

CRIMINAL JUSTICE COMMITTEE

The Criminal Justice Committee was assigned four studies. Senate Concurrent Resolution No. 4025 directed a study of the effects of child abuse on child victims, strategies to assist child victims and parents of child victims, the use and effectiveness of the mandatory reporting law, effective deterrents, and the need for training of professionals, public awareness initiatives, and training of school personnel in the recognition of victims and in prevention activities. Senate Concurrent Resolution No. 4049 directed a study of the feasibility and desirability of revising sections of the North Dakota Century Code which relate to sexual offenses. Senate Bill No. 2016, Section 10, directed a study of programs to prevent crime and delinquency and reduce incarceration. Senate Concurrent Resolution No. 4053 directed a study of the prevention of and dispositional alternatives to juvenile crime with a focus on services offered to American Indian children.

Committee members were Representatives Merle Boucher (Chairman), Duane L. DeKrey, G. Jane Gunter, Dale L. Henegar, Kim Koppelman, Paul Murphy, Bill Oban (until his death on July 10, 1998), Sally Sandvig, Al Soukup, Laurel Thoreson, and John M. Warner and Senators Jim Berg (until his death on September 20, 1997), Les J. LaFountain, Marv Mutzenberger, Donna L. Nalewaja, Wayne Stenehjem, Steven W. Tomac, and Darlene Watne.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 1998. The Council accepted the report for submission to the 56th Legislative Assembly.

SEXUAL ABUSE AND SEXUAL OFFENSES STUDIES

Background on Sexual Abuse

Senate Concurrent Resolution No. 4025 directs the Legislative Council to study the awareness of, prevention of, treatment of, effects of, and deterrents to child sexual abuse. Senate Concurrent Resolution No. 4049 directs the Legislative Council to study the portions of the North Dakota Century Code (NDCC) that relate to sexual offenses. This portion of the report covers both studies.

Effects of Child Sexual Abuse

Sexual abuse may cause behavioral problems in children. Some behavioral problems that are common to people who were sexually abused children include interpersonal problems, problems with sexual intimacy, substance abuse and addiction, self-mutilation, eating problems, anxiety, low self-esteem, and anger. In addition, children who have been sexually abused commonly suffer from psychological disorders that include borderline personality disorder, dissociate identity disorder, posttraumatic stress disorder, and clinical depression. In fact, sexually abused children are four times more likely than nonabused children to become severely depressed at some time in their lives. In addition, child sexual abuse may be a significant factor in delinquency. In a recent study of juvenile felons in Ohio, 75 percent of the girls and 50 percent of the boys had been sexually assaulted.

Protection of Child Sexual Abuse Victims

There are two systems that are active in responding to a report of child sexual abuse--the human service system and the law enforcement system. The first step in activating these systems is a report of child sexual abuse.

Under NDCC Section 50-25.1-03, any person having reasonable cause to suspect child sexual abuse may report to the Department of Human Services. Under the same statute, certain persons are required to report child sexual abuse to the department. These persons include:

- Any physician, nurse, dentist, optometrist, medical examiner or coroner, or any other medical or mental health professional, religious practitioner of the healing arts, schoolteacher or administrator, school counselor, addiction counselor, social worker, day care center or any other child care worker, police or law enforcement officer, or member of the clergy

The report must be based upon knowledge or reasonable cause for suspicion. Under NDCC Section 50-25.1-13, a person required to report who willfully fails to do so is guilty of a Class B misdemeanor.

Under NDCC Section 50-25.1-02(4), a report may be made to the department's designee. Under North Dakota Administrative Code (NDAC) Section 75-03-19-02, the department's designees for the purposes of receiving reports of child abuse and neglect are the county social service boards. As a matter of practice, if the department receives a report directly, it refers the report to

the county social service board with jurisdiction over the child in question.

Under NDCC Section 50-25.1-05, immediately upon the report of child sexual abuse, the department will conduct an assessment of the report. Under NDAC Section 75-03-19-02, a county social service board is the department's designee for the purpose of conducting an assessment. If a crime involving a sexual offense is alleged, the department must notify an appropriate law enforcement agency. The department must coordinate its assessment with the law enforcement agency's investigation.

In these proceedings, the department provides child protective services when a person responsible for the child's welfare is the person sexually abusing a child. Under NDCC Section 50-25.1-05.3, if the department determines that a report of child sexual abuse is of a stranger sexually abusing a child, the department does not have jurisdiction for protective services and may refer the report to law enforcement.

If the report of child sexual abuse is that a person responsible for the child's welfare has sexually abused a child, then the department will go on to the next step--the determination. The department may make three possible determinations based upon the assessment. The department may determine that no services are required, in which case the department will take no further action. The department may determine that services are recommended, in which case services will be offered by the department and no formal action will be taken. Under NDCC Sections 50-25.1-05.2 and 50-25.1-06, if the department determines that services are required, the department will report its determination to the juvenile court and will begin formal child protective services.

Under NDCC Section 50-25.1-02(9), protective services include a social assessment, service planning, implementation of service plans, treatment services, referral services, coordination with referral sources, progress assessments, monitoring service delivery, and direct services. Under NDCC Section 50-25.1-06, upon a finding of services required, the department provides protective services for the abused or neglected child and other children under the same care. In addition, the department provides other appropriate social services to the caregiver of the abused or neglected child.

The department is required to have a court order to force protective services. Under NDCC Section 27-20-20, to force protective services, a petition must be brought in juvenile court alleging that the child is deprived. Under NDCC Section 27-20-02, a deprived child is a child who is without proper parental care. Under NDCC Section 27-20-29, the burden of proof in determining whether a child is deprived is the clear and convincing standard.

There is protection for victims and witnesses in child sexual abuse cases as they go through the criminal justice system. North Dakota Century Code Chapter 12.1-34 provides the baseline protections for victims of and witnesses to crimes. This chapter provides for the release of information to the victims and witnesses on the status of the investigation, charges filed, pretrial release, all court proceedings, and available services. The chapter also provides for the return of property, a waiting area, protection of identifying information, and the right to be present at proceedings. There are also provisions for involvement in postconviction proceedings. Protections are mainly effectuated by the state's attorney.

North Dakota Century Code Chapter 12.1-35 provides additional protections for children. This chapter addresses the unique problems encountered by victims and witnesses who are minors. The state's attorney is encouraged to facilitate the court's, the child's, and the family's understanding of the special circumstances that surround the testimony of a minor. In 1997 the Legislative Assembly passed House Bill No. 1049, which added the requirement that the court protect a child victim or witness from psychological damage or lengthy interrogation, testimony, or discovery proceedings.

Treatment of Offenders Through Involuntary Civil Commitment

House Bill No. 1047 (1997) created a procedure for the civil commitment of sexually dangerous individuals. The bill defines a sexually dangerous individual as an individual who has:

- [S]hown to have engaged in sexually predatory conduct and who has a congenital or acquired condition that is manifested by a sexual disorder, a personality disorder, or other mental disorder or dysfunction that makes that individual likely to engage in further acts of sexually predatory conduct which constitute a danger to the physical or mental health or safety of others.

Sexually predatory conduct is conduct that is similar to the conduct required for the crime of gross sexual imposition.

The burden of proof for commitment is clear and convincing evidence, and the person to be committed has the right to counsel, to be present, to testify, and to present and cross-examine witnesses. If a person is found to be a sexually dangerous individual, the court commits that person to the care, custody, and control of the executive director of the Department of Human Services. The executive director has the duty to place the sexually dangerous individual in an appropriate facility or program at which

treatment is available. Unless the sexually dangerous individual is already in the custody of the Department of Corrections and Rehabilitation, the executive director may not place the individual at the State Penitentiary or affiliated penal facilities.

The court must release the individual once the individual is no longer sexually dangerous. Each committed individual must have an examination of that individual's mental condition at least once a year. In addition, once a year the executive director must give written notice of the right to petition for discharge to the committed individual. If the committed individual files a petition for discharge and has not had a hearing during the preceding 12 months, the committed individual will receive a hearing.

On June 23, 1997, the United States Supreme Court issued an opinion in *Kansas v. Hendricks*, 521 U.S. 346, 117 S. Ct. 2072. In *Hendricks*, the Court held in a 5-4 decision that the Kansas Sexually Violent Predator Act comports with due process requirements and neither runs afoul of double jeopardy principles nor constitutes an exercise in impermissible ex post facto lawmaking.

Substantive due process requires that a decision be principled. The Court reasoned that involuntary civil commitment requires a finding of dangerousness either to oneself or to others and an additional factor, such as mental illness or mental abnormality. The determination of the additional factor is within the purview of the state legislature. However, the additional factor must serve to limit involuntary civil commitment to those who suffer from a volitional impairment deeming them dangerous beyond their control. The Court held that the Kansas Act satisfied these requirements.

For the Kansas Act to violate the constitution's double jeopardy prohibition or its ban on ex post facto lawmaking, the Act must create a punishment. The Court held that the Act cannot be characterized as punitive. The Court reasoned that the legislature's stated intent was to have a civil label applied. The Court said that the Act does not implicate either of the two primary objectives of punishment--retribution or deterrence. For example, the Act does not have an element of scienter, which is customarily an important element in distinguishing criminal from civil statutes.

Background on Sexual Offenses and Sentencing

Under NDCC Section 12.1-20-01, if a victim of a sexual offense is under the age of 15, it is not a defense that the offender thought the victim to be older. However, if the victim is 15, 16, or 17 years of age, then it is an affirmative defense that the offender reasonably believed the victim to be an adult.

North Dakota Century Code Section 12.1-20-02 contains the definitions for "sexual act" and "sexual contact". The term sexual act includes certain defined sexual contacts. The term sexual contact is broadly defined to include any touching of the sexual or intimate parts of another for arousing or satisfying sexual or aggressive desires. Generally, the certain sexual contacts contained in the definition of sexual act are punished more severely than sexual contacts as broadly defined.

Under NDCC Section 12.1-20-03, the crime of "gross sexual imposition" is defined. Gross sexual imposition is categorized by whether a sexual act or a sexual contact was performed. Gross sexual imposition that results from a sexual act includes:

1. A forced victim. This is a Class A felony.
2. An unknowingly intoxicated or drugged victim. This is a Class A felony if there is serious bodily injury. Otherwise, it is a Class B felony.
3. An unknowing victim. This is a Class A felony if there is serious bodily injury. Otherwise, it is a Class B felony.
4. A victim under 15 years of age. This is a Class A felony.
5. A victim with a mental disease or defect. This is a Class A felony if there is serious bodily injury. Otherwise, it is a Class B felony.

Gross sexual imposition that results from sexual contact includes:

1. A victim under 15 years of age. This is a Class A felony if there is serious bodily injury. Otherwise, it is a Class B felony.
2. A forced victim. This is a Class A felony if there is serious bodily injury. Otherwise, it is a Class B felony.

Under NDCC Section 12.1-20-03.1, the crime of "continuous sexual abuse of a child" is defined as a combination of three or more sexual acts or sexual contacts with a minor under the age of 15 years during a period of three or more months. This crime is a Class A felony.

Under NDCC Section 12.1-20-04, the crime of "sexual imposition" is defined as a sexual act or contact as a result of a threat of a victim that would render a person of reasonable firmness incapable of resisting. This crime is a Class C felony unless the victim is 15, 16, or 17 years of age, then the crime is a Class B felony.

Under NDCC Section 12.1-20-05, the crime of "corruption or solicitation of minors" is defined as a sexual act by an adult on a victim that is 15, 16, or 17 years of age. This crime is a Class A misdemeanor unless the offender is at least 22 years of age, then the crime is a Class C felony. The solicitation of a sexual act or contact with a victim under 15 years of age is a Class A misdemeanor.

Under NDCC Section 12.1-20-06, the crime of "sexual abuse of wards" is defined as a sexual act performed on a victim in official custody by an offender with supervisory or disciplinary authority over the victim. This crime is a Class A misdemeanor.

Under NDCC Section 12.1-20-07, the crime of "sexual assault" is defined as sexual contact that is:

1. Offensive to the victim. This is a Class B misdemeanor.
2. On a victim with a mental disease or defect. This is a Class C felony.
3. On an unknowingly intoxicated or drugged victim. This is a Class C felony.
4. On a victim in official custody by an offender with supervisory or disciplinary authority over the victim. This is a Class A misdemeanor.
5. On a victim that is 15, 16, or 17 years of age and the offender is a parent or guardian. This is a Class C felony.
6. On a victim that is 15, 16, or 17 years of age and the offender is 18 years of age or older. This is a Class C felony if the offender is 22 years of age or older and a Class A misdemeanor if the offender is 18, 19, 20, or 21 years of age.

There are other NDCC Chapter 12.1-20 sexual offenses; however, they do not interrelate in the same manner as the sexual offenses previously listed. The other sexual offenses include:

1. Section 12.1-20-06.1 - Sexual exploitation by a therapist. Sexual contact with a patient is a Class C felony.
2. Section 12.1-20-08 - Fornication. A sexual act in public is a Class A misdemeanor. A sexual act by a minor is a Class B misdemeanor.
3. Section 12.1-20-09 - Adultery. This crime is a Class A misdemeanor.
4. Section 12.1-20-10 - Unlawful cohabitation. Living openly and notoriously as a married couple without the benefit of being married is a Class B misdemeanor.
5. Section 12.1-20-11 - Incest. This crime is a Class C felony.
6. Section 12.1-20-12 - Deviate sexual act. Sexual contact with an animal, bird, or dead person is a Class A misdemeanor.
7. Section 12.1-20-12.1 - Indecent exposure. Exposing certain body parts with the intent to annoy or harass another or masturbating in public is a Class B misdemeanor.
8. Section 12.1-20-13 - Bigamy. This crime is a Class C felony.

The remainder of NDCC Chapter 12.1-20 contains evidentiary rules and the crime of transferring body fluid that may contain the human immunodeficiency virus.

The following table compares the severity of offense for certain sexual offenses as they were before and as they are after changes made by the 55th Legislative Assembly.

Before	After
Class A felony	Class A felony
<ul style="list-style-type: none"> • Gross sexual imposition - Sexual act by force • Gross sexual imposition - Sexual act on a victim under 15 years of age • Gross sexual imposition - Any sexual act or sexual contact that is defined as gross sexual imposition which results in serious bodily injury 	<ul style="list-style-type: none"> • Gross sexual imposition - Sexual act by force • Gross sexual imposition - Sexual act on a victim under 15 years of age • Gross sexual imposition - Any sexual act or sexual contact that is defined as gross sexual imposition which results in serious bodily injury • Continuous sexual abuse of a child
Class B felony	Class B felony
<ul style="list-style-type: none"> • Gross sexual imposition - Any sexual act, except an act by force or on a victim under 15 years of age, or sexual contact that is defined as gross sexual imposition and does not result in serious bodily injury 	<ul style="list-style-type: none"> • Gross sexual imposition - Any sexual act, except an act by force or on a victim under 15 years of age, or sexual contact that is defined as gross sexual imposition and does not result in serious bodily injury • Sexual imposition - Sexual act or contact on a victim

<ul style="list-style-type: none"> Sexual imposition - Sexual act or contact on a victim who is 15, 16, or 17 years of age by an irresistible threat 	<p>who is 15, 16, or 17 years of age by an irresistible threat</p>
Class C felony	Class C felony
<ul style="list-style-type: none"> Sexual imposition - Sexual act or sexual contact on a victim by irresistible threat 	<ul style="list-style-type: none"> Sexual imposition - Sexual act or sexual contact on a victim by an irresistible threat Corruption of a minor - Sexual act by an adult who is at least 22 years of age on a victim who is 15, 16, or 17 years of age Sexual assault - Sexual contact on a victim with mental disease or defect Sexual assault - Sexual contact on a victim unknowingly intoxicated or drugged Sexual assault - Sexual contact on a victim who is 15, 16, or 17 years of age and the offender is a parent or guardian Sexual assault - Sexual contact on a victim who is 15, 16, or 17 years of age and the offender is at least 22 years of age
Class A misdemeanor	Class A misdemeanor
<ul style="list-style-type: none"> Corruption of a minor - Sexual act by an adult on a victim who is 15, 16, or 17 years of age Solicitation of a minor - Solicit a sexual act or contact of a victim who is under 15 years of age Sexual assault - Sexual contact on a victim who is 15, 16, or 17 years of age and the offender is a parent or guardian Sexual assault - Sexual contact on a victim who is 15, 16, or 17 years of age and the offender is an adult 	<ul style="list-style-type: none"> Corruption of a minor - Sexual act by an adult who is 18, 19, 20, or 21 years of age on a victim who is 15, 16, or 17 years of age Solicitation of a minor - Solicit a sexual act or contact of a victim who is under 15 years of age Sexual assault - Sexual contact on a ward Sexual assault - Sexual contact on a victim who is 15, 16, or 17 years of age and the offender is 18, 19, 20, or 21 years of age
Class B misdemeanor	Class B misdemeanor
<ul style="list-style-type: none"> Sexual assault - Sexual contact that is offensive to victim Sexual assault - Sexual contact on a ward Sexual assault - Sexual contact on a victim with mental disease or defect Sexual assault - Sexual contact on victim unknowingly intoxicated or drugged 	<ul style="list-style-type: none"> Sexual assault - Sexual contact that is offensive to victim

Under NDCC Chapter 12.1-32, there are specific provisions for the sentencing of sexual offenders. Under Section 12.1-32-02, before sentencing a defendant on a felony charge for gross sexual imposition, continuous sexual abuse of a child, incest, or certain sexual performances by children, a court shall order a presentence investigation and a presentence report. This section requires a risk assessment in presentence investigations of individuals charged with gross sexual imposition.

Under NDCC Section 12.1-20-03.1, a court may not defer imposition of sentence or suspend any part of a sentence for the continuous sexual abuse of a child unless the offense was the defendant's first violation of Chapter 12.1-20 and there are extenuating circumstances that justify a suspension.

Under NDCC Section 12.1-32-04, a court is prohibited from deferring imposition of sentence for gross sexual imposition on a victim under 15 years of age in cases where the defendant cannot prove by clear and convincing evidence that the defendant reasonably believed the victim was 15 years of age or older.

Under NDCC Section 12.1-32-06.1, a court may impose an additional period of probation not to exceed five years for a person found guilty of a felony sexual offense against a minor which is a gross sexual imposition, sexual imposition, or incest, if the additional period of probation is in conjunction with sexual offender treatment. If a person is guilty of a misdemeanor sexual offense that is a corruption or solicitation of a minor, a sexual abuse of a ward, or a sexual assault, the court may impose an additional period of up to two years, if in conjunction with sexual offender treatment.

Under NDCC Section 12.1-32-08, a court may require the defendant to pay the prescribed treatment cost for a victim of a sexual offense.

Under NDCC Section 12.1-32-09.1, a person who is convicted of and receives a sentence of imprisonment for forcible gross sexual imposition or other certain crimes is not eligible for release from confinement until 85 percent of the sentence imposed has been served.

Under NDCC Section 12.1-32-15, a person who commits a crime against a child or is a sexual offender is required to register in the county in which the person resides. A sexual offender is defined as a person who has pled guilty or has been found guilty of the following:

Sexual Offender Offenses	
NDCC Citation	Offense
12.1-20-03	Gross sexual imposition
12.1-20-03.1	Continuous sexual abuse of a child
12.1-20-04	Sexual imposition
12.1-20-05	Corruption or solicitation of minors
12.1-20-06	Sexual abuse of wards
12.1-20-07	Sexual assault
12.1-20-11	Incest
12.1-22-03.1	Surreptitious intrusion
12.1-27.2	Sexual performance by children

This section requires the release of registration information if a law enforcement agency determines that a sexual offender is a public risk and registration information is necessary for public protection.

Testimony and Discussion on Child Sexual Abuse Study

The committee was informed assisting victims of sexual abuse requires providing services to the child's family members, the offender, siblings, and the community at large; the recovery process is long and intense; the criminal justice response is not an option in many cases; there must be a commitment of resources to address the issues of prevention, intervention, and recovery; and the multidisciplinary partnership works well in creating a system of response to sexual abuse issues. The committee was informed funding is required for continued services to children and their nonoffending family members at no cost, for medical examinations, for training individuals to treat offenders, for prevention through information distributed through schools, and for treatment services for children.

Sexual Abuse Awareness and Education

The Red Flag Green Flag program provides information relating to child sexual abuse to children in kindergarten. This program provides children in kindergarten through grade 4 the skills needed to identify a potentially abusive situation and what to do when in one.

Effects on Victims, Parents, and Community

The committee received testimony from a victim of child sexual abuse. The victim was abused by her father. The victim was put in foster care upon reporting the sexual abuse to a school counselor. The trial took four years. Her contact with the state's attorney and the judge was positive. She received no emotional support from her family, but the treatment provider gave support. The most prominent effect of sexual abuse against her was depression.

The committee received testimony from a set of parents on the effects of child sexual abuse on their child. The abuse came from a neighboring teenage boy and resulted in posttraumatic stress disorder, a depressive disorder, multiple phobias, an eating disorder, speech difficulties, anger discontrol, a psychosomatic disorder, and sexual development disturbance, among other

things. The long-term effects of child sexual abuse include psychiatric hospitalization, self-abuse, somatization disorder, eroticization, learning difficulties, stress disorder, conversion disorders, running away, prostitution, revictimization, and poor parenting.

The committee received testimony on the effects of child sexual abuse on the community. The committee was informed of a community in which an individual had abused approximately 28 to 30 victims, the individual was still in the community, and the individual denied offending. The situation has prevented the community from healing and has created tension in the community.

Treatment of Victims of Sexual Abuse

The reporting of child sexual abuse is the first step in involving the criminal justice and social service systems. The committee was informed the mandatory reporting law has been effective, but reporting could be better if there were mandatory training.

The committee received information on medical examinations of children who are suspected of being victims of child sexual abuse. A forensic medical evaluation is needed to determine if there is any tissue that needs repair, if there is a potential for sexually transmitted disease, if the victim is pregnant, and to collect information and provide information to the child. A colposcopy is a noninvasive device used for medical evaluations. MeritCare in Fargo has been performing the procedure since 1996. The colposcopy may be paid for by North Dakota medical assistance programs. Other examination techniques include photography, the use of a wood lamp, toluidine blue dye stains, nonclean catch urine, papanicolaou smear, and other tests for sexually transmitted diseases. Providing medical examinations for children suspected of being victims of sexual abuse requires special expertise by a physician.

After the initial medical needs of a child are met, the child may need treatment for emotional and psychological problems. The committee was informed by treatment providers that victims of sexual abuse developed mental health problems partly because of inadequate support after abuse. Individually tailored therapy is required for victims. Group therapy is important because it provides feedback. Group therapy provides a social system or "family" for the victim. One-on-one treatment is important because it provides a trusting relationship. If there is child sexual abuse, there usually is emotional and physical abuse. It is difficult to separate the specific sexual component from the other abuse components in treatment. There are other methods of treatment including the dialectic behavior therapy for borderline personalities and nondirective play therapy. Dialectic behavior therapy is one of the few therapies that can help a borderline personality. Nondirective play therapy can provide early intervention with a victim which greatly reduces the long-term damage to that child.

There are many unknown individuals who have suffered sexual abuse as children and are functioning in the community. The clinical setting attracts the people with the most severe problems as a result of the abuse.

The committee was informed as to treatment at the regional human service centers. It is difficult to provide all types of child sexual abuse assessments and treatments in regional human service centers in this state because of staff leaving and being hired with different areas of expertise.

The committee discussed the common perception that the term rape sounds more severe than the term abuse. It was perceived that in incidents of rape, society looks to incarceration, then at treatment. In addition, it was perceived in incidents of abuse, society looks at treatment, then at incarceration. Treatment providers agreed there is a tendency to look at child sexual abuse as a social issue instead of a crime.

Treatment of Child Sexual Offenders

The committee received testimony on child sexual offenders in custody. There are 39 child sexual offenders in custody, not all of whom have been adjudicated for a sexual offense. Most have not committed forcible acts, but have offended in the context of a relationship.

Predatory child sexual offenders are placed in the Youth Correctional Center. Offenders in the community and in school have not offended in the school setting and generally have offended against much younger children than are in school.

Out-of-state treatment costs approximately \$100 per day. The privately run Mille Lucs Academy provides an intensive program that is confrontational. This program is for offenders with peer-aged victims or with deep-seeded psychological problems.

The committee received information on the treatment of adolescent sexual offenders at the Dakota Boys Ranch. The program began in 1993 and is an intensive residential treatment program for boys between the ages of 12 and 18. Sexual problems typically begin around 11 to 12 years of age with the first sexual offense occurring around 14 to 15 years of age. The goal of adolescent offender treatment is to help the offender take full responsibility for the offender's behavior, for the offender to learn

the pattern or cycle of the offender's sexually offensive behavior, for the offender to develop empathy for the victim, and for the offender to develop a realistic and usable relapse prevention plan. The treatment plan includes ten phases. The program is based on several nationally recognized models. The most difficult task for many offenders is to develop empathy for the victim.

Of the 59 boys who have been treated, very few victims have been strangers to the offender. Of the 59 boys, 22 boys were unsuccessful in treatment. The high rate of nonsuccess can often be attributed to the court or parents removing some of the children from treatment.

The committee was informed that juvenile sexual offenders need to be identified and held accountable by being adjudicated delinquent. The Alliance for Sexual Abuse Prevention and Treatment proposed there be the involvement of the Supreme Court, the Attorney General, the Division of Parole and Probation, the juvenile court system, and state's attorneys to track juvenile sexual offenders through the criminal justice system. The tracking would provide information to evaluate work done in the area of child sexual abuse.

Treatment of Adult Sexual Offenders

The committee received testimony on the treatment of adult sexual offenders in a community-based program at the Northeast Human Service Center. The treatment program is on an outpatient basis and is designed to meet the needs of the victim's recovery. The program requires the offender to help the victim with the victim's treatment. The program focuses on incest offenders and does not accept offenders who target strangers and only treats offenders with child victims. The decision to exclude rapists with adult victims is a way to limit expenditures. The program does not accept offenders in adamant denial because those offenders are not amenable to treatment.

The program has clients that are court-ordered into treatment. Most courts order sexual offenders to successfully complete treatment. Many times the orders do not include language that allows the offender to be forced back into the system if the offender were to relapse after the completion of treatment. Sometimes courts order treatment but not specifically sexual offender treatment.

Many incest offenders are pedophiles and choose victims of the age at which the offender was abused as a child. There is no cure for pedophilia. Treatment can greatly reduce the chance of reoffending. Group treatment is preferential to individual treatment for sexual offenders. The chance of reoffending is greatly reduced by using friends and relatives as de facto probation officers. According to a treatment provider, sexual offenders should have to deal with the entire community as part of their treatment.

The committee received testimony on the involuntary civil commitment of sexually dangerous individuals. The committee was informed about the *Hendricks* case and its effect on the constitutionality of this state's law for the involuntary civil commitment of sexually dangerous individuals. The Kansas statute uses the beyond a reasonable doubt standard. This state uses the clear and convincing standard. The Kansas law requires a criminal conviction for a person to be committed. This state does not require a criminal conviction for a person to be committed; however, this state requires a predicate act. A predicate act will most likely be a criminal act. The predicate act has to be of a nature that shows the person will be a danger in the future. This state's law has special recordkeeping provisions so that predicate acts of a juvenile can be retrieved after the juvenile has become an adult.

A representative from the Attorney General's office informed the committee it is too early to make any changes in this state's law. This state's law appears constitutional and the Attorney General would defend the statute if it is challenged in court. State's attorneys may require more funding because involuntary civil commitments are not simple cases. Only state's attorneys may initiate a petition for involuntary civil commitment.

There are a handful of inmates at the Penitentiary who could be committed under this law. Most committed offenders from the Penitentiary will be offenders who have not completed treatment. Inmates who do not want to be involved in group treatment at the Penitentiary are not forced to attend treatment. An inmate who refuses to go to treatment would appear more dangerous, and this may have an effect on a court in deciding whether to commit that person.

Most sexual offenders have long sentences of imprisonment so there is no immediate need for involuntary civil commitment. Sexual offenders receive on average five to ten years' imprisonment. Treatment at the Penitentiary takes three to five years.

The State Hospital treats sexually dangerous individuals. The treatment program for sexual offenders consists of 32 hours per week of treatment. There has not been any noticeable improvement with the individuals presently being treated; however, the program began on August 1, 1997. All three individuals in the program had prior convictions for sexual offenses. It is expected that those who have been involuntarily committed will stay 9 to 12 years in the program. There are 11 beds in the program and an expectation that there will be a need for an additional 15 beds. Before there was treatment for the sexually dangerous offenders at the State Hospital, the only treatment was out of state and it was very expensive. In addition, most of these out-of-state treatment programs did not have room for individuals committed in this state. The cost of the program is approximately

\$100,000 per year per patient. It is more expensive to treat a patient at the State Hospital than to place that person in the Penitentiary for a crime. The majority of the funding comes from the general fund. The individuals in the sexual offender unit are indigent so there is no charge for services.

There would need to be some followup services for individuals released from the sexually dangerous offender program. The regional human service centers could followup on sexual offenders released from the State Hospital. These individuals would be under court-ordered conditions upon release.

According to a representative from the State Hospital, chemical castration can be relatively effective, but should not be a major part of a sexual offender program. Chemical castration is most helpful when a patient has requested the medication.

The committee toured the State Hospital. The State Hospital has approximately 200 patients. There are approximately 1,650 admissions per year. Approximately 1,000 of these admissions are for the chemical dependency unit. Approximately 140 of these admissions are for minors. Approximately 510 patients are admitted for adult psychiatric services. There are 590 staff members at the State Hospital. The ratio of patients to staff is one to three. It is predicted that the hospital will maintain a population of 180 patients.

Child Fatality Review Panel

The Child Fatality Review Panel reviews every child's death for which a North Dakota death certificate is issued, including deaths on Indian reservations. The panel has difficulty, however, in receiving information on child deaths from reservations. American Indian children comprise 7.9 percent of the children in the state. Of the deaths the panel reviewed, 27 percent were of American Indian children. The statistics are comparable to statistics that relate to crime and delinquency.

In 1996 the Child Fatality Review Panel formally reviewed 58 of the 103 cases of child deaths in North Dakota. The panel looks at preventable deaths but does not review cases that are due to a medical anomaly or natural causes. The panel also reviews child deaths attributable to suicides. In 1996, 9.7 percent of child deaths were attributable to suicide. The school records for children who have committed suicide are usually very positive. Crisis teams respond to students' needs after a suicide. The Bismarck crisis response team has aided smaller school districts when there has been a lack of local services.

In 1996 there were 13 shaken baby cases in which no one was arrested because there were multiple caregivers. It is difficult to identify one suspect when there are multiple caregivers. There is a cooperative effort among the Children and Family Services Division, the North Dakota Committee to Prevent Child Abuse, and Blue Cross Blue Shield of North Dakota to place "Don't Shake the Baby" billboards next to highways. The "Put Down Your Fist" billboard is the result of an effort by the North Dakota Committee to Prevent Child Abuse. Brochures on shaken baby syndrome are provided at maternity wards in hospitals and obstetrics/gynecology offices around the state. New mothers receive a rattle which is inscribed "Never Shake a Baby."

The committee considered a bill draft proposed by the Child Fatality Review Panel which amended NDCC Section 50-25.1-04.4 to require an educational facility to disclose all records upon request of a coroner or the presiding officer of the Child Fatality Review Panel. The bill draft provided schools with the authority to provide information for the investigations of deaths. This information could be provided at little cost, and the records would still remain confidential.

Testimony and Discussion on Sexual Offenses and Sentencing Risk Assessments

The committee received testimony on risk assessments, which are required in all presentence reports on defendants charged with gross sexual imposition. The Department of Corrections and Rehabilitation has adopted the Minnesota sex offender screening test for risk assessments. This risk assessment test provides a numerical score.

The risk assessment tool is useful in providing a recommendation for the involuntary civil commitment of sexually dangerous individuals and for providing local law enforcement a tool in determining whether to notify the public of an offender. The risk assessment tool will provide uniformity among law enforcement agencies.

Sexual Offender Registration and Notification

There are 995 offenders who have been convicted of a sexual offense or a crime against a child in this state. There are 705 offenders who are registered with local law enforcement agencies and between 20 and 40 offenders per year will be added to the registration list. The remainder are either incarcerated or living in another state, and 67 have not been found. Between one-half and three-fourths of registered offenders are for felonies. A list of all sexual offenders is available free of charge to the public. Some states post sexual offender information on a web page.

Sexual offenders on parole and probation are monitored as to their behavior and as to where they are living. A sexual offender

has ten days to notify local authorities if the offender changes address. Tracking of a sexual offender is sometimes done by asking the postmaster if a person receives mail at an address.

The notification of the public of the presence of a sexual offender is left to the determination of local law enforcement because of the special circumstances in each community. This process avoids certain due process concerns. The notification may be an eight-block area or communitywide. The committee was informed law enforcement needs more direction as to how and whether to disseminate information. The committee was informed the public is not being notified of sexual offenders. It was suggested a list of local sexual offenders be made and law enforcement be required to notify the public of the list.

The committee was informed that community notification would be hard on the victim of an incest offender. In addition, there is a possibility that notification may cause harassment of or violence to offenders.

Marked Driver's License for Felonious Sexual Offenders and Offenders Against Minors

Delaware is the only state that requires a special mark, a "Y", on the driver's license of a sexual offender. Delaware chose the letter "Y" because it was the only letter that had not been used on the Delaware license. The purpose of this law is so law enforcement officers can instantly tell if a crying child in an automobile is with a sexual offender. In addition, the mark will also inform other states of the status of a person when that person exchanges a marked license for a new license in another state. The Delaware law is so new that law enforcement officers have had little experience with the new law.

The committee considered a bill draft requiring a mark on the driver's license of anyone required to register as a felonious sexual offender or anyone who has committed a crime against a child. The bill draft provided for the offender to receive notice of the required "Y" from the Department of Transportation. The mailing is a courtesy and the language of the bill draft deemed the mailing effective notice. The Bureau of Criminal Investigation would notify the Department of Transportation of the offenders who have already been convicted of a crime that require a marked license. Judges would notify the Department of Transportation of the conviction of offenders required to have a "Y" on their licenses.

A representative from the Department of Transportation testified it would cost between \$5,000 and \$10,000 to cover the extra expenses incurred to place a "Y" on the applicable licenses. This cost includes the computer programming and the creation of a file that would notify the department when notice of the placement of a "Y" or the removal of a "Y" would need to happen. The administrative costs associated with placing a "Y" on the driver's license would be \$50 to \$100 per license for the life of the license. The "Y" could be described in the restriction codes on the back of the license and notification of the meaning of the "Y" could be sent to other states.

The committee received testimony in opposition to the bill draft. The testimony questioned when punishment of sexual offenders needs to end and rehabilitation needs to begin. A marked license may encourage harassment of the sexual offender by law enforcement and others seeing the license. A marked license also could punish the children of a sexual offender.

Some committee members were concerned that the information the marked license provides already is provided to law enforcement through electronic means and a marked license would not solve any problems. It was suggested that registration information should be on a data base that gives the information to the law enforcement officer. This would alleviate any unintended consequences that could occur with a marked license. Concern also was expressed over the "scarlet letter" nature of a marked license and the harassment that could result due to a marked license.

Recommendations

The committee recommends [House Bill No. 1030](#) to require a school to provide information to the coroner or the Child Fatality Review Panel upon the death of a child. The committee recommends [House Bill No. 1031](#) to require a mark on the driver's license of a felonious sexual offender and an individual who has committed a felony against a child.

DELINQUENCY AND CRIME PREVENTION AND DISPOSITIONAL ALTERNATIVES STUDY

Background Information

Section 10 of Senate Bill No. 2016 directs the Legislative Council to study programs to prevent crime and delinquency and reduce incarceration. This section directs the study of crime prevention programs other than incarceration and suggests a review of programs identified in the 1996 research report *Diverting Children From a Life of Crime - Measuring Costs and Benefits*, which includes information on early childhood interventions for children at risk of developing antisocial behavior, interventions for families with children exhibiting aggressive and antisocial behavior, providing graduation incentives for disadvantaged high school students, and early monitoring of youth exhibiting delinquent behavior. In addition, this section creates a delinquency prevention consortium composed of representatives from the Department of Corrections and Rehabilitation, Department of

Human Services, Department of Public Instruction, and other state agencies and private organizations. This section directs the delinquency prevention consortium to cooperate with the Legislative Council in the completion of this study.

Senate Concurrent Resolution No. 4053 directs the Legislative Council to study the prevention of and dispositional alternatives to juvenile crime with a focus on services offered to American Indian children.

Diverting Children From a Life of Crime: Measuring Costs and Benefits *Diverting Children From a Life of Crime: Measuring Costs and Benefits*

is the name of a study conducted by the RAND Corporation, a nonprofit research firm, which compares prevention, intervention, and sanctions as investments for children at risk of being delinquent and delinquent children. The RAND study was a cost-benefit analysis of five responses to crime. These responses included:

1. Home visits by child care professionals beginning before birth and extending through the first two years of childhood, followed by four years of day care.
2. Training for parents and therapy for families with very young school-age children who have shown aggressive behavior or have begun to "act out" in school.
3. Four years of incentives, including cash, to induce disadvantaged high school students to graduate.
4. Monitoring and supervising high school age youth who have already exhibited delinquent behavior.
5. California's "Three Strikes Law."

The study resulted in estimates that can be expressed in terms of cost per serious crime prevented due to each program. The costs do not take into account savings realized by not having to eventually imprison youth diverted from criminal careers. In addition, the estimates are the result of limited demonstrations and educated guesses and actual values could vary considerably from those shown.

The most cost-effective approach for preventing serious crimes was graduation incentives for high-risk youth. The cost of preventing serious crimes with this program is approximately \$4,000 per crime.

The second most cost-effective approach was the parent training intervention. The cost of this approach is \$6,500 per serious felony prevented.

The third and fourth most effective approaches were delinquent youth supervision and California's "Three Strikes Law." The cost of delinquent youth supervision is \$14,000 per crime prevented, and the "Three Strikes Law" is \$16,000 per crime prevented.

Home visits and day care were the most costly approaches--\$100,000 per serious crime prevented. However, the kind of early childhood intervention considered in the study has been shown to reduce rates of child abuse by about 50 percent.

The RAND study found that the human service approaches depended on the ability to identify families with children at risk for future trouble with the law. The study said troublesome and delinquent children are more likely to come from troubled families. Previous studies cited by the RAND study revealed that family factors associated with higher rates of delinquency include:

1. Early childbearing.
2. Substance abuse during pregnancy.
3. Low birth weight and other types of birth complications.
4. Parents' criminal records or mental health problems.
5. Poor parental supervision.
6. Erratic child-rearing behavior.
7. Parental disharmony.
8. Parental rejection of children.
9. Abuse and neglect.

The study cited longitudinal studies that have demonstrated that inappropriate or inadequate parenting are among the strongest predictors of later delinquency. These studies consistently identify the following three factors as associated with a significantly higher risk of being an ineffective or abusive parent:

1. Poverty.
2. Single parenthood.
3. Youthfulness.

Preventing Crime

In February 1997 the United States Department of Justice released *Preventing Crime What Works, What Doesn't, What's Promising*. This report is a compilation of the results of a congressionally authorized University of Maryland study of virtually every study of criminal prevention efforts to determine which worked best. The central conclusion of the report is that the effectiveness of most crime prevention strategies will remain unknown until the nation invests more in evaluating them. The Maryland study concluded that by scientific standards there are very few crime prevention "programs of proven effectiveness." However, the study did say that effective programs appear to share a common characteristic--they focus on specific crimes, convicts, or potential lawbreakers. The least effective tend to be broad-based. For example, the Maryland report found that additional police officers are mainly effective if sent to high crime areas. In an April 21, 1997, article entitled "A Taxpayer's Guide to Crime and Punishment," published in *U S News and World Report*, the author, in summarizing the 500 plus page Maryland study, said:

- The same failure to focus on problems undermines other anticrime efforts. For instance, many police departments have scored public-relation points with programs to buy back guns from citizens. But gun violence has not necessarily gone down in those places. What does work, say the researchers, is more-aggressive police seizure of guns on streets from suspicious-looking characters. Putting more high-risk and violent offenders in prison has helped lower crime rates. Locking up low-risk drug offenders may have not. Rehabilitation programs designed to boost convicts' self-esteem have not lowered recidivism rates. Rehab programs that instill a work ethic have.

This report suggests that crime prevention practices can be organized by the seven local institutional settings in which these practices operate. The report organized these settings as follows:

1. Community-based crime prevention, which includes community organization and mobilization against crime, gang violence prevention, community-based mentoring, and after school recreation programs.
2. Family-based crime prevention, which includes home visitation of families with infants, preschool education programs involving parents, parents training for managing troublesome children, and programs for preventing family violence, including battered women's shelters and criminal justice programs. The report found that intervening in troubled families is a good strategy in reducing juvenile crime; however, the services must reach the child before the age of 10 for the services to have a significant impact.
3. School-based prevention, which includes the drug abuse resistance education (DARE) program, peer group counseling, gang resistance education, antibully campaigns, law-related education, and programs to improve school discipline and improve social problem-solving skills.
4. Labor markets and crime risk factors, which include labor training and placement programs for unemployed people, including job corps, vocational training for prison inmates, diversion from court to employment placements, and transportation of intracity residence to suburban jobs.
5. Preventing crime at places, which includes practices to block opportunities for crime at specific locations like stores, apartment buildings, and parking lots by using cameras, lighting, guards, and alarms.
6. Policing for crime prevention, which includes the police practices of directed patrol in crime hotspots, rapid response time, foot patrol, neighborhood watch, drug raids, and domestic violence crackdowns.
7. Criminal justice and crime prevention, which includes prisoner rehabilitation, mandatory drug treatment for convicts, boot camps, shock incarceration, intensively supervised parole and probation, home confinement, and electronic monitoring.

The report states "that serious youth crime in America can be reduced most substantially by a simultaneous investment in all seven institutional settings for crime prevention, focused on the small number of neighborhoods in the nation where serious youth violence is concentrated." Complete and focused crime prevention appears to be the recommendation of the report.

Services, Treatment, and Rehabilitation

Crime prevention is anything that may reduce crime rates. This state's crime prevention efforts can be divided into groups by the governmental units that expend the effort--the human service system and the criminal justice system, including the juvenile justice system.

Many human service programs have an effect on crime and delinquency because they intentionally or unintentionally reduce risk factors. These risk factors are based on characteristics that are significantly related to criminal or delinquent populations. The manner in which these programs are administered is usually on a voluntary participation basis.

In this state, the county social service board hires staff who determine the eligibility for economic assistance and provide human services. For example, county social service offices provide family social work, which may include family focus services, intensive in-home programs, and parent aide, foster care, case management, and health services for children. The board is responsible for

the administration of federally directed human service programs.

The Department of Human Services administers economic assistance and offers programs to those families that may be at risk of having a delinquent child. For example, the Child and Family Services Division administers, develops, funds, supervises, monitors, licenses, and coordinates services to children who have become or who are at risk of becoming neglected, abused, deprived, delinquent, or unruly and regulates through licensure some children's services programs. In particular, the Children and Family Services Division establishes policies and procedures for child protection, foster care, family services adoption, pregnancy, and early childhood services and licensure of group homes, family foster care, residential child care facilities, child-placing agencies, maternity homes, and early childhood facilities.

Services are delivered to communities in this state through eight regional human service centers, 53 county social service agencies, and a variety of contracted service providers. Regional human service centers are the community service centers of the Department of Human Services. The regional human service centers are located strategically throughout the state in the eight major population centers. North Dakota Century Code Section 50-06-05.3(2) provides, in part:

- Regional human service centers shall provide human services to all eligible individuals and families to help them achieve or maintain social, emotional, and economic self-sufficiency; prevent, reduce, or eliminate dependency; prevent or remedy the neglect, abuse, or exploitation of children and of adults unable to protect their own interests; aid in the preservation, rehabilitation, and reuniting of families; prevent or reduce inappropriate institutional care by providing for care while institutionalized or providing for community-based or other forms of less restrictive care; secure referral or admission for institutional care; provide outpatient diagnostic and treatment services; provide information concerning guardianship to people interested in becoming or who are guardians; and provide rehabilitation services for patients suffering from mental or emotional disorders, mental retardation, and other psychiatric conditions, particularly for those patients who have received prior treatment in an inpatient facility.

The second governmental unit expending effort in the area of crime prevention is the criminal justice system. Although the criminal justice system includes many entities, the focus of this report is on juveniles.

The juvenile justice system operates by intervening when there is unhealthy behavior by a child or directed at a child. Certain behaviors may bring the child under the jurisdiction of the juvenile court. The juvenile court makes determinations as to juveniles in three specific instances. These instances are when a child is deprived, unruly, or delinquent. In short, a deprived child is a child who is abused or neglected. A deprived child has not broken the law. An unruly child is a child who is truant, does not obey the child's parents, is a status offender, has violated the open container or minor in possession prohibitions, or has committed a noncriminal traffic offense without an operator's license or permit. A delinquent child is a child who has committed an act designated as a crime under the law.

Once a child is found to be deprived, unruly, or delinquent, the court will determine what services, treatment, or rehabilitation is needed at a disposition hearing. Under NDCC Section 27-20-30, the juvenile court in the disposition of a deprived child, in the best interests of that child, may return the child to the child's parents subject to conditions and limitations or transfer temporary legal custody to a qualified individual, public agency, or private organization. A deprived child may not be confined to a facility designed or operated for the benefit of delinquent children.

Under NDCC Section 27-20-32, the disposition for an unruly child is the same as for a delinquent child, except there can be no commitment to a secure facility. Under Section 27-20-31, the juvenile court in the disposition of a delinquent child, in the best interests of the child, may make any order authorized for the disposition of a deprived child; place the child on probation under the supervision of the juvenile supervisor, probation officer, an appropriate officer of the court, or the director of the county social service board; order the child to pay a fine in limited circumstances; place the child in an institution, camp, or other facility for delinquent children operated under the direction of the court or other local public authority; commit the child to the Division of Juvenile Services or another state department; order the child to make monetary restitution or complete community service; order periodic drug and alcohol testing; or suspend driving privileges for an offense that would be a Class A misdemeanor or felony if the offense were committed by an adult.

The juvenile court has broad powers in the disposition of children that come under the court's purview. Any limitation on what kind of service, treatment, or rehabilitation a child may be assigned appears to be a result of what services are offered by various agencies. The Division of Juvenile Services is the main in-state agency that provides services to chronically unruly and delinquent children.

Under NDCC Section 27-21-02, the Division of Juvenile Services takes custody of delinquent and unruly children committed to its care by the juvenile courts. Upon taking custody of a child, the division processes the child through a diagnostic testing and evaluation program to determine the treatment and rehabilitation that is in the best interests of the child and the state. The division uses the following out-of-home placements (which are listed from the least restrictive to the most restrictive):

1. Family foster care (county social service homes).
2. P.A.T.H. (Professional Association of Therapeutic Homes)--therapeutic foster family care.
3. Group homes and residential child care.
 - a. Charles Hall Youth Services operates three group homes and one shelter care facility in the Bismarck/Mandan communities. They accept referrals from the entire state.
 - b. Prairie Learning Center in Raleigh.
 - c. Dakota Boys Ranch in Minot and Fargo.
 - d. Home on the Range in Sentinel Butte.
 - e. Eckert Youth Home in Williston.
4. Residential treatment centers (used for youth with severe mental problems).
 - a. Dakota Boys Ranch in Minot.
 - b. Luther Hall in Fargo.
 - c. Ruth Meiers Adolescent Center in Grand Forks.

Note: A number of out-of-state facilities are utilized for specialized care, including sex offender treatment and severe conduct disordered youth.
5. North Dakota Youth Correctional Center.

The Division of Juvenile Services offers a number of community-based programs and sanctions. There are three levels of escalating sanctions recommended to case managers. Level 1 sanctions include:

1. Amends to victims, schools, law enforcement, and parents.
 - a. Apology letters.
 - b. Face-to-face visits.)
2. Verbal reprimands.
3. Written reports and assignments.
4. Structure.
 - a. Curfew limits on use of driver's license.
 - b. Limits on use of telephone.
 - c. Supervision sessions.
 - d. After school reporting.
 - e. Tracking.
5. Community services and restitution.
6. Employment.
7. Community activities.
8. Education and self-help groups.
 - a. Anger management.
 - b. Aggression replacement training.
 - c. Alcoholics Anonymous.
 - d. Grief counseling.
9. Urine analysis.

Level 2 sanctions are in addition to level 1 sanctions. These sanctions include:

1. More structure.
 - a. Increased tracking.
 - b. Increased supervision sessions.
 - c. Daily reporting.
 - d. Telephone contact.
 - e. Written log of daily activities.
 - f. Reduced privileges.
 - g. Closed campus at school (no free time outside school building).
2. Increased frequency of urine analysis.
3. Conversation with the Youth Correctional Center or placement facility.
4. Required community service.

Level 3 sanctions are in addition to level 1 and level 2 sanctions. These sanctions include:

1. Electronic monitoring.
2. Contact with law enforcement regarding house rules and expectations.
3. Informal court hearing.
4. House arrest.
5. Time out at the Youth Correctional Center.

The Division of Juvenile Services provides programs that may enhance the success of reducing bad behavior by children committed to its care. These programs may be used at various times while the youth are under community sanctions:

1. Day treatment services - Provides a special classroom setting in schools for children unable to function adequately in a regular classroom.
2. Intensive in-home services - Provides six to eight weeks of in-house training for families to improve the family's relationship.
3. Drug and alcohol evaluation and treatment.
4. Psychological evaluations.
5. Individual therapy.
6. Psychiatric interventions.
7. Job and vocational skills development - Provides training to children in daily living skills and job and vocational skills through a school-based program.
8. Independent living services are provided for juveniles over the age of 16 who may not return home. These services provide training to develop daily living skills.
9. Every child released from the Youth Correctional Center is provided aftercare services.

American Indian Children

The 1986 Governor's Commission on Children and Adolescents At Risk said, in relation to American Indian children:

- Native American children and adolescents at risk were not singled out in this study since most have the same problems as the rest of the children and adolescent population. However, the Native American youth's problems may be more intensified because of social and economic factors: the high rate of unemployment, the lack of services available on the reservation, and the lack of understanding between tribal authorities and the State of North Dakota on service provision, authority limits, and cultural values.

According to 1992 statistics, American Indian children represent seven percent of all children in this state but represent 28 percent of the children in juvenile detention and 36 percent of the admissions to the North Dakota Youth Correctional Center.

The following schedule is a profile of American Indian children, as determined by the Child Welfare Research Bureau at the University of North Dakota.

Indicator	American Indian	White
1994 total population (estimate)	27,363	602,738
1994 percent of population (estimate)	4%	94%
1994 child population (estimate)	13,613	173,838
1994 percent of child population (estimate)	7%	91%
The following poverty information cannot be updated (census data):		
1990 poverty status	50%	13%
1990 below poverty income for less than 18 years old	58%	14%
1994 resident live births	13%	85%
1994 low birth weight ratios (per 1,000 births)	77.01	50.68
1994 resident live births by use of tobacco	39.1%	16.7%
1994 resident live births by use of alcohol	4.7%	1.2%
1994 percent of births to teen mothers by race	19.8%	7.7%
1994 out-of-wedlock ratio (per 1,000 births)	568.4	181.1

1995 infant mortality rate (per 1,000 births)	12.06	6.84
1995 youth death rates by age 1-19 years	1	0.41
1993 percent of youth who considered suicide grades 9-12	33%	27%
1993 percent of youth who attempted suicide grades 9-12	15%	9%
1993 youth sexual behavior (had sex) grades 9-12	70%	45%
1995 juvenile detention by race	29%	67%
1995 admissions to the Youth Correctional Center	38%	57%
FY 1995 victims of child abuse/neglect (probable cause cases)	18%	76%
FY 1995 children in foster care	31%	66%
1995 admissions to State Hospital Children and Adolescents Unit	27%	68%
FY 1995 children served by human service centers	11%	87%

In September 1996 a final report of the North Dakota American Indian Juvenile Justice Summit was released. A portion of the report summarized problems facing American Indians and offered solutions for those problems. Those problems and solutions as they relate to this study include:

Problem	Solution
Tribes need facilities for unruly children and children with behavioral problems.	Establish tribal group home process of on-reservation facilities and develop resources to send families to attend off-reservation facilities.
Low self-esteem and discipline.	Construct a tribal juvenile detention facility on the reservation where traditional and spiritual ways can be used in the treatment process.
The tribal juvenile court has a heavy caseload.	Implement community conflict resolution through the tribal court and make changes to tribal law as it relates to child welfare and the judicial system.
No tribal youth probation officers.	Make an agreement in which the Division of Juvenile Services has jurisdiction over runaways.
Lack of coordination between key entities and individuals in the juvenile justice system.	Develop preventative programs that network into the community and coordinate all the entities in the juvenile process. Make a tribal contract with the Youth Correctional Center.

These are just a few of the problems and solutions listed in the summit's final report. Because of the status of Indian tribes as sovereign nations, there are limits on the jurisdiction of the state to aid in the juvenile justice system on reservations. According to a representative from the Indian Affairs Commission, the jurisdictional issue is not the major problem, but the issue is of coordination in providing services, especially to children who have entered both the tribal and state systems.

Testimony and Discussion Causes of Delinquency

The committee received testimony from Mr. Kevin Thompson, Associate Professor, North Dakota State University, on the causes of delinquency. He is reviewing the effectiveness of juvenile court services programs so that the juvenile court may recommend program elimination, modification, or expansion. His evaluation will be a cost-benefit analysis.

Mr. Thompson conducted a study of the causes of delinquency in Cass County. The goal of the study was to find high-risk youth who are not in custody. High-risk youth are three to five percent of the population and commit 50 to 75 percent of the crime. The high-risk youth criminal activity peaks between 16 and 18 years of age. These youth usually begin crime at age 8. These children typically come from families with no rules and no monitoring behavior. The parents do not recognize or refuse to

recognize defiance. These parents give inconsistent punishments. The punishment is usually physically severe when it occurs. These children have low self-esteem, are high risk takers, are pleasure-seekers, are shortsighted, and nonverbal.

The at-risk behaviors used to group the youth in the study were binge drinking, use of narcotics, police contacts, sexual activity, and seatbelt nonuse. The youth were divided into four groups. Seventy-five percent of the youth were in the minimal-risk group. These youth are the conformists. Seven percent of the youth in the study were in the episodic-risk group. These youth have had episodic contact with the juvenile justice system. Fourteen percent were in the moderate at-risk youth group. These youth are the criminal opportunists. Five percent are in the high-risk group. In this group, 78 percent were male. The average age was 15.3 years and 70 percent came from two parent families. Although alcohol and lack of fathers in the family are factors, they are not strong predictors of whether a youth will be in the high-risk group. Hispanics had a disproportionate number of youth in the high-risk group.

The theory of the study is deficient child-rearing creates a child with low self-control, which then becomes a stable trait in the child's life, i.e., bad parents create bad kids who become bad parents. Deficient parenting and low self-control are major factors in delinquency.

The percentage of youth in the risk groups who spent five or more hours a week at home without the presence of an adult is a measure of deficient parenting. The high-risk group contained 38.2 percent, the moderate-risk group contained 21.1 percent, the episodic-risk group contained 20.9 percent, and the minimal-risk group contained 23.8 percent of the juveniles surveyed in that group who had spent five or more hours a week at home without the presence of an adult.

The percentage of youth in risk groups who do not get punished for breaking parents' rules is a measure of deficient parenting. The high-risk group contained 40.5 percent, the moderate-risk group contained 36.7 percent, the episodic-risk group contained 32 percent, and the minimal-risk group contained 22 percent of the juveniles surveyed in that group who did not get punished for breaking parents' rules.

The percentage of youth in risk categories who have four or more incidents of serious physical abuse is a measure of deficient parenting. The high-risk group contained 15.7 percent, the moderate-risk group contained 7.9 percent, the episodic-risk group contained 2 percent, and the minimal-risk group contained 2.1 percent of the juveniles surveyed in that group who had four or more incidents of serious physical abuse.

The percentage of youth in risk groups whose parents would get very or extremely upset if they discovered the youth drinking at a party is a measure of deficient parenting. The high-risk group contained 49 percent, the moderate-risk group contained 52.9 percent, the episodic-risk group contained 73.3 percent, and the minimal-risk group contained 87.2 percent of the juveniles surveyed in that group who had parents who would get very or extremely upset if they discovered the youth drinking at a party.

The percentage of youth in risk groups whose parents have a serious problem with drugs or alcohol is a measure of deficient parenting. The high-risk group contained 18.8 percent, the moderate-risk group contained 9 percent, the episodic-risk group contained 6.1 percent, and the minimal-risk group contained 4.6 percent of the juveniles surveyed in that group who had a parent with a serious drug or alcohol problem. Although the survey assumed that children are interpreting the questions the same, each child's perception of an alcohol problem could be different. Children in the high-risk category might be underreporting because they think abuse of alcohol is normal.

The percentage of youth in risk groups who mostly receive grade C or below is a measure of low self-control. The high-risk group contained 44.9 percent, the moderate-risk group contained 29 percent, the episodic-risk group contained 21.4 percent, and the minimal-risk group contained 6.4 percent of the juveniles surveyed in that group who receive C or below grades.

The percentage of youth in risk groups who report gang involvement is a measure of low self-control. The high-risk group contained 80 percent, the moderate-risk group contained 41 percent, the episodic-risk group contained 31 percent, and the minimal-risk group contained 15 percent of the juveniles surveyed in that group who reported gang involvement.

The percentage of youth in risk groups who report most of their closest friends drink alcohol more than one time per week is a measure of low self-control. The high-risk group contained 55.1 percent, the moderate-risk group contained 23.6 percent, the episodic-risk group contained 10.2 percent, and the minimal-risk group contained 3 percent of the juveniles surveyed in that group who reported that most of their friends drink alcohol once a week or more.

Youth in the moderate-risk group have the ability to reform. Some would say youth in the high-risk group are impossible to rehabilitate. If high-risk children are identified and given intervention services at an early age, the risk may be removed. Intervention works best if high-risk youth are identified at four to five years of age. Intervention with parents to teach parenting skills is a method for removing risk.

The literature suggests that children who are physically and sexually abused and who do not become high risk have had an adult

role model and conventional peer group for support. The committee received testimony on the effect of sexual abuse on crime. Thirty to forty percent of the residents at Dakota Boys Ranch have had a history of being sexually abused.

Religion is not a good predictor of risk level. Extracurricular activities can prevent bad behavior; however, extracurricular activities in the community are not a good predictor of the level of risk behavior. Intelligence may be a factor in the removal of risk. Alternative schools seem to have youth who are either of low intelligence or high intelligence.

The committee received testimony on gangs and delinquency. Some gang activity is brought back by juveniles who attend larger out-of-state institutions. Fargo and West Fargo have had school and community efforts against gangs, which has produced a dramatic drop in gang activity.

The committee was informed that a lower ratio of children to adults in schools would be advantageous in lowering delinquency. California is preventing delinquency by legislating lower primary class sizes. If class sizes were more manageable, teachers could better assess problems and the school system could better educate and provide programs for the children.

Programs for At-Risk and Delinquent Children

The committee received testimony on statistics on commitments to the Department of Juvenile Services and referrals to juvenile court. There has been a decline in commitments due to a decline in population of children in this state and due to prevention services. The recidivism rate in this state for children is approximately 20 percent. There was an increase in juvenile court referrals from 1995 to 1996 of approximately eight percent. The increase is attributable to an increase in youth between 14 and 17 years of age, an increase in reports to authorities, and an increase in delinquent behavior.

The committee received testimony on the facilities and programs for children at the Youth Correctional Center. There is a program at the Youth Correctional Center for children with gang involvement. Children involved with gangs lack a positive role model. The program does not allow borderline gang members into this program because it would teach them more about gangs. There is amazing fluidity in the number of children who claim to be in any one gang on any one day. This is a somewhat positive sign because these children are not in big city urban gangs. A big city urban gang does not allow members to leave.

The children at the Youth Correctional Center are given jobs during the summer because classes are not offered by the center. The Division of Juvenile Services suggested the Youth Correctional Center have a 12-month school.

The committee received testimony from members of the Delinquency Prevention Consortium. The consortium meets once a month and consists of representation from the Division of Mental Health, the Superintendent of Public Instruction, Children and Family Services Division, and the Division of Juvenile Services. The consortium provided information on a variety of programs for at-risk and delinquent children in this state.

The committee received testimony on five programs that have been proven successful and five pilot programs that have potential for expansion. The five existing programs are the day treatment, intensive in-home, Keys to Innervision, diversified occupations, and tracking services. The five pilot programs are the Success Academy, financial incentives, early intervention with preschool children, the turnabout after school program, and the American Indian preservation project.

The day treatment program offers help with school work. The involvement of parents in the day treatment program is a key to the successful treatment of children in that program. A day treatment center uses three staff members to work with an ideal range of 10 to 12 children. It takes approximately \$110,000 annually to fund the day treatment program. This compares well fiscally with placement at the Youth Correctional Center and out-of-state treatment. The day treatment program has a social worker who acts as the liaison between the home and school. Seven schools in this state have day treatment programs. The Superintendent of Public Instruction pays 40 percent and the local school districts pay 60 percent of the program.

In 1990 a day treatment program started in Belcourt for grades 4 through 8. There is a cultural component in the day treatment program which includes a tribal elder providing instruction for two hours twice a week. Four schools receive services from the day treatment program.

Intensive in-home services are offered by licensed social workers with master's degrees. The goal of the services is try to keep the family intact. The services are 80 percent successful. The services are funded 20 percent by the Department of Juvenile Services and 80 percent by a combination of federal and state human service funds. The cost per year for each licensed social worker with a master's degree is approximately \$50,000. Intensive in-home services may be offered to six families at a time by a licensed social worker with a master's degree. This would result in helping 18 to 24 families per year. The services are being offered in Fargo, Grand Forks, Devils Lake, Jamestown, and Bismarck. Expansion of these services to Minot, Williston, and Dickinson is being evaluated.

The committee received testimony on the Keys to Innervision program. The program is taught by juvenile court probation staff.

The program is designed to provide a positive relationship for a child with an adult. Any person may be the adult person in the program. This program does not replace counseling. It is an educational program about changing one's beliefs and behaviors. The program says the child has choices and the child can make those choices. The program involves parents. The program is a court-ordered and self-referral program. The program is interactive and the optimal class size is under 20 people. The program is funded by the Supreme Court. The Supreme Court is going to provide a scientific evaluation of the program. Some schools have been adopting the program. The Dickinson school system uses the program as a credit class.

As anecdotal evidence, the committee received testimony that the program had taken eight children who were going to be recommended for out-of-home placement and kept those children placed at home. Of the eight children, half had a parent involved in the program. Four of the children learned to survive and four children established a relationship with their parents.

The diversified occupations program assists at-risk students in obtaining vocational training and daily living skills. The program is aimed at children who are going to drop out of school. The program involves the school, various agencies, and the business community. In Grand Forks, during this year there have been 141 employment contracts.

Tracking services are offered through a contract between the Division of Juvenile Services and Lutheran Social Services. Both regular tracking services and intensive tracking services are provided by Lutheran Social Services.

The Success Academy is a school-based program in Grand Forks. The Success Academy has included children who have been suspended from school multiple times. The program devises a way for these children to get caught up in their school work. There are agreements with all the schools to have teachers come to the Success Academy and teach different time periods. Older students are used as mentors. The chamber of commerce and service groups are used as mentors from the community. The Success Academy is different from an alternative school because there cannot be an alternative school for a person under the age of 16 years. A student under the age of 16 must have a teacher of record. This is not an alternative, but an attempt to remediate the student back into the normal school population. The program includes disabled students if they do not need specialized instruction programs.

The financial incentives program offers small financial incentives to encourage vocational school attendance, continued school progress, job skill development, and graduation. This program is being piloted in Belcourt. This program was specifically mentioned in the RAND study. Financial incentives are offered to sophomores and juniors. The financial incentives program is a vocational and not an academic program. One downfall of financial incentives is if children come to the program only to receive the money.

The family-focused early intervention program was addressed in the RAND study. The program offers good prevention; however, the effects of the program take 10 to 12 years to appear. The family-focused early intervention program is for at-risk children up to 5 years of age.

The turnabout after school program is being provided in Mandan and Bismarck by Youthworks. Turnabout is an intensive, multipurpose program for at-risk youth. Turnabout creates a plan to turn things around at home and at school to prevent further involvement in the juvenile justice and child welfare systems. Turnabout provides supervision during unsupervised and after school hours. The program is a middle ground between routine probation and residential care and inpatient treatment.

The American Indian preservation project includes two programs that have not begun. The program will be placed on one reservation and in one urban area. This program is a family-based program that provides intensive in-home family services that are tailored to each family.

The committee received testimony on the Partnership Project. The mission of the Partnership Project is to support children with emotional and behavioral difficulties in their home or community by using a family-focused, collaborative, cost-effective, community-based system of individualized care that is unconditional, ongoing, and culturally relevant. The Partnership Project is a demonstration grant being administered in Minot, Fargo, and Bismarck. Sixty-nine percent of the children in the program are male. Males tend to have behaviors that are more identifiable, e.g., aggression, and these behaviors come to the notice of other people quicker and more often. The human service center areas are the same areas used for the boundaries of the Partnership Project. The grant is administered through human service centers.

The Partnership Project uses the wraparound process. The wraparound process is a process whereby friends, family, and community agencies work together to provide one plan for a child. This process removes duplication of services. The services are more successful because they involve the family. Wraparound services are analogous to an individual education program in the education system. Usually, school officials are invited to take part in wraparound services; however, family members can exclude education providers.

The committee discussed the need for the juvenile justice system and schools to work together. The committee also discussed the need for linkage of entities that are providing services. Multiple providers may confuse the client with different treatment

programs and philosophical differences in treatment.

The Juvenile Services Division is using approximately \$930,000 in funding from the federal juvenile accountability block grant to fund the administration of the grant, intensive tracking, victim/offender mediation, tribal probation staff, and the building of a secure correctional unit enhancement onto Pine Cottage at the Youth Correctional Center. The Division of Juvenile Services is contracting with the North Dakota Association of Counties for the administration of the grant. Local communities are receiving funding under the juvenile accountability block grant. The money has to be used for one of the specific purposes listed by Congress. It is expected the counties will spend the grant money on detention facilities.

The committee received testimony on restorative justice. Restorative justice is the opposite of retributive justice. Restorative justice provides an extended role for victims and includes victim/offender mediation. Restorative justice focuses on personal responsibility and tries to repair the harm that crime has caused and to make things right.

Victim/offender mediation works well with front-end children. Victim/offender mediation will be available to the juvenile court and will be funded by the Division of Juvenile Services. Mediation is at the victim's discretion--not all crimes are appropriate for mediation. Restorative justice offers the victim a say in the punishment.

The confidentiality of the mediation is up to the victims. There has not been a problem with victims releasing sensitive information. The offenders are aware that the information may be released by the victim.

Educational Services for Expelled and Suspended Children

The committee considered a bill draft that required the provision of educational services for suspended and expelled students. Suspension is a limited exclusion or isolation that lasts for a period of up to 10 days. Expulsion is a permanent exclusion from school and requires the action of the school board. Individual school boards have the authority to develop policy on suspensions and expulsions. A few states have programs to educate expelled and suspended students by placing them in alternative settings. These states include Arkansas, California, Louisiana, and Nebraska. Suspensions and expulsions are rising in number. If the pattern of suspension and expulsion increases, then the pattern of dropouts increases and then greater societal problems begin. Children who are suspended or expelled are at risk of ending up in the juvenile justice or criminal justice system if they do not receive skills training. This could be avoided if schools have a continuing responsibility to provide education to expelled and suspended students. In 1997 there were 34 expulsions and 2,471 out-of-school suspensions in this state. Small schools account for most of the suspensions.

Some children are suspended or expelled for nonviolent behavior. Some schools suspend students for wearing caps in school. Generally, schools have more rules and are stricter than they were in the past. Schools used to look the other way for certain offenses, such as cigarette smoking off schoolgrounds.

There is no incentive for schools to deal with children instead of suspending or expelling them. Under the present system, the school can remove itself from a troubled child's life. Foundation aid payments stop for expulsion, but not suspension. A student needs to have four credits for a school to receive foundation aid. The bill draft provided for foundation aid even if a student is expelled from school.

Schools can create partnerships for alternative education and do not necessarily have to have a separate building or create programs. The provision of educational services for expelled and suspended children does not have to be in the same building as the regular school. There are alternatives for schools that offer education to suspended and expelled students. Large schools have alternative schools that would be able to offer education. Small schools could offer independent study that could be offered over the Internet or by hiring a teacher's aid. Before class or after class access to school with a tutor would provide an alternative education. Vocational programs are also an option.

Testimony in favor of the bill draft argued suspension and expulsion are punitive and can alienate a child from school, and it is unfair to expel students with behavioral problems from school. It was argued suspension and expulsion should not be used as punishment without an education component. A student should be able to keep up with the student's class work while suspended or expelled. Behavior should be dealt with without removing education. The services for suspended and expelled students in the bill draft are required by federal law for special education students.

Testimony in opposition to the bill draft was not against the concept, but against the manner in which the bill draft implemented the concept. The committee was informed the bill draft would require an individual education plan for a suspension and it would not be practical to create an individual education plan for a short-term suspension. In addition, the bill draft limited alternative education to school hours. It would be difficult to provide an alternative education during school hours. The committee was informed small schools would have difficulty providing an alternative education. The committee was informed placing an expelled student in an alternative school might not be a good option. The student who is disruptive in regular school would most likely be disruptive in an alternative school. The committee was informed that suspension should not be included in the bill draft. The

committee was informed the bill draft asked teachers to take care of a problem that parents and the community have not been able to solve. The bill draft would use classroom dollars to solve a societal problem. The bill draft would create state control and rules. The committee was informed that the local community would react if a school district was abusing suspension or expulsion.

Some committee members were concerned with the bill draft because it required an individual education plan for students suspended for a day for smoking. They thought this was too much work for this situation. Some members were concerned that the bill draft did not address parental responsibility. It was discussed that students make a choice to engage in bad behavior, and there should be a consequence for that bad behavior.

It was discussed the bill draft was in response to an escalating corrections budget and was intended to eliminate the long-term costs of crime in terms of money spent and wasted lives.

Juvenile Data Base

The committee received testimony on the juvenile data base for law enforcement created in NDCC Section 27-20-52.1. The data base contains crimes from simple assault to gross sexual imposition. This section provides for the notification of schools, the Department of Human Services, and law enforcement of individuals on the data base. There are 60 children on the data base and 15 of them committed sexual offenses. Fifty to 60 juveniles are expected to be placed on the list each year. The juvenile data base retains records for 10 years. Juveniles on the data base have a duty to inform the Attorney General of a change in name or address.

The committee considered a bill draft that removed simple assault from the data base. Simple assault was included in the data base because of a desire to include juveniles who, for example, are 15 years old and commit a simple assault against a 3-year-old child. The simple assaults on the data base, however, are for assaulting children of the same age. If simple assault were removed from the data base, there would still be a county record that schools could access.

The committee was informed that over 50 percent of the juveniles on the data base are listed because of simple assault. Some committee members expressed concern that teachers and schools need to be informed of a simple assault so they can deal with the situation. Not notifying teachers may minimize the seriousness of a simple assault. In addition, simple assaults may be a prelude to more serious assaults.

Crime by Adults

The committee received testimony on the James River Correctional Center and the State Penitentiary. The committee toured the James River Correctional Center. Federal funds are paying for most of the renovation at the James River Correctional Center. The federal dollars are only for renovation and new construction and not for programs. The federal government offers 90 percent of the funding for renovation and new construction. This state is expecting \$4.5 million for the renovation of the James River Correctional Center. The facility will be able to house 380 inmates. Population trends project the facility will be filled within four years.

The Penitentiary houses inmates in county jails. The Penitentiary primarily contracts with county Class I facilities that are designed for housing a person for up to a year. These contracts average \$40 per day for housing and \$5 per day for medical plus transportation. The cost is comparable to the cost at the Penitentiary; however, there are no treatment facilities in the counties.

The committee was informed local offenders could be sentenced to the local jail instead of being sentenced to state facilities and then returned to a local jail elsewhere in the state. If an offender is sentenced to a local jail, the county pays for the incarceration. If an inmate is sentenced to the Department of Corrections and Rehabilitation, the state pays for incarceration. If a judge sentences a criminal to jail, this places a burden on the county. A local sentence allows a person to keep that person's job, stay with that person's family, and continue with treatment and services already being used in the community. It was suggested that the state fund county jails.

There are three solutions to meet increasing prison populations. The state could build more prisons, contract with private prisons, or overcrowd. Increased inmate population may be attributable to the increase in severity of penalties for driving while intoxicated, more convicted sexual offenders, and mandatory sentencing. Thirty percent of the inmates are under mandatory sentences, which combined with longer prison terms results in a lower number of releases. Most research shows that the mandatory sentences increase the prison population by three times and do not affect the crime rate. In the 1970s, the average age of an inmate was 26 years old. The present average age is approximately 33 years of age.

Crime Lab

The committee received testimony from a task force created to review the State Laboratory and the medical examiner program, which included representatives from the Bureau of Criminal Investigation, the coroner system, the state crime lab, and the State Medical Examiner. The committee was informed that the positions of director of the state crime lab and the State Toxicologist had been separated; and the crime lab has inadequate space, is in need of more personnel, and has a high turnover of employees. The committee was informed out of the 53 counties in this state, 33 have a medical county coroner and 20 have a designated coroner. The designated coroner is usually a funeral director or sheriff. In 1997 the medical examiner autopsied 169 bodies.

American Indian Issues

The committee held meetings at the Fort Berthold Indian Reservation, the Standing Rock Indian Reservation, the Turtle Mountain Indian Reservation, and the Fort Totten Indian Reservation.

According to 1994 statistics, American Indians make up four percent of the total population of this state. Approximately 38 percent of the American Indians in North Dakota live off reservation. American Indians make up 22 percent of the adult population at the Penitentiary. In addition, there is a high proportion of American Indian population at the Youth Correctional Center.

The committee was informed the reasons for the high proportion of American Indians at the Youth Correctional Center and the State Penitentiary may be that the Indian culture expects a high level of honor and honesty. The committee was informed American Indians tend to be quiet and that makes it difficult to get information when sentencing them. This may result in American Indian offenders not using attorneys or plea bargains, choosing instead to plead guilty. The committee was informed the high number of American Indian children at the Youth Correctional Center may be attributable to the lack of programs from the state and the tribes for American Indian children.

Nearly 50 percent of the children in the juvenile justice system are American Indians. Approximately 35 percent of the children in the child welfare system and over 30 percent of children in the mental health system are American Indian children. There is an over representation of American Indian children in the foster care system. American Indians are the largest growing portion of this state's population. The Indian children population is growing by five to seven percent, and the white population is decreasing.

The committee received testimony on the causes of crime and delinquency. One cause of crime and delinquency is unemployment. At Standing Rock, the committee was informed that the most pressing problem on the reservation is unemployment. Prairie Knights Casino employs approximately 300 people. The casino in South Dakota employs approximately 100 people. The committee was informed that if the employment rate were lower there would be fewer family problems. The weather and long distances make it difficult for many to gain and retain employment. The outlying areas of the reservation have few businesses. Most of the businesses are in Fort Yates or McLaughlin. Most businesses in McLaughlin are owned by non-Indians.

At Fort Totten, the committee was informed unemployment is a major cause of societal problems on the reservation. The committee was informed the main reason for the lack of employment is prejudice. High unemployment results in families not having enough money, which results in stress, which results in societal problems. Treatment for those problems can only work for a limited time if the stresses that caused the problem remain.

Most employment on the reservation comes from governmental entities. There is a lack of small businesses on the reservation. The banks will not loan money to people to start a small business on the reservation. One reason for banks not loaning money is unemployment is high on the reservation, and no one will be able to buy the products produced by a small business. This reasoning perpetuates unemployment. Other reasons for the lack of businesses on the reservation are prejudice, concern with litigation, sovereignty issues, and an unstable work environment. In addition, the assistance that some American Indians receive if they do not work is equivalent to a \$10 an hour job. Most jobs for American Indians pay less than \$10 an hour.

Because of the lack of employment at Fort Totten, many Indians on the reservation work in Devils Lake. The committee received testimony from an American Indian who had applied for jobs in Devils Lake. The committee was informed this person was discouraged from applying at four or five places. The discouragement came from the attitude and looks of prospective employers. Some employers said they had already hired someone else. Some employers asked for a name and address so they could mail an application.

The committee was informed that American Indians have the same work ethic as the white community. The main barrier to American Indians not being punctual is the lack of adequate transportation.

One cause of crime and delinquency is the lack of parental involvement and improper parenting. Parental involvement in schools has a dramatic positive effect. Parental involvement produces well-behaved children with good grades. The committee was informed parents need to be given aid when children are young so parents can spend time with their children. Children listen better and parents are more influential with their children when children are young.

The committee was informed cases of abuse of the elderly are increasing. Parents are making parents out of grandparents and those grandparents are being abused by their grandchildren.

At Fort Totten, the committee was informed the tribe has received an abstinence education grant to implement programs to prevent teen pregnancy. The number of single parent homes on the reservation is growing, and it is a significant number of homes on the reservation. The tribe seems to have a larger than average problem with teen pregnancy.

One cause of crime and delinquency is alcohol and chemical abuse. The committee received testimony from the only licensed addiction counselor at Fort Berthold working with the children under federal programs on the reservation. The committee was informed there needs to be more alcohol and chemical abuse prevention and intervention.

At Fort Berthold, 92 percent of all arrests are drug- and alcohol-related. At Turtle Mountain, police officers have conducted the DARE program. DARE is a drug and alcohol abuse awareness program presented in the schools. In addition to addressing drug and alcohol abuse, this program has helped police in developing a positive relationship with the youth.

The committee received testimony on the Youth Alcohol and Drug Program at Turtle Mountain. The program received approximately five to seven referrals for drug and alcohol treatment a typical Monday. There is only one person who works in this program and that person's caseload involves 212 adolescents. The committee was informed that focusing drug and alcohol treatment on juveniles and not providing any for adults may be a better use of resources. The problem of teenage drunk driving is intensified on the Turtle Mountain Reservation because there is a heavy concentration of teenagers and only one major road. In 1997 there were 416 driving while under the influence cases. In 1995 through 1996, there were 55 high school students involved with alcohol, 32 with drugs, and 12 with inhalants at the Turtle Mountain High School.

The committee was informed that the Fort Totten Indian Reservation is a dry reservation; however, the tribe cannot enforce its no alcohol policy on non-Indian visitors to the casino. Even though alcohol is forbidden, alcohol is a factor in over 80 percent of juvenile delinquency. The penalty for purchasing alcohol for a juvenile is a \$360 fine with up to 60 days' imprisonment. There were 143 minor in possession cases last year.

The committee was informed the state provides tribes with funds through the Indian Affairs Commission for substance abuse services.

Another cause of crime and delinquency is gang involvement. Children who are sent to the Youth Correctional Center are exposed to gangs and bring back information to the reservation when they are released. The committee was informed gangs have strict rules that are enforced, and gangs offer children the discipline that families should offer to their children. There are gangs at the Standing Rock Indian Reservation, but there does not appear to be much gang influence in Fort Yates; most of the gangs are in Cannon Ball. The difference between the two places is Fort Yates has employment and Cannon Ball has high unemployment. There has been a positive intervention by schools at Standing Rock to stop any gang problems.

At Fort Berthold, there has been a joint effort against gang activity by New Town, the tribe, and the Bureau of Indian Affairs. Law enforcement has begun bike patrols as a form of community policing. Fort Berthold is networking with other reservations to stop the gang problems on the reservations in North Dakota.

Another cause of crime and delinquency is a high population of children. In 1996 there were 12,000 tribal members on the Turtle Mountain Reservation. Over 50 percent were over the age of 18 years. There is a high number of juveniles at the Youth Correctional Center from the Turtle Mountain Reservation because of a high population. There is also a high number from the Fort Totten Reservation because of the proximity to a large police department in Devils Lake. The tribe with the highest population of inmates at the State Penitentiary is the Turtle Mountain Chippewa Tribe. This tribe has the highest number of members in this state.

Another cause of crime and delinquency is the lack of an adequate education. At Fort Totten, the committee was informed each child must stay in school until the age of 18 years. Compliance is enforced by the school keeping records on attendance and notifying the court of suspicious absences. If a child 14 years of age or under is not validly away from school, charges are brought against the parents. A child 15 years or older is treated as an unruly child and placed on probation.

The committee received testimony on Turtle Mountain community schools. The committee was informed 76 students dropped out of school last year. The Turtle Mountain community high school population has increased from 560 to 600 students in the last year. The building is built for 450 students.

At Turtle Mountain, absenteeism in school increases with the age of the students. There is a 94 to 95 percent attendance level at the elementary school. If young students begin a pattern of being absent from school, the pattern increases with frequency as they get older. The dropout rate has increased from 14 percent last year to 17 percent this year. The school has a policy that requires the expulsion of a student until the end of the school year for fighting. Some students involve themselves in fights so they do not have to go to school.

The committee received testimony on students with educational disabilities at Standing Rock. These children take more of a teacher's time than other children. A separate building is being built in Fort Yates for students who have educational disabilities. The committee was informed if children with educational disabilities are not provided the appropriate education they may end up in the criminal justice system.

Yet another cause of crime and delinquency is child sexual abuse. The committee received testimony from representatives of the Fort Berthold and Standing Rock Reservations on child sexual abuse. Children at risk of sexual abuse are children whose parents are suffering from marital conflict, domestic violence, or a drug or alcohol problem. In addition, parental unemployment and depression are the causes of child abuse and neglect. In New Town, the elementary school has had six reports of sexual abuse in the last six years. The high school has had six per year. The reservation does not have a therapist for sexual abuse. There is limited treatment for very young children at human service centers. Distance and cost are the major inhibitors to mental health services for Indians on the reservation.

In 1996 there were 611 allegations of child abuse and neglect at Standing Rock. Services were recommended in 57 percent of these cases. There were approximately 10 cases that involved juvenile sexual offenders.

When children are abused or neglected, they may be placed in foster care on the Standing Rock Reservation. Last year 110 children were placed in foster care. The tribe pays for foster care. Recidivism into foster care is a big problem caused by returning children to the same problems in their family after foster care. There is an effort to move children out of foster care by promoting adoption. At Standing Rock, the county, the tribe, and the Bureau of Indian Affairs provide social services. Most of the social services to children are provided by the tribe.

Specialized treatment for sexual abuse victims is offered in South Dakota. The placement of a child from North Dakota to South Dakota requires the approval of the Department of Human Services. The committee was informed this process is cumbersome.

There are other causes of crime and delinquency. At Fort Berthold, the committee was informed that the creation of Lake Sakakawea caused a loss of the social fabric that provided a support mechanism for Indian youth. At Fort Totten, the flooding of Devils Lake has added stress.

The committee received testimony on prevention, treatment, and detention facilities. The committee received testimony on the need for social services on reservations. The committee was informed that there are major gaps in social services. At Fort Berthold, part of the gap is a result of the large geographic area of the reservation. The committee was informed that the tribes lack funding to provide adequate social services.

The committee received testimony on the problems with off-reservation treatment and detention. Comprehensive onsite programs are lacking on the reservations, and there are waiting lists to receive off-reservation treatment. There is a high cost to off-reservation treatment. Generally, off-reservation treatment is ineffective because it removes children from friends and family. A child is returned to the same environment after treatment. Most treatment programs have a family day or week; however, most potential attendees cannot make these events because of transportation problems.

The committee was informed that troubled children need parental involvement in their treatment and should not be placed outside of the community. Within an American Indian community, extended family is important. The committee was informed that treatment of American Indian juveniles must include mental, emotional, physical, and spiritual healing. State human service centers are not used because of distance and cultural differences.

The committee was informed off-reservation treatment is not culturally sensitive to American Indian youth. The tribal youth would feel more comfortable obtaining treatment on the reservation by counselors who are American Indian. Many juveniles suffer from the guard your heart syndrome. The guard your heart syndrome occurs because most everyone who provides services on the reservation leaves after a few years. This problem could be alleviated if there were local staffing of programs.

The committee received testimony from a juvenile who left the reservation to receive treatment in Minot. It was hard for the juvenile to be away from home. Treatment would be more attractive to juveniles if they did not have to leave the community. The program in Minot helped the juvenile with the juvenile's problems; however, the program did not help others in the community to which the juvenile returned after the treatment.

At Fort Totten, the committee was informed there is a lack of available programs in Devils Lake, and the programs offered there

are not sufficient because there is no 24-hour detention facility for juveniles. A juvenile must travel to Minot, Grand Forks, Fargo, Bismarck, or Sisseton for 24-hour facilities. The committee was informed that state facilities do not select American Indian children for treatment. State facilities do not accept children with the most problems because of the perceived lack of a successful outcome.

Children who are not Medicaid-eligible and do not have insurance are usually referred to state-offered human service programs in Devils Lake. These individuals must pay on a sliding fee scale. Human Services in Devils Lake had offered outpatient group treatment but has canceled the treatment due to lack of participation. This treatment requires at least 10 individuals in a group and there was too long of a wait before 10 juveniles were available for group treatment.

The committee received testimony on the lack of community-based programs on reservations. The committee was informed that the tribes want a 24-hour facility to provide treatment instead of foster care to provide aftercare for juveniles returning to the community from off-reservation treatment, and for the detention of juveniles by the tribal court. The committee was informed 24-hour facilities would provide meaningful punishment and treatment.

The tribes have an intertribal juvenile facility work group to investigate the placement of a detention center. A juvenile detention center would be for all four tribes to share. The tribes want a detention center because it would keep youth in the Indian community, and it would help in the retention of the cultural identity of the children. In addition, it would save money. The work group has stalled because of the difficulty in determining where the facility should be located. Each tribe wants the facility on that tribe's reservation because of the benefits of local treatment. Building a treatment and detention facility on a reservation would require the cooperation of all the tribes if they use the money available under the Violent Offender/Truth-In-Sentencing Act.

The Youth Correctional Center tries to maintain open slots for children from the reservations. The tribes are responsible to pay for the services offered at the Youth Correctional Center if there is a slot available. Most of the children who are at the Youth Correctional Center are adjudicated in district court. When a child is adjudicated delinquent in district court, the state pays for the services provided at the Youth Correctional Center.

The committee received testimony on the sacred child project. The sacred child project has received a \$5 million grant. The grant will provide \$200,000 per year at five sites throughout the state. The sacred child grant is for one million dollars for the first year, and this money is for planning purposes. The sacred child project is a solution to placing children out of the home and community. The sacred child project is working through the Tribal Children's Services Coordinating Committee to tailor a system of care for American Indian children. The program is designed to develop wraparound services using existing service providers to address the needs of children. The program is a partnership with the family and works with family resources and uses family beliefs and strengths. Family members may be used as mentors. The program brings all of the service providers together to look at the needs of the client and to individualize treatment with the strengths of all involved. The committee was informed that it is difficult to get different agencies to work together. There are turf battles between different agencies. The wraparound process would prevent the need for children going to a 24-hour facility. The wraparound process is a creative solution that is better than detention.

Recommendation

The committee recommends [House Bill No. 1032](#) to except a child from the law enforcement data base for that child's first adjudication for simple assault. Under this bill, the Attorney General would still receive information on simple assault adjudications, but there would be notification only if there were a second adjudication.