

COMMISSION ON ALTERNATIVES TO INCARCERATION - BACKGROUND MEMORANDUM

House Bill No. 1473 (attached as an appendix) establishes a Commission on Alternatives to Incarceration. The bill requires the Legislative Council chairman to select the chairman and vice chairman of the commission. The bill provides that the commission must consist of:

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 of Representatives and one of whom must be selected by the leader representing the minority faction of the House of Representatives;
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 of Counties.

The bill requires the commission to study sentencing alternatives, mandatory sentences, treatment options, the expanded use of problem-solving courts, home monitoring, and other related issues. The bill authorizes the commission to request funding for consultant services from the Legislative Council and other interested entities if the commission determines that consultant services are necessary to assist the commission in conducting its assigned studies.

House Bill No. 1473 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 bill establishing the commission is effective until June 30, 2009.

BACKGROUND

Between 1995 and 2003, the number of incarcerated adults in the United States increased by an average of 3.4 percent annually to a total of 1,470,045 inmates at the end of 2003. Of those inmates, 1,296,986 were under state jurisdiction. United States Department of Justice Bureau of Justice Statistics estimates suggest that the lifetime chances of an individual going to prison for a male are over 11 percent. The Bureau of Justice Statistics projects that if recent incarceration rates were to remain stable, one of every 15 persons will serve time in a prison during their lifetime.

The North Dakota Department of Corrections and Rehabilitation reported that the daily cost of incarceration at the State Penitentiary for fiscal year 2004 was \$68.07; the James River Correctional Center was \$69.28; the Missouri River Correctional Center was \$46.41; and the Dakota Women's Correctional Rehabilitation Center was \$83.55. The following table compiled by the Department of Corrections and Rehabilitation summarizes the inmate population under the department's supervision on December 31, 2004:

Population as of December 31, 2004: 1,329 (498 NDSP, 357 JRCC, 140 MRCC, 62 at TRCC, 55 at BTC, 17 on FTP, 44 in jails, 93 at DWCR, 20 on Interstate Compact, 35 board out of state, and 8 on temporary leave)		
Offense	Inmate Count	
Violent offenders (excluding sexual)	356	
Sex offenders	184	
Drug offenders and alcohol	466	
Property, status and other	323	
Sentenced for delivery/manufacture/ intent: 254	Sentenced for simple possession of drugs or paraphernalia: 179	Sentenced for alcohol-related offenses: 33

Minimum Mandatory Sentenced Inmate Breakout (as of December 31, 2004)

Offense	Inmate Count	
DUI/APC	32	
Driving under suspension	1	
Drug offenses (not alcohol)	44	
Reckless endangerment	3	
Aggravated assault	7	
Burglary with weapon	1	
Felonious restraint	1	
Sex offense	4	
Kidnapping	1	
Terrorizing	4	
Robbery	20	
Negligent homicide	2	
Manslaughter	4	
Murder	11	(Life sentence for murder: 37 males, 1 female)
Total mandatory sentenced inmates	135	
85% truth-in-sentencing	166	

As of July 5, 2005, the total inmate population was 1,356, of which 1,208 were males and 148 were females.

The following table summarizes 2005-07 biennium inmate population projections used for the department's legislative appropriation:

	Male	Female	Total
Fiscal Year 2006			
July	1,237	134	1,371
August	1,243	135	1,378
September	1,249	136	1,385
October	1,256	136	1,392
November	1,262	137	1,399
December	1,268	138	1,406
January	1,275	139	1,414
February	1,281	139	1,420
March	1,287	140	1,427
April	1,294	141	1,435
May	1,300	141	1,441
June	1,307	142	1,449
Fiscal Year 2007			
July	1,313	143	1,456
August	1,320	143	1,463
September	1,327	144	1,471
October	1,333	145	1,478
November	1,340	146	1,486
December	1,347	146	1,493
January	1,353	147	1,500
February	1,360	148	1,508
March	1,367	149	1,516
April	1,374	149	1,523
May	1,381	150	1,531
June	1,388	151	1,539

DEPARTMENT OF CORRECTIONS AND REHABILITATION

The Department of Corrections and Rehabilitation includes two major programs--juvenile services and adult services. Within each of the two programs is an institutional division and a community division. The four major areas of the department are the Prisons Division, the Juvenile Services Division, the Youth Correctional Center, and the Field Services Division.

The Department of Corrections and Rehabilitation has contracted with the Dakota Women's Correctional Rehabilitation Center to house female inmates since late 2003 and the Legislative Assembly has appropriated funds to continue to contract with the facility for the 2005-07 biennium. In addition, inmates may be held in local correctional centers, in the community placement program, in other states through the interstate compact program, and in a private prison in Appleton, Minnesota.

PRISONS DIVISION

North Dakota Century Code (NDCC) Section 12-47-01 provides for the establishment of the State Penitentiary. The main prison complex in Bismarck consists of 550 prison beds and houses maximum security male inmates. As of July 5, 2005, the State Penitentiary housed 496 male inmates.

The James River Correctional Center at Jamestown is classified as a medium security housing facility. The James River Correctional Center has 385 prison beds and houses medium security male inmates. As of July 5, 2005, there were 356 male inmates housed at the James River Correctional Center.

The Missouri River Correctional Center is south of Bismarck and has no walls or barriers to contain the inmates. The Missouri River Correctional Center has 150 prison beds and houses minimum security male inmates whose sentences are not less than 30 days nor more than one year. As of July 5, 2005, there were 134 male inmates at the Missouri River Correctional Center.

DIVISION OF JUVENILE SERVICES AND YOUTH CORRECTIONAL CENTER

The Community Services Division of 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's case managers supervise about 400 juveniles per day.

The Division of Juvenile Services also oversees the Youth Correctional Center. The Youth Correctional Center, located west of Mandan, 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.

FIELD SERVICES DIVISION

The Field Services Division has offices across the state staffed by parole and probation officers. The division manages offenders sentenced to supervision by a court, released to parole by the Parole Board, sent to community placement by the director, or placed at the Tompkins Rehabilitation and Correction Center. The division staff supervise offender compliance with the supervision conditions and provide cognitive behavioral and other forms of counseling services.

The Tompkins Rehabilitation and Correction Center, a combined program located on the campus of the State Hospital in Jamestown, is managed through the Field Services Division and houses both inmates and noninmates. The center is the combination of the Tompkins Rehabilitation and Corrections Unit from the Stutsman County Corrections Center and the Corrections Rehabilitation and Recovery Center. The center consists of three 30-bed wards--one ward (30 beds) for females and two wards (60 beds) for males.

DAKOTA WOMEN'S CORRECTIONAL REHABILITATION CENTER

During the 2003-05 biennium, the Department of Corrections and Rehabilitation began to contract with the Dakota Women's Correctional Rehabilitation Center to house its female inmates. The Dakota Women's Correctional Rehabilitation Center is owned and operated by the Southwest Multi-County Correction Center Board, which consists of one member from each of the six counties represented in the Southwest Multi-County Correction Center. The six counties are Stark, Slope, Billings, Bowman, Dunn, and Hettinger.

The prison at the Dakota Women's Correctional Rehabilitation Center consists of facilities for minimum

and higher security inmates. The Dakota Women's Correctional Rehabilitation Center will be constructing a new maximum security addition for administrative segregation and detention. As of July 5, 2005, there were 114 female inmates at the Dakota Women's Correctional Rehabilitation Center.

MANDATORY SENTENCES

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 that a judge impose a sentence of at least a specified length if certain criteria are met. The proponents of mandatory minimum sentencing laws contended that 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 that 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 adopted Senate Bill No. 2373, which established mandatory minimum terms of imprisonment for offenders with multiple driving while under the influence offenses.

In 1991 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 NDCC 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 was over the age of 21 and used a minor in 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 that the offense was the defendant's first violation and that extenuating or mitigating circumstances exist to justify the suspension.

Subsequent Legislative Assemblies, including the Legislative Assembly in 2005, have established minimum mandatory sentences for sex 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 that 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 adopted 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 that 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.

DRUG COURTS

In 2001 the Legislative Assembly enacted House Bill No. 1218, which permitted an individual convicted of a third or subsequent driving under the influence offense to serve the mandatory minimum terms of imprisonment by serving at least 10 days' imprisonment and then successfully completing a drug court program approved by the North Dakota Supreme Court. The legislation contained an expiration date of July 31, 2003. In 2003 the Legislative Assembly enacted House Bill No. 1191, which removed the expiration date from the 2001 legislation and made the drug court program permanent law.

Before the enactment of House Bill No. 1218 (2001), the South Central Judicial District Court began implementation of a drug court in Burleigh and Morton Counties. That court held its first session on January 5, 2001. The announced goals of the drug court program were to reduce recidivism and increase safety for the community by providing an alternative sentence that would provide meaningful treatment and probation supervision while reducing incarceration for nonviolent offenders. In July 2001 the Supreme Court was awarded a grant of nearly \$300,000 from the United States Department of Justice to provide for the operation of the drug court program over a three-year period.

The Supreme Court established a Juvenile Drug Court Study Committee in October 1998 to study whether a juvenile drug court should be implemented in North Dakota. As a result of the findings of that committee, the Supreme Court applied for and received a grant of \$30,000 from the United States Department of Justice to assist in the planning for implementation of a juvenile drug court. The juvenile drug court program in this state began on May 1, 2000, with the establishment of pilot programs in Fargo and Grand Forks. In October 2002 the juvenile drug court program was expanded to Bismarck.

2005 LEGISLATION

In 2005 the Legislative Assembly considered a number of bills relating to programs that may be considered alternatives to incarceration.

Senate Bill No. 2341 (2005) provides 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 being applied for by the Department of Human Services. The bill provides that when an individual located in Walsh, Pembina, or Grand Forks County has pled guilty or has been found guilty of a felony violation of NDCC Section 19-03.1-23(6) and that individual has 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 of this or another state or the federal government, the court is 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 provides that upon a plea or finding of guilt of the individual, the court is required to order a presentence investigation to be conducted which must include a drug and alcohol evaluation conducted by a licensed addiction counselor. If the licensed addiction counselor recommends treatment, the court must order the individual to participate in an addiction program licensed by the Department of Human Services as a condition of the probation. The court is then required to commit the individual to treatment through a licensed addiction program until the individual is determined suitable for discharge by the court. The term of treatment may not exceed 18 months and may include an aftercare plan. If the individual fails to participate in, or has a pattern of intentional conduct that demonstrates the individual's refusal to comply with or participate in the treatment program, as established by judicial finding, the individual is subject to revocation of the probation.

The bill requires the Department of Corrections and Rehabilitation to collaborate management of the pilot project with the Department of Human Services to ensure services under the federal grant program for one-half of the offenders mandated by the court to submit to mandatory treatment, not to exceed 23 individuals. The Department of Corrections and Rehabilitation is required to hire a program manager to manage the pilot project, collect statistics regarding the operation of the program, track participants in the program, and provide a report to the Attorney General, the Legislative Council for distribution during the November 2006 Legislative Council meeting, and the Legislative Assembly in 2007 detailing the number of participants in the program, the cost of the program, relapse statistics, and other data concerning the effectiveness of the program.

House Bill No. 1408 (2005) appropriates \$150,000 to the Department of Corrections and Rehabilitation for the purpose of reimbursing a nonprofit, faith-based organization in North Dakota for room and board costs associated with an extended residential care

program in northwestern North Dakota for indigent adults with alcohol or other substance abuse issues as a pilot project, for the biennium beginning July 1, 2005, and ending June 30, 2007. The bill requires that the recipient, selected by a competitive bid process, use the funding for room and board costs relating to the pilot project. The department is required to establish criteria that meets standards and best practices of the American Corrections Association for the population to be served and for the residential care services to be provided. The department is required to provide a report to the Legislative Assembly in 2007 on the pilot project. The report must include information on the results and outcomes of the pilot project, the department's recommendations regarding continuing or expanding funding for the program, and its recommendations regarding the development of a payment system for room and board costs for the residential care services providers.

House Bill No. 1486 (2005) provides that except for cases in which the specific necessary treatment is unavailable in the state or cases in which the appropriate treatment or services cannot be provided in a timely manner in the state, all juveniles in need of residential treatment or residential care placement must be placed in in-state residential facilities.

Senate Bill No. 2015 (2005), the appropriations bill for the Department of Corrections and Rehabilitation, increases from not less than \$36 to not less than \$40 per month the amount of supervision costs and fees that a court must order an individual on probation to pay as a condition of probation. That bill also includes a statement indicating that it is the intent of the Legislative Assembly that the Department of Corrections and Rehabilitation increase the number of inmates in short-term diversion during the 2005-07 biennium by 15 inmates, from 30 to 45 inmates. The bill requires the Legislative Council to appoint an interim committee, during the 2005-06 interim, to develop a legislative strategic plan, including site and facilities' plans, for the

Department of Corrections and Rehabilitation's incarceration and correctional facility needs. The Legislative Council assigned that study to the Budget Committee on Government Services.

House Concurrent Resolution No. 3047 (2005) directs a study of sentencing alternatives with an emphasis on the expanded use of rehabilitation over incarceration, the provision of more treatment options, and the adequate funding of treatment programs. The Legislative Council did not select that study for study by the Legislative Council.

House Bill No. 1277 (2005), which failed to pass, would have provided that except for an offense for which the law requires mandatory incarceration, electronic home detention or global positioning system monitoring may be used for low-risk, nonviolent adult and juvenile offenders as selected by the court.

Senate Bill No. 2350 (2005), which failed to pass, would have provided an appropriation of \$12 million to the Department of Corrections and Rehabilitation for the construction of a new facility or remodeling of an existing facility to house offenders, including those in need of mental health, drug addiction, and aging-related services, to be located adjacent to the James River Correctional Center.

PROPOSED STUDY APPROACH

In undertaking this study, the commission should consider receiving testimony from representatives of the Department of Corrections and Rehabilitation, local correctional facilities, courts, law enforcement agencies, and other entities regarding alternatives to incarceration programs. The commission may also seek information and review studies analyzing the success of alternative programs in other states and the costs of those programs. The commission may also consider seeking funds to hire a consultant as authorized by House Bill No. 1473.

ATTACH:1