

# Juvenile Justice Public Safety Improvement Act Oversight Council Meeting

May 17, 2019

10am-4pm

Aberdeen, South Dakota

## Meeting Documents

- [Agenda](#)
- [JJRI Terminology](#)
- [JJPSIA Overview Powerpoint](#)
- [5<sup>th</sup> Circuit and Brown County Deep Dive](#)
- [5<sup>th</sup> Circuit JJRI Service Report](#)
- [JJRI Evidence-Based Services](#)
- [Treatment Referral Process for Justice Involved Youth](#)
- [Native American Focus Group Progress Report and Final Recommendations](#)

## Call to Order

Shortly after 10am, Greg Sattizahn, chair of the Juvenile Justice Public Safety Improvement Act, called the meeting to order.

## Present

- Greg Sattizahn
- Justice Janine Kern
- Justice Steven Jensen
- Tiffany Wolfgang
- Kristi Bunkers
- Angela Shute\*
- Judge Scott Myren
- Lindsey Riter-Rapp\*
- Senator Alan Solano
- Senator Craig Kennedy\*
- Rep. Kelly Sullivan\*
- Tom Hart\*
- Secretary David Flute\*
- Chuck Frieberg
- Bryan Harberts

## Absent

- Kelly Marnette
- Dr. Kelly Glodt
- Andrew Robertson
- Neil Von Eschen
- Rep. Kevin Jensen

*\*Indicates a newly appointed member.*

## JJRI Overview

Mr. Sattizahn gave an overview [presentation](#) regarding the impetus for the 2015 juvenile justice reform.

Prior to SB 73, South Dakota was a national outlier in terms of juvenile justice. South Dakota had the second highest commitment rate for juveniles in the nation, and seven out of ten commitments were for probation violations, misdemeanor offenses, or Child in Need of Supervision (CHINS) cases. Consequently, the legislature passed SB 73 to better serve youth involved in the justice system. The

legislation implemented several policy changes, including mandatory diversion, juvenile citations, and narrowed commitment criteria.

None of the members had any questions or comments related to the JJRI Overview presentation.

### *Legislative Session Recap*

Following the JJRI Overview, the Council opened discussion about the previous legislative session. During the 2019 legislative session, there were two bills that attempted to modify the commitment criteria to the Department of Corrections. Both bills ultimately failed to pass. Senator Al Novstrup, who was in attendance as a guest and a sponsor of one of the bills, indicated that he brought the bill because the current juvenile justice system worked for 98 percent of the juveniles. His bill intended to address the remaining two percent.

Senator Susan Wismer indicated that her concern was related to rural communities and schools. She expressed concern that swift and certain sanctions were no longer utilized in her community. Senator Alan Solano questioned what tools were lost to school districts because of SB 73. Senator Wismer responded that she felt that the distance counselors had to travel between Aberdeen and Brittan was prohibitive for schools. She also felt as though probation should still be an option.

Tiffany Wolfgang responded that there was a summer study that addressed some of these concerns. Some of the items covered in the study looked at options available in the community, the citation process, and accessible services. Kristi Bunkers noted that there exists a strong preference for removing a child from the community because placements are now the norm; although there are other options available in small communities. Ms. Bunkers pointed to Charles Mix as an example. After working through initial inhibitions, the county now participates in the county fiscal incentive program for diversion, and many of the initial concerns have been reduced.

Senator Solano commented that he felt that some of the apprehensions felt by schools are related more to mental health needs. There is no one-size-fits-all solution; consequently, it is important for schools to continually reach out to their local mental health providers. It is not a problem that can be solved through one meeting. Ms. Wolfgang added that some of Senator Wismer's concerns about the distances counselors must travel could be alleviated with telehealth, which is available statewide.

Judge Myren pointed out that there were still options available to the schools and the laws have been amended in the past to address school concerns. For example, the initial legislation did not allow a truancy petition and possibility for probation until the third offense. However, that was later amended to make it an option the first time it occurred.

Mr. Sattizahn recalled a "roadshow" conducted by the UJS, DOC, and DSS that visited several small communities to host discussions about what is available, what is needed, and what could be done to help. Ms. Bunkers added that she felt that was helpful from both the state side and the local side—the state was able to better understand what was needed, and the local side was able to better understand what options were available. For example, schools were previously apprehensive about making referrals; however, a better understanding exists about how the process works.

Secretary Mike Leidholt, Department of Corrections, added that he thought it would be helpful to use school data if any reforms were to be recommended to the legislature. The initial SB 73 was crafted with a data driven approach, and it is not a good policy approach to craft legislation based on anecdotes.

Senator Wismer felt that it was significant that several educators testified during the legislative session about the juvenile justice bills. Senator Novstrup commented that he did not feel as though prosecutors had a strong enough voice either.

At this time, Chris White, Brown County State's Attorney, recapped the motivation for SB 67. He emphasized the need for resources in rural areas. Senator Wismer added that her community had the resources Mr. White referenced, but that the clinicians were too busy to address the needs in the community. Mr. White felt that some communities were not aware what was available as options, and that judges do not have enough options. The purpose of the bill, as explained by Mr. White, was to open more options to the judge to help the child.

Bryan Harberts explained the psychiatric residential treatment bed process, as well as the funding streams associated with each referring agency. Ms. Wolfgang added that eligibility means that the youth has a mental illness with functional impairments because of the mental illness necessitating residential inpatient treatment, as recognized in ARSD 67:16:47:04.05. Mr. White expressed concerns that there are still no locations in which to send a child. He would like to be able to send a child to DOC for rehab. According to Ms. Bunkers, however, the process has changed at the federal level in terms of how beds are paid for. DOC cannot make a direct placement in a Medicaid funded bed without going through the State Review Team process. To be in compliance, DOC referrals go through the same process for determining medical necessity as probation and DSS. Justice Kern added additional history, pointing out that in the past it was necessary to lose custody if the child were to have a PRTF; however, that is no longer necessary. Therefore, some children never needed to go through DOC. This represented a positive system change.

Recalling a comment made earlier about the number of children SB 67 would impact (Mr. Brown previously estimated roughly three from Brown County), Senator Kennedy said that if the system is missing only three kids, then the system was currently working well. He had concerns that changing the system for such a small number would erode some of the success seen elsewhere. Senator Kennedy also felt that systems should not be changed simply because stakeholders were frustrated with certain youth. Senator Solano agreed. While not opposed to making improvements to the legislation, he felt that the solution needed to be targeted and comprehensive.

Justice Jensen noted that there will always be tension between consequence/punishment and treatment. There is frustration—all that is heard is that there are not enough consequences or services. He asked if consequences solved problems prior to SB 73. As he recalled, they did not. He challenged the Council to consider to what extent should the problem fit the consequence. Mr. White answered that the tension will never be solved, but of the three in his county estimated there was one child who lacked services, and two who lacked consequences.

Karly Winter, from the Brown County States Attorney's office, gave a general description of some of the reasons a child should go to DOC, with the lack of services being an overall theme. Lindsey Riter-Rapp commented that those were cases of children who should not be in DOC due to their self-destructive behavior.

According to Secretary Leidholt, the reality is that the children in question would not, nor should not, qualify for DOC. 75 percent of the time, the contracted providers turn down the child due to the lack of space or other reasons. Therefore, the child sits in detention because there are no beds available. There

are currently 24 South Dakotan children placed out-of-state due to the lack of beds in-state. Mr. Harberts added that many of their PRTF children are youth that most likely would have been committed to DOC in the past because parents give up and have their child placed in a bed. There is limited funding available for this purpose, so the placement problem can often be acutely felt.

#### *5<sup>th</sup> Circuit and Brown County Deep Dive*

Following the Legislative Recap, Mr. Sattizahn walked the Council through [the 5<sup>th</sup> Circuit and Brown County Deep Dive](#). Ms. Bunkers and Tiffany Glaser addressed the DOC and DSS portions of the report.

- There was some discussion about the DOC length of stay data, especially the differences in length between school, DOC, other, and parental referrals. There were comments that the length of stay should be more uniform across the referring agencies.
- Members questioned the availability of services in 5<sup>th</sup> Circuit counties.
- Councilmembers discussed the need for an official CRT team presence in the 5<sup>th</sup> Circuit.
- There were several questions related to the availability and use of telehealth, as well as the success rate compared to in person treatment.
- A discussion occurred about the similarity of services available to a child in DOC compared to a child who is not committed and receives services in the community. There was also concerns about parents unnecessarily placing their child in a bed when it was not appropriate.
- A concern for the schools was child placement outside of the state, the school's budget to address the needs of the children, and the need for interventions.

#### *JJRI Referral Reports*

Tiffany Glaser walked the Council through several documents explaining the JJRI Referral Reports ([5<sup>th</sup> Circuit JJRI Service Report](#), [JJRI Evidence-Based Services](#), [Treatment Referral Process for Justice Involved Youth](#))

There were several questions pertaining to the State Review Team (SRT), which is the first layer of review for placement in a PRTF facility, and the information that is relayed back to the courts when the team does not make a recommendation for placement. While the current practice is to only provide a yes or a no, council members from the court indicated that it would be more helpful to know why a placement was not recommended.

The SRT process for placement can be accessed outside of the juvenile justice system; it is unnecessary for a child to be committed to the DOC to receive services. Members from the provider community commented that parents often seek placement through the SRT process because they are unaware of other options. Placing children unnecessarily in beds makes it more difficult to place children who do qualify. Consequently, children who do qualify may end up waiting in detention centers. Members commented that it would be helpful to have more information available about the purpose of the SRT and how referral process works. The council concluded that it may be helpful to explore this process and determine a better way to disseminate information and make the process more transparent.

The Council also discussed the funding streams for services available through DSS, and problems with sustaining certain services in rural areas due to the small numbers of children. While all the same services are currently available from the pre-reform era, additional funding was made available through SB 73 to support evidence-based programs, which have been challenging to sustain in some areas.

### *Native American Focus Group*

Next, the council discussed a 2016 report about juvenile justice for Native American youth. SB 73 created a focus group to outline the current process and make recommendations for improvement.

Secretary Flute (Department of Tribal Relations) discussed the need to engage tribal leadership. He recommended seeing if it were possible to start tracking tribal affiliation for Native American youth in the justice system to better understand what is needed for each tribe. The council also discussed the need to better disseminate information about how the court system handles juvenile justice. Secretary Flute commented that he believed there might be an opportunity for the tribes to access services through Indian Health Services to find resources for justice involved Native American youth.

### *Public Input*

There was no additional public input.

### *Next Steps*

Justice Kern opened the discussion by noting the items that had been identified throughout the meeting as potential needs.

- Availability of short term beds
- Mandated CRT for all counties
- More school involvement
- Better communication regarding SRT referrals with no recommendation for placement
- Better communication with providers
- Uniform truancy response
- More court service officers

Judge Myren suggested forming subgroups to address these concerns that would report back to the larger group for recommendations. Senator Novstrup commented that everyone in the room had the same goal, and that was to provide the best care for the children involved in the justice system. He felt that it was important to trust the experts in the room to draft recommendations.

Mr. Sattizahn suggested creating subgroups that covered the following topics:

- |                     |                                 |
|---------------------|---------------------------------|
| 1. Bed availability | 4. PRTF Process                 |
| 2. CRT Teams        | 5. System Gaps                  |
| 3. Communication    | 6. Possible legislative changes |

### *Adjournment*

The Oversight Council concluded at 4pm. The next Oversight Council meeting will occur in August and will include a Deep Dive of the 4<sup>th</sup> and 7<sup>th</sup> Circuits. Information will be available on the Juvenile Justice Public Safety Improvement Act's [Boards and Commissions](#) page.

Please visit <https://boardsandcommissions.sd.gov/Meetings.aspx?BoardID=134> for more information about this council.