

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

COMMISSION ON ALTERNATIVES TO INCARCERATION

Thursday, September 13, 2012
Harvest Room, State Capitol
Bismarck, North Dakota

Senator Stanley W. Lyson, Chairman, called the meeting to order at 10:00 a.m.

Members present: Senators Stanley W. Lyson, Dave Oehlke, Connie Triplett; Representatives Eliot Glasheim, Lawrence R. Klemin, William E. Kretschmar; Citizen Members Leann K. Bertsch, Bradley A. Cruff, Duane Johnston, Justice Mary Muehlen Maring, Thomas L. Trenbeath, Keith Witt

Members absent: Citizen Members Maggie Anderson, Edward Brownshield, Paul D. Laney, Judge Lisa McEvers, Dr. Gary Rabe

Others present: Senator Larry Robinson, member of the Legislative Management, was also in attendance.

See [Appendix A](#) for additional persons present.

It was moved by Senator Oehlke, seconded Mr. Johnston, and carried on a voice vote that the minutes of the April 18, 2012, meeting be approved as distributed.

MONETARY THRESHOLDS FOR FELONY OFFENSES

Chairman Lyson called on Mr. Paul Myerchin, North Dakota Association of Criminal Defense Lawyers, for comments ([Appendix B](#)) regarding the monetary thresholds for felony theft offenses.

In response to a question from Senator Lyson, Mr. Myerchin said the \$500 threshold that triggers a felony theft offense may be viewed as a deterrent, but the value of the property is not likely a consideration of the criminal mind when the person is committing the offense.

In response to a question from Representative Klemin, Mr. Myerchin said the North Dakota Association of Criminal Defense Lawyers has focused on the threshold for theft offenses and has not examined other felonies because the members generally view changing the monetary threshold as a housekeeping issue and desire to keep the proposed change straightforward in that the amount can be tied to past increases in the consumer price index. Although there is a \$100 threshold with respect to forgery, he said, forgery offenses take another level of criminal mind through the commission of fraud and deceit.

Chairman Lyson called on Mr. Aaron Birst, North Dakota Association of Counties, for comments regarding the monetary threshold for felony theft offenses. Mr. Birst distributed a copy of a bill draft [[10070.0200](#)] considered by the interim Judiciary

Committee in September 2010, which related to penalties for crimes under which a monetary amount triggers the level of penalty. He said this has been an issue that state's attorneys have worked on for a few years. He said he has polled state's attorneys twice and found that there is a level of apathy with respect to this issue. However, he said, there were a couple of strong opinions both ways on the issue. He said the issue was recently discussed by the North Dakota State's Attorneys Association Executive Board, and members of the board believe that if a change was going to be made, the 2010 bill draft, which generally raises the monetary threshold to thefts of \$1,000 to trigger a felony offense, would be the preferred approach. However, he said, the bill draft also addressed other issues, such as an increased penalty for larger property crimes and the amendment of some dollar amounts with respect to lesser crimes.

In response to a question from Senator Oehlke, Mr. Birst said judges and prosecutors have some discretion in tailoring penalties, and there is the potential for deferred imposition of sentences which reduces the likelihood of an individual going to prison for a Class C felony. However, he said, Department of Corrections and Rehabilitation supervision is required for individuals placed on probation. Although statutes guide prosecutors in charging individuals, he said, there is a significant amount of discretion involved in the criminal justice system.

Ms. Bertsch said although a felony sentence requires supervised probation, there are some judges who are placing offenders on unsupervised probation.

Mr. Birst said if judges are not requiring supervised probation for felony offenses, there are issues that should be addressed, and the subject of supervised probation may be an appropriate interim study topic.

In response to a question from Mr. Trenbeath, Mr. Birst said the determination of the value of stolen property is difficult. He said the assessment of the value of property is usually the price at which a product is marked, but he has seen cases where the defense has argued the marked value was inflated. He said the criminal justice system attempts to address those issues in a reasonable manner.

Senator Lyson said increasing the threshold to trigger a felony offense could lead to more people being placed in county jails.

Mr. Birst said an individual who steals something valued at \$1,000, but who has little criminal history, is not likely to face significant incarceration. He said

changing the monetary threshold is not likely to change incarceration levels significantly.

In response to a question from Senator Lyson, Mr. Myerchin said he has not reviewed all of the details of the 2010 bill draft. However, he said, the change to \$1,000 does not make up for all the years of inflation since the \$500 level was set. Although changing the threshold to \$1,500 would be an improvement, he said, the rate of inflation has been significantly greater. He said if a defendant has had very little criminal history, the defendant is not likely to be sentenced to jail time and would likely receive a deferred imposition of sentence. However, he said, the individual would have a felony record which leads to collateral issues, such as loss of voting rights and difficulty in obtaining jobs. He said the provisions in the 2010 bill draft relating to imposing a Class A felony for thefts of larger amounts probably is not necessary.

In response to a question from Representative Klemin, Mr. Myerchin said the members of his association did not discuss changing the penalties for various levels of offenses. He said the punishment levels for the crimes being discussed are sufficient, and sentencing issues are being left to the courts.

Representative Klemin said there was opposition to the bill draft proposed during the last interim from businesses because it was viewed as a way to allow a thief to steal more before being charged with a felony.

Representative Glassheim said a \$500 threshold 30 years ago may have been appropriate. However, he said, inflation makes the punishment much more severe now. Although a loss of \$500 is significant, he said, it seems that the law should make adjustments due to inflation.

Senator Lyson said the \$500 threshold can serve as deterrent, and the amount should not be increased.

Representative Klemin said the punishment for the theft offenses has not been increased, and the penalties should be examined in conjunction with any increase in the monetary threshold for the offense.

Representative Glassheim said he does object to increasing monetary penalties if the threshold for making an offense a felony is increased.

In response to a question from Representative Klemin, Commission Counsel said the [Supplementary Rules of Operation and Procedure of the Legislative Management](#) generally require a bill draft to be reviewed at two meetings of a committee.

DRIVING UNDER SUSPENSION PENALTIES

At the request of Chairman Lyson, Commission Counsel reviewed a bill draft [13.0067.02000] relating to driving under suspension penalties. Commission Counsel said the bill draft was revised to incorporate suggestions made at the last meeting of the committee, including allowing a court to dismiss a charge of a driver under suspension upon the motion if the defendant's operator's license is reinstated within 60 days of the date of the offense and the

defendant provides to the court satisfactory evidence of the reinstatement.

In response to a question from Mr. Trenbeath, Commission Counsel said the provision on page 4 of the bill draft allowing the Director of the Department of Transportation to impose conditions upon the use of a restricted license may be viewed as a delegation of legislative authority, but similar provisions are not uncommon in the North Dakota Century Code. He said the Legislative Assembly frequently grants executive branch officials some degree of discretion in implementing laws adopted by the Legislative Assembly.

Representative Klemin said the discretion of the Director of the Department of Transportation should be limited to the restrictions listed in the bill draft.

It was moved by Representative Klemin, seconded by Mr. Trenbeath, and carried on a roll call vote that the bill draft be amended to remove language in subsection 6 on page 4 of the bill draft which grants the Director of the Department of Transportation discretion to impose additional restrictions upon the use of a motor vehicle by an offender operating under a restricted license. Senators Lyson, Oehlke, and Triplett and Representative Klemin and Citizen Members Johnston, Trenbeath, and Witt voted "aye." Representatives Kretschmar and Glassheim and Citizen Members Bertsch, Cruff, and Muehlen Maring voted "nay."

It was moved by Representative Klemin, seconded by Senator Triplett, and carried on a roll call vote that the bill draft, as amended, relating to driving under suspension and the issuance of temporary restricted operator's licenses be approved and recommended to the Legislative Management. Senators Lyson, Oehlke, and Triplett and Representatives Glassheim, Kretschmar, and Klemin and Citizen Members Bertsch, Cruff, Muehlen Maring, Johnston, Trenbeath, and Witt voted "aye." No negative votes were cast.

ROBINSON RECOVERY CENTER

Chairman Lyson called on Mr. Bill Sparke, Robinson Recovery Center, for comments ([Appendix C](#)) regarding the Robinson Recovery Center.

In response to a question from Senator Lyson, Mr. Sparke said there are essentially two groups of clients who leave the center before completion of the treatment process. He said the first group involves individuals who leave during the first two weeks of treatment while the center is attempting to get the individuals acquainted to the process. The second group, he said, consists of individuals who leave after approximately two and one-half months when the individuals begin to work full time and begin to feel good physically. He said some of the individuals who leave the program will reapply for admittance after 30 days. He said if a client brings drugs or alcohol

into the facility, the client is discharged from the program.

In response to a question from Representative Kretschmar, Mr. Sparke said the center has clients who have been referred to it by the courts and clients who are on probation or parole. With respect to the court referrals, he said, he prefers the judge to order that the treatment period be until successful completion of treatment rather than a specified time period.

Chairman Lyson called on Senator Larry Robinson for comments regarding the center. Senator Robinson said although the Director of ShareHouse, Mr. Bill Lopez, could not be in attendance at the meeting, Mr. Lopez said the Robinson Recovery Center will need approximately \$200,000 to \$250,000 in additional funding to sustain operations. Senator Robinson said the center had a deficit of \$85,000 for 2012. However, he said, ShareHouse has subsidized the program. He said the program has been successful, and the success has been attributable, in part, to the many legislative leaders who have played roles in supporting the center. Although a 37 percent success rate may seem small, he said, that rate is way better than having no treatment option available. He said the center has made a big difference in many lives, and it would be great to have a similar facility in the western part of the state. He said treatment is a lifelong process and not an event with a set date for completion. He said representatives of the Department of Human Services are aware of the budgetary concerns, but he is unaware of any plans the Governor and the Office of Management and Budget have with respect to including additional funding within the budget of the Department of Human Services for the Robinson Recovery Center.

In response to a question from Senator Triplett, Mr. Sparke said it would be difficult to add additional treatment beds for women clients because of the configuration of the facility. He said the building is designed to keep the male and female clients separate.

In response to a question from Senator Oehlke, Mr. Sparke said the ShareHouse facilities have been receiving funding through the state of Minnesota. He said the Robinson Recovery Center accepts only North Dakota residents and is primarily funded by the state.

In response to a question from Representative Klemin, Commission Counsel said during prior interims, the commission has sent a letter to the Governor regarding recommendations for inclusion of items in the executive budget, including recommendations on the center.

Senator Triplett said Mr. Sparke indicated there are three areas in which the center could use additional resources, including increasing the number of beds for female clients. She said all of the concerns are valid, but her primary concern would be increasing the number of beds available to female clients and

increasing salaries. She said she is less concerned with the need for hiring a psychiatric nurse.

Mr. Trenbeath said an expression of support for additional funding for the center without specifying how the funds should be used would be appropriate.

Senator Oehlke said addressing the specific needs would draw the Governor's attention to those specific needs.

Mr. Cruff said he would prefer a general statement of support for the center.

Senator Lyson said the need for beds for female clients was a specific need addressed in Mr. Sparke's presentation.

It was moved by Senator Triplett, seconded by Senator Oehlke, and carried on a voice vote that the commission recommend to the Governor increased funding in the executive budget for the Robinson Recovery Center, including funding specifically addressing the expansion of beds available for female clients.

Senator Triplett said the increased funding should emphasize increased treatment for pregnant women.

INTEGRATED DUAL DISORDER TREATMENT

Chairman Lyson called on Mr. Jeff Stenseth, Southeast Regional Human Service Center, for a presentation ([Appendix D](#)) regarding integrated dual disorder treatment.

In response to a question from Representative Klemin, Mr. Alex Schweitzer, Department of Human Services, said the department has not increased staff to implement the integrated dual disorder treatment program.

In response to a question from Senator Triplett, Mr. Stenseth said the integrated dual disorder treatment program is a vigilant effort to stay focused. He said programs that were reviewed from other states and which were unsuccessful generally failed due to organizational changes or decisions to go in different directions.

It was moved by Senator Oehlke, seconded by Representative Klemin, 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 draft recommended by the commission, and to present the report and recommended bill draft to the Legislative Management.

It was moved by Mr. Trenbeath, seconded by Representative Kretschmar, and carried on a voice vote that the meeting be adjourned. No further business appearing, Chairman Lyson adjourned the meeting at 12:35 p.m.

John Bjornson
Commission Counsel

ATTACH:4