

OFFICE OF ATTORNEY GENERAL



2017-2019

Biennial Report

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Photos courtesy of North Dakota Tourism and the employees of the Office of Attorney General.



OFFICE OF ATTORNEY GENERAL

THE ELECTED OFFICE

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

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

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

DUTIES AND FUNCTIONS

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

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

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

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

- The **Bureau of Criminal Investigation** Division assists local law enforcement agencies with criminal and drug enforcement investigations, maintains the criminal history and sex offender registration systems, and provides training for local law enforcement.
- The **Consumer Protection and Antitrust** Division enforces the state's consumer fraud and "do not call" laws, investigates and prosecutes consumer fraud cases, and enforces the state's anti-trust statutes.

- The **Crime Laboratory** Division supports the criminal justice system through the analysis, identification, and comparison of physical evidence for use in the investigation and prosecution of criminal offenses.
- The **State Fire Marshal** Division conducts arson investigations and fire safety inspections, regulates the sale, use, and storage of explosives including fireworks, and conducts fire code compliance inspections of public buildings, day care facilities, and schools.
- The **Gaming** Division regulates charitable gaming and audits compliance with tribal-state casino gaming compacts.
- The **Licensing** Section issues gaming and transient merchant licenses, and certain wholesale, retail, and distributor licenses.
- The **North Dakota Lottery** is responsible for the day-to-day operation of the lottery and its games.

Defects in the Law

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

Marijuana

The 2019 Legislature made several changes to reduce the penalties for offenses relating to marijuana. However, there is an outstanding issue still to be addressed:

- Use of the term "marijuana" instead of "tetrahydrocannabinol" (THC).

By statute, **marijuana**, its chemical component **THC**, and **hashish**, a derivative of marijuana, are **all** Schedule I controlled substances. Although each substance is derived from the cannabis plant and falls within the statutory definition of "marijuana," N.D.C.C. ch. 19-03.1 lists marijuana, THC and hashish separately.

When analyzing an item for the presence of a controlled substance, the Crime Laboratory tests for the **presence of THC** but it does not identify the **type** of product the paraphernalia was used to consume.

The Legislature only reduced the penalties for marijuana-related offenses, and not offenses related to THC or hashish. As a result, the possession of dried leaves and flowers is treated differently than possession of a THC concentrate.

Recommendation

The various relevant sections of the North Dakota Century Code relating to offenses involving marijuana derivatives (THC, hashish) and penalties should be amended so that they are the same as the penalties for offenses involving marijuana. ▲

Finances

- The agency's biennial budget, after general fund allotments, was **\$46.4 million**.
- The 2017-2019 **revenues collected** totaled **\$98.5 million**.
- The cost of defending and prosecuting actions on behalf of other state agencies by attorneys within the Office of Attorney General totaled **\$3.7 million**.

Special Assistant Attorneys General

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

During the biennium, state agencies paid **\$17.36 million** to these SAAGs, including:

- Workforce Safety & Insurance — **\$3.85 million**;
- Department of Transportation — **\$1.08 million**;
- University System — **\$889,991**, of which:
 - **\$141,214** was for patent related matters and
 - **\$92,118** was for completion of federal immigration requirements relating to the employment of foreign nationals. ■

Human Trafficking Commission

The Attorney General's Human Trafficking Commission was established in August 2015. It is tasked with collecting and evaluating data on human trafficking activities in the state and promoting public awareness and training efforts.

The office partnered with the North Dakota Human Trafficking Task Force to provide prevention and awareness training materials and statistical reports, which can be downloaded from a link on the Attorney General's website, attorneygeneral.nd.gov.



In 2017, the Legislature appropriated **\$825,000** to provide grants to organizations providing prevention and treatment services related to human trafficking victims. Grants were awarded through a competitive process and disbursed through a political subdivision partnering with the organization involved in providing eligible services.

- For the 2017-2019 grant period, the City of Dickinson received \$322,987 for Youthworks, Cass County received \$518,641 for Youthworks, and Mountrail County received \$93,272 for CAWS North Dakota. ■

New Statutory Duties

The 66th Legislative Assembly passed several bills that create new duties or requirements for the Office of Attorney General, although all took effect after the end of the reporting period.

Social Security Cooperative Disability Investigations

The Social Security Cooperative Disability Investigations (CDI) Program is a joint effort among federal and state agencies to prevent fraud in the Social Security Administration's disability programs and related federal and state programs such as housing benefits, food stamps, etc.

The 66th Legislature authorized the addition of two criminal investigators at BCI to assist with the investigations of alleged federal fraud, which, if substantiated, would be prosecuted by the US Attorney's office.

Medicaid Fraud Control Unit

North Dakota was the only state without a Medicaid Fraud Control Unit. The federal government had indicated that it would no longer grant North Dakota a waiver. Senate Bill 2347 created a new chapter in the North Dakota Century Code defining false claims and establishing a Medicaid Fraud Control Unit (MFCU) within this office to investigate alleged Medicaid fraud.

Civil Asset Forfeiture Reporting

House Bill 1286 amended existing statutes relating to civil asset forfeiture proceedings and added a requirement for the Office of Attorney General to submit an annual report of civil asset forfeiture proceedings across the state,

as a total and also broken down by law enforcement agency.

- The first annual report will be issued in November 2020.

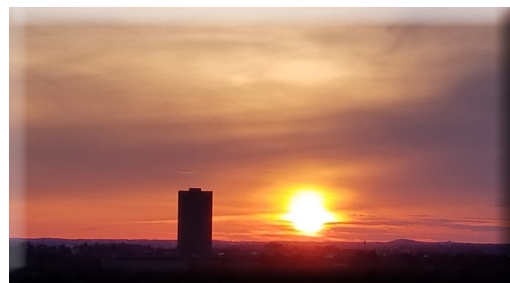
Missing & Murdered Indigenous People

House Bill 1311 required the state's Human Trafficking Commission to provide training to local prosecutors and law enforcement agencies about missing and murdered indigenous people.

Missing Persons Repository

House Bill 1313 required the agency's Criminal Justice Information Sharing system to implement a missing person repository for authorized criminal justice agencies to enter demographic information about missing persons.

The agency is working closely with the bill's sponsor and Information Technology to solicit bids for software systems to achieve the bill's purpose.





REPRESENTING THE STATE

GENERAL LEGAL COUNSEL

The **State & Local Government** Division provides general counsel legal services to **more than 70 state agencies, boards and commissions**. The division drafts Attorney General opinions, negotiates and reviews contracts involving state entities, reviews all administrative rules adopted by state agencies, and assists client agencies by drafting bills and amendments, explaining the ramifications of proposed legislation, and testifying before legislative committees.

LEGAL OPINIONS

The **State & Local Government** Division issued **13** opinions on questions of law related to state statutes, the state Constitution, and issues having statewide significance, including:

- **2017-L-07: CONSTITUTIONAL CARRY PROVISIONS.** An individual who meets the qualifications for constitutional carry may carry a loaded gun in a vehicle but must provide law enforcement with the proper identification upon a traffic stop.
- **2018-L-02: LOCALLY FUNDED UNIVERSITY SYSTEM CAPITAL PROJECTS.** The Board of Higher Education has control over its institutions' local funds. Legislative approval or appropriation is not needed for University System capital projects fully funded by local funds.
- **2019-L-05: LEGISLATIVE LIMITS ON STATE AUDITOR'S AUTHORITY**

LIKELY UNCONSTITUTIONAL.

Section 3 of Senate Bill 2004, which requires the State Auditor to obtain approval from a legislative committee before conducting certain audits, likely violates the separation of powers doctrine and would be found unconstitutional by a court.

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

OPEN RECORDS & MEETINGS

The division handled a large number of telephone calls from public entities and citizens regarding open records and meetings requirements and conducted **40 presentations** to state and local government agencies and officials on a public entity's obligations under the open records and open meetings law.

The division issued **37** opinions addressing alleged violations of the

open records or open meetings law, including:

- **2017-O-05: ACTIVE CRIMINAL INVESTIGATIVE RECORDS ARE EXEMPT FROM RELEASE.** The Morton County sheriff's office and state's attorney did not violate the law when they declined to provide records, including photographs and video, relating to specific incidents occurring during 2016 protests in Morton County, because the criminal investigations of those incidents are ongoing.
- **2018-O-20: QUORUM ATTENDANCE AT WHITE HOUSE BRIEFING.** The Cass County Commission violated the law when it chose to send a quorum to a meeting at the White House when it knew that meeting would not be open to the public.
- **2019-O-07: RESPONSE REQUIRED EVEN IF NO RECORDS EXIST.** The City of Mandan did not have any records, but failed to inform the requester within a reasonable time that no records existed.

Legal Services

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

Attorneys also drafted legislation to extend licensing reciprocity to military spouses, and worked with the Legislature to address questions and draft amendments on a number of bills.

Licensing Actions

The attorneys advised state boards on numerous disciplinary actions, including revoking the license of a massage therapist who was convicted of sexually assaulting a client, and advising the Chiropractic Board after one of its licensees was arrested and charged with four counts of murder.

Administrative Rules

Division attorneys reviewed **79** administrative rules for state agencies and boards, addressing legislative changes requiring regulatory updates.

Professional Expertise

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

- Provided annual training to over 100 state licensing board members on laws and rules governing boards and board authority;
- Taught constitutional and civil law, and civil liability courses to officers attending the Law Enforcement Training Academy;
- Co-chaired the National Attorney General Alliance Cannabis Project; and
- Presented at the National Federation of Associations of Regulatory Boards. ■

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

The division recovered **\$23.3 million** for state entities during the biennium.

Civil Actions

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

The attorneys:

- Collected **\$13.34 million** for the Bank of North Dakota in collections from delinquent property and student loans;
- Collected **\$525,334** in unpaid employer tax and benefit contributions for Job Service North Dakota;
- Handled **120** wage claim cases on behalf of the Department of Labor, recovering **\$180,277** in unpaid employee wages from employers; and
- Represented the Department of Transportation in **279** DUI administrative hearings.

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

Oil & Gas Hearings

The division presided over almost **2,200** oil & gas administrative hearings and helped the Industrial Commission's Department of Mineral Resources pursue **16** civil administrative cases for violations of the Commission's rules, orders, and regulations.

Through those actions, **\$2,590,034** has been collected in penalties.



Environmental Quality

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



During the biennium, the division represented the Department in **60** enforcement actions, collecting more than **\$6.67 million** in penalties for violations, including:

- A September 2018 inspection revealed that a state university was improperly storing hazardous waste generated by the university's research labs. Among other things, labels were missing and several containers were in deteriorating condition. The department issued a Notice of Violation on December 18, 2018.

The parties entered into an Administrative Consent Agreement to resolve the alleged violations in June 2019. The university paid a **\$100,000 penalty**. An additional \$100,000 penalty was suspended and will be dismissed upon the university's completion of a compliance plan, which has been implemented.

FEDERAL LITIGATION

Waters of the United States (WOTUS)

North Dakota successfully challenged the Waters of the United States (WOTUS) rule promulgated by the Environmental Protection Agency and Army Corps of Engineers in the June 2015 Federal Register.

Jurisdictional questions were resolved by the United States Supreme Court, and the state's case is pending in the US District Court for the District of North Dakota.

The EPA and Corps now plan to repeal the June 2015 rule and propose a new WOTUS definition.

In June 2017, the EPA took the first step toward withdrawing the rule.

“ *The WOTUS Rule would greatly and unlawfully expand the federal government's authority over North Dakota's land and water resources and vastly limit legitimate state authority to control water pollution.* ”

*Attorney General Wayne Stenehjem
March 23, 2018*



Stenehjem Praises Court's NAWS Ruling

May 3, 2019

BISMARCK, ND – The 2002 legal challenge to the Northwest Area Water Supply project has likely come to an end, announced Attorney General Wayne Stenehjem. In an opinion issued this morning, the DC Circuit Court ruled in favor of North Dakota and the Bureau of Reclamation, ending over 16 years of litigation, barring a last-ditch appeal to the US Supreme Court.

In August 2017, the District Court in Washington, DC concluded that the Environmental Impact Statement for the NAWS project met the requirements of the National Environmental Protection Act (NEPA) and that Missouri did not have legal standing to bring suit. Both Manitoba and Missouri appealed the decision, though Manitoba later dismissed its appeal. Missouri's appeal continued.

The Court's ruling ended the "most recent leg of the litigation marathon" by affirming the lower court decision that Missouri did not have standing to sue the federal government in this case.

The NAWS project will bring much-needed water from the Missouri River to Minot and surrounding counties in northwest North Dakota.

"This is a significant and long-sought victory for the citizens of North Dakota," said Stenehjem. ■

Hydraulic Fracturing (Fracking)

In June 2016, a federal judge struck down the Bureau of Land Management's (BLM) fracking rule on the ground that the BLM's effort to regulate fracking through the rule exceeded its statutory authority. The BLM appealed to the 10th Circuit Court of Appeals, which dismissed the appeal as moot and vacated the district court decision because BLM had proposed to rescind the 2015 rule. In **December 2017**, the BLM published a final rule rescinding the 2015 Rule. Two states challenged this action in a federal court in California. The State is monitoring this case, which is still pending.

Venting and Flaring Rule

In June 2017, the BLM postponed the effective date for certain compliance obligations under the proposed Venting & Flaring Rule, pending further review of the final Rule. In February 2018, the BLM then proposed largely rescinding the Rule.

The BLM's postponement and partial rescission rules have been challenged in separate actions in California. The district court has retained jurisdiction over North Dakota's challenge because certain portions of the 2016 Rule remain in place and the uncertainty associated with the separate actions challenging the partial rescission of the 2016 Rule.

Pipeline Protest Lawsuits

The division is defending several cases brought against North Dakota arising out of the protests against the Dakota Access Pipeline (DAPL).

In one suit, several plaintiffs allege the closure of Highway 1806 during the protests violated their rights, including the rights to freedom of speech, assembly, and religion by interfering with their ability to protest at their chosen location.

In two other suits, individual plaintiffs claim personal injuries they suffered during the protests were caused by a violation of their constitutional rights.



Pipeline Protest Costs

In addition to defending North Dakota in the various lawsuits listed above, the Attorney General filed suit against the United States in July 2018, asserting the US Army Corps of Engineers' negligent actions and inactions during the protests forced North Dakota to respond to the emergency situation created by the protests and resulted in more than **\$38 million in damages** to the State.

- The lawsuit is pending.

STATE LITIGATION

Corporate Farming Challenge

In September 2018, the Federal District Court interpreted the state's corporate farming law as not permitting out-of-

state family farm corporations. The court, ruling in favor of the plaintiffs, concluded that the corporate farming law was unconstitutional and consequently ordered the state to allow out-of-state family farm corporations to operate within North Dakota. The state did not appeal the district court's decision.

In August 2019, the court ordered the state to pay \$175,000 in attorney fees to the lead plaintiff, the ND Farm Bureau.

Dakota Access, LLC

In November 2016, the Attorney General approved a temporary exception to the corporate farming restrictions and allowed Dakota Access, LLC, one year within which to divest the property it had purchased in Morton County adjacent to its pipeline. In July 2018, the Attorney General sued Dakota Access, LLC, on the ground that its continued ownership of the land violated the corporate farming law.

- In April 2019, DAPL divested the land and the case was **dismissed**.

Farm Equipment Manufacturers

The 2017 Legislature enacted Senate Bill 2289, in an effort to assist the state's farmers, rural communities, farm economy, and farm equipment



dealership network and stem the continuing closures of independent dealerships.

Numerous farm equipment manufacturers immediately sued the state in federal court alleging that the bill violated their constitutional right of contract and that the state was taking their private property without providing any compensation. The manufacturers also claimed the law diluted their licensed trademarks, would cause them to alter their national pricing schedules, and would not permit them to require associated dealers to arbitrate contract disputes.

In December of 2017, the Federal District Court ordered that, during litigation, Senate Bill 2289 was not enforceable. After two years of litigation, the parties await the federal judge's ruling.

Voting Rights Lawsuits



Brakebill v. Jaeger

The State was sued in January 2016, by seven individual Native Americans claiming that the voter ID law passed by the 2015 Legislature was unconstitutional and violated the Voting Rights Act. The Legislature further amended the voter ID laws in 2017, and plaintiffs filed an amended complaint, again alleging the new law was unconstitutional and violated the Voting Rights Act.

In April 2018, the US District Court issued a preliminary injunction barring the Secretary of State from enforcing portions of the voter ID law in advance of the 2018 election; however, the 8th Circuit Court of Appeals vacated that preliminary injunction, finding the plaintiffs were not likely to succeed on the merits.

The plaintiffs indicated they intend to appeal to the US Supreme Court, and obtained an extension until December 2019 to petition the US Supreme Court for review of the 8th Circuit Court of Appeals decision.

Spirit Lake v. Jaeger

Two tribes (Spirit Lake and Standing Rock) and several individual Native American plaintiffs sued the state in October 2018, claiming the requirement that a voter's ID must have a residential street address was unconstitutional and a violation of the Voting Rights Act.

The Attorney General moved to dismiss the lawsuit because the two tribes lack standing, the plaintiffs failed to state a claim, and the defendant is immune from suit under the Eleventh Amendment to the Constitution, which has been interpreted by the US Supreme Court to grant sovereign immunity to state officials, insulating them from suit without the State's consent. As of the end of the reporting period, the State's motion to dismiss had not been decided by the court.

Air Ambulance Lawsuit

In 2017, the Legislature passed a law to regulate the manner that insurance pays for air ambulance services, which included a provision prohibiting

North Dakota Prevails in Minnesota Lawsuit, Again

August 14, 2018

BISMARCK, ND – The seven year battle between North Dakota and the State of Minnesota may now be at an end, with the affirmance of an award of attorney fees imposed against the Minnesota officials named in the suit.

Attorney General Wayne Stenehjem sued Minnesota in 2011 over the restrictions imposed by Minnesota's Next Generation Energy Act (NGEA), alleging that the NGEA violated the Commerce Clause and Supremacy Clause of the US Constitution.

After the District Court and the 8th Circuit Court of Appeals upheld the state's position that the Minnesota statute was unlawful and awarded attorney fees as prevailing parties, Minnesota appealed the award of attorney fees to the 8th Circuit.

Today, an appellate panel upheld **the award to North Dakota for \$1.3 million.**

"North Dakota maintained from the beginning that the Minnesota enactment attempting to prohibit importation into Minnesota of energy generated in North Dakota was a violation of the US Constitution and federal law. Our arguments have prevailed every step of the way. Now, I hope that Minnesota will finally pay the bill for the expense they caused us to incur, and end the matter," Stenehjem said. ■

air ambulance subscriptions and a provision regulating the settlement of air ambulance insurance claims.

In January 2018, one air ambulance service provider, Guardian Flight, sued the state, seeking a declaratory judgment that federal law preempted state law.

In January 2019, the US District Court upheld the prohibition on subscription agreements, finding it a proper exercise of state insurance regulatory power, but found the section governing settlement of air ambulance insurance claims is preempted by federal law.

Both parties appealed to the 8th Circuit, where the case is still pending.

Mineral Rights

In January 2018, a group of plaintiffs sued the state, challenging the constitutionality of legislation passed by the 2017 Legislature, which clarified the boundary of the State's mineral ownership.

The state District Court concluded the majority of the legislation was constitutional but also determined that a reimbursement provision of the law was unconstitutional. Both parties appealed, and the appeal is pending.



Sexually Dangerous Individuals

Several individuals sued the Department of Corrections and Rehabilitation (DOCR), the State Hospital and the Department of Human Services (DHS), challenging the civil commitment law for individuals who have been assessed as sexually dangerous. The plaintiffs petitioned the court for class certification, which was pending at the end of the last biennium.

Since then, the parties have settled with the DOCR. A recommendation was issued in favor of certifying most of the classes against the State Hospital and the DHS, but a final order adopting or rejecting that recommendation has not yet been issued.

Abortion Control Act

In 2017, the Legislature passed House Bill 1336, amending the "informed consent" requirements to add a mandatory notification that it may be possible to reverse the effects of an abortion-inducing drug if the woman changes her mind, but time was of the essence.

In June 2019, before the new law took effect, the Center for Reproductive Rights, on behalf of the Red River Women's Clinic, sued the state in Federal District Court. The Center alleged that the new requirement would force physicians to lie to their patients and that the abortion "reversal" procedure was not based on scientific evidence.

- **The provisions of HB 1336** were **temporarily stayed**, pending the outcome of the lawsuit. ▣

North Dakota to Receive \$34 Million in Tobacco Settlement

March 13, 2018

BISMARCK, ND - Attorney General Wayne Stenehjem today announced a settlement agreement that will release over \$34 million belonging to North Dakota that has been held in an escrow account during a decade-long dispute between the state and the major tobacco companies. The agreement settles a dispute over enforcement of the 1998 Tobacco Master Settlement Agreement, which requires the tobacco companies to make annual payments to the states that signed onto the agreement – including North Dakota.

"This is a **win-win proposition for North Dakota**. We will see an immediate payment of more than \$34 million, and will also eliminate the need for an expensive arbitration process year after year," Stenehjem said.

Without this settlement, North Dakota was scheduled to arbitrate the 2004 payment dispute this month, worth approximately \$23 million. "By settling the dispute for 2004, and all potential disputes through 2017, the settlement agreement resolves all disputes concerning past annual payments, and eliminates decades of potential litigation," Stenehjem said.

In addition to the lump sum payment, ND will continue to receive the annual payments due under the Master Settlement Agreement. In return, the tobacco companies receive a partial credit on the next five years of annual payments. ♦



PROTECTING COMMUNITIES

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

“Anti-trust” Laws

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

Sanford-Mid Dakota Merger

In December 2017, at the request of the Attorney General and the Federal Trade Commission, the Federal District Court issued a preliminary injunction, temporarily blocking the proposed merger of Sanford Health and Mid Dakota Clinic.

“ *Competition in the marketplace benefits consumers, including when that competition is for medical care.* ”

*Attorney General Wayne Stenehjem
December 13, 2017*

In January 2018, the court issued its order permanently blocking the proposed merger, finding that it likely **violated anti-trust laws** because it would have eliminated competition in the Bismarck area and likely resulted in higher prices for medical services. ■

CONSUMER COMPLAINTS

The Consumer Protection Division opened 3,322 consumer complaints and closed 1,434, including:

- **988** complaints were resolved through mediation or legal action, recovering **\$831,000** for consumers. Another seven were referred to other agencies;
- An additional **290** complaints were from victims of scams, who received individual assistance and guidance from division staff to help prevent further losses; and
- The remaining complaints were closed because they were unfounded, unresolved, the office had no jurisdiction, or no action was required.

Enforcement Actions

The division filed **187** civil actions against individuals and businesses for violating consumer fraud laws, resulting in **\$5.24 million refunded to consumers** and **\$6.9 million** in costs and penalties awarded to the state. ■

CONSUMER FRAUD INVESTIGATIONS

Spa D'Athena

In October 2017, the Consumer Protection Division initiated a fraud investigation of **Spa D'Athena** in Bismarck. The business initially reported it was "temporarily closed" for remodeling and continued to sell gift cards, though it had released all its employees. The business never reopened.

The division received 1,959 complaints, totalling \$250,000 in gift cards, including complaints that for several months leading up to the closure, customers had not been able to schedule or receive services to redeem their gift cards.



The investigation revealed that the outstanding gift card balance held by consumers is over **\$500,000**. The Attorney General sued Spa D'Athena, its owner, and operations director, in district court for the consumer fraud violations.

The defendants then moved to Nevada and filed Chapter 7 business and personal bankruptcies.

As of the end of the reporting period, the bankruptcy filing temporarily stayed the district court case. The consumer fraud case will continue after the bankruptcy case has closed. ■

Unlicensed Contractors

Working in conjunction with the Secretary of State's Office, the division continued its **contractor compliance** efforts, taking action against **47** contractors.

- The division issued **six** cease & desist orders against unlicensed contractors and pursued legal action against another **sixteen**, obtaining judgments totaling **\$548,100**, including **\$451,411** in **consumer restitution** ordered by the court.
- The division resolved another **23** cases through Assurances of Voluntary Compliance.

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



Studs to Rugs, Inc.

In October 2017, the division initiated an investigation of a Fargo business, **Studs to Rugs, Inc.**, after receiving multiple complaints from homeowners that the business had taken large advance

deposits from them before abruptly closing without warning and without providing any refunds.

The division sued Studs to Rugs and its owner for violating consumer fraud laws. In April 2019, the defendant admitted to the violations.

The Cass County District Court ordered the defendant to pay almost **\$78,000** in restitution to the homeowners, and over \$12,000 in penalties and fees, and barred him and the business, Studs to Rugs, from working as contractors for five years, or until he has paid back everything he and his business owe to the homeowners, whichever occurs first.

Before Hiring a Contractor

Attorney General Wayne Stenehjem reminds North Dakotans to make sure a contractor is licensed **before** handing over any money.

The state's contractor license requirements exist to protect the **homeowner**, not the contractor.

Contractors performing work valued at \$4,000 or more must be licensed by the Secretary of State's office.

"It is very easy to check if a contractor has a license, and that's a simple first step to guard against an unscrupulous individual who will take your money and run," said Stenehjem.

The list of licensed contractors is online at <http://sos.nd.gov/business/> contractors, or by calling 701-328-2900.

Cease & Desist Orders

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

- **Thomas Joseph** of Pennsylvania who used various names for his solicitations, including **Save on Resorts, Best Value Getaways, Southwest Getaways** and **Southwest Travel Services**. Joseph and his representatives solicited memberships for a fictitious discount travel club, claiming that club members would receive free airline tickets and other travel incentives.
- **James Michael Austin** of Texas, who created a **phony charity, Red Cross of Americas, Inc.**, and solicited donations from unsuspecting residents who believed that Austin's phony charity was affiliated with the actual Red Cross, which it was not. Mr. Austin deliberately used a name that was almost identical to a well-known international charity, in an attempt to lend legitimacy to his efforts.

Do Not Call

The division received **357** complaints of telephone solicitations to consumers registered on the "do not call" list - including 165 of prerecorded messages - and initiated enforcement actions against **17** entities, obtaining **\$15,570** in civil penalties. ■

DATA SECURITY BREACHES

A data security breach means a consumer's personal information has been exposed in some way, possibly including credit card and financial accounts. The thief can use this stolen information for identity theft and other inappropriate uses of personal information.

A company that experiences a breach affecting 250 or more North Dakota residents is required to submit a report.

- For the two years ending June 30, 2019, there were **42 data breaches involving more than 250** ND residents reported - a 55% increase from last biennium.
- Another **81** reported breaches affected less than 250 ND residents.

An individual who receives a "data breach" notification from a company should take advantage of any free credit monitoring service the company is offering.

Security Credit Freeze

The Consumer Protection Division processed **97 identity theft** affidavits this biennium.

One of the best ways to protect against identity theft is to place a **Security Credit Freeze** on your credit file. A security credit freeze prevents the thief from using the stolen information to create new financial accounts. Information about security credit freezes is available on the Attorney General's website, **attorneygeneral.nd.gov**. There is no charge for placing a security credit freeze. ■

Equifax Security Breach

September 12, 2017

BISMARCK, ND - In the wake of last week's announcement by Equifax that personal information of more than 143 million Americans may have been stolen by hackers, Attorney General Wayne Stenehjem urges North Dakotans to take immediate steps to protect against identity theft.

"I have learned from Equifax that **more than 248,000 North Dakotans may have been affected,**" Stenehjem said. Customer information that was potentially stolen includes **names, dates of birth, Social Security numbers, addresses, and in some cases, credit card numbers.**

"North Dakotans who are concerned that the security breach at Equifax may have exposed their personal information should take immediate steps to protect against identity theft by placing a fraud alert on their credit reports," said Stenehjem.

The Attorney General's website has information on how to file a fraud alert.

Parrell Grossman, director of the Consumer Protection Division, reminded North Dakota residents that they are entitled to a free credit report each year from each of the three credit reporting agencies.

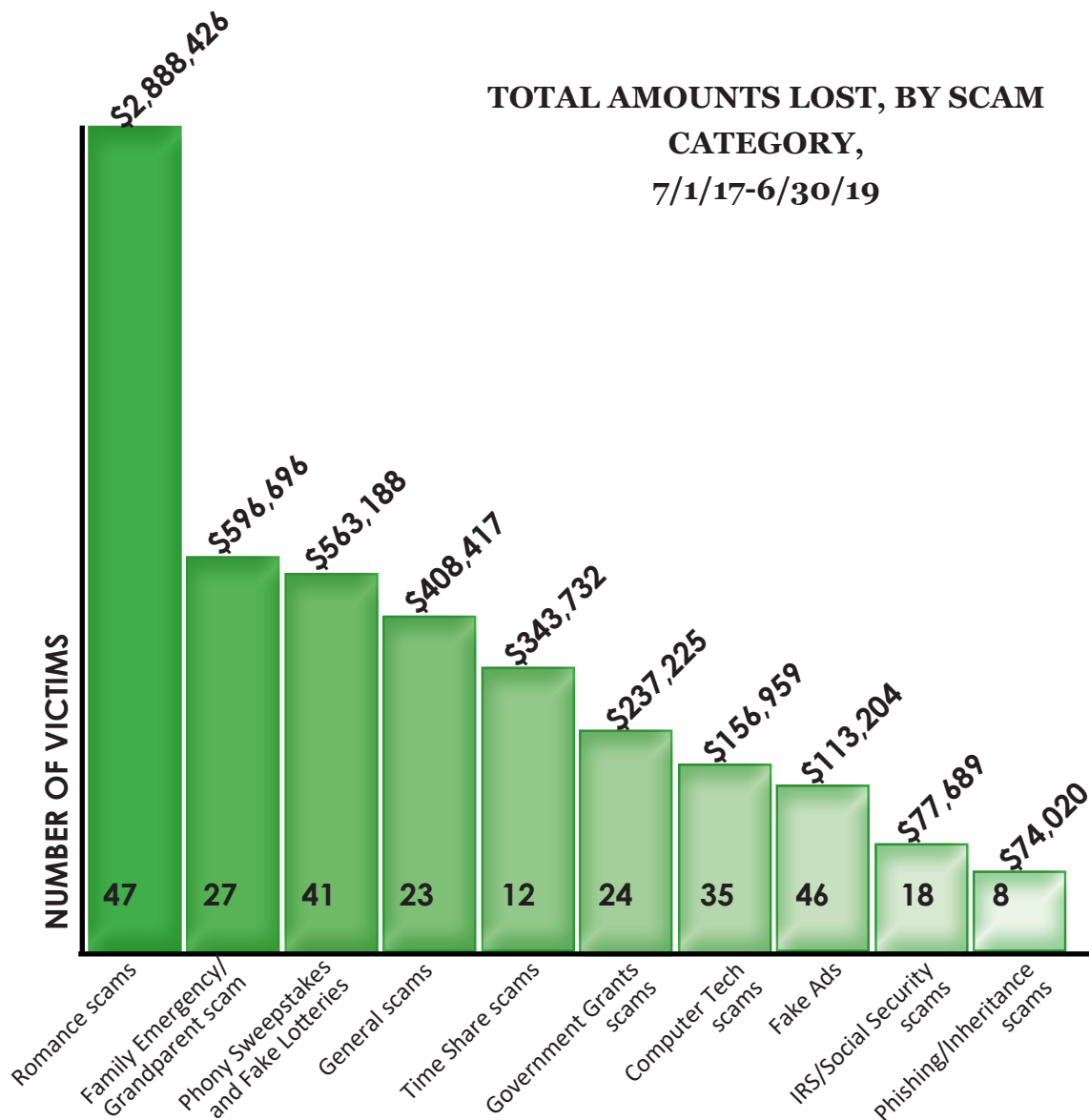
"Checking your credit report regularly will help you to spot, and stop, identity theft quickly," said Grossman. ■

IMPOSTER SCAMS

North Dakota victims reported losses of more than **\$5.49 million** to Imposter Scams. Unfortunately, scam victims are often too embarrassed to report that they have fallen for a scam, even when they have lost a significant amount of money.

The Consumer Protection Division issued numerous news releases, alerts, and consumer advisories warning about various imposter scams, including: the **Fake IRS Calls**, the **Grandparent/Family Emergency** scam, the phony **Sweepstakes/Foreign Lottery Win** scam, and the **Romance/Online Dating** scam.

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



ND victims lost \$5,494,764

Imposter Scam Victim Stories

Sweepstakes Scam

A 70-year-old woman received a phone call from a "Tim Riley" stating he was from the Consumer Protection Affairs claiming she had won an American Sweepstakes award in the amount of \$750,000. After this first call, she was called several times by different agents. Soon they were asking her to send money to pay for taxes and other fees that were "required" before she could receive her award. The victim took credit card cash advances to buy money orders in increments of \$7,000 to \$10,000.

Total loss = \$40,000.

Government Grant Scam

A 57-year-old man received a cold call claiming that he qualified for a \$15,000 grant because of the amount of taxes he had paid over the years. He was given various reasons why he had to make advance payments, including that his name had been flagged as a suspect in a crime in another state and the money would be used to clear his name so the grant then could be awarded. The victim took out an unsecured loan to pay the scammers.

Total loss = \$11,000.

Phony Government Official Scam

A 64-year-old man received a call from someone claiming to be with the Fargo Police Department, claiming there was a warrant for the victim's arrest unless the victim paid the bond immediately. The victim was told to purchase prepaid cards and then give the numbers on the back of the card to the "police officer."

Total loss = \$1,000.

IRS Scam

A victim who responded to a recorded message supposedly from the IRS reported that the scammers kept him on the phone for hours, directing him to go to multiple stores and purchase dozens of prepaid cards, then read off the numbers from the back of the cards. The supposed "federal agents" threatened that if the victim hung up before the total was paid, he'd be immediately arrested. The victim did not realize he had fallen for a scam until several days later when he was telling a friend about his experience. **Total loss = \$21,000.** ■

Remember: A legitimate government agency or business will **never** ask you to buy gift cards, prepaid cards, or to wire money. If that's what you are asked to do, **it's A SCAM!**

FOUR NEW DIVISION DIRECTORS APPOINTED

Attorney General Wayne Stenehjem appointed new directors for four agency criminal justice divisions. Two appointees were appointed from within the agency.

New State Fire Marshal Appointed

March 19, 2018 - Attorney General Stenehjem appointed **Douglas Nelson** of Fargo as the new State Fire Marshal. Nelson has been a firefighter since 2002 and has served with the Fargo Fire Department for many years, most recently as a fire inspector and investigator.

"I am honored to have been selected as the State Fire Marshal. I am looking forward to improving fire safety throughout the state, and developing the state's existing resources to better serve the firefighting community and the public," said Nelson.

State Crime Laboratory Welcomes New Director

July 1, 2018 - **A. Robyn Quinn** has accepted the position of Director of the State Crime Laboratory Division, effective immediately. Ms. Quinn has been employed by the Delaware Department of Safety and Homeland Security Division of Forensic Science for the past 23 years. A qualified forensic scientist, Quinn was promoted to Laboratory Manager, supervising the Forensic Chemistry and Forensic Evidence Units in 2013, and served in this capacity until June 2018. Quinn has a Master of Science in Pharmacy and Pharmaceutical Sciences with concentration in Forensic Science from the University of Florida.

"I am excited for the opportunity to join such an extraordinary group of professionals at the Crime Laboratory. The staff take great pride in their work and are dedicated to exceeding the high standards and expectations of our criminal justice partners. I am confident that we

will continue to meet any challenges as we fulfill our mission," said Quinn.

New Director Appointed to Head the Bureau of Criminal Investigation

October 25, 2018 - Attorney General Wayne Stenehjem has appointed Deputy Director **Lonnie Grabowska** as the new Director of the Bureau of Criminal Investigation (BCI). Grabowska has served BCI for more than 15 years, beginning as a special agent in 2003 assigned to the Drug Task Force, before being promoted to Chief Agent in 2007, and to Deputy Director in August 2012.

"I feel privileged to work with all the highly specialized and professionally trained personnel at BCI, and I am very thankful to have been given the opportunity to lead BCI as we work to meet the challenges of the ever-changing field of criminal investigations," said Grabowska.

Attorney Promoted to Lead Criminal & Regulatory Division

January 1, 2019 - **Britta Demello Rice** has been promoted to direct the Criminal & Regulatory Division. Demello Rice spent several years as an Assistant State's Attorney in Burleigh County, handling a varied criminal caseload, before joining the Office of Attorney General as an Assistant Attorney General in 2016.

"Jon Byers left big shoes to fill as a fearless advocate for children and victims of major crimes. With a similar passion, I'm humbled and honored to continue to uphold the highest standards of the Attorney General's Criminal Prosecution Division," said Demello Rice.



SUPPORTING CRIMINAL JUSTICE

CRIME STATISTICS

The Uniform Crime Report (UCR) section at the Bureau of Criminal Investigation (BCI) compiles criminal activity and arrest data from local law enforcement and produces an annual Crime Report, analyzing criminal activity and crime rates in North Dakota.

The report provides detailed information about the most serious offenses (Group A). Group A offenses are separated into three categories:

- **Crimes Against Persons** - murder, rape, aggravated assault, and simple assault;
- **Crimes Against Society** - promoting prostitution, drug offenses, weapons violations, pornography;
- **Crimes Against Property** - robbery, burglary, motor vehicle theft, **identity theft**, **wire fraud**, stolen property offenses.

DUI and other offenses are reported separately in Group B.

- There were **33,056 arrests** reported in calendar year 2018.

Fraud

There were **598** reports of **identity theft**, a **53.7%** increase from the 389 reported in 2017. This is only the third year the offense has been separately reported.

There was a 104% increase in reports of computer hacking, from 22 in 2017 to 45 last year, and a 37.7% increase in reports of wire fraud.

“Unfortunately the statistics for identity theft, and computer and wire fraud offenses don’t reveal the full extent of the problem, because we know that the majority of victims don’t come forward.”

*Attorney General Wayne Stenehjem
June 27, 2019*

Drugs and Alcohol

Arrests for **DUI dropped by 8%**, from 5,597 in 2017, to 5,148 in 2018. DUI arrests comprised 15.6% of all arrests, down from 22.6% of all arrests in 2012, before the Legislature enhanced DUI penalties and the Attorney General implemented the 24/7 Sobriety Program.

Drug arrests **increased 7.4%**, from 5,078 in 2017, to 5,455 in 2018.

BUREAU OF CRIMINAL INVESTIGATION



The **Bureau of Criminal Investigation Division (BCI)** has continually evolved its focus and operational responses to narcotics and criminal investigations. More and more, investigations have become a technological race against those who break our laws and prey on our citizens.

The oil development boom in the northwestern part of the state during the previous two bienniums brought a constant flow of transient workers and lots of money to the region, giving drug trafficking organizations (DTOs) and outlaw motorcycle gangs the opportunity to gain a foothold in the state, establishing transportation routes and safe houses.

Once established, these criminal organizations were able to reduce their numbers, appearing to visibly phase out of the area, while in reality still holding their operational standing in the criminal community and even expanding into protection rackets, stolen property, and white collar crimes.

Although oil development in the area has temporarily slowed, there is still a large amount of disposable income from established oil production workers, which supports the illegal drug use and human trafficking industries.

Response to criminal investigations - from drug trafficking to child pornography - now requires a true knowledge and mastery of technological advancements. The BCI has responded by sending agents to the National Forensics Academy for cutting edge training on new technological and investigative techniques.

BCI agents use these new techniques and technologies to gain the edge over the criminal organizations, and to identify, disrupt, and dismantle drug trafficking organizations.



- The BCI has procured two unmanned aircraft systems to support its narcotics operations and assist in criminal and search and rescue operations.

Investigations

The BCI has agents located in Bismarck and **13 field offices** across the state. These agents provided assistance to federal, state, and local law enforcement agencies on **853** criminal investigations and **724** drug investigations during the biennium, including:

- City of LaMoure Police Chief James Watson was arrested on June 29, 2017, by BCI on charges of Continuous Sexual Abuse of a Minor (2 counts), Gross Sexual Imposition (2 counts), Sexual Assault, and Possession

of Drug Paraphernalia after his stepdaughter came forward outlining multiple sexual acts beginning from the age of 6 until she was 18, beginning while the family lived in Mississippi and continuing after they moved to North Dakota. On July 26, 2018, James Watson was sentenced to **25 years**.

- In May 2017, the Cass County Drug Task Force assisted the US Postal Inspection Service after it intercepted a package from Philadelphia that was found to contain furanylfentanyl powder. While the addressee name was fictitious, the delivery address was not. When **Chad Anderson** took possession of the package, agents arrested him after a short foot pursuit.

During questioning, Anderson provided information about a **darkweb marketplace** and admitted that the furanylfentanyl powder was to be distributed in the Fargo/Moorhead area. Anderson's information led to the interception of a second package, destined for the Lisbon, ND, area, and the arrest of a second individual. Anderson was sentenced to over **6 years in federal prison**. The total amount of furanylfentanyl powder **seized** was equivalent to approximately **3,500 single dosage units**.



Stenehjem Urges Congress to Close Deadly Fentanyl Loophole

August 29, 2018

Bismarck, ND – Attorney General Wayne Stenehjem joined a bipartisan group of 52 state and territory Attorneys General calling on Congress to help end the opioid epidemic and close a loophole in federal law that allows those who traffic deadly fentanyl to stay a step ahead of law enforcement.

“North Dakota has already taken action to close the loophole, by changing state law last year. However, because drug trafficking rings operate both nationally and internationally, we need the same changes to be made at the federal level,” said Stenehjem.

The Attorneys General sent a letter to Congress in support of S. 1552 and H.R. 4922, Stopping Overdoses of Fentanyl Analogues (SOFA) Act. Fentanyl is currently a Schedule II controlled substance and when used as prescribed by a doctor, can be a safe painkiller.

Stenehjem explained that criminal laws must specify what's outlawed but slight variations in the chemical structure make it a new compound. “The proposed change to federal law that this letter urges would make groups of substances illegal, starting with the core molecular structure and specifying the variations, so even if drug traffickers make a slight alteration to the chemical structure, the resulting new variation would still be an illegal substance,” he continued. ■

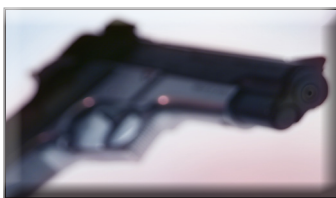
Criminal History Record Checks

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

- During the biennium, the BCI conducted **88,195** state and federal record checks for applicants for professional licensing, an additional **17,107** record checks in response to requests from the public (landlords, private employers), and **13,635** for concealed weapon license applicants.

Concealed Weapon Licenses

Constitutional Carry, which allowed eligible North Dakota residents to carry a concealed weapon within the state's borders without the need for a concealed weapon license, took effect on August 1, 2017.

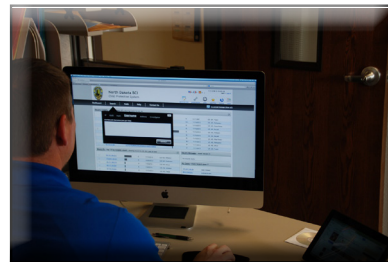


As a result, there was a slight decrease this biennium in the total number of applications for concealed weapon licenses. However, as North Dakota has reciprocity for its Class 1 license holders with the largest number of states in the nation (including with Minnesota), the BCI was kept busy issuing **13,483** licenses during the biennium.

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

Internet Crimes Against Children (ICAC)

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



During the biennium, the state's ICAC Task Force assisted with **500 child exploitation and sexual abuse investigations**, including:

- **Brent Daigle**, 39, of Sutton, ND, was sentenced to **70 years in prison** for three counts of sexual exploitation of minors and one count of possession of child pornography. A 12-year-old girl had informed law enforcement Daigle had repeatedly sexually abused her and that he had videoed some of the abuse. Daigle fled to Louisiana, where he was arrested. When investigators searched Daigle's cell phone, it contained video recordings of his sexual abuse of the victim.

- **Dustin Kewley**, 36, Fargo, ND, was sentenced to **35 years in prison**, for the charges of Conspiracy to Transport a Minor, Transportation of a Minor, Distribution of Materials Containing Child Pornography, and Possession of Materials Containing Child Pornography.

The investigation revealed that Kewley had transported a one-year-old child from Fargo, ND, to Moorhead, MN, to meet **Bryan Hogle**, 43, who traveled from Las Vegas, NV the previous day. The two men met at a hotel in Moorhead and together they sexually abused the child. **Hogle** was sentenced to **45 years in prison**. Hogle had a prior conviction for sexually abusing a child in New Hampshire in 2008. ♦

Sex Offender Registration

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

- As of June 30, 2019, there were **1,546** registered sex offenders.

The BCI obtained additional SORNA grant funding to provide electronic offender registration systems to local agencies. The electronic system is less labor-intensive than the paper registration forms, and the information is instantly transmitted to the BCI.

The BCI used almost \$29,000 to purchase 19 complete systems (Surface Pro with keyboard, docking station, webcam,

and monitor) for local agencies and provided training. Over 50 registering law enforcement agencies and jails now use electronic registration instead of paper forms. The BCI processed 12,913 electronic registration forms and 2,070 paper registration forms during the biennium.

- Only **26** offenders were delinquent in their registration requirements, which equates to a **compliance rate of 98%**.

Sex Offender Website

The state's Sex Offender website, **sexoffender.nd.gov**, provides information to the public about registered sex offenders who live and/or work in North Dakota.

The website is updated in real time, all day every day, as changes are reported by offenders, the courts, employers, parole & probation, and the public. ■

Use of Force Investigations

The BCI assists local law enforcement agencies with independent investigations of an officer's use of force.

Once the BCI's investigation is complete, it is referred to the county state's attorney who determines whether the officer's actions were justified.

- The BCI conducted **14** use of force investigations during the biennium.

INFORMATION TECHNOLOGY

The **Information Technology and Criminal Justice & Information Sharing (IT/CJIS) Division** provides technology support services for the Office of Attorney General in 24 locations across the state.

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

- The division responded to **10,032** internal and external service requests during the biennium.

Statewide Automated Victim Information & Notification

The North Dakota Statewide Automated Victim Information and Notification (ND SAVIN) Program is managed by the IT-CJIS Division.

ND SAVIN is a free service that provides crime victims and others with certain types of notifications about offenders, protective orders, and criminal cases. **Marsy's Law** (passed in November 2016) required an expanded list of victim notifications on more types of cases, something which the existing ND SAVIN program had not been designed for and did not have the technological capacity to do.

In 2017, the ND Legislature authorized \$815,000 over three years for improvements to and expansion of the ND SAVIN program to provide total



automation of required notifications.

In April and September 2018, the SAVIN program brought online the automated notifications for municipal courts and juvenile courts, respectively. Expansion to include sentencing notifications will be completed by June 2020.

ND CJIS is working with the vendor to develop an online database for assertion of victim rights that will provide authorized staff at criminal justice agencies (such as police departments and county state's attorneys) to search across jurisdictional boundaries, tracking victims' rights even when an offender is involved in cases in multiple jurisdictions.

This system will also generate notification to the victim when an open records request has been made.

This project is anticipated to roll out in May 2020. The last phase of the project will involve notifications of commitments.

AFIS Update

The state is preparing to update its **Automated Fingerprint Identification System (AFIS)** to increase capacity and improve processing time and accuracy.



The database now includes almost **2 million** palm prints and more than **5 million** sets of fingerprints, which strains the current processing system and results in slower response times. The AFIS update is projected to be completed by 2021. ♦

CRIME LABORATORY



The 19 forensic analysts with the Crime Laboratory spend their days analyzing and identifying samples, developing DNA profiles, comparing evidence, and testifying in trials, all in support of the state's criminal justice agencies.

- The Laboratory processed **15,629 criminal cases** this biennium.

Drug Samples

The Forensic Chemistry Unit received **8,985** cases involving **20,205** items, and completed 6,779 cases. The number of drug cases submitted decreased by 2.9% from the last biennium.

Toxicology Samples

The Crime Laboratory's Toxicology Unit Biological Section processed **613 alcohol** samples and **716** samples for the presence of **drugs** obtained as a result of suspected impaired driving-related offenses.

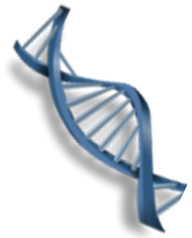
- DUI (alcohol) cases decreased by 86% from last biennium as a result of the Birchfield decision.

The section also processed **547** coroner cases and **454** medical examiner cases for drug and alcohol analysis.

- The **Breath Alcohol section** provided breath alcohol instrument training to 2,971 law enforcement officers.

DNA Samples

The DNA unit received **1,496 cases**, an increase of 22% over last biennium.



More than **5,300** offender and arrestee DNA profiles were uploaded into the FBI's National DNA Database, the Combined DNA Index System (CODIS), resulting in **494 hits** and possible investigative leads, including:

- A 2017 ND arrestee sample **matched** the DNA profile from a cigarette butt in a 1995 Maryland **homicide** case.
- A DNA profile from **fingernail clippings** from a 2017 homicide case, where the victim was found in a Four Bears Casino hotel room, **matched** a SD offender sample.

Testifying

The forensic scientists are frequently subpoenaed to testify regarding their analysis of evidence. This requires them to spend hours traveling to courthouses and then waiting to be called, to spend just a few minutes on the stand - or no time, if the case settles. Only in five cases was testimony allowed via IVN, thereby avoiding unnecessary travel and down time.

- Staff spent approximately **447 hours** traveling to and waiting at courthouses, testifying for a total of **less than 32 hours**. ♦

CRIMINAL PROSECUTIONS

The **Criminal & Regulatory** Division attorneys provide prosecutorial assistance to the 53 county state's attorneys in prosecuting major crimes or cases where a conflict of interest exists.

- In July 2018, a Grand Forks jury **convicted George Lyons** of one count of AA Felony Gross Sexual Imposition. The case went to trial **nine years** after the victim first disclosed Lyons' abuse. At the time of the offense, the victim was between the ages of 13 and 14 years old. Lyons was her mother's live-in boyfriend. Lyons would drug the victim with sleeping pills and sexually molest her while she was in and out of consciousness. Lyons was sentenced to **40 years**, first to serve 20 years of incarceration at the State Penitentiary, followed by supervised probation. Lyons **appealed** the conviction. In a **unanimous decision**, the North Dakota Supreme Court **affirmed**.
- In October 2017, **Michael Foster** of Seattle, WA, and **Samuel Jessup** of Burlington, VT, were **convicted** of Conspiracy to Commit Criminal Mischief, a "B" Felony, after they interfered with emergency valves on the TransCanada Keystone Pipeline near Walhalla, ND. The defendants used bolt-cutters to cut padlocks on the perimeter gate and on the valve itself. Foster closed the valve, halting the flow of oil and requiring TransCanada to perform a 7-hour emergency shutdown of the pipeline, which was transporting 634,000 barrels of oil per day. Foster appealed his conviction

which was unanimously affirmed by the Supreme Court.

Habeas Cases

The division defended the state against **31** habeas cases filed in federal district courts by prisoners seeking to overturn state district court convictions. Three cases were still pending at the end of the reporting period, but the remaining petitions were **denied**. Seventeen of those cases were appealed to the 8th Circuit, where they were all **denied**, and one writ of certiorari was **denied** at the US Supreme Court.

Criminal Law Expertise

Division attorneys taught criminal law courses at the Law Enforcement Training Academy, and provided instruction on criminal law and related matters to officers attending the Basic Investigation and Advanced Investigation training courses hosted by the BCI division.

Legislative Amendments

The division drafted legislation for the 66th legislative session to update state laws to comply with new federal regulations, requiring a sex offender to provide at least 21 days advance notice of any international travel. The division also drafted legislation to create the new criminal offense of **Sexual Extortion** (or "sextortion"). The offense occurs when a perpetrator manipulates a victim into sending nude photos, and later threatens to publicly disclose the photos unless the victim submits to other requests, such as engaging in sexual acts or providing more nude photos. If convicted, the offender may be required to register as a sex offender. The Legislature passed both bills. ■

REGULATORY ENFORCEMENT

STATE FIRE MARSHAL

The **State Fire Marshal** assists local criminal justice agencies with the investigation of suspected arson. There are **six** deputy fire marshals stationed in Bismarck and four field offices across the state.



Fire Origin and Cause Investigations

During the biennium, Deputy State Fire Marshals conducted **249** fire origin and cause investigations, a **12% increase** over last biennium.

Deputies devoted **4,286 hours** to these investigations, an average of 17 hours per investigation. As of the end of the reporting period, 51 fire investigations were pending.

- Of the 198 fire origin and cause investigations that were closed during the biennium, **9%** were determined to be arson, including a June 2018, house fire southwest of Minot, ND.



The **deputy fire marshal** found the fire was **intentionally caused**, and local law enforcement determined that the arson was an attempt to cover up a theft. Thomas Kraft of Berthold was charged with **arson and two counts of theft**. Trial is scheduled for late 2019.

Fire Incident Reports

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

- Only 60% of fire departments in North Dakota currently submit fire incident reports to NFIRS.

Those departments reported 4,461 fires, resulting in **five deaths** and almost **\$58.7 million** in losses.

Fire Safety Inspections

The Fire Marshal's office also inspects public schools, child care facilities, state buildings, licensed liquor establishments, and fuel tank storage sites for compliance with state building and fire safety codes.

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

The deputies with the Fire Marshal's division inspected **174** public schools, **260** fuel tank storage sites, **103** LPG tank sites, **76** state buildings, **47** bars and licensed restaurants, and **92** day care facilities.



Licensing Section

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

- Over **\$1.1 million** was transferred to the state's General Fund in licensing fees, including \$275,971 in retail liquor license fees and **\$422,768 in gaming license fees**.

GAMING

Veterans, charitable, educational, religious, fraternal, civic and service,

public safety, or public-spirited organizations in North Dakota can apply for a state gaming license to raise money for charitable purposes.

Only licensed organizations may conduct "games of chance," such as Bingo, Pull Tabs, Twenty-One, and Poker.

There are more than 320 licensed organizations operating **975** gaming sites across the state.

- During the 2017-2019 biennium, licensed gaming organizations grossed over **\$841 million**, raising over **\$65 million** for charitable uses and generating **\$10 million** in gaming taxes for the state's General Fund.

Gaming Compliance

The Gaming Division conducted **19 E-tab group training** sessions with 371 individuals representing 212 gaming organizations, 10 distributors, one manufacturer, one city auditor, and two tribal casino representatives attending.

The division provided additional one-on-one training for 196 individuals representing 92 gaming organizations, one distributor and two manufacturers.

The division conducted eight comprehensive audits and 34 in-office audits, resulting in 70 administrative complaints.

- The division collected **\$105,550** in fines and referred 37 incidents of suspected criminal activity to local law enforcement, including **23 cases of theft of funds by gaming employees and eight incidents of counterfeit money**.

Electronic Pull Tab Devices

Since the implementation of **Electronic Pull Tab devices** in August 2018, the popularity of these devices has skyrocketed beyond all predictions.

There were over **1,815 e-tab devices** being conducted by 178 organizations in 488 sites throughout the state. They were being conducted in 200 cities.

In the first 11 months, electronic pull tab activity grossed over **\$359 million**, with over \$322 million in prizes paid out.

- The top five counties were: Cass County with 267 devices, Grand Forks County with 167, Burleigh County with 125, Ward County with 113, and Morton County with 102 devices.
- The top five cities were: Grand Forks with 146, Fargo with 144, Bismarck with 106, Mandan with 75, and West Fargo with 71. ■



NORTH DAKOTA LOTTERY

The **North Dakota Lottery** conducts five multi-state games: Powerball®, 2by2®, Mega Millions®, Lucky for Life® and Lotto America®. The mix of games provides jackpots starting from \$22,000 to \$40 million.

The North Dakota Lottery generated total operating revenues of **\$67 million** and net proceeds of **\$17.6 million**.

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

- These businesses earned **\$3.3 million** in sales commissions and bonuses.

Since the Lottery began, North Dakota players have won more than **\$137 million**.

Lottery Ticket Sales

Slightly more than half of every \$1 ticket (51¢) is paid out in prize money. The state general fund gets 24¢. Only 5¢ goes to administration and operating expenses.

Prize Payouts

The lottery paid out **\$34.3 million in prizes** this biennium, including:

- **\$2,000,000** Powerball with Power Play prize in March 2019 to a player from New Town, ND;
- **\$1,000,000** Powerball prize in January 2019 to a player from McHenry, ND, and **another \$1,000,000** in March 2019 to a player from Edgeley, ND;
- **\$25,000 a year for life** Lucky for Life prize in July 2018 to a player from Hettinger, ND, **another** in December 2018 to a player from West Fargo, ND, and a **third** in March 2019 to a player from Mapleton, ND;
- There were **seventy-six \$22,000 2by2 jackpots won** as well as **six \$44,000 2by2 Tuesday Doubler jackpots**, including a player from Bismarck, ND, who said he plans to purchase a pool for his backyard with the winnings.

Lucky For Life

Lucky for Life launched on January 31, 2016. From the start, the game proved popular, with the first year's average weekly sales consistently exceeding expectations at over \$122,000 per week.

Game sales were expected to level out after the first year, with estimated weekly sales of \$45,600 - \$60,800. However, even after three years, the Lucky for Life



game has continued to exceed sales expectations.

- As of June 30, 2019, the Lucky for Life game is averaging over \$66,800 in weekly sales.



Lotto America

The North Dakota Lottery's newest game, **Lotto America**, launched on November 12, 2017.

Lotto America is North Dakota Lottery players' Ticket to Opportunity, with a jackpot that starts at \$2 million and grows until a lucky player(s) wins. There are 9 ways to win cash. Each play costs \$1. For just \$1 more per play, add All Star Bonus® to increase all non-jackpot prizes by 2, 3, 4 or 5 times. Drawings are held weekly, each Wednesday and Saturday night. The Lotto America multi-state game is played in 13 states.

Since the launch of the game, North Dakota Lotto America players have won **\$1,678,292**, including 1 Match 5+0 prize (\$60,000) and 13 Match 4+1 prizes (\$1,000 to \$5,000).

- Lotto America replaced the Hot Lotto® game, which ended on October 28, 2017, after thirteen years.

Lottery Promotion Success Stories

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

Powerball

POWER 25 Promotion: Players who purchased a single draw, four play Powerball with Power Play ticket (\$12) August 6 through September 2, 2017, had a chance to instantly win \$25.

Over 5,400 players instantly won a \$25 prize (\$136,725 in total instant prizes). Powerball sales increased an impressive 42% when compared to similar jackpot sales.

2by2

2by2 Instant Win: Players who purchased a single play, seven draw 2by2 ticket (\$7) May 5 through June 1, 2019, had a chance to instantly win another seven draw 2by2 ticket (\$7 value) FREE or \$500 cash.

All four weeks were record setting weekly sales numbers. The promotion saw an overall increase in weekly sales (compared to the 26-week, weekly average) of 85.9%, making it the best 2by2 promotion to date.

Pick & Click Online Play Service

Never Miss A Draw: Players who purchased a 13, 26, 39 or 52 week online play via the North Dakota Lottery's Pick

& Click online play received up to a 10% discount.

This promotion was available June 1 through June 30, 2019, to all eligible players by using the North Dakota Lottery Players Club website and/or official mobile app. There were 343 eligible purchases made, saving players \$2,514. Eligible sales totaled \$25,584.

Lottery Proceeds

The Lottery transferred **\$15.9 million** to the state's General Fund, **\$845,000** to the Multi-jurisdictional Drug Task Force Grant Fund (to offset rent, equipment, and other costs associated with the undercover operations), and **\$640,000** to the Compulsive Gambling Prevention and Treatment Fund. ■■

BIENNIUM IN REVIEW

PUBLISHED

50

Attorney General Opinions

INVESTIGATED

249

Fires to Determine the Cause

CONDUCTED

1,577

Criminal and Drug Investigations

ISSUED

13,483

Concealed Weapon Licenses

PROCESSED

15,629

Crime Laboratory cases

COMPLETED

118,937

Criminal History Record checks

OBTAINED

\$5.24 m

in consumer refunds

RECOVERED

\$23.3 m

for state agencies

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Bismarck ND 58503

(701) 328-3404

Bureau of Criminal Investigation

PO Box 1054

Bismarck ND 58502

(701) 328-5500

Gaming Division

17th Floor, Capitol Building

(701) 328-4848

Licensing Section

17th Floor, Capitol Building

(701) 328-2329

Fire Marshal

(701) 328-5555

North Dakota Lottery

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(701) 328-1574

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