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2007 HOUSE JUDICIARY

HB 1133

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1133

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 1/9/07

Recorder Job Number: 773 (41:41-94); 775

Committee Clerk Signature

Adam P. Rouse

Minutes:

Chairman DeKrey: We will open the hearing on HB 1133.

Patrick Bohn, ND DOCR-Field Services, ND Parole Board: (see attached testimony).

Rep. Klemin: First of all, you stated this 85% provision began in 1994 with the federal law, implemented in ND in 1995 and there were grants to the states, that the states also had the 85% provision. Is that still in effect, that the federal grant provision for 85%?

Patrick Bohn: There is no longer any money attached to 85%. It was an incentive grant to get states to implement this.

Rep. Klemin: So there being no further incentive to that, we would change that 85% to something else if we wanted to without jeopardizing any federal funds, is that correct?

Patrick Bohn: That's my understanding.

Rep. Klemin: My second question deals with the section 12.1-32-09 relating to sentencing of violent offenders. That's where the 85% provision is set out. There is a formula that is also used for persons who are sentenced to a term of life in prison based on their remaining life expectancy. Would this change in the statute also apply to that person?

Patrick Bohn: It would not. The only sentences that we are changing are manslaughter, robbery, burglaries and aggravated assault, those four. It would not include murder, it would

not include kidnapping and it would not include GSI. GSI offenses with force also have to be 85% also.

Rep. Klemin: My final question, I understand the objective of this is to provide some type of transition to the community. I am also going to assume that not everybody is eligible for parole just because they hit the 85% of their sentence. Would not that objective also be served by saying 85% plus six months in a transition center before you go back to the streets?

Patrick Bohn: If I'm hearing you correctly, you're saying that they serve the 85% and then serve that last six months in a transition center; so that somehow wording or getting it so that happens. Under the current law, offenders accrue good time and right now with that good time, if they accrue good time, they can use good time, that type of thing; but once they get all they can get, it's added out to about 84.7%, so right up to the 85%. The good time date is right around the 85%. The 15% that is left over is going to be, they'll only do that 15% if they aren't accruing good time. The way they don't accrue good time at the institution, is with behavior problems, involved in assaults, trafficking contraband, or they refuse to participate in treatment, when they can get treatment, they lose their job, those types of things can stop good time or even take away good time. It's those cases that we wouldn't have, that there isn't any interest in doing anything with them anyway, because that's who is already denied parole. So there really isn't time to work with there, once you get to the 85%. They either are, or are serving the remainder of the 15% because they haven't accrued good time.

Rep. Delmore: I guess I'm also looking at fiscal impact, which there isn't a fiscal note on it; but how many centers do we have that would be able to take this type of prisoner.

Patrick Bohn: I'm not sure of the fiscal impact because we already have the pieces in place, to place people in transition facilities, so this would be just another batch (pool) to draw from. In terms of facilities available, right now it would be the Bismarck Transition Center in Bismarck

for the males, and we contract with Centre Inc. out of Fargo, but they have a facility here in Bismarck, as well. It's a new contract with them to provide the female inmate transition program. So right now there are two facilities.

Rep. Delmore: Aren't those facilities already full of people who are in transition, are there openings in those centers.

Patrick Bohn: That space has been a problem for us in the past. Today we have a little bit more space in the area of the men; we've got some room to work with. The women have been particularly problematic, because their population, their growth rate is outpacing the men. We've seen population grow, like the state has never seen it grow. That is going on across the country, as well. Centre, Inc. is now in the process of adding beds. They are building onto their facility in Fargo, and they recently got approval from Mandan to take over the Salvation Army building over there and make that into a transition/halfway house. We're anticipating that there will be more beds available for females.

Rep. Delmore: As we look at this and we talked about the hazard to public safety. I think there is another side to it; we could have an incident with some of these people because of the crimes they committed.

Patrick Bohn: That's very true. But that's the business we're in. We're in the business, there are no guarantees. Our department supervises over 5,000 people and I can look at you today and say that any one of these 5,000 could go out and do something. We can't control every single action that the people do. That's the business we're in. I think with the layers of protection that are in place, those people that would be most appropriate for this type of placement would have to make those cuts to ensure that the public is safe, and ensure that we are doing the right things for the correct people.

Rep. Charging: The question I have is, do the sexual offenders, do they fall under this part.

Patrick Bohn: They do not. The sex offenders do not fall under that 85%. There are only a few GSI statutes involved in the use of force, in the commission of a crime that requires the 85% statute.

Rep. Koppelman: You talked earlier about ND having one of the most conservative parole boards in the country. What about our system in the area you are involved in, in terms of supervising parolees and probationers; our whole reentry process. How do we stack up against the rest of the country, in terms of and I guess I am asking you to brag on yourself, do you do a good job or are there statistics that tell you which states are doing a good job. You make a good point; we trust you with the responsibility of that critical time of transition from someone who has been incarcerated to that person being a productive person in society. How are we doing?

Patrick Bohn: Let me talk about the conservative piece right now, typically across the country you will have a ratio of parole to prison population of about 32%. About 33% of all eligible prison population will be on parole. ND is sitting right around 20%. So we're below the national average. Revocation rates for parole, the national parole revocations rate is 55%. Our revocation rate is 21%. So we're quite a bit lower than the national average. As a matter of fact, we are in the top 5 of the country in terms of low parole revocation rate. We are also a TPCI State- transition from prison to community initiative. The federal government put out specifications for states to apply to become TPCI states and in return we get the opportunity to work with consultants from across the country to improve our transition from prison to community process. We are one of those states. We have been working on that for 2 or 3 years now, I think it is, and we've really made some good headway. I think the combination of our parole board and the decision making process tied to the way we've evolved in terms of the delivery of programs, correctional programs in this state. Our flagship program, one of the

flagships anyway for transition, has been the Thompkins program. Some of you may be familiar with that. It is located in Jamestown. That program is looked at across the country as really a shining symbol of how correctional treatment can work in our community.

Rep. Griffin: What's the typical transition time for a person right now, and why would this six months in a transitional facility help.

Patrick Bohn: The current state of transition has quite a broad range. The parole board has a big role in that whole decision-making process, making the leap from prison to community, whether they go to parole or probation. That transition time for some people can be a 45-60 day process and for others it might be a 2-3 year process, that they are involved in some specific programs to aid in their transition. The longer we have somebody, the longer we can work with somebody. That is the nature of the job. For others, the shorter sentences, there is a smaller window in which to work with them. Typically the literature talks about 17-19 months, is what you want to have in terms of trying to effectively transition somebody. Of course, there are resources that are tied to that, so right now a placement in one of our transition facilities is about 4-8 months. The transition also takes place actually before somebody gets placed in a transition facility. That transition goes on for the person, by the prison offering mental health treatment, vocational counseling, job skills, living skills, and those types of programs as well, leading to that inmate being transitioned.

Rep. Boehning: In looking at the 85%, so if we've got an offender that lost all of his good time and he is supposed to serve the whole 5 years. So with this here, the inmate has good time and he's supposed to serve his whole sentence, he can actually get out between earlier. If you're taking the inmate now, let's say he gets out at 85% if he had his good time racked up, he's a non-violent prisoner, he's done everything, he has a sentence of 5 years, and would he be out with the 85%.

Patrick Bohn: That's not the case. The 85% is the mandatory, they have to serve 85%, and then that other 15% is available for them to earn good time, and if they do that, then they go on the 85% date. If they don't, they go on whatever that date is up to the maximum to which the court originally sentenced them. We can't hold them beyond the maximum.

Rep. Boehning: If you're not a model inmate, you don't have any good time coming to you, you have to serve out the whole 5 years of your sentence.

Patrick Bohn: Yes, that is correct.

Rep. Boehning: With this change, that will not affect that.

Patrick Bohn: That's correct.

Rep. Griffin: I guess going back to my previous question, why the 6 month program is better than what is already in place.

Patrick Bohn: Why do we see the six months as being significant – six months at least gives us a little more to make up the things that they've done in prison, whether treatment, mental health, or if need other services in the community in a supervised setting. If we don't have it, we're going to move on and continue doing business. This would give us an extra tool to help bring that transition about in a more orderly fashion. We have people who get out that don't have probation to follow, for instance. With someone like this, it would give us that six month window as time to get the inmate services and aid in the transition, so that they just don't drop into the apartment building, trailer house, or your next-door neighbor, because they live with mom and dad.

Rep. Charging: Going back to Rep. Delmore's question, is the transition center ready for them, are resources ready or is this going to put a burden on them. What if your people are ready and they're full. How long can you hold an inmate.

Patrick Bohn: I guess I don't see a big problem in terms of space or if they're ready. I think now that in Bismarck, now that they have some years under their belt, they are in a better position today than they were at the onset to manage this population. One thing we have to keep in mind, is that the 85% violent offender is a tag that applies to someone on a current offense. But we also have to remember that those offenders that we look at and parole often, we hope that they get parole that have these types of crimes in the past, that have committed a violent offense and now they are here serving a sentence for possession of drug paraphernalia, possession of marijuana, or those types of offenses. So they may have carried that 85% tag in the past, but they don't carry it today, but they are still that same person. It's just a tag that they have following them. So we work with those populations, those transition facilities and halfway houses; work with that population is merely a tag that follows them around.

Rep. Charging: So if you are unable to take them because of space being full, what happens then.

Patrick Bohn: As I mentioned earlier, there were some space issues for a while, but as of late, we've had room on the male side. The female population side has been full, but they are building and we are also requesting additional money for beds in our appropriations bill to add space, or give us some contract dollars to add that space throughout the state. So I anticipate that with our population we should have adequate resources and adequate space to accommodate for this population.

Chairman DeKrey: Thank you for appearing. Further testimony in support of HB 1133.
Opposition to HB 1133.

Scott Buschee, Sheriff of Williams County, and a rep. of the Sheriffs and Deputies

Association: We oppose this bill in its entirety. We think transitional homes are probably best

reserved for those coming out of drug related problems; if for no other reason than that they are in prison because they were probably more addicted than anything else and it's their addiction that needs treatment in the long term. Some of the controversy around transitional areas is that this is throwing a rock at a just recently calm pond that is the transition center.

Chairman DeKrey: So even with this amendment that they proposed this morning, you are still in opposition to the bill.

Scott Buschee: I still consider those violent offenders are not for transition center. Transition centers were designed to take some of the burden off the correctional facilities with the drug related people, so that we would have room to help, while violent offenders serve the full sentence.

Rep. Wolf: You're going to be out, why not transition them, to hopefully alleviate their coming back to see you again.

Scott Buschee: I agree, but with the limited space in the transitional facility that we have right now, we feel that right now it is necessary that it is geared to the drug addicted and less violent offender.

Rep. Klemin: Are there other alternatives to this for say someone is a violent offender who has served the full term, such as a halfway house after they get out, or some other alternatives.

Scott Buschee: There are some, I'm not familiar with how many there are or where they are at right now. Again, our basic premise is you don't fill that transitional facility with violent offenders, and you can better use the beds for the drug addicted and not the violent offenders.

Rep. Kingsbury: Are there no programs right now at the end of someone's sentence to prepare them at all for transition to the community.

Scott Buschee: There are, as was testified here before, they do start a transitioning period in the state facilities, which I always thought was an excellent program.

Rep. Kingsbury: How long would it be.

Scott Buschee: I couldn't answer that. I do feel that transition centers have real worth, but we don't have enough of them right now to take care of what we have now.

Rep. Koppelman: It seems to me, I respect what you are saying and understand, but the parole/probation folks wanting to do this. Wouldn't they be concerned if there wasn't space. Do they monitor that.

Scott Buschee: I don't know, I don't deal with that. I think Rep. Charging's question is a very valid question. Do you have room for those?

Rep. Charging: You mentioned that there four offenses, what is the difference between the seriousness of them. Do you still feel that there is no difference between a violent offender.

Scott Buschee: There is a descending order of seriousness with each crime. We were certainly opposed to the kidnapping, the murder, etc. Each offense is different; you have aggravated assault, which is very egregious, and I'm sure they've got people who decide that and know that and will take that into consideration. But again, in a perfect world, we could do this, we'd like to have transitional centers for all offenders who are going to be released. But right now, I don't think there is the room to take care of the ones that we sent to transitional centers before and now we're going to be putting violent offenders in there. If there was adequate space, but there isn't. It would be creating too much public outcry, because the public isn't ready for more transitional centers.

Chairman DeKrey: Thank you for appearing.

Rep. Ron Carlisle: As mentioned earlier by Pat Bohn regarding the 1995 legislation, I was the prime sponsor, HB 1218. I brought a whole file of information to look at. The bill, at the

time, included murder, manslaughter, aggravated assault, kidnapping, Gross Sexual Imposition and robbery are not eligible. Now this amendment takes out a couple of them, but still leaves, in my opinion, some very serious folks. As Rep. Charging and Rep. Delmore and the sheriff has said, there is no room at the inn. I am very familiar with the transition center in Bismarck. I support it, there's a possibility to fund one in Fargo. We have no room for error. If one of these folks in there, and we have an instance, you know how public perception is. Right now things are working. I also want to point out the DOCR manual in 2005, "Bismarck Transition Center holds only adult male offenders who do not have a repetitive history of serious violent crimes. Sex offenders are not eligible for admission to BTC." The DOCR can work on that. There's no room for error. We just added 80 beds here in Bismarck and I took the time this morning at 7:00 am on the way in to drive by. I am very familiar with the center. I don't think we need to do this. We have plenty of folks that they can work through with alternatives, incarceration. I am opposed to this bill with the amendments. I don't think we can fix it up enough.

Rep. Klemin: Since we don't have any federal incentive anymore for the 85%, why do we need this statute that was adopted in 1995 at all.

Rep. Ron Carlisle: That's a good question. My stand hasn't changed. Some of these folks deserve to be there. These are the top five violent offenders, and I don't think 85% will help them at all. There are some folks that are going to have to be there. There are some folks that we can obviously transition and hopefully there's a lot that corrections can rehab.

Chairman DeKrey: Thank you for appearing. There will be a women's group that will be submitting testimony to us on this bill, but they weren't ready this morning, so we have that testimony coming in also. Further testimony in opposition to HB 1133.

Ladd Erikson, McLean County State's Attorney: I am here to oppose the bill. I would like to highlight to the committee that this bill represents two major policy shifts in state law. The first policy shift is what is the role of the transition centers in our society. As originally proposed and this committee worked on that, those were intended to take the person that's been so removed from society for a period of time that transitioning back into normal life, where they would have responsibilities with an employer, personal care and other things like that, making a home, etc. they needed to be retrained to do that. There was support from law enforcement and the concern back in the '90s on that, that there was testimony, we had a lot of meetings about, was that this wouldn't become necessarily a dumping ground to eliminate consequences for criminal behavior in our state. From that original role, on the original bills in the '90s, the transition centers migrated into a different area. I'm not saying that's wrong, I just want to make it clear that there has been a shift from the original intent before this bill. That area was in the ability to take drug and alcohol offenders who have a history enough not to be out on the street and avoid having to be put in jail resources or dead space resources, because of our problems. Now transition centers have become a dumping ground to keep the person from having to go to the Pen and work on their real problems. There are a lot of positive things that happened in that process, but it did shift the original intent of the transition centers. Now the policy shift here in this bill, is the third one in about 7 or 8 year span. This is the 3rd policy shift, and that is let's put violent offenders in the transition centers. I think for the purposes of my testimony, what's in my mind, is the person who has one year in prison. That is a very common sentence for a judge. One year and one day creates a permanent felony record. So judges oftentimes on an aggravated assault, someone beats someone severely, some of these other crimes that are implicated here, the judge will say that they will give the person an incentive when they get out. I want to consequence them for what happened, but if

they stay clean and don't get revoked, they are going to be able to get that felony off their record. So that's a very common sentence. So under the amendment, under the first bill, it leaves that wide open; under the amendment, what you're doing, is taking the person that gets that year, under the 85% rule and subtracting the 6 months back. Where that creates implementation problems is this, there are two main areas that implicates: 1) when the judge sentences a person, there is no mandatory minimums on these crimes. What happens is that we do a presentence investigation. Then after that is done, the judge judges the facts of the case, the victim impact statements, letters from the families, whatever happened in these violent crimes and get this information from the victim advocates, the defendant brings in their side, letters from employers, friends and family and supporters. The judge looks over the material. The prosecutor makes an argument for a sentence, the defense attorney makes a counter argument for a sentence. Then the judge makes a decision based on all of the evidence before him. That decision might mean three years in the penitentiary, or it might be one year, or it might be straight probation. That is the flexibility of the judge. So this bill says that despite what the judge did in that case, we're not going to put the consequence on the person, like we've done in the other cases such as the drug cases and the alcohol cases. Despite what the judge orders, we're going to make a decision to put these people in different treatment programs, transition centers, etc. So the consequence you read in the paper from a personal judgment, really doesn't accurately reflect the amount of time a person does in prison. So the next major policy shift that this bill puts forth is changing our current system where there are consequences for violent crimes; they are clear and articulated. When a judge sentences a person to three years in the Pen for aggravated assault, or other violent crime, the person is going to do 85% of that and it's clear across the board. That does two things: 1) it makes the judge issue an honest order about what they think the person should

do. What happens in these drug cases now is the judge may want the person in the Thompkins Rehabilitation Center because they have a drug problem. That takes a four month process to go through, so what the judge does is say I'm going to pad my sentence and this is reality, they'll give them 8 months in the Pen knowing that they will be getting instructions from the Pen to give us at least 18 months sentences. So on paper, it looks like all these people have these long sentences, but the reality is, it gives them time to get them processed into TRCC and then they are rolled out of there back into society. So you see in the paper the guy got 18 months, that doesn't happen – they don't actually serve that. This what the process will do for violent felonies. So one of the things this bill will do is will apparently have judges say, if there is a 6 month window where they are going to start rolling these people out, and I would have normally given this guy a year in the Pen, but now I'm going to give them 18 months, because I want them to do at least a year. It forces that into the system; creates a problem in looking at the statistics of the judges, padding sentences to do with what he thinks the person should do. The second problem with this bill and this approach, is we get memos from the DOCR and we try to work with those folks on the jail space and other problems. What they don't want is prisoners out there that are only getting a 3 or 6 month sentence sent out to the Pen, to go through administration and all that. They tell us to work with them and keep those people in the counties and we do that. If you sentence a prisoner for a violent crime to 8 months incarceration, that person is going to stay in the McLean County jail, where they can be housed up to a year, for 8 months. The judge that sentenced the person to a year in the Pen, that person is going to be out before the person who got a lesser sentence, because they will qualify for the transition center. So when you start using the term, transitioning, a lot of offenders haven't been out of society very long, and don't need the transitioning, the re-acclimating to society. We're not moving them out, especially when you take the murderers

out here. They are out of society for 30 years. I have a lot of concerns about how this is going to work in practice. I think it will create some uncertainties also, with judges adding to sentences, counties having to house prisoners longer than people with longer sentences, who go out sooner. I think the concept is flawed. The other thing that should be considered, seems to be two polar extremes proposed by the State's executive branch this session. One is for pre-draconian type sex offender mandatory minimums that are coming, and there are concerns about some of the language there. It seems to me that the sex crimes should be looked at, as to whether they should be subject to the 85% rule. The only two that are in there now are the attack rape cases, the violent, which is a pretty rare circumstance, thankfully. The other one is the use of intoxicants. But some of these sex offenses we have in here, these people ought to be concerned about getting into these early release programs without a consequence. Safety should be a primary concern. ND has the lowest, or very close to the lowest, violent crime rate in the country. This committee can take pride in that; take credit for some of that. I think the 85% bill has something to do with that. I think the bill before you should be considered very deeply before you make changes because basically we are the success story of the country if you look at the statistics. This bill matters. I would ask that you oppose the bill. I don't think the amendment helps; there are too many implementation problems.

Rep. Meyer: You want people on parole, instead of serving their sentence. If they serve their entire sentence, they walk out of prison, they're a free man. If they opt for the parole option, they're under a great deal more restrictions, aren't they.

Ladd Erikson: I think that's a characterization that's fair. My argument is that there are consequences and then parole proceedings, where you agree to stay out of the Pen in the future. Being on supervised probation, being out on parole, to see if you can work into society

without causing other problems. The initial consequence that we tell people, if you commit a violent act against one of our citizens, there are consequences in ND, that's what I am concerned about eliminating; how that affects our overall public safety.

Chairman DeKrey: Further testimony in opposition.

Aaron Birst, ND Assoc of Counties, State's Attorney Association: (see attached testimony). In most cases where you have someone sentenced to the Pen, there is potential for probation or parole after some sort of time period. There are certain cases where somebody is given a straight time sentence; say a year and a day. Those are cases where, of course, then there wouldn't be anyone watching over that person when they are released. However, that was a decision that was decided on by the judge and the parties, and that's what they came to, that was their conclusion. It's hard then to accept the DOCR going back and saying, we would like to fix that. They weren't the party that started the action. I ask that you not support the bill as originally intended or amended.

Rep. Delmore: Do you know how many times the average inmate goes before the parole board.

Aaron Birst: I couldn't answer that. Mr. Bohn would be more appropriate for that question.

Pat Bohn: The average number of times before the parole board, that can vary based on the length of sentence. Typically if they are serving a two year sentence, they will only get there once, maybe twice. If they are serving a 5-7 year sentence, maybe twice and anything after that you could have 3-5 different hearings. What happens is that the parole board makes decisions as to when they will be seen again. There is no automatic that says you are going to be reviewed every year. The parole board, once they take the initial action, they will then refer them to a later board or they may deny them, and say we will see you in a 2010, or they may say you are denied and you're going to serve the balance of your sentence.

Aaron Birst: Just to clarify, on a point of reference, the federal system has no parole system. The time that you are sentenced to from the federal judge is the time you serve. It's certainly not my position, or the state's attorney position, to say that transition centers and the parole board don't have a function. They certainly do. But there are certainly enough inmates that are not considered violent that could benefit from the transition center. No need to go down the route with violent offenders.

Chairman DeKrey: Thank you for appearing. Further testimony in opposition. We will close the hearing.

(Reopened in the same session)

Chairman DeKrey: We will take a look at HB 1133.

Rep. Koppelman: I would move a DNP on HB 1133.

Rep. Boehning: Second.

Chairman DeKrey: Discussion? I would just mention to the committee that I serve on the pardon board and I do believe that the pardon and parole process does work. Even though this bill, on the surface, maybe doesn't look really great, I don't think it is as near as draconian as you've heard this morning. There are a lot of people, private citizens and parole board members that are involved before it ever gets to the position where somebody can go to a transition center. I do believe that, even though it costs us millions of dollars in this state in correction costs, I do believe the citizens in ND are pretty big supporters of the 85% law. I would think we would be negligent to change that at this time.

Rep. Klemin: Do you think that the written testimony that is coming, should we wait for it?

Chairman DeKrey: That is in opposition to the bill. The clerk will call the roll.

12 Yes 2 No 0 Absent

Do Not Pass

Carrier: Rep. Koppelman

Date: 1-9-07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1133

House JUDICIARY Committee

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Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By Rep. Koppelman Seconded By Rep. Boehning

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning	✓		Rep. Meyer	✓	
Rep. Charging	✓		Rep. Onstad	✓	
Rep. Dahl	✓		Rep. Wolf		✓
Rep. Heller	✓				
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar		✓			

Total (Yes) 12 No 2

Absent 0

Floor Assignment Rep. Koppelman

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

REPORT OF STANDING COMMITTEE (410)
January 9, 2007 12:11 p.m.

Module No: HR-05-0346
Carrier: Koppelman
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1133: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO NOT PASS
(12 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1133 was placed on the
Eleventh order on the calendar.

2007 TESTIMONY

HB 1133

