



North Dakota Legislative Council

Prepared for the Judiciary Committee
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SENTENCING, CORRECTIONS, AND PAROLE STUDY - BACKGROUND MEMORANDUM

Section 9 of Senate Bill No. 2015 (2025) ([appendix](#)) directs the Legislative Management to study the sentencing, correctional, and parole systems within the state, with a focus on improving transparency, consistency, and outcomes in the administration of justice. The study must include a comprehensive review of:

- Sentencing requirements and incarceration impacts, including an evaluation of the potential impacts of requiring offenders sentenced to the custody of the Department of Corrections and Rehabilitation (DOCR) to serve 85 percent of their term in secured facilities. The study must include:
 - Cost analyses;
 - Consideration of data and trends relating to criminal offenses and sentencing;
 - Consideration of recidivism trends;
 - Consideration of rehabilitation and re-entry opportunities;
 - Definitions of terms related to sentencing and incarceration; and
 - Safety and accountability measures for minimum security facilities and transitional facilities.
- The structure and function of the Parole Board, including provisions of North Dakota Century Code Chapter 12-59 and any rules adopted by the Parole Board. The study must include:
 - Membership structure, appointment process, terms, quorum, and meeting transparency;
 - Parole eligibility requirements and determinations;
 - Victim rights and notification systems; and
 - The role and input of DOCR in parole-related matters.

BACKGROUND

During the 69th Legislative Assembly, the Judiciary Committee, at the request of the Attorney General, introduced Senate Bill No. 2128 (2025). The bill proposed new sentencing requirements for violent crimes and amended release program eligibility for violent offenders. The bill required criminal offenders sentenced for a violent crime to serve 85 percent of the offender's term of imprisonment in a secured facility. The bill also required all offenders to serve 50 percent of the offender's term of imprisonment prior to release on parole.

Proponents of the bill argued truth in sentencing would provide accountability for offenders, transparency in sentencing outcomes, security and safety to victims of violent crimes, and preserve the integrity of the judicial process. Opponents of the bill argued limiting DOCR and the Parole Board's discretion in using community-based programming for violent offenders would substantially increase prison populations and result in large costs for construction, staffing, and operations.

Senate Bill No. 2128 failed to pass in the House and a study was amended into Senate Bill No. 2015.

Mandatory Minimum Sentencing in North Dakota

During the late 1970s to early 1990s, many states, including North Dakota, enacted laws providing mandatory minimum sentences for certain offenses. Those in favor of mandatory minimum sentencing laws contend the certainty and severity in sentencing reduces and deters crime and protects the public from violent offenders. Critics of the laws argue sentencing requirements do not deter individuals from committing crimes and ultimately result in significant increases in the number of individuals incarcerated.

The first mandatory minimum sentence was enacted in 1977 in Senate Bill No. 2122, which established mandatory prison terms without the benefit of parole if an individual inflicts or attempts to inflict bodily injury, or threatens another with a dangerous weapon, an explosive, or a firearm while in the commission of a crime.

In 1983, the Legislative Assembly enacted Senate Bill No. 2373, which established mandatory minimum terms of imprisonment for offenders with multiple driving while under the influence offenses.

In 1993, the Legislative Assembly enacted House Bill No. 1062, which established mandatory minimum terms of imprisonment for the manufacture, delivery, or possession with the intent to deliver a controlled substance. The bill provided minimum sentencing requirements based upon the classification of the controlled substance and whether the offender had previous offenses. The bill also established mandatory minimum sentences for violations occurring within 1,000 feet of a school and if the offender was over age 21 and used a minor in the commission of the crime. Additionally, the bill imposed mandatory sentences if the offender possessed a dangerous weapon or firearm while in the course of committing the offense.

In 1995, the Legislative Assembly enacted Section 12.1-32-09.1 requiring violent offenders to serve 85 percent of the court-ordered term of imprisonment in a secured facility prior to being released to community-based programming. The section was amended in 1997 to define the term "sentence imposed" for an offender sentenced to life imprisonment with the possibility of parole for purposes of calculating 85 percent of the offender's life sentence.

In 2001, the Legislative Assembly removed mandatory minimums for first time drug offenses.

In 2006, the Legislative Assembly established minimum mandatory sentences for sexual offenders and imposed requirements with respect to the service of sentences while incarcerated.

During the 2009-11 interim, the Commission on Alternatives to Incarceration recommended House Bill No. 1028 (2011) to allow DOCR and the Parole Board to authorize outside facility programs for a violent offender not currently eligible for participation in those programs due to the requirement to serve 85 percent of their court-ordered term of imprisonment or any other offender serving a minimum mandatory sentence. The Legislative Assembly enacted the bill during the 2011 legislative session.

In 2019, the Legislative Assembly enacted House Bill No. 1183, which removed all mandatory minimum sentences for a person who willfully manufactures, delivers, or possesses with intent to manufacture or deliver a controlled substance.

SENTENCING

Section 12.1-32-01 addresses classification of offenses and maximum penalties and terms of imprisonment. Criminal offenses are divided into seven classes, which are denominated and subject to maximum penalties as follows:

- Class AA felony, for which a maximum penalty of life imprisonment without parole may be imposed. The court must designate whether the life imprisonment sentence imposed is with or without an opportunity for parole. An individual found guilty of a Class AA felony and who receives a sentence of life imprisonment with parole, shall not be eligible to have that individual's sentence considered by the Parole Board for 30 years, less sentence reduction earned for good conduct, after that individual's admission to the penitentiary.

- Class A felony, for which a maximum penalty of 20 years' imprisonment, a fine of \$20,000, or both, may be imposed.
- Class B felony, for which a maximum penalty of 10 years' imprisonment, a fine of \$20,000, or both, may be imposed.
- Class C felony, for which a maximum penalty of 5 years' imprisonment, a fine of \$10,000, or both, may be imposed.
- Class A misdemeanor, for which a maximum penalty of imprisonment for 365 days, a fine of \$3,000, or both, may be imposed.
- Class B misdemeanor, for which a maximum penalty of 30 days' imprisonment, a fine of \$1,500, or both, may be imposed.
- Infraction, for which a maximum fine of \$1,000 may be imposed. Any person convicted of an infraction who, within 1 year before commission of the infraction of which the person was convicted, has been convicted previously at least twice of the same offense classified as an infraction may be sentenced as though convicted of a Class B misdemeanor.

Presentence Investigation and Report

The district court may order a presentence investigation be completed by the Parole and Probation Division of DOCR before sentencing a criminal defendant. A presentence investigation report is ordered to assist the sentencing judge in determining an appropriate sentence. A report is not required; however, a report often is ordered by a judge in cases involving a felony offense or when a sentence may include a term of incarceration.

According to Rule 32 of the North Dakota Rules of Criminal Procedure, the presentence investigation report may contain the defendant's previous criminal record, information regarding the defendant's characteristics, including family, education, and social and employment history, financial conditions, and other circumstances affecting the defendant's behavior which may assist in imposing a sentence or in the correctional treatment of the defendant.

The court also may receive additional information as an addendum to the report to include diagnostic or prognostic opinions that, if disclosed, might seriously disrupt a program of rehabilitation, any sentence recommendations by parole and probation staff or the victim, any victim impact statements, or any other information, including medical, psychiatric, or psychological information, information relating to the victim, and other matters the court may consider confidential, which if disclosed, might result in harm to the defendant, to a victim, or to other persons.

Factors to be Considered in a Sentencing Decision

During sentencing, the court may consider a variety of factors in determining whether a term of imprisonment is appropriate. Sentencing factors are intended to guide the exercise of judicial discretion and are codified to help the court evaluate whether incarceration is necessary or whether community-based alternatives may better serve the interest of justice and rehabilitation.

Under Section 12.1-32-04, when making determinations regarding the desirability of sentencing an offender to imprisonment, the court may consider the severity of harm and the intent of the defendant, including whether the defendant's criminal conduct caused or threatened serious harm to another person or property, and whether the defendant planned or expected the criminal conduct would cause or threaten serious harm to another person or property. The court also may consider whether the offense was committed under strong provocation, or whether there existed substantial grounds that, while not sufficient to establish a legal defense, tend to excuse or justify the defendant's conduct. In some cases, the victim's own behavior may have contributed to or facilitated the offense, further reducing the need for confinement.

Also relevant is the defendant's criminal history and postoffense conduct, including prior delinquency or criminal activity, whether the defendant's conduct was the result of circumstances unlikely to recur, or

whether the defendant has led a law-abiding life for a substantial period of time before the commission of the present offense.

Courts may weigh the defendant's efforts to make restitution or repair harm caused to the victim for damage or injury. The defendant's character, background, and attitudes are important indicators of whether the defendant is likely to reoffend or respond positively to probationary treatment.

Additional factors include whether imprisonment would impose an undue hardship on the defendant or the defendant's dependents, whether the defendant's age or health would make incarceration particularly severe, and whether the defendant abused a position of public trust or responsibility. Finally, cooperation with law enforcement authorities, such as assisting in the investigation or prosecution of other offenders, may be considered when determining incarceration.

Sentencing Alternatives

Every individual convicted of an offense who is sentenced by the court must be sentenced to one or a combination of the following alternatives, unless the sentencing alternatives are otherwise specifically provided in the statute defining the offense or sentencing is deferred:

| # | Sentencing Alternative | Description |
|----|---|--|
| 1 | Payment of prosecution costs | Payment of reasonable costs of the individual's prosecution |
| 2 | Probation | A court may place the offender under supervision instead of incarceration |
| 3a | Imprisonment - State facility or regional correction center | If convicted of a felony or a Class A misdemeanor, the term of imprisonment may be in a state correctional facility or regional correction center |
| 3b | Imprisonment - County jail or regional correction center | If convicted of a Class B misdemeanor, the term of imprisonment may be in a county jail or regional correction center |
| 3c | Imprisonment - Alternative facility or program | Sentence may include a facility or program deemed appropriate for the offender's treatment, including community-based or faith-based programs |
| 3d | Imprisonment - Juvenile offenders | If the offender is under age 18 at the time of sentencing, the court is limited to sentencing the minor to a term of imprisonment in the custody of DOCR |
| 4 | A fine | Monetary penalty imposed by the court |
| 5 | Restitution | Payment to compensate victims for damages resulting from the commission of the offense |
| 6 | No contact order | Order prohibiting contact with the victim of the offense |
| 7 | Restoration of property | Restoration of damaged property or other appropriate work detail |
| 8 | Commitment - Substance use or mental health | Commitment to a licensed public or private institution for treatment of alcoholism, drug addiction, or mental illness |
| 9 | Commitment - Sexual offender treatment | Commitment to a sexual offender treatment program |
| 10 | Treatment court program | Participation in a treatment court program |
| 11 | Veterans treatment docket | Participation in a specialized veterans treatment court |
| 12 | Restorative justice program | Completion of a restorative justice program |
| 13 | Mental health court | Participation in a mental health court program |
| 14 | Order prohibiting contact | An order prohibiting contact with an individual |

CORRECTIONS

Background

The Department of Corrections and Rehabilitation was created in 1989 by the Legislative Assembly through Senate Bill No. 2212 and is responsible for the direction, guidance, and planning of adult and juvenile correctional facilities and programs within the state. Included within the purview of the department are the state penitentiary and any of its affiliated facilities, parole and probation for adult offenders, the North Dakota Youth Correctional Center, community programs and services for juvenile offenders under the Division of Juvenile Services, and any other programs developed by the department. The director of the department is appointed by the Governor.

Section 54-23.3-02 establishes the purpose of DOCR to include:

- Providing for the care, custody, discipline, training, and treatment of persons committed to state correctional facilities and programs.
- Coordinating and providing a continuum of correctional services to both adult and juvenile clients.
- Working with local and state entities to develop alternatives to conventional incarceration for those offenders who can be handled more effectively in less-restrictive, community-based facilities and programs.

Additionally, Section 54-23.3-04 lists the powers and duties of the director of DOCR, which includes in pertinent part:

- Developing necessary programs and services for adult and juvenile offenders, within legislative appropriations, to provide for their treatment and rehabilitation, and to recognize their special needs.
- Promoting the development of alternatives to conventional incarceration for those offenders who can be handled more effectively in less-restrictive, community-based facilities and programs.

Execution of a Judgment

When a judgment is executed to include a term of imprisonment, the designation of a correctional facility is at the discretion of DOCR and not the sentencing judge. Under Section 29-27-07, if a judge imposes a term of imprisonment to a state correctional facility upon a conviction of a felony or Class A misdemeanor, the judge may not designate the state correctional facility in which the offender is to be confined but shall commit the defendant to the legal and physical custody of DOCR.

After the sentence is imposed, the sheriff of the county, upon receipt of a certified copy of the sentence, must take and deliver the defendant to the correctional facility designated by DOCR. After assuming custody of the convicted individual, the department may transfer the inmate from one correctional facility to another for the purpose 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.

The department has broad authority to determine how an inmate's sentence is served so long as the offender remains legally in the department's custody. Community-based options including work release, educational release, community residential programs, and treatment or transitional placements have been used by the department for offenders since the department was created in 1989.

Sentencing of Violent Offenders

Section 12.1-32-09.1 requires an offender convicted of a violent crime to serve 85 percent of the offender's term of imprisonment before being released from confinement on any basis. The statute provides, except for rules adopted by DOCR, and except for Section 12-48.1-02, an offender who is convicted and receives a sentence of imprisonment is not eligible for release from confinement on any basis until 85 percent of the sentence imposed by the court has been served or the sentence is commuted. The section applies to offenses including murder, manslaughter, Class B felony aggravated assault, kidnapping, gross sexual imposition by force or threat of serious bodily injury, robbery, burglary,

or an attempt to commit the offenses. The two exceptions to the statute include any rules adopted by DOCR and Section 12-48.1-02.

Eligibility for Release Programs

Section 12.1-48.1-02 provides DOCR and the Parole Board exceptions to the sentencing requirements for violent offenders to allow the use of community-based programming for all offenders except those convicted of Class AA gross sexual imposition or murder. Section 12.1-48.1-02 provides any offender, other than an offender sentenced to life without parole for gross sexual imposition or murder, may be eligible for programs outside facilities under the control of DOCR when the department determines the offender is not a high security risk, not likely to commit a crime of violence, and is likely to be rehabilitated by such program.

The director of DOCR may authorize participation in an outside program for an offender who has 10 years or less remaining on a sentence. If an offender has more than 10 years remaining on a sentence, the director, with approval of the Parole Board, may authorize participation in an outside program.

Additionally, Section 12-48.1-01 allows the director to participate in programs in which 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 director may obtain or contract with separate facilities with minimum security for housing offenders granted release privileges.

Classification and Risk Assessment

The Department of Corrections and Rehabilitation uses a classification process to identify and categorize incarcerated residents according to risk of institutional misconduct or escape. The department also completes a sentencing report on every individual sentenced to a DOCR facility based upon the Addiction Severity Index and the Levels of Service Inventory-Revised hybrid appraisal.

Classification is part of the orientation process and is completed on all residents. Once an individual is classified, the individual is assigned to a housing unit based on the individual's classification level. Classification levels include maximum custody at the North Dakota State Penitentiary, medium custody at the James River Correctional Center or medium transition unit located on the grounds of the North Dakota State Penitentiary, and minimum custody at the Missouri River Correctional Center or re-entry centers.

The department has a goal of transitioning inmates appropriately through security levels to the least restrictive means necessary. This is done to more effectively promote positive behavior change and growth, to prepare inmates for re-entry into the community, and to manage the department's population and resources more efficiently. Classification is a tool used to assist in this process.

Individuals continue to be classified at either 6- or 12-month intervals determined by the individual's release date. As an individual moves closer to release, reclassification occurs more frequently. Prosocial behavior such as following rules, employment, and participation in treatment allows people to move through this transition. If an individual chooses to not follow rules or participate in programming, the individual will maintain or increase in security levels. Classification also is used when a significant event has occurred in a case. Significant events include a major disciplinary infraction, new criminal charges, or a dismissal of a current offense.

PAROLE BOARD

The mission of the Parole 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 Parole Board may grant parole to eligible adults in custody subject to terms and conditions of supervision to provide for public safety while providing an opportunity for the parolee to engage in lawful behavior. The Parole Board is not an administrative agency and is not subject to the Administrative Agencies Practice Act.

Parole Board Structure and Meetings

The Parole Board consists of six members appointed by the Governor for terms of 3 years. One of the members must be a person experienced in law enforcement, which may include experience as a prosecuting attorney, one member must be a licensed attorney, and four members 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.

The chairman, appointed by the Governor, designates three members of the Parole Board for each meeting of the board. The meetings must be held as often as required to properly conduct the business of the board. The board may take action only upon the concurrence of at least two members who participate in the same meeting. The final decision of at least two members who participated in the same Parole Board meeting constitutes the decision of the board.

Section 12-59-03 requires the board to formulate rules and regulations governing the manner in which inmates may become eligible for discharge on parole. 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 DOCR, and the inmate's medical and psychological records.

Under Section 12-59-04, the decisions of the Parole Board to grant or deny parole are open records, however, parole records of DOCR obtained in the discharge of an official duty by any member of the Parole Board or employee of a division or department of DOCR on behalf of the Parole Board may not be disclosed except in the manner provided under Section 12-47-36.

Policy and Procedures

Parole Eligibility

Adults in custody and sentenced to the legal and physical custody of DOCR for a term of incarceration are subject to the jurisdiction of the Parole Board, except when parole for the adult in custody is prohibited by statute or if the adult in custody has less than 120 days of eligibility. Adults in custody subject to terms of life imprisonment without parole or certain mandatory prison terms for armed offenders are not eligible for parole while serving the mandatory portion of their sentence. Additionally, adults in custody who have 120 days or less to serve on their sentence after arrival at the department facility may not receive parole consideration because of the limitations caused by the short sentence.

Victim Notification and Clerk Responsibilities

The director of the DOCR or the director's designee must serve as the clerk for the Parole Board. The clerk must ensure victims' rights are protected and victims receive notification of an inmate's parole considerations in accordance with state constitutional and statutory requirements, including the statewide automated victim information notification system, and have the opportunity to present information to the Parole Board.

The clerk is responsible for maintaining the meeting minutes of all cases reviewed by the Parole Board, conducting investigations and providing information to the board, directing supervising staff of the department to provide testimony or written comments for the board to consider when reviewing eligibility, and provide written notice to the district court and the state's attorney in the county where the judgment of conviction was entered when the board is reviewing eligibility for release on parole. The notice must include the name of the inmate, docket number of the criminal judgment, and the date and place for the Parole Board's meeting to review whether an inmate may be released on parole.

Initial Review

The board may conduct an initial Parole Board review of each eligible adult within approximately 60 to 90 days of arrival at the facility. The adult must have 3 or more years to serve from date of arrival to the longest good-time release date. The purpose of the initial docket and review is to examine information gathered and various assessments conducted by the department. The clerk will set a later parole review

date for parole-eligible adults in custody who have less than 3 years to serve from date of arrival in prison to the longest good-time release date. The board may defer the case to a later month and year for parole consideration based upon the information, length of sentence, and nature of the offense. The board or the clerk also may reconsider adults in custody on the initial review docket if there are changes in custody status including new crimes and significant changes in good-time release dates. If the board agrees with case planning recommendations, the adult will have a parole docket review entry listed with the future month and year. If the board does not agree with the planning recommendations, the clerk will place the case back on a case planning agenda for future consideration.

Hearings and Determinations

The clerk of the Parole Board shall establish a tentative docket approximately 2 weeks before the Parole Board meeting. The clerk shall provide the board with recommendations for action and all necessary documents to aid the board's decisionmaking process. The final docket should be established by the board approximately 5 days before the meeting.

During the board meeting the board may interview adults in custody or conduct a review of the appropriate documents without interviewing the adults in custody. In making an order for parole, the board shall consider all pertinent information regarding the adult in custody, including the circumstances of the offense; victim impact and concerns; the adult's family, education, social history, and criminal record; the adult's conduct, employment, and participation in education and treatment programs while incarcerated; and the adult's parole plan, medical and psychological records, and mental and physical state. Additionally, the board must consider whether the adult in custody will conform to the terms and conditions of parole. The board may take action only upon the concurrence of at least two members who participated in the same meeting.

If parole is denied, at least one reason for the denial must be recorded and listed on the order denying parole. If parole is granted, the board shall establish a parole release date and the terms and conditions of parole using the parole agreement. The parolee must comply with all reasonable requests of the supervising staff.

SUGGESTED STUDY APPROACH

In conducting the study of sentencing, corrections, and parole, the committee may wish to receive information from:

- The judicial branch, including district court judges, regarding sentencing decisions;
- State's attorneys and defense attorneys, regarding charging practices, plea negotiations, and trial resources;
- DOCR, regarding inmate classification, housing, placement authority, and transitional services, including work or educational release;
- The Parole Board, regarding parole eligibility and release decisions;
- Law enforcement representatives, including the Chief of Police Association, Sheriff's Association, and Attorney General's office, regarding impacts to public safety and local and regional jails;
- The League of Cities and North Dakota Association of Counties, regarding impacts to public safety and local and regional jails;
- Justice-involved individuals, regarding the impact of current and potential sentencing and parole practices; and
- Crime victims, regarding the impact of sentencing.

ATTACH:1