

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

JUDICIARY A COMMITTEE

Wednesday, July 25, 2001
Harvest Room, State Capitol
Bismarck, North Dakota

Representative Merle Boucher, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives Merle Boucher, Duane DeKrey, Bruce Eckre, G. Jane Gunter, Joyce Kingsbury, Lawrence R. Klemin, William E. Kretschmar, John Mahoney, John M. Warner; Senators Carolyn Nelson, John T. Traynor

Members absent: Representative April Fairfield; Senators Deb Mathern, Darlene Watne

Others present: See attached appendix

Chairman Boucher announced that Representative John M. Warner would serve as vice chairman of the committee.

At the request of Chairman Boucher, Mr. John D. Olsrud, Director, Legislative Council, reviewed the *Supplementary Rules of Operation and Procedure of the North Dakota Legislative Council*.

Chairman Boucher said the committee has been assigned three interesting studies--the clerk of court unification process, the mental health commitment statutes, and indigent defense services in the state. He said all three are important studies and the goal of the studies is not necessarily to develop bill drafts, but to conduct a thorough study of the issues in each study.

CLERK OF COURT STUDY

At the request of Chairman Boucher, committee counsel presented a memorandum entitled *Clerk of District Court Unification Study - Restitution Collections and Enforcement Activities - Background Memorandum*.

Representative Klemin said it appears there are two issues that may need to be addressed. The first, he said, is there is no uniformity among the counties regarding the handling of restitution duties. He said the second issue is that the North Dakota Century Code is silent as to who is responsible for those duties.

Representative Eckre said he is aware of several clerks who went from county to state employment who have complained they did not receive adequate compensation for vacation and sick leave when they became state employees.

Representative Mahoney said Oliver County opted to operate the county's clerk of court office at county expense. He said at some point in the future Oliver

County will likely contract with the state for services because of the costs of providing the services.

Representative Boucher said the clerk of court is the last connection to local services in the county.

Representative Kretschmar said 1999 House Bill No. 1275 created a good system for the rural counties. He said the counties that contracted with the state still have local control. He said the system was designed for those rural counties that do not need a full-time clerk of court.

Chairman Boucher called on Chief Justice Gerald W. VandeWalle, Supreme Court, for comments concerning the clerk of court study. Chief Justice VandeWalle said of the 53 counties--Oliver, Billings, and Sioux--opted to fund their own clerk of court services; 11 counties opted to have the state provide clerk of court services; 38 counties opted to contract with the state; and 1 county, Sheridan, did not make an election by the April 1, 2000, deadline and, therefore, is providing clerk of court services at its own expense. He said the new system is working reasonably well due in large part to the personnel in the counties and in the State Court Administrator's office.

In response to a question from Representative Eckre, Chief Justice VandeWalle said there were no county employees who lost all their benefits when they became state employees. He said the recommendations as to how to handle the conversion of benefits from county employees to state employees were made by a clerks of court committee.

In response to a question from Representative Boucher, Chief Justice VandeWalle said Ms. Jana Thielges, Supreme Court, could provide the committee with information regarding the benefits of clerk of court office employees. He said the court would support the idea of a judge and clerk in every county if the Legislative Assembly is willing to pay for it. He said decisions to move a proceeding to a more centralized location are usually made by the parties involved in the dispute.

In response to a question from Representative Klemin, Chief Justice VandeWalle said there are ways to eliminate some of the traveling done by judges. He said telephone conferences are used for some proceedings. He said interactive television is used to

conduct hearings in some districts; however, the cost may not justify the use.

In response to a question from Representative Mahoney, Chief Justice VandeWalle said state law requires district judges to reside in the judicial district in which the judge's chambers are located.

In response to a question from Representative Boucher, Chief Justice VandeWalle said information regarding where hearings are being held is not available, but district judges could be surveyed as to whether cases are being held outside the counties where they should be held.

In response to a question from Representative Mahoney, Chief Justice VandeWalle said if there is growth in the state's economy and population, there would be a need for more judges. He said every change made to the judiciary has been a constant struggle. He said there has been much more restructuring in the judiciary branch than there has been in the executive or legislative branch.

In response to a question from Representative Boucher, Chief Justice VandeWalle said the current clerk of court system is working, due in part to the strong work ethic of the people of the state. He said state operation of all clerks of court offices would be difficult because in those counties that need only a fraction of a full-time equivalent (FTE) position to perform the clerk's duties would either have to be a part-time or a traveling clerk.

In response to a question from Representative Klemin, Chief Justice VandeWalle said over the years, a number of duties unrelated to the court had been assigned to clerks of court. He said when the clerks of court became judicial officers, the legislation took away the unrelated duties and placed them in other county offices, such as the register of deeds.

Regarding the restitution issue, Chief Justice VandeWalle said there is considerable disparity among the counties regarding who is responsible for collecting restitution. He said the court asked the Legislative Assembly for seven additional FTE positions and for funds to disburse to the contract counties for this duty. He said the question of whether restitution collection should be done by the clerk of court or the state's attorney is a political issue. He said most of the collection activities deal with bad checks, an issue that is very important to merchants.

In response to a question from Representative Boucher, Chief Justice VandeWalle said the cost of collecting restitution is an important issue. He said he is not familiar with the methods of collection used by collection agencies, but merchants must pay a portion or a percentage of the amount collected to the collection agency. He said when the amount is collected by the clerk or state's attorney, the merchant recovers the full amount of the bad check. He said restitution can be added to the duties of clerks of court, but additional FTE positions will be needed in the state-run offices, and additional compensation to counties

would be needed in the contract counties. He said the present situation is that the clerks' offices in the three largest counties--Cass, Burleigh, and Grand Forks--are not collecting restitution. He said the clerks' offices that have collected restitution in the past are continuing to do so. He said it is inevitable there will be disagreement as to why the activity is county paid in some counties and state paid in others.

In response to a question from Representative Klemin, Chief Justice VandeWalle said under the restitution collection statutes, the entire amount collected must be remitted to the person who has been awarded the judgment. He said a sheriff's sale allows for a percentage of the amount collected to be retained to help fund the collection process.

Chief Justice VandeWalle said he does not have a strong recommendation regarding the responsibility for restitution collection; however, if the Legislative Assembly decides the duty is to be performed by the clerks of court, additional FTE positions and moneys will be needed. Regarding the effectiveness of the clerk of court unification process, he said, more time is needed to properly evaluate how the new system is working.

Chairman Boucher called on Mr. Wade Williams, North Dakota Association of Counties, regarding the clerk of court study. Mr. Williams said court unification has been a long and difficult journey for the counties and the state. He said while counties were torn two legislative sessions ago between the costs of operating clerks' offices and the final steps of the unification process, the Association of Counties ultimately supported the compromise proposal that allows each county to maintain the level of court services it desires but also acknowledges the state's goal in unifying the court. Regarding the restitution issue, he said, counties generally feel restitution is a court order and, therefore, should be enforced by the court or an officer of the court. He said in the 2001 legislative session, the court proposed funding for 10 FTE positions and a restitution budget of \$639,000. He said if the Legislative Assembly decides restitution is a county responsibility, the cost to the counties, depending on size and caseload, would range from \$10,000 to \$45,000 per year. He said with the loss of fine and fee revenue in 1995, the Association of Counties does not believe that counties are interested in added responsibilities. He submitted written testimony, a copy of which is on file in the Legislative Council office.

In response to a question from Representative Boucher, Mr. Williams said the new clerk of court system is working better than expected. He said with the exception of some new rules, the clerks' offices in the contract counties are seeing few differences. He said if the state wants to continue to have clerks in each county, the new system is needed. He said 23 counties have combined register of deeds' and clerks' offices.

In response to a question from Representative Mahoney, Mr. Williams said the budget for providing clerk of court services is approximately \$11.5 million, and adding restitution duties would require an additional \$750,000.

In response to a question from Senator Traynor, Mr. Williams said Cass County spends approximately \$45,000 to \$50,000 for restitution collection.

Mr. Williams said he would provide the committee with additional information regarding the costs of providing restitution collection in Cass, Burleigh, Grand Forks, and Ward Counties.

In response to a question from Representative Klemin, Mr. Williams said state's attorneys would like to continue to provide the restitution collection service, but if the state pays for the clerk of court to provide the services in some counties, the counties will want moneys for the counties to provide the service.

In response to a question from Representative Kretschmar, Mr. Williams said the only complaint he has heard regarding clerk of court benefits and salary is that as state employees, the option of declining health insurance in lieu of additional salary is not available.

At the request of Chairman Boucher, Mr. Williams said he would provide the committee with information regarding any problems that have arisen regarding the benefits of county employees who are now state employees.

Representative Klemin requested the committee be provided with information on statutory collection activities for which a fee or percentage of the amount collected is retained for the enforcement of judgments. He also said the committee should consider inviting representatives of collection agencies to discuss the debt collection.

Representative Mahoney requested the committee receive information on the clerk of court duties of other states.

INDIGENT DEFENSE AND PUBLIC DEFENDER SYSTEM STUDY

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

Chairman Boucher provided to the committee a copy of a letter from Judge Debbie Kleven, Presiding Judge, Northeast Central Judicial District, Grand Forks. He said Judge Kleven chairs the North Dakota Indigent Defense Commission and is interested in participating in the committee's study. In her letter, Judge Kleven said the commission has gathered information on the current North Dakota public defender system as well as the public defender systems in Minnesota and Wyoming. She said she would be interested in reviewing this information with

the committee. A copy of Judge Kleven's letter is on file in the Legislative Council office.

Chairman Boucher called on Chief Justice VandeWalle regarding the indigent defense study. Chief Justice VandeWalle said the Supreme Court requested the study because of the increasing costs of providing indigent defense. He said the presiding judges supervise the awarding of indigent defense contracts. He said many judges are uncomfortable with this responsibility because of conflicts of interest, whether it be actual conflicts or the appearance of conflicts.

In response to a question from Representative Klemin, Chief Justice VandeWalle said 2001 Senate Bill No. 2081 provides for a \$25 application fee for indigent defense services. He said the bill provides that the fee can be waived by the court.

Chairman Boucher called on Mr. Jim Ganje, State Court Administrator's office staff attorney, Supreme Court, regarding the indigent defense study. Mr. Ganje said he serves as legal counsel for the North Dakota Indigent Defense Commission. He said the eight-member commission was established by Supreme Court administrative rule, and the commission develops procedures and guidelines for use by the district courts in awarding indigent defense contracts. He said the income eligibility for indigent defense eligibility is based on 125 percent of poverty. He said other states use a combination of several different indigent defense systems for providing indigent defense services, and North Dakota is the only "pure" contract state. He said counsel is appointed in situations in which there is a conflict of interest. He said the Spangenberg Group, a consulting company, is a good source of information for indigent defense issues. He distributed a copy of a newsletter issued by the Spangenberg Group which contains information on indigent defense delivery systems throughout the country. A copy of the newsletter is on file in the Legislative Council office.

Mr. Ganje said the contract method allows the state to project costs for the upcoming biennium; however, the method can cause a strain on the ability to provide services. He said the seven judicial districts in the state negotiate about 30 contracts per year with individual lawyers and law firms. He said in some districts it has been difficult to find contract attorneys. He said the contract attorneys are reimbursed for services and expenses, such as expert witnesses and mileage. He said 14 other states have imposed an application fee similar to the one imposed by 2001 Senate Bill No. 2081. He said the waiver provision in the bill satisfies the constitutional concerns such as a fee may raise.

In response to a question from Representative Mahoney, Mr. Ganje said commission members' opinions vary, and the commission has not reached a conclusion as to whether the state should use a different method for providing indigent defense

services. He said the contract system provides for flexibility of contracts and stability of costs.

In response to a question from Senator Traynor, Mr. Ganje said he is not aware of any compiled information on successful challenges to the quality of counsel provided by the contract attorneys. He said ineffective assistance of counsel is difficult to prove, and he is not aware of any cases in North Dakota in which the indigent defendant prevailed on ineffective assistance of counsel. He said the commission believes the contract attorneys in the state do a good job and have been very effective.

In response to a question from Representative Boucher, Mr. Ganje said more moneys are spent in the state to prosecute indigent defendants than is spent to defend indigent defendants.

In response to a question from Senator Nelson, Mr. Ganje said there are no minimum qualifications established for contract attorneys; however, when a judge receives offers from area attorneys, the judge will assess each attorney's qualifications and may not contract with a particular attorney because of the attorney's poor or lack of qualifications. He said contracts are awarded on the basis of who will best provide the services. He said he is not sure of the reason why North Dakota is the only state to use only the contract system for providing indigent defense.

In response to a question from Representative Warner, Mr. Ganje said the contracts allow for the payment of expenses for interpreters for both foreign language and for hearing and sight impairments. He said finding qualified interpreters has been an issue in the state.

In response to a question from Representative Mahoney, Mr. Ganje said overall, the contract attorneys in the state are doing good work.

In response to a question from Representative Klemin, Mr. Ganje said the contracts tend not to overlap between judicial districts; however, a particular case may take the contract attorney into another district.

In response to a question from Representative Boucher, Mr. Ganje said the commission has developed a model bid specification process for the awarding of contracts. He said, however, the low bid does not necessarily guarantee the best qualifications. He said judges do not want to be locked into the contracting with the lowest bidder. He said contracts are usually awarded following a negotiation process with interested attorneys.

Chairman Boucher called on Mr. Wayne Goter, attorney, Bismarck, regarding the indigent defense study. Mr. Goter said there are a number of issues of increasing concern to those attorneys whose practice is significantly, if not totally, devoted to the criminal defense of indigent defendants. He said the committee should consider a number of issues as it studies the state's indigent defense system. The first, he said, is caseload commitments. He said the

number of indigent defense cases is on the rise and more and more of the public defender's time is required for contract cases. He said this time commitment in turn leaves less and less time for other paying work. Closely tied to the caseload issue, he said, is the compensation issue. He said the public defender's availability to take on other cases and earn supplemental income is very limited, especially in a sole practitioner's office. He said the monthly contract income for public defenders in Region I of the South Central Judicial District is \$3,466.70. From this amount, he said, the attorney must pay all of his or her operating expenses, including at least a half-time secretary. He said there are also concerns regarding the recovery of indigent defense costs and scheduling difficulties and conflicts.

Mr. Goter made several recommendations regarding indigent defense. He said the state should actively seek recovery of indigent defense services in all cases as either a part of the criminal judgment or order or as part of the order of dismissal. He said the state should consider the implementation of a full-time, permanent public defender office. He said this would eliminate the duplication of expenses for rent, secretarial services, and the like. He said a public defender office would also promote the development of a cadre of experienced and competent public defenders. He said the present system seems to emphasize the creation of an opportunity for inexperienced attorneys to learn how to try cases. He said under North Dakota Century Code (NDCC) Section 12-62-09, the state is required to provide training and education for indigent defense counsel but does not. He said if the committee's bottom line is to spend the least amount possible for indigent defense to the exclusion of all other considerations, then the present system is a good one. He said, however, if the committee is dedicated to ensuring a fair system of justice, then the committee should seriously look at making changes in scheduling, compensation and recovery of fees, and ultimately, at the creation of a public defender office. He said under the contract system, the state is getting the services of a full-time public defender office at a fraction of the price. He submitted written testimony, a copy of which is on file in the Legislative Council office.

In response to a question from Representative Boucher, Mr. Goter said there is no comparison between the resources of state's attorneys when prosecuting indigent defendants and the resources of indigent defense attorneys when defending the indigent defendant. He said because there may not be enough legal counsel to go around, some citizens may not be getting legal counsel or at least not the level of legal counsel to which they are entitled. He said he is concerned about the \$25 application fee being assessed to indigent defendants. He said although the statute allows a court to waive the fee,

he is concerned that there are judges who will refuse to do so.

In response to a question from Representative Klemin, Mr. Goter said defendants have a right to counsel on appeal. He said the right to counsel for appeals requires the defendant to reapply for indigent defense services. He said the contracts cover the appeals process as well. He said it is difficult for an attorney to handle federal indigent defense cases because of the likelihood of scheduling conflicts with state cases.

Chairman Boucher called on Ms. Thielges regarding the cost of providing indigent defense services in the state. Ms. Thielges said the total budget for indigent defense services in the state for the 2001-03 biennium is \$3.83 million. She said the target wage for contract attorneys is \$65 per hour. She provided information on the state's indigent defense budget, a copy of which is on file in the Legislative Council office.

In response to a question from Representative Klemin, Ms. Thielges said she could provide to the committee more information on the number of cases being assigned in the state.

Chairman Boucher said the committee should receive information on the costs of prosecution in the state. He said the Association of Counties would likely be able to provide the information.

Representative Mahoney said the committee should consider looking at a model public defender system. In response to a question from Representative Boucher, Representative Mahoney said indigent defendants are getting good representation from public defenders. He said a defendant is more likely to get less effective representation with a paid attorney who does little work in criminal defense.

MENTAL ILLNESS COMMITMENT PROCEDURES STUDY

At the request of Chairman Boucher, committee counsel presented a memorandum entitled *Mental Illness Commitment Procedures - Background Memorandum*.

Chairman Boucher said in a study of the mental illness commitment procedures, the rights of the individual should be paramount. He said it may be necessary to expand the study to include the impact and issues related to mental illness and substance abuse among inmates in the corrections system. He said as a matter of public policy, it is the state's obligation to treat persons with mental illness while they are incarcerated.

Representative DeKrey said the Legislative Council's Corrections Committee has been assigned a study that addresses mental illness issues of inmates in the state's corrections system. He said the committees should follow the work of each other and report on the issues being addressed by each.

Senator Nelson requested the committee be provided with a copy of the legislative history for the 1989 bill that amended NDCC Section 25-03.1-25.

Chairman Boucher provided to the committee a copy of a letter from Ms. Teresa Larsen, Executive Director, Protection and Advocacy Project. In her letter, Ms. Larsen said the Protection and Advocacy Project is very interested in this study and willing to be involved at whatever level the committee would like. Ms. Larsen's letter is on file in the Legislative Council office.

Chairman Boucher called on Mr. Alex C. Schweitzer, Superintendent, State Hospital, for comments regarding the mental illness commitment procedures study. Mr. Schweitzer said it is important to look at changes in clinical practice and the delivery of services when reviewing the mental illness commitment procedures. He said admissions to the State Hospital have decreased over the past several years because of more community-based treatment services. He said the majority of patients admitted are emergency admissions. He said the medical staff at the State Hospital is preparing some recommendations on court-authorized prescribed medications, which will be presented to the committee at a later date. He also said he would like the committee to consider appointing a task force of interested parties to study the commitment procedures and provide recommendations to the committee. He submitted written testimony and a review of the state's mental illness commitment procedures, copies of which are on file in the Legislative Council office.

In response to a question from Representative Kretschmar, Mr. Schweitzer said some issues in the current system which should be addressed include court-prescribed medications, rights of individuals, timeframes between commitment and hearings, and the enhancement of community-based care.

In response to a question from Representative Boucher, Mr. Schweitzer said the state's system of providing mental illness treatment, which includes the regional human service center, the State Hospital, and private providers, to the citizens of the state is working well. He said the areas in which more services may be needed are in corrections and sex offender treatment. He said while the process works reasonably well, there is a need for streamlining in some areas, such as court-ordered medication and paperwork.

In response to a question from Representative DeKrey, Mr. Schweitzer said more interaction between mental health providers and law enforcement is an issue. He said there is a need for more training of law enforcement on the needs of the mentally ill.

Chairman Boucher called on Dr. Ronald M. Burd, MeritCare, Fargo, for comments concerning the mental illness commitment procedures study. Dr. Burd said involuntary commitment involves both

the medical and legal systems. He said although there is considerable variation between the two jurisdictions in the specifics, there is little disagreement about the principles. He said the concern of psychiatrists is the appropriate medical evaluation and care of the patient, and it is at those times that the statutes become significant. He said some of the problems with the current commitment process include:

1. Medical and psychiatric resources are limited, and many of the current procedures involve these resources in legal procedures;
2. Difficulties occur across state lines regarding the treatment of nonresidents and the lack of interstate compact provisions for transfer and coordination of care;
3. Conflicts exist between legal requirements and court schedules which puts additional and sometimes impossible demands on medical providers;
4. The current multistep system involves extended time delays before court-ordered treatment; and
5. The current process involves multiple forms that are redundant and vague.

Dr. Burd said some suggestions to address these concerns include:

1. Involve medical personnel only as expert examiners. All other procedural requirements are legal rather than medical;
2. Transfer responsibility for procedural matters to the legal system;
3. Streamline the process by permitting hearings to be held in the hospital, allowing medical examiners to appear in court proceedings by telephone, and by combining the preliminary and treatment hearings;
4. Improve interstate compacts;
5. Revise state law to eliminate irreconcilable conflicts in timelines; and
6. Revise documentation to simplify and more closely reflect the central question of whether the individual requires involuntary treatment.

Dr. Burd submitted written testimony, a copy of which is on file in the Legislative Council office.

In response to a question from Representative DeKrey, Dr. Burd said there are no legal procedures in place to transfer a nonresident who is committed in North Dakota back to the nonresident's home state for treatment.

Representative Klemin said because of jurisdictional issues, a court cannot order a person to be treated at an out-of-state treatment facility.

Mr. Schweitzer said nonresident treatment is a serious issue. He said if a person is committed by a North Dakota court, the person must be treated at the State Hospital or by a private hospital in the state. He said the Governor or the Attorney General should work with other states to resolve some of the jurisdictional issues in the interstate compact.

Chairman Boucher requested Mr. Schweitzer provide the committee with information regarding interstate compact issues.

Dr. Burd said he would provide to the committee a copy of a flow chart used by medical personnel in the mental illness commitment process.

Chairman Boucher called on Ms. Terryl Ostmo, Wahpeton, for comments concerning the mental illness commitment procedures study. Ms. Ostmo said she had testified before the Senate Judiciary Committee in support of 2001 Senate Bill No. 2219, a bill that would have shortened the period of time an individual facing civil commitment could be held before a preliminary hearing is conducted. She said she had the experience of being involuntarily held in Fargo and Grand Forks hospitals for seven days without a hearing. She said it is outrageous that people are held against their will by mental health professionals who use their discretion in deciding whether a petition should be filed. She said there was no reason why she could not have been in court for a hearing within three days. She said being accused of mental illness and being held for seven days was devastating. She said North Dakota should do a better job of safeguarding individual rights. She said the maximum period of time for holding a person before a preliminary hearing should be changed from seven days to three days. She submitted written testimony, a copy of which is on file in the Legislative Council office.

In response to a question from Representative Klemin, Ms. Ostmo said proper procedures were not followed when she was transferred from a Fargo hospital to a Grand Forks hospital. She said she was not given an explanation as to why a hearing was not held.

In response to a question from Representative Warner, Ms. Ostmo said her insurance company was billed for the seven days she was held in the Fargo and Grand Forks hospitals.

Representative Warner requested the committee be provided with information on situations in which an insurance company pays for the cost of treatment before a judicial hearing is held.

In response to a question from Senator Traynor, Ms. Ostmo said she was held in Fargo, but according to statute, she should have been held in her county of residence, which is Richland County. He said she was brought to MeritCare Hospital by law enforcement personnel. She said a lawsuit has been filed.

In response to a question from Representative Boucher, Mr. Schweitzer said emergency commitment procedures provide that the person is to be detained in either the city of residence or the city where the person is picked up. He said the respondent pays the cost of the expert examiner; however, if the respondent is indigent, the county pays the cost.

Senator Traynor said testimony on 2001 Senate Bill No. 2219 indicated three days was not enough time to gain access to the courts.

Senator Traynor requested the committee receive a copy of the legislative history for 2001 Senate Bill No. 2219.

Chairman Boucher requested Mr. Schweitzer provide to the committee information on the different allowable time periods of detention in other states.

In response to a question from Representative Boucher, Mr. Schweitzer said the seven-day period is a timeframe within which the petition must be filed and is not the number of days a person must be held.

Mr. Ganje said mental illness commitment proceedings are placed on the court's master calendar, which means that the cases are given priority. Mr. Ganje said he would provide the committee with information regarding the scheduling of the commitment proceedings.

Chairman Boucher called on Mr. David Peske, North Dakota Medical Association, for comments concerning the mental illness commitment procedures study. Mr. Peske said he also works with the North Dakota Psychiatric Society and that both organizations supported the passage of 2001 Senate Bill No. 2219. He said with only 50 psychiatrists in the state, there are access issues. He said he supports the idea of a task force and would be willing to serve on the task force.

Chairman Boucher called on Ms. Rose Stoller, Executive Director, Mental Health Association of North Dakota, for comments concerning the study. Ms. Stoller said there are a number of important issues to be addressed, including issues relating to transportation and the involvement of law enforcement. She said the Mental Health Association has access to information from other states which may be helpful to the committee.

In response to a question from Representative Boucher, Ms. Stoller said an informal survey of the commitment process indicated few problems with the process. She said she is not aware of any instances of gross negligence with respect to due process.

Chairman Boucher called on Ms. Karen Romig Larson, Division of Mental Health, Department of Human Services, for comments concerning the study. Regarding access to services, Ms. Larson said there are likely in excess of 2,000 persons with mental

illness in the state for whom it is unknown where or if these people are getting services. She said mental illness commitment law is based on the premise of commitment to a state institution. She said the time has come to ask the persons with mental illness their opinion. She said there have never been administrative rules adopted for mental illness commitment procedures. She said there is a need for uniformity of procedures and for the adoption of administrative rules. She said state's attorneys, attorneys, and mental health professionals struggle with the procedures.

Mr. Ganje said the court can provide information to the committee on access to the courts.

Chairman Boucher called on Dr. Robert Ostmo, Wahpeton, for comments regarding the study. Dr. Ostmo said Minnesota uses the three-day time period within which the preliminary hearing must be held. He said the distances are not any greater in Minnesota than they are in North Dakota. He said with the use of telephone conferences, telemedicine, fax machines, and e-mail, the preliminary hearing can be held within three days. He said almost without exception, persons are detained the maximum time allowed by law. He said he would like to see the time period changed from seven days to three days.

Chairman Boucher said he would discuss the idea of a task force with the chairman of the Legislative Council.

Representative Klemin requested the committee be provided with copies of the mental health commitment forms used by the courts.

Representative DeKrey requested the committee be provided with a copy of the interstate compact.

Chairman Boucher said he would seek information on jurisdictional issues regarding mental illness commitment and treatment that arise between the state and the tribes.

No further business appearing, Chairman Boucher adjourned the meeting at 3:05 p.m.

Vonette J. Richter
Committee Counsel

ATTACH:1