

## NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

**JUDICIARY COMMITTEE**

Wednesday, September 25, 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, Ruth Buffalo, Karla Rose Hanson, Pat D. Heinert, Mary Johnson, Daniel Johnston, Terry B. Jones, Karen Karls, Kim Koppelman, Aaron McWilliams, Bob Paulson, Shannon Roers Jones, Steve Vetter; Senators Michael Dwyer, John Grabinger, Diane Larson, Larry Luick, Janne Myrdal

**Members absent:** Senator JoNell A. Bakke; Representative Jim Kasper

**Others present:** Senators Joan Heckaman, New Rockford, Rich Wardner, Dickinson, and Representative Josh Boschee, Fargo, members of the Legislative Management  
Claire Ness, Legislative Council, Bismarck  
See [Appendix A](#) for additional members present.

Chairman Klemin said the committee has a lot of work to accomplish over the interim and expressed appreciation to the members of the Legislative Management for joining the meeting.

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

**JUVENILE JUSTICE SYSTEM STUDY**

At the request of Chairman Klemin, the Legislative Council staff reviewed a memorandum entitled [Juvenile Justice System](#).

Chairman Klemin called on Ms. Lisa Bjergaard, Director, Division of Juvenile Services, Department of Corrections and Rehabilitation, for testimony ([Appendix B](#)) regarding the state's juvenile justice system. Ms. Bjergaard said although the charts look drastic, the variance in juvenile crime rates over 30 years is not more than 1 per 1,000 youth in any given year.

In response to a question from Senator Heckaman, Ms. Bjergaard said although the data represents state court data, one of the efforts this biennium is a tribal and state youth court project.

In response to a question from Senator Myrdal, Ms. Bjergaard said girls are more vulnerable to sex trafficking. She said girls who have a history of abuse and neglect tend to end up farther into the child welfare and justice systems as a result of society's protectiveness of girls. She said that subset of the population tends to have more challenging behaviors that can escalate over time.

Chairman Klemin called on Ms. Nina Salomon, Deputy Program Director, Juvenile Justice, Council of State Governments Justice Center, for information ([Appendix C](#)) regarding a potential review of the state's juvenile justice system.

**Comments by Interested Persons**

Mr. Terry Traynor, Chair, Juvenile Justice State Advisory Group, provided information ([Appendix D](#)) relating to the Juvenile Justice State Advisory Group. He said the advisory group could provide some funding to assist the study of the juvenile justice system by issuing a request for proposal for a consultant to provide data analysis and technical assistance. He said the federal funds available would require a 3-year plan with a focus on overrepresentation of minority youth.

Chairman Klemin distributed a memorandum ([Appendix E](#)) regarding the constitutional rights of juveniles. He said a task force needs to be formed to initiate the process of hiring a consultant.

It was moved by Representative Hanson ([Appendix F](#)), seconded by Senator Larson, and carried on a voice vote to give Chairman Klemin the authority to form a task force.

### RECREATIONAL MARIJUANA STUDY

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

Chairman Klemin called on Mr. Jason Wahl, Director, Medical Marijuana Division, State Department of Health, for testimony ([Appendix G](#)) regarding the potential implications of an initiated measure allowing the use of recreational marijuana and regarding a statutorily required report on the number of applications, registered qualifying patients, registered designated caregivers, nature of debilitating medical conditions, identification cards revoked, health care providers providing written certifications, compassionate care centers, and expenses incurred and revenues generated by the department.

In response to a question from Senator Larson, Mr. Wahl said although one of the authorized products under the medical marijuana program is a THC concentrate sold in a disposable vape pen or cartridge, the concentrate may not contain additives or flavors.

In response to a question from Representative Roers Jones, Mr. Wahl said the exemption for individuals receiving care from Veterans' Administration physicians requires the department to determine if the individual is a veteran, document the individual's discharge papers, and determine if the individual's current health care provider is the individual's only provider.

In response to a question from Representative Boschee, Mr. Wahl said it is difficult to determine the impact legalizing recreational marijuana would have on the medical marijuana program.

In response to a question from Representative Klemin, Mr. Wahl said there are strict quality control measures in place for all medical marijuana products, including batch testing for potency and pesticides to ensure the label on the product is accurate.

In response to a question from Representative McWilliams, Mr. Wahl said although the prices for medical marijuana in the state are higher than prices in states that have legalized both medical and recreational marijuana, the prices in the state are comparable to states with only medical marijuana programs.

In response to a question from Representative Klemin, Mr. Wahl said all medical marijuana transactions are cash only. He said the department does not track the payment process. He said it is very difficult for a medical marijuana business to find a financial institution that will do business with the entity.

Chairman Klemin called on Ms. Karmen Hanson, Program Director, Behavioral Health & Pharmaceuticals, National Conference of State Legislatures, for a presentation ([Appendices H](#) and [I](#)) regarding marijuana policy across the United States and the implementation of recreational marijuana in Colorado.

In response to a question from Representative Hanson, Ms. Hanson said although there is one small study completed by Johns Hopkins University which showed a lower use of opioids in states with legalized recreational marijuana, the study encouraged larger research because of a lack of conclusive evidence.

In response to a question from Senator Heckaman, Ms. Hanson said Nevada is the only state with a specific regulation that allows medical marijuana use for an employee.

Chairman Klemin called on Mr. Troy Seibel, Chief Deputy Attorney General, Attorney General's office, for a presentation ([Appendix J](#)) regarding the potential implications of an initiated measure allowing the use of recreational marijuana. Mr. Seibel said it is very difficult to determine the potential impact as even those states legalized recreational marijuana nearly 7 years ago are still analyzing data. He said Colorado is experiencing a significant increase in impaired driving cases.

In response to a question from Representative Boschee, Mr. Seibel said Nebraska and Kansas have experienced an influx of marijuana legally produced and sold in Colorado but diverted into Nebraska and Kansas.

Chairman Klemin called on Ms. Jody Vetter, Chairperson, ND for Freedom of Cannabis Act, for testimony ([Appendices K](#), [L](#), and [M](#)) regarding a potential constitutional measure allowing the use of recreational marijuana.

Chairman Klemin called on Mr. David Owen, Chairman, Legalize ND, for testimony regarding a potential statutory measure ([Appendix N](#)) allowing the use of recreational marijuana. Mr. Owen said the proposal addresses areas of concern following the failed 2010 general election Measure No. 3, including how the new law would address conflicts with existing law, prohibiting public use and an individual from growing personal use plants, and the societal impact of normalizing marijuana. He said the proposal authorizes political subdivisions to restrict the sale of marijuana in their jurisdiction.

### Comments by Interested Persons

Mr. Chris Howe, Chair, ND Safe Vets, said the medical marijuana exemption is difficult to navigate and only 45 veterans have enrolled in the program.

Mr. Andrew Varvel provided information ([Appendix O](#)) relating to the committee's study on the potential implications of the legalization of recreational marijuana.

Mr. Steven Peterson thanked the committee for its work relating to medical marijuana and expressed the public's desire for regulation.

Mr. Chris Nolden thanked the committee for its work relating to medical marijuana.

### ETHICS STUDY

At the request of Chairman Klemin, the Legislative Council staff reviewed a memorandum entitled [Ethics Commission and Legislative Assembly Responsibilities - Background Memorandum](#).

Chairman Klemin provided testimony ([Appendix P](#)) regarding the study of the implementation and requirements of Article XIV of the Constitution of North Dakota.

Chairman Klemin called on Mr. Christopher Dodson, Executive Director, North Dakota Catholic Conference, for testimony ([Appendix Q](#)) regarding the study of the implementation of Article XIV of the Constitution of North Dakota.

Chairman Klemin called on Mr. John Olson, Olson Effertz Lobbying & Consulting, LLC, for testimony ([Appendix R](#)) regarding the study of the implementation of Article XIV of the Constitution of North Dakota.

### Committee Discussion

In response to a question from Representative Roers Jones, Ms. Claire Ness, Counsel, Legislative Council, reviewed a memorandum entitled [Ethics Commission and Anonymous Whistleblowers under the Confrontation Clause](#).

In response to a question from Representative Klemin, Ms. Ness said in a case in which the commission independently investigates a situation based on a tip, the case law does not indicate a distinction between the complaint or the tip and does not provide for a right to confront the witness. She said even if the individual making the complaint is named, whether the accused has the right to confront the witness likely is dependent on whether the tip is used as testimony or in an investigation.

In response to a question from Senator Myrdal, Ms. Ness said the Ethics Commission has the jurisdiction to determine the threshold for initiating an investigation based on a complaint or tip.

In response to a question from Representative Hanson, Ms. Ness said a significant portion of the case law stems from scenarios involving anonymous law enforcement tip lines.

Chairman Klemin said the next meeting will be in November.

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

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ATTACH:18