

JUDICIARY COMMITTEE

The Judiciary Committee was assigned three studies:

- Section 1 of Senate Bill No. 2078 (2013) directed a study of the assessment of fees by courts, the feasibility and desirability of combining various court fees, and whether courts should be mandated to impose fees established by statute.
- By Legislative Management Chairman directive, the committee was delegated the responsibility to review changes to the state's driving under the influence (DUI) laws under 2013 House Bill No. 1302, including whether double jeopardy issues exist as a result of the newly created offense for failure to submit to testing and how the implementation of the bill affects the 24/7 sobriety program and the drug court option for offenders.
- By Legislative Management Chairman directive, the committee was delegated the responsibility, in collaboration with the interim Higher Education Funding Committee, to study the intellectual property policies and procedures at research universities within the state, including consideration of the current and potential income generated through the commercialization of intellectual property, and consideration of the best practices related to intellectual property, the federal Bayh-Dole Act, and the federal Patent Reform Act of 2011.

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 North Dakota Century Code 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 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 (Section 54-03-32).

The Legislative Management delegated to the committee the responsibility to receive the following six 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 regarding the operation of the commission (Section 53-06.2-04).
- A report from the director of 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 Governor regarding the status of gender balance on appointive boards, commissions, committees, and councils and within the Governor's appointive cabinet for the 2013-15 biennium (2013 House Bill No. 1001, Section 4).

Committee members were Senators David Hogue (Chairman), Kelly M. Armstrong, John Grabinger, Stanley W. Lyson, Mac Schneider, and Margaret Sitte and Representatives Lois Delmore, Ben W. Hanson, Karen Karls, Lawrence R. Klemin, Kim Koppelman, William E. Kretschmar, Diane Larson, Andrew G. Maragos, and Gary Paur.

ASSESSMENT OF FEES BY COURTS

Background

Statutory Fees

Section 29-26-22 requires a court, upon a plea or finding of guilt, to impose a court administration fee in lieu of the assessment of court costs in all criminal cases except infractions. Under that section, the court administration fee must include a fee of \$125 for a Class B misdemeanor, \$200 for a Class A misdemeanor, \$400 for a Class C felony, \$650 for a Class B felony, and \$900 for a Class A or Class AA felony.

Section 29-26-22 also provides in all criminal cases except infractions, the court administration fee must include an additional \$100. From the additional \$100 court administration fee, the first \$750,000 collected per biennium must be deposited in the indigent defense administration fund, which must be used for indigent defense services in this state, and the next \$460,000 collected per biennium must be deposited in the court facilities improvement and maintenance fund. After the minimum thresholds have been collected, one-half of the additional court administration fee must be deposited in each fund.

Section 29-26-22 allows a court to waive the administration fee or community service supervision fee upon a showing of indigency. That section further provides that district court administration fees, exclusive of amounts deposited in the indigent defense administration fund and the court facilities and improvement fund, and forfeitures must be deposited in the state general fund.

Under Section 12.1-32-07, when a court orders probation for an offender, the court is required to order supervision costs and fees of not less than \$55 per month unless the court makes a specific finding on record that the imposition of fees will result in an undue hardship. The court is also authorized to impose as a condition of probation the requirement the defendant make restitution or reparation to the victim of the defendant's conduct for the damage or injury which was sustained, pay any fine imposed, and support the defendant's dependents and meet other family responsibilities. In addition, as a condition of probation, the court may order the offender to reimburse the costs and expenses determined necessary for the defendant's adequate defense when counsel is appointed or provided at public expense for the defendant.

Section 12.1-32-08 authorizes the court to order the defendant to reimburse indigent defense costs and expenses as a condition of probation. That section also provides the reimbursement amount must include an application fee imposed under Section 29-07-01.1 if the fee has not been paid before disposition of the case and the court has not waived payment of the fee. Section 29-07-01.1 imposes a nonrefundable application fee of \$35 to be paid at the time an application for indigent defense services in the district court is submitted.

Section 12.1-32-08 requires a court, when restitution ordered by the court is the result of a finding that the defendant issued a check or draft without sufficient funds or without an account, to impose as costs the greater of the sum of \$10 or an amount equal to 25 percent of the amount of restitution ordered, except the amount may not exceed \$1,000. The state-employed clerks of district court are required to remit the funds collected to the State Treasurer for deposit in the restitution collection assistance fund. The funds deposited into the restitution collection assistance fund are appropriated to the judicial branch on a continuing basis for the purpose of defraying expenses incident to the collection of restitution, including operating expenses and the compensation of additional necessary personnel.

Section 12.1-32-16 provides when an individual whose occupational, professional, recreational, motor vehicle operator, or vehicle license or registration has been suspended for nonpayment of child support is convicted of engaging in activity for which the license or registration was required, the court shall require as a condition of the sentence that the individual pay restitution in the amount of \$250, or a higher amount set by the court.

Section 27-01-10 allows the governing body of a county, by resolution, to authorize the district judges serving that county to assess a fee of not more than \$25 as part of a sentence imposed on a defendant who pleads guilty to or is convicted of a criminal offense or of violating a municipal ordinance for which the maximum penalty that may be imposed by law for the offense or violation includes imprisonment. That section also allows the governing body of a city, by ordinance, to authorize a municipal judge to assess a fee of not more than \$25 as part of a sentence imposed on a defendant who pleads guilty to or is convicted of violating a municipal ordinance for which the maximum penalty that may be imposed under the ordinance for the violation includes imprisonment. All fees paid to a district or municipal court must be deposited monthly in the county or city treasury for allocation by the governing body of the county or city to a private, nonprofit domestic violence or sexual assault program or a victim and witness advocacy program of which the primary function is to provide direct services to victims of and witnesses to crime.

As reported by the judicial branch, during the 2011-13 biennium, the judiciary collected \$9,997,087 in fees as follows:

- Criminal court administration fees - \$5,474,416.
- Indigent defense recoupment - \$347,152.
- Indigent defense application fee - \$186,436.
- Indigent defense administration fee - \$1,786,383.
- Restitution collection assistance fund - \$47,409.

- Community service supervision fee - \$53,837.
- Court facilities improvement and maintenance fund - \$1,496,381.
- Victim witness fee (county) - \$605,074.

The total number of criminal cases during the 2011-13 biennium was 62,073.

2013 Senate Bill No. 2078

Senate Bill No. 2078, introduced at the request of the Supreme Court, would have consolidated the seven different fees imposed by the court in criminal cases into a single fee, the amount of which would vary based upon the grade of the offense. The bill would have replaced the individual fees with a fee of \$250 for a Class B misdemeanor, \$400 for a Class A misdemeanor, \$600 for a Class C felony, \$800 for a Class B felony, and \$1,000 for a Class A or Class AA felony. The bill would have authorized the court to waive the fee upon a showing of indigency.

The bill also included a formula for the distribution of the fees collected. As amended by the Senate, the bill would have distributed the fees as follows:

- 68.2 percent deposited in the state general fund.
- 14.5 percent deposited in the indigent defense administration fund.
- 12.2 percent deposited in the court facilities improvement and maintenance fund.
- 4.7 percent deposited monthly in the county treasury if the county in which the fee is assessed has authorized acceptance of the fee by resolution under Section 27-01-10. If the county has not adopted such a resolution, this amount would be deposited in the state general fund.
- 0.4 percent deposited in the community service supervision fund.

Testimony in support of the bill indicated the bill had broad support in the judiciary. The testimony also indicated a consolidated fee would result in significant time-savings for the court. Other testimony expressed concerns about including the victim witness fee in the consolidated fee since that fee remains with the county. It was explained counties vary greatly in their efforts to collect this fee. The bill was amended and passed to provide for a study of the assessment of fees.

Testimony and Committee Considerations

In its study of the assessment of fees by courts, the feasibility and desirability of combining various court fees, and whether courts should be mandated to impose fees established by statute, the committee received information and testimony from a district judge, a representative of the state court administrator's office, several state's attorneys, a representative of the North Dakota Association of Counties, a representative of the Commission on Legal Counsel for Indigents, and a county commissioner. The committee's deliberations focused primarily on whether to recommend legislation that would allow for the consolidation of some or all of the statutory fees imposed upon offenders.

Testimony in support of consolidating all statutory court fees into a single fee indicated the consolidation would eliminate manual calculations and simplify the district clerk of court's overall bookkeeping duties. The testimony also indicated the consolidation of court fees would streamline the process, save time, create more efficiency, and create less judicial discrepancy about which fees to impose and which fees not to impose. According to the testimony, the current system of individual fees requires judges and court staff to consider the fees six times for each criminal case. Under the current system multiple fees are being charged to defendants and there is not a unified distribution of the money collected. Due to the lack of uniformity and guidance, it was noted there is a loss of efficiency. As a result, state's attorneys, county and state clerks, probation officers, and the courts must make priority decisions when the defendant is not able to pay all the court-ordered fees at the time of the original sentencing. Other testimony in support of consolidation of court fees indicated a single fee with a percentage allocated to various funds would save future programming costs and staff time if the state would decide to fund more programs or change the amounts dedicated to each program.

The committee received considerable testimony regarding the victim witness fee and the effect of consolidation of fees on those counties that routinely collect the fee. Under Section 27-01-10, the \$25 victim witness fee is to be allocated by the governing body of the county or city to a private, nonprofit domestic violence or sexual assault program or a victim and witness advocacy program of which the primary function is to provide direct services to victims of and witnesses to crimes. The victim witness fee is the only fee considered in the proposed consolidation which is retained by the county. According to the testimony, the judges in several judicial districts in the state diligently and routinely impose the victim witness fee while other judicial districts seldom collect the fee. In those counties in which the fees are routinely collected, the fees are used to fund county victim witness coordinators. It was argued that to

include the victim witness fee in the consolidation of court fee formula as was proposed in Senate Bill No. 2078 would provide a windfall to counties and courts that do not exercise their statutory discretion in assessing the fees and punishes those counties and courts that routinely exercised that authority and collect the fee. The testimony indicated those counties that routinely collect the fee could incur up to a 30 percent decrease in victim witness fees under the distribution formula proposed in the 2013 legislation while counties that did not routinely collect the victim witness fee could enjoy a 500 percent windfall. The testimony urged the committee either to exclude the victim witness fee in the consolidation of fees or to find a fee system that is less discretionary and more equitable so those counties that routinely impose the victim witness fee would not incur a significant loss.

During the course of the committee's study of the consolidation of court fees, the committee considered alternative bill drafts, both of which would have provided for the consolidation of court fees. The first bill draft would have consolidated the court administration fees, the community service supervision fee, the victim witness fee, and the restitution collection assistance fee into a single fee of \$250 for a Class B misdemeanor; \$400 for a Class A misdemeanor; \$600 for a Class C felony; \$800 for a Class B felony; and \$1,000 for a Class A or Class AA felony. The bill would have distributed the fees collected to the state general fund, the indigent defense administration fund, the court facilities improvement and maintenance fund, the community service supervision fund, and to the counties in accordance with Section 27-01-10. The distribution of those, with the exception of the amount distributed to the counties to replace the victim witness fee, was based upon a formula intended to be revenue neutral. The bill draft also would have held harmless, for four years, those counties that collected more than \$9,000 in victim witness fees in state fiscal year 2012. The bill draft provided for state fiscal years 2015 through 2018, if a county received more than \$9,000 in fees assessed for funding crime victim and witness programs in fiscal year 2012, that county would be entitled to receive in each fiscal year, 6.4 percent of the fee imposed or the amount received by that county in state fiscal year 2012, whichever amount was greater.

Testimony in opposition to this bill draft indicated that the counties for which the bill draft would hold harmless would be limited to the amount collected in fiscal year 2012. According to the testimony, the victim witness fees collected in those counties increased in 2013 and were expected to do the same in 2014. By limiting those counties to the 2012 amount, the testimony indicated that counties would not have any incentive to collect more than was collected in fiscal year 2012. The testimony also opposed the provision in the bill draft which would make those counties held harmless subject to the formula-based distribution after four years.

The second bill draft considered by the committee would have consolidated all court fees into a single fee; however, this bill draft would have exempted the victim witness fee from the court fees being consolidated. The bill draft contained the same single fee amounts as the first bill draft. However, the formula for the distribution of the fees collected did not include a distribution to the counties to replace the victim witness fee. Under the second bill draft, the victim witness fee collection and distribution would have been unchanged.

Testimony in support of the second bill draft was received from several state's attorneys, a victim witness coordinator, and a county commissioner. The testimony indicated to preserve the level of funding for local community programs that assist victims which the counties are currently receiving from the collection of victim witness fees, the second bill draft would be preferable.

Other general testimony relating to both bill drafts expressed concern either bill draft could create an uncertainty for the funding for the Commission on Legal Counsel for Indigents. The Commission on Legal Counsel for Indigents is funded in part by the court administration fee and the indigent defense application fee. Concern was also expressed as to whether judges would be more inclined to impose one large consolidated fee or if the judges would waive the fee at a greater rate than is done currently. The testimony indicated the current fee structure is working well.

Testimony from the judicial branch indicated support for the consolidation of as many court fees as possible. The testimony suggested including the indigent defense application fee and the indigent defense recoupment in the consolidation as well. To clarify a concern as to whether a judge could waive all or part of the fee upon a showing of indigency, the committee amended the second bill draft to include that option.

Several members of the committee expressed concerns about whether the consolidation is needed and the effect it may have on the funding of indigent defense in the state. It was noted while it is unclear if the consolidation of fees would have any effect on the funding for indigent defense, it is not likely the Legislative Assembly would take away a special fund source without replacing it with general fund support. Another committee member understood the need for streamlining and efficiency in the collection of fees, but indicated the emphasis should be on consistency in the collection among the district judges.

Conclusion

The committee makes no recommendation with respect to the consolidation of court fees.

DRIVING UNDER THE INFLUENCE LAWS REVIEW

By Legislative Management Chairman directive, the committee was delegated the responsibility to review changes to the state's driving under the influence laws under 2013 House Bill No. 1302, including whether double jeopardy issues exist as a result of the newly created offense for failure to submit to testing and how the implementation of the bill affects the 24/7 sobriety program and the drug court option for offenders.

Summary of Driving Under the Influence Law Changes by Offense

The following table summarizes the penalties and requirements under House Bill No. 1302 for first and subsequent incidents of driving under the influence. In addition to the penalties and fines listed below, a person is required to pay \$250 in court fees if convicted of a Class B misdemeanor, \$325 in court fees if convicted of a Class A misdemeanor, and \$525 in court fees if convicted of a Class C felony.

Criminal Penalties for Driving Under the Influence Offenses					
Offense	Level	Fine	Fees	Jail	Other
First offense within seven years	Class B misdemeanor	\$500	\$250		Evaluation
First offense within seven years and alcohol content of .16 or greater	Class B misdemeanor	\$750	\$250	2 days	Evaluation
Second offense within seven years	Class B misdemeanor	\$1,500	\$250	10 days with 48 hours consecutive	Evaluation and 24/7 sobriety program for 12 months
Third offense within seven years	Class A misdemeanor	\$2,000	\$325	120 days	Evaluation, one year supervised probation with requirement for 24/7 sobriety program
Fourth offense within lifetime	Class C felony	\$2,000	\$525	One year and one day imprisonment	Evaluation, two years' supervised probation with requirement for 24/7 sobriety program

Additional Provisions of House Bill No. 1302

In addition to the changes to the penalties for first and subsequent driving under the influence offenses, House Bill No. 1302 included the following provisions:

- Increased the look-back provision for second and third offenses from five years to seven years - Section 39-08-01(5)(b), (c).
- Created a felony for the fourth or subsequent offense regardless of time, instead of the fifth or subsequent offense in seven years as previously provided by law - Section 39-08-01(5)(d).
- Made the failure to submit for testing an offense of driving under the influence - Section 39-08-01(2).
- Created the crime of criminal vehicular homicide for driving under the influence that results in death, a Class A felony, with a penalty of three years' imprisonment as a minimum mandatory and 10 years' imprisonment for a second offense as a minimum mandatory - Section 39-08-01.2(1).
- Created the crime of criminal vehicular injury for driving under the influence offense that results in substantial bodily injury or serious bodily injury, a Class C felony, with a penalty of one year's imprisonment as a minimum mandatory and two years' imprisonment as a minimum mandatory for a second or subsequent driving under the influence offense - Section 39-08-01.2(2).
- Created a Class C felony for a second conviction for driving while under the influence with a minor in the motor vehicle - Section 39-08-01.4.
- Required a law enforcement officer to request a search warrant to force a blood, breath, or urine test unless there are exigent circumstances - Section 39-20-01.1(3).
- Reduced the revocation for failure to submit to testing from one year to 180 days for a first offense, from three years to two years for a second offense, and from four years to three years for a third or subsequent offense - Section 39-20-04.1(1)(a), (b), (c).

- Allowed curing the revocation for failure to submit to testing by pleading guilty for any offense, not just the first offense as was previously provided by law - Section 39-20-04(2).
- Allowed law enforcement to immediately take an individual into custody without a warrant if there is reasonable cause to believe the individual violated the court order to participate in the 24/7 sobriety program - Section 29-06-15(3).

Testimony and Committee Considerations

In its review of changes to the state's DUI laws under House Bill No. 1302, including whether double jeopardy issues exist as a result of the newly created offense for failure to submit to testing and how the implementation of the bill affects the 24/7 sobriety program and the drug court option for offenders, the committee received extensive testimony from numerous sources including the Attorney General; the Department of Transportation; the State Court Administrator; a district judge; a juvenile court director; the North Dakota Commissioner for the Interstate Commission for Adult Offender Supervision; the North Dakota Association of Counties; the North Dakota Association of Criminal Defense Lawyers; state's attorneys; defense attorneys; law enforcement agencies; a private company that provides drug and alcohol testing, monitoring, tracking, and treatment; and members of the public. The committee's review of the changes to the state's DUI laws under House Bill No. 1302 focused on the issues of 24/7 sobriety program concerns, 24/7 sobriety program for juveniles, look-back period for DUI offenses, dual conviction issues, implied consent and right to cure, participation in drug court, the Interstate Compact for Adult Offender Supervision, and technical corrections.

24/7 Sobriety Program Concerns

The committee received extensive testimony related to the impact of House Bill No. 1302 on the 24/7 sobriety program. As a result of the 2013 law, courts are required to order the offender to 12-months participation in the 24/7 sobriety program as a mandatory condition of probation for second and third DUI offenses within seven years and two years participation in the 24/7 sobriety program as a condition of probation for fourth and subsequent offenses within the offenders lifetime. As of July 1, 2014, at an average cost of \$537 over the period of participation, there were:

- 1,532 total participants statewide in the 24/7 sobriety program, of which 586 are participating with secure continuous remote alcohol monitoring (SCRAM) bracelets;
- 432 DUI probationers in 39 counties statewide in the 24/7 sobriety program--73 for first-time DUI, 292 for second-time DUI, 47 for third-time DUI, and 20 for fourth-time DUI; and
- At least 79 individuals who volunteered or opted into the 24/7 sobriety program in order to receive a temporary restricted driver's license.

Testimony from sheriff's departments indicated the expanded use of the 24/7 sobriety program is putting a strain on the resources of sheriff's departments. Several departments indicated the hiring of extra personnel was necessary to handle the increased workload. It was suggested allowing local law enforcement agencies and private contractors to provide additional testing sites for the 24/7 sobriety program would remove some of the burden from sheriff's departments. The committee received testimony from a private contractor who demonstrated various testing and tracking devices and provided information on the services available. The testimony indicated because the state limits the amount that can be charged for the alcohol testing--\$1 per test or \$2 per day--it is difficult for private companies to compete.

The testimony included concerns about the issuance of temporary restricted permits for offenders conditioned on continued participation in the 24/7 sobriety program with no exceptions for out-of-state defendants, for military members who are deployed, and for drivers who have completed intensive treatment. Another issue of concern was the requirement of a court order mandating participation in the 24/7 sobriety program before being permitted to participate in the program. Because participation in the program is required to obtain the temporary restricted permit and the court order mandating participation may not be issued for months after the offense, the testimony indicated the statutes are in need of harmonization to allow for participation in the 24/7 sobriety program before sentencing. The testimony also suggested Section 39-08-01(5)(f) and (h) be harmonized with respect to the court's authority to suspend a portion of jail time on a third or subsequent DUI upon completion of rehabilitation and 24/7 sobriety program before sentencing under subdivision f and the authority to allow a day for day credit against a sentence for a rehabilitation program that an offender does after sentencing under subdivision h. Finally, the testimony suggested clarification is needed that the 24/7 sobriety program is a condition of probation and may not be ordered as part of the sentence.

The committee considered a bill draft that would require the law enforcement agency to accept, the same as if ordered by the court, an individual as part of the 24/7 sobriety program if the individual provides documentation that the Department of Transportation has issued the individual a temporary restricted license conditioned on participation in the program. Testimony in support of the bill draft indicated this would resolve some of the issues that have arisen between the administrative and criminal sides of the process.

The committee also considered a bill draft to clarify when determining the amount of time the individual must participate in the 24/7 sobriety program, the sentencing court may credit for the time the individual already has served on the 24/7 sobriety program which was done for the purpose of pretrial release or to obtain a temporary restricted operator's license. The bill draft also provided the 24/7 sobriety program is a condition of probation and a court may not order participation in the program as part of the sentence. According to testimony in support of the bill draft, an individual would not serve less time on the program than is required by law, but the individual could serve more time. Other testimony expressed concern as to whether a judge is authorized keep an offender on the 24/7 sobriety program once probation is completed.

24/7 Sobriety Program for Juveniles

Section 2 of House Bill No. 1302 provided if a child is adjudicated delinquent for a DUI offense, the child is required to participate in the 24/7 sobriety program. Under the law, the maximum amount of time a juvenile can be sentenced to the 24/7 sobriety program is nine months, and there is not a minimum sentence. As of July 2014, 60 juveniles were in or had completed the 24/7 sobriety program. According to the testimony, the average time in the 24/7 sobriety program was two to four weeks for first-time minor in consumption juvenile offenders and four to eight weeks for first time DUI juvenile offenders. The committee received testimony the juvenile court was concerned with the mandatory use of the 24/7 sobriety program for first time offenders when there may be no indication that the child is likely to repeat the offense. Requiring the program when it may not be something a child needs may have unintended consequences, such as missing part of the school day, loss of employment, or other disruptions to activities that generally have a positive influence on a child's behavior. The testimony also discussed the challenges to a parent who may have to take time off from work twice a day to drive the child to the twice-per-day testing, including the financial cost and putting the parent's employment at risk. It was suggested a better approach would be to allow the court the discretion to order the 24/7 sobriety program for a first offense while still mandating its use for a second or subsequent alcohol-related offense.

The committee considered a bill draft that would allow the court discretion in whether to order the juvenile to participate in the 24/7 sobriety program for a first offence. The bill draft would provide if a child is subject to informal adjustment or is found to be delinquent or unruly due to a DUI violation, the court would have the court discretion to require the juvenile to participate in the 24/7 sobriety program for a first violation or occurrence and would be required to order the juvenile participate in the program for a second or subsequent violation. Testimony in support of the bill draft indicated if the discretionary aspect were changed for the first offense, the juvenile court could determine if the 24/7 sobriety program is appropriate for that juvenile. The testimony noted the law does not impose the mandatory 24/7 sobriety program for the first DUI offense for adult offenders, but it does impose the sanction for first offense juvenile DUI or alcohol-related offenders.

Look-back Period for DUI Offenses

Under House Bill No. 1302, the look-back period for fourth or subsequent DUI offenses was changed from seven years to a fourth or subsequent DUI within the offender's lifetime. The committee received testimony expressing concerns about the ability to prove cases for which the records may no longer exist. According to the testimony, to prove a prior offense, courts require certified judgments indicating advisement of rights and the status of counsel for each prior conviction. It was noted under court rules, clerk of court offices may dispose of misdemeanor case records after seven years, causing documentation retrieval for a majority of cases pre-2007 nearly impossible. The testimony noted Section 39-08-01(3) directs the court to take judicial notice of the fact that an offense would be a subsequent offense if indicated by the records of the Director of the Department of Transportation. According to the testimony, the Department of Transportation has a similar seven-year retention policy and therefore the certified documents from the department may not contain all previous DUI offenses.

The committee considered a bill draft that would limit the look-back period to 15 years for fourth and subsequent DUI offenses. Testimony in support of the bill draft indicated very old offenses can be difficult to prove especially if the offenses occurred in another state. Because convictions are an element of the crime, the convictions must be proved. It was noted in time more records will be computerized and more available.

Dual Conviction Issues

The committee received testimony whether it could be considered double jeopardy to charge an offender with the offense of refusal to submit to testing and the offense of DUI. Testimony indicated because the crimes have separate elements, it is not double jeopardy to charge the same person for both crimes. According to the testimony, the Legislative Assembly was aware of the two separate crimes and that it is what was intended. The committee received information on the status of two cases on appeal to the North Dakota Supreme Court based upon double jeopardy concerns. At the district court level, one judge found the statute constitutional and the other judge found the statute unconstitutional. As of November 12, 2014, the opinions of the Supreme Court on both cases were pending.

Testimony from the Department of Transportation indicated the department, in coordination with the Attorney General, had implemented a process to address the dual convictions by entering the first and second conviction in a dual conviction for a singular offense as a first conviction. According to the testimony, this process had the net impact of providing the required suspension time for a first conviction and provides for a second conviction on the records for enhancement in the event of a third conviction.

The committee considered a bill draft that would clarify, for purposes of conviction, the test refusal and the DUI charge are intended to be alternative charges. Testimony in support of the bill draft indicated while there are several options under which an individual can be convicted of DUI, the individual only can be convicted of one of those offenses. The committee amended the bill draft to address the administrative sanctions of suspension or revocation of an operator's license. The bill draft, as amended, provided for purposes of the administrative sanctions of suspension or revocation of an operator's license, the DUI charge and the test refusal (subdivisions a, b, c, or d and subdivision e of Subsection 1 of Section 39-08-01) are deemed to be a single violation. The amended version of the bill draft did not include the language regarding the test refusal and the DUI charge as alternative offenses which was included in the earlier version. According to the testimony, the effect of the bill draft would be that for criminal purposes, the DUI charge and the test refusal are counted as two offenses, but the two offenses would be considered a single offense for purposes of administrative sanctions.

Implied Consent and Right to Cure

The committee received testimony that in light of the severity of the consequences for refusing to submit to testing, it is important to ensure implied consent warnings are being read to offenders. The testimony indicated the warning is intended to be read verbatim from the DUI form which states a refusal is a criminal offense. Law enforcement testimony indicated officers are expected to read the information directly from the prepared form. According to the testimony, law enforcement has been diligent in reading implied consent warnings to offenders.

The committee also received testimony regarding whether officers should allow a defendant to cure a refusal. According to the testimony, although the law is silent on the right to cure a refusal, most officers have been operating on the assumption that, if it was reasonable, a cure should be allowed if the defendant requests to cure.

The committee considered a bill draft to address the issue of implied consent. Under the bill draft, a test is not admissible in any proceeding if the law enforcement officer fails to inform the individual with the implied consent information required in Section 39-20-01(3)(a). Testimony in support of the bill draft indicated while the vast majority of law enforcement officers are providing the implied consent information, the warning becomes even more important now that refusal is a criminal offense. Other testimony indicated concerns existed among state's attorneys regarding the proposed change to the implied consent requirements.

The committee also considered a bill draft that would give the individual the opportunity to cure a refusal of a test. The bill draft would require the law enforcement officer to inform the individual that the individual may remedy the refusal if the individual agrees to take a test after having first refused the test. Testimony in support of the bill draft indicated without the ability to cure a refusal, the constitutionality of the law may be in question. The testimony indicated the bill draft would clarify that the accused has a right to cure the refusal.

Participation in Drug Court

Drug court is a court-supervised, treatment-oriented program that targets nonviolent participants whose major problems stem from substance abuse. The drug court program is a voluntary program that includes regular court appearances before the drug court judge, rigorous probation, drug testing, individual and group counseling, and regular attendance at support group meetings. Candidates must have multiple prior misdemeanor or felony drug offenses, or in DUI cases must have three or more DUIs. The committee received testimony the mandatory minimum sentences in the 2013 legislation eliminated the incentives for a DUI offender to participate in the drug court process. The testimony indicated the impact of the 2013 legislation on the drug court program was an oversight.

To address the issue, the committee considered a bill draft that would provide that all but 10 days of the minimum mandatory sentence required for a defendant charged with a third or subsequent DUI offense may be suspended on the condition the defendant successfully complete a drug court program approved by the Supreme Court.

Testimony in support of the bill draft indicated abrogating the ability to use drug courts and imposing minimum mandatory penalties created substantial unintended consequences. According to the testimony, the drug court serves as a valuable incentive for a repeat DUI offender.

Interstate Compact for Adult Offender Supervision

The committee received testimony regarding a conflict with the Interstate Compact for Adult Offender Supervision which was created by House Bill No. 1302. According to the testimony, the participation in the 24/7 sobriety program

as a mandatory condition of program for second offenses would put a convicted second offense offender under the Interstate Compact if the offender relocated outside North Dakota during the probation period. If the offender relocates out of the state, the commission is faced with attempting to transfer offenders to a receiving state that may not have a 24/7 sobriety program. It was noted in the past, when faced with that knowledge, the Department of Corrections and Rehabilitation would request the court to modify the original court order. Because the 24/7 sobriety program is now mandatory, the court cannot legally modify its original order. It was recommended the language be changed to allow participation in a program that is equal to the 24/7 sobriety program if the offender lives in another state. It was also suggested if the language of Section 39-08-01(5)(b) were modified to require the 24/7 sobriety program participation for a period of less than one year, the second offense sentence would not trigger the Interstate Compact.

The committee considered a bill draft that would change the mandatory participation in 24/7 sobriety program for second and third DUI offenses from one year to 360 days. The bill draft also would change the probation length for third offenses from one year to 360 days. Testimony in support of the bill draft indicated the changes would eliminate the conflict with the Interstate Compact.

Technical Corrections

The committee considered a bill draft intended to remove arcane language in Section 39-06-03(3), which deals with a prohibition on the issuance of an operator's license to a habitual drunkard. The bill draft also amends Section 30-20-15 to change from 15 to 14 the number of days a driver must wait to get a temporary restricted operator's license. Testimony in support of the bill draft indicated this change would make the waiting period consistent with other provisions in that section. Testimony regarding the change to Section 39-06-03(3) indicated the provision in that subsection has never been used.

At the conclusion of the consideration of the bill drafts relating to changes to the state's DUI laws, the committee consolidated all the recommended DUI-related bill drafts into a single bill for presentation to the Legislative Management. Testimony in support of the consolidation indicated a single bill would allow all the issues to be considered at the same time by the Legislative Assembly rather than stretching out a number of bills throughout the legislative session.

Recommendation

The committee recommends a bill [[15.0294.01000](#)] to address issues related to the state's DUI laws. The bill would:

- Require a law enforcement agency to accept, the same as if ordered by the court, an individual as part of the 24/7 sobriety program if the individual provides documentation that the Department of Transportation has issued the individual a temporary restricted license conditioned on participation in the program;
- Clarify when determining the amount of time the individual must participate in the 24/7 sobriety program, the sentencing court may credit for the time the individual has already participated in the 24/7 sobriety program which was done for the purpose of pretrial release or to obtain a temporary restricted operator's license;
- Provide the 24/7 sobriety program is a condition of probation and a court may not order participation in the program as part of the sentence;
- Allow the court discretion in whether to order a juvenile to participate in the 24/7 sobriety program;
- Limit the look-back period to 15 years for fourth and subsequent DUI offenses;
- Provide, for purposes of the administrative sanctions of suspension or revocation of an operator's license, the DUI charge and the test refusal are deemed to be a single violation;
- Provide a test is not admissible in any proceeding if the law enforcement officer fails to inform the individual with the implied consent information required in Section 39-20-01(3)(a);
- Require the law enforcement officer to inform the individual that the individual may remedy the refusal if the individual agrees to take a test after having first refused the test;
- Provide all but 10 days of the minimum mandatory sentence required for a defendant charged with a third or subsequent DUI offense may be suspended on the condition the defendant successfully complete a drug court program approved by the Supreme Court;
- Change the mandatory participation in 24/7 sobriety program for second and third DUI offenses from one year to 360 days and change the probation length for third offenses from one year to 360 days; and
- Make technical changes to remove arcane language and correct inconsistent time frames.

NORTH DAKOTA UNIVERSITY SYSTEM INTELLECTUAL PROPERTY POLICIES

By Legislative Management Chairman directive, the committee was delegated the responsibility, in collaboration with the interim Higher Education Funding Committee, to study the intellectual property policies and procedures at research universities within the state, including consideration of the current and potential income generated through the commercialization of intellectual property, and consideration of the best practices related to intellectual property, the federal Bayh-Dole Act, and the federal Patent Reform Act of 2011. The committee conducted a joint meeting with the Higher Education Funding Committee to gather information regarding research activities at higher education institutions, to receive an overview of intellectual property policies and procedures, and to review the process used to commercialize intellectual property.

Background

According to the American Intellectual Property Law Association, intellectual property is property that results from the fruits of mental labor. The United States legal system provides certain rights and protections for owners of such property. The rights and protections are based on federal patent, trademark and copyright laws under Titles 17 and 35 of the United States Code and state trade secret laws under Chapter 47-25.1. In general, patents protect inventions of tangible things, trademarks protect names or symbols that identify the source of goods or services, and copyrights protect various forms of written and artistic expression.

A patent is a document, issued by the federal government, which grants to its owner a legally enforceable right to exclude others from practicing the invention described and claimed in the document. Congress allows this right, for a term ending 20 years from the date of filing of an application for patent, to encourage the public disclosure of technical advances and as an incentive for investing in their commercialization.

Trademarks and service marks are words, phrases, designs, sounds, or symbols and are used on or in association with goods and in association with services to be performed. Trademark rights arise either by filing a mark with the United States Patent and Trademark Office based on a bona fide intent to make use of the mark on a product or in association with a service that will soon be offered to the public or by actually using the mark in commerce on a product or in association with a service.

Copyright is a statutory property right that grants to creators certain exclusive rights in their creations for a limited duration. Its purpose, as expressed in the United States Constitution, is to promote the progress of science and useful arts by providing economic incentive for creative activity. Copyright protects intangible original works of authorship which are fixed in a tangible medium of expression. Copyright protects works, such as books, pictorial, graphic and sculptural works, music, photographs, movies, and computer programs.

With respect to North Dakota, the Legislative Assembly has enacted chapters pertaining to copyrights (47-21), sound recordings (47-21.1), royalties contracts (47-21.2), trademarks (47-22), trade names (47-25), and trade secrets (47-25.1). In addition to the statutory approach, Section 15-10-17, in part, authorizes the State Board of Higher Education to:

1. Adopt rules to protect the confidentiality of student records, medical records, and, consistent with Section 44-04-18.4, trade secret, proprietary, commercial, and financial information.
2. Authorize and encourage North Dakota University System entities to enter into partnerships, limited liability companies, joint ventures, or other contractual arrangements with private business and industry for the purpose of business or industrial development or fostering basic and applied research or technology transfer.
3. Adopt rules promoting research, encouraging development of intellectual property and other inventions and discoveries by University System employees, and protecting and marketing the inventions and discoveries. The rules must govern ownership or transfer of ownership rights and distribution of income that may be derived from an invention or discovery resulting from research or employment in the University System. The rules may provide for transfer of ownership rights or distribution of income to a private, nonprofit entity created for the support of the University System or one of its institutions.

Testimony and Committee Considerations

In its study of intellectual property policies and procedures at research universities within the state, including consideration of the current and potential income generated through the commercialization of intellectual property, and consideration of the best practices related to intellectual property, the federal Bayh-Dole Act, and the federal Patent Reform Act of 2011, the committee's considerations focused on three areas: intellectual property policies and procedures; research activities at higher education institutions; and the process used to commercialize intellectual property.

Intellectual Property Policies and Procedures

In accordance with Section 15-10-17, the State Board of Higher Education adopted North Dakota University System Policy No. 611.2. This policy, which pertains to intellectual property, became effective June 20, 2002. The board also adopted Policy No. 611.6, which pertains to confidential proprietary information. This policy became effective on April 18, 2002.

The committee reviewed Policy No. 611.6, which reiterates that certain trade secrets, as well as proprietary, commercial, and financial information, are not subject to the state's open record laws. The policy requires institutional policies "allow the free dissemination of data from knowledge creation efforts while maintaining confidential information and preserving the intellectual property rights resulting from such programs." The policy also vests the right to publish the results derived from research and development programs in the institution, its faculty, staff, or students. The committee also reviewed Policy No. 611.2, which enables institutions to develop procedures to manage intellectual property at the institution, does require certain provisions, such as the requirement that at least 30 percent of net royalties received for a patent or copyright be distributed to the original creator.

The committee received information that a University System task force was created in 2010 to review State Board of Higher Education policy relating to intellectual property. The task force recommended the board adopt minor changes to existing policies. The board reviewed the proposed changes to intellectual property policies at a meeting in November 2013. However, the board tabled any action on the proposed changes to allow board members to receive additional input regarding the changes.

The committee's review of intellectual policies and procedures included a review of intellectual property ownership. Under the board policy, a research university retains ownership of all intellectual property created or developed solely by the research university's faculty, staff, and students using university resources. A private sector partner retains ownership of all intellectual property created or developed solely by its employees. When intellectual property is developed or created jointly by a research university and a private sector partner, both the research university and the private sector partner have an equal, undivided ownership interest in the intellectual property. If the intellectual property was created or developed using federal funding, either the research university retains ownership or the ownership transfers to the federal government. This applies even if the intellectual property was developed jointly between a research university and a private sector partner.

The federal Bayh-Dole Act was enacted in 1980 and affects inventions developed at higher education institutions using federal funds. Before the Act, there was minimal licensing and commercialization resulting from federally funded research at institutions because the federal government retained ownership of inventions. The Act allows institutions to retain certain ownership rights of inventions resulting from federal research funding. A research university may assign or transfer its ownership interest to an independent foundation.

The ownership of an invention developed by an institution employee or student varies based on the specific situation. An invention may belong to the institution if the invention was developed as part of the employee's work duties and utilized institution resources.

Board policy requires an institution to make annual payments of at least 30 percent of the net royalties and fees associated with intellectual property to the inventor. The net royalties are the gross royalties and fees reduced by taxes, expenses for procuring and protecting the patent, and any other relevant costs. The 30 percent minimum for the disbursement of royalties applies both to intellectual property developed solely by a research university's faculty, staff, and students and to intellectual property developed jointly between a research university and a private sector partner.

As authorized by Policy No. 611.2, both the University of North Dakota (UND) and North Dakota State University (NDSU) have developed intellectual property policies that address intellectual property issues unique to each respective institution. Institution policy at UND provides that inventors receive a larger percentage of licensing revenue than required by board policy. Licensing revenue for inventions developed at the institution is distributed 45 percent to the inventor, 50 percent to the institution to support more research, and 5 percent to the department or unit where the invention was developed. Licensing revenue from intellectual property developed at UND has increased from \$55,000 in 2011 to \$148,000 in 2013. The institution has approximately 25 to 30 invention disclosures per year.

The NDSU Research Foundation is a separate nonprofit entity that owns and manages intellectual property developed at NDSU. The foundation coordinates intellectual property protection, marketing, licensing, and enforcement. After recovery of patenting and licensing expenses, the royalty revenue relating to an invention is distributed 30 percent to the inventor, 40 percent to the departments and units that developed the invention, and 30 percent is retained by the institution and foundation. The NDSU Technology Transfer Office reported 58 inventions in fiscal year 2013. NDSU Research Foundation licensing revenues have ranged from \$1.2 million to \$2.1 million per year since 2004.

Research Activities

The committee received testimony on the importance of research institutions. The core mission of a research institution is to teach, to provide outreach, and to conduct research. Research-related activities have a significant financial impact to an institution. Two institutions in the state are categorized as research universities by the Carnegie classification system. The University of North Dakota is classified as a high-research activity institution and NDSU is ranked as a very high-research activity institution. Approximately 25 percent of institution revenues at UND and NDSU are from research activities. Institutions conducting federal research projects receive reimbursement for certain overhead costs through a facilities and administration rate. Each institution negotiates a rate with the federal government, and the rate is based on a variety of factors, including research facilities, research faculty, and total research funds. The current facilities and administration rate at UND is 38 percent, and the current rate at NDSU is 45 percent.

Most research faculty spend half their time conducting research and the other half teaching. Some research faculty, such as agriculture research faculty, may spend up to 70 percent of their time on research projects. Research staff who do not provide classroom instruction are generally compensated entirely from income relating to research contracts with outside entities. Institutions use different methods to attract and compensate research graduate students, such as a tuition waiver or stipends. The testimony indicated while the state's research institutions are proactive in developing partnerships with private sector entities, the institutions are aware that not every partnership may be appropriate for the institution.

The committee received testimony that NDSU's research activities include not only the well-established research programs in the areas of agriculture, transportation, and polymer coatings but the university is also working on emerging research opportunities in the fields of unmanned aerial vehicles, informatics, and digital mobile health.

Testimony indicated UND's research activities are in the areas of aerospace, environment, natural resources, energy, life sciences, arts and humanities, and social and behavioral sciences. The testimony cited specific examples of research including the development of biodiesel that does not gel in cold weather, methods to control mercury emissions from coal plants, airborne sense-and-avoid technologies and development of communication systems for unmanned aerial systems, and social changes and challenges in the Bakken.

Commercialization of Intellectual Property

Section 15-10-17(9) allows the State Board of Higher Education to adopt rules promoting research and encouraging the development and commercialization of intellectual property. State Board of Higher Education policy authorizes the owner of the intellectual property to negotiate exclusive or nonexclusive commercially reasonable royalty-bearing licenses for the commercialization of the intellectual property. If the intellectual property was created jointly between a private sector partner and a research university, both parties have the right to negotiate royalty-bearing licenses. A private sector partner may request an exclusive royalty-bearing license with the research university to gain complete control over the intellectual property. A nonexclusive royalty-bearing license usually costs less, but allows other private sector partners to gain access to and utilize the intellectual property. If the intellectual property was created or developed jointly between a private sector partner and a research university using federal funding, the private sector partner has the first option to negotiate a royalty-bearing license with the research university assuming the research university retained ownership of the intellectual property. The terms of royalty-bearing licenses are unique to each agreement.

According to testimony from a representative of UND, to encourage more research and innovation, the institution's policy grants a larger percentage of licensing revenue than is required by State Board of Higher Education policy. Other efforts to encourage the commercialization of intellectual property include membership in national technology management organizations, use of federal resources, relationships with the UND Center for Innovation and the Tech Accelerator facility, a strong relationship with the Grand Forks Economic Development Corporation, and participation in the Research North Dakota program.

The committee received information regarding the Research North Dakota program. The 2013 Legislative Assembly's \$12 million appropriation to the Department of Commerce for Research North Dakota program grants was to be used to provide up to \$2 million for venture grants to research institutions for pursuing further commercialization of technology developed by the institution or jointly with a startup or spinoff business operating in the state and a total of \$10 million to provide grants to research institutions for research, development, and commercialization activities with private sector partners. Of this amount, \$4 million is to be used for biotechnology grants to develop and commercialize vaccines and antibodies.

The committee received numerous examples of innovative products as well as startup companies, including an engineering software company, a software company focused on health care, and a biotechnology company.

The committee received a report from the State Board of Higher Education regarding a task force that was formed to review existing State Board of Higher Education policies affecting intellectual property. The task force reviewed options to amend the policies and was expected to provide recommendations for amendments before the end of 2014. It was noted the State Board of Higher Education takes very seriously the responsibility the Legislative Assembly has entrusted to the board for intellectual property management at the various institutions within the University System. It was also noted the task force worked to ensure the policies benefit students, faculty, and staff; foster and facilitate collaborations with the state's valued private sector partners; and that the research and reactive activities of the University System continue to be a source of pride for all North Dakotans.

Conclusion

The committee expressed support for the efforts of the task force to revise the intellectual property policies and to increase collaboration between the two research universities.

UNIFORM LAWS REVIEW

The North Dakota Commission on Uniform State Laws consists of nine 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:

1. **The Uniform Act on Prevention of and Remedies for Human Trafficking.** The Act was initiated as the result of a proposal by the American Bar Association Center for Human Rights in 2010. The Act was approved by the national conference in July 2013 and by the American Bar Association House of Delegates in August 2013. To date in 2014, the Act has been introduced in 12 states and enacted in 2 states.
2. **The Uniform Fiduciary Access to Digital Assets Act,** which was approved by the national conference in 2014. 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. Under this Act, if a fiduciary would have access to a tangible asset, that fiduciary will also have access to a similar type of digital asset. The Act governs four common types of fiduciaries: personal representatives of a deceased person's estate; guardians or conservators of a protected person's estate; agents under a power of attorney; and trustees. The Act defers to an accounts holder's privacy choices as expressed in a document, e.g., a will or trust or by an online affirmative act.
3. **The amendment to Uniform Commercial Code Article 4A (4A-108),** which was approved by the national conference in 2012, was introduced in the 2013 legislative session, but which failed to pass the Senate. The amendment provides that Article 4A does apply to a remittance transfer that is not an electronic funds transfer under the federal Electronic Funds Transfer Act. Without this amendment, neither state nor federal law will apply for transfers that may involve mistaken addresses or payees and other issues beyond the initial sending of the transfer. To date, the amendment has been enacted in 41 states, including Minnesota, South Dakota, and Montana.
4. **Amendments to the Uniform Fraudulent Transfer Act,** which were adopted by the national conference in 2014. The conference renamed the Act the Uniform Voidable Transactions Act, which more closely reflects the Act. The amendments address narrowly-defined issues, such as choice of law rules and burden of proof rules for claims under the Act.
5. **The Revised Uniform Limited Liability Company Act,** which was recommended by the national conference in 2006. The revised Act was the subject of a 2009-10 interim Judiciary Committee study, which recommended continued study during the 2011-12 interim while Minnesota was working on the revised Act for adoption in Minnesota. The 2011-12 interim study recommended that the revised Act not be introduced during the 2013 legislative session because Minnesota had not yet adopted the revised Act. In 2014 the Minnesota Legislature adopted the revised Act, which was signed by the Governor in April.

Conclusion

The committee makes no recommendation regarding these uniform Acts.

STATUTORY AND CONSTITUTIONAL REVISION

Driving without Liability Insurance

The committee received testimony in explanation of an Attorney General letter opinion regarding the implementation of 2013 House Bill No. 1263. The letter opinion discussed an ambiguity in whether the charge of driving without liability insurance is to be treated as an infraction under Chapter 12.1-32 of the criminal code or a noncriminal offense under Chapter 39-06.1, and which of these chapter's procedures would more properly be applied to the offense of driving without liability insurance. The Attorney General concluded House Bill No. 1263 amended the statute concerning driving without liability insurance by reducing a violation from a Class B misdemeanor to an infraction, making the offense a noncriminal moving violation traffic offense, and adding enhanced penalties for a second or subsequent offense. For a repeat violation, the opinion indicated the officer either may advise the driver of the penalties, bond, and mandatory impound order, or may take the driver to a magistrate who may then advise the driver of the enhanced charge, bond, and mandatory impound order and release the driver on a promise to appear. The Attorney General recommended those courses of action for law enforcement to use until the matter can be brought to the Legislative Assembly for clarification.

The committee considered a bill draft that would have changed the penalty for driving without liability insurance from an infraction to a \$150 fine for a first violation and \$300 for a second or subsequent violation within three years. Testimony on the bill draft indicated the bill draft would help to resolve the problem created by House Bill No. 1263, which was an attempt to decriminalize the violation of driving without liability insurance by making the offense an infraction, which is a criminal offense. It was noted neither the bill draft nor House Bill No. 1263 resolves the problem of letting someone drive after being cited for failing to have proof of insurance.

Conclusion

The committee makes no recommendation regarding the driving without liability insurance issue.

Technical Corrections

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

Recommendation

The committee recommends a bill [[15.0168.02000](#)] to make technical corrections throughout the Century Code. The following table lists the sections affected and describes the reasons for the change:

Section	Reason
4-21	Chapter 4-21, which provides for payment of a tree bounty of two dollars for every row of 80 rods of trees planted, was declared unconstitutional in 1941 because it attempted to make a disbursement of public funds without an appropriation. A survey of county auditors found no county using this law.
11-11.1-05	This section permitted a county one-mill levy for a job development authority for the year 1985 only.
34-05-01.2	The statutory date of January 1, 1999, which relates to the starting date for the authority of the Governor to appoint a labor commissioner, is no longer necessary as the date has passed.
38-18.1-03(1)	This subdivision, which provides a procedure for the termination of a mineral interest, is obsolete due to the repeal of two other subdivisions in 2009.
54-44.1-18	The statutory date of June 1, 2011, which removes the starting date for the Director of the Office of Management and Budget to develop a searchable database of expenditures, is no longer necessary as the date has passed. This section as created did not contain an expiration date.

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 2013 and August 2014. 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 2013 and August 2014.

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 five sets of statistics:

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 on the number of people incarcerated or on probation for drug-related crimes.

The youth risk behavior survey indicated tobacco use among youth is decreasing. The use of alcohol by North Dakota teens has decreased for almost all responses, including drinking and driving and binge drinking. The survey indicated those who had at least one drink in the past 30 days decreased from 38.8 percent in 2011 to 35.3 percent in 2013. For other illicit drugs, marijuana use remained steady at 15 percent and is now lower than the national average by 8 percent. A slight increase, from 16.2 percent in 2011 to 17.6 percent in 2013, was noted in North Dakota high school students who have taken a prescription drug, such as OxyContin, Percocet, Vicodin, Adderall, Ritalin, or Xanax, without a doctor's prescription.

The Attorney General's report noted that almost nonexistent in the state in 2009, the use of synthetic drugs skyrocketed in 2011 and 2012. Synthetic drug submissions to the State Crime Laboratory increased from 311 in 2010 to 1,470 in 2013. In November 2012, in conjunction with the State Board of Pharmacy, the Attorney General's office took emergency action to ban the sales of these often deadly synthetic products in the state. As a result of this combined approach, synthetic drug arrests have fallen and submissions of these synthetics to the State Crime Laboratory decreased 75 percent in 2013.

The report of the Attorney General's Bureau of Criminal Investigation, which compiles data provided by the law enforcement agencies serving the state, indicated drug arrests increased by 286 percent in the past 22 years from 745 in 1990 to 2,872 in 2012. Meth labs have been reduced by 97 percent since 2003--the year the Legislative Assembly first passed laws restricting sales of over-the-counter medicine used in the manufacture of meth.

The Attorney General's report expressed concern that although the pseudoephedrine sale restrictions helped reduce the number of meth labs in the state, most of the meth sold and used in the state has always come from out of state and continues to increase.

In addition to an increase in the Bureau of Criminal Investigation's drug case numbers, the complexity of these cases and the quantity and quality of drugs involved present even greater challenges and a more dangerous environment for agents. The report noted the focus of the bureau's enforcement efforts has transitioned from investigating and arresting local dealers who dealt in grams and ounces to the investigation of dealers distributing many pounds of drug product. The report also indicated the vast majority of drug dealers are now armed and organized with potentially more tendencies toward violence.

Information provided on the use of the criminal justice oil impact funding indicated that all of the \$16.6 million in criminal justice oil impact funding had been allocated for various needs, including additional Bureau of Criminal Investigation agents, additional State Crime Laboratory personnel, 80 adequately equipped vehicles, and housing assistance.

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.

For the year beginning September 1, 2012, and ending August 31, 2013, the commission provided counsel on approximately 11,168 case assignments, an increase of 19 percent from two years ago. In McKenzie County, case assignments increased from 89 to 197 in two years, a 121 percent increase. Williams County increased by 54 percent,

and Burleigh County increased by 34 percent in that same time period. Approximately 87 percent of cases are criminal matters, and approximately 13 percent of the case assignments are juvenile matters. The commission also provided legal counsel for about 61 appeals to the North Dakota Supreme Court and 62 postconviction petitions. The commission employs 33 full-time equivalent (FTE) positions and several part-time employees who serve as administrative aides. The seven public defender offices are located in Williston, Dickinson, Bismarck, Grand Forks, Fargo, and Minot. There are two offices in Minot--the main office and an adjunct office with one attorney and one part-time staff. The adjunct office provides assistance with Minot conflict cases and Williams County cases. The commission's administrative office is located in Valley City.

The commission's budget for the 2013-15 biennium is \$11,923,410 from the general fund. The commission also has the authority to spend money from a special fund in the amount of \$2,497,866. These funds are received from court fees paid by defendants and from the indigent application fee. The commission does not apply for grants nor does it receive any federal funds. The report indicated because caseload continues to grow and that trend is likely to continue, the commission will seek an increase in general fund support for the 2015-17 biennium.

According to the report, the commission continues to look at ways to recruit attorneys. The commission is pursuing ways to increase the number of interns from the UND School of Law in order to generate interest in indigent defense.

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 the regulatory body in charge of 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.

Although account deposit wagering, an online method of wagering on horse racing licensed and regulated by the state, is often associated with the commission, the primary purpose of the commission is to support the horsemen of the state. Over the last four years, the commission has increased, from 1 to 11, the number account deposit wagering companies licensed in the state. In the 2012 fiscal year, the commission's account deposit wagering companies produced \$195 million in handle and is on track to reach a projected \$250 million in the 2013 fiscal year due in part to a significant increase in international wagering. According to the report, while many account deposit wagering companies initially began operations in North Dakota, the commission has begun to experience account deposit wagering companies licensed in other jurisdictions moving here as well. 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 their operations:

- The commission has put in place a memorandum of agreement with the Thoroughbred Racing Protective Bureau under which that organization conducts a background check on prospective account deposit wagering companies and their principals before taking any action on an application. No license is issued to an account deposit wagering company whose business practices do not meet the highest industry standards.
- After receiving Racing Commission approval, account deposit wagering applications are reviewed and approved by the Attorney General to ensure full compliance with state and federal laws.
- Account deposit wagering company employees are required to submit to a Federal Bureau of Investigation national background check through the state Bureau of Criminal Investigation before employees may begin employment.
- The commission has contracted with the preeminent pari-mutuel auditing company to provide independent monthly auditing of all account deposit wagering activity.
- Though not mandatory, the commission is working toward adopting the Racing Commissioners International Model Rules in an effort to ensure that 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 and their families. The statutory tax structure of the commission requires that all income resulting from account deposit wagering company operations directly or indirectly returns 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 following 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 North Dakota 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. The report noted the positive trend in account deposit wagering company tax contributions should allow the commission to begin remitting taxes

equivalent to the commission's biennial appropriation from the general fund in the near future. In addition to payments to the general fund, over the 2012 and 2013 fiscal years, the commission will have made the following direct contributions to the states equine industry:

Equine Fund	Amount
Promotion	\$532,000
Purse	400,500
Breeders	218,000
Total	\$1,150,500

Finally, the report indicated both the Fargo and Belcourt race tracks saw record or near-record attendance and handle in 2013. As a result, two additional weekends of racing were held at North Dakota Horse Park Fargo in 2014.

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 that are in convenient locations, create effective annual marketing plans, provide quality customer service to retailers and players, and control operating expenses.

For the 2013-15 biennium, the lottery had a fixed appropriation of \$1,537,944 for salaries and fringe benefits for 9.5 FTE positions, and \$2,595,877 for operating expenses, for a total of \$4,133,821. 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 of the Attorney General's office, 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 of the Attorney General's office. The appropriation also funds three part-time draw operators.

The lottery conducts five multi-state games: Powerball, Hot Lotto, Wild Card 2, 2by2, and Mega Millions. The Powerball game was launched on March 25, 2004; Hot Lotto on June 24, 2004; Wild Card 2 on September 23, 2004; 2by2 on February 2, 2006; and Mega Millions on January 31, 2010. 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 1:31.85.

For the 2013-15 biennium, the lottery projected sales of \$47 million and transfers of \$12.25 million (\$11 million - state general fund; \$400,000 - compulsive gambling prevention and treatment fund; and \$845,000 - Multijurisdictional Drug Task Force grant fund). Unaudited ticket sales through March 2014, the first nine months of the fiscal year, were \$20,840,158. This amount reflected a \$631,000 increase in sales or 3 percent increase compared to the same period in 2013. The lottery is on track to meet projected sales of \$26,800,000 and transfers of \$6,164,000 for the first year of the biennium.

During the 2013-15 biennium, the lottery has done or has plans to update lottery equipment at retailer locations; including new terminals, self-service ticket checkers, jackpot signs, and LCD monitors; implement an automated subscription process and players club that will provide an easy way for players to manage their subscriptions and reward players for their continued patronage; implement 50 self-service lottery terminals to the retailer base allowing players to purchase and check lottery products without utilizing a retailer clerk; celebrate the lottery's 10th anniversary; conduct rebranding campaign to bring an exciting and refreshing look to the lottery; relaunch Mega Millions with changes that will provide better odds, more winners, and larger jackpots; return the random Power Play multiplier to Powerball; add a new online game that will complement the product mix; develop and conduct innovative marketing promotions and public awareness campaigns; redesign the website to make it more innovative and user-friendly; and enhance security features to ensure the integrity and fairness of its operation.

The new contract with Scientific Games International, Inc., provides the lottery with online and secondary online gaming systems hardware, games management system software, retailer telecommunications network, 450 lottery terminals, self-service ticket checkers, jackpot signs, lottery in-motion monitors, customer display units, 50 self-service lottery terminals, primary and secondary internal control systems, and four field technicians and one field service supervisor to provide service to lottery retailers. The lottery's primary data center will be moved from Oklahoma City, Oklahoma, to the Scientific Games International national data center in Alpharetta, Georgia. In addition, Scientific Games International will provide a testing facility in Bismarck.

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.

The process for the evaluation of a sexually dangerous individual is initiated by the local state's attorney. If it appears that an individual is a sexually dangerous individual, the state's attorney may file a petition in state district court alleging that the individual is a sexually dangerous individual. If the court determines, after a preliminary hearing, that there is probable cause to believe the individual is a sexually dangerous individual, the court order that the individual be transferred to an appropriate treatment facility for an evaluation as to whether the individual has a congenital or acquired condition that is manifested by a sexual disorder, a personality disorder, or other mental disorder that makes the individual likely to engage in further acts of sexually predatory conduct. If, after a commitment hearing, the individual is found to be a sexually dangerous individual, the court commits the individual to the care, custody, and control of the Executive Director of the Department of Human Services. Annually the committed individual is provided written notice of the individual's right to petition the court for discharge.

The evaluation and treatment program for sexually dangerous individuals has operated at the State Hospital since 1997. The State Hospital operates 76 inpatient beds for this purpose. The State Hospital also operates a transitional home for patients that are in the late stages of treatment and are scheduled for discharge from the program. The sex offender evaluation and treatment program at the State Hospital is designed as a psychiatric rehabilitation program with special programming for residents with sex offense histories. The program includes a multidisciplinary team that uses both cognitive behavioral and rehabilitation approaches in providing group and individual therapy with an emphasis on assessment, skills building, a vocational process, and group psychotherapy. The intent of the program is to provide treatment opportunities for sex offenders within a safe, secure, and humane environment that protects residents, staff, and the public. The annual cost per patient in the program is \$91,206. There are 87.7 FTE positions assigned to the program, including treatment, direct care, and security personnel. From 1997 through 2014, 152 evaluations have been completed; 61 individuals were discharged after evaluation; 91 sexually dangerous individuals have been committed; 26 sexually dangerous individuals have been discharged from the program; three sexually dangerous individuals have returned to prison; and one sexually dangerous individual has returned to the State Hospital. In addition, as of May 6, 2014, 59 sexually dangerous individuals were in inpatient status, two were in the evaluation stage, and seven were residing in county jail or prison.

GOVERNOR'S REPORT ON STATUS OF GENDER BALANCE

The committee received a report on the status of gender balance on appointive boards, commissions, committees, and councils and within the Governor's appointive cabinet for the 2013-15 biennium. North Dakota has 145 boards, commissions, committees, and councils to which the Governor makes appointments. The Governor is responsible for more than 1,000 individual appointments. All appointments made by the Governor are first and foremost to the best-qualified candidates. Section 54-06-19 requires that gender balance be considered to the extent possible and to the extent that appointees are qualified to serve on those entities. Geographical location and diversity are also considered. As of April 24, 2014, the gender balance on all boards and commissions to which the Governor makes appointments was approximately 60 percent men and 40 percent women. The report included examples of gender balance on boards versus the balance of those employed within the related professions.