

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

JUDICIARY A COMMITTEE

Wednesday, May 29, 2002
Harvest 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 DeKrey, Bruce Eckre, April Fairfield, G. Jane Gunter, Joyce Kingsbury, Lawrence R. Klemin, William E. Kretschmar; Senators Carolyn Nelson, John T. Traynor, Darlene Watne

Members absent: Representatives John Mahoney, John M. Warner; Senator Deb Mathern

Others present: See attached appendix

It was moved by Representative DeKrey, seconded by Representative Eckre, and carried on a voice vote that the minutes of the November 5, 2001, meeting be approved.

CLERK OF COURT AND COLLECTION OF RESTITUTION STUDY

Chairman Boucher called on Mr. Ted Gladden, Acting State Court Administrator, Supreme Court, for information regarding salaries of clerk of court office employees. Mr. Gladden said when the county clerks of court were brought into the state system, a pay and classification plan was developed. He said that effective April 1, 2001, a commitment was made that every employee brought into the state system would be brought up to the state pay range. He said no county employee took a pay cut as a result of becoming a state employee. He said as a result of several pay increases, every employee is now within the state pay range. He provided a list of salary information for the clerk of court personnel who became state employees, a copy of which is on file in the Legislative Council office.

In response to a question from Representative Boucher, Mr. Gladden said the clerk of court employee salaries in the contract counties vary from county to county. He said it is likely that those employees who became state employees have a better benefit plan than employees of many of the smaller counties.

In response to a question from Senator Watne, Mr. Gladden said there are in excess of 100 state employees in those 11 counties that elected to have their clerk of court employees become state employees.

In response to a question from Senator Traynor, Mr. Gladden said the issue of the state's role in the

funding of courthouse facilities is an ongoing dilemma. He said the concern is whether the state or the county has the responsibility for renovating, updating, cleaning, and maintaining the judicial portion of courthouses. He said the issue is affecting the relationship between the state and the counties.

In response to a question from Representative Kretschmar, Mr. Gladden said bills received from the counties are being considered by the court on a case-by-case basis. He said the court does not have any outstanding bills from any county.

In response to a question from Representative Eckre, Mr. Gladden said the court developed written guidelines regarding the courthouse services that would be paid by the state. He said all counties have received a copy of those guidelines.

Chairman Boucher called on Mr. Wade Williams, North Dakota Association of Counties, for information regarding clerk of court salaries. Mr. Williams said the smaller counties do not pay as well as the state. He said the duties of the clerks of court in the contract counties are comparable to those in the state employee counties. He said the salaries of employees in the contract counties vary. Not all counties, he said, base their pay scales on the same criteria.

In response to a question from Representative Eckre, Mr. Williams said the county employees who became state employees did not have the option of receiving cash for declining health care coverage.

In response to a question from Representative Kretschmar, Mr. Gladden said the hiring of clerk of court employees in the state employee counties is the responsibility of the presiding judge. He said the presiding judges are required to follow the hiring policies of the state judicial branch.

In response to a question from Senator Traynor, Mr. Gladden said of all administrative traffic cases, only about 5 percent request a hearing; however, the clerks' offices are processing all payments. He said statewide about seven full-time equivalent (FTE) positions are needed to process those payments. He said if the proposed idea to move administrative traffic cases out of the judiciary became law, it is not likely there would be a statewide reduction in clerk of court personnel. He said because some counties are

experiencing increases in workload, there would not be a net decrease in the number of employees.

Chairman Boucher called on Ms. Deb Simenson, President, Clerks of Court Association, for testimony regarding the collection of restitution. Ms. Simenson said in Burleigh, Cass, and Grand Forks Counties, the collection of restitution is the responsibility of the state's attorney. She said in Ward County, the state's attorney is responsible for restitution collection for felony cases and the clerk of court is responsible for collection of restitution in all other cases. She said in those four counties, if clerks were required to collect all restitution, additional staff would be needed. She said the county commissioners of each county made the determination as to whether the clerks of court office or the state's attorney has the responsibility for the collection of restitution.

Chairman Boucher called on Ms. Janet Froelich, Clerk of Court, Barnes County, for comments regarding the collection of restitution study. Ms. Froelich said Barnes County has a contract with the state to provide clerk of court services. She said in Barnes County, bonds are forfeited in about 90 percent of all cases and the bond forfeitures are used to pay restitution. She said the Barnes County state's attorney has limited office space. She said if restitution collection became the duty of the state's attorney, there would not be any physical space for another person to work in that office. She said the district judges and the clerks in Barnes County believe that restitution should remain in the clerk's office. She said two offices would be too cumbersome and too confusing to the person paying restitution. She said the employees in the clerk's office are well-trained in restitution collection. She said it would be more costly for the counties if state's attorneys were required to collect restitution.

In response to a question from Senator Traynor, Ms. Froelich said as the result of a law change, bond forfeitures are used for paying restitution, fines, court costs, and attorneys' fees. She said the judge issues an order as to where the bond money is to be used. She said there are few instances in which the bond money is returned to the purchaser.

Chairman Boucher called on Ms. Jean Delaney, Assistant State's Attorney, Barnes County, for testimony regarding restitution collection. Ms. Delaney said she was representing Ms. Robin Huseby, President, North Dakota State's Attorneys Association. Ms. Delaney provided to the committee a copy of a letter from Ms. Huseby. In the letter, Ms. Huseby said the State's Attorneys Association is concerned about possible movements toward mandating the collection of restitution by state's attorneys instead of clerks of court. She said county state's attorneys' offices are not set up for the collection of money. She said counties are not staffed nor physically able to have a system to collect money without major changes that would necessitate expenditures. She said if the task of collecting restitution would be assigned to state's

attorneys, it is likely that smaller jurisdictions with limited resources and staff would not make the effort to collect restitution. She said it is discretionary for a state's attorney to ask for restitution and it could become a more standard practice to tell a victim to seek a civil judgment if that prosecutor does not have the resources available to handle a restitution case. She said, in that case, the victims would suffer. She said adding the duty of restitution collection to state's attorneys would be unfair to the counties and their budgets. A copy of Ms. Huseby's letter is on file in the Legislative Council office.

In response to a question from Senator Nelson, Ms. Delaney said the state's UCIS system is available to all state's attorneys who want access to it. She said Cass County is in the process of being converted to the system. She said most state's attorneys are not physically set up to collect money. She said there are instances in which no one is present in the state's attorneys' offices and that the offices do not have the security in place to collect money.

Chairman Boucher called on Ms. Valorie Lukes, Clerk of Court, Ransom County, for comments regarding the collection of restitution study. Ms. Lukes said some of the smaller counties in the state have less than a full-time state's attorney. She said not every county has a full-time state's attorney nor the staff to collect restitution.

In response to a question from Representative Kingsbury, Mr. Williams said he was unsure as to why collection of restitution is done by state's attorneys in some counties and by clerks of court in other counties. He said it is likely that the office best suited to handle the job was given the responsibility by the county commissioners.

Chairman Boucher called on Chief Justice Gerald W. VandeWalle, Supreme Court, for comments concerning the collection of restitution. Chief Justice VandeWalle said the North Dakota Century Code is silent as to who is responsible for the collection of restitution.

In response to a question from Senator Watne, Chief Justice VandeWalle said in four counties the counties are paying for collection of restitution and in the remaining counties collection is paid by the state. He said if a decision is made that the state is to pay for collection in Cass, Burleigh, Grand Forks, and Ward Counties, additional FTE positions will be needed.

In response to a question from Representative Klemin, Chief Justice VandeWalle said many state's attorneys believe retailers are not cautious enough when accepting checks. He said state's attorneys and clerks of court might be more aggressive in collecting bad checks if those offices had an incentive of retaining a percentage of the amount collected.

Representative DeKrey said he would not like to see any change to the collection responsibilities.

Representative Eckre agreed with Representative DeKrey.

Representative Klemin said the question of which office does the collecting is not an issue. He said the issue is whether the amount owed is being collected, especially in the case of bad checks. He said he would like to see the state's attorneys or clerks of court keep a percentage of the amount collected to be used for the operating costs of that office.

Senator Watne said she would be concerned that the retention of a percentage of the amount collected would take money away from victims. She also said she supported maintaining the status quo as far as which office is responsible for collecting restitution.

It was moved by Senator Watne, seconded by Senator Traynor, and carried on a roll call vote that if Burleigh, Cass, Grand Forks, or Ward County decides to turn over the county's responsibility for collection of restitution from the county state's attorney to the clerk of court office, the Judiciary A Committee recommends that the Legislative Assembly provide the funds necessary for the additional positions needed in the clerk of court office for restitution collection. Representatives Boucher, Fairfield, Gunter, Kingsbury, Klemin, and Kretschmar and Senators Nelson, Traynor, and Watne voted "aye." Representatives DeKrey and Eckre voted "nay."

Chief Justice VandeWalle said if the state's attorney in any of the four counties decided to turn over collection duties to the clerk of court, the judiciary would need adequate notice to have time to build the additional costs into its budget in the next budget cycle.

Chairman Boucher said the committee's approval of the motion would serve to express the opinion of the committee on the issue.

Representative Kretschmar said it may be necessary to include in the restitution statute as to who is responsible for restitution collection.

In response to a question from Senator Traynor, Ms. Simenson said she would provide to the committee information on how the money collected from restitution is collected, including how much is given to the victim.

Chairman Boucher requested that the Legislative Council staff prepare a bill draft that provides that either the state's attorney or the clerk of court is responsible for the collection of restitution.

Chairman Boucher requested that the Legislative Council staff prepare a bill draft that permits the office that collects restitution to retain for that office's operating expenses a percentage of the amount collected from insufficient funds checks.

INDIGENT DEFENSE AND PUBLIC DEFENDER SYSTEM STUDY

Chairman Boucher called on Mr. Williams for information regarding the costs incurred by a county

state's attorney in prosecuting a murder case. He said state's attorneys do not keep track of the hours spent on each criminal case; however, to arrive at an estimate, files were reviewed, major tasks identified, and an estimate on how much time was spent on each task was done. He said for this particular case, the estimated prosecution cost was \$13,379.08. He said this figure does not include office space, equipment, or supply costs. Mr. Williams submitted written testimony, a copy of which is on file in the Legislative Council office.

In response to a question from Representative Boucher, Mr. Williams said the average number of high-profile cases in the state is four to five per year. He said it is difficult for state's attorneys to budget for high-profile cases. He said because the case in the example was not appealed, the cost was less than an appealed case. He said he would provide to the committee information on the cost of court-appointed counsel for this case.

In response to a question from Senator Watne, Mr. Williams said depositions and expert witnesses were not used in the example case.

In response to a question from Representative Klemin, Mr. Williams said the example case was relatively short in duration and would not be considered costly when compared to other high-profile cases in other states.

Mr. Williams also provided information on the cost to counties of providing indigent defense for mental illness commitment cases and for providing guardian ad litem services. He said in 2001 Cass County spent \$16,000 on indigent defense and \$13,500 on guardian ad litem services; Burleigh County spent \$35,000 on indigent defense and \$10,000 on guardian ad litem services; Grand Forks County spent \$3,942 on indigent defense and \$12,273 on guardian ad litem services; and Stutsman County spent \$15,254 on indigent defense and \$5,000 on guardian ad litem services.

Chairman Boucher called on Judge Deb Kleven, Northeast Central Judicial District, North Dakota Counsel for Indigents Commission, for testimony regarding the application process and eligibility requirements for indigent defense services. Judge Kleven said the appointment of a counsel is a constitutional right. She said the commission has developed a manual that is provided to all state's attorneys, indigent defense counsel, and judges. She said the commission has developed a statewide, uniform application for appointed defense services. She said guidelines for determining eligibility for indigent defense services have been published and the courts are encouraged to follow the guidelines. She said the guidelines tend to favor the providing of counsel. She said the guidelines encourage the early appointment of counsel in the criminal process. She said there is not a formula used to determine eligibility; however, the income amount determined by the Department of

Human Services as poverty level is used. She said poverty level is only used as a guideline. She said the court has discretion to not base eligibility strictly on income. She said the courts also look at the complexity of the case and the availability of income from other sources. She said when indigent defense services are granted, the courts stress the need to reimburse the state for the services. Judge Kleven provided copies of the guidelines and the uniform application, both of which are on file in the Legislative Council office.

In response to a question from Representative Boucher, Judge Kleven said many of the defendants who are eligible for indigent defense services are lower-income working people. She said many lower-income people are not able to afford the "up-front" retainer fees requested by attorneys.

In response to a question from Representative Klemin, Judge Kleven said for the most part, the courts look at the poverty level and any exemptions in determining eligibility for services. She said while home equity may be considered, few applicants own homes or anything else of value.

In response to a question from Senator Traynor, Judge Kleven said state's attorneys are required by law to try to recoup indigent defense costs; however, she is not aware of any instances in which a state's attorney has brought an action to recoup those costs.

In response to a question from Senator Nelson, Judge Kleven said with the exception of the costs of providing indigent defense for mental illness commitment cases, the costs of indigent defense are the responsibility of the state.

Chairman Boucher called on Judge Benny Graff, South Central Judicial District, for testimony regarding indigent defense services in the state. Judge Graff said as presiding judge, he is responsible for the budget for his judicial district. He said when he became a judge in 1974, appointments for public defense were made on an ad hoc basis. He said the courts made appointments as needed and each appointed attorney was required to submit bills to the court to be paid for services. He said under the current process, each judicial district contracts with attorneys to provide indigent defense services. He said contract amounts are determined by dividing the money available in the budget by the number of attorneys needed, less an amount set aside for hiring outside counsel. He said the contracts made with the judicial district are for a two-year period. He said in the last biennium, the South Central Judicial District made 780 indigent defense appointments for felonies, 1,000 appointments for misdemeanors, and over 200 appointments for juveniles. He said with a budget of \$875,000, the average amount per case was \$220. He said \$4 million was spent on indigent defense statewide. He said the county pays the indigent defense costs for mental illness commitment cases and for guardians ad litem for custody cases.

Judge Graff said he would advocate the creation of a public defender office in the executive branch. He said he sees the appointment of and contracting with counsel by the judiciary as a conflict of interest. He said as a judge, he is supposed to be the arbiter. He said the state's current system requires him to be in a position to award contracts and select counsel. He said the state's public defense system should be run like a law office and a business, with the more experienced attorneys assigned the bigger cases and the new attorneys assigned the less complicated cases. He said under the current system, the better attorneys are not rewarded.

Judge Graff said his district uses the uniform application for indigent defense services. He said income is the primary factor used to determine eligibility. He said some of the applicants are making \$10,000 to \$15,000, but are at or below poverty level. He said in many cases, the applicant does not have any income or assets.

In response to a question from Representative Boucher, Judge Graff said when money is confiscated in criminal cases, the money is forfeited and is not used to provide defense for the defendant unless it can be proven that the money is from an independent source. He said the police rarely confiscate vehicles because they are difficult to store and sell.

In response to a question from Representative DeKrey, Judge Graff said it is not likely that the state is in jeopardy of being sued because of problems with its indigent defense system. He said the judiciary is making an effort to provide good counsel. He said it is also unlikely the state will be sued because the state does not have enough high-profile people and cases.

In response to a question from Representative Klemin, Judge Graff said it is becoming a problem for some smaller and more remote areas of the state to find contract attorneys. He said many attorneys will only do indigent defense work for two to four years. He said the lack of available attorneys in remote areas in the state is another reason he supports a state public defender system. He said the increase in methamphetamine cases in the state is putting a strain on the indigent defense budget. He said in most methamphetamine cases, the defendants do not own property. He said the cases in which the defendants own property tend to be the cases heard by the federal courts.

In response to a question from Senator Traynor, Judge Graff said a public defender office would require the hiring of an executive director, regional directors, and staff attorneys. He said a public defender office should be an executive agency. He said simply assigning the duty of contracting with attorneys for public defense services to another agency, such as the Attorney General's office, would not solve the problem. He said the public defense work should be done by a public defender office.

In response to a question from Representative Klemin, Judge Graff said the \$25 application fee for indigent defense is not being waived. He said if applicants are unable to pay the fee, it is being assessed as a cost.

In response to a question from Representative Boucher, Judge Graff said the availability of attorneys willing to contract with the state is a bigger issue than the money. He said many attorneys do not want to do indigent defense work. He said being an indigent defense attorney is a "burnout" job. He said some attorneys will do the work for the first few years out of law school, but once they establish a law practice on their own, they no longer want to do criminal defense work. He said perhaps some of the contract attorneys would work longer if more money was available, but not all. He said if the state had a public defender system, the state would hire attorneys and it would be run like a business. He said a public defender would be a career position with fringe benefits and staff. He said a public defender office would be like a state's attorney's office, only the attorneys would represent the defendants, not the state.

Senator Traynor said the committee should contact the North Dakota State Bar Association to find out the association's ideas on how to structure indigent defense in the state.

Chairman Boucher distributed information received from Judge Lee A. Christofferson, Northeast Judicial District, regarding indigent defense recoupment amounts and indigent defense contracts. Copies of these documents are on file in the Legislative Council office.

Chairman Boucher called on Ms. Kathy Bacon, law clerk, Northwest Judicial District, for testimony regarding the indigent defense study. Ms. Bacon provided to the committee a copy of a letter from Judge Robert W. Holte, Northwest Judicial District. In the letter Judge Holte said there is a concern in Williams, Divide, and McKenzie Counties regarding the limited number of attorneys who are available to provide indigent defense services. A copy of the letter is on file in the Legislative Council office. Ms. Bacon said the lack of attorneys willing to provide indigent defense services is a numbers problem, but is also a money problem. She said the lack of attorneys willing to do indigent defense work in these counties will result in the need to hire outside counsel for some cases. She said hiring outside the contract is draining the district's resources.

In response to a question from Senator Nelson, Ms. Bacon said Williams County is considered the "hotbed" of methamphetamine problems and the large number of cases has drained the district's indigent defense budget.

In response to a question from Representative Boucher, Ms. Bacon said there may be a need to hire attorneys from other counties to provide the necessary services.

Representative Eckre said the University of North Dakota Law School may want to work to emphasize careers in criminal law. Senator Traynor said the legal profession is market-driven and it is difficult to make a living doing criminal defense work.

STATUTORY REVISION

Chairman Boucher called on Ms. Jean Mullen, Assistant Attorney General, for testimony regarding *Kansas v. Crane*, 534 U.S. 407 (2002), and its impact on this state's civil commitment of sexual predators law and for information regarding the state's civil commitment law. Ms. Mullen said North Dakota Century Code (NDCC) Chapter 25-03.3 establishes a judicial procedure for the commitment of sexually dangerous predators, which is similar to the procedure for the commitment of mentally ill individuals. She said when the law was originally enacted in 1997, it was anticipated there might be as many as seven commitments during the first biennium. She said only eight individuals have been committed in the five years since enactment. She said North Dakota's law has been challenged twice since its enactment. She said in 1999 the statute was challenged on double jeopardy grounds. She said the North Dakota Supreme Court relied on a United States Supreme Court decision in which a similar Kansas statute was found constitutional on those grounds. She said in 2002 the state's civil commitment statute was before the North Dakota Supreme Court again. In that case the issue was whether the standard for commitment, identified in the state as "likely to engage in further acts of sexually predatory conduct," should be interpreted by the court as requiring proof that the respondent was "much more likely than not" to engage in sexually predatory conduct if not confined. She said the court rejected the respondent's standard of proof of "much more likely than not" as too restrictive. Rather, she said, the court reviewed other state courts' interpretation of similar language in sexual predator commitment statutes and, finding those cases persuasive, identified the standard to be applied as requiring proof that the respondent has a "propensity towards sexual violence of such a degree as to pose a threat to others."

Ms. Mullen said in the 2002 case of *Kansas v. Crane*, the United States Supreme Court revisited an earlier decision in reviewing a determination by the Kansas Supreme Court that due process required a finding by a court that a respondent in a civil commitment proceeding "cannot control his dangerous behavior." She said the Court rejected both of the Kansas Supreme Court's requirements for a finding of a total or complete lack of control and Kansas' position that the Constitution permits civil commitment without any lack of control determination. Rather, she said, the Court found there must be a "'mental abnormality' or 'personality disorder' that makes it difficult, if not impossible, for the dangerous person to control

his dangerous behavior” and there must be some showing of lack of control before commitment. She said the North Dakota Supreme Court has not yet addressed the *Crane* decision. When it does, she said, it will be applying the *Crane* requirement of a showing of “lack of control” to the definition of “sexually dangerous individual” which means “an individual who is shown to have engaged in sexually predatory conduct and who has a congenital or acquired condition that is manifested by a sexual disorder, a personality disorder, or other mental disorder or dysfunction that makes that individual likely to engage in further acts of sexually predatory conduct which constitute a danger to the physical or mental health or safety of others.” Ms. Mullen submitted written testimony, a copy of which is on file in the Legislative Council office.

Ms. Mullen said in 2001 the Legislative Assembly amended NDCC Chapter 25-03.3 to include individuals with mental retardation to those who can be civilly committed. She said no individuals with mental retardation have been committed yet under the law. She said the law also changed the referral process used by the Penitentiary.

In response to a question from Representative DeKrey, Ms. Mullen said in light of the *Crane* decision, no changes are needed to be made to the North Dakota law. She said any changes to the law should wait until the North Dakota Supreme Court rules on the *Crane* decision.

In response to a question from Senator Traynor, Ms. Mullen said of the eight who have been committed, seven are housed at the State Hospital and one is housed at the State Penitentiary. She said the one housed at the State Penitentiary is also serving time for a criminal conviction.

In response to a question from Representative Boucher, Ms. Mullen said after commitment, a person can petition for a rehearing after one year. She said state’s attorneys have been told to not use civil commitment as a part of the plea bargain process.

In response to a question from Representative Kretschmar, Ms. Mullen said it is not a requirement that the person be convicted before being civilly committed, but so far, all those who have been civilly committed were convicted first. She said if there is not a conviction, the state’s attorney must prove that the person has committed the predicate act.

In response to a question from Representative Boucher, Ms. Mullen said there are possibly three more individuals who may be civilly committed in the near future.

Chairman Boucher called on Mr. Alex Schweitzer, Superintendent, State Hospital, for information regarding the civil commitment process. Mr. Schweitzer said he would provide to the committee information on the cost per day of treating and housing sexual predators.

MENTAL ILLNESS COMMITMENT PROCEDURES STUDY

At the request of Chairman Boucher, committee counsel presented a bill draft that would change from seven to four the number of days within which a preliminary hearing or treatment hearing is to be held. She said as written, the number of days would include weekends and holidays.

Judge Graff said the four days probably would not be a scheduling problem for the courts, but it may be a problem for health care professionals to get the necessary evaluation and diagnosis within that timeframe.

Representative Fairfield said when the process involves imposing on a person’s civil rights, the process should be done as expeditiously as possible.

Chairman Boucher called on Mr. Schweitzer for comments concerning the bill draft. Mr. Schweitzer said he was appearing on behalf of the Department of Human Services. He said the department has no opposition to the change from seven to four days, but would ask the committee to consider the bill to exclude weekends and holidays from the four-day period. He said courts are not open on weekends and holidays. He said the State Hospital has an obligation by statute to assure that respondents attend preliminary and treatment hearings. He said many of these hearings are a great distance from the State Hospital. He said county sheriff’s offices are required to provide transportation for those hearings and he is concerned about the availability of transportation on weekends and holidays. Mr. Schweitzer submitted written testimony, a copy of which is on file in the Legislative Council office.

In response to a question from Representative Eckre, Mr. Schweitzer said the State Hospital does not have any difficulty with the seven-day requirement. He said most patients are in court for their hearings before seven days. He said he believes the change to four days would be an issue for the court system.

Chairman Boucher called on Ms. Corinne Hofmann, Protection and Advocacy Project, for testimony regarding the bill draft. Ms. Hofmann said because of the intrusive nature of the involuntary mental health commitment process, the Protection and Advocacy Project supports changing the timeframe for the preliminary hearing from seven to four days. She said Rule 6 of the North Dakota Rules of Civil Procedure applies to the scheduling of preliminary hearings under NDCC Chapter 25-03.1. She said Rule 6 would allow scheduling of such a hearing up to 11 business days after detention. Ms. Hofmann submitted written testimony, a copy of which is on file in the Legislative Council office.

Chairman Boucher called on Ms. Terry Ostmo, Wahpeton, regarding the mental illness commitment study and the bill draft. Ms. Ostmo said if the bill draft were changed to exclude weekends and holidays,

there would basically be no change from the current seven days. She said scheduling of the hearing should not be determined based on the convenience of medical personnel, courts, attorneys, and sheriffs. Ms. Ostmo submitted written testimony, a copy of which is on file in the Legislative Council office.

Chairman Boucher called on Ms. Delaney for testimony regarding the bill draft. She provided to the committee a letter from Ms. Huseby, Barnes County State's Attorney. In the letter, she said four days would not be an adequate amount of time to receive a report of examination and set a hearing. She said if the time period is changed to four days, judges will likely grant continuances. A copy of Ms. Huseby's letter is on file in the Legislative Council office. Ms. Delaney said changing the number of days before a hearing from seven to four would result in scheduling problems.

In response to a question from Representative Boucher, Ms. Delaney said an examination of the person taken into custody must be done within 24 hours. She said if the person does not meet certain criteria, the person must be released.

In response to a question from Representative DeKrey, Mr. Schweitzer said not all mental illnesses present themselves within 24 hours or even within seven days.

Ms. Ostmo said the statute creates a presumption that doctors are infallible.

Chairman Boucher called on Dr. Robert Ostmo, Wahpeton, for testimony regarding the bill draft. Dr. Ostmo said both the North Dakota Medical Association and the North Dakota Psychiatric Society have gone on record to support reducing the number of days from seven to four. He said seven days can be extremely damaging to patients. He said the longer time period can also cause collateral damage to the person by affecting the person's job and career. He said being committed removes a person from the competitive process.

Representative DeKrey said the length of time needed to perform certain aspects of the commitment process varies depending on where a person lives. He said access to services differs greatly between Cass County and Kidder County.

Chairman Boucher called on Mr. Tom Mayer, Assistant Attorney General, for testimony regarding the bill draft. Mr. Mayer said the change from 72 hours plus weekends and holidays to seven days was made in 1989. He said the change was made because of the time constraints for the judicial system and for sheriffs transporting patients. He said when a

similar bill was considered in 2001, the medical profession did not have a major concern with the four days but the courts and the sheriffs did have concerns. He said mental illness commitment is a civil process and that process involves a balancing act. He said the time period for mental illness commitment has already been compressed. He said within the 24-hour detention period, the person must be determined to be a danger to self or others. Mr. Mayer submitted written testimony, a copy of which is on file in the Legislative Council office.

In response to a question from Representative Klemin, Mr. Mayer said procedural rules apply when the statute is silent.

In response to a question from Representative Fairfield, Mr. Schweitzer said there are practical problems with reducing the seven-day period to a four-day period. He said, however, when a patient's liberty is at stake, it is important to err on the side of the patient.

Mr. Schweitzer said he would provide to the committee information on the 24-hour detention evaluation process.

Chairman Boucher said the committee would delay taking action on the bill draft until members of the committee have an opportunity to discuss the issues with persons involved in the process.

Chairman Boucher called on Mr. Schweitzer for information regarding the issue relating to the interstate transporting of patients. He said Minnesota has recently passed legislation that makes it possible for border communities to have treatment options that would be equivalent to what is available for non-border communities. He said for this legislation to work, North Dakota needs to pass complementary legislation. He said the Department of Human Services is planning to draft the necessary legislation and introduce the bill as an agency bill in the 2003 legislative session. He said the problems raised to the committee at earlier meetings would be corrected by this legislation. A copy of the Minnesota legislation is on file in the Legislative Council office.

No further business appearing, Chairman Boucher adjourned the meeting at 3:00 p.m.

Vonette J. Richter
Committee Counsel

ATTACH:1