

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

TRIBAL AND STATE RELATIONS COMMITTEE

Wednesday, March 2, 2016
Harvest Room, State Capitol
Bismarck, North Dakota

Representative Marvin E. Nelson, Chairman, called the meeting to order at 10:00 a.m.

Members present: Representatives Marvin E. Nelson, Bill Amerman, Dennis Johnson; Senators Joan Heckaman, Oley Larsen, Dave Oehlke

Members absent: Representative Wayne Trottier

North Dakota Tribal Governments' Task Force members present: Scott J. Davis, Executive Director, Indian Affairs Commission; Steve Sitting Bear, representing Dave Archambault II, Chairman, Standing Rock Sioux Tribe; Allen Nygard, representing Mark Fox, Chairman, Three Affiliated Tribes of the Fort Berthold Reservation; Richard McCloud, Chairman, Turtle Mountain Band of Chippewa Indians; Douglas Yankton, Sr., representing Myra Pearson, Chairperson, Spirit Lake Tribe

North Dakota Tribal Governments' Task Force members absent: Bruce Renville, Chairman, Sisseton-Wahpeton Oyate of the Lake Traverse Reservation

Others present: See [Appendix A](#)

TRIBAL YOUTH SERVICES STUDY DISCUSSION

Chairman Nelson called on the Honorable Donovan Foughty, District Judge, Northeast Judicial District. Judge Foughty said the purpose of this study is to find a way for a tribal youth adjudicated in tribal court to get access to the same services a tribal or nontribal youth can receive if adjudicated in state court.

Mr. Davis said discussions among the interested parties are moving forward in a positive way. He said it appears an agreement or a memorandum of understanding between the state and the tribes on this issue would not require legislation.

Chairman Nelson called on Ms. Lisa Bjergaard, Director, Division of Juvenile Services, Department of Corrections and Rehabilitation. Ms. Bjergaard said much of the data needed to determine the needs and number of youth in the state can be taken from the *North Dakota Three-Year Juvenile Justice Plan* ([Appendix B](#)). She said detention rates are set by the federal Bureau of Prisons. She said any agency that works with the Bureau of Prisons must abide by those rates. She said foundation aid or Medicaid funding is not available for a juvenile when the juvenile is in the custody of the Division of Juvenile Services. She said most of the funding for juvenile corrections is from the general fund.

In response to a question from Senator Larsen, Ms. Bjergaard said for foster care cases, the education funds follow the student but not when a juvenile is in the custody of the Division of Juvenile Services.

Chairman Nelson called on Mr. Bob Marthaller, Assistant Superintendent, Department of Public Instruction. Mr. Marthaller said the department would provide information to the committee as to why foundation aid money does not follow the student if the student is in the custody of the Division of Juvenile Services.

Mr. Davis said Medicaid and other insurance does not follow adult offenders. He said it is likely the same limitation applies to youth.

Ms. Bjergaard said all youth should be afforded the opportunity to become as productive as possible. She said access to services should not be limited while the youth are in corrections.

Chairman Nelson called on Mr. Joseph Vetsch, Tribal Prosecutor, Spirit Lake Sioux Tribe. Mr. Vetsch said there is a need in Indian Country for consistent services for juveniles. He said when limited to federal dollars, it has been a constant roller coaster of funding and no funding. He said there are very few options available to the tribal court other than incarceration. He said as a result of the lack of treatment, education, counseling, and other services, tribal youth adjudicated in tribal court have a much higher rate of recidivism than those youth adjudicated in the state system.

Chairman Nelson called on Ms. Erin Shanley, Associate Judge, Standing Rock Sioux Tribe. Ms. Shanley said the youth on the Standing Rock Sioux Reservation are being detained in South Dakota. She said youth detention services are provided by the Bureau of Indian Affairs (BIA). She said the Standing Rock Sioux Tribe is opening a new juvenile detention center in May. Because of this new detention center, she said, the tribe would not need detention services from the state but would be interested in other state services for youth.

In response to a question from Mr. Patrick Marcellais, Turtle Mountain Band of Chippewa Indians, Ms. Bjergaard said at least one state, Vermont, has been able to use Medicaid funding in detention facilities by repurposing the facility. She said the number of detainees who need mental illness treatment and other behavioral health treatment is greater than the number who just need detention.

In response to a question from Senator Heckaman, Ms. Bjergaard said there is a need in the state to bring services to any youth in rural areas, not just tribal youth.

Mr. Nygard said a new youth and adult facility with a juvenile capacity of 16 is being built with BIA funding in New Town. He said the funding does not include funding for operation. He said the Elbowoods Memorial Health Center provides education and medical services, but there is not enough mental health funding to meet the need. He said because of the service needs of youth, the juvenile bed cost is almost double that of adult beds.

Chairman McCloud commended Judge Foughty for his efforts to get services for tribal youth. He said special education funding cannot be allocated for detention. He said the issue of why the funding does not follow the detained student should be addressed by both the state and federal governments. He said tribal juveniles are sent all over the country for detention with no consistency.

Mr. Davis said there are possible funding mechanisms that may be available, including BIA, Title IV-E, Medicaid, and foundation aid.

Judge Foughty said the funding stream should follow the youth regardless of where the youth is sent.

Chairman Nelson said an agreement should be in place before looking at sources of funding.

Judge Foughty said the state has a two-part system--juvenile court and the Division of Juvenile Services. He said whenever possible, youth should be diverted to services that will keep the youth away from juvenile court.

In response to a question from Mr. Sitting Bear, Ms. Bjergaard said the staffing ratio is 1-to-8 in waking hours and 1-to-16 in overnight hours. She said taking on additional youth would create the need for additional staff. She said with the increase in the overall youth population in the state, it is expected the number of youth in the juvenile justice system will increase as well.

In response to a question from Representative Nelson, Ms. Bjergaard said when determining the cost of providing the services it is necessary to look at the cost to access all levels of care, not just the Youth Correctional Center costs.

Chairman Nelson said he would like Mr. Davis to work with the Spirit Lake Sioux Tribe to begin discussions regarding an agreement. He said after an agreement is reached, funding sources can be sought. He said he would like to see an agreement move forward.

In response to a question from Senator Heckaman, Ms. Bjergaard said the required 4.05 percent allotment will not effect the division's programming.

Mr. Nygard said jurisdictional issues may be a problem.

Judge Foughty said under the Utah tribal-state agreements, when a tribal youth is transferred to the state for services, the tribal youth comes under the jurisdiction of the state. He said, however, the tribal court has the option to call back the youth at any time.

Mr. Yankton said tribal members are dual citizens of their tribe and of the United States. He said tribal youth should be treated as dual citizens as well.

ANIMAL CRUELTY LAWS

Chairman Nelson called on Mr. TJ Jerke, North Dakota State Director, The Humane Society of the United States, for testimony and information ([Appendix C](#)) regarding animal cruelty laws in North Dakota and pet vaccination resources available to the tribes. Mr. Jerke said North Dakota has good animal cruelty laws, but people may not be aware of the laws or how to report abuse. He said there are feral and pack dog issues on the reservations in the state and although they may not be as problematic as in other states, they are still an issue.

Mr. Jerke said several programs are available to address animal issues on the reservation. He said the Rural Area Veterinary Services Program (RAVS), with four full-time veterinarians, brings 50 to 60 veterinary students to the state each summer to provide direct-care veterinary field clinics to the reservations. He said from 2005 through 2014 RAVS provided surgeries for 4,389 animals and medication and vaccinations for 7,890 animals on reservations in the state. He said RAVS clinics will be held at all reservations this summer.

Mr. Jerke said another program, Pets for Life, helps to provide food and veterinary care. He said on the Blackfeet Nation Reservation in Montana, the program has served 800 pets with 85 percent of the pets on the reservation now spayed or neutered.

In response to a question from Mr. Marcellais, Mr. Jerke said the Racing Commission has standards in place for the health and safety of horses. He said his organization would be happy to work with the commission to provide assistance for the care of horses.

In response to a question from Senator Larsen, Mr. Jerke said The Human Society of the United States is interested in working with pet programs in detention centers. He said Service Dogs for America, which is located in Jud, North Dakota, trains dogs to work with individuals with posttraumatic stress disorder. He said the dogs undergo a very specialized training with highly qualified trainers.

In response to a question from Senator Oehlke, Mr. Jerke said the dogs being trained by the womens' detention facility in Jamestown are not used for companion-service animals. He said there is a difference between companion animals and companion-service animals.

TRIBAL COLLEGE RESEARCH ACTIVITIES

Chairman Nelson called on Dr. Gary Halvorson, Agriculture Instructor/Director, Sitting Bull College, for a presentation ([Appendix D](#)) regarding the master of science degree program at Sitting Bull College. Dr. Halvorson said the master of science in environmental science is the first tribal college in the country to offer a master's program in a science area. He said the two students enrolled in the program are studying mercury and lead concentrations in river sediments.

Dr. Halvorson introduced Mr. Louis Walking Elk, one of the two students in the program, for a presentation ([Appendix E](#)) on his research regarding spatial distributions of total mercury within the sediments of the Grand River on the Standing Rock Sioux Reservation.

In response to a question from Representative Johnson, Mr. Walking Elk said only China and Spain still mine mercury. He said there is atmospheric mercury as well as mercury contained in rain and snow.

In response to a question from Senator Heckaman, Mr. Walking Elk said he hopes to get his research results published. He said publication would benefit the college and future students.

In response to a question from Mr. Davis, Mr. Walking Elk said the master's program helps emphasize the importance of college to tribal youth. He said the data will be valuable to landowners. He said the internal review board process only applies to research involving humans. He said he is interested in partnering with another study to get an outside perspective, such as in studying the effect of the mercury on elk and other wildlife.

In response to a question from Mr. Sitting Bear, Dr. Halvorson said Sitting Bull College is interested in offering a master's degree program in other areas of environmental science.

Chairman Nelson recognized Dr. Laurel Vermillion, President, Sitting Bull College, who said she appreciated the opportunity to demonstrate to the committee the amazing research being done at Sitting Bull College.

Chairman Nelson called on Dr. Jeremy Guinn, Environmental Science Instructor, United Tribes Technical College, for a presentation ([Appendix F](#)) regarding the research activities underway at United Tribes Technical College. Dr. Guinn said research at tribal colleges encourages interest, persistence, and retention of science, technology, engineering, and mathematics students; uses science as a means to address community issues; provides quality data to support decisionmaking; and provides opportunities unique to tribal colleges.

In addition to Dr. Guinn's presentation, presentations regarding specific research activities at United Tribes Technical College were made by Dr. Wanda Agnew (ecological research); Ms. Marlee Finley (antimicrobial activities of cultivated versus wild purple coneflowers); Mr. Robert Fox (breeding squash for sustainable food systems); Ms. Alexa Azure (retrospective ecological risk assessment of the January 2015 brine spill in western North Dakota); and Dr. Angelique Gillis (behavioral health research).

In response to a question from Chairman McCloud, Ms. Azure said the brine spill was mostly dissipated by the time it got to the Missouri River.

In response to a question from Mr. Sitting Bear, Dr. Gillis said the results of the data on the behavioral health research will be made available to the public.

In response to a question from Mr. Nygard, Dr. Guinn said United Tribes Technical College is working to increase research in the sciences, especially in the areas of energy, natural resources, and the impact of oil development on tribal lands. He said there will be jobs on the Fort Berthold Reservation for United Tribes Technical College students. He said the college would like to continue to work with the state on issues of brine spills and other contamination. He said degrees are required to be employed by tribal environmental protection and game and fish departments.

Mr. Davis said would like to see an economic impact study done on the tax contributions of tribal members. He said it is important for tribal leadership to create a "one-stop shop" for access to research information on tribal issues. He said a tribal college would be a good place to access that data.

CHILD SUPPORT

Chairman Nelson called on Mr. Jim Fleming, Director, Child Support Enforcement Division, Department of Human Services, for testimony ([Appendix G](#)) regarding how the department determines whether the amount of child support owed by an obligor is governed by state or tribal law and how the department's program approaches the suspension of a driver's license of a tribal obligor. The information provided by Mr. Fleming also included a summary of when tribal court has jurisdiction, when state court has jurisdiction, and when the jurisdiction is concurrent.

In response to a question from Chairman McCloud, Mr. Fleming said both the United States Supreme Court and the North Dakota Supreme Court have held the place of conception of a child must be considered when determining jurisdiction. He said his office would like to work with each tribe on child support collection efforts. He said even brief off-reservation contacts can lead to lifelong off-reservation jurisdiction of a case.

In response to a question from Chairman Nelson, Mr. Fleming said criminal charges for nonpayment of child support are used in extreme cases. He said criminal contempt of court charges can be made for willful refusal to pay child support.

CLEAN POWER PLAN

Chairman Nelson called on Mr. Dave Glatt, Chief, Environmental Health Section, State Department of Health, for a presentation ([Appendix H](#)) regarding the Clean Power Plan. Mr. Glatt said input from the tribal community is encouraged.

In response to a question from Chairman Nelson, Mr. Glatt said the tribes are not required to reduce emissions because North Dakota tribes do not own any power plants. He said, however, the tribes will be affected by the higher energy prices that may occur as a result.

In response to a question from Senator Larsen, Mr. Glatt said the goal is to use coal, capture the emissions, and use the emissions for oil field use. He said there is no talk of using nuclear technology to meet the emissions reduction requirements.

In response to a question from Mr. Sitting Bear, Mr. Glatt said the Public Service Commission does the siting requirements for wind farms. He said credit for constructing wind farms goes to the state that puts the wind towers in North Dakota. He said there are still some federal tax incentives for wind energy generation. He said North Dakota's energy production is about 25 percent from renewables (wind and water) with the remaining energy derived from coal and petroleum.

In response to a question from Senator Larsen, Mr. Glatt said there is little data on bird deaths from wind farms. He said according to Basin Electric Power Cooperative, about 500,000 acres of land would have to be taken out of production to construct and operate the number of wind farms necessary to comply with the emissions reduction requirements.

In response to a question from Mr. Nygard, Mr. Glatt said there will be federal methane rules that will affect natural gas flaring. He said carbon reduction requirements apply to oil field carbon emissions as well.

GOVERNMENT-TO-GOVERNMENT RELATIONS

Mr. Sitting Bear said to better manage the elk population in the state, a partnership between the Standing Rock Sioux Tribe, the North Dakota Game and Fish Department, and the University of North Dakota was formed. He said the project, which is 2 years in the making, has resulted in the tagging of six elk cows to monitor diet and activity. He said this project is a great example of a tribal and state partnership.

Mr. Nygard said the Three Affiliated Tribes of the Fort Berthold Reservation are concerned about the tax sharing agreements with the state. He said a mechanism is needed to allow for the negotiation of agreements without being required to wait 2 years for the Legislative Assembly to approve the agreement. He said not being able to move forward with tax agreements may force the tribe to implement their own taxes, which will result in dual taxation.

No further business appearing, Chairman Nelson adjourned the meeting at 3:30 p.m.

Vonette J. Richter
Assistant Code Revisor

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