

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

CRIMINAL JUSTICE COMMITTEE

Tuesday, July 8, 1997
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Merle Boucher, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives Merle Boucher, Duane L. DeKrey, G. Jane Gunter, Kim Koppelman, Paul Murphy, Bill Oban, Sally Sandvig, Al Soukup, Laurel Thoreson, John M. Warner; Senators James A. Berg, Les J. LaFountain, Marv Mutzenberger, Donna L. Nalewaja, Wayne Stenehjem, Steven W. Tomac, Darlene Watne

Members absent: Representatives Kathy Hawken, Dale L. Henegar

Others present:
Vivian I. Schafer, Children's Caucus/NDAEYE, Bismarck
Andrea J. Martin, Bonnie Palecek; NDCAWS/CASAND, Bismarck
Gladys Cairns, Child Protection Services, Department of Human Services, Bismarck;
Jaralea Muhlhauser, CFSTC, University of North Dakota, Grand Forks
Michael Lindblom, KFYZ-Meyer Broadcasting, Bismarck
Kathy Mayer, North Dakota Committee to Prevent Child Abuse, Bismarck
Linda Isakson, NDCAWS/Children's Caucus, Bismarck;
Elaine Little, Warren Emmer; Department of Corrections and Rehabilitation, Bismarck
Jonathan Byers, Attorney General's office, Bismarck
Carter Wood, Governor's office, Bismarck
Jon Rice, Department of Health, Bismarck
Terry Traynor, North Dakota Association of Counties, Bismarck
Al Lick, Division of Juvenile Services, Department of Corrections and Rehabilitation, Bismarck
Gerry Wilkie, State Representative, Rolla
Deborah Painte, Indian Affairs Commission, Bismarck
Claus Lembke, North Dakota Association of Realtors, Bismarck

PROCEDURAL MATTERS

Chairman Boucher called on Mr. Jay E. Buringrud,

Assistant Director, Legislative Council, to review the supplementary rules of operation and procedure of the Legislative Council.

Senator Nalewaja requested that the committee ask the chairman of the Legislative Council to consider assigning Senate Concurrent Resolution No. 4020 to the committee. She said this study includes a review of the state crime lab, the state forensic examiner, and the state toxicologist. Mr. Buringrud said the Legislative Council considered but did not prioritize this resolution and subsequent to this meeting requests were made to the Legislative Council chairman, who did not assign that resolution to the committee as an added responsibility. Senator Tomac commented that since the request had already been made as part of the prioritization process and of the Legislative Council chairman after that process, any further request would seem futile.

Senator Stenehjem suggested that the committee receive testimony from a representative of the crime lab to see if there is any new information on which the Legislative Council chairman may base a new decision.

At the request of Chairman Boucher, Dr. Jon Rice, State Health Officer, said the Department of Justice will provide technical assistance for a review of the crime lab and medical examiner; however, there is no available funding per se. He said the Department of Justice would provide a person for five to 10 days to review the crime lab and five to 10 days to review the medical examiner, and then to prepare a report. He said the medical examiner acts as a consultant to the local coroner who has the responsibility for a dead body. He said he is concerned over the number of deaths that are not being investigated thoroughly at the county level. Based upon statistics gathered in Vermont, he said, this state can expect about 200 cases to be investigated by the medical examiner per year. He said 150 cases per year provide an appropriate workload for one medical examiner.

Senator Stenehjem said receiving information would not create a problem with the committee going outside its areas of assigned study; however, if the committee were to request a bill draft, then

permission from the Legislative Council chairman would be required.

It was moved by Senator Nalewaja, seconded by Representative Soukup, and carried on a roll call vote that representatives from the Bureau of Criminal Investigation, the coroner system, the state crime lab, and the state medical examiner be requested to create a task force to review the state lab and report the findings to this committee. Representatives Boucher, Gunter, Koppelman, Murphy, Oban, Sandvig, Soukup, Thoreson, and Warner and Senators Berg, LaFountain, Mutzenberger, Nalewaja, Stenehjem, Tomac, and Watne voted "aye." No negative votes were cast. Chairman Boucher said he would send a letter to Senator Nelson, Chairman, Legislative Council, informing him of this motion.

SEX OFFENSES AND SENTENCING

At the request of Chairman Boucher, committee counsel presented a background memorandum on Senate Concurrent Resolution No. 4049, which directs a study of the feasibility and desirability of revising the sections of the North Dakota Century Code which relate to sexual offenses.

SEXUALLY DANGEROUS INDIVIDUALS

At the request of Chairman Boucher, committee counsel presented a memorandum on the involuntary civil commitment of sexually dangerous individuals in light of a recent United States Supreme Court opinion entitled *Kansas v. Hendricks*.

In response to a question from Representative Oban, Senator Stenehjem said the only treatment for a sexually dangerous individual is out of state. He said this treatment is very expensive. He said the State Hospital is reviewing the possibility of creating a program in state.

Senator Nalewaja commented that the State Hospital, through its governing board, has expressed the opinion that people that are involuntarily civilly committed may not benefit from treatment. She said there may not be a treatment that cures certain sexual offenders; however, there has been success with behavior modification which allows a sexual offender to live in the community. She said out-of-state placement is not possible because other state programs are full.

In response to a question from Senator Stenehjem, committee counsel said the clear and convincing standard that is used for commitment in this state appears to be constitutional. He said the Kansas statute at issue in *Hendricks* uses the beyond a reasonable doubt standard.

In response to a question from Representative Boucher, Senator Stenehjem said a committed

individual is placed in the custody of the executive director of the Department of Human Services. He said this state does not require the prerequisite of a criminal conviction for a person to be committed. He said Kansas law does.

In response to a question from Representative Thoreson, Senator Nalewaja said this state would need a program of treatment for eight to 10 sexually dangerous individuals at a minimum. She said a 20-bed program was what the State Hospital first suggested.

In response to a question from Senator Mutzenberger, Ms. Elaine Little, Director, Department of Corrections and Rehabilitation, said the State Hospital is investigating alternatives for individuals who are committed as sexually dangerous individuals. She said some state's attorneys are planning on using the commitment statute when it becomes effective. She said there are a handful of inmates at the Penitentiary who may be committed under this law; however, they have long sentences so the problem of what to do with them is not a current problem.

In response to a question from Senator Stenehjem, Ms. Little said judges are sentencing sexual offenders on average to five to 10 years' imprisonment. She said they do this because they know that treatment at the Penitentiary takes three to five years.

In response to a question from Representative Boucher, Ms. Little said an inmate who refuses to go to treatment would seem to appear more dangerous and this may have an effect on a court in deciding whether to commit that person.

CHILD SEXUAL ABUSE

Senator Nalewaja read a letter from the parents of a child who had been sexually abused. A copy of the letter is on file in the Legislative Council office.

At the request of Chairman Boucher, committee counsel presented a background memorandum on Senate Concurrent Resolution No. 4025, which directs the Legislative Council to study the effects of sexual abuse on child victims, strategies to assist child victims and the parents of child victims, the use and effectiveness of the mandatory reporting law, effective deterrents, and the need for training of professionals, public awareness initiatives, and training of school personnel in the recognition of victims and in prevention activities.

At the request of Chairman Boucher, Ms. Gladys Cairns, Administrator, Child Protection Services, Department of Human Services, provided testimony on information she will, upon request, make available to the committee. A copy of her testimony is on file in the Legislative Council office. She presented a videotape titled "A Story of Hope." The videotape

told the story of Marilyn Van Derbur, a former Miss America and incest survivor.

In response to a question from Representative Oban, Ms. Cairns said a table of the types of child sexual abuse assessment and treatment in the human service regions in this state contained in the memorandum presented by committee counsel shows inconsistencies between the regions because of the cycle of staff leaving and new staff with different skills being hired.

In response to a question from Senator Watne, Ms. Cairns said the table includes services offered at regional human service centers and the information is somewhat outdated. She said she would provide the committee with an updated table.

Senator Nalewaja commented that it is important to offer treatment to children who are victims and perpetrators of sexual abuse. She said the greatest chance for the rehabilitation of a perpetrator is providing treatment to the perpetrator when the perpetrator is young.

In response to a question from Representative Soukup, Ms. Cairns said group treatment is preferential to individual treatment for sex offenders. She said sometimes sex offenders must travel to obtain the proper court-ordered treatment. She said inmates who do not want to be involved in group treatment at the Penitentiary are not forced to attend treatment.

DELINQUENCY AND CRIME PREVENTION

Senator Nalewaja provided testimony on Senate Concurrent Resolution No. 4053. She said she sponsored the resolution to find out why there is a proportionally high number of children at the Youth Correctional Center that are Indian.

At the request of Chairman Boucher, committee counsel presented a memorandum on Section 10 of Senate Bill No. 2016 and on Senate Concurrent Resolution No. 4053. He said the studies were combined because they both deal with delinquency and crime prevention and dispositional alternatives.

Delinquent Indian Children

At the request of Chairman Boucher, Ms. Deborah Painte, Executive Director, Indian Affairs Commission, presented information on the programs and trends on the reservations. She said there was a lack of funding and services for delinquent and at-risk children on the reservation. She said the state provides tribes with funds through the Indian Affairs Commission for substance abuse services. She said 80 to 90 percent of the children in tribal court are already in the child welfare system. She said the reservations need therapeutic foster care services. She said the Youth Correctional Center does not offer aftercare for

children who go back to the reservation. She said the Indian tribes want a youth detention center on a reservation. She said there is federal funding available for the renovation or construction of a detention center. She said the tribes have formed an intertribal juvenile facility work group to investigate the placement of a detention center. She said this group is in the process of receiving information from tribes on cases disposed from tribal juvenile court. She said she would provide this information to the committee.

In response to a question from Senator Watne, Ms. Painte said the juvenile detention center would be for all four tribes to share. She said the tribes want a detention center because it keeps the youth in the Indian community, therefore aiding in the retention of the cultural identity of the child. She said it may also save money. She said it would be preferential to keep children at home, but this requires in-home intervention. She said in-home services are more available off a reservation than on a reservation.

Ms. Painte provided a handout of names and addresses of people that the committee may want to involve in the study and of statistical information on the Indian population. A copy of this handout is on file in the Legislative Council office.

Adult Criminals

At the request of Chairman Boucher, Ms. Little provided an update on the James River Correctional Center, an analysis of the State Penitentiary inmate population, an inmate profile of the State Penitentiary inmate population, and an analysis of the parole and probation offender population. A copy of her testimony is on file in the Legislative Council office.

In response to a question from Representative Boucher, Ms. Little said federal funds are paying for most of the renovation at Jamestown. She said these federal dollars are only for renovation and new construction and not for programs. She said the federal government offers 90 percent of the funding for renovation and new construction.

In response to a question from Senator LaFountain, Ms. Little said the crime bill funding is restricted to the renovation for or building of new prisons for serious violent offenders. She said there is no funding for programs in the crime bill. She said this state is expecting \$4.5 million for the renovation at Jamestown. She said approximately \$1.5 million should be awarded for the third year. She said there will be the ability to house 380 inmates at Jamestown. She said population trends project Jamestown to be filled with inmates within the next four years.

In response to a question from Representative Soukup, Ms. Little said the Jamestown facility will

take through promotions approximately 10 to 15 staff members from Bismarck. She said the rest of the staff will come from the Jamestown area.

In response to a question from Representative Sandvig, Ms. Little said electronic monitoring is being used and does work for nonviolent offenders. She said probation costs under \$3 per day.

In response to a question from Representative Thoreson, Ms. Little said there are 55 inmates at county jails.

In response to a question from Representative Boucher, Ms. Little said the Penitentiary primarily contracts with county Class I facilities, which are designed for housing a person for up to a year. She said these contracts average \$40 per day for housing and \$5 per day for medical plus transportation. She said the cost is about the same as housing at the Penitentiary, but there are no treatment facilities in the counties. She said the county beds are filling up because of the flooding in Grand Forks.

In response to a question from Representative Koppleman, Ms. Little said there is only a handful of federal prisoners in the Penitentiary. She said there are other states' prisoners in the Penitentiary. She said there are interstate compacts for the placement of out-of-state prisoners in this state and for the placement of prisoners from this state in other states. She said under these compacts North Dakota has a positive balance.

In response to a question from Senator Berg, Ms. Little said there are two reasons for the out-of-state placement of inmates--an inmate is a security risk or protective custody is required. She said there are 15 to 20 inmates placed out of state.

In response to a question from Representative Boucher, Ms. Little said if Jamestown fills, the first option would be to do something similar to what is being done at Jamestown. A second option would be to contract with out-of-state facilities.

In response to a question from Representative Soukup, Ms. Little said other states are using three solutions to meet increased prison populations. She said some are building, some are contracting with private prisons, and some are overcrowding up to the 200 percent level.

In response to a question from Representative Koppelman, Ms. Little said the reason for the overcrowding at the prison is mandatory sentencing. She said 30 percent of the inmates are under mandatory sentences, which combined with longer prison terms results in a lower number of releases.

In response to a question from Representative Boucher, Ms. Little said most research shows that the mandatory sentences increase the prison population by three times and do not affect the crime rate.

In response to a question from Senator Mutzenberger, Ms. Little said in the 1970s the average age of

an inmate was 26 years old. She said the present average age is 33 or 34 years of age. She said the increase in ages is attributable to the increase in severity of penalties for driving while intoxicated and more convicted sex offenders.

In response to a question from Senator Berg, Ms. Little said Indians make up 22 percent of the adult population at the Penitentiary. She said the percentage has been between 19 and 22 percent for a long period of time.

In response to a question from Representative Koppelman, Ms. Little said the court sentences a criminal to the Department of Corrections and Rehabilitation and not any particular facility. She said new inmates are placed in an orientation unit for three weeks. She said if the inmate is a low risk and the sentence is less than two years, the inmate will most likely go to the Missouri River Correctional Center. She said inmates are reclassified every six months as to their risk factor.

In response to a question from Representative Boucher, Ms. Little said the Penitentiary has expanded its administrative sanction unit to include 36 beds, which are always full. She said these beds are used for segregating dangerous inmates within the prison.

Juvenile Delinquency

At the request of Chairman Boucher, Mr. Al Lick, Director, Division of Juvenile Services, Department of Corrections and Rehabilitation, presented information on commitments to the Department of Juvenile Services and placements to the Youth Correctional Center and on programs being used by members of the delinquency prevention consortium that was created under Section 10 of Senate Bill No. 2016. Mr. Lick presented statistics on commitments to the Department of Juvenile Services, which included statistics on commitments by race, gender, and calendar year; new commitments by residents and calendar year (native American only); and average risk scores and age at commitment by year and race. He also provided statistics on placements at the Youth Correctional Center, which included statistics on the commitment categories by agency, race, and calendar year; commitment categories by agency gender and calendar year; the average length of stay; the average daily population; treatment placements; number and percentage of all placements by race and placement type; and average risk scores and age at placement by year and race. This information is contained in a handout that is on file in the Legislative Council office.

Mr. Lick said the Indian children population is growing by five to seven percent and the white population is decreasing. He said if a child has a risk score of zero to four, the division keeps the child in

the community. He said if a child has a risk score of four to nine, the division places the child out of the home, but not in a secure facility. He said if a child has a risk score of 10 or more, the child is placed in a secure facility.

In response to a question from Senator Berg, Ms. Little said for an Indian youth to be placed at the Youth Correctional Center, the youth must be committed from a district court. She said this means the child must have committed a crime off the reservation. She said the Youth Correctional Center contracts with the Bureau of Indian Affairs to provide space for up to five students at the Youth Correctional Center.

In response to a question from Senator Tomac, Mr. Lick said the decline in commitments is due to a decline in the population of children in this state and due to prevention services. He said the recidivism rate in this state for children is approximately 20 percent.

Mr. Lick provided information on gang activity in this state. His testimony is on file in the Legislative Council office. In addition, he provided information on services being offered by the delinquency prevention consortium members. He said the truancy program, the success academy, and financial incentives are all used to keep kids in school. He said the high risk case management service offers intensive contact with high risk youth. He said the evaluation center in Williston is sponsored by the Children and Family Services Division of the Department of Human Services and the Department of Juvenile Services. He said the evaluation center should reduce the number of children in foster care and provide quicker intervention. His testimony was based on a handout that is on file in the Legislative Council office.

In response to a question from Senator LaFountain, Mr. Lick said intensive in-home services are offered by licensed social workers with master's degrees. He said the goal of the services is to try to keep the family intact. He said the services are 80 percent successful. He said the services are funded 20 percent by the Department of Juvenile Services and 80 percent by a combination of federal and state human services funds. He said it costs approximately \$50,000 per year for each licensed social worker with a master's degree. He said the services are offered in Fargo, Grand Forks, Devils Lake, Jamestown, and Bismarck. He said he wants to expand the services to Minot, Williston, and Dickinson.

In response to a question from Representative Oban, Mr. Lick said the consortium meets once a month and usually consists of a representative of the Division of Mental Health, the Superintendent of Public Instruction, Children and Family Services Division, and the Division of Juvenile Services. He said the consortium reviews the status of the

programs offered to juveniles throughout the state. He said the consortium has allocated \$120,000 to programs around North Dakota. He said he is always looking for funding from different sources.

In response to a question from Senator LaFountain, Mr. Lick said some programs take 10 to 12 years to see if they have any effect on a child. He said this is especially true when the program is offered to very young children. He said intensive in-home services may be offered to six families at a time by a licensed social worker with a master's degree. He said this would result in helping 18 to 24 families per year.

At the request of Chairman Boucher, Mr. Claus Lembke presented testimony on the effect of this state's sex offender registration and notification statute on realtors. He said he wants the state to provide some guidance for realtors as to whether they should disclose the location of a nearby sex offender to a potential purchaser of a house. He said realtors are under a duty to disclose material information about property. He provided a handout that is on file in the Legislative Council office.

DIRECTIVES

The committee requested that the Legislative Council staff be requested to:

1. Send meeting notices to all the tribal leaders.
2. Compare this state's law on the involuntary civil commitment of sexually dangerous individuals with other state statutes, including Minnesota and Kansas. In particular, compare the existence of an element of a previous conviction and the level of proof required for commitment.
3. Invite a representative from the State Hospital and the executive director of the Department of Human Services or the director's designee to the next committee meeting to answer questions on the involuntary civil commitment of sexually dangerous individuals.
4. Invite a representative from the Attorney General's office to provide information on the reasons for the particular elements in this state's involuntary civil commitment law for sexually dangerous individuals.
5. Invite Mr. Kevin Thompson from North Dakota State University to provide information on the prevention of delinquency in this state.
6. Invite representatives from educational institutions that work with children to provide testimony on child sexual abuse.
7. Invite members of the delinquency prevention consortium to the next meeting to testify on new prevention services, expansion of existing programs, and the cost of existing and future

programs. Invite the delinquency prevention consortium members to compile a list of all present programs used to prevent delinquency and reduce incarceration and to evaluate the list as to which programs work best.

8. Provide to committee members copies of the Child Welfare League study done for the 1993-94 interim Budget Committee on Youth Services.
9. Research and review the problem presented by Mr. Claus Lembke and work with the Attorney General's and Governor's offices on that problem.
10. Invite judges and state's attorneys to testify on crime prevention alternatives.

11. Invite the Superintendent of Public Instruction to testify on crime prevention alternatives.

Chairman Boucher adjourned the meeting at 4:45 p.m.

Timothy J. Dawson
Committee Counsel

Jay E. Buringrud
Assistant Director