

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

CRIMINAL JUSTICE COMMITTEE

Tuesday, August 12, 2003
Roughrider 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, Lawrence R. Klemin, William E. Kretschmar, Carol A. Niemeier; Senators Stanley W. Lyson, John T. Traynor, Thomas L. Trenbeath

Members absent: Representatives Dennis Johnson, Mike Norland

Others present: See attached appendix

Chairman Delmore said Senator Stanley W. Lyson will serve as vice chairman of the committee.

At the request of Chairman Delmore, committee counsel reviewed the *Supplementary Rules of Operation and Procedure of the North Dakota Legislative Council*.

INDIGENT DEFENSE STUDY

At the request of Chairman Delmore, committee counsel presented a memorandum entitled *Indigent Defense and Public Defender Systems - Background Memorandum*.

Chairman Delmore called on Ms. Christine Hogan, Executive Director, State Bar Association, for comments regarding the indigent defense study. Ms. Hogan said the State Bar Association did not take a position on 2003 House Bill No. 1044, the bill that would have transferred the indigent defense contracting responsibility to the Office of Administrative Hearings. She said the association supported House Bill No. 1088, the bill that imposed an administration fee for certain criminal offenses. She said a portion of that fee will be used for indigent defense services. She said Ms. Maureen Holman, President, State Bar Association, has announced the formation of the State Bar Association's Indigent Defense Task Force, to be chaired by Ms. Sandi Tabor. She said the task force is a blue-ribbon panel of lawyers, judges, and legislators. She said the members of the task force were selected because of their understanding of the problems with the current indigent defense system and the members are well-equipped to tackle a system that everyone concedes is broken. She said this task force will work with the Criminal Justice Committee to fashion an acceptable legislative package for the 2005 legislative session

and for the state's future. She said the task force will prepare a report with recommendations for legislation by June 2004.

In response to a question from Representative Delmore, Ms. Hogan said the membership of the task force is being finalized. She said the membership of the task force will include judges, private practice attorneys, contract attorneys, legislators, and state's attorneys.

In response to a question from Representative Klemin, Ms. Hogan said the task force will provide reports and information to the Criminal Justice Committee as requested.

In response to a question from Senator Traynor, Ms. Hogan said the federal indigent defense system selects attorneys from a panel of attorneys who are willing to take cases. She said the attorneys have received training in handling indigent defense cases. She said the Eighth Circuit Court of Appeals administers the program for this area. She said the federal appellate court is looking at the possibility of establishing a federal public defender office in North Dakota.

At the request of Senator Traynor, Chairman Delmore said a representative of the federal indigent defense system will be invited to the next meeting to discuss the federal system.

Ms. Hogan said the task force will also be working with the American Bar Association and the Spangenberg Group as it gathers information.

Chairman Delmore said the committee and the task force should coordinate their efforts in the study.

Chairman Delmore called on Chief Justice Gerald W. VandeWalle, Supreme Court, for comments concerning the indigent defense study. Chief Justice VandeWalle said the committee's background memorandum referred to the *Wainwright* decision. He said this 1963 decision was the landmark United States Supreme Court case that required states to provide indigent defense. He said North Dakota was one of 14 states that filed an amicus brief in the case. He said North Dakota filed this brief because state law had been requiring the state to provide indigent defense since 1895.

Chief Justice VandeWalle said North Dakota is doing well in the area of indigent defense and in many instances, it is doing a better job than other states.

He said before the late 1970s, paying for indigent defense in the state was a county responsibility. He said he applauds the State Bar Association for setting up the task force. He said he is eager to have the task force in place. He said he stands by the idea that using the judicial branch to contract for indigent defense is a conflict of interest. He said more funding is needed for indigent defense. He said the additional funds as a result of 2003 House Bill No. 1088 will help. He said he would support a freestanding public defender office; however, he understands that funding is an issue. He said a combination of a public defender system and the contract system may be the solution. He said the state has relied on young attorneys who are willing to take the indigent defense contracts. He said the increasing indigent defense caseload in the state is due in large part to the increasing methamphetamine problem in the state. He said these increased drug offenses have resulted in a large increase in the number of indigent defense cases in the system. He said large increases in caseload are very difficult to handle in a contract system that operates on a fixed budget. He also said the number of attorneys in rural areas is a problem. He said there are even fewer attorneys in the rural areas who are willing to do indigent defense work. He said there have not been any indigent defense contracts signed in the northwestern part of the state. He said if the court is unable to contract with any attorneys to provide indigent defense services, attorneys will need to be hired on an hourly basis. He said hiring attorneys on an hourly basis will result in exhausting the indigent defense funds very quickly. He said the federal system pays its indigent defense attorneys at a rate of over \$100 per hour. He said 38 new attorneys were admitted to the bar last year. He said there were more attorneys in the state last year who died than were admitted and the newly admitted attorneys are not locating in the rural areas.

In response to a question from Representative Amerman, Chief Justice VandeWalle said eligibility for indigent defense is based on 125 percent of the federal poverty level.

Senator Traynor said 2003 House Bill No. 1088 was intended to remedy the deficit in indigent defense contract funding.

In response to a question from Senator Traynor, Chief Justice VandeWalle said the recent Judicial Conference discussed the prioritization of administrative fees. He said a motion was made to give restitution priority over indigent defense. He said when it was pointed out that indigent defense is a constitutional right and restitution to the victim is not, the motion was defeated.

In response to a question from Representative Klemin, Chief Justice VandeWalle said the state's indigent defense contract system has not been challenged as has the Arizona contract system, which

was declared unconstitutional by the Arizona Supreme Court in 1984.

Senator Trenbeath said he has done indigent defense contract work in the state. He said he believes the state could be sued at some point.

In response to a question from Representative Amerman, Chief Justice VandeWalle said the court has been working on setting up a system that separates the truly indigent from those persons who will not pay for an attorney. He said the process does not always allow for enough time to verify that a person is indigent. He said part of the answer is to go after the person's assets. He said the lack of adequate screening is one of the complaints of the system.

In response to a question from Representative Niemeier, Chief Justice VandeWalle said the vast distances between towns in the state is one of the concerns of a public defender system. He said, however, a public defender job may be attractive to an attorney who wants to gain experience, learn the system, and develop a reputation. He said the state may want to look at a student loan forgiveness program for public defenders. He said a person has a constitutional right to an adequate defense, not the best defense possible.

In response to a question from Representative Kretschmar, Chief Justice VandeWalle said some judicial districts are more successful at collecting indigent defense fees than others. He said in many cases it is more costly to collect than the amount collected.

Representative Klemin said the committee should receive information on the fees paid by defendants. He said the committee should also receive information regarding whether other states have student loan forgiveness programs in place for public defenders.

Representative DeKrey said the committee should receive information on the average student loan debt of new attorneys.

Representative Niemeier said the committee should receive information on the costs of the current contract system and an estimate on the costs of a public defender system.

GUARDIANSHIP STUDY

At the request of Chairman Delmore, committee counsel presented a background memorandum entitled *Guardianship Services, Standards, and Practices Study - Background Memorandum*.

Chairman Delmore called on Mr. Rodger Wetzel, Chairman, North Dakota Guardianship Task Force, for comments concerning the guardianship study. Mr. Wetzel said he has worked for 32 years in the area of guardianship and elder care. He said he is employed as the director of the St. Alexius Eldercare and Community Health Program. He said the membership of the task force, which included representation from 25 organizations, has been expanded. He said the task force met in July to develop issues to

be addressed. He said the issues to be addressed include community education, petitioning and hearing, resources, guardians, court visitors, indigent persons needing guardians, and legislation. Mr. Wetzel submitted a copy of the issues to be addressed as well as a list of the membership of the task force, copies of which are on file in the Legislative Council office.

In response to a question from Senator Traynor, Mr. Wetzel said he is aware of cases involving the exploitation of wards by guardians. He said this is an issue the task force will be reviewing. He said the task force will look at whether reports are being filed and monitored and whether there is a need for legislation.

In response to a question from Representative DeKrey, Mr. Wetzel said the task force plans to prioritize the issues at its next meeting.

In response to a question from Representative Klemin, Mr. Wetzel said persons with power of attorney have fewer accountability requirements than do guardians. He said persons with power of attorney do not have annual reporting requirements.

In response to a question from Senator Traynor, Mr. Wetzel said the task force will also review the ability of a ward to make a will. He said he believes that because the guardian is given the authority to make the ward's legal decisions, those legal decisions would include wills.

Chairman Delmore called on Ms. Donna Byzewski, Cochairman, North Dakota Guardianship Task Force, for comments regarding the study. Ms. Byzewski said she is the director of the North Dakota Catholic Charities Guardianship Program. She said the guardianship program has provided corporate guardianships for over 600 persons since 1987.

In response to a question from Representative Delmore, Ms. Byzewski said Catholic Family Services is the only organization in the state to provide corporate guardianship services.

In response to a question from Senator Lyson, Ms. Byzewski said the duties of organizations, such as Opportunities Foundation, are to provide training for independent living in a group home or an apartment setting and to provide its clients with life experience activities. She said this differs from the duties of a guardian in that it is the responsibility of the guardian to determine whether that activity is in the best interests of the ward.

VULNERABLE ADULT ABUSE AND NEGLECT REPORTING STUDY

At the request of Chairman Delmore, committee counsel presented a background memorandum entitled *Vulnerable Adult Abuse and Neglect Reporting - Background Memorandum*.

Chairman Delmore called on Ms. Lynne Jacobson, Elder Rights Program Administrator, Aging Services Division, Department of Human Services, for

comments regarding the vulnerable adult abuse and neglect study. Ms. Jacobson said the Department of Human Services would be available to provide information to the committee regarding this study.

In response to a question from Representative Delmore, Ms. Jacobson said because the tribes are considered sovereign entities, the state must have an agreement with the tribe to provide vulnerable adult protection services on the reservations. She said the only agreement the state has in place is with the Spirit Lake Reservation. She said the Standing Rock Reservation has an elderly protection team. She said she is not familiar with any other organized efforts on the other reservations.

Ms. Jacobson said the largest number of the vulnerable adult cases are the result of self-neglect. She said vulnerable adults who choose to live alone may make different choices than other people may make. She said the elderly are often forced to choose between buying medicine or buying food. She said the elderly today have fewer family members to help them than in the past, especially in the rural areas.

In response to a question from Representative Klemin, Ms. Jacobson said medical professionals and senior center staff have the most contact with the elderly. She said most of the referrals for vulnerable adult protection services are from medical professionals. She said the department would support mandatory reporting if adequate resources were made available.

In response to a question from Representative Niemeier, Ms. Jacobson said abuse and neglect reports are usually made to county social service boards which are in turn referred to the regional human service centers. She said the regional human service center will then provide information or conduct an assessment, depending on the circumstances.

In response to a question from Representative Delmore, Ms. Jacobson said because of the lack of a state vulnerable adult abuse and neglect program, other local agencies and counties have stepped up and assumed the responsibility.

In response to a question from Senator Traynor, Ms. Jacobson said the reporting system is not adequate.

In response to a question from Representative Amerman, Ms. Jacobson said the only funding for the vulnerable adult protection services and the ombudsman program is from the federal Older Americans Act. She said about \$170,000 is received annually under the federal Act. She said the limited funds only allow for crisis intervention services.

Representative Klemin requested that the committee receive a copy of the child abuse and neglect mandatory reporting requirements and penalties.

LAW ENFORCEMENT STUDY

At the request of Chairman Delmore, committee counsel presented a background memorandum entitled *Law Enforcement Training Study - Background Memorandum*.

Chairman Delmore called on Ms. Sandi Tabor, Attorney General's office, for comments concerning the law enforcement training study. Ms. Tabor said the 2003-05 executive budget removed the funding for two Bureau of Criminal Investigation law enforcement training positions. She said the Legislative Assembly restored funding for the two positions. She said the issues raised during the legislative session brought the state's law enforcement training needs into focus. She said in the area of law enforcement training, the Attorney General's office has two full-time trainers and one administrative position. She said the administrative position is responsible for staffing the Peace Officer Standards and Training Board. She said the time is right for the Legislative Assembly to look at the whole issue of law enforcement training. She said representatives of the North Dakota Peace Officers Association and the Peace Officer Standards and Training Board would be available to testify at the committee's next meeting.

Chairman Delmore called on Colonel James M. Hughes, Superintendent, Highway Patrol, for comments regarding the law enforcement study. Colonel Hughes said there are three law enforcement training sources in the state. The first, he said, is a law enforcement program available through Lake Region State College in Devils Lake. He said graduates of this program can seek employment in law enforcement in the state. He said the students in this program pay tuition. The second, he said, is the Bureau of Criminal Investigation's two field trainers. He said these trainers conduct specialized training as needed throughout the state. The third, he said, is the Law Enforcement Training Academy on the campus of Bismarck State College. He said any law enforcement officer in the state can receive basic training at

the academy at no charge to the agency for tuition, room, or board.

In response to a question from Representative Delmore, Colonel Hughes said the academy provides training for police and sheriff's department officers, game wardens, park rangers, and corrections personnel. He said in exchange for the free room and board, law enforcement officers with expertise in a certain area volunteer to provide training at the academy. He said the academy relies on the volunteers to provide most of the training. He said the academy does not have any full-time trainers on staff. He said the basic training offered at the academy meets the Peace Officer Standards and Training Board's certification requirements. After the basic training, he said, officers may take other specialized training, such as firearms training, at the academy. He said the Peace Officer Standards and Training Board sets the standards, the number of continuing education hours required, and other training requirements. He said all courses are licensed and approved by the board.

In response to a question from Representative Amerman, Colonel Hughes said there has not been a need for additional Highway Patrol training in light of homeland security issues. He said the need for more training and equipment is greater for first responders, such as fire departments and emergency medical personnel, than it is for the Highway Patrol. He said the Highway Patrol wants to avoid duplication of training and does not send officers for training that is not needed.

No further business appearing, Chairman Delmore adjourned the meeting at 2:00 p.m.

Vonette J. Richter
Committee Counsel

ATTACH:1