

Testimony to the
JUDICIAL PROCESS COMMITTEE

Prepared February 5, 2010 by the North Dakota Association of Counties
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CONCERNING MENTAL HEALTH AND SEXUALLY DANGEROUS INDIVIDUAL
COMMITMENT COSTS STUDY

Chair Meyer and members of the Committee, thank you for the opportunity to address county costs regarding defense costs in both mental health and sexual civil commitment. I do apologize for not being able to personally attend this hearing but I am more than willing to provide any information you may have after this hearing if you desire.

The North Dakota Association of Counties supports the concept of shifting the responsibility of providing legal defense counsel for those individuals who the State's Attorney is pursuing for civil commitment. These civil commitment costs come from Mental Health / Chemical Dependency hearing and Sexual Civil Commitment hearings. We support this for the following reasons:

- One, currently there is no direct oversight on the county level of evaluating the delivered services.
- Two, even if oversight could be established the county officials lack the expertise and qualifications to make those determinations. Thereby, the counties would be wholly reliant on Judicial and/or State's Attorney determinations of competency which in an adversarial system is always suspect.
- Three, the costs. While not staggering, costs can be difficult to budget for especially in the smaller counties where the demand for services is more sporadic. Additionally, counties lack the true leverage to negotiate fees when appointments have already been made by the court system.
- Fourth, there already exists a Statewide system designed to deliver and monitor indigent defense counsel. In 2005 when the State created the State indigent defense counsel, civil commitment of indigent defendants was not included.

First off, NDACo completely supports the position that those whose liberty may be threatened deserve competent and effective defense counsel. Contract defense lawyers, hired by the counties, have provided this service for years. NDACo also stress any proposed shifting of duties off the county must also be matched with the appropriate State fiscal resources in order to continue to provide a needed service for the State's indigent population.

Just by way of historical record, prior to 2005, the judicial branch was funding indigent defense costs for criminal cases. In other words, judges would appoint

defense attorneys in criminal cases and the defense attorneys would be reimbursed from the judicial branch. Counties were still responsible for paying defense costs for civil commitments. Generally, how it worked was counsel providing the criminal defense would also indicate to the counties they could also handle the civil commitment hearings. Many counties then created contracts with the defense attorneys and the courts would then appoint those attorneys for the civil commitment cases. (This is the general process ongoing now at least in the bigger jurisdictions. Many smaller jurisdictions have such a limited number of cases they do not have a contract but simply pay bills occasionally submitted by defense counsel who are appointed by the court)

In 2005 the legislature, in NDCC Chapter 54-61, provided that the Commission on Legal Counsel for Indigents would be charged “with developing and monitoring a process for the delivery of **state-funded** legal counsel services for indigents.” (emphasis added) Because civil commitment indigent services were not state-funded, the county continued to pay for the services.

What is the process for appointment of indigent counsel in civil commitment cases now? As mentioned above, this process varies amongst the counties. This is also one of the reasons finding hard numbers on what counties spend state-wide is difficult. The counties with sporadic civil commitments do not make specific note of the costs. They simply receive a bill from a defense lawyer who the court appointed and they pay the costs out of the general fund. There generally is no oversight or price negotiation from the county or court.

Some of the larger counties maintain a contract with local defense firms but there again there is no price negotiation or oversight. This can best be reflected by referring to a quote from Bonnie Johnson, Cass County Administrator when she stated, “We basically found our crew by word of mouth. We use the firm in Jamestown to do our work in that county and we use two guys from Fargo to do the work for the county. We don’t have an application process, we don’t interview anybody, we don’t do any follow-up work on the lawyers; we don’t check to see if they have ethics complaints filed on them. There is not 5 minutes spent on this per year from the county. We simply add the COLA county employees receive onto the existing contracts and send them out for renewal.”

NUMBERS

The North Dakota State Hospital had 1,076 individuals committed in 2008 and 1,152 in 2009 for Mental health reasons. The vast majority of these cases involved both the State’s Attorney and an indigent defense lawyer. (both paid by the counties)

Additionally, the North Dakota State Hospital continues to have a growing population of individuals committed as a result of sexual civil commitments.

In 2008, the hospital had 17 individuals committed and in 2009 the hospital had 14 individuals committed. As I understand, this would bring the hospitals overall committed sex offenders to 61. Although, 61 may seem like a small number, sexual commitments are time intensive for prosecutors, defense attorneys and the State hospital itself. All 61 patients also have a right to review their continued detention on a yearly basis which again requires significant time and expense.

Again because Cass County is one of the largest "purchasers" of these defense services they do have some very specific numbers which helps illustrate the costs.

In 2009, Cass County paid \$31,380.50 for indigent defense in both mental health and sexual civil commitment. This cost also includes contracted services with a firm in Jamestown for limited representation at the State Hospital for the purpose of "determining whether or not they waive or demand any court hearing to which they may be entitled in Cass county District Court and to prepare and sign any necessary written documents evidencing such demand or waiver."

Contrast those costs with Divide County which in 2008 went from \$608.76 spent on civil commitment costs to \$8635.64 in 2009 and you can see the dilemma counties face come budget time. At the last hearing I handed out a spread sheet based upon surveys of county auditors. I believe this is still on file with legislative counsel. In it you can see wide fluctuations of cost and quite honestly I would caution you with those numbers because as I mentioned above many counties who responded to my request for information did not necessarily know how to break down these individual costs. However, the bottom line is these costs can hit any county large or small with little to no advanced warning.

For the following reasons we ask that you consider a bill which would alleviate some of these burdens off the property tax payer while at the same time strength the type of services necessary to protect those who cannot afford to protect themselves.

Thanks you and let me know if you have any other questions or concerns.