

2021-23 BUDGET

Office of Attorney General
State of North Dakota

Wayne Stenehjem
Attorney General

For the Senate Appropriations
Committee

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2021 HOUSE BILL 1003

Office of Attorney General

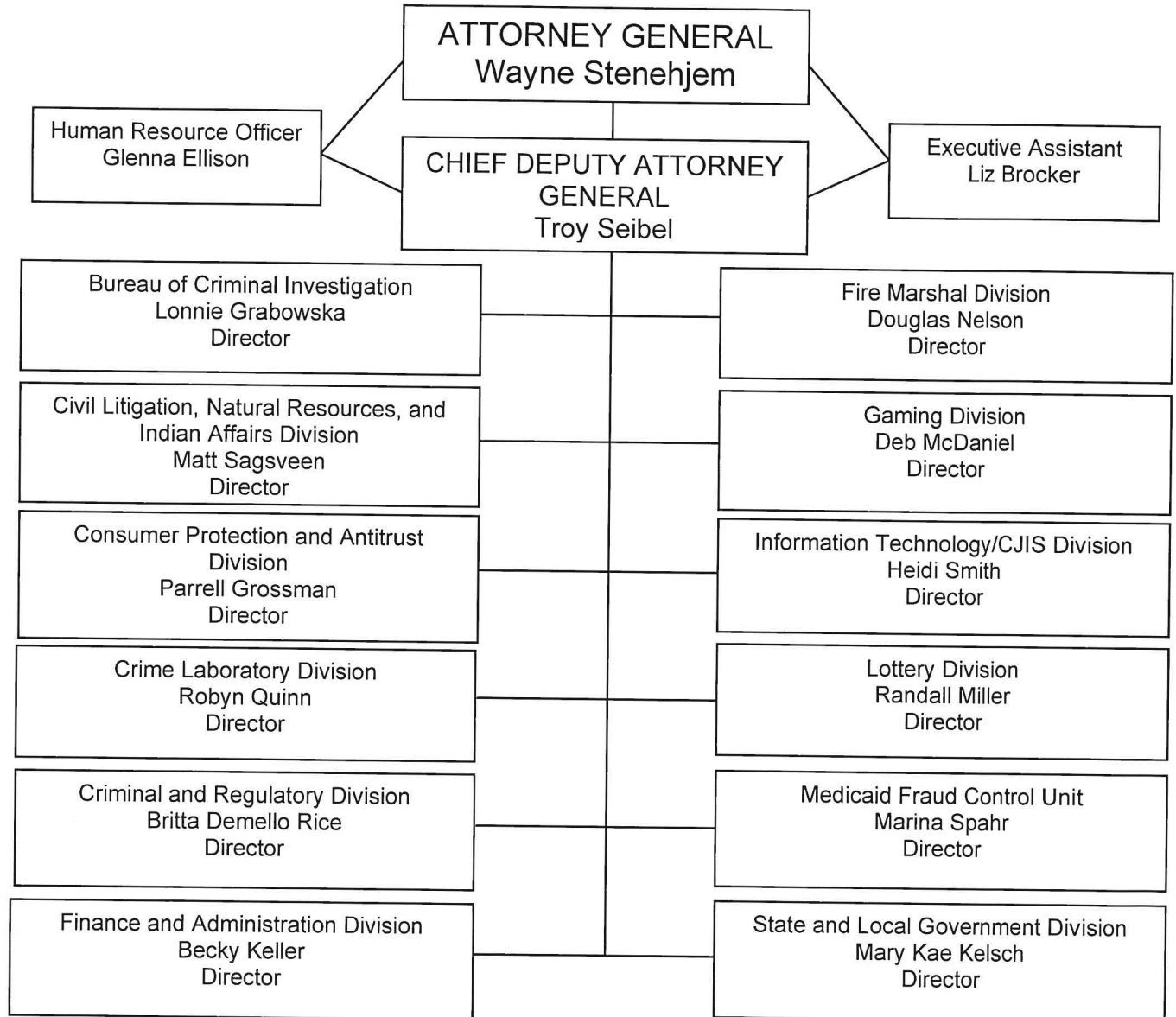
The Office of Attorney General represents and defends the interests of the citizens of North Dakota by executing the responsibilities charged to the North Dakota Attorney General by the North Dakota Constitution, state statutes and administrative rules, North Dakota and federal case law, and common law. The Attorney General is the chief legal counsel and advisor to state government providing legal representation to all facets of state government, including the Governor, all departments of state government, local government and all state agencies, boards, and commissions.

The Attorney General has primary authority to act on behalf of the state of North Dakota in other areas, including criminal investigations; full arrest and law enforcement authority; sex offender risk assessment and registration; Medicaid fraud control; evidence examination and testimony; consumer protection and antitrust; administration, regulation, and enforcement of charitable gaming and lottery activity; and fire inspections, investigations, and mitigation of hazardous materials incidents. Attorney General staff members provided a significant amount of training to North Dakota citizens and others, including law enforcement and the fire services.

The office consists of 13 divisions:

- Administration
- Bureau of Criminal Investigation (BCI)
- Civil Litigation and Natural Resources & Indian Affairs
- Consumer Protection and Antitrust (CPAT)
- Crime Laboratory (Crime Lab)
- Criminal and Regulatory
- Criminal Justice Information Sharing (CJIS) and Information Technology (IT)
- Finance
- Fire Marshal
- Gaming
- Lottery
- Medicaid Fraud Control Unit (MFCU)
- State and Local Government

NORTH DAKOTA
OFFICE OF ATTORNEY GENERAL
January 2021



SUMMARY OF OFFICE OF ATTORNEY GENERAL MAJOR ACCOMPLISHMENTS

BUREAU OF CRIMINAL INVESTIGATION

- Teamed with local law enforcement partners in establishing task forces which are having a significant impact on major drug trafficking organizations
- Processed approximately 51,000 requests for criminal history record information in 2020.
- Provided National Forensic Academy-trained criminal investigators to respond to crime scenes
- Teamed with federal and tribal partners in establishing the North Dakota Human Trafficking Task Force
- Supplied local law enforcement with updated automated Sex Offender Registry kiosks
- SLIC collaborated with state and private sector partners in establishing the North Dakota Cyber Security Task Force.

Cyber Crime Unit

The Cyber Crime Unit investigates crimes that are facilitated with the use of a computer or the internet. The unit frequently obtains data from internet service providers through legal processes such as search warrants and administrative subpoenas. The unit's expert level forensic examiners are trained to recover data from digital media devices. These forensic examiners then analyze and report their findings which are often used to further criminal investigations and are frequently used for evidence purposes in court.

Forensic capable labs are operational in Minot, Bismarck, and Fargo. For the years of 2019 and 2020, the Cyber Crime Unit investigated over 665 cases and forensically examined 1,317 digital media devices. Of those devices, 869 were cellular phones. The total amount of electronically stored information examined was over 115 terabytes.

24/7 Sobriety Program

The 24/7 Sobriety Program is designed to remove intoxicated drivers from the road, improve their ability to succeed in their treatment choices, and provide a safer driving environment for the traveling public. Offenders participate in twice-per-day breath

tests or electronic alcohol monitoring, seven days per week, for as long as the court order mandates. Participants are required to pay a fee for the monitoring, which in turn is used to pay for breath alcohol devices, electronic monitoring devices, and other program costs.

Here is some 24/7 Sobriety Program information:

- Total participants since the inception of the program in January 2008 (includes pilot counties): 28,930
- Total participants who graduated from the program: 19,954
- Total participants who have had a test failure (temporary status, have not failed or graduated): 3,335
- Participants currently active in the program: 1,583
- Total breath tests administered since the inception of the program: 1,671,976
- Pass rate of breath tests taken: 97.08% (1,665,551)

The program has been supported by law enforcement, the courts, and the participants, and it is proving to be a successful alternative to incarceration.

Concealed Weapon Licenses

As of December 15, 2020, 39,332 individuals held North Dakota concealed weapon licenses compared to a total of 46,970 active licenses at the end of 2017, and 29,131 active licenses at the end of 2013. The BCI issued 4,213 concealed weapon licenses in 2019 and 5,450 concealed weapon licenses in 2020. Of the total active concealed weapon licenses, about 21,478 are slated to be renewed in the 2021-23 biennium.

Criminal History Record Information Requests

BCI processed approximately 51,000 criminal history record information requests in 2020. Of those, 30,000 were requests for data from the state database and 21,000 were requests for federal record checks.

Sex Offender and Offenders Against Children Registry

Sex offenders and offenders against children are required to be registered with the agency where they reside and appear on the Office of Attorney General's website. As of December 2020, there are 1,534 registered sex offenders, 421 of which were incarcerated within North Dakota. As of December 2020, there are 120 registered offenders against children, 41 of which were incarcerated within North Dakota.

Information Processing

The Information Processing Unit provides case management support to over 40 BCI agents statewide. 1,628 case numbers were issued over the 2018-2019 2-year period.

Cases consist of many reports. In total during this same time period, the IP unit processed 5,685 individual agent reports.

ND State and Local Intelligence Center

The BCI is a member of the State and Local Intelligence Center (SLIC) whose mission it is to gather, store, analyze, and disseminate information on crimes, both real and suspected, to the law enforcement community, government officials, and private industry, concerning dangerous drugs, fraud, organized crime, terrorism, and other criminal activity for the purposes of decision making, public safety, and proactive law enforcement while ensuring the rights and privacy of citizens.

The BCI supports the SLIC by being a member of the executive board, and by providing personnel in the form of the director of the SLIC and criminal intelligence analysts as well as training and equipment for these personnel.

The SLIC has processed 1,871 requests for information in 2019. In addition, the SLIC has partnered with NDIT to create a multi-state Joint Cyber Security Operations Center.

In 2019–2020, North Dakota experienced an increase in Outlaw Motorcycle Gang activity. This was due to a rival OMG club trying to establish a presence in the state. Prior to 2019 there was only one documented OMG in the state. To compete for control of the state, BCI assesses that both OMG's will continue to increase their membership numbers in North Dakota. It is very likely there will be violent altercations between the two clubs.

Significant BCI Cases 2019-Present

Brandon Lee Bjornstad of Neche, North Dakota, was sentenced to 60 years in federal prison followed by a lifetime of supervised release for the charges of Sexual Exploitation of Minors, Extortion, Receipt and Distribution of Materials Containing Child Pornography, and Possession of Materials Containing Child Pornography. Bjornstad solicited thousands of self-produced child pornography from hundreds of children located across the United States and elsewhere. Using various aliases, Bjornstad coerced hundreds of children into producing and electronically sharing their self-produced sexually explicit images and videos. Bjornstad illegally enticed his victims with the use of multiple social media platforms such as Skype, Kik, Snapchat, and Musical.ly, among others. On hundreds of occasions, he directed the children to engage in very specific sexually explicit conduct after which he recorded the live presentations. In many cases, Bjornstad then shared this material with others, including other children, and other adult men who shared his sexual interest in children. To date, the North Dakota Bureau of Criminal Investigation has identified 90 children residing in three different countries as part of this investigation.

Dustin W. Kewley and Bryan James Hogle were sentenced to 35 and 45 years in federal prison, respectively, for the charges of Conspiracy to Transport a Minor, and Coercion and Enticement. A forensic examination of Dustin Kewley's computer and cell phone determined that there were chat conversations between Hogle and Kewley, wherein they discussed in horrific detail their plan to meet for the purpose of sexually abusing a one-year-old child. Kewley transported the one-year-old child from Fargo, North Dakota, to Moorhead, Minnesota, to meet Hogle, who traveled from Las Vegas, Nevada, the previous day. The two men met at a hotel in Moorhead where together they sexually abused the child. Kewley and Hogle subsequently took steps to conceal their crime such as deleting their communications and bathing the child.

Dustin James Gilleo was sentenced to 10 years in federal prison for the charge of Transportation of a Minor. The Beaufort County Sheriff's Office, South Carolina, reported that a missing juvenile female from Burton, South Carolina, had been located via cellular phone tracking at the Minneapolis-St. Paul (MSP) International Airport. Further investigation by the MSP Airport Security revealed the missing juvenile entered a vehicle belonging to Dustin Gilleo of Wahpeton, North Dakota. On January 4, 2020, the Wahpeton Police Department located the missing juvenile at a residence in Wahpeton and removed her from the residence, and later interviewed her. During the interview, she said she left her residence in South Carolina and met Gilleo at the MSP Airport as they had previously planned. Gilleo then drove the juvenile to his residence in Wahpeton, where Gilleo and the juvenile engaged in sexual intercourse. Gilleo admitted that the female found at his apartment was the missing juvenile from Burton, South Carolina. He acknowledged meeting the juvenile online and the two had been communicating for over five months. Gilleo admitted their communications were sexual in nature and that they had exchanged sexually explicit images of one another via text and various apps. Gilleo further admitted that he knew the girl was 16 years old at the time she traveled to North Dakota, and he admitted to having sexual intercourse with the girl at his apartment.

Williston BCI Case

On February 10, 2020, BCI was asked to investigate a report that a 21-year-old was sending inappropriate texts and pictures to his 12-year-old stepsister. The suspect was charged with promoting obscenity to minors and luring a minor by electronic means. During this investigation, it was found that the suspect was also in contact with a 14-year-old female from Missouri. An investigation was conducted and as a result, the suspect was also charged with a second luring a minor by electronic means, possession of child pornography, and promoting sexual performance by a minor.

A BCI special agent assisted the Internet Crimes Against Children (ICAC) Task Force on multiple operations and conducted six tactical polygraph examinations with the suspects. Eight previously unknown victims of child sexual abuse were identified due to the examination and subsequent interviews.

RJR Murder Case

On April 1, 2019, at approximately 7:20 am, the Mandan Police Department was called to RJR Maintenance and Management for a medical assist. Law enforcement located three additional RJR Maintenance and Management employees deceased in the building. The Mandan Police Department contacted BCI to assist with the investigation. BCI documented and processed the crime scene using a UAS (drone), Pointgun, Total Station, Panoscan, and the Scan Station. BCI agents, some trained in advanced crime scene techniques from the National Forensic Academy, processed the scene and processed a pickup that was driven from the scene by the suspect and left in a nearby business parking lot. A BCI agent trained in video collection, preservation, and enhancement collected video from the scene and other businesses throughout the Mandan area. BCI agents completed numerous interviews and a follow-up investigation which led to locating a person of interest. On April 4, 2019, the suspect was detained by members of the McLean County Sheriff's Department. After further investigation on April 4, 2019, the suspect was arrested on four counts of murder. Throughout the investigation, evidence collected by BCI has been processed by the ND State Crime Laboratory and the ATF Forensic Science Laboratory. This case is scheduled for a three-week jury trial in August 2021. In total, 20 BCI agents assisted in this investigation.

MEDICAID FRAUD CONTROL UNIT

Medicaid is funded jointly by federal and state government but administered by the state in accordance with federal requirements. Twenty-one percent (21%) of the US population is covered by Medicaid. Ten to fourteen percent (10-14%) of the North Dakota population is covered by Medicaid. Nationally, improper Medicaid payment rates in 2019 were 14.9% and 9.8% in 2018. The national rate of recovery is \$6 for every \$1 spent on the grant.

The 2019 Legislative Assembly established the Medicaid Fraud Control Unit (Unit) and placed it under the direction of the Attorney General.

- The Unit was substantially staffed in November 2019 and began establishing office procedures and investigating cases at that time.
- The State portion of the budget for the 2019-21 biennium is \$207,570 (\$103,785 per year).
- From November 1, 2019, through December 24, 2020, the Unit has opened 29 cases.
- Of those 29 cases, 2 criminal prosecutions were filed, and a 3rd case will be filed if the offer for settlement is refused. The fraudulent Medicaid billing involved in 2 of these cases totals \$125,000.

- The Unit has investigated 9 abuse/neglect cases, 7 misappropriation cases, and 14 fraud cases.
- 15 of the 29 cases were closed without need for civil or criminal action.
- 3 of the closed cases were referred to other investigative entities.
- 5 of the closed cases were satisfactorily settled, without the need for civil or criminal actions.
- Currently, the Unit is involved in 9 large-scale open investigations.
- The Unit also participates in joint investigations with our federal counterparts.
- On average, most fraud investigations that lead to a prosecution (criminal or civil) require 12-18 months to complete.
- Criminal abuse/neglect investigations typically take 6 months to complete.
- The statistical data will not reflect recoveries until some of the cases make their way through the court system.
- The Unit also provides data for national, or global, Medicaid provider fraud cases, which involve multiple states. This past year, the Unit participated in 39 global cases, some of which resulted in civil settlements. Those settlements provided \$84,000 in repayment for North Dakota Medicaid.

In December 2020, the Coronavirus Relief and Omnibus Funding Bill was enacted. The bill expanded the investigative and prosecutorial jurisdiction of MFCU's to include cases of abuse and neglect of Medicaid patients in non-institutional settings. Examples of settings that could now be allowed to be investigated are in-home, community-based services and office settings. The current trend is to assist people, including Medicaid recipients, to be able to stay and function in their homes as long as possible.

Cases Filed or Otherwise Completed

State v. Reilly – Pembina County – Reckless Endangerment (2 counts) and Theft (10 counts) – A Licensed Practical Nurse (LPN) was allegedly stealing pain medications from basic care residents. She has also been charged with replacing pain medications in the residents' bubble packs with unprescribed over the counter or prescription medications. Replacement of the opioids created a substantial risk of serious bodily injury to the residents. Jury trial is set for June 2021.

State v. Fruge – Burleigh County – Medicaid Provider Fraud and Theft – A Qualified Service Provider has been charged with failure to supply any records for the services provided. She is charged with not keeping track of services provided, when they were provided or to whom they were provided. She was required by the Medicaid Provider Agreement to maintain records of services and turn them over to the North Dakota Department of Human Services when requested. She billed North Dakota Medicaid for \$80,000 of undocumented services.

Another case has a settlement offer being considered. If the settlement offer is not accepted, it will also involve a criminal filing. A clinical social worker fraudulently

billed Medicaid for services not rendered. She obtained Medicaid patient identification numbers belonging to members she had never seen or had seen on a limited basis, many of them children, and then billed Medicaid, Blue Cross Blue Shield, and Tricare for services that were not provided. The minimum Medicaid losses are \$45,000.

Three cases involving the improper use of stimulus checks by long term care (LTC) facilities were resolved without the necessity for filing an action. Once the Unit explained the law applicable to residents receiving stimulus money, the LTC facility administrators were very willing to modify their policies and procedures to comply with the law.

Sample of Current Investigations

The Unit is investigating a psychologist who appears to be upcoding, billing for Saturdays and holidays, and failing to document the time associated with providing some other services. The total Medicaid liability is approximately \$88,000. While investigating this matter it became evident that other insurance entities may also have been defrauded in a similar matter. The Unit will provide their investigative results to the other insurance providers allowing them to initiate other recovery proceedings if they so choose. The Unit is also working with the North Dakota Insurance Department investigators regarding the loss to private insurance entities. The total loss to other insurance providers is approximately \$270,000.

CIVIL LITIGATION & NATURAL RESOURCES

Dakota Access Pipeline Protest Related Lawsuits

North Dakota v. United States Army Corp of Engineers (FTCA) (2018)

North Dakota sued the U.S. under the Federal Tort Claims Act (FTCA) in July of 2019, seeking to recover the over \$38 million in damages due the U.S. Army Corps of Engineers failure to follow its own rules for federal lands during the 2016 – 2017 protests over the construction of the Dakota Access Pipeline. The federal District Court in North Dakota denied the U.S.'s first effort to dismiss the case, holding that the Corps circumvented mandatory permit requirements when it invited and enabled the protesters to occupy federal lands. The case is now in the discovery phase.

DAPL Personal/Constitutional Injury Lawsuits

Four separate lawsuits arising out of the DAPL protests were filed in US District Court between 2018 and 2020 against various defendants, including some state defendants, for alleged constitutional or personal injuries. One of the lawsuits alleges the closure of a portion of Highway 1806 during the DAPL protests violated multiple constitutional rights of the protestors, including the First Amendment. The other three lawsuits involve personal injuries of individual protestors that occurred during the DAPL protests. The state defendants have succeeded in having the three

personal injury lawsuits dismissed. In September 2020, the district court dismissed all but a First Amendment free speech claim against the state defendants in the lawsuit involving the closure of Highway 1806. The state defendants have appealed that decision to the Eighth Circuit Court of Appeals arguing they are entitled to qualified immunity on the First Amendment claim.

Significant Accomplishments and Cases

Burgum v. Jaeger (2020)

Governor Burgum filed a petition for writ of mandamus with the North Dakota Supreme Court claiming he had the constitutional authority to fill a vacancy in the North Dakota House of Representatives caused by the death of David Andahl during the 2020 election. The Governor challenged the right of the District 8 Republican Committee to appoint someone to fill the vacancy, as outlined in an Attorney General opinion addressing the manner in which the vacancy should be filled under existing statutes.

The North Dakota Supreme Court, in a unanimous ruling, denied the petition, concluding the Governor did not have the authority to fill the vacancy because the law already provided a method for filling the vacancy.

Oil & Gas Development and Enforcement

The Division's assigned attorney presided over almost 2,700 oil & gas administrative hearings during the 2017-19 biennium through 2020 (total by calendar years for the past 4 years: 2017 – 811, 2018 – 909, 2019 – 953 and 2020 – 451). The Division assisted the Industrial Commission's Department of Mineral Resources in pursuing 14 civil administrative cases for violations of the Commission's rules, orders, and regulations for the 2017-19 biennium, and 6 civil administrative cases for violation of the Commission's rules, orders, and regulations from July 1, 2019, to date. In the 2017-19 biennium, \$2,590,034.78 was collected; and, from July 1, 2019, to date, \$1,892,058.85 has been collected. As of the end of the 2017-19 biennium, 6 cases were pending, and 5 civil administrative cases were pending at the end of 2020.

Environmental Protection

The Division assisted the Department of Environmental Quality with its regulatory work involving air pollution control, asbestos removal, water pollution control, radioactive materials management, and solid waste and hazardous waste management. During the biennium, the Division assisted the Department in pursuing more than 120 enforcement actions, collecting more than \$377,000 in penalties for violations.

Hydraulic Fracturing (Fracking) Rule Cases

In December 2017, the BLM rescinded the Obama-era 2015 Fracking Rule, returning regulatory authority over hydraulic fracturing to the states (North Dakota had

already successfully obtained a court order striking down the 2015 Fracking Rule). BLM's decision is currently being challenged in the 9th Circuit by a coalition of states led by California and several environmental groups. North Dakota is monitoring this case because if the 9th Circuit overturns BLM's decision and the 2015 Fracking Rule is reinstated, North Dakota's successful litigation against 2015 Fracking Rule would come into play again. Briefing was completed in early February 2021 and the 9th Circuit's decision is pending.

Venting and Flaring Rule Cases

In October of 2020 the federal District Court in Wyoming vacated the Obama BLM's 2016 Venting and Flaring Rule, which imposed air quality regulations on venting and flaring of natural gas from split estates common in North Dakota where state and private lands are pooled with federal mineral interests. The Court agreed with North Dakota's split estate arguments, concluding that BLM did not have the authority to impose federal requirements on communitized state and private mineral interests.

2016 and 2020 Methane Rule Cases

North Dakota has played a leading role in the consolidated litigation challenging the validity of the Obama EPA 2016 Methane Rule (regulating of methane emissions from oil and gas operations) in the D.C. Circuit Court of Appeals. When EPA issued a more reasonable methane rule in 2020, that rule was immediately challenged by a group of states led by California, as well as by several environmental groups. North Dakota is the only state to have intervened on EPA's side and in support of reasonable regulation of methane emissions from the state's important oil and gas sector.

The Clean Power Plan and Affordable Clean Energy Rule Cases

North Dakota played a leading role in persuading the U.S. Supreme Court in 2016 to prohibit implementation of Obama EPA's 2015 Clean Power Plan (CPP), which unlawfully regulated greenhouse gas emissions from large existing power plants and would have had a significant negative impact on North Dakota's power plants, electricity rates, and the lignite coal mining sector. In July of 2019 EPA replaced the CPP with the Affordable Clean Energy Rule (ACE Rule) which was promptly challenged in the DC Circuit. North Dakota intervened on behalf of EPA and filed a brief in support of the ACE Rule. The DC Circuit vacated the ACE Rule on January 19, 2021, but the opinion was ambiguous as to the status of the CPP that had been repealed by the ACE Rule. At the request of EPA, on February 22, 2021 the DC Circuit agreed to stay its mandate with respect to vacating the repeal of the CPP Rule, meaning that the CPP Rule was not revived and will not be implemented. This will allow EPA time to initiate a new rulemaking to regulate greenhouse gas emission regulations for power plants. North Dakota is continuing to monitor the status of EPA's rulemaking efforts.

Waters of the United States

North Dakota continues to play a major role in the litigation over the definition of Waters of the United States (WOTUS), a very important issue for North Dakota's farmers and ranchers. North Dakota successfully obtained a federal Court injunction preventing the 2015 WOTUS rule from taking effect, though the Court has yet to issue a final ruling in that case because in 2020 the Trump EPA replaced the 2015 WOTUS Rule, generating a new round of lawsuits. North Dakota's challenge to the 2015 WOTUS rule is stayed pending the outcome of the litigation over the 2020 rule, and the WOTUS landscape is expected to shift again with the incoming Biden administration.

Paul Sorum, et al., v. The State of North Dakota (2018)

The plaintiffs challenged the Legislature's 2017 enactment of Senate Bill No. 2134, which created a statutory process for establishing the Ordinary High Watermark for Lake Sakakawea and a certain portion of the Missouri River upstream from the Lake. The district court held that a majority of the new law was constitutional, but also held that a subdivision of the law was unconstitutional and awarded over \$700,000 in attorney's fees. The North Dakota Supreme Court subsequently upheld the constitutionality of the law and rejected the plaintiffs' attorneys fee award. The plaintiffs recently petitioned the United States Supreme Court to hear their case, but the court denied their petition.

North Dakota v. United States (Section Lines) (2012)

In 2012 the State and certain Counties brought suit in federal district court against the United States Forest Service, to quiet title to section line rights-of-way in the National Grasslands in North Dakota. The district court dismissed the State and Counties section line claims based upon the federal Quiet Title Act's statute of limitations. Both the State and the Counties appealed the district court's dismissal of the parties' section line claims to the 8th Circuit Court of Appeals. The State and Counties have filed their briefs with the Court, and are awaiting the United States' response.

Northwest Landowners Association v. State of North Dakota, et al.; Case No. 1:18-cv-00236

The Northwest Landowners Association (NWLA) brought suit against the State of North Dakota, the Industrial Commission, the Board of University and School Lands, the Governor, and the Attorney General, challenging Senate Bill 2344 (2019) (SB 2344). SB 2344 includes a variety of provisions, including a designation that carbon dioxide is an acceptable method for enhanced recovery of oil, gas, and other minerals; public interest statements related to the use of carbon dioxide; limitations on a surface landowner's remedies relative to a person conducting operations approved by the Industrial Commission under N.D.C.C. ch. 38-08; amendments to legislative findings; amendments to definitions; and a recognition that in North Dakota the mineral estate is the dominant estate. The State and the Counties have both moved for summary judgment and the case is pending before the state district court. The

court recently ruled in favor of NWLA, and concluded SB 2344 is unconstitutional in its entirety. The State is appealing the ruling to the North Dakota Supreme Court.

Missouri River/Garrison Diversion Litigation

The State of Missouri has sued the Garrison Diversion and Bureau of Reclamation over the Central Dakota Water Project, which would divert 20 cubic feet per second of water from the Missouri River to the McClusky canal. The State intervened in the litigation because Missouri's complaint seems to indicate that Missouri is less concerned about the Garrison Diversion's Central Dakota project, but rather intends to use the lawsuit as a mechanism to litigate water use out of the Missouri River generally.

Pharmaceutical Care Management Association v. Mylynn Tufte, et al. (2017)

Pharmaceutical Care Management Association (PCMA) filed a complaint in federal district court challenging the Legislature's 2017 enactment of Senate Bill No. 2301, which was one of two bills that sought to define the rights of pharmacists in relation to pharmacy benefit managers (PBMs), and to regulate certain practices by PBMs. PCMA alleged federal law preempts SB 2301. The parties filed cross motions for summary judgment, and the district court granted the State's motion in part and denied it in part. PCMA appealed the district court's decision to the Eighth Circuit Court of Appeals, which affirmed and reversed the district court's decision in part. The end result was that the State had lost its appeal. The State has further appealed the decision by petitioning the U.S. Supreme Court. The Supreme Court, after issuing an opinion on Rutledge v. PCMA (a case from Arkansas) that was favorable to North Dakota, recently vacated and remanded the judgment of the Eighth Circuit. The parties will soon start a new round of briefing.

Guardian Flight LLC v. Jon Godfread (2018)

The plaintiffs are challenging the Legislature's 2017 enactment of Senate Bill No. 2231, which provides that payment by an insurer to a provider for air ambulance services is full and final payment with no option for the provider to seek the balance from the patient. S.B. 2231 also prohibits air ambulance subscription agreements. The plaintiffs are arguing that the law is expressly preempted by federal law. The parties filed cross-motions for Judgment on the Pleadings. The US District Court found that the payment provision in S.B. 2231 is preempted by federal law, and state officials are enjoined from enforcing that part of the law. However, the US District Court found that the portion of S.B. 2231 prohibiting air ambulance subscription agreements is not preempted by federal law and is enforceable. The parties cross-appealed to the 8th Circuit Court of Appeals. Briefing on the appeals is concluded and oral arguments were heard on June 16, 2020. The 8th Circuit Court of Appeals has not yet ruled on the case.

Breanna Berndsen, et al. v. The North Dakota University System (2018)

Former members of the University of North Dakota (UND) women's hockey program filed a class action lawsuit against the University System, alleging that UND violated Title IX by eliminating its women's hockey program. The federal district court granted UND's motion to dismiss the plaintiffs' claims and the plaintiffs appealed the decision to the 8th Circuit Court of Appeals, which recently held arguments regarding the case.

Tobacco Enforcement

In 2018 the State settled a long dispute with tobacco companies concerning the 1998 Master Settlement Agreement, and allegations that the State had not diligently enforced the Agreement. The 2018 settlement resulted in the release of millions of dollars belonging to North Dakota that tobacco companies had held in an escrow account during the decades-long dispute, and the settlement of future years to 2023. In addition, North Dakota will continue to receive the annual payments it is due under the Master Settlement Agreement.

Mickelson et al v. ND DoH et al. (2020)

On March 26, 2020, Plaintiffs challenged the new administrative cottage food rules, effective January 1, 2020. The parties made cross-motions for judgment on the pleadings, regarding whether DoH had statutory authority to enact the new cottage food rules. On December 10, 2020, the state district court granted Plaintiffs' motion for judgment on the pleadings, ruling that DoH exceeded its authority in enacting the new cottage food rules, and enjoined enforcement on the rules.

Northwest Area Water Supply (NAWS) Pipeline

The court battle over the NAWS, which will bring much-needed water from the Missouri River to Minot and surrounding counties, was finally successfully concluded in this biennium.

Spoofcard v. Stenehjem (2020)

Spoofcard, LLC filed suit in US District Court alleging that North Dakota's "Caller ID Anti-Spoofing Act" was preempted by federal law and violated both the Commerce Clause and the First Amendment. In November 2020, the district court determined the Anti-Spoofing Act violated the Commerce Clause and granted judgment in favor of Spoofcard without addressing the First Amendment and preemption claims.

Election Lawsuits

Several election lawsuits were filed in 2020 relating to the COVID-19 pandemic, including Sinner v. Jaeger, wherein a sponsoring committee seeking to circulate an initiative petition for signatures brought suit in federal court against the Secretary of State, claiming the in-person signature gathering requirements were unconstitutional in light of the pandemic. The court denied the sponsoring committee's motion for preliminary injunction, finding it was unlikely to prevail on

the merits, after which the sponsoring committee voluntarily dismissed its lawsuit. In *Self Advocacy Solutions N.D. v. Jaeger*, the plaintiffs sued the Secretary of State in federal court, alleging that North Dakota's system of comparing signatures on absentee ballot applications with signatures on the voter's affidavit on ballot envelopes violates due process and the right to vote. The Court granted the plaintiffs' motion for preliminary injunction and ordered the parties to confer and agree upon procedures sufficient to safeguard voters' constitutional rights in the June 2020 primary election. The parties stipulated to a new procedure of notice and opportunity to cure. The new procedure was used successfully during the June 9, 2020 primary election, after which the parties stipulated to make the injunction permanent, to be in effect as long as North Dakota continues to rely on signature matching for absentee ballot verification, unless legislation is enacted to provide a different procedure.

In addition to the COVID-19 related election cases, two federal voter ID cases were resolved in 2020. In *Spirit Lake v. Jaeger* and *Brakebill v. Jaeger*, the plaintiffs brought suit against the Secretary of State, alleging North Dakota's voter ID laws and the SOS's enforcement of the laws violated the constitutional rights of Native American voters. Both cases were settled in April 2020 with a consent decree that did not change any of North Dakota's voter ID laws, but contained provisions by which the SOS agreed to assist the Plaintiffs in complying with those laws. As part of the settlement, the Plaintiffs waived their right to recovery of attorneys' fees, with the exception of a portion of the fees in *Brakebill v. Jaeger*, which is currently the subject of an appeal to the Eighth Circuit Court of Appeals.

Dakota Access, Limited Liability Corporation (LLC) (2018)

On July 3, 2018, the Division filed a Complaint in state court to compel Dakota Access, LLC to divest ranch land. On April 12, 2019, Dakota Access, LLC divested subject lands, by warranty deed, to 1806 Ranch LLC, a family farm/ranch LLC. On April 30, 2019, the ND District Court dismissed the case with prejudice.

Farm Equipment Dealership Network Law (SB 2289) (2017)

The Division defended 2017 Senate Bill No. 2289, regulating farm equipment dealer and farm equipment manufacturer contractual relationships. On July 24, 2017, several major farm equipment manufacturers challenged the law under numerous constitutional and federal preemption legal theories. On October 19, 2020, the U.S. District Court ruled that all of SB 2289 shall be applied prospectively from its effective date of August 1, 2017, the court nullified the arbitration provision. Nothing in SB 2289 may be applied retroactively.

Farm Bureau, et al.: Corporate Farming Challenge (2016)

The Division defended the state's corporate farming law in federal court from a constitutional challenge. In September 2018, the US. District Court found that the statute violated the dormant Commerce Clause. In August of 2019, the US District Court awarded Plaintiffs \$175K in attorneys' fees. This award order has been

submitted to OMB, for subsequent consideration by the upcoming Legislative session to make an appropriation to pay it.

Fleck v. Wetch (2015)

Arnold Fleck filed suit in US District Court alleging that mandatory membership in North Dakota's integrated bar association violated his First Amendment rights to free speech and association. The suit made claims against both the State Bar Association and the State Board of Law Examiners. After the defendants successfully had the case dismissed in both the district court and the Eighth Circuit Court of Appeals, the United States Supreme Court reversed and remanded the case to the Eighth Circuit for reconsideration in light of a recent Supreme Court decision that was decided in the interim.

In August 2019, the Eighth Circuit again held in favor of the defendants and concluded that Fleck failed to show North Dakota's integrated bar violated the First Amendment. In April 2020, the United States Supreme Court denied Fleck's request to review the Eighth Circuit's decision.

Sexually Dangerous Individuals (2013)

The State recently settled a challenge to its civil commitment laws, N.D.C.C. ch. 25-03.3, for individuals who have been assessed as "sexually dangerous" and involuntarily committed to the State Hospital for treatment. The case dates back to 2013. The plaintiffs argued that the Department of Human Services/the North Dakota State Hospital violated certain alleged constitutional rights by, among other things, the classification methods of sexually dangerous individuals, the methods and timing of certain treatments and privileges, as well as alleged violations of religious freedoms. The plaintiffs also argued that the Department of Corrections and Rehabilitation violated the constitutional rights of individuals by failing to provide certain notifications to the individuals while incarcerated. The State agreed, through the settlement agreement, to certain changes to its policies and procedures, and payment of attorney fees to court appointed counsel.

CRIMINAL & REGULATORY DIVISION

Attorneys in the Criminal & Regulatory Division prosecute criminal cases statewide, at the request of the county state's attorneys. Since July 1, 2019, two attorneys assumed prosecution, from the Williams County State's Attorney, of a seventeen-year-old defendant who shot two nineteen-year-olds – one of whom died – during a drug deal involving LSD. The now eighteen-year-old defendant was convicted and is serving ten years at the North Dakota Department of Corrections.

The division worked on many federal habeas corpus petitions during the biennium. There were twelve matters requiring responses at the U.S. District Court

level. Seven were dismissed by that court. The rest are pending. Eight cases were worked on at the 8th Circuit Court of Appeals, seven have been dismissed and one remains pending. One case was taken to the United States Supreme Court and the Writ of Certiorari was denied by that court. Thanks to the good work of state's attorneys across the state, none of the cases resulted in reversals of convictions or new trials. The petitioners included four cases involving deaths, five involving sexual offenses, and one kidnapping.

Although the Bureau of Criminal Investigation handles sex offender registration, attorneys from the division help lead the monthly meeting of the Sex Offender Risk Assessment Committee. During this biennium, the SORAC assessed 480 offenders residing or working in the State of North Dakota. In addition, an attorney and the offender registration supervisor visited four cities in the state to provide sex offender registration training to staff at local law enforcement agencies.

Division attorneys serve as instructors at the Law Enforcement Training Academy (LETA) in Bismarck. The LETA graduates three classes of basic law enforcement candidates each year. During this biennium, attorneys taught Criminal Law, North Dakota Criminal Procedure, North Dakota Rules of Evidence, Legal Aspects of Use of Force, and Criminal Investigations of Sex Crimes. Attorneys also instructed on topics such as Search & Seizure, Miranda, and Courtroom Testimony to law enforcement students who attended the BCI Criminal Investigations School, which was held twice during the biennium.

Following civil asset forfeiture reform in early 2019, attorneys have continued to advise law enforcement and local prosecutors on compliance with the new regulations. This has included revising law enforcement MOUs, compilation of civil asset forfeiture reports, and proposing potential legislative fixes to streamline reporting to lessen the burden on local prosecutor offices.

STATE AND LOCAL GOVERNMENT DIVISION

Since July 1, 2019, the office has issued a total of 36 opinions, of which 23 were open records opinions, and 13 were opinions on questions of law related to matters involving state statutes, the state Constitution, and issues having statewide significance, including the October 13, 2020, opinion addressing the effect of votes cast for a deceased candidate for political office, an opinion that was upheld by the North Dakota Supreme Court. In addition, division attorneys reviewed 80 administrative rules submitted for review by other state entities.

The attorneys in the division provide general counsel to 70 state agencies, regulatory boards, and state created boards and commissions. General counsel work includes contract review, policy review, legal advice regarding contract implementation, employment issues, and compliance with state and federal rules and laws.

During the pandemic, the work of general counsel has proven crucial. The attorneys have helped clients navigate a new landscape of COVID employment policies, executive orders, acquisition and distribution of PPE, and contract disruptions. One assistant attorney general represents the Department of Health which is at the epicenter of the state's response to the pandemic. Many clients, such as the Department of Commerce, Job Service, the Bank of North Dakota, and the Department of Public Instruction needed legal advice to navigate the federal CARES Act. State regulatory boards such as the Board of Medical Imaging and Radiation Therapy, Board of Respiratory Care, and the Education Standards and Practices Board, among others, were inundated with demands to adapt to a workforce stressed by COVID. Almost every client has had to address issues brought on by this pandemic.

CRIME LABORATORY DIVISION

The office received 10,802 cases (excluding breath alcohol tests) from January 2019 to December 2020.

The current turnaround times are as follows:

- Approximately 67 days for drug cases
- Approximately 8 days for fire debris cases
- Approximately 109 days for DNA cases – currently 481 DNA analysis cases are awaiting completion
- Approximately 30 days for toxicology (blood alcohol cases)
- Firearms cases are outsourced due to staffing issues
- Approximately 60 days for latent print cases (confirmations are outsourced due to staffing issues – there is only one qualified latent print examiner at the Crime Lab)

Combined DNA Index System (CODIS)

The NDOAG-CLD DNA Unit processed a total of 4,993 convicted offender and arrestee samples in 2019 and 2020. There are approximately 50,331 DNA profiles in North Dakota's State DNA Index System database (SDIS). Since 2003, the Crime Laboratory Division has averaged 574 convicted offender samples per year. Since 2009, the Crime Laboratory Division has averaged 2,606 arrestee samples per year.

North Dakota CODIS Database

| | 12/2000-12/2018 | 01/2019-12/2020 |
|---------------------------------|-----------------|-----------------|
| Convicted Offender DNA Profiles | 12,773 | 513 |
| Arrestee DNA Profiles | 26,861 | 4,480 |
| NDIS Forensic DNA Profiles* | 1,612 | 416 |
| SDIS Forensic DNA Profiles ** | 242 | 33 |

North Dakota CODIS Hits

| | 12/2000-12/2018 | 01/2019-12/2020 |
|--|-----------------|-----------------|
| Investigations Aided *** | 764 | 254 |
| State Forensic Hits (crime scene to crime scene) | 99 | 52 |
| State Arrestee Hits | 343 | 167 |
| State Convicted Offender Hits | 195 | 33 |
| National Forensic Hits | 36 | 30 |
| National Arrestee Hits | 135 | 51 |
| National Convicted Offender Hits | 172 | 42 |

* State forensic unknown, partial and mixture DNA profiles that qualify for NDIS and are therefore compared against the national database.

**State forensic unknown, partial and mixture DNA profiles that do not qualify for NDIS and are therefore compared against only the North Dakota database

*** Investigations aided are the number of cases where CODIS has added value to the investigative process.

The National DNA Index System (NDIS) has existed since 1998 and contains DNA profiles contributed by all 50 states, the District of Columbia, the federal government, the U.S. Army Criminal Investigation Laboratory, Puerto Rico, and local participating forensic laboratories.

NDIS (National DNA Index System)

| | |
|--|------------|
| Convicted Offender DNA Profiles | 13,444,810 |
| Arrestee DNA Profiles | 3,323,611 |
| Forensic DNA Profiles (Unknown, Partial and Mixture) | 894,747 |
| TOTAL | 17,663,168 |

NDIS (National DNA Index System)

| | |
|--|---------|
| Investigations aided | 42,808 |
| Forensic hits (crime scene to crime scene) | 67,462 |
| Intrastate hits (crime scene to convicted offender within a state) | 323,210 |
| Interstate hits (crime scene in one state to convicted offender in another state where CODIS aided an investigation) | 49,674 |

INFORMATION TECHNOLOGY/CRIMINAL JUSTICE INFORMATION SHARING

Throughout the 2019-21 biennium, the IT/CJIS Division has completed a variety of IT projects. A majority of the projects contribute to increasing public and law enforcement safety. Automating the sending and receiving of criminal history, disposition, and case filing data across various platforms increases the timeliness and accuracy of criminal history records and information that law enforcement relies on to safely perform their job duties.

BCI and IT/CJIS leveraged grant funds to automate the process of transmitting disposition data from the courts and state's attorneys to the state criminal history system. The data includes information on all persons prohibited from possessing firearms for mental health reasons from the courts, felony convictions, convictions for misdemeanors involving domestic violence and stalking, and drug convictions. This information is then reported to the FBI, resulting in more complete and accurate criminal history information.

IT/CJIS also completed a re-write of the North Dakota criminal history system. The previous system was designed 20 years ago. The new criminal history includes accepting the incoming disposition workflow that allows BCI staff to review and import received dispositions much more efficiently.

Another project IT/CJIS completed was the development of an "E-charging" system which allows paperless submission of case charging information from the IT/CJIS state's attorney's records management system (STARS) to the court's case management system, Odyssey. This system allows for initial and supplemental electronic filing of court cases from a state's attorney's office directly to Odyssey. Agencies utilizing these programs can now paperlessly file a case from the point of arrest to prosecution, disposition, and reporting back to criminal history.

In addition to the criminal justice programs that IT/CJIS develops and maintains, we completed phase one of the gaming core re-write project. Phase one provides a new online application that charitable gaming organizations (CGO) can use to fill out their tax forms and pay online. The system also includes extensive tax information checking to streamline the collection of tax information. Before the system, CGOs would submit hundreds of pages of tax information by mail. The next phases for the project include an online application for distributors to buy gaming stamps and report sales, as well as upgrades to the core gaming system to a new platform to allow integration with the new online systems.

IT/CJIS has various ongoing and upcoming projects that will continue to improve and streamline workflows and business processes for criminal justice, the general public, and the Office of Attorney General. IT/CJIS is developing a warrant system that integrates with the Odyssey system. This system will receive warrant information electronically. Law enforcement will be able to add additional details to active warrants, validate warrants, and send updates to the FBI. This system will notify law enforcement and the courts when updates to warrants are completed.

The IT/CJIS staff supports and maintains over 45 software programs for the Office of Attorney General, criminal justice agencies, victims of crime, and the general public. Staff also provide desktop support services to all employees of the Office of Attorney General.

Marsy's Law Implementation

Another initiative that IT/CJIS completed this biennium was the Marsy's Law Initiative projects. During the 2017-19 biennium, IT/CJIS identified notification gaps between Marsy's Law requirements and what the North Dakota Statewide Automated Victim Information and Notification (ND SAVIN) system provided. In the 2019-21 biennium, IT/CJIS finalized all projects relating to victim notifications required by Marsy's Law. The projects included adding commitment, juvenile court, sentencing, and open record request notifications. IT/CJIS also developed a statewide repository where victims can assert their rights, and criminal justice personnel can search and track victim assertions statewide.

CONSUMER PROTECTION AND ANTITRUST DIVISION

CPAT opened 646 consumer complaints and investigations and closed 639 files in 2020. The division recovered or collected \$647,299 in consumer restitution and \$1,405,310 in attorneys' fees, investigation costs, and civil penalties relating to litigation completed. The division took legal action against 73 companies or individuals. The division also obtained unpaid legal judgments in the amount of \$414,740.

Most notable for the 2019-21 biennium are the division's: 1) investigation and legal actions relating to opioids manufacturers and distributors; 2) investigations and legal actions relating to anticompetitive conduct by the "Big Tech" firms; 3) participation in multistate Equifax data breach investigation and legal action involving compromised personal or financial information affecting over 250,000 North Dakota consumers; and 4) processing of 618 ID theft complaints between January and December, 2020 related to the Job Service North Dakota false claims for unemployment insurance.

The division has identified the top ten consumer complaints through December 2020:

1. Identity theft
2. Imposter scams
3. Telemarketing/Do Not Call
4. Contractor/Home improvement
5. Automobile
6. Mail order
7. Entertainment
8. Services
9. Retail
10. Debt adjustment/Settlement – credit counseling

GAMING DIVISION

The legalization and implementation of electronic pull tab devices during the 2019 fiscal year significantly increased the gaming wagers for the 2017-19 biennium. Final numbers for the 2017-19 biennium include wagers of \$852.6 million raising over \$51.6 million for charitable uses (such as student scholarships, community crime prevention projects, financial and other assistance to injured and disabled veterans) and generating over \$10.8 million for the general fund. This compares to \$544.5 million in wagers, \$43.8 million in charitable uses, and \$6.5 million for the state's general fund during the 2015-17 biennium.

The number of e-tab devices has grown significantly. As of December 31, 2020, there were 3,221 devices conducted by 220 organizations in 828 sites. This compares to 1,814 devices conducted by 178 organizations at 488 sites at the end of the 2017-19 biennium.

Despite restrictions in hours of operation and game types due to COVID-19, there has been a dramatic increase in the estimated amounts for fiscal year 2020 including gaming wagers of \$882.6 million, charitable uses of \$38.1 million and general fund deposits of \$13 million.

Due to this increase in gaming activity there has also been an intense increase in workload for the Gaming Division. To help organizations with reporting responsibilities, the Attorney General requested funding during the 2019 legislative session for a new gaming system to allow organizations to file and pay their gaming taxes online. This system is in phase 2 of completion and with additional funding the division will complete phase 4, the final phase, by 2022. This system greatly reduces the time and paperwork for organizations while creating an easy and convenient way to file and pay gaming tax. Though this system will immediately help licensed organizations it will not reduce the extra workload for the Gaming Division. The

division is struggling to effectively regulate the rapidly expanding gaming industry and keep pace with continuously changing technical standards.

FIRE MARSHAL DIVISION

The Fire Marshal's Division accomplishes fire prevention goals through fire investigation, fire inspection and code enforcement, plan review, data collection, fire safer cigarettes, and public education programs.

Fire Investigations

Fire investigations are conducted to assist local fire departments and law enforcement agencies with origin and cause investigations and reports. Staff respond all days of the week and at any hour of the day to accomplish this task. In 2019, fire investigation activities included 121 total investigations, of which 96 were closed (22 accidental, 1 natural, 12 incendiary, and 61 undetermined). There are currently 25 open cases.

Arson Case Summaries

State of North Dakota vs. Jerry Ray Gerard

On June 1, 2019, the State Fire Marshal's Office was notified of a vehicle fire. In working with local law enforcement, the State Fire Marshal's Office was able to determine that the fire was intentionally set to cause harm to the property over a domestic dispute. Ignitable liquids were recovered at the scene by the State Fire Marshal's Office and were identified as gasoline by the State Crime Lab. Video was recovered at the scene by local law enforcement showing an individual near the vehicle when the fire ignited. Jerry Ray Gerard pled guilty to charges of endangering by fire and criminal mischief.

State of North Dakota vs. Edward Gonzalez and Another Individual

On August 14, 2020, the State Fire Marshal's Office was requested to assist with the fire investigation of a commercial bar and restaurant. During the investigation gas cans strewn throughout the building were recovered, security cameras were found dismantled, the property was for sale, insurance coverage was identified to be higher than the listed sale price, and other indications that helped determine that the fire was intentionally set. The State Fire Marshal's Office worked with local law enforcement and the State Insurance Fraud Division to identify other indicators of insurance fraud and evidence of the fire being arson. Edward Gonzalez has pled guilty to conspiracy to commit/endangering by fire. Another Individual has been charged with Conspiracy to commit arson and endangering by fire or explosion.

Residential Arson Case

On January 2, 2020, the State Fire Marshal's Office was requested to assist with the fire investigation of a residential structure fire with a body located inside. During the investigation two separate fires were identified: a basement fire located at a furnace, and a bedroom fire where the body was found. Ignitable liquids were identified at both fire origins, and the cause of death was identified to not have been caused by the fire. Through collaboration with local law enforcement, the Bureau of Criminal Investigation, the Bureau of Alcohol, Tobacco and Firearms, the State Crime Lab and the State Forensic Examiner, the State Fire Marshal's Office was able to determine the fire was intentionally set to conceal other crimes. One individual has been charged with arson and conspiracy to commit arson. Another individual has been charged with conspiracy to commit arson.

Fire Inspection and Code Enforcement

The fire inspection program is conducted through the State Fire Marshal's rules for prevention of fires, inspection of facilities as outlined in the North Dakota Century Code, and assisting other agencies/local fire departments with code enforcement as requested.

Effective July 1, 2020, the State Fire Marshal's Office adopted the 2018 Edition of the International Fire Code as our state rules for fire prevention. This was done through the administrative rule process and brought the state closer in-line with local government fire code adoptions resulting in a more level regulatory environment across the state.

In 2020 (the most recent year full statistics were available at the time of this report), the State Fire Marshal's Office completed:

- Total Fire Inspections - 364
- Schools – 86
- State Buildings – 236
- Other (childcare, assembly/liquor license, requested assistance by local fire department) – 42

The division is in the process of researching software for the fire inspections program with the goal of being software based by January 1, 2022. If this transition is accomplished, it will make inspections, reporting, data collection, and data analysis much more efficient.

Fire Protection Systems Plan

The plan review program is designed to help meet Century Code requirements and to ensure that fire protection systems, above-ground fuel storage tanks, and liquid petroleum gas tanks are designed and installed according to code. This program has

been updated resulting in a higher workload, better quality review, and partnership with local businesses and contractors to resolve fire code issues prior to installation. Over the past 4 years, it is clear to see the increase in workload that this program has resulted in.

- Plans received/reviewed in 2017 – 21
- Plans received/reviewed in 2018 – 23
- Plans received/reviewed in 2019 – 141
- Plans received/reviewed in 2020 – 121

The division is in the process of researching software solutions to increase the efficiency of assignments, tracking and data analysis for the plan review program. The goal for this software solution is to be online July 1, 2021.

Public Education

The State Fire Marshal is charged with fire safety public education initiatives. Currently the State Fire Marshal's Office provides public education through the childcare fire safety program, monthly fire safety messages to fire chiefs, and through assistance with fire prevention training and certificate programs. Public Education initiatives that are not available due to current workload include smoke alarm installation campaigns, youth fire-setter prevention, new construction requirements, and communication.

Fire Data Collection

The National Fire Incident Reporting System (NFIRS) program requires the State Fire Marshal to be the State Program Manager for all reporting of fires into both the state and national databases. This is accomplished through the use of the NFIRS system and a fire incident reporting software state contract. The state contract provides a free fire incident reporting software (Emergency Reporting) to all fire departments in the state. The state contract with Emergency Reporting has been paid for by the Department of Forestry through grants over the last four years. The state contract is necessary to increase participation of fire reporting in North Dakota and important for the State Fire Marshal and Department of Forestry to fund.

- Fires reported in 2019 (most recent year of complete data) – 2,257
- Fires resulting in fatality in 2019 – 8
- Dollar loss attributed to fire in 2019 - \$25,461,162
- Percentage of fire departments reporting fires – 56% (205/366)

Fire Safer Cigarettes

The fire safer cigarettes program was established in 2010 and requires cigarette manufacturers to comply in order to sell their product in North Dakota. The

requirements include but are not limited to the ability to ignite material, self-extinguishment, and markings on packaging for identification purposes. Every year division staff inspect the cigarettes to ensure that what has been submitted to the office matches what is being sold in the state.

- Cigarettes certified since the program's inception (2010) – 1,482
- Cigarettes currently certified – 1,044
- Cigarettes types certified in 2019-20 – 932

DOT Emergency Responder Guidebooks (ERG's)

The division partners with the US Department of Transportation to assist with distribution of Emergency Response Guidebooks (ERG) to first responders in the state. The ERG provides first responders chemical information to aid in decision-making in the first thirty minutes of a hazardous materials incident. Through December 2020, the division received 5,124 ERG's and distributed 2,713. There were 1,792 hazardous materials incidents in North Dakota in 2019.

LOTTERY DIVISION

The North Dakota Lottery conducts 5 games: Powerball, Lucky for Life, Mega Millions, Lotto America, and 2by2. The Lottery Division transferred \$15.9 million to the state general fund, \$845,000 to the multijurisdictional drug task force grant fund, and \$640,000 to the compulsive gambling prevention and treatment fund for the 2017-19 biennium. For fiscal year 2020, the Lottery transferred \$4.1 million to the state general fund, \$800,000 to the multijurisdictional drug task force grant fund, and \$320,000 to the compulsive gambling prevention and treatment fund.

CURRENT AND FUTURE CRITICAL ISSUES

Fentanyl, Heroin, and Other Illicit Drugs

In the last two years, opiate usage has continued to increase. Pills such as Oxycodone, heroin, and heroin cut with Fentanyl encompass the opiates in question. A majority of these products being seized can be positively linked to Detroit, Michigan, as the source area.

Naloxone (also known as Narcan) temporarily counteracts the effects of opiate overdoses and is being increasingly used to counteract the increasing number of overdoses in the state.

The following examples reflect the impact of opioid use and overdoses on local communities:

- Minot Community Ambulance has documented 132 opiate related overdoses for 2020. Of those 132 overdoses, 15 resulted in death. Further, they have utilized 90 units of Narcan.
- Narcan was administered in Williams County (reported by EMS) from July 2019 through December 2020 to 60 individuals.
- In the Grand Forks area most of the heroin being sold is actually Fentanyl. The Grand Forks Narcotics Task Force has seen an increase in overdoses with three of those being fatal.
- In a 7-day period in early December 2020, the Cass County Drug Task Force (CCDTF) and Fargo Narcotics Unit seized 9 pounds of methamphetamine, 11 ounces of heroin, 194 M30 (Fentanyl) pills, over \$120,000 in U.S. currency, and 8 firearms (illegally possessed). In August 2020, the CCDTF, in collaboration with the Fargo Narcotic Unit, Grand Forks Task Force, Ward County Task Force, and Metro Area Narcotic Task Force dismantled a narcotic ring of individuals responsible for multiple overdoses and deaths. As a result, approximately 1,400 M30 (Fentanyl) pills, 2 ounces of heroin, methamphetamine, a Glock 9 mm pistol, and \$52,785 were seized.
- The Bismarck/Mandan Metro Area Task Force (MANTF) seized 10,997 Oxycodone pills during 2019 and 2020, a 142% increase from the previous two years. In addition, over four pounds of heroin has been seized, which is an increase of 193 percent over the previous two years.
- In 2020, the Southwest Narcotics Task Force seized 426 units of Fentanyl or 4,260 individual dosage units. Each dosage unit has the potential to be a fatal

dose of the drug. The SWNTF also saw 49.2g or 492 dosage units of heroin in 2020.

Criminal Investigators Salary Issue

The office has historically attempted to recruit and hire experienced investigators from local agencies or other state agencies to fill criminal investigator positions. The office's hiring requirements include five years of law enforcement experience, a bachelor's degree, and a license as a peace officer. In order to acquire and retain investigators with the above qualifications, the office must offer higher salaries.

It has been difficult to hire these individuals in the last few years due largely to the office's limited salary levels, including the starting criminal investigator salary. Because of the substantial crime increase throughout North Dakota, calls for assistance, and population growth, the office concentrates on retaining experienced and trained investigators. The office needs these experienced investigators to combat the organized and dangerous criminals in North Dakota. BCI criminal investigations have become much more sophisticated, detailed, and time consuming than in the past. For all these reasons the office needs to continue to hire and retain experienced investigators to serve the public and keep the public safe.

Criminal Investigator Work Demands

The fluctuation in the state's population due to the energy industry and good business climate continues to be very taxing on Bureau of Criminal Investigation (BCI) criminal investigator's time, resources, and well-being. Criminal investigators are investigating crimes that have not traditionally occurred in this state, including gang activity, murder for hire, and organized crime including organized drug trafficking and human trafficking crimes. This new, very mobile workforce is responsible for not only trafficking drugs from their home state but also introducing new drug production methods. Although the mobile workforce related to the energy industry has decreased, criminals have stayed and are responsible for trafficking drugs from their home state. Most North Dakota counties' population remained and did not experience a growth reduction.

BCI continues to see a significant increase in requests for officer involved shooting (OIS) investigations by local law enforcement agencies. Use of deadly force investigations are extensive investigations that are manpower intensive and time consuming as well they should be. Once BCI receives a request for an OIS investigation, the case takes priority and other investigations often must be suspended until the conclusion of the OIS investigation.

BCI has seen a steady increase for assistance to local law enforcement agencies for investigations pertaining to child sexual abuse. Child sexual abuse investigations are

on the rise across the state and the majority of local law enforcement agencies request BCI assistance in some facet of the investigation. Child sexual abuse investigations are difficult cases to work because of family dynamics as well as the age and maturity of the victims.

Local law enforcement agencies are increasingly requesting BCI's assistance with financial crime and fraud related investigations. Financial crimes investigations are manpower and documentation intensive. There seems to be an increase in public entity financial crimes investigations that are high profile in the local communities.

BCI has not experienced any type of workload slowdown in any part of the state post oil boom nor during the COVID pandemic. Counterfeit Oxycodone pills made from Fentanyl have resulted in numerous overdoses and overdose death investigations for office criminal investigators and is at an all-time high. Marijuana, prescription drug abuse, and methamphetamine (meth) are still prevalent. The 10 drug task forces around the state continue to be busy. BCI is part of each of these task forces and has a criminal investigator assigned as a supervisor to all but one of the task forces. The office continues to deal with organized drug trafficking organizations in all parts of the state.

Aside from continued drug enforcement, criminal investigators have been continually busy with general investigations including homicides, multi-county burglaries, officer involved shootings, and have seen an increase in agency internal investigations and other numerous regular cases. The office has trained and equipped a group of criminal investigators to respond to and process crime scenes. The training consists of 10 weeks at the National Forensic Academy in Tennessee and the office now has 3 crime scene units to bring specialized equipment and staff wherever needed. These crime scene units now respond to crime scenes in departments of every size including Fargo, Grand Forks, Minot, Mandan, Bismarck, Williston, and throughout the state. These crime scene trucks and teams are located in Williston, Bismarck, and Grand Forks.

The BCI Cyber Crime Unit, which also oversees the Internet Crimes Against Children (ICAC) Task Force and Human Trafficking Task Force, continues to be a critical part of criminal investigations throughout the state. The six full-time investigators not only assist with child exploitation cases, but also many other types of crimes that involve digital media devices and/or investigations that require a high level of technological skills. In addition, in 2019 and 2020, over 930 reports of child sexual exploitation were received by the BCI Cyber Crime Unit from the National Center for Missing and Exploited Children. This high demand of child exploitation reports has led to local affiliates being over burdened with investigations, to the point that BCI Agents from outside of the Cyber Crime Unit have been assigned to assist with the investigations.

Unmanned Aircraft Systems

The use of UAS or drones has been growing quite a bit in recent years. The entry level price tag for drones is relatively inexpensive and many city and county agencies are finding ways to fund the drone operations themselves. However, the drones have limited capability without post-processing software as well as the local agencies are unable to purchase the more expensive DJI Matrice drone. BCI's UAS team has conducted many drone operations from searching for missing persons, assisting other agencies with foot pursuits, collecting point data for digital reconstruction, and providing visual surveillance of suspects in cooperation with regional SWAT teams.

Information Technology Division Infrastructure and Program Needs

The office's BCI and Crime Lab operations rely heavily on the expertise and skills of the office's Information Technology (IT) Division to develop new programs, and maintain and support new and existing projects. Between 80-90% of all IT services used in this office are for the BCI and Crime Lab.

It is essential that the IT Division receive the funding, staff, and other resources needed to ensure that critical internal and external existing programs function efficiently, that project funding deadlines can be met, and delays in development are kept at a minimum.

STATUS OF 2019-21 BIENNIUM ONE-TIME APPROPRIATIONS

Capital Assets

These funds have been allocated and will be spent.

Undercover Vehicles

These funds have been allocated and will be spent.

DOS-Based Deposit System Rewrite Carryover

Carryover authority of \$43,179 has been allocated and will be spent this biennium.

Criminal History Improvement Project

These funds have been allocated and have been spent. The office has requested an additional \$400,000 to continue the enhancement of the system in the 2021-23 biennium.

Voter ID Attorney

It is estimated that approximately \$260,319 will be transferred from the litigation pool to the Office of Attorney General to fund the one-time voter ID attorney. This position has been removed for the 2021-23 biennium.

Automated Fingerprint Identification System

This project is in development and includes an update from a fingerprint identification system to a biometric identification system. \$158,000 from federal funds for this project was received later than anticipated so federal funding has been requested to continue the project into the 2021-23 biennium. It is anticipated the \$158,000 special fund appropriation will be spent during the 2019-21 biennium.

Charitable Gaming Technology System

It is anticipated the \$400,000 appropriation will be spent during the 2019-21 biennium; however, if unforeseen challenges arise, the office may need to request carryover for any unspent appropriation. Funding of \$475,000 has been requested to finish the project in the 2021-23 biennium.

Concealed Weapon Rewrite Carryover

\$95,000 of the \$155,711 carryover has been allocated for the 2019-23 biennium. The remaining funding will be requested as carryover to continue the project in the 2021-23 biennium.

Statewide Automated Victim Identification Notification Program Carryover

Approximately \$400,000 of the \$540,000 carryover has been expended to complete the SAVIN program. The remaining \$140,000 will be requested as carryover to the 2021-23 biennium for replacement of the legal case management system.

OFFICE OF ATTORNEY GENERAL BUDGET ISSUES AND REQUESTS

Office/State Impacts Due to 2021-23 Biennium 15% General Fund Reduction Required

The vast majority of the office's staff (81%) provides legal and law enforcement services to state and local entities. General fund reductions at this level significantly affect the office's ability to assist with local law enforcement cases, provide training and hands-on legal and law enforcement support, purchase needed supplies and equipment, travel to other locations, and assist law enforcement throughout the state.

Governor Burgum required state agencies to submit budgets reflecting 15% general fund reductions (85% budgets). For this office it translated into a \$6.74 million general fund reduction.

The salaries line was reduced by over \$3.5 million which would have resulted in the loss of several FTE positions including BCI agents, attorneys, gaming auditors, forensic scientists, and IT staff. The Executive Recommendation restored all but \$246,000 of the salary reduction. The office did not request funding to be restored for some temporary salaries.

General fund operating expenses were reduced by over \$1.5 million. The Executive Recommendation did not restore any of the operating expenses. This will result in a loss of funding for criminal investigator case travel and equipment; Fire Marshal travel, equipment and supplies; IT maintenance, contractual services, software and supplies; building maintenance supplies; necessary crime scene supplies; Crime Lab consumables used to test local law enforcement submitted evidence; Crime Lab service contracts on critical, specialized equipment; office equipment; professional supplies; and printing. **The House did not restore this funding.**

The law enforcement line was reduced by \$343,738. The Executive Recommendation did not restore this funding. This will result in the loss of one BCI criminal investigator and one administrative assistant in the Williston area and necessary operating expenses for the Crime Lab. **The House did not restore this funding.**

The Criminal Justice Information Sharing line was reduced by \$454,172 including \$182,283 for salaries and \$271,889 for operating expenses. The Executive Recommendation restored the salary funding but did not restore the operating funding. This will result in portals and interfaces not being updated and projects being delayed or not completed. **The House did not restore the operating funding of \$271,889.**

Human trafficking grants were reduced by \$400,000 and forensic nurse examiner grants were reduced by \$37,500. The Executive Recommendation did not restore either of these grant reductions. **The House restored \$100,000 of human trafficking grants and fully restored the forensic nurse examiner grants.**

Litigation fees were reduced by \$22,500 and arrest/return of fugitives was reduced by \$1,500. The Executive Recommendation did not restore either of these reductions. **The House did not restore this funding.**

The intellectual property (IP) attorney line item totaling \$447,791 was removed and an optional package was added to request the funding be restored to the salaries and operating lines. The Executive Recommendation did not restore the IP attorney. **The House did not restore the IP Attorney position.**

Office of Attorney General
Reductions in the Executive Recommendation
2021 House Bill 1003

The Executive Recommendation included the following general fund changes:

1. Funding source changes were made from the general fund to other funds for the following:
 - a. Criminal Regulatory salary expenses in the law enforcement line (\$134,343)
 - b. State and Local Government operating expenses (\$60,225)
2. Removes an assistant attorney general.
3. Removes funding for one BCI agent and one administrative assistant
4. Significantly reduces BCI operating expenses.
5. Significantly reduces Crime Lab operating expenses.
6. Significantly reduces Fire Marshal operating expenses.
7. Significantly reduces IT and CJIS operating expenses.

PROPOSED CHANGES TO 2021 HOUSE BILL 1003

The office's optional adjustments requested in the submitted budget and as approved in the Executive Recommendation are shown below. The House included these requests.

| Description | Priority | General Fund | Federal Fund | Other Funds |
|--|----------|--------------|--------------|-------------|
| P1 maintenance and license | 3 | 217,662 | | |
| Tech fee increase | 3 | 13,680 | | |
| Office 365 increase | 3 | 57,278 | | |
| Gaming regulation FTE (4) | 4 | | | \$814,863 |
| Gaming regulation operating | 4 | | | 144,836 |
| CJIS portal, broker, common statutes table | 5 | 165,000 | | |
| Crime Lab equipment | 6 | | \$1,111,706 | |
| Peak Performance contract | 7 | 34,342 | | |
| SyTech trap and trace | 7 | 80,000 | | 80,000 |
| ABIS | 7 | | 300,000 | |
| Criminal History project | 8 | | | 400,000 |
| Gaming Project | 8 | | | 475,000 |
| Total | | \$567,962 | \$1,411,706 | \$1,914,699 |

The office's optional adjustments requested in the submitted budget and not included in the Executive Recommendation were included by the House as shown below.

| Description | Priority | General Fund | Federal Fund | Other Funds |
|---------------------|----------|--------------|--------------|-------------|
| Agent equity | 2 | | | \$1,007,326 |
| Fire Marshal equity | 2 | | | 125,906 |
| Total | | \$797,908 | \$15,455 | \$1,133,232 |

The office's optional adjustments requested in the submitted budget and not included by the House are shown below.

| Description | Priority | General Fund | Federal Fund | Other Funds |
|-------------------------------|----------|--------------|--------------|-------------|
| Agent reclassifications | 2 | 64,006 | | |
| Deputy Fire Marshal step incr | 2 | 16,234 | | |
| Gaming regulation FTE (4) | 4 | | | \$814,863 |
| Gaming regulation operating | 4 | | | 144,836 |
| Legal case management system | 5 | 500,000 | | 120,000 |
| Crime lab maint agreements | 6 | 7,305 | | |
| Gas cylinders | 6 | 8,235 | | |
| Narcotics buy fund | 7 | 100,000 | | |
| Ammunition | 7 | 21,941 | | |
| Total | | \$717,721 | | \$1,079,699 |

House Changes to House Bill 1003

The House made the following adjustments to House Bill 1003:

- Salary Equity Adjustments – The House added \$1.3 million for salary equity adjustments for 53 Bureau of Criminal Investigation positions, 2 Medicaid Fraud Control Unit positions and 7 State Fire Marshal positions.
- Human trafficking grants – The House restored \$100,000, to provide for \$1.1 million in human trafficking grants.
- Forensic nurse examiner grants – The House restored the forensic nurse examiner grant line to its 2019-21 level of \$250,000.
- Litigation Pool – The House changed the funding source for the \$3.0 million litigation pool included in the Executive Recommendation from the general fund to the Strategic Investment and Improvements fund.
- Operating Adjustment – The House removed an additional \$210,000 from the general fund for operating expenses, for a total operating reduction of over \$1.7 million.

The following sections are requested to be added to Engrossed House Bill 1003:

SECTION _. CONTINGENT FEE ARRANGEMENT. Notwithstanding section 54-15-08.1 of the North Dakota Century Code, the office of attorney general may contract for legal services which will be compensated for by a contingent fee arrangement, relating to ongoing technology multi-state lawsuits, during the biennium beginning July 1, 2021, and ending June 30, 2023

SECTION _. EXEMPTION – STATEWIDE AUTOMATED VICTIM INFORMATION AND NOTIFICATION PROGRAM. The \$815,000 from other funds appropriated to the attorney general for the statewide automated victim information and notification system as contained in sections 1 and 8 of chapter 3 of the 2017 Session Laws and section 9 of chapter 28 of the 2019 Session Laws is not subject to the provisions of section 54-44.1-11. Any unexpended funds from this appropriation are available to the attorney general for replacement of the legal case management system, during the biennium beginning July 1, 2021, and ending June 30, 2023.

SECTION _. GAMING GRANTS. Notwithstanding subsection 4 of Section 53-06.1-12 of the North Dakota Century Code, the office of attorney general may distribute the 2019-21 biennium seventh and eighth quarter gaming taxes to cities and counties by October 31, 2021.

SECTION __. EMERGENCY. \$255,000 of other income for a sexual assault evidence collection kit tracking system and \$100,000 of other income for drug analyzers, included in section 1 of this Act is considered to be an emergency measure.

2021 Legislation Having a Fiscal Impact on the Office of Attorney General

Several legislative bills have been introduced which impact the Office of Attorney General.

- **Engrossed House Bill 1025** provides a supplemental general fund appropriation of \$181,152 to the Office for the 2019-21 biennium for lawsuit expenses associated with a constitutional challenge to North Dakota's corporate farming laws.
- **Engrossed House Bill 1212** changes the gaming tax structure and creates a charitable gaming operation fund for deposit of all gaming taxes. Appropriated Gaming Division administrative and operating costs would be paid from this fund. This bill also provides a continuing appropriation for allocations related to gambling disorder prevention and treatment. Any gaming tax revenue remaining in the fund at the end of the biennium would be transferred to the general fund. **The \$1,756,101 general fund share of the Gaming Division's appropriation has not been moved to special funds in the Office's appropriation bill or this bill.**
- **Engrossed House Bill 1234** provides authorization of sports betting and the creation of a sports wagering commission within the Attorney General's office, contingent on adoption of House Concurrent Resolution 3032 by the qualified electors of North Dakota in the November 2022 general election. **The effective date of this bill will be August 1, 2023** so there is no fiscal impact during the 2021-23 biennium.
- **Engrossed House Bill 1389** provides for licensing and regulation of live poker contingent on adoption of House Concurrent Resolution 3012 by the qualified electors of North Dakota in the November 2022 general election. This bill would be effective for the last six months of the 2021-23 biennium. It is estimated a new division would be required within the Attorney General's office. The fiscal impact of this bill cannot be determined at this time, so **no funding has been added to the Office's appropriation bill or this bill.**

- **Engrossed Senate Bill 2281** requires the State Crime Lab to develop and implement a statewide sexual assault evidence collection kit tracking system and provides an emergency clause. Federal funds of \$255,000 are available under the SAFE ITR grant for this project but an appropriation has not been added to this bill. **The \$255,000 and an emergency clause have not been added to the Office's appropriation bill.**

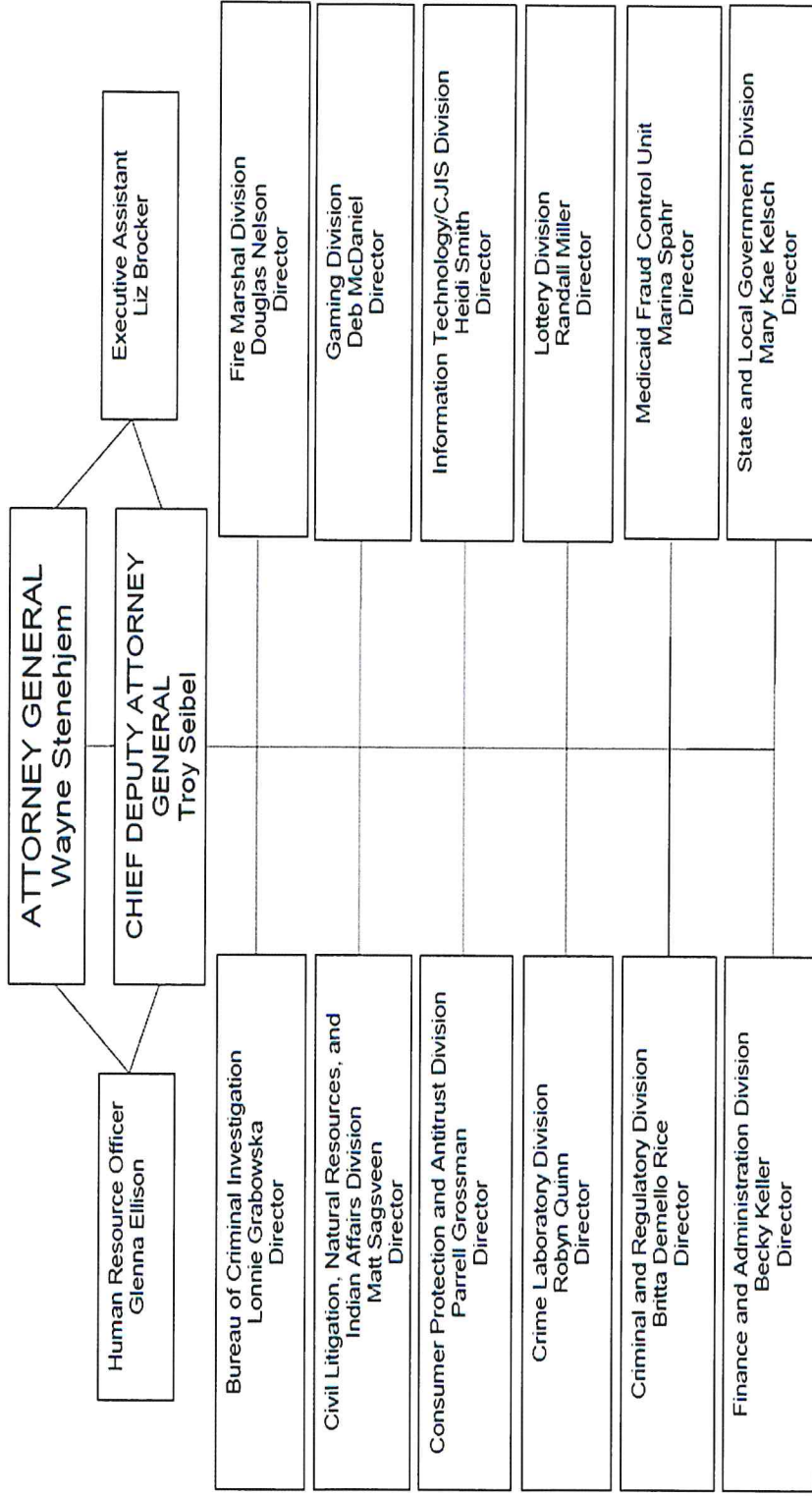
NORTH DAKOTA OFFICE OF ATTORNEY GENERAL



2021-23 BIENNIUM
67TH LEGISLATIVE SESSION

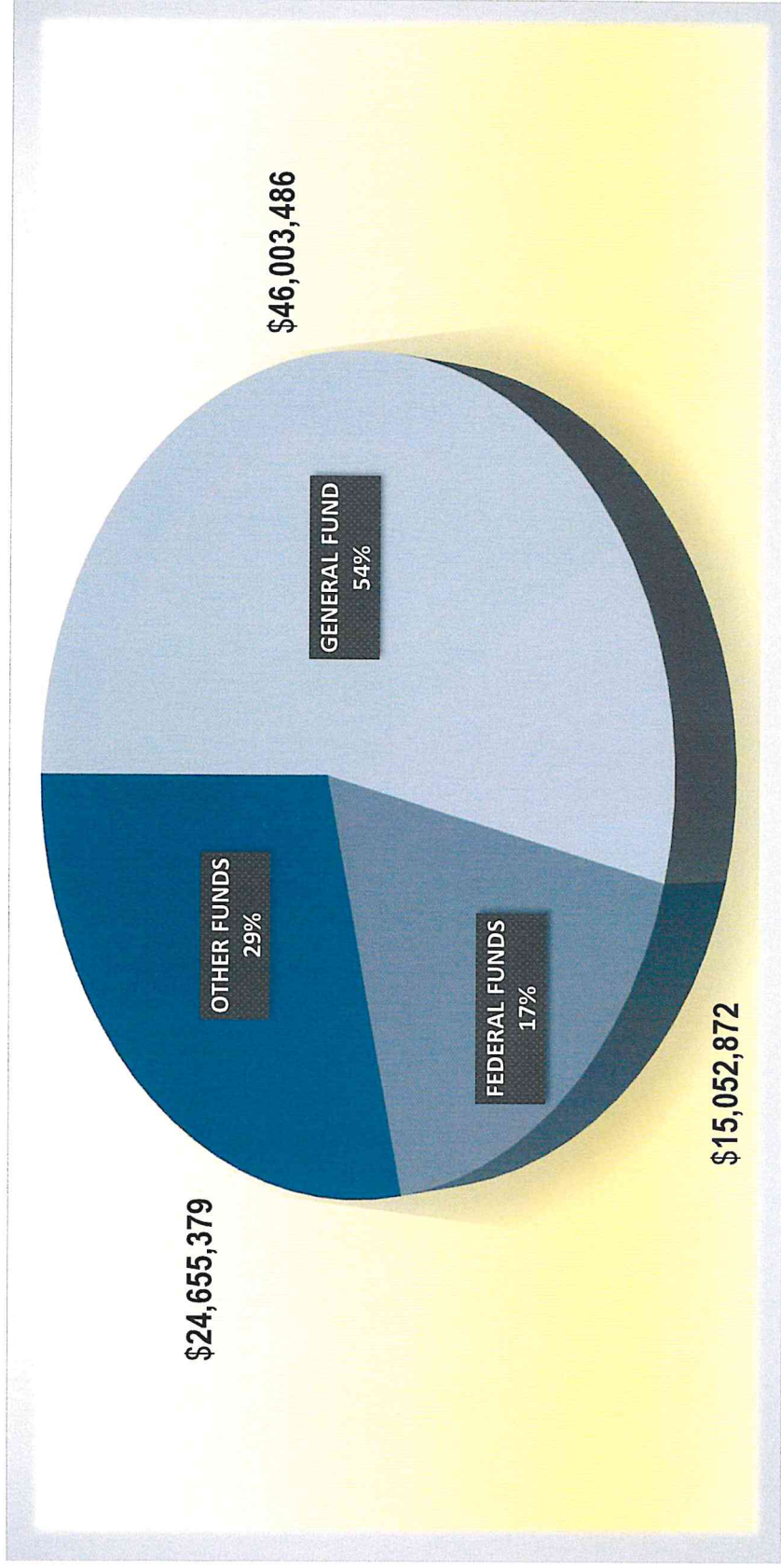
BUDGET PRESENTATION
SUPPLEMENTARY MATERIALS

**NORTH DAKOTA
OFFICE OF ATTORNEY GENERAL**
May 2020

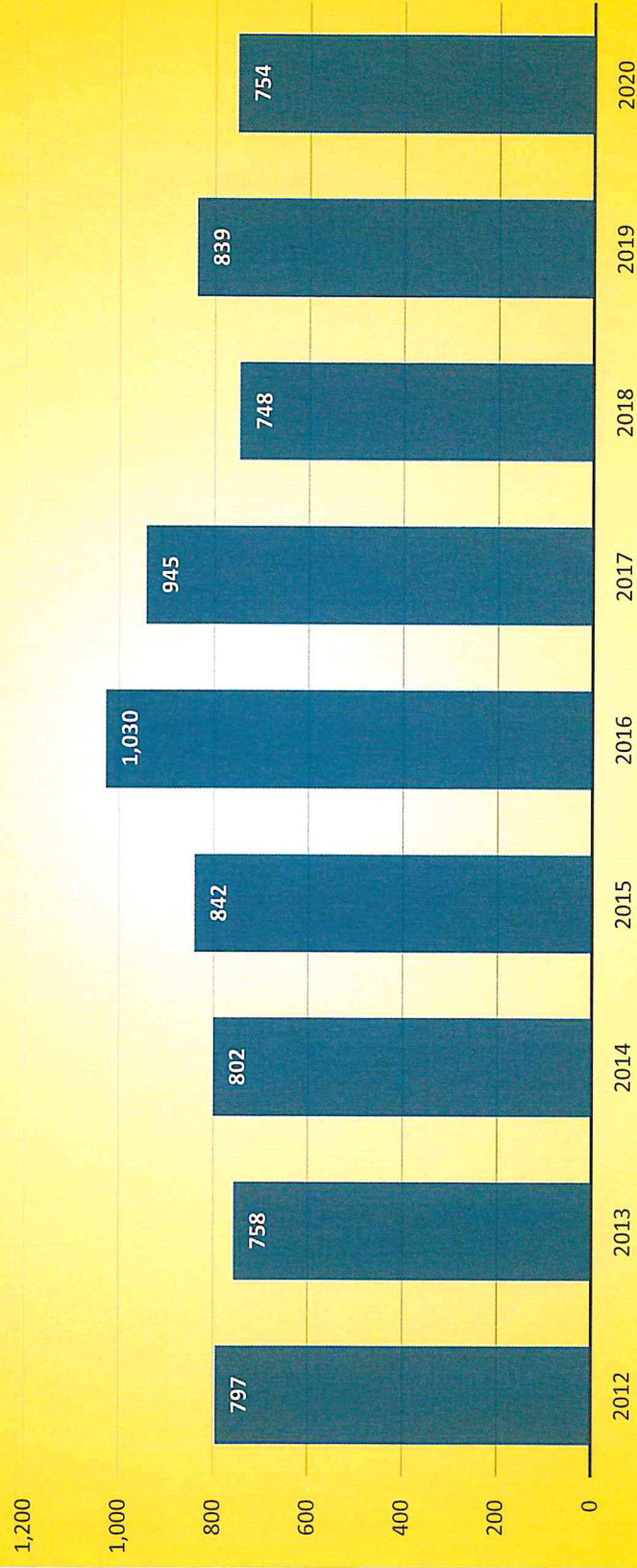


2019-21 BIENNIUM APPROPRIATION BY FUNDING SOURCE

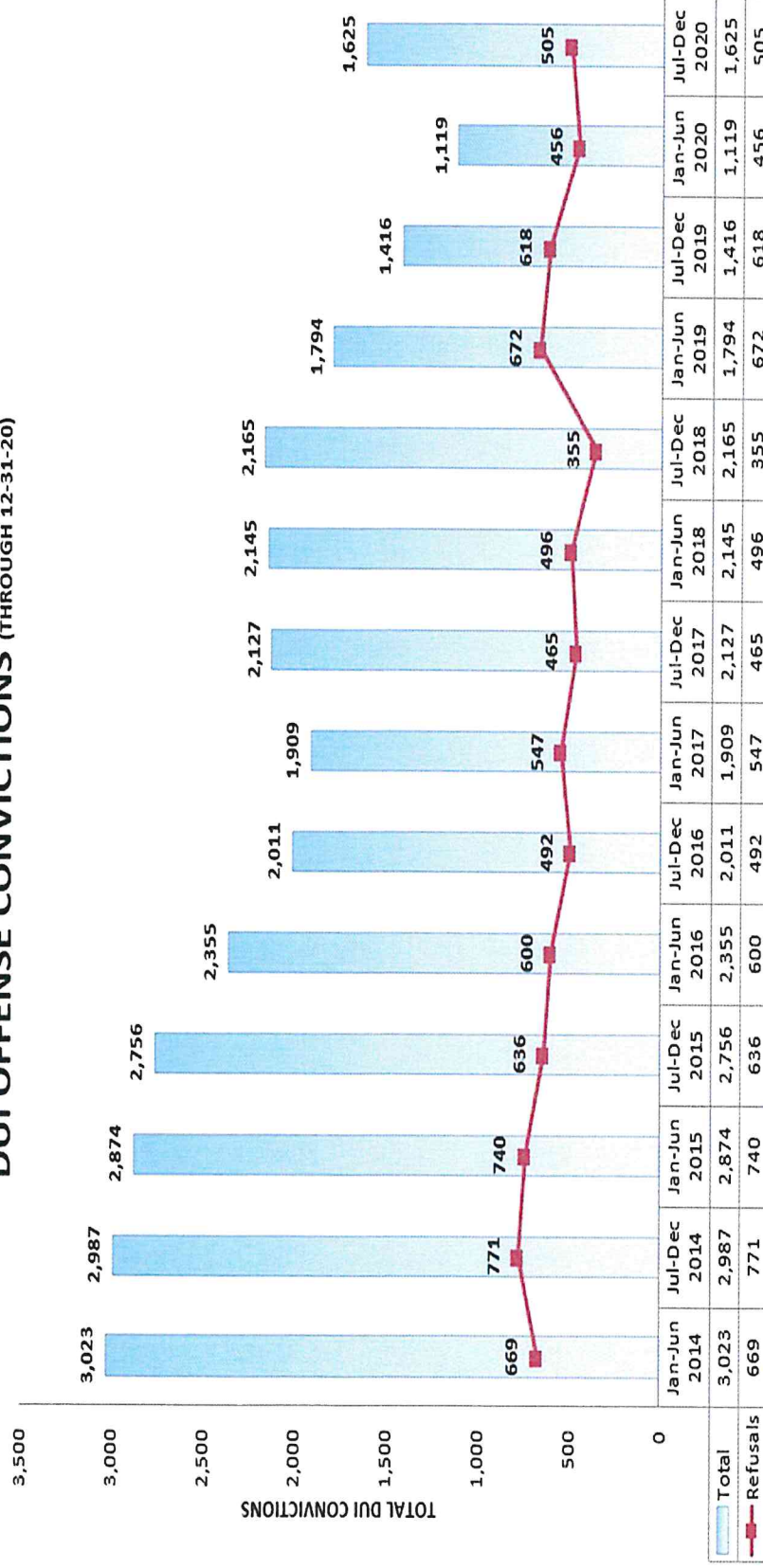
\$85,711,737



OFFICE OF ATTORNEY GENERAL CRIMINAL INVESTIGATIVE CASES

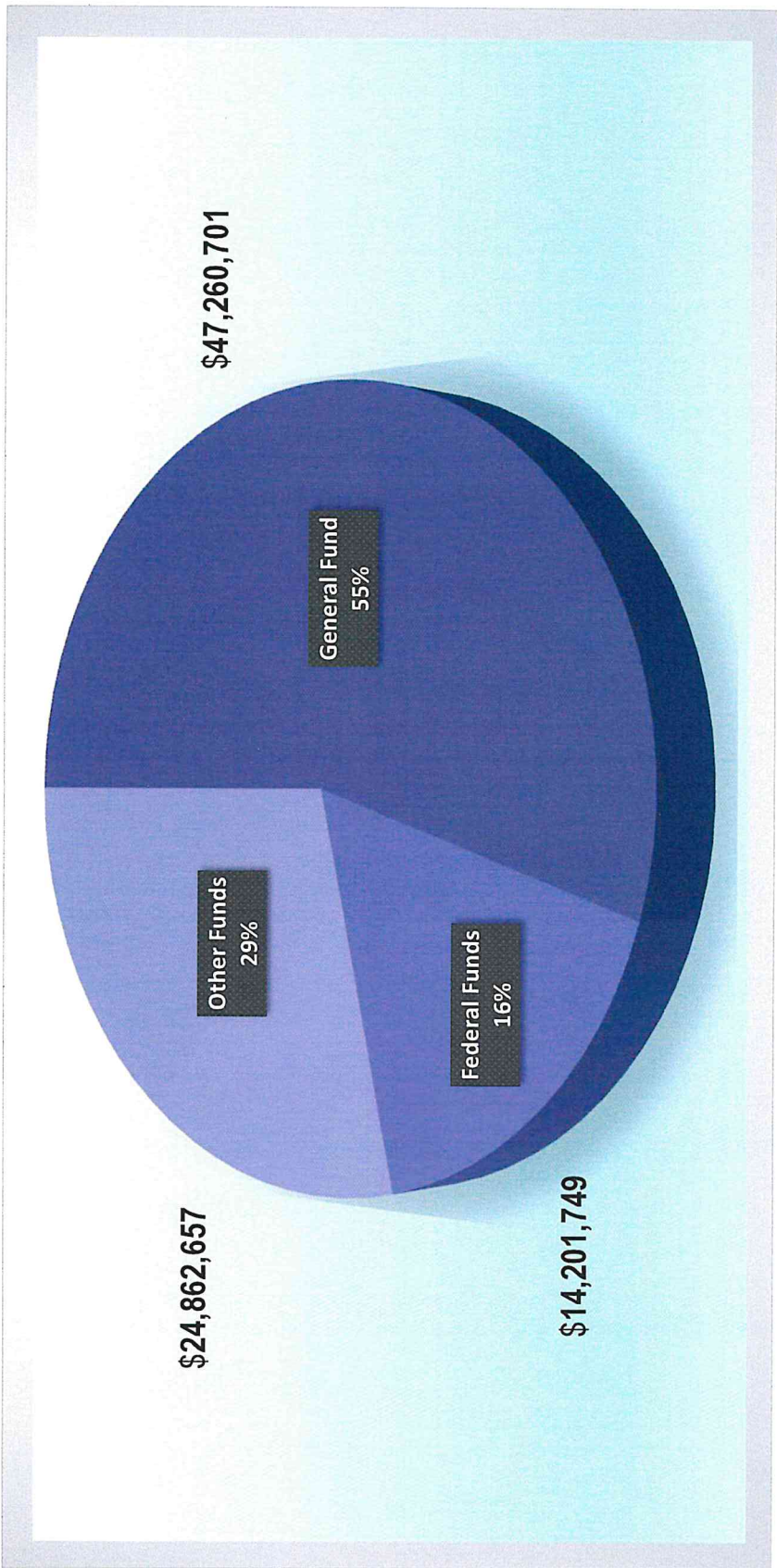


DUI OFFENSE CONVICTIONS (THROUGH 12-31-20)



Source: ND DOT

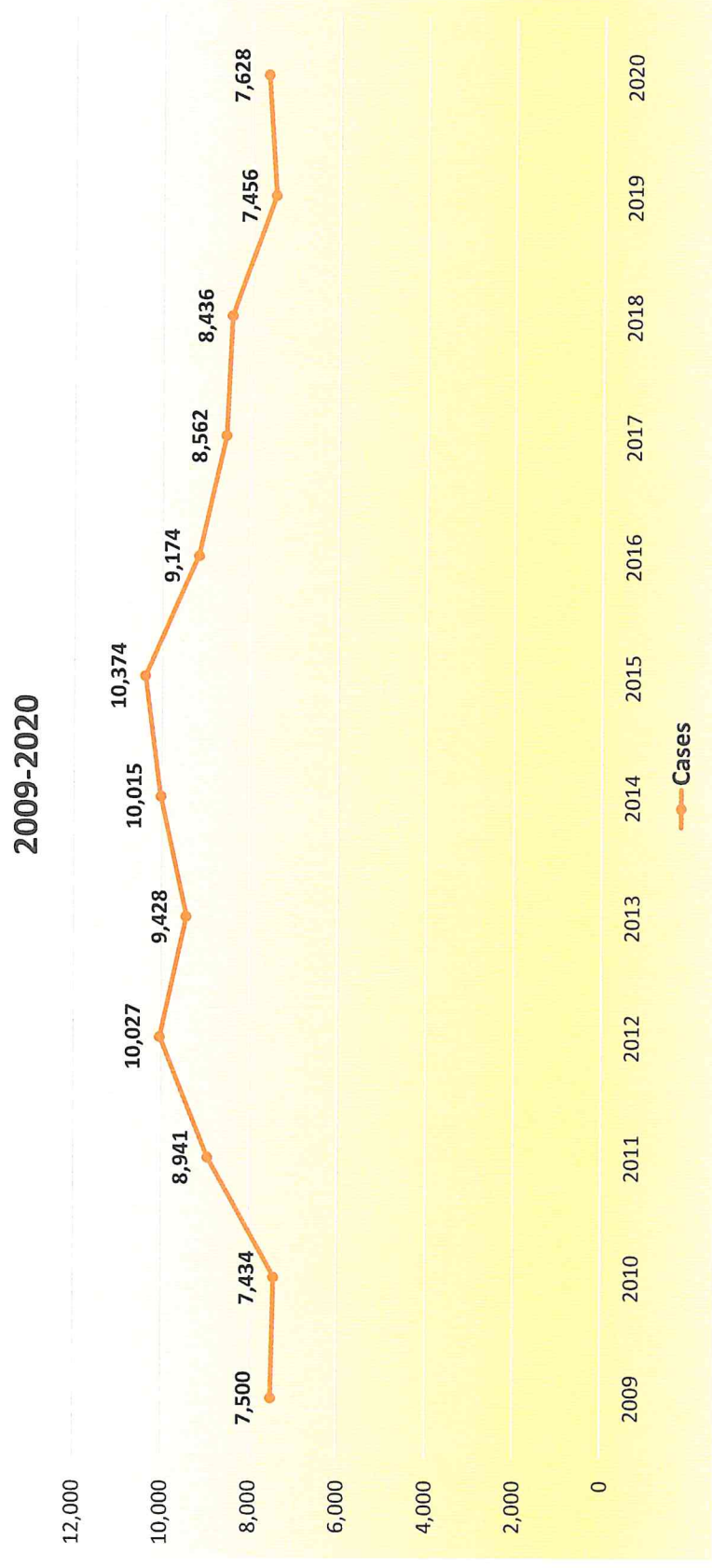
**2021-23 BIENNIUM EXECUTIVE RECOMMENDATION BY FUNDING
SOURCE \$86,325,107**



TOP 25 NARCOTICS SAMPLES
SUBMITTED TO THE CRIME LABORATORY
FOR THE PERIOD FROM JANUARY - DECEMBER 2020

| DESCRIPTION | TOTAL | PERCENT |
|----------------------------|--------------|---------------|
| METHAMPHETAMINE | 2427 | 53.54% |
| CANNABIS | 878 | 19.37% |
| HEROIN | 297 | 6.55% |
| COCAINE | 213 | 4.70% |
| FENTANYL | 144 | 3.18% |
| OXYCODONE | 115 | 2.54% |
| BUPRENORPHINE | 43 | 0.95% |
| ALPRAZOLAM | 39 | 0.86% |
| CLONAZEPAM | 27 | 0.60% |
| HYDROCODONE | 22 | 0.49% |
| CAFFEINE | 20 | 0.44% |
| PSILOCYBIN/PSILOCYN | 19 | 0.42% |
| NALOXONE | 17 | 0.38% |
| MORPHINE | 15 | 0.33% |
| TRAMADOL | 15 | 0.33% |
| SODIUM BICARBONATE | 14 | 0.31% |
| AMPHETAMINE | 13 | 0.29% |
| LYSERGIC ACID DIETHYLAMIDE | 13 | 0.29% |
| DIMETHYLSULFONE | 11 | 0.24% |
| LORAZEPAM | 11 | 0.24% |
| ACETYL FENTANYL | 10 | 0.22% |
| GABAPENTIN | 10 | 0.22% |
| MDMA | 10 | 0.22% |
| DIAZEPAM | 9 | 0.20% |
| DIPHENHYDRAMINE | 8 | 0.18% |
| TOTAL TOP 25 DRUGS | 4,400 | 97.07% |
| TOTAL ALL DRUGS | 4,533 | |

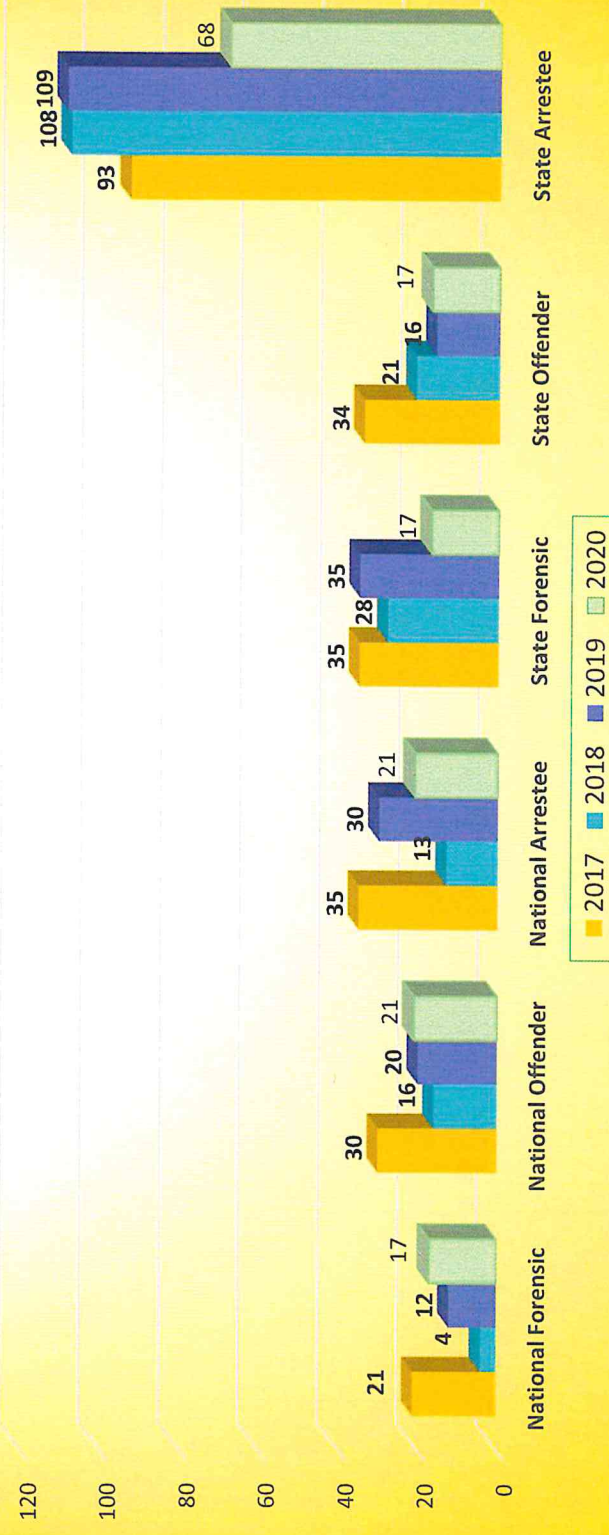
ND Crime Laboratory Workload



Previous reports included Breath Alcohol tests, Convicted Offender and Arrestee samples

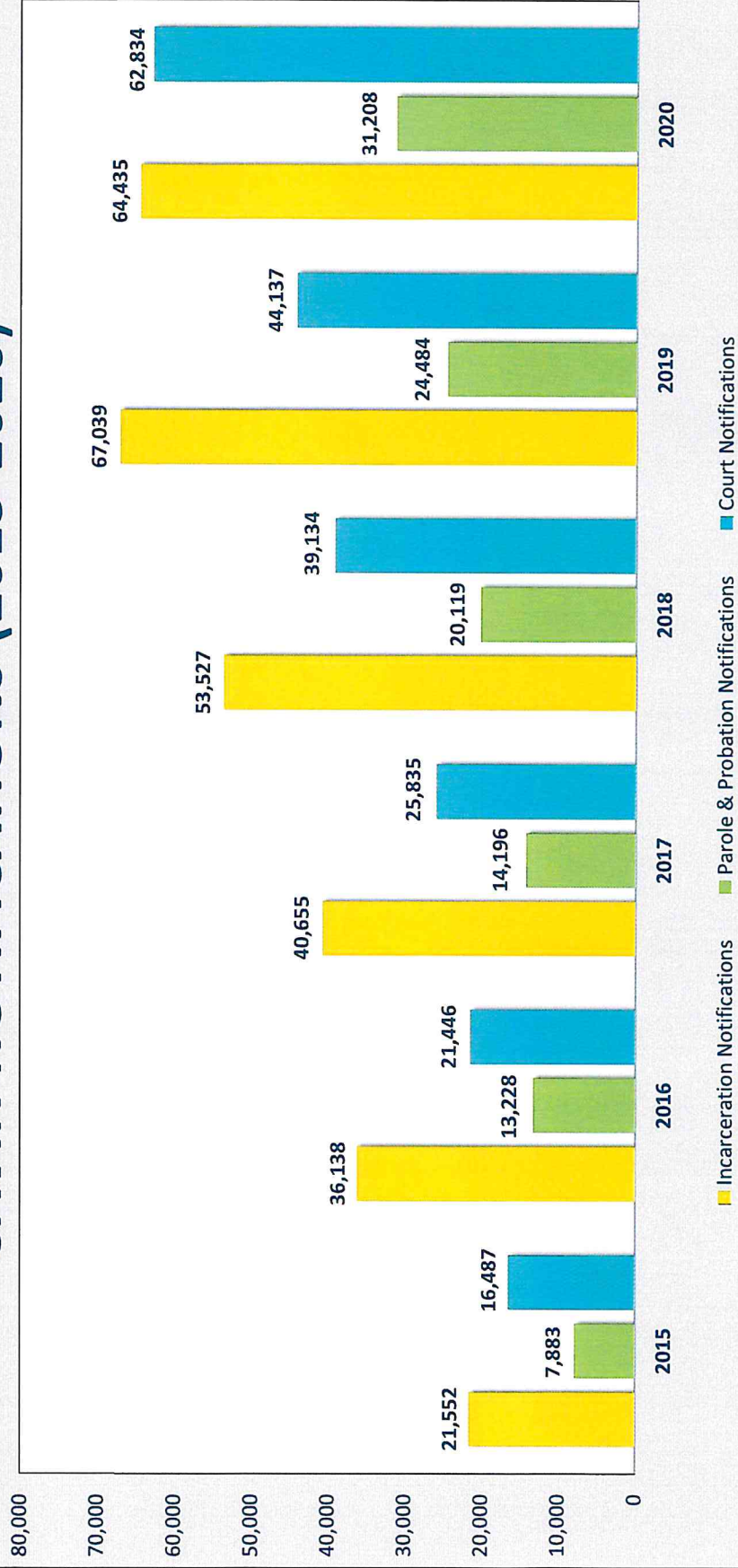
ND CRIME LABORATORY WORKLOAD

CODIS HITS

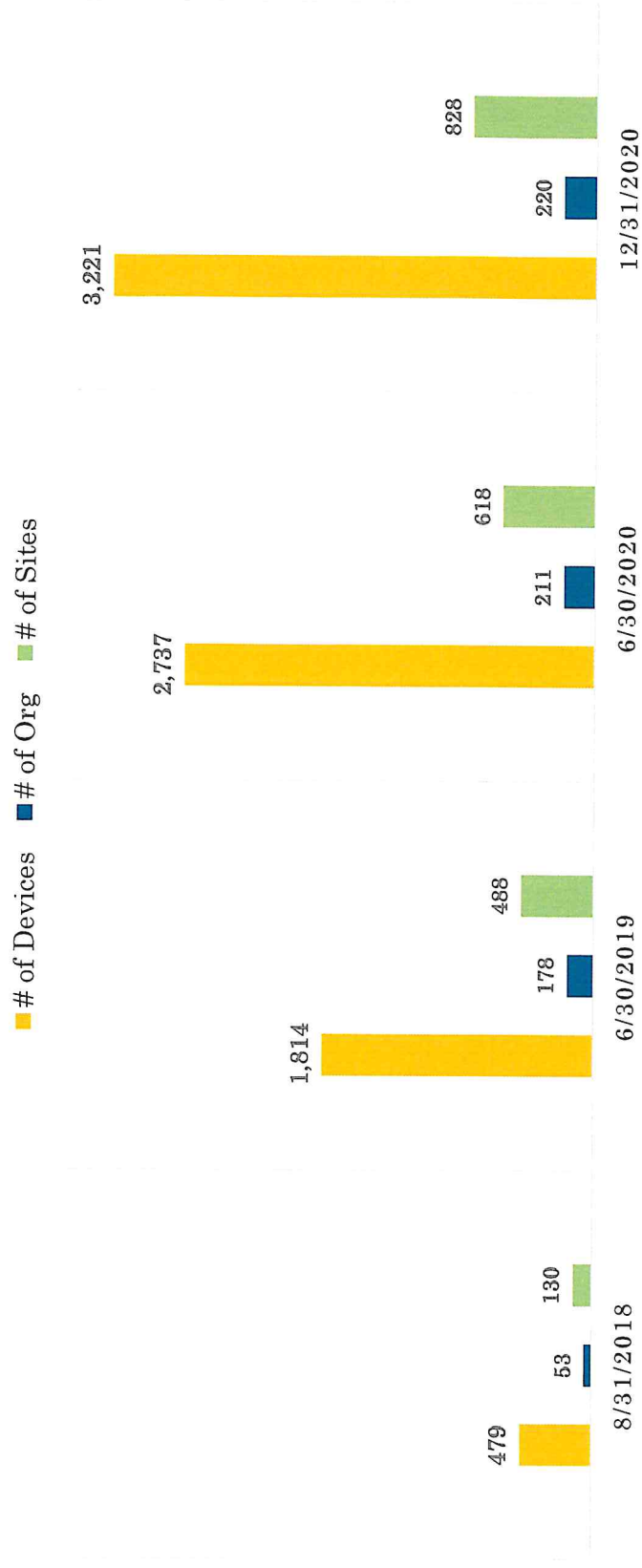


OFFICE OF ATTORNEY GENERAL

SAVIN NOTIFICATIONS (2015-2020)



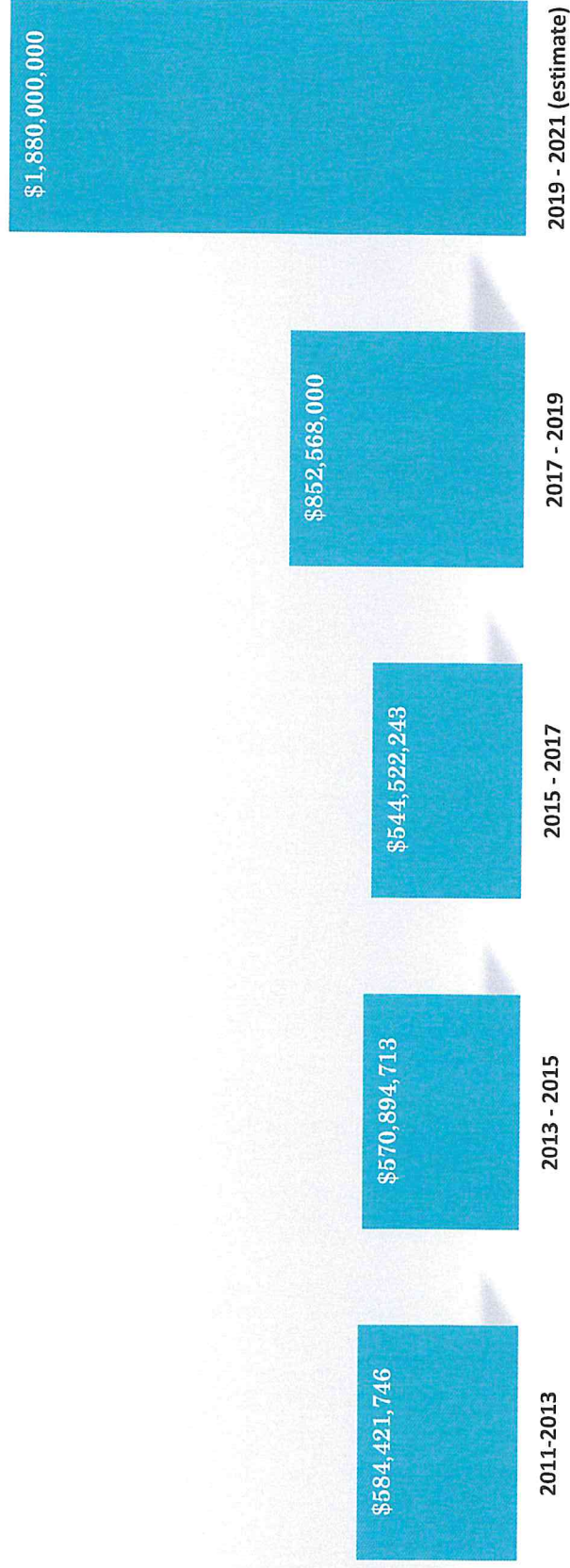
E-TAB DEVICES



E-TAB GROSS PROCEEDS PER QUARTER



ALL GAME TYPE GROSS PROCEEDS PER BIENNIUM



TOTAL GAMING TAX PER BIENNIUM

