



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:

- ~~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. ~~He noted the memorandum-i~~
- Includes information on the study guidelines, ~~an assessment of~~ recent federal court cases relating to firearm restrictions, ~~an examination of~~ 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, ~~presented~~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, ~~presented~~provided testimony regarding the state's firearm and weapon regulations, prohibitions, and restrictions. He noted:

- 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 ~~of North Dakota~~, or any of its political subdivisions.
- Section 62.1-02-04 prohibits an individual ~~who knowingly possesses a firearm or dangerous weapon~~ 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 ~~at which~~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, ~~presented~~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, ~~presented~~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, ~~presented~~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, ~~presented~~provided testimony regarding prosecutorial issues, challenges, and considerations ~~with~~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 ~~issues with~~concerns regarding the state's ~~current~~ firearm and dangerous weapon restrictions.
- ~~Firearms~~The law should not be ~~amended to~~ allowed ~~firearms~~ to be carried inside a liquor establishment ~~and the law should not be amended to allow it~~due to the devastating consequences that arise when alcohol misuse is combined with firearms.
- ~~Excessive a~~Alcohol use consumption and combined with gun ~~use violence are~~is a leading causes 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.
- ~~Alcohol misuse combined with firearms can have devastating consequences~~The intersection of alcohol misuse and firearms can have devastating consequences. This is why firearms should not be allowed in liquor establishments.

Mr. Stanley Schauer, Director of Assessment, Department of Public Instruction, ~~presented~~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, ~~presented~~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, ~~presented~~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 ~~current~~ prohibition on possessing a firearm in a publicly owned or operated building.
- ~~Out~~Only 6 of ~~the~~ 53 counties, ~~only six~~ have security measures at their courthouses.
- ~~Sensitive places are locations where a firearm can be prohibited without violating the Second Amendment.~~ Counties support allowing local governments more authority to determine ~~what a~~ sensitive places within their jurisdictions is, which are locations a firearm can be prohibited without violating the Second

Amendment.

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

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

CUSTODIAL INTERROGATIONS STUDY

Mr. Joseph presented a memorandum entitled *Uniform Electronic Recording of Custodial Interrogations Act - Background Memorandum*. ~~The~~He noted the memorandum:

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

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

- The Uniform Electronic Recordingation of Custodial Interrogations Act addresses a problem that does not exist in North Dakota. ~~and, 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 with ~~no out~~ space for a separate interview room, or ~~lack a budget~~the funds to build ~~an additional or outfit an~~ interview room ~~purchase and install to or with~~ recording equipment.
- Much of North Dakota is ~~a rural state, and so~~ it is not uncommon ~~to find for~~ criminal investigations to be occurring in ~~rural~~ areas 60 to 90 miles away from the nearest law enforcement office, regardless of whether an interview room is ~~available~~present or recording equipment is installed or operable.
- Costs will be a ~~retention issues regarding mandatory recording of interrogations recurring theme for concern regarding the mandatory retention of recorded interrogations~~. Server space, hard drive space, and cloud space are ~~all~~ at a premium, and costs ~~may even might~~ skyrocket when more storage is required, ~~depending on the agency~~.

Mr. Jeremy Ensrud, Criminal Division Director, Attorney General's office, ~~presented~~provided testimony

(Appendix I) regarding the number of law enforcement agencies recording custodial interrogations; custodial interrogation recording practices, policies, requirements, costs, equipment, storage and retention; and barriers to uniform implementation of the recording of custodial interrogations.

Mr. Finck ~~presented~~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 ~~presented~~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 ~~happening already~~ becoming a more common practice across the nation and the state with the use of body cameras ~~and recorded interrogations becoming a more common practice.~~
- ~~so~~ The North Dakota State's Attorneys' Association does not believe a legislative mandate is needed ~~practice required good custodial recordation a the use of to make.~~

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, ~~presented~~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 across the state to build a room or create dedicated space for interrogations for the purpose of A~~ adopting the Uniform Electronic Recordation of Custodial Interrogations Act ~~would require many small rural law enforcement agencies across the state to build a room or create dedicated space for interrogations which would not be an inexpensive endeavor.~~
- The cost of implementing mandatory ~~recordation~~ recording and retention of custodial interrogations would be a major issue ~~since~~for counties ~~have a lot of fiscal restraint. The storage and retention of recorded interrogations would be an issue for the same reason.~~
- ~~The Uniform Electronic Recordation of Custodial Interrogations Act would be superfluous to law enforcement agencies across the state who~~ that already use body cameras. ~~Several law enforcement agencies across the state already use body cameras so the purpose of the Uniform Electronic Recordation of Custodial Interrogations Act to those agencies would be superfluous.~~
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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:

- \$204,169.00 in currency was seized.

- Four motorized vehicles were seized. ~~The proceeds from the four motor vehicles totaled~~ with sales proceeds totaling \$50,334.00
- Three firearms were held, sold, or disposed of. ~~The reported value of the three firearms totaled~~ with a value totaling \$725.00.

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

Christopher S. Joseph
Senior Counsel

ATTACH: