

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

JUDICIAL PROCESS COMMITTEE

Thursday, September 16, 2010
Harvest 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, Chris Griffin, Nancy Johnson, Joyce M. Kingsbury, Lawrence R. Klemin, Kim Koppelman, William E. Kretschmar, Lisa Wolf; Senators Arden C. Anderson, Tom Fiebiger, Tom Fischer, Judy Lee, Stanley W. Lyson, Tim Mathern, Curtis Olafson, Jim Pomeroy

Members absent: Representatives Stacey Dahl, Lois Delmore

Others present: See [Appendix A](#)

It was moved by Senator Mathern, seconded by Representative Wolf, and carried on a voice vote that the minutes of the June 9, 2010, meeting be approved as distributed.

REPORTS

Comprehensive Status and Trends Report

Chairman Meyer called on Mr. Tom Trenbeath, Deputy Attorney General, Attorney General's office, for the presentation of the Attorney General's report ([Appendix B](#)) regarding the unlawful drug use and abuse and drug control and enforcement efforts in the state. Mr. Trenbeath said alcohol abuse continues to be the biggest problem in the state. He said the decreasing use of tobacco is likely due to educational efforts. He said the new "high" is prescription drug abuse. He said prescription drugs are safe only to the extent they are prescribed and used as directed. He said prescription drugs may be overprescribed in some instances. He said one of the issues related to prescription drugs is the difficulty in disposing of the drugs when no longer needed. He said educational and enforcement efforts are being taken to deal with the problem of prescription drug disposal. He said the Attorney General's take-back program involves placing lockboxes in police departments. He said the police departments arrange for the destruction of the collected drugs. He said in the first few months of the program, 60 pounds or 34,000 doses of prescription drugs were surrendered through the program. He said alcohol continues to be a problem among the state's youth. He said as long as alcohol use is acceptable to parents, it will be a problem.

In response to a question from Senator Fischer, Mr. Trenbeath said it was only this year that law enforcement realized that synthetic marijuana existed. He said the Attorney General's office is hearing

anecdotal information from the medical community about the negative effects of the synthetic marijuana product.

In response to a question from Representative Griffin, Representative Koppelman said the Administrative Rules Committee has approved the emergency rules adopted by the State Board of Pharmacy. He said a ruling by a district judge in Cass County held that the rule did not give adequate notice.

In response to a question from Representative Meyer, Mr. Trenbeath said the synthetic marijuana is both illegal to sell and to possess in the state. He said, however, importation is easy because synthetic marijuana products can be sold legally in Minnesota.

In response to a question from Senator Lee, Mr. Trenbeath said the prescription drug management program has been important in managing the prescription drug abuse problem.

Commission on Legal Counsel for Indigents Annual Report

Chairman Meyer called on Ms. Robin Huseby, Executive Director, Commission on Legal Counsel for Indigents, Valley City, for the presentation of the commission's annual report ([Appendix C](#)). Ms. Huseby said for the year beginning July 1, 2009, and ending June 30, 2010, the Commission on Legal Counsel for Indigents provided counsel in about 9,100 cases. She said 44 percent of those cases were handled by the full-time equivalent (FTE) public defenders, and 56 percent were handled by private attorneys who independently contract with the commission to provide legal services. Of those cases, she said, 3,094 were felonies, 3,172 were misdemeanors, 1,586 were juvenile matters, and the remainder of the caseload consisted of appeals, postconviction petitions, and miscellaneous cases. She said cases are being handled by a combination of 16 FTE public defenders and contract attorneys. She said there are about 42 attorneys who take excess or conflict cases. She said finding attorneys to take indigent cases continues to be a problem. She said the commission's staff includes 30 FTE employees and 7 part-time employees. She said the six public defender offices are located in Williston, Dickinson, Minot, Bismarck, Grand Forks, and Fargo. She said the administrative office is located in Valley City. She said some of the commission's accomplishments during the first five years of operation include the

adoption of performance standards for adult criminal providers and juvenile providers, the creation of a case reporting system, the adoption of fraud risk assessments, and the hiring of a financial officer. She said the commission's budget for the 2009-11 biennium consists of \$11,420,365. Of that amount, she said, \$9,470,148 is from the general fund, and \$1,950,217 is generated from court fees paid by defendants. She said the commission will be asking the Legislative Assembly for three FTE positions to staff a public defender office in the Northeast Judicial District, which includes Devils Lake, Grafton, Pembina, Rugby, Cavalier, and other cities. She said the commission is having difficulty finding attorneys willing or able to take indigent cases in that region. She said the commission will also be asking for funds to raise the rate for legal services from \$65 per hour to \$70 per hour. She said \$65 to \$75 per hour is about the midrange hourly rate around the country for indigent defense.

In response to a question from Senator Olafson, Ms. Huseby said there are two contract attorneys in Devils Lake. She said the attorneys in that area are turning away regular cases and do not want to take indigent cases. She said because of the large and diverse geography in this area, it has been difficult to retain contract attorneys. She said it is helpful to have a public defender in an area for those situations when a contract attorney suddenly quits.

In response to a question from Representative Kretschmar, Ms. Huseby said the court is responsible for assessing defense costs to those defendants who are able to reimburse the state for legal services.

In response to a question from Senator Fiebiger, Ms. Huseby said paying an hourly rate of \$75 per hour for attorneys who handle sexually dangerous individual commitment cases could be justified because of the expertise required. She said she would like to see the rate raised to \$75 per hour for all contract and conflict attorneys. She said \$75 per hour may be enough to attract contract attorneys but not conflict attorneys.

In response to a question from Representative Meyer, Ms. Huseby said continuing legal education and other training are paid from the commission's budget. She said the indigent defense attorneys may attend up to two out-of-state training seminars per year. She said she tries to select the younger attorneys to attend those training seminars.

MENTAL HEALTH AND SEXUALLY DANGEROUS INDIVIDUAL COMMITMENT COSTS STUDY

Chairman Meyer called on Ms. Huseby for the presentation of a proposal relating to the appointment of legal counsel for cases involving the commitment of sexually dangerous individuals. She said at the committee's last meeting, she was asked to speak with the State Bar Association of North Dakota to discuss the responsibility for providing legal services

for sexually dangerous individual cases and to prepare a bill draft regarding that issue. She said the State Bar Association of North Dakota did not believe there was adequate time to form a task force to review the issue but agreed to help with legislation. She said the Commission on Legal Counsel for Indigents has met on the issue and has adopted a resolution that indicates the commission does not wish to expand the legal services currently being provided. She said the resolution also provided that if the commission is given the responsibility for the sexually dangerous individual cases, the commission would request a separate division and budget for those cases. She said she was unable to get information from the counties on how much is spent on legal defense for sexually dangerous individual cases.

Ms. Huseby presented a bill draft ([Appendix D](#)) requiring the Commission on Legal Counsel for Indigents to provide legal services for cases involving the civil commitment of sexually dangerous individuals. She said the proposal includes an appropriation of \$814,293 for the 2011-13 biennium. She said this amount includes funding for one FTE housed in the Valley City office and four attorneys located across the state.

In response to a question from Representative Klemin, Ms. Huseby said the bill draft does not address legal services in mental health commitment cases. She said there are about 1,400 mental health cases in the state per year versus 20 sexually dangerous individual cases. For that reason, she said, the bill draft concentrates on the sexually dangerous offender cases.

In response to a question from Senator Lee, Ms. Huseby said it would be difficult to have a single agency responsible for providing legal services for vulnerable adults, indigent criminal defendants, mental health cases, and sexually dangerous individual cases. She said part of the dilemma in finding a way to address the need is that the commission's mission is to provide criminal defense counsel for indigents. She said the commission does not want to get into providing counsel for those who can pay. She said it would not be palpable to the public to provide legal services for nonindigent individuals. She said in the case of vulnerable adults, it may be necessary to rely on the state's attorneys and the guardians to do their jobs.

In response to a question from Senator Lyson, Ms. Huseby said the process of committing a sexually dangerous individual is a civil commitment process. She said while many of these individuals have committed a crime, an individual does not have to have a conviction in order to be committed as a sexually dangerous individual.

In response to a question from Senator Fiebiger, Ms. Huseby said according to the Supreme Court, in 2007 there were 13 new sexually dangerous individual cases filed. She said the appropriation in the bill draft is just an estimate based on that number.

In response to a question from Representative Meyer, Ms. Huseby said in commitment of sexually dangerous individual cases, either the judge will try to find a lawyer to appoint or the judge directs the clerk to do so.

In response to a question from Representative Griffin, Ms. Huseby said the commission handles some civil cases, such as juvenile cases and child support contempt.

Chairman Meyer called on Mr. Alex Schweitzer, Superintendent/Administrator, State Hospital, Jamestown, for testimony regarding the civil commitment of sexually dangerous individuals. Mr. Schweitzer said the commitment of sexually dangerous individuals has nothing to do with having committed a crime. He said the commitment is a civil proceeding and is a mental health issue not a criminal issue.

In response to a question from Senator Lyson, Mr. Schweitzer said at the time of the hearing, the individual has to be determined to be a sexually dangerous individual. He said the individual's criminal record is irrelevant.

In response to a question from Senator Mathern, Mr. Schweitzer said the State Hospital is represented by the state. He said the patient is the one who would benefit by having legal counsel with more expertise in handling the commitment cases.

In response to a question from Representative Griffin, Mr. Schweitzer said there are about 15 to 20 filings per year, and from those about 8 to 10 individuals are committed.

In response to a question from Representative Koppelman, Mr. Schweitzer said in most cases, the individuals have been receiving adequate legal counsel.

Chairman Meyer called on Mr. Terry Traynor, Assistant Director of Policy and Programs, North Dakota Association of Counties, regarding the bill draft. Mr. Traynor said the North Dakota Association of Counties is very supportive of the bill draft. He said counties would like the state to take responsibility for all civil cases, but the sexually dangerous individual cases are a step in the right direction. He said the sexually dangerous individual commitment process is a relatively new process and a new cost for counties. He said the cost is much more erratic for counties than mental health commitment cases. He said there are certain counties, such as Burleigh and Stutsman, which bear the majority of the costs because of the location of the State Penitentiary and the State Hospital. He said while the individuals may be getting adequate legal counsel, there are 53 different ways of arranging for sexually dangerous individual legal counsel. He said placing this responsibility on the county puts the county in a difficult position. He said the county prosecutor's role is to represent the county in the proceeding, so the county prosecutor should stay out of the selection of the defense counsel. He said consequently, the responsibility for hiring the defense counsel falls on other officials like the county

auditor. He said because legal costs for mental health commitments, guardians ad litem, and sexually dangerous individual commitments are all in one budget, it is difficult to separate out the cost of sexually dangerous individual commitment cases.

Mr. Traynor said the North Dakota Association of Counties will work to provide the best possible data on the costs of providing legal counsel in sexually dangerous individual cases. He said the North Dakota Association of Counties supports the bill draft.

In response to a question from Senator Lee, Mr. Traynor said when the state was facing the issues related to indigent defense, it was difficult to find an appropriate agency to handle the responsibility. He said ultimately the Commission on Legal Counsel for Indigents was created. He said he thinks the commission is the best place to handle the sexually dangerous individual cases.

Chairman Meyer called on Mr. Kevin Glatt, Auditor, Burleigh County, for testimony regarding the bill draft. Mr. Glatt said he supports the bill draft. He said in his experience, there are few attorneys willing to take sexually dangerous individual cases. He said the district court administrator is reluctant to get involved in the process because it is a county function. He said the state's attorney is reluctant to get involved in the legal defense selection because the state's attorney is prosecuting the case. He said in Burleigh County the responsibility then falls to the county auditor. He said the auditor just pays the bills. He said Burleigh County spent \$16,000 in 2008 and \$31,000 in 2009 on costs associated with sexually dangerous individual cases.

In response to a question from Representative Griffin, Mr. Glatt said attorneys handling these cases typically bill at \$75 per hour; however, that amount varies.

In response to a question from Senator Lyson, Mr. Schweitzer said the cost of psychological evaluations is paid for by the state. He said the cost of the initial and annual psychological evaluation, which is \$5,000 per evaluation or \$355,000 per biennium, is a part of the State Hospital's budget.

In response to a question from Senator Mathern, Mr. Schweitzer said if the bill draft passes, those evaluation costs should remain in the State Hospital's budget.

Committee Discussion

Senator Lee said because the issue of legal counsel for sexually dangerous individual cases is a problem that needs to be addressed, the bill draft should be moved forward. She said while the proposal in the bill draft may not be the ideal solution, the problems with it can be worked out in the legislative session.

Representative Klemin said the current system is working. He said the question is who is responsible for paying for it. He said the Commission on Legal Counsel for Indigents does not want this

responsibility. He said the counties should be responsible for finding the appropriate location for this.

Representative Meyer said the counties have offered proposals.

Representative Griffin said there is a problem. He said in some counties the decision to move forward on sexually dangerous individual cases is based on budgetary reasons. He said the attorneys in the state do not have the expertise to handle these cases. He said if Ms. Huseby's primary concern is adequate funding, then adequate funding should be provided.

Senator Mathern said a centralized location for providing these services would create a higher level of efficiency and expertise. He said he agreed with Senator Lee that the bill draft should be moved forward to continue to be worked on during the legislative session.

Senator Olafson said if the Commission on Legal Counsel for Indigents does not want this responsibility, perhaps the Office of Administrative Hearings would be a better choice.

Senator Mathern said the idea of moving the responsibility to the Office of Administrative Hearings may have merit.

Senator Fiebiger said he agreed with Senator Lee and Representative Griffin. He said he likes the idea of having four attorneys with expertise in the area of civil commitment of sexually dangerous individuals. He said this bill draft would get the responsibility out of the counties and into an agency with the expertise to handle it. He said the Commission on Legal Counsel for Indigents is the best solution. He said while there may be issues to address, this bill draft is an excellent start.

It was moved by Senator Mathern, seconded by Representative Griffin, and carried on a roll call vote that the bill draft relating to legal counsel for cases involving the commitment of sexually dangerous individuals be approved and recommended to the Legislative Management. Representatives Meyer, Griffin, Johnson, Kingsbury, Kretschmar, and Wolf and Senators Anderson, Fiebiger, Fischer, Lee, Mathern, Olafson, and Pomeroy voted "aye." Representatives Klemin and Koppelman and Senator Lyson voted "nay."

OMBUDSMAN PROGRAM FOR CHILD AND FAMILY SERVICES STUDY

At the request of Chairman Meyer, committee counsel presented a bill draft [\[10133.0100\]](#) relating to the establishment of a family and children's ombudsman program in the Governor's office. She said the bill draft would establish an ombudsman, who would be appointed by the Governor and confirmed by the Senate, in the Governor's office. She said the bill draft is modeled after a similar law in Washington.

Chairman Meyer called on Mr. John Ford, Executive Director, North Dakota Coalition for Child Protective Services and Foster Care Reform, Rugby, regarding the bill draft. Mr. Ford said he has

continually run into obstacles in his dealings with the Department of Human Services. He said there were many instances in which he was unable to get adequate services from the department. He said social workers have no accountability. He said even though the department says there are avenues for complaints, he has done all of them and nothing has happened. He said social workers are difficult to work with and are inconsistent. He said these examples demonstrate the importance of this bill draft. He said social service agencies have absolute power, no accountability, and are protected by immunity provisions. He said he relocated his family to North Dakota because of the state's strong family values. He said, however, there is no protection of children and families. He said all of his complaints fell on deaf ears. He said children are our most important resource.

Chairman Meyer called on Mr. Richard Bond for testimony ([Appendix E](#)) regarding the ombudsman program study and bill draft. Mr. Bond said he is a 17-year-old who has been diagnosed with Asperger's syndrome. He said he had some problems and needed a specialist to help him with his challenges. He said his mother asked Cass County Social Services for assistance. He said he was put in a foster home where he was abused. He said the system is not working. He said there is a lack of services in the state, and there is not a place to voice one's concerns.

Chairman Meyer called on Ms. Rose Bond for testimony ([Appendix F](#)) regarding the bill draft. Ms. Bond said she is Richard Bond's mother. She said her son, who is an Eagle Scout, was diagnosed with Asperger's syndrome and was having anger issues. She said when his anger issues became a threat to his safety, she asked social services for help for her son. She said she was referred to juvenile court. She said she wanted a referral to an out-of-state school that could help her son. She said she was led to believe the only way to get help was to report her son to police during his rages. She said she supports the creation of an ombudsman program. She said an ombudsman would hold social services workers accountable for their actions. She said an ombudsman should be able to remove poor case managers.

Chairman Meyer called on Ms. Kris Wishinsky regarding the bill draft. Ms. Wishinsky said she is a senior at the University of North Dakota with a 3.8 grade point average. She said she has spent over 25 years dealing with the social services system. She said her first foster home placement was when she was six years old. She said the resources available to people in North Dakota with complaints is a joke. She said she had an experience that involved the sexual abuse of her eight-year-old son by her stepson. She said a social worker told her she needed to consent to a forensic examination for her son. She said the social worker threatened to remove her children from the home if she did not comply with the request. She

said she has been bullied, threatened, coerced, and brought up on abuse charges. She said her family has spent \$20,000 defending themselves from frivolous claims. She said she receives harassing telephone calls from her social worker. She said she received a threatening and harassing telephone call from the social worker on the day of her husband's heart surgery. She said social services agencies need to have accountability. She said you cannot ask people to evaluate their coworkers. She said there is a need for someone to advocate for families, especially for those people in a lower economic status and with less education. She said many people do not know the right questions to ask.

In response to a question from Representative Meyer, Ms. Wishinsky said an ombudsman would be helpful. She said her name will be in a child abuse registry for 10 years because of her experience. She said things could have been handled better.

Chairman Meyer called on Ms. Nicole Brown for testimony regarding the bill draft. Ms. Brown said her children were taken from her twice. She said she received no assistance on what she needed to do to get them back. She said she filed complaints against the social worker. She said the complaints resulted in a conclusion that the social worker was doing nothing wrong. She said when her caseworker was finally taken off her case, she got her children back in three months without doing anything different. She said she was told if she voluntarily terminated her parental rights, the children could be placed with her parents. She said the children have now been placed in foster care in Minot, and no contact is allowed. She said there is a need for a neutral person to go to for help.

Chairman Meyer called on Ms. Lorie Hendricks for testimony regarding the bill draft. Ms. Hendricks said she is Nicole Brown's mother. She said she and her husband wanted to adopt Ms. Brown's children--her grandchildren. She said social services said she and her husband were not excited enough about adopting Ms. Brown's children. She said the social worker was taken off the case. She said the social worker made everything difficult. She said the social worker who was removed from the case was later promoted to supervisor. She said she called Ms. Tara Muhlhauser, Director, Children and Family Services, Department of Human Services, who was willing to meet with her. She said in the meantime, her grandchildren were moved to Minot to live with an adoptive couple. She said social services made no attempt to place the children with other family members. She said this bill draft will help families. She said an ombudsman is important for an independent review of children and family services issues.

Chairman Meyer called on Ms. Deidre Godycki for testimony regarding the bill draft. Ms. Godycki said the bill draft has great elements. She said children are our future. She said a child hurt in out-of-home placement is just as bad as a child hurt in the family home. She said the bill draft will give citizens a place

to go and be heard. She said the bill draft will help many people.

Chairman Meyer called on Ms. Salli McCollum for testimony regarding the bill draft. Ms. McCollum said she also had parental rights terminated and has had issues with social services. She said her request to have the caseworker removed from her case was ignored. She said also ignored were requests of other family members to take custody of her children. She said social services workers feel like they are above the law. She said her social worker refused to allow any reunification. She said this bill would give parents a place to go for help.

Chairman Meyer called on Ms. Sheri McMahon for comments regarding the bill draft. Ms. McMahon said there are issues regarding the need for legal representation which are not necessarily part of an ombudsman program. She said many people in the social services system cannot afford their own legal representation. The indigent defense attorneys do not always have expertise in this area. She said there is also a need to explore the need for trained indigent defense attorneys for child and family issues. She said she supports the bill draft. She said administrative rules developed by the ombudsman office would help define the ombudsman's duties.

In response to a question from Senator Olafson, Mr. Ford said the bill draft is a really good start. He said the problem is agencies should not be investigating themselves. He said social workers in the state do not have expertise in the area to which they are assigned. He said until there is accountability that is outside the social services agency, there will continue to be problems. He said even if the agencies are not doing anything wrong, they should not be investigating themselves.

In response to a question from Representative Koppelman, Ms. Hendricks said a book written by a social worker indicated that parents have about a 5 percent chance of getting their child back if a social worker is involved.

In response to a question from Representative Koppelman, Ms. Hendricks said she was told that they would close the book on the adoption investigation if one of the parents indicated that they would use spanking to discipline children.

In response to a question from Senator Lee, Mr. Ford said when asked to provide models for an ombudsman program, he suggested using the ombudsman program in the state of Washington.

In response to a question from Senator Lee, Mr. Ford said his lawsuit against the state has been dismissed. He said a federal lawsuit has been filed. He said he spent \$10,000 getting a child protective services' finding overturned. He said if he prevails in his federal suit, it will prevent this violation from happening to other children. He said his child was denied the right to practice her own religion while in the state's care.

Chairman Meyer called on Ms. Muhlhauser for questions from the committee regarding the bill draft.

In response to a question from Senator Lee, Ms. Muhlhauser said when the department receives a complaint, the complaint may be assigned to an appropriate member of the staff. She said a decision is made about how to contact the county. She said the county may be asked to explain the situation. She said other involved parties may be asked to come forward to discuss the situation. She said the department tries to facilitate conversation to determine what is causing the tension. She said regional supervisors may be involved. She said the department also considers where the case is in the legal process. She said the department tries to maintain a working conversation with the county. She said the department is in a difficult position to try to tell counties what to do. She said the department has a written protocol called constituent protocol.

Ms. Muhlhauser said she worked for several years in Washington's human services department. She said that department worked with Washington's ombudsman program. She said the Washington ombudsman has authority to investigate all child fatalities. She said the program is designed to listen to constituents but is not that willing to listen to the human services department. She said the difference between Washington and North Dakota is that Washington has a state-administered social services system and North Dakota has a county-administered system. She said because both the Washington ombudsman program and the human services department answered to the Governor, the conflicts between the two departments put the Governor in an awkward position.

In response to a question from Senator Fiebiger, Ms. Muhlhauser said the department can direct the county to go back and do more work on a case. She said when it comes to citizen complaints, there is a great difference between being heard and about disagreeing about the outcome of a case. She said there the avenues are in place to hear and address parents' complaints.

In response to a question from Senator Lyson, Ms. Muhlhauser said the department will investigate allegations of a county social worker who has committed perjury.

In response to a question from Representative Meyer, Ms. Muhlhauser said social workers are county employees, and the counties are responsible for firing those social workers. She said the county would typically consult the department about a case before that happens.

In response to a question from Senator Olafson, Ms. Muhlhauser said Washington is a very litigious state. She said this may be a product of the ombudsman program and the mood in the state. She said she has concerns about the confidentiality provisions in the bill draft. She said the bill draft opens files to the ombudsman or the ombudsman's designees. She said this includes the department's online database.

In response to a question from Senator Olafson, Ms. Muhlhauser said she thinks the bill draft duplicates what the Department of Human Services is already doing. She said she does not think this approach is the way to get a better system for children. She said the department does not want children to be in unsafe foster care placement. She said parents should be able to say what they need to say to caseworkers or anyone involved in the process.

In response to a question from Representative Griffin, Ms. Muhlhauser said the court requires a court review of each case at least once every 12 months if the child is in the state's custody. She said there is an administrative process that requires activity on each case every three months. She said decisions are made with parents at the table. She said a parent can ask for a review at any point. She said the courts have been very receptive about hearing cases more often. She said indigent parents have access to counsel.

In response to a question from Representative Griffin, Ms. Muhlhauser said while it is rare for the Department of Human Services to reverse a county-made decision, it has been done. She said decisions about a child's case plan are made at the county level. She said, however, regional supervisors sit on the teams that make those decisions. She said when the department recommends an action to the county, the expectation is that the county will follow the recommendation.

In response to a question from Representative Koppelman, Ms. Muhlhauser said she is aware of situations in which social workers have been dismissed. As a social worker, she said, she has an ethical obligation to report unethical behavior.

In response to a question from Senator Lyson, Ms. Muhlhauser said there are times when the appointment of a new caseworker might be a good decision. She said there is not a social worker transition policy.

In response to a question from Representative Klemin, Ms. Muhlhauser said the North Dakota Board of Social Work Examiners has a process for handling complaints. She said the North Dakota Board of Social Work Examiners is a citizen board, the members of which are appointed by the Governor.

In response to a question from Senator Lee, Ms. Muhlhauser said the department is working on the goal of kinship care. She said while there are situations in which it is not in the child's best interest for kin to be involved, the goal is to involve kin whenever possible.

In response to a question from Representative Meyer, Ms. Muhlhauser said Mr. Tom Tupa is the chairman of the North Dakota Board of Social Work Examiners.

In response to a question from Senator Fischer, Ms. Muhlhauser said she would be willing to discuss with the counties the issues that were raised by the previous presenters. She said regional supervisors are very actively involved in termination of parental

rights cases. She said there are disagreements about how long children should have to wait for their parents. She said the department is also looking at postadoption services to provide services to keep the adoption relationship in place.

Chairman Meyer called on Ms. Carol K. Olson, Executive Director, Department of Human Services, for testimony regarding the ombudsman study. Ms. Olson said the Department of Human Services is not perfect, but the system does work. She said there is a need to work on what goes on at the county level. She said the department would like to have an opportunity to work with the counties, to look at issues that have been raised. She said she would like the state to have more authority over the county in some cases. She said it is important to not lose sight of the children's best interests. She said there are some areas of high concern in the counties, and those areas need to be worked on. She said the department will work on the issues internally to get to the root of the problems. She said she is not in favor of another layer of government, which is proposed in the bill draft.

In response to a question from Representative Klemin, Ms. Muhlhauser said the current complaint process is called constituent protocol. She said there is a step-by-step process that is followed when an inquiry or complaint is received. She said this is not a prescriptive resolution, but rather resolution is on a case-by-case basis.

Committee Discussion

It was moved by Senator Mathern and seconded by Representative Griffin that the bill draft relating to the establishment of a family and children's ombudsman program in the Governor's office be approved and recommended to the Legislative Management.

Senator Mathern said it is important that the Department of Human Services is willing to conduct an internal process to look at the issues that have been raised in this study. He said there are a number of things in the bill draft that need to be resolved, but those issues could be addressed during the legislative session.

Senator Lee said the bill draft will require a large staff and is given great power with no accountability. She said although she agrees that counties are serving citizens well, she would like the Legislative Assembly to give the Department of Human Services more authority over counties.

Senator Olafson said this bill draft goes farther than it needs to go. He said he could see the value in having an ombudsman available to provide information to parents and other parties.

Representative Koppelman said he is conflicted. He said although something needs to be done, he is not sure if the program in the bill draft is the way to do it.

Senator Fiebiger said Ms. Muhlhauser did not disagree that the current system was not adversarial.

He said this bill draft removes the ombudsman from that adversarial process. He said he supports the idea in the bill draft.

Representative Klemin said the bill draft duplicates processes already in place in the Department of Human Services and the North Dakota Board of Social Work Examiners. He said perhaps improvements need to be made in those two agencies. He said there are areas of conflict within the bill draft as it relates to the confidentiality of information.

Representatives Meyer, Griffin, and Wolf, and Senators Anderson, Fiebiger, and Mathern voted "aye." Representatives Johnson, Kingsbury, Klemin, Koppelman, and Kretschmar and Senators Fischer, Lee, Lyson, Olafson, and Pomeroy voted "nay." **The motion failed.**

Chairman Meyer said she expects the Department of Human Services to make an effort to address the issues that have been raised in this study. She said she would like the department to offer proposals for change to the Legislative Assembly during the next legislative session.

CHILD SUPPORT OBLIGATIONS AND ENFORCEMENT STUDY

Chairman Meyer called on Mr. James Fleming, Acting Director, Child Support Enforcement Division, Department of Human Services, for testimony ([Appendix G](#)) regarding arrears and developments in child support activities, including child support guidelines, child care expenses, interstate cases, and outreach to the State Bar Association of North Dakota. Mr. Fleming said the statewide arrears total as of June 30, 2010, including interest, was \$282,754,306. He said the amount of arrears owed in IV-D cases, which are the cases being served by the state program, has dropped for the first year since the program began collecting this information. He said this was accomplished by a number of new or refined business practices, including increased collection of current support through income withholding and employer compliance, realistic child support obligations, and improved collection of arrears.

Mr. Fleming said child support guidelines, adopted by the department as administrative rules, are reviewed on a quadrennial basis. He said each review leads to fewer and fewer recommended changes, but one major proposed change under review is the amount of current support to be ordered when an obligor is incarcerated for at least a year. He said the drafting advisory committee had extensive discussion about not rewarding criminal behavior through reduced child support obligations but acknowledging the uncollectibility of the arrears that accrue because of nonpayment while the obligor is incarcerated.

Mr. Fleming said at an earlier meeting of the committee, a private attorney suggested that deviations from the child support guidelines for child

care expenses were inconsistently applied from court to court. He said child care expenses were discussed by the advisory committee. He said that committee did not recommend a guideline change in this area. He said the drafting committee asked the department to prepare material for the State Bar Association of North Dakota and the public explaining the level of child care expenses that are included in the guidelines based on United States Department of Agriculture figures for the cost of supporting children and the level of child care expenses for which a deviation would be appropriate. He said the material will be included in an upcoming publication of the State Bar Association of North Dakota.

Mr. Fleming said the private attorney also mentioned the difficulty that some parents have in collecting child support from obligors in other jurisdictions. He said each state's child support enforcement program has enacted the Uniform Interstate Family Support Act, which provides a standard process in all states for requesting and receiving help in cases. He said to help make sure all available steps are taken in cases in which the state has asked for another state's help, there is an outgoing interstate center in Grand Forks. He said this has been helpful in developing contacts in other states to assist in child support collection and enforcement matters.

In response to a question from Representative Wolf, Mr. Fleming said the public hearing on the proposed changes to the child support guidelines will be held on October 28, 2010, in Room 220 of the judicial wing, State Capitol.

In response to a question from Senator Fischer, Mr. Fleming said while the public hearing is in October, the changes will not be finalized until after the legislative session.

In response to a question from Representative Koppelman, Mr. Fleming said the adoption of the Uniform Interstate Family Support Act is congressionally mandated. He said temporary assistance for needy families funding is conditioned on the passage of the uniform Act.

In response to a question from Representative Meyer, Mr. Fleming said notice is given before a driver's license or occupational license is suspended. He said obligors are given the opportunity to set up a payment plan. He said the department also has the authority to issue temporary driver's licenses for traveling to and from a job.

INVOLUNTARY MENTAL HEALTH COMMITMENT PROCEDURES STUDY

At the request of Chairman Meyer, committee counsel presented a bill draft [10210.0100] regarding evaluations in involuntary mental health commitments. She also presented a bill draft [10158.0100] that would authorize the use of telemedicine technologies for court-ordered examinations.

Senator Mathern said the first bill draft deals with the definition of the mental health commitment law. He said a rewrite of a section in the mental health commitment law resulted in a reduction in the number of persons who could initiate a hold action. He said the bill draft would clarify that an evaluation of a respondent's mental status can be done by an expert examiner. He said a committee of the North Dakota Hospital Association supports this change. Senator Mathern said it has been difficult to attract psychiatrists to the state. He said this has resulted in limited services in some parts of the state. He said the second bill draft would make sure those types of services could be provided through telemedicine. He said the bill draft clarifies that telemedicine can be used. He said these two bill drafts will make the commitment process work better without extending the time limitations. He said the mental health commitment study came before this committee because of the interest in increasing the time within which an evaluation must be done. He said there was no support for that change.

Chairman Meyer called on Mr. Tim Blasl, Vice President, North Dakota Hospital Association, for testimony ([Appendix H](#)) regarding the bill drafts. Mr. Blasl said the North Dakota Hospital Association supports both bill drafts. He said the bill drafts would help to enhance mental health services in the state. He said the use of telemedicine would enhance the use of psychiatrists in underserved parts of the state.

It was moved by Senator Mathern, seconded by Representative Kretschmar, and carried on a roll call vote that the bill draft relating to the use of telemedicine technologies for court-ordered examinations be approved and recommended to the Legislative Management. Representatives Meyer, Griffin, Johnson, Kingsbury, Klemin, Koppelman, Kretschmar, and Wolf and Senators Anderson, Fiebiger, Fischer, Lee, Lyson, Mathern, Olafson, and Pomeroy voted "aye." No negative votes were cast.

It was moved by Representative Koppelman, seconded by Representative Wolf, and carried on a roll call vote that the bill draft relating to evaluations in involuntary mental health commitments be approved and recommended to the Legislative Management. Representatives Meyer, Griffin, Johnson, Kingsbury, Klemin, Koppelman, Kretschmar, and Wolf and Senators Anderson, Fiebiger, Fischer, Lee, Lyson, Mathern, Olafson, and Pomeroy voted "aye." No negative votes were cast.

OTHER BUSINESS

Representative Meyer said she would like the committee to consider making a recommendation to the Governor to include in his budget funding for eight additional beds in Dickinson to deal with the mental health and homeless situation.

Senator Lee said the need for crisis beds is a growing problem throughout the state.

Representative Klemin said homeless beds and crisis beds may not be the same thing.

In response to a question from Representative Kingsbury, Representative Meyer said because of the housing shortage in Dickinson, there is a lack of facilities for the homeless and mentally ill.

Senator Lyson said the state should not be involved in housing the homeless.

Senator Mathern said the Department of Human Services should be encouraged to take into consideration the care of the homeless when developing its mental health program.

Senator Lee said the homeless problem is a separate issue that can be addressed in the legislative session. She said mental health and homelessness are separate issues. She said she is not comfortable moving that recommendation forward.

It was moved by Senator Mathern, seconded by Representative Kretschmar, and carried on a voice vote that the chairman and the staff of the Legislative Council be requested to prepare a report and the bill drafts recommended by the committee and to present the report and recommended bill drafts to the Legislative Management.

It was moved by Representative Wolf, seconded by Representative Kretschmar, and carried on a voice vote that the committee be adjourned sine die.

No further business appearing, Chairman Meyer adjourned the meeting at 3:30 p.m.

Vonette J. Richter
Counsel

ATTACH:8