

# NORTH DAKOTA LEGISLATIVE COUNCIL

## Minutes of the

### COMMISSION ON ALTERNATIVES TO INCARCERATION

Tuesday, September 20, 2005  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Representative Joe Kroeber, Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Representatives Joe Kroeber, Ron Carlisle, Lawrence R. Klemin; Senators Dick Dever, Larry J. Robinson, Thomas L. Trenbeath; Citizen Members Leann K. Bertsch, Judge Gail Hagerty, Paul Hendrickson, Duane Johnston, Chris Magnus, Justice Mary Muehlen Maring, Carol K. Olson, Sandi Tabor

**Others present:** See attached appendix

Chairman Kroeber welcomed the commission members and said he is pleased with the opportunity to serve as chairman of the commission. He said some of the issues that likely will be considered by this commission include addressing the problem with the use of methamphetamine in the state, examining the growing population of sex offenders, and discussing various methods of monitoring certain offenders.

Chairman Kroeber called on Mr. John D. Olsrud, Director, Legislative Council, who referred to the [Supplementary Rules of Operation and Procedure of the North Dakota Legislative Council](#). Mr. Olsrud said this commission is not a Legislative Council committee and some of the rules of operation and procedure of Legislative Council committees may not apply to this commission. For example, he said, the commission's scope of study is limited by the legislation that created the commission. However, he said, other rules such as the rules relating to prohibiting secret ballots and ensuring open meetings are statutory requirements that apply to the commission. He said the commission has the authority to recommend legislation to the Legislative Council and has been authorized to contract with a consultant if funding is available. He said the Legislative Council policy relating to restricting the establishment of subcommittees is to allow full and equal participation in the interim process for all members of Legislative Council committees.

At the request of Chairman Kroeber, commission counsel reviewed a background memorandum entitled [Commission on Alternatives to Incarceration - Background Memorandum](#).

At the request of Chairman Kroeber, Ms. Leann Bertsch, Director of Corrections, Department of Corrections and Rehabilitation, presented information

relating to the Department of Corrections and Rehabilitation and alternatives to incarceration programs. She submitted written testimony, a copy of which is on file in the Legislative Council office, and a guide to the operations of the Field Services Division of the Department of Corrections and Rehabilitation, a copy of which is also on file in the Legislative Council office.

Ms. Bertsch said the Department of Corrections and Rehabilitation has seen a growth in inmate population from under 500 inmates in the early 1990s to over 1,390 inmates. She said for the fourth biennium in a row, drug offenders were the fastest growing segment of the population. She said the budget of the department has grown from \$22 million in 1995 to over \$100 million during this biennium.

Ms. Bertsch said the inmate population would be even greater if it were not for several alternative to incarceration programs implemented by the department. The department addresses offender diversion using two approaches, she said, one of which utilizes programs on the front end to divert offenders from prison incarceration and the second of which is designed to move offenders out of prison into the community.

Ms. Bertsch said the Last Chance program in Fargo provides a service of addiction treatment for approximately 20 offenders using a cognitive behavioral approach to effect change in offender behavior. She said the drug court programs in Bismarck and Fargo are court-supervised programs that target nonviolent participants whose major problems stem from substance abuse. The Faith-Based Alternative Community Housing Initiative, she said, is a pilot project approved by the 2005 Legislative Assembly to provide room and board to an offender population sentenced to the Department of Corrections and Rehabilitation. She said the 2005 Legislative Assembly also authorized an assessment center program through which an assessment team will conduct a thorough evaluation and recommend treatment programming for offenders. She said the Day Report program is an offender-oriented program primarily to provide accountability and verification of scheduled activities of offenders by a supervising parole or probation officer. She said a parole violator experiencing relapse in recovery or a technical violation of parole may require detention as an intervention

to reestablish the offender's treatment in the community through the three-day parole hold option.

Ms. Bertsch said electronic monitoring uses technology and equipment to provide the capability to monitor offender's compliance with curfew, house arrest, or home detention conditions of supervision. She said the global positioning systems monitoring program will be implemented in October. She said the Tompkins Rehabilitation and Correction Center is a treatment center for male and female inmates and offenders, which includes three wards that require a minimum of 100 days of treatment followed by community supervision. The female inmate transition program, she said, is intended to diagnose and provide a continuum of treatment and program services for females from prison to the community which focuses on the needs of the women and provides care and counseling to better equip them to start a new life in the community. She said the Bismarck Transition Center provides transitional treatment, education, and employment services to assist offenders in achieving meaningful stability and lasting sobriety. She said the reentry program is a federal initiative supporting the cooperation of multiple service agencies to return youth and high-risk offenders from prison to their community on parole.

Ms. Bertsch said the 2005 Legislative Assembly authorized additional treatment beds for the department through which eligible offenders may become involved in diversionary programs with compliance with treatment recommendations. In addition, she said, the 2005 Legislative Assembly authorized a rapid intervention program for parole violators to address parole violator chemical addiction and criminal thinking relapse and to return the parolees back to the community. She said the department cooperates with Centre, Inc., to maintain a halfway house to provide for the public safety by offering specialized programs that can effectively monitor and house offenders outside institutions and jails. She said the department entered a contractual arrangement for the Quarter House facility in Fargo to serve probation and parole offenders completing or enrolling in corrections treatment programming.

Ms. Bertsch said the Department of Corrections and Rehabilitation has added staff to support some of the new programs. She said additional licensed addiction counselors and licensed social workers were added in the Prisons Division to support the relapse program, three additional parole and probation officers were added in the Field Services Division to support the supervision of sex offenders, and the Field Services Division has promoted and trained five experienced parole and probation officers as sex offender specialists.

In response to a question from Representative Carlisle, Ms. Bertsch said the department has awarded a contract to the Teen Challenge program pursuant to the authorization by the 2003 Legislative

Assembly. Although the program has moved its treatment facility from Williston to Mandan, she said, the contract will not be affected. She said because the program is growing, the Williston facility also likely will be utilized.

In response to a question from Senator Robinson, Ms. Bertsch said there are 43 North Dakota prisoners at the Appleton, Minnesota, facility. She said the department will gather information and present it to the commission regarding the average caseload of parole and probation officers and the average length of stay of inmates.

In response to a question from Senator Dever, Ms. Bertsch said transition centers are effective in two ways. She said the number of bed days are cut in the transition to the community and the success of the program has resulted in lower relapse rates.

In response to a question from Justice Maring, Ms. Bertsch said the population at the Youth Correctional Center has been decreasing. She said she will provide the commission with information regarding the number of community-based programs for juvenile offenders.

Senator Robinson said there appears to be a void of aftercare programs for juveniles. He said for a relatively small amount of money, significant achievements can be obtained.

Ms. Bertsch said she will attempt to provide the commission with additional information regarding aftercare programs for juvenile offenders.

Representative Kroeber said looking at the number of individuals in the North Dakota prison system compared with the number in the South Dakota prison system, it appears that this state is doing something well. He said the treatment and alternatives programs deserve some credit for the lower number of individuals incarcerated in this state.

Mr. Hendrickson said he is concerned that members of the commission and representatives of the various interested entities are able to speak freely without concerns regarding jeopardizing funding from the Legislative Assembly.

Chairman Kroeber said he encourages members of the commission to share their concerns and their ideas for solutions.

In response to a question from Representative Carlisle, Mr. Warren Emmer, Department of Corrections and Rehabilitation, said the Department of Corrections and Rehabilitation has regular outside independent evaluations of the effectiveness of its alternatives to incarceration programs. He said the evaluations point out shortcomings in the programs and suggest improvements.

Representative Carlisle requested information regarding the effectiveness of the programs of the Department of Corrections and Rehabilitation and the recidivism rates for the programs. He said if other states have implemented novel programs that are effective, commission members would be willing to

listen and consider implementation of those types of programs.

Senator Robinson said often the sensitivity to the growth of government discourages innovation or negatively impacts the effectiveness of the programs. He said it is important for legislators to hear if additional resources are needed.

Ms. Olson said a representative of the Division of Mental Health and Substance Abuse of the Department of Human Services could provide the commission with information regarding diversion programs. She said a significant number of individuals who are incarcerated experience mental health problems and substance abuse issues.

Ms. Tabor said it is important that a focus be put on a collaborative effort between the state and local governments. She said early intervention is important, but financial assistance from the state is necessary.

Representative Klemin said the best alternative to incarceration is providing alternatives to the situations that result in the individuals being placed in the correctional system. He said it is important to look at programs that will reduce crime.

Senator Robinson said a high priority must be put on education. In addition, he said, a detailed analysis regarding the effectiveness of treatment before incarceration would be helpful. He said he would like to see additional information regarding whether a delay in acceptance into treatment facilities or the lack of treatment facilities contributes to a higher percentage of relapse for individuals with substance abuse problems. He said it is important that counselors be available to provide followup care when individuals are placed back into the community.

Mr. Magnus said there are successful collaborative efforts between the state and local governments that can be used as examples for other programs. Because the state is likely to experience more complex issues in the future, he said, it is important that entities not have to compete for scarce resources. Because substance abuse and mental health issues are a significant contributing factor for many individuals who are incarcerated, he said, it is important to look at what is happening in the communities to address those problems. He said the city of Fargo has a number of partnerships in place that can be used as examples for other communities.

Mr. Hendrickson said information-sharing among the various entities is crucial. He said early intervention is also very important. Another key factor to address, he said, is shifting responsibility for the behavior of juveniles back to the parents.

Ms. Tabor said a youth-at-risk behavior survey conducted by the State Department of Health may be of interest to members of the commission.

Senator Dever said the No. 1 alternative to incarceration is parents talking with their children. He said children in the third and fourth grades have been

found to be at an age when they are most receptive to advice from parents. He said that is also the time when they are most likely to be first exposed to drugs.

Mr. Magnus said it is important to educate the public regarding the concepts that are being discussed so that people will understand the programs and likely be less resistant to the implementation of the programs. He said it is important to inform the public to sell the programs without fear and to learn how other communities have been educated on issues.

Representative Klemin requested that the commission receive information regarding how schools are providing drug education.

In response to a question from Representative Carlisle, Ms. Bertsch said the cost of confinement at the Youth Correctional Center is approximately \$100 per day. She said the educational factor at that facility increases the cost.

Chairman Kroeber called on Ms. Marilyn Moe, Supreme Court, for a presentation regarding juvenile drug courts. Ms. Moe presented PowerPoint slides, copies of which are on file in the Legislative Council office. She said juvenile drug courts were initiated in Grand Forks and Fargo in 2000 and in Bismarck in 2002. She said the idea of the juvenile drug courts originated from a study committee that began its work in 1998 because studies had indicated there had been a rapid increase in drug offenses and alcohol offenses and because North Dakota had been rated as the No. 1 state for binge drinking. She said the drug court was the recipient of three federal grants and an appropriation from the 2005 Legislative Assembly. She said each drug court costs about \$64,500 annually. She said the drug courts contract with Lutheran Social Services for services. Additional costs incurred by the drug courts, she said, include drug tests and analyses and the provision of small incentives for successful participants. She said the drug court coordinator in Bismarck is a full-time position and the coordinators in Fargo and Grand Forks are one-half time. In addition, she said, the drug courts have full-time case managers.

Ms. Moe said several individuals are involved in making the drug court successful. Because evaluations have shown a need for aftercare, she said, the drug courts are working on developing a program for followup care. She said the drug courts have incorporated a six-week writing program for participants and a parenting program for the parents.

In response to a question from Mr. Hendrickson, Ms. Moe said the drug courts receive referrals from juvenile court and from schools.

In response to a question from Representative Klemin, Ms. Moe said the Juvenile Drug Court Advisory Committee has addressed the problems with the decision to not accept 17-year-old offenders for drug court. She said it is possible that those individuals

may participate in the adult drug court after they become 18 years of age.

Representative Klemin requested information regarding whether juvenile courts may retain jurisdiction over individuals once they reach 18 years of age.

Mr. John Gourde, Department of Corrections and Rehabilitation, said the Fargo drug court has reduced the number of individuals that would be spending time in jail or prison. He said the adult drug court accepts nonviolent drug and alcohol offenders but does not allow participation by drug dealers or manufacturers. He said the drug court receives referrals of individuals from attorneys and also accepts offenders who volunteer to participate in the program to avoid incarceration. He said the program involves intensive treatment lasting from between one year to about one and one-half years and requires regular drug and alcohol testing of the participants. While the Fargo drug court contracts with a private provider for treatment services, he said, the Bismarck drug court obtains treatment services through the West Central Human Service Center. He said participants are required to attend Alcoholics Anonymous meetings at least twice a week and must be employed full time. He said the participants meet weekly with the drug court personnel, including the judges.

Mr. Gourde said the Fargo drug court has been in operation since 2003. He said the drug court has had 41 participants, 20 of whom are in the program at this time. Of the 41 participants, he said, 31 are male and 31 participated as a result of committing drug offenses. He said the program has had 8 graduates and 13 participants who have had negative terminations of participation.

Ms. Penny Blotsky, Department of Corrections and Rehabilitation, said the Bismarck drug court has had 89 participants, 24 of whom are currently in the program. She said 26 of the participants have been women and the participants have been equally split between drug offenders and alcohol offenders. She said 47 of the participants have committed felonies. She said 39 of the participants have graduated from the program and 24 of the participants have had their participation terminated.

Ms. Blotsky said the drug court coordinators, counselors, and state's attorneys work with the judges to make decisions with respect to the participants. She said the judges are very dedicated to the drug court program and meet with participants on a weekly basis. She said participation by probation officers in the drug court program involves a more intensive supervision of the participants. She said if there is a violation of the terms of the drug court, the probation officer may take the offender directly to jail. However, she said, prosecutors under the drug court program work with an emphasis toward rehabilitation rather than punishment. She said defense attorneys favor the drug court program because it allows the

offenders to be rehabilitated and the cases are concluded more quickly.

Mr. Gourde said participants in the drug court program move forward in phases and are rewarded with donuts and coffee and praise for continued success in the program. However, he said, if an individual participating in the program does not conform with the requirements, the individual is held accountable. He said participants must work hard to succeed in the program.

Ms. Blotsky said the drug court program is an excellent program and she would like to see the program expanded. She said an individual is less likely to reoffend while in the program. In addition, she said, graduates of the program have lower recidivism rates. She said participants pay a \$40 per month supervision fee in addition to some treatment costs, fines, and other fees. Therefore, she said, the participants learn to manage finances through the program. She said the five-year federal grant used for drug courts has ended and the program will have to be funded at the state and local levels in the future. She said the program makes the community better and safer for everyone, including the participants.

In response to a question from Ms. Tabor, Ms. Blotsky said the average cost during 2003 for drug court participants was approximately \$15 per day. She said the expense is generally attributable to the cost of treatment and the cost of the probation officers' time.

In response to a question from Ms. Tabor, Mr. Gourde said the key to establishing a drug court is the planning stage. He said a longer planning stage allows the opportunity to get more people involved and vested with the program. He said it is important to have a judge who is committed to the program and to treatment of offenders. In addition, he said, committed probation officers are important to the program.

Judge Hagerty said the drug court program requires a significant commitment from the judges. She said the parole and probation officers provide the coordination for the program. Because the treatment options for the Bismarck program are provided by the West Central Human Service Center, the treatment program also addresses mental health issues. She said it is important to keep law enforcement officials and attorneys involved and educated in the drug court program.

In response to a question from Mr. Magnus, Mr. Gourde said some courts have allowed individuals to participate in the drug court program after a first or second driving under the influence offense. However, he said, because the sanction for a third or subsequent offense is greater, participation in the drug court program is more common with third or subsequent offenses.

Justice Maring said the drug court program cannot be successful without effective treatment options in

the community. She said additional studies must be done to see if the treatment has been successful and an investment must be made in treatment and after-care programs. Although treatment programs are expensive, she said, the Department of Human Services has been of great assistance in providing treatment for juveniles. However, she said, additional funding is necessary for treatment options.

Ms. Tabor said additional information regarding the cost of treatment through the Department of Human Services would be of interest.

In response to a question from Representative Carlisle, Ms. Blotsky said she is aware of one person who has been granted a work permit which allows very limited driving privileges so the offender may drive directly to and from work.

In response to a question from Mr. Hendrickson, Ms. Blotsky said the drug courts will accept difficult, hardcore offenders so long as the individuals are nonviolent offenders.

Chairman Kroeber requested commission members to make suggestions regarding future agenda items. He said representatives of the North Dakota Association of Counties have expressed

concern regarding reduced funding for community service programs. He said he would like to receive additional information from the Association of Counties regarding those concerns.

Senator Robinson said he is concerned with the loss of grant funds for the support of the drug courts.

Chairman Kroeber announced that tentative dates for future meetings of the commission are November 29, 2005; January 18, 2006; March 22, 2006; and June 20, 2006. There being no further business, Chairman Kroeber adjourned the meeting at 12:30 p.m.

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John Bjornson  
Commission Counsel

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John D. Olsrud  
Director

[ATTACH:1](#)