

**2019 HOUSE JUDICIARY**

**HB 1211**

# 2019 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Prairie Room, State Capitol

HB 1211  
1/21/2019  
31152

- Subcommittee  
 Conference Committee

Committee Clerk: DeLores D. Shimek
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## Explanation or reason for introduction of bill/resolution:

Relating to performance-based and meritorious sentence education credit, medical parole, length and supervision of probation, student misconduct and definit8on of firearm; relating to sentencing violent offenders; and to provide for retroactive application.

## Minutes:

1, 2
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**Chairman K. Koppelman:** Opened the hearing on HB 1211.

**Rep. Kading:** Introduced the bill. (Attachment #1) Went over testimony. (:36-3:48)

**Rep. Magrum:** Didn't we have a bill like this already?

**Rep. Kading:** Rep. Roers Jones bill and it was related to probation.

**Rep. McWilliams:** If the previous bill passed how would that effect this bill here?

**Rep. Kading:** Truth in sentencing and minimum mandatories were two separate policies that were put in place back in the 90s. Truth in sentencing targets certain types of crimes and you have to serve at least 85%. Minimum mandatories target a certain type of crime and saying you have to get at least so much time when you receive those charges.

**Chairman K. Koppelman:** Can you underscore the practical effect of this? Some violent crimes and substance abuse.

**Rep. Kading:** If this individual gets to 85% of the time they are out of prison without anything and their likelihood to reoffend in a violent increase.

**Chairman K. Koppelman:** Truth in Sentencing might be treated differently if the judge doesn't know of prior offenses by a particular defendant and therefore their sentencing might be treated as it were a first offense. Is there are reason for that not to be the case?

**Rep. Kading:** There is always the question do you have all the information in front of you when determining a sentencing? Ultimately this applies to specific crimes and requires you serve a certain amount of time.

**Vice Chairman Karls:** I did save the list of those 85% crimes from testimony on HB 1051. Went through that information. They are not just simple little crimes.

**Rep. Kading:** I think that is correct. Knowing these are crimes that we should target. I don't think trust in sentencing is the solution to those problems.

**Pat Bohn, Director, ND Parole & Probation, ND DOCR:** (Attachment #2) (8:30-17:14)  
Discussed various things that victims have done and how the parole board has worked. My challenge is to try and get you guys to understand my world.

**Rep. McWilliams:** Do you see any advantages of switching from an 85% rule to a 50% rule versus completely eliminating it altogether and finding some kind of middle ground?

**Pat Bohn:** There would be. Right now if you earn all your good time you are out on your 85% date. If you had a lesser amount there would be an element that you could be paroled between 60% to 85%. There would be some administrative leg work to be able to make that change.

**Rep. McWilliams:** If we take out the mandatory minimum sentencing and then take out the 85% rule and someone could commit a serious crime and not really pay the price for it.

**Pat Bohn:** That is a legitimate concern. The parole board is in better position to make those release decisions than a decision that is made earlier upstream. We have 7,000 people we are supervising now and thousands of others that still could do those same things since they are on supervision and out in the community today.

**Rep. Magrum:** Why is it that a person that is in prison for 85% of their sentence; they don't do as well as people that are released earlier?

**Pat Bohn:** While incarcerated we are still going to try and engage people in this program. If you have 85% to do one of the motivations is if they can make a better case for their parole release. Discussed how the parole works.

**Chairman K. Koppelman:** Do you have recidivism rates those that are on the 85% rule compared to other crimes?

**Pat Bohn:** On the whole on DOCR it is about 40%. National is about 45%. Recidivism define it differently.

**Chairman K. Koppelman:** You have been making a case for releasing people with no supervision; I want to see the data on this.

**Pat Bohn:** We count a return to prison within 3 years out of prison. If you leave prison without any supervision the only way you return to prison is by committing a new crime. Whereas if you leave prison with some form of supervision such as parole or probation you could be returned as a violator on technical violations.

**Chairman K. Koppelman:** So you don't track that; whether it is a new crime or revocation?

**Pat Bohn:** It does' show whether the individual returned into the system.

**Rep. Paur:** Could you provide the recidivism for those 6 or 7 crimes? Can you come up with the figures?

**Pat Bohn:** It might be possible. I have to think about it.

**Rep. McWilliams:** How is our parole system working?

**Pat Bohn:** Caseload are different across the state. We have specialized caseloads. If you took an average across the state; we would be setting at 70%? Went in detail about the various caseloads.

**Representative Jones:** What was the 98%?

**Pat Bohn:** That is the number of people who will be released someday. We have about 80 people who have a life sentence.

**Rep. McWilliams:** Is there an opportunity in future legislation to make sure we are addressing the need for supervision when somebody is released at 85%?

**Pat Bohn:** Mandatory probation has been tossed around for a few years. There are situations where someone has a maxed felony.

**Chairman K. Koppelman:** Most of them on the list you provided were pretty serious crimes. How do we get a handle on it this without going too far the other way?

**Pat Bohn:** On those cases where an individual is sentenced with life in prison; with eligibility for parole; even if you took this 85% out you would still have another law which lays out what the penalty is for a double A felony and in there it says if the court sentences the individual to life with the benefit of parole; that they must serve 30 years less good time before they are parole eligible so adding minimum in the right of parole. Discussed how this works in the system. A possible release and consideration is a recessionary decision. Under ND law there is no right to release. If you get denied you cannot take it somewhere else.

Opposition: None

Neutral: None

Hearing closed

# 2019 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Prairie Room, State Capitol

HB 1211  
2/11/2019  
32522

- Subcommittee  
 Conference Committee

Committee Clerk: DeLores D. Shimek	By: Elaine Stromme
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## **Explanation or reason for introduction of bill/resolution:**

Relating to performance-based and meritorious sentence education credit, medical parole, length and supervision of probation, student misconduct and definition of firearm; relating to sentencing violent offenders; and to provide for retroactive application.

## **Minutes:**

Attachment: 1
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Chairman K. Koppelman: Opened the meeting on HB 1211. This is a hog house amendment. January 22 was the amendment, the bill was heard on the 21<sup>st</sup>. This was Rep. Kadings bill, there was no opposition.

Rep. Hansen: Pat Bohm was supportive of this bill.

Chairman K. Koppelman: It reduces the sentence. But they would be under supervision.

Vice Chairman Karls: These are the violent criminals.

Chairman K. Koppelman: The question is would you want to extend that to violent criminals, and that's what this would do, obviously to a lesser degree with the amendment, but to a much greater degree with the bill.

Rep. Paur: I asked Pat Bohm for the recidivism is considerable lower for those who served the 85% to those who don't. when they serve their 85% then they are done. When they are put on parole a lot of times it is recidivism not following the terms of the parole. If we lower, it back to 65% we will have greater recidivism.

Chairman K. Koppelman: People that are on parole are supervised and therefore they are a lower risk to society, and better integrated back into society.

Rep. Vetter: I move the amendment # 19.0568.01001 Do Pass

Rep. Roers Jones: Seconded

Rep. McWilliams: Currently an offender can be released without being paroled after serving 85% of their sentence?

Chairman K. Koppelman: Correct.

Rep. McWilliams: I would rather have them serve the 85% then have them be paroled.

Chairman K. Koppelman: What happens with prisoners is that there is no incentive to behave well.

Rep. McWilliams: I think that the structured environment is what helps the prisoners in the prison, when they are released they are not in a structured environment. I don't think that it is targeting the right thing.

Chairman K. Koppelman: These efforts are to help them integrate back in society.

Voice Vote was taken on the Amendment #19.0568.01001

The Amendment #19.0568.01001 Passes

Chairman K. Koppelman: Now about the bill, what are the wishes of the committee?

Rep. Roers Jones: Motion for a Do Pass on HB 1211 as amended

Rep. Satrom: Seconded

A Roll Call Vote was Taken: Yes – 10 No – 4 Absent 0

Do Pass As Amended Carries

Rep. McWilliams will carry the HB1211 as amended

Chairman K. Koppelman: Meeting Closed

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1211

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 12.1-32-09.1 of the North Dakota Century Code, relating to sentencing violent offenders; and to provide for retroactive application.

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

**SECTION 1. AMENDMENT.** Section 12.1-32-09.1 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-32-09.1. Sentencing of violent offenders.**

1. Except as provided under section 12-48.1-02 and pursuant to rules adopted by the department of corrections and rehabilitation, an offender who is convicted of a crime in violation of section 12.1-16-01, 12.1-16-02, subsection 2 of section 12.1-17-02, section 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-fivesixty-five~~ sixty-five percent of the sentence imposed by the court has been served or the sentence is commuted. If an offender is eligible for release under this subsection, the offender may be eligible for parole.
2. In the case of an offender who is sentenced to a term of life imprisonment with opportunity for parole under subsection 1 of section 12.1-32-01, the term "sentence imposed" means the remaining life expectancy of the offender on the date of sentencing. The remaining life expectancy of the offender must be calculated on the date of sentencing, computed by reference to a recognized mortality table as established by rule by the supreme court.
3. Notwithstanding this section, an offender sentenced under subsection 1 of section 12.1-32-01 may not be eligible for parole until the requirements of that subsection have been met.
4. An offender who is convicted of a class C felony in violation of section 12.1-17-02, or an attempt to commit the offense, and who has received a sentence of imprisonment or a sentence of imprisonment upon revocation of probation before August 1, 2015, is eligible to have the offender's sentence considered by the parole board.

**SECTION 2. RETROACTIVE APPLICATION.** Section 1 of this Act applies retroactively to judgments of conviction for offenses subject to section 12.1-32-09.1 entered after July 31, 1995."

Renumber accordingly

**2019 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 HB**

House   **Judiciary**   Committee

Subcommittee

Amendment LC# or Description:   19.0568.01001  

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   Rep. Vetter   Seconded By   Rep. Roers Jones  

<b>Representatives</b>	<b>Yes</b>	<b>No</b>	<b>Representatives</b>	<b>Yes</b>	<b>No</b>
Chairman Koppelman			Rep. Buffalo		
Vice Chairman Karls			Rep. Karla Rose Hanson		
Rep. Becker					
Rep. Terry Jones					
Rep. Magrum					
Rep. McWilliams					
Rep. B. Paulson					
Rep. Paur					
Rep. Roers Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

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

Absent \_\_\_\_\_

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

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

VOICE VOTE CARRIED

**2019 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 HB 1211**

House   **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   Rep. Roers Jones                             Seconded By   Rep. Satrom  

<b>Representatives</b>	<b>Yes</b>	<b>No</b>	<b>Representatives</b>	<b>Yes</b>	<b>No</b>
Chairman Koppelman	X		Rep. Buffalo		X
Vice Chairman Karls		X	Rep. Karla Rose Hanson	X	
Rep. Becker	X				
Rep. Terry Jones	X				
Rep. Magrum		X			
Rep. McWilliams	X				
Rep. B. Paulson	X				
Rep. Paur		X			
Rep. Roers Jones	X				
Rep. Satrom	X				
Rep. Simons	X				
Rep. Vetter	X				

Total    (Yes)   10                             No   4  

Absent   0  

Floor Assignment   Rep. McWilliams  

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

**REPORT OF STANDING COMMITTEE**

**HB 1211: Judiciary Committee (Rep. K. Koppelman, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (10 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). HB 1211 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 12.1-32-09.1 of the North Dakota Century Code, relating to sentencing violent offenders; and to provide for retroactive application.

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

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3. Notwithstanding this section, an offender sentenced under subsection 1 of section 12.1-32-01 may not be eligible for parole until the requirements of that subsection have been met.
4. An offender who is convicted of a class C felony in violation of section 12.1-17-02, or an attempt to commit the offense, and who has received a sentence of imprisonment or a sentence of imprisonment upon revocation of probation before August 1, 2015, is eligible to have the offender's sentence considered by the parole board.

**SECTION 2. RETROACTIVE APPLICATION.** Section 1 of this Act applies retroactively to judgments of conviction for offenses subject to section 12.1-32-09.1 entered after July 31, 1995."

Renumber accordingly

**2019 TESTIMONY**

**HB 1211**

#1  
HB 1211  
1-21-19  
PZ1

Mr Chairman and members of the committee,

My name is Tom Kading for District 45 in Fargo.

Before you is House Bill 1211. This bill removes the use of truth in sentencing from the Century Code.

### **Truth in Sentencing/85% Rule**

Truth in Sentencing is also known as the 85% rule. What this rule mandates is that individuals sentenced to certain types of offenses are required to serve at least 85% of the sentence in which they are given. At face value, this would seem to make sense. Yet if you dive into it, I think the use of this policy has some unintended consequences. There are currently 6 different crimes to which the 85% rule applies in North Dakota. Patrick Bohn from the DOCR will get up and talk a little more about some of the individual crimes and how this policy has applied.

One of the primary reasons Truth in Sentencing was enacted in North Dakota was the fact that this policy had federal dollars promised if it was implemented. The state had to show certain results such as showing an increased length of time served for certain crimes. Ultimately from 1996-2001 the state received \$10.3 million from the federal government. There is no longer any federal dollars tied to this policy.

### **Unintended Consequences**

The conversation surrounding this issue really comes down to what are the unintended consequences and whether they are good things for our state. So what can happen with the 85% rule is that an individual has to serve at least 85% of the sentence regardless of good behavior, program attendance, or work programs. This policy takes away some of the incentive to participate in such and prepare for reentry into society.

Secondly, when someone hits 85% of their sentence and they have served with good behavior, they are released with no parole. There is no transition. There is no structure, support, or supervision. This increases the risks of reoffending.

### **Conclusion**

Ultimately, I think it is in the best interest of our state to not ensure additional time served is achieved as per the aim of the original intent of the federal incentives. In my opinion merely throwing people in prison is not the answer. This bill would allow for flexibility in the DOCR and with judges. Thank you and please provide for a Do Pass recommendation.

Thank you,

HOUSE JUDICIARY COMMITTEE  
REPRESENTATIVE KIM KOPPELMAN, CHAIRMAN  
JANUARY 21, 2019

#2  
HB 1211  
1-21-19  
mg

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**PATRICK N. BOHN, DIRECTOR, NORTH DAKOTA PAROLE & PROBATION,  
NORTH DAKOTA DEPARTMENT OF CORRECTIONS & REHABILITATION  
PRESENTING TESTIMONY RE: HB 1211**

My name is Pat Bohn and I am the Director for North Dakota Parole and Probation within the North Dakota Department of Corrections and Rehabilitation (DOCR). I am here to testify on behalf of the department in support of HB 1211.

**What this bill does:**

This bill proposes eliminate the 85% component for a sentence to prison for all crimes subject to the penalty and it has a retroactive application to August 1, 1995. It has nine sections, primarily because after the 12.32-09.1 was put in effect, as different areas of the code were evolving and addressing violent crime, that statute became the easier way to incorporate the violent crimes into a section of law instead of listing them independently. To make sure those crimes continue to be addressed in other areas, each violent offense criminal statute is not reflected.

**Background:**

During the Clinton era 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. Provisions in the bill incentivized states to incarcerate more people for longer periods of time. In response, in 1995 the 54<sup>th</sup> Legislative Assembly enacted N.D.C.C. section 12.1-32-09.1 which required 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 in Federal funds 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>) I want to point out that in the last two legislative sessions changes were made that effectively eliminated the 85% penalty from C Felony Aggravated Assault, which was by far the most common offense subject to the penalty.

**Current Situation:**

Of the approximately 1701 people in prison about 239 (14%) are currently subject to the 85% penalty.

#2  
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1-21-19

<b>Grand Count</b>	<b>239</b>
<b>AGGRAVATED ASSAULT</b>	19
<b>BURGLARY W/WEAPON</b>	6
<b>GROSS SEX. IMP. W/FORCE</b>	24
<b>KIDNAPPING</b>	5
<b>MANSLAUGHTER</b>	16
<b>MURDER or ATTEMPTED MURDER</b>	89
<b>ROBBERY</b>	80

### Proposed Solution:

We believe by removing the 85% penalty public safety can be improved. By making these people eligible for parole during their incarceration, we will have greater chance of engaging them in treatment programs while holding people accountable, maintaining and maybe even improving public safety, transitioning them back to our communities 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 you should authorize the parole board to evaluate these cases during their sentence, assess how they have prepared themselves for return to our communities and recognize that people can change. Let me share with you a few other interesting aspects of this law:

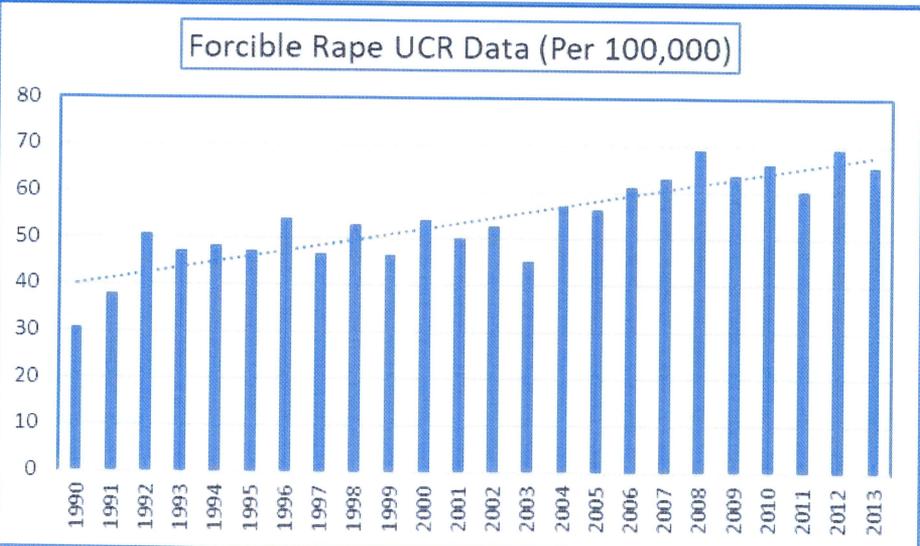
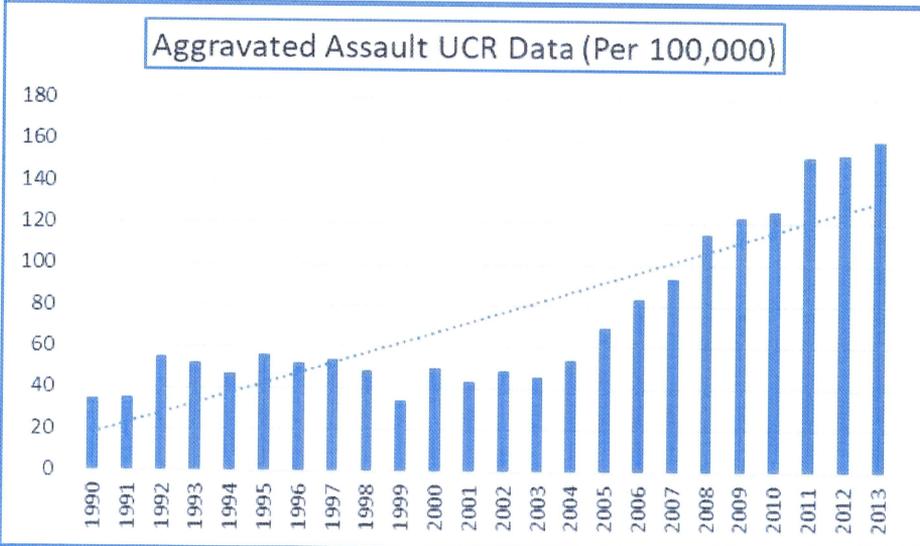
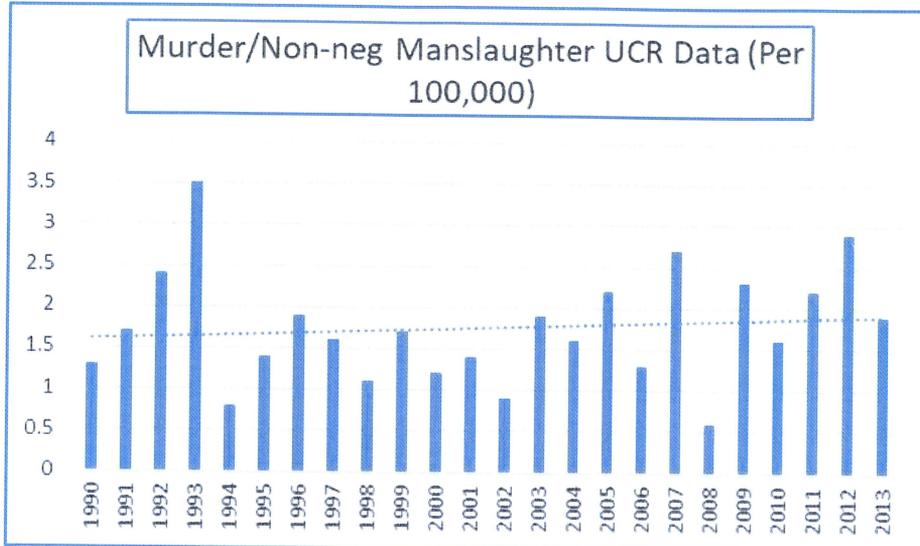
1. Under the 85% statute, the court is not mandated to sentence the person to a period of incarceration. A person convicted of robbery can be placed directly on supervised probation (unless a weapon was used and found to be an element of the crime at the time of sentencing).
2. The court is not required to place an individual on probation subsequent to an initial prison sentence, except for some instances such as GSI with force which requires a minimum of five years and A Misdemeanor and C Felony DUI. People can leave prison with little transition, no support and no services. (Blaine Ellis story)
3. Motivational enhancement. Eliminating release options actually gives people less incentive to follow prison rules or take advantage of treatment, education or job training opportunities.
4. Court hearings challenging the computation. (1 year and 2-year revocation resentence example):  $365 \cdot .85 = 310$ .  $730 \cdot .85 = 620$ .  
Resentence: 2-years credit for 1 year =  $620 - 55 = 565$
5. Cannot release to detainers in other states of federal system, even though other states sentence is longer than the ND sentence.
6. Parole eligibility dates not being computed by courts on life sentences.
  - a. Law in effect 1995
  - b. 1997 HB 1089 required court to compute life expectancy using a mortality table adopted by court rule.
  - c. Court adopted Administrative Rule 51 that states the United States Life Tables 2002 is to be used to compute life expectancy.
    - i. Still using a table from 2002
    - ii. Problems with the table

F2  
HB 1211  
1-21-19

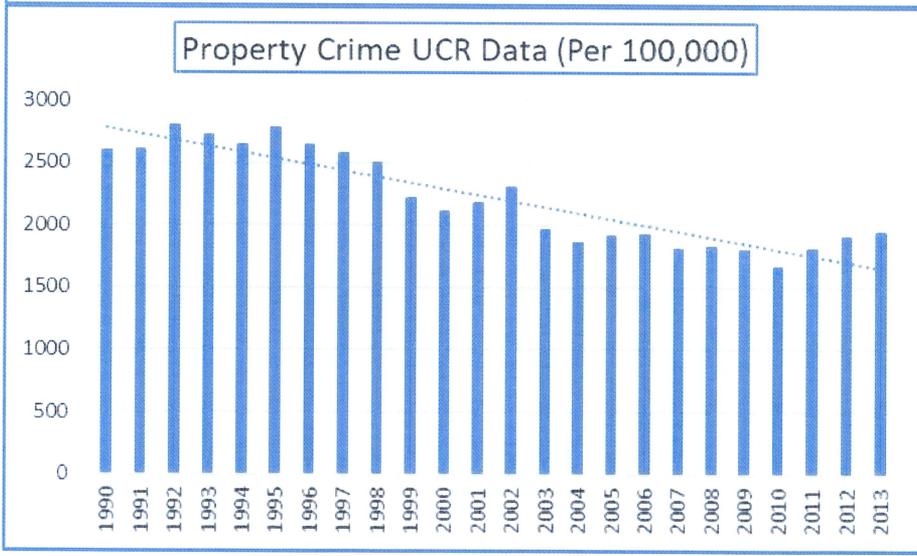
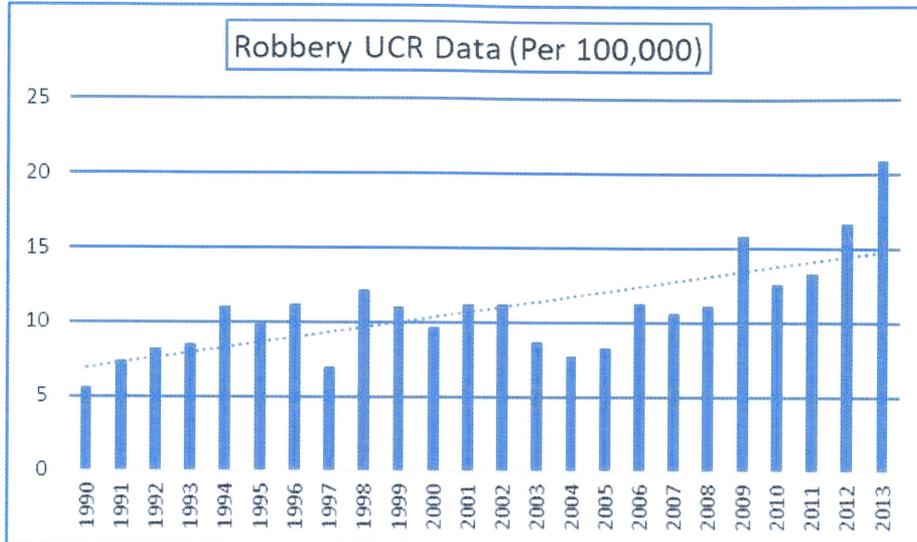
Furthermore, and compellingly is the data and the comments by law enforcement tell us this law is not making us safer. The following data is from the ND Attorney General Crime Reports for the years 1990-2017. In 2014 the reporting methodologies were changed, so from 1990 through 2013 the data is compiled using the Uniform Crime Reporting method (UCR) and from 2010 through 2017 the data is compiled using the North Dakota Incident Based Reporting method (ND IBR). There was cross-over period from 2010 through 2013 where both reporting methods were utilized.

The seven 85% crimes created when the law went in to effect on August 1, 1995 were: Murder, Manslaughter, Aggravated Assault, Kidnapping, Robbery, Gross Sexual Imposition with Force/Threat/Coercion and Burglary with Weapon/Menace/Intimidate. As I mentioned, C Felony Aggravated Assault (which was the largest group of the 85% crimes) is no longer subject to the 85% statute. In the UCR reporting, they do not capture incidences of Kidnapping or 85% Burglary. You can see the data and trends. As I mentioned, if 85% is to somehow impact public safety and reduce violent crime, the data indicates that is not working. If you want more information on the ND IBRs data graphs, I'm including a link so you can look at the last report (2017) and see more information on the reporting categories, rather than trying to insert all of it in this testimony. <https://attorneygeneral.nd.gov/sites/ag/files/documents/2017-CrimeReport.pdf>

#2  
HB-1211  
1-21-19

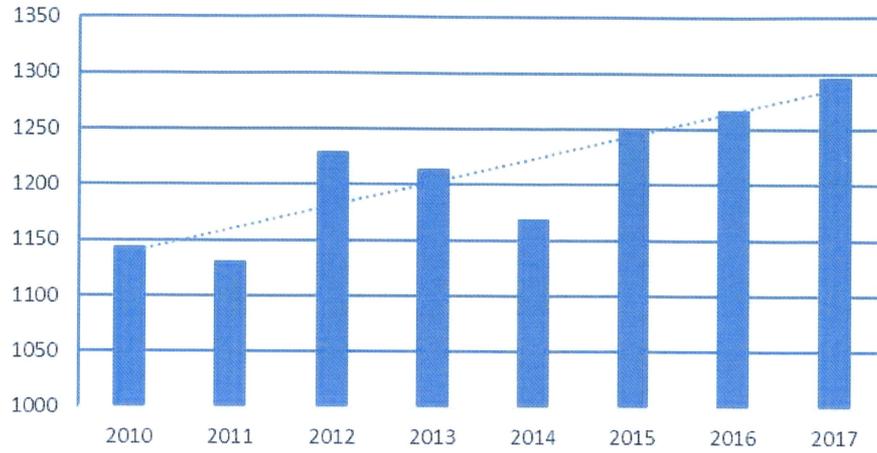


#2  
HB 1211  
1-21-19

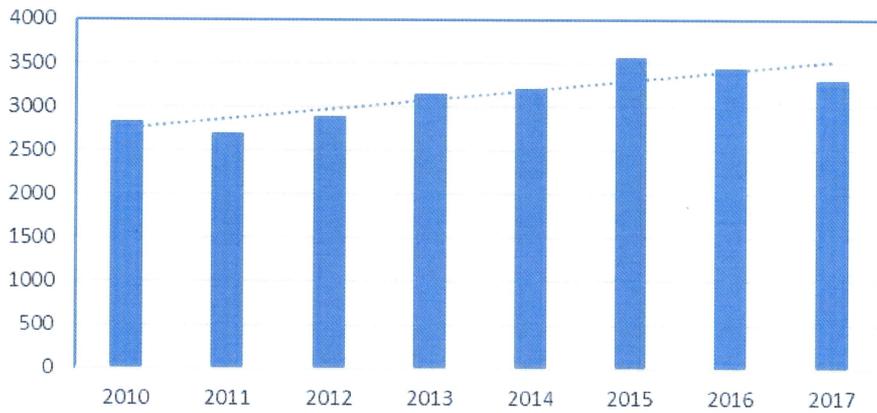


#2  
HB 1211  
1-21-19

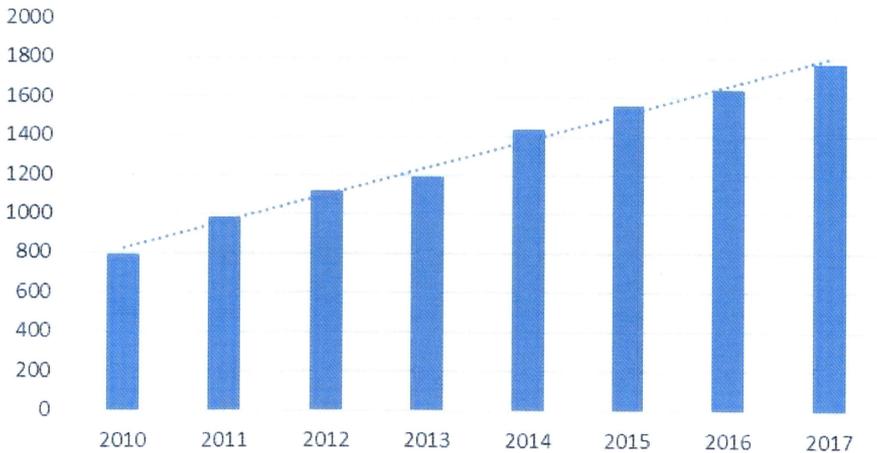
Crimes Against Person NIBRS Data (Per 100,000)



Crimes Against Property NIBRS Data (Per 100,000)



Crimes Against Society NIBRS Data (Per 100,000)



#2  
HB 1218  
1-21-19  
PJ

The North Dakota Parole Board is also supportive of this change. In closing, there is no evidence that the 85% penalty reduces crime. Furthermore, this ineffective law has contributed to the growth of the prison population, is a barrier to effective reentry and exacts a human toll that is difficult to measure. If you have any questions, I'd be glad to try and answer them.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1211

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2. In the case of an offender who is sentenced to a term of life imprisonment with opportunity for parole under subsection 1 of section 12.1-32-01, the term "sentence imposed" means the remaining life expectancy of the offender on the date of sentencing. The remaining life expectancy of the offender must be calculated on the date of sentencing, computed by reference to a recognized mortality table as established by rule by the supreme court.
3. Notwithstanding this section, an offender sentenced under subsection 1 of section 12.1-32-01 may not be eligible for parole until the requirements of that subsection have been met.
4. An offender who is convicted of a class C felony in violation of section 12.1-17-02, or an attempt to commit the offense, and who has received a sentence of imprisonment or a sentence of imprisonment upon revocation of probation before August 1, 2015, is eligible to have the offender's sentence considered by the parole board.

**SECTION 2. RETROACTIVE APPLICATION.** Section 1 of this Act applies retroactively to judgments of conviction for offenses subject to section 12.1-32-09.1 entered after July 31, 1995."

Renumber accordingly