

**2021 SENATE HUMAN SERVICES**

**SB 2084**

# 2021 SENATE STANDING COMMITTEE MINUTES

## Human Services Committee Sakakawea Room, State Capitol

SB 2084  
1/6/2021

A BILL for an Act to amend and reenact section 25-03.1-20, subsection 3 of section 25-03.1-21, and section 25-03.1-26 of the North Dakota Century Code, relating to involuntary treatment and emergency detention.

**Madam Chair Lee** called the meeting to order at 8:34 a.m. All members present; Senator Lee, Senator K. Roers, Senator O. Larsen, Senator Hogan, Senator Clemens, Senator Anderson.

### Discussion Topics:

- North Dakota State Hospital capacity
- Adequate care / bed access coordination
- Mental health and substance abuse alternatives to incarceration reduction
- Human Service Center assistance

**Dr. Rosalie Etherington, Superintendent, North Dakota State Hospital, Department of Human Services (8:34)** Introduced SB 2084 and submitted testimony #295 in favor.

**Stephanie Dassinger, Deputy Director and Attorney, League of Cities (9:04)** Testified in opposition on behalf of the **Chiefs of Police of North Dakota** and submitted testimony #111

**Jesse Jahner, Sheriff of Cass County North Dakota (9:09)** Testified in opposition and submitted testimony #224

**Tim Blasl, President of the North Dakota Hospital Association (NDHA) (9:30)** Testified in opposition and submitted testimony #97

**Donnell Preskey Hushka, North Dakota Association of Counties (NDACo) (9:33)** Testified in opposition and submitted testimony #298

**Madam Chair Lee** closed the hearing at 9:37 a.m.

*Justin Velez, Committee Clerk*

**Department of Human Services  
Senate Human Services Committee  
Senator Lee, Chair  
January 6, 2021**

Chairman Lee, and members of the Senate Human Services Committee, I am Rosalie Etherington, Superintendent of the North Dakota State Hospital (NDSH) of the Department of Human Services (Department). I am here on behalf of the Department to support Senate Bill 2084.

We recommend adding the words, 'if below capacity,' to section 25-03.1-20, subsection 3 of section 25-03.1-21, and section 25-03.1-26 of the North Dakota Century Code, to ensure that the hospital can safely meet the individual's needs without jeopardizing patient care or staff safety.

Hospitals use capacity planning methods to balance the availability of beds, staff, and other resources with patient demand. The state hospital has a set number of budgeted beds. We must balance admissions and discharges to stay within this capacity.

North Dakota has expanded community behavioral health services with the express purpose of avoiding hospitalizations. We are also adding hospital beds in the west. These remedies should make it possible, with good coordination of care, for all psychiatric hospitals to remain at or below capacity to ensure that all individuals receive the right service, at the right time, in the right place.

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

January 6, 2021

#111

Senate Human Services

SB 2084

Sen. Lee, Chair

Good morning Chairman Lee and members of the committee. For the record, I am Stephanie Dassinger and I am appearing on behalf of the Chiefs of Police Association of North Dakota. I am also the deputy director and attorney for the North Dakota League of Cities.

The Chiefs of Police appear today in opposition to SB 2084. The biggest issue with the bill is the constant reduction in options for people in mental health or substance abuse crises. There has been movement to keep people in crises out of incarceration; yet alternatives to incarceration are continually reduced. The Chiefs of Police agree that incarceration is not the place for most people suffering from mental health issues or substance abuse issues who have not committed serious offenses. There has been little to no communication with the Chiefs of Police about a long-term plan for individuals needing acute care in mental health or substance abuse areas.

Additionally, the phrase “if below capacity” is used in many places in the bill; however, it is unclear what this means in practice. The question that comes up is how far below capacity does the state hospital need to be? Several police departments have first-hand experience with the state hospital refusing to admit patients because they are “near capacity.” Law enforcement needs more options for placing these individuals, not less.

The Chiefs of Police request a Do Not Pass recommendation on SB 2084.

Thank you for your consideration.

Good Morning My name is Jesse Jahner and I am the Sheriff in Cass County North Dakota. As the Sheriff my staff and I oversee the Cass County Jail which has a current capacity of 348. As I read the addition to Senate Bill no 2084 if I am interpreting it correctly, I am opposed to the change. I oversee Over the course of the past year, the Cass County Sheriff's Office has collaborated on multiple occasions with various community partners to discuss and attempt to resolve gaps in the mental health services that are available in Cass County. That collaboration has included local hospitals, legislative members, service providers, representatives from state agencies, and local law enforcement. We have discussed alternative options for obtaining care where a need is identified, and we have considered modifications to processes used by various stakeholders and providers to work towards improved access and improved outcomes.

Significant gaps still remain, for those patients who have needs that are not or cannot be effectively treated in the community, but are not so severe as to warrant the acute intervention that would qualify for commitment to the state hospital. We are experiencing year over year increases in the number of people who end up in jail for serious offenses that threaten public safety and limited access to psychiatric care. Of even larger concern is the number of people with such acute and immediate needs that hospitalization is deemed necessary by all parties, including the local human service center.

The number of referrals that we make in Cass County for the required pre-screening assessment has risen each year over the past few biennium, as have the number of persons who have been admitted into the state hospital. We feel that we have a strong sense of what the commitment criteria is, and only refer those people that qualified mental health practitioners have assessed as appropriate for referral. While it is frustrating in those cases where the local human service center assessment does not concur with the opinions of Psychiatrists or clinicians who make those referrals, even more frustrating are the increasing instances where the process has determined that a person meets criteria for admission to the state hospital, but there is no room and the admission is denied or delayed beyond what is established in state law.

Today, as I offer this testimony, an inmate sits in the Cass County jail who was determined to meet commitment criteria on Dec 17<sup>th</sup> but has not yet been admitted due to capacity. This has been a recurring theme on several occasions throughout 2020. ND Century Code requires us to move such persons out of the jail within 24 hours of a commitment order being issued, but we have experienced delayed entry, which is effectively denial of access. This delay from pre-screen to transfer has occurred in cases ranging from a few days, to 13 days, and in one case 31 days total before admittance occurred.

The pre-screening process should be a determination of the condition of the patient, and not an assessment of the conditions at the hospital. If people are being denied access after a determination has been made that they do need hospitalization, then at least some of the decisions that a person does not need hospitalization must be at least partially impacted by capacity considerations as well.

There are instances in Cass County where pre-screens were approved, commitment paperwork submitted, and then a delay led to expiration of the commitment paperwork and the need to repeat the process.

There are instances in Cass County where pre-screens have been completed, but days or even a week passes before commitment paperwork is completed and submitted, which we are told is due to capacity.

There is no doubt that COVID has complicated the situation for everyone at every level in this continuum of care. But the numbers show that we are also dealing with an increase in cases of significant and even severe need of care, while at the same time capacity is not being addressed.

One of the striking observations we have made this year is the increased number of people landing in jail who are already open and active patients of the local human service center, who are subsequently determined to need acute care. These are not cases where it is appropriate or safe to release back on the street through the bond process. Multiple cases of residential arson, barricading with weapons, attempting to run over people and law enforcement with vehicles, aggravated assault and possession of explosives, and one person who was digging up the grave of a family member due to delusions.

The small changes proposed in Senate Bill 2084 absolve the state hospital of accepting care of patients beyond their capacity, but the existing and worsening problem is capacity itself. We have the same problem with a jail, in that we can't hold more than our certified capacity, and yes, sometimes we need to make adjustments to who is held and work with our local courts based on severity of offense. But we also explore options to expand, to meet observed and anticipated needs. We arrange for transport and secure additional help from other facilities. We don't just tell our local police "we're full, try someplace else."

There must ultimately be an option to take someone who has been deemed committable, where they can get adequate access to proper care and treatment. Jails are not equipped to manage or provide this acute care. I have always felt the 24-hour limit to move someone to hospitalization was codified into law in recognition that a jail setting is not appropriate care or placement and should be minimized as a short term contingency only. The changes in SB 2084 the way I interpret it, if enacted, would result in an increase in the types of delays that I mentioned earlier, and ongoing delay and denial of care to those who have the most severe need, and no clear direction for ultimately connecting these patients with treatment.

I am also left with several questions as to what happens next. If this change is enacted, what happens after a delay or denial due to capacity? Is there a waitlist? Would it be triaged? Would there be any limits at all as to how long care could be denied after a determination has been made that a person is need of hospitalization services? How would this impact judicial determinations and orders for treatment, and which would take priority – judicial orders or local human service center pre-screen assessments?

There is no doubt that this proposed change would relieve some pressure on the state hospital as it exists today, but it has detrimental impact on the jails left with no options, on the patients forced to delay access to treatment, and it is occurring when the need for additional capacity is greater than ever before. In Closing I just like to add that I am frustrated to learn of this bill when it affects so many at the municipal and county level when the sponsors have not reached out to those affected before sponsoring

the bill. We should all be working together when the overall end goal is to get help to those who need it and in doing so provide public safety to our citizens. It seems in this situation that there was no collaboration or consideration to those who may be affected.



**Testimony: 2021 SB 2084**  
**Senate Human Services Committee**  
**Senator Judy Lee, Chairman**  
**January 6, 2021**

Chairman Lee and members of the Senate Human Services Committee, I am Tim Blasl, President of the North Dakota Hospital Association (NDHA). I am here to testify in opposition to 2021 Senate Bill 2084. I ask that you give this bill a **Do Not Pass** recommendation.

We oppose adding the words, 'if below capacity' to the North Dakota Century Code. NDHA does not support the State Hospital having the ability to turn away individuals that require treatment based on capacity. Private hospitals do not have this ability. These hospitals cannot turn away individuals that present to their emergency rooms.

We need to shift our focus on why the state hospital exceeds capacity. NDHA would support resources needed at the State Hospital to eliminate this concern. Patients, private hospitals, law enforcement, and the community need a safety net hospital.

Thank you. I would be happy to address any questions you may have.

Respectfully Submitted,

Tim Blasl, President  
North Dakota Hospital Association



Testimony Prepared for the  
**Senate Human Services**

January 6, 2021

By: Donnell Preskey Hushka, NDACo



**RE: Neutral Testimony for Senate Bill 2084 – involuntary treatment capacity**

I'm Donnell Preskey Hushka with the North Dakota Association of Counties. In my capacity at NDACo, I serve as the executive director for the ND Sheriffs & Deputies Association. County Sheriffs see the great need for mental health services for individuals who need the very acute care that is provided at the State Hospital. Sheriffs are concerned the changes proposed in SB 2084 will only limit the availability of those services.

This bill also brings to light the question of if an individual can not be admitted to the State Hospital, where do they go? Sheriffs already have examples of holding individuals for numerous days and weeks waiting for the State Hospital to accept them. Our jails do not have the services to meet these individual's immediate needs.

Sheriffs are also concerned with codifying "capacity issues". There was a similar action in the 2017 Legislative Session in regards to ND DOCR's capacity issues and the further approval of a prison population management plan that restricts their capacity to "operational". Once in the prioritization plan, ND DOCR denies admission of state sentenced inmates. County jails felt the effects of this in 2019 when the prioritization plan kicked in for female inmates. This resulted in a space and financial issue for counties. The cost to counties to house state sentenced inmates over the four months was \$65,000. They were not reimbursed for this cost to house state sentenced inmates.

# 2021 SENATE STANDING COMMITTEE MINUTES

## Human Services Committee Sakakawea Room, State Capitol

SB 2084  
1/11/2021

A BILL for an Act to amend and reenact section 25-03.1-20, subsection 3 of section 25-03.1-21, and section 25-03.1-26 of the North Dakota Century Code, relating to involuntary treatment and emergency detention.

**Madam Chair Lee** opened the discussion on SB 2084 at 2:36 p.m. Members present: Lee, K. Roers, Hogan, Anderson, Clemens, O. Larsen.

### Discussion Topics:

- Bed management system
- Mental Health Registry
- Law Enforcement needs

**[2:46] Jonathan Alm, Attorney, Department of Human Services.** Advised the committee on meeting with Pam Sagness and Dr. Rosalie Etherington to provide clarification on the fiscal impact related to SB 2084.

**Additional written testimony:** N/A

**Madam Chair Lee** closed the discussion on SB 2084 at 2:47 p.m.

*Justin Velez, Committee Clerk*

# 2021 SENATE STANDING COMMITTEE MINUTES

## Human Services Committee Sakakawea Room, State Capitol

SB 2084  
2/1/2021

A BILL for an Act to amend and reenact section 25-03.1-20, subsection 3 of section 25-03.1-21, and section 25-03.1-26 of the North Dakota Century Code, relating to involuntary treatment and emergency detention.

**Madam Chair Lee** opened the discussion on SB 2084 at 2:56 p.m. Members present: Lee, K. Roers, Hogan, Anderson, Clemens. Absent: O. Larsen.

### Discussion Topics:

- Bed management system
- State Hospital

**Senator K. Roers** moves **DO NOT PASS**.

**Senator Hogan** seconded.

Senators	Vote
Senator Judy Lee	Y
Senator Kristin Roers	Y
Senator Howard C. Anderson, Jr.	Y
Senator David A. Clemens	Y
Senator Kathy Hogan	Y
Senator Oley Larsen	Absent

The motion passed 5-0-1

**Senator Hogan** will carry SB 2084.

**Additional written testimony:** N/A

**Madam Chair Lee** closed the hearing on SB 2084 at 3:02 p.m.

*Justin Velez, Committee Clerk*

**REPORT OF STANDING COMMITTEE**

**SB 2084: Human Services Committee (Sen. Lee, Chairman)** recommends **DO NOT PASS** (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2084 was placed on the Eleventh order on the calendar.