



Third Meeting
2003 Interim
Wednesday and Thursday, October 1-2, 2003

LCR 1 & 2
State Capitol Building
Pierre, South Dakota

The third meeting of the interim Department of Corrections Agency Review Committee was called to order by Senator Lee Schoenbeck, Chair, at 8:00 a.m. on Wednesday, October 1, 2003, in Legislative Conference Rooms 1 and 2 of the State Capitol Building in Pierre, South Dakota.

A quorum was established with the following members present: Senators Gene Abdallah, Dick Kelly, Bill Napoli, John Reedy, and Lee Schoenbeck (Chair); and Representatives Quinten Burg, Richard Engels, Cooper Garnos, Tom Hennies, Casey Murschel, Sean O'Brien, Larry Rhoden, Tim Rounds, Donna Schafer, Lou Sebert (Vice-chair), and Paul Valandra. Excused were: Senators Arlene Ham and Garry Moore; and Representative Art Fryslie.

Staff members present included Reuben Bezpaletz, Chief Analyst for Research and Legal Services; and Annie Mertz, Principal Fiscal Analyst.

All material distributed at the meeting is attached to the original minutes on file in the Legislative Research Council. For the purpose of continuity, these minutes are not necessarily in chronological order.

Approval of Minutes

Representative Hennies moved, seconded by Senator Abdallah, to amend the minutes of August 13-14, 2003, meeting as proposed by Deb Phillips (Document #1). Motion to amend prevailed unanimously on a voice vote. Representative Rounds moved, seconded by Senator Abdallah, that the minutes of the August 13-14, 2003, meeting, as amended, be approved. Motion prevailed unanimously on a voice vote.

Report on the Governor's Corrections Workgroup

Representative Burg, member of the Parole/Community Corrections Subcommittee, reported that the main item to come from the workgroup thus far is that prisoners need a home and a job upon release. Another topic has been making Springfield State Prison more of a vocational education prison, possibly expanding the programs to include auto body, auto mechanics, and an apprenticeship-type program for home building projects.

Mr. Tim Reisch, Secretary, Department of Corrections (DOC), stated that the Governor's Corrections Workgroup held its second meeting on September 18-19, 2003. Secretary Reisch distributed copies of his presentation (**Document #2**). The issues before the Sentencing Subcommittee are: a) inpatient versus outpatient alcohol treatment; b) Bennett County community corrections; c) use of day reporting centers - have a place in the community that a parolee or probationer could come for counseling, chemical dependency services, or life skill services; d) waiting list for inpatient treatment beds; e) UJS intensive probation program; and f) criminal code review. The issues before the Incarceration Subcommittee are: a) prison industries; b) community service programs; c) discussion on the C.O.P.E.

program (Cons on Preventive Education) - inmates talk to youth about the poor choices they have made; d) positive inmate programs--Pedal Power, Governor's housing program, and the wheel chair program, which give inmates a feeling of accomplishment; e) therapeutic model - pilot program; f) sex offender treatment program; and g) providing education certificate - possibly apprentice credit. The issues before the Parole/Community Corrections Subcommittee are: a) employment opportunities; b) housing resources; c) treatment resources for those on parole; and d) reinstatement of good time to reduce prison time and the length of parole. Their next subcommittee meeting is scheduled for December 5, 2003.

Public Testimony

Mr. Hal Perry, Sioux Falls, Development Coordinator for Glory House, testified about the electronic monitoring program that they run and distributed a packet of information concerning Glory House (**Document #3**). He demonstrated three types of electronic monitoring units: 1) regular--individual must have a telephone and if the ankle bracelet goes more than 150 feet away from the unit, the unit sends a fax to Glory House; 2) cellular--functions exactly the same way as the hard wired telephone; however no phone line is required; and 3) sobrieter--connected to a telephone and is used to perform a random breathalyzer. Glory House calls the individual, the individual breathes into the unit and it detects alcohol levels. The equipment has voice recognition technology. Mr. Perry stated that Glory House's funding source is 70% federal, 20% residents, and 10% grants and/or private contributors. For the year 2002, 183 individuals were served of which 153 successfully completed their conditions, 30 had violations of which 8 individuals absconded. The cost for the electronic monitoring is \$10 per day; for the sobrieter alone it is \$6 per day; and for both the cost is \$15 per day.

Dr. Susan Randall, Sioux Falls, Executive Director of the South Dakota Coalition for Children, distributed a report entitled "Justice for Juvenile Offenders in South Dakota - 2002-2004 - A Progress Report" (**Document #4**). She testified that the report states that over a three-year period (1999-2001) the statewide average for juveniles adjudicated (a judge has determined a child committed an offense) was 3,784. Less than 25% (908) of those juveniles were placed into the custody of the DOC. She also presented information regarding the South Dakota Juvenile Justice Symposium that will be held October 8-10, 2003, in Huron (**Document #5**).

Mr. Dick Howard, Pierre, Executive Director of the South Dakota Association of County Commissioners, testified regarding HB 1120. He stated that this bill would have required DOC to reimburse counties for holding Class 5 and Class 6 felons. According to a survey conducted by the association, 82,000 prison days would have qualified for reimbursement at \$50 per day. He requested that if criminal codes are revised and they require more days be spent in the county jails then the funding for the counties needs to follow. Over the last five years, counties have seen legal costs rise by 47% and they have no control over it. Representative Hennies stated that the state should be responsible for paying the costs for felons, not the counties.

Mr. Jeff Larson, Sioux Falls, Public Defender, testified that the dollar amounts in the criminal code need to be reviewed. For example, a \$5 no funds check and keying an ex-boyfriend's car are both felony offenses; however, taking \$499 from a till is considered a misdemeanor. He also stated that the habitual offender laws should be reviewed because of inconsistencies between Class A and Class B felonies. Under no circumstances should a life sentence be mandated based on priors. He stated that funding needs to be increased for alcohol and drug treatment for low income people; usually good health insurance covers treatment for their policyholders. The current waiting list at the Human Services Center in Yankton is nine weeks--too long for a person to remain crime free. Mr. Larson

testified that there is a need for more intermediate care (half-way houses) because some inmates do not need full scale incarceration and there is a need for a place for inmates to go between incarceration and a life of freedom. He also feels that there needs to be more supervision for mental health patients. He feels work release is important for an offense such as DUI. Mr. Larson stated that he has been involved with electronic monitoring--it needs to be combined with a treatment requirement and works best in rural areas. He stated that when addressing problems in the criminal system we look at the aftermath and tend to spend money on the backside instead of the front. Usually individuals get a wake-up call when arrested, this is when we need to look at treatment because the sentencing process takes anywhere between two and six months. He feels that when people commit a crime, they are not thinking of the result and penalties are not a deterrent. People behave because of instant gratification and social acceptance.

Final Presentation by Department of Corrections

Ms. Laurie Feiler, Deputy Secretary, DOC, responded to questions raised at the second meeting. She presented additional demographics on adult inmates and their county of last address and county of conviction; inmates serving time for grand theft with a gambling issue; and length of sentence for Native American inmates (**Document #6**). In response to a question if South Dakota's common crimes are similar to other states, Ms. Feiler stated in a comparison between South Dakota, Minnesota, Montana, and Nebraska, three of the four states list DUI in the top five offenses and that drug possession or drug distribution are also in the top five.

Mr. Doug Weber, Warden, S.D. State Penitentiary, responded to the question on how inmates and their families can address complaints (**Document #7**). He stated that the available avenues for inmates to address complaints at the adult facilities are: 1) directly to their unit team during daily rounds; 2) through the formal administrative remedy process; 3) directly to the Warden during daily walk-throughs; 4) through legal mail, (five free mailings per week); 5) through written "kites" or request slips to the Warden or staff; 6) through contract attorney or paralegal on site; 7) directly through other staff and volunteers; 8) through the courts by initiating legal action; 9) by letters to officials; 10) through letters and visits from SD Advocacy Services; and 11) through the Board of Pardons and Paroles. He stated families can get their questions answered by: 1) writing or telephoning unit staff or other staff, Warden, Secretary of Corrections, Attorney General, Governor, Legislators, congressional offices, or members of the Board of Pardons and Paroles; 2) meet with respective Warden; 3) contact the courts, ACLU, or attorney; and 4) contact SD Advocacy Services.

In response to the question regarding inspections of DOC adult facilities, Warden Weber stated that the State Department of Health conducts annual health and sanitation inspections. The Office of Risk Management conducts safety inspections of work, industry, and vocational program areas. The State Fire Marshal conducts an annual fire safety inspection. The National Commission on Correctional Health Care conducts a health service inspection every three years as part of accreditation. The Institutional inspections are conducted weekly and monthly for fire prevention, sanitation, and safety. Warden Weber stated that the administrative remedy process is available to all inmates and there is no retaliation. The issues that should be addressed through this process are: 1) classification decisions; 2) disciplinary decisions; 3) decisions regarding restoration of lost good time; and 4) other complaints such as: a) application of policy, rule, directive or procedure; b) lack of policy, rule, directive, or procedure; c) unprofessional staff behavior toward offender; and d) oversight or error affecting an inmate. He stated that in FY 2003, there were 1,776 administrative remedy requests at the SD State Penitentiary; 459 at Durfee State Prison; and 127 at the SD Women's Prison. In response to Representative Valandra's inquiry as to what are the most complaints about, Warden

Weber stated that disciplinary and property issues represent the most and 10% or less are for medical. Representative Engels stated that he felt it was very important to keep the families involved.

Chair Schoenbeck thanked Secretary Reisch and his staff for their tireless efforts in aiding the committee.

The committee recessed at 12:00 p.m. for lunch and reconvened at 1:10 p.m.

Staff Report

Mr. Bezpaletz distributed copies of a letter dated September 29, 2003, from Sharon Kallemeyen, Pennington County Victims Assistance Program (**Document #8**) and ombudsman information dated October 1, 2003, from Deb Phillips (**Document #9**).

Sentencing Comparison Report - **Mr. Bezpaletz** distributed a copy of a study entitled "Comparison of Penalties" (**Document #10**). He then explained his methodology in conducting the study and detailed the states and particular crimes that are compared in the study. He cautioned the committee that in several cases the elements of the crimes are not perfectly coterminous. In summarizing the results of the study, it was determined that South Dakota's maximum sentences are consistently, but not excessively, high. States in the Deep South are the most stringent while the Far West and Southwest tend to be the most lenient. In the local area, North Dakota is significantly below South Dakota in a number of important cases.

Enhancement and Mandatory Minimum Report - **Mr. Bezpaletz** distributed a copy of a study entitled "South Dakota Criminal Code" (**Document #11**) and explained the categories and their implications. He suggested that enhancements that increase a Misdemeanor 1 offense to a Felony 6 should be reviewed. Regarding the status of offender enhancements, Mr. Bezpaletz stated the big four enhancements are: 1) SDCL 22-6-5.1 Prisoner is subject to double the maximum punishment for crimes committed while a prisoner; 2) SDCL 22-7-7 Prior felon is subject to enhancement for subsequent felony; 3) SDCL 22-7-8 Hard core three strikes--Fourth time violent felon is subject to life imprisonment; and 4) SDCL 22-7-8.1 Soft core three strikes--Fourth time nonviolent felon is subject to double enhancement.

Special Projects - **Mr. Bezpaletz** gave a presentation on "Why are Native Americans over represented in the penal system?" He distributed a copy of a report entitled "American Indians and Crime" (**Document #12**). The report states that a Native American has a very significantly increased chance of being intoxicated during a crime. Intoxication during aggravated assault, robbery, burglary, and traffic offenses plays a large part in explaining why Native Americans are over represented. Alcoholism is the curse of the reservations and causes or exacerbates problems for Native Americans on any number of intersecting planes. Moreover, Native Americans are far more likely to commit aggravated assault and property crimes and less likely than Whites or Blacks to commit homicide or hard drug crimes.

Draft Legislation - **Mr. Bezpaletz** presented two draft bills for the committee's consideration. The first, Draft No. 178J0045, is clean-up legislation (**Document #13**). He stated that the proposed changes are style and form and there is no substantive law change. The second, Draft No. 394J0073, would establish a Criminal Code Revisions Commission (**Document #14**).

The committee recessed at 3:35 p.m. for subcommittee meetings and reconvened at 8:00 a.m. on Thursday, October 2, 2003, with a quorum present.

Subcommittee Reports and Committee Action

Aftercare and Program Evaluation: **Representative Murschel**, chair of the subcommittee, 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.

REPRESENTATIVE MURSCHEL MOVED, SECONDED BY SENATOR NAPOLI, TO ACCEPT THE AFTERCARE AND PROGRAM EVALUATION SUBCOMMITTEE'S REPORT. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.

Intercultural and Minority Concerns: **Representative Rounds**, vice chair of the subcommittee, 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.

REPRESENTATIVE ROUNDS MOVED, SECONDED BY REPRESENTATIVE VALANDRA, TO ACCEPT THE INTERCULTURAL AND MINORITY CONCERNS SUBCOMMITTEE'S REPORT. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.

Juvenile Justice: **Senator Abdallah**, chair of the subcommittee, 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.

SENATOR ABDALLAH MOVED, SECONDED BY REPRESENTATIVE BURG, TO ACCEPT THE JUVENILE JUSTICE SUBCOMMITTEE'S REPORT. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.

Parole Issues: **Representative O'Brien**, chair of the subcommittee, 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, through the appropriations process and any necessary supporting legislation, should develop and fund 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 case loads for the state's parole officers.

REPRESENTATIVE O'BRIEN MOVED, SECONDED BY SENATOR KELLY, TO ACCEPT THE PAROLE ISSUES SUBCOMMITTEE'S REPORT.

REPRESENTATIVE ROUNDS MOVED, SECONDED BY REPRESENTATIVE ENGELS, TO STRIKE THE SECOND PARAGRAPH OF THE REPORT. MOTION TO AMEND FAILED ON A ROLL CALL VOTE, WITH 6 AYES, 10 NAYS, AND 3 EXCUSED. MEMBERS VOTING AYE: ABDALLAH, ENGELS, HENNIES, RHODEN, ROUNDS, AND SCHAFER. MEMBERS VOTING NAY: BURG, GARNOS, KELLY, MURSCHEL, NAPOLI, O'BRIEN, REEDY, VALANDRA, SEBERT, AND SCHOENBECK. EXCUSED WERE: FRYSLIE, HAM, AND MOORE.

REPRESENTATIVE HENNIES MOVED, SECONDED BY REPRESENTATIVE RHODEN, TO STRIKE "THAT THE LEGISLATURE, THROUGH THE APPROPRIATIONS PROCESS AND ANY NECESSARY SUPPORTING LEGISLATION, SHOULD DEVELOP AND FUND A PILOT PROGRAM" AND REPLACE WITH "THAT THE LEGISLATURE SHALL EXAMINE THE FEASIBILITY OF A PILOT PROGRAM...." MOTION PASSED ON A VOICE VOTE.

Overall Wrap-Up

Senator Abdallah commented that electronic monitoring is okay for some offenses, however not DUI, sex offenses, and domestic abuse. He stated that we must remember that we need to protect the 750,000 citizens of South Dakota.

Senator Napoli commented that we need to slow the growth in the DOC by investing in the department, in the aftercare programs, and in trying to keep the criminals from criminal behavior.

Senator Reedy commented that electronic monitoring would be a good direction to move. He also thought it would be good to review some of our penalties and ensure they are fair.

Senator Kelly commented that he was impressed with the DOC and their facilities. The common thread is alcohol and drug abuse and we need to address the problems of alcohol and drug early and often. He also thought the criminal code revision is sorely needed.

Representative Hennies commented that the DOC has been doing a good job of using best practices and not gut-reaction. He stated that it is important that we, as a state government, identify the kids early on and make changes to their social behavior early.

Representative Rounds stated that he feels that aftercare is very important – whether it is treatment or a job.

Representative O'Brien commented that we need to try harder to keep our children in South Dakota. If it is knowledge and medical needs that we are lacking, then let's focus on getting that knowledge here.

Representative Murschel commented that with the advance of technology, we have to measure the success of programs. The number of people who were sent to jail for the first time tripled since 1970. She stated it is time that we stop thinking of the inmates as a throwaway society. They are going to be our neighbors in a short time and we need to have tools to make them good neighbors.

Representative Engels stated that we are overdue for the criminal code revision as there are some inconsistencies. He also feels we need to expand electronic monitoring. It allows them to continue to work; it keeps their families together and off welfare. We also need to expand the number of beds at the Human Services Center for alcohol and drug treatment and it needs to be expanded for early treatment.

Representative Burg commend that we need to get good diversionary programs to keep people out of the system and programs to reduce recidivism.

Representative Schafer commented that school counselors need to play a more active role in alcohol and drug prevention. The message is getting lost in junior and senior high school. We need intensive monitoring for those juveniles who have delinquency tendencies. We need intensive mentoring programs when juveniles leave the corrections system. We need cooperation between educators, social services, and DOC. She feels there is little communication between the agencies and that information should pass freely.

Representative Garnos stated that there needs to be alternatives for aftercare and that threshold amounts for intentional damage and theft need to keep pace with inflation.

Representative Rhoden commented that if we want to lower the prison population, there are several things we can do including electronic monitoring – newer technology makes it more feasible and focusing on lowering the recidivism rate.

Representative Valandra commented that we need to send a mandate and funding to the counties to create effective treatment programs.

Representative Sebert stated it is important that we utilize the Plankinton facility. It is a nice facility; and if this was a business, we certainly would not leave it vacant. Employers can make a difference in the future of inmates and we should look at an incentive for employers to hire them.

Senator Schoenbeck commented that rehabilitation and punishment are not mutually exclusive. He stated that 51% of those we are putting away are going to be back in our neighborhoods in less than two years. He feels that we need to move forward on the criminal code revision. He commented that he was not aware of the problems that go along with methamphetamine addiction.

Committee Action on Draft Legislation

SENATOR NAPOLI MOVED, SECONDED BY REPRESENTATIVE RHODEN, THAT THE COMMITTEE ADOPT DRAFT NO. 178J0045 (CLEAN-UP BILL). MOTION PREVAILED UNANIMOUSLY ON A ROLL CALL VOTE, WITH 16 AYES AND 3 EXCUSED. MEMBERS VOTING AYE: ABDALLAH, BURG, ENGELS, GARNOS, HENNIES, KELLY, MURSCHEL, NAPOLI, O'BRIEN, REEDY, RHODEN, ROUNDS, SCHAFFER, SCHOENBECK, SEBERT, AND VALANDRA. EXCUSED WERE: FRYSLIE, HAM, AND MOORE.

REPRESENTATIVE ENGELS MOVED, SECONDED BY REPRESENTATIVE MURSCHEL, THAT THE COMMITTEE ADOPT DRAFT NO. 394J0073 (CRIMINAL CODE REVISIONS). MOTION PREVAILED UNANIMOUSLY ON A ROLL CALL VOTE, WITH 16 AYES AND 3 EXCUSED. MEMBERS VOTING AYE: ABDALLAH, BURG, ENGELS, GARNOS, HENNIES, KELLY, MURSCHEL, NAPOLI, O'BRIEN, REEDY, RHODEN, ROUNDS, SCHAFFER, SCHOENBECK, SEBERT, AND VALANDRA. EXCUSED WERE: FRYSLIE, HAM, AND MOORE.

Senator Abdallah asked the committee for their support of Draft No. 247J0080 (**DOCUMENT #15**) - An Act to increase the penalty for rape of a child.

SENATOR ABDALLAH MOVED, SECONDED BY REPRESENTATIVE ROUNDS, THAT THE COMMITTEE ADOPT DRAFT NO. 247J0080 (PEDOPHELIA). MOTION FAILED ON A ROLL CALL VOTE, WITH 3 AYES, 13 NAYS, AND 3 EXCUSED. MEMBERS VOTING AYE: ABDALLAH, KELLY, AND REEDY. VOTING NAY: BURG, ENGELS, GARNOS, HENNIES, MURSCHEL, NAPOLI, O'BRIEN, RHODEN, ROUNDS, SCHAFFER, SCHOENBECK, SEBERT, AND VALANDRA. EXCUSED WERE: FRYSLIE, HAM, AND MOORE.

Adjournment

There being no further business, Chair Schoenbeck adjourned the meeting at 11:50 a.m.



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