

## NORTH DAKOTA LEGISLATIVE MANAGEMENT

### Minutes of the

## INCARCERATION ISSUES COMMITTEE

Tuesday, June 7, 2016  
Roughrider 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 Kim Koppelman, Jon O. Nelson; Citizen Members Leann K. Bertsch, Thomas Erhardt, Judge Douglas Mattson, Presiding Judge Frank Racek, Scott Steele, Attorney General Wayne Stenehjem, Chief Justice Gerald W. VandeWalle, Randy Ziegler

**Members absent:** Representative Ron Guggisberg, Citizen Members Rozanna Larson and Aaron Roseland

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

**It was moved by Attorney General Stenehjem, seconded by Representative Nelson, and carried on a voice vote that the minutes of the April 20, 2016, meeting be approved as distributed.**

Chairman Carlisle introduced the committee's new citizen member, Mr. Scott Steele. Mr. Steele said he has been a sheriff in Golden Valley County for 10 years and will be taking citizen member Art Walgren's place on the committee.

### COUNCIL OF STATE GOVERNMENTS

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

Ms. Mosehauer said the Council of State Governments (CSG) did not receive detailed prison admission information related to supervision violators and supervision records. Because the degree of offense is not tracked in the supervision case management system, she said, CSG is not able to provide a detailed analysis of supervision activity for low-level felony offenders.

In response to a question from Presiding Judge Racek, Ms. Mosehauer said CSG was able to determine whether sentences were a result of an individual committing a new offense or a probation revocation.

Ms. Mosehauer said maintaining the current incarceration trend will result in 1,300 more beds being used at a cost of about \$485 million. She said the \$485 million estimate does not include any building costs to accommodate the anticipated 3,000 incarcerated individuals over the next decade. She said property and drug offenses combined with probation and parole revocations account for 72 percent of all prison admissions. She said 62 percent of new offense admissions are Class C felony offenses, most being property and drug offenses. She said about 27 percent of individuals in prison on any given day are in custody as a result of a probation or parole violation. North Dakota's prison population drastically increased in 2011, she said, with new offense admissions and property and drug offenses driving the increase.

Mr. Steve Allen, Clinical Behavioral Health, Council of State Governments, said about 40 percent of the drug offenses were Class C felonies. Although that subgroup contains individuals that are repeat offenders, he said, there may be an opportunity for intervention.

Ms. Mosehauer said new offense admissions to prison increased in every judicial district. She said Class A and AA felonies have increased 21 percent since 2010.

In response to a question from Representative Nelson, Ms. Mosehauer said there are a variety of reasons for the high level of probation and parole revocations. Ms. Mosehauer said one of the major reasons is a lack of behavioral health resources.

Ms. Mosehauer said Native Americans make up a much larger portion of prison admissions from probation revocations and new offense admissions. She said North Dakota spends \$25 million incarcerating low-level property and drug offenders and individuals whose probation or parole has been revoked. She said 46 percent of revocations involved noncriminal violations of supervision conditions. There is a substantial need for substance abuse treatment, she said, as barriers exist to accessing adequate care in the community. She said one-half of the individuals revoked from probation are sent to prison while another one-third are sent to jail.

Mr. Allen said the probation and parole failure rate in North Dakota is not excessive compared to other states. He said an opportunity lies in reducing incarceration costs because there may be opportunities to shorten the accountability provisions.

Chief Justice VandeWalle said a change in public attitude and thinking would need to happen for a new method of diversion and public safety management to work.

Ms. Mosehauer said twice as many probationers live in the South Central Judicial District than anywhere else in the state. She said 75 percent of probation officers in the South Central district report having challenges employing best practices because of the high volume of high-risk individuals on their caseloads. Although the South Central Judicial District also had the highest rate and largest number of probation revocation in the state, she said, the activity is not proportional to the population. She said probation and parole officers reported an acute need for substance use services in the community. She said 50 percent of officers reported that 75 percent or more of probationers need substance abuse treatment and 50 percent need mental health services.

In response to a question from Representative Nelson, Ms. Mosehauer said in some communities treatment is available, but the cost prevents individuals from accessing services. Ms. Mosehauer said a majority of probation officers said wait times are at least 3 weeks before an individual gains access to any type of community treatment or evaluation.

Mr. Erhardt said the Department of Corrections and Rehabilitation (DOCR) has tried to alleviate some of the stress of this situation by using beds in transition facilities as treatment beds for individuals on probation and parole. However, he said, the increased prison population has diminished the impact because inmates are now being held in the treatment beds at transition centers.

Mr. Allen said individuals at higher supervision levels are revoked at higher rates, which suggests additional support and services are needed earlier in the supervision period. He said supervision, programs, and treatment that adhere to evidence-based practices are able to reduce recidivism at a lower cost than prison. Efforts to reduce recidivism fall short unless driven by a high-quality risk and needs assessment, he said, and North Dakota uses a very well respected risk and needs assessment tool.

Mr. Allen said to reduce recidivism, supervision and programs must be focused on people with higher risks and needs. To do so, he said, North Dakota would need to ensure that risk levels are used to prioritize access to community programs and treatment while moving felony probationers from an active caseload to a diversion type caseload based on risk level and demonstrated compliance. He said the vast majority of people who fail while on probation will do so within the first year. He said very often drugs, alcohol, and mental illness are causes for failure.

Mr. Allen said the only programming provided through probation is at transitional centers because access to treatment through regional human service centers or private providers is very limited. He said options should be explored to look at the ability for community providers to adopt cognitive behavioral programs and identify opportunities to expand capacity with existing providers.

Ms. Mosehauer said probation revocations cost the state more than \$9 million each year in state prison costs. She said probation supervision policies are based on best practices, but face real world challenges in terms of being implemented effectively.

In response to a question from Chairman Carlisle, Mr. Marc Pelka, Council of State Governments Justice Center, said CSG assisted in the analysis done by Nebraska when a new class of felony was created. Mr. Pelka said the legislators in Nebraska worked through each statute to determine which offenses fit in each category.

Ms. Bertsch said a higher level misdemeanor class may be more appropriate than a new felony class.

In response to a question from Representative Nelson, Mr. Pelka said CSG would want to ensure that any policy that would impact local county jails would be offset by other policy changes.

Ms. Bertsch said there is a misconception that if you make an offense a misdemeanor an individual would spend time in the county jail. She said pretrial services also need to be a consideration.

Mr. Pelka said CSG would like to examine factors surrounding revocation, such as how long a person uses a jail bed while waiting for a hearing. He said another possible area for policy changes involves the individuals who fail on community supervision and put significant pressure on county and state facilities.

Ms. Bertsch said DOCR is already doing a number of the ideas suggested. She said the ideas would be more effective if DOCR had access to services and other community resources. She said DOCR could reduce the number of individuals entering jails and prisons by providing services in the community.

Mr. Pelka said CSG noticed the lack of use of short jail stays in response to probation or parole violations. He said CSG would like to analyze the savings through using short jail stays in some cases to avoid revocation.

Mr. Erhardt said the 40-hour hold is being used more frequently; however, jail capacity could become a problem as officers become accustomed to the new option. He said DOCR also is looking at a matrix for early termination, but the issue of how to best deal with monetary obligations is a hurdle.

In response to a question from Representative Nelson, Mr. Pelka said the graduated response matrix used in Idaho includes a number of incentives. Mr. Pelka said the policy in Idaho was enacted through administrative rule, making it difficult to estimate the impact the change had on incarceration rates.

Judge Mattson said he would urge the committee to be careful about converting fines to civil judgments because doing so may result in a necessary expansion of the Attorney General's office for collections.

### **Comments by Interested Persons**

Sister Kathleen Atkinson, Ministry on the Margins, said the revolving door of recidivism has come to be called the second prison, which is the lifetime sentence that comes when an individual is labeled as a felon for life. She said individuals feel defeated and it comes as no surprise when those individuals commit another offense or violate probation stipulations. She said there are a lot of opportunities for partnerships in the community and she urged the committee to look at the regulations keeping individuals from success.

Ms. Jaclyn Hall, Executive Director, Ruth Meiers Hospitality House, provided information ([Appendix D](#)) relating to the relationship the Ruth Meiers Hospitality House has with DOCR and the West Central Human Service Center to support individuals upon release from incarceration.

### **Committee Discussion**

Attorney General Stenehjem said it is important to determine where insurance falls short for individuals seeking treatment and to address the lack of medical detox.

Senator Wanzek said the committee should consider the types of assistance provided to individuals upon release from incarceration.

Mr. Erhardt said there is a requirement in drug and alcohol cases for the judge to order a substance abuse evaluation; however, doing so stresses an already overburdened system. He suggested leaving the initial assessment and referral to the probation officer involved with pretrial services.

Ms. Bertsch said she has several bill drafts to present to the committee for consideration. She said draft number four ([Appendix E](#)) amends North Dakota Century Code Section 50-06-05.1(17) to remove the language from foreclosing those with felony drug convictions from obtaining food stamps. She said women who are incarcerated are often the primary caregivers and when they are released as a felon they are unable to access food stamps for 7 years. Although the stipulation used to be required by the federal government, she said, North Dakota is one of the few remaining states with such a prohibition.

Ms. Bertsch said draft number five ([Appendix F](#)) would create a pretrial services pilot program. She said a large portion of the individuals in county jails are awaiting trial because North Dakota does not have any pretrial services. She said the federal courts have a pretrial system for probation officers to determine if an individual should be detained or released while waiting for trial.

Representative Nelson said an important component of pretrial services would be a mental health evaluation.

Mr. Pelka said this concept is something CSG could assess to determine what savings exist.

Ms. Bertsch said draft number six ([Appendix G](#)) would amend Section 12-59-08 to give the parole board the ability to fashion a parole for inmates with a very serious medical condition. Due to an aging prison population, she said, many inmates are dying while in custody. She said this change would give the parole board a compassionate release option. Providing hospice care for inmates is an extreme expense, she said, while releasing the inmate to a nursing home would allow the inmate access to Medicaid.

Chairman Carlisle requested the Legislative Council staff explain a bill draft concept ([Appendix H](#)) from a member of the public.

The Legislative Council staff said the suggestion amends Section 19-03.1-23(7) to make possession of a controlled substance a Class A misdemeanor rather than a Class C felony.

Judge Mattson said implementing a mandatory deferred sentence would accomplish the same idea.

Ms. Mosehauer said the use of deferred impositions have provided better results.

Presiding Judge Racek said it is important for the criminal justice system to have the support of the public. He said the issue is multifaceted and simply changing the classification of offenses is not necessarily going to have the desired long-term impact the committee desires. He said there must be some type of interagency agreement for even minor changes to work.

Ms. Mosehauer said West Virginia provides a good example of what collaboration between different agencies might look like.

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

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Samantha E. Kramer  
Counsel

ATTACH:8