

# NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

## JUDICIARY COMMITTEE

Thursday, October 11, 2012  
Roughrider Room  
Bismarck, North Dakota

Senator Dave Nething, Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Senators Dave Nething, Jim Dotzenrod, Stanley W. Lyson, Carolyn C. Nelson, Curtis Olafson, Mac Schneider, Margaret Sitte; Representatives Stacey Dahl, Lois Delmore, Dennis Johnson, Joyce Kingsbury, Lawrence R. Klemm, Kim Koppelman, William E. Kretschmar, Andrew Maragos, Steven L. Zaiser

**Members absent:** Senator David Hogue; Representative Gary Paur

**Others present:** See [Appendix A](#)

**It was moved by Representative Delmore, seconded by Representative Maragos, and carried on a voice vote that the minutes of the August 15, 2012, meeting be approved.**

### MODEL PROTECTION OF CHARITABLE ASSETS ACT

At the request of Chairman Nething, Committee Counsel provided information ([Appendix B](#)) comparing the Model Protection of Charitable Assets Act with the bill draft presented at the August 15, 2012, meeting.

Chairman Nething called on Mr. Parrell Grossman, Antitrust and Consumer Protection Division, Attorney General's office, for testimony regarding the model Act. Mr. Grossman said he was asked to make recommended changes to the model Act. He said because of the lack of support from the Attorney General and the Secretary of State for a registration and reporting requirement, those portions of the model Act were not included in the bill draft.

In response to a question from Senator Sitte, Mr. Grossman said the model Act was initially drafted because of concerns about the waste of charitable assets. He said adoption of the model Act would help to ensure that charitable assets are being used properly.

In response to a question from Representative Koppelman, Mr. Grossman said any fees collected as a result of the implementation of this bill draft would be deposited in the Attorney General's refund fund or in the general fund. He said the Attorney General will not need additional staff to implement the requirements of the bill draft.

In response to a question from Senator Nelson, Mr. Grossman said the changes made to the model Act in the bill draft will help to ensure that it is consistently enforced using the Attorney General's

practices. He said the bill draft retains the important portions of the model Act but modifies it to work efficiently with current practices. He said the Attorney General needs legislative authority to enforce the model Act's requirements.

In response to a question from Representative Klemm, Mr. Grossman said the registration and the reporting requirements would be burdensome for the small charities. He said those requirements would be burdensome for the Attorney General and the Secretary of State as well. He said the Attorney General's office is not a registration entity. He said the Uniform Commission on Uniform State Laws thought the registration and reporting requirements of the model Act were necessary for all states, but the Attorney General does not think it is needed in North Dakota.

Chairman Nething said the North Dakota Commission on Uniform State Laws will decide whether to introduce the model Act in the upcoming session.

### ATTORNEY GENERAL REPORT

Chairman Nething called on Mr. Wayne Stenehjem, Attorney General, for the presentation of information regarding the synthetic drug abuse problem and other challenges of law enforcement in the state. Mr. Stenehjem said the use of synthetic drugs, also known as "designer drugs", has become epidemic in the state. He said the state crime laboratory is swamped with synthetic drug sample testing. He said every emergency room doctor in the state can verify that synthetic drugs are an extreme problem in the state. He said because of dozens of possible permutations, analyzing synthetic drugs is much more difficult than marijuana. He said the lab must have a sample against which the synthetic drug can be compared.

Mr. Stenehjem said the use of prescription drugs continues to be one of the most serious problems in the state. He said the number of drug overdose deaths in the state exceed the number of deaths from firearms. He said North Dakota has adopted a prescription drug monitoring program to monitor prescriptions and to look for people who are doctor shopping. He said he has asked the North Dakota Board of Medical Examiners to develop protocols to look for abuse and to urge physicians to use the

program. He said the prescription take-back program has been effective with over 1.5 tons collected to date.

Mr. Stenehjem said law enforcement officers and agencies in the oil patch area are overworked and there is concern about burnout. He said law enforcement is seeing more aggravated assaults, sex offenses, and domestic violence in the state, especially in the oil patch. He said over 20,000 concealed weapons permits have been issued and many more background checks are being requested than ever before. He said while law enforcement is seeing fewer meth labs in the state, there is an increase in meth coming into the state from Mexico and California. He said Minneapolis is becoming a hub for drugs coming into the state. He said motorcycle gangs and organized crime are also becoming a problem. With organized crime, he said, the state must either deal with it now, or it will be a problem for a long time.

Mr. Stenehjem introduced Mr. Dallas Carlson, Director, Bureau of Criminal Investigation. Mr. Carlson provided testimony ([Appendix C](#)) regarding the challenges of the investigation of synthetic drugs and the new challenges of law enforcement. He also provided statistics on concealed weapons permits, offender registrations, and criminal history checks. He said what we are experiencing is the new "norm" for North Dakota. He said with this new norm comes more challenges. He said the bureau will need to grow with the growth of the state.

In response to a question from Representative Koppelman, Mr. Carlson said to address the organized crime problem, the Bureau of Criminal Investigation is going to need more people. He said he may have to dedicate several people just for organized crime. Regarding background checks, he said, more and more groups are requiring background checks.

In response to a question from Senator Sitte, Mr. Carlson said it is likely that human trafficking is occurring in the state. He said he has been working with the United States Marshals Service on the issue.

In response to a question from Senator Sitte, Mr. Stenehjem said North Dakota is in compliance with all of the requirements of the Adam Walsh Act except for those areas in which the state believes its process is better. He said the federal system uses a low-risk, medium-risk, and high-risk sexual offender rating that is based on the crime. He said in North Dakota, a committee assesses each sex offender to develop a risk assessment. He said North Dakota has a better system and does not use the federal rating system.

Chairman Nething called on Ms. Hope Olson, Director, State Crime Laboratory, for testimony ([Appendix D](#)) regarding the increased need for testing samples of synthetic drugs by the State Crime Laboratory. Ms. Olson also provided information ([Appendix E](#)) regarding the top 25 drugs for 2008 and for 2012.

In response to a question from Representative Klemin, Ms. Olson said if the laboratory can get the compounds controlled, it will decrease the number of compounds coming in for testing.

In response to a question from Representative Delmore, Ms. Olson said the names of the products marketed as incense or bath salts are changing continuously making it difficult to regulate. She said many of the substances being abused can be purchased on the Internet.

Chairman Nething called on Ms. Charlene Schweitzer, forensic scientist, State Crime Laboratory, for testimony ([Appendix F](#)) regarding the synthetic drug problem in the state. Ms. Schweitzer said the legal designer drug market has exploded in the last four years. She said the products are marketed as incense, potpourri, bath salts, and pond cleaner or are sold on the Internet as research chemical and are labeled "Not for Human Consumption." She said it is clearly known that they are legal chemicals that give psychoactive and mind-altering effects. She said some of the different types of designer drugs are classified as synthetic cannabinoids, substituted cathinones, and hallucinogens.

In response to a question from Representative Klemin, Ms. Schweitzer said the products being marketed as bath salts and incense are not the same product as the legitimate bath salts and incense. She said proposed legislation will help get a handle on identifying the dangerous products without affecting the legitimate ones.

In response to a question from Senator Olafson, Ms. Schweitzer said most of the compounds are being manufactured in China. She said after being shipped to the United States, the blends are developed and repackaged for sale.

Mr. Stenehjem said the federal agencies need to get a handle on what is coming into the country from overseas.

Chairman Nething called on Ms. Julie Lawyer, Assistant Attorney General, for testimony ([Appendix G](#)) regarding synthetic drug abuse. She said with the advent of new chemical substances, the makers and distributors of synthetic drugs do what they can to find a way around the law. She said to stop that, the Attorney General is drafting legislation that would make it a crime for an individual to distribute any substance they know their customer is going to use to get high, whether the substance is controlled or not. She said if the makers and distributors can manufacture yet another synthetic substance that is new and not an analog of any controlled substance, law enforcement will have the tools to stop the spread of these dangerous substances.

Ms. Lawyer played a 911 recording of a Grand Forks woman who took the synthetic drug known as "Pure Evil." She said as a result of some of these products, some people think they are having heart attacks; others may be foaming at the mouth. She

said synthetic drugs have fallen through the cracks of current law.

In response to a question from Representative Koppelman, Ms. Lawyer said she is not aware of any new emergency rules being adopted for the new substances.

In response to a question from Senator Olafson, Ms. Olson said attacking the problem with truth-in-marketing laws might be an idea worth exploring.

In response to a question from Representative Klemin, Ms. Olson said even if the products are being shipped from out-of-state, intent to deliver crimes may apply when the product reaches the state. She said the bigger problem is the local distributors.

Mr. Stenehjem said the Internet sales are illegal. The bigger problem, he said, is finding and prosecuting the offenders.

### **REVISED UNIFORM LIMITED LIABILITY COMPANY ACT**

Chairman Nething called on Mr. Alvin A. Jaeger, Secretary of State, for testimony ([Appendix H](#)) regarding the Revised Uniform Limited Liability Company Act study. Mr. Jaeger said the uniform Act should not be introduced in the 2013 session. He said the reasons for his recommendation are the lack of adoption in other states and the fact that the state's current limited liability company laws are working well.

Mr. Jaeger thanked Chairman Nething for his years of service and for his tremendous efforts in the Legislative Assembly in helping to get various uniform laws enacted.

### **UNIFORM ELECTRONIC RECORDING OF CUSTODIAL INTERROGATIONS ACT STUDY**

The Committee Counsel reviewed information regarding the Uniform Electronic Recording of Custodial Interrogations Act. The committee also received a memorandum ([Appendix I](#)) from Mr. Thomas P. Sullivan in support of the adoption of the uniform Act. Representative Klemin said the memorandum indicates that the fiscal effect of this uniform Act would not be as high as was reported to the committee at an earlier meeting.

Chairman Nething called on Mr. Aaron Birst, North Dakota Association of Counties, for testimony regarding the uniform Act. Mr. Birst said the adoption of the uniform Act would affect a large number of the association's members, especially state's attorneys and sheriffs. He said a survey conducted by the association reflected a general disfavor for some of the specifics of the uniform Act.

In response to a question from Representative Kretschmar, Mr. Birst said the lack of support among the association's members was across the board, not just the rural counties. He said while about 20 percent supported the idea; most of the opposition came from the smaller counties and departments. He said many law enforcement agencies are already recording

interrogations. He said the problem with this uniform Act is the consequences for those times when the recordings of an interrogation are not made.

Chairman Nething said the North Dakota Commission on Uniform State Laws will decide whether to introduce the Uniform Electronic Recording of Custodial Interrogations Act in the upcoming session.

### **CHARITABLE GAMING ORGANIZATION STUDY**

Chairman Nething called on Mr. Keith Lauer, Gaming Division, Attorney General's office, for the presentation of information ([Appendix J](#)) regarding charitable gaming tax collections. Mr. Lauer said the primary complaint from several charities is that all dollars are taxed at the higher rate, not just those over the percentage of the next lower level. He said the gaming tax enacted in 2011 is an incremental tax, not a progressive tax.

In response to a question from Senator Nelson, Mr. Lauer said many groups would like the state to use the incremental tax rate. He said if all gross proceeds were taxed at the 1 percent rate, the industry would generate \$7 million to \$8 million in gaming tax dollars for the state. He said the projection under the current tax rate is \$11 million.

### **STATUTE OF LIMITATIONS AND VENUE REQUIREMENTS FOR CIVIL ACTIONS STUDY**

At the request of Chairman Nething, Committee Counsel reviewed a bill draft [[13.0056.03000](#)] that would provide for certain civil actions, if none of the defendants reside in the state, the action either must be brought in the county in which the plaintiff resides or in the county in which the cause of action arose. She said the committee requested a minor amendment to the bill draft [[13.0024.02000](#)] that would change the statute of limitations on civil actions from six years to three years. She said the amendment would remove a reference in North Dakota Century Code Section 28-01-16(2) to "an action other than a penalty or forfeiture," an action that currently has a three-year statute of limitations.

Chairman Nething called on Mr. Al Austad, North Dakota Association for Justice, for testimony regarding the statute of limitations bill draft. Mr. Austad said there is not a legal or judicial reason to change the statute of limitations period. He said this change would add an additional burden to the judicial system in the state. He said the bill draft would eliminate that time when cases typically attempt to settle through the mediation process. He said the amount of litigation has decreased in the last two years.

Chairman Nething called on Mr. Larry Boschee, North Dakota Defense Lawyers Association, for testimony on the statute of limitations bill draft. Mr. Boschee said he supported the bill draft. He said

the statute of limitations for claims against the state is three years. He said this bill draft would make the limitation period consistent with the period for claims against the state. He said a three-year statute of limitations would help prevent stale claims, prevent forum shopping, and would get North Dakota into the mainstream.

Representative Klemin said North Dakota has had a six-year statute of limitations on these types of claims since statehood. He said the longer limitations period has not been a problem in North Dakota. He said the shorter limitation period would be detrimental to those parties with valid claims. He said the judicial system in the state is already overstressed. He said this bill draft would add an additional burden on judicial system.

Senator Olafson said he supports the bill draft because forum shopping is a concern in North Dakota. He said North Dakota should not be a target for forum shopping from plaintiffs around the country.

**It was moved by Representative Koppelman, seconded by Senator Olafson, and failed on a roll call vote that the bill draft relating to reducing the statute of limitations on certain civil actions from six years to three years be approved and recommended to the Legislative Management.** Senators Nething, Lyson, Nelson, and Olafson and Representative Koppelman voted "aye." Senators Schneider and Sitte and Representatives Delmore, Johnson, Kingsbury, Klemin, Kretschmar, and Maragos voted "nay."

Chairman Nething called on Representative Klemin for testimony ([Appendix K](#)) in support of the bill draft relating to venue. Representative Klemin also provided a copy of a West Virginia case ([Appendix L](#)) related to this topic and a copy of the State Bar Association of North Dakota's "Justice System Energy Impact Task Force Report" ([Appendix M](#)). Representative Klemin said the bill draft would apply equally to both residents and nonresidents and would prevent forum shopping by resident plaintiffs and nonresident plaintiffs. He said only in those cases in which there is no connection to the state would a plaintiff be precluded from using the state's courts. If the case does not have a connection to North Dakota, he said, taxpayers of the state should not be required to bear the cost to the judicial system. He said the state's judicial system is overworked and understaffed and the courts should not be burdened by litigation from nonresident plaintiffs against nonresident defendants for causes of action which did not arise in the state. He said the amendment to Section 28-04-05 would accomplish that objective without violating the Privileges and Immunities Clause of the United States Constitution.

**It was moved by Representative Maragos, seconded by Senator Schneider, and carried on a roll call vote that the bill draft relating to venue in cases in which none of the defendants reside in the state be approved and recommended to the Legislative Management.** Senators Nething, Lyson,

Nelson, Olafson, Schneider, and Sitte and Representatives Delmore, Johnson, Kingsbury, Klemin, Koppelman, Kretschmar, and Maragos voted "aye." No negative votes were cast.

## STATUTORY REVISION

Chairman Nething called Mr. John Walstad, Code Revisor, Legislative Council, for the presentation of a bill draft [[13.0140.04000](#)] regarding technical corrections in the North Dakota Century Code. Mr. Walstad said the bill draft makes technical corrections, including improper, inaccurate, redundant, missing, or obsolete references. He said Section 5 of the bill draft was added in response to an ambiguity pointed out by the State Board of Registration for Professional Engineers and Land Surveyors. He said the United States survey foot differs slightly from the international foot because the United States survey foot is determined by dividing 12 by 39.37, which results in an infinitely repeating decimal amount and the international foot is exactly .3048 meters. He said the fractional difference is small, but in large-scale measurements the difference is not within accepted survey standards. He said because both units of measure are used in North Dakota, it is important to avoid ambiguity by distinguishing the two measures. He provided a copy ([Appendix N](#)) of the board's concerns.

In response to a question from Representative Klemin, Mr. Walstad said he would rather have a standard than an infinite number. He said he reluctantly put this in this technical corrections bill draft. He said he will communicate the committee's concerns to the surveyors board. He said the board should have a representative available to address that question during the legislative session.

**It was moved by Representative Dahl, seconded by Senator Nelson, and carried on a roll call vote that the bill draft relating to technical corrections to the North Dakota Century Code, be approved and recommended to the Legislative Management.** Senators Nething, Lyson, Nelson, Olafson, Schneider, and Sitte and Representatives Dahl, Delmore, Johnson, Kingsbury, Klemin, Koppelman, Kretschmar, and Maragos voted "aye." No negative votes were cast.

## JUVENILE COURT JURISDICTION STUDY

At the request of Chairman Nething, Committee Counsel reviewed a bill draft [[13.0066.02000](#)] regarding extended jurisdiction juvenile proceedings. She said the bill draft allows for the option of an extended jurisdiction in certain juvenile proceedings. She said the bill draft includes the amendments proposed to the committee at the August 15, 2012, meeting. The first amendment provides that upon the motion of any party, including a child's parent or guardian, the court may consider the proceeding an extended jurisdiction juvenile proceeding. The second amendment provides that the assignment of a judicial

officer to conduct an extended jurisdiction juvenile proceeding must be decided in accordance with rules adopted by the Supreme Court.

**It was moved by Representative Maragos, seconded by Representative Koppelman, and carried on a voice vote that the proposed amendments be adopted.**

Chairman Nething said Representative Paur, who could not be in attendance, provided a letter of support ([Appendix O](#)) for the bill draft.

Chairman Nething called on Mr. Birst for comments regarding the North Dakota State's Attorneys Association's position of the on the bill draft. He said about half of attorneys would be in support of the extended jurisdiction concept and half would not.

In response to a question from Senator Olafson, Mr. Birst said cases involving charges of gross sexual imposition would no longer be required transfers under the bill draft. He said it would be the prosecutor's decision whether to ask for an extended juvenile jurisdiction hearing.

In response to a question from Representative Klemin, Mr. Birst said there are relatively few automatic transfers occurring, however, a number of the gross sexual imposition cases are plead down.

In response to a question from Senator Schneider, Mr. Birst said most of the juvenile cases that would be affected by the bill draft would come from the four most populated counties in the state. He said Cass, Burleigh, and Grand Forks Counties expressed support for the bill draft while Ward County indicated it likely would be opposed to the bill draft.

In response to a question from Senator Schneider, Ms. Haley Wamstad, Assistant State's Attorney, Grand Forks County, said many of the concerns about the bill draft from state's attorneys around the state are based on misinformation. She said some state's attorneys thought the bill draft provided for deferred prosecution. She said this bill draft does not provide for deferred prosecution. Rather, she said, what is left open is whether the juvenile should serve a juvenile sentence or an adult sentence.

In response to a question from Representative Klemin, Ms. Wamstad said the Juvenile Policy Board is more opposed to the concept as a whole rather than the specific elements of the bill draft. She said the starting point for the bill draft was a draft prepared by Mr. Jim Ganje of the State Court Administrator's

office. In addition, she said, the Juvenile Policy Board's concerns were provided to the committee. She said those concerns were addressed and included in the bill draft.

Senator Sitte said she opposes the bill draft. She said she agrees with the concerns included in Justice Mary Muehlen Maring's testimony from the committee's April 11, 2012, meeting.

Representative Klemin said recommending this bill draft for introduction is not the same as passing the bill. He said forwarding this bill draft to the Legislative Assembly will allow the discussion to continue. He said the concept proposed in the bill draft is a policy decision.

**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 option of an extended jurisdiction juvenile proceeding for certain offenses be approved and recommended to the Legislative Management.** Senators Nething, Lyson, Nelson, Olafson, and Schneider, and Representatives Dahl, Delmore, Kingsbury, Klemin, Koppelman, Kretschmar, and Maragos voted "aye." Senator Sitte and Representative Johnson voted "nay."

## OTHER BUSINESS

**It was moved by Senator Lyson, seconded by Representative Dahl, and carried on a voice 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 Management.**

**It was moved by Representative Dahl, seconded by Senator Nelson, and carried on a voice vote that the committee be adjourned sine die.**

No further business appearing, Chairman Nething adjourned the meeting at 1:30 p.m.

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Vonette J. Richter  
Committee Counsel

ATTACH:15