

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

COMMISSION ON ALTERNATIVES TO INCARCERATION

Monday and Tuesday, February 10-11, 2014
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator Ron Carlisle, Chairman, called the meeting to order at 12:30 p.m.

Members present: Senators Ron Carlisle, John Grabinger, Margaret Sitte; Representatives Lawrence R. Klemin, William E. Kretschmar, Marie Strinden; Citizen Members Maggie D. Anderson, Leann K. Bertsch, Dan Donlin, Mark A. Friese, Duane Johnston, Paul D. Laney, Justice Lisa McEvers, Justice Mary Muehlen Maring, Jason T. Olson, Gary Rabe, Thomas L. Trenbeath

Member absent: Citizen Member Meredith Huseby Larson

Others present: See [Appendix A](#)

It was moved by Senator Grabinger, seconded by Senator Sitte, and carried on a voice vote that the minutes of the December 9-10, 2013, meeting be approved as distributed.

MINIMUM MANDATORY SENTENCING

Chairman Carlisle called on Mr. Bob Wefald, Retired District Judge, for comments ([Appendix B](#)) regarding mandatory minimum sentences. Mr. Wefald said because the use of drugs and alcohol leads many people to jail, it is important that secure drug treatment facilities be available. He said there are better ways to use public resources than to fill prisons with drug addicts.

In response to a question from Representative Klemin, Mr. Wefald said resentencing individuals who were sentenced to mandatory sentences would not be too difficult and could be resolved quickly. He said resentencing should not apply to driving under the influence felonies.

In response to a question from Senator Sitte, Mr. Wefald said because he accepted the requirements of the law, he never felt that his hands were tied. He said he resolved issues based upon the law.

COMMUNITY SERVICE AGENCIES

Chairman Carlisle called on Mr. Dell Horn, Jamestown Community Corrections, for comments ([Appendix C](#)) regarding community service organizations.

In response to a question from Chairman Carlisle, Mr. Horn said it is important that the state continue funding for community service programs. He said community service programs also are funded through local government sources and fees imposed upon the offenders participating in the programs. He said he would like to see the funding of programs continued through a three-pronged approach but would like to see additional state funding provided.

In response to a question from Representative Kretschmar, Mr. Horn said there are 15 regions for community service programs. He said the Jamestown region includes five counties and one city. He said three counties provide some community service options but are not part of the North Dakota Community Corrections Association. He said not all areas of the state are covered by community service programs.

In response to a question from Chairman Carlisle, Mr. Horn said members of the Community Corrections Association pay dues to belong to the association. He said the association compiles data on behalf of its members.

Mr. Johnston said Pierce, Bottineau, and McHenry Counties and cities within those counties participate in a regional community service organization. He said each of the political subdivisions contributes to support the organization, and that organization also receives state money and fees from offenders.

In response to a question from Chairman Carlisle, Mr. Horn said when determining the value of the services provided under the program, he used \$8 as a wage because many jobs performed are minimum wage type work.

In response to a question from Ms. Bertsch, Mr. Horn said the community service organizations have not tracked the number of offenders who end up serving jail time for failure to complete community service obligations. However, he said, the Community Corrections Association is examining the potential for tracking recidivism rates.

In response to a question from Chairman Carlisle, Mr. Horn said state support for the community service programs has been at the same level during the last two bienniums. While some areas have not seen much change in the utilization of community service, he said, some areas such as Williston have seen substantial increases. He said the change in the driving under the influence laws may result in additional use of community service programs.

In response to a question from Justice McEvers, Mr. Horn said judges have different philosophies on what they believe are effective, and some judges use their discretion and are very creative with respect to providing alternatives to jail.

Ms. Nancy Keating, Centre, Inc., said by observing judges, you can see trends in sentencing. She said some judges are very concerned with fees and the costs of evaluations and treatments. She said community service programs generally impose a local fee and there also is a statutory state community service fee. She said some offenders have been able to obtain jobs as a result of community service, which is a big benefit to all those involved. In addition, she said, some people who perform community service continue to perform volunteer service later.

In response to a question from Chairman Carlisle, Ms. Keating said although she is not certain about the impact of the driving under the influence law changes with respect to district courts, there appear to be more driving under the influence offenses in municipal courts.

In response to a question from Representative Strinden, Ms. Keating said sometimes an offender will be matched with a community service program that is of particular interest to that individual.

Mr. Horn said one judge he knows often prefers to place an offender in an area outside the offender's interest.

In response to a question from Chairman Carlisle, Ms. Keating said drug court participants are a big part of community service programs.

DEPARTMENT OF CORRECTIONS AND REHABILITATION REPORT

Chairman Carlisle called on Mr. Pat Bohn, Department of Corrections and Rehabilitation, for a presentation ([Appendix D](#)) regarding sentencing data and inmate populations ([Appendix E](#)).

In response to a question from Chairman Carlisle, Mr. Bohn said although the number of individuals incarcerated in this state has increased, the state still has a low per capita incarceration rate compared to most other states. However, he said, there has been a 160 percent increase in the number of individuals on parole and probation status over the last 20 years. He said he is unsure of the impact the changes in the driving under the influence laws will have. However, he said, the State Penitentiary has seen two new cases so far.

In response to a question from Justice McEvers, Mr. Bohn said the statistics provided in his presentation use Bureau of Criminal Investigation crime data, which shows a higher crime rate per capita in Cass County compared with Burleigh County and Grand Forks County.

In response to a question from Justice Muehlen Maring, Mr. Bohn said he is unsure if the statistics for Burleigh County are skewed due to the fact that correctional facilities are located in Bismarck and there are a number of offenders in transition facilities.

In response to a question from Chairman Carlisle, Ms. Bertsch said there does not appear to be many families of offenders moving to Bismarck to be near incarcerated family members.

In response to a question from Representative Klemin, Mr. Bohn said more analysis needs to be done to determine the reasons for the differences in admissions to the State Penitentiary among counties and judicial districts. He said there appear to be some differences in prosecutorial decisions and sentencing practices in Burleigh County that may account for the higher frequency of prison sentences in Burleigh County. He said judges in other judicial districts may decide to use local alternative to incarceration programs to avoid sending an offender

to the Penitentiary. He said prosecutorial practices have a big impact on the number of prisoners sent to the Penitentiary.

In response to a question from Senator Grabinger, Mr. Bohn said judges sentencing offenders to a term of one year and one day to avoid having the offender placed in a county jail may also play a role in the statistical disparities.

In response to a question from Chairman Carlisle, Mr. Bohn said the women's prison is at capacity. Because the new prison has a variety of units, such as administrative segregation and infirmary, he said, there may appear to be open beds when the facility is actually at capacity. He said the general population beds at the State Penitentiary are generally filled to capacity.

In response to a question from Justice Muehlen Maring, Mr. Bohn said the prison population statistics reflect prisoners sent to other states. He said when the state sends a prisoner to a facility in another state, there is generally a prisoner-for-prisoner swap.

In response to a question from Chairman Carlisle, Ms. Bertsch said an extensive review is done to determine who is included in a prisoner exchange. She said the number of prisoners exchanged with other states generally is around 25. She said money is not exchanged in the prisoner swaps. She said it is very important to be able to move prisoners to facilities in other jurisdictions.

In response to a question from Chairman Carlisle, Mr. Bohn said it is easier to budget for contract housing for the department if contract housing agreements are for a term longer than one year.

In response to a question from Representative Strinden, Mr. Bohn said the department has not had to implement its plan to address situations in which there is not a bed available at a particular level when needed.

In response to a question from Representative Klemin, Mr. Bohn said under the plan, the department would let a county sheriff know when a bed is open, and a prisoner would remain in a county jail until a bed is available. He said the plan would look at the priority for bringing particular inmates into the system. He said the department would continue to use strategies for release of prisoners as well.

In response to a question from Representative Strinden, Mr. Bohn said the capacities and populations at the county jails vary. He said Burleigh County is at capacity and is sending inmates elsewhere.

In response to a question from Mr. Donlin, Mr. Bohn said treatment programs generally are not available in county jails. He said the idea of sentencing offenders to one year and one day to provide for treatment time may be somewhat of a myth.

In response to a question from Chairman Carlisle, Mr. Bohn said although the recidivism reduction program has initially targeted Cass and Burleigh Counties, the other counties with large detention centers would also be targets for implementation of the program. He said the department will develop a proposed budget to implement the program in Cass and Burleigh Counties.

In response to a question from Justice Muehlen Maring, Mr. Bohn said about 85 percent of the population in jails are presentence status. He said the recidivism program would attempt to provide incentives to those offenders to demonstrate that if they are willing to make changes, they may help themselves in the sentencing process.

In response to a question from Senator Sitte, Mr. Bohn said research has demonstrated that investment of resources on those most likely to recidivate is vital. He said it is important to avoid placing low-risk offenders in unnecessary services. By exposing low-risk individuals to a positive reinforcement program, he said, there can be an avoidance of damage to those not likely to recidivate, and resources can be prioritized appropriately. He said support of the program by this commission would be helpful in moving the program forward.

MENTORSHIP PROGRAM

Chairman Carlisle called on Ms. Faye Miller, Big Brothers Big Sisters of Bismarck-Mandan, for comments regarding mentorship programs. Ms. Miller said volunteers and mentors can make a significant difference in the life of a child. She said mentoring at-risk children is an alternative to incarceration, and all children can achieve success in life. She said the social worker for the Big Brothers Big Sisters program recently asked a young boy what he wanted to do when he grew up, and the boy answered that when he got out of prison he would like to be a fireman. She said that answer is illustrative of the point that some children do not know that they have options other than following in the path of incarcerated parents. She said the Big Brothers Big Sisters program mentors a significant number of children who have a parent who is incarcerated.

Ms. Miller said the Big Brothers Big Sisters of Bismarck-Mandan was awarded a three-year grant from the Department of Justice to mentor children of incarcerated parents. At first, she said, it was difficult to identify children whose parents were incarcerated. However, she said, by the end of the grant period, over 50 percent of the children served by the program had a parent who was incarcerated. She said the program receives referrals from the regional human service center, social services personnel in Burleigh and Morton Counties, parents, and foster parents.

Ms. Miller said national studies have shown that children with mentors are 52 percent less likely to skip school, 46 percent less likely to use illegal drugs, and 27 percent less likely to use alcohol. In addition, she said, the studies have shown that children in mentoring programs are more likely to listen to their parents and will have better relationships with friends and family. She said 94 percent of the mentored children surveyed expressed confidence that they will achieve their goals. She said the impact of mentoring programs is felt long after the child graduates from high school.

In response to a question from Representative Klemin, Ms. Miller said it costs approximately \$100 per month to provide a mentor for a child. She said costs include background checks and time devoted by a social worker or caseworker to interview the child and family and monitor the relationship of each match in the program. She said the program helps prevent many at-risk children from becoming part of the juvenile justice system. She said Big Brothers Big Sisters programs in a number of other states receive state funding as a means to help break the cycle of incarceration.

In response to a question from Chairman Carlisle, Ms. Anderson said she is not aware of any existing programs that would have funds available to assist mentoring programs. She said some social work services may be available depending on the type of service.

In response to a question from Ms. Anderson, Ms. Miller said there are two Big Brothers Big Sisters programs that are responsible for serving the entire state. She said the other program is based in Fargo under The Village Family Service Center.

In response to a question from Representative Strinden, Ms. Miller said the program uses the Big Brothers Big Sisters of America case standards. She said the Bismarck-Mandan program is a United Way agency and receives approximately one-third of its funding through the United Way. She said the remaining funding for the program is provided through other grants and contributions and a fundraising event.

CASS COUNTY JAIL PROGRAMS

Mr. Laney said county jails are examining alternative concepts, and Cass County has partnered with the Department of Corrections and Rehabilitation to work to provide evidence-based tools in county facilities.

Mr. Andrew Frobig, Cass County Sheriff's office, said Cass County utilized a federal grant to implement a mental health program in its jail. Although there was initially some resistance with jail employees participating in the program, he said, the jail employees have seen the success of the program and had complete buyin as part of the overall jail program. He said similar programs should be considered in other jails if funding is available.

Ms. Lynette Tastad, Clinical Mental Health Coordinator, Cass County Jail, said she works with a postbooking jail diversion program in Cass County through which she provides a brief mental health questionnaire to determine if an individual has a mental illness. She said the intent of the program is to identify mental illnesses before the individual gets to the arraignment hearing. If possible, she said, an attempt will be made to get the individual into treatment rather than spending time waiting in county jail. She said the program works with the Southeast Human Service Center to connect the individuals with services either through the human service center or other available services. She said the Southeast Human Service Center provides a case plan for individuals on supervised probation to provide mental health services in an attempt to reduce recidivism. She said the jail-based program receives many referrals from defense attorneys for screening, and a review panel can recommend additional treatment or jail if immediate sanctions are needed for failure to comply with the program. She said the program provides very individualized treatment plans.

In response to a question from Chairman Carlisle, Ms. Tastad said the program began with a federal grant but has continued through funding provided by Cass County.

Mr. Laney said the program is included within the sheriff's department budget. He said the expense of the program is largely the salary of Ms. Tastad and supplies that she utilizes. He said the Department of Human Services provides caseworkers through the Southeast Human Service Center.

In response to a question from Mr. Trenbeath, Ms. Tastad said the mental health assessment consists of a brief screening to determine whether further assessment is necessary. She said the assessment looks for certain diagnostics before the individual is admitted into the program. She says most individuals participating in the program have a dual diagnosis of mental illness and an addiction.

In response to a question from Justice McEvers, Ms. Tastad said appearances are scheduled before municipal courts on a much quicker basis than district courts.

In response to a question from Senator Sitte, Ms. Tastad said some of the participants in the program receive a deferred imposition of sentence, and some are able to avoid jail time if the program is completed.

LENGTH AND DETERMINATION OF PROBATION BILL DRAFT

At the request of Chairman Carlisle, Commission Counsel reviewed a bill draft [[15.0040.02000](#)] relating to length and determination of probation, supervision of probation, and conditions of probation.

Ms. Bertsch said the bill draft would keep the term of probation at five years for more serious felonies, limit the term of probation to three years for other felonies, and reduce the term of probation from two years to one year for misdemeanor offenses. She said research has shown that probation extending more than 18 months shows diminishing returns. Under current law, she said, the department has to go to a state's attorney for a petition to have probation terminated early. She said the bill draft would allow those who are doing well on probation to be released from supervision. She said the bill draft would also give judges the option of unsupervised probation for nonviolent felonies. She said there is no need for supervised probation for many low-level felonies. She said the inclusion of the 48-hour jail hold for a violation of probation provides a swift response which has been shown to be effective in other jurisdictions.

In response to a question from Dr. Rabe, Ms. Bertsch said some other states that have implemented a 48-hour hold have seen large reductions in revocations of probation. She said the other states have experienced less jail bed days for revocations overall. Because the hold time would be at the cost of the department, she said, the department would be judicious in the use of that option.

In response to a question from Mr. Friese, Ms. Bertsch said the reference to the one-year limit for misdemeanors probably should be changed to 360 days. She said the probation officers are the individuals best-suited to determine whether an offender has met the conditions of probation.

Justice Muehlen Maring said she has concerns with the constitutionality of the 48-hour hold provision.

Mr. Bohn said that issue has come up in other states, and when the constitutionality has been tested, courts have ruled that it is constitutional. He said the hold is based on the authority of the court making it a condition of the sentence.

In response to a question from Justice McEvers, Ms. Bertsch said the draft probably should be revised to remove the reference to infractions and Class B misdemeanors. She said supervised probation for those offenses is a waste of resources.

MANDATORY SENTENCING AND SENTENCING PRACTICES

Representative Klemin presented a bill draft [[15.0033.01000](#)] relating to exceptions to mandatory minimum sentences and the reinvestment of funds saved due to those exceptions. He said the bill draft would allow a court to determine to not impose a mandatory minimum sentence if the mandatory minimum sentence would result in substantial injustice to the defendant and that the mandatory minimum sentence is not necessary for the protection of the public. He said a judge would have to have a very good reason for the departure from the mandatory minimum sentence. He said the idea of the bill draft is to give courts some discretion with respect to the handling of nonviolent offenders.

Mr. Friese said he cannot envision any client whom he has had who would be impacted by the bill draft due to the provision that would not allow a judge to depart from the minimum mandatory sentence if the defendant had been convicted for a substantially similar offense during the 10-year period before the commission of the offense. He said the reference to a substantial injustice should be changed to manifest injustice. In subsection 2, he said, the reference to a sex offender being more than four years older than the victim probably should be changed to three years to reflect the provisions of North Dakota Century Code Chapter 12.1-20. Although the bill draft would appear to give judges discretion, he said, that discretion would not likely apply in many circumstances.

Representative Klemin said he would not object to revising the bill draft so that it would be more effective in providing discretion to judges.

In response to a question from Dr. Rabe, Representative Klemin said the reinvestment of 25 percent of the estimated annual savings could be changed to a higher percentage. He said he began with 25 percent to generate discussion.

Chairman Carlisle recessed the meeting at 4:50 p.m. and reconvened the meeting at 9:00 a.m. on Tuesday, February 11, 2014.

Chairman Carlisle called on Ms. Lindsey Carlson, Senior Associate, Public Safety Performance Project, The Pew Charitable Trusts, for a presentation ([Appendix F](#)) regarding effective sentencing and corrections policies.

Ms. Carlson said the provision for a 48-hour hold in the bill draft considered earlier is commonly used in other jurisdictions. She distributed a memorandum ([Appendix G](#)) prepared by the National Center for State Courts which addresses administrative responses to probation violations and due process and separation of powers issues.

In response to a question from Representative Kretschmar, Ms. Carlson said mandatory minimum sentences are a common policy in many states.

In response to a question from Senator Sitte, Ms. Carlson said when Pew enters an agreement with a state on a project, such as the one recently completed with South Dakota, it is important to have bipartisan interbranch commitments to the project. She said a project typically lasts about one year. Under the typical format, she said, data experts review the big picture in the state and present an update to a bipartisan interbranch task force. She said the task force identifies priorities and develops policy solutions.

In response to a question from Mr. Laney, Ms. Carlson said the work of the program is entirely self-funded by Pew. She said it is vital to have support from each branch of government in a bipartisan manner. She said it is important to have participants who will work together to find common solutions. During the South Dakota study, she said, representatives from law enforcement were very supportive of the effort.

In response to a question from Ms. Anderson, Ms. Carlson said the reinvestment strategies adopted in other states, such as Kentucky, generally look at projected growth and costs in corrections and establish policies to address that growth and reinvest the projected savings from averted growth.

Senator Sitte distributed a bill draft [[15.0048.01000](#)] and a copy ([Appendix H](#)) of proposed federal legislation relating to departure from mandatory minimum sentences. She said the bill draft would allow an offender to request a court to reduce a mandatory term of imprisonment for a controlled substance violation.

In response to a question from Chairman Carlisle, Ms. Sally Holewa, State Court Administrator, Supreme Court, said the commission may consider inviting a presiding judge to its next meeting to discuss sentencing disparities among the judicial districts. Although each judge can only talk about that judge's philosophies and practices, she said, a presiding judge may be able to give an overview of sentencing practices in general. She said each judge looks at each case individually, and it is difficult to find a pattern in sentencing.

Senator Grabinger said seeing the disparity in sentencing practices among the judicial districts raises questions regarding the causes and whether the disparities are costing the state a substantial amount of money.

Mr. Friese said the commission may consider inviting a judge from Cass County and possibly a prosecutor to provide a perspective on prosecution and sentencing practices in that judicial district.

Dr. Rabe said the commission may consider inviting public defenders to a future meeting to get the perspective of defense attorneys with respect to sentencing and prosecutorial practices.

In response to a question from Justice McEvers, Mr. Bohn said he will try to provide the commission with information regarding the number of lengthy sentences mandated by minimum mandatory sentences.

DEPARTMENT OF HUMAN SERVICES PROGRAMS

Chairman Carlisle called on Ms. Anderson to present a summary ([Appendix I](#)) of adult and adolescent residential treatment programs.

Ms. Anderson said representatives of the department have visited with stakeholders since the last meeting of the commission in an attempt to determine needs in the various regions of the state. She said one of the biggest needs identified in the northwest region was additional addiction treatment services. In the north central region and lake region, she said, adolescent residential options and addiction treatment services were identified as serious needs. She said stakeholders in the northeast region indicated there is a need for transitional living, crisis residential housing, and housing for individuals who are sex offenders or felons. In the southeast region, she said, there also is a need for housing for the chronically homeless and sex offenders and felons. In addition, she said, there are needs in the southeast and northeast regions for developmentally disabled crisis beds. She said housing for sex offenders and beds for addiction treatment were identified as needs in several regions.

COMMISSION DISCUSSION AND POTENTIAL COMMISSION RECOMMENDATIONS

Chairman Carlisle said the commission is authorized by statute to make recommendations to the Governor regarding items in the executive budget. He said the commission should be prepared to begin to make recommendations at its next meeting.

In response to a question from Chairman Carlisle, Ms. Anderson said representatives of the Department of Human Services will begin the process of meeting with representatives of the Office of Management and Budget (OMB) to begin building a budget for the next biennium. She said she will review the needs from the various regions and may request additional funding for treatment programs.

Mr. Trenbeath said the commission should consider formulating a statement of support for Department of Human Services programs that address mental health needs and facilitate alternatives to incarceration.

Justice Muehlen Maring said in her work with drug courts since 1998, she has seen there is a crisis with respect to the availability of addiction counselors. She said there was a desire to establish a juvenile drug court in Jamestown and Valley City, but no addiction counselors were available to support the program. Ultimately, she said, the Department of Human Services was able to provide counselors from the State Hospital. She said it is very important to get more addiction counselors in the state to provide treatment for alternative programs. She said it may be necessary to request the Board of Addiction Counselors to reduce the requirements of licensure in the state or find other methods to get more counselors.

Ms. Anderson said although there are limited numbers of beds available for adolescent addiction treatment through the department and its contractors, there may be private providers in certain areas of the state that provide adolescent addiction services. However, she said, she is aware of the need of addiction services and addiction counselors in most areas of the state. She said the department has tried to work with the Board of Addiction Counselors to try to address the shortage of addiction counselors. She said the department attempts to shift counselors among the regions and is trying to use an addiction technician position to provide hours of experience necessary for licensure as an addiction counselor.

Chairman Carlisle requested that the Board of Addiction Counseling Examiners be invited to attend the next meeting to address concerns regarding the shortage of counselors.

In response to a question from Chairman Carlisle, Ms. Bertsch said the pilot program discussed by Mr. Bohn is contingent upon accessing federal funds. She said the proposal is a good idea for corrections statewide, and generating support for evidence-based services in county jails would be helpful.

Mr. Laney said if the federal grant becomes available, a partnership will be developed between state and local corrections agencies. If the grant is not available, he said, state funding could assist in the development of the program. He said the mental health diversion program in Cass County is a daily part of the county jail and is successful. He said he is willing to provide information and help support the development of similar programs in other jails. If the state were able to fund a position for the first few years, he said, counties could see the value of the program and pick up the costs of the program in future years. He said he will examine the minimum requirements for establishing such a program and try to determine what it would take to expand the diversion program statewide.

Mr. Friese said because it is difficult to obtain data regarding local jail sentences, it would be difficult to examine disparities in sentencing overall.

Ms. Holewa said it may be possible to generate data by charges and sentences. However, she said, analysis of the data is difficult and time-consuming and would likely require an outside contractor.

In response to a question from Chairman Carlisle, Ms. Pam Sharp, Director, Office of Management and Budget, said the Legislative Assembly appropriated \$375,000 in 2013 for community service supervision grants. She said OMB made distributions of the grants on August 1 of each year of the biennium. In addition, she said, almost \$57,000 was distributed from the community service supervision fund, and that fund will continue to accumulate. She said that fund has approximately \$10,500 deposited during this biennium. She said OMB works with the Community Corrections Association to make the grant distributions.

In response to a question from Representative Klemin, Ms. Sharp said the provisions in Representative Klemin's bill draft for estimating general fund savings should provide that the savings be estimated by July or August so the results can be used for the budget building process.

Representative Klemin said in reviewing his bill draft, he has come up with a number of revisions. He said the reference to "substantial" on line 13 of page 1 should be changed to "manifest". On line 1 of page 2, he said, the reference to four years should be changed to three years. He said the reference to a 10-year period on line 4 of page 2 should be changed to a five-year period, and lines 5 and 6 should be removed. He said he would provide Commission Counsel with recommendations to revise subsection 3 of the bill draft.

Mr. Friese said the references with respect to the age differences between a sex offender and a victim should be changed to 15 years old and a difference of 3 years of age.

Justice McEvers said she was concerned with the provision that appears to require a report of each judge's departures from mandatory minimum sentences. She said such a report could have a chilling effect on deviations from mandatory sentences.

Representative Klemin said the bill draft could be revised so that only raw data would be submitted to the State Court Administrator and would not identify each judge's sentencing departures.

Mr. Friese said the commission should consider eliminating all minimum mandatory sentences for all drug offenses under Chapter 19-03.1. He said the minimum mandatory sentences are not working, and the judges who are the experts should be allowed to have some discretion.

Ms. Bertsch said she agrees that eliminating all minimum mandatory sentences for all nonviolent drug offenses would be a good approach. She said minimum mandatory sentences allow prosecutors to use the law to have more leverage and force defendants to plead to a charge and avoid a jury trial. She said minimum mandatory sentences have not increased public safety.

Justice McEvers said she agrees minimum mandatory sentences provide leverage for prosecutors and remove the ability of a judge to use discretion.

Mr. Laney said eliminating minimum mandatory sentences for drug offenses will raise substantial concerns within law enforcement. He said such a proposal would be difficult to pass despite the need to do something. He said the public wants accountability, and many people feel that offenders are not getting enough jail time.

Mr. Donlin said he has heard police chiefs in the eastern part of the state express frustration with what they view to be insufficiently long sentences. He said victims and the public desire appropriate sentences for offenders. Although judges need discretion, he said, some judges make bad decisions.

Senator Sitte said 85 percent of the individuals in county jails are waiting for trial. She said treatment and diversion options should be available to them during that time. Although law enforcement officials may be frustrated with some sentencing practices and proposals to eliminate mandatory sentences, she said, simply incarcerating people is not working.

In response to a question from Chairman Carlisle, Ms. Bertsch said the state's 35 to 38 percent recidivism rate is not great. She said the idea of sentencing offenders to the custody of the Department of Corrections and Rehabilitation so that the offenders may receive treatment is wrong. She said placing nonviolent offenders in prison with riskier offenders results in increasing the risk of the nonviolent offenders becoming repeat offenders. She said the European criminal justice system is not based on the concept of retribution, and European countries have had lower crime rates than this country. She said it is important to make a policy statement to move in the direction of the European model. Because of the concern with the elimination of mandatory minimum sentences, she said, another approach may be to eliminate mandatory minimum sentences for a trial period. She said policymakers need to have the courage to admit that an approach is not working and try another approach by reinvesting savings in treatment options.

Mr. Laney said alternative and diversion programs need the financial investment to be successful.

Justice Muehlen Maring said another area of concern is the mandatory transfer of juveniles to adult court for drug offenses. She requested Ms. Holewa to provide the commission with any data that relates to transfers of juveniles to adult courts for drug offenses.

Ms. Bertsch said the bill draft relating to the length and termination of probation is in need of revision. She requested the bill draft be revised on page 1, line 16, to change one year to 360 days and to remove the reference to an infraction on that line. In subsection 7, she said, the reference to 18 months on line 26 should be revised to provide that the department may terminate probation no sooner than 18 months after the defendant commenced probation. Although everyone wants to make victims whole, she said, the department should not be forced to act as a glorified collection agent. She said the creation of a victims compensation fund for victims of property crimes may be an option. Once an offender is sent back to prison for a probation violation, she said, the victim is not likely to receive restitution. She said unpaid financial obligations should not be a reason for terminating probation.

Representative Klemin said the idea of a victims compensation fund should be considered in a different bill draft. He said such a fund would appear to be placing the burden on the taxpayers of assuming the debt of a criminal.

Justice McEvers said the reference to an infraction should also be removed in subsection 5 of section 1 of the bill draft.

Mr. Friese said the provisions of Senator Sitte's bill draft are largely based on federal law and relate to federal sentencing practices in which less discretion is available to federal judges to deviate from mandatory sentences.

Justice McEvers said she is concerned with the impact on judicial resources that could result from allowing defendants to seek reductions in sentences on more than one occasion.

Chairman Carlisle said he agrees that the impact on the court system would be a concern. In addition, he said, consideration must be given to the impact on victims of crime.

In response to a question from Chairman Carlisle, Commission Counsel said before this commission could pursue any involvement in an initiative with The Pew Charitable Trusts, permission would be required from the Legislative Management.

It was moved by Senator Sitte, seconded by Representative Strinden, and carried on a roll call vote that the Legislative Management be requested to engage in discussions with The Pew Charitable Trusts to seek the assistance of Pew in pursuing alternatives to incarceration and to request the participation of representatives of the executive and judicial branches. Senators Carlisle, Grabinger, and Sitte; Representatives Klemin, Kretschmar, and Strinden; and Citizen Members Anderson, Bertsch, Donlin, Friese, Johnston, Laney, McEvers, Muehlen Maring, Olson, Rabe, and Trenbeath voted "aye." No negative votes were cast.

Chairman Carlisle said the next meeting of the commission will be on Monday, April 28, 2014.

No further business appearing, Chairman Carlisle adjourned the meeting at 12:20 p.m.

John Bjornson
Assistant Code Revisor

ATTACH:9