

# OFFICE OF ATTORNEY GENERAL



**2019 - 2021**

**Biennial Report**



# Contents

<b>OFFICE OF ATTORNEY GENERAL</b> .....	<b>1</b>
THE ELECTED OFFICE .....	1
Duties and Functions.....	1
Defects in the Law .....	2
Finances .....	2
Special Assistant Attorneys General .....	2
Human Trafficking Commission.....	3
Human Trafficking Grants.....	3
Civil Asset Forfeiture .....	3
<b>REPRESENTING THE STATE</b> .....	<b>4</b>
GENERAL LEGAL COUNSEL .....	4
Open Records & Meetings.....	4
Legal Opinions.....	5
Legal Services .....	5
Administrative Rules .....	5
Covid-19 Pandemic .....	6
State Agencies .....	6
State Boards.....	6
Local Governments .....	6
LITIGATION .....	7
Somerset Court.....	7
Burgum v. Jaeger.....	7
Spooftcard, LLC.....	8
Mickelson et al v. ND Department of Health.....	8
Election Lawsuits.....	8
Air Ambulance Lawsuit.....	9
Open Meeting Lawsuits.....	9

Drake v. Stenehjem .....	9
Schmitz v. State Board of Chiropractic Examiners.....	9
<b>ADMINISTRATIVE ACTIONS .....</b>	<b>10</b>
Oil & Gas Hearings .....	10
Environmental Quality .....	11
<b>ENVIRONMENTAL LITIGATION .....</b>	<b>11</b>
Waters of the United States.....	11
North Dakota v. US Army Corps of Engineers - Pipeline Protest Costs .....	11
Washington State Vapor Pressure Standards .....	12
Water Supply Rule .....	13
<b>SUPPORTING CRIMINAL JUSTICE.....</b>	<b>14</b>
<b>BUREAU OF CRIMINAL INVESTIGATION .....</b>	<b>14</b>
Drug Investigations .....	14
K-9 Officers Jib and Jab .....	15
Internet Crimes Against Children (ICAC) .....	16
Sex Offender Registration .....	16
Use of Force Investigations.....	16
Concealed Weapon Licenses.....	17
Clergy Sexual Abuse Investigation.....	17
<b>CRIMINAL PROSECUTIONS .....</b>	<b>18</b>
Habeas Cases.....	18
Administrative Hearings.....	19
<b>MEDICAID FRAUD CONTROL UNIT.....</b>	<b>19</b>
Criminal Cases.....	19
Covid-19 Complaints .....	20
<b>STATE FIRE MARSHAL .....</b>	<b>20</b>
Origin & Cause Investigations.....	20
Fire Investigation Equipment.....	20
Portable X-Ray Imager. ....	21

Photo Ionization Detectors.....	21
Fire Incident Reports .....	21
<b>CRIME LABORATORY .....</b>	<b>22</b>
Drug Samples.....	22
Toxicology Samples.....	22
DNA Samples .....	23
<b>INFORMATION TECHNOLOGY .....</b>	<b>23</b>
Statewide Automated Victim Information & Notification .....	23
Automated Fingerprint Identification Systems (AFIS )Update .....	23
<b>PROTECTING CONSUMERS .....</b>	<b>24</b>
"Anti-trust" Laws .....	24
Multi-state Lawsuits against Google.....	24
Consumer Complaints.....	24
Enforcement Actions .....	24
Do Not Call.....	25
Combating Illegal Robocalls .....	25
<b>CONSUMER FRAUD INVESTIGATIONS .....</b>	<b>26</b>
Unlicensed Contractors.....	26
Nicholas DeRosier, d/b/a Team Lawn Inc. and Vaughn Construction Inc. ....	26
Cease & Desist Orders .....	27
<b>IMPOSTER SCAMS .....</b>	<b>28</b>
<b>REGULATORY ENFORCEMENT .....</b>	<b>29</b>
Fire Safety and Prevention .....	29
Fire Safety Plan Reviews.....	29
Fire Safety Inspections.....	29
Licensing Section.....	29
<b>GAMING .....</b>	<b>30</b>
Gaming Compliance .....	30

Electronic Pull Tab Devices .....	30
Powerhouse Gaming, Inc. ....	31
Gaming Computer System .....	31
<b>NORTH DAKOTA LOTTERY .....</b>	<b>32</b>
Lottery Ticket Sales .....	32
Prize Payouts .....	32
Lottery Promotion Success Stories .....	32
Lucky for Life .....	32
2by2.....	33
Pick & Click Online Play Service .....	33
Lottery Proceeds .....	33
<b>BIENNIUM IN REVIEW.....</b>	<b>34</b>

Photos courtesy of North Dakota Tourism, the CDC, the employees of the Office of Attorney General, and open source photos.



# OFFICE OF ATTORNEY GENERAL

## THE ELECTED OFFICE

*The Office of Attorney General was established in the 1889 state Constitution. The agency is headed by the Attorney General, an independently elected constitutional officer.*

The Attorney General serves on numerous boards and commissions, including the Board of University and School Lands, Industrial Commission (which oversees all state-owned industries), PERS Board of Trustees, Judicial Council, and the Pardon Advisory Board.

The Attorney General also chairs the state's Human Trafficking Commission and the Domestic Violence Fatality Review Commission.

## DUTIES AND FUNCTIONS

The Attorney General represents the state in all legal matters, civil and criminal, where the state is named as a party or the state may have an interest in the outcome of the litigation. The office also provides legal services to state entities and officials.

The Attorney General issues opinions to certain officials on questions of law related to matters involving state statutes, the state Constitution, and matters having statewide significance.

The office also enforces the open records and meetings law, and issues opinions in response to complaints of alleged violations by a public entity.

In addition to its legal duties, the Office of Attorney General has several divisions with regulatory or investigative functions:

- The **Bureau of Criminal Investigation** Division assists local law enforcement agencies with criminal and drug enforcement investigations, leads the narcotics task forces, maintains the criminal history and sex offender registration systems, and issues concealed weapons licenses.
- The **Consumer Protection and Antitrust** Division enforces the state's consumer fraud and "do not call" laws, investigates and prosecutes consumer fraud cases, and enforces the state's anti-trust statutes.
- The **Crime Laboratory** Division supports the criminal justice

system through the analysis, identification, and comparison of physical evidence for use in the investigation and prosecution of criminal offenses.

- The **Fire Marshal** Division conducts arson investigations and fire safety inspections, regulates the sale, use, and storage of explosives, including fireworks, and conducts fire code compliance inspections of public buildings, day care facilities, and schools.
- The **Gaming** Division regulates charitable gaming and audits compliance with tribal-state casino gaming compacts.
- The **Medicaid Fraud Control Unit** investigates allegations of Medicaid fraud by medical professionals and patient abuse at facilities receiving Medicaid funds.
- The **North Dakota Lottery** is responsible for the day-to-day operation of the lottery and its games.

## Defects in the Law

North Dakota Century Code §54-12-05 requires the Attorney General to “direct attention to any defect in the practical operations of the law relating to revenue and criminal offenses and shall suggest amendments and changes as in the attorney general’s judgment are necessary to subserve the public interest.” ▲

## Finances

- The agency’s biennial budget was **\$96.7 million**, including state, federal and other funds.
- The 2019-21 revenues **collected** totaled **\$98.9 million**.
- The cost of defending and prosecuting actions on behalf of other state agencies by attorneys within the Office of Attorney General totaled **\$3.1 million**.

## Special Assistant Attorneys General

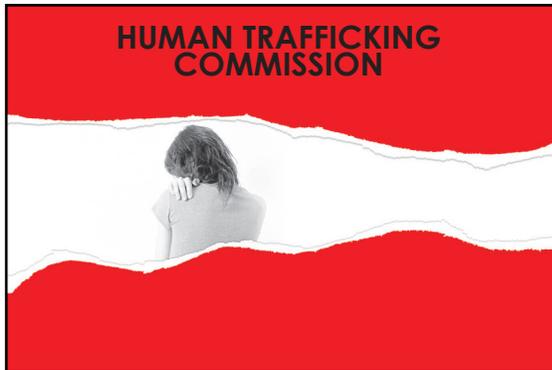
Several state agencies either have their own legal departments or statutory authority to use private attorneys. These attorneys are appointed as Special Assistant Attorneys General (SAAG) but are paid by the hiring state agency.

During the biennium, state agencies paid **\$17.5 million** to these SAAGs, including:

- Workforce Safety & Insurance — **\$4,543,026**;
- Tax Department — **\$618,826**;
- University Systems — **\$552,793**; and
- Private Investigation and Security Board — **\$196,024**. ▣

## HUMAN TRAFFICKING COMMISSION

The Attorney General's Human Trafficking Commission is charged with collecting and evaluating data on human trafficking activities in the state and promoting public awareness and conducting training efforts.



The Attorney General's office partnered with the **Human Trafficking task force** in these efforts. In 2020, the task force investigated **93** cases of human sex trafficking, resulting in **13** victims being identified and the arrest of **five** individuals.

Additional information on the task force activities is available in the 2020 Report, which can be found on the Attorney General's website.

### *Human Trafficking Grants*

In 2019, the Legislature appropriated **\$1.4 million** to provide grants to organizations providing prevention and treatment services related to human trafficking victims. For the 2019-2021 biennium, the following grants were awarded:

- Youthworks Bismarck - \$264,720;
- Youthworks Fargo - \$258,706;
- Abused Adult Resource Center -

\$99,408.00; Community Violence Intervention Center - \$22,493.00; Domestic Violence & Rape Crisis Center - \$54,021.00; Young Women's Christian Association - \$89,628.00; Legal Services of North Dakota - \$166,034.00; Family Crisis Shelter - \$23,850.00; Rape & Abuse Crisis Center - \$101,820.00; North Dakota Council on Abused Women's Services - \$209,319.00.

## CIVIL ASSET FORFEITURE

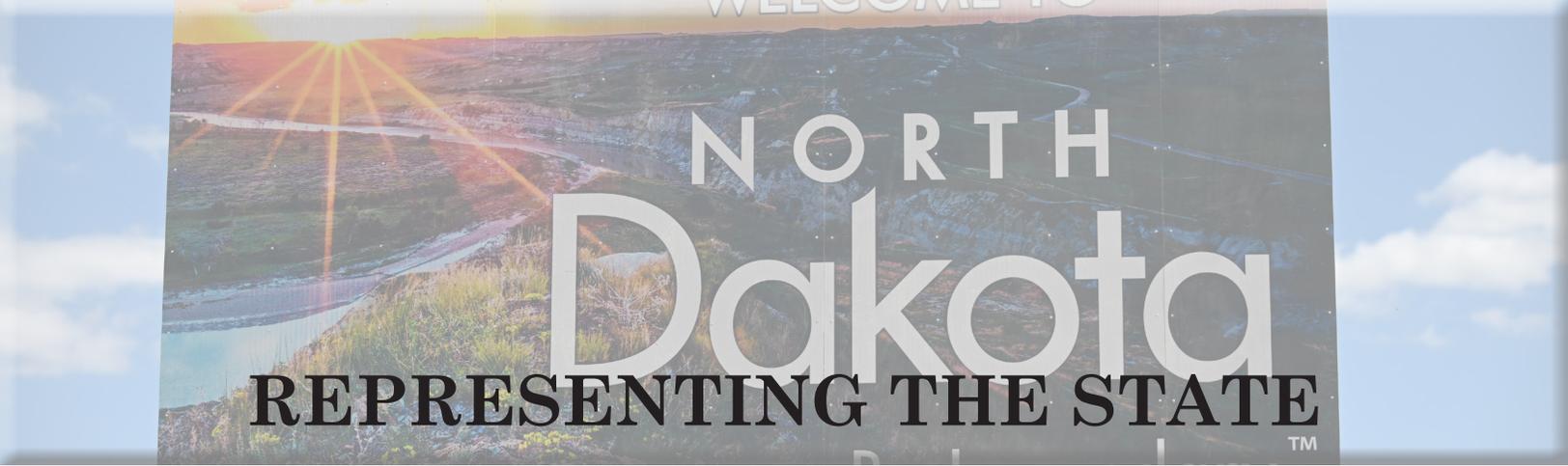
The 66th Legislative Assembly established a reporting requirement for local law enforcement and county state's attorneys regarding the status of civil asset forfeiture proceedings, and required the Attorney General to create an annual report compiled from that information.

The first annual Civil Asset Forfeiture Report was issued on November 1, 2020, providing information about civil asset forfeiture cases concluded, or forfeited assets disposed of, during the previous fiscal year.

Only ten of the state's 53 counties reported having civil asset forfeiture cases. Almost all items seized under civil asset forfeiture fell into one of three categories: currency, automobiles, or firearms. For fiscal year 2019-2020,

- \$477,214 in currency was forfeited, and
- Seven forfeited vehicles and two forfeited firearms were sold at auction for a total of \$30,141 and \$300, respectively.

The complete annual report is available on the Attorney General's website. ■



# WELCOME TO NORTH Dakota REPRESENTING THE STATE

TM

## GENERAL LEGAL COUNSEL

The **State & Local Government** Division provides general counsel legal services to **more than 70 state agencies, boards and commissions.**

*The division drafts Attorney General opinions, negotiates and reviews contracts involving state entities, reviews all administrative rules adopted by state agencies, and assists client agencies by drafting bills and amendments, explaining the ramifications of proposed legislation, and testifying before legislative committees.*

## OPEN RECORDS & MEETINGS

The division handles a large number of telephone calls from public entities and citizens regarding open records and meetings requirements and conducts presentations to state and local government agencies and officials on a public entity's obligations under the open records and open meetings law.

The division issued **27** opinions addressing alleged violations of the open records or open meetings law, including:

- **2019-O-18: CITY RETREAT HELD OUTSIDE CITY'S JURISDICTION VIOLATED THE LAW.** The City of Minot violated the law by holding a meeting that was inaccessible to the public when the city council held its annual retreat at a location approximately 70 miles outside the city's jurisdiction.
- **2020-O-08: COVID-19 CASE INFORMATION PROTECTED BY LAW.** The Department of Health did not violate the law when it declined to provide information relating to COVID-19 cases contained in protected disease control records.
- **2020-O-05: EXEMPTION FOR ATTORNEY WORK PRODUCT.** The City of Minot violated the open records law when it did not conduct a review of records before claiming they were exempt as attorney work product. The city was required to conduct a review and release any records that did not have statutory protections.

## LEGAL OPINIONS

The State & Local Government Division issued **14** opinions on questions of law related to state statutes, the state Constitution, and issues having statewide significance, including:

- **2019-L-09: ELIGIBILITY FOR SKILLED WORKFORCE STUDENT LOAN REPAYMENT PROGRAM.** The skilled workforce student loan repayment program is available to graduates of four-year institutions if all other eligibility requirements are met.
- **2020-L-03: COUNTY MAY CONTRACT WITH STATE PENITENTIARY TO HOUSE PRETRIAL DETAINEE.** State law provides authority for a county correctional facility to contract with the ND DOCR to house a pretrial detainee who has unique medical needs.
- **2020-L-09: EFFECT OF VOTES CAST FOR A DECEASED CANDIDATE FOR POLITICAL OFFICE.** A deceased candidate may be declared to have been elected if a sufficient number of votes were cast for the candidate, but because a deceased candidate would be unable to discharge the duties of the office at the specified time, the office will be deemed vacant.

The Attorney General's Opinion governs the actions of public officials until such time as the question presented is decided by the courts.

## Legal Services

Division attorneys advise and represent the majority of state agencies and professional licensing boards, providing general counsel services, and legal assistance with regulatory compliance, and licensing board disciplinary actions.

In addition to providing training on open records and meetings requirements, division attorneys:

- provided annual training to more than 100 state licensing board members on laws and rules governing boards and board authority, and assisted state boards in complex litigation regarding open records,
- advised the Board of Public School Education and represented it in hearings relating to reorganizing and creating a new school district in the Williston area,
- advised the Department of Career and Technical Education on guidelines and procedures for distribution of \$70 million dollars in grant funds, and
- worked with the Legislature to address questions and draft amendments on numerous bills.

## Administrative Rules

Division attorneys reviewed **97** sets of administrative rules for state agencies and boards, addressing legislative changes requiring regulatory updates. ■

## COVID-19 PANDEMIC

As general counsel for most state agencies, boards, and commissions, from the onset of the Covid-19 pandemic, attorneys in the **State & Local Government** division have been called upon to provide guidance and advice to assist their client agencies in navigating the ever-changing public health emergency.

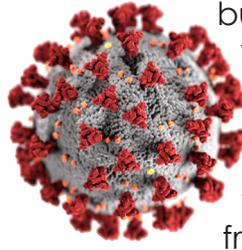
During the height of the state's Covid-19 pandemic crisis these attorneys, all working remotely during the state's shutdown, were available to their clients at all hours, to ensure these agencies received timely assistance in response to an emergent situation.

### *State Agencies*

Attorneys advised the Health Department on executive orders; federal orders and guidance; evolving legal information regarding the Covid-19 pandemic, including drafting state health officer orders and numerous executive orders related to the state's Covid-19 response; negotiated the purchase of additional lab equipment, software, PPE, and testing supplies; and negotiated contracts addressing workforce shortages in the healthcare sector.

Advised the University System on federal laws implemented for leave and pay, transitioning to online classes (and moving back to in-person classes), advising on cleaning, masking, spacing issues, transitioning to tele-health, developing and implementing new policies to address Covid-19.

Advised the Department of Commerce regarding the distribution of nearly \$80 million dollars in grant funding for



businesses and employers dealing with the impact of Covid-19.

Assisted JSND in ensuring federal CARES Act funds were obligated timely and advised JSND regarding fraud concerns and prevention, and trying to prevent any overpayment to claimants.

Advised ND ITD regarding project contracts for the expenditure of approximately \$33 million in CARES Act funding.

Advised State Investment Board while navigating Covid-19 related investment losses and subsequent recoveries.

Advised NDPERS on extending certain agency and member filing deadlines due to Covid-19, and procuring or renewing various Uniform Group Insurance Plans, including health, prescription drug, vision, and Medicare part D.

### *State Boards*

Assisted the various regulatory licensing boards regarding executive orders and issues related to licensure during the Covid-19 pandemic, including advising the Education Standards and Practices Board on executive orders and emergency rules relating to the teacher shortage experienced during the pandemic, and the Board of Respiratory Care on licensing of respiratory therapists during the pandemic.

### *Local Governments*

Provided assistance to local political subdivisions on their authority and issues related to the pandemic. ♦

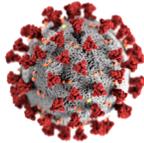


# LITIGATION

The **Civil Litigation and Natural Resources** Division attorneys provide a wide variety of legal services. The attorneys represent the state and state agencies and officials in legal actions, including administrative and enforcement hearings, state court lawsuits, federal court lawsuits, and appeals. The attorneys handle cases ranging from challenges to the constitutionality of state laws to protecting the state's natural resources from federal overreach.

## Somerset Court

In April 2020, Somerset Court, an assisted living facility, and a cosmetologist operating a salon within the facility, brought a lawsuit challenging executive orders issued by Governor Burgum in response to the **Covid-19 pandemic** that placed limits on certain services requiring close contact with others.



A state district court dismissed the case in September 2020, concluding the executive orders were within the Governor's constitutional and statutory authority, and the North Dakota Supreme Court **affirmed** that decision in April 2021.

## Burgum v. Jaeger

In November, 2020, Governor Doug Burgum filed a petition for a 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 shortly before the 2020 election.

The Governor challenged the right of the District 8 Republican Committee to appoint someone to fill the vacancy, as outlined in Attorney General **Opinion 2020-L-09**.

## *Stenehjem Statement on Supreme Court Decision in District 8 Election Dispute*

November 24, 2020

BISMARCK, ND - Today the North Dakota Supreme Court agreed with the Attorney General's October 13, 2020 Opinion, in which he opined a vacancy in the office of a District 8 House of Representatives seat would exist on December 1, 2020 as a result of the tragic death of David Andahl.

The Court further agreed with the Attorney General that a mechanism to fill the vacancy existed in current law and the District 8 Republican Executive Committee had the authority to fill the vacancy. The Court rejected the Governor's argument that he had the authority to fill the vacancy. The Court also rejected Kathrin Volochenko's argument that, as the third place finisher, she was entitled to the office.

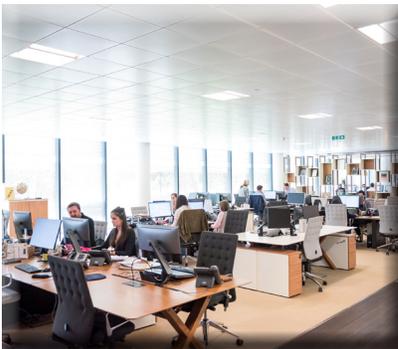
"The Court's decision today affirmed my earlier Opinion. This entire exercise was a waste of taxpayer dollars and time, all of which could have been avoided had the Governor come across the hall to receive legal advice from the person who was elected by the citizens of North Dakota to provide legal advice to state officials," said Attorney General Wayne Stenehjem. ♦

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

## Spoofcard, LLC

In 2019, the North Dakota Legislature unanimously passed a law banning "spoofing" (the use of technology to hide the telephone number being used and instead display an alternate number) within North Dakota.

Spoofcard, LLC, a New Jersey company that sells caller ID spoofing services, sued, arguing that the law attempted to regulate interstate commerce and was therefore unconstitutional.



The US District Court granted a partial summary judgment on November 9, 2019, ruling the law "has the practical effect of regulating interstate commerce because it is impossible for Plaintiffs to determine whether a call recipient is physically within North Dakota."

- The state entered into an agreement settling all claims on December 2, 2020.

## Mickelson et al v. ND Department of Health

In 2017, the legislature enacted legislation to expand cottage food sales. "Cottage foods" generally are homemade baked and canned foods.



The Department of Health then adopted administrative rules to restrict the types of homemade foods that could be sold. Those rules took effect in January 2020. In March 2020, a group of cottage food producers sued the state in district court, seeking to overturn the administrative rules.

In December, 2020, the District Court ruled against the Department, concluding it had exceeded its authority when it adopted the restrictive rules and the rules were contrary to the law. The court declared the rules invalid.

## Election Lawsuits

Two federal voter identification lawsuits were resolved this biennium. 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 Secretary of State's enforcement of the laws violated the constitutional rights of Native American voters.

Both cases were settled in April 2020. 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 was the subject of an appeal to the Eighth Circuit Court of Appeals.

On July 16, 2021 (after the end of the biennium), the Eighth Circuit Court of Appeals affirmed a judgment of \$452,983.76 in attorney fees in favor of the plaintiffs. Shortly after that decision, the State negotiated a settlement to pay the judgment plus post-judgment interest through **June 30, 2021**, in exchange for the plaintiffs' agreement not to seek additional fees on appeal or additional post-judgment interest.

## **Air Ambulance Lawsuit**

A detailed explanation of this lawsuit was provided in the previous biennial report. The ongoing litigation over the 2017 law regulating the manner in which insurance companies pay for air ambulance services concluded in March 2021, when the state lost at the Eighth Circuit.

## **OPEN MEETING LAWSUITS**



### ***Drake v. Stenehjem***

In December, 2020, Robert Drake sued the Attorney General, members of the Valley City Commission and the City of Valley City, in federal district court, alleging the City was violating the First Amendment by limiting his ability to speak at City Commission meetings, and alleging that the Attorney General's Open Meetings Manual and legal opinions on open meetings laws also violated his First Amendment rights.

- On July 30, 2021 (after the end of the reporting period), the federal district court dismissed the claims against the Attorney General, holding that the Attorney General was merely fulfilling his duties under state law by publishing the Manual and offering opinions on North Dakota's open meetings laws.

### ***Schmitz v. State Board of Chiropractic Examiners***

In June, 2020, a licensed chiropractor sued the North Dakota State Board of Chiropractic Examiners, alleging that the Board violated the open meetings law when it met in executive sessions to discuss a disciplinary matter, claiming it went beyond attorney consultation and attorney work product, and alleging the Board violated the open records laws by not providing him with copies of the recordings of the executive sessions.

The Board moved to dismiss the lawsuit, which was granted by the District Court. Dr. Schmitz appealed to the North Dakota Supreme Court.

On April 20, 2021, the Supreme Court reversed the District Court and remanded the case for an in camera review of the executive session recordings to determine if the executive session discussions went beyond the scope of attorney consultation or attorney work product and disclose the portions of the recordings of discussions to only those matters not exempt under the law.

- The case is pending. ▣

# ADMINISTRATIVE ACTIONS

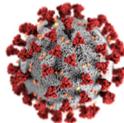
The **Civil Litigation** attorneys represent the Bank of North Dakota, the Department of Labor, Department of Human Services, Department of Transportation, Job Service North Dakota, the state's Risk Management Fund, and the Department of Corrections & Rehabilitation.

The **Natural Resources** attorneys advise and assist the various state entities tasked with regulating the exploration and development of the state's mineral and water resources, protecting the environment, and managing state-owned lands, wildlife and wildlife habitats, and public recreation areas.

The Civil Litigation & Natural Resources division recovered over **\$15,097,000** for state entities during the biennium.

The attorneys:

- Collected **\$5.7 million** for the Bank of North Dakota for delinquent property and student loans;
  - This is less than the \$13.3 million collected last biennium because there was a federal moratorium on collection of delinquent residential loans beginning in March 2020 and continuing through the remainder of the biennium.
- Collected **\$1.29 million** in unpaid employer tax and benefit contributions for Job Service North Dakota;
- Handled **39** wage claim cases on behalf of the Department of Labor, recovering **\$87,118.75** in unpaid employee wages from employers; and
- Represented the Department of Transportation in **255** appeals of DUI administrative hearings.



## Oil & Gas Hearings

The division presided over almost 2,000 oil & gas administrative hearings and helped the Industrial Commission's Department of Mineral Resources pursue seven civil administrative cases for violations of the Commission's rules, orders, and regulations, including:

- **\$1,027,776** from Samson Oil & Gas USA Inc, relating to a Williams county spill of 240 barrels of oil. The company completed cleanup and the case settled by consent agreement in December 2020.



Through its enforcement actions the division has collected **\$6.95 million** in penalties.

## Environmental Quality

The division assisted the Department of Environmental Quality with its regulatory work involving air and water pollution control, and solid waste and hazardous waste management.

During the biennium, the division represented the Department in **60 enforcement actions**, collecting more than **\$1.07 million** in penalties for violations, including:

- Against Marathon Oil Company, for a leak of approximately 32,860 gallons of produced water from a gathering line into a creek and stock pond. The company agreed to pay a penalty of **\$271,000**, complete remediation

of the spill site, and improve its leak detection and monitoring operations.

- Against Family Dollar, Inc., a retail store, which provides water through a private well and is a public water system, for violating the safe drinking waters laws and rules by failing to complete monthly monitoring, having positive e. coli results, and failing to properly notify the public. The parties entered into a settlement requiring a **\$30,000 penalty, \$20,000 of which was suspended** provided the store contracts with a qualified person to perform monthly testing and complies with all safe drinking water laws and rules for two years.

## ENVIRONMENTAL LITIGATION

### Waters of the United States

The State intervened, along with several other states, in litigation in the Northern District of California to **defend** the Navigable Waters Protection rule (the Trump administration's replacement of the Obama administration's WOTUS rule). Several other states have brought litigation in that district to have the rule declared **void**. The lawsuits are pending.



### North Dakota v. US Army Corps of Engineers - Pipeline Protest Costs



The Attorney General filed suit against the United States in July 2018, asserting that the US Army Corps of Engineers' negligent actions and inactions during the protests forced North Dakota to respond to the emergency situation created by the protests and resulted in

more than \$38 million in damages to the State.

The federal District Court in North Dakota denied the Corps' 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. Extensive discovery in the case is ongoing.

- A bench trial is set to begin on May 1st, 2023.

### ***Court Allows Dakota Access Pipeline to Continue to Operate***

May 21, 2021

North Dakota Attorney General Wayne Stenehjem welcomed Judge Boasberg's Order today denying the effort to shut down the Dakota Access Pipeline from continuing to operate pending completion of a court-ordered Environmental Impact Statement on a short portion of the pipeline where it crosses under the Missouri River. "I applaud the Court's determination not to halt the pipeline, and remain confident that the final environmental analysis will again show the pipeline is an exceedingly safe way to transport oil from North Dakota to refineries, just as it has been doing for almost four years," Stenehjem said.

"I trust that the updated information North Dakota recently provided the Court, as well as a separate letter from the Three Affiliated Tribes, were important considerations in the Court's decision, and look forward to conferring with the Corps as this matter proceeds," he added.

## **Washington State Vapor Pressure Standards**

In July, 2019, the state of North Dakota filed a petition with the US Department of Transportation seeking to overturn a Washington State law setting vapor pressure standards on crude oil unloaded at refineries in its state that were significantly lower than national standards.



North Dakota ships about **10% of its oil by rail to refineries in the state of Washington.**

The new WA state standard would have made it uneconomical for oil from the Bakken region in North Dakota and Montana to be unloaded at Washington state refineries. The state of Montana joined North Dakota's petition.

The Hazardous Materials Transportation Act is a federal law authorizing the US DOT to establish a uniform set of national regulations for the transportation of hazardous materials. The US DOT delegated this authority to the federal Pipeline & Hazardous Materials Safety Administration (PHMSA).

In May, 2020, PHMSA issued a decision in agreement with ND, that Washington state's restrictions on vapor pressure for transportation of crude oil were preempted by federal law, and further, that the law amounted to "a de facto ban on Bakken crude." ▣

## Water Supply Rule

In August 2019, North Dakota led a group of Attorneys General in a letter urging the Trump administration to instruct the Army Corps of Engineers to comply with state water laws and withdraw its proposed Water Supply Rule. The proposed rule, published in the final weeks of the Obama administration, would have required prospective users to pay the Corps for Missouri River water, which would have prohibited North Dakotans from accessing 75% of the Missouri River for water supply.

“ *The notion that the Corps of Engineers can regulate or charge for the use of water that has always belonged to the citizens of North Dakota is unlawful and completely unacceptable.* ”

*Attorney General Wayne Stenehjem  
August 23, 2019*



## *Stenehjem Applauds Corps of Engineers' Policy Change*

December 4, 2020

Attorney General Wayne Stenehjem was advised that the Army Corps of Engineers has **reversed** course on its policy regarding water withdrawals from the Missouri River, sometimes referred to as the “surplus water rule.” Since May 2010, the state’s access to nearly 75% of the Missouri River through ND has been blocked by the Corps. The Corps’ policy also blocked all access for the MHA reservation and the Standing Rock reservation.

“This is a huge step in the right direction to restore full access to the Missouri River to the people of North Dakota for beneficial use,” said Stenehjem. “It remains to be seen how the Corps will move forward from here,” he continued.

The Corps refused for over ten years to process any access easement applications across the reservoir take-line without an applicant first signing a water supply agreement and agreeing to pay the Corps for water use. In December 2016 the Corps then proposed a new nationwide “water supply rule” that was met with widespread criticism. Stenehjem’s office and bi-partisan colleagues in the Conference of Western Attorneys General, which Stenehjem chairs, have worked vigorously with the Corps to make headway on these issues.

**In January 2020, President Trump formally withdrew the water supply rule, and the Corps officially withdrew its policy.**

# POLICE

STATE AGENT

## SUPPORTING CRIMINAL JUSTICE

### BUREAU OF CRIMINAL INVESTIGATION

The **Bureau of Criminal Investigation** Division (BCI) has agents located in Bismarck and **13 field offices** across the state. These agents provided assistance to federal, state, and local law enforcement agencies on **828** criminal investigations and **706** drug investigations during the biennium

### Drug Investigations

Agents assigned to the ten narcotics task forces work to identify, target, disrupt, and dismantle Drug Trafficking Organizations (DTOs) producing and selling illegal drugs within our local communities. These DTOs are responsible for the epidemic of prescription drugs, fentanyl, and methamphetamine leading to continued overdoses today.

The BCI targets the supply chains of these organizations using digital technology to isolate and eliminate the operational and financial avenues being used to bring narcotics to North Dakota, including:

- Narcotics Task Force Agents received information about a large scale methamphetamine



dealer in West Fargo. During the course of the investigation, agents conducted numerous interviews and obtained search warrants that eventually lead to the interception and seizure of a 5lb package of meth that

had been shipped to the dealer. As the shipment originated out of state, the task force coordinated with the US Drug Enforcement Administration (DEA) and the Department of Justice in an effort to disrupt and dismantle the entire drug trafficking operation, which appears to get its supplies from Mexico.

The investigation, which was still ongoing as of the end of the biennium, has been expanded into California, Virginia, Oklahoma, Illinois and Minnesota.

- As of the end of the reporting period, the joint state-federal investigation has resulted in the seizure of **44lbs of meth** and **12 kilos of cocaine** in various states, **\$221,000 in currency**, and **13 people are under federal indictment, 8 of whom are from North Dakota.**

## K-9 OFFICERS JIB AND JAB



In December, 2019, through funding received from Operation Underground Railroad and the federal Department of Homeland Security, the BCI acquired Hex, a yellow Labrador trained in Electronic Detection. Unfortunately, only a few weeks later, Hex unexpectedly died from a heart condition.

Subsequently the BCI acquired not one, but two, K-9s with specialized training in detection of electronic devices such as hard drives, cell phones, and sim cards. **Jib** is a black lab and **Jab** is a yellow lab.

“They have proven to be more useful than we even had thought.”

*Attorney General Wayne Stenehjem, discussing two of the newest agents of North Dakota's Bureau of Criminal Investigation -- K9s Jib and Jab.*

Interview with Jack Dura, Bismarck Tribune

Jib's name was chosen by the breeder but K9 handler BCI Agent Halseth was able to pick the name, and chose Jab because "Jib and Jab go together well."

Jib and Jab have already assisted in more than **80** cases, including:

- S/A **Jib** located a computer in the storage area of a residence of an individual suspected to be involved in child pornography. The computer contained child pornography and stored chats indicating the suspect was allegedly producing videos of child pornography and sexually abusing a minor family member. In July, 2020, James Van Raden was charged in federal district court with multiple offenses including patronizing a minor for commercial sexual activity, luring minors by computer, and promoting sexual performance by a minor.

The case is pending.

- While assisting the Williams County Sheriff's Department on a search warrant, S/A **Jab** alerted at a large desk organizer that was full of pens, pencils, and other office supplies. After S/A Jab alerted, an investigator went through the desk organizer but could not locate any items of interest. S/A Jab still alerted on the desk organizer, so the investigator dumped everything out and found two micro SD memory cards among the items.

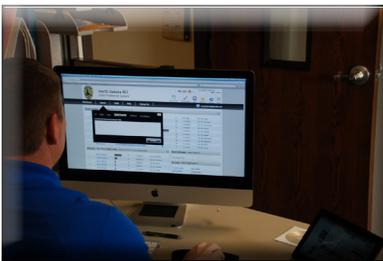
In March, 2021, 34 year old Morgan Tanner was charged with possession of certain materials prohibited and promoting an obscene performance by a minor. In May, 2021, an additional charge of gross sexual imposition was added.

The criminal cases are pending.

## Internet Crimes Against Children (ICAC)

The BCI has six specially trained computer forensic agents located in Minot, Fargo, and Bismarck. These agents provide forensic analysis to state and federal law enforcement agencies on a variety of criminal investigations, from homicides and financial crimes to child sexual exploitation and internet child pornography.

The ICAC agents investigated **810** cases and forensically examined **1,510** digital media devices. Of those devices, **1,184** were cellular phones. The total amount of electronically stored information examined was over **291 terabytes**.



During the biennium, the state's ICAC Task Force assisted with **1,018 child exploitation and sexual abuse investigations**, including:

- In February 2020, agents investigated a report that a 21-year-old was sending inappropriate texts and pictures to his 12-year-old step-sister. Christopher Champion was charged with promoting obscenity to minors and luring a minor by electronic means. During further investigations, it was found that Champion was also in contact with a 14-year-old female from Missouri. As a

result, Champion was charged with a second luring a minor by electronic means, possession of child pornography, and promoting sexual performance by a minor. In March 2021, Champion **pled guilty** to all charges and was sentenced to **five years** in prison. Upon his release, Champion will have to register as a **sex offender**.

## Sex Offender Registration

Sex offenders must register in North Dakota if they have pled guilty to, or been convicted of, certain criminal offenses in North Dakota or an offense in another court which is equivalent to a North Dakota registerable offense.

- As of June 30, 2021, there were **1,585** registered sex offenders. Only **33** offenders were delinquent, which equates to a **compliance rate of about 98%**. ■

## Use of Force Investigations

The BCI assists local law enforcement agencies with independent investigations of an officer's use of force. Once the BCI's investigation is complete, it is referred to the county state's attorney who determines whether the officer's actions were justified.

The BCI conducted **6** use of force investigations, including the death of **Grand Forks Police Officer Cody Holte** who was shot and killed in May 2020, while trying to serve eviction papers, and the August 2020 incident where **Grafton Police Officer Lucas Campoverde** was shot in an exchange of gunfire by an individual who was wanted on a federal warrant.

## Criminal History Record Checks

State agencies and professional licensing boards require, or may request, an applicant to complete a criminal history record check. The BCI also conducts a record check on all concealed weapon license applicants.

- BCI conducted **108,219** state and federal record checks for applicants for professional licensing (a 22.7% increase over last biennium), an additional **17,966** record checks in response to requests from the public (landlords, private employers, etc), and **11,414** for concealed weapon license applicants.

## Concealed Weapon Licenses



The 67th Legislature reduced the "lookback" period for alcohol-related offenses from 10 years to three years, making many more individuals eligible for a Class 1 license which has reciprocity with MN and more than 30 other states. It is anticipated that we will see an increase in the number of applications for a Class 1 license.

- There are **41,571** active licenses, of which **13,747 (33%)** are Class 1 licenses. Last biennium, only 24% of active licenses were Class 1.

## CLERGY SEXUAL ABUSE INVESTIGATION

In January, 2021, the BCI concluded its 18-month long investigation of child sexual abuse by members of the North Dakota Catholic Dioceses going back several decades. The agents reviewed all records associated with complaints of substantiated child sexual abuse against individuals previously identified by the Catholic Dioceses, interviewed several victims, and pursued new leads.

Of the 53 individuals who had not previously been prosecuted, all but two had died by the time the investigation commenced, one of whom died while the investigation was ongoing.

Investigators identified one new individual as a likely perpetrator of child sexual abuse.

Prosecutors with the **Criminal & Regulatory** division reviewed the investigative reports and concluded that while probable cause existed that could have led to criminal charges against the two surviving clergy, the acts occurred so long ago that the statute of limitations had run.

“ I regret it will not be possible to have these men face their victims at a trial and face the potential consequences, but I hope it brings a measure of comfort to the victims that these crimes were eventually investigated. ”

Attorney General Wayne Stenehjem  
January 4, 2021

## CRIMINAL PROSECUTIONS

The **Criminal & Regulatory** Division attorneys provide assistance to the county state's attorneys in prosecuting major crimes or on cases where a conflict of interest exists, including:

- The division assumed prosecution from Divide County of **Derek Fagerbakke**, who was charged with A-Felony Child Abuse after his three-month-old son was airlifted to Sanford Health in Fargo with an anoxic brain injury and severe retinal hemorrhaging. Fagerbakke admitted to shaking the infant but not being aware of the risk. The injury occurred on July 26, 2020. The victim survived but his neurologist testified at trial that the baby's brain scans were the worst he had seen on an individual who has survived.

The case went to trial in June 2021. The jury found Fagerbakke **guilty** and he was sentenced to **10 years**, with five years to serve at the ND DOCR. He did not appeal his conviction.

- On November 10, 2019, **Ian Laboyd** (17) shot and killed Matthew York (19) and shot and wounded Parker Haider (19), during what was supposed to be a drug deal involving LSD. Laboyd fled the scene to the alleyway behind a grocery store in Williston, and dumped the Ruger 22 pistol in a dumpster. He then fled to a female's apartment and admitted he shot some people. The Ruger 22 pistol had been reported stolen by Laboyd's brother-in-law.

LaBoyd was arrested and charged - as an adult. On October 15, 2020, he pled guilty to a reduced charge of **manslaughter** and aggravated assault. Laboyd was sentenced to **ten years** in prison. The Criminal & Regulatory division prosecuted this case.

The division has attorneys assigned to the state-federal High Intensity Drug Trafficking Area (HIDTA) program, to prosecute drug trafficking offenses in state or federal courts, including

- In February 2020, Andre Snead, Spence Courville, and Lakendrick Dixon were indicted on federal heroin trafficking charges. Snead was the source for numerous high level heroin dealers in the Bismarck and Minot areas, and maintain residences in both cities and also in Las Vegas. Courville and Dixon distributed for Snead. Courville committed suicide when taken into federal custody. In July, 2020, Dixon pleaded **guilty** and was sentenced to 72 months. Trial was set for Snead but in May 2021, he changed his plea to **guilty**.



## Habeas Cases

During the biennium, the division defended the state against **13** federal habeas cases at the US District Court, 10 cases at the 8th Circuit Court of Appeals and one case that was declined to be heard at the US Supreme Court.

## Administrative Hearings

The Criminal & Regulatory division provides general counsel to the Peace Officer Standards & Training (POST) Board, which licenses and regulates law enforcement officers.

During the biennium, the POST Board conducted 26 administrative hearings relating to licensure of officers for reasons ranging from lying to law enforcement during the job application process to use of a minor in a sexual performance. In

two instances, the offense was found not to rise to the level of a violation of POST Board rules, but in the other 24 cases, the officer received some form of license sanction, from probation to revocation, including:

- The license revocation of former Mandan officer Scott Warzecha, after he pleaded guilty to several felony offenses for recording a juvenile female while she was entering and exiting the shower.

## MEDICAID FRAUD CONTROL UNIT

*The Medicaid Fraud Control Unit (MFCU) was established as a division of this office by the 66th Legislature. The division initiated its first investigation in November 2019.*

Although the MFCU has been operational for only 20 months, it has already recovered **\$83,867**.

Through the end of the biennium, the MFCU opened **50** cases, and has **24 active** cases for billing fraud by Medicaid service providers, abuse and neglect of patients and residents of health care facilities, and opioid diversion, including:

- Investigating a psychologist who appears to be up-coding, 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.

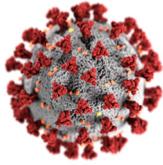
## Criminal Cases

The MFCU filed five criminal cases during the biennium, including:

- In April, 2020, in Pembina County District Court against a licensed practical nurse (LPN) who was charged with two counts of reckless endangerment and 10 counts of theft, for allegedly stealing pain medications from basic care residents and replacing opioid pain medications in the residents' bubble packs with unprescribed over the counter or prescription medications.

Jury trial was been delayed by Covid-19 restrictions and is now rescheduled to January 2022.

- Criminal charges were filed in Barnes County against a certified nurse aide and an LPN for the alleged abuse of a resident of a long-term care facility. The two cases are pending.



### *Covid-19 Complaints*

The MFCU received three complaints involving the improper use of **Covid-19** stimulus checks by long term care (LTC) facilities. Once the Unit explained the law applicable to residents receiving stimulus money, the facility administrators returned the funds to the residents, resolving the complaints without the need for formal action. ■

## STATE FIRE MARSHAL

The **State Fire Marshal** assists local agencies with the investigation of suspected arson. In addition to the State Fire Marshal, the Chief Deputy Fire Marshal and one Deputy are stationed in Bismarck. The remaining four Deputy Fire Marshals are located in field offices across the state.



### Origin & Cause Investigations

During the biennium, Deputy State Fire Marshals conducted **221** fire origin and cause investigations. Deputies devoted **7,338** hours to these investigations.

- As of the end of the reporting period, 39 fire investigations were pending.

Of the 182 fire origin and cause investigations that were closed during the biennium, **10% were determined to be intentionally set**, including

- An August 2020 fire investigation of a commercial bar and restaurant in McKenzie County. During the investigation, gas cans were recovered strewn throughout the building, security cameras had been dismantled, the property was for sale and the insurance coverage was higher than the listed sale price.

Deputy fire marshals worked with local law enforcement and the state's Insurance Fraud division to identify other evidence of insurance fraud and the fire being arson.

In October 2020, **Edward Gonzales** of Nevada **pleaded guilty to two counts of Conspiracy to commit/endangering by fire or explosion**, and received a deferred imposition of sentence in return for cooperating with the investigation of a co-conspirator.

### Fire Investigation Equipment

During the biennium, the State Fire Marshal's Office invested in specialized fire investigation equipment.

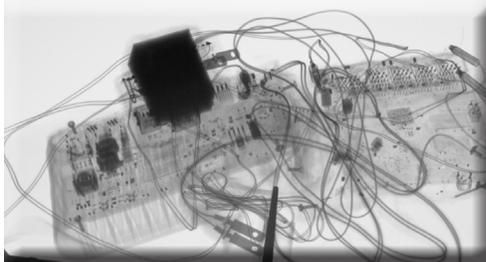
## ***Portable X-Ray Imager.***

The X-Ray Imager is used to detect electrical or non-electrical activity in items that were consumed by a fire, enabling fire investigators to further analyze and evaluate the possibility of electrical involvement as a cause of the fire, without damaging the evidence.

This is what an electrical appliance often looks like after a fire ... a blackened, charred, object.



But **this** is what the fire investigators see with the X-ray imager:



The Imager is portable, so Deputies can take it on site, even in rural areas.

## ***Photo Ionization Detectors***

Fire investigators were also equipped with Photo Ionization Detectors (PIDs), which detect volatile organic compounds that are often found in common ignitable liquids and accelerants.

The PIDs enable deputy fire marshals to collect fire debris evidence, learn about how ignitable liquids were used and

where they may accumulate in a fire scene.



*Deputy Fire Marshal Jess Sinerius, using the PID to monitor for the presence of ignitable liquid vapors*

## **Fire Incident Reports**

The State Fire Marshal serves as the state's program manager for the National Fire Incident Reporting System (NFIRS), monitoring reports submitted by local fire departments to compile and analyze statewide fire incident statistics.

- **260** fire departments in North Dakota (71%) currently submit fire incident reports to NFIRS. This is an increase of 25 fire departments from the previous biennium, and is a direct result of the efforts of the State Fire Marshal's administrative section to increase the rate of fire reporting in the state.
- The departments reported **6,255 fires** during the biennium, resulting in **twelve deaths** and almost **\$86.4 million** in losses.



# CRIME LABORATORY

The **Crime Laboratory Division** is an internationally accredited forensic laboratory providing forensic laboratory services to North Dakota's state and local law enforcement agencies, medical examiners, States Attorneys, and state agencies in the investigation of criminal matters.



Crime Laboratory's Forensic Scientists provide technical assistance and training, evaluate and analyze evidence, interpret results, and provide expert testimony related to the analyses of physical evidence recovered from crime scenes and submitted for examination.

- The Laboratory processed **10,716 criminal cases** this biennium.

## Drug Samples

The **Forensic Chemistry Unit** received 7,257 cases (a 19% decrease) involving 11,303 items (a 44% decrease), and completed 3,549 cases (a 47% decrease).

The decreases from the last biennium are due to the Covid-19 Pandemic and the loss of laboratory personnel.

- The Forensic Chemistry Unit also received 117 cases for **fire debris analysis**, completing **103 cases, involving 308 items.**



## Toxicology Samples

The **Toxicology Unit - Biological Section** processed **638** alcohol samples (4% increase) and **819** samples (14% increase) for the presence of drugs obtained as a result of suspected impaired driving-related offenses.

- The section also analyzed **56** drug-facilitated sexual assault cases.

In addition, **952** coroner cases and **218** medical examiner cases were processed for drug and alcohol analysis.

- When the State Medical Examiner retired, during the interim period before the Health Department hired his replacement, those cases were directed to the county coroners, which resulted in a decrease in "medical examiner" requests to the crime lab.

The **Toxicology Unit – Breath Alcohol Section** provided breath alcohol instrument training to **3,133** law enforcement officers (5% increase).

## DNA Samples

The DNA unit received **2,172 cases**, an increase of 29% over last biennium.



**4,912** offender and arrestee DNA profiles were uploaded into the FBI's National DNA Database, the Combined DNA Index System (CODIS), resulting in 334 matches and possible investigative leads, including:

- A DNA profile developed from a biological sample from the victim's tanktop in a **2005 North Dakota sexual assault** case hit to a DNA profile from a **2020 sexual assault case** from Iowa.
- A DNA profile from a cigarette butt left at the scene where a fence was cut in an alley to gain entry to steal a 4-wheeler in a **2020 Watford City, ND, burglary** hit to a **1991 Utah Sexual Assault**.

## INFORMATION TECHNOLOGY

*The Information Technology and Criminal Justice & Information Sharing (IT/CJIS) Division provides technology support services for the Office of Attorney General staff located in multiple locations across the state.*

*In addition, the division supports communications with other state and local criminal justice agencies through the Criminal Justice Information Sharing (CJIS) portal and the state radio teletype system, 24 hours a day, 7 days a week.*

- The division responded to **12,908** internal and external service requests, a **28%** increase from the previous biennium.

### Statewide Automated Victim Information & Notification

The North Dakota Statewide Automated Victim Information and Notification (ND SAVIN) Program is managed by the IT-CJIS Division. Expansion of the program to add components required under Marsy's Law has been ongoing for the past two bienniums. The last phase of updates was completed in

2020, with the exception of the planned notifications for the Pardon Board. The Department of Corrections does not track Pardon Board notifications electronically, so the SAVIN system has no mechanism to receive the data.

- All updates were completed on time and under budget.

### Automated Fingerprint Identification Systems (AFIS) Update

With the AFIS system nearing capacity, IT-CJIS has been working with the BCI division in partnership with the State of Minnesota, on an updated joint system that will have a database crossing state lines, benefitting criminal justice efforts in both states. Minnesota is bearing most of the cost of the new system, which is anticipated to go live in October, 2022.

- The current AFIS database now includes more than **3.9 million** palm prints and over **4.6 million fingerprint sets**.





# PROTECTING CONSUMERS

The **Consumer Protection and Antitrust** Division performs both legal and investigative duties as it enforces the consumer fraud and Do Not Call laws, prosecutes consumer fraud cases, and administers the state's anti-trust laws.

## “Anti-trust” Laws

The anti-trust laws protect consumers by restricting certain business practices that could result in a monopoly or other non-competitive practice.

### *Multi-state Lawsuits against Google*

In December 2020, North Dakota joined a national bipartisan coalition of states in two antitrust lawsuits against Google, both filed in federal district courts.

The first lawsuit alleges that Google's monopolization of online display advertising includes an anticompetitive agreement with Facebook, suppressing competition and harming consumers.

The second lawsuit addresses Google's control of search engines, alleging that by paying phone manufacturers to have Google products such as Chrome and Google Search preinstalled in such a way that consumers cannot uninstall them, it is effectively stifling competition and the development of next generation search platforms.

The lawsuits are pending. ■

## CONSUMER COMPLAINTS

The Consumer Protection Division opened 2003 consumer complaints and closed 2012.

- **683** complaints were resolved through mediation or legal action, recovering **\$453,067.19** for consumers. Another eight were referred to other agencies;
- An additional **334** complaints were from victims of **imposter scams**, who received individual assistance from division staff to help prevent further losses; and
- The remaining complaints were closed because they were unfounded, unresolved, the office had no jurisdiction, or no action was required.

## Enforcement Actions

The division filed **140** civil actions against individuals and businesses for violating consumer fraud laws, resulting in **\$1.5 million refunded to consumers** and **\$7.5 million** in costs and penalties awarded to the state. ■

## Do Not Call

The division initiated enforcement actions against **14** entities for violations of the “do not call” law, obtaining \$20,000 in civil penalties. Seven of these actions included violations through the use of prerecorded messages.

- Telemarketing complaints were one of the top five complaints filed with the division.

## Combating Illegal Robocalls

In August 2019, a nationwide coalition of Attorneys General announced an agreement with twelve national telephone companies, under which the phone companies will take immediate steps to help protect customers from illegal robocalls.

“*For too long, phone customers have been harassed by a barrage of illegal robocalls, seemingly without any recourse. With the help of the phone companies, unscrupulous scam artists will not be able to hide behind a curtain of technology any longer.*”

*Attorney General Wayne Stenehjem,  
August 22, 2019*

The participating phone companies agreed to implement call-blocking technology at no cost to customers, monitor their networks for robocall traffic, and utilize technology to ensure that calls to customers are coming from a legitimate source. ■

## *Attorneys General Secure \$600 Million from Equifax in Settlement of Largest Data Breach in History*

July 22, 2019

BISMARCK, ND - Attorney General Wayne Stenehjem today announced that a national coalition of Attorneys General has reached a settlement with Equifax as the result of an investigation into a massive 2017 data breach. The settlement includes a Consumer Restitution Fund of up to \$425 million and a \$175 million payment to the states. It is the largest data breach enforcement action in history.

“This enforcement action sends a strong message to Equifax and other credit reporting agencies that when you are in the business of collecting and storing our personal and confidential information, you must properly safeguard that information, and if you fail to do so, we will hold you accountable,” said Stenehjem.

On September 7, 2017, Equifax, one of the largest consumer reporting agencies in the world, announced a data breach affecting more than 147 million individuals — about half the adult population of the United States.

Equifax is one of the three major credit reporting agencies which collect personal and financial information of millions of Americans and then profit from re-selling that information in the form of credit reports. These credit reports are used by prospective employers, landlords, credit card companies, and lenders, to decide whether an individual poses a credit risk. ■

# CONSUMER FRAUD INVESTIGATIONS

## Unlicensed Contractors

The division continued its contractor compliance efforts, taking action against **28** contractors.

- The division issued four cease & desist orders against unlicensed contractors and pursued legal action against another nine, obtaining judgments providing **\$325,136** in consumer restitution ordered by the court.
- The division resolved another 13 cases through Assurances of Voluntary Compliance.

The vast majority of these cases involved unlicensed contractors who took advance payments and then either did not do any of the work for which they had already been paid, or did not finish the job, such as:

### *Nicholas DeRosier, d/b/a Team Lawn Inc. and Vaughn Construction Inc.*

In June 2019, the division began an investigation into **Nicholas J. DeRosier**, of East Grand Forks, MN, and his businesses, **Team Lawn, Inc.** and **Vaughn Construction, Inc.**, after receiving multiple complaints from consumers in the Grand Forks area that they had paid him for contracting services which he then failed to start or complete.

After DeRosier **refused** to cooperate with investigators, the Attorney General initiated legal action in Grand Forks County District Court to compel his cooperation. In October 2019, the District Court ordered DeRosier to stop

conducting business in ND until he complied with the investigation, and further ordered him to pay \$2,531.16 in fees and costs.



**Despite the 2019 ban**, DeRosier continued to operate as an **unlicensed contractor**. After receiving information about his activities, the division took further legal action against him.

In June, 2021, the District Court issued judgment against DeRosier and his companies: **GPHQ (dba Garden and Patio Headquarters), Team Lawn (dba Team Lawn and Landscaping) and Vaughn Construction.**

The Court found that DeRosier committed consumer fraud by operating as a contractor without a license and taking advance payments from consumers, banned him from operating as a contractor, ordered him to pay civil penalties and costs totaling \$8,071.00, and further ordered **all of DeRosier's businesses to be involuntarily dissolved and the trade names canceled.**

## Cease & Desist Orders

The division issued an additional five cease and desist orders for other violations of the state's consumer fraud laws, banning the businesses and business owners from doing business in the state, including:

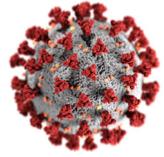
- **Sean Patrick Gorman, Bartley Gorman, Jr., Robert Gorman, Patrick Michael Gorman, Joseph Jude Gorman, John Gorman, Ann Gorman, John Costello, John Lovell, William Riley and Peter TooGood**, using the business name **Gorman General Contracting**, were part of a larger out-of-state crime ring, known as "Travelers" or "Irish Travelers." In North Dakota, they concentrated on rural areas within oil-producing counties.



These individuals engaged in a pattern of **criminal** behavior, such as showing up at an elderly individual's rural home unannounced, performing work without permission, and then using intimidation to force the victim to pay for the shoddy work; starting a job and then demanding payment of thousands more to finish the work. In one instance, after demanding the victim pay an extra \$32,000, they then threatened to take the elderly woman's vehicle and camper instead, forcing her to flee through a window for help.

## *Bogus Work at Home Online Job Offer Uses Bismarck Address*

May 21, 2020



Attorney General Wayne Stenehjem warns that scam artists are taking advantage of the current unemployment crisis created by the **Covid-19 pandemic** to create bogus websites offering phony "work from home" opportunities.

One recently reported scam website uses a street address in Bismarck, ND. The fake business, Nimcare Insurance ([nimcareinsurance.com](http://nimcareinsurance.com)) claims to be located in downtown Bismarck. There is no such company in Bismarck – or anywhere else in North Dakota. The business is a sham.

In the work from home scam, the unsuspecting victim clicks on a link in a spam email or online ad, completes the "application" and is quickly offered a job. The job titles vary, but often include "quality control" or "inventory inspection" duties.

The "fake business website" scam has been around for many years. The scammers add a fake street address or use the actual address of an unsuspecting business to make it appear there is a physical location associated with the website.

"Never assume a business website and business address you are unfamiliar with are legitimate or you could become the next scam victim and lose your money," said Stenehjem. ■

## IMPOSTER SCAMS

The Consumer Protection division issued numerous news releases, alerts, and consumer advisories warning about various imposter scams, including the Fake IRS and Government Agency calls, bogus "Inheritance" scams, the Grandparent/Family Emergency scam, the phony Sweepstakes/Foreign Lottery Win scam, and the **Romance/Online Dating** scam.

These imposter scams have been particularly pervasive for many years and frequently claim new victims despite all the public awareness efforts and countless warnings.

North Dakota victims reported losses of more than **\$4.7 million to Imposter Scams alone.**

Unfortunately, scam victims are often too embarrassed to report that they have fallen for a scam, even when they have lost a significant amount of money.

Of the **334** imposter scam victims who received individual guidance from division staff,

- **55** were victims of the "Computer technician" scam, losing \$547,233.
- **44** people fell for the phony sweepstakes and lottery scams, losing more than \$597,598.
- **27** people responded to a fake government agency call, losing \$72,000.
- **36** people fell victim to online **romance scams**, losing more than **\$1.8 million.**

# Victim

In January 2021, a bank called the Consumer Protection division to discuss concerns about one of its customers. The 65-year old male customer had withdrawn \$140,000 from his account and was coming back later in that day to request a loan. The bank was concerned that the customer might be involved in a Romance Scam.



When the customer returned, the bank called the Consumer Protection division. The customer explained that he had met a female on a dating website and had been communicating with her electronically for several months although he had never met her in real life because she was working in a foreign country. The man explained that the female had experienced several legal and medical problems, which is what he was sending money to cover.

He was having his retirement funds deposited into the bank account and then sending it all on. He estimated **he had withdrawn \$500,000 from his retirement account, but now had nothing left.** When he told the female he had **no money left**, she then encouraged him to get a **loan.**

**Unfortunately, he is just one of many victims who lost all their money to an imposter scam.**

# REGULATORY ENFORCEMENT

## Fire Safety and Prevention

### *Fire Safety Plan Reviews*

The State Fire Marshal's office works with contractors to ensure fire protection systems, buildings, and fuel tanks meet fire code safety requirements prior to construction. Identifying fire safety issues prior to starting construction helps to resolve problems during construction or installation, saving time and money for owners and installers.

- Deputies conducted **136** fire safety plan reviews during the biennium.



DFM Kayln Lucas, Jess Sinerius and Doug Pierre, reviewing plans for fire safety.

### *Fire Safety Inspections*

Deputies inspect public schools, child care facilities, state buildings, licensed liquor establishments, and fuel tank storage sites for compliance with state building and fire safety codes.

- Fire safety inspections are **required** as a condition of licensing for child care facilities, bars, and restaurants.

The deputies inspected **87** day care facilities, **146** public schools, **346** state buildings, and **47** bars and licensed restaurants.



## Licensing Section

The Licensing Section issues licenses to **bars, restaurants**, liquor stores, transient merchants, **gaming sites and operators**, fair boards, and wholesale fireworks distributors, among others.

- Over **\$1.2 million** was transferred to the state's General Fund in licensing fees, including **\$288,277** in retail liquor license fees, **\$309,387** in retail beer licenses, and **\$491,950** in gaming license fees.

## GAMING

The **Gaming** division regulates, enforces and administers charitable gaming in North Dakota, performs audits and investigations of gaming organizations; reviews gaming tax returns, administrative complaints, and provides training for charitable gaming organizations.

Veterans, charitable, educational, religious, fraternal, civic and service, public safety, or public-spirited organizations in North Dakota may apply for a state gaming license to raise money for charitable purposes. Only licensed organizations may conduct "games of chance," such as bingo, pull tabs, twenty-one, and poker.

There are more than **325** licensed organizations operating **995** gaming sites across the state.

- During the 2019-2021 biennium, licensed gaming organizations grossed an estimated **\$3.2 billion** - a **280% increase from last biennium** - raising an estimated **\$156 million** for charitable uses and generating **\$38.7 million** in gaming taxes for the state's General Fund.

### Gaming Compliance

The Gaming division conducted five E-tab group training sessions with 18 individuals representing 11 gaming organizations and two distributors, along with one-on-one training for 120 individuals representing 122 gaming organizations and three distributors.

The division also conducted 11 post-audit training sessions with 39 individuals representing 11 organizations. The division conducted seven comprehensive audits and 34 in-office audits, resulting in **66 administrative complaints**.

- The division collected **\$100,150** in **fin**es and referred several incidents of suspected criminal activity to local law enforcement, including cases involving theft of funds by gaming employees, incidents of counterfeit money and one case involving a cheating device.

### Electronic Pull Tab Devices

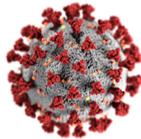
Electronic pull tab devices have become the **top grossing game type** bringing in over **\$2.7 billion** in gross proceeds and paying out over 2.4 billion in prizes during the biennium.

- There were **3,684** e-tab devices being conducted by 320 organizations in 693 sites in **263** cities across the state.



The top five counties were: Cass County with 480 devices, Ward County with 277, Burleigh County with 261, Grand Forks County with 213, and Morton County with 199 devices.

The top five cities were: Fargo with 252, Bismarck with 237, Minot with 186, Grand Forks with 169, and West Fargo with 139.



- Although gaming operations were shut down for about six weeks from March 20, 2020, through April 30, 2020, due to **Covid-19, e-tab activity grew by 40%** between June 2019 and June 2020.

### ***Powerhouse Gaming, Inc.***

The Gaming division initiated an investigation in May, 2020, after receiving credible information that Powerhouse Gaming, Inc., a licensed gaming equipment distributor, had installed pirated software in its e-tab devices. Officials from the gaming division inspected several Powerhouse devices and confirmed that the company had improperly installed a software hack that violates copyright laws.

As a result, Attorney General Stenehjem suspended Powerhouse Gaming's license and ordered the immediate shutdown of all its e-tab devices until Powerhouse provided satisfactory proof it had purchased and deployed the required software licenses on all of its e-tab devices.

On October 14, 2020, Powerhouse Gaming Inc., signed a consent

agreement admitting that it had engaged in acts that violated state gaming regulations, and paid a \$25,000 fine with an additional \$25,000 fine suspended for two years. Attorney General Stenehjem reinstated the license.

## **Gaming Computer System**

The Gaming Division completed the first stage of an update to its electronic gaming tax return system. The system, once completed, will streamline filing and processing gaming tax returns and distributor invoices, reducing the amount of paper record-keeping by Gaming division staff by 85%.

The system enables licensed gaming organizations to file their gaming tax returns and pay the gaming tax online.

Licensed gaming organization were able to begin filing online with the March 2021 returns.

- By June 2021, 201 of the 322 gaming organizations had enrolled in the online system and filed returns. ♦

## NORTH DAKOTA LOTTERY

The **North Dakota Lottery** conducts five multi-state games: Powerball®, Mega Millions®, Lucky for Life®, Lotto America®, and 2by2®. The mix of games provides jackpots starting from \$22,000 to \$20 million.



The North Dakota Lottery generated total operating revenues of **\$54.7 million** and net proceeds of **\$12.5 million**.

Across the state, **447** gas stations, convenience stores, grocery stores, and other locations are licensed to sell North Dakota lottery tickets.

- These businesses earned **sales commissions and bonuses** of **\$2.6 million**.

### Lottery Ticket Sales

The breakdown of each \$1 Lottery ticket is: Prizes Expense - 51%, Contracted Services - 10%, Retailer Commissions - 5%, Advertising/Marketing Expense - 2%, Administrative/Operating Expense - 6%, Compulsive Gambling Prevention and Treatment Fund - 1%, Multi-Jurisdictional Drug Task Force Grant Fund - 2%, Prize Reserve Pools - 1%, State General Fund - 22%

### Prize Payouts

The lottery paid out **\$29 million in prizes** this biennium, including:

- **\$3,000,000 Mega Millions** with Megaplier prize in March 2021 to a player from Fargo, ND;
- **\$1,000,000 Powerball** prize in April 2020 to a player from New Town, ND, and another \$1,000,000 in January 2021 to a player from Walhalla, ND;
- **\$25,000 a year for life Lucky for Life** prize in June 2020 to a player from Max, ND, another in November 2020 to a player from Jamestown, ND, and a third in March 2021 to a player from Williston, ND;
- **Ninety-one \$22,000 2by2** jackpots and **five \$44,000 2by2 Tuesday Doubler** jackpots.

### Lottery Promotion Success Stories

One of the Lottery's statutory priorities is to promote its games. The lottery offers limited-time promotions multiple times a year to encourage player awareness of all of the lottery's games. These promotions offer incentives such as instant win prizes, free tickets and discounts.



### Lucky for Life

INSTANT LUCK – Players who purchased a single draw, three play Lucky for Life

ticket (\$6) August 2 through August 29, 2020, had a chance to instantly win a free \$2 Lucky for Life ticket, \$10 cash, or \$100 cash.

Over 12,000 players instantly won a prize, including thirty \$100 instant winners (\$31,202 in total instant prizes).

**Lucky for Life** sales increased an impressive **119%** when compared to the 26-week, weekly sales average prior to the promotion.

## **2by2**

2BY2 INSTANT WIN – Players who purchased a single play, seven draw 2by2 ticket (\$7) February 7 through March 6, 2021, had a chance to instantly win another seven draw 2by2 ticket (\$7 value) FREE or \$500 cash.

Weekly sales steadily increased over the entirety of the four week promotion: Week 1: \$155,563; Week 2: \$173,631; Week 3: \$178,838 and Week 4: \$191,067.

- Three of the four weeks (weeks 2, 3 and 4) were record setting weekly sales numbers in North Dakota 2by2 history.
- Week 4 now holds the record for largest weekly sales at \$191,067.
- March 2, 2021 holds the top spot for highest single day sales: \$34,379.

Total promotion sales were **\$699,099**, which is a 2by2 Instant Win promotion record.

## **Pick & Click Online Play Service**

Players who purchased a 13, 26, 39 or 52 week online play via the North Dakota Lottery's Pick & Click online play received up to a 10% discount.

The promotion ran December 1 through 31, 2020, and was available to all eligible players using the North Dakota Lottery Players Club website and/or official mobile app.

- There were 578 eligible purchases made, saving players \$4,720. Eligible sales totaled \$47,873

## **Lottery Proceeds**

The Lottery transferred **\$10.4 million** to the state General Fund, **\$1.6 million** to the Multi-jurisdictional Drug Task Force Grant Fund (to offset rent, equipment, and other costs associated with the undercover operations), and **\$640,000** to the Compulsive Gambling Prevention and Treatment Fund. ■■

Since the Lottery began, North Dakota players have won more than **\$159 million**.

# BIENNIUM IN REVIEW

**PUBLISHED**

41

Attorney General Opinions

**INVESTIGATED**

221

Fires to Determine the Cause

**CONDUCTED**

1,554

Criminal and Drug Investigations

**PROCESSED**

10,716

Crime Laboratory Cases

**RECOUPED**

\$83,867

in fraudulent Medicaid billing

**COMPLETED**

108,219

Criminal History Record checks

**OBTAINED**

\$1.95 m

in consumer refunds

**RECOVERED**

\$15.1 m

for state agencies





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