

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

CORRECTIONS COMMITTEE

Monday, August 20, 2001
Harvest Room, State Capitol
Bismarck, North Dakota

Representative Duane DeKrey, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives Duane DeKrey, Ron Carlisle, Howard Grumbo, Gil Herbel, George Keiser, Joe Kroeber, John Mahoney, Ken Svedjan, Laurel Thoreson, John M. Warner; Senators Jerome Kelsh, Stanley W. Lyson, Carolyn Nelson, Dave Nething

Members absent: Representative Amy Kliniske-Warnke; Senators Dick Dever, Darlene Watne

Others present: See attached appendix

Chairman DeKrey announced that Senator Stanley W. Lyson would serve as vice chairman of the committee.

At the request of Chairman DeKrey, Mr. John D. Olsrud, Director, Legislative Council, reviewed the *Supplementary Rules of Operation and Procedure of the North Dakota Legislative Council*.

Chairman DeKrey said the committee has been assigned two important and interesting studies--a study of the state's drug laws, civil commitment procedures for substance abusers, and mandatory minimum sentences for drug offenses and a study of the operations and facilities of the Department of Corrections and Rehabilitation.

CHEMICAL DEPENDENCY COMMITMENT PROCEDURES AND MANDATORY MINIMUM DRUG SENTENCES STUDY

At the request of Chairman DeKrey, committee counsel presented a memorandum entitled *Mental Illness and Chemical Dependency Commitment Procedures and Mandatory Minimum Drug Sentencing Laws - Background Memorandum*.

Chairman DeKrey called on Ms. Elaine Little, Director, Department of Corrections and Rehabilitation, for testimony concerning the study. Ms. Little said the majority of offenders sentenced to the Department of Corrections and Rehabilitation have serious chemical dependency issues. She said the department has collected data on the number of offenders sentenced to the department who have an alcohol or drug dependency. She said department records indicate in the past two years, 66 percent of offenders sentenced to prison have an alcohol or drug addiction, and if other addictions, such as gambling, are included in the calculations, 80 to 85 percent of

inmates have some type of addiction. She said some of the inmates have already completed treatment, while others are currently in treatment, and the remainder wait for the opportunity to begin treatment. She said the primary treatment options in the prison include intensive outpatient (four weeks/30 to 36 hours); day treatment (five weeks/120 hours); long-term residential (six months to one year in the therapeutic community); Thomkins Rehabilitation and Corrections Unit (TRCU) program (average 100 days early in sentence); and the driving under the influence (DUI) program (during the last 90 days of sentence). She said of those offenders on parole or probation in the community, 64 percent have been referred to treatment to address substance abuse or other treatment issues. She said the department finds the great majority of offenders can remain crime-free if not abusing substances.

Regarding the mandatory minimum drug sentences portion of the study, Ms. Little said the number of inmates sentenced to prison on drug charges has increased from 41 in 1993 to 252 in 2000. She said approximately 46 percent of the 295 drug offenders in prison on June 30, 2001, had received a minimum mandatory sentence. She said a study of mandatory minimum sentences in North Dakota and in other states is timely. Ms. Little submitted written testimony, a copy of which is on file in the Legislative Council office.

Ms. Little also provided to the committee various statistics on the Department of Corrections and Rehabilitation inmate population. She said as of June 30, 2001, the total inmate count was 1,105. She said for 2001 the average daily inmate population as of June 30, 2001, was 1,095. A copy of the prison statistics is on file in the Legislative Council office.

In response to a question from Representative Herbel, Ms. Little said a five-week evaluation is conducted on all new inmates to determine which treatment program best fits that offender.

In response to a question from Representative Keiser, Ms. Little said extensive background checks are done on all new inmates to determine their criminal histories and the kinds of treatment the inmates received before incarceration. She said it is more difficult to obtain information about an inmate's record as a juvenile. She said if the inmate had been

a part of the juvenile system, the information is available to the department. She said the aftercare treatment program in the juvenile system works well.

In response to a question from Representative Warner, Ms. Little said recent reports from the counties indicate the number of prisoners being held in jails is increasing as well. She said a recent report indicated that while the number of inmates is decreasing nationwide, North Dakota was one of four states to have an increase in its prison population. She said the department is hopeful alternative programs will help stabilize or decrease the state's prison population in the next several years.

In response to a question from Representative Carlisle, Ms. Little said inmates who have used methamphetamines require intensive treatment and aftercare. She said the recidivism rate of inmates who successfully complete treatment is about half of that of the general prison population.

Ms. Little said she would provide statistics to the committee on recidivism numbers.

In response to a question from Senator Kelsh, Ms. Little said much of the increase in prison population is attributable to the increase in drug activity, especially methamphetamines. She said of the 255 inmates serving time for drug offenses, 124 are specifically related to methamphetamines.

In response to a question from Representative Svedjan, Ms. Little said the average sentence for all inmates is 42 months, while the average sentence for drug offenders is 60 months. She said for the 96 inmates currently serving a mandatory minimum sentence for a drug offense, other than for DUI, the average sentence is 72 months.

In response to a question from Representative Thoreson, Ms. Little said most of the inmates sentenced for DUI violations have been charged with four or more DUIs. She said most inmates have gone through treatment before they are incarcerated. She said the majority of the DUI inmates go through a treatment program while incarcerated.

In response to a question from Senator Lyson, Ms. Little said she would provide information to the committee regarding other offenses, if any, which were committed by the 96 inmates currently serving time for drug offenses.

In response to a question from Representative Carlisle, Ms. Little said there are consequences for an inmate who refuses treatment. She said the accumulation of "good time" requires participation in treatment. She said the Parole Board also considers an inmate's participation in treatment when reviewing an inmate's request for parole.

Chairman DeKrey called on Mr. Drew H. Wrigley, Governor's office, for comments concerning the study. Mr. Wrigley said the Governor is looking forward to receiving evidence of trends in the prison population which is based upon fact and not upon jargon. He said of the 254 inmates incarcerated on drug offenses, 183 were sentenced for the distribution or

manufacture of drugs, and 71 were sentenced for simple possession. He said of those 183 inmates, 75 are also serving time for a violent offense. He said of the 71 offenders sentenced for simple possession, 38 had committed violent offenses as well.

In response to a question from Representative Carlisle, Ms. Little said she would provide to the committee more detailed information on the other offenses for which the drug offenders are serving time.

Chairman DeKrey called on Ms. Karen Romig Larson, Director, Division of Mental Health and Substance Abuse Services, Department of Human Services, for comments concerning the study. Ms. Larson said as services for mental illness and substance abuse have changed and moved from an institutional to a community-based service model over the past several years, it is necessary to review the civil commitment statutes and procedures to determine their utility and appropriateness. She said there are a number of interested stakeholders who are willing to be part of a group to review, analyze, and recommend changes to the mental health commitment law. She said the stakeholders include providers, clinicians, attorneys, judges, law enforcement, advocacy groups, and consumers. She said the group could do a combined review of the issues being studied by the Corrections Committee as well as the mental illness commitment procedures study being conducted by the Judiciary A Committee. She said the group could recommend to the two committees any changes to the existing law. Ms. Larson submitted written testimony and a summary of involuntary commitment statutes from other states, copies of which are on file in the Legislative Council office.

Ms. Larson said recent research indicated that chemical dependency alters the brain biology, and the brain alteration for a person using methamphetamines is very rapid and intense, more so than with other drugs. She said, as a result, the person's response to treatment might take longer. She said there are no guarantees with treatment. She said only about 10 percent of people trying to remain drug-free or alcohol-free are able to do so after their first treatment.

In response to a question from Representative Keiser, Ms. Larson said she would provide the committee with information on trends in treatment programs.

In response to a question from Senator Nething, Ms. Larson said the same commitment statutes are used for mental illness commitment as are used for chemical dependency commitment.

In response to a question from Representative Mahoney, Ms. Larson said a goal of treatment is not only a continuance of sobriety but also an increase in the person's ability to function in society. She said the Department of Human Services works closely with the Department of Corrections and Rehabilitation treatment programs. She said the Department of Human

Services licenses the treatment programs used by the Department of Corrections and Rehabilitation. She said treatment works best when it is combined with a cognitive approach.

In response to a question from Representative Carlisle, Ms. Larson said abuse of inhalants can cause brain damage.

In response to a question from Representative Kroeber, Ms. Larson said various medications are used for detoxification. She said there is a need for adequate funding to provide those medications. She said she anticipates the approval of more medications for the treatment of addiction will be available. She said in some cases persons requiring treatment might need to continue to take a low dose of antidepressants for the remainder of their lives.

In response to a question from Representative Herbel, Ms. Little said the needed medications are provided to the inmates while they are incarcerated but often, following an inmate's release, the person is unable to afford to continue with the medication and relapses occur.

Ms. Larson said the regional human service centers provide samples and have indigent drug programs for those who cannot afford to purchase the medications; however, funding for those programs is diminishing.

Chairman DeKrey called on Mr. Wayne Stenehjem, Attorney General, for comments concerning the study. Attorney General Stenehjem said the legislators are faced with the problems of increasing costs and an increasing prison population in the state as well as pressure from the public to swiftly and severely deal with offenders. He said as part of a comprehensive review of the state's criminal justice system, the committee should take a careful look at the mental health commitment statutes. He said changes in chemical use patterns in the state, especially the use of methamphetamines, may raise concerns as to whether the current commitment statutes are adequate. He said it is possible to become addicted to methamphetamines after just one use, but the statutes tend to require a pattern of abuse before commitment can occur. He said the traditional legal process may no longer work. He said 51 methamphetamine labs have been busted so far this year, compared to 46 for the year 2000. He said although there are an increasing number of methamphetamine labs in the state, most of the methamphetamines used in this state are not manufactured here but are coming to the state from Mexico, California, and other southwestern states.

Attorney General Stenehjem said the state's mandatory minimum sentencing laws should be reviewed to determine if those laws are working and whether there are alternative programs that might work better. He said there is a need for more education programs for the state's youth and for more treatment programs. He said the Attorney General's office

is available for any information the committee may need.

In response to a question from Representative Carlisle, Attorney General Stenehjem said his office is working on forming a task force to address some of the drug and crime issues affecting the state.

In response to a question from Representative Svedjan, Attorney General Stenehjem said North Dakota is bucking the nationwide trend with respect to its increasing number and percentage of persons being incarcerated. He said his office would provide information to the committee on these statistics.

DEPARTMENT OF CORRECTIONS AND REHABILITATION STUDY

At the request of Chairman DeKrey, committee counsel presented a memorandum entitled *Facilities and Operations of the Department of Corrections and Rehabilitation - Background Memorandum*.

Chairman DeKrey called on Ms. Little for comments regarding the Department of Corrections and Rehabilitation study. Ms. Little said the study should be as comprehensive as possible within the limits of Section 5 of Senate Bill No. 2016 and within the limits of the \$200,000 appropriation. She said the Department of Corrections and Rehabilitation recommends several additional issues in addition to those contained in Section 5. She said the analysis and evaluation of the facilities of the Department of Corrections and Rehabilitation should include juvenile facilities as well. Regarding the analysis and evaluation of the future facility and program needs, she said, the study should include a review of the types of facilities and programs needed to service both male and female adult offenders, including whether a separate women's facility is advisable and whether a separate treatment unit for the seriously mentally ill is needed. She said the review of the appropriate location for future facilities and programs should include a review of the impact of future facilities on the infrastructure of current prison sites. Regarding the directive in Section 5 to conduct an analysis and evaluation of the anticipated needs for additional prison beds, she said, the review should include the impact of prison operations of contracting out the housing of inmates to jails and private facilities. Regarding conducting a cost-benefit analysis of the department's programs, she said, the review should consider the provision of treatment service jointly by the department and other state agencies.

Ms. Little also said there are two areas included in Section 5 of Senate Bill No. 2016 that could be excluded. She said the availability of State Hospital facilities for the Department of Corrections and Rehabilitation's use was one of the topics studied in depth during the last interim by the Legislative Council's Budget Committee on Institutional Services. She said the department can provide all the information provided to that committee as well as a copy of the

James River Correctional Center facility utilization master plan. She also said information regarding trends in occurrence and types of crime committed in the state would be very difficult to accumulate since the occurrence of all types of crimes committed is not a statistic that is collected or compiled by any agency in the state. She said the department, however, could provide the committee with the information on the trends and types of crimes committed by offenders sentenced to the Department of Corrections and Rehabilitation. She said it is critical the committee choose a consultant with extensive experience in corrections. She said it will be important that the consultant thoroughly understand security, staffing, and program needs in a corrections setting in order to provide meaningful findings to the committee. Ms. Little submitted written testimony, a copy of which is on file in the Legislative Council office.

In response to a question from Representative Mahoney, Ms. Little said the Department of Corrections and Rehabilitation provides training for county correctional facility personnel, and the department contracts with jails for some of its inmate housing needs. She said a study of the possibility of using all the state's correctional facilities for housing inmates, including both county jails and Department of Corrections and Rehabilitation facilities, indicated there would be jurisdictional issues because the county jails are under the jurisdiction of county commissioners. She said the study also indicated most of the Class 1 jails in the larger counties are at or near capacity.

In response to a question from Senator Nelson, Ms. Little said the information regarding the availability of State Hospital facilities for the Department of Corrections and Rehabilitation's use can be made available to the committee to be a part of the study and does not need to be a part of the information compiled by the consultant. She said the information regarding trends in crimes committed in the state may be difficult to compile.

In response to a question from Representative Mahoney, Ms. Little said most of the Class 1 jails are reimbursed a standard rate of \$45 per day. She said the standard rate for Class 2 jails is \$35 per day. She said Class 1 jails have the facilities to hold a prisoner for up to one year and are able to provide certain services; Class 2 jails can hold a prisoner for up to 90 days and are more limited in the services they can provide; and Class 3 jails can hold a prisoner for up to 96 hours.

In response to a question from Senator Nelson, Ms. Little said there are approximately 14 Class 1 jails and 20 Class 2 jails. She said there are only a handful of Class 3 jails in the state.

Representative Svedjan said the intent of the portion of the study dealing with trends in crime in the state was to study trends as they are experienced by the Department of Corrections and Rehabilitation. He said the committee will need to review the facilities at the State Hospital to determine if the most appropriate

services are being provided in the most appropriate location, in the most cost-effective way.

COMMITTEE DISCUSSION

Chairman DeKrey said it has been suggested the Judiciary A Committee work with the Corrections Committee to form a multidisciplinary task force to address issues relating to mental illness and chemical dependency commitment procedures. He said he would discuss the matter with the chairman of the Legislative Council.

Chairman DeKrey distributed a list of several consultants suggested by the National Institute for Corrections. He also distributed a copy of a draft letter to be sent to consultants requesting proposals.

Representative Carlisle said the consultant hired should have a proven track record and should provide information on any measurable results that resulted from the recommendations.

Ms. Sandi Tabor, Deputy Attorney General, Attorney General's office, said the Attorney General's office is seeking suggestions from the National Association of Attorneys General on consultants that other states have used.

Representative DeKrey said it is important the consultant hired is able to conduct a comprehensive study, so the committee will be able to form a consensus to take to the Legislative Assembly in 2003.

In response to a question from Representative Svedjan, Chairman DeKrey said the letter will be sent to potential consultants. He said the committee will review the proposals submitted by the consultants at the next meeting. He said the final decision on the consultant to be hired will be made by the chairman of the Legislative Council.

In response to a question from Representative Warner, Ms. Little said the Department of Corrections and Rehabilitation will provide information to the consultant to avoid duplication of efforts by the consultant of information that is already available.

In response to a question from Representative Herbel, Chairman DeKrey said the committee, in conjunction with the Budget Section, will tour the corrections facilities. Chairman DeKrey also said he would contact several companies regarding the privatization of prison facilities.

In response to a question from Representative Svedjan, Chairman DeKrey said the request for proposal letter will include the amount of the appropriation available for consultant services, as that figure is public information.

Chairman DeKrey adjourned the meeting at 11:50 a.m.

Vonette J. Richter
Committee Counsel

ATTACH:1