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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 #: /

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

**HOUSE JUDICIARY COMMITTEE
REPRESENTATIVE DUANE DEKREY, CHAIRMAN
JANUARY 9, 2007**

**PATRICK BOHN, NORTH DAKOTA DOCR-FIELD SERVICES
NORTH DAKOTA PAROLE BOARD
PRESENTING TESTIMONY RE: HB 1133**

My name is Pat Bohn and I am a program manager with the Department of Corrections-Field Services Division. I am currently assigned to the parole board and serve as the deputy clerk to the North Dakota Parole Board. I am here to testify in support of HB 1133 with some amendments.

We recognize that there is not a lot of support for HB 1133 in its current state and certainly understand the concerns we have heard. To get to the heart of the intent of this bill we are proposing amendments that will limit the amount of time for parole to a transition facility to a maximum of six months prior to the 85% release date and remove the offense of kidnapping from the list of eligible offenses.

I ask that you take a look at this on a deeper level to examine the overall benefits of this proposal. The primary motivation for this bill is to enhance public safety by giving the parole board the opportunity to review some of these cases as they near the end of their sentence. Transition allows offenders to reintegrate into society under the structure of a supervised residential setting with programming such as aftercare, mental health services, cognitive restructuring, obtaining employment, professional case management, and re-establishing positive relationships all in an effort to reduce the likelihood that they will re-offend.

1. Talk about history of 85%-Violent Crime and LE Act of 1994-Incentive Grants
2. How do you want them coming back?
3. My position is not as an advocate of the offender as much as it is about advocating for the public
4. Layers of review: a. Policy b. Parole Board c. Community Screening Team

In closing, we do not foresee droves of individuals moving out of prison via this process because the parole process will not allow for it. This change in the law will give the parole board another tool to further promote public safety by examining eligible individuals to determine if there may be a benefit to the individual and the public to move the individual back to the community in a strategic manner rather than turning them loose on the date their sentence expires.

Amended Written Version of HB 1133

Notwithstanding the provisions of section 12.1-32-09.1, the parole board may parole an offender who is convicted of a crime in violation of section 12.1-16-02, 12.1-17-02, 12.1-22-01, subdivision b of subsection 2 of section 12.1-22-02, or an attempt to commit the offense, to a transition center operated by or under contract with the department of corrections and rehabilitation no earlier than six months before the offender has served eighty-five percent of the sentence of imprisonment imposed by the court.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1133

Page 1, line 8, remove "12.1-18-01,"

Page 1, line 10, after "rehabilitation" insert "no earlier than six months"

Renumber accordingly

Testimony to the
HOUSE JUDICIARY COMMITTEE
Prepared January 9, 2007 by the North Dakota Association of Counties
Aaron Birst, Legal Counsel

CONCERNING HOUSE BILL 1133

Chairman DeKrey and members of the Committee, the North Dakota Association of Counties and the States Attorneys Association is here today to oppose House Bill 1133.

As a former criminal prosecutor, I can tell you there is nothing more satisfying then seeing an individual who has committed a violent crime be convicted and sentenced to a long period of prison time. Law enforcement and prosecutors work extremely hard to secure those convictions and judges put much thought into handing out such sentences.

Additionally, victims and family members always ask "Does this mean the defendant will actually serve this sentence?" There is comfort in the fact of telling them that under North Dakota law violent offender must serve at least 85% of there sentence behind bars. House Bill 1133 not only weakens the 85% law but essentially does away with it.

The North Dakota Association of Counties and the States Attorneys Association certainly recognize the Department of Corrections has a finite amount of space and money. However, House Bill 1133 as currently drafted applies to individuals convicted of Manslaughter, Aggravated Assault, Kidnapping, Robbery and Armed Burglary. Although "transition" centers may have there place in the criminal justice system, violent offenders should not be able to take advantage of such places.

I also note that under House Bill 1133 the Department of Correction may not even be the institution running the transition center. Based on the inmate's previous actions, the impact on victims, the work that went into securing their conviction and the judicial thought that went into the sentence it does not seems fitting that the Department of Corrections can overrule that by simply placing that offender in a transition center.

For the following reasons I ask that you do not support House Bill 1133.
Thank you.

TITLE 12.1
Criminal Code
Summary of Bills Enacted by 1995 Legislative Assembly

This memorandum summarizes 1995 legislation primarily affecting North Dakota Century Code Title 12.1. Bills primarily affecting other titles may also be summarized in this memorandum to the extent they affect this title.

The legislation relating to the criminal code may be classified in four areas: sentencing; new offenses; criminal procedure; and miscellaneous.

SENTENCING

House Bill No. 1027 provides that a court may sentence a person convicted of a felony or a Class A misdemeanor to a regional corrections center, a county jail, or to the legal and physical custody of the Department of Corrections and Rehabilitation.

House Bill No. 1152 requires a court to impose a registration requirement on any person who has pled guilty or been found guilty of a crime against a child. The bill also requires a person to register if that person is incarcerated or is on probation or parole on the effective date of the bill for a crime against a child or as a sexual offender, if the person has pled guilty or nolo contendere to, or been found guilty of, an offense in a court of another state or the federal government equivalent to those offenses for which registration is required in this state, or if the person has pled guilty to or been found guilty of a crime against a child or as a sexual offender within 10 years before the effective date of the bill. The bill provides that a person who fails to register who has previously pled guilty or been found guilty of violating the registration requirement is guilty of a Class C felony. The bill also provides that law enforcement agencies may release certain information to the public regarding a person required to register and who is about to be released into the community if the agency determines the person is a public risk and disclosure of the information is necessary for public protection.

House Bill No. 1218 requires that in all felony or Class A misdemeanor offenses in which force or threat of force is an element of the offense, the court must receive a criminal record report before sentencing the defendant. The bill expands the provisions regarding dangerous special offenders to include habitual offenders. The bill also requires that violent offenders (those convicted of murder, manslaughter, aggravated assault, kidnapping, gross sexual imposition or robbery) are not eligible for parole until at least 85 percent of the sentence imposed by the court has been served.

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.

- 4- 5. 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.
- 5- 6. 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.

Approved March 10, 1995
Filed March 10, 1995

CHAPTER 136

HOUSE BILL NO. 1218
(Representatives Carlisle, Mahoney, Wald)
(Senators Nalewaja, B. Stenehjem, Robinson)

SENTENCING OF VIOLENT OFFENDERS

AN ACT to create and enact a new section to chapter 12.1-32 of the North Dakota Century Code, relating to sentencing of violent offenders; and to amend and reenact sections 12-54.1-01, 12-54.1-03, subsection 12 of section 12.1-32-02, and section 12.1-32-09 of the North Dakota Century Code, relating to sentence reductions for good or meritorious conduct, presentence investigations, and extended sentences for special dangerous or habitual offenders.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-54.1-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-54.1-01. Performance based sentence reduction. ~~Offenders~~ Except as provided under section 5 of this Act, offenders sentenced to the penitentiary or any of its affiliated facilities are eligible to earn sentence reductions based upon performance criteria established through penitentiary rules. Performance criteria includes participation in court-ordered or staff-recommended treatment and education programs and good work performance. While incarcerated in the penitentiary or any of its affiliated facilities, an inmate may earn five days good time per month except for any sentence where the incarceration time is six months or less.

SECTION 2. AMENDMENT. Section 12-54.1-03 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12-54.1-03. Meritorious conduct sentence reduction. ~~In addition to sentence reductions under section 12-54.1-01~~ Except as provided under section 5 of this Act, offenders sentenced to the state penitentiary or any of its affiliated facilities may be awarded, as provided by penitentiary rules ~~and regulations~~ upon written recommendation of a penitentiary multidisciplinary team, lump-sum or a monthly rate of meritorious conduct sentence reductions for outstanding performance or heroic acts or as a special control and security measure. Such sentence reductions are in addition to sentence reductions under section 12-54.1-01 and may be made only after a written recommendation is made by the warden, and approved by the director of the department of corrections and rehabilitation. Any sentence reduction for special control or security measures may not exceed two days good time per month per inmate.

⁶⁷ SECTION 3. AMENDMENT. Subsection 12 of section 12.1-32-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12. Before sentencing a defendant on a felony charge under section 12.1-20-03, 12.1-20-11, 12.1-27.2-02, 12.1-27.2-03, 12.1-27.2-04, or 12.1-27.2-05, a court shall order the department of corrections and rehabilitation to conduct a presentence investigation and to prepare a presentence report. In all felony or class A misdemeanor offenses, in which force, as defined in section 12.1-01-04, or threat of force is an element of the offense or in violation of section 12.1-22-02, or an attempt to commit the offenses, a court, unless a presentence investigation has been ordered, must receive a criminal record report before the sentencing of the defendant. Unless otherwise ordered by the court, the criminal record report must be conducted by the department of corrections and rehabilitation after consulting with the prosecuting attorney regarding the defendant's criminal record. The criminal record report must be in writing, filed with the court before sentencing, and made a part of the court's record of the sentencing proceeding.

SECTION 4. AMENDMENT. Section 12.1-32-09 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12.1-32-09. Dangerous special offenders, extended - Habitual offenders - Extended sentences - Procedure.

1. A court may sentence a convicted offender to an extended sentence as a dangerous special offender or a habitual offender in accordance with the provisions of this section upon a finding of any one or more of the following:
 - a. The convicted offender is a dangerous, mentally abnormal person. The court ~~shall~~ may not make such a finding unless the presentence report, including a psychiatric examination, concludes that the offender's conduct has been characterized by persistent aggressive behavior, and that such behavior makes ~~him~~ the offender a serious danger to other persons.
 - b. The convicted offender is a professional criminal. The court ~~shall~~ may not make such a finding unless the offender is an adult and the presentence report shows that the offender has substantial income or resources derived from criminal activity.
 - c. The convicted offender is a persistent habitual offender. The court ~~shall~~ may not make such a finding unless the offender is an adult and has previously been convicted in any state or states or by the United States of two felonies of class B C or above; or of one class B felony or above plus two offenses potentially punishable by imprisonment classified below class B felony, committed at different times when the offender was an adult. For the purposes of this

subdivision, a felony conviction in another state or under the laws of the United States shall be considered a felony of class B C or above if it is punishable by a maximum term of imprisonment of ~~ten~~ five years or more.

- d. The offender was convicted of an offense which seriously endangered the life of another person, and the offender had previously been convicted of a similar offense.
- e. The offender is especially dangerous because ~~he~~ the offender used a firearm, dangerous weapon, or destructive device in the commission of the offense or during the flight therefrom.

A conviction shown on direct or collateral review or at the hearing to be invalid or for which the offender has been pardoned on the ground of innocence ~~shall~~ must be disregarded for purposes of subdivision c. In support of findings under subdivision b, it may be shown that the offender has had in his own name or under his control of income or property not explained as derived from a source other than criminal activity. For purposes of subdivision b, a substantial source of income means a source of income which for any period of one year or more exceeds the minimum wage, determined on the basis of a forty-hour week and a fifty-week year, without reference to exceptions, under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, for an employee engaged in commerce or in the production of goods for commerce, and which for the same period exceeds fifty percent of the offender's declared adjusted gross income under chapter 57-38.

2. The extended sentence may be imposed in the following manner:
 - a. If the offense for which the offender is convicted is a class A felony, the court may impose a sentence up to a maximum of life imprisonment.
 - b. If the offense for which the offender is convicted is a class B felony, the court may impose a sentence up to a maximum of imprisonment for twenty years.
 - c. If the offense for which the offender is convicted is a class C felony, the court may impose a sentence up to a maximum of imprisonment for ten years.
3. Whenever an attorney charged with the prosecution of a defendant in a court of this state for an alleged felony committed when the defendant was over the age of eighteen years has reason to believe that the defendant is a dangerous special offender or a habitual offender, ~~such~~ the attorney, at a reasonable time before trial or acceptance by the court of a plea of guilty, may sign and file with the court, and may amend, a notice specifying that the defendant is a dangerous special offender or a habitual offender who upon conviction for ~~such~~ the felony is subject to the imposition of a sentence under subsection 2, and setting out with particularity the reasons why ~~such~~ the attorney believes the defendant to be a dangerous special offender or a habitual offender. In no case ~~shall~~ may the fact that the prosecuting attorney is seeking sentencing of the defendant as a dangerous special offender or a habitual offender be disclosed to the jury. If the court finds that the filing of the notice as a

⁶⁷ Section 12.1-32-02 was also amended by section 5 of Senate Bill No. 2264,

public record may prejudice fair consideration of a pending criminal matter, it may order the notice sealed and the notice shall not be subject to subpoena or public inspection during the pendency of such criminal matter, except on order of the court, but shall be subject to inspection by the defendant alleged to be a dangerous special offender or a habitual offender and ~~has~~ the offender's counsel.

4. Upon any plea of guilty, or verdict or finding of guilt of the defendant of such felony, a hearing must be held, before sentence is imposed, by the court sitting without a jury. Except in the most extraordinary cases, the court shall obtain a presentence report and may receive a diagnostic testing report under subsection 5 of section 12.1-32-02 before holding a hearing under this subsection. The court shall fix a time for the hearing, and notice thereof must be given to the defendant and the prosecution at least five days prior thereto. The court shall permit the prosecution and counsel for the defendant, or the defendant if the defendant is not represented by counsel, to inspect the presentence report sufficiently prior to the hearing as to afford a reasonable opportunity for verification. In extraordinary cases, the court may withhold material not relevant to a proper sentence, diagnostic opinion which might seriously disrupt a program of rehabilitation, any source of information obtained on a promise of confidentiality, and material previously disclosed in open court. A court withholding all or part of a presentence report shall inform the parties of its action and place in the record the reasons therefor. The court may require parties inspecting all or part of a presentence report to give notice of any part thereof intended to be controverted. In connection with the hearing, the defendant is entitled to compulsory process, and cross-examination of such witnesses as appear at the hearing. A duly authenticated copy of a former judgment or commitment is prima facie evidence of such former judgment or commitment. If it appears by a preponderance of the information, including information submitted during the trial of such felony and the sentencing hearing and so much of the presentence report as the court relies upon, that the defendant is a dangerous special offender or a habitual offender, the court shall sentence the defendant to imprisonment for an appropriate term within the limits specified in subsection 2. The court shall place in the record its findings including an identification of the information relied upon in making such findings, and its reasons for the sentence imposed.

SECTION 5. A new section to chapter 12.1-32 of the North Dakota Century Code is created and enacted as follows:

Sentencing of violent offenders. Any offender who is convicted of a crime in violation of section 12.1-16-01, 12.1-16-02, 12.1-17-02, 12.1-18-01, subdivision a of subsection 1 or subdivision b of subsection 2 of section 12.1-20-03, section 12.1-22-01, subdivision b of subsection 2 of section 12.1-22-02, or an attempt to commit the offenses, and who receives a sentence of imprisonment is not eligible for release from confinement on any basis until eighty-five percent of the sentence imposed by the court has been served or the sentence is commuted.

Approved March 24, 1995
Filed March 27, 1995

CHAPTER 137

HOUSE BILL NO. 1223

(Representatives Hanson, Kretschmar, Wardner)
(Senators O'Connell, Freborg, Nalewaja)

PROBATION EXTENDED FOR CERTAIN OFFENSES

AN ACT to amend and reenact section 12.1-32-06.1 of the North Dakota Century Code, relating to an additional period of probation that may be imposed for certain types of offenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁶⁸ SECTION 1. AMENDMENT. Section 12.1-32-06.1 of the 1993 Supplement to 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.

1. Except as provided in this section, the length of the period of 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. If the defendant has plead 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 period of probation not to exceed five years.
3. ~~In cases where~~ If the defendant has plead 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.
- ~~3-~~ 4. In felony cases, in consequence of violation of probation conditions, the court may impose an additional period 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.

⁶⁸ Section 12.1-32-06.1 was also amended by section 2 of Senate Bill No. 2040, chapter 135.

Introduced by

Representatives Carlisle, Mahoney, Wald

Senators Nalewaja, B. Stenehjem, Robinson

1 A BILL for an Act to create and enact a new section to chapter 12.1-32 of the
2 North Dakota Century Code, relating to sentencing of violent offenders; and
3 to amend and reenact sections 12-54.1-01, 12-54.1-03, subsection 12 of
4 section 12.1-32.02, and section 12.1-32-09 of the North Dakota Century Code,
5 relating to sentence reductions for good or meritorious conduct, presentence
6 investigations, and extended sentences for special dangerous or habitual
7 offenders.

8 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

9 SECTION 1. AMENDMENT. Section 12-54.1-01 of the 1993 Supplement to
10 the North Dakota Century Code is amended and reenacted as follows:

11 12-54.1-01. Performance based sentence reduction. Offenders Except as
12 provided under section 5 of this Act, offenders sentenced to the penitentiary
13 or any of its affiliated facilities are eligible to earn sentence reductions
14 based upon performance criteria established through penitentiary rules.
15 Performance criteria includes participation in court-ordered or
16 staff-recommended treatment and education programs and good work performance.
17 While incarcerated in the penitentiary or any of its affiliated facilities,
18 an inmate may earn five days good time per month except for any sentence
19 where the incarceration time is six months or less.

20 SECTION 2. AMENDMENT. Section 12-54.1-03 of the 1993 Supplement to
21 the North Dakota Century Code is amended and reenacted as follows:

1 12-54.1-03. Meritorious conduct sentence reduction. ~~In addition to~~
2 ~~sentence reductions under section 12-54.1-01~~ Except as provided under
3 section 5 of this Act, offenders sentenced to the state penitentiary or any
4 of its affiliated facilities may be awarded, as provided by penitentiary
5 rules ~~and regulations~~ upon written recommendation of a penitentiary
6 multidisciplinary team, lump-sum or a monthly rate of meritorious conduct
7 sentence reductions for outstanding performance or heroic acts or as a
8 special control and security measure. Such sentence reductions are in
9 addition to sentence reductions under section 12-54.1-01 and may be made only
10 after a written recommendation is made by the warden, and approved by the
11 director of the department of corrections and rehabilitation. Any sentence
12 reduction for special control or security measures may not exceed two days
13 good time per month per inmate.

14 **SECTION 3. AMENDMENT.** Subsection 12 of section 12.1-32-02 of the 1993
15 Supplement to the North Dakota Century Code is amended and reenacted as
16 follows:

17 12. Before sentencing a defendant on a felony charge under section
18 12.1-20-03, 12.1-20-11, 12.1-27.2-02, 12.1-27.2-03, 12.1-27.2-04,
19 or 12.1-27.2-05, a court shall order the department of corrections
20 and rehabilitation to conduct a presentence investigation and to
21 prepare a presentence report. In all other crimes of violence in
22 which force, as defined in section 12.1-01-04, or threat of force
23 is an element of the offense or in violation of section 12.1-22-02,
24 a court, at a minimum, shall order the department of corrections
25 and rehabilitation to make a criminal records check and include
26 this information in a report for the court.

27 **SECTION 4. AMENDMENT.** Section 12.1-32-09 of the 1993 Supplement to
28 the North Dakota Century Code is amended and reenacted as follows:

1 12.1-32-09. Dangerous special offenders, ~~extended~~ - Habitual offenders
2 - Extended sentences - Procedure.

3 1. A court may sentence a convicted offender to an extended sentence
4 as a dangerous special offender or a habitual offender in
5 accordance with the provisions of this section upon a finding of
6 any one or more of the following:

7 a. The convicted offender is a dangerous, mentally abnormal
8 person. The court ~~shall~~ may not make such a finding unless the
9 presentence report, including a psychiatric examination,
10 concludes that the offender's conduct has been characterized by
11 persistent aggressive behavior, and that such behavior makes
12 him the offender a serious danger to other persons.

13 b. The convicted offender is a professional criminal. The court
14 ~~shall~~ may not make such a finding unless the offender is an
15 adult and the presentence report shows that the offender has
16 substantial income or resources derived from criminal activity.

17 c. The convicted offender is a ~~persistent~~ habitual offender. The
18 court ~~shall~~ may not make such a finding unless the offender is
19 an adult and has previously been convicted in any state or
20 states or by the United States of two felonies of class B C or
21 above, ~~or of one class B felony or above plus two offenses~~
22 ~~potentially punishable by imprisonment classified below class B~~
23 ~~felony~~, committed at different times when the offender was an
24 adult. For the purposes of this subdivision, a felony
25 conviction in another state or under the laws of the United
26 States shall be considered a felony of class B C or above if it
27 is punishable by a maximum term of imprisonment of ~~ten~~ five
28 years or more.

1 d. The offender was convicted of an offense which seriously
2 endangered the life of another person, and the offender had
3 previously been convicted of a similar offense.

4 e. The offender is especially dangerous because ~~he~~ the offender
5 used a firearm, dangerous weapon, or destructive device in the
6 commission of the offense or during the flight therefrom.

7 A conviction shown on direct or collateral review or at the hearing
8 to be invalid or for which the offender has been pardoned on the
9 ground of innocence ~~shall~~ must be disregarded for purposes of
10 subdivision c. In support of findings under subdivision b, it may
11 be shown that the offender has had ~~in his own name or under his~~
12 control of income or property not explained as derived from a
13 source other than criminal activity. For purposes of subdivision
14 b, a substantial source of income means a source of income which
15 for any period of one year or more exceeds the minimum wage,
16 determined on the basis of a forty-hour week and a fifty-week year,
17 without reference to exceptions, under section 6(a)(1) of the Fair
18 Labor Standards Act of 1938, as amended, for an employee engaged in
19 commerce or in the production of goods for commerce, and which for
20 the same period exceeds fifty percent of the offender's declared
21 adjusted gross income under chapter 57-38.

22 2. The extended sentence may be imposed in the following manner:

23 a. If the offense for which the offender is convicted is a class A
24 felony, the court may impose a sentence up to a maximum of life
25 imprisonment.

26 b. If the offense for which the offender is convicted is a class B
27 felony, the court may impose a sentence up to a maximum of
28 imprisonment for twenty years.

- 1 c. If the offense for which the offender is convicted is a class C
2 felony, the court may impose a sentence up to a maximum of
3 imprisonment for ten years.
- 4 3. Whenever an attorney charged with the prosecution of a defendant in
5 a court of this state for an alleged felony committed when the
6 defendant was over the age of eighteen years has reason to believe
7 that the defendant is a dangerous special offender or a habitual
8 offender, ~~such~~ the attorney, at a reasonable time before trial or
9 acceptance by the court of a plea of guilty, may sign and file with
10 the court, and may amend, a notice specifying that the defendant is
11 a dangerous special offender or a habitual offender who upon
12 conviction for ~~such~~ the felony is subject to the imposition of a
13 sentence under subsection 2, and setting out with particularity the
14 reasons why ~~such~~ the attorney believes the defendant to be a
15 dangerous special offender or a habitual offender. In no case
16 ~~shall~~ may the fact that the prosecuting attorney is seeking
17 sentencing of the defendant as a dangerous special offender or a
18 habitual offender be disclosed to the jury. If the court finds
19 that the filing of the notice as a public record may prejudice fair
20 consideration of a pending criminal matter, it may order the notice
21 sealed and the notice shall not be subject to subpoena or public
22 inspection during the pendency of such criminal matter, except on
23 order of the court, but shall be subject to inspection by the
24 defendant alleged to be a dangerous special offender or a habitual
25 offender and ~~his~~ the offender's counsel.
- 26 4. Upon any plea of guilty, or verdict or finding of guilt of the
27 defendant of such felony, a hearing must be held, before sentence
28 is imposed, by the court sitting without a jury. Except in the
29 most extraordinary cases, the court shall obtain a presentence

1 report and may receive a diagnostic testing report under
2 subsection 5 of section 12.1-32-02 before holding a hearing under
3 this subsection. The court shall fix a time for the hearing, and
4 notice thereof must be given to the defendant and the prosecution
5 at least five days prior thereto. The court shall permit the
6 prosecution and counsel for the defendant, or the defendant if the
7 defendant is not represented by counsel, to inspect the presentence
8 report sufficiently prior to the hearing as to afford a reasonable
9 opportunity for verification. In extraordinary cases, the court
10 may withhold material not relevant to a proper sentence, diagnostic
11 opinion which might seriously disrupt a program of rehabilitation,
12 any source of information obtained on a promise of confidentiality,
13 and material previously disclosed in open court. A court
14 withholding all or part of a presentence report shall inform the
15 parties of its action and place in the record the reasons therefor.
16 The court may require parties inspecting all or part of a
17 presentence report to give notice of any part thereof intended to
18 be controverted. In connection with the hearing, the defendant is
19 entitled to compulsory process, and cross-examination of such
20 witnesses as appear at the hearing. A duly authenticated copy of a
21 former judgment or commitment is prima facie evidence of such
22 former judgment or commitment. If it appears by a preponderance of
23 the information, including information submitted during the trial
24 of such felony and the sentencing hearing and so much of the
25 presentence report as the court relies upon, that the defendant is
26 a dangerous special offender or a habitual offender, the court
27 shall sentence the defendant to imprisonment for an appropriate
28 term within the limits specified in subsection 2. The court shall
29 place in the record its findings including an identification of the

Fifty-fourth
Legislative Assembly

1 information relied upon in making such findings, and its reasons
2 for the sentence imposed.

3 **SECTION 5.** A new section to chapter 12.1-32 of the North Dakota
4 Century Code is created and enacted as follows:

5 Sentencing of violent offenders. Any offender who is convicted of a
6 crime in violation of section 12.1-16-01, 12.1-16-02, 12.1-17-02, 12.1-18-01,
7 subdivision a of subsection 1 or subdivision b of subsection 2 of section
8 12.1-20-03, or section 12.1-22-01 and who receives a sentence of imprisonment
9 is not eligible for release from confinement on any basis until eighty-five
10 percent of the sentence imposed by the court has been served or the sentence
11 is commuted.

1995 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1218

House JUDICIARY Committee

Subcommittee on _____

Identify or
check where
appropriate

Conference Committee _____

Original Hearing Date _____ January 24, 1995 _____

Subsequent Hearing Date _____

Tape Number 1 /Side A Meter # 70

/Side B _____ Meter # _____

Committee Clerk Signature *James U. Raib*

Minutes:

RON CARLISLE, REPRESENTATIVE DISTRICT 30: Testified in support of the bill.
(See attached testimony and proposed amendments). (Meter #72)

DONNA NALEWAJA, SENATOR DISTRICT 45: Testified in support of the bill. The three provisions on the criminal background checks before sentencing are very important. Especially for the parole and probation people that might be involved later on. Habitual offenders have to be addressed and truth in sentencing serving eighty-five percent of the sentence will certainly be a deterrent to crime in North Dakota. This bill says to those who are contemplating criminal activity that this is not the state to do business. We care about our families, children, law enforcement officers. This state will not tolerate that. These get tough on crime bills is the direction that North Dakota should go. Ask for a favorable consideration on the bill. Meter #720.

BOB BENNETT, ATTORNEY GENERAL'S OFFICE: The attorney generals support the passage of this bill. On the proposed amendments, there was a little bit of confusion as to what offenses that might cover. There was some concern that it might include class B misdemeanor offenses. Such as, a simple assault might also bring into play a municipal court violations. The first amendment limits the crimes of violence to felony or class A misdemeanor offenses. Continued to explain the amendments and the fiscal note. Meter #870.

BILL BROER, DIRECTOR, BUREAU OF CRIMINAL INVESTIGATION: Testified in favor of the bill. (See attached testimony). Meter #1600

ROBERT HARMS, COUNSEL TO GOVERNOR SCHAEFFER: Testified in support of the bill. The bill has been a coordinated effort between the legislators that

Page Number 2
Committee Name JUDICIARY
Bill/Resolution Number HB 1218
Date January 24, 1995

are involved, the Department of Corrections, DCI, the Attorney General's office, and the Governor's office. In dealing with these three issues, it still allows flexibility in the States Attorney's office and the court system. It is sensitive to the essential impact that this bill could have on the Department of Corrections. We think it is a measured response to deal with these issues. There is a popular phrase these days that we should be tough on crime. This bill is essentially smart in dealing with the solutions. Meter #2037

Committee discussion on the fiscal note.

ELAINE LITTLE, DIRECTOR, DEPARTMENT OF CORRECTIONS: Testified in support of the bill. Explained the current national crime bill, and the affect on the fiscal note. (See attached testimony). Side B, Meter #4460.

TIM SCHUETZLE, WARDEN, STATE PENITENTIARY: Testified in support of the bill. (See attached testimony). Meter #5775.

WARREN EMMER, DIRECTOR, PAROLE AND PROBATION DIVISION: Testified in support of the bill. (See attached testimony). Tape 2, Side A, Meter #0.

DAVID BIRRENKOTT, PAROLE OFFICER II, FARGO DISTRICT: Testified in favor of the bill. (See attached testimony). Meter #1127.

JACKIE JENSEN, PAROLE OFFICER, MINOT DISTRICT: Testified in support of the bill. (See attached testimony). Meter #1430.

CYNTHIA FELAND, NORTH DAKOTA STATES ATTORNEYS ASSOCIATION: Overall, we are in strong support of this bill with the amendments. Specifically with reference to sections four and five, we are strongly in support with these habitual offenders and the truth of sentencing. We support additional language to include the charges of burglary and theft. We strongly support this legislation with the amendments under section three. We have some strong concerns without the amendments. (Gave background on criminal checks). The amendments assures that the information will be a permanent part of the record rather than an oral statement during the sentencing. These amendments add a complete additional step in the process. After the defendant has made a plea of guilty, we would basically halt the process. A separate criminal history would be done and provided to the court, then separate proceeding would have to be set up for sentencing. This really isn't necessary. We recommend a do pass with the amendments proposed this morning. Meter #1860.

Committee discussion on requirements for criminal records check and the report.

ACTION: February 7, 1995 amendments were adopted for HB 1218. Voice vote taken, passed. Moved by Rep. Koppleman, seconded by Rep. Nottlestad. Vote 14 yes, 0 no, 0 absent. Carrier Rep. Koppelman.

FISCAL NOTE

(Return original and 10 copies)

Bill/Resolution No.: _____

Amendment to: HB 1213

Requested by Legislative Council

Date of Request: 2-13-95

- 1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, and cities.

Narrative:

Section 5 of the bill provides that any offender who commits the crimes of murder, attempted murder, aggravated assault, robbery, kidnapping, or gross sexual imposition (with force) must serve 85% of their prison sentence prior to being eligible for parole. Based on Department of Corrections data, from January 1, 1992 through December 31, 1994, there were 16 offenders released on parole prior to serving 85% of their sentence.

Only offenders sentenced after August 1995 would be affected by this bill. Since most violent offenders have fairly lengthy prison sentences, the impact of this bill would be small during the

(CONTINUED ON FOLLOWING PAGE)

- 2. State fiscal effect in dollar amounts:

Table with 7 columns: 1993-95 Biennium (General Fund, Special Fund), 1995-1997 Biennium (General Fund, Special Fund), 1997-99 Biennium (General Fund, Special Fund). Rows: Revenues, Expenditures.

- 3. What, if any, is the effect of this measure on the appropriation for your agency or department:
a. For rest of 1993-95 biennium: None
b. For the 1995-97 biennium: \$58,500
c. For the 1997-99 biennium: \$136,500

- 4. County and City fiscal effect in dollar amounts:

Table with 6 columns: 1993-95 Biennium (Counties, Cities), 1995-1997 Biennium (Counties, Cities), 1997-99 Biennium (Counties, Cities).

If additional space is needed, attach a supplemental sheet.

Date Prepared: 02/17/95

Signed [Signature]

Typed Name Charles Placek

Department DOCR/Parole and Probation

Phone Number 701-328-6198

NARRATIVE (CONTINUED)

next two biennia. The full impact of this bill would be experienced in the 2002-2004 biennium and beyond. At that time the impact would be approximately 10 inmates (based on past data).

Based on the length of the paroles during the past three year period and assuming the parol given during the next few years would be similar to the past three years, the impact of the bill will be as follows:

Cost required to house inmates to meet the 85% truth in sentencing:

1st year of 1995-97 biennium	=	\$7,500
2nd year of 1995-97 biennium	=	\$51,000
1st year of 1997-99 biennium	=	\$60,000
2nd year of 1997-99 biennium	=	\$76,500
2002-2004 biennium and beyond - 10 beds	=	\$365,000

Since the passage of HB 1218 would allow North Dakota to access federal crime bill funds under the "Truth-in Sentencing Prison Construction Grant Program," and the "Violent Offender Incarceration Prison Construction Grant Program," 75% of the fiscal impact could be funded through these programs if Congress appropriates funds as projected under the Crime Bill. The funds could be utilized to house inmates in county jails or other correctional facilities across the state or could be utilized to replace federal income allowing for the return of federal inmates to the BOP thereby opening up cells at the prison for the housing of truth-in sentencing inmates.

Impact (on Department) of Truth-in Sentencing

Present biennium	\$0
1995-97 biennium	\$58,500
1997-99 biennium	\$136,500

	<u>1995-1997 Biennium</u>		<u>1997-99 Biennium</u>	
	<u>General Fund</u>	<u>Special Fund</u>	<u>General Fund</u>	<u>Special Fund</u>
Revenues:	0	\$43,875	0	\$102,375
Expenditures:	\$14,625	\$43,875	\$34,125	\$102,375

The Department estimates that Sections 3 and 4 of the Bill would have no fiscal impact.

REVISED
FISCAL NOTE

(Return original and 10 copies)

Bill/Resolution No.: HB 1218

Amendment to: _____

Requested by Legislative Council

Date of Request: _____

1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, and cities.

Narrative:

Section 5 of the bill provides that any offender who commits the crimes of murder, attempted murder, aggravated assault, robbery, kidnapping, or gross sexual imposition (with force) must serve 85% of their prison sentence prior to being eligible for parole. Based on Department of Corrections data, from January 1, 1992 through December 31, 1994, there were 16 offenders released on parole prior to serving 85% of their sentence.

Only offenders sentenced after August 1995 would be affected by this bill. Since most violent offenders have fairly lengthy prison sentences, the impact of this bill would be small during the

(CONTINUED ON FOLLOWING PAGE)

2. State fiscal effect in dollar amounts:

	1993-95 Biennium		1995-1997 Biennium		1997-99 Biennium	
	General Fund	Special Fund	General Fund	Special Fund	General Fund	Special Fund
Revenues:	0	0	0	43,875	0	102,375
Expenditures:	0	0	14,625	43,875	34,125	102,375

3. What, if any, is the effect of this measure on the appropriation for your agency or department:

a. For rest of 1993-95 biennium: None

b. For the 1995-97 biennium: \$58,500

c. For the 1997-99 biennium: \$136,500

4. County and City fiscal effect in dollar amounts:

	1993-95 Biennium		1995-1997 Biennium		1997-99 Biennium	
	Counties	Cities	Counties	Cities	Counties	Cities

If additional space is needed,

attach a supplemental sheet.

Date Prepared: 02/02/95

Signed Elaine Little

Typed Name Elaine Little

Department Department of Corrections & Rehabilitation

Phone Number 701-328-6198

NARRATIVE (CONTINUED)

next two biennia. The full impact of this bill would be experienced in the 2002-2004 biennium and beyond. At that time the impact would be approximately 10 inmates (based on past data).

Based on the length of the paroles during the past three year period and assuming the paroles given during the next few years would be similar to the past three years, the impact of the bill will be as follows:

Cost required to house inmates to meet the 85% truth in sentencing:

1st year of 1995-97 biennium	= \$7,500
2nd year of 1995-97 biennium	= \$51,000
1st year of 1997-99 biennium	= \$60,000
2nd year of 1997-99 biennium	= \$76,500
2002-2004 biennium and beyond - 10 beds	= \$365,000

Since the passage of HB 1218 would allow North Dakota to access federal crime bill funds under the "Truth-in Sentencing Prison Construction Grant Program," and the "Violent Offender Incarceration Prison Construction Grant Program," 75% of the fiscal impact could be funded through these programs if Congress appropriates funds as projected under the Crime Bill. The funds could be utilized to house inmates in county jails or other correctional facilities across the state or could be utilized to replace federal income allowing for the return of federal inmates to the BOP thereby opening up cells at the prison for the housing of truth-in sentencing inmates.

Impact (on Department) of Truth-in Sentencing

Present biennium	\$0
1995-97 biennium	\$58,500
1997-99 biennium	\$136,500

	<u>1995-1997 Biennium</u>		<u>1997-99 Biennium</u>	
	<u>General Fund</u>	<u>Special Fund</u>	<u>General Fund</u>	<u>Special Fund</u>
Revenues:	0	\$43,875	0	\$102,375
Expenditures:	\$14,625	\$43,875	\$34,125	\$102,375

The Department estimates that Sections 3 and 4 of the Bill would have no fiscal impact.

REVISED
FISCAL NOTE

(Return original and 10 copies)

Bill/Resolution No.: HB 1218

Amendment to: _____

Requested by Legislative Council

Date of Request: 01/11/95

1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, and cities.

Narrative:

Section 5 of the bill provides that any offender who commits the crimes of murder, attempted murder, aggravated assault, robbery, kidnapping, or gross sexual imposition (with force) must serve 85 % of their prison sentence prior to being eligible for parole. Based on Department of Corrections data, from January 1, 1992 through December 31, 1994, there were 16 offenders released on parole prior to serving 85% of their sentence.

Only offenders sentenced after August 1995 would be affected by this bill. Since most violent offenders have fairly lengthy prison sentences, the impact of this bill would be small during the

(CONTINUED ON FOLLOWING PAGE)

2. State fiscal effect in dollar amounts:

	<u>1993-95</u> <u>Biennium</u>		<u>1995-1997</u> <u>Biennium</u>		<u>1997-99</u> <u>Biennium</u>	
	<u>General</u> <u>Fund</u>	<u>Special</u> <u>Fund</u>	<u>General</u> <u>Fund</u>	<u>Special</u> <u>Fund</u>	<u>General</u> <u>Fund</u>	<u>Special</u> <u>Fund</u>
Revenues:	0	0	0	48,875	0	107,375
Expenditures:	0	0	38,425	48,875	52,325	107,375

3. What, if any, is the effect of this measure on the appropriation for your agency or department:
- a. For rest of 1993-95 biennium: None
- b. For the 1995-97 biennium: \$87,300
- c. For the 1997-99 biennium: \$159,700

4. County and City fiscal effect in dollar amounts:

	<u>1993-95</u> <u>Biennium</u>		<u>1995-1997</u> <u>Biennium</u>		<u>1997-99</u> <u>Biennium</u>	
	<u>Counties</u>	<u>Cities</u>	<u>Counties</u>	<u>Cities</u>	<u>Counties</u>	<u>Cities</u>

If additional space is needed,
attach a supplemental sheet.

Date Prepared: 01/20/95

Signed Elaine Little

Typed Name Elaine Little

Department Department of Corrections & Rehabilitation

Phone Number 701-328-6198

NARRATIVE (CONTINUED)

next two biennia. The full impact of this bill would be experienced in the 2002-2004 biennium and beyond. At that time the impact would be approximately 10 inmates (based on past data).

Based on the length of the paroles during the past three year period and assuming the paroles given during the next few years would be similar to the past three years, the impact of the bill will be as follows:

Cost required to house inmates to meet the 85% truth in sentencing:

1st year of 1995-97 biennium	= \$7,500
2nd year of 1995-97 biennium	= \$51,000
1st year of 1997-99 biennium	= \$60,000
2nd year of 1997-99 biennium	= \$76,500
2002-2004 biennium and beyond - 10 beds	= \$365,000

Since the passage of HB 1218 would allow North Dakota to access federal crime bill funds under the "Truth-in Sentencing Prison Construction Grant Program," and the "Violent Offender Incarceration Prison Construction Grant Program," 75% of the fiscal impact could be funded through these programs if Congress appropriates funds as projected under the Crime Bill. The funds could be utilized to house inmates in county jails or other correctional facilities across the state or could be utilized to replace federal income allowing for the return of federal inmates to the BOP thereby opening up cells at the prison for the housing of truth-in sentencing inmates.

Impact (on Department) of Truth-in Sentencing

Present biennium	\$0
1995-97 biennium	\$58,500
1997-99 biennium	\$136,500

	<u>1995-1997 Biennium</u>		<u>1997-99 Biennium</u>	
	<u>General Fund</u>	<u>Special Fund</u>	<u>General Fund</u>	<u>Special Fund</u>
Revenues:	0	\$43,875	0	\$102,375
Expenditures:	\$14,625	\$43,875	\$34,125	\$102,375

Section 3 of this Bill provides that in crimes of violence in which force or threat of force is an element of the offense, the court must order a criminal history check to be completed by the Department of Corrections. For the purposes of this fiscal note we included murder, attempted murder, kidnapping, arson, gross sexual imposition, robbery, aggravated assault, terrorizing, and reckless endangerment as violent crimes.

Based on these crimes the Department would complete approximately 200 additional criminal history checks for the court each biennium. In order to expedite the completion of the reports, the Department would purchase equipment costing \$5,600 and incur ongoing line charges of \$13,200 per biennium. Based upon a cost of \$50 to complete a criminal history check, the Department would incur an additional \$10,000 per biennium. Based on historical collection data, half of this cost could be collected from the offenders. The cost for the 1995-97 biennium would be \$28,800 of which \$23,800 would be general fund, and \$5,000 would be special fund. The cost for the 1997-99 biennium would be \$23,200, of which \$18,200 would be general fund and \$5,000 special funds.

The Department estimates that Section 4 of the Bill would have no fiscal impact.

WORKSHEET

This worksheet charts the additional bedspaces that would be needed at the prison based on the number and length of paroles granted to violent offenders (prior to the offender serving 85% of his/her sentence) during the past three years, and projects the impact over the next four biennia. The average additional bedspace needed was calculated as follows:

	FIRST BIENNIUM 1995-1997		SECOND BIENNIUM 1997-1999		THIRD BIENNIUM 1999-2002		FOURTH BIENNIUM 2002-2004	
	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 6	YEAR 7	YEAR 8
JULY		///	///	///	////////	////////	////////	//////////
AUGUST		///	////	///	////////	////////	////////	//////////
SEPTEMBER		//	////	///	////////	////////	////////	//////////
OCTOBER		//	////	///	////////	////////	////////	//////////
NOVEMBER		//	////	////	////////	////////	////////	////////
DECEMBER		///	////	////	////////	////////	////////	//////////
JANUARY		///	///	////	////////	////////	////////	//////////
FEBRUARY		///	///	////	////////	////////	////////	//////////
MARCH		///	///	////	////////	////////	////////	//////////
APRIL	/	////	////	//////	////////	//////////	////////	//////////
MAY	/	////	///	//////	////////	//////////	////////	//////////
JUNE	//	////	/	//////	////////	//////////	////////	//////////

FISCAL NOTE

(Return original and 10 copies)

Bill/Resolution No.: HB 1218

Amendment to: _____

Requested by Legislative Council

Date of Request: 01/11/95

- 1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, and cities.

Narrative:

Section 5 of the bill provides that any offender who commits the crimes of murder, attempted murder, aggravated assault, robbery, kidnapping, or gross sexual imposition (with force) must serve 85% of their prison sentence prior to being eligible for parole. Based on Department of Corrections data, from January 1, 1992 through December 31, 1994, there were 16 offenders released on parole prior to serving 85% of their sentence. Based on the length of the paroles during this three year period and assuming the paroles given during the next few years would be similar to the past three years, the impact of the bill will be as follows:

(CONTINUED ON FOLLOWING PAGE)

- 2. State fiscal effect in dollar amounts:

Table with 7 columns: 1993-95 Biennium (General Fund, Special Fund), 1995-1997 Biennium (General Fund, Special Fund), 1997-99 Biennium (General Fund, Special Fund). Rows: Revenues, Expenditures.

- 3. What, if any, is the effect of this measure on the appropriation for your agency or department:

- a. For rest of 1993-95 biennium: None
b. For the 1995-97 biennium: \$226,050
c. For the 1997-99 biennium: \$315,200

- 4. County and City fiscal effect in dollar amounts:

Table with 7 columns: 1993-95 Biennium (Counties, Cities), 1995-1997 Biennium (Counties, Cities), 1997-99 Biennium (Counties, Cities).

If additional space is needed, attach a supplemental sheet.

Date Prepared: 01/09/95

Signed Elaine Little

Typed Name Elaine Little

Department Department of Corrections & Rehabilitation

Phone Number 701-328-6198

NARRATIVE (CONTINUED)

Average additional beds required to continue to house inmates at the Penitentiary to meet the 85% truth in sentencing:

1st year of 1995-97 biennium - 4 beds	=	\$73,000
2nd year of 1995-97 biennium - 9 beds	=	\$164,250
1st year of 1997-99 biennium - 6 beds	=	\$109,500
2nd year of 1997-99 biennium - 10 beds	=	\$182,500
1999-2001 biennium - 10 beds	=	\$365,000

Since the passage of HB 1218 would allow North Dakota to access federal crime bill funds under the "Truth-in Sentencing Prison Construction Grant Program," and the "Violent Offender Incarceration Prison Construction Grant Program," 75% of the fiscal impact could be funded through these programs if Congress appropriates funds as projected under the Crime Bill. The funds could be utilized to house inmates in county jails or other correctional facilities across the state or could be utilized to replace federal income allowing for the return of federal inmates to the BOP thereby opening up cells at the prison for the housing of truth-in sentencing inmates.

Impact (on Department) of Truth-in Sentencing

Present biennium	\$0
1995-97 biennium	\$237,250
1997-99 biennium	\$292,000

	<u>1995-1997 Biennium</u>		<u>1997-99 Biennium</u>	
	<u>General Fund</u>	<u>Special Fund</u>	<u>General Fund</u>	<u>Special Fund</u>
Revenues:	0	\$177,938	0	\$219,000
Expenditures:	\$59,312	\$177,938	\$73,000	\$219,000

Section 3 of this Bill provides that in crimes of violence in which force or threat of force is an element of the offense, the court must order a criminal history check to be completed by the Department of Corrections. For the purposes of this fiscal note we included murder, attempted murder, kidnapping, arson, gross sexual imposition, robbery, aggravated assault, terrorizing, and reckless endangerment as violent crimes.

Based on these crimes the Department would complete approximately 200 additional criminal history checks for the court each biennium. In order to expedite the completion of the reports, the Department would purchase equipment costing \$5,600 and incur ongoing line charges of \$13,200 per biennium. Based upon a cost of \$50 to complete a criminal history check, the Department would incur an additional \$10,000 per biennium. Based on historical collection data, half of this cost could be collected from the offenders. The cost for the 1995-97 biennium would be \$28,800 of which \$23,800 would be general fund, and \$5,000 would be special fund. The cost for the 1997-99 biennium would be \$23,200, of which \$18,200 would be general fund and \$5,000 special funds.

The Department estimates that Section 4 of the Bill would have no fiscal impact.

WORKSHEET

This worksheet charts the additional bedspaces that would be needed at the prison based on the number and length of paroles granted to violent offenders (prior to the offender serving 85% of his/her sentence) during the past three years, and projects the impact over the next two biennia. The average additional bedspace needed was calculated as follows:

	FY 1996	FY 1997	FY 1998	FY 1999
JULY 1995		////////	//////	////////
AUGUST 1995		////////	//////	////////
SEPTEMBER 1995		////////	//////	////////
OCTOBER 1995	//	//////////	//////	//////
NOVEMBER 1995	//	//////////	//////	//////
DECEMBER 1995	///	//////////	//////	////////
JANUARY 1996	////	//////////	//////	//////////
FEBRUARY 1996	////	//////////	//////	//////////
MARCH 1996	//////	//////////	//////	//////////
APRIL 1996	//////	//////////	//////	//////////
MAY 1996	////////	//////////	//////	//////////
JUNE 1996	////////	////////	//////	//////////
TOTAL AVERAGE	48 ÷ 12 = 4	112 ÷ 12 = 9	69 ÷ 12 = 6	115 ÷ 12 = 10

REPORT OF STANDING COMMITTEE

HB 1218: Judiciary Committee (Rep. Kretschmar, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1218 was placed on the Sixth order on the calendar.

Page 1, line 4, replace "12.1-32.02" with "12.1-32-02"

Page 2, line 21, replace "other crimes of violence" with "felony or class A misdemeanor offenses,"

Page 2, line 23, after the underscored comma insert "or an attempt to commit the offenses,"

Page 2, line 24, replace "at a minimum, shall order the department of corrections" with "unless a presentence investigation has been ordered, must receive a criminal record report before the sentencing of the defendant. Unless otherwise ordered by the court, the criminal record report must be conducted by the department of corrections and rehabilitation after consulting with the prosecuting attorney regarding the defendant's criminal record. The criminal record report must be in writing, filed with the court before sentencing, and made a part of the court's record of the sentencing proceeding."

Page 2, remove lines 25 and 26

Page 7, line 8, remove "or" and after "12.1-22-01" insert ", subdivision b of subsection 2 of section 12.1-22-02, or an attempt to commit the offenses,"

Renumber accordingly

JANUARY 24, 1995

TESTIMONY

HB 1218
BY REP. RON CARLISLE

CHAIRMAN KRETSCHMAR AND MEMBERS OF THE HOUSE JUDICIARY
COMMITTEE, FOR THE RECORD I AM REPRESENTATIVE RON CARLISLE, DISTRICT
30.

GENERALLY, HB 1218 DEALS WITH THE MOST VIOLENT OFFENDERS AND
REPEAT OFFENDERS AND SENDS AN APPROPRIATE MESSAGE. HB 1218 ALSO
HEIGHTENS THE PUBLIC'S AND COURT'S AWARENESS TO CONCERNS. THIS BILL
STILL ALLOWS COURT DISCRETION IN APPROPRIATE CASES, AND IS SENSITIVE
TO COST IMPACT TO CORRECTIONS RESOURCES AND MANAGEMENT OF PRISON
POPULATIONS.

OVERALL, NORTH DAKOTA IS CURRENTLY DEALING WITH OFFENDERS
PROPERLY. WE HAVE ONE OF THE LOWEST VIOLENT CRIME RATES IN THE
NATION. NORTH DAKOTA HAS THE OPPORTUNITY TO KEEP THAT RECORD
INTACT. HB 1218 ADDRESSES 3 AREAS -- CRIMINAL RECORDS CHECKS,
HABITUAL OFFENDERS, AND TRUTH IN SENTENCING -- THE 85% RULE.

alf

JANUARY 24, 1995

SUMMARY OF HOUSE BILL 1218

BY REP. RON CARLISLE

Sections 1 and 2 limit good time and meritorious conduct sentence reductions for those inmates imprisoned for offenses subject to the 85 percent service of imprisonment sentence requirements of section 5 of this bill.

Section 3 requires the court, prior to sentencing a defendant for certain offenses, to receive a criminal history records check of the person to be sentenced.

The proposed amendments to section 3 of House Bill 1218, if adopted, would cause subsection 12 of section 12.1-32-02 of the North Dakota Century Code to read as follows:

12. Before sentencing a defendant on a felony charge under section 12.1-20-03, 12.1-20-11, 12.1-27.2-02, 12.1-27.2-03, 12.1-27.2-04, or 12.1-27.2-05, a court shall order the department of corrections and rehabilitation to conduct a presentence investigation and to prepare a presentence report. In all felony and class A misdemeanor offenses in which force, as defined in section 12.1-01-04, or threat of force is an element of the offense, or in violation of section 12.1-22-02, a court, at a minimum, shall order the department of corrections and rehabilitation to make a criminal records check and include this information in a report for the court if such information has not been provided to the court by the prosecuting attorney before or at the time of sentencing.

Class A misdemeanor offenses within this records check requirement includes preventing arrest (12.1-08-02), interference with elections (12.1-14-02), assault (12.1-17-01.1), menacing (12.1-17-05), harassment (12.1-17-07 (1)), and other similarly classified offenses which may involve force or threat of force.

Section 12.1-22-02 referred to in section 3 of this bill relates to the class B felony burglary offense where the crime was knowingly perpetrated in the dwelling of another in the nighttime or the offender attempted or inflicted bodily injury, menaces another with serious bodily injury, or was armed with a dangerous weapon.

Section 4 amends North Dakota Century Code § 12.1-32-09 by making reference to a repeat offender as a "habitual" offender rather than a "persistent" offender as found in current law. In addition, section 4 permits a court to find that a person is a habitual offender if that person has been convicted in any state or states or by the United States of two felonies of class C or above committed at different times when the offender was an adult. This is a change from existing law which presently requires that a persistent offender be convicted of two felonies of class B or above or of one class B felony or above plus two offenses potentially punishable by imprisonment classified below a class B felony.

The amendments to N.D.C.C. § 12.1-32-09 continues existing law in not mandating that the court sentence a person as a repeat, habitual, or persistent offender.

Section 5 requires that a violent offender is not eligible for release from confinement on any basis until 85 percent of the sentence imposed by the court has been served or the sentence has been commuted. A violent offender is a person who has been convicted of murder, manslaughter, aggravated assault, kidnapping, gross sexual imposition where a sexual act or contact occurred as a

result of force or threat of imminent death, injury, or kidnapping, and robbery. Section 5 is intended to be in compliance with title II, subtitle A, of the Violent Crime Control and Law Enforcement Act of 1994 pertaining to truth in sentencing provisions.

The proposed amendment to section 5 includes the offense of burglary under N.D.C.C. § 12.1-22-02 (2) (b) when the offender, while affecting entry or while in the premises or in immediate flight therefrom, inflicts or attempts to inflict bodily injury or physical restraint on another or menaces another with imminent serious bodily injury, or is armed with a firearm, destructive device, or other weapon the possession of which under the circumstances indicates an intent or readiness to inflict serious bodily injury.

PROPOSED AMENDMENTS TO HOUSE BILL 1218

Page 2, line 21, replace "other crimes of violence" with "felony or class A misdemeanor offenses"

Page 2, line 26, after "court" insert "if such information has not been provided to the court by the prosecuting attorney before or at the time of sentencing"

Page 7, line 8, remove "or"

Page 7, line 8, after "12-1-22-01" insert "or subdivision b of subsection 2 of section 12-1-22-02"

TRUTH-IN-SENTENCING BILL

The crimes listed in section 3 of House Bill No. 1218 are as follows:

- 12.1-20-03 - Gross sexual imposition
- 12.1-20-11 - Incest
- 12.1-27.2-02 - Use of a child in a sexual performance
- 12.1-27.2-03 - Promoting or directing an obscene sexual performance by a child
- 12.1-27.2-04 - Promoting a sexual performance by a child
- 12.1-27.2-05 - Sexual performance by a child

TRUTH-IN-SENTENCING BILL

The crimes listed in section 5 of the bill are as follows:

- 12.1-16-01 - murder
- 12.1-16-02 - manslaughter
- 12.1-17-02 - aggravated assault
- 12.1-18-01 - kidnapping
- 12.1-20-03(1)(a) or 12.1-20-03(1)(a) - gross sexual imposition (by force or threat of imminent death, injury, or kidnapping)
- 12.1-22-01 - robbery

TESTIMONY ON HOUSE BILL 1218
HOUSE JUDICIARY COMMITTEE
JANUARY 24, 1995

Good morning. HB1218 is a result of many months of work with Representative Carlisle and other proponents to draft a bill that will make violent inmates serve a substantial portion of their prison sentences and yet not fiscally overwhelm the state.

Section five of HB1218, in regards to the 85% truth in sentencing provision, will affect only inmates who are sentenced after the effective date of this Act. Therefore, since many of the violent offenders have quite lengthy sentences, and since in North Dakota violent offenders already must serve a significant portion of their sentence before being considered for parole, this bill will affect few inmates during the next two biennia. It will, however, require that violent offenders serve at least 85% of their sentence before they are eligible for parole. Over time, based on parole statistics of violent offenders during the past three years, this bill will require approximately ten additional beds at the Penitentiary on a consistent basis.

The Department of Corrections is very supportive of Section Three of HB1218 which will require a criminal records check for crimes of violence and in the case of home burglaries. Presently, a pre-sentence investigation is completed prior to sentencing on less than 10% of inmates sent to the Penitentiary.

We believe the courts would sentence inmates more consistently statewide if judges had criminal history checks before them at the

time of sentencing. In some cases, individuals are sentenced to very short prison terms and yet, once department staff complete a criminal history check on the inmate, they find the individual has very lengthy and sometimes a violent criminal history. Also some offenders are placed on probation who have lengthy criminal histories. These individuals usually end up having their probation revoked because of violations or because they've committed another crime. Judges would probably sentence these individuals differently if they had the criminal history information available to them.

The Department of Corrections also supports Section Four of HB1218, which allows a court to sentence an offender as a "habitual" offender if the person has been convicted of two felonies of Class C or above, committed at different times when the offender was an adult. We believe that this section will allow the courts to remove from the streets, for long periods of time, those minority of offenders who commit the greatest number of crimes. These are the inmates who repeatedly terrorize citizens or repeatedly commit burglaries. These are the offenders who frustrate law enforcement and who corrections professionals recognize as incorrigible. These offenders often have been to prison numerous times and have no intention of remaining crime free.

Thank you for your attention. I urge passage of HB1218.

TESTIMONY ON HOUSE BILL 1218
Warden Tim Schuetzle, State Penitentiary

House Judiciary Committee
January 24, 1995

Thank you for the opportunity to testify in support of HB 1218. I am especially supportive of the inclusion of the habitual offender language in Section 4 of this bill, and the criminal history check requirement found in Section 3.

We hear a lot of talk about there being a "revolving door" in our nation's prisons. Law enforcement officers are frustrated, as they claim to arrest the same guys over again. There is the often quoted statistic that 10 percent of the nation's criminals commit 90 percent of the violent crimes.

The problem I have with this perception is that it does not hold true in North Dakota. Very few of our violent offenders had any prior offenses, and only 30 percent of North Dakota inmates ever come back to prison. While researching inmates with violent crime who were incarcerated over the past five years in this state, we found that for 70 percent this was their first offense, 14 percent had one prior offense, and only 16 percent had two or more priors.

So, where do North Dakota's repeat offenders come from?

It's clear to me that our problems with crime do not come from those who commit violent crimes. What I have discovered is that most of our states' habitual offenders come from those who commit Class C felonies for burglary, theft of property, forgery, and terrorizing.

It is true that we have a small percentage of inmates who always seem to be coming back to prison. These three-time losers are a menace to our society, and staff cringe each time their sentence expires and we are forced to release them. We know that it's only a matter of time before they commit another crime. Fortunately for North Dakota, our habitual criminals prefer non-violent property crimes over violent crimes.

A review of our data shows that 22 of 88 (25 percent) prisoners incarcerated for burglary have had at least two prior incarcerations, 23.5 percent of those committing theft of property and 28 percent of all those in for forgery are also these three time losers. The only other crime type that has this high percentage is terrorizing at 29 percent, but a number of these terrorizing inmates are mentally ill. Staff recognize these people as dangerous, as their only way of coping is to make threats towards others. Fortunately, this bill addresses these inmates in the Habitual Offender section.

This bill allows judges to recognize the habitual offender and keep them in prison for longer periods of time. It continues to give discretion to the courts and, the criminal records check gives the judges better tools with which to make a decision. While we do not have the crime problem which faces most states, this bill does fine tune some flaws in the North Dakota criminal justice system and will make our society more safe. I ask you support this legislation.

HOUSE JUDICIARY COMMITTEE
Representative William Kretschmar, Chairman
January 24, 1995

Warren R. Emmer, Director
Parole and Probation Division
Testimony in Support of HB 1218

Mr. Chairman, Members of the Committee:

The Department of Corrections and Rehabilitations supports HB 1218. I will, along with two Parole Officers, be providing additional information concerning Section 3 of the bill.

Section 3 would require the Department of Corrections & Rehabilitation to provide the Court a criminal records report in crimes of violence and home burglaries. (See attached report.)

We believe the report will:

1. Assist the Court in determining appropriate sentences for offenders pursuant to NDCC 12.1-32-04 (see attached).
2. Assist the victim by allowing them to make a victim impact statement.
3. Assist the Department of Corrections in developing appropriate correctional plans for the offender.

We believe that without the report:

1. The system relies on a system that has been in place since 1965 and has not been effective. (See example of NDCC 12-60.)
2. The system relies on incomplete information found in the State Criminal History database. (See example of the errors.)
3. Plea agreements are accepted by the Court that would not be accepted with the report.
4. Unnecessary court time is spent on returning offenders to court as a result of poorly thought-out plea agreements.
5. Victim concerns are routinely overlooked.
6. The public will eventually demand mandatory sentences which will remove all discretion from within the system.
7. The public is placed at greater risk.

Officers Jensen and Birrenkott will now provide you with additional information concerning Section 3 of the bill.

ND HOUSE OF REPRESENTATIVES JUDICIARY COMMITTEE
Senator William E. Kretschmar
Chairman

January 24, 1995

Testimony on HB 1218

by

David Birrenkott
Parole Officer II

DOCR, Division of Parole & Probation

Mr. Chairman and members of the Committee, my name is Dave Birrenkott and I am a Parole Officer stationed in the Fargo District Office.

The case I would like to present today involves a 39 year old male who was sentenced December 20, 1994 on the Misdemeanor charge of Menacing. He was originally charged with Strong-Armed Robbery, A B Felony but through a plea agreement received a lesser charge.

In my first meeting with this offender, it became apparent that there was more to this offender than the conviction of Menacing. He was evasive to questions regarding his prior criminal record and although he minimized his alcohol use, there was a clear pattern of alcohol abuse.

My suspicions were confirmed when I received the criminal records report detailing his criminal activity. His first criminal conviction was in July 1976 for Aggravated Assault in Pennsylvania and over the next thirteen years he was convicted of ten additional offenses in Pennsylvania including Resisting Arrest and drunk driving twice. On July 1989 he received his third DUI in Maine. In October 1989 he received a conviction for Hit and Run accident involving death or personal injury and was placed on one year of probation. He later absconded from this probation and I learned from his criminal records report that Pennsylvania has an active warrant for his arrest and return. However, unfortunately they will only extradite within 300 miles so he is free unless he comes within that radius.

Around 1993 this offender came to North Dakota and immediately began adding to his criminal record; Criminal Mischief in April of 1993, his fourth DUI in May 1993 and in August 1994 the Strong-Arm Robbery that I am currently supervising him for.

In retrospect of the criminal record I have just related to you regarding this offender does it seem appropriate that his sentence was reduced to a misdemeanor? I think few people after being presented with the information of his many prior offenses could argue that his person who shows a pattern of alcohol related and violent crimes deserves a lessor sentence.

The problem in this and other cases is that the Judge who is the final word on guilt or innocence and to what degree, Misdemeanor or

January 23, 1995
Page 2

Felony, is not (by Law) routinely made aware of an offenders prior record. In the case I referred to I feel the Judge would have been less likely to accept the plea agreement were he fully aware of this offender's past. The information contained in the criminal records report also made apparent other areas not addressed by the Court. Despite a definite theme of alcohol related crimes, the offender was not specifically prohibited from using alcohol, a condition appropriately warranted after reviewing his criminal records report. Likewise convictions for aggravated assault, resisting arrest and the underlying strong-arm robbery could have given reason to include anger management counseling and psychological evaluation.

In summation, I believe the availability of a criminal records report for the Court would enhance its ability to deliver a more informed decision on criminal cases therefore better serving justice and the people of North Dakota.

House Judiciary Committee
Representative William E. Kretschmar, Chairman

January 23, 1995

Jackie C. Jensen, Parole Officer
Division of Parole and Probation
Testimony in Support of HB 1218

Mr. Chairman and members of the Committee, my name is Jackie Jensen and I am a Parole Officer stationed out of the Minot District Office.

On October 9, 1991 a 46 year old subject was given a three year deferred imposition of sentence out of McHenry County for the Crime of Reckless Endangerment and he was placed on supervised probation. This crime involved his driving a vehicle in a reckless manner at speeds exceeding 100 mph, he had a blood alcohol level of .37 and there was a passenger in his vehicle.

During our initial contact with this subject he only admitted to being convicted of one DUI when he was young. As his blood alcohol content was extremely high when he was arrested, I really questioned how extensive his alcohol history and criminal history was.

After my first contact with him I ran a criminal records report which showed a history of criminal behavior dating back to 1961 when he was 16 years old. In 1961 he was charged with Burglary and Auto Theft, 1963 Contributing to the Delinquency of a Minor, 1964 Aggravated Reckless Driving, 1965 Escape from Custody, 1967 Assault with a Deadly Weapon, 1980 Malicious Injury to Private Property, 1982 DUI, 1983 Aggravated Criminal Damage to Property, 1984 DUI and Domestic Assault, 1985 Criminal Trespass and Criminal Mischief, 1989 2nd degree assault which was dropped to Simple Assault, 1990 Assault and Criminal Mischief and in 1991 Malicious Injury to Property.

After confronting this subject with his prior record he explained that all of his offenses were committed while he was under the influence of alcohol and that his assaultive offenses occurred while he was involved in a 9 year relationship with a woman who was also actively drinking.

Should the Judge in this case have been able to review this persons criminal record report I feel that he would not have given this person a deferred imposition of sentence. Even though the Judge responded to a no drinking condition in his probation conditions I feel he would have ordered this individual into Domestic Violence Counseling and psychological testing. He obviously has a history of serious alcohol abuse and assaultive behavior.

One other point I would like to respond to is that completing a criminal records report involves more than running a state rap sheet. In running a records report on this individual today, you would not even find the original McHenry County charge of Reckless Endangerment. The only reference made to this charge is when his probation was revoked and he was sentenced to the penitentiary. We need to talk with the offender and verify their records by calling the jurisdictions in which they have lived.

In conclusion, it is very important that our States Judges have an offenders criminal record report available at sentencing so that the offender can no longer feel a sense of complacency. Judges will also be given a tool to assist them in making more informed decisions in criminal cases brought before them.

CRIMINAL RECORDS REPORT

County	File No. (s)	Date PSI Ordered
	States Attorney	Date PSI Due
Defense Attorney	<input type="checkbox"/> Appointed <input type="checkbox"/> Retained	Date PSI Completed
Name (Court Records)	Date of Birth	Race/Sex
Name (Alias)	Place of Birth	
Offense and Penalty Classification		Days in Custody
Address		Telephone No.
Lives With (Name)	Relationship	
<input type="checkbox"/> OWN? <input type="checkbox"/> RENTS: <input type="checkbox"/> House <input type="checkbox"/> Apartment <input type="checkbox"/> Room	How Long at this Address?	
Marital Status	No. of Dependents	Occupation
Gross Monthly Income (All)	Social Security No.	ND SID No.
		FBI No.
Employer	How Long Employed?	
Previous Employer	How Long Employed?	
Reason for Leaving		
Education		
Military Service (Branch and Dates)		Type of Discharge
Current Physical Condition	Height/Weight	Hair/Eyes
		Scars
<input type="checkbox"/> Drug Use <input type="checkbox"/> Mental/Emotional Problems <input type="checkbox"/> Alcohol Use (Give details under comments)		

PRIOR RECORD (USE REVERSE SIDE IF NEEDED FOR ADDITIONAL SPACE)

Date	Offense	Arresting Agency	Disposition

COMMENTS AND SENTENCING ALTERNATIVES (Community Service and/or Treatment Proposals, etc.)

MANDATORY ATTACHMENT:

Victim Impact Statement

Parole/Probation Officer

DA

12.1-32-04. Factors to be considered in sentencing decision. The following factors, or the converse thereof where appropriate, while not controlling the discretion of the court, shall be accorded weight in making determinations regarding the desirability of sentencing an offender to imprisonment:

1. The defendant's criminal conduct neither caused nor threatened serious harm to another person or his property.
2. The defendant did not plan or expect that his criminal conduct would cause or threaten serious harm to another person or his property.
3. The defendant acted under strong provocation.
4. There were substantial grounds which, though insufficient to establish a legal defense, tend to excuse or justify the defendant's conduct.
5. The victim of the defendant's conduct induced or facilitated its commission.
6. The defendant has made or will make restitution or reparation to the victim of his conduct for the damage or injury which is sustained.
7. The defendant has no history of prior delinquency or criminal activity or has led a law-abiding life for a substantial period of time before the commission of the present offense.
8. The defendant's conduct was the result of circumstances unlikely to recur.
9. The character, history, and attitudes of the defendant indicate that he is unlikely to commit another crime.
10. The defendant is particularly likely to respond affirmatively to probationary treatment.
11. The imprisonment of the defendant would entail undue hardship to himself or his dependents.
12. The defendant is elderly or in poor health.
13. The defendant did not abuse a public position of responsibility or trust.
14. The defendant cooperated with law enforcement authorities by bringing other offenders to justice, or otherwise cooperated.

Nothing herein shall be deemed to require explicit reference to these factors in a presentence report or by the court at sentencing.

Source: S.L. 1973, ch. 116, 31.

12-60-13. Court to ascertain criminal record of defendant -
Furnish information of offense to the bureau. The judge of the
district court of the county in which a defendant is to be
sentenced, or the state's attorney or sheriff thereof, shall
ascertain the criminal record of every defendant convicted of a
felony before sentence is passed on said defendant. The state's
attorneys and sheriffs, upon the request of the chief of the bureau
or the attorney general, shall furnish to the chief of the bureau
a statement of facts relative to the commission or alleged
commission of all felonies within their respective counties upon
such blanks or in such form as may be requested by the chief of the
bureau or the attorney general.

Source: S.L. 1965, ch. 111, §15.

OFFENDER # 1 CRIMINAL HISTORY

FQ.ND008015G.ND.
TXT
PUR/C.ATN/PLACEK
SID/55921

074754 1994/10/06 1310:33.1

FR.NDBCA0000.ND008015G.TXT

TXT HDR/

PUR/C ATN/PLACEK

THIS RECORD IS BASED ONLY ON THE SID NUMBER IN YOUR REQUEST-SID/ND55921

***** NORTH DAKOTA CRIMINAL HISTORY *****

RECORD SUBJECT: SID: 55921 FBI: 768981X11 HIGHEST CONVICTION: UNKNOWN

DOB

SOC SEC NO

POB

CIT

NAME: [REDACTED]

03-06-1951

SEX: M RACE: W HEIGHT:

WEIGHT:

EYE:

HAIR:

SKN:

HENRY FPC: UPPER: 11 0 5 A

OI 19

NCIC FPC: DOAA111319DI09A:W0621

LOWER: I 17 UA

I I

***** PAROLE/PROBATION DETAILS *****

CONTACT LISTED P/P AGENT OR P/P HQ BISMARCK FOR DETAILS.

PROBATION ENDING: 04-02-1995 SUPERVISOR: 959

OFFENSE: GROSS SEXUAL IMPOSITION

CONTRIBUTOR

CASE NUMBER

ARST/DISP DT

ARREST: ND0360100 DEVILS LAKE POLICE DEPARTMENT

10-25-1988

CHRG: WILLFUL MISCHIEF

DISP:

LAST KNOWN ADDRESS:

LAST KNOWN OCCUPATION:

THE USE OF THIS RECORD IS CONTROLLED BY STATE AND FEDERAL REGULATIONS. IT IS PROVIDED FOR OFFICIAL USE ONLY AND MAY BE USED ONLY FOR THIS PURPOSE.

END OF RECORD

SM 074767 IN NATL 1994/10/06 1310:42 OUT SPAR 1994/10/06 1310:44

OFFENDER 1 CRIMINAL HISTORY

<u>Date</u>	<u>Charge</u>	<u>City</u>	<u>Disposition</u>
4-30-82	Murder	Burbank, CA	Held
1-6-84	Murder 2nd Willful Child Cruelty: Injury /Death	Pasadena, CA	15 yrs to Life Prison sentence stayed
7-31-88		Chino, CA	Paroled from CDC
8-31-92	Gross Sexual Imposition	Devils Lake, ND	
4-2-93	Gross Sexual Imposition	Devils Lake, ND	2 yrs Deferred Imp.

OFFENDER # 2 CRIMINAL HISTORY

FG.ND008015G.ND.
TXT
PUR/C.ATN/PLACEK
SID/109108

128700 1995/01/23 1713:43.5

FR.NDBCA0000.ND008015G.TXT
TXT HDR/
PUR/C ATN/PLACEK

THIS RECORD IS BASED ONLY ON THE SID NUMBER IN YOUR REQUEST-SID/ND109108
***** NORTH DAKOTA CRIMINAL HISTORY *****

RECORD SUBJECT: SID: 109108 FBI: HIGHEST CONVICTION: UNKNOWN
DOB SOC SEC NO POB CIT
07-01-1956 217-72-9312
NAME: [REDACTED] WEIGHT: EYE: HAIR: SKN:
SEX: M RACE: W HEIGHT: HENRY FPC: UPPER: 99
LOWER:

***** PAROLE/PROBATION DETAILS *****
CONTACT LISTED P/P AGENT OR P/P HQ BISMARCK FOR DETAILS.
PROBATION ENDING: 12-30-1997 SUPERVISOR: 981
OFFENSE: THEFT OF PROPERTY

CONTRIBUTOR CASE NUMBR ARST/DISP DT

CRIMINAL HISTORY RECORD NOT FULLY CONVERTED.
RECORD WILL BE RESEARCHED AND UPDATED. CRIMINAL HISTORY
WILL BE TRANSMITTED AT FUTURE DATE. IF IMMEDIATE
RECORD IS REQUIRED, RESUBMIT AQ TO NDBCA0000.

LAST KNOWN ADDRESS:
LAST KNOWN OCCUPATION:

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PROVIDED FOR OFFICIAL USE ONLY AND MAY BE USED ONLY FOR THIS PURPOSE.

END OF RECORD

SM 128706 IN NATL 1995/01/23 1713:51 OUT SPAR 1995/01/23 1713:53

PRIOR RECORD:

OFFENDER # 2 CRIMINAL HISTORY

04/23/75	Breaking and Entering	Landover, MD	Dismissed	
08/21/75	Unauthorized use of M.V.	Arlington, VA	45 dys suspended	M
10/10/75	Robbery & Assault w/ Intent to murder	Landover, MD	Amended to Simple Assault & Battery Sentence, Not guilty, State offer no witness.	
11/27/75	Breaking & Entering 2 Co.	Landover, MD	5 yrs susp; 5 yr probation;	F
03/21/78	Probation Violation to the Breaking & Entering	Landover, MD	5 yrs reinstated by court	
10/31/81	Theft in 3rd Degree	Fairbanks, AK	75 dys confinement; 48 dys suspended	M
04/20/82	Burglary	Fairbanks, AK	3 yrs confinement; 2 yr 6 months suspended	F
09/06/84	Theft in 2nd Degree	Valdez, AK	5 yrs; 5 yrs susp probation	F
02/21/85	Probation Violation on Theft in 2nd Degree	Valdez, AK	5 yrs reinstated	
08/29/86	Escape 2nd	Anchorage, AK	Dispo. unknown	
12/10/88	DUI	Anchorage, AK	Fined. M	
02/17/90	Forgery	Malboro, MD	Maryland had no record of dispo.	
09/21/90	Theft under \$300	Landover, MD	Maryland had no record of dispo.	
08/11/91	Resisting Arrest; Assault w/battery; Assault	Malboro, MD	Maryland had no record of disposition	
03/03/94- 04/22/94	Theft of Property	Grand Forks, ND	Dispo. pending in District Court	

OFFENDER # 3 CRIMINAL HISTORY

THIS RECORD IS BASED ONLY ON THE SID NUMBER IN YOUR REQUEST-SID/ND95523

***** NORTH DAKOTA CRIMINAL HISTORY *****

RECORD SUBJECT: SID: 95523 FBI: HIGHEST CONVICTION: MISDEMEANOR

NAME: [REDACTED] DOB 11-12-1949 SOC SEC NO 352-40-4766 POB CIT IL
AKA: [REDACTED]

SEX: M RACE: W HEIGHT: 5 09 WEIGHT: 200 EYE: BRO HAIR: BRO SKN: MED
HENRY FPC: UPPER: 27 L 1 R 000 12 NCIC FPC:
LOWER: L 1 R 000
SMT: SC NOSE

***** PAROLE/PROBATION DETAILS *****
CONTACT LISTED P/P AGENT OR P/P HQ BISMARCK FOR DETAILS.
PROBATION ENDING: 05-19-1998 SUPERVISOR: 969
OFFENSE: THEFT

----- CONTRIBUTOR ----- CASE NUMBR ARST/DISP DT -----

ARREST: ND0180000 SO GRAND FORKS 09-26-1991
CHRG: POSSESSION OF CONTROLLED SUBSTANCE FC

DISP: .

ARREST: C 1 - NSF CHECK 01-18-1993

DISP: COUNTY COURT - GRAND FORKS COUNTY 01-18-1994

D 1 - NON SUFFICIENT FUNDS CHECKS CONVICTED B MISDEMEANOR
SENTC'D:

ADDL. INFO: DISMISSED

----- SUPERVISION OR CUSTODY ----- DATE REC'D -----

ND008015G PAROLE & PROBATION DEPARTMENT K8-91-409 10-08-1993
10-08-1993 RECEIVED ON INTER-STATE COMPACT MN THEFT

CHRGs: FRAUD (SWINDLE)

LAST KNOWN ADDRESS: 920 9TH AVE N GRAND FORKS ND
LAST KNOWN OCCUPATION:

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END OF RECORD

SM 128921 IN NATL 1995/01/23 1720:38 OUT SPAR 1995/01/23 1720:40

OFFENDER # 3 CRIMINAL HISTORY

PRIOR RECORD CONTINUED

11-23-71	Iss. Worthless Checks	PD, Haddon Twp, NJ	Restitution & 3d jail
12-01-71	Fraudulent Checks	PD, Pennsauken, NJ	Restitution & 3d jail
05-02-74	Forgery-US Treas. Cks	Chicago, IL	3y supervised probation
07-27-78	Assault & Battery	PD, Glenwood, IL	Current warrant-will not extradite
04-04-80	Dr. Under Suspension	PD, Hazel Crest, IL	Fine
08-24-80	Aggravated Assault	PD, Chicago Hqts, IL	Current warrant - \$1000 bond, will not extradite
07-21-86	Poss. Narcotic Drug	PD, Los Angeles, CA	Dismissed
04-04-88	Theft	PD, Alsip, IL	Current warrant - \$15,000 bond, will not extradite
05-25-88	Poss. Narcotic Instru. (hypodermic needle) Misd.	PD, Chicago Hqts, IL	10d jail
06-07-88	Theft	PD, MaHesan, IL	Current Warrant - \$15,000 bond, will not extradite
06-07-88	Theft Theft Theft	PD, Tinley Park, IL PD, Park Fork, IL PD, Chicago Hqts, IL	Current Warrants for these - will not extradite
07-07-88	Felony Forgery	PD, Chicago Hqts, IL	Current Warrant - will not extradite
08-02-88	Larceny (Theft)	PD, Saukville, IL	Current Warrant - will not extradite
08-04-88	Larceny (Theft)	PD, Steger, IL	Current Warrant - will not extradite
08-16-88	Larceny(Theft)Accomp.	PD, Calument City, IL	Current Warrant - will not extradite
02-08-91	Theft of Property (2 Charges) (Felony)	SO, Olmstead Co., MN	Current Warrant - will extradite
07-23-91	Poss. Cont. Substance Without Valid Prescription (2 counts)	PD, Grand Forks, ND	Dismissed
08-01-91/ 08-11-91	Poss. Cont. Substance Without Valid Prescription (3 counts)	PD, Grand Forks, ND	5-yr State Pen w/all but 120d susp. for 5 yr sup. probation; serve 120d in County Correctional Center

OFFICE OF ATTORNEY GENERAL

**PRESENTATION TO HOUSE JUDICIARY COMMITTEE
ON HB 1218**

**BY BILL BROER, DIRECTOR
BUREAU OF CRIMINAL INVESTIGATION
January 24, 1995**

Mr. Chairman, members of the committee, my name is Bill Broer, Director of the Bureau of Criminal Investigation, which is a division within the Office of Attorney General.

I am testifying in favor of HB 1218, representing not only our office and law enforcement, but also on behalf of victims and potential victims of crime.

There are several sections in this bill that are appealing, all of which make the individual committing these types of crimes more accountable for their actions. To make these individuals accountable, it is necessary that there is a complete pre-sentence investigation, which includes a criminal history records check be completed so that the judge can properly evaluate the facts when making a decision on sentencing.

Another section refers to habitual offenders, which law enforcement deals with much too often. Even though North Dakota has a lower recidivism rate than the national average, we still have individuals that fit into this category. Several times each year, we become involved in multi-county investigations in which individuals are involved in numerous burglaries throughout the state. It usually takes weeks, and sometimes months, before we

can actively put together a successful case on these individuals. What is mind boggling, is that it is common that the individuals arrested normally have previous records for similar crimes. The cycle just continues and continues, starting from when they get caught, are prosecuted, sentenced, paroled, and become active again, so the cycle continues on and on.

I don't mind giving a person a second, or even a third chance, but after that they need to be held accountable for their actions. And if that means longer sentences, the citizens of North Dakota will be better served by our criminal justice system.

Another important section of this bill is requiring that the offenders of murder; manslaughter; aggravated assault; kidnapping; gross sexual imposition by force, or threat of imminent death, injury, or kidnapping; and robbery to serve 85 percent of their sentence. We were pleased to hear from the Department of Corrections that most of the offenders of these types of crimes are presently serving 83 percent of their sentence, but there have been others who have not. Because we deal with the victims and their families, many of them, along with the law enforcement community, feel even 85 percent is too lenient. If any of you have had a family member or close friend who has been a victim of a crime, you can understand our feelings.

The fiscal note on this bill addresses the Department of Correction's version of their anticipated cost; however, please

consider some of the factors if individuals are not held accountable for their crime. When they are released and returned to their routine criminal activity, there are costs experienced by the next victim of not only the monetary aspect, but if a violent crime occurs, that of pain and grief. The entire criminal justice system from law enforcement, prosecution, judicial proceedings, and victim services all experience costs in returning these individuals back to prison. These costs are associated with performing our job, just as it is the role of the Department of Corrections to house these individuals. The point I am trying to make is that yes, there may be increased costs to have these individuals incarcerated, but if they remain in prison, other aspects of the system will benefit by not having to utilize our resources on the same offenders.

Several times I have mentioned the word accountability, which I feel best describes this bill. During my six year tenure as Deputy Warden, of the North Dakota State Penitentiary, a common slogan I used to hear from inmates to other inmates complaining about their sentence, was "If you do the crime, then do the time."

Again, we support this bill not only for ourselves, but for past and unfortunately future victims of crime. If this bill decreases the chance of one person having to be a victim of a violent crime, it is well worth the cost.

HOUSE JUDICIARY COMMITTEE

54th LEGISLATIVE SESSION

January 24, 1995

HOUSE BILL NO. 1218

RELATING TO SENTENCE REDUCTIONS FOR GOOD OR
MERITORIOUS CONDUCT, PRESENTENCE INVESTIGATIONS, AND
EXTENDED SENTENCES.

Mr. Chairman, members of the Judiciary Committee, I am Eugene I. Thompson, Lobbyist for the Aging Network of North Dakota. The ANND is a lobbying organization representing senior citizens statewide with the purpose of working toward their goals and objectives. Their goals were prioritized at the recent Silver-Haired Assembly. This is a priority issue that they feel very strong at this legislative session.

This Bill, House Bill Number 1218, or the Truth In Sentencing bill, as we have come to know, it, passed our Assembly unanimously because of the concerns that our older North Dakotans have for their well being in society.

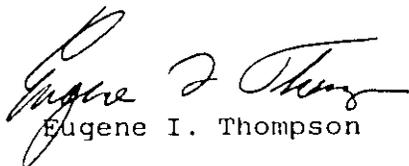
The older North Dakotans are traumatized by the news media and the manner that they see the legal system operating in

at the present time. This represents a change from what they have known to expect and respect. Many have trouble understanding what is going on because of the media highlights.

The senior citizens do understand that the bill would provide for offenders to serve more of their sentences and at the same time provide for longer sentence for habitual offenders.

On behalf of the ANND, I urge you to recommend a DO PASS on House Bill Number 1218 to return common sense to the judicial system.

If you have not any questions, I would like to thank you for your time and consideration.


Eugene I. Thompson

SUMMARY OF HOUSE BILL 1218 AS AMENDED BY THE HOUSE

Sections 1 and 2 limit good time and meritorious conduct sentence reductions for those inmates imprisoned for offenses subject to the 85 percent service of imprisonment requirements of section 5 of this bill.

Section 3 requires the court, prior to sentencing a defendant for certain offenses to receive a criminal history records check of the person to be sentenced. This required criminal history records check will apply to all felony or class A misdemeanor offenses in which force, or threat of force, is an element of the offense, a violation of N.D.C.C. § 12.1-22-02, or an attempt to commit these offenses. If a presentence investigation has not been ordered, the sentencing court must receive a criminal record report before the sentencing of the defendant. Unless otherwise ordered by the court, the criminal record report must be conducted by the Department of Corrections and Rehabilitation after consulting with the prosecuting attorney regarding the defendant's criminal record. In addition, the criminal record report must be in writing, filed with the court before sentencing, and made part of the court's record of the sentencing proceeding.

Section 12.1-22-02 referred to in section 3 of this bill relates to the class B felony burglary offense where the crime was knowingly perpetrated in the dwelling of another in the nighttime or the offender attempted or inflicted bodily injury, menaced another with serious bodily injury, or was armed with a dangerous weapon. Class A misdemeanor offenses within this records check requirement include preventing arrest (12.1-08-02), interference

with elections (12.1-14-02), assault (12.1-17-01.1), menacing (12.1-17-05), harassment (12.1-17-07(1)), and other similarly classified offenses which may involve force or threat of force.

Section 4 amends North Dakota Century Code § 12.1-32-09 by making reference to a repeat offender as a "habitual" offender rather than a "persistent" offender as found in current law. In addition, section 4 permits a court to find that a person is a habitual offender if that person has been convicted in any state or states or by the United States of two felonies of class C or above committed at different times when the offender was an adult. This is a change from existing law which presently requires that a persistent offender be convicted of two felonies of class B or above or of one class B felony or above plus two offenses potentially punishable by imprisonment classified below a class B felony.

The amendments to N.D.C.C. § 12.1-32-09 continues existing law in not mandating that the court sentence a person as a repeat, habitual, or persistent offender.

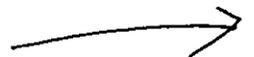
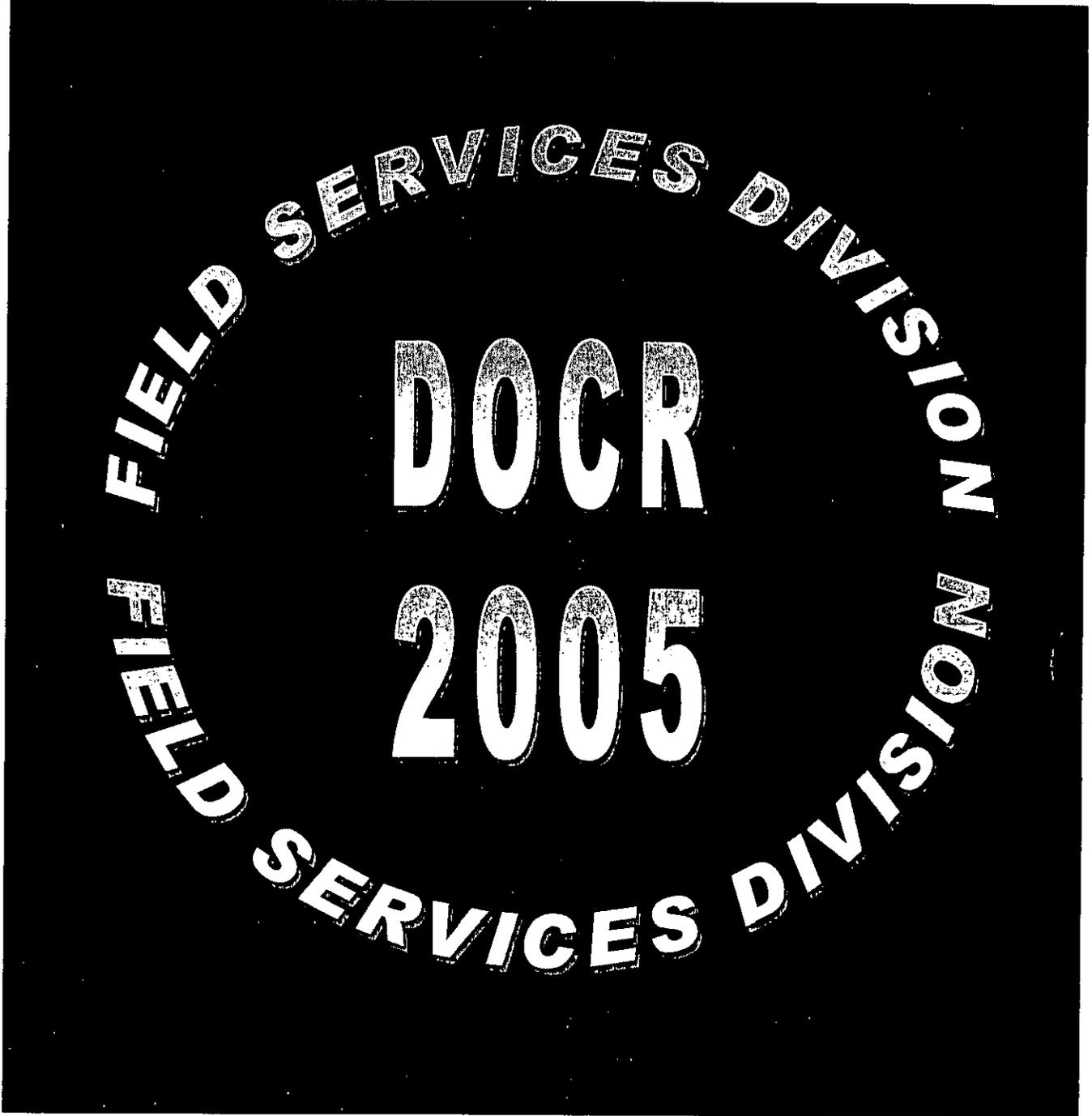
Section 5 requires that a violent offender is not eligible for release from confinement on any basis until 85 percent of the sentence imposed by the court has been served or the sentence has been commuted. A violent offender is a person who has been convicted of the following crimes: murder; manslaughter; aggravated assault; kidnapping; gross sexual imposition where a sexual act or contact occurred as a result of force or threat of imminent death, injury, or kidnapping; robbery; and burglary when the offender was armed, caused bodily injury, or menaced serious bodily injury. Section 5 is intended to be in compliance with

Article II, subtitle A, of the Violent Crime Control and Law Enforcement Act of 1994 pertaining to truth in sentencing provisions.

HB 1133

NORTH DAKOTA DEPARTMENT OF CORRECTIONS & REHABILITATION
FIELD SERVICES DIVISION

Guide to Division Overview, Operations, and Information



directly into the community without addressing these areas of need would be continuing to promote the “revolving door” of female in the criminal justice system. Unfortunately, not only would the women be affected by this process, but their children as well, since female crime has a generational component.

A contract was negotiated with Centre, Inc. to provide residential and intensive case management. A total of 15 beds, five in Bismarck and ten in Fargo were arranged. The case management was to focus on the needs of the women and to provide aftercare and counseling to better equip them to start a new life in the community. Partial funding has been provided through an Edward Byrne grant.

The women are expected to be employed full-time and to pay \$11/day to Centre. They are required to budget their money, pay court-ordered child support, fees, fines, restitution and implement a personal savings plan so they will be able to rent an apartment and set up a home upon their release from inmate status.

In December 2003, the first two females were placed in the program. Since then, 58 women have participated in the program. Forty-nine women successfully completed the program and nine were terminated then returned to Dakota Women’s Correctional Rehabilitation Center (DWCRC). Of those nine, two have since completed addiction treatment and been reinstated in the program. The program has been a success and the plan is to increase the number of female inmates transitioning into this program in our next biennium.

BISMARCK TRANSITION CENTER

The Bismarck Transition Center (BTC) is operated and managed by a private, non-profit corporation headquartered in Butte, MT. Community Counseling and Correctional Services, also known as CCCS, opened its doors to BTC during August 2002. Although BTC was originally planned as a 50-bed facility, it has grown to a 63-bed facility and is contemplating further growth in the very near future. BTC is a community-based correctional facility providing programming services and alternatives to direct release into the community for the DOCR. BTC houses only adult male offenders who do not have a repetitive history of serious violent crimes. Sex offenders are not eligible for admission to BTC.