

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

JUDICIARY COMMITTEE

Wednesday, April 11, 2012
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator Dave Nething, Chairman, called the meeting to order at 9:00 a.m.

Members present: Senators Dave Nething, David Hogue, Carolyn C. Nelson, Curtis Olafson, Mac Schneider, Margaret Sitte; Representatives Lois Delmore, Dennis Johnson, Joyce Kingsbury, Lawrence R. Klemin, Kim Koppelman, William E. Kretschmar, Andrew Maragos, Gary Paur, Steven L. Zaiser

Members absent: Representative Stacey Dahl; Senators Jim Dotzenrod, Stanley W. Lyson

Others present: Jim Kasper, State Representative, Fargo

See [Appendix A](#) for additional persons present.

It was moved by Representative Delmore, seconded by Senator Nelson, and carried on a voice vote that the minutes of the January 10, 2012, meeting be approved as distributed.

INTERNET GAMBLING RULING

Chairman Nething called on Mr. Wayne Stenehjem, Attorney General, for testimony regarding a recent ruling ([Appendix B](#)) of the United States Department of Justice regarding Internet gambling and the federal Wire Act. Mr. Stenehjem said the federal Wire Act previously has been interpreted as prohibiting all bets or wagers by use of wire communications. He said a new ruling of the Department of Justice indicates that the federal Wire Act only prohibits wire transactions for sports betting. He said the ruling has been interpreted to provide that wire communications can be used for other types of gaming if the state's law allows it. He said the Legislative Assembly considered a bill in 2005 which related to Internet poker. He said his discussion with the Department of Justice at that time indicated that the federal Wire Act would prohibit the activities proposed in the bill. He said this recent opinion overturns the previous four administrations' opinions on this issue. The ruling is not a court opinion, he said, and the ruling could be reversed with a new United States Attorney General or presidential administration. He said there may be individuals who were convicted based upon previous interpretations of the federal Wire Act. He said the Legislative Assembly must decide as to whether the state wants to allow the online purchase of lottery tickets. He said the Legislative Assembly should be cautious in considering whether to move in that direction. He said

current law requires a paper ticket to be purchased at a terminal. He said the state has developed a good relationship with approximately 400 lottery retailers who sell and promote the lottery.

In response to a question from Senator Nething, Mr. Stenehjem said there are not any states in our area which, in light of the ruling, have decided to allow Internet sales of lottery tickets. He said Illinois and New York are the only states to have made this change. He said a decision to have both online and retail purchase of lottery tickets may cause some retailers to get out of the lottery business.

In response to a question from Representative Klemin, Mr. Stenehjem said the ruling applies only to ticket sales to that state's residents. He said a law change would be necessary to allow credit cards to be used to purchase online lottery tickets.

In response to a question from Representative Koppelman, Mr. Stenehjem said in light of the new technologies that have been developed since the federal Wire Act was passed in 1961, all sides of the issue recognize that Congress needs to address this issue. He said the federal Wire Act should be amended, and Congress should decide what is allowed and what is not allowed as it relates to online gambling. He said the ruling provides that as long as the purchase is made by an in-state resident who is buying from that state's lottery, the fact that the Internet service provider is in another state does not violate the federal Wire Act.

In response to a question from Representative Maragos, Mr. Stenehjem said credit cards can be used for lottery subscriptions.

In response to a question from Senator Sitte, Mr. Stenehjem said even if a ticket purchaser makes an online lottery ticket purchase, the purchaser must still wait for the drawing. He said he does not view this as creating the same instant gratification gambling problems that are created from other types of gaming, such as pull tabs.

Chairman Nething said this issue is on the agenda for information purposes.

Chairman Nething called on Representative Kasper for comments regarding the Department of Justice ruling on Internet gaming. Representative Kasper said the application of the federal Wire Act to Internet gaming was discussed during the 2005 legislative session as a result of a bill he introduced on licensing Internet poker companies. He said retailers in the state provide sales of lottery tickets to

citizens. He said he is opposed to Internet sales of lottery tickets in the state because it would take business away from the private sector.

In response to a question from Senator Nething, Representative Kasper said during the 2005 legislative session, his contention was that the federal Wire Act did not apply to Internet gaming. He said in light of the Department of Justice ruling, he feels vindicated for the position he took in 2005. He said there still is a possibility that North Dakota could be a location for Internet companies to locate, a move that could create high-tech jobs and tax revenue. He said the projected half billion dollars per year could have been used to provide property tax relief. He said the 2005 bill focused on Internet poker and not other games. He said because of the Department of Justice ruling, the issue could be revisited in the 2013 legislative session.

In response to a question from Representative Delmore, Representative Kasper said Nevada had legislation to authorize Internet poker, but the legislation was vetoed. He said there are about a dozen states working to license or regulate Internet poker.

In response to a question from Representative Maragos, Representative Kasper said in the Nevada bill, the Internet gaming was required to be conducted by a licensed casino.

REVISED FEDERAL DEFINITION OF RAPE

Chairman Nething called on Mr. Jonathan Byers, Attorney General's office, for testimony regarding the United States Department of Justice's announcement ([Appendix C](#)) regarding the revised definition of rape within the Federal Bureau of Investigation's Uniform Crime Reporting program and whether statutory changes are necessary in light of this revised definition. Mr. Byers said because of the incident-based reporting system used in the state, the announcement of the Department of Justice will have little effect on North Dakota. He said the state's use of the National Incident-Based Reporting System, ([Appendix D](#))--known as NIBRS--already accounts for any reporting change that is necessary to comply with the Department of Justice announcement.

In response to a question from Senator Nething, Mr. Byers said no legislative changes are needed. He said the only change will be in the reporting of the crime.

In response to a question from Representative Delmore, Mr. Byer said all definition changes necessary in our system will be made.

CHARITABLE GAMING ORGANIZATION ELIGIBILITY REQUIREMENTS STUDY

Chairman Nething called on Mr. Keith Lauer, Gaming Division, Attorney General's office, for the presentation of information ([Appendix E](#)) requested by the committee regarding charitable gaming taxes, appropriations, and budgets. Mr. Lauer said on

January 18, 2012, as required by North Dakota Century Code Section 53-06.1-12, money was distributed to cities and counties from the gaming and excise tax allocation fund for local gaming grants. He said \$72,668 was distributed. He said the total gaming division budget for the 2011-13 biennium is \$2,818,487. He said the new gaming tax structure passed in 2011 has resulted in a \$6 million decrease in taxes to the state. He said there has been an increase in gaming activity in the state in the last year. He said charitable gaming is a very healthy industry right now with about \$277 million in gross wagers last year. He said 80 percent of that goes back to the players as prizes.

In response to a question from Senator Sitte, Mr. Lauer provided information ([Appendix F](#)) to the committee on gaming trends from 2002 to 2012 and an analysis of gaming activity for 2011. He said the large increase in 2011 may be due to the activity in the western part of the state.

In response to a question from Senator Nething, Mr. Lauer said since the implementation of the new tax rate, 12 organizations are being taxed at the 2.5 percent tax rate, 8 organizations are at the 2 percent tax rate, 8 organizations are at the 1.5 percent tax rate, and the remainder of the organizations are at the 1 percent tax rate. He said there are now 30 organizations that pay a rate of more than 1 percent. With the increased gaming activity in the state, he said, more organizations are moving into higher tax brackets; however, those organizations are still paying less than they were under the old tax system. For the most part, he said, even those organizations in the 2.5 percent bracket got a tax cut. In the last quarter, he said, three organizations had a higher tax rate than in the previous tax rate system. He said he had projected there would be only one organization that would get a higher tax rate under the new system, but there are actually three due to higher-than-projected gaming activity.

Mr. Lauer said the higher activity is likely to generate about \$10.5 million in tax revenue rather than the projected \$9 million. He said the state previously was collecting about \$16 million. He said the difference is going back to the charities. He said the combination of the new tax rate system and basing taxes on gross proceeds, rather than adjusted gross proceeds, has resulted in a more simplified form for reporting.

In response to a question from Representative Klemin, Mr. Lauer said organizations are required to file a form with the Attorney General's office as to how the charitable funds are spent. He said organizations are limited to 60 percent of adjusted gross proceeds for expenses. Everything else, he said, must go to charity.

In response to a question from Senator Nelson, Mr. Lauer said while there is an increase in gaming activity in the western part of the state, the game of bingo has never recovered from effects of the smoking ban.

In response to a question from Representative Zaiser, Mr. Lauer said no surveys have been done on the type of players who play the various games. He said bingo halls take frequent smoking breaks to encourage players to play.

Chairman Nething called on Ms. Karen Breiner, Manager, Plains Art Museum, Fargo, for testimony ([Appendix G](#)) regarding the gaming tax changes. Ms. Breiner said the Plains Art Museum and its board of directors would like the current charitable gaming tax structure improved by making it a typical tiered system. She said the Plains Art Museum is taxed at the highest rate of 2.5 percent on gross proceeds from the first dollar. She said the Plains Art Museum would like to see legislation drafted to modify the current charitable tax structure so that every organization's gross proceeds from \$1 to \$500,000 is taxed at 1 percent, the next \$500,000 in gross proceeds is taxed at 1.5 percent, and so on.

STATUTE OF LIMITATIONS AND VENUE REQUIREMENTS FOR CIVIL ACTIONS STUDY

At the request of Chairman Nething, committee counsel reviewed a bill draft [[13.0056.01000](#)] that would provide for certain civil actions, if none of the defendants reside in the state, the action must be brought in the county in which the plaintiff resides. She said the committee considered at the last meeting a bill draft [[13.0024.01000](#)] that would change the statute of limitations on civil actions from six years to three years.

At the request of Representative Klemin, committee counsel said she would provide to the committee information on venue requirements in other civil cases.

Chairman Nething called on Mr. Jonathan Godfread, North Dakota Chamber of Commerce, for testimony ([Appendix H](#)) regarding the bill drafts. Mr. Godfread said the chamber supports the bill draft that would change the statute of limitations from six years to three years. He said this change would put North Dakota's statute of limitations in line with other states. He said the shorter statute of limitations would help address the emerging trend of forum shopping going on in our state. He said plaintiffs are making the decision to file in North Dakota, because the statute of limitations has expired in their home state. He said reducing the statute of limitations would ensure that claims can be settled more expeditiously. He said the intent of this bill draft is not to discount personal injuries, but rather the business community feels that North Dakota should get in line with the other 47 states that have a statute of limitations of three years or less. He said the chamber has concerns about the venue bill draft. He said the best way to prevent forum shopping would be to change the statute of limitations.

In response to a question from Representative Delmore, Mr. Godfread said changing the statute of

limitations will help the business community. He said he can provide to the committee information on cases that come from out of state.

In response to a question from Representative Zaiser, Mr. Godfread said a shorter statute of limitations will help prevent forum shopping without taking away a citizen's right to get justice.

In response to a question from Senator Olafson, Mr. Godfread said limiting the statute of limitations is the cleanest way to limit forum shopping. He said the proposed venue change would create other problems.

In response to a question from Representative Paur, Mr. Godfread said that it is likely that at the time the six-year statute of limitations was passed, more time was needed to resolve cases. He said travel and technology changes that have evolved since the passage of the original law allow for cases to be handled more expeditiously.

Chairman Nething called on Mr. Alan Austad, North Dakota Association for Justice, for comments regarding the bill drafts. Mr. Austad said if the statute of limitations is changed from six years to three years, there will be more lawsuits. He said the longer statute of limitations allows for more time to reach a settlement. He said this bill draft is a solution in search of a problem. He said if forum shopping were really causing a depletion of resources, the courts would be coming to the Legislative Assembly for more resources to address the problem. He said there is not a legal or judicial reason to change the statute of limitations.

In response to a question from Representative Zaiser, Mr. Austad said the number of civil cases in the United States is declining, due in large part to settlements. He said lawsuits typically are not filed until all settlement options have been exhausted.

Chairman Nething called on Mr. Larry Boschee for testimony ([Appendix I](#)) regarding the bill drafts. Mr. Boschee said the North Dakota Defense Lawyers would oppose the bill draft regarding venue and would support the bill draft regarding the change in the statute of limitations. He said for claims involving real property, the proper venue is in the county where property is located; for personal property claims, the proper venue is the county in which the personal property is located; the venue for forfeiture claims is in the county where the transaction arose; if the defendant is a corporation, the proper venue is any county in the state; and for automobile accident claims, the proper venue is as provided in Section 28-04-03.1. He said three states have a one-year statute of limitations, and 16 states have a three-year statute of limitations. He said a three-year statute of limitations would be as long as or longer than 42 other states. He said only North Dakota, Minnesota, and Maine have a six-year statute of limitations. In Maine, he said, the lack of a discovery rule justifies the longer statute of limitations.

Mr. Boschee said the proposed bill draft on venue would violate the privileges and immunities clause of the United States Constitution. He said the bill draft

would categorically preclude a nonresident from suing a nonresident in North Dakota in situations in which a state resident could do so. He said even if the proposed bill draft did not violate the privileges and immunities clause, many would conclude that it operates unfairly when the accident happens in the state, the defendant is a resident of another state, and the plaintiff is also a resident of another state--either never having lived here or having moved away since the accident. He said the best way to eliminate forum shopping by out-of-state plaintiffs is to have a limitation period that is similar to what most other states have. He said changes to the venue statutes would not address two fundamental matters that a short statute of limitations would address--to prevent stale claims and to bring North Dakota into the mainstream.

In response to a question from Representative Delmore, Mr. Boschee said there are no hard statistics on the number of cases filed in the state by out-of-state plaintiffs. He said he is aware of 29 asbestos cases brought in the state by out-of-state companies.

In response to a question from Representative Klemin, Mr. Boschee said in any case in which the plaintiff could get personal jurisdiction over the defendant, the case could be brought in North Dakota. He said a defendant could argue inconvenient forum. He said as long as the law creates a situation that would preclude nonresidents from suing but allowing residents to do so is a violation of the privileges and immunities clause. He said there are cases brought in North Dakota in which the laws of other states are applied.

REPORTS

Chairman Nething called on Mr. Randy Miller, Director, North Dakota Lottery, for a report ([Appendix J](#)) of the lottery. Mr. Miller said 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, he said, 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.

Mr. Miller said the lottery's fixed appropriation for the 2011-13 biennium is \$1,454,365 for salaries and fringe benefits for 9.5 full-time equivalent (FTE) positions and \$2,245,877 for operating expenses for a total of \$3,700,242. He said 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 which have a direct incremental relationship to sales and cannot be budgeted. He said the appropriation funds 8 FTE positions in the Lottery Division, 1 FTE position in the Information Technology Division, and .5 FTE position in the

Finance and Administration Division. Also, he said, the appropriation funds three part-time draw operators.

Mr. Miller said for the 2011-2013 biennium, the lottery projected sales of \$46.5 million and net proceeds of \$12,245,000 (\$11 million - state general fund; \$400,000 - compulsive gambling prevention and treatment fund; and \$845,000 - Multijurisdictional Drug Task Force grant fund). He said unaudited ticket sales through December 2011--the first six months of the fiscal year--were \$11,507,209. He said this reflects a \$357,000 increase in sales or three percent increase compared to the same period in 2010. He said the lottery is on track to meet projected sales of \$23,250,000 and net proceeds of \$6,122,500 for the first year of the biennium.

Mr. Miller said during the 2011-13 biennium, the lottery plans to:

- Generate net proceeds of \$12,245,000;
- Replace the \$1 Powerball game with a \$2 Powerball game that will include new features which add strong value propositions to make it more exciting and attractive to players. The \$2 game will augment the lottery's product mix of online games by offering players diversity in price point, starting jackpots, and odds;
- Relaunch the game of Wild Card 2;
- Develop and conduct innovative marketing promotions and public awareness campaigns;
- Implement a retailer sales enhancement pilot program to introduce new point-of-sale items that actively promote the sale of lottery tickets;
- Upgrade terminal software to allow retailers to print subscription applications forms with discounted prices during special promotions;
- Redesign its website to make it more innovative, user-friendly, and helpful;
- Expand social media contact through Facebook, Twitter, and text messaging;
- Complete request for proposal process for a marketing vendor and issue a contract;
- Enhance security features to ensure the integrity and fairness of its operation; and
- Strategically reposition its brand to bring about change and refresh its look.

In response to a question from Representative Maragos, Mr. Miller said the lottery's net proceeds or actual profit is 26 percent of total revenues. He said North Dakota runs a very efficient lottery operation. He said the national average is 25 percent to 30 percent.

In response to a question from Representative Kretschmar, Mr. Miller said from the draw date, players have 180 days to claim the prize. If unclaimed, he said, the amount becomes a credit to prize expenses. He said ultimately this amount is transferred to the general fund at the end of the year. He said the majority of the unclaimed prizes are the \$1 to \$3 prizes. He said every effort is made to get the word out about unclaimed larger prizes. He said

signs are posted at the retailer reminding players to check their tickets.

In response to a question from Representative Klemin, Mr. Miller said expired prizes result in a reduction in prize expenses which results in more net proceeds at the end of the year. He said the fluctuation in the amounts of prizes is the result of the luck of the draw and is based on the number of North Dakota winners. He said winners are required to file a tax form for prizes in excess of \$600. He said at the \$5,001 in winnings level, 25 percent is withheld for state and federal income tax. He said he would provide information on the amount of income tax that has been withheld.

In response to a question from Senator Sitte, Mr. Miller said there very few cases of lottery gambling addiction problems. He said the amount set aside for compulsive gambling is used to assist the Department of Human Services and Lutheran Social Services to operate their compulsive gambling services program. He said there has never been any discussion about a link between the lottery and the Multijurisdictional Drug Task Force grant program. He said the lottery is expanding its use of social media as a way to get the message out about the lottery. He said it is the responsibility of the Lottery Division to promote the lottery to make it successful. He said promotion is a part of doing business.

In response to a question from Representative Koppelman, Mr. Miller said advertising results in an increase in sales. He said the lottery is operating as a business, and it is important to get the message out.

In response to a question from Representative Klemin, Mr. Miller said the marketing contract is subject to competitive bidding.

In response to a question from Representative Koppelman, Mr. Miller said he would provide information on the background for promotion.

Representative Maragos said as a member of the Multi-State Lottery Association, North Dakota has a responsibility to promote the lottery.

Representative Delmore said the lottery is one of a few agencies that contribute to compulsive gambling treatment programs in the state.

In response to a question from Representative Klemin, Mr. Miller said some states require expired prize amounts to be returned to players in the form of second chance drawings. He said Iowa had an unclaimed \$15 million Hot Lotto winner. He said after waiting for three months beyond the required time for redemption, the money was distributed among the 15 participating Hot Lotto states.

Chairman Nething called on Mr. Winston Satran, Director, North Dakota Racing Commission, for a report ([Appendix K](#)) of the commission. Mr. Satran said the commission has been able to get a glance at prosperity over the last few months. He said the change in financial fortune has brought about the restoration of horse racing in Fargo this summer. He said racing will take place at the North Dakota Horse Park on July 14-15 and 21-22. He said the

commission will provide \$89,000 in purse funds for the four days and \$18,000 in promotion funds to assist in the operation of the race meet. He said two account deposit wagering companies have donated an additional \$54,000 to assist with the operational costs of the race meet. He discussed the categories of expenses necessary for conducting a race meet.

Mr. Satran said the racing season in Fargo this year is being made possible due to an increase in account deposit wagering activity. He said in 2009 there was \$56 million wagered, in 2010 the total handles from account deposit wagering was \$69 million, and in 2011 that amount was \$112 million. He said the growth can be attributed to the fact that North Dakota-licensed companies are growing in reputation and attracting more clients nationally and internationally. He said the commission continues to see positive growth as the wagering companies mature and refine their business practices. He said the commission continues to implement safeguards to ensure monitoring and accountability of the wagering activity. He said a significant effort by the commission, along with other governmental and private agencies, is being made to professionalize the sport of horse racing and to increase horse production. He said a continuous effort is being made by the commission to bring responsibility and stability to horse racing in the state.

Senator Olafson commended Mr. Satran for improving the reputation of horse racing in the state.

In response to a question from Senator Olafson, Mr. Satran said all the wagers are made by North Dakota-licensed companies on races that are conducted all around the world. He said part of the net proceeds of those wagers is what makes live horse racing possible in North Dakota.

In response to a question from Representative Klemin, Mr. Satran said there are four weekends of racing planned for this summer in Belcourt as well.

Chairman Nething called on Mr. Alex Schweitzer, Superintendent/Administrator, State Hospital, for a report ([Appendix L](#)) relating to individuals who have been committed to the care and custody of the executive director of the Department of Human Services. Mr. Schweitzer said this is the annual report on the sexual offender treatment program at the State Hospital.

Mr. Schweitzer said the State Hospital currently operates 76 beds for the purpose of the evaluation and treatment of sexual offenders. He said since the program's inception, the State Hospital's evaluators have completed 137 sexual offender evaluations. Of that number, he said, 84 sexual offenders have been committed to the care and custody of the executive director of the Department of Human Services for treatment. He said the State Hospital has discharged 19 sexual offenders who have successfully completed the requirements of the program. Of those 19 patients, he said, two have returned to prison for crimes not of a sexual nature, and one offender who was discharged on a postcommunity commitment

returned to the State Hospital for further inpatient treatment. He said the State Hospital currently services 60 patients committed to the sexual offender programs. In addition, he said, there are three patients in the correctional system, and four patients who are currently being evaluated to determine the need for commitment and treatment. He said one patient is in the transitional housing program, which is the last stage of treatment before discharge from the program. He said the annual cost per patient in the program is \$89,253. He said the program has 86 FTE positions that carry out the unique role of treatment provider and security personnel. He said the James River Correctional Center provides security consultation, training, and services for the State Hospital.

In response to a question from Senator Nething, Mr. Schweitzer said the State Hospital's costs of operating the sexual offender treatment program are comparable to the national average. He said the costs are reasonable given the level of security, treatment, and supervision that is necessary. He said these patients include four subsets of patients who must be managed. He said the costs in the inpatient mental illness population are higher than the sexual offender unit.

In response to a question from Representative Delmore, Mr. Schweitzer said the two individuals who went back to prison have since left the state. He said based upon an order of the court, some of the released patients are followed by the Department of Corrections and Rehabilitation. He said all individuals who leave the program are required to meet certain conditions, including housing; employment; a support system within the community; treatment, if necessary; possible global positioning system monitoring; and certain restrictions on where the patient may or may not go, such as near schools and day care facilities.

In response to a question from Representative Zaiser, Mr. Schweitzer said those released from the sexual offender program have low recidivism. He said about half of those treated for drug and alcohol abuse return to prison. He said mental illness and substance abuse can be lifelong conditions that often result in a return to the State Hospital.

In response to a question from Representative Koppelman, Mr. Schweitzer said as a result of interstate compacts, the state works with other states to inform the other state of sexual offenders who relocate from North Dakota to another state and vice versa.

In response to a question from Senator Nething, Mr. Schweitzer said there are more than 100 individuals in Department of Human Services' outpatient services programs for sexual offender treatment. He said the State Hospital treats the highest risk sexual offenders. He said there are many sexual offenders who do not meet the civil commitment standards but who need treatment. He said the expertise has evolved in evaluating and treating sexual offenders since the program began.

He said Minnesota has never discharged anyone from the state's sexual offender civil commitment program. He said Minnesota has had a lot of issues with turnover, violence, and questions about their treatment. He said North Dakota has not had those issues.

Chairman Nething called on Ms. Robin Huseby, Executive Director, Commission on Legal Counsel for Indigents, for the annual report ([Appendix M](#)) of the commission. Ms. Huseby also provided information ([Appendix N](#)) on case filings in Williams County from 2006 through 2011. She said the commission provides indigent legal services to persons who are indigent and who are charged with misdemeanors and felonies in state district court. She said the commission also provides counsel to indigent persons who are parties in some juvenile and other miscellaneous matters. She said from October 2010 through September 2011, the commission provided counsel on approximately 9,000 case assignments. She said approximately 84 percent of cases are criminal matters, and approximately 17 percent of the case assignments are juvenile matters. She said there are about the same number of misdemeanor cases assigned as there are felony cases. She said the commission also provides legal counsel for about 50 appeals to the North Dakota Supreme Court each year and for about 60 postconviction petitions per year.

Ms. Huseby said the commission employs 30 FTE positions and several part-time employees who serve as administrative aides. She said the six public defender offices are located in Williston, Dickinson, Minot, Bismarck, Grand Forks, and Fargo. She said the Dickinson and Williston offices each have 2 attorneys and 1.5 administrative staff. She said the other four offices each have three attorneys, one legal assistant, and one full-time and one part-time administrative staff person.

Ms. Huseby said the commission's budget consists of \$9,808,430 of general fund dollars for the 2011-13 biennium. She said the commission also has the authority to spend money from a special fund in the amount of \$1,970,852. She said these funds are received from court fees paid by defendants and from the indigent application fee. She said the collection of these fees is not necessarily guaranteed to be consistent from year to year as the judges have discretion in waiving the fees in any particular case. She said the commission does not apply for grants nor does it receive any federal funds.

Ms. Huseby said the increase in population, the influx of money, and the changing demographics in the western part of the state have all had a dramatic impact on the commission and its offices in Minot, Dickinson, and Williston. She said because of the volume of cases and the types of cases the commission is seeing in those areas, they have not been able to keep up with the demand. She said the commission has resorted to adding pay onto salaries to try to compensate its 11 FTE employees in those

areas. She said because of the shortage of lodging in these areas, the commission has rented an apartment in Williston to allow their visiting attorneys to stay overnight. She said the commission is faced with two problems in the western part of the state--a rising caseload and the inability to find attorneys. She said the commission is seeing both a shortage of public defender attorneys and private attorneys who are willing to take the conflict cases. She said the commission needs help from the Legislative Assembly in the form of money and staff. She said the commission would like to open an adjunct office to help handle conflict cases from Dickinson and Williston and points in between. She said the number of cases in western North Dakota are not just increasing, they are spiking.

In response to a question from Senator Nething, Ms. Huseby said the problem in the western part of the state is not the working people. She said prosperity brings other problems and other people. She said the indigency status of some individuals changes quickly. She said the commission is facing a very multifaceted problem. She said the problem is usually not the worker but those individuals who are in the area looking for work.

In response to a question from Representative Klemin, Ms. Huseby said no one could have anticipated the boom and its impact. She said one idea for attracting more attorneys may be to increase the rate for attorneys in that part of the state. She said she plans to ask the Legislative Assembly for more employees for that area. She said Minot is feeling the impact as well, but the commission does have enough attorneys in the Minot area at this time.

In response to a question from Senator Hogue, Ms. Huseby said she is not sure if there are any oil impact-related government grants available for law enforcement and other protection, but she will keep it in mind.

In response to a question from Representative Zaiser, Ms. Huseby said the agency is seeing types of cases that usually are not seen in smaller jurisdictions.

JUVENILE COURT JURISDICTION STUDY

At the request of Chairman Nething, committee counsel presented a bill draft [\[13.0066.01000\]](#) regarding extended jurisdiction juvenile proceedings. Committee counsel said the bill draft, which allows for the option of an extended jurisdiction in certain juvenile proceedings, is based upon a draft prepared by Mr. Jim Ganje, staff attorney, State Court Administrator's office, for the Juvenile Policy Board earlier in the year.

Chairman Nething called on Ms. Haley Wamstad, Grand Forks County Assistant State's Attorney, for testimony ([Appendix O](#)) regarding the bill draft. Ms. Wamstad said at the committee's meeting on January 10, 2012, she was asked to organize a committee to draft a proposed bill on extended juvenile court jurisdiction. She said she organized a

committee of individuals who work in the juvenile justice system. She said the committee consisted of judicial referees, defense attorneys, assistant state's attorneys, a representative of Legal Services, and a graduate student in criminal justice. She said the committee also sought the input of Ms. Huseby, the National Counsel of Juvenile and Family Court Judges, the North Dakota State's Attorneys Association, the Bureau of Criminal Investigation, and other judges and attorneys involved in the juvenile court system.

Ms. Wamstad reviewed the bill draft. She said in light of the concerns of the Juvenile Policy Board regarding the bill draft, the committee did its best to address the board's concerns with the bill draft. She said this type of legislation has been adopted by 23 states.

In response to a question from Representative Koppelman, Ms. Wamstad said under Section 27-30-24, certain offenses are deemed so serious that those cases are automatically transferred to adult court. She said this bill draft would provide that a number of those cases would be removed from that section. Under the bill draft, she said, the only case with an automatic transfer would be murder. She said currently there are certain offenses with an automatic transfer to adult court which should be reviewed. She said once a case is transferred to adult court, that defendant will always be in adult court. She said, for example, if a juvenile gives just one hydrocodone pill to another child, the case would automatically be bumped into adult court with no discretion. She said she has seen a court decide to disregard this automatic transfer to adult court law because of the unfairness of the particular case. She said under the bill draft, the system would be more flexible. She said it would allow the court to consider the offense, the circumstances, and that particular child. She said this bill draft would allow for the options of juvenile court, adult court, or extended juvenile court jurisdiction.

In response to a question from Representative Koppelman, Ms. Wamstad said if courts are disregarding the law, there is a need for a fix.

In response to a question from Representative Klemin, Ms. Wamstad said the original draft gave the prosecutor too much discretion. She said under the bill draft any party can file the motion for extended juvenile court jurisdiction. She said a party could be the prosecutor, the parent, or the juvenile. She said in the opinion of Ms. Gretchen M. Handy, a public defender for the state of Minnesota who also practices in North Dakota, the implementation of the extended jurisdiction juvenile proceedings in Minnesota has resulted in less litigation. Ms. Wamstad provided to the committee a copy of Ms. Handy's letter ([Appendix P](#)).

In response to a question from Representative Klemin, Ms. Wamstad said the option of an extended jurisdiction juvenile proceeding would give the juvenile one last chance. She said under the bill draft, the transfer hearing would be handled by a judge;

however, once the case goes to an extended jurisdiction juvenile proceeding, the juvenile would have a right to a jury. She said the jury trial would be open to the public. She said the current transfer to adult court hearing is public.

Chairman Nething called on Ms. Renata Olafson Selzer, Cass County Assistant State's Attorney, for testimony ([Appendix Q](#)) regarding the bill draft. Ms. Olafson Selzer said she supports the bill draft. She said as a prosecutor in juvenile court, one of the most frustrating things for her has been the lack of alternatives when it comes to cases involving serious delinquent acts. She said under current law there are only two options--file a motion to transfer the case to adult court or keep the case in juvenile court. She said the statute does not provide any middle ground. She said the problem is that not all cases fit neatly into one of those two categories. She said there are cases that are too serious or complex to handle in the same manner as a typical delinquency yet the case does not warrant a transfer to adult court. She said although these cases do not arise on a frequent basis, there is a need for a workable mechanism for dealing with them. She said the extended jurisdiction juvenile proceeding would provide that middle ground. She said when a case is designated as an extended jurisdiction juvenile proceeding, the court would impose a juvenile court disposition and an adult court sentence; however, the execution of the adult court sentence would be suspended on the condition that the juvenile not violate the court's order and not commit any new offenses. She said the case would remain in juvenile court, and the child would be treated as a juvenile. Under this extended jurisdiction system, she said, if the child violates the juvenile court's order, a revocation hearing is conducted. Following this hearing, she said, the court could order execution of the adult sentence if the child is found to have violated the order.

Ms. Olafson Selzer said as a prosecutor, she has worked with many crime victims and their families. She said a common theme she hears from victims in serious delinquency cases is how unjust it is to keep such cases in juvenile court given the lack of recourse if the juvenile approaches age 20 and has failed to comply with the court's order. She said under the bill draft, victims would find some solace in the fact that the offender can be held accountable to follow the juvenile court's order.

In response to a question from Senator Olafson, Ms. Olafson Selzer said an extended jurisdiction juvenile proceeding option is a tool for rehabilitation. She said rehabilitation is always the goal. She said under an extended jurisdiction juvenile proceeding option, the court would give the juvenile a chance to be rehabilitated. She said the adult court part of the sentence would allow for the punishment component.

Chairman Nething called on Justice Mary Muehlen Maring, Supreme Court, for testimony ([Appendix R](#)) regarding the bill draft. Justice Maring said she is a member of the Juvenile Policy Board. She said at its

November 22, 2011, meeting, the board, in consultation with all of the juvenile court directors, voted not to support this legislation. She said referrals to juvenile court are down in the state because of the positive impact the state juvenile justice system's philosophy of balanced and restorative justice has had on improving outcomes for children and recidivism. She said this philosophy keeps children in the community and relies on evidence-based approaches like in-home family therapy and cognitive restructuring. She said several studies have expressed skepticism about the effectiveness of extended juvenile jurisdiction laws, which are also known as blended sentencing laws.

In response to a question from Senator Nelson, Justice Maring said there have been many changes in the area of dealing with juvenile crime since many of the blended sentencing laws were passed in the 1990s. She said today there are more tools available to assess juveniles. She said the way the juvenile court system deals with juveniles has changed, which statistically has been very successful. She said what the studies say is that the hammer of the possibility of being transferred to adult court does not mean anything to juveniles nor does it affect their behavior. She said the extended juvenile court jurisdiction is a prosecutor's tool.

In response to a question from Senator Nelson, Justice Maring said research has shown that extended juvenile jurisdiction does not work. She said the use of extended jurisdiction results in younger, less serious offenders in the adult system who are likely to become hardened criminals who reoffend.

In response to a question from Senator Nething, Justice Maring said the majority of the offenders placed in extended juvenile jurisdiction fail and ultimately became part of the criminal adult court. She said the studies show that more kids violated parole conditions under extended juvenile jurisdiction than would normally violate probation under juvenile court jurisdiction. She said there is no validity to the claim that this will deter crime.

In response to a question from Representative Paur, Justice Maring said the bill draft includes gross sexual imposition and certain drug offenses under the extended jurisdiction juvenile proceeding option. She said the bill draft also takes discretionary offenses and moves all of those into threat of adult court through the extended jurisdiction juvenile proceeding option. She said there is not an automatic transfer for gross sexual imposition and drug offenses under this bill draft, but prosecutors have tremendous discretion. She said prosecutors have kept many of these cases in juvenile court by charging the cases differently.

Chairman Nething called on Mr. Cory Pedersen, Director of Juvenile Court Services, Administrative Unit 3, for testimony ([Appendix S](#)) regarding the bill draft. Mr. Pedersen said nationally juvenile crime continues to decline, and juvenile violent crime is at its lowest point in two decades. He said North Dakota's juvenile referrals have declined at a similar pace, and

the state has seen a 20 percent decrease in delinquent referrals since 2007. He said in 2011 North Dakota had 405 felony offenses--11 percent of the total--and only 11 cases were transferred involuntarily to adult court.

Mr. Pedersen said the primary purpose of this legislation is to impose a threat of an adult sentence over the head of a juvenile in the hopes that the threat will encourage compliance and deter future bad behavior. He said as a juvenile justice expert, he knows that threats, no matter how serious, do not change adolescent behavior. He said juveniles who have made some terrible choices are not capable of changing their thoughts and actions just because we threaten them with serious future consequences, such as adult jail time. He said if threats of future consequences worked with adolescents, we would have a foolproof system with a zero recidivism rate. He said brain research in the last decade has clearly shown that the very last part of a child's brain to develop is the frontal lobe. He said the frontal lobe involves the ability to recognize future consequences and make behavior choices accordingly. Without a fully developed frontal lobe, he said, teenagers are like a fully loaded car without brakes; the result being that delinquent behavior is normative for that age. He said the brain is not fully developed until around age 21 for females and up to age 23 for males. He said the state's juvenile court officers agree with this current adolescent brain research as well as what they know about the harmfulness of early transfers to adult court. He said six large-scale national studies have shown that juveniles transferred to adult court are actually more likely to reoffend. He said the juvenile court would support legislation that moves delinquent acts other than murder and attempted murder away from the mandatory transfer and allow the court to decide on cases that transfer after a full needs and risks assessment is completed. He said state's juvenile courts deal every day with complicated youth and families as well as the victims of juvenile crime, all of whom have a wide variety of needs. It is important, he said, that we continue to focus on criminogenic needs and risks of our youth in North

Dakota and base decisions for the juveniles on evidence-based approaches.

In response to a question from Chairman Nething, Mr. Pedersen said he would work with committee counsel to arrange for juvenile court officers to appear before the committee at the next meeting.

Chairman Nething called on Mr. Aaron Birst, North Dakota Association of Counties, for testimony regarding the bill draft. Mr. Birst said the North Dakota State's Attorneys Association has not taken a formal position on this bill draft. He said this bill draft will be on the North Dakota State's Attorneys Association annual meeting agenda in June. He said he will report on the association's recommendation to the committee at its next meeting.

In response to a question from Representative Zaiser, Mr. Birst said while the prosecutors want more flexibility, the judges do as well.

In response to a question from Senator Olafson, Mr. Birst said there is not a perfect system. He said although juvenile numbers are down dramatically, there will always be those unique cases.

Representative Klemin said the committee should receive testimony from defense attorneys regarding the bill draft.

COMMITTEE DISCUSSION

Representative Klemin said he would like the bill draft on venue amended to provide that if none of the defendants reside in the state, the action must either be brought in the county in which the plaintiff resides or in the county in which the cause of action arose.

At the request of Representative Delmore, Chairman Nething said the committee will receive information at the next meeting on other states that have introduced legislation known as "Caylee's Law."

No further business appearing, Chairman Nething adjourned the meeting at 2:45 p.m.

Vonette J. Richter
Committee Counsel

ATTACH:19