

# NORTH DAKOTA LEGISLATIVE COUNCIL

## Minutes of the

### CRIMINAL JUSTICE COMMITTEE

Monday, April 26, 2004  
Harvest Room, State Capitol  
Bismarck, North Dakota

Representative Lois Delmore, Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Representatives Lois Delmore, Bill Amerman, Randy Boehning, Ron Carlisle, Duane DeKrey, Dennis Johnson, Lawrence R. Klemin, William E. Kretschmar, Carol A. Niemeier, Mike Norland; Senators Stanley W. Lyson, Thomas L. Trenbeath, Constance Triplett

**Member absent:** Senator John T. Traynor

**Others present:** See attached appendix

**It was moved by Representative Carlisle, seconded by Representative DeKrey, and carried on a voice vote that the minutes of the February 5, 2004, meeting be approved as distributed.**

#### INDIGENT DEFENSE STUDY

Chairman Delmore called on Ms. Christine Hogan, Executive Director, State Bar Association of North Dakota, for testimony regarding the preliminary report of the State Bar Association of North Dakota Indigent Defense Task Force. Ms. Hogan said the task force has completed the preliminary part of its work. She said the task force has prepared a final report and draft legislation. She said the State Bar Association Board of Governors met on April 24, 2004. She said the board of governors unanimously approved the concept proposed in the bill draft.

Ms. Hogan said the task force worked with the Spangenberg Group to prepare the report and to design a policy. She said the consulting services of the Spangenberg Group were funded by the Supreme Court, State Bar Association, and Legislative Council. She said the Spangenberg Group interviewed attorneys, judges, and court personnel throughout the state. She said the Spangenberg Group recommendations included the creation of a statewide public defender system and the improvement of the current contract system. She said the task force has recommended the idea of keeping the current contract system but with improvements. She said the final report of the task force is expected to be presented to the State Bar Association at its annual meeting in June.

In response to a question from Representative Delmore, Ms. Hogan said under the plan proposed in the bill draft, an independent commission would be created to oversee the indigent defense program in

the state. She said the commission would have its own budget. She said the funding for the indigent defense system in the next biennium would include initial funding to the Supreme Court's budget with a transition to the newly created indigent defense commission.

Chairman Delmore called on Mr. Jim Ganje, State Court Administrator's office, Supreme Court, for testimony regarding the proposed bill draft. Mr. Ganje said the task force, over the course of several meetings, developed a legislative proposal for a structure to provide indigent defense services in the state. He said the proposal is based on two central principles. The first, he said, is that the delivery and management of indigent defense services should be removed from the judicial branch. The second, he said, is that the delivery of indigent defense services should be accomplished through an independent entity with general responsibility for funding, management, and oversight. He said the proposal differs from the recommendation of the Spangenberg Group in that the proposal does not contemplate the establishment of a public defender system as the primary vehicle for providing indigent defense services.

Mr. Ganje reviewed the bill draft. He said Section 1 of the bill draft contains the core features of the proposal. He said the bill draft establishes a seven-member commission on legal counsel for indigents. He said two of the four members must be appointed from counties with a population of 10,000 or less. Two members, one from each house of the Legislative Assembly, he said, would be appointed by the chairman of the Legislative Council. One member, he said, would be appointed by the board of governors of the State Bar Association. He said members would have staggered terms and should have experience in criminal defense or other appointed counsel cases or have demonstrated a commitment to quality indigent defense representation. He said the commission would have a variety of responsibilities regarding the delivery, management, and oversight of indigent defense services. He said the two central responsibilities of the commission would be to establish and implement a process for contracting for legal counsel services for indigents and, if deemed necessary and appropriate, to establish public defender offices within the state. He said

derivative responsibilities include tracking and monitoring appointed counsel caseloads, developing standards regarding delivery of indigent defense services, and approving a biennial budget for submission to the Legislative Assembly. He said the commission could enter an agreement with a city or county to provide indigent defense services that the city or county would otherwise be required to provide. He said the commission would appoint a director who must be a licensed attorney and eligible to practice law at the time of appointment. He said the director's responsibilities would include preparation of a proposed budget for consideration by the commission; preparation of an annual report on operation of the system; hiring staff, including attorneys as public defenders; and otherwise administering and implementing standards, rules, and policies adopted by the commission. He said Section 2 would amend North Dakota Century Code (NDCC) Section 27-20-49 to transfer responsibility for appointed counsel services in juvenile court cases from the Supreme Court to the new commission. He said Section 3 would amend Section 29-07-01(1) to identify the commission, rather than the court, as being responsible for determining the rate of compensation for appointed counsel. Section 4, he said, would amend Section 29-07-01.1 to appropriate money in the indigent defense administration fund to the commission rather than to the judicial branch. Sections 5, 6, and 7, he said, would provide for a transition from the Supreme Court to the commission and for effective dates.

In response to a question from Representative DeKrey, Mr. Ganje said under the proposal, the commission would develop the guidelines for indigent defense eligibility. He said those guidelines would be provided to the court. He said hopefully the courts will follow the guidelines and work closely with the commission.

In response to a question from Representative Klemin, Mr. Ganje said the timing of the transition may be an issue. He said one solution may be to put certain dates in the bill draft by which the commission appointments must be made and the first meeting must be held.

In response to a question from Representative Carlisle, Mr. Ganje said the lawsuit against the Montana indigent defense system is on hold pending action by the Montana legislature. He said a state-wide public defender system has been proposed.

In response to a question from Representative Delmore, Mr. Ganje said under the bill draft, all members of the commission are not required to be law-trained; however, he said, there are a number of qualifications that should be considered when the appointments are made. He said the answer for what can be done to avoid litigation similar to that in Montana is related more to the adequate funding of the indigent defense system than the type of system the state uses.

Senator Trenbeath said the committee and the Legislative Assembly may want to consider whether the state's indigent defense system could be placed within an existing agency rather than to create a new agency.

Mr. Ganje said a number of states use the commission system. He said whether the commission is an independent agency or it is incorporated into an existing agency is a policy decision.

Representative Delmore said the Legislative Assembly will need to look at the most cost-effective way of providing adequate indigent defense.

Mr. Ganje reviewed the estimated costs of implementing the indigent defense system proposed in the bill draft. He said the estimated biennial cost to fully and adequately implement the proposed system is \$11,737,301. He said this amount includes approximately \$750,000 in special funds, leaving a general fund impact of \$10,954,901. He said the current indigent defense budget for the 2003-05 biennium is \$4,312,397 from the general fund plus approximately \$750,000 in special funds for a total biennial budget of \$5,062,397. He said if the current indigent defense budget were to increase approximately 5 percent for the 2005-07 biennium, it would result in a budget of about \$5,278,017. He said the proposed budget for the draft legislation would represent an increase in new dollars of approximately \$6,449,284. He said North Dakota will have spent about \$2.5 million per year on indigent defense during the 2003-05 biennium. By way of comparison, he said, South Dakota spends about \$6.3 million per year, Montana spends about \$8 million per year, and Wyoming spends about \$6.5 million per year.

Mr. Ganje said the proposed estimate is based on compensating contract counsel at \$75 per hour, which is the presumptive amount per hour currently identified under NDCC Section 29-07-01.1 and is the amount per hour recommended by the North Dakota Legal Counsel for Indigents Commission. He said the estimate is based on 21,810 projected case assignments for the biennium. He said this compares with 16,747 assignments during the 1999-2001 biennium and 18,039 during the 2001-03 biennium. He said costs associated with the establishment and operation of the commission on legal counsel for indigents is estimated to be approximately \$1,235,285 for the 2005-07 biennium. He said this includes the annual salary and benefits for a director, who would be appointed by the commission; a deputy; an administrative assistant; and four investigators. He said funds for expert witness fees are included as well as general operating costs. Mr. Ganje submitted written testimony, a copy of which is on file in the Legislative Council office.

In response to a question from Representative Delmore, Mr. Ganje said because of the additional work that would be required in the first year, the

commission may need more than the \$8,654 estimated for expenses in the proposal.

At the request of Chairman Delmore, Mr. Ganje distributed a map of the judicial districts in the state. He said there are currently 42 attorneys under contract in the state.

In response to a question from Representative Delmore, Mr. Ganje said several more items are yet to be added to the proposal, including an open records provision.

Chairman Delmore called on Chief Justice Gerald W. VandeWalle, Supreme Court, for testimony regarding the task force proposal. Chief Justice VandeWalle said the final report of the task force is a series of compromises. He said the task force addressed the two primary issues facing the state's indigent defense system--the conflict of interest issues involved in administering the program under the judicial branch and the adequate funding of the program. He said he was surprised by some of the findings of the Spangenberg Group study and that the comments regarding the current system indicated that the problems are worse than he thought. He said now that those findings have been documented something must be done. He said the task force did a tremendous job and thanked them for their efforts.

### **VULNERABLE ADULT ABUSE AND NEGLECT STUDY**

Chairman Delmore called on Ms. Linda Wurtz, Associate State Director for Advocacy, AARP North Dakota, for testimony regarding the AARP policy on mandatory reporting of elder abuse, neglect, and exploitation. Ms. Wurtz said AARP policy is reviewed annually. She said it is a culmination of input from members and others through communications, legislative forums, surveys, and polls. She said all but five states have some form of mandatory reporting. She said some states specify certain professions and some have statutes that refer to "any person." She said it has been the experience of her colleagues in other states that whatever the reporting situation is, it must be supported by sufficient public information and education. She said people must be told how they can report, to whom they should report, and what they should report. She said should it be determined that mandatory reporting is beneficial to the citizens of North Dakota, it would be necessary to include provisions for enforcement. She said reporting laws do not deter the victimization of vulnerable individuals without subsequent investigation, substantiation, and penalties. According to experts, she said, the most effective factor in identifying elder abuse is increased awareness among the general public and professionals. She said a significant element in preventing and treating abuse of the frail elderly is sufficient access to in-home services such as Meals on Wheels or home health care, which can prevent the first occurrence of abuse. She said this is especially true in cases of

self-neglect, which is the most frequently occurring substantiated abuse. She said a number of organizations, including AARP, have endorsed the federal Elder Justice Act. She said this legislation would create a nationwide structure for raising public awareness; supporting research, training, and technical assistance; funding services, and coordinating local, state, and federal resources. She said any support North Dakota can give to these efforts would benefit the state's vulnerable adults. Ms. Wurtz submitted written testimony, a copy of which is on file in the Legislative Council office.

In response to a question from Representative Delmore, Ms. Wurtz said states vary on what constitutes abuse. She said there is a need for consistency among states.

In response to a question from Representative Klemin, Ms. Wurtz said 63 percent of the cases in the state are incidents of self-neglect. She said mandatory reporting is not really the issue but rather it is the need for more services.

In response to a question from Representative Niemeier, Ms. Wurtz said home health care workers have their own reporting requirements; however, she said, they are not mandated by law to report abuse or neglect.

In response to a question from Representative Kretschmar, Ms. Wurtz said she would provide to the committee the AARP definitions of abuse, neglect, and self-neglect. She said self-neglect can include the failure to take medication or the failure to eat or prepare meals.

In response to a question from Senator Triplett, Ms. Wurtz said education is the key component to reporting vulnerable adult abuse and neglect.

Chairman Delmore called on Ms. Ellen Owen, Director, Burleigh County Senior Adults Program, for testimony on the issue of mandatory reporting of vulnerable adult abuse and neglect. Ms. Owen said the budget for the Burleigh County Senior Adults Program for 2003 was \$665,000. She said the program provides services to approximately 4,200 senior adults in Burleigh County. She said over 77,000 meals were served at their congregate and home-delivered meal sites. She said the program contracted with the West Central Human Service Center for four years to provide adult protective services in Burleigh County. She said she is in favor of the mandatory reporting of adult abuse and neglect. She said she also recommends that if reporting does become mandatory, that funding would be available to cover the additional cost of staffing and other costs. She said safeguards must be in place to protect the most needy and frail individuals of our population. She said mandatory reporting would be one more tool for society to reach the goal of protecting the vulnerable adult population. Ms. Owen submitted written testimony, a copy of which is on file in the Legislative Council office.

In response to a question from Representative Kretschmar, Ms. Owen said cases of abuse of a vulnerable adult by another individual are less prevalent than the cases of self-neglect, but they do occur.

In response to a question from Representative Delmore, Ms. Owen said she supports the idea of requiring the general public to report suspected abuse and neglect. She said the public needs to know what should be reported and to whom it should be reported. She said many professionals, such as physicians, are reporting suspected abuse and neglect. She said this is due in part to the ethical standards within certain professions. She said additional funding would be needed if reporting were mandated for the general public.

In response to a question from Senator Triplett, Ms. Owen said perhaps a civil penalty could be imposed for failure to report.

In response to a question from Representative Delmore, committee counsel said the penalty for the failure of mandated reporters to report child abuse is a Class B or Class A misdemeanor. She said there is also a civil liability for false reports.

In response to a question from Representative Boehning, Ms. Owen said in providing adult protective services, an attempt is made to remedy the situation by using the least-restrictive methods. She said if a person is believed to be incompetent there are other procedures to follow.

In response to a question from Senator Lyson, Ms. Owen said mandatory reporting could potentially be abused. She said most people, however, report abuse out of an obligation to make a vulnerable person's life better and give that person back their dignity. She said more education may be the tool to resolve some of the abuse and neglect issues.

In response to a question from Representative Boehning, Ms. Owen said when an abuse or neglect report is received, an assessment is done and, if necessary, services are offered.

In response to a question from Representative Delmore, Ms. Owen said the adult children of vulnerable adults often live far away and are unaware of their parents' situations.

In response to a question from Representative Niemeier, Ms. Owen said the senior center has an outreach program to provide visits to the elderly. She said the center also has a respite program. She said if a bad situation is reported to the regional human service center, an outreach worker is sent out to the residence.

Chairman Delmore called on Ms. Linda Wright, Director, Aging Services Division, Department of Human Services, for testimony regarding the study. Ms. Wright said she and the division are available to provide information to the committee.

In response to a question from Representative Delmore, Ms. Wright said the current system regarding the voluntary reporting of adult abuse and

neglect is working well but there is a need for more education.

Chairman Delmore called on Mr. John Val Emter for testimony regarding the study. Mr. Emter said he has been abused by the judicial system and his constitutional rights have been violated.

Representative Niemeier said mandatory reporting should not be the goal. She said education is the key to informing the public about vulnerable adult abuse and neglect and the availability of protective services. She said funding of \$25,000 per year for a public education campaign would be helpful.

Chairman Delmore requested the Legislative Council staff to work with the Aging Services Division of the Department of Human Services to prepare a bill draft that would provide for a \$50,000 biennial appropriation for an adult protective services education campaign.

Representative Norland said perhaps this is an issue for local agencies to address.

Representative Niemeier said a statewide public education campaign would get the message out to more people. She said there are many people who are truly in need of protective services.

### **GUARDIANSHIP SERVICES STUDY**

Chairman Delmore called on Mr. Rodger Wetzel, Cochairman, North Dakota Guardianship Task Force, for the presentation of proposed legislation. Mr. Wetzel provided to the committee a copy of proposed legislation. He said the proposed legislation would provide for a system of guardianship services and would provide for an appropriation of \$772,550 to fund the system. He said the appropriation amount includes \$247,000 for administrative costs, \$40,000 for training and standards, \$135,000 for court costs, and \$350,000 for guardianship services. A copy of the proposed legislation is on file in the Legislative Council office.

In response to a question from Representative Carlisle, Mr. Wetzel said the proposed amount would be in new money. He said the task force has met with Ms. Carol K. Olson, Executive Director, Department of Human Services, and Mr. Bill Goetz from the Governor's office regarding the proposal. He said both are aware of the need for these services. Mr. Tom Tupa, Guardianship Task Force, said the proposed appropriation would be a stand-alone appropriation and would not be a part of the Department of Human Services budget. He said the proposal is justified on its own merits.

In response to a question from Senator Triplett, Mr. Wetzel said \$5 per day pays for the costs of the guardianship services for an individual. He said these services may include legal decisions, securing housing, making health care decisions, and completing applications for services. He said the estimate that 210 individuals are in need of guardianship services is

based upon the guardianship coalition survey that was conducted earlier this year.

In response to a question from Representative Delmore, Mr. Wetzel said there is a need to develop new standards for guardians. He said there are federal guardianship guidelines, but there are no guardianship standards in place in the state.

Chairman Delmore called on Mr. Melvin L. Webster, Guardianship Task Force, for testimony regarding the appointment of successor guardians. Mr. Webster said the procedure for the appointment of a successor guardian can be more complicated when the guardian is a corporate guardian. He said the procedure is easier when there is one guardian with one ward. He said it is important, however, that there be a provision in law for the appointment of a successor guardian. He said he would prepare language for a bill draft regarding successor guardianship for the committee's next meeting.

**It was moved by Senator Trenbeath, seconded by Representative DeKrey, and carried on a voice vote that the Legislative Council staff prepare in bill draft form the proposals of the State Bar Association's Indigent Defense Task Force and the North Dakota Guardianship Task Force.**

Representative Kretschmar said the indigent defense bill draft should include specific dates within which the commission must be appointed and the first meeting held.

## **LAW ENFORCEMENT TRAINING NEEDS STUDY**

Chairman Delmore called on Mr. Richard Bendish, Chairman, North Dakota Peace Officer Standards and Training Board, for information on law enforcement training needs in the state. Mr. Bendish said in response to the committee's request, the board conducted a survey of law enforcement agencies in the state to determine the training needs of law enforcement. He said this survey instrument listed known courses provided by nationally recognized experts and allowed administrators to add other training programs that are also needed. He said the agencies responding to the survey indicated those courses that are needed to better prepare their officers to perform the duties of a peace officer within their jurisdictions and that they do not have the funding to provide to their officers. He said the respondents also indicated the number of officers needing this training and the number that would attend if the courses were made available. He said a total of 68 surveys (53 percent) were returned to the board. He said the results of the survey show that \$2.4 million in funding is necessary to meet the identified training needs of 53 percent of the law enforcement agencies in the state. He said the survey does not reflect the needs of the other 47 percent of the agencies nor does it reflect the additional funding that would be required to allow officers to travel out of

state for those courses not available in the state. He said the committee also requested that the board prioritize the training programs. He said in completing the survey, the individual agencies prioritized the training their officers need to do their jobs. He said a smaller agency may not have the numbers to be trained in a specific program as a larger agency, but the need for training is just as important. Mr. Bendish submitted written testimony and a copy of the survey results, a copy of which is on file in the Legislative Council office.

In response to a question from Representative Delmore, Mr. Bendish said the survey result is not a "wish list" but rather is representative of the training needed as well as the number of officers who need that training. He said the \$2.4 million is the amount needed to offer these courses.

Senator Lyson said the committee needs some idea of what specific courses would need to be taught within the next year and what would need to be taught in subsequent years. Mr. Bendish said the survey indicates the curriculum for the next two years and the cost. He said some training is ongoing and requires refresher courses. He said the survey indicates the training that is necessary to have adequately trained law enforcement officers.

In response to a question from Senator Triplett, Mr. Bendish said very little of the training identified in the survey results would qualify for federal Homeland Security funds. He said with the help of the Bureau of Criminal Investigation and the Highway Patrol, he can prepare a list of what is needed for one year of training.

In response to a question from Representative Carlisle, Mr. Bendish said there is Homeland Security money available for first responder equipment, but that is for emergency equipment not law enforcement equipment.

In response to a question from Representative Klemm, Mr. Bendish said it would be a legislative decision as to whether the training funding should go to the Bureau of Criminal Investigation, Highway Patrol, Peace Officer Standards and Training Board, or a combination of the three. He said a portion of the funds would be used to develop and coordinate training, schedules, and to maintain a record of attendance. He said requiring a tuition match by law enforcement agencies may be an option.

Representative Delmore said a number of professions, including teaching, are required to pay for their own licensing and continuing education costs.

In response to a question from Representative Delmore, Mr. Bendish said local law enforcement agencies lack the funds to provide advanced training to their officers. He said these agencies are maximizing the training dollars they have available but they do not have the money to provide the advanced training that is needed.

In response to a question from Senator Lyson, Mr. Bendish said the survey indicated a great need for supervision training.

Chairman Delmore requested that Mr. Bendish provide information to the Legislative Council staff of the specific training courses needed for the next biennium and the cost. She requested the information be placed in bill draft form for the next meeting.

Chairman Delmore called on Colonel Bryan Klipfel, Superintendent, Highway Patrol, for comments regarding the state's law enforcement training needs.

In response to a question from Senator Lyson, Colonel Klipfel said the proposed training needs would be spread over four to five years. He said he has met with the Bureau of Criminal Investigation to discuss the coordination of training. He said the plan is to have all persons involved in law enforcement training meet and coordinate training to avoid duplication. He said the types of training would be reviewed and the completion of training would be recorded and tracked.

In response to a question from Representative Delmore, Colonel Klipfel said he would get information regarding the specific training and costs to the Legislative Council staff by July 1.

In response to a question from Representative Kretschmar, Colonel Klipfel said the Highway Patrol has an annual turnover rate of 7 to 8 percent.

In response to a question from Representative DeKrey, Colonel Klipfel said there has been an increasing number of retirements from the Highway Patrol since 1995.

Chairman Delmore called on Mr. Mike Ness, Bureau of Criminal Investigation, for testimony regarding the law enforcement training needs study.

Mr. Ness said the Bureau of Criminal Investigation has met with the Highway Patrol to discuss the coordination of training. He said the bureau has a young staff. He said about 40 percent of the staff has less than five years' experience. He said the bureau is working on getting its staff more training in the field.

In response to a question from Senator Triplett, Mr. Ness said it is possible to do joint training with federal law enforcement agencies but it is often difficult to coordinate.

Chairman Delmore called on Captain Bill Brown, Minot Police Department, for testimony regarding law enforcement training needs.

In response to a question from Senator Lyson, Captain Brown said his department has lost seven officers this year due to retirements and resignations. He said his department experiences an annual turnover rate of 8 to 10 percent. He said this turnover results in the continuous training of new officers.

In response to a question from Representative Kretschmar, Captain Brown said his department requires a two-year degree to be hired as an officer. He said advancements within the department require additional education.

No further business appearing, Chairman Delmore adjourned the meeting at 2:15 p.m.

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Vonette J. Richter  
Committee Counsel

ATTACH:1