

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

JUDICIARY COMMITTEE

Thursday, May 6, 2014
Roughrider Room, State Capitol
Bismarck, North Dakota

Senator David Hogue, Chairman, called the meeting to order at 9:00 a.m.

Members present: Senators David Hogue, Kelly M. Armstrong, John Grabinger, Stanley W. Lyson, Mac Schneider, Margaret Sitte; Representatives Lois Delmore, Ben W. Hanson, Karen Karls, Lawrence R. Klemin, Kim Koppelman, William E. Kretschmar, Diane Larson, Andrew G. Maragos, Gary Paur

Others present: See [Appendix A](#)

It was moved by Representative Delmore, seconded by Representative Maragos, and carried on a voice vote that the minutes of the January 22-23, 2014, meeting be approved.

REPORTS

Chairman Hogue called on Mr. Randy Miller, Director, North Dakota Lottery, for a report ([Appendix B](#)) regarding the operation 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 2013-15 biennium is \$1,537,944 for salaries and fringe benefits for 9.5 full-time equivalent (FTE) positions, and \$2,595,877 for operating expenses, for a total of \$4,133,821. He said the lottery has a continuing appropriation for variable expenses of prizes, retailer commissions, online gaming system vendor fees, and the 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. He said the appropriation also funds three part-time draw operators.

Mr. Miller said the lottery conducts five multistate games: Powerball, Hot Lotto, Wild Card 2, 2by2, and Mega Millions. He said 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. He said 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.

Mr. Miller said for the 2013-15 biennium, the lottery projected sales of \$47 million and transfers 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 March 2014--the first nine months of the fiscal year--are \$20,840,158. He said this reflects a \$631,000 increase in sales or 3 percent increase compared to the same period in 2013. He said 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.

Mr. Miller said during the 2013-15 biennium, the lottery has done or has plans to do the following:

- 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.

Mr. Miller said 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. He said 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, he said, Scientific Games International will provide a testing facility in Bismarck.

In response to a question from Representative Maragos, Mr. Miller said each retailer will decide whether debit cards may be used for lottery tickets purchased using one of the new self-service terminals. He said if not, the self-service terminal in that establishment will be cash only. He said the terminals will accept cash up to a \$20 bill. He said change will be given in the form of a voucher that can be redeemed for cash or can be used for another lottery purchase. He said under the current system, the lottery sends staff to Oklahoma City, Oklahoma, to conduct testing. He said with a new testing site in Bismarck, the lottery will save travel costs. He said Scientific Games International, Inc., will relocate two of its employees to Bismarck. He said the change will bring the convenience of testing to Bismarck as well as economic development in the form of bringing new people to the state.

In response to a question from Representative Klemin, Mr. Miller said 25 percent in federal tax and 2.2 percent in state tax is withheld on prizes over \$600. He said \$887,000 in federal taxes and \$127,000 in state taxes were withheld from prizes in 2013. Since the inception of the lottery in 2004, he said, \$6.5 million in federal taxes and \$1.3 million in state taxes have been withheld from prizes.

In response to a question from Representative Koppelman, Mr. Miller said the lottery is always looking at new game opportunities. He said in his 2011 report, he indicated that unless the lottery could get another strong game, additional games would not be added. He said the lottery is considering the addition of a new Monopoly-type online game which is being offered by the Multi-State Lottery Association. He said the addition of any new game must be considered by the lottery's advisory commission and the Attorney General.

In response to a question from Senator Sitte, Mr. Miller said the lottery is one of only a few entities that contribute money for gambling addiction problems in the state. He said the Department of Human Services is very pleased with the contributions it receives from the lottery for problem gambling. He said very few problem gamblers indicate that they have lottery-related gambling issues. He said the source of much of the problem gambling in the state is attributed to casinos and pull tabs. He said the \$200,000 per year that is transferred in the compulsive gambling prevention and treatment fund is an amount set by statute.

In response to a question from Representative Delmore, Mr. Miller said the lottery is the only state entity that contributes to the compulsive gambling prevention and treatment fund (\$400,000 per biennium) and the Multijurisdictional Drug Task Force grant fund (\$845,000 per biennium).

In response to a question from Representative Kretschmar, Mr. Miller said the lottery has not experienced any problems with fraudulent activities among its retailers. He said the lottery continues to work on fairness and integrity. He said the fraudulent activity in other states is usually related to the instant win tickets.

In response to a question from Senator Sitte, Mr. Miller said the lottery has always accepted credit cards for subscriptions. He said the new self-service terminals will limit players to purchases of \$100 per week. After that threshold has been met, he said, further purchases will be blocked.

In response to requests for information from Chairman Hogue and Representative Koppelman, Mr. Miller provided information regarding lottery operating expenses ([Appendix C](#)); the allocation of lottery ticket sales ([Appendix D](#)); ticket sales compared to general fund transfers ([Appendix E](#)); state lotteries not withholding state income tax ([Appendix F](#)); and a summary of a player survey ([Appendix G](#)).

Chairman Hogue called on Mr. Gunner laCour, Director, North Dakota Racing Commission, for the biennial report ([Appendix H](#)) of the North Dakota Racing Commission. Mr. laCour said while account deposit wagering, an online method of wagering on horse racing licensed and regulated by the state, is often associated with the Racing Commission, the primary purpose of the commission is to support the horsemen of the state. He said over the last four years, the Racing Commission has gone from having only one licensed account deposit wagering company to a current total of 11. He said in the 2012-13 fiscal year, the commission's account deposit wagering companies produced \$195 million in handle and are currently on track to reach a projected \$250 million in the 2013-14 fiscal year due in part to a significant increase in international wagering. He said while many of these companies initially began operations in North Dakota, the commission has begun to see account deposit wagering companies licensed in other jurisdictions moving here as well. He said these positive signs, in addition to a number of current account deposit wagering initiatives supported by the commission, makes the commission confident that it will continue to see similar increases in handle in the coming years.

Mr. laCour also discussed steps taken by the Racing Commission to ensure that the account deposit wagering companies are held to a high standard of regulatory compliance and transparency in all aspects of their operations. He said these include:

- 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 prior to taking any action on an application. No license will be 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 an Federal Bureau of Investigation national background check through the state Bureau of Criminal Investigation before employees may begin their employment.
- The Racing Commission has contracted with the preminent pari-mutuel auditing company CHRIMS, Inc., to provide independent monthly auditing of all account deposit wagering activity. Every CHRIMS report is reconciled with those provided by the account deposit wagering companies. Without exception, it is the responsibility of each account deposit wagering company to provide the Racing Commission with accurate reporting and to fully comply with commission inquiries into any discrepancy.
- Though not mandatory, the Racing 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.

Mr. laCour said despite the great deal of the time and focus the Racing Commission expends regulating account deposit wagering companies, the true purpose of the commission is not the proliferation of gambling but rather the welfare of the North Dakota horsemen and their families. He said 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. He said 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. He said all breakage--the remaining pennies from pari-mutuel payoffs rounded out to a nickel or dime--from the account deposit wagering companies retained by the commission is deposited directly into the promotion fund.

Mr. laCour said 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. He said in addition to payments to the general fund, over the 2012-13 and 2013-14 fiscal years, the commission will have made the following direct contributions to the states:

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

Mr. laCour said both the Fargo and Belcourt race tracks saw record or near record attendance and handle last year. He said as a result, North Dakota will see two additional weekends of racing in Fargo this year. He said Chippewa Downs in Belcourt will be running June 14-15, 21-22, and 28-29 and July 5-6 with the North Dakota Horse Park in Fargo following on July 19-20 and 26-27 and August 2-3.

In response to a question from Representative Delmore, Mr. laCour said the Racing Commission tries to keep taxes low in order to be competitive. He said reducing taxes will eventually increase the revenue to the state.

In response to a request from Representative Delmore, Mr. laCour provided a list ([Appendix I](#)) of the Racing Commissioners.

In response to a question from Representative Koppelman, Mr. laCour said the Racing Commission continues to review and revise its administrative rules in all areas, including medication rules, account deposit wagering, and live racing.

Chairman Hogue called on Ms. Amanda Godfread, Governor's office, for an annual report ([Appendix J](#)) 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. Ms. Godfread said North Dakota has 145 boards, commission, committees, and councils to which the Governor makes appointments. She said the Governor is responsible for more than 1,000 individual appointments. She said all appointments made by the Governor are first and foremost to the best-qualified candidates. She said North Dakota Century Code 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. She said geographical location and diversity are also considered. She said as of April 24, 2014, the gender balance on all boards and commissions to which the Governor has appointment is approximately 60 percent men and 40 percent women.

In response to a question from Representative Delmore, Ms. Godfread said the Commission on the Status of Women is chaired by Ms. Tara Holt. She said she can provide to the committee information regarding the membership and activities of the Commission on the Status of Women.

In response to a question from Chairman Hogue, Ms. Godfread said the difficulty in finding qualified applicants often depends on the specific criteria required for membership on the board or commission. She said the Governor generally has not had a problem finding at least two qualified applicants for a position. She said often a number of phone calls are made in order to find qualified applicants.

In response to a question from Representative Karls, Ms. Godfread said she occasionally gets recommendations from legislators recommending certain individuals for various boards. She said in those cases, the legislator usually knows the applicant well.

In response to a question from Representative Delmore, Ms. Godfread said the Governor's office reaches out to a number of organizations, such as young professional organizations, when searching for applicants.

In response to a question from Senator Schneider, Ms. Godfread said North Dakota compares quite well to neighboring states with regard to gender balance. She said it can be difficult to compare the composition of boards and commissions with those in other states because not all states have the same boards nor do they have the same criteria for boards.

In response to a question from Chairman Hogue, Ms. Godfread said to assist the Governor in making a decision, she provides him information on the applicants, such as gender, geographical data, qualifications, and any criteria that may be missing.

Chairman Hogue called on Mr. Alex Schweitzer, Superintendent/Administrator, State Hospital, for a biennial report ([Appendix K](#)) relating to individuals at the State Hospital who have been committed to the care and custody of the Executive Director of the Department of Human Services. Mr. Schweitzer said 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, he said, the state's attorney may file a petition in state district court alleging that the individual is a sexually dangerous individual and providing sufficient facts to support the allegation. 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. He said 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. He said annually the committed individual is provided written notice of the individual's right to petition the court for discharge.

Mr. Schweitzer said the evaluation and treatment program for sexually dangerous individuals has operated at the State Hospital since 1997. He said the State Hospital operates 76 inpatient beds for this purpose. He said 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. He said 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. He said 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. He said 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.

Mr. Schweitzer said the current annual cost per patient in the program is \$91,206. He said there are 87.7 FTE positions assigned to the program, including treatment, direct care, and security personnel. He provided the following information regarding the program from 1997-2014--evaluations completed - 152; discharged after evaluation - 61; sexually dangerous individuals committed since 1997 - 91; current inpatient census - 59; in evaluation stage - 2; residing in county jail or prison - 7; discharged from program since 1997 - 26; returned to prison - 3; and returned to State Hospital - 1.

In response to a question from Senator Grabinger, Mr. Schweitzer said those committed to the program are not allowed to work in the community. He said within the unit, however, patients work on life skills to prepare themselves for life after discharge.

In response to a question from Representative Klemin, Mr. Schweitzer said the State Hospital is the only facility in the state which provides inpatient sex offender treatment. He said because the treatment must be the least restrictive, only those who are committed to inpatient treatment are committed to the State Hospital. He said those committed to an outpatient treatment program are treated at other facilities.

In response to a question from Chairman Hogue, Mr. Schweitzer said the program is staffed for 76 patients. He said the program currently has 59 patients.

In response to a question from Representative Koppelman, Mr. Schweitzer said the State Hospital bases treatment on what is the best practice in the area of treatment of sex offenders. He said the goal is to be able to return the patients to the community and that the individual not reoffend. He said he is aware of one state that has never discharged anyone from its program; however, other states have regular discharges.

In response to a question from Representative Delmore, Mr. Schweitzer said the tracking of individuals who are released from the program depends on the individual. He said some will be on monitoring by the Department of Corrections and Rehabilitation, and some are ordered to continue outpatient treatment. He said many who have left the program stay in contact with the program. He said the majority of those released reside in the state.

In response to a question from Representative Paur, Mr. Schweitzer said individuals are committed to the program through a civil court process. He said the court must determine through expert evidence that the individual has a mental disorder that makes the individual likely to engage in predatory sexual conduct. He said the commitment has nothing to do with whether the individual has committed a crime. He said the program only admits individuals who are committed by a court.

In response to a question from Representative Larson, Mr. Kerry Wicks, Administrative Director, State Hospital, said congenital condition is a broad term with both legal and clinical applications. He said he has no doubt that those 59 committed individuals have committed a sexual offense.

In response to a question from Representative Klemin, Mr. Wicks said the State Hospital have never evaluated a woman for being a sexually dangerous individual. He said there has not been a case involving a woman which has reached the point of predatory conduct. He said predatory behavior is more violent and more invasive.

In response to a question from Chairman Hogue, Mr. Wicks said there are at least 2 of the 59 committed individuals who have never acknowledged their actions and who continue to deny it.

ASSESSMENT OF COURT FEES STUDY

Chairman Hogue called on Mr. Aaron Birst, North Dakota Association of Counties, for testimony ([Appendix L](#)) regarding the assessment of court fees study. Mr. Birst said the North Dakota Association of Counties has been following this study and the previous legislation closely because it would likely impact all counties to some degree. He said the Association of Counties generally agrees that under the current system there are multiple fees being charged to defendants, and there is not a unified distribution of the money collected. He said because of that lack of uniformity and guidance, there is a loss of efficiency. He said state's attorneys, county and state clerks, probation officers, and the courts are all left trying to make priority decisions when the defendant is not able to pay all the court-ordered fees at the time of the original sentencing.

Mr. Birst said an example of the inconsistency in the collection of the fees is the assessment and collection of the victim witness fee. He said in Burleigh County, prosecutors ask and courts grant a victim witness fee in nearly all cases. He said that fee is used to support local programs, such as the victim witness program coordinators. He said in other judicial districts, however, that fee is not routinely ordered. He said when creating a formula, if the intention is to hold harmless all groups, it would be necessary to provide each group with the highest common denominator. He said since the amount of money is fixed, some groups would receive a larger share at the expense of another. He said it was for this reason 2013 Senate Bill No. 2078 was turned into a study.

In response to a question from Senator Armstrong, Mr. Birst said the victim witness fee is the only fee the Association of Counties is concerned about not including in a consolidation of court fees. He said the problem is that the victim witness fee is not assessed uniformly. He said some courts diligently assess and collect the fee, while others do not.

In response to a question from Representative Klemin, Mr. Birst said the only way to make the court fee consolidation concept work is to hold the counties harmless. He said it would be necessary for all courts to collect all fees. He said some counties would get a windfall. He said he is not sure if it is worth all the changes to make it work.

Chairman Hogue called on Ms. Rozanna C. Larson, State's Attorney, Ward County, for testimony regarding the assessment of court fees study. Ms. Larson referred to the [letter](#) she submitted to the committee at its January 23, 2014, meeting. She said her primary concern regarding consolidation or the implementation of a "one fee" system is the victim witness fee and the check fee. She said these are fees remitted to the local jurisdiction in which the offense was committed. She said the victim witness fee in particular is a fee that is assessed specifically to aid local domestic violence and victim witness programs. She said in Ward County, all five of the chambered judges in the North Central Judicial District routinely assess the \$25 victim witness fee. She said her biggest concern is the loss of revenue for counties like Ward. She said when considering the consolidation of fees, she would request that the committee not consolidate the victim witness fee.

In response to a question from Representative Larson, Ms. Larson said under the law, the victim witness fee can be used to fund a victim witness program coordinator or can be used to fund local domestic violence programs.

In response to a question from Chairman Hogue, Ms. Larson said the amount of funding to Ward County would have been cut by 50 percent under the formula proposed in Senate Bill No. 2078. She said the county receives about \$35,000. She said the formula would have cut that in half. She said the county is likely to collect \$40,000 this year.

Chairman Hogue called on Mr. Richard Riha, State's Attorney, Burleigh County, for testimony regarding the consolidation of court fees study. Mr. Riha said Burleigh County collects about \$55,000 in victim witness fees each year. He said if the court fees are consolidated, the victim witness fee should not be included in that consolidation.

In response to a question from Chairman Hogue, Mr. Riha said Burleigh County would have lost about 30 percent under the formula in Senate Bill No. 2078. He said Burleigh County used to split the fee between the Abused Adult Resource Center and the funding of a victim witness coordinator. He said the victim witness fees are now used only to fund the victim witness program coordinators.

Chairman Hogue called on Mr. Jerry Woodcox, Commissioner, Burleigh County, for testimony regarding the consolidation of court fees study. Mr. Woodcox said he agrees with Ms. Larson and Mr. Riha. He said the judges in the South Central Judicial District have done an excellent job of collecting the victim witness fee. He said the fees collected go directly to fund the victim witness program coordinator. He said because of the need, Burleigh County increased the number of victim witness coordinators from one position to three positions. He said the program was expanded to include a juvenile program. He said changes should not be made to the victim witness fee.

Senator Armstrong said some counties are so small that they do not assess the victim witness fee because the county does not meet the statutory requirements of the purpose of the fee.

DRIVING UNDER THE INFLUENCE LAWS REVIEW

Chairman Hogue called on Mr. Birst for testimony ([Appendix M](#)) regarding the changes to the DUI laws in House Bill No. 1302. Mr. Birst said the changes to the state's DUI laws have been overwhelmingly helpful in holding an offender accountable when the offender refuses to test. He said this issue is before the Supreme Court and that it is likely there will be a number of cases to follow. He said the law was not clear on how refusal was to be charged. He said it was his impression that the statute was to be considered a separate chargeable offense, but it was intended as an alternative count in which a defendant could be found guilty. Regarding whether officers should allow a defendant to cure their refusal, he said, the statute was also silent. He said it was also his impression that most officers have been operating on the assumption that, if it was reasonable, a cure should be allowed if the defendant requests to cure.

Mr. Birst said the increased penalties have had an impact on jail incarceration rates but generally counties have been able to accommodate the longer jail sentences. He said the increased use of the 24/7 sobriety program has probably led to most of the discussion on effective implementation. He said the largest identified issue regarding the 24/7 sobriety program and the accompanying probation is for those offenders who do not reside in North Dakota. He said under interstate compact laws, probation for a year or more must be transferred to the home state. In cases where the receiving state has no 24/7 sobriety program, he said, the question is how to implement the requirement.

In response to a question from Chairman Hogue, Mr. Birst said he has not heard of anyone being convicted of both refusal and DUI for the same incident.

In response to a question from Representative Koppelman, Mr. Birst said law enforcement is unsure of how to charge. He said it appears that prosecutors are treating the charges as an alternative charge situation. He said the goal of the law was to get people to take the test.

In response to a question from Representative Paur, Mr. Birst said the prosecutor has to prove the offense. He said if an individual has two refusals, second offense penalties apply.

Senator Armstrong said the refusal results in the higher level of suspension.

In response to a question from Senator Sitte, Mr. Birst said he cannot speak to how the Department of Transportation is handling the multiple charges. He said on the criminal side, judges and prosecutors are treating it as an alternative charge.

Mr. Birst also provided information ([Appendix N](#)) regarding regarding state traffic crashes and fatalities.

In response to a question from Representative Delmore, Mr. Birst said it is not always easy to determine if the impaired driver caused the crash.

Chairman Hogue called on Mr. Glenn Jackson, Director, Drivers License Division, Department of Transportation, for testimony ([Appendix O](#)) regarding the impact on a driving record for the third violation of Section 39-08-01. Regarding dual conviction processing, Mr. Jackson said the department, in coordination with the Attorney General, has 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. He said this has 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. He said to date, the department has received 13 dual convictions.

Mr. Jackson said it was mentioned at the committee's January 23, 2014, meeting that juveniles are not eligible for a temporary restricted license regardless of whether the juvenile participates in the 24/7 sobriety program. He said per Section 39-06-01.1, once the Director cancels the operator's license of a minor, the minor is deemed to have never been licensed. Based upon this, he said, a minor is ineligible for a temporary restricted license for an alcohol violation.

Mr. Jackson said the department does not administer the 24/7 sobriety program; however, the department does enable individuals who are otherwise eligible for a temporary restricted license to obtain one. He said the process coordinated with the Attorney General is one in which the individual who is not court-ordered to participate may participate in the 24/7 sobriety program if accepted by law enforcement.

In response to a question from Senator Armstrong, Mr. Jackson said the temporary restricted license takes a few days to issue. He said the department has seen an increase in requests for temporary restricted licenses of about 500 over last year.

In response to a question from Representative Koppelman, Mr. Jackson said the other element changed in the 2013 law was decriminalizing driving while under suspension. He said that has helped in allowing those individuals who stay sober be able to drive again.

In response to a question from Representative Paur, Mr. Jackson said there are two processes--one administrative and one criminal.

Chairman Hogue called on Senator Armstrong for testimony regarding the proposal to address issues related to the changes to the DUI laws in House Bill No. 1302. Senator Armstrong presented eight bill drafts to the committee.

1. Drug court [[15.0118.01000](#)] - Senator Armstrong said this bill draft would return the use of drug court in DUI cases. He said this language was recommended by Judge Gail Hagerty at the committee's December 11, 2013, meeting.
2. Juveniles in the 24/7 sobriety program [[15.0119.01000](#)] - Senator Armstrong said this bill draft would allow the court discretion in whether to order the juvenile to participate in the 24/7 sobriety program. He said there is not a minimum amount of time a juvenile may be required to participate in the program, but the maximum is nine months. He said issues, such as whether this participation can be a huge burden on the parents, is an issue that can be debated during the legislative session.
3. Look-back period for DUI offenses [[15.0120.01000](#)] - Senator Armstrong said this bill draft would limit the look-back period to 15 years for fourth and subsequent DUI offenses. He said very old offenses can be difficult to prove especially if the offenses occurred in another state. He said previous convictions are an element of the crime and have to be proved. He said as we move forward, more records will be computerized and more available. He said he chose 15 years as a starting point for discussion purposes.
4. Implied consent requirements [[15.0121.01000](#)] - Senator Armstrong said this bill draft would provide that a test is not admissible in any proceeding unless the law enforcement officer provides the individual with the implied consent information that is required by law.
5. Right to cure [[15.0123.01000](#)] - Senator Armstrong said this bill draft would give the individual the opportunity to cure a refusal of a test. He said the bill draft requires 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. He said without the ability to cure a refusal, the constitutionality of the law may be in question. He said this bill draft would clarify that the accused has a right to cure the refusal.
6. Participation in 24/7 sobriety program [[15.0124.01000](#)] - Senator Armstrong said this bill draft 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 notified by the individual that the Department of Transportation has issued the individual a temporary restricted license that is conditioned on participation in the program. He said this bill draft will resolve some of the issues which have arisen between the administrative and criminal sides of the process.
7. Dual conviction [[15.0125.01000](#)] - Senator Armstrong said this bill draft clarifies that for purposes of conviction, the DUI refusal and the DUI charge are intended to be alternative charges.
8. 24/7 sobriety program as condition of probation [[15.0126.01000](#)] - Senator Armstrong said this bill draft clarifies that the 24/7 sobriety program is a condition of probation and may not be ordered as part of the sentence. He said the language in the bill draft will be corrected to indicate that the court has the discretion to determine whether to give the offender credit for participation in the program which occurred before sentencing. He said credit for time served on the program should be discretionary not mandatory on the part of the court.

STATUTORY REVISION

Chairman Hogue distributed a bill draft [[15.0122.01000](#)] related to the offense of driving without liability insurance. He said the bill draft is intended to resolve the issue raised by the Attorney General in a January 14, 2014, [letter opinion](#) to Ms. Rozanna C. Larson, State's Attorney, Ward County.

Chairman Hogue called on Ms. Larson for testimony regarding the bill draft. Ms. Larson said the bill draft is a good start. She said the violation is that the individual does not have the proof of liability insurance in the vehicle. She said if that proof is shown within 20 days, the fee is refunded. She said the other problem with the statute on a second or subsequent offense is how to get the offender to court to surrender the license plates.

Chairman Hogue called on Mr. Birst for testimony regarding the bill draft. Mr. Birst said 2013 House Bill No. 1263 was an attempt to decriminalize the violation of driving without liability insurance. He said the 2013 bill made the offense an infraction, which is a criminal offense. He said the issue of what to do with an uninsured driver after issuing a citation continues to be a problem.

In response to a question from Representative Larson, Mr. Birst said previously, law enforcement officers would hold the citation for 20 days before sending in the violation. Under the 2013 law, he said, the clerk of court must hold the citation until the individual produces proof of insurance. He said the paperwork has shifted from the law enforcement agency to the court.

In response to a question from Senator Lyson, Mr. Birst said the 2013 law did not resolve the problem of letting someone drive after being cited for failing to have proof of insurance.

OTHER BUSINESS

As requested by the committee at its January 22, 2014, meeting, Committee Counsel provided copies of the intellectual property policies of the [University of North Dakota](#), [North Dakota State University](#), and the [North Dakota University System](#). Chairman Hogue said he will work with Chairman Mark Sanford, Higher Education Funding Committee, as to how the committee will proceed with the intellectual property study.

No further business appearing, Chairman Hogue adjourned the meeting at 2:15 p.m.

Vonette J. Richter
Committee Counsel

ATTACH:15