



## DEPARTMENT OF CORRECTIONS

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Dear Governor, Chief Justice and 2013 Legislators:

The South Dakota Corrections Commission met three times during calendar year 2012. The first meeting was held March 19 at the Capitol in Pierre. The second meeting took place May 22 at the Black Hills Correctional Transition Center in Rapid City and included a tour of facility. The final commission meeting was August 27 at the Mike Durfee State Prison in Springfield and included a tour of the facility and prison grounds.

The focus of the Corrections Commission is to assist the Department of Corrections (DOC) in examining various criminal justice issues, trends, developing initiatives and monitoring projects and programs occurring within the Department of Corrections.

### **2012 DOC Related Legislative Bills:**

Five DOC related bills were signed by the Governor during the 2012 Legislative Session. Members of the Corrections Commission received an explanation and description of the DOC related legislation during the March meeting.

HB 1021, An Act to revise certain provisions regarding the rights of victims of crime. The Act allowed victims the right to provide written input at clemency hearings with the Board of Pardons and Paroles as well as written input on clemency being considered by the Governor. Previously, under SDCL 23A-28C-1(10), the right to provide written input only extended to the discretionary parole hearings with the board but not to clemency hearings and only to consideration of sentence commutations by the Governor but not to pardons and remissions of fines or forfeitures. The Act also repealed duplicative language from the parole system chapter which is also found in the Crime Victims' Rights Act (SDCL 23A-28C).

HB 1022, An Act to revise certain parole hearing provisions regarding inmate compliance, waivers, and teleconferencing. The Act provides that inmates with undetermined compliance with their Individual Program Directives (IPDs) will be reviewed by the Parole Board, which will determine their parole release. The Act also allows for the use of teleconferencing for all types of parole hearings and allows inmates the chance to waive attendance at non-compliance and parole revocation hearings. Parole systems are different in every state, so when a SD DOC inmate is serving parole in another state, the SD Parole Board can now hold hearings by teleconference for noncompliance as well as violation hearings and discretionary paroles. The Act clarifies

that an inmate is entitled to a hearing versus a personal appearance and allows for the parole of an inmate to another jurisdiction for the purpose of confinement or deportation, even if the inmate does not want to be paroled from his South Dakota sentence. There are situations where it is in the best interests of the state to parole inmates to federal or other-state obligations.

HB 1023, An Act to repeal and revise certain provisions relating to the Department of Corrections. The Act repealed various statutory provisions related to the DOC including laws that have been on the books since the transition from the Board of Charities and Corrections. The Act also removed provisions related to DOC building projects, laws related to past-due account collection from Pheasantland Industries and the chapter on Adult Community Corrections. The Act was a result of DOC's review of statutes as part of Governor Daugaard's red tape review.

HB 1024, An Act to repeal the authorization to sell certain surplus real estate under the control of the Department of Corrections in Aurora County and Minnehaha County. The Act removed land near the State Penitentiary and a portion of the property near the State Training School from a list of state-owned properties that the 2011 Legislature authorized the Governor to sell. The two parcels removed from the list included one in Aurora County which contains a dump site and a former sewage lagoon near the State Training School campus. There was an agreement with the City of Plankinton that the sewage lagoon would be kept available in the event it was needed by the city. The parcel in Minnehaha County is across the viaduct from SDSP. Because the penitentiary campus is landlocked, there is no opportunity to address any further correctional needs without retaining that parcel. The Act also included land near the West Farm campus in Minnehaha County and other land around the State Training School and land around STAR Academy in Custer.

HB 1025, An Act to make aggravated incest a violent crime for purposes of setting an initial parole date. In 2005 and 2006 when the criminal code was revised, incest was removed from Chapter 22 dealing with sex offenses and put into a new chapter offenses against the family. As a result, new incest statutes were drafted, including the new offense of Aggravated Incest. That was expanded in 2008. Aggravated Incest was not included as a violent offense. Aggravated Incest is a Class 3 felony. A non-violent offense perpetrator right now would have to serve 30-50% of his sentence prior to initial parole. A violent offense perpetrator will have to serve 50-70% prior to parole.

## **Department of Corrections Topics Reviewed by the Commission:**

### **Black Hills Correctional Transition Center, Rapid City:**

The Commission received regular updates on the work completed during 2012 on the Correctional Transition Center, located at 2725 Creek Drive in Rapid City. The project totals over 55,000 square feet of renovated and new construction space. The minimum security facility is capable of housing up to 420 minimum custody inmates and provides office space for eight parole staff who were previously occupying leased space in Rapid City. Construction was started in the fall 2010 and was completed in

the spring of 2012. The first 110 inmates were moved into the facility on May 31. Currently there are over 200 minimum custody inmates housed at the facility with many having ties to the Black Hills region. The \$5 million facility includes a geo-thermal well field funded through the American Recovery and Reinvestment Act and is Leadership in Energy and Environmental Design (LEED) certified. Inmates contributed more than 43,000 hours to the project by performing various construction type activities. The Commission, along with Governor Daugaard and other dignitaries attended the dedication ceremony held in May at the facility. Tours were provided to the Commission as well as the general public and the media.

#### **Violence Risk Assessment Program:**

Deputy Secretary Laurie Feiler briefed the Commission on DOC's plan to utilize fiscal year 2013 budget monies to fund a risk reduction manager and operate a violence risk reduction program. DOC was successful in developing a system during the past year to identify inmates through various assessment and testing scores whose tendencies, behaviors, actions and past history placed them at a high risk for committing violent acts while in the institution and/or upon transition back into the community. DOC uses a system of assessments which are based upon the inmate's past record. Inmates identified as high risk for violence may be referred to a psychologist for a review. High risk inmates may also receive programming designed to assist them with their violent tendencies. The DOC supervises high risk inmates differently in terms of their work assignments and level of supervision provided to the inmate while in the institution or community. In certain circumstances, DOC has statutory authority to withhold parole eligibility for very high risk offenders. DOC developed a new policy which requires notification to various law enforcement agencies and in certain situations, the general public, when a high risk inmate is set to be released into the community.

#### **Inmate Recidivism:**

The Commission received information from Kevin McLain with the DOC regarding inmate recidivism. Recidivism is defined as a return to prison for either a new conviction or a parole or suspended sentence supervision revocation. DOC looks at offenders at their individual 1-year, 2-year, and 3-year anniversary date of their release. The rates are identified on a calendar year basis. In 2012, DOC looked at 2010 releases for their 1-year recidivism rate.

The DOC found that in 2010, 1934 inmates were released to either parole supervision or were discharged because their sentences expired. Within 12 months from their release dates, 25.9% had returned either for a revocation of their release to supervision or because they committed a new crime and received a new sentence. This is down from 28.7% of 2009 releases and 31.2% of 2008 releases.

In 2008, Secretary Reisch announced the goal of a 50% reduction in recidivism over a 5 year span. In 2009 the DOC began planning for the recidivism reduction initiative and applied for and received the 2<sup>nd</sup> Chance Act grant. The first year programmatic changes were implemented was 2010. The target recidivism rate was 28.1% and the department

exceeded that by reducing the recidivism rate to 25.9%. The goal for 2011 was 25% based on the five-year plan that was initially developed.

The DOC also reviewed recidivism rates by sex. Both male and female rates have decreased, but the female rate decreased by 5 percentage points.

**Update on the Inmate Population:**

Laurie Feiler with the DOC explained to the Commission that DOC measures inmate population by average daily population (ADP). This is normally done on a monthly or annual basis. The male inmate population has not seen significant changes during the last 5 years. In fiscal year (FY) 2012, the male inmate population has increased approximately 1%. The female ADP grew 3 to 3.5% during the past 5 years with a 6% increase noted in FY 2012. The ADP for FY 2012 was projected to be 3508. The actual ADP was 3500. In FY 2011, the ADP was 3434. When reviewing the last 6 months of inmate population growth, it appears possible the ADP will reach 3549 yet this year.

Increases in the number of inmates sentenced to prison can be attributed in part to an increase in the number of parole violators. In FY 2012, DOC saw an average of 63 parole violators per month. Also there was an increase in new court commitments for female inmates. Both factors contribute to a higher ADP. In December 2012 for instance, the DOC saw 36 new commitments for females. This is very high and well above the average. Additionally there have been fewer inmates leaving DOC. This can be due in part to a decrease in the number of discretionary parole hearings held in fiscal year 2012. DOC is estimating there will be 1271 discretionary hearings held this year in comparison to a 3 year average of 1496. There is also projected to be a decrease in the percent of inmates released on presumptive parole. The number of inmates who reached their presumptive parole date and were non-compliant in 2012 was higher than average. In summary, DOC is on pace to admit approximately 120 more inmates this year and release 110 fewer than last year.

Incarceration rates released by the US Department of Justice show the incarceration rate for females in South Dakota is 100 for every 100,000 within the population. South Dakota has the 5<sup>th</sup> highest incarceration rate for females in the country. For males, South Dakota's incarceration rate is about 30<sup>th</sup> in the nation. The male incarceration rate for South Dakota is 732 per 100,000. Research shows that in South Dakota, felony DUI and felony drug offenses are significant factors leading to high incarceration rates and a growing inmate population. Currently, 29% of the DOC's male inmates and 55% of the female inmates are incarcerated for drug or DUI felonies. Of the total number of female inmates admitted this fiscal year, 46% are for drug-related offenses. That is up significantly from about 35% last year and in previous years. DOC is also seeing an increase for male drug related offenses at 25% this year, up from 23%. Sentencing for drug and alcohol related crimes may contribute to South Dakota's elevated incarceration rate.

**Update on DOC Staff Turnover Rates:**

At the Commission's request, Secretary Kaemingk provided an update and information to the Commission on the issue of employee turnover rate in the DOC. The pay grade reclassification and increased hiring rate that was approved in 2012 for correctional officers, youth supervisors and Sergeants went into effect August 9, 2012. Additionally, State employees received a 3-percent across-the board salary increase beginning July 1. The turnover rate in the DOC remains elevated in part due to the number of young employees the department hires. These employees can be somewhat transient and are looking for higher paying jobs after they gain experience in the field of criminal justice/law enforcement. Additionally, working with inmates and juveniles is very challenging and job burn-out can also be a cause of staff turnover. As the economy improves and job opportunities become available in the private sector, state government can and often does see employees move to better paying jobs. Turnover rates continue to be a challenge in the DOC institutions.

**Work Release Review:**

The Commission received information regarding an incident which occurred on May 7, 2012 involving a work release inmate in Sioux Falls. The inmate had been approved for a three hour furlough to interview for jobs in the community. While he was in the community, the inmate was accused of assaulting a woman. As a result of the incident, criminal charges were filed by the States Attorney. The DOC conducted a review of all work release related DOC practices, policies and operational memorandums. Additionally, all 250 inmates classified as work release eligible were reviewed by staff. The DOC identified three work release inmates who were deemed unacceptable for the work release program. These inmates met the classification standards for involvement in the work release program; however, the DOC determined they should have their work release status revoked due to certain risks that were identified. The Commission received a second update at its August meeting regarding a certain revisions that were made to the DOC Work Release policy itself which further defined those inmates who are appropriate for placement in the work release program.

**Criminal Justice Initiative:**

Jim Seward, Legal Counsel for Governor Daugaard briefed the commission on the stakeholder listening meetings being held across the state during the Commission's May 22 meeting in Rapid City. The goal of the effort is to identify ways to manage the criminal justice system more effectively without compromising public safety. The state asked for the assistance of the PEW Center on the States to help analyze prison data. Pew also helps states determine how much prison space and money will be needed if the prison population growth is not addressed. PEW has experience in the analysis of data in reference to population projections, policy development, information on evidence-based practices and general advice and counsel. The Commission received an update on the Workgroup's meeting from Senator Tieszen at the October meeting. All Commission members also received a copy of the November 2012 Final Criminal Justice Initiative Report.

**Commission Membership Changes in 2012:**

Judge Patricia Riepel resigned from the Commission in April. Second Circuit Judge Robin Houwman was appointed by the Chief Justice of the Supreme Court in May.

In accordance with the Corrections Commission by-laws, the election of officers was held during the May 2012 meeting. Senator Craig Tieszen was re-elected as Chair and Representative Larry Lucas was elected as Vice-Chair, replacing Representative Lance Carson as Vice-Chair of the Commission.

The Commission is committed to assisting and supporting the Department of Corrections in their mission to protect the citizens of South Dakota by providing safe and secure facilities for juvenile and adult offenders committed to its custody by the courts, to provide effective community supervision to offenders upon their release and to utilize evidence-based practices to maximize opportunities for rehabilitation.

Respectfully,

Senator Craig Tieszen, Chair  
South Dakota Corrections Commission

c.c.  
Secretary Kaemingk  
Corrections Commission