

CRIMINAL JUSTICE COMMITTEE

The Criminal Justice Committee was assigned three studies. Senate Concurrent Resolution No. 4015 directed a study of the 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. Senate Concurrent Resolution No. 4051 directed a study of criminal offenses throughout the North Dakota Century Code. Senate Concurrent Resolution No. 4048 directed a study of the feasibility and desirability of revising the sections of the North Dakota Century Code which relate to sexual offenses, sentencing of sexual offenders, and sexual offender commitment treatment. The Legislative Council chairman directed the committee to study issues related to public safety and state liability in connection with the interstate transfer of convicted felons.

Committee members were Representatives John Mahoney (Chairman), Curtis E. Brekke, Ron Carlisle, Rachael Disrud, Bruce A. Eckre, G. Jane Gunter, Gerald O. Sveen, Elwood Thorpe, and John M. Warner and Senators Stanley W. Lyson, Carolyn Nelson, Wayne Stenehjem, and Darlene Watne.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2000. The Council accepted the report for submission to the 57th Legislative Assembly.

CORRECTIONAL SYSTEM STUDY

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 includes the Missouri River Correctional Center and other lands used for farming purposes.

The Penitentiary facility is composed 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-type cells and has a capacity of 66 inmates.
2. The Overflow unit is a medium security area with dormitory-style cells and has a capacity of 31 inmates.
3. The East Cell House, which was built in 1910, is a maximum security unit with single bunk-type cells and has a capacity of 157 inmates.
4. The West Cell House is a maximum security unit that contains single bunk-type cells and has a capacity of 80 inmates.
5. The South unit is a maximum security unit with dormitory-style cells and has a capacity of 60 inmates.
6. The Therapeutic community unit is a medium security, dormitory-style unit and has a capacity of 60 inmates.
7. The Administrative segregation unit is a maximum security unit with single bunk-type cells and has a capacity of 36 inmates.

Other buildings located at the Penitentiary site include a food service building, education building, the administration building, a recreation building, a purchasing and distribution building, the visiting center, power plant, chiller building, old slaughter house, 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 NDCC 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 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 center 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 center include a manager's residence, male and female inmate housing units, a 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 center include a

minimum security, dormitory-style housing unit for male inmates which has a capacity of 136 inmates. In addition, there is a minimum security, dormitory-style housing unit for female inmates with a capacity of 14 inmates. The administration of the center is under the jurisdiction of the warden of the State Penitentiary, but a manager lives onsite and conducts the day-to-day administration.

Educational programs offered to the inmates of the center 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 has a capacity of 160 inmates. The female unit, which is located on the third and fourth floors, is also a medium security, dormitory-style unit and has a capacity of 80 inmates.

Offender Statistics

During the 1997-99 biennium, the offenses (and percentage of inmates) for which male inmates were confined included property crimes (39.4 percent); drug-related (22.5 percent); violent crimes, excluding sexual offenses (18.8 percent); driving under the influence (7.4 percent); sexual crimes (7.3 percent); and other offenses such as bail jumping, escape, and unlawful possession of a firearm (4.6 percent). The offenses (and percentage of inmates) for which female inmates were confined included property crimes (46.2 percent); drug-related (33.8 percent); violent crimes, excluding sexual offenses (16.6 percent); driving under the influence (2.1 percent); and sexual crimes (1.4 percent). No females were confined for other offenses such as bail jumping, escape, and unlawful possession of a firearm.

The average length of sentences for both male and female inmates has decreased over the last three bienniums. During the 1993-95 biennium, the average length of sentence was 45 months for male inmates and 54 months for female inmates; during the 1995-97 biennium, 43 months for male inmates and 44 months for female inmates; and during the 1997-99 biennium, 40 months for male inmates and 38 months for female inmates. The average daily inmate population has increased from 571 in 1994 to 959 in 2000.

Testimony and Committee Considerations

The committee received testimony and reviewed extensive information submitted by the Department of Corrections and Rehabilitation and other state agencies with regard to many aspects of the adult correctional system. The committee's considerations centered on four issues--prison facilities and inmate population; interstate transfer of convicted felons; inmate records; and the Revocation Center.

Prison Facilities and Inmate Population

The committee received statistics and other information regarding the demographics of the inmate population in North Dakota. The testimony indicated that increases in the manufacture and use of methamphetamines, along with street gang activity, have brought in a new breed of younger, more violent, and more culturally diverse inmates. As of June 30, 1999, the inmate population of the Department of Corrections and Rehabilitation Prisons Division was 932, which included 578 inmates at the State Penitentiary; 210 inmates at the James River Correctional Center; and 144 inmates at the Missouri River Correctional Center. The information indicated the largest increases in inmates in recent years has been in the area of drug offenders. Of the 932 inmates, 172 had been sentenced for the delivery, manufacture, or intent to deliver or manufacture drugs, and 34 inmates had been sentenced for simple possession of drugs. The average sentence length for all inmates, as of June 30, 1999, was 39 months; however, the average sentence for violent offenders was 53 months; for sexual offenders, 121 months; and for drug offenders, 55 months.

According to the testimony, approximately half of the inmates are serving sentences of five years or more, and half are serving sentences of less than five years. Mandatory sentences and the 85 percent "truth-in-sentencing" requirement have had an impact on the number of persons incarcerated and the average length of incarceration. Of the 932 inmates, 132, or 14 percent, were serving a mandatory sentence. The mandatory sentence offenses include driving under the influence, drug offenses, aggravated assault, robbery, terrorizing, and murder. Eighty-two inmates are serving time under the 85 percent "truth-in-sentencing" law with an average sentence of 81 months. Each of the three state prison facilities are at full capacity with an additional 15 inmates being housed in county jails. The inmate population has been increasing at a rate of 10 percent per year.

The committee toured the facilities at the State Penitentiary and the James River Correctional Center. During the tour of the James River Correctional Center, the committee received testimony that the number of inmates incarcerated at the center ranges

from 217 to 225, of which 44 are women. It was noted that among the concerns for the facility are the lack of programming and the level of staffing, both of which will be addressed in the next budget process.

According to the testimony, plans have been developed for the possible renovation of another State Hospital building that, if renovated, would be used to house the female inmates at the James River Correctional Center. It was estimated it would cost \$2 million to renovate the existing building and \$3 million to construct an entirely new structure. If the proposed women's facility becomes a reality, the female inmates from the Missouri River Correctional Center would also be housed in that facility. The separate women's facility would also house all the women's programs, including the medical, recreational, and educational programs. A separate women's facility would keep the female and male inmates separated at all times except when working at Roughrider Industries. Moving all female inmates to one facility would make more beds available for male inmates at the Bismarck and Jamestown locations.

The committee received testimony on an alternative to adding more beds to the state's prison facilities, which would be to develop a transitional community program that would be used during the last six months of incarceration. If implemented, the program would most likely be based in Fargo or Bismarck and could handle 40 to 50 inmates at a time. The program would be operated by a private company and would involve state's attorneys, the courts, and the community. While an employment release program is part of the transition process at the Missouri River Correctional Center, the proposed transitional community program would be a whole treatment program.

Interstate Transfer of Convicted Felons

By Legislative Council chairman directive, the committee was authorized to study issues related to public safety and state liability in connection with the interstate transfer of convicted felons.

On October 13, 1999, Kyle Bell, a convicted felon, escaped near Santa Rosa, New Mexico, while being transported from the State Penitentiary to a facility in Oregon. TransCor, Inc., was the company hired to transport Kyle Bell to the new location. Kyle Bell was able to escape from the transport bus and remained at large until he was recaptured in Texas on January 9, 2000. As a result of the escape, issues were raised concerning the prisoner placement and transportation procedures and policies of the Department of Corrections and Rehabilitation and the use of transport companies for transporting prisoners.

The committee received extensive testimony regarding the prisoner placement and transportation policies and procedures of the Department of Corrections and Rehabilitation, both generally and with regard to the Kyle Bell case. A reciprocity agreement, known as the Interstate Compact Agreement, provides for cooperation between North Dakota and other states for the exchange of prisoners. The decision to house a prisoner in another state is made by the warden. In the Kyle Bell case, the warden determined that for security and safety reasons it would be in the institution's and the state's best interest that Kyle Bell be housed in a maximum security prison in another state.

In 1996 the department began utilizing private prisoner transport companies, principally TransCor America, Inc., based upon research that identified TransCor as being professional, experienced, and the largest of prisoner transport companies. Correctional authorities in other jurisdictions identified TransCor as the best in the field. The department used TransCor to transport two inmates in 1996, five inmates in 1998, and six inmates in 1999. Before the escape of Kyle Bell, the department had not experienced any problems with TransCor and was not aware that TransCor had any incidents of inmate escapes.

An internal review on the procedures and policies used for transporting prisoners indicated the Department of Corrections and Rehabilitation's policies and rules were not lacking and that the department runs a secure, competent, and efficient operation. It was noted that there were some communication failures between the department and TransCor regarding whether it was clear to TransCor that Kyle Bell was to be considered an escape risk. The review indicated the department's procedures should be reviewed continually as new correctional, housing, and transport practices are adopted. The internal review also found that the utilization of private prisoner transport companies is common for all levels of government corrections nationwide and is cost-effective, prudent, and efficient.

The department reported that as a result of the Kyle Bell escape and the internal review, several policies and procedures were changed. According to the testimony, the department immediately suspended the use of TransCor for transporting prisoners. In addition, transported prisoners must be transported in orange jumpsuits and tennis shoes. Prisoners are no longer allowed to wear their own shoes during the transport. The department will conduct the highest-level search before prisoners leave the Penitentiary, and no personal items, such as clothes, shoes, or medications, will be permitted on any prisoner. The department will provide the transport company with full written documentation of the prisoner's history, crimes, and escape attempts, and the department will use a formal written contract for transporting prisoners. It was noted that a need exists for a "sallyport" at the Penitentiary for prisoner transfers and that the parking lot at the Penitentiary is not conducive to prisoner transports.

The internal review also indicated that TransCor had the appropriate policies in place and that, if followed, would have precluded Kyle Bell's escape. The review found that TransCor had failed to follow its policies regarding the required number of guards

during the transport, the awakening of guards during stops, prisoner headcounts during stops, use of interconnecting chains linking prisoners, positions of guards on the bus during stops, and the number of guards awake during movement of the vehicle.

During the course of the committee's review of the interstate transporting of prisoners, several committee members toured the TransCor facilities in Nashville, Tennessee. The members reported that as a result of the Kyle Bell escape, the company had changed some of its training policies, including increasing its training requirements from 40 hours to 80 hours. In addition, TransCor planned to install alarms on the emergency hatches on the ceilings of its buses and use black boxes for certain prisoners.

The committee also received testimony regarding the notification protocol in the case of an out-of-state prisoner escape. Several committee members raised concerns as to why the North Dakota Bureau of Criminal Investigation and the United States Marshal Service were not immediately notified of the escape. According to the testimony, the Governor's office was the lead agency in the investigation because of the profile of the individual and because of the sense of urgency. It was noted there was a sharing of information among the agencies involved, and the main focus among all agencies was the capture of the escaped felon. The testimony indicated the notification should include the warden or director of the Department of Corrections and Rehabilitation, the Governor's office, sister state authorities, the Highway Patrol, the Bureau of Criminal Investigation, local authorities, and the media.

Finally, the committee received testimony regarding statutes of other states and proposed federal legislation regarding the interstate transportation of prisoners. Colorado requires local authorities to be notified when a vehicle transporting prisoners enters a state, and if any prisoner escapes during transport due to the negligence of the contracting company, the company is liable for all actual costs incurred by the state in recapturing the escaped prisoner and all actual damages caused by the escaped prisoner while at large. Iowa imposes training requirements for persons who transport prisoners, including training and proficiency in the safe use of firearms and appropriate transportation procedures. The Florida Department of Corrections is authorized to contract with private transport companies for the transportation of the state's prisoners both within and outside the state. The transport company is to be considered an independent contractor and is solely liable for the prisoner while the prisoner is in the custody of the company. The transport company and its employees are required to possess certain private investigative and private security licenses. Finally, the Florida Department of Corrections is required to advertise for and receive competitive bids for the transportation of prisoners and to award the contract to the lowest and best bidder.

In November 1999, Senators Dorgan, Ashcroft, and Leahy introduced S.1898 in the United States Senate. The "Interstate Transportation of Dangerous Criminals Act of 1999" or "Jeanna's Act," was intended to "provide protection against the risks to the public that are inherent in the interstate transportation of violent prisoners." The bill provides that the Attorney General is to adopt regulations relating to the transportation of violent prisoners in or affecting interstate commerce. The bill also provides that the regulations must include minimum standards for persons involved in the transporting of prisoners, including background checks and preemployment drug testing for potential employees; minimum standards for factors that disqualify employees similar to standards required of federal corrections officers; minimum standards for the length and type of training that employees must undergo before they can perform this service; restrictions on the number of hours that employees can be on duty during a given time period; minimum standards for the number of personnel that must supervise violent prisoners; minimum standards for employee uniforms and identification; standards requiring that violent prisoners wear brightly colored clothing clearly identifying them as prisoners; minimum requirements for restraints used when transporting violent offenders; notification of local law enforcement of stops within their jurisdictions; minimum standards for the markings on conveyance vehicles; notification requirements upon the escape of a prisoner; and minimum standards for the safety of violent prisoners. The bill provides for a civil penalty of \$10,000 plus the costs of prosecution for each violation of the regulations. The bill passed the Senate on October 25, 2000, and has been referred to the House Committee on the Judiciary.

Inmate Records

During the course of the committee's study of the interstate transfer of convicted felons, the issue of whether Kyle Bell's location following his recapture could be released was raised. North Dakota Century Code Section 12-59-04 provides that all Department of Corrections and Rehabilitation records, including preparole reports and supervision history, are confidential. A February 2000 Attorney General's opinion indicated that this section, although it was located in a chapter dealing with the Parole Board, applied to all records of the Department of Corrections and Rehabilitation and that all inmate records were confidential.

The committee considered a bill draft that would have provided that the medical, psychological, and social records of an inmate are confidential, but records with respect to an inmate's identity, location, criminal convictions, or projected date of release are open records. The bill draft also clarified that parole records of the department are confidential. Testimony regarding the bill draft indicated there are circumstances under which an inmate's identity or location should remain confidential, such as in the case of an inmate who is being held in protective custody. According to the testimony, there are situations when, because of the nature of the crime, the department is unable to keep an inmate safe in the system and for those situations, certain information regarding the inmate should be confidential. It was also noted that to allow certain inmate records to be open records could result in potential danger to the prison staff. Testimony in support of the bill draft indicated that the bill draft clarifies that records that have traditionally been closed, e.g., medical, social, and psychological records, remain confidential, but information

that has traditionally been public remains public information. According to the testimony, secret prisons are not good for democracy.

The committee also considered a bill draft that created a new classification of inmate records, known as case history records, that would be considered exempt. North Dakota Century Code Section 44-04-17.1 provides that exempt records may be released at the discretion of the department. The bill draft also provided that medical, psychological, and social records are confidential. The bill draft further provided that records with respect to the person's identity, location, criminal convictions, or projected date of release, except for the records of a person who is under protective management, are open records. Finally, the bill draft clarified that parole records of the department are confidential. Testimony in support of the bill draft indicated the bill draft would allow the department to communicate with inmate families, the media, and other interested parties regarding inmate matters in which the department regards disclosure as appropriate or necessary. The committee recognized there are circumstances when certain information regarding an inmate should be confidential; however, the burden should be on the Department of Corrections and Rehabilitation to explain why the information cannot be made public.

Revocation Center

The committee received testimony regarding the Revocation Center program. The Revocation Center program was presented to the 56th Legislative Assembly as one of the programs the Department of Corrections and Rehabilitation would implement as an "alternative to incarceration." The department presented a program of "alternatives to incarceration" at a cost of \$2 million compared to a cost of \$4.8 million to house the number of inmates that would be diverted from prison by the alternatives to incarceration program. The Revocation Center program was presented to the Legislative Assembly as an intense 60-day alcohol and drug treatment and cognitive restructuring program for primarily nonviolent, first-time probation-revoked offenders and for some first-time offenders.

The Revocation Center program is jointly provided by the Department of Corrections and Rehabilitation, the State Hospital, and the Stutsman County Correction Center and is housed at the Stutsman County Correction Center. The goals of the program are to reduce an offender's risk to the community and to reduce the prison reincarceration rate. The program design is to address not only the offender's addiction problem but also to help change the offender's criminal way of thinking through cognitive restructuring programming.

During 1999, 113 offenders successfully completed the program. It was reported to the committee that, of the 113 discharged from the program to the community, 82.3 percent remain successful in the community, and 17.7 percent have been returned to prison for not complying with release conditions. During 1999 the program saved 6,512 prison days, which translates into a reduction of 70 prison beds needed by the fourth quarter of 1999. According to the testimony, the program has been very effective in both cost-savings and reduced incarceration rates of offenders.

The committee received testimony that a number of concerns have arisen regarding the program. One issue is whether the Revocation Center is being used for offenders beyond legislative authorization. According to the testimony, some state's attorneys believe the program was approved only for offenders who were about to have their probation revoked, not for offenders who were sentenced to prison. According to the testimony, the department discussed with the Legislative Assembly the criteria for which offenders would be eligible for the program, and the criteria included offenders who were sentenced to prison for the first time as well as probation-revoked offenders.

Another issue of concern was the criteria for Revocation Center eligibility. The testimony indicated a concern among state's attorneys regarding offenders who had multiple felonies on their records or who had mandatory drug sentences. According to the testimony, there have been a few offenders selected to participate in the program who state's attorneys considered to be poor choices. To resolve the issue, the department acknowledged that a better exchange of information with judges and state's attorneys would help alleviate this concern.

Another issue of concern was that state's attorneys were not being notified of offenders being placed into the program. According to the testimony, the department now contacts both the state's attorney and the judge involved in an offender's case before placing the offender in the program.

Another issue of concern was the need to focus more on punishment. A primary concern of the state's attorneys was that offenders were only spending 90 to 120 days in prison before being released into the community. According to the testimony, state's attorneys did not believe this to be adequate punishment, especially in some cases when other offenders sentenced to jail at the local level with lesser offenses serve more time in the county jail than a Revocation Center participant spends in prison. To resolve this concern, the testimony indicated the department is making some changes on a case-by-case basis, and early discussion with the state's attorneys about each case would also assist in resolving this concern.

Another issue of concern was that mandatory sentences are being subverted by the department and the Parole Board. According to the testimony, state's attorneys are concerned about mandatory-sentenced drug cases that had been approved by the Parole Board for participation in the program. These cases, which otherwise met the criteria for participation in the program, were flagged by the department for the Parole Board's consideration. To address these concerns, the department changed its procedures. According to the testimony, cases that are mandatory sentences will be reviewed by the Parole Board only when

the cases would normally come before the board.

Another issue of concern was that a person is sentenced based on the severity of the crime and that person should serve at least the majority of that sentence in prison. It was suggested that offenders should serve 50 percent of their sentences at the Penitentiary before being allowed to participate in the Revocation Center program.

Recommendations

With respect to the interstate transfer of convicted felons, the committee concluded the notification process protocol of a prisoner escape is an administrative issue best handled by policy, and legislative involvement is not needed. The committee also concluded that the Governor's task force handled the Kyle Bell situation well, that the Department of Corrections and Rehabilitation was not at fault, and that whether a private company should be used for the transporting of prisoners was not an issue within the scope of the committee's assignments.

The committee makes no recommendation regarding the interstate transfer of convicted felons.

With respect to the Revocation Center program, the committee expressed concerns that the program does not appear to be working as the Legislative Assembly recommended. The committee recommended the department work with the state's attorneys and judges to address the concerns. If the concerns are not addressed, there may be a need for legislative changes. The committee recommends House Bill No. 1044 to provide for a new classification of inmate records, known as case history records, that would be considered exempt; provides that medical, psychological, and social records are confidential; and that records with respect to the person's identity, location, criminal convictions, or projected date of release, except for the records of a person who is under protective management, are open records. The bill draft also provides that parole records of the department are confidential.

CRIMINAL OFFENSES CLASSIFICATION STUDY

Senate Concurrent Resolution No. 4051 directed a study of the classification of criminal offenses throughout the North Dakota Century Code. The testimony on Senate Concurrent Resolution No. 4051 indicated that a proper classification of offenses would provide for equitable punishment based upon the elements of the offense committed and that the appropriate classification of offenses may result in more efficient use of the state's resources in determining levels of punishment, rehabilitation, and the appropriate alternatives to incarceration.

Background

In North Dakota, classification of criminal offenses commences with the Constitution of North Dakota. Section 7 of Article I of the Constitution provides that "[e]very citizen of this state shall be free to obtain employment wherever possible, and any person, corporation, or agent thereof, maliciously interfering or hindering in any way, any citizen from obtaining or enjoying employment already obtained, from any other corporation or person, shall be deemed guilty of a misdemeanor." Section 10 of Article I of the Constitution of North Dakota refers to the term "felony" and provides that no person shall be proceeded against for a felony except by indictment, until another procedure is provided by law.

Section 11 of Article XI of the Constitution of North Dakota provides that "[a]ll officers not liable to impeachment shall be subject to removal for misconduct, malfeasance, crime or misdemeanor in office, or for habitual drunkenness or gross incompetency in such manner as may be provided by law."

Section 11 of Article I of the Constitution of North Dakota dealing with bail for criminal offenses refers to "capital offenses" which need not be bailable if proof of commission "is evident or the presumption great."

The statutory classification of crimes in North Dakota is primarily contained in NDCC Title 12.1; however, a number of felonies, misdemeanors, and infractions can be found throughout the Century Code.

During the 1971-72 interim, the Legislative Council's Judiciary "B" Committee was assigned to review and revise the substantive criminal statutes of North Dakota. The committee recommended a bill that created a new criminal code that defined and classified criminal offenses, provided defenses to criminal charges, and delineated sentencing criteria. The bill abolished the death penalty, eliminated mandatory sentences, restricted the use of deadly force in apprehending alleged criminals, and consolidated theft laws. The bill was enacted by the 43rd Legislative Assembly.

During the 1973-74 interim, the Legislative Council's Judiciary "A" Committee continued the substantive and formal study and revision of the criminal statutes. As a result of this study, the committee recommended a bill that amended the Criminal Code enacted in 1973, created an offense classification known as an infraction, clarified certain offense definitions, expanded the instances wherein the use of force by peace officers is justified, and created a separate fine schedule for business organizations. The bill also made several changes in the sentencing code. The bill was enacted by the 44th Legislative Assembly.

During the 1987-88 interim, the Legislative Council's Judiciary Committee studied the criminal sentencing statutes in

misdemeanor and felony cases. The committee recommended a bill to consolidate NDCC Chapter 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. The bill was also intended to address conflicts and inconsistencies existing in the sentencing statutes. The bill was enacted by the 51st Legislative Assembly.

Testimony and Committee Considerations

Statutory provisions governing criminal classifications are primarily contained in NDCC Title 12.1 with sentencing in misdemeanor and felony cases primarily contained in Chapter 12.1-32; however, criminal classifications can be found throughout the Century Code. There are 382 offenses classified as Class A misdemeanors, 358 classified as Class B misdemeanors, and 151 classified as infractions.

The committee received testimony from several state's attorneys who indicated that there were not any gross inequities in the punishment of criminal offenders which would require a codewide comparison of offenses. It was suggested the committee be extremely cautious before reclassifying any criminal offense because well-meaning amendments may have unintended consequences, consume valuable resources, and lead to more problems.

The committee received testimony regarding a concern over NDCC Section 39-21-46, which deals with motor carrier safety. This section makes a violation of the section an infraction, which is a criminal offense. According to the testimony, problems have arisen when citations are issued for violations of the offense and offenders are asked, on the spot, to sign a document that states the person agrees to plead guilty and to forfeit bond. The problem is that law enforcement officers are providing legal advice and are asking persons to waive their constitutional rights. There could potentially be liability on the part of the officer for violating the person's civil rights. It was suggested the offense should be made a noncriminal traffic offense punishable with a fine. This would decriminalize the offense, but violators could still be cited for violations.

The committee also reviewed several criminal classifications in the state's sexual offense statutes. The committee reviewed NDCC Section 12.1-20-04, relating to sexual imposition. Section 12.1-20-04 makes the offense a Class C felony unless the victim is under 15 years of age in which case the offense is a Class B felony. The committee received testimony that the statute is typically used in "date rape" situations, and it was suggested that this type of offense warrants Class B felony status.

The committee reviewed NDCC Section 12.1-20-05 regarding the solicitation of minors. Under subsection 2 of this section, an adult who solicits a person under the age of 15 to engage in a sexual act is guilty of a Class A misdemeanor. The committee, as part of its sexual offender study, received testimony regarding the need for an offense regarding the luring of minors by computer, and a Class C felony as a penalty was suggested for that crime. Because the elements of solicitation of minors and luring of minors by computer were similar, it was suggested that if the luring of minors by computer crime was enacted, the penalties for the two crimes should be comparable.

The committee also received testimony regarding NDCC Section 12.1-20-12.1 relating to indecent exposure, which is described under **SEXUAL OFFENDER STUDY, Testimony and Committee Considerations, Miscellaneous Sexual Offense Statutes**.

According to testimony from state's attorneys, there is a concern about the "resentencing" that occurs after a person has been sentenced by a judge. Several examples of situations in which a person sentenced by a judge to serve a certain length of time were cited. In one situation, a repeat offender who was sentenced to 18 months by a judge served only three months in prison before being paroled into the community. While the need for the Parole Board's involvement is understood, the testimony indicated that state's attorneys object to significant reductions in a criminal sentence without any serious consideration of the opinions of the law enforcement agency, the prosecuting attorney, and the court involved in the case.

Conclusion

The committee makes no recommendation regarding this study; however, the suggestions discussed above regarding the changes to the classifications of sexual offenses are included in the bill recommended as a result of the sexual offender study.

SEXUAL OFFENDER STUDY

Background Sexual Offender Statutes

Crimes for sexual offenses are contained in NDCC Chapter 12.1-20. Under Section 12.1-20-01, if a victim of a sexual offense is under the age of 15, it is not a defense that the offender thought the victim to be older. If the victim is 15, 16, or 17 years of age, however, it is an affirmative defense that the offender reasonably believed the victim to be an adult.

North Dakota Century Code Section 12.1-20-02 defines "sexual act" and "sexual contact." The term "sexual act" includes certain

defined sexual contacts. The term "sexual contact" is broadly defined to include any touching of the sexual or intimate parts of another for arousing or satisfying sexual or aggressive desires. Generally, the certain sexual contacts contained in the definition of sexual act are punished more severely than sexual contacts as broadly defined.

North Dakota Century Code Section 12.1-20-03 defines "gross sexual imposition." The crime of gross sexual imposition is categorized by whether a sexual act or a sexual contact was performed. Under the statute, gross sexual imposition that results from a sexual act includes:

1. A forced victim (Class A felony).
2. An unknowingly intoxicated or drugged victim (Class B felony; Class A felony if there is serious bodily injury).
3. An unknowing victim (Class B felony; Class A felony if there is serious bodily injury).
4. A victim under 15 years of age (Class A felony).
5. A victim with a mental disease or defect (Class B felony; Class A felony if there is serious bodily injury).

Under the statute, gross sexual imposition that results from sexual contact includes:

1. A victim under 15 years of age (Class B felony; Class A felony if there is serious bodily injury).
2. A forced victim (Class B felony; Class A felony if there is serious bodily injury).

North Dakota Century Code Section 12.1-20-03.1 defines the crime of "continuous sexual abuse of a child" as a combination of three or more sexual acts or sexual contacts with a minor under the age of 15 years during a period of three or more months. This crime is a Class A felony.

1. Under NDCC Section 12.1-20-04, the crime of "sexual imposition" is defined as a sexual act or contact as a result of a threat that would render a person of reasonable firmness incapable of resisting. The crime is a Class C felony; however, if the victim is 15, 16, or 17 years of age, the crime is a Class B felony.
2. Under NDCC Section 12.1-20-05, the crime of "corruption or solicitation of minors" is defined as a sexual act by an adult on a victim who is 15, 16, or 17 years of age. The crime is a Class A misdemeanor; however, if the offender is at least 22 years of age, the crime is a Class C felony. The solicitation of a sexual act or contact with a victim under 15 years of age is a Class A misdemeanor.
3. North Dakota Century Code Section 12.1-20-06 defines the crime of "sexual abuse of wards" as a sexual act performed on a victim in official custody by an offender with supervisory or disciplinary authority over the victim. This crime is a Class A misdemeanor.
4. Under NDCC Section 12.1-20-07, the crime of "sexual assault" is defined as sexual contact that is:
 1. Offensive to the victim (Class B misdemeanor).
 2. On a victim with a mental disease or defect (Class C felony).
 3. On an unknowingly intoxicated or drugged victim (Class C felony).
 4. On a victim in official custody by an offender with supervisory or disciplinary authority over the victim (Class A misdemeanor).
 5. On a victim who is 15, 16, or 17 years of age and the offender is a parent or guardian (Class C felony).
 6. On a victim who is 15, 16, or 17 years of age and the offender is 18 years of age or older (Class C felony if the offender is 22 years of age or older; Class A misdemeanor if the offender is 18, 19, 20, or 21 years of age).

There are other NDCC Chapter 12.1-20 sexual offenses; however, they do not interrelate in the same manner as the sexual offenses previously listed. The other sexual offenses include Section 12.1-20-06.1 - Sexual exploitation by a therapist; Section 12.1-20-08 - Fornication; Section 12.1-20-09 - Adultery; Section 12.1-20-10 - Unlawful cohabitation; Section 12.1-20-11 - Incest; Section 12.1-20-12 - Deviate sexual act; Section 12.1-20-12.1 - Indecent exposure; and Section 12.1-20-13 - Bigamy. The remainder of Chapter 12.1-20 contains evidentiary rules and the crime of transferring body fluid that may contain the human immunodeficiency virus.

1. Under NDCC Chapter 12.1-32, there are specific provisions for the sentencing of sexual offenders. Section 12.1-32-02 provides that before sentencing a defendant on a felony charge for gross sexual imposition, continuous sexual abuse of a child, incest, or certain sexual performances by children, the court must order a presentence investigation and a presentence report. This section requires a risk assessment in presentence investigations of individuals charged with gross sexual imposition.
2. Under NDCC Section 12.1-20-03.1, a court may not defer imposition of sentence or suspend any part of a sentence for the continuous sexual abuse of a child unless the offense was the defendant's first violation of Chapter 12.1-20 and there are extenuating circumstances that justify a suspension.
3. North Dakota Century Code Section 12.1-32-04 provides that a court is prohibited from deferring imposition of sentence for gross sexual imposition on a victim under 15 years of age in cases in which the defendant cannot prove by clear and convincing evidence that the defendant reasonably believed the victim was 15 years of age or older.
4. Under NDCC Section 12.1-32-06.1, a court may impose an additional period of probation not to exceed five years for a

person found guilty of a felony sexual offense against a minor which is a gross sexual imposition, sexual imposition, or incest if the additional period of probation is in conjunction with sexual offender treatment. If a person is guilty of a misdemeanor sexual offense that is a corruption or solicitation of a minor, a sexual abuse of a ward, or a sexual assault, the court may impose an additional period of up to two years if in conjunction with sexual offender treatment.

5. North Dakota Century Code Section 12.1-32-08 provides that a court may require the defendant to pay the prescribed treatment cost for a victim of a sexual offense.
6. Under NDCC Section 12.1-32-09.1, a person who is convicted of and receives a sentence of imprisonment for forcible gross sexual imposition or other certain crimes is not eligible for release from confinement until 85 percent of the sentence imposed has been served.
7. Under NDCC Section 12.1-32-15, a person who commits a crime against a child or who is a sexual offender is required to register in the county in which the person resides. This section requires the release of registration information if a law enforcement agency determines that a sexual offender is a public risk and registration information is necessary for public protection.
8. A sexual offender is defined as a person who has pled guilty or has been found guilty of NDCC Sections 12.1-20-03 (gross sexual imposition); 12.1-20-03.1 (continuous sexual abuse of a child); 12.1-20-04 (sexual imposition); 12.1-20-05 (corruption or solicitation of minors); 12.1-20-06 (sexual abuse of wards); 12.1-20-07 (sexual assault); 12.1-20-11 (incest); 12.1-22-03.1 (surreptitious intrusion); or Chapter 12.1-27.2 (sexual performance by children).

Civil Commitment of Sexually Dangerous Individuals Statutes

1. The 1997 Legislative Assembly enacted NDCC Chapter 25-03.3, which establishes a judicial procedure for the civil commitment of sexually dangerous individuals, similar to the procedure for the commitment of mentally ill individuals. Section 25-03.3-01 defines a sexually dangerous individual as one who has:
2. [S]hown to have engaged in sexually predatory conduct and who has a congenital or acquired condition that is manifested by a sexual disorder, a personality disorder, or other mental disorder or dysfunction that makes that individual likely to engage in further acts of sexually predatory conduct which constitute a danger to the physical or mental health or safety of others.
3. Under NDCC Chapter 25-03.3, sexually predatory conduct is conduct that is similar to the conduct required for the crime of gross sexual imposition. Chapter 25-03.3 provides that the burden of proof for commitment is clear and convincing evidence and that the person to be committed has the right to counsel, to be present, to testify, and to present and cross-examine witnesses. If a person is found to be a sexually dangerous individual, the court commits that person to the care, custody, and control of the executive director of the Department of Human Services. The executive director has the duty to place the sexually dangerous individual in an appropriate facility or program at which treatment is available. Unless the sexually dangerous individual is already in the custody of the Department of Corrections and Rehabilitation, the executive director may not place the individual at the State Penitentiary or affiliated penal facilities.
4. The court must release the individual once the individual is no longer sexually dangerous. Each committed individual must have an examination of that individual's mental condition at least once a year. In addition, once a year the executive director must give written notice of the right to petition for discharge to the committed individual. If the committed individual files a petition for discharge and has not had a hearing during the preceding 12 months, the committed individual must receive a hearing.
- 5.

Testimony and Committee Considerations

1. The goals of the study were to review sections of the Century Code which relate to sexual offenses, the sentencing of sexual offenders, and the sexual offender commitment treatment. The committee's considerations centered on five main areas: the civil commitment of sexually dangerous individuals; age differentials in sexual offender statutes; adultery and unlawful cohabitation statutes; luring of minors by computer; and miscellaneous sexual offense statutes.
- 2.

Civil Commitment of Sexually Dangerous Individuals

1. The committee received testimony regarding the need for some amendments to the state's civil commitment of sexually dangerous individuals statutes. The law establishes a judicial procedure for the commitment of mentally ill individuals. For commitment to occur, the state's attorney, as petitioner, must show the individual has engaged in further acts of sexually predatory conduct, making the individual a danger to the physical or mental health or safety of others. The commitment is to the Department of Human Services for treatment in the least restrictive environment. Commitment continues until the individual is safe to be at large and has received the maximum benefit of treatment. A statute similar to the North Dakota law was challenged before the United States Supreme Court on substantive due process, double jeopardy, and ex post facto grounds in 1997 and was found to be constitutional. The North Dakota Supreme Court reviewed the North Dakota law in 1999 on the issue of double jeopardy and found the statute constitutional.

2. The committee received testimony that indicated that as the result of the civil commitments that have been made in the state, a number of areas have been discovered in which adjustments could be made to the statute. According to the testimony, a study group composed of representatives of the affected entities, including the Attorney General's office, the State Hospital, and state's attorneys, was formed to review the civil commitment statutes. It was noted the study group had consulted with the treatment staffs of the Department of Corrections and Rehabilitation, with the Department of Human Services, and with the Protection and Advocacy Project to learn of any concerns those agencies may have with the inclusion of the mentally retarded in the civil commitment statute.
3. The first area of concern was the definition of sexually dangerous individual. North Dakota Century Code Section 25-03.3-01(7) excludes an individual with mental retardation from the definition. According to the testimony, the exclusion of individuals with mental retardation creates a dangerous situation that arises when an individual who is charged with gross sexual imposition or a similar sexual offense is found to lack fitness to proceed at trial. If the individual charged is a mentally retarded person, the proceedings must be dismissed against this individual. It was suggested that if the definition were amended to eliminate the exclusion of mentally retarded individuals, the remainder of the commitment process, with some minor adjustments, would provide for a process of commitment for mentally retarded persons. If found to meet the criteria for commitment, a court would commit the individual to the care, custody, and control of the Department of Human Services. Depending on the level of mental retardation, the individual could be placed in the Developmental Center at Westwood Park's treatment program or in the State Hospital.
4. The second area of concern was the venue provisions of NDCC Section 25-03.3-02, which require the commitment proceeding to be held in the county in which the respondent resides or is located. The suggestion was to broaden venue to allow a commitment proceeding to be held in any appropriate county in which the respondent has had or intends to have a presence. The change was suggested as a result of venue issues that had arisen when an inmate who is due to be released and who has been referred by the Penitentiary states an intent to reside in a different county from the county in which the inmate resided at the time of entering the Penitentiary.
5. A third concern involved the detention of respondents under NDCC Section 25-03.3-08, which provides that the respondent is to be detained at a treatment facility for a 72-hour period before the probable cause hearing. Because of the lack of treatment facilities in small communities, it was suggested the law be amended to provide that the respondent be taken into custody and transferred to a local treatment facility "or correctional facility" to be held pending the probable cause hearing.
6. The fourth area of concern involved the closed and open proceedings under NDCC Sections 25-03.3-11 and 25-03.3-13. According to the testimony, the hearings should be closed and the records sealed because of the sensitive nature of the information released during a commitment hearing. The results of the commitment proceedings, however, to the extent that an individual is committed, need not be confidential.
7. A fifth area of concern was the maximum of 30 days between the probable cause hearing and the commitment hearing provided for in NDCC Section 25-03.3-13. According to the testimony, 30 days is not enough time to gather the necessary material and to complete the psychological evaluations and risk assessments. A time period of 60 or 90 days was suggested as being workable and would not unduly infringe on the respondent's rights.
8. The sixth area of concern was with regard to commitments under plea bargains under NDCC Section 25-03.3-14. According to the testimony, concerns have been raised about individuals who are being civilly committed to a sexual predator treatment program under a plea agreement in which the criminal sentence is deferred or suspended while the individual is under commitment. The underlying concept of the civil commitment statute is that a sexual offender who is under a criminal indictment, whenever possible, should be committed to a correctional facility rather than be offered a plea agreement that could result in civil commitment as an option to the criminal sentence. According to the testimony, state's attorneys thought it would be inadvisable to prohibit through legislation such a plea agreement as there may be unusual situations when it is necessary and appropriate. The testimony indicated the concerns regarding plea agreement need not be addressed legislatively but rather could be addressed by further educating state's attorneys and judges on the civil commitment statute and by distributing a protocol to state's attorneys that emphasizes criminal prosecution.
9. The seventh area of concern involved assessments and referrals from the Penitentiary. The testimony indicated there is a need for a more complete assessment by the Penitentiary of individuals who may be referred to a state's attorney for possible commitment. It was also noted more information should be included in the referral letter the Penitentiary sends to state's attorneys for civil commitment of a prisoner who is about to be released.
10. The final area of concern involved the need for a transitional process for releasing individuals into the community. According to the testimony, a transitional process could be adopted through legislation or through the rulemaking process.
11. The committee considered a bill draft that provided for changes to the state's civil commitment of sexual predators statutes contained in NDCC Chapter 25-03.3. The bill draft provided for the inclusion of individuals with mental retardation under the civil commitment procedures of the chapter by amending the definition of sexually dangerous individuals. The bill draft also included changes to numerous other sections of Chapter 25-03.3 to provide that individuals with mental retardation receive due process during the commitment proceedings, including the appointment of a guardian ad litem for an individual with mental retardation; the provision that the right to counsel may not be waived; notice requirements; and the appointment of an expert to perform an evaluation on behalf of the respondent. The bill draft also provided for expanded venue for bringing a petition; confidentiality of the petition and all proceedings, but the result of the commitment proceeding and the discharge from treatment would be open records; an assessment and referral process to be used by the Department of Corrections and Rehabilitation for inmates who have been convicted of an offense that involves sexually predatory conduct; detention of an individual in a local correctional facility; admission of certain evidence to establish probable cause which otherwise may not be admitted at a commitment hearing; and

- provided for an increase from 30 days to 90 days the time period during which the commitment proceeding must be held.
12. Testimony in support of the bill draft indicated the amendments to NDCC Chapter 25-03.3 would assist state's attorneys, the courts, the Department of Corrections and Rehabilitation, and the State Hospital in carrying out their duties and responsibilities under the civil commitment statute and would assist in achieving a more effective and efficient implementation of the goals of the statute. Other testimony regarding the bill draft indicated that there are concerns over the referral process in the bill draft and that it may increase the number of referrals and thereby increase the growth of the program at the State Hospital. According to the testimony, the State Hospital anticipates an increase of 12 beds for the sexual offender treatment program during the 2001-03 biennium.
 13. The committee also received testimony from representatives of the Protection and Advocacy Project regarding the bill draft. According to the testimony, a number of interested persons had formed a task force to review the bill draft and the state's civil commitment statutes. The testimony indicated additional changes to NDCC Chapter 25-03.3 should be included in the bill draft to increase the likelihood that a committed individual will get appropriate treatment and be released from a residential facility to rejoin the community with appropriate supervision. The proposed changes to the bill draft included adding a definition of mental retardation; clarifying that mental retardation does not cause any individual to engage in sexually predatory conduct; authorizing judges to appoint a nonattorney "special advocate" to help a victim, witness, or respondent with mental retardation to understand the proceedings and to better participate in the proceedings; continuing the ban on detaining a respondent in jail but providing the option of detaining a respondent in a secure local treatment facility before the preliminary hearing; improving notice to a respondent and the respondent's decisionmakers; establishing individualized treatment teams to develop, review, and revise an individual's treatment plan; identifying the rights that apply to a respondent or committed individual; articulating a committed individual's right to have a court review of any transfer to a more restrictive treatment setting; increasing the standard time allowed for an evaluation from 30 to 45 days; and granting rulemaking authority to the Department of Human Services to implement the chapter. Concerns were raised by committee members that the additional proposed changes are substantial steps beyond what the committee had originally considered and that the more things are defined in statute, the more open the law will be to litigation. The committee agreed to incorporate into the bill draft a reference to the definition of mental retardation in the *Diagnostic and Statistical Manual of Mental Disorders*, Fourth Edition; to include proposed changes to the definitions of respondent and treatment facility; and to provide for rulemaking authority. The committee recommended the Attorney General and the task force work together to resolve some of the task force's concerns before the legislative session.

Age Differentials in Sexual Offender Statutes

1. The committee received testimony that many of the sexual offenses contained in the North Dakota Century Code are interrelated and that the age of the victim often determines the crime and penalty. Many of the crimes in NDCC Chapter 12.1-20 are classified as crimes because the victim is under age 18, but the penalty is more harsh when the victim is under age 15. In those cases, the lack of knowledge of the victim's age is not a defense. Consent and conduct are important elements of many of the sexual offenses. Sexual offense statutes are not intended to legislate morals but rather to establish a strong public policy against certain types of sexual behavior. Problems arise in enforcing the sexual offender statutes when both parties are minors or when the two parties to the sexual act are near a certain age. There is often a problem as to where to draw the line. One option may be to set new age limits or age differentials. In some states, instead of using an actual age, the statutes look at the difference in ages between the two parties, such as "more than three years." Other options would be to establish new sentencing or case diversion statutes or to adjust the crimes and penalties depending on the parties' ages. The testimony indicated there is a concern about predatory conduct among minors.
2. The committee also received testimony regarding the state's compliance with the federal Wetterling Act. Under that law, a state may not permit any sexual offender to be exempt from registration. Some alternatives to the current law may be to use age differentials instead of actual ages. Under this option, certain behavior would no longer be classified as criminal, thus obviating the need for prosecution or registration. It was noted the state is at risk of losing up to 10 percent of its federal funds, approximately \$200,000, if it fails to comply with the Wetterling Act. The committee received testimony that the United States Department of Justice had announced that North Dakota was in compliance with the Wetterling Act.
3. The committee considered a bill draft that, in part, would have amended the state's corruption or solicitation of a minor statute and the sexual assault statute. The bill draft provided that the sexual act in each statute was a crime if the adult were at least three years older than the minor. Testimony in support of the bill draft indicated the amendments would decriminalize the consensual sexual relationships between some young couples, such as between a 17-year-old and an 18-year-old. It was noted that people may marry at age 16 in North Dakota; however, sexual relationships before age 18 are a crime if one person is 18 years of age or older. Other testimony on the bill draft indicated support for amendments that would provide for an age differential of three years instead of the current benchmark of age 18 and support to preserve the age of 15 years as the minimum age of consent. A three-year age difference would allow for the consideration of a young person's ability to consent to the relationship. Testimony in opposition to the bill draft indicated that there is a concern among some state's attorneys that they will lose discretion to prosecute on a case-by-case basis if the three-year age difference between the adult and the minor is enacted.

Adultery and Unlawful Cohabitation Statutes

1. The committee received testimony regarding the decriminalization of unlawful cohabitation and adultery. According to the testimony, the state does not have a need for a statute that makes it a crime for two adults of any age to live together. The last reported North Dakota Supreme Court case on adultery was in 1925. The view was expressed that the issue of adultery should be handled as a moral, religious, and family values issue. Regarding unlawful cohabitation, the testimony indicated the statute is outdated and should be repealed.
2. The committee considered a bill draft that would have repealed NDCC Sections 12.1-20-09 and 12.1-20-10. According to testimony on the bill draft, the legislative history for the unlawful cohabitation statute indicates the statute was only intended to cover fraud by a couple pretending to be a married couple and was not intended to make it a crime for two unmarried people to live together. Other testimony regarding the bill draft indicated that in a housing discrimination case in the state, the district court held that a landlord could refuse to rent to an unmarried couple based upon the state's unlawful cohabitation statute. Further testimony indicated other states have held the refusal to rent to unmarried couples to be a discriminatory practice.

Luring of Minors by Computer

1. The committee received testimony that North Dakota does not have a statute that protects children from the exposure created by the Internet. The testimony noted there was a recent situation in North Dakota involving a 16-year-old girl who was lured to Tennessee to have sex with an adult. If the luring reaches the point that physical contact is made and sexual acts occur, the sexual crime statutes can be used. It has become a national problem when adults hunt children over the Internet and lure them to locations for sexual relations. According to the testimony, several states and the federal government have made efforts to address the problem but have failed. Approximately 17 states have enacted statutes to deal with luring of minors by computer, and all have been found to be unconstitutional infringements on the First Amendment. A New York statute, however, has been found to be constitutional and has been endorsed by free speech advocates and child advocacy groups.
2. The committee considered a bill draft that, in part, made it a crime for an adult to use a computer to lure a minor when the adult knows that the communication depicts sexual acts and by means of that communication the adult importunes, invites, or induces the minor to engage in sexual acts or to have sexual acts with the adult for the adult's benefit, satisfaction, lust, passions, or sexual desires. The bill draft provided that the crime is a Class A misdemeanor, but if the adult is 22 years of age or older or the minor is under the age of 15, the crime is a Class C felony. Testimony in support of the bill draft indicated the bill draft would protect North Dakota's children from those who would make them victims, but their identity is cloaked in the secrecy of the Internet. Other testimony regarding the bill draft indicated the words "luring by electronic means" could be added to the corruption or solicitation of minors statute rather than creating a new crime for the luring of minors by computer.

Miscellaneous Sexual Offense Statutes

1. The committee received testimony that a number of the state's sex crime statutes are ineffective in protecting people from becoming victims of sexual offenses. According to the testimony, NDCC Section 12.1-20-04 could be amended to address the problem of criminal street gangs using or mandating a sexual relationship between gang members and gang prospects. It was noted that to become a member of a criminal street gang, a person has to complete an initiation process. The testimony indicated criminalizing the initiation process would help law enforcement control this type of street gang activity.
2. The committee also received testimony regarding NDCC Section 12.1-20-12.1 relating to indecent exposure. The penalty for indecent exposure is a Class B misdemeanor. According to the testimony, the elements of the crime do not adequately address situations in which a person exposes oneself for sexual gratification. It was proposed that the statute be amended to separate the prosecution of the offense into disorderly conduct for the situation in which persons expose themselves in a prank situation, e.g., "mooning," or public urination, and indecent exposure for situations in which persons expose themselves for sexual gratification. According to the testimony, the indecent exposure statute is inadequate to deal with sexually deviant exhibitionism. Persons may expose themselves to children on a playground to satisfy their sexual desires and only be prosecuted for a Class B misdemeanor. It was suggested that the penalty for indecent exposure be elevated to a Class A misdemeanor and a Class C felony for subsequent violations.
3. The committee received testimony that the current statute of limitations for gross sexual imposition is three years. The testimony proposed that the statute of limitations be expanded to seven years to be consistent with the statute of limitations for child sexual molestation cases.

Recommendations

1. The committee recommends Senate Bill No. 2034 to provide for changes to the state's civil commitment of sexual predators statutes contained in NDCC Chapter 25-03.3. The bill removes the current exclusion of individuals with mental retardation from the statute; extends the time period for experts to complete evaluations from 30 days to 90 days, codifies the procedures to be used by the Penitentiary for referring inmates scheduled for discharge; clarifies what portion of commitment proceedings are open; allows an individual to choose to be detained in a local correctional facility before a probable cause hearing; and provides rulemaking authority for the Department of Human Services.

The committee recommends Senate Bill No. 2035 to provide for the creation of a crime for luring minors by computer, to criminalize street gang initiation sexual acts, to separate disorderly conduct-type behavior from the indecent exposure statute and to make indecent exposure a crime for which a person is required to register as a sex offender, and to expand the statute of limitations for gross sexual imposition to seven years.