

## FACILITIES AND OPERATIONS OF THE DEPARTMENT OF CORRECTIONS AND REHABILITATION - BACKGROUND MEMORANDUM

Section 5 of Senate Bill No. 2016 (attached as an appendix) directs the Legislative Council to study the facilities and operations of the Department of Corrections and Rehabilitation. Section 5 requires that the study must include the use of consultant services. Section 5 also requires that the study include an analysis and evaluation of all current facilities used by the department, the future facility needs, the staffing needs of the department, the anticipated need for additional prison beds, and a cost-benefit analysis of the department's current and proposed programs. Section 6 of Senate Bill No. 2016 provides for an appropriation of \$200,000 for the purpose of contracting with a consultant to conduct the study.

### BACKGROUND

The Department of Corrections and Rehabilitation includes two major divisions--the Division of Adult Services and the Division of Juvenile Services. Within each of the two divisions is an institutional division and a community division. Therefore, the four areas the department oversees are the Prisons Division (North Dakota State Penitentiary, Missouri River Correctional Center, and James River Correctional Center), the Field Services Division (adult parole and probation across the state), the North Dakota Youth Correctional Center, and the Juvenile Community Services.

The North Dakota State Penitentiary in east Bismarck is the main prison complex and houses maximum security inmates as well as some medium security treatment inmates. The James River Correctional Center at Jamestown is designed to hold medium security male inmates and has the bulk of the women inmates. The Missouri River Correctional Center in southwest Bismarck houses minimum security male and female inmates. The Revocation Center, located at the Stutsman County Correctional Center, is managed through the department's Field Services Division and houses both inmates and noninmates. Other inmates may be held in local correctional centers, on the community placement program, and in other states through the interstate compact program.

#### State Penitentiary

North Dakota Century Code (NDCC) Section 12-47-01 provides for the establishment of the State Penitentiary. The State Penitentiary, which was founded in 1885, is to be located in Bismarck and is the general penitentiary and prison of the state for the punishment and reformation of offenders against the

laws of the state. In 1997, Section 12-47-01 was amended to permit the director of the Department of Corrections and Rehabilitation to establish affiliated facilities at other locations throughout the state within the limits of legislative appropriations. The Penitentiary and the immediate surrounding property occupy approximately 200 acres on the eastern outskirts of Bismarck. In addition, the Penitentiary owns or leases approximately 4,400 acres, which include the Missouri River Correctional Center and other lands used for farming purposes.

The Penitentiary facility is comprised of seven units that are used to house male inmates.

1. The north unit (orientation unit), constructed in 1987, is a maximum security area that contains double-bunk cells and has an inmate capacity of 66.
2. The overflow unit, constructed in the 1960s, is a medium security area with dormitory-style cells. This unit has a capacity of 31 inmates.
3. The east cellhouse, which was built in 1910, is a maximum security unit with single bunk-type cells with an inmate capacity of 157.
4. The west cellhouse, constructed in the 1960s, is a maximum security unit that contains single-bunk cells and has an inmate capacity of 80.
5. The south unit, constructed in 1986, is a maximum security unit with dormitory-style cells and an inmate capacity of 60.
6. The treatment unit, which was built in 1982, is a medium security, dormitory-style unit with an inmate capacity of 60.
7. The administrative segregation unit, constructed in the 1960s, is a maximum security unit with single bunk-type cells and an inmate capacity of 36.

Other buildings located at the Penitentiary site include a food service building, an education building, the administration building, a recreation building, a purchasing and distribution building, the visiting center, power plant, chiller building, old slaughterhouse, pressing room, program building, dairy barn, wood granary, the Sunny Farm barn, the Roughrider Industries office and warehouse, and a machine storage pole barn.

Pursuant to NDCC Section 12-47-11, the warden, under the direction of the director of the Division of Adult Services, is the person responsible for the custody and control of the Penitentiary, its inmates, and the Penitentiary land, buildings, furniture, tools, implements, stock, provisions, and any other property

within the premises of the Penitentiary. The warden is responsible for the policing of the Penitentiary and the discipline of the inmates.

### **Missouri River Correctional Center**

The Missouri River Correctional Center (MRCC) is located eight miles south of Bismarck near the Missouri River. The MRCC has no walls or barriers to contain the inmates and is located in a wooded setting. The institution houses male and female inmates whose sentences are not less than 30 days nor more than one year. The buildings at the MRCC include a manager's residence, male and female inmate housing units, a library, recreation building, vocational education building, industries building, storage barn, auto mechanic classroom, kitchen and dining room, treatment building, equipment repair shop, and various storage buildings. The inmate housing facilities at the MRCC include a minimum security, dormitory-style housing unit for male inmates, which has a capacity of 136. In addition, there is a minimum security, dormitory-style housing unit for female inmates with a capacity of 14. The administration of the MRCC is under the jurisdiction of the warden of the State Penitentiary but a manager lives onsite and conducts the day-to-day administration.

Among the educational programs offered to the inmates of the MRCC include a high school equivalency program, a resident tutoring program, a business education class, welding and automotive programs, carpentry classes, and prerelease and education release programs.

### **James River Correctional Center**

The James River Correctional Center (JRCC), which is located on the grounds of the State Hospital in Jamestown, was completed for use as a correctional facility in 1998. The JRCC contains three units for its inmate population. The second floor of the center is a medium security male unit with dormitory-style cells and an inmate capacity of 160. The female unit, which is located on the third and fourth floors, is also a medium security, dormitory-style unit with a capacity of 80 females. The JRCC also includes a newly constructed building for Roughrider Industries. The JRCC uses the building previously called the Forensic Unit to house mentally ill inmates and those requiring segregation from the male population for safety reasons.

### **Field Services Division**

The Field Services Division has offices across the state staffed by parole and probation officers. The division manages offenders sentenced to supervision by the court, released to parole by the Parole Board, sent to community placement by the director, and placed at the Revocation Center. The division staff supervise offender compliance with the supervision

conditions and provide cognitive behavioral and other forms of counseling services. The Field Services Division also manages the victims services program to help mitigate the suffering of crime victims by providing fiscal support and services to crime victims.

### **Division of Juvenile Services**

The Community Services Division of the Division of Juvenile Services has nine satellite offices that serve the eight human services regions across the state and which are staffed to provide supervision to juveniles committed by the court. The division's case managers supervise about 500 juveniles per day. Approximately 40 percent of those juveniles are in the home, 25 percent are in residential foster care or group homes, 8 percent are in therapeutic foster care or in individual homes, and about 12 percent are institutionalized.

The Division of Juvenile Services also oversees the North Dakota Youth Correctional Center. The Youth Correctional Center, located south of Mandan, 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, maximum staff supervision, and provides appropriate programming to address delinquent behavior. The basic mission of the Youth Correctional Center is to protect society while providing education and therapeutic services to troubled adolescents within a safe and secure environment. Juvenile programming at the Youth Correctional Center includes drug and alcohol programming, child psychiatric and psychological services, a pretreatment program for sexual offenders, a special management 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. There are typically about 90 juveniles at the center with 70 to 75 juveniles in treatment, and the remainder are divided between detention, evaluation, and time-out.

### **Offender Statistics**

The 1997-99 biennial report of the Department of Corrections and Rehabilitation reported the demographics of the inmate population were changing. The report noted increases in the manufacture and use of methamphetamines, along with street gang activity, brought in a new breed of younger, more violent, and more culturally diverse inmates. At the end of the biennium, 73 percent of the population was Caucasian, 19 percent American Indian, 5 percent Hispanic, and 3 percent Black.

During the 1997-99 biennium, the offenses for which male inmates were confined included violent crimes, excluding sexual offenses (18.8 percent);

drug related (22.5 percent); property crimes (39.4 percent); sexual crimes (7.3 percent); driving under the influence (7.4 percent); and other offenses such as bail jumping, escape, and unlawful possession of a firearm (4.6 percent). The offenses for which female inmates were confined included violent crimes, excluding sexual offenses (16.6 percent); drug related (33.8 percent); property crimes (46.2 percent); sexual crimes (1.4 percent); driving under the influence (2.1 percent); and other offenses such as bail jumping, escape, and unlawful possession of a firearm (0.0 percent).

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

As of February 2001, there were 715 inmates at the State Penitentiary; 216 at the James River Correctional Center; and 144 at the Missouri River Correctional Center.

### NORTH DAKOTA CENTURY CODE SENTENCING LAWS

North Dakota Century Code Chapter 12.1-32 provides for the penalties and sentencing of criminal offenders. The offenses for which a person may be sentenced are divided into seven classes. The classification of offenses under Section 12.1-32-01 is:

Classification of Offenses	Penalties
Class AA felony	Maximum penalty of life imprisonment without parole may be imposed. The court must designate whether the life imprisonment sentence imposed is with or without an opportunity for parole. A person found guilty of a Class AA felony who receives a sentence of life imprisonment with parole is not eligible to have that person's sentence considered by the Parole Board for 30 years, less sentence reduction earned for good conduct, after that person's admission to the Penitentiary.
Class A felony	Maximum penalty of 20 years' imprisonment, a fine of \$10,000, or both, may be imposed.
Class B felony	Maximum penalty of 10 years' imprisonment, a fine of \$10,000, or both, may be imposed.
Class C felony	Maximum penalty of five years' imprisonment, a fine of \$5,000, or both, may be imposed.
Class A	Maximum penalty of one year's

misdemeanor	imprisonment, a fine of \$2,000, or both, may be imposed.
Class B misdemeanor	Maximum penalty of 30 days' imprisonment, a fine of \$1,000, or both, may be imposed.
Infraction	Maximum fine of \$500 may be imposed. Any person convicted of an infraction who, within one year prior to commission of the infraction of which the person was convicted, has been previously convicted of an offense classified as an infraction may be sentenced as though convicted of a Class B misdemeanor. If the prosecution contends the infraction is punishable as a Class B misdemeanor, the complaint must specify that the offense is a misdemeanor.

North Dakota Century Code Section 12.1-32-02 provides for the sentencing alternatives available to the court when sentencing a person convicted of an offense. Those alternatives include:

1. Payment of the reasonable costs of the person's prosecution.
2. Probation.
3. A term of imprisonment, including intermittent imprisonment:
  - a. In a state correctional facility in accordance with NDCC Section 29-27-07, in a regional corrections center, or in a county jail, if convicted of a felony or a Class A misdemeanor.
  - b. In a county jail or in a regional corrections center, if convicted of a Class B misdemeanor.
  - c. In a facility or program deemed appropriate for the treatment of the individual offender, including available community-based programs.
  - d. In the case of persons convicted of an offense who are under age 18 at the time of sentencing, the court is limited to sentencing the minor defendant to a term of imprisonment in the custody of the Department of Corrections and Rehabilitation.
4. A fine.
5. Restitution for damages resulting from the commission of the offense.
6. Restoration of damaged property or other appropriate work detail.
7. Commitment to an appropriate licensed public or private institution for treatment of alcoholism, drug addiction, or mental disease or defect.
8. Commitment to a sexual offender treatment program.

North Dakota Century Code Section 12.1-32-02.1 provides for a mandatory prison term for armed offenders. This section provides:

Notwithstanding any other provision of this title, a term of imprisonment must be imposed upon an offender and served without benefit of parole when, in the course of committing an offense, the offender inflicts or attempts to inflict bodily injury upon another, threatens or menaces another with imminent bodily injury with a dangerous weapon, explosive, destructive device, or firearm, or possesses or has within immediate reach and control a dangerous weapon, explosive, destructive device, or firearm while in the course of committing an offense under subsection 1 or 2 of section 19-03.1-23. This requirement applies only when possession of a dangerous weapon, explosive, destructive device, or firearm has been charged and admitted or found to be true in the manner provided by law, and must be imposed as follows:

1. If the offense for which the offender is convicted is a class A or class B felony, the court shall impose a minimum sentence of four years' imprisonment.
2. If the offense for which the offender is convicted is a class C felony, the court shall impose a minimum sentence of two years' imprisonment.

This section applies even when being armed is an element of the offense for which the offender is convicted.

North Dakota Century Code Section 12.1-32-04 includes the factors to be considered in the sentencing decision, including the conduct, history, character, and health of the defendant.

North Dakota Century Code Section 12.1-32-06.1 provides the criteria for the length and termination of probation.

North Dakota Century Code Section 12.1-32-09 authorizes a court to sentence a convicted offender to an extended sentence as a dangerous special offender or a habitual offender upon certain findings, such as that the offender is a dangerous, mentally abnormal person, a professional criminal, or a habitual offender.

North Dakota Century Code Section 12.1-32-09.1 provides for the sentencing of violent offenders. Under this section, any offender who is convicted of a crime in violation of Section 12.1-16-01 (murder), Section 12.1-16-02 (manslaughter), Section 12.1-17-02 (aggravated assault), Section 12.1-18-01 (kidnapping), Section 12.1-20-03 (gross sexual imposition), Section 12.1-22-01 (robbery), Section 12.1-22-02 (burglary with intent to injury), or an attempt to commit the offenses is not eligible for release from confinement until 85 percent of the sentence imposed by the court has been served.

North Dakota Century Code Section 19-03.1-23 provides for mandatory terms of imprisonment for the manufacture, delivery, or the possession with intent to manufacture or deliver certain controlled substances. The crime with which an offender may be charged and the length of mandatory imprisonment under this section is dependent upon the classification of the controlled substance and whether the offender has previous convictions for that offense.

North Dakota Century Code Section 19-03.1-23.1 provides for increased penalties for aggravating factors in drug offenses, including the manufacture or distribution of a controlled substance in or on or within 1,000 feet of a school or the delivery of a controlled substance to a minor.

North Dakota Century Code Sections 19-03.1-24 and 19-03.1-25 also provide penalties for other drug-related offenses.

## **PREVIOUS STUDIES**

### **1977-78 Interim**

During the 1977-78 interim, the Legislative Council's Corrections Committee, pursuant to Senate Concurrent Resolution No. 4060, was directed to study the entire criminal justice system. As a result of its study, the Corrections Committee recommended a more detailed study be conducted of community corrections than was possible during the 1977-78 interim. The committee recommended a study of community corrections also include a study of the Penitentiary to determine whether changes need to be made concerning that facility. The committee cited the age of the Penitentiary and the expansion of the city of Bismarck around the Penitentiary area as raising questions concerning the suitability of the Penitentiary's location. The committee concluded that since these conditions exist at the Penitentiary, and community corrections programs would be interrelated with state level corrections, a dual interim study of community corrections programs and the State Penitentiary should be conducted.

### **1979-80 Interim**

During the 1979-80 interim, the Legislative Council's State and Federal Government "B" Committee, pursuant to Senate Concurrent Resolution No. 4019, was directed to conduct a comprehensive study and evaluation of the adult correctional facility needs throughout the state. Because the study resolution called for an extensive evaluation of the State Penitentiary and adult correctional facility needs throughout the state and would require extensive data gathering, criminal justice and correctional expertise, the committee obtained the services of a consultant to aid in the committee study. Based upon the consultant's recommendations, the committee recommended three bills. The first bill, Senate Bill No. 2086, would have appropriated funds to the Combined Law Enforcement Council for the purpose of a matching grant program for county and city jails. The second

bill, Senate Bill No. 2087, would have appropriated funds for the construction, renovation, and equipping of facilities at the State Penitentiary and for constructing new facilities at the State Farm. Both bills failed to pass. A third bill, House Bill No. 1085, relating to sentencing alternatives, was passed by the 1981 Legislative Assembly.

#### **1987-88 Interim**

During the 1987-88 interim, the Legislative Council's Judiciary Committee, pursuant to Senate Concurrent Resolution No. 4022, studied the criminal sentencing statutes in misdemeanor and felony cases. The committee recommended House Bill No. 1052 to consolidate NDCC Chapter 12-53, relating to suspended execution of sentences, with Chapter 12.1-32, which provides for the classification of offenses, penalties, and a broad array of sentencing alternatives available to the court. According to the committee's final report, the bill was intended to clarify a court's authority to impose a sentence if conditions of probation are violated following the suspended execution of a sentence and to clarify the status of a person receiving a deferred imposition of sentence. The bill was also intended to address conflicts and inconsistencies existing in the sentencing statutes. The bill was passed by the 1989 Legislative Assembly.

#### **1993-94 Interim**

During the 1993-94 interim, the Legislative Council's Budget Committee on Government Finance, pursuant to Senate Concurrent Resolution No. 4063, studied the feasibility and desirability of establishing a women's correctional facility off the State Penitentiary grounds. The committee recommended that a separate women's correctional facility not be constructed. The committee determined, based on the cost estimates of constructing a new female correctional facility or renovating an existing facility into a women's correctional facility, it was not feasible to proceed with a separate women's correctional facility at the time. The committee recommended House Bill No. 1027, which was passed by the 1995 Legislative Assembly. The bill required judges to sentence inmates to the Department of Corrections and Rehabilitation rather than to the State Penitentiary or the Missouri River Correctional Center. The bill also changed the name of the State Industrial School to the State Youth Correctional Center. The committee, pursuant to Senate Concurrent Resolution No. 4073, also studied the cost-effectiveness and economic impact of permitting Roughrider Industries to manufacture and sell products that may be produced and sold by the private sector. The committee recommended a bill to allow Roughrider Industries to participate in the workers' compensation program and provide workers' compensation coverage of Penitentiary inmates employed in the private sector and prison industry

enhancement program. The bill was passed by the 1995 Legislative Assembly.

#### **1995-96 Interim**

During the 1995-96 interim, the Legislative Council's Legislative Audit and Fiscal Review Committee received a report from the State Auditor's office on the cost of 1993 House Bill No. 1062 regarding mandatory sentencing for drug offenders. The State Auditor reported, based on the fiscal year 1994 cost per day to house an inmate of \$51.68 and the average projected inmate increase of 1,195 days per year, the cost to taxpayers was approximately \$61,758 per year.

#### **1999-2000 Interim**

During the 1999-2000 interim, the Legislative Council's Criminal Justice Committee, pursuant to Senate Concurrent Resolution No. 4015, studied the adult correctional system. The committee's considerations centered on four issues--prison facilities and inmate population; interstate transfer of convicted felons; inmate records; and the Revocation Center.

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

With respect to the Revocation Center program, the committee expressed concerns that the program does not appear to be working as the Legislative Assembly recommended. The committee recommended the department work with the state's attorneys and judges to address the concerns.

The committee also recommended House Bill No. 1044 to provide for a new classification of inmate records, known as case history records, that would be considered exempt; to provide that medical, psychological, and social records are confidential; and that records with respect to the person's identity, location, criminal convictions, or projected date of release, except for the records of a person who is under protective management, are open records. The bill also provided that parole records of the department are confidential. The bill was passed by the 2001 Legislative Assembly.

### **2001 LEGISLATION**

A number of bills relating to corrections and sentencing were considered by the 2001 Legislative Assembly. The legislation may be classified in these areas--corrections and correctional facilities; sexual offenses and offenders; new offenses or changes in

penalties; payment of restitution and fees; sentencing; and drug offenses.

### **Corrections and Correctional Facilities**

**House Bill No. 1044** provided that medical, psychological, and treatment records of persons in the custody of the Department of Corrections and Rehabilitation are confidential. The bill created a new classification of records known as case management records and provides that case management records are exempt records. The bill also provided that records with respect to the person's identity, location, legal files, criminal convictions, and projected date of release, except for the records of a person who is under protective management, are open records.

**House Bill No. 1270** provided for an interstate compact for adult offender supervision. The bill created an interstate commission for adult offender supervision to manage the movement between states of offenders placed under community supervision and released to the community. The bill also established a system of uniform data collection, access to information on active cases by authorized criminal justice officials, and regular reporting of compact activities to heads of state councils, state legislative, executive, and judicial branches, and criminal justice administrators.

**House Bill No. 1350** provided that a prisoner who has been charged with, pled guilty to, or convicted of a Class A or Class AA felony may only be transported by employees of the Department of Corrections and Rehabilitation or by law enforcement or correctional officers employed by a governmental agency.

**House Bill No. 1398** provided that the medical, psychological, and treatment records of an inmate are confidential and only may be disclosed to certain agencies and departments unless a court orders the inspection of the records; provided that records with respect to an inmate's identification, charges, criminal conviction, bail information, intake, projected release dates, and employment or work release records are open; and provided that records with respect to a sentenced inmate's institutional discipline, conduct, and protective management are exempt records.

**House Bill No. 1401** required the correctional facility administrator to establish an inmate account for each inmate and provided that the administrator may withdraw funds from the account to meet the inmate's legitimate financial obligations, including child support and restitution. The bill also authorized the administrator to collect fees from inmates to offset health care costs.

**Senate Bill No. 2016** increased the compensation for members of the Parole Board from \$62.50 per day to \$75 per day.

**Senate Bill No. 2061** authorized the director of the Division of Adult Services, with the concurrence of the director of the Department of Corrections and Rehabilitation, to appoint a warden for an affiliated facility of the Penitentiary.

### **Sexual Offenses and Offenders**

**Senate Bill No. 2035** provided that an adult is guilty of luring minors by computer if the adult uses a computer to lure a minor when the adult knows the communication depicts sexual acts and by means of that communication the adult importunes, invites, or induces the minor to engage in sexual acts or to have sexual acts with the adult for the adult's benefit; provided that luring minors by computer is a Class A misdemeanor, but if the adult is age 22 or older or the minor is under age 15, the crime is a Class C felony; and criminalized street gang initiation sexual acts, separates disorderly conduct-type behavior from the indecent exposure statute, and makes indecent exposure a crime for which a person is required to register as a sexual offender.

**Senate Bill No. 2254** increased the penalty for the sexual abuse of wards from a Class A misdemeanor to a Class C felony. The bill also increased the penalty from a Class A misdemeanor to a Class C felony for the sexual assault of an individual who is in official custody or detained in a hospital, prison, or other institution and the offender has supervisory or disciplinary authority over that individual.

**Senate Bill No. 2446** required the Attorney General, with the assistance of the Department of Corrections and Rehabilitation and the juvenile courts, to develop guidelines for the risk assessment of sexual offenders who are required to register, with a low-risk, moderate-risk, or high-risk level being assigned to each offender. The bill provided that if an offender is determined to be a high risk or moderate risk, relevant and necessary conviction and registration information must be disclosed to the public by a law enforcement agency. The bill required the Attorney General to develop guidelines for public disclosure of offender registration information.

### **New Offenses or Changes in Penalties**

**House Bill No. 1363** made a first offense for simple assault a Class B misdemeanor if the victim is a family or household member of the offender. The bill also made a second or subsequent offense for simple assault a Class A misdemeanor if the victim is a family or household member of the offender; provided that if an assault offense is against an offender's family or household member, the court must order the offender to complete a domestic violence offender treatment program unless an explanation is provided as to why the treatment would be inappropriate; and exempted the Class A misdemeanor domestic violence simple assault offense from those offenses for which the defendant is placed under the supervision and management of the Department of Corrections and Rehabilitation.

**Senate Bill No. 2046** made it a Class C felony for any person to intentionally remove a minor from the

state in violation of a custody decree. The bill became effective on March 19, 2001.

**Senate Bill No. 2116** made it a noncriminal offense for a minor to purchase, possess, smoke, or use cigarettes, cigars, cigarette papers, snuff, or tobacco in any other form in which it may be utilized for smoking or chewing. The bill also provided that cities and counties that adopt ordinances or petitions regarding the sale of tobacco to minors and use of tobacco by minors must provide for a fee of not less than \$25 for a minor age 14 or older who has been charged with an offense.

**Senate Bill No. 2426** provided that a person is guilty of a Class A misdemeanor if, with the intent to harass or annoy a former juror because of the verdict returned by the jury or the participation of the juror in the verdict, the person communicates with the juror in a manner that intimidates or conveys a threat of injury or damage to the juror or the juror's property.

### Payment of Restitution and Fees

**Senate Bill No. 2016** provided that unless the court, on the record, directs otherwise, restitution must be paid to the Division of Adult Services for any benefits the division has paid or may pay under the crime victims compensation program.

**Senate Bill No. 2081** provided that the amount a defendant is ordered to pay to reimburse the state for indigent defense costs and expenses must include the \$25 application fee imposed under NDCC Section 29-07-01.1, unless the fee has been paid before disposition of the case or the court has waived payment of the fee.

**Senate Bill No. 2135** provided that if an offender does not pay supervision fees and costs before the completion or termination of probation, the court may issue an order, and the order may be enforced in the same manner as other civil judgments.

### Sentencing

**Senate Bill No. 2118** provided that if the probation of a person whose felony conviction was reduced to a misdemeanor is revoked, the person is deemed to have been convicted of a felony.

### Drug Offenses

**House Bill No. 1364** removed mandatory imprisonment for first-time drug offenses.

**Senate Bill No. 2444** moved the crime for the inhalation of vapors of a volatile chemical and crimes relating to drug paraphernalia from NDCC Title 12 to Title 19. The bill added as drug paraphernalia ingredients or components to be used or intended or designed to be used in making drugs whether or not otherwise lawfully obtained, including anhydrous ammonia, nonprescription medications, or lawfully dispensed controlled substances; added as a relevant factor for a court to consider in determining whether an object is drug paraphernalia the actual or

constructive possession of written instructions, directions, or recipes used to make a drug; required the person who violates a drug paraphernalia law to undergo a drug addiction evaluation; required the evaluation to be submitted to the court when imposing punishment for a felony violation and allows submission for a misdemeanor violation; required a certified copy of an analytical report signed by the State Toxicologist to be accepted as prima facie evidence in an imitation controlled substance case; provided that the state is not required to prove a conspirator knew the other person to the agreement intended to deliver or possess with the intent to deliver a controlled substance, an imitation controlled substance, or drug paraphernalia to a third person; and clarified the requirements for the sentencing of dangerous special offenders.

**House Bill No. 1367** broadened aggravating factors that result in a one-level increase in the classification of offenses for drug offenses; broadened the aggravating factor of delivering a controlled substance to a minor by lowering the minimum age required of the defendant from age 18 to age 16; lowered the amount of heroin and cocaine needed to be involved in an offense to be an aggravating factor from 100 grams of heroin and 500 grams of cocaine to 50 grams; and expanded the definition of the amount of LSD needed to be involved in an offense to be an aggravating factor from 1 gram to 1 gram, 100 dosage units, or one-half liquid ounce. The bill created 50 grams of methamphetamine; 10 grams, 100 dosage units, or one-half liquid ounce of ecstasy; 100 dosage units or one-half liquid ounce of GHB; 100 dosage units or one-half liquid ounce of flunitrazepam (Rohypnol); and 500 grams of marijuana as aggravating factors.

**Senate Bill No. 2445** required the Attorney General to report to an interim legislative committee on the current status and trends of unlawful drug use and abuse and drug control and enforcement efforts in this state.

### SUGGESTED STUDY APPROACH

The committee, in its study of the facilities and operations of the Department of Corrections and Rehabilitation, may wish to receive testimony and make recommendations as to the information to be collected and analyzed by the professional consultant hired by the committee. Based upon the directives contained in Section 5 of Senate Bill No. 2016, the study conducted by the consultant should include:

1. An analysis and evaluation of all facilities currently used by the Department of Corrections and Rehabilitation and all facilities currently used by the State Hospital which may at some time be used by the department, including:
  - a. The age, condition, and adequacy of each facility.

- b. The operational efficiency of each facility, including utility costs and staffing needs.
  - c. Modifications, if any, required to allow the department to meet the various needs of adult offenders.
2. An analysis and evaluation of future facility needs, including:
    - a. The types of facilities needed to serve adult offenders.
    - b. The most appropriate location for the department's various facilities, considering:
      - (1) The operational inefficiencies of maintaining multiple facilities.
      - (2) The administrative benefits of having multiple facilities in which to place offenders.
      - (3) The availability of education, treatment, and work programs for inmates.
  3. An analysis and evaluation of the staffing needs of the department, including:
    - a. Current staff utilization and needs at each facility.
    - b. Availability of potential employees in each region in which the department operates or may operate a correctional facility.
  4. An analysis and evaluation of the anticipated need for additional prison beds, considering the following:
    - a. The impact of changes in sentencing laws.
    - b. The impact of programs that provide alternatives to conventional incarceration.
    - c. Trends in occurrence and types of crime committed in the state.
    - d. The utilization and availability of existing and proposed county or regional correctional facilities.
    - e. The utilization and availability of existing and proposed private correctional facilities.
  5. A cost-benefit analysis of the department's current and proposed programs, considering:
    - a. The effect on recidivism.
    - b. The necessity and effectiveness of providing rehabilitation and treatment services.
    - c. The availability of rehabilitation and treatment services which could be provided by entities or agencies other than the department, including regional human service centers.
- The committee, in its study, may also wish to:
1. Receive testimony from the Department of Corrections and Rehabilitation on the operation of the adult correctional system in North Dakota, including any specific needs of the State Penitentiary, Missouri River Correctional Center, and the James River Correctional Center.
  2. Receive periodic reports from the consultant.
  3. Receive a final report from the consultant.
  4. Review the consultant's reports and recommendations and prepare legislation necessary to implement the recommendations.

ATTACH:1

**Fifty-seventh Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 9, 2001**

SENATE BILL NO. 2016  
(Appropriations Committee)  
(At the request of the Governor)

AN ACT to provide an appropriation for defraying the expenses of the department of corrections and rehabilitation; to provide for line item transfers; to provide legislative intent; to provide for a legislative council study; to create and enact a new section to chapter 54-23.3 of the North Dakota Century Code, relating to the establishment of new programs by the director of the department of corrections and rehabilitation; and to amend and reenact section 12-59-02, subsection 1 of section 12.1-32-08, and subsection 2 of section 54-23.4-12 of the North Dakota Century Code, relating to compensation of parole board members, indigent defense costs and expenses, and crime victims compensation subrogation.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. APPROPRIATION.** The funds provided in this section, or so much of the funds as may be necessary, are appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, and from special funds derived from federal funds and other income, to the department of corrections and rehabilitation for the purpose of defraying the expenses of its various divisions, for the biennium beginning July 1, 2001, and ending June 30, 2003, as follows:

Subdivision 1.

CENTRAL OFFICE

Salaries and wages	\$1,155,357
Operating expenses	171,447
Equipment	65,750
Total all funds	\$1,392,554
Less estimated income	<u>11,160</u>
Total general fund appropriation	\$1,381,394

Subdivision 2.

JUVENILE SERVICES

Salaries and wages	\$10,647,498
Operating expenses	4,917,407
Equipment	148,700
Capital improvements	707,747
Grants	4,413,877
Total all funds	\$20,835,229
Less estimated income	<u>7,825,075</u>
Total general fund appropriation	\$13,010,154

Subdivision 3.

ADULT SERVICES

Victims services	\$3,423,566
Institutional offender services	3,863,128
Community offender services	11,353,870
Support services	21,514,202
Program services	3,778,761
Security and safety	24,977,530
Roughrider industries	<u>10,842,290</u>
Total all funds	\$79,753,347
Less estimated income	<u>17,296,864</u>

Total general fund appropriation	\$62,456,483
Grand total general fund appropriation S.B. 2016	\$77,048,031
Grand total special fund appropriation S.B. 2016	\$25,133,099
Grand total all funds appropriation S.B. 2016	\$102,181,130

**SECTION 2. LAND BOARD DISTRIBUTIONS.** The estimated income line item in subdivision 2 of section 1 of this Act includes \$502,823 from permanent funds managed for the benefit of the youth correctional center by the board of university and school lands.

**SECTION 3. AUTHORITY TO LEASE LAND UNDER THE JURISDICTION OF THE DEPARTMENT.** The department of corrections and rehabilitation may lease land under the jurisdiction of the department for the purpose of the construction and operation of a prerelease center. Subsection 12 of section 54-23.3-04 does not apply to the lease authorized by this section. The lease expires when the leased property is no longer used for a prerelease center, when the lease operator breaches any material part of the lease, or twenty years after the date of the lease, whichever occurs first, and all rights, title, and interest in any buildings, fixtures, and improvements vest and remain with the state.

**SECTION 4. DEPARTMENT OF CORRECTIONS AND REHABILITATION - LEGISLATIVE COUNCIL STUDY AND REPORTS.** During the 2001-02 interim, the legislative council shall consider studying wages paid to inmates sentenced to the state correctional system and the various deductions from those wages, including methods used to determine rates of pay; actual wages paid to inmates; deductions from inmate wages; and the effect deductions for incarceration costs, facility operation costs, and capital improvement costs have on inmate payments for child support and restitution. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-eighth legislative assembly.

**SECTION 5. DEPARTMENT OF CORRECTIONS AND REHABILITATION - FACILITY AND OPERATIONS - LEGISLATIVE COUNCIL STUDY.** The legislative council shall study, during the 2001-02 interim, the facilities and operations of the department of corrections and rehabilitation and report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-eighth legislative assembly. The study must include the use of consultant services as determined by the legislative council. The study must include the following:

1. An analysis and evaluation of all facilities currently used by the department of corrections and rehabilitation and all facilities currently used by the state hospital which may at some time be used by the department, including:
  - a. The age, condition, and adequacy of each facility.
  - b. The operational efficiency of each facility, including utility costs and staffing needs.
  - c. Modifications, if any, required to allow the department to meet the various needs of adult offenders.
2. An analysis and evaluation of future facility needs, including:
  - a. The types of facilities needed to serve adult offenders.
  - b. The most appropriate location for the department's various facilities, considering:
    - (1) The operational inefficiencies of maintaining multiple facilities.
    - (2) The administrative benefits of having multiple facilities in which to place offenders.
    - (3) The availability of education, treatment, and work programs for inmates.
3. An analysis and evaluation of the staffing needs of the department, including:

- a. Current staff utilization and needs at each facility.
  - b. Availability of potential employees in each region in which the department operates or may operate a correctional facility.
4. An analysis and evaluation of the anticipated need for additional prison beds, considering the following:
- a. The impact of changes in sentencing laws.
  - b. The impact of programs that provide alternatives to conventional incarceration.
  - c. Trends in occurrence and types of crime committed in the state.
  - d. The utilization and availability of existing and proposed county or regional correctional facilities.
  - e. The utilization and availability of existing and proposed private correctional facilities.
5. A cost-benefit analysis of the department's current and proposed programs, considering:
- a. The effect on recidivism.
  - b. The necessity and effectiveness of providing rehabilitation and treatment services.
  - c. The availability of rehabilitation and treatment services which could be provided by entities or agencies other than the department, including regional human service centers.

**SECTION 6. APPROPRIATION.** There is appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$200,000, or so much of the sum as may be necessary, to the legislative council for the biennium beginning July 1, 2001, and ending June 30, 2003, for the purpose of contracting with a consultant to conduct the study as provided in section 5 of this Act.

**SECTION 7. FEDERAL FUNDING REDUCTIONS - BUDGET SECTION APPROVAL.** If, during the biennium beginning July 1, 2001, and ending June 30, 2003, the federal government reduces funding below the level anticipated by the fifty-seventh legislative assembly for any programs administered by the department of corrections and rehabilitation, the department may not supplant the federal funds with general or special fund moneys without first obtaining the approval of the budget section of the legislative council. The department's budget request for the biennium beginning July 1, 2003, and ending June 30, 2005, must identify any programs for which general or special fund appropriation authority is requested to replace federal funds previously available for the program.

**SECTION 8. OPERATION OF "PRERELEASE" AND "DUI OFFENDER TREATMENT" PROGRAMS - REPORT TO THE FIFTY-EIGHTH LEGISLATIVE ASSEMBLY.** During the biennium beginning July 1, 2001, and ending June 30, 2003, the department of corrections and rehabilitation shall monitor the operation of the programs known as the "prerelease center" and the "DUI offender treatment center" authorized by the fifty-seventh legislative assembly. The department shall present a report to the appropriations committees of the fifty-eighth legislative assembly regarding the operation of the programs, including the impact of the programs on recidivism rates; the cost-effectiveness of the programs; the success of the programs; the ability to collect fees, if any, from the participating inmates; and a comparison of the costs and benefits of the "prerelease center" and the "DUI offender treatment center" to other forms of treatment or incarceration.

**SECTION 9. LEGISLATIVE INTENT - FUNDING FOR DRUG COURT PROGRAM.** It is the intent of the fifty-seventh legislative assembly that the department of corrections and rehabilitation seek federal funding to support the drug court program during the biennium beginning July 1, 2001, and ending June 30, 2003. If federal funds do not become available to the department to support the