

# NORTH DAKOTA LEGISLATIVE MANAGEMENT

## Minutes of the

### COMMISSION ON ALTERNATIVES TO INCARCERATION

Wednesday, February 1, 2012  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Senator Stanley W. Lyson, Chairman, called the meeting to order at 10:00 a.m.

**Members present:** Senators Stanley W. Lyson, Dave Oehlke, Connie Triplett; Representative Eliot Glassheim; Citizen Members Leann K. Bertsch, Bradley A. Cruff, Duane Johnston, Judge Lisa McEvers, Justice Mary Muehlen Maring, Carol K. Olson, Dr. Gary Rabe

**Members absent:** Representatives Lawrence R. Klemm, William E. Kretschmar; Citizen Members Edward Brownshield, Paul D. Laney, Thomas L. Trenbeath, Keith Witt

**Others present:** Representative Jerry Kelsh, member of the Legislative Management, was also in attendance.

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

#### COORDINATION OF SERVICES

Chairman Lyson called on Ms. JoAnne Hoesel, Department of Human Services, for a presentation ([Appendix B](#)) regarding coordination of services between the Department of Corrections and Rehabilitation and the Department of Human Services. Ms. Hoesel said five of the eight regional human service centers provide low-risk sexual offender treatment and provide services for victims. Although high-risk sexual offender treatment is not provided at the regional human service centers, she said, the department contracts with a provider for high-risk sexual offender treatment. She said the regional human service centers provide addiction treatment services, and the department also contracts for residential treatment services. Within a few days of release from incarceration, she said, an offender is scheduled for an appointment at a regional human service center to arrange for treatment and integration into the community.

In response to a question from Senator Lyson, Ms. Hoesel said all of the regional human service centers offer treatment services. However, she said, certain specialized efforts have been initiated at the local level and in some cases expanded to the other centers.

In response to a question from Mr. Cruff, Ms. Hoesel said in addition to the programs coordinated with the Department of Corrections and Rehabilitation, the Department of Human Services offers other mental health and prevention services. If a state's attorney or local law enforcement official is

aware of an individual who is incarcerated and who has apparent mental health issues, she said, the state's attorney or law enforcement official should contact the local human service center. She said some human service centers have local jails that will bring individuals directly to the human service centers for mental health referrals. In other situations, she said, staff from human service centers may work directly in correctional facilities.

In response to a question from Senator Oehlke, Ms. Hoesel said each regional human service center has an interagency council that interacts with volunteer groups, including the faith-based community. She said the type and level of cooperation and participation varies by region.

In response to a question from Senator Triplett, Ms. Hoesel said the areas of collaboration between the Department of Corrections and Rehabilitation and the Department of Human Services have generally been initiated because of a specific need in a region and have expanded to other areas based upon need. She said pilot programs also may be used to determine the feasibility of expansion of programs.

In response to a question from Justice Maring, Ms. Hoesel said the release and integration programs are specific to individuals on probation and parole. She said there also are referrals from the State Penitentiary for other released offenders. However, she said, those referrals are handled differently. She said not all of those who receive referrals go for the services if a referral is not a condition of the release.

In response to a question from Senator Oehlke, Ms. Hoesel said motivational interviewing in corrections is different than in human services. Although the technique is similar, she said, the process is applied differently.

In response to a question from Justice Maring, Ms. Hoesel said the motivational interviewing techniques are provided to staff at all levels and are appropriate for any client, including juveniles.

In response to a question from Senator Lyson, Ms. Hoesel said the Department of Human Services and Department of Corrections and Rehabilitation cooperate to share information regarding released offenders. If an individual who is released is not on parole or probation, she said, the departments may request information releases from the offender to assist in coordination of care.

Ms. Hoesel said the alternative for families cognitive behavioral therapy is a family-centered

treatment designed to address family conflict, coercion and hostility, emotional abuse, and child physical abuse. She said the therapy has been implemented in six regional human service centers. She said the therapy will be available in the other two centers when vacant positions are filled. She said the therapy could be very effective in the juvenile drug court setting. She said although treatment and therapy programs are resource-rich, individuals will continue cycling through the system if the resources are not devoted to treatment and therapy.

In response to a question from Senator Lyson, Ms. Hoesel said many of the evidence-based programs and much of the research is required by the federal government as a condition of receiving federal funds. She said there generally is no additional cost to replacing existing methods with new methods. She said it is important to look at the quality of the systems in place, not the quantity.

In response to a question from Representative Glasheim, Ms. Hoesel said the human service centers provide outreach on Indian reservations and place a high priority on a culturally competent manner of providing services to a variety of cultures. She said the department is performing an analysis of any gaps in the system. She said the changes occurring in the state will impact the delivery of human services.

### **COMMUNITY SERVICE SUPERVISION FUND**

Chairman Lyson called on Mr. Dave Krabbenhoft, Department of Corrections and Rehabilitation, for information ([Appendix C](#)) regarding the balance in the community service supervision fund. Mr. Krabbenhoft said the balance in the fund as of December 31, 2011, was \$9,680.61, and the ending balance is \$12,709.30. He said there have been no expenditures from the fund because there is no appropriation authority for the biennium. In the 2009-11 biennium, he said, \$34,550 was distributed on June 30, 2010, and \$21,124 was distributed on June 30, 2011. He said the Community Corrections Association received the distributions, and the funds were further distributed to community service agencies. He said there is approximately \$375,000 in an appropriation to the Office of Management and Budget (OMB) to be used for community service organizations.

In response to a question from Representative Glasheim, Mr. Krabbenhoft said the lack of an appropriation for this biennium was likely an oversight between the Department of Corrections and Rehabilitation and OMB. He said the Appropriations Committees were informed of the existence of the fund. He said the fund should be part of OMB's budget.

### **CLASS C FELONY THEFT STATUTES**

Justice Maring said because the \$500 threshold for a theft violation has not been increased in the last 30 years, an individual may be subject to a felony for

a relatively small monetary amount. If the threshold would have increased with the rate of inflation, she said, that amount would be substantially higher.

Mr. Cruff said the 2009-10 interim Judiciary Committee considered a bill draft that would have addressed this issue, but the bill draft was rejected.

In response to a question from Senator Lyson, commission counsel said the interim committee reviewed criminal offenses and penalties. He said the bill draft would have increased the monetary amount that would trigger a felony violation. He said the report of the Judiciary Committee indicated that the bill draft was distributed to 103 prosecutors in the state and only four responses were received. He said the report indicates that of the four who responded, three did not feel the changes were necessary. In addition, he said, some concern was expressed by committee members regarding the need to change the threshold. He said the committee's report indicated that supporters of the bill draft believed that the changes would result in a more efficient use of government services and that the increases were a reasonable reflection of inflation.

Senator Triplett said the committee probably should have also surveyed judges and defense attorneys. She said Justice Maring makes a good point regarding the impact of inflation.

Ms. Bertsch said a state's attorney brought the proposal to the Judiciary Committee. She said a person convicted of theft may not go to the State Penitentiary for the first offense but may later be incarcerated at the Penitentiary for the inability to fulfill the conditions of the sentence. She said the commission should consider increasing the thresholds and looking at the federal levels.

Judge McEvers said the cost incurred by the judiciary in addressing smaller theft cases is a concern. She said an individual may seek court-appointed counsel and the offense may end up being pleaded down to a misdemeanor. She said the change in the threshold would reduce the number of hearings and court appearances.

Senator Lyson said it is important to remember there are victims whose concerns also must be considered.

Senator Triplett said a person can be held responsible for a misdemeanor and may have a better opportunity to pay restitution and make the victim whole more easily for a misdemeanor than a felony. She said a felony is life-changing for everyone involved, including the family of the offender. She said the threshold for a felony should be at least \$2,000.

Senator Lyson said a lower threshold may prove to be a greater deterrent.

In response to a question from Representative Kelsh, Senator Lyson said a felony conviction for theft does not mean mandatory incarceration.

Ms. Bertsch said the felony conviction requires a period of probation which is a high-end correctional resource. She said the probation officers should be

focused more on offenders who are a risk to the public, and the probation process should not be used as a collection agency.

Justice Maring said the issue needs to be studied, and all perspectives should be addressed.

Chairman Lyson said the committee can consider additional information regarding the subject at its next meeting.

Ms. Bertsch said clerks of court collect restitution on misdemeanors, and the commission may consider getting information from clerks of court regarding the collection processes and amounts.

### **DRIVING UNDER SUSPENSION PENALTIES**

Justice Maring identified concerns with respect to large numbers of individuals who have been convicted of driving under suspension multiple times. She said judges are seeing a big problem with individuals driving under suspension and becoming subject to incarceration for multiple offenses. If there could be a provisional license available to individuals who are under suspension, she said, the individuals would have an opportunity to work and stop the continual spiral. She said an option could be to require an individual under suspension to demonstrate 12 months of sobriety and participation in a treatment program as a condition to receive a restricted or provisional license. Because some individuals under suspension have lost driving privileges for significantly long periods of time, she said, the individuals may lose hope of ever retaining a license and simply continue to drive unlicensed and uninsured.

Senator Lyson said the existing law provides for a work permit, and the law may need to be revised to address the concerns expressed by Justice Maring.

At the request of Chairman Lyson, commission counsel distributed a letter ([Appendix D](#)) from Judge Sonna M. Anderson regarding driving under suspension offenses and a summary ([Appendix E](#)) of driving under revocation or suspension penalties in other states which was prepared by the National Conference of State Legislatures.

Mr. Cruff said the work permit available under law may be too limited in that it applies to driving under the influence and actual physical control violations but not to driving under suspension violations. He said he can provide additional information to the commission regarding a pilot project undertaken in St. Paul, Minnesota, which may be the basis for proposed revisions in the laws of this state.

Ms. Linda Butts, Deputy Director, Driver and Vehicle Services, Department of Transportation, provided written testimony ([Appendix F](#)) regarding driving under suspension violations.

Mr. Glenn Jackson, Department of Transportation, said an individual is not able to obtain a work permit if there are multiple criminal traffic violations within a 36-month period. He said a work permit allows an individual to drive to work, go to medical appointments, and drive to purchase food. He said the department verifies the employment status of an applicant, and the issuance of the work permits is limited. He said participation in the 24/7 sobriety program may be a potential condition that could be considered as a means to obtain a limited permit for driving under suspension offenders. He said it is necessary to find a way to get individuals a permit to drive if there are no other violations beyond the driving under suspension violations. He said he could bring additional ideas to the commission at a future meeting.

Ms. Butts said she will work with interested parties, including judges suggested by Justice Maring, to try to develop a solution to bring to the commission.

Judge McEvers said she has seen many repeat driving under suspension offenders who do not have substance abuse problems. She said the suspensions have resulted from unpaid fines, and the violators have not been able to get their driving privileges reinstated.

Mr. Cruff said he has seen many individuals claim they have not received a notice of suspension from the Department of Transportation.

Mr. Jackson said because the department mails out thousands of letters, it is unable to send notices of suspension by certified mail due to cost issues. He said he also has heard many individuals claim they did not receive their notice of suspension, but the department rarely receives letters returned as undeliverable.

Senator Triplett requested information from the Department of Transportation regarding the cost of time and postage to require notices of suspension to be sent by certified mail.

No further business appearing, Chairman Lyson adjourned the meeting at 11:55 a.m.

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John Bjornson  
Commission Counsel

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