

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

JUDICIAL PROCESS COMMITTEE

Wednesday, September 17, 2008
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative Shirley Meyer, Chairman, called the meeting to order at 9:00 a.m.

Members present: Representatives Shirley Meyer, Nancy Johnson, Joyce Kingsbury, Lawrence R. Klemin, William E. Kretschmar, Lee Myxter, Lisa Wolf; Senators JoNell A. Bakke, Tom Fiebiger, Curtis Olafson, Constance Triplett

Members absent: Representatives Chris Griffin, Dennis Johnson, Kim Koppelman

Others present: Senator David O'Connell and Representative Merle Boucher, members of the Legislative Council, were also in attendance.

See attached [appendix](#) for additional persons present.

It was moved by Senator Triplett, seconded by Representative Wolf, and carried on a voice vote that the minutes of the June 24, 2008, meeting be approved.

COMPREHENSIVE STATUS AND TRENDS REPORT

Chairman Meyer called on Mr. Tom Trenbeath, Deputy Attorney General, for testimony regarding the 2008 *Comprehensive Status and Trends Report* regarding unlawful controlled substances use and abuse treatment and enforcement efforts. He said the Youth Risk Behavior Survey conducted by the Department of Public Instruction indicates that North Dakota's responses in alcohol usage and binge drinking categories are still among the highest in the nation. He said while the survey results reflect continued reduction in youth smoking, a well-known precursor to other substance abuse, responses regarding drug usage remained similar to those in the past. He said there was, however, a slight decrease between 2005 and 2007 in the number of students who were offered, sold, or given an illegal drug on school property by someone during the last 12 months.

Mr. Trenbeath said state and federal restrictions on the sale of ephedrine-based cold medicine, combined with law enforcement education and enforcement efforts, almost have eliminated clandestine methamphetamine lab busts, which fell to 25 in 2007, down from a peak of 293 in 2003. He said enforcement efforts now are focusing on drug trafficking, including methamphetamine transported through our state from Canada and Mexico. He said law enforcement will continue to focus on ways to

target drug trafficking in the state. He said efforts in this area continue to be hampered, however, by significant reductions in federal aid to the state. He said in May 2008, the Governor's Prevention Advisory Council on Drugs and Alcohol announced a grant program to fund projects that discourage alcohol and drug abuse by minors. He said the council will favor programs that target elementary school-age youth and their parents. He said one of the emerging trends that is raising concerns in the state is prescription drug abuse by minors. He said the number of minors who are accessing and abusing prescription drugs is increasing. A copy of the report is on file in the Legislative Council office.

Mr. Trenbeath said the pilot project being conducted in the state to test driving under the influence (DUI) offenders for alcohol use has been very successful. He said the project, known as the "24/7 sobriety pilot program," requires DUI offenders to be tested for alcohol use twice per day. He said if the offender fails a test, the offender is immediately sent to jail.

In response to a question from Representative Meyer, Mr. Trenbeath said to date over 90 offenders have participated in the program. He said fewer than 5 percent of the participants have failed a test. He said this program is different because, instead of keeping intoxicated people from driving, this program keeps them from drinking. He said the state has been loaned 10 ankle bracelets that can be used for those offenders in rural areas who are unable to get to a location for testing. He said the bracelets randomly test the offender for alcohol use twice a day. He said the test results are reported by telephone to a central computer in Denver. If the offender tests positive for alcohol use, notification is sent to law enforcement.

Representative Kretschmar said South Dakota, the state that developed this program, was awarded an innovation award by the Midwestern Legislative Conference at the annual meeting in Rapid City in July.

Mr. Trenbeath said the South Dakota program has been so successful that South Dakota is using the program for offenders other than DUI offenders. He said because alcohol is often a factor in criminal activity, prohibiting alcohol use can be an effective tool in controlling repeat behavior.

In response to a question from Senator Bakke, Mr. Trenbeath said the ability to increase treatment and services is limited by funding.

**CHILD CUSTODY -
BEST STATE PRACTICES STUDY
Child Custody and Visitation Bill Draft**

At the request of Chairman Meyer, committee counsel presented a bill draft [\[90276.0100\]](#) regarding child custody and visitation issues. Committee counsel said the bill draft makes changes to some of the terminology currently used in family law. She said the bill draft changes the term "custody" to "residential responsibility" and the term "visitation" to "parenting time." She said the bill draft also provides for mandatory parenting plans and includes those elements that must be included in a parenting plan. She said the bill draft also establishes a parenting coordinator program. She said the parenting coordinator is a neutral individual authorized to use any dispute resolution process to resolve parenting time disputes. She said the bill draft also makes some changes to the factors used by a court to determine parental rights and responsibilities.

Chairman Meyer called on Ms. Maureen Holman for testimony regarding the bill draft. She said the bill draft includes two additional changes that were not included in the bill draft that was reviewed by the committee in June. She said the bill draft includes a definition of the term "parenting time." She said the bill draft also provides that, with respect to the party that is responsible for paying the custody investigator, that cost is the responsibility of the county in which the child resides at the time the custody is established. She said, however, upon modification of an order, the cost is the responsibility of the county in which the child resides at the time of modification.

In response to a question from Representative Klemin, Ms. Holman said adding "parenting time" to those issues that must be addressed in a parenting plan makes sense. She said the bill draft could be changed on page 6, line 9, to add "parenting time" after "residential responsibility." She said the bill draft provides for the required elements of a parenting plan. She said the parties to a parenting plan would not be precluded from addressing other issues in their parenting plans, such as grandparent visitation.

Senator Fiebiger said North Dakota Century Code (NDCC) Section 14-09-05.1 gives grandparents recourse if grandparent visitation is not included in the parenting plan.

In response to a question from Senator Bakke, Ms. Holman said the bill draft provides that the Supreme Court would qualify the parenting coordinators. She said it is likely that, as with custody investigators, the Supreme Court would establish the training requirements and training for the parenting coordinators.

In response to a question from Senator Olafson, Ms. Holman said the grandparents are usually not a party to the custody proceeding. She said NDCC Section 14-09-05.1 allows grandparents to file their own motion for visitation.

In response to a question from Representative Klemin, Ms. Holman said it may be possible to tie NDCC Section 14-09-05.1 to the parenting plan; however, grandparent visitation issues usually do not arise until after the parenting plan has been developed and the custody matter has been decided.

In response to a question from Representative Kretschmar, Ms. Holman said the bill draft does not address any child support issues. She said the bill draft does not provide for an appeal process for decisions made by a parenting coordinator; however, there is a procedure for the removal of a parenting coordinator.

In response to a question from Representative Meyer, Ms. Holman said the bill draft mandates a parenting plan for those parties who wish to establish or modify a judgment providing for parenting time. She said it is likely that parenting plan forms will be developed. She said some parents may be able to develop their parenting plans without the assistance of an attorney. She said parenting coordinators will be necessary only in those cases that involve high conflict.

In response to a question from Representative Meyer, Mr. Paul Schauer, who was a member of the State Bar Association Custody and Visitation Task Force, said the parenting coordinator will be used after the divorce is final and parenting time issues arise. He said a parenting plan is developed on the front end of the process.

Chairman Meyer called on Mr. Paul Schumacher for testimony regarding the bill draft. He said when his daughter was born in August 2007, he was denied contact with the child for five months. He said at that time he sought legal action. He said in June 2008, he was awarded equal physical custody of the child. Since that time, he said, he has received threatening e-mails, continued threats of legal action to overturn the judgment, and continued interference with his time with his child. He said he supports this bill draft and is pleased with its direction. He said he would like to see more laws for fit fathers who want to be involved in their children's lives. He said he largely missed out on his daughter's first year while waiting on the legal process. He said mothers have the power and he hopes this new proposed legislation can make things more equal for both parents. He submitted written [testimony](#), a copy of which is on file in the Legislative Council office.

In response to a question from Senator Bakke, Ms. Holman said the parenting plan requirement applies to all proceedings to establish or modify a judgment providing for parenting time with a child, not just divorce cases.

Chairman Meyer called on Mr. John Val Emter for testimony. He said this bill draft tries to force people to follow the court's rules. He said it does not take into consideration that things change. He said people should try to stay out of the court system because the courts are wrong 90 percent of the time.

Representative Klemin said because the language is referring to the two parties, the word "among" should be changed to "between" on page 16, lines 18 and 20. Chairman Meyer said the bill draft would be changed to reflect those changes.

It was moved by Representative Klemin, seconded by Representative Kingsbury, and carried on a voice vote that the bill draft relating to child custody and visitation issues be amended on page 1, lines 20 and 22, to change "residential responsibility" to "parenting time" and on page 6, line 9, to add ", parenting time," after "responsibility."

It was moved by Representative N. Johnson, seconded by Representative Wolf, and carried on a voice vote that the bill draft relating to child custody and visitation issues be amended on page 12, line 19, and page 13, line 12, to change "to modify" to "concerning."

Senator Fiebiger said as a family law attorney and a member of the task force, the changes proposed in the bill draft are a good start. He said while the system is flawed, each side needs to have respect for the process.

Representative Meyer said the bill draft will help address some of those areas of concern that have been raised by interested persons over the past several years.

Senator Triplett said when one or more of the parties to a family law dispute want to be in conflict with another party, there is not much the system can do to alleviate that conflict. She said the bill draft will help to resolve some of those conflict issues.

It was moved by Senator Fiebiger, seconded by Representative Kretschmar, and carried on a roll call vote that the amended bill draft relating to child custody and visitation issues be approved and recommended to the Legislative Council. Representatives Meyer, N. Johnson, Kingsbury, Klemin, Kretschmar, Myxter, and Wolf and Senators Bakke, Fiebiger, Olafson, and Triplett voted "aye." No negative votes were cast.

Restricted Operator's License Bill Draft

At the request of Chairman Meyer, committee counsel presented a bill draft [90290.0100] regarding restrictions on an individual's operator's license for nonpayment of child support or failure to obey a subpoena. She said the bill draft authorizes the state agency, which is the Department of Human Services, to issue a restricted operator's license to an obligor or an individual who fails to comply with a subpoena which could only be used during that obligor or individual's normal working hours.

In response to a question from Senator O'Connell, committee counsel said the state agency would likely work with the Department of Transportation to address the implementation issues of the bill draft.

In response to a question from Senator Fiebiger, Senator O'Connell said when a restricted operator's license is issued, the Department of Transportation limits the times that the driver may be driving and the routes a driver may drive.

In response to a question from Senator Triplett, committee counsel said the Department of Human Services received a copy of the bill draft prior to the meeting.

It was moved by Representative Klemin, seconded by Representative N. Johnson, and carried on a roll call vote that the bill draft relating to restrictions on an individual's operator's license for nonpayment of child support or failure to obey a subpoena be approved and recommended to the Legislative Council. Representatives Meyer, N. Johnson, Kingsbury, Klemin, Kretschmar, Myxter, and Wolf and Senators Bakke, Fiebiger, Olafson, and Triplett voted "aye." No negative votes were cast.

OTHER BUSINESS

Representative Klemin commended Chairman Meyer for all of her efforts in serving as chairman of the committee.

Chairman Meyer said it was an honor and a privilege to work with the committee members and to serve as their chairman.

It was moved by Senator Fiebiger, seconded by Senator Bakke, and carried on a roll call vote that the chairman and the staff of the Legislative Council be requested to prepare a report and the bill drafts recommended by the committee and to present the report and recommended bill drafts to the Legislative Council. Representatives Meyer, N. Johnson, Kingsbury, Klemin, Kretschmar, Myxter, and Wolf and Senators Bakke, Fiebiger, Olafson, and Triplett voted "aye." No negative votes were cast.

It was moved by Senator Fiebiger, seconded by Senator Triplett, and carried on a voice vote that the committee be adjourned sine die.

Chairman Meyer adjourned the meeting sine die at 11:00 a.m.

Vonette J. Richter
Committee Counsel

ATTACH:1