

## COMMISSION ON ALTERNATIVES TO INCARCERATION - BACKGROUND MEMORANDUM

The Commission on Alternatives to Incarceration was created by 2005 House Bill No. 1473. The bill, which was codified as North Dakota Century Code Section 54-35-24, required the Chairman of the Legislative Management to select the Chairman and Vice Chairman of the commission and provided for the membership of the commission as follows:

1. Three members appointed by the Governor, one of whom must be an academic researcher with specialized knowledge of criminal justice sentencing practices and sentencing alternatives;
2. The Attorney General or the Attorney General's designee;
3. Two members appointed by the Chief Justice of the Supreme Court;
4. The Director of the Department of Corrections and Rehabilitation;
5. The Director of the Department of Human Services;
6. Two local law enforcement officers appointed by the Attorney General;
7. One state's attorney appointed by the North Dakota State's Attorneys' Association;
8. Three members of the House of Representatives, two of whom must be selected by the leader representing the majority faction of the House and one of whom must be selected by the leader representing the minority faction of the House;
9. Three members of the Senate, two of whom must be selected by the leader representing the majority faction of the Senate and one of whom must be selected by the leader representing the minority faction of the Senate; and
10. One representative of the North Dakota Association of Counties appointed by the association.

The commission is directed by Section 54-35-24 to study sentencing alternatives, mandatory sentences, treatment options, the expanded use of problem-solving courts, home monitoring, and other related issues. The commission is authorized to request funding for consultant services from the Legislative Management and other interested entities if the commission determines consultant services are necessary to assist the commission in conducting its assigned studies.

Section 54-35-24 requires the commission to study sentencing alternatives, mandatory sentences, treatment options, the expanded use of problem-solving courts, home monitoring, and other related issues. That section requires the commission to provide to the Governor information and recommendations for the Governor's consideration in time for inclusion of the recommendations in the biennial executive budget. The legislation that created the commission was due to expire on June 30, 2009, but the Legislative Assembly adopted 2009 Senate Bill No. 2029, which extended the commission to August 1, 2013, and 2013 House Bill No. 1173, which extended the commission to August 1, 2017.

In addition to the statutory study responsibilities, the Legislative Management directed the commission to undertake the study provided for under 2013 Senate Bill No. 2340. That bill provides for a study of sentencing alternatives to incarceration for first-time felony offenses that are nonviolent, excluding the distribution of drugs.

### BACKGROUND

According to a report by the Pew Charitable Trusts, the prison population in the United States has declined over the last five years after four decades of growth. The report, using Department of Justice statistics, indicated between 2006 and 2011 the imprisonment rate declined in 29 states and the crime rate declined in 47 states. During the same time, according to the report, the imprisonment rate in North Dakota decreased by 4 percent. However, inmate population counts documented by the North Dakota Department of Corrections and Rehabilitation indicate although inmate populations have decreased in the last two years, the number of individuals incarcerated under the supervision of the department has increased slightly from 2007 through 2012.

<b>Average Inmate Population, Arrivals, Releases, and One-Day Counts</b>						
	<b>FY 2007</b>	<b>FY 2008</b>	<b>FY 2009</b>	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>
Average daily population	1408.49	1436.78	1451.19	1478.29	1477.26	1459.68
Admissions	1,043	1,076	1,019	1,063	1,005	1,062
Releases	1,006	1,046	1,028	1,003	1,036	1,049
Inmate count on December 31	1,440	1,470	1,490	1,500	1,440	1,536

In 2013 the Legislative Assembly appropriated \$180,915,389 from the general fund and \$36,134,922 from other funds for the Department of Corrections and Rehabilitation for the 2013-15 biennium, which is an increase of approximately 13 percent over the 2011-13 biennium appropriation. The appropriation for the department provided for an increase of 20 full-time equivalent (FTE) positions, which increased the total number of FTE positions within the department to 814.29.

The appropriation to the department included \$26,002,845, a decrease of \$1,600,000 from the 2011-13 biennium appropriation, for contract housing and transitional facilities for male inmates housed at the Missouri River Correctional Center, county jails, and private facilities. The 2013-15 appropriation to the department also included \$8,966,204 to contract to house female inmates at the Dakota Women's Correctional and Rehabilitation Center, which is an increase of \$507,521 from the 2011-13 biennium appropriation.

### **Adult Services Division**

Section 12-47-01 provides for the establishment of the State Penitentiary. The main prison complex in Bismarck houses maximum and medium security male inmates. As of the end of August 2013, the State Penitentiary housed 674 male inmates. The James River Correctional Center in Jamestown is classified as a medium security housing facility and, as of the end of August 2013, housed 419 male inmates. The Missouri River Correctional Center is south of Bismarck and has no fences or barriers to contain the inmates. The Missouri River Correctional Center has approximately 150 prison beds and houses minimum security male inmates whose sentences are not less than 30 days nor more than one year. As of the end of August 2013, the Missouri River Correctional Center housed 145 inmates. The division offers addiction treatment services, a sexual offender treatment program, and mental health programs through its treatment department. The division's education program offers a variety of education programs, skills training, and vocational programs. In addition, the division offers work experience through Roughrider Industries.

### **Parole and Probation Division**

The department has 15 offices across the state staffed by parole and probation officers who manage offenders on parole or supervised probation and complete presentence investigations when ordered by courts. The officers supervise offender compliance with the supervision conditions and provide cognitive, behavioral, and other forms of counseling services.

The division manages the Tompkins Rehabilitation and Correction Center; operates or participates in drug court programs, global positioning monitoring of offenders, drug and alcohol testing of offenders, and monitoring of sexual offenders; and contracts for services with half-way houses and the Bismarck Transition Center to provide transition services.

The Tompkins Rehabilitation and Correction Center is a Department of Corrections and Rehabilitation-funded program at the State Hospital. The center consists of three 30-bed wards--one ward (30 beds) for females and two wards (60 beds) for males. As of the end of August 2013, the center housed 39 male inmates and 19 female inmates.

### **Dakota Women's Correctional and Rehabilitation Center**

During the 2003-05 biennium, the Department of Corrections and Rehabilitation began to contract with the Dakota Women's Correctional and Rehabilitation Center in New England to house its female inmates. The Dakota Women's Correctional and Rehabilitation Center is owned and operated by the Southwest Multi-County Correction Center Board. The prison at the Dakota Women's Correctional and Rehabilitation Center consists of a 70-bed minimum security unit, a 40-bed medium security unit, and a 16-bed orientation unit. In May 2006 a five-bed high security unit was added to the facility. As of the end of August 2013, the Dakota Women's Correctional and Rehabilitation Center housed 126 state inmates.

## **Division of Juvenile Services/Community Services and Youth Correctional Center**

The Division of Juvenile Services has eight regional offices serving the eight human service regions across the state and is staffed to provide supervision to juveniles committed by the courts. The division also oversees the Youth Correctional Center, which is located west of Mandan and is the state's secure juvenile correctional institution. The Youth Correctional Center serves as a secure detention and rehabilitation facility for adjudicated juveniles who require the most restrictive placement and maximum staff supervision and provides appropriate programming to address delinquent behavior.

Juvenile programming at the Youth Correctional Center includes drug and alcohol programming; child psychiatric and psychological services; sexual offender programming; a pretreatment program for juveniles who are difficult to manage; and a security intervention group program to inform, educate, and provide juveniles with alternatives to gang activity and gang affiliation. The Youth Correctional Center provides adjudicated adolescents an opportunity to complete or progress toward completing their education coursework while in residence through an accredited junior high and high school.

### **2005-06 INTERIM STUDY AND 2007 LEGISLATION**

During the 2005-06 interim, the commission made several recommendations, and the Legislative Assembly responded to most of the recommendations.

#### **Electronic Monitoring**

The commission recommended 2007 Senate Bill No. 2029, which provided except for an offense for which the law requires mandatory incarceration, electronic home detention or global positioning system monitoring may be used for certain adult and juvenile offenders. The bill, which was enacted, authorized, subject to the availability of funding, the court, or with the approval of the court, the Department of Corrections and Rehabilitation or a correctional facility, to implement an electronic home detention and global positioning system monitoring program.

#### **Executive Budget and Funding Issues**

##### **Faith-Based Treatment Program**

The commission recommended the Governor include in the 2007-09 executive budget \$300,000 for room and board expenses for individuals admitted to a faith-based program to address addiction problems.

In 2007 the Legislative Assembly included within the 2007-09 biennial budget for the Department of Corrections and Rehabilitation \$500,000 for faith-based programming.

##### **Drug Courts**

The commission recommended the Governor include in the 2007-09 executive budget approximately \$600,000 for the addition of two FTE positions for the Department of Corrections and Rehabilitation and four FTE positions for the Department of Human Services to assist in the expansion of drug courts.

In 2007 the Legislative Assembly included funding and authorization for three FTE positions within the Department of Corrections and Rehabilitation for drug court parole and probation officers and for four additional FTE positions for addiction counselors at regional human service centers.

##### **Robinson Recovery Center**

The commission recommended the Governor include in the 2007-09 executive budget up to \$1.2 million for the expansion of the Robinson Recovery Center.

In addition to the base funding of \$500,000 and an inflationary increase of \$134,000, the Legislative Assembly directed that \$700,000 from the general fund within the budget for the Department of Human Services must be used for increasing the number of individuals receiving methamphetamine treatment services at the Robinson Recovery Center.

##### **Community Service Programs**

The commission recommended the Governor include in the 2007-09 executive budget \$200,000 to be administered on a cost-share basis with local governments for the operation of community service programs.

The Legislative Assembly enacted 2007 Senate Bill No. 2243, which imposed a \$50 community service supervision fee upon each defendant who receives a sentence that includes community service. The bill provided the community service supervision fees collected are to be deposited in the community service supervision fund to be used to provide community service supervision grants. The bill appropriated \$125,000 from the fund for the 2007-09 biennium to the Department of Corrections and Rehabilitation for providing matching grants for community service supervision of offenders and directed the department to use \$100,000 of the funds appropriated in the field services line item in Section 3 of 2007 House Bill No. 1015 for the purpose of providing matching grants for community service supervision of offenders for the biennium.

### **Cass County Jail Intervention Coordinating Committee**

The commission recommended the Governor include in the 2007-09 executive budget \$582,000 to assist in implementing the Cass County Jail Intervention Coordinating Committee mental health project, to be contingent upon the receipt of a federal grant for the implementation of the project.

### **Other Recommendations and Statements**

The commission expressed its support for an appropriate level of funding, staffing, and training for electronic monitoring programs and the continued use and expansion of the secure continuous remote alcohol monitoring program. The commission encouraged the Governor to assess the need for reducing caseloads for licensed addiction counselors, case managers for individuals with serious mental illnesses, and parole and probation officers to attempt to achieve industry caseload standards.

The Legislative Assembly provided funding in the 2007-09 budget for the Department of Human Services for 4 additional full-time case managers, 1 additional addiction counselor, and 1 sexual abuse therapist and provided funding in the budget for the Department of Corrections and Rehabilitation for up to an additional 11 parole and probation officers and 1 corrections agent.

The commission recommended the provision of adequate funding for mental health and substance abuse programs.

The Legislative Assembly included within the budget for the Department of Human Services approximately \$2.8 million for the phase in of a community-based sexual offender treatment program.

The commission encouraged the Department of Human Services to work with treatment providers to identify gaps in recovery support services and to assist in the implementation of programs to provide early mental health screenings.

The commission encouraged school districts to operate alternative schools to assist in keeping adolescents in school.

The commission encouraged the continued study of the effectiveness of substance abuse treatment programs. The Legislative Assembly amended Section 19-03.1-45 to continue the drug assessment and treatment diversion program and expanded the program from a three-county pilot program to a statewide program.

The commission encouraged state agencies and other entities to place additional emphasis on education and awareness of substance abuse issues.

The commission expressed support for the work of the Prevention Advisory Council on Drugs and Alcohol appointed by the Governor, including the identification of methods for strengthening families and healthy communities.

The commission expressed support and encouragement for private initiatives, such as programs that provide mentors for children of incarcerated individuals.

### **2007-08 INTERIM STUDY AND 2009 LEGISLATION**

During the 2007-08 interim, the commission made several recommendations, and the Governor and the Legislative Assembly responded to most of the recommendations.

### **Community Service Supervision Fee Bill**

The commission recommended 2009 Senate Bill No. 2028 to repeal the \$50 community service supervision fee that courts are required to impose on participants in community service programs. As enacted, the bill retained the community service supervision fee but reduced the fee to \$25.

### **Commission Extension Bill**

The commission recommended 2009 Senate Bill No. 2029 to extend the existence of the commission until June 30, 2013. As enacted, the bill extended the life of the commission until August 1, 2013.

### **Executive Budget and Funding Issues**

#### **Faith-Based Treatment Program**

The commission recommended the Governor include \$500,000 in the executive budget for room and board expenses for individuals admitted to a faith-based program to address addiction problems.

The Legislative Assembly increased funding for faith-based treatment programming to \$800,000.

#### **Community Service Programs**

The commission recommended the Governor include \$500,000 in the executive budget for the Department of Corrections and Rehabilitation to be used by the department to provide matching grants for community service programs at a level to be determined by the department.

The Legislative Assembly provided an appropriation of \$62,500 from the community service supervision fund to the department in 2009 Senate Bill No. 2015 and also provided an appropriation of \$375,000 from the general fund to the Office of Management and Budget in 2009 Senate Bill No. 2178 for community service supervision grants.

#### **Cass County Justice and Mental Health Collaboration Project**

The commission recommended the Governor include \$86,000 in the executive budget for the Cass County Justice and Mental Health Collaboration Project.

#### **Crisis Intervention Training**

The commission recommended the inclusion of \$126,576 in the budget for the Attorney General to provide for crisis intervention training for law enforcement officials.

#### **Juvenile Crisis Intervention Programs**

The commission expressed its support for a request by the Department of Human Services for expanded state funding for juvenile crisis intervention programs around the state.

Senate Bill No. 2355 (2009) appropriated to the Department of Corrections and Rehabilitation \$200,000 for a pilot project relating to providing a short-term shelter program for at-risk youth.

### **Other Recommendations and Statements**

The commission encouraged the Governor and the Department of Human Services to allow the Robinson Recovery Center to address treatment needs for addictions other than the treatment of methamphetamine addiction.

The commission expressed its support for the efforts of the Department of Human Services and encouraged the department to provide broader residential treatment services for addictions and mental health issues on a statewide basis.

The commission expressed its support for legislation during the 2009 legislative session to clarify the role of the county sheriff in supervision of electronic home monitoring in misdemeanor cases. The Legislative Assembly adopted 2009 House Bill No. 1223, which provided for those offenders who are sentenced to a term of imprisonment in a county jail or regional correctional facility, the court may commit the offender to the legal and physical custody of the administrator of the jail or correctional facility and provided it is the responsibility of the administrator to determine whether the use of electronic home detention or global positioning system monitoring is appropriate for that offender.

The commission expressed its support for the 24/7 sobriety program initiated by the Attorney General and the efforts of the Attorney General to work with the Department of Transportation to extend work permits for participants in the 24/7 sobriety program. The Legislative Assembly enacted 2009 House Bill No. 1306, which authorized the State Parole Board to participate in the 24/7 sobriety program as an intermediate sanction or condition of parole. The bill also authorized the Attorney General to establish a statewide 24/7 sobriety program and established program guidelines and fees. The bill authorized a district or municipal court to order an offender charged with a violation of driving under the influence of alcohol or drugs, domestic violence, abuse or neglect of a child, or other offense in which alcohol or controlled substances are involved to participate in the 24/7 sobriety program as a condition of bond. The bill created a 24/7 sobriety program fund and provided a continuing appropriation for the use of money in that fund. The bill appropriated \$100,000 from the general fund to the Attorney General for the purpose of the 24/7 sobriety program.

### **2009-10 INTERIM STUDY AND 2011 LEGISLATION**

During the 2009-10 interim, the commission made several recommendations, and the Governor and the Legislative Assembly responded to many of the recommendations.

#### **2011-13 Executive Budget**

The commission recommended the Governor include in the executive budget funding in an amount equal to the amount provided during the 2009-11 biennium for treatment at the Robinson Recovery Center. The Legislative Assembly included within the budget for the Department of Human Services \$1,594,025, which accounts for an inflationary increase of \$112,452 over the 2009-11 biennium.

The commission recommended the Governor include in the executive budget an amount equal to or greater than the amount provided during the 2009-11 biennium to support community service programs. The Legislative Assembly, through Senate Bill No. 2275, appropriated \$375,000 from the general fund for the biennium to support the community service programs.

The commission recommended the Governor include in the executive budget funding in an amount equal to the amount provided during the 2009-11 biennium for room and board expenses for individuals admitted to a faith-based program to address addiction problems. The Legislative Assembly included within the budget for the Department of Corrections and Rehabilitation \$815,000 for room and board expenses for individuals admitted to faith-based treatment programs, which is essentially the same amount provided during the previous biennium.

#### **Work and Education Release Bill**

The commission recommended 2011 House Bill No. 1028 to allow the Department of Corrections and Rehabilitation to authorize work release or education release for an offender not currently eligible for participation in those programs due to the requirement to serve 85 percent of a sentence or to a minimum mandatory sentence, with the exception of an offender sentenced to life imprisonment without the opportunity for parole. The Legislative Assembly enacted the bill.

#### **Community Service and Other Fees Study**

The commission recommended 2011 Senate Concurrent Resolution No. 4001 to direct a Legislative Management study of the imposition of fees at sentencing and other fees that are imposed upon offenders. The Legislative Assembly passed the resolution, and the study was assigned by the Legislative Management to the Commission on Alternatives to Incarceration.

#### **Short-Term Shelter Care Bill**

The commission recommended 2011 Senate Bill No. 2029 to continue the short-term shelter care and assessment program that was initiated during the 2009-11 biennium and provide an additional \$200,000 in funding to expand the program to another area of the state. The bill failed to pass the Senate. However, the Legislative Assembly included a total of \$200,000 in the Department of Human Services budget to continue the short-term shelter care and assessment program.

#### **Other Recommendations and Statements**

The commission expressed its support for the Read Right program.

The commission expressed its support for continuation of electronic detention and global positioning system monitoring programs.

The commission expressed its continued support for the 24/7 sobriety program.

The commission expressed its continued support for expansion of drug courts within the state.

The commission, in recognition of the fact many individuals incarcerated have underlying mental health issues, expressed continued support for the maintenance of a case manager position for the Cass County Justice and Mental Health Collaboration Project.

### **2011-12 INTERIM STUDY AND 2013 LEGISLATION**

During the 2011-13 interim, the commission received reports from the Department of Corrections and Rehabilitation and the Department of Human Services regarding programs and initiatives implemented and administered by those entities. In addition, the commission examined issues related to the penalties and the monetary thresholds for determining whether a theft offense is a felony. The commission also studied driving under suspension offenses and penalties and the imposition of fees upon offenders by the courts.

#### **Department of Corrections and Rehabilitation**

The commission received reports from representatives of the Department of Corrections and Rehabilitation regarding programs and initiatives at the department which provide alternatives to incarceration or which are intended to keep offenders from reoffending.

#### **Recidivism**

The commission received a report relating to recidivism rates. The department has adopted the Association of State Correctional Administrators' definition of recidivism, which measures recidivism in several areas over 12, 24, and 36 months. Although the overall recidivism rate of about 35 percent is better than most states and significantly better than the national average, the department anticipated decreases in that rate, in part due to the availability of well-paying jobs in the state.

The commission received a report relating to the implementation of evidence-based practices designed to reduce recidivism. Through cognitive behavioral interventions, the department works with offenders to address the thought process of the offender which leads to criminal behavior and to focus on changing that thought process to help make the offender less likely to engage in behavior that will lead to reoffending. The evidence-based practices being implemented include completing an assessment of the risk and needs of each offender, providing the offender intrinsic motivation, targeting interventions specific to each offender, providing directed skills training, increasing positive reinforcement, and engaging in ongoing support in the community. The practices are designed to hold offenders accountable while providing opportunities for change. Because the evidence-based practices require three years of data to accurately measure the results of the practices, the department likely will not have full measurements of the success of the practices until at least 2015.

#### **Prison Education Programs**

The commission received a report regarding education programs implemented by the department. The department reorganized the education programs offered by the department to combine the adult and youth programs under one leadership team with the goal of more effectively and efficiently sharing resources and best practices. Because approximately 24 percent of the offenders in the state correctional system do not have a high school diploma or a general equivalency diploma, evidence-based programs have been implemented to reduce risk and recidivism. During the 2009-11 biennium, 136 of the 144 participants in the general educational development (GED) program earned a general equivalency diploma. In addition, the Read Right program, which has been successful with youth, has been implemented with adults in the system. The Interactive Video Network has been used to provide classes to adult women in Dickinson.

The commission also received information regarding reentry programs designed to teach individuals how to obtain and keep jobs, including the Choices program, which is a career development program implemented by the department. Computer applications and vocational programs are provided by Bismarck State College, and other postsecondary educational opportunities are available through Bismarck State College and the North Dakota State College of Science. In addition, the department provides opportunities to take correspondence courses through two out-of-state institutions. Because federal educational grants are no longer available for incarcerated individuals, it has become more difficult to provide and pay for the educational opportunities, but the department is working with Bismarck State College to use the work study program and federal supplementary educational opportunity grants to provide educational opportunities for inmates.

### **Work Release and Transition Programs**

After its 2009-10 interim study, the commission recommended 2011 House Bill No. 1028, which allows the department to expand the availability of work release programs for individuals who are required to serve 85 percent of their sentences. The change has allowed the department to expand the program to permit those individuals to participate in work release during the last six months of their sentences. Because the Missouri River Correctional Center was forced to be evacuated for five months during the summer of 2011 due to flooding, the impact of the expansion of the availability of work release had been delayed. However, in November 2011 the department began reviewing applications for work release under the expanded release provisions.

The Bismarck Transition Center receives referrals from the department to house individuals who are in the last few months of their sentences. An offender at the center is required to work to pay for a portion of the offender's room and board, pay fines and fees, and save money to be used upon release. In addition, each offender must receive approval from a case manager with respect to weekly spending to allow an offender to save money in preparation for discharge and to get started in a job that may be retained upon discharge.

The commission received a report from representatives of the Bismarck Transition Center regarding a proposal to develop a program through which the center would work with tribal governments in the state to provide transition programs for tribally committed offenders. Under that program, tribes would join a cooperative to help deliver tribal residents who have committed offenses to the center, which could help divert offenders from the state and federal criminal justice systems.

### **Performance-Based Sentence Reduction**

The commission received a report regarding performance-based sentence reduction, which was implemented in 1991 to replace the "good time" law that had been in effect. Under the performance-based sentence reduction law and policy, as implemented by the department, inmates must meet performance criteria, such as participation in court-ordered or staff-recommended treatment and education programs, to earn up to five days of good time per month for each month of the sentence imposed. Under the performance-based sentence reduction policy, inmates may not be credited for any sentence reduction for time spent in custody before sentence and commitment, for time under supervised probation, or for any sentence for which the incarceration time is six months or less. An inmate who is required to serve 85 percent of a sentence is not eligible for sentence reduction. The policy also allows an inmate to receive up to two days per month of meritorious conduct sentence reduction for outstanding performance or heroic acts or as a special control and security measure.

### **Community Supervision and Electronic Monitoring**

The commission received a report regarding offenders under supervision outside institutions. Because of the increasing migration of people into the state, there has been a substantial increase in the number of offenders under community supervision by the department. The report indicated the department is continuing to use electronic monitoring, including the use of alcohol monitoring devices, as a tool to supervise offenders paroled or released on probation. However, the primary barrier to expansion of electronic monitoring has been the high caseload of officers required to conduct the monitoring process.

### **Treatment Programs**

The commission received a report regarding the use of drug courts. According to the report, there are approximately 90 individuals participating in adult drug courts at most times. It was also reported the treatment program at the Tompkins Rehabilitation and Correction Unit has steadily improved and has been awarded a rating of highly effective, which approximately 6 percent of all treatment programs achieve.

## **Department of Human Services**

The commission received reports regarding programs under the supervision of the Department of Human Services, including efforts undertaken in coordination with the Department of Corrections and Rehabilitation and other entities, integrated dual disorder treatment, and the Robinson Recovery Center.

### **Coordination of Services**

The commission was provided information regarding coordination of services between the Department of Human Services and the Department of Corrections and Rehabilitation. Within a few days of release from incarceration, an offender is scheduled for an appointment at a regional human service center to arrange for treatment and integration into the community. Five of the eight regional human service centers provide low-risk sexual offender treatment and provide services for victims. In addition, high-risk sexual offender treatment is offered through a contract provider. Each of the regional human service centers provides addiction treatment



services, and the Department of Human Services also contracts for residential treatment services. Although the release and integration programs are specific to individuals on probation and parole, officials from the State Penitentiary may refer other released offenders for treatment.

In addition to the programs coordinated with the Department of Corrections and Rehabilitation, the Department of Human Services offers other mental health and prevention services upon request from a state's attorney or a local law enforcement official, and the regional human service centers provide outreach on Indian reservations and place a priority on a culturally competent manner of providing services to a variety of cultures. Each regional human service center has an interagency council that interacts with volunteer groups, including the faith-based community.

The alternative for families cognitive behavioral therapy is a family-centered treatment designed to address family conflict, coercion and hostility, emotional abuse, and child physical abuse, which has been implemented in regional human service centers and is a treatment therapy that may be effective in a juvenile drug court setting.

### **Integrated Dual Disorder Treatment**

The commission received a report indicating 25 to 35 percent of individuals with serious mental illness have an active substance abuse problem, and substance abuse among individuals with serious mental illness is three times greater than that of the general population. Studies have demonstrated individuals with dual disorders have an increased risk of relapse of mental illness; relapse of substance use; violence, victimization, and suicidal behavior; homelessness; and incarceration. However, studies also have demonstrated an integrated approach to treatment of dual disorders is more effective than separate treatment.

In 2005 the Southeast Regional Human Service Center initiated a pilot project to examine and implement a dual disorder treatment program. The program was implemented in January 2007 and has resulted in reduced institutionalizations, symptoms, suicide rates, violence, victimization, and legal problems and improved physical health, work results, and family relationships of the participants while not requiring additional staff. Based upon the experience of the pilot project, additional regional human service centers are moving toward implementing integrated dual disorder treatment programs.

### **Robinson Recovery Center**

The department contracts with the Robinson Recovery Center in Fargo for residential treatment services. The commission received a report indicating the number of referrals to the center has increased significantly from 2011 to 2012. Of the referrals in 2011, 6.3 percent were from human service center regions in the western portion of the state, and in 2012, 9.7 percent were from human service centers in the western portion of the state. However, the largest number of referrals continues to come from the region including Fargo. Although the primary addiction of clients admitted during 2011 and 2012 was identified as alcohol, the percentage of clients who were admitted with methamphetamine addiction increased from 2011 to 2012. According to the report, the center's rate of successful completion of the program increased from approximately 25 percent in fiscal year 2011 to about 38 percent in the 12 months prior to September 2012.

The commission was informed the center requires about \$200,000 to \$250,000 in additional funding to sustain operations. The three areas of greatest need identified were the addition of a psychiatric nurse, funding for increased staff salaries, and funding to increase the number of beds available for female clients.

### **Class C Felony Theft Offenses**

During the 2009-10 interim, the Judiciary Committee studied whether penalties for felonies are suitable for felonious behavior. As a part of the study, the committee reviewed criminal offenses for which a monetary amount triggers the grading of the offenses. The committee reported most of the dollar amounts that trigger a penalty were set in the 1970s and 1980s. The committee considered, but did not recommend, a bill draft that would have amended several statutes that include a monetary amount that triggers the level of penalty. Due to inflation, \$500 in 1972 was equivalent to over \$2,700 in 2012.

The commission received a report regarding the increased caseloads of state's attorneys in the western portion of the state due to a substantial increase in population, which indicated some state's attorneys have experienced up to 400 percent increases in caseloads. Because of the \$500 trigger for felony theft offenses, state's attorneys have devoted limited resources to address property-related felony offenses, which may affect the ability to effectively prosecute cases that involve bodily injury.

The commission also received a report indicating the \$500 trigger for felony theft offenses places a burden on public defense resources, and if the trigger were to be increased to \$1,000 or \$1,500, an offender convicted of stealing property valued at more than \$500, but less than the higher threshold, would likely have a better opportunity to make restitution if convicted of a misdemeanor offense. Also, if the individual were convicted of a misdemeanor offense, the individual would not be faced with the collateral issues associated with a felony offense, such as loss of voting rights and difficulty in obtaining jobs.

### **Driving Under Suspension Offenses and Penalties**

The commission examined concerns with respect to large numbers of individuals who have been convicted of driving under suspension multiple times. Judges indicated they are seeing a big problem with individuals driving under suspension and becoming subject to incarceration for multiple driving under suspension offenses, including situations in which the initial suspension was due to an offense, such as unpaid parking fines. Because some individuals under suspension have lost driving privileges for significantly long periods of time, judges and law enforcement officials have noted those individuals often lose hope of ever retaining a license and continue to drive unlicensed and uninsured.

The commission received a report from a representative of the Department of Transportation regarding the number of driving under suspension offenses. The report indicated there were 4,450 driving under suspension or driving under revocation convictions in 2008, 4,246 convictions in 2009, 4,164 convictions in 2010, and 4,073 convictions in 2011.

### **Imposition of Fees Upon Offenders**

#### **Community Service Supervision Fee**

Since the 2005-06 interim, the commission has received reports and studied issues regarding the funding of community service programs. In 2007 the Legislative Assembly enacted Senate Bill No. 2243, which imposed a \$50 community service supervision fee upon each defendant who receives a sentence that includes community service. The bill provided the community service supervision fees collected are to be deposited in the community service supervision fund to be used to provide community service supervision grants.

At the conclusion of the 2007-08 interim, the commission recommended 2009 Senate Bill No. 2028 to repeal the \$50 community service supervision fee, and recommended the Governor include \$500,000 in the executive budget for the Department of Corrections and Rehabilitation to be used by the department to provide matching grants for community service programs at a level to be determined by the department. The Legislative Assembly amended Senate Bill No. 2028 to retain the community service supervision fee but reduced the fee to \$25.

During the 2009-10 interim, the commission continued to examine issues relating to community service programs and the imposition of the community service supervision fee. At the conclusion of the interim, the commission recommended 2011 Senate Concurrent Resolution No. 4001 to request the Legislative Management to study the imposition of fees at sentencing and other fees that are imposed upon offenders.

#### **Other Statutory Fees**

Section 29-26-22 requires a court, upon a plea or finding of guilt, to impose a court administration fee in lieu of the assessment of court costs in all criminal cases except infractions. Under that section, the court administration fee must include a fee of \$125 for a Class B misdemeanor, \$200 for a Class A misdemeanor, \$400 for a Class C felony, \$650 for a Class B felony, and \$900 for a Class A or AA felony.

Section 29-26-22 also provides in all criminal cases except infractions, the court administration fee must include an additional \$100.

Section 29-26-22 allows a court to waive the administration fee or community service supervision fee upon a showing of indigence.

Under Section 12.1-32-07, when a court orders probation for an offender, the court is required to order supervision costs and fees unless the court makes a specific finding on record the imposition of fees will result in an undue hardship. The court is also authorized to impose as a condition of probation that the defendant make restitution or reparation to the victim of the defendant's conduct for the damage or injury which was sustained, pay any fine imposed, and support the defendant's dependents and meet other family responsibilities. In addition, as a condition of probation, the court may order the offender to reimburse the costs and expenses determined

necessary for the defendant's adequate defense when counsel is appointed or provided at public expense for the defendant.

Section 12.1-32-08 authorizes the court to order the defendant to reimburse indigent defense costs and expenses as a condition of probation. That section also provides the reimbursement amount must include an application fee imposed under Section 29-07-01.1 if the fee has not been paid before disposition of the case and the court has not waived payment of the fee. Section 29-07-01.1 imposes a nonrefundable application fee of \$25 to be paid at the time an application for indigent defense services in the district court is submitted.

Section 12.1-32-08 requires a court, when restitution ordered by the court is the result of a finding the defendant issued a check or draft without sufficient funds or without an account, to impose as costs the greater of the sum of \$10 or an amount equal to 25 percent of the amount of restitution ordered, except the amount may not exceed \$1,000.

Section 12.1-32-16 provides when an individual whose occupational, professional, recreational, motor vehicle operator, or vehicle license or registration has been suspended for nonpayment of child support is convicted of engaging in activity for which the license or registration was required, the court shall require as a condition of the sentence the individual pay restitution in the amount of \$250, or a higher amount set by the court.

Section 27-01-10 allows the governing body of a county to authorize by resolution the district judges serving that county to assess a fee of not more than \$25 as part of a sentence imposed on a defendant who pleads guilty to or is convicted of a criminal offense or of violating a municipal ordinance for which the maximum penalty may be imposed by law for the offense or violation includes imprisonment. That section also allows the governing body of a city to authorize by ordinance a municipal judge to assess a fee of not more than \$25 as part of a sentence imposed on a defendant who pleads guilty to or is convicted of violating a municipal ordinance for which the maximum penalty that may be imposed under the ordinance for the violation includes imprisonment.

The commission received a report regarding fees collected or imposed by the judicial branch. The report indicated for the 2009-11 biennium the judicial branch collected the following fees from offenders:

- Criminal court administration fees - \$4,777,928.
- Bail bond forfeitures - \$612,810.
- District court costs - \$22,619.
- Indigent defense recoupment - \$288,519.
- Indigent defense application fee - \$180,517.
- Indigent defense administration fund - \$1,566,192.
- Court facilities improvement and maintenance fund - \$1,276,192.
- Restitution collection assistance fund - \$47,923.
- Community service fee - \$51,378.

### **Recommendations and 2013 Legislation**

The commission recommended the Governor include increased funding in the executive budget for the Robinson Recovery Center, including funding specifically addressing the expansion of beds available for female clients. The Legislative Assembly increased funding for the Robinson Recovery Center by \$296,000 for the 2013-15 biennium.

The commission recommended and the Legislative Assembly enacted 2013 House Bill No. 1027 to provide additional flexibility to the Department of Transportation in providing temporary restricted licenses; expand the potential uses of a temporary restricted license to include use for attendance at an appropriate licensed addiction treatment program, or a treatment program ordered by a court, or to use as necessary to prevent the substantial deprivation of the educational, medical, or nutritional needs of the offender or an immediate family member of the offender; and authorize a court to dismiss a charge for driving under suspension if the defendant provides proof the defendant has reinstated the operator's license within 60 days after the date of the offense.

In addition to the legislation recommended by the commission, the Legislative Assembly enacted several bills relating issues addressed by the commission, including:

- Senate Bill No. 2015, the general appropriation bill for the Department of Corrections and Rehabilitation, increased the offender's probation supervision fee from \$45 to \$55 per month. The bill also authorized the department to refuse to admit inmates sentenced to the physical custody of the department when the admission of inmates will exceed the maximum operational capacity of the State Penitentiary and its affiliated facilities and required the department to develop a prison population management plan to prioritize admissions based on sentences and the availability of space in the Penitentiary and its affiliated facilities. The department is required to report annually to the Budget Section on the prison population management plan and inmate admissions and the number of inmates the department has not admitted after sentencing.
- House Bill No. 1115 removed the requirement an inmate must apply for parole.
- Senate Bill No. 2141 authorized a court, when imposing probation, to impose a fine in cases in which a deferred imposition of sentence is imposed. The bill also provided the court may order the offender to serve a term of imprisonment of up to one-half of the maximum term authorized for the offense of which the defendant was convicted.
- Senate Bill No. 2181 removed language that prohibited the courts from imposing supervised probation on certain domestic violence offenders.
- House Bill No. 1302 addressed driving under the influence provisions. The bill authorized the Department of Transportation to issue a temporary restricted license after 14 days on a first offense if the offender is in the 24/7 sobriety program instead of 30 days. The bill required attendance in the 24/7 program for a temporary restricted license for a second or subsequent offense. The bill created a felony for the fourth or subsequent offense, instead of the fifth or subsequent offense in seven years as previously provided by law. The bill increased the sentence for a first offense by increasing the fine from \$250 to \$500 and creating an aggravated first offense for having a blood alcohol content of at least .16 of 1 percent by weight, which has a fine of \$750 and requires at least two days' imprisonment. The bill increased the penalties for a second offense by increasing the fine from \$500 to \$1,000 and requiring at least 12 months' probation and participation in the 24/7 sobriety program as part of the supervised probation. The bill increased the penalties for a third offense by increasing the days of imprisonment from at least 60 days to 180 days, increasing the fine from \$1,000 to \$2,000, and requiring at least one year supervised probation and participation in the 24/7 sobriety program as part of probation. The bill increased penalties for a fourth or subsequent offense by increasing the number of days of imprisonment from at least 180 days to one year and one day, increasing the fine from \$1,000 to \$2,000, and requiring two years of supervised probation and participation in the 24/7 sobriety program as part of probation. The bill prohibited a suspended sentence for a first or second offense but allowed for converting days of imprisonment to 10 hours of community service for each day for an aggravated first offense. The bill prohibited a suspended sentence for a third offense except for 60 days of imprisonment upon treatment, evaluation, and participation in the 24/7 sobriety program. The bill prohibited a suspended sentence for a fourth or subsequent offense except for one year's imprisonment upon treatment, evaluation, and participation in the 24/7 sobriety program. The bill created criminal vehicular homicide for driving under the influence that results in death and provided for a penalty of a Class A felony with 3 years' imprisonment as a minimum mandatory and 10 years' imprisonment for a second offense as a minimum mandatory. The bill created criminal vehicular injury or driving under the influence that results in substantial bodily injury or serious bodily injury. The penalty is a Class C felony with one year's imprisonment as a minimum mandatory and two years' minimum mandatory imprisonment for a second offense. The bill created a Class C felony for a second conviction for driving while under the influence with a minor in the motor vehicle.

## **PENALTIES FOR NONVIOLENT CRIMES STUDY**

### **Background**

Senate Bill No. 2340 (2013) provided for a study of sentencing alternatives to incarceration for first-time felony offenses that are nonviolent, excluding the distribution of drugs. As introduced, the bill would have eliminated from the list of Class C felony offenses the theft of a prescription drug. The bill was amended in the Senate to provide for a study of sentencing alternatives for first-time felony drug offenses that are nonviolent, excluding the distribution of drugs. The bill was amended again in the House of Representatives to make the study applicable to all first-time nonviolent felony offenses, except the distribution of drugs.

### **Mandatory Minimum Sentences in North Dakota**

During the 1980s and early 1990s, many states, including North Dakota, enacted laws providing for mandatory minimum sentences for certain offenses. Mandatory minimum sentencing laws require a judge impose a sentence of at least a specified length if certain criteria are met. The proponents of mandatory minimum sentencing laws contended the certainty and severity of the mandatory minimum sentences would reduce crime by deterring individuals from committing crimes and keeping criminals incarcerated longer. However, critics of the laws argued the requirements unduly removed discretion from judges and would ultimately result in significant increases in the number of individuals incarcerated.

In 1983 the Legislative Assembly enacted Senate Bill No. 2373, which established mandatory minimum terms of imprisonment for offenders with multiple driving while under the influence offenses. The Legislative Assembly in 2013 House Bill No. 1302 increased the mandatory minimum sentences for driving under the influence offenses.

In 1993 the Legislative Assembly enacted House Bill No. 1062, which established mandatory minimum terms of imprisonment for the manufacture, delivery, or possession with the intent to deliver certain controlled substances. The bill amended Section 19-03.1-23 to provide specified minimum sentencing requirements based upon the classification of the controlled substance and whether the offender had previous offenses. The bill also established mandatory minimum sentences if the violation occurred within 1,000 feet of a school and if the offender were over the age of 21 and used a minor in the commission of the crime. Additionally, the bill amended Section 12.1-32-02.1 to impose mandatory sentences if the offender possessed a dangerous weapon or firearm while in the course of committing the offense. The bill created Section 19-03.1-23.2, which prohibits a court from deferring imposition of a sentence and from suspending a mandatory term unless the court finds the offense was the defendant's first violation and extenuating or mitigating circumstances exist to justify the suspension.

Subsequent Legislative Assemblies, including the 2005 Legislative Assembly, have established minimum mandatory sentences for sexual offenders and imposed requirements with respect to the service of sentences.

Section 12.1-32-09.1, which was enacted by the Legislative Assembly in 1995 and amended in 1997, provides an individual convicted of a crime that classifies the individual as a violent offender and who is sentenced to imprisonment 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 is commuted.

Section 12.1-20-03.1, which was enacted by the Legislative Assembly in 1997 and amended in 2005, prohibits a court from deferring imposition of a sentence of an individual convicted of the continuous sexual abuse of a child. In 2005 the Legislative Assembly, in House Bill No. 1313, further provided if, as a result of injuries sustained during the course of the offense classified as gross sexual imposition, the victim dies, the offense is a Class AA felony, for which the maximum penalty of life imprisonment without parole must be imposed.

In 2005 the Legislative Assembly enacted Senate Bill No. 2341, which provided for the establishment of a pilot project in Pembina, Walsh, and Grand Forks Counties effective three months from the date of receipt of a federal grant for methamphetamine treatment applied for by the Department of Human Services. The bill provided when an individual located in Walsh, Pembina, or Grand Forks County pled guilty or was found guilty of a felony violation of Section 19-03.1-23(6) and that individual had not previously pled guilty or been found guilty of any offense involving the use, possession, manufacture, or delivery of a controlled substance or of any other felony offense, the court would be required to impose a period of probation of not less than 18 months in conjunction with a suspended execution of a sentence of imprisonment, a sentence to probation, or an order deferring imposition of sentence. The bill further provided upon a plea or finding of guilt of the individual, the court would be required to order a presentence investigation, including a drug and alcohol evaluation conducted by a licensed addiction counselor. If the licensed addiction counselor recommended treatment, the court was required to order the individual to participate in an addiction program licensed by the Department of Human Services as a condition of the probation. The court was then required to commit the individual to treatment through a licensed addiction program for up to 18 months until the individual would be determined suitable for discharge by the court. In 2007 the Legislative Assembly expanded the assessment and treatment program statewide in House Bill No. 1015.

### **Incarceration Rates and Mandatory Sentences**

In August 2013 the Attorney General of the United States announced the Justice Department will no longer pursue mandatory minimum sentences for nonviolent drug offenders who have no connections with large criminal organizations, gangs, or cartels. The Attorney General stated federal prisons are operating at nearly 40 percent

above capacity and almost 50 percent of the inmates in federal correctional facilities are serving sentences for drug-related crimes and have substance abuse problems. The Attorney General contended lessening the use of mandatory minimum sentences will save the country billions of dollars that are dedicated to incarcerating nonviolent offenders.

According to the 2012 Department of Corrections and Rehabilitation inmate population report, the number of inmates incarcerated for minimum mandatory sentences has increased from 70 at the end of 2007 to 114 at the end of 2012. The following table compiled by the department summarizes the inmate population on December 31, 2012, compared with the same time during the previous five calendar years:

Inmate Count on December 31 (Crime Type)						
Offense	2007	2008	2009	2010	2011	2012
Violent offenders (excluding sexual)	394	450	430	457	470	507
Sexual offenders	226	243	233	258	260	252
Property, status, and other	359	384	443	413	351	384
Drug offenders (includes alcohol)	461	393	398	377	359	393
Drug - Deliver, manufacture, or intent	238	218	235	228	234	256
Drug - Simple possession	201	149	140	119	100	109
Drug - Alcohol	22	26	23	30	25	28

Inmate Count on December 31 (Minimum Mandatory)						
Offense	2007	2008	2009	2010	2011	2012
DUI/APC	4	19	15	22	21	24
Driving under suspension	2	2	0	1	0	0
Drug offenses (not alcohol)	28	22	28	31	35	37
Reckless endangerment	1	2	0	2	2	0
Assault	8	8	9	11	15	11
Burglary with weapon	1	0	0	0	0	0
Felonious restraint	0	0	0	0	0	0
Kidnapping	1	1	1	1	1	1
Sexual offense	2	3	5	8	9	8
Terrorizing	1	8	7	5	8	10
Robbery	8	12	9	7	6	5
Negligent homicide	0	0	0	2	2	1
Manslaughter	1	1	1	1	1	0
Murder	12	12	11	11	13	14
Felon in possession of a firearm	0	0	1	0	1	0
Offender registration violation	1	2	2	3	3	3
Total	70	92	89	105	117	114

Number of Fiscal Year Admissions by Crime Type						
	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
All inmates	1,043	1,076	1,019	1,063	1,005	1,062
Violent (nonsexual)	210	239	227	224	238	241
Sexual offenders	81	73	64	70	70	85
Drug and alcohol offenders	415	397	356	339	336	351
Property, status, and other	337	367	372	430	361	385

### PROPOSED STUDY APPROACH

In undertaking its studies, the commission may continue to monitor and assess the agencies and programs discussed during the last interim and monitor and assess new programs implemented during this biennium. The commission may consider more closely examining the impact of mandatory minimum sentences on the correctional resources in the state and the impact of incarceration of nonviolent offenders on the offenders versus alternatives to incarceration, such as treatment programs. The commission may consider spending some time identifying additional areas of study. The commission also could continue to monitor and review successful alternatives to incarceration programs undertaken in other states and jurisdictions. The commission should prepare recommendations for inclusion in the Governor's budget by August 2014.