

CORRECTIONAL SYSTEM STUDY - BACKGROUND MEMORANDUM

Senate Concurrent Resolution No. 4015 (copy attached as an appendix) directs the Legislative Council to study the adult correctional system in North Dakota, including its functions, responsibilities, funding, and operation and the causes of past and projected future increases in the state's adult inmate population, including the impact of sentencing laws. Testimony in support of the resolution indicated that a study was necessary to review the treatment and other correctional programs in order to provide alternatives to incarceration which may reduce the number of inmates and reduce recidivism.

BACKGROUND

State Penitentiary

North Dakota Century Code (NDCC) Section 12-47-01 provides for the establishment of the state penitentiary. The Penitentiary, which was founded in 1885, is to be located in Bismarck and is the general penitentiary and prison of the state for the punishment and reformation of offenders against the laws of the state. In 1997 Section 12-47-01 was amended to permit the Director of the Department of Corrections and Rehabilitation to establish affiliated facilities at other locations throughout the state within the limits of legislative appropriations. The Penitentiary and the immediate surrounding property occupy approximately 200 acres on the eastern outskirts of Bismarck. In addition, the Penitentiary owns or leases approximately 4,400 acres which include the Missouri River Correctional Center and other land used for farming purposes.

The Penitentiary facility is comprised of seven units that are used to house male inmates.

1. The North unit (Orientation unit) is a maximum security area that contains double-bunk cells and which has an inmate capacity of 66.
2. The Overflow unit is a medium security area with dormitory-style cells. This unit has a capacity of 31 inmates.
3. The East Cell House, which was built in 1910, is a maximum security unit with single-bunk cells with an inmate capacity of 157.
4. The West Cell House is a maximum security unit that contains single-bunk cells and has an inmate capacity of 80.
5. The South unit is a maximum security unit with dormitory-style cells and an inmate capacity of 60.
6. The Therapeutic community unit is a medium security, dormitory-style unit with an inmate capacity of 60.

7. The Administrative segregation unit is a maximum security unit with single-bunk cells and an inmate capacity of 36.

Other buildings located at the Penitentiary site include a food service building, education building, administration building, recreation building, purchasing and distribution building, visiting center, power plant, chiller building, old slaughterhouse, pressing room, program building, dairy barn, wood granary, the Sunny Farm barn, the Roughrider Industries office and warehouse, and a machine storage pole barn.

Pursuant to Section 12-47-11, the warden, under the direction of the director of the Division of Adult Services, is the person responsible for the custody and control of the Penitentiary, its inmates, and the Penitentiary land, buildings, furniture, tools, implements, stock, provisions, and any other property within the premises of the Penitentiary. The warden is responsible for the policing of the Penitentiary and the discipline of the inmates.

Missouri River Correctional Center

The Missouri River Correctional Center (MRCC) is located eight miles south of Bismarck near the Missouri River with an additional 1,300 acres known as "Sunny Farm" located south of Mandan. The MRCC has no walls or barriers to contain the inmates and is located in a wooded setting. The institution houses male and female inmates whose sentences are not less than 30 days nor more than one year. The buildings at the MRCC include a manager's residence, male and female inmate housing units, library, recreation building, vocational education building, industries building, storage barn, auto mechanic classroom, kitchen and dining room, treatment building, equipment repair shop, and various storage buildings. The inmate housing facilities at the MRCC include a minimum security, dormitory-style housing unit for male inmates which has a capacity of 136. In addition, there is a minimum security, dormitory-style housing unit for female inmates with a capacity of 14. The administration of the MRCC is under the jurisdiction of the warden of the State Penitentiary, but a manager lives onsite and conducts the day-to-day administration.

Among the educational programs offered to the inmates of the MRCC include a high school equivalency program, a resident tutoring program, a business education class, welding and automotive programs, carpentry classes, and prerelease and education release programs.

James River Correctional Center

The James River Correctional Center, which is located on the grounds of the State Hospital in Jamestown, was completed for use as a correctional facility in 1998. The James River Correctional Center contains two units for its inmate population. The second floor of the center is a medium security male unit with dormitory-style cells and an inmate capacity of 160. The female unit, which is located on the third and fourth floors, is also a medium security, dormitory-style unit. There is a capacity of 80 females.

Offender Statistics

The 1995-97 biennial report of the Department of Corrections and Rehabilitation reported that the demographics of the inmate population were changing. The report noted that increases in the manufacture and use of methamphetamines, along with street gang activity, brought in a new breed of younger, more violent, and more culturally diverse inmates. At the end of the biennium, 68 percent of the population was Caucasian, 22 percent American Indian, six percent Hispanic, and three percent Black.

During the 1995-97 biennium, the offenses for which inmates were confined included--property crimes (41 percent); violent crimes (22 percent); drug-related crimes (18 percent); sexual crimes (18 percent); driving under the influence (six percent); and other offenses such as bail jumping, escape, and unlawful possession of a firearm (five percent). Lengths of sentences during the 1995-97 biennium included--life (one percent); 15-45 years (one percent); 7-15 years (five percent); 4-7 years (25 percent); 2-4 years (24 percent); 1-2 years (19 percent); and one year or less (26 percent).

NORTH DAKOTA CENTURY CODE SENTENCING LAWS

Classification of Offenses - Penalties

North Dakota Century Code Chapter 12.1-32 provides for the penalties and sentencing of criminal offenders. The offenses for which a person may be sentenced are divided into seven classes. The classification of offenses under Section 12.1-32-01 is as follows:

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| Class AA felony | Maximum penalty of life imprisonment without parole may be imposed. The court must designate whether the life imprisonment sentence imposed is with or without an opportunity for parole. A person found guilty of a Class AA felony who receives a sentence of life imprisonment with parole is not eligible to have that person's sentence considered by the parole |
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| | board for 30 years, less sentence reduction earned for good conduct, after that person's admission to the penitentiary. |
| Class A felony | Maximum penalty of 20 years' imprisonment, a fine of \$10,000, or both, may be imposed |
| Class B felony | Maximum penalty of 10 years' imprisonment, a fine of \$10,000, or both, may be imposed |
| Class C felony | Maximum penalty of five years' imprisonment, a fine of \$5,000, or both, may be imposed |
| Class A misdemeanor | Maximum penalty of one year's imprisonment, a fine of \$2,000, or both, may be imposed |
| Class B misdemeanor | Maximum penalty of 30 days' imprisonment, a fine of \$1,000, or both, may be imposed |
| Infraction | Maximum fine of \$500 may be imposed. Any person convicted of an infraction who has, within one year prior to commission of the infraction of which the person was convicted, been previously convicted of an offense classified as an infraction may be sentenced as though convicted of a Class B misdemeanor. If the prosecution contends that the infraction is punishable as a Class B misdemeanor, the complaint must specify that the offense is a misdemeanor. |

Sentencing Alternatives

North Dakota Century Code Section 12.1-32-02 provides for the sentencing alternatives available to the court when sentencing a person convicted of an offense. Those alternatives include:

1. Payment of the reasonable costs of the person's prosecution.
2. Probation.
3. A term of imprisonment, including intermittent imprisonment:
 - a. In a state correctional facility in accordance with Section 29-27-07, in a regional corrections center, or in a county jail, if convicted of a felony or a Class A misdemeanor.
 - b. In a county jail or in a regional corrections center, if convicted of a Class B misdemeanor.

- c. In a facility or program deemed appropriate for the treatment of the individual offender, including available community-based programs.
 - d. In the case of a person convicted of an offense who is under 18 years of age at the time of sentencing, the court is limited to sentencing the minor defendant to a term of imprisonment in the custody of the Department of Corrections and Rehabilitation.
4. A fine.
 5. Restitution for damages resulting from the commission of the offense.
 6. Restoration of damaged property or other appropriate work detail.
 7. Commitment to an appropriate licensed public or private institution for treatment of alcoholism, drug addiction, or mental disease or defect.
 8. Commitment to a sexual offender treatment program.

Mandatory Sentencing

North Dakota Century Code Section 12.1-32-02.1 provides for a mandatory prison term for armed offenders. This section provides:

Notwithstanding any other provision of this title, a term of imprisonment must be imposed upon an offender and served without benefit of parole when, in the course of committing an offense, the offender inflicts or attempts to inflict bodily injury upon another, threatens or menaces another with imminent bodily injury with a dangerous weapon, explosive, destructive device, or firearm, or possesses or has within immediate reach and control a dangerous weapon, explosive, destructive device, or firearm while in the course of committing an offense under subsection 1 or 2 of section 19-03.1-23. This requirement applies only when possession of a dangerous weapon, explosive, destructive device, or firearm has been charged and admitted or found to be true in the manner provided by law, and must be imposed as follows:

1. If the offense for which the offender is convicted is a class A or class B felony, the court shall impose a minimum sentence of four years' imprisonment.
2. If the offense for which the offender is convicted is a class C felony, the court shall impose a minimum sentence of two years' imprisonment.

This section applies even when being armed is an element of the offense for which the offender is convicted.

Section 12.1-32-09.1 provides for the sentencing of violent offenders. Under this section, any offender who is convicted of a crime in violation of Section 12.1-16-01 (murder), 12.1-16-02 (manslaughter), 12.1-17-02 (aggravated assault), 12.1-18-01 (kidnapping), 12.1-20-03 (gross sexual imposition), 12.1-22-01 (robbery), 12.1-22-02 (burglary with intent to injury), or an attempt to commit the offenses is not eligible for release from confinement until 85 percent of the sentence imposed by the court has been served.

Section 19-03.1-23 provides for mandatory terms of imprisonment for the manufacture, delivery, or the possession with intent to manufacture or deliver certain controlled substances. The crime with which an offender may be charged and the length of mandatory imprisonment under this section is dependent upon the classification of the controlled substance and whether the offender has previous convictions for that offense.

Section 19-03.1-23.1 provides for increased penalties for aggravating factors in drug offenses including the manufacture or distribution of a controlled substance in or on, or within 1,000 feet of a school or the delivery of a controlled substance to a minor.

Sections 19-03.1-24 and 19-03.1-25 also provide penalties for other drug-related offenses.

Additional Sentencing Factors

North Dakota Century Code Section 12.1-32-04 includes the factors to be considered in the sentencing decision, including the conduct, history, character, and health of the defendant.

Section 12.1-32-06.1 provides the criteria for the length and termination of probation.

Section 12.1-32-09 authorizes a court to sentence a convicted offender to an extended sentence as a dangerous special offender or a habitual offender upon certain findings, such as, that the offender is a dangerous, mentally abnormal person, a professional criminal, or a habitual offender.

PREVIOUS STUDIES

1977-78 Interim

The 1977-78 interim Corrections Committee, pursuant to Senate Concurrent Resolution No. 4060, was directed to study the entire criminal justice system. As a result of its study, the Corrections Committee recommended that a more detailed study be conducted of community corrections than was possible during the 1977-78 interim. The committee recommended that a study of community corrections also include a study of the Penitentiary to determine whether changes need to be made concerning that facility. The committee cited the age of the Penitentiary and the expansion of the city of Bismarck around the Penitentiary area as raising questions concerning the suitability of the Penitentiary's location. The committee concluded that since these conditions exist

at the Penitentiary, and community corrections programs would be interrelated with state level corrections, a dual interim study of community corrections programs and the State Penitentiary should be conducted.

1979-80 Interim

The 1979-80 interim State and Federal Government "B" Committee, pursuant to Senate Concurrent Resolution No. 4019, was directed to conduct a comprehensive study and evaluation of the adult correctional facility needs throughout the state. Because the study resolution called for an extensive evaluation of the State Penitentiary and adult correctional facility needs throughout the state and would require extensive data gathering, criminal justice, and correctional expertise, the committee obtained the services of a consultant to aid in the committee study. Based upon the consultant's recommendations, the committee recommended three bills to the 1981 Legislative Assembly. The first bill, Senate Bill No. 2086, would have appropriated funds to the Combined Law Enforcement Council for the purpose of a matching grant program for county and city jails. The second bill, Senate Bill No. 2087, would have appropriated funds for the construction, renovation, and equipping of facilities at the State Penitentiary and for the constructing of new facilities at the State Farm. Both bills failed to pass. A third bill, House Bill No. 1085, relating to sentencing alternatives, was passed by the 1981 Legislative Assembly.

1987-88 Interim

During the 1987-88 interim, the Judiciary Committee, pursuant to Senate Concurrent Resolution No. 4022, studied the criminal sentencing statutes in misdemeanor and felony cases. The committee recommended House Bill No. 1052 to consolidate NDCC Chapters 12-53, relating to suspended execution of sentences, with Chapter 12.1-32, which provides for the classification of offenses, penalties, and a broad array of sentencing alternatives available to the court. According to the Judiciary Committee's final report, the bill was intended to clarify a court's authority to impose a sentence if conditions of probation are violated following the suspended execution of a sentence and to clarify the status of a person receiving a deferred imposition of sentence. The bill was also intended to address conflicts and inconsistencies existing in the sentencing statutes. The bill was passed by the 1989 Legislative Assembly.

1993-94 Interim

The 1993-94 interim Budget Committee on Government Finance, pursuant to Senate Concurrent Resolution No. 4063, studied the feasibility and desirability of establishing a women's correctional facility off the State Penitentiary grounds. The committee recommended that a separate women's correctional

facility not be constructed. The committee determined that based on the cost estimates of constructing a new female correctional facility or renovating an existing facility into a women's correctional facility, it was not feasible to proceed with a separate women's correctional facility at the time. The committee recommended House Bill No. 1027, which was passed by the 1995 Legislative Assembly. The bill required judges to sentence inmates to the Department of Corrections and Rehabilitation rather than to the State Penitentiary or the Missouri River Correctional Center. The bill also changed the name of the State Industrial School to the North Dakota Youth Correctional Center. The committee, pursuant to Senate Concurrent Resolution No. 4073, also studied the cost-effectiveness and economic impact of permitting Roughrider Industries to manufacture and sell products that may be produced and sold by the private sector. The committee recommended a bill to allow Roughrider Industries to participate in the workers' compensation program and provide workers' compensation coverage of Penitentiary inmates employed in the private sector and prison industry enhancement program. The bill was passed by the 1995 Legislative Assembly.

1995-96 Interim

The 1995-96 Legislative Audit and Fiscal Review Committee received a report from the State Auditor's office on the cost of 1993 House Bill No. 1062 regarding mandatory sentencing for drug offenders. The State Auditor reported that based on the fiscal year 1994 cost per day to house an inmate of \$51.68 and the average projected inmate increase of 1,195 days per year, the cost to taxpayers was approximately \$61,758 per year.

1999 LEGISLATION

The 1999 Legislative Assembly passed a number of bills relating to corrections and sentencing. The legislation may be classified in these areas-- correctional facilities, parole and pardons, sentencing, sexual offenses, and new offenses.

Correctional Facilities

House Bill No. 1170 provided that the warden must follow the procedures provided in NDCC Chapter 54-44.4 when procuring the machinery, tools, and equipment necessary to conduct the work and industries of the Penitentiary.

House Bill No. 1304 required correctional facilities to adopt a classification system for inmates to provide for the safety, security, and order of the correctional facility and for the safety and security of the public. The bill also provided that an inmate who is confined to a residential halfway house or similar alternative facility and who participates in a work-release program is required to pay room and board.

Senate Bill No. 2133 made it a Class A felony for a person to manufacture, possess, or deliver a controlled substance within any premises under the control of the Department of Corrections and Rehabilitation or any of its divisions. The bill provided that an inmate in possession of a controlled substance is guilty of a Class B felony; in possession of alcohol or alcoholic beverages is guilty of a Class A misdemeanor; and in possession of tobacco is guilty of a Class B misdemeanor. The bill further provided that an inmate is guilty of a Class B felony if the inmate makes or possesses a shard or weapon not considered a dangerous weapon or firearm and is guilty of a Class A felony for making or possessing ammunition or other object that is considered a dangerous weapon. The bill provided for the warden to authorize correctional officers trained in the use of firearms to carry firearms.

Senate Bill No. 2249 provided that a district judge may authorize an administrator of a correctional facility to establish criteria that would allow offenders sentenced to the correctional facility to obtain sentence reductions for good conduct.

Senate Bill No. 2360 removed the requirement that the superintendent of the North Dakota Youth Correctional Center, the warden, and deputy wardens furnish a \$10,000 bond upon taking the oath of office.

Parole and Pardons

Senate Bill No. 2087 increased from three to six the number of members on the State Parole Board and provides the requirements for attendance at meetings and for making parole decisions.

Senate Bill No. 2185 made it a Class C felony for an individual who is on parole or probation in another state, who is present in this state without permission, and who does not leave the state within seven days after written notification by a law enforcement officer.

Sentencing

Senate Bill No. 2305 expanded the meaning of "communicates in writing" for the purposes of the crime of harassment to include electronic transmissions, electronic mail, facsimile, or other similar means. The bill also permits a court to impose as a condition of probation that a person refrain from any subscription to, access, or use of the Internet.

Sexual Offenses

Senate Bill No. 2299 provided for the registration requirements for an individual who has pled guilty or been found guilty of a sexual offense, including juvenile delinquent adjudications of equivalent offenses.

New Offenses

House Bill No. 1184 made it a Class A misdemeanor to give false information or a false report to a law enforcement officer. The bill also provides that every applicant for a position as a law enforcement

officer must be requested to state in writing whether the applicant has ever pled or been found guilty of a felony.

House Bill No. 1295 added butane, fluorocarbon, and nitrous oxide to the list of volatile chemicals for which the inhalation of vapors from a listed chemical is prohibited.

House Bill No. 1379 provided that a person is guilty of an offense if the person removes, damages, or obstructs any telephone or telephone line so as to interfere with an emergency telephone call. The offense is a Class C felony if done intentionally and a Class A misdemeanor if done knowingly or recklessly.

Senate Bill No. 2125 changed the penalty from a Class B misdemeanor to an infraction for a person to sell or furnish tobacco products to a minor and for a minor to purchase, possess, smoke, or use tobacco products. The bill also authorized a city or county to adopt an ordinance or resolution regarding the sale of tobacco to minors and use of tobacco by minors which is more stringent than this bill; however, the penalty for the sale of tobacco to minors and use of tobacco by minors is a fee of at least \$25. The bill became effective on April 9, 1999.

Senate Bill No. 2186 made it a Class C felony for a person to knowingly cause bodily fluids or excrement to come into contact with law enforcement or correctional facility personnel and a Class A misdemeanor if the person recklessly causes the contact. The bill also required state agencies to release the results of any testing for any reportable disease performed on an individual convicted of a crime who is imprisoned if the request is made by the individual and documentation exists that the individual has had significant exposure to the disease.

Senate Bill No. 2223 increased the penalty for assault from a Class A misdemeanor to a Class C felony if the victim is under the age of 12 years and increased the penalty for aggravated assault from a Class C felony to a Class B felony if the victim is under the age of 12 years or the victim suffers permanent loss or impairment of the function of a bodily member or organ.

Senate Bill No. 2225 made it a Class C felony for a person to use or attempt to use the personal identifying information of an individual to obtain credit, money, goods, services, or anything else of value without the individual's consent.

SUGGESTED STUDY APPROACH

The committee, in its study of the adult correctional system in North Dakota, including its functions, responsibilities, funding, and operation, and the causes of past and projected future increases in the state's adult inmate population, including the impact of sentencing laws, may wish to approach this study as follows:

1. Receive testimony from the Department of Corrections and Rehabilitation on the

- operation of the adult correctional system in North Dakota, including any specific needs of the State Penitentiary, Missouri River Correctional Center, and the James River Correctional Center;
2. Receive testimony from the judiciary branch regarding sentencing statutes, trends, and alternatives;
 3. Review the state's sentencing laws to determine the impact those laws have on the state's adult inmate population;
 4. Receive testimony on treatment and other programs that provide alternatives to incarceration which may reduce the number of inmates and reduce recidivism; and
 5. Develop recommendations and prepare legislation necessary to implement the recommendations.

ATTACH:1

Fifty-sixth Legislative Assembly, State of North Dakota, begun in the Capitol in the City of Bismarck, on Tuesday, the fifth day of January, one thousand nine hundred and ninety-nine

SENATE CONCURRENT RESOLUTION NO. 4015
(Senators Nething, B. Stenehjem)
(Representative Carlisle)

A concurrent resolution directing the Legislative Council to study the adult correctional system in North Dakota, including its functions, responsibilities, funding, and operation, and the causes of past and projected future increases in the state's adult inmate population, including the impact of sentencing laws.

WHEREAS, the Legislative Council has not conducted a comprehensive study of the functions, responsibilities, funding, and operation of the state's adult correctional system since the 1977-78 interim; and

WHEREAS, the Legislative Council has not conducted a comprehensive study of adult correctional facility needs since the 1979-80 interim; and

WHEREAS, the prison population in North Dakota has increased by over 60 percent from 1993 to 1998; and

WHEREAS, state general fund appropriations to the Department of Corrections and Rehabilitation have increased by over 50 percent from the 1993-95 biennium to the 1997-99 biennium; and

WHEREAS, the number of adult drug offenders incarcerated in North Dakota has increased by over 460 percent from 1993 to 1998; and

WHEREAS, the Legislative Assembly has enacted numerous changes to sentencing laws in North Dakota since 1993; and

WHEREAS, treatment and other programs that provide alternatives to incarceration may reduce the number of inmates and reduce recidivism;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF NORTH DAKOTA, THE HOUSE OF REPRESENTATIVES CONCURRING THEREIN:

That the Legislative Council study the adult correctional system in North Dakota, including its functions, responsibilities, funding, and operation, and the causes of past and projected future increases in the state's adult inmate population, including the impact of sentencing laws; and

BE IT FURTHER RESOLVED, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Fifty-seventh Legislative Assembly.