

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

CORRECTIONS COMMITTEE

Tuesday, September 3, 2002
Harvest Room, State Capitol
Bismarck, North Dakota

Representative Duane DeKrey, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives Duane DeKrey, Ron Carlisle, Howard Grumbo, Gil Herbel, George Keiser, Joe Kroeber, John Mahoney, Laurel Thoreson, Amy Warnke; Senators Dick Dever, Jerome Kelsh, Stanley W. Lyson, Carolyn Nelson, Dave Nething

Members absent: Representatives Ken Svedjan, John M. Warner; Senator Darlene Watne

Others present: See attached appendix

It was moved by Senator Dever, seconded by Representative Carlisle, and carried on a voice vote that the minutes of the June 27, 2002, meeting be approved as distributed.

SUBSTANCE ABUSE STUDY

Chairman DeKrey called on Ms. Sandi Tabor, Deputy Attorney General, for the presentation of information regarding the public forums being held throughout the state in an effort to update the North Dakota comprehensive substance abuse prevention five-year plan. Ms. Tabor said more than 400 people have attended the seven public forums that have been held. She said the final forum was scheduled for September 4, 2002. She said at the forums information has been received on what is working and what is not working in communities regarding substance abuse prevention. She said alcohol abuse is the biggest substance abuse problem facing the state. Regarding substance abuse treatment, she said, the Department of Corrections and Rehabilitation is on the cutting edge. She said at the conclusion of the public forums, a report will be prepared and presented to the North Dakota Commission on Drugs and Alcohol. She said the preliminary report of the findings of the public forum will be presented at the September 17, 2002, meeting of the commission.

DEPARTMENT OF CORRECTIONS AND REHABILITATION STUDY

Chairman DeKrey called on Mr. Warren Emmer, Director, Field Services Division, Department of Corrections and Rehabilitation, for testimony regarding Parole Board guidelines. Mr. Emmer said after reviewing a number of issues regarding each

offender, the Field Services Division of the Department of Corrections and Rehabilitation makes recommendations to the Parole Board. He said an offender's success or failure in addiction treatment is an important issue considered by the division and the Parole Board. He said following treatment most drug offenders receive a recommendation for parole. He said the type of offense is also reviewed when making a recommendation. He said the Field Services Division considers the nature of all offenses and any legal prohibitions when making recommendations for and against parole. He said another consideration of the Parole Board is the recommendation of the sentencing judge and prosecutor. He said the recommendations of the judge and prosecutor are seriously considered by the division and the Parole Board. Treatment issues, he said, are also taken into consideration when making a recommendation to the Parole Board. He said the division and the Parole Board also review and consider the offender's treatment information. This, he said, may include treatment in the areas of chemical dependency, psychological, sex offender, and anger management. He said the division considers the results of the level of service inventory-revised (LSI-R) score. He said the LSI-R score is an assessment tool that objectively predicts an offender's future risk of committing a crime. The other issues reviewed by the division and the Parole Board, he said, include the offender's prior record, the offender's previous parole and probation supervision, the parole plan, the offender's conduct in the institution, and victim concerns. He submitted written testimony, a copy of which is on file in the Legislative Council office.

In response to a question from Representative Keiser, Mr. Emmer said the state has about a 20 percent recidivism rate.

In response to a question from Senator Nething, Mr. Emmer said the state's recidivism rate compares well with other states. He said most states' programs do not reach the "acceptable" level of recidivism. He said North Dakota gets to that level and above.

In response to a question from Representative Keiser, Mr. Emmer said the Parole Board is very conservative. He said about the same number of offenders were paroled in 2001 as were paroled in

1990. In 1990, however, he said, there were only 475 inmates in the prison population.

In response to a question from Representative Herbel, Mr. Emmer said women have about the same recidivism rate as the men. He said, however, the recidivism rate for women is difficult to determine because there are too few women inmates to get a good sample. He said women inmates tend to be "overclassified" because the same classification instrument is used for women and men. He said it is likely that more women could be released earlier if they were properly classified.

In response to a question from Representative Carlisle, Mr. Emmer said public safety is always a consideration when recommending an offender for parole. He said North Dakota's parole policy is as conservative as the SRT, Inc., report indicated and it is conservative when compared to other states. He said no one can guarantee that an offender will not reoffend. He said most offenders who do come back into the system do so because of technical violations or other nonviolent offenses.

In response to a question from Representative Kroeber, Mr. Emmer said a number of offenders, including those who are serving time under the state's truth-in-sentencing law, are not eligible for parole. He said there are some inmates who want a "no paper" release. A "no paper" release, he said, is when the inmate serves the full sentence so that the inmate will not have parole supervision upon release. He said there is a serious "at-risk" population that will have no parole supervision upon release. He said some states have implemented a mandatory supervision period for those who are released without a period of parole.

In response to a question from Senator Nething, Mr. Emmer said very few offenders are released without some opportunity for followup, such as a suspended sentence or a period of probation.

In response to a question from Senator Nelson, Mr. Emmer said an offender who is paroled is under the jurisdiction of the Parole Board. He said if an offender was sentenced to a four-year term but is released on parole after two years, the offender remains under the supervision of the Parole Board for the final two years. In the case of probation, he said, the offender is under the jurisdiction of the court. He said the period of probation usually precedes the sentence, but it can be ordered to be served at the end of the sentence.

In response to a question from Representative Thoreson, Mr. Emmer said there are six members on the Parole Board. He said the board is autonomous and is not a part of the Department of Corrections and Rehabilitation.

In response to a question from Representative Carlisle, Mr. Emmer said the number of "no paper" releases is small. He said upon the release of any offender, the prosecutor and the judge involved in the

case are notified. He said a victim coordinator also contacts the victims and their families if possible.

In response to a question from Representative Herbel, Mr. Emmer said the 2001 repeal of the mandatory sentence for first-time drug offenders was a good idea. He said in many cases those offenders can be handled through the probation process.

In response to a question from Representative Keiser, Mr. Emmer said the truth-in-sentencing law passed in 1995 has had some effect on how judges sentence. He said some judges anticipate the outcome and will sentence accordingly.

In response to a question from Senator Lyson, Mr. Emmer said there are about 3,400 persons on supervised probation in the state. He said there were about 1,500 in 1990.

In response to a question from Senator Dever, Mr. Emmer said in most cases the Field Services Division tries to recommend parole for an offender who has successfully completed all the recommended treatment.

In response to a question from Representative Kroeber, Mr. Emmer said the Governors who have served in the last 10 years have been reasonably aggressive in using their power to commute sentences. He said the decision to pardon lies solely with the Governor; however, the Pardon Advisory Board exists to assist the Governor in those decisions.

In response to a question from Senator Nething, Mr. Emmer said under the state's truth-in-sentencing law, the offender who is serving a sentence for a Class AA felony must serve 85 percent of the offender's life expectancy.

In response to a question from Senator Lyson, Mr. Emmer said parole and probation costs are included in the department's budget. He said offenders released on parole continue to cost the state money; however, it is not as much as the cost of incarceration.

Chairman DeKrey called on Ms. Theresa A. Snyder, Chairman, Parole Board, for testimony regarding the parole process. Ms. Snyder said the Parole Board is made up of six members who are scheduled to serve six times a year on a rotating schedule. She said three board members are present at each board hearing. She said before each hearing the board receives various documents regarding the inmates. She said the documents help the board determine who should or should not receive parole. She said for each inmate being considered, the board members receive a sentencing report, the presentence investigation, comments from the sentencing judge and prosecutor, a prison treatment summary, a parole plan and investigation, and in some cases, letters from family, employers, and victims.

Ms. Snyder said the first and foremost factor the Parole Board considers when reviewing the documents is public safety. She said evaluating public

safety typically sets the tone for the entire hearing and process. Other factors considered by the board, she said, are the type of offender, the inmate's criminal history, the inmate's history of supervision on probation and parole, the inmate's behavior while in the institution, and whether the inmate followed the treatment recommendations. She said the board is also interested in knowing about the victims involved in the crime. She said the board is very concerned about the feelings of the victim and strongly consider any opinion the victim may have expressed regarding the inmate's possibility for parole. She said a critical part of the board's ability to make a decision regarding parole is the interview with the inmate. She said upon completion of the interview, the inmate is excused from the room while the board deliberates and makes a decision. She said when the board has made its decision, the inmate is brought back to the hearing and informed of the decision. If the parole is granted, the inmate is told when he or she will be released. The board, she said, may defer the inmate to a future board or the inmate may be informed that he or she will be required to serve out the remainder of the sentence. Ms. Snyder presented written testimony, a copy of which is on file in the Legislative Council office.

In response to a question from Senator Nething, Ms. Snyder said only three of the six Parole Board members receive the information and attend the hearing for a particular inmate. She said the board uses a rotation system; therefore, one board member does not always hear cases with the same two other board members.

Chairman DeKrey said in 1999 the number of Parole Board members was increased from three to six to help reduce the workload for the board.

In response to a question from Senator Dever, Ms. Snyder said the members are appointed by the Governor. She said one of the members must be experienced in law enforcement, one must be a licensed attorney, and four must be qualified by special experience, education, or training. She said about 60 inmates are scheduled for hearings next month.

In response to a question from Representative Carlisle, Ms. Snyder said with the exception of the deliberations, the hearings are open to the public. Mr. Ernie Reinert, Deputy Clerk, Parole Board, said only the disposition portion of the hearing is taperecorded.

In response to a question from Representative Herbel, Ms. Snyder said a number of other persons attend the hearings, including the director of treatment and the inmate's case manager. She said the media occasionally attends the hearings.

In response to a question from Senator Nething, Ms. Snyder said approximately 40 to 45 inmates per month are reviewed for parole. She said the monthly

hearing lasts about 1.5 days. She said each month the board hears all the cases that deserve a hearing.

Chairman DeKrey called on Ms. Elaine Little, Director, Department of Corrections and Rehabilitation, for testimony regarding the findings of the study conducted by SRT, Inc., of the facilities and operations of the Department of Corrections and Rehabilitation. She said the department found the SRT report very informational. She said the department staff involved in the study greatly appreciated the many hours the SRT team spent onsite touring facilities and interviewing staff. She said she believed that SRT had a very good understanding of the state's correctional system. Ms. Little provided written testimony, a copy of which is on file in the Legislative Council office.

Ms. Little reviewed the recommendations made by SRT, Inc., in Volume I of the report, "The Executive Summary and Project Overview." She said SRT recommended the expansion of the corrections rehabilitation and recovery program. She said in the department's 2003-05 budget request, the department has requested new treatment staff positions to provide adequate treatment for the female offenders in the new women's unit. She said this treatment will be structured to specifically meet the needs of women offenders. The next SRT recommendation, she said, was to increase contracting with county jails and Appleton, Minnesota, as needed over the next year. She said the department does not anticipate that it will need to increase contracting for housing outside the department's facilities. She said with the addition of a new women's unit and implementation of the more aggressive parole process, they will need fewer contract beds.

Ms. Little said the next recommendation of SRT, Inc., was to accelerate parole reviews of eligible offenders. According to the report, she said, North Dakota paroles offenders later in their prison term than virtually any other state. She said the acceleration of parole reviews of eligible offenders has been implemented. She said on the average offenders can be paroled approximately 120 days longer than they were in 2001. She said the aggressive parole process will identify a few more offenders for parole each month than was the case in 2001. She said the department is already seeing a small impact of the implemented changes. She said the department's cost analysis indicates that this aggressive parole planning will result in a \$2,686,277 savings during the next biennium. She said the department estimates that if the Parole Board is able to continue the more aggressive paroling process, the inmate population will be 1,160 by July 1, 2003, rather than the 1,260 as indicated in the SRT projections.

In response to a question from Senator Nelson, Ms. Little said the department has also been very conservative in its parole recommendations. She said

the Parole Board relies heavily on the recommendations of the department.

In response to a question from Representative Carlisle, Ms. Little said the automated recidivism rate process will enable the department to compare rates and track offenders. She said recidivism of an inmate is tracked for three years after release.

In response to a question from Senator Nething, Ms. Little said in developing the aggressive parole process, the department looked at the average sentence served. She said the average sentence is 22 months. She said the department will be able to reduce the orientation process to three to four weeks rather than five weeks. She said based on the time it takes to meet an inmate's treatment needs and the reduced orientation process, the average sentence can be reduced by 120 days. She said state's attorneys and judges have the opportunity to comment at parole hearings. She said research indicates that upon the successful completion of treatment, moving an offender back into the community with aftercare supervision gives that offender the best chance of succeeding in society.

In response to a question from Representative Carlisle, Ms. Little said the aggressive parole process started several months ago but will not be fully implemented for several months. She said offenders are now being paroled 36 days earlier than previously. She said this figure will gradually increase. She said state's attorneys and judges get notice for all offenders appearing before the Parole Board.

In response to a question from Representative Keiser, Ms. Little said the department would prefer a limit of 50 to 60 parolees assigned to each parole officer. She said the department will request an additional parole officer for each 60 persons added to parole.

In response to a question from Senator Nelson, Ms. Little said upon release the parolees become contributing members of society. She said parolees pay supervision fees while on parole. She said the department has been in contact with Cass County regarding the use of the new Cass County jail to house some of the department's inmates. She said the jail does not have available bed space at this time, but it may be an option in the future. She said the daily cost of housing inmates in the jail would be about \$60.

Ms. Little said the department has been investigating all options for a new facility for housing female inmates. She said the department has contacted the two major private prison corporations--Corrections Corporation of America and Wackenhut Corrections Corporation. She said to get an accurate estimate from these companies, a detailed request for proposal would be needed. She said it would take 30 to 60 days to prepare the request for proposal and another 30 to 60 days for the companies to respond.

Ms. Little said SRT, Inc., recommended the construction of a new housing unit for female inmates at the James River Correctional Center. She said in response to this recommendation, the department has looked at four options. She said the four options were to renovate the Missouri River Correctional Center, build a new facility at the James River Correctional Center, build a new facility at the Penitentiary, and build a new facility in Fargo. She said based on the recommendation by SRT and the department's strategic planning process, it appears the best and most economical location for the new women's unit is at the James River Correctional Center.

In response to a question from Senator Nething, Ms. Little said the department has been working with the State Hospital on a plan to utilize some of the State Hospital facilities for prison use, including the food service and laundry areas. She said 37 workers would be affected by the plan. She said five of those workers would be hired by the department and a certain number would be retained by the State Hospital. She said the remainder, if interested, would be retrained in other State Hospital jobs or phased out through attrition. She said the department will need to hire a number of new staff at the new women's facility.

In response to a question from Senator Kelsh, Ms. Little said all inmates who are used for electrician or plumbing work are supervised by licensed electricians or plumbers.

In response to a question from Representative Keiser, Ms. Little said the infrastructure at the Missouri River Correctional Center is not adequate for expansion. She said the Missouri River Correctional Center is a minimum security facility that does not have a fence around the perimeter. She said the inmates do not have constant supervision. She said housing all women at the Missouri River Correctional Center would make it difficult to keep the male and female inmates apart.

In response to a question from Representative Kroeber, Ms. Little said the state's remaining \$2.4 million from the federal crime bill may be used for either new construction or for renovation of an existing facility.

In response to a question from Representative Carlisle, Ms. Little said a significant number of women inmates have mental health issues.

Ms. Little said SRT, Inc., recommended that the department needs to invest an estimated \$42 million to \$62 million in major capital repairs to the four facilities over the next 10 years. She said the major projects that need to be pursued during that time period include a new Missouri River Correctional Center dietary building; a new female housing unit at James River Correctional Center; a Penitentiary gatehouse; a fire alarm system at the Youth Correctional Center; the replacement of the Penitentiary east cellhouse; and roofing and infrastructure projects. She said the department agrees with this

assessment. She said the new female housing unit, the Missouri River Correctional Center dietary building, and the fire alarm system at the Youth Correctional Center are the most urgent. She said the department also agrees with SRT's recommendation that the department needs to invest \$14 million to \$21 million in facility maintenance over the next 10 years.

Regarding SRT, Inc.'s, operations recommendations, Ms. Little said the department agrees that additional staff are necessary to assure security and to operate in an effective manner. She said the department will include these new FTE positions in its 2003-05 budget request. She also said the department agrees that the position of warden of the Penitentiary and the position of the director of the Prisons Division should be separated. She said, however, the department has concerns about eliminating one of the deputy warden positions at this time.

Ms. Little said the department agrees with the recommendation that the department needs to develop or acquire an information system for the Field Services Division that can communicate with the Prisons Division's ITAG system. However, she said, the cost to integrate the two systems has been prohibitive. She said the estimated cost to accomplish this in 2000 was over \$800,000. She said the department will pursue this if the cost of integration decreases or if funding becomes available through grant sources. She said SRT, Inc., also recommended that the department should integrate the policies and procedures of its various divisions into one policy manual for the department and formalize an audit system to test policy compliance. She said the department will work toward this recommendation; however, it is not a priority at this time. She said the department has a common personnel policy manual. She said because the Division of Juvenile Services, Prisons Division, and Field Services Division policies, by necessity, are often different, integrating the policies into one policy manual may be very cumbersome.

Regarding program recommendations, Ms. Little said the department agrees with the recommendation to increase educational programming at the James River Correctional Center. She said the department anticipates it will be able to access improved and adequate facilities for educational programming through a new women's unit as well as acquisition of the laundry and food service space from the State Hospital. Regarding SRT, Inc.'s, recommendation to expand vocational training programs, Ms. Little said the department will include a request in its 2003-05 budget request for additional vocational programming for inmates. She said SRT recommended acceleration of the processing of offenders through classification. She said the department is in the process of implementing this proposal. She said inmates will be

processed in three to four weeks rather than in five weeks.

In response to a question from Senator Nelson, Ms. Little said contracting with community educational programs to provide vocational training within the prisons creates security issues. She said local retailers are not interested in operating within the prison facilities. She said Roughrider Industries, which makes products for retailers, has been successful. She said Roughrider Industries makes those products that North Dakota companies are not making or do not want to make.

Ms. Little said SRT, Inc., recommended the review and validation of the classification instrument. She said the department has submitted a request to the National Institute of Corrections to provide the technical assistance necessary to validate the classification instrument used by the Prisons Division. The final operations recommendation, she said, was to explore the expansion of the community placement program. She said the department has some concerns about expanding the community placement program. She said the new Transition Center has taken 50 additional inmates out of the population and placed them in a community program. She said the department will continue to place eligible candidates on the community placement program; however, the department does not feel comfortable that placing additional inmates on the community placement program would be in the best interest of public safety.

In response to a question from Senator Lyson, Ms. Little said in order to accomplish long-term cost-savings, the department needs to look at policy issues with regard to parole procedures.

In response to a question from Senator Nothing, Ms. Little said the department needs the ability to shift funding among divisions. She said one appropriation to the department would work better.

In response to a question from Representative Kroeber, Ms. Little said the new unit for the seriously mentally ill will be operational by November 1, 2002.

In response to a question from Senator Nelson, Ms. Little said the use of vacant schools for detoxification purposes would be more of a local law enforcement issue than a corrections issue. She said methamphetamine detoxification can take 30 to 90 days.

Chairman DeKrey thanked Ms. Little for the department's cooperation in the SRT, Inc., study and for all the efforts the department put into the response to the study. He said the state's corrections budget has reached the saturation point. He said the state will need to be more creative and inventive in the area of corrections. He said he commends the department and the State Hospital for working together to provide more cost-effective and efficient services.

Ms. Little said the SRT, Inc., study was good for the department. She said the study will give members

of the Legislative Assembly the opportunity to understand the issues facing the department.

It was moved by Senator Nething and seconded by Representative Carlisle that the committee recommend the reports received from SRT, Inc., and the Department of Corrections and Rehabilitation and that the chairman and the staff of the Legislative Council be requested to prepare a final report and to present the report to the Legislative Council.

Representative Keiser said he has a great deal of frustration with regard to the SRT, Inc., report. He said he is disappointed that SRT did not look at the option of a fully integrated single-unit system. He said there are few things in the current system that are being done economically. He said because the existing facilities are poorly designed, security is difficult and staffing is very expensive. He said the experts did not give their vision of long-term ways to maximize the return on the investment of the taxpayers of this state.

Representative Herbel said SRT, Inc., did not really do an assessment of what privatizing could do for the state's correctional system. He said SRT did not do a full investigation of what privatization could do for North Dakota, but rather only listed those reasons why North Dakota should not privatize. He said the representatives from Corrections Corporation of America and Wackenhutt Corrections Corporation were able to refute the "cons" listed by SRT. He said

the state facilities are old and inefficient. He said the privatization option should have been explored further. He said privatization should continue to be explored by the state. He said SRT did provide a great deal of information that will be valuable, but there is something missing in the report that needs to be explored.

Representative Thoreson said the committee went into this study with the mindset that we need to build a new building in Jamestown and it appears that is what will be done. He said the study did not look at the big picture.

Senator Nelson said instead of building new prisons, perhaps the focus should be on what can be done in the area of prevention.

The motion carried on a roll call vote. Representatives DeKrey, Carlisle, Grumbo, Herbel, Keiser, Kroeber, Mahoney, Thoreson, and Warnke and Senators Dever, Kelsh, Lyson, Nelson, and Nething voted "aye." No negative votes were cast.

No further business appearing, Chairman DeKrey adjourned the meeting sine die at 12:15 p.m.

Vonette J. Richter
Committee Counsel

ATTACH:1