

SOUTH DAKOTA CORRECTIONS COMMISSION
PIERRE COMMUNITY WORK CENTER TRAINING ROOM
PIERRE, SD

JANUARY 29, 2018 4:00 PM

OPENING BUSINESS

Vice Chairman Troy Heinert called the meeting of the South Dakota Corrections Commission to order at 4:00 PM at the Pierre Community Work Center in Pierre, SD on January 29, 2018.

Members present were Senator Troy Heinert, Senator Art Rusch, Representative Jamie Smith, Judge John Brown, and Representative Kevin Jensen.

Present via Teleconference were Bruce Yakley and David McGirr.

Eight of nine commissioners were present.

Also present were DOC Cabinet Secretary Denny Kaemingk, DOC Deputy Secretary Laurie Feiler, DOC Policy and Compliance Manager Aaron Miller, Attorney General Chief Deputy Charles McGuigan, and Senator Craig Kennedy.

REVIEW AND APPROVAL OF NOVEMBER MINUTES

Heinert asked for review and approval of the minutes from the last regularly scheduled meeting on November 29, 2017. Brown motioned that the minutes be approved as written. Rusch seconded the motion. The minutes were approved.

INTRODUCTION OF NEW MEMBER

VICE-CHAIRMAN HEINERT

Welcomed Representative Kevin Jensen to the Corrections Commission.

DISCUSSION OF SENATE BILLS 61-65

VICE-CHAIRMAN HEINERT

Prison-Jail Cost estimates for Senate Bills 61, 63, and 64 were distributed. Senate Bills 61, 62, and 64 have been heard by the Senate Judiciary Committee, Senate Bills 63 and 65 have not. Heinert stated he was not convinced these bills followed the direction DOC was trying to go, based on the information presented to the Commission at the November meeting. Heinert asked Kaemingk if he would like to add anything to his statement. Kaemingk

replied DOC would be there to answer any questions the Commission had; otherwise, it would be good for the Commission to make a determination on what stance they would like to take.

Rusch spoke about SB 61 and provided the Commission with updates on the status of the bill and what the bill would do if passed into law. SB 61 has been heard in the Senate Judiciary committee and was amended by Senator Kennedy on the floor. Rusch stated the amendment would allow individuals not to provide notice in-person that they were moving because this seemed to impose an unreasonable burden on people. Kennedy added the Attorney General indicated he was ok with the amendment. Rusch stated SB 61 would cost the state approximately \$25,000 per year as reported on the fiscal note. Heinert confirmed SB 61 passed 6-0 in the Senate Judiciary Committee with the amendment.

Heinert stated SB 63 had not yet been heard in Committee yet. McGuigan stated it would probably be heard next week. According to LRC staff, the jail impact statement would be available by the end of the week. The AG's office anticipates both SB 63 and 65 will be heard sometime next week.

Heinert questioned whether "Distributor" was defined in the bill or other places in law. Brown stated that during jury instruction, distribution/distributor is often very broad and can apply to any transfer of a substance from one individual to another. Kaemingk asked for clarification if there were two distribution statutes with the kingpin statute that came out of SB 70. Brown answered it was not defined any different, but distribution is a disqualifier from being able to participate in drug court. McGuigan answered Section 1 of SB 63 had language lifted from existing statute in SDCL 22-42-2. Also, Section 1 is specific to meth. Distribution qualifications come from existing law. SB 63 is specific only to meth and enhances each one level above existing statute. Brown stated raising distribution from a Class V to a Class IV felony would take it out of the presumptive probation category. McGuigan added that for distribution, they had also put in the federal safety valve from the mandatory minimum in Section 3. For the court to circumvent the mandatory minimum, the court would have to find the factors of the federal safety valve apply. Feiler asked if this would change for possession. McGuigan answered no, only manufacturing, distribution, or dispensing.

Heinert asked to clarify if this would remove presumptive probation. McGuigan answered it would not; distributors are not eligible for presumptive probation currently. Heinert gave a scenario of an individual handing out methamphetamine to friends. Brown, Rusch, and McGuigan indicated that under current law, that individual would be a distributor. McGuigan added current laws regarding distribution are not being changed. Heinert asked Kaemingk if these changes and the bill was supported by the department. Kaemingk answered that the Commission should discuss the bill based on the information presented.

Heinert stated he did not believe SB 63 and it's intended purpose is in line with many components set by the passage of SB 70 or the Commission's previous discussions about the rising prison population and associated costs. It has been reported that SB 63 may cost the state \$5.5 million over the next ten years.

Yakley asked if the bill was going to change behavior. Heinert followed by asking if there were any studies on incarceration effects or mandatory minimums. Jensen answered there were many studies on the ineffectiveness of treatment with methamphetamine. The typical 30 day treatment program does not work for most meth users; the Matrix model of treatment of meth is a six to nine month program with at least a year of follow-up after and consistent mentoring. Kaemingk clarified DOC does not have a 30 day treatment; they use CBISA, which is based on a 14 week model. Heinert asked if there was a cost estimate for providing 3-4 months of treatment. Feiler answered the Department of Social Services provided treatment services for DOC and they would have cost information. She added the CBISA outcomes are good if individuals finish the program. Overall DOC recidivism is 23% at one year and the CBISA is less than half of that. Heinert asked where those services are being provided now. Feiler answered both in the institution and the community. Kaemingk added in rural places, providing treatment can be challenging. There is a push to add telecommunication to help expand treatment options.

Jensen asked if there needed to be a distinction between a distributor and a dealer versus a user. Heinert answered there are separate manufacturing statutes. McGuigan clarified it is the same statute; the same provisions apply to manufacturing. Brown commented that manufacturing within the state has decreased because it is cheaper to import meth from Mexico than it is to make it here. McGuigan stated a record amount of meth was seized last year in SD. Heinert asked about the charges that are typically pursued in these cases. McGuigan answered it depends on the circumstances. Brown stated that distribution can be plead down to ingestion or possession, depending on the circumstances. Rusch agreed every case is different and most of these cases end up on the desk of the local state's attorney, so it would vary on how they are prosecuted. He stated his experience has been that raising the penalty for a crime does not have a particular effect because people either do not know what the penalty is or do not care what the penalty is when they commit a crime. With a cost of \$5.5 million to the state and \$161,000 to the county, Rusch asked if it would be better to put that money into some longer term treatment programs.

Smith asked what evidence was used to determine that an increase in sentences would work. McGuigan answered since SB 70 has been adopted, the arrests and prosecutions for methamphetamine have continued to increase. Kaemingk asked McGuigan to clarify if he was saying that the SD Public Safety Improvement Act had caused the increases. McGuigan responded that SB 70 and the increase in prison population are separate issues. Increases in meth crimes is happening independent of SB 70. McGuigan added the incentive has been

removed for persons to cooperate with law enforcement and to provide information about the dealers. Kaemingk asked if cooperation with law enforcement is based on whether or not you are imprisoned.

Heinert asked what other states are trying to tackle the meth issue. Kaemingk stated treatment is always being reviewed. Kaemingk stated that to his knowledge, no other states were looking at increasing drug penalties. Feiler answered it most likely a combination of prevention, keeping drugs from coming into the state, and responding in a way that best promotes public safety. Locking someone up provides for public safety in the short term, but we have to work on changing behavior in the long-term. Jensen stated prevention works. This had been demonstrated under Governor Rounds with the federal "Meth Makes You Ugly" program. From 2002-2009, meth use numbers were down, but since federal funding for the programs ran out, numbers started going back up. Heinert asked what the program's budget had been. Jensen responded for the entire time period it was approximately \$4.5 million statewide. Jensen stated the current "No Meth Ever" program through the AG's office was not enough since it was only media based. Heinert asked McGuigan what the budget was for that program. McGuigan answered \$100,000 and is funded with donations, except for some drug control fund money. There are no state dollars funding the program. Heinert asked if the \$5.5 million for SB 63 would come out of the general fund. Kaemingk stated that it would. Heinert agreed there was a need for a prevention campaign targeting younger people. Kennedy agreed prevention is a critical component when dealing with substance abuse. This money would be better spent on prevention and treatment programs. We are not opposed to being tough on crime, but we need to be smart on how we deal with crime.

Heinert asked Kaemingk if ingestion was a bigger problem in the male population or female population. Kaemingk stated 47% of the male population are violent offenders. 27% of the non-violent offenders have a drug offense. With the male population, 53% of the drug offenses are for possession, distribution is 21%, and ingestion is 26%. For females, 27% of the population are violent offenders, with 64% of the non-violent offenders in on a drug offense. Breaking down the drug crimes in the female population, distribution is 12%, ingestion is 35%, and possession is 53%. Kennedy asked what this translated to in raw numbers. Kaemingk responded that for the female population, there were 384 with drug offenses. Of those, 121 were ingestion, 183 possession, and 40 distribution. Kaemingk had charts showing these numbers; copies were made and distributed.

Heinert asked Kaemingk where DOC would like to see money spent. Kaemingk answered that funding has been requested through the appropriation process to identify and fund additional community services for minimum custody offenders who are eligible for placement in the community. This would include community-based treatment. Feiler added DOC is continuing to look at improving the options for providing services to

offenders in the community to help with transition back to the community. Kaemingk also shared he has requested funds to address the increasing inmate population and improve the staff to offender ratio within the institutions.

Jensen stated if SB 63 makes it to the House, he would support it because there would be cases where this would be a helpful tool. This is something to try because what we are doing right now is not working.

Heinert stated he would rather the money tied to SB 63 be given to Corrections for treatment and towards prevention programs. Smith said prevention requires an early investment and takes time; if we started kids with prevention in Pre-K, we would have fewer people in jail. It is frustrating that we can get money to lock people up now, but cannot invest the money in prevention on the front end.

Rusch stated he did not want the legislature to think passing SB 63 would be painless. The legislature needs to understand SB 63 has real costs associated with it.

Yakley stated SB 63 would be a waste of money if passed. Behavior is not going to change because of additional criminal penalties. Resources are limited, and must be used wisely. Jensen stated treatment beds are a limited resource; just because we put money into treatment does not mean we have a place to put the individual. Kaemingk answered if outpatient treatment is not an option and someone needs more support, than you have residential component with outside treatment. In-patient treatment is used seldom across the country and is not the most cost efficient. Jensen replied short-term in-patient for detoxing has been successful, but no one treatment program works for everyone because of different levels of use and addiction, as well as personalities.

Heinert asked Brown and Rusch if in their experience, the individuals coming before the courts with distribution charges are hardcore addicts or users who are trying to supplement their income by selling some extra product. Brown answered the hardcore addicts are typically charged with distribution. Dealers tend not to be heavy users as this is often their income or supplement to an income earned from another job, although, it is difficult to make generalizations as each case can be different. Feiler added methamphetamine is one of the more criminal drugs as users of meth then to become more involved in a criminal subculture and mindset. They have a criminal orientation in addition to an addiction. The DOC received a federal grant that it is using to develop a program for Native American females in Rapid City to help them avoid probation violations. DOC also has an Appropriations request to move 70 qualifying CTP offenders out of the Penitentiary into community based housing. Brown added that this is also the goal of drug courts, to give these individuals stabilization and skills for a lifestyle that supports sobriety. Kennedy asked if there was another probation program called Hope. Brown answered Hope is a program used by the court that combines regular probation with random drug testing.

Heinert asked where the telehealth services were being provided. Kaemingk answered that DSS is the provider. Feiler added that it was delivered from the facilities that contract for those services. Heinert asked if Corrections worked with DSS during the budgeting cycle and how that process worked. Kaemingk answered that DOC reviews what services are needed and provided and advises DSS if there are concerns or needs. Staff from DSS has indicated that the waiting length to get into treatment is four weeks or less.

Heinert indicated that he did not believe the Commission needed to take any sort of official action at this time on SB 63. He stated he would not support SB 63 as it was written currently. He asked the other commission members for their thoughts.

Brown said locking people up for longer periods of time can have effects on the problem. Prevention is obviously a necessary element as well as treatment. He hopes that the legislature, if they decide to pass SB 63, does not think they can do it without significant cost and must also be willing to invest more money in prevention and treatment.

Rusch indicated he was unsure there is a real reason to differentiate penalties here and that most judges do not like mandatory sentences.

Yakley stated he could not support SB 63.

Smith stated if the legislature is going to appropriate money to lock individuals up in prison, an equal amount should be appropriated to help keep from being locked up.

Jensen stated if SB 63 made it to the House, he would support it as a short term tool that could be useful in addressing the meth epidemic. Prevention takes time and commitment and there is a need for more immediate action. He supports giving the Attorney General's office one more tool, and maybe eventually phasing it out if something else proves more useful.

Heinert stated he cannot support 63. He indicated he would like to meet with the Attorney General and combine efforts to look at doing something along treatment.

SCHEDULE OF NEXT MEETINGS

Spring 2018	Mike Durfee State Prison Springfield, SD	Agenda Forthcoming Election of Chairman
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CONCLUDING BUSINESS

Heinert adjourned the meeting at 5:20 PM.
