

South Dakota Corrections Commission
September 24, 2013
Black Hills Correctional Transition Center, Rapid City Minimum Unit
Approved Minutes

Chairman Craig Tieszen called the meeting to order at 1:00 p.m.

Members present: Chairman Craig Tieszen, Vice-Chairman Jim Bradford, Judge John Brown, Mr. David McGirr, Mr. Mark Anderson, and Representative Pat Kirschman. Mr. Timothy Bottum and Judge Robin Houwman attended by telephone. Representative Lance Carson had attended the facility tours but was en route to a legislative meeting in Pierre and was not in attendance.

Also present at the meeting were Governor's Legal Counsel Jim Seward, Department of Corrections Secretary Dennis Kaemingk, DOC Communications and Information Manager Michael Winder, Director of Juvenile Services Doug Herrmann, West River Juvenile Corrections Supervisor Jason Gillaspie, and Governor's Office Legal Intern Tyler Stenberg.

The Chairman asked for discussion on the minutes of the March 25, 2013, meeting. Mr. McGirr moved approval of the minutes as submitted and Senator Bradford seconded the motion. The motion carried.

Chairman Tieszen welcomed a new member to the Commission, Representative Patrick Kirschman.

Sequel Update

Doug Herrmann, Director of Juvenile Services, provided an update on Sequel Transitional Academy, which is currently operating at the DOC West Farm location. The Department of Corrections (DOC) operated the West Farm facility for many years. A Request for Proposal (RFP) was issued by the DOC on May 31, 2012. The RFP sought a provider to provide services to youth with an emphasis on reentry and transitional services. Sequel Youth and Family Services, currently operating in 16 states, was selected. DOC has a working history with Sequel as some South Dakota youth are served by Sequel who are in residential placement in Iowa. The Sequel Transition Academy is now operating at the facility as a private provider under contract with DOC. The contract was signed in February 2013 and Sequel received a group care license from the South Dakota Department of Social Services to provide services to up to 32 male youth.

State law provides that the local school district must provide educational services, and an agreement is in place with the West Central School district, which provided summer school programming this year to some of the youth. The first youth were received at Sequel Transition Academy on June 3. Presently, 17 youth are being served at the facility. Sequel developed agreements for substance abuse and sex offender treatment with local providers and those services are in place. Youth at Sequel are receiving high school education classes, working with various employers in the area and are involved in post-secondary education classes. One youth who completed welding at STAR and is now at Sequel and is attending Southeast Vo-tech welding training. Sequel creates a specific roadmap for each youth.

Chairman Tieszen asked when and/or if the DOC anticipates Sequel will serve the maximum of 32 youth. Mr. Herrmann stated it is possible the facility will have around 30 youth by December. The startup plan was to begin admissions in June and increase the number as the program develops. DOC has identified

those youth who will be admitted in October and November, which shows that Sequel will be at or near capacity around December 2013. Mr. Herrmann believes, long-term, the 32 number is about right based on the analysis DOC did of the target population.

Representative Kirschman asked if any of the farm land from West Farm was sold. Secretary Kaemingk replied that DOC retained the facility, the shelter belt and various buildings but the farm land had been sold.

Mr. Herrmann shared with the Commission that Sequel will host an Open House on October 24 from 10:00 – 12:00 and he will ensure the Commission members receive invitations.

Juvenile Corrections Update

Mr. Herrmann presented an update on Juvenile Corrections. A decade ago, the Average Daily Population (ADC) of youth under DOC jurisdiction was 1000 to 1100. FY 2013 ended with an ADC of 693 youth. The reduced ADC is a result of hard work and the implementation of the National Institute of Corrections (NIC) model for implementing Evidence-based Practices (EBP). DOC received and applied the Returning Home Grant from Fiscal Years (FY) 2003-07. The Returning Home Grant allowed DOC to utilize consultants to help identify changes in certain practices and policies which in time helped to reduce the ADC. Practices were changed to be more effective when interacting with youth and staff were trained on how to encourage youth to make changes in their behaviors.

Senator Bradford asked why the youth population is projected to rise in future years. Doug Herrmann replied staff has implemented many of the changes identified and is now seeing the full impact of these changes. When going through that process, the youths who are successful are able to transition back into the community. The youth that remain tend to be higher risk and struggle more and tend to have more issues, which then requires more time in placement.

Judge Brown noted that in FY 06, there was a drop in the number of youth in programming. He asked if that was due to a policy change. Doug Herrmann stated there were fewer youth and the drop was associated more with the aftercare numbers.

The Average Daily Population (ADP) of youth under DOC jurisdiction at for FY 13 was 693. The ADP of DOC youth on aftercare for FY 2013 was down with about 296 youth on aftercare. The ADC of youth in Private Placement was 49 out of state and 154 in state, for a total of 203 in FY 2013.

Mr. Herrmann provided an explanation of recidivism. If a youth on aftercare returns to placement within a year of being placed on aftercare, they are a recidivist. Revocation by DOC is similar to a parole violation. If a youth on aftercare commits a new offense and the court adjudicates them and remands them back to DOC for a new offense, they are a recidivist. If the youth is discharged from DOC and recommitted with a new offense while under the age 18, they are a recidivist. If a youth under DOC care or discharged commits a new offense and is prosecuted as an adult and is sent to the penitentiary, they are a recidivist.

The break down of male youth by race is 25.7% Caucasian and 30.4% Native American. Mountain Plains Research indicates that the changes DOC implemented appear to have a similar impact, regardless of race. In 2007, Native American male youth were recidivating at a rate of 55 percent within the first

year. The figure has is substantially less at this time. In the benchmark year of 2007, the breakdown of female youth was 32.1% Caucasian and 50.8 % Native American.

Mr. Herrmann noted there was a higher percentage of 15- and 16-year-old youth who recidivated than youth 16 years of age and older. The younger youth are more impulsive and have a harder time making good decisions. Current research shows that cognitive skills aren't fully developed until an individual is in their 20s. While improvements have been made, the recidivism rate for youth who are 15 years old remains at 50%.

Mr. Herrmann provided an explanation of the three regions within South Dakota used by juvenile corrections. West River makes up one region. The Southern region is from Sioux Falls to Chamberlain and down to the Nebraska border. The East region is everything north of that line to the North Dakota border east of the Missouri River. By region, West River currently has a higher recidivism rate. In 2007, all three regions were similar with 43-47% recidivism. When DOC began implementing EBP in 2008-2010, the East and South regions saw immediate results. The West River region experienced some staff turnover which may have impacted the implementation of EBP. Mr. Herrmann stated West River's recidivism rate is slowing and should drop more into line with the other regions.

Criminal Justice Initiative Update

Chairman Tieszen shared that the Legislature had passed SB 70 in the last session, which made fundamental changes to the criminal justice system. Parts of SB 70 went into effect July 1. SB 70 included a provision to create an oversight council. Chairman Tieszen is a member of the council, along with Representatives Soli and Sly and Senator Lucas. The council met for the first time this month. Chairman Tieszen shared that it is appropriate that the Corrections Commission receive an update on the overall implementation of SB 70 as many of the changes affected the way DOC does business.

Jim Seward, General Counsel, Governor's Office, thanked the Chairman and members for the opportunity to talk about the Criminal Justice Initiative (SB 70) which is formally titled the South Dakota Public Safety Improvement Act. The law contains over 25 policy changes. The oversight council has representation from all three branches of government and the Attorney General's Office. The council is required to meet twice a year and sunsets after five years. The council met in September and will meet again in December. In future years, April and September meetings are planned. At the meeting in September 2014, one year's data will be available for review. When SB 70 was signed into law on February 6, the agencies and Unified Judicial System (UJS) began meeting immediately to collaborate. Mr. Seward presented a table showing the agency that was responsible for each segment of the law and what progress that has been made.

The Department of Social Services (DSS) was given the largest investment South Dakota has ever made in treating chemical substance abuse, behavioral health, and interventions. DSS issued RFPs to begin providing services. Last week, DSS met with providers and conducted training to prepare for the expansion of services. One of the areas of focus is to increase services provided in rural areas. SB 70 includes a rural pilot program for substance abuse and behavioral health treatment to be implemented by DSS.

In UJS, implementation is staggered from July 1, 2013 through January 2014. UJS will develop new rules. In the court system and within the State Constitution, Court rules have the same weight as the codified

laws. The court can pass rules and the Legislature can amend those, but the court goes through a process. They have drafted the rules and provided public notice of the rules. The next step will be a hearing on November 6. The proposed rules were published in the State Bar newsletter and included an explanation for Earned Discharge on Probation. If an offender is compliant, paying restitution, staying employed for 30 days, etc., he/she will earn 30 days off the end of their sentence. Earned discharge is projected to lower probation caseload numbers so probation staff can focus on high-risk offenders. That is an Evidence-based Practice.

The law also provides for the tracking of felony and Class 1 misdemeanors among veterans. Court Service Officers have identified 255 veterans in the system. They are looking for resources for these offenders through the federal system. UJS staff have received training and will be initiating veterans' courts in Watertown, Sioux Falls, and Rapid City.

UJS is also working to develop a response matrix similar to the one used by DOC so offenders on probation know exactly what the response will be if they commit certain infractions, such as quitting their jobs. Offenders know if they test positive for methamphetamines, they will go to jail. This is called swift and certain sanctions and is an EBP. It happens immediately and is not a 3- or 6- or 9-month process involving defense lawyers and judges.

The Hawaii Opportunity Probation with Enforcement (HOPE) pilot was started by a judge in Hawaii. It is very successful with high-risk methamphetamine addicts and employs swift and certain sanctions. Probationers addicted to meth are each assigned a color and must call an 800 number each morning to see if their color is chosen. The colors are selected randomly throughout the month. If their color is chosen, they must come in and provide a urine sample. If it field-tests positive, they go to jail that day. If they don't show up, they go to jail longer when they are caught. If a warrant has to be issued and law enforcement has to go find them, the amount of jail time they receive increases. Statistics over a 10-year period show Hawaii reduced the incarceration rate and increased the success rate of meth addicts.

The goals of SB70 were to improve public safety, hold offenders more accountable, reduce Corrections spending and reserve the beds DOC has for chronic, violent career criminals. The HOPE pilots will be in Selby and in Sioux Falls and should start after January 1, 2013. The legislation called for a rural and an urban HOPE pilot. Provided the HOPE pilots are successful, Mr. Seward expects the branches of government to support legislation making HOPE a state-wide program.

The final item with implementation delayed to July 1, 2015, is the Statewide Automated Victim Information Notification (SAVIN) program. Counties will funnel all of their case information into a system maintained by the Attorney General's office. In earlier days, the prosecutor would send a card for the victim to fill out and return. The staff would then enter the information into a computer showing the victim wished to be notified of all hearings. The prosecutor was not always aware of whether the victim had been notified of the hearing. Three days after court, a victim might call the judge and claim he hadn't been notified. This system is like others going into service around the country. Normally, they are very expensive and developed by private vendors. The Attorney General's office has been able to sign a Joint Powers Agreement with the Indiana Department of Corrections to receive their system free of charge. They and BIT will then tailor it to South Dakota's needs. They are currently on track and on budget for implementation before July 2015.

Representative Kirschman asked if some of the veterans in the system could be suffering from undiagnosed PTSD, which could be contributing to their legal problems. Mr. Seward agreed that is possible. It gives the Court Services Officer the opportunity to reach out to the Veterans Administration (VA) and try to link the offender with the VA to perhaps get a diagnosis and possibly treatment. Chairman Tieszen noted there is a whole array of veteran services available. If we make it a point to identify those veterans in our system, we might be able to make better use of those services.

Secretary Kaemingk presented DOC's portion of the CJJ implementation. He noted that DOC has had a victim notification system in place for many years. DOC notifies people who have requested to be notified of an inmate's facility change, classification, parole board hearing, or release date. DOC's definition of a victim is quite broad. The SAVIN project will combine all county jails along with the Department of Corrections into one notification system and will eliminate duplication.

Earned Discharge Credits became an issue in the CJJ task force and workgroup. South Dakota has around 3600 adult inmates and approximately 2900 parolees. That is a large number compared to other states taking into consideration South Dakota's overall population. Many other states grant good time credit to offenders. The old system granted nearly automatic good time. To lose good time, an inmate had to do something fairly drastic. The new system went into effect in 1996 and good time became a "compliant release" system. One thing the new system did not do is cut time off the sentence. A person who served 3 ½ years of a 10-year sentence has to serve the entire 6 ½ remaining years on parole unless they were granted early final discharge. Evidence-based Practices show that 3-5 years on supervision is optimal.

The earned discharge credit provides that if an offender is compliant for a month (without sanctions) then a month will be subtracted from the end of his/her sentence. Subsequent months are handled the same way. A fully compliant parolee can now potentially cut his/her parole time in half. During the first month of earned discharge credits being available, 2290 transactions received credits, which resulted in 70,869 days taken off parole. DOC is currently doing this calculation via spreadsheets while the software is being updated. Parole agents currently have a caseload of 70. The optimum level is around 50. The high caseload is preventing DOC from employing some Evidence-based Practices. The law provided for three new agent and they have been hired and are in training. DOC expects the earned discharge credit to help lower the parole caseloads to the optimum level for Evidence-based Practices to be effectively implemented.

Representative Kirschman asked how many parole agents DOC has. Secretary Kaemingk advised there are 39. Judge Brown noted that Court Services is also calculating probation earned discharge credits manually at this point and shares DOC's concern for accuracy and not depriving someone from receiving valid credit.

Mr. McGirr asked what percentage of people who could have qualified actually did earn discharge credits (sex offenders are exempt). Of the 78 percent eligible to receive earned discharge credits, 85 percent of those received credit in the month of July.

Secretary Kaemingk addressed the Tribal pilot segment of the bill. The state adult population contains about 10-12 percent Native Americans. In the institutions, 46 percent of the females and 27 percent of the males are Native Americans. Many who get out on parole want to go home, but home may be on the reservation. Secretary LaPlante and Kaemingk met with Director of Parole Ed Ligtenberg to ask what

the greatest complaint is he receives among Native American parolees. The answer was they want to return to their homes and families. When Native American inmates appear before the Parole Board, their parole plan was to go home. When asked if they had work there, many simply said they wanted to go home. They would be paroled to Sioux Falls to secure employment and then abscond and go home. Native American parolees have a 71 percent higher recidivism rate than their Caucasian counterparts because of absconding. On June 13, 2013, DOC had 216 absconders and 144 of those were Native American. Of those 144, DOC believes 122 were on a reservation.

The Tribal Pilot provides for one or two tribes to hire someone to help a parole agent assigned to the area to supervise Native Americans on the reservation. DOC also requests the tribe create a case management or wellness team if one is not already in place. The individuals that compose the wellness team will include chemical dependence and mental health professionals, employment specialists, etc. When a Native American inmate formulates a parole plan that includes returning to the participating reservation(s), their information will be sent to the wellness group. The wellness group will decide whether or not that person can parole to the reservation. They will begin to put the resources together for the parolee when he returns. When the parolee who has been released to the pilot program behaves in a manner that poses a high risk, DOC will ask for that parolee to be remanded back to the DOC. Secretaries LaPlante and Kaemingk visited seven tribes. Two tribal councils have submitted resolutions indicating a desire to participate. Within the next months, one or two pilots will begin to take shape. Secretary Kaemingk will notify the Corrections Commission of the tribes participating when all the necessary signatures are in place. He found all of the tribes they visited very interested in the pilot.

Senator Bradford stressed that he does not want this program to fail. He asked that great caution be taken to insure the success of the pilots. If the pilot is successful, it is hoped that funding can be secured to allow for the program to be replicated on other reservations.

Secretary Kaemingk shared that part of SB 70 requires DOC to validate risk assessments. An RFP has been released to identify a company that can provide technical assistance to validate the LSIR and the community risk assessment.

The Community Transition Program (CTP) Alternative Housing Pilot is for offenders who are placed in a minimum facility as a parolee. These offenders often need a place to reside but have limited resources. DOC will develop a program to assist low-risk, low-need offenders with locating housing. If a person has family support in the community, CTP may be unnecessary. The goal of the pilot is to transition offenders out of the facility and into the community sooner.

EBP will be expanded within the adult system. Parole has implemented EBP in the form of the sanctioning grid for a number of years. The grid details appropriate responses for certain infractions that are intended to be applied before parole revocation. The grid provides the appropriate response such as 24/7, a SCRAM or GPS bracelet, house arrest, AA meetings or treatment. Juvenile Corrections staff has been trained in Effective Practices in Correctional Settings (EPICS). DOC plans to begin implementing EPICS within adult corrections and to train the trainers in EPICS so this can be applied within the parole system.

Secretary Kaemingk shared the Parole Board is setting aside hours each month to train its members in Evidence-based Practices.

The Reinvestment Fund is based on probation numbers by county. The state will look at trends and project what the county's numbers would have been prior to the implementation of the CJJ. If the probation numbers after implementation are higher than those projections, the county will be given a portion of the \$1 million fund to compensate for keeping offenders in the community rather than sending them to prison.

The law provides for fiscal notes on all proposed legislation. If legislators bring a bill before the Legislature that will affect jail or prison beds, they will have to provide a fiscal note with the proposed legislation so the Legislature knows what the fiscal impact of the proposed law will be on the taxpayers.

Senator Bradford asked how the Reinvestment fund would impact a county such as Bennett County. Secretary Kaemingk noted it will be based on numbers, but every county has the ability to get this reimbursement. Counties like Bennett County without jails could still have jail costs increase because of offenders staying in the community. Those counties will be eligible for extra money to cover the cost of transporting offenders to the out-of-county facility they contract with.

Chairman Tieszen stated that the Reinvestment Fund helps address the fears the counties had of the state pushing corrections costs to the county by sending offenders to jail rather than revoking them and sending them back to prison.

Secretary Kaemingk stated that if South Dakota's experience follows the pattern from other states, the CJJ will initially decrease the prison population. There will be a blip, but in a year or two or three, the jail population will go down as well. The Reinvestment Fund is meant to address the fiscal fears of the County Commissioners and County Sheriffs.

Mark Anderson asked if Senate Bill 70 addresses any laws that were passed before that sent more people to jail or if there is a plan to do that. Is it something the Corrections Commission should do – look at laws such as ingesting -- rather than putting people in jail for using drugs we could put them in treatment or by addressing long mandatory sentences for nonviolent crimes.

Chairman Tieszen says those issues are already covered in the legislation. Secretary Kaemingk stated that the process included reviewing mandatory sentences and changed many Class 5 and 6 felonies to presumptive probation.

Chairman Tieszen said that in general terms, SB 70 took the drug offenses and made the lesser drug crimes lesser offenses. It also made those lesser crimes subject to presumptive probation. A mere possession case would become a lesser crime and the offender would get presumptive probation absent other factors.

Secretary Kaemingk noted that will still depend on the judge who sits on the case. Some judges may have already been giving presumptive probation on Class 5 and 6 felonies. How much impact that will have is something we have yet to learn.

Chairman Tieszen noted that significant changes were made in that area. He added that South Dakota has very few mandatory minimums, unlike other states and the federal system. South Dakota has always placed trust in and given discretion to judges.

Secretary Kaemingk discussed recidivism on the adult side, which is less complicated than for juveniles. Recidivism of an adult is return to prison. DOC has figures on one, two, and three years. For those released in 2011, data is for the 12-month numbers. In 2007, it was 29.9%. That went up to 31.2% in 2008 and down to 28.7% in 2009. It was down to 25.9% for those released in 2010. This year, it increased slightly to 26.1%.

The 24-month and 36-month rates show that DOC is going in the right direction. Those who returned to prison within 24 months reached a 38.5% recidivism rate and that rate is down every year for four years. We are down to 43.1% for 36-months post release. The Secretary believes that when the Parole Agent caseload is reduced so the agents can employ Evidence-based Practices, those numbers will go down further. He believes the recidivism numbers for Native Americans are higher because of the absconding factor. When that issue is solved, South Dakota will look much better as a state.

The older an inmate is, the fewer crimes he commits. There was an anomaly in the female population of 55-64, but those numbers were so small that it was affected by one or two admissions.

Chairman Tieszen noted that the next item on the agenda is to set the next meeting date. December 2 is the day before the Governor's Budget Address. He is suggesting a late-morning start at the Women's Prison with a tour, lunch, and meeting beginning at 11:00. That will allow those who are only attending the Corrections Commission meeting to drive to Pierre and home in a single day. He asked for comments, and there were none.

Next year, in the rotation of adult facilities, the Commission would like to visit SDSP. They would also like to look at some of the juvenile contract facilities, such as Aurora Plains in Plankinton, Abbott House in Mitchell, Sequel Transition Center at the old West Farm and perhaps McCrossan Boys Ranch and possibly working out a schedule to visit as many of those as possible next year. He asked for comments and new business.

Representative Kirschman moved to adjourn, Senator Bradford seconded the motion, and the motion carried. The meeting was adjourned at 2:45 p.m.