

## NORTH DAKOTA LEGISLATIVE MANAGEMENT

## Minutes of the

**JUDICIARY COMMITTEE**

Wednesday and Thursday, November 13-14, 2019  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Representative Lawrence R. Klemin, Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Representatives Lawrence R. Klemin, Karla Rose Hanson, Pat D. Heinert, Daniel Johnston, Terry B. Jones, Karen Karls, Jim Kasper, Kim Koppelman, Aaron McWilliams, Bob Paulson, Shannon Roers Jones, Steve Vetter; Senators JoNell A. Bakke, Michael Dwyer, John Grabinger, Diane Larson, Janne Myrdal

**Members absent:** Representatives Ruth Buffalo and Mary Johnson; Senator Larry Luick

**Others present:** Representative Karen M. Rohr, Mandan, member of the Legislative Management  
Christopher S. Joseph, Legislative Council, Bismarck  
See [Appendix A](#) for additional persons present.

**It was moved by Senator Grabinger, seconded by Senator Myrdal, and carried on a voice vote that the minutes of the September 25, 2019, meeting be approved as distributed.**

**CIVIL COMMITMENT STUDY**

At the request of Chairman Klemin, the Legislative Council staff reviewed a memorandum entitled [Involuntary Mental Health Commitment Procedures - Background Memorandum](#).

Chairman Klemin distributed a memorandum ([Appendix B](#)) on constitutional rights relating to civil commitment.

Chairman Klemin called on the Honorable James D. Gion, District Court Judge, Southwest Judicial District, for a presentation ([Appendix C](#)) relating to the state's civil commitment procedure.

In response to a question from Representative Karls, Judge Gion said because the district does not handle many commitment cases, the judges and state's attorneys in the Southwest Judicial District follow the commitment procedure set forth in statute very closely.

In response to a question from Senator Myrdal, Judge Gion said although the existing law and procedure is sufficient, the problem in the Southwest Judicial District is the lack of resources. He said anything beyond an initial screening requires an individual to travel to Bismarck.

In response to a question from Representative McWilliams, Judge Gion said there are instances when the evaluator does not see the same issue as the clinician because the clinician is in a clinical setting. He said although you cannot educate morality, education should be part of the solution.

In response to a question from Representative Rohr, Judge Gion said Dickinson does not have a secure facility and the psychiatrists who provide services must travel from Bismarck. He said the lack of services is especially concerning in the middle of the night when an individual is in a critical situation.

Chairman Klemin called on Ms. Sally Holewa, State Court Administrator, for a presentation ([Appendix D](#)) relating to court data from each county regarding civil commitment proceedings and outcomes.

In response to a question from Senator Myrdal, Ms. Holewa said although mandatory reporting of additional data by counties may answer questions about uniformity across the state, there is an official process as well as the process used by each county across the state. She said the concern as to whether the judicial interpretation of the standards for commitment are consistent across the state is difficult to address because each judge thinks independently.

In response to a question from Representative Klemin, Ms. Holewa said although judges receive local and national training each year, topics rotate over a period of 5 years.

Chairman Klemin called on Mr. Greg Runge, Attorney, for a presentation ([Appendix E](#)) relating to civil commitment proceedings. Mr. Runge said a few changes need to be made to North Dakota Century Code Title 25. He said the definitions of "chemical dependency" and "substance use disorder" in Section 25-03.1-01 need to be amended to be consistent. He said Section 25-03.1-18.2 should be removed because the language relates to guardianship, which does not relate to Chapter 25-03.1. He said Sections 25-03.1-17 and 25-03.1-19 should be amended to require the examining practitioner to submit the report of examination at least 24 hours before the hearing.

In response to a question from Representative Paulson, Mr. Runge said although the commitment process is not being uniformly applied, Burleigh and Morton Counties have a community coordinating council that includes law enforcement, attorneys, and practitioners, which meets every quarter to discuss the delivery of services within the system.

In response to a question from Representative Rohr, Mr. Runge said the high percentage of dismissals is based solely on the medical practitioner.

Chairman Klemin called on Representative Hanson for a presentation ([Appendix F](#)) regarding recent red flag legislation.

In response to a question from Senator Larson, Representative Hanson said a domestic violence protection order can include a restriction on firearm access.

In response to a question from Senator Dwyer, Representative Hanson said red flag laws do not provide for a right to counsel.

In response to a question from Representative McWilliams, Representative Hanson said House Bill No. 1537 (2019) would have required safe storage to ensure an individual who is in the same household as an individual with a concern would not have his or her right to possess a weapon restricted.

Chairman Klemin called on Mr. Brian Gosch, State Director, National Rifle Association, for information regarding possible challenges to red flag legislation. Mr. Gosch said as tragedies happen across the United States, bills have been introduced as red flag laws. He said most states do not provide an individual with a method to regain possession of the individual's firearm following a petition to take away the individual's firearm. He said red flag laws do not fill a gap in law because disorderly conduct restraining orders, sexual assault restraining orders, domestic violence restraining orders, and no contact orders exist.

Chairman Klemin called on Dr. Rosalie Etherington, Superintendent, State Hospital, for a presentation ([Appendix G](#)) relating to civil commitment procedures in the state.

In response to a question from Senator Myrdal, Dr. Etherington said although the law does not always work as designed, the statute is sound. She said issues arise for several reasons, one being judges and state's attorneys may not understand the statute completely or apply it regularly.

In response to a question from Senator Grabinger, Dr. Etherington said the issue is with the misinterpretation of the law by the professionals who believe imminent risk is necessary for commitment. She said the law is sound because it provides for individuals who are not an immediate risk but when a substantial deterioration in mental health predictably would result in immediate danger. She said although practitioners can use current circumstances and research on mental illness, professionals who do not understand the law or do the research believe imminent risk is the only way for commitment.

In response to a question from Senator Bakke, Dr. Etherington said although she is providing training at the judicial conference on November 21, 2019, civil commitment training is not provided regularly and many of the new judges have not been to training and do not have experience with the commitment law.

### **Comments by Interested Persons**

Ms. Rebecca Anderson, Fargo, said she has served as a caretaker for 35 years for several of her family members who have a dual diagnosis. She said the issue with the system is the lack of follow-through by the facilities and a lack of aftercare upon release.

### Committee Discussion

Representative Heinert said part of the study is to find a way to ensure each court across the state reacts the same way to emergency committals. He said getting nearly 50 judges to think the same way is a challenge.

Senator Myrdal said the Senate looked at this topic very thoroughly during the 2019 Legislative Session and the issue seems to be a lack of conformity among practitioners. She said the question is how does the Legislative Assembly control practitioners and resolve the lack of capacity in facilities.

### CHARITABLE GAMING STUDY

At the request of Chairman Klemin, the Legislative Council staff reviewed a memorandum entitled [Charitable Gaming Background Memorandum](#).

Chairman Klemin called on Ms. Deb McDaniel, Director of Gaming, Gaming Division, Attorney General's office, for a presentation ([Appendix H](#)) relating to charitable gaming, existing games, and future gaming options.

Chairman Klemin called on Mr. Don Santer, Treasurer, Charitable Gaming Association of North Dakota, for a presentation ([Appendix I](#)) regarding the possible addition of new games and existing limitations, restrictions, and oversight.

In response to a question from Senator Grabinger, Mr. Santer said there has not been a significant increase in gambling addiction since the implementation of electronic pull tabs.

In response to a question from Representative Jones, Mr. Santer said there is a misconception based on the use of the term "proceeds." He said reports indicate \$1 billion in proceeds. He said, however, the actual cash value is only the initial \$10 an individual put into the machine because the individual might win \$110 and continue to play \$100 of credits.

Chairman Klemin called on Ms. Janelle Mitzel, President, North Dakota Council for Charitable Gaming, for information ([Appendix J](#)) relating to the possible addition of new games and existing limitations, restrictions, and oversight.

In response to a question from Representative Hanson, Ms. Mitzel said although her organization is not looking to expand gaming, issues relating to taxes, prevention issues, and Gaming Division staffing should be considered.

Chairman Klemin called on Ms. Melissa Harvey, Gaming Manager, Horace Lions Club, and The Arc, Upper Valley Inc., for a presentation ([Appendix K](#)) relating to the possible addition of new games and existing limitations, restrictions, and oversight.

Chairman Klemin called on Mr. Bryan Nelson, Owner, Maverick's Saloon, for a presentation ([Appendix L](#)) relating to the possible addition of new games and existing limitations, restrictions, and oversight.

### Comments by Interested Persons

Mr. Arlan Scholl, Secretary, Bismarck Elks Lodge, said although the new electronic pull tab machines do a wonderful job, the lodge has had to take money from the lodge to keep the gaming amount at the required level. He said the percent of proceeds given to charities could be lowered to offset the cost.

In response to a question from Representative Heinert, Mr. Scholl said expenditures associated with the implementation of electronic pull tabs have increased between 30 and 32 percent.

Ms. Collette Brown, Executive Director, Gaming Commission for Spirit Lake Nation, National Indian Gaming Association, for information ([Appendix M](#)) regarding gaming. She said the tribes would be a proven partner for the state to start sports betting.

In response to a question from Representative Jones, Ms. Brown said since the implementation of electronic pull tabs, revenue at the casinos has decreased 41 percent. She said revenue had been stagnant for the last 2 years.

In response to a question from Chairman Klemin, Ms. Brown said the reservation would like to offer sports betting off the reservation through a mobile application.

Ms. Lisa Vig, Director, Gambler's Choice, Lutheran Social Services, provided information ([Appendix N](#)) relating to gambling in the state.

In response to a question from Representative Heinert, Ms. Vig said although addiction numbers have not increased, it is still early and individuals coming in for services are recognizing electronic pull tabs as an area of concern.

In response to a question from Senator Grabinger, Ms. Vig said Lutheran Social Services has four part-time counselors to cover the state.

### **ARTICLE XIV STUDY**

Chairman Klemin called on Mr. Greg Stites for a presentation ([Appendix O](#)) relating to the implementation of Article XIV of the Constitution of North Dakota.

Chairman Klemin called on Ms. Erin Chlopak, Director, Campaign Finance Strategy, Campaign Legal Center, for a presentation (Appendices [P](#), [Q](#), and [R](#)) relating to the implementation of Article XIV of the Constitution of North Dakota.

Chairman Klemin called on Mr. Rob Cook, former Montana state legislator, for a presentation (Appendices [S](#) and [I](#)) relating to the implementation of Article XIV of the Constitution of North Dakota.

In response to a question from Representative Heinert, Mr. Cook said although Montana has an ethics commission, the ethics commission serves as a foundational piece comprised of legislators and does not control elections.

In response to a question from Representative Kasper, Mr. Cook said the accused is provided a copy of the complaint.

In response to a question from Representative Vetter, Mr. Cook said Montana's ethics provisions are in statute.

Chairman Klemin called on Mr. Eric Wang, Senior Fellow, Institute for Free Speech, to appear by telephone and provide a presentation ([Appendix U](#)) relating to the constitutional implications of Article XIV of the Constitution of North Dakota. He said the definition of "ultimate and true source" leaves some ambiguity and room for enforcement difficulties. He said the definitions and other provisions in House Bill No. 1521 (2019) do not clearly explain what it means to influence a state election.

In response to a question from Representative Klemin, Mr. Wang said the definition of "ultimate and true source" could be amended to specify the criteria the Ethics Commission must consider to determine what a donor knew at the time of the donation. He said a bright line definition of when funds are given in connection with political activity could be included.

In response to a question from Representative Klemin, Mr. Wang said although House Bill No. 1521 (2019) mitigated most of the constitutional issues of Article XIV, the language still is vague.

### **Committee Discussion**

Chairman Klemin requested the committee to bring any proposed bills relating to the study of Article XIV to the next meeting.

### **CIVIL FORFEITURE REPORT**

Chairman Klemin called on Mr. Troy Seibel, Chief Deputy Attorney General, for a presentation relating to a statutorily required report summarizing activity of civilly forfeited property. Mr. Seibel said the first report will be completed by November 2020, and will contain all forfeitures in the past fiscal year. He said law enforcement agencies must report what was seized, the value, and how much the agency spent to seize and store the property.

### **POTENTIAL IMPLICATIONS OF RECREATIONAL MARIJUANA MEASURE STUDY**

Chairman Klemin called on Mr. Luke Niforatos, Chief of Staff and Senior Policy Advisor, Smart Approaches to Marijuana (SAM), for a presentation ([Appendix V](#)) relating to the potential implications of the legalization of marijuana.

In response to a question from Representative Vetter, Mr. Niforatos said SAM treats decriminalization the same as a reduction in criminal penalties.

In response to a question from Senator Myrdal, Mr. Niforatos said although there are not state reports relating to the costs associated with the legalization of marijuana, federal and state data suggest a loss of \$10 to \$15 for every \$1 generated in tax income.

Chairman Klemin called on Mr. Mark Jorritsma, Executive Director, Family Policy Alliance of North Dakota, for a presentation ([Appendix W](#)) relating to the potential implications of the legalization of marijuana.

Chairman Klemin called on Mr. Casey Neumann, Chief Operating Officer, Pure Dakota, for a presentation ([Appendix X](#)) relating to the potential impact legalized recreational marijuana would have on a medical marijuana manufacturing facility.

In response to a question from Representative Jones, Mr. Neumann said the price of medical regulated food grade cannabis in the state is comparable to the price across the United States.

In response to a question from Representative Klemin, Mr. Neumann said Dakota State Testing is the only A2LA accredited lab in the United States, which is a keystone lab started by Pennsylvania State University. He said testing is acute to foreign bacteria and tests for potency similar to how blood is tested for proteins. He said dispensaries pay through wire transfers as Pure Dakota is fortunate to have banking available through the Bank of North Dakota.

Chairman Klemin called on Sergeant Michael Bolme, Bismarck Police Department, for a presentation ([Appendix Y](#)) relating to the potential impact the legalization of marijuana would have on law enforcement.

In response to a question from Representative McWilliams, Sergeant Bolme said law enforcement does not have access to the medical marijuana cardholder database.

### **Comments by Interested Persons**

Ms. Donnell Preskey, North Dakota Association of Counties, said in October 2019, at the annual conference of members of the North Dakota Association of Counties, members voted to support a resolution that provided "North Dakota citizens have spoken strongly through the ballot box that legalization is not right for the state, counties support the citizens in this position and strongly oppose legalized recreational marijuana."

### **JUVENILE JUSTICE SYSTEM STUDY**

Chairman Klemin called on Ms. Carrie Hjellming, Juvenile Court Director, Unit 3, for a presentation ([Appendix Z](#)) relating to juvenile court and the juvenile policy board.

In response to a question from Representative Hanson, Ms. Hjellming said there are multiple reasons deprivation cases are increasing. She said some cases are related to parental drug and alcohol use while in other situations, parents use the deprivation category to gain access to mental health services they cannot get elsewhere.

Chairman Klemin called on Mr. Luke McCay, Youth Worker Supervisor, Police Youth Bureau, for a presentation ([Appendix AA](#)) relating to services for juveniles in the community.

Chairman Klemin called on Ms. Marlys Baker, Program Administrator, Department of Human Services, for a presentation ([Appendix BB](#)) relating to the reported child abuse and neglect within the juvenile justice system.

In response to a question from Representative Hanson, Ms. Baker said although some of the increase in cases can be attributed to an increase in overall population in the state, there is an identifiable increase in substance use and abuse, domestic violence, and behavioral health issues.

Chairman Klemin called on Ms. Lisa Jahner, Assistant Director - Research and Programs, North Dakota Association of Counties, for a presentation ([Appendix CC](#)) relating to the Juvenile Justice State Advisory Group's request for technical assistance relating to the juvenile justice study.

### **Committee Discussion**

Chairman Klemin distributed a letter ([Appendix DD](#)) from Representative Pollert, Chairman, Legislative Management, relating to the formation of a juvenile justice task force.

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

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Samantha E. Kramer  
Counsel

ATTACH:30