New policies on sexual assault, from handling of rape kits to new supports in hospitals, being implemented across Midwest

by Tim Anderson ( tanderson@csg.org)
Health & Human Services

States react to, push back against new federal rules on ‘skinny’ health insurance policies

In October, the Trump Administration adopted new rules for short-term (or “skinny”) health insurance plans. Since then, some states have weighed in by adopting new rules of their own, while also reminding insurers that they must still comply with state-level regulations.

“Skinny plans” are not new; they have typically been used by customers as short-term, or stopgap, coverage — for example, if they’re between jobs. But these plans have taken on new significance since passage of the Affordable Care Act and the Trump administration’s new rules, which allow for the terms of these plans to run longer (up to a year, rather than three months) and to be renewed for up to three years.

Proponents tout these plans as a more affordable option for people who can’t afford policies on the ACA health exchanges. Opponents, however, counter that skinny plans are only affordable because they allow insurers to deny individuals with pre-existing conditions or to exclude coverage that standard health policies would provide.

That’s one reason why Illinois legislators in November overrode then-Gov. Bruce Rauner’s veto of SB 1373. This new law limits short-term policies to a total of six months, says Sen. Laura Fine. Allowing that much time was a compromise, she notes; some lawmakers wanted these plans banned altogether.

Fine says two concerns prompted her vote to override: First, that these policies could pull all healthy people out of the state’s exchange, thus raising everyone’s rates; and second, a lack of disclosure as to what was and wasn’t covered. “People thought they were purchasing insurance, but then when they needed it, it wasn’t there,” Fine says. “As a state, we need to stay a step ahead to ensure everyone has insurance.”

In the wake of the new rules, other state actions have included issuing bulletins or notices (through insurance departments or commissioners) reminding insurers that the changes at the federal level don’t preempt existing state statutes and rules. Here are other examples of how states are trying to protect consumers:

- North Dakota’s Insurance Department requires insurance companies to ask consumers applying for short-term policies if they have comprehensive major medical coverage in force, if they know that short-term insurance is not comprehensive major medical coverage, and why they’re applying for short-term coverage.
- Ohio’s Department of Insurance issued a consumer alert to let residents know about the differences between “skinnier” and standard plans, and
- Nebraska notified insurers that their application materials for short-term plans must “clearly define” pre-existing conditions and describe the policy renewal process “in clear and unambiguous terms.”

Criminal Justice & Public Safety

U.S. Supreme Court case from Indiana challenges states’ use of asset forfeitures, criminal fines

In November, the U.S. Supreme Court heard arguments in a case that could dramatically limit states’ and localities’ ability to levy criminal fines and asset forfeitures. The central question in

 Tyson Timbs and a 2012 Land Rover LR2 v. State of Indiana

is whether the Eighth Amendment’s ban on excessive fines applies to states and localities.

The case started in 2013, when Timbs pleaded guilty to selling about $225 worth of heroin to undercover officers. Law enforcement in Indiana seized his vehicle, citing the state’s civil forfeiture laws, which allow an individual’s property to be seized (the vehicle in this case) if it were used to commit a crime. Timbs disputed the state’s right to seize his vehicle because the value of the car, $42,000, was about four times the maximum allowable fine for the crime he committed. The trial court and a state appeals court sided with Timbs, citing the Eighth Amendment’s excessive fines clause.

The Indiana Supreme Court, however, disagreed, noting that the U.S. Supreme Court has never ruled on whether this clause applies to states. Other parts of the Bill of Rights have been “selectively incorporated” through past Supreme Court decisions. But the brief filed by Timbs (as well as amicus briefs filed by his supporters) seem to argue for a full incorporation of the entire Bill of Rights.

While the court is months away from announcing its opinion, The New York Times and other observers believed it was clear during oral arguments how the justices would rule: The excessive-fines clause should apply to the states, but the Timbs case should not be used to fully incorporate the Bill of Rights. Additionally, it does not appear that the justices will rule on whether the vehicle’s forfeiture in the Indiana case, or similar fines, violate the excessive-fines clause.

“The most problematic aspect of this litigation ... is that it will consume enormous amounts of time and resources in the lower courts, as state and local governments are required to litigate, case by case, in order to sort out what kinds of forfeitures are permitted and what kinds are not,” says professor Lawrence Rosenthal of Chapman University, who wrote an amicus brief in the Timbs case on behalf of the National Association of Counties and other local government groups.

The court’s decision may prompt further discussion and/or legislation at the state level. According to the Institute of Justice, most Midwestern states have altered their civil forfeiture laws since 2014 (see map). The statutory changes tracked by the institute include:

1) abolishing civil forfeiture; Nebraska;
2) requiring a criminal conviction in most or all forfeiture cases: Iowa, Minnesota, Ohio and Wisconsin; and
3) requiring the government to bear the burden of proof for innocent-owner claims: Illinois, Iowa and Wisconsin; and
4) instituting new reporting requirements for seizure and forfeiture activity: Illinois, Indiana, Iowa, Kansas and Michigan.
Agriculture & Natural Resources

New farm bill provides some much-needed certainty during difficult economic period

A t a time when net U.S. farm income levels have fallen to a 16-year low, the Midwest’s agriculture producers were looking for some good news at the end of 2018.

The new farm bill is largely thought to be just that. Passed by the U.S. Congress in December, the bipartisan Agricultural Improvement Act maintains and expands crucial crop, loan, insurance and conservation programs for farmers, while also making new investments in areas such as rural broadband and urban agriculture.

Indiana state Sen. Jean Leising, who attended the farm bill’s signing ceremony, says the new federal law “will provide more certainty to farm programs, particularly the changes to the Commodity Title and the safety net of the crop insurance program, than an extension [of the existing farm bill] would have provided.”

This good news on the policy front comes at a time when “the economic conditions that our farms and rural communities are facing are bleak,” Leising says — the result of factors such as higher production costs, weak prices for most major U.S. crops, and a volatile period for farm exports due to ongoing global trade disputes.

With those economic challenges as a backdrop, the U.S. Congress faced the task of reaching agreement on the single most important piece of agriculture legislation in the country, the farm bill. Here is a summary of some of the key changes.

• Changes to Commodity Title — Under the 2014 federal farm bill, the U.S. Congress created two income-support programs: Price Loss Coverage and Agriculture Risk Coverage. These two programs will continue, but under the new law, producers will have greater flexibility on which one they elect to use (on a crop-by-crop and farm-by-farm basis).

The new law also doubles the limit for farm operating loans by $100,000, to $400,000. This new limit is designed in part to address concerns that the CRP was increasing land rental rates in some of the Midwest.

VanderWall, a member of the Great Lakes-St. Lawrence Legislative Caucus Executive Committee.

“The pipeline is the safest way to transport the oil. We need to make it safer.”

The state’s policy solution, at least for now, is this: Allow Line 5 to continue to operate for another few years, under enhanced inspections.

Michigan Sen. Curt VanderWall says the new cap on that payment — it can be no more than 85 percent of the average rental rate where the county is located. This new limit is designed in part to address concerns that the CRP was increasing land rental rates in some of the Midwest.

The U.S. Congress also greatly increased funding for the Regional Conservation Partnership Program, which leverages public and private dollars to tackle regional conservation challenges such as improving water quality in the western Lake Erie basin or the Upper Mississippi River watershed.

Other notable changes — Other titles of the farm bill receive much less funding and public attention. However, many innovations in the 2018 legislation can be found in these titles. For example, the USDA will create a new office within the department that focuses on encouraging urban agriculture and indoor farming.

In addition, federal lawmakers agreed to provide more loans and grants to connect rural communities to high-speed broadband. They also legalized the growing of industrial hemp across the country.

Michigan paves way for new tunnel, oil pipeline under lakes

M ichigan Sen. Curt VanderWall calls it the “most scrutinized pipeline in the nation.” And whatever one thinks the state should do about the future of Line 5 — which is located under the Straits of Mackinac and carries up to 540,000 barrels of oil and natural gas liquids every day — it’s hard to disagree with the observation. Built in 1953, the twin pipelines have been called a “sunken hazard” that put the “Great Lakes at risk of a catastrophic oil pipeline rupture.”

But VanderWall and others note that Michigan relies on the energy supplies being shipped via Line 5.

He says, for example, that most of the propane used in the Upper Peninsula comes from the 645-mile pipeline, which starts in Wisconsin, goes under the Straits, and then winds through Michigan before reaching Ontario.

To get the same supplies by truck, you’d need 2,400 trucks doing it every day, nonstop,” says VanderWall, a member of the Great Lakes-St. Lawrence Legislative Caucus Executive Committee.

“The pipeline is the safest way to transport the oil. We need to make it safer.”

The state’s policy solution, at least for now, is this: Allow Line 5 to continue to operate for another few years, under enhanced inspections.

Meanwhile, begin construction on a utility tunnel, located up to 100 feet beneath the lakebed, that would secure a new pipeline.

Michigan’s SB 1197, signed into law in late 2018, establishes a Mackinac Straits Corridor Authority to oversee this project as well as subsequent operations. The Canadian company Enbridge, which owns Line 5, is responsible for the costs, estimated to be $500 million. It estimates a project completion date of 2024.

Some Michigan residents and groups, though, have not given up on the idea of ridding the Great Lakes of this oil pipeline (old or new) altogether, and they now have two powerful allies on their side: the state’s new governor, Gretchen Whitmer, and attorney general, Dana Nessel. One of Whitmer’s first moves as governor was to request a legal opinion from Nessel on the constitutionality of SB 1197.

Along with Line 5’s age and location in an ecologically sensitive area (the Straits connect lakes Michigan and Huron), other factors have led to heavy public scrutiny — reports that Line 5 has spilled at least 1.1 million gallons of oil since 1968, concerns about Enbridge’s lack of “forthrightness” regarding structural issues, and a break in another Enbridge pipeline nine years ago that spilled more than 1 million gallons of oil into Michigan’s Talmadge Creek and Kalamazoo River.

Great Lakes

Brief written by Tim Anderson, who can be reached at tanderson@csg.org. CSG Midwest provides staff support to the nonpartisan, binational Great Lakes-St. Lawrence Legislative Caucus. Indiana Sen. Ed Charbonneaux serves as caucus chair and Illinois Rep. Robin Gabel as vice chair.
State fiscal conditions were the focus of several recent national studies — here are findings for the Midwest

**1** Amid strong revenue growth, states are saving more, spending moderately

Several encouraging signs marked the end of fiscal year 2018 and the start of FY 2019 in most Midwestern states, according to a December report from the National Association of State Budget Officers. NASBO’s 50-state study — “The Fiscal Survey of States” — found that every state in the Midwest met or exceeded its FY 2018 estimates for tax collections (see map). During the first part of FY 2019, too, states such as Kansas, Nebraska and North Dakota were reporting higher-than-expected revenue growth. All other Midwestern states reporting early results for FY 2019 said that revenue estimates were on target.

Nationwide, led by a jump in personal-income tax collections, state general-fund revenue rose by 6.4 percent in FY 2018, the fastest rate of growth in five years. Most of the Midwest’s states reported increases of between 1 percent and 5 percent. (Illinois and Kansas had double-digit increases between FY 2017 and 2018, due in part to legislated tax increases.)

States remain fiscally cautious even with this stronger revenue picture, the NASBO report concludes. Spending growth is moderate by historical standards (it is estimated to be 4.3 percent in FY 2019), with states instead “bolstering their reserves to prepare for the next downturn” and to “seek long-term structural balance.”

At the end of FY 2018, among the 50 U.S. states, the median balance for rainy day funds as a share of general-fund revenue was 6.4 percent. Six states in the Midwest reported balances higher than this U.S. median: Indiana, Iowa, Michigan, Minnesota, Nebraska and South Dakota. In FY 2010, the median balance for state rainy day funds was 1.6 percent.

A separate end-of-the-year NASBO study (“State Expenditure Report”) found that state spending eclipsed $2.0 trillion for the first time in FY 2018. Two areas, K-12 education and Medicaid, consume more than half of what states spend in their general funds (see table).

**2** Federal share of overall state revenue is on the rise, due largely to Medicaid

Federal dollars have long made up a significant portion of overall state revenue, and that trend is continuing, according to a November 2018 analysis by the Pew Charitable Trusts. In fiscal year 2016 (the last year in which federal data were available), the federal share of state revenue was 32.6 percent. That is the third-highest level since at least 1961, Pew researchers say. The highest levels were in 2010 and 2011, when states were digging out of fiscal holes from the Great Recession and using money from a federal economic stimulus.

The more recent upswing is the result of additional federal assistance to states for health care, particularly the expansion of Medicaid. In the Midwest, the percentage of state revenue from federal funds in FY 2016 ranged from a low of 23.0 percent in Kansas to a high of 35.8 percent in Indiana. (See map for federal share in all of the Midwestern states.)

**3** Eight Midwestern states get ‘A’ grades in evaluation of budget practices

Are states prepared to handle the next economic downturn and avoid a fiscal crisis? That is the focus of a December report of the nonpartisan Volcker Alliance, which grades states in five areas: budget maneuvers, legacy costs, reserve funds, budget forecasting and transparency. Eight Midwestern states received “A” grades in at least one of these five categories.

- Indiana, Iowa, Minnesota and Nebraska were singled out for not relying on various fiscal maneuvers to balance their budgets. These practices include using debt to pay for recurring expenses or transferring money from special funds to the general fund. These practices may help get budgets passed in the short-term, alliance researchers say, but they are unsustainable and can indicate deeper fiscal problems.

- According to the alliance, “meeting promised public employee pension and other retirement costs remains perhaps the most formidable challenge facing many states.” Iowa, Nebraska, South Dakota and Wisconsin stand out for being in strong positions to meet these obligations. Wisconsin’s pension system is 100 percent funded, the alliance study found, while South Dakota is the only U.S. state where the system is “overfunded” (exceeds 100 percent).

- Indiana, Michigan, Minnesota and North Dakota received “A”s for the strength of their rainy day funds, as well as the rules that govern contributions to them. Ohio also is highlighted in the report for “building its rainy day fund even though revenues have been below expectations.”

**4** Nebraska, South Dakota are top-ranked states in review of fiscal conditions

Nebraska and South Dakota ranked first and second in the nation, respectively, in a national study of state fiscal conditions. Conducted by researchers at the Mercatus Center at George Mason University, the study used five indicators of short- and long-term fiscal solvency. According to the center, those two Midwestern states stand out for the amount of the cash they have on hand to cover short-term obligations as well as their low levels of long-term debt and unfunded pension liabilities.

The center’s report also noted how tax cuts made between 2012 and 2017 have affected states differently. During this period, Indiana legislators cut corporate and income tax rates, but accompanied these reductions with a broadening of the tax base (by eliminating some tax incentives). The result: No negative effect on the state’s long-term fiscal solvency. In contrast, the center says, Kansas’ fiscal position was weakened during this period because its tax cuts were not offset by base-broadening or spending-reform measures.

**Actual general fund revenue collections in FY 2018 compared to original projections**

**Share of states’ revenue that comes from federal dollars, fiscal year 2016**

Article written by Tim Anderson, CSG Midwest publications manager. He can be reached at tanderson@csig.org.
How should the powers of a state’s attorney general be weighed against those of a state’s legislative branch?

That question arose most recently and prominently at the end of 2018 in Wisconsin, when lawmakers made statutory changes in an extraordinary session which altered that power balance in favor of the Legislature.

The moves by the Republican-led Legislature were contentious in large part because they came soon after Democrat Josh Kaul defeated incumbent Republican Attorney General Brad Schimel, and before Wisconsin’s new Democratic governor could block any of the changes. But this balance-of-power debate is not necessarily new or unique to Wisconsin. It has been part of lawsuits and legislation in other states in recent years — particularly the powers of state attorney generals as they relate to serving as counsel in the federal courts.

Diminished powers?

Wisconsin’s new law (SB 884):
- bars the attorney general from settling or withdrawing from civil cases he or she is prosecuting without approval from the Legislature;
- gives the Legislature oversight of proposed settle- ments or consent decrees in civil cases the attorney general is defending, and requires him or her to put settlement funds into the state’s general fund instead of spending them as he or she sees fit (it also sweeps all unspent settlement funds into the general fund); and
- ends the position of solicitor general, which had been created in 2015 at Schimel’s request. Per the department’s website, the solicitor general represented the state in cases or appeals “that are of special interest to the state” in federal appellate court, as well as the Wisconsin or U.S. supreme courts.

(A lawsuit filed in early January alleges the law is void because neither Wisconsin’s Constitution nor laws give the Legislature power to call itself into an extraordinary session.)

Midwestern state constitutions are largely silent as to the office’s responsibili- ties or obligations, leaving them to statu- tory definition. An article in the April 2015 edition of the Yale Law Journal — which surveyed the duty of attorneys general to defend state laws — found that all Midwestern states have laws stating some variation of “the attorney general shall represent the state in all cases in which the state is a party or the people of the state are interested.”

Beyond that, Iowa’s attorney general also prosecutes or defends any matter at the request of the governor, executive council or Legislature; Ohio’s attorney general appears for the state “when required by the governor or the general assembly” or prosecutes anyone indicted for a crime “upon written request of the governor.”

In an article in The Council of State Governments’ 2016 “The Book of the States,” authors Emily Myers and Aiyusha Cox cited recent challenges to attorneys general in their role as representative of the state in litigation and ability to determine when to seek judicial review.

They noted an Indiana case, Buquer v. City of Indianapolis — filed in 2011 over the constitutional- ity of an Indiana statute addressing enforcement of immigration laws — which resulted in three state senators seeking to intervene in force then-Attorney General Greg Zoeller to defend the entire statute. (Zoeller had said he wouldn’t defend a provision identical to an Arizona law the U.S. Supreme Court found unconstitutional.)

The U.S. district court denied them, citing Indiana case law under which the attorney general “has exclusive power and right in most instances to represent the state.”

The court further declined to allow intervention because “allowing the three individual legislators to intervene here in their official capacities as state senators not only would conflict with this well-settled state law, but would provide the legislators a trump card with respect to the attorney general’s statutorily derived discretion in this context.”

Outside the Midwest, the Maryland Defense Act of 2017 allowed the attorney general to file lawsuits independently, which overturned a Maryland law from 1864 requiring the attorney general to get permission from the governor or legislature to file litigation. In 2011, New Hampshire’s Supreme Court ruled a law requiring the attorney general to join a lawsuit against the ACA was unconstitutional because it violated the state constitution’s separation-of-powers doctrine.

Capital Closeup is an ongoing series of articles focusing on institutional issues in state governments and legislatures. Previous articles are available at csgmidwest.org.

QUESTION OF THE MONTH

QUESTION: Have any state legislatures considered proposals to end daylight saving time or to make it year-round?

This past year marked the 100th anniversary of daylight saving time in the United States, and it also included the introduction of numerous bills — in the Midwest and elsewhere — seeking an end to the “spring forward, fall back” ritual that now occurs in communities across the country.

Similar proposals are likely to appear in the year ahead. Entering 2019, only two U.S. states, Arizona and Hawaii, did not observe daylight saving time — an option for all states under federal law. At one time, much of Indiana did not observe daylight saving time, but that changed with the passage of legisla- tion 14 years ago instituting its use across the state.

Over the past two years, bills to end the use of day- light saving time were introduced in a majority of Midwestern states, including Iowa (SF 168), Kansas (HB 2519), Michigan (HB 4011), Minnesota (HF 2488), Nebraska (LB 309) and North Dakota (SB 2167). The proposals in Michigan and North Dakota also would have created a single time zone in those respective states. (Those two states are currently among six in the Midwest without a uniform time zone; see map.)

None of these bills passed, nor did legislation in Illinois (HB 424) and South Dakota (HB 1179) calling for year-round use of daylight saving time.
State laws aim to improve support for victims, testing of sexual assault kits

The handling of these kits — by hospitals, law enforcement and crime labs — has been the focus of many states’ new policies on sexual assault. In particular, states have tried to address concerns about a backlog of untested kits, and how this lack of testing prevents crimes from being solved, keeps serial rapists from being caught, and adversely impacts victims.

“There is a big message that you send to survivors [with the handling of those kits], and that message should be, ‘If you get this done, we will do something with it,’” says Ilse Knecht, the director of policy and advocacy for the Joyful Heart Foundation.

The foundation has been advocating that states across the country “end the backlog,” through the adoption of five legislative pillars of comprehensive rape kit reform.

One of those pillars is to conduct a statewide inventory of untested sexual assault kits — a step that most states in the Midwest have taken. In addition, through new laws or voluntary partnerships with law enforcement, many states have taken the next step of trying to clear the backlog. In 2018, for example, Ohio announced that all of its old kits had been tested. Nine years ago, Illinois became the first in the nation to require a statewide audit of untested rape kits and to require new kits to be tested, though even with this law in place, the Chicago Tribune reported in November on problems with the length of time it takes to process these kits.

Other states in the Midwest with mandates to test new rape kits include Michigan, Ohio and South Dakota. According to Joyful Heart, Michigan requires law enforcement to collect kits from the hospital within 14 days and then send them for testing within 14 days and then send them for testing within 90 days, if sufficient resources are available. That question of “sufficient resources” is a big one in all of the states. Last year in Nebraska, a different version of the Sexual Assault Survivors Bill of Rights would have mandated that all kits be tested, estimated to be about 600 a year.

That would have required the hiring of new forensic scientists, among other new expenses; a fiscal note on this legislation estimated a cost of $1.2 million in the first year and $433,000 in the second. Bolz removed the testing requirement this year from LB 43 to improve the bill’s chances of passing.

Legislatures revisit statute of limitations for sex crimes

How to set statutes of limitations — or whether to have them at all — in cases involving sexual assault has been the subject of much legislative debate in recent years. Here is a look at some of the changes adopted by state legislatures in the Midwest.

- Eliminate or extend time limit in cases involving children — Two years ago, Illinois eliminated the statute of limitations for felony criminal sexual assault and sexual abuse crimes against children (SB 189). Last year, Michigan lawmakers changed their statute-of-limitations provisions to allow for a criminal indictment to be filed within 15 years of the offense or by a survivor’s 28th birthday, whichever is later (SB 877). The limits had been 10 years and the survivor’s 21st birthday.

- Eliminate or extend the time limit in cases involving violent sex offenses — Six years ago, Kansas eliminated the statute of limitations on rape (HB 2352). According to the anti-sexual violence organization RAINN, Nebraska, North Dakota and Wisconsin also have no statute of limitations for this crime. In 2015, Ohio legislators extended the time limit for prosecutors to pursue cases involving rape and sexual battery, from 20 years to 25 years (HB 6).

- Eliminate or extend time limit in certain circumstances — Illinois lawmakers passed a bill in 2018 for cases in which victims were unaware that a sexual assault was committed against them, due to circumstances such as a drug-induced assault. SB 2271 extended the statute of limitations to within one year following a victim’s discovery of a crime, when corroborating physical evidence is available. Indiana’s SB 94, signed into law in 2015, extended the statute of limitations by five years in rape cases when new DNA evidence is found.

- Change law on civil actions — Six years ago, with the passage of HF 681, Minnesota legislators gave child victims of sex crimes a temporary, three-year window to file civil lawsuits from older cases that otherwise would have run up against the state’s statute of limitations. In 2017, Nebraska legislators eliminated the statute of limitations for the victims of childhood sex abuse to pursue civil actions (LB 800) against the perpetrator who “directly” caused the “injury or injuries.”

The state of Kansas has thus far used a voluntary approach to address its backlog of kits and to prevent future ones. A few years ago, Kansas became the first U.S. state to get 100 percent compliance from local law enforcement on an inventory of all untested sexual assault kits. More than 2,220 such kits...
Examples of recent state laws, proposals and programs in Midwest to improve sexual assault policies

**ILLINOIS SEeks to improve hospital care for victims**

By 2022, every hospital emergency room in Illinois must have a nurse or other staff that has received training on how to provide specialized care to victims of sexual assault, as well as how to properly collect physical evidence. This new requirement is the result of last year’s passage of HB 5245, which aims to reduce trauma among victims and improve government prosecutions of sex crimes.

**INDIANA DeveloPs new system to track sexual assault kits**

Indiana is taking steps to develop a statewide system for tracking rape kits, a move that is the result of last year’s passage of SB 264 and that the Joyful Heart Foundation says will help ensure “all rape kits associated with a reported crime are collected, transported and tested in an expeditious manner.” In late 2018, an Indiana advisory council reported that a tracking system “will be available in the near future.”

**IOWA conducts statewide survey of untested kits**

In 2016, Iowa legislators passed a bill (HF 2428) requiring local law enforcement to participate in a survey about the state’s untested rape kits. The results, released in 2017, shed light not only on the number of untested kits (4,265), but reasons for the lack of testing. The top three reasons: 1) the victim did not wish to file charges; 2) law enforcement doubted the truthfulness of the accusation; and 3) the victim did not cooperate.

**KANSAS working group calls for all kits to be tested**

Kansas has a working group of prosecutors, law enforcement, forensic scientists and victim advocates examining the issue of untested sexual assault kits. In April 2018, this group recommended that all of the state’s more than 2,200 untested kits be submitted to a forensic laboratory. It also developed a set of model policies for local law enforcement, including that any new kits be submitted to a lab within 14 days from evidence collection.

**MICHIGAN TIES university funding to sexual assault prevention**

In 2018, when Michigan legislators approved the higher-education budget, they made some funding contingent on these schools having policies on sexual assault in place. For example, universities must provide an in-person prevention course or presentation for all freshmen students and establish policies on how to report and investigate allegations. Lack of compliance results in a 10 percent drop in operations funding.

**MINNESOTA establishes new rules on sexual assault kits**

Minnesota’s HF 3017, signed into law in 2018, improves victim notification on sexual assault kits and establishes new rules for handling this evidence. If a victim has agreed to have a kit tested, law enforcement must retrieve the evidence within 10 days and then have it sent to a lab within 60 days, unless investigators determine the kit does not “add evidentiary value.” However, they must then record their reasons for not testing.

**NEBRASKA CONSIDERS BILL OF RIGHTS FOR SEXUAL ASSAULT SURVIVORS**

A Sexual Assault Survivors Bill of Rights has once again been introduced in the Nebraska unicameral legislature. Last year’s LB 1126 never made it out of legislative committee, but the bill’s sponsor, Sen. Kate Bolz, announced plans in October to introduce a “new, streamlined version.” Her goal with LB 43 is “ensuring that survivors are notified of formal and informal supports available to them during medical and law enforcement interactions.”

**NORTH DAKOTA ensures right to counsel for students accused of sexual assault**

North Dakota gives students at public universities the right to be represented by legal counsel (at their own expense) when contesting sexual misconduct allegations or other serious non-academic disciplinary charges. SB 2150 received near-unanimous approval in 2015. Its passage followed the controversial expulsion of a University of North Dakota student accused of sexual assault. He was later cleared by the university.

**OHIO allows victims to track rape kits — from collection to storage**

Legislation passed in Ohio (SB 201) in late 2018 creates a Sexual Assault Kit Tracking System. All agencies involved in the chain of custody of these kits must participate in the system, which will be run by the state attorney general’s office. With the new system, victims of sexual assault can anonymously follow the status of evidence as it is collected, analyzed, stored and, in some cases, destroyed.

**SOUTH DAKOTA law helps victims through forensic-exam process**

A bill passed by the South Dakota legislature in 2018 (HB 1126) ensures that victims of sexual assault don’t have to worry about erroneously being billed for the cost of a forensic medical exam. The new statutory language adds clarity to an existing law that says the county or the perpetrator, upon his or her conviction, must pay the exam costs. Victims also must be notified of the availability of the no-cost exam.

**Wisconsin clears backlog of sexual assault kits, considers new mandate**

In fall 2018, the Wisconsin attorney general’s office announced that the state had cleared its backlog of more than 4,100 untested sexual assault kits. Some of the kits dated back to the 1980s, according to the Wisconsin State Journal. Brad Schimel, then the state’s attorney general, also called on legislators to pass a law to prevent future backlogs — by requiring law enforcement to send new kits for testing within 72 hours.
Wisconsin Rep. Mary Felzkowski

Initially reluctant to run, she’s ascended to leadership in a new session and new environment, as Wisconsin returns to divided government

by Jon Davis (jdadvis@cg.org)

The Wisconsin Assembly’s new assistant majority leader has a secret: She never intended to be a legislator.

A lifelong resident of northern Wisconsin’s Lincoln County, Mary Felzkowski (Mary Czaja, as she was known back in 2012) was happy as the owner of an insurance company when a client, who happened to be ex-Rep. Don Friske, called her to ask if she was going to be in her office at 4:30 p.m.

“I thought he was coming in for insurance. And then he walked in with Speaker [Robin] Vos, the majority leader at the time [Scott Souter], Jenny Kostas, who works for Robin, and they made the pitch that I should run for office,” Felzkowski says. “My initial reaction was, ‘No, I don’t want to do that.’”

But after calls from other legislators and talking with friends and family, she ran for the Assembly seat and was elected with 57 percent of the vote.

“I had never served in public office,” she recalls. “It’s not like I served at the county level or anything like that, so it was a whole new experience.

“I never worked at something so hard in my life. I was knocking on doors — it was day in and day out — and then running the insurance agency, but I very much enjoy it, so I’m glad I did it.”

Felzkowski initially concentrated on legislation related to hunting and outdoor sports such as snowmobiling, along with various education issues.

Re-elected for a third term in November 2018, Felzkowski was tapped to be assistant majority leader, a position she hopes to use to reconnect her party to voters who went in a different direction this past fall.

As she prepared for her new responsibilities and challenges, Felzkowski discussed her views on leadership and being a legislator with CSG Midwest. Here are excerpts from her interview.

Q: What would you say are your biggest accomplishments in the Legislature so far?

A: My first session was unique for me. There weren’t a lot of people who were into the sporting heritage in the Assembly at that time, and for the past 15 years [preceding 2012,] there had been work on legislation to allow people to hunt with crossbows. We were able to get that done in my first session.

I also worked on what’s called “CAP/STEP” [the state’s Club Assistance Program/Snowmobile Trail Enhancement Program] with snowmobile associations. [Editor’s note: Under CAP/STEP, snowmobilers must buy a trail pass in addition to a vehicle license; proceeds from both are then used to help maintain snowmobile trails around the state].

In my second and third terms, I was on the Joint Committee on Finance, and we did a lot of the things around education, but especially fabrication laboratories, or “fab labs” [today’s version of school technology labs]. There are more fab labs in the state of Wisconsin for tech education than there are in the rest of the United States combined. So that was really, probably, I’d say my biggest accomplishment.

Q: What are your top legislative priorities for the 2019 session?

A: I think that one of the things you’re going to see is health care — access to health care, expanded health care, mental health care, everything.

We’re very fortunate in the state of Wisconsin in that our hospital system is No. 1 and our quality of health care is always No. 1 to No. 3 nationwide. But that doesn’t mean that everybody has equal opportunity or access to that health care, especially our rural areas and maybe some of our lower-income urban areas.

That’s going to be a priority for people. With split government [Republicans control the Legislature, Democrats the governor’s office], we need to be realistic. There’s going to be probably very few reforms that we would like to see happen that are going to get done, so we’re going to have to work with Gov. [Tony] Evers and find out where we have common ground. I think it’ll be health care, mental health care.

I also hope we can get some criminal justice reform done. I know that’s a priority at the federal level, and I know that both sides would like to see it get done at the state level, too.

Q: What elements of criminal justice reform would you like to see in Wisconsin?

A: I think that we would like to look at some of our nonviolent crimes that are felonies and move them off the felony roll. And then, how do we help — once you’ve paid your dues to society, so to speak? How do we help you get the education you need? Or help you get back to work, have the family life and become a productive member of society?

One of the largest hurdles we have in northern Wisconsin, as in all areas of Wisconsin, is the drug crisis — the opioid crisis in some parts of the state, but up in my area it’s meth.

Rep. John Nygren has done a phenomenal job with the HOPE [Heroin, Opioid Prevention and Education] agenda.

We have people that are using drugs and we’re helping them to get their lives back. But now I’m looking at this issue, and I said this to John, with this question in mind: “What is the why?” Why are they using those drugs? And I think that until we really get a handle on that and work through it, I don’t know that we ever really solve the issue.

Q: How does the state get at the “why” question, legislatively?

A: I wish I had a really good answer to that. I don’t know, but I know that there are a whole lot of people who work in drug counseling and different areas that can help us get to those answers. But I think that’s going to be our next challenge. We need to figure out why people are doing what they’re doing.

Q: Was stepping into a leadership role something you anticipated? What did you think when you were approached about it?

A: In doing [campaigning] for other representatives and helping them out, I thought to myself, and I don’t mean this as a negative, but if you look at our leadership team, it’s … middle-class white males. So how do we tell a different story? I’m a college-educated, 55-year-old white female. Why am I a conservative? … Safety, education, good-paying jobs, low taxes, opportunities — those are all the things that we want. That’s what our voter base said they wanted. But we’ve lost the narrative on that. I look at my role as an opportunity to start having those conversations again.

Bio-sketch of Rep. Mary Felzkowski

- elected to Wisconsin Assembly in 2012
- chosen assistant majority leader in 2018
- Insurance agency owner (CIS Insurance Group, in Tomahawk, Wis.)
- 1986 graduate of University of Wisconsin-River Falls
- with a bachelor’s degree in finance and economics
- she and husband, Fries, have five children and three grandchildren

“With split government, we need to be realistic ... and find out where we have common ground. I think it will be health care.”
Together, states are finding way to make ABLE work for disabled

Tax-advantaged accounts help individuals, families build financial security

by Illinois State Treasurer Michael Frerichs

When I took office, our team was honored to get the opportunity to launch the “Achieving a Better Life Experience” or ABLE program after it became law in Illinois (the result of SB 1383, passed in 2015). As the state’s chief investment officer, my primary role is to serve as a fiscal watchdog and to invest money on behalf of taxpayers, college savers and units of local government. However, I believe strongly that the treasurer’s office must also invest in people.

ABLE accounts help to solve a longtime predicament that many people with disabilities face — how to build financial wellness without risking much-needed federal government benefits.

Before congressional passage of the ABLE Act in late 2014, those with disabilities who had more than $2,000 in their name would lose government benefits such as Supplemental Security Income (SSI). Caps on such benefits committed people with disabilities to a lifetime of poverty and disincentivized employment.

ABLE accounts make it possible for SSI beneficiaries to save up to $100,000 without impacting their benefits. Other benefits, such as Social Security Disability Insurance and Medicaid, are not suspended based upon account balances. ABLE account owners not only achieve greater financial independence, their ABLE account can help reduce reliance on public assistance.

Contributions to an individual’s account may be made by the individual, as well as his or her family and friends or any other third-party contributor. These contributions are tax-deductible, and earnings and withdrawals are tax-free when used for qualified, disability-related expenses — for example, medical care, education, employment training, assistive technology, housing and transportation.

If an individual qualifies for Social Security or Social Security Disability, he or she likely will qualify for ABLE. An additional requirement is that the individual must also have been disabled since birth.

While the account beneficiary is always the account owner, others (through legal guardianship or power of attorney, for example) can help manage ABLE funds for those beneficiaries who want or need the assistance.

Overview of ABLE and programs in the 11-state Midwest

The December 2014 signing of the Achieving a Better Life Experience (ABLE) Act marked a major policy victory for individuals with disabilities as well as their families and advocates. This federal law authorizes state-based, tax-free savings accounts to help individuals and their families build up financial resources that can then pay for disability-related needs.

The ABLE Act also opened up new policy options, and decisions, for the 50 states. More than four years later, most states have established their own programs, including eight of the 11 Midwestern states (see map). Ohio was the first state in the nation to open enrollment; its tax-free savings account for the disabled is called “STABLE.” Eleven other states have since partnered with Ohio to offer STABLE accounts. Illinois, Indiana, Iowa, Kansas and Minnesota, meanwhile, are part of the National ABLE Alliance (see main article for details).

In the Midwest, ABLE programs are most commonly administered or overseen by state treasurers. Under federal law, annual contributions by an individual to an ABLE account cannot exceed $15,000. These contributions are not deductible for federal tax purposes. In six Midwestern states, however, these contributions can be used as a deduction when filing state income taxes (see map).

Status of ABLE program implementation in Midwest

As chairperson of the ABLE Committee of the National Association of State Treasurers, I will continue to work diligently to foster the growth of ABLE plans across the country by advocating for legislation that will strengthen and increase access to these accounts for people with disabilities.

Michael Frerichs was elected Illinois state treasurer in November 2014 and re-elected this past fall. He previously served in the Illinois Senate and is a 2008 graduate of CSG Midwest’s Bowhay Institute for Legislative Leadership Development (BILLD).

Illinois part of 16-state ABLE Alliance

When our state wanted to launch its ABLE program, we quickly discovered some unique challenges in trying to ensure its success. The number of individuals that this program could serve was too small, and the administrative needs were too big for Illinois to go it alone. It would be cost-prohibitive to the very families and individuals for whom an ABLE account would make a difference. So we reached out to states across the country and built a bipartisan consortium. The result: Achieving an economy of scale that makes ABLE plans possible for many states.

Today, I am proud to say that Illinois leads the National ABLE Alliance, a 16-state consortium that represents more than one-quarter of the nation’s ABLE-eligible population. (Indiana, Iowa, Kansas and Minnesota also are in the alliance.)

This consortium, which includes “red” and “blue” states, offers a best-in-class, low-cost ABLE program with an exclusive checking account feature. By pooling investments and administrative costs with other states, we created an ABLE program for thousands of families and their loved ones.

Submissions welcome

This page is designed to be a forum for legislators and constitutional officers. The opinions expressed on this page do not reflect those of the Council of State Governments or the Midwestern Legislative Conference. Responses to any FirstPerson article are welcome, as are pieces written on other topics. For more information, contact Tim Anderson at 630.925.1922 or tanderson@csg.org.

Is there a state income tax deduction or credit for contributions made to ABLE accounts?

Yes

No

Source: ABLE National Resource Center

% of state’s population, under age 65, that is disabled

Source: U.S. Census Bureau
Sen. Elgie Sims is now chair of Midwestern Legislative Conference

Illinois lawmaker will help host summer meeting of region’s legislators in Chicago while also focusing on his MLC chair’s initiative — building civic engagement

Sen. Elgie Sims, a member of the Illinois General Assembly since 2013, will lead the Midwestern Legislative Conference (MLC) in 2019 as its chair. He officially took over the position in December, when the MLC Executive Committee met in conjunction with The Council of State Governments’ National Conference.

The nonpartisan MLC — which receives staff support from CSG Midwest — is made up of all state legislators from the Midwest. Legislators from four affiliated Canadian provinces also participate.

Sen. Sims has made building civic engagement the focus of his 2019 MLC chair’s initiative. This topic will be covered regularly in 2019 as its chair. He officially took over the position in December, when the MLC Executive Committee met in conjunction with The Council of State Governments’ National Conference.

The meeting is one of many products and services that CSG Midwest and the MLC provide to legislators. This work is overseen by the MLC Executive Committee and its team of four officers (see photos).

Great Lakes Caucus secures grant to advance policy work that addresses nutrient pollution

A new grant from the Fred A. and Barbara M. Erb Family Foundation will help the region’s legislators develop strategies that address one of the greatest threats to the Great Lakes — nutrient pollution.

Leaders of the Great Lakes-St. Lawrence Legislative Caucus have targeted this environmental problem as a priority, and the grant will help launch the Patricia Birkholz Institute for Great Lakes-St. Lawrence Policy (named after the founder of the caucus) later this year with a focus on finding policy solutions.

CSG Midwest provides staff support to the bipartisan, nonpartisan caucus, which also receives financial support from the Joyce Foundation. Caucus membership is free and open to legislators in the Great Lakes’ eight U.S. states and two Canadian provinces.

Indiana Sen. Ed Charbonneau is the caucus chair; Illinois Rep. Robyn Gabel is the vice chair.

Legislators explore energy policy in Germany on CSG-led trip

Legislators traveled to Germany in late 2018 to explore the country’s transition to a low-carbon economy. This study trip is the result of an ongoing partnership between CSG Midwest and Germany’s Federal Foreign Office. The most recent legislative delegation included Illinois Reps. Laura Fine and Will Guzzardi, Iowa Sen. Wayne Braun, Alberta MLA Richard Starke, Manitoba government officials Neil Cunningham and Adrian Vannomme, and Ontario MPPs Sol Mamakwa and Judith Monteith-Farrell. They are pictured touring a biogas plant in western Germany. (photo: INPOLIS)

The Council of State Governments was founded in 1933 as a national, nonpartisan organization to assist and advance state government. The headquarters office, in Lexington, Ky., is responsible for a variety of national programs and services, including research, reference publications, innovations transfer, suggested state legislation and interstate consulting services. The Midwestern Office supports several groups of state officials, including the Midwestern Legislative Conference, an association of all legislators in 11 states: Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Nebraska, North Dakota, Ohio, South Dakota and Wisconsin. The Canadian provinces of Alberta, Manitoba, Ontario and Saskatchewan are MLC affiliate members.
The impact of party alignment and rise of ‘unified’ government

A realignment of the political parties was underway in 1995. The core of this realignment occurred in the South. Of that region’s 30 state legislative chambers, Democrats were the majority party in 26 of them in 1995. Today, Republicans are the majority party in all 30. Partisan shifts in other regions have been far less dramatic, but still noteworthy. In 1994, Democrats had majorities in 10 of the Midwest’s 20 partisan legislative chambers. One year later, that number had fallen to four. Today, 17 of the region’s chambers are Republican-controlled and three are held by Democrats. The realignment has implications for the prevalence of divided government at the federal level and the increase in unified (“trifecta”) governments at the state level. In 2019, we again have divided government nationally, but only four. Today, Republicans are the majority party in all four. Today, Republicans are the majority party in all.

Technological changes and how they transformed how we communicate

One of the most obvious changes since 1995 is in the area of technology. In 1995, 14 percent of Americans used the internet. Today, the figure is about 90 percent. Nowadays, too, about 70 percent of the population owns a smartphone. The first rudimentary smartphone was introduced in 1992, but the device did not become popular until the Blackberry (2002) and the iPhone (2007). Search engines such as Yahoo (1995) and Google (1998) were just beginning.

The pervasiveness of social media and how it rewards ‘extremes’

In 1995 there was no social media as we now know the term. In fact, Facebook was not introduced until 2004. Twitter did not exist until 2006. Instagram until 2010. They are ubiquitous in today’s world, and virtually all elected officials have one or more social media accounts. Yet we do not currently fully recognize the implications of social media for facilitating self-selection and incivility. As Evan Williams, co-founder of Twitter, now recognizes, “The trouble with the internet is that it rewards extremes.”

Partisanship triumphs over legislative process in era of ‘tribalism’

The evidence that the parties have become increasingly polarized is abundant. This is especially true since 1995. More importantly, this polarization has encouraged an “us-them” mentality often called “tribalism.” When we view the opposition party as “the enemy,” it becomes easier to justify winning by any means. We adhere to rules only when the rules are to our advantage. Process becomes less important than partisanship.

More money, independent spending going to races for state legislature

One of the biggest changes since 1995 is the increase in campaign spending in state legislative races, and especially the increase in independent spending. More than $4 million was spent in an Illinois House race in 2016; over $10 million was spent in each of two state senate races — one in Florida, one in Texas — in 2018. Most surprisingly, control of the chamber was not in question in any of these races.

Legislators encouraged to apply for 2019 BILLD fellowship

State lawmakers from the Midwest in their first four years of service are eligible to apply for a fellowship to attend the 25th Annual Bowhay Institute for Legislative Leadership Development (BILLD), which will be held Aug. 9-13 in Minneapolis. Applications are due on April 10. Fellowships cover the cost of tuition, lodging and meals, as well as a partial travel stipend for the five-day program. The interactive curriculum includes a mix of sessions on public policy, professional development and leadership. Thirty-seven legislators will be selected to attend this year’s program. Visit csgmidwest.org for the application and more information about BILLD.
In Midwest, population growing fastest in South Dakota and Minnesota

Population data released at the end of 2018 show South Dakota and Minnesota growing at the fastest rates in the Midwest. They also were the only two states in this region to eclipse the U.S. growth rate of 0.6 percent between July 2017 and July 2018 (South Dakota, +1.0 percent; and Minnesota, +0.8 percent), according to the U.S. Census Bureau.

Three factors cause changes in a state’s population: 1) the number of births vs. the number of deaths; 2) domestic migration; and 3) international migration. On that first factor, every Midwestern state experienced a “natural increase” in population — more births than deaths. However, U.S. Census Bureau researchers note that this natural increase has been in decline over the past decade. Nationwide, it was 1.04 million last year; that compares to 1.8 million in 2008.

Between 2017 and 2018, most states in the Midwest lost population due to domestic migration, most notably Illinois (-114,154, the third biggest drop in the country behind only New York and California). Indiana joined Minnesota and South Dakota in experiencing a net increase in residents due to domestic migration. Illinois had the region’s highest net gain from international migration (+36,753); however, it was one of eight U.S. states (and the only state in the Midwest) where total population fell.

Michigan now requires ballot measures to have ‘geographic diversity’

In future Michigan elections, getting initiatives on the ballot will require more than simply gathering enough valid signatures from anywhere in the state.

HB 6595, signed into law in late December, requires what its supporters have called “geographic diversity.” No more than 15 percent of the signatures used to determine the validity of an initiative petition can come from a single congressional district. Michigan has 14 congressional districts. This new law applies to voter-initiated constitutional amendments, statutes and veto referenda.

Michigan is one of five Midwestern states with broad “direct democracy” laws in place. The other four are Nebraska, North Dakota, Ohio and South Dakota. (Illinois allows voters to change the legislative article only.)

Among these states, Nebraska and Ohio also have “geographic distribution” requirements, according to Ballotpedia. In Nebraska, signatures must be collected from 5 percent of the registered voters in at least two-fifths of the state’s counties. In Ohio, ballot measures must have a certain percentage of signatures in at least half of the counties — for example, for a proposed constitutional amendment, the number of signatures must be equal to at least 5 percent of the votes cast for governor in the county.

Protecting nurse safety is goal of new laws in Illinois, South Dakota

Two states in the Midwest have new laws in place that aim to improve the safety of nurses and other health care professionals.

The Illinois General Assembly passed HB 4100 in response to two high-profile incidents. In one case, the Chicago Tribune reports, two nurses were taken hostage after an inmate being treated at their hospital got hold of a corrections officer’s gun. One of the nurses was sexually assaulted before police fatally shot the inmate. A month later, a nursing assistant and corrections officer were taken hostage at another hospital.

In future ballot measures to have geographic diversity

The new law requires Illinois medical facilities to develop workplace violence-prevention programs (Minnesota has this type of requirement as well), establishes whistleblower protections for nurses, and creates new safety guidelines for facilities to follow when caring for an inmate.

South Dakota’s HB 1293, meanwhile, increases penalties for assaults committed against first-responders and medical-care workers. The American Nurses Association lists Illinois, Iowa, Kansas, Michigan, Nebraska and Ohio as among the other U.S. states with specific penalties for assaults against nurses. According to the U.S. Government Accountability Office, rates of assault against health care workers are up to 12 times higher than they are for the overall workforce.

Teledicine is on rise, and reducing barriers to care, in Minnesota

A first-of-its-kind study in Minnesota details a dramatic rise in the use of teledicine in that state.

Between 2010 and 2015, the state’s number of “virtual visits” jumped from 11,113 to 86,238. These new findings, the result of research conducted by the state Department of Health and University of Minnesota School of Public Health, show that telemedicine “may be emerging as an option to overcome some of the geographical barriers of accessing specialty care,” state Commissioner of Health Jan Malcolm says.

In Minnesota’s nonmetropolitan areas, telemedicine was more commonly used by general practitioners to connect patients with specialists — for example, a primary care provider refers someone to a psychiatrist, or an emergency room doctor initiates a virtual visit with a neurologist to discuss caring for a stroke patient. Conversely, the majority of telemedicine services in metro areas involved non-emergency conditions, such as the common cold or strep throat, with consumers of commercial insurance visiting online with nurse practitioners.

According to Malcolm, this rise in teledicine will require the state to look more closely at issues such as quality of care, broadband access, and new investments in teledicine equipment.

A first-of-its-kind study in Minnesota details a dramatic rise in the use of teledicine in that state.