

JUSTICE REINVESTMENT COMMITTEE

The Justice Reinvestment Committee was assigned three studies:

- Senate Concurrent Resolution No. 4003 (2017) directed a study of the juvenile justice process, the appropriate age when a juvenile is considered capable of committing a criminal offense, levels of collaboration among various service systems, implementation of dispositional alternatives, and methods for improving outcomes for juveniles involved in the process.
- House Concurrent Resolution No. 3002 (2017) directed a study of the operation, management, conditions, standards, and supervision of city, county, and regional correctional facilities and other potential means to improve the rehabilitative function of city, county, and regional correctional facilities and a possible transition of the supervision of city, county, and regional correctional facilities from the Department of Corrections and Rehabilitation (DOCR) to the Attorney General.
- Section 11 of Senate Bill No. 2015 (2017) directed a study of alternatives to incarceration, with a focus on the behavioral health needs of individuals in the criminal justice system. The study must include receipt of reports on the status, effectiveness, and sustainability of the community behavioral health program for individuals in the criminal justice system, which must include caseload data, any recognized savings to DOCR, and an overview of the training requirements for contract behavioral health service providers.

The Legislative Management delegated to the committee the responsibility to receive the following reports:

- A report from DOCR and the Supreme Court regarding the progress of the justice reinvestment initiative (Section 20 of 2017 House Bill No. 1041).
- A report from the Justice Reinvestment Oversight Committee before July 1, 2018, of the findings and recommendations of the study of implementation of justice reinvestment policies in the state and any legislation required to implement those recommendations (Section 14 of 2017 Senate Bill No. 2015).

Committee members were Senators Kelly M. Armstrong (Chairman), Dick Dever, John Grabinger, Dave Oehlke, Arne Osland and Representatives Jake G. Blum, Karla Rose Hanson, Pat D. Heinert, Tom Kading, Karen Karls, Lawrence R. Klemin, Lisa Meier, Jon O. Nelson, Bernie Satrom, and Steve Vetter.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2018. The Legislative Management accepted the report for submission to the 66th Legislative Assembly.

JUVENILE JUSTICE SYSTEM

Background

North Dakota Century Code Section 27-20-03 grants the juvenile court exclusive original jurisdiction of proceedings in which a child is alleged to be delinquent, unruly, or deprived. Under Chapter 27-20, "child" means an individual who is under the age of 18 years and is not married or under the age of 20 years with respect to a delinquent act committed while under the age of 18. Section 27-20-34 authorizes the court to transfer a juvenile proceeding to another court depending on various factors, such as the age of the child at the time of the alleged conduct, the age of the child at the time of the transfer request, and the child's amenability to treatment and rehabilitation.

Section 27-21-01 established the Division of Juvenile Services within DOCR. The division operates the Youth Correctional Center and eight regional community-based services offices. The community services staff provide comprehensive case management and community-based correctional services to youth in the state while juvenile corrections specialists provide community services and correctional case management across eight regions.

Section 27-21-02 provides "the division of juvenile services is the administrative agency which shall take custody of delinquent and unruly children committed to its care by the juvenile courts." Section 27-21-02 requires the division, upon taking custody of a child or prior to receiving custody of a child, to complete diagnostic testing and evaluate the child to develop an individualized treatment and rehabilitation plan. The plan may include placement in the care of the child's parent, relative, guardian, or in a foster home, or placement in the care of the Youth Correctional Center, a career or technical education program, or other treatment and rehabilitation institution. Section 12-52-01 authorizes the division, with the approval of the Director of DOCR, to provide a juvenile aftercare program and other treatment and rehabilitation programs and to contract with public and private agencies to provide services for persons committed to the division.

Testimony and Committee Considerations

In its study of the juvenile justice system, the committee received testimony from representatives of DOCR, the Supreme Court, the Council of State Governments' Justice Center, the North Dakota Association of Counties, and the North Dakota Juvenile Justice State Advisory Group.

A representative from the Division of Juvenile Services indicated the juvenile justice system starts with law enforcement and includes the juvenile court, probation child welfare, and the Division of Juvenile Services. Testimony further indicated the state's juvenile violent crime rate is less than half of the national rate; however, the state has a higher rate of drug and alcohol use and disorderly conduct. The higher rate of disorderly conduct cases was attributed to an increased law enforcement presence in schools; however, the committee was informed further analysis is needed to determine whether appropriate community resources exist to divert some of the higher risk youth. It was noted because the youth population in the criminal justice system is low, it is an opportune time to make changes to the system. Changes may help avoid the type of exponential growth in the incarceration rate of juveniles the adult system has experienced in recent years.

The committee received information from a representative from the Supreme Court indicating juvenile court directors in the state are reviewing the age of juveniles entering the system compared to the age of criminal responsibility as outlined in Section 12.1-04-01. This section provides an individual under 7 years of age is deemed incapable of commission of an offense defined by the Constitution of North Dakota or Century Code. Testimony indicated the juvenile court budget designates \$11 per day per juvenile, with a total budget of \$14 million. Juvenile court offices are located in 11 cities across the state and the Department of Juvenile Services operates 8 regional offices. According to the testimony, the judicial branch budget for the 2017-19 biennium is \$11 million less than the 2015-16 biennium. Eleven positions were cut from the juvenile court and one office was closed.

A representative from the North Dakota Association of Counties indicated although prosecutors identified a lack of resources in rural areas and the western part of the state and issues with statewide polices, state's attorneys have expressed general satisfaction with the juvenile justice system.

Representatives from the Juvenile Court provided information regarding the process followed when a juvenile enters the juvenile court system. It was noted every juvenile is given a risk assessment to determine what is driving the behavior. Juvenile officers also provide more cognitive-based classes with groups to discuss how to handle stressful situations, and efforts have been made to provide more family based counseling. The committee received information from numerous individuals relating to the need for increased mental health services for youth.

The committee received information indicating a need to streamline juvenile services to provide services and funds to those families in need. The Dual Status Youth Initiative has received assistance from the Robert F. Kennedy National Resource Center for Juvenile Justice in an effort to change the trajectory of alleged abused and neglected children from entering the juvenile justice system by establishing child- and family-centered multi-disciplinary policies and practices. A representative from Juvenile Court Services indicated the initial implementation of the new family engagement policy will be in Grand Forks, Ramsey, Ward, Burleigh, Stutsman, Mercer, McLean, Oliver, and Sheridan Counties.

The committee considered a bill relating to the age of culpability of a juvenile. The bill would raise the age of culpability from 7 years old to 10 years old.

The committee received overwhelming testimony in support of the bill draft. Testimony indicated a law enforcement referral for a juvenile who is 7 or 8 years old would be sent to social services regardless of the statutory age of culpability because social services deals with the family dynamics that could be causing negative behaviors. According to the testimony, a juvenile under 12 years of age is placed with social services regardless of the offense and the most common age of culpability across the country is between 10 and 12 years of age.

Recommendation

The committee recommends [House Bill No. 1039](#) to raise the age of culpability of a juvenile from 7 to 10 years old.

OPERATION AND MANAGEMENT OF CORRECTIONAL FACILITIES

Background

Section 12-44.1-02 authorizes the governing body of a county or city to establish and maintain a correctional facility, contract for correctional facility services and use of correctional facilities with another county or city, or establish and maintain a correctional facility in conjunction with other counties and cities. Section 12-44.1-06 requires DOCR to grade correctional facilities as to the length of allowable inmate confinement based on construction, size, and usage. Under this section:

- A grade one facility means a facility for confining inmates not more than 1 year;

- A grade two facility means a facility for confining inmates not more than 90 days;
- A grade three facility means a facility for confining inmates not more than 96 hours; and
- A grade four facility means an adult lockup or court holding facility in which individuals may not be detained overnight.

According to data from DOCR, the state has 30 correctional facilities varying from grade one to grade three--20 grade one facilities, 7 grade two facilities, and 3 grade three facilities. Inmate counts documented by DOCR indicate the average length of time individuals spend in county jails is 90 days and approximately 7,600 individuals are under supervision, of which approximately 900 are on parole.

Section 12-44.1-24 requires DOCR to prescribe rules establishing minimum standards for the construction, operation, and maintenance of public or private correctional facilities; to prescribe rules for the care and treatment of inmates; to make the rules and regulations available to inmates or be posted; and to appoint a correctional facility inspector to inspect each correctional facility at least once each year. For the purposes of correctional facility rules, DOCR is exempt from the Administrative Agencies Practice Act under Chapter 28-32 and therefore is not required to follow the same procedures as other state agencies with regard to adopting and publishing the rules for correctional facilities.

Testimony and Committee Considerations

In its study of operation and management of correctional facilities, the committee received information and testimony from a representative of DOCR, a representative of the Attorney General's office, and representatives from the North Dakota Association of Counties.

The testimony received from DOCR indicated a thorough review of statutory standards for county and regional correctional facilities is needed, especially because of the need for more rehabilitative services in grade one facilities. The testimony indicated Chapter 12-44.1, which was enacted in 1979, was created in response to corrections liability issues and inmate litigation occurring in the state and across the country. As adopted, the administration of Chapter 12-44.1 was under the office of the Attorney General and duties included creating rules for the operation of county correctional facilities and correctional facility inspections. In 1989, the Legislative Assembly created the Department of Corrections and Rehabilitation, which developed new correctional facility rules in compliance with state and federal laws. The rules were revised in 2005, 2014, and 2017.

Testimony indicated although DOCR does not have staff solely dedicated to facility inspections, several staff members assume this additional responsibility. The Department of Corrections and Rehabilitation oversees 31 multicounty, county, or city operated secure correctional facilities in the state for a total of 2,553 jail beds. It was noted the jail administrator or sheriff knows when a DOCR inspector is scheduled to be onsite for an annual inspection and the facility often will show compliance with the standards. Testimony indicated DOCR is notified of most rule violations through other channels, including reports from inmates upon arrival at DOCR regarding conditions of confinement while at a county facility, complaints to the Governor's office, written correspondence to a jail inmate at DOCR, and inmates' family members, or critical incidents such as a death or escape. The testimony indicated DOCR is committed to the safety of those incarcerated in the state and the safety of those working in county and regional correctional facilities. It was contended DOCR is in the best position to objectively complete the jail oversight process.

A representative from the North Dakota Association of Counties indicated satisfaction with DOCR's oversight of jail facilities and expressed a need to provide local mental health and addiction treatment within county jail facilities. A representative from the Cass County jail indicated jailers spend about 2 hours with each individual who is booked into the jail and about 50 percent of the mental health assessments are flagged for further assessment. About 60 percent of those actually are evaluated.

Recommendation

The committee makes no recommendation regarding the operation and management of correctional facilities.

JUSTICE REINVESTMENT IMPLEMENTATION STUDY AND REPORTS

Background

Inmate counts documented by DOCR indicate 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 2015-16 average male inmate population for all facilities was 1,567. The 2015-16 average female inmate population for all facilities was 223.

Senate Bill No. 2015 (2017) directed DOCR to establish and implement, as a term and condition of parole and probation and as a sentencing alternative under Section 12.1-32-02, a community behavioral health program to provide comprehensive community-based services for individuals who have serious behavioral health conditions. The bill

appropriated \$7 million from special funds to the Department of Human Services (DHS) for the purpose of implementing the community behavioral health program during the 2017-19 biennium and created the Justice Reinvestment Oversight Committee to study the implementation of the community behavioral health program and justice reinvestment policies. The Justice Reinvestment Oversight Committee is staffed by the Governor's office and consists of:

- The Governor's general counsel;
- The Executive Director of DHS;
- The Director of the Behavioral Health Division of DHS;
- The Director of the Department of Corrections and Rehabilitation;
- The Chief Justice of the North Dakota Supreme Court or a designee;
- The Attorney General or a designee; and
- One member of the Senate and one member of the House of Representatives appointed by the Majority Leaders.

Section 5 of Senate Bill No. 2015 (2017) appropriated \$500,000 from the general fund to be used by DHS to contract with public or private entities to create, initiate, and facilitate a strategic plan to increase all types of behavioral health services across the state.

Section 8 of Senate Bill No. 2015 (2017) requires all correctional facilities in the state to collaborate with the state's attorneys, judiciary, and law enforcement to develop an inmate population plan to prioritize admissions and retention based on facility budget, nature of the offense, status of the inmate, level of risk, medical or behavioral health needs, and whether the offense requires mandatory sentencing. The prioritization plan must include alternatives to custody, such as community placement, work release treatment, GIS monitoring, electronic home detention, employment, pretrial risk assessment or pretrial supervision.

Section 9 of Senate Bill No. 2015 (2017) directed the Department of Corrections and Rehabilitation and DHS to collaborate to establish a community behavioral health program to provide comprehensive community-based services for individuals with behavioral health issues. The program applies to individuals as a condition of parole or in lieu of incarceration, as a sentencing alternative. Requirements for the program include:

- A referral and evaluation process for program access;
- Eligibility criteria, including risk of recidivism and severity of behavior health diagnosis; and
- Program oversight, such as auditing and case management for seamless transition to post-program services, outcome and provider reporting metrics, and annual reports to Legislative Management and the Governor.

The Department of Human Services also is required to establish a system for contracting and paying behavioral health providers and for supervising and monitoring caseloads and the provision of services. To qualify as a contract provider, a behavioral health provider must:

- Accept all referrals and provide care through a multidisciplinary care team on an ongoing basis until discharge;
- Receive payments on a per-month, per-referral basis; and
- Bill third-parties for services and direct payment to the general fund.

Section 20 of House Bill No. 1041 (2017) required DOCR to report on the progress of the justice reinvestment initiative. Section 54-23.3-11 authorizes DOCR to refuse to admit inmates sentenced to the physical custody of the department when the admission of inmates exceeds the maximum operational capacity of its prison facilities and results in the department exceeding its authorized legislative appropriation for contract housing. The section also directs DOCR to develop a prison population management plan to prioritize admissions based on sentences and the availability of space within its facilities.

Testimony and Committee Considerations

Inmate Prioritization Plan

The committee received testimony and a report from DOCR indicating the department has not refused to admit any inmates under Section 54-23.3-11. The maximum capacity for women is 224 and 1,624 for men. The testimony indicated the inmate prioritization plan only will be triggered when the numbers are reached. If those numbers are reached, the plan would go into effect the month following the month when the average daily population exceeds the established numbers. According to the testimony, DOCR has experienced a decrease in both the number of men and women in the system. It was reported DOCR regularly communicates information on population counts to the sheriffs and jail

administrators through weekly summaries of the number of men and women on inmate status and the number of men and women being supervised in the community on parole or probation. If DOCR reaches capacity and implements the prioritization plan, DOCR reported it would not refuse the admission of an inmate, but a delay may occur in the department's ability to accept the inmate.

The testimony further indicated considerable work needs to be done to manage how prison and jails are being utilized and to reserve costly resources for those individuals who really need to be imprisoned. Testimony also indicated the implementation of good time credit for individuals incarcerated at the county or regional jail will have a positive impact on the prison population. From April 2017 through December 1, 2017, 434 individuals were sentenced to DOCR. It was noted during that period, 7,825 days of good time was awarded, averaging 18 days of good time per person. About 50 percent of individuals admitted are receiving a good time reduction on their sentences, reducing the length of stay in a DOCR facility by 18 days.

A representative of the Governor's office provided information regarding the prison prioritization plan, which ranks criminal offenses by level. Priority 1 includes violent offenses charged as AA, A, and B felonies; Priority 2 includes nonviolent offenses charged as AA, A, and B felonies, and violent offenses charged as C felonies; Priority 3 includes all other felonies and misdemeanor offenses. Information provided to the committee indicated DOCR staff periodically have met with local officials to discuss the prioritization plan and address existing concerns. Assistance is available and provided to counties and jail administrators developing population management plans, and DOCR worked with the North Dakota Association of Counties to bring together stakeholders to develop strategies to address common criminal justice problems. The information indicated collaboration with law enforcement agencies across the state has been challenged by the lack of a uniform data reporting system, and a uniform data reporting system is a clear impediment to the justice reinvestment efforts across the state.

Justice Reinvestment Oversight Committee

In its study of the implementation of justice reinvestment, the committee received a report and testimony from representatives of the Governor's office, DOCR, and DHS.

Testimony from a representative of DHS indicated the behavioral health component of justice reinvestment, a program called "free through recovery", is operated and implemented by DHS and DOCR. The program's community-based behavioral health programs are designed to increase recovery support services to individuals involved with the criminal justice system who have behavioral health concerns by matching participants with local community providers for care coordination, recovery, and peer support services. The information indicated the dual-agency approach facilitates both correctional and clinical best practices in a multidisciplinary integration of key systems. Although the free through recovery program was intended to be four pilot projects in Bismarck, Fargo, Devils Lake, and Dickinson, the enthusiastic public response highlighted the need for services across the state and the plan was expanded to a statewide program. Free through recovery began taking referrals on January 10, 2018, and became operational on February 1, 2018.

According to the testimony, free through recovery providers must participate in training and certification programs, and collect and share data regarding program participants, services and outcomes relating to housing, employment, substance abuse, criminal activity, law enforcement involvement, incarceration, and treatment services, and discharge planning. Services are reimbursed monthly on a per participant basis, with incentives available for each participant who meets target outcomes including:

- Progress toward ongoing, meaningful employment;
- Residence in supportive, safe, long-term housing;
- Progress toward recovery from alcohol or illicit substances;
- Engaging in mental health recovery, evidenced by a decrease in mental health symptoms; and
- Absence of criminal violations.

Although the committee received testimony indicating the program is intended to be data driven, upon receipt of the final report of the Justice Reinvestment Oversight Committee, only 3 months of data had been collected. The testimony indicated from the implementation date, February 1, 2018, the program has expanded and gained capacity. Participation reports through March 2, 2018, reflect 200 referrals, 171 admissions, and a program capacity of 485 participants. The June 28, 2018, free through recovery report reflected 542 referrals, 449 participants, with an expanded program capacity of 670.

Testimony from a representative of DOCR indicated in March 2018, 85 percent (22 out of 26) participants met identified outcome measures; in April 2018, 72 percent (183 out of 254) of participants met identified goals; and in May 2018, 75 percent (234 out of 310) reached outcome goals. It was noted additional data is necessary to provide true, accurate, and verifiable results.

The committee received information from a representative of the Council of State Governments indicating the state was approved for Category 1 funding from the Bureau of Justice Assistance and the funds were intended to be used to hire a coordinator for the justice reinvestment project. An unexplained delay in receipt of the funds resulted in the coordinator position being absorbed internally on a shared basis between the DOCR and DHS. The Category 1 funds, totaling, \$106,786.73, were approved on March 8, 2018. As of May 31, 2018, no money from the grant had been spent. The testimony indicated the state applied for a second Bureau of Justice Assistance grant in March 2018, for a total of \$393,213.27, and the oversight committee had not received notice relating to the disposition of the application.

Testimony from a representative of the Governor's office indicated it was the position of the Justice Reinvestment Oversight Committee that the issuance of any findings and recommendations would be premature and would not provide Legislative Management with a true or accurate picture of the benefits of the project.

Recommendations

The committee makes no recommendation with respect to the study and reports on the implementation of justice reinvestment policies in the state.