

1999 SENATE JUDICIARY

SB 2240

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2240

Senate Judiciary Committee

Conference Committee

Hearing Date January 27, 1999

Tape Number	Side A	Side B	Meter #
1	x		1304 - 3493
Committee Clerk Signature <i>Jackie Follman</i>			

Minutes:

SB2240 relates to public intoxication.

SENATOR STENEHJEM opened the hearing on SB2240 at 9:35 A.M.

All were present.

SENATOR LEE, District 13, testified in support of SB2240. This has become a problem if they are a long way from home or parents are in another state.

SENATOR TRAYNOR asked if we adopt this bill, how will the family find out what happened to this person.

SENATOR LYSON stated that the officers usually try to contact the family.

SENATOR STENEHJEM stated that he believes the officers must make an attempt to contact someone. Maybe there should be an amendment that says a good faith attempt should be made.

RON RAFFOLD, Chief of Police of Fargo, testified in support of SB2240. Testimony attached

Page 2
Senate Judiciary Committee
Bill/Resolution Number SB2240
Hearing Date January 27, 1999

RON RAFFOLD stated that he would have no problem with an amendment of the type mentioned.

DICK PECK, North Dakota Peace Officers Association, testified in support of SB2240.

PAUL OLSON, Fraternal Order of Police, testified in support of SB2240. Some are transients, and make it impossible for us to notify family members.

SENATOR STENEHJEM CLOSED the hearing on SB2240.

Discussion.

SENATOR NELSON made a motion for DO PASS, SENATOR LYSON seconded. Motion carried.

SENATOR LYSON will carry the bill.

5 - 0 - 1

Date: 1-27-99
Roll Call Vote #: _____

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2240

Senate Judiciary _____ Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS

Motion Made By Nelson Seconded By Lyson

Senators	Yes	No	Senators	Yes	No
Senator Wayne Stenehjem	X				
Senator Darlene Watne	X				
Senator Stanley Lyson	X				
Senator John Traynor	X				
Senator Dennis Bercier					
Senator Caroloyne Nelson	X				

Total (Yes) 5 No 0

Absent 1

Floor Assignment Lyson

REPORT OF STANDING COMMITTEE (410)
January 27, 1999 3:58 p.m.

Module No: SR-17-1304
Carrier: Lyson
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2240: Judiciary Committee (Sen. W. Stenehjem, Chairman) recommends **DO PASS**
(5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2240 was placed on the
Eleventh order on the calendar.

1999 HOUSE JUDICIARY

SB 2240

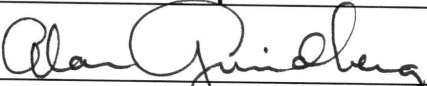
1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2240

House Judiciary Committee

Conference Committee

Hearing Date : March 2, 1999

Tape Number	Side A	Side B	Meter #
3	X		27.2
Committee Clerk Signature 			

Minutes:

RONALD RAFTEVOLD (Chf of Police, Fargo) Presented written testimony, a copy of which is attached. He also submitted letters from Garrylle Stewart, City Attorney and from Keith Gilleshammer of Centre, copies of which are attached.

DICK PECK (NDPOA) We favor this bill. I could save a lot of time and money in making fruitless calls.

SEN. DEMERS I am in favor of this bill as it is a reasonable solution to a problem.

COMMITTEE ACTION : March 3, 1999

REP. KOPPELMAN moved that the bill be amended to require a "reasonable effort" to contact someone. Rep. Klemin seconded and the motion passed on a unanimous voice vote.

REP. DELMORE moved that the committee recommend that the bill DO PASS AS AMENDED.

Page 2

House Judiciary Committee

Bill/Resolution Number 2240

Hearing Date March 2, 1999

Rep. Sveen seconded and the motion was passed on a roll call vote with 13 ayes, 0 nays and 2 absent. Rep. Disrud was assigned to carry the bill.

VR
3/3/99

HOUSE AMENDMENTS TO SENATE BILL NO. 2240 3/4/99 Jud

Page 1, line 14, remove the overstrike over "~~Upon placing that person in a hospital,
detoxification center, or jail,~~"

Page 1, line 15, remove the overstrike over "~~the peace officer shall~~" and insert immediately thereafter "make a reasonable effort to" and remove the overstrike over "~~notify the
intoxicated person's family as soon as possible.~~"

Re-number accordingly

Date: 3/3
Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2240

House JUDICIARY Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number Do pass as Am

Action Taken _____

Motion Made By Delmore Seconded By Sveen

Representatives	Yes	No	Representatives	Yes	No
REP. DEKREY			REP. KELSH		
✓ REP. CLEARY	✓		REP. KLEMIN	✓	
REP. DELMORE	✓		REP. KOPPELMAN	✓	
REP. DISRUD	✓		REP. MAHONEY	✓	
REP. FAIRFIELD	✓		REP. MARAGOS		
REP. GORDER	✓		REP. MEYER	✓	
REP. GUNTER	✓		REP. SVEEN	✓	
REP. HAWKEN	✓				

Total Yes 13 No 0

Absent 2

Floor Assignment ~~Hawken~~ Disrud

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2240: Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). SB 2240 was placed on the Sixth order on the calendar.

Page 1, line 14, remove the overstrike over "~~Upon placing that person in a hospital, detoxification center, or jail,~~"

Page 1, line 15, remove the overstrike over "~~the peace officer shall~~" and insert immediately thereafter "make a reasonable effort to" and remove the overstrike over "~~notify the intoxicated person's family as soon as possible.~~"

Renumber accordingly

1999 TESTIMONY

SB 2240



Fargo Police Department

222 4th Street North, P.O. BOX 150
Fargo, North Dakota 58107

January 27, 1999

CHAIRMAN SENATOR W. STENEHJEM
FORT LINCOLN ROOM
WEDNESDAY, JANUARY 27, 1999, 0930 HOURS

ORAL AND WRITTEN TESTIMONY OF CHIEF RONALD R. RAFTEVOLD,
FARGO, NORTH DAKOTA FOR SENATE BILL 2240, AMENDMENT TO NDCC 5-
01-05.1 - PUBLIC INTOXICATION - ASSISTANCE - MEDICAL CARE

Amendment is to remove the wording:

“Upon placing that person in a hospital, detoxification center, or jail, the peace officer shall notify the intoxicated person’s family as soon as possible.”

OPINIONS / SUPREME COURT OF NORTH DAKOTA

McCroskey v. Cass County in 1981, “No discretion is involved in executing this function.”

McCroskey v. Fettes, 1983 (this is the third appeal), “North Dakota Century Code, Section 5-01-05.1 was enacted to provide assistance and medical care to persons publicly intoxicated, and to eliminate punishment for public intoxication. The obvious purpose of the enactment was to consider alcoholism an illness, rather than a crime, and thus to assist rather than punish those persons publicly intoxicated.”

City of Fargo v. Stutlien, 1993, “If a peace officer takes an apparently intoxicated person to jail for detoxification, the jail must provide medical services, and a jailer within hearing distance. Additionally, the peace officer must notify the apparently intoxicated person’s family as soon as possible, presumably so the family may transfer the apparently intoxicated person from jail to home.”

HISTORICAL DATA ON DETOXIFICATION - CITY OF FARGO:

- 1969 - Cass County Jail had a Detox Center.

TO REPORT A CRIME
PHONE (701) 235-4493

DEPARTMENT FAX
(701) 241-8272

ADMINISTRATION
PHONE (701) 241-1427
FAX (701) 297-7789

INVESTIGATIONS
PHONE (701) 241-1405
FAX (701) 241-1407

- 1990 - Cass County discontinued Detox Center.
- April 1990 - City contracted with Centre Inc. for a detox facility.
- May 1995 - City made decision to allow various organizations to transport intoxicated persons from their facilities to Centre Inc. for detox without police intervention.
- July 1995 - City contracted with Doyle Transportation to provide transportation to and from area emergency rooms to Centre Inc.

DISCUSSION:

On January 6, 1996, a 39 year old male from Grand Forks was detoxed by Fargo officers. He refused to furnish any information as to who we could notify. He filed a civil suit in the United States District Court for excessive use of force. A jury trial was held in Fargo November 24 and 25, 1997, before Chief Judge Rodney S. Webb. During the trial, testimony occurred as to why his mother in Grand Forks was not notified by police as required. Instruction to the jury by Judge Webb, was that the Legislature did not intend an impossible task. On November 26, 1997, the jury verdict was in favor of the City of Fargo.

After the verdict was in, and the jury members were released by the Court, they were willing to talk with officers, and our Attorney, Mike Miller. The jury indicated their decision on excessive use of force was reached rather quickly, but they had a problem with whether or not the officers should have contacted his mother, as required by law.

After the Court proceedings, Judge Webb suggested I try and have this section amended.

Privacy issues are a concern with the City Attorney's Office and personnel at Centre Inc. There is no requirement for officers to notify family when an adult is held in jail, however the majority of officers will attempt to notify anyone if requested to do so.



CITY OF FARGO

OFFICE OF THE CITY ATTORNEY

January 25, 1999

Fifty-sixth Legislative Assembly
Bismarck, ND

Re: Senate Bill Number 2240 – Public Intoxication Bill

Ladies and Gentlemen:

Before the Legislature is Senate Bill 2240 which amends § 5-01-05.1 N.D.C.C. to remove a requirement that notification must be given to an intoxicated persons family by a peace officer upon placing that person in a hospital, detoxification center, or jail. The statute, as it presently exists, makes this a mandatory duty.

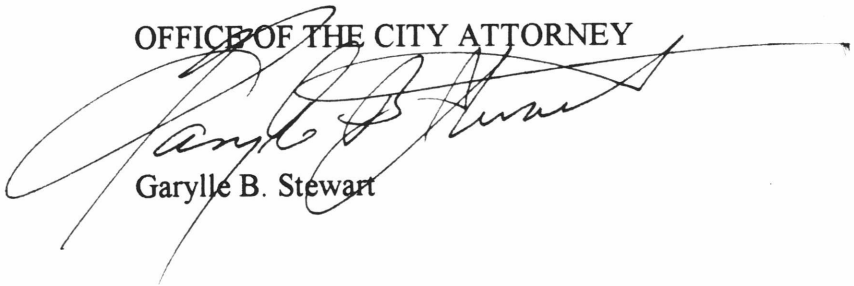
This portion of the statute has bothered me since its original passage back in 1969. Often due to the condition of the individual, it is impossible to ascertain where and to whom such notification should be given. Through the years, peace officers have been criticized for not reaching a member of the persons family as mandated by the statute in its present form. See *McCroskey v. Cass County* 303 NW2d 330 (N.D. 1981). Most recently we were criticized in a related civil proceeding for not notifying a persons family. In that particular case, the person lived in another city (apparently with his mother), a fact which we did not know.

Aside from the privacy issues, the statute, as presently written, oftentimes places an impossible burden on the peace officer. If notification is required, the statute should be reworded to require only a good faith effort at notification as opposed to the present mandatory requirement.

We respectfully submit this information for your consideration.

Very truly yours,

OFFICE OF THE CITY ATTORNEY


Garylle B. Stewart

GBS/bjs

Gbs\city\letters\ltr re senate bill 2240

Centre

January 25, 1999

The Honorable W. Stenehjem, Committee Chair

This letter is in reference to **SENATE BILL NO. 2240**, a Bill for an Act to amend and reenact **Section 5-01-05.1. Public intoxication - Assistance - Medical care.** of the North Dakota Century Code which states in part, "upon placing that person in a hospital, detoxification center, or jail, the peace officer shall notify the intoxicated person's family as soon as possible." As written, complying with the law can be extremely difficult, and at times, impossible. This notification process requires that the admitted client cooperate with peace officers and provide necessary information for family notification. In our experience at Centre Inc. detox, many clients, have been either unable or unwilling to provide necessary family notification information to peace officers. Intoxication has left many in an incapacitated and/or uncooperative state. Furthermore, many detox clients have little or no documentation on their person that would help to identify them or help to obtain necessary information.

Appropriate care is provided for each detox client in accordance with North Dakota State licensure requirements for detoxification facilities.

It is our experience that the Peace Officers and Detox Staff make every attempt to notify next of kin. When detox clients are cooperative, the notification process is successfully completed.

I would fully support the amendment as stated in **SENATE BILL NO. 2240** and support a "do pass" vote.

Sincerely,



Keith Gilleshammer, M.Ed.,LAC
Executive Director



123 - 15th Street North
Post Office Box 1269
Fargo, North Dakota 58107-1269
(701) 237-9340
FAX (701) 237-9945

315 West Indiana Avenue
Post Office Box 477
Bismarck, North Dakota 58502-0477
(701) 222-4966
FAX (701) 222-1436

1902 24th Avenue South
Post Office Box 14102
Grand Forks, North Dakota 58208-4102
(701) 746-6303
FAX (701) 746-7713



Fargo Police Department
222 4th Street North, P.O. BOX 150
Fargo, North Dakota 58107

February 5, 1999

Fifty-sixth Legislative Assembly
Bismarck
North Dakota

Re: Senate Bill Number 2240 - Public Intoxication

Chairman and Representatives:

Request an amendment to NDCC 5-01-05.1 by deleting the wording that requires peace officers to notify an intoxicated person's family.

OPINIONS / SUPREME COURT OF NORTH DAKOTA

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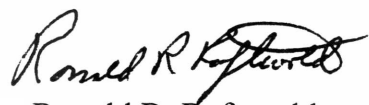
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- There is no requirement for officers to notify family when an adult is held in jail.
- Majority of officers will attempt to notify someone if requested to do so.



Ronald R. Raftervold
Chief of Police
Fargo Police Department

RRR/pgg