

## NORTH DAKOTA LEGISLATIVE MANAGEMENT

## Minutes of the

**JUDICIARY COMMITTEE**

Thursday, August 25, 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, Erin Oban, Mac Schneider; Representatives Pamela Anderson, Roger Brabandt, Lois Delmore, Kathy Hawken, Richard G. Holman, Karen Karls, Lawrence R. Klemin, Kim Koppelman, William E. Kretschmar, Diane Larson, Gary Paur, Mary Schneider

**Members absent:** Representatives Mary C. Johnson, Andrew G. Maragos, Christopher D. Olson

**Others present:** Vonette J. Richter and Emily L. Thompson, Legislative Council, Bismarck  
Thomas L. Trenbeath, Attorney General's office, Bismarck  
See [Appendix A](#) for additional persons present.

**It was moved by Representative Delmore, seconded by Representative Holman, and carried on a voice vote that the minutes of the June 6, 2016, meeting be approved as distributed.**

**UNIFORM LAWS RECOMMENDATIONS**

Chairman Hogue called on Representative Klemin, Commissioner, North Dakota Commission on Uniform State Laws, for testimony regarding [Recommendations of the North Dakota Commission on Uniform State Laws - 2017 Legislative Session](#). He said the commission recommended five uniform Acts for introduction during the 2017 legislative session and is tentatively recommending one uniform Act. Because the state has a similar statute, he said, the commission is tentatively recommending the Uniform Power of Attorney Act. He said the commission members will consult with interested parties to determine whether to introduce the Uniform Power of Attorney Act, which seeks to preserve the durable power of attorney as a low-cost, flexible, and private form of surrogate decisionmaking while deterring use of the power of attorney as a tool for financial abuse of incapacitated individuals.

**TECHNICAL CORRECTIONS BILL DRAFT**

Chairman Hogue called on Ms. Vonette J. Richter, Code Revisor, Legislative Council, for presentation of a bill draft [[17.0260.01000](#)] relating to technical corrections to the North Dakota Century Code.

Ms. Richter said the changes in the bill draft are not substantive, but are intended to correct obsolete or incorrect language and cross references.

In response to a question from Representative Delmore, Ms. Richter said the repeal of the homestead credit relates to a specific credit that was only in effect for 2 years.

In response to a question from Representative Schneider, Ms. Emily L. Thompson, Counsel, Legislative Council, said the veterans' property tax credits are still available, although the income tax credits are no longer in use. She said several of the sections being repealed specifically stated that the sections were in effect only for the years mentioned.

**It was moved by Senator Grabinger, seconded by Senator Schneider, 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 Hogue, Armstrong, Grabinger, Nelson, Oban, and Schneider and Representatives Anderson, Brabandt, Delmore, Hawken, Holman, Karls, Klemin, Koppelman, Kretschmar, Paur, and Schneider voted "aye." No negative votes were cast.

## REPORT

Chairman Hogue called on Mr. Thomas L. Trenbeath, Deputy Attorney General, for presentation of a report ([Appendix B](#)) regarding the status and trends of unlawful drug use and abuse and drug control efforts in the state.

Mr. Trenbeath said when the Attorney General's office began issuing the report, no other agency was collecting or tracking the data. He said several other agencies are now collecting the data and monitoring trends to determine the impact on state resources and reports are available on various agency websites. He said trends are growing in some areas while decreasing in others, such as adolescent tobacco and marijuana use.

In response to a question from Chairman Hogue, Mr. Trenbeath said it is difficult to determine whether the state has been impacted by the legalization of marijuana in Colorado and Washington. He said the state has seen a larger volume in terms of the transportation of marijuana out of Washington and into and through North Dakota.

In response to a question from Representative Delmore, Mr. Trenbeath says alcohol continues to be the primary substance used in the state. He said the strengthening of the driving under the influence law has helped, but it is difficult to make a direct correlation.

In response to a question from Representative Koppelman, Mr. Trenbeath said the recent cases of fentanyl use have not yet shown up in the statistics. He said the perceived over-prescription of painkillers is one part of the problem, whereas at the other end of the spectrum there is a lack of services available to individuals with addiction.

In response to a question from Representative Klemin, Mr. Trenbeath said the proportion of arrests to incarceration reflects the many detours of the criminal justice system, such as a plea agreement. He said nearly 20 percent of individuals arrested for drugs end up in prison, which is a statistic of epidemic proportion.

Representative Klemin said the data does not include other dispositions of criminal cases or any time an individual spends in a county facility. He said it may be time to consider amending the statute to include the appropriate data in the report.

Senator Schneider said the data from the Department of Human Services does not include individuals served by private providers.

Senator Armstrong said although private providers are not required to report, the data should be available through the courts because many individuals are ordered by the court to obtain treatment.

In response to a question from Chairman Hogue, Mr. Trenbeath said he does not believe specific data is collected as to the impact the recent changes to the driving under the influence laws have had on behavior.

## IMPLIED CONSENT - SOBRIETY TEST

Chairman Hogue called on Mr. Mike Pitcher, Assistant Attorney General, for testimony ([Appendix C](#)) regarding the impact of the United States Supreme Court decision in *Birchfield v. North Dakota* and *Beylund v. Levi*.

Mr. Pitcher said the primary impact of the decision relates to how law enforcement operates in the field when it comes to the type of chemical test that is requested.

In response to a question from Senator Armstrong, Mr. Pitcher said there have been discussions with the Department of Transportation about the wording of the implied consent advisory.

In response to a question from Representative Paur, Mr. Pitcher said law enforcement may have other reasons for requesting a blood test beyond testing blood alcohol concentration.

Chairman Hogue called on Ms. Sally Holewa, State Court Administrator, for testimony ([Appendix D](#)) regarding the impact of *Birchfield v. North Dakota* and *Beylund v. Levi* on court policies.

Ms. Holewa said a working group that was created in response to the decisions is recommending a web-based solution. She said the website would allow law enforcement and state's attorneys to enter data, which would alert a judge that a warrant has been requested and the judge could use an electronic signature to sign the warrant. The website was designed in-house to avoid additional costs, she said, and the goal is to have the website running by the end of the year.

In response to a question from Chairman Hogue, Ms. Holewa said a web-based solution is for the convenience of everyone. She said the working group is confident there will be some data to present to legislators during the 65<sup>th</sup> Legislative Assembly.

## VOTER IDENTIFICATION - VERIFICATION OF CITIZENSHIP

Chairman Hogue called on Ms. Elizabeth Fischer, Assistant Attorney General, for testimony ([Appendix E](#)) regarding the status of litigation related to the state's voter identification statutes.

Ms. Fischer said Judge Daniel L. Hovland ordered the state to revert to the use of an affidavit for the general election while the case progresses through the system.

In response to a question from Chairman Hogue, Ms. Fischer said the process to obtain a tribal identification card varies depending on the tribe.

Senator Schneider said although there were nine confirmed cases of voter fraud in the last general election, the court order noted the state failed to provide any evidence of voter fraud.

Chairman Hogue called on Ms. Wendy Underhill, Program Manager, Elections and Redistricting, National Conference of State Legislatures, for a presentation ([Appendix F](#)) regarding issues related to voter identification and registration and verification of citizenship status.

In response to a question from Chairman Hogue, Ms. Underhill said the most common basis for a challenge of a voter identification law is because of the intent or perceived discrimination.

In response to a question from Representative Koppelman, Ms. Underhill said the implementation of voter identification laws across the country began growing in 2011 after Kansas passed a law requiring proof of citizenship.

In response to a question from Chairman Hogue, Ms. Underhill said since the implementation of voting by mail ballot in Colorado, Oregon, and Washington, a couple issues have come to light. She said the postal service has extended mail delivery times and there could be an issue with verification of who actually completes the ballot.

In response to a question from Senator Oban, Ms. Underhill said in the majority of states with voter registration, once a voter has registered, the voter is required only to update the address on file. She said the voter does not have to register again upon moving.

Chairman Hogue called on Ms. Jennifer Cook, Policy Director, American Civil Liberties Union of North Dakota, for testimony ([Appendix G](#)) regarding voter registration.

### Comments by Interested Persons

Mr. Jim Silrum, Deputy Secretary of State, said the plaintiffs also are arguing that it is difficult to obtain an identification card in rural areas.

In response to a question from Representative Koppelman, Mr. Silrum said the Secretary of State's office is complying with the preliminary injunction until there is an official ruling. Since the current statute requires voter identification, he said, the Attorney General's office will continue to defend the law. If the Legislative Assembly amends the law in a way that would answer the lawsuit, he said, the lawsuit would go away.

Mr. Alvin A. Jaeger, Secretary of State, said there is concern about allowing poll workers to vouch for voters because doing so could open the door for lawsuits based on discrimination. He said he has been concerned for a number of years about the use of affidavits because all of the ballots are counted together, which limits the ability of poll workers to verify affidavits before counting the votes.

### OBERGEFELL V. HODGES STUDY

At the request of Chairman Hogue, the Legislative Council staff reviewed a memorandum entitled [Marriage Definition - Impacted Sections](#) and a bill draft [[17.0203.01000](#)] relating to the definition of marriage and the recognition of marital relationships.

**It was moved by Representative Hawken, seconded by Representative Paur, and carried on a roll call vote that the bill draft relating to the definition of marriage and the recognition of marital relationships be approved and recommended to the Legislative Management.** Senators Grabinger, Nelson, Oban, and Schneider and Representatives Anderson, Delmore, Hawken, Holman, Klemin, Kretschmar, and Schneider voted "aye." Senator Hogue and Representatives Brabandt, Karls, Koppelman, Larson, and Paur voted "nay."

**COMMITTEE DISCUSSION**

**It was moved by Senator Nelson, seconded by Senator Schneider, and carried on a voice vote that the Chairman and 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.**

In response to a question from Senator Schneider, Chairman Hogue said the committee has spent time during the interim reacting to decisions from the federal and state courts. He said he is satisfied the committee has adequately studied whether the state should implement voter identification.

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

No further business appearing, Chairman Hogue adjourned the committee sine die at 1:35 p.m.

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Samantha E. Kramer  
Counsel

ATTACH:7