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To: Government Operations and Audit Committee (GOAC)
From: Tim Flannery, State Government Audit Manager
Date: April 11, 2013
Re: Outline of Senate Bill 70 – Criminal Justice

Following is an outline of key provisions of Senate Bill 70 which was the criminal justice bill from the 2013 Legislative session.

Section 1:

- Contains definitions used throughout the Act

Sections 2 - 7:

- **Chief Justice** establishes an advisory council to address the operational – coordination - resource – information management and evaluation needs of the **drugs courts** (Section 2):
 - A **drug court** is a court supervised alternative to incarceration and includes drug, DUI, and other specialty dockets aimed at increasing offender accountability and decreasing recidivism (Section 3)
 - The **Supreme Court** may establish a drug court program in any court that has jurisdiction over criminal cases. (Section 4)
 - The **Supreme Court** establishes the rules for the eligibility criteria for participation in **drug courts** (Section 5)
 - The Unified Judicial System (UJS) will semi-annually report performance measures on drug courts to the oversight council. (Section 7)

Section 8:

- If a **defendant** pleads guilty or no contest to a crime punishable as a felony or class 1 misdemeanor → the court will inquire whether the defendant has/is serving in the **military**, if so the court can:
 - Order a court services officer to consult with the **U.S. Dept. of Veterans Affairs** to provide the court with information regarding treatment options (including federal/state/local programs)
 - Consider treatment options of any diagnosing/treating mental health or substance abuse professionals

Sections 9 - 11:

- The **Supreme Court** is authorized to establish two **SD HOPE court pilot programs** (Section 9)→ establishes the following (Section 10) :
 - Involvement and commitment of criminal justice officials
 - Eligibility criteria focused on offenders at high risk to re-offend
 - Judicial involvement in setting and communicating to the probation program expectations and consequences for non-compliance
 - Frequent / effective / random drug and alcohol testing
 - Swift / certain / proportional sanctions for non-compliance w/ program conditions and warrant services for absconding
 - Compilation, evaluation, and publicly reported program results
- **UJS** will report performance measures for pilot programs semi-annually to the oversight council (Section 11).

Sections 12 - 13:

- **DOC** may work with the **Dept. of Tribal Relations** to develop tribal parole pilot programs to supervise parolees on tribal land (Section 12).
- **DOC** reports performance measures for these programs semi-annually to oversight council (Section 13)

Sections 14 - 15:

- The **Supreme Court** establishes rules governing **evidence-based felony** probation supervision practices (Section 14):
 - Validated risks and needs assessments
 - Targeting the probationer's criminal risk factors w/ suitable supervision / intervention focusing resources on moderate / high risk offenders
- **UJS** will monitor and report semi-annually to the oversight council the extent of practices of probation supervision and training requirements (Section 15)

Sections 16 - 17:

- The **Supreme Court** establishes rules to develop a **graduated sanctions** procedure and grid to guide court services officers in determining the appropriate response to a violation of conditions of probation (Section 16):
 - A **graduated sanctions system** is a set of integrated intervention strategies designed to operate in unison to enhance accountability, ensure public safety, and reduce recidivism by preventing future delinquent behavior
 - Rules vest statewide oversight of graduated sanctions – procedure – use – data collections with the **State Court Administrator's Office**
- **State Court Administrator's Office** reports semi-annually to the oversight council the number and percentage of probationers who received a **graduated sanction** (Section 17).

Sections 18 - 21:

- Any person who exercises supervision over a probationer or provides intervention services to any probationer must receive sufficient **training on evidence-based practices** and how to target criminal risk factors and reduce recidivism (Section 18).
- If a probationer is sentenced to a term of imprisonment, the **UJS** shall transfer the case history to the **DOC** (Section 19).
- The **Chief Justice** of the Supreme Court shall annually summon all the members of the **Judicial Conference** to attend a conference. This section amends existing law and requires each magistrate and circuit judge to complete training on evidence-based practices (Section 20).

Sections 22 - 26:

- The **Supreme Court** establishes rules for the criteria and procedures for earning and awarding **earned credits for discharge** from probation (Section 22).
- The State Court Administrator's Office oversees these awards (Section 23) and will submit a report semi-annually to the oversight council including the number and percent of probationers who qualify for **earned discharge credits** and the average amount of credits earned by offenders within a year (Section 25).

Sections 27 - 29:

- **Parolee supervision** will use **evidence-based practices** and shall target the parolee's criminal risk and need factors (Section 27).
- Any employee who supervises parolees or provides intervention services shall receive **annual training** on evidence-based practices and criminal risk factors (Section 28).
- **DOC** shall report semi-annually to the oversight council the extent to which practices of parole supervision and training requirements of the Act are implemented with fidelity (Section 29).

Sections 30 - 39:

- Amends existing law and requires the **DOC** to include a risk and needs assessment in the defendant's case history file and violation decisions in the inmate's prior prison, probation and parole custodies (Section 30).
- The **Board of Pardons & Paroles** will generate a case history of each inmate of the State Penitentiary and use this information to prepare for Parole Hearings (Section 31)
- Members of the **Board of Pardon's and Paroles** serve 4 years (Section 34):
 - **The Governor – Attorney General – Supreme Court** each appoint 3 members
 - In case of a vacancy the appointing power will make an interim appoint to expire at the end of the next legislative session
 - Amends existing law and requires members of the Board to complete annual training

Sections 40 - 53:

- Each inmate discharging, who owes court-ordered financial obligations on the sentences discharging will be transferred by **DOC / UJS** to the **Administrative Financial Accountability System** which is administered by **UJS** who will also monitor and track payments and sanctions (Section 45)

- The **Supreme Court** will promulgate rules for collection of outstanding court ordered financial obligations (Section 46)
 - Any financial obligation from an order more than 25 years old is deemed uncollectable (Section 47)
 - An order is uncollectable following the death of an offender (Section 47)
- **UJS** will report semi-annually the implementation and outcomes to the oversight council (Section 50)

Sections 54 – 58:

- No person may knowingly ingest a controlled drug or substance or have a controlled drug or substance in an altered state in the body unless the substance was obtained by a valid prescription. A violation of this section for a substance in schedules I and II is a class 5 felony, a substance in schedules III or IV is a class 6 felony (Section 54).
- Amends existing law to provide that a person in possession of three or more of the following is a class 3 felony (Section 55):
 - \$300 or more in cash;
 - A firearm or other weapon;
 - Bulk materials used for the packaging of controlled substances;
 - Materials used to manufacture a controlled substance including recipes, precursor chemicals, laboratory equipment, lighting, ventilating or power generating equipment; or
 - Drug transaction records or customer lists.
- Amended existing law from a class 4 felony to a class 5 felony for a charge for unauthorized possession of controlled substance from schedules I and II. Added new language for a class 6 felony for unauthorized possession of controlled substance from schedules III and IV (Section 58).

Sections 59 - 66:

- Any person who knowingly conceals a felony or does not immediately disclose the felony, including the name of the perpetrator, to the proper authorities is guilty of misprision of a felony- Class 1 Misdemeanor. The amended portion of section 59 **added**: There is no misprision of misdemeanors, petty offenses, or **violations of section 54 of this act** (Section 59).
- Amends existing law relating to grand theft. Grand theft is a class 6 felony, if the property stolen (Section 60):
 - Exceeds \$1,000 in value but is less than or equal to \$2,500;
 - Is a firearm with a value of less than or equal to \$2,500;
 - Is taken from the person of another with a value of less than or equal to \$2,500; or
 - The property stolen is cattle, horses, mules, buffalo, or captive nondomestic elk with a value of less than or equal to \$2,500.
- Changed grand theft from a class 4 to a class 5 felony if the value of the property is more than \$2,500 but less than or equal to \$5,000; a class 4 felony if the value of the property is more than \$5,000 but less than or equal to \$100,000; and a class 3 felony if the value of the property is more than \$100,000 but less than or equal to \$500,000.
- Changed existing law for aggravated grand theft from a class 3 felony to a class 2 felony if the value of the property stolen exceeds \$500,000 (Section 61).
- Changed existing law for a third degree burglary from a class 4 felony to a class 5 felony (Section 62).

Sections 67 - 69:

- Establishes an oversight council responsible for monitoring / reporting performance and outcome measures related to **imprisonment for a specific period as condition of probation or suspension of sentences**:
 - UJS will provide staff support for council:
 - Oversight council → 13 members
 - **Governor** appoints 4 members → **Chief Justice** appoints 4 members → **Majority Leader of Senate** appoints 2 members (one from each party) → **Majority Leader of the House of Representatives** appoints 2 members (one from each party) → **Attorney General** appoints 1 member (Section 68)
 - Meets within 90 days of appointment and semi-annually afterwards (Section 69)
 - Council terminates after 5 years (Section 69)
 - **Oversight council** will submit an **annual summary report** of the performance and outcome measures of the Act to the **Legislature**, Governor, and Chief Justice (Section 69).

Section 70:

- All treatment / intervention programs for parolees and probationers are intended to reduce recidivism:
 - Payment may be made only for services recommended through an assessment conducted by a provider accredited by **DSS**
 - **DSS** collects data related to the participation/completion / treatment outcomes for services paid by **DSS**
 - **DSS / UJS** reports data on recidivism outcomes
 - **UJS** reports information semi-annually to oversight council

Sections 71 - 75:

- A **fiscal impact statement** shall be attached to any bill / amendment / measures proposed by ballot initiative that may impact the state prison or county jail population (Section 71). A fiscal impact statement should include (Section 72):
 - Analysis of specific components of bill / ballot initiative that will impact the prison and jail population
 - Projected costs of the impact of the bill on the state prison system and aggregated costs to county jails on an annual basis and costs over a 10 year period
 - Operational and capital costs
- **BFM** will analyze financial and administrative aspects of proposed legislation (Section 73)
- Amends existing law and requires a **fiscal impact statement**, prepared pursuant to section 72, to be included with the Attorney General's statement for each amendment to the Constitution proposed by the Legislature and any referred measure (Section 74).
- Following the receipt of the written comments of the director of the **Legislative Research Council**, the sponsors shall submit a copy of the initiative or initiated amendment to the Constitution in final form, to the **Attorney General** (Section 75).

Section 76:

- The **Attorney General** shall oversee the establishment of a **statewide automated victim information and notification system (SAVIN)**.
- The Attorney General shall establish guidelines by rules promulgated, to ensure any victim is properly notified of the **SAVIN** system and advised as to how the victim may gain access.

Section 77:

- The **DOC** shall promulgate rules to administer a **reinvestment program** for the purposes of improving public safety and reducing recidivism. The program provides options for judges other than incarceration. The reinvestment program is part of the **local and endowment fund (LEF)** (LEF was established in SDCL 4-8-13). The LEF is in DOC's other fund company 3023. The General Appropriations Bill called for a **\$1 million transfer from the General Fund to the LEF**. DOC will make payments, from the LEF, to counties for additional probationer costs above a baseline (established from 2009-2013 probationer data).