JUDICIAL PROCESS COMMITTEE

The Judicial Process Committee was assigned six studies. House Concurrent Resolution No. 3008 (2007) directed a study of the issues of fairness, equity, and the best interests of children as they relate to issues of child custody and visitation. By Legislative Council directive, the scope of this study was limited to a study of the best state practices relating to child custody. Section 1 of House Bill No. 1213 (2007) directed a study of the current state exemptions for bankruptcy and the desirability of updating these exemptions. Section 2 of Senate Bill No. 2284 (2007) directed a study of the exemption provisions found in North Dakota Century Code (NDCC) Chapter 28-22, including determining whether the exemptions in the current form continue to serve the historical purposes of protecting debtors from creditors and providing debtors with the basic necessities of life, so that debtors will not be left destitute and public charges of the state. Because of the similarity in the studies directed by the two bills, the two studies were combined into one comprehensive study.

House Concurrent Resolution No. 3056 (2007) directed a study of the search for and identification of missing persons. House Concurrent Resolution No. 3013 (2007) directed a study of the statutes and institutional resources relating to the domestic violence protection order process, including criminal cases for alleged violation of protection orders. House Concurrent Resolution No. 4028 (2007) directed a study of the feasibility and desirability of establishing a paternity registry.

The Legislative Council delegated to the committee the responsibility under NDCC Section 19-03.1-44 to receive a report from the Attorney General on the current status and trends of unlawful drug use and abuse and drug control and enforcement efforts in this state. The Legislative Council also delegated to the committee the responsibility under Section 54-61-03 to receive 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.

Committee members were Representatives Shirley Meyer (Chairman), Chris Griffin, Dennis Johnson, Nancy Johnson, Joyce Kingsbury, Lawrence R. Klemin, Kim Koppelman, William E. Kretschmar, Lee Myxter, and Lisa Wolf and Senators JoNell A. Bakke, Tom Fiebiger, Curtis Olafson, and Constance Triplett. Representative Dawn Marie Charging was a member of the committee until her resignation from the Legislative Assembly.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2008. The Council accepted the report for submission to the 61st Legislative Assembly.

CHILD CUSTODY - BEST STATE PRACTICES STUDY

North Dakota Law Regarding Child Custody and Visitation Orders

Child Custody

Child custody determinations are based on North Dakota statutes. North Dakota Century Code Section 14-09-04 provides that the mother and father of a legitimate unmarried minor child are entitled equally to custody of the child. Under Section 14-09-05, when maternity and paternity of an illegitimate child are positively established, the custody rights are equal as between the mother and father and must serve the best interests of the child.

Child custody often becomes an issue when a mother and father live separate and apart from each other. North Dakota Century Code Section 14-09-06 provides that "[t]he husband and father and wife and mother have equal rights with regard to the care, custody, education, and control of the children of the marriage, while such husband and wife live separate and apart from each other, and when they so live in a state of separation without being divorced. . . ."

According to NDCC Section 14-09-06.1, child custody determinations must promote the best interests and welfare of the child. Regardless of whether the parents are married, the factors contained in Section 14-09-06.2(1) must be considered in determining the best interests and welfare of a child. These factors include the love, affection, and other emotional ties existing between the parents and child; the capacity and disposition of the parents to give the child love, affection, and guidance and to continue the education of the child; the disposition of the parents to provide the child with food, clothing, medical care, or other remedial care recognized and permitted under the laws of this state in lieu of medical care, and other material needs; the length of time the child has lived in a stable satisfactory environment and the desirability of maintaining continuity; the permanence, as a family unit, of the existing or proposed custodial home; the moral fitness of the parents; the mental and physical health of the parents; the home, school, and community record of the child; the reasonable preference of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference; evidence of domestic violence; the interaction and interrelationship, or the potential for interaction and interrelationship, of the child with any person who resides in, is present, or frequents the household of a parent and who may significantly affect the child's best interests; the making of false allegations not made in good faith, by one parent against the other, of harm to a child; and any other factors considered by the court to be relevant to a particular child custody dispute.

Visitation

Because of their interrelated nature, visitation is frequently considered at the same time custody is

determined. North Dakota Century Code Section 14-05-22, which addresses visitation issues in divorce proceedings, provides that upon "making an award of custody, the court shall, upon request of the noncustodial parent, grant such rights of visitation as will enable the child and the noncustodial parent to maintain a parent-child relationship that will be beneficial to the child, unless the court finds, after a hearing, that visitation is likely to endanger the child's physical or emotional health."

North Dakota case law indicates that a trial court may consider the parents' attitudes regarding visitation when the court determines child custody. For example, when the trial court found a mother had a hostile attitude toward visitations between a child and father but, in contrast, the father had expressed a willingness to foster and encourage regular visitations between the mother and child, the court gave this factor significant weight in deciding to place the child in the father's custody; it was appropriate for the court to do so because visitation between a child and a noncustodial parent is presumed to be in the best interests of the child and hostility of a custodial parent toward such visitations could be detrimental to the child's best interests. *Schmidkunz v. Schmidkunz*, 529 N.W.2d 857 (N.D. 1995).

Although the North Dakota Supreme Court has determined that visitation with the noncustodial parent is presumed to be in the best interests of a child, the primary purpose of visitation is to promote the best interests of the child and not the wishes or desires of the parents. *Reinecke v. Griffeth*, 533 N.W.2d 695 (N.D. 1995).

In 1999 the Legislative Assembly considered legislation that addressed parental custody and visitation rights and duties. The legislation, codified as NDCC Section 14-09-28, provides that each parent of a child has certain custody and visitation rights and duties, including the right to access and obtain copies of the child's educational, medical, dental, religious, insurance, and other records or information and the duty to inform the other parent as soon as reasonably possible of a serious accident or serious illness for which the child receives health care treatment.

Enforcement of Custody and Visitation Orders

Enforcement of a child custody order or visitation order is essentially the same as enforcement of any court order. The enforcement tool available to a court is contempt proceedings. Additionally, NDCC Section 14-09-24 provides that in a child visitation proceeding, the court is required to award the noncustodial parent reasonable attorney's fees and costs if the court determines there has been willful and persistent denial of visitation rights by the custodial parent with respect to the minor child.

Modification

Unlike when the trial court makes an original award of custody between parents, the court must determine two issues when the trial court considers a request to modify a custody award: (1) whether, on the basis of facts that have arisen since the earlier order or on the basis of facts that were unknown to the court at the time of the earlier order, there has been a material change in the circumstances of the child or the parties since the earlier custody award; and, if so, (2) whether the modification is necessary to serve the best interests of the child. The parent seeking to modify custody has the burden of showing both that a circumstance changed significantly and that this change so adversely affected the child that custody should be changed. *Gould v. Miller*, 488 N.W.2d 42 (N.D. 1992).

The North Dakota Supreme Court has determined frustration of visitation does not in and of itself constitute a sufficient change in circumstances to warrant a change in custody. Before visitation problems justify changing custody, there must be a finding that the visitation problems worked against the child's best interests. *Blotske v. Leidholm*, 487 N.W.2d 607 (N.D. 1992). Additionally, NDCC Section 14-09-06.6 limits postjudgment custody modifications within two years after entry of a custody order unless modification is necessary to serve the best interests of the child and there is persistent and willful denial or interference with visitation, the child is in danger, or there has been a de facto change in custody.

North Dakota Century Code Section 14-09-07 limits when a custodial parent may change the residence of a child to another state. Modification proceedings frequently accompany legal proceedings initiated when a custodial parent seeks to change the residence of a child.

Mediation

Although typically in child custody cases the determination of the best interests and welfare of a child is made by the court, NDCC Chapter 14-09.1 provides for voluntary mediation in custody determinations. Section 14-09.1-02 provides that "[i]n any proceeding involving an order, modification of an order, or enforcement of an order for the custody, support, or visitation of a child in which the custody or visitation issue is contested, the court may order mediation at the parties' own expense."

Testimony and Committee Considerations

The committee received testimony and information from individuals personally affected by child custody and visitation issues, including the North Dakota Coalition for Families and Children, a group that promoted 2006 initiated measure No. 3, relating to child support and custody, in the 2006 general election. The committee also received extensive information and recommendations from the Custody and Visitation Task Force, a group formed by the State Bar Association of North Dakota to conduct an indepth review of custody and visitation laws and issues in North Dakota and other states. The committee's considerations included child custody and visitation laws, restricted licenses for nonpayment of child support, and the Supreme Court's pilot project on family law mediation.

Child Custody and Visitation Laws

As part of the committee's review of the best state practices with respect to child custody, the committee received testimony from individuals and family organizations regarding the state's child custody and visitation laws. A common theme of the testimony was that the state's child custody and visitation system is in need of improvement. According to the testimony, the current system of deciding child custody and visitation is designed to be adversarial and, consequently, does not promote cooperation between the parties and is not in the child's best interests. It was noted that the system and the state's laws do not address the diversity there is within families and fail to ensure both parents can be in the child's life. The testimony also emphasized that the system is easily manipulated by the physical custodial parent even when joint custody is awarded. A member of a coalition for families and children asserted that judges often deny custody changes based upon procedural technicalities. The testimony indicated that there is gender discrimination in the current system. It was suggested that shared parenting would resolve many of the custody and visitation problems that occur between parents.

The committee also received extensive testimony from and worked closely with the Custody and Visitation Task Force to study custody and visitation issues. The 15-member task force included judges, legislators, laymen, custody investigators, private practice attorneys, a custodial father, and a member of the clergy. The topics addressed by the task force included the use of parenting coordinators, the family court concept, the early intervention process, the primary caretaker presumption, and states that mandate parenting plans. Because the Family Law Section of the State Bar Association of North Dakota continues to study mediation and other forms of alternative dispute resolution, the task force chose not to duplicate those efforts. The task force emphasized that when looking at best state practices, both the procedure and the resources necessary to implement those procedures must be considered.

According to the testimony, the task force reviewed child custody and visitation practices in other states with an eye toward what does and does not seem to work well in North Dakota. It was noted that the child custody and visitation laws and requirements of New Hampshire, in particular, were reviewed extensively by the task force. The task force also reported that it met with proponents of failed 2006 initiated measure No. 3 as well as those individuals and organizations that were circulating a new proposed custody measure.

The first recommendation of the task force included a change in some of the terminology currently used in family law. It was recommended that the term "custody" be changed to "primary residential responsibility" and the term "visitation" be changed to "parenting time." The recommendation also included the codification of definitions of terms used to delineate the rights and responsibilities of parents to their children, including the terms decisionmaking responsibility, parental rights and responsibilities, parenting plan, parenting schedule, residential responsibility, and primary residential responsibility.

The second recommendation of the task force dealt with the concept of a parenting plan. It was recommended that in any proceeding to establish or modify a judgment providing for parenting time with a child, a parenting plan would be required to be developed and filed with the court. The recommended elements of a parenting plan included decisionmaking responsibilities, information sharing and access, transportation and exchange of the child, a procedure for review and adjustment of the plan, and methods for resolving disputes. Under the recommendation, a court could not approve a parenting plan unless the plan contained a method of resolving disputes. The committee reviewed the parenting plan forms of the state of Oregon.

The third recommendation of the task force dealt with the best interest factors used by the court for determining the custody of a child. This recommendation, it was noted, maintains the general structure of the best interest analysis while clarifying several best interest factors and adding several new best interest factors. For example, it was recommended that a new factor be added to the best interest analysis which would require a court to consider the ability and willingness of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child. This new factor was recommended because both parents are important to a child. According to the testimony, this language is used by many other states and it recognizes the need of a child to be close to both parents while taking into consideration the practical reality of two parents raising a child when they do not live together. It also was recommended that the best interest factors of moral fitness and the mental and physical health of the parents be limited to the impact those factors have on the child.

The fourth recommendation of the task force was the establishment of a parenting coordinator program. A parenting coordinator is a neutral person who helps to resolve visitation or "parenting time" disputes. According to the testimony, while most parents are able to work through disputes, some high-conflict families cannot work through the disputes without the assistance of the court. Because access to the court often is not as swift as some disputes require, the testimony indicated that a parenting coordinator could resolve the disputes more quickly and cost effectively than a court proceeding. The recommendation set out the duties of a parenting coordinator, the procedure for allocating the fees of the parenting coordinator between the parties, and the procedure for modifying or ending a parenting coordinator's appointment. According to the testimony, the Supreme Court would be responsible for establishing the qualifications of parenting coordinators. It was noted that a parenting coordinator would work independently but would be appointed by the court. A parenting coordinator would be employed in a way that would be similar to a guardian ad litem or child custody investigator. The testimony indicated that the use of a parenting coordinator would have a fiscal impact, but, in

the long run, resources will be saved and conflicts reduced. According to the testimony, most of the states with parenting coordinator programs only appoint a parenting coordinator if the parties are able to pay for the cost of the service. The testimony indicated that the proposals developed by the task force were approved by the State Bar Association of North Dakota Board of Governors.

The committee considered a bill draft that implemented the recommendations of the task force. The bill draft provided for changes in the terminology used in family law; required that in any proceeding to establish or modify a judgment providing for parenting time with a child, a parenting plan would be required to be developed and filed with the court; added several best interest factors; clarified several current best interest factors; and established a parenting coordinator program. The bill draft applied to those cases pending on the effective date of the legislation and any cases that have not procedurally completed the process.

Committee discussion regarding the bill draft raised the issue of whether the issue of grandparent visitation should be included in the parenting plan. The discussion indicated that while it may be possible to tie NDCC Section 14-09-05.1, the section that allows grandparents to file a motion for visitation, to the parenting plan, grandparent visitation issues usually do not arise until after the parenting plan has been developed and the custody matter has been decided. It was noted that the parties to a parenting plan would not be precluded from addressing other issues in their parenting plans, such as grandparent visitation.

Testimony in support of the bill draft indicated that the bill draft will help take family law in the state in the right direction. According to the testimony, the bill draft would help fit fathers who want to be involved in their children's lives. It was noted that the proposals would help make family law issues fairer for both parents.

Other testimony in support of the bill draft indicated that there will always be difficult domestic relations cases but the use of parenting plans, the additional best interest factor of considering which parent will best foster the relationship with the other parent, and the use of parenting coordinators will help address some of those concerns.

Committee members concluded that the bill draft helped address some of those areas of concern that have been raised by interested persons over the past several years. The committee noted that when one or more of the parties to a family law dispute want to be in conflict with another party, there is not much the system can do to alleviate that conflict, but the bill draft will help to resolve some of those conflict issues.

The committee also considered a bill draft that would have provided that unless there is evidence of domestic violence, upon the request of either party for joint custody, the court would be required to use a rebuttable presumption that joint custody is in the best interests of the child.

Testimony in support of the bill draft indicated that 23 states have a preference for joint custody. According to the testimony, the bill draft would be compatible with the recommendations proposed by the task force. It was noted that bill draft would not infringe on the court's ability to make determinations based upon the best interest standard.

Testimony in opposition to the bill draft indicated that if joint custody means equal or "50/50" custody, such arrangements can be difficult for the child, especially if the parents do not live in the same school district. According to the testimony, it does not make sense to presume that equal time with each parent is in the best interests of the child. It was also noted that a presumption of joint custody may not be compatible with the other best interest factors.

The committee concluded that the bill draft should not be recommended to the Legislative Council.

Restricted Operator's License Bill Draft

During the course of the committee's study of child custody and visitation issues, the committee received testimony from an individual who was concerned about discrepancies in the amount of his child support obligation and the difficulty in obtaining an accounting from the Department of Human Services. In response to these concerns, the committee received testimony from the Department of Human Services on the issue of obtaining an accounting of child support obligations as well as on the issue of the suspension of an operator's license for the nonpayment of child support.

The committee received testimony that indicated because all child support payments flow through a centralized state disbursement unit--Child Support Enforcement--clerks are becoming more efficient. This is due in part to the single set of records and customers who have one place in the state to call for an account status. According to the testimony, outstanding balances are updated for a number of reasons. It was noted that a misinterpretation of a court order could result in all subsequent accruals being incorrect. Other reasons for incorrect accounts may be that payments were made to another jurisdiction and Child Support Enforcement was not informed, payments were withheld from an obligor's paycheck but were not forwarded for disbursement, a parent paid the other parent directly instead of sending the money to the state disbursement unit, or the state or the employer may have made a mistake when disbursing the funds.

According to the testimony, reasonable steps to correct and maintain accurate data have been taken. These steps include the hiring of more staff to handle customer calls and a mailing to parents to confirm balances. The testimony indicated that each month the program sends notices to people with arrears informing them that the records indicate an overdue balance and that the program will be filing one-time tax refund offset and credit reporting notices. This notice gives those parents an opportunity to identify differences and reconcile the accounts. The program offers a number of portals to parents to ensure their data is accurate and to learn their current status. If a parent believes the parent's account information is not accurate, a comparison can be done to identify the reason for the discrepancy. This includes a month-by-month

comparison of debts and receipts to determine the specific months that are unpaid in an effort to pinpoint the discrepancy. The program encourages parents to periodically obtain and review their account information to ensure the data is accurate.

Regarding driver's license suspensions, driver's licenses can be suspended for nonpayment of child support by the courts as part of the contempt proceedings and by Child Support Enforcement as part of the enforcement process. In 2003 the Legislative Assembly authorized administrative license suspension, including driver's licenses, as part of the simplification of enforcement activities and to better work with obligors before arrearages reached the point of being unmanageable. This legislation led to an increase in the number of suspended licenses as well as an increase in child support payments. Because many obligors are unable to immediately satisfy their arrears, the tool of driver's license suspension helps in efforts to negotiate a payment plan that will enable the obligor to pay the outstanding balances over a 10-year period. The flexibility Child Support Enforcement was given has allowed the program to reinstate suspended licenses for cooperative obligors. It was noted that there may be a limited need for restricted driver's licenses or "work permits." As of June 2, 2008, there have been 955 administratively and 63 judicially suspended driver's licenses. Child Support Enforcement has payment plans with 688 obligors who know their licenses will be suspended if they do not follow through on their payment plans. It was noted that Child Support Enforcement does not want licenses, but they do want parents to take care of their children. The department contended that it is unclear whether Child Support Enforcement currently has the authority to issue restricted driver's licenses.

As a result of the information regarding the suspension of operator's licenses for the nonpayment of child support or the failure to obey a subpoena, the committee considered a bill draft that authorized the state agency, which is the Department of Human Services, to issue a restricted operator's license to an obligor or an individual who fails to comply with a subpoena which could only be used during that obligor's or individual's normal working hours. The committee noted that the state agency would likely work with the Department of Transportation to address the implementation issues of the bill draft. The testimony regarding the bill draft indicated that when a restricted operator's license is issued, the Department of Transportation limits the times that the driver may be driving and the routes a driver may drive.

Family Law Mediation Pilot Project

The committee received testimony regarding the Supreme Court's family law mediation pilot project. During the 2007 legislative session, the court requested and received funding to provide mediation services to litigants involved in custody and visitation disputes. The testimony indicated that mediation is one tool that has been found to be effective in reducing the acrimony of divorce and assisting parties in reaching agreements on what should happen with their case. Before this project, the court encouraged mediation by requiring attorneys to discuss the option of alternative dispute resolution with their clients. The court adopted a rule that allowed parties to ask for judge-mediated dispute resolution. This practice does not have a mechanism for informing self-represented litigants about the option of alternative dispute resolution. It was noted that the use of a district judge to mediate cases for other judges turned out to be an unpopular and rarely used option. It was also noted that many judges are not comfortable in the role of mediator. The testimony indicated that these issues led the court to request a pilot project of court-sponsored mediation in which mediation would be mandated for all cases involving custody or visitation disputes. The goal of the mediation project is to assist parties in reaching a settlement, to get parties thinking beyond the immediacy of the divorce to thinking about the challenges of parenting children from separate homes, to teach parents new ways to resolve disputes which they can use now and in the future, and to increase compliance with court orders by basing them as much as possible on the wishes of the parents.

The family law mediation pilot project is being funded by a $1 million general fund appropriation. The court has hired a coordinator for the project and is contracting with mediators for the mediation services. The Supreme Court approved the administrative order and protocol for the family mediation pilot project in February 2008. Since that time the project has advertised for, selected, and contracted with mediators to provide mediation services; provided training for the contracted mediators; developed a mediator mentoring program for new mediators; requested and received proposals for an independent evaluation of the program; selected and contracted with an independent evaluator to conduct the evaluation; collected preimplementation data; and developed and implemented an evaluation plan. Eleven mediators provide mediation services for the program--six in the Grand Forks area and five in the Bismarck area. Eight mediators are attorneys and three mediators hold social science degrees. On March 1, 2008, the pilot project went into effect and clerks began referring any civil proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. As of the report to the committee, 66 cases from the two pilot districts--the South Central and Northeast Central Judicial Districts--had been referred to the program. Of those 66 referrals, 42 had been accepted into the program. The cases not accepted were screened out due to settlements, domestic violence issues, or one party was living out of state. In four of the five completed cases, all issues were resolved through the mediation process. It was noted that the cases averaged 4.2 hours of combined mediation orientation and mediation, with an average cost of $714. According to the testimony, the court plans to include in its budget request funding to continue the pilot project for at least one year into the next biennium. It was noted that the court would like to expand the project to the remainder of the units in the state. If the project proves to be sufficiently effective, a sliding fee scale may be implemented.

Recommendations

The committee recommends Senate Bill No. 2042 to provide for changes in the terminology used in family law; require that in any proceeding to establish or modify a judgment providing for parenting time with a child, a parenting plan would be required to be developed and filed with the court; add several best interest factors; clarify several current best interest factors; and establish a parenting coordinator program. The bill would apply to those cases pending on the effective date of the legislation and any cases that have not procedurally completed the process.

The committee recommends House Bill No. 1038 to authorize the Department of Human Services to issue a restricted operator's license to an obligor or an individual who fails to comply with a subpoena which may be used only during that obligor's or individual's normal working hours.

EXEMPTIONS FROM JUDICIAL PROCESS STUDY

Background

A debtor who wants to keep property from creditors and the bankruptcy trustee has the right to claim certain items of property exempt from process. The Constitution of North Dakota as well as various North Dakota statutes provide for a debtor's right to exemptions.

In addition to the statutory and constitutional provisions, federal and state courts have held that there are public policy reasons for providing exemptions. The North Dakota Supreme Court, in *Seablom v. Seablom*, 348 N.W.2d 920 (N.D. 1984), stated "[e]xemptions statutes are remedial and are to be liberally construed to effectuate the purposes of their enactment. Exemption statutes have two major objectives: to provide a fresh start to the debtor who is being sued and to aid society by reducing the number of debtors who need public assistance."

Federal Bankruptcy Laws

Article I, Section 8, of the United States Constitution authorizes Congress to enact "uniform Laws on the subject of Bankruptcies throughout the United States." Congress has exercised this authority several times since 1801, most recently by adopting the Bankruptcy Reform Act of 1978, codified in Title 11 of the United States Code, commonly referred to as the Bankruptcy Code. The Bankruptcy Code has been amended several times since 1978, most recently in extensive amendments in 2005 through the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.

While bankruptcy cases are filed in United States bankruptcy court, which are units of the United States district courts, and federal law procedurally governs bankruptcy cases, state laws are often applied when determining property rights. For example, law governing the validity of liens or rules protecting certain property from creditors, known as exemptions, are derived from state law.

North Dakota Law Regarding Exemptions

Section 522 of the Bankruptcy Code, which provides for the property that is exempt, permits a state to opt-out of the federal exemptions. North Dakota opted out of the federal bankruptcy exemption scheme in 1981. North Dakota Century Code Section 28-22-17 provides, in part, that ". . .residents of this state are not entitled to the federal exemptions provided in section 522(d) of the Bankruptcy Reform Act of 1978. The residents of this state are limited to claiming those exemptions allowable by North Dakota law." The primary exemptions relating to judicial process and bankruptcy are contained in Chapter 28-22 and Section 47-18-01. Other exemptions are contained throughout the Century Code.

North Dakota Century Code Chapter 28-22 Exemptions

North Dakota Century Code Chapter 28-22 sets forth the property that is exempt from process in North Dakota. The "process" to which this chapter refers includes attachment, levy and sale upon execution, bankruptcy, and any other final process issued from any court. Chapter 28-22 includes exemptions that can be divided into two categories.

The first set of exemptions specifically describes items of property and classes of exempt property. For example, NDCC Section 28-22-02 exempts as "absolute exemptions:" family pictures, a family pew, the family Bible, school books, the family library, wearing apparel and clothing, food and fuel, the homestead as defined and limited by law, a certain amount of crops and grain, insurance benefits resulting from insurance covering the absolute exemptions, and any house trailer or mobile home occupied as a residence by the debtor. In addition, Section 28-22-03.1 provides for a motor vehicle exemption not to exceed $1,200, annuities, retirement plans, life insurance, and payments traceable to wrongful death and personal injury awards, a Social Security benefit, and veteran's disability pension benefits. Section 28-22-04 provides exemptions for miscellaneous books and musical instruments not exceeding $1,000 in value, household and kitchen furniture not exceeding $1,000 in value, livestock and farm implements not exceeding $4,500 in value, the tools and implements of any mechanic not exceeding $1,000 in value, and the library and instruments of any professional person not exceeding $1,000 in value. Section 28-22-19 exempts from liability for debts of the person "[a]ll pensions or annuities or retirement, disability, death, or other benefits paid or payable by, or amounts received as a return of contributions and interest from, a retirement system established pursuant to state law by the state except as provided by sections 15-39.1-12.2, 39-03.1-14.2, 54-52-17.6, and 54-52.2-03.3, a state agency, a political subdivision of the state, or a firefighters relief association for retirement, annuity, pension, disability benefit, or death benefit purposes."

The second set of exemptions applies to any property the debtor seeks to exempt. These exemptions set a dollar value limit on property that the debtor is permitted to shelter. North Dakota Century Code Section 28-22-03

allows a debtor, as head of a family, to take a $5,000 exemption in any property. Section 28-22-02 allows a single person to take a $2,500 exemption in any property. Section 28-22-03.1(1) permits an additional $7,500 in any other property if the debtor does not use the homestead exemption. Section 28-22-16 provides that in addition to the absolute exemptions against process, the debtor may take a $500 exemption on property of any kind.

North Dakota Century Code Section 47-18-01 Homestead Exemption

North Dakota Century Code Section 47-18-01 provides for the homestead exemption. This section provides that the homestead of any person residing in this state consists of the land upon which the person resides and "the dwelling house on that land in which the homestead claimant resides, with all its appurtenances, and all other improvements on the land, the total not to exceed eighty thousand dollars in value, over and above liens or encumbrances or both." This section also provides that the homestead is exempt from judgment lien and from execution or forced sale, except as otherwise provided in the chapter. According to this section, the homestead may not include different lots or tracts of land unless they are contiguous.

Testimony and Committee Considerations

To address the issues related to the state's exemptions from judicial process, the committee sought the testimony and recommendations of several experts in the area of exemptions and bankruptcy law. These individuals included several attorneys who practice in the area of debtor, creditor, and bankruptcy law, a bankruptcy trustee, and a law professor.

The testimony from these individuals indicated that some of the exemptions contained in North Dakota law are archaic and others need to be updated. For example, the testimony noted that the mobile home exemption is vague and needs clarification, and there is a need for clarification of the annuities exemption.

The committee's deliberations centered on the changes that were recommended to the state's exemption scheme. To address the recommended changes, the committee considered four bill drafts.

The Need for Clarification and Updating of Exemptions

The committee received testimony that recommended a number of changes to the exemptions contained in NDCC Chapter 28-22. The testimony recommended several changes to Section 28-22-02, which provides for absolute exemptions. According to the testimony, several of the absolute exemptions should be updated and clarified. For example, this section provides for an exemption for the family Bible. It was recommended that this section be changed to provide for an exemption for "one family Bible or other family primary religious text." The testimony also noted that Section 28-22-02 contains an exemption for wearing apparel and clothing. It was noted that because clothing is specifically mentioned, wearing apparel has been interpreted to refer to something other than clothing, such as jewelry. According to the testimony, this exemption is in need of clarification. Section 28-22-02(6) allows for an exemption of fuel necessary for one year. The testimony indicated that courts have held that the fuel must be "in kind" and actually on the debtor's property. The debtor cannot have money in an account that is designated as money for fuel. It also was noted that it is not clear if the fuel exemption applies to fuel to heat a home or fuel to propel a vehicle or both.

North Dakota Century Code Section 28-22-02 exempts a house trailer or mobile home occupied as a residence by the debtor or the debtor's family. The testimony noted that a house trailer or mobile home may exceed $80,000 in retail or market value. Because this statute does not have a dollar limit, it may be possible for someone living in a mobile home to get more benefit from the exemption than someone living in a stick-built home using the $80,000 homestead exemption. It was recommended that the house trailer or mobile home value be limited to $80,000. Section 28-22-03 allows for an additional exemption of $5,000 in personal property. The testimony indicated that although this statute is fairly clear about being limited to personal property, there have been numerous attempts by debtors to try to spread this wild card exemption onto real estate. It was recommended that it may be appropriate to add language that clarifies that the exemption cannot be used to exempt a real estate interest of any kind.

The homestead exemption law in North Dakota limits the homestead to $80,000 equity over liens and encumbrances. The federal Bankruptcy Code of 2005 was amended to limit homestead exemptions to $125,000. It was noted that the exemptions in North Dakota seem to allow most debtors to stay in their homes.

North Dakota Century Code Section 28-22-03.1 raises the issue of whether the term "resident" is different from the term "head of a family." This section allows a resident to take, in lieu of the homestead exemption, an additional exemption of up to $7,500. The North Dakota Supreme Court has not dealt with this issue, but the bankruptcy court has refused to allow this exemption to a North Dakota resident if that resident's spouse has chosen the homestead exemption under Section 28-22-02. The testimony noted that the bankruptcy court approach to this makes sense and it is probably what the Legislative Assembly intended. It was noted, however, that an argument by a debtor could be made that if one person in a married couple is considered the head of a family, the other person could be considered a resident. The head of a family could choose the homestead exemption while the other person could choose the "in lieu of" homestead exemption as a resident. It was suggested that this statute could be clarified to provide that the resident exemption is not available if the resident exemption claimant, the spouse of the resident exemption claimant, or other head of a family of the resident exemption claimant has chosen the homestead exemption.

North Dakota Century Code Section 28-22-03.1 provides for a motor vehicle exemption of $1,200.

According to the testimony, this has been interpreted to mean $1,200 in equity over and above liens and encumbrances. It was suggested that this statute could be amended to clarify that point. Section 28-22-03.1, which addresses pensions, annuities, and life insurance policies, provides for a $100,000 per account or $200,000 maximum exemption. This section provides that individual retirement accounts (IRAs), such as the Roth IRA and 401k accounts, are totally exempt. It was noted that there is a concern that a debtor might try to convert nonexempt property into exempt property in the face of a threatened judgment execution by, for example, selling a lake cabin that does not qualify as a homestead and putting the money into an exempt IRA. It was suggested that limiting language could be added which provides that any contributions to any of the plans made within one year before the issuance of the execution and which contributions are more than the amounts allowed by the governmental regulation to be tax-exempt for the year of contribution are not exempt from process.

The committee considered two bill drafts that attempted to clarify and update the state's exemptions from judicial process. The first bill draft provided clarification of some of the exemptions contained in NDCC Chapter 28-22. The bill draft clarified several of the absolute exemptions; limited the use of the exemption that is available in lieu of the homestead exemption; clarified that certain exemptions are available only to the head of a family; clarified the motor vehicle exemption; and for the purposes of claiming an account as exempt, limited the time period within which an individual may contribute to a retirement account.

Testimony in support of this bill draft indicated that changes made by this bill draft would be useful in interpreting and understanding the state's exemptions. The testimony indicated that the changes would provide much needed clarification of NDCC Chapter 28-22.

The second bill draft considered by the committee removed the $100 limit placed on the value of family books that are exempt; allowed an exemption for a house trailer or mobile home to be taken in lieu of the homestead exemption; removed the "in lieu of" homestead exemption of $7,500; increased the additional exemption for head of a family from $5,000 to $7,500; increased the motor vehicle allowance from $1,200 to $2,950; clarified the exemptions for pensions, annuity policies, and life insurance; and increased or eliminated the maximum amount of compensation that may be claimed as exempt on account of the debtor's right to receive or property that is traceable to wrongful death or personal bodily injury.

Testimony regarding the second bill draft indicated that the bill draft provides some much needed updating of the current exemptions. The testimony, however, did not support the repeal of the "in lieu of" homestead exemption. The testimony expressed support for the proposed change that would allow the debtor to claim a mobile home as a dwelling house as part of the homestead.

Upon consideration of these two bill drafts, the committee elected to merge the two bill drafts into a single bill draft. With the exception of the "in lieu of" homestead exemption, the merged bill draft included all the changes proposed in the two previously considered bill drafts.

Testimony in support of the merged bill draft indicated that changes would go a long way to address many concerns and uncertainties that have arisen in bankruptcy cases over the years. It was noted that one issue that may need to be addressed is whether both spouses may claim an exemption as head of a family. According to the testimony, there may need to be a clarification that only one spouse can be the head of a family and therefore entitled to the exemption. It was also noted that the United States Supreme Court has held that Employee Retirement Income Security Act-qualified plans are not property that is subject to claims in bankruptcy. According to the testimony, although the bill draft provides that the retirement funds must have been in effect for at least one year, there may need to be more clarification that the funds have been on deposit for at least one year. The testimony also indicated that in light of a United States Supreme Court decision, the limits on the amounts in the retirement accounts are likely to be preempted by the decision, but the timing of the fund may not be preempted.

Other testimony regarding the merged bill draft indicated that there are concerns that the property of the judgment debtor and the debtor's family must be claimed as exempt. It was noted that this requirement may allow levy upon property of family members and not just the judgment debtor. In response to this concern, the committee amended the merged bill draft to remove the language relating to the property of family members.

Single Exemption Theory

Although the Constitution of North Dakota indicates that certain exemptions are a right and are necessary to provide for the comforts and necessities of life, the testimony received by the committee indicated that the constitution does not specify what the exact exemptions should be but indicates that "all heads of families" should be entitled to a homestead the value of which is to be limited and defined by law. The constitution also provides that a reasonable amount of personal property must be exempt. The kind and value of both the homestead and personal property exemptions are to be fixed by law. According to the testimony, an interpretation of that provision is that there is no requirement that the Legislative Assembly provide real estate as an exemption. It was noted that this is further evidenced by the "in lieu of" homestead exemption that has been codified in NDCC Section 28-22-03.1(1).

It was recommended that the Legislative Assembly establish one exemption of a fixed dollar amount. According to the testimony, providing one exemption of a fixed dollar amount would eliminate the need for the Legislative Assembly to pigeonhole exemptions into specific areas. For example, if the fixed dollar amount was $80,000, the debtor could choose to use the entire sum toward the exemption of a homestead, or instead could choose to exempt personal property, whether it is cash, farm machinery, motor vehicles, or retirement

plans. Providing one exemption would also eliminate the need for debtors to move assets from one form to another just to claim the assets as exempt. It was argued that a single claim exemption would eliminate disputes, such as the items that constitute "wearing apparel."

Based upon this recommendation, the committee considered a bill draft that would have provided for a lump sum exemption of $40,000. Under this bill draft, this exemption would replace many of the separate exemptions that are now available. In addition to the lump sum exemption, however, a debtor still could have claimed the homestead exemption; professionally prescribed health aids; an unmatured life insurance contract owned by the debtor; the debtor's interest in certain retirement plans; and certain benefits, including Social Security benefits, veteran's disability pension benefits, disability, illness, or unemployment benefits, alimony, support, or separate maintenance. The bill draft also would have exempted payments received on account of the wrongful death of an individual of whom the debtor was a dependent.

It was suggested that going to a single exemption concept would reduce litigation because there would be no need to move assets around to fit into a scheme of exemptions. It was noted that a single exemption would prevent hiding assets. It was also noted that because more people own a computer than a church pew, a single exemption amount would allow a family to determine what is important to them.

Testimony regarding the bill draft indicated that if the state adopted a single exemption concept, the exemption should be limited to necessities. It was suggested that luxury items should not be permitted as exempted property.

Other testimony regarding this bill draft indicated that the change to a single exemption amount would be a radical change from the current exemption scheme. It was noted that a number of states have gone to the lump sum exemption method. According to the testimony, it would be very difficult to determine the appropriate amount for the lump sum exemption. The testimony also indicated that whether the homestead exemption is used or a single exemption amount, there will still be ongoing litigation.

The committee concluded that the bill draft relating to a single exemption amount should not be recommended to the Legislative Council.

Federal Exemptions Option

North Dakota Century Code Section 28-22-17 provides that North Dakota has chosen to opt-out of the federal exemptions, which allow for a broader range of exemptions. According to the testimony, the Minnesota system functions more efficiently because Minnesota allows debtors to claim either the federal exemptions or the state exemptions.

Based upon this recommendation, the committee considered a bill draft that would have given North Dakota residents, when filing a petition for bankruptcy, the option of claiming either the federal exemptions or the applicable exemptions allowable by state law.

Testimony in opposition to this bill draft indicated that adding the option of claiming the federal exemptions adds complications to the current system. According to the testimony, this bill draft would allow the federal government to dictate the state's exemptions. It was noted that bankruptcy under this bill draft would be more expensive and more complex.

The committee concluded that the bill draft granting an option of using federal exemptions or state exemptions should not be recommended to the Legislative Council.

Recommendation

The committee recommends House Bill No. 1039 to clarify and revise several of the absolute exemptions, including family books, clothing and wearing apparel, and fuel; clarify that certain exemptions are available only to the head of a family; increase and clarify the motor vehicle exemption; allow an exemption for a house trailer or mobile home to be taken in lieu of the homestead exemption; for the purpose of claiming an account as exempt, limit the time period within which an individual may contribute to a retirement account; increase the additional exemption for head of a family from $5,000 to $7,500; clarify the exemptions for pensions, annuity policies, and life insurance; and increase or eliminate the maximum amount of compensation that may be claimed as exempt on account of the debtor's right to receive or property that is traceable to wrongful death or personal bodily injury.

MISSING PERSONS STUDY

Background

North Dakota Law Enforcement

The search for and the identification of missing persons often involves cooperation and the sharing of information among federal, state, and local law enforcement agencies. The chief components of local law enforcement in North Dakota are city police departments and county sheriffs' offices. At the state level, law enforcement includes the Highway Patrol, game wardens, park rangers, and various divisions within the office of Attorney General, including the Bureau of Criminal Investigation.

The Highway Patrol enforces state law relating to the protection and use of the highways in the state and the operation of motor and other vehicles on North Dakota highways. In addition, under NDCC Section 39-03-09, the Highway Patrol is required to exercise general police powers over all violations of law committed on state property.

The statutory duties of the Bureau of Criminal Investigation include the assisting of federal, state, and local law enforcement entities in the establishment and maintenance of a complete system of criminal investigation; serving as the state central repository for the collection, maintenance, and dissemination of criminal history record information; aiding in establishing a system for apprehension of criminals and detection of crime; and, on request, assisting and cooperating in investigation, apprehension, arrest, detention, and conviction of alleged felons.

North Dakota Law and Programs Regarding Missing Persons

North Dakota Century Code

North Dakota Century Code Section 54-23.2-04.1 provides that State Radio has certain duties with respect to lost or runaway children and missing persons. This section requires State Radio to "[e]stablish and maintain a statewide file system for the purpose of effecting an immediate law enforcement response to reports of lost or runaway children and missing persons."

In addition, NDCC Section 54-23.2-04.2 provides for school enrollment procedures to aid in the identification and location of missing children. This section provides that if a child's parent, guardian, or legal custodian does not present proof of identity within 40 days of enrollment or if the school does not receive the school records of the child within 60 days of enrollment, the school, licensed day care facility, or school superintendent of the jurisdiction is required to notify the missing person information program provided in Section 54-23.2-04.1 and a local law enforcement authority that proof of identity has not been presented for the child.

AMBER Alert System

On August 30, 2002, the Governor signed Executive Order 2002-06, which directed the Highway Patrol, in cooperation with the Division of Emergency Management, Division of State Radio, and other state agencies, to implement a statewide AMBER Alert system by January 1, 2003. AMBER stands for America's Missing: Broadcast Emergency Response.

The AMBER Alert system exists in every state. The AMBER Alert involves a system of news bulletins that broadcast information about a missing child over the airwaves and on highway alert signs to encourage the public to help law enforcement locate a kidnapped child. According to missing person experts, the first hours following a child abduction are considered to be critical in terms of response.

According to the United States Department of Justice, AMBER Alerts have helped bring home more than 200 abducted children nationwide. In 2004 the federal PROTECT Act was passed to provide funding to help coordinate the 50 state AMBER Alert plans.

Criminal Justice Information Sharing

Criminal Justice Information Sharing is a statewide program with the mission to improve public safety by enhancing decisionmaking of law enforcement and other public safety officials. Criminal Justice Information Sharing enables the components of the state's justice systems, including state and local law enforcement, courts, state's attorneys, and corrections agencies to share justice information.

Testimony and Committee Considerations

According to the sponsor of the resolution that called for a study of the search for and identification of missing persons, there is not any national legislation nor any nationwide procedures in place for the sharing of information about the search for and identification of missing persons. North Dakota law does not provide for a procedure for law enforcement to follow when dealing with missing person cases. In 2005 the United States Department of Justice established a task force to study ways to improve the use of federal DNA databases. With the help of the task force, the National Institute of Justice--the research division of the United States Department of Justice--developed model state legislation that is intended to provide guidance to states on the entire process surrounding missing persons. During the course of this study, the committee focused much of its attention on the model legislation and whether the model legislation would be helpful to North Dakota law enforcement in handling missing person cases. The committee received testimony from an expert on the model legislation, several law enforcement officials, and the State Crime Laboratory.

Model Missing Person Legislation

According to a report from the National Institute of Justice, at any given time, there are as many as 100,000 active missing person cases in the United States. Due in part to sheer volume, missing persons and unidentified human remains cases are a tremendous challenge to state and local law enforcement agencies. More than 40,000 sets of human remains that cannot be identified through conventional means are held in the evidence rooms of medical examiners throughout the country. About 6,000 of these cases have been entered into the Federal Bureau of Investigation's National Crime Information Center database.

The National Institute of Justice reports that efforts to solve missing person cases are further hindered because many cities and counties continue to bury unidentified human remains without attempting to collect DNA samples. According to the National Institute of Justice, many laboratories may not be equipped to perform DNA analysis of human remains, especially when the samples are old or degraded. The National Institute of Justice report noted that compounding this problem is the fact that many of the country's 17,000 law enforcement agencies do not have access to or are unaware of their own state's missing person clearinghouse or the four federal databases--the National Crime Information Center, the Combined DNA Index System for Missing Persons, the Integrated Automated Fingerprint Identification System, and the Violent Criminal Apprehension Program.

In 2005 the United States Department of Justice established a task force of representatives from local, state, and federal law enforcement; forensic medicine; and victim advocacy organizations to study ways to improve the use of federal DNA databases. With the assistance of the task force, the National Institute of Justice developed model state legislation that is intended to provide guidance to states on the entire process surrounding missing persons. The model legislation:

- Requires all law enforcement agencies to accept any report of a missing person and to share it within the state and region.
- Requires law enforcement officers to notify the family about how the case will be handled.

- Suggests ways to improve the collection of information about missing persons and prioritizes high-risk cases.
- Ensures prompt dissemination of critical information to other law enforcement agencies and the public that can improve the likelihood of a safe return.
- Lays out an approach for collecting data that later can be used to help identify human remains.
- Suggests ways to improve death scene investigations and ensure the delivery of human remains to the proper examining entity.
- Ensures the timely reporting of identifying information to national databases. DNA samples must be taken within 30 days and uploaded to all relevant national, state, and local DNA missing person databases.

The committee received testimony from a representative of the California Attorney General's Missing Persons DNA Program regarding California's missing person law. California enacted its missing person law in 1989. The model missing person legislation under consideration by the committee was based primarily on California's law. It was noted that many of the concerns about California's missing person law have not materialized. One of these concerns was that in some domestic violence situations an individual may appear to be missing when the individual actually does not wish to be found. It was noted that in these cases law enforcement may confirm that the person is safe without revealing the person's location. It was also noted that concerns about jurisdiction of a missing person case have been addressed and have not been a problem.

California law provides that a risk assessment is to be done immediately upon receiving the missing person report. When law enforcement takes the report, an assessment is done. The assessment may vary depending on the individual who is missing. It was noted that the amount of time and resources that law enforcement expends on a case depends on the situation. In California the Attorney General's office is the central state agency for missing person cases. For interstate cases, the local law enforcement agency usually works with the Federal Bureau of Investigation and law enforcement in the other state.

The testimony indicated that there are as many as 15 other states that have passed similar missing person legislation. Most of the states that have passed missing person legislation have used at least portions of the model Act, with modifications depending on the specific state's needs. The legislation has led to an increase in those states in the number of bodies identified. Most states do not mandate that coroners report unidentified human remains to a central repository. The testimony indicated that the University of North Texas has received funding from the National Institute of Justice to process DNA samples free of charge for law enforcement from all states. California funds its missing person DNA program from the fee charged for the issuance of copies of death certificates. Federal law provides that the DNA analysis may be used only for the purpose of identifying or locating missing persons and any other use is prohibited. It was noted that because it is not possible to obtain DNA from cremated remains, California law provides that a body of an unidentified person may not be cremated until the jawbone is removed and retained. According to the testimony, California's missing person DNA program has been very successful. It was emphasized that every unidentified person deserves to be identified and the remains returned to the family.

The committee also received testimony from local law enforcement agencies regarding the adaptability of the procedures in the model legislation by law enforcement agencies in the state. The testimony stressed the importance of law enforcement to investigate legitimate reports of missing persons when evidence or other information exists to show the person is not simply delayed or otherwise voluntarily missing and to do everything possible to locate missing persons. The role DNA plays in the investigation of missing person cases and the identification of unidentified persons was emphasized. The testimony expressed opposition to the adoption of the model missing person legislation in its current form and emphasized that it is not advisable to codify extensive procedures. It was noted that procedures often need to be updated and having a procedure in law which cannot be revised until the next legislative session could create significant issues for law enforcement.

According to the testimony, law enforcement agencies often receive calls from concerned friends or relatives who want to report someone missing if the person has failed to come home on time from work, an appointment, or a social gathering. Basic information is gathered in these situations, but supervisors are given discretion in how these calls are handled in the initial stages. It was noted that the model legislation does not allow for any discretion in the handling of missing person reports--the model legislation states that a law enforcement agency may not refuse to accept a missing person report for any reason. According to the testimony, for those cases in which the law enforcement agency has no jurisdictional link to the missing person, the procedures set out in the model legislation would be impractical and unworkable. It was noted, however, that the model legislation contains excellent procedural guidelines that generally should be followed. It was suggested that a better approach would be to statutorily require law enforcement agencies to have a written policy concerning missing person reports with the model legislation used as model policy for departments to use as a guide in developing those policies.

The committee also received testimony from a law enforcement official who supported the adoption of the model legislation in North Dakota. The testimony indicated that the model legislation would be good for the state and would be easy to adopt. The testimony, however, recommended that language should be added to identify the party that is responsible to follow up on the missing person report. It was also suggested that once taken, the legislation should permit the missing person report to be forwarded to the law enforcement agency that would have proper jurisdiction.

In response to the testimony and information regarding the model missing person legislation, the committee considered a bill draft that established a procedure for the location and identification of missing persons. The bill draft was based upon model missing person legislation that has been adopted in a number of other states. The bill draft provided that a report of a missing person may be made to any law enforcement agency in the state, allowed the law enforcement agency to refer the missing person report to a more appropriate law enforcement agency when appropriate, set forth the information to be gathered regarding the missing person, provided for the entry of certain information regarding the missing person into state and national databases, and established a procedure for the identification and preservation of unidentified human remains.

In response to concerns from several committee members regarding the referral of missing person cases to other law enforcement agencies, the bill draft was amended to remove the prohibition that the missing person report may not be referred to another law enforcement agency if the person is a high-risk missing person. The bill draft also was amended to provide that, upon referral of a missing person case to another jurisdiction, that jurisdiction must accept or decline the responsibility for the referred case within 24 hours after receiving the request from the initial law enforcement agency.

State Crime Laboratory

During the course of the committee's study of the search for and identification of missing persons, the committee received information from a representative of the State Crime Laboratory regarding functions of the laboratory and the use of DNA for identifying missing persons. The State Crime Laboratory is divided into two units. The forensic unit deals with analysis of evidence involving arson, drugs, DNA, firearms, and trace, and the toxicology unit deals with drug screening, blood alcohol, breath instruments, and officer training for the use of intoxilyzer devices. The forensic unit works with the screening of biological evidence. According to the testimony, it is possible to obtain DNA from a number of sources with which there has been human contact, including chewing gum, stamps and envelopes, stains, doorknobs, toothbrushes, hairbrushes, sanitary pads, and bite marks. The federal DNA Identification Act of 1994 formalized the Federal Bureau of Investigation's authority to establish a National DNA Index System. Over 170 public law enforcement agencies across the country participate in the National DNA Index System. The Combined DNA Index System for Missing Persons merges aspects of forensic science and computer technology to create an effective tool for providing investigative leads and solving violent crimes. In 2000 the Federal Bureau of Investigation laboratory began developing the national missing person database program for the identification of missing and unidentified missing persons. The Combined DNA Index System for Missing Persons contains the following indexes--convicted offender, forensic, arrestees, missing persons, unidentified human remains, and biological relatives of missing persons. The missing person database program uses three indexes in the National DNA Index System, including unidentified human remains, missing persons, and biological relatives of missing persons. DNA profiles in these three indexes are searched against each other. As part of the President's DNA initiative, DNA collection kits are available to law enforcement free of charge. It was noted that to send a DNA case to a private laboratory for testing would cost approximately $6,675, which includes the cost of screening and DNA testing for five samples. The cost for the State Crime Laboratory to process the same case is $2,870. The testimony indicated that state's attorneys often demand 10 to 20 DNA samples from a crime scene. It was noted that in recent years there has been an increased demand for DNA testing.

Recommendation

The committee recommends House Bill No. 1040 to establish a procedure for the location and identification of missing persons. The bill, which is based upon model missing person legislation, establishes a uniform procedure for law enforcement to follow for locating missing persons and identifying and preserving unidentified human remains.

DOMESTIC VIOLENCE PROTECTION ORDER PROCESS STUDY

Background

Experts have described domestic violence as a pattern of behavior in which one intimate partner uses physical violence; coercion; threats; intimidation; isolation; and emotional, sexual, or economic abuse to control and change the behavior of the other partner. The abusive person might be a current or former spouse, live-in boyfriend or girlfriend, or dating partner. Domestic violence happens to people of all ages, races, ethnicities, religions, and levels of economic status. It occurs in both opposite-sex and same-sex relationships. According to the National Coalition Against Domestic Violence, about 95 percent of victims of domestic violence are women. According to this source, over 50 percent of all women will experience physical violence in an intimate relationship, and for 24 percent to 30 percent of those women, the battering will be regular and ongoing. Every state and United States territory has laws that allow its courts to issue protection orders, as do many Indian tribes.

North Dakota Domestic Violence Law

The North Dakota law regarding domestic violence is contained in NDCC Chapter 14-07.1. This chapter, which was initially enacted in 1979, provides that domestic violence "includes physical harm, bodily injury, sexual activity compelled by physical force, assault, or the infliction of fear of imminent physical harm, bodily injury, sexual activity compelled by physical force, or assault, not committed in self-defense, on the complaining family or household members."

North Dakota Century Code Sections 14-07.1-10 and 14-07.1-11 provide for the arrest procedures in a situation involving domestic violence. Section

14-07.1-15 provides for the establishment of the domestic violence and sexual assault prevention fund in the state treasury. A portion of the funds deposited into this fund are derived from the $35 supplemental marriage license fee provided for under Section 14-03-22. An estimated $340,000 from this source is expected to be deposited into the domestic violence and sexual assault prevention fund during the 2007-09 biennium. Section 14-07.1-16 authorizes the State Department of Health to administer the money in this fund to domestic violence sexual assault organizations. This section provides that up to 10 percent of the fund may be allocated to the state domestic violence sexual assault coalition, as recognized by the State Department of Health.

Domestic Violence Protection Orders

Under NDCC Section 14-07.1-02, a victim of domestic violence may obtain a domestic violence protection order. A protection order is a court order that is designed to restrain, or keep someone from committing, violent and harassing behavior. An action for a protection order may be brought in district court by any family or household member or by any other member with a sufficient relationship. Upon receipt of the application, the court orders a hearing to be held not later than 14 days from the date of the hearing order. Service must be made upon the respondent at least five days before the hearing. Upon a showing of actual or imminent domestic violence, the court may issue a domestic violence protection order after due notice and a full hearing.

North Dakota Century Code Section 14-07.1-02(5) authorizes a court to issue a dual protection order restricting both parties if each party has commenced an action and the court, after a hearing, has made specific findings of fact that both parties committed acts of domestic violence and that neither party acted in self-defense.

North Dakota Century Code Section 14-07.1-06 provides the penalty for violating a domestic violence protection order or an ex parte temporary protection order. The first violation of any order is a Class A misdemeanor and also constitutes contempt of court. A second or subsequent violation of either order is a Class C felony.

If the application for a domestic violence protection order alleges an immediate and present danger of domestic violence to the applicant, NDCC Section 14-07.1-03 authorizes the court to order an ex parte temporary protection order pending a full hearing. An ex parte temporary protection order remains in effect until an order issued under Section 14-07.1-02 is served. A full hearing must be set for not later than 14 days from the issuance of the temporary order.

North Dakota Century Code Section 14-07.1-08 provides that an emergency protection order may be ordered when the court is not available for an ex parte temporary protection order. Under this section, an emergency protection order may be signed by a local magistrate, such as a municipal judge or a small claims court referee. This emergency protection order can provide the same relief as the temporary order. An order issued under this section, however, expires in 72 hours unless it is continued by the court or the local magistrate in the event of continuing unavailability of the court.

Testimony and Committee Considerations

During the course of its study of the domestic violence protection order process, the committee received testimony from those involved in the domestic violence protection order process, including a victim advocacy organization, judges, and attorneys. The committee also received testimony from the North Dakota Supreme Court regarding the findings of the Gender Fairness in the Courts study with respect to the domestic violence protection order process. The committee's considerations focused on the gender bias and fairness in the domestic violence protection order process and efforts to improve the domestic violence protection order process.

Gender Bias and Fairness in the Domestic Violence Protection Order Process

The committee received testimony regarding the recommendations of the Final Report of the North Dakota Commission on Gender Fairness in the Courts. The Gender Fairness Implementation Committee was assigned the responsibility to "oversee the development of a detailed course of action to implement recommendations of the Final Report of the North Dakota Commission on Gender Fairness in the Courts" and to "monitor the progress of the Judicial Branch toward eradicating gender bias in the courts." The report, which was based on surveys, questionnaires, and discussions with lawyers, child support personnel, domestic violence advocates, victim and witness assistants, and judicial system employees, indicated that education and awareness efforts have affected positively how these domestic violence cases are handled and that professional conduct in the proceedings has improved. It was noted, however, that the survey question that generated a general concern was whether the current domestic violence protection order process within the court system serves both parties equally in terms of resources, review of petitions, and dispositions. According to the report, judicial officers raised a general concern that there are unequal resources in these proceedings. A review of some of these responses suggested that unequal resources meant the unavailability of a domestic violence advocate for both parties when dual protection petitions are filed and the unavailability of an attorney to represent a respondent who cannot afford one. It was noted that the responses are not a criticism of the work done by the victim advocacy organizations, but rather was a matter of funding for more advocates.

The testimony indicated that because the domestic violence protection order process is a civil proceeding, the respondent must hire an attorney to represent the respondent in the proceeding. There is not a constitutional requirement to provide legal counsel in civil matters. The process is unique because it is a civil process that invokes a criminal penalty if violated. If the

respondent is unable to afford an attorney, the respondent must look for legal services at no cost or at a reduced cost. It was noted that North Dakota has very limited resources for these parties. North Dakota Supreme Court Administrative Rule 34, which authorizes the use of advocates for domestic violence cases, was amended in 2005 to allow entities other than the North Dakota Council on Abused Women's Services to be a certifying entity qualified to train and certify domestic violence advocates. A committee of the Supreme Court is considering the development of an informational brochure for respondents who wish to petition for domestic violence protection orders.

The testimony indicated that a second area of concern reflected in the responses was that the protection order process is being used to gain an advantage in custody disputes. North Dakota Century Code Section 14-07.1-02.1 provides a penalty for domestic violence protection order petitions that are false and not made in good faith.

According to the testimony, progress has been made in eliminating gender bias in the adjudication and disposition of domestic violence protection orders; however, there continue to be concerns as to whether more resources and services should be made available for those respondents who cannot afford an attorney or who do not have access to advocates. The testimony indicated that additional funding for respondents would help balance the resources available to each party. It was noted that in some instances, the respondent also may be a victim of domestic violence but does not have access to an advocate. When both parties allege domestic violence, the party who goes to the advocate first is the one who is likely to receive assistance.

Testimony from a domestic violence victim advocacy organization discussed the role of the organization in the domestic violence protection order process. The process for applying for a temporary protection order begins with an individual obtaining an application in which the individual outlines the history of abuse and describes the most recent, specific incident of abuse. The petition is presented to the district court pro se, with an attorney, or with the assistance of an advocate certified under North Dakota Court Rule 34. A hearing is scheduled at which time the judge will decide if the order is granted. If the temporary order is granted, it is served on the respondent who may appear at a full hearing. At that hearing the court hears from each party and determines whether to continue the order. The North Dakota Supreme Court sanctioned the role of domestic violence advocates in this process in 1992 by outlining specific activities in which advocates can engage relating to the process, including sitting at counsel table, giving written or oral statements to the court, and assisting the petitioner with printed forms. There are codified training requirements for advocates for an initial training and 10 hours of continuing education each year. All certified advocates must be affiliated with a domestic violence agency. In 2006, 4,319 new victims sought assistance from 19 advocacy centers; 734 temporary protection orders were granted with the assistance of domestic violence advocates; 34 temporary order petitions were denied; and 30 orders were denied at the full hearing.

The testimony indicated that the advocacy network is very aware of the allegations that protection orders are easy to obtain and that the process is sometimes abused out of spite or to gain the upper hand in custody disputes. It was noted that nearly every center has had experience with receiving referrals from attorneys who want free assistance for their clients in getting protection orders. Two safeguards to maintaining the integrity of the process include a separate definition of domestic violence when custody is involved, which was accomplished in a 1997 change to NDCC Section 14-05-22, and a sanction for false allegations of domestic violence, which was accomplished in a 1999 change to Section 14-07.1-02.1.

Regarding the equality of the resources available to the petitioner and the respondent in the domestic violence protection order process, the testimony indicated that the intent of the legislation 30 years ago was to level the playing field by providing assistance to the most vulnerable--battered women and their children. It was noted that concerns about accusations of lopsided resources is puzzling given the fact that victim advocates have raised the resources themselves. It was noted that respondents are eligible for indigent defense if the respondent violates an order. It was emphasized domestic violence is a gender-based crime. As long as people resist seeing domestic violence as a gender-based crime, there will be gender-based issues.

Efforts to Improve the Domestic Violence Protection Order Process

Testimony regarding the domestic violence protection order process indicated that the language used in protection orders is not easily understood by respondents and seems to be more directed at law enforcement. According to the testimony, the petitioner is usually accompanied by an advocate; however, the respondents usually do not have an advocate or an attorney. The testimony noted that respondents often do not understand the proceeding, how to represent themselves, or how to respond to an order. It was suggested that it would be helpful if informational materials regarding the process were available to both the petitioner and the respondent. It was also suggested that the materials should be in plain English and in a format similar to those done for small claims court parties. The testimony also indicated that there should be more information made available to respondents regarding the possession of firearms if a domestic violence protection order is issued. It was suggested that it may be helpful if the State Bar Association of North Dakota would form a task force to develop informational materials for petitioners and respondents regarding the domestic violence protection order process.

Because of restrictions from funding sources, Legal Services of North Dakota is not able to represent respondents in domestic violence protection order cases. It was noted that because the volunteer lawyer program follows the same guidelines as Legal Services

of North Dakota, this program also does not represent respondents. Some cases are referred to the State Bar Association of North Dakota in which case the association may attempt to find an attorney who is willing to take the case.

The committee expressed concern regarding the inequality of resources available to petitioners versus respondents. The committee discussed whether it is the Legislative Assembly's responsibility to provide funding for legal services in civil cases. The committee noted that there is no constitutional requirement to provide legal services in civil cases. The committee also noted that if the protection orders issued by the court are unclear or difficult to understand, it is the responsibility of the court to clarify or simplify the language or to provide informational packets to petitioners and respondents.

Conclusion

The committee encourages the courts to include clearer information in domestic violence protection orders, recommends that the judicial branch and the State Bar Association of North Dakota evaluate the language used in domestic violence protection orders, and recommends that information regarding the respondent's rights and responsibilities should be included in those orders.

PATERNITY REGISTRY STUDY

Adoption Law

Generally, adoption is a creature of state law, and although all 50 states have different ways of dealing with the issue of adoption, the overall adoption scheme is similar in most states.

Although the National Conference of Commissioners on Uniform State Laws drafted uniform adoption Acts in 1953, 1969, and 1994, states have been hesitant to adopt these Acts. North Dakota, along with Alaska, Arkansas, and Ohio, has enacted the National Conference of Commissioners on Uniform State Laws' 1969 Revised Uniform Adoption Act. Vermont appears to be the only state that has adopted the 1994 version of the Uniform Adoption Act.

In addition to North Dakota's version of the Revised Uniform Adoption Act, state law addresses adoption in NDCC Chapter 50-12, regarding licensure by the Department of Human Services of child-placing agencies; Chapter 50-28, regarding the Department of Human Services' adoption assistance program for special needs children; Chapter 14-13, regarding Interstate Child Placement Compacts; Chapter 14-15.1, regarding the relinquishment of a child to adoptive parents; and Chapter 14-20, the Revised Uniform Parentage Act. The Revised Uniform Parentage Act, a 2002 revision of the Uniform Parentage Act, also has been enacted by Delaware, Oklahoma, Texas, Utah, Washington, and Wyoming.

North Dakota law does not provide for a paternity registry; however, NDCC Chapter 14-20, the Revised Uniform Parentage Act, establishes a procedure for a man to sign an acknowledgment of paternity or a denial of paternity. Section 14-20-17 establishes a procedure for the rescission of an acknowledgment or denial of paternity. With respect to the consent required for adoption, Section 14-15-05 provides that the consent of the father of the minor is required if the person is presumed to be the biological father of the minor as provided for under Section 14-20-10.

Paternity Registry Laws

When a mother wishes to place a child for adoption, the nature and extent of the father's legal rights in relation to the child vary from state to state. At common law, no legal relationship existed between the father and the child if the biological parents were not married. Gradually, both society and the law began to recognize the relationship between a man and his out-of-wedlock child. The question of whether a putative or presumed father has a legal interest in his child is of great practical importance for adoption. State laws require that everyone with a legal relationship to the child have his or her rights terminated before an adoption can proceed. Thus, courts must determine whether, under the relevant state statute, an unwed father has a legal interest in his child. If so, the court must afford the biological father the statutorily prescribed degree of due process protection before his legal relationship to the child may be terminated. The state's interest in placing children with adoptive parents quickly requires that the nature of the father's rights be determined promptly. States differ dramatically in the requirements they impose on an unwed father who wishes to preserve the father's legal interest in the child.

Many states have addressed this issue by creating "paternity" or "putative father" registries. Most paternity registry statutes provide that when a man registers with the appropriate state agency, the man will be notified of any petition to adopt the child. The general premise of a paternity registry is that by filing a form with the appropriate state agency, a putative father's parental rights will not be terminated without his knowledge.

As of 2005, 23 states (Alabama, Arizona, Arkansas, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Louisiana, Minnesota, Missouri, Montana, Nebraska, New Hampshire, New Mexico, New York, Ohio, Oklahoma, Tennessee, Texas, and Wyoming) have statutes authorizing the establishment of paternity registries. These statutes usually provide that the failure to register or file may preclude the right to notice of termination or adoption proceedings. States differ in the information they maintain in their registries, but the information may include the name, address, Social Security number, and date of birth of the putative father and birth mother; the name and address of any person adjudicated by a court to be the father; the child's name and date of birth or expected month and year of birth; and a registration date. A number of states make provisions in their statutes which allow putative fathers to revoke or rescind a notice of intent to claim paternity. Of these states, 12 allow revocation at any time, while revocation is effective only after the child's birth in Arkansas and Iowa. Florida allows revocation only at any time before the child's birth. Other states limit the right of rescission to 60 days after the paternity claim is

submitted or before a court proceeding to establish paternity, whichever occurs first.

Access to information maintained in registries also varies from state to state. Many jurisdictions permit certain persons access to registry records. In general, those persons with a direct interest in the case, such as birth mothers, courts, attorneys, licensed adoption agencies, prospective adoptive parents, state social service departments, state child support offices, and registries of other states, are entitled to access the information contained in the registries.

In a series of cases, the United States Supreme Court has addressed the issues relating to the parental right of unwed fathers. An overview of this case law appears to indicate the Court's desire to allow states to decide the manner and the extent to which the state addresses paternity rights.

Testimony and Committee Considerations

The committee, in its study of the feasibility and desirability of establishing a paternity registry in the state, received information and testimony from several entities, including The Village Family Service Center, the Department of Human Services, and from an adoptive father. The committee's considerations focused on the need for a paternity registry, a review of proposed 2003 North Dakota legislation regarding a paternity registry, and the efficacy of paternity registries in other states.

Need for a Paternity Registry

The committee received testimony from the Department of Human Services regarding the state's adoption process and the role a paternity registry plays in the adoption process. According to the testimony, when a birth mother is seeking to make an adoption plan for her child, the child-placing agency makes every effort to contact the putative father and involve him in the planning. When a birth father is unavailable or is not cooperative, the birth mother and agency may proceed with the adoption planning and a hearing to terminate parental rights. If the birth father is known, he is given notice of the hearing, either personally or by publication. If the birth father does not appear at the hearing, his rights may be terminated by default. It was noted that problems with this process occur when the birth mother is either not aware of or is not truthful with the agency as to the identity of the birth father. The effect of a paternity registry would be that notice of an action to terminate a man's parental rights would be provided to a registered father. According to the testimony, a paternity registry may protect the rights of a birth father who has an interest in a child he has fathered who may be placed for adoption without the father's knowledge. A paternity registry puts the burden on the birth father to establish his interest in a child he may have fathered. A paternity registry allows a birth mother to proceed with an adoption plan when the birth father is not cooperative in the planning process and is not willing to take parental responsibility. A paternity registry also may assist a birth parent or adoption counselor in locating an alleged father who has registered his interest in a child he may have fathered. A paternity registry does not relieve a birth mother of an obligation to identify a known father of her child or of the agency to contact a known birth father to obtain his cooperation and other information for the benefit of the child and the prospective adoptive family. It was noted that it is possible that more than one man may be registered as the putative father for the same child. In that situation, additional testing would be necessary to determine the birth father. The testimony indicated that strict confidentiality provisions in paternity registry laws have resulted in limited problems with the abuse of the information contained in the registries.

Testimony from an adoption services organization expressed support for the establishment of a paternity registry in North Dakota. According to the testimony, a paternity registry can protect a child's right to a smooth adoption. The testimony also noted that because each man who registers and asserts his rights in a timely manner regarding a particular woman is given notice of a pending adoption, a paternity registry does not squelch men's rights but rather gives men rights.

The committee also received testimony from an adoptive father who discussed the challenges and difficulties he and his wife experienced following the adoption of their son. According to the testimony, the problems this couple experienced could have been avoided if North Dakota law provided for a paternity registry. In this instance, the adoptive parents had an experience in which a man came forward when their adoptive son was six months old, claiming to be the father of the child. It was noted that the outcome of their experience was that the parental rights of the birth father eventually were terminated because the court found that the birth father could not properly parent the child; however, this outcome was achieved after more than a year of legal matters, added legal costs, and a great deal of emotional anguish. According to the testimony, a paternity registry would have prevented those problems. It was noted that a paternity registry is not about taking away rights from the birth father but rather it is about establishing timelines.

North Dakota adoption law provides for two proceedings--a hearing to terminate parental rights and a proceeding to finalize the adoption conducted six months later. According to the testimony, if the hearing to terminate parental rights were used also to terminate the rights of any potential father, it would solve some of the adoption issues.

Senate Bill No. 2035 (2003)

In 2003 the Legislative Assembly considered Senate Bill No. 2035, which would have established a paternity registry. Senate Bill No. 2035 failed to pass the Senate by a vote of 46 to 1. The bill was developed by an informal working group of child-placing agency staff and supervisors in consultation with the Department of Human Services. Under the bill, the paternity registry would have been facilitated through the Division of Vital Records of the State Department of Health. The bill allowed for a potential father to register at any time before the birth of the child and up to three days after the birth of the child. An agency facilitating the adoption of a child would have been required to request a search of

the registry before a hearing for the termination or relinquishment of parental rights. The search of the registry would have been required to be conducted no sooner than four business days after the birth of a child and the Division of Vital Records was required to issue a certificate of the results of the search within three business days of the receipt of the request. The bill would have provided a timeframe that would have been consistent with current timeframes for relinquishment hearings for infant adoptions in some court jurisdictions within the state. The bill provided that a mother would have 30 days from the receipt of notice of a paternity registry submission to deny the registrant's claim of paternity.

The committee also reviewed the bill's accompanying fiscal note, which indicated a fiscal effect of $1,000. According to testimony in explanation of the fiscal note, it was determined that the costs involved would be mainly for publication materials.

The committee also reviewed 2006 federal legislation that would have provided for a national paternity registry. The bill, S.3803 (109th Congress), which was introduced by Senator Mary Landrieu of Louisiana, never became law.

Committee members expressed concerns that for a paternity registry to be effective and to provide rights to a putative father there would have to be widespread publication and education efforts that promote the existence and purpose of a paternity registry. Concerns were also expressed that a paternity registry would need to be fully funded, including the funding necessary to promote the registry.

Efficacy of Paternity Registry Laws of Other States

The committee reviewed information regarding the paternity registry laws of other states. The information included each state's time limit for registering, the consequence of failure to register, whether a paternity action is required, and whether the state law includes an impossibility exception.

In addition to reviewing information regarding the specifics of each state's paternity registry laws, the committee received information about the efficacy of paternity registries of several Midwestern states. The information was based upon an informal survey conducted by the adoption administrator of the Department of Human Services. The individuals surveyed were the adoption administrator's counterparts in the other states. According to the testimony, the counterpart in Montana indicated that the Montana registry was "better than not having one," but felt it was not publicized adequately and wondered whether young men were aware of this option to protect their rights to a child. The counterpart in Wisconsin noted that Wisconsin has not had any particular issues with its registry and that it is an effective tool. According to the testimony, both Montana and Wisconsin believe that their adoption agencies continue to make efforts to search for birth fathers to involve them in adoption planning and to gather their information when possible. The Iowa counterpart noted that the registry is an effective tool for public agencies in making diligent efforts to identify fathers of children in foster care. The Minnesota counterpart's response was that, although its public agency has not used the registry regularly, the state is looking at changes that would make the registry more accessible to the public agency. It was noted that Minnesota indicated that private agencies in the state are unhappy with the length of time after birth that a father has to register (30 days) and have tried several times to have that time shortened. South Dakota and Colorado do not have paternity registries. There have been unsuccessful attempts in both states to pass such legislation.

Conclusion

It was the consensus of the committee that in light of the testimony received during this study and the Legislative Assembly's relatively recent consideration of a bill to establish a paternity registry, it did not appear that there is sufficient interest in or support for the establishment of a paternity registry. The committee makes no recommendation regarding the establishment of a paternity registry.

COMPREHENSIVE STATUS AND TRENDS REPORT

The committee received a report from the Attorney General on the current status and trends of unlawful drug use and abuse and drug control and enforcement efforts in the state as required by NDCC Section 19-03.1-44. According to the report, the Youth Risk Behavior Survey conducted by the Superintendent of Public Instruction indicates that North Dakota's responses in alcohol usage and binge drinking categories are among the highest in the nation. While the survey results reflect continued reduction in youth smoking, a well-known precursor to other substance abuse, responses regarding drug usage remained similar to those in the past. There was a slight decrease between 2005 and 2007 in the number of students who were offered, sold, or given an illegal drug on school property by someone during the last 12 months.

The report indicated that state and federal restrictions on the sale of ephedrine-based cold medicine, combined with law enforcement education and enforcement efforts, have contributed to reducing clandestine methamphetamine lab busts from 293 in 2003 to 25 in 2007. Law enforcement efforts now are focusing on drug trafficking, including methamphetamine transported through our state from Canada and Mexico. The report indicated that law enforcement will continue to focus on ways to target drug trafficking in the state. The efforts in this area continue to be hampered, however, by significant reductions in federal aid to the state. In May 2008 the Governor's Prevention Advisory Council on Drugs and Alcohol announced a grant program to fund projects that discourage alcohol and drug abuse by minors. According to the report, the council will favor programs that target elementary school-age youth and their parents. One of the emerging trends raising concerns in the state is prescription drug abuse by minors. The number of minors who are accessing and abusing prescription drugs is increasing.

A pilot project being conducted in the state to test driving under the influence offenders for alcohol use has been very successful. The project, known as the 24/7 sobriety pilot program, requires driving under the influence offenders to be tested for alcohol use twice per day. If the offender fails a test, the offender is sent immediately to jail. As of the date of the report, over 90 offenders had participated in the program. It was reported that fewer than 5 percent of the participants had failed a test. According to the report, this program is different because, instead of keeping intoxicated people from driving, this program keeps them from drinking. The state has been loaned 10 ankle bracelets that can be used for those offenders in rural areas who are unable to get to a location for testing. The bracelets randomly test the offender for alcohol use twice per day. The test results are reported by telephone to a central computer in Denver. If the offender tests positive for alcohol use, notification is sent to law enforcement.

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 NDCC 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 has been in existence for about two years. Public defender offices are operational in Williston, Dickinson, Grand Forks, and Minot. The Minot office is handling about 280 cases per calendar year. The cases assigned to the public defender offices are a mixture of felonies, misdemeanors, and juvenile cases. Individuals with income of less than 125 percent of the federal poverty level can qualify for indigent defense services. The commission hires conflict counsel to handle those cases in which the public defender may have a conflict of interest. Public defender offices will be operational in Bismarck and Fargo by the end of 2008. About two-thirds of indigent defense cases in the state are being handled by contract attorneys and about one-third by public defender offices. According to the report, one of the most challenging issues has been finding attorneys to do indigent defense work, especially in the western part of the state. The report noted that many of the complaints received about the indigent defense program are about the lack of contact with the person's attorney. According to the report, the commission has implemented a system for having attorneys respond to complaints. It was noted that as a result of this new system the number of complaints has decreased.