

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

COMMISSION ON ALTERNATIVES TO INCARCERATION

Thursday, November 5, 2009
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Lisa Wolf, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives Lisa Wolf, Brenda Heller, Lawrence R. Klemin; Senators Dick Dever, Stanley W. Lyson, John Warner; Citizen Members Leann K. Bertsch, Bradley A. Cruff, Judge Gail Hagerty, Justice Mary Muehlen Maring, Carol K. Olson, Thomas L. Trenbeath, Keith Witt

Members absent: Citizen Members Edward Brownshield, Duane Johnston, Paul D. Laney, Dr. Gary Rabe

Others present: Representative Merle Boucher, member of the Legislative Management, was also in attendance.

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

Chairman Wolf called on commission counsel to review the [Supplementary Rules of Operation and Procedure of the North Dakota Legislative Management](#).

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

Chairman Wolf called on Mr. Dennis Fracassi, Director, Roughrider Industries, Department of Corrections and Rehabilitation, for information relating to the Department of Corrections and Rehabilitation industry and education program and transitioning offenders back into the community. He submitted written information ([Appendix B](#)). He said the goal of the industry and education program is to transform offenders into productive taxpaying citizens. He said it is important to find out from offenders why they return to prison. He said the answers often reflect that upon release offenders do not have anything productive to do and go back to their old ways. He said the department has worked with Job Service North Dakota to use assessment tools to review the work and education history of offenders and to analyze skills so the department can determine a base level relative to those skills and education to assist the department in determining what type of program to put the offender in while incarcerated.

Mr. Fracassi said the department has been working with the Department of Human Services to reduce child support obligations of offenders while incarcerated so the offenders are not faced with an insurmountable arrearage upon release from incarceration. He said the obligation can be reevaluated upon release. Of the 200 to

300 offenders being placed under the custody of the department on an annual basis, he said, over 20 percent generally do not have a high school diploma. He said the department requires an offender who does not have a high school diploma to work toward obtaining a general educational development (GED) diploma, and 94 percent of the offenders achieve that goal. He said the achievement is one step toward developing work skills for the offender to use upon release. He said the education department at the State Penitentiary works to develop lesson plans to help individuals for industry training. He said the department seeks to train offenders to fill jobs available in the state.

Mr. Fracassi said the reading program teaches comprehension and spelling, as well as addressing basic educational needs. He said the department has worked with the North Dakota Retired Teachers' Association to get volunteers to teach at the Penitentiary and at the correctional facility in Jamestown. He said the automobile technology vocational education program is a program through which an offender may obtain a good job upon release. He said the program is limited only by the amount of space available. He said the prison has upgraded library services and has upgraded equipment and technology within the industry program. He said the industry program has over 50 skill-sets from which to choose, and the program works with the private sector to find employment for offenders upon release. He said instructors in the industry program receive certification through the career and technical education program and are able to certify skill-sets of offenders participating in the programs. In addition, he said, the department works with United States Department of Labor apprenticeship programs.

Mr. Fracassi said the reentry program teaches offenders how to obtain housing, prepare budgets, prepare resumes, and complete job applications. The program addresses how an offender can discuss the offender's felony record with employers by addressing the mistakes made and emphasizing the skills that have been acquired while incarcerated. He said the reentry program holds mock job fairs and helps prisoners identify interest in various jobs.

Mr. Fracassi said the department works with Job Service North Dakota for job placement. He said a second chance job fair was held which resulted in several placements of offenders who were being

released from custody. He said the strong economy in the state has helped facilitate placements in jobs. He said it has been difficult to enhance the online training of offenders due to security concerns. He said the department is developing partnerships with Bismarck State College for a welding program that would use welding simulators and which would result in measuring skill-sets for certification. In addition, he said, the department is working with other institutions of higher education to bring college classes into correctional facilities.

Mr. Fracassi said the reorganization of the department has illustrated that communication is necessary to avoid duplication of efforts. He said he is proud of the efforts made by the department in enhancing the industry and education program. He said Roughrider Industries will be taking over operation of the Penitentiary commissary on July 1. He said the profits from the commissary may be used to enhance education programs.

In response to a question from Representative Wolf, Mr. Fracassi said the department has a number of apprenticeship and certification programs, including woodworking, metal products, welding, carpentry, and sewing.

In response to a question from Senator Warner, Mr. Fracassi said 50 percent of all earnings by prisoners while in custody must go toward payment of child support obligations. He said offenders working in prison industries may generate \$150 a month that can be used toward child support obligations. He said the child support reduction gives the offender some hope to minimize the impact of child support obligations and provides some money to satisfy the obligations rather than simply allowing the obligations to accrue during the time of incarceration.

Ms. Olson said the reduction in child support obligations appears to be the best way to handle the problem. She said growing arrearages do not help anybody and may actually result in increased expenses to the Department of Human Services in the economic assistance programs. She said a little money from a prisoner helps the prisoner's family and teaches responsibility and the importance of continuing to address the obligation upon release.

In response to a question from Senator Warner, Mr. Fracassi said profits from the industry program are retained and reinvested in the program.

In response to a question from Justice Maring, Mr. Fracassi said funding for college classes was lost due to the reduction in Pell grants. He said the department is working with Bismarck State College and the State College of Science to redevelop programs and is considering the use of retired teachers to cut costs. He said there are many studies that demonstrate the importance of education in reducing recidivism. He said the department is beginning to use followup information on North Dakota education and training (FINDET) to help track the success of offenders upon release because accurate data is needed to measure the success. He said the

women's correctional facility in New England has a sewing operation and a welding program. He said minimum security inmates work in the community. He said there is also a sewing program at the facility in Jamestown, and there are a number of opportunities in the sewing industry.

In response to a question from Ms. Olson, Mr. Fracassi said the department wants to know where offenders are working and the wages they are receiving as part of the tracking program.

In response to a question from Senator Dever, Mr. Fracassi said many of the inmates do not have state-issued identification cards. He said the department is working to determine during orientation if an offender needs to obtain an official identification card. He said the lack of identification cards is a barrier to obtaining employment upon release. He said the department is working with the Department of Transportation to help offenders obtain official identification.

In response to a question from Representative Boucher, Mr. Fracassi said the industry program is at full employment. He said the department requires inmates to have a GED to work in the industry program. In addition, he said, the inmate must be in full compliance with treatment plans and have acceptable behavior. He said the education program has 300 to 400 monthly service contacts with inmates.

In response to a question from Representative Boucher, Ms. Bertsch said the department has a performance-based sentencing reduction program. Under the program, she said, the inmate must complete required treatment programs and undergo an assessment that establishes requirements that the inmate must achieve. She said the State Parole Board has the authority to reduce sentences and reviews treatment programs, work history, and educational progress of an inmate.

Judge Hagerty said, during sentencing, judges may require offenders to take advantage of treatment opportunities.

Mr. Cruff said state's attorneys also consider treatment requirements in the sentencing process with respect to probation decisions.

At the request of Chairman Wolf, Ms. Bertsch provided information regarding the Penitentiary building project. She said the \$64 million project is part of a three-year process. She said a selection team chose an architect for the project, and the programming phase has been completed. She said the project is in the predesign phase. Because the project will work within the existing facility, she said, the project is very complex. She said the predesign phase should be complete by the end of November. Upon completion of the predesign phase, she said, the architects will develop plans through next summer and bids should be let by late summer 2010. She said construction should be commenced by fall of 2010 and complete by December 2012.

Chairman Wolf requested members of the commission to suggest topics for study during the

interim. She said she reviewed the reports from the two previous interims and has identified areas in which she would like to have further information. She said the Attorney General has requested an opportunity to provide an update on the 24/7 sobriety program.

Judge Hagerty said the 24/7 sobriety program is used as a condition of bond and also is used as a condition of probation or as part of a sentence. She said drug courts also are using the program. However, she said, the increased use of the program may present issues with respect to staffing and available space for administration of the drug and alcohol tests. She said the Burleigh County testing is administered by the sheriff's department in a controlled-access hallway.

Senator Lyson said the Williams County sheriff has expressed concerns about the burden the program is placing upon local officials because many judges are utilizing the program.

Mr. Trenbeath said the 24/7 sobriety program administered by the Attorney General has not yet been rolled out in Williams County. He said the local judges likely are requiring the testing in that county. Therefore, he said, the county probably does not have the software and equipment used by the counties in which the program has been implemented.

In response to a question from Representative Wolf, Ms. Bertsch said the Department of Corrections and Rehabilitation has used electronic monitoring of sexual offenders for about five years. She said 45 to 50 offenders are being monitored by electronic means at any time. She said the Sexual Offender Task Force makes determinations of who may be monitored and works with probation officers and local law enforcement to run the program.

In response to a question from Representative Wolf, Ms. JoAnne Hoesel, Department of Human Services, said the department and the Rural Crime and Justice Center have worked to place 12 prevention coordinators around the state. She said four of the coordinators work with the tribes. She said a community readiness survey was prepared to help target prevention strategies. The results of the survey, she said, were surprising in that there was not a higher level of awareness of why high teenage drinking rates are not good. She said it was clear that there needs to be an emphasis on awareness of the negative impacts of the high teenage drinking rate. She said the prevention coordinators work with communities, schools, and parents to help address and intervene early through the use of partners. She said she will provide the commission members with copies of the survey results.

In response to a question from Senator Lyson, Ms. Hoesel said the Rural Crime and Justice Center has cooperated with the Department of Human Services to provide regional prevention coordinators in each of the eight regional human service centers. She said the prevention coordinators were hired recently and some work out of offices while others are

working out of homes. She said she will provide the commission with additional information regarding the prevention coordinators.

In response to a question from Representative Wolf, Ms. Bertsch said the Department of Corrections and Rehabilitation has published data on its website relating to incarceration statistics.

In response to a question from Senator Warner, Ms. Olson said there are capacity issues statewide with respect to substance abuse and mental health treatment. She said there was a lack of understanding during the last legislative session with respect to the global behavior health initiative. She said many legislators believed that it was a new program, when in fact it was an attempt to address the issue statewide rather than regionally. She said the program will be a priority for the department in 2011. She said the department is working with private providers to help relieve pressure locally and is handling the capacity issues in the best way the department is able. She said the commission may consider having a presentation by youth with addiction problems similar to the presentation during the last interim at the meeting in Belcourt. She said the prevention program is an excellent program.

Judge Hagerty said the committee also may consider receiving information regarding the Students Against Destructive Decisions program.

In response to a question from Representative Klemin, commission counsel said the commission received information during the last interim with respect to mandatory sentencing. However, he said, a proposal for a bill draft was not recommended by the commission.

Representative Klemin said the commission should continue to examine mandatory sentencing.

Mr. Cruff requested Ms. Hoesel to provide information at a future meeting regarding the difference between the prevention coordinators and the safe community coordinators and how those positions work together.

Senator Dever said he would like to see a progress report on the youth crisis intervention programs funded under 2009 Senate Bill No. 2355. In addition, he said, updates regarding drug courts would be appropriate. He said the recent Offender Reentry Summit demonstrated the need to support reentry programs and address juvenile reentry issues. He said the commission may consider the use of parole, including the lack of housing for sexual offenders, the handling of repeat driving under the influence offenders, use of parole for violent offenders, and problems associated with the parole of American Indians who return to the reservations. He said the commission also should consider receiving information regarding the use of community service organizations.

Mr. Cruff said the HOPE program has been instituted in Hawaii for the random drug testing of parolees. He said the program has been demonstrated to work well in rural areas. Under the

program, he said, a probationer is required to call in on a daily basis and submit to random drug tests. He said there are immediate sanctions for failures. He said the program is not expensive to administer.

Ms. Bertsch said it appears the HOPE program has the same effect as the 24/7 sobriety program. She said a court or a parole board may use the 24/7 sobriety program and surveillance officers are available in rural areas to participate in the program.

Mr. Trenbeath said he has seen a presentation on the HOPE program, and it appears the HOPE program and 24/7 sobriety program accomplish the same thing.

Mr. Cruff said a program has been implemented in St. Paul, Minnesota, to help repeat driving under suspension offenders regain driving privileges. He said he would like to see additional information on that program and work with the Department of Transportation to see if there are ways to allow offenders to work toward regaining their licenses.

Mr. Trenbeath said repeat driving under suspension offenders often dig a hole that they have no hope of getting out. He said the suspension of licenses also impedes the ability to participate in the 24/7 sobriety program. He said the issue of reinstating driving privileges is worthy of further study.

Chairman Wolf said the commission may consider visiting a drug court. In addition, she said, the commission may consider touring facilities such as the Boys and Girls Ranch, the Dakota Women's Correctional and Rehabilitation Center, the State Hospital, the Robinson Recovery Center, and the Heart of America Correctional and Treatment Center.

Senator Lyson said it is important to address youth issues and deal with initial violations in juvenile court through the use of community services. He said it is vital to deal with youth issues before bigger problems develop. He said there must be some shame attached to punishment to deter people from committing offenses.

Judge Hagerty said initial offenses may be addressed through meaningful misdemeanor probation.

Justice Maring said she agrees that juvenile issues should be a priority concern. She said a recent issue of a publication by the Council of State Governments profiled a juvenile justice initiative that has been successful in New Jersey. She said the program has reduced detention significantly. In addition, she said, Ramsey County, Minnesota, has used an initiative to reduce juvenile crime and juvenile detentions significantly.

Ms. Bertsch said attendant care is available in this state. She said the state has a model system that follows evidence-based practices.

It was moved by Senator Dever, seconded by Mr. Trenbeath, and carried on a voice vote that the commission follow the proposed study approach discussed in the commission's background memorandum.

In response to a question from Justice Maring, Ms. Bertsch said state funds cover housing costs for certain individuals participating in the Teen Challenge program. She said participation is self-selected by the offender and other options are provided, such as the Tompkins program or other traditional treatment programs.

Judge Hagerty said the individuals who select to participate in the Teen Challenge program often do so as a condition of probation which requires treatment. She said the Bismarck Transition Center could be another alternative that would be considered as a conditional probation.

Justice Maring said the state must provide non-faith-based alternatives that may be selected by offenders.

Chairman Wolf recessed the meeting and reconvened the meeting for a tour of the Teen Challenge Center located at 1406 Second Street NW, Mandan.

Mr. Steve Berg, Director of Administration, and Mr. Matt Voorhees, Executive Director, Teen Challenge Center, led a tour of the Teen Challenge Center. Mr. Berg distributed written information ([Appendix C](#)).

In response to a question from Representative Klemin, Mr. Berg said Teen Challenge leases the building in which it operates from a foundation. He said Teen Challenge provides maintenance for the facility and the cost of rent is forgiven in exchange for maintenance of the building. He said the students at Teen Challenge have done much of the repair work to update the facility.

Mr. Voorhees said he was a Teen Challenge student approximately nine years ago. He said the program is a 12-month to 18-month program consisting of education classes and counseling.

In response to a question from Representative Heller, Mr. Voorhees said the program had to close its family area due to funding issues. When that area of the program was discontinued, he said, three of the women left the program and three of the women remained in the program and found alternative housing arrangements for their children.

In response to a question from Justice Maring, Mr. Berg said it costs approximately \$2,000 per month to provide housing and services for one student. He said the contract with the Department of Corrections and Rehabilitation covers approximately one-half of the monthly cost for the program participants who are referred by the Department of Corrections and Rehabilitation. Therefore, he said, the program must make up the remaining costs through fundraising and other means. He said the participants who are not referred from the Department of Corrections and Rehabilitation are required to make monthly payments for participating in the program. He said churches and families frequently help the individuals with the payments.

In response to a question from Representative Boucher, Mr. Voorhees said participants do not take

part in the Alcoholics Anonymous (AA) program or Narcotics Anonymous (NA) program while in Teen Challenge because they have three hours of classwork each morning which is similar to the AA and NA programs. However, he said, Teen Challenge encourages participation in those types of programs in the last few months before reentry and after reentry into the community.

In response to a question from Justice Maring, Mr. Voorhees said the program has an addiction counselor for every 20 to 30 students in the program. He said each student meets monthly with the counselor and may meet with the counselor in other emergency situations. In addition, he said, the students take part in a personal studies class and have daily contact with the counselors.

In response to a question from Senator Dever, Mr. Voorhees said methamphetamine is still the most significant drug issue faced by participants in the Teen Challenge program. However, he said, there has been an increase in prescription drug addiction. He said most of the participants in the program are multidrug users.

Mr. Berg said nearly everyone in the program has used methamphetamine. He said the drug has become more easily obtained.

Mr. Voorhees said various treatment programs have different methodologies. However, he said, it is important to look at results. He said the faith-based aspect of Teen Challenge is aimed at helping participants develop and keep healthy behaviors. He said less than 10 percent of participants return to prison or jail after completing the program.

Chairman Wolf recessed the meeting and reconvened the meeting at the Youth Correctional Center, 701 16th Avenue SW, Mandan.

Chairman Wolf called on Ms. Lisa Bjergaard, Director, Division of Juvenile Services, Department of Corrections and Rehabilitation, for comments regarding the Division of Juvenile Services. She provided written information ([Appendix D](#)). She said the Division of Juvenile Services is using its assets to bring about corrective actions in youth to help keep the youth out of the adult juvenile justice system. She said 30 percent of the juveniles receiving services through the division during the last fiscal year were under supervision at home. She said the division has been able to access federal child welfare funds for home and residential treatment.

In response to a question from Senator Warner, Ms. Bjergaard said there are five youth under the custody of the division who are being treated at a Minnesota facility for aggressive sexual offenders. She said there are serious juvenile offenders who must be kept separate from less serious offenders who are likely to be able to be moved out of the juvenile justice system. She said it is important not to make low-risk offenders worse while being treated in the juvenile justice system.

In response to a question from Representative Boucher, Ms. Bjergaard said the youth under the

custody of the division are under that custody through a court order, which is limited in duration to 12 months. She said the division could petition the court for extensions if needed.

Ms. Bjergaard said the division has begun collecting data regarding risk. She said the division uses a 14- to 21-day assessment process that addresses the criminalgenic needs, treatment needs, and academic needs of youth under the custody of the division. She said the needs of the juveniles must be addressed so the risk can be reduced. She said the adoption of the Uniform Juvenile Court Act by the Legislative Assembly has provided the division the ability to control the length of stay of juveniles and set up a process for a juvenile offender to see a goal at the end of the detention, as well as provide treatment services. She said the division regularly monitors quality control and has developed a facility improvement process to evaluate conditions of confinement. She said the quality control process focuses on treatment and safety. She said the division works to infuse accountability for decisions made and the law provides flexibility to allow the movement of juveniles within the system to where the juveniles need to be to address their needs.

Mr. Jess Friesz, Division of Juvenile Services, Department of Corrections and Rehabilitation, said the assessment center was implemented on August 1, 2008. He said the assessment process helps the division make informed decisions about placement and treatment of juveniles. He said the process involves parents, the lead assessor, the juvenile, and community placing authorities. He said the assessment program provides a centralized process to allow for informed, evidence-based decisions regarding placement and services. In addition, he said, the program has allowed specialization of staff, continuity of procedures for intake, and the development of staff expertise. He said the rapport generated with the youth is likely to produce more honesty. He said the process provides for one uniform report regarding the juvenile. He said the staffing at the end of the assessment period is valuable to families and provides insights on the best plan for the juvenile which provides a better understanding of the juvenile and generates effective matches of services.

Ms. Gaylene Massey, Youth Correctional Center, Department of Corrections and Rehabilitation, said the assessment assists in identifying the educational needs of the juvenile. If a juvenile was enrolled in school before placement, she said, the school is contacted and requested to provide books and assignments. She said the teachers at the Youth Correctional Center assist the students with work, and the assignments are returned to the home school. She said this process helps the juvenile continue moving toward achievement of educational credits. If the juveniles remain at the Youth Correctional Center, she said, the juveniles become students at the center. She said the small class size at the center helps

provide a focus on individual needs and helps the juvenile catch up with the juvenile's educational needs. She said the center provides core classes and some electives, as well as vocational classes. She said independent living skills, parenting, and special education also are provided. She said the center has a GED program and is state-approved and accredited. She said the center has implemented the Read Right program which has been very successful.

In response to a question from Senator Warner, Ms. Massey said if a student does not appear likely to return to school upon reentry, the student will be eligible for the GED program. She said the student must petition to enter the program and sign a contract agreeing to follow numerous conditions to participate in the program. She said one individual contributed \$60,000 to invest in the Read Right program. She said there are other individuals, including graduates or former students at the center, who are working to establish scholarships or provide other funding for the education program.

Mr. Ryan Kudrna, Youth Correctional Center, Department of Corrections and Rehabilitation, said the center generates a treatment plan upon which to focus for each juvenile. He said the center administers a number of treatment plans, including group and individual counseling, substance abuse education, cognitive behavior classes, victim impact programming, and health and physical fitness. He said the EQUIP program is a 12-week cognitive restructuring program that addresses social skills, decisionmaking, and anger management. He said another program is designed for youth who have suffered significant trauma and is intended to teach the youth to deal with stress. A pretreatment sexual offender program, he said, is designed to prepare sexual offenders for the out-of-state sexual offender program. He said the TREK Challenge is a five-day backpacking trip in the Badlands that serves as a community service project.

Mr. Ron Crouse, Director, Youth Correctional Center, Department of Corrections and Rehabilitation, said in the 1950s juveniles were frequently running away from the facility. He said there were about 250 runaways per year. However, he said, there has not been an attempt by a juvenile to leave the facility in the last two years. He said the center is a safe place for the juveniles which provides learning opportunities and a high quality of life. In his 16 years at the center, he said, he cannot recall an instance of finding a juvenile with a secretive weapon. He said the staff members at the center have extensive training, and a four-year degree is required for staff members. He said the staff members work hard to help the young people and to keep them safe.

In response to a question from Senator Dever, Ms. Bjergaard said it is important to teach many of the juveniles at the center how to survive in spite of family problems. She said many of the juveniles at the center are parents. With respect to a juvenile committing further offenses, she said, 85 percent do not reoffend to a degree that would require them to return to the center after one year. She said the reentry program allows the juveniles to earn the right to go home. She said some juveniles are returned home after the 21-day assessment with a good community treatment plan in place. She said the support for the center has been good. However, she said, she would like to see additional focus on funding for intensive in-home family therapy and for tracking services to see that the juveniles are stabilized upon reentry into the community. She said the likelihood of entering the juvenile justice system goes up significantly if a juvenile drops out of school. Therefore, she said, cooperative programs with public schools to provide day treatment are important. She said there is a need to further help American Indian children. She said American Indian youth are overrepresented at the Youth Correctional Center and in the adult correctional system. She said a lot of the problems are related to economic issues and family stability.

In response to a question from Ms. Bertsch, Ms. Bjergaard said this state has done well to divert juveniles from detention. She said federal funds have been used to support nonsecure, holdover facilities through a cooperative arrangement with the North Dakota Association of Counties. She said attendant care centers have been created around the state to divert most youth from detention. However, she said, there are always concerns with federal funds being reduced to help support those programs.

In response to a question from Representative Boucher, Mr. Crouse said the results of the assessments are shared with tribal authorities and representatives of the center work closely with tribal social services and Bureau of Indian Affairs representatives. He said attempts are made to have tribal representatives involved in the staffing of the assessment.

Upon completion of a tour of the Youth Correctional Center, Chairman Wolf adjourned the meeting at 4:50 p.m.

John Bjornson
Commission Counsel

ATTACH:4