

FISCAL NOTE
Requested by Legislative Council
01/08/2015

Bill/Resolution No.: SB 2154

- 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						
Appropriations						

- 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).*

Clarifies release to supervised probation and the terms and conditions of probation if none are in place and prohibits eligibility for release under this section if individual has been sentenced to prison subsequent to a 2nd period of probation having been revoked. No material fiscal impact.

- 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.*

No material fiscal impact.

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.*

N/A

- 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.*

N/A

Name: Dave Krabbenhoft

Agency: DOCR

Telephone: 328-6135

Date Prepared: 01/14/2015

2015 SENATE JUDICIARY

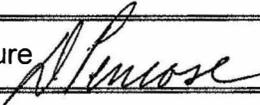
SB 2154

2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2154
1/27/2015
22576

- Subcommittee
 Conference Committee

Committee Clerk Signature 

Minutes:

1

Ch. Hogue: We will open the hearing on SB 2154.

Sen. Armstrong: Sponsor, support. This is some DOCR / AG clean-up language. They worked together to get this put in.

Ch. Hogue: Thank you.

Patrick Bohn, Director for Transitional Planning Services, ND DOCR: Support (see attached #1).

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

2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2154
2/3/2015
23104

- Subcommittee
 Conference Committee

Committee Clerk Signature *R. Penrose*

Minutes:

Ch. Hogue: We will take a look at SB 2154. What are the committee's wishes.

Sen. Armstrong: I move a Do Pass.

Sen. Casper: Second.

6 YES 0 NO 0 ABSENT

DO PASS

CARRIER: Sen. Armstrong

Date: 2/3/2015

Roll Call Vote #: 1

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTE

BILL/RESOLUTION NO. 2154

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. Armstrong 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

REPORT OF STANDING COMMITTEE

SB 2154: Judiciary Committee (Sen. Hogue, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2154 was placed on the
Eleventh order on the calendar.

2015 HOUSE TRANSPORTATION

SB 2154

2015 HOUSE STANDING COMMITTEE MINUTES

Transportation Committee
Fort Totten Room, State Capitol

SB 2154
3/19/2015
Job # 25116

- Subcommittee
 Conference Committee

Committee Clerk Signature

Beckie Stuge

Explanation or reason for introduction of bill/resolution:

A bill relating to sentencing for driving while under the influence of alcohol or drugs.

Minutes:

Attachments # 1 & 2

Chairman Dan Ruby opened the hearing on SB 2154.

Senator Armstrong introduced SB 2154. He explained that SB 2154 does four things. See attachment #1.

Some of this existed before the DUI law went into effect, and has manifested now that there are more significant penalties. This makes it consistent and allows for DOCR to not get boxed into a corner on mandatory release.

Chairman Dan Ruby: On Page 3 Line 27, if the court ordered it there, then why would it say 'If there is no any court-ordered period of probation'. Basically, it's not a court-ordered period of probation, but then they talk about supervised probation.

Senator Armstrong: I think this is situations where you get dinged twice for ramification and they don't have a choice. Under current law, they don't have the option for probation anymore in that situation. It is either a hard sentence, or you're done. This gives them more tools to deal with the treatment and release of them if they run into that hard deadline.

Representative Ben Hanson: Why did this end up in Transportation, and not Judiciary?

Senator Armstrong: Because the underlying reference is Chapter 39, which is in the driving code. DUI is not in the criminal code.

Representative Lois Delmore: On Page 2 why are we striking 'upon completion of the 24/7 sobriety program'?

Senator Armstrong: I can't tell you why. I think Ken Sorenson can.

Ken Sorenson, the Attorney General's Office: It says the court can put the person on probation upon completion of the 24/7 program. The 24/7 program is a condition of probation. The correction on page 2 is the way it was supposed to read.

Patrick N. Bohn, Director for Transitional Planning Services, North Dakota Department of Corrections & Rehabilitation: Spoke to support SB 2154. Written testimony was provided. See attachment #2. (7:30 - 12:48)

12:50

Vice Chairman Lisa Meier: Can you describe to me the process of probation is when you have an individual that is under two years supervised probation?

Pat Bohn: Generally speaking, there are conditions of probation that are established by the court that officers, as well as the person on supervision, must follow. Assessments are done and referrals are made to various programs to address the risk areas to reduce the likelihood they'll commit new crimes. We assist them on finding new jobs, getting them started with mental health services if needed, medical services, job training, education - it's a comprehensive case management to hold the person accountable and to increase the likelihood they will not commit more crimes.

Vice Chairman Lisa Meier: Almost every individual that ends up in this situation will have some type of case management?

Pat Bohn: Anybody under the supervision in the Department of Corrections. There are varying degrees of violations. The low risk individuals receive a less intensive case management. The high risk, dangerous individuals need more intensive case management with frequent monitoring and reporting.

Vice Chairman Lisa Meier: What percent of these individuals are both alcohol and drug abusers?

Pat Bohn: About 75% of our case load has a chemical abuse or chemical addiction problem.

Representative Lois Delmore: All of these terms and conditions would be set by the parole board on a case by case basis?

Pat Bohn: No. The parole board is not involved in these cases at this point and time. It's a mandatory release according to law once they complete treatment. The terms and conditions we would supervise them under if this bill is passed, would be the terms and conditions that were previously imposed by the court and now have subsequently been revoked. So we just go back to the most recent condition of probation imposed by the court.

Chairman Dan Ruby: So, in every case, like with a first DUI in your first example, if somebody completes that treatment, then they are released and then go on probation?

Pat Bohn: Yes, that generally is the case.

Chairman Dan Ruby: If they violate that, and then they are back in jail for two years, then they don't start their treatment until they have been in jail for 365 days?

Pat Bohn: I was just trying to give you a ball park. The qualifying issue is if somebody has numerous DUI's we might look at that differently.

Chairman Dan Ruby: Let's say they've been in jail 10 months and treatment is started. Then 120 days later, even if it's not the two year jail time, they get out again without probation because the court didn't order it when they were put in for the two years?

Pat Bohn: That is the core of the issue.

Chairman Dan Ruby: Does the court ever give the penalty of probation with conditions at the end of the penalty?

Pat Bohn: The second time around, it's at the court's discretion. Depending on the case and the judges may or may not order a period of probation. The court is limited to two periods of probation, once the second probation has been used they cannot invoke another period of probation. Meaning, in some situations, the court doesn't have probation available.

Chairman Dan Ruby: Do you suppose the mindset of the judges is that they have paid their due after the two years of probation?

Pat Bohn: The court would have the fold of the full benefit, a bill to invoke the full sentence that was available at the original sentencing.

Chairman Dan Ruby: The view is they are cut loose without supervision to assist them with getting on the right path?

Pat Bohn: That's the big theme in our department is how to bring people back to the community and the state. We have about 66 people now serving life sentences in the state prison system. We have about 1,740 people in prison. The tool would have been some sort of transition and supervision to help them re-assimilate.

Representative Robin Weisz: On the two examples you gave, what is the rational that you are waiting a year after the assessment before they go into treatment?

Pat Bohn: Everybody will have that assessment done within their first 30 days of arrival. It is a matter of timing in which the recommended course of treatment is implemented.

Representative Robin Weisz: In the first example, you seem to make it specific to enter treatment within 60 days after orientation and assessment. So when they are back a second time, it is then 'whenever'?

Pat Bohn: When they have committed more violations in the community, the court has found it appropriate to revoke them and place them back into prison again. In that case, that person will likely not be put into treatment after the initial assessment phase.

Representative Robin Weisz: You are saying that there is no point to start treatment if they won't be getting out for another 2-4 years later?

Pat Bohn: That's a pretty well established treatment methodology. We want that treatment to occur closer to time of release, and they will be able to use those skills in the community.

Representative Gary Paur: If the total sentence including parole couldn't exceed the original sentence - if you were sentenced to 3 years in prison but were released after a year with 2 years of probation, then if you reoffended you couldn't extend that sentence past 3 years?

Pat Bohn: In probation, the court has the authority to revoke that probation and resentence them up to the maximum penalty that was available to them at the original offense with credit for time served. In your example the court would have two years to resentence that individual.

Representative Rick C. Becker: With no fiscal note, are you assuming that there will be very few falling in this category? Or do the people currently working have the ability to absorb this additional work without extra man hours?

Pat Bohn: We are anticipating that this will be a smaller number, and we will be able to absorb those within the normal workload.

Representative Lois Delmore: Part of that is also the difference between having them in prison versus the cost to have someone on supervised probation.

Pat Bohn: You make a very good point. It's about \$39,000 a year to incarcerate somebody. It's around \$6 a day to supervise them on probation.

Representative Marvin Nelson: The section has all these mandatory minimum sentences. What is the maximum sentence for DUI in North Dakota?

Pat Bohn: The maximum on a Class C felony is 5 years. A Class A misdemeanor DUI is up to 1 year in prison.

Chairman Dan Ruby: How does the 24/7 program fit into the probation time?

Pat Bohn: The minimum mandatory on these C felonies is two years supervised probation with 24/7 as a component. There are some changes in the works to give them credit for 24/7 pre-trial. The second time around it may or not be ordered by the court if there's probation to follow because there's nothing mandatory. What we recommend here in the cases that don't have supervision following that they complete their treatment during their

course of incarceration, 24/7 would be a mandatory element of that remaining time on supervision.

Chairman Dan Ruby: So that would be imposed in the situation where there isn't a court order. Upon completion of that treatment and getting closer to their second period, then who would determine how much time they would be supervised, and is that 24/7?

Pat Bohn: We would have to have another sentence computation.

Chairman Dan Ruby: Who is doing this?

Pat Bohn: Our department. We would compute the expiration date, falling somewhere between their good time release date and their maximum release date. The 24/7 is managed under the local county sheriffs and jails.

Chairman Dan Ruby: Has there been any push back from the judges that would give you this authority?

Pat Bohn: I have heard none.

Arron Burst, Association of Counties, spoke to support SB 2154. We agree with the proposed changes. There are other bills that we need to blend together eventually.

Representative Lois Delmore: Why do we limit the courts to the two terms of probation?

Arron Burst: In the statute now it indicates a 'period' of probation. There was a Supreme Court case that said it is singular, not plural, meaning you can't be on multiple times. The bill we are putting in changes that to 'periods'.

There was no further support for SB 2154.
There was no opposition to SB 2154.

Ken Sorenson: Most of the testimony focuses on probation and period of probation. One of the amendments adds language to the statute regarding driving while under the influence with a minor child. The amendment adds one sentence. We were seeing lenient sentences for this.

Chairman Dan Ruby: How could it be more lenient in cases where they had a child with them?

Ken Sorenson: Because it was a separate statute and separate offense. It wasn't subject to those minimum sentencing requirements. With this amendment they now will be.

Chairman Dan Ruby: In the section it mentions the age 21, why?

Ken Sorenson: That's just current statutory language.

Chairman Dan Ruby: What if they are a parent that is only 19 or 20 years old?

Ken Sorenson: Then they would have to be charged out directly under 39-08-01. They would have a charging mechanism.

There was no further neutral testimony for SB 2154.

Hearing closed on SB 2154.

2015 HOUSE STANDING COMMITTEE MINUTES

Transportation Committee
Fort Totten Room, State Capitol

SB 2154
3/26/2015
#25458

Subcommittee
Conference Committee

Committee Clerk Signature

Janette Cook

Explanation or reason for introduction of bill/resolution:

A bill relating to sentencing for driving while under the influence of alcohol or drugs.

Minutes:

Chairman Dan Ruby opened the hearing on SB 2154. The bill was reviewed.

Representative Mike Schatz moved a DO PASS on SB 2154.

Representative Lois Delmore seconded the motion.

Rep. Mark Owens: I don't understand Page 4 Line 11. If you are eighteen and violate your probation, it is not a misdemeanor to have a minor in the car with you? But, if you are twenty-one or older it is? A nineteen year old that is a single parent and drunk and driving around with your kid, that is okay?

Chairman Dan Ruby: It may be referring to a nineteen year old that has a minor, 15 year old, in the car with him.

Representative Lois Delmore: It is the same way that we have some of our sexual predator language. A nineteen year old boy involved with a sixteen year old girl; it could be statutory rape. Some of these provisions are put in the Code for the greater good. This law has been like that for some time. Could someone fall through the cracks? In any piece of legislation we pass, there may be an exception to the rule. But, that is why it was put into place. For the greater good, they don't want an eighteen year old with a sixteen year old arrested and charged with an extra charge. It is just meant for minors; that was what was done.

Representative Robin Weisz: The rational here is that if a person under the age twenty-one already has an issue because alcohol is illegal. They are already penalized for that. The intent is to not double up the charges.

Representative Gary Paur: As far as a minor drinking alcohol, it doesn't have a limit, they can detect down to .02%. They are guilty at that point. They are guilty of DUI.

House Transportation Committee

SB 2154

03-26-15

Page 2

**A roll call vote was taken: Aye 10 Nay 0 Absent 4
The motion carried.**

Representative Lois Delmore will carry SB 2154.

**2015 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. SB 2154**

House Transportation 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 Representative Mike Schatz Seconded By Representative Lois Delmore

Representatives	Yes	No	Representatives	Yes	No
Chairman Ruby	X		Rep. Delmore	X	
Vice Chairman Meier	X		Rep. Hanson	X	
Rep. Rick Becker	A		Rep. Nelson	A	
Rep. Frantzvog	A				
Rep. Hawken	X				
Rep. Olson	A				
Rep. Owens	X				
Rep. Paur	X				
Rep. Schatz	X				
Rep. Sukut	X				
Rep. Weisz	X				

Total (Yes) 10 No 0

Absent 4

Floor Assignment Representative Lois Delmore

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

REPORT OF STANDING COMMITTEE

SB 2154: Transportation Committee (Rep. Ruby, Chairman) recommends **DO PASS** (10 YEAS, 0 NAYS, 4 ABSENT AND NOT VOTING). SB 2154 was placed on the Fourteenth order on the calendar.

2015 TESTIMONY

SB 2154

SENATE JUDICIARY COMMITTEE
SENATOR DAVID HOGUE, CHAIRMAN
JANUARY 27, 2015

PATRICK N. BOHN, DIRECTOR FOR TRANSITIONAL PLANNING SERVICES,
NORTH DAKOTA DEPARTMENT OF CORRECTIONS & REHABILITATION
PRESENTING TESTIMONY RE: SB 2154

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 to testify in support of Senate Bill 2154

What this bill does:

This bill would address and clarify some issues the department has been experiencing since the DUI enhancements went into effect on July 1, 2013. More specifically, it would address and clarify release issues reflected in 39-08-01(5)(i):

1. Specify that the release is to begin the court ordered supervised probation period upon the successful completion of the alcohol treatment program designated by the DOCR.
2. Specify that if there is not a court-ordered probation period to follow, that upon successful completion of the alcohol treatment program designated by the DOCR the person would be released to supervised probation under the terms and conditions previously imposed by the court, including participation in a 24/7 sobriety program. This probation period would run from the day the DOCR releases the individual after completing treatment to a date that would have to be calculated just prior to release. The date would fall somewhere between the good time release date and the maximum release date.
3. Prohibits the mandatory release upon successful completion of the alcohol treatment program designated by the DOCR from incarceration subsequent to a second probation revocation. (Avoids any State v Stavig and State v Perales issues, which may change if HB 1367 passes which would allow in felony cases for unlimited probation periods provided the defendant has not completed maximum period of incarceration available at the time of the initial sentencing or deferment). People would still be eligible for parole.
4. Clarifies that an individual convicted of an offense under 39-08-01.4 (Driving while under the influence of alcohol while being accompanied by a minor (A Misdemeanor or C Felony)) is subject to the same minimum mandatory sentencing requirements under 39-08-01(5) and therefore subject to the same release provisions that we previously spoke about.

Why:

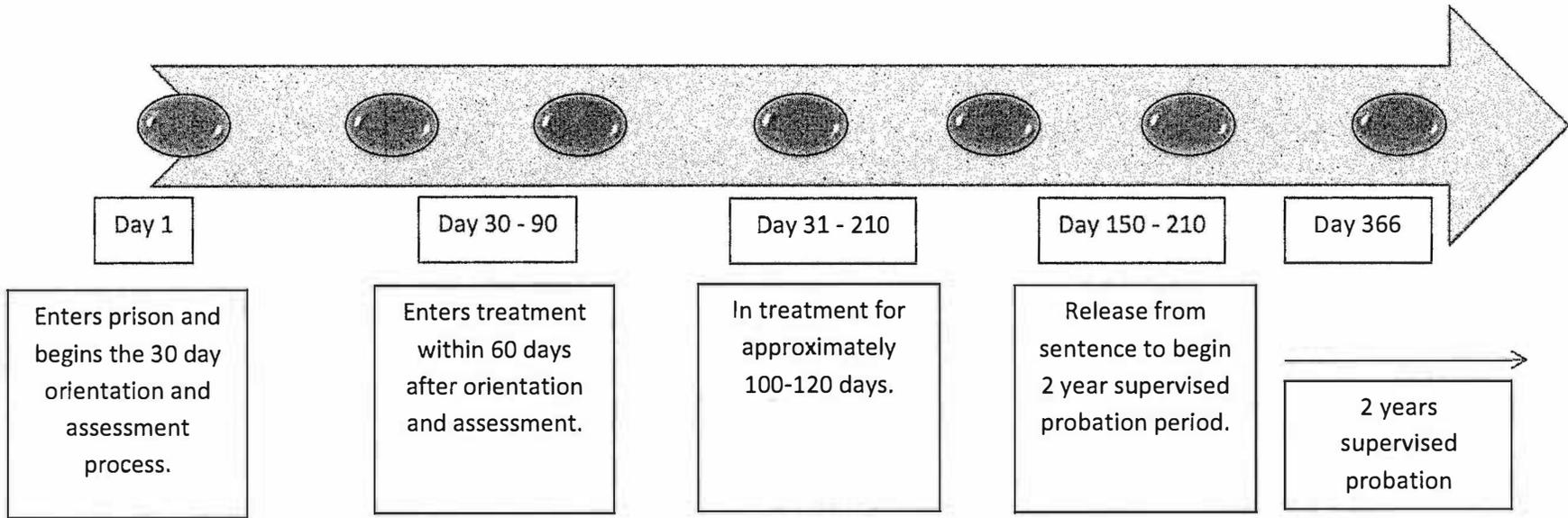
Reference examples: (See examples #1 and #2).

In closing, the DOCR supports the passing of Senate Bill 2154.

SB 2154
1/27/15

Example 1

Johnny (DUI) Offender
(Sentenced on DUI to 1 year and 1 day and 2 years supervised probation to follow)

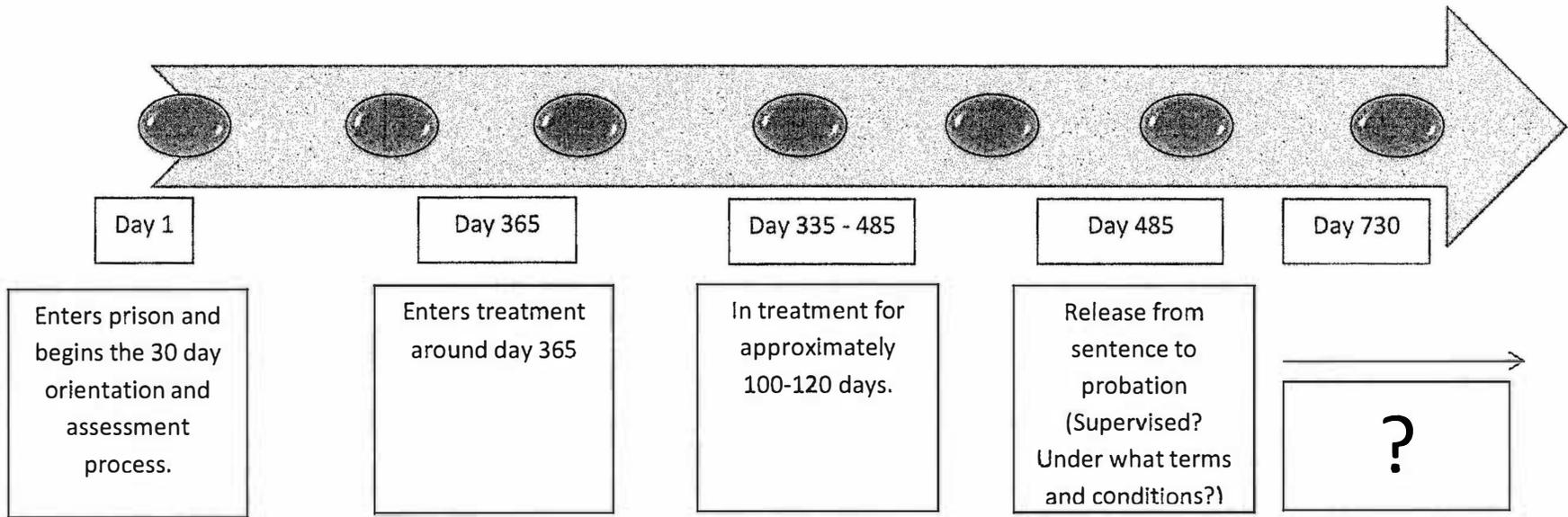


1-2

SB 2154
1/27/15

Example 2

Johnny (DUI) Offender
**(DUI probation revoked and resented to 2 years
and no probation to follow release.)**



What this bill does:

This bill will address and clarify four specific issues the DOCR has been experiencing in applying the DUI enhancements (N.D.C.C. 39-08-01(5)(i)) since they went into effect July 1, 2013.

1. It clarifies that release to court ordered supervised probation occurs upon the completion of a DOCR designated alcohol treatment.
2. It clarifies that if there is not a court-ordered probation period to follow, that upon successful completion of the DOCR designated alcohol treatment program, the person is released to supervised probation under the terms and conditions previously imposed by the court, including participation in a 24/7 sobriety program.
3. Subsequent to a second probation revocation, it prohibits the mandatory release from incarceration immediately upon successful completion of an alcohol treatment. (This will avoid problems with existing law that prohibits more than two periods of supervised probation in felony cases.).
4. It clarifies that an individual convicted of an offense of Driving While Under the Influence of Alcohol While Accompanied by a Minor (N.D.C.C. 39-08-01.4) is subject to the same minimum mandatory sentencing requirements in N.D.C.C.39-08-01(5) and therefore subject to the same release provisions in N.D.C.C. 39-08-01(5)(i).

SB 2154
3-19-15
#2

HOUSE TRANSPORTATION COMMITTEE
REPRESENTATIVE DAN RUBY, CHAIRMAN
MARCH 19, 2015

1 of 3

**PATRICK N. BOHN, DIRECTOR FOR TRANSITIONAL PLANNING SERVICES,
NORTH DAKOTA DEPARTMENT OF CORRECTIONS & REHABILITATION
PRESENTING TESTIMONY RE: SB 2154**

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 to testify in support of Senate Bill 2154

What this bill does:

This bill addresses and clarifies some issues the department has been experiencing since the DUI penalty enhancements went into effect on July 1, 2013. More specifically, it would address and clarify release issues reflected in 39-08-01(5)(i):

1. Specifies that the release is to begin the court ordered supervised probation period upon the successful completion of the alcohol treatment program designated by the DOCR.
2. Specifies that if there is not a court-ordered probation period to follow, that upon successful completion of the alcohol treatment program designated by the DOCR the person would be released to supervised probation under the terms and conditions previously imposed by the court, including participation in a 24/7 sobriety program. This probation period would run from the day the DOCR releases the individual after completing treatment to a date that would have to be calculated just prior to release. The date would fall somewhere between the good time release date and the maximum release date.
3. Prohibits the mandatory release upon successful completion of the alcohol treatment program designated by the DOCR from incarceration subsequent to a second probation revocation. (Avoids any State v Stavig and State v Perales issues, which may change if HB 1367 passes which would allow in felony cases for unlimited probation periods provided the defendant has not completed maximum period of incarceration available at the time of the initial sentencing or deferment). People would still be eligible for parole.
4. Clarifies that an individual convicted of an offense under 39-08-01.4 (Driving while under the influence of alcohol while being accompanied by a minor (A Misdemeanor or C Felony)) is subject to the same minimum mandatory sentencing requirements under 39-08-01(5) and therefore subject to the same release provisions that we previously spoke about.

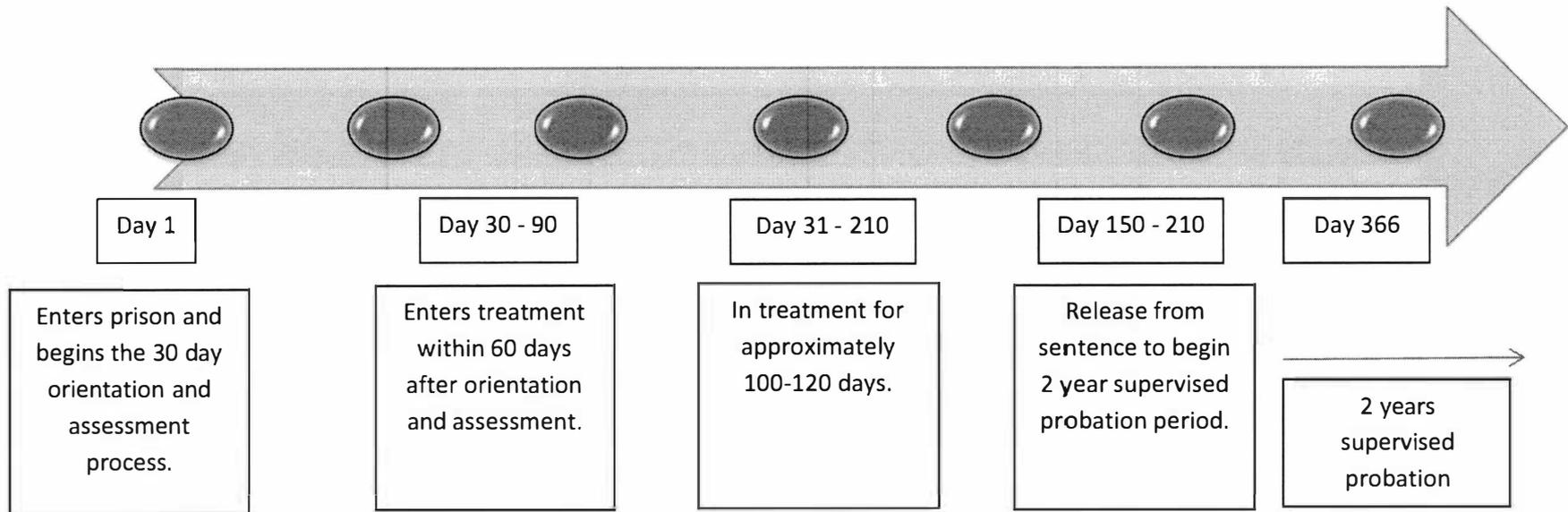
Why:

Reference examples: (See example #1 and #2).

In closing, the DOCR supports the passing of Senate Bill 2154.

Example 1

Johnny (DUI) Offender
(Sentenced on DUI to 1 year and 1 day and 2 years supervised probation to follow)



Example 2

Johnny (DUI) Offender
(DUI probation revoked and resentenced to 2 years and no probation to follow release.)

