Prepared by the North Dakota Legislative Council staff for the Commission on Alternatives to Incarceration
November 2007

COMMISSION ON ALTERNATIVES TO INCARCERATION - BACKGROUND MEMORANDUM

House Bill No. 1473 (2005), codified as North Dakota Century Code (NDCC) Section 54-35-24 (see appendix), established the Commission on Alternatives to Incarceration. The commission must consist of:

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.

The commission is directed to study sentencing alternatives, mandatory sentences, treatment options, the expanded use of problem-solving courts, home monitoring, and other related issues. The commission is authorized to request funding for consultant services from the Legislative Council and other interested entities if the commission determines that consultant services are necessary to assist the commission in conducting its assigned studies.

North Dakota Century Code Section 54-35-24 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. The legislation establishing the commission is effective until June 30, 2009.

BACKGROUND

The United States Department of Justice reported that during the 12 months ending June 30, 2006, there were 2,245,189 individuals incarcerated in federal and state prisons and local jails, which was an increase of 2.8 percent from the previous year. The federal report also indicated that the increase in state and federal prison admissions continued to increase faster than the rate of releases, thus resulting in continued growth in prison populations. As of June 30, 2006, Department of Justice statistics indicate that there are 497 prisoners per 100,000 residents in this country. Although the report indicates that the number of state and federal prisoners per 100,000 population in North Dakota (211) is significantly lower than the national average, the report also indicates that the rate of increase in incarcerated individuals in this state (6.1 percent) was among the highest in the nation for the period from June 30, 2005, through June 30, 2006.

Department of Corrections and Rehabilitation

In 2007 the Legislative Assembly appropriated $195.6 million for the Department of Corrections and Rehabilitation for the 2007-09 biennium. Of that amount, $171.6 million is from the general fund. The general fund appropriation includes a $41 million transfer to the State Penitentiary land fund for the purpose of addressing correctional facility needs. The general fund appropriation also includes $9,528,597 for contract housing of inmates, $7,955,877 of which is for housing female inmates at the Dakota Women's Correctional and Rehabilitation Center and $1,632,720 of which is for housing male inmates at county correctional centers and private facilities.

Adult Services Division

North Dakota Century Code 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 June 1, 2007, the State Penitentiary housed 530 male inmates. The James River Correctional Center at Jamestown is classified as a medium security housing facility and as of June 1, 2007, housed 403 medium security male inmates. In 2007 the Legislative Assembly provided funding to assist in increasing the capacity of the James River Correctional Center by 20 beds. The Missouri River Correctional Center is south of Bismarck and has no walls 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 June 1, 2007, the Missouri River Correctional Center housed 141 inmates.

The department has offices across the state staffed by parole and probation officers who manage offenders sentenced to supervision by a court, released to parole by the 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 Tompkins Rehabilitation and Correction Center, a combined program located on the campus of the State Hospital in Jamestown, houses both inmates and noninmates. The center provides a structured two-phased treatment program that generally lasts between 100 and 120 days. The center is the combination of the Tompkins Rehabilitation and Corrections Unit from the Stutsman County Corrections Center and the Corrections Rehabilitation and Recovery Center. The center consists of three 30-bed wards--one ward (30 beds) for females and two wards (60 beds) for males.

During the 2003-05 biennium, the Department of Corrections and Rehabilitation began to contract with the Dakota Women's Correctional and Rehabilitation Center 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, which consists of one member from each of the six counties represented in the Southwest Multi-County Correction Center. The six counties are Stark, Slope, Billings, Bowman, Dunn, and Hettinger.

The prison at the Dakota Women's Correctional and Rehabilitation Center consists of facilities for minimum and higher security inmates and for administrative segregation. As of June 1, 2007, the Dakota Women's Correctional and Rehabilitation Center housed 101 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's case managers supervise about 400 juveniles per day.

The Division of Juvenile Services 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, sex 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.

2005-06 INTERIM STUDY

During the 2005-06 interim, the Commission on Alternatives to Incarceration received testimony and reports regarding a number of issues related to the correctional system in North Dakota and public, private, and nonprofit alternatives to incarceration programs.

Department of Corrections and Rehabilitation Programs

The commission received reports from representatives of the Department of Corrections and Rehabilitation regarding alternatives to incarceration programs implemented by the department. The testimony revealed that the department has implemented or cooperated with other entities to operate a number of programs to divert offenders from incarceration and to move adult offenders from prison into the community. In addition, through the Division of Juvenile Services, the department implemented programs to divert juveniles from incarceration and move incarcerated juveniles back into the community.

Faith-Based Community Housing Initiative

In 2005 the Legislative Assembly enacted House Bill No. 1408, which appropriated $150,000 for the purpose of reimbursing a nonprofit faith-based organization for room and board costs associated with an extended residential care program in northwestern North Dakota for indigent adults with alcohol or other substance abuse issues as a pilot project. Although the department awarded the contract for the program to North Dakota Teen Challenge in Williston, the Teen Challenge program was moved to a facility in Mandan. The program provides residential treatment to individuals over a 13-month to 19-month period.

Last Chance Program

Under the last chance program, an offender on probation under the supervision of the Department of Corrections and Rehabilitation who has violated the provisions of the offender's probation may be diverted from incarceration for the probation violation. The program provides addiction treatment through therapeutic treatment with supervision and uses a cognitive behavioral approach to attempt to reduce risky behavior.

Assessment Center Program

Under the assessment center program, an assessment team conducts an evaluation of an offender's risk and treatment needs, which lasts from 10 days to 60 days. The evaluation is used to determine the appropriate level of treatment through a department or court-approved treatment program.

Day Report Program

Under the day report program, a parole or probation officer works with an offender to ensure that the offender is utilizing available resources and services that target common risks which may assist in reducing recidivism.

Three-Day Parole Hold

If an offender has a recovery relapse or a minor technical parole violation that may require detention as a means to continue treatment, the Department of Corrections and Rehabilitation may temporarily detain the individual to evaluate the individual's likelihood of reoffending and determine the risk to the community. With this evaluation, parole or probation officers can determine whether an offender's risk to reoffend may be reduced and managed with community corrections treatment and supervision of the offender.

Rapid Intervention Program

Under the rapid intervention program, a parole violator who would be subject to arrest and a return to prison may be placed in an appropriate treatment program for up to 90 days to address an addiction and any underlying criminal thinking before being placed back in the community.

Tompkins Rehabilitation and Correction Center

Treatment at the Tompkins Rehabilitation and Correction Center requires between 100 days and 150 days of residential treatment and subsequent community supervision. Treatment at the Tompkins Rehabilitation and Correction Center may be utilized as a method to divert an offender from incarceration or as a means to assist the offender in transitioning from incarceration to the community.

Transition Programs

The Department of Corrections and Rehabilitation has contracted with the Bismarck Transition Center and Centre, Inc., to provide facilities and programs to transition offenders from incarceration to the community. Centre, Inc., provides residential beds in Bismarck and Fargo to assist in the continuum of treatment and counseling of female offenders as the offenders prepare to return to their communities. The Bismarck Transition Center provides transitional treatment and educational and employment services to male offenders who do not have a history of serious violent crimes. The department also contacts with Centre, Inc., for halfway houses and the Quarter House facility in Fargo. The purpose of the halfway houses is to provide community-based correctional treatment services. The Quarter House facility serves parole and probation violators who are completing or enrolled in corrections treatment programming to support recovery or risk reduction.

Parole

The Parole Board implemented a policy that increased the number of individuals on parole. Although the parole ratio was increased to approximately 4.5 inmates to one parolee, the revocation rate increased only 3 percent and remains significantly below the national average.

Electronic Monitoring

The Department of Corrections and Rehabilitation began implementation of global positioning system technology to monitor offenders' movements and activities after release from incarceration. The department cooperated with the Department of Human Services and local law enforcement agencies to establish sex offender containment task forces in Bismarck, Fargo, Grand Forks, and Jamestown to identify sex offenders who may be appropriate subjects for electronic monitoring. The department also began implementation of a pilot program to test remote alcohol monitoring technology.

Juvenile Programs

Because a juvenile is substantially more likely to reoffend once the juvenile has been incarcerated, there are 13 nonsecure holdover sites throughout the state which are staffed only when needed and at which juveniles may be held temporarily so that further problems can be avoided and the issues with the juvenile can be addressed without adjudication. The sites are operated through the North Dakota Association of Counties. The commission also received a report indicating that in addition to the vocational education, alcohol and drug treatment, and basic sex offender treatment programs administered at the Youth Correctional Center, the Department of Corrections and Rehabilitation, through the Division of Juvenile Services, provides a continuum of programs to divert juveniles from incarceration and to return juveniles to their homes and communities. Those programs include in-home treatment, therapeutic foster care, residential foster care, and residential treatment. The division also provides aftercare services through its eight regional offices.

Judicial Branch Programs

Juvenile Drug Court

The juvenile drug courts in Bismarck, Fargo, and Grand Forks have been administered in cooperation with state's attorneys, the Department of Human Services, and contract services from Lutheran Social Services. The drug courts operate with full-time case managers, with part-time coordinators in Fargo and Grand Forks, and with a full-time coordinator in Bismarck. The approximate cost of each juvenile drug court is $64,500 per year. In addition, the commission

received reports indicating that plans were in place to expand the juvenile drug court to Minot and that there is interest among individuals in Williston in implementing a juvenile drug court.

Adult Drug Court

The adult drug courts in Bismarck and Fargo operate as a cooperative venture among district judges, parole and probation officers, and treatment providers. In Bismarck, treatment services are provided through the West Central Human Service Center. Treatment services for the Fargo drug court are provided on a contract basis pursuant to a contract between the Department of Corrections and Rehabilitation and ShareHouse.

Department of Human Services' Programs

The commission received reports stating that in addition to participation with the drug courts, the Department of Human Services is involved with prearrest, postbooking, and postadjudication diversion programs through the regional human service centers. Because a significant percentage of adult and juvenile offenders suffer from co-occurring substance and mental health problems, the department's participation is focused on substance abuse and mental health issues. The department also cooperates with the Superintendent of Public Instruction in supporting community and school-based prevention programs and provides funding for 12 prevention coordinators statewide. Testimony indicated that some of the regional human service centers were experiencing difficulty in hiring addiction counselors and that the caseloads for addiction counselors and case managers generally exceeded recognized industry standards. Testimony and commission discussion also revealed concern for the lack of treatment programs and the availability of aftercare for individuals who have completed treatment programs. The availability of treatment and aftercare appeared to be especially evident in rural areas of the state. In 2005 the Legislative Assembly enacted Senate Bill No. 2373, which required the Department of Human Services to implement a substance abuse treatment pilot program consisting of up to 20 beds at the State Hospital or at a private treatment facility through a grant as determined by the department for the treatment and rehabilitation of individuals who are chemically dependent on methamphetamine or other controlled substances. The bill required the department to issue a statewide request for proposal seeking providers for the program. The bill also appropriated $500,000 from the general fund and $800,000 from other sources to the department for treatment costs under the pilot program. Pursuant to Senate Bill No. 2373, the department contracted with ShareHouse in Fargo to establish the Robinson Recovery Center.

Superintendent of Public Instruction Programs

In addition to receiving information regarding the cooperation between the Department of Human Services and the Superintendent of Public Instruction with respect to prevention programs, the commission received a report from a representative of the Superintendent of Public Instruction relating to the administration of federal safe and drug-free school grant funds.

Local Government Programs

Community Service Agencies

Since the early 1990s, the state has provided funding to assist community service programs. The 14 community service agencies throughout the state 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. The Department of Corrections and Rehabilitation ceased providing the grants after June 30, 2006.

CounterAct Program

The commission received a report regarding the CounterAct program implemented by the Burleigh County Sheriff's office. Under the program, law enforcement officers go into schools and interact with youth and students. The law enforcement officers provide information regarding drugs and violence and work with students to develop skills for avoiding and counteracting the use of drugs and other negative behaviors.

Cass County Jail Intervention Coordinating Committee Project

The Cass County Jail Intervention Coordinating Committee presented reports to the commission regarding a proposal to implement a program to divert mentally ill individuals from incarceration after the individuals have been arrested. Under the program, when an individual is brought to a jail, jail personnel would attempt to identify whether a mental health problem underlying the individual's criminal behavior could be addressed without incarceration. Because about 10 percent of the approximately 250 individuals sent from Cass County to the State Penitentiary suffer from mental health problems, proponents of the program contended that the program could reduce the number of individuals sent to the Penitentiary from Cass County by about 25 per year.

Nongovernmental Program

The commission received a report from a representative of the Central Dakota RSVP program regarding the receipt of a federal grant for implementation of a program to provide mentors for children of incarcerated parents. The report indicated that studies have shown that 70 percent of children with an incarcerated parent will eventually become

incarcerated if the children do not have a positive influence in their life. In addition, those studies have also indicated that a child with a mentor is more likely to have improved test scores and is less likely to use alcohol and drugs.

2005-06 COMMISSION RECOMMENDATIONS AND 2007 LEGISLATION

Electronic Monitoring Bill

The commission recommended Senate Bill No. 2029, which provided that except for an offense for which the law requires mandatory incarceration, electronic home detention or global positioning system monitoring may be used for certain adult and juvenile offenders. The bill, which was enacted, authorizes, subject to the availability of funding, the court, or with the approval of the court, the Department of Corrections and Rehabilitation or a correctional facility, to implement an electronic home detention and global positioning system monitoring program.

Executive Budget and Funding Issues

Faith-Based Treatment Program

The commission recommended the Governor include in the executive budget $300,000 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 $500,000 for faith-based programming.

Drug Courts

The commission recommended the Governor include in the executive budget approximately $600,000 for the addition of two full-time equivalent positions for the Department of Corrections and Rehabilitation and four full-time equivalent positions for the Department of Human Services to assist in the expansion of drug courts.

The Legislative Assembly included funding and authorization for three full-time equivalent positions within the Department of Corrections and Rehabilitation for drug court parole and probation officers and for four additional full-time equivalent positions for addiction counselors at regional human service centers.

Robinson Recovery Center

The commission recommended the Governor include in the executive budget up to $1.2 million for the expansion of the Robinson Recovery Center.

In addition to the base funding of $500,000 and an inflationary increase of $134,000, the Legislative Assembly directed that $700,000 from the general fund within the budget for the Department of Human Services must be used for increasing the number of individuals receiving methamphetamine treatment services at the Robinson Recovery Center.

Community Service Programs

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. The Legislative Assembly enacted Senate Bill No. 2243, which imposes 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 House Bill No. 1015 for the purpose of providing matching grants for community service supervision of offenders for the biennium.

Cass County Jail Intervention Committee

The commission recommended the Governor include in the executive budget $582,000 to assist in implementing the Cass County Jail Intervention Coordinating Committee mental health project, to be contingent upon the receipt of a federal grant for the implementation of the project.

Other Recommendations and Statements

The commission expressed its support for an appropriate level of funding, staffing, and training for electronic monitoring programs and the continued use and expansion of the secure continuous remote alcohol monitoring program.

The commission encouraged the Governor to assess the need for reducing caseloads for licensed addiction counselors, case managers for individuals with serious mental illnesses, and parole and probation officers to attempt to achieve industry caseload standards. The Legislative Assembly provided funding in the budget for the Department of Human Services for four additional full-time case managers, one additional addiction counselor, and one sexual abuse therapist and provided funding in the budget for the Department of Corrections and Rehabilitation for up to an additional 11 parole and probation officers and 1 corrections agent.

The commission recommended the provision of adequate funding for mental health and substance abuse programs. The Legislative Assembly included within the budget for the Department of Human Services approximately $2.8 million for the phasein of a community-based sex offender treatment program.

The commission encouraged the Department of Human Services to work with treatment providers to identify gaps in recovery support services and to assist in the implementation of programs to provide early mental health screenings.

The commission encouraged school districts to operate alternative schools to assist in keeping adolescents in school.

The commission encouraged the continued study of the effectiveness of substance abuse treatment programs. The Legislative Assembly amended NDCC Section 19-03.1-45 to continue the drug assessment and treatment diversion program and expanded the program from a three-county pilot program to a statewide program.

The commission encouraged state agencies and other entities to place additional emphasis on education and awareness of substance abuse issues.

The commission expressed support for the work of the Prevention Advisory Council on Drugs and Alcohol appointed by the Governor, including the identification of methods for strengthening families and healthy communities.

The commission expressed support and encouragement for private initiatives, such as programs that provide mentors for children of incarcerated individuals.

PROPOSED STUDY APPROACH

In undertaking this study, the commission may continue to monitor and assess the agencies and programs discussed during the last interim and monitor and assess new programs implemented during this biennium. The commission may consider spending some time identifying additional areas of study. The commission also could continue to monitor and review successful alternatives to incarceration programs undertaken in other states and jurisdictions. The commission should prepare recommendations for inclusion in the Governor's budget by the fall of 2008.

ATTACH:1