

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

COMMISSION ON ALTERNATIVES TO INCARCERATION

Tuesday and Wednesday, March 21-22, 2006

Prairie Rose Room, Radisson Hotel

Fargo, North Dakota

Conference Room, Gronewald Middleton Building, State Hospital
Jamestown, North Dakota

Representative Joe Kroeber, Chairman, called the meeting to order at 1:00 p.m.

Members present: Representatives Joe Kroeber, Ron Carlisle, Lawrence R. Klemin; Senators Dick Dever, Larry J. Robinson, Thomas L. Trenbeath; Citizen Members Leann K. Bertsch, Edward Brownshield, Judge Gail Hagerty, Paul Hendrickson, Duane Johnston, John Mahoney, Deborah Ness, Carol K. Olson, Gary Rabe

Members absent: Citizen Members Justice Mary Muehlen Maring, Sandi Tabor

Others present: See attached [appendix](#)

It was moved by Senator Robinson, seconded by Representative Carlisle, and carried on a voice vote that the minutes of the November 29, 2005, meeting be approved as distributed.

Chairman Kroeber called on Representative Eliot Glassheim, Grand Forks, for comments regarding alternatives to incarceration programs. Representative Glassheim submitted written comments, a copy of which is on file in the Legislative Council office. He said since 1992 the inmate population in this state has grown from approximately 500 to over 1,400 inmates, which is an increase of approximately 70 inmates per year. If a growth rate of 20 percent per year were to continue, he said, the prison population would increase by approximately 280 prisoners per year. With a 7 percent increase, he said, the increase would be approximately 100 per year. He said prison beds are at capacity and construction of a new prison may be necessary. The cost of housing a prisoner is approximately \$60 per day and the cost of housing 70 prisoners for a biennium would amount to \$3 million. He said construction of new prison facilities would likely raise costs significantly.

Representative Glassheim said spending \$2 million to \$3 million per year for programs that would divert 70 prisoners per year could provide a safe and effective alternative to increasing prison beds. Although the increasing need for prison beds is widespread throughout the country, he said, alternative programs that provide treatment and rehabilitation are a good alternative to incarcerating certain prisoners in high security prisons and ultimately lead to cost-savings.

Representative Glassheim said a prison-based reentry program in Kansas helps teach negotiating, emotional, and interpersonal skills that aid the individual when reentering the community. He said Virginia has allowed certain elderly prisoners who are nonviolent offenders to apply for early parole. He said another area that may merit consideration is parole reform through which individuals are not incarcerated for technical violations of parole. In addition, he said, it may be beneficial to address whether mandatory sentences are necessary. He said drug courts have proven to be successful and should be a part of the options available. He said programs such as the Bismarck Transition Center and the faith-based treatment program that has been funded by the Legislative Assembly appear to be succeeding. He said allocating \$1.5 million per year to divert 70 individuals from incarceration is a realistic goal. One recommendation of this commission, he said, could be a graph that shows each potential alternative to incarceration program, the number of individuals each program could divert from incarceration, and the resources needed for each program. He said the answer may be to expend more resources on existing programs rather than look for new programs.

In response to a question from Representative Klemin, Representative Glassheim said the release of elderly prisoners saves the prison system money by reducing health-related costs. However, he said, those costs may be shifted to other government programs, such as Medicaid.

In response to a question from Representative Klemin, Ms. Bertsch said Social Security and Medicaid benefits are stopped when an individual is imprisoned. She said federal law mandates that benefits be stopped.

Chairman Kroeber called on Mr. Glenn Ellingsberg, Cass County Sheriff's Office, for comments regarding the Cass County Jail Intervention Coordinating Committee. Mr. Ellingsberg submitted written testimony, a copy of which is on file in the Legislative Council office. He said he is the jail administrator of the Cass County Jail and chairman of the Cass County Jail Intervention Coordinating Committee. He said the Cass County Jail has seen an increase in jail populations, particularly in the area of individuals with mental illnesses. He said the Cass County Jail

generally has up to 34 percent of its inmate population on some sort of psychotropic medication due to mental health issues. He said about 16 percent of populations of prisons and jails nationwide involve individuals with mental illness or mental illness with co-occurring substance abuse. He said 20 percent of youth in the juvenile justice system have serious mental health issues.

Mr. Ellingsberg said the Cass County Jail Intervention Coordinating Committee has been meeting since fall 2004 to identify what the community can do to reduce the number of individuals with mental illnesses from being incarcerated. He said the committee includes mental health professionals, criminal justice officials, legislators, and other interested individuals.

Chairman Kroeber called on Ms. Sheree Spear, National Alliance on Mental Illness, Fargo, for comments regarding the Cass County Jail Intervention Coordinating Committee. Ms. Spear submitted written testimony, a copy of which is on file in the Legislative Council office. Ms. Spear also submitted other documents on [alternatives sentencing flow chart, Jail Intervention Coordinating Committee membership, and the Jail Intervention Coordinating Subcommittees](#), copies of which are also on file in the Legislative Council office.

In response to a question from Mr. Hendrickson, Ms. Spear said the program would be focused on individuals booked for a crime and would not address situations where a crime is not committed or in which the individual is civilly committed.

Mr. Ellingsberg said when an individual is arrested and brought to the jail, jail personnel would attempt to identify whether a mental health problem underlying the individual's criminal behavior can be addressed without incarceration.

In response to a question from Senator Robinson, Ms. JoAnne Hoesel, Department of Human Services, said the caseloads for counselors at the human service centers vary. Although the optimal caseload should be from 30 to 40 cases, she said, some case managers have 60 or more cases.

In response to a question from Senator Robinson, Mr. Ellingsberg said it is difficult to obtain medical information because of privacy laws. He said it is important to get the medical information soon enough so the individuals do not encounter more serious problems.

In response to a question from Mr. Mahoney, Ms. Spear said the program would primarily focus on nonviolent offenders but would likely include some individuals who have committed assaults. She said the program is not designed for sex offenders or for individuals with certain personality disorders.

In response to a question from Representative Carlisle, Ms. Spear said although each program must be specific to the community, the Cass County program could help provide information and guidance for other communities.

In response to a question from Mr. Hendrickson, Ms. Spear said it is important to have a strong structured environment to continue ensuring the individual is taking medications. In addition, she said, ongoing support is needed and alternative treatment orders may be necessary to guarantee that medications are used.

Mr. Brownshield said a structured system is needed to give mentally ill and addicted individuals the resources they need. He said another issue that keeps individuals from being connected to the needed resources is illiteracy.

In response to a question from Senator Robinson, Mr. Rick Hoekstra, Department of Corrections and Rehabilitation, said the downsizing of the population of the State Hospital may have resulted in the transfer of the mentally ill individuals to the prison system. Although it is difficult to track the number of individuals in the prison system with mental illnesses who may have been in the State Hospital in the past, he said, the proposed Cass County program may assist in addressing problems with the mentally ill population.

In response to a question from Representative Klemin, Mr. Ellingsberg said about 10 percent of the 252 individuals sent from Cass County to the State Penitentiary last year had mental health issues. He said a goal of the Cass County program could be to reduce the number of individuals sent from the Cass County Jail to the State Penitentiary by 25 individuals per year. Because that would result in a substantial cost-savings to the state, he said, state assistance in funding the program may be considered a good alternative for the state.

In response to a question from Senator Robinson, Ms. Spear said although the policy to deinstitutionalize individuals made sense, the state did not transition resources to communities to assist in addressing the problems experienced by the individuals who would be deinstitutionalized.

Ms. Olson said there has been a turn in the thought process regarding the deinstitutionalization wherein the trend is to beef up treatment so individuals can be treated and live closer to their home and families. She said first-time admissions to the State Hospital are increasing as well as admissions for methamphetamine addictions. Because of more complex cases and a full capacity, she said, it is necessary to build up support in communities to sustain the structure.

Chairman Kroeber called on Dr. Andrew McLean, Southeast Human Service Center, for comments regarding co-occurring medical disorders. Dr. McLean presented PowerPoint slides on [Co-Occurring Mental and Substance Abuse Disorders](#), copies of which are on file in the Legislative Council office.

In response to a question from Mr. Hendrickson, Dr. McLean said privacy laws pose problems regarding identifying individuals with mental illness and addiction issues. He said those problems may be

overcome if agreements or contracts are in place with providers to share information.

In response to a question from Representative Carlisle, Dr. McLean said there is no medication available for treatment for methamphetamine addicts. He said antidepressants are often prescribed for individuals with methamphetamine addictions.

In response to a question from Senator Dever, Dr. McLean said co-occurring disorders clearly impact each other but are generally not the cause of each other. He said the disorders are neither 100 percent genetic nor 100 percent environmental.

Chairman Kroeber called on Mr. Warren Emmer, Field Services Director, Department of Corrections and Rehabilitation, for comments regarding sex offender supervision. Mr. Emmer said the Department of Corrections and Rehabilitation has established a Sex Offender Containment Task Force that has placed sex offender specialists in Fargo, Grand Forks, Bismarck, and Mandan.

Ms. Barb Breiland, Department of Corrections and Rehabilitation, submitted written documents regarding sex offender supervision and the use of a global positioning system (GPS), copies of which are on file in the Legislative Council office. Ms. Breiland said the department has taken a proactive stance regarding sex offenders and had a consultant propose changes to improve the supervision process. She said there are three types of GPS devices that may be used to track sex offenders--an active system provides real-time tracking, a passive system provides information that is downloaded at night and retrieved the next day, and a passive-plus system which has the added feature of an alarm for entry into hot zones. She said a Sex Offender Containment Task Force is beginning to operate in Jamestown and the department is looking to add additional sites. She said GPS devices are one tool that may be used in addition to a variety of other methods for monitoring sex offenders.

Chairman Kroeber called on Mr. Thorvald Dahle, Fargo Police Department, for comments regarding the Sex Offender Containment Task Force. Mr. Dahle said the task force is a cooperative operation among the Department of Corrections and Rehabilitation, Department of Human Services, and local law enforcement agencies. He said sharing of information is vital in identifying problems. He said the individuals involved will work together to determine which offenders should be monitored by GPS devices. He said there are not enough devices for use by all high-risk offenders. During the first year after release from incarceration, he said, it is vital that the sex offenders be closely supervised.

Ms. Sherrie Prochnow, Department of Corrections and Rehabilitation, said it is important to closely supervise an offender and watch for changes in behavior to see if the individual has reoffended. She said a prompt response to any violation is essential. Because of the intrusive nature of discussions with a sex offender, she said, it is important to establish a

relationship with the sex offender that encourages cooperation.

Ms. Prochnow said housing options are very limited for sex offenders and offenders also face challenges with finding employment. She said other problems a sex offender specialist may address with respect to a sex offender include the lack of treatment options and the fact that offenders are often in denial.

Ms. Prochnow said presentence investigations are now much more detailed than previous reports. She said the investigative report provides the court with as much information as possible regarding the offender. However, she said, the compiling of the report takes a significant amount of the sex offender specialist's time.

In response to a question from Mr. Rabe, Ms. Breiland said each sex offender specialist supervises about 30 to 35 offenders. She says a presentence investigation report takes approximately 22 to 26 hours.

In response to a question from Representative Carlisle, Mr. Emmer said the Department of Corrections and Rehabilitation has only one sex offender monitored by a GPS device. He said the sex offender specialists are working to identify the right offenders to monitor by GPS devices. Within a year, he said, there may be 25 to 30 offenders monitored by GPS devices. He said the devices are only one tool to use in monitoring offenders and the best tool is still active supervision. Until recently, he said, many court orders did not include GPS monitoring as a condition of parole. He said the monitoring is very labor-intensive. He said if the monitoring is not done right, there could be a risk to public safety. Therefore, he said, it is very important that appropriate staff and expertise be in place before placing too many offenders on GPS monitoring.

In response to a question from Senator Dever, Ms. Breiland said although most sex offender specialists are females, the specialists have been able to develop a good rapport with offenders.

Chairman Kroeber recessed the meeting and reconvened for a tour of the ShareHouse and Robinson Recovery Center facilities.

Ms. Andi Johnson, ShareHouse Residential Recovery Programs, Fargo, said the Robinson Recovery Center focuses on methamphetamine treatment. Although the center only recently opened, it has had 57 referrals and is filled to capacity. She said one individual is close to completing the program. She said when an individual leaves the center, counselors will maintain phone contact with the individual and the individual will be placed in contact with a human service center. She said treatment at the Robinson Recovery Center costs \$80 to \$85 per day.

Chairman Kroeber recessed the meeting at 5:30 p.m. and reconvened the meeting at the State Hospital in Jamestown at 9:00 a.m. on March 22, 2006.

At the request of Chairman Kroeber, commission counsel reviewed the duties and responsibilities of the commission.

In response to a question from Senator Robinson, Ms. Olson said the Office of Management and Budget has set a deadline for submission of agency budgets of June 15, 2006.

In response to a question from Mr. John D. Olsrud, Director, Legislative Council, Ms. Olson said representatives of the Office of Management and Budget work with the Governor on agency budgets after the June 15 deadline and continue to work with the agencies in refining the budgets after that date.

In response to a question from Representative Kroeber, Mr. Olsrud said the commission likely would have some flexibility in making recommendations to the Governor regarding inclusion of items in the Governor's budget beyond the June 15 deadline.

Ms. Olson said the June 15 deadline is not absolute and there are options to delay or expand budget submissions.

Mr. Hendrickson said he has struggled with the purpose of the commission. He questioned whether commission members are getting a good picture of the programs that have been reviewed by the commission because administrators have made the presentations and the commission members have not visited with participants in most of the programs. Because the individuals making the presentations before the commission have a vested interest in the various programs, he said, those individuals are not likely to report on negative aspects of the programs. He said the Department of Corrections and Rehabilitation must get the GPS devices into use immediately. Although representatives of the department indicated that the devices were costly and labor-intensive, he said, local law enforcement officials would be available to assist in the use of the devices. He said it makes no sense to have the devices and not use them.

In response to a question from Mr. Hendrickson, Ms. Olson said the Robinson Recovery Center is a pilot program that the Department of Human Services will be assessing and the department will report outcomes from the program to the Legislative Assembly in 2007.

Senator Robinson said a major challenge is the lack of treatment facilities in the state. Although some progress has been made, he said, a tremendous void remains.

Ms. Bertsch said the Department of Corrections and Rehabilitation is working with the Budget Committee on Government Services to develop a strategic plan for the department. Because of the growth rate in the number of individuals incarcerated, she said, alternatives must be implemented to manage the system. She said if the current growth rate were to continue until 2017, there would be approximately 2,200 individuals incarcerated and 7,500 individuals on parole. She said the department is doing a good job with the available resources. She

said the department uses evidence-based practices and does not implement policies or programs simply to make people feel good or give a false sense of security to the public. She said it is important to develop expertise and gain knowledge on how to implement and use GPS devices.

Ms. Bertsch said 50 percent of individuals entering the State Penitentiary have been on probation before entry into the Penitentiary. She said the first 30 days in prison are used as an assessment period and the imprisoned individual is required to meet with a case-planning committee to develop an individualized plan for the offender. She said treatment is customized for each offender and the department utilizes many risk reduction services. However, she said, for some offenders, risk cannot be reduced but may be managed with administrative segregation or other tools. She said the department will need to determine the number of beds necessary for the management of risk and determine the number of traditional beds and alternative beds needed in the future. She said programs such as ShareHouse, Teen Challenge, and GPS monitoring are pilot programs with which the department needs to experiment. Because prisoners must be prepared for parole, she said, alternative and transition programs are vital and likely will need to be increased as the prison population increases. She said the alternative programs must be evaluated to determine the effectiveness and cost-efficiency of the programs.

In response to a question from Representative Carlisle, Ms. Bertsch said it is a challenge to manage the number of individuals on parole. She said aftercare is often overlooked in the process. She said the department is committed to transitioning individuals from prisons to the communities and has worked with a number of agencies in that process. Because 97 percent of offenders are returned to the community, she said, the necessary resources must be available to assist in that transition.

Mr. Emmer submitted written comments on The Department of Corrections and Rehabilitation Field Services Division, a copy of which is on file in the Legislative Council office. Mr. Emmer said the five sex offender specialists are very busy attending to other numerous responsibilities in addition to implementing the GPS monitoring. He said most of the specialists' time is spent checking on offenders and on-the-street monitoring. Because electronic monitoring is only a tool and not a program, he said, it cannot replace good law enforcement practices and must be employed judiciously. As the task forces have evolved, he said, the individuals involved have agreed that electronic monitoring is a new technology and must be implemented slowly. He said it would be irresponsible to place monitors on offenders without knowing how well the system will work. He said offenders will test the system and are very intelligent in finding ways to fool the system.

Senator Trenbeath said concerns such as those expressed by Mr. Hendrickson are legitimate and

comments such as that must be encouraged. He said the Department of Corrections and Rehabilitation may have lacked diligence in conveying its message to local law enforcement officials.

In response to a question from Representative Carlisle, Mr. Emmer said the department has the funds needed for implementation of electronic monitoring. He said the contract with the vendor supplying the equipment is a four-year deal through which the department will pay approximately \$7 to \$8 per day for each device in use.

Mr. Emmer said a balanced approach must be used in addressing the tremendous growth in the number of individuals incarcerated. He said the approach should incorporate parole and probation, transitioning, and adding new prison beds. He said the Bismarck Transition Center saves the department a significant amount of money and allows for the release of individuals into the community in a manner that protects the public.

Mr. Hoekstra said a collaborative effort was initiated in 1998 to develop the concept of the Tompkins Rehabilitation and Corrections Unit. He said the Department of Corrections and Rehabilitation, State Hospital, and Stutsman County Jail have developed an excellent partnership to operate the unit. Through the use of outside evaluations, he said, improvements have been made in the operation of the unit. He said the target population of the unit is that of high-risk offenders. He said the program consists of at least 100 days of treatment with a transition process. He said the unit is a big investment of resources in the participants in the program.

In response to a question from Senator Robinson, Mr. Hoekstra said it generally takes 120 days to complete the program but some individuals may remain in the program longer. If more beds were available, he said, the number of individuals served could be increased. If an individual's sentence is for one year or longer, he said, there is a greater likelihood of an opportunity to participate in the treatment program at Tompkins.

In response to a question from Mr. Hendrickson, Mr. Hoekstra said safeguards have been implemented in case planning to address the issue of individuals using the treatment program as a means to shorten a sentence rather than using the program as a serious attempt at treatment.

Mr. Pat Bohn, Department of Corrections and Rehabilitation, said the Parole Board implemented a different approach approximately three and one-half years ago and increased the number of individuals on parole. He said after consultants reviewed the parole process in this state, the parole ratio was increased to approximately 4.5 inmates to 1 parolee. He said the national average is 3.1 inmates to each parolee. Even with the increase in the number of individuals paroled in the state and a 3 percent increase in the revocation rate, he said, the parole revocation rate remains well below the national rate.

Mr. Bohn said case planning for paroled individuals is vital and begins about 120 days before the parole review. About 17 days before an individual's review date, he said, a release plan is developed and recommendations are prepared for determining whether the individual should receive parole. He said the transition programs help make many individuals eligible for parole without compromising public safety because the facilities prepare the individuals for release and help reduce recidivism.

In response to a question from Mr. Mahoney, Mr. Emmer said if an individual is not prepared for release from incarceration, the individual is likely to reoffend. He said good prison and parole and probation strategies are important.

Mr. Emmer said 50 percent of new arrivals to the Penitentiary have been on a probation status. Often, he said, revocation of probation is for a technical violation. He said requiring presentence investigations could assist in managing supervision more effectively.

In response to a question from Judge Hagerty, Mr. Emmer said because the average presentence investigation takes approximately one month, it is important to be sensitive to the court's time and the time the individual is held in a county jail. He said the time needed to conduct a presentence investigation must come down.

Judge Hagerty said her experience has shown that a presentence investigation generally takes about six weeks.

In response to a question from Mr. Rabe, Mr. Emmer said although he is unsure of the number of presentence investigations that are completed, he will provide that information to the commission members. He said some judges prefer having presentence investigations while others do not. However, he said, with a better format for the presentence investigation report, the product could be improved so more judges may want to see the reports before sentencing.

Judge Hagerty said there must be more communication regarding presentence investigations. She said ordering an investigation after a plea agreement may not be necessary.

In response to a question from Representative Carlisle, Ms. Bertsch said because more female transition beds will be needed, the Department of Corrections and Rehabilitation is considering more options and looking to add more beds this summer.

In response to a question from Mr. Mahoney, Mr. Tim Schuetzle, Director, Prisons Division, Department of Corrections and Rehabilitation, said the department occasionally trades state prisoners with prisoners from the federal system on a one-for-one basis.

In response to a question from Mr. Brownshield, Mr. Emmer said the department is considering implementing a pilot reentry program in Belcourt to transition individuals that intend to return to that area after release from incarceration.

In response to a question from Senator Robinson, Mr. Emmer said he could provide the commission with regular updates regarding the parolee population.

In response to a question from Mr. Hendrickson, Mr. Emmer said if an offender were to tamper with any GPS device, the tampering would be considered to be a violation of the individual's probation or parole. He said it is important that there be around-the-clock response to the GPS monitoring and that technical issues be addressed so the department does not lose credibility when implementing a tool such as the GPS monitoring.

Mr. Hendrickson said he has experienced difficulty with the availability of officials of the Field Services Division on nights and weekends.

Mr. Emmer said division staff attempt to be available but it is not always possible in rural areas where the department does not have staff present.

In response to a question from Representative Carlisle, Mr. Emmer said the department is considering adding two sex offender specialists without having funds set aside for those positions. He said the department likely will not be able to go through the biennium without obtaining a deficiency appropriation.

In response to a question from Mr. Hendrickson, Mr. Emmer said many of the costs of the alternative programs are passed along to the offenders. However, he said, \$300 per month is the maximum amount assessed to an offender.

Representative Klemin distributed a copy of 2005 House Bill No. 1277 [[50259.0300](#)] which related to electronic home detention and GPS monitoring for certain offenders. He said home detention is still an alternative which should be considered and the bill would provide uniformity statewide. He said the bill failed in the Senate but he would consider updating the bill for consideration by the commission.

Chairman Kroeber requested commission counsel to include consideration of the bill draft on the agenda for the next meeting.

Chairman Kroeber called on Mr. Alex Schweitzer, Superintendent/Administrator, State Hospital, for comments regarding the sex offender and Tompkins rehabilitation and corrections programs at the State Hospital. Mr. Schweitzer submitted written testimony on the [North Dakota State Hospital Sexual Offender and Tompkins Rehabilitation and Corrections Center](#), a copy of which is on file in the Legislative Council office.

In response to a question from Mr. Mahoney, Mr. Steve Saum, State Hospital, said if a sex offender refuses to admit to having committed a crime, alternative programs are used to treat the individual.

In response to a question from Senator Dever, Dr. Rosalie Etherington, State Hospital, said it is the expectation that civilly committed sex offenders will be treatable and will be able to be released. She said it is important the offenders are able to transition to the community and participate in aftercare. She said the average length of treatment in other states is seven years. However, she said, some individuals are in treatment for a much longer time. She said one individual has been in treatment for seven years and is still at the first stage in the treatment process.

In response to a question from Representative Carlisle, Dr. Etherington said the release of an offender from civil commitment is based on a petition to the court. She said victim and community notification procedures are implemented before the release of the offender.

Mr. Schweitzer said transition housing at the State Hospital campus would assist with the release of sex offenders to the community.

In response to a question from Senator Robinson, Mr. Schweitzer said it is difficult to project the population of civilly committed sex offenders. However, he said, it is possible that the third unit at the State Hospital could be filled within the next two years.

At the request of Chairman Kroeber, Mr. Kerry Wicks, State Hospital, provided members of the commission a tour of a portion of the Tompkins Rehabilitation and Corrections Unit. Upon completion of the tour, Chairman Kroeber adjourned the meeting at 12:30 p.m.

John Bjornson
Commission Counsel

John D. Olsrud
Director

[ATTACH:1](#)