

MINUTES

State-Tribal Relations



Senator Troy Heinert, Chair
Representative Elizabeth May, Vice Chair

**First Meeting, 2018 Interim
Monday, October 01, 2018**

**413 – State Capitol
Pierre, South Dakota**

The first meeting of the State-Tribal Relations Committee was called to order by Senator Troy Heinert at 10:11 a.m. (CST) on October 1, 2018, in Room 413 of the State Capitol, Pierre, South Dakota.

A quorum was determined by the following members answering roll call: Senators Phil Jensen, Kevin Killer (via phone), Lance Russell, Jordan Youngberg, and Troy Heinert (Chair); and Representatives Shawn Bordeaux, John Lake (via phone), Oren Lesmeister, Steve Livermont, and Elizabeth May (Vice Chair).

Staff members present included Emily Kerr, Legislative Attorney; Amanda Doherty-Karber, Senior Fiscal and Program Analyst; and Rachael Person, Senior Legislative 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. This meeting was web cast live. The archived web cast is available at the LRC website at sdlegislature.gov

Approval of Minutes

Mr. Brian Brewer gave an opening prayer.

A MOTION WAS MADE BY SENATOR YOUNGBERG, SECONDED BY REPRESENTATIVE LESMEISTER, TO APPROVE THE MINUTES OF THE JANUARY 26, 2018, STATE-TRIBAL RELATIONS COMMITTEE MEETING. The motion prevailed unanimously on a voice vote.

Chair Opening Remarks

Senator Troy Heinert welcomed everyone to the meeting and brought attention to the agenda, stating the topics of discussion are steered towards public safety and corrections. Senator Heinert spoke briefly on the large influx of citizens becoming part of the corrections cycle, the shocking numbers of those citizens coming out of Pennington county, and how many are women. He remarked that this is an issue that needs to be addressed and asked the guests and committee members to think of what can be done to get ahead of the issue and help those in need. Next, he opened the floor for public testimony.

Public Testimony

Mr. Brian Brewer, President, Oglala Lakota County School Board, Pine Ridge, opened his testimony by thanking the committee for the honor to testify in front of them, and for the work they do for the State of South Dakota. Mr. Brewer talked about the horrors of meth on the reservations stating how sad it is to see so many of their young people using meth and ending up in prisons. He told the committee one of the issues his tribe faces is the lack of places for their people to go once they have been released from prison. The tribe has no resources for this issue and because of this, so many of their young people are released and end up right back in prison. He wanted

to remind everyone that while the reservations were originally created to separate the tribes from the rest of the state, the tribal members are South Dakota citizens too.

Mr. Jason Cooke, Vice-Chairman, Yankton Sioux Tribe, Wagner, echoed Mr. Brewer's sentiments, stating how hard meth has been hitting people on the reservations. He voiced how difficult it is to see so many of their own in prison, his desire for better lives for their youth, and how they need those who have overcome addictions to return to their reservations and help stand up for and educate the younger generation.

Mr. Gene Tyon, Legislative and Cultural Liaison, Oglala Sioux Tribe President's office, Pine Ridge, mentioned his purpose in coming before the committee was to speak about ideas for a possible residential treatment and re-entry program. He described utilizing a cultural approach to wellness for recovery and development of a cultural identity. He stated that historical and intergenerational trauma compound personal trauma, causing people to carry around dysfunction. To escape this dysfunction, many will turn to vices like drugs and alcohol to make themselves feel better. He feels many of their children are missing out on the childhood stage of development because they live in dysfunctional environments. It is his belief that having a rehabilitation center that is culturally based will help their people more than the mainstream therapy in use today. The problem lies in the need for more professionals and volunteers to step up. He pointed out that the south and northwest have been successfully utilizing cultural therapies to adjust behavior for thirty years, and he hopes that the State of South Dakota will help incorporate more of these approaches.

Mr. Darrell Middletent, Vice-Chairman, Lower Brule Sioux Tribe, Lower Brule, spoke passionately of how he has answered his calling to help and give back to people by visiting inmates in the prison system for the last eight years. He commented on how difficult it is to see so many in the prisons and how he often brings students in to talk to prisoners and hear their stories in an effort to show them they cannot follow the same path. He reminded everyone that meth is a problem that does not segregate. It isn't a just a problem in the native community, and he is afraid the problems coming off the reservation are going to become a state problem. He believes the people coming out of prison could help fight the growing problem meth presents.

Mr. Brewer, Mr. Cooke, Mr. Tyon, and Mr. Middletent, along with **Mr. Steve Van Bockern, Augustana University, Sioux Falls** also spoke of a young man by the name of Robert Horse who is currently incarcerated. They each described their individual knowledge of Mr. Horse's efforts in starting the program Fathers Against Meth (FAM First) while he has been incarcerated and asked the committee to consider allowing Fathers Against Meth to count as a heroic act as it pertains to heroic acts in SDCL Chapter 24-15A, and grant Mr. Horse ninety days worth of earned discharge credits.

Committee Discussion

Senator Lance Russell asked if a formal request had been made to the Governor to look at the case of Mr. Horse, noting the committee does not have that power, but the Governor does. Mr. Brewer responded that to his knowledge, no formal request had been made.

Representative Oren Lesmeister stated he was curious about the Fathers Against Meth program and asked if Mr. Horse had been through any formal counseling training, and if he was looking to be a counselor and willing to train other people when he is released.

Mr. Brewer commented that Mr. Horse intends to work for FAM First and travel to reservations to speak to children.

Senator Heinert clarified the request centered around the earned discharge credits for heroic acts contained in SDCL chapter 24-15A, SL 2018, ch. 153 (2018 House Bill 1053), and if Mr. Horse starting FAM First meets the definition, or criteria, of a heroic act ([Handout 1](#)).

Representative Elizabeth May pointed out that on line 12 of House Bill 1053 it says, “earned discharge credits may be granted in the judgement of the warden and the secretary of corrections” and suggested that if the committee wanted to do something, that would be the correct route to take.

A MOTION WAS MADE BY REPRESENTATIVE BORDEAUX, SECONDED BY REPRESENTATIVE LESMEISTER, DIRECTING THE CHAIR OF THE STATE-TRIBAL RELATIONS COMMITTEE TO DRAFT A LETTER OF SUPPORT FOR THE USE OF HEROIC ACTS AND DISCHARGE CREDITS TO THE WARDEN, THE SECRETARY OF CORRECTIONS, THE CORRECTIONS COMMISSION, AND THE GOVERNOR.

A SUBSTITUTE MOTION WAS MADE BY SENATOR RUSSELL, SECONDED BY REPRESENTATIVE BORDEAUX, THAT THE STATE-TRIBAL RELATIONS COMMITTEE REQUEST THE WARDEN, THE SECRETARY OF CORRECTIONS, AND THE GOVERNOR FULLY EVALUATE THE POTENTIAL FOR THE EXERCISE OF SDCL 24-15A, AND ALSO, EXECUTIVE CLEMENCY IN THE MATTER OF THE STATE VS. ROBERT HORSE.

The Chair ruled to hold the vote on the motion until the committee heard all public testimony.

Mr. Steve Emery, Secretary, Department of Tribal Relations, presented the committee with an overview of the work the Department of Tribal Relations has been doing throughout the fiscal year. He informed the committee that law enforcement and public safety continue to be a priority topic of concern for tribes, the state, and the department. To that end, the Department of Tribal Relations (DTR), in coordination with the department of Public Safety and Highway Patrol, have actively engaged leaders and tribal law enforcement. Working with Highway Patrol, regional tribal law enforcement meetings have been held on a quarterly basis to build working relationships between highway patrol, tribal law enforcement directors, county sheriffs, and city police departments. Tribal and state law enforcement personnel are sharing information, building comradery, and establishing lines of communication to utilize should emergencies occur and cooperative action if necessary.

DTR continues to work with other departments, including: the Department of Health and Department of Social Services to increase suicide prevention and awareness outreach efforts in Indian country; the Department of Game, Fish and Parks on related issues on reservations; the Governor’s Office of Economic Development to discuss proposals coming from Indian country and to examine any impediments to economic development on tribal lands; and the State Veterinarian and Brand Board to address cattle inspection and stock animal negligence cases. In the coming months, the department will be working with the Legislative Research Council to host a tribal legislative training at the capitol this upcoming November, which is a yearly event held to increase tribal participation in the legislative process and provide tribal attendees important procedural information.

Representative Shawn Bordeaux mentioned some concern about the pipeline situation and asked Mr. Emery if he could elaborate more on the efforts the department has made to work with the tribes regarding the pipeline.

Mr. Emery replied his department wants to get out in front of the issue should protests occur, and DTR’s vision has been focused on how everyone can work together so both sides are prepared and informed about what the other side is going to do. DTR has been speaking with all of the tribes and holding quarterly law enforcement meetings, so communication can move back and forth in a reasonable way. No one wants a repeat of what

happened in North Dakota, and DTR is working diligently to ensure law enforcement, highway patrol, and tribal law enforcement are all working together.

Representative May inquired whether there has been any discussion with the tribes regarding the costs that might be associated with any potential problems with protestors and how the tribes would work with the counties and the states. The concern is that tribes and the counties will probably be the first ones who will take the hit financially, so it is vital that tribes and county commissioners are aware and prepared for the potential costs that could be put on them.

Mr. Emery said they have not had that discussion yet, as concerns have been focused on how they can work together if something happens.

Laurie Feiler, Deputy Secretary, Department of Corrections, opened by speaking about 2018 House Bill 1053 and how it defines what constitutes a heroic act. House Bill 1053 passed last year creating a system of inmate earned discharge credits. Earned discharge credits started in July of this year and are for inmates who have completed certain programs after July 1 with 360 hours of work. An inmate is not entitled to earn discharge credits, and heroic acts are entirely discretionary. By statute, a heroic act could be one of three things – heroic acts in life-threatening situations, significant efforts in disaster response, or by providing exceptional assistance in maintaining the safety and security of a prison.

Ms. Feiler then gave an update on the Department of Corrections (DOC) and some happenings relevant to the State-Tribal Relations committee. She presented graphs which included different statistics such as population increases, percentages of inmates based on the type of crime they were incarcerated for, and racial breakdowns ([Handout 2](#)). She included a slide showing different programs and cultural ceremonies available and drew attention to the last two, which are new and emerging programs. The first is a tribal parole program that started in 2014 when an intergovernmental agreement was signed with Sisseton that continues to operate and go well. Last month, DOC added another tribal parole program by signing an intergovernmental agreement with Flandreau. The second program is an Intermediate Correctional Intervention Program which is between a traditional probation program and prison, that will work to divert female offenders, many of whom are probation violators, from going to the penitentiary.

Senator Heinert commented that he believes in what the system is trying to do, getting people out of prison and into community-based support groups. He encouraged utilizing tribal programs and professionals as much as possible and then asked Ms. Feiler what suggestions she had for the legislature that would help the Department of Corrections in its goal of treating people and getting individuals to where they are helping society. Ms. Feiler responded that being able to partner with various branches of government and continuing to work as a team is the best route.

Representative May pointed out that everyone wants to do something and see things improve but there always seems to be a struggle with mistrust. She voiced her concern about this hurdle and her hope that there will be more cooperation from every side in the future.

Committee Discussion

Senator Heinert brought the motion made earlier by Senator Russell to the forefront of the conversation, stating that passing this would put it in motion form and into the hands of the Department of Corrections and the Governor to investigate whether Father's Against Meth would be considered a heroic act.

Senator Phil Jensen asked Ms. Feiler if the situation of Robert Horse creating the Father's Against Meth group qualifies as a heroic act under definition. Ms. Feiler informed the committee that they have made the decision it does not. At this point, through the discretion granted in statute, they are sticking closely to the life-saving criteria that is in the statute and in DOC policy ([Handout 3](#)), but DOC would certainly not object to taking an in-depth look at the situation.

Senator Russell stated when he made his motion earlier in the day, he wanted to put it into the department's hands without advocating one way or the other because they didn't know all the facts. After finding some information on what crime was committed, before the committee makes a statement, he recommends giving the victim's family an opportunity to weigh in before the committee takes a vote on the motion. Senator Russell asked the chairman to utilize his prerogative and give the victim's family this opportunity at the next meeting because he believes the committee would be sending the wrong message if the situation was not fully evaluated and both sides were given an opportunity to participate.

Representatives Lesmeister and Bordeaux responded that they believe what Mr. Horse is doing with FAM First is a good thing, he has served his time, and they would like the committee to support the motion to move the request forward.

Senator Jordan Youngberg agreed with Senator Russell, commenting that there are proper channels for an issue like this to move through. He didn't know why this was going through a legislative committee, and while he has empathy for Mr. Horse and what he is doing, he could not support a letter of recommendation at this time as they have not heard both sides of the story and deciding on an issue like this is outside the scope of being a legislator.

Senator Heinert reminded the committee that they were not trying to retry the case, the motion was that the committee ask the Department of Corrections to accept FAM First as a heroic act.

Senator Russell commented that he wished they had been given more information up front because, from his standpoint, they did not have enough background information and it could be problematic if the committee took certain actions that could be perceived as recommending something, even if it wasn't anything more than a recommendation to look at the case.

Senator Jensen referred to the criteria which defines a heroic act and suggested that starting the program did not fall into that category. He encouraged the guests present to contact the Governor and file for clemency. Then, when the committee meets in December, after gathering more information and listening to possible testimony from the family, it can look at this issue again and decide where to go from there. He echoed Senator Youngberg's comments and said going through the legislature was not the proper venue but the Governor's office would be.

Senator Heinert acknowledged this was a sensitive issue, but the committee was losing sight of the real request which was whether or not Fathers Against Meth met the requirements of maintaining the safety and security of a

prison. Though he believed it does, and he would support the motion, he would indulge Senator Russell's request and invite the victim's family to be heard. He advised moving to table the motion and bring it back at the next meeting.

A MOTION WAS MADE BY SENATOR RUSSELL TO TABLE THE VOTE ON HIS SUBSTITUTE MOTION AT THIS TIME. The Chair ruled that the motion was not debatable. The motion prevailed on a roll call vote with 7 voting AYE, and 3 voting NAY. Voting AYE: Jensen, Russell, Youngberg, Lake, Lesmeister, Livermont, and May. Voting NAY: Killer, Bordeaux, and Heinert.

Senator Jenson brought an article to the attention of the committee and informed the room that he will be starting up a 501(C)(3) nonprofit called "Bags of Love" to provide sleeping bags for Native American children and asked if anyone was interested in contributing to or standing behind that to contact him ([Handout 4](#)).

Senator Heinert gave a brief update on the Todd County Middle School and said the school is still making excellent progress and its program is continuing to work well.

Adjournment

A MOTION WAS MADE BY SENATOR YOUNGBERG, SECONDED BY REPRESENTATIVE LESMEISTER, THAT THE STATE-TRIBAL RELATIONS COMMITTEE MEETING BE ADJOURNED. The motion prevailed on a unanimous voice vote.

The committee adjourned at 3:30 p.m.