

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

INCARCERATION ISSUES COMMITTEE

Tuesday, January 26, 2016
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator Ron Carlisle, Chairman, called the meeting to order at 9:00 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, Rozanna Larson, Judge Douglas Mattson, Aaron Roseland, Attorney General Wayne Stenehjem, Chief Justice Gerald W. VandeWalle, Randy Ziegler

Members absent: Citizen Members Judge Frank Racek, Art Walgren

Others present: Representative Kenton Onstad and Senator Rich Wardner, members of the Legislative Management

See [Appendix A](#) for additional persons present.

It was moved by Representative Koppelman, seconded by Senator Wanzek, and carried on a voice vote that the minutes of the September 21, 2015, meeting be approved as distributed.

Chairman Carlisle introduced the committee's new citizen member, Mr. Aaron Roseland. Mr. Roseland said he is an Assistant State's Attorney and will be taking citizen member James Gion's place on the committee.

COUNCIL OF STATE GOVERNMENTS

Chairman Carlisle called for a recess to allow the committee to attend the press conference launching the Justice Reinvestment Initiative.

Chairman Carlisle called on Ms. Katie Mosehauer and Mr. Marc Pelka, Council of State Governments Justice Center, for information (Appendices [B](#) & [C](#)) relating to the status of the criminal justice system in North Dakota.

Mr. Pelka said the Council of State Governments Justice Center (CSG) will provide technical support and data analysis to the state at no cost. He said the first phase of justice reinvestment lasts between 9 and 12 months, during which time data is collected and policy is crafted. He said Phase 2 is the implementation of the recommendations during which the effort involved is to ensure the goals and outcomes of the project are maximized. He said the federal Bureau of Justice Assistance (BJA) provides ongoing assistance to some states for up to 2 years after implementation. He said future presentations will be specific data analysis. Time will be spent looking at supervision strategies, he said, as the number of people on probation far exceeds the number of people incarcerated. Addressing those issues, he said, will go a long way in addressing the issue of recidivism.

Ms. Mosehauer said North Dakota is the 25th state to participate in the Justice Reinvestment Initiative and each state has a unique set of issues. She said there are four aspects of justice reinvestment which will be used to help address the challenges facing the criminal justice system. She said intensive data analysis to uncover previously unexplored challenges, stakeholder input to define challenges and reach a consensus solution, bipartisan approval, and sustained state leadership through implementation will be used during the process.

In response to a question from Judge Mattson, Mr. Pelka said other states have addressed geographical challenges to behavioral health services as a regional issue.

Mr. Stenehjem said the treatment component is a long-term component and working with higher education officials to address chemical addiction treatment and mental health is imperative.

In response to a question from Representative Nelson, Ms. Mosehauer said Montana and North Dakota are CSG's first opportunity to work with the Native American community.

Mr. Pelka said CSG initially looked at the criminal justice system in the state over the past decade. Although there has been a 14 percent population increase in the last decade, he said, North Dakota remains below the national average in the index crime rate. County population and index crime changes create a more complex picture, he said, while population changes coincided with increases in index crime, the population changes alone are not the cause of the changes in crime. He said CSG will explore what occupies a law enforcement officer's time on any given day and what support could be provided to make it easier to address the challenges at the front end of the system.

Mr. Ziegler said the large number of traffic stops and the amount of drugs that officers see on those stops takes up the majority of an officer's time. He said the amount of time spent with individuals who are detoxing is also very time consuming. It is not necessarily law enforcement's job to take care of those individuals, he said, but officers deal with it all the time. He said transporting prisoners is the other aspect of the job that takes up the bulk of an officer's time. At least one officer has to be taken off patrol to do a prisoner transport, he said, which leaves at least one fewer officer available to respond to calls.

Mr. Stenehjem said the state has struggled with collecting county crime data for some time. He said he has implemented a policy to encourage counties to file reports as a condition to be approved for oil-impacted county grants.

In response to a question from Judge Mattson, Mr. Pelka said CSG would prefer to look at the data in terms of the number of offenses per individual, however that data was not available.

Ms. Larson said bench warrants also strain law enforcement. She said the process puts a strain on local prosecutors to locate witnesses across the country in addition to the costs involved with bringing those witnesses back to the state for trial.

In response to a question from Representative Onstad, Mr. Pelka said juvenile issues are extremely complex. He said CSG will analyze the age range of offenders to look at the risk factors contributing to certain behaviors.

Mr. Roseland said at the end of 2009, Adams County had 82 active cases and currently the county has over 162. He said efforts need to be made during the data analysis process to narrow the scope and determine when the oil boom started impacting non-oil-producing counties.

Mr. Pelka said nationwide nearly two-thirds of the jail population consists of individuals awaiting trial. He said this is a population that can be assessed for risk and then sorted accordingly. Of the individuals released from incarceration in 2010, he said, 39 percent have returned. He said 40 percent is the national average in terms of recidivism. He said technical violations account for most of the individuals who are reincarcerated.

In response to a question from Representative Nelson, Mr. Pelka said CSG can look at the number of cases each probation officer is supervising in terms of the risk of reoffending. If the officer's time is not used correctly by focusing on the high-risk cases, he said, probation will be ineffective.

Mr. Roseland said in his experience probationers have several violations before being revoked. He said the data should be analyzed to determine what other methods were applied before revocation.

Ms. Mosehauer said growth in the prison population over the next 10 years is projected to be 75 percent. She said growth of that magnitude would require an additional 1,500 prison beds.

Mr. Pelka said the fact that North Dakota is experiencing some of the largest jail and prison population growth in the country is very interesting to someone not familiar with the state. Without action, public safety dollars will be consumed trying to keep up with growth, he said, rather than invested in crime and recidivism reduction strategies.

Ms. Mosehauer said justice reinvestment can help address strategies to reduce crime and recidivism while improving public safety, help to explain the growth in jail and prison populations, and determine what options North Dakota has for the future to avert growth in the prison population.

Comments by Interested Persons

Chairman Carlisle invited comments by interested persons in attendance regarding CSG's presentation.

Ms. Lorraine Davis, Executive Director, Native American Development Center, said one of the core focus areas of her work is to strengthen Native American families through providing re-entry support services. She said she would be willing to meet with CSG representatives to provide input regarding Native American issues.

Committee Discussion

Mr. Erhardt said there has been a 37 percent increase in the number of felony offenses in statute since 1997. Because policy decisions have a huge impact on the rest of the system, he said, it is important to look at the front end of the criminal justice system.

Ms. Bertsch said the Department of Corrections and Rehabilitation (DOCR) has an over-representation of individuals with mental health issues among the prison population because individuals are pushed into the criminal justice system as a result of a lack of mental health resources in the community. She said an officer will purposely charge an individual just to get the individual treatment through the jail. She said individuals with mental illness need to be viewed as citizens of the state needing services rather than criminals.

In response to a question from Senator Wardner, Ms. Mosehauer said CSG has staff who deal specifically with victim advocacy.

Representative Koppelman said this is not an either-or approach to the system where the Legislative Assembly was tough on crime and will now be soft on crime.

Ms. Bertsch said changing policy does not mean gutting the DOCR budget. Although the DOCR is a public safety agency and takes the data analysis seriously, she said, this initiative is about being smart on crime rather than being tough on crime. She said the DOCR does not have enough meaningful activity to provide inmates during the day to allow them the opportunity to apply the skills they learn in treatment and use those skills upon release.

COUNTY JAIL FACILITIES

Chairman Carlisle called on Ms. Donnell Presky Hushka, North Dakota Association of Counties, for a presentation ([Appendix D](#)) on county jail facilities. Ms. Presky Hushka said North Dakota's county jails house 56 percent of the state's prisoners whereas nationally only 35 percent of inmates are housed in local facilities. She said the planned county jail expansions across the state will increase bed capacity by 840 beds.

In response to a question from Senator Grabinger, Ms. Presky Hushka said the data does not separate the types of inmates in county jail facilities. She said North Dakota Association of Counties will update the data with a breakdown to include the number of inmates being held while awaiting trial as the information becomes available.

Ms. Presky Hushka said over the past 2 years, North Dakota Association of Counties staff has traveled to 24 counties and the lack of space and issues of transporting inmates were the top two complaints.

In response to a question from Chairman Carlisle, Mr. Ziegler said a typical inmate transfer involves at least two officers being pulled from patrol to transport an inmate in a squad car.

Mr. Roseland said in smaller counties officers come in on their day off or during vacation to do transfers, which causes the officers to accumulate overtime rapidly.

Chairman Carlisle called on Mr. Pat Heinert, Sheriff, Burleigh County, for a presentation ([Appendix E](#)) on local jail facilities. Mr. Heinert said Burleigh County has a much higher level of felony bookings into its jail facility than misdemeanor bookings. He said the 2016 Burleigh County jail budget will include a mental health specialist.

In response to a question from Chairman Carlisle, Mr. Heinert said the new Burleigh and Morton County 476 bed jail facility is projected to open with 325 beds already filled. He said there are about 234 federally charged inmates in North Dakota, only 120 of whom are being held in the state.

JUVENILE INCARCERATION

Chairman Carlisle called on Ms. Lisa Bjergaard, Director of the Division of Juvenile Services, Department of Corrections and Rehabilitation, for a presentation ([Appendix F](#)) of information on juvenile incarceration.

In response to a question from Chairman Carlisle, Chief Justice VandeWalle said juvenile drug court is being developed from the ground up and the Supreme Court is contemplating implementation through court rule.

In response to a question from Senator Grabinger, Ms. Bjergaard said the treatment program at the Youth Correctional Center and a couple private facilities are the only inpatient treatment options available to juveniles. She said one of the biggest challenges at the Youth Correctional Center is keeping kids alive.

Chairman Carlisle called on Ms. Bertsch for a presentation ([Appendix G](#)) on the United States-European Criminal Justice Innovation Project. Ms. Bertsch said a group traveled to Norway to study the changes the country

had made to its criminal justice system. In the 1990s, she said, Norway had a 70 percent recidivism rate. As a result, she said, Norway changed its approach to incarceration and rehabilitation. She said Norway shifted from a punitive system, like the United States, to a rehabilitative system.

Mr. Donovan Foughty, District Judge, provided information ([Appendix H](#)) on his experience in Norway. He said the opportunity to see Norway's system had a significant impact on how he views his role as a judge.

In response to a question from Representative Nelson, Ms. Bertsch said Norway has done the research to support every policy change. She said the longest sentence in Norway is 30 years and there is a process of judicial review during which an inmate may be released upon a determination the inmate is no longer a danger to society. She said North Dakota is one of the few states that does not allow for the compassionate release of inmates.

COMMITTEE DISCUSSION

In response to a question from Chairman Carlisle, Ms. Mosehauer said CSG would present information relating to sentencing and court data at the next meeting.

Chairman Carlisle said this committee will have a lot of support; however, it may be necessary to spend money to save money.

Representative Nelson said it will be necessary to consult with the institutions of higher education to get a better idea of what is being done to encourage students to enter the field of behavioral health.

Chairman Carlisle said the next meeting is scheduled for Wednesday, March 23, 2016.

No further business appearing, Chairman Carlisle adjourned the meeting at 4:00 p.m.

Samantha E. Kramer
Counsel

ATTACH:8