

## NORTH DAKOTA LEGISLATIVE MANAGEMENT

## Minutes of the

**COMMISSION ON ALTERNATIVES TO INCARCERATION**

Monday, April 28, 2014  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Senator Ron Carlisle, Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Senators Ron Carlisle, John Grabinger, Margaret Sitte; Representatives Lawrence R. Klemin, William E. Kretschmar; 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

**Members absent:** Representative Marie Strinden; Citizen Member Meredith Huseby Larson

**Others present:** See [Appendix A](#)

**It was moved by Senator Sitte, seconded by Senator Grabinger, and carried on a voice vote that the minutes of the February 10-11, 2014, minutes be approved as distributed.**

**CASS COUNTY JAIL DIVERSION PROGRAM**

At the request of Chairman Carlisle, Mr. Laney presented information ([Appendix B](#)) regarding the Cass County Jail diversion program and the feasibility of implementing similar programs in other jails. He said law enforcement officials observed individuals who have mental illnesses repeatedly being brought to the jail. Because there was a desire to find a way to stop that process, he said, the Cass County justice and mental health collaboration project utilized a federal Department of Justice grant to break new ground in this state.

In response to a question from Senator Sitte, Mr. Laney said an assessment is conducted on any individual that is identified through the initial screening as potentially having a mental illness. He said mental illnesses and dependency issues are frequently associated.

In response to a question from Representative Klemin, Mr. Laney said each individual brought to the Cass County Jail is screened for mental illnesses. He said 70 percent of the arrests are from the Fargo Police Department.

In response to a question from Representative Klemin, Ms. Lynette Tastad, Cass County Sheriff's office, said the Cass County Jail does not track recidivism for individuals who are not in the diversion program. If an individual is not eligible for the diversion program, she said, that individual may be diverted through other methods, including other treatment programs or the State Hospital.

Mr. Andrew Frobig, Cass County Sheriff's office, said a referral for an assessment by a law enforcement officer is the initial step in getting involvement from Ms. Tastad. He said approximately one-half of the individuals entering the jail may be in need of mental health services. He said the diversion program is an alternative available only for residents of Cass County.

In response to a question from Mr. Donlin, Ms. Tastad said Southeast Human Service Center personnel provide case management services and develop individual specialized plans for the participants in the program.

In response to a question from Justice Muehlen Maring, Mr. Laney said representatives of the Commission on Legal Counsel for Indigents participate in the program.

In response to a question from Justice McEvers, Ms. Tastad said the diversion program is flexible in that there are many avenues for participation. She said she occasionally receives referrals from defense attorneys for defendants who have been released from custody before she has an opportunity to conduct an assessment.

Mr. Laney said he will work with Ms. Anderson before the next meeting to discuss the feasibility of implementing similar diversion programs in other jails with the collaboration of the Department of Human Services.

## SENTENCING PRACTICES

Chairman Carlisle called on Judge Gail Hagerty, South Central District Court, for a presentation ([Appendix C](#)) regarding sentencing practices.

Chairman Carlisle called on Judge Frank L. Racek, East Central District Court, for a presentation ([Appendix D](#)) regarding sentencing practices. Judge Racek said although he has received some training in evidence-based sentencing, it is important to recognize that to be successful, a judge must be able to adjust programs to address individual needs and to have viable options available at sentencing. In addition, he said, it is necessary to have appropriate responses available to address noncompliance with the sentence. He said it is necessary to assess the defendant, including an assessment of stability, and to support the offender to help the offender to not recidivate. He said the treatment needs of offenders must be addressed. He said the more responsible an individual is, the more likely the threat of prison will be more effective. He said it is important to develop and foster more cooperation among the Department of Human Services, the Department of Corrections and Rehabilitation, and local jails for treatment options. He said incarceration can be counterproductive for certain offenders. He said he has worked hard to facilitate communication within the system, and drug court is an example of how cooperation can make a program successful. He said the East Central Judicial District has established standardized timelines to minimize conflicts and properly manage pretrial detainees.

In response to a question from Senator Sitte, Judge Racek said resources are needed to allow for assessment of individuals as they arrive in jail and to implement a plan immediately as well as eliminate waiting times for evaluations and treatment. He said the various agencies involved need to better work together and be able to access a more fluid budget. He said the ideal scenario would allow judges to sentence defendants to the supervision of the Department of Corrections and Rehabilitation and allow the department to decide where to best place each defendant. He said putting certain offenders in jail with the worst people in the community and in a situation where they do not have to make any decisions does not work. He said it is important to make those individuals accept responsibility.

In response to a question from Ms. Anderson, Judge Racek said the Department of Corrections and Rehabilitation and the Department of Human Services need to become involved with assessing offenders as soon as possible.

In response to a question from Justice McEvers, Judge Racek said he does not like to see programs in which all offenders are required to participate. In particular, he said, some programs that are run like businesses seek low-risk offenders for business reasons.

Ms. Bertsch said time spent in county jails is often time that is not effectively used. She said the pilot program to put treatment programs in the Cass and Burleigh County Jails can eliminate or reduce that downtime. She said there are Department of Corrections and Rehabilitation programs that can be models for jails.

## ADDICTION COUNSELOR SHORTAGE

Chairman Carlisle called on Ms. Kristie Spooner, President, Board of Addiction Counseling Examiners, for testimony ([Appendix E](#)) regarding licensing of addiction counselors.

In response to a question from Representative Klemin, Ms. Spooner said wages for addiction counselors are generally lower than for other mental health professions. She said the salary for an entry-level addiction counselor position at a human service center is about \$3,500 to \$3,700 per month.

In response to a question from Mr. Trenbeath, Ms. Spooner said the Board of Addiction Counseling Examiners has denied five reciprocity requests since 2011. She said the supervised training hours requirement is the biggest difference between the licensing requirements in this state and Minnesota.

In response to a question from Ms. Bertsch, Ms. Spooner said the training hours can be obtained when working under a clinical supervisor. She said the place of employment is not an issue, and an agency or entity can establish a training program.

Chairman Carlisle called on Dr. Vicki Michels, Board Member, Board of Addiction Counseling Examiners, for comments regarding the licensing of addiction counselors. Dr. Michels said there is a shortage of licensed addiction counselors across the nation, and she expects the need for addiction counselors to increase and the shortage of counselors to worsen. She said the board is concerned with its responsibility to protect the public while

trying to add numbers to the addiction counseling workforce. She said the addiction counseling profession is very stressful and counselors must have appropriate training. She said addiction counselors need to be able to properly screen for co-occurring disorders so that patients may be referred to appropriate mental health providers. She said approximately 60 percent of those individuals with addictions also have mental health disorders, and many have experienced some trauma or come from troubled family situations. Because addiction counselors must be able to create treatment plans and understand the criminal justice system, she said, it takes time to develop the necessary skills.

Dr. Michels said 85 percent of the other states have training requirements of over 2,000 hours. She said 78 percent of those states require between 4,000 and 6,000 hours of supervised training. The 1,400-hour supervised training requirement in this state, she said, ranks in the bottom eight states. Although standards vary greatly from state to state, she said, there is a movement nationally to require licensed addiction counselors to hold a master's degree. Because of the varying licensing and training requirements, she said, applicants are often encouraged to apply for initial licensure rather than reciprocity licensure. She said the board works with training consortiums and has established procedures through which other mental health professionals may receive credit toward the 1,400-hour supervised training requirement. Although the lack of pay during training may be a barrier to licensure, she said, that is not an issue related to the licensing board.

In response to a question from Mr. Trenbeath, Dr. Michels said although Minnesota and Montana require fewer hours of supervised training, South Dakota requires 2,000 hours. She said there have not been many applicants from Minnesota for reciprocity status.

In response to a question from Ms. Bertsch, Dr. Michels said the board president has the authority to approve licenses between board meetings.

In response to a question from Justice Muehlen Maring, Dr. Michels said the Board of Addiction Counseling Examiners works with the colleges and universities in the state that provide training for addiction counselors to develop training programs for applicants for licensure as addiction counselors. She said there are six training consortiums throughout the state, but there are shortages of clinical supervisors in some areas and there are more applicants than available positions in certain areas.

In response to a question from Representative Klemin, Dr. Michels said an applicant for licensure must train at two different facilities. She said the facilities do not have to pay the trainees.

## HOPE PROGRAM

Chairman Carlisle called on Judge Bradley A. Cruff, Southeast Judicial District Court, for testimony ([Appendix F](#)) regarding Hawaii's Opportunity Probation with Enforcement (HOPE) program.

In response to a question from Representative Klemin, Judge Cruff said he will provide additional information regarding changes necessary to North Dakota Century Code Section 12.1-32-06.1 which would allow an unlimited number of times probation may be imposed or provide that revocation would not terminate probation.

In response to a question from Justice McEvers, Judge Cruff said the HOPE program provides for an appearance before a judge by a defendant before a revocation of probation. He said there are many intermediate measures that are established as a condition of probation similar to the 48-hour hold. He said he sees the sanctions under the HOPE program as a more effective sanction.

In response to a question from Representative Klemin, Judge Cruff said he would like to establish a pilot program in the Southeast Judicial District where jail space is available.

Representative Klemin requested the Legislative Council staff to obtain copies of the Hawaii statutory provisions relating to the HOPE program and the similar program implemented in Washington.

Ms. Bertsch said the Hawaii program has been studied and found to be very effective. She said the program can be replicated with the key elements of swift and immediate response for violations. She said the study of the program has demonstrated that when sanctions are applied correctly, actual use of jail beds can be reduced.

## DRUG COURTS

Chairman Carlisle called on Judge Donovan J. Foughty, Northeast Judicial District Court, for testimony ([Appendix G](#)) regarding drug courts.

Judge Foughty said in addition to the issues he identified with respect to drug courts, he has seen many

jurisdictional issues that need to be addressed with respect to the disparity with levels of services available to Native American juveniles. He said the state and the tribes need to work together to address those problems and to provide services in Native American communities.

### **HEART RIVER BRIDGES OF HOPE REENTRY MINISTRY**

Chairman Carlisle called on Pastor Renee Splichal Larson for a presentation ([Appendix H](#)) regarding the Heart River Bridges of Hope Reentry Ministry.

In response to a question from Justice Muehlen Maring, Pastor Larson said the program recruits mentors primarily from churches. She said the mentors participate in a training program in addition to completing an application that includes a background check. She said the approval process for a mentor takes approximately three months to four months, and the board has the ability to reject an applicant.

### **ADDICTION COUNSELOR SHORTAGE**

Chairman Carlisle called on Ms. Sandy Thompson, West Central and Badlands Human Service Centers, for testimony ([Appendix I](#)) regarding recruitment and retention strategies for addiction counselors employed by the Department of Human Services.

In response to a question from Justice Muehlen Maring, Ms. Thompson said the entry-level salary for an addiction counselor may be somewhat lower than the market in Williston, Minot, and Dickinson. She said it is very expensive to move to those areas and find affordable housing. She said a private provider who is a licensed addiction counselor is contracting with the department to provide services in the Williston area. As of May this year, she said, there will be no licensed addiction counselors on staff at the Northwest Human Service Center.

Justice Muehlen Maring said there was an attempt to establish a drug court in Williston, but there were no treatment options available for the proposed court.

In response to a question from Representative Klemin, Ms. Thompson said the technician position established by the department allows for an individual to receive pay while training under a licensed clinical supervisor. However, she said, the technician is not allowed to work independently. She said the Board of Addiction Counseling Examiners has a classification for addiction counselor trainees. She said Department of Human Services employees may be eligible for tuition reimbursement if attending classes to obtain a degree in an area of departmental need.

In response to a question from Senator Sitte, Ms. Thompson said the department embraces several evidence-based treatment practices. She said there is a realization that one way of doing things is not appropriate and a full menu of services is necessary to allow individualized treatment. She said the matrix model, which was initially intended for methamphetamine treatment, has been adopted for other addictions.

In response to a question from Justice Muehlen Maring, Ms. Thompson said a clinical supervisor may have only one student under supervision at one time.

Ms. Marcie Wuitschick, Human Resources, Department of Human Services, said the tuition assistance program, which is provided for under administrative rule, allows the department to reimburse an employee for tuition costs. She said the state internship program also has been used by the department to help develop its workforce. She said the addiction counselor technician position was created in conjunction with the Department of Corrections and Rehabilitation and is available to all state agencies.

In response to a question from Justice McEvers, Ms. Wuitschick said the department is more likely to provide recruitment bonuses than student loan repayment.

### **SUPERVISION AND CONDITIONS OF PROBATION BILL DRAFT**

At the request of Chairman Carlisle, Commission Counsel reviewed a bill draft [[15.0040.03000](#)] relating to supervision and conditions of probation. He said the bill draft was revised to incorporate three changes requested at the last meeting of the commission. He said on page 1, line 16, the reference to one year was changed to 360 days and the reference to an infraction was removed. On page 2, line 16, he said, the reference to infraction was removed. He said on page 2, line 25, the provision was changed to allow a court to authorize the Department of Corrections and Rehabilitation to terminate probation no sooner than 18 months after the defendant commenced probation.

At the request of Chairman Carlisle, Commission Counsel distributed correspondence ([Appendix J](#)) from

Ms. Larson regarding the bill draft relating to minimum mandatory sentences.

Ms. Bertsch said she has not received much feedback from state's attorneys regarding the proposed changes in the bill draft. She said some state's attorneys have questioned why the changes are necessary. She said some state's attorneys will not entertain motions to terminate probation status early. However, she said, evidence shows that there are diminishing returns on probation longer than 18 months.

Mr. Friese said the supervised probation terms in Section 39-08-01(5)(c) should be changed to reflect the changes in Section 1 of the bill draft. On page 2 of the bill draft, he said, the reference to one year on line 16 should be changed to 360 days. He said the provisions in subsection 7 of Section 12.1-32-06.1 in Section 1 of the bill draft should be changed to provide that unless otherwise ordered by the court the Department of Corrections and Rehabilitation may terminate probation early.

In response to a question from Representative Klemin, Ms. Bertsch said the changes to the probation conditions in the bill draft do not address the concerns expressed by Judge Cruff. She said the state Supreme Court has ruled there is a statutory limitation to two terms of probation for an offender.

Mr. Trenbeath said to provide consistency in the bill draft, the words "or order of disposition" should be added on page 3, line 14.

Justice McEvers said she continues to have concerns with respect to the inclusion of the 48-hour hold provision in Section 3 of the bill draft.

Justice Muehlen Maring said she also has concerns with respect to due process and separation of powers. She said allowing a 48-hour hold without court involvement is of particular concern. She said that issue could be remedied by establishing that a defendant is entitled to written notice of the temporary revocation of probation and an opportunity to contest the detention, as well as an opportunity for representation. She said she also has questions about who would pay for the temporary detention.

Ms. Bertsch said a similar procedure is in place for addressing parole violators. Although the process would involve written notice and a right to a hearing, she said, in all likelihood almost all defendants waive that right because the other option is revocation of probation. She said the sanction would be limited in use and would be similar to other intermediate sanctions. She said the Department of Corrections and Rehabilitation would pay the county jail for the time of retention.

In response to a question from Justice Muehlen Maring, Ms. Bertsch said the procedures would be outlined through rules of the department. Because the Burleigh County Jail is at capacity, she said, the department would likely contract with the Bismarck Transition Center for secure detention.

Mr. Friese said the 48-hour hold likely would help defendants and the courts tremendously. Rather than an offender sitting in jail waiting for a revocation hearing, he said, there would be an intermediate sanction. He said parole officers have this option now.

Justice Muehlen Maring said a limitation on the use of a 48-hour hold probably should be included within the bill draft to limit the use to no more than five times in a year.

Ms. Bertsch said the 48-hour hold provision could be revised to provide that there may not be successive 48-hour periods and that up to five 48-hour sanctions may be imposed in a year if the sanction periods are not consecutive.

**It was moved by Mr. Friese, seconded by Senator Sitte, and carried on a roll call vote that the Legislative Council staff be requested to revise the bill draft to incorporate all of the suggested changes.** Senators Carlisle, Grabinger, and Sitte, Representatives Kretschmar and Klemin, and Citizen Members Bertsch, Donlin, Friese, Johnston, Muehlen Maring, Rabe, and Trenbeath voted "aye." No negative votes were cast.

**It was moved by Representative Klemin, seconded by Senator Sitte, and carried on a roll call vote that the bill draft relating to supervision and conditions of probation, as amended, be approved and recommended to the Legislative Management.** Senators Carlisle, Grabinger, and Sitte, Representatives Kretschmar and Klemin, and Citizen Members Anderson, Bertsch, Donlin, Friese, Johnston, Muehlen Maring, Rabe, and Trenbeath voted "aye." No negative votes were cast.

## MANDATORY SENTENCES BILL DRAFT

At the request of Chairman Carlisle, Commission Counsel distributed a bill draft [15.0033.02000] which was prepared for Representative Klemin. Commission Counsel said the bill draft was revised to incorporate changes requested at the last meeting.

Representative Klemin said the bill draft would allow a judge to deviate from a minimum mandatory sentence under certain circumstances. He said another revision that should be made to the bill draft is to include "or other dangerous weapon" on page 1, line 19.

Mr. Trenbeath said although he understands the point of the bill draft and believes that it is worthy of consideration, he does not believe it will have much practical effect. He said the reference to "substantial" on page 1, line 11, should be removed.

Mr. Friese said he agrees with the intent of the bill draft, but other changes should be made. He said the use of "Notwithstanding" on page 1, line 7, suggests that the bill draft may supersede other provisions under which a judge has discretion to not impose a mandatory sentence, such as Sections 12.1-20-03 and 19-03.1-23.2. He said there are instances in which a mandatory minimum sentence would result in manifest injustice to someone other than the defendant and a judge should have authority to consider that. He said the reference to "serious physical injury" on lines 17 and 19 should be changed to "bodily injury". He said he would like to see lines 21 through 24 of page 1 be removed from the bill draft. He said the reference to "a substantially similar offense" on page 2, line 1, would make all drug offenses applicable and eliminate the authority of judges to deviate from a mandatory sentence. Therefore, he said, that subdivision should be removed from subsection 2. He said the provisions of subsection 3 would discourage judges from deviating from mandatory sentences.

Representative Klemin said he does not agree with all of the comments made by Mr. Friese. He said he revised the provisions of subsection 3 to provide for generic reporting that would not identify judges who depart from mandatory minimum sentences. However, he said, there must be a way to track the departures. He said he would prefer to leave subsection 3 as it is. He said he does not object to the change of "physical injury" to "bodily injury". However, he said, he does not agree with removing subdivision c from subsection 2 on page 1, lines 21 through 24.

Justice McEvers said although she would like to provide judges discretion, she has some concerns with portions of the bill draft. She said a cross-reference to the definition of manifest injustice in Section 39-01-01 would make the provisions of this section consistent with Section 12.1-20-03. She said the provisions in subdivision c of subsection 2 should be revised to remove the reference to "consensual" and replace it with "the victim being a willing participant". She said although the provisions of subsection 3 may still have a chilling effect on judges deviating from mandatory sentences, the language in this draft is preferable to the initial draft.

Mr. Donlin said the provisions of subdivision c of subsection 2 should end after "minor" on line 22.

Mr. Friese said Chapter 12-20 has a provision for deviation from a mandatory sentence for sexual contact against a minor. Therefore, he said, it may be best to delete subdivision c from subsection 2.

Justice Muehlen Maring questioned whether the provisions of this bill draft would supersede other statutory provisions allowing deviation from mandatory minimum sentences. She said it may be best to include references to those provisions in this draft. She said subdivision a of subsection 2 has no culpability standard, and it may be best to include "willfully" in that subdivision. She said subsection 3 does not specify what the court administrator is required to report and should be more specific. With respect to subsection 4, she questioned how the savings can be quantified.

Representative Klemin said the Director of the Office of Management and Budget has indicated the estimated savings could be quantified. He said this version of the draft was revised to allow the Director of the Department of Corrections and Rehabilitation to consider the savings rather than require that the savings be reinvested in recidivism programs.

Senator Sitte said she sees no need for subsections 3 and 4 and would prefer those subsections be removed from the draft.

Representative Klemin said subsection 3 is necessary to provide some information regarding whether the bill draft would have any impact. He said with the changes already made to subsection 4, that subsection probably does not mean much.

Justice McEvers said the term "Notwithstanding" in subsection 1 could be changed to "In addition to" to clarify

that there are other provisions allowing departures from mandatory sentencing.

Representative Klemin said he will work with Commission Counsel to review the proposed changes and send a list of the changes to members of the commission before the next meeting.

### COLLECTION OF RESTITUTION

At the request of Chairman Carlisle, Commission Counsel distributed information ([Appendix K](#)) submitted by Ms. Sally Holewa, State Court Administrator, Supreme Court, relating to collection of restitution. At the request of Chairman Carlisle, Commission Counsel reviewed a resolution draft [[15.3004.01000](#)] that would direct the Legislative Management to study issues related to restitution for criminal acts.

**It was moved by Senator Grabinger, seconded by Representative Kretschmar, and carried on a roll call vote that the resolution draft relating to a Legislative Management study of issues related to restitution for criminal acts be approved and recommended to the Legislative Management.** Senators Carlisle, Grabinger, and Sitte, Representatives Kretschmar and Klemin, and Citizen Members Anderson, Bertsch, Donlin, Friese, Johnston, McEvers, Muehlen Maring, Rabe, and Trenbeath voted "aye." No negative votes were cast.

### DEPARTMENT OF CORRECTIONS AND REHABILITATION BILL DRAFTS

Ms. Bertsch distributed three bill drafts for the commission's consideration. She said the first draft ([Appendix L](#)) would revise provisions related to abuse and neglect of a child. She said abuse of a child is much different than neglect, and neglect of a child probably should be a Class A misdemeanor for a first offense and a felony for subsequent offenses. In cases of neglect of a child, she said, social services should become involved to address parenting needs.

Mr. Friese said the reference to "mental injury" should be removed in subsection 1. He said Section 12.1-32-15 requires certain individuals who are guilty of offenses against children to register with the chief of police of the city or the sheriff of the county where the individual resides. He said that section should be reviewed if the commission were to proceed with the bill draft.

Ms. Anderson said attorneys from the Department of Human Services have reviewed the bill draft and indicate that there may be cross-references that need to be changed as the result of the changes in the bill draft.

Mr. Friese said the commission also may consider examining the statute in Chapter 19-03.1 which addresses exposure of a vulnerable adult to drugs.

Ms. Bertsch said the second bill draft ([Appendix M](#)) reduces the penalty for possession of drug paraphernalia from a Class C felony to a Class A misdemeanor and repeals the provision relating to ingestion of a controlled substance. She said the ingestion statute has not been used responsibly and has been abused by some prosecutors. She said individuals in the process of recovering from drug addictions are likely to relapse and should not be punished for admitting to a probation officer that they have had a relapse.

Mr. Friese said there is an inherent conflict for probation officers when they have to inform a prosecutor that an individual under their supervision has admitted to use of a controlled substance. He said the statute criminalizes admitted behavior.

Mr. Donlin said the ingestion statute is used when a law enforcement officer knows that drug use has occurred, but there is no possession of the drug at the time the law enforcement officer encounters the individual.

Ms. Bertsch said the third bill draft ([Appendix N](#)) repeals the minimum mandatory sentences in Title 19 and addresses the provisions relating to drug offenses occurring within 1,000 feet of a school. She said the bill draft would require there be a nexus between the drug offense and the real property comprising the school to trigger subject to the longer term of imprisonment. She said she is seeing incidences of offenders under the supervision of the department who were imposed enhanced penalties simply based upon the location in which the offenders were caught and that location having nothing to do with the crime. She said the judiciary should have the discretion needed in sentencing rather than allowing a state's attorney to use mandatory sentences for leverage.

Mr. Friese said it is difficult to find any location in Fargo or any other community in this state that is not within 1,000 feet of a school as defined in the statute. He said the nexus requirement could be changed to address instances where the offender is not a student and the crime did not affect the school.

Justice McEvers said it is a positive step to provide judges discretion. She said mandatory sentences have

been used as a tool by prosecutors. She said there are a significant number of inmates who are in the State Penitentiary due to minimum mandatory drug sentences. She said a prior conviction under the minimum mandatory law could be a simple possession conviction that would later trigger a minimum mandatory sentence.

### **DRUG PARAPHERNALIA BILL DRAFT**

Mr. Donlin distributed a bill draft ([Appendix O](#)) relating to penalties for possession of drug paraphernalia. He said the bill draft is similar to 2013 Senate Bill No. 2319, which failed. He said Senate Bill No. 2319 was opposed by law enforcement officials, including him. He said he agreed to present this draft for the commission's consideration at the request of another law enforcement official. He said he sent the bill draft to a number of prosecutors and generally received a negative response.

Mr. Friese said he agrees with the concept of making possession of paraphernalia a misdemeanor.

Representative Klemin said the bills presented by Ms. Bertsch and Mr. Donlin address grading of offenses and do not appear to be alternatives to incarceration. He questioned whether the bill drafts are within the scope of the commission's authority.

Chairman Carlisle said the bill drafts are worth discussing and will be placed on the agenda for the next meeting.

Senator Sitte requested Ms. Anderson to arrange for representatives of the Department of Human Services to provide additional information regarding effective treatment models, including programs in other states that have been proven to be successful. She said she is concerned with the lack of access to treatment programs in jails and would like to examine what the Department of Corrections and Rehabilitation and the Department of Human Services can do to provide more treatment options as an alternative to incarceration. She said she would like to see if the court system has statistical information regarding the time it takes to move through the criminal court process.

Ms. Anderson said representatives of the Department of Human Services and the Department of Corrections and Rehabilitation began having quarterly meetings approximately one year ago to address bottlenecks and barriers to obtaining services. She said the collaborative effort will continue.

At the request of Chairman Carlisle, Commission Counsel distributed information ([Appendix P](#)) provided by Ms. Holewa regarding juveniles tried as adults.

Justice Muehlen Maring said if the commission approves some of the reductions in classifications of offenses, the commission should eliminate the automatic transfer to adult court for drug offenses committed by juveniles under Section 27-20-34. She said she would like to see a bill draft to eliminate the automatic transfer.

Chairman Carlisle said the commission will focus on consideration of the bill drafts that were discussed at this meeting during the next meeting and address potential budget recommendations, such as increasing the allocation for community service grants.

No further business appearing, Chairman Carlisle adjourned the meeting at 4:20 p.m.

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John Bjornson  
Assistant Code Revisor

ATTACH:16