

# JUDICIARY COMMITTEE

The Judiciary Committee was assigned six studies:

- House Bill No. 1254 (2021) directed a study of the types of spousal support ordered by the district court and the desirability and feasibility of providing statutory guidance for awards of spousal support. The study required input from practicing attorneys in the area of family law and the Department of Human Services' Division of Child Support Enforcement and a review of the frequency and duration of spousal support awards entered in the state.
- House Bill No. 1036 (2021) directed a study, in collaboration with the Commission on Juvenile Justice, of the juvenile justice process. The study required a review of the effective intervention, resources, and services for children.
- Senate Bill No. 2258 (2021) directed a study, in collaboration with the Commission on Juvenile Justice, of the necessity of licensing shelter care programs for runaway, homeless, and former foster care youth and the ability of these youth to access temporary shelter. The study required a review of the current barriers, effective intervention, and necessary resources and services.
- Section 27 of House Bill No. 1003 (2021) directed a study of the economic and societal impacts of gambling addiction in the state. The study required a review of the trend of gambling addiction since the expansion of electronic pull-tab gambling in the state, state funding provided for gambling addiction and disorder prevention and treatment, support programs for individuals and families affected by gambling addiction, and the use of net proceeds for eligible organizations.
- House Concurrent Resolution No. 3021 (2021) directed a study of the factors contributing to the nation's firearm and ammunition shortage and the impact the shortage has had on the quality of life for North Dakota citizens. The study required the development of a plan of action to resolve the state's firearm and ammunition shortage.
- Senate Bill No. 2282 (2021) directed a study the membership of the Board of University and School Lands and the Industrial Commission. The study required consideration of potential conflicts of interest relating to the memberships, possible changes to the composition of the membership of the Board of University and School Lands and the Industrial Commission, and possible changes to Section 3 of Article IX of the Constitution of North Dakota.

The Legislative Management delegated to the committee the responsibility:

- To review uniform laws recommended to the Legislative Management by the North Dakota Commission on Uniform State Laws, pursuant to North Dakota Century Code Section 54-35-02.
- For statutory and constitutional revision.
- To review any executive order issued by the President of the United States which has not been affirmed by a vote of Congress and signed into law, and recommend to the Attorney General and the Governor that the executive order be further reviewed to determine the constitutionality of the order and whether the state should seek an exemption from the order or seek to have the order declared to be an unconstitutional exercise of legislative authority by the President, pursuant to Section 54-03-32.

The Legislative Management delegated to the committee the responsibility to receive the following reports:

- A report from the Attorney General by November 1 of each year summarizing activity regarding any civilly forfeited property, pursuant to Section 19-03.1-36.8(4).
- An annual report from the Director of the Commission on Legal Counsel for Indigents containing pertinent data on the indigent defense contract system and established public defender offices, pursuant to Section 54-61-03; and information regarding actual costs incurred to date and expected costs to be incurred for the 2021-23 biennium to provide legal counsel and related services to indigent juveniles and nonindigent juveniles, and any amounts collected from those financially able to pay all or part of the cost of providing legal counsel and related services for juveniles, pursuant to Section 46 of House Bill No. 1035 (2021).
- A biennial report from the North Dakota Racing Commission addressing the issue of the liability of charitable organizations that receive and disburse money handled through account wagering, pursuant to Section 53-06.2-04.
- A report from the North Dakota Lottery regarding the operation of the lottery, pursuant to Section 53-12.1-03.

- A report from the Department of Human Services (DHS) on services provided by the Department of Corrections and Rehabilitation (DOCR) for individuals at the State Hospital who have been committed to the care and custody of the Executive Director of DHS, pursuant to Section 50-06-31.
- An annual report from the State Department of Health (DOH) 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, pursuant to Section 19-24.1-39.
- An annual report from the Task Force on the Prevention of Sexual Abuse of Children before July 1 of each even-numbered year with any findings and recommendations, pursuant to Section 1 of House Bill No. 1237 (2019).
- A report from the Supreme Court on the status of the program to assist rural counties and municipalities in recruiting attorneys, pursuant to Section 27-02.2-13.
- A report from DOCR, the Juvenile Court, and the Indian Affairs Commission on the status, effectiveness, performance, and sustainability of a memorandum of understanding established under Section 27-20.4-27.

Committee members were Representatives Kim Koppelman (Chairman), Mary Adams, Ruth Buffalo, Sebastian Ertelt, Karla Rose Hanson, Mary Johnson, Terry B. Jones, Karen Karls, Lawrence R. Klemin, Jeffery J. Magrum, Bob Paulson, Shannon Roers Jones, Bernie Satrom, Mary Schneider, and Steve Vetter and Senators JoNell A. Bakke, Robert O. Fors, Diane Larson, and Janne Myrdal.

## **SPOUSAL SUPPORT STUDY**

### **Background**

Title 14 contains the majority of the statutes dealing with domestic relations or family law in the state, including chapters dealing with marriage, divorce, annulment, separation, custody and visitation, child support, adoption, alternative dispute resolution, and domestic violence. Chapter 14-05 provides the law governing divorce and Section 14-05-24.1 sets forth the law as it relates to spousal support, providing "... the court may require one party to pay spousal support to the other party for a limited period of time in accordance with this section" and granting the court authority to modify its spousal support orders. District courts are the state trial courts of general jurisdiction and hear civil, criminal, domestic relations, small claims, and probate cases. In some districts, judicial referees have been appointed to preside over juveniles, judgment enforcement, and domestic relations proceedings other than contested divorces.

Section 14-05-24.1 was enacted by Senate Bill No. 2046 (2001) and amended by House Bill No. 1399 (2015) to require the termination of spousal support, except rehabilitative spousal support, upon the remarriage of the spouse receiving support and unless otherwise agreed to by the parties, or upon an order of the court based upon a preponderance of the evidence that the spouse receiving support has been habitually cohabitating with another individual in a relationship analogous to a marriage for at least 1 year.

### **Other States**

Although North Dakota, Montana, South Dakota, and Minnesota do not have a mathematical formula to control the amount and length of spousal support or whether it should be awarded, Minnesota and Montana have specific statutory factors for the court to consider when determining spousal support payments. Several states provide a mathematical formula for determining spousal support. In California, for example, the formula for calculating spousal support is 40 percent of the difference between the parties' net incomes without dependent children and 30 percent with dependent children. Courts in Illinois use a similar formula after considering a list of factors similar to Minnesota and Montana to determine whether support is appropriate.

### **Previous Studies**

In 1995, the North Dakota Supreme Court, at the request of the State Bar Association of North Dakota, established a task force to study family law issues. The task force was assigned to review family law procedures and related matters presently used by the judicial system in North Dakota; evaluate the need for changes to ensure accessibility to the system and responsiveness of the system; assess the impact of court unification on the process; and evaluate the effectiveness of the process for clients, attorneys, and the courts. The Joint Family Law Task Force completed its work in April 1998 and concluded the task force had completed as many of its goals as were practicable.

Senate Concurrent Resolution No. 4032 (1999) directed a study of the family law process in the state with a focus on a review of existing statutes, the coordination of procedures, and the further implementation of alternative dispute resolution methods. Although the 1999-2000 interim Judiciary Committee considered guidelines for spousal support and reviewed whether a more predictable and consistent solution could be developed, the committee concluded while some states included arbitrary time limits for spousal support or establish "years of marriage" demarcation for purposes of setting support, no state had adopted a comprehensive and fair set of guidelines.

The 1999-2000 interim Judiciary Committee also reviewed the guidelines adopted by the Superior Court of Arizona in Maricopa County which apply to marriages of at least 5 years and included some financial restrictions regarding the postdivorce income of the two parties. If the parties meet the threshold under the guidelines, a mathematical formula for calculating spousal support is used. However, the guidelines do not create a presumption of support but rather serve as a starting point. Although the guidelines were discussed by the interim committee, district judges expressed concern about the limited use of the guidelines and whether spousal support guidelines would provide a fair and reasonable alternative for the calculation of spousal support. The committee ultimately recommended the creation of a new section regarding spousal support, which is codified as Section 14-05-24.1.

Section 2 of Senate Bill No. 2361 (2005) directed a study of the state's marriage laws and methods for strengthening the institution of marriage in the state, including premarital requirements, such as marital education and counseling, waiting periods, and marital blood tests; the availability of marriage counseling and parenting education in the state; and the implementation of predivorce requirements, such as divorce effects education. The 2005-06 interim Judiciary Committee completed the study and recommended a bill to reduce the cost of a marriage license fee by \$25.

### **Testimony and Committee Considerations**

The committee received testimony and information from attorneys in the state who practice family law, a representative from the Supreme Court, a representative of the Child Support Enforcement Division of DHS, and members of the community.

The committee received testimony indicating the primary concerns among practitioners are the inability to predict an outcome accurately and the level of judicial discretion involved in each case. Testimony indicated codifying the court-created Ruff-Fischer guidelines used when dividing property and determining spousal support would be a step in the right direction. Testimony indicated permanent and rehabilitative spousal support are the two general types of spousal support awarded in the state.

The committee received testimony indicating the inability to accurately predict an outcome in any given case results in clients who are left to make difficult decisions and attorneys who only are able to offer forecasts based on research and experience because judges exercise considerable discretion over support amounts. Testimony indicated when a judge is presented with the same set of facts, a judge in one court could arrive at a completely different support award than a judge in another court within the same jurisdiction. Testimony further indicated although spousal support is a necessary tool to equalize the economic disadvantages of a marriage ending in divorce, attorneys need a tool to allow them to give reasonably certain advice to clients in terms of an outcome, as is done with the division of property, to avoid the additional expense of the parties going to trial.

Testimony indicated establishing guidelines within the Century Code would provide clear options to reduce reliance on the interpretation of the Supreme Court by district judges and result in continuity in judgments. Testimony indicated although the court is required to review the Ruff-Fischer guidelines, the court is not required to mechanically address each guideline in the final divorce judgment.

The committee considered a bill draft relating to spousal support. The bill draft would codify the factors the court must consider in determining the amount and duration of spousal support, set forth the types of support the court may award, provide a standard for when spousal support terminates based on the length of the marriage, and create a rebuttable presumption for termination of spousal support.

The committee expressed a desire to codify the Ruff-Fischer guidelines to provide individuals a more consistent result during a divorce and to eliminate the varied outcomes individuals are experiencing across the state dependent upon which judicial district or judge presides over a divorce action. Although the committee also discussed the possibility of making additional changes to child support guidelines, the committee was informed the existing child support guidelines are working.

### **Recommendation**

The committee recommends a bill draft [23.0117.01000] relating to determining spousal support.

## **JUVENILE JUSTICE PROCESS STUDY**

Because of the similarities in the studies directed by House Bill No. 1036 (2021) and Senate Bill No. 2258 (2021), the two studies were combined into one comprehensive study.

### **Background**

Section 27-20.2-03 provides the Juvenile Court with exclusive original jurisdiction over a variety of proceedings, including those in which a child is alleged to be delinquent, a child in need of services, or a child in need of services or protection under Chapter 27-20.4. Under Chapter 27-20.2, "child" means an individual who is under the age of 18 and

is not married or under the age of 20 with respect to a delinquent act committed while under the age of 18. Section 27-20.4-21 authorizes a court to transfer a juvenile proceeding to another court depending on various factors, such as the age of the child at the time of the alleged conduct, the age of the child at the time of the transfer request, and the child's amenability to treatment and rehabilitation.

Section 27-21-01 creates the Division of Juvenile Services within DOCR, which operates the Youth Correctional Center and eight regional community-based services offices. Section 27-21-02 provides "[t]he division of juvenile services is the administrative agency which shall take custody of delinquent and unruly children committed to its care by the juvenile courts." Section 27-21-02 requires the division, upon taking custody of a child or before receiving custody of a child, to complete diagnostic testing and evaluate the child to develop an individualized treatment and rehabilitation plan. Section 12-52-01 authorizes the division, with the approval of the Director of DOCR, to provide a juvenile aftercare program and other treatment and rehabilitation programs and to contract with public and private agencies to provide services for individuals committed to the division.

### **Intervention, Resources, and Services for Children**

House Bill No. 1036 is a continuation of the study of the juvenile justice process conducted by the 2019-20 interim Judiciary Committee, which resulted in the recommendation and passage of House Bill No. 1035 (2021). The 2019-20 interim Judiciary Committee worked closely with the Commission on Juvenile Justice to craft House Bill No. 1035 to ensure youth at a low risk of reoffending are able to quickly and easily receive services outside the juvenile justice system. House Bill No. 1035 repealed Chapter 27-20 and replaced it with Chapter 27-20.2, which is referred to as "The Juvenile Court Act." House Bill No. 1035 also created Chapter 27-20.3, relating to child welfare, and Chapter 27-20.4, relating to delinquency. Before the passage of House Bill No. 1035, the Uniform Juvenile Court Act consisted of the law relating to unruly or deprived children, now child welfare, and delinquency in a single chapter that was difficult to navigate and contained outdated definitions without reflecting the modern tools and phrases used in the juvenile justice system.

To ensure youth at a low risk of reoffending are able to quickly and easily receive services outside the juvenile justice system, House Bill No. 1035 established a case category common in many other states of "child in need of services." This category encompasses all the behavior that had been referred to as "unruly child," ungovernable behavior, truancy, runaway, and the use of tobacco under 14 years of age while excluding minors in consumption or possession. House Bill No. 1035 also broadened a child's right to counsel to allow a child to be fully advised of the legal consequences by creating a presumption that all children are entitled to counsel in a delinquency case in an effort to lower the number of continuances and shorten stays in pre-adjudicatory detention or shelter care while requests and applications for counsel are processed.

The creation of Chapter 27-20.4 established clear limits on the use of secure detention and requires the use of validated risk and needs assessments, mental health and trauma screens, and a predisposition investigation and report to the court before a formal court disposition. The chapter also provides for shorter time limits on probation, from 9 to 6 months, places limits on removing custody of a child from parents due to low-level probation violations, and requires the use of graduated sanctions by court officers who manage probation caseloads.

### **Shelter Care for Runaway, Homeless, and Former Foster Care Youth**

Section 27-20.3-04 directs the Director of the Juvenile Court to receive and examine referrals of a child in need of services or a child in need of protection for the purpose of considering diversion of services and to make the appropriate referrals and issue temporary custody orders. Section 27-20.3-01 further defines "diversion" as "an intervention strategy that redirects a child away from formal processing in the juvenile justice system, while still holding the child accountable for that child's actions" and defines "shelter care" as "temporary care of a child in physically unrestricted facilities."

### **Testimony and Committee Considerations**

The committee received testimony from representatives of the Commission on Juvenile Justice, DOH, DHS, members of local law enforcement, the Council of State Governments, and representatives of the Dakota Boys and Girls Ranch, Adult & Teen Challenge, YouthWorks, and Home on the Range.

#### **Shelter Care**

The committee received testimony indicating rural outreach for juvenile youth with mental health issues is limited due to a lack of mental health professionals in rural areas and children and families need long-term ongoing support. Testimony indicated although the Dakota Boys and Girls Ranch, North Dakota Adult & Teen Challenge, YouthWorks, and Home on the Range provide services to youth in the state, the State Hospital does not provide services to youth and human service zone personnel are not adequately trained in youth mental health.

The committee indicated administrative rules for shelter care program operations are in place and DHS is working with providers to ensure policies are in place to allow adequate space to properly separate residents who are children in need of services or protection from children who engage in delinquent acts. Testimony indicated shelter care is used to

provide a temporary safe bed for a youth through a certified shelter care program site or licensed foster family home for a period not to exceed 7 days. Testimony indicated during the 2019-21 biennium there were 120 instances when shelter care was used. Testimony also indicated shelter care is different from respite care, which provides temporary relief, either hourly or for up to 4 days, through licensed family foster homes, licensed child care providers, or a contracted vendor agency. During the 2019-21 biennium, there were 446 instances of respite care.

### **Commission on Juvenile Justice**

The committee received testimony indicating the Commission on Juvenile Justice supervises three planning committees, including the Juvenile Justice Planning Committee, the Planning Committee for Children in Need of Services, and the Planning Committee for Alternatives to Juvenile Detention. The Division of Juvenile Services secured a federal grant allowing the state to continue to retain the expertise of The Council of State Governments Justice Center for technical assistance and guidance to all three committees through September 30, 2023. Testimony indicated support for the development of a delinquency code for the state which does not rely on the adult criminal code.

Testimony indicated there have been numerous positive changes since the passage of House Bill No. 1035, including every youth who is formally charged with a delinquent offense is appointed counsel. Testimony also indicated the detention risk screening tool ensures secure detention for youth who pose the highest risk to public safety and the youth assessment screening inventory instrument assists the courts and probation staff in making the best decisions in every case.

The committee received testimony indicating a critical next step is ensuring quality, evidence-based, and securely funded services are available to all youth and families regardless of geography. Testimony also indicated the process of implementing the updates has been challenging, including the transition of the unruly case category to the human service zones, which was completed August 1, 2022.

The committee considered a bill draft [21.0173.01000] relating to various cross-references and other updates as a result of House Bill No. 1035. The bill draft would have replaced references to "deprivation of a minor" with "a child in need of protection" throughout the Century Code and established a method for making a delinquency referral to Juvenile Court.

Although the committee supported the bill draft, the committee determined the bill draft should not proceed as an interim committee bill because of additional changes that are necessary. The bill draft would have served as a "clean-up" to various sections while also providing a method for making a delinquency referral to Juvenile Court. The committee also was supportive of the continued work of the Juvenile Justice Commission and understood the work of the Commission is not yet complete, which likely will result in additional bills or changes to the bill draft considered by the committee.

### **Conclusion**

The committee makes no recommendation with respect to the juvenile justice study.

## **GAMBLING ADDICTION STUDY**

### **Background**

The constitutional prohibition on gambling was maintained until 1976 when it was amended to allow certain forms of charitable gaming. Under the constitutional provision, the Legislative Assembly is permitted to authorize bona fide nonprofit veterans', charitable, educational, religious, or fraternal organizations, civic and service clubs, or such other public-spirited organizations as it may recognize, to conduct games of chance when the entire net proceeds of the games are devoted to educational, patriotic, fraternal, religious, or other public-spirited uses.

After passage of the constitutional amendment in 1976, a temporary law was passed by the 1977 Legislative Assembly followed by another temporary law in 1979, and finally legislation in 1981 which was codified as Chapter 53-06.1. All three laws became effective without the approval of the Governor holding office at the time of passage. Under the original 1977 law, the only games permitted were bingo, raffles, pull tabs, jars, and punchboards. A 1979 law added sports pools on professional sports. In 1981, charities were first permitted to conduct the game of twenty-one. In 1987, draw poker and stud poker were added to the list of permitted games. Also, that same year, Chapter 53-06.2 was enacted which allows most charities to conduct horse racing under the pari-mutuel system. In 1989, eligible organizations were permitted to conduct calcuttas, allow off-track pari-mutuel betting on races held at licensed racecourses inside or outside the state, and use electronic video gaming devices in place of normal methods of playing otherwise allowable games of chance. However, legalization of electronic video gaming was referred and rejected at a special election on December 5, 1989. In 1991, paddlewheels were added as a game of chance. In 2017, electronic quick shot bingo, fifty-fifty raffle systems, and electronic pull tabs were added as games of chance.

## **Administration and Enforcement of Charitable Gaming**

In 1991, the Legislative Assembly passed legislation that provided for the State Gaming Commission to have an increased role in charitable gaming enforcement and attention has been directed both at preventing crimes and at ensuring compliance with the many requirements of the law. In 1991, the State Gaming Commission was created, consisting of a chairman and four other members appointed by the Governor with the consent of the Senate. The legislation provided the State Gaming Commission would share authority with the Attorney General to impose fines on organizations, distributors, and manufacturers that violate any law or rule and to suspend or revoke a charitable gaming distributor's or manufacturer's license for violation of a law or rule. However, in 1993, the sole authority to impose fines and to suspend or revoke licenses was returned to the Attorney General. The commission is given full authority for adoption of rules to implement the charitable gaming laws.

## **Gambling Addiction and Addiction Services**

During the 2019-20 interim, the Taxation Committee completed a study of the state's charitable gaming laws; specifically, whether the state's charitable gaming laws on taxation are fair, adequate, and appropriate. The committee received testimony indicating a record amount of \$84.5 million was wagered on electronic pull-tab devices in the state in May 2020 and the Gaming Division anticipated \$1.8 billion in gaming proceeds and \$26.8 million in gaming tax during the 2019-21 biennium. The committee recognized additional funds might be needed for gambling prevention and treatment considering the explosive growth of gaming in the state.

As of February 28, 2021, there were over 3,330 electronic pull-tab devices being conducted by 269 charitable gaming organizations in 655 sites across North Dakota with 166 sites pending licensing requesting devices. Gross proceeds from August 14, 2018, through May 31, 2021, totaled \$2,314,228,219, with \$2,075,064,393 in prizes.

House Bill No. 1212 (2021) created the charitable gaming operating fund, consisting of all gaming taxes, monetary fines, and interest and penalties and directed a quarterly allocation of \$10,000 to the gambling disorder prevention and treatment fund. Testimony on House Bill No. 1212 indicated since August 2018, electronic pull-tab devices have generated the same amount of revenue that previously took the state nearly 10 years to generate.

In fiscal year 2016, after the creation of the compulsive gambling prevention and treatment fund, DHS established the Problem Gambling Advisory Council to focus on raising awareness about problem gambling, gambling addiction and treatment services, and resources. Before 2021, Gamblers Choice, a program offered by Lutheran Social Services of North Dakota, was the sole provider of accredited counseling services for problem gamblers and their families in the state. The Gamblers Choice program received funding from a variety of sources, including state funds from North Dakota and Minnesota, the Indian Gaming Association, and the United Way. Since Lutheran Social Services of North Dakota suspended its programs in January 2021, gambling addiction services are being provided by the Department of Health and Human Services through the Gambler North Dakota program.

## **Testimony and Committee Considerations**

The committee received testimony from a representative of the Attorney General's office, the Director of Gambler's Choice, DHS, and members of the public.

Testimony indicated an increase in funding for gambling addiction services from charitable gaming provides an increased appropriation of \$10,000 per quarter for a total of \$40,000 each year. Testimony also indicated roughly 1 in 20 individuals who participate in gambling have an addiction and data from a study conducted in 2016-17 indicated about 19,000 individuals in the state have a gambling addiction. Testimony indicated electronic pull tabs are the source of the majority of instances of gambling addiction in the state because the machines operate like a slot machine. In fiscal year 2020, 67 residents received gambling treatment services, 1,020 hours of in-person services were delivered, 441 hours of telebehavioral health services were delivered, and when filing health insurance for gambling treatment, 90 percent of claims were denied.

The committee was informed the gross proceeds for electronic pull tabs from April 1, 2021, through June 30, 2021, totaled \$418,024,151 and for the 2019-21 biennium gross proceeds for all game types totaled an estimated \$1,880,000,000. Testimony indicated the increased availability of pull-tab machines has increased significantly the need for a full continuum of programming across the state. Electronic pull tabs gross about \$4 million each quarter and there is no statutory limit on the number of devices that can be operated in the state.

The committee expressed frustration with the increase in the number of electronic pull-tab machines across the state and the limited oversight over each machine. Committee members acknowledged additional funds may be needed for gambling addiction prevention and treatment. Several members of the committee expressed a desire to work with various stakeholders on the issue and introduce a bill during the 68<sup>th</sup> Legislative Assembly.

## **Conclusion**

The committee makes no recommendation with respect to the gambling addiction study.

## **FIREARM AND AMMUNITION SHORTAGE STUDY**

### **Background**

Testimony during the hearings for House Concurrent Resolution No. 3021 (2021) indicated the United States is experiencing a shortage of firearms and ammunition. Testimony further indicated the shortage may be the result of a lack of raw materials necessary to manufacture both firearms and ammunition. The shortage began in the 1<sup>st</sup> quarter of 2020 as the effects of the Coronavirus (COVID-19) pandemic impacted supply lines for raw materials and components such as lead, copper, brass, and gunpowder while retailers experienced a surge in demand for firearms and ammunition. In 2019, the number of individuals applying for a Federal National Instant Criminal Background Check to purchase a firearm increased 39 percent from the previous year.

Although large manufacturers are running at maximum capacity, manufacturers face difficult decisions because there are significant costs associated with purchasing new machines and the cost for raw materials is high. Additional factors that may be contributing to the shortage is the bankruptcy, sale, and breakup of Remington, one of the world's largest ammunition manufacturers and one of the two full-line ammunition manufacturers in the country, and the increase in protests and civil unrest in 2020.

### **Testimony and Committee Considerations**

The committee received testimony from the Director of the Bureau of Criminal Investigation, the National Rifle Association, and the Attorney General. The committee's deliberations focused on the cause of the shortage.

Testimony indicated the shortage of firearms and ammunition in the state is the result of a perfect storm of anxiety among members of the public and increased demand. Testimony indicated the total number of new first-time gun buyers in 2020 exceeded 5 million and with each firearm purchased, several boxes of ammunition also are purchased. Testimony also indicated although the shortage is impacting law enforcement, the United States military is not affected because the Army produces ammunition for all branches of the military at six sites across the country.

The committee concluded the lack of firearms and ammunition available for purchase is the result of various factors, including a lack of raw materials and the historical increase in the number of individuals purchasing firearms. The committee also acknowledged the issue might be a short-term problem as the shortage that inspired the study has diminished.

## **Conclusion**

The committee makes no recommendation with respect to the firearm and ammunition study.

## **BOARD OF UNIVERSITY AND SCHOOL LANDS AND INDUSTRIAL COMMISSION MEMBERSHIP STUDY**

### **Background**

#### **Board of University and School Lands**

The Department of Trust Lands is the administrative arm of the Board of University and School Lands, serving under the direction and authority of the board. Section 3 of Article IX of the Constitution of North Dakota and Section 15-01-01 set the membership of the board as the Governor, Secretary of State, Attorney General, State Treasurer, and Superintendent of Public Instruction. The department's primary responsibility is managing the common schools trust fund and 12 other permanent educational trust funds. The beneficiaries of the trust funds include local school districts, various colleges and universities, and other institutions in North Dakota. The department also manages the strategic investment and improvements fund, the coal development trust fund, the Capitol building fund, the Indian cultural education trust, and the Theodore Roosevelt Presidential Library and Museum endowment fund. The department also administers the responsibilities outlined in the Uniform Unclaimed Property Act. As the administrator, the department collects "unclaimed property," such as uncashed checks and unused bank accounts, and processes owners' claims. This property is held in permanent trust for owners to claim, with the revenue from the investment of the property benefiting the common schools trust fund.

#### **History**

Upon the passage of the Northwest Ordinance of 1785, the United States Congress established a policy of granting land to a state when it entered the Union as an asset to generate funding to support the public education system, a fundamental state responsibility. Starting with Ohio in 1785, and ending with Arizona and New Mexico in 1910, each new state received a set of federal lands that, under federal enabling legislation and the corresponding state constitution, were to be held in trust for the benefit of the public schools. The trust mandates the states are to use the lands to generate revenue to support the public schools and other institutions.

In 1889, Congress passed the Enabling Act "to provide for the division of the Dakota Territory into two states, and to enable the people of North Dakota, South Dakota, Montana, and Washington to form constitutions and state governments, and to be admitted into the union on an equal footing with the original states, and to make donations of public lands to such states." Section 10 of the Act granted sections 16 and 36 in every township to the new states "for the support of common schools." In cases in which portions of sections 16 and 36 had been sold before statehood, indemnity or "in lieu" selections were allowed. In North Dakota, this grant of land totaled nearly 2.6 million acres.

The Enabling Act also provided land grants to North Dakota for the support of colleges, universities, the State Capitol, and other public institutions. Revenues are generated through the prudent management of trust assets, which include approximately 706,600 surface acres and nearly 2.6 million mineral acres. The Board of University and School Lands is a result of the Enabling Act, making it an agency that predates statehood.

### **Membership**

The membership of the Board of University and School Lands has changed only once in the past 130 years. Senate Bill No. 2072 (1985) and Senate Concurrent Resolution No. 4006 (1985) replaced the State Auditor with the State Treasurer on the Board of University and School Lands and the Public Employees Retirement Board. In 1987, nearly 100 years after the Board of University and School Lands was created, the membership was changed after the passage of the ballot measure to amend Section 3 of Article IX of the Constitution of North Dakota.

### **Conflict of Interest**

Testimony in opposition to Senate Bill No. 2282 (2021) indicated adding the Agriculture Commissioner to the Board of University and School Lands would create several conflicts of interest because the Agriculture Commissioner's mission is to serve, advocate, protect, and promote agriculture to benefit everyone, and because the placement of the Agriculture Commissioner on the board places the entire Industrial Commission on the board and the Industrial Commission oversees the Bank of North Dakota.

### **Industrial Commission**

In 1919, House Bill No. 17 created the North Dakota Industrial Commission to conduct and manage, on behalf of the state, certain utilities, industries, enterprises, and business projects established by state law. The membership of the Industrial Commission has not changed since 1919 and consists of the Governor, the Attorney General, and the Agriculture Commissioner. The Oil and Gas Division of the Industrial Commission regulates the drilling and production of oil and gas in North Dakota. Its mission is to encourage and promote the development, production, and utilization of oil and gas in the state to prevent waste, maximize economic recovery, and fully protect the correlative rights of all owners to the end that the landowners, the royalty owners, the producers, and the general public realize the greatest possible good from vital natural resources.

### **Testimony and Committee Considerations**

The committee received testimony from the Commissioner of the Board of University and School Lands, a representative of the Department of Agriculture, and the Secretary of State. The committee's deliberations focused on whether the membership of the Board of University and School Lands should be changed.

Testimony indicated adding the Agriculture Commissioner to the Board of University and School Lands may create a conflict of interest because the Agriculture Commissioner also serves on the Industrial Commission and a meeting of the Industrial Commission likely would be a quorum of the board. Testimony further indicated there are significant overlaps in topics and information relating to both entities which creates an appearance and the opportunity to have members influenced by conflicting responsibilities.

The Industrial Commission oversees the Bank of North Dakota and the Board of University and School Lands has the fiduciary responsibility of administering five loan programs for which there are agreements with the Bank of North Dakota to manage the applications and day-to-day functions of the loans. Testimony indicated the separation of the duties between the Industrial Commission and the board exist to ensure there are checks and balances in place for the loan programs. Testimony also contended the five elected officials are an ideal blend to oversee the financial and land assets administered by the Department of Trust Lands and there is not a valid reason to change the membership.

Committee members expressed concern regarding the conflict of interest that would be created if a member of the Board of University and School Lands also served on the Industrial Commission. Concerns were raised about the types of funds and programs administered by each entity and whether each entity might have competing goals. Committee members also expressed satisfaction with decisions made by the existing membership of the Board of University and School Lands and the Industrial Commission and members did not see a need to make any changes.

## **Conclusion**

The committee makes no recommendation with respect to the Board of University and School Lands and Industrial Commission membership study.

## **UNIFORM LAWS REVIEW**

The North Dakota Commission on Uniform State Laws consists of 12 members. The primary function of the commission is to represent North Dakota in the Uniform Laws Commission (ULC), also known as the National Conference of Commissioners on Uniform State Laws. The Uniform Laws Commission consists of representatives of all states, and its purpose is to promote uniformity in state law on all subjects on which uniformity is desirable and practicable and to serve state government by improving state laws for better interstate relationships. Under Sections 54-35-02 and 54-55-04, the state commission may submit its recommendations for enactment of uniform laws or proposed amendments to existing uniform laws to the Legislative Management for its review and recommendation during the interim between legislative sessions. The commission presented these recommendations to the committee:

- Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act, which the ULC approved in 2018, addresses the disclosure of private images of nudity or sexual conduct without consent. The Act creates a civil cause of action; protects victims' identities; and provides various remedies. The Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act has been enacted by seven states.
- Uniform Commercial Code (UCC) amendments, which the ULC approved in 2022. The amendments to the UCC address emerging technologies, providing updated rules for commercial transactions involving virtual currencies, distributed ledger technologies (including blockchain), artificial intelligence, and other technological developments. The amendments span almost every article of the UCC and add a new Article 12 addressing certain types of digital assets defined as "controllable electronic records." The amendments provide new default rules to govern transactions involving these new technologies and clarify the UCC's applicability to mixed transactions involving both goods and services. The amendments also contain miscellaneous revisions unrelated to technological developments but providing needed clarification.
- Revised Uniform Law on Notarial Acts (RULONA), which the ULC approved in 2010 and most recently revised in 2021. Amendments to the RULONA, including a new Section 14A on remote notarization, were approved by the ULC in 2018, resulting in RULONA (2018). The ULC approved further amendments to the uniform Act in 2021 to accommodate remote ink notarization and to establish a notary may administer an oath or affirmation remotely via communication technology. North Dakota enacted RULONA in 2011 and enacted the 2018 amendments in 2019.

## **Conclusion**

The committee makes no recommendations regarding these uniform Acts.

## **TECHNICAL CORRECTIONS**

The committee continued the practice of reviewing the Century Code to determine if there are inaccurate or obsolete name and statutory references or superfluous language. The committee considered a bill draft addressing the following statutory provisions:

- Section 1 of the bill draft clarifies the use of the terms "commissioner" and "department," as used in the law relating to public access to leased and unleased trust lands, refers to the Commissioner of University and School Lands and the Department of Trust Lands.
- Section 2 of the bill draft clarifies the use of the term "commissioner," as used in the law relating to vehicular access to trust lands, refers to the Commissioner of University and School Lands.
- Section 3 of the bill draft corrects the reference to the University of North Dakota medical school to instead refer to the University of North Dakota School of Medicine and Health Sciences, which is the correct name of this entity.
- Section 4 of the bill draft corrects an internal cross-reference in Section 26.1-05-19(24). Between 2010 and 2017, the Code Revisor repealed subsection 6 due to reference to a repealed chapter of Century Code, necessitating this correction.
- Section 5 of the bill draft corrects internal cross-references in Section 26.1-05-19(34). Between 2010 and 2017, the Code Revisor repealed subsection 6 due to reference to a repealed chapter of Century Code, necessitating these corrections. This section corrects cross-references to subsections 19, 20, and 21.
- Section 6 of the bill draft corrects an outdated cross-reference to Section 26.1-05-19(21) which occurred due to renumbering of this section by the Code Revisor between 2010 and 2017.

- Section 7 of the bill draft creates a new subdivision to Section 27-20.2-21(1), regarding the ability to access juvenile court files and records. House Bill No. 1035 (2021) repealed Chapter 27-20 and relocated several of the repealed provisions in the newly created Chapter 27-20.2; however, House Bill No. 1047 (2021) amended the repealed Section 27-20-51(1). This section incorporates the intended amendment into the newly created Section 27-20.2-21.
- Section 8 of the bill draft corrects an outdated cross-reference to Chapter 47-30.1, regarding unclaimed property. Senate Bill No. 2048 (2021) repealed Chapter 47-30.1 and replaced it with Chapter 47-30.2. This section updates that cross-reference to refer to Chapter 47-30.2.
- Section 9 of the bill draft corrects a formatting error to Section 39-06-32, regarding the authority to suspend motor vehicle operator licenses, which occurred in 2013.
- Sections 10 through 12 of the bill draft correct cross-references that are necessary due to the formatting correction under Section 9 of the bill.
- Section 13 of the bill draft corrects a formatting error to Section 40-34-13, regarding the use of money remaining after the payment of bonds.
- Section 14 of the bill draft corrects a formatting error to Section 40-35-02, regarding the definition of the term "undertaking" as it relates to revenue bonds.
- Section 15 of the bill draft corrects an outdated reference to Section 11-33-20, which was repealed in 2015.
- Sections 16 and 17 of the bill draft remove obsolete language relating to city and county general fund levy authority. The language being removed was included in Senate Bill No. 2144 (2015), which eliminated and consolidated various types of levy authority, to slowly phase cities and counties down to the new levy limits. The period addressed by the phase-in language has passed, so the obsolete language has been removed.
- Section 18 of the bill draft corrects an outdated reference to "state engineer" in Section 61-32-03.1(6), regarding permits required to drain subsurface waters.

### **Recommendation**

The committee recommends a bill draft [23.0171.01000] to make technical corrections throughout the Century Code.

### **REVIEW OF EXECUTIVE ORDERS**

Pursuant to Section 54-03-32, the Legislative Management delegated to the committee the responsibility to review any executive order issued by the President of the United States which has not been affirmed by a vote of Congress and signed into law, and recommend to the Attorney General and the Governor that the executive order be further reviewed to determine the constitutionality of the order and whether the state should seek an exemption from the order or seek to have the order declared to be an unconstitutional exercise of legislative authority by the President. The committee monitored and reviewed the executive orders issued between January 2021 and August 2022.

### **Conclusion**

The committee recommends the following executive orders issued between January 2021 and August 2022 for further review by the Attorney General and the Governor:

- Executive Order Nos. 14076 and 14079, relating to access to reproductive and other health care services, for review and challenge by the Attorney General.
- Executive Order Nos. 13990 and 14037, relating to public health and the environment, for review by the Attorney General.
- Executive Order No. 14019, relating to voting rights, for review by the Attorney General.
- Executive Order No. 14075, relating to equality for lesbian, gay, bisexual, transgender, queer, and intersex individuals, for review by the Attorney General.

### **REPORT ON CIVILLY FORFEITED PROPERTY**

The committee received a report from the Attorney General, pursuant to Section 19-03.1-36.8, relating to civil asset forfeiture cases in the state for the preceding fiscal year, including information about the type, approximate value, and disposition of any civilly forfeited property and the amount of proceeds received. The report indicated of the counties that submitted reports, the net total of forfeited currency in the state was \$424,655 and the total proceeds from forfeited motorized vehicles or automobiles was \$20,147 from July 1, 2020, through June 30, 2021. The report indicated although forfeited firearms were seized during the reporting period, the items do not have a value until sold.

## **COMMISSION ON LEGAL COUNSEL FOR INDIGENTS ANNUAL REPORT**

The committee received a report from the Director of the Commission on Legal Counsel for Indigents, as required by Section 54-61-03, regarding pertinent data on the operation, needs, and cost of the indigent defense contract system and any established public defender offices. The report indicated the commission provides legal services to persons who are indigent and who are charged with misdemeanors and felonies in state district court. The commission also provides counsel to indigent persons who are parties in some juvenile cases and other miscellaneous matters.

In the 2021 fiscal year, the commission provided legal counsel services in over 16,000 case assignments. The commission's 2021-23 budget consisted of \$18,969,363 from the general fund and \$1,994,850 from the commission's special fund. The special fund consists of statutory fees paid by defendants, which include the court administration fee, an indigent defense/facility improvement fee of \$100, and the \$35 indigent defense application fee from criminal cases. The report indicated during the 2019-21 biennium, the commission averaged 132 case assignments per month whereas through January 2022, the commission averaged 194 case assignments per month and the commission has approximately 67 monthly contractors handling 67 percent of annual cases.

In July 2021, the commission was tasked with representing all children, regardless of income, in delinquency matters. During the 2019-21 biennium, juvenile assignments averaged 132 per month whereas during the first 6 months of the 2021-23 biennium, the commission averaged 196 cases per month. The report indicated the commission spent an average of \$29,100 per month on juvenile-specific contracts during the 2019-21 biennium and \$41,800 per month through the first 6 months of the 2021-23 biennium.

## **NORTH DAKOTA RACING COMMISSION REPORT**

The committee received a report from the Director of the North Dakota Racing Commission pursuant to Section 53-06.2-04. The report indicated the commission's primary responsibilities are to regulate live and simulcast races as well as to license all the participants, including simulcast service providers, tote operators, simulcast site operators, live track providers, simulcast employees, and live racing participants, including owners, trainers, and jockeys.

During the 2020 and 2021 fiscal years, the account wagering companies significantly rebounded from fiscal year 2019 with \$612,913,406 in wagers deposited with account wagering companies. The report indicated while the past 2 years have shown positive results, the commission is operating in an ever-changing environment and due to the expansion of sports wagering around the world the commission is at risk of losing licensees to states allowing sports betting. The loss of one of the major account wagering companies to a competing state could have a significant impact on the commission's ability to operate without additional support from the general fund. The report indicated roughly 95 percent of the North Dakota account wagering companies regulated wagering is generated from outside the state.

## **LOTTERY REPORT**

The committee received a report from the Director of the North Dakota Lottery regarding the operation of the lottery pursuant to Section 53-12.1-03. The report indicated, for the 2019-21 biennium, the lottery had a fixed appropriation of \$2,118,319 for salaries and benefits for 10 full-time equivalent (FTE) positions and \$3,136,525 for operating expenses. The lottery has a continuing appropriation for variable expenses of prizes, retailer commissions, online gaming system vendor fees, and Multi-State Lottery Association game group dues. The appropriation funds 8 FTE positions in the Lottery Division, 1 FTE position in the Information Technology Division, and 1 FTE position in the Finance and Administration Division of the Attorney General's office. The appropriation also funds 3 part-time draw operators.

For the 2021-2023 biennium, the lottery's projected sales are \$64 million with transfers of \$15.84 million (\$13.6 million to the state general fund, \$640,000 to the compulsive gambling prevention and treatment fund, and \$1.6 million to the multijurisdictional drug task force grant fund). Unaudited ticket sales through December 2019, the first 6 months of the fiscal year, were \$12.06 million. Unaudited ticket sales through March 31, 2022, the first 9 months of the fiscal year, were \$22.3 million, which reflects a \$1.3 million decrease in sales, or a 5.4 percent decrease compared to the same period last year.

## **STATE HOSPITAL REPORT ON SEXUALLY DANGEROUS INDIVIDUALS TREATMENT PROGRAM**

The committee received a report from DHS, pursuant to Section 50-06-31, regarding the State Hospital's program for the evaluation and treatment of sexually dangerous individuals. The report indicated since 2007, DOCR has provided a variety of security services, including security training, perimeter surveillance, emergency response, and security consultation. According to the report, there are 27 individuals committed for sexual dangerousness and 11 individuals on postcommitment community release receiving outpatient treatment in their home communities.

## **STATE DEPARTMENT OF HEALTH REPORT ON IMPLEMENTATION OF MEDICAL MARIJUANA**

The committee received a report from DOH, as required by Section 19-24.1-39, regarding 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, expenses incurred, and revenues generated by the department.

The report indicated in fiscal year 2021, 10 registry identification cards were revoked, 7 of which were qualifying patients. In fiscal year 2022, 16 registry identification cards were revoked, 12 of which were qualifying patients, 3 of which were designated caregivers, and 1 of which was an agent. As of June 30, 2022, the state had 340 health care providers who completed written certifications for registered qualifying patients which was an increase of 43 compared to June 30, 2021. The two registered manufacturing facilities are located in Fargo and Bismarck with eight registered dispensaries in Devils Lake, Dickinson, Jamestown, Minot, Bismarck, Fargo, Williston, and Grand Forks. In fiscal year 2022, the total dispensary sales were \$19,970,000, 69 percent of which were dried flowers and leaves, compared to total sales of \$15,336,000 in fiscal year 2021, 72 percent of which were dried flowers and leaves.

## **TASK FORCE ON THE PREVENTION OF SEXUAL ABUSE OF CHILDREN REPORT**

The purpose of the North Dakota Child Sexual Abuse Prevention Task Force is to develop and implement a comprehensive statewide approach to the prevention of child sexual abuse with the four main goals of the task force being prevention of child sexual abuse, strengthening intervention, strengthening the network, and strengthening offender programming. The report indicated an environmental scan regarding the processes and prospective of the prevention of child sexual abuse for the state was completed in April 2022 and there was a strong desire among those surveyed to provide child sexual abuse education to all stakeholder groups. Existing roadblocks to providing education include a lack of intellectual resources and subject matter expertise.

## **REPORT ON ATTORNEY RECRUITMENT PROGRAM**

Senate Bill No. 2233 (2021) established the Attorney Recruitment Program, codified as Chapter 27-02.2, to encourage attorneys to live and work in rural communities through an incentive payment of \$45,000 paid in equal installments over the course of 5 years. Cities with a population of 5,000 or less or counties with a population of 16,000 or less are eligible to apply for the program and applications are reviewed by an ad hoc committee of three who are appointed by the Chief Justice. The report indicated the initial recruitment process ran from February 1, 2022, through March 31, 2022. Of the three individuals participating in the program, two are located near Grafton, and the third is in the far southwest area of the state.

## **REPORT ON MEMORANDUM OF UNDERSTANDING FOR JUVENILE JUSTICE**

Section 27-20.4-27 authorizes DOCR, the Supreme Court, and the Indian Affairs Commission to enter a memorandum of understanding with the tribal government of a federally recognized Indian tribe in the state for the purpose of accepting and providing for the treatment and rehabilitation of tribal juveniles who have been adjudicated in tribal court under tribal or federal law. The report indicated since the signing of the agreement with the Spirit Lake Tribe, 21 youth have been referred by the Tribal Court to be staffed with the multidisciplinary team. Staff turnover remains a significant concern for the tribal court and Spirit Lake Social Services and there is a greater need for more intensive supervision of the youth involved in tribal court.