2023 SENATE JUDICIARY

SB 2286

2023 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

SB 2286
2/1/2023

A bill relating to peace officers acting outside their jurisdiction; relating to duties of the sheriff, powers, and duties of the chief of police and police officers, and detentions.

2:25 PM Chairman Larson opened the meeting.
Chairman Larson and Senators Myrdal, Luick, Estenson, Sickler, Braunberger and Paulson are present.

Discussion Topics:

- Transports
- Jurisdiction
- Detention centers

2:25 PM Senator Schaible introduced the bill and provided written testimony. #17514.

2:27 PM Pat Merriman States Attorney Hettinger County testified in favor. #18614.

2:38 PM Sara Warner, Sheriff of Hettinger County testified in favor of the bill and provided written testimony #18510.

2:44 PM Chairman Larson closed the public hearing.

2:44 PM Senator Luick moved a do pass the bill.
Motion seconded by Senator Estenson.

2:45 PM Roll call vote was taken.

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 passes 7-0-0.

Senator Luick will carry the bill.

This bill does not affect Workforce Development.

2:46 PM Chairman Larson closed the meeting.

Rick Schuchard, Committee Clerk

REPORT OF STANDING COMMITTEE

SB 2286: Judiciary Committee (Sen. Larson, Chairman) recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2286 was placed on the Eleventh order on the calendar. This bill does not affect workforce development.

2023 HOUSE JUDICIARY

SB 2286

2023 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

SB 2286
3/20/2023

Relating to duties of the sheriff, powers and duties of the chief of police and police officers, and detentions.

9:00 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, and Rep. Vetter. Absent: Rep. VanWinkle

Discussion Topics:

- Transporting and detention.
- Jurisdiction challenges.

Senator Schaible: Introduced the bill. Testimony #25747

Kyle Christenson, Hettinger Chief of Police. Testimony #25741

The hearing closed at 9:21 AM.

Delores Shimek, Committee Clerk

2023 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

SB 2286
3/20/2023

Relating to duties of the sheriff, powers and duties of the chief of police and police officers, and detentions.

3:00 PM Chairman Klemin opened the meeting. Members present: Chairman Klemin, 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. Absent: Rep. Roers Jones and Vice Chairman Karls

Discussion Topics:

- ND Stockmen's Association and Railroad's
- Amendment

Rep. Vetter moved amendment 23.0988.01001.
Seconded by Rep. VanWinkle

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

Roll call vote 11 Yes 0 No 2 Absent Motion carried.

Rep. Schneider moved a Do Pass as Amended;
Seconded by Rep. Bahl

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

Roll call vote: 11 Yes 0 No 2 Absent Motion carried.
Carrier: Rep. S. Olson

The meeting closed at 3:10 PM.

Delores Shimek, Committee Clerk

23.0988.01001
Title.02000

Adopted by the House Judiciary Committee

March 20, 2023

BK
1/1
3-20-2023

PROPOSED AMENDMENTS TO SENATE BILL NO. 2286

Page 4, line 14, remove ", or employed by the North"

Page 4, line 15, remove "Dakota stockmen's association or a railroad,"

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2286: Judiciary Committee (Rep. Klemin, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). SB 2286 was placed on the Sixth order on the calendar.

Page 4, line 14, remove ", or employed by the North"

Page 4, line 15, remove "Dakota stockmen's association or a railroad,"

Renumber accordingly

TESTIMONY

SB 2286

Legislative Assembly

North Dakota Senate

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360

Senator Donald Schaible
District 31
9115 Highway 21
Mott, ND 58646-9200
dgschaible@ndlegis.gov

COMMITTEES:
Appropriations

February 1, 2023

Introduction for SB 2286

Good afternoon Chairwomen Larson and the Judiciary Committee. I am here to introduce SB 2286 which came to me at the request of my local sheriff's department with some issues that they have when transporting or detention of a person. It is my understanding that when transporting a person, their jurisdiction is only valid from starting point to the first end point. If further transportation is needed the sheriff's office no longer has jurisdiction which creates the problem. That is the extent of my knowledge of this issue and I have experts behind me that will further explain this issue and the improvement that this bill is asking for. One bit of information that I would like to explain is that when we were discussing the merits of this bill, we thought it would be a good idea to discuss it with the Attorney General's office. He did not see any issues with this and seen no reason not to suggest this bill. With that I will try to answer any questions but I may have to refer to the real experts.

Senator Don Schaible

Hettinger County Sheriff's Office

Sheriff Sarah D. Warner

Senate Judiciary Committee
February 1, 2023
SB 2286

Chairwomen Larson, and members of the Judiciary Committee, I am Sarah Warner, the Sheriff of Hettinger County. I am here in support of SB 2286.

I would like to give you an idea of what this bill would do. Hettinger County is located in the Southwest portion of the State. Hettinger County has no hospital and does not have a local jail. This causes an issue when we have to transport arrestees and mental health individuals out of our jurisdiction.

Currently, there is no law which explicitly grants arrest authority to law enforcement outside their jurisdiction. If we are forced to take law enforcement action outside our political subdivision, we potentially open ourselves and our political subdivision to civil liability. After speaking to Attorney General Wrigley and Deputy Attorney General Ness, on this proposal, they were surprised that there was no law already in effect that address this.

There is a 1996 Attorney General Opinion that states that such authority exists during one continuous transport. So if for any reason we should stop outside of our jurisdiction, the transport is over and would need to ask an agency with jurisdiction for permission to continue. It is also not well defined if having a signed transport order by a judge would grant such authority.

For example, if we make an arrest and need medical clearance before taking an individual to jail, we would need to take that individual to the hospital. Once we are at the hospital, we currently have no further jurisdiction. This means if the individual should become agitated and start fighting with the medical staff or us, we have no jurisdiction to intervene without first getting permission from the Law Enforcement Agency with jurisdiction. Once the individual has been cleared, we now have no jurisdiction to transfer this person to the jail.

Likewise, we had an incident a few weeks ago of an individual who was suicidal and we were able to voluntarily get the individual to a Bismarck hospital for help. If we had decided to take the individual first to Dickinson for a medical evaluation, we would not have been able to continue to another facility for a mental health evaluation. This would cause an agency with jurisdiction to have to transport the individual. Once in Bismarck the individual became upset as it took over 3 ½ hours to speak with a Doctor. The individual did become aggressive, but we were able to talk them down. If the individual would have become combative with medical staff and we would have be forced to intervene to protect the safety of others, we would have opened ourselves and our political subdivision to liability. Once an evaluation took place, it was found that there was no mental health beds to place the individual in North Dakota. If the individual would have needed to continue on to a different facility, we would not have been able to do the transport as we were out of our jurisdiction. This would cause another agency to have to transport and deal with the individual we had already been working with for over 6 hours.

This bill would give us the narrow scope of jurisdiction to keep care, custody and control of an individual until we can get them to the final destination of the jail or a mental health facility. This proposed amendment to Century Code will better protect a political subdivision and individual for civil liability.

I ask that you vote DO PASS on SB 2286. Thank you, Chairwoman Larson and Judiciary Committee. I will try to answer any questions.

Respectfully,
Sarah D. Warner
Sheriff

336 Pacific Ave | PO Box 157
Mott, ND 58646
T (701) 824-2935 | F (701) 824-4387

Hettinger County Sheriff's Office

Sheriff Sarah D. Warner

336 Pacific Ave | PO Box 157
Mott, ND 58646
T (701) 824-2935 | F (701) 824-4387

Office of the Hettinger County States Attorney

David M. Crane
States Attorney
(701) 824-2329
(Fax) 824-2717

Pat J. Merriman
Asst. States Attorney
336 Pacific Ave.
Mott, ND 58646
pat@cranemerriman.com

SENATE BILL NO. 2286
TESTIMONY OF ASST. HETTINGER COUNTY STATES ATTORNEY PAT J. MERRIMAN
SENATE JUDICIARY COMMITTEE

Chairman Larson and Members of the Senate Judiciary Committee:

I submit this testimony to supplement my February 1, 2023, oral testimony in support of Senate Bill No. 2286. As described in that testimony, this bill would easily eliminate a modern law enforcement transport problem which was created in my county in 2003 by the regional jail concept and mental health transport provisions of the Century Code as follows. I first noted the problem as Dunn County States Attorney on June 4, 2017, when my local sheriff[1] expressed his liability concerns about transporting people (against their will) outside the county. Simply put, NDCC §11-15-03 enumerates the duties of a county sheriff and, makes reference to the antiquated term "county jail" which simply no longer exists in most ND counties. A *regional correction center* (RCR), like our *Southwest Multi-County Correctional Center* (SWMCC), created under the provisions of NDCC §§12-44.1-01 and 12-44.1-02, *circa* 2003, replaces the old, traditional "county jail" in Billings, Bowman, Dunn, Golden Valley, Hettinger, Slope and Stark counties. The inherent problem? Any Sheriff, other than the local sheriff where the RCR is physically located, has no statutory authority to act as a peace officer in the county where the RCR is located because the Century Code does not currently grant that authority.

Which then begs the question, since we have no Hettinger County jail within the geographic confines of our county, what is a *deputy's* status in Stark County (the situs of SWMCC) as the deputy is either transporting a prisoner to jail/hospital, attending the District Court in Dickinson, and/or transporting any citizen as an involuntary mental health commitment under NDCC Chap. 29-05? First, recall that NDCC §11-15-03[4] only authorizes the sheriff (or her deputies) to act when the court is being held within Hettinger County and, the legal fiction that we have been embracing is that if we have a court order to transport, yet, there is still no statutory authority for a warrantless arrest or emergency detention for any of the foregoing purposes outside our county. So, in reading the plain language of the Century Code, in the absence of any ND Supreme Court guidance, it can be argued that our deputies are actually acting as private citizens outside their jurisdiction. And, if the deput(ies) are refusing to enforce a district court *order,* it could expose them to a civil/criminal contempt violation, under NDCC Chap. 27-10 or, the class A misdemeanor of disobedience of a judicial order in violation of NDCC §§12.1-10-05 and 29-06-12.

[1] The Killdeer City Police Chief also expressed the same concerns for his officer's authority as enumerated in NDCC Chap. 29-06.

Second, if any offense occurs, outside the geographic confines of our county, in a Hettinger County Deputy's presence during a prisoner or mental health transport, again, there is no statutory authority for them to make an actual *arrest*[2] which would, then, again, expose that peace officer to civil liability for that detention and any subsequent injury. Again, neither the ND Supreme Court nor the ND Attorney General has addressed NDCC §11-15-03 in any context except an emergency mental health transport. See, *NDAGOp. 96-L-153 (August 30, 1996).* That logical opinion, although not our Supreme Court speaking, held that an emergency mental health transport, conducted in one, prompt, continuous journey from the county to the closest mental health facility is *implied* by NDCC Chap. 29-05. This is especially frustrating when NDCC §§29-06-05 and 29-06-05.1 actually **do** authorize foreign, non-North Dakota, peace officers (in fresh pursuit) state-wide arrest and detention powers for misdemeanors, felonies and even traffic violations or, transports of their own prisoners, in the exact same manner as a local ND peace officer in that ND jurisdiction.

Third, the problem has been exacerbated by RCR administrations which are frequently demanding that the arresting sheriff's dept. transport their inmates for medical treatment (both before and after booking) when, again, there is no statutory authority, Attorney General's Advisory opinion or ND Supreme Court case authorizing such a transport. And, for Hettinger County, both the SWMCC and our two regional hospitals lie within the geographic confines of Stark County (an hour away) and, again, our deputy is acting with no enumerated arrest, detention or transport powers outside our county. And, as I noted in 2017, this particular problem is only going to get worse as private, corporate RCR's seek to limit *their* civil liability for detaining these persons, without prior medical clearance and, also, thereby, avoid liability for any attendant medical/mental health expenses. A hotly debated issue across the entire United States right now as reported by the *Chatanooga Times Free Press* on 24 April 2017 in writing about the ongoing battle between the Bradley County, Ohio, Sheriff's Office and the Cleveland Police Department's local jail. A transported arrestee, refused booking at that jail, died when he was turned away for medical reasons and, taken by ambulance to a local hospital. He left shortly, thereafter, and was never seen alive again.

In closing, these proposed amendments to NDCC §§11-15-03, 25-03.1-25, 40-25-05 and Chap. 29-06 are those I recommended to my sheriff on February 10, 2022. Although I did not do exhaustive research on other states' laws, I did note that both California and Florida had provided the same state-wide arrest, detention and transport powers to their state licensed POST approved peace officers. In my opinion this amendment closes a gaping legal liability wound created by modern policing and detention at no expense to any member of the public and, simply approves, in writing, what sheriffs are now doing with questionable authority.

---

[2] "Arrest" is defined under NDCC §29-06-01 as the taking of a person into custody in the manner authorized by law to answer for the commission of an offense.

Hettinger County Sheriff's Office

Sheriff Sarah D. Warner

03/20/2023

House Judiciary Committee
North Dakota State Capitol
600 East Boulevard
Bismarck, ND 58505

RE: Testimony in support of Senate Bill 2286

Dear Honorable members of the House Judiciary Committee,

My name is Kyle Christenson. I am Chief Deputy with Hettinger County Sheriff's Office and I support the proposed changes to North Dakota Century Code related to SB 2286. Prior to submitting this proposal, I met with North Dakota Attorney General Drew Wrigley and Deputy Attorney General Claire Ness to discuss this issue and they voiced their support of this Bill, and the goals it aims to accomplish, as it will allow Peace Officers to do our job with the civil protection we need.

Proposed amendment granting Peace Officer powers of arrest during transports outside "home" jurisdiction

- Currently, North Dakota Century Code (NDCC) only allows Peace Officers to have powers of arrest within the political subdivision for which they are employed. For the purposes of this document, these will be called their 'home' jurisdiction. e.g.:
  - A Mandan Police Officer has jurisdiction only in the city of Mandan, but may need to maintain custody of an arrestee who is being treated in the Emergency Department of Sanford Medical Center in Bismarck.
  - A Cass County Sheriff's Deputy has jurisdiction only in Cass County, but may have to transport an inmate back to Fargo from the Ward County Jail in Minot.

- NDCC currently has no provision allowing a Peace Officer to retain the "home" jurisdiction authority while they conduct transports of any detainee who is in that Peace Officer's custody, care, or control while in 'foreign' jurisdictions. The simple act of having someone in their custody is not sufficient legal coverage. The Peace Officer is conducting that person, in essence, as a private citizen. This brings with it many legal grey areas which could be remedied by the passage of SB 2286.

- Should either of the two above-mentioned Peace Officers have to take enforcement action in a 'foreign' jurisdiction (to protect the safety of themselves, the detainee, or others for example), they may not be able to legally act under NDCC. Any action taken by that Peace Officer would technically be done be as a private citizen only, and just *hope* the detainee cooperates. Good faith qualified immunity *may* protect the officer to an extent, but that does not protect officers or political subdivisions from civil liability.

- North Dakota often has few community resources and those resources frequently lie in the major population centers. Peace Officers in rural jurisdictions must often transport detainees into a 'foreign' jurisdiction. e.g.:
  - Transport a detainee to or from a jail
  - Transport a detainee to or from court
  - Transport a detainee to or from a hospital (mental health evaluation, medical clearance, etc.)

- Should the Peace Officer need to take enforcement action while in a 'foreign' jurisdiction, they and the political subdivision with whom that Peace Officer is employed, may be held civilly liable.

336 Pacific Ave | PO Box 157
Mott, ND 58646
T (701) 824-2935 | F (701) 824-4387

Hettinger County Sheriff's Office

Sheriff Sarah D. Warner

- SB 2286's proposed changes to NDCC remedy this shortfall by granting Peace Officers statewide jurisdiction and powers of arrest under specific conditions, such as those examples listed above.

- Allowing this lack of clarity in NDCC leaves political subdivisions and, through no fault of their own, individual Peace Officers open to unnecessary civil liability.

- This proposal only extends such legal protections to Peace Officers for the purposes of detainee transports to or between facilities which may lie in a 'foreign' jurisdiction. **SB 2286 does not grant Peace Officers *carte blanche* jurisdiction for all purposes, at all times.**

- With the increased incidence of mental health-related calls, Peace Officers are more often transporting individuals to a hospital for purposes of mental health evaluations from a physician. If that hospital does not lie in their 'home' jurisdiction, they face the same legal risks as any other transport.

- SB 2286's proposed language, drafted by Attorney Patrick Merriman of the Hettinger County State's Attorney's Office, modified existing NDCC with the addition of applicable language taken directly from the state statues of California and Florida. Both states have provisions which provide the legal protections we seek to adopt in North Dakota. These protections will allow Peace Officers to have the legal protections relating to the care, custody, and control of an individual for the duration that individual is in their custody.

- The proposed amendment to NDCC will reduce the potential of unnecessary civil liability for political subdivisions and individual Peace Officers.

This Bill is supported by the North Dakota Attorney General's Office, was voted unopposed "Do Pass" in the Senate Judiciary Committee, and passed unopposed on the Senate floor. A member of the Senate Judiciary Committee, I believe it was Senator Larson, Chair of the Committee, stated after their SB 2286 hearing that the Bill is "a no-brainer". With such strong support, I trust the House Judiciary Committee will agree that SB 2286 represents a positive change.

Passage of this Bill will help Peace Officers such as myself do our jobs with the same civil protections offered to our peers in other states. I respectfully recommend you vote "Do Pass" on this Bill.

Respectfully,

Kyle Christenson
Chief Deputy
Hettinger County Sheriff's Office

336 Pacific Ave | PO Box 157
Mott, ND 58646
T (701) 824-2935 | F (701) 824-4387

Legislative Assembly

North Dakota Senate

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360

Senator Donald Schaible
District 31
9115 Highway 21
Mott, ND 58646-9200
dgschaible@ndlegis.gov

COMMITTEES:
Appropriations

March 20, 2023

Introduction for SB 2286

Good morning, Chairman Klemin and the members of the House Judiciary Committee. For the record I am Senator Don Schaible, District 31, here to introduce SB 2286. This bill was at the request of my local sheriff's department with some issues that they have when transporting or detention of a person. It is my understanding that when transporting a person, their jurisdiction is only valid from starting point to the first end point. If further transportation is needed the sheriff's office no longer has jurisdiction which creates the problem. If further transportation to medical facilities or other law enforcement agencies is required, the question of jurisdiction becomes unclear. That is the extent of my knowledge of this issue, and I have experts behind me that will further explain this issue and the improvement that this bill is asking for. One bit of information that I would like to explain is that when we were discussing the merits of this bill, we thought it would be a good idea to discuss it with the Attorney General's office. He did not see any issues with this and seen no reason not to suggest this bill. With that I will try to answer any questions, but I may have to refer to the real experts.

Senator Don Schaible