

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

JUDICIAL PROCESS COMMITTEE

Wednesday, February 10, 2010
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Shirley Meyer, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives Shirley Meyer, Stacey Dahl, Lois Delmore, Chris Griffin, Joyce M. Kingsbury, Kim Koppelman, William E. Kretschmar, Lisa Wolf; Senators Arden C. Anderson, Stanley W. Lyson, Tim Mathern, Curtis Olafson, Jim Pomeroy

Members absent: Representatives Nancy Johnson, Lawrence R. Klemin; Senators Tom Fiebiger, Tom Fischer, Judy Lee

Others present: See [Appendix A](#)

It was moved by Senator Anderson, seconded by Representative Delmore, and carried on a voice vote that the minutes of the December 14, 2009, meeting be approved.

MENTAL HEALTH AND SEXUALLY DANGEROUS INDIVIDUAL COMMITMENT COSTS STUDY

Chairman Meyer called on Mr. Terry Traynor, Assistant Director of Policy and Programs, North Dakota Association of Counties, for testimony regarding the commitment costs study. Mr. Traynor, who appeared on behalf of Mr. Aaron Birst, Legal Counsel, North Dakota Association of Counties, presented Mr. Birst's testimony ([Appendix B](#)). He said for the following reasons the North Dakota Association of Counties supports the concept of shifting the responsibility of providing legal defense counsel for those individuals whom the state's attorney is pursuing for civil commitment:

- There is no direct oversight on the county level for evaluating the delivered services.
- Even if oversight could be established, the county officials lack the expertise and qualifications to make those determinations.
- While not staggering, costs can be difficult to predict, especially in the smaller counties in which 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.
- There already exists a statewide system designed to deliver and monitor indigent defense counsel.

Mr. Traynor said there were 1,076 individuals committed to the State Hospital for mental health reasons in 2008 and 1,152 individuals in 2009. He said the vast majority of these cases involved the

state's attorney and an indigent defense lawyer, both of whom are paid by the counties. He said the State Hospital also continues to have a growing population of individuals committed as a result of sexually dangerous individual commitments. He said 17 individuals were committed to the State Hospital as sexually dangerous individuals in 2008 and 14 individuals in 2009. He said there are 61 individuals currently committed to the State Hospital as sexually dangerous individuals. He said in 2009, Cass County paid \$31,380.50 for indigent defense in both mental health and sexual civil commitment. He said this cost 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." He said in contrast, Divide County went from \$608.76 spent on civil commitment costs in 2008 to \$8,635.64 in 2009. He said these contrasts create dilemmas for counties when creating annual budgets.

In response to a question from Senator Lyson, Mr. Traynor said if the state were responsible for providing the legal services and each county paid an amount to the state for those services, it would make budgeting easier for the counties. He said he was not sure, however, if property tax is the appropriate source for paying for these services.

In response to a question from Representative Delmore, Mr. Traynor said if provided with the necessary additional money and staff, it would make the most sense to have the Commission on Legal Counsel for Indigents administer the legal services for mental health and sexual offender commitment cases. He said when 53 separate counties provide this service, there is a lack of consistency in procedures. He said the Commission on Legal Counsel for Indigents would provide the professional oversight that is not available in the counties.

Chairman Meyer called on Mr. Peter D. Welte, State's Attorney, Grand Forks County, Grand Forks, for testimony ([Appendix C](#)) regarding the mental health and sexual offender commitment costs study. Mr. Welte said in 2007, 2008, and 2009, Grand Forks County spent \$30,000 each year for providing defense attorneys in mental health commitment cases. For those same years for sexually dangerous individual commitment cases, the county spent \$28,807.25,

\$21,538.32, and \$7,105.13, respectively. He said while larger counties may be able to control the expenditure of funds on mental health hearings, the lack of uniformity and control in the sexually dangerous individual commitments is problematic. He said while Grand Forks County is able to plan for the wide variation in the sexually dangerous individual commitment case expenditures, most counties in the state are not equipped for the lack of predictability and lack of uniformity in expenditures. He said a natural consequence of this unpredictability in expenditures is that important legal decisions might be based solely on the availability of funding for defense counsel. He said this is unsound public policy. He said conversely the state budgeting process leaves more room for the unpredictability of expenditures. He said an unexpected \$20,000 is more easily planned for and absorbed in a state-level budget than in a county-level budget. He said besides the cost issue, another legitimate reason for transferring the responsibility to the state is policy. He said the issue of the treatment of civilly committed individuals is one of statewide importance. He said the only county individual involved in the entire commitment process is the state's attorney. He said the state is far better equipped to administer the defense attorney component of the civil commitment process than are the 53 separate counties of the state.

In response to a question from Senator Olafson, Mr. Welte said because of the potential permanent deprivation of an individual's liberty in sexually dangerous individual commitment cases, the process for commitment is much different than for a mental health commitment. He said the mental health and chemical dependency commitment procedures are statutorily the same, but the conditions are very different in terms of treatment.

In response to a question from Senator Mathern, Mr. Welte said it is difficult to estimate the actual costs of mental health and chemical dependency civil commitments. He said he has witnessed the "rewards" of the process when he sees how a commitment has helped an individual or the individual's family.

In response to a question from Senator Anderson, Mr. Welte said if the state assumed responsibility for the prosecution and defense of civil commitments, the state would need about one defense attorney per judicial district and one to two attorneys statewide for handling the prosecutorial duties.

In response to a question from Representative Koppelman, Mr. Welte said the best state agency for treating mental health and chemical dependency cases is the State Hospital. He said the best agency for treating the sexually dangerous individuals is the Department of Corrections and Rehabilitation. He said he is not advocating for transferring to the state any prosecutorial duties other than for the civil commitment cases. He said he is advocating for the state assumption of the defense costs for civil commitment cases.

In response to a question from Senator Lyson, Mr. Welte said an attorney needs a very different level of expertise for handling a sexually dangerous individual commitment case than for a criminal case. He said because the individual potentially could be committed for life, it is important to have the attorney with expertise in that area defending that individual.

In response to a question from Representative Dahl, Mr. Welte said individuals committed as sexually dangerous individuals are entitled to an annual review of their case as well as an appeal of the review.

In response to a question from Representative Meyer, Mr. Welte said registered sexual offenders who relocate to North Dakota must get permission from the other state to leave that state. He said the registered sexual offender must be supervised by the parole or probation division of the other state while in North Dakota or be transferred to the North Dakota Parole and Probation Division. He said as a result of the Dru Sjodin case, a uniformity of procedures among states for dealing with registered sexual offenders has developed.

In response to a question from Senator Lyson, Mr. Welte said the commitment process for sexually dangerous individuals is more likely to be triggered by a referral than from a parole or probation violation of the offender.

Chairman Meyer called on Ms. Robin Huseby, Executive Director, Commission on Legal Counsel for Indigents, Valley City, for testimony ([Appendix D](#)) regarding the civil commitment costs study. Ms. Huseby said the Commission on Legal Counsel for Indigents has 30 full-time employees, 3 of whom are in administration. She said the commission administers and oversees 16 staff attorneys and about 42 private attorney contractors. She said through the attorneys the commission provides legal services for about 9,500 cases per year. She said the attorneys do not handle any mental health or sexually dangerous individual commitment cases. She said in 2007 and 2008 there were 1,200 to 1,300 mental health commitment petitions filed each year in the state. She said according to information provided by the Supreme Court, \$262,243 was spent on legal fees for indigent mental health clients in 2007 and \$333,663 in 2008. She said there is little consistency among the counties with respect to oversight, contracts, rates, or training. She said an estimated \$2 million per biennium would be necessary for the commission to assume this responsibility. She said in addition to the cost of attorneys, funding would be necessary for extra staff, office space, and equipment. She said because part of the commission's budget is funded by fees paid by criminal defendants, the costs of legal counsel for mental health cases could not be commingled with criminal defense costs. She said if the commission is required to assume mental health commitment cases, she would recommend a separate budget for criminal and civil cases. She said providing legal counsel for mental health cases would require the hiring of new attorneys. She said the

commission's attorneys are not trained to handle civil commitment cases. She said because of the strict timelines that must be followed in mental health commitment cases, she would recommend hiring another administrator to handle a separate, civil division of the commission. She said the commission would prefer that the responsibility for civil commitments not be given to the Commission on Legal Counsel for Indigents.

In response to a question from Representative Griffin, Ms. Huseby said she would estimate that the assumption of the mental health commitment cases would require two additional administrative employees plus the contract attorneys. She said additional office space also would be needed.

In response to a question from Senator Mathern, Ms. Huseby said she understands the nexus that the North Dakota Association of Counties has made between the need for legal counsel in commitment cases and the services the Commission on Legal Counsel for Indigents provides. She said the expertise for handling commitment cases is available in the state but more training is required. She said these cases require more than an attorney with a license.

In response to a question from Representative Wolf, Ms. Huseby said the Commission on Legal Counsel for Indigents has developed performance standards for all attorneys under contract with the commission.

In response to a question from Representative Meyer, Ms. Huseby said legal counsel in indigent defense cases is typically appointed within 24 hours. She said under the commission's performance standards, the assigned attorney is required to contact the defendant within a certain number of hours.

In response to a question from Representative Dahl, Ms. Huseby said if the commission is required to assume the civil commitment legal counsel responsibilities, it would take a minimum of one year for the commission to implement.

In response to a question from Representative Griffin, Ms. Huseby said sexually dangerous individual commitment cases require more expertise and present more challenges than mental health commitment cases. She said mental health cases, however, operate on extremely tight deadlines.

In response to a question from Representative Delmore, Ms. Huseby said there were about 1,300 mental health commitment filings in 2008 compared to about 15 sexually dangerous individual commitment filings.

Chairman Meyer called on Mr. Nathan Madden, Assistant State's Attorney, Williams County, Williston, for testimony regarding the civil commitment costs study. Mr. Madden provided information ([Appendix E](#)) on the amount Williams County spent on mental health, chemical dependency, and sexually dangerous individual commitment cases. He said the county spent \$30,800.39 on these cases in 2008 and \$29,727.92 in 2007. He said it has become very

difficult in the western counties to find attorneys who are willing to take these cases. He said attorneys who can make three times as much in oil-related cases do not want to take sexually dangerous individual commitment cases. He said counties are reaching the point where no one will take these cases. He said the sexually dangerous individual cases are especially time-consuming. He said the counties are looking for some state entity to take over these responsibilities. He said it would be more streamlined and efficient for the state to handle these cases.

In response to a question from Representative Meyer, Mr. Madden said Williams County has a large transient population that has not been counted as a part of the state's population so the county has not received funding for these individuals. He said, however, this uncounted transient population does have its share of mental health, chemical dependency, and sexually dangerous individual cases. He said the county needs help.

In response to a question from Senator Mathern, Mr. Madden said the county does have an attorney under contract. He said he did not know what the county will do when this contract expires. He said sometimes the only option for the mental health cases is detaining the individual in jail.

In response to a question from Representative Koppelman, Mr. Madden said because the firm under contract knows it is the only firm willing to take the contract, the firm knows it has more bargaining power. He said if the contract attorney selection were done districtwide, there may be more firms from which to choose. He said he is also concerned about oversight issues.

In response to a question from Representative Delmore, Mr. Madden said the state's public defender office in Williston has two attorneys. He said one of those attorneys is running for district judge. He said the office has had to go as far as Valley City to find attorneys.

In response to a question from Representative Meyer, Mr. Madden said the 23-hour hold has not been as much of a problem as finding qualified individuals to conduct the evaluations.

Chairman Meyer called on Mr. Alex Schweitzer, Superintendent, State Hospital, Jamestown, for information ([Appendix F](#)) regarding sexually dangerous individual costs. Mr. Schweitzer said the State Hospital's biennial budget for sexually dangerous individuals is \$10,480,915. He said the annual cost per patient is \$86,344. He said each committed individual has an annual evaluation by a state evaluator and an independent evaluator, each of which is paid by the state. He said the State Hospital has discharged eight individuals under the program since 1997. He said the process has improved, and there has been progress made in terms of treatment. He said the increased use of global positioning devices and increased community involvement have been helpful tools in dealing with sexual offenders.

In response to a question from Representative Griffin, Mr. Schweitzer said all eight of the released individuals are residing in North Dakota. He said the release of three of those individuals was recommended by the State Hospital. The other five, he said, were released based upon order of the district court. He said it can be difficult to find professionals to conduct the independent evaluations. He said some of those professionals come from out of state.

In response to a question from Representative Griffin, Mr. Schweitzer said the State Hospital has 85 beds reserved for sexually dangerous individual commitments. He said the State Hospital may be able to reduce that number in the next budget cycle because admissions to the program have slowed. He said between 2006 and 2009, the number of admissions increased by only five. He said before 2006, there were 10 to 15 individuals admitted per year. He said in 2009, of the 15 individuals evaluated, only 2 were admitted.

INVOLUNTARY MENTAL HEALTH COMMITMENT PROCEDURES STUDY

Chairman Meyer called on Ms. Susan Rae Helgeland, Executive Director, Mental Health America of North Dakota (MHAND), for testimony ([Appendix G](#)) regarding the mental health commitment procedures study. Ms. Helgeland said the board of directors of MHAND met and voted not to take a position on the 24-hour hold issue. She said she would suggest that consumers be consulted directly through the eight regional recovery centers as to their opinion on the hold issue.

Ms. Helgeland said MHAND has concerns about the delivery of services in rural North Dakota for farm and ranch producers and their family members as well as individuals on the reservations. She said MHAND is aware that inpatient psychiatric services are not available in Dickinson. She said she is concerned about the use of law enforcement transporting patients in the same vehicle as prisoners. She said through a grant from the National Mental Health America organization, MHAND has identified two target areas to address the barriers to access of services in rural North Dakota. She said one area will be the federally qualified health care center--the Coal Country Clinic--in Beulah and the other will be the Three Affiliated Tribes at New Town. She said this will be known as the behavioral health initiative. She said the other part of the project will be the delivery of culturally competent behavioral health curriculum to primary care and mid-level providers at the Coal Country Clinic and Three Affiliated Tribes.

In response to a question from Senator Mathern, Ms. Helgeland said transportation for mental health patients has been very challenging, especially in the western part of the state. She said she also is concerned about the lack of mental health services in Dickinson. She said she hopes the documentary that

is being funded by the grant will help raise awareness of the issue of a lack of mental health services in rural areas.

Chairman Meyer called on Ms. Nancy McKenzie, Director, Division of Vocational Rehabilitation, Department of Human Services, for testimony regarding the reimbursement of psychiatric services. Ms. McKenzie said a task force has held meetings in Fargo and Bismarck to study reimbursement contract issues. She said the task force is looking at consistent statewide contracts with respect to reimbursement. She said the task force also is looking at what other services besides inpatient services are needed.

In response to a question from Senator Mathern, Ms. McKenzie said the task force will continue to work with the committee and through the Governor's budget to move its recommendations to the next legislative session.

Chairman Meyer called on Ms. C. Lynn Gifford, Protection and Advocacy of Individuals With Mental Illness, Fargo, for testimony regarding the mental health commitment procedures study. Ms. Gifford said she has been a consumer of mental health services in the state. She said she does not have a problem with requiring an evaluation to determine if an individual should be committed to the State Hospital. She said primary care physicians are capable of prescribing medications used to treat mental health problems.

At the request of Chairman Meyer, committee counsel presented a memorandum entitled [Summary of Recommendations From the December 14, 2009, Meeting of the Judicial Process Committee](#). She said the memorandum summarizes the recommendations made by the presenters at the last meeting with respect to the committee's mental health commitment procedures and availability of psychiatric services study.

CHILD SUPPORT OBLIGATIONS AND ENFORCEMENT STUDY

Chairman Meyer called on Mr. Mike Schwindt, Director, Child Support Enforcement, Department of Human Services, for information ([Appendix H](#)) regarding the administration fee on non-IV-D cases. Mr. Schwindt said as part of the 2005 federal Deficit Reduction Act, all states were required to charge a \$25 fee on all nonassistance IV-D cases when \$500 had been collected on a case. He said since this is a revenue item, the federal government receives 66 percent of the collections, or \$16.50 each time the threshold is reached, whether the \$25 is collected or not. He said in response to the federal legislation, in 2007 the Legislative Assembly gave the department the authority to impose this fee. He said the department recommended the funds be deducted from the payments to custodial parents. He said the 2007 legislation also permitted a judge to order the fee to be collected as past-due support as a means to

shift the burden to the other parents. He said during testimony on the 2007 bill, the department was specifically asked about the fee charged in non-IV-D cases. He said the department's response to that question was that because a fee must be imposed in certain IV-D cases, it would be appropriate to impose a fee in non-IV-D cases as well. He said it was the department's position that the fee should be higher because the state is funding the full cost of those services. He said in non-IV-D cases, the department charges \$2.10 for each month in which a collection is made. He also provided information on the administration fees charged by other states.

Mr. Schwindt said during federal fiscal year 2009, the department collected and paid out \$34 million on behalf of non-IV-D parents, including \$22,480,579 through income withholding. He said during that period, the department retained \$89,404 in non-IV-D fees from 4,684 people. He said the maximum any one individual paid was \$50.40. During that period, he said, the department issued 5,850 income withholding orders and related documents and received about 161,000 payments that were recorded, distributed among cases, and paid out to parents. He said the department also provides the same customer service for non-IV-D cases as it does for IV-D cases.

Mr. Schwindt said in response to 2009 House Bill No. 1175, the department has established a business relations task force to study the interaction of the business community and the child support enforcement program. He said the task force has met three times and is working on preliminary recommendations.

In response to a question from Senator Mathern, Mr. Schwindt said the biggest cost in implementing the administration fee was the programming. He said because the fee was required by federal law on IV-D cases, there was not any additional cost to implement the fee for non-IV-D cases. He said the federal requirement is met differently by different states. He said some states pay the fee out of the state's general fund while others pass the cost on to the parents.

In response to a question from Representative Wolf, Mr. Schwindt said some obligors use the automatic withdrawal for making their child support payments rather than income withholding.

In response to a question from Representative Delmore, Mr. Schwindt said an obligor can check if the obligor's payment was received by the state disbursement unit either by telephone or through a service on the Internet. He said the obligor can see if the payment posted and if there is any outstanding balance. He said the decision was made to collect the fee from the custodial parent because the noncustodial parent is already paying child support and the noncustodial parent does not know if the custodial parent is on assistance. He said it was a matter of fairness.

In response to a question from Representative Meyer, Mr. Schwindt said when a parent calls the customer service number, the parent can access information directly from the parent's account. He said the department's customer service number is staffed from 8:00 a.m. to 5:00 p.m. daily and until 7:00 p.m. on Mondays. He said the department receives thousands of calls per month on its 800 numbers.

Chairman Meyer called on Ms. DeAnn M. Pladson, attorney, Fargo, for testimony ([Appendix I](#)) regarding the child support enforcement study. Ms. Pladson said she has been practicing family law for over 17 years in the area of contested divorce, child custody, parenting time disputes, and child support issues. She said one area of concern is child care expenses for the children. She said it is not uncommon to see child care expenses range from \$400 to over \$1,000 per month. She said it is not unusual to see court orders for child support in an amount that is equal to or less than child care expenses for the entire month. She said that leaves the custodial parent with no money to provide for basic needs for the children. She said even though courts can deviate from the guidelines for child care expenses, parents may not want to risk the cost and expense of going to court to try to secure that deviation. She said in Minnesota child care expenses are paid by each parent on a pro rata share of the parental income for determining support. She said the pro rata share is determined by looking at each parent's percentage of the total income after deducting the tax benefits of paying the day care expenses. She said North Dakota does not have an income share's model for determining child support but rather looks at the net income of the child support obligor. She said it would be helpful to attorneys and the court to have guidelines developed to assist in determining when to deviate from the guideline amount of support for purposes of paying for the increased needs of the children related to child care expenses.

Ms. Pladson also discussed modifications for obligors. She said the department does not offer any self-help measures for obligors who lose their job because of the economic downturn or other reasons out of their control. She said the only remedy for the obligor is to hire an attorney, which is time-consuming and expensive. She said there is a pilot program under way to address this issue. She said there is a need for this type of assistance. She also addressed concerns relating to the enforcement of out-of-state orders and enforcement measures, including the suspension of occupational or professional licenses. She said the department should take an active role in educating practitioners on various issues to avoid situations in which arrears accrue when they are not intended.

In response to a question from Representative Delmore, Ms. Pladson said it could cost an individual \$2,000 to \$3,000 in legal fees and costs to take a

child support matter back to court for modification. She said it may take years to pay off these attorney's fees.

In response to a question from Representative Kretschmar, Ms. Pladson said it may take up to a month to draft a motion for modification of support followed by six to eight weeks before the matter can be heard before a judge or judicial referee. She said if a child support order is modified, the change can be made retroactive to the date the motion is filed.

Chairman Meyer called on Mr. Paul Schumacher, Lincoln, for testimony ([Appendix J](#)) regarding the child support enforcement study. Mr. Schumacher discussed issues he has dealt with personally in dealing with the child support process. He said while there are penalties for an obligor who does not pay child support, there are no penalties for the custodial parent who does not abide by a court order for visitation and residential responsibility. He said there needs to be a level playing field for both parents. He provided a list of recommended changes.

In response to a question from Senator Mathern, Mr. Schumacher said an obligor can have his or her case reviewed only every three years.

Representative Dahl said an obligor can request a review every year; however, Child Support Enforcement is required to conduct a review every three years only.

OMBUDSMAN PROGRAM FOR CHILD AND FAMILY SERVICES STUDY

Chairman Meyer called on Ms. Sheri McMahan, Fargo, for testimony ([Appendix K](#)) regarding the ombudsman program study. Ms. McMahan said as a supporter of creating an ombudsman program accessible to families involved with child and family services in North Dakota, she has reviewed the structure of existing programs in other states. She said some states such as Iowa and Arizona have independent ombudsman agencies that assist citizens with nearly every area of state government, not just child welfare. She said some child welfare ombudsman programs are independent agencies; others are housed within the human services agency and may include child welfare ombudsman work with a range of other human services-related areas such as medical services, long-term care, civil rights, or even employee concerns. She said Tennessee's program, which was initially funded by an Office of Juvenile Justice and Delinquency Prevention grant, is now state-funded. She said the program has two staff members who investigate complaints involving foster children, children in kinship placements, and families involved with Child Protective Services. She said at first most people in the system were wary of the program. Over time, she said, the Tennessee program has created more accountability while emphasizing persuasive powers to effect positive change.

Ms. McMahan said Arizona's ombudsman office is a separate agency empowered to investigate nearly every other agency in the state. She said Arizona's Department of Economic Security, which includes human services, incorporates a huge number of agencies which have in-house ombudsmen, but the state ombudsman office is a statutory agency based on a classical ombudsman model.

Ms. McMahan said she explored many programs, some of which were identified as ombudsman programs, others with labels such as child advocate, public counsel, and inspector general. She said some would not fall under formal ombudsman definitions because the programs are housed within the human services system itself. She said many of these would actually be considered internal complaint resolution offices, which may handle civil rights complaints and employee complaints as well as consumer complaints.

Ms. McMahan said if there were a child and family services ombudsman program in North Dakota, there would be many decisions to make, including how to select the ombudsman, the qualifications necessary, the jurisdiction, access to records, and funding. She said the other states' general fund appears to be the source of funding for most programs. She said most programs are allowed to seek and accept grant funding. She said Oregon's funding is provided in part by a \$1 charge on marriage licenses, divorce filing fees, and adoption filing fees.

In response to a question from Representative Delmore, Ms. McMahan said the cost of implementing an ombudsman program in the state would depend on the amount of authority granted to the program. She said many of the other programs in the country are located in cabinet agencies such as in a human services department.

In response to a question from Senator Olafson, Ms. McMahan said her interest in this program is a result of a personal experience in which her son spent 33 months in foster care. She said during that time, she had a very difficult time obtaining information and answers.

In response to a question from Senator Anderson, Ms. McMahan said to allow for time to assess the problem, the program in North Dakota could begin on a small scale. She said the program could begin with two .5 full-time equivalent positions. She said the ombudsman should have either law training or access to legal services.

Chairman Meyer called on Ms. Kim Kay C. McCarty-Martin for testimony regarding the ombudsman program for children and families study. Ms. McCarty-Martin discussed the issues she faced when her son was diagnosed with mental health issues. She said she had a difficult time obtaining information regarding her son's condition and treatment. She said she was continuously denied information from social services agencies regarding her son's condition and his location. She said over her objections, her ex-husband, who was an alcoholic, was granted custody of her son. She said her son

was killed while in her ex-husband's care. She said there was not a paper trail for her to follow, and she was denied access to all records. She said her second son also was taken from her without notice.

Chairman Meyer called on Ms. Carol K. Olson, Executive Director, Department of Human Services, for testimony regarding the ombudsman program study. Ms. Olson said the department operates an ombudsman program in its Aging Services Division. She said she would provide information to the committee regarding that program.

In response to a question from Representative Meyer, Ms. Olson said social services in the state are state-supervised and county-administered. She said there is a complaint process in place and there are avenues for individuals to follow to resolve issues. She said the county should be providing information to parents.

Chairman Meyer called on Ms. Tara Muhlhauser, Director, Children and Family Services, Department of Human Services, for testimony regarding the ombudsman program study. Ms. Muhlhauser said only courts can remove a child from a family. She said when a child is removed from a home, the family is served with notice and legal documentation on the case which includes the basis behind the action. She said court-appointed legal counsel is appointed in custodial change cases.

In response to a question from Representative Meyer, Ms. Muhlhauser said a social worker does not have a right to remove a child without a court order. She said law enforcement can remove a child in an emergency situation but a hearing must be held within 96 hours. She said the parents have a constitutional right to due process.

In response to a question from Senator Mathern, Ms. Muhlhauser said the Department of Human Services takes all complaints seriously. She said in some cases it is necessary to engage the county to see why policies are not being followed. She said when she worked in the state of Washington she witnessed conflict between that state's human services department and the state's ombudsman program. She said both agencies were state agencies. She said ombudsman programs are not common in the child welfare area.

In response to a question from Representative Wolf, Ms. Muhlhauser said when the Department of Human Services receives a complaint, the individual in the department with the required expertise is assigned to deal with the complaint. She said depending on the situation, calls may be delegated by the program administrator. She said when a child is removed from a home, the county decides where to place the child based upon the court order. She said

the best interest of the child standard is used. She said the parent has the opportunity to appear in court with legal counsel to object to the placement.

In response to a question from Representative Meyer, Ms. Muhlhauser said part of the purpose of the team process is to keep the family together. She said it is difficult to imagine a parent being denied information about his or her child.

Senator Lyson said in his experience, when law enforcement removed a child from a home, the child was taken to the emergency room. He said law enforcement then notified child protective services that the child was in the emergency room. He said the law requires a copy of the law enforcement report to be provided to the parent or guardian.

In response to a question from Representative Griffin, Ms. Muhlhauser said the facts are identified in the report as reasons for the removal. She said this information is served on the parents as well as the notice of hearing.

In response to a question from Representative Koppelman, Ms. Muhlhauser said caseworkers in the state have good training. She said the caseworker is required to provide the child protective service report to the parents. She said if the department received a complaint about a caseworker's failure to follow the procedures, the department may notify the caseworker's supervisor. She said it is up to the county to supervise its employees.

COMMITTEE DISCUSSION

In response to a request from Chairman Meyer, Ms. Muhlhauser said she would forward the committee's request for information from the Department of Human Services on the available psychiatric services and costs for those services in North Dakota.

Chairman Meyer said the next meeting of the committee may be held at the State Hospital. She said a tour of the State Hospital and the sexual offender unit would be helpful to the committee in its studies of mental health commitment procedures and the mental health and sexually dangerous individual commitment costs.

No further business appearing, Chairman Meyer adjourned the meeting at 3:00 p.m.

Vonette J. Richter
Committee Counsel

ATTACH:11