

# NORTH DAKOTA LEGISLATIVE MANAGEMENT

## Minutes of the

### COMMISSION ON ALTERNATIVES TO INCARCERATION

Monday, January 9, 2012  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Senator Stanley W. Lyson, Chairman, called the meeting to order at 10:00 a.m.

**Members present:** Senators Stanley W. Lyson, Dave Oehlke, Connie Triplett; Representatives Eliot Glassheim, Lawrence R. Klemin, William E. Kretschmar; Citizen Members Leann K. Bertsch, Bradley A. Cruff, Duane Johnston, Paul D. Laney, Judge Lisa McEvers, Justice Mary Muehlen Maring, Carol K. Olson, Thomas L. Trenbeath, Keith Witt

**Members absent:** Citizen Members Edward Brownshield, Dr. Gary Rabe

**Others present:** See [Appendix A](#)

**It was moved by Mr. Laney, seconded by Senator Triplett, and carried on a voice vote that the minutes of the September 15, 2011, meeting be approved as distributed.**

Chairman Lyson said the commission should focus on areas of potential study and determine what should be accomplished during the remainder of the interim.

#### DEPARTMENT OF CORRECTIONS AND REHABILITATION

Chairman Lyson called on Ms. Bertsch to provide information relating to offender recidivism ([Appendix B](#)), procedures for inmate work programs ([Appendix C](#)), and statistics regarding inmate populations ([Appendix D](#)). Ms. Bertsch said the inmate count is at 1,436, and the offenders on community status are increasing by about 75 per month primarily due to the influx of people moving into the state. She said there are approximately 5,300 offenders on community status. Although electronic monitoring is a valuable tool, she said, the tool is not appropriate in all instances. She said alcohol monitoring devices are being used as a condition of parole. Of the 94 offenders placed on the monitoring, she said, participation by 14 has been terminated for noncompliance. She said the monitors appear to have a deterrent effect. As a result of the expansion to statewide monitoring, she said, 77 offenders are being monitored.

Ms. Bertsch said the Department of Corrections and Rehabilitation has adopted the Association of State Correctional Administrators' definition of recidivism, which measures recidivism in several areas over 12, 24, and 36 months. She said the overall recidivism rate of 35 percent is at a good level, and the department expects to see continued decreases in that rate.

In response to a question from Senator Lyson, Ms. Bertsch said the availability of good-paying jobs is one factor in the reduced recidivism rate. She said offenders being released are obtaining good life-changing jobs with wages upon which they are able to live.

In response to a question from Senator Triplett, Ms. Bertsch said the national recidivism rate is over 50 percent.

Ms. Bertsch said five adult drug courts are operating in the state, and of the 179 participants during the last biennium, 116 graduated. She said the number of participants generally runs around 90 at any one time. She said the drug court in Minot has been struggling with only about 7 or 8 participants.

Ms. Bertsch said House Bill No. 1028 (2011) allowed the department to expand the availability of work release programs for individuals who are required to serve 85 percent of their sentences. Under the bill, she said, the department could expand the program to allow those individuals to participate during the last six months of their sentences. Because the Missouri River Correctional Center was forced to be evacuated for five months during last summer due to flooding, she said, the impact of the expansion of the availability of work release has not yet been seen. In November, she said, 14 inmates requested work release, eight of whom were not eligible based on other factors and two of whom were approved for work release.

Ms. Bertsch said eight inmates applied for work release in December, and those applications are being reviewed. Although no female inmates have made requests for work release as a result of the legislation, she said, one inmate was allowed to participate in the Tompkins program. She said that inmate would not have been previously eligible for participation at Tompkins.

Chairman Lyson called on Ms. Gaylene Massey, Department of Corrections and Rehabilitation, for comments regarding education programs offered by the department. Ms. Massey said the department reorganized the education programs to combine the adult and the youth programs under one leadership team. With that change, she said, the department is able to better share resources and best practices. She said there are 10 teachers and seven volunteers in the adult corrections system and 20 teachers in the youth corrections education program. She said the department has implemented evidence-based programs to reduce risk and recidivism because

approximately 24 percent of the offenders in the system do not have a high school diploma or a general educational development (GED). During the 2009-11 biennium, she said, 136 of the 144 participants in the program earned a GED. She said the Read Right program has been successful with youth, and use of the program has been implemented with adults in the system. She said the Interactive Video Network provides classes to adult women in Dickinson, and she would like to see the use of the network expanded to all department facilities. Because of the accredited high school at the Youth Correctional Center, she said, adults under age 21 are able to earn a high school diploma through that school.

Ms. Massey said adult reentry programs are designed to teach individuals how to obtain and keep jobs. She said the Choices program is a career development program that has been implemented by the department. In addition, she said, computer applications are available as well as vocational programs through Bismarck State College. She said postsecondary educational opportunities are available through Bismarck State College and North Dakota State College of Science. She said those programs include studies in accounting, mathematics, and art history. She said the department also provides opportunities to take correspondence courses through two out-of-state institutions. Because federal educational grants are no longer available for incarcerated individuals, she said, it has become more difficult to provide and pay for the educational opportunities. She said the department is working with Bismarck State College to use the work study program and federal supplementary educational opportunity grants. She said the department is always looking for opportunities to expand educational programs.

In response to a question from Senator Triplett, Ms. Massey said discussions have begun recently with Bismarck State College to explore funding opportunities for educational programs. She said Pell grants and most other federal aid for inmates were eliminated in 1994.

Ms. Karianne Wolfer and Dr. Lisa Peterson, Department of Corrections and Rehabilitation, provided information ([web presentation](#)) regarding evidence-based practices at the Department of Corrections and Rehabilitation.

Ms. Wolfer said the department is implementing programs that work and which are based upon research in an effort to make offenders less likely to engage in behavior that leads them to reoffend. She said the state has seen fairly stable crime rates but an increasing incarceration rate. She said the department began a redesign of its programs in April 2011.

Dr. Peterson said addressing strictly behavioral issues is most effective. She said it is important to address the thought process of an individual which leads to the criminal behavior and to focus on changing that thought process.

Ms. Wolfer said an effective program will implement eight evidence-based practices.

In response to a question from Senator Triplett, Dr. Peterson said some of the programs have been in place for years, and others are in the development process. She said it is important to target areas that will most likely lead to recidivism.

In response to a question from Justice Maring, Dr. Peterson said cognitive behavior programs can work for treatment of psychopaths or sociopaths if the programs are delivered in a way that motivates changes. However, she said, the research is mixed and cautionary with respect to treatment for psychopaths and sociopaths.

In response to a question from Representative Klemin, Ms. Wolfer said it is important to focus on what is a crime-producing behavior and examine elements of substance abuse that are criminal and elements of criminality. She said an assessment process is important to sort out criminals from addicts.

Dr. Peterson said programs are being changed to focus on accountability and focus on the future.

In response to a question from Senator Triplett, Ms. Wolfer said the evidence-based programs should be implemented fully by September 2012. She said the department will continue adjusting the programs as necessary. She said three years of data are necessary to develop accurate measurements of the programs.

In response to a question from Senator Triplett, Dr. Peterson said the department is working with community providers and fine-tuning the services that are being delivered. She said most therapists are familiar with cognitive behavioral treatment. She said the department's program has a good foundation, and she hopes that that foundation can be extended into the community. She said some additional funding may be necessary to provide training for community programs.

Ms. Olson said the Department of Human Services has a partnership with the Department of Corrections and Rehabilitation with respect to what happens when an offender is released into the community. She said representatives of the Department of Human Services can update the commission with respect to the coordination of efforts between the Department of Human Services and the Department of Corrections and Rehabilitation.

Ms. Bertsch said the Tompkins program has steadily improved and has a rating of highly effective, which only 6 percent of treatment programs have.

In response to a question from Mr. Cruff, Ms. Wolfer said treatment options can have an impact on how sentencing is done. She said treatment professionals want to work with the criminal justice community to provide information about what programs are offered and statistical data to demonstrate effectiveness of programs.

Dr. Peterson said the goal is to treat criminals with behavioral modification strategies to help keep them in the programs.

## COMMUNITY SERVICE PROGRAMS

Chairman Lyson called on Mr. Dell Horn, Director, Jamestown Community Corrections, for comments ([Appendix E](#)) regarding community service programs.

In response to a question from Representative Klemin, Mr. Horn said the money appropriated by the Legislative Assembly for community service programs came from the general fund and is separate from funds collected by the court system. He said community service supervision fees collected from an offender for participation in a program goes to the state and then is returned to the program that collects the fee. However, he said, the amount of fees being collected is decreasing. He said some programs may also charge an offender a separate fee to participate. In addition, he said, the program he manages seeks grants and other sources of funding. However, he said, there have not been many opportunities for grant funds recently. He said funding for each community service program varies.

In response to a question from Representative Kretschmar, Mr. Horn said community service in McIntosh County is performed under the Bismarck rural community service program. He said community service ordered by a court is generally performed in the county of record of the offender.

In response to a question from Representative Klemin, Mr. Horn said it would help to have a state agency that oversees all community service programs and provides help in developing budgets. He said community service programs will continue to be used by courts, but the programs need assistance.

In response to a question from Ms. Bertsch, Mr. Horn said although the Office of Management and Budget is the fiscal home for community service programs, that office does not really consider the programs to be part of the agency's budget. In addition, he said, it is not certain that the community service programs will be included in the office's budget in the future.

Chairman Lyson called on Mr. Donald Wolf, Director of Finance, State Court Administrator's Office, for comments ([Appendix F](#)) regarding community service programs, fees imposed by courts, and alternatives to incarceration programs under the court system.

## DEPARTMENT OF CORRECTIONS AND REHABILITATION

Ms. Michelle Tweed submitted written comments ([Appendix G](#)) regarding the implementation of expanded availability of work release.

In response to a question from Senator Triplett, Ms. Bertsch said the main reason Mr. Tweed has not been granted work release is because he is in prison for murder. She said the goal of the department is to guard public safety and minimize risk. She said the Parole Board can review Mr. Tweed's application and can recommend a parole plan which may include work release. She said the department will not preempt the Parole Board. In addition to the concerns with public

safety, she said, the department has to be aware of the public perception of allowing an individual convicted of murder to be released into the community on a work release program.

Chairman Lyson requested members of the commission to share potential areas of study for the commission.

Justice Maring said theft cases in which the amount alleged to have been stolen is over \$500 are Class C felonies, which may subject an individual to a potential sentence of five years in prison. She said it appears that the \$500 threshold has been in place for approximately 30 years. She said the commission may consider reviewing Class C felony theft amounts to see if the threshold should be adjusted.

Representative Klemin said a recent interim study focused on fine amounts. He said that study may have examined issues such as the threshold for theft offenses.

In response to a question from Representative Glasheim, Ms. Bertsch said making additional online educational programs available for prisoners would be great. However, she said, there are issues with giving prisoners Internet access. She said more work needs to be done on controlled computer access. She said the department attempts to be proactive in limiting access, but close supervision is necessary. She said some of the welding programs use netbooks without Internet access. However, she said, expanding programs such as this become resource issues.

Senator Triplett said resource issues are the types of things the commission needs to focus upon so that it can consider making recommendations to provide more resources in needed areas.

Representative Klemin requested that an update be made at the next meeting regarding the amount of funding in the community service supervision fund.

In response to a question from Representative Glasheim, Ms. Bertsch said the primary barrier to expansion of electronic monitoring is the high caseload of officers needed to conduct the monitoring process.

Representative Glasheim said if electronic monitoring can save \$35,000 a year in costs in keeping an individual from being incarcerated, it may be an issue of resource allocation.

Senator Lyson said the main cost is having enough officers with manageable caseloads to keep track of the individuals released into the community.

Mr. Trenbeath said the value and cost of electronic monitoring is a good subject to continue to discuss for this group.

No further business appearing, Chairman Lyson adjourned the meeting at 2:20 p.m.

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John Bjornson  
Commission Counsel

ATTACH:7