

JUDICIARY COMMITTEE

The Judiciary Committee was assigned five studies:

- Section 6 of House Bill No. 1050 (2019) directed a study of the potential adoption of an initiated measure allowing the use of recreational marijuana, including the potential benefits and detriments of legalizing recreational marijuana.
- Section 6 of House Bill No. 1453 (2019) directed a study of the state's civil commitment laws and procedures under North Dakota Century Code Chapters 25-03.1 and 35-03.2 and the behavioral health and civil justice systems to determine whether steps could be taken to prevent and to decrease the incidence of violence committed by persons who are mentally ill.
- Section 34 of Senate Bill No. 2015 (2019) directed a study of the state's charitable gaming laws, including an evaluation of whether charitable gaming is being expanded properly; whether the addition of new games, such as sports betting and historic horse racing, is appropriate; and whether such expansion should be approved by the voters; an evaluation regarding the appropriate limitations, restrictions, and oversight if new games are added; an evaluation of whether a portion of gaming proceeds should be deposited in the gambling disorder prevention and treatment fund; and a review of whether the laws regarding eligible uses for proceeds, gambling sites and locations, limitations, enforcement, conduct, and play of charitable gaming are fair, adequate, and appropriate.
- Section 1 of Senate Bill No. 2148 (2019) directed the study of the implementation and requirements of Article XIV of the Constitution of North Dakota concerning the transparency of funding sources, lobbyists, conflicts of interest, and related matters, the responsibilities of the Legislative Assembly and the Ethics Commission, and potential issues under the United States Constitution and the Constitution of North Dakota. The study required a review of existing laws and laws enacted to implement Article XIV and consideration of whether the civil and criminal sanctions for violations of the constitutional provisions and the statutes are appropriate; whether legislative action regarding Article XIV is necessary or desirable; and an effective means to educate public officials, lobbyists, and the public on the requirements of Article XIV and other laws regarding government ethics.
- House Concurrent Resolution No. 3031 (2019) directed a study of the juvenile justice process, levels of collaboration among various service systems, implementation of dispositional alternatives, and methods for improving outcomes for juveniles involved in the process.

The Legislative Management delegated to the committee the responsibility:

- For statutory and constitutional revision.
- To review any executive order issued by the President of the United States which has not been affirmed by a vote of Congress and signed into law, and recommend to the Attorney General and the Governor that the executive order be further reviewed to determine the constitutionality of the order 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).
- To review uniform laws recommended to the Legislative Management by the North Dakota Commission on Uniform State Laws under Section 54-35-02.

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

- A report from the Attorney General by November 1 of each year summarizing activity of any civilly forfeited property (Section 19-03.1-36.8(4)).
- An annual report from the State Department of Health (DOH) on the number of applications, registered qualifying patients, registered designated caregivers, nature of debilitating medical conditions, identification cards revoked, health care providers providing written certifications, compassionate care centers, and expenses incurred and revenues generated by the department (Section 19-24.1-39).
- A report from the Department of Human Services (DHS) on services provided by the Department of Corrections and Rehabilitation (DOCR) for individuals at the State Hospital who have been committed to the care and custody of the executive director of DHS (Section 50-06-31).
- A biennial report from the North Dakota Racing Commission addressing the issue of the liability of charitable organizations that receive and disburse money handled through account wagering (Section 53-06.2-04).
- A report from the North Dakota Lottery regarding the operation of the lottery (Section 53-12.1-03).

- 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).
- An annual report from the Task Force on the Prevention of Sexual Abuse of Children before July 1 of each even-numbered year with any findings and recommendations. Before July 1, 2024, the task force shall submit a final report (2019 House Bill No.1237, § 1).
- A report from the Attorney General during the 2019-20 interim regarding the status and results of the human trafficking victims grant program (2019 Senate Bill No. 2003, § 10).
- A report from the Commission on Juvenile Justice with the commission's findings and recommendations which may include a legislative strategy to implement the recommendations (2019 Senate Bill No. 2313, § 4).

Committee members were Representatives Lawrence R. Klemin (Chairman), Ruth Buffalo, Karla Rose Hanson, Pat D. Heinert, Mary Johnson, Daniel Johnston, Terry B. Jones, Karen Karls, Jim Kasper, Kim Koppelman, Aaron McWilliams, Bob Paulson, Shannon Roers Jones, and Steve Vetter and Senators JoNell A. Bakke, Michael Dwyer, John Grabinger, Diane Larson, Larry Luick, and Janne Myrdal.

RECREATIONAL MARIJUANA

Background

According to the director of the National Institute on Drug Abuse, changes in marijuana policies across states legalizing marijuana for medical and recreational use suggests marijuana is gaining greater acceptance in society, making it important for people to understand what is known about the adverse health effects and the potential benefits linked to marijuana. According to the 2015 National Survey on Drug Use and Health, marijuana is the most commonly used illicit drug, with 22.2 million people reporting marijuana use in the last month.

State Action

Washington, Colorado, and Oregon have regulatory schemes and tax structures in place for marijuana sales. Colorado and Washington collect tax revenues similarly in that approximately 30 percent of the total revenue is deposited in the general fund; about 35 percent is dedicated to health care services; 10 percent to education and prevention; and the remaining revenue is used for research, local government, and other efforts. Data collected by the National Conference of State Legislatures (NCSL) of Colorado's 2017 revenue report indicated over \$227 million was collected in taxes, licenses, and fees related to marijuana in 2017 for a total of nearly \$639 million collected since adult-use sales began in 2014. Colorado's marijuana tax revenue accounts for 2.5 percent of Colorado's total budget and provides for program oversight and enforcement, local community enforcement assistance, school construction grants, substance use disorder and prevention, treatment efforts and public health surveillance, and other public safety education efforts. Washington collected a total of \$319 million in taxes and licensing fees in 2017, which was \$113 million more than the liquor tax revenue in the same period.

Colorado and Washington use a threshold of 5 nanograms or more of tetrahydrocannabinol (THC) per milliliter of blood as a measurement for driving under the influence of cannabis. Several states with legalized medical or recreational marijuana use leave testing and employment decisions up to the discretion of the individual employer. According to NCSL, the trend among states with employment policies is, if an employee is not bringing medical marijuana to work or working in a job in which impairment could result in serious harm to others, employers are not authorized to take medical marijuana use or positive drug test results into consideration when making hiring and firing decisions. In 2017, Maine's State Legislature placed a moratorium on an initiative passed by popular vote in 2016, which would have permitted the recreational use, retail sale, and taxation of marijuana and included an employment and antidiscrimination provision for recreational users. The moratorium delayed parts of the law regarding retail sales and taxation until at least February 2018. In May 2018, the legislature overrode the Governor Paul LePage's veto of the implementation of a regulatory structure for adult-use marijuana. Sales of recreational marijuana in Maine began on October 9, 2020.

Federal Oversight

Under federal law, marijuana is a Schedule I drug, is considered dangerous, has no accepted medical use, and has a high potential for abuse. In January 2018, Attorney General Jeff Sessions issued a marijuana enforcement memorandum, which rescinded the "Cole Memorandum," and allows federal prosecutors to decide how to prioritize enforcement of federal marijuana laws. Specifically, the Sessions Memorandum directs United States Attorneys to "weigh all relevant considerations, including federal law enforcement priorities set by the Attorney General, the seriousness of the crime, the deterrent effect of criminal prosecution, and the cumulative impact of particular crimes on the community."

Testimony and Committee Considerations

The committee received testimony from a representative from DOH, the Chief Deputy Attorney General, the representatives from the sponsoring committees of potential initiated measures relating to the legalization of recreational

marijuana, representatives of national marijuana operations and organizations, and several members of the public. The committee's deliberations focused on the impacts of legalized recreational marijuana.

A representative from DOH indicated it is difficult to determine the impact legalizing recreational marijuana would have on the medical marijuana program. The committee received considerable testimony indicating the general perception that states with legalized recreational marijuana benefit from increased tax revenue is not entirely accurate. Testimony indicated although the tax rate for marijuana is nearly 30 percent in Colorado, less than 1 percent of marijuana tax revenue goes directly to the state general fund. The 30 percent tax consists of a 2.9 percent sales tax imposed on medical marijuana and a 15 percent wholesale excise tax, and a 15 percent retail excise tax imposed on recreational marijuana. Testimony indicated federal and state data suggest a loss of \$10 to \$15 for every \$1 generated in tax revenue as a result of increased costs associated with public health, public safety, medical care, and other administrative costs.

The committee received testimony from representatives from the sponsoring committees of potential initiated measures relating to the legalization of recreational marijuana indicating one measure would amend the Constitution of North Dakota and the other would amend existing statutes within the Century Code. Testimony indicated although both measures received support and were close to the signature requirements necessary to be placed on the ballot, due to the challenges of gathering signatures due to the Coronavirus (COVID-19) pandemic, neither proposed measure was submitted for placement on the November 3, 2020, ballot.

Conclusion

The committee makes no recommendation with respect to the recreational marijuana study.

CIVIL COMMITMENT

Background

The majority of North Dakota's initial laws concerning the voluntary, involuntary, and emergency commitment of individuals with mental illness and chemical dependency were enacted in 1957 and were not substantially changed until 1977. The Legislative Assembly enacted Senate Bill No. 2164 (1977), creating Chapter 25-03.1. The bill established many of the commitment procedures for individuals with mental illness and chemical dependency which are currently in effect. The bill was precipitated by a number of state and federal court decisions that had invalidated state commitment laws similar to North Dakota's law. A number of the commitment procedures contained in Chapter 25-03.1 have been amended in the years since the chapter was enacted.

Commitment Procedures for Mentally Ill and Chemically Dependent Individuals

Chapter 25-03.1 provides for commitment procedures for mentally ill and chemically dependent individuals. Section 25-03.1-02(13); however, specifically exempts an individual with an intellectual disability from the definition of mentally ill person.

Generally speaking, there are three reasons why an individual would be subject to involuntary civil commitment under modern statutes--mental illness, developmental disability, and substance addiction. In the case of mental illness, dangerousness to self or others defines the typical commitment standard, with almost all states construing the inability to provide for one's basic needs as dangerousness to self. In terms of process, every state provides for a hearing, the right to counsel, and periodic judicial review, while most states have statutory quality standards for treatment and hospitalization environment.

Residential Treatment Centers for Children

Chapter 25-03.2 was enacted in 1989 and revised by Senate Bill No. 2130 (2007) to specify the chapter relates to psychiatric residential treatment facilities. For purposes of Chapter 25-03.2, "child" or "children" means "a person or persons under the age of twenty-one."

Involuntary Commitment Case Law

Olmstead v. L.C., 527 U.S. 581 (1999), is a United States Supreme Court case regarding discrimination against people with mental disabilities. In this case, the Court held under the federal Americans with Disabilities Act of 1990, 42 U.S.C. 126, individuals with mental disabilities have the right to live in the community rather than in institutions if, in the words of the opinion of the Court, "the State's treatment professionals have determined that community placement is appropriate, the transfer from institutional care to a less restrictive setting is not opposed by the affected individual, and the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities." The case was brought by the Atlanta Legal Aid Society, Inc.

About 10 years after the *Olmstead* decision, the State of Georgia and the United States Department of Justice entered a settlement agreement to cease all admissions of individuals with developmental disabilities to state-operated, federally licensed institutions ("State Hospitals") and, by July 1, 2015, "transition all individuals with developmental disabilities in

the State Hospitals from the Hospitals to community settings," according to a Department of Justice fact sheet about the settlement. The settlement also called for serving 9,000 individuals with mental illness in community settings.

Testimony and Committee Considerations

The committee received testimony from representatives of the district courts, a representative from DHS, and members of the legal community. The committee's deliberations focused on whether steps could be taken to prevent and decrease the incidence of violence committed by persons who are mentally ill.

The committee received testimony indicating a general lack of resources for treatment services for individuals requiring anything beyond an initial screening. The committee received testimony identifying areas for improvement within Chapter 25-03.1. Testimony indicated a need for additional training among judges and court staff to ensure the commitment procedure is implemented in a unified manner throughout the state. Testimony also indicated a lack of mental health services in the western part of the state.

The committee considered a bill draft [21.0038.01000] relating to preliminary treatment and involuntary hearings. The bill draft requires all parties in a civil commitment proceeding to receive a copy of the medical report pertaining to the hearing at least 24 hours before the hearing. The bill draft also updates references to coincide with existing definitions.

The committee considered a bill draft [21.0107.03000] relating to the voluntary surrender of a firearm by a family or household member and the creation of a firearm and suicide prevention video. The bill draft would have required DHS to include a brochure as part of suicide resources offered by the department and to provide the brochure to the Bureau of Criminal Investigation. The bill draft would have created a new section of law for the purpose of establishing a safe harbor provision by allowing a family or household member to voluntarily surrender a firearm to a nonfederal law enforcement agency for temporary safekeeping if the family or household members reasonably believe a firearm owner in the household or another family or household member with access to a firearm is an immediate threat to the owner or someone else in the household. The bill draft also would have required an applicant for a concealed weapons license to view a firearm safety and suicide prevention video.

Recommendations

The committee recommends a bill draft [21.0038.01000] requiring all parties in a civil commitment proceeding to receive a copy of the medical report pertaining to an involuntary treatment hearing at least 24 hours before the hearing and updating references to coincide with existing definitions.

CHARITABLE GAMING

Background

In the first legislative session after statehood (1889-90), an attempt was made to establish the Louisiana lottery, which was seeking a new home in light of the impending revocation of its charter in its state of origin. The operators of the lottery were willing to offer the state an initial payment of \$100,000, followed by annual payments of \$75,000, for the privilege of operating a lottery. The scandal and controversy following this attempt led to the state's first constitutional amendment. The amendment added what eventually became Section 25 of Article XI of the Constitution of North Dakota and outlawed all forms of lotteries and gift enterprises.

The constitutional prohibition was maintained until 1976 when it was amended to allow certain forms of charitable gaming. After passage of the constitutional amendment in 1976, a temporary law was passed by the 1977 Legislative Assembly followed by another temporary law in 1979, and finally legislation in 1981 which was codified as Chapter 53-06.1. All three laws became effective without the approval of the governor holding office at the time of passage. A bill passed by the Legislative Assembly in 1987 added Chapter 53-06.2, which allowed charitable organizations to conduct pari-mutuel horse racing.

The most comprehensive proposal was that of the 1981-82 interim Political Subdivisions Committee, which suggested a bill that, when enacted, contained 23 sections changing various aspects of the charitable gaming law. Changes from that session and others have primarily affected the kinds of games that can be held, the kinds of organizations that can hold the games, the allocation of expenses of conducting the games, administration of the charitable gaming law, enforcement of the charitable gaming law, and taxation of gaming proceeds.

Charitable Organizations

There are two critical elements specifically mentioned in the constitutional amendment allowing charitable gaming--the kinds of organizations that can conduct the games and the use of the proceeds from the games. The constitutional provision requires the charity to be a bona fide nonprofit veterans', charitable, educational, religious, or fraternal organization, a civic or service club, or a "public-spirited" organization authorized by the Legislative Assembly. The constitutional provision also requires the net proceeds be used only for "educational, charitable, patriotic, fraternal, religious, or other public-spirited uses."

Administration of Charitable Gaming Law

From the inception of charitable gaming, administration of the law has been the responsibility of the Attorney General and local officials. The phrase "licensing authority" has been used in each version of the law to refer to the Attorney General who has served as the primary licensing authority since 1977. Local government officials were the primary approving agency for what were known as Class B charities. Since 1979, local government officials have been the primary approving agency for the issuance of a local permit or a charity local permit for conducting raffles, bingo, sports pools, paddlewheels, twenty-one, and poker. Although the Attorney General now licenses charities, local officials remain involved in charitable gaming.

Enforcement of Charitable Gaming Laws

Since the 1977 law, responsibility for enforcement of the charitable gaming law has been shared by the Attorney General and local officials. In 1991, the Legislative Assembly passed legislation that provided for the State Gaming Commission to have an increased role in charitable gaming enforcement and attention has been directed both at preventing crimes and at ensuring compliance with the many requirements of the law. Primary difficulties encountered in preventing crimes are the volume of activity and subtlety of some of the cheating methods. Likewise, the subtlety of cheating has caused enforcement difficulties. The State Gaming Commission has adopted extensive rules governing accounting procedures and auditing methods to increase opportunities to prevent and detect cheating by players or gaming personnel.

In 1991, the State Gaming Commission was created consisting of a chairman and four other members appointed by the Governor with the consent of the Senate. The bill provided the State Gaming Commission would share authority with the Attorney General to impose fines on organizations, distributors, and manufacturers that violate any law or rule and to suspend or revoke a charitable gaming distributor's or manufacturer's license for violation of law or rule. In 1993; however, the sole authority to impose fines and to suspend or revoke licenses was returned to the Attorney General. The commission is given full authority for adoption of rules to implement the charitable gaming laws.

Federal Oversight

In 1992, Congress passed the federal Professional and Amateur Sports Protection Act (PASPA) that prohibited states from legalizing sports betting operations, but allowed states already offering sports betting or related games to maintain the current operations. Although other states had the opportunity to offer sports betting at the time, most declined and Nevada was the only state to offer sports betting. In 2014, New Jersey passed a law to repeal the state's ban on sports betting, which was challenged by the National Collegiate Athletic Association (NCAA) and several major professional sports leagues as a violation of PASPA. The case ultimately made its way to United States Supreme Court. In *Murphy v. National Collegiate Athletic Association*, 138 S.Ct. 1461 (2018), the Court held the provisions of PASPA violated the Constitution's anti-commandeering rule that prevents Congress from compelling states to adopt or enforce federal law. The decision paved the way for states to authorize gambling on sports events.

Gaming on Indian reservations is controlled by the federal Indian Gaming Regulatory Act passed by Congress in 1988. One provision of the Act requires the state to negotiate in good faith with any Indian tribe wishing to enter into gaming. The five tribal casinos in the state are operating under the Indian gaming compacts last negotiated with the state in 2013. The five compacts, which are nearly identical, each contain a provision listing the kinds of gaming authorized. In Section 3.1(g), each compact provides, the tribe has the right to operate certain Class III games under the terms of the compact, including "Sports Book except as prohibited by the Professional and Amateur Sports Protection Act, P.L. 102-559; 28 U.S.C. Chap. 178, Pt. VI;." Based upon this compact provision and the United States Supreme Court decision, it would appear the tribes now have the authority to operate sports book gaming.

Testimony and Committee Considerations

The committee received information and testimony from representatives of the Attorney General's office, a representative of the Charitable Gaming Association of North Dakota, a representative of the North Dakota Council for Charitable Gaming, owners of establishments in which charitable games are played, a representative of Lutheran Social Services of North Dakota, and a representative of the Gaming Commission for Spirit Lake Nation and National Indian Gaming Association. The committee's deliberation focused on areas of concern in the gaming industry, enforcement, conduct, and play of charitable gaming and recommendations from the industry regarding areas of concern.

The committee received testimony indicating although there has not been a significant increase in gambling addiction since the implementation of electronic pull tabs, this game is relatively new and individuals seeking services are recognizing electronic pull tabs as an area of concern. Testimony indicated although charitable organizations are not seeking to expand gaming, additional staffing within the Attorney General's Gaming Division should be considered. Testimony noted a lack of oversight on electronic pull tabs is due to insufficient staff. Concerns were expressed regarding the difference in gaming classification of the electronic pull tabs operated through charitable gaming and similar games at the tribal casinos. Testimony indicated although electronic pull tab machines are a welcome addition, the increased

costs and regulations associated with electronic pull tab machines has resulted in a decrease in net proceeds for some charitable organizations.

The committee received testimony indicating the revenue at tribal casinos has decreased 41 percent since the implementation of electronic pull tabs and revenue has been stagnant for the last 2 years. Tribal officials contended there may be a possible violation of the Gaming Compact between the state and the tribes as a result of the implementation of electronic pull tabs. Testimony from a representative of the Spirit Lake Nation indicated an interest in bringing sports betting to casinos.

Conclusion

The committee makes no recommendation with respect to the charitable gaming study.

ETHICS COMMISSION

Background

In the November 2018 general election, voters approved a ballot measure creating Article XIV of the Constitution of North Dakota. Article XIV contains several provisions related to government ethics applicable to lobbyists, legislators, other elected and appointed state officials, members of the governor's cabinet, and employees of the legislative branch. Although Article XIV generally became effective on January 5, 2019, several of the sections in the article have delayed effective dates. Some provisions in the article require the Legislative Assembly to enact laws, and many of the provisions in the article existed in statute before Article XIV was created. The Legislative Assembly passed House Bill No. 1521 (2019) to implement parts of Article XIV. On August 8, 2019, the members of the Ethics Commission were selected.

The Ethics Commission created by Article XIV is not part of the executive, legislative, or judicial branch of state government. The five members of the commission are to be appointed by consensus agreement of the Governor, Majority Leader of the Senate, and Minority Leader of the Senate. The members may not hold public office, or be lobbyists, candidates for public office, or political party officials. Article XIV gives the commission authority "to investigate alleged violations of [the commission's] rules, [Article XIV], and related state laws" and mandates the commission maintain a confidential hotline to receive information from any "person acting in good faith." Article XIV also requires the Legislative Assembly to appropriate adequate funds for the commission to carry out its responsibilities.

2019 Legislation

During the 2019 legislative session, an ethics committee in each chamber of the Legislative Assembly was created and tasked with developing legislation to implement Article XIV. The Senate Ethics Committee was assigned Senate Bill No. 2148, which originally contained provisions to implement Article XIV but was amended to require this study. The House Ethics Committee was assigned House Bill No. 1521, which was passed by both chambers after several hearings and amendments.

House Bill No. 1521 included 28 sections that fall into four broad categories. The first five sections of the bill amended sections of Chapter 16.1-08.1, which regulates campaign finance. These sections implemented Section 1 of Article XIV regarding transparency of campaign contributions and expenditures, and provided a penalty for violations of subsection 4 of Section 2 of Article XIV, which prohibits the personal use of campaign contributions. Sections 6 through 24 of House Bill No. 1521 amended Chapter 28-32 and require the Ethics Commission created by Article XIV to follow many of the procedures for adopting rules that executive branch agencies are required to follow. Section 25 of House Bill No. 1521 created Chapter 54-66, which implements multiple parts of Article XIV and establishes procedures and requirements for the Ethics Commission. The chapter also authorizes civil penalties for violations of Article XIV provisions and gives the Secretary of State and Ethics Commission authority to enforce certain ethics laws. The remaining three sections appropriated funds to the Ethics Commission, authorized the commission to hire 2 full-time equivalent (FTE) positions, and provided effective dates for other sections of the bill.

Testimony and Committee Considerations

The committee received testimony from a representative of the Ethics Commission, representatives of the Montana State Legislature, a representative of the North Dakota Catholic Conference, a representative from the Institute for Free Speech, and a representative of the Campaign Legal Center.

Testimony indicated minimal legislative changes are necessary to implement Article XIV and the Ethics Commission is working to establish rules. Testimony also indicated some states have additional statutory language relating to dark money in an effort to provide for complete transparency surrounding monetary contributions. Testimony from a representative of the Institute for Free Speech indicated the existing definition of "ultimate of true source" leaves some ambiguity and room for enforcement difficulties and could be amended to specify the criteria the Ethics Commission must consider to determine what a donor knew at the time of the donation. In addition, the committee received testimony indicating a bright line definition of when funds are given in connection with political activity could be included.

Testimony from a representative of the Ethics Commission indicated the commission is working to create and implement a complaint process and finalize ethics rules by the end of 2020.

The committee considered a bill draft [21.0059.01000] relating to rulemaking, complaint handling procedures, removal, and immunity for the Ethics Commission. The bill draft would have updated definitions and the complaint process to align with Article XIV, established penalties for violations of the gifting rules, and updated reporting guidelines relating to lobbyist expenditures.

The committee considered a bill draft [21.0060.01000] relating to reporting the ultimate and true source of funds and political advertisements. The bill draft would have created transparency standards for independent expenditures, addressed concerns relating to dark money, and established parameters for public campaign finance reports.

The committee received testimony in support of the bill draft contending the disclosure standards would not limit free speech. In addition, it was argued the bill draft would add transparency to the election process, allowing voters to know the ultimate and true source of funding for election ads.

The committee considered a bill draft [21.0080.01000] relating to written advisory opinions regarding ethics. The bill draft would authorize the Ethics Commission to provide written advisory opinions upon the request of a public official, candidate for elected office, or lobbyist. The bill draft also would provide criminal and civil penalties may not be imposed upon an individual who acts in accordance with an ethics advisory opinion.

The committee discussed the benefit of giving elected officials a method for requesting advisory opinions similar to the way members of the State Bar Association of North Dakota request advisory opinions relating to the conduct of licensed attorneys. The committee was informed an elected official could rely on the advisory opinion and likely avoid violating an ethics rule if the elected official followed the advisory opinion.

Recommendations

The committee recommends a bill draft [21.0080.01000] authorizing the Ethics Commission to provide written advisory opinions upon the request of a public official, candidate for elected office, or lobbyist.

JUVENILE JUSTICE

Background

Section 27-20-03 provides the Juvenile Court has exclusive original jurisdiction of proceedings in which a child is alleged to be delinquent, unruly, or deprived. Under Chapter 27-20, "child" means an individual who is under the age of 18 and is not married or under the age of 20 with respect to a delinquent act committed while under the age of 18. Section 27-20-34 authorizes the court to transfer a juvenile proceeding to another court depending on various factors, such as the age of the child at the time of the alleged conduct, the age of the child at the time of the transfer request, and the child's amenability to treatment and rehabilitation.

Section 27-21-01 creates the Division of Juvenile Services within DOCR. The division operates the Youth Correctional Center and eight regional community-based services offices. The community services staff provide comprehensive case management and community-based correctional services to youth in the state while juvenile corrections specialists provide community services and correctional case management across eight regions.

Section 27-21-02 provides "the division of juvenile services is the administrative agency which shall take custody of delinquent and unruly children committed to its care by the juvenile courts." Section 27-21-02 requires the division, upon taking custody of a child or prior to receiving custody of a child, to complete diagnostic testing and evaluate the child to develop an individualized treatment and rehabilitation plan. The plan may include placement in the care of the child's parent, relative, guardian, or in a foster home; or placement in the care of the Youth Correctional Center, a career or technical education program, or other treatment and rehabilitation institution. Section 12-52-01 authorizes the division, with the approval of the director of DOCR, to provide a juvenile aftercare program and other treatment and rehabilitation programs and to contract with public and private agencies to provide services for persons committed to the division.

Testimony and Committee Considerations

The committee received testimony from a representative of the Division of Juvenile Services of DOCR, representatives from the Council of State Governments (CSG), representatives from the Juvenile Court, a representative from DHS, a representative from the North Dakota Association of Counties, a representative from the Police Youth Bureau, and a representative from the Juvenile Justice Commission.

Testimony indicated the variance in the state's juvenile crime rate over the past 30 years is not more than 1 per 1,000 youth in any given year. The committee also received information regarding how the Juvenile Court works closely with local schools to provide services within schools. According to reports, with the right policies and effective use of resources

prioritized for youth with the highest risk to reoffend, the number of youth who formally come into contact with the juvenile justice system can safely be reduced while improving outcomes.

Representatives from CSG indicated the Justice Center identified five initial recommendations for system improvement in the state--decriminalizing unruly behaviors and developing pathways to serve youth outside the justice system; establishing more stringent criteria and research-based processes for system decisions; investing limited resources for building a more robust continuum of community-based services across the state; strengthening commitment to and capacity for evidence-based services, quality assurance, and data collection; and aligning statutes with research and best practices.

The committee considered a bill draft [21.0150.03000] relating to the Uniform Juvenile Court Act. The bill draft would separate the existing sections within Chapter 27-20 into new chapters relating to the Uniform Juvenile Court Act, delinquency, and child welfare while incorporating the changes suggested by CSG.

The committee discussed the length of the bill while understanding although the bill appears to contain all new language, the repeal of Chapter 27-20 required a reorganization of existing law into separate chapters and the updating of numerous cross-references.

Testimony in support of the bill draft indicated the bill draft would incorporate best practices already in use by the Juvenile Court to create efficiencies, improved public safety, and better youth outcomes.

The committee discussed the need to continue the study of the juvenile justice system while working in tandem with the Commission on Juvenile Justice to ensure the youth of the state receive the support necessary to be successful. The committee also discussed the need to consider best practices among Native American youth as the Native American population has a higher incarceration rate through adulthood.

The committee considered a bill draft [21.0171.01000] relating to a continued study of the juvenile justice system with a focus on a review of the effective intervention, resources, and services for children.

Recommendations

The committee recommends a bill draft [21.0150.03000] relating to a reorganization of the Uniform Juvenile Court Act and an inclusion of the best practices in use by the Juvenile Court and a bill draft [21.0171.01000] relating to a continued study of the juvenile justice system, including a review of the effective intervention, resources, and services for children.

UNIFORM LAWS REVIEW

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

- Revised Uniform Athlete Agents Act (amendments), which the ULC approved in 2015 and amended in 2019. The Revised Uniform Athlete Agents Act (RUAAA) is an update of the Uniform Athlete Agents Act of 2000, which has been enacted in 42 states, including North Dakota in 2003. The 2000 Act governs relations among student athletes, athlete agents, and educational institutions, protecting the interests of student athletes and academic institutions by regulating the activities of athlete agents.
- Uniform Electronic Wills Act, which the ULC approved in 2019. The Uniform Electronic Wills Act permits testators to execute an electronic will and allows probate courts to give electronic wills legal effect.
- Faithful Presidential Electors Act, which the ULC approved in 2010. The Uniform Faithful Presidential Electors Act (UFPEA) provides a statutory remedy if a state presidential elector fails to vote in accordance with the voters of the elector's state.
- Revised Unclaimed Property Act, which the ULC approved in 2016. The Revised Uniform Unclaimed Property Act (RUUPA) is the latest revision to the Uniform Unclaimed Property Act, first promulgated in 1954 and last updated in 1995. The Act requires holders of unclaimed property to turn unclaimed property over to the state unclaimed property administrator after a suitable dormancy period so the administrator can attempt to reunite the property with its rightful owner.

- Uniform Pretrial Release and Detention Act, which the ULC approved in 2020. The Uniform Pretrial Release and Detention Act creates a comprehensive procedural framework for release and detention determinations after arrest. The commission recommends the North Dakota Supreme Court consider adopting the appropriate portions of this Act in the form of court rules.

Recommendations

The committee makes no recommendation regarding these uniform Acts.

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. The committee considered a bill draft [21.0199.01000] addressing the following statutory provisions:

- Section 4.1-01-19. The section, relating to the federal environmental law impact review fund, created in Section 4.1-01-21, is referenced twice in Section 4.1-01-19. The bill draft corrects the inadvertent omission of the word "review."
- Section 10-19.1-115. The section relates to involuntary dissolution under the North Dakota Business Corporation Act. Subsection 2 provides the manner in which a court may grant equitable relief or dissolve a corporation, which includes in an action brought by a shareholder when a corporation's period of duration has expired and an extension has not been granted. Section 10-19.1-115 references the extension provisions provided in Section 10-19.1-124. However, the extension provisions are provided in Section 10-19.1-127. The bill draft corrects the cross-reference error.
- Section 15.1-07-33. The section references the North Dakota educational technology council which was repealed by Senate Bill No. 2215 (2019). The inadvertent failure to remove the reference to the repealed council is corrected in the bill draft.
- Section 23-02.1-27. The bill draft changes the reference to the "department of information technology" to the "information technology department," which is the correct name of the department.
- Section 23-07-07.6. This section references a "significant exposure" as defined in Section 23-07.3-01. However, Section 23-07.3-01 was repealed with the repeal of Chapter 23-07.3 in House Bill No. 1410 (2005). The bill draft provides a definition that mirrors the definition of "significant exposure" provided in Section 23-07.3-01 before that section was repealed.
- Sections 43-17-06, 43-17-14, 43-17-17, 43-17-24, 43-17-25, and 43-17-30. These sections relate to the North Dakota Board of Medicine which changed the title of the board's secretary-treasurer position to the title of executive director. The bill draft updates the old position title to the new title of executive director.
- Section 57-07-01.2. The section provides the governor the power to appoint members of certain boards and commissions. Among the boards listed in this section is the state water pollution control board. However, this board was eliminated through the repeal of Section 61-28-03 by Senate Bill No. 2327 (2017). This bill draft removes the reference to the repealed state water pollution control board.
- Section 57-51-16. This section provides the manner in which gross production tax revenue is allocated within counties under certain circumstances. The section directs gross production tax revenue to be allocated within the county in the manner provided in Section 57-51-15(3); however, county allocations are addressed in subsections 4 and 5 of that section as a result of past revision and renumbering of Section 57-51-15. The bill draft corrects the incorrect subsection reference by referencing Section 57-51-15 broadly.
- Section 61-04-06.2. Senate Bill No. 2090 (2019) made various changes to laws pertaining to permits for the appropriation of water, including changing the fund in which application fees related to water use permits are deposited from the water use fund to the resources trust fund. The bill draft clarifies that fees collected related to conditional water permits are deposited in the resources trust fund, rather than the water use fund.
- Section 61-03-05.1. The bill draft repeals Section 61-03-05.1, which inadvertently was not repealed in Senate Bill No. 2090 (2019) and which contains a conflicting requirement to deposit the fees collected under Section 61-04-06.2 in the water use fund, which is no longer used by the State Water Commission.

Recommendation

The committee recommends a bill draft [21.0199.01000] to make technical corrections throughout the Century Code.

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 2019 and August 2020. 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 2019 and August 2020.

COMMISSION ON LEGAL COUNSEL FOR INDIGENTS ANNUAL REPORT

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

In the 2019 fiscal year, the commission provided legal counsel services in over 15,400 case assignments, which was less than fiscal years 2018 and 2017, but higher than any other previous year. The commission's 2019-21 budget consisted of \$18,384,627 from the general fund and \$1,990,035 from the commission's special fund. The special fund consists of statutory fees paid by defendants, which include the court administration fee, an indigent defense/facility improvement fee of \$100, and the \$35 indigent defense application fee from criminal cases.

The report indicated state contractors are compensated at an hourly rate of \$75 per hour whereas federal contractors are compensated at an hourly rate of \$148 per hour in noncapital cases. The report also indicated the commission's employees remain underpaid in comparison to states' attorneys and attorneys in the Attorney General's office and it is becoming increasingly difficult to fill open positions and maintain internal equity, resulting in extremely high turnover. In fiscal year 2019, the employee turnover rate was 27.5 percent and of the 11 employees who left, 8 indicated pay was the primary reason.

NORTH DAKOTA RACING COMMISSION

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

In the 2019 fiscal year, the account wagering companies produced \$270 million, significantly less than the \$490 million in fiscal year 2018, and \$704 million in fiscal year 2017. The report indicated the impact of these declines is a significant loss of revenue to the general and special funds. The report indicated the decline is due to several factors, including a shift in betting on a global and national basis, regulation changes in other jurisdictions, the introduction of additional wagering opportunities in competitor states in the area of sports betting, and virtual and historic racing.

The report indicated the future of racing is at risk. Although the commission continues to work on multiple areas of improvement with the North Dakota Horse Park, without other sources of funding or support it will be difficult for the North Dakota Horse Park to survive.

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. For the 2019-21 biennium, the lottery had a fixed appropriation of \$2,047,060 for salaries and benefits for 10 FTE positions, and \$3,144,394 for operating expenses. The lottery has a continuing appropriation for variable expenses of prizes, retailer commissions, online gaming system vendor fees, and Multi-State Lottery Association game group dues. The appropriation funds 8 FTE positions in the Lottery Division, 1 FTE position in the Information Technology Division, and 1 FTE position in the Finance and Administration Division of the Attorney General's office. The appropriation also funds 3 part-time draw operators.

For the 2019-21 biennium, the lottery projected sales of \$60,000,000 and transfers of \$16,485,000 (\$15,000,000 - state general fund; \$640,000 - compulsive gambling prevention and treatment fund; and \$845,000 - multijurisdictional drug task force grant fund). Unaudited ticket sales through December 2019 (first 6 months of the fiscal year) are \$12,060,000. This reflects a \$7,740,000 decrease in sales or 39 percent decrease compared to the same period last year. Although the lottery is slightly under projections, the lottery anticipated it would meet projected sales for the 1st year of the biennium.

STATE HOSPITAL REPORT ON SEXUALLY DANGEROUS INDIVIDUALS TREATMENT PROGRAM

The committee received a report from DHS regarding the State Hospital's program for the evaluation and treatment of sexually dangerous individuals. Since 2007, DOCR has provided a variety of security services, including security training, perimeter surveillance, emergency response, and security consultation. According to the report, there are 25 individuals committed for sexual dangerousness and eight individuals on postcommitment community release receiving outpatient treatment in their home community.

STATE DEPARTMENT OF HEALTH ON IMPLEMENTATION OF MEDICAL MARIJUANA

The committee received a report from DOH, as required by Section 19-24.1-39, regarding the number of applications, registered qualifying patients, registered designated caregivers, nature of debilitating medical conditions, identification cards revoked, health care providers providing written certifications, compassionate care centers, expenses incurred, and revenues generated by the department.

The report indicated two manufacturing facilities are registered under the medical marijuana program and 155 health care providers completed written certifications during fiscal year 2019. The report indicated the state's eighth dispensary is anticipated to be opened by the end of 2020.

TASK FORCE ON THE PREVENTION OF SEXUAL ABUSE OF CHILDREN

The Task Force on the Prevention of Sexual Abuse of Children was created by Senate Bill No. 2342 (2017) for the purpose of gathering information concerning child sexual abuse throughout the state; receiving reports and testimony from individuals, state and local agencies, community-based organizations, and other public and private organizations; creating goals for state policy that would prevent child sexual abuse; and providing policy recommendations. The task force is composed of representatives of state agencies, the Legislative Assembly, nonprofit entities focused on children's health and well-being, Indian tribes, and law enforcement. The task force finalized a logic model with data type, analysis, and reporting mechanism; is looking to secure funding to assist with task force coordination, data collection, analysis, reporting, printing, marketing, and other human resource costs; established subcommittees to focus on specific aspects of the strategic plan; and continues to execute the strategic plan and report process to statewide stakeholders.

REPORT ON HUMAN TRAFFICKING VICTIMS TREATMENT AND SUPPORT SERVICES GRANT PROGRAM

The committee received a report from the Attorney General on the status and results of the human trafficking victims treatment and support services grant program. The 65th Legislative Assembly approved an appropriation to provide one-time funding for treatment and support services for victims of human trafficking. The report indicated 10 applicants received grants for victim treatment and support services and 3 applicants received grants for sexual assault nurse examiners during the 2019-21 grant period.

REPORT ON JUVENILE JUSTICE COMMISSION

The committee received a report from the Juvenile Justice Commission relating to the findings and recommendations of the commission and the recommendation that a bill draft [21.0150.03000] be recommended to the Legislative Management. The report indicated the commission received input from stakeholders and CSG before incorporating suggestions into the recommended bill draft. The report further indicated the Uniform Juvenile Court Act contained in Chapter 27-20 has not been updated or studied for nearly 50 years.

REPORT ON CIVILLY FORFEITED PROPERTY

The committee received a statutorily required report from the Attorney General relating to civil asset forfeitures cases in the state for the preceding fiscal year, including information about the type, approximate value, and disposition of any civilly forfeited property and the amount of proceeds received. The report indicated of the counties that submitted reports, the net total of forfeited currency in the state was \$477,214, the total proceeds from forfeited firearms was \$30,141, and the total proceeds from forfeited firearms was \$300 from August 1, 2019, through June 30, 2020. The report identified three potential areas within Section 19-03.1-36.8 that could be amended to improve reporting. Subsections 1 and 9 of Section 19-03.1-36.8 require law enforcement to file a report with the Attorney General and subsection 3 of Section 19-03.1-36.8 requires prosecutors to provide a copy of the judgement to the Attorney General. The report indicated removing subsection 3 would eliminate the duplication and reduce the burden on local prosecutors without impairing the compilation of data. The report also indicated amending Section 19-03.1-36.8 to include a *de minimus* exception to exclude the reporting of items worth less than \$50 would reduce the reporting burden on law enforcement without significantly impacting public oversight. Amending subsection 9 to require law enforcement to submit reports to the Attorney General annually rather than within 30 days after the report is issued would reduce confusion while achieving the same result.