

## **INCARCERATION ISSUES COMMITTEE - BACKGROUND MEMORANDUM**

The Incarceration Issues Committee was created by Section 4 of 2015 House Bill No. 1015. That section of the bill required the Legislative Management to select the Chairman and Vice Chairman of the committee and provided for the membership of the committee as follows:

1. Two members of the house appropriations committee;
2. Two members of the senate appropriations committee;
3. One member of the house judiciary committee;
4. One member of the senate judiciary committee; and
5. Other members serving in a nonvoting advisory capacity include:
  - a. Two district court judges appointed by the chief justice of the supreme court;
  - b. The chief justice of the state supreme court, or a designee of the chief justice;
  - c. One local law enforcement official appointed by the governor from a city with a population greater than 10,000 based on the most recent decennial census;
  - d. One local law enforcement official appointed by the governor from a city with a population less than 10,000 based on the most recent decennial census;
  - e. One state's attorney appointed by the attorney general from a county with a population of 10,000 or more based on the most recent decennial census;
  - f. One state's attorney appointed by the attorney general from a county with a population of less than 10,000 based on the most recent decennial census;
  - g. The attorney general, or a designee of the attorney general;
  - h. The director of the department of corrections and rehabilitation; and
  - i. One member appointed by the director of the department of corrections and rehabilitation.

The committee is directed to study pretrial services, sentencing alternatives, treatment options, and other related issues. Section 3 of House Bill No. 1015 appropriated \$50,000 to the Legislative Council for consulting services to assist with the study of incarceration issues.

In addition to the study responsibilities provided in 2015 House Bill No. 1015, the Legislative Management directed the committee to undertake the study provided for under 2015 House Bill No. 1165. That bill provides for a study, in conjunction with representatives of the executive and judicial branches and other stakeholders, justice reinvestment reforms to seek cost-effective and evidence-based strategies to enhance public safety and properly manage corrections and supervision populations. The bill further provides that the committee shall seek technical assistance as appropriate from the United States Bureau of Justice Assistance, The Pew Charitable Trusts, and the Council of State Governments' Justice Center to conduct the reform initiative.

### **BACKGROUND**

According to a report by the federal Bureau of Justice Statistics, an estimated 6,899,000 people were under the supervision of adult corrections systems in the United States at the end of 2013. Inmate counts documented by the Department of Corrections and Rehabilitation indicated that after a decline in the average number of inmates in 2011 and 2012, North Dakota has experienced an increase in average prison population since 2013.

The 2015 Legislative Assembly appropriated \$177,774,343 from the general fund and \$37,612,899 from other funds to the Department of Corrections and Rehabilitation for the 2015-17 biennium. The appropriation for the department provided for an increase of 22 full-time equivalent (FTE) positions, which increased the total number of FTE positions within the department to 836.29.

### **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. At the end of June 2015, the State Penitentiary housed 758 male inmates. The James River Correctional Center in Jamestown is classified as a medium security

housing facility and, at the end of June 2015, housed 435 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. At the end of June 2015, the Missouri River Correctional Center housed 155 inmates. The adult services division offers addiction treatment services, a sex 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.

The 2015 Legislative Assembly considered including a prison bed day allocation standard to allow the Department of Corrections and Rehabilitation to allocate to each county in North Dakota a specific number of prison bed days available for offenders during the 2015-17 biennium. The department was to determine the specific number of beds available to each county by considering the estimated 2015-17 inmate population, the authorized appropriation for housing inmates at correctional facilities, including contract in-state and out-of-state correction facilities, and the most recent North Dakota county census data. If enacted, each county would have received a monthly statement reporting the number of prison bed days used by that county during the biennium to date and the county's current balance of available prison bed days. Under the proposal in House Bill No. 1015 as introduced, if a county that exceeded its prison bed day allocation, the county would be billed \$75 for each prison bed day in excess of the county's allocation.

### **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 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 sex 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. At the end of June 2015, the center housed 46 male inmates and 27 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. Over the past three decades, the state female population has been steadily increasing, however in the last year, there has been a more dramatic increase. On December 5, 2014, there were 211 female inmates under the control of the Department of Corrections and Rehabilitation. This is in sharp contrast to female inmate counts ranging from 155 to 171 in November and December 2013. At the end of June 2015, the Dakota Women's Correctional and Rehabilitation Center housed 139 state inmates.

### **Division of Juvenile Services/Community Services and Youth Correction 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; sex 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.

### **Treatment Options**

There are various programs under the supervision of the Department of Human Services, including programs undertaken in cooperation with the Department of Corrections and Rehabilitation and various contract programs.

#### **Robinson Recovery Center**

The department continues to contract with the Robinson Recovery Center for residential treatment services. The Robinson Recovery Center utilized the additional funding provided by the 2013 Legislative Assembly to increase the number of beds available to female clients from 10 to 15, and those additional beds were filled within a week after completion of the renovation allowing for the additional beds. The center had an occupancy rate of approximately 90 percent during 2013, and a similar occupancy rate is expected to be maintained in the foreseeable future. Although a majority of the admissions to the center continue to be from the human service region including Fargo, a growing number of admissions are coming from the western portion of the state. Almost 50 percent of the clients admitted were addicted to meth. The center's rate of successful completion of the program increased from approximately 35 percent in fiscal year 2012 to 39 percent in the following year. The majority of those not successfully completing treatment either left against professional advice or were discharged by the facility for behavioral or compliance issues. Addiction counselors are seeing an increase in the use of meth and heroin in addition to an increasing number of individuals in the state in need of long-term, residential treatment for addiction to drugs and alcohol. Although the entity that operates the center also operates a residential program for women with children, that program does not receive funding from the state.

#### **Tompkins Rehabilitation and Corrections Center**

The Tompkins Rehabilitation and Corrections Center is located at the State Hospital and operated by the Department of Human Services in collaboration with the Department of Corrections and Rehabilitation. According to a report from a representative of the center, the center has consistently ranked in the top 15 percent of similar programs nationally. The center provides a cognitive behavioral treatment approach utilizing cognitive restructuring groups to reduce risks to reoffend. The percentage of individuals who successfully complete treatment and who do not reoffend within six months is more than double the national average. The success of the program has been attributed to the length of the program. In addition to the 100 days of residential treatment, aftercare treatment extends the care to a total of 6 to 12 months.

#### **Southeast Human Service Center**

The Southeast Human Service Center has collaborated with the Cass County Jail to provide case management and mental health services for incarcerated individuals. In addition to the postbooking services through the jail program, the center has participated with law enforcement and private mental health providers to provide training to law enforcement officers to assist the law enforcement officers in identifying individuals in need of community services, and helping those individuals with obtaining treatment with the purpose of addressing mental health issues before incarceration. The center also reported on the implementation of an integrated dual-diagnosis treatment multidisciplinary team structure designed to reduce institutionalization; reduce violence and suicide; and improve physical health, function, and family relationships of participants. The measured outcomes over the first 48 months of that initiative indicated a 29 percent decrease in emergency room admissions, a 40 percent decrease in crisis bed days, a 70 percent decrease in long-term hospitalization, an 87 percent decrease in respite care bed days, a 90 percent decrease in acute psychiatric hospital days, and a 98 percent decrease in days incarcerated.

The Southeast Human Service Center collaborates with the private provider to address urgent mental health needs in the region through on-call staff. During the first eight months of the program, the team received an average of over 12 calls per month. According to the report, 97 of the 99 calls were resolved without the need to access alternative placements or higher levels of care. Although the cost of the crisis team is approximately \$10,000 per month, the estimated cost of psychiatric hospitalization of 50 percent of the individuals seeking help would likely be approximately three times that amount.

#### **Heart River Bridges of Hope Re-entry Ministry**

Heart River Bridges of Hope is an outreach and re-entry ministry for youth. One of the primary goals of Heart River Bridges of Hope is to create a bridge from a youth's involvement in the worship life of Heart River into another faith community upon release through informal mentoring relationships.

## **Sentencing Alternatives**

There are a few alternatives to traditional sentencing available in North Dakota, the majority of which are under the supervision of the Department of Corrections and Rehabilitation or the judicial branch.

### **Drug Courts**

There are several challenges faced by drug courts and the individuals participating in the drug court process. The shortage of addiction counselors has become a concern with respect to the operation and potential expansion of both juvenile and adult drug courts. Standards for effective operation of drug courts require evidence-based practices. However, not all drug courts in the state have had access to services utilizing evidence-based practices.

With respect to juvenile drug courts, several additional challenges were identified by the Commission on Alternatives to Incarceration during the 2013-14 interim. Those challenges included the lack of adolescent inpatient and crisis stabilization beds, a lack of affordable and accessible treatment options, and the limited availability of psychiatric services for adolescents. With respect to adult drug courts, the challenges identified included difficulty in obtaining or maintaining appropriate housing, the cost of chemical dependency evaluations, the cost of defense counsel for participants, insurance carriers not covering the cost of treatment beyond the traditional 24-day programs, and the impact of the changes in driving under the influence laws enacted by the 2013 Legislative Assembly--the required mandatory jail time reduces the incentive to participate in drug court.

### **Community Service Programs**

Community service programs were formed in North Dakota in 1993 to provide community-based alternatives to incarceration and allow juvenile and adult offenders to perform court-ordered community service obligations for the benefit of nonprofit organizations and local communities. Initially, the state provided funding to assist in establishing the programs. However, the Department of Corrections and Rehabilitation ceased providing the grants after June 30, 2006, due to reductions in funding and prioritization of programs. The 2011 Legislative Assembly, through Senate Bill No. 2275, appropriated \$375,000 from the general fund for the biennium to support the community service programs. In 2013 the Legislative Assembly included within the appropriation for the Office of Management and Budget \$375,000 in funding for support of community service programs. In addition to the state funding, the programs have received funding from local governments and from participation fees imposed on offenders ordered to perform community service.

A total of 2,638 offenders performed community service in 2013, with 41 percent of the offenders performing community service in Fargo. In 2013 a total of 74,053 hours of community service were completed with a noncash value to the worksites of \$592,383. The hours of community service performed in 2013 saved 9,256 days of prison or jail service, which at an estimated cost of \$65 per day, provided a savings of \$601,680.

The 2015 Legislative Assembly, through Senate Bill No. 2015, appropriated \$500,000 from the general fund for the biennium to support the community service programs, and an additional one-time appropriation of \$500,000 for a community grant program.

### **Pretrial Services**

There are limited pretrial services options which are not directly provided by probation and pretrial services.

### **Cass County Jail Initiative**

In 2007 Cass County was awarded a \$250,000 grant to plan and implement a postbooking, jail-based program targeting offenders with a specific diagnosis and whose nonviolent offense is a product of a treatable mental illness. The Cass County Jail has collaborated with the Southeast Human Service Center for mental health services and also has hired a full-time clinical mental health coordinator at the jail to conduct assessments, refer mentally ill offenders to treatment providers, and make referrals to prosecutors for consideration of dismissal of charges or a deferred or suspended sentence.

## **2013-14 INTERIM STUDY RECOMMENDATIONS AND OTHER 2015 LEGISLATION**

The previous Commission on Alternatives to Incarceration looked at mandatory minimum sentences in North Dakota and their relation to incarceration rates, recidivism reduction, treatment programs, and sentencing alternatives for first-time nonviolent felony offenses. Upon completion of the 2013-14 interim, the Commission on Alternatives to Incarceration made several recommendations, and the Legislative Assembly responded to most of the recommendations.

### **Transfer of Juveniles to Adult Court Bill**

The commission recommended, and the 2015 Legislative Assembly passed, Senate Bill No. 2028 eliminating the mandatory transfer of a juvenile to adult court for offenses related to manufacture, delivery, or possession of controlled substances.

### **Abuse and Neglect of a Child Bill**

The commission recommended, and the 2015 Legislative Assembly passed, House Bill No. 1029 separating the offenses of abuse of a child and neglect of a child into different statutory provisions and eliminate the Class B felony penalty for the offense of neglect of a child.

### **Term of Probation Bills**

The commission recommended, and the 2015 Legislative Assembly passed, Senate Bill No. 2029 removing the requirement that a court impose a period of probation of not less than 18 months for a person who has plead guilty or been found guilty of a felony violation for drug possession, and to provide a judge discretion with respect to the length of the probation within those statutory limits.

The commission recommended 2015 Senate Bill No. 2027, which was amended into 2015 House Bill No. 1367 and passed by the Legislative Assembly. As enacted, the bill creates a distinction between supervised and unsupervised probation. Under the bill, the length of supervised probation from the later of the date of the order imposing probation, the defendant's release from incarceration, or termination of the defendant's parole is up to five years for a felony, two years for a Class A misdemeanor, and 360 days for a Class B misdemeanor. The bill also authorizes the court to impose additional probation if the defendant has not served the maximum sentence of imprisonment available to the court at the time of initial sentencing or deferment. The bill includes the option of up to five nonsuccessive periods of incarceration during any 12-month period, not to exceed 48 hours each, as an intermediate measure a court may use to avoid a revocation of probation.

### **Possession of Drug Paraphernalia Penalties Bill**

The commission recommended, and the 2015 Legislative Assembly passed, Senate Bill No. 2030 reducing the penalty for possession of paraphernalia intended for the use of controlled substances from a Class C felony to a Class A misdemeanor and reduced the penalty for possession of paraphernalia for the use of marijuana from a Class A misdemeanor to a Class B misdemeanor. As enacted, the bill also makes it a Class A misdemeanor to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal marijuana.

### **Departures from Mandatory Sentences Bill**

The commission recommended, and the 2015 Legislative Assembly passed, House Bill No. 1030 allowing a court to depart from a mandatory minimum sentence if the court, in giving due regard to the nature of the crime, history and character of the defendant, and the defendant's chances of successful rehabilitation, finds a compelling reason on the record that imposition of the mandatory minimum sentence would result in manifest injustice to the defendant and that the mandatory minimum sentence is not necessary for the protection of the public.

### **Other Recommendations**

The commission recommended the Governor contact The Pew Charitable Trusts to propose a collaborative effort to implement a justice reform study in the state. The 2015 Legislative Assembly passed House Bill Nos. 1165 and 1015, which provided that the Legislative Management study justice reinvestment reforms through the creation of an Incarceration Issues Committee.

### **Funding Recommendations**

The commission recommended the Governor include additional funding for the 2015-17 biennium to provide residential treatment program beds statewide, with an emphasis on additional beds in the western portion of the state. The 2015 Legislative Assembly provided the Department of Human Services an additional \$903,983 for a 10-bed crisis residential and transitional living unit in the north central region and \$283,500 for a 4-bed unit to provide alternate care services for the west central region.

The commission recommended the Governor include funding to replicate the Cass County Jail diversion project in other areas of the state. The 2015 Legislative Assembly approved an additional \$1,705,382 for an adult recidivism reduction re-entry program. In addition, pretrial services received 3 full-time equivalent (FTE) positions and approximately \$530,000.

The commission recommended the Governor include funding for a study of evidence-based practices used by the Department of Corrections and Rehabilitation in meeting identified treatment service gaps and expressed its support to increase funding of community service supervision grants.

## **JUSTICE REINVESTMENT INITIATIVE STUDY**

### **Background**

In 2010 Congress appropriated funds to the federal Bureau of Justice Assistance to launch the Justice Reinvestment Initiative (JRI) in partnership with The Pew Charitable Trusts. The Justice Reinvestment Initiative convenes the stakeholders in a state's justice system along with local policy leaders to devise data-driven approaches to criminal justice reform designed to generate cost-savings that can be reinvested in high-performing public safety strategies. Since JRI began, 17 states have participated in the program and with technical support from The Pew Charitable Trusts and the Council of State Governments' Justice Center to help implement JRI legislation and policy solutions in addition to developing systems for tracking the impact of the reinvestment strategies.

States participating in JRI first establish bipartisan, interbranch teams of elected and appointed state and local officials to work with researchers and criminal justice policy experts. States also engage a wide variety of stakeholders, such as judges, prosecutors and defense attorneys, victims' advocates, corrections staff, law enforcement agencies, local officials, and service providers. Participating states then develop policy solutions that target corrections population and cost drivers identified through systemwide data analyses that determine the key causes of a state's correctional costs and populations and the main barriers to enhanced public safety. Through legislation and other policy modification, these solutions are incorporated into the state's criminal justice operations. Upon passage of JRI legislation, reforms are implemented and a portion of the resulting savings is reinvested in evidence-based efforts to support additional public safety improvements. Projected savings vary across states and time periods, ranging from \$7.7 million over 5 years to \$875 million over 10 years. Total project savings amount to \$3.3 billion, and states are projected to reinvest a total of \$374 million in public safety initiatives.

### **South Dakota Justice Reinvestment**

Seeking to improve public safety and contain prison costs, South Dakota Governor Dennis Daugaard, Chief Justice David Gilbertson, Senate Majority Leader Russell Olson, and House Majority Leader David Lust established the Criminal Justice Initiative Workgroup in 2012. The 18-member, bipartisan workgroup included representatives from the executive, legislative, and judicial branches, as well as law enforcement, substance abuse and mental health treatment providers, prosecutors, and defense attorneys. In the summer of 2012, the workgroup began a five-month process to analyze South Dakota's sentencing and corrections data; discuss criminal justice programs, policies, and practices; examine options proven to reduce recidivism; and issue research-based, fiscally sound policy recommendations to improve public safety, hold offenders more accountable, and reduce spending. The data-driven effort was supplemented by extensive outreach. The Council of Advisors reviewed and provided feedback on the key findings and recommendations. The Criminal Justice Initiative Workgroup's Native American Subcommittee analyzed data and provided specific recommendations and feedback regarding Native Americans and the criminal justice system in the state.

After a comprehensive review of state data, the review determined that nonviolent offenders made up 81 percent of prison admissions and 61 percent of the inmate population. In addition, parole violators occupied 1 in 4 prison beds, and more than 4 in 10 inmates were returning to prison within three years of release. The workgroup developed policy recommendations to strengthen supervision and interventions, focus prison space on violent and career criminals, and ensure the quality and sustainability of reforms.

The policies implemented as a result of the review are projected to reduce anticipated prison growth in South Dakota by 716 beds, avert the construction of two prisons, and save state taxpayers \$207 million in construction and operating costs through 2022. Legislation also redirects the \$8 million from the current budget to programs and policies proven to reduce recidivism and improve offender accountability. An ongoing investment in these programs of \$4.9 million annually is expected. More specifically, the law expands the tools and options available to judges, court service officers, the parole board, and parole agents to change offender behavior and reduce recidivism. To help policymakers and corrections officials assess and manage the overall performance of the system, the new law creates policies to ensure that the reforms achieve the impact anticipated, through the creation of an oversight council, which will sunset after five years, charged with monitoring and evaluating implementation of the reforms.

## **PROPOSED STUDY APPROACH**

The committee shall participate with representatives of the executive and judicial branches and other stakeholders to seek cost-effective and evidence-based strategies to enhance public safety and properly manage corrections and supervision populations. The committee should consider inviting representatives from the United States Bureau of Justice Assistance, The Pew Charitable Trusts, and the Council of State Governments' Justice Center to make presentations to the committee regarding the collaborative efforts necessary to make effective use of the interim. The committee should consider inviting representatives from the Indian Affairs Commission, the Department of Veterans' Affairs, and mental health organizations to provide insight on the diverse communities represented in the North Dakota prison population. The committee should include a wide variety of stakeholders in the discussion, including judges, local officials, prosecutors and defense attorneys, victims' advocates, corrections staff, law enforcement agencies, and service providers. The committee should then consider any potential policy modification to target the corrections population and other costs identified through a systemwide analysis. The commission should prepare recommendations, together with any legislation required to implement the recommendations, to the 65<sup>th</sup> Legislative Assembly.