

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

CRIMINAL JUSTICE COMMITTEE

Thursday, February 5, 2004
Harvest Room, State Capitol
Bismarck, North Dakota

Representative Lois Delmore, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives Lois Delmore, Bill Amerman, Randy Boehning, Ron Carlisle, Duane DeKrey, Dennis Johnson, Lawrence R. Klemin, William E. Kretschmar, Mike Norland; Senators Stanley W. Lyson, Thomas L. Trenbeath, Constance Triplett

Members absent: Representative Carol A. Niemeier; Senator John T. Traynor

Others present: See attached appendix

It was moved by Representative DeKrey, seconded by Senator Trenbeath, and carried on a voice vote that the minutes of the November 10, 2003, meeting be approved as distributed.

Chairman Delmore welcomed Senator Constance Triplett, a new senator representing District 18, to the committee.

INDIGENT DEFENSE STUDY

Chairman Delmore called on Judge Donald Jorgenson, South Central Judicial District, for testimony regarding his concern about the administration fee imposed by 2003 House Bill No. 1088. Judge Jorgenson said he was speaking only for himself and was not expressing the views of his judicial colleagues. He said his concern centers on the employment of the courts as a revenue source, especially when the funds are dedicated funds in which the courts have a direct interest. He said the funds generated under North Dakota Century Code Section 29-26-22 are directed first to the indigent defense fund, followed by the court facilities fund, and the residual to the general fund. He said there are three groups of defendants that appear before the court in criminal cases. First, he said, there is the group that is not indigent and may or may not have privately retained counsel. Second, he said, is the group who falls below the indigent defense guidelines and is represented by court-appointed legal counsel. The third group, he said, and the largest of all three, is the group that appears before the court, does not seek legal representation, and enters pleas of guilty. All three groups, he said, are routinely advised by the court that should they elect to enter a plea of guilty to the alleged offense they will be subject to mandatory court administration fees as mandated for the level of the alleged offense. He said they are not routinely

advised that the court may waive the fees if they are indigent. The result, he said, is that frequently defendants are subjected to mandatory court administration fees that may be inappropriate if the court were fully informed as to the financial status of the defendant.

Judge Jorgenson said when defendants are indigent for the purpose of court-appointed legal counsel, that status is insufficient in and of itself as a basis for the court to waive the fees. Additionally, he said, the court-appointed legal counsel, who has a direct interest in the revenue generated from court administration fees, may well argue to the court that the court should reduce the fine imposed since the defendant will be subject to the existing court administration fees. He said criminal defendants are subjected to court administration fees dedicated to court facilities improvement and maintenance as a separate category of judicial services consumer. He said no such fee is imposed upon others who use court facilities, such as civil litigants. He said while court costs have a long history of justification and acceptance, they have traditionally been equal to or less than the amount of fines imposed for the convictions. He said as a means of funding necessary indigent defense services and judicial facilities, the court administration fees now frequently exceed fines. He said if a defendant qualifies for court-appointed counsel, it seems an unnecessary burden to establish indigent status under North Dakota Century Code Section 25-03.1-13. He said it is fundamentally inconsistent to appoint legal counsel and then later impose court administration fees for the indigent defendant. Judge Jorgenson submitted written testimony, a copy of which is on file in the Legislative Council office.

In response to a question from Representative Kretschmar, Judge Jorgenson said if a defendant qualifies for indigent defense counsel, the court has the authority to waive the court administration fees. He said he is surprised at the amount of revenue the statute has generated. He said many of those defendants who are paying the fee, if they applied, would qualify for indigent defense counsel. He said consideration should be given to a user-oriented recovery rather than a blanket recovery from defendants.

Senator Trenbeath said the Legislative Assembly will take Judge Jorgenson's comments into consideration during the next session.

Chairman Delmore called on Mr. Kevin Chapman, attorney, Williston, for testimony regarding his experience as an indigent defense contract attorney in the Northwest Judicial District. Mr. Chapman testified via telephone. He said in May 2002, when he gave notice that he intended to terminate his contract with the state, his reasons for giving notice were the heavy caseload and the inadequate compensation. He said the increase in drug offenses in the northwestern part of the state has greatly impacted the number of cases being assigned to the attorneys. He said under the contract he was earning about \$50 per hour. He said because there are no attorneys currently under contract with the court in the district, the court is hiring attorneys to do the indigent defense work at a rate of \$65 per hour. He said the cases include criminal, juvenile, and termination of parental rights. He said in the past six months he has taken 6 to 12 new cases at the hourly rate.

In response to a question from Senator Trenbeath, Mr. Chapman said to attract attorneys to take the contracts, the hourly rate should be in the \$75 to \$85 range. He said his private rate is \$115 per hour. He said the idea of a public defender office may be a good option. He said, however, there still may be conflict of interest situations, such as a situation in which there are codefendants. In this instance, he said, there would be a need to go outside the public defender office for legal counsel.

In response to a question from Representative Kretschmar, Mr. Chapman said he spent about 50 hours per month or about one-third of his time on contract cases when he had the indigent defense contract.

In response to a question from Representative Klemin, Mr. Chapman said an attempt was made to renegotiate his contract. He said he and two other attorneys in his firm would have been willing to continue with the contract work for a 25 percent pay increase. He said their offer was rejected and a 14 to 15 percent increase was offered. He said the counteroffer was rejected.

In response to a question from Representative Delmore, Mr. Chapman said he is not aware of any other attorneys or law firms in the Williston area who are interested in the criminal defense contract. He said the court is struggling to find attorneys to take the work on an assignment basis. He said his partner, Mr. Josh Rustad, is currently doing the majority of the assignment work in the Williston area.

Chairman Delmore called on Ms. Marea L. Beeman, Vice President, Spangenberg Group, West Newton, Massachusetts, for testimony regarding the findings of the study conducted by the Spangenberg Group. Ms. Beeman said she and another researcher traveled to North Dakota the week of December 8, 2003. She said they conducted interviews with current and former contract attorneys, judges, state's attorneys, and court administrators in Dickinson, Bismarck, Jamestown, and Fargo. She said after

conducting the site work and reviewing data on the indigent defense system, they concluded the North Dakota system is wrought with many serious problems. She said the current system is in danger of failing to fulfill its constitutional mandate of providing indigent defendants with effective assistance of counsel. She said as a result of the study, the Spangenberg Group recommends North Dakota shift to a statewide public defender program to better serve indigent defendants. She said North Dakota is the only state in the country that uses an indigent defense model relying primarily on private attorneys working under contract with judges. She said under North Dakota's system, attorneys agree to accept flat fee contracts requiring them to handle an unlimited number of cases in a given county or judicial district. She said this type of contracting method presents two primary potential problems: (1) a lack of independence from the judiciary; and (2) the inability for contract attorneys to receive relief from excessive case assignments not anticipated when the contract period began. She said both of these two potential problems are impacting the quality of legal representation provided to indigent defendants in North Dakota. She said the chief problem with North Dakota's indigent defense system is the pervasive absence of independence for the defense function from the judiciary. She said while conducting the study, they met with three presiding judges. She said all three were uncomfortable with the current system. She said North Dakota has some of the lowest rankings among all states in the nation for indigent defense expenditures and cost per capita. She said the average cost per capita for indigent defense in nine states similar to North Dakota in population and geography was \$8.54 while in North Dakota it was \$3.23. She said in terms of overall indigent defense expenditures, North Dakota spent 43 percent less than the state with the second-lowest expenditure, which is Wyoming. In terms of cost per capita, she said, North Dakota spent 49 percent less than the state with the second-lowest rank, Idaho. She said the 2003-05 appropriation of \$4.3 million for indigent defense was a 5 percent increase over the previous biennium. However, she said, the overall caseload has increased by 8 percent and the felony caseload has increased by 15 percent.

Ms. Beeman said the goal in the state is to pay contract attorneys \$65 per hour, which is \$10 an hour less than the amount recommended by the North Dakota Legal Counsel for Indigents Commission. She said none of the attorneys she interviewed reported earning a full \$65 an hour for their contract work. She said when a contract attorney is appointed to a very serious case, such as a homicide case, there is often no additional pay for the time required to properly handle the case. She said in addition to concerns about high caseloads and inadequate pay, there are also concerns that there are no minimum qualifications for attorneys to get contracts. She said

all judges interviewed noted that they receive complaints about contract attorneys from indigent defendants, most concerning a lack of communication with their lawyers. She said the current system does little in the way of monitoring the work of contract attorneys and there is no formal process for addressing client complaints. She said some attorneys reported pressure from judges to not request motions, preliminary hearings, or trials. She said there is a declining interest in the contracts, especially in the rural areas.

Ms. Beeman said there is a disparity between the level of resources provided to contract attorneys and state's attorneys. She said this disparity can impact the quality of representation provided by defense counsel by diminishing the level of adversarialness called for in a healthy criminal justice system. She said full-time state's attorneys receive salaries and benefits, are provided with support staff, and are sent to training at no cost. She said in the Burleigh County state's attorney's office, additional resources include Westlaw, victim witness coordinators, access to law enforcement personnel for help with investigation, and assistance from the crime lab, medical examiner, toxicologist, and out-of-state experts when needed. By comparison, she said, contract attorneys receive no benefits, have to pay for their own training and online legal research, and must seek approval for investigators and experts. She also said contract attorneys have no effective voice in the system.

Ms. Beeman said it is recommended North Dakota create a primary public defender system to fulfill its duty of providing its indigent citizens with meaningful and effective representation. She said in addition to a central administrative office for the public defender system, they recommend the creation of a contract administrator position. She said this position should be staffed with someone who is familiar with indigent defense practice and issues. She said it is further recommended North Dakota create an indigent defense commission that is involved in policy oversight of both the public defender and contract systems, serves as a voice for indigent defense needs, and is responsible for selecting and overseeing the state's public defender. Ms. Beeman provided a copy of the draft report, a copy of which is on file in the Legislative Council office.

In response to a question from Representative Delmore, Ms. Beeman said regardless of the type of indigent defense system North Dakota chooses, there will be an increase in funding needs.

In response to a question from Representative Carlisle, Ms. Beeman said the federal government pays indigent defense attorneys \$90 per hour. She said this rate is the same for all states.

In response to a question from Representative DeKrey, Ms. Beeman said the indigent defense systems in Connecticut and Georgia have been sued. She said the Georgia case resulted in the state being

required to double and in some cases triple its level of funding. She said a lawsuit is pending in Montana.

In response to a question from Representative Delmore, Ms. Beeman said to handle conflict of interest issues that would arise under a public defender system, the contract system could be used for those cases.

In response to a question from Representative Boehning, Ms. Beeman said a public defender system would allow for oversight, training, and supervision. She said newer, less experienced attorneys could be assigned the misdemeanor cases with the more experienced attorneys handling the felony cases. She said a number of law schools have criminal defense clinics available for their students.

In response to a question from Representative Kretschmar, Ms. Beeman said Kentucky relies heavily on user fees to fund its indigent defense system. She said other states, such as North Dakota and Massachusetts, have an indigent defense application fee. She said the fee is \$25 in North Dakota and \$200 in Massachusetts. She said this fee is used to supplement general fund appropriations.

Chairman Delmore called on Ms. Sandi Tabor, Chairman, State Bar Association Indigent Defense Task Force, for testimony regarding the task force. Ms. Tabor said the major concern of the task force is that the state's indigent defense system should be independent from the judiciary. She said the task force is undecided about going to a statewide public defender system. She said one option would be to continue using the contract system in the urban areas and to use the public defender system in the rural areas. She said it is the goal of the task force to finish its work by April. She said the task force may be proposing legislation. She said it is likely several million additional dollars are needed to adequately fund the state's system. She said the concerns of the task force are the system is underfunded and attorneys are handling too many cases.

In response to a question from Representative DeKrey, Ms. Tabor said attorneys who serve as state's attorneys are able to do indigent defense work as long as the indigent defense work is not in the same county as the attorney's state's attorney duties.

In response to a question from Representative Carlisle, Ms. Tabor said there are a number of issues that will need to be addressed by the Legislative Assembly.

Representative Boehning said the committee should be provided with information on the judicial district boundaries, the number of attorneys in each district, and the number of contracts.

Chairman Delmore called on Mr. Robert Ansley, attorney, United States District Court, Bismarck, for testimony regarding the indigent defense program in the United States District Court for the District of North Dakota. Mr. Ansley said the federal Criminal Justice Act of 1964 provides for the hourly payment of indigent defense counsel in the federal courts. He said in

North Dakota, attorneys are appointed on a case-by-case basis. He said attorneys are paid a flat rate of \$90 per hour with caps of \$5,200 for felony cases, \$1,500 for misdemeanors, and \$3,700 for appeals. He said additional compensation can be approved by the court. He said attorneys can request additional money for interpreters, investigators, and experts. He said the Criminal Justice Act provides authority for the creation of community defender organizations and federal public defender organizations. He said the attorneys in the public defender organizations are federal employees, while community defender organizations are nonprofit groups and the attorneys are employed by the nonprofit group. He said there are 94 judicial districts in the United States and 83 of the 94 districts have implemented either the federal public defender organization or the community defender organization systems. He said of those 83 districts, 58 districts have the federal public defender office system. He said North Dakota does not have either type of organization but rather uses a panel attorney system. He said each federal district adopts its own plan. He said all members of the federal bar are eligible to be on the panel. He said there are 302 attorneys on the North Dakota panel and about one-fourth of those attorneys are actively taking appointments. He said the district court has two attorneys on contract who serve as advisors to the panel attorneys. He said when making appointments, the magistrate judge looks at the needs of the defendant and the experience of the attorneys. He said attorneys can refuse cases. He said most attorneys are cutting their regular fees by \$40 to \$50 per hour when they take a case. He said about 200 appointments are made per year at a cost of about \$400,000. He said some incentives for attorneys to take cases are the \$90 per hour rate and the promptness of getting paid, usually within 10 to 14 days. He said it is a good program for young attorneys to get experience in federal court. He said the district is looking at a federal public defender office and is using South Dakota as a model system. He said South Dakota has two full-time defenders and a number of assistants. He said North Dakota's caseload would only justify one full-time public defender. He said a federal public defender office would not replace the panel system but would complement it. He said the district court has not had problems recruiting attorneys to take cases. He said there is a good relationship between the attorneys and the court. Mr. Ansley provided information on the federal indigent defense system, a copy of which is on file in the Legislative Council office.

In response to a question from Representative Delmore, Mr. Ansley said defendant indigency status is based upon financial information submitted by the defendant. He said once indigency is determined, the magistrate appoints counsel.

At the request of Chairman Delmore, committee counsel presented a memorandum entitled

Information on Law Student Debtload and Financial Aid. She said over the past four years, 84 to 93 percent of law students have borrowed money to finance their law school education. She said the average student loan amount for graduates of the University of North Dakota School of Law in 2003 was \$48,800. Committee counsel also presented information on loan repayment and forgiveness programs in other states and on salaries and employment of recent law school graduates. Copies of this information are on file in the Legislative Council office.

VULNERABLE ADULT ABUSE AND NEGLECT STUDY

Chairman Delmore called on Mr. David Peske, North Dakota Medical Association, for testimony regarding whether certain individuals should be required to report vulnerable adult abuse and neglect. Mr. Peske said the latest available statistics on adult abuse from the Aging Services Division of the Department of Human Services indicate that from October 2002 to September 2003 the eight regional human service centers received 555 information and referral calls regarding adult abuse and neglect and spent 7,922 hours providing case services. Of these referrals, he said, 29 percent came from medical or home health sources, 21 percent from agency sources, and 19 percent from both family and community sources, respectively. He said self-neglect was the most common reason for a referral. He said self-neglect accounted for 63 percent of referrals.

Mr. Peske said to date the North Dakota Medical Association has received only limited input on this issue from its physician membership. He said, however, it has found physicians are generally aware of the voluntary law and the reporting process and has become involved in the reporting of suspected cases. He said some clinics indicated they have treated vulnerable adults because protective agency personnel have already become involved and made arrangements for care. Other input, he said, has indicated a preference that the voluntary reporting mechanism remain in place, but there is a need for more clarity and education to better assure proper functioning of the referral process. He said those clinics closely associated with a hospital system that is accredited by the Joint Commission on the Accreditation of Healthcare Organizations may be more attuned to this issue since the hospital must have a policy in place to maintain accreditation. He said at least the 12 largest hospitals in the state are currently accredited by the organization and therefore operate with the required policies in place. He said it is important to note that the enactment of any mandated reporting requirement tends to have a negative effect on the willingness of patients or their caregivers to seek timely medical care. He said the North Dakota Medical Association's position would, therefore, be based on assurances that the appropriate safeguards, such as reporter immunity, were included and that the

revised system is adequately structured and funded to function as necessary. Mr. Peske submitted written testimony, a copy of which is on file in the Legislative Council office.

GUARDIANSHIP SERVICES STUDY

Chairman Delmore called on Ms. Donna Byzewski, Cochairman, North Dakota Guardianship Task Force, for testimony regarding the results of a survey conducted by the Guardianship Association of North Dakota. Ms. Byzewski said the purpose of the survey, which was conducted in early January 2004, was to help determine the need, standards and practices, and funding issues regarding guardianship in the state. She said the survey was posted on the association's web site and made available to the broad spectrum of task force organizations and their membership. She said the association received 141 responses to the survey. She said categories of respondents included family members, the legal profession, and social services. With respect to the issue of need, she said, 57 percent of the respondents indicated guardianship needs for the populations served are not adequate and 50 percent of the respondents indicated it is difficult to find individuals who are willing to serve as guardians. She said the results indicate family members are typically the first choice for guardian, but when a family member is not available, a public administrator assigned by a judge becomes the guardian. She said, however, a number of courts do not have a public administrator. She said approximately 22 percent of the respondents indicated family members are generally not willing or able to serve as guardians. She said over half of the survey respondents indicated they are seeing changes in the population needing guardianship services. She said those changes are most identifiable in the elderly population, followed by individuals with mental illness, physical disabilities, and head and brain injuries. She said with regard to standards and practices for guardianship, approximately 25 percent of the respondents indicated they do not have an adequate knowledge of guardianship and the guardianship process. She said when asked if they have experienced any barriers or problems accessing or working with the legal system for guardianship, 35 percent indicated "yes" with the majority citing lack of funds and length of time for the process as barriers. Ms. Byzewski submitted written testimony, a copy of which is on file in the Legislative Council office.

In response to a question from Representative Boehning, Ms. Byzewski said the survey was distributed online. She said 141 responses were received; however, she said, hundreds could have responded to the survey.

Chairman Delmore called on Mr. Rodger Wetzel, Cochairman, North Dakota Guardianship Task Force, for the presentation of proposed legislation. Mr. Wetzel provided to the committee a copy of proposed legislation. He said the proposed legislation

would provide for a system of guardianship services and would provide for an appropriation to fund the system. A copy of the proposed legislation is on file in the Legislative Council office.

In response to a question from Representative DeKrey, Mr. Wetzel said the task force will be discussing the funding needed for guardianship training and services proposed in the bill draft. He said \$450,000 to \$500,000 was the amount suggested at the last meeting of the task force.

Chairman Delmore called on Mr. Melvin Webster, Bismarck, for testimony regarding the appointment of successor guardians. Mr. Webster said a parent or guardian can name a successor guardian in the person's will. He said when possible he tries to have a coguardian named at the time the guardianship is initially created. He said when naming a successor guardian, there is not a need to go through the entire guardianship process. He said the determination that a guardianship is needed has already been determined and, therefore, that part of the process does not need to be repeated for the appointment of a successor. He said in some cases an organization rather than an individual is appointed as guardian. He said in instances in which there is no money available for the guardianship proceeding, the filing fee can be waived. He said in these cases there is a need to find an attorney and a visitor who will do the work pro bono. He said the medical evaluations are usually covered by medical assistance. He said courts usually require guardians to submit annual reports, but annual reports are not required by statute. He said there are no reporting requirements for persons with power of attorney.

In response to a question from Representative Klemin, Mr. Webster said the full guardianship hearing is not necessary for the appointment of a successor guardian. He said the procedure he uses for successor guardianship appointment meets the requirements of the guardian statutes. He said it would be helpful if the statutes specifically provided for the appointment of successor guardians. He said language should provide that the appointment of a successor guardian may be done by motion.

Chairman Delmore requested that the Legislative Council staff prepare a bill draft that would allow for a procedure for the appointment of successor guardians.

LAW ENFORCEMENT TRAINING NEEDS STUDY

Chairman Delmore called on Mr. Richard Bendish, Chairman, North Dakota Peace Officer Standards and Training Board, for information on law enforcement training needs in the state. Mr. Bendish said the basic law enforcement training needs in the state are adequately being met by the Law Enforcement Training Academy in Bismarck and Lake Region State College in Devils Lake. He said the problem is the inability to fund the need to provide adequate

inservice and advanced training. He said the board recently purchased a software upgrade that allows the board to accurately track officer training compliance. He said the Highway Patrol and the Bureau of Criminal Investigation provide field training to officers in the state. He said in planning the delivery of the training, every attempt is made to provide it to all officers without any officer being required to travel more than one hour to get to the training site. He said officers also receive training via video and computer format. He said individual agencies provide both inservice and specialized training to their officers and in most cases will allow officers of other agencies to attend. He said peace officers in the state are meeting the minimum requirements in continuing education. He said the question is whether the training is the proper training. He said some officers are meeting the standard only by completing refresher training or training needed to requalify with the equipment or techniques the officers already use. He said training for current and new techniques is important. He said the larger agencies may be able to provide this, but it is more difficult for the smaller agencies. He said an officer should not be placed into a position or duty for which the officer is not properly trained. He said obtaining training for courses, such as terrorism and weapons of mass destruction, is expensive and costly. He said the board operates only on the license fees paid by officers. He said the board has the authority to secure grants and has received such funding. He said the Bureau of Criminal Investigation's budget for the staffing and delivery of field training is \$310,664. Mr. Bendish submitted written testimony, a copy of which is on file in the Legislative Council office. Mr. Bendish also provided two examples of the training courses received by two different officers. A copy of those documents is also on file in the Legislative Council office.

In response to a question from Senator Lyson, Mr. Bendish said while the board sets the standards for peace officer training, the board has been forced to accept video training in some cases because that is all that is available. He said he would provide information to the committee on where the training dollars are being spent. He said he would also provide information regarding the need for quality training and not just training that meets the basic needs.

In response to a question from Representative Klemin, Mr. Bendish said in the two training examples he distributed, one officer is from a large law enforcement agency with a larger training budget and more access to training and the other is from a small agency. He said the differences in the training received by each are significant.

In response to a question from Representative Delmore, Mr. Bendish said because many counties do not have the money to pay competitive salaries, the counties do not attract highly experienced applicants.

In response to a question from Senator Triplett, Mr. Bendish said he is aware that there are federal

Homeland Security funds available for training and that the board is applying for those funds.

Chairman Delmore called on Colonel Bryan Klipfel, Superintendent, Highway Patrol, for comments regarding the state's law enforcement training needs. Colonel Klipfel said the Highway Patrol is responsible for the operation, maintenance, and administration of the Law Enforcement Training Academy. He said in 2003, 55 training courses were held at the training center for 1,156 students. He said a total of 55 new officers from various agencies satisfactorily met the minimum training requirements to serve as peace officers in the state. He said the training academy has one field training officer. He said this officer's job is to present various training programs at locations around the state. He said in 2003 this officer conducted training at 43 locations other than Bismarck. He said a total of 486 officers received 279 hours of instruction. He said for the 2003-05 biennium \$1,016,000 was appropriated for the operation, maintenance, and staffing of the training academy. He said within this budget \$50,000 was appropriated for funding specialized training. He said the Highway Patrol also hosts training with funds the board receives through the Edward Byrne grant program. He said the Highway Patrol budget has allocated \$34,000 for training. He said this amount covers tuition only. Other costs, he said, such as travel, meals, and lodging, are funded out of other sources. Colonel Klipfel submitted written testimony, a copy of which is on file in the Legislative Council office.

In response to a question from Representative Delmore, Colonel Klipfel said although not every officer needs the same level of training, there are basic training needs that all officers must have.

Chairman Delmore requested that the committee be provided with information on the different categories of training needs and the amount needed to adequately meet those needs.

In response to a question from Representative Amerman, Colonel Klipfel said of the 135 authorized Highway Patrol officers, six are women.

In response to a question from Representative Kretschmar, Colonel Klipfel said the majority of the trainers who teach the highly specialized courses are brought in from out of state.

In response to a question from Representative Delmore, Colonel Klipfel said the state's Interactive Video Network (IVN) has been used for some training. He said there are certain courses, however, that must be taught officer to officer.

Chairman Delmore called on Mr. Terry Traynor, North Dakota Association of Counties, for testimony regarding the use of IVN. He said statewide there are about 250 IVN sites and this number is growing. He said 11 of these sites are at the colleges and universities. He said the majority of the remaining sites are controlled by the various kindergarten through grade 12 telecommunications consortiums around the state. He said the most significant limitation of the

system is scheduling. He said the university and public school sites are generally booked for one-hour slots at least 30 but no more than 90 days in advance. He said the cost is \$80 per hour for the network and \$10 per site. He said in these locations it is difficult to get a large time block, such as four hours, in multiple locations unless it is in the summer. He said the local government sites are more flexible and the association has had some success in scheduling longer training sessions by using only county sites. He said there is also a practical limitation of 10 sites for a single training, after which the degradation in the signal reduces transmission quality. He said while significant time and travel costs can be saved, training at 10 or fewer locations still requires some people to leave their county, resulting in the need for backup staffing. He said as more local sites are installed, this medium will become more flexible and hopefully more available to law enforcement agencies. Mr. Traynor submitted written testimony, a copy of which is on file in the Legislative Council office.

In response to a question from Representative Klemm, Mr. Traynor said in the future Internet conferencing may be a viable alternative to IVN.

Chairman Delmore called on Captain Bill Brown, Minot Police Department, for testimony regarding law enforcement training needs. Captain Brown said as a training officer one of his tasks is to ensure that all the department's officers receive advanced training in various areas of expertise. He said examples would be homicide investigations, computer crimes, tactical operations, supervision and management, criminal investigations, and firearms maintenance. He said these training sessions are offered throughout the state, but they occur infrequently. He said the tuition and lodging for the training pose a substantial cost to the law enforcement agency. He said the state's peace officers are required to complete at least 60 hours of training in each three-year period to maintain their licenses. He said the majority of local law enforcement agencies in the state do not have any money budgeted for continued training. He said many of the smaller agencies in the state rely on the generosity and assistance of larger departments to provide quality instruction for them. He said any type of advanced training is almost nonexistent for the smaller agencies. Captain Brown submitted written testimony, a copy of which is on file in the Legislative Council office. Captain Brown also submitted a list of the films and videos that are in the North Dakota Peace Officer Association's library.

In response to a question from Senator Lyson, Captain Brown said the committee would be provided with a breakdown of the state's training needs, including what is specifically needed, why it is needed, and how much each need will cost.

Chairman Delmore requested that the items on the list be prioritized. Captain Brown said he would work with the Peace Officer Standards and Training Board to develop the prioritized list.

In response to a question from Representative Delmore, Captain Brown said he has seen fairly significant turnover in his department. He said the Minot Police Department has lost 12 officers and the majority of these are the result of career changes. He said when an officer quits or retires considerable training is required to develop that same level of expertise in a new officer.

In response to a question from Representative Kretschmar, Captain Brown said Minot State University offers a bachelor's degree in criminal justice. He said even though an officer may have a criminal justice degree, that officer is still required to complete the basic training course at the academy.

In response to a question from Representative Klemm, Captain Brown said the forensic training offered at the University of North Dakota and the DNA center at North Dakota State University may be helpful for some top-level investigators, but the street officer does not need this training. He said there is some methamphetamine training done by the universities which is helpful. He said the lack of adequate officer training can lead to a lack of charges against an offender or the loss of a case.

Chairman Delmore called on Sheriff Kim Murphy, Richland County Sheriff's Department, for testimony regarding training concerns. Sheriff Murphy said basic training is just that--basic and nothing more. He said law enforcement trains in two styles, classroom lecture and hands-on skills training. He said both are important, but skills training is considered to be the most important. He said skills training is needed to train officers on the most current and updated procedures. He said it is also important that the training be consistent across borders. He said advanced training is costly both in terms of time and money. He said there is not an easy fix to the problem. Sheriff Murphy submitted written testimony, a copy of which is on file in the Legislative Council office.

In response to a question from Senator Triplett, Sheriff Murphy said officer physical fitness is a major concern. He said the state has an aging officer population. He said the younger, more fit officers are being recruited out of state, and some departments look at an unfit officer as a liability. He said officer medical conditions are also a concern.

Chairman Delmore called on Mr. Dan Draovitch, Chief, Minot Police Department, for comments regarding officer fitness. Chief Draovitch said if a department requires certain fitness standards, the department should provide the fitness tools as well. He said his department recently received a grant to purchase fitness equipment and to provide training. He said fitness is a part of training, but it is also costly.

Senator Triplett said the Grand Forks County Commissioners have developed a fitness program for the county's sheriff's department deputies and correctional officers. She said the county will offer the deputies and officers three hours per week of paid time to participate in the program.

Chairman Delmore called on Mr. Lloyd Halvorson, Lake Region State College, for comments on the state's law enforcement training needs. Mr. Halvorson said there is a need in the state for additional law enforcement training funds.

It was moved by Senator Trenbeath, seconded by Senator Triplett, and carried on a voice vote that the meeting be adjourned. Chairman Delmore adjourned the meeting at 3:30 p.m.

Vonette J. Richter
Committee Counsel

ATTACH:1