP on September 15, 2022 to serve the remaining approximately 12 months of his sentence in these two cases. He was transferred to a halfway house in Fargo on November 3, 2022. That is **49 days**.

As such, Mr. Eidem served 54 days in jail or prison of his 366-day sentences for dealing methamphetamine and for burglary. That is **14.8%**.

This was Mr. Eidem's second methamphetamine dealing conviction.

Prior to these cases, Mr. Eidem's criminal history in North Dakota included felony convictions for possession with intent to manufacture/deliver methamphetamine, theft, and criminal conspiracy to commit theft. As such, these were the fourth and fifth criminal cases in North Dakota in which he was convicted of felonies.

DEFENDANT:
JADEN PATRICK

CASE#: 08-2023-CR-01417

CHARGE:
POSSESSION WITH INTENT TO DELIVER – FENTANYL – 40 GRAMS OR MORE

OFFENSE LEVEL:
CLASS A FELONY

SENTENCE:
4 YEARS

JAIL CREDIT:
176 DAYS

DAYS AT PRISON:
280 DAYS

Mr. Patrick served 456 days of a 1,460-day sentence for a Class A Felony fentanyl offense. That is **31.2%**. Despite that, according to a DOCR email from the legal records manager dated August 21, 2024, Mr. Patrick "earned 200 days of good time[.]" As such, Mr. Patrick "earned" 200 days good time despite only serving 280 days at the prison.

DEFENDANT:
CHRISTOPHER GIST

CASE#: 08-2021-CR-01149

CHARGE:
POSSESSION OF METHAMPHETAMINE WITH INTENT TO DELIVER

OFFENSE LEVEL:
CLASS B FELONY

SENTENCE:
4 YEARS

JAIL CREDIT:
0 DAYS

DAYS AT DOCR:
485 DAYS

Mr. Gist served 485 days of a 1,460-day sentence, including any time spent in a halfway house. That is **33.2%**, despite this being a *second* offense for Possession of Methamphetamine with Intent to Deliver. While back out in the community, Mr. Gist committed a *third* offense for Possession of Methamphetamine with Intent to Deliver, this time with a stolen firearm.

DEFENDANT:
HOPE BURD

CASE#: 51-2020-CR-00796

CHARGE:
CONSPIRACY TO DELIVER METHAMPHETAMINE

OFFENSE LEVEL:
CLASS B FELONY

SENTENCE:
2 YEARS, 73 DAYS

JAIL CREDIT:
105 DAYS

DAYS AT PRISON:
223 DAYS

CASE#: 51-2022-CR-01255

CHARGE:
POSSESSION OF METHAMPHETAMINE WITH INTENT TO DELIVER

OFFENSE LEVEL:
CLASS B FELONY

SENTENCE:
2 YEARS

PRIOR CREDIT:
0 DAYS

DAYS AT PRISON:
201 DAYS

In July 2020, Ms. Bird pled guilty to Conspiracy to Deliver Methamphetamine in case 51-2020-CR-00796 and was sentenced to probation. While on probation for that offense, Ms. Burd committed the offense of Unlawful Possession of a Firearm in case 51-2022-CR-00231, and was again sentenced to probation.

While on probation in those two cases, Ms. Burd committed the offense of Possession of Methamphetamine with Intent to Deliver in case 51-2022-CR-01255. Ms. Burd was sentenced to 2 years in prison. That sentencing occurred on September 21, 2022. She was paroled out on April 10, 2023. That is 201 days. As such, she served **27.5%** of her sentence in case 51-2022-CR-01255.

Ms. Burd was also sentenced to 2 years in prison on a probation revocation in case 51-2020-CR-00796. She had credit for 105 days. That sentencing occurred on August 30, 2022. She was paroled out on April 10, 2023. That is 223 days. As such, she served 328 days of a 2 years and 73-day (803-day) sentence. That is **40.8%**.

DEFENDANT:
BRENT AHO

CASE#: 51-2023-CR-00322

CHARGE:
POSSESSION OF METHAMPHETAMINE WITH INTENT TO DELIVER

OFFENSE LEVEL:
CLASS B FELONY

CHARGE:
UNLAWFUL POSSESSION OF FIREARM

OFFENSE LEVEL:
CLASS C FELONY

SENTENCE:
2 YEARS

JAIL CREDIT:
38 DAYS

DAYS AT PRISON:
128 DAYS

According to DOCR records, Mr. Aho arrived to begin serving his sentence on April 26, 2023. At that time, Mr. Aho had approximately 22 months left to serve on his 2-year sentence. He was paroled out on September 1, 2023. That is 128 days. According to records available at https://www.docr.nd.gov/sites/www/files/documents/parole_pardon/Parole/Minutes%20%26%20Result%20Upload/August%202023%20PB%20results%20and%20minutes.pdf, Mr. Aho was paroled "[t]o his approved plan with his father-in-law in Minot, ND." His total time served was 166 days of his 730-day sentence for dealing methamphetamine with a firearm. That is **22.8%.**

DEFENDANT:
JESSE LIPSH

CASE#: 34-2021-CR-00202

CHARGE:
POSSESSION WITH INTENT TO DELIVER – METHAMPHETAMINE

OFFENSE LEVEL:
CLASS B FELONY

SENTENCE:
15 MONTHS

JAIL CREDIT:
22 DAYS

DAYS AT PRISON:
56 DAYS

Ms. Lipsh arrived at DOCR on August 23, 2023 to serve the remaining approximately 14 months of her sentence. She was transferred to a halfway house in Fargo on October 18, 2023. That is **56 days**. As such, she served a total of 78 days of her 15-month sentence in a jail or prison. That is **17.3%**.

According to the affidavit of probable cause in this case, officers seized approximately 26 grams of methamphetamine and approximately $3,085 cash from Ms. Lipsh.

DEFENDANT:
AMBROSE AMYOTTE

CASE#: 40-2022-CR-00239

CHARGE:
ESCAPE

OFFENSE LEVEL:
CLASS C FELONY

SENTENCE:
27 MONTHS

JAIL CREDIT:
105 DAYS

DAYS AT NDSP:
137 DAYS

Mr. Amyotte arrived at NDSP on April 14, 2023 to serve the remaining approximately 23 months of his sentence. He was paroled out on August 29, 2023. As such, he served about 4 months (137 days) of the remaining 23 months of his sentence for escape.

As such, Mr. Amyotte served 242 days in jail or prison of his 810-day sentence for escape. That is **30.0%**.

DEFENDANT:
CALIE THIBERT

CASE#: 03-2016-CR-00134

CHARGE:
BURGLARY

OFFENSE LEVEL:
CLASS B FELONY

CHARGE:
THEFT

OFFENSE LEVEL:
CLASS C FELONY

SENTENCE:
5 YEARS

JAIL CREDIT:
108 DAYS

DAYS AT PRISON:
315 DAYS

CASE#: 36-2019-CR-00335

CHARGE:
ESCAPE

OFFENSE LEVEL:
CLASS C FELONY

SENTENCE:
1 YEAR AND 1 DAY

JAIL CREDIT:
29 DAYS

DAYS AT PRISON:
315 DAYS

In case 03-2016-CR-00134, Ms. Thibert was originally sentenced to probation in April 2017. Her probation was revoked in March 2019, and she was sentenced to 90 days in jail, followed by probation.

Ms. Thibert's probation was revoked for a second time in May 2022. At that time, the court sentenced her to 5 years in prison, with credit for 108 days served.

In case 36-2019-CR-00335, Ms. Thibert was sentenced to 1 year and 1 day in prison for escape.

Ms. Thibert arrived at DOCR to serve her sentences on June 22, 2022. She was transferred to Heart River Correctional Center, a minimum-security facility, on December 21, 2022. Ms. Thibert was paroled out from HRCC on May 3, 2023. As such, she served 315 days at DOCR. When you add the 108 days she served in jail before sentencing in the burglary case, she served 423 days of her 5-year sentence. That is **23.2%** of time actually served in jail or prison on her 5-year sentence on a second probation revocation.

According to DOCR parole board records available at https://www.docr.nd.gov/sites/www/files/documents/parole_pardon/Parole/Minutes%20%26%20Result%20Upload/April%202023%20PB%20results%20and%20minutes.pdf, Ms. Thibert was paroled "[t]o her approved plan with her boyfriend in West Fargo, ND."

03/23/2025

FROM THE DESK OF ADAM MARTIN FOUNDER AND CEO OF F5 PROJECT

House Judiciary Committee,

I am writing to express my strong opposition to SB 2128. While there are elements of the bill that have merit, I believe its overall impact will lead to collateral consequences that will adversely affect the community as a whole, including transitional living programs, service providers, agencies, and taxpayers.

The potential negative outcomes of this bill would be more acceptable if it were to result in a safer environment. However, based on my eight years of experience providing transitional living solutions in multiple cities across North Dakota, I have seen firsthand the importance of effective support systems. The F5 Project has been a valuable asset in facilitating successful transitions for the Department of Corrections and Rehabilitation (DOCR), helping to achieve numerous positive outcomes through transitional living, peer support, Free Through Recovery, and Community Connect.

The primary reason for my opposition to this bill is the proposed removal of incentives for individuals while they are incarcerated. This change will diminish the motivation for personal improvement and growth among those in the system. By creating what can be termed "dead time," individuals will feel powerless to change their circumstances, leading to a sense of hopelessness.

If we applied this same mindset to industries, schools, or parenting, we would witness widespread disengagement and resignation. Such an approach fosters a stagnant and unhealthy environment, negatively impacting not only the inmates but also correctional officers, families, and communities at large. It is crucial to maintain incentives that encourage positive behavior and personal development during incarceration to promote a healthier and more productive environment for everyone involved.

Adam Martin, Founder and CEO of F5 Project



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03/24/2025
To: Chairman Lawrence R. Klemin and the Judiciary Committee
Regarding: SB 2128
From: Skyler C. Larson
Position: In Opposition

Victor Hugo wrote a novel in 1862 called Les Misérables. Over the past century and a half, this book has been adapted into musical, and even movie formats. Although written in 1862, Les Misérables takes place in 1815 during the stressful time of the French Revolution.

In the beginning of the movie. Jean Valjean is in prison. He is going to be released. Javert, who at this point is a prison guard. Confronts Jean Valjean, He calls Valjean by his inmate ID number 24601 and gives him a yellow slip of paper that marks Valjean as a dangerous man. This paper is one that Jean Valjean is required to keep with him, and to show any potential employers, landlords, and law enforcement. Long story short Jean Valjean is on a lifetime parole and served 19 years in prison for stealing bread to feed his sisters family and running from the police.
Jean Valjean struggles to make ends meet. Its not for lack of trying. He is making a momentous effort to gain employment, and is turned down at every at every corner, because of this he cannot afford housing, and eats scraps. In a desperate attempt to sleep off the cold ground, and maybe find a meal, Jean Valjean visits the local church.
The bishop of this church takes in Jean Valjean. He gives food and a bed for the night. Yet Jean Valjean struggles to sleep, he tosses and turns knowing that in the morning he will have to leave.

In my own personal experience, people do not rise to the occasion. People always fall back to what they know. A child who falls knows that comfort is a close by parent, that child will run to the close parent. A solider under attack will fall back on weeks and months and maybe years of drills upon drills to survive and win. A surgeon will fall back to memorized textbooks and medical journals to be successful in a complex medical procedure. This bill makes our inmates the exception to this rule. This bill will halt forward positive growth of the inmate population. The author of Les Misérables knew this back in 1862. Its a real shame that being a decent human being is even in question today, 163 years after this book was published.

The kind Bishop wakes to find that he was robbed in the night all the silver was taken except two silver candle sticks. Shortly after this realization, two lawmen drag Jean Valjean back to the church to return the silver They laugh and say that Jean Valjean said he was gifted the silver. The bishop replied while reaching for the silver candle sticks, That is right, my friend you left so early surely something slipped your mind, you forgot I gave these also would you leave the best behind? The Bishop handed Jean Valjean the last silver in that church.

Jean Valjean then uses that silver to change. He works in local government; he runs successful businesses and goes out of his way to help those in need, at times he even puts his own personal safety at risk to save lives. The Bishop showed such a kindness to a man who was unaware of what kindness was, and because Jean Valjean had leaned this lesson. He now had something to FALLBACK on, other than stealing bread and silver.

The other person I had mentioned earlier is Javert. This man of the law only views life in two ways. Good and Bad. Right and Wrong. The lawful and the Lawless. He is dead set on upholding the letter of the law. During the movie and in the book, Javert rises in the ranks of law and becomes an inspector.
He chases down Jean Valjean. He only sees a criminal deserving of no redemption. Over the years that this book takes place. Jean Valjean and Javert have several run ins. Every time Jean Valjean is the bigger person and even saves Javerts life. No matter what Jean Valjean does, no matter how many good and virtuous deeds Valjean completes proving his change. Javert hunts and becomes less and less forgiving. This unwillingness to see positive change in people, ultimately destroys Javert. Lack of understanding change in people drives Javert to jump off a bridge into a river.

In the musical to help illustrate this internal struggle Javert sings

Who is this man, what sort of devil is he?

To have me caught in a trap and choose to let me go free?
It was his hour at last to put a seal on my fate
Wipe up the past and watch me clean up the slate
All it would take was a flick of his knife
Vengeance was his and he gave me back my life
Damned if I'll live in the debt of a thief
Damned if I'll yield at the end of the chase
I am the law and the law is not mocked
I'll spit his pity right back in his face
There is nothing on earth that we share
It is either Valjean or Javert
How can I now allow this man to hold dominion over me?
This desperate man that I have hunted
He gave me my life, he gave me freedom
I should have perished by his hand
It was his right
It was my right to die as well
Instead I live, but live in hell
And my thoughts fly apart
Can this man be believed?
Shall his sins be forgiven?
Shall his crimes be reprieved?
And must I now begin to doubt
What I never doubted all those years?
My heart is stone but still it trembles
The world I have known
Is lost in shadow
Is he from heaven or from hell?
And does he know
That granting me my life today?
This man has killed me, even so

This bill just doesnt affect the lives of inmates. This bill doesnt just take away many opportunities to change, learn, and grow new skills for inmates to FALLBACK ON.
This bill takes hope away from the officers. We wont get to see the fruits of our labor. We will be forced to take the humanity out of the rehabilitation.
As an employee of the State of North Dakota, and as a proud officer of the DOCR. I do not want my legacy to be built upon a bill like this. It would be spitting in the face of every employee who has given time, talents, tears, and blood, to transform lives, influence change and strengthen the community.

I have seen several men take advantage of what the DOCR has to offer and better their lives and their families.
Most recently, I ran into an ex-inmate taking a lunch break at a sandwich shop. I didnt recognize him at first. He had to remind me of his name, that is how different he looked. He had a contagious smile, a firm healthy handshake, and told stories about his children.

Oddly enough at a different sandwich shop, another ex-inmate was working at the counter, He too smiled broadly when he noticed me. We spoke for a long while about how his oldest daughter was gearing up for the police academy. The pride he took in his children making honorable career choices, seemed to radiate through the room.

Another ex-inmate, who left the NDDOCR and changed forever, took advantage of our CDL program, according to his social media he drives truck and appears to spend his free time catching up with is family. I havent made the time to reach out and see how he is doing yet, but I plan to at some point.

In the Bible, Book of Galatians Chapter 6: 7-10 it reads:

7 Be not deceived; God is not mocked: for whatsoever a man soweth, that shall he also reap.
8 For he that soweth to his flesh shall of the flesh reap corruption; but he that soweth to the Spirit shall of the Spirit reap life everlasting.
9 And let us not be weary in well doing: for in due season we shall reap, if we faint not.
10 As we have therefore opportunity, let us do good unto all men
These examples of change are just some examples of what is currently being sowed and reaped within the NDDOCR.
Thank You, I will now stand for questions.

March 10th, 2025

North Dakota Legislature
600 East Boulevard Ave
Bismark, ND 58505

Representative Lawrence Klemin
House Judiciary Committee Chair

Subject: Statement in support of SB 2128 – "Truth in Sentencing"

I am David Zimmer, Public Safety Policy Fellow with Center of the American Experiment, ND, a position I have held for the past 3 years following a 33-year career as a licensed peace officer with the Hennepin County Sheriff's Office in Minneapolis.

I write in support of SB 2128 which seeks to improve public safety by ensuring swift and sure punishment for several crimes in North Dakota. The Bill was sent to the house in late February, though it does not appear to have a House bill number assigned yet.

Whether it's fleeing police in a motor vehicle, interfering in an arrest, or assaulting a peace officer, these crimes are a direct affront to law and order in North Dakota. Failing to properly address these crimes leads to a breakdown in respect for authority and a corresponding weakening of any deterrent effect the system hopes to achieve.

As the Fargo Forum Editorial Board opined in 2022 – *"We cannot allow criminals to flee law enforcement with impunity. That leads to a climate of disregard for the law, which send out dangerous ripple effects."*

The Forum was correct, and the ripple effects of failing to apply swift and certain consequences for criminal offending are being felt by North Dakotans in 2025.

In the past ten years the number of offenses in the Crimes Against Persons category has increased by 43.4% in North Dakota. Even more troubling is that during that same period the number of arrests for Crimes Against Persons carried out by juvenile offenders increased by 142%. The message being sent to criminal offenders by North Dakota's criminal justice system is failing to serve as a deterrent. That needs to change, and it can change by adopting the measures proposed in SB 2128.

A long-established truth in public safety is that deterrence is achieved when would be offenders believe that if they commit a crime they will be caught and punished. The severity of a sentence isn't as important as the certainty of a consequence. SB 2128 moves North Dakota in line with this long-standing truth.

The Bill mandates reasonably light, yet certain, penalties of 14 – 30 days incarceration for interfering or resisting arrest, assault of a peace officer, and fleeing a peace officer in a motor vehicle. This certainty of incarceration, albeit brief, is a proven deterrent to crime, and the provision that mandates these sentences run consecutive to any sentence of an underlying offense only adds to the deterrent effect.

As a seasoned public safety practitioner, SB 2128 has my support. The penalties proposed in the Bill are not overly onerous, yet they send a strong message that disrespect for the law will result in swift and certain consequences.

North Dakotans would benefit from the deterrent effect SB 2128 would have on would be criminal offenders, and from the corresponding reduction in crime and incarceration.

Sincerely,

David P. Zimmer

David P. Zimmer
Public Safety Policy Fellow
Center of the American Experiment

March 23, 2025

Re: Testimony in opposition to SB 2128

Chair Klemin and members of the House Judiciary Committee:

I am Ann Crews Melton, Executive Director of Consensus Council, a North Dakota-based nonprofit that has brought people together for conflict resolution, building consensus, and bridging differences for 35 years. Typically, as conveners and consensus builders, we do not weigh in with legislative testimony. However, since 2021 Consensus Council has operated North Dakota's statewide Restorative Justice program, which seeks to repair harm and create safer communities. We feel strongly that this bill runs counter to the evidence-based, cost-effective restorative services already in place, and will push our state in the wrong direction, toward more spending and less safety. Thus I am breaking with precedent to provide testimony in opposition to SB 2128 and respectfully request a DO NOT PASS vote from the House Judiciary Committee.

Punishment without Accountability Isn't Justice

At Consensus Council, we believe that punishment without accountability isn't justice. As Americans we have grown accustomed to relying on systems that punish those who hurt us. Punishment does not require accountability, but places the person who caused harm in a passive role in which they are removed from society and aren't required, or given the opportunity, to take accountability at all.

When traditional punishment doesn't work, we dig in harder. We lock people away longer. Yet again and again, whether through enacting mandatory minimum or truth in sentencing initiatives, this does not deliver desired outcomes. We ultimately want the person responsible to feel remorse, make amends, repay their debt, and never hurt anyone again. Occasionally, punitive methods do motivate these changes. More often, they create worse, more broken citizens, and remove incentives for people to get better. As others testifying have noted, higher incarceration rates and longer sentences have repeatedly proven ineffective in reducing crime or recidivism, or in making communities safer.

Restorative Justice Requires Accountability

Restorative Justice is a philosophy that prioritizes the relational impact of wrongdoing. It asserts that when someone commits a crime or causes harm, a relationship is damaged, and the person responsible has an obligation to repair the harm to those affected. Restorative Justice is how many Indigenous and religious communities addressed harm before formal

systems were in place. Today, punitive systems and Restorative Justice are not mutually exclusive: Restorative Justice may be utilized as a stand-alone alternative or as a complementary process. North Dakota has had a robust Restorative Justice program since 1999, which is now operated by Consensus Council. Since adopting the program in 2021, we have served 3,048 individuals (not including parents of referred youth) through partnerships with ND Juvenile Court, ND Health & Human Services, school districts, and the ND Department of Corrections & Rehabilitation.[1] We have staff located statewide and frequently work with law enforcement, school resource officers, juvenile court officers, probation/parole officers, prosecutors, defense attorneys, and victim advocates, as Restorative Justice involves a holistic, community-based approach.

North Dakota's Ongoing Investment in Restorative Justice

To our knowledge, North Dakota is unique within the US for allocating state funding for a statewide Restorative Justice program, making our state a respected leader in the Restorative Justice field nationally. In 2021, the ND Legislative Assembly added Restorative Justice to ND Century Code as a sentencing alternative (12.1-32-02), defined as a "system of justice which focuses on the rehabilitation of offenders through reconciliation with victims and the community at large." One of our key services, Restorative Conferencing, brings people together in a safe, professionally facilitated space, to hold the responsible party accountable. In this voluntary process, the person responsible must own up to what they did and listen to victims share how the offense impacted them. Participants then create an agreement by consensus that defines how the responsible person will repair the harm.[2] This agreement is designed to meet the unique needs of the people most directly affected and reduce the risk of future offenses. Conferencing frequently results in restitution agreements; in 2024 alone Consensus Council distributed $22,400 to victims paid by their offender.

While Consensus Council's program works primarily with youth, we also serve adults through DOCR Victim Services and through the Unity Village (Restoring Promise) unit at the ND State Penitentiary, which offers a mentorship program utilizing restorative principles. Across our services, our facilitators address offenses ranging from theft, burglary, and simple assault to more violent crimes, including those resulting in serious injury or death. We have facilitated multiple cases, for both youth and adults, concerning loss of life. Some of these involved shootings, while others stemmed from driving offenses such as vehicular homicide and driving under the influence. These types of cases are typically requested by the victim's family members and require a high degree of preparation for all parties involved.

In our experience, Restorative Justice is effective in addressing not only low-level, nonviolent offenses but also for more violent crimes, such as those named in SB 2128. In a 2013 review of multiple studies, researchers found that face-to-face Restorative Justice conferencing resulted

[1] While we have faced challenges in tracking recent recidivism rates due to changes in the ND Juvenile Court database, past ND program data from 2007-2019 showed a six-month recidivism rate of just 13.1% for juvenile program participants.

[2] There are some cases where harm is impossible to repair—such as cases resulting in loss of life. But the opportunity for parties to meet is still critical to accountability for the offender, and healing for the victim.

in offenders committing significantly less crime than counterparts who were assigned to standard criminal justice alone, and that Restorative Justice conferencing is particularly effective with offenders of violent crime. This review also affirmed that victims participating in Restorative Justice conferencing express more satisfaction with the handling of their cases and are less likely to suffer post-traumatic stress symptoms.[3] Participants in our cases involving violent crimes and loss of life have expressed appreciation for the opportunity to tell their story in full—stating they often felt ignored or misunderstood by the traditional system. We know that restorative methodology works. Since 95% of our prison population will reenter our communities, we need to continue and expand North Dakota's commitment to Restorative Justice programs to enact accountability and ensure public safety.

Accountability to Victims and Communities Ensures Safety

Our communities are in dire need of accountability and restoring relationship, and North Dakota is poised to sustain and expand our established restorative approach. The eligibility and truth in sentencing requirements of SB 2128 would take our state and corrections system in the opposite direction. As others have testified, we have decades of data showing that locking people up longer does not make communities safer. It costs more, and it doesn't work. What does work are proven, evidence-based services that hold people accountable and require them to meaningfully reckon with the impact of their actions. Through Restorative Justice services we have such a program already in place.

Rather than spend state dollars on more prison beds and staff, which would result in cutting effective rehabilitative services, we urge you to take a smarter approach and sustain the proven services that are already working to reduce recidivism and ensure public safety, such as Restorative Justice. In light of this, I respectfully ask that the House Judiciary Committee vote DO NOT PASS on SB 2128.



Ann Crews Melton
Executive Director
Consensus Council
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[3] Strang, H., Sherman, L.W., Mayo-Wilson, E., Woods, D. and Ariel, B. (2013), Restorative Justice Conferencing (RJC) Using Face-to-Face Meetings of Offenders and Victims: Effects on Offender Recidivism and Victim Satisfaction. A Systematic Review. Campbell Systematic Reviews, 9: 1-59. https://doi.org/10.4073/csr.2013.12

Unify.US

Testimony
Before the North Dakota House of Representatives
Judiciary Committee

Public Hearing on SB 2128

Testimony by
Patrick D. Purtill
Executive Vice President & General Counsel
Unify.US
March 24, 2025

Thank you, Chairman Klemin, Vice Chair Karls, and Members of the Judiciary Committee for the opportunity to testify today.

Unify.US is a new addition to the public policy community and is engaged in work across the country to strengthen our economy, our families, and our communities. A merger of economic and faith driven conservatives, we were formed by former principals of the American Conservative Union (better known as "CPAC") and the Faith & Freedom Coalition.

The founders of Unify.US have more than 50 years of collective experience as grass roots activists. Our team also has a significant record on criminal justice policy. Unify.US' President, Timothy Head, was formerly the Executive Director of the Faith & Freedom Coalition. Prior to that, Tim was one of the key staffers in the Texas legislature that developed the Justice Reinvestment Initiative, a policy framework that changed the way conservatives have dealt with crime, punishment, and incarceration in 33 states across the country.

Our Chief Operating Officer, David Safavian, was formerly the long-time general counsel and executive vice president at CPAC. He served in the George W. Bush White House and as a chief of staff for a Republican Member of Congress from Utah who was senior on the House Judiciary Committee.

For the past ten years I was Director of Legislative Affairs for the Faith & Freedom Coalition where I worked with the first Trump Administration to craft and pass the First Step Act to reduce criminal recidivism and promote public safety. Prior to that I spent three years as Special

Assistant to the U.S. Deputy Attorney General in the George W. Bush Administration where I managed drafting and implementation of regulatory reforms and pilot grant programs and served on the Attorney General's Prisoner Reentry Working Group, the President's Prisoner Reentry Initiative Group, and the Strategic Management Council's Subcommittee on Violent Crime and Gangs.

Given our backgrounds, we wanted to reach out to express our views on SB2128. In short, we have serious concerns about this piece of legislation. Broadly speaking, the bill would do three things:

(1) *Imposition of Mandatory Minimum Sentences.* SB2128 would reduce the ability of judges to mete out sentences that reflect the individual facts and circumstances of each case before them by establishing mandatory minimum sentences for certain crimes. Our view is that mandatory minimums are an inflexible and formulaic approach to justice. Our criminal justice system relies on judges to oversee court proceedings and apply their own judgment to the circumstances of each case at sentencing. Given North Dakota's political culture, we have no concerns about judges failing to reflect the community ethos on crime and punishment. But SB2128 would create a one-way ratchet on sentence imposition and increase the number of prisoners behind bars, regardless of mitigating circumstances in any individual case.

(2) *Limit the Ability of Department of Corrections Officials to Effectively Manage ND Prisons.* SB2128 would establish a so-called "Truth in Sentencing" policy that would severely constrain NDDOC. Not only would it essentially lengthen prison terms by not counting time in half-way houses and on home confinement, but it would also prohibit the use of "earned time credits" to encourage good behavior during incarceration. This latter effect is particularly important. In prison systems across the country, inmates are incentivized to participate in alcohol and drug treatment, mental health programs, and vocational or other educational programs. The incentives often take the form of credits that can be used to reduce the number of days in prison. Such incentives have been shown to reduce recidivism, which makes communities safer. And because earned time credits are generally forfeited if a prisoner violates the rules while behind bars, these incentives also make prisons safer for corrections officers and inmates alike by incentivizing compliance.

(3) *Increase Government Spending of Taxpayers' Money*. Our understanding is that SB2128 would increase state spending on corrections by approximately $40+ millions of dollars over four years. Given that there is little recent quality research validating the beneficial impact on public safety of either mandatory minimums or Truth in Sentencing, it is difficult to justify the increased spending.

We note one area where we agree in principle with the sponsors of SB2128: addressing fleeing or assaulting a police officer. These are serious crimes that put our law enforcement officers – and ultimately the community – at greater risk. The legislature should provide clear guidance to the state's Judiciary that stern sentences are appropriate. So long as judges can grant departures from sentencing guidelines in the interests of justice (and requiring the rationale for any such

downward departures to be put on the public record), we have no opposition to increasing the penalties for both evasion of and assault on a police officer.

As you consider SB2128 we appreciate your taking our views into account. We anticipate more regular engagement in North Dakota, and hope to establish an active grassroots presence in the state in the coming months. In the interim, please feel free to contact me at ppurtill@unifyus.us with any questions or comments.

Thank you for the opportunity to testify today and for your thoughtful consideration.

CONTACT:
Patrick D. Purtill
Unify.US
ppurtill@unifyus.us / 757-903-5224

March 24, 2025
House Judiciary Committee
SB 2128
Representative Lawrence R. Klemin, Chair

For the record, I am Stephanie Dassinger Engebretson. I am appearing on behalf of the Chiefs of Police Association of North Dakota. I am also the deputy director and attorney for the North Dakota League of Cities. The Chiefs of Police appear in support of SB 2128.

SB 2128 is a good step towards addressing concerns that are at the top of the minds of the chiefs of police. First, it ensures that the sentences of individuals sentenced to the custody of the North Dakota Department of Corrections are carried out in a transparent manner. It also ensures that most individuals who are convicted serve the majority of their sentences in prison.

Next, the bill adds additional penalty provisions for preventing arrest, assaulting a police officer, and fleeing or attempting to elude a peace officer. Conduct constituting those charges has become quite prevalent and defendants convicted of those crimes often do not have any additional punishment for the listed offenses that are incredibly dangerous to law enforcement officers.

As this bill addresses many major concerns of law enforcement, the Chiefs of Police Association of North Dakota respectfully requests a Do Pass recommendation on SB 2128.

NORTH Dakota™ Be Legendary.

Commission on Legal Counsel for Indigents

Testimony of Travis W. Finck, in Opposition to SB 2128

Research Shows Truth in Sentencing Does NOT Reduce Recidivism

- SB 2128 will not reduce recidivism.
  - A 2021 analysis of 116 studies found, for example, that custodial sentences do not prevent reoffending—and can actually increase it.[1]
    - "The null effect of custodial compared with noncustodial sanctions is considered a "criminological fact." Incarceration cannot be justified on the grounds it affords public safety by decreasing recidivism. Prisons are unlikely to reduce reoffending unless they can be transformed into people-changing institutions on the basis of available evidence on what works organizationally to reform offenders."
  - Georgia adopted Truth in Sentencing requiring 90% of a sentence to be served[2]
    - I estimate that eliminating parole for all prisoners would increase the prison population by 10% while also increasing the crime rate through deleterious effects on recidivism
  - Arizona truth in Sentencing Paper by David McDonald:[3]
    - "Overall, the results in this paper suggest that TIS runs contrary to public policy aimed at reducing reoffending among those convicted and incarcerated"
    - Also with commentary on Florida and North Carolina Truth In Sentencing

Locking people up for longer sentences does not make communities safer.

- North Dakota's Law Enforcement does a great job with their resources to protect communities
- According to Pew Research and the Crime and Justice Institute, the prison population in the Untied States has fallen along with the crime rates
- Current policies and procedures seem to be working when reviewing recent reports
  - Our two largest cities have released crime stats showing Group A or "violent" crime is down in 2024
    - Fargo
    - Bismarck

Truth in Sentencing will not deter criminal behavior.

- After decades of a mandatory minimum structure, it was found that Louisiana's sentencing laws had "**DONE LITTLE TO DETER CRIMINAL BEHAVIOR"** …. AND HAVE RESULTED IN A SIGNIFICANT INCREASE IN LOUISIANA'S PRISON POPULATION, WITH ATTENDANT COSTS TO LOUISIANA'S TAXPAYERS." [4]
- U.S. Department of Justice, office of Justice Programs has issued a paper on deterrence, titled five things about deterrence.[5]
    1) The certainty of being caught is vastly more powerful deterrent than the punishment.
    2) Sending an individual convicted of a crime to prison isn't a very effective way to deter crime.
    3) Police deter crime by increasing the perception that criminals will be caught and punished
    4) Increasing the severity of punishment does little to deter crime.
    5) There is no proof that the death penalty deters crime.

Conclusion: The Commission opposes SB 2128 based upon research and national best practices:

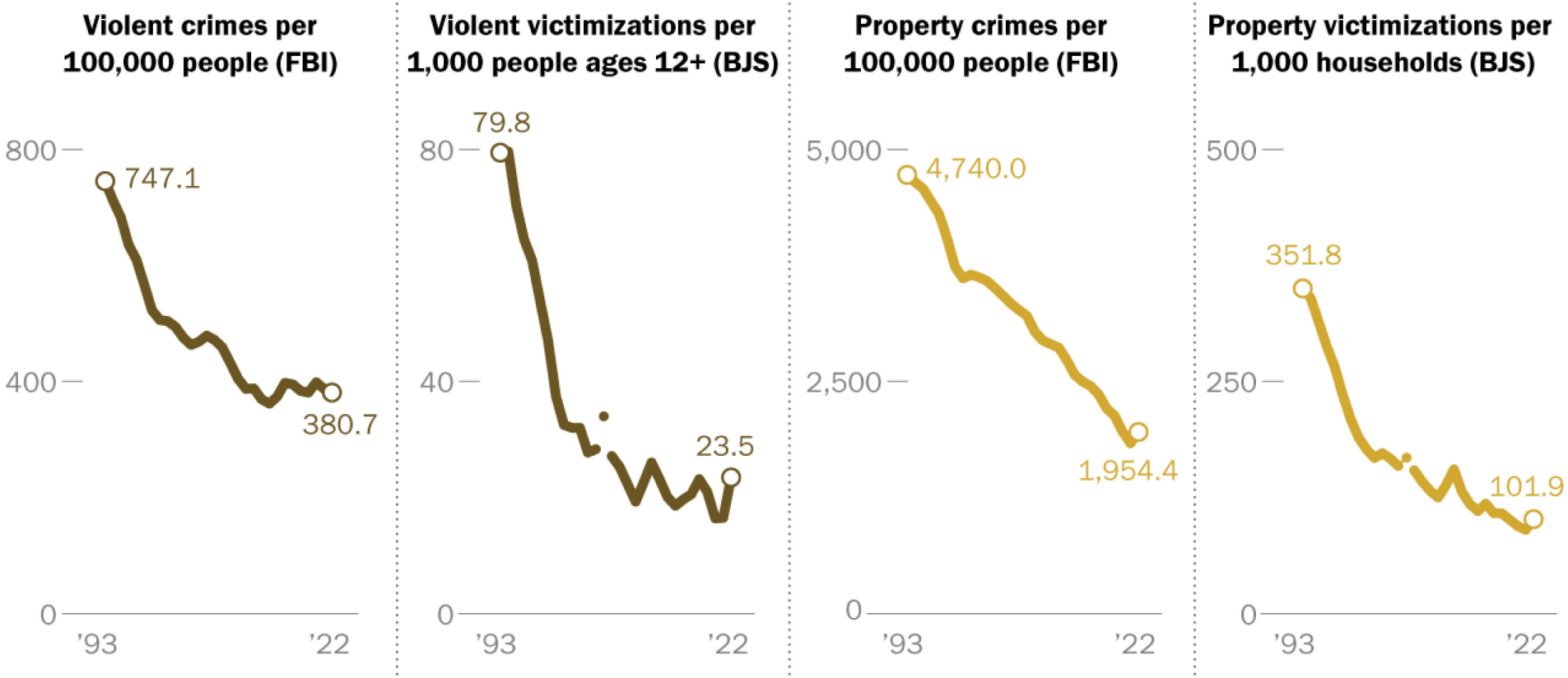
- A lot has been made about the fiscal note and whether it was inaccurate. Regardless, we know SB 2128 will cause increased costs without knowing if it will achieve its goals. What we do know is if we put the money into local law enforcement, our communities will be safer
- Mandatory minimum sentences and harsher sentences do not curb behavior
- The federal government under President Trump is moving away from determinate sentencing towards what North Dakota has, this bill would move us backwards
  - First Step Act
  - While SB 2128 limits the use of halfway houses to only "eligible offenders" Attorney General Pam Bondi is trying to increase their usage on a federal level. https://www.judiciary.senate.gov/imo/media/doc/2025-01-15_-_opening_statement_-_bondi.pdf

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3) Macdonald, D.C. (2024). Truth in Sentencing, Incentives and Recidivism, Working Paper. https://www.dropbox.com/s/8d0xha35vxvsrgs/Macdonald_TIS.pdf?e=2&dl=0
4) Smart on Sentencing, Smart on Crime: An Argument for Reforming Louisiana's Determinate Sentencing Laws, Galik, Laure and Julian Morris, Reason Foundation Report, https://reason.org/wp-content/uploads/files/louisiana_sentencing_reform.pdf, emphasis added
5) U.S. Dept. of Justice, Office of Justice Programs National Institute of Justice; Five Things About Deterrence, May 2016. https://www.ojp.gov/pdffiles1/nij/247350.pdf

U.S. violent and property crime rates have plunged since 1990s, regardless of data source

Trends in U.S. violent and property crime, 1993-2022



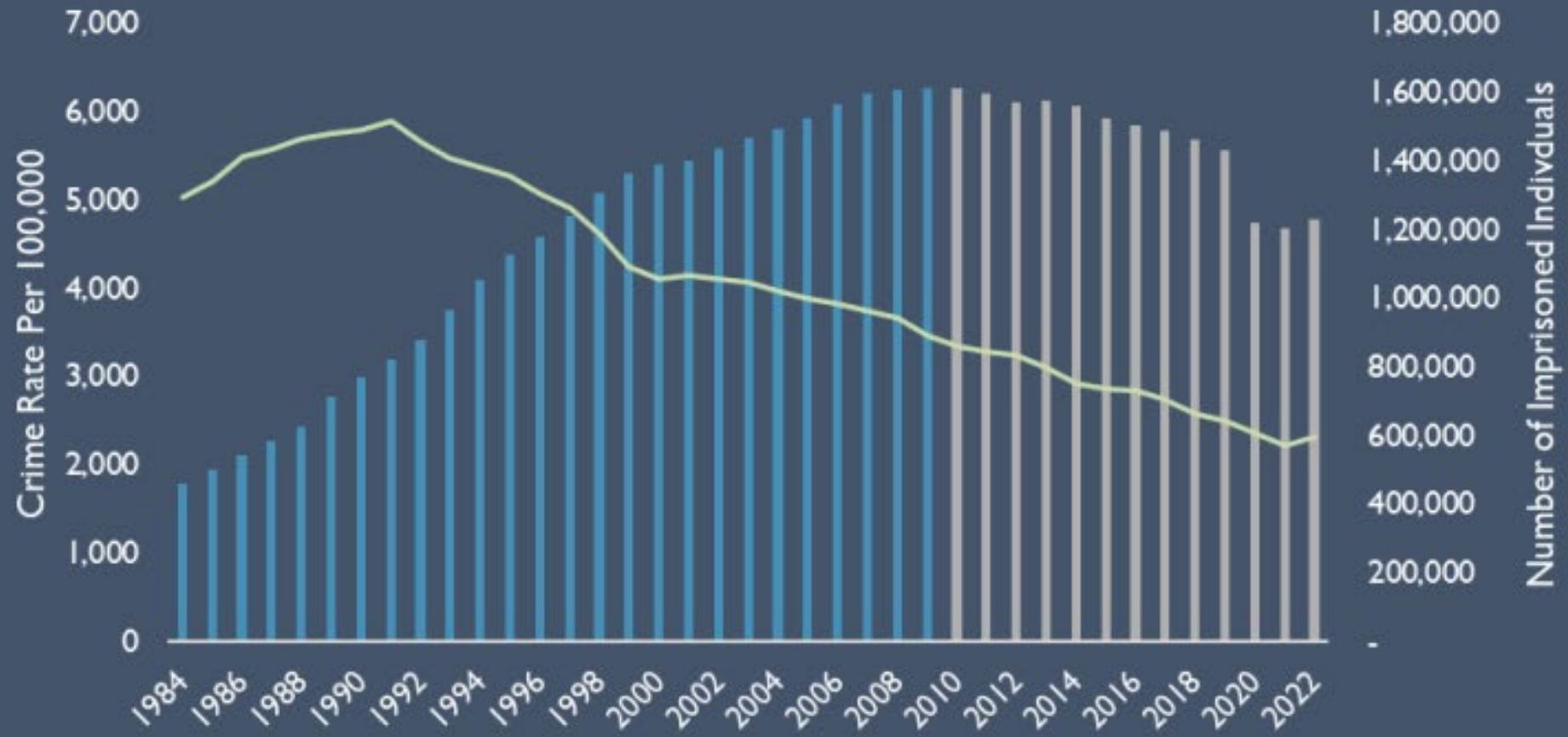
Note: FBI figures include reported crimes only; BJS figures include unreported and reported crimes. 2006 BJS estimates are not comparable to those in other years due to methodological changes.
Source: Federal Bureau of Investigation (FBI), U.S. Bureau of Justice Statistics (BJS).

PEW RESEARCH CENTER

Q: Does Truth in Sentencing make communities safer?

A: Crime across the country has declined regardless of TIS laws. Between 1984 and 2009, when TIS was on the rise, prison populations grew by 250% and crime decreased by 31%. Since 2010, the prison population has fallen by 24% and crime has dropped by another 30%.

National Crime Rate v. Number of Imprisoned Individuals, 1984-2022

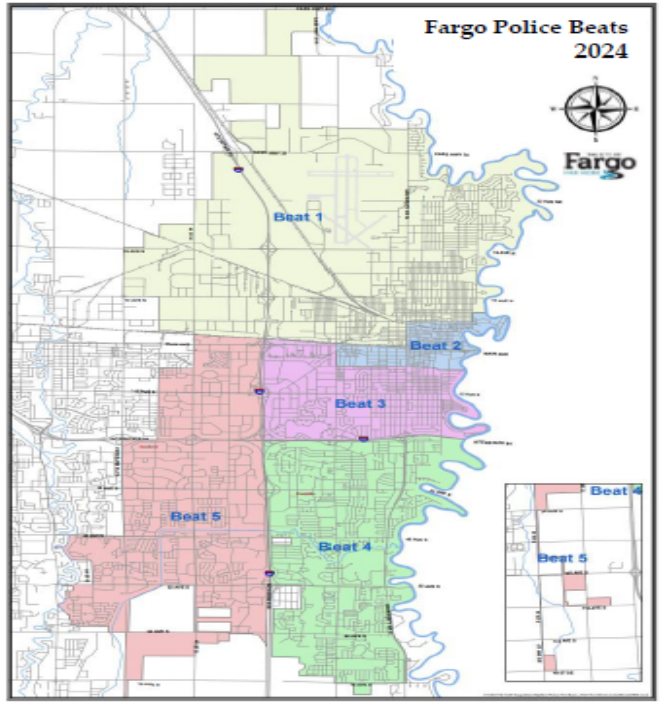


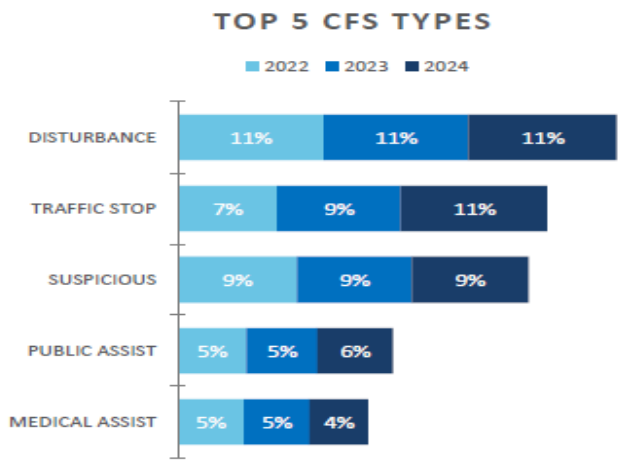
BACK

FARGO POLICE DEPARTMENT
INTELLIGENCE AND ANALYSIS UNIT
105 25th St N, Fargo, ND 58102, USA
FPDIntelUnit@FargoND.gov

*2024 Data Through November 30, 2024

ALL FARGO POLICE BEATS





	2022	2023	2024
Number of Calls for Service (CFS):	91,175	92,211	89,633
Case Offenses:			
All Rape	144	108	126
All Other Larceny	2,222	1,973	1,450
Animal Cruelty	17	28	30
Arson	37	23	14
Assault, Aggravated	501	480	375
Assault, Simple	1,978	1,994	1,786
Assisting or Promoting Prostitution	7	0	2
Betting/Wagering	0	0	0
Bribery	0	0	0
Burglary/Breaking & Entering	1,069	1,025	964
Counterfeiting/Forgery	164	169	126
Credit Card/Automatic Teller Machine Fraud	80	72	40
Destruction/Damage/Vandalism	1,065	1,024	1,004
Drug Equipment Violation	940	1,158	939
Drug/Narcotic Violations	799	881	710
Embezzlement	15	23	19
Extortion/Blackmail	15	17	9
Forcible Fondling	109	101	84
Fraud - Welfare Fraud	0	0	0
Fraud-False Pretenses/Swindle	222	258	230
Gambling Equip. Violations	0	0	0
Hacking/Computer Invasion (Fraud)	0	1	0
Human Trafficking, Commercial Sex Acts	1	0	0
Human Trafficking, Involuntary Servitude	0	1	2
Identity Theft (Fraud)	237	265	266
Impersonation	143	120	16
Incest	1	0	2
Intimidation	659	616	488
Kidnapping/Abduction	43	45	35
Motor Vehicle Theft	712	589	464
Murder/Non-Negligent Manslaughter	4	2	5
Negligent Manslaughter	0	0	0
Operating/Promoting/ Assisting Gambling	0	0	0
Pocket Picking	0	2	6
Pornography/Obscene Material	57	71	59
Prostitution	0	0	2
Purchasing Prostitution	0	0	1
Purse Snatching	0	6	10
Robbery	123	99	100
Shoplifting	750	952	940
Sports Tampering	0	0	0
Stalking	22	66	58
Statutory Rape	23	16	8
Stolen Property Offenses	290	242	209
Theft from Building	12	61	103
Theft from Coin Operated Machine or Device	0	5	2
Theft from Motor Vehicle	766	748	849
Theft of Motor Vehicle Parts or Accessories	91	102	35
Weapon Law Violations	113	101	88
Wire Fraud	30	10	20
TOTAL GROUP A OFFENSES	13,461	13,454	11,676

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GROUP A CRIMES

Crimes Against Persons	2020	2021	2022	2023	2024	%Change 2023-2024
Murder	0	2	6	2	1	-50.00%
Manslaughter	1	0	0	0	0	N/C
Sex Offenses	148	151	135	157	168	7.01%
Aggravated Assault	170	122	191	133	113	-15.04%
Simple Assault	868	792	736	735	696	-5.31%
Intimidation	165	40	112	151	141	-6.62%
Stalking[1]	28	22	11	10	21	110.00%
Kidnapping[2]	19	3	1	3	2	-33.33%
Human Trafficking[3]	6	3	0	2	3	50.00%
TOTAL	1,405	1,135	1,192	1,193	1,145	-4.02%

Group A offenses consist of the serious crimes against persons, generally felonies by statute; some crimes of vice include gambling, prostitution and drug offenses; and larcenies which also include fraud. The NIBRS reporting requirements for these offenses are much more extensive than for the offenses classified in Group B and Group C.

Crimes Against Property	2020	2021	2022	2023	2024	%Change 2023-2024
Arson	12	4	1	3	4	33.33%
Burglary	334	302	294	170	190	11.76%
Counterfeit/Forgery	127	97	107	88	63	-28.41%
Fraud	315	328	287	266	189	-28.95%
Destruction/Damage/Vandalism	742	656	580	582	504	-13.40%
Possession of Stolen Property	73	52	55	46	34	-26.09%
Robbery	28	26	25	30	34	13.33%
Motor Vehicle Theft	192	83	204	201	144	-28.36%
Shoplifting	776	742	460	693	631	-8.95%
Theft	1194	1389	1173	1121	1161	3.57%
Drug/Narcotic Violation	776	1029	847	638	671	5.17%
Drug Paraphernalia/Equip	801	1014	564	673	664	-1.34%
Embezzlement	36	18	14	15	8	-46.67%
Pornography/Obscenity	39	53	32	23	26	13.04%
Prostitution	12	7	10	10	7	-30.00%
Weapon Law Violations	71	85	60	57	59	3.51%
TOTAL	5,528	5,885	4,713	4,616	4,389	-4.92%

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RETURN ON INVESTMENT OF 2128

More victims of crime.

- One of the key elements of this bill is to take away one of the best mechanisms we have for reducing violent crime – transitional facilities. Confinement (Page 9 Lines 25 –26).
- 90% of offenders will not be eligible for transitional facilities due to the structure of the eligible offender.

2128 will not change:

- The length of time a violent person serves in DOCR custody.
    - o Per ND law, violent offenders and offenders who use firearms and weapons while committing crimes subject to the current statute already serve 85% of their sentence. The DOCR cannot and does not release them early. This would be unlawful.
    - o Violent crimes include:
        - Murder
        - Manslaughter
        - Class B Felony Aggravated Assault
        - Kidnapping
        - Gross Sexual Imposition
        - Robbery
        - Burglary

Violence in North Dakota will increase.

- A violent offender released directly to society from prison rather than going through a transitional facility is 39% more likely to return to a ND prison for committing another violent crime than one who went through a transitional facility..
- A non-violent offender released directly to society from prison rather than going through a transitional facility is 14% more likely to return to a ND prison for committing another violent crime than a person who went through a transitional facility first.

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RETURN ON INVESTMENT OF 2128

Recidivism in North Dakota will increase.

- Regardless of whether the crime is considered violent or non-violent, people who reenter society through a transitional facility are 14% less likely to return to prison in 3 years.
- To go directly from prison back to normal life is dramatic. Coaching people through this return to society is what reduces reoffending and the likelihood of violence.

Fewer people will be released with drug and alcohol treatment completed.

- 1/3 of individuals who completed drug and alcohol treatment in 2024 did so in a transitional facility.
- DOCR doesn't have the space or personnel to meet the new demand for treatment. Historically, DOCR has had a difficult time to recruit addiction counselors.

North Dakota prison and jail employees will be less safe.

- Removing incentives for making good choices will increase violence in prison. The current design of good time incentivizes personal responsibility. Under this bill individuals who are not yet eligible for treatment will lose their incentive to maintain good behavior within our prison walls.
- The specific language of this bill ignores the reality of what we can provide. A person MUST be working AND participating in education AND participating in court-ordered treatment or staff-recommended treatment. We do not have enough jobs for every person, so people are on a waiting list for employment. Approximately 32% of people in prison need a GED. Treatment programs are offered to inmates when they are nearing release, if resources are available. It will be rare that a person will be participating in all three at the same time. This means that the current language of the bill will disincentivize people from participating in education or vocational or treatment programs. The mindset will become, since the state can't support me to do all three, and since I don't benefit from doing 1 or 2, I'll just do nothing at all. As we have said before, idle hands are the devil's workshop.

End 40 years of legislative investment into successful reentry through transitional housing.

DOCR budget, bed space and needs will increase.

Safe Transitions, Stronger Communities

Real stories of change, real impact on public safety. Using transitional facilities as tools in recovery.

While at Centre, I have been able to obtain and maintain a full-time job, assistance with finances, completed treatment and aftercare. I have been able to maintain a prosocial life for myself. I have been able to pay off all of my debt, fines, and learned how to budget. I have been able to save $9,000+ for when I exit to my own apartment in the community. I have learned the importance of living a structured disciplined life. If not for the opportunity to be at Centre, I'm not sure which direction my life would have gone. Being here has helped my family to trust me because I have been able to independently provide for myself, responsible for my own transportation and establish employment which will help to carry me into my next phase of life. With the opportunities that Centre provided me, I have been able to show my family and confidently trust myself that I can transition back into the community successfully.

Getting the opportunity of coming to Centre, Inc. has helped me in many areas such as valuable work experience, earning wages to help support my kids, enhancing reintegration into the community by building relationships and job skills, paying larger amounts to fines, completion of treatment, a savings account, a bond back with my family, financial stability, and learning to work as a team. I could keep going on why Centre, Inc. has been a blessing to not just me and my family but to many others as well.

Through determination, support from loved ones, and the help of rehabilitation programs, I took the first step toward recovery. It wasn't easy, and there were many moments when I questioned whether I would ever be able to regain control of my life. But with persistence and support, I started to build the foundation for a healthier future. Any problems I ran into in my reintegration phase I was able to solve on my own or had amazing resources (Bismarck Transitional Center) and support systems to help navigate these challenges. Today, I am proud to say that I have successfully rebuilt my life. I encourage you to consider supporting policies and initiatives that promote recovery, reduce the stigma of addiction, and provide people with the resources they need to thrive.

The structure and support of Grand Forks Centre were critical to my success. Reentry is challenging, but the Centre provided a safe environment where I could apply what I had learned, develop resilience, and stay accountable. These experiences reinforced my ability to lead a productive and meaningful life. None of this would have been possible without parole and transitional housing. Since my parole release in December, I have achieved more than I ever imagined. Most importantly, I am proud of the man I have become and excited for my future. Had I been required to serve 85% of my sentence without hope of reentry support, I don't know if I would have been motivated to change. Taking away that hope could eliminate the drive for rehabilitation altogether.

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Safe Transitions, Stronger Communities

Real stories of change, real impact on public safety. Using transitional facilities as tools in recovery.

When I arrived at Centre from the North Dakota State Penitentiary, I was immediately offered help with achieving my goals. Honestly, they even helped me figure out what my goals even were at that time since it is hard trying to think of the future when you are in prison. Since leaving Centre, I have maintained my recovery, and I am currently 22 months sober. I still have the same job, and I have money in my bank account for the first time in years. 2025. I fully believe that I would not be sober right now or be where I am today if transitional facilities like Centre did not exist.

Centre Inc. has been an absolute lifeline in my transition from prison back into society. The support and resources they have provided have played a crucial role in alleviating the deep fears and anxieties I felt about reentering the outside world. Centre Inc. has not only provided me with the tools and resources to reintegrate into society, but they've also been instrumental in giving me a sense of hope and purpose for my future. Their support, combined with the powerful community connections they've helped me establish, has made all the difference in my reintegration process. I feel equipped to face the future with optimism and determination, and I owe much of that to the support I've received from Centre Inc.

While at Centre, I was able to finish my treatment and find employment so I could have financial stability. I've had the same job for the last 6 years. I have been clean from using illegal substances since 2016. This has also helped me to be a better father. I've been able to pay off all my debts and buy a house. This is something I thought I would never be able to accomplish, owning my own home was a dream of mine. I believe Centre is a much need program for those getting out of prison and have no place to go. This place was a crucial first step in turning my life around. Now I strive to be a positive role model for others who have found themselves in similar situations.

Being at Centre, Inc. has truly transformed my life, and I am grateful for the opportunity to give back. I have been sober since April 20, 2022, and I actively support others by providing transportation to meetings, helping them find their path to a better life. I believe wholeheartedly that everyone deserves a chance at recovery and a brighter future. Since my release, I have worked hard to rebuild my life. I obtained my license and became certified as a peer support specialist, helping others in schools and the community. I understand the struggles faced by those recently released from prison, and I am committed to helping them avoid the pitfalls of addiction and criminal activity.

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HOUSE JUDICIARY COMMITTEE
REPRESENTATIVE LAWRENCE KLEMIN, CHAIR
MARCH 24, 2025

NORTH DAKOTA DEPARTMENT OF CORRECTIONS AND REHABILITATION PRESENTING TESTIMONY IN OPPOSITION OF SENATE BILL 2128

Chair Klemin and members of the House Judiciary Committee, I am Colby Braun, Director of the North Dakota Department of Corrections and Rehabilitation (DOCR). Today, I submit this verbal and written testimony in opposition to Senate Bill 2128. SB 2128 is disastrous to the state's budget and dangerous for DOCR employees and the people of North Dakota.

You have been hearing that SB 2128 allegedly targets violent criminals – I am here to explain today how it in fact targets and greatly reduces our public safety. I agree that violent criminals need serious punishment. In fact, we have laws on the books that legislature has already implemented: violent offenders in North Dakota are already required to serve 85% of their sentences in prison. What SB 2128 does is shut the door on the investments in rehabilitation and redemption that are proven to make our communities safe.

Almost everyone in North Dakota prisons is coming home someday, and we all agree that we want them to come home from prison better than they went in. SB 2128 does two things that will undermine rehabilitation and lead to more crime:

1. SB 2128 takes away time credits that incentivize people in prison to follow the rules and participate in education, treatment, and rehabilitation programs, and

2. SB 2128 bans people in prison from entering a transition center until they reach the last 15% of their sentence, which is often too late for a person to complete and benefit from the treatment and training available there. **SB 2128 denies more than 90% of North Dakotans in prison timely access to the rehabilitation programs and life-changing reentry assistance our transition centers provide.**

In short, SB 2128 denies people the opportunity, incentives, and tools they need to rebuild their lives. This is a disservice to victims of crime. It will lead to more crime and make us less safe.

Some of the people SB 2128 endangers are correctional officers. Any correctional officer will confirm what common sense tells us: “Idle hands are the devil’s workshop.” People in prison are just like the rest of us: they need incentives to motivate them to do hard work. SB 2128 takes this motivation away. When we put people in prison and give them nothing to do and no incentives to improve themselves, misconduct goes up. Rule-breaking goes up. Violence goes up. Hopelessness goes up. This creates a more unstable, dangerous work environment for correctional officers and the people we are trying to rehabilitate. Our correctional officers want to help the people they supervise to grow and change in positive ways. We already have a hard time recruiting, hiring, and retaining staff. No one wants to work in a place where they don’t feel safe and don’t feel like they’re making a difference.

It gets worse. SB 2128 would also require the DOCR to minimize its use of our most effective crime-fighting tool: our transition centers. **Violent offenders who go through our transition centers are 39% less likely to commit an additional violent crime.**

That's because our transition centers have dedicated staff that provide the one-on-one mentoring and assistance that people need when they are transitioning home. The fact that there are more than zero people who have failed is not a reason to remove this tool because far more people would fail without this tool. I would be delighted to take any one of you to visit our transition centers so you can see for yourself how we empower people to find jobs, stay sober, take care of their families, contribute to our economy, and stop committing crimes.

One Native American man shared with me his story of success at the transition center, and it shows why we should be investing more in rehabilitation instead of just warehousing people longer. He wrote me:

> "I have been to prison multiple times for various reasons, which were all caused by decisions I made when I was under the influence of substances and in active addiction. My last stay in a transitional center was what really helped me get a start on my journey of bettering my life. …
>
> I spent 4 months residing at Grand Forks Centre. … While at Centre, I was able to use their resources to get a cellphone so that I could apply for jobs and communicate with potential employers, which ended up helping me obtain a job that I am still employed at, even today. The staff at Centre even got me set up with Vocational Rehabilitation, which resulted in them purchasing a bike for me so that I could have transportation to work. Centre helped me learn how to budget my money better, and I was even able to save up almost $2,000 at the time I discharged from there. I completed treatment in prison, but I was able to maintain my sobriety at Centre …

Since leaving Centre, I have maintained my recovery, and I am currently 22 months sober. I still have the same job, and I have money in my bank account for the first time in years. … When I got out of Centre, my care coordinator through that program asked me, “so what now?” and I told her about my goal of getting a bachelor’s degree in cyber security. She helped me apply for the University of North Dakota. I got accepted, and I am currently taking online classes at 41 years old. … I applied for about 6 different apartments and got denied from all of them due to my criminal history. … However, my care coordinator pulled some strings for me and found me a 2-bedroom house to rent.”

In contrast to this successful reentry, SB 2128 would send people directly to the community after they have spent years in prison with little or no time in a transition center to sort out sobriety, mental health treatment, housing, or finding a job. Common sense - and all of the evidence - tells us that a person who serves less of their sentence in prison but gets more rehabilitation and preparation will do better and reoffend less than a person who serves much more time isolated from society and is released unprepared, uneducated, untrained, and untreated because of SB 2128. Failing to prepare and support people when they are in prison and coming home leads to failure. Taxpayers will pay for SB 2128 not just in dollars, but in new crimes and new victims.

Transition centers change lives and reduce crime. We need more of this, not less!

The net effect of SB 2128 is to send people home from prison worse off than when they came into prison and give them only minimal help when they reenter our communities. This will lead to increased crime and victimization.

The Federal Government had an 85% law like the one that the Attorney General is proposing. It made the federal prison population and budget explode. President Donald J. Trump passed the First Step Act in 2018 in recognition that people need incentives to improve themselves, and that bill has been a public safety success. It gives **inmates** more time in community transition for completing rehabilitation programs. The Federal Bureau of Prisons is learning what we have known for years that incentivizing behavior and programming while supporting people in their return to society increases public safety and reduces recidivism.

SB 2128 is a disservice to taxpayers. SB 2128 will make taxpayers pay more for less safety. This bill will cost our state $45 million – and that's just in the next two biennium. The money that SB 2128 would spend locking up nonviolent people with less rehabilitation would be far better spent on hiring more police – which actually does deter crime – or investing in more rehabilitation.

If anything, the fiscal note's cost estimate is too low. The fiscal note does not include the increased costs of new crimes and recidivism from failing to rehabilitate people. Those new crimes will bring court and prosecution costs and victim restitution. The math on prisons is simple: keep more people inside longer, and your prison population will eventually increase so much that you need to build more facilities. To put some perspective on this, our new women's facility will cost taxpayers $166 million to build. SB 2128 is a recipe for more prison construction.

I take my mandate to protect the public very seriously. Based on my experience and on research and data, I can promise you that locking people up longer with less rehabilitation guarantees more crime and enormous costs. SB 2128 moves North Dakota in the wrong direction on public safety and fiscal responsibility. I urge you to vote no on SB 2128, and I welcome your questions.

Robert Vallie-Resident District 46
Concerning Senate Bill 2128
March 24, 2025

Chairman Klemin and members of the House Judiciary Committee,

My name is Robert Vallie. I am a resident of District 46 in Fargo and in my everyday work, I serve as an Assistant State's Attorney with the Cass County State's Attorney's Office. I have been a licensed attorney in North Dakota since September of 2017 and have spent my entire legal carer in criminal prosecution, serving as an ASA in Ward and Cass Counties. While I am testifying today in my individual capacity, it is with those years of experience and my belief in good public policy that I provide this testimony in opposition to Senate Bill 2128.

SB 2128 fails to recognize current realities

Regardless of how members of the Committee may feel about the merits of SB 2128, North Dakota is left with certain realities faced in this current point and time. The reality is that our county jails are at capacity or near capacity, depending on the moment a law enforcement officer calls in to determine if there is available housing for a suspect. While our jails have worked tirelessly to maximize space, from transfers of inmates to other jails as space is available to programs like Cass County's Community Supervision Unit, it can only go so far. Cass County, for example turned 1,491 people away for certain criminal offenses (DUI, DUS etc.) and warrants (failure to pay fine, failure to appear) between the years 2023 and 2024. Even with 348 beds, Cass County has had to balance available resources with the increased demands to their services that can leave prosecutors, law enforcement and other frustrated.

The reality is our prison system is overcapacity. In a post-covid world, the number of inmates in DOCR facilities has grown year by year, with no end in sight. As of March 18th, of this year, DOCR reported a total of 2,114 inmates, with a maximum operational capacity of 1,886. DOCR, much like our county jails, have attempted to maximize space, including contracting with local jails for bed space. Much like our county jails, DOCR can only push things so far. As of November of 2024, DOCR implemented its deferred admission plan, where inmates are prioritized based on the nature and level of offense for entry from our county jails. This backlog takes away from available beds to our county jails to accept individuals committing criminal offenses, addressing warrants and serving local sentences. It appears, based on information provided by DOCR to the HR Subsection of House Appropriations that the number of inmates DOCR will be ordered to house will continue to increase going into the Biennium. This anticipated increase will only create greater backlogs to our county jails and further strain DOCR resources, again, without any guarantee of achieving the Bill's aims. To these comments another way: North Dakota is at the point where for every person going into prison, someone needs to come out, by whatever authorized option is available. This will only be further exacerbated if this Bill is passed.

Financial impacts-known and unknown

In the second engrossment of SB 2128, the North Dakota Department of Corrections and

Rehabilitation has estimated the cost of implementing this change at roughly $43.9 million over this biennium and the next. This includes costs ranging from the hiring of additional staff to address services lost with transitional services and increased bed usage, among others. While less than the original fiscal note when this Bill was before the Senate Judiciary Committee, significant issues remain. The first is, as of the date of this testimony, the estimated costs for the 25-27 biennium to implement this Bill has neither been proposed as an amendment or amended into DOCR's Budget. The second, with the newly adopted revenue forecast, that funds available for new endeavors appear to be moving towards prioritization for State needs. As the legislature debates priorities like funding for highways, flood protection projects, educational programing for K-12 and Higher Ed, such an expenditure places North Dakota in a difficult position. To fully fund the fiscal note takes significant resources away from other state priorities, with no guarantee of achieving the aims of the Bill. To not fund the fiscal note or not fully fund, places DOCR in the position of deciding what objects cannot be funded from their budget, such as recruitment and retention, additional facility services, etc.

Additionally, what the fiscal note does not provide are the increased costs to those political subdivisions and entities involved in the Criminal Justice System. The increases to county jails to house additional DOCR inmates of deferred admission status or to complete the mandatory minimum sentences imposed. The increased cost to taxpayers, as county officials propose additional increases to jail staff, salary and facilities, to ensure continued operations. Increased costs to State's Attorney's Offices and Public Defenders to address cases of defendant's left in the community due to not being brought in on warrants and allowed to commit more offenses, increased trials, etc. At a time where this Legislature is attempting to hold the reigns on property taxes, this Bill appears to create a significant conflict in local needs to ensure community safety and Justice is achieved, with the want to cap taxpayer burdens at the local level.

Mr. Chairman and members of the Committee, in review of this Bill and the implications, SB 2128 provides greater strain and difficulties on our correctional system, greater costs to implement with no guarantee that this policy change will deter crime, ensure community safety, or address the balance of paroling individuals who show they are worthy, versus those worthy of being locked up.

Thank you for your time and consideration.

Robert Vallie
2320 34th Ave S
Fargo ND, 58104

March 17, 2025

Chairman Klemin and members of the House Judiciary committee,

Background

As the nation's oldest conservative grassroots organization, the Conservative Political Action Coalition (CPAC) support efforts to promote public safety through accountability and redemption. As conservatives, we also believe in limiting the size and scope of government, reducing unnecessary spending of the taxpayers' money, and preserving the idea that government closest to the voters is most responsive to their needs. It is in this context that we write to express our concerns about SB 2128.

Issue Overview

As drafted, SB 2128 makes substantial changes to the state's penal code. The bill mandates that individuals serve 85% of their sentence in prison (known as "Truth in Sentencing" or "TIS") and adds dozens of non-violent offenses to be held to this standard. It would preclude time spent in halfway houses or transitional facilities from counting toward the sentence imposed. SB 2128 would reduce the ability of the Department of Corrections to offer incentives to get inmates to participate in proven anti-recidivism programming such as addiction treatment, job training, or mental health programs. Finally, it would establish mandatory minimums for certain offenses, including fleeing a peace officer and assaulting one. Those convicted of either fleeing or assaulting a law enforcement officer would have to serve the mandatory minimum sentence, imposed consecutively to any underlying sentences.

The Fiscal Note for SB 2128 indicates that it would increase government spending by over $40 million between 2025-2029 - an estimate that will likely grow.

So-Called "Truth in Sentencing"

With respect to the 85% requirement, we have seen similar TIS provisions in use in other states. However, there has been very little quality research assessing the outcomes driven by minimum time served requirements. Indeed, according to the data analytics firm Recidiviz in a 2022 review:

> Because there are few credible papers that estimate causal effects of TIS laws on outcomes for justice-involved individuals, we find it important to highlight the highest quality research on this topic to best inform decision makers. These two natural experiments from two different states find effectively the same unintended and critical consequences. ***Truth in Sentencing reduces incentives to complete rehabilitative programming, increases risk to safety for correctional officers and individuals in prison, and increases recidivism. If the goal of TIS is to increase public safety, these consequences may cause the policy to backfire.*** (Emphasis added.)

Eliminating Incentives for Anti-Recidivism Programming

According to the North Dakota Department of Corrections, the state's recidivism rate remains stubbornly high at approximately 40%. Because every case of re-offending means another crime, another victim, and often another costly prison cell, reducing recidivism is the key to cutting crime *and* unnecessary spending.

Indeed, that was the working principle behind President Trump's signature criminal justice bill, the First Step Act. First Step provides a mechanism for prisoners to earn credits towards early release to home confinement by taking anti-recidivism programming. Six years later, it is clear that the Trump approach has worked.

An analysis conducted in December 2024 by the non-partisan Council on Criminal Justice indicated that similarly situated inmates who had taken programming under the First Step Act and earned early release had a 55% lower recidivism rate compared to those who did not.

We believe the most effective path to recidivism reduction in North Dakota is to adopt an approach similar to that used by President Trump to improve performance of the federal system. That is, create incentives to encourage inmates to do the hard work of self-improvement so that they leave prison ready to work and become law abiding members of the community. Unfortunately, SB 2128 does just the opposite. It would prohibit the use of earn time credits to incentivize anti-recidivism programming, which will almost certainly lead to an increase in the number of repeat offenders.

Imposition of Mandatory Minimums

SB 2128 would set mandatory minimum sentences for certain crimes – including evading and assaulting a law enforcement officer. To be clear, we have no compunction about holding people accountable for their actions. Evading a police officer is serious. Assaulting one is even more so. People who act in such a way merit meaningful punishments … to be issued by trial judges, not the prosecutors.

Taking the discretion out of the hands of judges under the rubric of mandatory minimums is seductively simple. However, reliance on mandatory minimums is a one-size-fits-all solution to a criminal problem. Such an approach to sentencing not only removes needed flexibility in the system to actually do justice, it predictably leads to higher incarceration costs and prison overcrowding.

Every crime is unique because individual victims, defendants, and case circumstances are unique. Our belief is that judges should have the power to mete out sentences based on all the facts and circumstances. In fact, that is why we pay judges; to use their judgment to do justice rather than apply a mathematical formula. If a judge is too harsh or too lenient, there is recourse at the ballot box.

Conclusion

While well intended, SB 2128 would have negative consequences for the taxpayers and residents of North Dakota. It would prohibit incentives that have been proven to reduce recidivism. And it would likely lead to higher incarceration costs to be borne by the taxpayers. All without any definitive proof that it would lead to safer communities. We urge you to reject this legislation and stand ready to work with you on legislation that is beneficial to North Dakotans safety and prosperity.

Thank you for your attention and consideration to this critical issue,

Patrick Plein



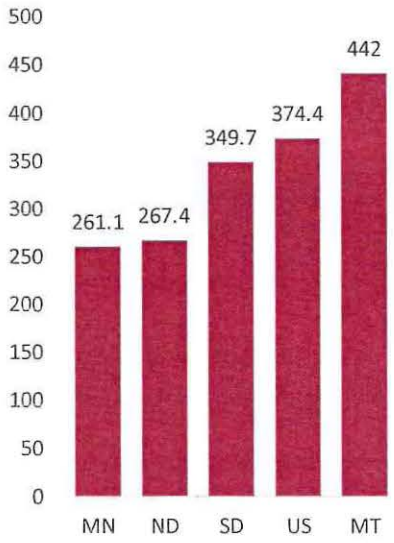
Director, CPAC - *Nolan Center for Justice*

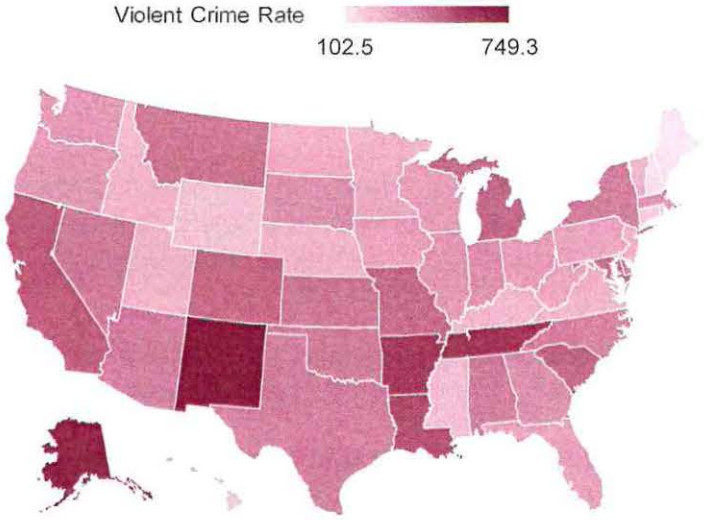
Violent Crime in North Dakota

How Does North Dakota's Violent Crime Rate Compare to the National Rate?

- North Dakota's violent crime rate has been **consistently lower** than the national violent crime rate and was **33% lower** than the national rate in 2023.
- In 2023, North Dakota's violent crime rate **was the 18th lowest** in the nation, lower than that of South Dakota and Montana.

2023 Violent Crime Rates per 100,000





Data Source: Federal Bureau of Investigation, Crime Data Explorer

How Has Violent Crime Changed in North Dakota in Recent Years?

- North Dakota's violent crime rate has **declined every year since 2020**.
- North Dakota's violent crime rate **decreased by 19%** from 2020 to 2023, while the national violent crime rate decreased by 6%.

How Does North Dakota Handle Violent Offenders?

- North Dakota's **most violent offenders have had an 85% time served requirement for decades.** These people make up a *very small* percentage of the population that is entering prison. For example, in 2023, they represented **less than 5%** of prison admissions.

Violent Crime in North Dakota

Does SB 2128 Target Violent Offenders?

The scope of SB 2128 reaches **far beyond** the dangerous, violent criminals.

- If the policies in SB 2128 had been implemented in the last biennium, they would have **increased prison time and delayed access to reentry services for more than 1,000 people** who came to prison in 2023.
- Based on 2023 data, **more than half** of those who would have been impacted by these policies were people sentenced to prison for **non-violent offenses.**

How Does SB 2128 Handle Crime?

SB 2128 handles crime only by incapacitating people for longer periods of time. The bill does not offer any solutions to address an offender's underlying needs to prevent crime from happening in the future.

- SB 2128 **takes away** access to critical transitional services and reentry support for people who are currently assessed as being **the safest to be back in the community**.
- Instead of allowing comprehensive assessments of risk, escape history, prior criminal activity, and institutional behavior to inform housing placement and access to transitional opportunities, **SB 2128 requires decisions to be based solely on time served.**
- SB 2128 **limits meaningful rewards** that incentivize people to work hard in prison to help others and turn their own lives around for the better.

What Will SB 2128 Cost North Dakotans?

- The second engrossed version of SB 2128 is projected to cost taxpayers **$44 million** by 2029, without factoring in costs for additional space that will be needed to house the population that will be required to reside within prison walls instead of transitional facilities.
- Requiring inmates convicted of non-violent offenses to serve at least 50% of their sentence inside prison walls **will force North Dakotans to pay for more prison space.** That means building new facilities on North Dakota soil, sending money to other states to house the overflow population, or even worse, **doing both.**

Truth in Sentencing

Frequently Asked Questions (FAQs)

Q: What is Truth in Sentencing?

A: First enacted in 1984, Truth in Sentencing (TIS) laws are a form of determinate sentencing where incarcerated individuals are required to serve a substantial portion of their sentence, generally 85%, prior to release. Under this model, parole eligibility and good time credits are restricted or outright eliminated.

Q: Does North Dakota Use Truth in Sentencing Currently?

*A: **Yes.** Anyone sentenced for a violent offense, including murder, manslaughter, aggravated assault, kidnapping, gross sexual imposition, or robbery, is currently required to serve 85% of their sentence in North Dakota. In 2023, at least 15% of the state prison population was serving a TIS term.*

"WE NEED TO ADDRESS THE OVERCROWDING IN OUR CORRECTIONAL SYSTEM. WE CANNOT BUILD OUR WAY OUT OF THIS. WE NEED AN APPROACH THAT'S SMART ON CRIME, NOT SOFT ON CRIME. FINDING PRACTICAL SOLUTIONS THAT WILL INCREASE ACCESS TO SERVICES WHILE REDUCING THE RELIANCE ON OUR JAILS AND PRISONS AS TREATMENT CENTERS IS A TOP PRIORITY OF OUR ADMINISTRATION." -Governor Kelly Armstrong, 2025 State of the State Address

Q: Why have states moved away from TIS?

A: Over time, most states realized that TIS resulted in larger prison populations at tremendous cost with little evidence of improved public safety or reduced recidivism . Here are three examples of state experiences under TIS models .

State Spotlight	Impacts of TIS
Wisconsin 	▪ 14% growth in the prison population ▪ Annual corrections budget reached $2.25 Billion ▪ Severe programming shortage
Georgia 	▪ Dangerous environment within prisons ▪ More crime committed upon re-entry ▪ Significantly higher reincarceration rates
Arizona 	▪ 50% increase in rule infractions ▪ 20% reduction in education program enrollment ▪ Higher rate of reincarceration

HOUSE JUDICIARY COMMITTEE
MARCH 23, 2025

TESTIMONY OF CLAIRE NESS
OFFICE OF ATTORNEY GENERAL

IN SUPPORT OF
SENATE BILL 2128

Chairman Klemin and Members of the Committee:

My name is Claire Ness, and I'm the Chief Deputy Attorney General. During the hearings on Senate Bill 2128 in the Senate, Rachelle Juntunen, the Deputy Director of Adult Services at the Department of Corrections and Rehabilitation (DOCR), and I engaged in conversations about issues related to the bill. As those conversations continued and the bill successfully passed the Senate, Ms. Juntunen and I agreed to continue working together to develop an amendment to the bill for this committee to address many of DOCR's stated concerns.

This work included meetings – including a very productive meeting at DOCR that seemed to result in an agreement in principle on the substance of the amendment – and several emails – including emails discussing a draft of the amendment prepared according to the agreed-upon principles. However, at the end of the process, DOCR decided not to join us in offering the amendment. I do not wish to speak for Ms. Juntunen, but my understanding of her message about this is that the amendment did not address all of the items in the bill that DOCR dislikes, not that DOCR opposes the amendment itself.

The Attorney General's Office and I greatly appreciate Ms. Juntunen's time and work on the amendment, and we would like to offer the amendment to the committee. It adds clarity and reflects input from DOCR on the bill.

Specifically, the amendment:

- Would allow any offender to participate in work opportunities in or on the grounds of a DOCR facility that is at least as secure as the facility in which the offender is housed. According to DOCR, this:
  - Will allow an inmate to serve on yard crews and other work details at DOCR facilities; and
  - Will not change current practices for inmates work at DOCR facilities.

- Would **not diminish** the ability of all offenders to participate in educational, rehabilitation, treatment, or other programs in their residential facilities.

- Would **not diminish** the ability of "eligible offenders" to participate in offsite, community-based "release programs" for work, education, rehabilitation, or treatment.

- Would add several offenses requested by DOCR to the list of crimes for which an individual would be an "eligible offender."
    - The newly added crimes include child neglect (for which many of the women at the women's prison are incarcerated) and almost all misdemeanors for which an inmate could serve a concurrent sentence under DOCR's jurisdiction.
    - The newly added crimes would not trigger the truth-in-sentencing provisions in section 10 of the bill and would not make the inmate ineligible for release programs or halfway houses.
    - The misdemeanors that still would trigger the truth-in-sentencing provisions include assaults, crimes against unborn children, sex offenses, rioting, and certain obscenity crimes involving minors.

- Explicitly clarifies that an inmate does not have to participate in court-ordered or staff-recommended programs to earn "good time" if no such programs are ordered or recommended for the inmate.

- Explicitly clarifies that eligible offenders are exempt from the truth-in-sentencing provisions in section 10 of the bill.

The Attorney General's Office requests the committee adopt this amendment to Senate Bill 2128 and recommend a Do Pass on the amended bill. Thank you for your time.

~~25.8109.03000~~

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

SECOND ENGROSSMENT

Introduced by

Judiciary Committee

REENGROSSED SENATE BILL NO. 2128

(At the request of the Attorney General)

A BILL for an Act to amend and reenact sections 12-44.1-01, 12-47-18.1, 12-48.1-01, 12-48.1-02, 12-54.1-01, 12-54.1-03, 12.1-08-02, 12.1-17-01, 12.1-32-02.1, 12.1-32-09.1, and 39-10-71 of the North Dakota Century Code, relating to transparent sentencing of criminal offenders, transfer of persons between correctional facilities, work release eligibility and conditions for criminal offenders, sentences for assaulting and fleeing from law enforcement officers, and sentences for preventing arrest; to provide a legislative management report; to provide a penalty; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-44.1-01 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-01. Definitions.

As used in this chapter:

1. "Administrator" means the sheriff, chief of police, administrator, superintendent, director, or other individual serving as the chief executive officer of a correctional facility.
2. "Adult lockup" means a secure temporary-hold nonresidential facility that does not hold individuals overnight and includes a facility with cuffing rails or cuffing benches.
3. "Correctional facility" means a city or county jail or detention center, regional corrections center, or juvenile detention center for the detention or confinement of persons in accordance with law. The use of the term does not imply and may not be used to require the provision of services including treatment, counseling, career and technical education, or other educational services, except as may otherwise be

required or provided for under this chapter. The term does not include transitional facilities.

4. "Correctional facility staff" means correctional personnel with titles such as jailer, deputy, counselor, correctional officer, or any other title, whose duties include the ongoing supervision of inmates in a correctional facility.

5. "Court holding facility" means a secure facility, other than an adult correctional facility or adult lockup, used to temporarily detain individuals before or after a detention hearing or other court proceedings, and is not used to detain individuals overnight.

6. "Individual justice planning" means a process to identify, accommodate, and develop appropriate consequences for behaviors caused by or related to an individual's mental or cognitive impairment.

7. "Inmate" means any individual, whether sentenced or unsentenced, who is detained or confined in a correctional facility. The term does not include an individual who is under the supervision of the correctional facility and is supervised under home detention, electronic monitoring, or a similar program that does not involve physical detention or confinement in the facility.

8. "Jail" means a correctional facility, including a county or city jail or a regional corrections center.

9. "Juvenile detention center" means a publicly maintained correctional facility for the detention of juveniles. The term does not include the North Dakota youth correctional center.

10. "Regional corrections center" means a correctional facility established and maintained by more than one county or city, or a combination of counties and cities, for the confinement of inmates.

11. "Trained correctional facility staff" means correctional personnel who have completed a course of training approved by the peace officer standards and training board.

12. "Transitional facility" means a halfway house, assessment center, re-entry facility, transitional living facility, or similar facility, operating under contract, in partnership with, or under the direction of the department of corrections and rehabilitation or a correctional facility, which offers education, counseling, or other programs, with unsecured or minimum security housing, for offenders.

SECTION 2. AMENDMENT. Section 12-47-18.1 of the North Dakota Century Code is amended and reenacted as follows:

12-47-18.1. Transfer of persons between correctional facilities.

~~The~~Subject to statutory limitations, the director of the department of corrections and rehabilitation may transfer an offender to any facility under the department's control or contract to transfer an offender to another correctional facility for purposes of safety, security, discipline, or medical care~~, or when the director determines it may be in the best interests of the public, the offender, or the department~~.

SECTION 3. AMENDMENT. Section 12-48.1-01 of the North Dakota Century Code is amended and reenacted as follows:

12-48.1-01. ~~Director may provide certain~~Work release and education or rehabilitation services for offenders.

1. The director of the department of corrections and rehabilitation may participate in programs in which ~~offenders~~an offender committed to the legal and physical custody of the department may be gainfully employed in, or on the grounds of, a facility under the control of the department which has a security level that is the same as or higher than the security level of the facility in which the offender resides, or participate in an educational or other rehabilitation program ~~either in or outside facilities~~in the facility under the control of the department in which the offender resides. ~~The~~For eligible offenders, the director may obtain or contract with separate facilities with minimum security for housing offenders granted release privileges. In areas where facilities are not within reasonable proximity of the place of employment or training of an eligible offender so released, the director may arrange for the housing of the offender in local confinement facilities.
2. For purposes of this chapter, an "eligible offender" means an offender who:
   a. In accordance with section 12.1-32-09.1, has served eighty-five percent of the offender's sentence of imprisonment or had the offender's sentence~~s~~ commuted and served the commuted sentence; or
   b. Is serving a sentence only for one or more violations of:
      (1) ~~s~~Section 12.1-06.1-08, 12.1-11-01, ~~12.1-11-07,~~ 12.1-15-02, or 12.1-15-03; subdivision c of subsection 1 of section 12.1-21-02; section 12.1-21-03.1; subdivision b of subsection 1 of section 12.1-21-05; section 12.1-21-06.1, ~~12.1-22-~~

~~05,~~ 12.1-23-02, 12.1-23-04, 12.1-23-07, 12.1-23-08, ~~or~~ 12.1-24-01, or 14-09-22.1; subsection 7 of section 19-03.1-23; ~~or~~ section 19-03.4-03 or 39-08-01~~.~~; or

(2) Any other section for which the offender is guilty of a misdemeanor except an an offender serving a sentence for a violation of a section in chapter 12.1-17, 12.1-17.1, 12.1-20, 12.1-25, or 12.1-27.1 is not an eligible offender.

c. For purposes of subdivision b of subsection 2, a conviction reduced pursuant to subsection 9 of section 12.1-32-02 is not a misdemeanor.

3. The department of corrections and rehabilitation shall provide to the attorney general and the legislative council each quarter a report, including the names, locations, and sentences of each individual who meets the criteria in subdivision b of subsection 2.

SECTION 4. AMENDMENT. Section 12-48.1-02 of the North Dakota Century Code is amended and reenacted as follows:

12-48.1-02. Conditions of ~~eligibility for~~participation in release programs.

1. An eligible offender, except 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, may ~~be eligible for programs~~participate in a program outside ~~facilities~~a facility under the control of the department of corrections and rehabilitation when the department determines, with a high degree of reliability, the eligible offender is not a high security risk, not likely to commit a crime of violence, not likely to escape, and is likely to be rehabilitated by such program. An eligible offender may apply to the director of the department for permission to participate in such programs.
2. The director of the department may authorize participation in outside programs for an eligible offender who has ten years or less remaining on a sentence and has been committed to the legal and physical custody of the department. The parole board, with the approval of the director of the department, may authorize participation in outside programs for eligible offenders who have more than ten years remaining on a sentence and have been committed to the legal and physical custody of the department.
3. The offender shall submit a signed application which must include a statement that the eligible offender agrees to abide by all terms and conditions of the particular plan adopted for the eligible offender, and must include such other information as the parole board or the director of the department may require.

4. The parole board may approve, disapprove, or defer action on an application approved by the director of the department. The director of the department or the parole board may revoke approval of the application at any time after granting the application. The department shall prescribe rules of conduct and treatment for all eligible offenders on release programs and shall prescribe objective and subjective criteria for which revocation of approval to participate in release programs is mandatory. A rule violation indicating the eligible offender likely will commit a crime of violence or is likely to attempt to escape must result in revocation of approval to participate in release programs. The department shall document all violations of the rules of conduct and treatment.

5. The director of the department may grant short leaves, not to exceed seventy-two hours, to eligible offenders who have been committed to the legal and physical custody of the department for ten years or less. The parole board, upon the approval of the director of the department, may grant short leaves, not to exceed seventy-two hours, to offenders committed to the legal and physical custody of the department for more than ten years. Short leaves granted under this subsection may not be granted consecutively to the same individual.

6. All rules adopted by the parole board and the director of the department relating to release programs and short leaves must conform, to the extent allowable by law, with executive order no. 11755 issued by the President of the United States.

SECTION 5. AMENDMENT. Section 12-54.1-01 of the North Dakota Century Code is amended and reenacted as follows:

12-54.1-01. Sentence reduction for good time.

~~Except as provided under~~Subject to the requirements of section 12.1-32-09.1, an offender committed to the legal and physical custody of the department of corrections and rehabilitation is eligible to earn sentence reductions based upon satisfactory fulfillment of performance criteria established through department and penitentiary rules. Performance criteria ~~includes~~must include participation in court-ordered or staff-recommended treatment and education programs to the extent there are any for the offender, and good work performance if the offender is employed. The department may credit an offender committed to the legal and physical custody of the department who is eligible for sentence reduction up to five days good time per month for each month of the sentence ~~imposed~~served, up to a maximum of fifteen percent of the offender's sentence. Sentence reductions may not be awarded before they are earned. The department

may credit an offender with sentence reduction for time spent in custody before sentencing and commitment to the legal and physical custody of the department. The department may not credit an offender with any sentence reduction for time spent on probation under the supervision and management of the department.

SECTION 6. AMENDMENT. Section 12-54.1-03 of the North Dakota Century Code is amended and reenacted as follows:

12-54.1-03. Meritorious conduct sentence reduction.

~~Except as provided under section 12.1-32-09.1, offenders~~Offenders committed to the legal and physical custody of the department of corrections and rehabilitation may receive a lump sum or a monthly rate of meritorious conduct sentence reduction for outstanding performance or heroic acts ~~or as a special control and security measure~~, as provided by penitentiary and department rules and upon written recommendation of a department multidisciplinary team. Meritorious sentence reductions are in addition to sentence reductions under section 12-54.1-01 and may be made only after a written recommendation is made by the warden and approved by the director of the department. Any sentence reduction ~~for special control or security measures~~under this section may not exceed ~~two days~~one day good time per month per offender.

SECTION 7. AMENDMENT. Section 12.1-08-02 of the North Dakota Century Code is amended and reenacted as follows:

12.1-08-02. Preventing arrest or discharge of other duties.

~~1.~~ A person is guilty of a class A misdemeanor if, with intent to prevent a public servant from effecting an arrest of himself or another for a misdemeanor or infraction, or from discharging any other official duty, he creates a substantial risk of bodily injury to the public servant or to anyone except himself, or employs means justifying or requiring substantial force to overcome resistance to effecting the arrest or the discharge of the duty. A person is guilty of a class C felony if, with intent to prevent a public servant from effecting an arrest of himself or another for a class A, B, or C felony, he creates a substantial risk of bodily injury to the public servant or to anyone except himself, or employs means justifying or requiring substantial force to overcome resistance to effecting such an arrest.

~~2.~~1. It is a defense to a prosecution under this section that the public servant was not acting lawfully, but it is no defense that the defendant mistakenly believed that the public servant was not acting lawfully. A public servant executing a warrant or other process in good faith and under color of law shall be deemed to be acting lawfully.

2. A conviction under this section carries a penalty of at least fourteen days' imprisonment and, if there is an underlying conviction, the imprisonment must be consecutive to any sentence of imprisonment for the underlying conviction.

SECTION 8. AMENDMENT. Section 12.1-17-01 of the North Dakota Century Code is amended and reenacted as follows:

12.1-17-01. Simple assault.

1. A person is guilty of an offense if that person:
   a. Willfully causes bodily injury to another human being; or
   b. Negligently causes bodily injury to another human being by means of a firearm, destructive device, or other weapon, the use of which against a human being is likely to cause death or serious bodily injury.
2. The offense is:
   a. A class C felony when the victim is a peace officer or correctional institution employee acting in an official capacity, which the actor knows to be a fact; an employee of the state hospital acting in the course and scope of employment, which the actor knows to be a fact, and the actor is an individual committed to or detained at the state hospital pursuant to chapter 25-03.3; a person engaged in a judicial proceeding; or a member of a municipal or volunteer fire department or emergency medical services personnel unit or emergency department worker in the performance of the member's duties.
   b. A class B misdemeanor except as provided in subdivision a.
3. A conviction under subdivision a of subsection 2 carries a penalty of at least thirty days' imprisonment and, if there is an underlying conviction, the imprisonment must be consecutive to any sentence of imprisonment for the underlying conviction.

SECTION 9. AMENDMENT. Section 12.1-32-02.1 of the North Dakota Century Code is amended and reenacted as follows:

12.1-32-02.1. Mandatory prison terms for armed offenders.

1. Notwithstanding any other provision of this title, a term of imprisonment must be imposed upon an offender and served without benefit of parole when:

a. In the course of committing an offense, the offender inflicts or attempts to inflict bodily injury upon another, threatens or menaces another with imminent bodily injury with a dangerous weapon, explosive, destructive device, or firearm; or

b. An offender prohibited from possessing a firearm under section 62.1-02-01 possesses a firearm while in the course of committing any felony offense under subsection 1~~,~~ or 3~~, or 7~~ of section 19-03.1-23.

2. This requirement applies only when possession of a dangerous weapon, explosive, destructive device, or firearm has been charged and admitted or found to be true in the manner provided by law, and must be imposed as follows:

a. If the offense for which the offender is convicted is a class AA, class A, or class B felony, the court shall impose a minimum sentence of four years' imprisonment.

b. If the offense for which the offender is convicted is a class C felony, the court shall impose a minimum sentence of two years' imprisonment.

3. This section applies even when being armed is an element of the offense for which the offender is convicted.

4. This section applies even if the offender is prosecuted for a violation of section 62.1-02-01 for the same conduct.

5. 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~~is not an eligible offender under subdivision b of subsection 2 of section 12-48.1-01.

SECTION 10. AMENDMENT. Section 12.1-32-09.1 of the North Dakota Century Code is amended and reenacted as follows:

12.1-32-09.1. ~~Sentencing of violent offenders~~Truth in sentencing.

1. Except as provided under ~~section~~sections 12-48.1-01 and 12-48.1-02 ~~and pursuant to rules adopted by the department of corrections and rehabilitation~~which exempt eligible offenders from the requirements of this subsection, an offender who is sentenced as a dangerous special offender or habitual offender under section 12.1-32-09, or is convicted of a crime in violation of section 12.1-16-01, 12.1-16-02, subsection 2 of section 12.1-17-02, section 12.1-18-01, subdivision a of subsection 1 or subdivision b of subsection 2 of section 12.1-20-03, section 12.1-22-01, subdivision b of subsection 2 of section 12.1-22-02, or an attempt to commit the offenses, and who receives a sentence

of imprisonment is not eligible for release from confinement on any basis until eighty-five percent of the sentence imposed by the court has been served or the sentence is commuted. All other offenders are not eligible for release from confinement on any basis until:

a. Fifty percent of the sentence imposed by the court is served, not including any time credited under section 12-54.1-01, and the offender is paroled;

b. The offender's sentence is commuted and the offender served the commuted sentence;

c. Eighty-five percent of the sentence imposed by the court is served; or

d. The offender is pardoned.

2. In the case of an offender who is sentenced to a term of life imprisonment with opportunity for parole under subsection 1 of section 12.1-32-01, the term "sentence imposed" means the remaining life expectancy of the offender on the date of sentencing. The remaining life expectancy of the offender must be calculated on the date of sentencing, computed by reference to a recognized mortality table as established by rule by the supreme court.

3. Notwithstanding this section, an offender sentenced under subsection 1 of section 12.1-32-01 may not be eligible for parole until the requirements of that subsection have been met.

4. ~~An offender who is convicted of a class C felony in violation of section 12.1-17-02, or an attempt to commit the offense, and who has received a sentence of imprisonment or a sentence of imprisonment upon revocation of probation before August 1, 2015, is eligible to have the offender's sentence considered by the parole board.~~

~~5. Notwithstanding subsection 4, this section does not apply to a sentence imposed upon revocation of probation.~~For purposes of this section "confinement" does not include placement or residence in a transitional facility, halfway house, or similar facility, operating under contract, in partnership with, or under the direction of the department of corrections and rehabilitation or other correctional facility, with unsecured or minimum security housing.

5. Notwithstanding subsection 4, placement or residence at the James River correctional center, Missouri River correctional center, Heart River correctional center, or Dakota

women's correctional and rehabilitation center, or county jail is "confinement" for purposes of this section, provided the order to place the inmate in the center or jail is approved by an identifiable employee of the department of corrections and rehabilitation after the employee determines, with reasonable certainty, the placement will not pose a danger to the public.

SECTION 11. AMENDMENT. Section 39-10-71 of the North Dakota Century Code is amended and reenacted as follows:

39-10-71. Fleeing or attempting to elude a peace officer - Penalty.

1. A driver of a motor vehicle who willfully fails or refuses to bring the vehicle to a stop, or who otherwise flees or attempts to elude, in any manner, a pursuing police vehicle or peace officer, when given a visual or audible signal to bring the vehicle to a stop, is guilty of a:
   a. Class A misdemeanor for a first offense and a class C felony for a subsequent offense within three years;
   b. Class C felony if the driver violates this section while willfully fleeing during or after the commission of a felony; or
   c. Class C felony if, at any time during the flight or pursuit, the driver willfully operates the vehicle in a manner constituting an inherent risk of death or serious bodily injury to a third person.
2. A signal complies with this section if the signal is perceptible to the driver and:
   a. If given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the stopping vehicle is appropriately marked showing it to be an official police vehicle; or
   b. If not given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the officer is in uniform or prominently displays the officer's badge of office.
3. A felony conviction under this section carries a penalty of at least thirty days' imprisonment and, if there is an underlying conviction, the imprisonment must be consecutive to any sentence of imprisonment for the underlying conviction.

4. Upon a motion by a state's attorney, a court may order that a motor vehicle used in the commission of a violation of this section be impounded by a peace officer for up to six months.

SECTION 12. APPLICATION. Sections 1, 2, 3, 4, 5, 6, 9, and 10 of this Act apply to individuals who are charged after July 31, 2025, with violations subject to the provisions of this Act.

Truth in Sentencing

Testimony and Materials

In Support of

Senate Bill 2128

Six Main Categories of SB 2128 Provisions

Truth in Sentencing

- Parole and release eligibility for crimes subject to the current 85% law are not changed.
- Inmates who committed other violent crimes or drug trafficking offenses:
  - Can be paroled anytime after serving 50% of their sentence;
  - If they're not paroled, they can be released from confinement in a DOCR facility (*not transitional facility*) after serving 85% of their sentence.

Eligible Offenders

- **Eligible offenders** (nonviolent offenders who are sentenced to prison)
  - Not subject to the Truth in Sentencing Provisions
  - Can serve their time in transitional facilities if DOCR or the parole board approves
  - Can participate in work release and other release programs if DOCR or the parole board approves
- Other offenders:
  - Are subject to the Truth in Sentencing Provisions
  - Can serve their time in any DOCR facility (except transitional facilities until released or serve 85%)
  - Can participate in education, work, rehabilitation, and treatment programs on site at DOCR facilities

Sentence Reductions

- "Good time" must be **earned before** it is awarded.
  - **Up to** 5 days/month (currently 5 days/month)
  - Capped at 15% (currently about 16%)
- Meritorious sentence reductions must be for meritorious conduct.
  - Not for operational flexibility, which is available elsewhere
  - 1 day/month on top of "good time" (currently 2 days/month)

Release Programs

- SB 2128 adds "not likely to escape" to the list of criteria for an inmate to meet before being eligible for a release program where they can be out in the community, unsecured.
- Eligibility determinations for release programs must have a reliable basis.
- DOCR must document inmates' violations of rules for release programs.
- DOCR must set criteria for revoking an inmate's participation in release programs.

Law Enforcement Protections

- **Preventing arrest** (felony) – 14 days consecutive sentence
- **Assaulting a peace officer or corrections officer** (felony) – 30 days consecutive sentence
- **Felony fleeing** – 30 days consecutive sentence and possible 6 months' impoundment of vehicle

General Provisions

- SB 2128 clarifies what a "transitional facility" is.
- Inmates can be moved from one facility to another for safety, security, discipline, or medical care
- DOCR must provide a basic report. to the Legislative Council and Attorney General.

6 Main Categories of SB 2128 Provisions

1. Truth In Sentencing

Parole and release eligibility for crimes subject to the current 85% law are not changed.

Inmates who committed other violent crimes or drug trafficking offenses:

- Can be paroled anytime after serving 50% of their sentence;
- If they're not paroled, they can be released from confinement in a DOCR facility (*not transitional facility*) after serving 85% of their sentence.

2. Eligible Offenders

Eligible offenders (nonviolent offenders who are sentenced to prison)

- Not subject to the Truth in Sentencing Provisions
- Can serve their time in transitional facilities if DOCR or the parole board approves
- Can participate in work release and other release programs if DOCR or the parole board approves

Other offenders:

- Are subject to the Truth in Sentencing Provisions
- Can serve their time in any DOCR facility (not in transitional facilities until released or serve 85%)
- Can participate in education, work, rehabilitation, and treatment programs on site

3. Sentence Reductions

"Good time" must be **earned before** it is awarded.

- **Up to** 5 days/month (currently 5 days/month)
- Capped at 15% (currently about 16%)

Meritorious sentence reductions must be for meritorious conduct.

- Not for "special control and security"-- operational flexibility is available elsewhere
- 1 day/month on top of "good time" (currently 2 days/month)

4. Release Programs (work release, etc)

Eligibility for release programs:

- SB 2128 adds "not likely to escape" to the list of criteria for an inmate to meet before being eligible for a release program where they can be out in the community, unsecured.
- Eligibility determinations must have a reliable basis.

DOCR must set criteria for revoking an inmate's participation in release programs.

DOCR must document inmates' violations of rules for release programs.

5. Law Enforcement Protections

Preventing arrest (felony) – 14 days consecutive sentence

Assaulting a peace officer or corrections officer (felony) – 30 days consecutive sentence

Felony fleeing – 30 days consecutive sentence and possible 6 months' impoundment of vehicle

6. General Provisions

Clarify what a "transitional facility" is

Inmates can be moved from one facility to another for safety, security, discipline, or medical care.

Requires DOCR to provide a basic report to Legislative Council and Attorney General

NORTH DAKOTA OFFICE OF THE ATTORNEY GENERAL

MARCH 2025

HOUSE JUDICIARY COMMITTEE

TRUTH IN SENTENCING FOR VIOLENT CRIME AND DRUG TRAFFICKING

SB 2128

Slide Topics

- Work and study that led to SB 2128 (slide 3)
- Why SB 2128 is necessary - Key findings (slides 4-10)
- What Truth In Sentencing means, and does not mean, in SB 2128 (slides 11-16, esp. slide 12)
- Other provisions in SB 2128 (slides 17-21)
- Partial list of available resources, documentation, and other support materials (slides 22-23)

SB 2128 Development

Almost 2 years of work and research:

- Meetings with DOCR administrators and employees
- Tours of DOCR facilities and transitional facilities
- Conversations with inmates
- Meetings with Law Enforcement Officers
- Meetings with former Parole and Probation Officers
- Meetings with State's Attorneys and Assistant State's Attorneys
- Meetings with Legislators
- Analyses of DOCR Information, Documents, Website, and other Materials
- Research on the history of North Dakota's criminal laws
- Research on the effects of different types of sentencing laws
- Research on other states' criminal laws and trends in "correcting" the pendulum swing

Why SB 2128 is Necessary - Key Findings (1)

Violent crime numbers and rates have risen steadily for 10 years.*

There are **4,000 more violent crimes per year** now than 10 yrs ago. This number of violent crimes increased 43%.

There are more violent crimes **per capita** than 10 years ago. The per capita rate increased 34.82%.

Recidivism is well above 40%* – higher than many, if not most, states.

DOCR's recidivism statistic is 40%, but that's because DOCR **chooses not to include** inmates who return to federal prison, county jails, or other states' correctional facilities.

Inmates spend a small percentage – sometimes less than 10% – of their sentences in prison.*

Prosecutors, defendants, judges, and law enforcement officers understand this, and at least some sentences and plea deals explicitly take this into account.

* see the Annual Crime Reports built on data from ND law enforcement agencies, the Fact Sheet on Recidivism, DOCR website on recidivism, CSG data sheets, and Testimony from Dennis Ingold and Claire Ness to the Senate Judiciary Committee

Key Findings (2)

Inmates, including violent inmates, are sent to live in transitional facilities (TFs) during their sentences – often within months.*

DOCR could not provide data on % of sentences spent in TFs.

Some of the examples from prosecutors:

- 4-year sentence for Fentanyl conspiracy – sent to TF after 190 days
- 535-day sentence for death caused by DUI – sent to TF after 85 days (escaped)
- 3-year sentence for drug charges – sent to TF after 143 days (escaped)

Transitional facilities are not secure, and inmates are not closely monitored when they are out in the community.*

Bismarck Transition Center testified: ***"normally, it could be 5 walk-aways a month. And that's an expectation. Our doors are not locked. ... They can walk away from any job that they want. ... People are going to walk away."***

Ex: fentanyl dealer also sentenced for terrorizing with dangerous weapon and theft

4/2/24 - Sent to TF in Fargo
5/20/24 - Placed on "full restrictions" at TF
5/28/24 - He simply walked away
6/5/24 – He fled from Fargo PD but was caught with an illegal handgun

Law enforcement officers are frustrated by the 'revolving door' of violent criminals and the increases in assaults, resisting arrest, and dangerous fleeing.

Sentences for assaulting officers or fleeing are **concurrent** ("freebies").

Ex: offender sentenced for felony fleeing

1/31/24 – sent to TF
2/24/25 – allowed to leave for work release and simply did not return
3/19/24 – arrested for car theft and drug possession

** see examples from Burleigh County, the Fact Sheet on Transitional Facilities and Testimony from DOCR and Transitional Facility employees to the Senate Judiciary Committee*

Key Findings (3)

In practice, "**good time**" is awarded up front based on an inmate's entire sentence, regardless of how much time is actually served.*

This pads the "**good time**" and "**time served**" statistics reported by DOCR.

Per DOCR, "good time" continues to be awarded after an offender is paroled.

The current 85% rule does not include many types of violent crimes and does not require inmates to serve their sentences in the prison.

Some rapes, some aggravated assaults, some burglaries, assault, continuous child sexual abuse, terrorizing, human trafficking, and other violent crimes are **not included** in that statute.

Drug trafficking is **not included** in that statute.

Current research shows that spending more time in prison **reduces recidivism**.*

Current research specifically identifies the errors and unreliability in the types of studies that opposition testimony has relied on.

Opponents of SB 2128 do not offer solutions – only criticism based on flawed or inapplicable research.

* see the Annual Crime Reports built on data from ND law enforcement agencies, the Fact Sheet on Recidivism, Testimony from Dennis Ingold to the Senate Judiciary Committee, and Supplemental Testimony from the Attorney General's Office on research studies provided to the Senate Judiciary Committee

Key Findings (4)

DOCR's definition of "**success**" or "**successful completion**" is not what you or your constituents would expect, and those statistics are unreliable.*

If an offender is on parole or probation for 3 cases and commits a felony, and DOCR chooses to revoke his probation for only 1 of the 3 cases – the other 2 cases are deemed "successfully completed" – and that offender counts as a 66.7% success rate.

In 2024, at least 65% of parolees who **absconded** were deemed to have successfully completed parole or are in process to be "successful".

DOCR routinely does **not revoke** an individual's parole or probation for crimes/violations of their parole or probation conditions.

A supervisor can deny a Parole and Probation Officer's (PO's) request to take an offender into custody for parole violations.

DOCR's "Transitional Planning Services" can deny a PO's recommendation to impose intermediate measures on an offender.

DOCR says it does not collect data on the frequency of these denials.

POs and former POs reported that they are penalized for requesting too many revocations for offenders who violate parole or probation conditions.

Based on research and experience, states are now moving away from the lax practices of the past 10-12 years and toward a more moderate, common sense approach to criminal justice.

Pendulum is swinging back from the "reform" / "reinvestment" / prison "abolition" movement because data show it did not work.

Reformers pushed the idea that prison admissions are inherently bad. Now, the focus is shifting back to reducing violent crime so the *need* for prison admissions is reduced.

* see the Fact Sheet on DOCR's Definition of Success

In light of the findings, we asked:

What objective, verifiable outcomes have improved for North Dakota in exchange for our investment in the criminal justice model that evolved over the past 10-12 years?

If inmates are "better prepared to return to society" under the system we have now, why is recidivism so high?

Changes are needed.

Truth in Sentencing under SB 2128

- Protects our communities from violent criminals and drug traffickers
- Respects judges' discretion and sentences
- Keeps education, work, rehabilitation, and treatment for inmates
- Keeps parole, commutations, and pardons
- Will be implemented gradually and prospectively
- Improves transparency for policymakers and the public
- **Not** the same as mandatory minimum sentencing

Truth in Sentencing* under SB 2128 simply means:

*Applies only to crimes charged after the bill's effective date

The subset of violent crimes subject to the current 85% requirement are not changed.

For other violent crimes and drug trafficking:

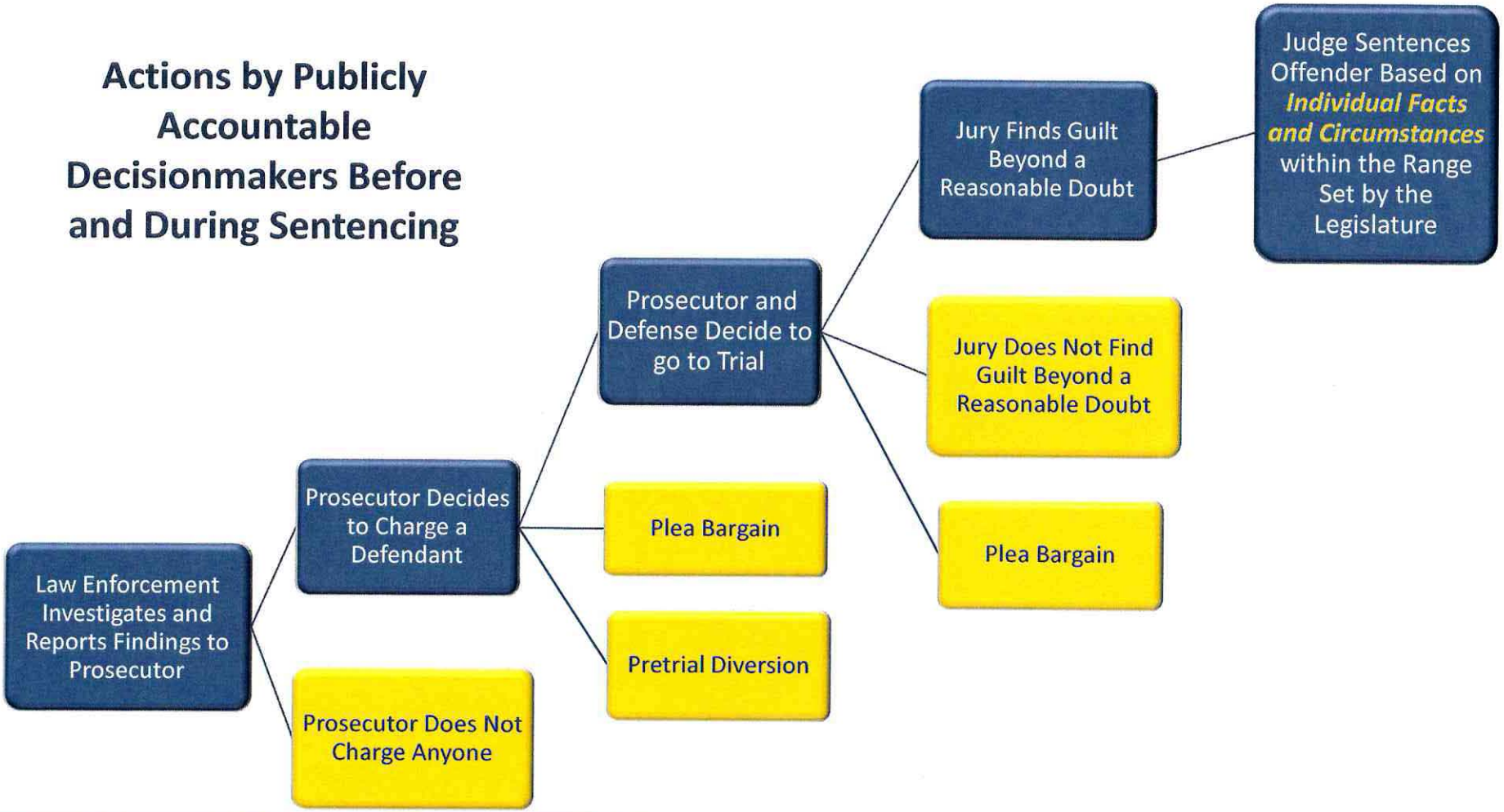
An inmate can be paroled by the Parole Board **anytime after serving 50% of their sentence.**

If an inmate is not paroled, they can be released from a DOCR facility after serving 85% of their sentence.

Ask the people in your districts:

Is it too much to ask for a violent criminal or drug trafficker to serve **half** of the sentence a judge ordered them to serve?

Actions by Publicly Accountable Decisionmakers Before and During Sentencing



The extensive, public process that results in a prison sentence should not be undone by anonymous individuals who are not accountable to the public for their decisions.



Misconceptions about SB 2128

Despite what you may have heard, the other provisions in SB 2128:

- Will **not** strip DOCR of its ability to treat and rehabilitate inmates
- Will **not** prevent DOCR from providing education and work opportunities to inmates
- Will **not** empty transitional facilities
- Often align with DOCR policies or statements, even if not with DOCR practices

Other Parts of SB 2128 (1 of 5)

General provisions:

- Clarify what a "transitional facility" is
- Inmates can be moved from one facility to another for safety, security, discipline, or medical care.
- Requires DOCR to provide a basic report to Legislative Council and Attorney General
  - The Governor can require DOCR reports whenever he chooses.

Other Parts of SB 2128 (2 of 5)

Sentence reductions:

- "Good time" must be **earned before** it is awarded.
  - **Up to** 5 days/month (currently 5 days/month)
  - Capped at 15% (currently about 16%)

- Meritorious sentence reductions must be for meritorious conduct.
  - Not for "special control and security"-- operational flexibility is available elsewhere
  - 1 day/month on top of "good time" (currently 2 days/month)

Other Parts of SB 2128 (3 of 5)

Release programs:

- Eligibility for release programs:
  - SB 2128 adds "not likely to escape" to the list of criteria for an inmate to meet before being eligible for a release program where they can be out in the community, unsecured
  - Eligibility determinations must have a reliable basis
- DOCR must set criteria for revoking an inmate's participation in release programs
- DOCR must document inmates' violations of rules for release programs

Other Parts of SB 2128 (4 of 5)

Law enforcement protections:

- **Preventing arrest** (felony) – 14 days consecutive sentence
- **Assaulting a peace officer or corrections officer** (felony) – 30 days consecutive sentence
- **Felony fleeing** – 30 days consecutive sentence and possible 6 months' impoundment of vehicle
  - Willfully operating the vehicle in a manner constituting an inherent risk of death or serious bodily injury to a third person, or
  - Willfully fleeing during or after the commission of a felony

Other Parts of SB 2128 (5 of 5)

Eligible offenders:

- "Eligible offenders" (nonviolent/not drug traffickers):
  - Are not subject to the truth-in-sentencing provisions
  - Can serve their time in transitional facilities if DOCR or the parole board approves
  - Can participate in work release and other release programs if DOCR or the parole board approves
- Other offenders (violent/drug traffickers):
  - Are subject to the truth-in-sentencing provisions
  - Can serve their time in any DOCR facility (except transitional facilities until released or serve 85%)
  - Can participate in education, work, rehabilitation, and treatment programs on site

Some of the Resources Available to You

The handouts summarize some of our findings, mostly based on DOCR documents and testimony, and include:

- Fact Sheets on:
  - Transitional facilities
  - DOCR's Good Time calculations (practice vs. policy)
  - DOCR's definition of "success" or "successful completion"
  - Recidivism in North Dakota
  - Time Served by inmates
- Do North Dakotans have the corrections system they deserve?
- Facts vs. Myths about SB 2128
- What objective, verifiable outcomes do we have from investing heavily in our current system?
- Supplemental testimony on the flaws in the research cited in opposition testimony

Some of the Resources Available to You

- Emails from Burleigh County State's Attorney supporting SB 2128 and including:
  - Lots of data on escapees from transitional facilities
  - DOCR practices that let inmates out after serving a small fraction of their sentences
  - Case involving brutal rape committed by Edward Harper, who was out of prison early
- Email from Cass County Sheriff supporting SB 2128
- Letters of Support for SB 2128 from:
  - Chiefs of Police Association of ND
  - ND Sheriffs' Association
  - ND Peace Officers Association

Suspect arrested after fleeing in stolen vehicle in Fargo

North Dakota an enticing target for deadly fentanyl; Detroit pipeline still an issue

Bismarck man pleads guilty to dozens of rape and drug dealing charges

Man dies after exchange of gunfire with Dickinson police officer

Two arrested in connection with Williston shooting

Man in custody after robbery, stand-off near Stark County Courthouse

LOCAL NEWS

Charged with 45 felonies involving sexual acts against minors in Ward County

Minot man with firearm threatens neighbors, police

Bismarck Police seize more than 20,000 fentanyl pills

TOP STORIES

Bismarck man out on bond severely beats neighbor, assaults woman, resists arrest

Downtown Fargo standoff suspect previously convicted of murder, other violent crimes

Royal Rockefeller spent nearly 20 years in prison in Minnesota for beating a stranger to death in 1995. Since 2022, he's racked up 11 felony and misdemeanor convictions in Cass County.

DICKINSON, ND (KXNET) — A woman who was wanted for charges of aggravated assault and reckless endangerment has been arrested.

Thank You

When choosing between Senate Bill 2128 with the Attorney General's amendment, and our current corrections system, consider:

After years of investing heavily in the "Norway model" and policies that some people call "smart on crime," what objective, verifiable outcomes have improved for North Dakota?

- The recidivism rate is over 40%.[1]
- Violent crime rates have increased steadily, both numerically and as a rate per 100,000 residents.[2]
- Drug use and addiction are unmoved and continue to impact thousands of our residents.[3]
- Law enforcement officers and agencies are frustrated by the corrections system, have difficulty recruiting and retaining personnel, are assaulted more often, and have asked policymakers for changes to reduce the "revolving door" of criminals for several years.
- The public is alarmed by the prevalence of violent crime and its impact on the quality of life in North Dakota.

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[1] See handout on *Recidivism*, based on DOCR data found on the DOCR website.
[2] See Attorney General Crime Reports, at https://attorneygeneral.nd.gov/public-safety/crime-data/crime-and-homicide-reports/.
[3] See ND DHHS Behavioral Health Reports, at https://www.hhs.nd.gov/behavioral-health/data.

DOCR's Definitions of "Success" and "Successful Completion"

DOCR says many of the offenders under its supervision "successfully complete" their time, but what does that really mean?

Based on DOCR's own written and oral answers to questions:

- If an offender is on probation and commits several probation violations, can DOCR say the probation was successfully completed?
  - Yes, this appears to be common.

- What if the violations were so numerous or extreme that the offender was given "intermediate measures" as a punishment? Does DOCR still say the probation was completed successfully?
  - Yes

- Many offenders are on parole or probation for multiple cases at once. Even if an offender's parole or probation in 1 case is revoked, can DOCR count the others as successful?[i]
  - Yes
  - **Example:** Frank is on probation for 3 cases at the same time and commits multiple probation violations. DOCR has Frank's probation revoked in only 1 of the cases.
    - DOCR counts Frank's other 2 cases as successfully completed.
    - DOCR says Frank's 3 cases have a 66.7% success rate.
    - The revocation rate for Frank's cases is 33.3%.
  - *Keep in mind: DOCR basically controls revocations and can determine their own "success" rate. If they do not initiate revocations and do not report violations to prosecutors, revocations will not occur.*

- If an offender absconds from a transitional facility and is returned by law enforcement, can DOCR say the offender successfully completed their time in the transitional facility?
  - Yes
  - For example, just for parolees, DOCR's own testimony shows:
    - 13% of parolees in transitional facilities absconded[ii] in 2024. (*4 of the parolees who absconded in 2024 remain at large*.)
    - DOCR says at least 65% of parolees who **absconded** from transitional facilities in 2024 **"successfully completed"** parole or are in process to successfully complete parole.

Marquis Smith

- Pled guilty to 2 Counts Class A Felony – Gross Sexual Imposition with sexual contact on a child under 15
- Sentenced to 20 years (15 suspended) with 5 years of probation
- 10/30/18 – arrived at the state prison
- 3/9/21 (approximately) – released from prison to Bismarck Transition Center (parole)
- **While living at the Bismarck Transition Center:**
    - Worked at Dairy Queen where he met the mother of young children. He eventually moved in with her, even though it violated probation conditions. Those children eventually became victims of his.
- 4/7/21 – committed a new Gross Sexual Imposition on child under 15, based on charging documents
- 10/1/21 – committed new sex offenses on the children he lived with
- 3/21/22 – returned to prison
    - The probation period for the 2018 GSIs continued to run (not revoked), at least through 7/20/23 and may be eligible for "successful completion".
- Later sentenced to federal prison

Jazmine Power

- 1/10/20 - Sentenced to 2 years in prison for burglary
- 4/2020 – Sent to a transitional facility as an inmate
- 5/22/20 – escaped transitional facility
- "Successfully" completed probation on multiple cases while she was a fugitive
- February 2025 – arrested in Oregon

Jeffrey Lee Buckmeier and Dustin Ray Fredrickson

- Each was on supervised probation for sex offenses against minors
    - Buckmeier: Luring minors
    - Fredrickson: Sex abuse of a 13 year old and a 14 year old, and failing to register as a sex offender
- Each committed new crimes while on supervised probation
    - Buckmeier: almost 12,000 images and videos of child sex abuse materials involving children as young as 3 months
    - Fredrickson: Images of child sex abuse materials involving children as young as 11 years
- Probation was not revoked and may have run (or still be running) "successfully".

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[i] A Parole and Probation supervisor can deny a Parole and Probation Officer's request to take an offender into custody for parole violations. And Transitional Planning Services can deny a Parole or Probation Officer's

recommendation to impose intermediate measures on an offender. These denials can make DOCR's "success" rates appear higher, even though the officers who work most closely with the offenders and know them best believe the denied actions are necessary. When asked how often this occurs, DOCR replied that it does not collect this data.

[ii] DOCR's definition of an absconder requires a 72-hour waiting period. ***"An adult under supervision can be classified as an absconder when parole and probation staff has verified that the individual no longer resides at their last known address. Parole and probation staff has checked other reasonable leads including the individual's employer, if there is one, and the adult under supervision has not been located for a period of 72 hours."***

RECIDIVISM

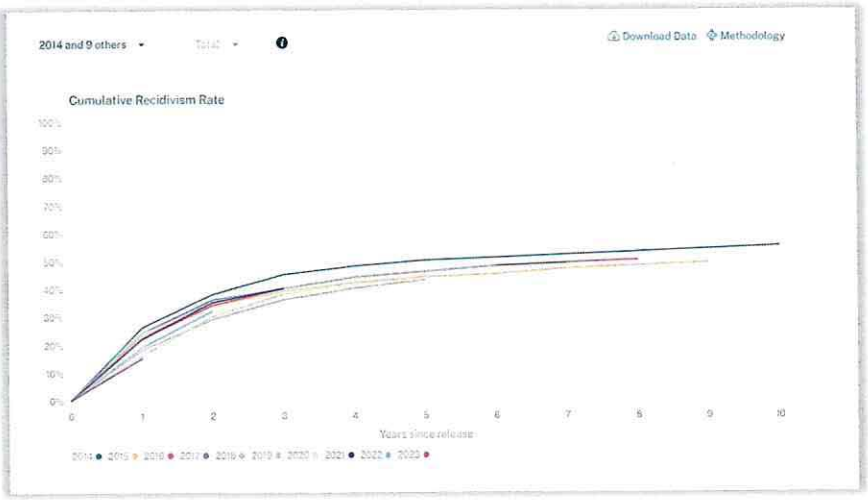
- The actual recidivism rate in ND is much higher than 40%.

- DOCR's recidivism rates remain high, despite years of the current system sometimes called the "Norway model".

- Even using DOCR's definition of recidivism, the latest rate published by DOCR is 40%.[1]
  - DOCR testified that it uses a 3-year recidivism rate.[2]
  - DOCR also testified that its definition of recidivism is not standard across other states.[3]

- Definitions matter, especially when they are not shared with policy makers. In its definition of "recidivism," **DOCR has chosen not to include** inmates who were released from custody and then reincarcerated in:
  - County jails,
  - Federal prisons, or
  - Other states' correctional facilities.[4]

  As a result, the true recidivism rate in ND is much higher than 40%.



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[1] DOCR Public Dashboard, https://dashboard.docr.nd.gov/us-nd/narratives/prison/7.
[2] Testimony of Colby Braun, Director, DOCR, before the Senate Judiciary Committee on SB 2128 (Jan. 22, 2025).
[3] Testimony of Colby Braun, Director, DOCR, before the Senate Judiciary Committee on SB 2128 (Jan. 22, 2025).
[4] DOCR Public Dashboard, https://dashboard.docr.nd.gov/us-nd/narratives/prison/7, Methodology: "This data reports reincarceration recidivism rates, which is [sic] the proportion of individuals released from a ND DOCR facility that return to a ND DOCR facility at some point in the future."

DOCR'S ILLUSORY "GOOD TIME" CALCULATIONS

DOCR's good time calculations and the resultant "time served" statistics are not what they seem.

Under N.D.C.C. § 12-54.1-01, an inmate can earn 5 days of good time for each month of the sentence that was "imposed" by meeting "performance criteria established through department and penitentiary rules."

However, in practice, DOCR gives each inmate a lump sum of good time at the beginning of their sentence based on the totality of the sentence, rather than giving them credit each month they actually serve for the good time they earn, regardless of the department's policies.

> DOCR's emails and communications to prosecutors document this practice.
>
> Also, according to DOCR, they continue to award "good time" to offenders after the offenders are paroled, effectively reducing the time the offenders are monitored after being released from custody.
>
> > However, the North Dakota Supreme Court has said the "good time" statute, "Section 12-54.1-01, N.D.C.C., grants the Department of Corrections the discretion to reduce an offender's sentence each month the offender is in custody."[1]

Maximum good time calculations appear to be included in the "time served" statistics that DOCR provides, even if the inmates were paroled or otherwise left confinement before the good time could actually be earned.

> This appears to be one way DOCR's "time served" statistics are inflated.

DOCR staff have provided examples of the way they calculate good time incorrectly, including the examples on page 2:

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[1] *State v. Williamson*, 2024 ND 7, ¶ 8 (N.D. 2024) (emphasis added).

Cori Willard received more than 40 days of good time per month in custody.

- She was given a **4-year sentence** in April 2022.
- She was paroled in September 2022, after spending **157 days in custody**.
- Per DOCR's Legal Records Department, she received "240 days DOCR good time credit and 5 days earned good time applied to her sentence."
    - Under the statute, in 6 months, she should have been credited only 30 days of good time, assuming she did not lose any for poor behavior.
    - DOCR explained the 240 days of good time credit was based on her 4-year sentence, even though she spent less than 11% of that sentence in custody.
    - DOCR said she "did not lose any good time" from the 240-day total.
    - DOCR said the additional 5 days of good time credit were "meritorious credit" for participating in a crisis intervention team.

Jaden Patrick received credit for more than 13 days of good time / per month in custody.

- He was given a **4-year sentence** for an A felony (dealing fentanyl).
- He **served 31.3%** of his sentence (176 days in jail and 281 days in prison) before he was paroled.
- Per DOCR's Legal Records Department, he received credit for 200 days of good time for the 457 days he was in custody.
    - Under the statute, he should have been credited only about 75 days of good time, assuming he did not lose any for poor behavior.

Scott Michael Huber received credit for more than 11 days of good time / month in custody.

- He was given a **7-year sentence** for his 3rd and 4th drug trafficking cases.
- He was initially paroled in May 2022 after spending roughly 33 months in prison and 40 days in jail (**approximately 40%** of his sentence).
- Per DOCR's Legal Records Department, he received credit for 380 days of good time for the roughly 34 months he was in custody.
    - Under the statute, he should have been credited only about 170 days of good time, assuming he did not lose any for poor behavior.
- Huber's parole was revoked in October 2023. He was paroled again the next month.
- His second parole also was revoked, in July 2024, after he was charged in a new drug conspiracy case.

TIME SERVED

Law enforcement officers, prosecutors, and other North Dakotans often talk about the "**revolving door**" of criminals.

- Criminals reappear in the community far earlier than their sentences dictate, then commit new crimes and go back to jail.

Judges make comments on and off the record about DOCR greatly reducing the time inmates spend incarcerated compared to their sentences, even when time spent in transition centers is included.

- *"A two year sentence means you're only going to be out there for two, three months."*
- *"The Department of Corrections has their own policy on how much time you're going to serve," Weiler explained, per the Associated Press. "These are not mandatory minimums, which means that you're probably going to serve a small portion of that 28 years and be out on parole, so that'll ... give you an opportunity to have a second chance that Deputy Martin does not have, nor does his family have."*

"Time served" calculations are inflated because they are based on inflated figures. When calculating the "time served" for an inmate, DOCR includes:

- Time an individual spends incarcerated, PLUS time spent out of confinement, in transitional facilities, and
- Good time and meritorious conduct time.
  - Good time is inflated. See the handout on *Good Time*.
  - Transitional facilities are not incarceration. Most inmates in transition centers have complete access to the community during the day. Walking away from a transitional facility is not hard and not uncommon. See the handout on *Transitional Facilities*.

Examples of actual time served:

- Josiah Anderson
  Conspiracy to deliver a controlled substance – 4 year sentence
  Time served in jail or prison – 190 days or 13% of his sentence

- Kevin Luke
  Dealing fentanyl (2 cases) – 2 year sentence
  Time served in jail or prison – 52 days or 7.1% of his sentence

- Cori Willard
  Second time possessing meth with intent to deliver – 4 year sentence
  Time served in jail or prison – 71 days or 4.9% of her sentence

- Cory Reis
  Fourth drug dealing offense (while on parole) – 5 year sentence
  Time served in jail or prison – 701 days or 38.4% of his sentence

TRANSITIONAL FACILITIES

- Transitional facilities function similarly to dorms that provide drug and other counseling services.
- Most inmates in transitional facilities participate in a variety of release programs.
    - Inmates can leave the transitional facilities for the day.
    - These inmates are out in the community and appear no different from noninmates.
    - If they go somewhere other than their work location during the day, the transition center may not discover this for many days.
- Inmates on work release rarely have drug testing when they return to the transition center at night.
- An inmate may be placed in a release program (to be out in the community each day), even if no one has determined whether the inmate is not likely to escape.
- An inmate may be placed in a release program even if it is not in the best interests of the community or public.
- According to DOCR, not all who walk away (escape) from transitional facilities have been returned.

DOCR Testimony[1] and Statements on Transitional facilities

- As of January 23, the Bismarck location (BTC) has 123 "residents" -- 101 inmates and 22 who are on parole or probation.
    - 87 work in Bismarck or Mandan.
- From BTC, "normally, it could be 5 walk-aways [escapes] a month. And that's an expectation. Our doors are not locked. ... They can walk away from any job that they want. ... People are going to walk away."
    - DOCR could not provide data on how long it takes to recover walk-aways or how many walk-aways are not recaptured.
- "We do have staff that go and physically check on the residents at their job sites." However, in 2024, based on DOCR testimony and using a low estimate of 90 individuals on release at a given time, physical checks occurred about once every 9 or 10 days per individual.
- During 2024, BTC administered 1,201 urinalysis tests, including tests administered to each individual when they first arrive at the facility. That's 3.3 tests per days for the facility. If the average head count was 120, that's an average of 1 drug test every 10 days per individual.
- "On January 9, there were 238 men and women serving their sentence in a transitional facility. Under [SB 2128], only 8 of the 238 inmates currently in a transitional facility would be eligible."
    - That means, at most, only 8 of the 238 were sentenced for one of the many nonviolent offenses listed in Section 3 of the bill.
- The people who run transition programs "have decades of positive outcomes."
    - What are the "positive outcomes" and how are they measured?

- "Nearly 80% of inmates who participate in an adult transition program at a transitional facility successfully complete."
    - The recidivism rate for DOCR, based on its own misleading definitions, is 40%.[2] So "successfully complete" cannot mean that those inmates do not recidivate.
    - SEE the FACT SHEET on DOCR's Definition of SUCCESS and SUCCESSFULLY COMPLETE.
        - An inmate who escapes can be deemed to have "successfully completed."
        - An inmate who commits multiple violations can be deemed to have "successfully completed."

Examples of Transition Center Walk-Aways (Escapes)

- Kadar Pearson
    - Dealing fentanyl, terrorizing with a dangerous weapon, theft, and refusal to halt
    - Sentence should have run to October 25, 2025, minus good time if earned
    - Served about 24% of sentence in prison
    - On April 2, 2024, he was transferred to a transition center in Fargo
    - On May 20, 2024, the center placed him on "full restrictions" for an incident
    - On May 28, 2024, he "walked away" after staff tried to talk him out of leaving
    - On June 5, 2024, he fled from Fargo PD and was caught with an illegal handgun
- Mark Conica
    - 2 counts of robbery
    - Sentence should have run to February 2027, minus good time if earned
    - Served 149 days in prison
    - On July 26, 2024, he was transferred to a transition center
    - On July 29, 2024, he was allowed to leave for work release and did not return
- Jesse White Eagle
    - High speed chase/felony fleeing
    - Sentence should have run to October 2025, minus good time if earned
    - Served about 2 months in prison
    - On January 31, 2024, he was transferred to a transition center
    - On February 14, 2024, he went out on work release and "failed to return"
    - On March 19, 2024, he was arrested for car theft and drug possession

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[1] Testimony provided by Colby Braun and Kevin Arthaud at the Senate Judiciary Committee hearing on Senate Bill 2128 on January 22, 2025, either orally or in writing.
[2] See the handout on *Recidivism*.

Do North Dakotans Have the State Corrections System They Deserve?

1. **What is the rate of recidivism in North Dakota?**
   a. **29%**
   b. **36%**
   c. **40%**
   d. **More than 40% but DOCR does not track the actual rate of recidivism**

DOCR publishes the percentage of its inmates who return only to DOCR facilities[1] and uses the 3-year rate as their measurement of recidivism.[2] The most current 3-year rate using DOCR's definition of recidivism is 40%.[3] But the actual rate of recidivism in North Dakota is even higher because DOCR's rate does **not** include:

- Former DOCR inmates who are sent to federal prisons;
- Former DOCR inmates who are sent to county jails;
- Former DOCR inmates who are sent to other states' correctional facilities; and
- Former DOCR inmates who are sent back to DOCR facilities after more than 3 years.[4]

2. **Inmates who committed violent crimes are free to be out in our communities, unsecured, while serving their sentences, even if it has not been determined that (1) letting them free during the day is in the best interests of the public or (2) they do not pose a high risk of escape.**
   a. **True**
   b. **False**

Regardless of the crime committed,[5] DOCR[6] can transfer an inmate to a halfway house (also called a transitional facility) and let that inmate come and go each day – without any security – on a release program. DOCR can do this even if they decide it is simply in the best interests of the inmate or DOCR.[7] DOCR does not need to assess the inmate's likelihood of escaping into the community.[8]

3. **Transitional facilities and release programs are secure. Inmates can't just walk away and blend into the community.**
   a. **True**
   b. **False**

The director of one transitional facility under contract with DOCR testified that "normally" 5 inmates walk away from his facility per month and that "that's an expectation." He stated "our doors are not locked ... people are going to walk away."[9] He was unable to provide information about how many of the inmates who walk away are not recaptured and how long it takes to recapture an inmate after walking away when asked.[10] Prosecutors have provided abundant information on individuals "walking away" from these facilities.

4. **After years of investing in treatment programs, re-entry programs, the "Norway model," and policies called "smart on crime," are our communities safer?**
   a. **Yes, violent crime rates have gone down in North Dakota over the past 10 years.**
   b. **No, violent crime rates have gone up in North Dakota over the past 10 years.**
   c. **There hasn't been a change in violent crime rates in North Dakota over the past 10 years.**

Crime statistics are methodically reported by law enforcement agencies throughout North Dakota each year according to rigorous standards to ensure consistency from year to year.[11] According to these statistics, violent crime in North Dakota has risen steadily over the past 10 years. For example, the number of Crimes Against Persons[12] committed in 2023 (12,403) was 2.9 percent higher than the number of Crimes Against Person committed in 2022 (12,060). In 2019, that number was 10,539. In 2014, that number was 8,645.

This is not due to population growth because the rate of Crimes Against Persons and robbery per 100,000 people also has grown over 34% from 2014 to 2023.

5. **With all the talk about the need for substance abuse treatment, rehabilitation services, and addressing the root causes of crime, inmates who are out in the community all day are physically checked on and have a rigorous check-in process at night that includes drug testing to ensure they stay compliant with their treatment programs.**
   a. **True**
   b. **False**

Drug treatment programs are important for many inmates, and there's a lot of talk about them when people say our current system is "smart on crime." But DOCR does not conduct daily drug tests on inmates in transitional facilities, including inmates who are in the community each day without supervision.

Based on DOCR data, a transitional facility with a maximum capacity of 140 residents (and a current head count of 123) administered only 1,201 urinalysis tests throughout all of 2024, including a drug test upon arrival for each individual.[13] That equates to 3.3 drug tests per day total. Even if the facility averages only 120 residents per day, that means each resident is drug tested only about once every 10 days.

Also based on DOCR data, a transitional facility completed 3,407 physical checks on its residents who were on release programs in the community through 2024.[14] Even if only 90 of its residents are on release programs, each of them is physically checked on in the community only once every 9-10 days to ensure they are where they're supposed to be.

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[1] The "Methodology" for the recidivism statistics on the DOCR website states: "This data reports reincarceration recidivism rates, which is the proportion of individuals released from a ND DOCR facility that return to a ND DOCR facility at some point in the future." The graphics indicate the rate for each year after release.

[2] Testimony of Colby Braun, Director, DOCR, before the Senate Judiciary Committee (Jan. 22, 2025) (also noting other states do not use the DOCR definition as a standard measurement).

[3] DOCR website (https://dashboard.docr.nd.gov/us-nd/narratives/prison/7) showing the most recent 3-year recidivism rate using the DOCR definition is "40%" ("444 of 1102").

[4] Based on DOCR's website (https://dashboard.docr.nd.gov/us-nd/narratives/prison/7), the rate of recidivism increases each year an inmate has been out of prison.

[5] See N.D.C.C. 12-47-18.1. There is no limit on the crimes currently. Many of the inmates in halfway houses now did not commit any of the many nonviolent crimes listed in S.B. 2128. Testimony of Colby Braun, Director, DOCR, before the Senate Judiciary Committee (Jan. 22, 2025).

[6] Or, in cases when the sentence is more than 10 years, the Parole Board makes this decision.

[7] See N.D.C.C. 12-47-18.1.

[8] See N.D.C.C. 12-47-18.1 and 12-48.1-01.

[9] Testimony of Kevin Arthaud, Administrator, Bismarck Transition Center, before the Senate Judiciary Committee (Jan. 22, 2025).

[10] Testimony of Kevin Arthaud, Administrator, Bismarck Transition Center, before the Senate Judiciary Committee (Jan. 22, 2025).

[11] See Attorney General Crime Reports, at https://attorneygeneral.nd.gov/public-safety/crime-data/crime-and-homicide-reports/.

[12] This figure does not even include data for robberies, which are classified as offenses against property despite the element of violence against a person required to meet the definition of robbery.

[13] Testimony of Kevin Arthaud, Administrator, Bismarck Transition Center, before the Senate Judiciary Committee (Jan. 22, 2025).

[14] Testimony of Kevin Arthaud, Administrator, Bismarck Transition Center, before the Senate Judiciary Committee (Jan. 22, 2025).

DON'T BELIEVE THE MYTHS

S.B. 2128	NOT S.B. 2128
Truth-in-Sentencing Bill	Mandatory-Minimum Sentencing Bill
Judges' sentences will be respected and carried out faithfully by the corrections system	Will take away judges' discretion
Parole eligibility for violent inmates[1] sentenced to prison after they serve 50% of sentence	Eliminates parole
Nonviolent offenders can still serve their sentences in halfway houses	Nonviolent offenders have to stay in jail or prison
Other inmates[1] sentenced to prison will serve 85% of their sentences in correctional facilities before being eligible for halfway houses	Other offenders receive longer sentences
Does not change the current 85% law for the small number of crimes it covers Adds truth in sentencing for other types of rape, other types of aggravated assault, human trafficking, drug trafficking, gang crimes, coerced abortion, continuous sexual abuse of a child, sexual assault, terrorism, terrorizing, and other crimes, and keeps violent criminals out of halfway houses	Is not necessary because ND already has an "85% law" for a subset of some violent crimes
Recovery, re-entry, treatment, counseling and other programs are still available in correctional facilities and halfway houses	Inmates will not be able to participate in programs to get them ready to re-enter society
Parolees and individuals on probation can still reside in halfway houses, and judges can make residence in halfway houses a probation condition	Parolees and individuals on probation will be homeless and have no access to re-entry programs
Time off for good behavior must be earned before it is awarded	There is no incentive for good behavior
Inmates will have to be "not likely to escape" before being transferred to halfway houses	Unreasonable restrictions will be placed on the corrections system
Violently resisting arrest, assaulting law enforcement, and felony fleeing will have consecutive 14-day or 30-day sentences added to their prison time	The bill is all about imposing long mandatory minimum sentences
	Inmates will have to be sent back to jails to serve their 14-day or 30-day sentences

[1] Inmates sentenced under the current 85% law will still be subject to that law.

Devon Kurtz

Rehabilitate First, Release Second

.ather than pushing dangerous policies, reformers should focus their efforts on making prisons better at "correcting" individuals.

/ From the Magazine / Public Safety, Politics and law Nov 16 2023

Criminal-justice reform advocates claim that prison is a failure—that it doesn't reduce or deter crime and that it presents a host of ethical challenges as well. Some argue the case on moral grounds, examining the racial and class demographics of the prison population; others point to overcrowding, institutional violence, and deteriorating conditions within prisons; and still others complain about the exorbitant expense of prisons, which cost over $80 billion nationwide each year. The assumption of prison failure drives reformers' push for shorter sentences, expanded early release and parole, and alternatives to incarceration.

The problem for reformers is that this assumption is deeply flawed, and many of their policy priorities require considerable obfuscation of criminal-justice data. For example, while the National Institute of Justice, the research arm of the U.S. Department of Justice, claims that "prison sentences (particularly long sentences) are unlikely to deter future crime," another arm of the DOJ, the Bureau of Justice Statistics, disagrees. In an analysis of prisoners released in 2012 from 34 states who were rearrested within five years, BJS found that those who served longer sentences for the same types of crimes were rearrested at lower rates than those who served shorter sentences. The difference was greater than 8 percentage points, representing tens of thousands of fewer crimes committed.

Many reform advocates dispute the theory that steeper punishments deter future crimes. While it is true that most research shows that long prison sentences do not prevent new criminals from committing crimes, that finding does not apply to criminals who have gone to prison already. The empirical reality is that people who served longer sentences in every category of crime re-offend at considerably lower rates than ·ose serving shorter sentences. For violent offenders, the differential between re-offense rates are staggering: shorter-sentence offenders are 28 ·rcent more likely to get rearrested than longer-sentence offenders.

Why do longer sentences have such an effect? A key reason is that age is inversely correlated with crime: older people commit less crime than younger people. Longer-sentence offenders are more likely to leave prison at an older age than are shorter-sentence offenders. The connection between longer sentences and lower re-offense rates presents a steep obstacle for reform advocates. The data contradict the advocates' assurances that expanded parole and early-release programs, as well as shorter sentences in general, will not undermine public safety.

Rather than pushing dangerous policies, reformers could more productively focus their efforts on improving rehabilitation within prisons. For example, meta-studies have shown that cognitive behavioral therapy programs, which help criminals develop strategies to counter antisocial decision-making, are effective at reducing future crime among participants. Facilities such as Maine State Prison have seen success in terms of both desistance from crime and employment outcomes from their robust vocational programs, which include woodworking, metalworking, and upholstery shops. Advocating for more effective and accountable prison-based rehabilitation makes much more sense than simply curbing the use of prison without accounting for its effect on crime.

The preponderance of data exposes the flaws in conventional reform priorities and suggests a more sensible, politically achievable, and empirically sound goal: making prisons better at achieving their intended purpose of "correcting" individuals—even if that means that prisoners must take the longer way home.

Devon Kurtz is the public-safety policy director at the Cicero Institute.

·hoto: Yellow Dog Productions/iStock

Some Recent Examples of Inmates who Escaped D[illegible] Minimum Security Custody or Transitional Facility

		Original Conviction	**Approx. % Sentence Served Before Moved to Transitional Facility (*if applicable and if known*)**	***Known* Offenses Committed while the offender should have been in custody**
Pearson	Kadar	Poss. Of CS w/Intent to Deliver-Fentanyl (FB), Theft-Firearm-Ammunition (Class C Felony), Refusal to Halt (Class B Misdemeanor), and Theft (Class B Misdemeanor).	24% Granted parole in Feb. 2024 to become effective June 6, 2024 Moved to Centre, Inc. on April 2, 2024, and escaped before parole became effective	Escape (FC) from Centre, Inc. Unlawful Poss. Of a Firearm (FC), and Refusal to Halt (MB) Indicted by U.S. Attorney's Office
Conica	Mark	Robbery x 2 (FC)	28%	Escape (FC) from BTC
Perry	Richard	Gross Sexual Imposition (FAA), Aggravated Assault (FC)		Luring Minors by Computer x 5 (FB)
White Eagle	Jesse	Fleeing (FC), Theft x 2 (FC), Poss. Of CS (FC)		Escape (FC), Theft (FC), Poss. Of Drug Paraphernalia
Whitetail	Milo	Contact by Bodily Fluids or Excrement (FC)		Murder (FAA)
Allen	Terrance	Delivery of drugs within 1000 feet of school, drug paraphernalia		Escape from BTC
Barnett	Joseph	Unauthorized Use of a Vehicle, Felony fleeing in a vehicle	27%	Escape from BTC
Bender	Thomas	Facilitating counterfeiting	21%	Escape from BTC
Black	Mariah	4th DUI, 4th DUS, felony drug paraphernalia	25%	Escape from BTC
Bredahl	Christopher	Poss. With intent to deliver (2 revocations), paraphernalia, possession	13%	Escape from BTC
Brown	Russell	Terrorizing with weapon	Placed at MRCC	Escape from MRCC (within one month)

			(a minimum custody facility) immediately	
Camp	Preston	Forgery, poss. With intent to deliver	55% (first sentence) 50% (second sentence)	Escape from BTC
Chamberlain	Brett	Theft (4 cases)	16%	Escape from BTC
Charvat	Jasin	Probation revocations on a Domestic Violence Protection Order violation and drug paraphernalia	29%	Escape from BTC
Corn	David	Preventing arrest, poss. With intent to deliver, unauthorized use of vehicle	Placed at MRCC (a minimum custody facility) after serving 8% of sentence	Escape from MRCC
Fresse Cortes	Melving	2nd revocation on Endangering by fire (vehicle and occupied apartment building)	15% (only 3% was actually at a DOCR facility)	Escape from BTC
Harris	David	Assault law enforcement officer, preventing arrest, drug paraphernalia, breaking into vehicles	50% or 63%	Escape from BTC
Hoffmann	Jonathan	Burglary, theft, drug poss.		Escape from MRCC
Meyer	Alexander	Poss with intent to deliver with a firearm, felon in poss. Of firearm, theft of firearm, conspiracy to commit theft, theft		Escape from MRCC
Lange	Justice	Negligent homicide, child neglect, parole revocation on 4 counts of conspiracy to commit robbery	50%	Escape from BTC
Royce	Robert	Fleeing in a vehicle, aggravated reckless driving, concealed weapon, leaving the scene of accident involving injury, provation revocation on trespass into residence, assault	28%	Escape from BTC
Waanatan	William	2nd revocation on DUI causing death	16%	Escape from BTC

Some Recent Examples of Individuals on **Parole or Probation** Under DOCR Supervision who Reoffended
(in recent newspaper articles)

		Parole	Probation	Original Conviction	Offense Committed while under DOCR Supervision
Engesser	Tara		Y	DUI 4th (FC), Fleeing (FC)	DUI 4th (FC), Fleeing (FC), Reckless Endangerment (FC)
Huesers	Zachary	Y	Y	Poss. Of CS-Heroin (FC), Poss. Of CS-Meth (FC), Poss. Of Drug Paraphernalia (FC)	Burglary (FB), Unlawful Entry Vehicle (FC), Theft (FC) x 2, Conspiracy (FC) x 3, Fleeing (FC)
Richards	Gregory	Y		Poss. Of Drug Paraphernalia (FC), Duty in Accident Involving Death or Serious Injury (FC)	Fleeing (FC), DUI-Drugs (MB), DUS-4th (MA), Reckless Endangerment (MA)
Brennan	Daniel	Y	Y	Poss. Of Drug Paraphernalia (FC)	Fleeing (FC), Reckless Endangerment (FC), Poss. Of CS-Meth (FC), Refusal to Halt (MB), Criminal Vehicular Injury (FC), Duty in Accident Involving Death or Serious Injury (FC)
Hadley	Friling		Y	Domestic Violence-Serious Bodily Injury (FC)	Murder (FAA)
Smith	Paul	Y	Y	Poss. w/Intent to Deliver-Meth (FB), Poss. Of a CS-Heroin (FC), Poss. Of Drug Paraphernalia (FC)	Poss. w/Intent to Deliver-Meth (FB), Mrininal Mischief (FB), PCS (FC), Simple Assault LE (FC), Fleeing (FC), Preventing Arrest (FC), Reckless Endangerment (FC), Carrying a Concealed Weapon (MA), various MB offenses
Wiedmer	Andrew	Y		Actual Physical Control of a Motor Vehicle (FC)	Assault (MA), Theft (FC), Breaking into a Vehicle x 2 (FC), Poss. Of Stolen Property (FC), Aggravated Assault-LE (FB), Fleeing x 2 (FC), Preventing Arrest (FC), Attempting to Disarm LE Officer (FC), Reckless Endangerment (MA)
Bartlette	Donald		Y	Attempted Criminal Trespass (MA), Poss. Of a CS-Meth (FC), Poss. Of Drug Paraphernalia (FC)	Murder (FAA)
Helm	Brooke	Y		Criminal Trespass (FC), Poss. Of Drug Paraphernalia (FC) x 2, Poss. Of CS-Meth (FC), Contact by Bodily Fluids-LE (FC), Preventing Arrest (FC)	Conspiracy to Deliver CS-Fentanyl (FB), Tampering w/Informants in Criminal Investigation (FC)

Smith	Thomas	Y	Y	Poss. Of CS w/Intent ... Manufacture/Deliver-Meth x 2 (FAA), Conspiracy to Deliver a CS x 2 (FA)	Poss. Of CS-Meth (FC), Poss. w/Intent t... eliver-Meth (FB), Poss. Of Drug Paraphernalia (FC)
Lee	Donnie	Y		Domestic Violence-Serious Bodily Injury (FC), Simple Assault-Peace Officer or Correctional Officer (FC)	Domestic Violence (FC), Domestic Violence x 3 (MA), Violation of Order Prohibiting Contact x 2 (MA), False Information to LE (MA), Simple Assault-Peace Officer x 2 (FC), Contact by Bodily Fluids-LE (FC), Preventing Arrest (FC), Theft (FC), Theft (FB), Poss. of CS-Meth (FC), Poss. of Drug Paraphernalia (FC), Poss. of 5 or fewer Sched. II, III, IV, or CSA pills (MA), Criminal Mischief (MB), Leaving the Scene of Property Crash (MB), Reckless Driving (MB)
Huber	Scott	Y		Poss. Of CS w/Intent to Deliver x 4 (FB), Poss. Of Drug Paraphernalia x 2 (FC)	Poss. Of CS-Meth (FC), Conspiracy to Deliver CS-Fentanyl (FB)
Vandeusen	Randolph	Y	Y	Theft (FC), Reckless Endangerment (FC), Fleeing (FC)	Poss. Of CS w/Intent to Manufacture/Deliver-Fentanyl (FB)
Kessel	Steven		Y	Domestic Violence-Serious Bodily Injury (FC)	Criminal Vehicular Injury (FC), DUS-Alcohol Related (MB)
Lauer	Colton		Y	Fleeing (FC), Poss. Of Drug Paraphernalia (FC), False Information to LE (MA), Unauthorized Use MV (FC)	Fleeing x 2 (FC), Reckless Endangerment (FC), Poss. Of Drug Paraphernalia (FC), Refusal to Halt (MB)
Williams	Benjamin	Y		Reckless Endangerment (FC) (Shooting Incident)	Murder (FAA), Possession of Firearm by Felon (FC)
Frederick	Demoris	Y	Y	Aggravated Assault (FC),	Poss. Of CS w/Intent to Manufacture/Deliver x 3 (FB), Poss. Of Drug Para (FC), Fleeing (FC), Attempt to Tamper w/Physical Evidence (FC), Poss. Of CS-Meth (FC), Carrying a Concealed Weapon (MA), Poss. Of Firearm by Felon (FC)
Johnson	Kyle		Y	Possession of Drug Paraphernalia (FC)	Poss. Of Firearm by Felon x 2, Poss. Of CS w/Intent to Distribute-Meth, Poss.and Discharge of a Firearm in Furtherance of a Drug Trafficking Crime (Federal prosecution)
Merritt	Tyler	Y	Y	Theft (FB), Theft (FC), Fleeing x 2 (FC), Reckless Endangerment x 2 (FC), Poss. Of CS w/Intent to Manufacture/Deliver-	Fleeing (FC), Poss. Of CS-Fentanyl (FC), Poss. Of Drug Paraphernalia (FC), Criminal Mischief (FC), DUI-Drugs (MB), Preventing Arrest (FC)

				Meth (FA), Poss. Of D[illegible]Paraphernalia (FC), Poss. Of a Short Barreled Shotgun or Rifle (FC)	
Blackcloud	Richard		Y	Fleeing (FC), Reckless Endangerment (FC), Poss. Of Drug Paraphernalia (MA), Unauthorized Use of a Vehicle (MA), Refusal to Halt (MB)	Poss. Of Drug Paraphernalia (FC), Poss. Of CS (MA)
Galaviz	Amos	Y	Y	Fleeing (FC), Poss. Of Drug Paraphernalia x 3 (FC),	Poss. Of CS w/Intent to Manufacture/Deliver x 2 (FB), Poss. of Firearm by Felon (FC), Poss. of Drug Paraphernalia x 2 (FC), Fleeing (FC), Reckless Driving (MB), DUR (MB), Refusal to Halt (MB)
Reynolds	Samuel		Y	Conspiracy to Commit Theft (FC), Theft (FC)	Possession of a Controlled Substance (FC), Possession of Drug Paraphernalia (FC), Poss. Of Firearm by Felon (FC)
Morin	Garret		Y	Accomplice to Reckless Endangerment (FC) (Drive by shooting)	Attempted Murder (FA), Aggravated Assault-Serious Bodily Injury (FC)(In custody, not yet charged-stabbing)
Smith	Marquis	Y		Gross Sexual Imposition-Sexual Contact-Victim <15 years (FA) x 2	Promoting Obscene Performance by a Minor (FA); Use of a Minor in Sexual Performance (FA); Luring Minors by Computer (FB)

SENATE APPROPRIATIONS COMMITTEE
FEBRUARY 17, 2025

TESTIMONY OF CLAIRE NESS
OFFICE OF ATTORNEY GENERAL
SENATE BILL 2128

Chairman Dever and Members of the Committee:

For the record, my name is Claire Ness. I am the Chief Deputy Attorney General, and I am here on behalf of the Attorney General's Office in support of Senate Bill 2128.

To start, I'd like to draw your attention to the fact sheets about the bill and the information on which it is founded. The Attorney General's Office has found that several inaccurate narratives about the bill have been circulating. In order for you to assess the appropriateness of the fiscal note, we wanted to ensure you have an honest accounting of what the bill does and does not do, based on documented data and information.

We also need to consider the costs of the current criminal justice system. SB 2128 resulted from intensive research, meetings, and discussions with law enforcement officers, State's Attorneys, DOCR administrators and employees, and others. The key findings from that work were distilled into the packet of materials provided to you. What we found is that – over the many years of investing heavily in the expensive "Norway" model – the DOCR has received a tremendous amount of discretion in how they carry out their responsibilities. In return for that investment and autonomy, the Legislative Assembly – and the state as a whole – should receive objective measurements of success. But we don't have them. Instead:

- Violent crime and violent crime rates have increased[1];

[1] *See* the annual crime and homicide reports documenting crime statistics reported by North Dakota law enforcement agencies at https://attorneygeneral.nd.gov/public-safety/crime-data/crime-and-homicide-reports/.

- Drug use and addiction rates are increasing[2];
- More than 40% of prisoners recidivate,[3] costing the state and counties money for repeat arrests, investigations, prosecutions, trials, and sentencing hearings;
- Law enforcement officers and prosecutors are frustrated by the expensive and dangerous revolving door of criminals who are on our streets and recommitting crimes before their previous sentences are served[4]; and
- Our neighbors are concerned about the prevalence of crime in their communities.

When evaluating SB 2128, the Attorney General's Office urges you to consider the comparative costs, savings, and returns from both the state's current investment in corrections and rehabilitation and the investment that would be made under this bill. Buying a bicycle is not a good investment if you need a car.

Inaccurate assumptions are the basis for the fiscal note.

The first fiscal note prepared by DOCR was based on an assumption that parole would be eliminated under SB 2128. After the parole issue was clarified, the fiscal note should have decreased as a result. However, the second fiscal note is about 37% higher than the first. A careful review of the second fiscal note reveals that most of its costs are based primarily on 3 inaccurate assumptions:

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[2] The rate of illegal substance use in North Dakota, as reported by the ND DHHS, rose again between the 2023 report and the 2025 report. The rate of illegal drug use (other than marijuana) increased from 2.83% to 3.46%, and the rate of marijuana use increased from 10.4% to 11.97%. ND DHHS's *Behavioral Health in North Dakota: Data Book 2023* and *Behavioral Health in North Dakota: Data Book 2025,* at https://www.hhs.nd.gov/behavioral-health/data.

[3] DOCR testified it defines recidivism as returning to DOCR facility within 3 years of release. **DOCR's website states 40% of offenders released from ND state prison facilities were returned to those prisons within 3 years. If you add the number of those offenders who were returned to federal prison, county jails, and other states' prisons, the total recidivism rate exceeds 40%** and likely exceeds it by a significant margin. DOCR has not provided data on the exact recidivism rate when those facilities are included.

[4] *See, e.g.,* the testimony of Dennis Ingold and the testimony of Jasoon Stugelmeyer in support of SB 2128 to the Senate Judiciary Committee on January 21, 2025.

1. DOCR will have to return inmates who currently reside in transitional facilities back to prison.
2. Parole will not be available for inmates.
3. Inmate labor will have to be replaced by civilians.

The second fiscal note contains other presumptions that do not seem to be supported by data, but this testimony will focus on those three main faulty assumptions.

(1) DOCR will not have to return inmates who currently reside in transitional facilities back to prison.

In the first sentence of the second fiscal note, DOCR says the "bill removes DOCR's authority to house inmates in transitional facilities, requiring residents to return to prison." This is not accurate for at least two reasons.

One, during the first hearing on the bill, this office presented an amendment (which is still available on the legislative website for SB 2128 as document 30506) as well as written and oral testimony describing each section of the bill. The amendment contains an Application clause showing the bill is prospective only. It will not impact current inmates, and it will affect DOCR only gradually as new inmates serve their sentences. The Application clause also was described on page 13 of my testimony, which I read during that first hearing. My testimony also stated that the bill probably would be prospective even without the Application clause (because of Due Process and other considerations). To avoid any confusion, however, the Application clause was always part of the amendment that the Senate Judiciary Committee adopted.

Two, inmates can still reside in transitional facilities, as can individuals on parole and probation. Inmates who committed the nonviolent crimes exempted from the 85% requirement can be transferred to transitional facilities at any time during their sentences, provided they meet DOCR's criteria. Other inmates who committed violent crimes can be transferred to transitional

facilities after they have safely served 85% of their sentences. To say that inmates cannot be housed in transitional facilities under the bill is not correct.

Late last week, Senator Castaneda and I discovered that Legislative Council had removed the Application clause from the amendment and the engrossed version of the bill that they posted online. I understand that Senator Castaneda and Senator Larson had the Legislative Council replace that clause. To the extent this incident caused confusion for DOCR, I would ask the committee to request an updated fiscal note adjusting the costs accordingly.

(2) and (3) Parole will be available, and civilians will not have to replace inmate labor.

DOCR estimates that approximately $67 million for FY 25-27 and $155 million for FY 27-29 will be incurred because inmates will not be eligible for parole. This is not accurate. Parole will not be eliminated. Also, DOCR's first fiscal note - based on the assumption that parole was eliminated – had a total cost that was tens of millions of dollars less than the amount in the second fiscal note that DOCR attributes to the supposed lack of parole.

SB 2128 says inmates are eligible for parole after serving 50% of their sentences. (This is significantly less than our more liberal neighbor, Minnesota, which requires inmates to serve 2/3 of their sentences.[5]) DOCR's argument seems to be that work, education, and rehabilitation programs will not be allowed in DOCR facilities under SB 2128 – and that this will make inmates poor candidates for parole even after they have served 50% of their sentences. DOCR then uses a model suggesting that only 5% of parole-eligible inmates will be paroled. DOCR also adds almost $17 million to the second fiscal note for replacing inmate labor with civilian labor. Additionally,

[5] *See* Minnesota Department of Corrections website on Community Supervision, at www.mn.gov/doc/community-supervision/. ("Individuals serve two-thirds of their prison sentence incarcerated and the remaining third on supervised release.")

DOCR states about $2.5 million will be incurred by housing parolees in transitional facilities to participate in programs after they are released from prison.

Throughout the weeks of testimony and discussion on Senate Bill 2128, the Attorney General's Office has consistently stated that the bill:

> "will not take away any offender's opportunity to participate in rehabilitation programs or programs that help an offender prepare for reentry to the community. Those programs can continue to be offered in prison and other correctional facilities. The Attorney General's Office supports these types of programs and for years has offered to support requests for the resources to ensure they can continue."[6]

Senate Judiciary Committee members also understood these programs would continue to be available in the prison and other DOCR facilities.

There was no indication that DOCR believed work, education, and rehabilitation programs would be eliminated in correctional facilities until they issued the second fiscal note – after the Senate Judiciary Committee had closed the proceedings on the bill. Had DOCR believed a clarification in the bill language was necessary, they should have raised that issue to the committee so the clarification could be made. Everyone involved intended for the programs to continue, and a clarification would have been simple and easily approved by the committee.

By waiting until after the committee's work concluded, **DOCR is adding approximately $242 million to the second fiscal note based on an argument that the bill will have an impact that absolutely no one thought it would have and no one intended**. The Attorney General's

[6] Testimony of Claire Ness in support of Senate Bill 2128 to the Senate Judiciary Committee on January 21, 2025.

Office asks that the Appropriations Committee either adopt a minor, clarifying amendment to satisfy DOCR's concerns or disregard the $242 million in costs DOCR says will be attributable to the alleged elimination of parole and these programs.

SB 2128 also will result in savings.

As noted above, our current system has produced a recidivism rate that is higher than 40% and has not slowed the rate of substance abuse that contributes to our crime rate. That means close to half of all inmates return to a correctional facility within 3 years. The cost to the state and our counties from these repeated arrests, investigations, prosecutions, trials, and sentencing hearings must be tremendous. Although DOCR says it does not have data on this, a significant amount of those crimes would not occur while inmates serve their sentences in secure settings. Moreover, inmates who are able to participate in treatment and rehabilitation programs for longer periods of time may be less likely to recidivate at all. Finally, the deterrent effect of actually having to serve at least half of a sentence may reduce the incidence of violent crime.

The other costs to society – the impact on public safety and security – also should be considered when determining the value of SB 2128.

SENATE JUDICIARY COMMITTEE
JANUARY 27, 2025

SUPPLEMENTARY TESTIMONY OF
THE OFFICE OF ATTORNEY GENERAL

IN SUPPORT OF
SENATE BILL 2128

Senator Larson and Members of the Committee:

During the hearings on Senate Bill 2128, as amended by the Attorney General, you heard multiple opponents of the bill claim that longer sentences do not deter crime, increase recidivism, make prisons unsafe, or some combination of these notions. These claims do not withstand scrutiny.

While many agenda-driven groups have made claims like these, the studies they cite are flawed and do not apply to the bill under consideration. When the relevant research is viewed more comprehensively, a different picture emerges. This is especially true when the studies' shortcomings are not hidden.

When inmates spend more time in prison, as they would under a law that requires them to serve a larger percentage of their judge-imposed sentences, they have more time to participate in rehabilitation, treatment, and re-entry programs. They also are unable to commit crimes while in prison and are more likely to be deterred from committing future crimes after release. These are some of the reasons that – contrary to testimony offered by opponents of Senate Bill 2128 – more recent and robust studies often show a reduction in recidivism when inmates are in prison for longer periods of time.

Opponents of Senate Bill 2128 Presented a Distorted View of the Research

During the hearing on Senate Bill 2128, opponents of the bill who testified about research findings relied on flawed and inapplicable research. When they extrapolated findings from these studies and tried to project them onto Senate Bill 2128, they were comparing apples to oranges.

For example, the opponents of the bill often conflated truth-in-sentencing with mandatory minimum sentencing. These are very different practices, and studies on them are not interchangeable. Additionally, truth-in-sentencing can mean many things, and not all studies on truth-in-sentencing would be applicable to Senate Bill 2128.

Also, many studies in this area fail to control for variables (such as age, sex, etc.) that distort their results. When those variables are not controlled, it is difficult to account for their effects on the studied population, even if the studies try to do so with mathematical modeling.

Opponents of the bill who testified about research findings should have identified the limitations of that research – why it does not predict the outcomes of Senate Bill 2128 – rather than imply the research is conclusive.

Opponents of the bill also painted an extremely one-sided and inaccurate picture of the research into the effect of incarceration on recidivism and criminal behavior. They neglected to notify the committee that many studies, especially recent studies, demonstrate a reduction in recidivism from longer incarceration times. Studies are not nearly as conclusive and one-sided as opponents of the bill testified.

In June 2022, the United States Sentencing Commission issued a study report titled *Length of Incarceration and Recidivism*. As part of its study, the Commission reviewed preexisting research on this issue and found much of it was flawed. The Commission's report stated:

> Empirical research on the relationship between length of incarceration and recidivism is limited and presents mixed results. Of the studies that have been published, many are dated (*e.g.*, conducted prior to 2000), use less rigorous research designs, or present results on the relationship between incarceration and recidivism as a sub-analysis within a broader study. Further, a number of the prior studies have methodological deficiencies relating to not appropriately controlling for offender age and, therefore, are not considered valid.[1]

Similarly, a detailed and extensive study of existing research by the Criminal Justice Legal Foundation in 2022 noted significant limitations to earlier research on this topic.

> Overall, the effect of incarceration length on recidivism appears too heterogeneous to draw universal conclusions, and findings are inconsistent across studies due to methodological limitations. For example, many study samples are skewed toward people with shorter sentences while others include confounds that render results invalid. Of the studies reviewed, some suggested that longer sentences provide additional deterrent benefits in the aggregate, though some studies also had null effects. None suggested a strong aggregate-level criminogenic effect.[2]

The authors identified several specific problems with earlier research on this topic. Randomized controlled trials (the gold standard) would be unethical for prisoners. Controlling for other variables impacting recidivism or violence is almost impossible. Criminals with longer sentences may be more violent, male, and younger than those with shorter sentences, and those factors may influence recidivism rates. Moreover, there are different methods to measure recidivism, so consistency across studies and studied populations is lacking.

Researchers from Loyola University who studied Illinois' truth-in-sentencing laws also identified some inherent problems in relying on the existing research.

> Given the fact that the impact of the law appears to vary from state to state, depending on the offenses covered under [truth-in-sentencing] and the overall sentencing structure and/or courtroom culture in place, it is clear that analyses need to be done on a state-by-state basis to take into account the nuances of each state's [truth-in-sentencing] law and sentencing structure to assess impact on sentence lengths and/or lengths of time to serve.[3]

Conclusory study findings offered to the committee in hearings on Senate Bill 2128 simply painted an inaccurate picture.

More Time in Incarceration Has Been Shown to Reduce Recidivism and Reduce Violence in Prison

There are at least three ways that requiring an inmate to serve more of the sentence imposed by a judge can reduce the risk of recidivism.

1. Deterrence: The inmate will realize the cost of committing a crime is higher than the reward.
2. Incapacitation: The inmate cannot commit new crimes while in prison.
3. Rehabilitation: The inmate will have more time to be rehabilitated through treatment programs, education, re-entry programs, and other services available in prison.

Studies have found these impacts increase as the amount of time incarcerated increases.[4] The reduction in recidivism from incapacitation is self-evident. And some researchers have commented on the need for increased incarceration time to have a rehabilitative effect on criminals.[5]

The 2022 Criminal Justice Legal Foundation study report included citations to many research reports that found reductions in recidivism from increases in incarceration time, although fewer studies showed no difference.

The United States Sentencing Commission's 2022 study, which controlled for many of the variables that plague earlier studies, found that "offenders serving longer sentences had a lower likelihood of recidivism and took longer to recidivate."[6] Specifically, offenders who were incarcerated between 60 and 120 months had about an 18% reduction in recidivism compared to those with shorter sentences. Offenders who were incarcerated more than 120 months had about a 29% reduction in recidivism compared to those with shorter sentences.[7]

The Commission's findings were not an outlier. The findings "were almost identical for both the 2010 cohort studied in [the 2022] publication and the 2005 cohort studied in the Commission's previous publication."[8]

Also, in Appendix A of the Commission's report, there is a review of literature on this topic. Many of the studies listed in the appendix demonstrated a reduction in recidivism correlated with longer times in prison.

[1] United States Sentencing Commission, *Length of Incarceration and Recidivism*, p. 3 (June 2022).
[2] Berger, Elizabeth, and Scheidegger, Kent, *Sentence Length and Recidivism: A Review of the Research*, Criminal Justice Legal Foundation, p. 2 (June 2022) (emphasis added).
[3] David E. Olson, Ph.D. et al., *FINAL REPORT: The Impact of Illinois' Truth-in-Sentencing Law on Sentence Lengths, Time to Serve and Disciplinary Incidents of Convicted Murderers and Sex Offenders*, Loyola University Chicago, Department of Criminal Justice, Prepared for The Illinois Criminal Justice Information Authority (June 2009) (emphasis added).
[4] E.g., Wei Long, 2016. *Does Longer Incarceration Deter or Incapacitate Crimes? New Evidence from Truth-in-Sentencing Reform*, Working Papers 1607, Tulane University, Department of Economics. ("We observe statistically significant -7 percent deterrent effect of TIS on growth of violent crime two years after its passage. A series of placebo tests confirm the robustness of the estimates and inferences. In the long-run, additional incapacitative effect also becomes significant, making the treatment effect of TIS even greater in magnitude. Even though insignificant in the first two years after TIS was passed, growth of non-violent property crime rates decreases by 7 percent in the long-run in TIS states, indicating relative greater importance of incapacitative effect which locks up offenders who commit both types of crimes. A rough approximation shows that TIS is an economically efficient method to decrease crimes.")
[5] Al Weswasi, E., Sivertsson, F., Bäckman, O. et al., *Does sentence length affect the risk for criminal recidivism? A quasi-experimental study of three policy reforms in Sweden*, J Exp Criminal 19, 971–999 (2023).
[6] United States Sentencing Commission, at p. 19, 20.
[7] United States Sentencing Commission, at p. 19, 20.
[8] United States Sentencing Commission, at p. 22.
[9] Olson, at p. 5-6.
[10] Olson, at p. 17.

SENATE JUDICIARY COMMITTEE
JANUARY 21, 2025

TESTIMONY OF CLAIRE NESS
OFFICE OF ATTORNEY GENERAL
SENATE BILL NO. 2128

Chairman Larson and members of the Committee:

For the record, my name is Claire Ness. I am the Chief Deputy Attorney General, and I am here on behalf of the Attorney General's Office in support of Senate Bill 2128, our **Truth-in-Sentencing Bill**. The Attorney General regrets he is unable to be here today because he is returning from President Trump's inauguration. I respectfully ask that you keep the hearing on this bill open so he may complete our office's presentation in support of the bill upon his return.

My testimony today has 2 parts:

First, I will explain how each section of the bill – including the amendment that we have distributed – operates. Based on media reports and questions we have received, there seem to be several misperceptions about the bill that we can clear up.

Second, I will describe the underlying goals of the bill and the values of the Attorney General's Office and our great state that are advanced by this bill.

Throughout my testimony, I also will describe some of the voluminous background data and information that demonstrate why passing this bill is a critical step toward reducing crime in our communities.

Our office has worked with, and incorporated feedback from, State's Attorneys, law enforcement personnel, legislators, and others to develop this bill, and we look forward to working with members of the Legislative Assembly on the bill during the session.

How the Bill, as Amended, Operates

Section 1

Section 1 of Senate Bill 2128 makes two changes to definitions in Chapter 12-44.1 of the North Dakota Century Code (N.D.C.C.). The first is to clarify that the term "correctional facility" does not include transitional centers, and the second is to define "transitional facilities". The definition of "transitional facility" in the bill reflects publicly available information from the Department of Corrections and Rehabilitation (DOCR).

Transitional facilities – sometimes called transition centers or halfway houses – are structurally, operationally, and in almost all ways distinct from commonly understood "correctional facilities" (jails and prisons). Transitional facilities function similarly to staffed dormitories or apartments that offer on-site counseling or other services. Most individuals who live there are free to check-out of, and check-in to, the transitional facility, so they can spend their days unsecured in the community. DOCR informed us these individuals are not required to undergo daily drug testing when they return to the facility in the evening.

Section 2

Under Section 2, the Legislative Assembly will have authority to establisih common sense and public safety guardrails for transferring prisoners among DOCR facilities. For example, DOCR will have to abide by statutory limits on transfers of prisoners to facilities that have little or no security.

Currently, under N.D.C.C. 12-47-18.1, the Director of DOCR has vast, unilateral power to take a prisoner from the penitentiary and transfer them to the dorm-like setting of a transitional facility, regardless of the risk to the community. The Director can do this for just about any

reason, as long as the Director subjectively thinks it is a good idea for "the public, the offender, **or** the department." That word "or" in the statute is key. Even if transferring a prisoner to a halfway house is not in the public's best interest, the Director now can legally order it as long as the Director thinks the transfer would be good for either the prisoner or DOCR.

DOCR may tell you that would never happen because it might risk public safety. We would welcome that testimony because it would mean that Section 2 of this bill is simply what we all agree should be codified in law.

Section 3

Section 3 is first and foremost a public safety measure. Under current law, the Director of DOCR has authority to approve work release programs and other release programs for offenders in DOCR custody. The Director also has the power to contract with transitional facilities to house offenders in release programs. These offenders have the privilege of being out and about in our communities without guards or other security measures. So it is critical that they do not pose a danger to others.

Section 3 of SB 2128 identifies which offenders may participate in these release programs and live in transitional facilities. For clarity, it uses the term "eligible offender" to identify these individuals and then defines that term.

An "eligible offender" is an offender who has:

- Served 85 percent of their sentence; or
- Had their sentence commuted; or
- Is serving a sentence only for a nonviolent crime listed in Section 3.
    - Computer fraud (12.1-06.1-08)

- Perjury (12.1-11-01)
- Fraudulent practice in urine testing (12.1-11-07)
- Interception of wire or oral communications (12.1-15-02)
- Trafficking in intercepting devices (12.1-15-03)
- Property damage by fire or explosion (12.1-21-02(1)(c))
- Negligent act resulting in fire (12.1-21-03.1)
- Property damage by criminal mischief (12.1-21-05(1)(b))
- Interference with telephone during emergency call (12.1-21-06.1)
- Stowing away (12.1-22-05)
- Theft (12.1-23-02)
- Theft of lost property (12.1-23-04)
- Misapplication of entrusted property (12.1-23-07)
- Defrauding secured creditors (12.1-23-08)
- Forgery or counterfeiting (12.1-24-01)
- Simple drug possession (19-03.1-23(7))
- Possession of drug paraphernalia (19-03.4-03), or
- DUI (39-08-01).

Section 3 also serves an important transparency purpose. It requires DOCR to give the Attorney General and the Legislative Council quarterly reports of eligible offenders. This transparency measure will help everyone decipher the "time served" statistics from DOCR. Time spent in transitional facilities when offenders are allowed to check-out and check-in during the day is actually included in an offender's "time served," as calculated by DOCR. The reports

required in Section 3 of this bill will give you a window into how much of each sentence is spent, not in cells, but in the community.

Section 4

Section 4 of the bill provides common sense transparency and accountability regarding offenders' eligibility for release programs and transitional facilities. Keep in mind, offenders in these programs and facilities have the privilege to be in our communities without security, and the vast majority of us do not know who they are.

Under Section 4 of SB 2128, 4 changes will be made:

1. Before an offender can participate in these programs, DOCR must be able to determine "with a high degree of reliability" – meaning, the determination must be based on an objective, reliable assessment – that the offender is not a high security risk, is not likely to commit a crime of violence, is "not likely to escape," and is likely to be rehabilitated by the program.
    - Under current law, DOCR's decision that an offender can participate in a release program and live in a halfway house does not have to have any objective or reliable basis at all. DOCR may say they already use reliable data; if so, there should be no objection to Section 4.
    - Also under current law, DOCR can allow an offender who is likely to escape (or, really, just "walk away," which is how it is described) to participate in these programs. DOCR does not even have to consider this issue before granting the privilege of participating in release programs.

2. The Parole Board will have better information from DOCR about the offenders in release programs.

    - Under current law, the Parole Board may approve, disapprove, or defer action on the DOCR Director's decision to let an offender participate in a release program. The Parole Board should know, based on reliable and objective information, whether they will be a high security risk, are likely to escape, are likely to commit violent crimes, etc. Section 4 will require DOCR to make reliable assessments of all these factors so the Parole Board will have better information for its decisions.

3. The Parole Board will set common sense criteria for revoking an offender's participation in a release program.

    - For example, if an offender in a release program breaks a rule indicating they are likely to commit a crime of violence or are likely to try to escape, DOCR willl have to end the offender's participation in the release program.
    - Under current law, revoking an offender's participation in a release program is completely discretionary, even if continued participation is likely to result in harm to a member of the public. It is hard to imagine why anyone would object to establishing these kinds of practical and obvious limits on release programs, especially when they are weighed against public safety.

4. Grants of short leave could not be stacked to give one offender more than 72 hours of leave at a given time.

    - Under current law, offenders may be granted leave up to 72 hours by the DOCR Director (for offenders with sentences of 10 years or less) or by the

Parole Board (for other offenders). There is no prohibition now on granting back-to-back leave.

Section 5

Section 5 is a critical piece of this legislation. Although the current law regarding "good time" given to offenders seems straightforward, we have found that it is not applied the way most people think it is. Section 5 will make the law crystal clear. Under Section 5:

- Offenders will actually have to "satisfactorily fulfill" performance criteria before earning good time;
- Depending on how well they fulfill those criteria, offenders may receive "up to" 5 days per month of good time, giving DOCR more flexibility to enforce the performance criteria;
- Good time will be capped at 15 percent of an offender's sentence.
- Good time will have to be "earned" by offenders for time they actually "served."
    - Currently, according to documents from DOCR's staff, in practice even if contrary to policy, when an offender enters DOCR custody, DOCR awards the full amount of good time for the entire sentence imposed on the offender. Good time is not earned month-by-month, although theoretically it could be lost. If the offender is released early for parole (or another reason), the amount of good time is not reduced. Using these methods, DOCR gave at least one offender 40 days of good time per month of time actually served. That is just one example. This inflated amount of good time then appears to be included in the statistics you see regarding the amount of "time served" by offenders in DOCR custody.

Section 6

Section 6 of the bill will reduce the amount of time that can be taken off an offender's sentence for meritorious conduct from two days to one day per month. It also states that meritorious conduct sentence reductions will no longer be used as a special control or security measure. Such measures relate to DOCR operational needs and not meritorious conduct. Calling them meritorious conduct lacks transparency and muddies data.

DOCR claims this provision will cost the state $645,600 per biennium for 4 new employees because offenders will no longer want to participate on resident crisis support teams when doing so will reduce their sentences by one day per month instead of two days per month. The Attorney General's Office is not aware of any evidence for this.

Sections 7 and 8

Sections 7 and 8 of the bill are similar to provisions we brought forward in 2023 at the urging of law enforcement officers around the state. Being punched, beaten, kicked, or otherwise assaulted is not part of an officer's job, and these assaults should not go unpunished. You can talk to just about any law enforcement officer in the state, and they will tell you about the dramatic increase in the rate of attacks on, and injuries to, law enforcement in recent years. Officers deserve serious deterrence for these crimes and serious penalties for the people who commit them.

In 2023, we heard that criminals already get sentences for these crimes, and it was just as misleading then as it is now. These sentences almost always are concurrent sentences, meaning

they are served at the same time as the criminal's other sentences. In other words, the sentences are freebies for the criminals.

Section 7 will make the sentence for preventing arrest at least 14 days' imprisonment, and, if there is a sentence for an underlying conviction, the 14-day sentence would have to run consecutively to it. Keep in mind, to get this sentence, the criminal has to create a substantial risk of bodily injury to someone besides himself, or do something serious enough to justify the use of substantial force to overcome his resistance to the arrest.

Section 8 will make the sentence for assaulting a peace officer, correctional officer, or other emergency personnel listed in N.D.C.C. 12.1-17-01(2)(a) at least 30 days' imprisonment. If there is a sentence for an underlying conviction, the 30-day sentence would have to run consecutively to it. To get this sentence, the criminal has to willfully cause bodily injury to someone or negligently cause bodily injury to someone with a weapon that is likely to cause death or serious bodily injury.

Section 9

Section 9 of the bill contains public safety guardrails on release programs and, in response to many of the comments we have received, removes certain offenders guilty of drug possession from existing mandatory minimum sentencing. Section 9 amends N.D.C.C. 12.1-32-02.1, the current statute that requires a subset of armed offenders to be sentenced to minimum 2-year or 4-year sentences if prosecutors surmount the additional hurdles embedded in the statute. Currently, these offenders can serve up to 25 percent (6 months) of their sentences, or more when you factor in good time awarded by the DOCR, in transitional facilities on work release,.

Section 9 of the bill will clarify that these violent offenders are not "eligible offenders" as defined in N.D.C.C. 12-48.1-01(2)(b) in Section 3. However, they will be eligible for participation in release programs and transitional facilities after serving 85 percent of their sentences under N.D.C.C. 12-48.1-01(2)(a) in Section 3.

Section 9 also removes certain offenders convicted of felony drug possession from the list of individuals currently subject to the minimum sentencing provisions of N.D.C.C. 12.1-32-02.1. Under current law, if an individual who is prohibited by law from having a firearm is found to possess both a firearm and illegal drugs for their individual use, that individual is subject to the minimum sentences in N.D.C.C. 12.1-32-02.1. Section 9 would remove those individuals from that statute. This change does not affect penalties for illegal drug manufacturers or dealers.

Section 10

Section 10 of SB 2128 will provide real Truth-In-Sentencing. Our criminal justice system rightly gives the Legislative Assembly the power to decide the sentencing ranges for each type of crime – and gives judges the power to sentence offenders found guilty of those crimes by juries of their peers. North Dakotans elect legislators and judges to public office – investing you with your lawful authority and the accountability for exercising it.

Those same citizens believe criminals generally serve their sentences in secured settings that keep us all safe. However, over the past several years, a tremendous amount of bureaucratic discretion has been given to DOCR to move criminals to transitional facilities, to give them unsecured access to our communities, and to award them unearned good time. The pendulum has swung far to the left in our state.

Shortly after filing SB 2128, the Attorney General decided to add a clarifying amendment to Section 10 enhancing the state's parole system because Parole Board members are public officials with accountability to the public for their decisions. That provision is included in our amendment and in my description of this section.

Section 10 will bring common sense, transparent, truth-in-sentencing back to our criminal justice system by setting a floor on the percentage of each sentence a criminal must serve in jail or prison. North Dakotans are surprised when they learn this isn't already the law and are even more surprised to find out what percentage of each sentence a criminal spends in jail or prison. The phrase "time served" has a very different meaning to our citizens than it does to many people familiar with our corrections system. One judge noted recently that a defendant sentenced to two years would serve "two, three months."

Under Section 10 of SB 2128, an offender – with a few exceptions – may:

- Be paroled after 50 percent of their sentence (not including good time) is served;
- Be released after serving a commuted sentence;
- Be released after being pardoned; or
- Be transferred to a transitional facility after 85 percent of their sentence is served.

The exceptions I mentioned are for currently existing requirements for some violent offenders who already have to serve 85 percent of their sentences and a new requirement for dangerous special offenders and habitual offenders, both of which are defined in N.D.C.C. 12.1-32-09, to do the same. Also, as described in Section 3 of the bill, offenders sentenced for the nonviolent crimes listed in Section 3 may be transferred to transitional facilities and granted the privilege of participating in release programs before serving 85 percent of their sentences.

I'd like to address a red herring we have heard about truth-in-sentencing. Section 10 of SB 2128 will not take away any offender's opportunity to participate in rehabilitation programs or programs that help an offender prepare for reentry to the community. Those programs can continue to be offered in prison and other correctional facilities. The Attorney General's Office supports these types of programs and for years has offered to support requests for the resources to ensure they can continue.

Section 11

Similarly to Sections 7 and 8, Section 11 responds to an alarm raised by law enforcement officers around the state for years. Fleeing from law enforcement is an urgent, dangerous, and escalating problem in our state, and we are all on notice from law enforcement that this is due to the lack of consequences for people who flee. We introduced an almost-identical provision to Section 11 in 2023, and, since that time, we have experienced tragic examples of how fleeing can impact officers and their communities.

Section 11 would provide a minimum 30-day sentence for felony fleeing as defined in N.D.C.C. 39-10-71, and the sentence would have to be consecutive to any sentence for an underlying conviction. Also, a State's Attorney could ask a judge to impound a vehicle used in fleeing for up to six months. The State's Attorney and the judge would both be able to consider the individual circumstances of the case and would not be required to request or order the impoundment.

Section 12

To avoid any confusion or litigation, we added an application clause for SB 2128 so the changes it makes will apply to individuals who are charged after then bill takes effect. Although we believe this would be the outcome without the application clause, the clause will provide certainty for affected individuals.

Goals and Values that Compel Passage of SB 2128

Because all of us here love this state and care deeply about the people who live here, we owe it to them to do the hard work necessary to bring down our steadily rising crime statistics. And, yes, methodically collected data from North Dakota's law enforcement agencies prove that they are rising. Everywhere we go, we hear from family, friends, neighbors, and concerned citizens about crime in our communities.

Personally, I moved home to North Dakota to raise my son – a fifth generation North Dakotan – after years of school and work in other states because this is the best place to live and raise a family. We can still make changes to reverse the crime trends we see. Doing so will require the accountability, transparency, and truthfulness in SB 2128.

Accountability

The critical foundation of the work we must do is accountability. Power and authority must remain with the people who are accountable for it.

As SB 2128 demonstrates, the Attorney General's Office is committed to preserving the power of the Legislative Assembly to establish sentencing ranges and the authority of judges to impose sentences that will be faithfully carried out by DOCR.

Each time legislators vote on statutes containing sentencing ranges, they are accountable to their constituents for their decisions.

Judges also are accountable to voters (and subject to Supreme Court rulings) for their sentencing decisions. Judges have particularized training and expertise, and they are present throughout trials and plea hearings. In each case, the judge has a unique, in-depth understanding of the law, context, and nuances that inform their sentence.

The Legislative Assembly's votes and judges' sentences should not be supplanted by a bureaucracy that can release the offender into the community after a fraction of the sentence is served.

Transparency and Truthfulness

Accountability in our criminal justice system cannot be maintained without transparency and truthfulness comprised of at least the following elements that SB 2128 will address.

- Words have to have commonly understood definitions.
    - Some relevant terms do not have straightforward meanings now. For example:
        - According to DOCR, their published "recidivism" rates only include offenders who were released from DOCR and are returned to DOCR. The recidivism rates do not include offenders who were released from DOCR and then were sentenced to county jails, federal prison, or other states' jails or prisons. The true recidivism rate is therefore higher than what is published.
        - You may have heard that offenders already serve on average, 70-, 80-, or 85 percent of their sentences. However, as calculated by DOCR,

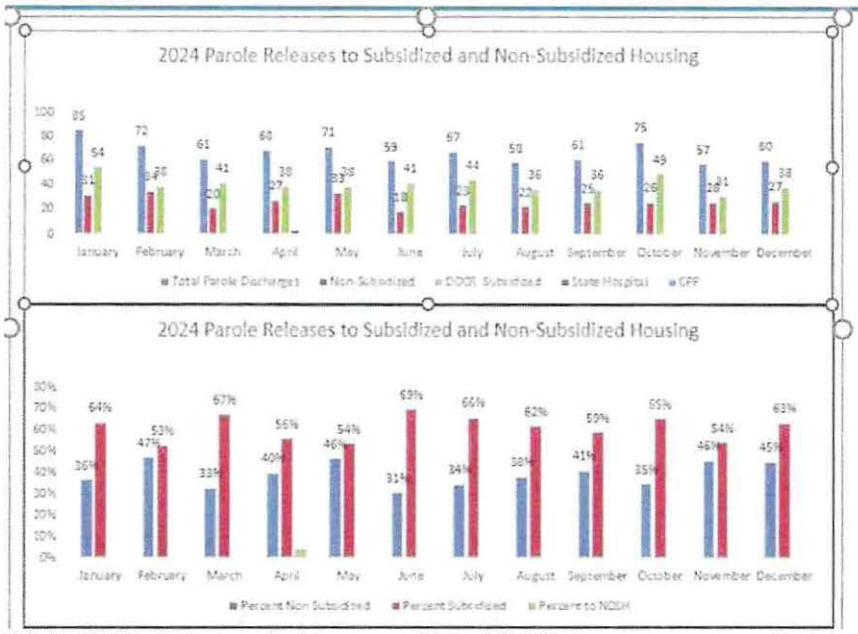
"time served" includes time spent in transitional facilities where offenders have daily check-in/check-out privileges so they can be out and about in the community, as well as inflated calculations of "good time" (as discussed in my testimony for Section 5 of the bill).

- Outcomes have to be clear, objectively measured, and meaningful.
    - For example, there do not seem to be objective, documented statistics showing that the last several years of the "Norway model" have significantly reduced crime, reduced true recidivism, reduced the number of offenders in prison, or reduced assaults on corrections officers.

- Data and statistics have to be easily available and based on fully described methodologies. For example:
    - Crimes committed by offenders on work release or other release programs should be thoroughly documented, and statistics on these crimes should be readily available, especially to legislators and law enforcement personnel.
    - The rate at which DOCR inmates are prosecuted and sentenced for new crimes after release – regardless of whether they are sentenced to DOCR, county jails, federal prison, or other states' prisons – should be documented and readily available.
    - The public should be made aware every time an offender "walks away" or absconds from a transitional facility.

- The cost of crimes committed by offenders in DOCR custody and crimes committed by offenders released from DOCR custody – including the costs to apprehend, charge, prosecute, try, reprocess, and rehouse the offenders – should be calculated to determine the true financial costs of the current system.

Thank you for your time today. The Attorney General's Office is always available to discuss these issues and provide additional information, and we urge you to vote for a "DO PASS" on Senate Bill 2128. With that, I'd be happy to answer your questions.



484 paroles to a transitional facility in 2024

NORTH Dakota | Correction Rehabilita
Be legendary.

Of the 484 people paroled to a transitional facility:

Centre 35 paroles, BTC 28 paroles for a total of 64 total paroles absconded from a TF in 2024.

63 (13%) people absconded from the transitional program while there on parole

Absconder - An adult under supervision can be classified as an absconder when parole and probation staff has verified that the individual no longer resides at their last known address. Parole and probation staff has checked other reasonable leads including the individual's employer, if there is one, and the adult under supervision has not been located for a period of 72 hours.

Intermediate Measure (IM): Community constraints used as strategies to address violations of supervision conditions. Strategies may address risk control, risk reduction or both. This also includes adult under supervision agreed to conditions or programs that may be implemented by the DOCR when an individual violates supervision conditions in lieu of initiating revocation proceedings.

<u>Of the 63 who absconded from a transitional facility while on parole</u>:

5 received intermediate measures and continued at the facility. They did not receive any new criminal charges. Successfully completed parole.

7 received intermediate measures. They did not have any new criminal charges. They continue on parole.

1 was taken back into custody and waiting for action by the February Parole Board. This person had no new criminal charges.

7 were allowed to remain at reported residence after reestablishing consistent PO contact. They did not receive new charges, and remain on parole.

9 were allowed to remain at reported residence after reestablishing consistent PO contact. They did not receive new charges, and successfully completed parole.

9 were allowed to remain at reported residence after reestablishing consistent PO contact. They did not receive new charges. They successfully completed parole.

1 was allowed to remain at reported residence after reestablishing consistent PO contact. They did receive new drug possession charge, but bonded out and parole has since expired.

1 received a new charge of driving an unlit watercraft. He received intermediate measures, but was allowed to remain on parole through successful completion.

4 remain at large, but at this point they do not have new criminal charges.

1 Died

11 were revoked from parole and didn't receive new charges.

1 was revoked from parole and received a new endangerment of child or vulnerable adult charge.

1 was revoked from parole and received a new drug possession charge and drug para possession charge.

1 was revoked from parole and received a new charge of theft of property.

1 was taken back into custody and waiting for action by the February Parole Board. They received a new charge of false information to law enforcement.

1 was revoked from parole and received a new class A misdemeanor charge for preventing arrest.

1 was revoked from parole and received a new charge for terrorizing, trespass and DUS.

1 was revoked from parole and received a new charge for Refusal to Halt-Non Motor Vehicle

What happens after someone absconds on parole?

SB 2128

March 20th, 2025

My name is Nathan Tebay and on February 4th, 2025 I was afforded the opportunity to speak to Senators Dever, Magrum, Cleary, Davison, and Mathern at the North Dakota State Penitentiary, (NDSP), where I presented a brief overview of a program I am involved in here. In my address I described the Resident Crisis Support Team, (RCST), and how it benefits the inmates/residents who participate. My brief address can be viewed online I am told under the 'Harvest Room' designation for that day's hearings and is indexed by name should you wish to acquaint yourself quickly.

Teddy Roosevelt gave a speech entitled "The Strenuous Life" addressing the Hamilton Club in Chicago years ago wherein he challenged them to consider merit as a paradigm shifting principle that separates sincere change agents from those who just talk a 'good game.' This historic man's spirit is imbued in just about every aspect of North Dakota Heritage. His advocacy for the 'little guy' and independent spirit is cited and adopted in business names, park designations, and generally as an ideal virtue the whole of humanity should pursue. In that worthy spirit, I ask for your thoughtful consideration of my submission here.

On January 8th a letter to the editor was printed in the Bismarck Tribune where the swollen prison population was addressed. I have been a 'resident' here since September of 2019 and feel I can offer a great deal of insight that would benefit this body and our state. I wish my voice to be heard and that it be given due deference for the objective context it offers.

Since my arrival, I have made an involved study of the revolving door issues plaguing this institution and I can confidently share that the prison population problem is entirely due to:

1] Disparate sentencing among the district courts
2] The overuse of plea agreements
3] Technical violations of parole and probation.

To first dispel skepticism, even I as a member of this population, agree that prisons exist for a reason and there are many that belong in an environment such as this. While it is true, I have a significant liberty interest here, my lived experience has proven, with certainty, that we as a society, use this institution entirely too much, for too long of a period, and at too great a cost to the North Dakota Taxpayer.

You have likely heard the statistic that we Americans account for 5% of the world's population but imprison ~25% of the world's prison population. ~2.2 Million were in jail or prison with another 4.75 Million on parole or probation in 2019. To bring it home, The Fargo Forum published in 2020 that it was estimated at that time ~28% of North Dakota's adult population possessed a felony conviction. When running for President, former Gov. Burgum addressed a townhall meeting in New Jersey where he expressed his disdain for the $500 Million spent annually on the penal system in North Dakota. What can be done about this?

In my experience, numbers don't lie—people do. The real cost to ND taxpayers is not the token $36,000/ year that is most often cited. The actual cost is closer to $68,000/year per inmate and that's if they don't get in violent altercations here or have medical conditions that require more security or care costs respectively. We are all entitled to our own opinion, but we are NOT entitled to our own set of facts. Statistics tell a story and we would do well to observe them objectively. We pay to study and collect them to be presented for our consideration but

then so often react emotionally rather than rationally. Even bills proposed this session are asking for money to fund criminal justice studies—what will be done with that information?

It is also true that 90% or more of the prison population will return to society at one point. We, the 'outcast' and 'irredeemable' among North Dakota's population will be living in your neighborhoods and working among you. This may be lost on many proponents of blindly retributive prison sentences. Prison culture is an exercise in the decomposition of humanity. Within its clutch exist good and bad men and women just as in the whole of society. Prisons simply distill that population and geographically concentrate these individuals. While bad actors can thrive in this concentration—good men struggle.

HB-1417 addresses the #3 concern asserted above and in my opinion is a good move and would go a long way to relieving strain on the system presently.

SB-2128 however, does the complete opposite. AG Drew Wrigley is being disingenuous with the people of North Dakota and their representatives. His characterization of SB-2128 does not include all the pertinent facts for anyone to make an informed decision.

For instance, is the general public aware that the 5 days per month of 'good time' credit statutorily granted to ALL prisoners requires them to already serve 83.6% of their sentence? That is in ALL criminal categories except the enhanced/mandatory minimum offenses that already exist within NDCC with NO additional enhancements or additions to the law as SB-2128 suggests. That means Mr. Wrigley's chief argument is for an additional 1.4% of a sentence to be served for ALL offenders before being parole eligible.

Now the facts—the proposed law would require every inmate to serve 310.25 days/year vs. the 305 days/year they serve now after their statutory 5 days/month is credited. 4.75 more days/year overall. The parole board presently has the authority to review individuals not serving mandatory minimum or enhanced sentences prior to their 'good time release' date. These board members are not 'nameless and faceless.' They are exercising the authority given them through their appointment by our elected Governor should they grant parole to someone before their good time release date. This is the Governor's executive authority in action granted him by the voters of North Dakota.

Further still, our elected Governor appoints the members of the Parole Board and they have broad authority with regard to who is granted the opportunity to parole. This amounts to their authority, and by extension Governor Armstrong's authority, being usurped by barring the entirety of the inmate population from the board's very informed decision on any one individual before this nominal 4.75 days/year is served. This board has available to them a prepared parole plan assembled by those who the state of ND has hired, *professionally*, to maintain daily contact with this individual inmate. It includes case managers, treatment staff, officers, education staff, work supervisors, and even the warden and director of DOCR. What's more, the faith and confidence the State of ND places in those just mentioned is being invalidated by saying the AG knows better from afar than these vested and specialized fields who encounter each offender on a daily basis.

In a December 27th, 2024 interview with Gary Emineth, (SP?), Mr. Wrigley stated, *"If a door is not locking behind you at night you are not serving your sentence..."* only seconds later in that same interview he said *"everyone deserves a second chance..."* Which is it Mr. Wrigley? Part of SB-2128 wants to remove a 'correctional facility' designation to transition centers, aka: 'half-way houses', used for re-entry efforts and programming by DOCR. This blanket change would *require* that treatment must only occur within the confines of the prison walls before an inmate leaves to begin re-entry. This sounds like a benign change on the surface but in effect it would

be dramatic because of the exceedingly rare exceptions that would require administrative intervention to accommodate. Those eligible for release would further congest the crowded prison and be delayed due to the massive bottleneck that would form in the treatment department—backing up like water behind the wall of a dam. During this time, costs to house this otherwise 'release-eligible' population would skyrocket because they would still be borne by the state. If eligible inmates move on to a transition center and can access recommended or *required* treatment there, that inmate *pays for their own housing there* due to the ability to hold a job that pays a commensurate wage while concurrently re-familiarizing themselves with living a lawful and productive life. This is a win-win for ND and accomplishes the overarching concern with public safety and self-sufficiency that everyone wants.

During this same interview AG Wrigley claimed the title of, *"Mayor of Reals-Ville,"* mentioning that transitional care would be made available after someone serves 20% of their sentence. This is in stark contrast to what he is pushing for in SB-2128. He went on to say, *"Behave like a saint while you're in and do all you're required to then have access to release..."* Well, I am here to inform Mr. Wrigley, and anyone who wishes to learn, meritorious conduct does NOT earn an earlier release. You might earn a Positive Behavior report for said conduct but meaningful reduction of your time is not made available to you for being a decent human being while you are in North Dakota's Prison System. SB-2128 attacks even the extraordinary meritorious sentence reduction that *can* be made available for outstanding performance or perform an act of heroism like saving a life or rendering aid, (NDCC 12-54.1-03). The new language changes the previously allowed 2 days per month down to 1 day per month. All these proposed changes do NOT align with what Mr. Wrigley is saying. If you, *"behave like a saint,"* these changes effectively bar you from being awarded even merited relief and if you are deemed worthy of receiving such, it is now **half** of what it was previously. Prisoners are no different from the public in their response to incentives. Incentives exist to encourage certain behaviors—just look at our tax code to illustrate this point. Remove incentives and you can witness a nearly instant drop in participation of desired conduct. I have seen it first-hand. The most dangerous individuals in this place are those with ***absolutely nothing to lose***.

Upon arrival here, your classification has PREDETERMINED dates you are scheduled for treatment and even parole review. This is one of the areas that is most misunderstood by the voting public and even our elected officials. Using a 10-year sentence as an example, your classification document will show you will be scheduled for treatment roughly 6-7 years in and a parole review date will be very close to your anticipated completion of that treatment. Given the 5 days of 'good time' statutorily guaranteed by NDCC 12-54.1-01 one would earn 600 days of 'good time' over the 10 years making their 'good time release date' reduce from 3,650 days down to 3,050 days which is 8 years + 130 days or 83.6% of 10 years. One would serve every day of that sentence if the parole board was disallowed from reviewing an inmate's conduct and granting him parole which they can *technically* do at any time if a sentence enhancement or mandatory minimum is not in play.

It is not like the movies where you behave yourself and you get to have a physical sit down with those on the board—quite the contrary actually. You seldom get a face to face review and only 2 of the 6 members must be present to make a decision regarding an eligible parolee. Sadly, there are more instances of parole being granted to those who are back here for their 3rd or 4th tour and are nothing but trouble and seed chaos within the facility. They conduct themselves this way while they occupy an otherwise available chair in the treatment department attending programming they have taken multiple times with little to no effect.

SB-2128 usurps the executive authority bestowed upon the Governor's Office of the State of North Dakota by disallowing Mr. Armstrong to exercise it and I maintain that this is the main thrust of AG Wrigley. Do not interpret my argument as a justification for criminal behavior or a compromise of public safety. I was raised in a home where when you told the truth, you received the benefit that the truth brought—that does NOT mean you were free of consequence, but it does mean you should be afforded due consideration. Those of us deserving of merited consideration are being cast asunder and this consideration being removed even further than it is presently.

I wish to be involved and to be considered an objective source of information that this body has a *right to*. Prior to this season in my life my credibility was never called into question. I was a successful contractor, helpful neighbor, faithful volunteer and contributing member of society. Now, any opinion or statement is called into question almost automatically by someone in my position. Veracity of a claim can easily be verified if the right questions are asked. I can offer information that will help to form those questions. I pledge to you, reader, I will maintain objectivity because I am a father and I have no interest in plaguing our society with those who wish to destroy it. Speak to Colby Braun our Director—he knows how I conduct myself here.

I have not sat on my hands while I've been here and I strive daily to warrant merited consideration to return to my precious children and family as soon as possible. I have set an example for them through my conduct and accomplishments while I've been here through additional college education, treatment completion, obedience, job performance, and living my Faith. I pray that my civic participation will contribute to that example.

I ask that you use me as a resource and sounding board—you are not prohibited from doing this with incarcerated individuals—in fact it is your First Amendment Right. I welcome a dialogue and your help in informing the ND electorate that certain neighbors of theirs are languishing due to delayed consideration for their meritorious conduct. I need your help—my children need your help. God Willing, this is just the beginning of a larger conversation.

Respectfully and sincerely,



Nathan Tebay

2025 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

SB 2128
3/31/2025

Relating to transparent sentencing of criminal offenders, transfer of persons between correctional facilities, work release eligibility and conditions for criminal offenders, sentences for assaulting and fleeing from law enforcement officers, and sentences for preventing arrest; to provide a legislative management report; to provide a penalty; and to provide for application.

9:22 a.m. Chairman Klemin opened the hearing.

Members Present: Chairman Klemin, Vice-Chairman Karls, Vice-Chairman Vetter, Representatives Christianson, Henderson, Hoverson, Johnston, McLeod, S. Olson, Satrom, Tveit, VanWinkle, Wolff, Schneider

Discussion Topics:

- Hope for inmates
- Prison overpopulation
- Parole board meetings
- North Dakota violent crime rates

9:22 a.m. Chairman Klemin proposed Amendment LC:25.8109.03002, testimony #44448.

Additional written testimony:
Representative Lawrence Klemin, North Dakota Representative for District 47, submitted neutral testimony #44446
Representative Daniel Johnston, North Dakota Representative for District 24, submitted neutral testimony #44456

9:44 a.m. Chairman Klemin closed the hearing.

Wyatt Armstrong, Committee Clerk

House Judiciary Committee,

One of the main issues of the AG in SB 2128 is that offenders are getting out of NDSP too soon. We have been given various statistics that don't agree or seem to be slanted one way or the other. The AG and DOCR have considerable disagreement about the facts and the solutions. Part of the solution may be in SB 2128, but I think it needs some work. Part of the solution may be in some changes at DOCR. We do need to make an informed decision with a fiscal note about $45 million over the next 2 biennia. 25-29. We need to look at long range financial impacts due to the result of keeping prisoners for longer times. We need to present a clear picture when the bill goes to House Appropriations. We don't have all the facts that could be disclosed by a thorough study of DOCR. Section 7 of SB 2015 [DOCR budget] contains a study that will be helpful in determining what to do. SB 2015 provides:

SECTION 7. LEGISLATIVE MANAGEMENT STUDY - DEPARTMENT OF CORRECTIONS AND REHABILITATION. During the 2025-26 interim, the legislative management shall consider studying the impacts of providing requirements for offenders sentenced to the supervision and custody of the department of corrections and rehabilitation. The study must include a thorough review of the impacts of requiring an offender to serve eighty-five percent of an offender's term of imprisonment in a secured facility, together with input from district court judges regarding sentencing decisions, state's attorneys regarding charging decisions, the department of corrections and rehabilitation regarding early release and use of transitional facilities to provide outside services to inmates, and the parole board regarding decisions to parole an inmate. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the seventieth legislative assembly.

In addition to DOCR in the study, you will notice that the study also refers to the Parole Board. DOCR doesn't make the decision to release a prisoner on parole. That decision is

made by the Parole Board. I am attaching some information about the Parole Board that you may find interesting. I am also requesting an amendment to SB 2128 to include a separate study on the Parole Board and the parole process. The study should include a thorough analysis of parole in Ch. 12-59 and the Parole Board, including members, terms, appointment process; meetings, quorum requirements, member participation (since only 3 of the 6 members meet at a time), minutes, schedule, process; rules and policies; DOCR participation, recommendation process, who is involved; parole determinations including eligibility, requirements, conditions; analysis of parole activities including paroles denied, granted, rescinded, revoked; victim rights, notices, assistance, SAVIN, among other things. Should the AG be able to appoint some of the members of the Parole Board, not just the Governor? This study could be added to either SB 2128 or SB 2015.

What is the real solution to the problem SB 2128 is trying to solve? Is it longer mandatory sentences? Is it something to do with what happens at DOCR? Is it something to do with the Parole Board? What about the effect on victims? All of these factors need to be more clearly understood if we want to make major changes to punishment and rehabilitation that's going to cost 10s of millions of $$$ to implement with no place to house more prisoners. We need to get a better handle on the big picture.. We make want to make only intermediate decisions now.

We can talk about this in committee.

Rep. Lawrence R. Klemin

February 2025 Parole Board: Ms. Britta Joyce, Ms. Jennifer Thompson, and Mr. Keith Witt

SID	DOC NO	LAST NAME	FIRST NAME	ACTION TAKEN	PAROLE START DATE	PAR MOD EXP DATE	DEFERRED TO	COMMENTS	INTERMEDIATE MEASURE APP	SERVE THE BAL	TIME ADDED BACK
243404	56529	MCGILLIS	PRESTON	Intermediate Measure					Y		
267322	67466	SCOTT	SHAYLEE	Intermediate Measure					Y		
120764	19493	ALLERY	LESLIE	Parole Denied			01/2026			N	
260964	77037	AUTRY	KASEY	Parole Denied						Y	
256287	81117	BERGQUIST	KEYLA	Parole Denied						Y	
179361	61018	BOLMAN	HANK	Parole Denied						Y	
96324	70877	BRENDEL	TERRY	Parole Denied						Y	
153140	36947	CATCH THE BEAR	JOURNEY	Parole Denied						Y	
276844	81418	CHARBONNEAU	REBBECCA	Parole Denied						Y	
282770	81178	COLEMAN	ROBERT	Parole Denied						Y	
167154	80517	DELANEY	ANTHONY	Parole Denied						Y	
134983	23171	EAGLEMAN	MATTHEW	Parole Denied						Y	
277483	81139	ENGLAND	RACHEL	Parole Denied						Y	
267349	81398	FEATHER	RAEDONNA	Parole Denied						Y	
266987	77519	FLADELAND	JAKE	Parole Denied						Y	
280337	81138	FRANKLIN	MICHAEL	Parole Denied						Y	
56080	22865	GAILFUS	RODNEY	Parole Denied						Y	
267504	80238	HARRIS	HUGH	Parole Denied						Y	
258820	79922	HEAL	THOMAS	Parole Denied						Y	

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236730	51295	IRON SHIELD	CASSANDRA	Parole Denied						Y	
241522	78582	JACKSON	NICOLAS	Parole Denied			08/2025			N	
277761	79358	KESSEL	STEVEN	Parole Denied						Y	
95367	18085	LEACH	JOHN	Parole Denied						Y	
237840	47811	LINDQUIST	CHARLIE	Parole Denied			12/2025			N	
273216	74637	MATOS MONTALVO	JORGE	Parole Denied						Y	
268331	64717	MCCALEB	RANDEE	Parole Denied						Y	
100287	16503	MOORE	GARY	Parole Denied						Y	
177225	78844	NEUMILLER	PRESTON	Parole Denied						Y	
288516	81073	OIKANG	JORDAN	Parole Denied			08/2025			N	
91768	16185	OSTAFIN	SHAWN	Parole Denied			04/2030			N	
188685	37123	POITRA	JUSTIN	Parole Denied						Y	
282035	76460	PRUDE	COURTNEY	Parole Denied						Y	
109841	40805	REMMICK	THOMAS	Parole Denied				The September 2024 order granting parole is rescinded.		Y	
242949	78790	ST CLAIRE	GARRET	Parole Denied						Y	
175318	57143	STEWART	JERRY	Parole Denied						Y	
279558	70579	TRUITT	TIMOTHY	Parole Denied				However, Mr. Truitt may reapply for Parole Board consideration, if he reconsiders his position about a possible parole release.		Y	
219574	59770	VEZINA	JORDAN	Parole Denied						Y	

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193932	81221	ALBERTS	AMANDA	Parole Granted	04/30/2025			To Centre Fargo. Ms. Alberts shall enroll in a drug monitoring program that is established by her parole officer and remain in the program for a minimum of 90 days when she is released to a community residence.			
226023	41930	ATKINS	CODY	Parole Granted	07/16/2026			To a plan approved by Adult Services.			
243061	78300	BAUDUIN	CHRISTIAN	Parole Granted	03/21/2025			To Centre Grand Forks.			
129313	21021	BELGARDE	KEITH	Parole Granted	06/18/2026			To the Bismarck Transition Center, where he must remain for a minimum of 90 days.			
256697	60251	BROWN JR	ALVIN	Parole Granted	07/24/2025			To Centre Fargo. Mr. Brown Jr shall enroll in an alcohol and drug monitoring program that is established by his parole officer and remain in the program for a minimum of 60 days when he is released to a community residence.			
162580	72637	CARPENTER	ADAM	Parole Granted	10/02/2025			To his approved plan with his parents in Lisbon, ND. Mr. Carpenter shall enroll in a drug monitoring program that is established by his parole officer and remain in the program for the duration of his parole when he is released to a community residence.			
152766	40418	CHARVAT	JASIN	Parole Granted	01/22/2026			AMENDED parole date 01/22/2026 To the Bismarck Transition Center.			
119350	23288	DALTON	CARL	Parole Granted	02/28/2025			To Centre Fargo.			
259987	60882	DELEON	ALFREDO	Parole Granted	04/03/2025			To Centre Mandan.			
191882	75697	DILLMAN	DEREK	Parole Granted	08/04/2025			To his approved plan with his parents in Bismarck, ND.			
172610	62047	DOEPKE	WYATT	Parole Granted	04/23/2026			To the Bismarck Transition Center.			
217697	40408	DORSCHER	SETH	Parole Granted	11/19/2026			To a plan approved by Adult Services.			
253411	78926	ERICKSON	GLENDON	Parole Granted	07/11/2025			To the Bismarck Transition Center.			
146358	54776	ERTELT	MICHAEL	Parole Granted	07/24/2025			To his approved plan with his mother in West Fargo, ND.			

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196314	63539	FALKENSTEIN	JOSEF	Parole Granted	09/02/2025			To a plan approved by Adult Services.			
103403	18339	FEATHER	PAUL	Parole Granted	02/27/2025			To Centre Fargo.			
141680	35332	GATLIN	LUKE	Parole Granted	03/27/2025			To Centre Fargo.			
272465	64818	GERTCHER	DANIEL	Parole Granted	03/17/2026			AMENDED: continue with parole 03/17/2026 To Centre Mandan. amend condition 16.			
287285	79805	HANNA	GEORGE	Parole Granted	09/04/2025			To a plan approved by Adult Services.			
157291	81049	HERRICK	ALYSIA	Parole Granted	02/21/2025			To her approved plan with her brother and sister in law in Fargo, ND.			
275693	76857	HOFFMAN	ANDREA	Parole Granted	06/25/2025			To Centre Fargo.			
170784	32513	HOLCOMB	DUARD	Parole Granted	06/12/2025			To his Federal detainer. Should Mr. Holcomb be released from his Federal detainer, his parole release is to a plan approved by Adult Services.			
234569	54344	HOOK	JUSTIN	Parole Granted	02/27/2025			To Centre Fargo.			
246965	78903	HOULE	JUSTYCE	Parole Granted	04/25/2025			To the Bismarck Transition Center. Mr. Houle shall enroll in a drug monitoring program that is established by his parole officer and remain in the program for a minimum of 90 days when he is released to a community residence.			
217948	53879	IRON SHIELD	CHANCE	Parole Granted	03/25/2025			To Centre Mandan.			
199014	59978	IRONROAD	RYAN	Parole Granted	04/25/2025			To the Bismarck Transition Center.			
263679	74557	JACOBSON	TYLER	Parole Granted	11/04/2025			To the Bismarck Transition Center.			
284518	77617	LAPOINTE	JEFFERY	Parole Granted	08/14/2025			To his warrants. Should Mr. Lapointe resolve his warrants his parole release is to Centre Fargo.			
283407	80407	LARRY	ZHANA	Parole Granted	03/26/2025			To Tennessee, if accepted for interstate compact supervision. If Ms. Larry is denied interstate compact supervision her parole release is to Centre Fargo.			

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149005	24524	LAVALLIE	JOSEPH	Parole Granted	09/09/2025			To a plan approved by Adult Services. Mr. Lavallie shall not enter Grand Forks County, ND without prior approval of his parole officer.			
195468	62700	MARTIN	KEVIN	Parole Granted	05/29/2025			To Minnesota, if accepted for interstate compact supervision. If Mr. Martin is denied interstate compact supervision his parole release is to a plan approved by Adult Services.			
266430	58999	MASON	ANGELINA	Parole Granted	04/09/2025			To Oklahoma, if accepted for interstate compact supervision. If Ms. Mason is denied interstate compact supervision her parole release is to a plan approved by Adult Services.			
132310	50093	MAYERHOFER	JAMES	Parole Granted	06/06/2025			To Centre Grand Forks.			
282989	79903	MILLER	DENNIS	Parole Granted	03/25/2025			To the Bismarck Transition Center.			
138544	80006	MOQUINO	KEVIN	Parole Granted	08/05/2025			To his approved plan in Mandan, ND.			
245738	78624	PELTIER	NICHOLAS	Parole Granted	05/02/2025			To Centre Fargo.			
287562	80999	PIERSON	ERNEST	Parole Granted	07/24/2025			To Centre Fargo.			
166575	33231	RAU	SCOTT	Parole Granted	03/13/2025			To his warrants. Should Mr. Rau resolve his warrants his parole release is to Centre Fargo.			
272809	80302	REDBOW	DYLAN	Parole Granted	03/07/2025			To a plan approved by Adult Services.			
152327	35209	RODRIGUEZ	EDUARDO	Parole Granted	08/12/2025			To Centre Grand Forks.			
188083	52863	RUPP	RYAN	Parole Granted	07/17/2025			To the Bismarck Transition Center.			
232435	51183	SCHONER	BRAYTON	Parole Granted	04/08/2025			To his approved plan with his mother in Dickinson, ND.			

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242918	80800	SEWARD	WILLIAM	Parole Granted	10/23/2025			To his Minnesota detainer. Should Mr. Sward be released from his Seward detainer, his parole release is to a plan approved by Adult Services. Mr. Seward shall enroll in a drug monitoring program that is established by his parole officer and remain in the program for a minimum of 90 days when he is released to a community residence.			
126403	39582	SORENSON	DARRION	Parole Granted	03/24/2025			To his approved plan with his girlfriend in Bismarck, ND.			
286278	81045	ST VINCENT	DANEIL	Parole Granted	04/03/2025			To his approved plan with his mother in Bismarck, ND.			
240745	79030	STANDRIDGE	CHANCE	Parole Granted	03/28/2025			To Centre Fargo. Mr. Standridge shall enroll in an alcohol and drug monitoring program that is established by his parole officer and remain in the program for a minimum of 90 days when he is released to a community residence.			
223460	41104	THIEL	NICHOLAS	Parole Granted	06/05/2025			To Centre Fargo.			
203412	39570	TOWRY	COLTEN	Parole Granted	03/17/2025			To his approved plan in Mandan, ND.			
146165	47818	VONDAL-RINDE	DEAN	Parole Granted	09/09/2025			To Centre Grand Forks.			
237852	45897	WELCHER	ROBBY	Parole Granted	06/10/2025			To his approved plan with his friend in Bismarck, ND.			
286582	80858	WESTLUND	DANIEL	Parole Granted	10/06/2025			To his approved plan with his mother in Bismarck, ND.			
285218	80545	WHITE	ROBERT	Parole Granted	03/27/2025			To Centre Fargo. Mr. White shall enroll in a drug monitoring program that is established by his parole officer and remain in the program for a minimum of 90 days when he is released to a community residence.			
271075	79519	WHITEFACE	GABRIEL	Parole Granted	03/04/2025			To the Bismarck Transition Center.			
267872	81417	WILLIAMS	ARIAUNA	Parole Granted	06/25/2025			To a plan approved by Adult Services.			
183349	78682	WOUNDED FACE	SETH	Parole Granted	04/14/2025			To a plan approved by Adult Services.			

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200739	80180	YUNKER	MATTHEW	Parole Granted	02/28/2025			To his approved plan with his mother in Center, ND.			
257513	60889	ZUBIATE	OSCAR	Parole Granted	03/12/2026			To a plan approved by Adult Services.			
250594	70118	BLACK	MARIAH	Parole Rescinded				Ms. Black shall serve the balance of her sentence for this incarceration without the benefit of any further Parole Board consideration.		Y	
286267	77758	CABRERA	NATHANIEL	Parole Rescinded				Mr. Cabrera shall serve the balance of his sentence for this incarceration without the benefit of any further Parole Board consideration.		Y	
250991	59755	CHARBONNEAU	ZACRIEL	Parole Rescinded				Mr. Charbonneau shall serve the balance of his sentence for this incarceration without the benefit of any further Parole Board consideration.		Y	
253411	78926	ERICKSON	GLENDON	Parole Rescinded						N	
270340	67679	HERNANDEZ	ENRIQUE	Parole Rescinded				Mr. Hernandez shall serve the balance of his sentence for this incarceration without the benefit of any further Parole Board consideration. However, Mr. Hernandez may reapply for Parole Board consideration provided he has no further 200E or 300 reports from the date of this parole order but no earlier than November 2025.		Y	
109841	40805	REMMICK	THOMAS	Parole Rescinded				Mr. Remmick shall serve the balance of his sentence for this incarceration without the benefit of any further Parole Board consideration.		Y	
207425	61871	ALBITRE	DEVIN	Parole Revoked				Mr. Albitre shall serve the balance of his sentence for this incarceration without the benefit of any further Parole Board consideration.		Y	11/23/2024
162795	72677	BEARSTOPS	BRANDON	Parole Revoked				Mr. Bearstops shall serve the balance of his sentence for this incarceration without the benefit of any further Parole Board consideration.		Y	04/01/2024
252073	57223	BRAVEBULL	NATASSIA	Parole Revoked				Ms. Bravebull shall serve the balance of her sentence for this incarceration without the benefit of any further Parole Board consideration.		Y	10/03/2024

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139724	22464	EVERETT	CORNELIUS	Parole Revoked				Mr. Everett shall serve the balance of his sentence for this incarceration without the benefit of any further Parole Board consideration.		Y	01/24/2025
139894	22313	GOODSOLDIER	CHARLES	Parole Revoked				Mr. Goodsoldier shall serve the balance of his sentence for this incarceration without the benefit of any further Parole Board consideration.		Y	06/08/2024
187586	35921	HUESERS	ZACHARY	Parole Revoked				Mr. Huesers shall serve the balance of his sentence for this incarceration without the benefit of any further Parole Board consideration.		Y	01/08/2025
209605	38909	JONES	IRA	Parole Revoked				Mr. Jones shall serve the balance of his sentence for this incarceration without the benefit of any further Parole Board consideration. However, Mr. Jones may reapply for Parole Board consideration provided he has successfully completed all recommended programming.		Y	01/01/2025
159083	37317	LADUCER	NORBERT	Parole Revoked				Mr. Laducer shall serve the balance of his sentence for this incarceration without the benefit of any further Parole Board consideration. However, Mr. Laducer may reapply for Parole Board consideration provided he has no further 200E or 300 reports from the date of this parole order but no sooner than 180 days after he is in the physical custody of the DOCR.		Y	10/22/2024
205240	46910	ST. CROIX	TUCKER	Parole Revoked				Mr. St Croix shall serve the balance of his sentence for this incarceration without the benefit of any further Parole Board consideration. However, Mr. St Croix may reapply for Parole Board consideration provided he has successfully completed all recommended programming but no earlier than November 2026.		Y	01/08/2025

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158537	25990	THOMPSON	JAMES	Parole Revoked				Mr. Thompson shall serve the balance of his sentence for this incarceration without the benefit of any further Parole Board consideration. However, Mr. Thompson may reapply for Parole Board consideration provided he has successfully completed all recommended programming but no earlier than August 2025.		Y	01/08/2025
259663	67937	WHITEEAGLE	SHILO	Parole Revoked				Mr. Whiteeagle shall serve the balance of his sentence for this incarceration without the benefit of any further Parole Board consideration.		Y	01/22/2025
262057	61358	WICHTERMAN	TROY	Parole Revoked				Mr. Wichterman shall serve the balance of his sentence for this incarceration without the benefit of any further Parole Board consideration.		Y	03/17/2024
171235	33120	ALBERTS	JAMES				02/2026				
245763	56043	BLACKCLOUD	LYMAN				04/2027				
186577	36155	BURNETTE	JOHN				01/2029				
284471	81233	CARLSON	ALEXANDER				04/2025				
178368	81397	CHARBONEAU	SHANNON				11/2026				
236645	81112	DECOTEAU	DYLAN				12/2025				
287903	81332	DONAHUE	SEANA				11/2025				
224505	80884	GARZA	ISAAC				05/2026				
288120	81229	HARDWICK	DALTON				03/2027				
163958	39302	HEINZE	CORY				04/2026				
242990	52698	JACKSON	KENAZ				11/2025				
258731	80892	LEGARRETA	RICHARD				10/2027				
173749	33737	LONGCHASE	HENRY				03/2027				

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263376	66855	MELVILLE	HALEY				08/2025				
194449	56000	PETERSON	KYLE				07/2026				
168997	31931	RUSH	LORING				04/2028				
184191	49191	STONE	JUSTIN				11/2025				
270918	69599	TEITGEN	ROBERT				06/2028				

PAROLE BOARD MEETING **02/04/2025** –Britta Joyce, Jennifer Thompson, and Keith Witt *This is a summary of the Parole Board Meeting; please submit requests for additional information to: shall@nd.gov	
02/04/2025	**North Dakota Parole Board**
Call to Order; Reading of the Open Meeting Statement	The meeting of the North Dakota Parole Board was called to order by BJ. In attendance were: Britta Joyce (BJ), Jennifer Thompson (JT), Keith Witt (KW), Adam Anderson, Jessica McSparron-Bien, and Carisa Upton
Overview of Agenda	
Changes/Updates to parole releases during the past month	
	Discussion on agenda - Personal Interview scheduled for SHAWN OSTAFIN is cancelled by Parole Board.
Motion after cancelling Personal Interview	Motion by JT to deny and defer to 04/2030 Seriousness of Offense and Inmate Refusal. Seconded by BJ; no further discussion, Roll Call: JT yes, BJ yes, KW yes; Motion Carried.
Initial Review Docket	JAMES ALBERTS, LYMAN BLACKCLOUD, JOHN BURNETTE, ALEXANDER CARLSON, SHANNON CHARBONEAU, DYLAN DECOTEAU, SEANA DONAHUE, ISAAC GARZA, DALTON HARDWICK, CORY HEINZE, KENAZ JACKSON, RICHARD LEGARRETA, HENRY LONGCHASE, HALEY MELVILLE, KYLE PETERSON, LORING RUSH, JUSTIN STONE, and ROBERT TEITGEN
Motion to Accept Initial Docket	Motion by KW to accept the Initial Review Docket as presented; Seconded by JT, no further discussion; Roll CALL: JT yes, BJ yes, KW yes; Motion Carried.
Violator Docket	DEVIN ALBITRE, BRANDON BEARSTOPS, MARIAH BLACK, NATASSIA BRAVEBULL, NATHANIEL CABRERA, ZACRIEL CHARBONNEAU, GLENDON ERICKSON, CORNELIUS EVERETT, CHARLES GOODSOLDIER, ENRIQUE HERNANDEZ, ZACHARY HUESERS, IRA JONES, NORBERT LADUCER, PRESTON MCGILLIS, SHAYLEE SCOTT, TUCKER ST. CROIX, JAMES THOMPSON, SHILO WHITEEAGLE, and TROY WICHTERMAN
	Board Member BJ recused themselves from the following action
	DEVIN ALBITRE
Motion to Accept Violator Docket	Motion by KW to accept the Violator Docket as presented; Seconded by BJ, no further discussion; Roll CALL: JT yes, BJ yes, KW yes; Motion Carried.

Miscellaneous Docket	AMANDA ALBERTS, LESLIE ALLERY, KASEY AUTRY, CHRISTIAN BAUDUIN, KEITH BELGARDE, KEYLA BERGQUIST, HANK BOLMAN, TERRY BRENDEL, ALVIN BROWN JR, ADAM CARPENTER, JOURNEY CATCH THE BEAR, REBBECCA CHARBONNEAU, JASIN CHARVAT, ROBERT COLEMAN, CARL DALTON, ANTHONY DELANEY, ALFREDO DELEON, DEREK DILLMAN, WYATT DOEPKE, SETH DORSCHER, MATTHEW EAGLEMAN, RACHEL ENGLAND, MICHAEL ERTELT, JOSEF FALKENSTEIN, PAUL FEATHER, RAEDONNA FEATHER, JAKE FLADELAND, MICHAEL FRANKLIN, RODNEY GAILFUS, LUKE GATLIN, DANIEL GERTCHER,

	GEORGE HANNA, HUGH HARRIS, THOMAS HEAL, ALYSIA HERRICK, ANDREA HOFFMAN, DUARD HOLCOMB, JUSTIN HOOK, JUSTYCE HOULE, CASSANDRA IRON SHIELD, CHANCE IRON SHIELD, RYAN IRONROAD, NICOLAS JACKSON, TYLER JACOBSON, STEVEN KESSEL, JEFFERY LAPOINTE, ZHANA LARRY, JOSEPH LAVALLIE, JOHN LEACH, CHARLIE LINDQUIST, KEVIN MARTIN, ANGELINA MASON, JORGE MATOS MONTALVO, JAMES MAYERHOFER, RANDEE MCCALEB, DENNIS MILLER, GARY MOORE, KEVIN MOQUINO, PRESTON NEUMILLER, JORDAN OIKANG, NICHOLAS PELTIER, ERNEST PIERSON, JUSTIN POITRA, COURTNEY PRUDE, SCOTT RAU, DYLAN REDBOW, THOMAS REMMICK, EDUARDO RODRIGUEZ, RYAN RUPP, BRAYTON SCHONER, WILLIAM SEWARD, DARRION SORENSON, GARRET ST CLAIRE, DANEIL ST VINCENT, CHANCE STANDRIDGE, JERRY STEWART, NICHOLAS THIEL, COLTEN TOWRY, TIMOTHY TRUITT, JORDAN VEZINA, DEAN VONDAL-RINDE, ROBBY WELCHER, DANIEL WESTLUND, ROBERT WHITE, GABRIEL WHITEFACE, ARIAUNA WILLIAMS, SETH WOUNDED FACE, MATTHEW YUNKER, and OSCAR ZUBIATE
	AMANDA ALBERTS – condition 20 Ms. Alberts shall enroll in a drug monitoring program that is established by her parole officer and remain in the program for a minimum of 90 days when she is released to a community residence.
	KEITH BELGARDE parole 06/18/2026
	KEYLA BERGQUIST parole deny and serve balance. Insufficient time served
	TERRY BRENDEL parole deny and serve balance. Insufficient time served
	ALVIN BROWN JR parole 07/24/2025 condition 20 Mr. Brown Jr shall enroll in an alcohol and drug monitoring program that is established by his parole officer and remain in the program for a minimum of 60 days when he is released to a community residence.
	ADAM CARPENTER parole 10/02/2025
	JOURNEY CATCH THE BEAR parole deny and serve balance. Insufficient time served
	REBBECCA CHARBONNEAU parole deny and serve balance. Insufficient time served
	JASIN CHARVAT amend date to 01/22/2026
	ANTHONY DELANEY parole deny and serve balance. insufficient time served
	WYATT DOEPKE parole 04/23/2026
	SETH DORSCHER parole 11/19/2026
	MATTHEW EAGLEMAN parole deny and serve balance. insufficient time served
	RACHEL ENGLAND parole deny and serve balance. insufficient time served
	MICHAEL ERTELT parole 07/24/2025
	JAKE FLADELAND parole deny and serve the balance. seriousness of offense and insufficient time served
	RODNEY GAILFUS parole deny and serve the balance insufficient time served
Miscellaneous Docket Review break	

Personal Interview	CODY ATKINS

Personal Interview Executive Session	The next item on the agenda is for the Parole Board to discuss whether to grant CODY ATKINS a parole with him and with his Case Manager: Tarnue Ballah, and Counselors: Heather Haugen and Cameron Harper-Beck. This discussion will be limited to medical, psychological, and treatment information that is confidential under N.D.C.C. Section 12-47-36 and case history record information that is an exempt record under the same statute. Motion to Enter Executive Session by KW; Seconded by JT; Roll Call: JT yes, BJ yes, KW yes; Motion Carried. Executive Session began at: 3:34 pm Executive Session was adjourned at: 3:50 pm In attendance: Britta Joyce (BJ), Jennifer Thompson (JT), Keith Witt (KW), Adam Anderson, Jessica McSparron-Bien, and Carisa Upton
Motion after Personal Interview	Motion by KW to grant parole 07/16/2026 To a plan approved by Adult Services.; PAROLE CONDITIONS – standard conditions of parole will apply along with special conditions 16, 18; the sex offender addendum will include core and all additional conditions. Seconded by JT; no further discussion, Roll Call: JT yes, BJ no, KW yes; Motion Carried.
Miscellaneous Docket Review resumed	
	GEORGE HANNA parole 09/04/2025
	JUSTYCE HOULE condition 20 Mr. Houle shall enroll in a drug monitoring program that is established by his parole officer and remain in the program for a minimum of 90 days when he is released to a community residence.
	TYLER JACOBSON parole 11/04/2025
	STEVEN KESSEL parole deny serve balance insufficient time and seriousness of offense
	JOSEPH LAVALLIE To a plan approved by Adult Services. 21. Mr. Lavallie shall not enter Grand Forks County, ND without prior approval of his parole officer.
	CHARLIE LINDQUIST parole deny and defer to 12/2025, insufficient time served and institutional behavior.
	ANGELINA MASON discussion
	GARY MOORE parole deny serve balance insufficient time served
	KEVIN MOQUINO parole 08/05/2025
	COURTNEY PRUDE parole Deny serve the balance seriousness of offense insufficient time
	THOMAS REMMICK previous parole rescinded and parole deny serve the balance seriousness of offense and insufficient time
	EDUARDO RODRIGUEZ parole 08/12/2025
	WILLIAM SEWARD parole 10/23/2025 condition 20 Mr. Seward shall enroll in a drug monitoring program that is established by his parole officer and remain in the program for a minimum of 90 days when he is released to a community residence.
	CHANCE STANDRIDGE condition 20 Mr. Standridge shall enroll in an alcohol and drug monitoring program that is established by his parole officer and remain in the program for a minimum of 90 days when he is released to a community residence.

	DEAN VONDAL-RINDE parole 09/09/2025
	ROBBY WELCHER parole 06/10/2025
	ROBERT WHITE condition 20 Mr. White shall enroll in a drug monitoring program that is established by his parole officer and remain in the program for a minimum of 90 days when he is released to a community residence.
	ARIAUNA WILLIAMS parole 06/25/2025
	OSCAR ZUBIATE parole 03/12/2026
Motion to Accept Miscellaneous Docket	Motion by BJ to accept the Miscellaneous Docket as presented with the noted changes; Seconded by KW, no further discussion; Roll CALL: JT yes, BJ yes, KW yes; Motion Carried
Motion to Adjourn	Motion by BJ, approved.

January 2025 Parole Board: Ms. Leslie Bakken Oliver, Ms. Rachel Bruner, and Ms. Jennifer Thompson

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279473	72461	TISCHLER	KYLE	Intermediate Measure					Y		
204143	40359	WORLEY	JEFFERY	Intermediate Measure					Y		
55179	16620	AUSTIN	KEVIN	Parole Denied						Y	
260774	69262	BAKKEN	KALEB	Parole Denied			04/2025			N	
281943	73901	COLLINS	DEANGELO	Parole Denied			10/2025			N	
147275	68378	CUTLER	CHARLES	Parole Denied						Y	
283315	80518	DAVE	KUSH	Parole Denied						Y	
253336	80934	DEMERY	KEISHA	Parole Denied						Y	
237177	44904	FOREMAN	LANCE	Parole Denied						Y	
215812	44035	HANDELAND	JADEN	Parole Denied						Y	
289386	80835	HENRICKSON	JAYDEN	Parole Denied						Y	
249581	58626	HYSHAW	DEMARIUS	Parole Denied			07/2025			N	
249936	78791	LATTERGRASS	SHAQUILLE	Parole Denied						Y	
271136	69757	LAWRENCE	ALEX	Parole Denied						Y	
157373	80179	LEMON	CASEY	Parole Denied						Y	
157895	35976	LINDER	KRYSTAL	Parole Denied						Y	
163697	42377	MATTSON	ANDREW	Parole Denied						Y	
209738	80599	MEDINA	JUAN	Parole Denied						Y	
181037	34946	OLSON	TIMOTHY	Parole Denied			02/2030			N	
285843	80859	PELAYO RODRIGUEZ	ALBERTO	Parole Denied						Y	

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283109	80678	PLENTYCHIEF	LANNELLE	Parole Denied						Y	
282946	77357	QUIDO	KYLE	Parole Denied			12/2025			N	
256097	54581	RADTKE	TRISTON	Parole Denied						Y	
288451	80650	SALDANA	ERIKA	Parole Denied						Y	
273913	78287	SCHMUHL	SPENCER	Parole Denied						Y	
109032	71278	ST JOHN	EMERSON	Parole Denied			11/2026			N	
273944	80633	STEELE	CURTIS	Parole Denied						Y	
275969	69357	STERLING JONES	LONIEL	Parole Denied			08/2025			N	
211231	78718	STRENKE	DUSTIN	Parole Denied						Y	
279125	78001	TAYLAY	LAMAR	Parole Denied						Y	
250637	64677	WARREN	MATTHEW	Parole Denied			01/2026			N	
250603	66997	WATTS	DONDARRO	Parole Denied						Y	
166159	78722	WOUNDED FACE	CHAD	Parole Denied						Y	
197405	42770	YOUNGBIRD	NICHOLAS	Parole Denied			02/2026			N	
284817	79804	ACOR	BRANDON	Parole Granted	03/04/2025			To New York, if accepted for interstate compact supervision. If Mr. Acor is denied interstate compact supervision his parole release is to a plan approved by Adult Services.			
277484	73460	ACOSTA-ZAMORA	YASMANY	Parole Granted	07/14/2026			To Nevada, if accepted for interstate compact supervision. If Mr. Acosta-Zamora is denied interstate compact supervision his parole release is to a plan approved by Adult Services.			
259971	75999	ADAMS	MICHAEL	Parole Granted	02/14/2025			To a plan approved by Adult Services.			
153987	75760	ALLERY	DALLAS	Parole Granted	04/01/2025			To Centre Mandan.			

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286770	79897	ALLESSIO	CELINDA	Parole Granted	02/26/2025			To her approved plan with her brother in Hazen, ND.			
219487	73437	ALYEA	PRESTON	Parole Granted	01/27/2025			To Centre Mandan.			
164156	33970	ANDERSON	CHRISTOPHER	Parole Granted	04/08/2025			To the Bismarck Transition Center.			
272834	66297	BEAULIEU	KENNETH	Parole Granted	06/10/2025			To Centre Fargo, provided he has no further 200E or 300 reports from the date of this parole order.			
230596	48987	BELL	JOHNNIE	Parole Granted	02/18/2025			To the Bismarck Transition Center.			
198524	64917	BELL	MICHAEL	Parole Granted	05/08/2025			To Centre Fargo.			
250594	70118	BLACK	MARIAH	Parole Granted	02/03/2025			To Centre Mandan.			
226481	43383	BORRERO	IVAN	Parole Granted	12/02/2025			To a plan approved by Adult Services.			
275383	80481	BOTSTEIN	SUSAN	Parole Granted	03/14/2025			To Centre Mandan.			
204662	47748	BRUCE	AARON	Parole Granted	02/18/2025			To the Bismarck Transition Center.			
155170	56246	BUCHANAN	JOSHUA	Parole Granted	02/20/2025			To Centre Mandan, where he must remain for a minimum of 180 days.			
277975	72757	BULLINS	JOSEPH	Parole Granted	05/20/2025			To the Bismarck Transition Center.			
205232	50684	BURLINGAME	TRAVIS	Parole Granted	05/06/2025			To the Bismarck Transition Center.			
179046	34951	BUSCHE	TIMOTHY	Parole Granted	05/06/2025			To Centre Fargo.			
207925	40307	COLVIN	RICHARD	Parole Granted	06/02/2025			To his approved plan with his wife in Williston, ND.			
106607	18287	CONMY	CORY	Parole Granted	03/18/2025			To a plan approved by Adult Services, provided he has no further 200E or 300 reports from the date of this parole order.			
270767	78040	CONSTANT	CARLVENSKY	Parole Granted	05/15/2025			To his ICE detainer. Should Mr. Constant be released from his ICE detainer, his parole release is to a plan approved by Adult Services.			
188568	80086	COTTONWOOD	LOUIS	Parole Granted	03/07/2025			To Centre Fargo.			
249529	53608	COX	GAGE	Parole Granted	02/04/2025			To the Bismarck Transition Center.			

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148821	24790	DAVIS	CLARK	Parole Granted	03/10/2025			To his approved plan with his mother in Dunseith, ND.			
137248	21975	DECOTEAU	BERNARD	Parole Granted	01/24/2025			To the Bismarck Transition Center.			
156539	37349	DEICHERT	NICOLE	Parole Granted	03/12/2025			To her approved plan with her mother in Dickinson, ND.			
197916	54005	DENISON	JAMES	Parole Granted	01/24/2025			To his approved plan with his boss in Bismarck, ND.			
257584	68360	DIAZ	DAVID	Parole Granted	04/08/2025			To Centre Mandan.			
270124	67517	DICKIE	JOHN	Parole Granted	01/13/2026			To Florida, if accepted for interstate compact supervision. If Mr. Dickie is denied interstate compact supervision his parole release is to a plan approved by Adult Services.			
278209	80125	DOERING	ANGELA	Parole Granted	02/14/2025			To the Bismarck Transition Center.			
258359	79950	DRIVER	SKYLEE	Parole Granted	06/02/2025			To a plan approved by Adult Services.			
196062	40370	DUBOIS	CHANTELLE	Parole Granted	03/03/2025			To the Bismarck Transition Center.			
155372	50784	DUNHAM	RAE	Parole Granted	03/13/2025			To her warrants. Should Ms. Dunham resolve her warrants her parole release is to the Bismarck Transition Center.			
236601	76662	EAGLE	TRINITY	Parole Granted	01/31/2025			To Centre Mandan.			
155880	24828	EAGLEMAN	KENNETH	Parole Granted	04/17/2025			To his warrants. Should Mr. Eagleman resolve his warrants his parole release is to a plan approved by Adult Services.			
258572	78580	EASTMAN	DONOVAN	Parole Granted	05/15/2025			To his Minnesota detainer. Should Mr. Eastman be released from his Minnesota detainer, his parole release is to a plan approved by Adult Services.			
209054	65557	EBERTOWSKI	JACOB	Parole Granted	07/31/2025			To a plan approved by Adult Services.			
280233	72998	EDDY	JOSHUA	Parole Granted	05/07/2026			To Connecticut, if accepted for interstate compact supervision. If Mr. Eddy is denied interstate compact supervision his parole release is to a plan approved by Adult Services.			

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239115	63137	ELLZEY	ZACHERY	Parole Granted	01/27/2025			To his approved plan with his mother in law in Hazen, ND.			
244980	59962	ELMI	ELMI	Parole Granted	05/27/2025			To Centre Fargo.			
217134	44364	EMMONS	ALEXANDER	Parole Granted	04/15/2025			To a plan approved by Adult Services, provided he has no further 200E or 300 reports from the date of this parole order and he remains medication compliant.			
157404	39137	EPPLER	BRANDON	Parole Granted	11/19/2024			AMENDED: continue with parole 11/19/2024 To Centre Fargo. AMENDED condition 16.			
284546	77999	FEDICK	MARY	Parole Granted	04/03/2025			To Minnesota, if accepted for interstate compact supervision. If Ms. Fedick is denied interstate compact supervision her parole release is to a plan approved by Adult Services.			
179095	38734	FERGUSON	ROBERT	Parole Granted	12/16/2025			To Centre Fargo.			
221023	77621	FLOCK	CLAYTON	Parole Granted	02/25/2025			To the Lake Region Reentry Center. Mr. Flock shall enroll in an alcohol monitoring program that is established by his parole officer and remain in the program for the duration of his parole when he is released to a community residence.			
196597	77398	FLYING HORSE	TORREY	Parole Granted	04/15/2026			To Arizona, if accepted for interstate compact supervision. If Mr. Flying Horse is denied interstate compact supervision his parole release is to a plan approved by Adult Services.			
224386	44057	FOREMAN	AMANDA	Parole Granted	02/28/2025			To the Bismarck Transition Center.			
231054	48638	FRANK	JOSHUA	Parole Granted	05/22/2025			To Centre Fargo.			
86787	80277	FREDERICK	VICKI	Parole Granted	01/29/2025			To Centre Mandan.			
272465	64818	GERTCHER	DANIEL	Parole Granted	03/17/2026			To Centre Mandan.			
151892	80570	GIBBON	CHRISTOPHER	Parole Granted	03/14/2025			To Centre Fargo.			
175192	33972	GILBERT	EVERETT	Parole Granted	07/07/2025			To his approved plan with his daughter in Williston, ND.			

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141813	50998	GREEN	DANIEL	Parole Granted	03/11/2025			To Centre Mandan.			
236004	72917	GREENIZER	CHRISTOPHER	Parole Granted	05/15/2025			To a plan approved by Adult Services, provided he has completed all recommended programming. He shall enroll in an alcohol monitoring program that is established by his parole officer and remain in the program for a minimum of 90 days when he is released to a community residence. He is prohibited from residing in his mother's residence.			
173156	34692	GREGER	MATTHEW	Parole Granted	03/21/2025			To Centre Grand Forks.			
282364	73902	GREYWATER	NICKOLAS	Parole Granted	09/04/2025			To Centre Grand Forks.			
234588	80542	GRIFFITH	ALEX	Parole Granted	05/15/2025			To his ICE detainer. Should Mr. Griffith be released from his ICE detainer, his parole release is to a plan approved by Adult Services.			
145274	31938	HAIDER	ROBERT	Parole Granted	04/21/2025			To his approved plan in Bismarck, ND.			
168407	38725	HARLAN	HAROLD	Parole Granted	12/04/2025			To Centre Mandan.			
230176	80318	HATCH	CASSIE	Parole Granted	03/31/2025			To the Bismarck Transition Center.			
240284	73518	HELMILA	DEAN	Parole Granted	02/14/2025			To the Bismarck Transition Center.			
273370	80237	HENRY	MICHAEL	Parole Granted	01/16/2025			To his Burleigh County detainer. Should Mr. Henry be released from his Burleigh County detainer, his parole release is to a plan approved by Adult Service.			
258456	61119	HOOGE	HENRY	Parole Granted	03/13/2025			To his Federal detainer. Should Mr. Hooge be released from his Federal detainer, his parole release is to a plan approved by Adult Services, provided he has successfully completed all recommended programming and he has no further 200E or 300 reports from the date of this parole order.			
110713	17409	JOHNSON	AARON	Parole Granted	06/09/2025			To a plan approved by Adult Services.			

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247714	80502	JOHNSON	KELSEY	Parole Granted	04/02/2025			To her approved plan with her mother in Upham, ND.			
194709	45693	JOHNSON	STEVEN	Parole Granted	01/31/2025			To the Bismarck Transition Center.			
172602	78792	KASPRICK	JONATHAN	Parole Granted	02/18/2025			To a plan approved by Adult Services.			
212370	48826	KITTLESON	SHANE	Parole Granted	02/25/2025			To his approved plan with his parents in Max, ND.			
155387	68037	KORB	KYLE	Parole Granted	01/24/2025			To the Bismarck Transition Center.			
265992	80799	LEUWER	VINCENT	Parole Granted	12/30/2025			To Centre Fargo.			
208002	80239	LOPEZ	ORASIO	Parole Granted	04/10/2025			To Centre Fargo.			
264208	59377	LORD BLEGEN	RICO	Parole Granted	02/13/2025			To his Minnesota detainer. Should Mr. Lord Blegen be released from his Minnesota detainer, his parole release is to a plan approved by Adult Services.			
151754	38596	LORDSON	ANTHONY	Parole Granted	04/04/2025			To Centre Fargo.			
289655	80827	LOUDEN	GINA	Parole Granted	03/17/2025			To her approved plan with her father in Enderlin, ND.			
285353	78746	MALLARD	RICHARD	Parole Granted	05/06/2025			To Michigan, if accepted for interstate compact supervision. If Mr. Mallard is denied interstate compact supervision his parole release is to a plan approved by Adult Services.			
193173	69837	MARCELLAIS	LANDON	Parole Granted	03/25/2025			To a plan approved by Adult Services.			
246452	79517	MESA	SAMUEL	Parole Granted	10/07/2025			To the Bismarck Transition Center.			
193174	79392	MEYER	JUSTIN	Parole Granted	02/21/2025			To Centre Fargo.			
95676	16481	MOORE	JONATHON	Parole Granted	03/18/2025			To Centre Fargo.			
82001	19512	MULSKE	DANIEL	Parole Granted	03/27/2025			To Centre Mandan.			

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236095	53967	NETTERVILLE	DEXTER	Parole Granted	10/16/2025			To Centre Mandan, provided he has no further 200E or 300 reports from the date of this parole order. Mr. Netterville shall enroll in an alcohol monitoring program that is established by his parole officer and remain in the program for a minimum of 120 days when he is released to a community residence.			
256555	67830	NORRIS	JENIVA	Parole Granted	01/24/2025			To the Bismarck Transition Center.			
235291	63721	OGDEN	SADDERA	Parole Granted	02/19/2025			To her approved plan with her mother in Burlington, ND.			
144769	46751	PAINTE	MISTY	Parole Granted	02/21/2025			To Centre Mandan.			
237347	70959	PARISIEN	AUSTIN	Parole Granted	04/10/2025			To Centre Fargo.			
282229	79064	PATRICK	TRAVIS	Parole Granted	02/07/2025			To Centre Fargo.			
187889	71619	PEACH	DAVID	Parole Granted	03/03/2025			To his approved plan with his mother in Belcourt, ND.			
284833	79179	PLATT	CHRISTOPHER	Parole Granted	02/10/2025			To the Bismarck Transition Center.			
218526	49723	PLENTYCHIEF	ROBERTA	Parole Granted	04/16/2025			To Nevada, if accepted for interstate compact supervision. If Ms. Plentychief is denied interstate compact supervision her parole release is to a plan approved by Adult Services.			
270435	80572	POITRA	BRADY	Parole Granted	04/10/2025			To his warrants. Should Mr. Poitra resolve his warrants his parole release is to a plan approved by Adult Services.			
258733	80139	PRYZANT	DAVID	Parole Granted	03/06/2025			To Centre Fargo. Mr. Pryzant shall enroll in a drug monitoring program that is established by his parole officer and remain in the program for a minimum of 90 days when he is released to a community residence.			

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150525	80939	REITEN	STACEY	Parole Granted	02/05/2025			To her approved plan in McVille, ND. Ms. Reiter shall enroll in an alcohol monitoring program that is established by her parole officer and remain in the program for a minimum of 90 days when she is released to a community residence.			
194540	80801	RODRIGUEZ	BENNEY	Parole Granted	04/24/2025			To Centre Fargo.			
267392	59747	ROSS	DAJOHNNIUS	Parole Granted	04/03/2025			To Centre Fargo.			
108100	32205	RUNCORN	BRYAN	Parole Granted	02/10/2025			To Centre Mandan.			
171191	42074	SALVESON	WAYNE	Parole Granted	02/24/2025			To Centre Mandan.			
275112	70001	SANDOVAL	EDWARD	Parole Granted	06/17/2025			To the Bismarck Transition Center.			
194436	65363	SAPA	MICHAEL	Parole Granted	01/15/2026			To a plan approved by Adult Services. Mr. Sapa shall enroll in an alcohol and drug monitoring program that is established by his parole officer and remain in the program for a minimum of 90 days when he is released to a community residence.			
236336	78047	SATTERFIELD	LOUIS	Parole Granted	07/29/2025			To Centre Mandan.			
194585	40727	SAXON	SHANE	Parole Granted	03/06/2025			To Centre Grand Forks.			
242501	78752	SCHANER	KAYLENE	Parole Granted	03/19/2025			To Centre Fargo. Ms. Schaner shall enroll in a drug monitoring program that is established by her parole officer and remain in the program for a minimum of 90 days when she is released to a community residence.			
280493	72877	SCIGLIANO	LEVI	Parole Granted	05/12/2026			To his approved plan with his father in Bisbee, ND.			
144334	43630	SHEEHAN	DUSTIN	Parole Granted	01/16/2025			To his Federal detainer. Should Mr. Sheehan be released from his Federal detainer, his parole release is to a plan approved by Adult Services.			
223480	41610	SKORICK	ERIC	Parole Granted	02/27/2025			To Centre Fargo, where he must remain for a minimum of 180 days.			

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276834	75038	SMITH	MICHELLE	Parole Granted	02/05/2025			To Centre Fargo.			
258322	80378	SMITH	TIMOTHY	Parole Granted	03/24/2025			To his approved plan with his brother in Rugby, ND.			
266374	80402	SMITHSON	JILL	Parole Granted	02/19/2025			To Centre Fargo.			
238697	47131	STARR	KIANA	Parole Granted	02/19/2025			To the Bismarck Transition Center. Ms. Starr shall enroll in a drug monitoring program that is established by her parole officer and remain in the program for a minimum of 90 days when she is released to a community residence.			
261530	62046	STEERMAN	LEVI	Parole Granted	04/07/2025			To his approved plan with his mother in New England, ND. Mr. Steerman shall enroll in a drug monitoring program that is established by his parole officer and remain in the program for a minimum of 90 days when he is released to a community residence.			
103104	18239	STEGMAN	GLEN	Parole Granted	02/21/2025			To Centre Grand Forks. Mr. Stegman shall enroll in a drug monitoring program that is established by his parole officer and remain in the program for a minimum of 90 days when he is released to a community residence.			
213048	79228	THOMAS	COTY	Parole Granted	03/10/2025			To his approved plan with his parents in Rolette, ND.			
258024	78877	TRUJILLO	KRISTIN	Parole Granted	02/24/2025			To her approved plan with her husband in Bismarck, ND. Ms. Trujillo shall enroll in an alcohol monitoring program that is established by her parole officer and remain in the program for a minimum of 90 days when she is released to a community residence.			
269025	80359	TURNER	DUSTIN	Parole Granted	02/28/2025			To Centre Fargo.			
280507	71638	TURNER	SEAN	Parole Granted	11/18/2025			To Centre Fargo.			
219164	70107	VARGAS	MARIO	Parole Granted	03/20/2025			To Centre Fargo.			

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191792	47819	VONDAL	JARED	Parole Granted	03/11/2025			To a plan approved by Adult Services.			
273172	76798	WARREN	MARK	Parole Granted	04/01/2025			To the Bismarck Transition Center.			
285356	78846	WASHINGTON	JAMES	Parole Granted	06/10/2025			To Michigan, if accepted for interstate compact supervision. If Mr. Washington is denied interstate compact supervision his parole release is to a plan approved by Adult Services.			
250998	80583	WELLS	HANNAH	Parole Granted	04/16/2025			To her approved plan with her grandfather in New Town, ND. Ms. Wells shall enroll in a drug monitoring program that is established by her parole officer and remain in the program for a minimum of 90 days when she is released to a community residence.			
142945	50532	WETTELS	DUSTIN	Parole Granted	02/24/2025			To his approved plan in Center, ND.			
281779	80943	WHALEN	ANGELA	Parole Granted	04/09/2025			To the Bismarck Transition Center. Ms. Whalen shall enroll in an alcohol and drug monitoring program that is established by her parole officer and remain in the program for a minimum of 90 days when she is released to a community residence.			
240294	80267	WILLERT	PHILIP	Parole Granted	02/27/2025			To Centre Grand Forks.			
283159	80600	WOMACK	MARCELLOUS	Parole Granted	03/21/2025			To Centre Fargo.			
282214	73880	WYNN	KAYALYN	Parole Granted	03/25/2025			To a plan approved by Adult Services.			
123978	37698	ZEUTZIUS	ROBERT	Parole Granted	06/17/2025			To Centre Fargo, where he must remain for the duration of his parole.			
165404	30646	AMYOTTE	JERRY	Parole Rescinded				Mr. Amyotte shall serve the balance of his sentence for this incarceration without the benefit of any further Parole Board consideration.		Y	
217134	44364	EMMONS	ALEXANDER	Parole Rescinded						N	

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209954	63397	HUGHES	HARRY	Parole Rescinded				Mr. Hughes shall serve the balance of his sentence for this incarceration without the benefit of any further Parole Board consideration. However, Mr. Hughes may reapply for Parole Board consideration provided he has successfully completed conflict resolution programming and he has no further 200E or 300 reports from the date of this parole order.		Y	
255917	70878	MARTIN	BRIAN	Parole Rescinded				Mr. Martin shall serve the balance of his sentence for this incarceration without the benefit of any further Parole Board consideration.		Y	
129950	79480	ST CLAIR	DONALD	Parole Rescinded				Mr. St Clair shall serve the balance of his sentence for this incarceration without the benefit of any further Parole Board consideration.		Y	
252385	58559	ALLEY	KARIN	Parole Revoked				Ms. Alley shall serve the balance of her sentence for this incarceration without the benefit of any further Parole Board consideration.		Y	09/03/2024
212564	45197	BARSE	ANTHONY	Parole Revoked				Mr. Barse shall serve the balance of his sentence for this incarceration without the benefit of any further Parole Board consideration. However, Mr. Barse may reapply for Parole Board consideration provided he is found not guilty of the Robbery and Reckless Endangerment charges or any lesser offenses.		Y	09/01/2024
150609	24496	BOOTH	MELISSA	Parole Revoked				Ms. Booth shall serve the balance of her sentence for this incarceration without the benefit of any further Parole Board consideration. However, Ms. Booth may reapply for Parole Board consideration provided she has successfully completed all recommended programming, but no sooner than 18 months after she is in the physical custody of the DOCR.		Y	12/17/2024

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134128	22146	HAASE	ANTHONY	Parole Revoked				Mr. Haase shall serve the balance of his sentence for this incarceration without the benefit of any further Parole Board consideration.		Y	12/08/2024
238623	48843	HURT	BRANDEN	Parole Revoked				Mr. Hurt shall serve the balance of his sentence for this incarceration without the benefit of any further Parole Board consideration.		Y	09/21/2024
268040	70052	LOPEZ	STEPHANIE	Parole Revoked				Ms. Lopez shall serve the balance of her sentence for this incarceration without the benefit of any further Parole Board consideration.		Y	11/03/2023
177307	51400	MARTELL	JARRED	Parole Revoked				Mr. Martell shall serve the balance of his sentence for this incarceration without the benefit of any further Parole Board consideration.		Y	10/01/2024
244071	74378	PELTIER	DERICK	Parole Revoked				Mr. Peltier shall serve the balance of his sentence for this incarceration without the benefit of any further Parole Board consideration.		Y	10/09/2024
241331	54282	SMITH NERLIEN	TATE	Parole Revoked				Mr. Smith Nerlien shall serve the balance of his sentence for this incarceration without the benefit of any further Parole Board consideration.		Y	10/29/2024
217259	79227	SUNDBY	CODY	Parole Revoked				Mr. Sundby shall serve the balance of his sentence for this incarceration without the benefit of any further Parole Board consideration.		Y	12/27/2024
245004	51296	WELLS	DELRAY	Parole Revoked				Mr. Wells shall serve the balance of his sentence for this incarceration without the benefit of any further Parole Board consideration.		Y	10/31/2024
148021	25296	ADAMS	CHASTA				12/2025				
282152	81109	ALI	SAID				09/2026				
200817	43755	BAKKE	SCOTT				06/2027				
172890	43984	BATTLE	MARY				07/2027				
162962	36405	BEARKING	AMY				03/2026				

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265139	71318	COLLINS	ALFREDO				09/2026				
240034	81071	CROWLEY	JOSHUA				02/2029	Initial Review Reassessment: 07/2026			
283460	80819	ERICKSON	TEANNA				05/2026				
126343	67817	FLYNN	EVERETT				11/2028				
223251	48630	FREDERICK	DEMORIS				02/2027				
255853	60081	HARSTAD	MACKENZIE				01/2026				
51507	81143	HENDERSON	DEBORA				01/2026				
201582	60276	HERLIKOFER	MICHAEL				06/2026				
175062	44348	JOHNSON	CHRISTOPHER				06/2028				
245865	81072	KASTROW	HARLAN				10/2029	Initial Review Reassessment: 10/2026			
208574	69998	KNIGHT	JEREMY				02/2028				
285460	80758	LEVELL	JASON				04/2026				
275428	80785	LEWELLYN	DAEDYN				09/2031	Initial Review Reassessment: 09/2028			
54463	60433	LONGIE	PHILBERT				06/2026				
258402	56132	MARTINEZ	PATRICK				08/2032				
141510	42481	NOACK	IAN				12/2026				
52304	25081	REITAN	EDWARD				01/2035	Initial Review Reassessment: 01/2030			
266432	72518	SALOU	IBRAHIM				01/2029				
185159	46863	SEMINGSON	BRYAN				06/2026				
127730	39291	SILVA	OLE				03/2042				
261314	63339	SLATER	PEYTON				11/2027				

PAROLE BOARD MEETING: **01/07/2025 and 01/08/2025** –Leslie Bakken Oliver, Rachel Bruner, and Jennifer Thompson *This is a summary of the Parole Board Meeting; please submit requests for additional information to: shall@nd.gov	
01/07/2025	**North Dakota Parole Board**
Call to Order; Reading of the Open Meeting Statement	The meeting of the North Dakota Parole Board was called to order by JT. In attendance were: Leslie Bakken Oliver (LB), Rachel Bruner (RB), Jennifer Thompson (JT), Steve Hall, Adam Anderson, Carisa Upton, and Jessica McSparron-Bien
Overview of Agenda	
Changes/Updates to parole releases during the past month	
Initial Review Docket	CHASTA ADAMS, SAID ALI, SCOTT BAKKE, MARY BATTLE, AMY BEARKING, ALFREDO COLLINS, JOSHUA CROWLEY, TEANNA ERICKSON, EVERETT FLYNN, DEMORIS FREDERICK, MACKENZIE HARSTAD, DEBORA HENDERSON, MICHAEL HERLIKOFER, CHRISTOPHER JOHNSON, HARLAN KASTROW, JEREMY KNIGHT, JASON LEVELL, DAEDYN LEWELLYN, PHILBERT LONGIE, PATRICK MARTINEZ, IAN NOACK, EDWARD REITAN, IBRAHIM SALOU, BRYAN SEMINGSON, OLE SILVA, and PEYTON SLATER
Motion to Accept Initial Docket	Motion by RB to accept the Initial Review Docket as presented; Seconded by JT, no further discussion; Roll CALL: RB yes, JT yes, LB yes; Motion Carried.
Violator Docket	KARIN ALLEY, JERRY AMYOTTE, ANTHONY BARSE, MELISSA BOOTH, ALEXANDER EMMONS, ANTHONY HAASE, HARRY HUGHES, BRANDEN HURT, STEPHANIE LOPEZ, JARRED MARTELL, BRIAN MARTIN, DERICK PELTIER, TATE SMITH NERLIEN, DONALD ST CLAIR, CODY SUNDBY, KYLE TISCHLER, DELRAY WELLS, and JEFFERY WORLEY
	Discussion ALEXANDER EMMONS
	HARRY HUGHES add and he has no further 200E or 300 reports from the date of this parole order.
	JARRED MARTELL add back date to 10/01/2024
Motion to Accept Violator Docket	Motion by RB to accept the Violator Docket as presented with the noted changes; Seconded by JT, no further discussion; Roll CALL: RB yes, JT yes, LB yes; Motion Carried.
Victim Interview Executive Session	The next item on the agenda is for the Parole Board to discuss whether to grant a parole with a victim. This discussion involves information that could lead to harassment of the victim, so it is confidential under Article 1, Section 25 of the North Dakota Constitution, and we will move into executive session now. Executive Session began at: 3:16 pm Executive Session was adjourned at: 3:27 pm In attendance: Leslie Bakken Oliver (LB), Rachel Bruner (RB), Jennifer Thompson (JT), Steve Hall, Adam Anderson, Carisa Upton, and Jessica McSparron-Bien

Personal Interview	LANCE FOREMAN
Personal Interview Executive Session	The next item on the agenda is for the Parole Board to discuss whether to grant LANCE FOREMAN a parole with him and with his Case Manager: Kim Lunderville and Counselor: Heather Haugen. This discussion will be limited to medical, psychological, and treatment information that is confidential under N.D.C.C. Section 12-47-36 and case history record information that is an exempt record under the same statute. Motion to Enter Executive Session by LB; Seconded by RB; Roll Call: RB yes, JT yes, LB yes; Motion Carried. Executive Session began at: 3:29 pm Executive Session was adjourned at: 3:50 pm In attendance: Leslie Bakken Oliver (LB), Rachel Bruner (RB), Jennifer Thompson (JT), Steve Hall, Adam Anderson, Carisa Upton, and Jessica McSparron-Bien
Motion after Personal Interview	Motion by LB to deny parole and serve the balance. Seriousness of offense. Seconded by RB; no further discussion, Roll Call: RB yes, JT yes, LB yes; Motion Carried.
Personal Interview	MATTHEW WARREN
Personal Interview Executive Session	The next item on the agenda is for the Parole Board to discuss whether to grant MATTHEW WARREN a parole with him and with his Case Manager: Randy McGonigal. This discussion will be limited to medical, psychological, and treatment information that is confidential under N.D.C.C. Section 12-47-36 and case history record information that is an exempt record under the same statute. Motion to Enter Executive Session by RB; Seconded by JT; Roll Call: RB yes, JT yes, RB yes; Motion Carried. Executive Session began at: 4:09 pm Executive Session was adjourned at: 4:15 pm In attendance: Leslie Bakken Oliver (LB), Rachel Bruner (RB), Jennifer Thompson (JT), Steve Hall, Adam Anderson, Carisa Upton, and Jessica McSparron-Bien
Motion after Personal Interview	The Parole Board declined to interview Mr. Warren. Motion by RB to deny and defer to January 2026 institutional behavior. Seconded by JT; no further discussion, Roll Call: RB yes, JT yes, LB; Motion Carried.

Miscellaneous Docket	BRANDON ACOR, YASMANY ACOSTA-ZAMORA, MICHAEL ADAMS, DALLAS ALLERY, CELINDA ALLESSIO, PRESTON ALYEA, CHRISTOPHER ANDERSON, KEVIN AUSTIN, KALEB BAKKEN, KENNETH BEAULIEU, JOHNNIE BELL, MICHAEL BELL, MARIAH BLACK, IVAN BORRERO, SUSAN BOTSTEIN, AARON BRUCE, JOSHUA BUCHANAN, JOSEPH BULLINS, TRAVIS BURLINGAME, TIMOTHY BUSCHE, DEANGELO COLLINS, RICHARD COLVIN, CORY CONMY, CARLVENSKY CONSTANT, LOUIS COTTONWOOD, GAGE COX, CHARLES CUTLER, KUSH DAVE, CLARK DAVIS, BERNARD DECOTEAU, NICOLE DEICHERT, KEISHA DEMERY, JAMES DENISON, DAVID DIAZ, JOHN DICKIE, ANGELA DOERING, SKYLEE DRIVER, CHANTELLE DUBOIS, RAE DUNHAM, TRINITY EAGLE, KENNETH EAGLEMAN, DONOVAN EASTMAN, JACOB EBERTOWSKI, ZACHERY ELLZEY, ELMI ELMI, ALEXANDER EMMONS, BRANDON EPPLER, MARY FEDICK, ROBERT FERGUSON, CLAYTON FLOCK, TORREY FLYING HORSE, AMANDA FOREMAN, JOSHUA FRANK, VICKI FREDERICK, CHRISTOPHER GIBBON, EVERETT GILBERT, DANIEL GREEN, CHRISTOPHER GREENIZER, MATTHEW GREGER, NICKOLAS GREYWATER, ALEX GRIFFITH, ROBERT HAIDER, JADEN HANDELAND,

	HAROLD HARLAN, CASSIE HATCH, DEAN HELMILA, JAYDEN HENRICKSON, MICHAEL HENRY, HENRY HOOGE, DEMARIUS HYSHAW, AARON JOHNSON, KELSEY JOHNSON, STEVEN JOHNSON, JONATHAN KASPRICK, SHANE KITTLESON, KYLE KORB, SHAQUILLE LATTERGRASS, ALEX LAWRENCE, CASEY LEMON, VINCENT LEUWER, KRYSTAL LINDER, ORASIO LOPEZ, RICO LORD BLEGEN, ANTHONY LORDSON, GINA LOUDEN, RICHARD MALLARD, LANDON MARCELLAIS, ANDREW MATTSON, JUAN MEDINA, SAMUEL MESA, JUSTIN MEYER, JONATHON MOORE, DANIEL MULSKE, DEXTER NETTERVILLE, JENIVA NORRIS, SADDERA OGDEN, TIMOTHY OLSON, MISTY PAINTE, AUSTIN PARISIEN, TRAVIS PATRICK, DAVID PEACH, ALBERTO PELAYO RODRIGUEZ, CHRISTOPHER PLATT, LANNELLE PLENTYCHIEF, ROBERTA PLENTYCHIEF, BRADY POITRA, DAVID PRYZANT, KYLE QUIDO, TRISTON RADTKE, STACEY REITEN, BENNEY RODRIGUEZ, DAJOHNNIUS ROSS, BRYAN RUNCORN, ERIKA SALDANA, WAYNE SALVESON, EDWARD SANDOVAL, LOUIS SATTERFIELD, SHANE SAXON, KAYLENE SCHANER, SPENCER SCHMUHL, LEVI SCIGLIANO, DUSTIN SHEEHAN, ERIC SKORICK, MICHELLE SMITH, TIMOTHY SMITH, JILL SMITHSON, EMERSON ST JOHN, KIANA STARR, CURTIS STEELE, LEVI STEERMAN, GLEN STEGMAN, LONIEL STERLING JONES, DUSTIN STRENKE, LAMAR TAYLAY, COTY THOMAS, KRISTIN TRUJILLO, DUSTIN TURNER, SEAN TURNER, MARIO VARGAS, JARED VONDAL, MARK WARREN, JAMES WASHINGTON, DONDARRO WATTS, HANNAH WELLS, DUSTIN WETTELS, ANGELA WHALEN, PHILIP WILLERT, MARCELLOUS WOMACK, CHAD WOUNDED FACE, KAYALYN WYNN, NICHOLAS YOUNGBIRD, and ROBERT ZEUTZIUS
	KEVIN AUSTIN deny and serve the balance. Seriousness of offense.
	Discussion KENNETH BEAULIEU
	Discussion JOSHUA BUCHANAN
	TRAVIS BURLINGAME parole 05/06/2025
	TIMOTHY BUSCHE parole 05/06/2025
	CORY CONMY parole 03/18/2025
	KENNETH EAGLEMAN 04/17/2025
	Discussion BRANDON EPPLER
	ROBERT FERGUSON 12/16/2025
	TORREY FLYING HORSE 04/15/2026
	Discussion EVERETT GILBERT
	CHRISTOPHER GREENIZER provided he has successfully completed all recommended programming. Condition 20 Mr. Greenizer shall enroll in an alcohol monitoring program that is established by his parole officer and remain in the program for a minimum of 90 days when he is released to a community residence. Condition 21 Mr. Greenizer is prohibited from residing in his mother's residence.
	Discussion MATTHEW GREGER
	Discussion ROBERT HAIDER
	HENRY HOOGE provided he has successfully completed all recommended programming and he has no further 200E or 300 reports from the date of this parole order.
	DEXTER NETTERVILLE provided he has no further 200E or 300 reports from the date of this parole order. Condition 20 Mr. Netterville shall enroll in an alcohol monitoring program that is established by his parole officer and remain in the

	program for a minimum of 120 days when he is released to a community residence.
	Discussion ROBERTA PLENTYCHIEF
	DAVID PRYZANT condition 20 Mr. Pryzant shall enroll in a drug monitoring program that is established by his parole officer and remain in the program for a minimum of 90 days when he is released to a community residence.
	DAJOHNNIUS ROSS condition 16
	KAYLENE SCHANER condition 20 Ms. Schaner shall enroll in a drug monitoring program that is established by her parole officer and remain in the program for a minimum of 90 days when she is released to a community residence.
	LEVI SCIGLIANO parole 05/12/2026
	ERIC SKORICK condition 16
	KIANA STARR condition 20 Ms. Starr shall enroll in a drug monitoring program that is established by her parole officer and remain in the program for a minimum of 90 days when she is released to a community residence.
	LEVI STEERMAN condition 20 Mr. Steerman shall enroll in a drug monitoring program that is established by his parole officer and remain in the program for a minimum of 90 days when he is released to a community residence.
	GLEN STEGMAN condition 20 Mr. Stegman shall enroll in a drug monitoring program that is established by his parole officer and remain in the program for a minimum of 90 days when he is released to a community residence.
	KRISTIN TRUJILLO condition 20 Ms. Trujillo shall enroll in an alcohol monitoring program that is established by her parole officer and remain in the program for a minimum of 90 days when she is released to a community residence.
	HANNAH WELLS condition 20 Ms. Wells shall enroll in a drug monitoring program that is established by her parole officer and remain in the program for a minimum of 90 days when she is released to a community residence.
	ANGELA WHALEN condition 20 Ms. Whalen shall enroll in an alcohol and drug monitoring program that is established by her parole officer and remain in the program for a minimum of 90 days when she is released to a community residence.
Motion to Accept Miscellaneous Docket	Motion by RB to accept the Miscellaneous Docket as presented with the noted changes; Seconded by JT, no further discussion; Roll CALL: RB yes, JT yes, LB yes; Motion Carried
Break	
01/08/2025	
	Board Member RB recused themselves from the following action.
Personal Interview	JOSHUA EDDY
Personal Interview Executive Session	The next item on the agenda is for the Parole Board to discuss whether to grant JOSHUA EDDY a parole with him and with his Case Manager: Tavis Nicholson. This discussion will be limited to medical, psychological, and treatment information that is confidential under N.D.C.C. Section 12-47-36 and case history record information that is an exempt record under the same statute. Motion to Enter Executive Session by JT; Seconded by LB; Roll Call: JT yes, LB yes; Motion Carried. Executive Session began at: 8:58 am Executive Session was adjourned at: 9:16 am

	In attendance: Leslie Bakken Oliver (LB), Jennifer Thompson (JT), Steve Hall, Adam Anderson, Carisa Upton, and Jessica McSparron-Bien
Motion after Personal Interview	Motion by JT to grant parole 05/07/2026 To Connecticut, if accepted for interstate compact supervision. If Mr. Eddy is denied interstate compact supervision his parole release is to a plan approved by Adult Services.; PAROLE CONDITIONS – standard conditions of parole will apply along with special conditions 16, 18; the sex offender addendum will include core and all additional conditions. Seconded by LB; no further discussion, Roll Call: JT yes, LB yes,; Motion Carried.
Personal Interview	DANIEL GERTCHER
Personal Interview Executive Session	The next item on the agenda is for the Parole Board to discuss whether to grant DANIEL GERTCHER a parole with him and with his Case Manager: Tavis Nicholson. This discussion will be limited to medical, psychological, and treatment information that is confidential under N.D.C.C. Section 12-47-36 and case history record information that is an exempt record under the same statute. Motion to Enter Executive Session by LB; Seconded by JT; Roll Call: RB yes, JT yes, LB yes; Motion Carried. Executive Session began at: 9:53 am Executive Session was adjourned at: 10:06 am In attendance: Leslie Bakken Oliver (LB), Rachel Bruner (RB), Jennifer Thompson (JT), Steve Hall, Adam Anderson, Carisa Upton, and Jessica McSparron-Bien.
Motion after Personal Interview	Motion by LB to grant parole 03/17/2026 To Centre Mandan.; PAROLE CONDITIONS – standard conditions of parole will apply along with special conditions 16, 18; the sex offender addendum will include core and all additional conditions. Seconded by RB; no further discussion, Roll Call: RB yes, JT yes, LB yes; Motion Carried.
Personal Interview	MICHAEL SAPA
Personal Interview Executive Session	The next item on the agenda is for the Parole Board to discuss whether to grant MICHAEL SAPA a parole with him and with his case manager, Kyle Wheeler. This discussion will be limited to medical, psychological, and treatment information that is confidential under N.D.C.C. Section 12-47-36 and case history record information that is an exempt record under the same statute. Motion to Enter Executive Session by RB; Seconded by JT; Roll Call: RB yes, JT yes, RB yes; Motion Carried. Executive Session began at: 10:26 am Executive Session was adjourned at: 10:37 am In attendance: Leslie Bakken Oliver (LB), Rachel Bruner (RB), Jennifer Thompson (JT), Steve Hall, Adam Anderson, Carisa Upton, and Jessica McSparron-Bien
Motion after Personal Interview	Motion by RB to grant parole 01/15/2026 To a plan approved by Adult Services. Mr. Sapa shall enroll in an alcohol and drug monitoring program that is established by his parole officer and remain in the program for a minimum of 90 days when he is released to a community residence. PAROLE CONDITIONS – standard conditions of parole will apply along with special conditions 16, 18, 20; the sex offender addendum will include core and all additional conditions. Seconded by JT; no further discussion, Roll Call: RB yes, JT yes, LB yes; Motion Carried.
Motion to Adjourn	Motion by RB, Consent.

March 2025 Parole Board - Ms. Leslie Bakken Oliver, Ms. Rachel Bruner, and Mr. Keith Witt

SID	DOC NO	LAST NAME	FIRST NAME	ACTION TAKEN	PAROLE START DATE	PAR MOD EXP DATE	DEFERRED TO	COMMENTS	INTERMEDIATE MEASURE APP	SERVE THE BAL	TIME ADDED BACK
236612	53620	GOODMANSON	TRISHA	Intermediate Measure					Y		
138813	22691	KRATZ	AARON	Intermediate Measure					Y		
256065	74237	MAES	GABRIEL	Intermediate Measure					Y		
255438	64619	NELEPOVITZ	TROY	Intermediate Measure					Y		
273089	63217	ANDERSON	TREVON	Parole Denied						Y	
150386	34838	BERCIER	KELLY	Parole Denied				However, Mr. Bercier may reapply for Parole Board consideration provided he has successfully completed all recommended programming.		Y	
202460	38376	BORNER	CODY	Parole Denied						Y	
281956	80957	BROWNBEAR	HAROLD	Parole Denied						Y	
251982	54542	BUTLER	SHEYANNE	Parole Denied						Y	
138869	22748	CHRISTMANN	JUSTIN	Parole Denied						Y	
284595	80998	CRISSLER	WYATT	Parole Denied			08/2025			N	
289118	81521	CURTIS	ALBRINA	Parole Denied						Y	
288240	80902	DAVIS	ANTOINE	Parole Denied				However, Mr. Davis may reapply for Parole Board consideration provided he has successfully completed all recommended programming.		Y	
244786	71046	DAVIS	SARAH	Parole Denied			09/2025			N	
287879	81217	ERICKSON	ADAM	Parole Denied						Y	
211444	81465	FEIST	JOSHUA	Parole Denied						Y	
168722	80677	LAWLER	JESSICA	Parole Denied			08/2025			N	

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165100	32558	LITTLEWIND	RAYBERT	Parole Denied						Y	
133312	53635	LYONS	GEORGE	Parole Denied			09/2030	Mr. Lyons parole is rescinded prior to discharge from a correctional facility of another state per NDCC 12-59-12.		N	
243571	81057	MCCARTY	BRIANA	Parole Denied			07/2025			N	
253517	59658	MOEN	BRONSON	Parole Denied						Y	
202538	41931	PINKNEY	THOMAS	Parole Denied			03/2026			N	
214479	39918	PROSSER	ERIC	Parole Denied						Y	
280123	72160	ROSS	LEROY	Parole Denied				However, Mr. Ross may reapply for Parole Board consideration provided he has successfully completed all recommended programming.		Y	
252660	66197	SANCHEZ	NICHOLAS	Parole Denied						Y	
280487	80544	THORNTON	JACOB	Parole Denied						Y	
195049	46197	AIKEN	NATASHA	Parole Granted	04/09/2025			To Centre Fargo.			
153592	52086	ALTMAN	TY	Parole Granted	03/13/2025			To his Minnesota detainer. Should Mr. Altman be released from his Minnesota detainer, his parole release is to a plan approved by Adult Services.			
243116	56455	AZURE	SHANELL	Parole Granted	03/26/2025			To Centre Fargo.			
274681	76879	BAKER	FRANKLIN	Parole Granted	04/01/2025			To Centre Fargo.			
112311	62440	BARTELL	MATTHEW	Parole Granted	08/26/2025			To Centre Fargo.			
169456	36579	BEANE	DONALD	Parole Granted	06/10/2025			To his approved plan with his father in Watford City, ND.			
270177	64517	BELYEU	MARK	Parole Granted	09/11/2025			To his warrants. Should Mr. Belyeu resolve his warrants his parole release is to a plan approved by Adult Services.			

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256720	81228	BROWN	ARRAN	Parole Granted	04/17/2025			To Centre Fargo. Mr. Brown shall enroll in a drug monitoring program that is established by his parole officer and remain in the program for a minimum of 90 days when he is released to a community residence.			
274645	80264	BRUTON	JOSHUA	Parole Granted	06/03/2025			To Georgia, if accepted for interstate compact supervision. If Mr. Bruton is denied interstate compact supervision his parole release is to a plan approved by Adult Services.			
155116	70960	BUTH	LAWRENCE	Parole Granted	11/04/2025			To Centre Fargo, where he must remain for a minimum of 90 days. Mr. Buth shall not enter Grand Forks County, ND without prior approval from his parole officer.			
277681	73737	BUTLER	LARRY	Parole Granted	09/02/2025			To a plan approved by Adult Services.			
257050	66481	CANTLEBERRY	LACEY	Parole Granted	12/03/2025			To her approved plan with her mother in Harvey, ND. Ms. Cantleberry shall enroll in an alcohol and drug monitoring program that is established by her parole officer and remain in the program for a minimum of 120 days when she is released to a community residence.			
266230	63197	CHAMPION	KHRISTOPHER	Parole Granted	05/29/2025			To the Bismarck Transition Center.			
259958	73459	CLOWN	AARON	Parole Granted	10/02/2025			To Centre Mandan.			
232429	44412	COLLINS	ERIC	Parole Granted	08/04/2026			To a plan approved by Adult Services. Mr. Collins shall not enter Stark County, ND without prior approval of his parole officer.			
276599	72758	COUNCIL	JARON	Parole Granted	04/15/2025			To Centre Fargo.			

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214627	44802	CRANLEY	JAMES	Parole Granted	10/07/2025			To his approved plan with his aunt in New Town, ND. Mr. Cranley shall enroll in a drug monitoring program that is established by his parole officer and remain in the program for the duration of his parole when he is released to a community residence.			
205367	52048	CRAWFORD	TYREL	Parole Granted	03/24/2025			To his approved plan with his mother in Harvey, ND.			
268092	78761	DAGER	ELISSE	Parole Granted	04/10/2025			To her warrants. Should Ms. Dager resolve her warrants her parole release is to a plan approved by Adult Services.			
235834	68637	DECK	ERIC	Parole Granted	04/15/2025			To a plan approved by Adult Services.			
189464	36769	DEITER	DANA	Parole Granted	05/06/2025			To Minnesota, if accepted for interstate compact supervision. If Mr. Deiter is denied interstate compact supervision his parole release is to a plan approved by Adult Services.			
279183	73398	DERONJIC	OMAR	Parole Granted	05/15/2025			To his ICE detainer. Should Mr. Deronjic be released from his ICE detainer, his parole release is to a plan approved by Adult Services.			
130701	23731	DOCKTER	RAMSEY	Parole Granted	04/07/2025			To his approved plan with his fiance in Devils Lake, ND. Mr. Dockter shall enroll in an alcohol and drug monitoring program that is established by his parole officer and remain in the program for the duration of his parole when he is released to a community residence.			
207312	48945	ELLETSON	MACKINZIE	Parole Granted	04/21/2025			To his approved plan with his parents in Williston, ND.			
269116	79063	ENTENMANN	CHANCE	Parole Granted	12/16/2025			To Center Fargo.			
282034	79977	ESKRIDGE	ANTONIO	Parole Granted	10/28/2025			To Centre Fargo, where he must remain for a minimum of 90 days.			
205858	63617	FAGERBAKKE	DEREK	Parole Granted	07/01/2025			To his approved plan in Noonan, ND.			

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285151	79882	FLORES	CIAN	Parole Granted	08/21/2025			To the Bismarck Transition Center.			
204475	81604	FREDERICK	JAMIE	Parole Granted	06/11/2025			To her approved plan with her father in Belcourt, ND.			
156916	25265	GAGNE	SCOTT	Parole Granted	05/20/2025			To the Bismarck Transition Center. Mr. Gagne shall enroll in a drug monitoring program that is established by his parole officer and remain in the program for the duration of his parole when he is released to a community residence.			
255156	59657	GALONEK	BRANDON	Parole Granted	05/19/2026			To a plan approved by Adult Services.			
149145	43544	GARDNER	SAMUEL	Parole Granted	06/26/2025			To Centre Fargo. Mr. Gardner shall enroll in a drug monitoring program that is established by his parole officer and remain in the program for the duration of his parole when he is released to a community residence.			
255375	64658	GARRIGAN	KYLE	Parole Granted	06/10/2025			To Minnesota, if accepted for interstate compact supervision. If Mr. Garrigan is denied interstate compact supervision his parole release is to a plan approved by Adult Services.			
182394	71538	GHOLAR	KELVIN	Parole Granted	03/13/2025			To his Cass County detainer. Should Mr. Gholar be released from his Cass County detainer, his parole release is to approved plan with his friend in West Fargo, ND.			
130855	24915	GOLDSACK	DANIEL	Parole Granted	10/07/2025			To the Bismarck Transition Center.			
286087	81563	GUZMAN	GERARDO	Parole Granted	06/24/2025			To a plan approved by Adult Services.			
237198	70137	HANEY	DEMETRIS	Parole Granted	12/18/2025			To Centre Fargo, provided he has no further 200E or 300 reports from the date of this parole order.			
283495	79206	HENKE	DANIEL	Parole Granted	09/16/2025			To his approved plan with his parents in New Salem, ND.			
266949	71400	HERRERA	ANTHONY	Parole Granted	09/02/2025			To the Lake Region Reentry Center.			

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127466	80438	HOULE	JUSTIN	Parole Granted	06/26/2025			To Centre Mandan.			
151045	56737	HOULE	VERNON	Parole Granted	04/08/2025			To Center Fargo.			
271433	81232	HOWARD	KYLE	Parole Granted	06/12/2025			To his warrants. Should Mr. Houle resolve his warrants his parole release is to the Bismarck Transition Center.			
191374	81218	JAIME	JAIME	Parole Granted	05/22/2025			To Centre Fargo.			
176750	38331	JOHNSON	CHANCE	Parole Granted	07/16/2026			To his approved plan with his mother in Mandaree, ND.			
253150	60680	JORGENSON	BAILEE	Parole Granted	04/17/2025			To a plan approved by Adult Services.			
194014	38124	KILLSCROW	KIRSTEN	Parole Granted	03/24/2025			To the Bismarck Transition Center.			
197196	50371	KUNKEL	DAVID	Parole Granted	12/09/2025			To a plan approved by Adult Services.			
148588	81220	KVASAGER	TODD	Parole Granted	04/15/2025			To his approved plan with his friend in Grand Forks, ND. Mr. Kvasager shall enroll in a drug monitoring program that is established by his parole officer and remain in the program for the duration of his parole when he is released to a community residence.			
132123	19400	LACROIX	WALDERN	Parole Granted	07/01/2025			To the Bismarck Transition Center, where he must remain for a minimum of 180 days. Mr. Lacroix shall enroll in a drug monitoring program that is established by his parole officer and remain in the program for a minimum of 90 days when he is released to a community residence.			
284339	78647	LAFRINIERE	CAMERON	Parole Granted	08/12/2025			To Center Fargo.			

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206849	51114	LASATER	KEITH	Parole Granted	05/27/2025			To a plan approved by Adult Services. Mr. Lasater shall enroll in a drug monitoring program that is established by his parole officer and remain in the program for the duration of his parole when he is released to a community residence.			
246942	53453	LEONARD	QUENTIN	Parole Granted	04/04/2025			To Centre Fargo.			
185979	78424	LIDBERG	JOSHUA	Parole Granted	09/29/2025			To his approved plan in Dickinson, ND.			
147195	54984	LONG	KEVIN	Parole Granted	05/27/2025			To Centre Fargo, where he must remain for the duration of his parole.			
274749	70968	MAKESHIMFIRST	TYLAYNA	Parole Granted	03/26/2025			To Centre Fargo.			
273247	66317	MARTIN	JOSHUA	Parole Granted	07/25/2025			To Centre Fargo.			
219123	62684	MATTHEW	JASON	Parole Granted	04/14/2025			To Centre Fargo.			
128474	33892	MCCLOUD	DOUGLAS	Parole Granted	04/09/2026			To his warrants. Should Mr. McCloud resolve his warrants his parole release is to a plan approved by Adult Services.			
282482	81060	MCCORMICK	JOSEPH	Parole Granted	05/05/2025			To his approved plan with his girlfriend in Fargo, ND.			
248147	78407	MOMMSEN	JOSHUA	Parole Granted	04/15/2025			To Alaska, if accepted for interstate compact supervision. If Mr. Mommsen is denied interstate compact supervision his parole release is to a plan approved by Adult Services.			
284774	78764	MORRIS	MATTHEW	Parole Granted	11/20/2025			To his approved plan with his mother's boyfriend in Grand Forks, ND. Mr. Morris may not enter Nelson County, ND without prior approval from his parole officer or come within 500 feet of the residences where his crimes were committed in Grand Forks County, ND.			

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207921	39996	NORMANDIN	SHAYNNE	Parole Granted	07/10/2025			To his Minnesota detainer. Should Mr. Normandin be released from his Minnesota detainer, his parole release is to a plan approved by Adult Services.			
221695	41508	ORTON	DAMION	Parole Granted	07/01/2025			To Centre Fargo.			
224579	44394	PARRY	BRIAN	Parole Granted	07/03/2025			To the Bismarck Transition Center.			
278625	80107	PATRON	RAFAEL	Parole Granted	04/17/2025			To the Bismarck Transition Center.			
94541	64721	RANISATE	ALANNA	Parole Granted	06/23/2025			To the Bismarck Transition Center.			
188680	37109	RENAULT	ERIC	Parole Granted	04/22/2025			To the Lake Region Reentry Center.			
197535	79883	RODRIGUEZ	ANGELO	Parole Granted	08/05/2025			To Centre Grand Forks, provided he has successfully completed all recommended programming.			
159072	73318	ROYCE	ROBERT	Parole Granted	04/15/2025			To the Bismarck Transition Center.			
157213	26012	SABOT	JOSHUA	Parole Granted	06/03/2025			To a plan approved by Adult Services.			
149282	79954	SCHMALTZ	CHAD	Parole Granted	03/21/2025			To Centre Mandan. Mr. Schmaltz shall enroll in a drug monitoring program that is established by his parole officer and remain in the program for a minimum of 90 days when he is released to a community residence.			
138838	30698	SCHMIDT	JEFFREY	Parole Granted	04/24/2025			To the Bismarck Transition Center.			
140994	37490	SEIDEL	PAMELA	Parole Granted	04/23/2025			To a plan approved by Adult Services. Ms. Seidel shall enroll in an alcohol and drug monitoring program that is established by her parole officer and remain in the program for the duration of her parole when she is released to a community residence.			
160001	80644	SIKES	JEREMY	Parole Granted	10/09/2025			To his approved plan with his brother and sister in law in Williston, ND.			

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286174	81309	SMITH	BLAINE	Parole Granted	03/13/2025			To his Federal detainer. Should Mr. Smith be released from his Federal detainer, his parole release is to a plan approved by Adult Services.			
289072	81466	SPRINGER	DAVID	Parole Granted	06/02/2026			To a plan approved by Adult Services.			
287985	79246	TAYLOR	JONATHAN	Parole Granted	05/05/2025			To his approved plan with his mother in Minot, ND.			
196968	37967	TEUNISSEN	MICHAEL	Parole Granted	08/12/2025			To the Bismarck Transition Center. Mr. Teunissen shall enroll in a drug monitoring program that is established by his parole officer and remain in the program for the duration of his parole when he is released to a community residence.			
257550	55930	UMSTEAD	DONOVAN	Parole Granted	03/28/2025			To a plan approved by Adult Services. Mr. Umstead shall enroll in a drug monitoring program that is established by his parole officer and remain in the program for a minimum of 90 days when he is released to a community residence.			
194904	71539	UTKE	BRANDON	Parole Granted	05/12/2025			To Centre Fargo.			
262227	79180	VAN TASSEL	STEPHAN	Parole Granted	01/13/2026			To his approved plan with his friend in South Heart, ND. Mr. Van Tassel shall enroll in an alcohol and drug monitoring program that is established by his parole officer and remain in the program for the duration of his parole when he is released to a community residence.			
160956	31770	VAULTERS	CRAIG	Parole Granted	06/26/2025			To Centre Fargo. Mr. Vaulters shall enroll in an alcohol monitoring program that is established by his parole officer and remain in the program for a minimum of 90 days when he is released to a community residence.			

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138675	55836	WARREN	CLIFFORD	Parole Granted	03/12/2026			To his Federal detainer. Should Mr. Warren be released from his Federal detainer, his parole release is to a plan approved by Adult Services.			
201264	75817	WHITEEAGLE	JESSE	Parole Granted	04/29/2025			To a plan approved by Adult Services.			
273182	78880	WOMACK	DEVIN	Parole Granted	09/24/2026			To Utah, if accepted for interstate compact supervision. If Mr. Womack is denied interstate compact supervision his parole release is to a plan approved by Adult Services.			
263509	79436	WROLSON	ANGEL	Parole Granted	04/11/2025			To Centre Fargo.			
281405	80038	ABNEY	JADE	Parole Rescinded				Ms. Abney shall serve the balance of her sentence for this incarceration without the benefit of any further Parole Board consideration.		Y	
188568	80086	COTTONWOOD	LOUIS	Parole Rescinded				Mr. Cottonwood shall serve the balance of his sentence for this incarceration without the benefit of any further Parole Board consideration.		Y	
243924	79242	DECOTEAU	SHYANNE	Parole Rescinded				Ms. Decoteau shall serve the balance of her sentence for this incarceration without the benefit of any further Parole Board consideration.		Y	
258359	79950	DRIVER	SKYLEE	Parole Rescinded				Ms. Driver shall serve the balance of her sentence for this incarceration without the benefit of any further Parole Board consideration. However, Ms. Driver may reapply for Parole Board consideration provided she has successfully completed all recommended programming but no earlier than January 2026.		Y	

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238611	74882	DUNN	CODY	Parole Rescinded				Mr. Dunn shall serve the balance of his sentence for this incarceration without the benefit of any further Parole Board consideration. However, Mr. Dunn may reapply for Parole Board consideration provided he has completed all recommended programming, has no further 200E or 300 reports from the date of this parole order but no earlier than August 2025, if he is found not guilty of his pending incident report.		Y	
253411	78926	ERICKSON	GLENDON	Parole Rescinded				Mr. Erickson shall serve the balance of his sentence for this incarceration without the benefit of any further Parole Board consideration. However, Mr. Erickson may reapply for Parole Board consideration provided he has successfully completed all recommended programming and he has no further 200E or 300 reports from the date of this parole order but no earlier than January 2026.		Y	
103403	18339	FEATHER	PAUL	Parole Rescinded				Mr. Feather shall serve the balance of his sentence for this incarceration without the benefit of any further Parole Board consideration. However, Mr. Feather may reapply for Parole Board consideration provided he has successfully completed all recommended programming and he has no further 200E or 300 reports from the date of this parole order but no earlier than September 2025.		Y	
110713	17409	JOHNSON	AARON	Parole Rescinded				Mr. Johnson shall serve the balance of his sentence for this incarceration without the benefit of any further Parole Board consideration.		Y	

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248607	71779	LARSON	MARISSA	Parole Rescinded				Ms. Larson shall serve the balance of her sentence for this incarceration without the benefit of any further Parole Board consideration.		Y	
133312	53635	LYONS	GEORGE	Parole Rescinded			09/2030	Mr. Lyons parole is rescinded prior to discharge from a correctional facility of another state per NDCC 12-59-12.		N	
223480	41610	SKORICK	ERIC	Parole Rescinded				Mr. Skorick shall serve the balance of his sentence for this incarceration without the benefit of any further Parole Board consideration. However, Mr. Skorick may reapply for Parole Board consideration provided he has successfully completed all recommended programming and he has no further 200E or 300 reports from the date of this parole order but no earlier than September 2025.		Y	
283159	80600	WOMACK	MARCELLOUS	Parole Rescinded				Mr. Womack shall serve the balance of his sentence for this incarceration without the benefit of any further Parole Board consideration. However, Mr. Womack may reapply for Parole Board consideration provided he has successfully completed all recommended programming and he has no further 200E or 300 reports from the date of this parole order but no earlier than September 2025.		Y	
265184	68932	BELGARDE	ELIJAH	Parole Revoked				Mr. Belgarde shall serve the balance of his sentence for this incarceration without the benefit of any further Parole Board consideration.		Y	02/12/2025

SID	DOC NO	LAST NAME	FIRST NAME	ACTION TAKEN	PAROLE START DATE	PAR MOD EXP DATE	DEFERRED TO	COMMENTS	INTERMEDIATE MEASURE APP	SERVE THE BAL	TIME ADDED BACK
175443	33704	BOHLMAN	EVAN	Parole Revoked				Mr. Bohlman shall serve the balance of his sentence for this incarceration without the benefit of any further Parole Board consideration.		Y	11/05/2024
274218	73117	EAGLE BOY	BLAINE	Parole Revoked				Mr. Eagle Boy shall serve the balance of his sentence for this incarceration without the benefit of any further Parole Board consideration.		Y	02/21/2025
236903	55784	GALAVIZ	AMOS	Parole Revoked				Mr. Galaviz shall serve the balance of his sentence for this incarceration without the benefit of any further Parole Board consideration.		Y	02/14/2025
135982	25221	LAVALLIE	JEREMIAH	Parole Revoked				Mr. Lavallie shall serve the balance of his sentence for this incarceration without the benefit of any further Parole Board consideration.		Y	10/28/2024
157737	45156	LITTLEDOG	FENTON	Parole Revoked				Mr. Littledog shall serve the balance of his sentence for this incarceration without the benefit of any further Parole Board consideration.		Y	12/27/2024
274510	72118	LYONES	KENDRICK	Parole Revoked				Mr. Lyones shall serve the balance of his sentence for this incarceration without the benefit of any further Parole Board consideration.		Y	02/20/2025
242296	75306	MARTINO	MAX	Parole Revoked				Mr. Martino shall serve the balance of his sentence for this incarceration without the benefit of any further Parole Board consideration.		Y	11/06/2024
215332	45216	OFALLON	DEVIN	Parole Revoked				Mr. OFallon shall serve the balance of his sentence for this incarceration without the benefit of any further Parole Board consideration.		Y	02/04/2025
274646	68479	REITER	DENNIS	Parole Revoked				Mr. Reiter shall serve the balance of his sentence for this incarceration without the benefit of any further Parole Board consideration.		Y	10/03/2024

SID	DOC NO	LAST NAME	FIRST NAME	ACTION TAKEN	PAROLE START DATE	PAR MOD EXP DATE	DEFERRED TO	COMMENTS	INTERMEDIATE MEASURE APP	SERVE THE BAL	TIME ADDED BACK
249999	54762	SAUCEDA	NOEL	Parole Revoked				Mr. Sauceda shall serve the balance of his sentence for this incarceration without the benefit of any further Parole Board consideration.		Y	01/23/2025
279473	72461	TISCHLER	KYLE	Parole Revoked				Mr. Tischler shall serve the balance of his sentence for this incarceration without the benefit of any further Parole Board consideration.		Y	10/21/2024
235703	77684	VARGAS	DANIEL	Parole Revoked				Mr. Vargas shall serve the balance of his sentence for this incarceration without the benefit of any further Parole Board consideration.		Y	11/18/2024
279065	77420	WHITE EAGLE	TAYSHAUN	Parole Revoked				Mr. White Eagle shall serve the balance of his sentence for this incarceration without the benefit of any further Parole Board consideration.		Y	12/11/2024
204143	40359	WORLEY	JEFFERY	Parole Revoked				Mr. Worley shall serve the balance of his sentence for this incarceration without the benefit of any further Parole Board consideration.		Y	01/09/2025
92417	17233	YANEZ	BOBBI JO	Parole Revoked				Ms. Yanez shall serve the balance of her sentence for this incarceration without the benefit of any further Parole Board consideration.		Y	02/11/2025
283621	81668	BITTLESTON	THOMAS				08/2029				
163883	33208	BRENNAN	DANIEL				07/2028				
226354	81715	CHARGING	JASMINE				11/2031	Initial Review Reassessment: 12/2027			
123862	19204	DIETZ	IVAN				04/2026				
278158	74817	DUPAUL	KELLEY				05/2027				
208836	81683	FERMIN	JAMAL				05/2050	Initial Review Reassessment: 04/2046			
155734	32873	GETZLAFF	BOWE				12/2026				

SID	DOC NO	LAST NAME	FIRST NAME	ACTION TAKEN	PAROLE START DATE	PAR MOD EXP DATE	DEFERRED TO	COMMENTS	INTERMEDIATE MEASURE APP	SERVE THE BAL	TIME ADDED BACK
286246	81625	GONZALEZ	TAHNASIA				08/2027				
49716	18837	GRANT	WALTER				07/2027				
276261	81661	HIPSAK	SEBASTAIN				07/2030	Initial Review Reassessment: 03/2027			
262094	81671	KOSS	AMY				03/2027				
288243	81803	KYE	KODY				04/2026				
286013	81684	MANY RIBS	JORDAN				05/2031	Initial Review Reassessment: 07/2027			
220979	39909	MENDOZA	JORGE				03/2032	Initial Review Reassessment: 03/2030			
278678	73341	MWINYI	HAMISI				03/2028				
285093	81046	OLSON	CHAD				08/2025				
281949	81711	PEREZ	ROXANA				08/2026				
159527	33103	RED HORN	DANIEL				03/2027				
186471	39652	TWO HORSES	TIMOTHY				02/2068	Initial Review Reassessment: 03/2063			
246269	65279	WALKER	JOHN				10/2026				
289202	81749	WILLIAMS	JERRY				07/2027	Initial Review Reassessment: 01/2026			

PAROLE BOARD MEETING 03/04/2025 – Leslie Bakken Oliver, Rachel Bruner, and Keith Witt *This is a summary of the Parole Board Meeting; please submit requests for additional information to: paroleclerk@nd.gov	
3/04/2025	**North Dakota Parole Board**
Call to Order; Reading of the Open Meeting Statement	The meeting of the North Dakota Parole Board was called to order by KW. In attendance were: Leslie Bakken Oliver (LB), Rachel Bruner (RB), Keith Witt (KW), Adam Anderson, Jessica McSparron-Bien, Carisa Upton, Jackie Landis, Reed Johnson, and Christopher Joseph
Overview of Agenda	
Changes/Updates to parole releases during the past month	
Victim Interview Executive Session	The next item on the agenda is for the Parole Board to discuss whether to grant a parole with a victim. This discussion involves information that could lead to harassment of the victim, so it is confidential under Article 1, Section 25 of the North Dakota Constitution, and we will move into executive session now. Executive Session began at: 3:07 pm Executive Session was adjourned at: 3:22 pm In attendance: Leslie Bakken Oliver (LB), Rachel Bruner (RB), Keith Witt (KW), Adam Anderson, Jessica McSparron-Bien, Carisa Upton, Jackie Landis, Reed Johnson, and Christopher Joseph
Initial Review Docket	THOMAS BITTLESTON, DANIEL BRENNAN, JASMINE CHARGING, IVAN DIETZ, KELLEY DUPAUL, JAMAL FERMIN, BOWE GETZLAFF, TAHNASIA GONZALEZ, WALTER GRANT, SEBASTAIN HIPSAK, AMY KOSS, KODY KYE, JORDAN MANY RIBS, JORGE MENDOZA, HAMISI MWINYI, CHAD OLSON, ROXANA PEREZ, DANIEL RED HORN, TIMOTHY TWO HORSES, JOHN WALKER, and JERRY WILLIAMS
Motion to Accept Initial Docket	Motion by RB to accept the Initial Review Docket as presented; Seconded by LB, no further discussion; Roll CALL: RB yes, KW yes, LB yes; Motion Carried.
Violator Docket	JADE ABNEY, ELIJAH BELGARDE, EVAN BOHLMAN, LOUIS COTTONWOOD, SHYANNE DECOTEAU, SKYLEE DRIVER, CODY DUNN, BLAINE EAGLE BOY, GLENDON ERICKSON, PAUL FEATHER, AMOS GALAVIZ, TRISHA GOODMANSON, AARON JOHNSON, AARON KRATZ, MARISSA LARSON, JEREMIAH LAVALLIE, FENTON LITTLEDOG, KENDRICK LYONES, GABRIEL MAES, MAX MARTINO, TROY NELEPOVITZ, DEVIN OFALLON, DENNIS REITER, NOEL SAUCEDA, ERIC SKORICK, KYLE TISCHLER, DANIEL VARGAS, TAYSHAUN WHITE EAGLE, MARCELLOUS WOMACK, JEFFERY WORLEY, and BOBBI JO YANEZ
	CODY DUNN add if found not guilty of his pending incident report.
Motion to Accept Violator Docket	Motion by RB to accept the Violator Docket as presented with the noted changes; Seconded by KW, no further discussion; Roll CALL: RB yes, KW yes, LB yes; Motion Carried.

Personal Interview	BRANDON GALONEK
Personal Interview Executive Session	The next item on the agenda is for the Parole Board to discuss whether to grant BRANDON GALONEK a parole with him and with his Case Manager: Brent Stein and Counselor: Heather Haugen. This discussion will be limited to medical, psychological, and treatment information that is confidential under N.D.C.C. Section 12-47-36 and case history record information that is an exempt record under the same statute. Motion to Enter Executive Session by KW; Seconded by RB; Roll Call: RB yes, KW yes, RB yes; Motion Carried. Executive Session began at: 3:29 pm Executive Session was adjourned at: 3:52 pm In attendance: Leslie Bakken Oliver (LB), Rachel Bruner (RB), Keith Witt (KW), Adam Anderson, Jessica McSparron-Bien, Carisa Upton, Jackie Landis, Reed Johnson, and Christopher Joseph
Motion after Personal Interview	Motion by KW to grant parole 05/19/2026 To a plan approved by Adult Services.; PAROLE CONDITIONS – standard conditions of parole will apply along with special conditions 16 and 18.; the sex offender addendum will include core and all additional conditions. Seconded by LB; no further discussion, Roll Call: RB yes, KW yes, LB yes; Motion Carried.
Personal Interview	DEMETRIS HANEY
Personal Interview Executive Session	The next item on the agenda is for the Parole Board to discuss whether to grant DEMETRIS HANEY a parole with him and with his Case Manager: Joseph Jones. This discussion will be limited to medical, psychological, and treatment information that is confidential under N.D.C.C. Section 12-47-36 and case history record information that is an exempt record under the same statute. Motion to Enter Executive Session by LB; Seconded by KW; Roll Call: RB yes , KW yes, LB yes; Motion Carried. Executive Session began at: 4:17 pm Executive Session was adjourned at: 4:45 pm In attendance: Leslie Bakken Oliver (LB), Rachel Bruner (RB), Keith Witt (KW), Adam Anderson, Jessica McSparron-Bien, Carisa Upton, Jackie Landis, and Christopher Joseph
Motion after Personal Interview	Motion by LB to grant parole 12/18/2025 To Centre Fargo, provided he has no further 200E or 300 reports from the date of this parole order.; PAROLE CONDITIONS – standard conditions of parole will apply. Seconded by RB; no further discussion, Roll Call: RB yes, KW yes, LB yes; Motion Carried.

Miscellaneous Docket	NATASHA AIKEN, TY ALTMAN, TREVON ANDERSON, SHANELL AZURE, FRANKLIN BAKER, MATTHEW BARTELL, DONALD BEANE, MARK BELYEU, KELLY BERCIER, CODY BORNER, ARRAN BROWN, HAROLD BROWNBEAR, JOSHUA BRUTON, LAWRENCE BUTH, LARRY BUTLER, SHEYANNE BUTLER, LACEY CANTLEBERRY, KHRISTOPHER CHAMPION, JUSTIN CHRISTMANN, AARON CLOWN, ERIC COLLINS, JARON COUNCIL, JAMES CRANLEY, TYREL CRAWFORD, WYATT CRISSLER, ALBRINA CURTIS, ELISSE DAGER, ANTOINE DAVIS, SARAH DAVIS, ERIC DECK, DANA DEITER, OMAR DERONJIC, RAMSEY DOCKTER, MACKINZIE ELLETSON, CHANCE

	ENTENMANN, ADAM ERICKSON, ANTONIO ESKRIDGE, DEREK FAGERBAKKE, JOSHUA FEIST, CIAN FLORES, JAMIE FREDERICK, SCOTT GAGNE, SAMUEL GARDNER, KYLE GARRIGAN, KELVIN GHOLAR, DANIEL GOLDSACK, GERARDO GUZMAN, DANIEL HENKE, ANTHONY HERRERA, JUSTIN HOULE, VERNON HOULE, KYLE HOWARD, JAIME JAIME, CHANCE JOHNSON, BAILEE JORGENSON, KIRSTEN KILLSCROW, DAVID KUNKEL, TODD KVASAGER, WALDERN LACROIX, CAMERON LAFRINIERE, KEITH LASATER, JESSICA LAWLER, QUENTIN LEONARD, JOSHUA LIDBERG, RAYBERT LITTLEWIND, KEVIN LONG, GEORGE LYONS, TYLAYNA MAKESHIMFIRST, JOSHUA MARTIN, JASON MATTHEW, BRIANA MCCARTY, DOUGLAS MCCLOUD, JOSEPH MCCORMICK, BRONSON MOEN, JOSHUA MOMMSEN, MATTHEW MORRIS, SHAYNNE NORMANDIN, DAMION ORTON, BRIAN PARRY, RAFAEL PATRON, THOMAS PINKNEY, ERIC PROSSER, ALANNA RANISATE, ERIC RENAULT, ANGELO RODRIGUEZ, LEROY ROSS, ROBERT ROYCE, JOSHUA SABOT, NICHOLAS SANCHEZ, CHAD SCHMALTZ, JEFFREY SCHMIDT, PAMELA SEIDEL, JEREMY SIKES, BLAINE SMITH, DAVID SPRINGER, JONATHAN TAYLOR, MICHAEL TEUNISSEN, JACOB THORNTON, DONOVAN UMSTEAD, BRANDON UTKE, STEPHAN VAN TASSEL, CRAIG VAULTERS, CLIFFORD WARREN, JESSE WHITEEAGLE, DEVIN WOMACK, and ANGEL WROLSON
	DONALD BEANE parole date 06/10/2025
	CODY BORNER deny and serve the balance. Seriousness of offense and insufficient time served.
	ARRAN BROWN condition 20 Mr. Brown shall enroll in a drug monitoring program that is established by his parole officer and remain in the program for a minimum of 90 days when he is released to a community residence.
	LAWRENCE BUTH parole date 11/04/2025
	LARRY BUTLER parole date 09/02/2025
	SHEYANNE BUTLER deny and serve the balance. Insufficient time served.
	LACEY CANTLEBERRY parole date 12/03/2025
	JUSTIN CHRISTMANN deny and serve the balance. Insufficient time served.
	AARON CLOWN parole date 10/02/2025
	ERIC COLLINS parole date 08/04/2026 and condition 21. Mr. Collins shall not enter Stark County, ND without prior approval of his parole officer.
	JAMES CRANLEY parole date 10/07/2025. Condition 20 Mr. Cranley shall enroll in a drug monitoring program that is established by his parole officer and remain in the program for the duration of his parole when he is released to a community residence.
	SARAH DAVIS deny and defer to September 2025; insufficient time served and institutional behavior
	ANTONIO ESKRIDGE 10/28/2025
	DEREK FAGERBAKKE 07/01/2025
	SCOTT GAGNE condition 20 Mr. Gagne shall enroll in a drug monitoring program that is established by his parole officer and remain in the program for the duration of his parole when he is released to a community residence.
	SAMUEL GARDNER condition 20 Mr. Gardner shall enroll in a drug monitoring program that is established by his parole officer and remain in the program for the duration of his parole when he is released to a community residence.
	CHANCE JOHNSON parole date 07/16/2026

	TODD KVASAGER condition 20 Mr. Kvasager shall enroll in a drug monitoring program that is established by his parole officer and remain in the program for the duration of his parole when he is released to a community residence.
	WALDERN LACROIX condition 20 Mr. Lacroix shall enroll in a drug monitoring program that is established by his parole officer and remain in the program for a minimum of 90 days when he is released to a community residence.
	KEITH LASATER condition 20 Mr. Lasater shall enroll in a drug monitoring program that is established by his parole officer and remain in the program for the duration of his parole when he is released to a community residence.
	RAFAEL PATRON condition 16
	ANGELO RODRIGUEZ parole 08/05/2025 To Centre Grand Forks, provided he has successfully completed all recommended programming.
	CHAD SCHMALTZ condition 20 Mr. Schmaltz shall enroll in a drug monitoring program that is established by his parole officer and remain in the program for a minimum of 90 days when he is released to a community residence.
	JEFFREY SCHMIDT condition 16
	PAMELA SEIDEL condition 20 Ms. Seidel shall enroll in an alcohol and drug monitoring program that is established by her parole officer and remain in the program for the duration of her parole when she is released to a community residence.
	MICHAEL TEUNISSEN condition 20 Mr. Teunissen shall enroll in a drug monitoring program that is established by his parole officer and remain in the program for the duration of his parole when he is released to a community residence.
	DONOVAN UMSTEAD condition 20 Mr. Umstead shall enroll in a drug monitoring program that is established by his parole officer and remain in the program for a minimum of 90 days when he is released to a community residence.
	STEPHAN VAN TASSEL parole 01/13/2026 condition 20 alcohol and drugs for duration Mr. Van Tassel shall enroll in an alcohol and drug monitoring program that is established by his parole officer and remain in the program for the duration of his parole when he is released to a community residence.
	CRAIG VAULTERS condition 20 Mr. Vaulters shall enroll in an alcohol monitoring program that is established by his parole officer and remain in the program for a minimum of 90 days when he is released to a community residence.
	MATTHEW MORRIS parole 11/20/2025 and condition 16, 21 added language …and may not be within 500 feet of the residences where his crimes were committed in Grand Forks County, ND.
Motion to Accept Miscellaneous Docket	Motion by KW to accept the Miscellaneous Docket as presented with the noted changes; Seconded by RB, no further discussion; Roll CALL: RB yes, KW yes, LB yes; Motion Carried
	Discussion of change in language to condition 16 to include prior approval of my parole officer.
Motion to Adjourn	Motion by KW, consent approved.

Parole Board

About the Parole Board

The mission of the Board is to conduct informed and fair hearings on cases subject to the jurisdiction of the Board and take appropriate action to ensure public and victim safety and to reduce the likelihood of future criminal behavior of people by providing opportunities for rehabilitation.

The members of the North Dakota Parole Board are appointed by the Governor for a term of three years. During the Fifty-Sixth Legislative Assembly the Parole Board was expanded from three to six members, three members serve at each monthly Parole Board meeting. At the present time the board members are:

- Mr. H. Patrick Weir, Chairman of Parole Board
- Mr. Keith Witt
- Ms. Rachel Bruner
- Ms. Britta Joyce
- Ms. Jennifer Thompson
- Ms. Leslie Bakken Oliver

Information Regarding the Parole Board

- **Parole Board Meeting Dates**
- **Parole Board Results**
- **How to Correspond with the Parole Board**
- **Parole Board Policy**

3100 Railroad Avenue | P.O. Box 1898 | Bismarck, ND 58502-1898
Telephone: (701) 328-6390

NORTH Dakota Be Legendary.™ Corrections and Rehabilitation **POLICY & PROCEDURES**	**POLICY NUMBER AND SECURITY:** 1A-13 –This policy has no confidential or exempt information. **RELATED STANDARDS (such as ACA/ACI/ ACRS/PbS/PREA):**

RELATED REFERENCES:

Appendices:

- North Dakota Parole Board of Conditions of Parole

Manuals:

- None

Related DOCR Training:

- Parole Training that TPS provides during orientation for residents
- New Parole Board Member Overview Training
- Parole and Pardon Overview – New Officers Training
- Preliminary Revocation/Probable Cause Hearing – Parole, CPP, & Interstate Compact

DIVISION:	**FACILITY/WORK GROUP:**	**TOPIC:**
Transitional Planning	Administration	Parole Board

Effective Date: August 5, 2010 Revised: February 24, 2011 Revised: February 1, 2012 Revised: August 13, 2012 Revised: November 20, 2013 Revised: June 3, 2014	Revised: April 7, 2015 Revised: June 7, 2016 Revised: July 12, 2017 Revised: July 5, 2018 Revised: August 4, 2021

Summary of Revision(s)

Approved by the August 21 Parole Board.

1. Definitions deleted: Adult in Custody, Adult Under Supervision, Board, DOCR, Initial Review, LSI-R, ND, N.D.C.C., Preliminary Hearing, SAVIN, TPS

2. Definition revised: Parole Rescission: An action and order reconsidering the grant of parole prior to the adult in custody's discharge from the North Dakota State Penitentiary or any of its affiliated facilities release to parole supervision.

3. Subsection 5-H: Expanded rescission authority from release from a DOCR facility to release to parole supervision.

4. Subsection 5-I: Added Parole Modification.

1. **AUTHORITY:** Authority for this policy with procedures is found in Section 54-07-01 and Chapters 12-47, 12-59, 12.1-34 and 54-23.3 of the North Dakota Century Code.

2. **APPLICABILITY:** To all employees of the Department of Corrections and Rehabilitation ("Department"), especially to those employees involved with the parole process, and to the members of the North Dakota Parole Board.

3. **DEFINITIONS AND ACRONYMS:**

   A. Intermediate Measures: Intermediate conditions, as authorized by N.D.C.C. §§ 12-59-07 and 22, which are used as strategies to address violations of supervision conditions. Strategies may address risk control, risk reduction or both, including conditions or programs adults in custody agree to that may be implemented by the Department in lieu of parole revocation when an adult in custody violates parole.

   B. Parole: The discretionary conditional release of an adult in custody from custody before the expiration of the adult in custody's term of imprisonment.

   C. Parole Denied: An action and order issued by the Parole Board denying the adult in custody parole and establishing a reason for denial.

   D. Parole Granted: An action and order issued by the Parole Board that sets a parole release date and establishes terms and conditions of the parole.

   E. Parole Rescission: An action and order reconsidering the grant of parole prior to the adult in custody's release to parole supervision.

   F. Parole Revocation: An action and order issued by the Parole Board when a parolee has been found to be in violation of any term or condition of parole established by the Parole Board or the Department.

   G. PBPR: Means Performance Based Parole Reduction under N.D.C.C. § 12-59- 21

   H. PBSR: Means Performance Based Sentence Reduction under N.D.C.C. § 12-54.1-01

   I. Serious Medical Condition: An injury, illness, disease, physiologic or psychological condition or disorder that poses an immediate risk to the adult in custody's health or life and requires high risk or highly complex medical intervention or intensive or high needs or specialized care. Examples include stroke, heart attack, aggressive or advanced stage forms of cancer; a medical condition that requires long-term hospitalization, nursing home, or hospice care; or a mental illness that causes the adults in custody to be unable to provide for essential needs and requires long-term hospitalization, nursing home, or group home placement.

J. Terminal medical condition: A serious medical condition with a prognosis that death is likely and imminent.

K. Victim: An individual who has suffered direct or threatened physical, financial, or emotional harm where there is probable cause to believe that the harm has been caused by the commission of a criminal act. This includes the family members of a minor, incompetent, or deceased victim.

4. **POLICY:** The Parole Board shall review adults in custody eligible for parole based on eligibility and applicable statutes.

A. The purpose of the Parole Board is to conduct informed and fair hearings on cases subject to the jurisdiction of the Parole Board and take appropriate action to ensure public and victim safety and to reduce the likelihood of future criminal behavior of adults in custody by providing opportunities for rehabilitation.

B. The vast majority of adults in custody confined within Department facilities are eventually returned to the community. The Parole Board may grant parole to eligible adults in custody subject to terms and conditions of supervision established by the Parole Board to provide for public safety while providing an opportunity for the parolee to engage in lawful behavior.

C. The Parole Board shall make other relevant parole decisions, including revocation of parole, rescission of parole, initial reviews, use of intermediate measures, and any other actions necessary to execute its lawful authority.

D. The Parole Board is not an administrative agency according to N.D.C.C. § 28-32-01(1)(p) and is not subject to Administrative Agencies Practice Act, N.D.C.C. chapter 28-32, except for final parole revocation hearings, which must be conducted by the Office of Administrative Hearings in accordance with N.D.C.C. § 54-57-03(1) and chapter 12-59. Any rules the Parole Board may adopt are not subject to administrative rulemaking under chapter 28-32 and need not be published in the North Dakota Administrative Code.

E. Parole Board members may not engage in ex-parte communications with adults in custody subject to the jurisdiction of the Parole Board or with their representatives or advocates about topics related to parole.

5. **PROCEDURES:**

A. Membership and Meetings.

1. The Governor shall appoint six members to the state Parole Board.

2. One Parole Board member must be experienced in law enforcement, which may include experience as a prosecuting attorney, one member must be a licensed attorney, and four members must be qualified by special experience, or education or training.

3. The Governor shall appoint one member of the Parole Board as the Chairman. The Chairman shall designate three members of the Parole Board to a panel for each meeting of the Parole Board. Two members of a panel who participated in the same meeting constitute a quorum.

4. The Parole Board may only take action with the concurrence of at least two acting members of a panel.

5. The Director of the Department or the Director's designee shall serve as the clerk to the Parole Board. The clerk may appoint a deputy clerk.

6. The Parole Board may schedule as many meetings per year as necessary to conduct parole reviews but not less than six meetings per year.

7. The Parole Board may use video conference or other communication mediums to conduct any of the meetings.

8. The Chairman may call special meetings in order to review emergency parole-related matters or to address other business of the Parole Board.

B. Duties and Responsibilities of the Board. The Parole Board shall consider eligible adults in custody for parole based upon state law and this policy.

C. Parole Eligibility.

1. Adults in custody sentenced to the legal and physical custody of the Department for a period of incarceration are subject to the jurisdiction of the Parole Board, except when parole for the adult in custody is prohibited by statute or an adult in custody has less than 120 days of eligibility.

2. Adults in custody who are subject to mandatory sentencing requirements that prohibit them from parole under state law are not eligible for parole while serving the mandatory portion of their sentence.

3. Adults in custody who have 120 days or less to serve on their sentence after arrival at a Department facility may not receive parole consideration because of the limitations caused by the short sentence.

D. Duties and responsibilities of the clerk. The Director of the Department or the director's designee shall serve as the clerk and shall:

1. Maintain a register of all cases of adults in custody the Parole Board has reviewed and record the minutes of proceedings.

2. Retain a copy of the minutes for three years after the current fiscal year in which the record is created. After three years, the records must be transferred to the State Archives.

3. Conduct investigations for and provide information to the Parole Board. The clerk will receive all information to be considered by the Parole Board.

4. Direct supervising staff of the Department to provide testimony or written comments for the Parole Board to consider when reviewing eligible adults in custody for parole or when the parolee is on supervision or has recently been on supervision by the Department.

5. Provide written notice to the district court and the state's attorneys in the county or counties where the judgment of conviction was entered when the Parole Board is reviewing whether an adult in custody may be released on parole. The notice must include the name of the adult in custody, docket number of the criminal judgment, and the date, time, and place for the meeting of the Parole Board to review whether the adult in custody may be released on parole.

6. Ensure victim rights (including under Article I, § 25, N.D. Const. and N.D.C.C. Chapters 12.1-34 and 12.1-35) are protected and victims receive notice of an adult in custody's parole consideration in accordance with state constitutional and statutory requirements, including through the statewide automated victim information and notification system (SAVIN), and have the opportunity to present information to the Parole Board in the manner the Parole Board prescribes.

7. Ensure compliance with the state's open meetings laws.

8. Ensure the management of Parole Board's records is in accordance with applicable state and federal laws.

9. Schedule all interviews of adults in custody when the Parole Board has requested their personal appearance before the Parole Board.

E. Establishing the docket and the parole review process.

1. Initial Review

a. The Parole Board may conduct an Initial Parole Board Review of each eligible adult in custody's parole eligibility status within approximately 60-90 days of the adult in custody's arrival at a Department facility, when the adult in custody has three or more years to serve from date of arrival to the longest, good time release date.

b. The purpose of an initial docket is for the Parole Board to examine information gathered and various assessments conducted by the Department as well as the nature of the offense(s) and length of sentence(s). Based upon that

information, the Parole Board may defer the case to a later month and year for parole consideration.

c. The clerk shall set parole review dates for parole-eligible adults in custody who have less than three years to serve from date of arrival in prison tothe longest, good time release date.

d. The Parole Board or the clerk may reconsider adults in custody on the Initial Review docket if there are changes in the adults in custody's status that may significantly impact parole decision outcomes, including new crimes and significant changes in good time release dates.

e. If the Parole Board agrees with case planning recommendations, the adult in custody will have a parole review entry as a "Miscellaneous Review" in Elite with the month and year. If the Parole Board does not agree with the case planning recommendation, the clerk shall place the case back on a case planning agenda through the Add-On process.

2. Initial Review Reassessment.

a. An adult in custody who has not had a parole review but is eligible for parole and has a good time release (GTR) date of seven or more years from the day the adult in custody came into the physical custody of the Department may be eligible for an Initial Review Reassessment. If the Parole Board has taken action either denying or granting parole in a case during the adult in custody's current incarceration period, the reassessment process does not apply, unless an adult in custody is sentenced to additional time after the Parole Board's decision that makes the GTR more than seven years from the time the adult in custody was initially reviewed. The clerk may recommend an initial review reassessment of an adult in custody who does not have a GTR of seven or more years from the date the adult in custody came into the physical custody of the Department.

b. The Parole Board shall review cases identified for initial review reassessment on the initial review portion of its docket. If the Parole Board agrees with the case planning recommendations, the adult in custody will have a parole review entry as a "Miscellaneous Review" entered into Elite with a month and year and an "Initial Review" entered with a month, year, and the comment "Initial Review Reassessment." If the Parole Board does not agree with the case planning recommendation, then the clerk shall place the case back on a case planning agenda through the Add-On process.

c. Department Transitional Planning Services will run the Initial Review Reassessment list on the first Monday of the month two months prior to the Parole Board meeting to identify Initial Review Reassessment cases.

d. Department Transitional Planning Services notify the adults in custody's case managers, who shall complete and enter an institutional adjustment summary in Elite no later than two weeks after receiving the notification from Department Transitional Planning Services.

e. The adult in custody's case manager, through the case manager's unit manager, shall refer the case to the Department Case Planning Committee through the Add-On process for review and recommendations.

f. The Case Planning Committee shall review the institutional adjustment summary, program/work/education participation, institutional conduct, classification, and custody level and make a recommendation for action to the Parole Board. Recommended actions may include:

   1.) No change.

   2.) Set an earlier parole review than was initially set (set month and year), revisit and update the case plan.

   3.) Set a later parole review than was initially set (set month and year), revisit and update the case plan.

g. The Parole Board shall review the case in the Initial Review portion of its docket. If the Parole Board agrees with the case planning recommendations, the adult in custody's Miscellaneous Review will be modified in Elite to this date (month and year). If the Parole Board does not agree with the case planning recommendation, then the clerk shall place the case back on a case planning agenda through the Add-On process. The Department shall provide necessary and appropriate information to the Parole Board to aid in their decisions.

h. Notification to courts and victims, including through SAVIN, about initial review reassessments is not required because notifications are handled the same way as the Parole Board currently handles the Initial Reviews. The purpose of the initial review and initial review reassessment is not to make a release decision but instead to make a decision about the timing of making a release decision.

3. Additional Sentences.

   a. Department Legal Records personnel shall place the case back on a case planning agenda via the Add-On process when an adult in custody's GTRD changes by more than six months, the case becomes eligible for the Sentence and Treatment for Early Release (STEP) Program or becomes subject to the 85% or a minimum mandatory statutes.

   b. Case Planning Committee shall review the additional sentence and may reconsider eligibility and timing for Parole Board review.

   c. If the adult in custody has three or more years to serve from the date of arrival to the longest, good time release date, case planning shall set a parole review and the Parole Board may review case on the Initial Review portion of their docket.

4. Medical Parole. All requests for medical parole review must be sent to the clerk. A serious or terminal medical condition must be diagnosed by a Department medical provider. Only a Department medical provider may submit a request for medical parole review to the clerk. The Department medical provider shall provide written documentation summarizing the adults in custody's medical conditions, recommended courses of care and treatment and a prognosis. The clerk shall consult with the chairperson and the chairperson shall direct the clerk to either place the case on the next available Parole Board meeting docket or establish a special meeting to review the case. The Parole Board is the sole authority for all matters relating to medical review and action. All decisions of the Parole Board are final.

5. The clerk may place cases on an earlier review than what was ordered by the Parole Board when there is cause. The clerk shall establish cause based upon direction from the Parole Board.

6. The clerk shall establish a tentative docket approximately two weeks prior to the Parole Board meeting. The clerk shall provide the Parole Board with recommendations for action and all necessary documents to aid their decision-making process.

7. The final docket should be established by the Parole Board approximately five days prior to the meeting. The clerk may add cases, such as for parole violators or potential parole recissions, to the final docket with the consent of the Parole Board.

8. During the Parole Board meeting, the Parole Board may interview adults in custody or conduct a review of the appropriate documents without interviewing the adults in custody. Granting or not granting an interview does not constitute a negative recommendation for relief.

9. In order to determine whether an adult in custody may receive a parole, the Parole Board shall consider all pertinent information regarding the adult in custody, including the circumstances of the offense; victim impact and concerns; the adult in custody's family, education, social history and criminal record; the adult in custody's conduct, employment, and participation in education and treatment programs while incarcerated; the adult in custody's parole plan and the adult in custody's medical and psychological records and current mental and physical state. The Parole Board shall also consider whether the adult in custody will conform to the terms and conditions of parole.

10. The Parole Board may only take action upon the concurrence of at least two members who participated in the same meeting.

11. All actions by the Parole Board must be recorded The clerk shall send adults in custody a written order reflecting the Parole Board's decision.

    a. If parole is denied, at least one reason for denial must be recorded and listed on the Order Denying Parole.

    b. If parole is granted, the Parole Board shall establish a parole release date and the terms and conditions of parole using the Parole Agreement. The parolee shall comply with all reasonable requests of supervising staff that may assist the parolee with his or her rehabilitation and may reasonably protect the safety of the community.

12. The clerk may make changes to a parole release date of 30 days or less for cause, such as transportation issues, inclement weather, lack of bed space at a facility that the individual is required to reside as a condition of parole, and changes in program completion dates.

13. The clerk may make technical changes to terms of parole unless otherwise prohibited by the Parole Board, including a change to a specified transitional facility due to an adult in custody's request, a facility's conflict of interest, or a facility's denial of an adult in custody's placement.

14. The clerk shall notify the Parole Board of any changes pursuant to this section at the next regularly scheduled Parole Board meeting.

F. Setting parole expiration dates and Performance Based Parole Reduction PBPR.

1. The Parole Board shall set a parole expiration date no earlier than the longest expiration date of the court-imposed sentence less the award of PBPR and accrued Performance Based Sentence Reduction PBSR at a rate up to five days per month.
    a. PBPR may be awarded on the condition that the parolee is:

1.) Gainfully employed or seeking employment;

2.) Participating in recommended treatment or educational programs or other recidivism reduction strategies; and

3.) Engaging in behavior reasonably consistent with the conditions of parole.

b. Supervising staff may make a written report to the Parole Board any time the parolee is not complying with the PBPR rules. The Parole Board shall make all final decisions regarding the loss of PBPR.

c. The Parole Board may set parole expiration dates beyond the longest expiration date of the court-imposed sentence not to exceed:

1.) Two years for a misdemeanor, or

2.) Five years for a felony.

d. The Parole Board may terminate parole earlier than the parole expiration date in those cases that a parole expiration date was set beyond the court-imposed expiration of sentence upon a motion by the Parole Board or upon the filing of a Petition to Terminate Parole with the Parole Board by supervising staff. The petition must state the reasons for the request. The Department should consider the following factors when petitioning the Parole Board for early termination:

1.) Type of offense;

2.) Prior record;

3.) Victim issues;

4.) Overall performance of the parolee while on parole; and

5.) Recidivism reduction, based on the Levels of Service Inventory-Revised (LSI-R) Raw Score and LSI-R Protective Factors Score.

e. The Parole Board may not terminate supervision for a parolee who has a life sentence with the opportunity for parole less than five years from the established date of release on parole.

2. The clerk may adjust parole expiration dates established by the Parole Board, so dates coincide with revised PBSR and PBPR dates adjusted by legal records, including for adults in custody who receive awards of more jail time, meritorious conduct awards, or loss of

PBSR when entered after the Parole Board reviewed the case and established the expiration date. The clerk may not adjust the date to be earlier than the PBSR and PBPR date.

G. Breach of Parole (Parole Violations, Intermediate Measures, and Revocation).

1. When a parolee violates any term or condition of parole, the Department may establish intermediate measures, including incarceration for a period of up to 72 hours, and restitution, when the Department determines intermediate measures are necessary for the rehabilitation of the parolee, are appropriate in lieu of revocation proceedings, or are necessary for the safety of the community.

2. Supervising staff shall give written notice to the Parole Board when they institute an intermediate measures for alleged violations of parole conditions that imposes a period of incarceration or placement at the North Dakota State Hospital. The Parole Board shall review the intermediate measures and authorize the intermediate measures or make appropriate changes. If the Parole Board does not authorize an intermediate measure, the clerk shall notify supervising staff and require supervising staff to initiate revocation proceedings. Intermediate measures that do not impose a period of incarceration or placement at the North Dakota State Hospital must be authorized by transitional planning services.

3. If a parolee has violated any of the terms or conditions of parole, supervising staff may apply to the clerk or designee, for a warrant of arrest and authority to hold. If supervising staff has probable cause to believe a parolee has violated any of the terms or conditions of parole, supervising staff may take the parolee into custody and detain the parolee in a correctional facility pending application for a warrant of arrest and authority to hold. The application for a warrant of arrest and authority to hold must be supported by a notarized affidavit showing probable cause. Unless there are extraordinary circumstances, supervising staff shall first consult with a supervisor before taking a parolee into custody.

4. Upon the issuance of the warrant, the parole clerk may enter the warrant into the National Crime Information Center database and the Central Warrants Information System if it is determined the parolee cannot be readily located in order to serve the warrant and be taken into custody. The Department may choose to enter a non-extraditable warrant in cases in which the parolee's most severe originating offense is a Class A Misdemeanor or a non-violent offense.

5. As soon as reasonably possible after a parolee has been taken into custody, the supervising staff shall assure the parolee is served with a copy of the parole warrant and shall advise the parolee in writing

of the alleged violations of the terms and conditions of parole and the parolee's right to a preliminary parole revocation hearing and a final parole revocation hearing.

6. The preliminary parole revocation hearing is conducted in order to determine whether there is probable cause to believe the parolee violated one or more of the terms or conditions of parole and whether further detention is warranted pending a final hearing for revocation of parole. The preliminary hearing may only be conducted by a Department staff not directly involved in the supervision of the parolee and not involved in bringing the allegation of a violation of any of the terms or conditions of parole. The parolee is entitled to:

   a. Written notice of the purpose of the hearing and the alleged violations;

   b. The opportunity to be heard in person and present witnesses and documentary evidence;

   c. The opportunity to confront and cross-examine adverse witnesses, unless the hearing officer determines that confrontation may create a risk of harm to the witness;

   d. The right to submit a written statement to the Parole Board as to the reasons why parole should not be revoked or why the Parole Board should not order all or a part of the remaining sentence;

   e. Although there is no right to appointed legal counsel, the parolee may obtain a lawyer at the parolee's own expense; and

   f. A written statement as to the findings of the hearing.

7. If requested by the parolee after a preliminary hearing, an administrative parole revocation hearing must be held before an administrative law judge designated by the North Dakota Office of Administrative Hearings. The parolee is entitled to:

   a. Written notice of the purpose of the hearing and the alleged violations of the terms or conditions of parole;

   b. The opportunity to be heard in person and to present testimony and evidence;

   c. The opportunity to confront and cross-examine adverse witnesses, unless a determination has been made there is a risk to safety and security;

d. A written decision with findings of fact and reasons for the decision.

8. The parolee may waive the preliminary hearings and admit to any of the alleged violations of parole. The parolee may present a statement in mitigation of revocation of parole. There may be instances in which it is in the best interest of the Department to conduct a preliminary hearing. The Department may hold a preliminary hearing regardless of the parolee's choice to waive the hearing. The Department may request a final revocation hearing even if the parolee does not request one.

9. The Parole Board shall make the final determination whether the parolee should be returned to physical custody to serve all or part of the remaining part of the parolee's sentence that has not been served in custody.

10. The clerk shall determine the appropriate placement for a parolee who has been found guilty of, or who has pled guilty to, a violation of any of the terms and conditions of parole and has been ordered returned to the physical custody of the Department.

11. A parole violator will not receive further parole consideration unless the Parole Board sets a future review date in the revocation order.

H. Parole Reconsideration (Rescission). Pursuant to N.D.C.C. § 12-59-12, the Parole Board may reconsider its action granting parole prior to an adult in custody's release to parole supervision. When doing so, the parole clerk or deputy clerk may suspend a parole date, conduct any necessary investigation or hearings, and shall place the case on the docket for reconsideration and action at the next regularly scheduled Parole Board meeting.

I. Parole Modification. With good cause, the Parole Board may modify or enlarge conditions of parole at any time before expiration or termination of parole. The parolee is entitled to:

1. Written notice of the purpose of the modification;
2. The opportunity to present written testimony and evidence; and
3. A written decision regarding the modification and a copy of the modified conditions of parole supervision.

6. **SIGNATURE:** This policy with procedures and applicable manuals becomes effective when signed by the Clerk and the Chairperson of the Board.

Steven D. Hall, Clerk — Date: 8/4/2021

H. Patrick Weir, Chairperson — Date: 8/4/2021

Submitting a Parole or Pardon board statement by the victim is an opportunity for you to explain, in your own words, how the crime committed by this person has affected you and people close to you. This statement may include an explanation of the crime, the nature and extent of any physical, psychological, emotional harm or trauma suffered by the victim; an explanation of the extent of any economic loss or property damage; and the victim's recommendation for an appropriate parole release if granted.

A written statement may be submitted by the victim (as defined below), and/or their family members.

An oral, in person or virtual statement may also be given. If you have any questions, or if you wish to make an oral statement, please contact the Victim Services Program at least **one month prior** to the scheduled board meeting.

The information that you give in your statement is helpful to the board members in understanding the full effects of the crime. Please include the following informational sections in your statement:

1. **Your name, contact information, and name of the offender**.

2. **Physical** - Describe how the crime has physically changed your life:

    - Do you have any physical discomfort or illness because of this crime?
    - What treatment have you received, or will you be required to receive in the future?
    - Do you have any permanent or long-term disability or injury as a result of the crime?

3. **Emotional** - It may be difficult to explain the emotional impact of the crime, please consider the following:

    - Do/did you feel fearful, vulnerable, helpless, violated, angry?
    - Do/did you feel uncomfortable or frightened in your own home?
    - Have you changed your lifestyle? Do you restrict your activities? Do you avoid going out at a certain time?
    - Has the crime affected your relationship with your family, friends, or colleagues?

4. **Financial** - Describe any expenses you have incurred as a result of the crime:

    - Personal belongings or property lost, destroyed, or damaged.
    - Medical expenses incurred.
    - Future medical or counseling expenses your doctor anticipates.
    - Funeral expenses.
    - Lost wages or income.

Definition:

Victim: A person identified in a criminal information or complaint who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act or against whom the crime or delinquent act is committed, for which the adult under supervision is currently in the legal and physical custody or under the supervision and management of the Department of Corrections and Rehabilitation. If a victim is deceased, incompetent, incapacitated, or a minor, the victim's spouse, parent, grandparent, child, sibling, grandchild, or guardian, and any person with a relationship to the victim that is substantially similar to a listed relationship. The term "victim" does not include the accused or a person whom the court finds would not act in the best interests of a deceased, incompetent, minor, or incapacitated victim.

ND DOCR Victim Services Program Phone: 701-328-6183 Email: victimservices@nd.gov

NORTH Dakota | Corrections and Rehabilitation
Be Legendary.™

Victim Services

Here is what you need to know:

1. **Stay Informed**: You can find more information on the ND DOCR website https://docr.nd.gov/.
2. **SAVIN**: There's another website called **VINELINK**. It helps you stay updated about changes to custody. You can visit it here. https://vinelink.vineapps.com/state/ND
3. **Victim Services Program**: If you have questions or need help, you can call the Victim Services Program at **701-328-6183,** toll-free at **1-888-568-4410**, or email: victimservices@nd.gov . We are available to listen and help you understand next steps.
4. **Your Safety Matters**: If you're worried about safety, please contact the Victim Services Program. Your information will be kept confidential and not shared with the individual incarcerated or the public.

Remember, things might change, so please check these websites periodically. Your input is important, and we want to make sure everyone stays safe.

Additional Information:
Adults sentenced to the DOCR may go through multiple status changes and custody level changes including Parole Board reviews and releases.
Your input is very valuable and is respectfully requested by the deciding committees and releasing board members so that they may have all available information prior to making custody and releasing decisions.
All contacts from a victim and/or their family are kept confidential, not subject to open records law.

Custody Levels: Individuals under the supervision of the ND DOCR are evaluated initially and throughout incarceration for a custody level. Custody options are Maximum, Medium, or Minimum. Some may be placed at out of state facilities.
Minimum Custody: If an individual is considered Minimum custody, they might live in a Transitional Facility or Community Placement. These places allow work or schooling in the community. It is a step toward returning to the community.
If you have concerns for your, or your family's safety, please call the Victim Services Program right away.
We are here to help.

Parole Review: Most individuals will be review for a supervised early release. If you wish to make a statement to the Parole Board, contact the Victim Services Program at least 1 month before the review date. You can talk to them in person, on the phone, or even through video.
Stay Updated: Review dates might change, please check periodically to stay informed. If you're registered in SAVIN, you will be notified 1 month prior of the final review date.

No Contact: If you would like to request a no contact for yourself, or minors in your care, with a incarcerated individual, please send a statement to the Victim Services Program by mail or email with all perinate contact information.

What Is SAVIN?

SAVIN stands for the **Statewide Automated Victim Information Notification**.

1. **Why SAVIN Matters**: SAVIN helps people stay informed. You will be notified of important changes during incarceration and release through phone call, text, email, or the App.
2. **How to Get SAVIN Alerts**:
   - You need to register for SAVIN.
   - You can call **1-866-ND1-VINE** or visit VINELINK. https://vinelink.vineapps.com/state/ND
   - Once registered, SAVIN will begin receiving notifications.
3. **Extra Help**: If you have questions, you can call **866-631-8463** for help from VINELINK staff who can help you register, or call the Victim Services Program.

Postal Notices: If you cannot register by phone or email, you may request notification by mail.

Please write to:
ND DOCR Victim Service Program
PO Box 1898
Bismarck, ND 58502

Make sure to include the name of the person incarcerated.

You may view an individual's picture and their current release date.
Visit https://docr.nd.gov and click on "Resident Lookup." Also on https://vinelink.vineapps.com/state/ND.

Remember, your safety matters, and the Victim Services Program is here to help. Feel free to ask them any questions or share your concerns.

Thank you for registering, please keep your contact information current.
If you have previously registered, please check to verify that you are registered for ND DOCR notifications.

Restorative Justice Program

The DOCR collaborates with Consensus Council to offer victims a Restorative Justice program that engages victims, individuals in custody, and the community in repairing the harm caused by crime. The program offers victims participation in ways that promote healing, safe, and secure communities.
*This is a victim-initiated process; incarcerated individuals are not allowed to initiate contact with victims through this program.
Please contact the DOCR Victim Services Program for details about the Restorative Justice program.

Please complete a quick survey about the Victim Services Program to let us know how we are doing:
https://www.docr.nd.gov/victims-services

Information provided by the ND DOCR is subject to the North Dakota Open Records Law

The State of North Dakota and the Department of Corrections and Rehabilitation does not discriminate on the basis of race, color, national origin, sex, religion, age, or disability in employment or the provision o or the provision of services and complies with the provisions of the North Dakota Human Rights Act.

ARE YOU A VICTIM OF A CRIME?

Have you ever wished you could meet with the person responsible?

You may be interested in...

RESTORATIVE JUSTICE CONFERENCING

Conferencing provides an opportunity for a face-to-face meeting (or alternative communication) between the victim of an offense and the responsible party. It is:

- **Voluntary for everyone involved**
- **Carefully prepared by a trained, professional facilitator**
- **Accessible even years after the offense occurred**



If you would like more information regarding Restorative Justice services, please contact:

Victim Services Program Manager
ND Department of Corrections & Rehabilitation
701.328.6183 • victimservices@nd.gov

Restorative Justice Program
Consensus Council
701.224.0588 Ext. 4 • RJ@agree.org

This service is provided by Consensus Council in partnership with the ND Department of Corrections & Rehabilitation (DOCR).

CONSENSUS COUNCIL

CHAPTER 12-59 Parole [relevant sections]

12-59-01. State parole board — Membership.
Text
The state parole board consists of six members, who must be qualified electors of the state, appointed by the governor for terms of three years, arranged so that the terms of two members must expire on December thirty-first of each year. One of the members must be a person experienced in law enforcement, which may include experience as a prosecuting attorney, one must be a licensed attorney, and four must be persons qualified by special experience, education, or training. The governor may only remove a member of the parole board for disability, inefficiency, neglect of duty, or malfeasance in office.

12-59-05. Consideration by board.
Text
Every inmate's eligibility for parole must be reviewed in accordance with the rules adopted by the parole board. The board shall consider all pertinent information regarding each inmate, including the circumstances of the offense, the presentence report, the inmate's family, educational, and social history and criminal record, the inmate's conduct, employment, participation in education and treatment programs while in the custody of the department of corrections and rehabilitation, and the inmate's medical and psychological records.

12-59-06. General powers of board.
Text
The board may issue process requiring the presence of any person or officer before it, with or without books and papers, in any matters pending before said board. If any such person or officer disobeys the order of the board, the chairman, or acting chairman, of such board may apply to any judge of the district court for an order requiring the attendance of such person or officer, with or without books and papers described in the process. The failure of any such person or officer to comply with such order of the district court shall be held to be a contempt of court and shall be punishable accordingly. Any member of the board, the parole officer, or anyone appointed by the board to secure information for said board shall have the power to examine witnesses and records and to administer oaths to witnesses. The board may employ psychiatrists or specialists for mental or medical examination of applicants and may take such reasonable steps as it may deem necessary for proper determination of any matters before it.

12-59-07. Requirements precedent to parole.
Text
The parole board may grant parole to an inmate if the board is convinced the inmate will conform to the terms and conditions of parole the board or the department of corrections and rehabilitation may establish for the inmate. The department of corrections and rehabilitation may establish intermediate conditions of parole, including

incarceration for a period of seventy-two hours and restitution, subject to the subsequent approval of the parole board.

12-59-09. Inmates subject to jurisdiction of parole board.
Text
All inmates sentenced to the legal and physical custody of the department of corrections and rehabilitation are subject to the jurisdiction of the parole board, except when parole for the inmate is prohibited by statute.

12-59-12. Board may reconsider action.
Text
The board may reconsider its action in granting a parole to any individual at any time before the individual has been released and finally discharged from the penitentiary, a local correctional facility, a federal correctional facility, or a correctional facility of another state. Such action may be taken on the board's own motion or on the petition of interested parties. Upon notice to a parolee and with good cause, the board may modify or enlarge conditions of parole at any time before the expiration or termination of the parole.

12-59-15. Breach of parole — Hearings — Order of recommitment.
Text
1. When it is alleged that a parolee has violated any of the terms or conditions of parole established by the parole board or by the department of corrections and rehabilitation, the director of the department of corrections and rehabilitation may issue a warrant for the arrest of the parolee.
2. Upon issuance of a warrant of arrest for a parole violation, the running of the time period of parole must be suspended until the parole board issues a final order under this section. The parolee is entitled to credit for time spent in physical custody from the time of arrest until the time the parole board issues a final order.
3. The parolee is entitled to a preliminary hearing, as promptly as is convenient after the arrest and reasonably near the place of the alleged violation or arrest, to determine whether there is probable cause to find that the parolee violated any of the terms and conditions of parole established by the board or by the department of corrections and rehabilitation.
4. The preliminary hearing must be conducted before the director of the department of corrections and rehabilitation or other hearing officer authorized by the director. The preliminary hearing must be conducted by a disinterested hearing officer not directly involved in the supervision of the parolee or by the person bringing the allegation of a parole violation.
5. If the hearing officer determines there is probable cause to find that the parolee has violated any of the terms and conditions of parole established by the board or by the department of corrections and rehabilitation, the board may redetermine the time remaining in the period of parole to reflect any portion of the period during which the parolee was not under supervision or not in the custody of law enforcement personnel in the state.

6. If the hearing officer determines there is probable cause to find that the parolee has violated any of the terms and conditions of parole established by the board or by the department of corrections and rehabilitation, the parolee must be returned to the physical custody of the department of corrections and rehabilitation, transferred to another correctional facility or the state hospital, or released from actual custody pursuant to such terms and conditions as may be established by the parole board or the department of corrections and rehabilitation, pending a final revocation hearing before the parole board. If the board determines at the final revocation hearing that the parolee has violated any of the terms and conditions of parole established by the board or by the department of corrections and rehabilitation, it may order that the parolee be recommitted to the physical custody of the department of corrections and rehabilitation to serve all or part of the remaining time of the sentence that has not been served in custody.
7. At any hearing pursuant to this section a record must be made and the parolee shall have:

a. Written notice of the purpose of the hearing and the alleged violations.

b. The opportunity to be heard in person and present witnesses and documentary evidence.

c. The opportunity to confront and cross-examine adverse witnesses, unless the hearing officer determines that confrontation would create a risk of harm to the witness.

d. A written statement as to the reasons for the decision.

8. When the board determines the parolee has absconded from supervision, the board may order the parolee to pay the costs of being returned to the board. Moneys recovered under this subsection must be remitted to the department of corrections and rehabilitation.

12-59-17. Causing parolee or probationer to violate parole or probation — Penalty.
Text
Any person knowing that another person is on parole, or on probation, who willfully causes such parolee or probationer to violate the terms or conditions of the parolee's or probationer's parole or probation is guilty of a class A misdemeanor.

12-59-20. Probation and parole officers as peace officers.
Text
1. Probation and parole officers have the power of a peace officer:

a. For the purpose of enforcing probation and parole laws; and

b. To enforce the law, conduct investigations, and make arrests for violations of the law on or within any premises under the control of the department of corrections and rehabilitation.

2. Probation and parole officers shall provide assistance to and receive assistance from other law enforcement officers in securing and jailing probation and parole violators and other offenders and in preventing and controlling of criminal activity.
3. Probation and parole officers may supervise sexually dangerous individuals released to community placement on an outpatient basis in accordance with section 25-03.3-24.

12-59-21. Establishment and modification of parole expiration dates.
Text
The parole board shall establish parole expiration dates in all parole cases. The parole board may not establish an initial parole expiration date that is earlier than the expiration date of the parolee's court-imposed sentence, less sentence reduction received under chapter 12-54.1. The length of the period of parole may not be extended more than five years for a felony and two years for a misdemeanor beyond the date that the court-imposed sentence would have otherwise expired had parole not been granted. The parole board may allow a parolee to earn performance-based parole reduction at the rate of up to five days per month in accordance with performance criteria established by the parole board. The board may terminate a parolee's supervision at any time earlier than the established date of release from parole if the parole board determines that early termination of supervision is warranted and termination of supervision is in the interest of justice. The parole board may not terminate supervision for a parolee who has a life sentence with opportunity for parole earlier than five years from the established date of release on parole.

12-59-22. Twenty-four seven sobriety program.
Text
The parole board may authorize participation in the twenty-four seven sobriety program as an intermediate sanction or condition of parole.

25.8109.03002
Title.

Prepared by the Legislative Council
staff for Representative Klemin
March 31, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO
SECOND ENGROSSMENT

REENGROSSED SENATE BILL NO. 2128

Introduced by

Judiciary Committee

(At the request of the Attorney General)

A BILL for an Act to create and enact a new section to chapter 12-67 of the North Dakota Century Code, relating to tampering or destroying an approved electronic monitoring device; to amend and reenact sections 12-44.1-01, 12-47-18.1, 12-48.1-01, 12-48.1-02, 12-54.1-01, 12-54.1-03, 12.1-08-02, 12.1-08-06, 12.1-08-07, 12.1-08-08, 12.1-08-09, 12.1-17-01, 12.1-32-02.1, 12.1-32-09.1, and 39-10-71 of the North Dakota Century Code, relating to transparent sentencing of criminal offenders, transfer of persons between correctional facilities, work release eligibility and conditions for criminal offenders, sentences for assaulting and fleeing from law enforcement officers, sentences for escape, and sentences for preventing arrest; to provide a legislative management report; to provide a penalty; to provide an appropriation; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-44.1-01 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-01. Definitions.

As used in this chapter:

1. "Administrator" means the sheriff, chief of police, administrator, superintendent, director, or other individual serving as the chief executive officer of a correctional facility.
2. "Adult lockup" means a secure temporary-hold nonresidential facility that does not hold individuals overnight and includes a facility with cuffing rails or cuffing benches.

3. "Correctional facility" means a city or county jail or detention center, regional corrections center, or juvenile detention center for the detention or confinement of persons in accordance with law. The use of the term does not imply and may not be used to require the provision of services including treatment, counseling, career and technical education, or other educational services, except as may otherwise be required or provided for under this chapter. The term does not include transitional facilities.
4. "Correctional facility staff" means correctional personnel with titles such as jailer, deputy, counselor, correctional officer, or any other title, whose duties include the ongoing supervision of inmates in a correctional facility.
5. "Court holding facility" means a secure facility, other than an adult correctional facility or adult lockup, used to temporarily detain individuals before or after a detention hearing or other court proceedings, and is not used to detain individuals overnight.
6. "Individual justice planning" means a process to identify, accommodate, and develop appropriate consequences for behaviors caused by or related to an individual's mental or cognitive impairment.
7. "Inmate" means any individual, whether sentenced or unsentenced, who is detained or confined in a correctional facility. The term does not include an individual who is under the supervision of the correctional facility and is supervised under home detention, electronic monitoring, or a similar program that does not involve physical detention or confinement in the facility.
8. "Jail" means a correctional facility, including a county or city jail or a regional corrections center.
9. "Juvenile detention center" means a publicly maintained correctional facility for the detention of juveniles. The term does not include the North Dakota youth correctional center.
10. "Regional corrections center" means a correctional facility established and maintained by more than one county or city, or a combination of counties and cities, for the confinement of inmates.
11. "Trained correctional facility staff" means correctional personnel who have completed a course of training approved by the peace officer standards and training board.

12. "Transitional facility" means a halfway house, assessment center, re-entry facility, transitional living facility, or similar facility, operating under contract, in partnership with, or under the direction of the department of corrections and rehabilitation or a correctional facility, which offers education, counseling, or other programs, with unsecured or minimum security housing, for offenders.

SECTION 2. AMENDMENT. Section 12-47-18.1 of the North Dakota Century Code is amended and reenacted as follows:

12-47-18.1. Transfer of persons between correctional facilities.

~~The~~Subject to statutory limitations, the director of the department of corrections and rehabilitation may transfer an offender to any facility under the department's control or contract to transfer an offender to another correctional facility for purposes of safety, security, discipline, or medical care~~, or when the director determines it may be in the best interests of the public, the offender, or the department~~.

SECTION 3. AMENDMENT. Section 12-48.1-01 of the North Dakota Century Code is amended and reenacted as follows:

12-48.1-01. ~~Director may provide certain~~Work release and education or rehabilitation services for offenders - Report.

1. The director of the department of corrections and rehabilitation may participate in programs in which ~~offenders~~an offender committed to the legal and physical custody of the department may be gainfully employed or participate in an educational or other rehabilitation program ~~either in or outside facilities~~in the facility under the control of the department in which the offender resides. ~~The~~For eligible offenders, the director may obtain or contract with separate facilities with minimum security for housing offenders granted release privileges. In areas where facilities are not within reasonable proximity of the place of employment or training of an eligible offender so released, the director may arrange for the housing of the offender in local confinement facilities.
2. For purposes of this chapter, an "eligible offender" means an offender who~~:~~
   ~~a.~~ ~~In~~, in accordance with section 12.1-32-09.1, has served eighty-five percent of the offender's sentence of imprisonment or had the offender's sentences commuted~~;~~ ~~or~~

~~b. Is serving a sentence only for one or more violations of section 12.1-06.1-08, 12.1-11-01, 12.1-11-07, 12.1-15-02, or 12.1-15-03; subdivision c of subsection 1 of section 12.1-21-02; section 12.1-21-03.1; subdivision b of subsection 1 of section 12.1-21-05; section 12.1-21-06.1, 12.1-22-05, 12.1-23-02, 12.1-23-04, 12.1-23-07, 12.1-23-08, or 12.1-24-01; subsection 7 of section 19-03.1-23; or section 19-03.4-03 or 39-08-01.~~

3. The department of corrections and rehabilitation shall provide to the attorney general and the legislative council each quarter a report, including the names, locations, and sentences of each individual who meets the criteria in ~~subdivision b of~~ subsection 2.

SECTION 4. AMENDMENT. Section 12-48.1-02 of the North Dakota Century Code is amended and reenacted as follows:

12-48.1-02. Conditions of ~~eligibility for~~participation in release programs.

1. An eligible offender, except 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, may ~~be eligible for programs~~participate in a program outside ~~facilities~~a facility under the control of the department of corrections and rehabilitation when the department determines, with a high degree of reliability, the eligible offender is not a high security risk, not likely to commit a crime of violence, not likely to escape, and is likely to be rehabilitated by such program. An eligible offender may apply to the director of the department for permission to participate in such programs.
2. The director of the department may authorize participation in outside programs for an eligible offender who has ten years or less remaining on a sentence and has been committed to the legal and physical custody of the department. The parole board, with the approval of the director of the department, may authorize participation in outside programs for eligible offenders who have more than ten years remaining on a sentence and have been committed to the legal and physical custody of the department.
3. The offender shall submit a signed application which must include a statement that the eligible offender agrees to abide by all terms and conditions of the particular plan

adopted for the eligible offender, and must include such other information as the parole board or the director of the department may require.

4. The parole board may approve, disapprove, or defer action on an application approved by the director of the department. The director of the department or the parole board may revoke approval of the application at any time after granting the application. The department shall prescribe rules of conduct and treatment for all eligible offenders on release programs and shall prescribe objective and subjective criteria for which revocation of approval to participate in release programs is mandatory. A rule violation indicating the eligible offender likely will commit a crime of violence or is likely to attempt to escape must result in revocation of approval to participate in release programs. The department shall document all violations of the rules of conduct and treatment.

5. The director of the department may grant short leaves, not to exceed seventy-two hours, to eligible offenders who have been committed to the legal and physical custody of the department for ten years or less. The parole board, upon the approval of the director of the department, may grant short leaves, not to exceed seventy-two hours, to offenders committed to the legal and physical custody of the department for more than ten years. Short leaves granted under this subsection may not be granted consecutively to the same individual.

6. All rules adopted by the parole board and the director of the department relating to release programs and short leaves must conform, to the extent allowable by law, with executive order no. 11755 issued by the President of the United States.

SECTION 5. AMENDMENT. Section 12-54.1-01 of the North Dakota Century Code is amended and reenacted as follows:

12-54.1-01. Sentence reduction for good time.

~~Except as provided under~~Subject to the requirements of section 12.1-32-09.1, an offender committed to the legal and physical custody of the department of corrections and rehabilitation is eligible to earn sentence reductions based upon satisfactory fulfillment of performance criteria established through department and penitentiary rules. Performance criteria ~~includes~~must include participation in court-ordered or staff-recommended treatment and education programs and good work performance. The department may credit an offender committed to the legal and

physical custody of the department who is eligible for sentence reduction up to five days good time per month for each month of the sentence imposed~~served, up to a maximum of fifteen percent of the offender's sentence. Sentence reductions may not be awarded before they are earned~~. The department may credit an offender with sentence reduction for time spent in custody before sentencing and commitment to the legal and physical custody of the department. The department may not credit an offender with any sentence reduction for time spent on probation under the supervision and management of the department.

SECTION 6. AMENDMENT. Section 12-54.1-03 of the North Dakota Century Code is amended and reenacted as follows:

12-54.1-03. Meritorious conduct sentence reduction.

~~Except as provided under section 12.1-32-09.1, offenders~~Offenders committed to the legal and physical custody of the department of corrections and rehabilitation may receive a lump sum or a monthly rate of meritorious conduct sentence reduction for outstanding performance or heroic acts ~~or as a special control and security measure~~, as provided by penitentiary and department rules and upon written recommendation of a department multidisciplinary team. Meritorious sentence reductions are in addition to sentence reductions under section 12-54.1-01 and may be made only after a written recommendation is made by the warden and approved by the director of the department. Any sentence reduction ~~for special control or security measures~~under this section may not exceed two days~~one day~~ good time per month per offender.

SECTION 7. A new section to chapter 12-67 of the North Dakota Century Code is created and enacted as follows:

Tampering or destroying an approved electronic monitoring device - Penalty.

1. An individual may not tamper with, destroy, or remove an approved electronic monitoring device.
2. An individual who violates this section is guilty of a class C felony. For a conviction under this section, the court shall impose a minimum sentence of one year imprisonment in a correctional facility to be served consecutively to any other term of commitment, including incarceration due to revocation of probation or parole.

3. Notwithstanding subsection 2, for a conviction under this section, the court shall impose a term of imprisonment to be served concurrently with a conviction for a violation under section 12.1-08-06 arising from same incident.

4. No part of a sentence imposed under this section may be served at a transitional facility

SECTION 8. AMENDMENT. Section 12.1-08-02 of the North Dakota Century Code is amended and reenacted as follows:

12.1-08-02. Preventing arrest or discharge of other duties.

~~1.~~ A person is guilty of a class A misdemeanor if, with intent to prevent a public servant from effecting an arrest of himself or another for a misdemeanor or infraction, or from discharging any other official duty, he creates a substantial risk of bodily injury to the public servant or to anyone except himself, or employs means justifying or requiring substantial force to overcome resistance to effecting the arrest or the discharge of the duty. A person is guilty of a class C felony if, with intent to prevent a public servant from effecting an arrest of himself or another for a class A, B, or C felony, he creates a substantial risk of bodily injury to the public servant or to anyone except himself, or employs means justifying or requiring substantial force to overcome resistance to effecting such an arrest.

~~2.~~1. It is a defense to a prosecution under this section that the public servant was not acting lawfully, but it is no defense that the defendant mistakenly believed that the public servant was not acting lawfully. A public servant executing a warrant or other process in good faith and under color of law shall be deemed to be acting lawfully.

2. A sentence for a conviction under this section ~~carries a penalty of at least fourteen days' imprisonment and, if there is an underlying conviction, the imprisonment~~ must be consecutive to any sentence of imprisonment for ~~the~~an underlying conviction.

SECTION 9. AMENDMENT. Section 12.1-08-06 of the North Dakota Century Code is amended and reenacted as follows:

12.1-08-06. Escape.

1. A person is guilty of escape if, without lawful authority, the person removes or attempts to remove himself from official detention or fails to return to official detention following temporary leave granted for a specified purpose or limited period. A person who is subject to official detention under this section is guilty of escape, if while outside the

state of North Dakota and without lawful authority, the person removes or attempts to remove himself from official detention, or fails to return to official detention following temporary leave granted for a specified purpose or limited period, when at the time the person is in the legal custody of a warden of the penitentiary, department of corrections and rehabilitation, or other competent authority by virtue of a lawful commitment to official detention.

2. Escape is a class B felony if the actor uses a firearm, destructive device, or other dangerous weapon in effecting or attempting to effect the actor's removal from official detention. Escape is a class C felony if:

   a. The actor uses any other force or threat of force against another in effecting or attempting to effect the actor's removal from official detention; or

   b. The person escaping was in official detention by virtue of the person's arrest for, or on charge of, a felony, or pursuant to the person's conviction of any offense.

   Otherwise escape is a class A misdemeanor.

3. The court shall impose a minimum sentence of one year imprisonment in a correctional facility for an individual convicted of a felony under subdivision b of subsection 2 to be served consecutively to any other term of imprisonment, including incarceration due to revocation of probation or parole. No part of a sentence imposed under this subsection may be served at a transitional facility.

4. Notwithstanding subsection 3, for a conviction under this section, the court shall impose a term of imprisonment to be served concurrently with a conviction for a violation of section 7 of this Act arising from the same incident.

5. In this section:

   a. "Conviction of an offense" does not include an adjudication of juvenile delinquency.

   b. "Official detention" means arrest, custody following surrender in lieu of arrest, detention in any facility for custody of persons under charge or conviction of an offense or alleged or found to be delinquent, detention under a law authorizing civil commitment in lieu of criminal proceedings or authorizing such detention while criminal proceedings are held in abeyance, detention for extradition, home detention as authorized by chapter 12-67, or custody for purposes incident to the

foregoing, including transportation, medical diagnosis or treatment, court appearances, work, and recreation, or being absent without permission from any release granted while under custody of a sentence such as work or education release, community confinement, or other temporary leaves from a correctional or placement facility. "Official detention" does not include supervision on probation or parole or constraint incidental to release.

~~4.~~6. Irregularity in bringing about or maintaining detention, or lack of jurisdiction of the committing or detaining authority, shall not be a defense to a prosecution under this section if the escape is from the penitentiary or other facility used for official detention or from detention pursuant to commitment by an official proceeding. In the case of other detentions, irregularity or lack of jurisdiction shall be an affirmative defense if:

a. The escape involved no substantial risk of harm to the person or property of anyone other than the detainee; or

b. The detaining authority did not act in good faith under color of law.

~~5.~~7. The jurisdiction of a violation of this section when the person is in the legal custody of a warden of the penitentiary, the department of corrections and rehabilitation, or other lawful authority is in the county where the violation occurred if the violation occurred within this state, and is in Burleigh County or in the county in which the order committing the person to official detention was entered if the violation occurred outside this state.

SECTION 10. AMENDMENT. Section 12.1-08-07 of the North Dakota Century Code is amended and reenacted as follows:

12.1-08-07. Public servants permitting escape.

A public servant concerned in official detention pursuant to process issued by a court, judge, or magistrate is guilty of a class A misdemeanor if he recklessly permits an escape and is guilty of a class B misdemeanor if he negligently permits an escape. "Official detention" has the meaning prescribed in subsection ~~3~~5 of section 12.1-08-06.

SECTION 11. AMENDMENT. Section 12.1-08-08 of the North Dakota Century Code is amended and reenacted as follows:

12.1-08-08. Inciting or leading riot in detention facilities.

1. A person is guilty of a class C felony if, with intent to cause, continue, or enlarge a riot, he solicits a group of five or more persons to engage in a riot in a facility used for official detention or engages in conduct intended to serve as the beginning of or signal for such riot, or participates in planning such riot, or, in the course of such riot, issues commands or instructions in furtherance thereof.
2. In this section:
   a. "Official detention" has the meaning prescribed in subsection ~~3~~5 of section 12.1-08-06.
   b. "Riot" means a disturbance involving an assemblage of five or more persons which by tumultuous and violent conduct creates grave danger of damage or injury to property or persons or substantially obstructs the operation of the facility or other government function.

SECTION 12. AMENDMENT. Section 12.1-08-09 of the North Dakota Century Code is amended and reenacted as follows:

12.1-08-09. Introducing or possessing contraband useful for escape.

1. A person is guilty of a class C felony if he unlawfully provides an inmate of an official detention facility with any tool, weapon, or other object which may be useful for escape. Such person is guilty of a class B felony if the object is a firearm, destructive device, or other dangerous weapon.
2. An inmate of an official detention facility is guilty of a class C felony if he unlawfully procures, makes, or otherwise provides himself with, or has in his possession, any tool, weapon, or other object which may be useful for escape. Such person is guilty of a class B felony if the object is a firearm, destructive device, or other dangerous weapon.
3. In this section:
   a. "Official detention" has the meaning prescribed in subsection ~~3~~5 of section 12.1-08-06.
   b. "Unlawfully" means surreptitiously or contrary to a statute or regulation, rule, or order issued pursuant thereto.

SECTION 13. AMENDMENT. Section 12.1-17-01 of the North Dakota Century Code is amended and reenacted as follows:

12.1-17-01. Simple assault.

1. A person is guilty of an offense if that person:
   a. Willfully causes bodily injury to another human being; or
   b. Negligently causes bodily injury to another human being by means of a firearm, destructive device, or other weapon, the use of which against a human being is likely to cause death or serious bodily injury.
2. The offense is:
   a. A class C felony when the victim is a peace officer or correctional institution employee acting in an official capacity, which the actor knows to be a fact; an employee of the state hospital acting in the course and scope of employment, which the actor knows to be a fact, and the actor is an individual committed to or detained at the state hospital pursuant to chapter 25-03.3; a person engaged in a judicial proceeding; or a member of a municipal or volunteer fire department or emergency medical services personnel unit or emergency department worker in the performance of the member's duties.
   b. A class B misdemeanor except as provided in subdivision a.
3. A sentence for a conviction under subdivision a of subsection 2 ~~carries a penalty of at least thirty days' imprisonment and, if there is an underlying conviction, the imprisonment~~ must be consecutive to any sentence of imprisonment for ~~the~~an underlying conviction.

SECTION 14. AMENDMENT. Section 12.1-32-02.1 of the North Dakota Century Code is amended and reenacted as follows:

12.1-32-02.1. Mandatory prison terms for armed offenders.

1. Notwithstanding any other provision of this title, a term of imprisonment must be imposed upon an offender and served without benefit of parole when:
   a. In the course of committing an offense, the offender inflicts or attempts to inflict bodily injury upon another, threatens or menaces another with imminent bodily injury with a dangerous weapon, explosive, destructive device, or firearm; or

b. An offender prohibited from possessing a firearm under section 62.1-02-01 possesses a firearm while in the course of committing any felony offense under subsection 1~~,~~ or 3~~, or 7~~ of section 19-03.1-23.

2. This requirement applies only when possession of a dangerous weapon, explosive, destructive device, or firearm has been charged and admitted or found to be true in the manner provided by law, and must be imposed as follows:

a. If the offense for which the offender is convicted is a class AA, class A, or class B felony, the court shall impose a minimum sentence of four years' imprisonment.

b. If the offense for which the offender is convicted is a class C felony, the court shall impose a minimum sentence of two years' imprisonment.

3. This section applies even when being armed is an element of the offense for which the offender is convicted.

4. This section applies even if the offender is prosecuted for a violation of section 62.1-02-01 for the same conduct.

5. 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~~is not an eligible offender under subdivision b of subsection 2 of section 12-48.1-01~~.

SECTION 15. AMENDMENT. Section 12.1-32-09.1 of the North Dakota Century Code is amended and reenacted as follows:

12.1-32-09.1. ~~Sentencing of violent offenders~~Truth in sentencing.

1. Except as provided under ~~section~~sections 12-48.1-01 and 12-48.1-02 ~~and pursuant to rules adopted by the department of corrections and rehabilitation~~, an offender who is sentenced as a dangerous special offender or habitual offender under section 12.1-32-09, or is convicted of a crime in violation of section 12.1-16-01, 12.1-16-02, subsection 2 of section 12.1-17-02, section 12.1-18-01, subdivision a of subsection 1 or subdivision b of subsection 2 of section 12.1-20-03, section 12.1-22-01, subdivision b of subsection 2 of section 12.1-22-02, or an attempt to commit the offenses, and who receives a sentence of imprisonment is not eligible for release from confinement on any basis until eighty-five percent of the sentence imposed by the

court has been served or the sentence is commuted. ~~All other offenders are not eligible for release from confinement on any basis until:~~

~~a. Fifty percent of the sentence imposed by the court is served, not including any time credited under section 12-54.1-01, and the offender is paroled;~~

~~b. The offender's sentence is commuted and the offender served the commuted sentence;~~

~~c. Eighty-five percent of the sentence imposed by the court is served; or~~

~~d. The offender is pardoned.~~

2. In the case of an offender who is sentenced to a term of life imprisonment with opportunity for parole under subsection 1 of section 12.1-32-01, the term "sentence imposed" means the remaining life expectancy of the offender on the date of sentencing. The remaining life expectancy of the offender must be calculated on the date of sentencing, computed by reference to a recognized mortality table as established by rule by the supreme court.

3. Notwithstanding this section, an offender sentenced under subsection 1 of section 12.1-32-01 may not be eligible for parole until the requirements of that subsection have been met.

4. ~~An offender who is convicted of a class C felony in violation of section 12.1-17-02, or an attempt to commit the offense, and who has received a sentence of imprisonment or a sentence of imprisonment upon revocation of probation before August 1, 2015, is eligible to have the offender's sentence considered by the parole board.~~

~~5. Notwithstanding subsection 4, this section does not apply to a sentence imposed upon revocation of probation.~~For purposes of this section "confinement" does not include placement or residence in a transitional facility, halfway house, or similar facility, operating under contract, in partnership with, or under the direction of the department of corrections and rehabilitation or other correctional facility, with unsecured or minimum security housing, except during the last six months before an offender's release from incarceration.

5. Notwithstanding subsection 4, placement or residence at the James River correctional center, Missouri River correctional center, Heart River correctional center, or Dakota women's correctional and rehabilitation center, or county jail is "confinement" for

purposes of this section, provided the order to place the inmate in the center or jail is approved by an identifiable employee of the department of corrections and rehabilitation after the employee determines, with reasonable certainty, the placement will not pose a danger to the public.

SECTION 16. AMENDMENT. Section 39-10-71 of the North Dakota Century Code is amended and reenacted as follows:

39-10-71. Fleeing or attempting to elude a peace officer - Penalty.

1. A driver of a motor vehicle who willfully fails or refuses to bring the vehicle to a stop, or who otherwise flees or attempts to elude, in any manner, a pursuing police vehicle or peace officer, when given a visual or audible signal to bring the vehicle to a stop, is guilty of a:
   a. Class A misdemeanor for a first offense and a class C felony for a subsequent offense within three years;
   b. Class C felony if the driver violates this section while willfully fleeing during or after the commission of a felony; or
   c. Class C felony if, at any time during the flight or pursuit, the driver willfully operates the vehicle in a manner constituting an inherent risk of death or serious bodily injury to a third person.
2. A signal complies with this section if the signal is perceptible to the driver and:
   a. If given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the stopping vehicle is appropriately marked showing it to be an official police vehicle; or
   b. If not given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the officer is in uniform or prominently displays the officer's badge of office.
3. A felony conviction under this section carries a penalty of at least thirty days' imprisonment and, if there is an underlying conviction, the imprisonment must be consecutive to any sentence of imprisonment for the underlying conviction.
4. Upon a motion by a state's attorney, a court may order that a motor vehicle used in the commission of a violation of this section be impounded by a peace officer for up to six months.

SECTION 17. APPROPRIATION - DEPARTMENT OF CORRECTIONS AND REHABILITATION - ELECTRONIC MONITORING IN TRANSITIONAL FACILITIES - ONE-TIME FUNDING. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of $600,000, or so much of the sum as may be necessary, to the department of corrections and rehabilitation for the purpose of using electronic monitoring in transitional facilities, for the biennium beginning July 1, 2025, and ending June 30, 2027.

SECTION 18. APPLICATION. Sections 1, 2, 3, 4, 5, 6, ~~9~~14, and ~~10~~15 of this Act apply to individuals who are charged after July 31, 2025, with violations subject to the provisions of this Act.

25.8109.03001
Title.

Prepared by the Legislative Council staff for Representative D. Johnston
March 27, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO SECOND ENGROSSMENT

REENGROSSED SENATE BILL NO. 2128

Introduced by

Judiciary Committee

(At the request of the Attorney General)

A BILL for an Act to amend and reenact sections 12-44.1-01, 12-47-18.1, 12-48.1-01, 12-48.1-02, 12-54.1-01, 12-54.1-03, 12.1-08-02, 12.1-17-01, 12.1-32-02.1, 12.1-32-09.1, and 39-10-71 of the North Dakota Century Code, relating to transparent sentencing of criminal offenders, transfer of persons between correctional facilities, work release eligibility and conditions for criminal offenders, sentences for assaulting and fleeing from law enforcement officers, and sentences for preventing arrest; to provide a legislative management report; to provide a penalty; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-44.1-01 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-01. Definitions.

As used in this chapter:

1. "Administrator" means the sheriff, chief of police, administrator, superintendent, director, or other individual serving as the chief executive officer of a correctional facility.
2. "Adult lockup" means a secure temporary-hold nonresidential facility that does not hold individuals overnight and includes a facility with cuffing rails or cuffing benches.
3. "Correctional facility" means a city or county jail or detention center, regional corrections center, or juvenile detention center for the detention or confinement of persons in accordance with law. The use of the term does not imply and may not be

used to require the provision of services including treatment, counseling, career and technical education, or other educational services, except as may otherwise be required or provided for under this chapter. The term does not include transitional facilities.

4. "Correctional facility staff" means correctional personnel with titles such as jailer, deputy, counselor, correctional officer, or any other title, whose duties include the ongoing supervision of inmates in a correctional facility.

5. "Court holding facility" means a secure facility, other than an adult correctional facility or adult lockup, used to temporarily detain individuals before or after a detention hearing or other court proceedings, and is not used to detain individuals overnight.

6. "Individual justice planning" means a process to identify, accommodate, and develop appropriate consequences for behaviors caused by or related to an individual's mental or cognitive impairment.

7. "Inmate" means any individual, whether sentenced or unsentenced, who is detained or confined in a correctional facility. The term does not include an individual who is under the supervision of the correctional facility and is supervised under home detention, electronic monitoring, or a similar program that does not involve physical detention or confinement in the facility.

8. "Jail" means a correctional facility, including a county or city jail or a regional corrections center.

9. "Juvenile detention center" means a publicly maintained correctional facility for the detention of juveniles. The term does not include the North Dakota youth correctional center.

10. "Regional corrections center" means a correctional facility established and maintained by more than one county or city, or a combination of counties and cities, for the confinement of inmates.

11. "Trained correctional facility staff" means correctional personnel who have completed a course of training approved by the peace officer standards and training board.

12. "Transitional facility" means a halfway house, assessment center, re-entry facility, transitional living facility, or similar facility, operating under contract, in partnership with, or under the direction of the department of corrections and rehabilitation or a

correctional facility, which offers education, counseling, or other programs, with unsecured or minimum security housing, for offenders.

SECTION 2. AMENDMENT. Section 12-47-18.1 of the North Dakota Century Code is amended and reenacted as follows:

12-47-18.1. Transfer of persons between correctional facilities.

~~The~~Subject to statutory limitations, the director of the department of corrections and rehabilitation may transfer an offender to any facility under the department's control or contract to transfer an offender to another correctional facility for purposes of safety, security, discipline, or medical care~~, or when the director determines it may be in the best interests of the public, the offender, or the department~~.

SECTION 3. AMENDMENT. Section 12-48.1-01 of the North Dakota Century Code is amended and reenacted as follows:

12-48.1-01. ~~Director may provide certain~~Work release and education or rehabilitation services for offenders.

1. The director of the department of corrections and rehabilitation may participate in programs in which ~~offenders~~an offender committed to the legal and physical custody of the department may be gainfully employed in, or on the grounds of, a facility under the control of the department which has a security level that is the same as or higher than the security level of the facility in which the offender resides, or participate in an educational or other rehabilitation program ~~either in or outside facilities~~in the facility under the control of the department in which the offender resides. ~~The~~For eligible offenders, the director may obtain or contract with separate facilities with minimum security for housing offenders granted release privileges. In areas where facilities are not within reasonable proximity of the place of employment or training of an eligible offender so released, the director may arrange for the housing of the offender in local confinement facilities.
2. For purposes of this chapter, an "eligible offender" means an offender who:
   a. In accordance with section 12.1-32-09.1, has served eighty-five percent of the offender's sentence of imprisonment or had the offender's ~~sentences~~sentence commuted and has served the commuted sentence; or
   b. Is serving a sentence only for one or more violations of ~~section~~:

(1) Section 12.1-06.1-08, 12.1-11-01, ~~12.1-11-07,~~ 12.1-15-02, or 12.1-15-03; subdivision c of subsection 1 of section 12.1-21-02; section 12.1-21-03.1; subdivision b of subsection 1 of section 12.1-21-05; section 12.1-21-06.1, ~~12.1-22-05,~~ 12.1-23-02, 12.1-23-04, 12.1-23-07, 12.1-23-08, ~~or~~ 12.1-24-01; or 14-09-22.1; subsection 7 of section 19-03.1-23; ~~or~~ section 19-03.4-03 or 39-08-01~~.~~; or

(2) Any section for which the offender is guilty of a misdemeanor, except an offender serving a sentence for a violation of chapter 12.1-17, 12.1-17.1, 12.1-20, 12.1-25, or 12.1-27.1 is not an eligible offender.

3. For purpose of subdivision b of subsection 2, a conviction reduced pursuant to subsection 9 of section 12.1-32-02 is not a misdemeanor.

4. The department of corrections and rehabilitation shall provide to the attorney general and the legislative council each quarter a report, including the names, locations, and sentences of each individual who meets the criteria in subdivision b of subsection 2.

SECTION 4. AMENDMENT. Section 12-48.1-02 of the North Dakota Century Code is amended and reenacted as follows:

12-48.1-02. Conditions of ~~eligibility for~~participation in release programs.

1. An eligible offender, except 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, may ~~be eligible for programs~~participate in a program outside ~~facilities~~a facility under the control of the department of corrections and rehabilitation when the department determines, with a high degree of reliability, the eligible offender is not a high security risk, not likely to commit a crime of violence, not likely to escape, and is likely to be rehabilitated by such program. An eligible offender may apply to the director of the department for permission to participate in such programs.
2. The director of the department may authorize participation in outside programs for an eligible offender who has ten years or less remaining on a sentence and has been committed to the legal and physical custody of the department. The parole board, with the approval of the director of the department, may authorize participation in outside programs for eligible offenders who have more than ten years remaining on a

sentence and have been committed to the legal and physical custody of the department.

3. The offender shall submit a signed application which must include a statement that the eligible offender agrees to abide by all terms and conditions of the particular plan adopted for the eligible offender, and must include such other information as the parole board or the director of the department may require.

4. The parole board may approve, disapprove, or defer action on an application approved by the director of the department. The director of the department or the parole board may revoke approval of the application at any time after granting the application. The department shall prescribe rules of conduct and treatment for all eligible offenders on release programs and shall prescribe objective and subjective criteria for which revocation of approval to participate in release programs is mandatory. A rule violation indicating the eligible offender likely will commit a crime of violence or is likely to attempt to escape must result in revocation of approval to participate in release programs. The department shall document all violations of the rules of conduct and treatment.

5. The director of the department may grant short leaves, not to exceed seventy-two hours, to eligible offenders who have been committed to the legal and physical custody of the department for ten years or less. The parole board, upon the approval of the director of the department, may grant short leaves, not to exceed seventy-two hours, to offenders committed to the legal and physical custody of the department for more than ten years. Short leaves granted under this subsection may not be granted consecutively to the same individual.

6. All rules adopted by the parole board and the director of the department relating to release programs and short leaves must conform, to the extent allowable by law, with executive order no. 11755 issued by the President of the United States.

SECTION 5. AMENDMENT. Section 12-54.1-01 of the North Dakota Century Code is amended and reenacted as follows:

12-54.1-01. Sentence reduction for good time.

~~Except as provided under~~Subject to the requirements of section 12.1-32-09.1, an offender committed to the legal and physical custody of the department of corrections and rehabilitation

is eligible to earn sentence reductions based upon satisfactory fulfillment of performance criteria established through department and penitentiary rules. Performance criteria ~~includes~~must include participation in court-ordered or staff-recommended treatment and education programs available to the offender, if any, and good work performance if the offender is employed. The department may credit an offender committed to the legal and physical custody of the department who is eligible for sentence reduction up to five days good time per month for each month of the sentence ~~imposed~~served, up to a maximum of fifteen percent of the offender's sentence. Sentence reductions may not be awarded before they are earned. The department may credit an offender with sentence reduction for time spent in custody before sentencing and commitment to the legal and physical custody of the department. The department may not credit an offender with any sentence reduction for time spent on probation under the supervision and management of the department.

SECTION 6. AMENDMENT. Section 12-54.1-03 of the North Dakota Century Code is amended and reenacted as follows:

12-54.1-03. Meritorious conduct sentence reduction.

~~Except as provided under section 12.1-32-09.1, offenders~~Offenders committed to the legal and physical custody of the department of corrections and rehabilitation may receive a lump sum or a monthly rate of meritorious conduct sentence reduction for outstanding performance or heroic acts ~~or as a special control and security measure~~, as provided by penitentiary and department rules and upon written recommendation of a department multidisciplinary team. Meritorious sentence reductions are in addition to sentence reductions under section 12-54.1-01 and may be made only after a written recommendation is made by the warden and approved by the director of the department. Any sentence reduction ~~for special control or security measures~~under this section may not exceed ~~two days~~one day good time per month per offender.

SECTION 7. AMENDMENT. Section 12.1-08-02 of the North Dakota Century Code is amended and reenacted as follows:

12.1-08-02. Preventing arrest or discharge of other duties.

~~1.~~ A person is guilty of a class A misdemeanor if, with intent to prevent a public servant from effecting an arrest of himself or another for a misdemeanor or infraction, or from discharging any other official duty, he creates a substantial risk of bodily injury to the public

servant or to anyone except himself, or employs means justifying or requiring substantial force to overcome resistance to effecting the arrest or the discharge of the duty. A person is guilty of a class C felony if, with intent to prevent a public servant from effecting an arrest of himself or another for a class A, B, or C felony, he creates a substantial risk of bodily injury to the public servant or to anyone except himself, or employs means justifying or requiring substantial force to overcome resistance to effecting such an arrest.

~~2.~~1. It is a defense to a prosecution under this section that the public servant was not acting lawfully, but it is no defense that the defendant mistakenly believed that the public servant was not acting lawfully. A public servant executing a warrant or other process in good faith and under color of law shall be deemed to be acting lawfully.

2. A sentence for a conviction under this section ~~carries a penalty of at least fourteen days' imprisonment and, if there is an underlying conviction, the imprisonment~~ must be consecutive to any sentence of imprisonment for ~~the~~an underlying conviction.

SECTION 8. AMENDMENT. Section 12.1-17-01 of the North Dakota Century Code is amended and reenacted as follows:

12.1-17-01. Simple assault.

1. A person is guilty of an offense if that person:
   a. Willfully causes bodily injury to another human being; or
   b. Negligently causes bodily injury to another human being by means of a firearm, destructive device, or other weapon, the use of which against a human being is likely to cause death or serious bodily injury.
2. The offense is:
   a. A class C felony when the victim is a peace officer or correctional institution employee acting in an official capacity, which the actor knows to be a fact; an employee of the state hospital acting in the course and scope of employment, which the actor knows to be a fact, and the actor is an individual committed to or detained at the state hospital pursuant to chapter 25-03.3; a person engaged in a judicial proceeding; or a member of a municipal or volunteer fire department or emergency medical services personnel unit or emergency department worker in the performance of the member's duties.
   b. A class B misdemeanor except as provided in subdivision a.

3. A sentence for a conviction under subdivision a of subsection 2 ~~carries a penalty of at least thirty days' imprisonment and, if there is an underlying conviction, the imprisonment~~ must be consecutive to any sentence of imprisonment for ~~the~~an underlying conviction.

SECTION 9. AMENDMENT. Section 12.1-32-02.1 of the North Dakota Century Code is amended and reenacted as follows:

12.1-32-02.1. Mandatory prison terms for armed offenders.

1. Notwithstanding any other provision of this title, a term of imprisonment must be imposed upon an offender and served without benefit of parole when:
   a. In the course of committing an offense, the offender inflicts or attempts to inflict bodily injury upon another, threatens or menaces another with imminent bodily injury with a dangerous weapon, explosive, destructive device, or firearm; or
   b. An offender prohibited from possessing a firearm under section 62.1-02-01 possesses a firearm while in the course of committing any felony offense under subsection 1~~,~~ or 3~~, or 7~~ of section 19-03.1-23.
2. This requirement applies only when possession of a dangerous weapon, explosive, destructive device, or firearm has been charged and admitted or found to be true in the manner provided by law, and must be imposed as follows:
   a. If the offense for which the offender is convicted is a class AA, class A, or class B felony, the court shall impose a minimum sentence of four years' imprisonment.
   b. If the offense for which the offender is convicted is a class C felony, the court shall impose a minimum sentence of two years' imprisonment.
3. This section applies even when being armed is an element of the offense for which the offender is convicted.
4. This section applies even if the offender is prosecuted for a violation of section 62.1-02-01 for the same conduct.
5. 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~~is not an eligible offender under subdivision b of subsection 2 of section 12-48.1-01.

SECTION 10. AMENDMENT. Section 12.1-32-09.1 of the North Dakota Century Code is amended and reenacted as follows:

12.1-32-09.1. ~~Sentencing of violent offenders~~Truth in sentencing.

1. Except as provided under ~~section~~sections 12-48.1-01 and 12-48.1-02 ~~and pursuant to rules adopted by the department of corrections and rehabilitation~~, which exempt eligible offenders from the requirements of this subsection, an offender who is sentenced as a dangerous special offender or habitual offender under section 12.1-32-09, or is convicted of a crime in violation of section 12.1-16-01, 12.1-16-02, subsection 2 of section 12.1-17-02, section 12.1-18-01, subdivision a of subsection 1 or subdivision b of subsection 2 of section 12.1-20-03, section 12.1-22-01, subdivision b of subsection 2 of section 12.1-22-02, or an attempt to commit the offenses, and who receives a sentence of imprisonment is not eligible for release from confinement on any basis until eighty-five percent of the sentence imposed by the court has been served or the sentence is commuted. All other offenders are not eligible for release from confinement on any basis until:
   a. Fifty percent of the sentence imposed by the court is served, not including any time credited under section 12-54.1-01, and the offender is paroled;
   b. The offender's sentence is commuted and the offender served the commuted sentence;
   c. Eighty-five percent of the sentence imposed by the court is served; or
   d. The offender is pardoned.
2. In the case of an offender who is sentenced to a term of life imprisonment with opportunity for parole under subsection 1 of section 12.1-32-01, the term "sentence imposed" means the remaining life expectancy of the offender on the date of sentencing. The remaining life expectancy of the offender must be calculated on the date of sentencing, computed by reference to a recognized mortality table as established by rule by the supreme court.
3. Notwithstanding this section, an offender sentenced under subsection 1 of section 12.1-32-01 may not be eligible for parole until the requirements of that subsection have been met.

4. ~~An offender who is convicted of a class C felony in violation of section 12.1-17-02, or an attempt to commit the offense, and who has received a sentence of imprisonment or a sentence of imprisonment upon revocation of probation before August 1, 2015, is eligible to have the offender's sentence considered by the parole board.~~

~~5.~~ ~~Notwithstanding subsection 4, this section does not apply to a sentence imposed upon revocation of probation.~~For purposes of this section "confinement" does not include placement or residence in a transitional facility, halfway house, or similar facility, operating under contract, in partnership with, or under the direction of the department of corrections and rehabilitation or other correctional facility, with unsecured or minimum security housing.

5. Notwithstanding subsection 4, placement or residence at the James River correctional center, Missouri River correctional center, Heart River correctional center, or Dakota women's correctional and rehabilitation center, or county jail is "confinement" for purposes of this section, provided the order to place the inmate in the center or jail is approved by an identifiable employee of the department of corrections and rehabilitation after the employee determines, with reasonable certainty, the placement will not pose a danger to the public.

SECTION 11. AMENDMENT. Section 39-10-71 of the North Dakota Century Code is amended and reenacted as follows:

39-10-71. Fleeing or attempting to elude a peace officer - Penalty.

1. A driver of a motor vehicle who willfully fails or refuses to bring the vehicle to a stop, or who otherwise flees or attempts to elude, in any manner, a pursuing police vehicle or peace officer, when given a visual or audible signal to bring the vehicle to a stop, is guilty of a:
   a. Class A misdemeanor for a first offense and a class C felony for a subsequent offense within three years;
   b. Class C felony if the driver violates this section while willfully fleeing during or after the commission of a felony; or
   c. Class C felony if, at any time during the flight or pursuit, the driver willfully operates the vehicle in a manner constituting an inherent risk of death or serious bodily injury to a third person.

2. A signal complies with this section if the signal is perceptible to the driver and:
   a. If given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the stopping vehicle is appropriately marked showing it to be an official police vehicle; or
   b. If not given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the officer is in uniform or prominently displays the officer's badge of office.

3. A sentence for a felony conviction under this section ~~carries a penalty of at least thirty days' imprisonment and, if there is an underlying conviction, the imprisonment~~ must be consecutive to any sentence of imprisonment for ~~the~~an underlying conviction.

4. Upon a motion by a state's attorney, a court may order that a motor vehicle used in the commission of a violation of this section be impounded by a peace officer for up to six months.

SECTION 12. APPLICATION. Sections 1, 2, 3, 4, 5, 6, 9, and 10 of this Act apply to individuals who are charged after July 31, 2025, with violations subject to the provisions of this Act.

2025 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

SB 2128
3/31/2025

Relating to transparent sentencing of criminal offenders, transfer of persons between correctional facilities, work release eligibility and conditions for criminal offenders, sentences for assaulting and fleeing from law enforcement officers, and sentences for preventing arrest; to provide a legislative management report; to provide a penalty; and to provide for application.

3:36 p.m. Chairman Klemin opened the hearing.

Members Present: Chairman Klemin, Vice-Chairman Karls, Vice-Chairman Vetter, Representatives Christianson, Henderson, Hoverson, Johnston, McLeod, S. Olson, Satrom, Tveit, VanWinkle, Wolff, Schneider

Discussion Topics:

- Electronic monitoring devices
- North Dakota transitional facilities
- Separation of powers
- North Dakota violent crime rates

3:51 p.m. Representative Tveit moved to Amend LC: 25.8109.03001, testimony #44456 (submitted during March 31, 2025, 9:22 a.m. meeting).

3:51 p.m. Representative McLeod seconded the motion.

Representatives	Vote
Representative Lawrence R. Klemin	N
Representative Karen Karls	Y
Representative Steve Vetter	N
Representative Nels Christianson	N
Representative Donna Henderson	N
Representative Jeff Hoverson	N
Representative Daniel Johnston	Y
Representative Carrie McLeod	Y
Representative SuAnn Olson	N
Representative Bernie Satrom	N
Representative Mary Schneider	N
Representative Bill Tveit	Y
Representative Lori VanWinkle	A
Representative Christina Wolff	Y

4:33 p.m. Motion failed 5-8-1

4:34 p.m. Representative Satrom moved to Amend LC: 25.8109.03002, testimony #44448 (submitted during the March 31, 2025, 9:22 a.m. meeting) and change "means" to "includes" on page 3 line 37.

4:34 p.m. Representative Henderson seconded the motion.

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	N
Representative Steve Vetter	Y
Representative Nels Christianson	Y
Representative Donna Henderson	Y
Representative Jeff Hoverson	Y
Representative Daniel Johnston	N
Representative Carrie McLeod	N
Representative SuAnn Olson	Y
Representative Bernie Satrom	Y
Representative Mary Schneider	Y
Representative Bill Tveit	N
Representative Lori VanWinkle	A
Representative Christina Wolff	N

4:45 p.m. Motion passed 8-5-1

4:46 p.m. Representative Vetter moved to further Amend and adopt the Amendment to section 12 from testimony #44484.

4:46 p.m. Representative Satrom seconded the motion.

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	Y
Representative Steve Vetter	Y
Representative Nels Christianson	Y
Representative Donna Henderson	Y
Representative Jeff Hoverson	Y
Representative Daniel Johnston	Y
Representative Carrie McLeod	N
Representative SuAnn Olson	Y
Representative Bernie Satrom	Y
Representative Mary Schneider	Y
Representative Bill Tveit	N
Representative Lori VanWinkle	A
Representative Christina Wolff	N

4:50 p.m. Motion passed 10-3-1

4:51 p.m. Representative Tveit moved a Do Not Pass as Amended.

4:52 p.m. Representative McLeod seconded the motion.

Representatives	Vote
Representative Lawrence R. Klemin	N
Representative Karen Karls	Y
Representative Steve Vetter	N
Representative Nels Christianson	Y
Representative Donna Henderson	N
Representative Jeff Hoverson	Y
Representative Daniel Johnston	Y
Representative Carrie McLeod	Y
Representative SuAnn Olson	N
Representative Bernie Satrom	Y
Representative Mary Schneider	N
Representative Bill Tveit	Y
Representative Lori VanWinkle	Y
Representative Christina Wolff	Y

4:53 p.m. Motion passed 9-5-0

4:53 p.m. Representative Christianson will carry the bill.

4:54 p.m. Chairman Klemin closed the hearing.

Wyatt Armstrong, Committee Clerk

25.8109.03004
Title.04000

Adopted by the House Judiciary Committee

March 31, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO SECOND ENGROSSMENT

REENGROSSED SENATE BILL NO. 2128

47
1/15
4/1/2025

Introduced by

Judiciary Committee

(At the request of the Attorney General)

A BILL for an Act to create and enact a new section to chapter 12-67 of the North Dakota Century Code, relating to tampering or destroying an approved electronic monitoring device; to amend and reenact sections 12-44.1-01, 12-47-18.1, 12-48.1-01, 12-48.1-02, 12-54.1-01, 12-54.1-03, 12.1-08-02, 12.1-08-06, 12.1-08-07, 12.1-08-08, 12.1-08-09, 12.1-17-01, 12.1-32-02.1, 12.1-32-09.1, and 39-10-71 of the North Dakota Century Code, relating to transparent sentencing of criminal offenders, transfer of persons between correctional facilities, work release eligibility and conditions for criminal offenders, sentences for assaulting and fleeing from law enforcement officers, sentences for escape, and sentences for preventing arrest; to provide a legislative management study; to provide for a legislative management report; to provide a penalty; to provide an appropriation; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-44.1-01 of the North Dakota Century Code is amended and reenacted as follows:

12-44.1-01. Definitions.

As used in this chapter:

1. "Administrator" means the sheriff, chief of police, administrator, superintendent, director, or other individual serving as the chief executive officer of a correctional facility.
2. "Adult lockup" means a secure temporary-hold nonresidential facility that does not hold individuals overnight and includes a facility with cuffing rails or cuffing benches.

3. "Correctional facility" means a city or county jail or detention center, regional corrections center, or juvenile detention center for the detention or confinement of persons in accordance with law. The use of the term does not imply and may not be used to require the provision of services including treatment, counseling, career and technical education, or other educational services, except as may otherwise be required or provided for under this chapter. The term does not include transitional facilities.

4. "Correctional facility staff" means correctional personnel with titles such as jailer, deputy, counselor, correctional officer, or any other title, whose duties include the ongoing supervision of inmates in a correctional facility.

5. "Court holding facility" means a secure facility, other than an adult correctional facility or adult lockup, used to temporarily detain individuals before or after a detention hearing or other court proceedings, and is not used to detain individuals overnight.

6. "Individual justice planning" means a process to identify, accommodate, and develop appropriate consequences for behaviors caused by or related to an individual's mental or cognitive impairment.

7. "Inmate" means any individual, whether sentenced or unsentenced, who is detained or confined in a correctional facility. The term does not include an individual who is under the supervision of the correctional facility and is supervised under home detention, electronic monitoring, or a similar program that does not involve physical detention or confinement in the facility.

8. "Jail" means a correctional facility, including a county or city jail or a regional corrections center.

9. "Juvenile detention center" means a publicly maintained correctional facility for the detention of juveniles. The term does not include the North Dakota youth correctional center.

10. "Regional corrections center" means a correctional facility established and maintained by more than one county or city, or a combination of counties and cities, for the confinement of inmates.

11. "Trained correctional facility staff" means correctional personnel who have completed a course of training approved by the peace officer standards and training board.

12. "Transitional facility" means a halfway house, assessment center, re-entry facility, transitional living facility, or similar facility, operating under contract, in partnership with, or under the direction of the department of corrections and rehabilitation or a correctional facility, which offers education, counseling, or other programs, with unsecured or minimum security housing, for offenders.

SECTION 2. AMENDMENT. Section 12-47-18.1 of the North Dakota Century Code is amended and reenacted as follows:

12-47-18.1. Transfer of persons between correctional facilities.

~~The~~Subject to statutory limitations, the director of the department of corrections and rehabilitation may transfer an offender to any facility under the department's control or contract to transfer an offender to another correctional facility for purposes of safety, security, discipline, or medical care~~, or when the director determines it may be in the best interests of the public, the offender, or the department~~.

SECTION 3. AMENDMENT. Section 12-48.1-01 of the North Dakota Century Code is amended and reenacted as follows:

12-48.1-01. ~~Director may provide certain~~Work release and education or rehabilitation services for offenders - Report.

1. The director of the department of corrections and rehabilitation may participate in programs in which ~~offenders~~an offender committed to the legal and physical custody of the department may be gainfully employed or participate in an educational or other rehabilitation program ~~either in or outside facilities~~in the facility under the control of the department in which the offender resides. ~~The~~For eligible offenders, the director may obtain or contract with separate facilities with minimum security for housing offenders granted release privileges. In areas where facilities are not within reasonable proximity of the place of employment or training of an eligible offender so released, the director may arrange for the housing of the offender in local confinement facilities.
2. For purposes of this chapter, an "eligible offender" ~~means~~includes an offender who~~:~~
   ~~a.~~ ~~In~~, in accordance with section 12.1-32-09.1, has served eighty-five percent of the offender's sentence of imprisonment or had the offender's sentences commuted~~;~~
   ~~or~~

~~b. Is serving a sentence only for one or more violations of section 12.1-06.1-08, 12.1-11-01, 12.1-11-07, 12.1-15-02, or 12.1-15-03; subdivision c of subsection 1 of section 12.1-21-02; section 12.1-21-03.1; subdivision b of subsection 1 of section 12.1-21-05; section 12.1-21-06.1, 12.1-22-05, 12.1-23-02, 12.1-23-04, 12.1-23-07, 12.1-23-08, or 12.1-24-01; subsection 7 of section 19-03.1-23; or section 19-03.4-03 or 39-08-01.~~

3. The department of corrections and rehabilitation shall provide to the attorney general and the legislative council each quarter a report, including the names, locations, and sentences of each individual who meets the criteria in ~~subdivision b of~~ subsection 2.

SECTION 4. AMENDMENT. Section 12-48.1-02 of the North Dakota Century Code is amended and reenacted as follows:

12-48.1-02. Conditions of ~~eligibility for~~participation in release programs.

1. An eligible offender, except 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, may ~~be eligible for programs~~participate in a program outside ~~facilities~~a facility under the control of the department of corrections and rehabilitation when the department determines, with a high degree of reliability, the eligible offender is not a high security risk, not likely to commit a crime of violence, not likely to escape, and is likely to be rehabilitated by such program. An eligible offender may apply to the director of the department for permission to participate in such programs.
2. The director of the department may authorize participation in outside programs for an eligible offender who has ten years or less remaining on a sentence and has been committed to the legal and physical custody of the department. The parole board, with the approval of the director of the department, may authorize participation in outside programs for eligible offenders who have more than ten years remaining on a sentence and have been committed to the legal and physical custody of the department.
3. The offender shall submit a signed application which must include a statement that the eligible offender agrees to abide by all terms and conditions of the particular plan

adopted for the eligible offender, and must include such other information as the parole board or the director of the department may require.

4. The parole board may approve, disapprove, or defer action on an application approved by the director of the department. The director of the department or the parole board may revoke approval of the application at any time after granting the application. The department shall prescribe rules of conduct and treatment for all eligible offenders on release programs and shall prescribe objective and subjective criteria for which revocation of approval to participate in release programs is mandatory. A rule violation indicating the eligible offender likely will commit a crime of violence or is likely to attempt to escape must result in revocation of approval to participate in release programs. The department shall document all violations of the rules of conduct and treatment.

5. The director of the department may grant short leaves, not to exceed seventy-two hours, to eligible offenders who have been committed to the legal and physical custody of the department for ten years or less. The parole board, upon the approval of the director of the department, may grant short leaves, not to exceed seventy-two hours, to offenders committed to the legal and physical custody of the department for more than ten years. Short leaves granted under this subsection may not be granted consecutively to the same individual.

6. All rules adopted by the parole board and the director of the department relating to release programs and short leaves must conform, to the extent allowable by law, with executive order no. 11755 issued by the President of the United States.

SECTION 5. AMENDMENT. Section 12-54.1-01 of the North Dakota Century Code is amended and reenacted as follows:

12-54.1-01. Sentence reduction for good time.

~~Except as provided under~~Subject to the requirements of section 12.1-32-09.1, an offender committed to the legal and physical custody of the department of corrections and rehabilitation is eligible to earn sentence reductions based upon satisfactory fulfillment of performance criteria established through department and penitentiary rules. Performance criteria ~~includes~~must include participation in court-ordered or staff-recommended treatment and education programs and good work performance. The department may credit an offender committed to the legal and

physical custody of the department who is eligible for sentence reduction up to five days good time per month for each month of the sentence imposed~~served, up to a maximum of fifteen percent of the offender's sentence. Sentence reductions may not be awarded before they are earned~~. The department may credit an offender with sentence reduction for time spent in custody before sentencing and commitment to the legal and physical custody of the department. The department may not credit an offender with any sentence reduction for time spent on probation under the supervision and management of the department.

SECTION 6. AMENDMENT. Section 12-54.1-03 of the North Dakota Century Code is amended and reenacted as follows:

12-54.1-03. Meritorious conduct sentence reduction.

~~Except as provided under section 12.1-32-09.1, offenders~~Offenders committed to the legal and physical custody of the department of corrections and rehabilitation may receive a lump sum or a monthly rate of meritorious conduct sentence reduction for outstanding performance or heroic acts ~~or as a special control and security measure~~, as provided by penitentiary and department rules and upon written recommendation of a department multidisciplinary team. Meritorious sentence reductions are in addition to sentence reductions under section 12-54.1-01 and may be made only after a written recommendation is made by the warden and approved by the director of the department. Any sentence reduction ~~for special control or security measures~~under this section may not exceed two days~~one day~~ good time per month per offender.

SECTION 7. A new section to chapter 12-67 of the North Dakota Century Code is created and enacted as follows:

Tampering or destroying an approved electronic monitoring device - Penalty.

1. An individual may not tamper with, destroy, or remove an approved electronic monitoring device.
2. An individual who violates this section is guilty of a class C felony. For a conviction under this section, the court shall impose a minimum sentence of one year imprisonment in a correctional facility to be served consecutively to any other term of commitment, including incarceration due to revocation of probation or parole.

3. Notwithstanding subsection 2, for a conviction under this section, the court shall impose a term of imprisonment to be served concurrently with a conviction for a violation under section 12.1-08-06 arising from same incident.

4. No part of a sentence imposed under this section may be served at a transitional facility

SECTION 8. AMENDMENT. Section 12.1-08-02 of the North Dakota Century Code is amended and reenacted as follows:

12.1-08-02. Preventing arrest or discharge of other duties.

~~1.~~ A person is guilty of a class A misdemeanor if, with intent to prevent a public servant from effecting an arrest of himself or another for a misdemeanor or infraction, or from discharging any other official duty, he creates a substantial risk of bodily injury to the public servant or to anyone except himself, or employs means justifying or requiring substantial force to overcome resistance to effecting the arrest or the discharge of the duty. A person is guilty of a class C felony if, with intent to prevent a public servant from effecting an arrest of himself or another for a class A, B, or C felony, he creates a substantial risk of bodily injury to the public servant or to anyone except himself, or employs means justifying or requiring substantial force to overcome resistance to effecting such an arrest.

~~2.~~1. It is a defense to a prosecution under this section that the public servant was not acting lawfully, but it is no defense that the defendant mistakenly believed that the public servant was not acting lawfully. A public servant executing a warrant or other process in good faith and under color of law shall be deemed to be acting lawfully.

2. A sentence for a conviction under this section ~~carries a penalty of at least fourteen days' imprisonment and, if there is an underlying conviction, the imprisonment~~ must be consecutive to any sentence of imprisonment for ~~the~~an underlying conviction.

SECTION 9. AMENDMENT. Section 12.1-08-06 of the North Dakota Century Code is amended and reenacted as follows:

12.1-08-06. Escape.

1. A person is guilty of escape if, without lawful authority, the person removes or attempts to remove himself from official detention or fails to return to official detention following temporary leave granted for a specified purpose or limited period. A person who is subject to official detention under this section is guilty of escape, if while outside the

state of North Dakota and without lawful authority, the person removes or attempts to remove himself from official detention, or fails to return to official detention following temporary leave granted for a specified purpose or limited period, when at the time the person is in the legal custody of a warden of the penitentiary, department of corrections and rehabilitation, or other competent authority by virtue of a lawful commitment to official detention.

2. Escape is a class B felony if the actor uses a firearm, destructive device, or other dangerous weapon in effecting or attempting to effect the actor's removal from official detention. Escape is a class C felony if:

   a. The actor uses any other force or threat of force against another in effecting or attempting to effect the actor's removal from official detention; or

   b. The person escaping was in official detention by virtue of the person's arrest for, or on charge of, a felony, or pursuant to the person's conviction of any offense.

   Otherwise escape is a class A misdemeanor.

3. The court shall impose a minimum sentence of one year imprisonment in a correctional facility for an individual convicted of a felony under subdivision b of subsection 2 to be served consecutively to any other term of imprisonment, including incarceration due to revocation of probation or parole. No part of a sentence imposed under this subsection may be served at a transitional facility.

4. Notwithstanding subsection 3, for a conviction under this section, the court shall impose a term of imprisonment to be served concurrently with a conviction for a violation of section 7 of this Act arising from the same incident.

5. In this section:

   a. "Conviction of an offense" does not include an adjudication of juvenile delinquency.

   b. "Official detention" means arrest, custody following surrender in lieu of arrest, detention in any facility for custody of persons under charge or conviction of an offense or alleged or found to be delinquent, detention under a law authorizing civil commitment in lieu of criminal proceedings or authorizing such detention while criminal proceedings are held in abeyance, detention for extradition, home detention as authorized by chapter 12-67, or custody for purposes incident to the

foregoing, including transportation, medical diagnosis or treatment, court appearances, work, and recreation, or being absent without permission from any release granted while under custody of a sentence such as work or education release, community confinement, or other temporary leaves from a correctional or placement facility. "Official detention" does not include supervision on probation or parole or constraint incidental to release.

~~4.~~6. Irregularity in bringing about or maintaining detention, or lack of jurisdiction of the committing or detaining authority, shall not be a defense to a prosecution under this section if the escape is from the penitentiary or other facility used for official detention or from detention pursuant to commitment by an official proceeding. In the case of other detentions, irregularity or lack of jurisdiction shall be an affirmative defense if:

a. The escape involved no substantial risk of harm to the person or property of anyone other than the detainee; or

b. The detaining authority did not act in good faith under color of law.

~~5.~~7. The jurisdiction of a violation of this section when the person is in the legal custody of a warden of the penitentiary, the department of corrections and rehabilitation, or other lawful authority is in the county where the violation occurred if the violation occurred within this state, and is in Burleigh County or in the county in which the order committing the person to official detention was entered if the violation occurred outside this state.

SECTION 10. AMENDMENT. Section 12.1-08-07 of the North Dakota Century Code is amended and reenacted as follows:

12.1-08-07. Public servants permitting escape.

A public servant concerned in official detention pursuant to process issued by a court, judge, or magistrate is guilty of a class A misdemeanor if he recklessly permits an escape and is guilty of a class B misdemeanor if he negligently permits an escape. "Official detention" has the meaning prescribed in subsection ~~3~~5 of section 12.1-08-06.

SECTION 11. AMENDMENT. Section 12.1-08-08 of the North Dakota Century Code is amended and reenacted as follows:

12.1-08-08. Inciting or leading riot in detention facilities.

1. A person is guilty of a class C felony if, with intent to cause, continue, or enlarge a riot, he solicits a group of five or more persons to engage in a riot in a facility used for official detention or engages in conduct intended to serve as the beginning of or signal for such riot, or participates in planning such riot, or, in the course of such riot, issues commands or instructions in furtherance thereof.
2. In this section:
   a. "Official detention" has the meaning prescribed in subsection ~~3~~5 of section 12.1-08-06.
   b. "Riot" means a disturbance involving an assemblage of five or more persons which by tumultuous and violent conduct creates grave danger of damage or injury to property or persons or substantially obstructs the operation of the facility or other government function.

SECTION 12. AMENDMENT. Section 12.1-08-09 of the North Dakota Century Code is amended and reenacted as follows:

12.1-08-09. Introducing or possessing contraband useful for escape.

1. A person is guilty of a class C felony if he unlawfully provides an inmate of an official detention facility with any tool, weapon, or other object which may be useful for escape. Such person is guilty of a class B felony if the object is a firearm, destructive device, or other dangerous weapon.
2. An inmate of an official detention facility is guilty of a class C felony if he unlawfully procures, makes, or otherwise provides himself with, or has in his possession, any tool, weapon, or other object which may be useful for escape. Such person is guilty of a class B felony if the object is a firearm, destructive device, or other dangerous weapon.
3. In this section:
   a. "Official detention" has the meaning prescribed in subsection ~~3~~5 of section 12.1-08-06.
   b. "Unlawfully" means surreptitiously or contrary to a statute or regulation, rule, or order issued pursuant thereto.

SECTION 13. AMENDMENT. Section 12.1-17-01 of the North Dakota Century Code is amended and reenacted as follows:

12.1-17-01. Simple assault.

1. A person is guilty of an offense if that person:
   a. Willfully causes bodily injury to another human being; or
   b. Negligently causes bodily injury to another human being by means of a firearm, destructive device, or other weapon, the use of which against a human being is likely to cause death or serious bodily injury.
2. The offense is:
   a. A class C felony when the victim is a peace officer or correctional institution employee acting in an official capacity, which the actor knows to be a fact; an employee of the state hospital acting in the course and scope of employment, which the actor knows to be a fact, and the actor is an individual committed to or detained at the state hospital pursuant to chapter 25-03.3; a person engaged in a judicial proceeding; or a member of a municipal or volunteer fire department or emergency medical services personnel unit or emergency department worker in the performance of the member's duties.
   b. A class B misdemeanor except as provided in subdivision a.
3. A sentence for a conviction under subdivision a of subsection 2 ~~carries a penalty of at least thirty days' imprisonment and, if there is an underlying conviction, the imprisonment~~ must be consecutive to any sentence of imprisonment for ~~the~~an underlying conviction.

SECTION 14. AMENDMENT. Section 12.1-32-02.1 of the North Dakota Century Code is amended and reenacted as follows:

12.1-32-02.1. Mandatory prison terms for armed offenders.

1. Notwithstanding any other provision of this title, a term of imprisonment must be imposed upon an offender and served without benefit of parole when:
   a. In the course of committing an offense, the offender inflicts or attempts to inflict bodily injury upon another, threatens or menaces another with imminent bodily injury with a dangerous weapon, explosive, destructive device, or firearm; or

b. An offender prohibited from possessing a firearm under section 62.1-02-01 possesses a firearm while in the course of committing any felony offense under subsection 1~~,~~ or 3~~, or 7~~ of section 19-03.1-23.

2. This requirement applies only when possession of a dangerous weapon, explosive, destructive device, or firearm has been charged and admitted or found to be true in the manner provided by law, and must be imposed as follows:

a. If the offense for which the offender is convicted is a class AA, class A, or class B felony, the court shall impose a minimum sentence of four years' imprisonment.

b. If the offense for which the offender is convicted is a class C felony, the court shall impose a minimum sentence of two years' imprisonment.

3. This section applies even when being armed is an element of the offense for which the offender is convicted.

4. This section applies even if the offender is prosecuted for a violation of section 62.1-02-01 for the same conduct.

5. 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~~is not an eligible offender under subdivision b of subsection 2 of section 12-48.1-01~~.

SECTION 15. AMENDMENT. Section 12.1-32-09.1 of the North Dakota Century Code is amended and reenacted as follows:

12.1-32-09.1. ~~Sentencing of violent offenders~~Truth in sentencing.

1. Except as provided under ~~section~~sections 12-48.1-01 and 12-48.1-02 ~~and pursuant to rules adopted by the department of corrections and rehabilitation~~, an offender who is sentenced as a dangerous special offender or habitual offender under section 12.1-32-09, or is convicted of a crime in violation of section 12.1-16-01, 12.1-16-02, subsection 2 of section 12.1-17-02, section 12.1-18-01, subdivision a of subsection 1 or subdivision b of subsection 2 of section 12.1-20-03, section 12.1-22-01, subdivision b of subsection 2 of section 12.1-22-02, or an attempt to commit the offenses, and who receives a sentence of imprisonment is not eligible for release from confinement on any basis until eighty-five percent of the sentence imposed by the

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court has been served or the sentence is commuted. ~~All other offenders are not eligible for release from confinement on any basis until:~~

~~a. Fifty percent of the sentence imposed by the court is served, not including any time credited under section 12-54.1-01, and the offender is paroled;~~

~~b. The offender's sentence is commuted and the offender served the commuted sentence;~~

~~c. Eighty-five percent of the sentence imposed by the court is served; or~~

~~d. The offender is pardoned.~~

2. In the case of an offender who is sentenced to a term of life imprisonment with opportunity for parole under subsection 1 of section 12.1-32-01, the term "sentence imposed" means the remaining life expectancy of the offender on the date of sentencing. The remaining life expectancy of the offender must be calculated on the date of sentencing, computed by reference to a recognized mortality table as established by rule by the supreme court.

3. Notwithstanding this section, an offender sentenced under subsection 1 of section 12.1-32-01 may not be eligible for parole until the requirements of that subsection have been met.

4. ~~An offender who is convicted of a class C felony in violation of section 12.1-17-02, or an attempt to commit the offense, and who has received a sentence of imprisonment or a sentence of imprisonment upon revocation of probation before August 1, 2015, is eligible to have the offender's sentence considered by the parole board.~~

~~5.~~ ~~Notwithstanding subsection 4, this section does not apply to a sentence imposed upon revocation of probation.~~For purposes of this section "confinement" does not include placement or residence in a transitional facility, halfway house, or similar facility, operating under contract, in partnership with, or under the direction of the department of corrections and rehabilitation or other correctional facility, with unsecured or minimum security housing, except during the last six months before an offender's release from incarceration.

5. Notwithstanding subsection 4, placement or residence at the James River correctional center, Missouri River correctional center, Heart River correctional center, or Dakota women's correctional and rehabilitation center, or county jail is "confinement" for

purposes of this section, provided the order to place the inmate in the center or jail is approved by an identifiable employee of the department of corrections and rehabilitation after the employee determines, with reasonable certainty, the placement will not pose a danger to the public.

SECTION 16. AMENDMENT. Section 39-10-71 of the North Dakota Century Code is amended and reenacted as follows:

39-10-71. Fleeing or attempting to elude a peace officer - Penalty.

1. A driver of a motor vehicle who willfully fails or refuses to bring the vehicle to a stop, or who otherwise flees or attempts to elude, in any manner, a pursuing police vehicle or peace officer, when given a visual or audible signal to bring the vehicle to a stop, is guilty of a:
   a. Class A misdemeanor for a first offense and a class C felony for a subsequent offense within three years;
   b. Class C felony if the driver violates this section while willfully fleeing during or after the commission of a felony; or
   c. Class C felony if, at any time during the flight or pursuit, the driver willfully operates the vehicle in a manner constituting an inherent risk of death or serious bodily injury to a third person.
2. A signal complies with this section if the signal is perceptible to the driver and:
   a. If given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the stopping vehicle is appropriately marked showing it to be an official police vehicle; or
   b. If not given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the officer is in uniform or prominently displays the officer's badge of office.
3. A felony conviction under this section carries a penalty of at least thirty days' imprisonment and, if there is an underlying conviction, the imprisonment must be consecutive to any sentence of imprisonment for the underlying conviction.
4. Upon a motion by a state's attorney, a court may order that a motor vehicle used in the commission of a violation of this section be impounded by a peace officer for up to six months.

SECTION 17. LEGISLATIVE MANAGEMENT STUDY - STATE PAROLE BOARD.

1. During the 2025-26 interim, the legislative management shall consider studying the state parole board. The study must include a comprehensive review of chapter 12-59 of the North Dakota Century Code and any rules and regulations adopted by the state parole board relating to:
   a. Members of the board, the appointment process by the governor, terms of board members, quorum requirements, scheduling, and meeting minutes;
   b. Inmate eligibility, including an analysis of the board's activities relating to eligibility requirements for parole, conditions, board determinations, victim rights and victim assistance, automated victim information and notification, and the board's action to grant, deny, revoke, or rescind parole; and
   c. The department of corrections and rehabilitation, including participation in the parole board process and recommendations to the parole board, if any.
2. The legislative management shall report its findings and recommendations, to the seventieth legislative assembly.

SECTION 18. APPROPRIATION - DEPARTMENT OF CORRECTIONS AND REHABILITATION - ELECTRONIC MONITORING IN TRANSITIONAL FACILITIES - ONE-TIME FUNDING. There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of $600,000, or so much of the sum as may be necessary, to the department of corrections and rehabilitation for the purpose of using electronic monitoring in transitional facilities, for the biennium beginning July 1, 2025, and ending June 30, 2027. The appropriation under this section is considered a one-time funding item.

SECTION 19. APPLICATION. Sections 1, 2, 3, 4, 5, 6, ~~9~~14, and ~~10~~15 of this Act apply to individuals who are charged after July 31, 2025, with violations subject to the provisions of this Act.

REPORT OF STANDING COMMITTEE
REENGROSSED SB 2128

Judiciary Committee (Rep. Klemin, Chairman) recommends **AMENDMENTS (25.8109.03004)** and when so amended, recommends **DO NOT PASS** (9 YEAS, 5 NAYS, 0 ABSENT OR EXCUSED AND NOT VOTING). Reengrossed SB 2128 was placed on the Sixth order on the calendar.

SB 2128 Cross References

CHAPTER 12-44.1 Jails and Regional Correction Centers
12-44.1-01. Definitions.
CHAPTER 12-47 The Penitentiary
12-47-18.1. Transfer of persons between correctional facilities.
CHAPTER 12-48.1 Work Release Programs
12-48.1-01(2)(b). Director may provide certain services for offenders.
12-48.1-02. Conditions of eligibility for release programs.
CHAPTER 12-54.1 Sentence Reduction for Good or Meritorious Conduct
12-54.1-01. Sentence reduction.
12-54.1-03. Meritorious conduct sentence reduction.
CHAPTER 12.1-06.1 Racketeer Influenced and Corrupt Organizations
12.1-06.1-08. Computer fraud — Computer crime — Classification — Penalty.
CHAPTER 12.1-08 Obstruction of Law Enforcement — Escape
12.1-08-02. Preventing arrest or discharge of other duties.
CHAPTER 12.1-11 Perjury — Falsification — Breach of Duty
12.1-11-01. Perjury.
12.1-11-07. Fraudulent practice in urine testing.
CHAPTER 12.1-15 Defamation — Interception of Communications
12.1-15-02. Interception of wire or oral communications — Eavesdropping.
12.1-15-03. Traffic in intercepting devices.
CHAPTER 12.1-17 Assaults — Threats — Coercion — Harassment
12.1-17-01. Simple assault.
CHAPTER 12.1-20 Sex Offenses
CHAPTER 12.1-21 Damaging Property or Public Services
12.1-21-02(1)(c) Endangering by fire or explosion.
12.1-21-03.1. Negligent act resulting in fire — Penalty.
12.1-21-05(1)(b). Criminal mischief.
12.1-21-06.1. Interference with telephone during emergency call.
CHAPTER 12.1-22 Robbery — Breaking and Entering Offenses
12.1-22-06. Definitions.
CHAPTER 12.1-23 Theft and Related Offenses
12.1-23-02. Theft of property.
12.1-23-04. Theft of property lost, mislaid, or delivered by mistake.
12.1-23-07. Misapplication of entrusted property.
12.1-23-08. Defrauding secured creditors.
CHAPTER 12.1-24 Forgery and Counterfeiting
12.1-24-01. Forgery or counterfeiting.
CHAPTER 12.1-25 Riot
CHAPTER 12.1-27.1 Obscenity Control
CHAPTER 12.1-32 Penalties and Sentencing
12.1-32-02(9). Sentencing alternatives — Credit for time in custody — Diagnostic testing.
12.1-32-02.1. Mandatory prison terms for armed offenders.

12.1-32-09. Dangerous special offenders — Habitual offenders — Extended sentences — Procedure.
12.1-32-09.1. Sentencing of violent offenders.
CHAPTER 14-09 Parent and Child
14-09-22.1. Neglect of child — Penalty.
CHAPTER 19-03.1 Uniform Controlled Substances Act
19-03.1-23(7). Prohibited acts — Penalties.
CHAPTER 19-03.4 Drug Paraphernalia
19-03.4-03. Unlawful possession of drug paraphernalia — Penalty.
CHAPTER 39-08 Regulations Governing Operators
39-08-01. Persons under the influence of intoxicating liquor or any other drugs or substances not to operate vehicle — Penalty.
CHAPTER 39-10 General Rules of the Road
39-10-71. Fleeing or attempting to elude a peace officer — Penalty.

4. Upon a motion by a state's attorney, a court may order that a motor vehicle used in the commission of a violation of this section be impounded by a peace officer for up to six months.

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   c. The department of corrections and rehabilitation, including participation in the parole board process and recommendations to the parole board, if any.
2. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the seventieth legislative assembly.

SECTION 13. APPLICATION. Sections 1, 2, 3, 4, 5, 6, 9, and 10 of this Act apply to individuals who are charged after July 31, 2025, with violations subject to the provisions of this Act.