

JUDICIARY COMMITTEE

The Judiciary Committee was assigned four studies:

- Section 4 of House Bill No. 1206 (2017) directed a study of the adoptive process and procedure, expenses, duration, and state tax credits and deductions associated with adoption by an identified or an unidentified adoptive parent.
- Section 3 of House Bill No. 1233 (2017) directed a study of the provisions of North Dakota Century Code which relate to firearms and weapons, for the purpose of eliminating provisions that are irrelevant or duplicative, clarifying provisions that are inconsistent or unclear in their intent and direction, and rearranging provisions in a logical order.
- House Concurrent Resolution No. 3003 (2017) directed a study of the impact of Marsy's Law on the statutorily provided rights of crime victims and those alleged to have committed crimes, and the criminal procedures relating to the rights of victims and criminal defendants.
- House Concurrent Resolution No. 3014 (2017) directed a study of the various legal notice and publishing requirements of all state agencies and political subdivisions, the related costs required in state and political subdivision budgets, and potential notification alternatives.

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 under 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 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 (Section 54-03-32).

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

- 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 (Section 54-61-03).
- 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 (Section 53-06.2-04).
- A report from the North Dakota Lottery regarding the operation of the lottery (Section 53-12.1-03).
- A report from the Department of Human Services (DHS) on services provided by the Department of Corrections and Rehabilitation for individuals at the State Hospital who have been committed to the care and custody of the Executive Director of DHS (Section 50-06-31).
- A report from the Attorney General on the status and results of the human trafficking victims treatment and support services grant program (2017 Senate Bill No. 2203, §§ 1,2).
- A report from the Task Force on the Prevention of Sexual Abuse of Children with recommendations for state policy that would prevent child sex abuse (2017 Senate Bill No. 2342, § 1).
- A report from the State Department of Health including the findings and recommendations of the study on adding identified medical conditions to the definition of "debilitating medical condition" in its annual reports (2017 Senate Bill No. 2344, § 5).
- An annual report from the State Department of Health 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 (Section 19-24.1-39).

Committee members were Senators David Hogue (Chairman), John Grabinger, Diane Larson, and Janne Myrdal and Representatives Roger Brabrandt, Lois Delmore, Terry B. Jones, Karen Karls, Lawrence R. Klemin, Kim Koppelman, Jeffrey J. Magrum, Shannon M. Roers Jones, Bernie Satrom, and Luke Simons.

The committee submitted this report to the Legislative Management at the biennial meeting of the Legislative Management in November 2018. The Legislative Management accepted the report for submission to the 66th Legislative Assembly.

IDENTIFIED OR UNIDENTIFIED ADOPTION

Background

The Department of Human Services reported 152 adoptions in the state during fiscal year 2017, including 140 special needs adoptions, 20 infant or regular adoptions, 6 international adoptions, and 6 identified parent adoptions. Section 14-15.1-01 provides definitions for "relative" and "identified adoptive parent," but Century Code does not provide a specific definition for "unidentified" adoptive parent. "Relative" means a brother, sister, stepbrother, stepsister, first cousin, uncle, aunt, or grandparent of the child by marriage, blood, or adoption and "identified adoptive parent" means "the person or persons eligible under section 14-15-03 to adopt a child and who has been selected by a birth parent to adopt a specific child." Section 14-15-03 provides the following individuals may adopt:

1. A husband and wife together although one or both are minors.
2. An unmarried adult.
3. The unmarried father or mother of the individual to be adopted.
4. A married individual without the other spouse joining as a petitioner, if the individual to be adopted is not the adopting person's spouse, and if:
 - a. The petitioner is a stepparent of the individual to be adopted and the biological or legal parent of the individual to be adopted consents;
 - b. The petitioner and the other spouse are legally separated; or
 - c. The failure of the other spouse to join in the petition or to consent to the adoption is excused by the court by reason of prolonged unexplained absence, unavailability, incapability, or circumstances constituting an unreasonable withholding of consent.

Adoption Procedure - Unidentified Parent

Section 14-15-09(1)(j) requires a petitioner to include all reasonable fees, such as an adoption assessment, expenses for travel, medical expenses, and legal fees in the petition for adoption. After a petition is filed, Section 14-15-11 requires a licensed child-placing agency to complete an investigation as to the conditions of the minor to be adopted and of the petitioner to determine if the adoptive home is a suitable home for the minor and whether the proposed adoption is in the best interest of the minor. An investigation and report is not required in cases involving a petitioner who is a stepparent or in cases in which the individual being adopted is an adult. Under Section 14-15-11(5), the court may waive the investigation and report "if the petitioner is a relative other than a stepparent of the minor, the minor has lived with the petitioner for at least nine months, no allegations of abuse or neglect have been filed against the petitioner or any member of the petitioner's household, and the court is satisfied that the proposed adoptive home is appropriate for the minor."

Section 14-15-13 requires the petitioner and the individual to be adopted to appear at the hearing on the petition. At the conclusion of the hearing, the court determines whether the adoption is in the best interest of the individual. The court also must make a finding as to the reasonableness of reported expenses.

Adoption Procedure - Identified Parent

Chapter 14-15.1 sets forth the legal process governing an identified parent adoption. In an identified adoption, the custody of the child passes directly from the birth parent to adoptive parent through a legal process when the birth parents relinquish their parental rights pending the final adoption of the child at a later date. Section 14-15.1-03 requires the court to set a time and place for a hearing on the petition for relinquishment of parental rights. Section 14-15.1-04 requires the report of a child-placing agency to be filed with the court before a hearing under this chapter. House Bill No. 1206 (2017) amended Section 14-15.1-04 to create a distinction between the required report of a child-placing agency in an adoption by an identified adoptive parent who is not a relative and an adoption by an identified adoptive parent who is a relative. An identified parent who is a relative must have written character statements from three adult witnesses describing various characteristics, such as the emotional maturity and stability of the home environment. An identified adoptive parent who is not a relative must complete a preplacement adoption assessment.

Section 14-15.1-05 requires a report of agreements, whether oral or written, and a full accounting of any disbursement of anything of value to be filed with the court. Within 180 days after entry of an order for relinquishment under Chapter 14-15.1, the identified adoptive parent must file a petition for adoption under Chapter 14-15.

Financial Impact

In North Dakota, private adoption agencies facilitate infant adoptions, the adoption of children from the foster care system, and foreign-born adoptions. According to DHS, the state implements the Adults Adopting Special Kids Program, which contracts with three private agencies to provide adoption services for children adopted from the foster care system. The state does not provide specific tax exemptions or credits relating to adoption.

Fees charged by private adoption agencies in the state range from \$5,000 to \$11,000 or more for domestic and intercountry adoptions. Adoption services provided through the Adults Adopting Special Kids Program are available for a modest fee.

Although North Dakota does not offer state tax credits or deductions relating to adoptions, federal or state subsidies may be available to assist families adopting a child with special needs. In North Dakota, a child may be designated as a child with "special needs" for the purposes of an adoption subsidy through DHS if the child is over the age of 7; is a member of a minority race; is a member of a sibling group placed together for adoption; is diagnosed with a physical, mental, or emotional disability; or has been determined to be at high risk for a physical, mental, or emotional disability by a licensed physician. The state also must determine a reasonable but unsuccessful effort was made to place the child without a subsidy, unless the child is being placed with a family that has a significant relationship to the child. Children placed through the state, a county social service officer, a licensed agency in the state, or a North Dakota tribe may be eligible for a subsidy. A subsidy may be a monthly payment, medical assistance, or reimbursement of nonrecurring adoption expenses. Private (nonagency) adoptions do not qualify for a subsidy.

Testimony and Committee Considerations

In its study of adoption, the committee received information and testimony from several adoptive parents, a representative from DHS, and a representative from an adoption agency. The committee's deliberations focused on whether any unnecessary burdens exist for individuals looking to adopt a child through an identified or unidentified adoption.

Although House Bill No. 1206 (2017) amended Chapter 14-15.1 to allow for more limited involvement of the child-placing agency in relative adoptions, a representative from DHS indicated an agency report still includes an assessment and recommendation, the criminal history record of the identified adoptive parent and any adult living in the home, written credible character statements from three adult witnesses, and the medical and social history of the birth parent, including an assessment regarding the birth parent's understanding and acceptance of the action. The committee received considerable testimony indicating adoptions within North Dakota and across state borders are running very smoothly. Testimony also indicated the legal process to terminate parental rights under Section 14-15-19 can be a lengthy process and birth parents find it difficult to move on emotionally when the birth parents have to attend a hearing months after giving up physical custody of a child.

The committee received testimony regarding the average cost of adoption. Testimony generally indicated although adoption costs vary between \$5,000 and \$17,000, identified adoptions tend to cost more because of the additional paperwork required. Testimony also indicated the adoption process is working well as administered.

The committee considered a bill relating to the reports of a child-placing agency. The bill removes a requirement for a statement of affidavit confirming the information in the child-placing agency report is accurate. The committee was informed the affidavit is unnecessary because the adoption application contains the same statement.

Recommendations

The committee recommends [House Bill No. 1038](#) to remove the requirement for a statement of affidavit confirming the information in the child-placing agency report is accurate.

FIREARMS AND WEAPONS PROVISIONS IN TITLE 62.1

Background

Title 62.1 sets forth the provisions relating to weapons, specifically the possession of weapons, handguns, concealed weapons, machine guns, automatic rifles, silencers, and bombs.

Chapter 62.1-01

Chapter 62.1-01 sets forth the definitions applicable for Title 62.1, the general provisions requiring the forfeiture of a dangerous weapon or firearm by a person arrested and convicted of a crime, and limits the authority of a political subdivision from enacting an ordinance relating to the purchase, sale, ownership, possession, transfer of ownership, registration, or licensure of firearms and ammunition, which is more restrictive than state law.

Chapter 62.1-02

Chapter 62.1-02 provides the specific instances under which an individual may not possess a firearm and when an individual's right to possess a firearm may be restored.

Chapter 62.1-03

Chapter 62.1-03 sets forth specific regulations related to the use and possession of handguns.

Chapter 62.1-04

Chapter 62.1-04 sets forth the law relating to carrying a concealed weapon.

Chapter 62.1-05

Chapter 62.1-05 relates to the possession and sale of machine guns, automatic rifles, silencers, and bombs.

2017 Legislation

In 2017, 13 bills related to firearms were introduced, 8 of which were passed by the Legislative Assembly and signed by the Governor.

Legislation Adopted

- House Bill No. 1169 allowed an individual who is not otherwise prohibited from possessing a Class 2 firearm and dangerous weapon license and who has been a resident of the state for at least 1 year to carry a concealed firearm. The bill also allows an individual to show proof of a valid driver's license or nondriver identification card on a mobile device upon demand by a law enforcement officer.
- House Bill No. 1233 adds a federal, magistrate, or judicial referee to the list of individuals exempt from Section 62.1-02-05, which prohibits the possession of a firearm at a public gathering. The bill allows an individual who has a Class 2 concealed weapons license to upgrade to a Class 1 concealed weapons license within 5 years from the date the Class 2 license was issued and upon successful completion of the testing required for a Class 1 license. The bill also allows an individual who has a valid Class 1 firearm license to request to convert the license to a Class 2 firearm license before the expiration of the Class 1 firearm license.
- House Bill No. 1273 removes the requirement for a church to notify local law enforcement of any individual the church authorizes to possess a concealed weapon on church property and limits the liability of a church or place of worship for any injury, death, or damage to property caused by an individual permitted to carry a dangerous weapon.
- House Bill No. 1279 allows an individual to store a firearm or dangerous weapon in a building owned or managed by the state or a political subdivision if the individual resides in the building, the storage is inside the residential unit, and the storage of the firearm or dangerous weapon was approved by the state, governing board, or designee.
- House Bill No. 1395 amends the definition of "dangerous weapon" to include a device that uses a projectile and voltage or the device uses a projectile and may be used to apply multiple applications of voltage during a single incident. The bill amends the definition of law enforcement officer to include a retired public servant who was authorized by law or a government agency for at least 10 years to enforce the law and to conduct or engage in investigations or prosecutions for violations of the law.
- House Bill No. 1402 allows a law enforcement officer to arrest an individual subject to a protection order and who failed to surrender any firearm or dangerous weapon.
- Senate Bill No. 2097 adds public security personnel to the list of individuals allowed to carry firearms at a public gathering.
- Senate Bill No. 2125 adds a correctional officer employed by the Department of Corrections and Rehabilitation or by a correctional facility to the individuals allowed to carry firearms at a public gathering.

Legislation Not Passed

- House Bill No. 1190 would have allowed an individual authorized by the Chief Justice of the Supreme Court, Governor, Speaker of the House, or President Pro Tempore of the Senate to carry a concealed weapon on property owned or leased by the state.
- House Bill No. 1278 would have amended the definition of "government building" for purposes of possession of a firearm to specify a "government building" is a building that limits access by using metal detection devices and is staffed by armed personnel. The bill also would have clarified a public gathering as it relates to possessing a firearm or dangerous weapon.
- House Bill No. 1310 would have created a pilot program for armed first responders in schools.

- House Bill No. 1391 would have created an exception from all federal regulations for any firearm, firearm accessory, or ammunition produced or manufactured in the state.
- Senate Bill No. 2139 would have allowed an individual who carries a concealed firearm or dangerous weapon to produce, within 10 days of a request of by a police officer, evidence of a valid license to carry a concealed weapon.

Testimony and Committee Considerations

In its study of Title 62.1, the committee received information and testimony from representatives of the Attorney General's office, a representative from the Game and Fish Department, and several members of the public. The committee's deliberations focused on which sections of Title 62.1 needed to be amended to address the inconsistencies and eliminate confusion.

The committee received testimony identifying inconsistencies in Title 62.1 relating to the passage of House Bill No. 1169 (2017), specifically whether an individual who is permitted to carry a firearm or dangerous weapon concealed under Chapter 62.1-04 also is permitted to carry a loaded firearm in a motor vehicle under Section 62.1-02-10. A representative from the Game and Fish Department indicated there is confusion relating to how the restrictions in Section 62.1-02-10 apply to an individual who is hunting. A representative from the Attorney General's office indicated an inconsistency in Section 62.1-02-01.1, relating to whether the state has the jurisdiction to restore an individual's right to possess a firearm when the individual's right was taken by another state or the federal government.

The committee considered a bill relating to the possession of firearms. The bill consists of 11 sections that amend language in an effort to address inconsistencies and eliminate confusion.

Section 1 of the bill removes duplicative language relating to the definition of a retired law enforcement officer and the language relating to a felon possessing a firearm from the definition of "firearm" in Section 62.1-01-01. Section 3, which amends Section 62.1-02-01, also revises the same language restricting a felon from possessing a firearm.

Section 4 of the bill addresses the inconsistency in Section 62.1-02-01.1, relating to whether the state or federal government has jurisdiction to reinstate an individual's right to possess a firearm by specifying the petition to reinstate the right must be filed in the venue where the rights were revoked.

Sections 8 and 10 of the bill address inconsistencies created with the passage of House Bill No. 1169 (2017) by clarifying the restrictions relating to open carry of a handgun and carrying a loaded firearm in a vehicle do not apply to an individual who is not otherwise precluded from carrying a concealed firearm or dangerous weapon under Chapter 62.1-04.

Section 9 of the bill amends Section 62.1-02-13 to add the exceptions that apply to the restriction on carrying a firearm at a public gathering in Section 62.1-02-05 to the prohibition of the possession of a secured firearm by an employer at any public or nonpublic elementary school, middle school, or high school property.

Section 11 of the bill amends Section 62.1-04-02 by creating language that provides a distinction between a Class 1 and Class 2 firearm and dangerous weapon license.

Although there was discussion regarding whether the statutory changes were necessary, the committee was informed the changes would not be substantive in nature.

Recommendations

The committee recommends [Senate Bill No. 2034](#) to make Title 62.1 more readable and to remove inconsistencies.

MARSY'S LAW Background

At the general election in November 2016, the voters of the state approved an initiated constitutional measure referred to as "Marsy's Law." Marsy's Law was named after Dr. Henry T. Nicholas' sister, Marsalee Nicholas, who was stalked and killed by her ex-boyfriend in 1983. Dr. Nicholas was the sole reported contributor to the campaign and contributed over \$2.3 million. Marsy's Law, codified as Section 26 of Article I of the Constitution of North Dakota, provides 19 rights afforded to victims. Any court in the state in which the criminal proceeding is being heard, the prosecuting attorney, and criminal justice agencies are subject to and must enforce Marsy's Law.

Section 16.1-01-17 requires the Legislative Management to gather information on the estimated fiscal impact of initiated measures. At the September 29, 2016, meeting of the Legislative Management, the Office of Management and Budget estimated the fiscal impact of Marsy's Law to be \$1,156,846 for the remainder of the 2015-17 biennium and \$3,966,330 for the 2017-19 biennium.

Under the constitutional provision, a "victim" is defined as "a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or delinquent act or against whom the crime or delinquent act is committed." Pursuant to Section 26, victims are entitled to the following rights, beginning at the time of victimization:

- The right to be treated with fairness and respect for the victim's dignity.
- The right to be free from intimidation, harassment, and abuse.
- The right to be reasonably protected from the accused and any person acting on behalf of the accused.
- The right to have the safety and welfare of the victim and the victim's family considered when setting bail or making release decisions.
- The right to prevent the disclosure of information or records that could be used to locate or harass the victim or the victim's family, or which could disclose confidential or privileged information about the victim, and to be notified of any request for such information or records.
- The right to privacy, which includes the right to refuse an interview, deposition, or other discovery request made by the defendant, the defendant's attorney, or any person acting on behalf of the defendant, and to set reasonable conditions on the conduct of any such interaction to which the victim consents.
- The right to reasonable, accurate, and timely notice of, and to be present at, all proceedings, involving the criminal or delinquent conduct, including release, plea, sentencing, adjudication, and disposition, and any proceeding during which a right of the victim is implicated.
- The right to be promptly notified of any release or escape of the accused.
- The right to be heard in any proceeding involving the release, plea, sentencing, adjudication, disposition, or parole, and any proceeding during which a right of the victim is implicated.
- The right, upon request, to confer with the attorney for the government.
- The right to provide information regarding the impact of the offender's conduct on the victim and the victim's family to the individual responsible for conducting any presentence or disposition investigation or compiling any presentence investigation report or recommendation regarding, and to have any such information considered in any sentencing or disposition recommendations.
- The right, upon request, to receive a copy of any report or record relevant to the exercise of a victim's right, except for those portions made confidential by law or unless a court determines disclosure would substantially interfere with the investigation of a case, and to receive a copy of any presentence report or plan of disposition when available to the defendant or delinquent child.
- The right, upon request, to the prompt return of the victim's property when no longer needed as evidence in the case.
- The right to full and timely restitution in every case and from each offender for all losses suffered by the victim as a result of the criminal or delinquent conduct.
- The right to proceedings free from unreasonable delay, and to a prompt and final conclusion of the case and any related postjudgment proceedings.
- The right, upon request, to be informed of the conviction, adjudication, sentence, disposition, place, and time of incarceration, detention, or other disposition of the offender, any scheduled release date of the offender, and the release of or the escape by the offender from custody or commitment.
- The right, upon request, to be informed in a timely manner of all postjudgment processes and procedures, to participate in such processes and procedures, to provide information to the release authority to be considered before any release decision is made, and to be notified of any release decision regarding the offender.
- The right, upon request, to be informed in a timely manner of any pardon, commutation, reprieve, or expungement procedures, to provide information to the Governor, the court, the pardon board, and other authority in these procedures, and to have that information considered before a decision is made, and to be notified of such decision in advance of any release of the offender.
- The right to be informed of these rights, and to be informed that victims can seek the advice of any attorney with respect to their rights.

Chapters 12.1-34 and 12.1-35 also provide for the fair treatment of victims and witnesses and child victim and witness fair treatment standards. The 65th Legislative Assembly passed 2017 House Bill No. 1194, which amended Chapter 12.1-34 to be consistent with Marsy's Law. The definitions of "family member" and "victim" in Section 12.1-34-01 were amended to include a grandchild and any person with a relationship to the victim which is substantially similar to a relationship specified, and to specify the term "victim" does not include the accused or a person whom the court finds would not act in the best interests of a deceased, incompetent, minor, or incapacitated victim.

Section 12.1-34-02 was amended in House Bill No. 1194 to provide a victim has the right to prevent the disclosure of confidential or privileged information about the victim or the victim's family and to be notified of any request for identifying information or confidential or privileged information about the victim or victim's family. This section was amended to specify a victim must be allowed to confer with the prosecuting attorney and victims and witnesses must be informed of the right to seek the advice of an attorney. House Bill No. 1194 also updated Section 12.1-34-06 to require the Attorney General to maintain a statewide automated victim notification system and to require the Attorney General to develop a Marsy's card, which is required under the constitutional amendment.

Testimony and Committee Considerations

In its study of Marsy's Law, the committee received information and testimony from representatives of the Attorney General's office, local law enforcement, and the Ward County State's Attorney. The committee's deliberations focused on whether the implementation of the law resulted in unforeseen negative consequences.

The committee received neutral testimony with a consensus suggesting there has not been enough time since the implementation of Marsy's Law to fully understand the impacts. A representative from the Bismarck Police Department indicated Marsy's Law has not had an impact on the day-to-day operations of the department and noted there have been 11 instances in which a victim has invoked any of the rights provided in Marsy's Law. The testimony also indicated some confusion amongst various agencies regarding whether a victim must affirmatively invoke the right to privacy. A representative from the Ward County State's Attorney's office indicated although victims have a right to prevent disclosure of information, 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.

The committee received testimony regarding the strain on witness advocates, law enforcement, and state's attorneys as a direct result of Marsy's Law because of the time required to redact records. Testimony generally indicated redacting records is extremely time consuming because each document must be redacted by hand and in some cases a single incident results in thousands of pages to review.

Conclusion

The committee makes no recommendation with respect to Marsy's Law.

LEGAL NOTICE AND PUBLISHING REQUIREMENTS

Background

Section 46-05-01 requires newspapers in the state to meet three qualifications before the newspaper is qualified to publish a legal notice or any matter required by law to be printed or published in some newspaper in the state. The qualifications include being in circulation for at least 1 year, having at least 150 subscribers, being nonsectarian and printed in English, and having complied with the federal laws governing mailing privileges for at least 1 year. Section 46-05-03 requires the Office of Management and Budget to compute a standard price on all legal notices, which are published widely, such as ballots, insurance statements, and official proclamations. Section 46-05-06 provides any person that violates the printing requirements is liable to a fine of at least \$25 and may be required to forfeit all proceeds from the unlawful printing.

Section 46-06-01 requires the electors of each county to select one newspaper, every 4 years, to be the official newspaper. Section 46-06-02 provides "a newspaper is qualified to serve as an official newspaper if it meets all the requirements of a legal newspaper set forth in section 46-05-01 and maintains its principal editorial office within the county in which it is a candidate for official newspaper." Section 46-06-02 also provides if a county does not have a newspaper in which the principal editorial office also is located in the county, a newspaper published in an adjoining county with general circulation in the original county is qualified to serve as that county's official newspaper.

Testimony and Committee Considerations

In its study of legal notice and publishing requirements, the committee received testimony from a representative of the Office of Management and Budget, a representative from the North Dakota League of Cities, a representative from the North Dakota Newspaper Association, a representative from the North Dakota Association of Counties, and various members of the public. The committee received conflicting testimony as to whether legal notices should continue to be published in the newspaper at a cost to the citizens.

Representatives from the North Dakota League of Cities and the North Dakota Association of Counties indicated a desire among political subdivisions to eliminate the requirement that legal notices be printed in the newspaper and instead be published on the corresponding website of each political subdivision or through the use of social media. Testimony indicated cities and counties with larger populations already utilize electronic means to provide notice to citizens. The committee received information from the North Dakota Association of Counties and OpenGov indicating all counties could participate in one software system through which an individual could compare one county's budget to another or see the big picture.

The committee received testimony from the North Dakota Newspaper Association indicating public notice spending among cities, counties, school districts, and state agencies for 1 year totaled just under \$2 million. Testimony also indicated newspaper readership remains steady, and newspaper websites are among the top viewed. A representative from the Office of Management and Budget indicated the negotiated fee structure for legal notices applies to all government entities subject to notice publishing requirements.

The committee considered a bill relating to notice and publication requirements. The bill draft includes revisions of the top five public notice requirements of the over 140 public notices counties publish. The revision shifts the notice requirements from the county extension agent to the commodity group holding an election.

Recommendations

The committee recommends [Senate Bill No. 2035](#) to revise the top five notice requirements and shift the notice requirements from the county extension agent to the commodity group holding an election.

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 Family Law Arbitration Act, which the ULC approved in 2016. States' laws vary when it comes to arbitrating family law matters, such as spousal support, division of property, child custody, and child support. The Uniform Family Law Arbitration Act standardizes the arbitration of family law. The Act is based in part on the Revised Uniform Arbitration Act (RUAA), though it departs from the RUAA in areas in which family law arbitration differs from commercial arbitration, such as standards for arbitration of child custody and child support, arbitrator qualifications and powers, and protections for victims of domestic violence. This Act is intended to create a comprehensive family law arbitration system for the states. The Act has been enacted in two states. The commission recommends the North Dakota Supreme Court Joint Procedure Committee consider adopting the appropriate portions of this Act in the form of court rules.
- Uniform Nonparental Child Custody and Visitation Act, which the ULC approved in 2018. The Uniform Nonparental Child Custody and Visitation Act addresses the rights of third parties other than parents to custody of or visitation with a child. Those rights also are affected by the decision of the Supreme Court in *Troxel v. Granville*, 530 U.S. 57 (2000), which held courts must give deference to decisions of fit parents concerning the raising of children, including concerning grandparents' visitation rights. The Act recognizes a right to seek custody or visitation for two categories of individuals--nonparents who have served as consistent caretakers of a child without expectation of compensation, and other nonparents who have a substantial relationship with a child and who demonstrate denial of custody or visitation would result in harm to the child.
- Revised Uniform Law on Notarial Acts, Amendment, which the ULC approved in 2018. The amendment to the Revised Uniform Law on Notarial Acts (RULONA) authorizes notaries public to perform notarial acts in the state in which the notaries are commissioned for remotely located individuals using audiovisual communication technology regardless of where the individual may be located. This amendment is not limited to foreign-located individuals, it extends the authority to any remotely located individuals. This amendment was prepared in response to a rapidly emerging trend among the states to authorize the performance of notarial acts by means of audiovisual technology. The ability of notaries public to perform notarial acts by audiovisual technology is being promoted by the American Land Title association and the Mortgage Bankers Association. These associations have prepared a Model On-Line Notary Act that contains provisions very similar to these RULONA amendments, but which are not incorporated into the framework of RULONA.
- Uniform Unsworn Domestic Declarations Act, which the ULC approved in 2016. The purpose of the Uniform Unsworn Domestic Declarations Act is to permit the use of unsworn declarations made under penalty of perjury

in state courts. Under the Act, unsworn declarations may be used in lieu of affidavits, verifications, or other sworn court filings if the declarations were made under penalty of perjury and use substantially similar language to the model form provided. The Act builds upon the Uniform Unsworn Foreign Declarations Act (UUFDA), which covers unsworn declarations made outside the United States, which North Dakota enacted in 2011. The Uniform Laws Commission recommends states that have the UUFDA enact the Uniform Unsworn Domestic Declarations Act and states that have not enacted UUFDA enact the Uniform Unsworn Declarations Act. The Uniform Unsworn Domestic Declarations Act has been enacted in South Dakota.

Conclusion

The committee makes no recommendation with respect to the recommendation of the North Dakota Commission on Uniform State Laws.

TECHNICAL CORRECTIONS

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

- Section 4.1-45-22.1. The section, relating to State Fair Association operations and maintenance costs, was inadvertently codified as Section 4.1-55-22.1 in the 2017 agriculture law rewrite bills. Chapter 4.1-55 relates to the Seed Commission. Chapter 4.1-45 provides for the regulation of the State Fair Association.
- Section 4.1-55-22.1. This section relates to state fair operations and maintenance costs. The section, which was part of the agriculture law rewrite, was inadvertently codified in Chapter 4.1-55, relating to the Seed Commission. The proper codification is Section 4.1-45-22.1.
- Sections 6-09.8-04, 6-09.11-02, and 61-21.1-02. These sections, which reference the Agricultural Development Act in Chapter 4-36, were inadvertently omitted in the repealer sections of the 2017 agricultural law rewrite bills. Chapter 4-36 is obsolete and was repealed by 2017 Session Laws Chapter 61, § 13.
- Section 21.1-31.2-01(7). 2013 Session Laws Chapter 104, § 11 increased the fine for a Class A misdemeanor from \$2,000 to \$3,000. 2017 Session Laws Chapter 164, § 2 changed the maximum imprisonment for a Class A misdemeanor from 1 year to 360 days. In both instances, the language required to be included in a disorderly conduct restraining order for a violation of the order under Section 12.1-31.2-01 was not changed.
- Sections 14-09-00.1 and 14-09-06.2. 2007 Session Laws Chapter 131, § 1 removed the definition of "harm" in Section 50-25.1-02. Section 3 of this bill draft restores the language of the definition referenced in Section 14-09-06.2 to the definitions applicable to Chapter 14-09.
- Section 15-08.1-09. This section authorizes a continuing appropriation from the strategic investment and improvements fund (SIIF) of all principal and interest to the common schools trust fund on any loans from the fund to the developmentally disabled loans fund program Nos. 2 and 3. The authority ceases when all loans are repaid. Because all loans have been repaid, the section is obsolete.
- Sections 27-20-30.1(2) and 27-20-45(1). These provisions reference Section 27-20-21, which was superseded by Rule 3 of the North Dakota Rules of Juvenile Procedure on March 1, 2010.
- Sections 43-62-01 and 43-62-15. 2017 Session Laws Chapter 295, § 3 removed the term "limited x-ray machine operator" from Section 43-62-03 and reinserted the term in Sections 43-62-01 and 43-62-15; however, in doing so, the term was reinserted incorrectly.
- Section 57-02-08.6. This section references "this program" without specifying the program. Sections 57-02-08.4 and 57-02-08.5 provide for a wetlands tax exemption and payment.
- Section 57-38-30.3(7). Section 57-38-30.3(7)(l), which was expired by 2017 Session Laws Chapter 399, eliminated the previous angel fund investment tax credit and replaced it with an angel investor tax credit. Section 57-38-30.3(7)(o) was expired by 2017 Session Laws Chapter 445, § 4.
- Section 57-60-14. The changes to this section remove expired dates for fund allocations to certain funds.

Recommendation

The committee recommends [Senate Bill No. 2036](#) to make technical corrections throughout 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 the 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 May 2017 and August 2018. The committee concluded there were not any executive orders issued during that period which rose to the level indicated in the directive.

Conclusion

The committee makes no recommendations for further review by the Attorney General and the Governor of any executive order issued between May 2017 and August 2018.

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 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 2017 fiscal year, the commission provided legal counsel services in over 15,200 cases, more case assignments than in any year prior. The report indicated this number included 433 Dakota Access Pipeline-related assignments; however, the number of serious Classes AA, A, and B felony cases remains high and continues to increase. The report also indicated the more serious cases take more attorney time and require additional private investigators and other experts resulting in higher costs. It was noted the number of appeals also have increased, resulting in additional costs.

The commission's 2015-17 budget was insufficient to sustain the agency though June 30, 2017. House Bill No. 1024 (2017) authorized \$189,000 from SIIF to defray the commission's expenses up to June 30, 2017, and granted \$1,027,000 in spending authority for Dakota Access Pipeline-related expenses incurred after June 30, 2015 and ending June 30, 2019. The commission did not need the \$189,000 SIIF appropriation and the unspent funds were transferred back to the fund. The commission's budget for 2017-19 biennium consists of \$17,983,876 from the general fund, \$1,919,147, from the commission's special fund, and the remaining spending authority of \$950,242 for costs of the Dakota Access Pipeline case assignments. 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. According to the report, Marsy's Law has impacted the commission because the application fee and indigent defense/facility improvement fee are no longer the first priorities for collection among fines and fees ordered by the court to be paid.

NORTH DAKOTA RACING COMMISSION

The committee received a report from the Director of the North Dakota Racing Commission pursuant to Section 53-06.2-04. 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.

In the 2017 fiscal year, the account deposit wagering companies produced \$698,812,892 and the account deposit wagering is projected to generate approximately \$700,000,000 for the 2018 fiscal year. The report indicated as a result of the increased revenues, the commission is completely self-funded and returned \$615,433 to the general fund in the 2015-17 biennium, which was \$227,612 over the general fund appropriation for the biennium. The commission is taking the following steps to ensure the account deposit wagering companies are held to a high standard of regulatory compliance and transparency in all aspects of operations:

- The Commission has entered a memorandum of agreement with the Thoroughbred Racing Protective Bureau under which the organization conducts a background check on prospective account deposit wagering companies and their principals before taking any action on an application. A license may not be issued to an account deposit wagering company whose business practices do not meet the highest industry standards.
- After receiving Racing Commission approval, account deposit wagering company applications are reviewed and approved by the Attorney General to ensure full compliance with state and federal law.
- Account deposit wagering employees are required to submit to a Federal Bureau of Investigation background check through the Bureau of Criminal Investigation before beginning employment.
- The commission has contracted with the pre-eminent pari-mutuel auditing company CHRIMS, Inc., to provide independent monthly auditing of all account deposit wagering companies.

According to the report, the true purpose of the commission is not the proliferation of gambling, but rather the welfare of the North Dakota horsemen. The statutory tax structure of the commission requires all income resulting from account deposit wagering company operations directly or indirectly be returned to the horsemen. The .0025 percent tax of the total account deposit wagering handle is split equally into four funds--the general fund, which offsets the commission's funding for the subsequent years; the promotion fund, which is directed to supporting race meets in the state; the purse fund, which provides the vast majority of purse funding for the live races; and the breed fund, which promotes the breeding of horses in the state through performance awards. All breakage--the remaining pennies from pari-mutuel payoffs rounded up to a nickel or dime--from the account deposit wagering companies retained by the commission is deposited directly into the promotion fund.

The report indicated the North Dakota Horse Park is facing very serious difficulties due to the City of Fargo levying additional special assessments on the property. The Racing Commission and the Horse Park are working to identify ways to mitigate the additional payments.

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 lottery's goal is to provide a service to the citizens of North Dakota and, while considering the sensitive nature of the lottery, promote games and ensure the integrity, security, and fairness of its operation. To accomplish this, the lottery must offer attractive games that add value to its product mix, license retailers in convenient locations, create effective annual marketing plans, provide quality customer service to retailers and players, and control operating expenses.

For the 2017-19 biennium, the lottery had a fixed appropriation of \$1,805,200 for salaries and benefits for 10 full-time equivalent (FTE) positions, and \$3,531,597 for operating expenses, totaling \$5,336,797. 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 2 part-time draw operators.

The lottery conducts five multi-state games--Powerball, 2by2, Mega Millions, Lucky for Life, and Lotto America. The Powerball game was launched on March 25, 2004; 2by2 on February 2, 2006; Mega Millions on January 31, 2010; Lucky for Life on January 31, 2016; and Lotto America on November 12, 2017. These games have a range of minimum jackpots of \$22,000 to \$40 million, and a range of overall odds of winning a prize of 1:3.59 to 1:24.87. The Hot Lotto game ended October 28, 2017.

For the 2017-2019 biennium, the lottery projected sales of \$60 million and transfers of \$16,485,000 (\$15 million - state general fund; \$640,000 - compulsive gambling prevention and treatment fund; and \$845,000 - multijurisdictional drug task force grant fund). Unaudited ticket sales through February 2018, the first 8 months of the fiscal year, were \$21.8 million. This amount reflected a \$2.99 million increase in sales or a 16 percent increase compared to the same period last year. The lottery is on track to meet projected sales of \$30 million and transfers of \$8,242,500 for the 1st year of the biennium.

During the 2017-19 biennium, the lottery has done or has plans to relaunch the Mega Millions game with new features; end the Hot Lotto game; launch the Lotto America game to replace Hot Lotto; launch a mobile device application; rebrand the subscription service with a new name "Pick & Click"; increase subscription sales; build membership in the Players Club that rewards players for the continued patronage; develop and conduct innovative marketing promotions and public awareness campaigns; continue to review and enhance security policies and procedures to ensure the integrity and fairness of its operations; and celebrate the lottery's 15th anniversary.

The lottery must partner with one or more other government-authorized lotteries to conduct a game. This restriction generally limits the lottery to games sponsored by the Multi-State Lottery Association. Because the Multi-State Lottery Association may not have a broad range of games available to fulfill the lottery's desired product mix in the future, the report indicated if the Multi-State Lottery Association were to disband, the lottery may not have an adequate number of games to continue operation.

STATE HOSPITAL REPORT ON SEXUALLY DANGEROUS INDIVIDUALS TREATMENT PROGRAM

The committee received a report from the Department of Human Services regarding the State Hospital's program for the evaluation and treatment of sexually dangerous individuals. Since 2007, the Department of Corrections and Rehabilitation has provided a variety of security services, including security training, perimeter surveillance, emergency response, and security consultation. Over the past 24 months, 22 hospital staff received 660 hours of classroom-based security training. Another 10 staff received additional web-based security training. According to the report, 24-hour

perimeter surveillance occurs through camera and a roving officer. In addition, the James River Correctional Center Security Director provides security consultation for environmental and procedural improvements to the sex offender treatment program.

STATE DEPARTMENT OF HEALTH ON IMPLEMENTATION OF MEDICAL MARIJUANA

The committee received a report from the State Department of Health, as required by Section 19-24.1-39 and Section 5 of Senate Bill No. 2344 (2017), 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 and the findings and recommendations of the study on adding identified medical conditions to the definition of "debilitating medical condition."

In November 2016, an initiated measure, known as the "North Dakota Compassionate Care Act," was approved by voters. On January 26, 2017, the provisions of the North Dakota Compassionate Care Act were suspended through legislation passed by the Legislative Assembly. On April 18, 2017, a new state law became effective requiring the Department of Health to establish and implement a medical marijuana program allowing for the production and processing, sale and dispensing of usable marijuana, and medical use of marijuana.

The report indicated the department has been committed to implementing a well-regulated program that protects the health and safety of qualifying patients and the public. Section 19-24.1-12 provides the department is to register no more than two manufacturing facilities and eight dispensaries unless the department determines additional entities are necessary to increase access to usable marijuana by registered qualifying patients and registered designated caregivers. According to the report, an open application period for manufacturing facilities started in March 2018, and 19 applications were received. Following an evaluation of nine complete applications, two entities were selected to move forward with the registration process.

The department has established eight regions in the state where dispensaries may be located. Regions are comprised of a 50-mile radius from certain cities. On July 10, 2018, an application period was opened to accept applications from entities to become a registered dispensary in the Bismarck/Mandan region and in the Fargo region. The selection of an applicant to move forward in the registration process in each region is anticipated to be complete near the end of September 2018. The report indicated an application period for the Williston and Grand Forks regions will be complete by the end of December 2018, and the application procedure for remaining regions is expected to occur in January 2019. By the end of October 2018, the department anticipates the applications for qualifying patients and designated caregivers will be available.

The report indicated the department's review of the debilitating medical conditions for the state's program included are also in several of the other states' programs. Although the department identified medical conditions included in other states' programs which are not specifically listed in the Century Code, symptoms associated with specific medical conditions identified in other states still may allow an individual to qualify to be a registered qualifying patient in the state. The report concluded the department does not have recommendations for changes to the law regarding debilitating medical conditions.

REPORT ON HUMAN TRAFFICKING VICTIMS TREATMENT AND SUPPORT SERVICES GRANT PROGRAM

The committee received a report from the Attorney General on the status and results of the human trafficking victims treatment and support services grant program. The 65th Legislative Assembly approved an appropriation to provide one-time funding for treatment and support services for victims of human trafficking. The report indicated of the \$935,000 in grant funds that have been administered through the Attorney General's office, \$124,000 is from the general fund and the remainder is from the Department of Trust Lands. According to the report, funds are to be awarded through a competitive process and given to organizations that demonstrate involvement in providing prevention and treatment services related to human trafficking victims, in coordination with state and local governments. Grant funds are not permitted to be awarded directly to nongovernment victim or witness assistance programs and domestic violence programs, but a grantee may contract for services from such an organization. The report indicated the three grant recipients were the only applicants this biennium and the carryover funds from the 2015-17 biennium were awarded during the 2017-19 grant period.

According to the report, human trafficking funds may be used for state and local initiatives, technical assistance, training, personnel, equipment, supplies, contractual support, and information systems for criminal justice for development and implementation of direct care, emergency and long-term crisis services, residential care, training for law enforcement and victim service providers, programs promoting positive outcomes for victims, and support of advocacy services. Grant funds may not be used to supplant state and local funds or for lobbying, research projects, fundraising, construction or remodel projects, or providing direct services or training out of state.

TASK FORCE ON THE PREVENTION OF SEXUAL ABUSE OF CHILDREN

The Task Force on the Prevention of Sexual Abuse of Children was created by Senate Bill No. 2342 (2017) for the purpose of gathering information concerning child sex abuse throughout the state, receiving reports and testimony from individuals, state and local agencies, community-based organizations, and other public and private organizations, creating goals for state policy that would prevent child sexual abuse, and providing policy recommendations. The task force was composed of representatives of state agencies, the Legislative Assembly, nonprofit entities focused on children's health and well-being, Indian tribes, and law enforcement. The task force identified a lack of tribal and law enforcement data as each tribe has its own child welfare data system to report child abuse and neglect and policy recommendations will be presented during the 66th Legislative Session.