

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

COMMISSION ON ALTERNATIVES TO INCARCERATION

Tuesday, November 29, 2005
Roughrider Room, State Capitol
Bismarck Transition Center
Bismarck, North Dakota

Representative Joe Kroeber, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives Joe Kroeber, Ron Carlisle, Lawrence R. Klemin; Senators Dick Dever, Larry J. Robinson, Thomas L. Trenbeath; Citizen Members Leanne K. Bertsch, Edward Brownshield, Judge Gail Hagerty, Paul Hendrickson, John Mahoney, Justice Mary Muehlen Maring, Carol K. Olson, Gary Rabe, Sandi Tabor

Members absent: Citizen Members Duane Johnston, Chris Magnus, Deborah Ness

Others present: Merle Boucher, State Representative, Rolette

Julie Eikamp, Central North Dakota RSVP, Bismarck

Valerie Fischer, Department of Public Instruction, Bismarck

Steve Berg, Burleigh County Sheriff's Department, Bismarck

Marcie Conmy-Fisher, Bismarck Transition Center, Bismarck

Warren Emmer, Dave Krabbenhoft; Department of Corrections and Rehabilitation, Bismarck

Terry Traynor, North Dakota Association of Counties, Bismarck

Al Lick, Division of Juvenile Services, Youth Correctional Center, Bismarck

Ross Munns, Division of Juvenile Services, Youth Correctional Center, Mandan

JoAnne Hoesel, Department of Human Services, Bismarck

Joni Brunner, Rehab Services, Inc., Minot

Deb Schuler, Grand Forks Community Services, Grand Forks

Nancy Keating, Bismarck-CENTRE, Bismarck

It was moved by Senator Robinson, seconded by Senator Dever, and carried on a voice vote that the minutes of the September 20, 2005, meeting be approved as distributed.

Chairman Kroeber called on Mr. Al Lick, Department of Corrections and Rehabilitation, for comments regarding alternatives to incarceration programs for juvenile offenders. Mr. Lick submitted a written summary of his comments, a copy of which is on file in the Legislative Council office. He said the Division of Juvenile Services of the Department of Corrections and Rehabilitation has a number of programs through its treatment and service continuum

that attempt to keep juveniles from being incarcerated. He said the likelihood of a juvenile reoffending increases dramatically once the juvenile has spent time in detention. To keep juveniles from being detained in jails, he said, the state has 13 nonsecure holdover sites that are staffed only when needed at which juveniles may be held temporarily. He said the holdover sites are operated through the North Dakota Association of Counties. By holding juveniles in such facilities, he said, problems may be averted and court proceedings may be avoided. He said the cost of operating holdover sites will need to be converted to general fund support.

Mr. Lick said the treatment continuum utilized by the Division of Juvenile Services involves in-home treatment, therapeutic foster care, residential foster care, residential treatment, confinement at the Youth Correctional Center, and aftercare. He said the use of the common foster care system saves the state \$1 million per year and the placement of juveniles into alternative care is the best option for them. He said residential foster care through group homes, the Home on the Range, and the Charles Hall Center costs between \$90 and \$140 per day. Residential treatment, he said, costs approximately \$200 to \$300 per day

Mr. Lick said the Youth Correctional Center is a 100-bed secure facility at which the cost of confinement and education of juveniles is approximately \$140 per day. He said 50 percent of the cost is for the school at the facility. He said the Youth Correctional Center provides vocational education, drug and alcohol treatment programs, and a basic sex offender treatment program. He said the time-out program at the Youth Correctional Center consists of two to four weeks of confinement after transfer from a residential treatment facility. He said 65 percent of the juveniles confined at the Youth Correctional Center have some type of mental health diagnosis.

Mr. Lick said the Division of Juvenile Services is flexible in using the entire continuum of treatment. He said the continuum is unique and is accomplished in cooperation with the child welfare program. He said few other states have such a system.

In response to a question from Mr. Hendrickson, Mr. Lick said the division provides vital information regarding juveniles to foster homes and schools. In

addition, he said, representatives of the division usually visit with law enforcement officials to share information regarding the placement of a juvenile in a foster home. He said it may be more difficult to communicate with law enforcement in rural areas regarding therapeutic foster care. He said he will work to see that the division does a better job of communicating with law enforcement officials.

In response to a question from Representative Kroeber, Mr. Lick said the population at the Youth Correctional Center fluctuates. He said an emerging problem is the growth of the female population. He said the number of juveniles with mental health problems confined at the Youth Correctional Center has been increasing as has the number of juveniles who come from abusive homes.

In response to a question from Justice Maring, Mr. Lick said approximately 75 percent of the juveniles in the juvenile justice system have substance abuse issues. He said 60 percent of the juveniles have both substance abuse and mental health issues.

In response to a question from Senator Dever, Mr. Lick said after a juvenile is released from the Youth Correctional Center, the juvenile is placed with one of the eight regional Division of Juvenile Services offices. He said the juvenile is assigned a case manager who will remain assigned to the individual through the aftercare program.

In response to a question from Senator Robinson, Mr. Lick said aftercare programs can always use more funding. He said some community programs have been dropped due to lack of funding.

In response to a question from Mr. Hendrickson, Mr. Lick said the juvenile recidivism rates in this state are among the lowest in the nation.

In response to a question from Mr. Mahoney, Mr. Lick said the Division of Juvenile Services assesses whether a juvenile is able to be placed back into the juvenile's home. He said representatives of the division will look for a safe placement and work with the juvenile on developing independent skills as well as look at other options like adoption and permanent foster care.

Mr. Mahoney said in some instances, return of a child into a home may undo the good that has been done during the treatment process.

Mr. Lick said one of the problems that must be addressed is the overrepresentation of American Indian youth under the custody of the Division of Juvenile Services. He said American Indian juveniles consist of 35 percent of the population at the Youth Correctional Center. Although the number of individuals under age 18 in North Dakota has dropped considerably in recent years, he said, the number of girls in the custody of the division has increased significantly. He said the division has contracted with Lutheran Social Services for a mentoring program. In addition, he said, the division conducts intensive tracking through the use of ankle bracelets, electronic monitoring, and urinalysis. He said eight-day treatment programs, which are school-based, are

used to keep juveniles in school. He said juveniles are 75 percent more likely to end up in the juvenile corrections system if they leave school in the 7th through 9th grade.

Mr. Lick said intensive in-home treatment programs have been reduced due to budget cuts. He said referrals for these programs are generally made by juvenile courts. He said restorative justice programs allow courts to refer juveniles to placement with juvenile services. He said the juvenile accountability conferencing and victim empathy seminars have been successful programs.

Mr. Lick said the cost of juvenile corrections in North Dakota is substantially lower than in South Dakota, Nebraska, or Montana. He said each of those states expend approximately twice the amount expended in this state.

Chairman Kroeber called on Ms. JoAnne Hoesel, Division of Mental Health and Substance Abuse, Department of Human Services, for comments regarding diversion programs. Ms. Hoesel submitted written materials, copies of which are on file in the Legislative Council office. She said mental health and substance abuse intercepts in the criminal justice process range from prearrest to postadjudication programs. She said it is important to take a comprehensive look at why individuals come into contact with law enforcement and address those issues.

Ms. Hoesel said prebooking diversion programs involve crisis intervention teams and mobile crisis response teams. She said prebooking intercepts are police-based through which an individual may be transported to treatment rather than to jail. She said cooperation is needed with law enforcement and treatment teams to divert individuals to a hospital or a mental health hold.

Ms. Hoesel said postbooking diversion programs involve screening, negotiating treatment disposition in lieu of prosecution, evaluating and identifying treatment needs, and linking the individual to community services. She said postadjudication diversion programs involve specialty courts such as mental health courts and drug courts. She said diversion programs must be targeted, and if successful, the programs result in decreased incarceration rates and an improved workforce. She said there must be continuing involvement of the criminal justice system while the individual meets the terms and conditions of treatment. She said the investment in individuals by getting them into treatment is a long-term investment. With respect to individuals with mental illnesses, she said, it is important to reach a consensus on the type of program and who will be targeted for the program. She said effective discharge planning is needed to connect the individual with postrelease community service.

In response to a question from Mr. Hendrickson, Ms. Hoesel said although there will always be

individuals who attempt to take advantage of the system, good screening can reduce that problem.

Ms. Hoesel submitted written information relating to the involvement of the Department of Human Services with the juvenile drug courts in Bismarck, Grand Forks, and Fargo and the adult drug court in Bismarck. A copy of the document is on file in the Legislative Council office. She said the Department of Human Services has seven staff members directly involved with the juvenile drug courts and there is one staff member involved with the adult drug court in Bismarck. She said the Fargo drug court contracts for services due to the need to serve the traditional clients in that area.

In response to a question from Representative Carlisle, Ms. Olson said there has never been funding in the Department of Human Services budget for treatment services for drug courts. However, she said, the West Central Human Service Center has found resources to provide treatment services for the drug court in Bismarck. She said because the Southeast Human Service Center in Fargo serves the largest population of all of the regional human service centers, resources must be used to address the traditional population served by the human service centers.

Judge Hagerty said it is essential that funding be available through the Department of Human Services for treatment services if the drug courts are to expand because the key to the success of the drug courts is the availability of treatment.

Ms. Hoesel said a request for proposal was issued in August for the residential treatment program for methamphetamine which was provided for under Senate Bill No. 2373. She said a notice of intent to award a contract was issued in October. She said the State Hospital and Sharehouse responded to the request and the department intends to contract with Sharehouse for 20 treatment beds beginning in January 2006.

In response to a question from Ms. Tabor, Ms. Hoesel said the Department of Human Services did not receive a grant for the methamphetamine pilot project in the northeastern part of the state. She said the department intends to apply for a similar grant in 2006.

Ms. Tabor said the Attorney General will be receiving a small grant for addressing methamphetamine problems in rural areas. She said it is possible that some money may be available for that pilot project.

Representative Carlisle said it is important that Cass County get adequate funding for treatment for the drug court.

Judge Hagerty said more than a year of planning was conducted before the implementation of the drug court in Bismarck. She said it is important that there was widespread community involvement in the planning process.

Chairman Kroeber called on Mr. Warren Emmer, Department of Corrections and Rehabilitation, for

comments regarding the Bismarck Transition Center. Mr. Emmer submitted a written summary of his comments, a copy of which is on file in the Legislative Council office. He said the Bismarck Transition Center is a good example of the success of a private and public partnership. He said the center opened its doors in August 2002 and the Department of Corrections and Rehabilitation has contracted with the parent company of the center since that time. He said the department houses 63 offenders at the center. He said the offenders pay some of the costs of their stay and are expected to be employed in preparation for release to parole. He said the center utilizes an advisory board and the department's case planning committee to assist in the placement of offenders at the center. He said parole numbers for the department have increased from 132 on August 1, 2002, to 291 on August 1, 2005, in large part due to the Bismarck Transition Center. He said the department and the center will be expanding the contractual relationship during this biennium when the department will house an average of 17 parole violators in a relapse program and 30 probation violators in a revocation assessment program at the center.

Mr. Emmer said the cost of housing an individual at the center is \$52.42 per day. He said the cost will be reduced to \$50.25 per day under the new contract and the state will receive four free beds under that contract.

In response to a question from Mr. Hendrickson, Mr. Emmer said the individuals participating in the center program pay \$13 per day for participation.

In response to a question from Senator Trenbeath, Mr. Emmer said although the prison population has grown, the number of individuals on parole has grown at a more significant rate.

In response to a question from Representative Carlisle, Mr. Emmer said it could be difficult to contract for treatment services particularly because federal funds are becoming less available.

Chairman Kroeber recessed the meeting and reconvened for a tour at the Bismarck Transition Center.

At the request of Chairman Kroeber, Ms. Marcie Conmy-Fisher distributed written information relating to the Bismarck Transition Center, copies of which are on file in the Legislative Council office. Ms. Conmy-Fisher said the parent company of the Bismarck Transition Center operates nine facilities in Washington, Montana, and North Dakota. She said the addition to the Bismarck Transition Center is expected to be completed by April 1, 2006. That addition, she said, will provide 88 new beds. She said the 63 existing beds are filled and there is a waiting list of nearly 30 individuals.

In response to a question from Representative Carlisle, Ms. Conmy-Fisher said of the 63 individuals housed at the center, 57 are working in the facility and 6 are in treatment.

In response to a question from Judge Hagerty, Ms. Conmy-Fisher said 95 residents at the center have drug or alcohol issues.

Chairman Kroeber recessed the meeting and reconvened the meeting in the Roughrider Room.

At the request of Chairman Kroeber, Mr. Steve Berg, Sheriff, Burleigh County, addressed the committee regarding the CounterAct program. Mr. Berg said the program was established in 1989 through the Hazelden Foundation and the Maple Grove, Minnesota, Police Department. He said he became an instructor in the program in 1991. He said the program provides an opportunity for law enforcement officers to go into schools and become familiar with youth and parents as well as let the youth and parents get to know the law enforcement officers. He said the program consists of five 1-hour sessions through which the law enforcement officers provide information regarding drugs and violence and work with the students to practice skills to counteract the use of drugs or other negative behaviors. He said the program is a team-building effort among law enforcement, schools, and parents.

Mr. Berg said it is important to develop a positive relationship with the youth and provide them information so they make wise decisions. He said they need to know the consequences of their actions and be aware of alternatives that are safe, legal, and fun. He said the program is very effective and is relatively inexpensive. During the 2004-05 school year, he said, 20 law enforcement agencies in the state participated in the program at a cost of approximately \$25,000 to \$40,000. He said the program is funded through a federal grant that is passed through the State Bureau of Criminal Investigation.

In response to a question from Senator Dever, Mr. Berg said the program targets 6th and 7th grade students. However, he said, in some rural schools, the program may cover grades 4 through 12.

In response to a question from Mr. Mahoney, Mr. Berg said law enforcement officials work with the teachers to schedule times for the sessions. He said the law enforcement officers go to the schools in uniform.

Chairman Kroeber called on Ms. Valerie Fischer, Department of Public Instruction, for comments regarding safe and drug-free schools and coordinating school health. Ms. Fischer submitted a written summary of her testimony, a copy of which is on file in the Legislative Council office. She said the Department of Public Instruction receives safe and drug-free school funding through the United States Department of Education and receives coordinated school health funding through the Centers for Disease Control and Prevention. She said the Department of Education funding amounts to \$1.7 million and the Centers for Disease Control and Prevention funding is approximately \$635,000. She said the state portion of the safe and drug-free schools funding is 20 percent of the \$1.7 million. She said 93 percent of the funding

goes directly to the school districts and 7 percent is used for technical assistance and administration.

Ms. Fischer said schools are required to complete an application with an assessment and analysis, determine issues to address and how the issues will be addressed, and implement performance measures. She said the department encourages the use of a scientific, research-based curriculum. She said the programs need parental and community support to be successful. Although the parameters of the programs are set for the school districts, she said, each school district identifies its local issues. She said federal officials have been pleased with the reports of the performance indicators from the programs in this state.

Ms. Fischer said the youth risk behavior study indicates that North Dakota remains the highest in the nation in terms of youth drinking. Although schools are doing an excellent job of addressing the issue at the 3rd through 6th grade level, she said, efforts must be increased in middle schools and high schools when kids are likely to be experimenting with drugs, alcohol, and tobacco. She said alcohol and drug use lead to other risk behaviors.

Ms. Fischer said one initiative being implemented is related to bullying. She said bullied kids are found to be engaging in risk behaviors such as drugs and alcohol.

Ms. Fischer said good curriculums are successful but need funding. In addition, she said, it is important that parents spend time talking with their children and setting standards. She said extracurricular activities are important because those activities require time commitments and impose standards and rules.

In response to a question from Senator Robinson, Ms. Fischer said teachers and administrators track at-risk children. She said afterschool programs are a valuable source of support and supervision for at-risk children. She said community coalitions are important in the implementation and maintenance of the programs but funding is an issue.

In response to a question from Mr. Hendrickson, Ms. Fischer said alcohol is treated as a culturally accepted norm and is the biggest risk behavior problem in the state. She said many parents downplay the risks of alcohol use. She said it is important to set appropriate standards and have children involved in discussing those standards.

In response to a question from Mr. Rabe, Ms. Fischer said schools have changed disciplinary policies to not tolerate fighting and violence. She said it may be necessary to require community service or some other thing of value to replace out-of-school suspension. She said a prevention curriculum must have a message repeated in a variety of ways to be successful.

In response to a question from Senator Robinson, Ms. Fischer said community coalitions may be easier to track in small communities that have a single approach rather than in large communities that may have multiple programs. She said what is successful

in one community may not be as successful in another community.

In response to a question from Representative Boucher, Ms. Fischer said some schools have hired licensed addiction counselors to provide services onsite and provide support in the schools.

Mr. Brownshield said it is difficult to organize community intervention teams to work in the schools. Even after a program is organized, he said, it is often very difficult to sustain.

In response to a question from Representative Klemin, Ms. Fischer said surveys have shown that boredom, pessimism, and peer pressure are significant contributors to alcohol use. In addition, she said, the lack of standards or rules set by parents is a significant factor.

Chairman Kroeber called on Ms. Julie Eikamp, Central North Dakota RSVP, for comments regarding mentoring of children of incarcerated individuals. Ms. Eikamp submitted printed materials, copies of which are on file in the Legislative Council office.

Ms. Eikamp said RSVP is a federally funded program and funding was obtained for mentoring children with incarcerated parents. She said little attention has been paid to these children until recently. She said studies have shown that without a positive influence during a parent's incarceration, 70 percent of children will eventually end up in jail. Under the program, she said, volunteers spend one hour per week for a year with a child. She said studies have shown that with a mentor, a child will have a better attitude about school, improved attendance, improved test scores and grades, and will be less likely to use alcohol and drugs. She said the mentors will go through a training program before being matched with a child.

In response to a question from Representative Klemin, Ms. Eikamp said there are seven RSVP offices in the state. She said mentors can be found in each of the areas served by the offices. She said permission from a parent is needed before a mentor is matched with a child.

Ms. Bertsch said officials from the Department of Corrections and Rehabilitation will attempt to assist in implementation of the program.

Chairman Kroeber called on Mr. Terry Traynor, North Dakota Association of Counties, for comments regarding community service agencies. Mr. Traynor submitted written testimony, a copy of which is on file in the Legislative Council office. He said the Department of Corrections and Rehabilitation has informed representatives of local community service agencies that state grants for those agencies will end on June 30, 2006. He said the 14 community service agencies provide community-based alternatives to detention and provide the opportunity for adult, juvenile, and misdemeanor offenders to perform court-ordered community service obligations by working at nonprofit organizations and in the community at large. He said during the last fiscal year, the community

service agencies served over 4,700 offenders and provided over 138,000 hours of community service.

Mr. Traynor said a survey of the community service agencies indicated that approximately one-third of the agency budgets are funded by grants from the Department of Corrections and Rehabilitation. He said the loss of funding will result in program reductions or terminations and will have a direct impact on the state's capacity to manage offenders in the community, thereby creating further pressure on parole and probation staff and state facilities. In addition, he said, the reductions or terminations in the programs will have a longer-term effect in that the loss of services may result in the increased likelihood that more individuals will reoffend. He said a review of legislative materials relating to the biennial budget of the Department of Corrections and Rehabilitation suggests that the Appropriations Committees anticipated the continued funding of the community service agencies.

In response to a question from Senator Trenbeath, Mr. Traynor said the community service agencies in Langdon and Cavalier received no direct funding from the Department of Corrections and Rehabilitation. He said those agencies serve as primarily local programs for local offenders.

In response to a question from Representative Klemin, Mr. Traynor said some local governments had established budgets for the next year for the community service agencies before receiving notice that the state grants would terminate on June 30, 2006.

Mr. Emmer submitted written testimony regarding the community service agencies, a copy of which is on file in the Legislative Council office. He said the reduction of the grant funding to the community service agencies was a difficult decision made after careful review of the budget that had been approved by the 2005 Legislative Assembly. He said the amount that had been requested in the department's budget was reduced significantly during the budgeting process. He said when the community service agencies were established, it was hoped that the agencies would become self-funded at some point. Because the primary consideration of the department is to protect public safety, he said, the department must fund the most high-risk programs. He said the department continued funding for the first year of the biennium to provide the communities with an opportunity to seek other funding.

Judge Hagerty said she is concerned that judges are being asked to look at options other than incarcerating individuals while options are being eliminated.

Ms. Bertsch said letters were sent to judges and state's attorneys to request that options be found to deal with low-risk and short-sentence offenders due to a mandate from the Legislative Assembly and the Governor to utilize alternatives.

Senator Robinson said that members of the Legislative Assembly knew that the Department of

Corrections and Rehabilitation was underfunded and that the department would need to seek a deficiency appropriation in 2007.

In response to a question from Senator Robinson, Mr. Dave Krabbenhoft, Department of Corrections and Rehabilitation, said the department is attempting to get through the biennium without a deficiency appropriation by developing a plan for funding. However, he said, the department has no control over some factors such as the number of prisoners with medical problems. He said department administrators have had to make difficult decisions in reducing funding.

Senator Robinson said programs that have worked well and that save money in the long run have been underfunded. He said a deficiency appropriation is a better option than making short-term cuts to successful programs.

In response to a question from Senator Robinson, Mr. Emmer said individuals in the community service programs are generally not high-risk offenders. Therefore, he said, there is not a significant risk to the public safety by reducing funding for those programs while maintaining funding for programs that focus on high-risk offenders.

In response to a question from Representative Carlisle, Mr. Krabbenhoft said the department did not identify the community service funds as a source of money to use to raise salaries during the biennium. Because employee salaries are a priority for the department, he said, the department will use savings generated from the new contract with the parent company of the Bismarck Transition Center for salary increases.

In response to a question from Senator Dever, Ms. Deb Schuler, Grand Forks Community Service, said almost 30 percent of the funding for the community service agencies is derived from grants. She said each of the community service agencies functions differently and receives money from a variety of funding sources such as federal grants, county funds, United Way funds, and fees for services. Without the state grants, she said, some smaller community service agencies may not survive. She said the Grand Forks community service agency should be able to survive on its reserves for about three years without the state grants.

In response to a question from Representative Klemin, Ms. Schuler said after she became aware of the elimination of state grants in June she has worked to find alternative funding sources and to diversify the funding sources for the agency.

Senator Trenbeath said he does not see a problem with the elimination of the state grants. He said the programs should be able to be funded at the local level. He said some agencies are not receiving state funds and are able to conduct activities while other agencies appear to have funding reserves.

Ms. Joni Brunner, Rehab Services, Inc., said the Minot area community service agency receives funding from the city of Minot, Ward County, and program fees. In addition, she said, the agency has begun to provide drug testing services on a fee basis.

At the request of Chairman Kroeber, Ms. Tabor provided the commission an update regarding the Alcohol and Drug Commission. She said the Alcohol and Drug Commission has decided to focus its study in the next year on prevention and treatment. She said federal funds may be available through the Department of Human Services to address prevention programs. In addition, she said, United Tribes has received a federal grant to focus on strategic planning and collaboration and coordination between the state and Indian tribes. In addition to treatment, she said, the commission is looking at ways to address the problem of importation of methamphetamine.

In response to a question from Representative Klemin, commission counsel said juvenile courts may retain jurisdiction in most cases until the individual reaches age 20. He said the decision to generally not accept 17- and 18-year-old individuals into the juvenile drug courts has been a policy decision to focus the resources on the younger offenders and not a matter of jurisdiction.

Chairman Kroeber said the next meeting will include a demonstration of electronic monitoring equipment used by the Department of Corrections and Rehabilitation. He said the next meeting will be on March 22, 2006.

There being no further business, Chairman Kroeber adjourned the meeting at 3:40 p.m.

John Bjornson
Commission Counsel