

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

JUDICIARY COMMITTEE

Tuesday, October 10, 2017
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, Diane Larson, Janne Myrdal; Representatives Lois Delmore, Terry B. Jones, Karen Karls, Lawrence R. Klemin, Kim Koppelman, Jeffery J. Magrum, Shannon M. Roers Jones, Bernie Satrom, Luke Simons

Member absent: Representative Roger Brabandt

Others present: See [Appendix A](#)

Chairman Hogue said his philosophy about interim meetings is to learn and study. He said the goal of an interim committee is not to generate bills and propose new legislation although bills often are a byproduct of the process.

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

ADOPTION STUDY

At the request of Chairman Hogue, the Legislative Council staff reviewed a memorandum entitled [Identified or Unidentified Adoption - Background Memorandum](#).

Chairman Hogue called on Ms. Julie M. Hoffman, Adoption Administrator, Department of Human Services, for information ([Appendix B](#)) regarding the adoption process in the state.

In response to a question from Representative Klemin, Ms. Hoffman said the Interstate Child Placement Compact has been in place for many years and governs the transfer of children across state lines for purposes of foster care, adoptions, or guardianship. She said anytime a child is moved across states through an agency, the transfer must be processed through the compact.

In response to a question from Representative Delmore, Ms. Hoffman said the statutes relating to access to adoption records, provide the records are very confidential once an adoption is finalized. However, she said, before placement and before the final adoption proceedings, records are open and accessible to the parties.

In response to a question from Chairman Hogue, Ms. Hoffman said North Dakota Century Code Chapter 14-15.1 has been in place for over 25 years, and the recent changes to the process involving identified parents will impact a very minimal number of individuals. She said most relatives who are adopting already have the ability to ask a court to waive the investigation process.

In response to a question from Senator Grabinger, Ms. Hoffman said there is a significant wait period for individuals who are working to adopt children from foster care. She said the Department of Human Services is under federal requirements to expedite children in foster care who have identified relatives to adopt them, which causes other individuals to be pushed to the bottom of the list. She said the extensive waiting periods are purely a resource issue.

MARSY'S LAW

At the request of Chairman Hogue, the Legislative Council staff reviewed a memorandum entitled [Marsy's Law - Background Memorandum](#).

Chairman Hogue called on Mr. Troy Seibel, Chief Deputy Attorney General, Attorney General's office for information ([Appendix C](#)) regarding the implementation of Marsy's Law. Mr. Seibel said Marsy's Law does not impose any obligations on the Attorney General; however, the Attorney General recognized the need to determine

what the law requires and what the Attorney General's office could do to assist the public. He said a portion of the Attorney General's website was dedicated to address some of the questions and to provide victims with information, and a Marsy's Card was developed. He said the proponents of Marsy's Law provided \$5,000 to be used for producing the Marsy's Card, of which \$1,987 has been used to produce 100,000 cards. He said the final piece the Attorney General is working on is upgrading the statewide automated victim information and notification system (SAVIN) to make the system capable of providing the type of notice required by Marsy's Law.

In response to a question from Representative Koppelman, Mr. Seibel said if a victim is not properly informed of the victim's rights a lawsuit against the law enforcement agency is unlikely to be successful because the law prohibits someone from suing for a violation of the law.

In response to a question from Senator Myrdal, Mr. Seibel said law enforcement would best be able to provide specific numbers; however, the Attorney General's office has received far fewer questions than expected.

In response to a question from Senator Grabinger, Mr. Seibel said the upgrade to SAVIN will take about 3 years and has cost an estimated \$10,000 to date. He said the Attorney General has entered agreements with technology firms to provide several upgrades, which is where the higher costs will come.

In response to a question from Representative Klemin, Mr. Seibel said the main issue raising questions is whether a victim has to affirmatively invoke any of the rights provided in Marsy's Law. He said the Attorney General's office believes a victim does need to affirmatively invoke a right; however, the courts may not agree.

Chairman Hogue called on Ms. Rozanna Larson, State's Attorney, Ward County, for information relating to the impact of Marsy's Law on prosecutors. Ms. Larson said at the time an individual is arrested, the victim may not even be aware of the arrest let alone be aware of Marsy's Law. She said the court has to review documents that most likely contain a victim's personal information to ensure probable cause for an arrest. She said victims have a right to prevent disclosure of information, and law enforcement is getting better at including only the bare minimum of personal information in an affidavit of probable cause, but the victim's contact information is required so the prosecutor can contact the victim after an arrest to inform the victim of upcoming hearings and to allow a victim to opt in or out of Marsy's Law.

In response to a question from Chairman Hogue, Ms. Larson said the majority of victims do not invoke all the rights. She said theft or burglaries often are random crimes and the victims do not want to invoke any rights because the victim's name and address would appear on a bail order to inform the defendant where the defendant is not allowed. No contact orders are the same, she said, because a defendant has to know who, where, and how not to contact a victim.

In response to questions from Representative Klemin, Ms. Larson said postjudgment proceedings are becoming difficult because there has not been a determination as to what is a proceeding that implicates a victim. She said there is a gross sexual imposition case from 1998 in Ward County and because there is not a clear rule, the victim of the case is notified every time the defendant has any type of court proceeding relating to his failure to pay a fine or register as a sex offender. She said a victim can decide to relinquish the rights provided in Marsy's Law. However, she said, the question remains relating to what the prosecutors and law enforcement are required to do with a victim of a past crime who is unaware of rights under Marsy's Law.

In response to a question from Chairman Hogue, Ms. Larson said there has been an issue with a victim asserting the right to privacy and refusing to be interviewed or deposed.

In response to a question from Representative Roers Jones, Ms. Larson said the Marsy's Card is available only in English.

Ms. Larson said redacting reports is extremely time consuming for staff because each document has to be redacted by hand and in some cases a single incident results in thousands of pages.

Chairman Hogue called on Mr. Randy Ziegler, Deputy Chief, Bismarck Police Department, for information regarding the impact of Marsy's Law on local law enforcement. Mr. Ziegler said other than the initial implementation, Marsy's Law has not had an impact on the day-to-day operations of the department. He said he is not aware of any instances in which officers have experienced negative consequences. Since the measure passed in 2016, he said, there have been only 11 instances in which a victim has invoked any of the rights provided in Marsy's Law. He said the biggest impact on the department has been with regard to redacting records because it is extremely time consuming for staff.

In response to a question from Chairman Hogue, Mr. Ziegler said there seems to be some confusion related to open records laws and what type of information may be released. He said he reached out to officers in Minot, Fargo, and Dickinson and all indicated the law has not been a strain on the officers, but has created a strain on witness advocates and state's attorneys.

In response to a question from Representative Klemin, Mr. Ziegler said the Bismarck Police Department created a Marsy's Card because it did not receive cards from the Attorney General's office. He said the Marsy's Card is one of numerous cards officers carry.

COMMENTS BY INTERESTED PERSONS

Mr. Don Wolf, Finance Director, Supreme Court, provided information ([Appendix D](#)) regarding the revenue impact on the state as it relates to restitution.

FIREARMS AND WEAPONS STUDY

At the request of Chairman Hogue, the Legislative Council staff reviewed a memorandum entitled [Firearms and Weapons Provisions in Title 62.1 - Background Memorandum](#).

Chairman Hogue called on Mr. Seibel for testimony relating to conflicts within Century Code. Mr. Seibel said the Attorney General's office is working on an opinion relating to the new constitutional carry provision and carrying a loaded firearm in a vehicle and asked the committee to defer any specific questions until the opinion is released.

Chairman Hogue called on Mr. Phil Pfennig, Chief Agent, Bureau of Criminal Investigation, for information ([Appendix E](#)) relating to conflicts within Title 62.1.

In response to a question from Representative Koppelman, Mr. Pfennig said there has been a reduction in applications for concealed carry permits since the constitutional carry bill went into effect.

Chairman Hogue called on Mr. Robert Timian, Division Chief/Chief Game Warden, Game and Fish Department, for information ([Appendix F](#)) regarding conflicts relating to weapons in Century Code.

In response to a question from Representative Roers Jones, Mr. Timian said the language regarding exceptions for hunting could be cleaner.

In response to a question from Chairman Hogue, Mr. Timian said the consequence of having unclear language is the public generally wants to comply with the law, but there can be frustration with the lack of clarity.

STUDY OF LEGAL NOTICE REQUIREMENTS

At the request of Chairman Hogue, the Legislative Council staff reviewed a memorandum entitled [Legal Notice and Publishing Requirements - Background Memorandum](#).

Chairman Hogue called on Ms. Sherry Neas, Director, Central Services Division, Office of Management and Budget, for information (Appendices [G](#), [H](#), [I](#), and [J](#)) relating to the fee structure for legal notices.

In response to a question from Representative Karls, Ms. Neas said the negotiated rates apply to all government entities subject to notice publishing requirements.

Chairman Hogue called on Mr. Blake Crosby, Executive Director, North Dakota League of Cities, for information (Appendices [K](#) and [L](#)) relating to the costs associated with publishing legal notices.

In response to a question from Representative Klemin, Mr. Crosby said he is not aware of the various media platforms available to political subdivisions as alternatives to printed newspapers.

In response to a question from Chairman Hogue, Mr. Crosby said most cities with a website publish meeting minutes online.

Chairman Hogue called on Mr. Steve Andrist, Executive Director, North Dakota Newspaper Association, for information ([Appendix M](#)) relating to the study of legal notice requirements.

In response to a question from Chairman Hogue, Mr. Andrist said for an individual to have access to the legal notices on a newspaper's website, the individual must be a subscriber.

In response to a question from Representative Klemin, Mr. Andrist said the North Dakota Newspaper Association has a website where every legal notice published in the state is provided.

No further business appearing, Chairman Hogue adjourned the meeting at 3:00 p.m.

Samantha E. Kramer
Counsel

ATTACH: 13