

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

JUDICIARY COMMITTEE

Monday, August 25, 2014
Roughrider 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: Timothy J. Dawson, Legislative Council, Bismarck
See [Appendix A](#) for additional persons present.

It was moved by Representative Delmore, seconded by Representative Koppelman, and carried on a voice vote that the minutes of the July 1, 2014, meeting be approved as distributed.

DRIVING UNDER THE INFLUENCE LAWS REVIEW

Senator Armstrong and Committee Counsel reviewed and the committee discussed four bill drafts relating to changes to the state's driving under the influence (DUI) laws.

Temporary Restricted License and the 24/7 Sobriety Program [15.0126.03000]

Senator Armstrong said the version of the bill draft reviewed at the July 1, 2014, meeting was revised to clarify that when determining the amount of time the individual must serve on the 24/7 sobriety program, the sentencing court may credit for the time the individual has already served on the 24/7 sobriety program which was done for the purpose of pretrial release or to obtain a temporary restricted operator's license. He said under the bill draft, the individual would not serve less time on the program than is required by law, but the individual could serve more time.

In response to a question from Senator Sitte, Senator Armstrong said for purposes of DUI offenses, the 24/7 sobriety program involves either twice-a-day testing or the use of the secure continuous remote alcohol monitor (SCRAM) bracelet. He said the patch is not used because it does not detect the use of alcohol.

It was moved by Representative Maragos, seconded by Representative Larson, and carried on a roll call vote that the bill draft relating to temporary restricted licenses and 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.

DUI Law Corrections [15.0243.01000]

Senator Armstrong said this bill draft is intended to remove arcane language in subsection 3 of North Dakota Century Code Section 39-06-03, which deals with a prohibition on the issuance of an operator's license to a habitual drunkard. He said the Department of Transportation said the provision in this subsection has never been used. He said the bill draft also amends Section 30-20-15 to change from 15 to 14 the number of days a driver must wait to get a temporary restricted operator's license. He said this change makes the waiting period consistent with other provisions in that section.

It was moved by Representative Maragos, seconded by Representative Larson, and carried on a roll call vote that the bill draft relating to technical and other corrections to several DUI statutes 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.

Multiple Convictions for Same DUI Incident [15.0125.03000]

Senator Armstrong said the bill draft is intended to clarify for purposes of the administrative sanctions of suspension or revocation of an operator's license, the DUI charge and the DUI refusal (subdivisions a, b, c, or d and subdivision e of Section 1 of Section 39-08-01) are deemed to be a single violation. He said this version of the bill draft does not include the language regarding the DUI refusal and the DUI charge as alternative offenses which was included in the earlier version.

In response to a question from Senator Armstrong, Mr. Timothy J. Dawson, Legislative Council, said the correct placement for this language in the bill draft is in Section 39-08-01. He said there are numerous references to this section in the administrative provisions of the DUI laws. He said the effect of the bill draft would be that for criminal purposes, the DUI charge and the DUI refusal are counted as two offenses; however, the two offenses would be considered a single offense for purposes of administrative sanctions.

Chairman Hogue called on Honorable Gail Hagerty, District Judge, South Central Judicial District, for comments regarding the bill draft. Judge Hagerty said the dual criminal offenses have not been a problem. She said regardless of whether the offender is found to be guilty of the DUI or the refusal to test, the court treats the offenses as one conviction. She said the language change in the 2013 legislative session did not change how the court handles those convictions. She said a language change is not necessary.

Chairman Hogue called on Mr. Ken Sorenson, Assistant Attorney General, for information on the status of challenges to the DUI law based upon double jeopardy concerns. Mr. Sorenson said two cases--State v. Washburn and State v. Birchfield--are pending before the North Dakota Supreme Court. He said at the district court level, one judge found the statute constitutional and the other judge found the statute unconstitutional. He said the Supreme Court is scheduled to hear both cases on Tuesday, September 30, 2014.

It was moved by Senator Armstrong, seconded by Representative Koppelman, and carried on a roll call vote that the bill draft relating to treating the DUI charge and the DUI refusal as a single violation for purposes of administrative sanctions 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.

Length of Probation [15.0236.01000]

At the request of Chairman Hogue, Committee Counsel reviewed a bill draft relating to the length of probation for second and third offenses. She said bill draft is in response to the concerns of Mr. Charles Placek, Commissioner, Interstate Commission for Adult Offender Supervision, regarding the one year of supervised probation required in Section 39-08-01 and the conflict of length of time with the Interstate Compact. She said the bill draft changes the mandatory participation in 24/7 sobriety program from one year to 360 days. She said Mr. Placek indicated that if the probation length is modified to 360 days, the Interstate Compact would not be triggered.

It was moved by Representative Klemin, seconded by Senator Lyson, and carried on a roll call vote that the bill draft relating to the length of probation for second and third DUI offenses 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.

Chairman Hogue presented the idea of consolidating all the DUI-related bill drafts single bill draft for presentation to the Legislative Management. He said a single bill draft allows all the issues to be considered at the same time by the Legislative Assembly rather than stretching out the bills throughout the session.

It was moved by Senator Sitte, seconded by Representative Koppelman, and carried on a voice call vote that the bill drafts approved by the committee regarding DUI offenses and related issues be consolidated into a single bill draft.

UNIFORM LAWS RECOMMENDATIONS

Chairman Hogue called on Mr. Jay E. Buringrud, Commissioner, North Dakota Commission on Uniform State Laws, presented a memo [Recommendations of the North Dakota Commission on Uniform State Laws - 2015 Legislative Session](#) regarding the recommendations of the commission for the 2013 legislative session. Mr. Buringrud said the commissioners are required to attend the annual meeting of the National Conference of Commissioners on Uniform State Laws and to promote uniformity in state laws on those subjects where uniformity may be deemed desirable and practicable. Under Section 54-55-04, he said, the commission may submit its recommendations for enactment of the uniform and model laws to the Legislative Management for its review and

recommendation. He said as a result of its meetings on July 14, 2014, the commission determined that the following uniform Acts may be appropriate for recommendation to the Legislative Management for introduction during the 2015 legislative session:

- The Uniform Act on Prevention of and Remedies for Human Trafficking. The Act was initiated as the result of a proposal by the American Bar Association Center for Human Rights in 2010. The Act was approved by the national conference in July 2013 and by the ABA House of Delegates in August 2013. To date in 2014, the Act has been introduced in 12 states and enacted in two.
- The Uniform Fiduciary Access to Digital Assets Act, which was approved by the national conference in 2014. In the modern world, documents are stored in electronic files rather than in file cabinets, e.g., photographs are uploaded to websites rather than printed on paper. Under this Act, if a fiduciary would have access to a tangible asset, that fiduciary will also have access to a similar type of digital asset. The Act governs four common types of fiduciaries--personal representatives of a deceased person's estate, guardians or conservators of a protected person's estate, agents under a power of attorney, and trustees. The Act defers to an accounts holder's privacy choices as expressed in a document, e.g., a will or trust or by an online affirmative act.
- The amendment to Uniform Commercial Code Article 4A (4A-108), which was approved by the national conference in 2012, was introduced in the 2013 legislative session, but failed to pass the Senate. The amendment provides that Article 4A does apply to a remittance transfer that is not an electronic funds transfer under the Federal Electronic Funds Transfer Act. Without this amendment, neither state nor federal law will apply for transfers that may involve mistaken addresses or payees and other issues beyond the initial sending of the transfer. To date, the amendment has been enacted in 41 states, including Minnesota, South Dakota, and Montana.
- Amendments to the Uniform Fraudulent Transfer Act, which were adopted by the national conference in 2014. The conference renamed the Act the Uniform Voidable Transactions Act, which more closely reflects the Act. The amendments address narrowly-defined issues, e.g., choice of law rules and burden of proof rules for claims under the Act.
- The Revised Uniform Limited Liability Company Act, which was recommended by the national conference in 2006. The revised Act was the subject of a 2009-10 interim Judiciary Committee study, which recommended continued study during the 2011-12 interim while Minnesota was working on the revised Act for adoption in Minnesota. The 2011-12 interim study recommended that the revised Act not be introduced during the 2013 legislative session because Minnesota had not yet adopted the revised Act. In 2014 the Minnesota Legislature adopted the revised Act, which was signed by the Governor in April.

In response to a question from Chairman Hogue, Mr. Buringrud said the North Dakota Commission on Uniform State Laws is an agency and has bill introduction privileges.

Chairman Hogue called on Mr. Alvin A. Jaeger, Secretary of State, for comments ([Appendix B](#)) on the Revised Uniform Limited Liability Company Act. Mr. Jaeger said his office would like to work with Mr. William Guy, Representative Klemin, and the Legislative Council staff in the drafting of the Uniform Act in order to include his office's procedures and processes in the bill draft. He said making those changes in the introduced bill will limit the number of amendments needed during the legislative session.

In response to a question from Representative Koppelman, Representative Klemin said he is working on a comparison between the Uniform Act and Minnesota law. He said in drafting the Uniform Act, the goal will be consistency with Minnesota's law.

In response to a question from Representative Koppelman, Mr. Jaeger said his concerns with the Uniform Act are on the administrative side of the Uniform Act, not the legal side. He said matching his office's procedures and practices does not destroy the uniformity of the Act.

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 [[15.0160.1000](#)] would consolidate all court fees except the victim witness fee into a single fee. She said the second draft [[15.0162.01000](#)] would consolidate all fees, including the victim witness fee; however, the 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. Jean Delaney, Deputy Director, Commission on Legal Counsel for Indigents, for testimony ([Appendix C](#)) regarding the bill drafts. Ms. Delaney said the commission is concerned about the

uncertainty of the commission's funding under the bill drafts. She said she is concerned as to whether judges will be more inclined to impose one large consolidated fee or if the judges will waive the fee at a greater rate than is done currently. She proposed an amendment to the bill drafts which would clarify that judges could waive all or part of the fee upon a showing of indigency.

In response to a question from Representative Delmore, Ms. Delaney said the current fee structure is working well. She said she would prefer the bill draft that would generate the most funding for the commission.

In response to a question from Representative Koppelman, Ms. Delaney said if the amount in the special fund was reduced, the commission would request more general fund dollars.

Chairman Hogue called on Mr. Richard Riha, State's Attorney, Burleigh County, for testimony on the bill drafts. Mr. Riha said all the funds subject to consolidation are state funds with the exception of the victim witness fee, which is returned to the county. He said for that reason, he supports bill draft [\[15.0160.01000\]](#), which excludes the victim witness fee from the consolidated fee.

Chairman Hogue called on Ms. Rozanna C. Larson, State's Attorney, Ward County, for testimony regarding the bill drafts. Ms. Larson said she agrees with Mr. Riha and would prefer the bill draft that excludes the victim witness fee. She said under the other bill draft [\[15.0162.01000\]](#), Ward County would receive considerably less than it collects in victim witness fees. She said because the amount collected in victim witness fees continues to increase every year, she would not want the county to be locked into the amount collected in 2012.

In response to a question from Representative Koppelman, Ms. Larson said her concern is that the money would still go for victim witness programs, but the amount would be reduced significantly. She said Ward County would get tens of thousands of dollars less than it currently receives under the formula in the bill draft that includes the victim witness fee in the consolidation. She said the assessment of the victim witness fee is discretionary. She said some of the other judicial districts in the state do not uniformly access the fee.

In response to a question from Representative Klemin, Ms. Larson said about 92 percent of offenders are indigent. She said the waiving of fees unusually is based upon a request from the defense rather than a showing of being indigent. She said she would be in support of Ms. Delaney's amendment.

Chairman Hogue explained the history behind the consolidation of court fee proposal. He said idea was proposed by the judicial branch during the 2013 legislative session as a way to streamline and create efficiency in the collection of court fees. He said at issue has been the \$25 victim witness fee. He said several counties, including Burleigh and Ward, have been diligent in collecting the fee, while other counties have not.

It was moved by Representative Klemin, seconded by Representative Maragos, and carried on a roll call vote that the bill draft [\[15.0160.01000\]](#) relating to the consolidation of court fees be amended to insert the words "all or part" after waive on page 5, line 29. Senators Hogue, Armstrong, Grabinger, Schneider, and Sitte and Representatives Delmore, Hanson, Karls, Klemin, Koppelman, Kretschmar, Larson, and Paur voted "aye." Senator Lyson voted "nay."

Senator Lyson said he is concerned about whether the consolidation is needed and the effect it may have on the funding of indigent defense in the state.

Representative Koppelman said the bill draft, as amended, would allow courts to waive all or part of the fee, but it is unclear if that change would have any effect on the funding for indigent defense. He said it is not likely that the Legislative Assembly would not take away a special fund source without replacing it with general fund dollars. He said he is not sure that is a policy decision the Legislative Assembly wants to make.

Representative Klemin said under the formula in the bill draft, the Commission on Legal Counsel for Indigents would get 22.2 percent of the fee collected. He said if the commission needs more than that amount, the percentage could be increased and the percentage deposited in the general fund decreased.

Senator Armstrong said the bill draft provides for 62.3 percent of the fees collected to be deposited in the general fund. He said he understands the need for streamlining and efficiency in the collection of fees. He said the emphasis, however, should be on consistency in collection among the district judges. He said the consolidation of fees does not solve the problem of collection.

Representative Koppelman said if the committee does not recommend the bill draft, the judicial branch has the option of introducing a consolidation of court fees bill again in the next legislative session.

In response to a question from Representative Kretschmar, Mr. Jim Ganje, State Court Administrator's office, said the dollar amount of the consolidated fee in the bill draft was intended to represent the total of all current fees. He said the intent was not to increase the fees but rather to consolidate the individual fees into a single fee.

In response to a question from Representative Koppelman, Mr. Ganje said it is assumed that courts have the authority to waive all or part of a fee.

It was moved by Representative Klemin, seconded by Representative Larson, and failed on a roll call vote that the bill draft relating to the consolidation of court fees, with the exception of the victim witness fee, be approved and recommended to the Legislative Management. Senator Hogue and Representatives Klemin, Larson, and Maragos voted "aye." Senators Armstrong, Grabinger, Lyson, Schneider, and Sitte, and Representatives Delmore, Hanson, Karls, Koppelman, Kretschmar, and Paur voted "nay."

INTELLECTUAL PROPERTY POLICIES AND PROCEDURES STUDY

Chairman Hogue called on Mr. Murray Sagsveen, Chief of Staff, North Dakota University System, for an update ([Appendix D](#)) on the State Board of Higher Education actions regarding intellectual property policies for University System institutions. He said the North Dakota University System created a task force to review existing State Board of Higher Education policies affecting intellectual property. He said the task force is reviewing options to amend the policies and is expected to provide recommendations for amendments prior to the end of 2014. He said the task force plans a first reading on the policy amendments at the board of Higher Education meeting on October 30 and final approval by the board on November 20. He said the board takes very seriously the responsibility the Legislative Assembly's entrusted to the board for intellectual property management at the various institutions within the University System. He said the task force is working to ensure that the policies benefit students, faculty, and staff; foster and facilitate collaborations with the state's valued private sector partners; and that the research and reactive activities of the University System continue to be a source of pride for all North Dakotans.

In response to a question from Senator Hogue, Mr. Sagsveen said historically, the royalties from intellectual property at the research institutions have not generated much revenue. He said the intent is for the policy to provide incentives to the inventor and to benefit both the inventor and the state. He said the current distribution of the royalties on intellectual property vary considerably between the University of North Dakota and North Dakota State University.

Representative Klemin said that the committee's duty was to study what is happening with regard to intellectual property at the research institutions and what can be done to create more consistency. He said it appears that with efforts of the task force to revise the intellectual property policies and the increased collaboration between the two research universities, the committee has fulfilled its responsibility.

In response to a question from Senator Sitte, Mr. Sagsveen said students are addressed in the policy. He said the intellectual property rights of a student depend on the student's situation and the agreement the student has with the university or, in the case of an internship, the employer.

In response to a question from Senator Schneider, Mr. Sagsveen said it is likely that if a student develops an invention with some input from a professor, the invention is likely to belong to the student.

Mr. Sagsveen said he would provide information to the committee on the outcome of the student who developed a paint can resealing device. He said the invention was discussed at the committee's meeting in Fargo on January 22, 2014.

OTHER BUSINESS

Chairman Hogue said regarding the committee's responsibility to review executive orders by the President of the United States and recommend to the Attorney General and the Governor that the executive order be further reviewed to determine the constitutionality of the order and whether the state should seek an exemption from the order. He said he and Committee Counsel have monitored and reviewed the executive orders issued since the 2013 legislative session. He said there do not appear to be any executive orders issued during that period which rise to the level indicated in the directive. He said the committee could meet again to further review the orders.

It was moved by Representative Koppelman, seconded by Senator Armstrong, and carried on a voice vote that the Chairman and the Legislative Council staff 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.

The committee discussed whether adjourning sine die would preclude the committee from having another meeting. Committee Counsel said to adjourn sine die has traditionally meant the committee has concluded its business and will not meet again.

Representative Koppelman noted that the term "sine die" means "without day" or "without a day specified for a future meeting."

It was moved by Senator Armstrong, seconded by Representative Koppelman, and carried on a roll call vote that the committee be adjourned sine die. Senators Hogue, Armstrong, Grabinger, Lyson, Schneider, and Sitte and Representatives Delmore, Hanson, Karls, Klemin, Koppelman, Kretschmar, Larson, and Paur voted "aye." Representative Maragos voted "nay."

No further business appearing, Chairman Hogue adjourned the meeting at 11:50 a.m.

Vonette J. Richter
Counsel

ATTACH:4