

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

COMMISSION ON ALTERNATIVES TO INCARCERATION

Wednesday, March 24, 2010
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Lisa Wolf, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives Lisa Wolf, Brenda Heller, Lawrence R. Klemin; Senators Dick Dever, Stanley W. Lyson, John Warner; Citizen Members Leann K. Bertsch, Bradley A. Cruff, Judge Gail Hagerty, Duane Johnston, Justice Mary Muehlen Maring, Dr. Gary Rabe, Keith Witt

Members absent: Citizen Members Edward Brownshield, Paul D. Laney, Carol K. Olson, Thomas L. Trenbeath

Others present: Representative Merle Boucher, member of the Legislative Management, was also in attendance.

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

It was moved by Senator Dever, seconded by Mr. Johnston, and carried on a voice vote that the minutes of the November 5, 2009, meeting be approved as distributed.

24/7 SOBRIETY PROGRAM

Chairman Wolf called on Mr. Wayne Stenehjem, Attorney General, for a presentation ([Appendix B](#)) regarding the 24/7 sobriety program.

Attorney General Stenehjem said the idea of implementing a 24/7 sobriety program was borrowed from the state of South Dakota because law enforcement and the judiciary were seeing the same people committing alcohol-related offenses time after time. He said the approach of the 24/7 sobriety program is to keep people from drinking rather than keeping people from drinking and driving because the approach to keeping people from drinking and driving was not successful. He said a pilot project was implemented in the South Central Judicial District and had an excellent response from the judges. The success of the program, he said, led to the expansion of the program by the Legislative Assembly in 2009. He said the program has been implemented in the Northeast Judicial District and Grand Forks and Nelson Counties. In addition, he said, Cass and Traill Counties will implement the program soon, and the Northwest Judicial District is scheduled to implement the program a bit later. As a result of the action of the Legislative Assembly, he said, a staff position was added in the Bureau of Criminal Investigation to implement the program statewide. He said the program is being expanded to include participation by individuals committing other offenses such as

domestic violence and child abuse. For the program to be successful, he said, cooperation is needed from judges and local sheriffs. He said the program is effective because there are immediate sanctions and consequences for failed tests. He said he believes the program is a wise approach that seems to be working. He said South Dakota has contracted for a study to examine recidivism statistics of participants in the program. Anecdotal evidence suggests, he said, that the program has resulted in a reduction in prison admissions in South Dakota.

In response to a question from Senator Dever, Attorney General Stenehjem said other than the initial cost of implementing the program, the cost of the program is borne by the participants. He said the only other ongoing costs are the cost of administration by the Bureau of Criminal Investigation and the purchase of the remote electronic alcohol monitoring bracelets. Although more bracelets will need to be purchased, he said, he hopes that he may be able to secure grant funding from insurance companies or alcoholic beverage distributors to offset some of that cost.

In response to a question from Senator Warner, Attorney General Stenehjem said random drug testing is frequently a condition of probation imposed by a court. He said expansion of the use of the drug detection patches is likely.

In response to a question from Justice Maring, Attorney General Stenehjem said if an offender fails an alcohol test, the offender is immediately taken into custody and provided a hearing before a judge. He said the judge determines whether to jail the offender or allow the offender to go back on the program. He said judges typically will give an offender a second chance but will jail the offender for a second failed test. Because the offenders see the immediate consequences of a failed test, he said, second failed tests are rare. He said there has been no challenge in this state to the accuracy of the tests, and he is unaware of any challenge in South Dakota.

In response to a question from Representative Klemin, Attorney General Stenehjem said a judge has the discretion to put a first-time offender on the 24/7 sobriety program. However, he said, the program generally becomes an option after the second offense because offenders should be aware of the consequences after one offense. He said one-third of the individuals arrested for driving under the influence in this state are arrested for a second or subsequent offense.

In response to a question from Representative Wolf, Attorney General Stenehjem said a judge has the discretion to expand the use of the program. He said there are no statistics yet to show the expanded use of a program by judges.

Mr. Tom Dahl, Bureau of Criminal Investigation, said he hopes to have all of the counties in this state implemented into the program by the end of this summer.

Chairman Wolf called on Sergeant Troy Karlberg, Burleigh County Sheriff's Department, for a presentation ([Appendix C](#)) regarding the 24/7 sobriety program. Sergeant Karlberg said the Burleigh County Sheriff's Department has 38 individuals participating in the 24/7 sobriety program through daily breath testing, 11 individuals participating through the use of the remote alcohol monitoring bracelet, and 1 individual wearing a drug test patch. He said the staff time involved in conducting the testing and handling recordkeeping is the only cost to conduct the program. Because there were no startup costs for the county, he said, resistance to implementing the program was eliminated.

Sergeant Karlberg said the consequence of incarceration is an incentive to abstain from the use of alcohol. He said the breath test takes less than 30 seconds to administer. If an individual fails an initial test, he said, the individual is permitted to retake the test after 15 minutes have elapsed. If an individual does not show up for the test, he said, a warrant is issued for the arrest of the individual. He said staffing concerns and the size of the test site may be concerns in the future if the program continues to grow.

In response to a question from Representative Klemin, Sergeant Karlberg said approximately 10 of the 40 participants in the program are in treatment programs.

In response to a question from Representative Wolf, Sergeant Karlberg said he or an administrative secretary generally handles the data entry for the testing. He said it takes approximately 20 minutes to log 80 tests for one day. If wireless Internet access is available at the test site, he said, the data can be entered immediately. He said Burleigh County has approximately \$16,000 in an account from payments for tests. He said that money may be used for the hiring of part-time employees to conduct the testing and data entry. He said it would probably require 100 to 150 participants to pay for one staff position to administer the program.

Chairman Wolf called on Sheriff Dave Shipman, Morton County, for comments regarding the 24/7 sobriety program. Sheriff Shipman said the number of inmates at the Morton County detention center has grown significantly over the last few years, and the county spends a significant amount of time and money transporting inmates to other facilities. He said the 24/7 sobriety program and electronic monitoring programs are methods through which to reduce the number of inmates who are incarcerated.

He said Morton County has tested 107 participants, and there have been 57 failed tests out of over 7,000 tests administered. In addition, he said, there have been 144 instances in which a participant has failed to show for a test. He said there are offenders who have expressed gratitude for the opportunity to participate in the program and who want to remain in the program. He said one participant walked one-half mile a day for the test for 194 days.

In response to a question from Senator Dever, Sheriff Shipman said there have been two or three individuals who successfully completed the program and who were subsequently arrested. However, he said, the results of the program appear to be positive in the long term.

ROBINSON RECOVERY CENTER

Chairman Wolf called on Ms. JoAnne Hoesel, Department of Human Services, for comments ([Appendix D](#)) relating to the Robinson Recovery Center.

In response to a question from Representative Klemin, Ms. Hoesel said the Robinson Recovery Center has expanded admissions based upon a priority system and has addressed utilization issues.

In response to a question from Representative Wolf, Ms. Hoesel said the four-month residential treatment at the Robinson Recovery Center is part of a continuum of care that includes outpatient or day treatment.

In response to a question from Senator Warner, Ms. Hoesel said a substantial number of individuals receiving treatment at the Robinson Recovery Center have a dual diagnosis of an addiction and a mental illness. She said there are some individuals who self-medicate to address mental illnesses. In addition, she said, mental illnesses or addictions may be hereditary, and some long-term addictions can lead to the development of mental illnesses. Because it is difficult to sort out mental illnesses and addictions and the appropriate treatments, she said, it is important to determine the primary focus of treatment and stabilize that issue before addressing the other problem. She said it is very rare to see only an addiction issue or only a mental illness.

In response to a question from Senator Lyson, Ms. Hoesel said the addiction staff at the Robinson Recovery Center are trained to tailor treatments for individuals. She said there are some unique factors with treatment plans based upon gender. She said female patients often have children who play a factor in the treatment process. Another factor affecting female patients, she said, is that many of them have had a significant trauma in their lives that led to the addiction problem. Therefore, she said, there is a need to address those problems within the treatment plan. She said traditional treatment programs were designed for men, and those programs work well for men. However, she said, she is unaware of any evidence to demonstrate that treatment is more successful for one particular gender.

In response to a question from Senator Dever, Ms. Hoesel said methamphetamine treatment is a difficult and long-term process. She said the drug's damage to the brain requires long-term treatment and a support system. Although many methamphetamine addicts are recovering, she said, many do not recover due to the unique and serious nature of the drug.

In response to a question from Justice Maring, Ms. Hoesel said the majority of the referrals to the Robinson Recovery Center are from Fargo, Grand Forks, and Bismarck. She said there are referrals from the human service centers and parole and probation offices, as well as self-referrals. If a patient has health insurance, she said, the center will bill the insurance company. She said she will provide the commission with additional information regarding payments for treatment.

In response to a question from Judge Hagerty, Ms. Hoesel said the Robinson Recovery Center is also working through issues related to the prescription of narcotics to patients. She said the center is working with medical providers to find solutions to the problem of addicts in treatment seeking prescription medications.

In response to a question from Senator Lyson, Ms. Hoesel said the need for dental treatment for methamphetamine addicts is a concern at the Robinson Recovery Center. She said the center attempts to obtain dental care for clients and address other basic needs to help make the treatment more successful. She said a physical assessment is done at the initial intake for patients. She said nursing and dental services are a financial challenge for the center.

Senator Lyson said he recently read information suggesting that dental treatment for individuals who have addictions will make treatment more effective because the dental issues often lead to other medical issues that affect the effectiveness of treatment programs.

In response to a question from Representative Wolf, Ms. Hoesel said there are residential treatment programs that specifically focus on treating women with children. She said the Northeast and North Central Regional Human Service Centers have programs in which women may bring their children to the treatment.

SUBSTANCE ABUSE PREVENTION COORDINATORS AND COMMUNITY READINESS SURVEY

Chairman Wolf called on Ms. Pamela Sagness, Department of Human Services, for comments ([Appendix E](#)) relating to substance abuse prevention coordinators and the North Dakota community readiness survey.

In response to a question from Representative Boucher, Ms. Sagness said the abuse of prescription drugs is a growing concern in this state. She said prescription drug abuse is especially a growing

concern with middle school and high school students. She said prescription drug abuse is one of the top five priorities to address for the state.

In response to a question from Representative Klemin, Ms. Sagness said the community readiness survey demonstrates that there is a limited awareness of substance abuse problems in the state. However, she said, the survey also indicated that people want to know more and that attitudes will not be permissive when there is an awareness of the problems. She said access to alcohol for young people is a problem. She said there is support for prevention, and if awareness is created, the state will be well-placed to address addiction issues. She said awareness may be built through promotion.

Ms. Hoesel said the Governor's Prevention and Advisory Council has determined it is necessary to develop a uniform message with all agencies to take action and become engaged in a solution to abuse problems. She said there will be an effort to connect all state agency efforts.

In response to a question from Representative Klemin, Ms. Sagness said enforcement strategies are being emphasized at times when high-risk activities, such as concerts or proms, might be occurring. She said access to alcohol and drugs must be limited. In addition, she said, it is important to address role modeling so that youth are not receiving mixed messages from adults.

Senator Lyson said although putting more law enforcement in place is fine, it is important to get parents involved to eliminate the behaviors.

Ms. Sagness said several strategies are used together. She said she agrees that the primary focus needs to be on parents and providing parents with tools to use in addressing abuse issues.

In response to a question from Senator Dever, Ms. Sagness said the Governor's Prevention and Advisory Council was established to facilitate collaboration, to reduce duplication of efforts, and to work with local partners.

In response to a question from Dr. Rabe, Ms. Sagness said the statistics in the community readiness survey can be used and modified so that prevention coordinators can address issues at different levels. She said these statistics may be broken down by regions and demographics. She said the youth risk behavior results may be broken down by region and by school.

In response to a question from Chief Witt, Ms. Sagness said the prevention coordinators need to establish coalitions and work with local partners on grassroots efforts throughout the large service areas. She said the coordinators bring events and activities to the local level and work at events such as the state Class B basketball tournament. She said the job of the coordinators is to find ways for local efforts to help change behaviors.

In response to a question from Senator Lyson, Ms. Sagness said the data from the community

readiness survey, including the questions asked, is available at www.nd.gov/dhs/prevention.

In response to a question from Representative Wolf, Ms. Sagness said several schools use alcohol breath tests as a deterrent. She said the prevention coordinators can work with schools to help implement a breath test program.

Representative Wolf said although Minot High School had a postprom party that offered large prizes, attendance was low while attendance at a large party hosted by parents who provided alcohol was high.

Ms. Sagness said she has worked with the Attorney General over the last year to address problems such as parents providing alcohol to minors. She said schools have been provided information to distribute to parents to make it clear that it is illegal to provide alcohol to their children.

TRANSITION PROGRAMS

Chairman Wolf called on Ms. Robyn T. Schmalenberger, Department of Corrections and Rehabilitation, for comments ([Appendix F](#)) relating to transition programs.

In response to a question from Justice Maring, Ms. Schmalenberger said the Department of Corrections and Rehabilitation has worked with communities to address the problem of homelessness with offenders, particularly sexual offenders. She said it is a problem that most people do not care to address.

Justice Maring said the Supreme Court continues to see problems related to sexual offenders failing to register due to being homeless.

In response to a question from Representative Wolf, Ms. Schmalenberger said some transitional facilities will accept low-risk sexual offenders.

In response to a question from Dr. Rabe, Ms. Schmalenberger said statutory requirements do not allow offenders who are required to serve 85 percent of their sentences to participate in transition programs. Therefore, she said, the offenders are being released directly into the community upon serving their time. She said she would like to see some discussion to consider allowing some transitional efforts for those offenders.

READ RIGHT PROGRAM

Chairman Wolf called on Ms. Penny L. Hetletved, Youth Correctional Center, for information ([Appendix G](#)) relating to the Read Right program.

Ms. Hetletved said the program provides immediate and specific feedback to the participants. She said the program has been very successful at the Youth Correctional Center.

In response to questions from Senator Warner, Ms. Hetletved said some vocabulary problems may be attributable to culture. She said Native Americans are often structured to learn through storytelling and may find it difficult to relate text to their reality. She said the Read Right program is successful at the Youth Correctional Center, in part, because the state of incarceration provides for a clean and sober, well-rested, and well-fed student. She said using the program with an adult population in prisons may not provide the same accountability standards that are present for the students at the Youth Correctional Center. In addition, she said, another issue in adult correctional facilities which may hinder the success of a program such as Read Right includes the need for Internet access for onsite tutoring and to provide tools for tutoring upon release.

In response to a question from Senator Dever, Ms. Hetletved said although public schools can implement and conduct a Read Right program through a number of methods, the program works especially well at the Youth Correctional Center because the correctional environment is conducive to learning. She said there has been no turnover in the program staff since its implementation at the Youth Correctional Center, which is another factor in its success.

Chairman Wolf said the next meeting of the commission will be scheduled for June 2-3, 2010. She said the meeting will be in Minot and may also include a tour of the correctional facility in Rugby. She said other items that may be included on the meeting agenda include observing the drug court in Minot, a tour of the Dakota Boys and Girls Ranch, a presentation from the Students Against Destructive Decisions organization, and a tour of transitional living facilities and the juvenile detention center in Minot.

There being no further business, Chairman Wolf adjourned the meeting at 1:55 p.m.

John Bjornson
Commission Counsel

ATTACH:7