

2019 SENATE JUDICIARY COMMITTEE

SB 2246

2019 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2246
1/22/2019
#31162 (26:13)

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Meghan Pegel

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact section 5-01-05.1 of the North Dakota Century Code, relating to public intoxication.

Minutes:

2 Attachments

Chair Larson opens the hearing on SB 2246.

All are in attendance. **Senator Luick** is briefly at another hearing.

Capt. Andrew Frobig, Jail Administrator for Cass County, testifies in favor of the bill (see attachment #1)

Chair Larson: Excuse me, but Senator Lee the sponsor is here now.

Capt. Frobig: I will turn it over to her.

(2:40) Judy Lee, District 13 Senator, testifies in favor of the bill

Senator Lee: We're updating the definition of intoxicated so that it includes drugs or controlled substances. It allows law enforcement and all of the folks involved with this to be able to move forward with what is needed in order to keep an intoxicated individual in jail but not arrested as a matter of safety if they're under the influence of drugs.

(4:00-5:38) Capt. Frobig continues his testimony

Senator Myrdal: What is the definition of "under the influence"? It's vague to me.

Capt. Frobig: I have suggested changes to Senator Lee. With the current intoxication statutes as written, it says public intoxication is not a crime. The standard that we use for alcohol intoxication is not a threshold as far as a .20 or .10 like it is with driving. The threshold we use is that the law enforcement officer has deemed the person unsafe to care for themselves or unsafe for other people based on their behavior.

Chair Larson: and they need to articulate that in their report, correct?

Capt. Frobig: I don't actually receive the police report myself. Anyone that would challenge that I would say that's common practice within law enforcement. With drug intoxication, it would be the same exact thing. I don't see any changes there. The save for that, to prevent unreasonable application of this law, is giving the jail administrators and the jails the empowerment to decide when that person is safe for release. With intoxication we have released people within an hour of arriving at our facility because their behavior has dramatically changed. It will be a subjective call no matter what so we have to be able to trust the people who are doing this. If it was ever applied unreasonably, that would be something we would all be a concerned liability.

Chair Larson: When would you be able to bring in the verbiage you'd like to add?

Capt. Frobig: Yes, I drafted language and I can find it in my email and forward it to you (**see attachment #2**). Specifically, it related to the decision making as to when we could release such a person and under what circumstances. Basically making it clear in the language that it's up to the jail administrator to accept the person based on their medical capabilities to care for the person and it's up to their explicit judgement as to when that person is safe for release or transfer to medical care.

(9:25) Senator Myrdal: What is the actual intent of adding this language?

Capt. Frobig: For instance, for those people who are on a synthetic substance and it's 7 degrees outside. The hospital deems that they don't have any medical needs at that time, but they're wandering around with no place to go. The practice right now is they apply a criminal charge to that person so that they can get them into the jail. We have a detox center in Fargo, but it operates beyond its capacity a lot of times. We started our jail taking people just for alcohol intoxication in January 2018. Looking at those people that have come in multiple times, not just once on a fluke situation, but who utilize that service 2 or more times, we've seen a dramatic decrease just in the last year in reduction in their actual criminal offenses, their court involvement. They're being brought in for detox and we're releasing them within 6-12 hours most times and the courts are never having to get involved. We're seeing some of them more often. They might get booked in 5 times within a month for that detox hold whereas they may have been booked in 6 times in the last year and it was for 15-30 days each time for the same behavior-nuisance offenses, criminal trespassing, disorderly conduct, alcohol in public and things like that.

Chair Larson: So the officer sometimes can just hold them on their intoxication rather than charging them with a crime.

Capt. Frobig: Correct.

Chair Larson: Do you do a brief assessment when they come in to see if you can refer them?

Capt. Frobig: Yes. We deal with people that have a criminal charge that are intoxicated all the time. I would say over half of our people who get arrested off the street are under the influence of some type of substance to varying degrees of how high or intoxicated they are. We go through the same procedures with everyone. Under the DOCR rules, anyone coming into a facility under this statute, must see a doctor before they arrive at the jail. We get that clearance first. With alcohol, that assessment is less valuable than it is for drug intoxication because that's just a point in time assessment. The real concern with alcohol is not when they're drunk but when they start going through withdrawal as they start to sober up. That's

a life and death situation potentially. With drug intoxication not so much. We've had to sit on inmates in the hospital that were arrested for a criminal offense, drug intoxicated, and got admitted right away, so now we're sitting with them. That medical clearance process at the hospital is the first indicator and then there's ongoing assessments and observation requirements under DOCR rules. This really doesn't change anything as far as what are current practices are because we still have to care for those people when they have a criminal charge. This just reduces the number of criminal charges that would be applied to people.

(13:49) Vice Chairman Dwyer: I see the statute says "no person may be prosecuted at any court solely for public intoxication" then it goes onto say "law enforcement officers may utilize standard identification procedures on all persons given assistance because of apparent intoxication". So DOCR must have some regulations or standards they've adopted for this.

Chair Larson: It's sort of like a pick up and hold, not really an arrest.

Capt. Frobig: We need to separate street cops from the jail facilities. Street cops are the ones who make a decision whether or not they're going to hold this person for safety purposes. Sometimes we just get a John Doe, we don't know their name and we have to try to work to establish what that is. We enter information basic information about them and have to be prepared if there was an emergency. However, they don't get a criminal charge and it never goes into the court system. We don't fingerprint them or mugshot them for the most part. There always held up in the intake area where they can be under constant observation as well. This is more designed for when we see people laying in the snowbank. We take them to the doctor, the doctor says he's fine, then that officer needs somewhere to take that person. The detox center is great if it's available. Not every community has one; sometimes jails are the only option, especially for a homeless person. This just extends that to somebody who's under the influence of a chemical substance.

Vice Chairman Dwyer: What's the standard for whether it's alcohol or drugs? There's a statute that says there are standards and so for the police officers, there must be standards to decide whether somebody is publicly intoxicated.

Capt. Frobig: There are standards as written right now, it's us deeming that person a risk to themselves or others based on the circumstances at the time.

Chair Larson: When I worked with police officers, they had to articulate the reason for picking up anybody. They would describe what the circumstances were that caused them to pick somebody up.

Capt. Frobig: In the existing statute, there's a limitation for up to 24 hours for alcohol intoxication and that's a very reasonable standard because we're going to see either the signs of withdrawal or a safe sobering within that time period. With drugs in my experience and certainly some synthetics, it's significantly longer than that. We might see in some cases a deterioration after 2 or 3 days. I don't really know what the fix for that is because I don't necessarily want to extend indefinitely the amount of time we hold somebody. The one suggestion I have that we might consider would be that if we don't deem them safe within 24 hours, that at that point it is a mandatory transfer to medical care for a further assessment.

(17:57) Pam Sagness, Director of Behavior Health with DOH, testifies in favor of bill.

Sagness: Our role is licensing social detox and detox programs in the state. In our state we have a significant shortage of detox facilities. We really only have 2 that are fully functioning in communities and that's in Grand Forks and in Fargo which are run by the local public

health units and locally supported. We've been doing a lot of work in Bismarck and hope to have something here soon. Other than that most of the social detox is through more traditional treatment programs that are available throughout the state. One of the things that has been difficult is when we look at this alcohol chapter, a lot of individuals end up getting criminal charges because of the fact that there are not social detox centers.

The intent was to decrease legal charges so that individuals are not getting charges for things like disorderly conduct and things of the like just because they don't have a detox facility available. This has been a partnership between jail administrators, the DOCR and the DOH to come up with some creative solutions. Fargo has asked "How can we make sure people are safe but get them to the right place without bogging down the legal system with charges that aren't necessary for someone who has an addiction or disease". They work closely with social detox in their community so that if an individual is stable within 2 hours and doesn't need to be in the jail, they can move on. We don't need to utilize the cost and the resources within the jail setting when we can get someone out of there and get them into more of a therapeutic system or service. The intent is right now if you're intoxicated by something other than alcohol, you will still be charged. The jail is the last resort.

Of those 4 choices, the first is if there's someone else at home who can watch this individual, second is a hospital or medical facility that could deal with the needs of this individual, third is a treatment center or social detox, and lastly if that person is not safe, then it's a jail. We don't want jails in North Dakota acting as social detox; it's the last thing we want. They're not trained for it and they don't have the capacity or the staff. We've worked really closely to give them the tools they need to do an assessment if someone comes in intoxicated, but it's important to note that even if someone comes in a warrant, they come in intoxicated. So jails are going to deal with this regardless of whether or not they have this requirement in Century Code or whether it's someone turning themselves in because they have charges.

Chair Larson: Please describe the difference between social and medical detox.

Sagness: Medical detox means that someone needs to be in a hospital or a setting that would have access to prescribing, physicians and constant medical monitoring. A social detox setting is able to use medications. They have partnership with physicians; however, it's more of a supported environment rather than a clinical treatment environment. We have licensing rules in our administrative rules that clarify the difference between when someone is stable to be in a social detox and it's based on something called the "CIWA Score" which looks at what are their withdrawal symptoms and what are the things they are experiencing. Part of what we've done is provide a training for jails to use that CIWA so they can take someone who's too sick and get them back to medical care because sometimes withdrawal symptoms don't start at the point of assessment. So even if DOCR requires jails and law enforcement to have a screening done in a medical facility, withdrawal happens over time. The real risk is for those jail administrators that have the individuals that come in intoxicated and over time, the sicker they get, that's when the symptoms start. That medical clearance really isn't something that is tremendously meaningful in the context of whether or not someone is going to have an acute or fatal consequence.

Each law enforcement agency in North Dakota has their own standards. The DOCR provides guidance for jails but not specifically to law enforcement. We have been working with law enforcement to develop a consistent decision tree. We work community by community. They need support in knowing when to make which decision- send them home or to a medical facility. We've brought in technical experts from other states to actually

provide us some guidance. It's a process we're working on right now because it is very depending on the experience of each local law enforcement.

(23:40) Vice Chairman Dwyer: This definition will help in that whole process of less charges?

Sagness: Correct. That was the intent.

Chair Larson: Would it be your suggestion that we look for other sections of the law to add this to or to expand this one to say "or any other intoxicating substance"?

Sagness: I did see the recommendations that Capt. Frobig had recommended to Senator Lee and I think they're worth a consideration. One of the things he had identified in his language was being clear to say that the jail administrator could release someone sooner and that the jails would be utilizing oversight with the DOCR to make sure that they're doing things in a safe way. I think the language he presented earlier was meaningful and certainly isn't something we would be opposed to. We understand how this is an alcohol chapter, but it's difficult to say what the substance is when you have someone who is passed out on the side of the road. Many times I've worked crisis myself as a clinician. You can be in an emergency room and have no idea what you're dealing with. It's concerning for law enforcement and jail administrators.

Chair Larson closes the hearing on SB 2246.

Senator Myrdal: It would be wise to look at some of that language. I will work with Capt. Frobig.

2019 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2246
1/22/2019
#31215 (05:54)

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature: Meghan Pegel

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact section 5-01-05.1 of the North Dakota Century Code, relating to public intoxication.

Minutes:

No Attachments

Chair Larson calls the committee to order for committee work.

Senator Myrdal: I went to legislative council who prepared this bill for Senator Lee. We had a lengthy 45-minute discussion on this. The intent is valid- that these intoxicated people shouldn't have to be arrested and loaded up into court. The intent was purely to add drugs and controlled substances in combination of alcohol, beverages and such to the bill, but there were some questions as far as the definition of "intoxication". Capt. Frobeg also had some concerns that he had written in his testimony. At the conclusion of our discussion with legislative council, the definition in this section on intoxication stands on its own feet if you will. It's defined in a different part of the code, but since it's defined in this part of the code, that does not effect that. It is only subsection 1 that's changed. I'm personally comfortable to move forward on this bill.

Senator Myrdal: Moves a Do Pass.

Senator Luick: Seconds.

Chair Larson: He wanted to add another definition about intoxication that might not be due to alcohol and drugs. I think we can leave that because I don't think that will be the main problem that they're having.

Senator Myrdal: The intention of this specific legislation is just to add controlled substances to alcohol. There's no other intent. That's almost a whole, separate issue.

A Roll Call Vote Was Taken: 6 Yeas, 0 Nays, 0 Absent. Motion carries.

Senator Myrdal will carry the bill.

**2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2246**

Senate Judiciary 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 Senator Myrdal Seconded By Senator Luick

Senators	Yes	No	Senators	Yes	No
Chair Larson	X		Senator Bakke	X	
Vice Chair Dwyer	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Osland	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Myrdal

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

REPORT OF STANDING COMMITTEE

SB 2246: Judiciary Committee (Sen. D. Larson, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2246 was placed on the Eleventh order on the calendar.

2019 HOUSE JUDICIARY

SB 2246

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee Prairie Room, State Capitol

SB 2246
3/5/2019
33257

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: DeLores D. Shimek	By Elaine Stromme
------------------------------------	-------------------

Explanation or reason for introduction of bill/resolution:

Relating to public intoxication.

Minutes:

Attachment 1

Chairman Koppelman: Opened the hearing on SB 2246.

Senator Judy Lee: Introduced bill. We don't want someone held in jail for their own safety and have to be arrested to be there. There are only a couple places that do have detox in the state. Intoxication with drugs, controlled substances, or alcoholic beverages

Rep. Paur: You cannot be arrested for public intoxication. Why didn't you include it in the definitions in that section instead of here with all the other definitions?

Senator J. Lee: The Legislative Counsel Attorney drafted it and chose the location.

Rep. Rick Becker: Is the person under the influence mean?

Senator J. Lee: If you find a better definition am open to it.

Rep. Satrom: In Jamestown we take them to the state hospital.

Senator J. Lee: Part of the problem is there isn't a place for people to go. It is a social detox situation.

Pam Sagness, Director of the Behavioral Health Division of DHS: (Attachment #1) stopped 9:20 We don't believe jails should be used for detoxification. We need more detoxification places across the state. The intent of this bill is merely to provide a short term solution.

Rep. Satrom: I like this idea. I remember taking someone to a detox and he had diabetes.

Pam Sagness: Jails need to protect themselves too. We often see a situation where they are medically cleared and they are transferred to a jail. So an individual can be cleared in a medical facility and six hours later they start to develop withdrawal symptoms. That is the important part about the training.

Rep. Satrom: Are there some that have protocols and some that don't? Where does the liability lie with that?

Pam Sagness: The reason I am talking about local decision making is that this bill would allow progressive programs who are trying to find solutions in their own area, and the jails that are not equipped will not be required to take these individuals.

Rep. Vetter: In this definition it looks like to me that it could also be someone who was on prescribed drugs, would they be considered intoxicated?

Pam Sagness: The intent is just not to come up with charges for a person who is intoxicated. This would be for the individuals regardless of their substance. If they end up in jail, they would not have to be charged with a crime in order to be held for a few hours, and released or transitioned into a detox program.

Rep. Vetter: Why is the state in the business of picking them up?

Pam Sagness: The majority of the times it is law enforcement are left dealing with someone who is intoxicated, they have already taken them to an emergency department and they are medically cleared, but they are too intoxicated to care for themselves so they basically come back repeatedly.

Rep. Vetter: So are we talking about someone in a bar who they kick out?

Pam Sagness: When law enforcement is called and they are out of options the only thing left is the jail.

Rep. Jones: I think we need to add in 1. If someone is a nuisance or has become a public nuisance. Don't you think we need to clarify this?

Pam Sagness: This bill is current as related to alcohol, we would like to expand this to include these other substances.

Rep. McWilliams: What is the current operating definition of being intoxicated, what is the state using now for the definition versus what is being put in?

Pam Sagness: I would need to defer to the people who drafted the bill. The intent here is not to create criminal penalties for someone who is intoxicated when they don't have enough resources to get to a detox center.

Chairman K. Koppelman: If someone is currently intoxicated on drugs, what happens now? Are they arrested for using drugs?

Pam Sagness: If someone would come to the Cass County Jail and they are not intoxicated from alcohol they don't fall in to having to do detox from alcohol. They would indeed be charged with a crime.

Representative Simons: You just added in drugs; correct. My sheriff said this would really clear things up because right now they would have to charge these people.

Pam Sagness: This was brought forward by jailers who work every day with law enforcement. The intent is not to create charges unnecessarily for individuals who need services.

Chairman K. Koppelman: Is this ever used?

Pam Sagness: I have never heard of it being used in a private home. The Senate Judiciary also did check because they had the same concerns.

Rep. Jones: You say a person can be held from 24 to 72 hours is that correct?

Pam Sagness: I have never heard of anyone staying longer.

Rep. Rick Becker: What this really comes down to is bringing in other substances other than alcohol? Who did that interpretation thinking it was just narrowed down to alcohol?

Pam Sagness: The jailers felt that this clarification would assist them in being able to do what they wanted to do in the first place just like it is being clarified in the alcohol chapter.

Rep. Jones: Everything that is in current statute is simply in a paragraph right now.

Pam Sagness: Yes.

Chairman K. Koppelman: How do we deal with people who repeat the alcohol problems?

Pam Sagness: Today we have a clear plan on how to move forward with the behavioral health changes that need to happen. One of the first things is withdrawal management services. It is a medical need and a necessity it should be a covered service. That is one of the things we are working on.

Chairman K. Koppelman: How is that working out with repeat offenders?

Pam Sagness: We need an engaging approach, if they want to be here is the key. I have seen children with 10 minors before they are referred.

Rep. Jones: You said ten times without being referred?

Pam Sagness: I don't know where the system fails.

Rep. Jones: Was it because that they didn't have those treatments or the programs available?

Pam Sagness: I would say both. We have already trained 27 people to be providers. The intent of that bill was to improve access so that people would feel confident that they could do that training and do it as a certified instructor.

Rep. Paulson: It was not a hearing with a judge?

Pam Sagness: No, often it would be informal and considered an unruly offense.

Representative Simons: Can you attempt to find out who their family is?

Pam Sagness: That is in current law. If you think about a young adult who has not had experience with alcohol. They are not responsive; they don't know who they are. The law enforcement lets them sleep it off till they are coherent.

Chairman K. Koppelman: When it says any additional costs, what is that? Transporting the person to the jail or home or hospital?

Pam Sagness: I have never heard of any additional billing.

Rep. McWilliams: If they were to bill what would it be?

Pam Sagness: There is established daily billing fees for withdrawal management services.

Rep. McWilliams: Who will pay for this? The Individual?

Pam Sagness: I don't know how that would work legally.

Opposition:

Neutral:

Hearing Closed.

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

SB 2246
3/6/2019
33288

☐ Subcommittee
☐ Conference Committee

Committee Clerk: DeLores D. Shimek By: Elaine Stromme
--

Explanation or reason for introduction of bill/resolution:

Relating to public intoxication.

Minutes:

--

Chairman Koppelman: Opened the meeting on SB 2246.

Rep. Satrom: Do Pass Motion on SB 2246

Rep. Hanson: Seconded

A roll call vote was taken: Yes - 11 No - 0 Absent - 3

A Do Pass carried for SB 2246

Rep. Buffalo will carry bill SB 2246

Chairman K. Koppelman: The meeting is closed on SB 2246

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
SB 2246**

House Judiciary 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. Satrom Seconded By Rep. Hanson

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman	X		Rep. Buffalo	X	
Vice Chairman Karls	X		Rep. Karla Rose Hanson	X	
Rep. Becker	X				
Rep. Terry Jones	X				
Rep. Magrum	X				
Rep. McWilliams	X				
Rep. B. Paulson	X				
Rep. Paur	A				
Rep. Roers Jones	A				
Rep. Satrom	X				
Rep. Simons	A				
Rep. Vetter	X				

Total (Yes) 11 No 0

Absent 3

Floor Assignment Rep. Buffalo

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

REPORT OF STANDING COMMITTEE

SB 2246: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **DO PASS** (11 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). SB 2246 was placed on the Fourteenth order on the calendar.

2019 TESTIMONY

SB 2246

#1
SB 2246
1/22

Senator Diane Larson, Chair
Senator Michael Dwyer, Vice Chair
Judiciary Committee – Fort Lincoln Room

Capt. Andrew R. Frobig, Jail Administrator, Cass County Sheriff's Office

Monday January 22, 2019

Support for Senate Bill No. 2246 – Amendment to the definition of Intoxication in NDCC Chapter 5

Madam Chair and members of the committee,

I appear before you today as the Administrator of the Cass County Jail, and also on behalf of the ND Correctional Center Administrators Association. I am here today to offer my individual support for the concept of this bill, but also to bring to your attention some concerns that I have personally noted, and some that I have collected from my colleagues through our professional association.

ND Century Code has long provided four options for Law Enforcement who encounter an intoxicated person who is at risk to themselves or to other persons. A Peace Officer can take that person to a hospital for medical care, to their home, to an appropriate detoxification center, or to a jail under if certain requirements are met. This bill, at face value, I believe is intended to make a technical correction to the current definition of "intoxicated person". The current statute permitting such persons to be transported by Law Enforcement is codified in Chapter 5, which deals with Alcoholic Beverages.

The first concern I will address is the fact that 05-01-02 provides specific exceptions that "Nothing contained in this title may be construed to apply to the following articles when they are unfit for beverage purposes...", and among those exceptions are specifically stated

- 2 Patent, proprietary, medical, pharmaceutical, antiseptic, and toilet preparations;*
- 4. Scientific, chemical, and industrial products.*

While I do believe that the intent of this change is to include persons who have ingested, inhaled, or injected any intoxicating substance, I do see that there is a conflict with other existing statutory language, which would leave jails open to claims of illegal detention. I do not have any specific language suggestions as to how this should be corrected, I only wish to bring this potential conflict to the attention of the committee.

My second concern deals with the inherent differences between alcohol and drug intoxication. 5-01-05.1 imposes a 24 hour limit for how long a jail can hold someone due to intoxication. While this is almost always a reasonable timeframe when dealing with alcohol, my personal experience when dealing with drug intoxicated persons is that it can often be several days, depending on the substance, before a person is no longer negatively affected by that substance. This is especially true with some synthetics.

I can speak from personal experience that it is not uncommon for us to receive a new inmate with criminal charges who has to be monitored and isolated for several days before the effects of their drug intoxication are cleared. With synthetic and other street drugs, we can even see a deterioration of health after 24 hours have elapsed. In many of those cases we end up transferring the person to a hospital because their needs exceed our in house capabilities.

The third concern, which has been relayed to me by several colleagues, relates to the current capacity to deal with these additional admissions. They are concerns about their ability to properly care for these persons, their physical capacity, and their inability to effectively make determinations as to when it is reasonably safe to release such persons.

All of us currently deal with drug intoxication on a regular basis. When criminal charges are present, we can all recognize when someone is in need of additional medical care. From my perspective, a change in the century code to redefine intoxication is of value, since it will reduce the need to apply a criminal charge simply to have a place to take a person who's behavior is unsafe due to drug intoxication. While I support the change that is proposed in this bill, I also agree with my colleagues that there are additional language changes that are needed to protect both the intoxicated person and the jail facilities who are asked to care for them.

I thank you for your time and consideration of these concerns.

Capt. Andrew Frobis
Jail Administrator
Cass County Sheriff's Office

#2
SB 2246
1/22

NDLA, S JUD - Pegal, Meghan

From: Frobig, Andrew <FrobigA@casscountynynd.gov>
Sent: Tuesday, January 22, 2019 9:27 AM
To: NDLA, S JUD - Pegal, Meghan
Subject: Fwd: Intoxication definition draft bill

Follow Up Flag: Follow up
Flag Status: Flagged

CAUTION: This email originated from an outside source. Do not click links or open attachments unless you know they are safe.

Get [Outlook for iOS](#)

From: Frobig, Andrew
Sent: Sunday, January 13, 2019 3:25:36 PM
To: Lee, Judy; Sagness, Pamela T.
Cc: Jahner, Jesse
Subject: Intoxication definition draft bill

Sen. Lee,

Pam Sagness and I have been corresponding today regarding support for the draft bill regarding changes to the definition of intoxication.

One technical concern I have is that 05-01-02 says that nothing contained in Chapter 5 may be construed to apply to (list of exclusions) when they "are unfit for beverage purposes."

Just wanted to convey that placing such a change within chapter 5 may create somewhat of a paradox or conflict.

That being said, I have some other concerns about the optics of timing and lack of prior discussion. While I support the changes myself and feel they are both inevitable and fully capable of being implemented, I have not had the opportunity to discuss with any of my colleagues.

I do have one suggestion for some additional clarifying language that would both alleviate my other concerns and also make clear that the jails are not obligated to take everyone under this chapter, but are rather legally granted the option of holding in this capacity. In fact, I think it may help to clean up for what we are currently doing as well with alcohol intoxication.

The DOCR spent significant time in revising the facility rules related to alcohol intoxication admissions. Assuming that the definition of intoxication was amended per the first line in your draft bill, I have some suggested revisions to #3 on your draft bill.

I'm Just going to write out what I'd suggest that entire section might read...

Current:

3. An intoxicated person may not be held in jail because of intoxication for more than 24 hours. An intoxicated person may not be placed in an jail unless a jailer is constantly monitoring the individual and medical services are provided if the need is indicated.

Suggested revision:

3. An intoxicated person may not be placed in a jail solely due to intoxication unless that jail is capable, at the time of admission and for the duration of time that person is held, of providing for necessary observation and medical care of the intoxicated individual. Such capabilities shall be determined by the Jail Administrator, and shall be prescribed by rules established under the authority of the Department of Corrections and Rehabilitation. An intoxicated person may not be held in a jail because of intoxication for more than 24 hours, and the determination of discharge shall be at the discretion of the Jail Administrator, in accordance with rules established under the authority of the Department of Corrections and Rehabilitation.

Capt. Andrew Frobig
Jail Administrator
Cass County Sheriff's Office
450 34th St S
Fargo, ND 58103
701-271-2958

#1
SB 2246
3-5-19
P. 1

Testimony
Senate Bill 2246 - Department of Human Services
House Judiciary Committee
Representative Kim Koppleman, Chairman
March 5, 2019

Chairman Koppleman and members of the House Judiciary Committee, I am Pamela Sagness, Director of the Behavioral Health Division of the Department of Human Services (Department). I appear today to provide testimony in support of Senate Bill 2246.

The widely used general term of "detoxification" can involve management of intoxication episodes and withdrawal episodes. Adults, at various points in time, may need intoxication management or may be in need of withdrawal management. Adolescents are more frequently in need of management for intoxication episodes than management for withdrawal symptoms.

When a person's substance use disorder has progressed to the point that physical dependence has developed, withdrawal management becomes the first (but not the sole) priority in treatment planning. The onset of a physical withdrawal syndrome can be uncomfortable and potentially dangerous. The Department licenses substance use disorder treatment programs, including programs that provide a withdrawal management level of care.

Century Code chapter 5-01-05.1 states peace officers have a responsibility to take an apparently intoxicated person to their home, the hospital, a detox center, or jail for the purposes of detoxification. With the limited number of social/medical detox providers in the state, other systems/providers (jails) are often left responsible but are not licensed or trained to provide the level of care required.

#1
SB2246
3-5-18
pg. 2

The Behavioral Health Division has partnered with the Department of Corrections and Rehabilitation and the Jail Administrators group to work towards ensuring safety for intoxicated individuals by providing tools and training to ND jails regarding intoxication and withdrawal management. This training provides assistance to jails in developing policies and utilizing tools that guide care for individuals under the care of the jail.

Withdrawal management services are greatly lacking across the state. The Behavioral Health System Study published in April 2018 also noted the need for improved access to intoxication and withdrawal management services. Currently, Fargo and Grand Forks are the only communities with stand-alone withdrawal management (social detox) programs.

Jails are not best suited for withdrawal management services; however, withdrawal management capacity outside of jails needs to be built across the state before the issue of intoxicated people in jails can be addressed. This bill provides a short-term solution while services are being developed.

Senate Bill 2246 will assist county jails, like Cass County, who are being innovative in addressing intoxication or withdrawal management needs. This idea was initially brought forward by Mr. Andy Frobig, Cass County Sheriff's Office Jail Administrator, during a panel discussion in Bismarck regarding the establishment of a social detox program for this region.

This concludes my testimony, and I am happy to answer any questions.