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Senator Deb Soholt, Chair  
Representative Mike Stevens, Vice Chair

First Meeting  
2013 Interim  
June 17, 2013

Room 413  
State Capitol  
Pierre, South Dakota

**Monday, June 17, 2013**

The first meeting of the Domestic Abuse Study Committee was called to order by the Chair, Senator Deb Soholt, at 10:00 a.m. in Room 413 of the State Capitol in Pierre, South Dakota.

A quorum was determined with the following members answering the roll call: Senator Deb Soholt, Chair; Representative Mike Stevens, Vice Chair; Senators Deb Peters (via telephone), and Craig Tieszen; and Representatives Jim Bolin, Kristin Conzet, Peggy Gibson, Tona Rozum, and Karen Soli.

Staff members present included Amanda Reiss, Legislative Attorney; Reuben Bezpaletz, Chief Analyst for Research and Legal Services; and Cindy Tryon, Legislative Secretary.

*(Note: For purpose of continuity, the following minutes are not necessarily in chronological order. Also, all reference documents distributed at the meeting are attached to the original minutes on file in the Legislative Research Council. This meeting was web cast live. The archived web cast is available at the LRC web site at <http://legis.state.sd.us> under "Interim Information – Current Interim – Minutes and Agendas.")*

**Opening Remarks**

**Senator Deb Soholt**, Committee Chair, distributed a printed copy of the scope of study assigned to this committee, "A comprehensive review of Domestic Abuse in South Dakota. The focus of this study will include a) a review of current state and federal regulations; b) an examination of the effectiveness of state policies and programs with respect to domestic abuse; c) a study of the prevalence of domestic abuse across the state, including related crimes; and d) a discussion of potential options with respect to domestic abuse statutes in South Dakota." (**Document #1**)

Chair Soholt said that the committee will have three or four meetings to look at this topic and, because of the limited number of meetings, it is important to stay on topic. Scope of the Domestic Abuse summer study will not include shared parenting, the antecedents to domestic abuse, or the treatment for abusers. The committee will function within the scope of study assigned to them.

**Domestic Abuse in South Dakota**

**Ms. Amanda Reiss**, Legislative Attorney for the Legislative Research Council, gave a PowerPoint presentation, *Domestic Abuse in South Dakota: Current State Statutes and Current Federal Regulations* (**Document #2**).

Significant relevant statutes to the scope of study that will be referred to often are:

- SDCL 25-10-1(1) "Domestic abuse," physical harm, bodily injury, or attempts to cause physical harm or bodily injury, or the infliction of fear of imminent physical harm or bodily injury between

family or household members, Any violation of SDCL 25-10-13 or chapter 22-19A or any crime of violence as defined in subdivision 22-1-2(9) constitutes domestic abuse if the underlying criminal act is committed between family or household members.

- SDCL 25-10-13 Violation of a protection order.
- SDCL 22-19A Stalking.
- SDCL 22-1-2(9) "Crime of violence," any of the following crimes or an attempt to commit, or a conspiracy to commit, or a solicitation to commit any of the following crimes: murder, manslaughter, rape, aggravated assault, riot, robbery, burglary in the first degree, arson, kidnapping, felony sexual contact, felony child abuse, or any other felony in the commission of which the perpetrator used force, or was armed with a dangerous weapon, or used any explosive or destructive device.

Ms. Reiss explained that in certain situations, federal laws apply. Such situations include prohibiting any person convicted of a felony, or a misdemeanor crime of Domestic Abuse from purchasing or possessing a firearm; and, the Violence Against Women Act makes it a federal crime to cross state lines or tribal lines to commit a Domestic Abuse crime or violate a protection order.

**Representative Jim Bolin** asked if there is a difference between abuse and violence or are they interchangeable. Ms. Reiss explained that, in regard to the general terms and statistics, violence is usually a physical act while abuse includes violence plus much more, such as emotional abuse, threat of abuse, etc. State criminal law uses the term domestic abuse, while federal law uses both terms.

**Senator Craig Tieszen** asked about the federal firearms provision. Ms. Reiss explained that the federal government is not required to recognize the state's laws in regard to domestic abuse and does not need to reinstate the offender's right to possess a firearm even if the abuse charge is changed.

**Representative Karen Soli** asked about mandatory arrest and how that applies in a domestic abuse case. Ms. Reiss described that under state law it is mandatory to make an arrest in a domestic abuse case. However, the officer does not have to make an arrest if there is no probable cause.

**Mr. Reuben Bezpaletz, Chief Analyst for Research and Legal Services**, addressed the committee regarding South Dakota domestic abuse laws. Mr. Bezpaletz shared that when he started working for the Legislative Research Council in the 1970s, there were no domestic abuse laws. Domestic Abuse laws began to be enacted in the 1980s. One of the challenges in domestic abuse legislation has always been determining to whom the phrase "domestic relationship" applies. He added that domestic abuse is not a crime in itself but is a subset of another crime, such as assault or kidnapping. The purpose of the laws is not to punish the act but to try to change a set of actions by placing certain criteria in a subset of the law.

Mr. Bezpaletz summarized the legislation that had been proposed from 2005 to 2013 regarding domestic abuse (**Document #3**). He also presented legislation that failed during that time frame (**Document #4**). Mr. Bezpaletz then presented a copy of a bill he had drafted for a former legislator (**Document #5**) who was not reelected and therefore the bill was not heard.

### **Department of Social Services Perspective**

**Ms. Lynne Valenti, Deputy Secretary of the Department of Social Services**, introduced herself, Secretary Kim Malsam-Rysdon, Ms. Lori Martinec, Program Manager for Victim Compensation

Services, and Ms. Virgena Wieselen, Director of the Division of Child Protection Services. Ms. Valenti said that the issue of domestic abuse crosses through all the divisions within Social Services.

**Ms. Lori Martinec, Program Manager for Victim Compensation Services**, gave a PowerPoint presentation (**Document #6**). Her presentation included information on the Victims' Services program within the Department of Social Services.

Ms. Martinec said they manage and administer several different grants. In State Fiscal Year (SFY) 2012, 12,971 victims received services paid for by grant funds. These grants provide funding for shelters and in South Dakota there are 26 shelter agencies. The grants also fund non-shelter services such as counseling centers, CASA, assessment centers, victim assistants, and victim services provider organizations.

**Representative Peggy Gibson** asked if all the money received by DSS is distributed. Ms. Martinec said that every dollar received is distributed to victims' services.

Representative Bolin asked if the amount of the funds increases from year to year. Ms. Martinec said that in the past they have received slight increases each year, but are concerned that the federal sequestration will have a negative impact on the amount of funding received this year.

Senator Tieszen asked if one agency may receive funds from all five grant sources and, if so, do they have to complete five different grant applications. Ms. Martinec responded that an agency may receive funds from up to five of the grant sources and they do have to complete an application for each source and they must reapply every year.

**Ms. Virgena Wieselen, Director of the Division of Child Protection Services**, continued with the PowerPoint presentation regarding the Division of Child Protection Services.

Ms. Wieselen reported that they received 15,697 child abuse and neglect reports in SFY 2012. Domestic violence was found to be a factor in 579 or 16.5% of the 3,511 cases that were assigned for a child abuse or neglect assessments in SFY 2012.

Chair Soholt pointed out that while the Committee will not be studying child abuse, it is helpful to understand the numbers in relationship to domestic abuse.

### **Criminal Code Revision of 2004**

**Mr. Lee Schoenbeck, Schoenbeck Law, Watertown**, talked to the committee via telephone about code revisions regarding domestic violence that were implemented while he was a State Senator. Mr. Schoenbeck began his presentation by sharing that the work of the committees is very important and that domestic violence is a crime not limited to any demographic group.

Mr. Schoenbeck shared that there was a transformation in how people thought about domestic violence from the late 1970s to the 1980s. Then, in the 1990s there was a major transformation. In 1997, the domestic violence gun ban law was enacted.

Mr. Schoenbeck continued by explaining that under federal law if a person is found guilty of a felony, or a misdemeanor domestic violence crime, the violator would be banned for life from possessing a firearm. SDCL 22-14-15.2 was written to address that issue. Federal law states that if a felon's civil rights are restored by the state, they can again possess firearms. However, South Dakota did not take away a person's civil rights, meaning that there was no procedure to restore the rights, so the federal government refused to allow a felon or a person convicted of a misdemeanor domestic violence crime

to own a firearm in South Dakota. In response to that issue, South Dakota passed a statute that takes away the civil rights in the first paragraph and restores the civil rights in the second paragraph. Even though the federal government was not supportive of that law and indicated that it would not abide by it, the law passed during the 2005 session.

Representative Soli asked if the federal government abides by that law today. Mr. Schoenbeck replied that he does not know and he is not sure there is any way to find out.

Mr. Schoenbeck continued, sharing with the committee that domestic violence cannot be legislated away, but areas that can have a positive impact are education, safe harbor options, and criminal laws. An area of great effectiveness is assuring that the federal money is given to groups that have expertise and who do the most work with this issue. He added that the worst domestic violence is happening to young women on the Indian reservations; that is where the most victims suffer the worst violence.

Senator Tieszen asked if the U.S. Attorney's office was contacted when working on the 2005 legislation. Mr. Schoenbeck said that they did work with the SD Attorney General's office, but they did not contact the U.S. Attorney.

**Representative Mike Stevens** asked Mr. Schoenbeck if there is anyone he would suggest the committee talk to during this interim study. Mr. Schoenbeck said that the USD Law School has a list serve where a topic can be posted and then attorneys across the state can make comments. He also said that criminal defense lawyers deal with this issue more than any others and would be a good resource.

### **Attorney General's Office Perspective**

**Mr. Charlie McGuigan, Chief Deputy Attorney General**, spoke on behalf of the Attorney General's Office. Mr. McGuigan said that most domestic abuse cases are handled by local prosecutors. He said that the Attorney General's office gets involved in the very serious cases, such as homicide, kidnapping and violent rapes. He shared that there were fifteen homicides in South Dakota in 2012 and seven of those were domestic related.

Mr. McGuigan discussed the history of domestic violence as it applies to the Attorney General's office. He said that in 1980 the domestic violence code was adopted. In 1991, the Crime Victims Act and Crime Victims Compensation Act were adopted. These acts include such things as the victim's right to be notified, the right to be consulted and much more.

Mr. McGuigan continued by talking about the Stop Violence Against Women Act that was passed by Congress in 1994. He said that workgroups were put together on the state level to determine how to best implement the act in South Dakota. Additional police officers were hired because of this Act and that many counties still have prosecutors dedicated to domestic violence crimes.

Mr. McGuigan said that another area the Attorney General's office has been working is protection orders. Previously there were no standardized forms or uniform process regarding protection orders. The Attorney General's office established a uniform process and forms that are now used in every clerk of courts office. It was not too many years ago when the victim had to have the actual protection order with them at all times. A system was developed where protection orders were logged in with state radio, and now the system has been computerized for even better access for the authorities.

Mr. McGuigan reported that the Attorney General's office is also involved in the training for law enforcement officers. One specific area in which they do training is domestic violence, which is

required by statute. Every four years certified officers are required to take a refresher course in domestic violence. State's Attorneys also receive training in domestic violence every four years.

Mr. McGuigan said that the Attorney General's office is also obligated to compile, maintain, and write an annual report for criminal statistics, including domestic violence. He added that 1,086 reports of domestic violence have already been reported to the Attorney General's office this year. He said to keep in mind that not every crime is reported by the victim, and these statistics only include reported cases.

Mr. McGuigan said that part of SB 70 passed in the 2013 Legislative session, is the requirement to implement a Statewide Automated Victim Information and Notification (SAVIN) system. The Attorney General's office has until July 1, 2014, to get that program up and running. At this time, the victims are contacted in writing with any information regarding the perpetrator. This new system would allow them to keep informed electronically.

Mr. McGuigan said that criminal history is based on arrest data. He said that there are two ways for a criminal to get his or her rights restored: one is for the Governor to grant a pardon; and the other is for the person convicted of a misdemeanor to request that crime be erased from his or her record, which he or she can do after a ten year period. Federal law, however, prevents anyone who has been convicted of a felony or a misdemeanor domestic violence from possessing a firearm.

Mr. McGuigan continued by saying that the national criminal background check system was established under the Brady Bill. That system is set up so that when a background check is done on someone trying to purchase a gun, the seller receives either a "yes", "no", or "hold" as a response. Even if the state has restored a person's rights, the check done when purchasing a gun may come up "no" because of federal laws.

Senator Tieszen asked if the federal government queries the state about a crime, will they get the domestic violence tag even if it has been pleaded down to a disturbance charge. Mr. McGuigan said yes, that is correct. Senator Tieszen continued by asking if someone had a domestic violence charge that was plead down to a disturbance twenty years ago, will that person be protected by the 2005 Schoenbeck bill. Mr. McGuigan said that person would probably not be protected when it comes to purchasing a firearm.

Representative Soli asked what can be done to correct this issue. Mr. McGuigan said that this can only be corrected by the U.S. Congress.

Mr. McGuigan said that South Dakota does not have a stand-alone domestic violence crime in the statutes. When asked how a stand-alone crime would make a difference, he said that now it is on the person applying for the firearm to prove that the misdemeanor was not domestic violence. If it was a stand-alone crime, no proof would be needed.

Representative Gibson asked how many people are affected by this issue in South Dakota. Mr. McGuigan said that potentially there were 2,750 people in 2011, 2,870 people in 2012, and 1,086 people thus far in 2013.

Representative Stevens asked if there is a difference when using the terms domestic violence or domestic abuse. Mr. McGuigan said if you search the code by using either term, you will find the same information. In the code, the terms mean almost the same thing.

When asked about homicides in South Dakota, Mr. McGuigan said that there were fifteen homicides in 2011. Of those fifteen, five were women. All different types of weapons were used, but the most common weapon of choice in South Dakota is a knife.

More information and statistics can be found on the Attorney General's website: <http://atg.sd.gov/>

### **Uniform Judicial System**

**Chief Justice David E. Gilbertson, South Dakota Supreme Court, and Suzanne Starr, Staff Attorney, Unified Judicial System**, talked to the committee about the role domestic abuse cases play in the court system.

Chief Justice Gilbertson said that they conducted a poll of presiding justices asking about the current laws on domestic violence. He said that most judges believe the current laws are working as intended and do not see any need for major legislative changes.

Representative Stevens asked if there is training for judges regarding domestic violence laws, standardized forms for protection orders, and uniform procedures. Chief Justice Gilbertson said that judges do receive training in the spring and fall but that training focuses on new laws.

Representative Stevens asked about temporary protection orders. Chief Justice Gilbertson said that he has heard some complaints in the past, that out of twenty-five that get scheduled, maybe only five show up. But, he said, the judges did not identify this issue when recently queried. Ms. Starr added that most judges believe that the safety factors from the protection orders far outweigh the abuses.

Representative Stevens asked if these temporary protection orders are used as leverage in child custody cases. Chief Justice Gilbertson said yes, but, when polled, the judges did not say that this is a problem.

### **Committee Dialogue, Next Steps**

Chair Soholt said that they will consider going out to several communities to take public testimony in late August. The dates most likely to be used are August 21 and 22.

**SENATOR PETERS MOVED, SECONDED BY REPRESENTATIVE GIBSON TO CONDUCT PUBLIC HEARINGS IN SIOUX FALLS, RAPID CITY, ABERDEEN AND THE YANKTON/VERMILLION AREA IN LATE AUGUST. The motion prevailed on a voice vote.**

The Chair said that these meetings will be scheduled and she will announce the final schedule for the public hearings at the committee's August 1, 2013, meeting, which will be held in Pierre.

### **Adjourn**

**REPRESENTATIVE GIBSON MOVED, SECONDED BY SENATOR TIESZEN TO ADJOURN. The motion prevailed unanimously on a voice vote.**

The Committee adjourned at 3:30 PM.

