

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

JUDICIARY COMMITTEE

Monday, June 6, 2016
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, Carolyn C. Nelson, Mac Schneider; Representatives Pamela Anderson, Roger Brabandt, Lois Delmore, Kathy Hawken, Richard G. Holman, Mary C. Johnson, Karen Karls, Kim Koppelman, William E. Kretschmar, Diane Larson, Andrew G. Maragos, Christopher D. Olson, Gary Paur, Mary Schneider

Members absent: Senator Erin Oban and Representative Lawrence Klemin

Others present: See [Appendix A](#)

It was moved by Representative Nelson, seconded by Representative Maragos, and carried on a voice vote that the minutes of the March 22, 2016, meeting be approved as distributed.

COUNCIL OF STATE GOVERNMENTS

Chairman Hogue called on Ms. Katie Mosehauer, Council of State Governments Justice Center, for information ([Appendix B](#)) relating to criminal justice system trends in North Dakota.

Ms. Mosehauer said the Council of State Governments (CSG) is tasked with providing technical assistance to state leaders. She said state leaders requested technical assistance from CSG through The Pew Charitable Trusts and the Bureau of Justice Assistance to use a data-driven justice reinvestment approach. She said the project officially began in January 2016 with CSG providing a final policy package by the end of 2016. She said North Dakota's jail and prison population is growing at the fourth fastest rate in the country.

In response to a question from Representative Larson, Ms. Mosehauer said the increase in population in the state has contributed to the increase in prison population. However, Ms. Mosehauer said, the prison population grew faster than the overall population of North Dakota, so the two are correlated but not dependent on each other.

Ms. Mosehauer said the correctional system is operating at capacity and is forecasted to grow significantly over the next decade. She said the growth has not changed in relation to the decrease in oil production. She said the state is expecting about 1,300 more individuals in the justice system in the next decade, totaling over 3,000 individuals. She said CSG first analyzed sentencing data to determine what is really driving incarceration in North Dakota.

In response to a question from Representative Delmore, Ms. Mosehauer said CSG does not have specific data related to the mental health issues of the individuals being incarcerated. However, Ms. Mosehauer said, there is a significant relationship between mental health and incarceration which needs to be adjusted to make progress.

Ms. Mosehauer said drug offenses make up a larger share of felony sentences in North Dakota than other states. She said North Dakota also sentences individuals found guilty of drug offenses to probation much less frequently than other states.

In response to a question from Representative Delmore, Ms. Mosehauer said the cost to have an individual on probation in North Dakota is \$4.22 per day compared to \$113 per day for that same individual to be incarcerated. Ms. Mosehauer said the incarceration cost includes treatment costs. Although most probation officers indicated most of the individuals on probation need some type of treatment, she said, there is a 3- to 4-week wait time for an individual on probation to access community services.

Ms. Mosehauer said Class C felonies are nearly the entire population going through the courts. She said 70 percent of judges in North Dakota said they sentence some individuals to prison just to provide access to treatment.

In response to a question from Senator Armstrong, Ms. Mosehauer said an investment in probation would need to be made because probation is also at capacity. Ms. Mosehauer said there is a need to look at the resources in probation and parole to determine what changes would result in the greatest impact on community supervision.

Ms. Mosehauer said the cost to accommodate the anticipated growth over the next 10 years is estimated to be about \$485 million. She said that figure does not include any building costs.

In response to a question from Representative Holman, Ms. Mosehauer said there is gender-specific programming available at the women's prison. However, Ms. Mosehauer said, the programs are 100 days and the average female inmate is incarcerated for 90 days. Although some of the programs are modified to alter the length of treatment, she said, the programs are voluntary.

In response to a question from Chairman Hogue, Ms. Rachael Druckhammer, Council of State Governments, said the Department of Corrections and Rehabilitation (DOCR) provided the cost projections. Ms. Mosehauer said DOCR made the projection assuming the rate of increase over the past 5 years would continue.

OBERGEFELL V. HODGES STUDY

At the request of Chairman Hogue, the Legislative Council staff reviewed a memorandum entitled [Marriage Definition - Impacted Sections](#).

It was moved by Senator Schneider and seconded by Representative Larson that the Legislative Council staff be requested to prepare a bill draft to amend all statutes impacted by the *Obergefell v. Hodges* decision.

Chairman Hogue said Solicitor General Douglas Bahr provided testimony to the committee at a previous meeting and determined the statutes did not need to be amended. He said the decision whether to amend the statutes is not nearly as contentious as the underlying question of providing the right for same-sex couples to be married.

Representative Hawken questioned whether funds would need to be set aside for potential lawsuits if the statutes are not amended.

Senator Armstrong said the provision defining marriage as between a man and a woman in the Constitution of North Dakota can remain indefinitely even though the provisions are not currently valid under the supremacy clause of the United States Constitution. He said if *Obergefell v. Hodges* were reversed, North Dakota's provision would become valid again.

Representative Larson said having a bill drafted does not mean the committee will forward the bill to the Legislative Management.

In response to a question from Representative Olson, the Legislative Council staff said the changes provided to the committee are only language changes. The Legislative Council staff said changing the statutory references from husband and wife to spouse does not change the meaning of a statute.

Chairman Hogue said the committee needs to choose a direction. He said the committee either should forward a bill draft or report that the topic was studied and no changes are necessary.

Representative Koppelman said the issue has been studied and the Solicitor General said nothing further needs to be done.

After that discussion, **the motion to request a bill draft was approved on a roll call vote.** Senators Hogue, Armstrong, Grabinger, Nelson, and Schneider and Representatives Anderson, Delmore, Hawken, Holman, Johnson, Kretschmar, Larson, Maragos, and Schneider voted "aye." Representatives Koppelman, Brabandt, Karls, Olson, and Paur voted "nay."

REPORTS

Chairman Hogue called on Ms. Maggie D. Anderson, Executive Director, Department of Human Services, for presentation (Appendices [C](#) and [D](#)) of the statutorily required report of the task force on substance exposed newborns.

Ms. Anderson said the task force was created as a result of 2015 Senate Bill No. 2367.

In response to a question from Representative Paur, Ms. Anderson said the task force did not discuss the nursing mother piece. However, Ms. Anderson said, the safety plan for the child should include that aspect if the mother is choosing to nurse.

In response to a question from Representative Koppelman, Ms. Anderson said the lack of services is multifaceted. Ms. Anderson said some of the problem relates to personnel and licensure issues while another issue is who is paying for services.

Ms. Pamela Sagness, Director, Behavioral Health Services Division, Department of Human Services, said the issue of lack of effective treatment in the state combined with the use of abstinence-based treatment, which is no longer the best practice nationally, create barriers to treatment.

In response to a question from Representative Anderson, Ms. Sagness said the Department of Human Services (DHS) does not have data related to the demographics of those seeking treatment. Ms. Sagness said alcohol abuse is an issue, but many individuals continue to use prescription medications during early pregnancy without knowing the medications could have an adverse effect on the developing fetus.

In response to a question from Representative Delmore, Ms. Sagness said the task force discussed the need for a method to identify high-risk individuals during very early pregnancy because a majority of fetal development occurs during the first 10 weeks of a pregnancy. Ms. Sagness said women generally are not intentionally harming their babies.

Chairman Hogue called on Mr. Jim Fleming, Director, Child Support Division, Department of Human Services, for a presentation ([Appendix E](#)) of the statutorily required report on suspension of a driver's license for nonpayment of child support.

In response to a question from Representative Koppelman, Mr. Fleming said DHS works to administer sanctions in a smart manner because negotiating a payment plan is the hardest part of a caseworker's job. Mr. Fleming said DHS can deviate from the income shares model depending on each situation.

In response to a question from Representative Holman, Mr. Fleming said compliance issues with employer withholding were more of a challenge 10 years ago than today. Mr. Fleming said DHS has the ability to impose late fees and sanctions as well as the ability to waive those fees if the employer complies.

In response to a question from Representative Schneider, Mr. Fleming said the custodial parent is a key source of information for DHS although there are times when a custodial parent's vision for enforcement differ from the process used by DHS. In those instances, Mr. Fleming said, DHS has ultimate responsibility to the taxpayer.

In response to a question from Senator Grabinger, Mr. Fleming said notice of suspension of a driver's license is sent by mail. If a notice comes back as undeliverable, Mr. Fleming said, DHS will search for the individual using other means.

In response to a question from Chairman Hogue, Mr. Fleming said the caseworker makes the final decision as to whether to remove or suspend a driver's or professional license.

In response to a question from Representative Johnson, Mr. Fleming said the core part of a caseworker's job is to adjust payment plans to avoid default. Mr. Fleming said the Child Support Division receives about 45,000 payments each month.

In response to a question from Chairman Hogue, Mr. Fleming said there is not a disproportionate impact on individuals required to have a license for employment as most employers expect employees to be able to drive. Mr. Fleming said there is a risk that suspension could impair an individual's ability to work, which is why DHS is very thoughtful about using the sanction.

VOTER IDENTIFICATION - VERIFICATION OF CITIZENSHIP

At the request of Chairman Hogue, the Legislative Council staff reviewed a memorandum entitled [North Carolina - Voter Identification](#).

Chairman Hogue said he asked the Legislative Council staff to prepare the memorandum because the committee's work deals with topics that receive attention at the federal level. He said North Dakota's current voter identification requirement is being challenged by several individuals who argue the law unduly burdens Native Americans.

IMPLIED CONSENT - SOBRIETY TEST

Chairman Hogue requested committee members review the memorandum entitled [Implied Consent - Sobriety Test](#). He said if the United States Supreme Court overturns the statute at issue, the Legislative Assembly will need to revisit the topic.

No further business appearing, Chairman Hogue adjourned the meeting at 2:20 p.m.

Samantha E. Kramer
Counsel

ATTACH:5