

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

CRIMINAL JUSTICE COMMITTEE

Wednesday, October 22, 1997
Bingo Hall, Four Bears Casino and Lodge
New Town, North Dakota

Representative Merle Boucher, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives Merle Boucher, Duane L. DeKrey, Dale L. Henegar, Kim Koppelman, Bill Oban, Sally Sandvig, Al Soukup, Laurel Thoreson, John M. Warner; Senators Les J. LaFountain, Wayne Stenehjem

Members absent: Representatives G. Jane Gunter, Kathy Hawken, Paul Murphy; Senators Marv Mutzenberger, Donna L. Nalewaja, Steven W. Tomac, Darlene Watne

Others present: See attached appendix

It was moved by Senator Stenehjem, seconded by Representative Oban, and carried on a voice vote that the minutes of the previous meeting be approved as mailed.

DELINQUENCY PREVENTION CONSORTIUM

At the request of Chairman Boucher, Mr. Paul Ronningen, Administrator of Children's Mental Health, Division of Mental Health and Substance Abuse, Department of Human Services, presented information on the Partnership Project and the relationship with the Division of Juvenile Services. A copy of his testimony is on file in the Legislative Council office. In response to a question from Representative Warner, Senator Stenehjem said dysthymia is a depressive disorder of a serious nature. In response to a question from Representative Oban, Mr. Ronningen said national programs have shown that early identification of mental health problems keeps children out of the juvenile justice system. He said minorities with mental health problems are served more frequently by the juvenile justice system than the mental health system. Representative Oban said he would like information on programs being conducted in this state that are similar to the RAND study programs. He said the delinquency prevention consortium should evaluate programs with promise on a national level to see if they will work in North Dakota. In response to a question from Representative Oban, Mr. Ronningen said the wraparound process is a process whereby friends, family, and community agencies work together to provide one plan for a child; however, the Division of Children and Family Services uses this term to describe flex fund dollars. In response to a question from Representative Boucher, Mr. Ronningen said a

wraparound process has multiple agencies create one plan for a child. He said this process removes duplication of services. He said these services are more successful because they involve the family. In response to a question from Representative Thoreson, Mr. Ronningen said wraparound services are analogous to an individual education program in the educational system. In response to a question from Representative Soukup, Mr. Ronningen said the Partnership Project is a demonstration grant being administered in Minot, Fargo, and Bismarck. He said he would like to expand the program. He said 69 percent of the children in that program are male. He said 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. In response to a question from Senator LaFountain, Mr. Ronningen said approximately 50 percent of the children in the juvenile justice system are American Indians. He said Indian children make up five to seven percent of the juvenile population. He said there is overrepresentation of Indian children in the juvenile justice system and foster care system. He said 35 percent of the children in the child welfare system and over 30 percent of the children in the mental health system are Indian. In response to a question from Senator LaFountain, Mr. Ronningen said the Partnership Project grant was for \$12 million. He said a similar grant has been provided to the tribes. He said this grant has funds for two reservations in the United States. He said North Dakota received one of the grants. He said there will be presentations at the reservations in this state in the next month on this program. In response to a question from Representative Oban, Mr. Ronningen said schools should find out about wraparound services by being invited to take part in the services by other team members. He said family members could exclude education providers. In response to a question from Representative Oban, Mr. Ronningen said the grant pays for a care coordinator who is a Bismarck public school system employee. In response to a question from Representative Boucher, Mr. Ronningen said the human service center areas are the same areas used for the boundaries of the Partnership Project. He said the grant is administered through human service centers. He said a human service center does not extend service beyond its geographical area because every center is struggling to provide services within its own area. In response to

a question from Representative Boucher, Mr. Ronningen said there are disincentives for providing community-based programs. He said they have a high cost and the effort is lost if the community is not involved in the program. He said it costs approximately \$72,000 for a residential treatment program. He said this money is wasted if no money is spent on community-based programs because the child will be returned to the same home and community from which the child came. He said the cost enters the picture if a program is a community-based service because it is a line item in the budget. He said the state does not pay as much of the cost for community-based service as it does for out-of-home treatment. Representative Boucher said site-based services are rated highly by families with means. He said the poor have difficulty with the cost of transportation and this provides an excuse to an unwilling participant not to receive services. In response to a question from Representative Thoreson, Mr. Ronningen said wraparound services have the family as the center of the program so they own the program. He said this is contrary to the medical model. In response to a question from Representative Warner, Mr. Ronningen said mental health problems usually follow a child for life, much like diabetes. Representative Oban said a high percentage of the children in the juvenile justice system have mental health problems. He said there is pressure in the education system to put children with mental health problems into a more restrictive setting. He said the Partnership Project should include schools. He said any communication problems between the juvenile justice system and the education system seem to be caused more by practical considerations than legal roadblocks. Representative Thoreson said the juvenile justice system and schools need to work together. Senator LaFountain said he wants an equal chance for Indian children to have mental health services instead of being placed in the criminal justice system. In response to a question from Representative Boucher, Mr. Ronningen said the Sacred Child grant is for \$1 million for the first year and is for planning purposes. Representative Boucher said there needs to be a linkage of the entities that are providing services. He said multiproviders may confuse the client with different treatment programs and philosophical differences in treatment.

COMMITMENT OF THE SEXUALLY DANGEROUS

At the request of Chairman Boucher, Ms. Jean Mullen, Assistant Attorney General, provided information on North Dakota Century Code Chapter 25-03.3, which relates to the involuntary civil commitment of sexually dangerous individuals. She provided information on *Kansas v. Hendricks*, a comparison of Chapter 25-03.3 to similar statutes in other states, and rationale for the elements in

Chapter 25-03.3. A copy of her testimony is on file in the Legislative Council office. In response to a question from Representative Boucher, Ms. Mullen said imprisonment and civil commitment for the same act could run concurrently. In response to a question from Representative Soukup, Ms. Mullen said it is too early to make any change to the law. In response to a question from Representative Oban, Ms. Mullen said the Attorney General will defend the statute if it is challenged in court. She said this is part of the Attorney General's job and should not require additional funds. She said state's attorneys may require more funds because this kind of case is not simple. She said Burleigh County may suffer the most because of the presence of the Penitentiary in Burleigh County. In response to a question from Representative Koppelman, Ms. Mullen said she is not worried that this state does not require a criminal conviction for civil commitment because a predicate act is required. She said the predicate act will most likely be a criminal act. She said the predicate act has to be of a nature which shows the person will be a danger in the future. She said only state's attorneys may initiate a petition. In response to a question from Representative DeKrey, Ms. Mullen said a juvenile may be committed under this statute. She said there are special recordkeeping provisions so that predicate acts of a juvenile may be retrieved after the juvenile has become an adult. In response to a question from Representative Koppelman, Ms. Mullen said the mental illness civil commitment statute does not fit instances of when there is a sexually dangerous individual. She said that statute was not amended because the Mental Health Association did not want mental illness linked with sexual dangerousness. At the request of Chairman Boucher, Mr. Alex Schweitzer, Administrator, State Hospital, provided information on the treatment program for sexually dangerous individuals at the State Hospital. He said there are no patients committed as sexually dangerous at the hospital. He said he has identified a clinical team and has provided education and training in anticipation of sexually dangerous individuals. He said there is room for seven commitments. He said the individuals would be placed in the forensic unit for the first 10 months of this biennium. He said during the last 14 months of the biennium, individuals will be placed in the intensive care unit, which will be able to hold 10 patients. He said the hospital's budget can provide care for 10 patients. In response to a question from Representative Boucher, Mr. Schweitzer said under the current circumstances and in the current biennium, the State Hospital has enough staff, facilities, and funding for the involuntary civil commitment of sexually dangerous individuals. In response to a question from Representative Soukup, Mr. Schweitzer said the majority of the funding comes from the general fund. In response to a question from Senator LaFountain, Mr. Schweitzer said other states show rapid growth in the number of patients. He said the hospital will require major remodeling to go

beyond 10 patients. In response to a question from Representative Boucher, Mr. Schweitzer said the growth in patients is due to the length of treatment. He said the average commitment is from eight to 10 years. He said Minnesota has had two discharges and one of them was due to death. In response to a question from Representative Boucher, Mr. Schweitzer said it requires a great deal of expertise and a long period of time to evaluate the level of dangerousness.

AMERICAN INDIAN ISSUES

At the request of Chairman Boucher, Mr. Joel Herslip, Bureau of Criminal Investigation, provided information on the Native American Juvenile Justice Summit held in Mandan. He said he worked with the children's services coordinating committees to bring together officials from all different jurisdictions. He said the focus of the conference was on the local levels of government.

Crime and Delinquency

At the request of Chairman Boucher, Mr. Russell Mason, Chairman, Three Affiliated Tribes, presented information on the state of affairs on the Fort Berthold Indian Reservation. He said a spirit of cooperation is required to deal with the problems on the reservation. He said the creation of Lake Sakakawea moved his people to the high lands. He said this move caused a loss of the social fabric that provided support mechanisms for Indian youth. He said the tribe is updating its codes. He said economic development will be needed to improve the living conditions on the reservation. He said he wants to cooperate with the state in finding solutions to the problems on the reservation. He provided two handouts--Executive Order: Initiative for American Indian and Alaskan Native Children and Youth and Securing the Future: A Better Tomorrow for Indian Children and Adolescents. These handouts are on file in the Legislative Council office. At the request of Chairman Boucher, Mr. Mark Fox, Councilman, testified before the committee. He said there are growing incidents of violence on the reservation. He said the Tribal Council has passed curfew and gang ordinances. He said there will soon be a law enforcement center on the reservation. He said the center will cost \$8 million. He said there is no federal funding at this time. He said current facilities are unsanitary and inadequate. He said he wants the state to supplement programs to help the youth. In 1996, he said, there were 1,494 arrests. He said there were only 172 juvenile arrests; however, there would have been 800 to 900 juvenile arrests if there had been a place to detain the juveniles. He said there are 1,000 to 1,300 juveniles on the reservation. He said 92 percent of all arrests are drug and alcohol-related. He said the casino provides a few million dollars per year in revenue. He said this results in approximately \$300 per tribal member. He said the tribe uses that money for meals for the elderly, raising bison, cultural

preservation, day care, Head Start, health programs, solid waste, and donations and grants. In a response to a question from Representative Warner, Mr. Fox said the planned detention center will hold 78 to 100 adults and 28 juveniles. He said the facility will be used as a holding facility. In response to a question from Representative Soukup, Mr. Fox said the Bureau of Indian Affairs patrols school areas and hallways to prevent gang activity and harassment. He said the problem with enforcing the law against juveniles is that there is no place to detain juveniles upon arrest. In response to a question from Representative Thoreson, Mr. Fox said parents respond in different ways when confronted with their child being in trouble. He said sometimes children are beyond the control of their parents. He said sometimes families do not make any response. He said there are five times the number of dysfunctional families on the reservation than are in the rest of the United States. He said some take responsibility and correct the behavior. He said parents are civilly responsible under the curfew ordinance. In response to a question from Representative Sandvig, Mr. Fox said there are some programs for children. He said the NDSU Extension Service provides some summer programs. He said there is job training and the Youth Build program. At the request of Chairman Boucher, Mr. Spencer Wilkinson, New Town High School, testified before the committee. He said there is a lack of awareness of juvenile problems. He said he sponsored an initiative and only one parent was in attendance. He said he is in favor of preventive programs for gang activity. He said there are no transition services for youth. He said after treatment a child is dropped off at school and returns to that child's old way of life. In response to a question from Representative Boucher, Mr. Wilkinson said these gangs are coming from big cities. He said there are approximately seven gangs and they are involved in illegal business activities. In response to a question from Representative Thoreson, Mr. Wilkinson said parental involvement in schools has a dramatic positive effect. He said parental involvement produces well-behaved children with good grades. At the request of Chairman Boucher, Ms. Adeline Brunsell, Superintendent, Bureau of Indian Affairs, testified before the committee. She said there has been a joint effort against gang activity by New Town, the tribe, and the Bureau of Indian Affairs. She said policing would be aided by a Federal Communications Commission license for high-band frequency. She said this would keep police conversation from being scanned. She said bike patrols have begun as a form of community policing. She said the tribal code needs to be updated to be at par with surrounding state law. She said there needs to be more programs for children after school, including tutoring. She said there is one probation officer for the reservation. In response to a question from Representative Thoreson, Ms. Brunsell said juvenile crime is a community problem. She said building a detention center will not help the problem all

that much. Senator LaFountain said the entire state is neglecting the problems on the reservation. He said American Indians are the largest growing portion of this state's population. At the request of Chairman Boucher, Mr. Tex Fox testified before the committee. He said the state provides free training to law enforcement officers; however, it is offered to tribal police after it is first offered to state and political subdivision law enforcement officers. He said there were 929 arrests in New Town last year. He said New Town is a small city with a big city problem. He said Fort Berthold is networking with other reservations to stop the gang problems on the reservations in North Dakota. He said Indian youth need to be made aware of their culture. He said before there was a gang problem there was a problem with Satanism. He said children with a good cultural background do not get involved with gangs or Satanism. He said he is always looking for resources to improve the law enforcement services offered at the reservation. In response to a question from Representative Koppelman, Mr. Fox said the biggest challenge facing the reservation is parental responsibility. At the request of Chairman Boucher, Mr. Elmer Four Dance testified before the committee. He said there are two separate sets of laws which place a burden on law enforcement when there is cross-deputization. He said the curfew for Indians and non-Indians used to be at different times. Now, he said, there is one curfew. He said Indian gangs are geared more toward violence than toward profit. He said there is denial that there is a gang problem. In response to a question from Representative Warner, Mr. Four Dance said a lot of the arrests in New Town are of repeat offenders. At the request of Chairman Boucher, Ms. Josey Chase, Casey Family Program, testified before the committee. She said the Casey Foundation provides long-term foster care for children at Fort Berthold. She said there are major gaps in service. She said there needs to be training on child sexual abuse, alcohol abuse, and domestic issues. She said there needs to be alternative learning for children with special learning needs. She said there needs to be a social worker in each school. She said there needs to be a parenting class as part of the school curriculum. Because of the large geographic area, she said, problems go unaddressed until there is a crisis. She said the tribal children's code is inadequate. She said residential treatment is ineffective because it removes the child from friends and family. She said the child is returned to the same environment after residential treatment. She said onsite comprehensive programs are needed at the reservation. She said there needs to be alternative activities to alcohol use. She said family recreation centers like the YMCA are needed on the reservation. She said there needs to be economic development and job creation. She said there are limited aspirations and limited opportunities on the reservation. She said there needs to be a public awareness initiative. She said public awareness provides people with a sense of ownership of

problems and provides for collaboration. She said there are two programs proven to be effective with Indian youth. She said placing elders in the classroom restores values and culture. She said high school age mentors of grade school children would be a useful program. She said there needs to be intensive in-home family services. She says there needs to be specialized care for children released from the Youth Correctional Center so they may be placed with specially trained families that work with social workers and the juvenile justice officials. In response to a question from Representative Sandvig, Ms. Chase said the Character Counts program was provided on the reservation this summer. In response to a question from Senator LaFountain, Ms. Chase said it would be more cost-effective to provide services on the reservation than to provide them off the reservation. At the request of Chairman Boucher, Mr. Ron Stanley, White Shield School District, testified before the committee. He said the White Shield School has a prevention program that includes a guidance counselor, a social worker, and a drug and alcohol counselor in the school. He said coordination between courts, schools, and social service providers is essential. He said behavior writeups are decreasing because of a more consistent approach in enforcing handbook policies. At the request of Chairman Boucher, Ms. Bernadine Young Bird, Tribal Education Program, testified before the committee. The handouts she used as a basis of her testimony are on file in the Legislative Council office. The handouts relate to the Three Affiliated Tribes education philosophy, the level of enrollment at the Three Affiliated Tribes schools, and six statements on education at Fort Berthold. In response to a question from Representative Soukup, Ms. Young Bird said the numbers she provided on school enrollment do not include some children who have dropped out of school. At the request of Chairman Boucher, Ms. G. Janet Gunderson, Director of Social Services, Three Affiliated Tribes, testified before the committee. She said the tribe needs a system of care that allows children to remain in the community. She said the tribe needs its own human service center because the state human service centers are not used because of distance and cultural differences. At the request of Chairman Boucher, Mr. Stephen Magstadt, Supervisor of the Child Welfare Department, testified before the committee. If a child is not out of foster care within 90 days of a placement, he said, the placement tends to be permanent. He said he has hired a family preservation worker who has helped by working with parents to reduce the time of children in foster care. In response to a question by Representative Soukup, Mr. Magstadt said his funding comes from the federal government. He said some of the funds are passthrough funds that contain some state funds. At the request of Chairman Boucher, Ms. Cheryle J. Fox, Circle of Life, testified before the committee. She said she is the only licensed addiction counselor working with children under federal programs on the

reservation. She said there needs to be more prevention and intervention. She said a symptom of the drug and alcohol abuse by juveniles is the recent lack of interest in sporting activities. In response to a question from Representative Boucher, Ms. Fox said Satanism is accompanied by alcohol and drug abuse behaviors. At the request of Chairman Boucher, Ms. C. A. Wolf Eyes, Director, Head Start, testified before the committee. Her testimony was based on a handout that is on file in the Legislative Council office. Her handout is titled Disposition of the Three Affiliated Tribes' Head Start Program Operation and Services. She said there needs to be a centralized data system for the reservation and there needs to be followup on reports of child abuse. She said there needs to be career training for the youth. In response to a question from Senator LaFountain, Ms. Wolf Eyes said Head Start takes care of 11 percent of the infants and toddlers on the reservation. In response to a question from Representative Boucher, Ms. Wolf Eyes said Head Start received \$3,500 for the adult family literacy program. She said Even Start was not continued because it was not self-sufficient. At the request of Chairman Boucher, Ms. Delphine Baker, Director, WIC Program, testified before the committee. She said coordination with other programs is important to the provision of adequate services. She said some county social service agencies do not coordinate. She said a solution to this lack of cooperation would be for the reservation to be treated as a social service county or for coordination to be encouraged. At the request of Chairman Boucher, Mr. Charlie Moran, Youth Services, testified before the committee. He said Youth Services offers a youth center, recreational programs, cultural programs, camps, basketball tournaments, and other sporting activities, including soccer. He said sports are useful tools in preventing juvenile delinquency. At the request of Chairman Boucher, Mr. Malcolm Wolf, Language and Culture Instructor, Four Bears Community College, testified before the committee. He said the history of the Indians is about things being taken away. He said Indians have had their values and language taken away. He said he does not need money from the state. He said he needs the return of Indian culture, the Indian clan system, and Indian values.

Sexual Abuse

At the request of Chairman Boucher, Ms. Karol Parker, Indian Health Services, Mental Health Services, testified before the committee. She said there are no statistics on sexual abuse for Fort Berthold. She said a child is at risk of sexual abuse if the child's parents are suffering from marital conflict, domestic violence, or a drug or alcohol problem. She said the flooding of tribal land was a negative stresser that removed most natural social structures. She said the effects of child abuse on children are that it forms and deforms personality, initiates psychological

defense mechanisms, creates long-lasting psychological problems, causes alcohol and drug usage, and impairs the ability to form relationships. She said distance and cost are the major inhibitors to mental health services for Indians on the reservation. She said the reservation does not have a therapist for sexual abuse. She said there needs to be a study of the incidence of sexual abuse. She said the gaps in the delivery system need to be filled. She says there needs to be an increase of awareness of child sexual abuse. She said there needs to be grants and scholarships for Indian children. In response to a question from Representative Boucher, Ms. Parker said there are some services at the human service centers, but they do not have any experience with very young children. Mr. Magstadt said the mandatory reporting law has been effective, but reporting could be better if there were mandatory training. At the request of Chairman Boucher, Mr. Ed Slocum, Superintendent, New Town Public Schools, testified before the committee. He said 47 percent of Fort Berthold children are educated at New Town. He said the elementary school has had six reports of sexual abuse in the last six years. He said the high school has had six per year. He said there have been 20 to 30 reports of child neglect in the elementary school per year. He said the Head Start program makes a large difference in the test scores of children. He made two recommendations. He said there needs to be training on how to recognize and report child sexual abuse, and there needs to be strong provisions to protect teachers and social workers from angry parents when a report is made of child sexual abuse. In response to a question from Senator LaFountain, Mr. Slocum said the school has a guidance counselor that helps with child sexual abuse. He said the school pays for a child's schooling when the child is out of town for treatment. In response to a question from Representative Thoreson, Mr. Slocum said participation at parent-teacher conferences is approximately 75 to 80 percent. In response to a question from Representative Boucher, Mr. Slocum said the graduation rate stated of 27 of 27 is the rate of those students that started and finished their senior year. He said 40 to 50 students may have started as freshmen. He says he does not know exactly what happens to the children that do not graduate. In response to a question from Representative Boucher, Mr. Slocum said there is a major problem with transient students. He said it is hard to educate a moving target. He said students move because of poor grades and to be on different sports teams.

Chairman Boucher adjourned the meeting at 5:00 p.m.