

# NORTH DAKOTA LEGISLATIVE COUNCIL

## Minutes of the

### COMMISSION ON ALTERNATIVES TO INCARCERATION

Thursday, January 31, 2008  
Board Room, Turtle Mountain Community College  
Belcourt, North Dakota

Senator Joel C. Heitkamp, Chairman, called the meeting to order at 9:10 a.m.

**Members present:** Senators Joel C. Heitkamp, Dick Dever; Representatives Ron Carlisle, Kari L. Conrad, Lawrence R. Klemin; Citizen Members Edward Brownshield, Bradley A. Cruff, Paul Hendrickson, Duane Johnston, Justice Mary Muehlen Maring, Carol K. Olson, Dr. Gary Rabe, Thomas L. Trenbeath

**Members absent:** Senator Tony Grindberg; Citizen Members Leann K. Bertsch, Judge Gail Hagerty

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

**Others present:** Senator David O'Connell and Representative Merle Boucher, members of the Legislative Council, were also in attendance.

Chairman Heitkamp thanked representatives of the Turtle Mountain Community College for hosting the commission meeting. He said when he was appointed to chair this commission, he intended to hold four meetings during the interim with at least one meeting in a tribal area. He said it is important that the commission members receive input from individuals across the state and from representatives of the tribes of the state.

Chairman Heitkamp called on Mr. Dale W. Brien, Director, Turtle Mountain Alternative Court. Mr. Brien gave a PowerPoint presentation ([Appendix B](#)).

In response to a question from Mr. Hendrickson, Mr. Brien said there must be some sort of consequence for an offender, such as jail time, before an offender enters the drug court program.

In response to a question from Representative Carlisle, Mr. Brien said the sanctions for violating conditions of the drug court program are flexible and vary depending upon the severity of the infraction or offense. He said the most serious offenses could result in removal from the program.

In response to a question from Justice Maring, Mr. Brien said expungement of an offender's offense after completion of the drug court program was automatic when the program first began. However, he said, the second group of graduates from the drug court program were required to go before the tribal council to get a pardon. He said the pardon or expungement process has now changed to require a participant to petition the tribal pardon board. Of the last 10 applicants, he said, only one was rejected.

In response to a question from Senator David O'Connell, Mr. Brien said he has had to reject

applicants for the drug court program because of the lack of resources. He said it is important that the caseload for the addiction counselor and probation officer remain manageable so that each participant has an adequate amount of time with those individuals.

In response to a question from Ms. Olson, Mr. Brien said the alternative court has used grant funds to attempt to set up a system for tracking graduates of the program to see if they reoffend.

In response to a question from Mr. Brownshield, Mr. Brien said despite the politics involved, he likes to have the tribal council have a degree of involvement in the program.

In response to a question from Representative Klemin, Mr. Brien said the alternative court will accept nontribal members if they are subject to the jurisdiction of the tribal court. He said he has tried to work with nontribal jurisdictions to admit an offender who is a tribal member and who offended off the reservation.

In response to a question from Representative Conrad, Mr. Brien said the Department of Justice grants that were used for the alternative court were reduced by 35 percent. He said the Department of Justice has attempted to fund new programs first and the Turtle Mountain program did not receive additional grant money. However, he said, he is in the process of reapplying for additional grant funds.

In response to a question from Senator Heitkamp, Mr. Brien said the alternative court experienced similar funding issues in 2002. He said the tribe covered the shortfall until grant funds were restored. He said tribal leaders believe in the program and hope that the program will continue.

In response to a question from Representative Conrad, Mr. Brien said he has explored working with the state government to establish some connection between the tribal drug court program and state courts.

In response to a question from Senator O'Connell, Mr. Brien said spending time in the tribal jail can be a significant deterrent. He said there is not much to do in jail and the drug court offers an attractive alternative.

In response to a question from Senator Heitkamp, Mr. Brien said the success rate of the Turtle Mountain Alternative Court program compares well with other tribal drug court programs.

In response to a question from Representative Conrad, Mr. Brien said he would like the probation officer caseload to be limited to 10 clients.

In response to a question from Senator Heitkamp, Mr. Brien said about \$92,000 per year would fund the probation officer position and provide funding for a licensed addiction counselor.

In response to a question from Justice Maring, Mr. Brien said the addiction counselor working with the program works 20 hours per week in addition to the individual's school counseling position. He said the counselor evaluates clients; provides family therapy, marriage counseling, anger management training, and cultural training; and undertakes other responsibilities.

In response to a question from Mr. Hendrickson, Mr. Brien said the approximate cost of \$10,000 per client far exceeds the value derived from the drug court. However, he said, it will be difficult to get the program back on track after losing its probation officer.

In response to a question from Representative Carlisle, Mr. Brien said the Turtle Mountain Alternative Court is the only tribal drug court program in this state.

Senator Heitkamp said sustaining a program often is more difficult than getting the program off the ground.

Mr. Brien said because of his earlier work with crime victims, he initially was a critic of the drug court program. However, he said, he quickly began to realize that the offenders were individuals in need of help and were not the monsters that he had perceived them to be. He said the program has 27 graduates who have not reoffended. He said the tribes need to work with the state to address addiction problems.

Chairman Heitkamp called on Mr. Norman McCloud, Jr., and Ms. Erika Malaterre, Pathways to Prosperity, for a presentation regarding the Pathways to Prosperity program. Mr. McCloud and Ms. Malaterre distributed written information regarding the Pathways to Prosperity program, a copy of which is on file in the Legislative Council office.

Mr. McCloud said the Northwest Area Foundation initiated a process through which the members of the Turtle Mountain Band of Chippewa participated in creating a poverty reduction plan beginning in 2003. He said the foundation awarded a grant of \$10 million to the tribe to be distributed over a 10-year period. He said the poverty reduction plan includes 13 different strategies to work to reduce poverty, including reaching out to youth at risk.

Ms. Malaterre said the strategy to reach out to youth may include the creation of a youth drug court as well as other drug and alcohol prevention programs. Although the deadline passed for receipt of funds for the drug court this year, she said, the program will continue to seek money for implementing such a program. She said the youth-at-risk strategy has been allocated \$12,500 per year over the term of the grant.

In response to a question from Representative Carlisle, Mr. McCloud said the Pathways to Prosperity program hopes to leverage another \$30 million in funds over the 10-year grant period.

In response to a question from Mr. Johnston, Mr. McCloud said although the grants are in the second year of the 10-year process, the strategies in the plan are continuing to be developed.

Justice Maring said there are five juvenile drug courts within the state system and the administrator for the juvenile drug courts would be able to provide a significant amount of information to assist in the establishment of a tribal juvenile drug court.

In response to a question from Mr. Hendrickson, Mr. Rick Hoekstra, Department of Corrections and Rehabilitation, said although the state and the tribes are generally in agreement with respect to goals in dealing with offenders, there are details that need to be addressed with respect to cooperation between the state and tribes. He said sovereignty is always an issue that needs to be recognized. Of the male population under the supervision of the Department of Corrections and Rehabilitation, he said, 21 percent are Native American. He said that percentage has been relatively stable. However, he said, the Native American population within the female population under the supervision of the Department of Corrections and Rehabilitation has increased to almost 35 percent. With respect to drug court, he said, the level of intensity and accountability are important factors. In addition, he said, the duration of the program is vital to its success. He said it is important to get the participants when they are motivated to make changes in their lifestyle. He said the Department of Corrections and Rehabilitation could provide the commission members with information at a future meeting regarding collaboration with the Department of Human Services in integrating individuals into the community after incarceration and the building of programs in the home communities of the offenders.

In response to a question from Mr. Hendrickson, Mr. Hoekstra said there has been a good level of communication between state officials and tribal officials. However, he said, changes in leadership often result in setbacks. Although there may be some difficulties in executing contracts between the state and tribes, he said, respecting tribal concerns and sovereignty is important.

Mr. Brownshield said constant communication between the tribes and the state is necessary. He said the sovereignty issue can be dealt with and is workable if the key leaders on both sides are willing to communicate and be involved.

Chairman Heitkamp called on Ms. Terri Martin-Parisien, Project Peacemaker, for comments regarding Project Peacemaker. Ms. Martin-Parisien said Project Peacemaker is an attempt to increase the knowledge of the law by tribal members. In addition, she said, the program is designed to improve curriculum of tribal colleges in law-related education

and train council members, court employees, and other judicial officials. She said the program is being evaluated and may be expanded to grow into a Tribal Justice Center. She said the Tribal Justice Center would address restorative justice and include a peacemaking and research component.

Ms. Martin-Parisien said many data bases exist upon which the research component could be built. She said some of the problems to get around in dealing with the data include sovereignty and ownership issues. She said one question to be answered is why is the tribal jail system such a deterrent.

In response to a question from Senator Dever, Ms. Martin-Parisien said tribes are always looking to share ideas with the various Indian nations, but it is difficult to generalize because of the differences between the various nations. However, she said, findings and results can be shared.

Representative Conrad distributed information regarding a drug treatment alternative to prison program from Kings County, New York, a copy of which is on file in the Legislative Council office. She said 60 percent to 70 percent of the individuals in the penal system are incarcerated for nonviolent drug crimes. She said the New York program demonstrates the cost-benefit savings of offering treatment as opposed to incarceration. She said the prison population in this state has increased by 1,000 since 1991. She said much of that increase can likely be attributed to offenders who have committed drug use or possession crimes, but no other crime. She said the commission should consider visiting the Tompkins Rehabilitation and Correction Center in Jamestown to determine if the center should be increased in size.

Dr. Rabe said the program described in the information distributed by Representative Conrad addresses individuals incarcerated only for selling drugs and who have had no violent offenses.

Representative Carlisle distributed a copy of a memorandum entitled [Survey of Agency Alcohol, Drug, Tobacco, and Risk-Associated Behavior Prevention Programs](#).

At the request of Chairman Heitkamp, commission counsel distributed information provided by the Department of Corrections and Rehabilitation relating to the prison population in this state and recidivism rates, copies of which are on file in the Legislative Council office.

In response to a question from Senator Heitkamp, Mr. Cruff said the criminal justice information system should contain information regarding all charges filed against an individual. He said some cases involve a number of charges that have been dismissed as a part of a plea agreement.

Chairman Heitkamp requested the Legislative Council staff to seek additional information regarding data provided by the criminal justice information sharing system.

Chairman Heitkamp called on Representative Merle Boucher for a presentation. Representative Boucher submitted written testimony, a copy of which is attached as [Appendix C](#).

In response to a question from Representative Carlisle, Representative Boucher said his proposal could begin as a pilot project or be done through any number of methods. He said it would likely require the segregation of one campus for the purpose and would require support from the local community.

Mr. Hendrickson said if an individual could receive a free education as a result of committing a crime, there may be some incentive to commit crimes.

Representative Boucher said the key to making appropriate choices is the ability to have freedom.

Representative Klemin said Representative Boucher's proposal appears to be similar to the program described in the information submitted by Representative Conrad. He said that Representative Boucher's proposal may be able to be implemented on a college campus without the state paying for the education of the offender.

Representative Boucher said once offenders get past the remedial education level, they may have some ability to pay for the cost of education. He said it is important to look at the financial component of the plan and emphasize personal responsibility after remedial education. He said individuals taking part in such a program may be able to access student loans and grants.

Senator Dever said the number of inmates in this state is the lowest in the country and is significantly lower than South Dakota. Although the state is doing a number of things correctly, he said, programs can be enhanced and good assessment tools are needed to evaluate offenders to determine the value of treatment and the risk of reoffending.

Representative Boucher said the inmate population in this state has increased significantly and the state must address offenders who can be helped.

Chairman Heitkamp called on Ms. JoAnne Hoesel, Department of Human Services, for comments. Ms. Hoesel submitted written testimony, a copy of which is attached as [Appendix D](#).

Ms. Pam Sagness, Department of Human Services, said the Department of Human Services is developing a Youth Advisory Council to gather input from youth regarding addiction and mental health issues. She said it is important to look at the motivation of an individual who commits a crime and determine the appropriate consequence. If drug or alcohol addiction is the problem, she said, treatment should be a first option. She said a structured environment with some freedom can help an individual ease back into society after being incarcerated or being in a treatment program.

Ms. Sagness introduced four individuals who she has worked with in addressing alcohol and drug addictions. Each of those individuals shared their personal stories with the commission.

Members of the commission commended the individuals for sharing their stories and for the efforts they have made to address their addictions.

In response to a question from Representative Conrad, Ms. Hoesel said the Department of Human Services has surveyed the human service centers and found that there generally is no longer than a two-week wait for treatment services. She said if an individual is experiencing a crisis, the individual can usually receive treatment the same day. She said the department is evaluating all needs during its budget process and will attempt to prioritize resources.

Representative Conrad said the state budget surplus should result in funds being available to help the vital programs.

Ms. Olson said the department continues to track information regarding treatment services and continues to address problems with respect to shortages of addiction counselors and other specialists. She said the department's budget request for the next biennium will address some of the areas of concern.

Chairman Heitkamp said the next meeting will involve fewer presentations and more commission discussion so that the commission can focus its attention toward developing recommendations for the Governor's budget and for the Legislative Council. He

invited commission members to make requests for information to be provided at the next meeting or for bill drafts.

Representative Klemin requested the Legislative Council staff to prepare a bill draft that would extend the life of the commission for another four years.

Senator Dever requested commission counsel to invite a representative of the Youthworks program to provide information to the commission. He said the objective of the program is to reunite children with their families and keep youth from being placed in the Youth Correctional Center when there is no other place to go. He distributed a summary of the Youthworks short-term care and assessment center program, a copy of which is attached as [Appendix E](#).

Mr. Johnston requested additional information regarding the community service programs.

There being no further business, Chairman Heitkamp adjourned the meeting at 3:10 p.m.

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John Bjornson  
Commission Counsel

ATTACH:5