

2017 SENATE JUDICIARY

SB 2219

2017 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2219
1/24/2017
27286

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to probation violations.

Minutes:

Testimony attached #

1

Chairman Larson called the committee to order on SB 2219. All committee members were present.

Chairman Armstrong is testifying so **Senator Larson** is acting chair.

Senator Armstrong introduced and testified in support of the bill. He said this bill will help how we currently deal with the criminal justice system.

“Essentially what this is, is that it is the removal of the blanket requirement that’s on probation revocations on 85% crimes, that carry 85% sentences. What I mean by that is that an 85% crime is a crime where you have to serve 85% of your sentence, however 85% of a probationary sentence is 0. Not all revocations are created equally in the probation revocation system. This allows a little more discretion on revocation the same way it does on the original sentencing.”

Patrick Bohn, Director for Transitional Planning Services for the North Dakota Department of Corrections and Rehabilitation (DOCR), testified in support of bill. (see attachment 1)

Senator Luick: “What kind of rate do you have for recidivism? Is it huge? Is it small?”

Patrick Bohn: “Around 40% in North Dakota.”

Jackson Lofgren, President of the Association for Criminal Defense Lawyers, testified in support of the bill. No written testimony. He described who this does and does not affect in terms of crime.

“This bill helps those who did an offense due to different things going on. Maybe they committed an offense because of an addiction issue, maybe they made restitution and by the time they were sentenced by a judge they went to treatment. This will affect the individual who the judge gave a chance to but who ended up screwing up and then the judge tells them

they will get some jail time. This allows the parole board to see them sooner, and because of that I would support the bill.”

Aaron Birst, Association of Counties, testified in opposition of the bill, No written testimony.

“I have the utmost respect for Pat Bohn and Jackson Lofgren, but we just have a difference of opinion on this. We heard all morning long that we have to trust the judge’s and the prosecutors to make sentencing decisions, and in some ways, the fact we are even talking about an 85% bill is a little problematic, because we trust the judge to impose a sentence. In a prosecutor’s mind, if the judge sentenced you to an X amount of time, you should serve X amount of time because they are the ones that made the decision. If somebody who has been given a sentence and a chance at probation, and then comes back before the court regardless of what the violation was, if the judge says you’re going back to the big house, it is our opinion that the 85% should apply. Maybe there are some crimes we could pick off and say these folks would be subject to it, but because the bill currently is for everyone who is in our opinion violent offenders, we can’t support this bill. But we are willing to sit down and see if we can compromise, maybe we can maybe we can’t.”

Chairman Larson: “Is this one of those public safety issues where the public begins to feel like you just want to let people go from prison who may be a danger to the community?”

Aaron Birst: “The prosecutors I represent would look at those 85% offenders as someone you should be cautious of and proceed slowly with. We think you need to give the Department of Corrections some latitude on how to let some people transition back in. We think we narrowed it down to the worst of the worst, as they say, and that is why we are hesitant to agree with this bill.”

Chairman Larson closed the hearing on SB 2219.

No motions were made.

2017 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2219 Committee Work
1/31/2017
27636

- Subcommittee
 Conference Committee

Committee Clerk Signature 

Explanation or reason for introduction of bill/resolution:

Relating to probation violations.

Minutes: **No written testimony**

Chairman Armstrong began the discussion on SB 2219. All committee members were present.

Chairman Armstrong discussed his reasons why he wanted to kill the bill.

“I have an idea that I’m working with the DOCR (Department of Corrections and Rehabilitation) on. There may be a way to make the probationary stuff retroactive to apply the same way as the law that changed two years ago. Which would solve a lot of DOCR’s problems with this. I think when we talk about criminal justice reform and minimum mandatories and non-violent crimes and things in that nature, that’s one conversation, I personally don’t want to muddy the water with the addition of 85% crimes which is what this bill would do.”

Senator Larson motioned for Do Not Pass. **Senator Luick** seconded.

A Roll Call Vote was taken. Yea: 6 Nay: 0 Absent: 0.
The motion carried.

Senator Osland carried the bill.

Chairman Armstrong ended the discussion on SB 2219.

**2017 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. SB 2219**

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: _____

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

Motion Made By Senator Larson Seconded By Senator Luick

Senators	Yes	No	Senators	Yes	No
Chairman Armstrong	X		Senator Osland	X	
Vice-Chair Larson	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Nelson	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Osland

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

REPORT OF STANDING COMMITTEE

SB 2219: Judiciary Committee (Sen. Armstrong, Chairman) recommends **DO NOT PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2219 was placed on the Eleventh order on the calendar.

2017 TESTIMONY

SB 2219

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**SENATE JUDICIARY COMMITTEE
SENATOR KELLY ARMSTRONG, CHAIRMAN
JANUARY 24, 2017**

**PATRICK N. BOHN, DIRECTOR FOR TRANSITIONAL PLANNING SERVICES,
NORTH DAKOTA DEPARTMENT OF CORRECTIONS & REHABILITATION
PRESENTING TESTIMONY RE: SB 2219**

My name is Pat Bohn and I am the Director for Transitional Planning Services for the North Dakota Department of Corrections and Rehabilitation (DOCR). I am here to testify on behalf of the department in support of SB 2219.

What this bill does:

This bill proposes negating the 85% penalty for a sentence to prison upon revocation of probation for all crimes that fall under the 85% penalty.

Background:

The Violent Offender Incarceration and Truth-In-Sentencing Incentive Formula Grant Program (VOI/TIS) contained in the Violent Crime Control and Law Enforcement Act of 1994 provided states formula grants to build or expand correctional facilities and jails to increase secure confinement space for violent offenders. In response, in 1995 the 54th Legislative Assembly enacted N.D.C.C. section 12.1-32-09.1 which requires people to serve 85% of the court imposed sentence without the benefit of parole if convicted of committing, attempting to commit or accomplice to the criminal offenses of Murder (12.1-16-01), Manslaughter (12.1-16-02), Aggravated Assault (12.1-17-02), Kidnapping (12.1-18-01), Robbery (12.1-22-01), Gross Sexual Imposition with the use of force or the threat of the use of force that would result in the death, serious bodily injury or kidnapping (12.1-20-03 – 1(a) or 2(b)), Burglary with the use of force or a weapon while encountering the inhabitants (subdivision b of subsection 2 of section 12.1-22-02). Between 1996 and 2001 North Dakota received \$10,351,888 and used its VOI/TIS funds for the James River Correctional Center (Opened in 1998). VOI/TIS funds were also used to lease private transitional beds. (February 2012 REPORT TO CONGRESS by U.S. Department of Justices: <https://www.bja.gov/Publications/VOITIS-Final-Report.pdf>)

Current Situation:

Of the approximately 1820 people in prison yesterday, 311 were serving an 85% penalty sentence. Approximately 33% of those were serving a sentence subsequent to a probation revocation. Almost half of them are were for Aggravated Assault (C Felony).

Proposed Solution:

We believe by removing the requirement that people are subject to the 85% statute upon revocation we can improve outcomes. By making these people eligible for parole during their incarceration we will have greater chance of reducing recidivism while holding people accountable, maintaining and maybe even improving public safety and reducing the likelihood of future victimization. I need to be clear that we are not saying some of these people are not dangerous and should not be incarcerated for a period of

time. We are saying that you should allow the parole board to evaluate these cases during their sentence and analyze the prospects of methodically transitioning them from prison back to the community under the conditions established by the board. Let me share with you a few other interesting aspects of this law:

1. Under the 85% statute the court is not mandated to sentence the person to prison. A person convicted of robbery can be placed directly on supervised probation (unless a weapon was used and found to be an element of the crime at the time of sentencing). It would only be upon revocation of probation and a subsequent sentence to prison that would result in the execution of the 85% statute. It seems odd that this person could be deemed by the court to not need incarceration upon conviction of this offense, yet some years later, upon revocation of probation for maybe technical violations, this person now needs to serve 85% of the sentence without benefit of parole and greater accountability via transition.
2. This applies to any subsequent probation revocation which can sometimes occur 3, 5, 10 years after the original act.
3. The court is not required to place an individual on probation subsequent to an initial prison sentence, except for GSI with force which requires a minimum of five years. People can leave prison with no form of supervision.
4. Motivational enhancement.

In closing, if you have any questions, I'd be glad to try and answer them.