

# NORTH DAKOTA LEGISLATIVE COUNCIL

## Minutes of the

### COMMISSION ON ALTERNATIVES TO INCARCERATION

Tuesday and Wednesday, November 20-21, 2007  
Room 148/154 Research 1 Building  
North Dakota State University Technology Park  
Fargo, North Dakota

Senator Joel C. Heitkamp, Chairman, called the meeting to order at 1:00 p.m.

**Members present:** Senators Joel C. Heitkamp, Dick Dever, Tony Grindberg; Representatives Ron Carlisle, Lawrence R. Klemin; Citizen Members Leann K. Bertsch, Edward Brownshield, Bradley A. Cruff, Paul Hendrickson, Dr. Gary Rabe, Thomas L. Trenbeath

**Members absent:** Representative Kari L. Conrad; Citizen Members Judge Gail Hagerty, Duane Johnston, Justice Mary Muehlen Maring, Deborah Ness, Carol K. Olson

**Others present:** See [Appendix A](#)

Chairman Heitkamp called on commission counsel who reviewed the [Supplementary Rules of Operation and Procedure of the North Dakota Legislative Council](#).

Chairman Heitkamp welcomed the members of the commission and encouraged the members to provide suggestions for areas of study or subjects that the members would like to further discuss at future meetings. He said the state has a good track record with respect to rehabilitating incarcerated individuals. However, he said, improvements can be made and it is the mission of this commission to examine methods through which those improvements may be implemented. He said the commission did an excellent job during the last interim.

At the request of Chairman Heitkamp, commission counsel reviewed a background memorandum entitled [Commission on Alternatives to Incarceration - Background Memorandum](#).

In response to a question from Representative Carlisle, commission counsel said there is one vacancy on the commission due to the resignation of a member during the last interim. He said the vacancy must be filled by the Attorney General.

At the request of Chairman Heitkamp, Ms. Leann K. Bertsch, Department of Corrections and Rehabilitation, presented written information relating to the reorganization of the Department of Corrections and Rehabilitation and programming within the Division of Adult Services. A copy of the documents submitted by Ms. Bertsch is attached as [Appendix B](#).

In response to a question from Senator Dever, Ms. Bertsch said the reorganization of the Department of Corrections and Rehabilitation is a work in progress and will require more effort.

In response to a question from Senator Heitkamp, Ms. Bertsch said the goal of the reorganization is to get the best structure in place to serve the state. She said the department is doing well with the resources available to it.

Mr. Dennis Fracassi, Department of Corrections and Rehabilitation, said the reorganization of the Department of Corrections and Rehabilitation is the right thing to do. He said change is welcome and it presents great potential. Because 100 inmates are released from incarceration each month, he said, there is a hidden workforce available to employers. He said employers are coming to him to request assistance in getting inmates prepared to work upon release from incarceration. He said training offenders may present an excellent opportunity to lower the recidivism rate and address workforce shortages in the state. He said it is important to address job training at the front end of the process and create a plan for an individual during the time of incarceration. Although transition centers provide opportunities for employment for offenders, he said, the jobs available are often not career-type positions. He said it is vital to identify the educational needs of offenders and attempt to provide the soft skills necessary for employment, such as safety training, harassment training, and resume writing. He said the department can work with Job Service North Dakota to bring educated, trained individuals into the workforce as well as work with other training and apprenticeship programs. Because the state's economy is in excellent shape, he said, there is an opportunity to work with the private sector to address workforce needs. He said he has never seen a better opportunity to make inmates taxpayers rather than tax burdens by providing education and training.

In response to a question from Representative Klemin, Mr. Fracassi said the recidivism rate in this state is approximately 23 percent.

Ms. Bertsch said the department releases about as many individuals as are coming into the system. Thus, she said, the inmate population is remaining stable. She said the department does not have a good handle on why offenders are returning to prison after having served a sentence. However, she said, the lack of meaningful work is a significant factor. She said another problem offenders face upon being released from prison is being in arrears with respect to

child support obligations and losing their driver's licenses due to the nonpayment of those obligations.

In response to a question from Senator Dever, Mr. Fracassi said more funding may be needed to refocus efforts on education of offenders. Although it will take time to develop a program to provide training and education, he said, the investment in training and education would be a positive investment.

In response to a question from Senator Heitkamp, Mr. Fracassi said representatives of the department have spoken with individuals from Bismarck State College and the State College of Science and are willing to work with those institutions if resources are available to provide training for inmates before their release from incarceration.

In response to a question from Dr. Rabe, Mr. Fracassi said it is important to place a higher emphasis on vocational education programs to meet the needs of business in the state. He said more information needs to be available regarding what needs can be addressed through the training of incarcerated individuals.

In response to a question from Representative Carlisle, Mr. Fracassi said individuals gaining employment through the transition centers can be successful if the jobs are meaningful positions.

Representative Klemin said one issue this commission may consider focusing upon during the interim is examining reasons for recidivism and determining what can be done to reduce the recidivism rate.

Senator Heitkamp said a significant cause of recidivism is addiction relapse.

Mr. Fracassi said support for additional funding for the Information Technology Department within the Department of Corrections and Rehabilitation would help in producing better information and improved tracking of individuals after being released from custody. He said the department has a limited ability to track inmates.

In response to a question from Senator Grindberg, Mr. Fracassi said the department has information available regarding recidivism and the tracking of individuals released from custody. However, he said, it is often difficult to retrieve that information and use the information in a meaningful manner.

Chairman Heitkamp requested commission counsel to contact representatives of the North Dakota University System to determine if tracking systems similar to that used by institutions of higher education may be used to track offenders released from incarceration.

Mr. Brownshield said a significant factor in recidivism is illiteracy. He said technology training is great, but people need to know how to use the technology.

Mr. Trenbeath said rather than focus on recidivism, this commission should focus on keeping individuals from being incarcerated in the first place.

Senator Heitkamp said information regarding recidivism is important. He said studying recidivism is

an important issue, particularly if recidivism rates can be reduced.

In response to a question from Senator Dever, Ms. Bertsch said the department has been getting valuable information from the state of Missouri regarding programs in that state that have resulted in a reduction in recidivism.

Ms. Jennifer College, Department of Corrections and Rehabilitation, said adult drug courts have been very successful in Bismarck and Fargo. She said the drug court in Fargo will double in size, and drug courts in Grand Forks and Minot are in the process of being implemented. She said drug court is an option for nonviolent, repeat drug and alcohol offenders who meet certain entry criteria. She said the drug court is a collaboration between judges, state's attorneys, counselors, and parole and probation officials. She said many of the participants in drug court have been through treatment at some point before entering drug court.

Ms. College said the drug court process takes one year and is accomplished in phases. She said participants must submit to drug and alcohol testing and must be employed or enrolled in school. She said the successful completion of drug court may result in the dismissal of charges or the early termination of probation. She said drug courts reinforce positive behavior weekly and provide a very positive and beneficial experience for most participants. She said each offender participating meets weekly with the judge and may be awarded incentives for positive behavior. Because of the intensive supervision, she said, the drug court process can quickly address violations. She said a typical drug court participant is initially motivated by the ability to avoid incarceration. However, she said, within two to three months in the program, there is a change in most participants and a recognition of the benefits of sobriety and recovery. Because of the accountability provided through drug court, she said, the process is difficult, and successful completion is significant and inspiring. During the last two years, she said, the adult drug court has seen a 77 percent success rate for graduates, which is significantly better than the 43 percent revocation rate statewide for nonparticipants.

Ms. Barb Breiland, Department of Corrections and Rehabilitation, said there have been significant changes in the managing of sex offenders since November 2003. She said a task force was created and experts evaluated the existing program. Under the new sex offender program, sex offender specialists supervise offenders, prepare risk assessments, and prepare presentence reports. She said there are 1,300 registered sex offenders in this state, approximately 25 percent of whom are supervised by the sex offender unit. Because of changes in the sex offender registration law, she said, there will be an increase in the number of offenders supervised. She said high-risk offenders are registered for life, moderate-risk offenders remain

under supervision for 25 years, and low-risk offenders are supervised for 15 years.

Ms. Breiland said the sex offender unit has seven specialists--two in Fargo, one in Jamestown, two in the Bismarck/Mandan area, one in Minot, and one in Grand Forks. In addition, she said, there are seven generalists that are spread throughout the regions in the state. She said the preparation of presentence investigations has increased the workload for the sex offender unit.

Ms. Breiland said the department changed vendors with respect to the global positioning system monitoring. She said the current system uses an ankle bracelet and no longer requires the offender to also carry a cellular telephone. She said electronic monitoring is an important tool to use in monitoring sex offenders but can also provide a false sense of security. She said the tool can tell law enforcement and corrections officials where an offender is located, but does not provide information regarding what the offender is doing.

Ms. Breiland said the sex offender task forces allow law enforcement, parole and probation officers, treatment providers, state's attorneys, and victims' advocates to share intelligence and discuss which offenders should be more strictly monitored. She said significant close supervision and treatment is necessary for sex offenders. She said this state is a national leader with respect to risk assessment and the state has progressed significantly since November 2003. However, she said, much more progress is needed.

Mr. Hendrickson said Ms. Breiland's work has been important to the success of the sex offender task forces.

Senator Dever said the offender assessment is an excellent tool to determine if an individual will reoffend. He said it is important to prioritize who needs to be more closely managed.

In response to a question from Senator Heitkamp, Ms. Breiland said it is very difficult to find housing for high-risk offenders released from custody. She said the department has access to a house in Bismarck and an apartment in Fargo to provide temporary housing for released offenders. She said the use of those facilities helps law enforcement track the offenders. In addition, she said, peer pressure from fellow offenders helps reduce an offender's risk of reoffending. She said officials from the department work with landlords to help find suitable housing for offenders so that offenders can be more easily monitored.

Mr. Brownshield said sex offenses are a significant problem on Indian reservations. He said statistics show that the average Indian woman will be raped three times in her life. He said the reservations are a breeding ground for sex offenders and the use of drugs are at the root of the problem. He questioned what can be done to help reduce this problem on the reservations.

Chairman Heitkamp called on Ms. JoAnne Hoesel, Department of Human Services, for comments regarding the MATRIX treatment model, the Robinson Recovery Center, and other alternatives to incarceration programs. Ms. Hoesel submitted written testimony, a copy of which is attached as [Appendix C](#).

In response to a question from Representative Klemin, Ms. Hoesel said mandatory/minimum sentences are an obstacle to getting some addicted individuals into the treatment program available at the Robinson Recovery Center. She said the commission may consider whether alternative sentencing, such as the program available for driving under the influence offenders, would be a viable option for individuals arrested for methamphetamine possession.

In response to a question from Mr. Hendrickson, Ms. Hoesel said there are models to help identify individuals who may be candidates for prebooking diversion. She said the diversion decisions are very difficult to make.

Chairman Heitkamp recessed the meeting at 4:00 p.m. so that members of the commission could participate in a tour of the Robinson Recovery Center and ShareHouse facilities. He reconvened the meeting at 8:00 a.m. on Wednesday, November 21, 2007.

Chairman Heitkamp called on Ms. Nancy McKenzie, Department of Human Services, for a presentation regarding the status of juvenile and adult drug courts in the state and other areas of collaboration between the Department of Human Services and the Department of Corrections and Rehabilitation. Ms. McKenzie submitted written testimony, a copy of which is attached as [Appendix D](#).

In response to a question from Representative Carlisle, Ms. McKenzie said the implementation of drug courts in Grand Forks and Minot will begin upon the final assignment of judges to work with the drug court. She said she has seen no opposition from judges with respect to participating in drug court programs. However, she said, logistical issues must be addressed.

In response to a question from Senator Dever, Ms. McKenzie said because the Youth Correctional Center may be the only other option for a juvenile if the juvenile does not participate in drug court, there is some leverage to gain drug court participation by the juvenile.

Ms. Hoesel said family involvement is important for a juvenile participating in drug court. She said a juvenile drug court outcome study was conducted by a professor from North Dakota State University.

Mr. Rick Hoekstra, Department of Corrections and Rehabilitation, said information can be provided to the committee regarding the outcome study conducted with respect to the juvenile drug court in Fargo.

In response to a question from Senator Heitkamp, Ms. McKenzie said expansion of drug courts to rural areas has been difficult; however, the use of technology could help address some of the travel issues.

Senator Heitkamp encouraged Ms. McKenzie to consider establishing a proposal to provide for a pilot program for a juvenile drug court in a rural area.

Mr. Brownshield said there was an attempt to implement a drug court on the Spirit Lake Reservation, but the proposal did not succeed.

Ms. McKenzie said a critical component of the success of drug courts is the continuity of the individuals involved in the drug courts.

Representative Klemin said jurisdictional issues always pose problems with respect to legal matters on Indian reservations. He said the establishment of a drug court may need to be addressed through the tribal courts.

Mr. Hoekstra said a drug court established by the tribal court in Belcourt has been quite successful.

Representative Carlisle said the commission may consider requesting the Chief Justice to provide information to the commission at a future meeting with respect to judicial participation in drug courts.

In response to a question from Mr. Cruff, Ms. McKenzie said the biggest impediment to preadjudication treatment is the cost of the treatment. She said it is also difficult to assess an individual's level of readiness for treatment. She said treatment options are available through the State Hospital.

Chairman Heitkamp called on Mr. Rodney Hair, Rural Crime and Justice Center, for a presentation regarding the Rural Crime and Justice Center. A copy of his presentation is attached as [Appendix E](#).

In response to a question from Senator Heitkamp, Mr. Hair said he will provide the commission with findings from the crime perception survey project.

In response to a question from Senator Grindberg, Mr. Hair said methamphetamine labs in the state generally have been prevalent in rural areas where there is a significant amount of open space to operate the labs. He said the state is seeing more methamphetamine traffic from Mexico and California moving through the eastern part of the state. He said criminals will always find areas of opportunity.

In response to a question from Representative Klemin, Mr. Hair said it appears that cocaine abuse is becoming more common in some areas of the state. He said he is unaware of any new drugs that are posing problems at this time.

In response to a question from Senator Dever, Mr. Hair said it is important to note that methamphetamine addiction can be treated and does not have to be a lifelong addiction. He said early intervention is necessary and it is important to get the message out to young people to keep them from trying the drug for the first time.

Ms. Hoesel noted that alcohol remains the No. 1 addiction in the state. She said prescription drug abuse is also becoming a significant problem.

In response to a question from Dr. Rabe, Mr. Hair said he expects to have preliminary findings from the crime survey by the end of December.

In response to a question from Senator Dever, Mr. Hair said the federal Drug Enforcement Agency

has stepped up efforts to address the importation of methamphetamine.

Mr. Hendrickson said there has been an excellent collaborative interdiction effort to address drug trafficking.

In response to a question from Senator Heitkamp, Mr. Hair said he has some concerns with funding for the Rural Crime and Justice Center because there was no earmark grant funding from the federal government in 2007. He said the center is operating on 2006 funding and continues to seek grant funds. He said funding for the center appears to be secured through May 2008.

Chairman Heitkamp called on Dr. Paul Kolstoe, Department of Human Services, for a presentation regarding the Individual Justice Planning Project. Dr. Kolstoe provided a PowerPoint presentation, a copy of which is attached as [Appendix F](#).

In response to a question from Representative Klemin, Dr. Kolstoe said the Individual Justice Planning Project has very little expense because the parties participating are already likely to be involved in the process. He said a plea bargain could be an outcome of a case using the project after an examination of the disabilities of the individual involved and other relevant factors. He said the court could also require medication or counseling and establish consequences for the failure to comply with the conditions imposed.

In response to a question from Senator Dever, Dr. Kolstoe said although the Individual Justice Planning Project was established in Fargo in 1988, the program has not been used frequently. He said the goal after publication of the new manual is to make more people aware of the program.

In response to a question from Senator Heitkamp, Mr. Hoekstra said one report indicates that approximately 47 percent of the inmate population in this state has a mental illness. Although the data varies, he said, an estimated 10 percent of inmates suffer from a significant mental illness.

Senator Dever said it was his understanding that approximately 65 percent of the juveniles in the custody of the Youth Correctional Center suffer from a mental illness and approximately 20 percent of all high school students are affected by a mental illness.

In response to a question from Representative Carlisle, Mr. Hoekstra said 92 percent of incarcerated individuals have an addiction, a mental illness, or a dual diagnosis that requires some type of treatment service.

Chairman Heitkamp called on Mr. Glenn Ellingsberg, Cass County Sheriff's Office, for comments regarding the Cass County Jail Intervention Project. Mr. Ellingsberg provided written testimony and other documents relating to the Cass County Jail Intervention Project, a copy of which is attached as [Appendix G](#).

In response to a question from Senator Heitkamp, Mr. Ellingsberg said the goal of the jail intervention project is to address problems before an individual

enters the criminal justice system. He said proper treatment with aftercare frequently will address problems in a more productive manner than incarceration.

Ms. McKenzie said cooperative interagency efforts can help keep individuals out of the State Hospital while providing community intervention. She said that type of effort will lessen the cost of services.

Chairman Heitkamp said the commission will likely meet three or four more times during the interim. He welcomed commission members to provide suggestions regarding future meetings.

Senator Grindberg said he would like to see more information regarding minimum/mandatory sentencing.

In response to a question from Senator Heitkamp, Ms. Bertsch said North Dakota compares very well with other states with respect to recidivism rates. In addition, she said, the parole revocation rate in this state is significantly below the national average.

Senator Heitkamp said it is important to inform the public of the success of programs implemented and administered by the Department of Human Services and the Department of Corrections and Rehabilitation.

Representative Carlisle said the commission should receive an update regarding the Teen Challenge program.

Ms. Bertsch said that program has been expanded to include women and children.

Senator Heitkamp said the commission should spend some time addressing the issues relating to job training and education of inmates.

Mr. Brownshield said the number of Native Americans incarcerated is significantly higher in proportion to the total number of Native Americans living in the state. He said the entire state will benefit if problems on the reservations can be addressed, and it is important to share information with tribal leaders.

Chairman Heitkamp said the commission should consider meeting in Belcourt where it can involve

tribal leaders and spend some time focusing on issues affecting Native Americans.

Mr. Hendrickson said the commission may consider examining educational programs that target younger children. He said there must be a coordination of efforts to provide information in the schools regarding drugs and alcohol. He said the benefits of treatment should be examined with respect to the cost of providing treatment and determine if funding is being used in the appropriate areas.

Ms. Hoesel said although the size of ShareHouse has been doubled, administrative costs have not doubled. She said residential treatment, such as the Robertson Recovery Center, cost significantly less than inpatient treatment.

Ms. Bertsch said the commission may consider meeting in Jamestown and visiting the Tompkins Rehabilitation and Correction Center. She said the center provides treatment for males and females and inmates and noninmates, which would give commission members a broad perspective on the treatment programs.

In response to a question from Representative Klemin, Chairman Heitkamp said visiting the Dakota Women's Correctional and Rehabilitation Center in New England would allow commission members to visit with individuals who are incarcerated and discuss the reasons for recidivism.

Chairman Heitkamp requested commission counsel to attempt to schedule a meeting in Belcourt for January 31, 2008. In addition, he said, he would like the commission to meet again on April 22-23, 2008.

There being no further business, Chairman Heitkamp adjourned the meeting at 10:50 a.m.

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John Bjornson  
Commission Counsel

ATTACH:7