

2023 SENATE JUDICIARY

SB 2225

2023 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

SB 2225
1/24/2023

A BILL for an Act, relating to involuntary treatment of a ward with prescribed medication.

9:58 AM Madam Chair Larson called the hearing to order.

Madam Chair Larson, Senators, Paulson, Sickler, Braunberger, Estenson, Luick, Myrdal were present.

Discussion Topics:

- Proposed Amendments
- Provisions of emergencies
- Approval of medication
- Classification drugs
- Universal drugs
- General powers and duties of guardian
- Prescribed medication
- Lapsed treatments.
- Preemptive authority
- Involuntary treatment w/prescribed medication hearing
- Length of treatment
- Physician authority
- Ward protections
- Ethics of involuntary treatments
- Guardianship recruiting

9:59 AM Cynthia Feland, Judge explained and detailed SB 2225 (#15618, 16473).

10:23 AM Madam Chair Larson closed the hearing.

Patricia Wilkens, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

SB 2225
1/24/2023

A BILL for an Act relating to court-authorized involuntary treatment of a ward; relating to involuntary treatment of a ward with prescribed medication.

10:25 AM Madam Chair Larson called the meeting to order.

Madam Chair Larson, Senators, Paulson, Sickler, Braunberger, Estenson, Luick, and Myrdal were present.

Discussion Topics:

- Committee action

10:25AM Senator Luick moved a **DO PASS** on SB 2225

10:25 AM Senator Myrdal seconded the motion.

Senators	Vote
Senator Diane Larson	Y
Senator Bob Paulson	Y
Senator Jonathan Sickler	Y
Senator Ryan Braunberger	Y
Senator Judy Estenson	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Motion passed 7-0-0

Senator Sickler will carry the bill.

10:26 AM Madam Chair Larson adjourned the meeting.

Patricia Wilkens, Committee Clerk

REPORT OF STANDING COMMITTEE

SB 2225: Judiciary Committee (Sen. Larson, Chairman) recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2225 was placed on the Eleventh order on the calendar. This bill does not affect workforce development.

2023 HOUSE JUDICIARY

SB 2225

2023 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

SB 2225
3/15/2023

Relating to involuntary treatment of a ward with prescribed medication.

10:05 AM Chairman Klemin opened the hearing. Members present: Chairman Klemin, Vice Chairman Karls, Rep. Bahl, Rep. Christensen, Rep. Cory, Rep. Henderson, Rep. S. Olson, Rep. Rios, Rep. S. Roers Jones, Rep. Satrom, Rep. Schneider, Rep. VanWinkle, and Rep. Vetter.

Discussion Topics:

- Procedure for ward medications
- Prescription medication guidelines.

Cynthia Feland, District Court Judge, South Central Judicial District & Guardianship Workgroup: Testimony #24526

The hearing closed at 10:17 AM.

Delores Shimek, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

SB 2225
3/15/2023

Relating to involuntary treatment of a ward with prescribed medication.

10:59 AM Chairman Klemin opened the hearing. Members present: Chairman Klemin, Vice Chairman Karls, Rep. Bahl, Rep. Christensen, Rep. Cory, Rep. Henderson, Rep. S. Olson, Rep. Rios, Rep. S. Roers Jones, Rep. Schneider, Rep. VanWinkle, and Rep. Vetter. Absent: Rep. Satrom

Discussion Topics:

- Committee action.

Vice Chairman Karls moved a Do Pass;
Seconded by Rep. VanWinkle

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	Y
Representative Landon Bahl	Y
Representative Cole Christensen	N
Representative Claire Cory	N
Representative Donna Henderson	Y
Representative SuAnn Olson	Y
Representative Nico Rios	N
Representative Shannon Roers Jones	Y
Representative Bernie Satrom	A
Representative Mary Schneider	Y
Representative Lori VanWinkle	Y
Representative Steve Vetter	N

Roll call vote: 8 Yes 4 No 1 Absent; Motion carried.

Carrier: Vice Chairman Karls

The meeting closed at 11:04 AM

DeLores Shimek, Committee Clerk

REPORT OF STANDING COMMITTEE

SB 2225: Judiciary Committee (Rep. Klemin, Chairman) recommends **DO PASS** (8 YEAS, 4 NAYS, 1 ABSENT AND NOT VOTING). SB 2225 was placed on the Fourteenth order on the calendar.

TESTIMONY

SB 2225

23.0619.01000

Sixty-eighth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2225

Introduced by

Senators Dwyer, Lee, Sickler

Representatives Klemin, Nelson, Schneider

1 A BILL for an Act to create and enact sections 30.1-28-16, 30.1-28-17, 30.1-28-18, and
2 30.1-28-19 of the North Dakota Century Code, relating to court-authorized involuntary treatment
3 of a ward; to amend and reenact sections 25-03.1-18.2 and 30.1-26-01, subsection 2 of section
4 30.1-28-03, and sections 30.1-28-04, 30.1-28-12, and 30.1-28-14 of the North Dakota Century
5 Code, relating to involuntary treatment of a ward with prescribed medication.

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

7 **SECTION 1. AMENDMENT.** Section 25-03.1-18.2 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **25-03.1-18.2. Guardian consent to involuntary treatment with prescribed medication.**

10 Notwithstanding sections 25-03.1-16, 25-03.1-18.1, and 25-03.1-24, if a patient refuses
11 treatment with prescribed medication, a treating physician, physician assistant,
12 ~~psychiatrist~~clinical nurse specialist, or advanced practice registered nurse may treat the patient
13 with prescribed mood stabilizer or antipsychotic medication upon consent of the patient's
14 guardian pursuant to ~~subsection 6 of section 30.1-28-12~~sections 30.1-28-16 through
15 30.1-28-18.

16 1. ~~The guardian's consent for involuntary treatment with prescribed medication may not~~
17 ~~be in effect for more than ninety days without receiving another recommendation and~~
18 ~~determination pursuant to subsection 6 of section 30.1-28-12.~~

19 2. ~~The patient has the right to be free of the effects of medication at the preliminary or~~
20 ~~treatment hearing by discontinuance of medication no later than twenty-four hours~~
21 ~~before the hearing unless, in the opinion of the prescriber, the need for the medication~~
22 ~~still exists or discontinuation would hamper the patient's preparation for and~~
23 ~~participation in the proceedings.~~

1 **SECTION 2. AMENDMENT.** Section 30.1-26-01 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **30.1-26-01. (5-101) Definitions and use of terms.**

4 Unless otherwise apparent from the context, in this title:

- 5 1. "Alternative resource plan" means a plan that provides an alternative to guardianship,
6 using available support services and arrangements which are acceptable to the
7 alleged incapacitated person. The plan may include the use of providers of service
8 such as visiting nurses, homemakers, home health aides, personal care attendants,
9 adult day care and multipurpose senior citizen centers; home and community-based
10 care, human service zones, and developmental disability services; powers of attorney,
11 representative and protective payees; and licensed congregate care facilities.
- 12 2. "Incapacitated person" means any adult person who is impaired by reason of mental
13 illness, mental deficiency, physical illness or disability, or chemical dependency to the
14 extent that the person lacks capacity to make or communicate responsible decisions
15 concerning that person's matters of residence, education, medical treatment, legal
16 affairs, vocation, finance, or other matters, or which incapacity endangers the person's
17 health or safety.
- 18 3. "Least restrictive form of intervention" means that the guardianship imposed on the
19 ward must compensate for only those limitations necessary to provide the needed
20 care and services, and that the ward must enjoy the greatest amount of personal
21 freedom and civil liberties consistent with the ward's mental and physical limitations.
- 22 4. A "protected person" is a minor or other person for whom a conservator or limited
23 conservator has been appointed or other protective order has been made.
- 24 5. A "protective proceeding" is a proceeding under the provisions of section 30.1-29-01 to
25 determine that a person cannot effectively manage or apply the person's estate to
26 necessary ends, either because the person lacks the ability or is otherwise
27 inconvenienced, or because the person is a minor, and to secure administration of the
28 person's estate by a conservator or other appropriate relief.
- 29 6. "Refusal" means a clear and unequivocal response declining to accept prescribed
30 mood stabilizer or antipsychotic medication.

1 7. A "ward" is a person for whom a guardian or limited guardian has been appointed. A
2 "minor ward" is a minor for whom a guardian has been appointed solely because of
3 minority.

4 **SECTION 3. AMENDMENT.** Subsection 2 of section 30.1-28-03 of the North Dakota
5 Century Code is amended and reenacted as follows:

6 2. The petition for appointment of a guardian must state:

- 7 a. The name, address, and corporate or agency status of the petitioner, and its
8 connection with or relationship to the proposed ward;
- 9 b. The name, age, and address of the proposed ward;
- 10 c. The name and address of any person or institution having care or custody over
11 the proposed ward;
- 12 d. The names and addresses of the spouse, parents, and adult children or, if none,
13 any adult siblings and any adult with whom the proposed ward resides in a
14 private residence, or, if none, the nearest adult relative;
- 15 e. A brief description of and the approximate value of the real and personal property
16 and income of the proposed ward, so far as they are known to the petitioner;
- 17 f. The extent of guardianship authority sought, including full authority, limited
18 authority, or no authority in each area of residential, educational, medical, legal,
19 vocational, and financial decisionmaking unless the petitioner is undecided on the
20 extent of authority in any area, in which case the petition must state the specific
21 areas in which the authority is sought;
- 22 g. The occupation and qualifications of the proposed guardian;
- 23 h. The name and address of the attorney, if known, who most recently represented
24 the proposed ward;
- 25 i. A statement alleging specific facts establishing the necessity for the appointment
26 of a guardian;
- 27 j. The name and address of any current conservator appointed for the proposed
28 ward;
- 29 k. The name and address of any person designated as an attorney in fact or agent
30 in a power of attorney or as an agent in a health care directive;
- 31 l. The name and address of any representative payee for the proposed ward;

- 1 m. That less intrusive alternatives to guardianship have been considered;
- 2 n. In the form of an attached recent statement, the physical, ~~mental~~neurological,
- 3 and ~~emotional~~psychological limitations of the proposed ward from an expert
- 4 examiner, if available; and
- 5 o. Whether the petition seeks to restrict any of the following rights:
- 6 (1) To vote;
- 7 (2) To seek to change marital status; or
- 8 (3) To obtain or retain a motor vehicle operator's license; or
- 9 (4) To use, own, control, or possess a firearm; and
- 10 p. If the proposed guardian seeks authority for involuntary treatment with prescribed
- 11 mood stabilizer or antipsychotic medication under section 30.1-28-16, facts
- 12 specified under subsection 3 of section 30.1-28-16. The petitioner also shall
- 13 attach a recent report under subsection 2 of section 30.1-28-16.

14 **SECTION 4. AMENDMENT.** Section 30.1-28-04 of the North Dakota Century Code is

15 amended and reenacted as follows:

16 **30.1-28-04. (5-304) Findings - Order of appointment.**

- 17 1. The court shall exercise the authority conferred in this chapter consistent with the
- 18 maximum self-reliance and independence of the incapacitated person and make
- 19 appointive and other orders only to the extent necessitated by the incapacitated
- 20 person's actual mental and adaptive limitations or other conditions warranting the
- 21 procedure.
- 22 2. At a hearing held under this chapter, the court shall:
- 23 a. Hear evidence that the proposed ward is an incapacitated person. Age,
- 24 eccentricity, poverty, or medical diagnosis alone is not sufficient to justify a finding
- 25 of incapacity;
- 26 b. Hear evidence and determine whether there are any existing general durable
- 27 powers of attorney and durable powers of attorney for health care. If there are
- 28 validly executed durable powers of attorney, the court shall consider the
- 29 appointed attorneys in fact and agents appointed thereunder when assessing
- 30 alternative resource plans and the need for a guardian; and

- 1 c. Appoint a guardian and confer specific powers of guardianship only after finding
2 in the record based on clear and convincing evidence that:
- 3 (1) The proposed ward is an incapacitated person;
- 4 (2) There is no available alternative resource plan that is suitable to safeguard
5 the proposed ward's health, safety, or habilitation which could be used
6 instead of a guardianship;
- 7 (3) The guardianship is necessary as the best means of providing care,
8 supervision, or habilitation of the ward; and
- 9 (4) The powers and duties conferred upon the guardian are appropriate as the
10 least restrictive form of intervention consistent with the ability of the ward for
11 self-care.
- 12 3. Except upon specific findings of the court, a ward may not be deprived of any of the
13 following legal rights: to vote, to seek to change marital status, or to obtain or retain a
14 motor vehicle operator's license.
- 15 4. The court may find that the ward retains other specific rights.
- 16 5. The order appointing a guardian confers upon the guardian only those powers and
17 duties specified in the order. In addition to any other powers conferred upon the
18 guardian, the court's order must state whether the guardian has no authority, general
19 authority, or limited authority to make decisions on behalf of the ward in each of the
20 areas of residential, educational, medical, legal, vocational, and financial
21 decisionmaking. A grant of limited authority must specify the limitations upon the
22 authority of the guardian or the authority retained by the ward. The court's order must
23 require the guardian to provide within ninety days from the date of the order a
24 beginning inventory of all assets owned by the ward or in which the ward has an
25 interest. The guardian shall provide a copy of the beginning inventory to the ward and
26 any interested persons designated by the court in its order. Unless terminated earlier
27 by the court, an order appointing or reappointing a guardian under this section is
28 effective for up to five years. At least ninety days before the expiration of the initial
29 order of appointment or any following order of reappointment, the court shall request
30 and consider information submitted by the guardian, ward, ward's attorney, if any, and
31 any interested persons regarding whether the need for a guardian continues to exist. If

1 it is recommended that the guardianship continue, the court may appoint a guardian
2 ad litem or visitor, or both, in accordance with section 30.1-28-03. The court shall hold
3 a hearing on whether the guardianship should continue. Following the hearing and
4 consideration of submitted information, the court may reappoint the guardian for up to
5 another five years, allow the existing order to expire, or appoint a new guardian in
6 accordance with this section. The supreme court, by rule or order, shall provide for the
7 regular review of guardianship in existence on August 1, 2015.

8 6. Unless a court of competent jurisdiction determines otherwise, a durable power of
9 attorney for health care executed pursuant to chapter 23-06.5 takes precedence over
10 any authority to make medical decisions granted to a guardian pursuant to chapter
11 30.1-28.

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

16 8. The court may require a guardian to furnish a bond in the amount and with sureties as
17 the court specifies.

18 **SECTION 5. AMENDMENT.** Section 30.1-28-12 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **30.1-28-12. (5-312) General powers and duties of guardian.**

- 21 1. A guardian of an incapacitated person has only the powers and duties specified by the
22 court.
- 23 2. To the extent that it is consistent with the terms of an order by a court of competent
24 jurisdiction, the guardian is entitled to custody of the person of the ward and may
25 establish the ward's place of residence within or without this state. However, no
26 guardian may voluntarily admit a ward to a mental health facility or state institution for
27 a period of more than forty-five days without a mental health commitment proceeding
28 or other court order. Notwithstanding the other provisions of this subsection, the
29 guardian may readmit a ward to a mental health facility or a state institution within sixty
30 days of discharge from that institution, if the original admission to the facility or
31 institution had been authorized by the court.

- 1 3. If entitled to custody of the ward, the guardian should make provision for the care,
2 comfort, and maintenance of the ward and, whenever appropriate, arrange for the
3 ward's training, education, or habilitative services. The guardian shall take reasonable
4 care of the ward's clothing, furniture, vehicles, and personal effects.
- 5 4. Notwithstanding general or limited authority to make medical decisions on behalf of
6 the ward, no guardian may consent to psychosurgery, abortion, sterilization, or
7 experimental treatment of any kind unless the procedure is first approved by order of
8 the court.
- 9 5. When exercising the authority granted by the court, the guardian shall safeguard the
10 civil rights and personal autonomy of the ward to the fullest extent possible by:
 - 11 a. Meeting with the ward following the hearing, unless the ward is represented by
12 an attorney, and explaining to the fullest extent possible the contents of the
13 court's order and the extent of the guardian's authority;
 - 14 b. Involving the ward as fully as is practicable in making decisions with respect to
15 the ward's living arrangements, health care, and other aspects of the ward's care;
16 and
 - 17 c. Ensuring the ward's maximum personal freedom by using the least restrictive
18 forms of intervention and only as necessary for the safety of the ward or others.
- 19 6. ~~A guardian with authority to consent to involuntary treatment with prescribed~~
20 ~~medications may not provide consent without receiving a recommendation and~~
21 ~~determination from the ward's treating physician, physician assistant, psychiatrist, or~~
22 ~~advanced practice registered nurse that:~~
 - 23 a. ~~The proposed prescribed medication is clinically appropriate and necessary to~~
24 ~~effectively treat the ward and that the ward requires treatment;~~
 - 25 b. ~~The ward was offered that treatment and refused it or that the ward lacks the~~
26 ~~capacity to make or communicate a responsible decision about that treatment;~~
 - 27 c. ~~Prescribed medication is the least restrictive form of intervention necessary to~~
28 ~~meet the treatment needs of the ward; and~~
 - 29 d. ~~The benefits of the treatment outweigh the known risks to the ward.~~

- 1 7. If no conservator for the estate of the ward has been appointed and if the guardian
2 has been granted authority to make financial decisions on behalf of the ward, the
3 guardian may:
- 4 a. Institute proceedings to compel any person under a duty to support the ward or to
5 pay sums for the welfare of the ward to perform that duty.
- 6 b. Receive money and tangible property deliverable to the ward and apply the
7 money and property for support, care, and education of the ward; but, the
8 guardian may not use funds from the ward's estate for room and board which the
9 guardian or the guardian's spouse, parent, or child have furnished the ward
10 unless a charge for the service is approved by order of the court made upon
11 notice to at least one of the next of kin of the ward, if notice is possible. The
12 guardian shall exercise care to conserve any excess for the ward's needs.
- 13 c. Move the court under section 30.1-28-03.2 for authority to sell, mortgage, or
14 otherwise encumber or transfer ownership or beneficiary of:
- 15 (1) The real property of the ward; or
- 16 (2) The personal property of the ward valued over two thousand five hundred
17 dollars upon such terms as the court may order, for the purpose of paying
18 the ward's debts; providing for the care, maintenance, rehabilitation,
19 training, or education of the ward or the ward's dependents; or for any other
20 purpose which is in the best interests of the ward. The sale, mortgage, or
21 other encumbrance or transfer of ownership of personal property of the
22 ward valued at two thousand five hundred dollars or less does not require a
23 court order.
- 24 d. Move the court under section 30.1-28-03.2 for authority to lease the real or
25 personal property of the ward.
- 26 e. A guardian may not purchase, lease, or obtain ownership or become the
27 beneficiary of property of the ward unless the price and manner of the sale are
28 approved by the court.
- 29 ~~8.7.~~ If a conservator has been appointed, all of the ward's estate received by the guardian
30 in excess of those funds expended to meet current expenses for support, care, and

1 education of the ward must be paid to the conservator for management as provided in
2 this title, and the guardian must account to the conservator for funds expended.

3 ~~9.8.~~ A guardian shall file an annual report with the court regarding the exercise of powers
4 and duties in areas of authority specified in the court's order of appointment. The
5 report must describe the status or condition of the ward, including any change of
6 residence and reasons for the change, any medical treatment received by or withheld
7 from the ward, any expenditure and income affecting the ward, any sale or transfer of
8 property affecting the ward, and any exercise of legal authority by the guardian
9 affecting the ward. The report must include changes that have occurred since the
10 previous reporting period and an accounting of the ward's estate. The guardian also
11 shall report whether the ward continues to require guardianship and whether any
12 powers of the guardian should be increased or limited. The report must be filed with
13 the clerk of district court. The filing of the report does not constitute an adjudication or
14 a determination of the merits of the report nor does the filing of the report constitute
15 the court's approval of the report. The court may approve a report and allow and settle
16 an accounting only upon notice to the ward's guardian ad litem and other interested
17 persons who have made an appearance or requested notice of proceedings. The
18 office of the state court administrator shall provide printed forms that may be used to
19 fulfill reporting requirements. Any report must be similar in substance to the state court
20 administrator's form. The forms must be available in the office of clerk of district court
21 or obtainable through the supreme court's internet website.

22 ~~10.9.~~ Copies of the guardian's annual report to the court and of any other reports required
23 by the court must be mailed to the ward and any interested persons designated by the
24 court in its order. The ward's copy must be accompanied by a statement, printed with
25 not less than double-spaced twelve-point type, of the ward's right to seek alteration,
26 limitation, or termination of the guardianship at any time.

27 ~~11.10.~~ The guardian is entitled to receive reasonable sums for services and for room and
28 board furnished to the ward as approved by the court or as agreed upon between the
29 guardian and the conservator, provided the amounts agreed upon are reasonable
30 under the circumstances. The guardian may request the conservator to expend the

1 ward's estate by payment to third persons or institutions for the ward's care and
2 maintenance.

3 **SECTION 6. AMENDMENT.** Section 30.1-28-14 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **30.1-28-14. Guardianships established before July 1, 1990.**

6 The powers and duties of guardians and the rights and privileges of wards under
7 guardianships established before July 1, 1990, are as provided by this chapter as it existed on
8 June 30, 1990, and are not affected by chapter 405 of the 1989 Session Laws, except that
9 guardians appointed before July 1, 1990, must comply with the requirements of subsections 2,
10 4, 5, and 9~~8~~ of section 30.1-28-12.

11 **SECTION 7.** Section 30.1-28-16 of the North Dakota Century Code is created and enacted
12 as follows:

13 **30.1-28-16. Court-authorized involuntary treatment with prescribed medication.**

- 14 1. A guardian, upon notice and hearing, may request authorization from the court to
15 consent to a ward to be treated with prescribed mood stabilizer or antipsychotic
16 medication. The petition may be considered by the court in the initial procedure for
17 court appointment of a guardian or at a separate involuntary treatment hearing
18 pursuant to section 30.1-28-17. Upon filing a petition, the court shall set a hearing date
19 on the issues and appoint an attorney guardian ad litem for the ward.
- 20 2. The guardian, as part of the petition, shall provide a report from the treatment expert
21 examiner, treating physician, physician assistant, clinical nurse specialist, or advanced
22 practice registered nurse which must certify:
- 23 a. The ward is a person requiring treatment;
24 b. The proposed prescribed mood stabilizer or antipsychotic medication is clinically
25 appropriate and necessary to effectively treat the ward;
26 c. The ward was offered the treatment and refused;
27 d. The prescribed mood stabilizer or antipsychotic medication is the least restrictive
28 form of intervention necessary to meet the treatment needs of the ward; and
29 e. The benefits of the treatment outweigh the known risks to the ward.
- 30 3. Evidence of the factors certified under subsection 2 may be presented to the court
31 within the petition, during the initial hearing for court appointment of a guardian under

1 section 30.1-28-03, or at a separate involuntary treatment hearing under section
2 30.1-28-17. Involuntary treatment with prescribed mood stabilizer or antipsychotic
3 medication may not be authorized by the court solely for the convenience of the facility
4 staff or for the purpose of punishment. The court in ruling on the requested
5 authorization to consent to involuntary treatment with prescribed mood stabilizer or
6 antipsychotic medication shall consider all relevant evidence presented at the hearing
7 including:

8 a. The danger the ward presents to self or others;

9 b. The ward's current conditions;

10 c. The ward's treatment history;

11 d. The results of previous medication trials;

12 e. The efficacy of current or past treatment modalities concerning the ward;

13 f. The ward's prognosis; and

14 g. The effect of the ward's mental condition on the ward's capacity to consent.

15 4. If the factors certified under subsection 2 have been demonstrated by clear and
16 convincing evidence, the court may include a finding in its findings on the petition, or
17 issue a separate order after notice and hearing, authorizing the guardian to provide
18 consent to the treating medical professional to involuntarily treat the ward with
19 prescribed mood stabilizer or antipsychotic medication. The order to consent to
20 involuntary treatment with prescribed mood stabilizer or antipsychotic medication may
21 not be in effect for more than ninety days, unless specifically authorized by the court.

22 **SECTION 8.** Section 30.1-28-17 of the North Dakota Century Code is created and enacted
23 as follows:

24 **30.1-28-17. Involuntary treatment with prescribed medication hearing.**

25 1. The involuntary treatment with prescribed mood stabilizer or antipsychotic medication
26 hearing must be held within three business days of the date of the filing of the petition
27 unless waived by the ward or the ward has been released as a person not requiring
28 treatment. The court may extend the time for hearing for good cause.

29 2. The hearing must be held in the county of the ward's residence or location, or the
30 county in which the state hospital or treatment facility treating the ward is located.

- 1 3. At the hearing, evidence in support of the request must be presented by the guardian
2 or guardian's counsel. During the hearing, the guardian and the ward must be afforded
3 an opportunity to testify and to present and cross-examine witnesses. The court may
4 receive the testimony of any other interested person.
- 5 4. All individuals not necessary for the conduct of the proceeding must be excluded,
6 however, individuals having a legitimate interest in the proceeding may be admitted by
7 the court. The hearing must be conducted as informal as practicable, but the issue
8 must be tried as a civil matter.
- 9 5. Discovery and the power of subpoena permitted under the North Dakota Rules of Civil
10 Procedure are available to the ward. The court shall receive all relevant and material
11 evidence that may be offered as governed by the North Dakota Rules of Evidence.
12 There is a presumption in favor of the ward, and the burden of proof is upon the
13 petitioner to rebut the presumption in support of the petition. If the court finds that the
14 petition has not been sustained by clear and convincing evidence, the court shall deny
15 the petition.

16 **SECTION 9.** Section 30.1-28-18 of the North Dakota Century Code is created and enacted
17 as follows:

18 **30.1-28-18. Length of involuntary treatment with prescribed medication and**
19 **continuing treatment orders.**

20 An initial order for a guardian to consent to involuntary treatment with prescribed mood
21 stabilizer or antipsychotic medication may not exceed ninety days, unless the court is presented
22 with evidence that the ward will continue to require treatment beyond the ninety-day period with
23 the prescribed medication and the ward has historically declined treatment with subsequent
24 harm to self or others. If the court determines the ward will continue to require treatment
25 beyond the ninety-day period and orders continuing treatment, the order for a guardian to
26 consent to continuing treatment may not to exceed the term of the appointment of the guardian.

27 **SECTION 10.** Section 30.1-28-19 of the North Dakota Century Code is created and enacted
28 as follows:

29 **30.1-28-19. Application.**

30 This chapter does not limit the use of medications pursuant to sections 25-03.1-16,
31 25-03.1-18.1, and 25-03.1-24, or prohibit a hospital or treatment facility from rendering medical

- 1 care without consultation, if care is immediately necessary and delay would endanger the life of
- 2 or adversely and substantially affect the health of the ward or others.

Senate Bill 2225
Senate Judiciary Committee

Testimony Presented by Cynthia M. Feland
District Court Judge
Chair, Guardianship Workgroup

Chair Larson, members of the Senate Judiciary Committee, my name is Cynthia Feland, District Court Judge in the South Central Judicial District and Chair of the Guardianship Workgroup. The Guardianship Workgroup is a multi-disciplinary group of professionals with extensive and varied experience in the area of guardianships and conservatorships created in 2013 to evaluate and improve procedures in cases involving guardianships for incapacitated adults, minors and in conservatorship cases. For the last four legislative sessions, the Guardianship Workgroup has identified and recommended a number of statutory amendments to improve and strengthen procedures in cases involving guardianship for incapacitated adults and conservatorship cases.

The proposed amendments contained in Senate Bill 2225 establish a procedure for judicial authorization prior to involuntary treatment of a ward with prescribed medication. As many member of this committee may recall, in 2017, legislation was passed allowing guardians with full medical authority to consent to involuntary treatment with prescribed medication without a court order. During the 2017 legislative session, the Workgroup appeared at the legislative committee hearings and expressed three main areas of concern with the proposed legislation: (1) overbroad authority granted to guardians; (2) lack of specific findings and judicial oversight prior to authorization; and (3) potential for abuse.

Although the legal effect of a guardianship removes a ward's freedom of choice and places that responsibility with the guardian, North Dakota law still requires judicial oversight of certain decisions made by the guardian on the ward's behalf. Under section 30.1-28-12, a guardian may not consent to psychosurgery, abortion, sterilization, or experimental treatment without court approval. Specific findings by a Court are also required under section 30.1-28-04(3) before a ward may be deprived of the right to vote, to marry or divorce, to have a driver's license or to possess a firearm. The current broad grant of authority to the guardian to consent to involuntary treatment of a ward with prescribed medication without court approval does not align with these laws.

The Workgroup also noted that even under the civil commitment statute, a party seeking to involuntarily treat a patient with prescribed medication in a non-emergency situation must obtain a court order, even though the individual has been deemed incapable of making responsible decisions about his or her care under section 25-03.1-18.1. In determining whether to authorize involuntary treatment with prescribed medication in mental health and competency restoration cases, a court is required to consider a number of factors and to make specific findings which include a determination that the benefits of the treatment outweigh the known risks. While the current provisions of subsection 6 of section 30.1-28-12 require a recommendation from the ward's treating physician, PA, psychiatrist or advanced practice registered nurse prior to consenting to involuntary treatment, the current procedure does not involve the same level of scrutiny that is afforded to other mental health patients. Further, wards have no ability to contest the authorization until after the medication has been involuntarily administered. As a result, guardians have, in some instances, authorized involuntary treatment

without being given complete information or where there is no medical necessity and the medication merely makes the ward more manageable.

In an effort to address concerns with the current law and those raised by the supporters of the 2017 statutory revisions, the Workgroup sought input from Dr. Gabriela Balf, Dr. Rosalie Etherington, the North Dakota Long-Term Care Association, as well as staff and administration from care centers around the state. After lengthy discussions, a compromise was reached to propose amendments to the current law which would only require prior approval for involuntary treatment with mood stabilizers and antipsychotic medications as they are the ones most frequently sought to be used involuntarily and have the most significant risks and side effects.

Although all prescribed medications require consistent use, a lapse in treatment with mood stabilizers and antipsychotic medications may compromise the effectiveness of the medication for certain mental health conditions like schizophrenia even if only discontinued for a short period of time. In some case, the lapse has rendered the medication ineffective. Given the often limited availability of alternative mood stabilizers and antipsychotic medications, effective treatment may no longer be available. The proposed legislation provides safeguards to the ward consistent with those in the mental health statutes while ensuring consistent use of the medication once approved.

Section 1:

Page 1, lines 12 through 13, amends section 25-03.1-18.2 to correct the list of medical practitioners to include all those with authority to prescribe mood stabilizers and antipsychotic medications.

Page 1, line 14 through 23, amends section 25-03.1-18.2 to remove subsection 1 and 2 which are superseded by amendments in chapter 30.1-28 in section 7 of this bill.

Section 2

Page 2, lines 29 through 30, amends section 30.1-26-01 to add a new subsection defining “refusal”. In proposing the definition, the Workgroup discussed situations where a ward’s verbal and physical responses may be contradictory; saying no but holding out a hand to take the medication. The definition clarifies that only a “clear and unequivocal” response is to be treated as a “refusal”.

Section 3

Page 4, lines 2 through 3, amends subsection n of subsection 2 of section 30.1-28-03 to correct the language describing the proposed ward’s limitations that may be addressed in the expert examiners statement.

Page 4, line 9, amends subsection 2 of section 30.1-28-03 to add the right to use or possess firearms to the list of rights which may be restricted if a guardianship is ordered. The addition is consistent with federal law which already requires the court to make specific findings.

Page 4, lines 10 through 13, amends subsection 2 of section 30.1-28-03 to add a new subsection clarifying that a request for authority to authorize involuntary treatment of a ward with prescribed medication may be made in the original petition for guardianship.

Section 4

Page 6, lines 12 through 15, amends section 30.1-28-04 to remove subsection 7 which is superseded by section 7 of this bill.

Section 5

Page 7, lines 19 through 29, amends section 30.1-28-12 to remove subsection 6 which is superseded by section 7 of this bill.

Section 6

Page 10, line 10, amends section 30.1-28-14 to correct citation references due to renumbering.

Section 7

Page 10, line 13 through Page 11, line 21, creates a new chapter to 30.1-28 requiring guardians to seek court authority to authorize the involuntary treatment of a ward with prescribed medication.

Subsection 1 permits a guardian to request authorization to consent to involuntary treatment of the ward with prescribed mood stabilizers or antipsychotic medications. The request may be made in the initial petition seeking guardianship or in a separate proceeding after the guardianship has been established.

Subsection 2 requires a report from the treating medical professional having the ability to prescribe mood stabilizers and antipsychotic medications and identifies the information that must be included in the report.

Subsection 3 provides a list of the factors, consistent with those in section 25-03.1-18.1, mental health commitment proceeding, to be considered by the court in determining whether to grant authorization for the involuntary treatment of a ward with prescribed medication.

Subsection 4 establishes that the burden of proof for involuntary treatment with prescribed medication is clear and convincing evidence, again consistent with the requirements under mental health statutes in chapter 25-03.1. Authority under the treatment order is for a period of 90 days unless otherwise specified by the Court. The ability to extend authority beyond 90 days is intended to prevent lapses in treatment with prescribed medication for those wards.

Section 8

Page 11, line 24 through Page 12, line 15, creates a new chapter to 30.1-28 to establish the hearing procedure for seeking authority to authorize involuntary treatment with prescribed medication.

Subsection 1 requires that a hearing be held within 3 business days from filing the petition. This can be extended if good cause is shown.

Subsection 2 requires the hearing to be held in the jurisdiction where the ward resides or is located.

Subsection 3 requires that the guardian and the ward be given the opportunity to testify. Testimony may also be received from any other interested person.

Subsection 4 closes the hearing except for those determined by the court to have a legitimate interest in the proceeding and requires the hearing to be held informally.

Subsection 5 authorizes discovery and subpoena power, requires receipt of relevant and material evidence, establishes a presumption in favor of the ward, and places the burden of proof on the petitioner.

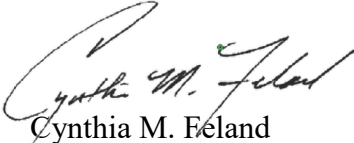
Section 9

Page 12, lines 18 through 26, creates a new chapter to 30.1-28 authorizing a court to issue an order granting a guardian continuing authority to authorize involuntary treatment with prescribed medication up to the length of the guardianship where evidence is presented that the ward will require treatment longer than 90 days and has a history of declining treatment which resulted in harm to the ward or others.

Section 10

Page 12, line 29 through Page 13, line 2, creates a new chapter to 30.1-28 to clarify that amendment to chapter 30.1-28 does not affect a physicians' ability to authorize the involuntary treatment with prescribed medications under chapter 25-03.1.

Respectfully Submitted:



Cynthia M. Feland
District Judge
South Central Judicial District
Chair, Guardianship Workgroup

Guardianship Workgroup Members: Judge **Cynthia M. Feland**, Chair; Judge **Pamela Nesvig**, South Central Judicial District; Judge **Stacey Louser**, North Central Judicial District; Judge **Cherie Clark**, Southeast Judicial District; **Jon Alm**, N.D. Department of Health and Human Services; Dr. Gabriela Balf, psychiatrist; **Cheryl Bergan**, attorney, Fargo; **Jennifer Lee**, Executive Director, North Dakota Legal Services; **Thomas Jackson**, attorney, Bismarck, **Tracey Laaveg**, attorney, Park River; **Jesse Maier**, attorney, Fargo; **Mikayla Reis**, attorney, Bismarck; **Heather Krumm**, attorney, Mandan; **Lonnie Wagner**, ND Department of Veterans Affairs; **Aaron Birst**, North Dakota Association of Counties; **Donna Byzewski**, Catholic Charities; **Michelle Gayette**, N.D. Department of Health and Human Services; **Rachael Sinness**, Protection and Advocacy; **Chris Carlson**, attorney, Bismarck; **Brittany Fode**, N.D. Department of Health and Human Services; **Sally Holewa**, State Court Administrator; **Donna Wunderlich**, Trial Court Administrator, Unit 3; **Karen Kringlie**, Juvenile Court Director, Unit 2; **Catherine Palsgraff**, Citizen Access Coordinator; **Cathy Ferderer**, Family Law Mediation Program Administrator; **Rose Nichols**, Guardian Monitoring Program; **Norma O'Halloran**, Grand Forks County Clerk of Court's Office; **Rebecca Nelson**, Ramsey County Clerk of Court; **Scott Bernstein**, Executive Director, Guardian and Protective Services; **Diane Osland**, Lutheran Social Services of MN; **Roxane Romanick**, CEO, Designer Genes of North Dakota, Inc.; **Keith**

Testimony Presented by Cynthia M. Feland
District Court Judge
January 24, 2023
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Vavrovskv, Director of Social Services, Life Skills and Transition Center; and **Margo Haut**,
Guardian Angels Inc.

**Senate Bill 2225
Senate Judiciary Committee**

**Testimony Presented by Cynthia M. Feland
District Court Judge
Chair, Guardianship Workgroup
March 15, 2023**

Chair Klemin, members of the House Judiciary Committee, my name is Cynthia Feland, District Court Judge in the South Central Judicial District and Chair of the Guardianship Workgroup. The Guardianship Workgroup is a multi-disciplinary group of professionals with extensive and varied experience in the area of guardianships and conservatorships created in 2013 to evaluate and improve procedures in cases involving guardianships for incapacitated adults, minors and in conservatorship cases. For the last four legislative sessions, the Guardianship Workgroup has identified and recommended a number of statutory amendments to improve and strengthen procedures in cases involving guardianship for incapacitated adults and conservatorship cases.

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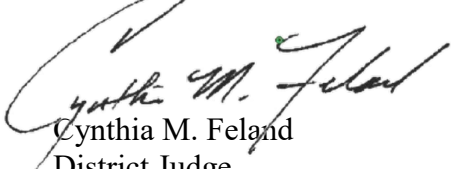
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