

# NORTH DAKOTA LEGISLATIVE COUNCIL

## Minutes of the

### **CRIMINAL JUSTICE COMMITTEE**

Tuesday and Wednesday, May 12-13, 1998  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Representative Merle Boucher, Chairman, called the meeting to order at 9:15 a.m. on May 12, 1998.

**Members present:** Representatives Merle Boucher, Duane L. DeKrey, G. Jane Gunter, Kim Koppelman, Bill Oban, Sally Sandvig, Al Soukup, Laurel Thoreson, John M. Warner; Senators Donna L. Nalewaja, Wayne Stenehjem, Darlene Watne

**Members absent:** Representatives Dale L. Henegar, Paul Murphy; Senators Les J. LaFountain, Marv Mutzenberger, Steven W. Tomac

**Others present:** See attached appendix

**It was moved by Senator Stenehjem, seconded by Senator Nalewaja, and carried that the minutes of the previous meeting be approved as distributed.**

#### **CHILD SEXUAL ABUSE Child Fatality Review Panel and Assessments**

At the request of Chairman Boucher, Ms. Gladys Cairns, Administrator for Child Protection Services, Children and Family Services Division, Department of Human Services, presented information on North Dakota Century Code (NDCC) Chapter 50-25.1 and the Child Fatality Review Panel. She said the Child Fatality Review Panel recommends Section 50-25.1-04.4 be amended to require an educational facility to disclose all records upon request of a coroner or the presiding officer of the Child Fatality Review Panel. She said the Child Fatality Review Panel is in favor of studying the concept of a graduated driver's licensing system. She said the panel does not have a plan for graduated licensing. A copy of her testimony is on file in the Legislative Council office.

Ms. Cairns provided handouts on child abuse and neglect in North Dakota for calendar year 1996, on the procedures and services offered upon a report of suspected child abuse or neglect, on this state's law relating to the Child Fatality Review Panel, on the forms used to evaluate a

death by the Child Fatality Review Panel, and on the statistics on deaths reviewed by the Child Fatality Review Panel including suspected shaken baby cases. In 1996, she said, there were 24 appeals of decisions made by Child Protection Services. She said there were approximately 120 appeals before the change in the law. A copy of her handouts is on file in the Legislative Council office.

In response to a question from Representative Thoreson, Ms. Cairns said Child Protection Services receives information for making an assessment from local law enforcement.

In response to a question from Representative Boucher, Ms. Cairns said it is a coroner's case when there is a sudden death at home. She said there is an onsite investigation by local law enforcement. She said local law enforcement does a fine job of being tactful in investigating a death that may be from natural causes or from unnatural causes.

In response to a question from Representative Thoreson, Ms. Cairns said the Child Fatality Review Panel reviews all deaths in which a North Dakota death certificate is issued, including deaths on reservations. She said there are jurisdictional issues as to whether the panel receives information from the reservation.

In response to a question from Senator Watne, Ms. Cairns said the higher percentage of male deaths as to female deaths can be attributed to car accidents and suicides.

In response to a question from Senator Stenehjem, Ms. Cairns said the Child Fatality Review Panel occupies approximately 15 hours per month of her time.

In response to a question from Representative Oban, Ms. Cairns said she is not involved with the task force on suicide; however, panel members from the Department of Health are involved with the task force.

In response to a question from Representative Oban, Ms. Cairns said there is a goal of having a crisis team at every school to respond to

students' needs after a suicide. She said crisis teams are a voluntary effort.

Representative Boucher said he encourages the formation of crisis response teams before a crisis.

In response to a question from Representative Oban, Ms. Cairns said smaller school districts have used the Bismarck crisis response team when there has been a lack of local services.

In response to a question from Representative Boucher, Ms. Cairns said in Dickinson there is a child protection team that serves the whole district. She said this is what is wanted on the local level.

In response to a question from Representative Oban, Ms. Cairns said the "Don't Shake the Baby" billboards are a cooperative effort of the Children and Family Services Division, the North Dakota Committee to Prevent Child Abuse, and Blue Cross Blue Shield of North Dakota. She said the "Put Down Your Fists" billboard is an effort by the North Dakota Committee to Prevent Child Abuse.

In response to a question from Representative Boucher, Ms. Cairns said there were 13 shaken baby cases in which no one was arrested because there were multiple caregivers. She said it is difficult to identify one suspect when there are multiple caregivers.

In response to a question from Representative Sandvig, Ms. Cairns said she has not worked with the Humane Society on the correlation between cruelty to animals and child abuse; however, she has done training on this issue in this state.

In response to a question from Senator Watne, committee counsel said Senator Ed Kringstad, Representative April Fairfield, and Representative RaeAnn Kelsch serve with 20 other citizens on the North Dakota Safety Council's Graduated Drivers Licensing Advisory Committee. After evaluating the graduated licensing concept, he said, the committee will consider its feasibility for submission to the 1999 Legislative Assembly.

### Overview

At the request of Chairman Boucher, Ms. Tara Lea Muhlhauser, Director, Children and Family Services Training Center, Grand Forks, presented an overview of sexual abuse prevention, intervention, and treatment issues from a multidisciplinary perspective. She said she is a member of the Alliance for Sexual Abuse Prevention and Treatment multidisciplinary group. She said the Alliance for Sexual Abuse Prevention and Treatment has learned:

1. Assisting victims of child sexual abuse requires providing services to the child's

family members, the offender, siblings, and the community at large.

2. The recovery process is long and intense.
3. The criminal justice response is not an option in many cases.
4. There must be a commitment of resources to address the issues of prevention, intervention, and recovery.
5. The multidisciplinary partnership works well in creating a system of response to sexual abuse issues.

Ms. Muhlhauser provided handouts on the description, administration, and mission of the Alliance for Sexual Abuse Prevention and Treatment training programs. A copy of her testimony and the handouts are on file in the Legislative Council office.

In response to a question from Senator Watne, Ms. Muhlhauser said there needs to be a clear understanding of juvenile sexual offenders to meet the treatment needs of these offenders. She said the alliance needs statistical data to meet this goal.

In response to Representative Boucher, Ms. Muhlhauser said because there are multiple points of access to the juvenile justice system, there needs to be the involvement of the Supreme Court, the Attorney General, the Division of Parole and Probation, the juvenile court system, and state's attorneys to track sexual offenders through the criminal justice system. She said there is a lack of coordination among the entities in the criminal justice system as to the keeping of records on sexual offenders. She said the alliance is unable to access data once a case leaves the Child Protection Services system. She said this makes it difficult to evaluate work done in the area of child sexual abuse.

At the request of Chairman Boucher, Mr. Stephen Wonderlich, Associate Professor and Associate Chairman, University of North Dakota School of Medicine and Health Sciences, presented information to the committee on the epidemiology and consequences of child sexual abuse. His presentation defined sexual abuse, told how common sexual abuse of children is, told what happens to children physically and mentally who have been sexually abused, and explored the impact on the community in terms of costs and societal problems. A copy of his presentation is on file in the Legislative Council office.

In response to a question from Representative Thoreson, Mr. Wonderlich said victims of child sexual abuse develop mental health problems partly because of inadequate support after abuse. He said there is an effort to increase support.

In response to a question from Representative Warner, Mr. Wonderlich said if there is child sexual abuse, there usually is emotional or physical abuse. He said it is difficult to separate the specific sexual component from the other abuse components.

At the request of Chairman Boucher, Ms. Susan Heinze, Coordinator, Child Protection Services, MeritCare Children's Hospital, Fargo, presented information on medical examinations of children suspected as victims of sexual abuse. She said a forensic medical evaluation is needed to determine if there is any tissue that needs repair, if there is a potential for sexually transmitted diseases, to check if the victim is pregnant, to collect evidence, and to provide information to the child. She said the colposcopy is used for medical evaluations and is noninvasive, but it does require special expertise. She said there is extra stress on a physician who performs these examinations. She said there are other examination techniques, including photography, use of a wood lamp (a source of ultraviolet light), toluidine blue dye stains, nonclean catch urine, and papanicolaou smear. She said there may be more testing for sexually transmitted diseases. She said each examination with a colposcopy costs approximately \$350. A copy of the outline used as the basis of her testimony is on file in the Legislative Council office.

In response to a question from Representative Soukup, Ms. Heinze said the hospital does not take referrals from parents. She said custody battles in divorce cases would monopolize the hospital's time if the hospital took parental referrals.

In response to a question from Representative Soukup, Ms. Heinze said doctors have to report suspected abuse. She said the North Dakota medical assistance programs pays for the colposcopy. She said some counties do not have the money to pay for this test.

In response to a question from Representative Soukup, Ms. Heinze said the process is not painful. She said the hospital has been doing the procedure since 1996. She said only the hands of the doctor and a nurse touch the child. She said the taking of some cultures is not pleasant, but it is not painful. She said the most painful test would be to have blood drawn.

In response to a question from Senator Nalewaja, Ms. Heinze said many times a court will allow a doctor to use a speaker phone for testimony.

At the request of Chairman Boucher, Ms. Susan Cordes Green, Director, Alliance for Sexual Abuse Prevention and Treatment, Fargo,

presented information on the process adult survivors of sexual abuse undergo when they seek professional help in overcoming the effects of abuse they suffered in childhood. She presented two case studies. She said the alliance provides basic and advanced training for mental health professionals throughout this state. She said treatment and prevention efforts will be enhanced if there is a continued investment in training. She said the alliance is in the process of conducting a survey to see if people are in need of support, information, or a forum for their ideas. She said the results of the survey will be given to the Criminal Justice Committee. A copy of her testimony is on file in the Legislative Council office.

In response to a question from Representative Boucher, Ms. Cordes Green said in one of the case studies the mother aided in the hiding of the sexual abuse of the child. She said the mother was programmed not to deal with the sexual abuse.

In response to a question from Representative Sandvig, Ms. Cordes Green said clients have the choice of including religion in part of their treatment. She said treatment is tailored to each client.

In response to a question from Senator Stenehjem, Ms. Cordes Green said that dialectic behavior therapy stems from traditional behavior therapy. She said there are a few methods that can help a borderline personality, and dialectic behavior therapy is one of them.

In response to a question from Senator Stenehjem, Ms. Cordes Green said a severely sexually abused child needs the concerted effort of many professionals. She said group therapy is important because it provides feedback. She said group therapy provides a social system or "family" for the victim. She said long-term one-on-one treatment is important to the seriously ill. She said this provides a trusting relationship.

In response to a question from Representative Thoreson, Ms. Cordes Green said she does not have the information to provide statistics on sexual abuse in rural versus urban areas. She said there are many unknown people who have suffered sexual abuse as a child and are functioning in the community. She said the clinical setting attracts the people with the most severe problems as a result of child sexual abuse.

In response to a question from Senator Watne, Ms. Cordes Green said there is a mandate on therapists to report cases of child sexual abuse. She said sometimes adults who were abused as children do not seek prosecution of the offender because the crime is beyond the statute of limitations.

In response to a question from Representative Boucher, Ms. Cordes Green said it is possible for a person who commits incest to be predatory. Representative Boucher said the term "rape" is used for the description of nonconsensual sex between adults. He said the term "abuse" is used for nonconsensual sex that involves a child. He said rape sounds more severe than abuse. He said in incidents of rape, society looks to incarceration, then at treatment. He said in incidents of abuse, society looks at treatment, then at incarceration.

At the request of Chairman Boucher, Ms. Beth Haseltine, Executive Director, Rape and Abuse Crisis Center, Fargo, presented information on the treatment of child sexual abuse victims at the center. Her presentation included information on the number of cases, the kinds of cases, the cost of treatment, and funding for treatment. She said therapy for children at the center uses a "nondirective" play therapy approach. She said early intervention with a victim of child sexual abuse greatly reduces the long-term damage to that child. She said the center provides information through the Red Flag, Green Flag program to children in local kindergartens. A copy of her testimony is on file in the Legislative Council office.

In response to a question from Representative Warner, Ms. Haseltine said there is a tendency to look at child sexual abuse as a social issue instead of a crime. She said child abuse is defined by statute. She said it is important to be careful in determining what is sexual.

### **Effects of Child Sexual Abuse on a Victim**

At the request of Chairman Boucher, Sarah, a victim of child sexual abuse, presented information to the committee. She said she was sexually abused by her father for about a year. She said she was put in foster care the day she reported to her school counselor that she had been sexually abused. She said she has been in foster care for four years. She said the criminal proceedings against her father involved three trials, two sentencing, and one appeal. She said she reported the sexual abuse on November 29, 1994. She said the first trial was in March 1996. She said this trial resulted in a hung jury with a jury vote of 11 to 1. She said the second trial began in August 1996. She said her father was sentenced on October 31, 1996, to 20 years in prison and 10 years of supervised probation. She said on September 10, 1997, her father appealed and was released from jail. She said on December 3, 1997, the third trial began. She

said on March 5, 1998, her father was sentenced to 30 years.

Sarah said her father denies sexually abusing her. She said she has not spoken with her sister or mother since this time because they do not believe that she was sexually abused. She said she received treatment at the Rape and Abuse Crisis Center. She said the treatment provider was the only one that was on her side. She said the treatment provider was the only one who believed her.

Sarah said her mom and dad are married. She said she does not know the location of her mom and sister. She said the treatment she received was very important. She said the support and the fact that the treatment provider believed her were very important.

Sarah said the criminal process took four years, which is too long. She said there needs to be more treatment centers. She said there needs to be education on the availability of treatment.

In response to a question from Representative Boucher, Sarah said she moved from her first foster home because she wanted to be closer to treatment. She said she moved from her second foster home because her foster parents' son died in a car accident. She said she moved from her third foster home because her foster parents moved to Minnesota.

In response to a question from Senator Stenehjem, Sarah said the state's attorney provided her with assistance and support. She said the judge was very fair. She said she provided a written statement and did not attend sentencing because her mother was at the sentencing.

In response to a question from Senator Nalewaja, Sarah said she has a best friend with whom she could talk during her ordeal. She said she does not think she will be close with her mother in the future; however, she will try to reconcile with her sister when she is not living with her mother.

In response to a question from Representative Thoreson, Sarah said her mental health is good. She said she was suffering from depression, and the counseling was very helpful.

### **Child Sexual Offender Treatment**

At the request of Chairman Boucher, Ms. Boni Simonson, Therapist, Dakota Boys Ranch, Minot, presented information on the sexual responsibility program for the treatment of adolescent sexual offenders. She said this program at Dakota Boys Ranch began in 1993. She said the program is an intensive residential treatment program for 10 adolescent boys between the ages of 12 and 18. She said there are myths about sexual

offending that include "boys will be boys" and "they will grow out of it." She said research shows that sexual problems typically begin around 11 to 12 years of age with the first sexual offense occurring around the ages of 14 to 15. She said the goal of sexual offender treatment is to help the offender take full responsibility for the offender's behavior, for the offender to learn the pattern or cycle of the offender's sexual offending behavior, for the offender to develop empathy for the victim, and to develop a realistic and usable relapse prevention plan. She said the treatment program includes 10 phases. She said it is important that the offender develop empathy for the victim, as well as for others in general. She said this is the most difficult task for many offenders.

Ms. Simonson said 30 to 40 percent of the residents at the Dakota Boys Ranch have a history of being sexually abused. She said very few victims have been strangers to the offender. She said the program has treated 59 boys. She said of these 59, nine are in placement, 28 have successfully completed the residential program, and 22 were unsuccessful in the program. She said she was told by Child Protective Services in Minot that they typically receive two to four reports each month of a suspected juvenile offender. She said they pass that information along to law enforcement for investigation. She said the juvenile court in Minot said they only handled a couple of juvenile sex crime cases in the previous two years. She said it is important to identify and hold juvenile sexual offenders accountable. A copy of her testimony is on file in the Legislative Council office.

In response to a question from Senator Watne, Ms. Simonson said the Boys Ranch developed the 10-phase program. She said this program is based on several nationally recognized models. She said they chose whatever worked best and fit within ranch resources. She said the ranch is in a constant state of updating the program.

In response to a question from Representative Boucher, Ms. Simonson said the reason for the high rate of nonsuccess is that the court has pulled some of the children out of treatment. She said some parents pulled their child out of treatment. She said the ranch removed some children from treatment because they were too disturbed or aggressive.

In response to a question from Representative Boucher, Ms. Simonson said financial responsibility is determined on the basis of ability to pay. She said this may be one reason for some cases not being successful. She said the ranch does not collect money from the parents for treatment.

She said the foster care system collects the money. She said parents might tell their child to go through the program as quickly as possible to avoid the expense.

In response to a question from Representative Koppelman, Ms. Simonson said the 10 phases include many goals within each phase. She said each phase includes many presentations, readings, and writings. She said the success of the program can be seen in the behavior of the offenders. She said how well the offenders are internalizing the treatment can be seen through whether they are empathetic in their behavior.

In response to a question from Representative Koppelman, Ms. Simonson said she is not aware of any recidivism for boys that have gone through the treatment program. She said the program has only been around for five years so there is no long-term review.

In response to a question from Senator Watne, Ms. Simonson said a task force to study the stumbling blocks between the initial report of a suspected juvenile sexual abuse case to the point of treatment and aftercare would be useful to determine what changes might need to be made within the system in order to better serve the adolescent population. She said the study should come from an external source to avoid finger pointing.

### **Adult Sexual Offender Treatment**

At the request of Chairman Boucher, Mr. Myron Veenstra, Director, Adult and Family Services, Northeast Human Service Center, Grand Forks, presented information on the treatment of sexual offenders in a community-based program. He said the treatment he offers is on an outpatient basis and is designed to meet the needs of the victim's recovery. He said the program does not accept offenders who target strangers or children in general. He said he works with incest offenders. He said he does not accept offenders who are in adamant denial of their offenses. He said the treatment is victim sensitive. He said he works to gain in the child a sense of empowerment over the offender. He said it is of great importance for the child to see the offender take responsibility for the offender's actions. A copy of his testimony is on file in the Legislative Council office.

In response to a question from Representative DeKrey, Mr. Veenstra said it is better to treat offenders at younger ages. He said whatever can be done to identify adolescent sexual offenders is worthwhile.

In response to a question from Senator Nalewaja, Mr. Veenstra said people expect a lot of good to come out of punishment. He said some families do not realize the value of treatment. He said working with the offender to help the victim with the victim's treatment is of great benefit to the victim.

In response to a question from Senator Watne, Mr. Veenstra said many incest offenders are pedophiles. He said offenders generally chose victims of the age at which the offender was abused as a child. He said incest offenders are usually focused on offending against family members. He said there is no cure for pedophilia; however, treatment can greatly reduce the chance of reoffending. He said it is important to use friends and relatives as de facto probation officers. He said they know what to look for to see if the offender is in relapse.

In response to a question from Representative Boucher, Mr. Veenstra said the treatment of sexual offenders in regional centers seems to be supported by the Legislative Assembly. He said the Jamestown facility is receiving training on sexual offender treatment. He said sexual offenders should have to deal with the entire community as part of the treatment.

In response to a question from Representative Boucher, Mr. Veenstra said treatment of sexual offenders is case management intensive. He said it is not billable hour intensive.

In response to a question from Senator Nalewaja, Mr. Veenstra said there is a range of denial. He said adamant denial is complete denial. He said offenders in adamant denial are not amenable to treatment. He said offenders in a lesser state of denial, i.e., say they are guilty but rationalize and minimize, may be susceptible to treatment.

In response to a question from Senator Nalewaja, Mr. Veenstra said the Northeast Human Service Center only treats offenders with child victims. He said this decision was made as a fiscal decision. He said excluding rapists with adult victims is a way to limit expenditures.

In response to a question from Representative Koppelman, Mr. Veenstra said treatment of individuals involuntarily civilly committed as sexually dangerous needs to carry over to the community if the offender is released. He said there must be treatment for an individual who is committed as a sexually dangerous individual. He said there is treatment at the State Hospital.

In response to a question from Representative Koppelman, Mr. Veenstra said most court orders require an offender to successfully complete treatment. He said the orders do not include any

language that allows the offender to be forced back into the system if the offender were to relapse after the completion of treatment. He said courts may order treatment but not specifically sexual offender treatment.

In response to a question from Representative Koppelman, Mr. Veenstra said notification has to be geared to the risk of the offender to the community. He said notification of the community of an incest offender would be hard on the victim.

### **Effects of Sexual Abuse on the Community**

At the request of Chairman Boucher, Father Duaine Cote, Catholic Pastor, Edgeley, North Dakota, presented information on the effects of child sexual abuse on a community. He said he came to the community in which he is a pastor five years ago. He said two months after arriving he found out a parishioner was a child sexual offender. He said he had known the man for approximately 30 years. He said the man was very involved with the youth activities. He said the man had been abusing for approximately 30 years and had 28 to 30 victims. He said the man is in a state of denial.

Father Cote said the offender has caused problems in the community. He said the problems are caused by the denial of the offender. He said denial holds up the healing process with the victims and the community. He said the offender is manipulative. He said the offender has gone to a neighboring parish and has gotten the ear of another priest. He said there is a difference between forgiveness and reconciliation. He said he has to forgive; however, reconciliation is a two-way street. He said the church is in the business of saving souls, and it is very difficult to help the offender and the community.

In response to a question from Representative Boucher, Father Cote said the offender has been ordered to stay at least 50 feet away from the victims. He said the offender was ordered into treatment for three or four months.

In response to a question from Representative Boucher, Father Cote said he would support community crisis teams coming into the community in these situations.

### **Risk Assessments**

At the request of Chairman Boucher, Ms. Barb Breiland, Intensive Program Supervisor, Parole and Probation Division, Department of Corrections and Rehabilitation, presented information on risk assessments as part of the presentence investigation. She said all presentence reports on

defendants charged with gross sexual imposition must include a risk assessment. She said this risk assessment may be useful for local law enforcement in determining whether to notify the public of an offender. She said the department has adopted the Minnesota sex offender screening test for risk assessments. She said the risk assessment test provides a score. She said the threshold for referral to a human service center is approximately 15 points. She said the department is in the process of training individuals to administer the test. A copy of her testimony is on file in the Legislative Council office.

In response to a question from Representative Boucher, Ms. Breiland said state's attorneys and law enforcement were notified of risk assessment training; however, not many attended. She said this is a consistent pattern.

In response to a question from Representative Soukup, Ms. Breiland said if sexual offenders are on parole or probation, they are monitored as to their behavior and as to where they are living. She said sexual offenders have 10 days to notify local authorities if they move. She said a sexual offender needs to follow the standards in the interstate compact if that offender wants to move out of state. She said a sexual offender would have to register if the offender moved to Minnesota.

In response to a question from Representative Sandvig, Ms. Breiland said a risk assessment should give law enforcement information to base decisions on community notification.

In response to a question from Senator Watne, Ms. Breiland said she has faith in the risk assessment test.

In response to a question from Senator Watne, Ms. Breiland said frottage includes brushing up against others for sexual gratification.

In response to a question from Senator Nalewaja, Ms. Breiland said there should be billboards that advertise that sexual offenders must register and register again if they change address.

In response to a question from Representative Warner, Ms. Breiland said there is a possibility that notification may cause harassment of or violence to offenders. She said notification is the law and it protects children.

### **Sexual Offender Registration and Notification**

At the request of Chairman Boucher, Mr. Jonathan Byers, Assistant Attorney General, presented information on sexual offender registration and notification. He said there are 995 offenders who have been convicted of a sexual offense or a crime

against a child. He said 693 are registered with local law enforcement agencies. He said the remainder are either still incarcerated or living in another state, and 67 have not been found. He said there are 42 juveniles listed on the juvenile data base, only nine of whom are indicated for sex crimes. A copy of his testimony is on file in the Legislative Council office.

In response to a question from Representative Boucher, Mr. Byers said the juvenile data base retains records for 10 years. He said law enforcement would be able to access these records for that period of time.

In response to a question from Representative Boucher, Mr. Byers said juvenile sexual offenders do not have the same duties as adults. He said juveniles have to send in an address to the data base.

In response to a question from Representative Boucher, Mr. Byers said the State Penitentiary may recommend to the state's attorney that the state's attorney file a petition for the involuntary civil commitment of an inmate about to be released from the Penitentiary.

In response to a question from Representative Sandvig, Mr. Byers said the risk assessment tool will help with recommendations for the involuntary civil commitment of sexually dangerous individuals.

In response to a question from Senator Watne, Mr. Byers said the reason notification is left to the determination of local enforcement is that it is simple, and it avoids certain due process concerns.

In response to a question from Representative Koppelman, Mr. Byers said the notification may be a block area or communitywide. He said the decision is left to local law enforcement because of the special circumstances in each community. He said local law enforcement is open to criticism for a decision to release or not release information on a sexual offender. He said there is civil and criminal immunity for law enforcement for releasing and not releasing information.

In response to a question from Representative Koppelman, Mr. Byers said there is a list of all 995 sexual offenders at the Bureau of Criminal Investigation which is free of charge to the public.

In response to a question from Representative Koppelman, Mr. Byers said he is in the process of notifying the people of this state so that they know that there is information on sexual offenders. He said California has a CD-ROM of sexual offenders.

In response to a question from Senator Nalewaja, Mr. Byers said all of the agencies that will

use a risk assessment tool for sexual offenders will be using the same test.

In response to a question from Senator Nalewaja, Mr. Byers said Louisiana requires offenders to go around the neighborhood and notify their neighbors of the fact that the offender is a sexual offender. He said tracking of sexual offenders is done by asking the postmaster if a person receives mail at an address. He said that other states require sexual offenders to have a marked driver's license.

Senator Stenehjem said he likes the concept of posting sexual offender information on a web page.

In response to a question from Senator Stenehjem, Mr. Byers said misdemeanor assaults are on the same list as sexual offenders, and it might not be fair to post them together.

In response to a question from Senator Nalewaja, Mr. Byers said removing simple assaults from the juvenile data base has been recommended to him, and the idea seems appropriate.

In response to a question from Senator Nalewaja, Mr. Byers said that prosecutors are willing to charge the serious charges, and sentencing for these charges is becoming more severe.

### **Effects of Child Sexual Abuse on Parents**

At the request of Chairman Boucher, the committee was provided with the written testimony of Sue, a parent, on the needs of parents of sexual abuse victims. A copy of her testimony is on file in the Legislative Council office.

### **Summary of Alliance Testimony**

At the request of Chairman Boucher, Ms. Haseltine summarized the previous testimony. She said funding is needed for agencies like the Rape and Abuse Crisis Center to continue services to children and their nonoffending family members at no cost for medical examinations, for training individuals to treat offenders, for prevention through information distributed through schools, and for treatment services for children. She said juvenile offenders must be adjudicated delinquent, so they are accountable. She said the alliance would like to see a statute that would require repeat risk assessments at certain intervals during the time the offender is required to register, even if they are no longer on parole or probation. She said there needs to be established a data system that will make it possible to follow a case from the initial report to Child Protection Services or law enforcement to sentencing and beyond. A copy of

her testimony is on file in the Legislative Council office.

## **JUVENILE CRIME American Indian Crime and Delinquency Information**

At the request of Chairman Boucher, Mr. Al Lick, Director, Division of Juvenile Services, Department of Corrections and Rehabilitation, presented information on inmates at the State Penitentiary by enrolled tribe, juveniles at the Youth Correctional Center by enrolled tribe, the estimated cost of a 30-bed secured juvenile facility, and dollars available for new construction of a secured juvenile facility for Indian tribes. A copy of the information he provided is on file in the Legislative Council office.

In response to a question from Senator Stenehjem, Mr. Lick said the other tribes in the United States category of inmates at the Penitentiary or juveniles at the Youth Correctional Center include mainly individuals who have wandered into this state.

In response to a question from Representative Boucher, Mr. Lick said this information was gained from asking inmates and juveniles what their tribal affiliation was. He said the department did not verify the information. He said the number of American Indian juveniles at the Youth Correctional Center decreased in 1997.

In response to a question from Representative Boucher, Mr. Lick said all the children at the Youth Correctional Center came from district court, except two who came from the Bureau of Prisons. He said the tribe pays for the cost of placement of juveniles at the Youth Correctional Center. He said the tribes are at the end of their fiscal year, and there are no tribal placements because they have run out of money.

Representative Boucher said the idea of all the tribes in this state cooperating and having one secure facility has stalled because of politics and determining where the facility should be located. He said each tribe wants the facility on that tribe's reservation because of the benefits of local treatment.

In response to a question from Representative Thoreson, Mr. Lick said the detention facility should be built on reservation property. He said the tribes would like it on reservation property. Representative Thoreson said locating the facility off a reservation would provide a neutral and centrally located facility.

Mr. Lick said the Division of Juvenile Services would like to use juvenile crime bill money for intensive supervision of juveniles through the



juvenile court and on the reservation by increasing Division of Juvenile Services probation staff, offering tracking services to the tribes, and for treating huffers.

In response to a question from Representative Sandvig, Mr. Lick said building a treatment facility on the reservation would be difficult under the allocation to be set aside for individual Indian tribes under the Violent Offender/Truth-in-Sentencing Act unless the tribes work together.

In response to a question from Senator Nalewaja, Mr. Lick said the higher number of juveniles at the Youth Correctional Center from the Spirit Lake Tribe is because of the proximity to a large police department at Devils Lake. He said the higher number from the Turtle Mountain Reservation is because of a higher population.

Senator Watne said Spirit Lake is a dry reservation. She said alcohol-related crime would necessarily have to have some portion of it done off the reservation.

In response to a question from Senator Nalewaja, Mr. Lick said the female population at the Youth Correctional Center is between 10 and 15 percent.

### **Gangs**

At the request of Chairman Boucher, Mr. Larry Little, Founder, Citizens Against Gang Existence, presented information on remaining vigilant against the formation of gangs. A copy of his testimony is on file in the Legislative Council office.

In response to a question from Representative Soukup, Mr. Little said that he is a one-man organization.

Senator Stenehjem said the state appears to have the laws proposed by Mr. Little.

In response to a question from Senator Stenehjem, Mr. Little said it is important to promote a community effort against gangs. He said this is just as important as any law change.

In response to a question from Representative Thoreson, Mr. Little said he has attended the citizen group meetings in Fargo. He said he is prodding people to get involved against gangs.

Senator Nalewaja said there has been a dramatic drop in gang activity in Fargo.

Representative Thoreson said West Fargo is doing a good job in schools and in the community in preventing gang formation.

At the request of Chairman Boucher, Ms. Lisa Bjergaard, Regional Supervisor, Division of Juvenile Services, Department of Corrections and Rehabilitation, presented information on

treatment for juvenile sexual offenders and on gang issues.

Ms. Bjergaard said there is treatment at the Youth Correctional Center for children with gang involvement. She said children involved with gangs lack a positive male role model. She said the program does not allow borderline gang members. She said involving borderline gang members would teach them more about gangs.

In response to a question from Senator Watne, Ms. Bjergaard said there is amazing fluidity in the number of children who claim to be in any one gang on any one day. She said these children are not in the big city urban gangs. She said you cannot leave a big gang. She said the children claim affiliation with the gang for the purpose of making a name for themselves.

### **Juvenile Sexual Offenders**

Ms. Bjergaard said there are 39 children in custody who are sexual offenders. She said not all have been adjudicated for sexual offenses. She said most have not performed forcible acts but have sexually offended in the context of a relationship. She said out of the 39 children in custody, seven are at the Youth Correctional Center, 12 are in group home or ranch-type settings, nine are in their own home and in community-based programs, two are in therapeutic foster care, one is in the State Hospital, one is in independent living because the child is at the age of majority, and seven are at out-of-state facilities.

In response to a question from Representative Soukup, Ms. Bjergaard said within 60 days of receiving custody of a child, the division must report to the district court. She said the division gathers previous reports and assessments as part of this process. She said the division has authority to get an evaluation at the State Hospital, a human service center, or other treatment facility. She said the division does a risk assessment. She said if the child is at the Youth Correctional Center there is a brief psychological test. She said the treatment plan is based on the information compiled and on the professional opinion of staff members and others within the context of placing the child in the least restrictive environment. She said the division updates the court on a quarterly basis.

In response to a question from Senator Nalewaja, Ms. Bjergaard said child sexual offenders treated by the division get into trouble with their own families and are treatable. She said it would be useful to track children after they grow out of the juvenile system so there can be accurate statistics on the success of certain programs.

In response to a question from Representative Sandvig, Ms. Bjergaard said the division tracks recidivism, but not by offense.

Senator Nalewaja said she would like to have final proof that juvenile sexual offenders have not become adult sexual offenders.

In response to a question from Senator Nalewaja, Ms. Bjergaard said the juvenile data base is not under the division's purview. She said it is for law enforcement.

In response to a question from Senator Nalewaja, Ms. Bjergaard said she does not strongly endorse letters of apology. She said offenders need to do more than write a letter. She said offenders need to make things right with their families. She said an apology is important for the family and the victim.

In response to a question from Representative Thoreson, Ms. Bjergaard said we have not had predatory child sexual offenders placed in schools. She said these offenders are at the Youth Correctional Center. She said the child offenders in the community usually have not offended in a school setting. She said they generally offend against children who are quite younger, so there is no danger in a school setting.

In response to a question from Senator Nalewaja, Ms. Bjergaard said the privately run Mille Lacs Academy provides an intensive program. She said it would be cost-prohibitive to have the same program in this state. She said the program has more structure. She said the children are not in public school. She said more of the offenders have peer-aged victims. She said the treatment is very confrontational.

In response to a question from Senator Nalewaja, Ms. Bjergaard said enhancements in juvenile offender treatment require more foster homes and residential treatment centers.

In response to a question from Representative Boucher, Ms. Bjergaard said the average cost of an out-of-state facility is approximately \$100 per day.

In response to a question from Senator Watne, Ms. Bjergaard said the reason for the difference in the cost of placing a child at the Youth Correctional Center of approximately \$42,000 per year and the cost of placing an adult at the Penitentiary of approximately \$25,000 per year is due to the school program. She said it costs approximately \$70 per day for the school program.

Representative Oban said he thinks the trend is for the federal government to balance its budget on the backs of this state.

In response to a question from Representative Oban, Ms. Bjergaard said the division keeps close

watch of federal dollars. She said this state maximizes foster care dollars better than any other state.

In response to a question from Representative Sandvig, Ms. Bjergaard said the gang counselor at the Youth Correctional Center is on the professional staff. She said using community members for gang treatment would be valuable as long as it did not glamorize gang activity.

### **Restorative Justice**

At the request of Chairman Boucher, Mr. Curt Brown, Case Manager, Division of Juvenile Services, Department of Corrections and Rehabilitation, presented information on restorative justice. A copy of the outline used as a basis for the testimony of Ms. Bjergaard and Mr. Brown is on file in the Legislative Council office.

Mr. Brown said restorative justice places a face with a crime. He said restorative justice provides an extended role for victims. He said restorative justice focuses on personal responsibility and tries to repair the harm the crime caused and make things right. He said restorative justice includes victim/offender mediation.

Mr. Brown said the difference between retributive and restorative justice is that retributive justice focuses on who is wrong, where restorative justice focuses on obligations. He said retributive justice is absolute, and restorative justice is by degree. He said retributive justice is indelible, and restorative justice is removable. He said retributive justice focuses on debt in the abstract, and restorative justice focuses on debt in the concrete. He said retributive justice has the debt paid by punishment, and restorative justice requires that things are made right. He said retributive justice focuses on the debt owed to society, and restorative justice focuses on the debt owed to the victim.

Mr. Brown said that victim/offender mediation is good for front-end children. He said money will be offered to the juvenile courts to develop victim/offender mediation. He said the Division of Juvenile Services will contract with private providers for these services. He said these services will be available to the juvenile court and will be funded by the division.

In response to a question from Representative Thoreson, Mr. Brown said victim/offender mediation is for any time the victim wants mediation.

In response to a question from Representative Thoreson, Mr. Brown said the punishment of the juvenile is left to the juvenile court. He said restorative justice offers the victim a say in the punishment. He said restorative justice focuses

on accountability, not getting away with the crime.

In response to a question from Representative Boucher, Mr. Brown said he has done approximately 10 victim/offender mediations. He said the mediations typically start out with a lot of anger on the part of the victims. He said most of the victims say that they want to know what happened to the child. He said mediation allows this. He said victims think that mediation works well. He said victims want to be involved in the process, and mediation allows their involvement in the process.

In response to a question from Senator Nalewaja, Mr. Brown said there is no legal duty for victims to take part in an offender's treatment. He said there is a contract signed at the end of the mediation.

In response to a question from Representative Thoreson, Mr. Brown said the confidentiality of the mediation is up to the victims. He said there has not been a problem with victims releasing sensitive information. He said the offenders are aware that the information may be released by a victim.

In response to a question from Representative Soukup, Mr. Brown said not all crimes are appropriate for mediation.

In response to a question from Representative Boucher, Mr. Brown said people are aware of the mediation program and on a nationwide basis it appears to be a way juvenile justice is headed.

### **Causes of Delinquency**

At the request of Chairman Boucher, Mr. Kevin Thompson, Associate Professor, North Dakota State University, presented information on the causes of delinquency in Cass County. A copy of his presentation is on file in the Legislative Council office.

Mr. Thompson said on May 11, 1998, he signed a contract with the Supreme Court to evaluate juvenile programs in this state. He said the evaluation is a cost-benefit analysis.

Mr. Thompson said his study tries to identify the high-risk youth. He said the goal of the study is to find high-risk youth that are not in custody. He said high-risk youth are three to five percent of the population and commit 50 to 75 percent of the crime. He said the high-risk youth criminal activity peaks between 16 and 18 years of age. He said these youth usually begin crime at age 8. He said these children typically come from families with no rules and no monitoring behavior. He said the parents do not recognize or refuse to recognize defiance. He said these parents give

inconsistent punishments. He said the punishment is usually physically severe when it occurs. He said these children have low self-control, are high risk takers, are pleasure seekers, are short-sighted, and are nonverbal.

Mr. Thompson said the at-risk behaviors used to categorize youth were binge drinking, use of narcotics, police contacts, sexual activity, and seatbelt nonuse. He said the youth were divided into four categories. He said 75 percent of the youth surveyed were minimal-risk youth. He called these youth "the conformists." He said seven percent were in the officially labeled youth category. He said these youth are "the episodic troubled youth." He said 14 percent were in the moderate at-risk youth category. He said these youth were "the criminal opportunists." He said intervention works on these youth. He said five percent were in the high-risk category. He said 78 percent were male. He said the average age was 15.3 years of age. He said 70 percent came from two-parent families. He said each youth was active in all behaviors, except narcotics use.

In response to a question from Representative Thoreson, Mr. Thompson said Hispanics had a disproportionate number of youth in the high-risk category.

In response to a question from Senator Nalewaja, Mr. Thompson said alcohol and the lack of fathers in the family are factors but not strong predictors of whether a youth will be in the high-risk category.

Mr. Thompson said deficient child rearing creates low self-control in a child, which then becomes a stable trait in the child's life.

Mr. Thompson said the percentage of youth in risk categories who spent five or more hours a week at home without the presence of an adult is a measure of deficient parenting. He said 38.2 percent of the high-risk category, 21.1 percent of the moderate-risk category, 20.9 percent of the episodic-risk category, and 23.8 percent of the minimal-risk category spent five or more hours a week at home without the presence of an adult.

Mr. Thompson said the percentage of youth in risk categories who do not get punished for breaking parents' rules is a measure of deficient parenting. He said 40.5 percent of the high-risk category, 36.7 of the moderate-risk category, 32 percent of the episodic-risk category, and 22 percent of the minimal-risk category did not get punished for breaking parents' rules.

Mr. Thompson said the percentage of youth in risk categories who have four or more incidents of serious physical abuse is a measure of deficient parenting. He said 15.9 percent of the high-risk

category, 7.9 percent of the moderate-risk category, two percent of the episodic-risk category, and 2.1 percent of the minimal-risk category had four or more incidents of serious physical abuse.

In response to a question from Senator Nalewaja, Mr. Thompson said abuse starts before risk behaviors. He said a pattern is developed through abuse which is followed when at-risk behaviors emerge.

Mr. Thompson said the percentage of youth in risk categories whose parents get very or extremely upset if they discovered the youth drinking at a party is a measure of deficient parenting. He said 49 percent of the high-risk category, 52.9 percent of the moderate-risk category, 73.3 percent of the episodic-risk category, and 87.2 percent of the minimal-risk category had parents who got very or extremely upset if they discovered the youth drinking at a party.

Mr. Thompson said the percentage of youth in risk categories whose parents have a serious problem with drugs or alcohol is a measure of deficient parenting. He said 18.8 percent of the high-risk category, nine percent of the moderate-risk category, 6.1 percent of the episodic-risk category, and 4.6 percent of the minimal-risk category had a parent with a serious drug or alcohol problem.

In response to a question from Representative DeKrey, Mr. Thompson said his survey assumes that children are interpreting the questions the same. He said each child's perception of an alcohol problem could be different.

In response to a question from Representative Boucher, Mr. Thompson said children in the high-risk category might be underreporting because they think abuse of alcohol is normal.

Mr. Thompson said the percentage of youth in risk categories who mostly receive grades C or below is a measure of low self-control. He said 44.9 percent of the high-risk category, 29 percent of the moderate-risk category, 21.4 percent of the episodic-risk category, and 6.4 percent of the minimal-risk category receive C or below grades.

Mr. Thompson said the percentage of youth in risk categories who reported gang involvement is a measure of low self-control. He said 80 percent of the high-risk category, 41 percent of the moderate-risk category, 31 percent of the episodic-risk category, and 15 percent of the minimal-risk category reported gang involvement.

In response to a question from Senator Nalewaja, Mr. Thompson said youth in the moderate-risk category have the ability to reform. He said some would say youth in the high-risk category are impossible to rehabilitate. He said the literature suggests that children who are physically and

sexually abused and who do not become high risk have had an adult role model and conventional peer groups for support.

Mr. Thompson said the percentage of youth in risk categories who report most of their closest friends drink alcohol more than one time per week is a measure of low self-control. He said 55.1 percent of the high-risk category, 23.6 percent of the moderate-risk category, 10.2 percent of the episodic-risk category, and three percent of the minimal-risk category report that most of their closest friends drink alcohol once a week or more.

Mr. Thompson said rehabilitation requires institutional changes. He said sometimes a solid relationship, a job, or the military lowers the risk in a youth.

In response to a question from Representative Sandvig, Mr. Thompson said the biological/chemical model of at-risk youth is a small proportion of at-risk youth. He said children grow out of hyperactivity as they get older. He said his study is based on a probability model.

In response to a question from Representative Soukup, Mr. Thompson said bad parents create bad kids who become bad parents.

In response to a question from Representative DeKrey, Mr. Thompson said religion is not a good predictor of risk level. He said extracurricular school activities can prevent bad behavior; however, extracurricular activities in the community are not a good predictor of the level of risk behavior.

In response to a question from Representative Koppelman, Mr. Thompson said high-risk children need to be identified and given intervention services at an early age so the risk can be removed. He said the intervention of a parenting learning center works to remove the risk. He said high-risk youth need to be identified at four or five years of age.

In response to a question from Senator Nalewaja, Mr. Thompson said intelligence may be a factor in the removal of risk. He said alternative schools seem to have youth who are either of low intelligence or high intelligence.

## **CRIME LAB AND MEDICAL EXAMINER**

At the request of Chairman Boucher, Mr. Murray Sagsveen, State Health Officer, presented information to the committee on the crime laboratory and medical examiner program. He provided a copy of a study of the crime lab which was conducted by Ms. Sandra C. Mays, Deputy Director, Division of Criminal Investigation, Cheyenne, Wyoming, and a copy of

a study done on the state medical examiner system by Mr. I.C. Stone. A copy of each study is on file in the Legislative Council office.

Mr. Sagsveen said he has separated the positions of director of the state crime lab and the State Toxicologist. He said he is in the process of hiring a director for the crime lab. He said the medical examiner uses two morgues in Bismarck and has an office at the Bureau of Criminal Investigation. He said he is exploring the possibility of combining these facilities.

Chairman Boucher recognized Mr. Earle Myers, Richland County State's Attorney, who presented information to the committee. He said the issues of a crime lab and the medical examiner system should remain separate. He said a problem with the medical examiner system is that there is no permanent facility.

Chairman Boucher recognized Mr. I.C. Stone who said creating more space and hiring more personnel is the most important objective. He said accreditation and certification is becoming the norm in the forensic community. He said the crime lab may not be able to be accredited or certified.

Chairman Boucher recognized Ms. Sandra C. Mays, Deputy Director, Division of Criminal Investigation, Cheyenne, Wyoming, who said there is the perception that placing the crime lab in the Attorney General's office will create a biased review of evidence. She said in Wyoming the crime lab does work for court-appointed attorneys and for the public defenders. She said this aids in removing the perception of the crime lab being biased.

In response to a question from Representative Boucher, Dr. George Mizell, State Medical Examiner, said out of the 53 counties in this state, 33 have a medical county coroner, and 20 have a designated coroner. He said the designated coroner is usually a funeral director or a sheriff. He said the medical examiner has autopsied 295 bodies since the inception of the position. He

said there were 169 autopsies in 1997 and 94 autopsies so far this year.

In response to a question from Senator Watne, Ms. Mays said the crime lab needs a vehicle for use at crime scenes. She said the state of Wyoming has two vehicles. Mr. Aaron Rash, State Toxicologist, said state fleet vehicles may be used to collect evidence from crime scenes; however, most crimes do not happen during state fleet working hours. He said it also takes time to check out a vehicle and in crime scene investigation time is of the essence. Mr. Stone said there is the fiscal liability of spreading a communicable disease in a vehicle that is used by different agencies.

In response to a question from Senator Nalewaja, Mr. Bob Barnett, Chief, Administrative Services Section, Department of Health, said there is a lot of turnover at the crime lab. He said there is one position presently open.

Chairman Boucher recognized Mr. Bill Broer, Director, Bureau of Criminal Investigation, who said the Bureau of Criminal Investigation does not have a magic wand that will make the crime lab work efficiently. He said the bureau would need the additional resources and personnel that the crime lab presently needs.

Chairman Boucher recognized Mr. Dick Peck, Peace Officers Association, who said Mr. Sagsveen understands the problems with the crime lab and is working to solve the problems.

Chairman Boucher tentatively set the next meetings of the Criminal Justice Committee for July 8 and September 17. He adjourned the meeting at 3:30 p.m. on May 13, 1998.

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Timothy J. Dawson  
Committee Counsel

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