

# **CORRECTIONS AGENCY REVIEW COMMITTEE**

## **Study Assignment**

An agency review of the Department of Corrections pursuant to HB 1196, including a study comparing the criminal penalties imposed by South Dakota in relation to the criminal penalties imposed by other states as well as a comprehensive study of whether and to what extent criminal penalties currently imposed in South Dakota may be internally inappropriate or inconsistent in comparison to each other.

## **Summary of Interim**

The committee began its work on the sunset component of its assignment by reviewing the model sunset study plan suggested by the Executive Board. The committee adopted and subsequently completed all relevant aspects of the sunset study plan in addition to several supplementary components suggested by the chair and approved by the committee. The committee also discussed and approved a course of action for the comparative sentencing portion of their study and assigned several research projects to staff for presentation at later meetings.

The bulk of the initial meeting was comprised of a detailed overview of the Department of Corrections (DOC). This was presented by Tim Reisch, Secretary, Department of Corrections, Laurie Feiler, Deputy Secretary, Michael Winder, Policy and Information Specialist, Doug Weber, Warden of the South Dakota State Penitentiary, Doug Herrmann, Director of Juvenile Services, Scott Bollinger, Director of Operations, and Kevin McLain, Coordinator of Research and Grants. The committee was interactive during the entire six-hour presentation and many questions were answered while others were deferred until additional information could be accessed. The committee regarded the agency's presentation as both comprehensive and informative.

The second meeting was held shortly after the initial meeting of Governor Rounds' Corrections Workgroup. Since the topics of discussion for the committee and the workgroup overlapped in several key areas, the committee monitored the activities of the workgroup throughout the summer. In addition, Senator Arlene Ham-Burr, Senator Garry Moore, and Representative Quinten Burg were privileged to serve on both groups and thus provide a considerable degree of continuity of effort.

During the first day of the second meeting, Secretary Reisch and key personnel of the Department of Corrections responded to areas of concern identified by the committee prior to the meeting. Especially informative was a report on inmate demographics presented by Laurie Feiler. The Department of Corrections personnel also responded to numerous ad hoc committee questions.

The committee was then hosted by Secretary Reisch at an on-site tour of the

Department of Corrections administrative offices and the adjoining Women's Prison. This presented the committee, not only with an opportunity to see the facilities, but to meet, interview, and question many Department of Corrections' officials and employees. The department extended an invitation to all committee members to view any Department of Corrections facility at any time. Many committee members, either individually or in small groups, subsequently accepted this invitation and visited a number of facilities, especially the men's prison in Sioux Falls.

Later the committee broke into subcommittees to facilitate expanding the number of topics that could be addressed in detail during the allotted time. The subcommittees, their chairs, and their assignments were:

- Aftercare and Program Evaluation - Representative Casey Murschel;
- Intercultural and Minority Concerns - Senator Arlene Ham-Burr;
- Juvenile Justice - Senator Gene Abdallah;
- Parole Issues - Representative Sean O'Brien.

Subsequently the subcommittees met again during the third meeting and submitted formal reports involving recommendations and findings to the full committee. These recommendations and findings were then debated and voted on in the full committee. The finalized subcommittee reports are as follows:

Aftercare and Program Evaluation reported that the subcommittee:

- Finds that it is necessary for inmates to be productive with their time. The subcommittee further finds that there is an unmet need in programming, as evidenced by 26 percent of inmates with pending work program assignments. The subcommittee recommends that DOC expand the number and variety of work and vocational programs.
- Finds that treatment for alcohol and chemical dependency is critical for inmates. The subcommittee recommends that treatment should be available throughout incarceration with emphasis on intensive treatment just preceding release. The treatment should be cognitively-based and address antisocial thinking.
- Recommends that the programs utilized by DOC be based on best practices or undergo a program evaluation to ascertain if the desired goals are being achieved.
- Recommends that creative, community-based services, such as mentoring and half-way houses, should be encouraged for aftercare programs.
- Recommends that alternative sentencing practices be used where appropriate, especially for technical violations of parole.

Intercultural and Minority Concerns reported that the subcommittee recommends the following:

DOC, in cooperation with participating tribes, would establish and coordinate a pre- and post-release program for Native American inmates. The program would prepare the inmates for release and reintegration into the community.

Creation of the program would include the following:

- Conduct an examination of the current system and current programs and conduct a formal needs assessment to determine the scope and characteristics of the proposed program.
- Establish relationships between the department and individual tribes to coordinate the creation and operation of the program and to include tribal funding for a portion of the program.
- Identify and work with contact persons from each participating tribe to design and implement the pre- and post-release program.

Juvenile Justice reported that the subcommittee recommends the following:

The Department of Corrections Agency Review Committee convey to the Governor, Department of Corrections, and the Department of Social Services its support in opening the Plankinton facility based on an agreement between the Governor and the appropriate contracting authority for the City of Plankinton, subject to licensing by the Department of Social Services and subject to the continuing jurisdiction of the Department of Corrections over all children in the facility.

Parole Issues reported that the subcommittee recommends the following:

- That the Legislature, through the appropriations process, should provide such expenditure authority as may be necessary to the Department of Corrections to fund, through grant monies, a pilot program of intensive alcohol counseling, training, and treatment, to begin at system intake, and featuring follow-up and post-incarceration analysis to determine the effectiveness of the intensive program with regard to both sobriety and recidivism.
- That the Legislature shall examine the feasibility of a pilot program to subsidize the wages of parolees who might otherwise not be able to secure employment in the private sector at the time of initial release from the prison system.
- That the Legislature, through the appropriations process, should provide such additional funding as may be necessary to reverse the trend of ever increasing caseloads for the state's parole officers.

The second day of the second meeting was initially devoted to a long and exhaustive public hearing which was attended by about forty individuals of whom about twenty-five testified at length. Most of the testimony was highly complimentary to the Department of Corrections and emphasized programs that are widely viewed as important and effective. Criticism tended to center around the following issues:

- (1) Minority, especially Native American, cultural concerns;
- (2) Minority, especially Native American, overrepresentation in the prisons' populations;
- (3) Adequacy of dispute resolution opportunities and perceived need for a corrections ombudsman;

- (4) Perceived need for additional programs to benefit prisoners during and immediately after incarceration;
- (5) Perceived need for more and better health care and psychiatric care;
- (6) Concerns about the food service.

Considerable public testimony also centered on the efforts of the Plankinton Task Force Board to contract with Cornell Corporation to reopen the Plankinton facility as a private juvenile corrections center. Here the focus was on the nature of the State of South Dakota's commitment and oversight as well as Cornell's qualifications and the manner in which the Plankinton group had selected Cornell.

At the final meeting the committee, in addition to reviewing and debating the reports of the subcommittees referred to above, took several hours of additional public testimony, especially on electronic monitoring and the public defender system. Department of Corrections personnel made their final presentation and were subjected to a final round of committee questioning.

Much of the final day was devoted to the presentation of research conducted by the staff at the committee's request. The first of these reports sets out the mandatory minimum sentences, enhancements, and mandatory incarceration provisions in the South Dakota criminal code. The enhancements are further broken down into subsequent offense enhancements, status of offender enhancements, and status of victim enhancements.

The other report attempts to compare the penalties that may be statutorily imposed for a number of common felonies in South Dakota, the six adjoining states, and six other states. The crimes compared are manslaughter (reckless), aggravated assault, rape (common law), rape (statutory), robbery (armed), burglary (common law), arson, grand theft (\$555), intentional damage (\$555), forgery (\$555), DWI (third), and DWI (fourth). The states surveyed are Alabama, Delaware, Indiana, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, Vermont, and Wyoming. Although the exact rankings are necessarily subjective, the study concluded that South Dakota is above average in the severity of its statutory penalties for most of the felonies studied. The Deep South is the most severe; the West Coast, the most lenient. North Dakota is less severe than South Dakota in a number of important areas.

In addition to its findings and recommendations described above, the committee will be sponsoring a seventy-three section clean-up bill of the type commonly generated by sunset studies as well as a bill to provide for the establishment by the Executive Board of a Criminal Code Revision Commission composed of legislators and lawyers to revise and restructure the state's criminal penalties. The Governor's Corrections Workgroup has also expressed interest in a Criminal Code Revision Commission. The committee voted down proposed legislation that would have attached the same penalties to the rape of a child as currently

apply to the crime of pedophilia.

### **Listing of Legislation Adopted**

- An Act to revise the style and form of certain provisions relating to the Department of Corrections and to correct certain errors and omissions.
- An Act to provide for a Criminal Code Revision Commission and to declare an emergency.

### **Summary of Meeting Dates and Listing of Committee Members**

On April 14, 2003, the Executive Board of the Legislative Research Council created the Department of Corrections Agency Review Committee. The following members of the South Dakota Legislature were appointed to the committee: Senator Lee Schoenbeck, Chair; Representative Lou Sebert, Vice-chair; Senators Gene Abdallah, Arlene Ham-Burr, Dick Kelly, Garry Moore, Bill Napoli, and John Reedy; and Representatives Quinten Burg, Richard Engels, Art Fryslie, Cooper Garnos, Tom Hennies, Casey Murschel, Sean O'Brien, Larry Rhoden, Tim Rounds, Donna Schafer, and Paul Valandra.

The committee met on June 13 in Pierre, August 13-14 in Pierre, and October 1-2 in Pierre.

Staff members were Reuben D. Bezpaletz, Chief of Research Analysis and Legal Services; Annie Mehlhaff, Principal Fiscal Analyst; Rhonda Purkapile, Senior Legislative Secretary; and Kris Schneider, Legislative Secretary.