

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

INCARCERATION ISSUES COMMITTEE

Monday, September 21, 2015
Harvest Room, State Capitol
Bismarck, North Dakota

Senator Ron Carlisle, Chairman, called the meeting to order at 10:00 a.m.

Members present: Senators Ron Carlisle, John Grabinger, Terry M. Wanzek; Representatives Ron Guggisberg, Kim Koppelman, Jon O. Nelson; Citizen Members Leann K. Bertsch, Thomas Erhardt, James D. Gion, Rozanna Larson, Judge Douglas Mattson, Thomas Trenbeath, Randy Ziegler

Members absent: Citizen Members Judge Frank Racek, Chief Justice Gerald W. VandeWalle, Art Walgren

Others present: See [Appendix A](#)

At the request of Chairman Carlisle, Legislative Council staff reviewed the [Supplementary Rules of Operation and Procedure of the North Dakota Legislative Management](#).

Chairman Carlisle said the committee has a unique opportunity to work with the Justice Reinvestment Initiative. He said the committee also will look at the impact, if any, the bills that the 2013-14 interim Commission on Alternatives to Incarceration recommended, which went into effect on August 1, 2015.

Ms. Bertsch said the committee needs to talk about the entire criminal justice system rather than just focusing on incarceration. She said it is important to look at why the system is not working rather than spending time focused on the aspects that are working.

Judge Mattson said the situation in North Dakota has changed over the years and recent legislation has provided judges with flexibility.

At the request of Chairman Carlisle, Legislative Council staff reviewed a memorandum entitled [Incarceration Issues Committee - Background Memorandum](#). The Legislative Council staff said 2015 House Bill No. 1015 directed the committee to seek technical assistance from the Bureau of Justice Assistance, The PEW Charitable Trusts, and the Council on State Government's Justice Center to conduct a reform initiative. She said the first step to request technical assistance is a [formal letter](#) stating that North Dakota is committed to providing the Council on State Governments (CSG) access to data about the corrections and criminal justice system in the state and that North Dakota is committed to considering CSG's recommendations for legislative policy proposals during the 65th Legislative Assembly.

It was moved by Senator Grabinger, seconded by Senator Wanzek, and carried on a roll call vote that the committee approve the proposed draft letter, subject to approval of the Chairman of the Legislative Management, and if the letter is approved by the Chairman, the Legislative Council staff will be requested to coordinate obtaining the signatures to the letter. Senators Carlisle, Grabinger, and Wanzek, and Representatives Nelson, Guggisberg, and Koppelman voted "aye." No negative votes were cast.

COUNCIL OF STATE GOVERNMENTS

Chairman Carlisle called on Mr. Carl Reynolds, Senior Legal and Policy Advisor, Justice Center, Council of State Governments, for information (Appendices [B](#) and [C](#)) relating to the role CSG plays in the federal Justice Reinvestment Initiative. Mr. Reynolds said CSG is interested in the impact the Bakken Formation has had on incarceration and crime rates in North Dakota. He said additional funds will be available from the federal government for North Dakota upon the implementation of policy changes. Mr. Reynolds said the key is to understand the way the sentencing and parole systems in North Dakota work.

In response to a question from Chairman Carlisle, Mr. Reynolds said the committee will be a home group for the study, however much of the work will be done in the background through data analysis and the meeting of different stakeholders. Once the formal letter is received, he said, data collection from the court system, local police, and

the Department of Corrections and Rehabilitation will begin to provide some perspective as to what is actually happening in jail populations. He said North Dakota is the first state CSG has worked with that is experiencing such drastic population growth related to oil production.

In response to a question from Representative Guggisberg, Mr. Reynolds said the data CSG will collect is data to which the committee likely already has access. Although CSG will do the analysis and provide the committee with the results, CSG typically is not in the position of cleaning up the data for states.

In response to a question from Ms. Bertsch, Mr. Reynolds said the process is sensitive to the concerns of local leaders and policymakers. He said the goal of CSG is to create strategies with which everyone can be happy.

In response to a question from Representative Nelson, Mr. Reynolds said The PEW Charitable Trusts partially funds the work of CSG, but The PEW Charitable Trusts also has a team of people doing similar work. He said representatives of the two organizations communicate regularly, however, The PEW Charitable Trusts has limited influence on the process.

In response to a question from Chairman Carlisle, Mr. Reynolds said the Phase 2 implementation funding for which North Dakota may be eligible becomes available after legislation has been passed.

COMMENTS BY INTERESTED PERSONS

Chairman Carlisle invited comments by interested persons in attendance regarding the Justice Reform Initiative.

Mr. Alan Austad, North Dakota Association of Justice, said it is important to have criminal defense attorneys involved in the process as their input is very valuable.

Representative Koppelman said public defenders also should be involved.

Mr. Aaron Birst, North Dakota Association of Counties, said county sheriffs would like to be involved in the process.

Representative Nelson said it was an oversight that the local sheriffs were not specifically involved, but they will be included.

Ms. Janelle Moos, Executive Director, Council on Abused Women's Services North Dakota, said data collected by her organization could provide a wealth of information to the committee. She said the Council on Abused Women's Services has access to offenders who are ordered to different treatment programs provided through the Council on Abused Women's Services.

DEPARTMENT OF PUBLIC INSTRUCTION

Chairman Carlisle called on Ms. Kirsten Baesler, Superintendent, Department of Public Instruction, for a presentation on truancy programs. Ms. Baesler said the Department of Public Instruction has the responsibility of monitoring the operation of grades K-12. She said school districts provide annual attendance and graduation rate reports for each school in the district. She said attendance is tracked and monitored because attendance has been identified as an at-risk factor for students.

Ms. Valerie Fischer, Director, Safe and Healthy Schools Unit, Department of Public Instruction, submitted written testimony and additional information (Appendices [D](#), [E](#), [F](#), [G](#), [H](#), and [I](#)) relating to attendance and truancy in North Dakota.

In response to a question from Mr. Trenbeath, Ms. Fischer said the key factor upon which to focus is the number of students missing school, which is the most difficult factor to control.

In response to a question from Ms. Larson, Ms. Fischer said the truancy law was amended in 2009, changing the crime of truancy from a felony to a Class B misdemeanor. She said when truancy was classified as a felony it was difficult to find prosecutors to charge the offense.

In response to a question from Ms. Bertsch, Ms. Fischer said many schools have programs to target an at-risk student prior to the student being expelled. She said the school administration focuses on meeting with parents and engaging a student in extracurricular activities in an attempt to re-engage the student in school. She said because there are students who do not want to be in school and cause a great deal of trouble, some administrators are not hesitant to push those students out.

In response to a question from Ms. Bertsch, Ms. Baesler said the state has a "no-opt out" policy for the state standardized assessment in order to avoid teachers pushing students who may not be the best test-takers out of the classroom. She said the graduation rate goal for the state is 90 percent and currently the state is at 89 percent. She said alternative education settings provide opportunities for students who may not thrive in the traditional school environment. Because the collaboration that is necessary to get students to school is not always swift, she said, sometimes a student changes schools before action is taken.

BISMARCK PUBLIC SCHOOLS

Chairman Carlisle called on Ms. Tamara Uselman, Superintendent, Bismarck Public Schools, for testimony regarding truancy programs available to students in the Bismarck Public School District. Ms. Uselman said the Bismarck School Board sets a policy on school attendance. She said the parent of a student in elementary school is generally responsible for getting a student to school. However, she said, when a student reaches middle or high school, the schools experience the most issues with truancy. She said the district has a team that works hard to determine who the contact person is within each family to get each child to school. She said South Central Alternative High School is an option for some students. Because schooling needs to be personalized and individualized for about 15 percent of students, she said, the district is developing school-based mental health services.

In response to a question from Chairman Carlisle, Ms. Uselman said the top 5 percent of students at high-risk are needing to work in addition to attending school to support their families or themselves.

In response to a question from Representative Koppelman, Ms. Uselman said because 70 percent of high school students are engaged in extracurricular activities while taking a full course load, the number of students working for spending money is greatly lower than in previous decades.

In response to a question from Representative Nelson, Ms. Uselman said schools make individual efforts based on family needs to prevent truancy. She said Bismarck is lacking a formal way to concentrate efforts with school employees, the court system, mental health service providers, and the city or county to ensure that when a student moves from school to school that student's records go with the student.

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Chairman Carlisle called on Ms. Bertsch for a presentation (Appendices [J](#) and [K](#)) on the current prison populations, the drivers of incarceration, and the employment opportunities available to the female prison population in North Dakota. Ms. Bertsch said 7,000 probationers and parolees cannot access treatment providers. She said the Department of Corrections and Rehabilitation is the default mental health provider for people in North Dakota.

Mr. Erhardt said since 1992 the probation and parole count has increased 217 percent and the inmate day count has increased 134 percent.

In response to a question from Senator Wanzek, Ms. Bertsch said locking up people for longer periods of time does not make them better. She said there are many aspects of the system that need to be fixed in order to see fewer victims.

In response to a question from Judge Mattson, Mr. Erhardt said the 37 percent increase in felony offenses since 1997 was calculated based on the fact that North Dakota had 565 felonies in code in 1997 and as of 2015 there are 777.

In response to a question from Representative Guggisberg, Ms. Bertsch said a number of states experienced reduced prison populations during the recession because several states closed prisons and decriminalized many offenses. She said North Dakota did not experience the same trend because the recession had a limited impact on the state.

In response to a question from Judge Mattson, Ms. Bertsch said the top areas to improve with respect to treatment are access and effectiveness, because there are not enough treatment options available and those that exist do not necessarily address the criminal behavior. Until the mental health crisis is addressed, she said, the prison population will continue to grow.

Ms. Barb McGillivray, Director, Women's Services, Department of Corrections and Rehabilitation, provided written testimony ([Appendix L](#)) relating to the female prison population. Ms. McGillivray said the Department of Corrections and Rehabilitation receives between 20 and 25 new female inmates each month. She said about 75 percent of female inmates are serving time for nonviolent offenses. She said 80 percent of female inmates are mothers and 85 percent of female inmates have significant chemical dependency issues.

Ms. Bertsch said 85 percent of inmates are in jail because of an inability to make bond and this state does not have pretrial detention practices. She said the focus should be on the dangerous individuals rather than locking up the individuals society is mad at.

Chairman Carlisle said the next meeting would probably be scheduled for the later part of January.

No further business appearing, Chairman Carlisle adjourned the meeting at 3:00 p.m.

Samantha E. Kramer
Counsel

ATTACH:12