



JUDICIARY COMMITTEE

Tuesday, November 7, 2023
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator Janne Myrdal, Chairman, called the meeting to order at 9:00 a.m.

Members present: Senators Janne Myrdal, Ryan Braunberger, Michael Dwyer, Judy Estenson, Diane Larson, Bob Paulson, Jonathan Sickler; Representatives Claire Cory, Matt Heilman, Pat D. Heinert, Karen Karls, Lawrence R. Klemin, Ben Koppelman, Shannon Roers Jones, Kelby Timmons, Lori VanWinkle

Members absent: Representatives Jim Kasper, Nico Rios, Bernie Satrom

Others present: See [Appendix A](#)

It was moved by Senator Larson, seconded by Representative Karls, and carried on a voice vote that the minutes of the August 31, 2023, meeting be approved as distributed.

FIREARM AND DANGEROUS WEAPONS STUDY

Mr. Christopher S. Joseph, Senior Counsel, Legislative Council, presented a memorandum entitled [Firearm and Dangerous Weapon Restrictions - Background Memorandum](#). He noted the memorandum:

- Provides the legislative history of Section 1 of House Bill No. 1341 (2023), which directed the Legislative Management to study the provisions of the North Dakota Century Code, which place restrictions on carrying firearms and dangerous weapons.
- Includes information on the study guidelines, recent federal court cases relating to firearm restrictions, the state definition of a dangerous weapon, and the federal and state laws prohibiting a firearm at certain places and prohibiting the possession of a firearm by certain individuals.

Ms. Claire Ness, Chief Deputy Attorney General, Attorney General's office, provided testimony ([Appendix B](#)) regarding *New York State Rifle & Pistol Association Inc. v. Bruen* and subsequent Second Amendment caselaw.

Mr. Casey Miller, Special Agent, Bureau of Criminal Investigation and North Dakota Peace Officers Association, provided testimony regarding the state's firearm and weapon regulations, prohibitions, and restrictions. He noted:

- North Dakota Century Code Section 62.1-02-05 prohibits an individual from possessing a firearm or a dangerous weapon at a school, church, and publicly owned or operated building.
- A publicly owned or operated building is a building that is owned, possessed, or used by or leased to the state or any of its political subdivisions.
- Section 62.1-02-04 prohibits an individual from entering or remaining in that part of the establishment either set aside for the retail sale of alcoholic beverages and the consumption of purchased alcoholic beverages or used as a gaming site where bingo is the primary gaming activity, while knowingly possessing a firearm or dangerous weapon.
- North Dakota has robust and pragmatic statutory firearm provisions and the law should not be amended to allow the possession of a firearm inside a liquor establishment.

Ms. Sally Holewa, State Court Administrator, North Dakota Supreme Court, provided testimony ([Appendix C](#)) regarding the Supreme Court's input on the committee's firearm and dangerous weapon study.

Mr. Brian Gosch, State Director, National Rifle Association, provided testimony ([Appendix D](#)) regarding the constitutionality of the state's firearm and weapon possession prohibitions and restrictions, and whether the definition of a dangerous weapon should be maintained, narrowed, or expanded.

Mr. Travis Finck, Executive Director, Commission on Legal Counsel for Indigents, provided testimony ([Appendix E](#)) regarding the criminal justice issues and challenges with the state's firearm and weapon possession prohibitions, and whether the definition of a dangerous weapon should be maintained, narrowed, or expanded.

Mr. Jonathan Byers, North Dakota State's Attorneys' Association, provided testimony regarding prosecutorial issues, challenges, and considerations regarding the state's firearm and weapon possession prohibitions, and whether the definition of a dangerous weapon should be maintained, narrowed, or expanded. He noted:

- The North Dakota State's Attorneys' Association does not have any concerns regarding the state's firearm and dangerous weapon restrictions.
- The law should not be amended to allow firearms to be carried inside a liquor establishment due to the devastating consequences that arise when alcohol misuse is combined with firearms. Excessive alcohol consumption combined with gun use is a leading cause of preventable injury and death in the United States. Alcohol plays an outsized role in firearm fatalities. One-in-three individuals who committed homicide with a firearm had been heavily drinking when they murdered their victims. More than 30 percent of gun homicide victims had been heavily drinking when they were killed.

Mr. Stanley Schauer, Director of Assessment, Department of Public Instruction, provided testimony ([Appendix F](#)) regarding the state's definition, criteria, and report for persistently dangerous schools, the state's suspension and expulsion data, and the armed first responder criteria and status.

Ms. Katie Fitzsimmons, Director of Student Affairs, North Dakota University System, provided testimony ([Appendix G](#)) regarding the state's firearm and weapon possession prohibitions and restrictions.

Mr. Aaron Birst, Executive Director, North Dakota Association of Counties, provided testimony regarding the counties' perspective on the state's firearm and weapon possession prohibitions and restrictions. He noted:

- Counties are in favor of the prohibition on possessing a firearm in a publicly owned or operated building.
- Only 6 of the 53 counties have security measures at their courthouses.
- Counties support allowing local governments more authority to determine sensitive places within their jurisdictions which are locations a firearm can be prohibited without violating the Second Amendment.

Ms. Stephanie Engebretson, Deputy Director, North Dakota League of Cities, provided testimony regarding the cities' perspective on the state's firearm and weapon possession prohibitions and restrictions. She noted:

- Cities support the prohibition on possessing a firearm in a publicly owned or operated building and the definition of a government building.
- Cities would appreciate the legal flexibility to adapt to changing needs and circumstances if substantial changes are made to state firearm and dangerous weapon restrictions.
- Cities are concerned about firearms being allowed in liquor establishments.

CUSTODIAL INTERROGATIONS STUDY

Mr. Joseph presented a memorandum entitled [Uniform Electronic Recording of Custodial Interrogations Act - Background Memorandum](#). He noted the memorandum:

- Provides the legislative history of Section 1 of Senate Bill No. 2376 (2023), which directed the Legislative Management to study and determine the feasibility and desirability of uniform implementation of recording practices by local and state law enforcement during custodial interrogations.
- Includes information on the study guidelines, the history and a summary of the Uniform Electronic Recordation of Custodial Interrogations Act of 2010, and the status of the Uniform Electronic Recordation of Custodial Interrogations Act nationwide.

Mr. Patrick Lenertz, Supervisory Special Agent, Bureau of Criminal Investigation, provided testimony ([Appendix H](#)), regarding the number of law enforcement agencies recording custodial interrogations; custodial interrogation recording practices, policies, requirements, costs, equipment, and storage and retention; and barriers to uniform implementation of the recording of custodial interrogations. He noted:

- The Uniform Electronic Recordation of Custodial Interrogations Act addresses a problem that does not exist in North Dakota. If legislation mandating recorded interviews in all circumstances is passed, it will undermine the credibility of sworn law enforcement officers' testimony and could create a number of unintended consequences.
- Many law enforcement agencies are headquartered in buildings without space for a separate interview room, or lack the funds to build or outfit an interview room with recording equipment.
- Much of North Dakota is rural, so it is not uncommon for criminal investigations to be occurring in areas 60 to 90 miles away from the nearest law enforcement office, regardless of whether an interview room is present or recording equipment is installed or operable.
- Costs will be a concern regarding the mandatory retention of recorded interrogations. Server space, hard drive space, and cloud space are at a premium, and costs might skyrocket when more storage is required.

Mr. Jeremy Ensrud, Criminal Division Director, Attorney General's office, provided testimony ([Appendix I](#)) regarding the number of law enforcement agencies recording custodial interrogations; custodial interrogation recording practices, policies, requirements, costs, equipment, and storage and retention; and barriers to uniform implementation of the recording of custodial interrogations.

Mr. Finck provided testimony ([Appendix J](#)) regarding the recording practices of local and state law enforcement during custodial interrogations and whether the state should adopt the Uniform Electronic Recordation of Custodial Interrogations Act.

Mr. Byers provided testimony on the recording practices of local and state law enforcement during custodial interrogations and whether the state should adopt the Uniform Electronic Recordation of Custodial Interrogations Act. He noted:

- Adopting the Uniform Electronic Recordation of Custodial Interrogations Act would help build stronger cases for prosecutors because recorded confessions aid in the prosecution of criminal offenses.
- Recording all custodial interrogations makes better law enforcement officers because it minimizes errors and is a great tool for self-training.
- Recording interviews is becoming a more common practice across the nation and the state with the use of body cameras.
- The North Dakota State's Attorneys' Association does not believe a legislative mandate is needed.

Mr. Jim Tranium provided testimony ([Appendix K](#)) regarding the advantages of recording custodial interrogations.

Mr. James Mayer, Managing Attorney, Great North Innocence Project, provided testimony ([Appendix L](#)) regarding how recording interrogations minimizes the risk of wrongful convictions.

Ms. Donnell Preskey, Government and Public Relations Specialist, North Dakota Association of Counties, provided testimony regarding adoption of the Uniform Electronic Recordation of Custodial Interrogations Act. She noted:

- It would be costly to require small rural law enforcement agencies to build a room or create dedicated space for interrogations for the purpose of adopting the Uniform Electronic Recordation of Custodial Interrogations Act. The cost of implementing mandatory recording and retention of custodial interrogations would be a major issue for counties.
- The Uniform Electronic Recordation of Custodial Interrogations Act would be superfluous to law enforcement agencies that already use body cameras.

REPORTS

Ms. Sarah Couture, Grants Supervisor, Attorney General's office, presented an annual report ([Appendix M](#)) summarizing activity regarding civilly forfeited property in the state for the preceding fiscal year. She noted statewide from July 1, 2022, through June 30, 2023:

- \$204,169 in currency was seized.
- Four motorized vehicles were seized with sales proceeds totaling \$50,334.
- Three firearms were held, sold, or disposed of with a value totaling \$725.

No further business appearing, Chairman Myrdal adjourned the meeting at 2:55 p.m.

Christopher S. Joseph
Senior Counsel

ATTACH:13