

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

JUDICIARY A COMMITTEE

Tuesday, July 9, 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, Joyce Kingsbury, Lawrence R. Klemin, William E. Kretschmar, John Mahoney, John M. Warner; Senators Deb Mathern, Carolyn Nelson

Members absent: Representative G. Jane Gunter; Senators John T. Traynor, Darlene Watne

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 May 29, 2002, meeting be approved as distributed.

CLERK OF COURT AND COLLECTION OF RESTITUTION STUDY

Chairman Boucher called on Ms. Shari McPhail, attorney, Bismarck, for testimony regarding the state's indigent defense program. Ms. McPhail said she has participated in two separate indigent defense contracts that involved the handling of misdemeanor and felony cases, contempt proceedings, revocation proceedings, and appeals to the North Dakota Supreme Court. She said in 2001 she was awarded a one-half contract for which she was paid \$1,730 per month. She said from July 2001 through October 2001, she was assigned 25 cases, many of which involved multiple counts. She said she spent approximately 50 hours per month on those cases. She said when she computed her hourly indigent defense rate it equaled less than \$35 per hour. She said with the exception of witness fees and process service fees, the contracting attorney is responsible for all costs, fees, and expenses incurred in providing the contract services. She said some attorneys with indigent defense contracts are zealous advocates for their clients and are focused on their clients' needs; however, this is not always the case. She said she is aware of one situation in which the contract attorney did not contact or discuss the case with the client until the day of the hearing.

Ms. McPhail said in her indigent defense cases, she often met with her clients at the courthouse because she felt safety was an issue. She said the indigent defense contract was a "lifeline" to her newly established law practice. She said the contract

provided a monthly income and helped with her overhead expenses. She said doing indigent defense work gave her courtroom experience. She said as her law firm grew and overhead expenses grew, the contract was no longer financially feasible. She said she recommends the indigent defense system either increase the monthly payments to the attorney or the state consider the establishment of a public defender office. She said with a public defender system, the attorneys representing the indigent would have support staff and a secure environment. Ms. McPhail submitted written testimony, a copy of which is on file in the Legislative Council office.

In response to a question from Representative Klemin, Ms. McPhail said the terms of the contract require the contract attorney to have a support staff. She said there is an established procedure that requires the attorney to contact the client within a certain time. She said contract attorneys are required to report to the court when a case is completed and how much time was spent on the case.

In response to a question from Representative Warner, Ms. McPhail said she believes a majority of the entry-level lawyers are staying in the state; however, she does not know how long they stay in the state.

In response to a question from Representative Eckre, Ms. McPhail said it is a matter of judicial discretion as to whether a request for a change of attorney is granted. She said there are good contract attorneys; however, there are some who are not adequately representing their clients.

In response to a question from Representative Mahoney, Ms. McPhail said some contract attorneys have more cases than they can handle. She said a public defender would have a greater commitment to public defense. A public defender, she said, would not have other nonindigent cases to handle. She said about 10 attorneys have indigent defense contracts in the South Central Judicial District.

In response to a question from Representative Kretschmar, Ms. McPhail said to indicate her interest in being awarded an indigent defense contract, she sent a resume and cover letter to the district judges. She said she was interviewed by the judges and then awarded a contract. She said the court does not solicit attorneys.

In response to a question from Representative Boucher, Ms. McPhail said much of indigent defense work is done by the younger attorneys; however, a number of more experienced attorneys use the contract work to supplement their practices. She said for about one-half of the contract attorneys in the district, the contract is used as a primary source of income. She said finding attorneys who are willing to do indigent defense work is an issue in the rural areas. She said security can be an issue, especially in cases in which the client is accused of a violent offense or has a history of violent behavior. She said security is not just a concern for female attorneys. She said she would like to see an increased use of metal detectors in courthouse entrances. She said having security personnel in the room while discussing a case with a client would raise confidentiality concerns.

At the request of Chairman Boucher, committee counsel reviewed several e-mail messages she has received from attorneys throughout the state regarding the state's indigent defense system. She said the comments range from recommendations that the state establish a public defender office to recommendations that the system is fine as it is and it does not need to be changed. Copies of the e-mail messages are on file in the Legislative Council office.

In response to a question from Representative Boucher, Chief Justice Gerald W. VandeWalle, Supreme Court, said the current system of providing indigent defense was set up by the Legislative Assembly. He said part of the problem with the current system is that there is little overview or reporting requirements.

In response to a question from Representative Mahoney, Chief Justice VandeWalle said when indigent defense services were paid by the county, the court appointed the indigent defense attorneys using a rotation system. He said the state's criminal caseload was lower at that time.

In response to a question from Representative Boucher, Chief Justice VandeWalle said the conflict of interest problem would be difficult to resolve unless an independent agency is in charge of the indigent defense program. He said that agency cannot be the state's attorney's office or the Attorney General's office. He said the awarding of costs to the defense attorney also raises conflict of interest issues. He said the awarding of costs by the judge allows the judge to control the defense.

In response to a question from Representative Mahoney, Chief Justice VandeWalle said the indigent defense budget is about \$4 million. He said the awarding of contracts is a bid process, but in many cases only one bid is received.

In response to a question from Representative Boucher, Chief Justice VandeWalle said in other states the public defense system is not part of the court, but rather is operated by an independent office.

He said the problem with electing public defenders is that there may be a problem with the elected person's qualifications. He said in states that have capital punishment, Congress has imposed certain standards and there are qualifications that the public defender must have.

Chairman Boucher called on Mr. Lawrence P. Kropp, attorney, Jamestown, for comments regarding the state's indigent defense system and regarding the costs of defending an indigent client in a homicide case. Mr. Kropp said he has been in practice for 18 years and that he has been doing indigent defense contract work for the past three or four years. He said he served as indigent defense counsel in a murder case in which he represented the defendant, Mr. Timothy Klose. He said the case nearly broke his law firm. He said every defendant is entitled to the best defense the attorney can provide. He said he gave Mr. Klose's case his best effort. He said both he and his law partner, Mr. Eric Baumann, worked almost exclusively on the *Klose* case for two weeks. He said during that time, he did not have time to work on other cases and, therefore, nothing was being billed to other clients. He said Mr. Klose recently requested a copy of a transcript that was over 500 pages in length. He said under the contract he is paid \$56 per month for costs. He said the indigent defense contract does permit the attorneys to apply for additional fees, however, that may not be done until the case is finished. He said the *Klose* case is being appealed; therefore, he will have to wait to apply for additional costs until after the appeal is complete.

Mr. Kropp said the contract system does work, but there are problems. He said an estimated \$15,000 to \$20,000 per month would be needed for the system to effectively operate in Jamestown. He said even if the state establishes a public defender office, there would still be situations of conflict of interest. He said splitting contracts between adult and juvenile offenders would not be cost-effective. He said the current system is better and more cost-effective than a public defender office would be; however, contract attorneys should be better compensated. He said security has not been an issue for him. He said the only threats he has ever received were in family law cases. He said attorneys are required to maintain records for every case which must be submitted to the Supreme Court. He said his firm currently has 35 or more pending public defender cases. He said he cannot afford to take two or three days to do legal research at the University of North Dakota Law School library like state's attorneys are able to do. He said his office overhead is about \$35 per hour. He said if he spends more than two hours per day on contract clients, he is losing money. He said he enjoys working on the contract cases. He said slow population growth in the state does not justify the establishment of a public defender office.

In response to a question from Representative Boucher, Mr. Kropp said although most cases are not as time-consuming as the *Klose* case, the time spent on cases versus the amount of compensation will never balance out. He said any additional compensation is at the court's discretion. He said he is unsure how much or if he will receive any additional compensation for the *Klose* case. He said if he had billed by the hour, the *Klose* case would have cost an estimated \$20,000 to \$25,000. He said state's attorneys have technology, the police, and other sources of information at their disposal which are not available to the contract attorneys. He said although the state's attorneys have the burden of proof, providing a defense is more time-consuming.

In response to a question from Representative Mahoney, Mr. Kropp said the *Klose* case has not been his only time-consuming case. He said he did agree to the terms of the contract; however, the amounts paid to contract attorneys do not justly compensate the attorney for the amount of time spent on the cases. He said being a contract attorney creates the public perception that the attorney only does criminal defense work and as a result, people do not come to that attorney for other things such as wills and estate planning. He said the work and the money will not even out and he does not expect that it ever will.

In response to a question from Representative Eckre, Mr. Kropp said he can see that the issue of security may be more of a concern for some female attorneys than for some male attorneys.

Chairman Boucher called on Mr. Wade Williams, Association of Counties, for the estimated mental health evaluation costs incurred in the *Klose* case. Mr. Williams said the total mental health evaluation cost was \$2,467. Mr. Kropp said that amount was only for the initial commitment and did not include the psychiatric evaluation.

In response to a question from Representative Klemin, Mr. Williams said the mental health evaluation costs were paid by the State Hospital.

In response to a question from Representative Boucher, Mr. Williams said high-profile cases also put a strain on the county budget and on the budget of the state's attorney's office.

Chairman Boucher called on Mr. Gary N. Lee, President, State Bar Association of North Dakota, for comments regarding the indigent defense study. Mr. Lee said he had also received e-mails from State Bar Association members regarding the state's indigent defense system. He said one of the e-mails indicated that the problems with the current indigent defense system relate to the caseload and pay. That person, he said, believes there is a tremendous amount of fraud on the indigent defense applications and, consequently, many people who do not qualify are being assigned attorneys. Several other persons, he said, suggested the state needs a centralized,

state-funded indigent defense program. A copy of the e-mails received by Mr. Lee is on file in the Legislative Council office.

Mr. Lee said in 1981 there were five attorneys practicing in Crosby. Today, he said, there is one. He said either under the current contract system or under a public defender system, travel to outlying areas would be required. He said when he worked on a double-murder case several years ago, he had about 15 years' experience. He said if he had been a recent law school graduate or an attorney with only a few years' experience, he would not have been able to handle that case. He said there are many cases that cannot be handled adequately by inexperienced attorneys. He said there is a need for dedicated, experienced attorneys to handle indigent defense cases. He said the only way to get this level of attorney is to pay more money. He said more investigative money is also needed. He said in the double-murder case, the state was able to fly in witnesses and Federal Bureau of Investigation experts and had the State Crime Laboratory at its disposal. He said two full-time state's attorneys tried the case with a third state's attorney rotating with the other two. He said he was paid \$2,500 to represent the defendant. He said defendants have a constitutional right to an adequate and competent defense. He said the attorneys providing that service need to be adequately compensated. He said the federal system pays indigent defense attorneys \$90 per hour. He said under the state's current system, defendants are being represented by the lowest bidder.

In response to a question from Representative Klemin, Mr. Lee said there is a shortage of attorneys in the northwest part of the state who are willing to do indigent defense work.

In response to a question from Representative Mahoney, Mr. Lee said he is aware of instances in which the first time the attorney meets with or talks to a client is at the courthouse. He said the attorney is seen as a "lifeline" or "last hope" to the client, but the client is not always getting the best defense under the current system.

In response to a question from Representative Klemin, Mr. Lee said the contract attorneys are held accountable because a client can make an ineffective assistance of counsel claim against that attorney. He said the overview is through the judicial process. He said another form of accountability is through the attorney disciplinary process. He said these claims are made for the more extreme ethical violations.

Chairman Boucher called on Ms. Janet Froelich, Clerk of District Court, Barnes County, for comments concerning the indigent defense study. Ms. Froelich said defendants with an income of less than \$923 per month qualify for an indigent defense attorney. She said although the indigent defense costs are charged back to the defendant, most defendants will not be able to repay those defense costs. She said the court

will look at the person's means and ability to pay when assessing attorney fees.

Ms. Froelich said she does not know why some judicial districts are able to collect attorney fees and others are not. She said this is an area that should be addressed. She said the amounts collected by each judicial district are East Central Judicial District - \$60,000; Northeast Central Judicial District - \$36,990; Northeast Judicial District - \$69,201; Northwest Judicial District - \$20,627; South Central Judicial District - \$2,272; Southeast Judicial District - \$73,600; and Southwest Judicial District - \$18,313. She said these amounts total about \$271,000 or about 4 percent of the total indigent defense budget. She said defendants who have the ability to pay should be doing so. She said she does not understand why the state imposed a \$25 application fee to someone who is indigent. She said in most cases the fee is waived and assessed as a cost at the end of the proceeding.

COMMITTEE DISCUSSION

Chairman Boucher said there are three options the committee may want to consider regarding the indigent defense study. He said the committee could recommend the establishment of a public defender system, the creation of a statewide task force to study the indigent defense issues, or that the state stay with the current system with recommendations that issues such as compensation, competency, accountability, support staff requirements, and security be addressed.

Representative Klemin said there is a conflict of interest issue when the court is responsible for selecting and awarding the indigent defense contracts. He said another problem is the lack of overview. He said the Office of Administrative Hearings may be an agency that would be appropriate to handle the awarding of indigent defense contracts. He said a public defender system would require a radical change over the current system.

Senator Mathern said she would support the idea of creating a task force to study the indigent defense issues. She said the task force should include a representative of each judicial district. She said she supports keeping the current system, but there are issues that could be addressed by the task force.

Representative Klemin said the North Dakota Legal Counsel for Indigents Commission is in place and is responsible for many of the same duties that a task force would do.

Committee counsel distributed a copy of the commission's rules as well as a copy of the membership of the commission. She said the commission includes representatives appointed by the county, the judiciary, the State Bar Association, the Attorney General, the Legislative Assembly, and the Supreme Court. Copies of the rules and membership of the commission are on file in the Legislative Council office.

Chairman Boucher called on Mr. Jim Ganje, Court Administrator's office, for information regarding the North Dakota Legal Counsel for Indigents Commission. Mr. Ganje said he serves as staff counsel for the commission. He said the membership of the commission is fairly balanced geographically. He said the members have term limits. He said the commission meets an average of three to four times per year.

In response to a question from Representative Boucher, Mr. Ganje said the commission discusses many of the same issues that have been addressed by this committee.

It was moved by Representative Kingsbury, seconded by Representative Klemin, and carried on a roll call vote that the committee recommends that the state continue to use the contract system for providing indigent defense and recommends that issues of compensation, staff requirements, security, attorney competency, and attorney accountability be addressed administratively. Representatives Boucher, DeKrey, Eckre, Kingsbury, Klemin, Kretschmar, Mahoney, and Warner and Senators Mathern and Nelson voted "aye." No negative votes were cast.

Representative Mahoney said at some point the state should move to a public defender system. He said it is something the Legislative Assembly may want to consider, but court and clerk of court consolidation issues should be settled first. He said the committee may want to recommend a continuation of the indigent defense study in the next interim.

It was moved by Representative Kingsbury, seconded by Representative Klemin, and carried on a voice vote that the Legislative Council staff be requested to prepare a bill draft that would transfer the indigent defense contract responsibilities from the judiciary to the Office of Administrative Hearings.

It was moved by Representative Mahoney, seconded by Representative Kretschmar, and carried on a voice vote that the Legislative Council staff be requested to prepare a resolution draft that would provide for the continued study of the indigent defense issues.

It was moved by Representative Warner, seconded by Representative Kretschmar, and carried on a voice vote that the Legislative Council staff be requested to prepare a bill draft that would provide that the state rather than the county is to pay the cost of indigent defense for mental illness commitment proceedings, sexual predator commitment proceedings, and for guardians ad litem costs.

Mr. Williams said counties spend approximately \$100,000 annually on these costs.

CLERK OF COURT AND COLLECTION OF RESTITUTION STUDY

Chairman Boucher called on Ms. Deb Simenson, Clerk of District Court, Burleigh County, for information on the amount of bond money that is forfeited to restitution, fines, fees, and costs. Ms. Simenson said she does not have a dollar amount from bonds that are forfeited to restitution in Burleigh County, but she does have a figure from Grand Forks County. She said the amount collected in Grand Forks County from January 1, 2002, through June 30, 2002, was \$23,335.84. She said over one-half of the nonsufficient funds check complaints filed in Burleigh County are infractions. She said these infractions stem from bad checks that range in value from \$10 to \$50. She said a bond is not required on these cases unless the defendant does not appear for the first appearance, in which case a bond is set at \$100. She said when the defendant is sentenced, the \$100 bond is applied to restitution, fines, and fees if so ordered by the judge. She said if not ordered by the court, the bond is returned to the bond remitter. She said the general philosophy is to pay restitution first. A copy of Ms. Simenson's testimony, which included statistics on the collection of restitution in Burleigh County, is on file in the Legislative Council office.

At the request of Chairman Boucher, committee counsel presented a bill draft [30116.0100] regarding insufficient funds checks. She said the bill draft would authorize the state's attorney or the clerk of district court to retain a percentage of the amount of restitution collected from insufficient funds checks.

In response to a question from Senator Mathern, committee counsel said the percentage retained by the state's attorney or clerk of district court would reduce the amount paid to the person to whom the check was written.

Representative Klemin said the bill draft would give an incentive to state's attorneys or clerks of district courts to collect from what would otherwise be an uncollectible judgment. He said the bill draft also would provide a source of funding for the expenses of collection. He said the result would be that more money would be returned to the victim.

In response to a question from Senator Mathern, Ms. Froelich said the Barnes County clerk's office has been successful in collecting restitution for bad checks. She said the clerk's office does not retain any portion of the amount collected.

Representative DeKrey said he would support recommending this bill draft; however, he did not believe the government should have to have an incentive to do its job.

Representative Klemin said there are other situations in which a percentage of amounts collected is retained. He said this is not a new concept. He said when a sheriff levies on a judgment and an auction is held, the sheriff retains a percentage of the proceeds from the auction.

Mr. Williams said county auditors would prefer that any funds retained by state's attorneys or county-employed clerks of district court be deposited in the county general fund rather than be directly retained by the state's attorney or clerk of district court.

It was moved by Representative Eckre, seconded by Representative DeKrey, and carried on a voice vote that page 3, line 17, of the bill draft be amended to provide that money collected by the state's attorney or county-employed clerk of district court be deposited in the county general fund.

Chairman Boucher called on Mr. Jim Fleming, Deputy Director, Child Support Enforcement, Department of Human Services, for comments on the bill draft. Mr. Fleming said the bill draft would reduce the amount collected by the state. He said if a child support obligor writes a bad check and a percentage of that amount is retained by the state's attorney or clerk of district court, there would have to be an accounting for the decreased amount. He said this bill draft would affect government agencies. He said in the case of a \$100 bad check, the amount paid to the state may only be \$66.67. He said this raises the question as to who is responsible to make up the difference. He said the obligor's arrearage would be reduced by \$100 and the obligee would receive \$100, but the state only collects \$66.67.

In response to a question from Representative Eckre, Mr. Fleming said a two-tiered system could be established which would exclude government agencies from having a percentage of the amount collected retained.

In response to a question from Representative Boucher, Mr. Fleming said the committee may want to consider if it wants the government to be treated differently. He said as written, the bill draft would take from one government pot and put it into another.

In response to a question from Representative Klemin, Mr. Fleming said the custodial parent could be asked to give the money back in the case of a bad check; however, this would be a difficult process and it would take money away from the child.

Chairman Boucher called on Ms. Karin Fischer, Clerk of District Court, LaMoure County, for comments on the bill draft. Ms. Fischer said the bill draft does not include situations for checks written without accounts. She also said it was unclear from the bill draft as to how the percentage collected would work. She said the bad check process is criminal and the process in the bill draft for collecting would be a civil one.

In response to a question from Representative Klemin, Ms. Fischer said she would prefer imposing an additional fee rather than retaining a percentage of the amount collected.

It was moved by Representative Klemin, seconded by Representative DeKrey, and carried on a voice vote that page 2, line 31, of the bill draft

be amended to include the words "without an account," that the language on page 3, line 2, be amended to provide that the state's attorney or clerk of court may retain 25 percent of the amount collected, and that lines 3 through 10 on page 3 be removed.

Representative Warner said another option may be that an additional fee could be collected as a cost. He said the additional cost imposed would not be intended to be punitive.

Representative Klemin said the bill draft is intended to provide an incentive to collect restitution.

Representative Kretschmar said costs are assigned to a case in addition to any penalty that is imposed.

It was moved by Representative Klemin, seconded by Representative Kretschmar, and defeated on a roll call vote that the bill draft, as amended, relating to the retention of a percentage of the amount of restitution collected from insufficient funds checks, be approved and recommended to the Legislative Council. Representatives DeKrey, Kingsbury, Klemin, and Kretschmar voted "aye." Representatives Eckre and Warner and Senators Mathern and Nelson voted "nay."

It was moved by Representative Klemin, seconded by Representative DeKrey, and carried on a voice vote that the Legislative Council staff be requested to prepare a bill draft to provide that when ordering restitution in an insufficient funds case, the court must impose costs in an amount equal to 25 percent of the value of the check and to provide that those costs are to be used by the state's attorney or clerk of district court to offset operating expenses.

Representative Warner said the committee should receive information on the imposing of costs and whether or at what point costs are considered punitive.

Chairman Boucher said Ms. Robin Huseby, State's Attorney, Barnes County, was unable to attend the meeting but had submitted a letter of testimony in opposition to the bill draft. A copy of Ms. Huseby's letter is on file in the Legislative Council office.

At the request of Chairman Boucher, committee counsel presented a bill draft [30108.0100] that would authorize the board of county commissioners to designate either the state's attorney or the clerk of district court as the office responsible for the collection of restitution.

Chairman Boucher called on Mr. Williams for testimony regarding the bill draft. Mr. Williams said this bill draft would not cover those counties in which the clerks of district court are state employees and in which the clerks are responsible for the collection of restitution. He said he would prefer that instead of the bill draft, the committee consider repealing the sunset provision contained in 2001 Senate Bill No. 2002.

In response to a question from Representative Boucher, Mr. Williams said the bill draft could result in the shifting of the cost of restitution collection from the state to the county. He said a better solution would be to repeal the sunset provision.

It was moved by Representative DeKrey and seconded by Senator Mathern that the Legislative Council staff be requested to prepare a bill draft that would repeal the sunset provision in 2001 Senate Bill No. 2002.

Committee counsel said the provision to which Mr. Williams referred is Section 6 of 2001 Senate Bill No. 2002. She said that section provides that "[i]t is the intent of the legislative assembly that the county and state offices performing restitution collection and enforcement activities as of April 1, 2001, continue to perform those activities until June 30, 2003." She said this is a statement of intent and is not a statute. She said this section expires on June 30, 2003; therefore, it does not need to be repealed.

Representative DeKrey, with the consent of Senator Mathern, withdrew his motion.

Chairman Boucher called on Mr. Ted Gladden, Acting State Court Administrator, for comments on the bill draft. Mr. Gladden said there is a concern that because there is not a statute designating the office responsible for collecting restitution, the county commissioners of a county in which the state's attorney collects restitution could make a decision that the state's attorney will no longer continue to collect restitution. He said four to five full-time equivalent positions are needed statewide to carry out the responsibility.

Representative Klemin said the intent of the bill draft was to maintain the status quo regarding the collection responsibility.

It was moved by Representative Kretschmar and seconded by Representative Klemin that the bill draft be amended to provide that the county commissioners of those counties with state-employed clerk of court offices and the State Court Administrator's office negotiate an agreement as to which office is responsible for restitution collection.

Mr. Williams said he does not understand how negotiations would work. He said neither the county nor the state will want to pay the cost of the restitution collection responsibility.

Mr. Gladden said counties have the option to change to or from a contract county every two years. He said the situation takes on different dynamics when the clerk is a state employee.

In response to a question from Representative Kretschmar, Mr. Gladden said the counties with state-employed clerks have continued to collect restitution in the same manner as before they came into the state system.

Senator Nelson said the system appears to be working and perhaps does not need to be changed.

Representative Klemin said the status quo as far as restitution collection should be codified.

Chairman Boucher declared the motion to amend the bill draft tabled. He said the committee should receive more information on the issue at the next meeting.

MENTAL ILLNESS COMMITMENT PROCEDURES STUDY

At the request of Chairman Boucher, committee counsel reviewed a bill draft [30094.0100] that would change from seven days to four days the number of days following detention within which a preliminary hearing must be held.

In response to a question from Senator Mathern, Representative DeKrey said testimony on a similar bill considered during the 2001 legislative session indicated that reducing the number of days would create logistical problems for law enforcement and the judiciary.

It was moved by Representative Klemin and seconded by Representative DeKrey that the bill draft be amended to provide that the four-day period within which the preliminary hearing must be held be exclusive of weekends and holidays.

In response to a question from Representative Eckre, Representative DeKrey said in discussing the issue with law enforcement in the rural areas, reducing the number of days is not an issue because there are not usually any medical facilities in those areas.

Representative Mahoney said seven days is an outside limit and judges try to schedule the hearing as soon as possible.

Representative Boucher said if the four-day period was exclusive of weekends and holidays, the time period could be as long as six or seven days, depending on the situation.

Senator Nelson said before 1989 the law provided that the time period was 72 hours exclusive of weekends and holidays. She said this bill draft, which would provide for 96 hours, would be a compromise between three days and seven days. She said with new technology, time periods should not need to be extended.

In response to a question from Representative Warner, Representative Mahoney said individuals get medical attention within 24 hours. He said if it is determined within those 24 hours that the person does not require treatment, the person must be released and the petition dismissed.

Chairman Boucher called on Mr. Alex Schweitzer, Superintendent, State Hospital, for comments regarding the bill draft. Mr. Schweitzer said the State Hospital does not have a difficult time completing an evaluation within 24 hours. He said the State Hospital also does not have a difficult time getting the respondent to court within seven days. He said it is the courts and law enforcement who have indicated

that reducing the number of days from seven to four would cause problems. He said the State Hospital would not have a problem complying with the four-day requirement. He said the State Hospital can deal with either timeframe.

In response to a question from Representative Boucher, Mr. Schweitzer said the typical turnaround is four to five days. He said the law provides that a continuance may be granted for good cause.

Representative Mahoney said as a practical matter, seven days may be needed to prepare for a preliminary hearing.

In response to a question from Representative Boucher, Representative Mahoney said he estimates that up to 80 percent of preliminary hearings are waived.

Chairman Boucher called on Ms. Terry Ostmo, Wahpeton, for comments on the bill draft. Ms. Ostmo said she mailed testimony regarding mental illness to committee members in advance of the meeting. A copy of Ms. Ostmo's testimony is on file in the Legislative Council office. Regarding the bill draft, Ms. Ostmo said there is no distinction between whether a person is detained for a crime or for mental illness. She said unjustified psychiatric commitments are a fact. She said every person deserves his or her day in court. She said seven days between detention and a preliminary hearing is too long.

Representative Mahoney said he has never needed to ask for an extension. He said in his experience, judges want preliminary hearings scheduled as soon as possible. He said before 1989 there were still county judges and more local state's attorneys. He said it is not as easy to schedule a hearing before a judge as it was before 1989. He said times have changed since 1989. He said he has not seen an abuse of the seven-day time period.

Chairman Boucher requested a roll call vote on the amendment to the bill draft. Representatives DeKrey, Kingsbury, Klemin, and Mahoney voted "aye." Representatives Boucher, Eckre, Fairfield, Kretschmar, and Warner and Senators Mathern and Nelson voted "nay." **The motion failed.**

It was moved by Representative Eckre, seconded by Senator Nelson, and carried on a roll call vote that the bill draft that would change from seven to four the number of days within which a preliminary hearing must be held be approved and recommended to the Legislative Assembly. Representatives Boucher, Eckre, Fairfield, Kingsbury, Kretschmar, Mahoney, and Warner and Senators Mathern and Nelson voted "aye." Representatives DeKrey and Klemin voted "nay."

Chairman Boucher called on Mr. Schweitzer for information regarding the cost of treating sex offenders at the State Hospital. Mr. Schweitzer said the per diem cost of sex offender treatment is \$421 per day.

Mr. Schweitzer also presented information on the admission and evaluation procedures the State Hospital is required to follow during the first 24 hours of admission. He said documentation is done on the appropriateness of admission. He said if the patient is not in need of treatment, the patient is discharged. Mr. Schweitzer submitted a copy of the admission and evaluation procedure, a copy of which is on file in the Legislative Council office.

In response to a question from Representative Boucher, Mr. Schweitzer said patients often have both mental and physical issues. He said patients are often sent to the Jamestown Hospital for medical treatment.

In response to a question from Representative Fairfield, Mr. Schweitzer said the evaluators are able to glean certain things from the assessments. He said the intent is to be as thorough as possible. He said patients are informed of their rights.

No further business appearing, Chairman Boucher adjourned the meeting at 3:10 p.m.

Vonette J. Richter
Committee Counsel

ATTACH:1