

JUDICIARY COMMITTEE

The Judiciary Committee was assigned four studies:

- House Concurrent Resolution No. 3012 (2015) directed a study of the registration requirements for offenders against children and sex offenders under North Dakota Century Code Section 12.1-32-15.
- Section 1 of 2015 House Bill No. 1302 directed a study of voter registration and policies to implement a system of voter registration, including provisions necessary to allow same-day voter registration.
- Section 1 of 2015 House Bill No. 1389 directed a study of issues relating to verification of citizenship status for the purpose of voting, including absentee and mail ballot voting. The section also directed a study of the process the Department of Transportation (DOT) uses to verify citizenship status in the issuance of driver's license and nondrivers identification cards and the feasibility and desirability of requiring the department to include on a driver's license or nondriver identification card of a noncitizen a notation indicating the individual is not a citizen of the United States.
- By Legislative Management Chairman directive, the committee was delegated the responsibility to review North Dakota statutes that may be in conflict with the definition of marriage ruling from the United States Supreme Court in *Obergefell v. Hodges*, 576 U.S. ____ (2015).

The Legislative Management delegated to the committee the responsibility:

- To review uniform laws recommended to the Legislative Management by the North Dakota Commission on Uniform State Laws under Section 54-35-02.
- For statutory and constitutional revision.
- To review any executive order issued by the President of the United States which has not been affirmed by a vote of Congress and signed into law, and recommend to the Attorney General and the Governor that the executive order be further reviewed to determine the constitutionality of the order whether the state should seek an exemption from the order or seek to have the order declared to be an unconstitutional exercise of legislative authority by the President (Section 54-03-32).

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

- A report from the Attorney General on the current status and trends of unlawful drug use and abuse and drug control and enforcement efforts in this state (Section 19-03.1-44).
- An annual report from the Director of the Commission on Legal Counsel for Indigents containing pertinent data on the indigent defense contract system and established public defender offices (Section 54-61-03).
- A biennial report from the North Dakota Racing Commission addressing the issue of the liability of charitable organizations that receive and disburse money handled through account wagering (Section 53-06.2-04).
- A report from the North Dakota Lottery regarding the operation of the lottery (Section 53-12.1-03).
- A report from the Department of Human Services on services provided by the Department of Corrections and Rehabilitation for individuals at the State Hospital who have been committed to the care and custody of the Executive Director of the Department of Human Services (Section 50-06-31).
- A report from the Task Force on Substance Exposed Newborns on findings and recommendations (2015 Senate Bill No. 2367 § 1).
- A report from the Department of Human Services regarding the number of revoked obligor driver's licenses, the duration and effectiveness of revocations, including a comparison of the state's driver's license revocation with other rural states, and a specific proposal that may limit the use of revocation of driver's licenses as a tool of enforcement (2015 House Bill No. 1111 § 15).

Committee members were Senators David Hogue (Chairman), Kelly M. Armstrong, John Grabinger, Carolyn C. Nelson, Erin Oban, Mac Schneider and Representatives Pamela Anderson, Roger Brabandt, Lois Delmore, Kathy Hawken, Richard G. Holman, Mary C. Johnson, Karen Karls, Lawrence R. Klemin, Kim Koppelman, William E. Kretschmar, Diane Larson, Andrew G. Maragos, Christopher D. Olson, Gary Paur, and Mary Schneider.

OFFENDERS AGAINST CHILDREN AND SEX OFFENDER REGISTRATION

Background

Section 12.1-32-15 specifically addresses the registration requirements for offenders against children and sex offenders. This section, which became law in 1991, has been amended numerous times since being enacted. The section is the longest criminal statute in Century Code. Before the 2015 legislative session, representatives from the North Dakota State's Attorneys' Association recommended suggestions to amend the law to address inconsistencies such as the timeframe different offenders have to register as well as issues created by addressing both sex offenders and child offenders in the same statute. A representative from the North Dakota Association of Counties suggested an interim study would be the best method to approach the topic to allow adequate discussion between the interested parties.

Subsection 12.1-32-15(1) defines terms used in the section. A "sexual offender" is defined as a person who has pled guilty to or been found guilty, including juvenile delinquent adjudications, under at least one of the following:

- Section 12.1-20-03 - Gross sexual imposition.
- Section 12.1-20-03.1 - Continuous sexual abuse of a child.
- Section 12.1-20-04 - Sexual imposition.
- Section 12.1-20-05 - Corruption or solicitation of minor.
- Section 12.1-20-05.1 - Luring minors by computer or other electronic means.
- Section 12.1-20-06 - Sexual abuse of wards.
- Section 12.1-20-06.1 - Sexual exploitation by therapist.
- Section 12.1-20-07 - Sexual assault.
- Section 12.1-20-11 - Incest.
- Section 12.1-20-12.1 - Indecent exposure.
- Section 12.1-20-12.2 - Surreptitious intrusion.
- Chapter 12.1-27.2 - Sexual performances by children.
- Section 12.1-41-02(1)(b) - Trafficking an individual.
- Section 12.1-41-04 - Sexual servitude.
- Section 12.1-41-05 - Patronizing a victim of sexual servitude.
- Section 12.1-41-06 - Patronizing a minor for commercial sexual activity.
- An equivalent offense from another court in the United States, a tribal court, or court of another country, or an attempt or conspiracy to commit these offenses.

Under Section 12.1-32-15(2), an individual must register with the chief of police of the city or the sheriff of the county if the individual resides, attends school, or is employed in an area other than a city after a court imposes a requirement that the individual register within 3 days of coming into a county or becoming temporarily domiciled if:

1. The individual has pled guilty or nolo contendere, or been found guilty as a felonious sex offender or an attempted felonious sex offender, a misdemeanor or attempted misdemeanor, is a juvenile found delinquent under Section 12.1-20-03(1)(d), Section 12.1-20-03(2)(a), or as a sex offender for a misdemeanor; or
2. The individual has pled guilty or nolo contendere, been found guilty of a crime against a child or an attempted crime against a child, including juvenile delinquent adjudications of equivalent offenses, or has been adjudicated delinquent of any crime against another individual which is not otherwise specified in Section 12.1-32-15, if the court determines registration is warranted by the nature of the crime and therefore orders registration for the individual.

Under Section 12.1-32-15(3), an individual who has not been ordered to register by a court in this state but who resides, is homeless, or is temporarily domiciled in this state is required to register if the individual is incarcerated or is on probation or parole after July 31, 1995, for a crime against a child, has pled guilty or nolo contendere, or been adjudicated for or found guilty of an offense which requires registration under North Dakota law, federal law, tribal law, or court of another country equivalent to the offenses in Section 12.1-32-15, or has pled guilty or nolo contendere, or has been found guilty of a crime against a child or as a sex offender requiring mandatory registration under this section if the conviction occurred after July 31, 1985.

Section 12.1-32-15(4) provides in determining whether an individual has a mental abnormality or has engaged in predatory conduct, a court is required to consider the age of the offender, the age of the victim, the difference in ages of the victim and offender, the circumstances and motive of the crime, the relationship of the victim and offender, and the mental state of the offender. The court may order an offender to be evaluated by a qualified counselor, psychologist, or physician before sentencing.

Section 12.1-32-15(5) requires the official in charge of a facility or institution where an individual who is required to register under Section 12.1-32-15 is confined to inform the individual of the duty to register before the discharge, parole, or release of the individual. The official or department must require the individual to read and sign a form stating that the duty of the individual to register has been explained to that individual. The official or department in charge must provide three copies to the individual and three copies to the Attorney General 45 days before the scheduled release of that individual. The Attorney General must forward the copies to the local law enforcement agency having jurisdiction where the individual expects to reside, the prosecutor who prosecuted the individual, and the court in which the individual was prosecuted 30 days before the release of the individual.

Section 12.1-32-15(6) requires an individual who is released on parole or probation upon payment of a fine to be informed of the duty to register under Section 12.1-35-15 by the court in which that individual was convicted. The court must require the individual to read and sign a form stating that the duty of the individual to register has been explained to that individual. The court must obtain the address where the individual expects to reside, attend school, or work upon release and report the address to the Attorney General within 3 days. The Attorney General is required to forward one copy to the appropriate law enforcement agency.

Section 12.1-32-15(7) provides registration consists of a written statement signed by the individual, giving the information required by the Attorney General, and the biometric data and photograph of the individual. In addition, the individual is required to submit a sample of blood and other bodily fluids for inclusion in a centralized database of DNA identification records if the individual is not already required to do so under Section 31-13-03. Section 31-13-03 requires an individual 18 years of age or older who is arrested or summoned to appear for the commission of a felony to provide, at the time of arrest or appearance upon booking into a correctional facility, a sample of blood or other body fluids for DNA law enforcement identification purposes. Within 3 days of submission of a registration, the registering law enforcement agency must forward the statement, biometric data, and photograph to the Attorney General and submit the blood and fluid sample to the State Crime Laboratory. If an individual who is required to register has a change in vehicle or computer online identity, the individual must inform, in writing, the law enforcement agency that the individual is registered with, within 3 days after the change. If an individual who is required to register has a change in name, school, or residence or employment address, the individual must inform the law enforcement agency that the individual is registered with, in writing, at least 10 days before the change. Upon a change in address, the individual required to register also must register within 3 days of the change at the law enforcement agency with jurisdiction of the new place of residence, school, or employment.

Section 12.1-32-15(8) requires an individual who is required to register to comply with the registration requirements for the longer of the following periods:

- 15 years after the date of sentence upon a plea or finding of guilt or after release from incarceration, whichever is later;
- A period of 25 years after the date of sentence or order deferring or suspending sentence upon a plea or finding of guilt or after release from incarceration, whichever is later, if the offender is assigned a moderate risk by the Attorney General; or
- For the life of the individual if:

On two or more occasions the individual has plead guilty or nolo contendere to, or been found guilty of a crime against a child or as a sex offender, unless a qualifying offense was committed after August 1, 1999;

The individual is an adult and the victim is under age 12 and the individual pleads guilty or nolo contendere to an offense committed after August 1, 1999; or

If the individual is assigned as high risk by the Attorney General.

Section 12.1-32-15(9) provides an individual required to register who violates the registration requirements is guilty of a Class C felony.

Section 12.1-32-15(10) provides when an individual is released on parole or probation and is required to register, but fails to do so within the time prescribed, the parole or probation must be revoked.

Section 12.1-32-15(11) requires the local law enforcement agency having jurisdiction over the place where an individual required to register is being temporarily sent outside the facility or institution where that individual is confined under conviction or sentence be notified within a reasonable time period before that individual is released from the facility or institution.

Section 12.1-32-15(12) requires the Attorney General, with the assistance of the Department of Corrections and Rehabilitation and the juvenile courts, to develop guidelines for the risk assessment of sex offenders who are required to register. The Department of Corrections and Rehabilitation is required to conduct a risk assessment of sex offenders who are incarcerated in institutions under the control of the department and sex offenders who are on supervised probation. The Attorney General is required to conduct risk assessments of sex offenders who are not under the custody or supervision of the Department of Corrections and Rehabilitation. The juvenile court or the agency having legal custody of a juvenile is required to conduct a risk assessment of juvenile sex offenders who are required to register. The Attorney General is required to notify the offender of the risk level assigned to that offender and the offender may request a review of that determination at which time the offender may present any information the offender believes may lower the assigned risk level.

Section 12.1-32-15(13) requires relevant information be disclosed to the public by a law enforcement agency if an individual is a moderate or high-risk offender and the agency determines disclosure of the conviction and registration information is necessary for public protection. If the offender has been determined to be a moderate risk, public disclosure must include notification of the offense to the victim registered under Chapter 12.1-34 and to any agency, civic organization, or group of persons who have characteristics similar to those of a victim of the offender.

Section 12.1-32-15(14) releases a state officer, law enforcement agency, or public school district, or any appointee, employee, or officer of those entities from civil or criminal liability for making risk determinations or for disclosing or failing to disclose information as permitted under the section.

Section 12.1-32-15(15) requires a juvenile sex offender to comply with the registration requirements and local law enforcement agencies to register and release any information in the same manner as adult offenders.

Section 12.1-32-15(16) provides if an individual has been required to register as a sex offender or an offender against a child under that section or Section 27-20-52.1 before August 1, 1999, the individual may petition the court to be removed from the offender list if the registration is no longer mandatory for that individual.

Section 12.1-32-15(17) prevents moderate or high-risk level offenders from using state parks as a residence or residential address to comply with the registration requirements.

Testimony and Committee Considerations

In its study of offenders against children and the registration of sex offenders, the committee received information and testimony from representatives of the Attorney General's office, a representative from the North Dakota Association of Counties, several state's attorneys, and a representative of the North Dakota Association of Criminal Defense Lawyers. The committee's deliberations focused on whether to amend Section 12.1-32-15 to address inconsistencies such as the timeframes during which different offenders are required to register, as well as addressing both sex offenders and offenders against children in the same statute.

The committee received considerable testimony supporting the statute as written. A representative from the Attorney General's office indicated the method of registration used in the state is more effective than the method required by the federal Adam Walsh Child Protection Safety Act. Although the state is not in compliance with the registration requirements of the Adam Walsh Child Protection Safety Act and therefore loses about 10 percent of federal Bureau of Justice Assistance Grants, federal funds are reallocated to North Dakota upon assurance to the federal government the state is continuing to develop and refine the sex offender and offender against children registration requirements. The committee received testimony from numerous sources indicating that although the registration requirements could be easier to read, the requirements are effective.

The committee received testimony regarding registration requirements as the requirements relate to timelines for a change in address or employment. The testimony generally indicated offenders have some difficulty in understanding the requirements, but law enforcement officials often exercise discretion depending upon an offender's history and the seriousness of the failure to report. The testimony also indicated concern over offenders working and living close to schools, particularly college campuses.

Conclusion

The committee makes no recommendation with respect to the registration requirements for offenders against children and sex offenders.

VOTER REGISTRATION AND VERIFICATION OF CITIZENSHIP

Voter Registration

Background

Although a number of states provide for same-day voter registration, North Dakota is the only state that does not require some form of voter registration. The Legislative Assembly enacted a bill requiring voter registration in 1895. The bill provided for voter registration 2 weeks before every general or municipal election in all cities and villages exceeding 1,000 in population. Voters who failed to have their names properly registered on the first day were permitted to have their names added by the local election board, which also served as the registration board, 1 week before the election. Even then, an unregistered voter could appear at the polls and vote by filing an affidavit supported by the oath of a householder or registered voter attesting that the prospective voter was a resident entitled to vote.

The Legislative Research Committee, predecessor of the Legislative Council and Legislative Management, studied the state's voter registration laws during the 1949-50 interim. As a result of the study, Senate Bill No. 61 was introduced during the 1951 legislative session. The bill repealed mandatory voter registration and left registration optional with the governing boards of the municipalities. The 1951 Legislative Research Committee report stated "[t]he present system is cumbersome and of limited effect since it does not apply to primary elections, usually the most important elections in the state." Senate Bill No. 61 passed unanimously in the Senate and passed in the House with a vote of 95 to 5.

In the majority of the legislative sessions between 1957 and 1975, unsuccessful attempts were made to pass legislation requiring statewide registration. In 1975 a bill requiring registration passed, but Governor Arthur Link vetoed the bill.

During the 1975-76 interim, the Legislative Council's Judiciary "A" Committee was directed to revise and modernize the state's election laws. The 1977 Legislative Council report indicated the subject of voter registration was thoroughly discussed; however, there was no general consensus on the need for a voter registration system. The committee heard proposals on voter registration ranging from a completely voter-initiated system to a completely government-initiated system. The government-initiated system involved door-to-door canvassing of every household in the state to determine qualified electors. The committee also considered proposals to provide branch offices for registration and to allow registration by mail. At the time, committee members were concerned voter registration might become a deterrent to voting, especially in rural areas where voter identification was a minor problem. Other members believed the existing affidavit system did not prove whether there was fraudulent voting in the state. As a compromise, the committee recommended a bill providing for statewide voter registration, which allowed any county containing no city with a population of 5,000 or more to be exempt from the system by resolution of the board of county commissioners. The bill, 1977 House Bill No. 1050, failed to pass the House.

The 1999-2000 interim Judiciary Committee was the most recent committee assigned to study voter registration and residency requirements. The committee focused on voter registration and the federal National Voter Registration Act of 1993, residency requirements, and challenged voters. The committee recommended 2001 House Bill No. 1047 to permit election board members and poll challengers to request identification from challenged voters to address voting eligibility concerns, which passed, and 2001 House Bill No. 1048 to provide a provisional ballot procedure for the ballots of challenged voters, which failed to pass the House.

North Dakota Voter Registration Laws and the Central Voter File

Section 40-21-10 allows the governing body of any city to require the registration of voters in any election held or conducted within the municipality. No city has instituted voter registration under that provision.

Under Chapter 16.1-02, the Secretary of State is responsible for the maintenance of a central voter file. Section 16.1-02-01 establishes a permanent, centralized electronic database of voters--the central voter file. Section 16.1-02-03 directs the Secretary of State to establish the central voter file from records maintained by DOT and each county auditor and to assign each voter a unique identifier. Section 16.1-02-04 requires the county auditor to immediately update the voter records maintained by DOT and the Secretary of State when the boundaries of a precinct are changed. Section 16.1-02-05 requires a county auditor to add any voter who is not already included in the central voter file within 45 days following an election and requires the Secretary of State to determine within 85 days of an election if any individual voted more than once. Section 16.1-02-06 requires the State Health Officer to report the name, address, date of birth, and county of residence of each individual 18 years of age or older who has died to the Secretary of State to assist the county auditor in updating the central voter file.

Section 16.1-02-07 requires the State Court Administrator to report the name, address, date of birth, and county of residence of each individual whose name was changed by divorce or any order or decree, to the Secretary of State to assist the county auditor in updating the central voter file. Section 16.1-02-08.1 requires the Director of the Department of Corrections and Rehabilitation to provide a report to the Secretary of State including the name, address, date of birth, date of sentence, effective date of sentence, and county in which a conviction occurred, of each individual who has been

convicted of a felony and incarcerated under the legal and physical custody of the Department of Corrections and Rehabilitation in the last year. The Secretary of State is required to designate those individuals as ineligible to vote within the central voter file. Section 16.1-02-09 requires DOT to report any relevant changes and updates that may require changes to the central voter file to be reported to the Secretary of State.

Section 16.1-02-10 requires each county auditor to post the voting history for each individual who voted in an election within 75 days of the election. At the end of each even-numbered calendar year, the Secretary of State is required to determine whether to change the status of each individual to "inactive" in the central voter file. Section 16.1-02-11 provides the Secretary of State the authority to adopt rules and procedures for the purpose of maintaining the central voter file. Section 16.1-02-12 provides the information required to be included for each individual in the central voter file, such as an individual's complete legal name, date of birth, residential address, mailing address, and the unique identifier assigned to the individual. Section 16.1-02-13 requires each county auditor to generate a pollbook for each precinct in the county from the central voter file by the day before an election. Section 16.1-02-15 provides a voter list or a report generated from the central voter file may be made available to a candidate, political party, or a political committee for election-related purposes.

Section 16.1-05-07 addresses verification of the eligibility of an individual seeking to vote. Under that section, when verifying an individual's eligibility or when entering the name of an individual into the pollbook, the poll clerks at a precinct are required to request, correct, and update any incorrect or incomplete information about an individual required to be included in the pollbook. If the individual's name is in the pollbook, the poll clerks are required to verify the individual's address. If the individual's name is not in the pollbook, but the individual is determined eligible to vote, the poll clerks are required to record the individual's name in the pollbook.

National Voter Registration Act of 1993

The federal National Voter Registration Act of 1993 [42 U.S.C. § 1973] requires individuals be given an opportunity to register to vote in elections for federal office when applying for or renewing a driver's license or other personal identification document issued by a state motor vehicle authority; when applying for or receiving certain types of public assistance and other services; by mail, using either an appropriate state form or a national form, and at a military recruiting office. The Act prohibits the purging of voters' names from voter registration lists solely for failure to vote and requires a program for positively confirming the accuracy and currency of the registration lists. The Act sets out specific and detailed requirements for the maintenance of voter lists that require multiple confirmation mailings in most cases. The Act provides for certain "fail-safe" voting mechanisms to ensure the right to vote prevails when a voter's name is eliminated or not included on a voter registration list.

North Dakota is the only state exempt from complying with the Act because North Dakota is the only state without voter registration. Only the states that had "same-day" registration in place at the time of the enactment of the Act were permitted to continue with that type of registration. If North Dakota implemented voter registration, it would immediately fall under the requirements of the Act.

Verification of Citizenship

Verification of United States citizenship is a responsibility of the United States Citizenship and Immigration Services of the United States Department of Homeland Security. During the 2015 legislative session, the House Judiciary Committee received testimony from representatives of DOT indicating that to verify citizenship for each applicant, DOT would be required to work with the Department of Homeland Security to establish processes deemed satisfactory by the Department of Homeland Security, and DOT would be required to prove an applicant's citizenship.

Testimony and Committee Considerations

A representative from the Secretary of State's office indicated a desire to explore the idea of requiring identification at the polls in conjunction with a method to demonstrate residency to determine whether such a requirement would be considered voter registration under the National Voter Registration Act. The fiscal impact of the state of implementing voter registration was estimated to be near \$10 million.

The committee received testimony from a representative from DOT regarding the responsibilities of the department. Although the primary responsibilities of the department relate to motor vehicles, the department has taken on additional roles relating to the verification of residency and citizenship.

The committee received testimony from county auditors and representatives of the North Dakota Association of Counties indicating changes implemented since 2013, which relate to verification of eligibility of voters, have increased confusion among voters. However, it has yet to be determined whether the changes were necessary as voter fraud has generally not been an issue in the state.

A representative of the Colorado Election Division provided information relating to the mail ballot system used in Colorado. Colorado allows same-day registration, which permits an individual to register at the polling location if that individual can legally demonstrate the individual's right to do so.

A representative of the Minnesota Elections Division provided information related to the methods of voter verification used in Minnesota. That state uses postcard verification to confirm the residential address of registered voters while also providing an individual the opportunity to provide further documentation at a polling location.

A representative of the National Conference of State Legislatures provided information relating to the various types of voter registration in use throughout the country and the legal challenges some states have experienced through the implementation of voter verification of citizenship statutes. Because all the other states have voter registration requirements, most of the states address verification of citizenship through the registration process. According to the testimony, the most common method is attestation on the voter registration form.

The committee focused its deliberations on whether to implement voter registration or a method to verify citizenship and residency. The committee received extensive testimony regarding the ease of use of the state's central voter file compared to implementing voter registration. Testimony from election officials indicated pollworkers often have questions when determining residency for purposes of voting. The committee received overwhelming testimony against implementing voter registration or any type of verification of citizenship. Testimony indicated there are very few cases of voter fraud during each election, even fewer of which are prosecuted.

Testimony indicated the states that require verification of citizenship are facing legal challenges. In addition, the committee received testimony indicating there would be significant cost associated with implementing a voter verification system. To verify citizenship for each applicant, DOT would be required to work with the federal Department of Homeland Security to establish processes to enable DOT to provide verification. A verification process could include the scanning and verification of identification documents such as a birth certificate, passport, certificate of naturalization, or other form of identification. To prove residency, DOT would request and scan a document such as a utility bill or mortgage document to correlate an individual to a physical address. A full interview of the applicant would be necessary to complete the verification of each individual.

Conclusion

The committee makes no recommendation with respect to voter registration and verification of citizenship.

OBERGEFELL V. HODGES

Background

After the United States Supreme Court in *Obergefell v. Hodges*, 576 U.S. ____ (2015), determined the 14th Amendment of the United States Constitution provides the right for same-sex couples to marry, the committee was delegated the responsibility to review statutory provisions that may be in conflict with the ruling.

Testimony and Committee Considerations

In its study of the impact of the United States Supreme Court's decision in *Obergefell v. Hodges*, the committee received testimony from a representative of the North Dakota Association of Counties, which indicated the only change to state documentation relating to marriage licenses was a clerical change to the application form for a marriage license.

Testimony from a representative of the Attorney General's office indicated one of the lawsuits brought against the state before the Supreme Court decision in *Obergefell v. Hodges* involved seven same-sex couples, some of whom wanted to be married in the state and some of whom wanted their marriages to be recognized in the state. A second case was filed only on behalf of two women who had been married in Minnesota and were seeking to have their marriage recognized by the state. Although the state filed a motion to dismiss in each case, the cases were stayed pending the outcome of the *Obergefell v. Hodges* case. The federal judge issued orders finding Sections 14-03-01 and 14-03-08 unconstitutional after the *Obergefell v. Hodges* decision was released in June 2015. The federal court orders require the state to issue marriage licenses to a same-sex couple as it would to a heterosexual couple. Testimony indicated that although only two sections were specifically declared unconstitutional, many other statutory sections are likely unenforceable.

The committee received information from representatives from the Department of Human Services, North Dakota Public Employees Retirement System, and the North Dakota Association of Counties indicating *Obergefell v. Hodges* would not have a significant impact on the day-to-day operations of the state. According to information provided by the North Dakota Association of Counties, out of the 4,797 marriage licenses issued in 2015, 66 were issued to same-sex couples. Approximately 20 same-sex couples enrolled in group insurance plans under the Public Employees Retirement System.

The committee considered a bill draft to update the references to married couples in Century Code. The bill draft consists of 33 sections that amend language from either "husband or wife" to "two individuals married to each other" or "husband" or "wife" to "spouse." Although there was discussion regarding whether the statutory changes were necessary, the committee also was informed the changes would not be substantive in nature.

Recommendation

The committee recommends a bill [[17.0203.01000](#)] to address the inconsistent statutory references regarding married couples.

UNIFORM LAWS REVIEW

The North Dakota Commission on Uniform State Laws consists of 12 members. The primary function of the commission is to represent North Dakota in the National Conference of Commissioners on Uniform State Laws. The National Conference consists of representatives of all states, and its purpose is to promote uniformity in state law on all subjects on which uniformity is desirable and practicable and to serve state government by improving state laws for better interstate relationships. Under Sections 54-35-02 and 54-55-04, the state commission may submit its recommendations for enactment of uniform laws or proposed amendments to existing uniform laws to the Legislative Management for its review and recommendation during the interim between legislative sessions. The commission presented these recommendations to the committee:

- **Revised Uniform Athlete Agents Act (RUAAA)**, Revised 2015. North Dakota enacted the Uniform Athlete Agents Act in 2003. The purposes of RUAAA include providing enhanced protection for student athletes and educational institutions, creating a uniform body of agent registration information for use by state agencies, and simplifying the regulatory environment faced by legitimate athlete agents. The Act has been introduced in one state and enacted in three other states.
- **Uniform Disposition of Community Property Rights at Death Act**, which was completed by the Uniform Law Commission in 1971, for adoption by noncommunity property states such as North Dakota. This Act reserves the rights of each spouse in property that was community property before the spouses moved to the noncommunity property state, unless they have severed or altered their community property rights. This Act has been enacted in 16 states.
- **Revised Uniform Fiduciary Access to Digital Assets Act (Revised UFADAA)**, which was completed by the Uniform Law Commission in 2014 and revised in 2015. The Uniform Fiduciary Access to Digital Assets Act was introduced in North Dakota in 2015 and failed to pass. In the modern world, documents are stored in electronic files rather than in file cabinets, e.g., photographs are uploaded to websites rather than printed on paper. The Revised UFADAA gives Internet users the power to plan for the management and disposition of their digital assets in a similar way as they can make plans for their tangible property. The Act has been introduced in 12 states and enacted in 19 other states.
- **Uniform Foreign-Country Money Judgments Recognition Act**, Revised 2005, which is a revision of the Uniform Foreign Money Judgments Recognition Act of 1962, which North Dakota enacted in 2003. Since its promulgation more than 40 years ago, the 1962 Act has been adopted in a majority of the states and has been in large part successful in carrying out its purpose of establishing clear and uniform standards under which state courts will enforce the foreign-country money judgments that come within its scope. Notwithstanding the success of the 1962 Act, a revision is necessary to update that Act. The revision is made timely by the continuing increase in international trade and the need for making each state a recognized forum for international business. The revised Act provides clear and certain rules for obtaining foreign-country money judgments, is a more comprehensive Act than its predecessor, and provides a better response to the current conditions of international trade. The Act has been introduced in two states and enacted in 22 other states.
- **Uniform Recognition and Enforcement of Canadian Domestic Violence Protection Orders Act**. The Uniform Law Commission approved this Act in 2002 to provide for cross-border recognition and enforcement of Canadian domestic violence protection orders and a uniform system for the enforcement of domestic violence protection orders across state lines. In 2011 the Uniform Law Conference of Canada approved the Uniform Enforcement of Canadian Judgments and Decrees Act, providing for the recognition of foreign protection orders, including those of the United States. This Act has been introduced in Colorado and enacted in Delaware.
- **Uniform Power of Attorney Act**. The commission will consult with interested parties to determine whether to introduce this Act. This Act is designed to supersede the Uniform Durable Power of Attorney Act, which North Dakota enacted in 1985. The Uniform Power of Attorney Act seeks to preserve the durable power of attorney as a low-cost, flexible, and private form of surrogate decisionmaking while deterring use of the power of attorney as a tool for financial abuse of incapacitated individuals. The Act contains provisions that encourage acceptance of powers of attorney by third persons, safeguard incapacitated principals, and provide clearer guidelines for agents. This Act has been introduced in 2 states and enacted in 21 other states.

Conclusion

The committee makes no recommendation regarding these uniform Acts.

TECHNICAL CORRECTIONS

The committee continued the practice of reviewing Century Code to determine if there are inaccurate or obsolete name and statutory references or superfluous language.

Recommendation

The committee [recommends a bill](#) to make technical corrections throughout Century Code. The following sections are affected:

- Section 1-02-12. This section provides the headnote for a section of Century Code is not part of the law. In 2009 a change in publication style was made and effective date and expiration date notes were included immediately preceding the headnote. That publication style is undergoing another change in which the effective date and expiration date note will follow immediately after the headnote.
- Section 14-20-12. Section 14-20-18 was amended by 2013 Session Laws Chapter 124 to change the period to challenge a voluntary acknowledgment of paternity from 1 to 2 years. The corresponding change in Section 14-20-12 was inadvertently omitted.
- Section 25-02-01.1(1). In 2007 the Joint Commission on Accreditation of Healthcare Organizations simplified its name to The Joint Commission.
- Sections 52-10-04, 52-10-05(4), and 52-10-07. These provisions relate to the old-age survivors' fund. All members of the old-age survivors' fund are deceased and the fund has been closed.
- Section 54-52-01(17). The composition of the Public Employees Retirement Board in Section 54-52-03 was amended by 2015 Session Laws Chapter 56. Although the change to subsection 17, in effect through July 31, 2017, was made, the change to subsection 17, in effect after July 31, 2017, was inadvertently omitted.
- Sections 57-15-10.2, 57-38-01.29, and 57-38-01.30. Section 57-15-10.2, which addressed the tax levy for port purposes, is being repealed because Chapter 11-36, which dealt with port authorities, was repealed by 2015 Session Laws Chapter 439.
- Sections 57-38-01.20(7), 57-38-01.29, and 57-38-01.30. Sections 57-38-01.20(7)(l)(m), 57-38-01.29, and 57-38-01.30 were effective only for the 2007 and 2008 income tax years, with an extension for the 2009 income tax year for certain taxpayers inadvertently omitted under the 2007 legislation.
- Section 57-38-30.3(2). Paragraph i of subsection 2 is no longer necessary because Chapter 11-37, which dealt with commerce authorities, was repealed by 2015 Sessions Laws Chapter 439. Paragraphs l and m were effective only for the 2007 and 2008 income tax years, with an extension for the 2009 income tax year for certain taxpayers inadvertently omitted under the 2007 legislation.
- Section 57-51.1-03.1. House Bill No. 1476 (2015) eliminated various oil extraction tax exemptions and rate reductions. References to portions of Sections 57-51.1-02 and 57-51.1-03 eliminated in the bill were inadvertently left in Section 57-51.1-03.1.

REVIEW OF EXECUTIVE ORDERS

Pursuant to Section 54-03-32, the Legislative Management delegated to the committee the responsibility to review any executive order issued by the President of the United States which has not been affirmed by a vote of the Congress and signed into law, and recommend to the Attorney General and the Governor that the executive order be further reviewed to determine the constitutionality of the order and whether the state should seek an exemption from the order or seek to have the order declared to be an unconstitutional exercise of legislative authority by the President. The committee monitored and reviewed the executive orders issued between May 2015 and August 2016. The committee concluded there were not any executive orders issued during that period which rose to the level indicated in the directive.

Conclusion

The committee makes no recommendations for further review by the Attorney General and the Governor of any executive order issued between May 2015 and August 2016.

COMPREHENSIVE STATUS AND TRENDS REPORT

The committee received a report from the Attorney General on the current status and trends of unlawful drug use and abuse and drug control and enforcement efforts in the state as required by Section 19-03.1-44. The report evaluated the following:

1. The youth risk behavior survey, which is conducted by the Department of Public Instruction every other year, examines the health risks taken by the state's children;
2. Data on the number and type of drug samples analyzed at the State Crime Laboratory;
3. Trends in substance abuse treatment as reported by the Department of Human Services;
4. Arrest statistics compiled by the Bureau of Criminal Investigation from reports submitted by local law enforcement agencies; and
5. Information from the Department of Corrections and Rehabilitation regarding the number of people incarcerated or on probation for drug-related crimes.

The report indicated alcohol continues to be the primary substance used in the state. The number of inmates with drug or alcohol offenses has more than doubled in the past 5 years, from 334 in 2011 to 779 in 2015. In the past 5 years, heroin- and methamphetamine-related drug violations have skyrocketed. Methamphetamine-related drug violations have quintupled, from 246 in 2010 to 1,633 in 2015, with heroin violations increasing from 4 to 177, a 4,300 percent increase.

While alcohol continues to be the number one substance reported by adults receiving treatment through the regional human service centers, methamphetamine use by adults has almost doubled in the last 3 years, from 21 percent in 2012 to 39 percent in 2015. The number of drug cases submitted to the State Crime Laboratory increased by 26 percent from 2013 to 2015, with drug cases involving heroin increasing by more than 400 percent during the same time period. The report noted the percentage of high school students who say they have taken a prescription drug without a prescription one or more times has decreased from 17.6 percent in 2013 to 14.5 percent in 2015, which is below the national average.

COMMISSION ON LEGAL COUNSEL FOR INDIGENTS ANNUAL REPORT

The committee received a report from the Director of the Commission on Legal Counsel for Indigents, as required by Section 54-61-03, regarding pertinent data on the operation, needs, and cost of the indigent defense contract system and any established public defender offices. The commission provides legal services to persons who are indigent and who are charged with misdemeanors and felonies in state district court. The commission also provides counsel to indigent persons who are parties in some juvenile cases and other miscellaneous matters.

In fiscal year 2015, the commission provided counsel in over 13,500 cases. The report indicated the caseloads in the northwest area of the state have been high; however, the commission works to ensure each attorney in the public defender office does not take more than 240 cases each year.

The commission's 2013-15 budget was insufficient to sustain the agency through June 30, 2015. The commission's budget for the 2015-17 biennium is \$18,304,103 from the general fund and \$2,106,914 from other funds. The other funds consist of \$200,000 from the strategic investment and improvements fund as one-time funding for contract services fees for the 2015-17 biennium, and \$1,906,914 from the commission's special fund. The special fund consists of statutory fees paid by defendants which include the court administration--indigent defense/facility improvement fee of \$100 and the \$35 indigent defense application fee from criminal cases. For the 2015-17 biennium, the agency was authorized 7 new full-time equivalent (FTE) positions. According to the report, the commission continues to encourage new attorneys to become public defenders while monitoring caseloads to avoid attorney burnout and reassess employee compensation as the agency loses employees to other agencies and the court system.

NORTH DAKOTA RACING COMMISSION REPORT

The committee received a report from the Director of the North Dakota Racing Commission pursuant to Section 53-06.2-04. The commission is responsible for regulating live and simulcast racing in the state. The commission's primary responsibilities are to regulate live and simulcast races as well as to license all of the participants, including simulcast service providers, tote operators, simulcast site operators, live track providers, simulcast employees, and live racing participants, including owners, trainers, and jockeys.

In the 2015 fiscal year, the account deposit wagering companies produced \$405 million in handle and the handle is on track to reach a projected \$600 million. The report indicated that as a result of the increased revenues, the commission is completely self-funded and returned \$457,561 to the general fund in the 2013-15 biennium which was \$68,317 over the general fund appropriation for the biennium. The commission is taking the following steps to ensure the account deposit wagering companies are held to a high standard of regulatory compliance and transparency in all aspects of operations:

- The commission entered a memorandum of agreement with the Thoroughbred Racing Protective Bureau under which that organization conducts a background check on each prospective account deposit wagering company and the principals of each company before taking any action on an application. No license is issued to an account deposit wagering company if the business practices of the company do not meet the highest industry standards.
- After receiving Racing Commission approval, the Attorney General reviews each account deposit wagering application to ensure full compliance with state and federal laws.
- The commission requires each account deposit wagering company employee to submit to a Federal Bureau of Investigation national background check through the state Bureau of Criminal Investigation before the employee may begin employment.
- The commission contracted with the pre-eminent pari-mutuel auditing company to provide independent monthly auditing of all account deposit wagering activity.
- The commission is working toward adopting the Racing Commissioners International Model Rules in an effort to ensure North Dakota follows current industry standards in all aspects of racing.

According to the report, the true purpose of the commission is not the proliferation of gambling, but rather the welfare of the North Dakota horsemen. The statutory tax structure of the commission requires all income resulting from account deposit wagering company operations directly or indirectly be returned to the horsemen. The .0025 percent tax of the total account deposit wagering handle is split equally into four funds--the general fund, which offsets the commission's funding for the subsequent years; the promotion fund, which is directed to supporting race meets in the state; the purse fund, which provides the vast majority of purse funding for the live races; and the breed fund, which promotes the breeding of horses in the state through performance awards. All breakage--the remaining pennies from pari-mutuel payoffs rounded up to a nickel or dime--from the account deposit wagering companies retained by the commission is deposited directly into the promotion fund. In addition to payments to the general fund, the commission contributed \$1,150,500 during the 2011-13 biennium, and \$1,540,500 during the 2013-15 biennium to the state's equine industry.

The report indicated Horse Race ND has formally entered a business plan with Lien Games Racing, LLC., to move forward with operating the North Dakota Horse Park in Fargo. According to the report, the partners have begun joint efforts to develop further revenue that will support the long-term payment of liabilities and growth of the North Dakota Horse Park.

LOTTERY REPORT

The committee received a report from the Director of the North Dakota Lottery regarding the operation of the lottery pursuant to Section 53-12.1-03. The lottery's goal is to provide a service to the citizens of North Dakota and, while considering the sensitive nature of the lottery, promote games and ensure the integrity, security, and fairness of its operation. To accomplish this, the lottery must offer attractive games that add value to its product mix, license retailers in convenient locations, create effective annual marketing plans, provide quality customer service to retailers and players, and control operating expenses.

For the 2015-17 biennium, the lottery had a fixed appropriation of \$1,753,083 for salaries and fringe benefits for 9.5 FTE positions, and \$3,529,695 for operating expenses, totaling \$5,282,778. The lottery has a continuing appropriation for variable expenses of prizes, retailer commissions, online gaming system vendor fees, and Multi-State Lottery Association game group dues. The appropriation funds 8 FTE positions in the Lottery Division, 1 FTE position in the Information Technology Division of the Attorney General's office, and a .5 FTE position in the Finance and Administration Division. The appropriation also funds 3 part-time draw operators.

The lottery conducts five multi-state games: Powerball, Hot Lotto, 2by2, Mega Millions, and Lucky for Life. The Powerball game was launched on March 25, 2004; Hot Lotto on June 24, 2004; 2by2 on February 2, 2006; Mega Millions on January 31, 2010; and Lucky for Life on January 31, 2016. These games have a range of minimum jackpots of \$22,000 to \$40 million, and a range of overall odds of winning a prize of 1:3.59 to 1:24.87. The Wild Card 2 game ended February 24, 2016.

For the 2015-17 biennium, the lottery projected sales of \$59,620,000 and transfers of \$16,985,000 (\$15.5 million - general fund; \$640,000 - compulsive gambling prevention and treatment fund; and \$845,000 - multi-jurisdictional drug task force grant fund). Unaudited ticket sales through February 2016, the first 8 months of the fiscal year, were \$25.3 million. This amount reflected a \$6.47 million increase in sales or a 34 percent increase compared to the same period last year. The lottery was on track to exceed projected sales of \$33 million and transfers of \$9,242,500 for the first year of the biennium.

During the 2015-17 biennium, the lottery has done or has plans to implement 50 self-service lottery terminals to the retailer base, allowing players to purchase and check lottery products without utilizing a retailer clerk; re-launch the

Powerball game with better overall odds, more winners, and bigger jackpots; add a new online game that will complement the product mix; develop and conduct innovative promotional and public awareness campaigns to attract new players and strengthen the current player/lottery relationship; build membership in the Players Club to reward players for continued patronage; increase awareness of the subscription service; continue to monitor security policies and procedures to ensure the integrity and fairness of operations; and research the ability to introduce a mobile application.

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

STATE HOSPITAL REPORT ON SEXUALLY DANGEROUS INDIVIDUALS TREATMENT PROGRAM

The committee received a report from the Department of Human Services regarding the State Hospital's program for the evaluation and treatment of sexually dangerous individuals. During presentation of the report, a representative of the State Hospital questioned the value of the report being provided by the Department of Human Services. The committee received testimony indicating the report may be more beneficial coming from the Department of Corrections and Rehabilitation.

Since 2007, the Department of Corrections and Rehabilitation has provided a variety of security services, including security training, perimeter surveillance, emergency response, and security consultation. Over the past 24 months, 53 hospital staff received 1,644 hours of basic security training. Another 35 staff received additional specialized security training, including hostage negotiation techniques. According to the report, 24 hour perimeter surveillance occurs through camera and a roving officer. In addition, the James River Correctional Center Security Director provides security consultation for environmental and procedural improvements to the sex offender treatment program and Tompkins Rehabilitation Center.

REPORT ON SUBSTANCE EXPOSED NEWBORNS

The Task Force on Substance Exposed Newborns was created as a result of 2015 Senate Bill No. 2367 for the purpose of researching the impact of substance abuse and neonatal withdrawal syndrome, evaluating effective strategies for treatment and prevention, and providing policy recommendations. The task force was comprised of representatives of state agencies, the Legislative Assembly, medical providers, nonprofit entities focused on children's health and well-being, Indian tribes, law enforcement, and the foster care community.

The task force recommended the state provide funding for programs to help ensure the safety of neonatal abstinence syndrome (NAS) infants after the infants return home. Prevent Child Abuse North Dakota operates the North Dakota Maternal, Infant, and Early Childhood Home Visiting program, which is funded through a federal grant and which provides parent support and education during home visits. The task force identified a considerable lack of data on the incidence of NAS and the effectiveness of measures to prevent and address it. The task force indicated a belief that it is critical to establish baseline incidence data and to develop trend data to determine whether and to what extent the incidence is increasing or decreasing over time.

The task force's recommendations include several methods for identifying substance abusers at risk of becoming pregnant, pregnant substance abusers, babies with NAS, and children suffering long-term effects of in utero exposure to substances. The recommendations also include several methods for ensuring appropriate services are available and provided to women, babies, and children identified as needing the services. This will require continuing educational campaigns directed to health care providers, women, and the general public, as well as requiring the provision of multiple services for mothers who abuse substances and babies suffering from NAS.

DEPARTMENT OF HUMAN SERVICES REPORT ON REVOKED OBLIGOR DRIVER'S LICENSES

Section 50-09-08.6 provides for the suspension of occupational, professional, recreational, motor vehicle operator, and vehicle licenses and registrations for nonpayment of child support or failure to obey a subpoena. The report indicated that before 2003, suspensions were something that courts could order, but it was used sparingly and therefore did not deter obligors from becoming delinquent.

The report stated the goal of the license suspension process is to discourage obligors from missing a payment and to encourage obligors to avoid suspension by working and paying current support on a regular basis plus an affordable amount toward the past-due child support. For this reason, a delinquent obligor receives written notice 30 days before a license is suspended. During that time, the obligor has an opportunity to pay the arrears in full, contact child support

enforcement and sign a payment plan, or seek review by a court. The report indicated child support enforcement has the authority to approve temporary restricted licenses allowing an obligor to drive to work. The report concluded the license supervision process is a proven, effective enforcement technique. After comparing the state's laws with child support enforcement in the other states, the Director of the Child Support Division of the Department of Human Services recommended making no changes to the state's laws relating to child support enforcement.