

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

CRIMINAL JUSTICE COMMITTEE

Thursday, September 24, 1998
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, Sally Sandvig, Al Soukup, Laurel Thoreson; Senators Marv Mutzenberger, Wayne Stenehjem, Steven W. Tomac

Members absent: Representatives Dale L. Hene-gar, John M. Warner; Senators Les J. LaFountain, Donna L. Nalewaja, Darlene Watne

Others present: See attached appendix

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

BILL DRAFT - MARKED DRIVER'S LICENSE FOR FELONIOUS SEXUAL OFFENDERS AND OFFENDERS AGAINST MINORS

At the request of Chairman Boucher, committee counsel presented the second draft of a bill draft that requires a mark on the motor vehicle operator's license of certain sexual offenders and individuals who have committed a crime against a child. He said the second draft changes the term "invalid" to "canceled" and requires a \$3 fee for the return of an unmarked license, instead of returning the license at no charge. He said this draft is based upon a Delaware statute, and that state's law is not retroactive. He said the law is so new law enforcement in Delaware has not had any experience with it.

At the request of Chairman Boucher, Mr. Keith Magnusson, Director, Driver and Vehicle Services, Department of Transportation, provided information to the committee. He said although there is a philosophical debate as to whether a driver's license should be used for reasons other than driving, his testimony would be limited to the facts surrounding a marked driver's license. He said it would cost between \$5,000 and \$10,000 to place a Y on the applicable licenses. He said this cost includes the computer programming and the creation of a file that would notify the department when notice of the placement of a Y or the removal of a Y would happen. He said the department has contemplated putting the Y in

the restriction codes on the back of the license. He said the Y would not be placed on the front unless that was the intent of the Legislative Assembly.

In response to a question from Representative Soukup, Mr. Magnusson said the temporary permit issued to a sexual offender or a person who has committed a crime against a child could easily have a Y placed on it.

In response to a question from Representative Thoreson, Mr. Magnusson said the Department of Transportation will notify sexual offenders of the marked license requirement. He said the Bureau of Criminal Investigation will notify the Department of Transportation of the offenders who have already been convicted of a crime that requires a marked license. He said judges will notify the Department of Transportation of offenders required to have a Y on their license if the bill draft were to become law.

In response to a question from Representative Soukup, Mr. Magnusson said the Department of Transportation could send notification of the meaning of the Y to other states. He said a description of what the Y means could be placed on the back of the driver's license, if the Legislative Assembly directed the department to do so.

In response to a question from Representative Murphy, Mr. Magnusson said the administrative costs associated with placing a Y on the driver's licenses of certain offenders would be \$50 to \$100 per license for the life of the license.

At the request of Chairman Boucher, Ms. Zoe McClintock, Baldwin, presented testimony to the committee. She is in opposition to the bill draft. She said at some point the punishment of sexual offenders needs to end and the rehabilitation and second chance for sexual offenders needs to begin. She said the bill draft provides for too much punishment because of the chance of harassment. She said sex offenders do not receive the treatment they need. A copy of her testimony is on file in the Legislative Council office.

At the request of Chairman Boucher, Mr. Jonathan Byers, Assistant Attorney General, provided information to the committee. He said there are 705 registered sexual offenders and offenders who have committed a crime against a child. He said between one-half and three-quarters of the registered

offenders are for felonies. He said the bill draft applies to felonies. He said between 20 and 40 offenders per year will be added to the registration list. He said the idea for marked licenses came from law enforcement officers. He said a marked license would provide instantaneous recognition of sexual offenders. He said he is more concerned with the victims of sexual abuse than any stigmatization a marked license may cause an offender.

Senator Stenehjem said at present the information the marked license provides is already provided to law enforcement. He said he did not know how useful a marked license would be. He said there would appear to be better alternatives.

In response to a question from Senator Stenehjem, Mr. Byers said the greater good sometimes justifies taking away certain freedoms.

In response to a question from Senator Stenehjem, Mr. Byers said it is a policy decision on how many sexual abuse cases a marked license will stop before a law requiring marked licenses is deemed worthwhile. He said one would be enough.

In response to a question from Senator Stenehjem, Mr. Byers said he is unsure whether one records check by a law enforcement officer in the field will find the information shown on a marked license.

In response to a question from Senator Stenehjem, Mr. Byers said the Y is not probable cause for arrest but may provide reasonable suspicion to stop and investigate an individual if certain facts are present.

In response to a question from Representative Thoreson, Mr. Byers said studies show that the recidivism rate for sexual offenders is up to 60 percent. He said some studies show that treatment reduces recidivism to between 5 and 15 percent.

In response to a question from Representative Murphy, Mr. Byers said this state would be one of the first states to have this law. He said he only knows of one state, Delaware, that has this law.

In response to a question from Representative Murphy, Mr. Byers said he did not think the insignia on the driver's license would add to probable cause. He said arrest has to be based on conduct. He said an insignia would give reasonable suspicion to investigate when combined with certain facts.

In response to a question from Representative Thoreson, Mr. Byers said individual law enforcement officers suggested this idea to him. He said he has not heard from any law enforcement associations. He said he does not know if they would be for or against the bill draft.

Representative Koppelman said it appears to be common practice for a law enforcement officer to take the license of an individual in a routine traffic stop and call in for information on that person. He said sexual offender information should be on the data base that gives the information to the law enforcement officer.

He said this would alleviate any unintended consequences that may occur with a marked license.

Senator Tomac said he is concerned with the comparison of a marked license to a scarlet letter. He said he is concerned that harassment of offenders may be an issue. He said a marked license for sexual offenders and offenders who have committed a crime against a child is a slippery slope for other crimes or classes of people to be marked on a driver's license. He said a marked license may result in law enforcement strictly and completely enforcing the law against offenders when they might use their discretion if it were someone else.

In response to a question from Senator Tomac, Mr. Byers said Senator Tomac's concerns are legitimate.

At the request of Chairman Boucher, Ms. Marcia Strecker, Bismarck, provided information to the committee. She is in opposition to the bill draft. She said a marked license would punish the children of sexual offenders. She said a marked license could put a parent and child in an embarrassing situation. She said there has recently been an increase in repeat offenders. She said treatment at the Penitentiary is offered, but offenders are not receiving treatment. She said the treatment offered is not helpful because it requires persons to admit to their crimes and describe them in detail. She said this turns therapy into a bragging match.

Representative DeKrey said the idea of the bill draft has merit but needs some fixing.

Representative Thoreson said the bill draft is not perfect. He said there is more than one way to fix a problem and it is not undesirable to fix the big problem of sexual offenders with this bill draft. He said any error should be on the side of aiding law enforcement and helping children.

Representative Sandvig said children in grade schools are being warned of strangers outside of school. She said she sees some merit in the bill draft.

Representative Soukup said he supports what Representative Thoreson said. He said testimony by victims of sexual abuse or family members of victims would have provided a good perspective for the committee. He said sometimes the focus is too much on the rights of criminals. He said the focus should be on abused children. He said the bill draft is a good start.

Senator Mutzenberger said he would tend to oppose the bill draft but will support it so that it can receive more testimony during the legislative session.

Representative Koppelman said he is not sympathetic to sexual offenders. He said the bill draft may be a solution to a problem, but there is a better solution. He said the information should be given to law enforcement when they call in a license or a plate number.

Representative Boucher said he sees many flaws in the bill draft. He said he understands the concerns

with the bill draft. He said there are competing interests of avoiding branding sexual offenders and preventing child abuse. He said one case of sexual abuse is one too many. He said no child should have to be subject to a sexual abuse violation. He said he would vote for the bill draft because it would be a vote for the children.

It was moved by Representative Thoreson, seconded by Representative DeKrey, and carried that the second draft of the bill draft relating to a mark on the driver's license of certain sexual offenders and individuals who have committed a crime against a child be approved and recommended to the Legislative Council. Representatives Boucher, DeKrey, Gunter, Sandvig, Soukup, and Thoreson and Senator Mutzenberger voted "aye." Representatives Koppelman and Murphy and Senators Stenehjem and Tomac voted "nay."

BILL DRAFT - JUVENILE DATA BASE

At the request of Chairman Boucher, committee counsel presented the second draft of a bill draft that excepts a child from the law enforcement data base for that child's first adjudication for simple assault. He said the first draft excepted all simple assaults.

At the request of Chairman Boucher, Mr. Byers provided information to the committee. He said the idea behind the bill draft was to remove simple assault because there are 60 children on the data base and 15 of them are for sexual offenses. He said the initial intent of the bill appeared to be for the purpose of identifying dangerous sexual offenders. He said simple assault may be a playground fight. He said having simple assaults on the data base detracts from the usefulness of the data base. He said under the second draft the Attorney General would still receive information on a simple assault adjudication. He said there would only be notification if there was a second adjudication. He said he would prefer the first version of the bill draft.

It was moved by Senator Stenehjem, seconded by Representative Soukup, and carried that the bill draft that excepts a child from the law enforcement data base for that child's first adjudication for simple assault be approved and recommended to the Legislative Council. Representatives Boucher, DeKrey, Gunter, Koppelman, Murphy, Sandvig, Soukup, and Thoreson and Senators Mutzenberger, Stenehjem, and Tomac voted "aye." No negative votes were cast.

CHILD FATALITY REVIEW PANEL

At the request of Chairman Boucher, Ms. Gladys Cairns, Administrator, Child Protection Services, Department of Human Services, presented information on the final data review report for 1996 from the Child Fatality Review Panel. She said there is no method of sending a death certificate back to a doctor due to insufficient data. She told a story of the unprofessionalism of a nonmedical coroner. She said most motor vehicle accidents that result in deaths for juveniles relate to not wearing a seatbelt. She said the school records for children who have committed suicide are usually very positive. She said there is difficulty getting information on child deaths from reservations. She provided a draft of the data report for 1996 and brochures on the shaken baby syndrome, coping with a crying baby, and information on cases of shaken baby syndrome. A copy of each of her handouts is on file in the Legislative Council office.

In response to a question from Representative Soukup, Ms. Cairns said the brochures she provided are available at maternity wards in hospitals and at obstetrics/gynecology offices all over the state.

In response to a question from Representative Boucher, Ms. Cairns said a rattle is given to new mothers which is inscribed with the saying "never shake a baby."

In response to a question from Senator Tomac, Ms. Cairns said the Child Fatality Review Panel reviewed 58 of the 103 cases of child deaths in North Dakota. She said the cases that are not reviewed are cases that are due to a medical anomaly or natural causes. She said the Child Fatality Review Panel looks at preventable deaths.

In response to a question from Senator Tomac, Ms. Cairns said the percentage of child deaths attributable to suicides was 9.7 percent in 1996.

In response to a question from Representative Sandvig, Ms. Cairns said there were two deaths in 1996 which were the result of bad cases of the croup. She said these deaths should not have happened.

In response to a question from Representative Boucher, Ms. Cairns said American Indian children comprise 7.9 percent of the children in the state. She said 27 percent of the deaths reviewed were of American Indian children. Ms. Cairns said that poverty kills.

Representative Boucher said the statistics are comparable to statistics that relate to crime and delinquency. He said poverty and the lifestyles associated with poverty kill.

In response to a question from Representative Boucher, Ms. Cairns said information is not being shared from the different reservations with the Child Fatality Review Panel. She said sovereignty may be one factor in the lack of sharing of information; however, she said there has not been enough education as to the purpose of the panel and how sharing

information with the panel would help American Indians tell their story. She said American Indian deaths may be reviewed in Aberdeen. She said if blame needs to be placed, it should be on the panel for not zealously seeking information from the different Indian tribes.

FEDERAL JUVENILE CRIME GRANTS

At the request of Chairman Boucher, Mr. Al Lick, Director, Juvenile Services Division, Department of Corrections and Rehabilitation, presented testimony to the committee. He said the Juvenile Services Division is using funding from the federal juvenile accountability block grant to fund the administration of the grant, intensive tracking, victim/offender mediation, tribal probation staff, and the building of a secure correctional unit enhancement onto Pine Cottage at the Youth Correctional Center. A copy of his testimony is on file in the Legislative Council office.

In response to a question from Senator Stenehjem, Mr. Lick said the Department of Juvenile Services is contracting with the North Dakota Association of Counties for the administration of the grant.

In response to a question from Representative Boucher, Mr. Lick said many children's services coordinating committee grants have gone to the tribes. He said the Department of Juvenile Services has tried to provide aid on the reservations. He said the Office of Juvenile Justice and Delinquency Prevention grants may be only used for two purposes--keeping kids in school and for American Indian children. He said last year was the first year there was a decrease in American Indian children going through the juvenile system. He said the needs on the reservations are large.

In response to a question from Representative Boucher, Mr. Lick said he is not optimistic that Congress will provide funding for programs instead of bricks and mortar. He said he hopes that Congress will remove the detailed limitations on how money may be spent.

In response to a question from Representative Thoreson, Mr. Lick said local communities are receiving funding under the juvenile accountability block grant. He said the money has to be used for one of the specific purposes listed by Congress.

At the request of Chairman Boucher, Mr. Terry Traynor, North Dakota Association of Counties, provided testimony to the committee. He said the North Dakota Association of Counties is working well with the Division of Juvenile Services. He said he would expect counties to spend grant money on

detention facilities. He said counties are responsible for detention.

In response to a question from Representative Boucher, Mr. Traynor said there was a good response of applications for the grants. He said there were requests totaling \$600,000 and only \$300,000 in grants.

DISCUSSION

Chairman Boucher said although the study of the prevention of and dispositional alternatives to juvenile crimes with a focus on services offered to American Indian children produced no bill drafts, the study provided useful information that individual legislators may use to draft bills for the upcoming legislative session. He said the committee meetings in Indian country helped in developing a good relationship with the Indian tribes. He said these meetings will hopefully foster a relationship wherein the state and the tribes can address issues cooperatively. He said it is not always necessary to find a legislative solution. He said the committee discussed important issues and brought them into public discourse. He said the interested parties as they relate to these issues are focusing on some of them and working to provide a solution to them.

It was moved by Representative DeKrey, seconded by Senator Stenehjem, and carried that the chairman and the staff of the Legislative Council be requested to prepare a report and the bill drafts recommended by the committee and to present the report and the recommended bill drafts to the Legislative Council. Representatives Boucher, DeKrey, Gunter, Koppelman, Murphy, Sandvig, Soukup, and Thoreson and Senators Mutzenberger, Stenehjem, and Tomac voted "aye." No negative votes were cast.

It was moved by Senator Stenehjem, seconded by Representative DeKrey, and carried on a unanimous voice vote that the meeting be adjourned sine dine.

Chairman Boucher adjourned the meeting at 11:45 a.m.

Timothy J. Dawson
Committee Counsel

ATTACH:1