

INDIGENT LEGAL SERVICES TASK FORCE (HB 1064)

April 26, 2023

10 am – 12 pm CST

Second Meeting

Via Zoom

ATTENDANCE: Dean Neil Fulton, Judge Mike Day, Rep. Will Mortenson, Sen. Jim Mehlhaff, Brent Kempema, Wendy Kloepfner, Eric Whitcher, Randy Brown, Thomas Cogley, Arthur Hopkins, Greg Sattizahn, Aaron Olson

Not Present: Judge Christina Klinger, Lori Stanford, Traci Smith

CALL TO ORDER: Dean Fulton thanked everyone for being here and stated there is a quorum to call the meeting to order.

APPROVAL OF MINUTES: Judge Day moved to approve the minutes from the meeting held March 31, 2023. The motion to approve was seconded by Wendy Kloepfner. All were in favor by voice vote; none opposed. The minutes were approved.

TASK FORCE MEETING GOALS: Dean Fulton announced this meeting was set to discuss information in the Comparative States Analysis submitted by the National Center following the last meeting.

COMPARATIVE STATES ANALYSIS: Greg Sattizahn stated the goal was to take a look at states who have programs that may be similar to South Dakota in terms of geography and demographics. The documents submitted were meant to be a survey at this point. It was narrowed down to eight states, all in different levels of maturity with their model. Greg mentioned he wanted to provide enough initial information as possible for this Task Force to explore the structure and relationship between states, county and municipalities. Some states have an oversight board, whether it's the executive branch, the chief justice, or a combination, as the appointing authority. Some states hire an executive director to set policy. There are also requirements for training and funding for public defenders.

Greg discussed that the Scorecard was created as a helpful means to detail what South Dakota should look at and consider. He pulled out the ABA ten principles that matter to what indigent representation looks like. Some require more detail than we have now; some are much broader. One important question that needs to be addressed is what South Dakota needs and wants.

David Carroll stated the documents speak for themselves. He added they were cautious not to insert their own views. They felt the overviews hit the important questions of oversight and funding. He mentioned states are at different levels which is why the synopsis doesn't contain more detail and is an overview at this point.

Dean Fulton suggested everyone take time to read through this and use the scoresheet as an assessment of the different systems and then provide comments on the scorecard to include

information you'd like in the system and what information you'd like to look at more closely. This information will be collected and form the discussion for the in-person meeting in June.

Wendy Kloeppner inquired if it would be possible to talk to people in other states to answer questions. David Carroll answered there may be people from other states that would be present over Zoom such as judges, providers or policy makers.

Eric Whitcher remarked he found the documents very useful to see what other states have done. Eric mentioned he wasn't certain if there are other states like South Dakota unique in the way our courthouses are maintained by the counties and staff is funded by the state.

Commissioner Arthur Hopkins added he appreciated the documents but was uncertain how to compare them to South Dakota. Commissioner Hopkins stated many Native Americans do not have the means to hire counsel. His county is the poorest county in the state and does not have a public defender office and inquired if South Dakota only has only three public defender offices.

Judge Day replied we do have funding for the three public defender offices. Wendy added that every county has some system in place where if people want to have an attorney to help them, they are appointed an attorney and then are asked to repay the counties for the representation later.

Commissioner Hopkins mentioned there were 14,000 persons sent to prison from 2019 to 2022 who were unrepresented. He did state he liked Maine's system and also the specific funding Minnesota has for tribal jurisdictions.

Commissioner Randy Brown stated that the Sixth Circuit has five judges, with four of them officed in the Hughes County Courthouse. The courthouse is full and looking at how to expand that budget is a concern. Judge Day mentioned that situation is not unique and they have the same problem in the 4th Circuit. Judge Day added this is a critical issue to discuss when looking at placing new operations.

Jim Mehlhaff commented that maybe appellate work and habeas cases could be handled at a central state level. He would like more information from other states to see what challenges they faced and what is working for them and what could be improved on.

Dean Fulton encouraged everyone to submit their thoughts on the scorecard and what information they're seeking. Some issues to be addressed more closely are governance oversight, administration, housing and board composition. Wendy asked if they should include everything in their requests, no matter the cost. Dean Fulton replied everything should be put on the table initially and then identify the key needs based on feasibility and efficiency.

Rep. Will Mortenson discussed the best system of delivery for the counties when asking for additional money from the legislature would be to prove the benefits to the citizens and tax dollar savings and making meaningful changes to the state.

LISTENING SESSIONS PROPOSED: Greg discussed the map handout which shows the proposed locations for listening sessions and gathering information around the state on the provision of legal services. Greg tried to find locations covering the entire state. The goal is to have these sessions completed before the in-person meeting June 20th. Invites will be sent out to counties, state's attorneys, local judiciary and the public.

Wendy suggested the possibility of creating a webpage that would show the meeting dates and possibly also have a link to the meetings for people to participate. Greg agreed the webpage makes sense and suggested he could add a tab to the UJS webpage to house this information along with other information. Wendy also suggested adding this information to the LRC webpage, and Rep. Mortenson said he would try to help there.

DISCUSSION AND NEXT STEPS: Dean Fulton indicated everyone can send their survey information to Greg. Greg, Aaron and Jeff will work on the dates and locations for the listening sessions. Greg stated he will look into putting information on the webpage. The next big step will be the in-person meeting June 20th in Sioux Falls from 1-5 pm.

Eric Whitcher asked for the number of court-appointed cases by circuit or county to help with the analysis. Greg answered he can pull that information together. Wendy added information from the prior Appendix B in the UJS Annual Report would be helpful. Greg replied he will look back at previous reports to find that information.

PUBLIC COMMENT: No one from the public had further comments

ADJOURNMENT:

HEARING NO FURTHER COMMENTS, A MOTION WAS MADE BY SENATOR MEHLHAFF TO ADJOURN THE MEETING. THE MOTION WAS SECONDED BY JUDGE DAY.

VOICE VOTE: ALL IN FAVOR; NONE OPPOSED. MOTION APPROVED AND CARRIED.

Meeting adjourned at 11:15 am.