

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

JUSTICE REINVESTMENT COMMITTEE

Thursday, April 26, 2018
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator Kelly M. Armstrong, Chairman, called the meeting to order at 9:00 a.m.

Members present: Senators Kelly M. Armstrong, John Grabinger, Dave Oehlke, Arne Osland; Representatives Jake G. Blum, Karla Rose Hanson, Pat D. Heinert, Tom Kading, Karen Karls, Lawrence R. Klemin, Lisa Meier, Jon O. Nelson, Bernie Satrom, Steve Vetter

Member absent: Senator Dick Dever

Others present: Senator Rich Wardner, Dickinson, member of Legislative Management
See [Appendix A](#) for additional persons present.

It was moved by Senator Grabinger, seconded by Representative Meier, and carried on a voice vote that the minutes of the January 10, 2018, meeting be approved as distributed.

JUVENILE JUSTICE

Chairman Armstrong called on Mr. Mike Borr, Director, University Police and Safety Office, North Dakota State University, for a presentation ([Appendix B](#)) relating to efforts to engage the community to keep North Dakota State University (NDSU) safe.

In response to a question from Chairman Armstrong, Mr. Borr said the behavioral intervention team at NDSU identifies students who are having trouble in the classroom or exhibiting suicidal behavior and works to determine what may be causing the issue. He said the team understands the importance of confidentiality.

In response to a question from Representative Meier, Mr. Borr said a student is not always aware the student is on the behavioral intervention team's radar. He said the team discusses whether a student's behavior rises to the level at which there is a definite need for intervention or a referral to the campus counseling center. He said students can notify the behavioral health team directly if there is a concern about a fellow student as the contact with the team can remain anonymous.

In response to a question from Representative Klemin, Mr. Borr said the behavioral intervention team sees about 30 students each year. He said it is not uncommon for the same student to be on and off the team's radar over the course of a year as a result of substance abuse and varying stressors throughout a semester.

In response to question from Chairman Armstrong, Mr. Borr said the behavioral health team provides multiple training sessions for incoming freshman, and the residential advisers are available to students throughout the academic year. He said there is not a specific training structure beyond the initial classes offered to incoming freshman.

In response to a question from Representative Satrom, Mr. Borr said although he is not aware of the types of education provided to high school students, early intervention is most effective. He said the overall crime and substance abuse trends at NDSU remain relatively stable with some fluctuation depending on the time in the semester.

In response to a question from Senator Grabinger, Mr. Borr said the NDSU Counseling Center is very busy and could use additional staff to provide services. He said students referred by the behavioral intervention team for counseling can seek services on or off campus.

Chairman Armstrong called on Mr. Daniel Weigel, Interim Associate Director of Emergency Management, University of North Dakota, for a presentation ([Appendix C](#)) on efforts to engage the community to keep the University of North Dakota (UND) a safe place to live, learn, work, and visit.

In response to a question from Representative Meier, Mr. Weigel said the UND has 19 police officers who provide 24-hour coverage.

In response to a question from Representative Nelson, Mr. Weigel said there could be more collaboration between the campuses in the state especially given the way the law is written, which gives an officer from UND jurisdiction on the NDSU campus.

JUSTICE REINVESTMENT

Chairman Armstrong called on Mr. Aaron Birst, Legal Counsel, North Dakota Association of Counties, for information relating to the impact the implementation of justice reinvestment has had on state's attorneys.

Mr. Birst said as a technical matter, the presumptive probation piece of the justice reinvestment legislation continues to result in litigation. Although the drug penalty reductions are working and the prosecutors completely support the focus on treatment, he said, there is growing concern the \$7 million appropriation for the pilot program is not enough to provide services in the smaller jurisdictions. He said the counties and state prosecutors have concerns regarding the serious impact a 5 to 13 percent budget cut would have on the courts and judicial system and more specifically the juvenile court. Because the court system is almost entirely composed of staff, he said, reducing the budget by 10 to 13 percent is possible only through staff reduction.

In response to a question from Chairman Armstrong, Mr. Birst said most prosecutors would suggest the practice of the Legislative Assembly reducing penalties is not the way to decrease the prison population because the underlying problem is a lack of pretrial services.

In response to a question from Senator Wardner, Mr. Birst said there are two types of services pre-adjudication, one is a treatment component, such as psychological and addiction services and the other is assigning an individual who is out on bail to the caseload of a probation officer. He said the federal government uses pretrial services and although Cass County is working to create a pretrial program, most counties in the state do not have the budget to create a pretrial program.

In response to a question from Senator Grabinger, Mr. Birst said the larger scale issue is how to provide services to individuals with behavioral health issues. He said since the 1970s, jails have become treatment centers.

In response to a question from Representative Hanson, Mr. Birst said although the counties have a good relationship with the Department of Corrections and Rehabilitation (DOCR), there is concern that because of the prison prioritization plan, when the state prison becomes too crowded the counties will be forced to pick up the tab.

Ms. Donnell Preskey, Government/Public Relations Specialist, North Dakota Association of Counties, provided information ([Appendix D](#)) relating to the impact of justice reinvestment on the counties.

In response to a question from Representative Nelson, Ms. Preskey said there is an overall lack of treatment resources for both drug addiction and mental health, but especially in the rural areas.

Chairman Armstrong called on Ms. Pamela Sagness, Director, Behavioral Health Division, Department of Human Services, for information (Appendices [E](#), [F](#), and [G](#)) relating to the implementation of the free through recovery program. Ms. Sagness provided the committee with a copy of the final report from the North Dakota Behavioral Health System Study and said the primary recommendation is the state needs to invest in community behavioral health services followed by pretrial services.

In response to a question from Representative Meier, Ms. Sagness said the enthusiasm among the individuals working as support specialists has been amazing. She said peer support specialists are located all over the state and the Department of Human Services is looking for more targeted and purposeful outreach in rural areas.

In response to a question from Representative Karls, Ms. Sagness said although a care coordinator works to meet with an individual and develop a care plan, a care coordinator does not need a licensure or credential. She said the individuals in these roles often were providing the same service as a volunteer through a church before the implementation of the free through recovery program. She said the because goals of each individual seeking treatment are varied, the care coordinator is really a connector between services and people. She said a peer support specialist might also provide assistance depending on what connections are needed because some people will meet with a coordinator but do not want to work with a peer specialist. She said the program is about meeting someone where they are rather than requiring an office meeting during traditional business hours.

In response to a question from Representative Hanson, Ms. Sagness said working as a peer support specialist is a profession and the Center for Rural Health is creating a certification for the state.

In response to a question from Senator Grabinger, Ms. Sagness said a care plan is very different from a chemical treatment plan because a chemical treatment plan involves a clinical aspect and a care plan puts together all the individual's goals.

In response to a question from Senator Oehlke, Ms. Sagness said the free through recovery program is working with DOCR to provide peer support specialists within the prisons to support the continued relationship with the program. She said the program will not stop serving an individual who is incarcerated.

In response to a question from Representative Karls, Ms. Sagness said care coordination agencies are reimbursed a flat rate of \$400 per month, per individual, and a 20 percent bonus is added if a specified number of positive outcomes is achieved. She said the state does not directly reimburse peer support because some private providers provide both care coordination and peer support services.

In response to a question from Representative Nelson, Ms. Sagness said it will be difficult to show measurable results for the initial \$7 million appropriation by the time the 66th Legislative Assembly convenes.

In response to a question from Representative Karls, Ms. Sagness said barriers exist between military and civilian services even though the free through recovery program interfaces with services available to veterans.

In response to a question from Representative Satrom, Ms. Sagness said the most difficult aspect of early intervention is determining who is responsible for the cost. She said the majority of resources are used to pay for very deep end services, which causes other individuals to be turned away.

Chairman Armstrong called on Mr. Rob Johnson, Director, Lake Region Law Enforcement Center, for information ([Appendix H](#)) relating to the implementation of justice reinvestment.

In response to a question from Senator Wardner, Mr. Johnson said law enforcement should not need to arrest an individual to refer the individual for services.

In response to a question from Representative Karls, Mr. Johnson said the Lake Region Law Enforcement Center has a 28-bed adult re-entry center that serves as a halfway house. He said the center is used for work release, holding federal prisoners, and housing other inmates.

Chairman Armstrong called on Ms. Michelle Kommer, Executive Director, Job Service North Dakota, for information ([Appendix I](#)) relating to programs and training available to an individual upon re-entry into the community following a period of incarceration.

Chairman Armstrong called on Mr. Patrick N. Bohn, Director, Division of Parole and Probation, Department of Corrections and Rehabilitation, and Dr. Penny Veit-Hetletved, Director of Education, Training, and Core Correctional Practices, Department of Corrections and Rehabilitation, for information ([Appendix J](#)) relating to programming available to an individual before to re-entry into the community.

Dr. Veit-Hetletved said DOCR works to establish partnerships for education while incarcerated to promote connections out of the prison. She said DOCR works closely with Job Service North Dakota to break barriers by allowing some individuals to attend job fairs before release.

In response to a question from Representative Hanson, Dr. Veit-Hetletved said DOCR works closely with various industries to identify jobs with the highest demand. She said there are barriers if a particular industry is unionized or a job requires licensure because some licensure boards will not license a convicted felon.

In response to a question from Representative Klemin, Dr. Veit-Hetletved said DOCR has an off-paper program with the North Dakota University System which allows DOCR to offer some college credits. She said unless an incarcerated individual has someone willing to help pay for college, an individual who took college courses while incarcerated is required to go through a second admissions process. She said the general rule is a college or university will allow an individual to take classes on campus after the individual has been off probation or parole for 1 year.

Chairman Armstrong called on Mr. Greg Larson for information ([Appendix K](#)) relating to the housing market and incentives for private landlords to rent to convicted felons. Mr. Larson said landlords do not want to work with felons because there is not an incentive program or indemnification.

Chairman Armstrong called on Mr. Greg Thompson for information ([Appendix L](#)) relating to the housing challenges faced by convicted felons. Mr. Thompson said landlords are authorized to check a potential renter's income, credit, rental, and criminal history. He said a typical landlord in the state has a policy that if an individual has a felony conviction, the landlord will not rent to the individual. He said about a year ago the United States Department of Housing and Urban Development (HUD) issued a directive that provided an across the board policy against renting to felons has a disparate impact on minorities. As a result, he said, HUD directed landlords to review the specifics of each conviction on a case-by-case basis.

In response to a question from Chairman Armstrong, Mr. Thompson said looking at the criminal records of convicted felons is not an easy task. He said the question comes down to if it is foreseeable, based on an individual's past convictions, the landlord could be held liable for any future issues.

Chairman Armstrong called on Mr. Scott J. Davis, Executive Director, Indian Affairs Commission, for information relating to the relationship between tribal law enforcement and the state court system. Mr. Davis said a memorandum of understanding (MOU) has been executed between the Three Affiliated Tribes of the Fort Berthold Reservation and McLean County in response to complaints about response time to emergency calls. He said the agreement allows the closest officer, whether the officer is with the federal Bureau of Indian Affairs (BIA) or the McLean County Sheriff's Department, to respond to a call on the reservation. He said regardless who is first to respond to a call, the issue is heard in tribal court.

Mr. Davis said reservation land has become a safe haven for criminals to escape arrest. He said the reservation is used by tribal members and non-natives to engage in criminal behavior. He said although the next logical step is using a drug task force to close the safe haven, a trusting relationship has to be built between law enforcement and tribal members.

In response to a question from Representative Vetter, Mr. Davis said tribes have always been very personal about their sovereignty by having their own law enforcement and taking care of themselves. He said over the years appropriations have diminished and law enforcement and BIA officers are understaffed by 50 percent.

Chairman Armstrong called on Mr. Ladd Erickson, McLean and Sheridan County State's Attorney, for information relating to the relationship between tribal law enforcement and the state court system. Mr. Erickson said the key to a successful MOU is the language and one of the key facts in the MOU was naming Mr. Scott Davis as the mediator and judge if one of the parties wants out of the agreement.

Mr. Erickson said the 66th Legislative Assembly could work on an amendment to the extradition policy to allow the executive branch to execute a MOU and send a South Central District judge to the reservation once a month to see anyone willing to clear a warrant. Because a warrant cannot be served on a reservation, he said, individuals who use the reservation as a safe haven have arrest warrants for years before going to court.

Chairman Armstrong called on Mr. Travis Finck, Deputy Director, Commission on Legal Counsel for Indigents, for information relating to the relationship between tribal law enforcement and the state court system.

In response to a question from Senator Wardner, Mr. Finck said the attorneys working for the Commission on Legal Counsel for Indigents are not overloaded, but there is always a concern about the number of cases each attorney is handling.

COMMENTS BY INTERESTED PERSONS

Chairman Armstrong called on Mr. Dean Roller for comments ([Appendix M](#)) relating to behavioral health needs.

COMMITTEE DISCUSSION

Chairman Armstrong called on Ms. Cathy Ferderer, Juvenile Court Coordinator, State Court Administrator's office, for information ([Appendix N](#)) relating to the committee's discussion of a bill draft [[19.0039.01000](#)] relating to the age of culpability of a juvenile.

In response to a question from Chairman Armstrong, Ms. Ferderer said a law enforcement referral for a juvenile who is 7 or 8 years old would be sent to social services regardless of the age of culpability provided in statute. She said social services deals with the family dynamics that could be causing negative behaviors.

Chairman Armstrong called on Mr. Jackson Lofgren for information relating to the bill draft. Mr. Lofgren said the proposal to raise the age of culpability is a very good idea. He said children too small to ride the wild rides at Disney World should not be in criminal court.

In response to a question from Chairman Armstrong, Mr. Cory Pedersen, Director, Juvenile Court Services, South Central District Court, said a juvenile under 12 years of age is placed with social services regardless of the offense.

In response to a question from Representative Satrom, Ms. Ferderer said the most common age of culpability across the county is between 10 and 12 years of age.

In response to a question from Representative Heinert, Mr. Pedersen said a juvenile found guilty of an offense before the juvenile's 18th birthday can be held by the juvenile court until the juvenile reaches age 20.

It was moved by Representative Meier, seconded by Representative Vetter, and carried on a roll call vote that the bill draft relating to the culpability of a juvenile be approved and recommended to the Legislative Management. Senators Armstrong, Grabinger, Oehlke, and Osland and Representatives Blum, Hanson, Heinert, Kading, Karls, Klemin, Meier, Nelson, Satrom, and Vetter voted "aye." No negative votes were cast.

No further business appearing, Chairman Armstrong adjourned the meeting at 3:15 p.m.

Samantha E. Kramer
Counsel

ATTACH:14