

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

JUDICIAL PROCESS COMMITTEE

Wednesday, June 9, 2010
Room 308, Learning Resource Center, State Hospital
Jamestown, North Dakota

Representative Shirley Meyer, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives Shirley Meyer, Stacey Dahl, Lois Delmore, Chris Griffin, Nancy Johnson, Joyce M. Kingsbury, Lawrence R. Klemm, Kim Koppelman, William E. Kretschmar, Lisa Wolf; Senators Arden C. Anderson, Tom Fiebiger, Judy Lee, Stanley W. Lyson, Tim Mathern, Jim Pomeroy

Members absent: Senators Tom Fischer, Curtis Olafson

Others present: See [Appendix A](#) for additional persons present.

It was moved by Senator Mathern, seconded by Representative Koppelman, and carried on a voice vote that the minutes of the February 10, 2010, meeting be approved.

Senator Mathern introduced his guest, Ms. Kacie Floe, a student at Concordia College. Senator Mathern said Ms. Floe is interested in public policy.

REPORTS

Chairman Meyer called on Mr. Alex Schweitzer, Superintendent/Administrator, State Hospital, Jamestown, for the presentation of a report ([Appendix B](#)) relating to individuals at the State Hospital who have been committed to the care and custody of the executive director of the Department of Human Services. Mr. Schweitzer said the State Hospital has 62 patients under the care and custody of the executive director of the Department of Human Services. He said 50 of these patients were civilly committed under North Dakota Century Code Chapter 25-03.3, eight are being evaluated to determine if they meet criteria for commitment under Chapter 25-03.3, and four are currently in prison. He said one patient is in the transitional housing program. He said transitional housing is the last stage of treatment before discharge from the program. He said 12 patients have been discharged from the program since the program's inception in 1997.

Mr. Schweitzer said in 2007 the Legislative Assembly mandated that the Department of Corrections and Rehabilitation enter an agreement with the Department of Human Services to provide security services for the sexual offender unit located at the State Hospital. He said the James River Correctional Center provides security consultation,

training, and services to the State Hospital under this agreement.

In response to a question from Representative Delmore, Mr. Schweitzer said the State Hospital's employee turnover rate is about 12 percent. He said that rate is relatively low compared to other mental health facilities. He said the State Hospital has 35 employees who have been employed at the facility for 30 years or longer. Regarding the State Hospital's sexually dangerous individual treatment program, he said some of those committed are not ready to admit they are a sexual offender and refuse to engage in the treatment program. As a result, he said, these individuals do not move through stages of treatment. He said security is vital in this program.

In response to a question from Representative Griffin, Mr. Schweitzer said some of the employee turnover in the sexually dangerous individual unit is the result of boundary issues. He said the individuals committed as sexually dangerous individuals are often good manipulators. He said some employees have been removed from the sexually dangerous individual unit because the employee did not follow the rules for patients in that unit.

In response to a question from Representative Wolf, Mr. Schweitzer said the first sexually dangerous individuals released from the program were discharged in 2007. He said 12 individuals have been discharged since 2007. He said the State Hospital recommended the discharge of three of those individuals based upon the successful completion of their treatment. He said the program has become more sophisticated in treating these individuals. He said the professionals have gained more experience in treating the sexually dangerous individuals and know what treatments work. He said upon discharge, the individuals continue to be involved in treatment within their communities. He said there is continued contact with the released individuals. He said the other nine individuals who have been released were discharged by the court based upon a determination that the individuals no longer meet the criteria under the law. He said once discharged, the individuals must register for life as sexual offenders.

In response to a question from Senator Lyson, Mr. Schweitzer said every patient in the program is offered treatment on Day 1. He said whether the patient participates is up to the patient.

In response to a question from Senator Mathern, Mr. Schweitzer said state general funds pay for care

and treatment of sexually dangerous individuals committed to the program. He said most of these individuals are indigent with few resources. He said the annual cost to house and treat each patient is \$86,344 or \$168.90 per day. He said each individual receives an annual independent evaluation.

In response to a question from Representative Koppelman, Mr. Schweitzer said the individuals in this program would be considered Level 3 sexual offenders. He said the three individuals released by the State Hospital are doing well in their respective communities.

In response to a question from Senator Fiebiger, Mr. Schweitzer said increased security and infrastructure improvements have resulted in fewer problems.

In response to a question from Representative Klemin, Mr. Schweitzer said the State Hospital is not recommending any legislative changes to the state's sexually dangerous individual laws at this time.

In response to a question from Representative Griffin, Mr. Schweitzer said as a result of 2009 Senate Bill No. 2293, which made it a Class C felony for an individual to assault an employee of the State Hospital who is acting in the course and scope of employment and the actor is committed to or detained at the State Hospital under Chapter 25-03.3, one individual was sent back to prison. He said the law has been helpful. He said he is hopeful that the law is a deterrent. He said the individual who was returned to prison was charged under the new law.

In response to a question from Representative Koppelman, Mr. Schweitzer said once released, the individuals need ongoing counseling, housing, employment, good support from family and friends, and involvement in community activities. He said there is one individual who is doing especially well with community support and involvement with his church. He said the released individuals need productive life activities. He said the State Hospital works with the court and the state's attorney to stay in contact with released individuals. He said there continue to be legal challenges to the sexually dangerous individual civil commitment laws. He said in most legal challenges the court has indicated that to be constitutional, treatment must be offered.

Chairman Meyer called on Ms. Lisa J. Bjergaard, Director, Division of Juvenile Services, Department of Corrections and Rehabilitation, for the presentation of a report ([Appendix C](#)) regarding the short-term shelter and assessment pilot program for at-risk children and youth in the South Central Judicial District during the 2009-11 biennium. Ms. Bjergaard said the need arose because of concerns about at-risk youth who may not need to be in the legal system. She said to meet this need, a demonstration project was begun in December 2006 in the South Central Judicial District area. She said startup funding was provided through the Children's Services Coordinating Committee and the Bush Foundation. She said those dollars ended on June 30, 2009. She said local startup support was

also provided by the City of Bismarck. She said the appropriation authorized by 2009 Senate Bill No. 2355 was intended to continue the demonstration program through the 2009-11 biennium. She said this allowed for a thorough analysis of the effectiveness of a crisis intervention approach. She said the pilot program is just finishing its first year of operation under this appropriation; therefore, data from the cohort beginning July 1, 2009, is not available yet. She said, however, some data is available from previous cohorts. She said for the year beginning July 1, 2008, and ending June 30, 2009, 103 youth received shelter care services. Of those, she said, 37 youth were at high risk for further formal system involvement but were identified as candidates to receive reunification services. She said these 37 youth did receive pilot program services. She said at the end of 180 days, 67.6 percent of the youth still were successfully placed with their families. She said a detailed analysis of cost is underway, and results will be available before the next legislative session convenes. She said it is estimated that each child will need an average of 56 hours of services at a cost of \$1,000 per child. She said the cost of foster care is about \$213 per day, and the average time in foster care is 172 days. She said the cost of a statewide program will depend on what facilities and services are already available in various communities.

In response to a question from Representative Delmore, Mr. Lauren Bosch, Program Director, Youthworks, Bismarck, said there are three short-term shelter facilities in Bismarck. He said the facilities are like a house in that the facility has bedrooms, a living room, and a kitchen. He said each facility has a capacity of five children, but typically there are about two or three children at the facility at a time. He said while it is rare that a child is turned away due to lack of space, the facilities also are rarely empty. He said the facilities are not a group home and are not structured as a group home. He said, for example, if a child came in at 10:00 p.m., the child would likely talk with a family therapist the next morning. He said the facility would be in contact with the child's school to get the child's assignments. He said the facility works with parents to see if unification is possible. He said the average length of time to resolve the issues is 56 hours. He said the services are provided free of charge. He said Youthworks deals with families that do not have a lot of resources. He said the program gives children the time to reflect and to figure out how to make things better. He said the facility is staffed with one or two staff at a time. He said often it is parents who bring their child to Youthworks. He said many parents and children access the facility by calling the 24-hour crisis line. He said the facility rarely gets violent children. He said it is more likely that the violent children will go to the Youth Correctional Center. He said those children in need of mental health treatment may be referred to other facilities. He said Youthworks does not want to take children who are a risk to themselves or others.

In response to a question from Senator Mathern, Ms. Bjergaard said the study included in 2009 Senate Bill No. 2355 was not prioritized. She said an evaluation that compares this pilot with other programs is not being conducted. She said tracking is being done to determine whether children who participated in Youthworks have later entered the foster care system. She said continuity and attention to school is important. Often children in the system are up to three years behind in school.

Senator Mathern said he would like to see more evaluation.

Senator Anderson discussed personal experience involving his daughter. He said after failing to get the help she needed in Wahpeton and Fargo, he was referred to a counselor in Breckenridge, Minnesota. He said the counselor was able to work successfully with his daughter by working with his daughter individually, as well as by working with him and his wife.

In response to a question from Senator Lyson, Ms. Bjergaard said she would forward his concerns about the need for facilities and training in the more remote areas of the state. She said there is a real need for people specifically trained to deal with teenagers. She said the corrections jail training does not include training on how to deal with teenagers. She said we need to do better, earlier, and without detention. She said once a child is in detention, the child is much more likely to get deeper into the system. She said the low- and moderate-risk children should not be mixed with the high-risk children.

Senator Lee said the family impact initiative and a program like Youthworks work and are able to keep children out of the corrections system. She said this type of program is important and needs to be expanded statewide.

In response to a question from Senator Lee, Mr. Bosch said he is training staff at the Fargo office as to how the Bismarck facility is operated. He said the Fargo operation will be operational within weeks. He said it is difficult to get a comparative analysis because there are no other comparable programs in the state. He said he wants to develop the program in other parts of state but is in need of funding.

In response to a question from Representative Dahl, Ms. Bjergaard said of the \$200,000 appropriation, about \$83,000 has been spent. She said Youthworks invoices the department for expenses. She said it is expected that the \$200,000 will be spent by the end of the biennium.

Senator Mathern said the problem is getting enough funding to adequately fund this program. He said it would be helpful to provide more comparative data to the Legislative Assembly to get the Legislative Assembly to commit to another level of funding. He said although other programs in the state may not be the same, it would help to have a comparison of the different programs that work to keep children out of corrections. He said perhaps the universities may be able to help to do this analysis.

Senator Lee said it would be helpful to have someone from the family impact initiative and Ms. Tara Muhlhauser from the Department of Human Services to give an update at the next meeting.

In response to a question from Representative Koppelman, Ms. Bjergaard said North Dakota is unique in that the correctional system is involved in prevention. She said she is not aware of what other states are doing in terms of prevention.

In response to a question from Representative Kingsbury, Mr. Bosch provided information ([Appendix D](#)) regarding Youthworks statistics for 2009.

MENTAL HEALTH AND SEXUALLY DANGEROUS INDIVIDUAL COMMITMENT COSTS STUDY

At the request of Chairman Meyer, committee counsel presented a bill draft [[10098.0100](#)] relating to the responsibility for providing legal counsel in cases involving the commitment of sexually dangerous individuals. She said the bill draft transfers from the counties to the Commission on Legal Counsel for Indigents the responsibility for providing legal services for those individuals who are indigent and who are the subjects of sexually dangerous individual commitment proceedings.

Representative Klemin said the Commission on Legal Counsel for Indigents is still in its infancy. He said this bill draft is another attempt to try to transfer duties to the commission. He said the counties continue to try to transfer duties to the state in an attempt to relieve the counties of responsibilities for paying for things.

Representative Meyer said there was recently a potential sexually dangerous individual case in Dunn County; however, the civil commitment was not pursued by the state's attorney due to lack of time, money, and expertise.

Senator Lyson said this movement to transfer duties from the county to the state started when the state changed from a county-based court system to a state-based court system. He said because the commitment cases involving sexually dangerous individuals are civil rather than criminal, it would not be a good idea to use the same attorneys for the civil cases.

Senator Mathern said consolidating this function in a state agency is an efficiency issue. He said if a state agency handled these cases, each county would not have to replicate efforts and costs.

Chairman Meyer called on Ms. Robin Huseby, Executive Director, Commission on Legal Counsel for Indigents, Valley City, for testimony ([Appendix E](#)) regarding the bill draft. Ms. Huseby said she helped the Department of Human Services prepare the fiscal note for 2009 House Bill No. 1497, a bill that would have transferred the responsibility for sexually dangerous individual commitment cases from the county to the state. She said she has not calculated

the costs of having the commission take on this responsibility.

In response to a question from Representative Delmore, Ms. Huseby said there are no attorneys on the commission staff who are trained to take sexually dangerous individual cases. She said two or three of the commission's contract attorneys have done these cases. She said sexually dangerous individual commitment cases take an average of 50 or more hours compared to an average of 15 hours for a criminal case.

Ms. Huseby said she cannot comment on the change proposed in the bill draft until she confers with the full commission. She said the commission will meet on June 21. She said, however, the commission previously has gone on record as being in opposition to this transfer. She said if a bill draft is to go forward to the 2011 legislative session, she would like to be involved in the drafting of the necessary language. She said there may be a need to amend the bill draft to create a separate division within the commission to handle the civil cases. She said because of the importance of keeping the criminal and civil cases separate, if the commission took on this responsibility, there would be a need for a separate budget and staff.

In response to a question from Representative Koppelman, Ms. Huseby said there are indigent defense commissions in other states that also handle mental health and sexually dangerous individual cases.

In response to a question from Senator Fiebiger, Ms. Huseby said there are issues about payment for legal services when the individual is not indigent. She said there also would be ongoing legal services required for the committed individuals because of the statutorily mandated annual review. She said all 62 individuals currently committed under the program get annual reviews. She said the annual review can be waived, but most of the committed individuals request an annual review.

In response to a question from Representative Delmore, Ms. Huseby said the county state's attorney represents the state in sexually dangerous individual cases. She said she understands the counties' dilemma. She said the commission has a small staff. She said the commission's goal is not to expand the agency; however, the commission will work with the committee if requested.

Senator Lee said there needs to be a way for counties to get skilled people to handle these cases. She said the current process for handling sexually dangerous individual cases is in a complete state of chaos. She said the whole system is broken and is similar to the criminal indigent defense process before the commission was formed. She said perhaps the commission could give guidance, training, and assistance in finding attorneys, but the counties would pay for the cost of the legal services.

Representative Koppelman said the State Bar Association of North Dakota may need to be involved in developing a solution to this problem.

Representative Griffin said counties have little control over their costs in mental health and sexually dangerous individual commitment cases. He said it is important to find a way to alleviate the counties' costs.

Chairman Meyer called on Ms. Bonnie Johnson, Cass County Administrator, Fargo, for testimony ([Appendix F](#)) regarding the bill draft. Ms. Johnson said Senator Lee and Ms. Huseby are correct--the system is broken and in chaos. She said there is a need for a more efficient system. She said it is important to remember that county and state taxpayers are the same people. She said the counties select attorneys for these cases but do not provide training and have not developed any standards. She said the counties are just a billpayer. She said the commission is a perfect program to make sure sexually dangerous individual cases are handled properly.

In response to a question from Senator Lyson, Ms. Johnson said she would like mental health and sexually dangerous individual cases to be handled by the state. She said, however, the transfer of these responsibilities may have to be done in steps. She said all responsibility for court costs should be in one place.

In response to a question from Senator Lyson, Ms. Johnson said 55 percent of the space in the new Cass County Courthouse addition, is being used by the district court. She said the state is not paying for any of the costs for the addition, even though the majority of the space will be used by the state court. She said there are tradeoffs between the county and state every day.

In response to a question from Senator Mathern, Ms. Johnson said it is likely that 100 percent of the counties would support moving costs and responsibility for mental health and sexually dangerous individual cases to the state.

Senator Lyson said the committee may want to postpone consideration of the bill draft until the commission meets. He said Ms. Huseby can bring to the committee more information.

Senator Fiebiger said the committee may want to get the State Bar Association of North Dakota, the North Dakota Supreme Court, and the Commission on Legal Counsel for Indigents to craft a proposal as an alternative to the bill draft.

Senator Mathern said perhaps the commission could be authorized to set up a separate division. He also said the transition could be a two-step process with the commission taking on the sexually dangerous individual cases first and the mental health cases later.

Representative Klemin said perhaps there is a need to create a task force to look at this issue as was done before the Commission on Legal Counsel for Indigents was created.

Senator Lee said she does not want to wait another legislative session to handle this. She said the committee should encourage stakeholders to

come up with a proposal before the next legislative session.

Ms. Huseby said the commission bases indigency on 125 percent of the federal poverty level. She said there would be a need to amend indigency standards if the sexually dangerous individual cases were added to the commission's responsibilities.

Chairman Meyer called on Dr. Rosalie Etherington, Clinical Director, State Hospital, Jamestown, for comments regarding the study. Dr. Etherington said there are levels of mental illnesses. She said that is the problem of committing sexually dangerous individuals. She said within the diagnostic manual, sexually dangerous individuals do have a mental illness but are not necessarily incompetent.

INVOLUNTARY MENTAL HEALTH COMMITMENT PROCEDURES STUDY

At the request of Chairman Meyer, committee counsel presented a bill draft [10099.0100] regarding mental health commitment procedures and the authority of licensed addiction counselors to execute a certificate regarding a continuing treatment order. She said the change was recommended by Dr. Andrew J. McLean, Medical Director, Department of Human Services, and Mr. Gary Euren, Cass County State's Attorney's office, at the committee's December 2009 meeting. She said the presenters indicated that the change was necessary to make it consistent with other provisions in Chapter 25-03.1.

In response to a question from Representative Koppelman, committee counsel said the language on line 13 with respect to the licensed addiction counselor's area of expertise may not be necessary because the parameters within which the licensed addiction counselor may practice are already

determined by the North Dakota Board of Addiction Counseling Examiners.

Chairman Meyer called on Mr. Kerry Wicks, Executive Director, Chemical Dependency Services, State Hospital, Jamestown, for testimony regarding the bill draft. Mr. Wicks expressed support for the bill draft.

It was moved by Senator Mathern, seconded by Representative Delmore, and carried on a voice vote that the bill draft be amended on page 1, line 12, to remove the first "or" and on page 1, line 13, to remove "within the licensed addiction counselor's areas of expertise".

It was moved by Representative Koppelman, seconded by Representative Wolf, and carried on a roll call vote that the amended bill draft relating to the authority of licensed addiction counselors to execute a certificate regarding a continuing treatment order be approved and recommended to the Legislative Management. Representatives Meyer, Dahl, Delmore, Griffin, Johnson, Kingsbury, Klemin, Koppelman, Kretschmar, and Wolf and Senators Anderson, Fiebiger, Lee, Lyson, Mathern, and Pomeroy voted "aye." No negative votes were cast.

No further business appearing, Chairman Meyer adjourned the meeting at 12:10 p.m.

Following adjournment of the meeting, the committee toured the State Hospital facilities. The tour concluded at 2:00 p.m.

Vonette J. Richter
Committee Counsel

ATTACH:6