

# NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

## COMMISSION ON ALTERNATIVES TO INCARCERATION

Tuesday, September 10, 2013  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Senator Ron Carlisle, Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Senators Ron Carlisle, John Grabinger, Margaret Sitte; Representatives Lawrence R. Klemin, William E. Kretschmar; Citizen Members Maggie D. Anderson, Leann K. Bertsch, Dan Donlin, Mark A. Friese, Meredith Huseby Larson, Paul D. Laney, Judge Lisa McEvers, Jason T. Olson, Dr. Gary Rabe, Thomas L. Trenbeath

**Members absent:** Representative Marie Strinden; Citizen Members Duane Johnston, Justice Mary Muehlen Maring

**Others present:** See attached [appendix](#)

At the request of Chairman Carlisle, Commission Counsel reviewed the [Supplementary Rules of Operation and Procedure of the North Dakota Legislative Management](#).

Chairman Carlisle said the commission should work hard to examine feasible, sustainable, and cost-effective solutions and be prepared to make recommendations for the inclusion of items in the budgets for the Department of Corrections and Rehabilitation and the Department of Human Services.

At the request of Chairman Carlisle, Commission Counsel reviewed a memorandum entitled [Commission on Alternatives to Incarceration - Background Memorandum](#).

In response to a question from Senator Carlisle, Ms. Bertsch said North Dakota ranks about third or fourth nationally with respect to the lowest rate of incarceration.

In response to a question from Senator Sitte, Ms. Bertsch said she has heard discussion regarding the elimination of the possibility of using drug court as a result of a driving under the influence offense after the more stringent penalties became effective in July. She said there have also been concerns raised regarding the impact of the law on individuals who are driving through the state who are charged with a driving under the influence offense.

Senator Carlisle said he has had similar concerns expressed to him by attorneys representing clients charged with driving under the influence offenses.

Judge McEvers said the changes to the driving under the influence provisions have reduced the amount of discretion judges have in dealing with offenders, including using the option of drug court.

### MINORITY JUSTICE IMPLEMENTATION COMMITTEE

Chairman Carlisle called on Mr. Andrew Frank, Supreme Court Minority Justice Implementation Committee, for comments relating to evidence-based sentencing. Mr. Frank submitted [written information](#) relating to integrating risk assessment into sentencing. He said the Minority Justice Implementation Committee held its first meeting in July and is working to implement recommendations made by the Supreme Court's Race and Bias Commission. He said one of those recommendations is to implement evidence-based sentencing to address implicit bias based on minority status. He said evidence-based sentencing has been shown to help promote consistency and objectivity in sentencing. In reviewing statistics regarding race and sentencing in the state, he said, regional variations were noted. However, he said, bias was not found to exist on a statewide basis. He said it is difficult to find firm statistical conclusions due to the small size of the study. He said tools used in other levels of the criminal justice process, which can be implemented in the sentencing process, include risk and needs assessment tools, actuarial tools that measure risk, and clinical tools that measure criminogenic needs. He said those tools, when

implemented by judges, allow judges to craft better sentences that promote objectivity, provide cost-savings, reduce recidivism, and deliver an appropriate level of services.

In response to a question from Senator Carlisle, Ms. Bertsch said the Department of Corrections and Rehabilitation uses risk assessment tools regularly. She said there are many low-risk prisoners who do not need to be in the State Penitentiary.

In response to a question from Representative Klemin, Mr. Frank said evidence-based sentencing is a tool for judges to utilize when there is discretion afforded to the judge. He said mandatory minimum sentences generally do not allow the discretion a judge may need to implement evidence-based sentencing.

In response to a question from Judge McEvers, Ms. Bertsch said parole and probation officers conduct presentence investigations based on risk assessment. However, presentence investigations are not frequently utilized by judges. She said more reliance on the investigations would assist judges in implementing evidence-based sentencing.

### **ROBINSON RECOVERY CENTER**

At the request of Chairman Carlisle, Mr. Bill Sparke, Robinson Recovery Center, presented the commission with [information](#) regarding the center.

In response to a question from Senator Carlisle, Mr. Sparke said the center will admit walk-in clients.

In response to a question from Mr. Trenbeath, Mr. Sparke said clients with dual diagnoses also have access to the mental health services provided by ShareHouse. He said the Robinson Recovery Center refers some of those clients to ShareHouse. He said dual-diagnosis clients utilize more staff. However, he said, there is a need to address more mental health issues, and a dual diagnosis will not disqualify an individual from admission to the center unless the individual is actively psychotic. He said a significant portion of the individuals in the center are using some type of mental health medication.

In response to a question from Representative Klemin, Mr. Sparke said individuals coming to the center who have not been through other treatment programs may be more effectively treated in a less-intensive treatment program. Therefore, he said, one of the considerations for admission to the center is whether an individual has been through prior treatment programs. Upon release from the center, he said, the clients are referred to continuing care groups and programs, including programs provided through the human service centers. He said the staff at the center begins planning for postrelease support immediately upon admittance of an individual to the center.

In response to a question from Senator Carlisle, Mr. Sparke said the center does not allow sexual offenders in its program. He said the admission process includes criminal background checks to the extent possible, and the center works with the court system and parole and probation in reviewing applicants for admission.

In response to a question from Representative Kretschmar, Mr. Sparke said most of the individuals seeking help are unable to pay for treatment. He said the center is a treatment option of last resort, and the center does not take insurance payments because virtually no clients have private insurance.

In response to a question from Senator Carlisle, Mr. Laney said law enforcement is encountering more instances of heroin usage. He said prescription drugs tend to be a gateway to heroin use.

Mr. Donlin said Bismarck police are also seeing an increase in the use of heroin as well as an increase in the use of methamphetamine.

Mr. Olson said arrests for methamphetamine possession have skyrocketed in the Minot area. He said almost all of the methamphetamine is coming from out of state. In addition, he said, there appears to be an increase in the amount of heroin that is being brought in from the reservations.

In response to a question from Senator Carlisle, Ms. Anderson said the human service centers watch trends in drug usage and adjust treatment options based on those trends.

In response to a question from Ms. Anderson, Mr. Sparke said it is very difficult to find housing for individuals upon release from the center. He said the center has some landlords who will work with the center to provide housing, but it is very difficult because most landlords will not rent to individuals with criminal records. He said the

center begins working with the individual about three months into the program to begin to locate housing, and an individual will occasionally remain in the program longer until suitable housing is secured.

In response to a question from Representative Klemin, Mr. Sparke said the center has no room for additional beds or staff. However, he said, with additional funding, the center may be able to acquire another building.

In response to a question from Dr. Rabe, Mr. Sparke said there is a growing demand for treatment services from the western portion of the state. He said he would be supportive of the concept of opening a treatment center in the western portion of the state.

Ms. Julie McCroskey, ShareHouse - Sister's Path, said the Sister's Path program provides treatment for homeless mothers and unmarried mothers who are in need of long-term treatment. She said the program receives referrals from a number of entities, including the Robinson Recovery Center. She said the intent of the program is to keep children with their mothers. She said the program consists of a stay of at least 6 months and the average length of stay is about 11 ½ months. She said the program is partially funded by the United States Department of Housing and Urban Development. She said the program partners with the Fargo Housing and Redevelopment Authority which provides Section 8 housing vouchers for women at the conclusion of the program. She said one of the purposes of the program is to help make the participants as independent as possible upon completion of the program.

In response to a question from Representative Klemin, Ms. McCroskey said the program receives no funding from the state. She said the Department of Housing and Urban Development covers about one-third of the cost of the program.

### **TOMPKINS REHABILITATION AND CORRECTION CENTER**

Chairman Carlisle called on Mr. Kerry Wicks, Department of Human Services, for a [presentation](#) regarding the Tompkins Rehabilitation and Correction Center.

In response to a question from Senator Carlisle, Mr. Wicks said the Tompkins Center likely sees many of the same people who receive services at the Robinson Recovery Center. He said the center also is treating high-risk offenders. He said by working with the psychiatric unit at the State Hospital, there has been a substantial reduction in the number of medications used to treat individuals after admission. He said 20 percent of the men in the program receive psychiatric services.

In response to a question from Senator Sitte, Mr. Wicks said all of the individuals in the center are referred through the Department of Corrections and Rehabilitation. He said 70 percent of the individuals admitted are sent directly from the prison and 30 percent of the individuals admitted come from the community before going back to prison.

In response to a question from Senator Sitte, Ms. Bertsch said stories relating to the ability to admit offenders into treatment programs being limited due to the short terms of incarceration are not true.

### **DEPARTMENT OF CORRECTIONS AND REHABILITATION TREATMENT AND RECIDIVISM REDUCTION PROGRAMS**

Chairman Carlisle called on Dr. Lisa Peterson, Department of Corrections and Rehabilitation, for [comments](#) regarding Department of Corrections and Rehabilitation treatment programs.

In response to a question from Senator Carlisle, Dr. Peterson said the department has not had much data available in the past to measure the success of sexual offender treatment programs. However, she said, cognitive behavior programs have been shown to generally reduce recidivism by about 8 percent. She said the department has begun collecting additional data to better analyze the results of the programs.

In response to a question from Senator Sitte, Dr. Peterson said the department will likely develop a partnership with the civil commitment program for treatment of sexual offenders.

Chairman Carlisle called on Ms. Karianne Wolfer, Department of Corrections and Rehabilitation, for a [presentation](#) relating to reduction of recidivism through community supervision.

In response to a question from Mr. Laney, Ms. Wolfer said because rehabilitation often does not feel as good as locking up offenders, parole and probation officers have often been skeptical of programs that appear to be

soft on crime. However, she said, by getting the officers proficient in skills that show results, the officers are accepting of changes. She said officers need the opportunity to practice those skills and reward performance to get to a full buyin of the programs.

In response to a question from Senator Sitte, Ms. Wolfer said the sooner there can be intervention, the more likely there can be success in developing good behavior with offenders, particularly young offenders. She said the concepts are being applied at the Youth Correctional Center, but she is not sure of the ability to apply the programs outside the correctional setting.

Chairman Carlisle called on Mr. Pat Bohn, Department of Corrections and Rehabilitation, for a [presentation](#) regarding reducing recidivism and cutting corrections costs.

In response to a question from Senator Carlisle, Mr. Bohn said the proposed initiative to allow a 48-hour hold would need to be codified and would require funding to pay counties for the two days of incarceration. He said the department could project potential costs during the biennium and run the program for as long as funding is available. He said the program likely will reduce long-term incarcerations for probation violations.

Mr. Laney said the proposal would provide another option or tool that would be available to address probation violations and to lower long-term costs. He said the program likely will reduce long-term jail time by holding offenders accountable immediately. He said both Cass and Burleigh Counties are supportive of the proposal.

In response to a question from Representative Klemin, Mr. Bohn said a statutorily authorized 72-hour hold has been available to use for parole violators since 1997. He said if a jail is at capacity, the program should provide flexibility for using another county jail.

Ms. Bertsch said funding for such a program would likely be through the Department of Corrections and Rehabilitation. She said the 48-hour hold provisions would need to be addressed in statute. She said similar programs in other states have resulted in probation being more successful and a reduction in individuals incarcerated for probation violations.

Mr. Trenbeath said he has concerns with cutting judges out of the process and with constitutional issues related to the 48-hour hold.

In response to a question from Judge McEvers, Mr. Bohn said the 48-hour hold involves custody and liberty interests, but due process through a hearing and notification of allegations would be provided before a longer detention. He said the parole 72-hour hold allows an offender to agree to the detention as a condition of the program. He said the concept has been used in other states and has been found to be constitutional.

Ms. Bertsch said Texas and North Carolina have implemented similar programs that have passed constitutional muster. Because it would be very difficult to revise the probation judgments of everybody currently on probation, she said, statutory authorization for such a program is necessary.

In response to a question from Senator Carlisle, Mr. Bohn said allowing time off supervision for compliance with the conditions of supervision is consistent with research that shows incentives and rewards motivate people to change behavior.

In response to a question from Dr. Rabe, Mr. Bohn said the optimal length of probation is approximately 18 months. He said the proposal to provide reductions in supervision is flexible and would involve assessing the risks associated with the offenders while working with the courts on evidence-based sentencing.

Senator Sitte said Arizona, Arkansas, and Delaware have implemented supervision reduction plans based upon compliance with supervision terms. She said statistics from Arizona indicate implementation of the initiative has resulted in a decline in probation revocations and a decline in the commission of new crimes by the probationers.

Ms. Bertsch said South Dakota has implemented a similar program and provides 15-day to 30-day reductions in supervision based upon every month of full compliance with the conditions of the supervision.

In response to a question from Senator Grabinger, Ms. Bertsch said certain dangerous offenders should not be eligible for supervision reduction.

In response to a question from Representative Klemin, Mr. Bohn said some issues, such as revoking any earned sentence reduction after an instance of noncompliance, would need to be further discussed.

In response to a question from Representative Klemin, Mr. Bohn said although there is a problem collecting civil judgments, converting a criminal judgment ordering restitution would provide an option to probation officers and the courts which could allow probation officers to focus on more dangerous offenders rather than acting as collection agents. He said an extension of supervision could be requested if there are concerns with the payment of the judgment. He said he is unsure whether the judgment could be discharged in bankruptcy. However, he said, it is important to examine viable options to reduce the number of nonviolent offenders on supervision so important resources can be allocated to supervising higher-risk offenders.

Mr. Friese said most crime victims do not have a mechanism to collect a judgment. However, he said, providing an offender an incentive to pay restitution by reducing the time of supervision may be the incentive needed for an offender to follow through with restitution.

Judge McEvers said most fines and fees are left unpaid, and a civil judgment may not aid in the collection process. However, she said, the ability to obtain credit may be an incentive for an offender to pay restitution. She said restitution requirements are often part of a stipulation entered before sentencing.

In response to a question from Senator Grabinger, Mr. Bohn said various offenses can be excluded from the proposals to reduce the number of individuals on supervision. He said the main concern is to promote consistency.

In response to a question from Mr. Trenbeath, Mr. Bohn said the proposal to reduce the maximum length of probation for misdemeanors to one year will help divert additional resources to high-risk and more dangerous offenders. He said crimes such as stalking and domestic violence probably should not be included in the offenses eligible for reduction of supervision time.

In response to a question from Judge McEvers, Mr. Bohn said an analysis of sentencing practices indicates the practices vary greatly among the judicial districts. He said promoting consistency in sentencing would be a product of the proposals.

Mr. Friese said the municipal courts often impose two years' unsupervised probation, which is an issue that should be examined. He said the probation process should provide some flexibility to allow people to move to other states.

Mr. Laney said he and others have been working with the Department of Corrections and Rehabilitation for a few months on developing the proposals submitted by Mr. Bohn. He said a partnership between the state and local jails is important. Because sometimes goals and funding do not always match up, he said, it is important the state and local governments work together to reduce costs at both the state and local levels. He said Cass County and Burleigh County have agreed to be part of a pilot project because the costs of the project can be shared and the result will likely be a lowering of costs for both the state and local governments. Although an individual may be incarcerated in a local jail for up to one year, he said, that individual has no access to services and programs provided by the Department of Corrections and Rehabilitation. If those programs could be implemented at the local level, he said, recidivism may be reduced.

In response to a question from Senator Carlisle, Mr. Laney said a state reinvestment fund could allow a county to apply for funding to provide services. Although there has been some resistance in the past by the Legislative Assembly to provide funding to pay local jails for the cost of housing offenders, he said, this proposal would promote a partnership between the state and local jails. He said the Department of Corrections and Rehabilitation could administer the funding and ensure county jail programs are evidence-based. He said the program would be a reinvestment of funds saved at the state level into local programs. However, he said, the investment is needed upfront to promote the reallocation of resources.

In response to a question from Senator Sitte, Mr. Laney said local jails should not be a warehouse but should be a place where successful programs and initiatives are implemented to keep offenders from coming back and from moving into the State Penitentiary. He said pretrial intervention programs can help offenders before going to court, which may affect the sentence given by the judge.

Judge McEvers said providing treatment in the jails is a good option.

In response to a question from Senator Grabinger, Mr. Laney said county jails generally are not able to utilize the services of the regional human service centers to provide treatment. He said the expense to the counties would be very difficult to manage.

Mr. Bohn said the assessment process is fundamental to the entire concept of reducing recidivism. He said substance abuse may be addressed through cognitive behavior intervention. He said the motivational enhancement and positive reinforcement concepts are an investment in training and involve minimal ongoing costs. He said those concepts give staff the skills necessary to deal with the offenders in a manner that will likely produce better results. He said the department has partnered with Cass and Burleigh Counties to apply for a federal grant to plan for a pilot project and would likely apply for additional grant funds to operate the project.

In response to a question from Representative Kretschmar, Mr. Bohn said the average caseload for probation officers differs based upon the types of offenders. He said the caseload for a probation officer dealing with sexual offenders needs to be lower than for other offenders. He said it is important to focus resources on the offenders who are most at risk and most dangerous. He said low-risk offenders can actually have negative effects with too much supervision.

Representative Klemin requested the Legislative Council staff work with the Department of Corrections and Rehabilitation in developing a bill draft incorporating the proposals submitted by Mr. Bohn.

### COMMISSION DISCUSSION

Senator Sitte distributed [copies](#) of documents relating to the cost and benefits of incarcerating low-level drug offenders, how sentencing safety valves can help states protect public safety and save money, and the potential of community corrections to improve safety and reduce incarceration. She said expenditures in other states that have implemented sentencing reform have been shifted to addressing more serious offenses rather than incarcerating low-level drug offenders. She said a safety valve on mandatory minimum sentences can provide judges discretion when sentencing for certain offenses. She said the commission should look at successful sentencing reform in other states and consider proposals to implement similar options in this state. Although the United States has approximately 5 percent of the world's population, she said, it has about 25 percent of the world's prisoners. She said condemning people for life for a felony has a number of collateral impacts.

Mr. Laney invited members of the commission to attend a presentation regarding South Dakota sentencing reform that will be held as part of a law enforcement officer's conference on September 25. He said a sheriff from South Dakota and other presenters will discuss initiatives implemented in South Dakota as a result of a criminal justice initiative workgroup that received assistance from The Pew Charitable Trusts.

Representative Klemin said the commission should address the impact of mandatory minimum sentences at its next meeting.

Ms. Bertsch said the impact of mandatory minimum sentences goes beyond the Department of Corrections and Rehabilitation, but the department can work to provide information for the commission.

In response to a question from Senator Sitte, Judge McEvers said judges have an opportunity to defer imposition of sentences which would result in an offense not appearing on an individual's record. She said judges will frequently defer imposition of sentences on a first offense but are not as likely to defer the imposition of a sentence on a subsequent offense.

Senator Grabinger said there was discussion during the legislative session in the Judiciary Committee regarding clearing criminal records. He said there was concern expressed regarding the inability to remove a reference to an offense from a federal record once an individual has been charged with an offense regardless of whether the judge has deferred imposition of a sentence.

Dr. Rabe said an additional impediment for an individual seeking a job is job applications often ask if the individual has been arrested or charged with a crime, not whether there has been a conviction.

Mr. Donlin said individuals filing permit applications with the city sometimes do not distinguish between a deferred imposition of sentence and being charged with a crime and fail to indicate being charged with a crime on the application as is required by the application.

Chairman Carlisle said the next meeting of the commission will likely be in December in Fargo and Jamestown.

Senator Sitte said the commission should spend time visiting programs such as Teen Challenge. She said the visit to Jamestown should include discussion regarding the civil commitment of sexual offenders.

Ms. Anderson said the Department of Human Services has implemented programs in the Fargo area which are alternatives to incarceration, and representatives of the department can provide more details on those programs at the Fargo meeting.

Senator Carlisle said he sponsored several of the bills relating to mandatory sentences which have been discussed. He said it is important to keep in mind most people are not sent to prison on a first offense.

Ms. Anderson said another issue the commission may desire to consider is related to workforce development. She said the Department of Human Services and the Department of Corrections and Rehabilitation have been having significant difficulty in hiring licensed addiction counselors.

No further business appearing, Chairman Carlisle adjourned the meeting at 2:50 p.m.

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John Bjornson  
Assistant Code Revisor

ATTACH:1