

## NORTH DAKOTA LEGISLATIVE MANAGEMENT

## Minutes of the

**JUDICIARY COMMITTEE**

Tuesday, July 1, 2014  
Harvest Room, State Capitol  
Bismarck, North Dakota

Senator David Hogue, Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Senators David Hogue, Kelly M. Armstrong, John Grabinger, Stanley W. Lyson, Mac Schneider, Margaret Sitte; Representatives Lois Delmore, Ben W. Hanson, Karen Karls, Lawrence R. Klemin, Kim Koppelman, William E. Kretschmar, Diane Larson, Andrew G. Maragos, Gary Paur

**Others present:** Mr. John Walstad, Legislative Council, Bismarck  
See [Appendix A](#) for additional persons present.

**It was moved by Representative Delmore, seconded by Representative Maragos, and carried on a voice vote that the minutes of the May 6, 2014, meeting be approved as distributed.**

**REPORT**

Chairman Hogue called on Mr. Wayne Stenehjem, Attorney General, for the presentation of a report ([Appendix B](#)) regarding current status and trends of unlawful drug use and abuse and drug control and enforcement efforts in this state.

Mr. Stenehjem said the youth risk behavior survey indicated that tobacco use among youth is decreasing. He said the use of alcohol by North Dakota teens has decreased for almost all responses, including drinking and driving and binge drinking. He said the number of teens who said they drove when drinking alcohol decreased from 2009 and is now about equal to the national rate of 10.7 percent. He said the survey indicated those who had at least one drink in the past 30 days decreased from 38.8 percent in 2011 to 35.3 percent in 2013. He said for other illicit drugs, marijuana remained steady at 15 percent and is now lower than the national average by 8 percent. He said a slight increase, from 16.2 percent in 2011 to 17.6 percent in 2013, was noted in North Dakota high school students who have taken a prescription drug, such as OxyContin, Percocet, Vicodin, Adderall, Ritalin, or Xanax, without a doctor's prescription.

Mr. Stenehjem said almost nonexistent in the state in 2009, the use of synthetic drugs skyrocketed in 2011 and 2012. He said synthetic drug submissions to the Crime Laboratory increased from 311 in 2010 to 1,470 in 2013. He said in November 2012, in conjunction with the State Board of Pharmacy, the Attorney General's office took emergency action to ban the sales of these often deadly synthetic products in the state. As a result of this combined approach, he said, synthetic drug arrests have fallen and submissions of these synthetics to the Crime Laboratory decreased by 75 percent in 2013.

Mr. Stenehjem said a report of the Attorney General's Bureau of Criminal Investigation, which compiles data provided by the law enforcement agencies serving the state, indicates that drug arrests have increased by 286 percent in the past 22 years from 745 in 1990 to 2,872 in 2012. He said meth labs have been reduced by 97 percent since 2003—the year the Legislative Assembly first passed laws restricting sales of over-the-counter medicine used in the manufacture of meth.

In response to a question from Representative Larson, Mr. Stenehjem said while the pseudoephedrine sale restrictions helped reduce the number of meth labs in the state, most of the meth sold and used in the state has always come from out of state. He said the out-of-state meth coming into the state continues to increase. He said the while the Bureau of Criminal Investigation's drug case numbers have increased, the complexity of these cases and the quantity and quality of drugs involved present even greater challenges and a more dangerous environment for agents. He said the focus of the bureau's enforcement efforts has transitioned from investigating and arresting local dealers who dealt in grams and ounces to the investigation of dealers distributing many pounds of drug product. He said the vast majority of drug dealers are now armed and organized with potentially more tendencies toward violence.

In response to a question from Chairman Hogue, Mr. Stenehjem said the meth made in local meth labs is in small amounts and generally not good quality. He said the meth from out of state is coming in by the pound, not just a few grams like what can be made in a local meth lab.

Mr. Stenehjem said with regard to the prescription drug problem, one of the things working well is the prescription drug take-back program at local law enforcement agencies. He said 71 percent of youth said they obtained prescription drugs from medicine cabinets. He said some pharmacies will also take back limited types of prescription drugs. He said federal law is changing to allow pharmacies to take back nearly all prescriptions. He said the prescription drug monitoring program is intended to allow physicians and pharmacists to see where else a person has been getting prescriptions filled and which other doctors have prescribed. He said the program is not being used as much as it should be. He said Bureau of Criminal Investigation agents are begging for legislation mandating compliance with the program.

With regard to the effect of the changes to the driving under the influence (DUI) laws, Mr. Stenehjem said the number of arrests decreased from 3,975 from January 2013 to June 2013 to 3,023 from January 2014 to June 2014.

Mr. Stenehjem provided information ([Appendix C](#)) on the use of the criminal justice oil impact funding. He said all of the \$16.6 million in criminal justice oil impact funding has been allocated for various needs, including additional Bureau of Criminal Investigation agents, additional Crime Laboratory personnel, 80 adequately equipped vehicles, and housing assistance.

In response to a question from Senator Schneider, Mr. Stenehjem said there has been a steady increase in criminal activity across the state, but there are more concentrations in the west. He said drug arrests, quantities of drugs, and the complexity of the crimes are especially bad out west.

In response to a question from Representative Klemin, Mr. Stenehjem said he will be asking the Legislative Assembly for funding. He will be asking for a continuation of the criminal justice oil impact grant program and will ask for additional assistance to work on drug cartel efforts. He said the Bureau of Criminal Investigation works well with the federal agencies, including the Federal Bureau of Investigation and the United States Attorney's office.

In response to a question from Senator Armstrong, Mr. Stenehjem said a cry has been made for additional funding for substances abuse and mental health treatment in the western part of the state. He said many of those arrested have mental health issues, but there is nowhere to send them for treatment.

In response to a question from Senator Sitte, Mr. Stenehjem said the jail diversion project for low-level users is more of a human services issue, but the Attorney General's office is involved. He said distinctions need to be made between first-time or low-level users and dealers. He said getting the low-level users into treatment is important.

In response to a question from Chairman Hogue, Mr. Stenehjem said they are seeing marijuana and marijuana-laced products coming into the state from Colorado and Washington.

In response to a question from Representative Hanson, Mr. Stenehjem said education and law enforcement efforts will help to continue decrease youth drug and alcohol use trends.

In response to a question from Chairman Hogue, Mr. Stenehjem said he is not sure if there is a correlation between the decrease in DUI arrests and the increase in the number of law enforcement positions. He said the state has more people who are driving more miles, and the DUI arrests have decreased.

In response to a question from Representative Larson, Mr. Stenehjem said the increase in criminal activity resonates across the state. He said, for example, law enforcement is seeing increases in copper theft at construction sites throughout the state.

In response to a question from Representative Klemin, Mr. Stenehjem said human trafficking and prostitution are a big problem, especially in the west.

In response to a question from Representative Koppelman, Mr. Stenehjem said the 24/7 sobriety program is a big factor in the efforts to decrease the number of DUI arrests.

Chairman Hogue said human trafficking is an issue that needs to be monitored. He said the Legislative Assembly will likely be considering the Uniform Act on Prevention of and Remedies for Human Trafficking.

## DRIVING UNDER THE INFLUENCE LAWS REVIEW

Chairman Hogue called on Mr. Perry Smith, President and Chief Executive Officer, A.D.A.P.T. Inc., for a presentation on the privatization of the 24/7 sobriety program. Mr. P. Smith provided information ([Appendix D](#)) regarding the services of his company and how a private entity can be a part of the state's correctional system. He said A.D.A.P.T., which has 10 addiction counselors, is a Christian-based organization that provides support services. He said A.D.A.P.T. provides the following addiction services:

- DUI evaluations.
- Drug and alcohol evaluations.
- DUI seminars.
- Low-intensity outpatient drug and alcohol services.
- Minor in possession classes.
- Substance abuse prevention assessments.
- Aftercare.
- Relapse group.
- Individual classes.
- Awareness classes.
- Drug screenings and collections.

Mr. P. Smith said A.D.A.P.T. also provides electronic monitoring services, including house arrest and work release, in-home and mobile alcohol monitoring using a device called the Soberlink, global positioning monitoring, juvenile tracking, and victim and witness protection. He said a landline is not required for any of the above services. He said with proper court orders and local sheriff's departments' approval, A.D.A.P.T. can provide these services. He said the company does not receive any state or federal funding. He said the client pays the fees. He said A.D.A.P.T. is the only company in the state using the Soberlink device.

In response to a question from Representative Delmore, Mr. P. Smith said the Soberlink device is given to the client. He said the client is notified when to blow into the device. He said the device also takes a picture of the person who blows into the device. He said results and the pictures are available to A.D.A.P.T. within three minutes.

In response to a question from Representative Koppelman, Mr. P. Smith said Soberlink is intended to be done in lieu of the secure continuous remote alcohol monitoring (SCRAM) bracelets or of requiring the offender to come in twice per day for testing.

In response to a question from Representative Klemin, Mr. P. Smith said the devices are calibrated after every 1,500 tests. He said the accuracy of the devices has been tested in court. He said the global positioning system (GPS) bracelets, which are used to identify a client's location, are very accurate. He said one staff person is assigned to monitor each client 24 hours per day. He said the GPS also records data if the client goes out of range.

In response to a question from Representative Klemin, Mr. P. Smith said if the client goes into an exclusion zone, the device sends a notification. He said this information provides documentation to prove violations of court orders.

In response to a question from Representative Delmore, Mr. P. Smith said A.D.A.P.T. has about 60 clients on the GPS devices and about 10 on the Soberlink alcohol devices. He said there were about 60 on the Soberlink device last year, but because of the DUI law changes in 2013 House Bill No. 1302, the company can no longer provide the alcohol monitoring services.

Mr. P. Smith said private providers can play a roll in monitoring offenders. He said the state provides that offenders can only be charged \$1 per test for an alcohol blow, \$5 per day for a SCRAM bracelet, and \$50 for a drug patch. He said he cannot compete with those prices, which are subsidized with government money. He said he has costs of locations and staffing. He said each member of his staff has at least 10 years' experience in their area of expertise. He said to stay in business, he has to charge \$21 to \$22 per day for the SCRAM bracelet. He said he would like know what the true costs of law enforcement providing these services would be without government money.

In response to a question from Senator Sitte, Mr. P. Smith said 98 percent of the company's clients successfully complete their court order.

In response to a question from Representative Koppelman, Mr. P. Smith said prior to the 2013 law change, he was providing these monitoring services to sheriff's departments around the state. He said the law change on the maximums that can be charged for the monitoring services affected his business. He said if the government subsidy is taken out of the picture, it would be more cost-effective for the private sector to provide the monitoring services. He said if the amount the offender pays is added to the amount appropriated by the Legislative Assembly in the last biennium, the cost would be higher than what it would cost his company to provide the same service. He said he has discussed this with the Bureau of Criminal Investigation and was told he cannot charge more than what the offenders are required to pay for the testing.

In response to a question from Representative Klemin, Mr. P. Smith said sheriff's departments do not have the money to adequately fund the 24/7 sobriety program, therefore, those departments are not able to contract with A.D.A.P.T. to help provide the monitoring services.

Chairman Hogue called on Mr. Fred Smith, A.D.A.P.T. Inc., for testimony. Mr. F. Smith said the limitations on the amount that can be charged for the alcohol testing makes it difficult for companies like A.D.A.P.T. to do business. He said the law created a lesser-funded mandate to businesses.

Chairman Hogue called on Mr. Ken Sorenson, Assistant Attorney General, for testimony regarding the privatization of the 24/7 sobriety program. Mr. Sorenson said the 24/7 sobriety program, authorized in 2007, started as a pilot project in Burleigh and Morton Counties with equipment on loan from South Dakota and with funding solicited by the Attorney General from beverage wholesalers. He said in 2009 the program was authorized to go statewide. He said in 2013 the 24/7 sobriety program was mandated for probation.

Mr. Sorenson said the cost of twice-per-day breath testing on a State Toxicologist-approved portable breath test device--the Intoximeter--is \$1 per test or \$2 per day. He said the cost of SCRAM bracelets includes a \$25 activation fee and \$25 deactivation fee. He said that fee goes to the sheriff's department at which the individual is participating in the 24/7 sobriety program. He said the daily monitoring fee is \$5 per day for a landline or download-based system and \$6 per day for a wireless system. He said this daily fee is collected from the participants by the sheriffs' departments and remitted to the Attorney General's office, which in turn pays the monitoring fees to the company that provides the SCRAM monitoring.

Mr. Sorenson said urinalysis testing is \$5 per test plus the cost of any laboratory confirmation testing. He said drug patch testing is \$50 per patch. He said urinalysis is typically not used in alcohol offenses, and the drug patch is never used in alcohol offenses because it only detects drugs. He said individuals participate in the 24/7 sobriety program as a condition of bond or pretrial release; through the juvenile court, as a condition of probation; or to have a temporary restricted driver's license in order to drive during a period in which the license is otherwise suspended. He said the following participation data comes from the 24/7 testing sites throughout the state that enter the information into the sobriety information system:

- There are 1,532 total participants statewide in the 24/7 sobriety program, of which 586 are participating with SCRAM bracelets.
- There are 432 DUI probationers statewide in the 24/7 sobriety program--73 for first-time DUI, 292 for second-time DUI, 47 for third-time DUI, and 20 for a fourth DUI. There have been 39 counties with DUI probationers in the 24/7 sobriety program.
- There are 14 juveniles participating in the 24/7 sobriety program. There has been a total of 60 juveniles to date who have participated in the program. The juveniles' primary offenses have been minor in possession or minor in consumption, first and second DUI, actual physical control, and miscellaneous other offenses.
- There are 79 individuals who have volunteered or opted into the 24/7 sobriety program in order to receive a temporary restricted driver's license. He said he is unsure of the validity of this number because the 24/7 testing sites do not always use the data volunteer indicator correctly when entering the participant information.
- The average cost of an individual's participation in the 24/7 sobriety program is \$537 over the period of participation.

Mr. Sorenson said the 24/7 sobriety program allows for a person to be taken immediately into custody for violations. He said the fees are set in the Attorney General's guidelines. He said when considering all the court costs and fines assessed in conjunction with a DUI offense, the Attorney General wanted to keep the costs as low

as possible. He said the money paid by the offender goes to a county fund for equipment and staff. He said it is important that testing be done near law enforcement so the offender can be taken into custody immediately if there is a violation.

In response to a question from Representative Klemin, Mr. Sorenson said the rules established for the 24/7 sobriety program are not subject to the Administrative Agencies Practice Act under North Dakota Century Code Chapter 28-32. He said if the 24/7 sobriety program was subject to Chapter 28-32, Mr. P. Smith would have a forum to express his concerns.

In response to a question from Representative Paur, Mr. Sorenson said the government's involvement in faith-based organizations is always an issue. He said the 24/7 sobriety program is only a testing program, not a treatment program.

In response to a question from Representative Koppelman, Mr. Sorenson said following a positive test on a SCRAM bracelet, a bench warrant is obtained, and the offender is taken into custody. He said the same could be done for a violation of the Soberlink device. He said the Attorney General's 24/7 sobriety program was exempted from Chapter 28-32 to allow for flexibility and to keep the testing costs down. He said when the program went statewide, it became a judicially driven process. He said the process favors volume. He said Intoximeters are purchased through the state. He said the Legislative Assembly subsidized the costs of the SCRAM bracelets.

Chairman Hogue called on Mr. Charles Placek, Commissioner, Interstate Commission for Adult Offender Supervision. Mr. Placek provided information ([Appendix E](#)) regarding a conflict with the Interstate Compact which was created by 2013 House Bill No. 1302 and a proposed bill draft ([Appendix F](#)) to rectify the conflict. He said due to the mandatory language in Section 39-08-01, which requires at least 12 months of 24/7 sobriety program participation as a condition of probation and one year of supervised probation, if an offender relocates outside the state during the probation period, the probation must be transferred. He said the language in this section could be modified to require a period of 360 days of 24/7 sobriety program participation. He said the less than one year period would not trigger the Interstate Compact transfer. He also said if the probation length could be modified to 360 days, it also would not trigger the Interstate Compact.

In response to a question from Representative Koppelman, Mr. Placek said if the Legislative Assembly adopts the bill draft, the court could sentence the offender to 360 days. In turn, he said, the Interstate Compact would not be involved.

Chairman Hogue called on Senator Armstrong to review the following bill drafts relating to changes to the state's DUI laws:

1. Drug court [[15.0118.01000](#)] - Senator Armstrong said this bill draft would return the use of drug court in DUI cases. He said this language was recommended by Judge Gail Hagerty at the committee's December 11, 2013, meeting.
2. Juveniles in the 24/7 sobriety program [[15.0119.01000](#)] - Senator Armstrong said this bill draft would allow the court discretion in whether to order the juvenile to participate in the 24/7 sobriety program. He said there is not a minimum amount of time a juvenile may be required to participate in the program, but the maximum is nine months. He said issues, such as whether this participation can be a huge burden on the parents, is an issue that can be debated during the legislative session.
3. Lookback period for DUI offenses [[15.0120.01000](#)] - Senator Armstrong said this bill draft would limit the lookback period to 15 years for fourth and subsequent DUI offenses. He said very old offenses can be difficult to prove especially if the offenses occurred in another state. He said previous convictions are an element of the crime and have to be proved. He said as we move forward, more records will be computerized and more available. He said he chose 15 years as a starting point for discussion purposes.
4. Implied consent requirements [[15.0121.02000](#)] - Senator Armstrong said this bill draft would provide that a test is not admissible in any proceeding unless the law enforcement officer provides the individual with the implied consent information that is required by law. He said the version presented to the committee at the May 6, 2014, meeting was revised to amend subsections 2 and 3 of Section 39-20-05. He said if the language in Section 1 of the bill draft is stricken, the language in Section 39-20-05 must be stricken as well.
5. Right to cure [[15.0123.01000](#)] - Senator Armstrong said this bill draft would give the individual the opportunity to cure a refusal of a test. He said the bill draft requires the law enforcement officer to inform the individual that the individual may remedy the refusal if the individual agrees to take a test after having first refused the test. He said without the ability to cure a refusal, the constitutionality of the law may be in question. He said this bill draft would clarify that the accused has a right to cure the refusal.

6. Participation in 24/7 sobriety program [15.0124.01000] - Senator Armstrong said this bill draft would require the law enforcement agency to accept, the same as if ordered by the court, an individual as part of the 24/7 sobriety program if notified by the individual that the Department of Transportation has issued the individual a temporary restricted license that is conditioned on participation in the program. He said this bill draft will resolve some of the issues which have arisen between the administrative and criminal sides of the process.
7. Dual conviction [15.0125.01000] - Senator Armstrong said this bill draft clarifies that for purposes of conviction, the DUI refusal and the DUI charge are intended to be alternative charges. He said he will consult with attorneys from the Department of Transportation to determine if additional changes are necessary.
8. 24/7 sobriety program as condition of probation [15.0126.02000] - Senator Armstrong said this bill draft clarifies that the 24/7 sobriety program is a condition of probation and may not be ordered as part of the sentence. He said the bill draft allows the court to have the option to backdate the date of the offender's participation in the 24/7 sobriety program. He said the credit for time served on the program would be discretionary and not mandatory on the part of the court.

Chairman Hogue called on Mr. Aaron Birst, Legal Counsel, North Dakota Association of Counties, for testimony relating to the DUI laws. Mr. Birst said a number of state's attorneys are concerned about the changes to implied consent requirements in bill draft [15.0121.01000]. He said regarding bill draft [15.0126.02000], he is not sure if a judge can keep an offender on the 24/7 sobriety program once probation is completed. He said he agrees with Mr. Placek's bill draft, which is an easy fix for the Interstate Compact problem.

In response to a question from Senator Armstrong, Mr. Birst said most members of the State's Attorneys' Association will support the bill draft proposed by Mr. Placek. He said the philosophical debate is whether law should be adjusted to comply with a compact.

In response to a question from Representative Klemin, Mr. Birst said some judges may have cut a day or two off to get the length of probation or participation in the 24/7 sobriety program around the problem raised by Mr. Placek. He said the North Dakota Supreme Court has not taken up the issue of criminal refusal.

Chairman Hogue called on Mr. Chad McCabe, Attorney, McCabe Law Firm, for testimony relating to the DUI laws bill drafts. Mr. McCabe said many of his concerns are being addressed by Senator Armstrong's proposals. He said there are several options to convict a person of a DUI offense. He said the proposal in bill draft [15.0125.01000] would clarify that while there are several options under which an individual can be convicted of DUI, the individual can only be convicted of one of those offenses. He said the committee may want to consider changing term "offense" to "conviction" in the DUI statutes. He said the issue was similarly dealt with in the Title 19 drug statutes. He said he would like the lookback period for fourth or subsequent offenses to be 10 years. He said he approves of the change regarding the screening device. He said there should be a level of culpability or a "mens rea" for refusing a test. He said because the DUI statutes are not in Title 12.1, a level of culpability is not implied. He said the level of culpability could be "willingly". He said the 24/7 sobriety program should be an option for the courts to order. He said because every case is different, the courts should have more discretion.

In response to a question from Senator Grabinger, Mr. McCabe said the reason there may be fewer DUI convictions in the last year could be because more cases are being pleaded as reckless or careless driving or care required.

In response to a question from Representative Klemin, Mr. McCabe said in most cases in which the driver is driving without liability insurance, additional charges are made at the same time. He said under recent law changes, the driver is charged with the violation but if the driver can provide proof of liability insurance within a certain amount of time, the case will be dismissed. He said the driver should not be allowed to drive away after failing to provide proof of liability insurance.

Chairman Hogue called on Mr. Jim Ganje, State Court Administrator's office, for testimony. Mr. Ganje provided a proposed amendment ([Appendix G](#)) to bill draft [15.0119.01000]. He said the amendment would close the loophole for those juveniles found to be unruly.

In response to a question from Representative Koppelman, Mr. Ganje said juvenile directors are concerned about juveniles participating in the 24/7 sobriety program. He said the question is whether the court should have some discretion for first-time juvenile offenders.

## DISCUSSION OF DRIVING UNDER THE INFLUENCE BILL DRAFTS

[15.0118.01000](#) - Representative Kretschmar inquired as to why the definition of drug court program was being removed in the bill draft. He said because it is not defined elsewhere in the Century Code, it should remain in law but should be moved to the new section created in Section 2 of the bill draft.

**It was moved by Representative Klemin, seconded by Senator Sitte, and carried on a voice vote that the overstruck language on page 1, lines 9 through 14, be added to the end of the new section on page 4 of the bill draft.**

**It was moved by Representative Maragos, seconded by Representative Delmore, and carried on a roll call vote that the bill draft, as amended, relating to the use of drug court in DUI cases be approved and recommended to the Legislative Management.** Senators Hogue, Armstrong, Grabinger, Lyson, and Sitte and Representatives Delmore, Hanson, Karls, Klemin, Koppelman, Kretschmar, Larson, Maragos, and Paur voted "aye." No negative votes were cast.

[15.0119.01000](#) - The committee discussed the amendment offered by Mr. Ganje.

**It was moved by Representative Maragos, seconded by Senator Armstrong, and carried on a voice vote that the bill draft be amended on page 1, line 9, to replace "or" with an underscored comma and on page 1, line 10, to insert "or is found to be unruly under section 27-20-32," after the first comma.**

**It was moved by Senator Sitte, seconded by Representative Delmore, and carried on a roll call vote that the bill draft, as amended, relating to court discretion in ordering juvenile participation in the 24/7 sobriety program be approved and recommended to the Legislative Management.** Senators Grabinger and Sitte and Representatives Delmore, Hanson, Karls, Klemin, Koppelman, Kretschmar, Larson, Maragos, and Paur voted "aye." Senators Hogue, Armstrong, and Lyson voted "nay."

[15.0120.01000](#) - Chairman Hogue said this bill draft would change the lookback period for fourth and subsequent DUI offenses to 15 years.

**It was moved by Senator Armstrong, seconded by Senator Lyson, and carried on a roll call vote that the bill draft relating to the lookback period for fourth and subsequent DUI offenses be approved and recommended to the Legislative Management.** Senators Hogue, Armstrong, Grabinger, Lyson, and Sitte and Representatives Delmore, Karls, Klemin, Kretschmar, Larson, Maragos, and Paur voted "aye." Representatives Hanson and Koppelman voted "nay."

[15.0121.02000](#) - In response to a question from Representative Koppelman, Senator Armstrong said this bill draft is the equivalent to the "Miranda" warning for DUI offenses.

Representative Paur said he was concerned about how to verify that the warning was given.

Representative Hanson said this process may not work in every case, but many law enforcement officers are recording pull-overs.

Senator Armstrong said a vast majority of law enforcement officers are honest. He said the warning carries more weight now that refusal is a criminal offense.

Senator Schneider inquired as to whether on page 2, line 13, the word "provides" should be changed to "fails to inform".

**It was moved by Senator Grabinger, seconded by Representative Koppelman, and carried on a roll call vote that the language on page 2, lines 13-14, of the bill draft be changed to "chapter if the law enforcement officer fails to inform the individual charged as required under subdivision a."** Senators Hogue, Armstrong, Grabinger, Schneider, and Sitte and Representatives Delmore, Hanson, Karls, Klemin, Koppelman, Kretschmar, Larson, Maragos, and Paur voted "aye." Senator Lyson voted "nay."

**It was moved by Senator Grabinger, seconded by Senator Sitte, and carried on a roll call vote that the bill draft, as amended, relating to implied consent requirements be approved and recommended to the Legislative Management.** Senators Hogue, Armstrong, Grabinger, Lyson, Schneider, and Sitte and Representatives Delmore, Hanson, Karls, Klemin, Koppelman, Kretschmar, Larson, Maragos, and Paur voted "aye." No negative votes were cast.

[15.0123.01000](#) - Chairman Hogue said this bill draft relates to an offender's ability to cure a refusal.

Senator Armstrong said the state wants people to take the test.

**It was moved by Representative Klemin, seconded by Representative Koppelman, and carried on a voice vote that the bill draft be amended to change "provides" to "submit to" on lines 11, 12, and 14.**

In response to a question from Senator Sitte, Representative Koppelman said adding a level of culpability to the refusal is an issue better taken up during the legislative session.

**It was moved by Representative Koppelman, seconded by Senator Sitte, and carried on a roll call vote that the bill draft, as amended, relating to an offender's ability to cure a refusal be approved and recommended to the Legislative Management.** Senators Hogue, Armstrong, Grabinger, Lyson, Schneider, and Sitte and Representatives Delmore, Hanson, Karls, Klemin, Koppelman, Kretschmar, Larson, and Paur voted "aye." No negative votes were cast.

[15.0124.01000](#) - Senator Armstrong said because the state does not allow for the privatization of the 24/7 sobriety program, only law enforcement agencies are permitted to conduct the testing.

In response to a question from Representative Koppelman, Senator Armstrong said the term "documentation" could be added to clarify that the individual may participate in the program.

**It was moved by Representative Koppelman, seconded by Senator Armstrong, and carried on a voice vote that the bill draft relating to participation in the 24/7 sobriety program be amended on page 1, line 9, to replace "notified by the individual" with "if the individual provides documentation".**

**It was moved by Representative Karls, seconded by Representative Larson, and carried on a roll call vote that the bill draft, as amended, relating to participation in the 24/7 sobriety program be approved and recommended to the Legislative Management.** Senators Hogue, Armstrong, Grabinger, Lyson, Schneider, and Sitte and Representatives Delmore, Hanson, Karls, Klemin, Koppelman, Kretschmar, Larson, Maragos, and Paur voted "aye." No negative votes were cast.

[15.0125.01000](#) - Senator Armstrong said he will be working with the Department of Transportation to ensure that the bill draft is complete. He said he will provide additional information to the committee at the next meeting.

[15.0126.02000](#) - In response to a question from Representative Koppelman, Senator Armstrong said some judges are not comfortable backdating participation in the 24/7 sobriety program to the time the offender began the program. He said this bill draft would allow judges the discretion to give the offender credit for time in the program. He said under this bill draft, offenders would not be sentenced to less than one year. He said it is just a matter of when the law allows the court to begin counting the year of participation in the 24/7 sobriety program. He said the offender would never serve less than one year on the 24/7 sobriety program under this change, but the offender could serve longer than a year.

Chairman Hogue said the bill draft will be carried over to the next meeting. He said Senator Armstrong should work with Committee Counsel to attempt to make the language in the bill draft more explicit.

Chairman Hogue said the bill draft offered by Mr. Placek will be considered at the next meeting of the committee.

### **TECHNICAL CORRECTIONS BILL DRAFT**

Chairman Hogue called on Mr. John Walstad, Code Revisor, Legislative Council. Mr. Walstad presented a bill draft [[15.0168.01000](#)] relating to technical corrections to the North Dakota Century Code.

In response to a question from Representative Koppelman, Mr. Walstad said the changes in the bill draft are not substantive but rather are intended to correct obsolete or incorrect language and cross-references.

In response to a question from Representative Klemin, Mr. Walstad said the notes following each section of the bill draft will be removed before the bill is introduced.

Representative Klemin said he would like to amend the bill draft to include an amendment to Section 38-18.1-03, which provides a procedure for the termination of a mineral interest. He said subdivision f of subsection 1 is obsolete. He said the repeal of two other subdivisions in 2009 makes this subdivision obsolete.

**It was moved by Representative Klemin, seconded by Senator Armstrong, and carried on a voice vote that the bill draft relating to technical corrections to the North Dakota Century Code be amended to remove subdivision f of subsection 1 of Section 38-18.1-03.**

Mr. Walstad said additional technical corrections that are brought to his attention before the legislative session will be offered as amendments during the session.

**It was moved by Representative Koppelman, second by Representative Larson, and carried on a roll call vote that the bill draft, as amended, relating to technical corrections to the North Dakota Century Code be approved and recommended to the Legislative Management.** Senators Hogue, Armstrong, Grabinger, Lyson, and Sitte and Representatives Delmore, Hanson, Karls, Klemin, Koppelman, Kretschmar, Larson, Maragos, and Paur voted "aye." No negative votes were cast.

### **ASSESSMENT OF COURT FEES STUDY**

At the request of Chairman Hogue, Committee Counsel reviewed two bill drafts regarding the consolidation of court fees. She said the first bill draft [[15.0160.01000](#)] would consolidate all court fees except the victim witness fee into a single fee. She said the second bill draft [[15.0162.01000](#)] would consolidate all fees, including the victim witness fee; however, the bill draft would hold harmless for four years those counties that collected more than \$9,000 in victim witness fees in state fiscal year 2012.

Chairman Hogue called on Ms. Sally Holewa, State Court Administrator, Supreme Court, for testimony regarding the bill drafts. Ms. Holewa said consolidating the court fees would streamline the process, save time, create more efficiency, and create less discrepancy about which fees to impose and which fees not to impose. She said Judge Frank L. Racek, East Central Judicial District, would like to include the indigent defense application fee and the indigent defense recoupment in the consolidation as well.

In response to a question from Representative Klemin, Ms. Holewa said the court would favor the consolidation of as many fees as possible.

Chairman Hogue called on Ms. Rozanna C. Larson, State's Attorney, Ward County. Ms. Larson said she encourages the committee to adopt bill draft [[15.0160.01000](#)]. She said the victim witness fee, which stays with the court, is assessed by judges in Ward County in nearly every case. She said under bill draft [[15.0162.01000](#)], the county would be limited to the amount collected in state fiscal year 2012. She said after 2018, the county would be subject to just a percentage rather than the entire amount assessed. She said she does not want Ward County to be held to the state fiscal year 2012 amount and does not want to go back to a straight percentage after four years. She would want to be held harmless indefinitely and to be able to keep whatever is collected not just be guaranteed the 2012 amount.

Chairman Hogue called on Mr. Richard Riha, State's Attorney, Burleigh County, for testimony on the bill drafts. Mr. Riha said he agrees with Ms. Larson and that he supports bill draft [[15.0160.01000](#)].

In response to a question from Representative Kretschmar, Mr. Riha said the State's Attorneys' Association has not taken a position on the bill drafts.

Chairman Hogue called on Ms. Michelle Dresser-Ternes, Victim Witness Coordinator, Burleigh County, for testimony on the bill drafts. Ms. Dresser-Ternes said she supports bill draft [[15.0160.01000](#)]. She said the victim witness fee should not be included in the court fee consolidation.

Chairman Hogue said 2013 Senate Bill No. 2078 was introduced by the judicial branch as a way to make the assessment of court fees more efficient. He said the committee must decide if efficiency is desirable and how to accomplish that objective. He said the bill drafts will be discussed again at the next meeting of the committee.

No further business appearing, Chairman Hogue adjourned the meeting at 2:40 p.m.

---

Vonette J. Richter  
Committee Counsel

ATTACH:7