

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

JUDICIAL PROCESS COMMITTEE

Tuesday, September 12, 2006
Harvest Room, State Capitol
Bismarck, North Dakota

Senator Stanley W. Lyson, Chairman, called the meeting to order at 10:00 a.m.

Members present: Senators Stanley W. Lyson, Carolyn Nelson, John T. Traynor, Constance Triplett; Representatives Ron Carlisle, Lois Delmore, Dennis Johnson, Joyce Kingsbury, Lawrence R. Klemin, Kim Koppelman, William E. Kretschmar, Shirley Meyer

Members absent: Representatives Dawn Marie Charging, Duane DeKrey, Kathy Hawken

Others present: See attached appendix

It was moved by Representative Delmore, seconded by Senator Nelson, and carried that the minutes of the June 16, 2006, meeting be approved.

DRUG USE AND ABUSE REPORT

Chairman Lyson called on Mr. Wayne Stenehjem, Attorney General, for the presentation of a report regarding the unlawful drug use and abuse and drug control and enforcement efforts in this state. Mr. Stenehjem said North Dakota Century Code Section 19-03.1-44 calls for a comprehensive status and trends report regarding unlawful controlled substance use and abuse treatment and enforcement efforts. He said the report evaluates five sets of statistics. He said each set of statistics provides a different aspect of the substance abuse problem in the state. The first set, he said, is the youth risk behavior survey results. He said while tobacco, alcohol, and drug use by the state's youth in grades 7 through 12 have steadily decreased since 1999, North Dakota continues to rank near the top in youth who binge drink, drink while driving, and drive with persons who have been drinking. He said North Dakota's youth tend to be near the top of all states when it comes to alcohol use.

Mr. Stenehjem said the second set of statistics contained in the report deals with controlled substance testing. He said the statistics provide information regarding the types of controlled substances tested. He said the number of narcotic cases submitted for analysis has steadily increased from 1,735 in 1999 to over 2,900 in 2005. He said these figures represent a 70 percent increase during the five-year period. He said the number of exhibits analyzed has increased from 5,535 in 1999 to 10,312 in 2005, an 86 percent increase. He said exhibits involving marijuana and methamphetamine constitute the majority of exhibits analyzed with marijuana

leading the way. He said the testing indicates that the potency of marijuana is ever-increasing.

Mr. Stenehjem said the third set of statistics, which was compiled by the Department of Human Services, deals with treatment information. He said the department's information is derived from screening interviews conducted when an individual seeks treatment at a regional center. He said statistics from 2001 through 2004 reaffirm that alcohol, by far, remains the substance of choice in this state, followed by marijuana and methamphetamine and amphetamines. He said patients identifying methamphetamine as their primary substance rose by 175 percent between 2002 and 2004. He said patients identifying marijuana as their primary substance decreased by 9 percent.

Mr. Stenehjem said a fourth set of statistics is the current status report which was compiled by the Department of Corrections and Rehabilitation. He said the analysis examines the number of admissions for drug offenses for the year. He said the data provides information on the number of offenders who are court-ordered to treatment, the number of offenders referred to chemical dependency treatment, and the number of offenders who complete chemical dependency treatment. He said the state has seen a steady increase in each area since 1999. He said the number of admissions for drug offenses increased by 28 percent between 2002 and 2004. He said the number of offenders who complete chemical dependency treatment increased by 15 percent during the same period. He said the waiting list for criminal offenders who want to get into treatment increased from 44 in 2003 to 95 in 2004. He said this statistic merits further review in future years to ascertain whether the system is handling the treatment needs of those sentenced to incarceration.

Mr. Stenehjem said the fifth set of statistics, which is an overview of current law enforcement efforts to combat unlawful drug trafficking and usage, was compiled by the Bureau of Criminal Investigation. He said one of the bureau's missions is to enforce the state's laws concerning the manufacture, distribution, sale, and possession of narcotics and controlled substances. He said the bureau's 2004-05 enforcement activities included:

- Partnering with the Highway Patrol, State Radio, and the National Guard to create a fusion center located at Fraine Barracks to

receive and disseminate homeland security intelligence to the proper agencies;

- Supporting the concept of intelligence-driven investigations by developing a postseizure analysis team to help facilitate information sharing among task forces, analysts across the nation, and the international border enforcement teams;
- Working with the Federal Bureau of Investigation and the Bureau of Indian Affairs to establish a Safe Trails Task Force to focus on narcotics enforcement in and around the state's Indian reservations; and
- Conducting a one-week narcotic investigation school for law enforcement officers and conducting a methamphetamine summit in Minot.

Mr. Stenehjem said methamphetamine lab seizures decreased as a result of the vigilant efforts of the nine task forces, legislation regulating the sale of over-the-counter medications containing precursors for manufacturing, and the public's willingness to call law enforcement regarding suspicious activities. A copy of the Attorney General's report and information regarding the trends in methamphetamine labs in the state are on file in the Legislative Council office.

In response to a question from Representative Delmore, Mr. Stenehjem said alcohol is the drug of choice for the state's youth. He said there is still a public perception that drinking is acceptable behavior. He said it is everyone's responsibility to change that perception. He said there is new information regarding the effectiveness of the treatment for methamphetamine addiction. He said contrary to what was previously believed, treatment for methamphetamine addiction can be effective but the treatment must be appropriate. In some cases, he said, appropriate treatment may need to be intensive and inpatient.

In response to a question from Representative Koppelman, Mr. Stenehjem said because methamphetamine is a relatively new drug, the treatment components are also relatively new. He said treatment options continue to be developed. He said although the number of methamphetamine lab busts in the state continues to decrease, it is important to note that most of the methamphetamine used in the state is not manufactured in the state. He said most of the methamphetamine used in the state appears to be coming from Mexico. He said the number of methamphetamine lab busts is down but methamphetamine use is not. He said the Byrne grant, a previous source of federal funds for law enforcement efforts, is drying up. He said that grant was used to fund the salaries for local law enforcement.

In response to a question from Representative Carlisle, Mr. Stenehjem said there is a good relationship between the Attorney General's office and the Highway Patrol. He said the Highway Patrol has made many drug-related arrests.

Senator Lyson said the additional funding appropriated in the last legislative session for law enforcement training has been very helpful.

In response to a question from Representative Kingsbury, Mr. Stenehjem said about 40 percent of the inmates at the new Rugby correctional facility will be participating in treatment programs.

In response to a question from Representative Kretschmar, Mr. Stenehjem said there is a new federal law that restricts the sale of the precursor drugs used in the manufacture of methamphetamine. He said after North Dakota passed its law regarding the sale of these precursor drugs, Minnesota, Montana, South Dakota, Manitoba, and Saskatchewan passed similar legislation. He said these laws make it very difficult to obtain the precursor drugs in this region.

In response to a question from Senator Nelson, Mr. Stenehjem said there are not enough treatment beds in the state. He said if drug addiction is treated on the front end, the state can save money on incarceration costs.

In response to a question from Senator Traynor, Mr. Stenehjem said the pilot project to provide locks for anhydrous ammonia tanks has been very successful. He said there have not been any thefts of anhydrous ammonia in the counties in which the project was implemented. He said the Legislative Assembly may want to consider implementing the program statewide but an evaluation should be done as to whether the decrease in anhydrous ammonia thefts is due to that pilot project or if it is because of the restrictions in the sale of the precursor drugs.

COMMISSION ON LEGAL COUNSEL FOR INDIGENTS UPDATE

Chairman Lyson called on Ms. Robin Huseby, Director, Commission on Legal Counsel for Indigents, for a report regarding the status of the implementation of the new indigent defense system in the state. Ms. Huseby said the Commission on Legal Counsel for Indigents has been holding monthly meetings to address issues that arise in the implementation of the state's new indigent defense system. She said the commission approved the budget for the upcoming biennium. She said the budget has been submitted to the Office of Management and Budget. She said the commission's budget request is approximately the same as the commission's budget for the current biennium. However, she said, the commission is requesting an optional package of \$1.6 million to establish full public defender offices in Fargo and Bismarck. She said the public defender offices in Williston, Minot, and Dickinson are running smoothly. She said the Minot public defender office, which began operating on March 20, has closed to date approximately 300 cases. She said the reports from court personnel who work with the public defender offices have been very positive. She said the commission is opening a public defender office in

Grand Forks in the spring of 2007. She said the office will have three attorneys and a support staff. She said the commission has had some difficulty maintaining indigent defense service in Grand Forks using only contract attorneys. She said the commission is considering the prospect of an internship program with the University of North Dakota School of Law. She said she has met with Grand Forks attorneys and judges regarding the transition from contract counsel to public defenders.

Ms. Huseby said the commission has been working on standards for the commission, public defenders, and contract attorneys. She said the commission has developed a web page that contains basic information, forms, standards, newsletters, and contact information. She said eventually the commission would like to use the web page as a vehicle for the attorneys to report their hours. She said the commission is also working on a case management system. Ms. Huseby submitted written testimony, a copy of which is on file in the Legislative Council office.

In response to a question from Representative Koppelman, Ms. Huseby said the indigent defense system in the state will benefit from a public defender system. She said the use of public defenders allows for more consistency, especially financial consistency, than the contract system.

In response to a question from Representative Klemin, Ms. Huseby said if public defender offices are established in Bismarck and Fargo, the public defenders would handle about one-third to one-half of the cases with the remainder of the cases handled by contract attorneys. She said a contract that was lost in Fargo cost the commission \$60,000. She said using public defenders helps alleviate spikes in costs. She said not all contract attorneys are pleased with the change to public defender offices.

IDENTITY THEFT STUDY

At the request of Chairman Lyson, committee counsel distributed a bill draft [\[70175.0100\]](#) regarding the facilitating and assisting of deceptive acts or practices. She said the committee recommended the bill draft to the Legislative Council at the June 16, 2006, meeting.

In response to a question from Representative Meyer, Mr. Parrell Grossman, Consumer Protection and Antitrust Division, Attorney General's office, said the bill draft could apply to Internet fraud.

In response to a question from Senator Traynor, Mr. Grossman said the phrase "substantial assistance or support" was used to exclude those persons who unwittingly become involved in the act or practice. He said the federal version of this law does not use the word "substantial." He said he does not have a problem with removing that word.

In response to a question from Representative Klemin, Mr. Grossman said the "knowingly" standard is used in the bill draft. He said this bill draft would allow the Attorney General to go after Internet service

providers that facilitate and assist in deceptive acts or practices.

Chairman Lyson called on Mr. Jack McDonald, State Bar Association of North Dakota, Bismarck, for testimony regarding the bill draft. Mr. McDonald said the bill draft casts a wide net. He said the bill draft could affect many small Internet service providers and shopper newspapers in small towns.

It was moved by Representative Kretschmar, seconded by Representative Delmore, and carried on a roll call vote that the committee reconsider its action on June 16, 2006, whereby it approved and recommended the bill draft relating to the facilitating and assisting of deceptive acts or practices. Senators Lyson, Nelson, Traynor, and Triplett and Representatives Carlisle, Delmore, Johnson, Kingsbury, Klemin, Koppelman, Kretschmar, and Meyer voted "aye." No negative votes were cast.

It was moved by Senator Nelson, seconded by Senator Traynor, and carried that the bill draft relating to the facilitating and assisting of deceptive acts or practices be amended to remove the word "substantial" on lines 7 and 8.

It was moved by Representative Delmore, seconded by Representative Koppelman, and carried on a roll call vote that the bill draft, as amended, relating to the facilitating and assisting of deceptive acts or practices be approved and recommended to the Legislative Council. Senators Lyson, Nelson, Traynor, and Triplett and Representatives Carlisle, Delmore, Johnson, Kingsbury, Klemin, Koppelman, Kretschmar, and Meyer voted "aye." No negative votes were cast.

JUDICIAL CONDUCT STUDY

At the request of Chairman Lyson, committee counsel presented a concurrent resolution draft [\[73017.0100\]](#) relating to a study of judicial election and selection issues. She said the concurrent resolution draft would continue the present study into the next interim.

Chairman Lyson called on Mr. McDonald for testimony regarding the concurrent resolution draft. Mr. McDonald said he would recommend the concurrent resolution draft be amended to provide for a joint legislative and State Bar Association of North Dakota public information and education program regarding judicial selection methodology and the conduct of judicial elections. He said the program should include public forums around the state.

In response to a question from Senator Traynor, Mr. McDonald said although recent federal court opinions have limited the restrictions the state can place upon judicial elections and judicial candidates, the study could provide for a review of the way judges are selected, including the possibility of changing from an elected system to an appointed system.

It was moved by Representative Kretschmar, seconded by Representative Delmore, and carried on a roll call vote that the concurrent resolution draft relating to a study of judicial election and

selection issues be amended to provide that the Legislative Council pursue a public information and education program with the State Bar Association of North Dakota which includes public forums around the state regarding judicial selection methodology and the conduct of judicial elections.

It was moved by Senator Nelson, seconded by Representative Delmore, and carried on a roll call vote that the concurrent resolution draft, as amended, relating to a study of judicial election and selection issues be approved and recommended to the Legislative Council. Senators Lyson, Nelson, Traynor, and Triplett and Representatives Carlisle, Delmore, Johnson, Kingsbury, Klemin, Koppelman, Kretschmar, and Meyer voted "aye." No negative votes were cast.

EMINENT DOMAIN STUDY

At the request of Chairman Lyson, committee counsel reviewed a bill draft [\[70124.0100\]](#) regarding the uses of eminent domain. She said the bill draft provides for a definition of economic development. She said the bill draft also defines "public use." She said there does not appear to be any provisions in the bill draft which would directly conflict with the language in the initiated measure that will appear on the November ballot.

Chairman Lyson said if the initiated measure does not pass, this bill draft would give the Legislative Assembly a vehicle to discuss the eminent domain issue during the upcoming session.

Chairman Lyson called on Mr. Jerry Hjelmstad, North Dakota League of Cities, Bismarck, for comments regarding the bill draft. Mr. Hjelmstad said the North Dakota League of Cities is in support of a legislative review of the eminent domain issues. He said it is not clear from the initiated measure or the bill draft whether property taken by eminent domain may ever be returned to private ownership. He said there is a concern about the impact of the initiated measure on urban renewal projects. He said the testimony of Ms. Heidi Heitkamp, Committee to Restrict Eminent Domain (C-RED), before the Legislative Council on September 11, 2006, indicated a different position than previously stated with respect to whether property taken by eminent domain could be returned to private ownership. Mr. Hjelmstad submitted written testimony, a copy of which is on file in the Legislative Council office.

Chairman Lyson said he also recognized that the statements made by Ms. Heitkamp on September 11,

2006, with respect to whether property taken by eminent domain could be returned for private use were different from the statements she had previously made before this committee. He said her previous statements before this committee indicated that property taken by eminent domain could not be returned to private use.

In response to a question from Representative Klemin, Mr. Hjelmstad said C-RED has not changed its position on the limitations the measure would have on urban renewal.

In response to a question from Senator Nelson, Representative Klemin said constitutions apply prospectively and retroactively.

In response to a question from Representative Koppelman, Senator Traynor said when interpreting a law or constitutional provision, a court first looks to the plain meaning of the language before it looks to the legislative history and other indications of intent.

It was moved by Representative Koppelman, seconded by Representative Kingsbury, and carried on a roll call vote that the bill draft relating to restrictions on the uses of eminent domain be approved and recommended to the Legislative Council. Senators Lyson, Nelson, Traynor, and Triplett and Representatives Carlisle, Delmore, Johnson, Kingsbury, Klemin, Koppelman, Kretschmar, and Meyer voted "aye." No negative votes were cast.

OTHER BUSINESS

It was moved by Representative Klemin, seconded by Representative Carlisle, and carried that the chairman and the staff of the Legislative Council be requested to prepare a report and the bill and resolution drafts recommended by the committee and to present the report and recommended bill and resolution drafts to the Legislative Council.

It was moved by Senator Nelson, seconded by Representative Meyer, and carried that the meeting be adjourned sine die.

No further business pending, Chairman Lyson adjourned the meeting at 2:10 p.m.

Vonette J. Richter
Counsel

[ATTACH:1](#)