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MINUTES
Jolene's Law Task Force

Senator Deb Soholt, Chair
Senator Alan Solano, Vice Chair

Third Meeting
2014 Interim
October 14, 2014

Room LCR 1 & 2
State Capitol Building
Pierre, South Dakota

Tuesday, October 14, 2014

The third meeting of the Jolene's Law Task Force for the 2014 Interim was called to order by Senator Deb Soholt at 10:00 a.m. (CDT) in Legislative Conference Rooms 1 & 2 of the State Capitol, Pierre, South Dakota.

A quorum was determined with the following members answering the roll call: Representative Peggy Gibson, Representative Jenna Hagggar, Senator Deb Soholt, Senator Alan Solano, Christine Bisek, Cam Corey, Daniele Dosch, Dr. Nancy Free, Ann Larsen, Angela Lisburg, Jolene Loetscher, TateWin Means, Hollie Strand, Virgena Wieseler, and Colleen Winter.

Legislative Research Council staff members present included Amanda Reiss, Senior Legislative Attorney; Roxanne Hammond, Legislative Attorney; Jason Simmons, Senior Fiscal Analyst; and Cindy Tryon, Senior Secretary.

NOTE: For purpose of continuity, the following minutes are not necessarily in chronological order. Also, all referenced documents distributed at the meeting are attached to the original minutes on file in the Legislative Research Council office and some can be found on the Legislative Research Council website at <http://legis.sd.gov/Interim/CommitteeDocuments.aspx?Session=2014>. This meeting was web cast live. The archived web cast is available at the LRC website at <http://legis.sd.gov>.

Approval of Minutes

A MOTION WAS MADE BY REPRESENTATIVE PEGGY GIBSON, SECONDED BY REPRESENTATIVE JENNA HAGGAR, THAT THE SEPTEMBER 15, 2014, MINUTES BE APPROVED. The motion prevailed on a voice vote.

Opening Remarks and Introductions

Senator Deb Soholt went through the agenda for the meeting and shared adjustments to the schedule. She then asked the task force members for their comments on the book, "Silent No More: Victim 1's Fight for Justice Against Jerry Sandusky" by Aaron Fisher, that she had provided to all of them following the previous meeting. Members commented on the powerful voice of Aaron and how difficult the journey was to be heard and respected as a victim of child sexual abuse.

A Mother's Perspective

Ms. Mary Beth Holzwarth, Gettysburg, shared with the task force about her families' ordeal after learning that two of her sons were sexually molested by their uncle. Investigation led to the knowledge

that there had been other victims and with each subsequent victim the abuse became more severe. After admitting guilt, the uncle was sentenced to two 10 year sentences.

After experiencing extreme difficulty finding a counselor trained to work with the boys that the family could afford, and seeing how poorly prepared the professionals were who worked with the boys after the boys reported the molestation, Ms. Holzwarth founded Endeavor 52, a non-profit organization for addressing the need for education on child sexual abuse crimes. Ms. Holzwarth said that we have to empower our children and educate adults and professionals on working with victims of child sexual abuse.

Ms. Holzwarth has hosted two events in her community regarding child sexual abuse and both events were well attended. She is planning another event to be held spring of 2015 which will include education on more types of sexual abuse.

Ms. Holzwarth said that efforts need to be made to support the victims and their families, especially in rural areas where it is nearly impossible to get help or justice. She said that the passage of Jolene's Law is changing lives nationally as people from other states are learning how they too can pass similar legislation.

A Tribal Perspective

Ms. TateWin Means, Oglala Sioux Tribe Attorney General, Pine Ridge, and Ms. Daniele Dosch, FBI Victim Specialist, Rapid City, talked about how crimes of abuse are dealt with on the Pine Ridge Reservation. Ms. Means said that one in three women living in Indian Country will be abused.

Ms. Means explained that, as sovereign nations, the tribes have control over their own territory. The federal government enacted the following regarding crimes on tribal lands: General Crimes Act; Major Crimes Act; Tribal Law and Order Act; and Violence against Women Act. These acts create a patchwork of criminal jurisdiction throughout tribal lands.

Ms. Dosch explained that the FBI has memoranda of understanding with the tribes regarding law enforcement. Each memorandum is different for each of the tribes. Ms. Dosch is assigned to the Pine Ridge Reservation, where the FBI is responsible for child abuse cases for children up to age 16.

Ms. Dosch and one other person in her office serve as victim specialists. They provide referrals, help find assistance including victim compensation and transportation assistance, and assist in finding counselors. The FBI team does try to go to the victim on the reservation rather than having the victim come to Rapid City. The victim is much more comfortable if interviewed in their own community. Working with the victim continues well after prosecution or after the decision to not prosecute is made.

Common to the reservations is the historic trauma. About 90% of the mothers of today's victims living in Indian Country were victims of abuse themselves.

Ms. Means said that the Pine Ridge Reservation has its own child protective services. There were 1343 referrals to the Pine Ridge Child Protective Services in 2013. Of those, 127 were regarding child sexual abuse.

Ms. Means pointed out that the number of child on child abuse referrals continues to increase. The abuser is often under the age of 12, some as young as 7 years old. There are no resources in the state to address child on child abuse. **Dr. Nancy Free, Child's Voice, Sanford Hospital, Sioux Falls**, said that there are increasing numbers of child offenders everywhere, not just on the reservations. She said in order to change child sexual abuse, these assaults by children on children have to be addressed.

Not much can be done legally because they are under 12 years old. Many of these child offenders go on to become adult offenders.

Ms. Means continued saying that there is a gap with respect to mental health services on the reservation. The only mental health services are provided by the Indian Health Services and the supply of mental health providers does not match the need. Ms. Means said that she is concerned about all the child victims who receive no mental health care.

It is important when providing mental health care to the Native American child that his or her cultural and spiritual needs are taken into consideration. The Native Americans believe that when trauma happens to a child, his or her spirit is taken and the healing process needs to address that.

Ms. Means said that 38% of the children in the juvenile corrections system are Native American, while the Native Americans make up less than 10% of the total population of the state.

Ms. Dosch said that prosecutors often want to delay the victim's mental healthcare treatment because the victim undergoing treatment may affect the case when it goes to trial. The priority focus becomes prosecution, many times at the expense of the child.

Ms. Means recommended a massive awareness campaign focusing on prevention and targeting entire families. Ms. Dosch added that all education materials used on the reservations must be culturally sensitive.

Representative Peggy Gibson asked about the other reservations. Ms. Means shared that if the campaign is culturally respectful of the Lakota and Dakota people, it should be effective on all South Dakota reservations. The desire would be to inundate our schools with information on what is okay and what is not okay. Our interest must be for all children, not just children on the reservations.

Ms. Jolene Loetscher, Sioux Falls, asked about the mandatory reporting on reservations. Ms. Means said that the definition of mandatory reporters is far more expansive on the Pine Ridge Reservation, including all school officials and workers.

Ms. Hollie Strand, Children's Home Society, Rapid City, said that the extent to which the state goes to provide services for sex offenders is far greater than what is done for the victims. In regard to the historic trauma, people do what they think is right and look back at their past as a resource on how they think things should be.

Senator Soholt asked if it would be possible to get the number of referrals to child protective services on other reservations such as the numbers Ms. Means provided for the Pine Ridge Reservation. Ms. Means said that she would contact the other tribes and request that information.

Ms. Means reported that Pine Ridge is getting a Child Advocacy Center (CAC) and that will be the second CAC on tribal land. The other CAC is located on the Crow Creek Reservation.

Child Sexual Abuse and the Internet

Mr. Brent Gromer, Division of Criminal Investigation, Pierre, talked about internet crimes against children. Mr. Gromer said that over the past four years, there has been a shift from offenders trying to collect child pornography to actual child solicitation. The offender believes it is safer to find a child online and manipulate that child into taking videos or photos of him or herself and sending them to the offender. The offenders then meet in chatrooms and go to private email sites to do their pornography trading.

Mr. Gromer stated that the biggest issue they are facing right now is the use of mobile applications. Most everyone carries either a tablet or cell phone and there are 1.2 million different applications available. The perpetrators talk amongst themselves about the different apps and how to use them.

A locked phone with ISO 8 is impossible for law enforcement to unlock to get evidence. Some states have laws that allow law enforcement to force the user to give his or her thumbprint to allow the device to be unlocked. South Dakota does not have such a law.

Fewer people store their collections locally on their computer but instead use the cloud. Flickr allows for storage of over 500,000 photos and is a remote option. Offenders can then get a password or link allowing them to download the images.

In any professional education and public campaign regarding child sexual abuse, it will be important to address how the internet is a portal for child sexual abuse.

Mr. Cameron Corey, DCI, Watertown, asked about the offenders involved in child pornography. Mr. Gromer said that there have been several studies done to learn how many involved in pornography are also physical offenders. He said that those studies show that between 75% and 80% of those viewing child pornography are also hands on offenders. There is a direct connection between owners of child pornography and those who sexually assault children.

Ms. Loetscher asked if DCI identifies the victims found in the child pornography and if DCI follows up with those victims. Mr. Gromer said that the National Center for Missing and Exploited Children does have a child victim identification system. The pornography is run through that system to try to identify the victims. Several thousand victims have been identified through that program.

Ms. Strand pointed out that internet crimes increase the level of victimization because once the photos are downloaded they are available in cyberspace forever.

The School Counselor's Perspective

Ms. Kelly Jones, Government Chair of the SD School Counselor Association and Counselor at O'Gorman High School, Sioux Falls, and Ashley Seeklander, President of the SD School Counselor Association and Counselor for the Groton School System, talked to the task force about the school counselor's role in preventing and addressing child sexual abuse.

School counselors do have a set of standards and curriculum and there is a section on sexual abuse in those standards. There is a "good touch – bad touch" curriculum in the elementary schools, but this does become an issue with parents and administration. They often suggest finding a different way to address this issue.

Ms. Angela Lisburg, Avera St. Mary's Child Advocacy Center, Pierre, said that they no longer support the "good touch – bad touch" program because it can be confusing to the victim as sometimes a bad touch can feel good. She said that they are in the process of working on a better curriculum.

Ms. Jones pointed out that training teachers and staff in the schools would be under local control. She shared that they do try to reach out to teachers but they are already overloaded with classwork. Ms. Seeklander said that one of the counselors from Capitol Area Counseling came to their schools and gave mental health first aid training. She said that training opened the eyes of many of their staff.

As school counselors, there are so many things in which they need to be trained and even in the Master's program there is only a week of training on sexual abuse.

The South Dakota School Counselor Association does have a school counseling model that was revised in 2013. This model is based on a national model and revised to fit South Dakota schools. This document can be found on the School Counselor Association's website <http://sdsca.weebly.com/>.

Mr. Corey asked how often the model is used. Ms. Jones said that this model is talked about at all the conferences and training put on by the School Counselor Association and that they work very hard to make sure all counselors in the state are aware of it. However, they do not know if everyone uses it.

Senator Alan Solano asked if this model includes both curriculum and practice. Ms. Jones said that the model is just practice and that each counselor decides on his or her curriculum. She explained that if a curriculum would be written regarding this issue, the best way to bring it to the counselors would be through the School Counselors Association. She said that most counselors would be open to it if it is easy to use. There is a counselors' conference in May, but the statewide meeting specific to school counselors is in Brookings, November 7-8, 2014.

Ms. Strand asked if the counselors know that they should not ask the victim questions, as that could interfere with the forensics interview. The counselors said that when they contact social services, the social services contact asks so many questions that the counselor has to ask questions to get the information that social services requires.

Senator Sohlt reminded the task force that this is an adult problem. We need to be providing for the safety of all children in all elements. We need to refocus our thinking about what the children should do, and determine the accountability of adults. Ms. Jones said that meetings held for the parents are not well attended and asked for advice on how to reach the parents.

Ms. Strand said that the Lemmon school district offers laptops that the students can take home to use. However, the parents had to attend an education session that addresses abuse before the student is allowed to borrow the laptop.

Ms. Means said that very few schools on the reservations have licensed counselors and the few counselors working for reservation schools are completely overwhelmed.

Ms. Jones and Ms. Seeklander thanked the task force members for the work they are doing and said that their organization looks forward to working with the task force.

Child Sexual Abuse and the Courts

Mr. Michael Moore, Beadle County States Attorney, Huron, has been a prosecutor for over 20 years and has been the elected states attorney in Beadle County for 18 years. He said that the system regarding child sexual abuse has made significant strides since he first started, but there are still many things that can be done to make improvements. In Omaha, there is Project Harmony, which is a formal center where all the professionals who work on child abuse cases are housed making it easier for cases to be handled properly.

The forensics interview is very important. Years ago there were no forensic interviewers for child sexual abuse cases. Now, 90-95% of the cases heard in Mr. Moore's area have the forensics interview. This interview helps the prosecution in gathering evidence and getting the information needed for court. In the rural areas, these types of cases are not heard very often and are handled much differently than in the larger populated areas. Many prosecutors in rural areas do not know that there is

a Dr. Nancy Free in Sioux Falls or a Ms. Hollie Strand in the Rapid City area who they can call and talk to about the case.

Mr. Moore said that in most of these cases the child is going to have to testify. The prosecutor needs to take the lead in explaining to the child and the parents about what is going to take place and that the process can take a long time. The prosecutor cannot become friends with the child or that will be questioned during the trial and will work against the prosecution. Decisions have to be made prior to the trial by talking to professionals who know more about the case than the prosecutor, such as Dr. Free or Ms. Strand.

Mr. Moore said that the fewer times the child is questioned the better, so he does not have the child testify at the preliminary hearing. It is crucial to educate the jurors in these cases. The jury needs to understand that just because the child says things in different ways, that doesn't mean he or she is lying.

It is not in the best interest of the child to wait until after the trial to start treatment. The child needs to start treatment right away. The defense will ask for the counseling records and the best way to address that is to have the judge go through the files and decide what would be relevant to the defense. One of the worst things a prosecutor can do is request all those files for use by the prosecution, because then the defense also has the right to all the files.

Timing of these cases is important and they can take a long time. The defense tries to drag them out and the child will often lose interest or even just want it all to be over. Judges need to be educated regarding these delays.

Ms. Means asked if there is statewide training for prosecutors regarding prosecuting child sexual abuse cases. Mr. Moore said that there are no mandatory CLE classes for lawyers in South Dakota, but that they do have good attendance at the CLE training that is offered annually. That training does include a component on child sexual abuse cases.

Ms. Strand asked how the prosecutor follows up when a criminal case cannot be pursued. Mr. Moore responded that prosecutors are charged with prosecuting criminal activity and once it becomes a civil matter they have nothing more to do with it. He said that the civil attorney will subpoena the criminal case files and then they turn those files over. Mr. Moore added that he does have a victim witness person who can work with the family when needed.

Ms. Strand said that there are a lot of cases that move forward civilly without the forensics interview and there needs to be some way to change that.

Mr. Moore concluded his presentation stating that we can obviously get better and there is no more important reason to get better than to make our kids safe.

Youth Risk Assessment Survey Update

Ms. Colleen Winter, Department of Health, Pierre, gave an update on the questions that will be included in the Youth Risk Assessment Survey at the Task Force's request. Those questions are:

- Have you ever been touched, grabbed, or pinched in a sexual way that made you feel unsafe or uncomfortable?
- Have you ever been forced to do sexual things, such things as kissing or touching, when you did not want to? (Do not count sexual intercourse.)
- Have you ever been physically forced to have sexual intercourse when you did not want to?

The survey will be conducted the spring of 2015 and the results will be available late the following fall.

Public Testimony

Ms. Georgina Schaff, Dakota Reformed Sex Offenders Laws Family Solutions, Lemmon, testified that she believes there is a need to reform the sex offender registry.

Ms. Beverly Bruce, Dakota Reformed Sex Offenders Laws Family Solutions, Highmore, talked about reforming the sex offender registry.

Representative Gibson explained that there was a task force in 2009 that worked on clarifying and improving the sex offender registry. Those meetings can be found on the LRC website and can be listened to or the minutes can be read to learn more about that task force's findings.

Committee Discussion

Senator Soholt asked each task force member to contact several schools in the State (both urban and rural) and ask the following questions:

1. Does your school district include any integrated curriculum on child sexual abuse?
 - a. If so, what grade/s is the curriculum taught?
2. Does your school have a school counselor?
 - a. If no how do you attend to counseling issues?
3. As mandatory reporters, do you have an estimate of how many cases the school has referred over the past 5 years?
 - a. Over the past year?
4. Do you conduct staff education or training about mandatory reporting? If yes, when?
5. Do you have specific concerns about addressing child sexual abuse in the school?
6. What barriers do you see in expanding awareness of child sexual abuse in the schools?

Task force members will report back to Ms. Amanda Reiss at LRC regarding these contacts and Ms. Reiss will compile the information to be given to the full task force at the November meeting.

Senator Soholt created four work groups tasked with further understanding the following assigned topics:

- Statistics/Benchmarks – Leader, Senator Alan Solano
- Child Advocacy Centers & statewide availability – Leader, Angela Lisburg
- Professional Education – Leader, Holly Strand
- Public Prevention – Leader, Dr. Nancy Free

The task force members should be thinking about possible legislation which will be on the next meeting's agenda. A few suggestions thus far are: any family member can report to suspected abuse to Child Protective Services; a written report should follow the oral report and be conducted by the witnessing mandatory reporter; and thoughts on revenue streams that could help fund educational programs on child sexual abuse.

Representative Gibson asked if it would be possible for this task force to continue through next year. Senator Soholt said that she is looking into extending the deadline for this task force.

Future Meetings

The next two meetings of the Jolene's Law Task Force will be Monday, November 17, and Monday, December 1, all in the State Capitol in Pierre.

Adjourn

REPRESENTATIVE GIBSON MOVED, SECONDED BY REPRESENTATIVE JENNA HAGGAR, THAT THE JOLENE'S LAW TASK FORCE BE ADJOURNED. The motion prevailed unanimously on a voice vote.

The Committee adjourned at 4:00 p.m.

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