

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

CORRECTIONS COMMITTEE

Wednesday, May 1, 2002
Harvest Room, State Capitol
Bismarck, North Dakota

Representative Duane DeKrey, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives Duane DeKrey, Ron Carlisle, Gil Herbel, Joe Kroeber, Ken Svedjan, Laurel Thoreson, John M. Warner, Amy Warnke; Senators Dick Dever, Stanley W. Lyson, Carolyn Nelson, Dave Nething, Darlene Watne

Members absent: Representatives Howard Grumbo, George Keiser, John Mahoney; Senator Jerome Kelsh

Others present: See attached appendix

It was moved by Senator Dever, seconded by Senator Watne, and carried on a voice vote that the minutes of the December 18-19, 2001, meeting be approved as distributed.

DEPARTMENT OF CORRECTIONS AND REHABILITATION STUDY

Chairman DeKrey called on Mr. Michael Fair, President, Security Response Technologies, Inc. (SRT), Middleton, Massachusetts, for a presentation of the preliminary findings of the study of the facilities and operations of the Department of Corrections and Rehabilitation. Mr. Fair said Mr. Karl Becker, Mr. Ken McGinnis, and Ms. Wendy Naro would be presenting information regarding the preliminary findings.

Mr. Becker said the study team has finished collecting data. He said the members of the study team have made six trips to North Dakota and have spent about 700 hours on the project. He said the team has interviewed more than 50 staff members and has analyzed more than 100 documents. He said the final report, which will be completed by June 15, will include an executive summary and recommendations, a population projection, and physical plant assessment.

Ms. Naro provided information regarding the prison population projections. She said she had reviewed 751 sentencing reports. She said the state is experiencing a downward trend in violent crimes which matches the nationwide trend. In 2000 and 2001, she said, fewer inmates were granted parole by the Parole Board than she would have expected. She said she found the state to have a more conservative approach to parole than was expected. She said the state has had an 8.2 percent increase in prison population during 2001. She said the growth rate is three

times the national average. She said most of the inmates are in the 26 to 35 age group with the average age of 32 years for male inmates and 30 years for female inmates. She said one notable aspect of North Dakota's prison population is its level of education. She said 70 percent of the males and 65 percent of the females have a high school diploma or general equivalency degree (GED). She said it is likely the best high school and GED completion rate in the country and it is higher than some states' overall education level. She said most of the inmates are either single or divorced. She said 40 percent of the males and 50 percent of the females had a history of regular drug and alcohol use at the time of incarceration. She said 45 percent of the males and 46 percent of the females have mental health issues.

Ms. Naro said the males tend to commit the more serious offenses; however, the state's number of inmates serving time for violent and sex offenses is lower than the national average. She said methamphetamine-related offenses account for 65 percent of all males' drug offense sentences. She said the majority of females are serving time for drug, theft, or forgery offenses. She said 65 to 70 percent of all females are serving time for drug offenses. She said with the exception of drug offenses, the average sentences for females are shorter than for males.

Ms. Naro said the average parole rate for North Dakota inmates is 27 percent. She said the state's parole rate is about 20 percent lower than the national average. She said inmates are serving an average of 70 percent of their sentence. She said this is one of the highest sentence-serving rates in the country. She said most inmates are being released as a result of the expiration of their sentences and not by other early release mechanisms.

Ms. Naro said of the male inmate population, most of the beds are occupied by sex and drug offenders, offenders serving mandatory sentences, and by offenders serving time under the state's 85 percent truth-in-sentencing law. She said most of the female inmate population is serving time for theft crimes and under mandatory sentences for drug offenses. She said the state has about a 30 percent recidivism rate; however, many of the offenses are technical violations rather than new offenses.

In response to a question from Representative Herbel, Ms. Naro said the growth of the prison population is being driven by the long serving times. She said the relatively low number of early releases puts North Dakota above the national average for prison growth.

In response to a question from Representative Svedjan, Ms. Naro said parole is a discretionary decision on the part of the Parole Board. Mr. McGinnis said because North Dakota has a large percentage of nonviolent offenders, he expected to see more inmates being paroled.

In response to a question from Senator Nething, Mr. McGinnis said the number of parole violators in North Dakota is about 5 percent lower than the national average. He said parole violators are serving an additional 18 to 22 months. He said the average parole period in North Dakota is about 113 days.

In response to a question from Representative Thoreson, Mr. McGinnis said there is little correlation between the length of time a person serves and recidivism.

Mr. Becker provided information on the capacity management options. He said the study team has looked at alternatives to capacity expansion by reviewing the state's parole practices and the validity of classification instruments. He said the facility assessment conducted by the team is looking at the current condition of the facilities, building issues, required repairs, and projected useful life. He said the state's juvenile facility is in good condition. He said the Missouri River Correctional Center meets current needs, but the kitchen area needs work. He said there is potential for future development at the James River Correctional Center and there is a need for greater sharing of facilities and resources with the State Hospital. He said all of the facilities are very clean and well-maintained. He said there is a need for a gatehouse at the Penitentiary. He said the Penitentiary also has safety and infirmary issues that need to be addressed. He said the study team has looked at the security, efficiency, and cost-effectiveness of all the facilities.

Regarding staffing, Mr. Becker said they are looking at roster management, recruitment and retention practices, and security issues. He said the staff of the Department of Corrections and Rehabilitation is relatively small in comparison to the amount of work done. He said the team is also looking at the department's policies and procedures by reviewing security and operations practices, policies, and internal audit and compliance reviews. He said one of the strengths of the organizational structure is its flexibility. He said the department's information systems are efficient.

Mr. McGinnis said the department's areas of strength include the integration of rehabilitation emphasis into all aspects of the operation, the case management process, the treatment components,

and the cognitive restructuring. He said although a large percentage of inmates have a high school diploma or equivalent or are able to earn their high school equivalency while incarcerated, the department is weak in vocations programs. He said Roughrider Industries provides a good work environment, but it does not really provide vocational training.

Mr. McGinnis said the areas of concern include the female offender programs, vocational training programs, the classification and risk instruments, the tracking and analysis of the effectiveness of individual programs, the mental health services, and the duplication and overlap of reports and applications for various programs. He said the service delivery issues include the availability of services, transporting of inmates, management oversight, workforce availability, the opportunity for consolidation, and the opportunity for privatization. He said a major concern is the female inmate population. He said the concerns include adequate bed capacity, access to appropriate programs, the classification process, the environment, and access to visitation and recreation areas.

In response to a question from Representative Thoreson, Mr. McGinnis said the concern is that females should have the same access and opportunities to vocational, educational, and treatment programs as male offenders have. He said that access is limited because of the location and physical facilities. He said the lack of access could become a litigation issue.

In response to a question from Senator Watne, Mr. Fair said providing educational and vocational training to inmates is important for public safety reasons. He said these programs provide vocational training that will help them get jobs when they are released. He said the training gives them the opportunity to get real jobs and to earn real money rather than returning to a life of crime. He said the training gives them alternatives to reoffending. He said vocational training is not required by federal law, but it is a good idea and it pays for itself.

In response to a question from Representative Svedjan, Mr. Fair said there are a number of ways the state can provide better programming for the female population. He said some states contract for these programs through community colleges and others provide the programs in-house.

In response to a question from Representative Carlisle, Mr. Fair said good educational programs result in less security and disciplinary problems in correctional facilities. Representative Carlisle distributed a copy of a memorandum entitled *Correctional Officer Salaries - North Dakota and Surrounding States*.

In response to a question from Senator Nething, Mr. Fair said there is a definite correlation between educational programs and recidivism. He said it is cost-effective to educate on the front end.

In response to a question from Senator Watne, Mr. Fair said the Missouri River Correctional Center

has a fully equipped welding facility; however, only one half-time instructor is available. He said there should be full-time programs available in a number of vocational fields, including automotive, welding, and carpentry.

In response to a question from Representative Thoreson, Mr. Fair said idleness is the worst part of doing time. He said inmates want to be kept busy. He said the inmate population is a willing group of students. Mr. Becker said because of North Dakota's low unemployment rate, an inmate who had received vocational training while incarcerated would not have much difficulty finding a job after release.

In response to a question from Representative Herbel, Mr. Becker said the privatizing of prison facilities is an alternative the state can consider.

In response to a question from Representative Carlisle, Mr. Becker said using the Missouri River Correctional Center for a women's facility will be one of the options provided in the final report.

Mr. Becker said the study team will continue to work on refining the analysis, comparing the alternatives, and reviewing the data. He said the final report will be completed by June 15, 2002.

Chairman DeKrey said the committee will receive the final report at its meeting on June 27, 2002.

In response to a question from Senator Nething, Mr. Fair said he would talk with representatives of the judiciary and law enforcement regarding corrections concerns.

In response to a question from Representative Herbel, Mr. Fair said it is a myth that the privatization of prisons is less expensive. He said public and private prisons cost money, but the privately run prisons are in business to make money. He said the trend in California has been to close private facilities. He said Puerto Rico is also closing some of its private facilities. He said the privatization of facilities will be addressed in the final report as an alternative, but they probably will not be advocating it.

Mr. Becker said privately owned facilities create a demand to keep the beds filled. He said the pressure may be to keep the beds filled when inmates may be better served in alternative programs. He said the state would have to guarantee certain capacities.

In response to a question from Representative Svedjan, Ms. Naro said she would do some additional analysis based upon the change made to the law during the last session regarding the removal of the mandatory sentence for first-time drug offenders. Mr. McGinnis said North Dakota is doing or on the verge of using some of the alternatives to sentencing that other states are using, including drug courts and electronic surveillance. He said the use of drug courts significantly impacts jail population and will have a long-term impact on the prison population. He said the department is staying current in national trends by attending national meetings. He said North Dakota is doing what the other states are doing.

In response to a question from Representative Svedjan, Mr. Fair said unless the state would turn the Penitentiary over to a private company, new beds would have to be built. He said usually the minimum number of beds the private companies want to operate in a state is 1,000. He said if the state is willing to pay, the system could be privatized. He said a privately run facility would result in cuts in personnel. He said because the state does not have a large labor pool, finding personnel could be difficult. He said the current staffing is already low and the employees are paid a fairly low salary. He said the private companies tend to want the "good" inmates and the state would still have to deal with the problem inmates. He said 20 percent of the inmates create 80 percent of the problems. He said in a state the size of North Dakota, a privatized prison would cost the state more money.

In response to a question from Representative Kroeber, Ms. Elaine Little, Director, Department of Corrections and Rehabilitation, said an analysis of the 2001 bill that removed the mandatory sentence for first-time drug offenders indicated the change would not have a significant impact on the prison population. She said research indicated that most first-time offenders either plead down their sentence or judges were not sentencing first-time offenders. She said most of the drug offenders in the system are not first-time offenders.

In response to a question from Representative Carlisle, Ms. Little said the court goes on record as to the sentence a person in adult drug court would have received. She said there are 18 to 20 offenders participating in the adult drug court and of those, nine would have received prison time.

In response to a question from Senator Dever, Ms. Little said a south Bismarck location has been found for the transition center. She said the center is expected to open July 15.

In response to a question from Representative Kroeber, Ms. Little said the cost of housing a prisoner in North Dakota is \$52.67 per day. She said the daily cost is lower in South Dakota because that state offers fewer programs. She said the daily cost in Minnesota is over \$70.

In response to a question from Representative Carlisle, Mr. McGinnis said there is risk involved in making parole decisions. He said North Dakota's recidivism rate is about the same as the national rate, which indicated that North Dakota's conservative approach to granting parole does not necessarily result in lower recidivism. He said lower risk offenders may be able to be released sooner. Ms. Little said the state's Parole Board is considering a new parole process that would give the Parole Board an opportunity to grant longer paroles.

In response to a question from Senator Dever, Mr. Fair said because of discretion at all levels of the process, mandatory sentencing is not as effective as

people think it is. He said a Massachusetts mandatory sentence law regarding firearms resulted in just a handful of prison sentences in a ten-year period.

In response to a question from Senator Lyson, Mr. Fair said SRT's final report to the committee would include a long-term forecast on the cost of facilities.

Chairman DeKrey called on Senator Tom Trenbeath, Cavalier, regarding locating a privately owned correctional facility in Pembina County. Senator Trenbeath said the people of Pembina County, through the Pembina County Job Development Authority, have been working on the concept of a privately owned correctional facility since 1992. He said it is time to seriously consider privately owned and operated facilities. He said Pembina County has studied the option, has made the contact, and stands ready to assist in siting such a facility in northeast North Dakota. Senator Trenbeath submitted written testimony, a copy of which is on file in the Legislative Council office.

In response to a question from Representative Kroeber, Senator Trenbeath said the privately owned companies are willing to contract for facilities with fewer than 1,000 beds.

In response to a question from Representative Herbel, Senator Trenbeath said the population of Pembina County is well-educated and there is a significant amount of industry in the area. He said there is a possibility that Motor Coach Industries, which employs around 650 persons, may be closing.

Senator Nething said wages is one of the reasons that Motor Coach Industries may be closing. He said prison guards would likely make less money than the people currently employed by Motor Coach Industries.

In response to a question from Senator Nething, Senator Trenbeath said the companies who have expressed an interest in operating a privately owned facility in the state indicated the state would have to guarantee 400 inmates.

Senator Nething said he is concerned that a privately owned facility in Pembina County would mean a loss of jobs in Stutsman and Burleigh Counties.

Mr. McGinnis said he as well as Mr. Fair and Mr. Becker have experience in privatization. He said they will be providing information on whether privatization would be cost-effective for North Dakota.

Chairman DeKrey called on Mr. C. M. Halcrow, County Commissioner, Pembina County, for comments regarding a privately owned facility. Mr. Halcrow said the methamphetamine problem in the state is exploding and must be addressed. He said the committee should consider hearing from representatives of the Wackenhutt Corporation, a company that operates privately owned prison facilities.

Drug Offenses Study

Chairman DeKrey called on Attorney General Wayne Stenehjem for comments regarding the North Dakota Commission on Drug and Alcohol Abuse. Attorney General Stenehjem said so far in 2002, 69 methamphetamine labs have been busted compared to 21 labs at the same time in 2001. He said at this rate the number will exceed 200 by the end of the year. He said these numbers mean two things--that law enforcement efforts have improved and that there is an increase in methamphetamine use. He said the commission is made up of several legislators and persons who work in the areas of treatment, prevention, education, and law enforcement. He said the commission is focusing on prevention, treatment, and enforcement. He said there needs to be coordination of prevention and treatment programs and that broad community awareness and involvement is needed. He said there is also a need to eliminate existing barriers in education and treatment. He said treatment and education providers need to help eliminate "turf" issues.

Attorney General Stenehjem said the commission has had two meetings with a third scheduled in May. He said the commission will be hearing from representatives from Kansas and Wyoming regarding those states' problems, programs, and success stories. He said the commission has heard from local communities regarding the programs that are being implemented. He said the commission is working on updating the state's five-year substance abuse plan. He said the continued funding of substance abuse prevention programs is an issue. He said there is a concern that the federal Burn Grant may no longer be available and that alternative funding sources may be needed. He said the commission has also reviewed the state's mental commitment statutes regarding substance abuse and has concluded that the statutes do not need major change, but rather more education is needed in implementing the statutes that are in place. He said education is the key and an overhaul of the statutes is not needed.

In response to a question from Representative DeKrey, Attorney General Stenehjem said to help combat the methamphetamine problem, a broad and full public awareness of the problem is needed. He said a large amount of the ephedrine used to make methamphetamines comes from Canada. He said several chambers of commerce in the state are offering programs to educate businesses and community leaders on the methamphetamine problem and what can be done to combat it.

In response to a question from Representative Herbel, Attorney General Stenehjem said other states, especially those in the Midwest, are experiencing the same problems with methamphetamine manufacture and use.

In response to a question from Senator Nething, Attorney General Stenehjem said it is important that

the education process be extended into the school systems as well; however, the programs must be workable and they must be introduced at an early level. He said programs must also educate parents. He said there is not a certain age of children to target, but the younger the better. He said his office is seeing drug and alcohol problems in the grade and middle school levels as well as the high school level.

In response to a question from Representative Thoreson, Attorney General Stenehjem said the typical methamphetamine lab in North Dakota is small and the persons operating them are educated and uneducated, young and old. He said his office would be available to set up a sample "meth lab" for the committee at a future meeting.

In response to a question from Representative Kroeber, Attorney General Stenehjem said schools need to play a role, but parents, churches, law enforcement, and the community also need to be involved in dealing with the drug problem.

In response to a question from Representative Warner, Attorney General Stenehjem said some of the trigger signs of a possible methamphetamine lab include an unusual smell, persons coming and going at odd hours, and people using a building believed to be unoccupied. He said the state Bureau of Criminal Investigation only has 30 agents statewide so it must rely on the public for tips. He said many busts are made as the result of traffic stops. He said Williams County has a training program to educate retailers and clerks on how to watch for suspicious behavior, such as large purchases of items used in the production of methamphetamines.

In response to a question from Senator Dever, Attorney General Stenehjem said most of the methamphetamine used in the state is manufactured out of state. He said the small labs that have been busted in the state are just the tip of the iceberg. He said schools in Grand Forks have made drug test kits available to parents and have taught the parents how to use them. He said this program emphasizes that parents are primarily responsible for their children.

Committee Discussion

Chairman DeKrey said the committee would invite representatives of the Wackenhutt Corporation to its next meeting in June to discuss the privatized prison facilities. He said the committee would also invite a representative of the private facility in Appleton, Minnesota, to discuss issues such as the source of the facility's population, the level of prisoners, the programs available, employee issues and pay, the effect of the facility on the community, and the commitment of the state to the building of the facility.

Chairman DeKrey said the committee should receive, if available, a copy of the executive summary of the consultant's final report in advance of the next meeting.

Chairman DeKrey adjourned the meeting at 1:50 p.m.

Vonette J. Richter
Committee Counsel

ATTACH:1