

MINUTES

Offenses Regarding Controlled Substances Interim Study



Representative Steven Haugaard, Chair
Senator Craig Kennedy, Vice Chair

**Fourth Meeting, 2019 Interim
Friday, November 1, 2019**

**Room 414 – State Capitol
Pierre, South Dakota**

The fourth meeting of the Offenses Regarding Controlled Substances Interim Study Committee was called to order by Representative Steven Haugaard (Chair), at 10:00 a.m. CDT, on November 1, 2019, in Room 414 at the State Capitol, Pierre, South Dakota.

A quorum was determined with the following members answering the roll call: Representatives Linda Duba (via DDN), Dayle Hammock, and Steven Haugaard (Chair); Senator Craig Kennedy (Vice Chair), and public members Mr. Gary Drewes, Ms. Laurie Gill (via phone), Mr. Gary Jaeger (via phone), Mr. Mike Leidholt (via DDN), Mr. Aaron McGowan (via phone), Mr. Jason Ravensborg, Ms. Patricia Riepel (via DDN), Mr. Greg Sattizahn, and Mr. Kevin Thom. Excused: Senators Jeff Partridge and Jim Stalzer.

Staff members present were David Ortbahn, Chief Research and Legal Analyst, and Cindy Tryon, Senior Legislative Secretary.

NOTE: For the 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 webcast live. The archived webcast is available at the LRC website at sdlegislature.gov.

Approval of Minutes

A motion was made by Mr. Gary Drewes, seconded by Attorney General Ravensborg, to approve the minutes of the Tuesday, October 22, 2019, Offenses Regarding Controlled Substances Interim Study Committee meeting. Motion prevailed on a voice vote.

Remarks by Chair and Vice Chair

Representative Haugaard thanked all the participants in the study. During the interim meetings, the committee heard testimony and received information allowing a committee consensus as to the direction needing to be taken. There are issues yet to be addressed including a significant shortage of space for treatment and a significant shortage of staff who provide treatment. The study brings to light things that can be done to earlier address the problems that lead to incarceration.

Response to Committee Questions from Previous Meeting

Mr. Greg Sattizahn, Unified Judicial System (UJS), provided information on Court Service Officers (CSOs) including workloads and costs ([Document #1](#)). The location of the probation supervisors and the risk level of the probationers plays a big part in the workload. UJS is requesting 7 additional CSOs in the FY21 budget. The cost for the 7 CSOs including salary and benefits, travel, and capital outlay is \$491,330. Of the 7 requested CSOs, the locations would be 3 in Minnehaha County, 3 in Pennington County, and 1 in Codington County.

UJS reviews the CSO workload on a quarterly basis and the need for 20 additional CSOs has been the result of those reviews for several years. The additional 20 FTE is what is needed for the foreseeable future, but the UJS has decided to be realistic and slowly add staffing, beginning with the request for an additional 7 CSOs.

Attorney General Ravnsborg asked about the FY21 budget request for the drug court program. Mr. Sattizahn said during this current fiscal year the drug courts served 620 people and was budgeted to serve 450, which meant UJS overspent the drug court treatment budget by \$425,000. In order to not have to reduce capacity in the drug court program, UJS has a one-time request of \$450,000 for the FY20 budget year. The budget request for drug court funding for FY21 will be \$650,000.

Representative Haugaard asked how does the large number of people supervised by each CSO contribute to recidivism. Mr. Sattizahn said the CSOs are so involved in probationer's lives and the lack of time to give each person the individual attention needed increases the chance of relapsing. The things needed to keep people from slipping are the first to go when the CSO does not have the time needed. The standard rate of recidivism for those who complete probation is 27% while the rate is 18% for those who complete drug court. The more supervision the better the outcomes. CSOs supervise 10,000 adults and juveniles per year. On any given day there are 6,500 adults and juveniles on supervised probation.

Ms. Amy Iversen-Pollreisz, Deputy Secretary, Department of Social Services (DSS), distributed an informational document answering committee questions from previous meetings ([Document #2](#)). The first response to a committee question in the document explains how treatment programs incorporate the Native American cultural treatment methods.

The second question is regarding the number of beds available through the residential treatment programs. The document lists the locations of the beds and the number of beds. The total number of licensed beds available in South Dakota is 471 and the total number of beds available for state funded individuals to receive treatment is 190. There are 2 additional programs providing services specific to pregnant women and those programs have 49 licensed beds with 44 beds available for state funded care.

The third question asks how many state funded inpatient treatment beds are needed. The number of additional beds needed in FY19 is 18 and in the first quarter of FY20 an additional 22 beds were needed to serve state funded individuals.

Questions 4 and 5 are regarding staffing needed and demand for services. The data obtained from the service providers regarding this information is on the final page of the informational document.

Senator Kennedy asked about the delay in receiving care because of the need for additional beds. Ms. Iversen-Pollreisz said the wait for getting into treatment may be 1-2 weeks and that information is used when presenting the DSS budget request. Additional funding was requested last year for additional beds for pregnant women needing treatment. Treatment beds fluctuate on a daily basis. There may be a bed available, but it is in the wrong location and the person elects to wait for a bed to open closer to home. Low intensity treatment beds are usually at full capacity.

The need for more beds is mostly in Rapid City and Sioux Falls with the greatest need in Rapid City as there are more treatment providers in Sioux Falls.

Ms. Laurie Feiler, Deputy Secretary, Department of Corrections (DOC), shared information regarding the 353 offenders in prison for ingestion as their most serious offense ([Document #3](#)). The chart illustrates that 79 of the 353 offenders are new to prison, the remaining have had previous incarcerations.

Mr. Sattizahn said the three most common reasons for drug court failures are the person absconds, fails the UA test, or fails to complete treatment. Ms. Feiler said those are also the most common reasons for parole violations.

Representative Haugaard said the state is trying to run so many people through the basics of treatment and then follow-up with light supervision. The state is checking the boxes but not giving the full services the people need. It is a challenge to take over someone's life with new direction and oversight they have never before received.

Public Testimony on Possible Recommendations

Ms. Lisa Nolen, Americans for Prosperity, Sioux Falls, said the Americans for Prosperity believe reforms that keep people from needlessly experiencing the criminal justice system will have the greatest long term impact. It is important to reprioritize resources towards front end reform rather than back end. Criminal sentencing should hold people accountable and the punishment should fit the crime. Too many people go to prison for far too long for low level non-violent crimes. Prison should be for people who are a danger to society vs. people who make choices we do not like. Prison is also a much more expensive option than diversion or treatment.

The approach should be two-fold where the punishment fits the crime, but by shifting the funding, the root of the issue can be treated earlier in the process. This organization supports treatment and recovery for a strong and safe community.

Terra Fisher, SD Association of Criminal Defense Lawyers (SDACDL), Pierre, said evidence repeatedly shows incarceration has less impact on recidivism than treatment. The SDACDL proposes to eliminate ingestion as a felony and reduce to a misdemeanor with an order to receive evaluation and treatment.

Ms. Jayne Parsons, self, Pierre, is a recovering opioid addict. Ms. Parsons said she has 2 felonies but did not spend time in prison. Addiction is a disease; a chronic illness. Ms. Parsons attends recovery treatment at the Women's Prison in Pierre and is employed at Capitol Area Counseling. Women released from prison have no funding for housing and often have no where to go, which makes it easier for them to go back to the old life styles. Addicts need to learn the tools needed to have a successful life after being released. Addicts are not bad people getting good but are sick people getting well.

Mr. Mark Vargo, States Attorney, Pennington County, addressed what he called the illusion of cost savings to the government by turning meth addicts out on the street. The thought that there is a cost savings is "just silly." Places that have reduced simple possession to misdemeanors have merely abdicated their responsibility to their citizens. In theory, if a person could be diverted and put on a track that is the optimal path to follow, but misdemeanor probation does not provide the person with anything. There are mechanisms that every charge could become a misdemeanor if the person is motivated and capable of getting off meth. The deferred imposition of sentence the legislature passed several years ago makes that possible. We need to provide people the tools to engage in those mechanisms. Mr. Vargo said he does not believe there is any evidence suggesting this will help reduce costs.

Committee Discussion of Possible Recommendations

Attorney General Ravnsborg said proposed legislation Draft 204 was drafted based on previous committee discussion and is patterned on the 0.17 level of a DUI where there has to be an evaluation. ([Document #4](#)).

Judge Riepel said this is dealing with SDCL 22-42-5.2 as a felony and a person pleading guilty to the felony part of the felony probation already requires an assessment. Mr. Sattizahn said in most cases when someone is put on probation because of an ingestion or possession offense this evaluation is currently one of the standard terms of conditions and Mr. Sattizahn is not sure what gap this legislation would fill.

Senator Kennedy presented proposed legislation Draft 234 which changes ingestion of a controlled substance from a felony to a Class 1 misdemeanor with the imposition of up to two years probation ([Document #5](#)). Senator Kennedy said he is not trying to water down current drug laws or create problems regarding public safety, but the

system is not working, and something needs to change. Some people carry felonies for the rest of their lives impacting the ability to live a normal life and a felony does not help them deal with the illness. A Class 1 misdemeanor does have the possible sentence of one year in county jail so there is still a fear of incarceration. South Dakota is the only state in the nation that makes ingestion of a controlled substance a felony.

Representative Haugaard said adequate supervision does not exist for this type of legislation. The need is to switch resources from prison to prevention, treatment, and supervision. There would be substantial savings with more supervision and fewer prison sentences.

The Attorney General said reducing the sentence to a misdemeanor removes the incentive for the person to go to drug court or treatment. Senate Bill 70 from the 2013 legislative session shifted costs from the state to the counties and having the option of a year in county jail shifts even more costs to the counties.

Mr. Vargo said the state has mechanisms for people to take advantage of successful treatment programs and the committee should look at putting capacity behind what already exists.

Representative Haugaard said he would like to see an expansion of suspended sentences and expungements. People need to receive credit for their accomplishments, and the state should allow people to clear up their records so they can move on with their lives and careers.

Senator Kennedy presented proposed legislation Draft 233 which creates an incentive program to provide diversion programs ([Document #6](#)). The bill is modeled on the statutes regarding the diversion program for juvenile offenders which Pennington County has used successfully. This bill provides a financial incentive to the counties to create a diversion program and applies to people charged with ingestion and/or possession of controlled substances.

Mr. Drewes said he agrees with the remarks on expungement. Committee discussion finds education and treatment could result in some of the answers, but those types of programs need funding. Mr. Drewes said he is not in favor of decriminalization. Diversion programs are a good option but are not available throughout the state. Most people are willing to take advantage of treatment, but it is not available to everyone. Whatever the decisions are, the costs should not be put on the counties.

Representative Duba said this is not an attempt to water down sentences but rather to offer someone an opportunity to succeed.

Mr. Sattizahn said the juvenile diversion program has been highly successful. Counties receive \$250 for every youth who succeeds in the program. This last year 26 counties made claims. The diversion dollars go to the county to use however the county chooses. Typically the courts have no involvement in true diversion programs but sections 7 and 8 of the proposed legislation do include court involvement which creates a court record.

Senator Kennedy said prosecutors have the option of using the charge for huffing instead of ingestion in order to reduce the charge. Mr. Vargo said the Pennington County prosecutor's office routinely uses the huffing charge for a variety of things. Draft legislation 233 would be slightly different because of the two year probation, and that would be reason to pass this legislation giving another option. Mr. McGowan said Minnehaha County also uses the huffing Class 1 misdemeanor as a plea bargaining tool.

Attorney General Ravnsborg asked if Senator Kennedy has an estimate as to how much this program would cost. Senator Kennedy said the budget for the juvenile diversion program is \$250,000.

Representative Haugaard asked Ms. Fisher with SDACDL if the defendant asking about the diversion options is an issue; are the defense attorneys aware of the options. Ms. Fisher said these diversion options are discussed by the

defense attorney and the prosecutor. The concern is that some states attorneys will choose not to use this diversion option.

Mr. Vargo said the Magistrates and the UJS are very helpful in awareness of the options. There will be rack cards available in Pennington County the judge can hand out regarding the diversion program options.

Senator Kennedy said they may want to discuss final action with the subcommittee to see if there should be a joint proposal going forward.

Attorney General Ravnsborg said this is a good start and more information is needed before making a final decision.

Representative Haugaard said a report will be made to the Executive Board at the November 18 meeting.

The Attorney General said the committee agrees there is more treatment needed and the appropriators need to be made aware that more funding is needed.

Representative Haugaard said the committee does have numbers to apply to recommendations. There needs to be a general statement in the final report that SB70 from 2013 was never fully developed because of the lack of funding.

Senator Kennedy said the report should include the fact this committee does support UJS's request for additional CSOs.

Representative Haugaard said the discussion needs to continue regarding clearing records. A checklist of recommendations can be compiled that can be sent out to the committee members for comment.

A conference call will be held on Friday, November 8, at 9:00 AM, for discussion on the final report.

Adjournment

A motion was made by Attorney General Ravnsborg, seconded by Representative Hammock, that the Offenses Regarding Controlled Substances Interim Study Committee meeting be adjourned. The motion prevailed on a voice vote.

Chair Haugaard adjourned the meeting at 1:10 p.m.