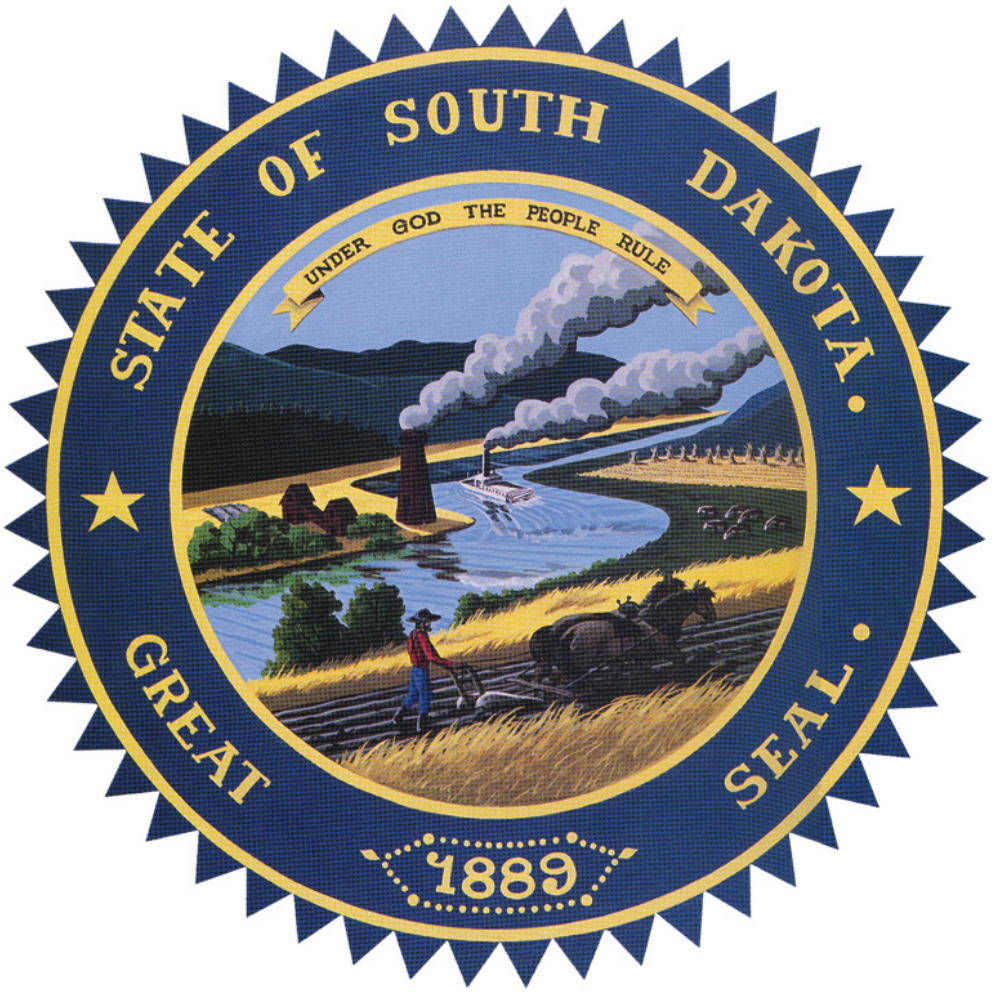
FINAL REPORT

November 2012



South Dakota

Criminal Justice Initiative

South Dakota Criminal Justice Initiative Work Group
Final Report
November 2012

SUMMARY[i]

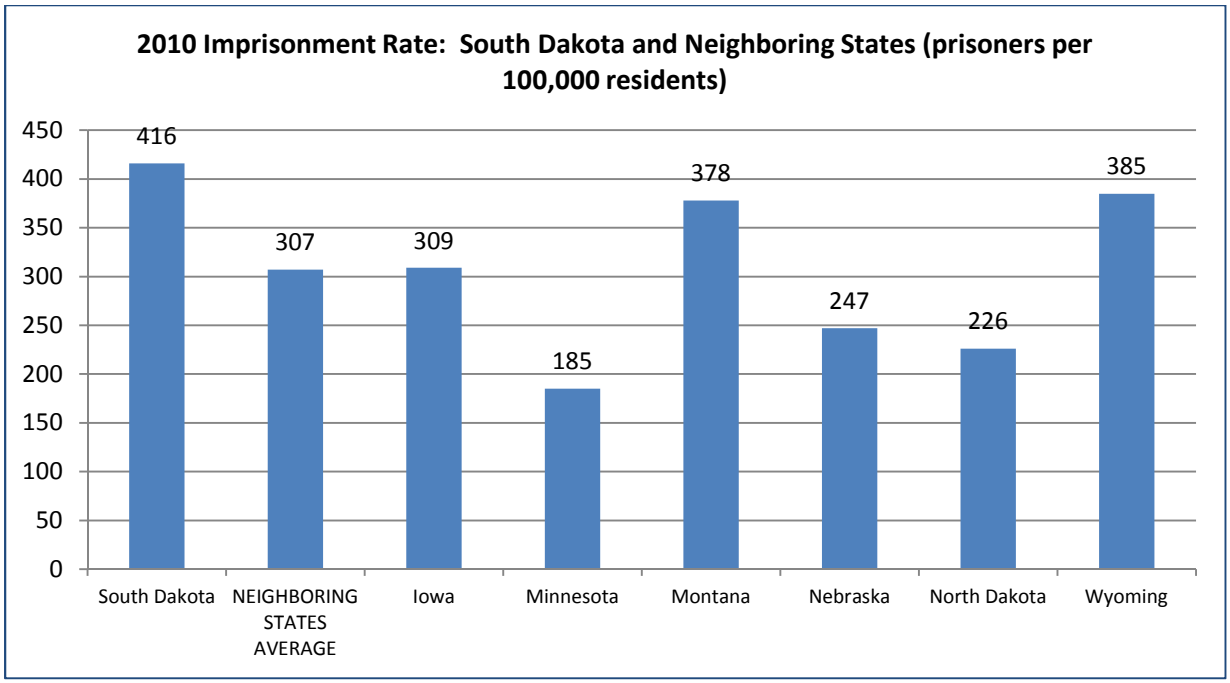
South Dakota's prison population has grown from just a few hundred inmates in the 1970s[ii] to more than 3,600 in 2012. Absent a change in approach, South Dakota should expect to have more than 4,500 inmates by 2022. This growth is estimated to cost the state $224 million over the next 10 years, including the construction of two new prison facilities.

From March until June 2012, Governor Dennis Daugaard and Chief Justice David Gilbertson sought stakeholder input regarding the state of South Dakota's criminal justice system. Over 400 stakeholders were consulted in 36 meetings across the state. Following these meetings, Governor Daugaard, Chief Justice Gilbertson, Senate Majority Leader Russell Olson, and House Majority Leader David Lust created the South Dakota Criminal Justice Initiative Work Group in order to achieve a better public safety return on the state's corrections spending. Starting in July 2012, the work group analyzed the state's criminal justice system, including an exhaustive review of sentencing, corrections, probation and parole data. It has developed policy recommendations that meet the goals of improving public safety, holding offenders more accountable, and reducing corrections spending by focusing resources on violent, chronic and career criminals.

The package of policy recommendations is estimated to save between $197 and $212 million in averted prison construction and operating expenses through 2022.[iii] By avoiding the expansion of between 596 and 755 prison beds, state taxpayers will avert the entire cost of construction and between 72 and 87 percent of the operating costs over the next 10 years.[iv]

THE PROBLEM

Following national trends, South Dakota's prison population and corrections spending grew substantially during the past three decades. Since 1977, the state's prison population has increased by more than 500 percent, outpacing the national growth rate.[v] The population grew from 546 in 1977 and surpassed 3,600 inmates in July 2012. Since 2000, the number of inmates in South Dakota has increased 41 percent, and the number of female inmates has more than doubled. South Dakota has the 23rd highest imprisonment rate in the nation, and the highest of its neighboring states, with 416 inmates per 100,000 residents. And the state's female imprisonment rate of 100 inmates per 100,000 female residents is significantly higher than the national rate of 59 per 100,000.[vi]



Source: Department of Justice, Bureau of Justice Statistics, Prisoner Series.

Not surprisingly, the growth in the prison population has been accompanied by an increase in corrections spending. State general fund spending on adult corrections tripled during the past 20 years.[vii] In fiscal year 1990, the percentage of general funds used for all of corrections[viii] in South Dakota was 4 percent. By 2010, it was 6.8 percent.[ix] For fiscal year 2013, the budget for all of corrections was more than $100 million, with general fund spending of $82 million, including nearly $60 million for administration and adult facilities.[x]

Despite this continued growth in corrections spending, South Dakota has not received a commensurate public safety return as measured by crime and recidivism rates. From 2000 to 2010, South Dakota's imprisonment rate rose faster than the national average while its crime rate failed to decline at the same pace as the national reduction.

2000-2010

	Overall Crime Rate	Imprisonment Rate
US	-19%	+1.6%
SD	-9%	+18%

Source: Department of Justice, Bureau of Justice Statistics, Prisoner Series. Federal Bureau of Investigation, Uniform Crime Reports. Overall crime rate is the violent crime rate plus the property crime rate.

During the past 10 years, 17 states lowered their imprisonment rates, and each of them also lowered their crime rates by an average of 18 percent. South Dakota was not one of them.[xi] A 2011 study reported that the recidivism rate in South Dakota was approximately 45 percent, meaning that more than four in 10 exiting prisoners returned within three years.[xii]

If state policy does not change, projections indicate that South Dakota's prison population will grow 25 percent in the next 10 years from 3,673 in 2012 to 4,580 in 2022. This would be an increase of 924 inmates, reaching the female system capacity of 498 beds by 2015 and reaching over 95 percent of the men system capacity before the end of the decade. The increased cost to taxpayers is estimated to be $224 million over the next 10 years - $126 million for construction of two new prisons and $98 million for additional operating costs.

THE SOUTH DAKOTA CRIMINAL JUSTICE INITIATIVE WORK GROUP

Following budget cuts to address a structural deficit in the state budget, South Dakota's leaders began scrutinizing major budget items. Substantial growth in corrections expenditures prompted state leaders to ask whether continued prison growth would provide taxpayers the best public safety outcomes.

Seeking a better return on the state's investment in corrections, Governor Daugaard, Chief Justice Gilbertson, Senate Majority Leader Olson, and House Majority Leader Lust established the Criminal Justice Initiative (CJI) Work Group. The work group was comprised of 18 stakeholders from the executive branch, the legislature, the judiciary as well as from law enforcement, treatment providers, prosecutors, and defense attorneys.

The four leaders charged the work group with establishing a path to meet the following goals of the CJI:

1. Improve public safety by investing in programs, practices, and policies that have been proven to reduce recidivism.
2. Hold offenders more accountable by strengthening community supervision.
3. Reduce corrections spending and focus prison space on violent, chronic, and career criminals.

The work group reviewed extensive analyses of state criminal justice data including prison, parole, probation, and sentencing information; discussed the programs, policies, and practices of the criminal justice system; examined practices proven to reduce recidivism; and assessed policy options for South Dakota. Throughout this process, the work group's key findings and policy options were reviewed and guided by a Council of Advisors. The Council was composed of former Attorneys General, a former Supreme Court Justice, a law professor, former legislators, the State Bar Association President, and a Presiding Circuit Court Judge. In addition, a victim, survivor and advocate roundtable was held, and the attendees provided the work group with policy ideas and key priorities from the victim perspective. Chaired by Secretary of Tribal Relations, J.R. LaPlante, a Native American Subcommittee was formed to analyze data and provide the CJI Work Group with recommendations and feedback. Outreach and meetings were conducted with tribal representatives across South Dakota, including representatives from the tribal judiciary and legal community, Native American behavioral health and treatment experts, and tribal law enforcement.

Throughout the summer and fall, the CJI Work Group analyzed data from South Dakota's criminal justice system, focusing on the major factors contributing to the prison population.

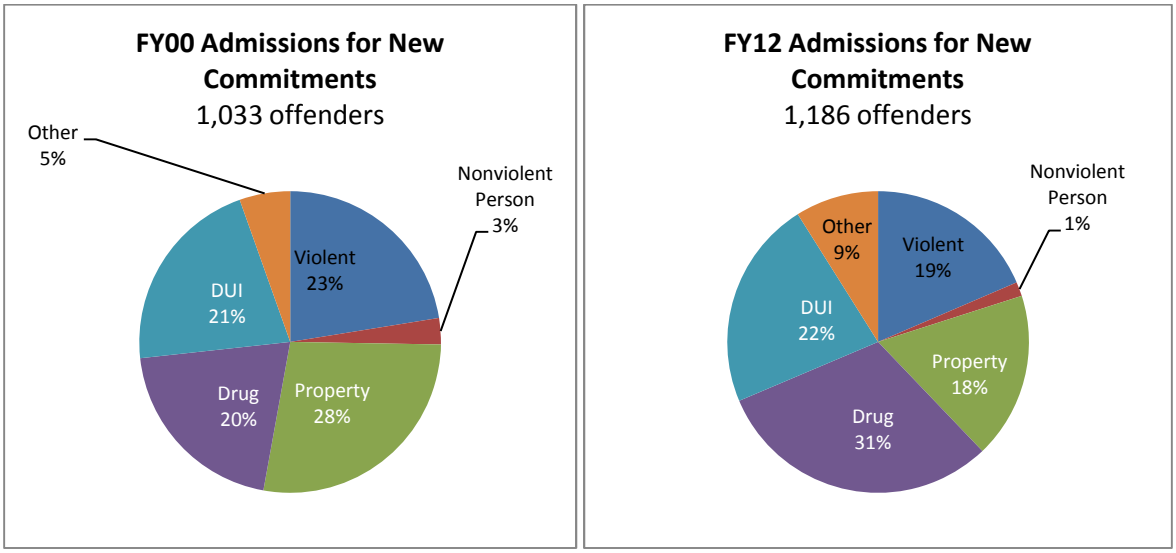
KEY FINDINGS

Two key factors shaping the prison population are the types of offenses an inmate is incarcerated for (e.g., drug, property or violent) and the source of the prison admission (e.g., a new court commitment or a revocation of parole supervision). For South Dakota, the work group found that: (1) nonviolent offenders constitute the majority of the prison population, with drug possession offenders the most frequent offense type, and (2) the number of prison beds used by offenders who entered prison because of parole violations as opposed to new criminal convictions grew by more than 100 percent between 2000 and 2012.

Most Prisoners were Sentenced for Nonviolent Crimes, and Drug Possession is the Number One Type of Offense

To understand the standing population (a snapshot of the offenders who are incarcerated on a particular day), the work group examined the offenders who entered prison in previous years (admissions) combined with how long they stayed.

In 2012, 81 percent of new commitment admissions to prison were for nonviolent crimes. Fifty-three percent of new commitment admissions were for DUI and controlled substance offenses (22 percent for DUI and 31 percent for drugs).



Note: Nonviolent person offenses are those offenses that are not named in statute as violent but are considered crimes against persons.

The growth in new commitment admissions from 2000 to 2012 was characterized by an over 70 percent increase in the number of offenders admitted for drug offenses from about 200 to about 360. While there are more nonviolent offenders than violent offenders entering prison each year, nonviolent inmates stay for less time than violent inmates.

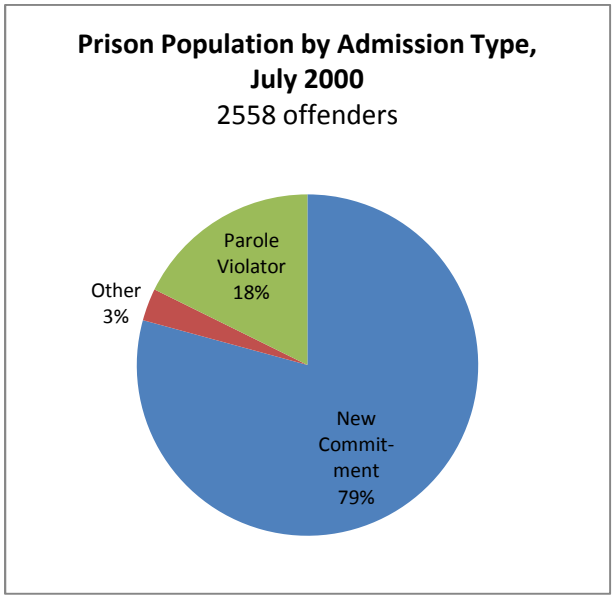
However, after accounting for the shorter length of stay, nonviolent offenders remained the majority of the standing population in 2012, making up 61 percent of all inmates. In today's prison population, six of the top 10 offenses are nonviolent: drug possession (#1), grand theft (#2), DUI 3rd (#4), burglary 3rd (#6), DUI 4th (#7) and forgery (#8).[xiii] These six crimes make up almost 40 percent of the prison

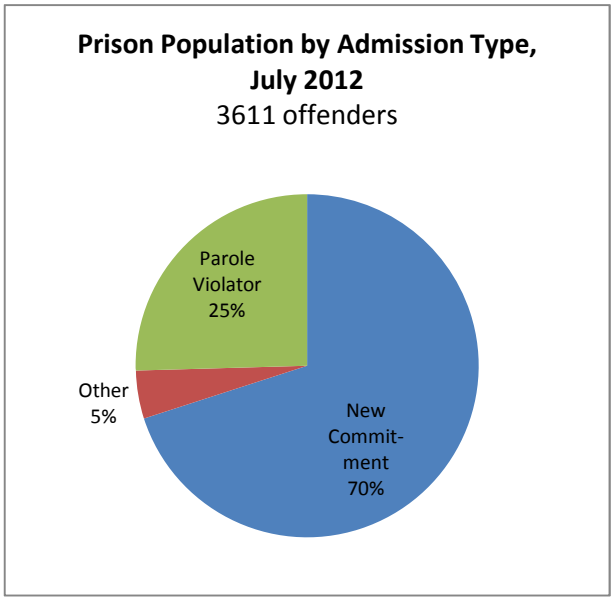
population. Close to one in three South Dakota prisoners is incarcerated for a drug or alcohol offense (28 percent of males, 55 percent of females).

The most common reason for an offender being in prison in South Dakota is drug possession. The vast majority of inmates serving time for controlled substance crimes were convicted of possession offenses rather than manufacturing or distribution/delivery offenses. Department of Corrections analysis showed that in 2011 more than 71 percent of drug offenders were serving time for drug possession and 29 percent were serving time for distribution or manufacturing. In North Dakota, by contrast, only 34 percent of drug offenders were incarcerated for possession, with 66 percent serving time for delivery or manufacturing.

Increasing Number of Prison Beds Used for Offenders Entering Through Revocations

The work group found that parole violators grew as a share of the prison population from 18 percent in 2000 to 25 percent in 2012. Parole violators are those who are readmitted to prison because their parole supervision has been revoked.[xiv]





The work group focused on several key findings about the parole population. First, in 2000, 270 parole violators were admitted into prison. By 2012, this number had almost tripled, growing to 768. Second, since 2000, the amount of time inmates serve on parole supervision while under suspended time[xv] has tripled for DUI, drug, and property crimes. Also during that period, the average length of time on parole (i.e. following release from prison) for all offenses has increased from 1.6 years to 2.3. Third, despite the increase in time on parole, most offenders who are revoked to prison are revoked in the first two years on parole. For offenders who were released in fiscal year 2005 and have been revoked back to prison, 65 percent first returned within one year and 84 percent within two years.

Separately from the parole violators described above who failed on supervision after being released from prison, more than 270 people were admitted to prison in 2012 for failing on probation supervision. About 40 percent of these admissions had violated a condition of probation such as consuming alcohol or other substances or failing to go to treatment, pay restitution or report to their probation officer.

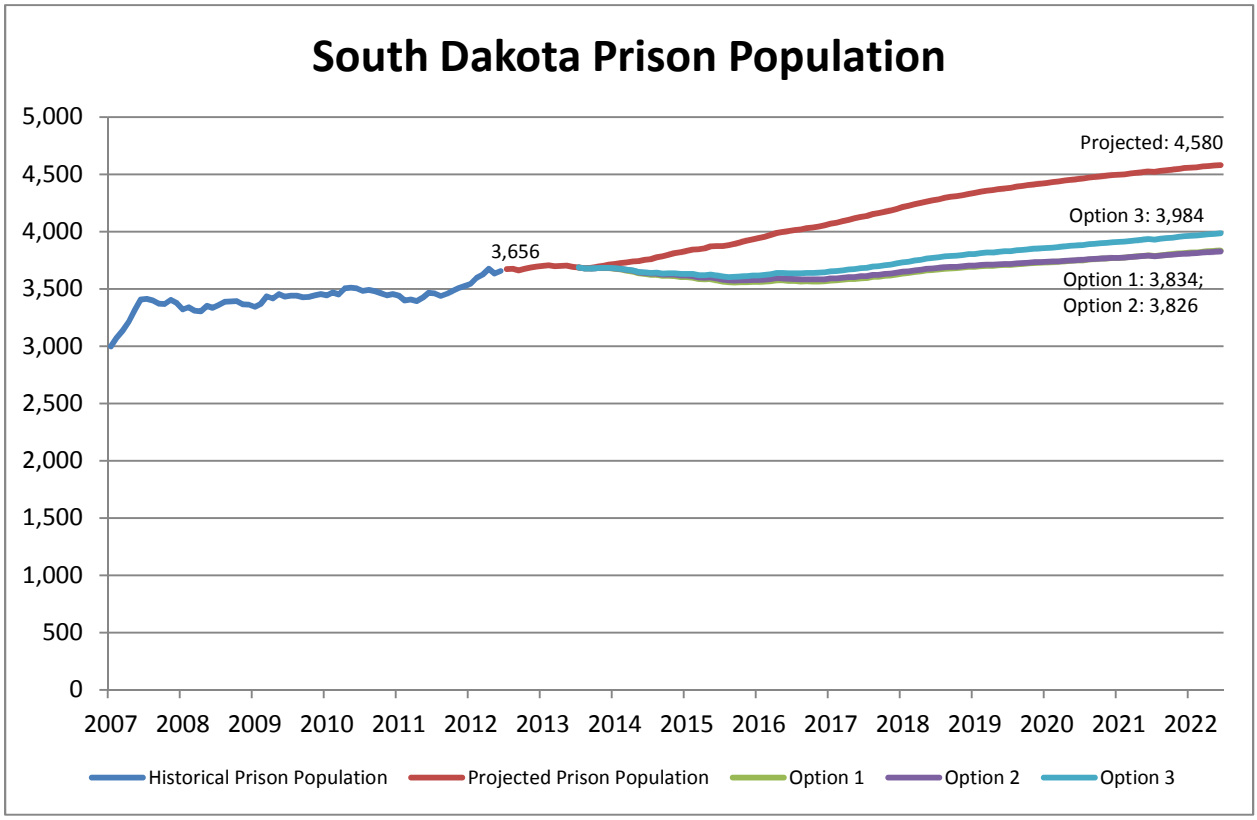
POLICY RECOMMENDATIONS

The Criminal Justice Initiative's policy recommendations are grounded in key data findings and seek to answer these important questions:

- How can South Dakota avert growth in prison beds for non-violent offenders and individuals with substance use issues while also improving public safety? What statutory changes may be needed?
- What practice improvements and investments are needed to supervise and hold offenders more accountable in the community?
- What can be done to reduce violations of conditions of supervision that lead to incarceration?

To answer these questions, the work group considered policy options that have been tested in other states and proven to both contain prison populations and increase public safety. Taken together, these research-based solutions will focus prison space on violent and career criminals, slow inmate population growth through recidivism reduction efforts and, in turn, allow investments that will strengthen community supervision and thereby improve public safety.

The proposed reforms are estimated to avert between 64 and 82 percent of South Dakota's projected prison population growth in the next 10 years. This equates to between 596 and 755 fewer prison beds in 2022 than otherwise anticipated and is projected to save South Dakota taxpayers $126 million in new prison construction costs[xvi] as well as $71 to $86 million in averted operational costs.



The projected options take into account the changes listed in policy recommendations H, I, K, and L. Since recommendation H has three options, the impact provided is a range based on the variance of policy options H1 (Option 1), H2 (Option 2), and H3 (Option 3).

The work group recommends that the state make targeted investments as part of the implementation of these policy changes to reduce recidivism and improve safety in South Dakota's communities. Some policies will require existing staff time to be rededicated, while others will require seed funding for pilot programs, and still others will benefit from ongoing reinvestment of savings from the package of reforms in future years. The work group felt that a significant investment made now could improve public safety and help eliminate the need for additional prisons to be built in the next 10 years.

In order to improve public safety, hold offenders more accountable, and reduce corrections spending, the CJI Work Group recommends policy changes be implemented that will: Strengthen Supervision and Intervention; Focus Prison Space on Violent and Career Criminals; and Ensure Quality and Sustainability of Reforms.

Strengthen Supervision and Intervention

A. *Authorize earned discharge from probation and parole supervision to focus resources on those most at risk to reoffend.*
   (1) Develop and implement formal, standardized discharge policies that encourage offenders to comply with supervision terms and allow the Unified Judicial System (UJS) and Department of Corrections (DOC) to focus their supervision resources on those who are most at risk to reoffend.
      - Probation: Allow probationers to earn 15 to 30 days off their term of supervision for every month of full compliance with their conditions of supervision.
      - Parole: Allow parolees to earn 30 days off their term of supervision for every month of full compliance with their conditions of supervision.

   (2) In months during which the probationer or parolee is non-compliant, the days are not earned. If a sufficient number of days are earned for discharge but the probationer or parolee still owes restitution, move the offender to a restitution-only monitoring and sanctioning system shared by UJS and DOC.

   (3) Currently, there are approximately 2,700 people under parole supervision. A preliminary estimate indicates that the long-term impact of the program would reduce the parole population by 37 percent.[xvii]

B. *Enhance and expand alternative courts.*
   (1) Expand existing drug and DUI courts in areas of the state where the need is greatest and establish new drug courts in areas where there is a demonstrated need to reduce the rate of admissions to prison for alcohol and drug offenses.

   (2) Change the statutes to provide for the identification and consideration of available options for a defendant who is currently serving in or who is a veteran of the armed forces of the United States.

   (3) Optimize the effectiveness of alternative courts through policies consistently applied and admission criteria that ensure that the resources are focused on those offenders who need this level of supervision and intervention.

(4) Restrict the use of preliminary hearings in certain Class 1 misdemeanor cases in order to create additional capacity for prosecutors, court personnel, and law enforcement to participate in alternative courts and other activities.

C. *Create a supervision option based on Hawaii's Opportunity Probation with Enforcement (HOPE) model.*

(1) The 24/7 program holds alcohol offenders accountable while keeping them out of jail and in the community. This proposal brings a similar approach to drug-related offenders. The model involves random and frequent substance abuse testing for those on supervision, backed-up by swift and certain jail sanctions for those who violate as well as treatment for those who need it.

(2) Establish two pilot programs, one rural and one urban, based on the HOPE model to assess the feasibility of the model to provide increased supervision and accountability in different geographies.

(3) Consider statewide implementation after assessment of pilots to provide additional supervision and accountability options.

D. *Enhance probation and parole supervision through evidence-based practices*[xviii]*.*

(1) Define evidence-based practices in statute, and require use of validated risk and needs assessments. Develop case plans for all moderate- to high-risk probationers and parolees that address the risk factors identified by the assessments, and target those risk factors through supervision and intervention.

(2) Ensure that judges have information on behavioral health assessment and risk and needs assessment to assist in decision making and in setting conditions of supervision.

(3) Require probation and parole to: (1) use proven methods to encourage compliance with conditions, participation in interventions, and positive behavior change, (2) stay informed of offenders' conduct, compliance with conditions, and progress in community-based interventions through visitation and required reporting with a frequency consistent with risk level, collateral contacts and information sharing, and other proven methods, and (3) create and utilize a system of swift and certain graduated sanctions (to include a community corrections program) and incentives to boost compliance with supervision.

(4) Evaluate fidelity to evidence-based practices through ongoing analysis and review of performance measures and a system of observation and case review by trained evaluators.

(5) Require UJS and DOC-Parole to establish standards that meet these recommendations by July 1, 2013. Require an assessment and report on their ability to achieve the standards.

E. *In coordination with enhanced supervision practices, identify and implement community-based interventions that match the needs of the probation and parole populations, and are proven to reduce recidivism.*

(1) Determine intervention needs based upon analysis of the assessed criminogenic needs and responsivity factors[xix] of the probationer and parolee populations and identify community-based interventions proven to reduce recidivism.

(2) In conjunction with the Behavioral Health Services Workgroup, expand capacity for access to community-based interventions aimed at recidivism reduction.

(3) Require semi-annual reports on intervention expenditures. Expand behavioral health intervention investment and require an increasing portion of the investment be proven to reduce recidivism.

(4) Evaluate the fidelity of community-based interventions and assess annually.

F. Create a community supervision pilot program tailored for Tribal Communities.

(1) Create one to two pilot programs to establish a specialized on-reservation supervision caseload of Native Americans on parole and improve the cross-jurisdictional coordination. Currently Native Americans comprise 44 percent of the parole violators who are returned to prison.

G. Improve outcomes through a housing option for offenders released to parole.

(1) Add a transitional housing program to provide housing for two groups of parolees: (1) those released to the Community Transition Program for whom housing is an obstacle, and (2) those for whom housing is the primary obstacle to parole release.

Focus Prison Space on Violent and Career Criminals

H. Consider the following three options to create a tiered controlled substance statute to differentiate among levels of criminal conduct, including increasing penalties for the most serious offenders:

(1) Option 1: Create a structured punishment statute based on the weight of a controlled substance, the seriousness of the criminal conduct, and criminal history. Penalties would range from a Class 1 misdemeanor (up to one year in jail) for ingestion/internal possession of a controlled substance to a Class 2 felony (up to 25 years) for manufacturing or distribution of more than 14 grams. Create a possession with intent to distribute offense characterized by additional factors such as carrying large amounts of cash, customer lists, or scales.

(2) Option 2: Create a structured punishment statute based on the seriousness of criminal conduct. Penalties would range from a Class 6 felony (up to two years) for ingestion/internal possession of a controlled substance and possession of Schedule III and IV drugs to a Class 3 felony (up to 15 years) for an aggravated manufacturing offense. The existing habitual criminal enhancement structure would apply. Create a separate offense definition for ingestion/internal possession of a controlled substance and exempt this offense from the misprision of a felony offense.

(3) Option 3: Create a structured punishment statute based on the seriousness of criminal conduct. Penalties would range from a Class 5 felony (up to five years) for possession to a Class 3 felony (up to 15 years) for manufacturing, distribution and possession with intent. The existing habitual criminal enhancement structure would apply.

I. Create more targeted punishments for grand theft, including increasing penalties for the most serious offenders.

(1) Differentiate punishments for grand theft based on the following dollar amounts: $1,000-$2,499 as a Class 6 felony (up to two years), $2,500-$4,999 as a Class 5 felony (up to five years), $5,000-$99,999 as a Class 4 felony (up to 10 years), $100,000 to $499,999 as a Class 3 felony (up to 15 years), and $500,000 or more as a Class 2 felony (up to 25 years).

J. Enhance available penalties for Driving Under the Influence (DUI) offenders.

(1) Create an Aggravated DUI 5th offense defined as having a DUI 5th and five additional DUIs within the past 25 years. Upon release from prison, the offender would be subject to 10 years of a

condition such as supervision modeled after the HOPE program, Community Corrections, 24/7 Sobriety Program, ignition interlock or breath alcohol ignition interlock or alcohol monitoring bracelet, with the possibility of short jail stays for violations.

(2) Standardize the DUI 2nd curriculum and make it a mandatory condition for those who the risk and needs assessment indicates should complete this program.

(3) For DUI 4ths, increase the available jail sentence to allow judges the discretion to impose up to 365 days in jail on a suspended execution of sentence. The current allowance is up to 180 days.

K. Create greater penalty differentiation for burglary.

(1) Change the penalty for a base offense of burglary 3rd from a Class 4 felony (up to 10 years) to up to a Class 5 felony (up to five years). The existing habitual offender enhancement statute would apply.

L. Create presumptive probation for Class 5 and 6 felonies.

(1) Offenders convicted of Class 5 and 6 felonies should be placed on probation absent overriding public safety concerns, excluding crimes of violence, sex offender registry offenses, hit and run with injury, simple assault on law enforcement and distribution of marijuana to a minor.

(2) To overcome the presumption, the findings of why presumptive probation is not granted must be made on record.

M. Change the 180 day sanction for suspended imposition of sentence (SIS) and suspended execution of sentence (SES) offenders.

(1) Recommend in statute that judges use the 180 days available for jail or prison for offenders on SIS and SES in increments not to exceed 60 days. Stays less than 45 days should be served in jail.

(2) This policy would encourage judges to use incarceration days in ways that align with swift and certain sanctions for probation violations.

Ensure Quality and Sustainability of Reforms

N. Assign a group to be responsible for monitoring and evaluation of evidence-based practices and require data collection and reporting on performance and outcome measures.

(1) Require that a designated group of stakeholders monitor and evaluate the policies set forth in the Criminal Justice Initiative.

(2) Require DOC and UJS to develop performance measures related to implementation of Criminal Justice Initiative reforms. Reports on the measures shall be submitted to the designated group responsible for monitoring and evaluating evidence based practices. Agencies shall review reports monthly for quality improvement purposes.

O. Ensure policy makers are aware of the impact of all legislative proposals or public policy questions posed to voters that could affect prison populations.

(1) Require fiscal notes be placed on bills and ballot initiatives impacting the prison population.

P. Enhance training for decision makers and offender supervision officers.

(1) Establish an annual training schedule and provide evidence-based practices training for parole board members based on guidelines set by nationally recognized organizations.

(2) Provide training to judges on the use of risk and needs assessments and behavioral health assessments in decision making and other evidence-based practices.

(3) Require annual training for probation and parole officers and supervisors, including risk factors, how to target them, and how to support and encourage compliance and behavior change.

Q. Hold offenders accountable through enhanced victim notification and improved collection of restitution.

(1) Create a statewide automated victim information and notification (SAVIN) system to increase victim safety through the development of policies, practices, and technological solutions to disseminate information about offenders in an accurate and timely way.

(2) Create a restitution monitoring and sanctioning approach that would allow offenders who have discharged from probation or parole (either after completing their sentence or as part of an early discharge policy) to continue to be monitored and sanctioned by the criminal justice system in order to compel the payment of restitution. Technological solutions will be the primary methods of monitoring, and sanctions can include time in jail but cannot include prison time.

R. Create a reinvestment fund to align incentives and pay for potential new costs to local jurisdictions.

(1) Establish a fund and payment mechanism to ensure: (1) judicial circuits are incentivized and have the resources needed to comply with presumptive probation and graduated sanctions on probation, and (2) counties, including sheriffs, have resources needed for electronic monitoring, transportation and probation holds.

(2) Establish a mechanism to ensure savings from the Criminal Justice Initiative transfer back into the established reinvestment fund to replenish it.

IN CONCLUSION

Since the 1970s, South Dakota's prison population has grown by more than 500 percent,[xx] reaching over 3,600 inmates in 2012. The inmate population is projected to grow another 25 percent in the next 10 years to over 4,500. This increase in prison population is estimated to cost state taxpayers an additional $224 million.

A review of the data by the Criminal Justice Initiative Work Group found that 81 percent of prison admissions in 2012 were for nonviolent convictions, and offenders in prison for drug possession outnumber every other type of offense. In addition, offenders who have failed on supervision – as opposed to picking up a new criminal conviction – are taking up increasing space in the prison system. The number of parole violators being admitted to prison has grown to over 750 in 2012, up from 270 in 2000.

The Criminal Justice Initiative Work Group recommends the package of policies included in this report to Governor Daugaard, Chief Justice Gilbertson, Senate Majority Leader Russell Olson, and House Majority Leader David Lust. The work group encourages these leaders to introduce a South Dakota Public Safety Improvement Act based on these recommendations in order meet the goals of improving public safety, holding offenders more accountable, and reducing corrections spending by focusing resources on violent, chronic and career criminals.

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[i] Unless otherwise cited, the analyses in this report were conducted for the Criminal Justice Initiative Working Group by the Pew Center on the States using data provided by the South Dakota Department of Corrections.
[ii] Department of Justice, Bureau of Justice Statistics, Prisoner Series.
[iii] The impact takes into account the changes listed in policy recommendations H, I, K, and L. Since recommendation H has three options, the impact provided is a range based on the variance of policy options H1, H2, and H3.
[iv] The averted cost savings assume the avoidance of a $36 million women's facility being built in 2015 and a $90 million men's facility being built in 2020. The costs of these facilities are likely to be about $202 million due to the need to issue a bond. The principal and interest costs would be spread out over 25 years.
[v] Department of Justice, Bureau of Justice Statistics, Prisoner Series.
[vi] Department of Justice, Bureau of Justice Statistics, Prisoner Series.
[vii] Budget data comes from the South Dakota Bureau of Finance and Management, *State Budget* (http://bfm.sd.gov/budget/).
[viii] Includes adult and juvenile facilities, as well as administration costs.
[ix] National Association of State Budget Officers. State Expenditure Report. 1991, 2010.
[x] Budget data comes from the South Dakota Bureau of Finance and Management, *State Budget* (http://bfm.sd.gov/budget/).
[xi] Crime data comes from the Federal Bureau of Investigation's Uniform Crime Reports (http://ucrdatatool.gov).Incarceration data comes from the Bureau of Justice Statistic's Prisoner Series (http://bjs.ojp.usdoj.gov/index.cfm?ty=pbse&sid=40). The 17 states are NY, NJ, MA, DE, GA, TX, MD, NV, CA, MI, SC, UT, CT, OK, WI, AK, MS.
[xii] Pew Center on the States, State of Recidivism: The Revolving Door of America's Prisons (Washington, DC: The Pew Charitable Trusts, April 2011).
[xiii] The other crimes in the top 10 offenses in prison are: aggravated assault (#3), sex. cont. w/ child.<16 (#5), robbery, 1st degree (#9), and rape, 1st degree (#10).
[xiv] This category of offender includes parolees who broke the rules of their supervision, such as failing drug tests or being arrested, but does not include parolees who were convicted of a new crime while on parole or those who return for very short stays and are designated as a parole detainee or a relapser from the Community Transition Program. For reference, parole new crime violators were 3.8% of the total number of admissions in 2012 compared with the remaining parole violators at 28%.
[xv] Suspended time is part of an offender's sentence and when an offender exits prison with suspended time remaining, DOC-Parole supervises the offender.
[xvi] The averted cost savings assume the avoidance of a $36 million women's facility being built in 2015 and a $90 million men's facility being built in 2020. The costs of these facilities are likely to be about $202 million due to the need to issue a bond. The principal and interest costs would be spread out over 25 years.
[xvii] This estimate assumes that credits are non-revocable, that credits can be awarded in the first month, and that paying off restitution is not a requirement for discharge.
[xviii] Evidence-based practices are supervision policies, procedures, programs and practices that scientific research demonstrates reduce recidivism among individuals on probation, parole, or post-release supervision.
[xix] Criminogenic needs are dynamic qualities of an offender that are directly linked to criminal behavior and recidivism such as anti-social behavior or substance abuse. Responsivity factors are characteristics of an offender that influence his or her ability to change.
[xx] Department of Justice, Bureau of Justice Statistics, Prisoner Series.

SDPSIA (SB70) - 2013

TABLE OF CONTENTS

(enrolled bill):

TOPIC	PAGE	SECTIONS
Definitions	1	1
Drug Courts	2	2
Veterans	3	8
HOPE Courts	4	9
Tribal Pilots	5	12
EBP – Probation	5	14
Earned Discharge Probation	7	22
EBP – Parole	7	27
Earned Discharge – Parole	11	36
Financial Obligations	14	43
Preliminary Hearings	15	52
Presumptive Probation	16	53
Ingestion & Altered State	17	54
Sched. I & II - Manu./Dist.	17	55
Sched. III – Manu./Dist.	19	56
Sched. IV – Manu./Dist.	19	57
Possession of a Controlled Sub.	20	58
Misprision Exception to Alt. State	20	59
Grand Theft	20	60
Burglary 3rd	21	62
DUI	21	63
DUI and 180-Day Sanctions	24	66
Oversight Council	24	67
Interventions and Treatments	26	70
Fiscal Impact Statement	27	71
SAVIN	29	76
Reinvestment Program	30	77

Topic	SB70 Section #	Description of Sections	Effective Date
Definitions	1	Definitions of terms used in the Act.	7/1/13
Drug Courts	2-7	Requires the Chief Justice to establish a drug court advisory council; defines a drug court; authorizes the Supreme Court to establish drug court programs in courts with jurisdiction over criminal cases; requires the Supreme Court to establish eligibility criteria for drug court and excludes drug court participants from earned discharge credits in section 22; specifies that statements made by drug court participants or reports made by staff as part of the program regarding a participant's use of controlled substances are not admissible as evidence against the participant in a legal proceeding or prosecution; and requires UJS to report performance measures semiannually to the oversight council established in section 67.	7/1/13
Veterans	8	Describes the procedure for identifying court-involved veterans and active military personnel and determining possible treatment options.	7/1/13
HOPE Courts	9-11	Authorizes the Supreme Court to establish two South Dakota HOPE court pilot programs; requires the Supreme Court to establish rules for the HOPE pilot programs; requires an evaluation of the HOPE pilot programs; and requires UJS to report performance measures semiannually to the oversight council established in section 67.	1/1/14
Tribal Pilots	12 & 13	Authorizes the Department of Corrections (DOC), with the assistance of the Department of Tribal Relations, to establish tribal parole pilot programs to supervise state parolees within Indian County and requires the DOC to report performance measures semiannually to the oversight council established in section 67.	7/1/13
EBP- Probation	14-19	Requires the Supreme Court to establish rules regarding felony probation supervision practices and requires these practices be evidence-based; requires UJS to semiannually report performance measures to the oversight council established in section 67; requires the Supreme Court to establish rules for the development and use of a graduated sanctions procedure and sanction grid to guide Court Service Officers in determining appropriate responses to violations of conditions of probation; requires the State Court Administrator's Office to collect and report graduated sanctions data semiannually to the oversight council established in section 67; requires individuals who supervise and provide intervention services to probationers receive training on evidence-based practices and targeting criminal risk factors to reduce recidivism; and requires UJS to send the case history of a probationer sentenced to a term of imprisonment in the state penitentiary to the DOC.	10/1/13
EBP-Judicial Training	20	Requires magistrate and circuit court judges complete training on evidence-based practices.	10/1/13
Earned Discharge-Probation	22-25	Requires the Supreme Court to establish rules for the criteria and procedure for earning and awarding of earned discharge credits for probation; requires the State Court Administrators Office oversee the awarding of earned discharge credits; authorizes all probationers, except persons on probation for sex crimes, shall be eligible for early discharge credits; and requires	7/1/13

		the State Court Administrators Office to collect and report earned discharge data semiannually to the oversight council established in section 67.	
EBP-Parole	27-34	Requires the use of evidence-based practices in parole-decision making and determining appropriate supervision levels and interventions; requires individuals who supervise and provide intervention services to parolees receive training on evidence-based practices and targeting criminal risk factors to reduce recidivism; requires DOC to monitor the parole supervision practices and training requirements and report semiannually to the oversight council; requires case histories generated by the Executive Director of the Board of Pardons and Paroles to include the results of all risk and needs assessments conducted on the inmate and copies of all documents relevant to the inmate's prior custodies; requires the Executive Director of the Board of Pardons and Paroles, in preparing for each parole hearing, receive from the DOC the results of all risk and needs assessments conducted on the inmate and any available documents relevant to the inmate's prior custody; establishes a list of formal responses ranging from a written reprimand, to community service, to treatment, if available, to incarceration for those who violate parole conditions; and creates training requirements for new and sitting members of the parole board.	7/1/13
Earned Discharge – Parole	36-39	Describes the process for awarding earned discharge credits for parolees; creates a requirement that parole agents report the names of parolees eligible for earned discharge credits earned in the previous month to the DOC; establishes an earned discharge credit review process for parolee objections to an ineligibility decision; and specifies the earned discharge data the DOC is required to collect and report semiannually to the oversight council established in section 67.	7/1/13
Financial Obligations	40 & 43-50	Requires inmates discharging from the DOC who still owe financial obligations to be transferred to the administrative financial obligations system; authorizes the DOC or UJS to place any offender with outstanding court-ordered financial obligations into the administrative financial accountability system; requires that any parolee, inmate or probationer who had discharged from supervision but has outstanding court-ordered financial obligations be transferred to the administrative financial accountability system; requires UJS to administer the administrative financial accountability system and monitor and track payments and sanctions; requires the Supreme Court to promulgate rules for the collection of outstanding debts, including a graduated sanctioning grid policy and a policy for termination of an adjustment of financial obligations; allows financial obligations over 25 years old which are deemed to be uncollectable to be terminated; makes failure to comply with court-ordered financial obligation plans, including restitution, a probation violation and allows the court to	1/1/14

		modify the financial obligation plan; makes the original sentencing court the court of competent jurisdiction for contempt and review hearings as part of the administrative financial accountability system sanctioning grid; and requires UJS to report the implementation and outcomes semiannually to the oversight council established in section 67.	
Old System Parolees	41	Clarifies that the use of evidence-based practices, response to violations, earned discharge and transfer to the administrative financial accountability system applies to old system parolees.	7/1/13
Preliminary Hearings	52	Eliminates preliminary hearings for Class 1 misdemeanors.	7/1/13
Presumptive Probation	53	Creates a presumptive term of probation for Class 5 or Class 6 felonies and describes eligibility criteria.	7/1/13
Ingestion & Altered State	54	Creates the stand-alone offense of possession of a controlled substance in an altered state. If the ingested substance is a Schedule I and Schedule II controlled substance, the penalty will be a Class 5 felony. If the substance is listed in Schedule III or Schedule IV, the penalty will be a Class 6 felony.	7/1/13
Sch. I & II - Manu./Dist.	55	Establishes a Class 3 felony for distribution of drugs. In order to establish distribution, the prosecution must prove three of five factors are present. The factors include: the possession of $300 or more in cash; a firearm; bulk materials used for the packaging of a controlled substance included recipes, precursor chemicals, laboratory equipment, lighting, ventilation or power generating equipment, and drug transaction records or customer lists.	7/1/13
Sch. III & IV-Manu./Dist.	56 & 57	Adds the term “controlled drug” to the existing controlled substance statutes.	7/1/13
Possession	58	Amends the possession statute and reduces the violation for possessing a Schedule I or II controlled substance from a Class 4 felony to a Class 5 felony and makes it a Class 6 felony to possess a substance listed in Schedule III and Schedule IV. This section also clarifies that ingested substances new provision in section 54 or altered state substances must be used.	7/1/13
Misprision	59	Creates an exception for the crime of misprision of a felony for altered state UA and hot UA felony cases.	7/1/13
Grand Theft	60	Establishes a tiered system for grand theft. Grant theft will be a Class 6 felony if the value is $1,000 to $2,500, a Class 5 felony if the value is $2,500 to $5,000, a Class 4 felony if the value is $5,000 to $100,000 and Class 3 felony if the property is valued at more than $100,000 but less than $500,000.	7/1/13
Aggravated Grand Theft	61	Amends the crime of aggravated grand theft which is theft greater than $500,000. The penalty is a Class 2 felony.	7/1/13
Burglary 3rd	62	Reduces a third degree burglary from a Class 4 felony to a Class 5 felony.	7/1/13
Aggravated DUI	63 & 64	Establishes a sixth or subsequent DUI offense, for offenders with at least five DUI convictions within 25 years, as an aggravated DUI with a penalty of a Class 4 felony and a required term of	7/1/13

		10 years of supervision for 10 or more DUI convictions and 5 years of supervision for 5-9 DUI convictions and allows for DUIs older than 10 years to be used if that DUI would fall under the provisions of section 63.	
DUI 4th	65 & 66	Clarifies sentencing pursuant to DUI 4th includes the provisions governing suspension of execution of a sentence included in section 66 of the act; modifies the provisions dealing with suspended execution of sentence and allows for persons convicted of DUI 4th to be sentenced to jail for up to a year as a condition of a suspended execution of sentence. This section also encourages the court to not incarcerate an individual for a period that exceeds 60 consecutive days to ensure the court retains authority to impose additional days of imprisonment if necessary during the term of supervision. The court retains jurisdiction to raise or lower the required period of incarceration within the section otherwise allowed by law.	7/1/13
Oversight Council	67-69	Establishes an oversight council and requires UJS to provide staff support to the council; describes the composition of the council; and describes the meeting requirements and powers and duties of the council.	7/1/13
Intervention and Treatment	70	Defines treatment and intervention programs, requires all treatment and intervention programs for parolees and probationers be based on assessments and prioritize the reduction of recidivism as demonstrated by research or documented evidence, and specifies the type of data to be collected and submitted semiannually to the oversight council.	7/1/13
Fiscal Impact Statement	71-75	Requires a fiscal impact statement be included with any legislation bill or ballot initiative which may impact jail or prison populations.	7/1/13
SAVIN	76	Requires the Office of the Attorney General to oversee the establishment, implementation, and maintenance of the statewide automated victim information and notification (SAVIN) system.	7/1/14
Reinvestment Program	77	Requires the DOC to promulgate rules, to administer a reinvestment program for purposes of improving public safety and reducing recidivism. This section requires UJS to provide data to DOC about the number of probationers at the end of each year. A calculation will be done to determine how many felony probationers were sentenced in the last five years. A tread line based on growth will project growth based on past performance. If the use of felony probation and the county has increased beyond the trend line, then the county will be compensated for additional felony probationers under supervision at fiscal year-end. The county Sherriff shall receive $1,000 for each additional probationer beyond the trend line. In counties without a county jail, the sheriff shall receive $200 per probationer above the trend line as compensation for additional transportation costs.	6/30/14