

**2017 SENATE HUMAN SERVICES**

**SB 2291**

# 2017 SENATE STANDING COMMITTEE MINUTES

Human Services Committee  
Red River Room, State Capitol

SB 2291  
2/7/2017  
Job Number 27997

- ☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

A bill relating to medication pending treatment order, and powers and duties of a guardian regarding medical decisions.

## Minutes:

Attch#1=KathySkroch;Attch#2=CherylRising;  
Attch#3=David Boeck; Attch#4=amendment;.

**Vice Chair Larsen:** Call the committee to order on hearing for SB 2291. Sen. Heckaman was absent.

**Chair J. Lee:** Introduced the bill (0:30-3:10). Purpose is to discuss the importance of to require treatment when someone refuses. Complicated issue because once one is over 18 years of age, they decided. The gray area is when is it dangerous to myself or someone else. Sometimes it is substance abuse sometimes a mental health issue.

**Rep. Kathy Skroch, Dist. 46:** (4:20-17:04) testified in favor, please see attachment #1

**Senator Piepkorn:** What was so different about how he was treated in another state? Which state did he make this amazing turnaround?

**Rep. Kathy Skroch:** That was MN, our son was in one of the psychotic episode and went into the state of MN, where a friend called for the transport. The transport was horribly ugly. Many law officers did not know how to handle him. He was had been hit with a Taser three times. In the mental hospital, they started treatment immediately and continued treatment until he recovered, about two weeks. The difference is, in ND, when they come in critical, they can immediately do forced meds. But as soon as they start to recover and possibility make their own decisions, then we have to go through the court process. First to determine competency, then back to court to see if they can force meds. This process causes terrible delay. We are asking for very solid reasons why the judge gave us 100% authority over his medical decisions. It is only applied when that ward is unable to make decisions for themselves. With a history, the Doctors know you have to stay on meds. In giving long laps, has caused setbacks. (19.50)

**Senator Anderson:** Were you contacted when he was in MN facility? And you gave permission?

**Rep. Kathy Skroch:** We have digital file of our guardian paper. As soon as our son was admitted, they contacted us, and we sent them our papers, and we were able to immediately start medication.



**V-Chair Larsen:** You had the person declared incompetent would you always be POA? Is it the part that not declared incompetent is the problem?

**Chair J. Lee:** Whether or not court the order says he is capable of making his own decisions he gets to make them. Or does guardian have power all the time?

**Rep. Kathy Skroch:** We are given that authority when he becomes incompetent. And we have 100% authority. we choose to let him make as many decisions as he is capable. We take over when his decisions are not in his best interest. The doctors who come to conclusion that it's time to force meds, we have trusted their judgment on that and we have plenty of history to feel that way.

**V-Chair Larsen:** I'm thinking of elderly folks, not taking meds, declare them incompetent. That you take care of their life, if you just declared him incompetent, would you always be the one to take his meds?

**Rep. Kathy Skroch:** In this case, you talked about somebody elderly. They probably have a diagnosis that makes them incompetent all the time. With a mental illness, on meds, they can have some competence. In the guardianship papers, it can spell out when necessary we have full authority over medical decisions.

**Chair J. Lee:** This bill talks about treatment which means the it is affecting a disease not dementia.

**Rep Kathy:** Right. I only see this working with my son and my experience working in a nursing home. When it comes to severe types of mental illness, there is a pattern and you assume if they don't stay on meds, you go in downward spiral again. (24.40)

**Cheryl Rising, FNP and Legislative Liaison for ND Nurse Practitioner Assoc.:** (25:30-26:24)  
I am here in support of this bill. (see attachment #2).

**Mr. Boeck,** Director of Legal Services for Protection & Advocacy Project (26:30-99.0) testified in favor (see attachment #3, #4 - Suggested amendments. Talked about HB1365. (28.51) I have proposed amendments to SB2291 to facilitate a guardian's ability to make forced medication decisions at the state hospital. And to remove reference to the siltation to the writings in statute with reference to the guardian. The second amendment I proposed, establishes a new subsection to 30.1.28.12, which is one of the guardian statutes. Some guardians do not have any authority to make medical decisions. I suggest some standard by which the guardian would measure consent or denial of consent for forced meds. I agree that the act could be an emergency measure and have added that to my amendments, too.

**Senator Anderson:** (31.13) In your amendment, you use the individual's mental health professional to determine instead of the doctor or nurse practitioner. Is that consistent with other language in the law? Why did you choose that?

**Mr. Boeck:** I chose that language because I didn't want to list a laundry list of various categories of people. If they're acting within their scope of their licensure, then I think they can decide.

**Senator Anderson:** Could include others as well, psychologists, etc.

**Mr. Boeck:** I would need to narrow it, I guess. That is too broad. Psychologists does not have prescribing authority nor does a counselor.

**Senator Anderson:** in #4, a4, it lists one of the criteria that prescribes medication as the least restrictive form of intervention. If that's a decision somebody needs to make, who makes it?

**Mr. Boeck:** I am asking that the guardian get reassurance from the treating psychiatrist that the prescribed meds are the least restrictive.



**Senator Anderson:** You just upped the criteria considerably, when you said psychiatrist. The NP is not a psychiatrist. It is your intention to say that this individual should be a psychiatrist? Are you comfortable with the three that are listed in the bill?

**Mr. Boeck:** That's where I need to change the language to medical health professional. I narrowed it too much.

**Chair J. Lee:** How do you feel about tier one?

**Senator Anderson:** This has an emergency clause, and tier 1 doesn't take effect until August, but we can work around that.

**Chair J. Lee:** We can't forget that we have done something that is way more positive.

**Mr. Boeck:** I would like to go back to drawing board and add a few things.

**Chair J. Lee:** Obviously, we need to check the rights of adults in treatment, too. We have to be careful to balance rights with need to provide treatment. But the least restrictive form of intervention may not be the best form. I recognize that you're looking to protect the rights, but they are not capable of making that decision for themselves. We need to enable the treating professionals, with the consent of the guardian, to be able to do what is right to get them to a point where they can participate in the choices. (36.31)

**Mr. Boeck:** This a4 says the least restrictive form of intervention but it also says to meet the treatment needs. I don't think its eliminating things that need to be available

**Chair J. Lee:** On a different scale, I might be choosing between Tylenol and hydrocodone. Tylenol is least but maybe I need hydrocodone. You have to convince me that it is a good addition. I would trust the professionals who are treating this individual. Maybe something at a higher level of intervention works better to return them to a place where they can be at the best place. This gets between a physician and his or her patient.

**Mr. Boeck:** Taking your analogy, in that instance they Tylenol, it doesn't meet your treatment needs, that's why you would choose against Tylenol. The professional could choose hydrocodone.

**Chair J. Lee:** You might come in and say, That the individual could have gone with Advil instead. Maybe the individual being treated protests; and the guardian and doctor did what they thought was best. My point is why does this need to be in there at all? Won't the physician make the best judgement. How do we get to put something into statute that says that a doctor or psychiatrist can't choose what is the right thing to do for the individual knowing their case history better than any of us around the table?

**Mr. Boeck:** I think this is the kind of standard the psychiatrist would choose. we can't ignore the individual rights. We can't honor their rights and ignore their treatment needs. This is an attempt to balance that.

**Chair J. Lee:** Why can't we trust their professional judgement, without us putting something in law?

**Mr. Boeck:** The provision is to make the guardian aware of this issue, so the guardian doesn't scoot by it. The guardian needs to ask mental health professionals. This provision invites the guardian to consult with mental health professional, which needs to happen to make the best decision.

**Chair J. Lee:** You don't think that's going to happen anyway? Parents try to do what's right for their son or daughter. I don't think we should legislate treatment. We need to trust the people who are regulated by their own licensing boards, to do a good job, particularly those in mental health. I'm going to err with the psychiatrist.

**Mr. Boeck:** This is not proscribing a treatment. This is establishing a standard. If we have faith in the mental health professionals, we don't need any laws at all. They could pick who needs to be sent to mental health hospitals without hearings or laws. They can treat how they



want. I do think there is a parallel to be drawn between the faith we've given to professionals at Life Skills and Transitions Center now. 30 years ago, conditions were horrible, but we trusted the professional in charge to make right decisions and horrible events happened because of that.

**Chair J. Lee:** This is an acute situation. A mental health crisis is different.

**Mr. Boeck:** For someone who has a guardian, the decision has already been made in a guardianship hearing; that the person lacks the capacity to make responsible decisions. That's what's comparable to the term competency. If they lack capacity to make those decisions. A guardianship court chooses if someone lacks capacity full or limited decision making authority. I think we're looking for full decision making authority. What we want full decision includes the decision to allow forced meds.

**V-Chair Larsen:** If I'm appointed guardian of person and I know their history, good on meds, and they stop taking their medication. I know that, so don't I go to the court and say I am in charge here. I will make the decisions. I will continue to give him the meds. Isn't that what ND does now? Is that not happening now?

**Mr. Boeck:** It's difficult to know how things are actually happening. That is how things happen, except when someone is a patient at the state hospital. Guardians do not want to lose time waiting for a hearing, because there was a provision in law that a psychiatrist needs to order and court decided.

**Mr. Jonathan Alm, Attorney for Dept. of Human Services: (49.49):** I am neutral and here to present amendment (see Attch#4) that merges HB1365 with SB2291. We added PA based on some of the testimony from HB1365.

**Chair J. Lee:** Were the amendments proposed by Mr. Boeck considered by the house?

**Mr. Alm:** I think this is the first time he proposed his amendments. We have not received a copy.

**Chair J. Lee:** Do you have background on ruling that changed things for us.

**Mr. Alm:** (51.44) It was a decision in 2008, it dealt with the state hospital. They were looking at the civil commitment law as to what can the state hospital to force medication. Whether or not the guardian can authorize to force meds. Under the civil commitment law, it restricts the ability to accept the guardian's consent. To force meds. That is what section 1 of this bill is changing the civil commitment law. The third one is guardian related and is based on guardian consent. That consent is given and the state hospital can do forced meds until the court order is obtained. The court gives the treatment order.

**Senator Anderson:** Does this legislation solve the problem we're trying to solve?

**Mr. Alm:** Yes, it would allow state hospital to fill stop gap. There is need for treatment but does not fit the two criteria. The guardian would be able to give consent.

**Senator Anderson:** You say state hospital; if this person is admitted into a different hospital, different scenario?

**Mr. Alm:** I'm not sure, Dr. Etherington, is here from the state hospital. Sect 1 is dealing with our civil commitment law. It applies to all hospitals.

**Chair J. Lee:** Dr., do you have anything to do?

**Dr. Rosalie Etherington, Dept. of Human Services:** Yes, the commitment law and guardianship law would apply to any psychiatric facility that treats a person under the management of a guardian or in fact committed. The law has a small clause that would say the state hospital must accept a person under commitment; but a private hospital may., but many of them do.



**Senator Anderson:** Are you comfortable with three categories of individuals that we listed here? Is a PA or NP competent to make this choice? Or do we need to say tier 1? (56.10)

**Dr. Etherington:** I am comfortable with these three, and in fact these three would be in tier 1, if it is in place.

**Senator Piepkorn:** How does one administer a drug to someone in a schizophrenic episode?

**Dr. Etherington:** In the worst throes, when somebody is exhibiting extreme violence, we holding somebody down and give an injection. We would move to administer oral meds if possible. It is infrequent that forced meds ordered go beyond 7-10 days. When a person is coming out of an episode, its uncommon for them to not take it orally.

**Senator Anderson:** We are talking about a person who is past the immediate treatment stage and he is calm. He says he will not take it anymore. You transition him to oral capsules, but how do we get him to take it then?

**Dr. Etherington:** That is why there are long acting injectable. Now they are willing to take orally, without us holding them down. Past that immediate stage, it is common for them to stop taking the med when they feel better. Sometimes, because of the side effects, they stop taking meds. These orders do require injectable, or oral under supervision, because we want to keep stability for longer periods of time.

**Chair J. Lee:** In Mr. Boecks amendments, can you look on page 4, because I was having some heartburns stating in statute. There could be situations where something less strong, could be used but the higher impact might be better,

**Dr. Etherington:** They occur regularly in commitment laws and our regulations. Technically the words you just said qualify that; if that med might meet the needs best, that is at that moment, best, to meet the needs.

**Chair J. Lee:** You would be comfortable with that phrase, if we amend?

**Dr. Etherington:** Yes.

**Chair J. Lee:** Any further testimony on SB2291? Any opposed? Hearing is closed. Give Mr. Boeck a chance to change his amendments. (10.02.05)

**Senator Anderson:** Mr. Boeck makes contentions about something that is not in the right section. I think we should clarify with Mr. Alm.

**Senator Piepkorn:** With the law regarding the decision making in guardianship. Just because someone is feeling better after a while, I do not know if the guardian's responsibilities should be lifted from that responsible person. Shouldn't that remain in place then?

**V-Chair Larsen:** If you go to court that person is incompetent, and you take over meds, finances, housing, etc. doesn't that allow you the ability to say keep him on his meds. I am confused with this.

**Chair J. Lee:** Mr. Alm said that the judge could give you permanent guardianship, or he determines how much responsibility.

**V-Chair Larsen:** Doesn't the conversation between doctor and parent determine that. Shouldn't the parent fight for that?

**Senator Anderson:** Once this individual was again healthy, on his medication, the judge wouldn't declare him incompetent. He was quite bright and able to perform fine. He was able to make good decisions when on meds. The guardian could not say all times. We need something beyond that.

**Chair J. Lee:** We'll see what Mr. Alm and Mr. Boeck come up with.

**V-Chair Larsen:** personal story (1:06:05-1:07:00)



**Senator Anderson:** The caution is that we don't want somebody who is competent forced to take meds. He gave a personal story. (1.07.59)

COMMITTEE CLOSED.

# 2017 SENATE STANDING COMMITTEE MINUTES

**Human Services Committee**  
Red River Room, State Capitol

SB 2291  
2/13/2017  
Job Number 28261

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature

*Cassie Wing* for Mame Alm

## Explanation or reason for introduction of bill/resolution:

A bill relating to medication pending treatment order, and powers and duties of a guardian regarding medical decisions.

## Minutes:

1 attachment

**Johnathan Alm:** (See Attachment #1 for proposed amendments. Walked through amendments.) They were hog-house amendments.

**(4:10) Chair J. Lee:** We were told last week that lease restrictive form of intervention is a very standard, acceptable phrase.

**Senator Heckaman:** Can you remind me why we have an emergency section on here?

**Johnathan Alm:** It was added because of the other bill that was in the House that had an emergency section so we just added it for that purpose.

**Senator Clemens:** Is there another section that lists how the guardian is appointed?

**Johnathan Alm:** In Chapter 30.128 talks about the guardians of an incapacitated persons and the processes and procedures of the petitions, and what the court goes through.

**Chair J. Lee:** Were we aware of the fact that there was a bill in the House about this? Are these going to be similar or identical?

**Johnathan Alm:** It was similar, except for in the original, SB 2291 we had Section 1 that the department needed to allow the guardian to give consent for civil commitment procedures for them to follow. The House version didn't include that. I think these proposed amendments are the best law out of both. The House version leaves some questions as to how to implement the procedures and really what hospitals would do on the civil commitment side.

**Chair J. Lee:** Which bill was that?

**Johnathan Alm:** HB 1365.



**V-Chair Larsen:** On page 1, letter a, it talks about 90 days without receiving another recommendation, does the person that is going to be forced with the medications, when they meet to try to continue this, do they have to be at the hearing? Who are all the players to keep that in continuation?

**Johnathan Alm:** What this process would be is that, after a certain time period, the 90 days passed and the individual still refuses, the guard would have to go through Subsection 3 of this act. That is not through a court process. It is to ask the prescriber, the physician, or one of the other two, if it fits, and then they can go ahead and consent. Under the civil commitment law, the treating physician on that side can accept that consent. It's not a lengthy process.

**Chair J. Lee:** It doesn't have to go back to court.

**Johnathan Alm:** Correct.

**Senator Heckaman: Moved Proposed Amendments.**

**V-Chair Larsen: Seconded.**

**A roll call vote was taken.**

**Passes 7-0-0.**

**Senator Heckaman: Moved a Do Pass As Amended.**

**V-Chair Larsen: Seconded.**

**Passes 7-0-0.**

**Senator Lee will carry the bill.**

# 2017 SENATE STANDING COMMITTEE MINUTES

Human Services Committee  
Red River Room, State Capitol

SB 2291  
2/15/2017  
Job Number 28406

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

A bill relating to medication pending treatment order, and powers and duties of a guardian regarding medical decisions.

## Minutes:

2 attachments

**Chair J. Lee:** Brought committee work to order, all members present

**Johnathan Alm:** Dept. of Human Services; You have amendments before you. You passed this Hoghouse, this is the new one. Attachments 1, 2. Amendments explained. Under today's practice, the guardian under general power already has that authority, why 2291 originally presented civil committed side law clearly goes to the court guardian, but couldn't give consent for original purposes addressed in that side. This amendment guardianship has to do it for all purposes.

**Chair J. Lee:** Do you see any conflict if these 2 are different? Are you concerned about the same language? Can we limit it? We were comfy with language we had. Do we have big issues if we leave the language the way we have it? Does it create legal issues for the department or guardians? Does it have to be the same as other areas of statute?

**Johnathan Alm:** As far as the department is concerned, the law allows us to get the consent of the guardian. We are already within the law; we could accept that consent to do prescribed medication. If you are looking at the guardian workgroup version, the decision if you except that version, the guardian always has to go to court to get that authority for any situations dealing with prescribed medication.

**Senator Anderson:** Our original intent was to loosen this up. Not to make it worse for everyone.

**Chair J. Lee:** That's the rub, we need to chat about this a little bit.

**Johnathan Alm:** On section 2, of the proposed amendment, is really setting forth our best to make petition for guardianship to include specific facts that outlines the proposed section 16 and attach a recent report from section 3 of act. Section 3 of the act which is setting forth



court authorization from voluntary treatment prescribed medication. The hearing is going to be conducted and what information is needed for the hearing. It would be requesting 2 expert examiners. One would be the treating expert examiner and one would be a non-treating expert examiner. The expert examiner would have to look at and certify a-b-c-d, which is similar to what you passed out as the a-b-c-d. That requirement is what the treating physician would have to give consent. This case adds an extra examiner. Then it also talks about the evidence it needs to consider. Explanation followed of review Sections 3 a 1-7, 4, 5, and 6.

**Senator Anderson:** Are there provisions in this amendment that you think we need in the 2 page we did?

**Johnathan Alm:** It's a tough question. For what you passed out, it will assist and accomplish the task of what the sponsors believe were intending and what the individual testified to. They have the authority to provide consent and the State Hospital to be able to accept that consent.

**Senator Anderson:** My perception on 4 page is to make it easier for judges?

**Johnathan Alm:** The 4th page amendment is designed to have judicial oversight.

**Senator Anderson:** You talked about the 2-3 experts. I heard a judge testify on a different bill in judiciary, and her comment was that there are those people that rarely show up at the hearings. They give their written opinion, but rarely show up. You said in the 4-page amendment there is an opportunity to cross examine, so they have to show up.

**Johnathan Alm:** Yes, they have to drive to that county to testify.

**Senator Anderson:** My experience for looking at the counties cost, that's about \$1000 an hour.

**Chair J. Lee:** My observation is in the 4-page amendment, that it is dealing with a guardian of incapacitated persons. So that is the process which the guardianship is established in the first place. And what we're talking about in 2291, is after the guardian is already in place and then making a decision about medication that is prescribed.

**Johnathan Alm:** In the chapter 30-1028, it definitely is how the guardianship is established, but also the court has a continuous roll and oversight on the guardian by filing a report and a review every 5 years.

**Chair J. Lee:** That is already there. What we were trying to do was really the gist of this, the rest that comes under guardianship in general. The specifics of what we were trying to do is in section 1 of the original and that is what we passed.

**Johnathan Alm:** You are right. Section 2-3 was clarifying the general authority exists and they can do this if someone has limited authority to make medical decisions then the court has to specifically state that. Section 3 addresses the a,b,c,d recommendation determination from the physician.

**Chair J. Lee:** We visited about the fact that some folks only temporarily need that intervention. Once they are stable again they may not, if the limited guardianship would mean that the guardian isn't always in charge of the person treated, and they take care of their own affairs.

**Johnathan Alm:** I have to look at the minimum necessary requirements considering the wards interests.

**Chair J. Lee:** Any issues that we have not foreseen? I am comfortable with what we have.

**Senator Kreun:** Are we going back to after the individual may regain his competency on meds, and then after he feels he doesn't need meds anymore, and goes off the medication and becomes a client again? Do they have to go back through this whole process again? Then go through a hearing process and start over again? That's what we were trying to eliminate. We go in this circle and at a \$1000/hour court cost, this individual gets to cross examine and have witnesses and do all this work. I agree about going through it every 5 years, but not every time he or she wants to get off medication and start the process over. That could go on every few months.

**Chair J. Lee:** In the amendment we passed, the individual, the medical provider has to make that decision.

**Johnathan Alm:** Section 5 talks about the initial order. The ward has to refuse treatment.

**Chair J. Lee:** They need to cover all those immunizations at the same time.

**Johnathan Alm:** They would have to petition to the court for permission.

**Senator Kreun:** What happens if its 2x a year?

**Johnathan Alm:** If the court isn't addressing that, then the guardian would have to go back.

**Chair J. Lee:** We want to do this right. We don't want it to be onerous.

**Senator Anderson:** I suggest we go with amendments we have now. We can come back and fix it later.

**Senator Piepkorn:** Did I hear you say that this was to protect the Department of Human Services from a possible lawsuit?

**Johnathan Alm:** The section 1 is the section the department needs to ensure that we have authority to give that forced medications. How you get there is before the committee.

**Chair J. Lee:** It's an enabling legislation.

**Senator Piepkorn:** I guess I have to pour over it. It seems it makes it more difficult than what the sponsors intended. It is making it harder and we were supposed to make it smoother.



**Chair J. Lee:** This isn't the final word.

**Senator Anderson:** It is a Senate bill; we could review it later.

**Chair J. Lee:** Leave this in our books. We will recess for now.

February 13, 2017

Σ7  
2-13-17  
p. 1 of 2

PROPOSED AMENDMENTS TO SENATE BILL NO. 2291

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 25-03.1, a new subsection to section 30.1-28-04, and a new subsection to section 30.1-28-12 of the North Dakota Century Code, relating to powers, duties, and authority of a guardian regarding medical decisions; and to declare an emergency.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1.** A new section to chapter 25-03.1 of the North Dakota Century Code is created and enacted as follows:

**Guardian consent to involuntary treatment with prescribed medication.**

Notwithstanding sections 25-03.1-16, 25-03.1-18.1, and 25-03.1-24, if a patient refuses treatment with prescribed medication, a treating physician, physician assistant, psychiatrist, or advanced practice registered nurse may treat the patient with prescribed medication upon consent of the patient's guardian pursuant to section 3 of this Act.

1. The guardian's consent for involuntary treatment with prescribed medication may not be in effect for more than ninety days without receiving another recommendation and determination pursuant to section 3 of this Act.
2. The patient has the right to be free of the effects of medication at the preliminary or treatment hearing by discontinuance of medication no later than twenty-four hours before the hearing unless, in the opinion of the prescriber, the need for the medication still exists or discontinuation would hamper the patient's preparation for and participation in the proceedings.
3. The guardian may not consent to involuntary treatment with prescribed medication solely for the convenience of facility staff or for the purpose of punishment.

**SECTION 2.** A new subsection to section 30.1-28-04 of the North Dakota Century Code is created and enacted as follows:

A grant of general authority to make medical decisions includes the authority to consent to involuntary treatment with prescribed medications. Except upon specific findings of the court, a grant of limited authority does not include authority to consent to involuntary treatment with prescribed medications.

**SECTION 3.** A new subsection to section 30.1-28-12 of the North Dakota Century Code is created and enacted as follows:



A guardian with authority to consent to involuntary treatment with prescribed medications may not provide consent without receiving a recommendation and determination from the ward's treating physician, physician assistant, psychiatrist, or advanced practice registered nurse that:

- a. The proposed prescribed medication is clinically appropriate and necessary to effectively treat the ward and that the ward requires treatment;
- b. The ward was offered that treatment and refused it or that the ward lacks the capacity to make or communicate a responsible decision about that treatment;
- c. Prescribed medication is the least restrictive form of intervention necessary to meet the treatment needs of the ward; and
- d. The benefits of the treatment outweigh the known risks to the ward.

**SECTION 4. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly

Date: 2/13 2017Roll Call Vote #: 1

**2017 SENATE STANDING COMMITTEE  
ROLL CALL VOTES**  
BILL/RESOLUTION NO. 2291

Senate Human Services Committee☐ SubcommitteeAmendment LC# or Description: 17.0943.01001

Recommendation: ☒ Adopt Amendment  
☐ Do Pass    ☐ Do Not Pass    ☐ Without Committee Recommendation  
☐ As Amended    ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar  
Other Actions: ☐ Reconsider    ☐ \_\_\_\_\_

Motion Made By Sen. Heckaman Seconded By Sen. Larsen

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee (Chairman)	<u>X</u>		Senator Joan Heckaman	<u>X</u>	
Senator Oley Larsen (Vice-Chair)	<u>X</u>		Senator Merrill Piepkorn	<u>X</u>	
Senator Howard C. Anderson, Jr.	<u>X</u>				
Senator David A. Clemens	<u>X</u>				
Senator Curt Kreun	<u>X</u>				

Total (Yes) 7 No 0Absent 0

Floor Assignment \_\_\_\_\_

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



Date: 2/13 2017Roll Call Vote #: 2

**2017 SENATE STANDING COMMITTEE  
ROLL CALL VOTES**

BILL/RESOLUTION NO. 2291Senate Human Services Committee☐ Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation: ☐ Adopt Amendment  
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☒ As Amended ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ \_\_\_\_\_Motion Made By Sen. Heckaman Seconded By Sen. Larsen

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee (Chairman)	X		Senator Joan Heckaman	X	
Senator Oley Larsen (Vice-Chair)	X		Senator Merrill Piepkorn	X	
Senator Howard C. Anderson, Jr.	X				
Senator David A. Clemens	X				
Senator Curt Kreun	X				

Total (Yes) 7 No 0Absent 0Floor Assignment Sen. Lee

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

**REPORT OF STANDING COMMITTEE**

**SB 2291: Human Services Committee (Sen. J. Lee, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2291 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 25-03.1, a new subsection to section 30.1-28-04, and a new subsection to section 30.1-28-12 of the North Dakota Century Code, relating to powers, duties, and authority of a guardian regarding medical decisions; and to declare an emergency.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1.** A new section to chapter 25-03.1 of the North Dakota Century Code is created and enacted as follows:

**Guardian consent to involuntary treatment with prescribed medication.**

Notwithstanding sections 25-03.1-16, 25-03.1-18.1, and 25-03.1-24, if a patient refuses treatment with prescribed medication, a treating physician, physician assistant, psychiatrist, or advanced practice registered nurse may treat the patient with prescribed medication upon consent of the patient's guardian pursuant to section 3 of this Act.

1. The guardian's consent for involuntary treatment with prescribed medication may not be in effect for more than ninety days without receiving another recommendation and determination pursuant to section 3 of this Act.
2. The patient has the right to be free of the effects of medication at the preliminary or treatment hearing by discontinuance of medication no later than twenty-four hours before the hearing unless, in the opinion of the prescriber, the need for the medication still exists or discontinuation would hamper the patient's preparation for and participation in the proceedings.
3. The guardian may not consent to involuntary treatment with prescribed medication solely for the convenience of facility staff or for the purpose of punishment.

**SECTION 2.** A new subsection to section 30.1-28-04 of the North Dakota Century Code is created and enacted as follows:

A grant of general authority to make medical decisions includes the authority to consent to involuntary treatment with prescribed medications. Except upon specific findings of the court, a grant of limited authority does not include authority to consent to involuntary treatment with prescribed medications.

**SECTION 3.** A new subsection to section 30.1-28-12 of the North Dakota Century Code is created and enacted as follows:

A guardian with authority to consent to involuntary treatment with prescribed medications may not provide consent without receiving a recommendation and determination from the ward's treating physician, physician assistant, psychiatrist, or advanced practice registered nurse that:



- a. The proposed prescribed medication is clinically appropriate and necessary to effectively treat the ward and that the ward requires treatment;
- b. The ward was offered that treatment and refused it or that the ward lacks the capacity to make or communicate a responsible decision about that treatment;
- c. Prescribed medication is the least restrictive form of intervention necessary to meet the treatment needs of the ward; and
- d. The benefits of the treatment outweigh the known risks to the ward.

**SECTION 4. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly

**2017 HOUSE HUMAN SERVICES**

**SB 2291**



# 2017 HOUSE STANDING COMMITTEE MINUTES

## Human Services Committee Fort Union Room, State Capitol

SB 2291  
3/14/2017  
29165

- ☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature



### Explanation or reason for introduction of bill/resolution:

Relating to powers, duties, and authority of a guardian regarding medical decisions; and to declare an emergency.

### Minutes:

1

Chairman Weisz: Called the committee to order.  
Opened the hearing on SB 2291.

J. Lee

Introduced SB 2291. This is a tricky area. If they are over 18 they can decide for themselves whether they want to take medications. Unless they are a danger to themselves or others, their medications cannot be mandated. There really is a gray area in there where they are not well, but they are not dangerous. It is really heartbreaking for some of the family members to not be able to help their family member stabilize and then know the value of taking the medications. That really is the purpose of this bill.

Chairman Weisz: Are there any questions from the committee? Have you had our bill in your committee yet? HB 1365.

Vice Chairman Rohr: Line number 3 on the bill. Could you speak to that?

J. Lee: Pretty obvious I think.

Vice Chairman Rohr: Who will decide that?

J. Lee: The guardian doesn't just decide on their own with this. The medical representative would have to agree to the treatment. If I were the guardian and I was doing something that seemed to be better for the staff in the facility where my ward lived and the primary care provider did not agree, it would not happen.

Representative Skroch: I don't believe it is acceptable to allow that to happen. Why does that have to be spelled out in century code if it is already standard procedure?

J. Lee: the council recommended that that be included and I guess I don't feel it is wrong to make it clear. When the guardian is making this decision in conjunction with the primary care provider it has to be in the best interest of the patient.

Representative Skroch: In my position as a guardian, it is almost describing guardians as people that have been appointed by the court, but they really do not have the best interest of the ward in mind. We are not singling out doctors or nursing staff or anyone else. Just the guardians would consider approving medication for punishment or convenience.

J. Lee: I think that we have good facilities and that this might be something that your committee might want to consider. It just says the guardian will not consent, it doesn't say that they brought it up in the first place.

Representative Skroch: I can't imagine any time or place that someone would advise to give someone medication as a punishment.

Is there any testimony in support of SB 2291?

9:39

David Boeck, Director of Legal Services for the Protection & Advocacy Project.  
(Attachment 1)

10:41

16:13

Chairman Weisz: Are there any questions from the committee?

Representative Skroch: When you referred to "perceived" on page 2, it is difficult for a doctor to come up with a plan of action when they don't have the protection of the law to be able to treat. I was hoping that we could get beyond the gray areas of treating before they actually get to the bad place, but they are on a fast track to get there if you don't intervene. I am not sure you are adequately describing that situation with this program.

D. Boeck: This only refers to people that are involuntarily committed to treatment. I do see that it was overlooked to address the person's potential for their physical or mental deterioration. I am not opposing the bill, but I think the amendments would help it to be more comprehensive.

Representative Schneider: If you go to section 3 on page 2 where subsection D and F would go. It looks like if you read the initial paragraph on section 3, those refer back to the medical professional and not the guardian. Did you mean for those to be stand-alone provisions.

D. Boeck: I think the way it is set up in this bill there is a requirement that the involuntary medication can continue beyond the 90 days if the medical provider would determine the need for that.

Representative Schneider: Ok if you look at F. Is that a recommendation of the medical professional too that the ward has the right to challenge the guardian's decision or did you mean that to be a stand-alone provision in all cases that the ward can challenge the decision?



D. Boeck: Perhaps that should be at Number 1 at the beginning of lines 7 and number 2.

Chairman Weisz: Further questions?

Representative Kiefert: Have you ever heard of the judge ruling in favor of the patient over the doctor?

D. Boeck: I cannot think of an instance where that has happened. We have to provide the rights of the patients. It is part of due process. We have to provide the opportunity to challenge.

Chairman Weisz: Is there anyone here in opposition to SB 2291?

Chairman Weisz: Are there any further questions?

Chairman Weisz: Is there anyone from the department that wishes to comment?

Dr. McClain, Medical Director for the Dept. of Human Services

Representative Kiefert, you asked if it ever happens that a judge would overrule the recommendation of the medical provider. It does happen, but it doesn't happen a lot. I have lost one case when the person was arrested in Minnesota. Often times injectable medication might be seen as more restrictive and therefore if the person is saying yes they will take the med, even if the record is sporadic, the judge will order oral medication and then they will be noncompliant and it starts all over again.

Chairman Weisz: Further questions from the committee?  
Further testimony?

Chairman Weisz: ok we will close the hearing on SB 2291

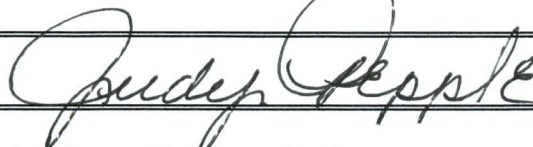
# 2017 HOUSE STANDING COMMITTEE MINUTES

**Human Services Committee**  
Fort Union Room, State Capitol

SB 2291  
3/14/2017  
29192

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to powers, duties, and authority of a guardian regarding medical decisions: and to declare an emergency.

## Minutes:

Chairman Weisz: We can either amend this bill to say what HB 1365 said or we can kill it.

Representative McWilliams: Should we wait until tomorrow to see what they do?

Chairman Weisz: They passed it 45-0, so I don't think they will kill it. They want a bill.

Representative Skroch: My concern is that our bill could end up looking just like this one when they are done with it.

Chairman Weisz: If we amend this one we can go to conference committee and still have something to say about it.

Representative Damschen: they could amend it and then we would end up with the same version they have here.

Representative Damschen: I move a do not pass on SB 2291

Representative Devlin: second

Representative Kiefert: I don't see how anyone is going to win this one.

Chairman Weisz: Ok committee we have a motion before us for a do not pass on SB 2291. Is there any discussion? If not the clerk will call the roll for a do not pass on SB 2291.

Roll call vote taken    yes    11    No    1    Absent    2

Chairman Weisz: Do I have a volunteer to carry this one?

Representative McWilliams: I will.

Adjourned.



Date: 3-14-17  
Roll Call Vote #: 1

2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. S.B. 2291

House Human Services Committee

☐ Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation: ☐ Adopt Amendment  
☐ Do Pass ☒ Do Not Pass ☐ Without Committee Recommendation  
☐ As Amended ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ \_\_\_\_\_

Motion Made By Rep. Damschen Seconded By Rep. Devlin

Representatives	Yes	No	Representatives	Yes	No
Chairman Weisz	✓		Rep. P. Anderson	✓	
Vice Chairman Rohr	abs.		Rep. Schneider		✓
Rep. B. Anderson	✓				
Rep. D. Anderson	✓				
Rep. Damschen	✓				
Rep. Devlin	✓				
Rep. Kiefert	✓				
Rep. McWilliams	✓				
Rep. Porter	abs.				
Rep. Seibel	✓				
Rep. Skroch	✓				
Rep. Westlind	✓				

Total (Yes) 11 No 1

Absent 2

Floor Assignment Rep. McWilliams

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

**REPORT OF STANDING COMMITTEE**

**SB 2291, as engrossed: Human Services Committee (Rep. Weisz, Chairman)**  
recommends **DO NOT PASS** (11 YEAS, 1 NAYS, 2 ABSENT AND NOT VOTING).  
Engrossed SB 2291 was placed on the Fourteenth order on the calendar.

2017 TESTIMONY

SB 2291



SB 2291  
Attache #1  
2/7

TESTIMONY IN SUPPORT OF SB 2291 GUARDIANSHIP

REPRESENTATIVE KATHY SKROCH

SENATE HUMAN SERVICES COMMITTEES

65<sup>TH</sup> LEGISLATIVE SESSION

<sup>Lee</sup>  
Chairman ~~Weisz~~ and members of the Human Services Committee, thank you for permitting me to speak to you today. For the record, my name is Representative Kathy Skroch from District 26. I come before you to give testimony in support of ~~HB 1365~~.  
<sup>SB 2291</sup>

My husband and I have been guardians of our eldest son since 2003. He is our second child but our firstborn son and has five younger siblings. For the sake of his privacy, I will only refer to him as MCS in this testimony.

Anxious to make his mark in this world, MCS was born 10 days early. He was a very happy baby, a good baby and easy to care for. He was full of joy and eager to please his parents. At the age of 18 months he decided he did not like wet diapers anymore. He started using the toddler potty and never wet another diaper. He had a relatively normal childhood laced with adventure and mischief due to his high intelligence. He was bright from the beginning and claims to remember his birth. He grew into a handsome young man, strong and healthy from life on the family farm. He was a hard worker and at the age of 16 he took on a second job with our neighbor as a hired man in his free time. Our neighbor loved him and referred to him as his second son. He grew to be an easygoing, compassionate, empathetic, funny, self-sacrificing, patient and kind young man.

MCS first began to exhibit hints of his later diagnosis at the age of 18 which is the typical age for the onset of Schizophrenia. This disease is also more common in males. We did not realize at the time, but he was self-medicating in an attempt to resolve headaches and strange thoughts. He experienced his first full blown psychotic episode at the age of 19. The delusion he experienced occurred in real time and space, yet was a living nightmare so horrific that he found no other escape but killing himself. His attempt failed. We received the phone call at 1:30am in the morning from an emergency room doctor who had been frantically trying to locate a family member. He explained that a young man came in with 6" cuts down both wrists. He wondered if we were his parents.

Over the next several months and years, there were many visits to doctors who tried various medications to treat his symptoms. He would improve then stop taking the medications thinking he was "cured". Each time the medication was interrupted the disease would strike with vengeance, each time worse than the last. However, MCS insisted he did

not have a disease and would refuse medications not realizing how much he was harming himself. Since he was an adult we had no choice but to watch in anguish as he continued on this downward spiral.

During one of the many hospitalizations we met Dr. Ravassia, one of his best Psychiatrists. In a private consultation he confirmed our worst fears. MCS, he strongly suspected, was suffering from schizophrenia. It was critical, the doctor explained, for MCS to stay on his medication to keep the disease in check. If not, the disease would ravage his mind, co-mingling delusional thoughts and experiences with his memory, eventually, corrupting and hard wiring his entire mind. Because our son was so intelligent, the doctor explained, he would try to outwit himself and his doctors. He would rationalize and try to think his way out of the delusions and hallucinations with a malfunctioning brain. The real danger, was that the day MCS realized this disease of his brain is incurable, that he would never be "normal" again even with medication, is the day he would again attempt suicide and may succeed.

Schizophrenia functions much like a Trojan Virus in a computer. If it is not stopped right away, the virus infiltrates corrupting file after file until the entire computer memory is corrupted. Schizophrenia may cause the corruption of all memories including data, even childhood memories, become laced with false realities and delusional thoughts. Highly intelligent victims, refuse to accept the reality of their disease and reject advice from their families and doctors. They are the most likely to commit suicide when they realize their "beautiful mind" can never be "normal" again. MCS was sure he could fix himself while he continued on a downward spiral. He could no longer hold down a job. He lost his health insurance, was out of money and owed nearly \$50,000. in medical bills. We finally had no other choice but to petition the court and obtained legal guardianship over our 23-year-old son. With guardianship in place he also qualified for Social Security Disability Income which was used to pay down his medical bills.

We were assigned full guardianship authority over much of our son's decisions making. We especially needed this authority over all medical decisions with full durable power of attorney, particularly during his worst relapses. His doctors would seek our permission for force medications.

Off his medication MCS began to have horrifying delusions. He would see the walls of his house become as molten lava in a vision of hell, food would become worms slithering on his plate and a pork chop he just cut into pieces become a cut up baby before his eyes. He could feel snakes crawling over his body and other horrors. Water would taste like urine or have bugs in it. He could not eat or drink. He would not dare sleep for fear of horrific nightmares. We would make every effort to get help for him but were often told "We can't do anything unless he is doing harm to himself or others." In his delusional state he would resort to eating tree bark and leaves, weeds, grass or worse in his attempt to survive. His lips would split from dehydration, having gone without food and water for weeks, having lost 30 pounds we finally could get help to transport him to the hospital. In this critical state doctors could force



medication with a guardian's permission. However, after a few days, the doctors would have to stop forced medications. This was because of North Dakota statutes that provide for the mentally ill to refuse their medication against doctor's advice and guardianship authorization to treat. Knowing the delay of treatment advances the progression of the disease, we were still denied our guardianship authority to approve forced medication needed until he fully recovered. So even under the watch of the ND State Hospital, MCS would again deteriorate over the course of weeks.

We were told, "We can't force medications unless a judge declares him mentally incompetent." The delays to treat continued. During one of these hearings, MCS was in a horrible physical and mental condition. He was made to wear shackles and handcuffs to a hearing. He was so shamed by being made to hop through the front entrance of the court house under armed guards, through a crowded foyer to enter the courtroom. Then, he was made to repeat that experience to return to the psych ward. Please don't get me wrong. I am not blaming law enforcement providers. They don't have a choice when left to pick up the pieces as the system fails. Again, I blame the law, not the people. However, our son has been tazed over 8 times including one transport in which he was tazed 3 times. That particular time, MCS said his heart stopped and he died but Jesus brought him back. This is protocol, law officers have no choice. When the patient goes untreated for long periods they can become unpredictable.

Now after years of delayed intervention, we see the devastating results. Each relapse for MCS has permitted the disease to advance. At first it was Schizophrenia, then Paranoid Schizophrenia, then Paranoid Schizophrenia with Bi-Polar Effect and more. Each delay has resulted in the need to increase medication, from 60 milligrams to 80mg, 100mg, 120mg, 160mg, 180mg, 200mg with less and less recovery of his original personality and functionality in society. The high dosages have resulted in the need of other drugs to ease side effects.

Yes, I believe it could have been much different. There are states who permit guardian authorized forced medication until a patient has recovered enough to have the incentive necessary to willingly stay on medication. It was in another state, with those laws, where our son had the most successful, most amazing recovery while with the shortest hospitalization. So made whole was he, that he was able to enroll in college, was recognized as an honor student, and earned a certification in welding. He held gainful employment for a year. Then as often happens, he relapsed, this time in North Dakota. Treatment was delayed, he was left to sit in a jail for 6 weeks waiting for a hearing. He was transported to an acute care mental hospital when officers could not bear watching him suffer any longer.

So much damage has occurred to our son because of delays in treatment. I can't help wonder what might have been. Still there is hope. People with this illness, can live normal lives, have jobs raise families if they stay on their medication. That is the greatest challenge. Current ND laws are well intentioned but in these cases they cause harm. Guardians and North Dakota Mental Health professionals need the right to force medication when in their



informed judgment, it is in the best interest of the patient. They need their hands unshackled from the laws of this state through this bill.

I was encouraged again and again, that if I ever got elected, I should work on fixing how mentally ill people are treated in North Dakota. Prompted by the many professionals who have tried so hard to help our son, his doctors, human service agents, lawyers, law officers, states attorneys, I ask you today vote Do Pass on ~~House Bill 1365~~.

*Senate Bill 2291*

Thank you for giving me the opportunity to speak today. I would be happy to answer any questions.

Kathy Skroch



TESTIMONY TO:

SENATE HUMAN SERVICES COMMITTEE

65<sup>TH</sup> NORTH DAKOTA LEGISLATIVE ASSEMBLY

Senate Bill 2291 2/07/2017

Madam Chairman Senator Lee and Committee Members:

I am Cheryl Rising, Family Nurse Practitioner (FNP) and Legislative Liaison for the North Dakota Nurse Practitioner Association (NDNPA). I am here to testify in support of Senate Bill 2291 regarding medication pending treatment order and powers and duties of a guardian regarding medical decisions.

Advance Practice Registered Nurse's (APRN) and Physician Assistant are currently listed on page 1. On page 2 line 1 we recommend adding Advance Practice Registered Nurse's (APRN) and Physician Assistant to keep the wording consistent throughout. This would eliminate any barriers to our scope of practice. This concludes my testimony and I entertain any questions.

Cheryl Rising, RN, MS, FNP-BC

701-527-2583

crisingnp@gmail.com

SB2291  
Attch #2  
2/7  
pg1

Senate Human Services Committee  
Sixty-Fifth Legislative Assembly of North Dakota  
Senate Bill No. 2291  
February 7, 2017

SB 2291  
Att 4 #3  
2/7  
pg 1

Good morning, Chairman Lee and Members of the Senate Human Services Committee. I am David Boeck, a State employee and Director of Legal Services for the Protection & Advocacy Project. The Protection & Advocacy Project is an independent state agency that acts to protect people with disabilities from abuse, neglect, and exploitation, and advocates for the disability-related rights of people with disabilities.

I serve on the court system's Guardianship Workgroup that has been studying the guardianship and conservatorship laws to propose appropriate amendments, among other things. The Workgroup has been effective at developing appropriate amendments to current North Dakota guardianship and conservatorship laws.

The court system's Guardianship Workgroup has not met since these bills were introduced. The Workgroup has not taken a position on either bill.

Last week the House Human Services Committee held a hearing on House Bill 1365, which is substantially similar to Senate Bill 2291. I had agreed to testify in opposition to HB 1365, so the Guardianship Workgroup would have time to study it and propose amendments, as appropriate, for the Sixty-Sixth Legislative Assembly.



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#3  
2/7  
pg 2

But nearly everyone in attendance agreed the problem needs an urgent remedy. The House Human Services Committee added an emergency clause to the bill.

I have proposed amendments to SB 2291 to facilitate a guardian's ability to make a forced medications decision at the State Hospital, removing reference to the guardianship statute, which is subject to amendment and repeal.

A second amendment seeks to establish a new subsection to section 30.1-28-12 because it does not belong in subsection 4, as proposed in SB 2291. Subsection 4 contains prohibitions on a guardian's authority but does not add any authority and does not mention decisions on forced medications.

Without an amendment, Section 2 of SB 2291 begins with a misstatement of law that could lead to errors. Present law (N.D.C.C. section 30.1-28-12 (4)), as amended under SB 2291, would begin, "A guardian has general or limited authority, as determined by the court, to make medical decisions ...." But some guardians have no authority to make medical decisions.

Without change, Section 2 would create confusion.

Please let me know if you have any questions.

Proposed Amendment to Senate Bill No. 2291

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#3  
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pg 3

Page 1, line 1, after "Act" insert "to create and enact a new subsection to section 30.1-28-12 of the North Dakota Century Code and"

Page 1, line 1, remove "and subsection 4 of section"

Page 1, line 2, remove "30.1-28-12"

Page 1, line 3, before the period, insert "and to declare an emergency"

Page 1, line 15, replace "pursuant to section 30.1-28-12" with "to implement the directive of a properly authorized guardian"

Page 1, line 21, after "2." replace the remainder of the bill with "A new subsection to section 30.1-28-12 is created and enacted as follows:

Full authority to make medical decisions includes the authority to consent to prescribed medications over the objection and physical resistance by the ward. Before consenting to the forcible administration of a medication, the guardian:

- a. Shall approve the forcible administration of the medication only when the ward's treating mental health professional, has determined:
  - (1) The prescribed medication is necessary to treat the individual effectively;
  - (2) No other medication to which the ward will consent has the potential for a comparable benefit;
  - (3) The potential benefits of the prescribed medication outweigh the known risks to the ward;
  - (4) The prescribed medication is the least restrictive form of intervention necessary to meet the treatment needs of the individual;
- b. Shall make a good faith effort to see that the ward has been fully informed of the value of the medication to the ward's treatment and has been given the opportunity to accept the medication voluntarily.

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#3  
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pg 4

Page 2, line 3, after line three, insert:

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Renumber accordingly



Proposed Amendments to Senate Bill No. 2291

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Attache  
#4  
pg1

Page 1, line 3, after "decisions" insert "; and to declare an emergency"

Page 2, line 1, after "physician's" insert ", physician assistant's, or advanced practice registered nurse's"

Page 2, line 1, after "recommendation" insert "when the power to provide forced medication is specifically included in the guardianship order"

Page 2, after line 3, insert:

**"SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 25-03.1, a new subsection to section 30.1-28-04, and a new subsection to section 30.1-28-12 of the North Dakota Century Code, relating to powers, duties, and authority of a guardian regarding medical decisions; and to declare an emergency.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1.** A new section to chapter 25-03.1 of the North Dakota Century Code is created and enacted as follows:

**Guardian consent to involuntary treatment with prescribed medication.**

Notwithstanding sections 25-03.1-16, 25-03.1-18.1, and 25-03.1-24, if a patient refuses treatment with prescribed medication, a treating physician, physician assistant, psychiatrist, or advanced practice registered nurse may treat with prescribed medication upon consent of the patient's guardian pursuant to section 3 of this Act.

- a. The guardian's consent for involuntary treatment with prescribed medication may not be in effect for more than ninety days without receiving another recommendation and determination pursuant to section 3 of this Act.
- b. The patient has the right to be free of the effects of medication at the preliminary or treatment hearing by discontinuance of medication no later than twenty-four hours before the hearing unless, in the opinion of the prescriber, the need for the medication still exists or discontinuation would hamper the patient's preparation for and participation in the proceedings.
- c. The guardian may not consent to involuntary treatment with prescribed medication solely for the convenience of facility staff or for the purpose of punishment.

**SECTION 2.** A new subsection to section 30.1-28-04 of the North Dakota Century Code is created and enacted as follows:

A grant of general authority to make medical decisions includes the authority to consent to involuntary treatment with prescribed medications. Except upon specific findings of the court, a grant of limited authority does not include authority to consent to involuntary treatment with prescribed medications.

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#1  
2/13

**SECTION 3.** A new subsection to section 30.1-28-12 of the North Dakota Century Code is created and enacted as follows:

A guardian with authority to consent to involuntary treatment with prescribed medications may not provide consent without receiving a recommendation and determination from the ward's treating physician, physician assistant, psychiatrist, or advanced practice registered nurse that:

- a. The proposed prescribed medication is clinically appropriate and necessary to effectively treat the ward and that the ward requires treatment;
- b. The ward was offered that treatment and refused it or that the ward lacks the capacity to make or communicate a responsible decision about that treatment;
- c. Prescribed medication is the least restrictive form of intervention necessary to meet the treatment needs of the ward; and
- d. The benefits of the treatment outweigh the known risks to the ward.

**SECTION 4. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly

Amendment prepared by the Department at the request of Senator Lee.



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2-15-17  
#1 p 1

PROPOSED AMENDMENTS TO SB 2291

Page 1, line 1 after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 25-03.1, a new subdivision to subsection 30.1-28-03(2), and new sections to chapter 30.1-28 of the North Dakota Century Code relating to authorization for involuntary treatment with prescribed medication.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1:** A new section to chapter 25-03.1 of the North Dakota Century Code is created and enacted as follows:

**Involuntary treatment with prescribed medication in guardianships.**

Notwithstanding sections 25-03.1-16, 25-03.1-18.1, and 25-03.1-24, if a patient refuses treatment with prescribed medication, a treating physician, physician assistant, psychiatrist, or advanced practice registered nurse may treat with prescribed medication pursuant to section 3 of this Act.

**SECTION 2:** A new subdivision to subsection 30.1-28-03(2) of the North Dakota Century Code is created and enacted as follows:

If the proposed guardian seeks authority for involuntary treatment with prescribed medication under 30.1-28-16, the specific facts required under Section 3 of this Act and must include an attached recent report under Section 3 of this Act.

**SECTION 3:** A new section to chapter 30.1-28 of the North Dakota Century Code is created and enacted as follows:

**Court-authorized involuntary treatment with prescribed medication.**

1. Upon notice and hearing, a guardian may request authorization from the court for a ward to be treated with prescribed medication. The request may be considered by the court in the initial procedure for court appointment of a guardian or at a separate involuntary treatment with prescribed medication hearing. Upon the filing of a request, the court shall set a date for hearing on the issues and appoint an attorney to represent the ward, unless the ward is represented by private counsel.
2. As a part of the request, the guardian must provide a report from the treating expert examiner, which shall state the expert examiner's qualifications and summary of the expert examiner's history in treating the ward, and another expert examiner not involved in the current diagnosis or treatment of the ward which shall state the expert examiner's qualifications. Additionally, the reports shall certify:
  - a. That the proposed prescribed medication is clinically appropriate and necessary to effectively treat the ward and that the ward is a person requiring treatment;

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HLP

- b. That the ward was offered that treatment and refused it or that the ward lacks the capacity to make or communicate a responsible decision about that treatment;
  - c. That prescribed medication is the least restrictive form of intervention necessary to meet the treatment needs of the ward; and
  - d. That the benefits of the treatment outweigh the known risks to the ward.
3. a. Evidence of the factors certified under subsection 2 may be presented to the court within the request and during the initial hearing for court appointment of a guardian under section 30.1-28-03 or at a separate involuntary treatment with prescribed medication hearing. The court in ruling on the requested authorization for involuntary treatment with prescribed medication shall consider all relevant evidence presented at the hearing, including:
- (1) The danger the ward presents to self or others;
  - (2) The ward's current condition;
  - (3) The ward's treatment history;
  - (4) The results of previous medication trials;
  - (5) The efficacy of current or past treatment modalities concerning the ward;
  - (6) The ward's prognosis; and
  - (7) The effect of the ward's mental condition on the ward's capacity to consent.
- b. Involuntary treatment with prescribed medication may not be authorized by the court solely for the convenience of staff or for the purpose of punishment.
4. If the factors certified under subsection 2 have been demonstrated by clear and convincing evidence, the court may include in its findings on the request, or it may issue a separate order after notice and hearing, authorizing the involuntary treatment of the ward with prescribed medication on such terms and conditions as are appropriate. The order for involuntary treatment with prescribed medication, however, may not be in effect for more than ninety days, unless specifically authorized by the court.

**SECTION 4:** A new section to chapter 30.1-28 of the North Dakota Century Code is created and enacted as follows:

**Involuntary treatment with prescribed medication hearing.**

1. The involuntary treatment with prescribed medication hearing must be held within three days, exclusive of weekends and holidays, of the date of the filing of the request. The court may extend the time for hearing for good cause.



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2. The ward has the right to an examination by an independent expert examiner if so requested. If the ward is indigent, the county of residence of the ward shall pay for the cost of the examination and the ward may choose an independent expert examiner.
3. The hearing must be held in the county of the ward's residence or location or the county where the state hospital or treatment facility treating the ward is located. At the hearing, evidence in support of the request must be presented by the guardian or guardian's private counsel. During the hearing, the guardian and the ward must be afforded an opportunity to testify and to present and cross-examine witnesses. The court may receive the testimony of any other interested person. All individuals not necessary for the conduct of the proceeding must be excluded, except that the court may admit individuals having a legitimate interest in the proceeding. The hearing must be conducted in as informal a manner as practical, but the issue must be tried as a civil matter. Discovery and the power of subpoena permitted under the North Dakota Rules of Civil Procedure are available to the ward. The court shall receive all relevant and material evidence that may be offered as governed by the North Dakota Rules of Evidence. There is a presumption in favor of the ward, and the burden of proof in support of the request is upon the requester. If, upon completion of the hearing, the court finds that the request has not been sustained by clear and convincing evidence, the court shall deny the request.

**SECTION 5:** A new section to chapter 30.1-28 of the North Dakota Century Code is created and enacted as follows:

**Length of involuntary treatment with prescribed medication and continuing treatment orders.**

An initial order for involuntary treatment with prescribed medication may not exceed ninety days, unless the court is presented with evidence that the ward will continue to require treatment beyond the ninety day period with the prescribed medication and the ward has habitually refused treatment. If the Court determines the ward will continue to require treatment with the prescribed medication beyond the ninety day period and orders continuing treatment with prescribed medication, the order for continuing treatment with prescribed medication may be for a period not to exceed the term of the appointment of the guardian.

**SECTION 6:** A new section to chapter 30.1-28 of the North Dakota Century Code is created and enacted as follows:

**Right to treat.**

Medical personnel may treat a ward with prescribed medication or a less restrictive alternative if, in the opinion of an expert examiner, these treatments are necessary to prevent bodily harm to the ward or others or to prevent imminent deterioration of the ward's physical or mental condition and there is no time to obtain a court order. This chapter does not prohibit a hospital from rendering medical care without the need for consultation, if in the exercise of



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sound medical judgment that care is immediately necessary and delay would endanger the life of, or adversely and substantially affect the health of, the ward.

**SECTION 7: EMERGENCY.** This Act is declared to be an emergency measure.”

Renumber accordingly

Amendment prepared by the Guardianship Standards Workgroup of the Supreme Court

February 13, 2017

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PROPOSED AMENDMENTS TO SENATE BILL NO. 2291

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 25-03.1, a new subsection to section 30.1-28-04. and a new subsection to section 30.1-28-12 of the North Dakota Century Code, relating to powers, duties, and authority of a guardian regarding medical decisions; and to declare an emergency.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1.** A new section to chapter 25-03.1 of the North Dakota Century Code is created and enacted as follows:

**Guardian consent to involuntary treatment with prescribed medication.**

Notwithstanding sections 25-03.1-16, 25-03.1-18.1, and 25-03.1-24, if a patient refuses treatment with prescribed medication, a treating physician, physician assistant, psychiatrist, or advanced practice registered nurse may treat the patient with prescribed medication upon consent of the patient's guardian pursuant to section 3 of this Act.

1. The guardian's consent for involuntary treatment with prescribed medication may not be in effect for more than ninety days without receiving another recommendation and determination pursuant to section 3 of this Act.
2. The patient has the right to be free of the effects of medication at the preliminary or treatment hearing by discontinuance of medication no later than twenty-four hours before the hearing unless, in the opinion of the prescriber, the need for the medication still exists or discontinuation would hamper the patient's preparation for and participation in the proceedings.
3. The guardian may not consent to involuntary treatment with prescribed medication solely for the convenience of facility staff or for the purpose of punishment.

**SECTION 2.** A new subsection to section 30.1-28-04 of the North Dakota Century Code is created and enacted as follows:

A grant of general authority to make medical decisions includes the authority to consent to involuntary treatment with prescribed medications. Except upon specific findings of the court, a grant of limited authority does not include authority to consent to involuntary treatment with prescribed medications.

**SECTION 3.** A new subsection to section 30.1-28-12 of the North Dakota Century Code is created and enacted as follows:

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A guardian with authority to consent to involuntary treatment with prescribed medications may not provide consent without receiving a recommendation and determination from the ward's treating physician, physician assistant, psychiatrist, or advanced practice registered nurse that:

- a. The proposed prescribed medication is clinically appropriate and necessary to effectively treat the ward and that the ward requires treatment;
- b. The ward was offered that treatment and refused it or that the ward lacks the capacity to make or communicate a responsible decision about that treatment;
- c. Prescribed medication is the least restrictive form of intervention necessary to meet the treatment needs of the ward; and
- d. The benefits of the treatment outweigh the known risks to the ward.

**SECTION 4. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly



Att. 1  
SB2291  
3-14-17

House Human Services Committee  
Sixty-Fifth Legislative Assembly of North Dakota  
Senate Bill No. 2291  
March 14, 2017

Good morning, Chairman Weisz and Members of the House Human Services Committee. I am David Boeck, a State employee and Director of Legal Services for the Protection & Advocacy Project. The Protection & Advocacy Project is an independent state agency that acts to protect people with disabilities from abuse, neglect, and exploitation, and advocates for the disability-related rights of people with disabilities.

I serve on the court system's Guardianship Workgroup that has been studying the guardianship and conservatorship laws to propose appropriate amendments, among other things. The Workgroup has been effective at developing appropriate amendments to current North Dakota guardianship and conservatorship laws. The Legislature has already passed and the Governor has signed House Bill 1095, containing recommendations from the Guardianship Workgroup.

The Guardianship Workgroup discussed Senate Bill 2291 after the Senate Human Services Committee hearing but while the Committee was still working on amendments. The Guardianship Workgroup provided recommended amendments. Those recommendations included more rights protections than I am

presenting today, as those recommendations were largely rejected by the Senate Human Services Committee.

The proposed amendments from the Guardianship Workgroup mirrored the requirements of section 25-03.1-18.1 of the Century Code, which currently applies to individuals under an involuntary treatment order. This includes rights to a court-appointed attorney, identified evidentiary factors, and an independent expert examiner.

Tomorrow the Senate Human Services Committee will consider HB 1365, which you have already considered. Senate Bill 2291 arose from the same perceived problem as HB 1365. I refer to the problem as "perceived" because section 25-03.1-24 of the Century Code already permits treatment with a prescribed medication when a patient refuses but presents a risk of bodily harm (to self or others) or a risk of imminent deterioration in the patient's physical or mental condition.

In contrast with section 25-03.1-24, SB 2291 would allow treatment with medication refused by a patient when "clinically appropriate and necessary to effectively treat the ward," if it is "the least restrictive form of intervention necessary to meet the treatment needs of the ward," and the benefits outweigh the known risks. Senate Bill 2291 would make it easier to administer the prescribed medication over a patient's objection.

I am offering proposed amendments to the first engrossment of the SB 2291.

In its present form, the engrossed bill would protect an individual's right to be free of the medication at "the preliminary or treatment hearing." (Page 1, lines 16-17). This language does not explicitly cover other hearings as may arise. For example, if an individual were to challenge the guardian's decision on a forced medication, the engrossed bill would not provide this protection.

This provision should apply to any hearing while the individual is receiving a forced medication. The same conditions would apply if this language were changed to include all hearings. An individual has a right to challenge the guardian's decision to consent to a forced medication. In a hearing on that challenge, it would be appropriate to provide the individual the same protection as SB 2291 proposes to provide for a "preliminary or treatment hearing."

At the end of the bill (section 3), there should be a provision explicitly recognizing the individual's right to challenge the decision in court. The bill should be amended to provide for a hearing and to identify the standard clear and convincing standard of proof.

Please let me know if you have any questions.



Proposed Amendments to Engrossed Senate Bill No. 2291

Page 1, line 16, remove "the preliminary or"

Page 1, line 17, replace "treatment" with "any"

Page 2, after line 17, insert:

- e. The guardian's consent remains effective for up to 90 days but no longer than the recommendation and determination of the treating physician, physician assistant, psychiatrist, or advanced practice registered nurse continues.
- f. The ward has a right to challenge the guardian's decision within the guardianship proceeding and the guardian would have the burden of proving by clear and convincing evidence the validity of the determination by the treating physician, physician assistant, psychiatrist, or advanced practice registered nurse.

Renumber accordingly