

**2013 HOUSE JUDICIARY**

**HB 1173**

# 2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee  
Prairie Room, State Capitol

HB 1173  
January 23, 2013  
Job 17591

☐ Conference Committee



## Explanation or reason for introduction of bill/resolution:

Expiration date of the commission on alternatives to incarceration.

## Minutes:

*Testimony 1*

**Chairman Koppelman:** Opens.

**Rep Klemin:** All this bill does is extending the life of this commission for another 4 years, on line 6. Page 1 lists all the members, and it's a statutory commission comprised of legislators from the House and Senate along with a number of other individuals from State and local organizations. Look at Page 2, line 7. Then refers to testimony 1.

**Rep Larson:** This seems like it should be an ongoing thing, I wonder if it would be better if instead of changing the sunset date just to take that whole part in parenthesis out altogether. If you find someday that there is no need for this commission any longer, go back and dissolve it the statute?

**Rep Klemin:** It certainly is an alternative and committee might want to make an amendment to the bill if appropriate to do that.

**Rep Delmore:** Are the 6<sup>th</sup> Legislative members the sponsors of the bill? 3 from the Senate and 3 from the House correct? Who are the current members?

**Rep Klemin:** All of the current members are the sponsors except for Senator Carlisle which is a former member. Senator Lyson was member and Chairman of this commission.

**Chairman Koppelman:** When did this began?

**Rep Klemin:** Must have been 8 years ago.

**Chairman Koppelman:** Could the interim judiciary committee not handle this kind of work; is there a need for a separate body to do it?

**Rep Klemin:** If the study is assigned to this commission it could probably be done by interim committee. However none of the interim committees have the Attorney General,

Supreme Court or District judge and so on....So this brings together a broad spectrum of the community that deals with the subject other Legislators and includes the professionals that are involved with this on a daily basis.

**Rep Hogan:** Did this commission end up recommending any legislative action for this session?

**Rep Klemin:** We did have some recommendation, Senate Concurrent Resolution 4001, Senate bill 2029; make recommendation to the Governor for inclusion in the budget.

**Chairman Koppelman:** Closes.

No recording located for the afternoon on January 23, 2013 for HB 1173 which was voted on. Researched the voting results with Chairman so the roll call sheet is correct.

**Rep. Kathy Hogan:** Made a motion for do pass.

**Rep. Lois Delmore:** Second the motion.

14-0-0.

**Rep. Vicky Steiner:** Will be carry the bill.

Date: 1-23-13  
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. HB1173

House Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment  
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Hogan Seconded By Rep. Delmore

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman	/		Rep. Lois Delmore	/	
Vice Chairman Lawrence Klemin	/		Rep. Ben Hanson	/	
Rep. Randy Boehning	/		Rep. Kathy Hogan	/	
Rep. Roger Brabandt	/				
Rep. Karen Karls	/				
Rep. William Kretschmar	/				
Rep. Diane Larson	/				
Rep. Andrew Maragos	/				
Rep. Gary Paur	/				
Rep. Vicky Steiner	/				
Rep. Nathan Toman	/				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Steiner

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1173: Judiciary Committee (Rep. K. Koppelman, Chairman)** recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1173 was placed on the Eleventh order on the calendar.

**2013 SENATE JUDICIARY**

**HB 1173**

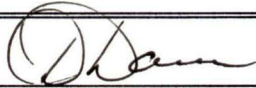
# 2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee  
Fort Lincoln Room, State Capitol

HB1173  
3/18/2013  
Job #20048

☐ Conference Committee

Committee Clerk Signature



## Minutes:

*Attached testimony*

Relating to the expiration date of the commission on alternatives to incarceration

Senator David Hogue - Chairman

Representative L. Klemin - District 47 - Introduces the bill and explains its intent. See handout (1). Rep. Klemin says this commission can set its own schedule and agenda within the parameters set in line 7. He explains the duties of the commission and that they can be assigned studies. Senator Hogue asks Rep. Klemin if they have looked at withholding hunting licenses as an alternative to incarceration. Rep. Klemin believes that is a good option but that is an alternative to sentencing. Senator Sitte asks if they have looked at fines and penalties. Rep. Klemin said they will look into all those ideas. Senator Sitte says she finds a lot of value in this committee.

Opposition - none

Neutral - none

Close the hearing on 1173

Senator Grabinger motions a do pass

Senator Nelson seconded

## Discussion

Senator Lyson said he will vote against this because he sees no purpose in keeping the committee because nothing ever gets done. Senator Grabinger asks if there is anything that would make the bill better to which Senator Lyson remarks no. Senator Sitte remarks that she would like to see continued discussions and thinks it is important for the Commission to meet. Senator Armstrong says there are many issues coming up that have to be dealt with dealing with not enough jail space.

Vote - 6 yes, 1 no

Motion passes

Senator Hogue will carry

Date: 3/18/13  
Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1173

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment  
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By S. Armstrong Seconded By S. Nelson

Senators	Yes	No	Senator	Yes	No
Chairman David Hogue	<input checked="" type="checkbox"/>		Senator Carolyn Nelson	<input checked="" type="checkbox"/>	
Vice Chairman Margaret Sitte	<input checked="" type="checkbox"/>		Senator John Grabinger	<input checked="" type="checkbox"/>	
Senator Stanley Lyson		<input checked="" type="checkbox"/>			
Senator Spencer Berry	<input checked="" type="checkbox"/>				
Senator Kelly Armstrong	<input checked="" type="checkbox"/>				

Total (Yes) 6 No 1

Absent 0

Floor Assignment S. Hogue

If the vote is on an amendment, briefly indicate intent:



**REPORT OF STANDING COMMITTEE**

**HB 1173: Judiciary Committee (Sen. Hogue, Chairman) recommends DO PASS**  
(6 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). HB 1173 was placed on the  
Fourteenth order on the calendar.

**2013 TESTIMONY**

**HB 1173**

101113 Rep. Alvin 1-23-13

# COMMISSION ON ALTERNATIVES TO INCARCERATION

The Commission on Alternatives to Incarceration was created by 2005 House Bill No. 1473. The bill, which was codified as North Dakota Century Code Section 54-35-24, required the Legislative Management Chairman to select the chairman and vice chairman of the commission and provided for the membership of the commission as follows:

1. Three members appointed by the Governor, one of whom must be an academic researcher with specialized knowledge of criminal justice sentencing practices and sentencing alternatives;
2. The Attorney General or the Attorney General's designee;
3. Two members appointed by the Chief Justice of the Supreme Court;
4. The Director of the Department of Corrections and Rehabilitation;
5. The Director of the Department of Human Services;
6. Two local law enforcement officers appointed by the Attorney General;
7. One state's attorney appointed by the North Dakota State's Attorneys Association;
8. Three members of the House of Representatives, two of whom must be selected by the leader representing the majority faction of the House of Representatives and one of whom must be selected by the leader representing the minority faction of the House of Representatives;
9. Three members of the Senate, two of whom must be selected by the leader representing the majority faction of the Senate and one of whom must be selected by the leader representing the minority faction of the Senate; and
10. One representative of the North Dakota Association of Counties appointed by the Association of Counties.

Section 54-35-24 requires the commission to study sentencing alternatives, mandatory sentences, treatment options, the expanded use of problem-solving courts, home monitoring, and other related issues. That section requires the commission to provide to the Governor information and recommendations for the Governor's consideration in time for inclusion of the recommendations in the biennial executive budget.

In addition to its statutory study directive, the Legislative Management assigned to the commission the responsibility to conduct the study directed by 2011 Senate Concurrent Resolution No. 4001. That resolution provided for a study of the imposition of fees by courts at sentencing and other fees that are imposed upon offenders.

Commission members were Senators Stanley W. Lyson (Chairman), Dave Oehlke, and Connie Triplett; Representatives Eliot Glassheim, Lawrence R. Klemin, and William E. Kretschmar; Governor's appointees Edward Brownshield, Dr. Gary Rabe, and Keith Witt; Attorney General's designee Thomas L. Trenbeath;

Chief Justice's appointees Justice Mary Muehlen Maring and Judge Lisa McEvers; Director of the Department of Corrections and Rehabilitation Leann K. Bertsch; Director of the Department of Human Services Carol K. Olson and Interim Director Maggie Anderson; Attorney General's law enforcement officer appointee Paul D. Laney; North Dakota State's Attorneys Association appointee Bradley A. Cruft; and North Dakota Association of Counties' appointee Duane Johnston.

The commission submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2012. The Legislative Management accepted the report for submission to the 63<sup>rd</sup> Legislative Assembly.

## BACKGROUND

### Department of Corrections and Rehabilitation

The Legislative Assembly in 2011 appropriated \$159,565,919 from the general fund for the Department of Corrections and Rehabilitation for the 2009-11 biennium. The appropriation bill, House Bill No. 1015, also appropriated to the department \$31,606,150 in special funds. The appropriation for the department provided for an increase of 59 full-time equivalent (FTE) positions, which increased the total number of FTE positions within the department to 794.29.

The appropriation to the department included \$27,584,656, an increase of \$816,501 from the 2009-11 biennium appropriation, for contract housing and transitional facilities for male inmates housed at the Missouri River Correctional Center, county jails, and private facilities. The department was appropriated \$8,458,683 to contract with the Dakota Women's Correctional and Rehabilitation Center to house female inmates.

House Bill No. 1015 also provided additional funding for the prison construction project. The Legislative Assembly in 2009 provided an appropriation of \$64 million, of which \$19,465,804 was from the general fund and \$44,534,196 from the State Penitentiary land fund, to the Department of Corrections and Rehabilitation for completing the renovation and expansion project at the State Penitentiary. Funding from the State Penitentiary land fund was to include interest income earned on money in the fund. Because the department anticipated interest income on money in the State Penitentiary land fund to be \$1.5 million less than projected due to lower than anticipated interest rates, the Legislative Assembly in 2011 authorized the department to borrow up to \$1.1 million from the Bank of North Dakota for the purpose of defraying the expenses of the Penitentiary project during the 2011-13 biennium.

### Adult Services Division

Section 12-47-01 provides for the establishment of the State Penitentiary. The main prison complex in Bismarck houses maximum and medium security male inmates. As of the end of July 2012, the State Penitentiary housed 526 male inmates. The James

River Correctional Center in Jamestown is classified as a medium security housing facility and, as of the end of July 2012, housed 411 male inmates. The Missouri River Correctional Center is south of Bismarck and has no fences or barriers to contain the inmates. The Missouri River Correctional Center has approximately 150 prison beds and houses minimum security male inmates whose sentences are not less than 30 days nor more than one year. As of the end of July 2012, the Missouri River Correctional Center housed 151 inmates.

The division offers addiction treatment services, a sexual offender treatment program, and mental health programs through its treatment department. The division's education program offers a variety of education programs, skills training, and vocational programs. In addition, the division offers work experience through Roughrider Industries.

The department contracts with Community, Counseling, and Correctional Services, Inc., to operate the Bismarck Transition Center and manages the Tompkins Rehabilitation and Correction Center. The Tompkins Rehabilitation and Correction Center is a Department of Corrections and Rehabilitation-funded program at the State Hospital. The center consists of three 30-bed wards—one ward for females and two wards for males.

#### **Parole and Probation Division**

The department has 15 offices across the state staffed by parole and probation officers who manage over 5,000 offenders sentenced to supervision by a court, released to parole by the State Parole Board, sent to community placement by the director, or placed at the Tompkins Rehabilitation and Correction Center. The officers supervise offender compliance with the supervision conditions and provide cognitive, behavioral, and other forms of counseling services. The division operates or participates in drug court programs, global positioning monitoring of offenders, drug and alcohol testing of offenders, and monitoring of sexual offenders; and contracts for services with half-way houses.

#### **Dakota Women's Correctional and Rehabilitation Center**

During the 2003-05 biennium, the Department of Corrections and Rehabilitation began to contract with the Dakota Women's Correctional and Rehabilitation Center in New England to house its female inmates. The Dakota Women's Correctional and Rehabilitation Center is owned and operated by the Southwest Multi-County Correction Center Board. The prison at the Dakota Women's Correctional and Rehabilitation Center consists of a 16-bed orientation unit, 70-bed minimum security unit, 40-bed medium security unit, and a 5-bed high security unit. As of the end of July 2012, the Dakota Women's Correctional and Rehabilitation Center housed 132 state inmates.

#### **Division of Juvenile Services and Youth Correctional Center**

The Division of Juvenile Services has eight regional offices serving the eight human service regions across

the state and is staffed to provide supervision to juveniles committed by the courts. The division also oversees the Youth Correctional Center, which is located west of Mandan and is the state's secure juvenile correctional institution. The Youth Correctional Center serves as a secure detention and rehabilitation facility for adjudicated juveniles who require the most restrictive placement and maximum staff supervision and provides appropriate programming to address delinquent behavior.

Juvenile programming at the Youth Correctional Center includes drug and alcohol programming; child psychiatric and psychological services; sexual offender programming; a pretreatment program for juveniles who are difficult to manage; and a security intervention group program to inform, educate, and provide juveniles with alternatives to gang activity and gang affiliation. The Youth Correctional Center provides adjudicated adolescents an opportunity to complete or progress toward completing their education coursework while in residence through an accredited junior high and high school.

#### **2009-10 Interim Study Recommendations and 2011 Legislation**

During the 2009-10 interim, the commission studied and received testimony regarding several alternatives to incarceration programs. At the conclusion of the 2009-10 interim, the commission made several recommendations, and the Governor and the Legislative Assembly responded to many of the recommendations.

#### **2011-13 Executive Budget**

The commission recommended the Governor include in the executive budget funding in an amount equal to the amount provided during the 2009-11 biennium for treatment at the Robinson Recovery Center. The Legislative Assembly included within the budget for the Department of Human Services \$1,594,025, an increase of \$112,452 over the 2009-11 biennium.

The commission recommended the Governor include in the executive budget an amount equal to or greater than the amount provided during the 2009-11 biennium to support community service programs. The Legislative Assembly in Senate Bill No. 2275 appropriated \$375,000 from the general fund for the biennium to support community service programs.

The commission recommended the Governor include in the executive budget funding in an amount equal to the amount provided during the 2009-11 biennium for room and board expenses for individuals admitted to a faith-based program to address addiction problems. The Legislative Assembly included within the budget for the Department of Corrections and Rehabilitation \$815,000 for room and board expenses for individuals admitted to faith-based treatment programs, which is essentially the same amount provided during the previous biennium.

#### **Work and Education Release Bill**

The commission recommended 2011 House Bill No. 1028 to allow the Department of Corrections and Rehabilitation to authorize work release or education



release for an offender not currently eligible for participation in those programs due to the requirement to serve 85 percent of a sentence or to a minimum mandatory sentence, with the exception of an offender sentenced to life imprisonment without the opportunity for parole. The Legislative Assembly enacted the bill.

### **Community Service and Other Fees Study**

The commission recommended 2011 Senate Concurrent Resolution No. 4001 to direct a Legislative Management study of the imposition of fees at sentencing and other fees that are imposed upon offenders. The Legislative Assembly passed the resolution and the study was assigned to the commission.

### **Short-Term Shelter Care Bill**

The commission recommended 2011 Senate Bill No. 2029 to continue the short-term shelter care and assessment program that was initiated during the 2009-11 biennium and provide an additional \$200,000 in funding to expand the program to another area of the state. The bill failed to pass the Senate. However, the Legislative Assembly included a total of \$200,000 in the Department of Human Services budget to continue the short-term shelter care and assessment program.

### **Other Recommendations and Statements**

The commission expressed its support for the Read Right program.

The commission expressed its support for continuation of electronic detention and global positioning system monitoring programs.

The commission expressed its continued support for the 24/7 sobriety program.

The commission expressed its continued support for expansion of drug courts within the state.

The commission, in recognition of the fact that many individuals incarcerated have underlying mental health issues, expressed continued support for the maintenance of a case manager position for the Cass County Justice and Mental Health Collaboration Project.

## **TESTIMONY AND COMMISSION CONSIDERATIONS**

### **Department of Corrections and Rehabilitation**

The commission received reports from representatives of the Department of Corrections and Rehabilitation regarding programs and initiatives at the department which provide alternatives to incarceration or which are intended to keep offenders from reoffending.

### **Recidivism**

The commission received a report from the Department of Corrections and Rehabilitation relating to recidivism rates. The department has adopted the Association of State Correctional Administrators' definition of recidivism, which measures recidivism in several areas over 12, 24, and 36 months. Although the overall recidivism rate of about 35 percent is better than most states and significantly better than the national average, the department expects to see continued decreases in

that rate, in part due to the availability of well-paying jobs in the state.

The commission received testimony from representatives of the department relating to the implementation of evidence-based practices designed to reduce recidivism. Through cognitive behavioral interventions, the department is able to work with offenders to address the thought process of the offender which leads to criminal behavior and to focus on changing that thought process to help make the offender less likely to engage in behavior that will lead to reoffending. The evidence-based practices being implemented include completing an assessment of the risk and needs of each offender, providing the offender intrinsic motivation, targeting interventions specific to each offender, providing directed skills training, increasing positive reinforcement, and engaging in ongoing support in the community. The practices are designed to hold offenders accountable while providing opportunities for change. Because the evidence-based practices require three years of data to accurately measure the results of the practices, the department likely will not have full measurements of the success of the practices until at least 2015.

### **Prison Education Programs**

A representative of the Department of Corrections and Rehabilitation provided testimony regarding education programs implemented by the department. The department reorganized the education programs offered by the department to combine the adult and youth programs under one leadership team with the goal of more effectively and efficiently sharing resources and best practices. Because approximately 24 percent of the offenders in the state correctional system do not have a high school diploma or a general equivalency diploma, evidence-based programs have been implemented to reduce risk and recidivism. During the 2009-11 biennium, 136 of the 144 participants in the general educational development program earned a general equivalency diploma. In addition, the Read Right program, which has been successful with youth, has been implemented with adults in the system. The Interactive Video Network has been used to provide classes to adult women in Dickinson.

Representatives of the department provided the commission information regarding reentry programs designed to teach individuals how to obtain and keep jobs, including the Choices program which is a career development program implemented by the department. Computer applications and vocational programs are provided by Bismarck State College and other postsecondary educational opportunities are available through Bismarck State College and North Dakota State College of Science. In addition, the department provides opportunities to take correspondence courses through two out-of-state institutions. Because federal educational grants are no longer available for incarcerated individuals, it has become more difficult to provide and pay for the educational opportunities, but the department is working with Bismarck State College to use the work study program and federal supplementary educational

opportunity grants to provide educational opportunities for inmates.

### **Work Release and Transition Programs**

After its 2009-10 interim study, the commission recommended 2011 House Bill No. 1028 which allows the department to expand the availability of work release programs for individuals who are required to serve 85 percent of their sentences. The change allows the department to expand the program to allow those individuals to participate in work release during the last six months of their sentences. Because the Missouri River Correctional Center was forced to be evacuated for five months during the summer of 2011 due to flooding, the impact of the expansion of the availability of work release had been delayed. However, in November 2011, the Department of Corrections and Rehabilitation began reviewing applications for work release under the expanded release provisions.

The Bismarck Transition Center continues to receive referrals from the department to house individuals who are in the last few months of their sentences. An offender at the center is required to work to pay for a portion of the offender's room and board, pay fines and fees, and save money to be used upon release. In addition, each offender must receive approval from a case manager with respect to weekly spending. Testimony from a representative of the center stated the goal of the program is to allow an offender to save money in preparation for discharge and to get started in a job that may be retained upon discharge.

The commission received a report from representatives of the Bismarck Transition Center regarding a proposal to develop a program through which the center would work with tribal governments in the state to provide transition programs for tribally committed offenders. Under the proposed program, tribes would join a cooperative to help deliver tribal residents who have committed offenses to the center, which could help divert offenders from the state and federal criminal justice systems.

### **Performance-Based Sentence Reduction**

The commission received a report regarding performance-based sentence reduction which was implemented in 1991 to replace the "good time" law that had been in effect. Under the performance-based sentence reduction law and policy, as implemented by the Department of Corrections and Rehabilitation, inmates must meet performance criteria such as participation in court-ordered or staff-recommended treatment and education programs to earn up to five days of good time per month for each month of the sentence imposed. Under the performance-based sentence reduction policy, inmates may not be credited for any sentence reduction for time spent in custody before sentence and commitment, for time under supervised probation, or for any sentence for which the incarceration time is six months or less. An inmate who is required to serve 85 percent of a sentence is not eligible for sentence reduction. The policy also allows an inmate to receive up to two days per month of

meritorious conduct sentence reduction for outstanding performance or heroic acts or as a special control and security measure.

### **Community Supervision and Electronic Monitoring**

The commission received a report regarding offenders under supervision outside institutions. Because of the increasing migration of people into the state, there has been a substantial increase in the number of offenders under community supervision by the Department of Corrections and Rehabilitation. The report indicated the department is continuing to use electronic monitoring, including the use of alcohol monitoring devices, as a tool to supervise offenders paroled or released on probation. However, the primary barrier to expansion of electronic monitoring has been the high caseload of officers required to conduct the monitoring process.

### **Treatment Programs**

The commission received a report regarding the use of drug courts. According to the report, there are approximately 90 individuals participating in adult drug courts at most times. It was also reported that the treatment program at the Tompkins Rehabilitation and Corrections Unit has steadily improved and has been awarded a rating of highly effective, which approximately 6 percent of all treatment programs achieve.

### **Department of Human Services**

The commission received reports regarding program under the supervision of the Department of Human Services, including efforts undertaken in coordination with the Department of Corrections and Rehabilitation and other entities, integrated dual disorder treatment, and the Robinson Recovery Center.

### **Coordination of Services**

The commission was provided information regarding coordination of services between the Department of Human Services and the Department of Corrections and Rehabilitation. Within a few days of release from incarceration, an offender is scheduled for an appointment at a regional human service center to arrange for treatment and integration into the community. Five of the eight regional human service centers provide low-risk sexual offender treatment and provide services for victims. In addition, high-risk sexual offender treatment is offered through a contract provider. Each of the regional human service centers provides addiction treatment services and the Department of Human Services also contracts for residential treatment services. Although the release and integration programs are specific to individuals on probation and parole, officials from the State Penitentiary may refer other released offenders for treatment.

In addition to the programs coordinated with the Department of Corrections and Rehabilitation, the Department of Human Services offers other mental health and prevention services upon request from a state's attorney or a local law enforcement official, and the regional human service centers provide outreach on



Indian reservations and place a priority on a culturally competent manner of providing services to a variety of cultures. The commission also was informed that each regional human service center has an interagency council that interacts with volunteer groups, including the faith-based community.

The alternative for families cognitive behavioral therapy is a family-centered treatment designed to address family conflict, coercion and hostility, emotional abuse, and child physical abuse which has been implemented in regional human service centers and is a treatment therapy that may be effective in a juvenile drug court setting. Testimony from a representative of the Department of Human Services stated that although treatment and therapy programs are resource-rich, individuals will continue cycling through the system if the resources are not devoted to treatment and therapy.

### **Integrated Dual Disorder Treatment**

The commission received a report indicating 25 to 35 percent of individuals with serious mental illness have an active substance abuse problem, and substance abuse among individuals with serious mental illness is three times greater than that of the general population. Studies have demonstrated individuals with dual disorders have an increased risk of relapse of mental illness; relapse of substance use; violence, victimization, and suicidal behavior; and homelessness and incarceration. However, studies also have demonstrated that an integrated approach to treatment of dual disorders is more effective than separate treatment.

In 2005 the Southeast Regional Human Service Center initiated a pilot project to examine and implement a dual disorder treatment program. The program was implemented in January 2007 and has resulted in reduced institutionalizations, symptoms, suicide rates, violence, victimization, and legal problems and improved physical health, work results, and family relationships of the participants while not requiring additional staff. Based upon the experience of the pilot project, additional regional human service centers are moving toward implementing integrated dual disorder treatment programs.

### **Robinson Recovery Center**

The Department of Human Services continues to contract with the 40-bed Robinson Recovery Center in Fargo for residential treatment services. The commission received a report indicating the number of referrals to the center has increased significantly from 2011 to 2012. Of the referrals in 2011, 6.3 percent were from human service center regions in the western portion of the state and in 2012, 9.7 percent were from human service centers in the western portion of the state. However, the largest number of referrals continues to come from the region including Fargo. Although the primary addiction of clients admitted during 2011 and 2012 was identified as alcohol, the percentage of clients who were admitted with methamphetamine addiction increased from 2011 to 2012. According to the report, the center's rate of successful completion of the program increased from approximately 25 percent in

fiscal year 2011 to about 38 percent in the 12 months prior to September 2012.

A representative of the Robinson Recovery Center informed the committee that the center will need about \$200,000 to \$250,000 in additional funding to sustain operations. The three areas of greatest need identified are the addition of a psychiatric nurse, funding for increased staff salaries, and funding to increase the number of beds available for female clients.

### **Class C Felony Theft Offenses**

During the 2009-10 interim, the Judiciary Committee studied whether penalties for felonies are suitable for felonious behavior. As a part of the study, the committee reviewed criminal offenses for which a monetary amount triggers the grading of the offenses. The committee reported that most of the dollar amounts that trigger a penalty were set in the 1970s and 1980s. The committee considered, but did not recommend, a bill draft that would have amended several statutes that include a monetary amount that triggers the level of penalty.

Due to inflation, \$500 in 1972 is equivalent to over \$2,700 in 2012. Some of the members of the commission requested the commission to consider increasing the \$500 threshold for triggering a Class C felony offense. In addition to accounting for inflation as a matter of fairness, proponents of increasing the \$500 trigger contended an increase would result in a more efficient use of government services by reducing the need for prosecutorial resources, court-appointed defense counsel, and judicial resources. Furthermore, the commission was informed that although an offender convicted of a felony theft offense is not likely to serve time in the State Penitentiary if it is the first offense, it is not uncommon for such an offender to ultimately be incarcerated for the inability to fulfill the conditions of the sentence imposed. However, an offender sentenced to a felony will be subject to probation which is a costly correctional resource and which places an additional burden on probation officers who could be using their time to better monitor more dangerous offenders.

The commission received testimony from a representative of the North Dakota Association for Justice regarding the increased caseloads of state's attorneys in the western portion of the state due to a substantial increase in population. The testimony indicated some state's attorneys are experiencing up to 400 percent increases in caseloads. Because of the \$500 trigger for felony theft offenses, state's attorneys are devoting limited resources to address property-related felony offenses which may affect the ability to effectively prosecute cases that involve bodily injury.

Representatives of defense attorneys testified that the \$500 trigger for felony theft offenses is placing a burden on public defense resources. If the trigger was to be increased to \$1,000 or \$1,500, an offender convicted of stealing property valued at more than \$500 but less than the higher threshold, would likely have a better opportunity to make restitution if convicted of a misdemeanor offense. Also, if the individual was

convicted of a misdemeanor offense, the individual would not be faced with the collateral issues associated with a felony offense, such as loss of voting rights and difficulty in obtaining jobs.

Opponents of increasing the trigger for felony theft offenses contended the theft of \$500 is significant to the person whose property is stolen. In addition, the lower threshold may serve as a better deterrent to individuals contemplating committing an offense. It also was suggested that if the monetary triggers for felony offenses are adjusted for inflation, the amount of penalties for the offenses also should be adjusted.

### **Driving Under Suspension Offenses and Penalties**

A member of the commission identified concerns with respect to large numbers of individuals who have been convicted of driving under suspension multiple times. Judges have indicated they are seeing a big problem with individuals driving under suspension and becoming subject to incarceration for multiple driving under suspension offenses, including situations in which the initial suspension was due to an offense such as unpaid parking fines. In addition, many individuals are either unaware of a suspension or unaware of the procedure to get a license reinstated. Because some individuals under suspension have lost driving privileges for significantly long periods of time, judges and law enforcement officials have noted that those individuals often lose hope of ever retaining a license and continue to drive unlicensed and uninsured. It was suggested that if a provisional license were to be available to individuals who are under suspension, the individuals would have an opportunity to work and stop the continual spiral.

The commission received a report from a representative of the Department of Transportation regarding the number of driving under suspension offenses. The report indicated there were 4,450 driving under suspension or driving under revocation convictions in 2008, 4,246 convictions in 2009, 4,164 convictions in 2010, and 4,073 convictions in 2011. Testimony from a representative of the department indicated the ability to issue a temporary restricted license is limited because a driving under suspension conviction is a criminal offense. An individual may not be able obtain a work permit if there are multiple criminal traffic violations within a 36-month period. Under a work permit, an individual may drive to work, go to medical appointments, and drive to purchase food. The department verifies the employment status of an applicant for a work permit and may impose requirements on the applicant before issuing the permit, such as participation in the 24/7 sobriety program. The testimony suggested the department would support an amendment to revise the law to allow an individual to obtain a work permit or temporary restricted license if the individual has no other violations beyond the driving under suspension violations.

Because judges and prosecutors have often been told by driving under suspension offenders that the offenders did not receive a notice of suspension, the

members of the commission requested representatives of the Department of Transportation to provide information regarding the cost of mailing notices by certified mail. Representatives of the department reported the cost of mailing notices by certified mail would be approximately \$1 million per biennium. The cost of each letter sent by certified mail would be approximately \$6.46 and the department sends an average of 220 suspension or revocation letters per day. An analysis of the process of sending and receiving the documents by certified mail indicated it would take approximately five minutes to prepare the letter and three minutes to enter the receipt into the system. Therefore, the additional time needed to prepare, send, and receive the certified letters and receive the returned notices would require 3.5 FTE positions, which would cost approximately \$700 per day or \$185,000 per year.

The commission considered a bill draft to provide additional flexibility to the Department of Transportation in providing temporary restricted licenses, expand the potential uses of a temporary restricted license, and require a court to dismiss a charge for driving under suspension if the defendant provides proof that the defendant has reinstated the operator's license within 20 days after the date of the offense.

Although the members of the commission generally supported the bill draft, concerns were raised concerning the expansion of potential uses of a temporary restricted license and the impact the change could have on law enforcement officers having to determine if an individual was operating the vehicle within the restrictions place on the license. In addition, members of the commission questioned whether enough time was being allowed under the provision which would require a judge to drop a charge of driving under suspension if the defendant provides evidence of a reinstatement of the license within 20 days. Some members of the commission also objected to a provision in the bill draft which would have allowed the Director of the Department of Transportation to impose additional restrictions on a license beyond the restrictions specifically listed in the bill draft.

### **Conclusions and Recommendations**

The commission recommends the Governor include increased funding in the executive budget for the Robinson Recovery Center, including funding specifically addressing the expansion of beds available for female clients.

The commission makes no recommendation with respect to the monetary thresholds that trigger felony offenses.

The commission recommends House Bill No. 1027 to provide additional flexibility to the Department of Transportation in providing temporary restricted licenses; expand the potential uses of a temporary restricted license to include use for attendance at an appropriate licensed addiction treatment program, or a treatment program ordered by a court, or to use as necessary to prevent the substantial deprivation of the educational, medical, or nutritional needs of the offender or an immediate family member of the offender; and authorize a court to dismiss a charge for driving under suspension



if the defendant provides proof that the defendant has reinstated the operator's license within 60 days after the date of the offense.

## **IMPOSITION OF FEES UPON OFFENDERS STUDY**

### **Background**

#### **2005-06 Interim and 2007 Legislation**

During the 2005-06 interim, the commission received testimony regarding the funding of community service programs. The commission was informed that 14 community service organizations were operating in the state and approximately one-third of the programs' budgets were supported through grants from the state. However, the testimony also indicated that the level of state support varied greatly among the programs. The commission also received testimony from officials from the Department of Corrections and Rehabilitation indicating the community service programs were expected to become self-supporting within a few years after implementation. At the end of the interim, the commission recommended the Governor include in the executive budget \$200,000 to be administered on a cost-share basis with local governments for the operation of community service programs.

Although funding was not included in the executive budget for community service programs, the Legislative Assembly enacted 2007 Senate Bill No. 2243, which imposed a \$50 community service supervision fee upon each defendant who receives a sentence that includes community service. The bill provided that the community service supervision fees collected are to be deposited in the community service supervision fund to be used to provide community service supervision grants. The bill appropriated \$125,000 from the fund for the 2007-09 biennium to the Department of Corrections and Rehabilitation for providing matching grants for community service supervision of offenders and directed the department to use \$100,000 of the funds appropriated in the field services line item in Section 3 of 2007 House Bill No. 1015 for the purpose of providing matching grants for community service supervision of offenders for the biennium.

#### **2007-08 Interim and 2009 Legislation**

During the 2007-08 interim, the commission again examined issues related to the community service programs. The commission received testimony indicating the community service fee was low on the hierarchy of fees that a court was required to impose, and defendants often did not have the financial resources to pay the fees imposed by courts. Therefore, many judges were not imposing the community service fee when ordering a defendant to perform community service. The commission was informed that less than \$15,000 had been collected and deposited in the community service supervision fund during the first nine months of the 2007-09 biennium, and community service supervision grants were not likely to amount to the \$125,000 appropriated from the fund for the biennium.

At the conclusion of the interim, the commission recommended 2009 Senate Bill No. 2028 to repeal the \$50 community service supervision fee, and recommended the Governor include \$500,000 in the executive budget for the Department of Corrections and Rehabilitation to be used by the department to provide matching grants for community service programs at a level to be determined by the department.

The Legislative Assembly amended Senate Bill No. 2028 to retain the community service supervision fee, but reduced the fee to \$25. The Legislative Assembly also provided an appropriation of \$62,500 from the community service supervision fund to the department in 2009 Senate Bill No. 2015 and provided an appropriation of \$375,000 from the general fund to the Office of Management and Budget (OMB) in 2009 Senate Bill No. 2178 for community service supervision grants.

#### **2009-10 Interim and 2011 Legislation**

During the 2009-10 interim, the commission continued to examine issues relating to community service programs and the imposition of the community service supervision fee. The commission again was informed the community service supervision fee is low on the hierarchy of fees that a court is required to impose, and defendants often do not have the financial resources to pay the fees imposed by courts. Therefore, many judges do not impose the fee or waive the fee when ordering a defendant to perform community service. The commission received testimony regarding the varied level of funding of community service organizations by local governments and a lack of consistency in establishing adequate local participation fees to cover the costs of the programs.

The commission considered a bill draft that would have eliminated the community service supervision fee. Although commission members generally agreed that community service programs should continue to receive state support separate from the community service supervision fee, members of the commission were reluctant to eliminate the fee without further study of all the fees that may be imposed upon a defendant upon sentencing as well as other fees that may be imposed upon offenders. Thus, the commission recommended Senate Concurrent Resolution No. 4001 to request the Legislative Management to study the imposition of fees at sentencing and other fees that are imposed upon offenders. The commission also recommended the Governor include in the executive budget an amount equal to or greater than the amount provided during the 2009-11 biennium to support community service programs.

In addition to adopting the study resolution, the Legislative Assembly in 2011 enacted Senate Bill No. 2275, which appropriated \$375,000 from the general fund for the biennium to support the community service programs. Senate Bill No. 2275 included a statement of legislative intent which provided that it is "the intent of the sixty-second legislative assembly that the funds appropriated in section 1 of this Act are considered ongoing funding and that the funds be a part of the office

of management and budget's base budget as a separate line item for the 2013-15 biennium." The annual funding for the community service programs during the 2011-13 biennium is to be allocated as follows:

- Barnes County - \$9,091.
- Bismarck (urban) - \$20,293.
- Bismarck (rural) - \$10,667.
- Devils Lake - \$10,747.
- Dickinson - \$12,683.
- Fargo - \$24,127.
- Grand Forks - \$19,803.
- Jamestown - \$13,883.
- Minot - \$16,194.
- Richland County - \$9,931.
- Rugby - \$11,657.
- Sargent County - \$8,086.
- Wells County - \$8,189.
- Williston - \$12,149.

Section 29-26-22(3) provides that community service supervision fees collected must be deposited in the community service supervision fund to be used to provide community service supervision grants subject to legislative appropriations. The Legislative Assembly in 2011 did not appropriate any funds from the community service supervision fund.

### **Community Service Programs**

Community service programs were formed in North Dakota in 1993 to provide community-based alternatives to incarceration and allow juvenile and adult offenders to perform court-ordered community service obligations for the benefit of nonprofit organizations and local communities. Initially, the state provided funding to assist in establishing the programs. However, the Department of Corrections and Rehabilitation ceased providing the grants after June 30, 2006, due to reductions in funding and prioritization of programs. In addition to the state funding, the programs have received funding from local governments and from participation fees imposed on offenders ordered to perform community service.

### **Other Statutory Fees**

Section 29-26-22 requires a court, upon a plea or finding of guilt, to impose a court administration fee in lieu of the assessment of court costs in all criminal cases except infractions. Under that section, the court administration fee must include a fee of \$125 for a Class B misdemeanor, \$200 for a Class A misdemeanor, \$400 for a Class C felony, \$650 for a Class B felony, and \$900 for a Class A or AA felony.

Section 29-26-22 also provides that in all criminal cases except infractions, the court administration fee must include an additional \$100. From the additional \$100 court administration fee, the first \$750,000 collected per biennium must be deposited in the indigent defense administration fund, which must be used for indigent defense services in this state, and the next \$460,000 collected per biennium must be deposited in the court facilities improvement and maintenance fund. After the minimum thresholds have been collected,

one-half of the additional court administration fees must be deposited in each fund.

Section 29-26-22 allows a court to waive the administration fee or community service supervision fee upon a showing of indigence. That section further provides that district court administration fees, exclusive of amounts deposited in the indigent defense administration fund and the court facilities and improvement fund, and forfeitures must be deposited in the state general fund. A court may allow a defendant to pay any assessed administration fee or community service supervision fee in installments. When a defendant is assessed administration fees or a community service supervision fee, the court may not impose at the same time an alternative sentence to be served if the fees are not paid.

Under Section 12.1-32-07, when a court orders probation for an offender, the court is required to order supervision costs and fees of not less than \$45 per month unless the court makes a specific finding on record that the imposition of fees will result in an undue hardship. The court is also authorized to impose as a condition of probation that the defendant make restitution or reparation to the victim of the defendant's conduct for the damage or injury which was sustained, pay any fine imposed, and support the defendant's dependents and meet other family responsibilities. In addition, as a condition of probation, the court may order the offender to reimburse the costs and expenses determined necessary for the defendant's adequate defense when counsel is appointed or provided at public expense for the defendant.

Section 12.1-32-08 authorizes the court to order the defendant to reimburse indigent defense costs and expenses as a condition of probation. That section also provides the reimbursement amount must include an application fee imposed under Section 29-07-01.1 if the fee has not been paid before disposition of the case and the court has not waived payment of the fee. Section 29-07-01.1 imposes a nonrefundable application fee of \$25 to be paid at the time an application for indigent defense services in the district court is submitted.

Section 12.1-32-08 requires a court, when restitution ordered by the court is the result of a finding that the defendant issued a check or draft without sufficient funds or without an account, to impose as costs the greater of the sum of \$10 or an amount equal to 25 percent of the amount of restitution ordered, except the amount may not exceed \$1,000. The state-employed clerks of district court are required to remit the funds collected to the State Treasurer for deposit in the restitution collection assistance fund. The funds deposited into the restitution collection assistance fund are appropriated to the judicial branch on a continuing basis for the purpose of defraying expenses incident to the collection of restitution, including operating expenses and the compensation of additional necessary personnel. The state's attorneys and county-employed clerks of district court are required to remit the funds collected to the county treasurer to be deposited in the county general fund.



Section 12.1-32-16 provides that when an individual whose occupational, professional, recreational, motor vehicle operator, or vehicle license or registration has been suspended for nonpayment of child support is convicted of engaging in activity for which the license or registration was required, the court shall require as a condition of the sentence that the individual pay restitution in the amount of \$250, or a higher amount set by the court.

Section 27-01-10 allows the governing body of a county to, by resolution, authorize the district judges serving that county to assess a fee of not more than \$25 as part of a sentence imposed on a defendant who pleads guilty to or is convicted of a criminal offense or of violating a municipal ordinance for which the maximum penalty that may be imposed by law for the offense or violation includes imprisonment. That section also allows the governing body of a city to, by ordinance, authorize a municipal judge to assess a fee of not more than \$25 as part of a sentence imposed on a defendant who pleads guilty to or is convicted of violating a municipal ordinance for which the maximum penalty that may be imposed under the ordinance for the violation includes imprisonment. All fees paid to a district or municipal court must be deposited monthly in the county or city treasury for allocation by the governing body of the county or city to a private, nonprofit domestic violence or sexual assault program or a victim and witness advocacy program of which the primary function is to provide direct services to victims of and witnesses to crime.

### **Testimony and Commission Considerations**

The commission received a report from a representative of the judicial branch regarding fees collected or imposed by the judicial branch. The report indicated that for the 2009-11 biennium, the judicial branch collected the following fees from offenders:

- Criminal court administration fees - \$4,777,928.
- Bail bond forfeitures - \$612,810.
- District court costs - \$22,619.
- Indigent defense recoupment - \$288,519.
- Indigent defense application fee - \$180,517.
- Indigent defense administration fund - \$1,566,192.
- Court facilities improvement and maintenance fund - \$1,276,192.
- Restitution collection assistance fund - \$47,923.
- Community service fee - \$51,378.

The commission received testimony from a clerk of court regarding the collection of restitution. The testimony indicated collection of restitution is likely to become more efficient with the implementation of a new

computer system that also is used to assist in the collection of fines, fees, and administrative costs. With the new system, clerks of court are able to better monitor the collection of costs and track payments. If a defendant is found to be in arrears on payments, the clerk of court may transfer the file to the court for action by the court, including an order to show cause.

The commission received a report relating to community service programs which indicated in fiscal year 2010, 2,478 offenders performed community service, 26 percent of which performed the community service in Fargo. In 2010 a total of 75,267.32 hours of community service were completed with a noncash value to the worksites of \$602,138.56, based upon a wage of \$8 per hour. The report concluded that the hours of community service performed in 2010 saved 9,408.4 days of prison or jail service, which at an estimated cost of \$65 per day provided a savings of \$611,547.

A representative of community service programs reported that the various community service programs are supported by a variety of funding sources including grants and a program fee that may be collected from offenders participating in the community service programs. It also was reported the amount of community service supervision fees being collected and deposited in the community service supervision fund has been decreasing and that due to an oversight in the 2011-13 biennium budgets for the Department of Corrections and Rehabilitation and OMB, there was no biennial appropriation of the funds deposited in the community service supervision fund. It was suggested that the fund should be placed under the budget of OMB. However, the representative of the community service agencies testified that although OMB has been the fiscal home for the general fund appropriation for community service programs during the last two bienniums, there is no guarantee the community service programs will be included in the office's budget in the future. It was argued that because the community service programs continue to be used by the courts and the programs have no state agency that oversees the various programs and budgets for the programs, the designation of a state agency to provide technical assistance and to serve as a fiscal home of the programs would help ensure the future viability of community service programs.

### **Conclusion**

The commission makes no recommendation as a result of its study.

# COMMISSION ON ALTERNATIVES TO INCARCERATION

The Commission on Alternatives to Incarceration was created by 2005 House Bill No. 1473. The bill, which was codified as North Dakota Century Code Section 54-35-24, required the Legislative Management Chairman to select the chairman and vice chairman of the commission and provided for the membership of the commission as follows:

1. Three members appointed by the Governor, one of whom must be an academic researcher with specialized knowledge of criminal justice sentencing practices and sentencing alternatives;
2. The Attorney General or the Attorney General's designee;
3. Two members appointed by the Chief Justice of the Supreme Court;
4. The Director of the Department of Corrections and Rehabilitation;
5. The Director of the Department of Human Services;
6. Two local law enforcement officers appointed by the Attorney General;
7. One state's attorney appointed by the North Dakota State's Attorneys Association;
8. Three members of the House of Representatives, two of whom must be selected by the leader representing the majority faction of the House of Representatives and one of whom must be selected by the leader representing the minority faction of the House of Representatives;
9. Three members of the Senate, two of whom must be selected by the leader representing the majority faction of the Senate and one of whom must be selected by the leader representing the minority faction of the Senate; and
10. One representative of the North Dakota Association of Counties appointed by the Association of Counties.

Section 54-35-24 requires the commission to study sentencing alternatives, mandatory sentences, treatment options, the expanded use of problem-solving courts, home monitoring, and other related issues. That section requires the commission to provide to the Governor information and recommendations for the Governor's consideration in time for inclusion of the recommendations in the biennial executive budget.

In addition to its statutory study directive, the Legislative Management assigned to the commission the responsibility to conduct the study directed by 2011 Senate Concurrent Resolution No. 4001. That resolution provided for a study of the imposition of fees by courts at sentencing and other fees that are imposed upon offenders.

Commission members were Senators Stanley W. Lyson (Chairman), Dave Oehlke, and Connie Triplett; Representatives Eliot Glassheim, Lawrence R. Klemin, and William E. Kretschmar; Governor's appointees Edward Brownshield, Dr. Gary Rabe, and Keith Witt; Attorney General's designee Thomas L. Trenbeath;

Chief Justice's appointees Justice Mary Muehlen Maring and Judge Lisa McEvers; Director of the Department of Corrections and Rehabilitation Leann K. Bertsch; Director of the Department of Human Services Carol K. Olson and Interim Director Maggie Anderson; Attorney General's law enforcement officer appointee Paul D. Laney; North Dakota State's Attorneys Association appointee Bradley A. Cruff; and North Dakota Association of Counties' appointee Duane Johnston.

The commission submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2012. The Legislative Management accepted the report for submission to the 63<sup>rd</sup> Legislative Assembly.

## BACKGROUND

### Department of Corrections and Rehabilitation

The Legislative Assembly in 2011 appropriated \$159,565,919 from the general fund for the Department of Corrections and Rehabilitation for the 2009-11 biennium. The appropriation bill, House Bill No. 1015, also appropriated to the department \$31,606,150 in special funds. The appropriation for the department provided for an increase of 59 full-time equivalent (FTE) positions, which increased the total number of FTE positions within the department to 794.29.

The appropriation to the department included \$27,584,656, an increase of \$816,501 from the 2009-11 biennium appropriation, for contract housing and transitional facilities for male inmates housed at the Missouri River Correctional Center, county jails, and private facilities. The department was appropriated \$8,458,683 to contract with the Dakota Women's Correctional and Rehabilitation Center to house female inmates.

House Bill No. 1015 also provided additional funding for the prison construction project. The Legislative Assembly in 2009 provided an appropriation of \$64 million, of which \$19,465,804 was from the general fund and \$44,534,196 from the State Penitentiary land fund, to the Department of Corrections and Rehabilitation for completing the renovation and expansion project at the State Penitentiary. Funding from the State Penitentiary land fund was to include interest income earned on money in the fund. Because the department anticipated interest income on money in the State Penitentiary land fund to be \$1.5 million less than projected due to lower than anticipated interest rates, the Legislative Assembly in 2011 authorized the department to borrow up to \$1.1 million from the Bank of North Dakota for the purpose of defraying the expenses of the Penitentiary project during the 2011-13 biennium.

### Adult Services Division

Section 12-47-01 provides for the establishment of the State Penitentiary. The main prison complex in Bismarck houses maximum and medium security male inmates. As of the end of July 2012, the State Penitentiary housed 526 male inmates. The James



River Correctional Center in Jamestown is classified as a medium security housing facility and, as of the end of July 2012, housed 411 male inmates. The Missouri River Correctional Center is south of Bismarck and has no fences or barriers to contain the inmates. The Missouri River Correctional Center has approximately 150 prison beds and houses minimum security male inmates whose sentences are not less than 30 days nor more than one year. As of the end of July 2012, the Missouri River Correctional Center housed 151 inmates.

The division offers addiction treatment services, a sexual offender treatment program, and mental health programs through its treatment department. The division's education program offers a variety of education programs, skills training, and vocational programs. In addition, the division offers work experience through Roughrider Industries.

The department contracts with Community, Counseling, and Correctional Services, Inc., to operate the Bismarck Transition Center and manages the Tompkins Rehabilitation and Correction Center. The Tompkins Rehabilitation and Correction Center is a Department of Corrections and Rehabilitation-funded program at the State Hospital. The center consists of three 30-bed wards--one ward for females and two wards for males.

#### **Parole and Probation Division**

The department has 15 offices across the state staffed by parole and probation officers who manage over 5,000 offenders sentenced to supervision by a court, released to parole by the State Parole Board, sent to community placement by the director, or placed at the Tompkins Rehabilitation and Correction Center. The officers supervise offender compliance with the supervision conditions and provide cognitive, behavioral, and other forms of counseling services. The division operates or participates in drug court programs, global positioning monitoring of offenders, drug and alcohol testing of offenders, and monitoring of sexual offenders; and contracts for services with half-way houses.

#### **Dakota Women's Correctional and Rehabilitation Center**

During the 2003-05 biennium, the Department of Corrections and Rehabilitation began to contract with the Dakota Women's Correctional and Rehabilitation Center in New England to house its female inmates. The Dakota Women's Correctional and Rehabilitation Center is owned and operated by the Southwest Multi-County Correction Center Board. The prison at the Dakota Women's Correctional and Rehabilitation Center consists of a 16-bed orientation unit, 70-bed minimum security unit, 40-bed medium security unit, and a 5-bed high security unit. As of the end of July 2012, the Dakota Women's Correctional and Rehabilitation Center housed 132 state inmates.

#### **Division of Juvenile Services and Youth Correctional Center**

The Division of Juvenile Services has eight regional offices serving the eight human service regions across

the state and is staffed to provide supervision to juveniles committed by the courts. The division also oversees the Youth Correctional Center, which is located west of Mandan and is the state's secure juvenile correctional institution. The Youth Correctional Center serves as a secure detention and rehabilitation facility for adjudicated juveniles who require the most restrictive placement and maximum staff supervision and provides appropriate programming to address delinquent behavior.

Juvenile programming at the Youth Correctional Center includes drug and alcohol programming; child psychiatric and psychological services; sexual offender programming; a pretreatment program for juveniles who are difficult to manage; and a security intervention group program to inform, educate, and provide juveniles with alternatives to gang activity and gang affiliation. The Youth Correctional Center provides adjudicated adolescents an opportunity to complete or progress toward completing their education coursework while in residence through an accredited junior high and high school.

#### **2009-10 Interim Study Recommendations and 2011 Legislation**

During the 2009-10 interim, the commission studied and received testimony regarding several alternatives to incarceration programs. At the conclusion of the 2009-10 interim, the commission made several recommendations, and the Governor and the Legislative Assembly responded to many of the recommendations.

#### **2011-13 Executive Budget**

The commission recommended the Governor include in the executive budget funding in an amount equal to the amount provided during the 2009-11 biennium for treatment at the Robinson Recovery Center. The Legislative Assembly included within the budget for the Department of Human Services \$1,594,025, an increase of \$112,452 over the 2009-11 biennium.

The commission recommended the Governor include in the executive budget an amount equal to or greater than the amount provided during the 2009-11 biennium to support community service programs. The Legislative Assembly in Senate Bill No. 2275 appropriated \$375,000 from the general fund for the biennium to support community service programs.

The commission recommended the Governor include in the executive budget funding in an amount equal to the amount provided during the 2009-11 biennium for room and board expenses for individuals admitted to a faith-based program to address addiction problems. The Legislative Assembly included within the budget for the Department of Corrections and Rehabilitation \$815,000 for room and board expenses for individuals admitted to faith-based treatment programs, which is essentially the same amount provided during the previous biennium.

#### **Work and Education Release Bill**

The commission recommended 2011 House Bill No. 1028 to allow the Department of Corrections and Rehabilitation to authorize work release or education

release for an offender not currently eligible for participation in those programs due to the requirement to serve 85 percent of a sentence or to a minimum mandatory sentence, with the exception of an offender sentenced to life imprisonment without the opportunity for parole. The Legislative Assembly enacted the bill.

#### **Community Service and Other Fees Study**

The commission recommended 2011 Senate Concurrent Resolution No. 4001 to direct a Legislative Management study of the imposition of fees at sentencing and other fees that are imposed upon offenders. The Legislative Assembly passed the resolution and the study was assigned to the commission.

#### **Short-Term Shelter Care Bill**

The commission recommended 2011 Senate Bill No. 2029 to continue the short-term shelter care and assessment program that was initiated during the 2009-11 biennium and provide an additional \$200,000 in funding to expand the program to another area of the state. The bill failed to pass the Senate. However, the Legislative Assembly included a total of \$200,000 in the Department of Human Services budget to continue the short-term shelter care and assessment program.

#### **Other Recommendations and Statements**

The commission expressed its support for the Read Right program.

The commission expressed its support for continuation of electronic detention and global positioning system monitoring programs.

The commission expressed its continued support for the 24/7 sobriety program.

The commission expressed its continued support for expansion of drug courts within the state.

The commission, in recognition of the fact that many individuals incarcerated have underlying mental health issues, expressed continued support for the maintenance of a case manager position for the Cass County Justice and Mental Health Collaboration Project.

### **TESTIMONY AND COMMISSION CONSIDERATIONS**

#### **Department of Corrections and Rehabilitation**

The commission received reports from representatives of the Department of Corrections and Rehabilitation regarding programs and initiatives at the department which provide alternatives to incarceration or which are intended to keep offenders from reoffending.

#### **Recidivism**

The commission received a report from the Department of Corrections and Rehabilitation relating to recidivism rates. The department has adopted the Association of State Correctional Administrators' definition of recidivism, which measures recidivism in several areas over 12, 24, and 36 months. Although the overall recidivism rate of about 35 percent is better than most states and significantly better than the national average, the department expects to see continued decreases in

that rate, in part due to the availability of well-paying jobs in the state.

The commission received testimony from representatives of the department relating to the implementation of evidence-based practices designed to reduce recidivism. Through cognitive behavioral interventions, the department is able to work with offenders to address the thought process of the offender which leads to criminal behavior and to focus on changing that thought process to help make the offender less likely to engage in behavior that will lead to reoffending. The evidence-based practices being implemented include completing an assessment of the risk and needs of each offender, providing the offender intrinsic motivation, targeting interventions specific to each offender, providing directed skills training, increasing positive reinforcement, and engaging in ongoing support in the community. The practices are designed to hold offenders accountable while providing opportunities for change. Because the evidence-based practices require three years of data to accurately measure the results of the practices, the department likely will not have full measurements of the success of the practices until at least 2015.

#### **Prison Education Programs**

A representative of the Department of Corrections and Rehabilitation provided testimony regarding education programs implemented by the department. The department reorganized the education programs offered by the department to combine the adult and youth programs under one leadership team with the goal of more effectively and efficiently sharing resources and best practices. Because approximately 24 percent of the offenders in the state correctional system do not have a high school diploma or a general equivalency diploma, evidence-based programs have been implemented to reduce risk and recidivism. During the 2009-11 biennium, 136 of the 144 participants in the general educational development program earned a general equivalency diploma. In addition, the Read Right program, which has been successful with youth, has been implemented with adults in the system. The Interactive Video Network has been used to provide classes to adult women in Dickinson.

Representatives of the department provided the commission information regarding reentry programs designed to teach individuals how to obtain and keep jobs, including the Choices program which is a career development program implemented by the department. Computer applications and vocational programs are provided by Bismarck State College and other postsecondary educational opportunities are available through Bismarck State College and North Dakota State College of Science. In addition, the department provides opportunities to take correspondence courses through two out-of-state institutions. Because federal educational grants are no longer available for incarcerated individuals, it has become more difficult to provide and pay for the educational opportunities, but the department is working with Bismarck State College to use the work study program and federal supplementary educational



opportunity grants to provide educational opportunities for inmates.

### **Work Release and Transition Programs**

After its 2009-10 interim study, the commission recommended 2011 House Bill No. 1028 which allows the department to expand the availability of work release programs for individuals who are required to serve 85 percent of their sentences. The change allows the department to expand the program to allow those individuals to participate in work release during the last six months of their sentences. Because the Missouri River Correctional Center was forced to be evacuated for five months during the summer of 2011 due to flooding, the impact of the expansion of the availability of work release had been delayed. However, in November 2011, the Department of Corrections and Rehabilitation began reviewing applications for work release under the expanded release provisions.

The Bismarck Transition Center continues to receive referrals from the department to house individuals who are in the last few months of their sentences. An offender at the center is required to work to pay for a portion of the offender's room and board, pay fines and fees, and save money to be used upon release. In addition, each offender must receive approval from a case manager with respect to weekly spending. Testimony from a representative of the center stated the goal of the program is to allow an offender to save money in preparation for discharge and to get started in a job that may be retained upon discharge.

The commission received a report from representatives of the Bismarck Transition Center regarding a proposal to develop a program through which the center would work with tribal governments in the state to provide transition programs for tribally committed offenders. Under the proposed program, tribes would join a cooperative to help deliver tribal residents who have committed offenses to the center, which could help divert offenders from the state and federal criminal justice systems.

### **Performance-Based Sentence Reduction**

The commission received a report regarding performance-based sentence reduction which was implemented in 1991 to replace the "good time" law that had been in effect. Under the performance-based sentence reduction law and policy, as implemented by the Department of Corrections and Rehabilitation, inmates must meet performance criteria such as participation in court-ordered or staff-recommended treatment and education programs to earn up to five days of good time per month for each month of the sentence imposed. Under the performance-based sentence reduction policy, inmates may not be credited for any sentence reduction for time spent in custody before sentence and commitment, for time under supervised probation, or for any sentence for which the incarceration time is six months or less. An inmate who is required to serve 85 percent of a sentence is not eligible for sentence reduction. The policy also allows an inmate to receive up to two days per month of

meritorious conduct sentence reduction for outstanding performance or heroic acts or as a special control and security measure.

### **Community Supervision and Electronic Monitoring**

The commission received a report regarding offenders under supervision outside institutions. Because of the increasing migration of people into the state, there has been a substantial increase in the number of offenders under community supervision by the Department of Corrections and Rehabilitation. The report indicated the department is continuing to use electronic monitoring, including the use of alcohol monitoring devices, as a tool to supervise offenders paroled or released on probation. However, the primary barrier to expansion of electronic monitoring has been the high caseload of officers required to conduct the monitoring process.

### **Treatment Programs**

The commission received a report regarding the use of drug courts. According to the report, there are approximately 90 individuals participating in adult drug courts at most times. It was also reported that the treatment program at the Tompkins Rehabilitation and Corrections Unit has steadily improved and has been awarded a rating of highly effective, which approximately 6 percent of all treatment programs achieve.

### **Department of Human Services**

The commission received reports regarding programs under the supervision of the Department of Human Services, including efforts undertaken in coordination with the Department of Corrections and Rehabilitation and other entities, integrated dual disorder treatment, and the Robinson Recovery Center.

### **Coordination of Services**

The commission was provided information regarding coordination of services between the Department of Human Services and the Department of Corrections and Rehabilitation. Within a few days of release from incarceration, an offender is scheduled for an appointment at a regional human service center to arrange for treatment and integration into the community. Five of the eight regional human service centers provide low-risk sexual offender treatment and provide services for victims. In addition, high-risk sexual offender treatment is offered through a contract provider. Each of the regional human service centers provides addiction treatment services and the Department of Human Services also contracts for residential treatment services. Although the release and integration programs are specific to individuals on probation and parole, officials from the State Penitentiary may refer other released offenders for treatment.

In addition to the programs coordinated with the Department of Corrections and Rehabilitation, the Department of Human Services offers other mental health and prevention services upon request from a state's attorney or a local law enforcement official, and the regional human service centers provide outreach on

Indian reservations and place a priority on a culturally competent manner of providing services to a variety of cultures. The commission also was informed that each regional human service center has an interagency council that interacts with volunteer groups, including the faith-based community.

The alternative for families cognitive behavioral therapy is a family-centered treatment designed to address family conflict, coercion and hostility, emotional abuse, and child physical abuse which has been implemented in regional human service centers and is a treatment therapy that may be effective in a juvenile drug court setting. Testimony from a representative of the Department of Human Services stated that although treatment and therapy programs are resource-rich, individuals will continue cycling through the system if the resources are not devoted to treatment and therapy.

### **Integrated Dual Disorder Treatment**

The commission received a report indicating 25 to 35 percent of individuals with serious mental illness have an active substance abuse problem, and substance abuse among individuals with serious mental illness is three times greater than that of the general population. Studies have demonstrated individuals with dual disorders have an increased risk of relapse of mental illness; relapse of substance use; violence, victimization, and suicidal behavior; and homelessness and incarceration. However, studies also have demonstrated that an integrated approach to treatment of dual disorders is more effective than separate treatment.

In 2005 the Southeast Regional Human Service Center initiated a pilot project to examine and implement a dual disorder treatment program. The program was implemented in January 2007 and has resulted in reduced institutionalizations, symptoms, suicide rates, violence, victimization, and legal problems and improved physical health, work results, and family relationships of the participants while not requiring additional staff. Based upon the experience of the pilot project, additional regional human service centers are moving toward implementing integrated dual disorder treatment programs.

### **Robinson Recovery Center**

The Department of Human Services continues to contract with the 40-bed Robinson Recovery Center in Fargo for residential treatment services. The commission received a report indicating the number of referrals to the center has increased significantly from 2011 to 2012. Of the referrals in 2011, 6.3 percent were from human service center regions in the western portion of the state and in 2012, 9.7 percent were from human service centers in the western portion of the state. However, the largest number of referrals continues to come from the region including Fargo. Although the primary addiction of clients admitted during 2011 and 2012 was identified as alcohol, the percentage of clients who were admitted with methamphetamine addiction increased from 2011 to 2012. According to the report, the center's rate of successful completion of the program increased from approximately 25 percent in

fiscal year 2011 to about 38 percent in the 12 months prior to September 2012.

A representative of the Robinson Recovery Center informed the committee that the center will need about \$200,000 to \$250,000 in additional funding to sustain operations. The three areas of greatest need identified are the addition of a psychiatric nurse, funding for increased staff salaries, and funding to increase the number of beds available for female clients.

### **Class C Felony Theft Offenses**

During the 2009-10 interim, the Judiciary Committee studied whether penalties for felonies are suitable for felonious behavior. As a part of the study, the committee reviewed criminal offenses for which a monetary amount triggers the grading of the offenses. The committee reported that most of the dollar amounts that trigger a penalty were set in the 1970s and 1980s. The committee considered, but did not recommend, a bill draft that would have amended several statutes that include a monetary amount that triggers the level of penalty.

Due to inflation, \$500 in 1972 is equivalent to over \$2,700 in 2012. Some of the members of the commission requested the commission to consider increasing the \$500 threshold for triggering a Class C felony offense. In addition to accounting for inflation as a matter of fairness, proponents of increasing the \$500 trigger contended an increase would result in a more efficient use of government services by reducing the need for prosecutorial resources, court-appointed defense counsel, and judicial resources. Furthermore, the commission was informed that although an offender convicted of a felony theft offense is not likely to serve time in the State Penitentiary if it is the first offense, it is not uncommon for such an offender to ultimately be incarcerated for the inability to fulfill the conditions of the sentence imposed. However, an offender sentenced to a felony will be subject to probation which is a costly correctional resource and which places an additional burden on probation officers who could be using their time to better monitor more dangerous offenders.

The commission received testimony from a representative of the North Dakota Association for Justice regarding the increased caseloads of state's attorneys in the western portion of the state due to a substantial increase in population. The testimony indicated some state's attorneys are experiencing up to 400 percent increases in caseloads. Because of the \$500 trigger for felony theft offenses, state's attorneys are devoting limited resources to address property-related felony offenses which may affect the ability to effectively prosecute cases that involve bodily injury.

Representatives of defense attorneys testified that the \$500 trigger for felony theft offenses is placing a burden on public defense resources. If the trigger was to be increased to \$1,000 or \$1,500, an offender convicted of stealing property valued at more than \$500 but less than the higher threshold, would likely have a better opportunity to make restitution if convicted of a misdemeanor offense. Also, if the individual was



convicted of a misdemeanor offense, the individual would not be faced with the collateral issues associated with a felony offense, such as loss of voting rights and difficulty in obtaining jobs.

Opponents of increasing the trigger for felony theft offenses contended the theft of \$500 is significant to the person whose property is stolen. In addition, the lower threshold may serve as a better deterrent to individuals contemplating committing an offense. It also was suggested that if the monetary triggers for felony offenses are adjusted for inflation, the amount of penalties for the offenses also should be adjusted.

### **Driving Under Suspension Offenses and Penalties**

A member of the commission identified concerns with respect to large numbers of individuals who have been convicted of driving under suspension multiple times. Judges have indicated they are seeing a big problem with individuals driving under suspension and becoming subject to incarceration for multiple driving under suspension offenses, including situations in which the initial suspension was due to an offense such as unpaid parking fines. In addition, many individuals are either unaware of a suspension or unaware of the procedure to get a license reinstated. Because some individuals under suspension have lost driving privileges for significantly long periods of time, judges and law enforcement officials have noted that those individuals often lose hope of ever retaining a license and continue to drive unlicensed and uninsured. It was suggested that if a provisional license were to be available to individuals who are under suspension, the individuals would have an opportunity to work and stop the continual spiral.

The commission received a report from a representative of the Department of Transportation regarding the number of driving under suspension offenses. The report indicated there were 4,450 driving under suspension or driving under revocation convictions in 2008, 4,246 convictions in 2009, 4,164 convictions in 2010, and 4,073 convictions in 2011. Testimony from a representative of the department indicated the ability to issue a temporary restricted license is limited because a driving under suspension conviction is a criminal offense. An individual may not be able obtain a work permit if there are multiple criminal traffic violations within a 36-month period. Under a work permit, an individual may drive to work, go to medical appointments, and drive to purchase food. The department verifies the employment status of an applicant for a work permit and may impose requirements on the applicant before issuing the permit, such as participation in the 24/7 sobriety program. The testimony suggested the department would support an amendment to revise the law to allow an individual to obtain a work permit or temporary restricted license if the individual has no other violations beyond the driving under suspension violations.

Because judges and prosecutors have often been told by driving under suspension offenders that the offenders did not receive a notice of suspension, the

members of the commission requested representatives of the Department of Transportation to provide information regarding the cost of mailing notices by certified mail. Representatives of the department reported the cost of mailing notices by certified mail would be approximately \$1 million per biennium. The cost of each letter sent by certified mail would be approximately \$6.46 and the department sends an average of 220 suspension or revocation letters per day. An analysis of the process of sending and receiving the documents by certified mail indicated it would take approximately five minutes to prepare the letter and three minutes to enter the receipt into the system. Therefore, the additional time needed to prepare, send, and receive the certified letters and receive the returned notices would require 3.5 FTE positions, which would cost approximately \$700 per day or \$185,000 per year.

The commission considered a bill draft to provide additional flexibility to the Department of Transportation in providing temporary restricted licenses, expand the potential uses of a temporary restricted license, and require a court to dismiss a charge for driving under suspension if the defendant provides proof that the defendant has reinstated the operator's license within 20 days after the date of the offense.

Although the members of the commission generally supported the bill draft, concerns were raised concerning the expansion of potential uses of a temporary restricted license and the impact the change could have on law enforcement officers having to determine if an individual was operating the vehicle within the restrictions placed on the license. In addition, members of the commission questioned whether enough time was being allowed under the provision which would require a judge to drop a charge of driving under suspension if the defendant provides evidence of a reinstatement of the license within 20 days. Some members of the commission also objected to a provision in the bill draft which would have allowed the Director of the Department of Transportation to impose additional restrictions on a license beyond the restrictions specifically listed in the bill draft.

### **Conclusions and Recommendations**

The commission recommends the Governor include increased funding in the executive budget for the Robinson Recovery Center, including funding specifically addressing the expansion of beds available for female clients.

The commission makes no recommendation with respect to the monetary thresholds that trigger felony offenses.

The commission recommends House Bill No. 1027 to provide additional flexibility to the Department of Transportation in providing temporary restricted licenses; expand the potential uses of a temporary restricted license to include use for attendance at an appropriate licensed addiction treatment program, or a treatment program ordered by a court, or to use as necessary to prevent the substantial deprivation of the educational, medical, or nutritional needs of the offender or an immediate family member of the offender; and authorize a court to dismiss a charge for driving under suspension

if the defendant provides proof that the defendant has reinstated the operator's license within 60 days after the date of the offense.

## **IMPOSITION OF FEES UPON OFFENDERS STUDY**

### **Background**

#### **2005-06 Interim and 2007 Legislation**

During the 2005-06 interim, the commission received testimony regarding the funding of community service programs. The commission was informed that 14 community service organizations were operating in the state and approximately one-third of the programs' budgets were supported through grants from the state. However, the testimony also indicated that the level of state support varied greatly among the programs. The commission also received testimony from officials from the Department of Corrections and Rehabilitation indicating the community service programs were expected to become self-supporting within a few years after implementation. At the end of the interim, the commission recommended the Governor include in the executive budget \$200,000 to be administered on a cost-share basis with local governments for the operation of community service programs.

Although funding was not included in the executive budget for community service programs, the Legislative Assembly enacted 2007 Senate Bill No. 2243, which imposed a \$50 community service supervision fee upon each defendant who receives a sentence that includes community service. The bill provided that the community service supervision fees collected are to be deposited in the community service supervision fund to be used to provide community service supervision grants. The bill appropriated \$125,000 from the fund for the 2007-09 biennium to the Department of Corrections and Rehabilitation for providing matching grants for community service supervision of offenders and directed the department to use \$100,000 of the funds appropriated in the field services line item in Section 3 of 2007 House Bill No. 1015 for the purpose of providing matching grants for community service supervision of offenders for the biennium.

#### **2007-08 Interim and 2009 Legislation**

During the 2007-08 interim, the commission again examined issues related to the community service programs. The commission received testimony indicating the community service fee was low on the hierarchy of fees that a court was required to impose, and defendants often did not have the financial resources to pay the fees imposed by courts. Therefore, many judges were not imposing the community service fee when ordering a defendant to perform community service. The commission was informed that less than \$15,000 had been collected and deposited in the community service supervision fund during the first nine months of the 2007-09 biennium, and community service supervision grants were not likely to amount to the \$125,000 appropriated from the fund for the biennium.

At the conclusion of the interim, the commission recommended 2009 Senate Bill No. 2028 to repeal the \$50 community service supervision fee, and recommended the Governor include \$500,000 in the executive budget for the Department of Corrections and Rehabilitation to be used by the department to provide matching grants for community service programs at a level to be determined by the department.

The Legislative Assembly amended Senate Bill No. 2028 to retain the community service supervision fee, but reduced the fee to \$25. The Legislative Assembly also provided an appropriation of \$62,500 from the community service supervision fund to the department in 2009 Senate Bill No. 2015 and provided an appropriation of \$375,000 from the general fund to the Office of Management and Budget (OMB) in 2009 Senate Bill No. 2178 for community service supervision grants.

#### **2009-10 Interim and 2011 Legislation**

During the 2009-10 interim, the commission continued to examine issues relating to community service programs and the imposition of the community service supervision fee. The commission again was informed the community service supervision fee is low on the hierarchy of fees that a court is required to impose, and defendants often do not have the financial resources to pay the fees imposed by courts. Therefore, many judges do not impose the fee or waive the fee when ordering a defendant to perform community service. The commission received testimony regarding the varied level of funding of community service organizations by local governments and a lack of consistency in establishing adequate local participation fees to cover the costs of the programs.

The commission considered a bill draft that would have eliminated the community service supervision fee. Although commission members generally agreed that community service programs should continue to receive state support separate from the community service supervision fee, members of the commission were reluctant to eliminate the fee without further study of all the fees that may be imposed upon a defendant upon sentencing as well as other fees that may be imposed upon offenders. Thus, the commission recommended Senate Concurrent Resolution No. 4001 to request the Legislative Management to study the imposition of fees at sentencing and other fees that are imposed upon offenders. The commission also recommended the Governor include in the executive budget an amount equal to or greater than the amount provided during the 2009-11 biennium to support community service programs.

In addition to adopting the study resolution, the Legislative Assembly in 2011 enacted Senate Bill No. 2275, which appropriated \$375,000 from the general fund for the biennium to support the community service programs. Senate Bill No. 2275 included a statement of legislative intent which provided that it is "the intent of the sixty-second legislative assembly that the funds appropriated in section 1 of this Act are considered ongoing funding and that the funds be a part of the office



of management and budget's base budget as a separate line item for the 2013-15 biennium." The annual funding for the community service programs during the 2011-13 biennium is to be allocated as follows:

- Barnes County - \$9,091.
- Bismarck (urban) - \$20,293.
- Bismarck (rural) - \$10,667.
- Devils Lake - \$10,747.
- Dickinson - \$12,683.
- Fargo - \$24,127.
- Grand Forks - \$19,803.
- Jamestown - \$13,883.
- Minot - \$16,194.
- Richland County - \$9,931.
- Rugby - \$11,657.
- Sargent County - \$8,086.
- Wells County - \$8,189.
- Williston - \$12,149.

Section 29-26-22(3) provides that community service supervision fees collected must be deposited in the community service supervision fund to be used to provide community service supervision grants subject to legislative appropriations. The Legislative Assembly in 2011 did not appropriate any funds from the community service supervision fund.

### **Community Service Programs**

Community service programs were formed in North Dakota in 1993 to provide community-based alternatives to incarceration and allow juvenile and adult offenders to perform court-ordered community service obligations for the benefit of nonprofit organizations and local communities. Initially, the state provided funding to assist in establishing the programs. However, the Department of Corrections and Rehabilitation ceased providing the grants after June 30, 2006, due to reductions in funding and prioritization of programs. In addition to the state funding, the programs have received funding from local governments and from participation fees imposed on offenders ordered to perform community service.

### **Other Statutory Fees**

Section 29-26-22 requires a court, upon a plea or finding of guilt, to impose a court administration fee in lieu of the assessment of court costs in all criminal cases except infractions. Under that section, the court administration fee must include a fee of \$125 for a Class B misdemeanor, \$200 for a Class A misdemeanor, \$400 for a Class C felony, \$650 for a Class B felony, and \$900 for a Class A or AA felony.

Section 29-26-22 also provides that in all criminal cases except infractions, the court administration fee must include an additional \$100. From the additional \$100 court administration fee, the first \$750,000 collected per biennium must be deposited in the indigent defense administration fund, which must be used for indigent defense services in this state, and the next \$460,000 collected per biennium must be deposited in the court facilities improvement and maintenance fund. After the minimum thresholds have been collected,

one-half of the additional court administration fees must be deposited in each fund.

Section 29-26-22 allows a court to waive the administration fee or community service supervision fee upon a showing of indigence. That section further provides that district court administration fees, exclusive of amounts deposited in the indigent defense administration fund and the court facilities and improvement fund, and forfeitures must be deposited in the state general fund. A court may allow a defendant to pay any assessed administration fee or community service supervision fee in installments. When a defendant is assessed administration fees or a community service supervision fee, the court may not impose at the same time an alternative sentence to be served if the fees are not paid.

Under Section 12.1-32-07, when a court orders probation for an offender, the court is required to order supervision costs and fees of not less than \$45 per month unless the court makes a specific finding on record that the imposition of fees will result in an undue hardship. The court is also authorized to impose as a condition of probation that the defendant make restitution or reparation to the victim of the defendant's conduct for the damage or injury which was sustained, pay any fine imposed, and support the defendant's dependents and meet other family responsibilities. In addition, as a condition of probation, the court may order the offender to reimburse the costs and expenses determined necessary for the defendant's adequate defense when counsel is appointed or provided at public expense for the defendant.

Section 12.1-32-08 authorizes the court to order the defendant to reimburse indigent defense costs and expenses as a condition of probation. That section also provides the reimbursement amount must include an application fee imposed under Section 29-07-01.1 if the fee has not been paid before disposition of the case and the court has not waived payment of the fee. Section 29-07-01.1 imposes a nonrefundable application fee of \$25 to be paid at the time an application for indigent defense services in the district court is submitted.

Section 12.1-32-08 requires a court, when restitution ordered by the court is the result of a finding that the defendant issued a check or draft without sufficient funds or without an account, to impose as costs the greater of the sum of \$10 or an amount equal to 25 percent of the amount of restitution ordered, except the amount may not exceed \$1,000. The state-employed clerks of district court are required to remit the funds collected to the State Treasurer for deposit in the restitution collection assistance fund. The funds deposited into the restitution collection assistance fund are appropriated to the judicial branch on a continuing basis for the purpose of defraying expenses incident to the collection of restitution, including operating expenses and the compensation of additional necessary personnel. The state's attorneys and county-employed clerks of district court are required to remit the funds collected to the county treasurer to be deposited in the county general fund.

Section 12.1-32-16 provides that when an individual whose occupational, professional, recreational, motor vehicle operator, or vehicle license or registration has been suspended for nonpayment of child support is convicted of engaging in activity for which the license or registration was required, the court shall require as a condition of the sentence that the individual pay restitution in the amount of \$250, or a higher amount set by the court.

Section 27-01-10 allows the governing body of a county to, by resolution, authorize the district judges serving that county to assess a fee of not more than \$25 as part of a sentence imposed on a defendant who pleads guilty to or is convicted of a criminal offense or of violating a municipal ordinance for which the maximum penalty that may be imposed by law for the offense or violation includes imprisonment. That section also allows the governing body of a city to, by ordinance, authorize a municipal judge to assess a fee of not more than \$25 as part of a sentence imposed on a defendant who pleads guilty to or is convicted of violating a municipal ordinance for which the maximum penalty that may be imposed under the ordinance for the violation includes imprisonment. All fees paid to a district or municipal court must be deposited monthly in the county or city treasury for allocation by the governing body of the county or city to a private, nonprofit domestic violence or sexual assault program or a victim and witness advocacy program of which the primary function is to provide direct services to victims of and witnesses to crime.

### **Testimony and Commission Considerations**

The commission received a report from a representative of the judicial branch regarding fees collected or imposed by the judicial branch. The report indicated that for the 2009-11 biennium, the judicial branch collected the following fees from offenders:

- Criminal court administration fees - \$4,777,928.
- Bail bond forfeitures - \$612,810.
- District court costs - \$22,619.
- Indigent defense recoupment - \$288,519.
- Indigent defense application fee - \$180,517.
- Indigent defense administration fund - \$1,566,192.
- Court facilities improvement and maintenance fund - \$1,276,192.
- Restitution collection assistance fund - \$47,923.
- Community service fee - \$51,378.

The commission received testimony from a clerk of court regarding the collection of restitution. The testimony indicated collection of restitution is likely to become more efficient with the implementation of a new

computer system that also is used to assist in the collection of fines, fees, and administrative costs. With the new system, clerks of court are able to better monitor the collection of costs and track payments. If a defendant is found to be in arrears on payments, the clerk of court may transfer the file to the court for action by the court, including an order to show cause.

The commission received a report relating to community service programs which indicated in fiscal year 2010, 2,478 offenders performed community service, 26 percent of which performed the community service in Fargo. In 2010 a total of 75,267.32 hours of community service were completed with a noncash value to the worksites of \$602,138.56, based upon a wage of \$8 per hour. The report concluded that the hours of community service performed in 2010 saved 9,408.4 days of prison or jail service, which at an estimated cost of \$65 per day provided a savings of \$611,547.

A representative of community service programs reported that the various community service programs are supported by a variety of funding sources including grants and a program fee that may be collected from offenders participating in the community service programs. It also was reported the amount of community service supervision fees being collected and deposited in the community service supervision fund has been decreasing and that due to an oversight in the 2011-13 biennium budgets for the Department of Corrections and Rehabilitation and OMB, there was no biennial appropriation of the funds deposited in the community service supervision fund. It was suggested that the fund should be placed under the budget of OMB. However, the representative of the community service agencies testified that although OMB has been the fiscal home for the general fund appropriation for community service programs during the last two bienniums, there is no guarantee the community service programs will be included in the office's budget in the future. It was argued that because the community service programs continue to be used by the courts and the programs have no state agency that oversees the various programs and budgets for the programs, the designation of a state agency to provide technical assistance and to serve as a fiscal home of the programs would help ensure the future viability of community service programs.

### **Conclusion**

The commission makes no recommendation as a result of its study.