

**FISCAL NOTE**  
**Requested by Legislative Council**  
**03/31/2015**

Amendment to: SB 2027

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures			\$116,400		\$116,400	
Appropriations			\$116,400		\$116,400	

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

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Measure relates to lengths of probation and changes the intermediate measure statute to allow the DOCR to incarcerate individuals on probation status for up to 5 non-successive periods during any 12 month period each of which cannot exceed 48 hours.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The bill changes the conditions of probation to include an intermediate measure (NDCC 12.1-32-07 section 3) to allow the DOCR up to 5 non-successive periods of incarceration during any 12 month period, each of which can not exceed 48 hours (48 hour hold).

It is assumed the incarceration would take place in a ND county jail facility (given the current capacity issues facing a number of ND county jail facilities this assumption may prove to be aggressive) and that the DOCR would pay the applicable county \$150 for each 48 hour hold (daily rate of \$75 x 2 days = \$150).

Other key assumptions for each year of the biennium:

- 1) 775 offenders on probation will face revocation of probation
- 2) 50% of offenders on probation facing revocation will have a 48 hour hold used

Computation of estimated cost:

Year 1 -  $775 \times 50\% = 388 \times \$150 = \$58,200$   
Year 2 -  $775 \times 50\% = 388 \times \$150 = \$58,200$   
Total estimated year 1 and 2 cost = \$116,400

It is also anticipated that the 48 hour hold program would have a positive effect (decrease the number) on prison admissions due to probation revocation. However due to lack of historical data regarding the effect of a 48 hour hold program, the DOCR is unable to estimate the effect on prison admissions.

The estimated cost of the 48 hour hold program is not included in the DOCR 2015-17 executive budget recommendation.

3. **State fiscal effect detail:** For information shown under state fiscal effect in 1A, please:

- A. **Revenues:** Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

n/a

- B. **Expenditures:** Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

Estimated biennial expenditure amount to fully implement the 48 hour hold (based on above assumptions) would be the \$116,400 noted above. This amount would be paid to ND county jails to provide incarceration services under the proposed 48 hour hold.

Adult Services - \$116,400 - general funds

The estimated cost of the 48 hour hold program is not included in the DOCR 2015-17 executive budget recommendation.

- C. **Appropriations:** Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.

Estimated biennial appropriation required to fully implement the proposed 48 hour hold (based on above assumptions) is \$116,400.

Adult Services - \$116,400 - general funds

The estimated cost of the 48 hour hold program is not included in the DOCR 2015-17 executive budget recommendation.

**Name:** Dave Krabbenhoft

**Agency:** DOCR

**Telephone:** 328-6135

**Date Prepared:** 04/01/2015

**FISCAL NOTE**  
**Requested by Legislative Council**  
**02/11/2015**

Amendment to: SB 2027

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Section 2 changes the conditions of probation to include an intermediate measure (NDCC 12.1-32-07 section 3) to allow the DOCR up to 5 non-successive periods of incarceration during any 12 month period, each of which can not exceed 48 hours (48 hour hold).

It is assumed the incarceration would take place in a ND county jail facility (given the current capacity issues facing a number of ND county jail facilities this assumption may prove to be aggressive) and that the DOCR would pay the applicable county \$150 for each 48 hour hold (daily rate of \$75 x 2 days = \$150).

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**Name:** Dave Krabbenhoft

**Agency:** DOCR

**Telephone:** 328-6135

**Date Prepared:** 02/11/2015

**FISCAL NOTE**  
**Requested by Legislative Council**  
**12/20/2014**

Bill/Resolution No.: SB 2027

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**Name:** Dave Krabbenhoft

**Agency:** DOCR

**Telephone:** 328-6135

**Date Prepared:** 01/06/2015

2015 SENATE JUDICIARY

SB 2027

# 2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee  
Fort Lincoln Room, State Capitol

SB 2027  
1/12/2015  
21825

- Subcommittee  
 Conference Committee

Committee Clerk Signature

*A. Penrose*

## Minutes:

#1, 2 and 3

Ch. Hogue: We will open the hearing on SB 2027.

Sen. Ron Carlisle: Sponsor. During the interim I was chairman of the Alternatives to Incarceration. We met several times. We came up with several bill drafts, some of which are here in Senate bills and some over on the House side. We put a lot of work in on this committee. We would like to see something come out of both houses that will look at this subject. We would like to have some more treatment options and hopefully salvage something that will work for the people of North Dakota.

John Bjornson, Legislative Council: I was counsel during the interim for the Commission on Alternatives to Incarceration. SB 2027, 2028, 2029 and 2030 are all from that Commission. I am here in a neutral position to explain the bill. The commission is a bit unique in its status. It's a commission that is set in statute; it is due to expire actually after this interim. It's been extended twice now. This is the 10<sup>th</sup> year of existence; the purpose of the Commission is essentially to look at alternatives to incarceration. Also, it is supposed to look at mandatory sentences and examine the appropriateness of mandatory sentences. This has been done over the last 3 or 4 interims and I expect this will continue for this next interim. The Commission is made up from members of the judiciary, representatives of law enforcement, director of Human Services, director for the Dept of Corrections, the deputy attorney general and the Governor has three appointees including an academic appointee from Minot State University. It had a great variety of representation and intergovernmental entity that is to get everybody together to try and find alternatives. SB 2027 was brought to the Commission as a recommendation from the Dept of Corrections and Rehabilitation, as were a number of the other bills that the Commission considered. This bill deals with probation. If you look in section 1, it addresses the length and term of probation; currently felony offenses are terms of five years. This would meet the term of five years for probation for felony offenses that are of the violent nature. Sexual offenses where the offender used a weapon, in the commission of domestic violence and violation of protection orders. For other felony offenses, this bill would reduce the maximum probation to three years, at the end of the line 16 and line 17. It would reduce from two years to 360 days the maximum term of probation for misdemeanor offenses. It removes the reference to infractions; line 18 of page 1. If you go on to page 2, the next

change in the bill that is of significance is subsection 5. That's the felony cases where the court could add an additional term of five years. That remains the same, not to exceed 360 days in misdemeanor cases. So if they are going to put on additional probation for a violation of the terms and conditions of probation. On lines 25-30 at the end of the page, unless otherwise ordered by the court, when the court imposes probation under the supervision of the DOCR for a felony offense, that language on lines 26-30 is all new language. The Dept may terminate probation no sooner than 18 months after the defendant commenced probation. If the defendant has complied with all the terms and conditions of probation, so this would authorize DOCR to terminate probation after a period of 18 months if there is full compliance with the terms of probation. If they do so as required to notify the sentencing court of the county where the defendant was prosecuted to make that determination. The second section of the bill is a portion of the section in the Code that also deals with supervision of probationers and the conditions of probation. The important language to look at is on lines 15-17, when the court imposes probation upon conviction or order of disposition of all other felony cases. For the serious felonies the court is required to place them under direct supervision of DOCR; for other felonies the court may place a defendant under the supervision of DOCR, it is permissive language for the court to do so. On page 4 of the bill, continuing in that section, the discussion with the interim commission had revolved around intermediate sanctions, so if there is a violation of probation, rather than just revoking or sending someone back to prison, there was discussion about what to do when there is some violation and try to intervene before they need to go back to incarceration. There are a number of options already in the law, such as community service, curfew, and home confinement, where on lines 25 and 26, this new option was added to the arsenal. That is to provide up to five non-successive periods of incarceration in a 12 month period each of which cannot exceed 48 hours. Basically it provides a 48 hour hold to try to address this situation; this would be a sanction but it wouldn't be a full incarceration so that they could try and address this situation immediately and hopefully deal with it in hopefully a less severe manner. Section 3 of the bill addresses the DUI statutes. A third offense, which is a class A misdemeanor, it changes the language on the last page of the bill, from the one year of supervised probation to 360 days which matches up with the section 1 for misdemeanors.

Ch. Hogue: Why is there a sunset provision in the Commission's existence?

John Bjornson: The Commission began in 2005 and had a 4 year sunset on it at that point. At the end of the four year term, the Assembly decided to give it another 4 years. I think the view was that it was making some progress in addressing some of these situations. Two years ago they said to give it another 4 year extension. It began that way and it has continued. The decision will be made in 2017 to let it continue or expire.

Ch. Hogue: Okay. Do you know, in terms of the department having the authority to terminate probation, so other states to do that, or is that something that the Commission came up with to streamline the process.

John Bjornson: I don't know about other states, but the second part of your question is the reason for that.

Ch. Hogue: Thank you. Further testimony in support of SB 2027.

Pat Bohn, Director for Transitional Planning Services, ND Dept of Corrections and Rehab: (see attached # 1A, 1B, 1C, 1D, and 1E). We are in support of this bill.

Sen. Armstrong: So if you are reducing the misdemeanor probation from maximum of 2 years to 360 days, is supervised probation still an option for an class A misdemeanor.

Pat Bohn: Yes. It is still an option for a class B misdemeanor as well (continued reading the testimony).

Sen. Grabinger: You stated that DOCR is not allowed to file a motion, but the defendant or a state's attorney can, why wouldn't we just amend the law to allow the DOCR to make that motion and then leave it in the hands of the court.

Pat Bohn: If that is possible, I think that is something that we would be open to, for us to be able to file that petition. Then it would come directly before the court.

Sen. Grabinger: I think it would accomplish the same thing, wouldn't we?

Pat Bohn: Yes. The only thing that would be is if we could come to some agreement into how this would work and what it would take to do that early termination. Then it wouldn't necessarily need to take some of the precious judicial time. However, I think that would be a reasonable middle ground, to allow the DOCR to petition directly to the court.

Sen. Armstrong: Under the current language, it says that DOCR may notify the court or the prosecutor; but let's assume that the court or the prosecutor doesn't agree with the DOCR early termination, I don't like "notification" language because I don't know what happens next. How do you see what happens next. You notify the court that you are going to release someone at 18 months. The prosecutor says I don't want that person released yet, what happens next.

Pat Bohn: That's been talked about too. One of the things that have been thrown around is to have a 30 days period for response. So we would have to give notice to the court and the state's attorney that we are looking at terminating this individual within the next 30 days and if they wanted to do something or say to us, "no", the state's attorney files a motion to cease that action, I think that would be reasonable, that we could live with.

Sen. Armstrong: That doesn't clear it up for me. Is it handled in the courtroom, handled internally, that's my concern? Do they call you and say "no we don't want this action taken". Is there a process for the state's attorney or judge to object to some degree? It seems like you are putting people in different roles than they were originally in the beginning of the case. I don't know if there is a process in place in the new language that clearly defines how that would happen.

Pat Bohn: As it is written, no; it would be the Department determining that this person has met the objectives of the supervision and when that's done, we send that individual notice that they are terminated along with a notice to the state's attorney and the court of record, that the individual has been terminated from supervision. Moving on to section 2

amendment, under subsection 1 changes the language to only require supervised probation for felony offenses and I have the offenses listed in the testimony (continued with his testimony, see attachment #1B, 1C, 1D). If you do something bad, something bad happens to you; if you do something good, something good happens to you. It is important for that something bad to happen as soon as the behavior occurs, or most near the time of the behavior for it to be the most effective. Punishing someone days, weeks, or months or years after the violation or the behavior occurs, is less effective. It also goes into things that go into classical deterrents theory. That is that certainty that it is going to happen and the swiftness in which it occurs. Of the three, swiftness, certainty and severity, severity is the least effective in changing behavior. Swiftness and certainty are 1 and 2.

Sen. Luick: You had mentioned about the 3S's, swiftness, surety and severity and severity is least effective.

Pat Bohn: Yes, that's correct.

Sen. Luick: I thought it would be the severity of the punishment was going to be a whole lot more eye-opening and remembering as far as swiftness or the surety that it is going to happen. So you think it is different than that.

Pat Bohn: The research supports that idea that the certainty and the swiftness in which that violation is dealt with or the negative behavior. Then the severity piece is important in terms of making sure that it is proportional to the behavior. A punishment that is less than or overly excessively unjust can have much more damaging effects than good.

Sen. Luick: Where does the research come from.

Pat Bohn: I can get a couple of the articles together for you. It is called dosage probation and it has a lot of research, experts in the field of behavior modification.

Sen. Luick: On the section where you want to change the law from "shall" to "may" place the defendant under supervision, the choice of that is a big game changer. I think it should be in your hands to consider that.

Pat Bohn: It wouldn't be in our hands, the DOCR. It would be in the judiciary's hands in terms of deciding whether the individual for a felony offense would have to be placed on supervised probation with us or not. As the current law stands, any suspended or deferred imposition of sentence for a felony must be placed under the supervision of the DOCR. That is a mandatory thing for the judges.

Ch. Hogue: Thank you. Further testimony in support.

Jackson Lofgren, attorney: I am a member and part of the Board of the ND Association of Criminal Defense Lawyers. I recommend a Do Pass on SB 2027. There are a lot of things in this bill, obviously not every part of the bill is going to make everyone happy. On the whole, though, it does a lot of good things. It gives the court discretion to take people who normally would be forced to take up DOCR resources and be on supervised probation. That would give the court the ability to look at that individual and see "this is a bad check

case", the person has no history, they don't need to take up DOCR's supervision. They will pay the restitution on their own. They've lived a law-abiding life up to this point. It allows the court to make that decision on their own, based on per-person and not just on a broad stroke by the statute. That's one part of the bill I think is very important. The other parts of the bill I don't believe to be that controversial. It takes non-violent felony offenses and shortens the period of potential probation for those people. If you look at it, they are still facing up to a potential 8 years of probation. That is a long period of time for anybody. They could do three years on the first probation and five on the second. That's a long period of time. In that period of time, they are going to screw up and if they screw up they are going to go to the penitentiary or some other DOCR facility. In my experience, if someone is going to screw up on supervised probation, it's going to be in the first year or two. I think the DOCR's statistics support that. We don't have people in year 4 or year 5 suddenly deciding "now I'm going to take probation lightly". If they don't take it seriously, they are going to screw up on the front end. They will be back in front of that court in a year or two, and because of that, I think the bill does a number of important things that are going to free up some resources and hopefully get these people moving through the system a little bit faster.

Ch. Hogue: Thank you. Further testimony in support. Testimony in opposition.

Cynthia Feland, South Central Judicial District: Opposition (see attached #2A, 2B, 2C, 2D, 2E and 2F). Courts have authority to do different types of sentencing and different types of probation, depending upon the level of the offense. In class B misdemeanor cases, people can be placed on probation, but that would be misdemeanor probation through Centre, Inc. DOCR cannot be utilized for class B misdemeanors. DOCR and misdemeanor cases are only available in class A misdemeanors which, of course, carry that potential penalty for up to a one year period of incarceration. In addition, I would mention that it is fairly uncommon for people in class B misdemeanor cases to be placed on supervision; typically they are on unsupervised probation. The only instances I can think of is where we've had successive repeat offenses for the same type of class B misdemeanor offense where they have then been placed on a misdemeanor probation status through Centre Inc. Finally the numbers are a little deceiving. I think everybody is learning that, especially with the issues that have come up in oil country. A good number of the people that we see in criminal cases are not residents of the state of ND. They are committing extremely serious offenses within the state of ND and unfortunately then become the problem of the state of ND to contend with. I think you have to be a little careful if you are just looking at our population numbers because it doesn't accurately reflect the total number of people that we are seeing, who come before our courts committing criminal offenses. The numbers seem to continue to increase. It's very common, when we are doing bond hearings on any given day, when you ask the person for their connections or ties to the state of ND, I think the shortest I've had is three days. Some of them have been here for a couple of years, but most of them are weeks or months. I think you need to take that into consideration. Also as far as supervision currently, we are held to two periods of supervision and that is under our current case law and so unless something changes two times for the court to be able to look at probation is all that is available to the court.

Sen. Grabinger: We heard in previous testimony that the DOCR couldn't file a motion to the court to eliminate the supervision. Now you list three items here, where you say, and I am assuming that's who is making the request.

Cynthia Feland: The three cases I passed out and reviewed are included with my testimony are included in that packet. The additional cases that I passed out are to let you know that these are not isolated case. If you look in all of those cases, the state's attorney office did sign off on those. We did later learn that the states attorney's may not have reviewed those cases as clearly as they should have, but those were things that were actually drafted by the DOCR, not the states attorney's office. I can also tell you that personally, I have had a couple of cases where the DOCR has filed a petition where the states attorney's office has not signed off on it indicating that there was successful completion. Before I had the opportunity to address that, when anything come to the court we always make sure that it has gone to all of the necessary parties. For example, if the DOCR were to file something like that, one of the things that I have to make sure of is that the defendant received a copy and that the state received a copy of it and was given the requisite period of time in which to respond. In that case, prior to those response times expiring, the DOCR actually came back in and withdrew that request; the court didn't consider it in that instance. To my knowledge that was a couple of isolated cases that I have personally seen.

Sen. Grabinger: Would this nullify your objection to that portion of the bill if there was an amendment made to allow the DOCR to file to the court.

Cynthia Feland: No, the only matter that we have to pay attention to is having non-attorneys filing legal paperwork. So if there was counsel for the DOCR who, on behalf of the DOCR, were to file something, we probably wouldn't have any other issues to contend with. The only thing that the court would have to contend with is to make sure that the other parties, including the state had an opportunity. Just because the state objects, doesn't mean that the court would deny that. The court is going to look at the whole picture and is going to listen to both sides in making that decision. But if the state doesn't have an objection, then typically it is more of a pro forma response of granting that termination. I would assume, and I can't speak for the states attorney's office, that they would review these on a case-by-case basis and if they determined that it was appropriate, they would put in a response objecting, if not they would likely take no position.

Sen. Luick: Could you give me a little bit of scope as far as the timeline of that process.

Cynthia Feland: Of which process?

Sen. Luick: We're looking at trying to get the approval.

Cynthia Feland: If no one has asked for a hearing, and everybody always has a right to request a hearing if they want to bring in additional evidence to the court. But when no one asks for a hearing, typically each side would have 10 days, an additional 3 days if there is mailing involved because we want to make sure that the full 10 day window has been given to respond; they would actually file a written response, the court would review those responses and issue an order based on those written response. In most instances, roughly

within a 20 day timeframe you would have an order unless they ask for a hearing. Then it would really vary on the individual judge's calendar because in felony cases it would have to go back to the original sentencing judge.

Sen. Luick: Is there any way to fast track any of that process.

Cynthia Feland: You can certainly shorten the time for a response. The timeframes are there to make sure that we are accommodating individual schedules. Ten days was the magic timeframe that was provided to respond to those types of filings. Clearly the legislature has the ability to shorten that if they think that is appropriate.

Sen. Armstrong: Do the judges have an objection to the "may" placed on the supervised probation, given the discretion to the judges.

Cynthia Feland: No.

Sen. Armstrong: The question about cleaning up the language about the number of times you can cleaning up the class A misdemeanor language. I know that in this bill they move it from two years to one year, but whatever that period ends up being, you guys are okay with that language.

Cynthia Feland: That doesn't give us the greatest concern. One of our concerns is if you shorten some of those times, especially in the drug cases, too much, we're really not giving the probation long enough to work and we're not providing the type of guidance to hopefully prevent people from reoffending. I guess the drug court program is probably the best example I can give you, in that the very best case scenario, is if the person going through the drug court program does every single thing that they are supposed to within the timeframes that they are supposed, it takes at least a year for them to accomplish that program. Most commonly it takes 18 months. That's for someone who is really working. For other people there are setbacks. I guess to piggy back on something that was mentioned before, the drug court program does have the ability to do what you call that quick dip, where if there is a violation of probation, there are two judges that are on drug court and then the judge ultimately makes the final decision as to whether or not there needs to be that quick dip. Drug court operates with a staffing every Thursday and on Friday everybody for the drug court program comes in and they review each case with the individual and the other participants that are there and at that time they will impose any sanctions which sometimes involve someone spending a weekend in jail because they've had that type of violation. Again, we're concerned about those due process concerns with not having someone independent, who doesn't have a vested interest in the case, ultimately making that final decision as to whether jail time is appropriate based on the violation of whether there has been sufficient evidence to establish that violation.

Sen. Armstrong: I have a question about the additional probation for revocation. It's always fascinated me that if you follow the letter of the law, a class B misdemeanor defendant could be in the court system for life.

Cynthia Feland: No, two years. We aren't going to bring them back after two times, so you could put them on probation for two years, they could violate at the end of that two year

period and still come back in on a revocation proceeding. We could have that revocation proceeding again. They could be put back on probation but it would never extend for a lifetime on a class B misdemeanor. You can only have two bites at the apple. We would lose jurisdiction. We can't sentence somebody, in fact, we've had cases where they filed petitions for revocation outside of that window and there is no action that the court can take because they are outside the period with which they can be terminated. I haven't looked into why they are putting that language there. It isn't anything I guess that concerns the courts at this point. We took a look at this and are providing information based on concerns that the court had specifically within this judicial district as to the consequences of some of these provisions. Those are the concerns that I've expressed to you.

Sen. Grabinger: I understand your position on the 48 hour hold, but having been an employee at the state hospital, I remember the 72 hour detox orders that were similar to this and that passed the auspices of the law, it was okay with the law. I've seen other things where the emergency commitment can be done by a counselor, who is not an officer of the court as well.

Cynthia Feland: No but you have a judge who is reviewing and signing off in the case.

Sen. Grabinger: On the 72 hour detox as well.

Cynthia Feland: On the 72 hour detox no, but when you are talking about depriving somebody of their liberty, yes they can be immediately taken in on an emergency hold. But then a court has to review it and determine that there is sufficient evidence, probable cause there. We set a hearing then at a later date. I just glanced through the chart that was provided. If you are looking for a fast track way to do a quick dip, perhaps something could be looked at, where much like on a revocation petition, something can be filed with the court, if the court finds probable cause, then that quick dip can be held pending a revocation hearing. We're just concerned with there not being some type of detached review where you have someone who is a neutral party looking at that and saying yes there is probable cause for this quick dip to occur and then the quick dip occurring. There isn't a mechanism set up and some of the comments that were mentioned before, even though they were proposing this, it doesn't require that by the statute. What is shown in the chart doesn't mean that that is what is actually going to happen. I think Sen. Armstrong had some questions in that regard. We want to make sure that there was some type of procedure just to make sure that there weren't due process issues and we had somebody neutral and detached reviewing it before we're depriving a person of their liberty. That isn't to say that a system couldn't be set up where a person could agree to it, and only if they don't agree, then do we have some type of probable cause hearing. I think you have to have some type of mechanism where a person doesn't agree that you have a neutral detached party reviewing it before you can impose it.

Ch. Hogue: You mentioned that you are speaking on behalf of the South Central Judicial district. Have the other judges across the state have a position on this matter.

Cynthia Feland: I can't speak for the other judges. I'm not part of the judicial legislation committee. I do know that this was reviewed and discussed at a judicial meeting we had

within this district last week. Judge Hagerty was supposed to be here but had other commitments that prevented her from appearing today.

Ch. Hogue: Thank you. Further testimony in opposition.

Aaron Birst, ND Association of Counties, and States Attorney: <sup>(att. # 3A) (att. 3B)</sup> There are positives and negatives in this bill. We debated as to whether the positives outweighed the negatives. We feel that the DOCR having the ability to cut probation off after 18 months is not acceptable. We ask that that be struck out. We had some issues with the length of probation conditions. We think the current language is fine. We want to work with DOCR to try and make a bill that works. As you can see one of the papers I handed out was a petition to terminate that comes out of Ward County. Again, the DOCR indicated somebody was not compliant with probation, but yet they asked to terminate. That is why we have a concern with the early termination provisions.

Sen. Armstrong: Are you running into any situations with misdemeanor supervised probation, primarily in western ND, where people may have lost their jobs, they might be from another state and on supervised probation and they are having difficulty leaving the state because they are on supervised probation in ND. Primarily I'm talking about misdemeanors, because I think that the Compact immediately attaches with all felonies. That's one thing I'm hearing from some of the local people out west.

Aaron Birst: The misdemeanor language, we don't necessarily offer an objection going to the 360 days for the probation on the DUI offenses. Over a year of probation requires interstate compact to be signed to transfer to another state. Those out of state defendants that have longer than a one year period, they have to actually transfer their probation. DOCR would have to actually transfer their probation; DOCR would have to call Texas and say that they are sending a person. If you go under a year, then you can get around that problem. That is particularly difficult with misdemeanors. So we think that there can be some workable way to deal with that.

Sen. Armstrong: If we leave it the same way it is now, would you be open to an opportunity in those situations for DOCR to petition the court and send someone back to their home state, maybe they have family. Primarily this would be on the misdemeanors, the lower non-violent status people; we need to get him off supervised probation so he can go home.

Aaron Birst: Ideally we would like to handle that on the front end and that's what prosecutors and defense attorneys work out all the time, to try and figure out a way to avoid that issue. However, when you find that issue later on, I would guess that the membership depending on what the amendment would be, I think most prosecutors would be agreeable if there was a process to get involved in and also be approved by the court that would be workable.

Sen. Armstrong: I think there a certain amount of "it's not my concern anymore, my desk is so full I can't see straight, deal with it some other way". That's why I brought that up.

Ch. Hogue: Thank you. Further testimony in opposition. Neutral testimony. We will close the hearing.

# 2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee  
Fort Lincoln Room, State Capitol

SB 2027  
2/4/2015  
23242

- Subcommittee  
 Conference Committee

Committee Clerk Signature

*D. Penno*

Minutes:

1,2

Ch. Hogue: Let's take a look at SB 2027.

Sen. Armstrong: This bill from DOCR was kind of trying to take over probation from the court. There were a lot of things that were good in this bill, but that seemed to be the thing that caused the most consternation with the testimony. Then there was the talk about whether DOCR can petition the court and that's a good idea but they don't really have lawyers and do we really want them practicing law without a license. I sat down and worked with Aaron Birst and came up with amendments that kept the good things in the bill and maybe gave DOCR not quite as much as they wanted, but more than they have now. So these amendments are what were proposed (see attached 1).

Ch. Hogue: Do your amendments incorporate this one.

Sen. Armstrong: No it doesn't because one of the issues with that was the unsupervised probation and that was an attempt by Probation to still maintain control over somebody with a restitution agreement. I think you will find that anybody who is owed restitution is the court who was in charge of supervising restitution will not be comfortable with unsupervised probation. Essentially unsupervised probation is whatever you want it to be. I think we should look at this with the marked up copy (see attached 2). Sen. Armstrong explained the amendments, 15.0040.04001.

Ch. Hogue: We will wait so we can see the marked up copy with the changes.

# 2015 SENATE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Fort Lincoln Room, State Capitol

SB 2027  
2/9/2015  
23442

- Subcommittee  
 Conference Committee

Committee Clerk Signature

*Steuere*

**Minutes:**

1

Ch. Hogue: Let's take a look at SB 2027. We discussed this last week but did not resolve it.

Sen. Armstrong: (See attached #1). Essentially on the sheet it shows you what the statutes correlate to. I think Sen. C. Nelson was asking that; I had it on an email and then I lost it and redid in this format (he explained it). We put the violent crimes back into the 5 year probation. Anything that's not specifically listed there, the minimum would be three years' probation.

Sen. Grabinger: How much of an impact do you think that's going to have on our jails? Is it going to have a huge impact allowing the probation officers to go and take these people right off the street and put them in? Obviously they are going to go into our local correctional facilities. Is that going to have a huge impact or is it a rare thing that they do this.

Sen. Armstrong: Best guess, not much at all; maybe even a positive one because they can do these two days instead of a revocation where they get 30 days. If they can do five of these two days a year, that's 10 days in prison vs. 30 days. I can't see them getting to five of these in a year, because there will be the revocation of probation. It happens all the time right now.

Sen. Grabinger: If there was a rogue probation officer going around and picking up his people off the street and filling the jail.

Sen. Armstrong: It is hard to write policy for rogue people. Hard cases make bad law. It turns into a people issue. This is amendment tightens this up a lot from what DOCR wanted; they wanted a lot.

Sen. Grabinger: I think the main focus of it was to allow them to cut the length of time. If we're not going to do that, I don't know how much of an impact it is going to have on our jail system anyway; that was the intent of the bill.

Sen. Armstrong: The one thing that's still in here is that the petitioner, after 18 months, can petition. Effectively, what will help it happen is if DOCR thinks they should petition the court to get off probation, then they are going to do it on their own? The reason that you can't let DOCR do it, is that they don't have lawyers. A petitioner can do it pro se anytime he wants. When you are a defendant, you can always petition the court. You can either hire a lawyer to help you, you can fill out the paperwork yourself knowing that probation is going to come to the table with you and then the one thing in this amendment is that they don't get to keep doing it. If they petition the court after 18 months, they have to wait a year to do it again. Hopefully between the petitioner and their probation officer they are actually communicating with the prosecutor and the judge and not just doing it whenever they want. If they do that, sooner or later the probation officers will start learning what judges and prosecutors are looking for in these hearings and be cognizant of the other people involved. This will still allow the court final determination of when probation gets revoked, not the DOCR. It opens it up for them a little bit; you don't have to wait for a prosecutor to petition the court, because prosecutors are really busy and letting people off of probation is not necessarily their #1 priority. It does allow the petitioner to initiate the process. But the court still has the final say.

Sen. Grabinger: I move the amendment 15.0040.04001, title 05000.

Sen. Luick: Second the motion.

Ch. Hogue: We will take a voice vote on the amendment. Motion carried. We now have the bill before us as amended. What are the committee's wishes?

Sen. Grabinger: I move a Do Pass as amended.

Sen. Casper: Second the motion.

**6 YES 0 NO 0 ABSENT DO PASS AS AMENDED**

**CARRIER: Sen. Armstrong**

TP  
2/09/15

PROPOSED AMENDMENTS TO SENATE BILL NO. 2027

- Page 1, line 17, overstrike "and"
- Page 1, line 17, remove the overstrike over "~~two years~~" and insert immediately thereafter "for a class A misdemeanor offense; and"
- Page 1, line 17, after "a" insert "class B"
- Page 2, line 18, replace "three hundred sixty days" with "two years"
- Page 2, line 22, after "6." insert "Upon petition by the defendant, no sooner than eighteen months from the time of sentence, the court shall provide a hearing to determine if the defendant should be discharged from probation."
- Page 2, line 24, after the period insert "A defendant may not petition for an early discharge from probation within twelve months of a previous hearing on a request for discharge from probation. Unless waived by the state's attorney, the state's attorney must be provided notice of a petition for discharge from probation and must be provided an opportunity to object to the petition."
- Page 2, line 25, remove "Except for an offense under chapter 12.1-20 or 12.1-27.2 and unless otherwise"
- Page 2, remove lines 26 through 30
- Page 3, remove lines 1 and 2
- Page 3, line 3, remove "8."
- Page 3, line 8, remove "under chapter"
- Page 3, line 9, remove "12.1-20 or 12.1-27.2, a felony offense"
- Page 3, line 9, remove ", a felony offense"
- Page 3, line 10, replace "subject to section" with "or"
- Page 3, line 10, remove "which involves the use of a firearm or dangerous"
- Page 3, line 11, remove "weapon"
- Page 3, line 22, overstrike "If an appropriate"
- Page 3, overstrike lines 23 through 26
- Page 3, line 27, overstrike "program selected by the department of corrections and rehabilitation."
- Page 3, line 29, overstrike "or"
- Page 3, overstrike line 30
- Page 3, line 31, overstrike "the department of corrections and rehabilitation"
- Renumber accordingly

Date: 2/9/15  
Voice Vote # 1

2015 SENATE STANDING COMMITTEE  
VOICE VOTE  
BILL/RESOLUTION NO. 2027

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: 15.0040.04001 05000

Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar

Other Actions:  Reconsider     \_\_\_\_\_

Seconded By

Motion Made By Sen. Grabinger    Sen. Luick

Senators	Yes	No	Senators	Yes	No
Ch. Hogue			Sen. Grabinger		
Sen. Armstrong			Sen. C. Nelson		
Sen. Casper					
Sen. Luick					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

*Motion carried.*

Date: 2/9/15  
Roll Call Vote #: 2

2015 SENATE STANDING COMMITTEE  
ROLL CALL VOTE  
BILL/RESOLUTION NO. 2027

Senate \_\_\_\_\_ **JUDICIARY** \_\_\_\_\_ Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
 Place on Consent Calendar

Other Actions:  Reconsider  \_\_\_\_\_

Motion Made By Sen. Grabinger Seconded By Sen. Casper

Senators	Yes	No	Senators	Yes	No
Chairman Hogue	✓		Sen. Grabinger	✓	
Sen. Armstrong	✓		Sen. C. Nelson	✓	
Sen. Casper	✓				
Sen. Luick	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Armstrong

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

REPORT OF STANDING COMMITTEE

**SB 2027: Judiciary Committee (Sen. Hogue, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2027 was placed on the Sixth order on the calendar.

Page 1, line 17, overstrike "and"

Page 1, line 17, remove the overstrike over "~~two years~~" and insert immediately thereafter "for a class A misdemeanor offense; and"

Page 1, line 17, after "a" insert "class B"

Page 2, line 18, replace "three hundred sixty days" with "two years"

Page 2, line 22, after "6." insert "Upon petition by the defendant, no sooner than eighteen months from the time of sentence, the court shall provide a hearing to determine if the defendant should be discharged from probation."

Page 2, line 24, after the period insert "A defendant may not petition for an early discharge from probation within twelve months of a previous hearing on a request for discharge from probation. Unless waived by the state's attorney, the state's attorney must be provided notice of a petition for discharge from probation and must be provided an opportunity to object to the petition."

Page 2, line 25, remove "Except for an offense under chapter 12.1-20 or 12.1-27.2 and unless otherwise"

Page 2, remove lines 26 through 30

Page 3, remove lines 1 and 2

Page 3, line 3, remove "8."

Page 3, line 8, remove "under chapter"

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Page 3, line 10, remove "which involves the use of a firearm or dangerous"

Page 3, line 11, remove "weapon"

Page 3, line 22, overstrike "If an appropriate"

Page 3, overstrike lines 23 through 26

Page 3, line 27, overstrike "program selected by the department of corrections and rehabilitation."

Page 3, line 29, overstrike "or"

Page 3, overstrike line 30

Page 3, line 31, overstrike "the department of corrections and rehabilitation"

Renumber accordingly

**2015 SENATE APPROPRIATIONS**

**SB 2027**

# 2015 SENATE STANDING COMMITTEE MINUTES

**Appropriations Committee**  
Harvest Room, State Capitol

SB 2027  
2/17/2015  
Job # 23981

- Subcommittee  
 Conference Committee

Committee Clerk Signature

*Alice Grove*

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

Relating to length and termination of probation, supervision of probation, and conditions of probation; and to provide a penalty.

## Minutes:

Legislative Council - Chris Kadrmas  
OMB - Becky Keller

**Chairman Holmberg** called the committee to order on SB 2027.

**John Bjornson, Legislative Council:** Neutral testimony. This bill comes from Commission on Alternatives to Incarceration, which is an interim committee, but a statutory committee; it has 6 legislators and 12 non-legislators. The commission is tasked with looking at alternatives to incarceration. This bill is one of a half-dozen that came out of the interim. This came to the commission from DOCR, and it deals with the length and term of probation and termination of probation. The bill was amended in your judiciary committee. You should be looking at the engrossed version. What do you want me to discuss?

**Chairman Holmberg** -- There is an updated fiscal note dated 2-11-15,

**Senator Mathern**-- What passage of this engrossed bill will do?

**John Bjornson** -- What this will do, it will address some of the length of probation provisions that are currently in the law. It will say that probation will be 5 years for serious felony offenses. Sexual offenses, offenses against children, offenses that involve the use of weapons, those are 5 years of probation. An intermediate category, as amended by the judiciary committee, 3 years for any other felony offense; 2 years for class A misdemeanor; 360 days for class B misdemeanor; no term of probation for infractions. Bill also deals with additional terms if people aren't complying and that would stay in place for all felonies and then a term of up to 2 years for misdemeanor offenses. This would be under the supervision of DOCR. Bill also addresses the ability, as amended by the judiciary committee and approved by you on the floor, with applications to terminate probation and

would allow an offender, after 18 months, to apply to have probation terminated. It would limit them to subsequent applications, one every 12 months after that.

**Senator Mathern** -- The intent was to reduce the burden on corrections for situations where there really isn't a need for what we were doing and now we have a fiscal note for \$116,000. The intent got changed so now we're going to do more instead of doing less? What happened?

**John Bjornson** -- What happened was there were a fair number of changes by the judiciary committee. The original intent was to provide some additional flexibility in terminating probation. The DOCR came in during the interim and essentially said that there is a point in probation where if you go beyond that, for many offenders, it's counter-productive. Their idea was to find something in that sweet spot for certain offenders to release them from probation at an earlier point. Some of the changes in length of terms that were done by the judiciary committee probably resulted in changes in the fiscal note.

**Chairman Holmberg** -- The fiscal notes look identical.

**Dave Krabbenhoft, Director of Administration, DOCR** -- The fiscal note didn't change. We really couldn't get to a point where we could put a fiscal impact on that. We don't know what these changes are going to do. The way I understand the bill, as it's changed now, is that provision that allows the offender to apply for early termination of probation (meter 7:42-8:55)

**Senator Bowman** -- Shouldn't there be a savings offset someplace, rather than incarceration? It seems logical. Our prisons are full, and it costs a lot of money.

**Dave Krabbenhoft** -- That's a good point and we get at that in the fiscal note, that's the piece that's hard to get our hands on. What effect is that going to be on the caseloads? When we have reduced caseloads to our parole and probation, you aren't going to see as direct fiscal effect as you would preventing someone from going to prison. We believe that this 48 hour hold will prevent some people from going all the way into prison. We just don't know how many people that's going to be.

**Senator Robinson** -- If my understanding of your caseloads is correct, we're either at or pushing 7,000 total, statewide? How many of those cases would be impacted by this bill? Given the growth in probation, are we going to gain much of anything or are we holding our own?

**Dave Krabbenhoft** -- I can't answer that right now. I think this is a positive step in the right direction. It gives that avenue for someone to petition for early termination of probation. There's a point of diminishing returns. I wish we had more data and really understood what kind of effect it would have on it.

**Senator Carlisle** -- What's the cost now for incarceration for 1 year?

**Dave Krabbenhoft** -- The cost on an annual basis for fiscal year ended 2014, is right around \$40,000/per person which comes up into that \$107 to \$109/per day. It's extremely expensive to incarcerate someone.

**Senator O'Connell** -- When somebody reports to their probation officer, the charge is what? \$55/a day?

**Dave Krabbenhoft** -- There's a supervision fee that is assessed and that's \$55/per month.

**Senator O'Connell** -- What is it, still about 50% that you can't collect?

**Dave Krabbenhoft** -- I would have to go back and check, \$55 or \$65 but our bad debts are about half.

**Chairman Holmberg** closed the hearing on SB2027.

**Senator Carlisle** moved Do Pass on SB 2027.  
**Senator Mathern** seconded.

A Roll Call vote was taken. Yea: 13    Nay: 0    Absent: 0

**Senator Armstrong** will carry the bill.

Date: 2-17-15  
 Roll Call Vote #: 1

**2015 SENATE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 2027**

Senate Appropriations Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

- Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar  
 Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Carlisle    Seconded By Mathern

Senators	Yes	No	Senators	Yes	No
Chairman Holmberg	✓		Senator Heckaman	✓	
Senator Bowman	✓		Senator Mathern	✓	
Senator Krebsbach	✓		Senator O'Connell	✓	
Senator Carlisle	✓		Senator Robinson	✓	
Senator Sorvaag	✓				
Senator G. Lee	✓				
Senator Kilzer	✓				
Senator Erbele	✓				
Senator Wanzek	✓				

Total (Yes) 13    No 0

Absent 0

Floor Assignment Judicial Committee Sen Armstrong

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

**REPORT OF STANDING COMMITTEE**

**SB 2027, as engrossed: Appropriations Committee (Sen. Holmberg, Chairman)**  
recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).  
Engrossed SB 2027 was placed on the Eleventh order on the calendar.

2015 HOUSE JUDICIARY

SB 2027

# 2015 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee  
Prairie Room, State Capitol

SB 2027  
3/9/2015  
24493

- Subcommittee  
 Conference Committee

Committee Clerk Signature



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

Relating to length and termination of probation, supervision of probation, and conditions of probation; and to provide a penalty.

## Minutes:

Testimony #1, Proposed amendment #2

Chairman K. Koppelman: Opened the hearing with testimony in support.

**John Bjornson:** Legislative Counsel: Neutral on the bill. Last week I visited with you about the Commission on Alternatives to Incarceration. It is a commission that is made up of six legislators and then representative of the judiciary, law enforcement, counties and other groups. It was brought by the Dept. of Corrections and Rehabilitation. The Commission recommended the bill. The bill was amended in the Senate and there is an engrossed version. Went through each section of the bill.(1:50-10:05)

**Rep. G. Paur:** There are two points. Referencing 14-09-22; abuse and neglect of a child. We had a bill in here that separates the two offenses. How is that going to work? We also had a bill which limits the subsequent patrol violations not to exceed probation not to exceed the initial probation period.

**Chairman K. Koppelman:** I think what Rep. Paur is referring to is we had another bill imposing more than one period of probation, but the way the bill left here is that it still could not exceed the maximum period of the sentence.

**John Bjornson:** I am not familiar with those bills but we would try to reconcile them. I am familiar with that other bill. The reference to 14-09-22 would remain because that was a more serious offense and I think the less neglect of a child may have been broken out. We probably should check on that so this would apply to the more serious charge of abuse.

**Rep. D. Larson:** That one separated the difference between abuse and neglect because of reporting of a violent offender against a child. My question is on page 2 lines 18 this line says not to extend probation past the original maximum sentence for the crime. This line says exceed two years in a misdemeanor case. Are there times that misdemeanor cases can be sentenced to more than two years?

**John Bjornson:** I suspect not.

**Chairman K. Koppelman:** Maybe you could work with the intern to be sure this is right.

**Rep. K. Wallman:** On the fiscal note anywhere that there is an additional cost for allowing the petitioner to request is heard. It seems to me there would be an added cost if a defendant requests a hearing and they are denied so they would automatically have another one so they are adding hearings?

**John Bjornson:** I don't know how the fiscal note was prepared.

**Rep. K. Wallman:** In section 2, #1 toward the end the language is stuck out there. Who would be the responsible party if the Dept. of Corrections Probation and Patrol was not going to supervise someone? I don't think it flows back to the department if I am reading that correctly.

**John Bjornson:** I am not certain how these changes were made in the Senate. In certain cases there are community service programs that are funded by the state in part and receive an appropriation to help support their programs.

**Rep. L. Klemin:** How can you impose probation for an additional two years?

**John Bjornson:** That was another change the Senate made.

**Aaron Burst, Association of Counties:** Initially we did not support this bill on the Senate side, but after it was amended we support this bill. We agreed with all the changes on the Senate side. Violent offenders could get up to 10 years of supervised probation. All other felonies such as theft could get a maximum of 8 years. Misdemeanors you could get a maximum of 4 years. For an A misdemeanor and then 2 years and 360 days for B misdemeanor.

**Rep. L. Klemin:** If the maximum sentence in a Class A misdemeanor is 1 year you still have an additional 4 years' probation?

**Aaron Burst:** That is correct. Currently the law is a maximum of 1 year incarceration, but the current law allows up to 5 years of probation so this is actually reducing the time. The original bill reduces an A misdemeanor. That originally was not there. On an A misdemeanor the max time you can serve incarceration is one year. However the court has the ability to put somebody on supervised probation for a longer period than their jail time.

**Rep. L. Klemin:** The other bill had some limit on that. How does that affect this?

**Aaron Burst:** HB1357 and SB2027; which we are hearing are on a collision course for many conference committees. There needs to be a meeting of the minds on this. The DOCR is overworked and understaffed and this would lessen their workload and that is essentially what this bill does. It reduces probations times and makes discretionary

supervised probation in a lot of felonies. Currently under ND law if you are sentenced on a felony you must be on supervised probation if the court imposes probation. So this says the nonviolent offenders, the thief of properties the court will add the discursion so we are relying on the courts to make the right decision. Regarding Rep. L. Klemin questions why would you have a longer period of probation on an A misdemeanor? For many sentences the court will impose a long period of probation simply to collect restitution If somebody steals from my house or car; yet they have no ability to pay up front they might put them on supervised probation and say you are ordered to pay \$50/month for two years until it is paid and it does not necessarily correspond to the jail time.

**Rep. G. Paur:** Initially you were opposed to the bill so now you must not perceive much benefit from to this bill?

**Aaron Burst:** I saw some benefits in the supervised probation on the original bill; but we say a lot of negatives from the department having the ability to terminate early so we objected based on that. We supported the changes to the mandatory supervised probation and the changes to the timeline. It was overwhelming the DOCR could terminate within 18 months. There was a structure in place but we felt it didn't flow very well. Additionally the lawyers had a significant concern when DOCR is not a party to the case of state versus Aaron Burst. If the department is petitioning or cutting somebody off we didn't feel that is right so that is why we suggested the changes in subsection 6 saying that the petitioner can bring it up early. I will make note that the DOCR is going to say just change page 2 line 21 #6 back to the way it originally was and don't worry about and we have no problems with that. Number 6 was amended to try and help the DOCR institute a process where they could bring it in front of the judge to talk about whether somebody should be on probation or not.

**Rep. G. Paur:** Would the association of counties have heartburn if it came out with a do not pass?

**Aaron Burst:** I don't know. It does advance the ball to focus on the folks that need limited resources.

**Rep. D. Larson:** This added amendment on page 4 where they can put somebody back in for 48 hours seems like of an off thing to do; and then on the fiscal specifically says that the estimated cost of the 48 hour hold program is not included in the executive budget recommendation so does that mean that DOCR is coming in here and saying we are not paying for it?

**Aaron Burst:** That was part of the original bill. If someone is not paying attention to their probation as opposed to sending a petition to revoke them and put them back in the DOCR a swift consequence is more helpful. They would not be going back to the pen so it would be an additional potential extra cost that the county jail would have to house them for 48 hours as basically a timeout; however when we talked to our county folks we recognize that essentially is an unfunded mandate, but on the other side of the coin if DOCR choses to ask states attorneys to revoke them there is a revolution petitions and they are setting in jail the county is being the cost of them setting there anyway.

**Rep. K. Wallman:** The way I read section 2 the court imposes probation upon conviction that will bear the costs and who is that?

**Aaron Burst:** Generally when the local community service providers; they are supported in many ways. There is some state funding, there is grant funding so those local community service providers exist even without this bill so this bill says the DOCR only has to oversee those community service folks for the A misdemeanors, but all the struck language says the B misdemeanor so when I asked prosecutor they don't remember a time when DOCR has been ordered to do supervised probation for a B misdemeanor for a community service program. The short answer is we don't see that changing the fiscal obligation of the locals.

**Rep. K. Wallman:** Can you give me an example of what a community provider would be for this purpose?

**Aaron Burst:** In the Cass County region they have a program called RESTORE. It is a nonprofit and this private organization and the court will say you are on probation and it will be monitored by not by DOCR but by RESTORE and they will report to the court.

**Rep. K. Wallman:** The state doesn't pay these folks to do this?

**Aaron Burst:** It depends on the organization. I know the DOCR might be paying some of this.

**Rep. P. Anderson:** You made a comment that someone maybe on supervised probation because they still have a fine outstanding. If that is the only thing outstanding can they be on unsupervised probation?

**Aaron Burst:** Most of the time the court would say for small misdemeanors it is hard to generalize on this. Larger counties have more resources than smaller counties. Most of the time the court would say for small crimes like misdemeanors they would say you need to pay your fines and fees and restitution but you are on unsupervised probation. Essentially meaning nobody is watching over you. The clerk will just make sure you are paying your fines and fees. On other case the court may say you are on supervised probation and that is ran by DOCR. You are right there could be only fines and restitution left so the person has gone through their treatment; they have done their time but the only reason that they are still on probation is their fines and fees. If they don't pay that goes in front of a court and we will revoke you because you are not paying.

**Rep. L. Klemin:** Page 2 at the bottom on 27, unless waived by the state's attorney, the state's attorney must be provided notice. Why would the state's attorney waive being provided notice if you don't even know about it how can you even waive it?

**Aaron Burst:** Originally how this was supposed to read was the state's attorney must receive notice when somebody petitions and at that point the state's attorney can waive requesting a hearing to argue about it or not.

**Chairman K. Koppelman:** Because of the complexity of this bill and HB 1357 the chairman does intend to appoint a subcommittee to try and work through some of this.

**Patrick Bohn, Director for Transitional Planning Service:** (Testimony #1)  
(Handed out proposed amendment#2) My amendments are an attempt to harmonize what has been discussed which was passed out of this committee with HB 1367. (35:06-42:23)

**Rep. L. Klemin:** When you were here earlier you mentioned something that changes would only apply to new sentences. Could you refresh my memory on that?

**Patrick Bohn:** I believe what you are talking about is adding an ability to add a period of probation. Now the court is limited to two periods. If we add that the court can go up to what we are capping probation at is an enhancement and would apply to any of those after the offense is committed on or after August 1, 2015.

**Rep. G. Paur:** According to the counties testimony I was under the impression this was to alleviate some of the workload and it appears it might be increasing your workload by making those multiple paroles?

**Patrick Bohn:** It could be difficult to predict how this will be implemented? I still believe that this will have a positive impact on the workload of the DOCR but have a positive impact on the state's attorney and judiciary and our overall correctional system.

**Chairman K. Koppelman:** We have a resolution that has been sent over to the Senate for a justice reinvestment study and I strongly support that.

**Rep. L. Klemin:** Did you say the enhancements would apply only to offenses committed after August 1, 2015 or did you say convictions?

**Patrick Bohn:** It would be offenses committed on or after August 1, 2015.

**Rep. L. Klemin:** So offenses being committed now would go under the old law?

**Patrick Bohn:** As I understand what we currently have August 1 is new crimes?

**Rep. K. Wallman:** After the Legislative Management study on alternatives to incarceration this committee has heard lots of bills about streamlining the way probation and parole is handled. In ND we have a lot of resources so we could actually appropriate more money for this cause. I want to make sure we are not compromising safety. There is data out there and research that shows it has better outcomes. Will we be getting better outcomes?

**Patrick Bohn:** If we stick to the research we can improve outcomes?

Opposition: None

Neutral:

**Gail Haggerty, District Judge, Bismarck, ND:** If you maintain the language concerning a petition by the defendant by termination; I wish you would take out the language shall provide a hearing. We currently have these petitions and we aren't required to hold a hearing or to schedule a hearing on every case. There may be cases where it would be appropriate but we wouldn't want to be doing it in every case. It does limit options the court has with regard to length of probation. I don't think it is necessarily a bad thing, but it does limit some discretion. Supervised probation in misdemeanor cases is a little different than community service. We have some community programs like Center Inc. in Bismarck where we can have misdemeanor probation supervised felony. Center runs a community service program, but they also have a probation supervision program and have probation officers. When a court sentences someone to supervised probation they are required to pay a monthly fee for the DOCR. Now I think they receive \$55/month for each person supervised. Center Inc. also receives a monthly fee from the person who is to be supervised. One thing we know from drug court is the longer we can keep people clean and sober the more likely they are going to have good results on a long term.

**Rep. L. Klemin:** On Section 6 the court shall require a hearing under what circumstances would a court not hold a hearing?

**Gail Haggerty:** The court considered the written response from the state; if the state is agreeing the probation should be modified there wouldn't be any need for a hearing. There are some cases where we get requests that just aren't reasonable and there is no request for a hearing. We would like not to be scheduling a hearing for every case. That would also be a real burden for patrol and state's attorneys.

**Rep. L. Klemin:** So what you are saying the court shall provide a hearing if requested?

**Gail Haggerty:** If you are going to keep some of this language that came in if you could just say the court shall determine. There would be a request from the defendant or from the state and assume that would be honored.

**Rep. L. Klemin:** So if it stayed in and it was like a motion to request a hearing you have to hold one so if the court shall provide a hearing if requested would cover that situation.

**Gail Haggerty:** There are some people who are incarcerated then it is like a field trip and they get taken to the court house so it would be better to say shall provide a hearing to determine. That is an expensive thing for the system. It would be better to take out the language shall provide a hearing.

**Rep. D. Larson:** What if we would just say may?

**Gail Haggerty:** I don't know why we would be suggesting a hearing.

Hearing closed,

**Chairman K. Koppelman:** Appointed a Subcommittee: **Rep. D. Larson:** **Rep. L. Klemin:** **Rep. P. Anderson:**

House Judiciary Committee

SB 2027

March 9, 2015

Page 7

HB 1367 bill in Senate now so we need to monitor that too.

Minutes of the

(HOUSE)(SENATE) BILL NO. 2027 SUBCOMMITTEE OF THE

~~Judiciary~~ STANDING COMMITTEE

Meeting location: Prairie Room

Date of meeting: 3-25-15

Time meeting called to order: 2:20 PM

Members present: Reps Klemm, Anderson, Larson

Others present (may attach attendance sheet):

Topics discussed:

Amendments to replace language in SB 2027 to language from 1367.

Motion and vote:

Rep. Klemm moved the above with the addition of lines 21+22 from SB 2027 on page 4. Rep Anderson seconded which motion carried

Time of adjournment: 2:30

Note: If a motion is made, a description of the motion must be provided along with the member seconding the motion. A recorded roll call vote must be taken and reported for any nonprocedural motion.

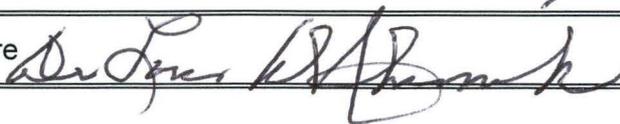
# 2015 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee  
Prairie Room, State Capitol

SB 2027  
3/30/2015  
25594

- Subcommittee  
 Conference Committee

Committee Clerk Signature



Minutes:

Proposed amendment #1

**Chairman K. Koppelman:** Opened the meeting on SB2027. This is the probation bill. We had a subcommittee on this bill and there is another bill that has some similar provisions so we have visited with the Senate and DOCR and States Attorneys. We had a subcommittee and Rep. D. Larson chaired that.

**Rep. D. Larson:** (See proposed amendment #1) Went through the proposal. We had HB1367 is still in play. (1:30-3:31)

**Motion made to move the amendment 15.0040.05001 by Rep. D. Larson: Seconded by Rep. L. Klemin:**

Discussion:

**Rep. Lois Delmore:** I think this is important we do this. I have a bill I am carrying on the floor on transportation that is another companion bill on this one; HB 1357 and what we have done with this will clarify that as well.

**Chairman K. Koppelman:** The discussion we have been having with DOCR and with the state's attorney today; they have been working through some of the fine points on both bills and our house bill was in better shape when it left here than this one. So we have been setting on this one hoping they would clear that one up and say we don't need this one anymore. Now we need to attach the amendments to move this bill forward with rerefer to appropriations. We can continue to visit with them and later appropriations can take care of this.

**Voice vote carried.**

**Do Pass As Amended Motion Made by Rep. D. Larson: Seconded by Rep. Maragos With referral to appropriations.**

**Roll Call Vote: 13 Yes 0 No 0 Absent Carrier: Rep. D. Larson:**

SP  
3/30/15  
1/0

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2027

Page 1, remove lines 6 through 24

Page 2, remove lines 1 through 29

Page 3, replace lines 1 through 3 with:

**"SECTION 1. AMENDMENT.** Section 12.1-32-06.1 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-32-06.1. Length and termination of probation - Additional probation for violation of conditions - Penalty.**

1. Except as provided in this section, the total length of the period of unsupervised probation imposed in conjunction with a sentence to probation or a suspended execution or deferred imposition of sentence may not extend for more than five years for a felony and two years for a misdemeanor or infraction from the later of the date of:
  - a. The order imposing probation;
  - b. The defendant's release from incarceration; or
  - c. Termination of the defendant's parole.
  
2. Except as provided in this section, the total length of supervised probation imposed in conjunction with a sentence of probation or a suspended execution or deferred imposition of sentence may not extend for more than five years for a class C felony, ten years for all other felony offenses, and two years for a class A misdemeanor from the later of the date of:
  - a. The order imposing probation;
  - b. The defendant's release from incarceration; or
  - c. Termination of the defendant's parole.
  
3. If the defendant has pled or been found guilty of an offense for which the court imposes a sentence of restitution or reparation for damages resulting from the commission of the offense, the court may, following a restitution hearing pursuant to section 12.1-32-08, impose an additional periodperiods of unsupervised probation not to exceed five years for each additional period imposed.
  
- 3.4. If the defendant has pled or been found guilty of a felony sexual offense in violation of chapter 12.1-20, the court shall impose at least five years but not more than ten years of supervised probation to be served after sentencing or incarceration. If the defendant has pled or been found guilty of a class AA felony sexual offense in violation of section 12.1-20-03 or 12.1-20-03.1, the court may impose lifetime supervised probation on the defendant. If the defendant has pled or been found guilty of a misdemeanor sexual offense in violation of chapter 12.1-20, the court may

impose an additional ~~period~~periods of probation not to exceed two years for each additional period imposed. If the unserved portion of the defendant's maximum period of incarceration is less than one year, a violation of the probation imposed under this subsection is a class A misdemeanor.

- 4.5. If the defendant has pled or been found guilty of abandonment or nonsupport of spouse or children, the period of probation may be continued for as long as responsibility for support continues.
- 5.6. In felony and misdemeanor cases, in consequence of violation of probation conditions, the court may impose an additional ~~period~~periods of probation ~~not to exceed five years~~. ~~The additional period of probation may follow a period of incarceration if the defendant has not served the maximum period of incarceration available at the time of initial sentencing or deferment~~if the defendant has not served the maximum sentence of imprisonment or probation available to the court at the time of initial sentencing or deferment. The court shall allow the defendant credit for a sentence of probation from the date the defendant began probation until the date a petition to revoke probation was filed with the court. If the defendant is on supervised probation, the defendant is not entitled to credit for a sentence of probation for any period the defendant has absconded from supervision. The total amount of credit a defendant is entitled to for time spent on probation must be stated in the criminal judgment or order of revocation of probation.
- 6.7. The court may terminate a period of probation and discharge the defendant at any time earlier than that provided in subsection 1 if warranted by the conduct of the defendant and the ends of justice.
- 7.8. Notwithstanding the fact that a sentence to probation subsequently can be modified or revoked, a judgment that includes such a sentence constitutes a final judgment for all other purposes."

Page 4, line 29, replace "day's" with "days"

Renumber accordingly

2015 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. SB 2027

House JUDICIARY Committee

- Subcommittee  Conference Committee

Amendment LC# or Description: 15-0040.05001

- Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
 Other Actions:  Reconsider  \_\_\_\_\_

Motion Made By Rep. Larson Seconded By Rep. Klemin

Representative	Yes	No	Representative	Yes	No
Chairman K. Koppelman			Rep. Pamela Anderson		
Vice Chairman Karls			Rep. Delmore		
Rep. Brabandt			Rep. K. Wallman		
Rep. Hawken					
Rep. Mary Johnson					
Rep. Klemin					
Rep. Kretschmar					
Rep. D. Larson					
Rep. Maragos					
Rep. Paur					

Total (Yes) \_\_\_\_\_ No AR

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

Date: 3-30-15  
Roll Call Vote #: 2

2015 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 5B2027

House JUDICIARY Committee

Subcommittee  Conference Committee

Amendment LC# or Description: 15. 0040. 05001. 06000

Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
Other Actions:  Reconsider

Motion Made By Rep. Larson Seconded By Rep. Maragos

Representative	Yes	No	Representative	Yes	No
Chairman K. Koppelman	✓		Rep. Pamela Anderson	✓	
Vice Chairman Karls	✓		Rep. Delmore	✓	
Rep. Brabandt	✓		Rep. K. Wallman	✓	
Rep. Hawken	✓				
Rep. Mary Johnson	✓				
Rep. Klemin	✓				
Rep. Kretschmar	✓				
Rep. D. Larson	✓				
Rep. Maragos	✓				
Rep. Paur	✓				

Total (Yes) 13 No 0

Absent 0

Floor Assignment Rep. Larson

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

**REPORT OF STANDING COMMITTEE**

SB 2027, as engrossed: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2027 was placed on the Sixth order on the calendar.

Page 1, remove lines 6 through 24

Page 2, remove lines 1 through 29

Page 3, replace lines 1 through 3 with:

**"SECTION 1. AMENDMENT.** Section 12.1-32-06.1 of the North Dakota Century Code is amended and reenacted as follows:

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  - a. The order imposing probation;
  - b. The defendant's release from incarceration; or
  - c. Termination of the defendant's parole.
2. Except as provided in this section, the total length of supervised probation imposed in conjunction with a sentence of probation or a suspended execution or deferred imposition of sentence may not extend for more than five years for a class C felony, ten years for all other felony offenses, and two years for a class A misdemeanor from the later of the date of:
  - a. The order imposing probation;
  - b. The defendant's release from incarceration; or
  - c. Termination of the defendant's parole.
3. If the defendant has pled or been found guilty of an offense for which the court imposes a sentence of restitution or reparation for damages resulting from the commission of the offense, the court may, following a restitution hearing pursuant to section 12.1-32-08, impose ~~an~~ an additional periodperiods of unsupervised probation not to exceed five years for each additional period imposed.
- 3-4. If the defendant has pled or been found guilty of a felony sexual offense in violation of chapter 12.1-20, the court shall impose at least five years but not more than ten years of supervised probation to be served after sentencing or incarceration. If the defendant has pled or been found guilty of a class AA felony sexual offense in violation of section 12.1-20-03 or 12.1-20-03.1, the court may impose lifetime supervised probation on the defendant. If the defendant has pled or been found guilty of a misdemeanor sexual offense in violation of chapter 12.1-20, the court may impose ~~an~~ an additional periodperiods of probation not to exceed two years for each additional period imposed. If the unserved

portion of the defendant's maximum period of incarceration is less than one year, a violation of the probation imposed under this subsection is a class A misdemeanor.

- 4-5. If the defendant has pled or been found guilty of abandonment or nonsupport of spouse or children, the period of probation may be continued for as long as responsibility for support continues.
- 5-6. In felony and misdemeanor cases, in consequence of violation of probation conditions, the court may impose an additional ~~period~~periods of probation ~~not to exceed five years~~. ~~The additional period of probation may follow a period of incarceration if the defendant has not served the maximum period of incarceration available at the time of initial sentencing or deferment if the defendant has not served the maximum sentence of imprisonment or probation available to the court at the time of initial sentencing or deferment.~~ The court shall allow the defendant credit for a sentence of probation from the date the defendant began probation until the date a petition to revoke probation was filed with the court. If the defendant is on supervised probation, the defendant is not entitled to credit for a sentence of probation for any period the defendant has absconded from supervision. The total amount of credit a defendant is entitled to for time spent on probation must be stated in the criminal judgment or order of revocation of probation.
- 6-7. The court may terminate a period of probation and discharge the defendant at any time earlier than that provided in subsection 1 if warranted by the conduct of the defendant and the ends of justice.
- 7-8. Notwithstanding the fact that a sentence to probation subsequently can be modified or revoked, a judgment that includes such a sentence constitutes a final judgment for all other purposes."

Page 4, line 29, replace "day's" with "days"

Renumber accordingly

**2015 HOUSE APPROPRIATIONS**

**SB 2027**

# 2015 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee  
Roughrider Room, State Capitol

SB 2027  
4/2/2015  
Job #25786

- Subcommittee  
 Conference Committee

Committee Clerk Signature

*Kenneth M. Torbeck*

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

A BILL for an Act to amend and reenact section 12.1-32-06.1, subsections 1 and 3 of section 12.1-32-07, and subdivision c of subsection 5 of section 39-08-01 of the North Dakota Century Code, relating to length and termination of probation, supervision of probation, and conditions of probation; and to provide a penalty.

## Minutes:

Chairman Jeff Delzer opened the hearing on SB 2027.

**Repr. Kim Koppelman** spoke on the bill. This is a work in progress. It came to us from the Commission on Alternatives to Incarceration. There is another bill, HB 1367, which we've passed out of the House, that is currently in the Senate. I've had a few discussions with the Senate folks. They want to make sure the contents of 2027 goes forward, as do we, but it really doesn't matter what bill it happens in. I believe they will amend 1367 with the contents of 2027 if we should kill this bill. We held it until Monday because that was our deadline to get it off to you. However, at this stage, I'm not sure it's that important that this bill go forward, even though we very much support what the bill does, because I believe the Senate will amend it with these measures if we do not pass it here in the House. It did pass the committee unanimously, and we support what the bill attempts to do. It deals with lengths of probation and the changes to that. You can see that the fiscal note was prepared by the Department of Corrections, and it's about \$116,000 per biennium, and that deals with what they anticipated as being a payout to the counties. But they also say in their fiscal note that it's anticipated that the 48-hour hold program would have a positive effect. In other words, it would decrease the number on prison admissions due to the probation revocation. However, they say, due to a lack of historical data regarding the effect of a 48-hour hold, the DOCR is unable to estimate the effect on prison admissions. So what they've done in the fiscal note is essentially itemized their cost, and say there probably is a benefit, but we can't tell you what it is.

**Chairman Jeff Delzer:** I think we need to cover the policy a little bit.

**Rep. Koppelman:** What this bill essentially does is it deals with the supervision and the changes to the termination of probation supervision and so on, and it allows a defendant to be placed on probation multiple times. HB 1367 essentially did the same thing. The court

system and DOCR and the Office of Parole and Probation think that's really a good thing because the way it works now, judges can only sentence to probation once, and if that probation is revoked, they go back into jail or prison. They believe that if the court has the ability to put people on probation more than once, it might be helpful to the system because they're still supervised, but they're not locked up. And that ultimately would cost less. It's essentially the same thing that 1367 did when we had it in the House.

**Chairman Jeff Delzer:** Do you want us to hold this a couple days and then kill it?

**Koppelman:** Yes. That would be helpful, because then I would be able to get a clearer picture. DOCR has indicated to us, and the prosecutors as well, has indicated that one of these bills should go forward. They don't really care which one it is, and they're working with both chambers to insure that the provisions are in the bill. I would ask you to hold this bill for a couple days, and then let's communicate on it.

**Chairman Jeff Delzer:** What happens if they both pass? Do they just kind of meld together in the end?

**Brady Larson, Legislative Council:** The Code Advisor would have to try to meld the two together, and if there was an extreme conflict, then he would more than likely assume that the last bill passed would prevail.

**Koppelman:** The other thing I would point out is that 1367 has no fiscal note.

**Chairman Jeff Delzer:** But if they amended this in; then it would create a fiscal note?

**Koppelman:** I don't know that it would, because what DOCR is looking at is, they're saying, we're going to have to pay some money out here to counties in order to house people, but we're also going to save money because there aren't as many people in the pen. So they're telling us what the number is that they're going to pay out, but they're saying, we don't know how much we'd save, so we can't tell you that amount. My guess is that it's probably a wash.

**Chairman Jeff Delzer:** Try to let me know by Tuesday afternoon.

**Koppelman:** I will.

**Chairman Jeff Delzer:** Further questions by the committee?

Chairman Delzer closed the hearing on SB 2027.

# 2015 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee  
Roughrider Room, State Capitol

SB 2027  
4/7/2015  
Job #25891

- Subcommittee  
 Conference Committee

Committee Clerk Signature *Kenneth M. Tonkel*

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

A BILL for an Act to amend and reenact section 12.1-32-06.1, subsections 1 and 3 of section 12.1-32-07, and subdivision c of subsection 5 of section 39-08-01 of the North Dakota Century Code, relating to length and termination of probation, supervision of probation, and conditions of probation; and to provide a penalty.

## Minutes:

**Chairman Jeff Delzer:** Opened the meeting. (Recording may have started late.) I believe it has a 48-hour hold, and this should really, and of course the fiscal note doesn't say it, but it should really allow for the opportunity for an actual reduction in cost to DOCR. That's what they're hoping, because currently I think they have to, if they want to do more than one revocation, they have to put them in for a longer period of time. This would allow three or four, I think it's four short revocations within a year's time period, of up to 48 hours. Anybody have any comments or questions? Rep. Pollert, have you looked at all? I mean Corrections is over in the Senate. But I don't know that this would be anything we'd have to worry about adding any money to the Corrections bill for, anyway. What are your wishes?

**Representative Pollert:** I move a Do Pass because there should be some savings on this, with doing this bill.

**Chairman Jeff Delzer:** We have a motion for a Do Pass. Is there a second?

**Representative Nelson:** I second.

**Chairman Jeff Delzer:** Do we need to have any kind of reporting language of how it works? Or do you think we're OK without that? I would hope they would come back next time and tell us how it works. This did come out of an interim committee. I think we've got quite a few studies in on the DOCR again.

**Rep. Nelson:** Within the DOCR budget, there is a study. I would think that this would be included in some of the findings because parole revocations is a part of that section. We do have a study in there that should address this.

**Chairman Jeff Delzer:** Any further discussion? Seeing none, the clerk will call the roll.

ROLL CALL VOTE TAKEN: YES: 21 NO: 0 ABSENT: 2

THE MOTION FOR A DO PASS AS AMENDED ON SB 2027 CARRIES: 21 YES, 0 NO, 2 ABSENT.

**Rep. Larson** will carry the bill.

**Chairman Jeff Delzer** closed the hearing on SB 2027

Date: 4/7/15

Roll Call Vote #: \_\_\_\_\_

2015 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES

BILL/RESOLUTION NO. 2027

House: Appropriations Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
 Place on Consent Calendar  
Other Actions:  Reconsider  \_\_\_\_\_

Motion Made By: Pollert Seconded By: Nelson

Representatives	Yes	No	Absent
Chairman Jeff Delzer	✓		
Vice Chairman Keith Kempenich	✓		
Representative Bellew			A-B
Representative Brandenburg	✓		
Representative Boehning	✓		
Representative Dosch	✓		
Representative Kreidt	✓		
Representative Martinson	✓		
Representative Monson	✓		
Representative Nelson	✓		
Representative Pollert	✓		
Representative Sanford	✓		
Representative Schmidt	✓		
Representative Silbernagel	✓		
Representative Skarphol	✓		
Representative Streyle	✓		
Representative Thoreson	✓		
Representative Vigesaa	✓		
Representative Boe			AB
Representative Glassheim	✓		
Representative Guggisberg	✓		
Representative Hogan	✓		
Representative Holman	✓		
TOTALS	21	0	2

Assignment: Larson

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

**REPORT OF STANDING COMMITTEE**

**SB 2027, as engrossed and amended: Appropriations Committee (Rep. Delzer, Chairman)** recommends **DO PASS** (21 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2027, as amended, was placed on the Fourteenth order on the calendar.

2015 CONFERENCE COMMITTEE

SB 2027

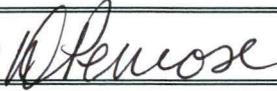
# 2015 SENATE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Fort Lincoln Room, State Capitol

SB 2027  
4/14/2015  
26080

- Subcommittee  
 Conference Committee

Committee Clerk Signature



**Minutes:**

Sen. Armstrong: Call the committee to order on SB 2027. All members present. I think our wishes are to kill the bill. We need the proper way to do it.

Rep. Koppelman: There are several ways to accomplish that. For the record, our intention is to amend the two bills into one bill. The two bills dealt with some of the same issues as HB 1367. I move that the House recede from its amendments to SB 2027 with the intention of disposing of it on the Floor.

Sen. Casper: Second the motion.

**6 YES 0 NO 0 ABSENT**

**HOUSE RECEDE FROM AMENDMENTS**

**CARRIER: Sen. Armstrong**

**CARRIER: Rep. Brabundt**

Date: 4/14/15  
 Roll Call Vote #: 1

**2015 SENATE CONFERENCE COMMITTEE  
 ROLL CALL VOTES**

BILL/RESOLUTION NO. 2027 as (re) engrossed

**Senate Judiciary Committee**

- Action Taken**
- SENATE accede to House Amendments
  - SENATE accede to House Amendments and further amend
  - HOUSE recede from House amendments
  - HOUSE recede from House amendments and amend as follows
  - Unable to agree, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Rep. Koppelman Seconded by: Sen. Casper

Senators				Representatives			
	4/14	Yes	No		4/14	Yes	No
<u>Sen. Armstrong</u>	✓	✓		<u>Rep. Brabandt</u>	✓	✓	
<u>Casper</u>	✓	✓		<u>Koppelman</u>	✓	✓	
<u>Grubinger</u>	✓	✓		<u>Delmore</u>	✓	✓	
Total Senate Vote				Total Rep. Vote			

Vote Count      Yes: 6      No: 0      Absent: 0

Senate Carrier Sen. Armstrong      House Carrier Rep. Brabandt

LC Number \_\_\_\_\_ of amendment

LC Number \_\_\_\_\_ of engrossment

Emergency clause added or deleted: \_\_\_\_\_

Statement of purpose of amendment: \_\_\_\_\_

*Intent: To Kill SB 2027 in favor of HB 1367.*

**REPORT OF CONFERENCE COMMITTEE**

**SB 2027, as engrossed:** Your conference committee (Sens. Armstrong, Casper, Grabinger and Reps. Brabandt, K. Koppelman, Delmore) recommends that the **HOUSE RECEDE** from the House amendments as printed on SJ pages 1234-1235 and place SB 2027 on the Seventh order.

Engrossed SB 2027 was placed on the Seventh order of business on the calendar.

2015 TESTIMONY

SB 2027

SENATE JUDICIARY COMMITTEE  
SENATOR DAVID HOGUE, CHAIRMAN  
JANUARY 12, 2015

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PATRICK N. BOHN, DIRECTOR FOR TRANSITIONAL PLANNING SERVICES,  
NORTH DAKOTA DEPARTMENT OF CORRECTIONS & REHABILITATION  
PRESENTING TESTIMONY RE: SB 2027

My name is Pat Bohn and I am the Director for Transitional Planning Services for the North Dakota Department of Corrections and Rehabilitation (DOCR). I am here on behalf of the department to testify in support of Senate Bill 2027.

This past year the department presented a number of ideas to the Commission on Alternatives to Incarceration, that we believe and research supports, can lessen the ongoing growth in the entire criminal justice system, including incarceration on the county and state levels, while maintain public safety. After some hearings and good modifications to the recommendations, the Commission passed a number of those ideas on to this body for consideration.

So let's take a look at some of those recommendations contained within this bill.

Section 1

Reduces felony probation from 5 years to 3 years for the first probation period, except for some of those more violent or dangerous crimes:

What:

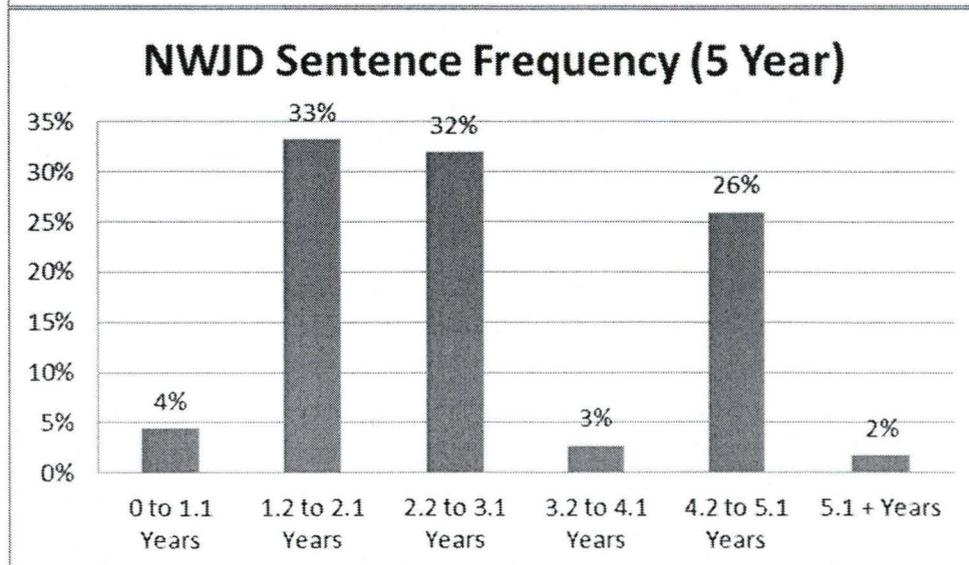
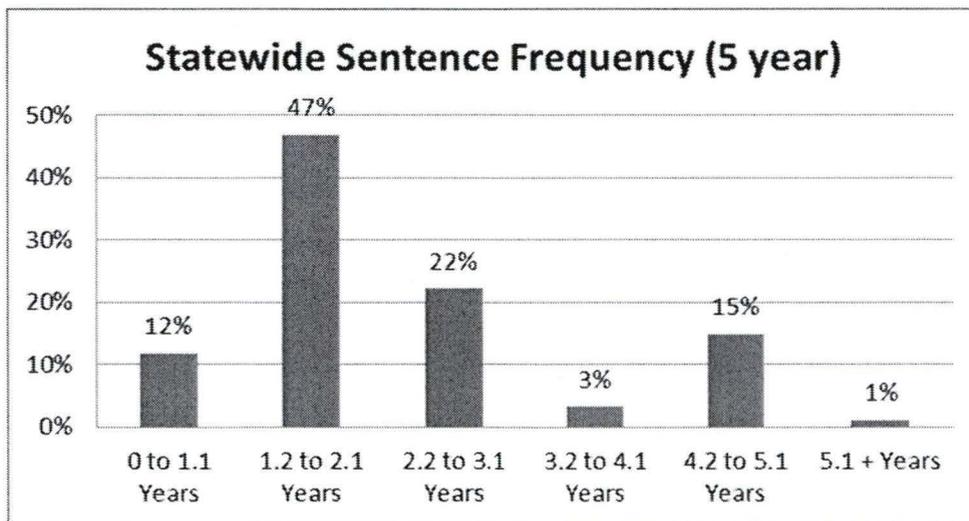
- Notify the committee that NDCC 12.1-40 (human trafficking) has a bill to repeal and replace (SB 2107).
- Notify the committee that the 5 years would remain on the "abuse" portion of the Child Abuse/Neglect statute (NDCC14-09-22) which is being considered for amendment by HB 1029.
- This would reduce the amount of time defendants can be placed on supervised for the first period from 5 to 3 years, except for the offenses listed.

Why:

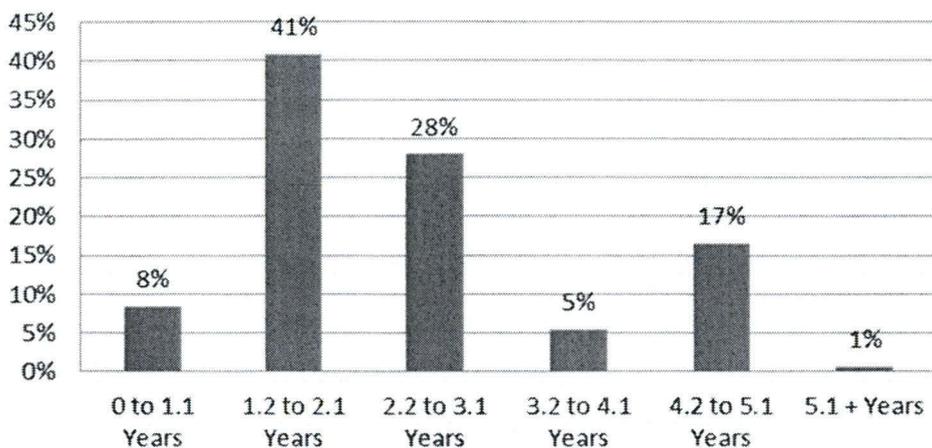
- Help reduce caseloads in an effort to leverage correctional resources. Probation caseloads are not infinite in capacity. Current caseloads for a standard PO is 75-80 offenders. Some areas have over 100 offenders on caseloads.
- Studies found that as caseload sizes increase, violation report and revocation rates increased (Florida DOCR 1988).
  - Officers with smaller caseloads made more frequent contacts with offenders.
  - Offenders supervised by officers with smaller caseloads had lower recidivism rates, if the supervising agency had implemented evidence-based practices.

#1A #2

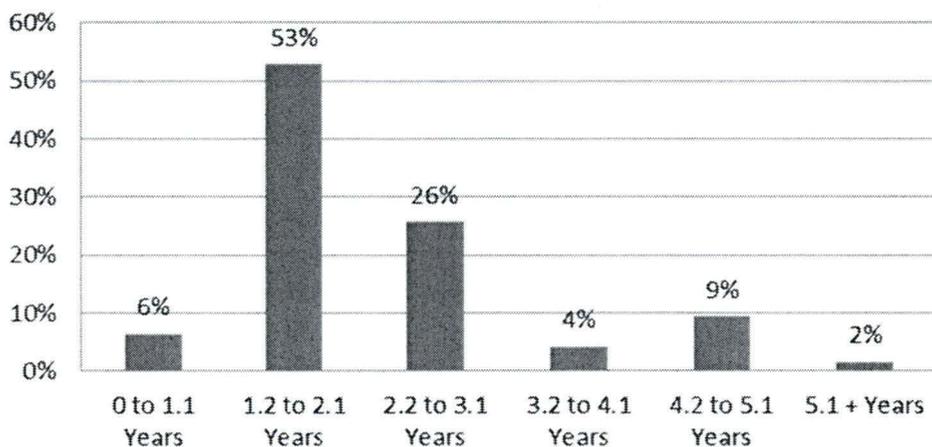
- see, e.g., Bonta et al., 2011; Lowenkamp, Holsinger, Robinson, & Alexander, 2012; Robinson et al., 2012; Smith, Schweitzer, Labreque, & Latessa, 2012
- Help prioritize correctional resources to focus on higher risk more dangerous offenders.
- Guide people out of the criminal justice system who may get “stuck” with long probation sentences.
  - Studies suggest there may be a point of diminishing returns (Kroner & Takahashi, 2012)
- Research supports probation lengths (Dosage Probation-NIC by the Center for Effective Public Policy, 2014)
  - Among many elements, fundamentally dosage probation completion is linked to achievement of a dosage target rather than a fixed period of time, thereby incentivizing the offender’s engagement in risk-reducing interventions (3<sup>rd</sup> bullet).
- Graphs are sentences to probation (felony and misdemeanor) by judicial district with supervision starting 1/1/08 to 12/31/12.



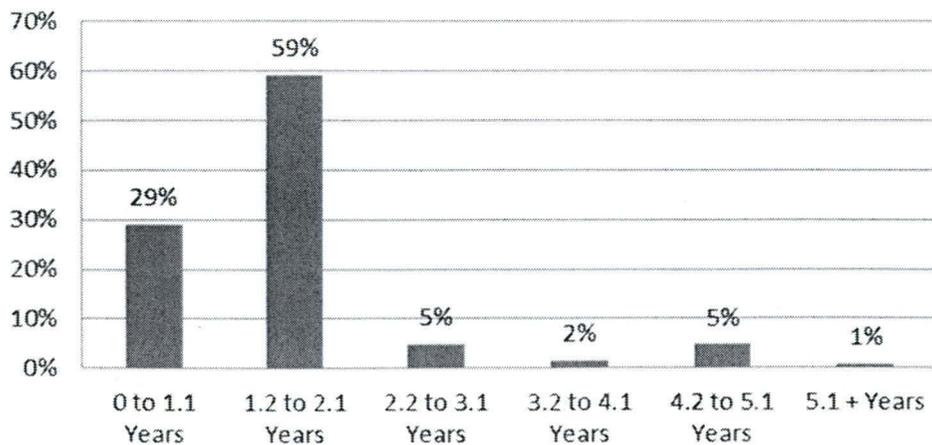
### NEJD Sentence Frequency (5 year)



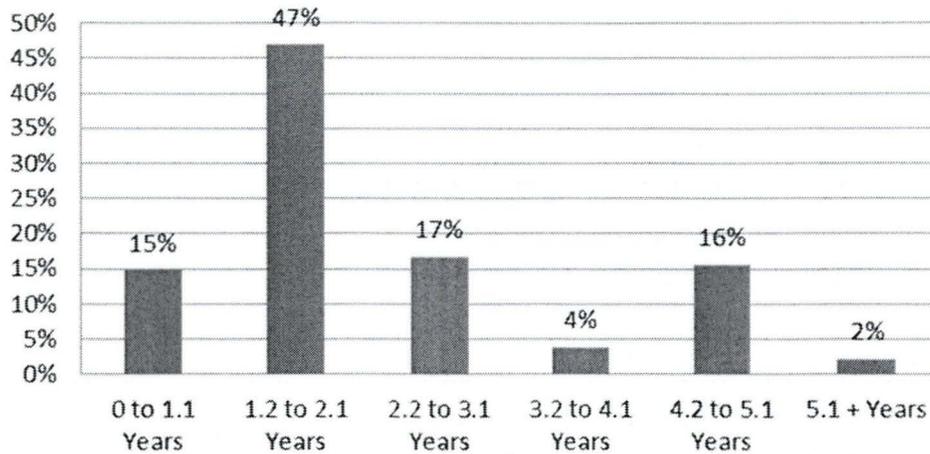
### NECJD Sentence Frequency (5 Year)



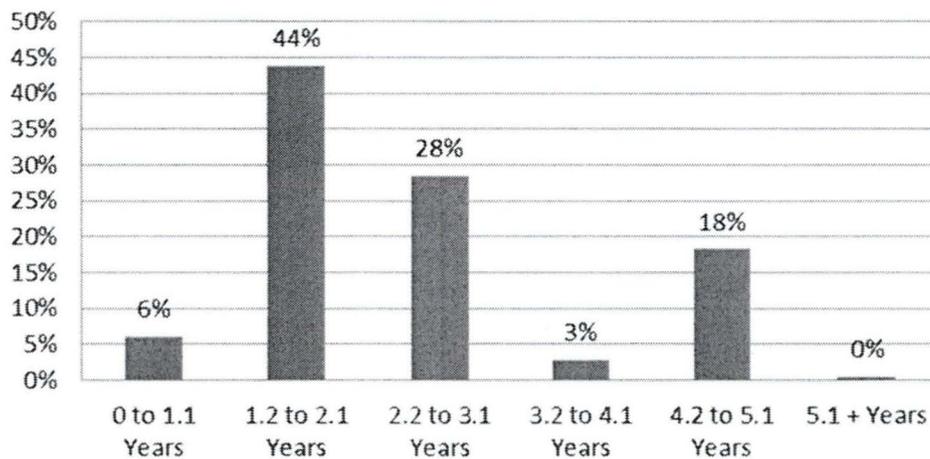
### ECJD Sentence Frequency (5 year)



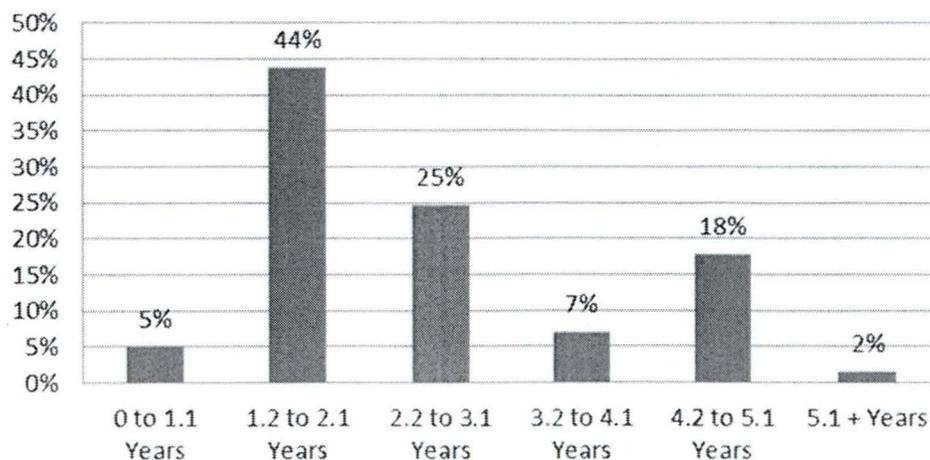
### SEJD Sentence Frequency (5 Year)



### SCJD Sentence Frequency (5 Year)



### SWJD Sentence Frequency (5 Year)



What:

Section 1 would reduce the length of supervised probation for misdemeanors from 2 years to 360 days.

Why:

- Caseload reductions = same as felony.
- 360 days of supervision would not trigger the requirements of the Interstate Compact for Adult Offender Supervision to transfer the case.
  - ICAOS is the mechanism for transfer of people on parole and probation supervision among the states. Federal, state, and ICAOS rules require offenders with one year or more of supervision to be transferred via ICAOS.
  - This process sometimes inhibits the ability of offenders to go home to a different state after being sentenced for misdemeanor offenses in North Dakota courts.

What:

Subsection 3 adds sexual performance by a child (12.1-27.2) the court must impose mandatory minimum probation of 5 years and not more than 10 years.

- DOCR is in favor of this amendment.

What:

Subsection 5 would add the possibility of an additional period of probation in misdemeanor cases to 360 days. Would also continue to authorize an additional period of probation for felonies of 5 years.

- This would set the parameters for misdemeanor probation periods as it is not currently spelled out in statute.
  - No current limits on periods of probation for misdemeanors upon revocation.
- This would allow, in instances of probation revocation, the court to sentence the defendant to up to 5 years of probation as a sentence at the revocation hearing.

Why:

- Define maximum number of periods of probation for a misdemeanor, as it is not currently defined in statute.
- Potential for unlimited probation periods for a misdemeanor offense.
- For felonies, this would provide the defendant another incentive for compliance on the first probation period because the period is shorter; should the defendant's probation be revoked that person would be subject to a longer probation period.

Subsection 7 authorizes the DOCR to terminate probation after 18 months if the offender has complied with the conditions of probation imposed by the court. The DOCR shall notify the court that sentenced and states attorney that prosecuted the offense(s). Except for:

- Any sexual offense under NDCC 12.1-20 or sexual performance by a child (12.1-27.2).

What:

- 1 AB
- Initial idea and testimony to the Alternatives to Incarceration Commission was that the court, in the criminal judgment, would authorize the DOCR to terminate the probation under this statute. Thus the court would remain the authority.
  - **Amendment:**
    - **We would recommend the language be added to the bill. (... the court may authorize the department to terminate probation 18 months after the defendant commenced probation.)**
    - **We would also recommend amendment to allow the supervised probation to be converted to unsupervised probation when financial obligations would otherwise be a barrier to the termination of supervised probation.**
  - The DOCR, in consultation with the courts would set policy and/or rules relating to the termination of probation and conversion to unsupervised probation.

Why:

- Provides incentives for offenders to complete goals of supervision, to comply with conditions, and remain law-abiding.
- Similar to reduction of felony lengths of probation re: dosage & caseload size.
- Currently law allows for the court to terminate probation at any time; however the DOCR is not a party to the action so the DOCR cannot file the motion for early termination. Therefore the defendant or the state's attorney must file the motion;
  - Defendants many times do not have the money or know-how to do this.
  - Some states attorneys resist early termination. Some have expressed beliefs that probation was a "break" at the initial sentencing and resist giving a defendant an additional "break" or they have expressed unwritten policies regarding early termination for certain offenses (drug offenses); therefore it is dead on the vine before it even has a chance to come before a judge.

Section 2 amendment, under subsection 1 changes the language to only require supervised probation for felony offenses:

- Sex offenses under NDCC 12.1-20
- Sexual performance by a child (NDCC 12.1-27.2)
- Offenses committed with a firearm or dangerous weapon (12.1-32-02.1)
- Second or subsequent Stalking (12.1-17-07.1)
- Human Trafficking (12.1-40)
- Second or subsequent violation of any domestic violence protection order
- Abuse or Neglect of a Child (14-09-22) ~ **Doesn't distinguish between "abuse" and "neglect".**
- Felony DUI (39-08)

In all other felony cases changes language from "shall" to "may place the defendant under supervision and management of the department of corrections and rehabilitation".  
What:

- This would give discretion to the court whether or not to impose supervised probation in felony cases where the court defers imposition or suspends execution of sentence; except for the offenses listed above.

Why:

- The DOCR is aware of instances where courts have already taken this action.
- This would change the law from mandatory supervised probation to give courts greater discretion in how to sentence as well as utilize judicial and correctional resources.
- Could potentially reduce DOCR P&P caseload sizes.
- Eliminates the necessity to place low-risk, less dangerous offenders on supervised probation (i.e. risk principle) which could potentially make them worse. Mandatory probation remains for violent offenders and felony DUI.

Section 3 changes the intermediate measure statute to allow the DOCR 5 non-successive periods of incarceration during any 12 month period, each of which cannot exceed 48 hours.

What:

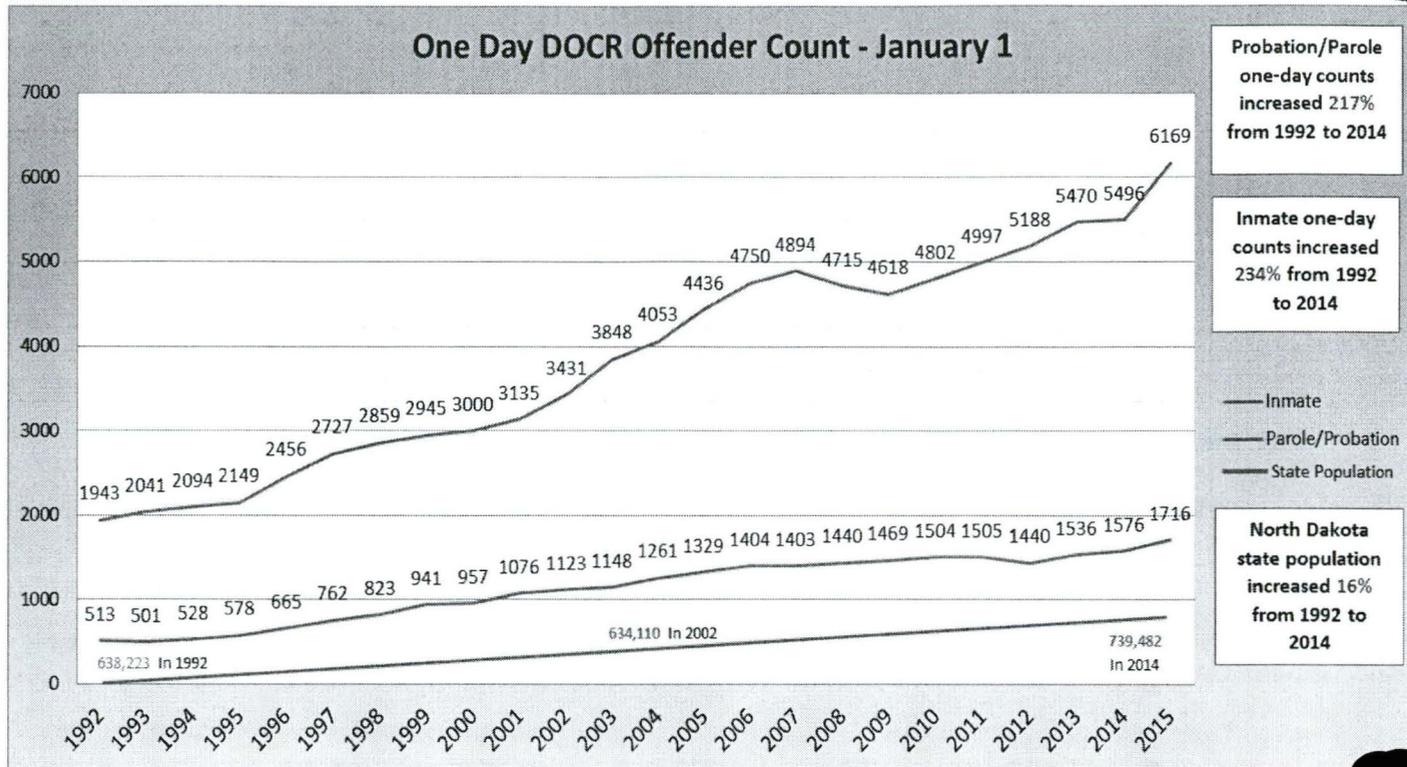
- Authorizes probation officers to arrest and incarcerate probationers for up to 48 hours as an agreed-upon intermediate measure to avoid revocation.
- The DOCR would pay counties for the costs of this incarceration.
- Liberty interest of defendants (discuss how this is constitutional-white paper by the National Center for State Courts and the Process Diagram)

Why:

- Provides immediate consequences for noncompliant behavior and the foundation is supported by operant conditioning theory (do something bad, get something bad).
- Currently for incarceration to be imposed revocation proceedings must be initiated.
  - Discuss length of time that has passed from the behavior to consequence.
  - Discuss the impact of revocation proceedings "putting the offender in the queue".
- Provides swift, certain, and severe (enough to be impactful, not to be unjust) consequences for offender behavior that currently is not available. This is supported by classical deterrence theory.)
- Discuss the HOPE Program utilizing immediate consequences, etc...
- Other jurisdictions have seen positive impacts when this type of strategy has been implemented:
  - Reduction of violations
  - Reduction in court resources
  - Reduction in jail resources

Summary:

SB 2027 is only part of the overall recidivism reduction plan. Pretrial services, prison allocation plan, elimination of mandatory minimum sentences under Title 19, and realignment of drug paraphernalia penalties will all have an impact on future correctional resources.



In closing, the DOCR supports the passing of House Bill 2027

**ADMINISTRATIVE RESPONSES TO PROBATION VIOLATIONS:  
DUE PROCESS AND SEPARATION OF POWERS ISSUES**  
National Center for State Courts

As of the end of 2010, more than 4 million adults in the United States were on probation, representing well over half of all persons under correctional supervision.<sup>1</sup> Many of these offenders will violate the conditions of their probation, posing a challenge for supervising authorities: when a violation is not severe enough to warrant the revocation of probation, how can the offender be held accountable? Administrative responses programs are a potential solution to this problem.<sup>2</sup> When contemplating such a program, however, policymakers must be careful to avoid legal issues related to due process of law, the right to appointed counsel, and the separation of powers.

**Probation: The Basics**

Probation is a form of community supervision typically ordered by a judge at the time of sentencing as an alternative to incarceration.<sup>3</sup> Probation is designed to promote public safety while providing the probationer with an opportunity for rehabilitation. It is also intended to serve as a meaningful punishment that deters criminal behavior and to achieve cost savings in comparison to imprisonment. A probationer is typically required to report to a probation officer on a regular basis and to abide by a variety of conditions that may include paying restitution,

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<sup>1</sup> Persons under correctional supervision include probationers, parolees, and jail and prison inmates. LAUREN E. GLAZE, BUREAU OF JUSTICE STATISTICS, U.S. DEPT. OF JUSTICE, NCJ 236319, CORRECTIONAL POPULATION IN THE UNITED STATES, 2010 3 (2011).

<sup>2</sup> Administrative responses include both sanctions for violations of the conditions of supervision and incentives for good performance. This document focuses on the legal issues associated with administrative sanctions, which are more likely to produce legal challenges. Although this document refers primarily to the use of administrative sanctions in the context of probation violations, the majority of the analysis is also applicable to administrative sanctions for parole violations. *See* Gagnon v. Scarpelli, 411 U.S. 778, 782 (1973) (finding no "difference relevant to the guarantee of due process between the revocation of parole and the revocation of probation").

<sup>3</sup> Probation differs from parole in that probation is ordered by the sentencing judge, typically in lieu of incarceration but sometimes following a period of incarceration, whereas parole is granted by the parole board following release from incarceration. PEGGY BURKE, PEW CENTER ON THE STATES, PUBLIC SAFETY POLICY BRIEF NO. 3, WHEN OFFENDERS BREAK THE RULES 3 (2007).

abstaining from alcohol and drug use, maintaining employment, obtaining permission for any change in residence, obeying all laws, and attending treatment programs. In some states, supervision of probationers is the responsibility of the executive branch of government; in other states, probation supervision is handled by the judicial branch.

In many states, when a probationer violates a condition of probation, the probation officer's only possible response is to return the probationer to court so that the judge can impose a sanction, modify the conditions of probation, or revoke probation and send the probationer to jail or prison. Because it is not feasible to initiate court proceedings for every minor infraction such as a missed appointment or positive drug test, probation violations often go unaddressed. Furthermore, decisions about when it is appropriate to seek a sanction or revocation may vary widely among probation officers. When probationers observe that violations are routinely ignored and that the conditions of probation are enforced only on a selective basis, they may come to expect that bad behavior will be tolerated. Such inconsistency decreases probationers' motivation to comply with the conditions of probation, undermining probation's rehabilitative, public safety, and deterrence values.<sup>4</sup>

#### **Administrative Sanctions for Probation Violations**

In order to improve compliance with the conditions of probation, a number of states have adopted administrative systems for sanctioning probation violations. These systems are designed to provide swift, certain, and proportionate responses to a well-defined set of violations, without the delay or expense of a court proceeding. Administrative sanctions programs are often based upon a structured list of violations and their associated sanctions. Commonly used sanctions include community service, more frequent drug testing or supervisory visits, electronic

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<sup>4</sup> Faye Taxman, David Soule & Adam Gelb, *Graduated Sanctions: Stepping Into Accountable Systems and Offenders*, 79 PRISON J. 182, 185, 188-89 (1999).

monitoring, day reporting to the probation office, and short jail stays. More serious violations are associated with more severe sanctions. Some states specify a narrow range of possible sanctions for each type of violation, whereas others provide more flexibility. States also limit the length of each period of incarceration (e.g., 10 days), as well as the total amount of time a probationer may spend in jail on administrative sanctions (e.g., 30 days). When a probation officer believes that a violation has occurred, the officer notifies the probationer of the alleged violation and the proposed sanction. The probationer may choose to admit the violation, accept the sanction, and waive the right to have the fact of the violation determined in a formal hearing. If the probationer denies the violation, refuses to accept the sanction, or does not wish to waive the right to a hearing, formal judicial or administrative proceedings are instituted. Under some systems, this means that the matter proceeds to a probation revocation hearing.

Research indicates that quickly and uniformly sanctioning violations deters probationers from violating the conditions of supervision and provides additional opportunities for rehabilitation. By clearly defining what constitutes a violation of probation, specifying how each type of violation will be punished, and constraining the discretion of probation officers and judges, administrative sanctions programs may also encourage probationers to perceive the sanctioning process as neutral and fair, rather than arbitrary and inconsistent.<sup>5</sup> Such perceptions of procedural justice enhance the legitimacy of the court and probation authorities in the eyes of probationers, improving compliance.<sup>6</sup> Finally, it is hoped that administrative sanctions will produce cost savings for taxpayers by reducing the number of probation revocation hearings,

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<sup>5</sup> Taxman et al., *supra* note 4, at 186-87. See also *Morrissey v. Brewer*, 408 U.S. 471, 496 (1972) ("And society has a further interest in treating the parolee with basic fairness: fair treatment in parole revocations will enhance the chance of rehabilitation by avoiding reactions to arbitrariness.").

<sup>6</sup> See TOM TYLER, *WHY PEOPLE OBEY THE LAW* (2006).

decreasing the need to incarcerate technical violators whose probation has been revoked and improving probation's effectiveness in rehabilitating probationers and averting future crimes.

To help ensure the success of an administrative response program, any state implementing such a program should take steps to ensure that its program meets constitutional standards regarding due process of law, the right to counsel, and separation of powers. By carefully structuring administrative sanctions systems, policymakers and agency leadership should be able to obviate any constitutional issues. These simple steps may also reinforce the program's effectiveness in deterring violations and rehabilitating probationers.

### **Due Process in Administrative Sanctioning**

The Fifth Amendment to the United States Constitution provides that no person "shall be deprived of life, liberty, or property, without due process of law"; the due process clause of the Fourteenth Amendment explicitly applies this guarantee against the states.<sup>7</sup> State constitutions contain similar guarantees of due process of law. To date, there exists no case law that directly addresses the question of due process in administrative sanctioning systems, either finding such a system to be constitutional or determining that a particular state's administrative sanctioning procedures are inadequate. States must therefore look to analogous cases for guidance. Two landmark Supreme Court cases, *Morrissey v. Brewer* and *Gagnon v. Scarpelli*, define the meaning of due process of law in the context of proceedings to revoke parole and probation. Although they deal specifically with revocation rather than with lesser sanctions, these two cases are the closest applicable precedents and set up the framework for the due process inquiry that would most likely be applied to an administrative sanctions program.

In the 1973 case *Gagnon v. Scarpelli*, the Supreme Court held that because probation revocation results in a loss of liberty, a probationer facing revocation is entitled to due process of

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<sup>7</sup>U.S. CONST. amend. V, amend. V; U.S. CONST. amend. XIV. § 1.

law. Because probation is very similar to parole, the due process requirements for probation revocation proceedings are identical to those required in parole revocations.<sup>8</sup> The Court had laid out the requirements for parole revocations in detail in *Morrissey v. Brewer*, decided one year earlier. In both *Gagnon* and *Morrissey*, the Court conducts a two-step inquiry into the question of due process, first examining the purposes of supervision, the nature of the liberty interest at stake, and society's interests in the revocation decision before delineating what procedures are required to ensure due process of law. Although the answer to the question of exactly what process is due may be different in administrative sanctions proceedings than in probation revocation proceedings, the structure of the constitutional inquiry is the same, and much of the *Gagnon/Morrissey* analysis is applicable.

The first step in the inquiry is to examine the purposes of supervision and the nature of the interests at stake. According to *Gagnon* and *Morrissey*, the purposes of probation and parole are to "help individuals reintegrate into society as constructive individuals as soon as they are able" and to "alleviate the costs to society of keeping an individual in prison."<sup>9</sup> The conditions of probation or parole are imposed in order to aid in probationers' reintegration into "normal society," and to provide the probation or parole officer with the opportunity to advise the probationer.<sup>10</sup> The probation or parole officer's primary goal should be to assist in the probationer's rehabilitation while ensuring public safety, and the officer should seek revocation only as a last resort when supervision has failed.<sup>11</sup> The Court notes that "[b]ecause the probation or parole officer's function is not so much to compel conformance to a strict code of behavior as to supervise a course of rehabilitation, he has been entrusted traditionally with broad discretion

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<sup>8</sup> *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973).

<sup>9</sup> *Morrissey v. Brewer*, 408 U.S. 471, 477 (1972).

<sup>10</sup> *Id.* at 478.

<sup>11</sup> *Gagnon v. Scarpelli*, 411 U.S. at 783-85.

to judge the progress of rehabilitation in individual cases[.]”<sup>12</sup> This discretion includes substantial latitude in interpreting the conditions of probation or parole, as well as in decisions about whether to seek revocation.<sup>13</sup> Under administrative sanctions programs, probation officers’ authority to recommend sanctions is consistent with the broad discretion they have traditionally been granted.

As long as he or she abides by the conditions of supervision, the probationer or parolee enjoys a limited liberty to remain free in the community and engage in many of the activities available to persons who are not under supervision. Unlike a prisoner, a probationer or parolee is free to maintain employment, spend time with family and friends, and live a “relatively normal life.” Although limited, this liberty interest is valuable and falls within the protection of the Fourteenth Amendment’s due process guarantee.<sup>14</sup> At the same time, a probationer or parolee has already been convicted of the underlying crime, and revocation is not a stage of a criminal prosecution subject to the same due process requirements as a criminal trial.<sup>15</sup> Because the probationer has already been convicted, the state has a legitimate interest in “being able to return the individual to imprisonment without the burden of a new adversary criminal trial if in fact he has failed to abide by the conditions of his parole” or probation. On the other hand, society has an interest in the probationer’s rehabilitation and therefore in the accuracy of the revocation decision. Society also has an interest in treating the probationer or parolee with “basic fairness,” because fairness in revocation decisions will “enhance the chance of rehabilitation by avoiding reactions to arbitrariness.”<sup>16</sup>

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<sup>12</sup> *Id.* at 784.

<sup>13</sup> *Morrissey v. Brewer*, 408 U.S. at 479.

<sup>14</sup> *Id.* at 482-83.

<sup>15</sup> *Id.* at 480; *Gagnon v. Scarpelli*, 411 U.S. at 782. Note, however, that a sentencing that occurs upon the revocation of parole or probation rather than at the time of trial *does* constitute a stage of a criminal proceeding. *See Mempa v. Rhay*, 389 U.S. 128 (1967).

<sup>16</sup> *Morrissey v. Brewer*, 408 U.S. at 483-84.

After defining the nature of the interests at stake, the Court turns in *Morrissey* to the question of “what process is due” in order to protect these interests.<sup>17</sup> When revocation is the proposed response to a probation or parole violation, the probationer or parolee must be afforded an informal hearing designed to verify that the alleged violation did in fact occur, and that revocation is an appropriate response to the violation.<sup>18</sup> Because a probation or parole revocation is not part of a criminal prosecution, and the liberty interest at stake is a limited one, the “full panoply of rights due a defendant” in a criminal proceeding does not apply, and the rules of evidence and procedure for revocation proceedings may be less formal. Nevertheless, certain procedural safeguards are required in order to ensure due process of law.<sup>19</sup> *Morrissey v. Brewer* lays out these safeguards in detail.<sup>20</sup> They include “(a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses ...; (e) a ‘neutral and detached’ hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking parole.” The rules of evidence should be flexible, allowing the use of “evidence including letters, affidavits,

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<sup>17</sup> *Id.* at 481.

<sup>18</sup> *Id.* at 484.

<sup>19</sup> *Id.* at 480-82; *Gagnon v. Scarpelli*, 411 U.S. at 782.

<sup>20</sup> In advance of the final revocation hearing described here, *Morrissey* and *Gagnon* also identify the need for a preliminary hearing to determine whether there is probable cause to believe that the probationer has violated the conditions of supervision, to be held as soon as possible after the alleged violation is reported. In the case of administrative sanctions, this preliminary hearing will typically be unnecessary. The two-stage hearing process is contemplated where the alleged violator is being held in custody awaiting the final revocation hearing, often for a substantial amount of time and possibly at some distance from the location where the final hearing will be held. *Morrissey v. Brewer*, 408 U.S. at 485. Administrative sanctions occur in a much different context: the probationer is not likely to be outside the supervising jurisdiction, and the sanctioning process is designed to function as quickly as possible.

and other material that would not be admissible in an adversary criminal trial.” The probationer or parolee may waive his right to a revocation hearing.<sup>21</sup>

In seeking guidance from *Gagnon* and *Morrissey* in the application of federal due process requirements to administrative sanctions proceedings, we observe that the interests of society and the state in administrative sanctioning procedures are similar to those in revocation proceedings: society has an interest in fairness and accuracy, and the state has an interest in avoiding overly burdensome procedures. In the context of administrative sanctions proceedings, the state and society have an additional interest in establishing an expedited sanctioning process, as the effectiveness of administrative sanctions in promoting probation compliance and probationer rehabilitation depends in large part on the immediacy of the response to noncompliant behavior. For probationers, on the other hand, the liberty interest at stake is more limited. Although the extent of liberty at risk will vary depending on the type of sanction proposed, the most severe potential sanction (a short period of incarceration) results in less deprivation of liberty than commitment to prison for a longer period of time upon revocation, and a non-custodial sanction presents even less risk to the probationer’s liberty interest.

The Court emphasizes in *Morrissey* that “the concept of due process is flexible,” and that “not all situations calling for procedural safeguards call for the same kind of procedure.”<sup>22</sup> Because not all administrative sanctions curtail the probationer’s liberty to the same degree, they may not all require the same types of procedures. In the case of a jail sanction, the probationer’s physical liberty—and, potentially, other interests such as employment—is at risk, and the notice and hearing requirements are likely to be similar to, but somewhat less rigorous than, the requirements for probation revocation enumerated in *Morrissey* and *Gagnon*. For less

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<sup>21</sup> *Morrissey v. Brewer*, 408 U.S. at 487-89.

<sup>22</sup> *Id.* at 481.

burdensome sanctions such as electronic monitoring or more frequent drug testing, a lower level of procedural protection is likely required. Although existing case law provides little guidance as to precisely what procedures might be required for non-custodial sanctions, it is likely that notice of the claimed violation and an opportunity for administrative review by a neutral third party of the sanction imposed should suffice.

In practice, administrative sanctions programs typically address the issue of due process in one of two ways. Some programs require the probationer to waive the right to a probation revocation or modification hearing under established procedures in order to accept an administrative sanction. In other states, the enabling statute for the administrative sanctions program also establishes a framework for informal sanctions hearings within the probation agency, permitting but not requiring probationers to waive these hearings.

In states that require waiver of a judicial hearing, concern may arise over the voluntariness of the waiver. The argument is that the waiver is not truly voluntary because the probationer will fear that failure to waive the hearing and accept the administrative sanction will lead to revocation, a more severe sanction, or arrest and confinement prior to a formal revocation hearing—a period of confinement that might well be longer than the administrative sanction itself.<sup>23</sup> This situation, however, is analogous to plea bargaining, a widely accepted practice in which defendants routinely waive their right to a trial in exchange for a more favorable case resolution. As long as the defendant fully understands the proposed sanction and the consequences of the waiver, and the waiver is not induced by threats or misrepresentation, a waiver requirement should meet the requirements for due process of law.<sup>24</sup> Practical precautions to ensure the voluntariness of the waiver might include providing the probationer with a written

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<sup>23</sup> Posting of Jamie Markham to North Carolina Criminal Law, <http://nccriminallaw.sog.unc.edu/> (Oct. 2., 2012).

<sup>24</sup> See *Brady v. United States*, 397 U.S. 742 (1970).

explanation of the proposed sanction and the consequences of the waiver, securing a written waiver, and, for sanctions of incarceration, requiring a person other than the probationer's own probation officer (e.g., the field supervisor) to secure the waiver.

In states that choose to establish a separate hearing procedure for administrative sanctions, administrative due process protections need not be overly burdensome, and may also serve as a practical means to enhance the effectiveness of the administrative sanctions program. Written notice of the claimed violation, the supporting evidence, and the proposed sanction can be accomplished by having the probation officer fill out a simple form and present a copy to the probationer, which would likely be necessary for operational reasons even if due process were not a concern. Written notice may also aid in rehabilitation by improving probationers' understanding of the connection between their behavior and its consequences. Given the need for swiftness and the limited burden imposed upon probationers by most administrative sanctions, a very informal hearing procedure would most likely be acceptable. On a practical level, when the probationer is given the option to waive the hearing, waiver is likely to be the most common outcome even when it is not required. Moreover, the establishment of fair and transparent procedures for imposing administrative sanctions is likely to improve perceptions of procedural fairness, making probationers more willing to waive the hearing on a voluntary basis.

#### **Right to Appointed Counsel in Administrative Sanctions Proceedings**

The Sixth and Fourteenth Amendments to the United States Constitution require states to provide indigent defendants with counsel in criminal proceedings.<sup>25</sup> No existing case law specifically addresses the right to counsel as it relates to administrative sanctions. As with other due process concerns, the closest analogue to a state administrative sanctions proceeding addressed in federal case law is the probation revocation hearing. In *Gagnon v. Scarpelli*, the

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<sup>25</sup> *Gideon v. Wainwright*, 372 U.S. 335 (1963).

Supreme Court held that because a probation revocation hearing is not part of a criminal proceeding, the appointment of counsel for an indigent defendant is not automatically required. Rather, federal due process requires the appointment of counsel in probation revocation proceedings only in those rare cases in which "fundamental fairness" necessitates it. The Court suggests that counsel should be appointed when the probationer makes a timely request for counsel, along with a timely assertion that the alleged violation was not committed or that revocation is inappropriate under the circumstances; however, even under these circumstances, the Court allows that it may not be necessary to appoint counsel if the probationer is capable of adequately representing his interests on his own. The decision to appoint counsel is to be made by the state probation authority, rather than by a court.<sup>26</sup>

Under *Gagnon v. Scarpelli*, it is reasonable to assume that the United States Constitution does not require the appointment of counsel in the vast majority of administrative sanctions proceedings, although it may be prudent for any state implementing an administrative sanctions program to provide a mechanism for probationers to request counsel in those exceptional cases in which either the violation or the sanction is contested, a custodial sanction is at stake, and the probationer demonstrates that he is incapable of representing his own interests.<sup>27</sup> Most states, however, do provide a statutory right to appointed counsel in probation revocation and/or modification proceedings that occur in court. In these states, it may be necessary either to require the probationer to waive the statutory right to counsel in order to accept an administrative sanction, or to establish a separate statutory framework for administrative hearings on sanctions that explicitly specifies that there is no state statutory right to counsel at such hearings.

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<sup>26</sup> *Gagnon v. Scarpelli*, 411 U.S. 778, 786-92 (1973).

<sup>27</sup> The appointment of counsel is not required unless the defendant is subject to incarceration. *See Argersinger v. Hamlin*, 407 U.S. 25 (1972).

## Separation of Powers

Another legal question that requires consideration is whether the imposition of sanctions by the probation department violates any separation of powers doctrine. As with due process and the right to counsel, there is virtually no existing case law that directly addresses the issue of separation of powers as it relates to administrative sanctions programs, so it is necessary to look to analogous cases. At the federal level, probation revocation proceedings again provide the closest equivalent. As the Seventh Circuit points out, "nothing in the federal Constitution forbids a state from providing for administrative revocation of probation imposed by a court."<sup>28</sup> According to the Supreme Court, questions of separation of powers in state government arise under the state constitution—not the Constitution of the United States—and are to be answered by the state's own courts.<sup>29</sup> The answers to these questions will therefore vary from state to state. Some states may also have existing statutes defining or limiting the authority of probation officers to impose conditions or sanctions, or to revoke probation.

In Wisconsin, the legislature's delegation of the probation revocation decision to the executive branch rather than the judicial branch was found not to violate the separation of powers.<sup>30</sup> In states where administrative revocation is permitted, administrative sanctions programs should also withstand any separation of powers challenge. In Iowa, on the other hand, a pilot project statute delegating revocation authority to the probation agency in one judicial district was struck down as a violation of the separation of powers clause in the state

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<sup>28</sup> *Ware v. Gagnon*, 659 F.2d 809, 812 (7th Cir. 1981).

<sup>29</sup> "Whether the legislative, executive and judicial powers of a State shall be kept altogether distinct and separate, or whether persons or collections of persons belonging to one department may, in respect to some matters, exert powers which, strictly speaking, pertain to another department of government, is for the determination of the State. And its determination one way or the other cannot be an element in the inquiry whether the due process of law prescribed by the Fourteenth Amendment has been respected by the State or its representatives when dealing with matters involving life or liberty." *Dreyer v. Ill.*, 187 U.S. 71, 84 (1902).

<sup>30</sup> *State v. Horn*, 594 N.W.2d 772 (Wis. 1999).

constitution.<sup>31</sup> Although separation of powers claims in most states will involve the authority of probation employees to administer sanctions that are viewed as the responsibility of the judicial branch, claims may also be raised that the program interferes with the discretion of the prosecutor to seek probation revocation. The Supreme Court of Illinois has recently rejected this argument.<sup>32</sup>

Defendants challenging administrative sanctions may also argue that these sanctions actually constitute new conditions of probation. On separation of powers grounds, one state court has rejected the authority of probation officers to set *new* conditions of probation (in contrast to conditions that enhance *existing* probation conditions), in response to violations or for other reasons.<sup>33</sup> Other state courts have permitted judges to delegate the authority to set conditions of probation to the probation department, as long as the conditions set by the probation department support those set by the judge, and the judge retains final authority to review such conditions of probation.<sup>34</sup> States can strengthen administrative sanctions programs against such challenges by including in their enabling legislation a clear delegation of sanctioning authority to the probation department. This delegation of authority should include the power to impose as sanctions new or additional conditions of probation, subject to possible judicial review.

Finally, several state courts have rejected the judicial practice of allowing the probation department to determine whether, or how long, a defendant will be incarcerated.<sup>35</sup> In each of these cases, however, authority over the sentence was delegated to the probation department not by the legislature but by the sentencing judge, and the judge's delegation of authority was

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<sup>31</sup> Klovdva v. 6th Judicial Dist. Dept., 642 N.W.2d 255 (Iowa 2002).

<sup>32</sup> People v. Hammond, 959 N.E.2d 29 (Ill. 2011).

<sup>33</sup> See, e.g., State v. Stevens, 646 S.E.2d 870 (S.C. 2007); State v. Archie, 470 S.E.2d 380 (S.C. 1996).

<sup>34</sup> See, e.g., State v. Merrill, 999 A.2d 221 (N.H. 2010).

<sup>35</sup> See, e.g., State v. Paxton, 742 N.E.2d 1171 (Ohio Ct. App. 2000); State v. Fearing, 619 N.W.2d 115 (Wis. 2000); State v. Hatfield, 846 P.2d 1025 (Mont. 1993); People v. Thomas, 577 N.E.2d 496 (Ill. App. 4th Dist. 1991); State v. Lee, 467 N.W.2d 661 (Neb. 1991).

overturned on statutory rather than separation of powers grounds.<sup>36</sup> Where there is statutory authority specifically permitting the trial court judge to make this delegation, or there is a statute that directly delegates discretion over a defendant's incarceration to the probation department, a reviewing court is likely to uphold the delegation of authority. A state that wishes to use incarceration as an administrative sanction for probation violations should therefore specify in the program's enabling legislation that incarceration is among the sanctions that may be imposed by the probation department.

**Implications for Policy and Practice**

In constructing an administrative sanctions program for probation violations, states have taken a variety of steps to address due process of law and other legal issues. Practical approaches include:

1. The program's enabling legislation should clearly define the concept of an administrative sanction (including whether incarceration may be used as a sanction, as well as the maximum periods of incarceration that can be imposed) and delegate sanctioning authority to the probation department. In the absence of such legislation, the court's sentencing order should clearly authorize the supervising agency to impose administrative sanctions in response to violations of the conditions of probation.
2. The probationer should be provided with written notice of the claimed violation, the supporting evidence, and the proposed sanction.

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<sup>36</sup> See State v. Paxton, 742 N.E.2d at 1173 ("Since the sentence imposed does not comply with statutory requirements of the laws of Ohio, we need not reach the constitutional questions raised."); State v. Fearing, 619 N.W.2d at 117 ("Nowhere in this statutory scheme is DOC given the authority to impose or modify a condition of probation, nor, more specifically, is it given the authority to decide to impose jail confinement as a condition of probation or the length of that confinement."); People v. Thomas, 577 N.E.2d at 497-98 ("Since there is no authorization to delegate the decision to incarcerate a defendant, that part of defendant's sentence is void and must be vacated."); State v. Hatfield, 846 P.2d at 1029 ("Furthermore, no statute specifically authorizes a district court to delegate sentencing discretion to a probation officer."). In State v. Lee, 467 N.W.2d 661, the court cites both the state constitution and state statutes in support of its conclusion, implying but not explicitly stating that its reasoning is statutory.

3. Where a sanction of incarceration is proposed, the probationer should be provided with the opportunity to request a judicial or administrative hearing, or to waive the right to such a hearing. This hearing may be an informal hearing conducted by a supervisory employee of the probation department. The probationer should have the right to appear at the hearing and present evidence, and should be provided with a written statement of the decision that cites the evidence relied upon and the reasons for imposing the sanction. If a state does not wish to establish a separate administrative hearing procedure for administrative sanctions, the opportunity for a hearing may also be provided by allowing the probationer to choose whether to waive the right to a hearing and accept the administrative sanction, or to proceed to a judicial hearing following the standard procedures for probation violation or revocation proceedings.
4. If the probationer contests the violation or the proposed sanction, and the proposed sanction does not include incarceration, the probationer should be accorded an opportunity for independent administrative review of the probation officer's decision by another agency employee serving at the supervisory level. The procedures for this review may be informal.
5. To the extent required by state law, the probationer should be provided with counsel unless the right to counsel is waived. To comply with federal due process requirements, it may also be prudent for states to furnish counsel for indigent probationers in the exceptional case where a custodial sanction is at stake, the fact of the violation or the appropriateness of the sanction is contested, it is manifest that the probationer is unable to represent his or her own interests adequately, and the probationer has not waived the right to counsel.

6. Steps should be taken to ensure that any waiver of the right to a hearing or the right to counsel is knowing and voluntary.
  - a. A clear written explanation of the consequences of the waiver should be provided.
  - b. The waiver should be in writing.
  - c. For sanctions of incarceration, the waiver should be obtained by a person other than the probationer's supervising officer, preferably a probation department employee in a supervisorial position.

In addition to preserving due process of law and the separation of powers, the availability of these procedures should increase probationers' perceptions of fairness in the sanctioning process. If probationers feel that they are treated fairly throughout the sanctioning process, research and experience suggest that the majority will voluntarily waive the hearing and accept the sanction, helping to realize the goals of swiftness, certainty, and proportionality and improving probation's effectiveness in rehabilitating offenders and deterring future crime.

# 48 Hour Hold Process

\*May not serve more than 48 hours due to this process and sanction periods may not be consecutive

\*May not use this sanction for any person more than 5 times during a 1 year period.

Violation of probation occurs

Officer reviews the violation and case with supervisor

Supervisor can authorize authority to hold for up to 48 hours

Probationer arrested and transported to county jail

Probationer served with warrant, allegations and rights to a preliminary hearing

Probationer can waive their right to hearing and agree to the jail sanction- signed admission and waiver

Officer informs jail staff of date and time of release (no more than 48 hours from admission to jail)

Probationer does not waive their right to hearing and agree to the jail sanction

Officer restaffs with supervisor to determine whether to pursue full revocation or hold a preliminary hearing

- Supervisor can authorize hold for up to 48 hours
- Rights of probationer include:
  - Written notice of alleged violation(s) and supporting evidence
  - Opportunity to be heard in person and present witnesses and documentary evidence
  - Confront and cross-examine adverse witnesses
  - Hearing before a neutral DOCR hearing officer
  - May obtain an attorney at their own expense
  - Written notice of the hearing officer's finding's and conclusion

Although further research is clearly warranted given the limited number of studies conducted to date that are specific to dosage and recidivism, the following reflects a conceptual model to guide risk-based interventions:

<b>Dosage Conceptual Model</b>				
Risk Level	Dosage Target	Likely Duration	Illustration	
			Dosage Hours Delivered by Corrections Professional	Dosage Hours Delivered through Referral Services
Moderate risk	100 hours	12 months supervision (52 weeks) with 12 months services (52 weeks)	45 minutes/2 weeks for 12 months Total hours: 19.5	90 minutes/week for 12 months Total hours: 78
Moderate/ high risk	200 hours	18 months supervision (78 weeks) with 15 months services (65 weeks)	45 minutes/week for 12 months + 45 minutes/2 weeks for 6 months Total hours: 49	3 hours/week for 9 months + 90 minutes/week for 6 months Total hours: 156
High risk	300 hours	24 months supervision (104 weeks) with 18 months services (78 weeks)	45 minutes/week for 24 months Total hours: 78	6 hours/week or 24 hours/4 weeks for 6 months + 90 minutes/week or 6 hours/4 weeks for 12 months Total hours: 234

### SECTION III IMPLICATIONS: THE DOSAGE PROBATION MODEL OF SUPERVISION

Although the subject warrants deeper study, there appears to be sufficient grounding for further testing and perhaps expansion of the application of dosage to justice system practices (i.e., the dosage probation model). The following summarizes the relevant research to date:

- Applying evidence-based principles and practices (i.e., risk, need, and responsivity) with fidelity reduces recidivism (Bonta et al., 2011; Lowenkamp et al., 2012; Lowenkamp, Latessa, & Smith, 2006; Robinson et al., 2012).
- Corrections professionals' face-to-face contacts with offenders can be an effective intervention and, as such, corrections professionals play a key role as agents of change (Bonta et al., 2008, 2011; Robinson et al., 2012). Their risk-reducing interventions complement those provided by others (e.g., treatment providers) and, as such, it is reasonable to consider their interventions as contributing to the minimum dosage necessary to reduce recidivism.

Despite the lack of a standard operating definition of dosage, a growing body of evidence indicates that dosage considerations are important to maximizing outcomes and reducing recidivism with correctional populations, particularly for moderate and high risk offenders (see, e.g., Bourgon & Armstrong, 2005; Kroner & Takahashi, 2012; Sperber et al., 2013b). These findings suggest that officers' practices during the course of supervision can reasonably contribute toward the minimum dosage requirements needed for recidivism reduction, and that a probation model based on the risk, need, and responsivity principles has the potential to enhance risk-reduction efforts.

Taking together the research summarized in this paper, the primary elements of a dosage probation model emerge:

- Research-based, structured assessments are conducted to reliably differentiate higher from lower risk offenders.
- Sentencing, supervision, correctional programming, reentry, and violation decisions are informed by assessed level of risk, criminogenic needs, and optimal dosage.
- Probation completion is linked to achievement of a dosage target rather than a fixed period of time, thereby incentivizing offenders' engagement in risk-reducing interventions.
- Probation terms and conditions emphasize risk-reducing interventions that target criminogenic needs.
- Officers and offenders collaborate to develop case management plans; interventions are designed to address the most influential criminogenic needs; dosage targets are set.
- Offenders are referred to programs and services that demonstrate the capacity to effectively address their needs, thereby incentivizing service providers to deliver evidence-based programs.

DOCR #1E

**PROPOSED AMENDMENTS TO SENATE BILL NO. 2027**

Page 2, line 30, after "court" insert ", or if there is a restitution balance outstanding, convert the remaining balance of the probation period to unsupervised probation according to rules established by the state court and the department.

**HEARING ON SB2027  
SENATE JUDICIARY COMMITTEE  
JANUARY 12, 2015**

Chair Hogue, Members of the Committee:

I am Cynthia Feland, one of the district judges for the South Central Judicial District.

As judges, we appreciate the work done by probation and parole officers, and we want to support them in the work that they do. However, I am appearing here today on behalf of the judges of our district to speak in opposition to Senate Bill 2027.

An over-riding concern with this legislation is that it is putting the Department of Corrections and Rehabilitation in the business of sentencing. Judges are elected, charged with the responsibility of imposing sentences, and held accountable for the sentences imposed. Our form of government is based on a separation of powers – the Department of Corrections is an executive branch agency and the Courts are the judicial branch.

As judges, we are concerned with the provision on page 2 of the bill draft which allows the Department of Corrections and Rehabilitation to terminate probation after 18 months if the defendant has complied with conditions of probation. Under current law, probation may be terminated early, with the recommendation of the State's Attorney and approval of the sentencing judge. When a defendant has complied with the conditions of probation, that approval is generally granted.

However, we're seeing a number of cases in which a defendant fails to comply with terms of probation and the response from the Department of Corrections and Rehabilitation is to ask that supervision be terminated without any consequences. We do not feel such requests are appropriate and do not believe that those who are making such requests should have authority to terminate probation without judicial approval.

Here are some examples – there are many more:

In July of this year, I received a petition to terminate supervision with this information:

**On March 20, 2014 the defendant's probation was revoked and the court resentenced the defendant to one (1) year imprisonment with all but 31 days suspended for two (2) years. The defendant has since violated certain conditions in that she has failed to report to her probation officer as directed and has failed to complete a chemical dependency evaluation. The defendant's violation does not warrant revocation of the Court's order of probation but the defendant's present status does warrant a termination of supervision by this office.**

The request to terminate supervision was not granted.

In 2013, I received a request indicating:

**The defendant has violated certain conditions in that the Defendant did not report in to her probation officer in the months of February and April, 2012, did smoke marijuana on or about May 4<sup>th</sup>, 2012, did ingest non-prescribed hydrocodone on or about May 12<sup>th</sup>, 2012, was convicted of Driving Under Suspension on March 6<sup>th</sup> 2013, did smoke marijuana on or about April 6<sup>th</sup>, 2013. The defendant's violation does not warrant revocation of the Court's order of probation but the defendant's present status does warrant a termination of supervision by this office.**

The request to terminate supervision was not granted.

As recently as last week, Judge Hagerty received the following request:

**The defendant has violated certain conditions [of probation] in that he has failed to report to his probation officer as directed for several months. This may be attributed to the defendant's pre-existing medical condition. The defendant's violation does not warrant revocation of the Court's order of probation but the defendant's present status does warrant a termination of supervision by this office.**

The request to terminate supervision was not granted.

We are concerned with giving the people who think these requests are reasonable the authority to terminate probation early. If the consequence for failure to report to your probation officer is to no longer have the requirement to report, the whole system falls apart. Any parent could explain why the logic used in making these requests will lead to recidivism, which may well lead to incarceration.

We are also concerned about the provision which allows probation officers to in effect impose two-day jail sentences without any judicial oversight. It seems there should be some

requirement of a showing of probable cause to a neutral judicial officer before a person is jailed.

Finally, we are concerned with the language in this bill which limits the length of probation which may be imposed. Long experience in the criminal justice system has made it clear to us that when dealing with defendants who are chemically addicted, the longer they are on supervision, subject to testing, the more likely they are to be able to maintain sobriety. That's one of the principles of the drug court programs. In addition, defendants who have restitution to pay often request extensions of probation to pay restitution and are advised and assisted in doing so by their probation officers. The judge should have the ability to determine the length of probation as is possible now. If probation is successful, the DOCR can petition for early termination of probation.

STATE OF NORTH DAKOTA )  
COUNTY OF MORTON ) ss.

IN DISTRICT COURT  
SOUTH CENTRAL JUDICIAL DISTRICT

State of North Dakota, )  
 )

Criminal No. 30-10-K-1014 (Count III only)  
SA File No. #F23515

Plaintiff )

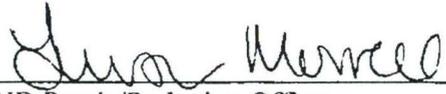
vs. ) ss.

PETITION TO  
TERMINATE SUPERVISION  
OF PROBATIONER  
SFN 18097

Christopher James Neubauer, )  
 )  
Defendant )

Trish Morrell, a Parole/Probation Officer for the North Dakota Department of Corrections and Rehabilitation, informs the Court that the defendant on December 13, 2010, was convicted by a plea of guilty of the offense of Count 3: Possession of Drug Paraphernalia (Marijuana). On December 13, 2010, the Honorable Robert Wefald entered an order deferring imposition of sentence until December 13, 2012, which order was subject to certain conditions of probation. The defendant has violated certain conditions in that he committed the new offenses of Driving Under the Influence and MIP on or about September 17, 2011, used alcohol on or about September 17, 2011 and committed the new offense of MIP on or about May 20, 2012. The defendant's violation does not warrant revocation of the Court's order of probation but the defendant's present status does warrant a termination of supervision by this office.

WHEREFORE, the undersigned petitions this Court to order a termination of supervision of the defendant by the North Dakota Department of Corrections and Rehabilitation.

  
ND Parole/Probation Officer 12-13-12  
Date

Concur.  
  
Morton County State's Attorney 12-14-12  
Date

**FILED**  
DEC 19 2012  
Morton County District Court

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STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF MORTON

SOUTH CENTRAL JUDICIAL DISTRICT

Case No. 30-10-K-01014

<p>State of North Dakota,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>Christopher Neubauer,</p> <p style="text-align: center;">Defendant.</p>
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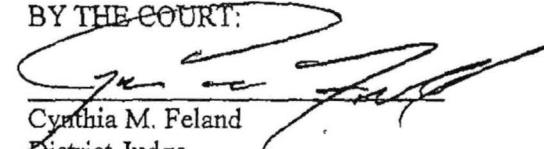
**ORDER  
DENYING PLEA AGREEMENT**

The Court has reviewed the petition to terminate probation and finds that given the number of subsequent criminal violations early termination of probation is not appropriate. Therefore, the request for termination of probation is DENIED.

IT IS HEREBY ORDERED.

Dated this 19<sup>th</sup> day of December, 2012.

BY THE COURT:



Cynthia M. Feland  
District Judge

cc: Allen Kopyy  
Steve Balaban

**FILED**

DEC 20 2012

Morton County District Court

STATE OF NORTH DAKOTA )  
COUNTY OF MORTON ) ss.

IN DISTRICT COURT  
SOUTH CENTRAL JUDICIAL DISTRICT

State of North Dakota, )  
)

Criminal No. 30-10-K-00946

Plaintiff )

vs. ) ss.

PETITION TO  
TERMINATE SUPERVISION  
OF PROBATIONER  
SFN 18097

Jolita R. Grinolds, )  
)  
Defendant )

[1] Janine Jacob, a Parole/Probation Officer for the North Dakota Department of Corrections and Rehabilitation, informs the Court that the defendant on the 6<sup>th</sup> day of June, 2011, was convicted by a plea of guilty of the offense of Unlawful Possession of Drug Paraphernalia, a Class C Felony. On the 6<sup>th</sup> day of June, 2011, the Honorable Cynthia M. Feland entered an order deferring imposition of sentence until the 6<sup>th</sup> day of June, 2013, which order was subject to certain conditions of probation. The defendant has violated certain conditions in that the Defendant did not report in to her probation officer the months of February and April, 2012, did smoke marijuana on or about May 4<sup>th</sup>, 2012, did ingest non-prescribed hydrocodone on or about May 12<sup>th</sup>, 2012, was convicted of Driving Under Suspension on March 6<sup>th</sup>, 2013, did smoke marijuana on or about April 6<sup>th</sup>, 2013. The defendant's violation does not warrant revocation of the Court's order of probation but the defendant's present status does warrant a termination of supervision by this office.

[2] WHEREFORE, the undersigned petitions this Court to order a termination of supervision of the defendant by the North Dakota Department of Corrections and Rehabilitation.

Janine Jacob 4/21/13  
ND Parole/Probation Officer Date

I concur.  
Allen Koppy 8/13/13  
Allen Koppy County State's Attorney Date  
210 2<sup>nd</sup> Ave. NW, Mandan, ND  
667-3350

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF MORTON

SOUTH CENTRAL JUDICIAL DISTRICT

Case No. 30-10-K-946

State of North Dakota,  
 Plaintiff,  
 vs.  
 Jolita Rae Grinolds,  
 Defendant.

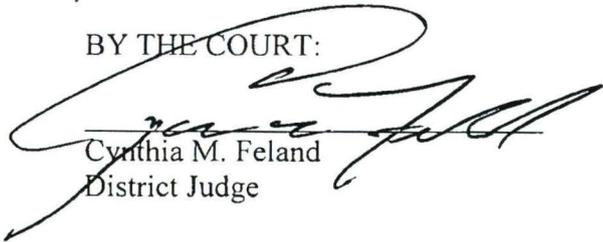
**ORDER DENYING  
TERMINATION OF PROBATION**

The Court has reviewed the petition to terminate probation and finds that given the number of alleged violations, termination of probation is not warranted. Therefore, the request for termination of probation is DENIED.

IT IS HEREBY ORDERED.

Dated this 6<sup>th</sup> day of September, 2013.

BY THE COURT:



Cynthia M. Feland  
 District Judge

cc: Allen Koppy  
Jolita Rae Grinolds

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STATE OF NORTH DAKOTA )  
COUNTY OF BURLEIGH ) ss.

IN DISTRICT COURT  
SOUTH CENTRAL JUDICIAL DISTRICT

State of North Dakota, )  
)

Criminal No. 08-2011-CR-02115  
SA File No. #F739-11-09

Plaintiff )

vs. ) ss.

PETITION TO  
TERMINATE SUPERVISION  
OF PROBATIONER  
SFN 18097

Richard Lee Wilkie, )

Defendant )

[1] John Clemens, a Parole/Probation Officer for the North Dakota Department of Corrections and Rehabilitation, informs the Court that the defendant on the 29<sup>th</sup> day of August, 2012, was convicted by a plea of guilty of the offense of Simple Assault on a Peace Officer (Count I), a Class C Felony. On the 29<sup>th</sup> day of August, 2012, the Honorable Gail Hagerty entered an order suspending execution of sentence until the 28<sup>th</sup> day of August, 2015, which order was subject to certain conditions of probation. The defendant has violated certain conditions in that he has failed to report to his probation officer as directed for several months. This may be attributed to the defendant's pre-existing medical condition. The defendant's violation does not warrant revocation of the Court's order of probation but the defendant's present status does warrant a termination of supervision by this office.

[2] WHEREFORE, the undersigned petitions this Court to order a termination of supervision of the defendant by the North Dakota Department of Corrections and Rehabilitation.

*John R. Clemens* 1/5/2015  
ND Parole/Probation Officer Date  
I concur.  
*[Signature]* 07979 1/5/2015  
Asst. Burleigh County State's Attorney Date  
514 East Thayer Avenue, Bismarck, ND 58501  
701-222-6672  
Bc08@nd.gov

202

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

Case No. 08-2011-CR-02115

State of North Dakota,

Plaintiff,

vs.

Richard Lee Wilkie,

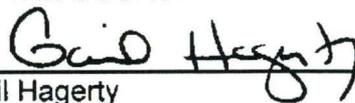
Defendant.

**NOTICE**

The Court has been asked to terminate probation supervision, apparently to sanction the defendant for failure to comply with terms of probation. This is not a reasonable request or manner in which to deal with failure to comply with conditions of probation. The request is DENIED.

Dated January 8, 2015.

BY THE COURT:

  
\_\_\_\_\_  
Gail Hagerty  
District Judge

STATE OF NORTH DAKOTA )  
COUNTY OF MORTON ) ss.

IN DISTRICT COURT  
SOUTH CENTRAL JUDICIAL DISTRICT

State of North Dakota, )  
)

Criminal No. 30-2011-CR-581

Plaintiff )

vs. ) ss.

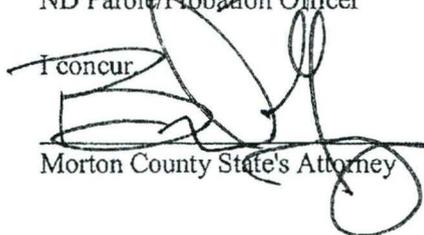
PETITION TO  
TERMINATE SUPERVISION  
OF PROBATIONER  
SFN 18097

Christopher Garrison, )  
)  
Defendant )

Lee Nagel, a Parole/Probation Officer for the North Dakota Department of Corrections and Rehabilitation, informs the Court that the defendant on September 8, 2011, was convicted by a plea of guilty of the offense of Duty Upon Striking an Unattended Vehicle. On September 8, 2011, the Honorable Cynthia Feland entered an order deferring imposition of sentence until March 8, 2013, which order was subject to certain conditions of probation. The defendant has violated certain conditions in that he was convicted of the offense of Driving Under Suspension, a Class B Misdemeanor, in Burleigh County on 6/13/12. The defendant was also charged with the offense of Theft of Property, a Class C Felony, in Cass County on or about 2/3/12, this case is still pending. The defendant's violation does not warrant revocation of the Court's order of probation but the defendant's present status does warrant a termination of supervision by this office.

WHEREFORE, the undersigned petitions this Court to order a termination of supervision of the defendant by the North Dakota Department of Corrections and Rehabilitation.

  
ND Parole/Probation Officer      9-4-13  
Date

  
I concur  
Morton County State's Attorney      9/5/2013  
Date

STATE OF NORTH DAKOTA  
COUNTY OF MORTON

IN DISTRICT COURT  
SOUTH CENTRAL JUDICIAL DISTRICT

Case No. 30-2011-CR-581

<p>State of North Dakota,  Plaintiff,  vs.  Christopher M. Garrison,  Defendant.</p>
--

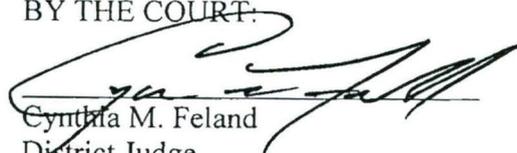
**ORDER DENYING  
TERMINATION OF PROBATION**

The Court has reviewed the petition to terminate probation and finds that given the number of alleged violations, termination of probation is not warranted. Therefore, the request for termination of probation is DENIED.

IT IS HEREBY ORDERED.

Dated this 6<sup>th</sup> day of September, 2013.

BY THE COURT:



Cynthia M. Feland  
District Judge

cc: Allen Koppy  
Christopher Garrison

2F1

STATE OF NORTH DAKOTA )  
COUNTY OF MORTON ) ss.

IN DISTRICT COURT  
SOUTH CENTRAL JUDICIAL DISTRICT

State of North Dakota, )  
)

Criminal No. 30-11-K-428  
SA File No. #F

Plaintiff )

vs. ) ss.

PETITION TO  
TERMINATE SUPERVISION  
OF PROBATIONER  
SFN 18097

Michael Allen Fee, )

Defendant )

Jim A. Becker, a Community Corrections Program Manager for Centre Inc., informs the Court that the defendant on July 6th, 2011' was convicted by a plea of guilty of the offense of Fleeing a Peace Officer on Foot. On July 6th, 2011 the Honorable Cynthia Feland entered an order suspending execution of sentence until July 21<sup>st</sup>, 2013 which order was subject to certain conditions of probation. The defendant has violated certain conditions in that he has been convicted in Mclean County District court on August 1<sup>st</sup>, 2012 for the offenses of Possession of a Controlled Substance Schedule IV(C Felony), Possession of Drug Paraphernalia (C Felony) and Possession of Stolen Property (B Felony). The defendant was sentenced to 5 years with the North Dakota Department of Corrections. The defendant's violation does not warrant revocation of the Court's order of probation but the defendant's present status does warrant a termination of supervision by this office.

WHEREFORE, the undersigned petitions this Court to order a termination of supervision of the defendant by the North Dakota Department of Corrections and Rehabilitation.

*Jim Baker* 1-3-13  
Community Corrections Mgr Date

I concur.

*Allen Kopy* January 7, 2013  
Morton County State's Attorney Date

**FILED**

JAN - 8 2013

Morton County District Court

2F2

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF MORTON

SOUTH CENTRAL JUDICIAL DISTRICT

Case No. 30-11-K-00428

State of North Dakota,

Plaintiff,

vs.

Michael Allen Fee,

Defendant.

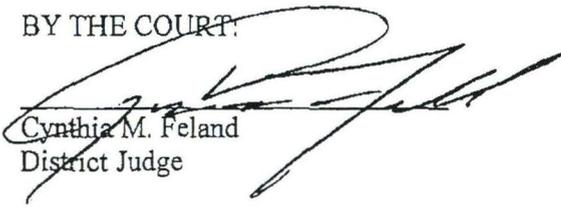
**ORDER DENYING  
TERMINATION OF PROBATION**

The Court has reviewed the petition to terminate probation and finds that given the number of subsequent criminal violations early termination of probation is not appropriate. Therefore, the request for termination of probation is DENIED.

IT IS HEREBY ORDERED.

Dated this 9<sup>th</sup> day of January, 2013.

BY THE COURT:

  
Cynthia M. Feland  
District Judge

cc: Allen Koppy  
Michael Fee

**FILED**

JAN 11 2013

Morton County District Court

Testimony to the: SENATE JUDICIARY  
Prepared January 12, 2015 by the North Dakota Association of Counties  
Aaron Birst, Legal Counsel

**CONCERNING SB 2027**

Chairman Hogue and members of the committee, SB 2027 contains a number of significant concerns for prosecutors and we therefore ask you give SB 2027 a due not pass or at least consider some amendments to address some of our concerns.

Prosecutors are certainly aware of the work of the alternatives to corrections committee and we support their efforts to improve the system. However, we cannot support improvements that simply focus on reducing costs to the Department of Corrections without considering other negative consequences. One of the primary concerns with this bill is found in subsection 7 where DOCR is given the ability to terminate probation on a felony after 18 months. In our opinion, a court order should mean what it says. If a court orders probation for x amount of time it should stay that way until the COURT has been provided a reason to terminate it early. We recognize the additionally language contains an exception to this for sex offenses and "unless otherwise ordered by the court" but that would simply mean a court would have, at the time of sentencing, make a determination of future action.

Additionally, prosecutors are concerned with the shortening of probation length. Under this proposal most felony level crimes are capped at a three year term and misdemeanors would be reduced to slightly under a year. Although that might seem reasonable, the reality is many plea negotiations and ultimately sentences are the direct result of the defendants agreeing to serve a longer probation term in exchange for lesser jail time. This may be done to give the defendant a longer period to pay restitution to their victims or ensure they continue with their alcohol and drug treatment programs. Shortening probation sentences may actually have an unintended consequence of lengthening prison sentences. Telling an innocent crime victim they will not receive full compensation because the defendant cannot make the higher payments in the shortened time frame will add to pressure to increase incarceration time.

In terms of the concepts of reducing the number of felonies that must receive supervised probation and the short term "time out" consequences, prosecutors are generally supportive of continued discussions with this committee and DOCR to help improve the system.

Thank you,

STATE OF NORTH DAKOTA )  
COUNTY OF WARD ) ss.

IN DISTRICT COURT  
NORTHWEST JUDICIAL DISTRICT

State of North Dakota, )  
)

Criminal No. 51-2011-K-00241

Plaintiff )  
)

vs. ) ss.

PETITION TO  
TERMINATE SUPERVISION  
OF PROBATIONER  
SFN 18097

John Holly, )  
)  
Defendant )

[1] Jodi Kirkwood, a Parole/Probation Officer for the North Dakota Department of Corrections and Rehabilitation, informs the Court that the defendant on July 18, 2012, was convicted by a verdict of guilty of the offense of Possession of a Controlled Substance, Class C-Felony, Possession of a Controlled Substance, Schedule III, Class C Felony, Possession of Drug Paraphernalia- other than Marijuana, Class A Misdemeanor, Possession of Drug Paraphernalia- Marijuana, Class A Misdemeanor, Possession of a Controlled Substance- Hallucinogenic Mushrooms, Class C Felony, Prohibited Acts A/Controlled Substances, Class C Felony, and Possession of Drug Paraphernalia, Class A Misdemeanor. On July 18, 2012, the Honorable William W. McIees entered an order suspending execution of sentence until July 18, 2015, which order was subject to certain conditions of probation. The defendant has violated certain conditions in that the Defendant has failed to attend monthly appointments for July, August, October, November, and December of 2013 and January, February, July, August, September, October, and November of 2014. The Defendant has not completed his required 8 hours of Level I Treatment as recommended by Goodman Addiction Services. Finally, the Defendant was non-compliant with regards to providing a saliva sample to determine the use of drugs and alcohol on 10/09/2014. The Defendant was ordered to show up the following day, 10/10/2014 to submit to urinalysis testing. The Defendant failed to show as ordered. The defendant's violation does not warrant revocation of the Court's order of probation but the defendant's present status does warrant a termination of supervision by this office.

[2] WHEREFORE, the undersigned petitions this Court to order a termination of supervision of the defendant by the North Dakota Department of Corrections and Rehabilitation.

Jodi Kirkwood      1/7/15  
ND Parole/Probation Officer      Date

I concur.

\_\_\_\_\_  
County State's Attorney      Date  
PO Box 5005  
Minot, ND 58702-5005  
701-857-6480  
[51wardsa@wardnd.com](mailto:51wardsa@wardnd.com)

# 1-1  
2/4/15

PROPOSED AMENDMENTS TO SENATE BILL NO. 2027

- Page 1, line 17, overstrike "and"
- Page 1, line 17, remove the overstrike over "~~two years~~" and insert immediately thereafter "for a class A misdemeanor offense; and"
- Page 1, line 17, after "a" insert "class B"
- Page 2, line 18, replace "three hundred sixty days" with "two years"
- Page 2, line 22, after "6." insert "Upon petition by the defendant, no sooner than eighteen months from the time of sentence, the court shall provide a hearing to determine if the defendant should be discharged from probation."
- Page 2, line 24, after the period insert "A defendant may not petition for an early discharge from probation within twelve months of a previous hearing on a request for discharge from probation. Unless waived by the state's attorney, the state's attorney must be provided notice of a petition for discharge from probation and must be provided an opportunity to object to the petition."
- Page 2, line 25, remove "Except for an offense under chapter 12.1-20 or 12.1-27.2 and unless otherwise"
- Page 2, remove lines 26 through 30
- Page 3, remove lines 1 and 2
- Page 3, line 3, remove "8."
- Page 3, line 8, remove "under chapter"
- Page 3, line 9, remove "12.1-20 or 12.1-27.2, a felony offense"
- Page 3, line 9, remove ", a felony offense"
- Page 3, line 10, replace "subject to section" with "or"
- Page 3, line 10, remove "which involves the use of a firearm or dangerous"
- Page 3, line 11, remove "weapon"
- Page 3, line 22, overstrike "If an appropriate"
- Page 3, overstrike lines 23 through 26
- Page 3, line 27, overstrike "program selected by the department of corrections and rehabilitation."
- Page 3, line 29, overstrike "or"
- Page 3, overstrike line 30
- Page 3, line 31, overstrike "the department of corrections and rehabilitation"
- Renumber accordingly

#2-1  
2-415

Sixty-fourth  
Legislative Assembly  
of North Dakota

**SENATE BILL NO. 2027**

Introduced by

Legislative Management

(Commission on Alternatives to Incarceration)

1 A BILL for an Act to amend and reenact section 12.1-32-06.1, subsections 1 and 3 of section  
2 12.1-32-07, and subdivision c of subsection 5 of section 39-08-01 of the North Dakota Century  
3 Code, relating to length and termination of probation, supervision of probation, and conditions of  
4 probation; and to provide a penalty.

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

6 **SECTION 1. AMENDMENT.** Section 12.1-32-06.1 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8 **12.1-32-06.1. Length and termination of probation - Additional probation for violation**  
9 **of conditions - Penalty.**

10 1. Except as provided in this section, the length of the period of probation imposed in  
11 conjunction with a sentence to probation or a suspended execution or deferred  
12 imposition of sentence may not extend for more than five years for a felony offense  
13 subject to section 12.1-32-09.1, a felony offense subject to section 12.1-32-02.1 which  
14 involves the use of a firearm or dangerous weapon, a second or subsequent violation  
15 of section 12.1-17-07.1, a second or subsequent violation of any domestic violence  
16 protection order, a violation of chapter 12.1-40, or a violation of section 14-09-22; three  
17 years for any other felony offense; and two years for a class A misdemeanor offense;  
18 and three hundred sixty days for a class B misdemeanor or infraction offense from the  
19 later of the date of:

- 20 a. The order imposing probation;
- 21 b. The defendant's release from incarceration; or
- 22 c. Termination of the defendant's parole.

23 2. If the defendant has pled or been found guilty of an offense for which the court  
24 imposes a sentence of restitution or reparation for damages resulting from the

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2/3/15

2-2

Sixty-fourth  
Legislative Assembly

- 1 commission of the offense, the court may, following a restitution hearing pursuant to  
2 section 12.1-32-08, impose an additional period of probation not to exceed five years.
- 3 3. If the defendant has pled or been found guilty of a felony sexual offense in violation of  
4 chapter 12.1-20 or 12.1-27.2, the court shall impose at least five years but not more  
5 than ten years of supervised probation to be served after sentencing or incarceration.  
6 If the defendant has pled or been found guilty of a class AA felony sexual offense in  
7 violation of section 12.1-20-03 or 12.1-20-03.1, the court may impose lifetime  
8 supervised probation on the defendant. If the defendant has pled or been found guilty  
9 of a misdemeanor sexual offense in violation of chapter 12.1-20, the court may impose  
10 an additional period of probation not to exceed two years. If the unserved portion of  
11 the defendant's maximum period of incarceration is less than one year, a violation of  
12 the probation imposed under this subsection is a class A misdemeanor.
- 13 4. If the defendant has pled or been found guilty of abandonment or nonsupport of  
14 spouse or children, the period of probation may be continued for as long as  
15 responsibility for support continues.
- 16 5. In ~~felony cases~~, in consequence of violation of probation conditions, the court may  
17 impose an additional period of probation not to exceed five years in felony cases and  
18 not to exceed ~~three hundred sixty days~~ two years in misdemeanor cases. The  
19 additional period of probation may follow a period of incarceration if the defendant has  
20 not served the maximum period of incarceration available at the time of initial  
21 sentencing or deferment.
- 22 6. Upon petition by the defendant, no sooner than eighteen months from the time of  
23 sentence, the court shall provide a hearing to determine if the defendant should be  
24 discharged from probation. The court may terminate a period of probation and  
25 discharge the defendant at any time earlier than that provided in subsection 1 if  
26 warranted by the conduct of the defendant and the ends of justice. A defendant may  
27 not petition for an early discharge from probation within twelve months of a previous  
28 hearing on a request for discharge from probation. Unless waived by the state's  
29 attorney, the state's attorney must be provided notice of a petition for discharge from  
30 probation and must be provided an opportunity to object to the petition.

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2/3/15

1           7. ~~Except for an offense under chapter 12.1-20 or 12.1-27.2 and unless otherwise~~  
2           ~~ordered by the court, when the court imposes probation under the supervision and~~  
3           ~~management of the department of corrections and rehabilitation for a felony offense,~~  
4           ~~the department may terminate probation no sooner than eighteen months after the~~  
5           ~~defendant commenced probation if the defendant has complied with the conditions of~~  
6           ~~probation imposed by the court. The department shall notify the sentencing court and~~  
7           ~~the state's attorney of the county in which the defendant was prosecuted when the~~  
8           ~~department terminates probation under this subsection.~~

9           8. Notwithstanding the fact that a sentence to probation subsequently can be modified or  
10           revoked, a judgment that includes such a sentence constitutes a final judgment for all  
11           other purposes.

12           **SECTION 2. AMENDMENT.** Subsections 1 and 3 of section 12.1-32-07 of the North Dakota  
13           Century Code are amended and reenacted as follows:

14           1. When the court imposes probation upon conviction for a felony ~~offense under chapter~~  
15           ~~12.1-20 or 12.1-27.2, a felony offense~~ subject to section 12.1-32-09.1, ~~a felony offense~~  
16           ~~subject to section~~ or 12.1-32-02.1 ~~which involves the use of a firearm or dangerous~~  
17           ~~weapon,~~ a second or subsequent violation of section 12.1-17-07.1, a second or  
18           subsequent violation of any domestic violence protection order, a violation of chapter  
19           12.1-40, a violation of section 14-09-22, or a felony offense under chapter 39-08, the  
20           court shall place the defendant under the supervision and management of the  
21           department of corrections and rehabilitation. When the court imposes probation upon  
22           conviction or order of disposition in all other felony cases, the court may place the  
23           defendant under the supervision and management of the department of corrections  
24           and rehabilitation. In class A misdemeanor cases, the court may place the defendant  
25           under the supervision and management of the department of corrections and  
26           rehabilitation or other responsible party. In all other cases, the court may place the  
27           defendant under the supervision and management of a community corrections  
28           program other than the department of corrections and rehabilitation. ~~If an appropriate~~  
29           ~~community corrections program is not reasonably available, the court may place the~~  
30           ~~defendant under the supervision and management of the department of corrections~~  
31           ~~and rehabilitation. The department of corrections and rehabilitation may arrange for~~

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2/3/15

2-4

1 ~~the supervision and management of the defendant by a community corrections~~  
2 ~~program selected by the department of corrections and rehabilitation.~~ A community  
3 corrections program means a program for the supervision of a defendant, including  
4 monitoring and enforcement of terms and conditions of probation set by the court ~~or~~  
5 ~~pursuant to a conditional release from the physical custody of a correctional facility or~~  
6 ~~the department of corrections and rehabilitation.~~

7 3. The court shall provide as an explicit condition of every probation that the defendant  
8 may not possess a firearm, destructive device, or other dangerous weapon while the  
9 defendant is on probation. Except when the offense is a misdemeanor offense under  
10 section 12.1-17-01, 12.1-17-01.1, 12.1-17-05, or 12.1-17-07.1, or chapter 14-07.1, the  
11 court may waive this condition of probation if the defendant has pled guilty to, or has  
12 been found guilty of, a misdemeanor or infraction offense, the misdemeanor or  
13 infraction is the defendant's first offense, and the court has made a specific finding on  
14 the record before imposition of a sentence or a probation that there is good cause to  
15 waive the condition. The court may not waive this condition of probation if the court  
16 places the defendant under the supervision and management of the department of  
17 corrections and rehabilitation. The court shall provide as an explicit condition of  
18 probation that the defendant may not willfully defraud a urine test administered as a  
19 condition of probation. Unless waived on the record by the court, the court shall also  
20 provide as a condition of probation that the defendant undergo various agreed-to  
21 community constraints and conditions as intermediate measures of the department of  
22 corrections and rehabilitation to avoid revocation, which may include:

- 23 a. Community service;  
24 b. Day reporting;  
25 c. Curfew;  
26 d. Home confinement;  
27 e. House arrest;  
28 f. Electronic monitoring;  
29 g. Residential halfway house;  
30 h. Intensive supervision program; or

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2/3/15

- 1           i. Up to five non-successive periods of incarceration during any twelve-month  
2           period, each of which may not exceed forty-eight consecutive hours; or  
3           j. Participation in the twenty-four seven sobriety program.

4           **SECTION 3. AMENDMENT.** Subdivision c of subsection 5 of section 39-08-01 of the North  
5 Dakota Century Code is amended and reenacted as follows:

- 6           c. For a third offense within seven years, the sentence must include at least one  
7           hundred twenty days' imprisonment; a fine of at least two thousand dollars; an  
8           order for addiction evaluation by an appropriate licensed addiction treatment  
9           program; at least ~~one year's~~ three hundred sixty day's supervised probation; and  
10          participation in the twenty-four seven sobriety program under chapter 54-12 as a  
11          mandatory condition of probation.

SB 2072  
2/3/15

2/9/15  
Sen. Armstrong

SB 2027

Section 1 Amendment Changes

**Section 1 – Probation length**

5 years for Violent Offenses under 12.1-32-09.1 (includes):

- 12.1-16-01 (Murder)
- 12.1-16-02 (Manslaughter)
- 12.1-17-01.1 (Aggravated Assault)
- 12.1-18-01 (Kidnapping)
- 12.1-20-03(1)(a) (GSI –Force Sex Act)
- 12.1-20-03(2)(b) (GSI – Force Sexual Contact)
- 12.1-22-01 (Robbery)
- 12.1-22-02 (Burglary)

5 years for 12.1-32-02.1 (armed offender)

Inflicting or attempting to inflict bodily injury or threatening or menacing imminent bodily injury with a dangerous weapon, explosive, destructive device or firearm or drug possession with intent to deliver or manufacture and being armed.

5 years for 2nd violation of 12.1-17-07.1 (Stalking)

5 years for 2nd violation of domestic violation protection order,

5 years for 12.1-40 (Human Trafficking)

5 years for 14-09-22 (Abuse or Neglect of a child)

3 years all other felonies

2 years all A misdemeanors

360 days for B misdemeanors

NO MORE INFRACTION PROBATION

**Additional periods of probation upon violations**

5 years in Felony Cases

2 years in Misdemeanors

**Translated**

Violent Felonies could receive up to: 10 years

Other Felonies could receive up to: 8 years

A Misdemeanors could receive up to: 4 years

B Misdemeanors could receive up to: 2 years and 360 days

**Section 6 - Defendant can petition for early release within 18 months and then not again for yearly terms.**

**Section 2 Amendment – Deals with when probation supervised by DOCR**

DOCR SHALL supervise all offenders referenced in section 1 where they can get 5 years.

ALL OTHER felonies and misdemeanors **DISCRETIONARY** supervised probation.

DOCR NOT responsible for communities without local community corrections program

DOCR can do up to 5 periods of incarceration during a 12 month period. *2 day periods*

HOUSE JUDICIARY COMMITTEE  
REPRESENTATIVE KIM KOPPELMAN, CHAIRMAN  
MARCH 9, 2015

#1  
SB2027  
3-9-15

-----  
**PATRICK N. BOHN, DIRECTOR FOR TRANSITIONAL PLANNING SERVICES,  
NORTH DAKOTA DEPARTMENT OF CORRECTIONS & REHABILITATION  
PRESENTING TESTIMONY RE: SB 2027**

My name is Pat Bohn and I am the Director for Transitional Planning Services for the North Dakota Department of Corrections and Rehabilitation (DOCR). I am here on behalf of the department to testify in support of Senate Bill 2027 and offer some amendments.

This past year the department presented a number of ideas to the Commission on Alternatives to Incarceration, that we believe and research supports, can lessen the ongoing growth in the entire criminal justice system, including incarceration on the county and state levels, while maintaining public safety. After some hearings and good modifications to the recommendations, the Commission passed a number of those ideas on to the legislature for consideration. As we talk about this bill, I also want to underscore HB 1367 relating to probation which we worked with Aaron Birst from the State's Attorneys' Association to offer some amendments to the bill that would address issues relating to unsupervised and supervised probation periods. Judge Bruce Haskell testified on HB 1367 and approved of the amendments that we offered. Ultimately, the amendments were adopted and the Engrossed HB 1367 passed the House. I've worked with Ken Sorenson, Assistant Attorney General, and Aaron Birst to develop a plan and amendments that would blend HB 1367 into SB 2027.

So let's conduct an overview of the bill including the proposed amendments:

1. Creates a new subsection to more clearly define maximum lengths of unsupervised probation.
2. Allows for unlimited supervised probation periods until either the maximum prison sentence or probation period has been served and defines how the court awards credit for time on probation.
  - a. Three hundred sixty days for class B misdemeanors, two years for class A misdemeanors, five years for class C felonies and ten years for all other felonies unless otherwise specified in law.
3. Eliminates class B misdemeanors and infractions from being eligible for supervision by the DOCR.
4. Limits the maximum length of the first probation period to three years except for offenses involving violence, use of a weapon, a second or subsequent stalking, human trafficking, second or subsequent violation of a domestic violence protection order and child abuse or where otherwise mandated by law.
5. Adds sexual performance by a child (12.1-27.2) to offenses for which the court must impose mandatory minimum probation of 5 years and not more than 10 years.
6. Returns subsection 6 of 12.1-32-06.1 to the current statutory language where the court may terminate a period of probation at any earlier time if warranted by the conduct of the defendant and the ends of justice.

7. Provides the court discretion to not place a person on supervised probation in felony cases except in cases involving violence, use of a weapon, a second or subsequent stalking, human trafficking, second or subsequent violation of a domestic violence protection order, child abuse or a felony in chapter 39-08.
8. Changes the intermediate measure statute to allow the DOCR five non-successive periods of incarceration during any twelve month period, each of which cannot exceed 48 hours.
9. Modifies the minimum mandatory probation period for a third offense in seven years in subdivision c of subsection 5 of section 39-08-01 from one year to 360 days to avoid issues with the interstate compact.

In closing, we believe these changes can help improve the utilization of criminal justice resources to maintain and improve public safety and the DOCR supports the passing of Senate Bill 2027 with the proposed amendments.

#2  
SB2027  
3-9-15

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2027

Page 1, line 10, after "the" insert "total"

Page 1, line 10, overstrike "the period of" and insert immediately thereafter "unsupervised"

Page 1, line 12, insert a semi-colon after "offense"

Page 1, remove lines 13 through 16

Page 1, line 17, remove "years for any other felony offense;"

Page 1, after line 22, insert:

"2. Except as provided in this section the total length of supervised probation imposed in conjunction with a sentence of probation or a suspended execution or deferred imposition of sentence may not extend for more than five years for a felony offense subject to section 12.1-32-09.1, a felony offense subject to section 12.1-32-02.1 which involves the use of a firearm or dangerous weapon, a second or subsequent violation of section 12.1-17-07.1, a second or subsequent violation of any domestic violence protection order, a violation of chapter 12.1-40, or a violation of section 14-09-22; three years for any other felony offense; and two years for a class A misdemeanor offense from the later of the date of:

a. The order imposing probation;

b. The defendant's release from incarceration; or

c. Termination of the defendant's parole."

Page 1, line 23, overstrike "2." and insert immediately thereafter "3."

Page 2, line 2, after "of" insert "unsupervised"

Page 2, line 3, overstrike "3." and insert immediately thereafter "4."

Page 2, line 10, overstrike "an"

Page 2, line 10, overstrike "period" and insert immediately thereafter "periods"

Page 2, line 10, after "years" insert "for each additional period imposed"

Page 2, line 13, overstrike "4." and insert immediately thereafter "5."

Page 2, line 16, overstrike "5." and insert immediately thereafter "6."

Page 2, line 16, remove the overstrike over "felony" and insert immediately thereafter "and misdemeanor"

Page 2, line 16, remove the overstrike over "cases, in"

Page 2, line 17, overstrike "an"

Page 2, line 17, overstrike "period" and insert immediately thereafter "periods"

Page 2, line 17, overstrike "not to exceed five years"

Page 2, line 17, remove "in felony cases and"

1.

Page 2, line 18, remove "not to exceed two years in misdemeanor cases"

Page 2, line 18, overstrike ". The additional period of probation"

Page 2, overstrike lines 19 and 20 and insert immediately thereafter "may follow a period of incarceration if the defendant has not served the maximum"

Page 2, line 20, overstrike "period of incarceration available at the time of initial sentencing or deferment" and insert immediately thereafter: "if the defendant has not served the maximum sentence of imprisonment or probation available to the court at the time of initial sentencing or deferment. The court shall allow the defendant credit for a sentence of probation from the date the defendant began probation until the date a petition to revoke probation was filed with the court. If the defendant is on supervised probation, the defendant is not entitled to credit for a sentence of probation for any period the defendant has absconded from supervision. The total amount of credit a defendant is entitled to for time spent on probation must be stated in the criminal judgment or order of revocation of probation."

Page 2, line 21, overstrike "6." and insert immediately thereafter "7."

Page 2, line 21, remove "Upon petition by the defendant, no sooner than eighteen months from the time of"

Page 2, remove line 22

Page 2, line 23, remove "discharged from probation."

Page 2, line 25, remove "A defendant may"

Page 2, remove lines 26 through 29

Page 3, line 1, overstrike "7." and insert immediately thereafter "8."

Renumber accordingly

March 24, 2015

#1  
SB2027  
3-30-15

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2027

Page 1, remove lines 6 through 24

Page 2, remove lines 1 through 29

Page 3, replace lines 1 through 3 with:

"**SECTION 1. AMENDMENT.** Section 12.1-32-06.1 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-32-06.1. Length and termination of probation - Additional probation for violation of conditions - Penalty.**

1. Except as provided in this section, the total length of the period of unsupervised probation imposed in conjunction with a sentence to probation or a suspended execution or deferred imposition of sentence may not extend for more than five years for a felony and two years for a misdemeanor or infraction from the later of the date of:
  - a. The order imposing probation;
  - b. The defendant's release from incarceration; or
  - c. Termination of the defendant's parole.
2. Except as provided in this section, the total length of supervised probation imposed in conjunction with a sentence of probation or a suspended execution or deferred imposition of sentence may not extend for more than five years for a class C felony, ten years for all other felony offenses, and two years for a class A misdemeanor from the later of the date of:
  - a. The order imposing probation;
  - b. The defendant's release from incarceration; or
  - c. Termination of the defendant's parole.
3. If the defendant has pled or been found guilty of an offense for which the court imposes a sentence of restitution or reparation for damages resulting from the commission of the offense, the court may, following a restitution hearing pursuant to section 12.1-32-08, impose an additional periods of unsupervised probation not to exceed five years for each additional period imposed.
- ~~3-4.~~ If the defendant has pled or been found guilty of a felony sexual offense in violation of chapter 12.1-20, the court shall impose at least five years but not more than ten years of supervised probation to be served after sentencing or incarceration. If the defendant has pled or been found guilty of a class AA felony sexual offense in violation of section 12.1-20-03 or 12.1-20-03.1, the court may impose lifetime supervised probation on the defendant. If the defendant has pled or been found guilty of a misdemeanor sexual offense in violation of chapter 12.1-20, the court may

impose ~~an additional period~~periods of probation not to exceed two years for each additional period imposed. If the unserved portion of the defendant's maximum period of incarceration is less than one year, a violation of the probation imposed under this subsection is a class A misdemeanor.

- ~~4-5.~~ If the defendant has pled or been found guilty of abandonment or nonsupport of spouse or children, the period of probation may be continued for as long as responsibility for support continues.
- ~~5-6.~~ In felony and misdemeanor cases, in consequence of violation of probation conditions, the court may impose ~~an additional period~~periods of probation ~~not to exceed five years~~. ~~The additional period of probation may follow a period of incarceration if the defendant has not served the maximum period of incarceration available at the time of initial sentencing or deferment~~if the defendant has not served the maximum sentence of imprisonment or probation available to the court at the time of initial sentencing or deferment. The court shall allow the defendant credit for a sentence of probation from the date the defendant began probation until the date a petition to revoke probation was filed with the court. If the defendant is on supervised probation, the defendant is not entitled to credit for a sentence of probation for any period the defendant has absconded from supervision. The total amount of credit a defendant is entitled to for time spent on probation must be stated in the criminal judgment or order of revocation of probation.
- ~~6-7.~~ The court may terminate a period of probation and discharge the defendant at any time earlier than that provided in subsection 1 if warranted by the conduct of the defendant and the ends of justice.
- ~~7-8.~~ Notwithstanding the fact that a sentence to probation subsequently can be modified or revoked, a judgment that includes such a sentence constitutes a final judgment for all other purposes."

Renumber accordingly