

MINUTES: Committee on Tribal & State Court Affairs
(Unofficial until approved)
MHA Nation Public Safety and Judicial Center,
609 Main Street, New Town ND
February 8, 2019

Members Present:

Justice Jerod Tufte, Chair, North Dakota Supreme Court
Judge Anthony Swain Benson, Northeast Judicial District
Judge Joseph Vetsch, Spirit Lake Nation Tribal Court
Judge Mary Seaworth, Fort Berthold District Court
Kevin Hagen, Standing Rock Tribal Court, Probations (by phone)
Kyle Iron Lightning, Spirit Lake Nation Tribal Court
Scott Hopwood, Director of Juvenile Court Services, Unit 4 (by phone)
Traci Hysjulien, Clerk of Court, Mountrail County (by phone)
Sharon Thompson, Circling Eagle Law, Fargo (by phone)
Erica Thunder (on behalf of Scott Davis), North Dakota Indian Affairs Commission (by phone)
Judge BJ Jones, Sisseton-Wahpeton Tribal Court (by phone)
Rodney Olson, Court Administrator, Unit 2 (by phone)

Members Absent:

Judge Madonna Marcellais, Turtle Mountain Band of Chippewa Tribal Court
Judge Michael Swallow, Standing Rock Tribal Court
Michelle Rivard Parks, Assistant Director, Tribal Justice Institute
Amanda Engen, Spirit Lake Nation Tribal Court, Juvenile Court
Verna Gone, Standing Rock Tribal Court, Chief Clerk
Mandy Davis, Turtle Mountain Band of Chippewa Tribal Court, Juvenile Clerk

Others Present:

Sara Behrens, Staff
Ty Thompson, Good Road Recovery
Sara Robinson, Public Defender, Fort Berthold
Carolyn Spotting Horse – Judicial Assistant, Fort Berthold District Court
Cesar Alvarez – Council Member for Judy Brugh, MHA Nation
Shannon Silbernagel, Lead Probation Officer, Standing Rock

Chair Benson called the meeting to order and directed members' attention to the minutes from August 23, 2018. Rod Olson moved to approve the minutes, Judge Joe Vetsch seconded, motion carried.

Probation Experiences

Mr. Hagen works with the North Dakota Department of Corrections. He has been a state probation officer since 2004. A big challenge he's encountered is simply the remoteness and limited services in some areas. He has been traveling to Standing Rock for over 14 years and has a good relationship with the entities there and has been able to share information. Some of the challenges he sees there are transportation issues, financial issues, probationers absconding, and a lack of treatment in Cannonball. While there are services available such as substance abuse treatment and anger management treatment, these are not always recognized by the state court.

Mr. Jones asked about an agreement with the state. He said they have a North Dakota/Minnesota/South Dakota agreement with the state, tribal parole and parole committee and he had heard they were going to do something similar in Standing Rock. Mr. Hagen has not heard that. He said they have met with tribal council and the chairman is looking at extradition off the reservation. He is not looking at extradition for everyone however, but only the more violent offenders. They are working on setting up due process to get them extradited. Mr. Jones stated he would be willing to share the agreement with Sisseton Wahpeton which is not really extradition, but more recommendations.

Chair Tufte asked about the revocation process. Mr. Jones stated that with such a high revocation rate that state funds the tribal parole officer and has set up a wellness team. When someone is paroled back into the community the tribe supervises and if that person violates they have a hearing and recommend whether to revoke. The state court does the actual revocation. The number one reason for revocation is absconding.

Mr. Hagen noted that with the absconding rate even if they pick up one charge or usage they figure they're going back to prison so they stop reporting. The intent is not to send them back to prison but to rehabilitate them. We have a lot of tools at our disposal to get people into halfway houses and rehab centers. The state pays the bill. One of the biggest challenges is keeping track of the probationers. He knows where every family member lives and he attempts to track them by going house to house.

Chair Tufte went back to the issue of the state court not recognizing some of the services received on the reservation. Mr. Hagen responded that with addiction evaluations and day treatment, as long as it's done by a licensed addiction counselor it is recognized. It comes down to the actual treatment that is provided. They do a wonderful job, but when he's sent completion certificates to some SD courts they do not always recognize it. Treatment has to be provided by a licensed addiction counselor as well. Only the evaluator is licensed. In ND he has not had anyone come back yet and say the completion is not sufficient. In Bismarck, they want a person to receive a minimum of 26 weeks and on the reservation it is 6 sessions and complete so some courts have issues with whether they received sufficient service. He has had to have an evaluation done in Bismarck and then have them complete treatment in Bismarck. Judge Benson

noted that he would entertain modification requests in those situations. He has not had those issues come up yet, but he would be willing to consider such requests in order to serve that population. Chair Tufte questioned whether Mr. Hagen has requested the court to relax the requirements or offered to provide additional information about the services to see whether it would be equivalent. Mr. Hagen responded that he has not. He could staff it with the prosecutor and look at modifying the condition and he will do so in the future.

Judge Seaworth stated that they had three probation officers but now are down to two. In juvenile court they have a male and female juvenile probation officer and they are pretty active with their cases. She is wondering if Standing Rock has its own probation officers. Mr. Hagen stated yes, he works with Shannon Silbernagel and Kristy Marshall. There is also Brett Smith who works with the sex offenders and another he has not yet met. Out of 28 probationers he has on the reservation, 6-8 are on probation in both state court and tribal court. They have a release signed right away to allow exchange of information.

Judge Seaworth asked about the difference between state probation requirements and tribal probation requirements. Mr. Hagen stated there are more requirements coming out of state court. Sometimes the tribal court judges do not require a chemical dependency evaluation.

Chair Tufte asked about interactions between tribes. Mr. Hagen stated they don't really have interaction with another tribe. Most of their interactions are with state courts and federal courts. Ms. Silbernagel stated that she has not had it come up where two tribes have had to coordinate. She has had some probationers with federal probation wanting to move it to Standing Rock. She refers them to Kevin Hagen and that they can get information on interstate transfers.

Ms. Silbernagel explained the makeup of her department is the lead officer (which is her), two other adult probation officers, and a juvenile probation officer. January of last year, they had a caseload of 671 clients and ended the year at 578. They see over 2000 people in the department in a year either coming in to bring a completion certificate, coming in for testing, to attend monthly meetings, to check in or for community service work. They require proof of payment for fines. For community service, she explained there are a number of programs including trash pickup and grave digging. The clients performed over 8000 hours of community service work and this can be credited towards fines. They have an agreement with the BIA OGS to allow inmates to go out on a daily basis. This slows down in the winter other than working with the nutrition program or shoveling sidewalks. All programs that take inmates out to do community service work are required to feed the inmates. There are rules the inmates must follow while out including no meetings with anyone and no smoking.

Ms. Silbernagel explained that they have the 24/7 program in Standing Rock, but North Dakota does not recognize it because they do not have a certificate from the Attorney General for the SD5. They plan to get the certificate again. They are SCRAM certified so they can do house arrest and monitoring. This began in 2012 and they have done over a million hours of

monitoring. Chair Tufte asked who pays for the monitoring. Ms. Silbernagel explained that the defendant pays for it themselves and it is a rate of \$5. One of her duties is grant seeking. Anyone indigent without income to pay for the program can receive grant funds to cover the cost. Anyone gainfully employed must pay. They also have a grant to cover urine testing and drug patches. Again, those who are employed do not receive grant funds. Last year they applied 126 drug patches. The highest result was for meth.

Ms. Silbernagel stated that they update their probation list with conditions weekly. This is provided to dispatch, the chief prosecutor, the probation officers and the clerk of court. This provides the conditions, pretrial services, deferral and any conditions of the deferral, active warrants and restrictions. This list also identifies the registered sex offenders.

Ms. Robinson asked whether they use ankle monitors. Ms. Silbernagel responded that they do and are fortunate to have a Department of Justice grant. They were able to obtain 50 bracelets and 50 base units.

Ms. Silbernagel discussed some of the training she has received. The probation officers were trained under the Duluth Model for domestic violence classes. Following the training, they developed a program they could teach which also incorporated the tribal culture. She's also received a certificate for Attitudinal Dynamics of Driving (ADD) from the North Dakota Safety Council to be an instructor. Over 100 people have gone through the course for DUIs and they have a very low recidivism rate of 2.

She is currently working on additional grants. One of the grants she is currently writing is for infrastructure to house the probation department. Another is for staffing. They hope to get 3 more probation officers. Another is for a youth service coordinator.

Ms. Silbernagel stated she frequently works with Mr. Hagen. She explained that, with a signed release, they are able to exchange information. Judge Benson asked if the court ever requires a release be signed as part of the probation conditions. The courts have never done this.

Chair Tufte asked whether extradition is exercised if someone is on tribal probation and abscond to Bismarck. Ms. Silbernagel stated they do not. Chair Tufte asked whether any other courts ask for the state's assistance to return the probationers who have absconded? Judge Vetsch stated that he has a good relationship with the county. They have not had the issue of someone coming from another tribe and wanting to be supervised. They currently have 58 people who are supposed to be tested twice a week. They do not have the SCRAM system set up.

Ms. Silbernagel explained that one difficulty is that those sentenced by Burleigh and Morton County courts actually live on the reservation. One of her probationers is required to do the 24/7 program. However, he has no means of going back and forth so she was able to get him approved to do SCRAM program. He is now gainfully employed and doing very well. He is almost done with the whole year. Another probationer was sentenced in district court and ordered to 10 days

of house arrest. She did that for him but in speaking with the court they said he was actually ordered to do the 24/7 program. She is now concerned that he will not receive credit for the house arrest he has completed. She believes they need to have a way to resolve these issues and assist those people and avoid them having to be put back into the system because they could not complete the required programs.

Chair Tufte asked Mr. Hagen if he has any insight into the barriers to recognizing the tribal 24/7 program. Mr. Hagen thinks it comes down to court judges and state's attorneys. Most individuals have had the program initiated in the county before they go down to the reservation. He has had Ms. Silbernagel hook up probationers with 24/7 a couple of times.

Good Road Recovery

Chair Tufte moved on to the next agenda item. Ty Thompson is the executive director of Good Road Recovery Center. He is an enrolled member of MHA Nation and holds a bachelor's degree in psychology/counseling. He is a North Dakota licensed addiction counselor. The Good Road Recovery Center is 100% funded by MHA Nation. It is a North Dakota licensed substance abuse and use disorder treatment facility. The primary goal is to reach tribal members facing substance abuse disorders and to provide culturally appropriate, evidence-based treatment modalities. After the oil boom there was an outrageous number of babies born with substance abuse issues. They also had the highest rate of Hepatitis C and had no help from the state.

In 2015, MHA Nation decided to build its own treatment center because they were encountering too many barriers working with the state and other tribes. They accepted their first clients on December 13, 2018. Currently, they have one bed left but are operating at half-staff. They have one RN, 3 LACs, 2 recovery coaches, and 4 in outpatient services. He is coordinating with the tribe to get peer support so they can do further outreach. They have 16 beds but the facility is built for 32. They have an extension plan to go up to 64 beds.

Good Road Recovery has an intensive outpatient treatment program. Native people tend to have the mindset that they can't work with the states. It comes from historical trauma. The program is completely individualized and they stay on the caseload for up to 24 months. For court referrals, they won't send a letter saying treatment is complete until the client is off the caseload. They will provide an update when the client is moved to outpatient treatment. His one request for courts is that they not say they are court ordered to complete inpatient or residential treatment because in a program like theirs, if they truly follow ASAM guidelines they are supposed to go to the least restrictive care and with a court order being that specific, they can't follow ASAM.

Currently, the Center is taking only MHA enrolled members under a directive from Chairman Mark Fox. They have run into some issues with federal court. They ask that if someone is being referred from the court that the one doing the referral have the individual sign a proper release form and provide all court documents and court dates. The Center does not transport directly but they can try to arrange transportation through peer supports.

The three LACs are currently trying to come up with an abbreviated drug/alcohol evaluation that they can conduct in person or by telephone that the court would approve. They do not want people sitting and waiting in jail for an evaluation. They have a good working relationship with New Freedom and other places in the state.

Mr. Thompson also noted that there are only 3 enrolled members who are North Dakota licensed addiction counselors out of 392 licensed addiction counselors in the state.

Ms. Robinson stated that she deals with all the adult criminal clients, all juvenile clients, and all involuntary commitments. As far as she knows, the court here has never ordered any defendant to go to inpatient treatment. Instead, they order that evaluations be done. Substance abuse evaluations are ordered but what comes back is an all-in-one behavioral health assessment which is being done by a couple of the centers. She believes there are communication issues.

Mr. Thompson has a meeting during the Wellness Coalition with Chairman Fox. He expressed that barrier. To do a whole behavioral health assessment can take up to a full week or more. We need to get people into treatment first and that treatment provider should do the assessments. Another barrier is the lack of enrolled state licensed addiction counselors. Good Road Recovery is a state licensed facility and to house that record it needs to be signed off by a LAC. He would urge all tribes to get up to state standards and he's more than happy to assist. He pointed out that North Dakota is one of the toughest states to get into addiction counseling. North Dakota requires the highest amount of hours and a minimum of a bachelor's degree. He thinks we should get tribal members up to that level to streamline these services. It's redundant to redo someone's evaluation and put the client under that same stress because they aren't credentialed. Most want treatment and even if the court orders it they know it's their opportunity. Unfortunately, it is disheartening to have to sit and wait and by that point they decide it's not worth it.

Ms. Robinson stated that, being the public defender, she has many clients with dual diagnoses from Elbowoods and Circle of Life. She stated their own tribal code requires the assessment is conducted by a LAC and it has been difficult to find treatment facilities so they sit in jail. It is difficult to argue for release and try to build a plan to allow them to survive in a community with no treatment.

Judge Seaworth asked about where the new admissions are coming from. Mr. Thompson stated that they are from tribal court, New Freedom, West Central, self-referred and the courts. Judge Seaworth asked whether they have had any state court orders for MHA members. They have not had any directly from a state or federal court.

There was extensive discussion regarding how the court orders should be done. Judge Benson and Judge Seaworth stated they order an evaluation and follow-through with any recommendations. Mr. Thompson feels that communication between the court and the counselors needs to improve to allow the counselors to inform the judge of progress and any new recommendations. This would provide more accountability to the client and more faith in the

system. Judge Vetsch believes the key is the release of information so that the information can be shared with the court and the probation officer. Mr. Thompson suggested that judges require the counselor to provide more information is needed.

There was discussion regarding criminal background and what treatment centers are looking for. Mr. Thompson stated he is looking for relevant history including what brought the client in and any violent or sexual offenses. They also want to know if there are pending charges. Good Road Recovery does take registered sex offenders and will make an effort to work with clients even if they have pending charges. It's important that the facility is provided with any court dates.

Chair Tufte inquired whether Mr. Thompson has provided information about Good Road Recovery to the courts in Minot and Watford City. Mr. Thompson is not sure but he would be happy to do so. Chair Tufte thinks it would be a good idea for judges, probation officers, and prosecutors to ask about membership status to see if the defendant is eligible for Good Road Recovery. Mr. Thompson will put together a packet for the courts. Mr. Thompson would also like to note that it is helpful if the clients have an evaluation somewhere else because Good Road is currently low on counselors.

Cooperation Between Counties and Tribes

Judge Benson addressed the Memorandums of Understanding in juvenile courts. He spoke with the juvenile court officer in Ramsey County to see how the MOU with Spirit Lake is going and she said it's going very well. They are able to share information and do so numerous times a week. They are able to collaborate regarding how to proceed. There is also an agreement regarding drug court but currently nobody from Spirit Lake involved in drug court. There are tribal personnel who sit on the drug court. He feels we should discuss how to expand these agreements and what role we want to take.

Judge Vetsch noted that the key to the relationship working well was breaking down communication barriers. Now it's a matter of taking on the technical and legal issues of sharing information. However, he does not do a lot of work in juvenile court. He is aware of a push to explore trying to get tribal adjudicated youth services in ND because they often find themselves in a situation where they do not have anywhere to place the youth and the only option is jail. Ms. Thunder stated that SB 2153 is addressing this issue and it passed the Senate Judiciary Committee with a 5-0 due pass recommendation and a unanimous floor vote. It is now with the House. There was a similar bill last session that failed but she stated this time it is more detailed with tighter language regarding the ability of her office to co-facilitate and enter into agreements with all federally recognized tribes if they so choose. They have legislative sponsors this time.

Chair Tufte wondering if there are juveniles under the MOU adjudicated in both state and tribal court. Judge Vetsch stated they do have some. This is the only tribe in North Dakota currently doing this that anyone is aware of.

Ms. Thompson provided an update on Chairman Fox's initiative to start a drug court. There have been preliminary meetings and they are hoping to have it up and running this year. They are also working on a grant for a juvenile drug court and are interested in learning more about the Spirit Lake MOU. She wondered about the status of Standing Rock's juvenile drug court. Mr. Iron Lightning stated he knows they are moving forward and working on a grant.

Judge Benson asked if we should consider doing a letter to the tribes about the MOU and how it is working in Spirit Lake. Chair Tufte asked if Indian Affairs has any plan to urge consideration if the bill passes. Ms. Thunder responded that there will be a push from their end but with the understanding that it has to be collaborative.

Chair Tufte moved on to the issue of cooperation on arrest and search warrants. Judge Vetsch indicated that they have a good relationship with the county and if anyone would like to review their extradition code he would be happy to share. They currently do it the same way it would work in any county or state: if they come into contact with someone the name is run and when the person is in custody they are presented a waiver of extradition. If the person does not sign the waiver they will appear in front of a judge to determine the validity of the warrant. Once the order is signed it doesn't take effect until the person is relinquished from tribal custody. At that point, the state has 5 days to come and get the person.

Judge Vetsch noted that another issue is that he believes state law currently requires a person to appear in front of a judge before they can be extradited back to the tribes and people spend a week or two in jail on a minor charge and they aren't able to do a waiver under the state's tribal extradition statute. Ms. Thunder asked about the code citation. Chair Tufte stated it appears to be chapter 29-06.1 and that can perhaps be a topic at the next meeting.

Ms. Thunder mentioned that there is an MOU between MHA Nation and McLean County currently but not with Mountrail. The MOU covers 4 topics including extradition, hot pursuit and detainment. She briefly discussed a bill in House Judiciary which would take away authority of reserve deputies. This would be an issue in a place like Sioux County that has only a sheriff and his entire force is made up of reserve deputies who are BIA agents. It did receive a do not pass recommendation.

Chair Tufte noted the Olson case was included in the materials. That case touches on this area. A non-member from Turtle Mountain was stopped in Fort Berthold and the conclusion was that only the tribe can arrest an Indian within the reservation. An interesting wrinkle is how the officer knows what the membership status is. He didn't sure how that can be handled on a practical basis. Cross-deputization would be one solution. Judge Seaworth noted that they know a lot of people and can go by name. Chair Tufte noted in the Olson case the Indian's name was Olson.

There is no date currently set for the next meeting, but we are aiming to meet twice a year. We will try to meet in different locations but the next meeting will likely be held in a county

courthouse or at the Capitol. We appreciate Judge Seaworth hosting this meeting and would be happy to discuss another tribe hosting a future meeting.

Having no further business, the meeting was adjourned at 1:56pm.