

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

JUDICIARY COMMITTEE

Thursday, September 17, 2015
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, John Grabinger, Erin Oban, Mac Schneider; Representatives Pamela Anderson, Roger Brabandt, Lois Delmore, Karen Karls, Lawrence R. Klemin, Kim Koppelman, William E. Kretschmar, Diane Larson, Andrew G. Maragos, Christopher D. Olson, Gary Paur, Mary Schneider

Members absent: Senators Kelly M. Armstrong and Carolyn C. Nelson; Representatives Kathy Hawken, Richard G. Holman, Mary C. Johnson

Others present: See [Appendix A](#)

At the request of Chairman Hogue the Legislative Council staff reviewed the [Supplementary Rules of Operation and Procedure of the North Dakota Legislative Management](#).

UNIFORM LAWS RECOMMENDATIONS

Chairman Hogue called on Representative Klemin, Commissioner, North Dakota Commission on Uniform State Laws, regarding the [Potential Recommendations of the North Dakota Commission on Uniform State Laws - 2017 Legislative Session](#). Representative Klemin 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 North Dakota Century Code 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 meeting on July 11, 2015, the commission determined that the following uniform Acts may be appropriate for recommendation to the Legislative Management for introduction during the 2017 legislative session--Uniform Act on Revised Athlete Agent Act, Uniform Home Foreclosure Procedure Act, Uniform Commercial Real Estate Receivership Act, Revised Uniform Residential Landlord and Tenant Act, Uniform Trust Decanting Act, Uniform Recognition and Enforcement of Canadian Domestic Violence Protection Orders Act, and the Revised Uniform Fiduciary Access to Digital Assets Act. He said the commission has not made a decision as to specific recommendations for the upcoming legislative session. He said specific recommendations are scheduled to be made by the commission during its 2016 meeting.

OFFENDERS AGAINST CHILDREN AND SEX OFFENDER REGISTRATION REVIEW

At the request of Chairman Hogue the Legislative Council staff reviewed a memorandum entitled [Offenders Against Children and Sex Offender Registration - Background Memorandum](#). The memorandum discussed the study directives included in 2015 House Concurrent Resolution No. 3012. The Legislative Council staff said Section 12.1-32-15 became law in 1991 and is the longest criminal statute in North Dakota. She said prior to the 64th Legislative Assembly state prosecutors recommended suggestions to amend the law to address inconsistencies such as the time frame different offenders have to register as well as the issue created by addressing both sex offenders and offenders against children in the same statute.

Attorney General

Chairman Hogue called on Mr. Jon Byers, Assistant Attorney General, Attorney General's office, for testimony regarding issues related to the implementation of 2015 House Concurrent Resolution No. 3012 (Appendices [B](#) and [C](#)). Mr. Byers said the 1994 Jacob Wetterling Act was the first federal Act requiring all states to have sex offender registration. He said 1995 House Bill No. 1152 was passed to bring North Dakota into compliance with the Jacob Wetterling Act, requiring registration for federal and out-of-state convictions. Mr. Byers said the 1996 Pam Lynchner Act required the state to determine which offenders are most dangerous. He said 2001 Senate Bill No. 2446 established a risk-based tier system and a requirement that all sex offenders be assigned a risk level for community notification purposes. He said every month North Dakota's Sex Offender Risk Assessment Committee meets to determine into which tier each offender falls. Mr. Byers said 2005 House Bill

No. 1061 amended the sex offender registration requirements to require the submission of a DNA sample and required offenders to notify the affected jurisdiction 10 days prior to a change of name, school, or address. Mr. Byers said that prior to 2006, North Dakota was determined to be compliant with federal law, however, upon passage of the Adam Walsh Child Protection and Safety Act, the Attorney General determined the risk assessment method already in use by North Dakota was more effective than the method required by the Adam Walsh Child Protection and Safety Act. He said North Dakota's failure to comply has resulted in a loss of about 10 percent of Justice Assistant Grants funds, however, the funds are reallocated to North Dakota upon assurance to the federal government that the state is continuing to develop and work on the sex offender and offender against children registration requirements. Mr. Byers said the current statute works well although it could be easier to read.

In response to a question from Representative Klemin, Mr. Byers said the Governor is aware that North Dakota is not in compliance with federal law, however, he said he would be happy to provide the committee with a copy of the federal notice to allow the legislature to determine what legislation is appropriate. Representative Klemin said he is concerned about the Attorney General usurping legislative authority.

In response to a question from Chairman Hogue, Mr. Byers said as a result of the state's noncompliance with federal law, North Dakota could lose between \$200,000 and \$500,000 in Adam Walsh Child Protection and Safety Act Grants.

In response to a question from Representative Kretschmar, Mr. Byers said the way the statute addresses both sex offenders and offenders against children is not an issue.

North Dakota Association of Counties

Chairman Hogue called on Mr. Aaron Birst, Legal Counsel, North Dakota Association of Counties, for testimony regarding issues related to House Concurrent Resolution No. 3012 ([Appendix D](#)). Mr. Birst said offenders have difficulty comprehending the statute. He said offenders against children have to explain to employers, landlords, and the public that although they have a registration requirement they are not sex offenders.

In response to a question from Chairman Hogue, Mr. Birst said the main consequences for those required to register are related to employment and residency. He said the transient population is the most difficult to track. Mr. Birst said offenders would rather be jailed for a longer period of time than be required to register as a sex offender.

In response to a question from Representative Anderson, Mr. Birst said there are currently thousands of offenders in North Dakota.

State's Attorney

Chairman Hogue called on Ms. Renata Selzer, Assistant State's Attorney, Cass County, for testimony regarding issues related to House Concurrent Resolution No. 3012 ([Appendix E](#)).

In response to a question from Representative Klemin, Ms. Selzer said under the mandatory minimum requirements, if an offender fails to register the court is required to impose a mandatory 90 day sentence.

In response to a question from Chairman Hogue, Ms. Selzer said if a report is sent to the state's attorney for review the offender will likely be charged as there is very limited prosecutorial discretion under the sex offender registration requirements. Ms. Selzer said when a state's attorney receives a report the state's attorney is unaware whether the law enforcement office exercised any discretion.

Chairman Hogue said written testimony from Ms. Pamela Nesvig, Assistant State's Attorney, Burleigh County, is included in the information packet ([Appendix F](#)).

North Dakota Association of Criminal Defense Lawyers

Chairman Hogue called on Mr. Justin Vinje, Past President, North Dakota Association of Criminal Defense Lawyers, for testimony regarding issues related to House Concurrent Resolution No. 3012 ([Appendix G](#)).

In response to a question from Representative Koppelman, Mr. Vinje said judicial discretion is limited to whether there was sexual predatory conduct, whether the offender has a mental abnormality, and whether the offender has prior sex crime convictions.

Comments by interested persons

Chairman Hogue invited comments by interested persons in attendance regarding the current sex offender and offender against children registration requirements.

Mr. Kendall Vetter, Warrants Officer, Bismarck Police Department, said he has worked with sex offender compliance at the Bismarck Police Department for the last two years. He said there are about 260 offenders that live, work, and attend school in Bismarck. He said in his experience law enforcement exercises discretion depending on the offender's history and the seriousness of the failure to report. Mr. Vetter said it can be difficult for an offender to manage registration in both Bismarck and Mandan when the offender works in one city and lives in the other. He said it would be easier for law enforcement and the offender if there was a single parent agency for an offender to register residency, allowing that parent agency to notify any other law enforcement agency about the offender's school and work locations. Mr. Vetter said the registration timeline is also unrealistic as some offenders start and stop three jobs in 10 days and every offender in Bismarck could likely be found in violation of the reporting requirement. He said consistency as to the number of days an offender has to report various changes would be beneficial.

In response to a question from Representative Klemin, Mr. Vetter said there does not need to be separate statutes for sex offenders and offenders against children. He said the most important aspect is public notification and education because the public does not differentiate between sex offenders and offenders against children. He said offenders against children do not have risk assessment levels like sex offenders.

In response to a question from Representative Koppelman, Mr. Vetter said the presence of sex offenders near schools needs to be addressed. He said the current law does not keep sexual predators from acting as college students or attending high school activities being held at college venues. He said construction workers are also allowed to work on college construction sites.

Sargent Gail Wischmann, Cass County Sheriff's Department, said housing is the most difficult aspect for moderate- and high-risk offenders in Cass County. She said the offenders typically rent properties that are less than desirable. She said Cass County has a primary notification policy that works very well and eliminates the confusion about registering with several different law enforcement agencies.

In response to a question from Representative Paur, Sargent Wischmann said once an offender crosses into Minnesota to work, the offender is required to also register in Minnesota. She said Minnesota has less restrictions on sex offenders than North Dakota.

Chairman Hogue called on Mr. Jack McDonald, Past President, State Bar Association of North Dakota, for a presentation. Mr. McDonald, Mr. Tony Weiler, and Chief Justice Gerald VandeWalle presented Representative Koppelman with the 2015 Legislative Service Award.

VOTER VERIFICATION AND VERIFICATION OF CITIZENSHIP

At the request of Chairman Hogue the Legislative Council staff reviewed a memorandum entitled [Voter Identification and Verification of Citizenship - Background Memorandum](#). The memorandum discussed the study requirements under 2015 House Bill No. 1302 and 2015 House Bill No. 1389. The Legislative Council staff said North Dakota is the only state that does not require some form of voter registration. She said the Legislative Assembly enacted a bill requiring registration in 1895, however, the law was repealed during the 1951 session. The Legislative Council staff said North Dakota's election laws are referred to as the central voter file and are contained in Chapter 16.1-02. She said if North Dakota implemented voter registration, it would immediately fall under the requirements of the National Voter Registration Act of 1993. The Legislative Council staff said verification of United States citizenship is a responsibility of the United States Citizenship and Immigration Services of the United States Department of Homeland Security.

Secretary of State

Chairman Hogue called on Mr. Jim Silrum, Deputy Secretary of State, Secretary of State's office, for testimony on voter registration and obtaining driver's licenses and nondriver identification (Appendices [H](#) and [I](#)). Mr. Silrum said there are two types of voter registration, one requires all eligible voters to register a certain number of days before an election and the other allows same day registration. He also said some states require a person to also specify a party designation.

In response to a question from Chairman Hogue, Mr. Silrum said some believe having voter registration increases turnout, however some states with registration have some of the lowest voter turnout.

In response to a question from Representative Klemin, Mr. Silrum said the ambiguity surrounding the rules for determining residency as it applies to voting is the biggest concern. He said a law stating that a residency for the purpose of voting is determined by the address on your acceptable form of identification provided at voting would be acceptable.

In response to a question from Senator Oban, Mr. Silrum said the changes since 2013 have been improvements as there were a limited number of people that failed to update their identification cards and were therefore unable to cast ballots. He said moving to voter registration would not change that outcome because a person would still be required to prove residency.

In response to a question from Representative Olson, Mr. Silrum said pollbooks are updated on a weekly basis through data collected by the Department of Transportation (DOT).

In response to a question from Representative Koppelman, Mr. Silrum said the Secretary of State's office would like to explore the idea of requiring identification at the polls in conjunction with a method to demonstrate residency to determine whether or not such a requirement would be considered voter registration under the National Voter Registration Act.

In response to a question from Representative Klemin, Mr. Silrum said the fiscal impact of implementing voter registration under the National Voter Registration Act would be spread across state and county agencies. He said Wyoming spent about \$10 million to implement voter registration and Wisconsin spent about \$35 million.

In response to a question from Representative Delmore, Mr. Silrum said whether or not North Dakota has voter registration, the concern about voter fraud will exist until the law is changed to specify the residency requirement for voting purposes.

Department of Transportation

Chairman Hogue called on Mr. Glenn Jackson, Director, Driver's License Division, Department of Transportation, for testimony on verification of citizenship status for obtaining driver's licenses and nondriver identification cards ([Appendix J](#)). Mr. Jackson said if DOT is required to verify citizenship, DOT would need to verify the citizenship of everyone that votes, not just those that come from out of state.

In response to a question from Representative Koppelman, Mr. Jackson said in order to definitively say that each person who has a license or identification card is a citizen there would need to be some method of verification. He said DOT has the authority but the policy decision has not been made. Mr. Jackson said DOT is looking at a mobile driver's license that would update automatically to the Secretary of State.

In response to a question from Representative Olson, Mr. Jackson said a temporary license is only for individuals who are not citizens of the United States. He said someone who is a permanent resident would receive a driver's license.

Committee Discussion

In response to a question from Representative Koppelman, Mr. Silrum said someone who receives a temporary status on a driver's license is not included in the data sent to the Secretary of State for inclusion in the central voter file. He said to address the issue of noncitizens having driver's licenses just like citizens, poll workers will be asking all voters if they are a United States citizen, and whether they have lived in the precinct for 30 days.

In response to a question from Representative Anderson, Mr. Silrum said he was aware of some college students who were unable to cast votes as a result of a failure to update their identification card (ID). He said the individual would not be prevented from voting at the precinct on their ID, however, they would not be able to vote at the new precinct because state law requires an individual to live in the precinct for 30 days prior to an election.

In response to a question from Representative Olson, Mr. Silrum said the information in the central voter file includes the names of the individuals that have received a driver's license using a Green Card. He said the only way an election official knows an individual is a citizen is by taking the word of the individual.

In response to a question from Senator Grabinger, Mr. Silrum said the Department of Corrections and Rehabilitation sends the Secretary of State a list of incarcerated individuals every week so the Secretary of State can update the central voter file with the names of those individuals who are ineligible to vote.

In response to a question from Representative Schneider, Mr. Silrum said the Help America Vote Act of 2002 requires every state to make a voting accessibility grievance form and toll-free phone number available to all voters.

In response to a question from Representative Olson, Mr. Jackson said it would be technically feasible to mark a driver's license to show an individual is a resident but not a United States citizen. He said in the past DOT was focused on providing a driver's license to the individuals that passed the test and currently DOT is focused on identity management.

Comments by Interested persons

Chairman Hogue invited comments by interested persons in attendance regarding voter registration and verification of citizenship status for voting and obtaining driver's licenses and nondriver identification.

Mr. Kevin Glatt, Burleigh County Auditor, said voter registration is not necessary as it would be very costly and there is a pseudo-voter verification system through DOT. He said if the address on an ID is the current residential address nothing additional would be required. Mr. Glatt said the committee should keep in mind that no matter what the committee decides the volunteers on election day have a very difficult job and there are very few of them.

Mr. Michael Montplaisir, Cass County Auditor, said Cass County has had electronic pollbooks since 1998. He said election workers have a log to keep track of any discrepancies on election day, however, most of the time people are turned away because they are in the wrong precinct.

No further business appearing Chairman Hogue adjourned the meeting at 2:45 p.m.

Samantha E. Kramer
Counsel

ATTACH:10