MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M

ROLL NUMBER

DESCRIPTION

2219

2001 SENATE JUDICIARY

SB 2219

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTIN NO. SB 2219

Senate Judiciary Committee

☐ Conference Committee

Hearing Date January 22nd, 2001

Tape Number	Side A	Side B	Meter #
1	x	x	58.9-end/0-end
2 (January 24,2001)	X		
Committee Clerk Signature			

Minutes: **Senator Traynor** opened the hearing on SB 2219: A BILL FOR AN ACT TO AMEND AND REENACT SECTION 25-03.1-11 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO INVOLUNTARY TREATMENT AND COMMITMENT PROCEDURES.

Senator Mathern, representing district 11 of Fargo, supports SB 2219. Reduction of 7 days to 4 days when a preliminary hearing must be held. Issue is not simple when we deprive a person of their liberty, there are problems. A person who was involuntarily held asked me to address this problem. (Tape 1, side B)

Senator Lyson: In larger communities 4 days is plenty of time. But in rural communities it is not enough time. I would like some leeway in rural areas.

Senator Mathern, I understand that concern. I addressed the bill some time ago. However, modern technological advances have allowed us to speed up this process. These people are held in a care facility that feels like a prison.

Senator Trenbeath: I feel that four days is enough with my experience of this.

Senator Mathern: I would like to show the committee line 10 and 11. I think this would be the situation. Lets get to the business faster. This is also not rigid enough to say that there are no exceptions.

Senator Nelson: Holidays are addressed on page 1 line 10.

Senator Trenbeath: The time frame is short.

Senator Joel Heitkamp, representing district 27, is on record for supporting SB 2219.

Representative Audrey Cleary, representing district 49, is on record for supporting SB 2219.

Terryl Ostmo, homemaker testifies in favor of SB 2219. (Testimony attached)

Senator Traynor: What happened at the preliminary hearing?

Terryl Ostmo: I didn't get one.

Senator Traynor closed the hearing on SB 2219.

JANUARY 24TH, 2001 TAPE 2 SIDE A METER # 30.1

Senator Traynor opened the hearing on SB 2219.

Thomas Mayer submitted testimony on SB 2389 which was heard in 1989, regarding scheduling a preliminary hearing within seven days rather than seventy-two hours, exclusive of weekends and holidays.

John Olson, appearing on behalf of the peace officers. It is best to keep this at seven days. Important that a preliminary hearing be there. I don't know what your doing by reducing the days.

Senator Traynor are days defined in the code?

John Olson I don't know, I assume its defined in the bill I think we can assume if the fourth day

fell on on a Saturday we could postpone until following Monday. I think this is a potential out. I think its a good point but it doesn't always work.

Senator Watne did you hear Mrs. Ostmos testimony? It was very devastating.

John Olson I agree that it is hard on individual cases in. But, routine situations must be conducted or the system will be strained. This is not the way.

Senator Watne nothing can be assessed in four days?

Senator Trenbeath Mrs. Ostmo wasn't criticizing the court system, she was criticizing that she was held the maximum number of days.

John Olson I came from a very strong interest in this. I believe people should be given their rights. I agree with you. If you reduce the number of days to 4 you'll put a hardship on the system.

Senator Lyson I can tell you shortening the days will not work. Sometimes 7 days isn't enough time. 4 days is not enough.

Senator Nelson do I hear this right? It will go back to 7 days if this bill is not passed?

Tom Mayer if you make changes you'll have technical problems elsewhere. A large task force came up with a bill which your now undoing. The present law states 7 days.

Senator Watne you have an amendment which would allow a person to be heard in their residence?

Tom Mayer if a hearing was in 4 days that would help. For other places you may need 7 days, because a preliminary hearing is done in the county of residence.

Senator Traynor that would be a new change.

Tom Mayer there would need to be a new section to make it consistent.

Alex C. Schweitzer, appearing on behalf of the North Dakota State Hospital. (testimony attached)

Senator Traynor are you familiar with Mrs. Ostmos lawsuit?

Alex Schweitzer no I am not. A 24 hour preliminary hearing was not heard.

Senator Dever if Mrs. Ostmo came to your hospital would she have been treated differently?

Alex Schweitzer yes.

Senator Traynor we can't help Mrs. Ostmo with this bill. It may help someone in the future. However, the problem was not to do with the amount of days. It had to deal with the person signing her to the Hospital.

SENATOR WATNE MOVED TO DO NOT PASS. SECONDED BY SENATOR TRENBEATH. VOTE INDICATED 6 YEAS, 1 NAYS, AND 0 ABSENT AND NOT VOTING. SENATOR LYSON VOLUNTEERED TO CARRY THE BILL.

Senator Nelson motioned to draft a resolution to study the area of involuntary commitment procedures. Seconded by Senator Bercier. VOTE INDICATED 7 YEAS, 0 NAYS AND 0 ABSENT AND NOT VOTING.

Date: 1/24/01
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2219

Senate Judiciary Committee

☐ Subcommittee on

or

☐ Conference Committee

Legislative Council Amendment Number

Action Taken Do Not Pass

Motion Made By Watne Seconded By Trenbeath

Senators	Yes	No	Senators	Yes	No
Traynor, J. Chairman	X		Bercier, D.	X	
Watne, D. Vice Chairman	X		Nelson, C.		X
Dever, D.	X				
Lyson, S.	X				
Trenbeath, T.	X				

Total (Yes) 6 No 1

Absent 0

Floor Assignment Lyson

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

Date: 1/24/01
Roll Call Vote #: 2

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2219.

Senate Judiciary Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken to start a resolution a preliminary hearings.

Motion Made By _____ Seconded By _____

Senators	Yes	No	Senators	Yes	No
Traynor, J. Chairman	X		Bercier, D.	X	
Watne, D. Vice Chairman	X		Nelson, C.	X	
Dever, D.	X				
Lyson, S.	X				
Trenbeath, T.	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

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

REPORT OF STANDING COMMITTEE (410)
January 25, 2001 3:22 p.m.

Module No: SR-13-1639
Carrier: Lyson
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2219: Judiciary Committee (Sen. Traynor, Chairman) recommends **DO NOT PASS** (6 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2219 was placed on the Eleventh order on the calendar.

2001 TESTIMONY

SB 2219

57th (2001) Legislative Assembly

SENATE BILL NO. 2219 Changes to Involuntary Commitment Statutes

Testimony of Terryl Ostmo, Wahpeton, ND

Mr. Chairman and members of the committee, my name is Terryl Ostmo from Wahpeton, ND. I am a homemaker and decorative painter, and my husband is a family practice physician. We have two children who are now in high school. Those of you who subscribe to The Forum may recall the headlines on Sunday, December 12, 1999, which read: "Terryl Ostmo, who was held against her will in two psychiatric hospitals for seven days without judicial review, wants law changed" and "Woman says her 'stay' in hospital 'abuse of power ".

What was done to me during those seven days nearly destroyed my life. My whole family has been deeply affected. I do not believe that my experience of involuntary commitment is an isolated one. If there is anything isolated about my case, it is that I have come forward to publicly share my story. It is my hope that this legislature will see that the involuntary commitment laws need to be changed. These changes will prevent others from suffering the trauma my family and I suffered. This legislature should not expect a flood of victims of the involuntary commitment process to come forward with their stories. The stigma associated with mental illness is just too great.

On April 3, 1997, I was accused of being mentally ill. For five days I was held against my will at MeritCare Hospital by Psychiatrist Samy Karaz . My medical record documents that I complained of being a "prisoner".

After five days, under Dr. Karaz's orders, I was transferred to Altru Hospital in Grand Forks. Sheriff's deputies from Cass County handcuffed me in the psychiatric ward, led me through the hospital lobby out into the street in front of MeritCare Hospital and drove me to

Grand Forks where I was again held against my will for two more days. My insurance company was billed nearly $1,000 for each day I was held against my will.

The law needs to be changed so that the psychiatric evaluation period is no longer seven days. A study by a California psychologist at the Langley Porter Institute in San Francisco has shown that psychiatrists will hold a patient, almost without exception, for the maximum period allowed under the law.

My case dramatically illustrates the irresponsible use and abuse of the special authority entrusted to physicians and other mental health professionals by the North Dakota legislature. The commitment papers that had been prepared were never filed with the Court. My rights to an attorney, to an independent medical evaluation, to be present at a hearing, and to be free from unnecessary restraint and isolation were all violated. The findings of North Dakota's Protection and Advocacy Project substantiated neglect. Mr. Paul F. Richard, General Counsel for MeritCare Health System, in his response to those findings wrote:

"Ms. Ostmo was ultimately released from Altru prior to the 7 day period for the preliminary hearing, thus the filing of a petition became unnecessary." (I was released only within several hours of having been held a full seven days.)

Involuntary commitment is "a massive curtailment of liberty." Being denied liberty for up to seven days when accused of mental illness is devastating to one's mental health. Mental health patients are discriminated against in North Dakota by having the longest confinement before seeing a judge. Individuals being held for sexual crimes will have a preliminary hearing within 72 hours, according to the Sexual Predator Law. Individuals being held for felonies will be in court without unnecessary delay. It is fact that in North Dakota a person accused of being mentally ill can be locked up for five, six or seven days, which is worse than jail sentences for most first-offense misdemeanors. This is clearly punitive . Punishing the mentally ill, or those accused of

mental illness, should not be a result of the involuntary commitment process.

It is wrong for the law to allow seven days before an individual being held for mental health allegations and accusations will see a judge. The existing law already allows a delay or continuance of the preliminary hearing if concurred with by the respondent or if extended by the magistrate for good cause shown. Therefore, we do not need to arbitrarily jeopardize the mental health and liberty of all persons by allowing incarceration for a full seven days.

If it takes more than three days to do an evaluation to justify the extreme measure of taking away a person's liberty, the problem lies with the examiner doing the evaluation. Geographically, there isn't anyplace in North Dakota that can't be reached easily within 24 hours. Involuntary commitment is only appropriate for a very small subset of people with mental illness, and then only if the person is at imminent risk of danger to themselves or others, or substantially incapable of self-care. This requires circumstances of an extreme nature, and as such will become apparent very quickly. Unnecessary deprivation of liberty for any period of time is devastating. Seven days is far too long. I ask for your positive recommendation on SB2219 to the Senate and your yes vote when it goes to the Senate floor for a final vote.

Respectfully yours,

Terryl Ostmo

Terryl Ostmo

Terryl Ostmo of Wahpeton, N.D., who asserts she was illegally detained in 1997 to a psychiatric ward, is pushing for a change in N.D. law governing emergency involuntary commitments. Photo by Bruce Crummy

Woman says 'stay' in hospital 'abuse of power'

By Patrick Springer
The Forum - 12/12/1999

Terryl Ostmo will stipulate that she wasn't a model of etiquette on the evening of April 3, 1997. She will admit, in fact, that she was a cauldron of anger.

Angry enough to curse and flail her arms at her former therapist over what a licensing board later found was poor judgment in counseling her. So angry that the psychologist she confronted would accuse her of threatening his life — an allegation she denies.

But she insists she didn't do anything to justify being held for seven days against her will in the psychiatric wards of two hospitals — detained without a court order, without legal representation, without any process of law.

"It was an abuse of power," she says. "Even animals get treated better than that."

North Dakota laws governing the involuntary commitment of persons deemed mentally ill and in need of treatment require that a court petition be filed within 24 hours, except on holidays.

That didn't happen after Ostmo, who lives in Wahpeton, N.D., was admitted to MeritCare Hospital at 9:15 p.m. on a Thursday night, records indicate — a lapse a state advocacy agency found to be neglect.

The finding, by the North Dakota Protection and Advocacy Project, was issued this fall as part of an investigation of Ostmo's case that continues. The agency has authority under state and federal law to investigate reports of possible abuse and neglect in the care of the mentally ill or developmentally disabled.

Although a petition and other paperwork were prepared following Ostmo's admission, the documents never were filed in court, as required by law, the agency's report said. As a result, no lawyer was appointed to represent Ostmo, and no hearing was held before a judge to decide whether she was a person in need of involuntary treatment — safeguards required by law.

MeritCare responded to the findings with arguments that circumstances, including a blizzard and other delays in transferring Ostmo to a hospital in Grand Forks, N.D., allowed an exception to the deadline for filing the paperwork. Officials who have reviewed the case have been unpersuaded, however.

"We substantiated neglect," says Jim Jacobson, deputy director of the Protection and Advocacy Project, and the investigator in Ostmo's case.

"Do I think that Terryl Ostmo's rights were violated to the extent there was negligence?" Jacobson added. "Yeah, I think that's very clear."

Jacobson also concluded that MeritCare had failed to fully advise Ostmo of her legal rights, including her right to be present at a treatment hearing and the right to an independent medical evaluation.

Following, according to the agency's findings and other documents, is a summary of what happened before and after Ostmo's emergency admission at MeritCare:

That evening, she went to the south Fargo home of Ken Christianson, a MeritCare psychologist, to confront him with complaints about the unsuccessful treatment of her post-traumatic stress. She had ended her therapy with Christianson two years earlier.

Christianson refused to meet with Ostmo and asked her to leave. He contends that she assaulted him, verbally and physically, and that he had to restrain her by holding her by the wrists. In a sworn court affidavit filed the next day, Christianson said Ostmo threatened his life three times.

Ostmo denies threatening Christianson's life. She maintains that she called him a vulgar name three times.

"I'll admit that I tried to slap his face," she says. "He could have said all kinds of things, and it's his word against mine."

(A judge later granted Christianson's request for a restraining order against Ostmo, barring her from coming within 500 feet of his office or home. Months later, because of the order, police escorted Ostmo out of the hearing room when Christianson was questioned about his counseling of her by a state licensing board.)

After Ostmo's confrontation with Christianson at his home, he called Fargo police, who took her to MeritCare's emergency room.

Doctors examined Ostmo, whose blood-alcohol concentration was 0.099; the statutory intoxication level for drivers is 0.10 percent. A psychiatrist, Samy Karaz, determined that Ostmo posed a risk to herself or others — an opinion not shared by her therapist at the time, R.P. Ascano, a psychologist from Breckenridge, Minn.

Ascano, who had seen Ostmo before she went against his advice to confront Christianson, talked to Karaz by telephone the next day, who asked for his input. Ascano wrote that, once sober, he didn't think Ostmo was "admittable" under Minnesota laws.

Although Ascano deferred to Karaz's assessment, he says he told the MeritCare psychiatrist "that if I had been of the opinion that Mrs. Ostmo was 'committable,' she would not have been permitted to leave my office and would have immediately been placed on a peace officer hold."

MeritCare had a duty to provide medical treatment to someone requiring it, Jacobson wrote in his report. "The Project takes no position as to whether Ms. Ostmo was an individual in need of continuing treatment after the first 24 hours of hospitalization."

In any event, Karaz ordered Ostmo hospitalized and she was taken to the hospital's psychiatric ward, where a woman told her, "OK, strip."

With three women and two men present, including a private security officer with a gun, she was forced to take off her clothes. Ostmo then was placed in a small locked room, furnished with only a hospital bed.

Hospital records indicate Ostmo was angry in the emergency room, using loud and threatening language. She also was irritable at times when confined to her room in the psychiatric ward.

"I was angry for being locked up in that hellhole," she says. "I think that's a normal reaction for somebody in that situation. I was telling them, 'You can't lock me in here, I have claustrophobia.' "

The Protection and Advocacy Project concluded, in fact, that the hospital's practice of locking up patients for safety reasons after a new admission constituted neglect.

MeritCare had a practice of having all patients in the psychiatric unit go to their rooms, which then were locked, when a new patient was admitted. State law provides that a patient has the right to the least restrictive conditions necessary.

"The Project substantiates a finding of neglect in that MeritCare lacked adequate written policies and procedures to define, document, monitor, and control the use of seclusion," the report found.

Ostmo maintains she didn't receive any psychiatric care during her five days at MeritCare.

The hospital had planned to transfer Ostmo to United Hospital in Grand Forks because of her contentious relationship with Christianson — and with others at MeritCare, including Karaz, the admitting psychiatrist, who earlier had refused to accept her for counseling.

The transfer, which was made by Cass County deputy sheriffs, was delayed several times because of weather — including the blizzard that preceded the 1997 Red River Valley flood. Nonetheless, Jacobson concluded that did not excuse the failure to file a petition.

The petition and other papers were prepared by Melissa Overland, a medical social worker at MeritCare. The state licensing board for social workers last month found a "reasonable basis to believe" that Overland violated professional ethics by failing to file the petition. Overland objects to that finding and is asking for it to be overturned. A final decision is expected in February.

Jacobson also concluded that MeritCare acted negligently by not allowing Ostmo to wear a coat when she was driven to Grand Forks on icy highways on April 8, 1997, when the temperature was 16 degrees.

"Not having a coat during transport in freezing temperatures placed Ms. Ostmo at risk of harm," he wrote in his findings.

MeritCare declined to comment, in detail, on the report or the conduct of its employees in handling Ostmo's case. In letters responding to the agency's report and Ostmo's complaints against professionals involved in the case, however, MeritCare has denied doing anything wrong.

"While MeritCare would like the opportunity to talk about our side of the story regarding Terryl Ostmo's case, we are bound both legally and ethically to abide by the laws of patient confidentiality," says MeritCare spokeswoman Carrie Johnson. "Because Mrs. Ostmo has made the decision not to give consent, we will respect her wishes and won't discuss anything related to her case.

"We welcome the comments of outside organizations such as The Protection and Advocacy Project. We have cooperated fully with the project and have invited them to conduct an in-service for our staff on the issues identified in their report."

The report has been sent to state health officials and a private agency that accredits hospitals. Ostmo, who is pushing for legislation to change state laws regarding involuntary commitments, released information about her case to The Forum. She said she didn't want to sign a release with the hospital, however, saying she didn't want to open herself to the release of sensitive medical information.

Jacobson still is investigating whether United Hospital, since renamed Altru, acted improperly by holding Ostmo for two days without filing a court petition. He hopes to finish his findings next month.

"I really admire Terryl Ostmo's grit in pursuing this and her perseverance in pursuing it," Jacobson says. "I believe we have addressed what were the most significant concerns."

Ostmo still is disturbed by the experience. "I'm doing what I can to get over it," she says. "I'm trying to make changes. It's traumatic — it's exceedingly traumatic. I don't think I'll ever get over it."

Back to Top

SB 2219

Senate Judiciary Committee

January 22, 2001

Good Morning, Chairman Traynor and members of the Committee. I am Teresa Larsen, Executive Director for the Protection and Advocacy Project. I would like to make a few comments relative to the proposed changes to North Dakota's involuntary commitment law.

The current law allows the State to postpone a respondent's first appearance before a judge until seven days after the State has taken a respondent into physical custody. Seven days is a very long time for a respondent to lose the opportunities to go to work, to go home, to attend religious services, to visit friends, to go for a walk, to attend to usual social activities, to interact with nature outdoors - outside constant surveillance by the State. All this occurs in the usual case before a respondent has seen a judge for the first time.

During this seven days, a respondent might be fired from employment because the respondent did not show up for work for several consecutive scheduled work shifts. A respondent could miss out on seeing the respondent's children and grandchildren on a daily basis. A respondent may fail to live up to various family obligations. There are many examples of how a respondent's life is disrupted while held in custody before seeing a judge.

If a preliminary hearing can be held on the fourth day, rather than the seventh day, the respondent should have that option. Liberty is a constitutional right. The State can honor that constitutional right to liberty

by withholding it for a shorter time, consistent with the practical limits of a fair and reliable commitment process. A person taken into custody for commitment as a sexually dangerous person gets the right to a preliminary hearing on the third day. A respondent should get no less in an involuntary civil commitment proceeding under Chapter 25-03.1

Thank you for the opportunity to comment.

Legislation would shorten holding time

By Patrick Springer
The Forum - 12/12/1999

Psychiatric hospitals in North Dakota can hold a person for involuntary treatment for up to seven days before a judge decides whether hospitalization should continue.

Terryl Ostmo, who was held against her will in two psychiatric hospitals for seven days without any judicial review, wants to change the law.

She advocates legislation to shorten the length of time, to three days from seven, that a person can be hospitalized involuntarily for psychiatric treatment.

Reducing the time before a hearing must be held would help guard against a person being held without a hearing – or at least shorten the time, she argues.

"Those laws are there to protect the rights of individuals," says Ostmo, who lives in Wahpeton, N.D. "Hospitals are not prisons and you don't check your legal rights at the door when you enter."

Sen. Tim Mathern, D-Fargo, has had a bill drafted and plans to introduce a proposal to shorten the period to three days, with continuances allowed by a judge for good cause. He plans to introduce the bill in the 2001 Legislature.

"This is not a common problem in my work experience," says Mathern, whose career has been in social work. "However, in the cases where it does happen, it is devastating to the individuals involved. It is not just an issue of civil rights being violated, but also of damage to one's self concept."

Minnesota allows an emergency psychiatric admissions for up to three days, excluding weekends or holidays, before a court hearing must be held.

Rose Stoller, executive director of the Mental Health Association in North Dakota, says the organization's board is studying the proposal, in light of Ostmo's case, but hasn't yet taken a position on it.

"We are absolutely going to take a look at it," she says. "The decision was to put it on our legislative agenda. It certainly sounds like it was a very traumatic experience for this individual, clearly."

However, Stoller adds, "I just don't have enough information."

Glenn Johnson, a psychologist from Jamestown, N.D., and vice president of the association's board, isn't convinced that shortening the period by which a hearing must be held would solve the problem in Ostmo's case – that no petition was filed with the court.

"I'm just not sure I had a clear understanding of how a shorter amount of time would keep this from happening," Johnson says.

That position misses the point, Ostmo says. She believes she was released on the seventh day because of the law requiring a hearing. A shorter deadline would protect people from being arbitrarily held for up to a week, she says.

A patient has the right to an independent medical examination as part of the court review.

Thomas Lockney, a law professor at the University of North Dakota, says North Dakota's laws protecting psychiatric patients' rights in involuntary commitments are generally good. He was active in revising the laws in 1977.

"What happens when you don't follow the statutes?" he asked. "The big question is what are your remedies? The answer is the remedies are only as good as the mental health professionals."

Patients whose rights were violated can file a civil lawsuit to seek damages, but it can be difficult to get a lawyer to take such a case on contingency, Lockney says.

Indeed, Ostmo says she spoke to a number of lawyers. None was willing to take the case without a fee. A two-year statute of limitation might have passed by now, she says.

"Once you're out, there's incredible difficulty in getting any financial remedies," Lockney says.

Gregory Runge, a Bismarck, N.D., lawyer who has represented patients in involuntary commitment cases for almost 10 years, says situations like Ostmo's are rare.

"That's totally unheard of," he says. "In my 9½ to 10 years of doing this, it's never happened."

Runge agrees with Lockney that North Dakota's laws and procedures governing involuntary psychiatric admissions are good -- as long as they are followed.

"These laws are great, absolutely excellent. They give the respondent adequate protection. But that means everybody must know the law and follow it."

Professionals involved in mental commitments in Burleigh and Morton counties meet regularly to discuss procedures. That includes law enforcement, lawyers and court officials, medical professionals and social workers.

As a result, people are well aware of what the laws require, and the system works well, Runge says.

"Nobody falls through the cracks in Burleigh and Morton counties," he says. "We have it down to a science. There's no guessing here."

Lockney says the idea of shortening the period a patient can be held without a hearing to three days has merit. "I think seven is awfully long," he says.

The legislative fight likely will be to demonstrate that it would not be a hardship in rural areas, he says.

"Here, you can be locked up for five, six or seven days, which is worse than jail sentences for most first-offense misdemeanors."

Back to Top

Number of Mental Health Petitions Filed & Hearings Held

Richland County	1997	Petitions Filed: 8	Hearings Held: 2
	1998	Petitions Filed: 10	Hearings Held: 0
	1999	Petitions Filed: 12	Hearings Held: 2
	2000	Petitions Filed: 6	Hearings Held: 1

Cass County	1997	Petitions Filed: 351	Hearings Held: 33
	1998	Petitions Filed: 315	Hearings Held: 31
	1999(up to Nov. 15):	Petitions Filed: 258	Hearings Held: 32
	Nov. 15, 1999 to end of year:	Petitions Filed: 45	Hearings Held: 3

For Cass County the above data averages out to fewer than three mental health hearings per month.

North Dakota Supreme Court Clerk of Court's Office (701) 328-2221 Annual Reports:

Total Number of Mental Health Petitions Filed in 1997: 993
Total Number of Mental Health Petitions Filed in 1998: 969
Total Number of Mental Health Petitions Filed in 1999: 944

Total Number of Hearings Held: Not Available from Supreme Court Clerk of Court. I was told to contact each individual County Clerk of Court's Office.

Burleigh County	1997	Petitions Filed: 75	Hearings Held: Not Kept Track Of
	1998	Petitions Filed: 68	Hearings Held: Not Kept Track Of
	1999	Petitions Filed: 69	Hearings Held: Not Kept Track Of

Forum editorial: Psychiatric patients have rights

The Forum - 12/23/1999

North Dakota's legal system for reviewing the need for involuntary admissions to psychiatric hospitals seems to work pretty well – most of the time.

But occasionally things don't happen as they should, and we all are reminded of the reasons why people involuntarily committed for psychiatric treatment are entitled to have a judge review their case.

That process is mandatory, not discretionary. The law is clear: a court petition must be filed within 24 hours of an emergency admission, excluding holidays. People cannot be held involuntarily without a review hearing for more than seven days.

That didn't happen in the case of Terryl Ostmo, a Wahpeton, N.D., woman who recently made her case public in The Forum. She is pushing for legislation to shorten the time a person can be held, to three days from seven, before a review hearing. If approved by the 2001 Legislature, North Dakota would join Minnesota in requiring a judge to decide – normally within three days with provisions for an extension – whether in-patient treatment is required.

The proposal has merit. It would reduce the length of time a person can be held involuntarily, until a judge decides. In Ostmo's case, she was admitted to two hospitals and was released only when the seven-day limit had been reached.

Although lapses are rare, they do occasionally occur. The Ostmo case demonstrates that the laws governing emergency, involuntary admissions are supposed to safeguard patient rights. The decision to hold someone against his or her wishes must be made with unfailing attention to the protections of due process.

In Ostmo's case, a petition never was filed with a court. And the patient was not fully apprised of her legal rights, an investigation later found. Thus, no lawyer was appointed to represent her; no independent medical examination was made; no judge decided what was in her best interest.

That should not happen. Ever. North Dakota should reduce the length of time that a person facing involuntary commitment is in legal limbo, to three days from seven. Four days is a long time when a person is deprived of liberty without a hearing.

(Forum editorials represent the opinion of Forum management and the newspaper's Editorial Board.)

Back to Top

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STATE OF NORTH DAKOTA

Wayne Stenehjem
ATTORNEY GENERAL

January 23, 2001

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Senator Jack Traynor
Chairman Senate Judiciary Committee
State Capitol
Bismarck, ND 58505

Dear Senator Traynor:

Enclosed are amendments to other sections of N.D.C.C. chapter 25-03.1 pertaining to a preliminary hearing to be held within seven days of emergency detention to be consistent with the changes in section 25-03.1-11 under Senate Bill No. 2219. A separate amendment in section 25-03.1-26(1) allows preliminary hearings to be held where the person is located, thus saving substantial costs of transportation for the counties.

There are also references to scheduling a hearing within seven days, but not a preliminary hearing, in N.D.C.C. §§ 25-03.1-18.1(1)(b) and 25-03.1-34. In each instance, the individual is subject to an existing treatment order and I therefore did not make changes in those sections.

The State Hospital Superintendent, Mr. Alex Schweitzer, will be available to testify regarding Senate Bill No. 2219 on Wednesday and I can accompany him to answer any questions concerning the amendments or commitment procedures.

Sincerely,

Thomas A. Mayer
Assistant Attorney General

lk
Enclosure

MEMORANDUM

If the Committee concludes that it is appropriate to provide for a preliminary hearing in a mental health commitment only four days after an emergency detention or a treatment hearing within four days after the court receives the examiner's report, it is recommended that N.D.C.C. § 25-03.1-26(1) be amended to allow a preliminary hearing to be held in the court where the person is located as well as in the county of residence as is the case regarding treatment hearings under N.D.C.C. § 25-03.1-19. The following amendment to subsection 1 of section 25-03.1-26 will accomplish this.

SECTION _____ AMENDMENT. Section 25-03.1.26 of the North Dakota Century Code is amended and reenacted as follows:

25-03-1.26 Emergency procedure -- Acceptance of petition and individual -- Notice -- Court hearing set.

1. A public treatment facility immediately shall accept and a private treatment facility may accept on a provisional basis the application and the person admitted under section 25-03.1-25. The superintendent or director shall require an immediate examination of the subject and, within twenty-four hours after admission, shall either release the person if the superintendent or director finds that the subject does not meet the emergency commitment standards or file a petition if one has not been filed with the court of

the person's residence or the court where the person is located or the court which directed immediate custody under subsection 2 of the section 25-03.1-25, giving notice to the court and stating in detail the circumstances and facts of the case.

2. Upon receipt of the petition and notice of the emergency detention, the magistrate shall set a date for a preliminary hearing, if the respondent is alleged to be suffering from mental illness or from a combination of mental illness and chemical dependency, or a treatment hearing, if the respondent is alleged to be suffering from chemical dependency, to be held no later than ~~seven~~ four days after detention unless the person has been released as a person not requiring treatment, has been voluntarily admitted for treatment, has requested or agreed to a continuance, or unless the hearing has been extended by the magistrate for good cause shown. The magistrate shall appoint counsel if one has not been retained by the respondent.

SECTION _____ AMENDMENT. Section 25-03.1-06 of the North Dakota Century Code is amended and reenacted as follows:

§ 25-03.1-06. Right to release on application - Exception - Judicial proceedings.

Any person voluntarily admitted for inpatient treatment to any treatment facility or the state hospital must be orally advised of the right to release and must be further advised in writing of the rights under this chapter. A voluntary patient who requests release must be immediately released. However, if the superintendent or the director determines that the patient is a person requiring treatment, the release may be postponed until judicial proceedings for involuntary treatment have been held in the county where the hospital or facility is located. The patient must be served the petition within twenty-four hours, exclusive of weekends and holidays, from the time release is requested, unless extended by the magistrate for good cause shown. The treatment hearing must be held within ~~seven~~ four days from the time the petition is served.

RETAKE

DATRUE

2705 Twin City Dr
Mandan, ND 58554
701-663-8930

SECTION _____ AMENDMENT. Section 25-03.1-06 of the North Dakota Century Code is amended and reenacted as follows:

§ 25-03.1-06. Right to release on application - Exception - Judicial proceedings.

Any person voluntarily admitted for inpatient treatment to any treatment facility or the state hospital must be orally advised of the right to release and must be further advised in writing of the rights under this chapter. A voluntary patient who requests release must be immediately released. However, if the superintendent or the director determines that the patient is a person requiring treatment, the release may be postponed until judicial proceedings for involuntary treatment have been held in the county where the hospital or facility is located. The patient must be served the petition within twenty-four hours, exclusive of weekends and holidays, from the time release is requested, unless extended by the magistrate for good cause shown. The treatment hearing must be held within ~~seven~~ four days from the time the petition is served.

SECTION _____ AMENDMENT. Section 25-03.1-18 of the North Dakota Century Code is amended and reenacted as follows:

§ 25-03.1-18. Involuntary treatment - Release.

The superintendent or the director may release a patient subject to a fourteen-day evaluation and treatment order or a ~~seven-day~~ four-day emergency order if, in the superintendent's or director's opinion, the respondent does not meet the criteria of a person requiring treatment or, before the expiration of the fourteen-day order, the respondent no longer requires inpatient treatment. The court must be notified of the release and the reasons therefor. If the respondent is released because the respondent does not meet the criteria of a person requiring treatment, the court shall dismiss the petition.

MEMORANDUM

If the Committee concludes the change of time from seven days to four days within which preliminary hearings for mentally ill or treatment hearings for chemically dependent are to be scheduled is appropriate, the same change should also be made in N.D.C.C. §§ 25-03.1-19 and 25-03.1-26(2) for the sake of consistency. Following is the amendment to 25-03.1-19:

SECTION _____ AMENDMENT. Section 25-03.1-19 of the North Dakota Century Code is amended and reenacted as follows:

§ 25-03.1-19. Involuntary treatment hearing.

The involuntary treatment hearing, unless waived by the respondent or the respondent has been released as a person not requiring treatment, must be held within fourteen days of the preliminary hearing. If the preliminary hearing is not required, the involuntary treatment hearing must be held within ~~seven~~ four days of the date the court received the expert examiner's report, not to exceed fourteen days from the time the petition was served. The court may extend the time for hearing for good cause. The respondent has the right to an examination by an independent expert examiner if so requested. If the respondent is indigent, the county of residence of the respondent shall pay for the cost of the examination and the respondent may choose an independent expert examiner.

The hearing must be held in the county of the respondent's residence or location or the county where the state hospital or

treatment facility treating the respondent is located. At the hearing, evidence in support of the petition must be presented by the state's attorney, private counsel, or counsel designated by the court. During the hearing, the petitioner and the respondent must be afforded an opportunity to testify and to present and cross-examine witnesses. The court may receive the testimony of any other interested person. All persons not necessary for the conduct of the proceeding must be excluded, except that the court may admit persons having a legitimate interest in the proceeding. The hearing must be conducted in as informal a manner as practical, but the issue must be tried as a civil matter. Discovery and the power of subpoena permitted under the North Dakota Rules of Civil Procedure are available to the respondent. The court shall receive all relevant and material evidence which may be offered as governed by the North Dakota Rules of Evidence. There is a presumption in favor of the respondent, and the burden of proof in support of the petition is upon the petitioner.

If, upon completion of the hearing, the court finds that the petition has not been sustained by clear and convincing evidence, it shall deny the petition, terminate the proceeding, and order that the respondent be discharged if the respondent has been hospitalized before the hearing.

SECTION _____ AMENDMENT. Subsection 2 of section 25-03.1-21 of the North Dakota Century Code is amended and reenacted as follows:

2. If the respondent is not complying with the alternative treatment order or the alternative treatment has not been sufficient to prevent harm or injuries that the individual may be inflicting upon the individual or others, the department, a representative of the treatment program involved in the alternative treatment order, the petitioner's retained attorney, or the state's attorney may apply to the court or to the district court of a different judicial district in which the respondent is located to modify the alternative treatment order. The court shall hold a hearing within ~~seven~~ four days after the application is filed. Based upon the evidence presented at hearing and other available information, the court may:

   a. Continue the alternative treatment order;

   b. Consider other alternatives to hospitalization, modify the court's original order, and direct the individual to undergo another program of alternative treatment for the remainder of the ninety-day period; or

   c. Enter a new order directing that the individual be hospitalized until discharged from the hospital under section 25-03.1-30. If the individual refuses to comply with this hospitalization order, the court may direct a

peace officer to take the individual into protective custody and transport the respondent to a treatment facility.

SECTION _____ AMENDMENT. Subsection 2 of section 25-03.1-25 of the North Dakota Century Code is amended and reenacted as follows:

2. If a petitioner seeking the involuntary treatment of a respondent requests that the respondent be taken into immediate custody and the magistrate, upon reviewing the petition and accompanying documentation, finds probable cause to believe that the respondent is a person requiring treatment and there exists a serious risk of harm to the respondent, other persons, or property if allowed to remain at liberty, the magistrate may enter a written order directing that the respondent be taken into immediate custody and be detained as provided in subsection 3 until the preliminary or treatment hearing, which must be held no more than ~~seven~~ four days after the date of the order.

Prepared by North Dakota State's Attorneys Association

PROPOSED AMENDMENTS TO SB 2219

Page 2, line 8, remove the overstrike over "~~seven~~" and remove "four"

Page 2, line 13, remove the overstrike over "~~seven~~" and remove "four"

Renumber accordingly

ARTICLE IV

LEGISLATIVE BRANCH

Section 1. The senate must be composed of not less than forty nor more than fifty-four members, and the house of representatives must be composed of not less than eighty nor more than one hundred eight members. These houses are jointly designated as the legislative assembly of the state of North Dakota.

Section 2. The legislative assembly shall fix the number of senators and representatives and divide the state into as many senatorial districts of compact and contiguous territory as there are senators. The districts thus ascertained and determined after the 1990 federal decennial census shall continue until the adjournment of the first regular session after each federal decennial census, or until changed by law.

The legislative assembly shall guarantee, as nearly as is practicable, that every elector is equal to every other elector in the state in the power to cast ballots for legislative candidates. A senator and at least two representatives must be apportioned to each senatorial district and be elected at large or from subdistricts from those districts. The legislative assembly may combine two senatorial districts only when a single member senatorial district includes a federal facility or federal installation, containing over two-thirds of the population of a single member senatorial district, and may provide for the election of senators at large and representatives at large or from subdistricts from those districts.

Section 3. The legislative assembly shall establish by law a procedure whereby one-half of the members of the senate and one-half of the members of the house of representatives, as nearly as is practicable, are elected biennially.

Section 4. Senators and representatives must be elected for terms of four years.

Section 5. Each person elected to the legislative assembly must be, on the day of the election, a qualified elector in the district from which the member was chosen and must have been a resident of the state for one year immediately prior to that election.

Section 6. While serving in the legislative assembly, no member may hold any full-time appointive state office established by this constitution or designated by law. During the term for which elected, no member of the legislative assembly may be appointed to any full-time office which has been created, or to any office for which the compensation has been increased, by the legislative assembly during that term.

Section 7. The terms of members of the legislative assembly begin on the first day of December following their election.

The legislative assembly shall meet at the seat of government in the month of December following the election of the members thereof for organizational and orientation purposes as provided by law and shall thereafter recess until twelve noon on the first Tuesday after the third day in January or at such other time as may be prescribed by law but not later than the eleventh day of January.

No regular session of the legislative assembly may exceed eighty natural days during the biennium. The organizational meeting of the legislative assembly may not be counted as part of those eighty natural days, nor may days spent in session at the call of the governor or while engaged in impeachment proceedings, be counted. Days spent in regular session need not be consecutive, and the legislative assembly may authorize its committees to meet at any time during the biennium. As used in this section, a "natural day" means a period of twenty-four consecutive hours.

Neither house may recess nor adjourn for more than three days without consent of the other house.

For SB 2274

Section 8. The house of representatives shall elect one of its members to act as presiding officer at the beginning of each organizational session.

Section 9. If any person elected to either house of the legislative assembly shall offer or promise to give his vote or influence, in favor of, or against any measure or proposition pending or proposed to be introduced into the legislative assembly, in consideration, or upon conditions, that any other person elected to the same legislative assembly will give, or will promise or assent to give, his vote or influence in favor of or against any other measure or proposition, pending or proposed to be introduced into such legislative assembly, the person making such offer or promise shall be deemed guilty of solicitation of bribery. If any member of the legislative assembly, shall give his vote or influence for or against any measure or proposition, pending or proposed to be introduced into such legislative assembly, or offer, promise or assent so to do upon condition that any other member will give, promise or assent to give his vote or influence in favor of or against any other such measure or proposition pending or proposed to be introduced into such legislative assembly, or in consideration that any other member hath given his vote or influence, for or against any other measure or proposition in such legislative assembly, he shall be deemed guilty of bribery. And any person, member of the legislative assembly or person elected thereto, who shall be guilty of either such offenses, shall be expelled, and shall not thereafter be eligible to the legislative assembly, and, on the conviction thereof in the civil courts, shall be liable to such further penalty as may be prescribed by law.

Section 10. No member of the legislative assembly, expelled for corruption, and no person convicted of bribery, perjury or other infamous crime shall be eligible to the legislative assembly, or to any office in either branch thereof.

Section 11. The legislative assembly may provide by law a procedure to fill vacancies occurring in either house of the legislative assembly.

Section 12. A majority of the members elected to each house constitutes a quorum. A smaller number may adjourn from day to day and may compel attendance of absent members in a manner, and under a penalty, as may be provided by law.

Each house is the judge of the qualifications of its members, but election contests are subject to judicial review as provided by law. If two or more candidates for the same office receive an equal and highest number of votes, the secretary of state shall choose one of them by the toss of a coin.

Each house shall determine its rules of procedure, and may punish its members or other persons for contempt or disorderly behavior in its presence. With the concurrence of two-thirds of its elected members, either house may expel a member.

Section 13. Each house shall keep a journal of its proceedings, and a recorded vote on any question shall be taken at the request of one-sixth of those members present. No bill may become law except by a recorded vote of a majority of the members elected to each house, and the lieutenant governor is considered a member-elect of the senate when the lieutenant governor votes.

No law may be enacted except by a bill passed by both houses, and no bill may be amended on its passage through either house in a manner which changes its general subject matter. No bill may embrace more than one subject, which must be expressed in its title; but a law violating this provision is invalid only to the extent the subject is not so expressed.

Every bill must be read on two separate natural days, and the readings may be by title only unless a reading at length is demanded by one-fifth of the members present.

No bill may be amended, extended, or incorporated in any other bill by reference to its title only, except in the case of definitions and procedural provisions.

CHAPTER 54-03
LEGISLATIVE ASSEMBLY

54-03-01. State legislative apportionment. Repealed by S.L. 1975, ch. 463, § 4.

54-03-01.1. Numbering legislative districts - Classes of senators to provide staggered terms. Repealed by S.L. 1975, ch. 463, § 4.

54-03-01.2. Legislative subdistricting - Methods. Repealed by S.L. 1975, ch. 463, § 4.

54-03-01.3. Election on petition - Ballot form - Vote required. Repealed by S.L. 1975, ch. 463, § 4.

54-03-01.4. Amendment to the Constitution of the United States - Results. Repealed by S.L. 1975, ch. 463, § 4.

54-03-01.5. Legislative apportionment requirements. A legislative apportionment plan based on any census taken after 1989 must meet the following requirements:

1. The senate must consist of forty-nine members and the house must consist of ninety-eight members.

2. Except as provided in subsection 3, one senator and two representatives must be apportioned to each senatorial district. Representatives may be elected at large or from subdistricts.

3. Multimember senate districts providing for two senators and four representatives are authorized only when a proposed single member senatorial district includes a federal facility or federal installation, containing over two-thirds of the population of the proposed single member senatorial district.

4. Legislative districts and subdistricts must be compact and of contiguous territory.

5. Legislative districts must be as nearly equal in population as is practicable. Population deviation from district to district must be kept at a minimum. The total population variance of all districts, and subdistricts if created, from the average district population may not exceed recognized constitutional limitations.

54-03-01.6. State legislative apportionment. Repealed by S.L. 1981, ch. 804, § 9.

54-03-01.7. State legislative apportionment. Repealed by S.L. 1991 Sp., ch. 886, § 3.

54-03-01.8. Staggering of the terms of senators. A senator from an even-numbered district must be elected in 1992 for a term of four years and a senator from an odd-numbered district must be elected in 1994 for a term of four years. The senator from district forty-one must be elected in 1992 for a term of two years. A senator from a district in which there is another incumbent senator as a result of legislative redistricting must be elected in 1992 for a term of four years. Based on that requirement, districts six, ten, fourteen, twenty-eight, and thirty-six must elect senators in 1992.

54-03-01.9. Legislative redistricting. Each legislative district is entitled to one senator and two representatives. The legislative districts of the state are formed as follows:

1. District 1 consists of that part of the city of Williston and that part of Williston township in Williams County bound by a line commencing at the point where the west side of section 27 of township 154-101 intersects the shore of Lake Sakakawea, thence north on a straight line following section lines until its

OFFICE OF ATTORNEY GENERAL
STATE OF NORTH DAKOTA

Wayne Stenehjem
ATTORNEY GENERAL

January 24, 2001

CAPITOL TOWER
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Dept. 125
Bismarck, ND 58505-0040
701-328-2210
800-366-6888 (TYY)
FAX 701-328-2226

Consumer Protection and Antitrust Division
701-328-3404
800-472-2600
Toll Free in North Dakota
FAX 701-328-3535

Gaming Division
701-328-4848
FAX 701-328-3535

Licensing Section
701-328-2329
FAX 701-328-3535

CAPITOL COMPLEX
State Office Building
900 E. Boulevard Ave.
Bismarck, ND 58505-0041
FAX 701-328-4300

Civil Litigation
701-328-3640

Natural Resources
701-328-3640

Racing Commission
701-328-4290

Bureau of Criminal Investigation
P.O. Box 1054
Bismarck, ND 58502-1054
701-328-5500
800-472-2185
Toll Free in North Dakota
FAX 701-328-5510

Fire Marshal
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Bismarck, ND 58502-1054
701-328-5555
FAX 701-328-5510

Fargo Office
P.O. Box 2665
Fargo, ND 58108-2665
701-239-7126
FAX 701-239-7129

Senator Jack Traynor
Chairman Senate Judiciary Committee
State Capitol
Bismarck, ND 58505

Dear Senator Traynor:

As Yogi Berra is reputed to have said, "It's deja vu all over again". For background when considering the change proposed in Senate Bill No. 2219 I am submitting testimony concerning Senate Bill No. 2389 passed by the 1989 Legislature which, among other things, changed the time within which a preliminary hearing is to be held from seventy-two hours, exclusive of weekends and holidays, to seven days.

Senate Bill No. 2389 was a comprehensive revision of the mental health commitment chapter proposed by a task force represented by persons from the Mental Health Association, the Department of Human Services, the judiciary, State's Attorneys, attorneys for respondents, and others. I have highlighted and tabbed the pages where references are made to the change to seven days being made by Senate Bill No. 2389 in 1989.

Also enclosed is a copy of portions of 1989 N.D. Session Laws chapter 149 reflecting the changes regarding scheduling a preliminary hearing within seven days rather than seventy-two hours, exclusive of weekends and holidays.

Sincerely,

Thomas A. Mayer
Assistant Attorney General

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1989 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2389

Senate Committee on JUDICIARY

Subcommittee on _____ Identify or check where appropriate

Conference Committee _____

Hearing Date 1/31/89

Tape Number 2 /Side A _____ Meter # 0 - end
and tape #3, A, 0-1595 Side B X

Committee clerk signature Jeannette K. Hart-Lynch

Minutes:

All committee members were present when Chair Sen. J. Meyer convened the committee to hear SB 2389.

SB 2389: Duties of states attorneys in commitment proceedings and com' ination of preliminary and treatment hearings; civil commitment of mentally ill and chemically dependent persons.

Senator John Olson, District 49:

He testified in support of the bill, which he was sponsoring. He said that the bill revises the mental health commitment law. It makes changes in who initiates petitions; other changes deal with redefining people who suffer from alcoholism and drug addiction--the wording is changed to "chemical dependency"--redefining those persons who are requiring treatment.

Senator Olson stated for the record that he is very much in support of the bill. One item concerning him is changing the method by which the petitions are initiated. Now, this is the sole responsibility of the country courts. County judges are concerned with becoming active in the commitment proceedings as assistants to adversary proceedings. They are making decisions at the outset about whether someone should be forced into the civil commitment system. States attorneys subsequently come in at the involuntary treatment hearing stage, and then become advocates for the petitioners. States attorneys are concerned about involvement at this point because of their resources. Senator Olson said that the committee should be concerned about the states attorneys' problems.

Sharon Gallagher, Past President, ND Mental Health Association:

She testified in favor of the bill. She chaired a joint effort by the Mental Health Assoc. and the Dept. of Human Services to revise the mental health commitment law. (See attached material.)

Judge Bill McLees, McKenzie County:

He served on the task force which Sharon Gallagher chaired. He said that he has been handling commitment proceedings for 12 years as a county court judge and believes that a judge is put into an awkward position. When a person comes in to file a petition for involuntary treatment, the clerk is supposed to assist the person in filing the petition. This puts the clerk in a difficult position, since the clerk doesn't feel qualified to do this. Difficult questions can arise, and often the petitioner is ushered into the judge's office. The judge is then given a detailed account of what has brought the petitioner to this point. The judge's position is awkward because he/she has to make a decision about whether or not there is probable cause to go forward with the petition. If the decision is yes, then later on when the matter comes before the judge in a preliminary hearing, the judge has to make another probable cause determination which might be contrary to his/her earlier probably cause determination. If this does happen, the petitioner will be quite bewildered.

He said that the proposed changes are very good; having the state's attorney involved at the very beginning in the process will contribute to a more thorough and effective case presentation in behalf of someone who files a petition for involuntary treatment.

Edwin Dyer, Bismarck Attorney:

He was part of the committee which produced the proposed legislation. He said that he agreed with Sharon Gallagher and Judge McLees regarding the duties of the states attorneys. The response attorney is also placed in an awkward position should he/she object to a question being posed to a petitioner at a preliminary hearing by a judge. Mr. Dwyer's experience has been that the petitioner visits with the judge before the petition is prepared. This makes it difficult for a judge to remain fair and impartial through the whole proceeding.

He suggested that on page 5, subsection 10, the language which the committee wants overstruck related to "severe impairment" would, in his experience create more trouble than it's worth. It relates specifically to the provision of the diagnostic and statistical manual of psychiatrists. Mr. Dyer said that a psychiatrist may testify that a person is severely disabled, but on cross examination, it's found that the psychiatrist means it in a different sense than what is meant in this section. Also, the diagnostic and statistical manual has changed since the terminology in the bill no longer relates to what the manual says. Mr. Dyer differs with the subsection d (page 6). He doesn't believe that psychiatry is such a precise science that a psychiatrist can predict that if a patient

stops taking medicine, he/she will exhibit exactly the behavior as before. He said that if a person has been committed once, chances are likely a second commitment will be based on inexact predictions, rather than the same careful process a first-time commitment entails.

OPPOSED

Patricia Burke, Burleigh County State's Attorney:

She testified in opposition to the bill. She said that to require the State's Attorney Office to assume the tasks the county courts now have dealing with preparation of mental health commitment petitions is ill-advised. **(See attached testimony.)**

Owen Mehrer, Stark County State's Attorney:

He appeared on his own behalf, and on behalf of the State's Attorneys Association and on behalf of individual state's attorneys who authorized him to appear (Bud Meiers, the Executive Director of the State's Attorneys Assoc.; Bob Bouy(?), Cass County; Jim Odegaard, Grand Forks.).

He said that he didn't know of any state's attorneys who supported the bill as it is written. The vote was unanimous at the association's meeting to oppose the legislation.

The state's attorneys are opposed to the bill only insofar as it places them in the position of the clerk of court. It invades the discretion of the state's attorneys.

Wendy Schultz, State's Attorney, Stutsman County:

She stated that she was really not testifying against the bill but was there to present proposed amendments which would, if adopted, would mean that the State's Attorneys Assoc. would support the bill. The amendments represent the results of some discussions and negotiations with state's attorneys and would keep in the spirit of the bill while answering concerns of the committee and the state's attorneys.

The first group of amendments **(See attached.)** address the role of the state's attorneys. They would not place the state's attorney in the position of receiving the application of the potential petitioner and then doing the petition and filing it. The bill, as it's written now, would have the state's attorney filing the petition. The amended language would, on page 9, allow the clerk "request that the petition be reviewed by the state's attorney after it's completed but before it is presented to the court. The judge would be taken out of the arena as acting as an advocate for the petitioner.

These amendments would also change the section having to do with the outreach worker. The committee (who proposed the legislation) had deleted this section of the bill. This was because in many counties, outreach workers were not available. Ms. Schultz suggested changing the language from mandatory to discretionary: "The court may (rather than shall) involve the outreach worker."

The second set of amendments deals with alternative treatment orders. Ms. Schultz said that this section should be left the way it is in present law.

1989 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2389

Senate Committee on JUDICIARY

Subcommittee on _____

Conference Committee _____

Identify or check where appropriate

Hearing Date 1/31/89 Action: 2/1/89

Tape Number 1 /Side A _____ Side B X Meter # 3048-3955

Committee clerk signature Jeanette K. Shaw-Lynch

Minutes:

Senator Stenehjem moved to eliminate section 2 of the bill.
Senator Maxson seconded the motion.
Voice vote was in favor.

Sharon Gallagher offered to draft an amendment which would allow the human service center personnel to help the state's attorney.

1989 SENATE STANDING COMMITTEE MINUTES

BILL/~~RESOLUTION~~ NO. SB 2389

Senate Committee on JUDICIARY

Subcommittee on _____

Conference Committee _____

Identify or check where appropriate

Hearing Date 1/31/89 ACTION: 2/8/89

Tape Number 3 /Side A x Side B _____ Meter # 533-1544

Committee clerk signature Jeanette K. Thiel-Lipsch

Minutes:

ACTION:

Senator Stenehjem moved the Dept. of Human Services amendments. These give the state's attorney the authority to use the regional human centers as resource people to assist in investigating. The judge is being taken out of the position where he makes the original determination that a person is insane and then comes back at a later date to be the judge to decide whether he was right or wrong. The state's attorney will help draft the petition. Voice vote passed the amendments. (There apparently was not a second.)

Senator Stenehjem moved to delete Section 2 from the bill. All were in favor.

Senator Maxson moved a do pass as amended.
Senator Stenehjem seconded the motion.
Roll call vote: 5 aye, 0 nay, 2 absent.
Carrier: Senator Stenehjem.

(Return in triplicate) **FISCAL NOTE**

Bill/Resolution No.: SB 2389 Amendment to: _____

Requested by: Legislative Council Date of Receipt: 1/17/89

Please estimate the fiscal impact of the above measure for:

[X] State general or special funds [ ] Counties [ ] Cities

In the following space note the fiscal effect in dollars of this measure:

Narrative:

No Fiscal Impact

State Fiscal Effect:

1989-90		1990-91		Biennium Total	
General Fund	Special Funds	General Fund	Special Funds	General Fund	Special Funds

County and City Fiscal Effect:

1989-90		1990-91		Biennium Total	
Counties	Cities	Counties	Cities	Counties	Cities

If additional space is needed, attach a supplemental sheet.

Signed Michael Schwindt

Typed Name Michael Schwindt

Date Prepared: 1/19/89

Department Human Services

90701.0102

PROPOSED AMENDMENTS TO SENATE BILL NO. 2389

Page 1, line 5, remove "11-16-06,"

Page 1, remove lines 17 through 22

Page 2, remove lines 1 through 19

Page 8, line 13, after "treatment" insert "- Investigation by qualified mental health professional"

Page 9, line 8, replace "cause an investigation of the grounds on which the petition is based" with "direct a qualified mental health professional as designated by the regional human service center to investigate and evaluate the specific facts alleged by the applicant. The investigation must be completed as promptly as possible and include observations of and conversation with the respondent, unless the respondent cannot be found or refuses to meet with the mental health professional. A written report of the results of the investigation must be delivered to the state's attorney. Copies of the report must be made available upon request to the respondent, the respondent's counsel, and any expert examiner conducting an examination under section 25-03.1-11"

Page 9, line 19, overstrike "- Investigation"

Page 26, line 9, replace "must" with "may"

Renumber accordingly

1989 HOUSE STANDING COMMITTEE MINUTES

BILL/~~RESOLUTION~~ NO. 2389

House Committee on JUDICIARY

Subcommittee on _____ Identify or check where appropriate

Conference Committee _____

Hearing Date 3/8/89

Tape Number 1 /Side A X Side B _____ Meter # 1162

Committee clerk signature Maxine Kolb

Minutes: CHAIRMAN WENTZ opened the hearing on SB 2389. A quorum was present and the clerk read the bill title.

SENATOR OLSON, sponsor of the bill, introduced it and stated it was for the purpose of making revisions to certain mental health sections of the Code. A task force drafted the bill and there were several agencies involved in the interim committee who reviewed and examined the current mental health conditions in North Dakota. The task force was a result of a joint project of the Department of Human Services and the ND Mental Health Association. Persons on the task force were from the Mental Health Association, county judges, state hospital personnel, representatives of the county judges association and sheriff's departments and others who had a sincere interest and have expertise in the field of mental health proceedings. He stated that in the early days of his term as a states attorney, petitions for commitment were reviewed by a mental health board in each county composed of the county judge, states attorney and a doctor appointed at large. There was no court reporter, no adversary proceedings. The respondent could bring an attorney into the proceeding and a review was made of the petition. We've advanced since that time to a better commitment review and it works well, but it is time to look at the procedure again. The major provision in this bill is updating terminology regarding treatment etc. The changes allow current methods to review petitions and places new responsibility on the petitioner, but allows intervention when necessary. It will allow a better flow of cases, better procedural handling of the cases. Now, the county judges receives the petitions and there will probably be quite a bit of testimony in opposition of the changes proposed because of disagreement with the conflict of interest issue. He wasn't sure there was a middle ground to satisfy all, but he felt the county judges have been in a position where they are in position to rule and at the same time provide counsel through the states attorneys. He urged a favorable recommendation to the bill.

REP. TIGH KELLY, testified in favor of the bill and stated the major change, in her opinion, regarded mental health professionals as added in the Senate.

Chairman Wentz stated the changes Rep. Kelly referred to are on pages 8 and 9.

SHARON GALLAGHER, representing the Mental Health Association, submitted written testimony for distribution to the committee members. She stated she was the chair of the task force involved in drafting the bill and is past president of the ND Mental Health Association. She indicated the handouts submitted should assist in understanding the reasoning behind the bill. She explained the detail in the handouts and how they relate to each section of the bill. She indicated the task force met 8 times during 1988 to discuss the issues surrounding the drafting of the bill. She indicated that in every session since the first introduction of the bill in 1977 has massaged it and made some alterations and updates in an attempt to assure the rights of the respondents as well as the process itself is protected and streamlined as needed. She indicated SB 2389 addresses 6 major changes but would only highlight several of them. The first one is the role of the states attorney. Presently, anyone who wants to file a petition committing someone else needs to present themselves to the clerk of district court who will assist them in filling out the petition. That lay person does, in fact, do the filling out of the petition. The kind of overt behavior prompting the filing must be outlined. Not that the person is mentally ill, but that there has been recent behaviors, statements or conduct to be of concern that meets the requirements of the law to be committed. This lay person is not a lawyer and doesn't know the law needs to qualify for treatment, they are merely telling the story the best they can and filling out the form. The judge is then required to review that and determine sufficient probable cause for the petition to go forward and be filed. The judge is often placed in the position of listening to a family member tell the story and glean the facts necessary for commitment for treatment. Then he must put on his robe 72 hours later and act as administrator of justice on the case.

At that first hearing, after hospitalization on an emergency pickup and hold, no one represents the petitioner in court before the judge, but the respondent (the one who has been picked up) is represented by an attorney so the judge is again placed in an awkward position at the hearing of helping the petitioner to present the case. There is not a balanced representation. This is the only system in North Dakota whereby we are assuring that one side in a case is not represented by counsel. In those counties that have their states attorneys represent petitioners in the preliminary hearing. This data is in the handouts. The dual representation for petitioner and respondent should begin in the office early on, not at the last minute when representation cannot have time to review the case and be familiar with details. SB 2389 will provide that.

She indicated there are two definition changes in the bill for persons requiring treatment and is the criteria for commitment in North Dakota. Establishment of serious risk or harm as a result of the mental illness is necessary. This definition has been massaged over the last 12 years to try to assure an objective measurable criteria that accurately reflects the need for treatment. The word "severe" is deleted as it is a difficult concept to deal with and too vague and unworkable New criteria has been added relating to "substantial

deterioration, etc." so as to say it may be treatable, but not curable in the case of certain illnesses. Persons with a predictable history of harm as a result of mental illness can be treated. This will be a new criteria for commitment and really addresses only a small percentage of mentally ill persons.

The other significant change is that, in the past, when we define a person requiring treatment, they always talk about the need for hospitalization and even 12 years ago when the bill was drafted, the intent was not to emphasize the hospital, but to instead use the hospital as a last resort. Using community resources first was always the intent and yet by that one misplaced word in the definition of the criteria, alternative community resources have not been utilized because some judges who read it so strictly and even though the law later said that after determining the need for treatment and the appropriate place for treatment can often be other than hospitalization. The word "treatment" is far more important than "hospitalization."

Another change that may be significant is the time period for adequate representation. The suggestion is that it be 7 days counting holidays and weekends rather than 5 days. The defense attorneys, those representing the respondents, appeared before the task force and stated it was not enough time. The judges concurred there was a concern that it wasn't enough time because what was happening was that the person representing the person about to be committed and had, in fact, been hospitalized, did not get the doctor's report until 15 minutes before the hearing. That, of course, is not adequate time to prepare a defense or proper representation.

Coupled with that change is an amendment to eliminate the two-tired system, i.e. emergency hearing in 72 hours and the treatment hearing 14 days later and have only one hearing 7 days after probable cause is determined. The probable cause can be determined during hospitalization following pickup.

The objection in the Senate regarding additional duties of states attorneys was amended to provide that when a petition is presented to the state's attorneys office and if the state's attorney has no concerns about the basis for the petition or whether there is additional information that should be gathered before the petition is filed, a deposition may be done on his behalf by contacting the regional human services center and the qualified mental health professional would do the necessary investigation as to the underlying facts to assist the state's attorney before the petition is filed. Presently, that aspect is being done after the petition is filed whereby the outreach investigation is done by an outreach worker to determine the underlying basis for the petition and present the findings to the court. The courts have informed the task force that too often it was not at all useful information. The amendment then puts the outreach worker at the front end of the case prior to filing a petition. Often the motives behind the petition are not always pure and this is the time that can be determined. This process is often used in a divorce proceeding to gain an upper hand. This would give a state's attorney the ability to analyze the case before any other process takes place and save everybody a lot of time.

REP. NELSON stated his area does not have a facility to take care of someone on medication who goes off and needs to be removed from society for his actions and asked what happens in those 7 days before the hearing.

MS. GALLAGHER stated that she assumed those individuals are being transported to the nearest facility or even across the state, if necessary. The law prohibits putting them in jail. Recently, several private hospitals are opening up their facility to handle the emergency hold situations. The Association is attempting to bring local centers into agreeing to handle these situations so all counties are covered.

REP. WENTZ asked if the mental health service centers were geared up to handle this. Ms. Gallagher indicated the centers all have individuals who have been doing what was the outreach workers report. Rep. Wentz stated that now they have a time period within which it must now be completed. Ms. Gallagher agreed. However, there is no time period involved if the request for investigation is done by the state's attorney's office. The same persons doing it in the past will continue to do so, but now directly with the state's attorney's office. So there's really nothing new. The language was suggested by John Graham of the Department of Human Services.

JUDGE BURT RISKEDAHL, task force member, testified in favor of the bill and indicated it is a fine tuning and language change. As a judge, he is concerned with the responsibilities of the state's attorneys staying in the law and requested a favorable consideration by the committee.

ED DYER, task force member and attorney member of the Defense Bar, testified in favor of the bill. As indicated, the major controversy is with the duty change of the state's attorneys. As Ms. Gallagher indicated, this brings the duties of the state's attorneys in line with the way they belong in the operation. He agreed with Ms. Gallagher's comments and reiterated many of them. REP. SHOCKMAN asked how this bill could not carry with it a fiscal note. Mr. Dyer indicated the Defense Bar is on contract bidding for services and that it appears the responsibility is shifted with no cost increase.

LOWELL FLEMMER, representing St. Alexius Medical Center, testified in favor of the bill and presented written testimony for distribution to the committee members. He added no further comments.

WENDY SHULZ, Stutsman County State's Attorney, testified in opposition to the bill. However, she indicated there were several aspects of the bill that were good, i.e. the time frame to 7 days and the telescoping of the hearings as well as the state's attorneys representing all constituents, but is concerned about their role along with the outreach workers. She presented proposed amendments to address the concerns mentioned. She felt the bill, as written, puts the state's attorneys in a position to decide to file a petition or not. The amendments provide that the clerk can do the form and then an attorney can decide, but in the proper time prior to the hearing. She felt the bill may be an overkill of the situation. The state's attorney being placed in the position of defender and counselor creates an awkward and illegal, in some cases, situation. Also, there is often the situation whereby criminal acts are included in a probable cause situation that comes out of the details revealed in filing petition.

Ms. Gallagher submitted further amendments on a separate sheet that do not relate to the role of the state's attorneys. She stated the current system appears to be working quite well and why fix something that is not broken. She was relating to alternative treatment in that statement. The statute, as far as she knows, has not been challenged and makes the community safer as-is and works to the benefit of the respondent. Staying on medication is the key because then they stay out of the hospital and if you take that automatic trigger away that is often the strong motivation to stick with the alternative treatment, you're actually going to end up seeing more people go back to the hospital. She asked that if the committee chooses not to adopt the amendments proposed by her, there are at least two extremely important amendments that need to be added for consistency. The first one is on page 9, lines 13 and 14. The Senate amended out the reference to 11-16-06 on pages 1 and 2 of the bill. However, they left a reference to review under 11-16-06 on page 9. The second amendment needed is to add another section on page 27 at the end of the bill to amend Section 25-03.1-42 which is in the Mental Health commitment law which limits the liability of those professionals that are either required or given discretionary responsibilities under the commitment statutes. State's attorneys need to be added to the list of professionals covered. This would be in subsection 2 of the Section previously iterated. These two amendments are very important because even though state's attorneys are covered somewhat in criminal action, that same protection does not appear to be here in this arena.

REP. AAS asked where the alternative treatment orders are covered in the bill. She indicated that was the second set of amendments she passed out relating to page 17.

WADE ENGET, part-time Mountrail County State's Attorney, testified in opposition to the bill and expressed his concern with the discretion afforded state's attorneys and if they have it at all, it is mandated by this bill. He indicated that in Mountrail County there is no problem with this. They represent the petitioners at the hearings. If it is not a problem with that provision of the bill, why change it. He agrees with the changes Wendy Schulz has proposed including the liability element.

TOM SLORBY, Ward County State's Attorney, testified in opposition to the bill and indicated the conflict of interest issue is the major concern. He read a statement from Cal Raulston, lobbyist for the Association of Counties who was in the room earlier and had to leave. Mr. Raulston indicated the Association of Counties supports the concept of the bill, but the Association is concerned about the provision that will provide for conflict of interest for state's attorneys and should be deleted from the bill.

He indicated the previous testimony in opposition covered the points he wished to make and indicated he would address only the conflict of interest issue. He stated Ward County receives about 220 petitions per year and approximately 40% of those cases also involve criminal activity. This is where the problem comes in. Under present law, the state's attorney is not involved in making a decision whether or not a mental health proceeding should be pursued. They are often called at 3:00 PM and told there is a hearing

tomorrow morning at 9:00 and that's the first they know about it. He stated they don't make the decision the petition should be approved and filed, the judge does. Then the problem is that the state's attorneys are put in a position to determining if the preliminary finding has probable cause which is, in essence, still made by the judge, if the state's attorney makes it. He agreed with the deletion of taking the refusal of a state's attorney to accept a case out of salaries. He indicated he would not do both, but refusal to take one side or the other was taken out of pay and if they did both, it would mean going before a grievance committee and have the license taken so there would be no pay check anyway. It's a far-fetched example perhaps, but if they are required to do both sides of the issue, there is definitely a conflict of interest as a result. If the Attorney General's office could be increased in staff by 6 or 7 persons to handle the criminal load, then there's no problem, but that cost may not be the way that's desirable. If the bill passes, Ward County Commissioners will be recommended to budget no less than $20,000. a year extra for purposes of private counsel. Private counsel certainly will not work as cheaply as state's attorneys do. It will be more inefficient to handle the workload and added one more step to a bureaucratic framework. It's not necessary and any problems the clerk's office would have in assisting someone in filling out a petition could be resolved by asking for assistance from state's attorneys. They are legal advisors too and are available to clerks just like anybody else. No decision in the action puts the state's attorneys in a position to defend someone else's decision for action.

Ms. Gallagher and Mr. Riskedahl both wished to offer rebuttal, but asked that they be allowed to do it in writing. Chairman Wentz granted them that right. Ms. Gallagher did make one comment regarding Mr. Slorby's testimony in that there is no conflict of interest because the general public is being served by their involvement, not the individual. Mr. Slorby responded by saying he had discussed with other state's attorneys and judges and they are in agreement with him.

There being no further testimony or discussion, Chairman Aas closed the hearing on SB 2389.

3/15/89 - TAPE 3, SIDE A - METER 595

Committee discussion was resumed and Chairman Wentz indicated a sub-committee would be appointed to study the bill and bring appropriate amendments. Those appointed were Rep. Shaft, Rep. Aas and Rep. Ring.

3/21/89 - TAPE 1, SIDE B - METER 1860

The sub-committee report included Rep. Ring indicating the proposed amendments address the problem attorneys have regarding conflict of interest and judges being in a catch-22 situation of assisting petitioners prior to a case and then hearing the same case. She explained the amendments. **REP. RING** moved the proposed amendments be adopted. **REP. AAS** seconded the motion. The motion carried on a voice vote.

REP. AAS moved a Do Pass As Amended. REP. RING seconded the motion. There was no further discussion and the motion carried on a vote of 14 yeas, 0 nays and 2 absent and not voting. Rep. Ring will carry the bill on the floor.

COMMITTEE ACTION - 3/22/89 - TAPE 1, SIDE A - METER 1340

Continued discussion included Coral explaining that the previous amendments submitted presented a conflict and/or include other places where wording needed to be changed. Further amendments may need to be added. The previous amendments begin on page 8. Rep. Ring stated that when she was preparing her comments to carry the bill on the floor, she discovered there was at least one mistake by leaving in a clause on page 7 that the state's attorney did the filing, if he found probable cause where previously it was stated the petitioner had the responsibility to file. In checking with LC, they indicated that reference needed to be removed. She then asked them to check other areas where there may be the need for change. She suggested it might be well to get these new amendments in and then put it in a conference committee. It's already known the Senate will not concur. In the meantime, Keith Wolberg could look the bill over. Coral inserted that the LC was not sure about the engrossed bill on page 8, line 13 regarding the assisting the person completing the petition, the clerk's attorney may direct a qualified mental health professional and whether that was, in fact, the intent.

Further discussion included comments regarding the way it came from the Senate and those who preferred it that way and that the requirement of the state's attorney to handle step one of the process away and give it to the clerk of court, but may require a review by the state's attorney at the clerk's request. Rep. Aas commented that the Senate does not want the responsibility to be on the clerk of court. In Ward County alone, there are approximately 200 cases per year so it is necessary to get it right whatever it takes, through a conference committee or whatever.

REP. STENEHJEM moved to reconsider the previous committee action of 3/21/89. REP. SHAFT seconded the motion. It passed on a voice vote.

REP. RING moved to adopt the additional amendments she presented and add them to those previously proposed. The motion was seconded and carried by a voice vote. She indicated they are technical corrections to accompany the major amendments added previously.

Rep. Larson stated she would prefer to first remove the first amendments adopted to avoid a conference committee knowing they are going to come back from the Senate and make more adjustments. She moved to remove all amendments. The motion died for lack of a second. She stated the original intent of the bill has been lost, in her opinion.

REP. SHAFT moved a Do Pass as Amended. REP. LARSON seconded the motion. Discussion included Rep. Shaft stated he will support the bill fully on the floor with the intent that it goes to a conference committee and that it will come back in a changed form

from the way it is sent out. The Senate wants the bill as it originally came to the House and the House has found valid concerns on the part of the state's attorneys. With that, a compromise should be possible. The motion carried on a vote of 14 yeas, 0 nays and 2 absent and not voting. Rep. Ring will carry the bill on the floor.

7
3/22/89

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2389

Page 1, line 1, remove "a new subsection to section 11-16-01 and"

Page 1, line 3, remove "duties of states attorneys in commitment proceedings and to"

Page 1, remove lines 12 through 16

Page 7, line 17, remove "Application to state's attorney -"

Page 7, line 21, after "with" insert "shall present the information necessary for the commitment of an individual for involuntary treatment to", remove the overstrike over "the clerk of court", and remove "shall present the information necessary for the"

Page 7, remove line 22

Page 7, line 24, remove the overstrike over "clerk of court" and remove "state's attorney"

Page 8, line 13, replace "state's attorney" with "clerk of court"

Page 8, line 20, replace "state's attorney" with "clerk of court"

Page 8, line 22, after the period insert "The clerk of court or the petitioner may request the state's attorney to review the completed petition prior to submitting it to the court." and remove "The"

Page 8, remove lines 23 through 28

Page 13, line 13, remove the overstrike over "and the"

Page 13, line 14, remove the overstrike over "results of the outreach worker's investigation"

Renumber accordingly

1989 SENATE STANDING COMMITTEE MINUTES

BILL/[redacted] NO. SB 2389

Senate Committee on _____

Subcommittee on _____

Conference Committee JUDICIARY

Identify or check where appropriate

Hearing Date Conf. Comm. 4/3/89

Tape Number 1 /Side A x Side B _____ Meter # 2714-4795

Committee clerk signature Jeanette K. Shaw-Lynch

Minutes:

All conferees were present: Senators Maxson (chair), Holmberg, Stenehjem; Representatives Aas, Shaft, Ring.

Senator Stenehjem explained that the intent of the bill was to move the requirement for representing petitioners in mental health commitment cases from the clerk of court to the state's attorney's office. The House turned this around.

Rep. Aas, chair for House conferees, asked Rep. Ring to explain what the House did.

Rep. Ring said that the House Judiciary Committee had attempted to address the various parties concerned by saying that for the 80-90% of cases which are simple and depend entirely upon the psychiatrist's report, the clerk of court could assist the petitioner to fill out the paper work. This is being done now. For the complicated cases where there is need for an attorney, the clerk of court or the petitioner could request the state's attorney's assistance and get him/her to review the file rather than the judge so that there should be no conflict of interest for the judge.

Senator Stenehjem said that you don't know whether a case is going to be complex or not until the petition is filed and has been served on the respondent.

Senator Maxson pointed out that there wouldn't be a conflict of interest if a district court were being dealt with. Both the clerk of district court and the judge are autonomous, elected officials. In county court, usually the clerk is an employee of the judge. Senator Maxson added that he would have less of a problem with this issue if there were an autonomous clerk of county court.

Senator Stenehjem said the amendments would make what they're planning on doing in Grand Forks worse. There is a woman who works in the clerks office; all she does is fill out petitions. They are going to move her over to the State's Attorney's Office. This is all they are going to do.

Rep. Shaft said that his position was that "we (subcommittee) didn't entirely agree with the states attorneys concerns, but we saw that somewhere down the line that this conflict might exist...a conflict where they're obligated to represent both sides...I felt that somewhere down the line they might have a legitimate concern."

Rep. Ring said that one of the biggest concerns was if they are pursuing a case for civil commitment "and they are trying to pursue another case, or through their work on this case they become aware of possible criminal charges. Their case, as they stated it, was that in one case they are trying to argue that the person is crazy and not responsible, and in the other case, they're trying to argue no they're not crazy and they are responsible."

Senator Maxson: That's a red herring because there are several different levels of mental incompetence. For example, a chronic alcoholic or a chronic drug abuser who is at the point where he/she is a danger to him/herself or others. This person would certainly qualify to be committed under the civil commitment procedure, but they certainly would not be eligible for an insanity defense. Most psychotics don't classify as being legally incompetent for defense purposes. Psychosis, chemical dependency, being legally insane are three very distinguishable circumstances.

Rep Aas said that the subcommittee agreed that they wanted to pass the bill. They agreed to try and simplify the problem which the states attorneys presented. The subcommittee didn't agree that the states attorneys had a greater conflict of interest than the judges did. The subcommittee felt that the judges do have a conflict of interest under the "existing thing" and all the subcommittee wanted to do was to try and resolve the problem as simply as possible.

Senator Holmberg said that he liked the bill as the Senate passed it, but that the bill is important and should be fixed so it will pass.

Rep. Aas said that it would be better for the state's attorney to have the conflict of interest rather than the judge.

Senator Stenehjem recalled that another thing the states attorneys were asking for was the "beefing up of the immunity provision." He said that he would work on an amendment.

Senator Holmberg moved that the House recede from its amendments and the bill be amended in the manner per Senator Stenehjem's amendments

Senator Stenehjem said that he would send his amendments around with the committee report. The committee would vote by signing the sheet. If there are objections to the amendments, Senator Maxson will call a meeting of the conference committee.

(A roll call vote was taken.)

90701.0202

Prepared by the Legislative Council staff for Senator Stenehjem
April 5, 1989

BTL
4-6-89
1081

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2389

That the House recede from its amendments to engrossed Senate Bill No. 2389, as printed on page 1670 of the House Journal and pages 1445-1446 of the Senate Journal, and that engrossed Senate Bill No. 2389 be amended as follows:

CONFERENCE COMMITTEE AMENDMENTS TO ENGROSSED SB 2389 JU 4/6/89

Page 7, line 17, after "attorney" insert "or retained attorney"

Page 7, line 24, after "residence" insert ", or to an attorney retained by that person to represent the applicant throughout the proceedings" and remove "state's"

CONFERENCE COMMITTEE AMENDMENTS TO ENGROSSED SB 2389 JU 4/6/89

Page 8, line 23, after "attorney" insert "or retained attorney"

CONFERENCE COMMITTEE AMENDMENTS TO ENGROSSED SB 2389 JU 4/6/89

Page 13, line 1, overstrike "The" and insert immediately thereafter "Unless the petitioner has retained an attorney, the"

Page 13, line 4, replace ", except for" with ". The state's attorney or an attorney retained by the petitioner need not appear at"

CONFERENCE COMMITTEE AMENDMENTS TO ENGROSSED SB 2389 JU 4/6/89

Page 16, line 28, after the underscored comma insert "the petitioner's retained attorney,"

CONFERENCE COMMITTEE AMENDMENTS TO ENGROSSED SB 2389 JU 4/6/89

Page 26, line 26, after the second comma insert "state's attorney,"

Renumber accordingly

ST. ALEXIUS MEDICAL CENTER
Archway Family Services
900 East Broadway • P.O. Box 1668 • Bismarck, ND 58502 • (701)224-7100

ARCHWAY

TESTIMONY ON SENATE BILL 2389

MADAME CHAIRMAN, MEMBERS OF THE COMMITTEE, MY NAME IS LOWELL FLEMMER. I AM A BOARD CERTIFIED DIPLOMATE IN CLINICAL SOCIAL WORK, LICENSED IN THE STATE OF NORTH DAKOTA. I AM ALSO THE DIRECTOR OF ARCHWAY FAMILY SERVICES AT ST. ALEXIUS MEDICAL CENTER IN BISMARCK, AND I AM A MEMBER OF THE BOARD OF DIRECTORS OF THE MENTAL HEALTH ASSOCIATION OF NORTH DAKOTA.

I AM HERE REPRESENTING ST. ALEXIUS MEDICAL CENTER AND SPECIFICALLY, THE MEDICAL CENTER'S INPATIENT PSYCHIATRIC PROGRAMS AND OUTPATIENT PSYCHOTHERAPY PROGRAM. I AM HERE TO STATE THAT WE STRONGLY SUPPORT SENATE BILL 2389.

WE BELIEVE THIS BILL ALLOWS FOR MORE AND MORE APPROPRIATE OPTIONS FOR COMMITTED INDIVIDUALS IN NORTH DAKOTA. RATHER THAN THE MOST OFTEN THOUGHT OF OPTION FOR TREATMENT [THE NORTH DAKOTA STATE HOSPITAL], THIS BILL WILL HOPEFULLY ENCOURAGE JUDGES TO LOOK AT OTHER OPTIONS IN COMMITTING MENTALLY ILL INDIVIDUALS. THESE OTHER OPTIONS BEING COMMITMENT TO LOCAL INPATIENT TREATMENT FACILITIES OR LOCAL OUTPATIENT CLINICS.

THIS BILL CHANGES THE FOCUS OF COMMITMENT TO TREATMENT RATHER THAN INSTITUTIONALIZATION AND ALLOWS FOR THE OPPORTUNITY OF LOCAL TREATMENT FACILITIES TO BE BETTER UTILIZED.

RATHER THAN SENDING PEOPLE OFF HUNDREDS OF MILES AWAY TO THE STATE HOSPITAL, HOPEFULLY NOW PEOPLE CAN REMAIN IN THEIR HOME COMMUNITIES OR AT LEAST NEAR THEIR HOME COMMUNITIES TO RECEIVE TREATMENT. ALL OF THE LARGER COMMUNITIES IN THE

STATE HAVE HOSPITALS WITH PSYCHIATRIC UNITS. ALSO, MOST HAVE OUTPATIENT MENTAL HEALTH PROGRAMS. THESE FACILITIES ARE WELL ABLE TO SERVE THE MENTALLY ILL.

WE SEE THIS BILL AS BEING A TREMENDOUS BENEFIT TO THE MENTALLY ILL INDIVIDUAL AND HIS OR HER FAMILY. NOW, NOT ONLY CAN PERHAPS A LESS RESTRICTIVE TREATMENT BE PROVIDED, BUT IT CAN BE PROVIDED CLOSER TO HOME. WE SEE TREATMENT CLOSE TO HOME AS GREATLY ADVANTAGEOUS OVER TREATMENT HUNDREDS OF MILES AWAY FROM HOME, FAMILY AND AFTERCARE RESOURCES.

WHY FORCE OUR COMMITTED MENTALLY ILL TO TRAVEL HUNDREDS OF MILES AWAY FROM HOME TO SOME HUGE AND MYSTERIOUS INSTITUTION, WHEN THEY CAN BE VERY ADEQUATELY TREATED IN THEIR HOME COMMUNITIES? FURTHER, WHY SEPARATE THESE INDIVIDUALS FROM THEIR FAMILIES AND FRIENDS WHEN SO OFTEN, FAMILY IS VITALLY NEEDED IN THE TREATMENT OF MENTAL ILLNESS.

COMMITMENT IN OR NEAR THE HOME COMMUNITIES MEANS ACCESS TO TREATMENT, BOTH ON AN INPATIENT AND AN OUTPATIENT BASIS, IS MUCH ENHANCED. FURTHER, FOLLOW-UP AND AFTERCARE RESOURCES, WHICH WOULD BE UTILIZED BY THE MENTALLY ILL INDIVIDUAL COMING OUT OF THE HOSPITAL, ARE CLOSE AT HAND, THEREFORE TREATMENT PLANNING AND IMPLEMENTATION OF AFTERCARE SERVICES ARE ENHANCED. ACCESS TO FAMILY DURING THE COURSE OF TREATMENT ON EITHER AN INPATIENT OR OUTPATIENT BASIS IS OFTEN THE KEY INGREDIENT IN THE RECOVERY OF THE MENTALLY ILL INDIVIDUAL. IT IS ALSO THE MOST LACKING INGREDIENT WHEN THESE PEOPLE ARE INSTITUTIONALIZED FAR FROM HOME.

I HAVE HEARD TIME AND TIME AGAIN DURING THIS LEGISLATIVE SESSION ABOUT THE STATUS OF THE STATE HOSPITAL. IT IS VERY CLEAR THAT THE STATE HOSPITAL IS GROSSLY UNDER-STAFFED FOR THE LARGE POPULATION THEY SERVE. IT IS CLEAR, TOO, THAT THE ROLE OF THE STATE HOSPITAL NEEDS TO CHANGE AND I BELIEVE THAT THE LEADERSHIP OF THE STATE HOSPITAL IS ATTEMPTING TO MOVE IN NEW DIRECTIONS.

THE IDEAS I HAVE PRESENTED REGARDING THIS BILL I BELIEVE GO HAND IN HAND WITH THE CHANGES THAT NEED TO TAKE PLACE AT THE STATE HOSPITAL. WE DESPERATELY NEED THE OPPORTUNITY TO DEAL FIRST WITH OUR MENTALLY ILL AT HOME WHERE RESOURCES ARE PLENTIFUL, RATHER THAN SENDING PEOPLE HUNDREDS OF MILES FROM HOME WHERE RESOURCES ARE SCARCE, AT BEST.

WRITTEN TESTIMONY OF PATRICIA L. BURKE

Senate Judiciary Committee
Senate Bill 2389
Presented January 31, 1989
Fort Lincoln Room - 3:00 p.m.

My name is Patricia L. Burke and I am the elected Burleigh County State's Attorney and I am here to oppose Senate Bill 2389 in its present form.

While I recognize the desire of the county courts to remove themselves from the preparation of mental health commitment petitions because of the fear of conflict of interest, to summarily require the State's Attorney's Office to assume these tasks is ill-advised. Even more ill-advised is the proposed review language under Section 11-16-06.

The 1987 Legislature added several new duties to the State's Attorney's Office. Included in these were the Victim/Witness Fair Treatment Standards Act and the Crime Bureau Reporting Act. While there is no question that these laws were needed and are beneficial they created new responsibilities for my office which we neither had the staff nor the budget to handle. Counties operate on a calendar year budget unlike the state budget. If this bill is passed I will once again be placed in the position of new duties, no staff and less money.

I further note that nothing in this bill does or could obligate the county courts to provide that portion of their staff and budget necessary to implement the duties of Section 25-03.1-08. Nor has that been volunteered to my knowledge. It is easy to say let someone else do it, but who pays for it?

I am an attorney. My staff is comprised of three other attorneys, one legal assistant/secretary and two legal secretaries. There are no investigators on my staff nor are there any mental health professionals or chemical addiction counselors. On what basis and how would I, as State's Attorney, "cause an investigation of the grounds on which the petition is based". (Pg. 9, line 8). I have no qualifications on which to assess the specific facts alleged.

On the other hand, a mental health worker or chemical addiction counselor does have the qualifications, expertise and understanding of what to look for and how to assess it. The present law provides for such an investigation and should not be changed, as proposed in this bill. The facilities of the area human services center were developed on these lines and are ideal especially since they often do the treatment. This assures their counselors complete knowledge of the situation which necessarily assists treatment. To make a person untrained in mental health or chemical addiction, such as a State's Attorney, responsible for a judgment call regarding such serious matters as these is tantamount to gross negligence on the Legislature's part if the bill is passed.

I would suggest that rather than leaving these duties with county court or putting them on the State's Attorney inappropriately that this committee put the duties where the expertise is. That is with the mental health and chemical addiction workers. These professionals would be better able to determine whether or not there is a mental illness or addiction problem indicated, based on the facts presented by the petitioner.

What may appear as merely eccentric behavior to a lay person such as myself may in fact be indicative of a much more serious problem to a mental health professional. On the other hand the untrained person may overreact to behavior not warranting hospitalization. Then a person would be deprived of their liberty for insufficient reason. The mental health professional and the chemical addiction worker operate from a position of knowledge in this area. I, as State's Attorney, operate from a position of ignorance. Who, then, is better to judge?

Finally, I strenuously object to the proposed "review" language as proposed in Sections 11-16-01 and 11-16-06, Section 25-03.1-06. Henneberg v. Hoy, 343 N.W. 2d 87 (N.D. 1983) states very clearly that the decision by the State's Attorney to initiate any legal action, civil or criminal, which involves the exercise of judgment and discretion, such as determination of probable cause in these petitions is not subject to the direction of the courts. To quote the North Dakota Supreme Court:

> "where the performance of a legal duty involves the exercise of judgment and discretion the exercise of such judgment and discretion cannot be controlled by mandamus nor can the courts direct the manner in which such discretion be exercised;..."
> First American Bank & Trust Company v. Ellwein, 198 N.W.2d 84, 106 (N.D. 1972)

This bill would allow a judge to review the State's Attorney's determination of no probable cause and if that judge disagreed then use my salary as payment and as punishment for my exercising the judgment and discretion I am legally required to exercise. It would be a no win

situation. The only solution I can see under this proposed language would be to simply approve all petitions regardless of probable cause. That decision is non reviewable. It also would be unfair to those individuals who would be hospitalized and stigmatized inappropriately.

S. B. 2389
January 31, 1989

SECTION BY SECTION REVIEW OF S. B. 2389

Section 1. Amends the section relating to the duties of state's attorneys requiring them to institute commitment proceedings if there is probable cause.

Section 2. Amends Section 11-16-06 to allow review by the district court if a state's attorney has refused to institute commitment proceedings.

Section 3. Substitutes the phrase "chemical dependency" for the terms alcoholism and drug addiction.

Section 4. Deletes the the definitions of alcoholic individual and drug addict as outmoded and substitutes the definition of "chemically dependent person".

Amends the criteria for commitment by deleting the reference to "severe mental illness, severe alcoholism, or severe drug addiction".

Adds a new definition of "serious risk of harm" to address the problem of the small population of persons who suffer from chronic mental illnesses where there is "substantial deterioration in mental health which would predictably result in dangerousness to that person, others or property, based upon acts, threats, or patterns in the person's treatment history, current condition, and other relevant factors."

Amends the criteria for commitment to provide that if there is a reasonable expectation that if the person is not <u>treated</u> there exists a serious risk of harm to that person, others, or property. The present criteria requires a finding that if the person is not <u>hospitalized</u> there exists a serious risk of harm.

Section 5. Substitutes "chemically dependent" for alcoholic and drug addict.

Section 6. Extends the time for a hearing on the commitment of a previously voluntary patient from five days excluding weekends and holidays to seven days from the service of the petition.

Section 7. Technical drafting amendment to conform to present style requirements.

Section 8. Deletes the role of the clerk of court in assisting the person in completing the petition.

Provider that the state's attorney shall assist the person in completing the petition and may cause an investigation of the grounds on which the petition is based. The state's attorney shall file the petition if the information provides probable cause to believe that the respondent is a person requiring treatment. Allows for diversion to other community resources if there are insufficient grounds for a petition and for a review of a decision not to institute proceedings by the district court.

Section 9. Deletes the outreach workers investigation into the specific facts alleged in the petition.

Section 10. Extends the following time limits within the act:

If the respondent is taken into custody an examination must be conducted within 24 hours, exclusive of holidays, but not weekends of the custody.

If the respondent is in custody, the preliminary hearing date must be within 7 days of the date taken into custody. Presently it is 72 hours, exclusive of weekends and holidays.

If the respondent is not in custody, the treatment hearing must be held within 7 days of the date the court received the expert examiner's report, but not to exceed 14 days from the date the petition was served. Presently the hearing must be held with 72 hours of the receipt of the expert examiner s report not to exceed 14 days, exclusive of weekends and holidays.

Section 11. Allow the parties to waive the preliminary hearing and conduct the treatment hearing within the time period set for the preliminary hearing. In other words allows for one hearing instead of two when the parties agree.

Section 12. The court must appoint counsel within 24 hours, exclusive of weekends and holidays, from the time the petition was filed. Presently the appointment is made within 72 hours, exclusive of weekends and holidays, from the time the petition was served.

Section 13. Requires the state's attorney to appear and represent the state (petitioner) in all court proceedings and hearing under this chapter except those initiated by the state hospital.

Section 14. Deletes the reference to the outreach workers' investigation.

Section 15. Amends the reference to the 72 hour emergency order to the proposed seven day emergency order. See Section 10 of the bill.

Section 16. Consistent with section 10 of the bill provides that if the respondent is not in custody the treatment hearing must be held within 7 days of the receipt of the expert examiner's report but not to exceed 14 days from the time the petition was served. Presently it is held within 72 hours of the receipt of the report not to exceed 14 days exclusive of weekends and holidays.

Allows the court to extend the time for the treatment hearing for good cause.

Section 17. If a respondent is not complying with an alternative treatment order or the ATO is not sufficient to prevent harm or injuries, the DHS, a representative of the treatment program, or the state's attorney may apply to the court for a modification of the court's alternative treatment order.

Reinstitutes the need for a court hearing on the request to modify the order. The hearing must be held within 7 days after the application is filed.

Sets out what remedies are available when an application to modify an ATO order is reviewed by the court.

If the respondent has been hospitalized on an emergency pending a review of the request to modify the ATO order and after the hearing, if the court is not convinced of the need for the more restrictive treatment, the court may release the person from the hospital and continue the ATO order.

Section 18. Deletes the restriction that persons hospitalized for the treatment of alcoholism may have the continuing treatment order entered only for an additional 30 days as opposed to the normal 90 days for a continuing treatment order.

Section 19. Deletes the words "person suffering from a mental illness, alcoholism, or drug addiction" and substitutes the phrase "an individual is a person requiring treatment."

Consistent with section 10 of the bill provides that the preliminary hearing must be held within 7 days of the date custody was ordered.

Section 20. Consistent with section 10 of the bill provides that the preliminary hearing must be held within 7 days of the date of detention rather than 72 hours, exclusive of weekends and holidays.

Section 21. Consistent with section 10 of the bill provides that when a person is hospitalized under an emergency procedure that the person must receive an expert exam within 24 hours of hospitalization, excluding only holidays but not Sundays.

Provides that if the individual is unable to read or understand the written materials which must be provided to him upon hospitalization that every reasonable effort will be made to explain them.

Section 22. Substitutes the phrase "chemically dependent" for the words alcoholic or drug addict.

Section 23. Inserts the phrase "chemically dependent" within the transfer provisions to clearly indicate that all persons who are involuntarily committed may be transferred to other private and public facilities.

Extends the time for a hearing if the patient objects to a transfer to 7 days after notice of the proposed transfer is received, rather than 5 days, exclusive of weekends and holidays.

Section 24. Substitutes the phrase "chemical dependency" for the words alcoholism or drug addiction.

Section 25. Provides that under regulations of the DHS, patient information and records may be disclosed but not necessarily must be disclosed to the listed categories of persons.

Section 26. Provides that the supreme court in consultation with the DHS, the associations of county judges and state's attorneys, and other affected organizations will be responsible for the preparation of the necessary and appropriate forms to enable compliance with this chapter.

A REVIEW OF NORTH DAKOTA'S COMMITMENT LAW

I. Background

A. Old law enacted in 1957 with little or no change until 1977

1. Under the provisions of that law commitment decision was made by a county mental health board comprised of the county judge, an attorney and a doctor.

2. The county mental board acted in all three roles: Investigatory, prosecutorial and adjudicative.

3. A specific provision provided for convalescent leave under which a patient at the state hospital could be released on his good behavior, but was subject to arrest and readmission without a hearing if behavior did not conform to an unstated criteria.

B. Changes were occurring between 1957 and 1977 to precipitate the revision of the state's commitment law.

1. There were major changes in the methods and theories for the treatment of mental illness as well as additions in the types of facilities available, i. e. community mental health centers.

2. Federal Court decisions had ruled several provisions of other states' commitment laws unconstitutional
   a) Definition of who is mentally ill - vagueness
   b) Criteria for commitment - dangerousness standard (O'Connor v. Donaldson)
   c) Necessity for notice and due process rights - confinement
   d) Role of mental health board - deprivation of due process
   e) Pennsylvania convalescent leave law--lack of hearing or standards

II. Process by which new law passed

A. Interim Committee Study

1. Ad Hoc Committee formed by MHA

2. Membership covered entire spectrum of private and public pyschiatrists, judges, lawyers, patient advocates.

B. 1977 Legislative Session

1. Senate Social Welfare Committee provided one of the most extensive reviews of pending legislation.

2. All groups were heard and all amendments strictly scrutinized.

   a. Social workers
   b. Physicians
   c. Pyschiatrists
   d. Mental Health Center Personnel
   e. Judges, and
   f. States Attorneys

C. Law was amended 1979, 1981, 1983, 1985, 1987

III. Major changes

A. Substituted court system for county mental health boards

B. Provided due rights to a person subject to a commitment petition

   1) Notice
   2) Right to hearing
   3) Right to counsel
   4) Right to independent evaluation

C. Provided specific criteria for commitment

1. Suffering from severe mental illness, severe alcoholism, or severe drug addition "Severe" means that the disease or addiction is associated with gross impairment of the person's level of adaptive functioning as outlined by axis V of the DSM (Diagnostic Statistical Manual).

   OR

2. Is mentally ill, alcoholic, or drug addicted

   AND

3. There is a reasonable expectation that if a is not hospitalized there exists a serious risk of harm to <u>himself</u>, <u>others</u> or <u>property</u>. "Serious Risk of Harm" means a substantial likelihood of:

   a. Suicide <u>as manifested</u> by suicidal threats, attempts, or significant depression relevant to suicidal potential;

   b. Killing or inflicting serious bodily harm on another person, inflicting significant property damage, <u>as manifested</u> by acts or threats; or

c. Substantial deterioration in physical health, or substantial injury or disuse, or death resulting from poor self-control or judgment in providing one's shelter, nutrition, or personal care.

D. Required that the treatment ordered must give first consideration to the least restrictive alternate and the law specifically emphasized utilization of community resources.

E. Stated that the intent of law was to:

1. Provide prompt evaluation and treatment of persons with serious mental disorders, alcoholism, or drug addiction.

2. Safeguard individual rights.

3. Provide continuity of care for persons with serious mental disorders, alcoholism, or drug addiction.

4. Encourage the full use of all existing agencies, professional personnel, and public funds to prevent duplication of services and unnecessary expenditures.

5. Encourage, whenever appropriate, that services be provided within the community.

IV. Procedure

A. Emergency Procedure

1. Criteria:

a. Mentally ill, alcoholic, drug addict
b. Serious risk of harm
c. of such an immediate nature that considerations of safety do not allow preliminary intervention of the Court

2. Who may initiate emergency commitment

a. peace officer
b. physician
c. psychiatrist
d. clinical psychologist
e. mental health professional
(1) licensed psychologist with at least a Master's Degree
(2) social worker with Master's Degree
(3) registered nurse with Master's Degree in psychiatric and mental health nursing

(4) registered nurse with minimum of two years of supervised psychiatric clinical experience
(5) licensed addiction counselor

f. Petitioner may request magistrate to order emergency commitment.

3. Taken into custody

a) Person conveying respondent to a facility must complete application for evaluation; and
b) Shall deliver a detailed written report from person who initiated detention which report shall state circumstances under which person taken into custody
c) Report must allege in detail the overt act which constituted basis for belief that emergency detention was required. (i. e mentally ill and serious risk of harm).

4. Immediate examination within 24 hours of admission is required and

a) person shall be released if examination reveals that he or she does not meet emergency commitment standards; or
b) a petition shall be filed with court of the county of the person's residence or court which directed immediate detention.

5. Notice statement of rights must be given to respondent.

6. Preliminary treatment hearing must be held within 72 hours, exclusive of weekends and holidays, unless
a) person released
b) person voluntarily admits self
c) person requests or agrees to extension of time

7. Preliminary treatment hearing establishes whether there is probable cause to believe that the person is a person requiring treatment and that immediate treatment is required.

8. Involuntary treatment hearing is held 14 days after preliminary treatment hearing.

a) criteria for commitment must be established
b) alternative treatment must be considered and specifically found to be inappropriate before hospitalization as required.

9. Treatment pending hearing(s)

B. Commitment proceedings begun by petition

1. Anyone over the age of 18 may file petition

2. Petition must state specific overt acts or behavior of respondent as basis for belief that treatment is required

3. Notice is given to respondent and nearest relative, guardian or friend

4. Court directs outreach worker to investigate and evaluate the specific facts alleged in petition

5. Unless examined by expert examiner within 45 days of petition court shall order an examination

6. Respondent entitled to legal representation

7. Respondent has the right to refuse medication and other forms of treatment before preliminary and treatment hearing

a) medication may be given if needed to prevent bodily harm or imminent deterioration of patient's condition, however

b) all medication must be discontinued no later than 24 hours before the hearing if so requested by patient and if treating physician agrees.

8. Treatment hearing held within 72 hours of receipt of physician's report to the court

a) criteria for commitment:

(1) severely mentally ill, alcoholic or drug addict

(2) serious risk of harm

b) Least restrictive form of treatment must be ordered unless hospitalization is only viable treatment program

C. Patient's Rights and Right to Treatment

1. A patient shall have a right:

a) to least restrictive conditions necessary to achieve purposes of treatment

b) to be free from unnecessary restraint and isolation

c) to be free from unnecessary medication

d) not to be subjected to experimental research without express and informed written consent

e) not to be subjected to phychosurgery, eletroconvolsive treatment, or aversive reinforcement conditioning without express and informed written consent

2. Limitations and restrictions of rights listed above may be ordered by treating physician if in his or her medical judgment to do so would be in the best interests of the patient and a written order specifying the restriction is signed by the treating physician, and attached to patient's chart and the order is reviewed every 14 days

3. Physicians shall be able to treat a patient with medication or a less restrictive alternative, if, in his opinion, these treatments are necessary to:

a) prevent bodily injury to patient or others; or

b) prevent imminent deterioration of patient's physical or mental condition.

SUMMARY OF ISSUES SUBMITTED BY COMMITTEE MEMBERS

1. Standard of Commitment 25-03.1-02(11)
   a. Lesser standard for outpatient treatment (ATO)
   b. Different standard for treatment of chronic or recidivist alcoholic
   c. Different standard or reinstatement of convalescent leave provision allowing return of ATO to state hospital
   d. Clarify that guardian may admit ward regardless of whether minor
   e. Substitute need for treatment in lieu of need for hospitalization as standard for person requiring treatment

2. Time Frame for Hearings
   a. Increase time for preliminary hearing from 72 hours to 5 days
   b. Increase time for treatment hearing from 14 days to 21 days

3. Screening and Filing Petition - Involvement of State's Attorney
   a. Replace Clerk and Judge review with screening function performed by State's Attorney
   b. Require State's Attorney to represent petitioner at all stages including preliminary (emergency) hearing

4. Alcoholism
   a. Provide for consistent periods of commitment particularly continuing treatment order of 90 days (not only 30 days)
   b. Allow indefinite treatment of chronic or recidivist alcoholic
   c. Voluntary admission standards for detoxification

5. Burden of Proof - Reduce to 1 Hearing
   a. Is probable cause sufficient burden of proof at emergency hearing where majority of respondents are released prior to treatment hearing
   b. Should emergency and treatment hearing be telescoped into one hearing.

6. Outreach Workers
   a. Delete as unnecessary step

7. Respondents attendance at Hearings
   a. Allow hearing to be moved to Stutsman County or County where respondent hospitalized if expert examiner determines travel would be detrimental to respondent
   b. Provide unconditional right to hearing for continuing treatment
   c. Allow expert examiner's testimony by phone

8. Transportation Costs:
   a. Clarify who pays -- when (including if voluntary patient walks away)

9. Authorization to Administer Medication
   a. Clarify hospital's authority to medicate under treatment order
      OR
   b. Require specific finding that medication necessary and include authorization in disposition (order)

10. Transfer of Patients
    a. Provide one procedure to transfer patient to another treatment facility

11. Patients Right of Access to Their Files
    a. Clarify right of patient to review their files

12. Limit Liability of Physcotherapists
    a. Limit liability for failure to warn of patient's violent behavior
    b. Allow physcotherapists to release information from patient file if emergency exists where patient likely to injure others

13. Review use of limited guardianships as tool to avoid repeated commitment petitions.

14. Review dual commitment useage: simultaneous commitment to private provider and state hospital.

15. Review role of licensed addiction counselor as expert examiner to clarify examination may be physical and mental.

16. Redefine "alcoholic individual" to provide objective standard which reflects current diagnostic criteria.

17. Clarify procedures for out of state and VA transfers.

18. Address the problems associated with tribal court commitments.

Wendy Schulz
2389
1/31/89
set 1

PROPOSED AMENDMENTS TO SENATE BILL 2389

Proposed by: Wendy P. Schulz, Stutsman County State's Attorney
Owen K. Mehrer, Stark County State's Attorney

Page 1, line 5, delete "11-16-06"

Page 1, delete lines 14 through 16

Page 1, line 14, add

"Represent the state in civil commitment proceedings under chapter 25-03.1 as may be required by law."

Page 1, delete lines 17 through 22

Page 2, delete lines 1 through 19

Page 8, line 12, delete "Application to state's attorney"

Page 8, line 13, remove the overstrike over "~~Proceedings for the involuntary treatment of an individual may be~~"

Page 8, line 14, remove the overstrike over "~~commenced by any~~", delete "Any", and remove the overstrike over "~~by filing a written~~"

Page 8, line 15, remove the overstrike over "~~petition with the clerk of court~~", and delete "shall present the information necessary for"

Page 8, delete line 16

Page 8, line 17, delete "attorney"

Page 8, line 18, remove the overstrike over "~~clerk of court~~", and delete "state's attorney"

Page 9, delete lines 7 through 14

Page 9, line 7, add

"The clerk of court may request the state's attorney to review the completed petition prior to submission to the court."

Page 10, line 17, remove the overstrike over "~~The magistrate~~", add "may", and remove the overstrike over "~~direct the city, county, or district mental~~"

Page 10, remove the overstrike over lines 18 through 28

Page 13, line 26, remove the overstrike over "~~and the~~"

Page 13, line 27, remove the overstrike over "results-of-the outreach-workers'-investigation"

Renumber accordingly

Wendy Schultz
SB 2389
1/31/89

PROPOSED AMENDMENTS TO SENATE BILL 2389

Proposed by: Wendy P. Schulz, Stutsman County State's Attorney
Owen K. Mehrer, Stark County State's Attorney

Page 17, line 1, remove the overstrike over "during-this-period, the-court-or-the-county-court-of-a"

Page 17, line 2. remove the overstrike over "different-county-in which-the-respondent-is-presently-located"

Page 17, line 3, remove the overstrike over "learns-that"

Page 17, line 4, remove the overstrike over "that"

Page 17, line 6, remove overstrike over "the-court-may-without-a hearing"

Page 17, remove the overstrike over line 7

Page 17, line 8, remove the overstrike over "is-presently-located may-with-a-hearing,-and-based", and delete "the department"

page 17, delete lines 9 through 13

Page 17, line 14, delete "application is filed. Based", delete overstrike over "record", and delete "evidence presented at"

Page 17, line 15, delete "hearing"

Page 18, remove overstrike over lines 1 through 12

Renumber accordingly

OFFICE OF THE
BURLEIGH COUNTY COURT
514 EAST THAYER AVE
PO BOX 5518
BISMARCK, NORTH DAKOTA 58502
PHONE 222-6702

L. RISKEDAHL
JUDGE
GAIL HAGERTY
JUDGE

Loralee Heiser Clerk of Court
Sharon Fox Court Reporter

February 1, 1989

The Hon. Jerry Meyer, Chairperson
Senate Judiciary Committee
North Dakota State Senate
State Capitol
Bismarck, ND 58505

Re: Senate Bill 2389 (Heard in Judiciary Committee on January 31, 1989).

Dear Senator Meyer:

I regret that a protracted hearing in this court resulted in my being unable to be present for the hearing regarding the above bill.

I strongly favor the improvements this bill represents to the North Dakota Civil Commitment Statute. I hope it will receive favorable consideration by the Judiciary Committee.

The changes proposed to NDCC Chapter 25-03.1 in the definition section defining "chemically dependent person" and "person requiring treatment' represent needed refinements and clarification of the definitions consistent with current thinking in the psychiatric and chemical dependency areas.

Secondly, the enhanced role of the state's attorney's office with regard to the processing of these cases is a much needed improvement. Presently, with the state's attorney's office uninvolved until the point of a treatment hearing. the participants in these proceedings are sometimes confused by the role of the Court. The informality which the law originally contemplated by having petitioners proceed directly to the Court (and to the Judge) at the point they were needing information and trying to make a decision about whether or not to proceed with a commitment has been an awkward process. The conduct of the preliminary hearing without an advocate for the petitioner being present in court to present evidence is inconsistent with sound legal procedure in these cases.

I believe the proposed revisions will result in smoother processing of the cases while at the same time representing needed protections for those needing treatment.

Thank you for your consideration.

Sincerely,

Burt L. Riskedahl
Burleigh County Judge

BLR:sf

90701.0101 Prepared by the Department of Human Services
February 6, 1989

PROPOSED AMENDMENTS TO SENATE BILL NO. 2389

Page 1, line 5, remove "11-16-06,"

Page 1, remove lines 17 through 22

Page 2, remove lines 1 through 19

Page 8, line 13, after "treatment" insert "- Investigation by qualified mental health professional"

Page 9, line 8, replace "cause an investigation of the grounds on which the petition is based" with "direct a qualified mental health professional as designated by the regional human service center to investigate and evaluate the specific facts alleged by the applicant. The investigation must be completed as promptly as possible and include observations of and conversation with the respondent, unless the respondent cannot be found or refuses to meet with the mental health professional. A written report of the results of the investigation must be delivered to the state's attorney. Copies of the report must be made available upon request to the respondent, the respondent's counsel, and any expert examiner conducting an examination under section 25-03.1-11"

Page 9, line 19, overstrike "-Investigation"

Page 26, line 9, replace "must" with "may"

Renumber accordingly

PROPOSED AMENDMENTS TO ENGROSSED SB 2389

Page 8, line 13, replace "state's attorney" with "clerk of court"

Page 8, line 20, replace "state's attorney" with "clerk of court"

Page 8, line 22, after "25-03.1-11." insert "The clerk of court or the petitioner may request the state's attorney to review the completed petition prior to submission to the court." and remove "The"

Page 8, remove lines 23 through 28

Page 13, line 14, remove the overstrike over "~~results of the outreach workers' investigation~~"

Renumber accordingly

RESPONSE OF MHA TO CONCERNS RAISED BY STATES' ATTORNEYS
RELATING TO SENATE BILL NO. 2389

TO: House Judiciary Committee

FROM: Sharon A. Gallagher, MHA

RE: Engrossed Senate Bill No. 2389

At the hearing on S.B. 2389 relating to the state's commitment law, the states' attorneys presented two sets of amendments and raised several concerns. The issues are identified as follows:

1. Role of states' attorneys relating to:
   a. preparation and filing of commitment petition
   b. representation of petitioner at all hearings

2. Whether a conflict of interest prevents the states' attorneys from fulfilling the role proposed under Senate Bill 2389.

3. Whether a hearing is required before a person committed under an "alternative treatment order" (ATO) can be hospitalized for an alleged failure to comply with such ATO <u>without</u> a hearing.

4. Whether the states' attorneys should be included in the section granting limitation from liability under the act.

The Senate Judiciary Committee heard many of these same concerns of the states' attorneys and determined that the real issue being raised was one of increased workload. The first two issues relating to the filing of the petition and representation at the hearings, and the conflict of interest disguise the real concern relating to the increased workload.

ROLE OF STATES' ATTORNEYS AND CONFLICT OF ISSUE

Of note is that the representatives of the states' attorneys, at the hearing, agreed that they would appear and represent the state at all hearings conducted under this act. However, on the issue of assisting the petitioner to complete the petition and determining whether probable cause exists to file the petition, the states' attorneys assert that a conflict of interest exists.

If a true conflict of interest existed it would prevent the states' attorneys not only from determining whether a petition should be filed but also prevent them from representing the state at the hearing. Further, the states' attorneys from the larger counties are presently representing the state at these hearings and we have not heard from the counties that this has necessitated an increased budget for outside counsel.

The truth is that legally, there is no conflict of interest for the states' attorneys. In both the civil commitment proceedings and criminal proceedings the client of the state's attorney is the public. The interests of the public in requiring a person to receive treatment and to hold that same person accountable for a criminal act are compatible.

A person may be a respondent in a civil commitment proceeding and a defendant in a criminal proceeding. What the states' attorneys may have been alluding to is the potential that the defendant may raise an insanity defense in the criminal proceeding. However, the test for the insanity defense is entirely different from the test for commitment.

The standard for lack of criminal responsibility is set out in §12.1-04.1-01 which reads as follows:

> "The individual lacks substantial capacity to comprehend the harmful nature or consequences of the conduct, or the conduct is the result of a loss or serious distortion of the individual's capacity to recognize reality; and
> It is an essential element of the crime charged that the individual act willfully."

The standard for civil commitment is that the person "suffers from a mental illness and there is a reasonable expectation that if the person is not treated there exists a serious risk of harm to that person, others, or property". An individual may suffer from a mental illness and meet the definition of a person requiring treatment and still possess the capacity to comprehend the harmful nature or consequences of his or her conduct.

Although there may be instances where a particular judge voluntarily recuses himself from hearing a criminal matter involving a respondent in a civil commitment matter, the code of professional responsibility does not require it. Just last week in Morton County, the states' attorneys office completed handling a criminal charge of terrorizing related to an individual who had also been committed for treatment. The event which led to the emergency commitment of the person and the filing of the criminal charges was identical. The state's attorney office represented the state at the treatment hearing and the state at the criminal proceedings. The same judge presided over both the commitment and criminal proceedings.

There are always unique circumstances where a states' attorney believes that representation in both instances is not preferable. The law presently allows the state's attorney to request assistance from the attorney general's office. I spoke to Bruce Quick,

of the Attorney General's Office about this issue and he agrees that the conflict of interest argument is specious and hides the real issue of increased workload. Further, that the attorney general's office would always grant the request for assistance in those unique circumstances thus eliminating the need for additional expenditures on the part of the counties.

DUE PROCESS REQUIREMENT OF HEARING ON REVOCATION OF ATO

Attached is an article that reviews the court decisions relating to the due process rights to a hearing before a person may have a conditional release from the hospital revoked. This issue is not exactly on point but is so similar that it should assist the committee in understanding the principles involved in section 25-03.1-21.

The North Dakota Supreme Court has recognized that p rsons subject to civil commitment has recognized that respondents have substantial due process rights which must be protected in determining the need for treatment and the appropriate placement. See In the Interest of Goodwin, 366 N.W.2d 809 (ND 1985) wherein the Court stated as follows:

> "Past lax practices in mental health commitments in this country, and current widespread concerns about abuse of mental health commitments around the world make the issue tendered on this appeal a substantial and grave one. The stark fact is that incarceration in a barred hospital, for a person who does not require it for his own protection from serious harm or the protection of society from serious harm, is no different than incarceration in a barred jail. The rights of an individual in a mental health commitment proceeding are not guarded by the carefully designed and protective procedures of our criminal rules, or by the same heightened burden of proof required in criminal proceedings, but the results can be the same if commitment procedures are abused. Therefore, we should be cautious not to overlook other fundamental rights in these proceedings notwithstanding that our State has recently adopted good and thoughtful procedures for mental health commitments." 366 N.W.2d 809, at 811-813 (ND 1985)

In it decision of In the Interest of Palmer, 366 N.W.2d 401, at 402, the North Dakota Supreme Court stated as follows:

> "A patient has a right to the least restrictive conditions necessary for effective treatment. NDCC 25-03.1-40(2). Under §25-03.1-21 the trial court must review a report ... assessing the availability and appropriateness of treatment programs other than hospitalization. In applying this section the trial court must make a twofold inquiry: (1) whether or not a treatment program other than hospitalization is adequate to meet an individual's treatment needs, and (2) whether or not an alternative treatment program is sufficient to prevent harm or injuries which an individual may inflict upon himself or others.... In making its

decision the trial court must determine by clear and convincing evidence that alternative treatment is not adequate and sufficient to prevent harm or injuries which an individual may inflict upon himself or others."

Because the court is required to make a specific finding that an alternative treatment placement will not adequately address the person's treatment needs, the system would be denying the individual his due process rights if it were allowed to "revoke" the alternative treatment order and place the individual in the hospital without the right to a hearing.

Wendy Schulz, in her testimony to the committee urging that this hearing not be required, justified that position with "the end justifies the means" argument. Fortunately, for those who are the subject of commitment orders, such an argument will not withstand a constitutional nor statutory review. The state cannot deprive someone of their constitutional rights simply because it is convenient or "it works".

Further, she suggested that the necessity of the hearing would prevent the state from intervening prior to the hearing if an emergency situation presented itself. §25-03.1-21 specifically provides that if a police officer or mental health professional believes that a person is not complying with the alternative treatment order and that "considerations of time and safety do not allow intervention by a court, the designated mental health professional may cause the respondent to be taken into custody and detained at a treatment facility" pending the hearing. Therefore the law already provides sufficient protections for the public in the event a person on an alternative treatment order presents a danger to himself or others.

LIMITATION OF LIABILITY

The states' attorneys requested, that in the event they were required by the law to screen the petitions, that they be included under the provisions of §25-03.1-42 to protect them from liability when in good faith they exercise professional judgment in fulfilling an obligation or discretionary responsibility under the act. I agree that this is a good and sound suggested amendment and believe that the task force would support this amendment. Therefore I too would recommend that the engrossed bill be amended as follows:

Page 26, line 26, after "facility," insert "<u>state's attorney,</u>

One final note. The amendments proposed by the states' attorneys are drafted to amend the bill as originally printed. Several of the amendments that they suggested were incorporated by the Senate. If the committee desires to deal with any of the proposed amendments by the states' attorneys the amendments would need to be closely reviewed with the engrossed bill. Keith Wolberg, was the attorney who staffed our task force, and would

be more than willing in assisting the committee draft and review any amendments. Frankly, the bill is so interrelated that any proposed amendments must be reviewed carefully to assure that the law is consistent throughout.

MENTAL HEALTH AND EMERGENCY COMMITMENT HEARINGS HELD IN COUNTY COURTS DURING 1987

Source: 1987 Annual Report of the North Dakota Judicial System

Adams	9	McLean	10
Barnes	26	Mercer	18
Benson	6	Morton	55
Billings	0	Mountrail	7
Bottineau	18	Nelson	1
Bowman	0	Oliver	2
Burke	9	Pembina	11
Burleigh	115	Pierce	10
Cass	287	Ramsey	25
Cavalier	3	Ransom	14
Dickey	3	Renville	5
Divide	3	Richland	29
Dunn	0	Rolette	10
Eddy	2	Sargent	1
Emmons	2	Sheridan	1
Foster	1	Sioux	0
Golden Valley	9	Slope	0
Grand Forks	81	Stark	41
Grant	0	Steele	2
Griggs	5	Stutsman	226
Hettinger	2	Towner	5
Kidder	0	Traill	11
LaMoure	2	Walsh	30
Logan	1	Ward	123
McHenry	6	Wells	13
McIntosh	3	Williams	69
McKenzie	15		
		TOTAL:	1,327

The counties of Burleigh (115), Cass (287), Grand Forks (81), Morton (55), Richland (29), Stark (41), Stutsman (226) and Ward (123) accounted for 957 of the 1,327 mental health and emergency commitment hearings held in 1987 or 72% of the total hearings. It was the task force's understanding that the state's attorneys in these counties have been representing the petitioner at the preliminary hearings.

Twenty-one of the counties had 10 or more hearings in 1987 and those 21 counties accounted for 1,219 out of the 1,327 hearings or 92% of the total. In addition to the eight counties listed above the other thirteen counties in this breakdown are Barnes, McKenzie, McLean, Mercer, Pembina, Pierce, Ramsey, Ransom, Rolette, Traill, Walsh, Wells and Williams.

1989 REVISION OF MENTAL HEALTH COMMITMENT LAW

S.B. 2389 which revises the mental health commitment law is the result of a joint project of the Department of Human Services and the North Dakota Mental Health Association. A committee of persons representing all parts of the system met during 1988 to review the procedure and recommend changes which would streamline the process without sacrificing the rights of persons who are subjects of a commitment petition.

The following persons served on the Commitment Law Revision Task Force:

Judge Harold Herseth, Stutsman County Court
Judge Bert Riskedahl, Burleigh County Court
Judge William McLees, McKenzie County Court
Dr. Arnold Kadrmas, Superintendent State Hospital
Dr. Richard Stadter, UND School of Medicine Fargo
Gene Hysjulien, Associate Director, Voc Rehab
Rolf Storsteen, Director, South Central H.S.C.
Ron Rowe, Archway Family Services, Bismarck
Mark Hanlon, Heartview Foundation, Mandan
Edwin W.F. Dyer III, Attorney, Bismarck
Wendy Schulz, Stutsman County State's Attorney
John Fox, Assistant Attorney General, Jamestown
Bob Harvey, Burleigh County Sheriff
Sam Ismir, Director, Mental Health Services, DHS
John Allen, Director, Division of Alcoholism & Drug Abuse DHS
Edi Falk, Mental Health Association
Rose Huhn, Mental Health Association
Nancy Keating, Mental Health Association
Sharon Gallagher, Mental Health Association
Keith Wolberg, Attorney, Task Force Staff

The members of the task force voted on each proposed amendment, and while not each change was unanimously approved, each change does reflect the wishes of the majority of the task force. S.B. 2389 contains the following procedural changes:

1. Requires the State's Attorneys to represent the petitioner in all stages of the mental health commitment proceedings. Petitions are to be screened and filed by the State's Attorney who may cause investigations to be conducted into the underlying facts of the petition. The investigations will be conducted by qualified mental health professionals designated by the regional human service centers.

2. Defines "chemical dependency" and substitutes chemical deper ency for alcoholism and drug addiction throughout the bill. The d finition is proposed to reflect the current diagnostic methods in the addiction field and in hopes that it would cure the present dissatisfaction with the vagueness of the alcoholism

and drug addiction definitions.

3. Amends the definition of "Person Requiring Treatment" by substituting the word "treated" for "hospitalized". Many of the judges believed that it was necessary to determine that a person needed hospitalization in order to be committed. It was the original intent of the law to discourage hospitalization unless necessary and this one misplaced word has created an undue burden on the petitioner who is merely requesting that the person be required to undergo treatment which could include outpatient treatment.

4. Amends the definition of "Person Requiring Treatment" to add a new commitment criteria relating to the "substantial deterioration in mental health which would predictably result in dangerousness to that person, others, or property, based upon acts, threats, or patterns in the person's treatment history, current condition and other relevant factors". This subsection is viewed by the mental health professionals as necessary to allow earlier intervention without the need for the person to totally deteriorate before treatment can be ordered.

5. Deletes the outreach worker's report and the role of the clerk of court in assisting the petitioner in filling out the petition. The added role of the state's attorney makes these roles unnecessary. The judges are strong advocates of the removal of the role of the clerk and judge in reviewing the petition because the petitioners who are now unrepresented tend to view the judge and clerk as their advocates.

6. Extends the time for hearings on a voluntary patient from "five days exclusive of weekends and holidays" to seven days. Extends the time for the preliminary hearing following an emergency commitment from "72 hours exclusive of weekends and holidays" to seven days without counting the weekends and holidays. It was the task force's belief that presently there is not sufficient time for the respondent's attorney to prepare for the hearing nor to request an independent examination. The actual extension in reality is two days. The treatment hearing must be held within 14 days of the receipt of the expert examiner's report and weekends and holidays are counted within that time.

7. Allows the preliminary and treatment hearing to be held at the same time without waiting for the intervening time to pass if the respondent requests that the hearings be combined. This provision to telescope the two hearings would be particularly helpful in cases where commitment is sought for treatment of chemical dependency.

8. Clarifies that the appointment of the counsel must be made within 24 hours of the time that a petition is filed with the court. As the law was written counsel was to be appointed within 72 hours of service or 24 hours of hospitalization, however this could not be accomplished because the court which makes the

appointment would have no knowledge of the existence of a petition until it is filed.

9. Clarifies the procedure to deal with noncompliance of an alternative treatment order. During the last legislative session the law was amended to allow the modification of an ATO without a hearing. The task force believes that due process requires a hearing in order to review the reasons for noncompliance and that this is particularly important when the possibility of ordering a more restrictive form of treatment exists. The section as amended would authorize the filing of a request to modify the ATO and identifies the court's remedies.

10. Provides that the supreme court in consultation with the DHS, county judges, state's attorney and other affected organizations will prepare the forms to implement this act and the DHS will be responsible for distribution of the forms. The forms now in use were developed by the Health Department 12 years ago and are in need of substantial revision. In all other court proceedings the supreme court, through its committees, is responsible for the development of the court forms.

SECTION BY SECTION REVIEW OF ENGROSSED S. B. 2389

Section 1. Amends the section relating to the duties of state's attorneys requiring them to institute commitment proceedings if there is probable cause.

Section 2. Substitutes the phrase "chemical dependency" for the terms alcoholism and drug addiction.

Section 3. Deletes the the definitions of alcoholic individual and drug addict as outmoded and substitutes the definition of "chemically dependent person".

Amends the criteria for commitment by deleting the reference to "severe mental illness, severe alcoholism, or severe drug addiction" as being too vague and lacking objective criteria.

Amends the criteria for commitment to provide that if there is a reasonable expectation that if the person is not treated there exists a serious risk of harm to that person, others, or property. The present criteria requires a finding that if the person is not hospitalized there exists a serious risk of harm.

Adds a new definition of "serious risk of harm" to address the problem of the small population of persons who suffer from chronic mental illnesses where there is "substantial deterioration in mental health which would predictably result in dangerousness to that person, others or property, based upon acts, threats, or patterns in the person's treatment history, current condition, and other relevant factors."

Section 4. Substitutes "chemically dependent" for alcoholic and drug addict.

Section 5. Extends the time for a hearing on the commitment of a previously voluntary patient from five days excluding weekends and holidays to seven days from the service of the petition.

Section 6. Technical drafting amendment to conform to present style requirements.

Section 7. Deletes the role of the clerk of court in assisting the person in completing the petition.

Provides that the state's attorney shall assist the person in completing the petition and may

cause an investigation of the grounds on which the petition is based. The state's attorney shall file the petition if the information provides probable cause to believe that the respondent is a person requiring treatment. Allows for diversion to other community resources if there are insufficient grounds for a petition and for a review of a decision not to institute proceedings by the district court.

Provides that the state's attorney may direct a qualified mental health professional as designated by the regional human service center to investigate and evaluate the specific facts alleged by an applicant for a petition for involuntary commitment. Presently this investigation is provided by outreach workers from the human service centers.

Section 8. Deletes the outreach workers investigation into the specific facts alleged in the petition since the previous amendment covers the investigation.

Section 9 Extends the following time limits within the act:

If the respondent is taken into custody, an examination must be conducted within 24 hours, exclusive of holidays, but not weekends of the custody.

If the respondent is in custody, the preliminary hearing date must be within 7 days of the date taken into custody. Presently it is 72 hours, exclusive of weekends and holidays, which could mean five days from date of custody.

If the respondent is not in custody, the treatment hearing must be held within 7 days of the date the court received the expert examiner's report, but not to exceed 14 days from the date the petition was served. Presently the hearing must be held with 72 hours of the receipt of the expert examiner's report not to exceed 14 days, exclusive of weekends and holidays.

Section 10. Allow the parties to waive the preliminary hearing and conduct the treatment hearing within the time period set for the preliminary hearing. In other words allows for one hearing instead of two when the parties agree.

Section 11. The court must appoint counsel within 24 hours, exclusive of weekends and holidays, from the time the petition was filed. Presently the appointment is made within 72 hours, exclusive of weekends and holidays, from the time the petition was served.

Section 12. Requires the state's attorney to appear and represent the state (petitioner) in all court proceedings and hearing under this chapter except those initiated by the state hospital.

Section 13. Deletes the reference to the outreach workers' investigation.

Section 14. Amends the reference to the 72 hour emergency order to the proposed seven day emergency order. See Section 10 of the bill.

Section 15. Consistent with section 10 of the bill provides that if the respondent is not in custody the treatment hearing must be held within 7 days of the receipt of the expert examiner's report but not to exceed 14 days from the time the petition was served. Presently it is held within 72 hours of the receipt of the report not to exceed 14 days exclusive of weekends and holidays.

Allows the court to extend the time for the treatment hearing for good cause.

Section 16. If a respondent is not complying with an alternative treatment order or the ATO is not sufficient to prevent harm or injuries, the DHS, a representative of the treatment program, or the state's attorney may apply to the court for a modification of the court's alternative treatment order.

Reinstitutes the need for a court hearing on the request to modify the order. The hearing must be held within 7 days after the application is filed.

Sets out what remedies are available to the court if an application to modify an ATO order is filed.

If the respondent has been hospitalized on an emergency pending a review of the request to modify the ATO order and after the hearing, if the court is not convinced of the need for the more restrictive treatment, the court may release the person from the hospital and continue the ATO order.

Section 17. Deletes the restriction that persons hospitalized for the treatment of alcoholism may have the continuing treatment order entered only for an additional 30 days as opposed to the normal 90 days for a continuing treatment order.

Section 18. Deletes the words "person suffering from a mental illness, alcoholism, or drug addiction" and substitutes the phrase "an individual is a person requiring treatment."

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Consistent with section 10 of the bill provides that the preliminary hearing must be held within 7 days of the date custody was ordered.

Section 19. Consistent with section 10 of the bill provides that the preliminary hearing must be held within 7 days of the date of detention rather than 72 hours, exclusive of weekends and holidays.

Section 20. Consistent with section 10 of the bill provides that when a person is hospitalized under an emergency procedure that the person must receive an expert exam within 24 hours of hospitalization, excluding only holidays but not Sundays.

Provides that if the individual is unable to read or understand the written materials which must be provided to him upon hospitalization that every reasonable effort will be made to explain them.

Section 21. Substitutes the phrase "chemically dependent" for the words alcoholic or drug addict.

Section 22. Inserts the phrase "chemically dependent" within the transfer provisions to clearly indicate that all persons who are involuntarily committed may be transferred to other private and public facilities.

Extends the time for a hearing if the patient objects to a transfer to 7 days after notice of the proposed transfer is received, rather than 3 days, exclusive of weekends and holidays.

Section 23. Substitutes the phrase "chemical dependency" for the words alcoholism or drug addiction.

Section 24. Provides that under regulations of the DHS, patient information and records may be disclosed but not necessarily must be disclosed to the listed categories of persons.

Section 25. Provides that the supreme court in consultation with the DHS, the associations of county judges and state's attorneys, and other affected organizations will be responsible for the preparation of the necessary and appropriate forms to enable compliance with this chapter.

Mr. Flemmer and testify in person

ST. ALEXIUS MEDICAL CENTER

Archway Family Services

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ARCHWAY

TESTIMONY ON SENATE BILL 2389

Mr. Chairman, Members of the Committee, my name is Lowell Flemmer. I am a Board Certified Diplomate in Clinical Social Work, licensed in the State of North Dakota. I am also the Director of Archway Family Services at St. Alexius Medical Center in Bismarck and I am a member of the Board of Directors of the Mental Health Association of North Dakota.

I am here representing St. Alexius Medical Center and specifically the Medical Center's inpatient psychiatric programs and outpatient psychotherapy program, namely Archway Family Services. I am here to state that we strongly support Senate Bill 2389.

We believe this bill allows for more, and more appropriate options for committed individuals. Rather than the most often thought of option for treatment [the North Dakota State Hospital], this bill will hopefully encourage judges to look at other options in committing mentally ill individuals. These other options being commitment to local treatment facilities or local outpatient clinics.

This bill changes the focus of commitment to treatment rather than to institutionalization.

Rather than sending people off hundreds of miles away to the state hospital, hopefully, now people can remain in their home communities or at least near their home communities to receive treatment. All of the larger communities in the state have hospitals with psychiatric units. Also, most have outpatient mental health programs. These facilities are well able to serve both the acute and chronic mentally ill.

We see this bill as being a tremendous benefit to the mentally ill individual and his/her family. Now, not only can perhaps a less restrictive treatment be provided, but the treatment can be provided close to home. We seen treatment close to home as advantageous over treatment hundreds of miles away from home, family, and after-care resources.

Why pull these people off hundreds of miles away from home to some huge and mysterious institution when they can be very adequately treated in their home communities? Further, why separate these individuals from their families and friends, when so often family is vitally needed in the treatment of mental illness?

In or near the home communities access to treatment both on an inpatient and an outpatient basis is much enhanced. Further, the follow-up or after-care resources, which would be utilized by a mentally ill individual coming out of the hospital, are close at hand for treatment planning and ease of implementation.

In addition, I have heard time and time again during this legislative session about the status of the state hospital. It is very clear that the state hospital is grossly understaffed for the large population they serve. It is clear that the role of the state hospital needs to change and the leadership of the state hospital is moving in that direction. The ideas I have presented and this bill, with its many enhancements I believe go hand in hand with the changes which need to take place at the state hospital.

Right to notice and hearing prior to revocation of conditional release status of mental patient

This annotation collects and analyzes these state and federal cases in which the courts have considered the right of a mental patient[1] to notice and a hearing prior to the revocation of the patient's conditional release status.[2]

Relevant statutory provisions and court rules are discussed herein only to the extent that they are reflected in the reported cases and no attempt has been made to state the current status of enactments in any jurisdiction. The reader is therefore advised to consult the most recent statutory enactments and court rules of the jurisdiction of interest to him.

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Within the requirements of due process the form or mode of proceedings incidental to the formal commitment of a person alleged to be incompetent is largely prescribed by local statute. Under one line of authority, a valid proceeding to commit a person to an insane asylum or hospital requires not only adequate notice to the alleged incompetent, or his representative if he is a minor, but also an opportunity to be heard before the order of commitment is issued. On this view, a statute that authorizes the commitment of an alleged incompetent without notice and without affording him the right to a hearing before judgment is invalid as violative of constitutional provisions inhibiting the deprivation of liberty without due process of law, and a statute that does not specifically mention notice will be construed as requiring notice to preserve its constitutionality. The various jurisdictions following a different view have held statutes constitutional where, although they do not provide for notice and hearing before commitment, they provide for it promptly thereafter.[3]

In the few cases in which the courts have considered the right to notice and a hearing before the revocation of the conditional release status of a mental patient, the potential loss of liberty interest has been likened to that occurring upon the revocation of probation or parole of a convicted criminal, and therefore it has been held that notice and a hearing are due process requirements in this instance. There are a few jurisdictions which have rejected this analogy, however, and have held that notice and a hearing were not required before the revocation of conditional re-

1. Only those cases dealing with the revocation of the conditional release status of a person committed for reasons of insanity, retardation, mental illness, and the like, are included within the scope of this annotation. Excluded, therefore, are cases where the courts held that notice and a hearing were required before the revocation of outpatient status of drug dependent persons even though such persons may have been committed under the mental hygiene laws of the particular state.

2. The term "conditional release status" as used herein means that status whereby the mental patient is released from the hospital or institution on the condition that he continue treatment or therapy on an outpatient or other basis.

3. For a general discussion of due process requirements before the commitment of a mentally infirm person, see 41 Am Jur 2d, Incompetent Persons §§ 30 et seq.

lease status, since the decision was a medical one and there was a continuing authority over the person due to the initial commitment.

The courts in the following cases held that notice and a hearing were required before the conditional release status of a mental patient could be revoked.

In Meisel v Kremens (1975, ED Pa) 405 F Supp 1253, the court held that a mental patient whose long-term leave was summarily revoked pursuant to a Pennsylvania statute which did not afford a hearing at which the factual and medical basis of the revocation could be challenged was denied due process, and that the statute under which the leave was revoked was unconstitutional. The statute in question allowed the director of any facility, in his discretion, to allow a leave of absence to any person admitted or committed whose condition was such as to warrant the action, for a period not exceeding one year, and upon such terms and conditions as he might prescribe consistent with regulations of the department. The liberty at stake in a civil commitment proceeding is as valuable an interest as the liberty at stake in a criminal trial, the court said, noting that it had been held that the conditional liberty of the paroled criminal fell within the scope of the Fourteenth Amendment and was entitled to the protection of the due process clause. Finding that the liberty interest of the patient released on long term was as great as that of the paroled criminal, the court concluded that such liberty interest could not be revoked without the due process right to a hearing.

A statute which permitted the revocation of outpatient or convalescent leave of a mental patient without notice or an opportunity to be heard prior to reinstitutionalization was held by the court in Lewis v Donahue (1977, WD Okla) 437 F Supp 112, to be infirm for failure to comport with the due process clause of the Fourteenth Amendment. The plaintiff had been committed to the state mental hospital but had been released and placed on outpatient after care status when she was taken into police custody and returned to the hospital pursuant to a court order issued without affording the plaintiff notice of the charges and facts allegedly necessitating revocation of the leave or an opportunity to be heard. Rejecting the defendants' contention that inasmuch as a patient on leave or outpatient status remained under the continuing supervision of the department of mental health for a period of 12 months, no action taken during that time could affect a change in status because a return of the patient to the institution was merely an instance of continuing medical treatment, the court said that the granting of outpatient status did change the plaintiff's situation as she ceased to be a person who was institutionalized and became a person permitted to enjoy a substantial degree of liberty. A leave could properly be indeterminate, or terminable upon the happening of certain conditions, the court recognized, and it was nevertheless clear that it could not be revoked and that conditions as well as revocation rights fell within the protection of the liberty or property language of the Fourteenth Amendment.

The court in Re Anderson (1977, 2d Dist) 73 Cal App 3d 38, 140 Cal Rptr 540, held that a mental patient acquitted by reason of insanity must be afforded notice and a hearing prior to the revocation of his outpatient status. Noting that before a patient could be released for local outpatient care treatment arrangements

must be made with a county mental health facility, various agencies must be notified, and formal court approval must be secured, the court observed that despite these elaborate release procedures, the patient was subject to summary return if the outpatient supervisor and the head of the local health facility were of the opinion that the person refused to accept outpatient treatment, but could obtain a full judicial hearing if the prosecuting attorney sought the patient's return. In response to the contention that the summary return procedure satisfied due process considerations as the state interest in providing proper, uninterrupted treatment for the protection of both patient and public outweighed any deprivation to the patient when he was returned to the hospital, the court said that the conditional liberty interest of the outpatient from a mental hospital was no less entitled to due process safeguards than that of either the parolee or the outpatient from the narcotics programs. The revocation of his status and the recommitment to a state mental hospital, an institution which often is little more than a "sanitary dungeon," certainly work a loss of liberty as grievous as that inflicted upon the parolee or narcotics addict, the court determined, concluding that to call the revocation of the patient's outpatient status a "medical" as opposed to a "factual" or "adversary" decision, or to label his status as a "continuing course of treatment," was simply a variation of the discredited right-privilege distinction. Responding to the contention that the provision for habeas corpus review afforded the recommitted outpatient passed constitutional muster, the court said that the fundamental mandate of the Fourteenth Amendment was that a person be afforded notice and an opportunity to be heard prior to the deprivation of a significant liberty or property interest, not afterward. There might be instances where the need for immediate recommitment is of paramount importance for both the public's and the patient's well-being, the court recognized, declaring that the hearing afforded the patient must be held as soon as reasonably possible following the patient's return to the hospital and not before the return to the hospital.

Noting that by statute a mental patient's outpatient status could be revoked and the patient immediately rehospitalized if the patient failed to fulfill the conditions of his release or if it was reported by a designated official that the patient had suffered a relapse, the court in Re Application of True (1982) 103 Idaho 151, 645 P2d 891, 29 ALR4th 366, held that a mental patient's outpatient status could not be revoked absent a hearing and notice. In response to the argument that the summary procedure for revocation of an improved patient's conditional release status withstood due process scrutiny on the ground that the interest of the state in protecting society from the patient and the patient from himself by way of proper, uninterrupted treatment outweighed any deprivation of the patient when he was rehospitalized, the court said that a patient who had been conditionally released from institutional hospitalization possessed a liberty interest which was entitled to due process safeguards. At a minimum, the patient is entitled to prompt written notice and a revocation hearing before a neutral hearing body, the court declared. Conceding that the state had an interest in protecting society and the individual and that at times the need for rehospitalization was of sufficient magnitude

that immediate action was required, the court determined that the hearing need not be held before the rehospitalization but rather required the hearing to be held a reasonable time after recommitment.

See R. v Adams (1981, CA5 Iowa) 649 F2d 625, where although it was held that the question presented was an appropriate case for abstention by the federal courts since the Iowa statute dealing with the revocation of outpatient status of mental patients was subject to varying interpretations, the court nevertheless indicated that the patient was entitled to notice and a hearing before the revocation. Lower courts which have reviewed state recommitment statutes similar to Iowa's have uniformly found that the conditional liberty interest of a mental patient or a drug dependent person on outpatient status could not be summarily terminated without notice and the opportunity for a hearing, the court noted. The trial court in it had held that since the plaintiff was under the continuing jurisdiction of the committing court during the outpatient phase, he was not entitled to a due process hearing prior to transfer back to inpatient status. Observing that the patient challenged the statute on the assumption that it did not provide for notice or hearing upon revocation of outpatient status and recommitment, the court concluded that the section said nothing about notice and a hearing one way or the other and therefore invoked the abstention doctrine at that time.

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In the following cases, the courts held that a mental patient did not have a right to notice or a hearing before the revocation of his conditional release:

The court in Hooks v Jaquith (1975, Miss) 318 So 2d 860, rejected the contention of a mental patient that the termination of his outpatient status was equivalent to the revocation of probation or parole of a convicted criminal, and held that the patient's leave could be terminated without a hearing. Noting that it was not contended that the patient had been improperly committed initially or that he had regained his sanity such as to require discharge, the court said that when determining whether to revoke a probation or parole, the court was considering a knowing violation of the conditions of the parole or probation. The parolees are not persons suffering from a condition or disease which requires continued medical treatment, the court stated, observing that in the case of mental patients, even more than in the case of patients suffering from physical ailments, a decision as to whether to keep the patient in the hospital or to discharge him must rest on medical opinion to be decided by medical experts based upon the mental condition of the patient and the necessity for hospital treatment as determined by them.

In Dietsch v Brooks (1976) 27 Or App 821, 558 P2d 357, the court held that a mental patient could have his leave terminated without the need for a hearing if the visit was less than 90 days. The applicable statute provided that a trial visit which lasted at least 90 days could not be terminated without an administrative hearing but did not require a hearing to terminate visits of less than 90 days. The court rejected the argument of the mental patient that a trial visit from a mental hospital was analogous to parole from a penitentiary or jail, though the court noted that as first enacted the mental health statute provided for "parole from institutions and that word remained until the legislature substituted the phrase 'trial visit.' The description of the purpose of a parole in criminal cases sounds much like

the description of the purpose of a trial visit, the court stated, noting that both were to help individuals reintegrate into society as constructive individuals. Reasoning by analogy, however, has its limits, the court declared, observing that a parole or probation was part of a deterrent or correctional situation whereas a trial visit was one therapeutic device in a program of medical treatment of a mentally ill person which had nothing penal or deterrent about it. Termination of a trial visit is not an isolated event, the court reasoned, noting that if it were, then a denial of liberty based upon the sworn statements of two people and the judgment of an admitting physician, standing alone, would be unconstitutional for lack of due process. The court concluded that the trial visit was one of a sequence of events within a course of confinement and treatment and it was the procedural protection which surrounded that course of confinement and treatment which must be measured against the due process clause to determine if it was appropriate to the public purpose to be served.

See Metaxos v People (1924) 76 Colo 264, 230 P 608, where the court held that the discharge of a mental patient in the care of friends was probationary and the person so discharged could be recommitted without a trial by jury. The pertinent statute provided that if any person confined in the state insane asylum should be restored to reason, the superintendent thereof could discharge such person from said confinement, and the county court, upon a hearing, could determine that the patient had not been restored to sanity and order him recommitted without a new jury trial.

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The following annotations may be of related interest:

Validity of conditions imposed when releasing person committed to institution as consequence of acquittal of crime on ground of insanity. 2 MER4th 231

Modern status of rules as to standard of proof required in civil commitment proceedings. 97 ALR3d 780

Validity of statutory provision for commitment to mental institution of one acquitted of crime on ground of insanity without formal determination of mental condition at time of acquittal. 50 ALR3d 144

Liability for false imprisonment predicated upon institution of, or conduct in connection with, insanity proceedings. 30 ALR3d 523

Liability for malicious prosecution predicated upon institution of, or conduct in connection with, insanity proceedings. 30 ALR3d 455

Modern status of rules as to burden and sufficiency of proof of mental irresponsibility in criminal case. 17 ALR3d 116

Power of courts or other agencies, in absence of statutory authority, to order compulsory medical care for adult. 9 ALR3d 1401

Release of one committed to institution as consequence of acquittal of crime on ground of insanity. 95 ALR2d 51

Right to counsel in insanity or incompetency adjudication proceedings. 87 ALR2d 950

Constitutional right to jury trial in proceeding for adjudication of incompetency or insanity or for restoration. 33 ALR2d 1145

Habeas corpus on ground of restoration to sanity of one confined as an incompetent other than in connection with crime. 21 ALR2d 1001

Right to relief under Federal Civil

Rights Act of 1871 (42 USCS § 1983) or confinement in mental hospital, 16
for alleged wrongful commitment to ALR Fed 440.

Consult POCKET PART in this volume for later cases

March 28, 1989

Prepared by the Legislative Council staff

BILL NO.: SB 2389

SUBJECT: Civil commitment of mentally ill and chemically dependent persons

CREATES NDCC: New section to Chapter 25-03.1

AMENDS NDCC: Numerous sections

BILL SUMMARY

GENERALLY, THIS BILL:

As amended, requires the state's attorney to appear and represent the state at most hearings in civil commitment proceedings. The bill also extends the time within which a preliminary hearing must be held from three days to seven days. The bill also adds a substantial deterioration in mental health that will predictably result in dangerousness to the criteria of a "person requiring treatment."

CHAPTER 149

SENATE BILL NO. 2389
(Senators Olson, Stenehjem, J. Meyer)
(Representatives Wentz, Schneider, Kelly)

MENTALLY ILL AND CHEMICALLY DEPENDENT COMMITMENT

AN ACT to create and enact a new subsection to section 11-16-01 and a new section to chapter 25-03.1 of the North Dakota Century Code, relating to duties of states attorneys in commitment proceedings and to combination of preliminary and treatment hearings; and to amend and reenact sections 25-03.1-01, 25-03.1-02, 25-03.1-04, 25-03.1-06, 25-03.1-07, 25-03.1-08, 25-03.1-09, 25-03.1-11, 25-03.1-13, 25-03.1-14, 25-03.1-17, 25-03.1-18, 25-03.1-19, 25-03.1-21, 25-03.1-22, 25-03.1-25, 25-03.1-26, 25-03.1-27, subsection 5 of section 25-03.1-30, sections 25-03.1-34, 25-03.1-42, 25-03.1-43, and 25-03.1-46, relating to civil commitment of mentally ill and chemically dependent persons.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 11-16-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

Institute proceedings under chapter 25-03.1 if there is probable cause to believe that the subject of a petition for involuntary commitment is a person requiring treatment.

SECTION 2. AMENDMENT. Section 25-03.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-01. Legislative intent. The provisions of this chapter are intended by the legislative assembly to:

1. Provide prompt evaluation and treatment of persons with serious mental disorders, ~~alcoholism,~~ or ~~drug addiction~~ chemical dependency.
2. Safeguard individual rights.
3. Provide continuity of care for persons with serious mental disorders, ~~alcoholism,~~ or ~~drug addiction~~ chemical dependency.
4. Encourage the full use of all existing agencies, professional personnel, and public funds to prevent duplication of services and unnecessary expenditures.
5. Encourage, whenever appropriate, that services be provided within the community.

treatment history, current condition, and other relevant factors.

~~12.~~ 11. "Private treatment facility" means any facility established ~~pursuant to~~ under chapters 10-19.1, 10-22, and 10-24 and licensed ~~pursuant to~~ under chapter 23-16 or 23-17.1.

~~13.~~ 12. "Public treatment facility" means any treatment facility not falling under the definition of a private treatment facility.

~~14.~~ 13. "Respondent" means a person subject to petition for involuntary treatment.

~~15.~~ 14. "Superintendent" means the state hospital superintendent.

~~16.~~ 15. "Treatment facility" or "facility" means any hospital including the state hospital at Jamestown, or evaluation and treatment facility which can provide directly, or by direct arrangement with other public or private agencies, emergency evaluation and treatment, outpatient care, and inpatient care to persons suffering from a mental disorder, ~~alcoholism~~, or ~~drug addiction~~ chemical dependency.

* SECTION 4. AMENDMENT. Section 25-03.1-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-04. Voluntary admission. An application for admission to the state hospital or a public treatment facility for observation, diagnosis, care, or treatment as a voluntary patient may be made by any person who is mentally ill, ~~an alcoholic~~, or ~~a drug addict~~, chemically dependent or who has symptoms of such illnesses. An application for admission as a voluntary patient may be made on behalf of a minor who is mentally ill, ~~an alcoholic~~, or ~~a drug addict~~, chemically dependent or who has symptoms of such illnesses, by ~~his~~ the minor's parent or legal guardian. The application may be submitted to a public treatment facility or to the state hospital, ~~both~~ each of which ~~shall have~~ has the authority to admit and treat the applicant. Upon admittance, the superintendent or the director shall immediately designate a physician, psychiatrist, clinical psychologist, or mental health professional to examine the patient.

SECTION 5. AMENDMENT. Section 25-03.1-06 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-06. Right to release on application - Exception - Judicial proceedings. Any person voluntarily admitted for inpatient treatment to any treatment facility or the state hospital shall be orally advised of the right to release and shall be further advised in writing of ~~his~~ the rights under this chapter. A voluntary patient who requests ~~his~~ release shall be immediately released. However, if the superintendent or the director determines that the patient is a person requiring treatment, the release may be postponed until judicial proceedings for involuntary treatment have been held in the county where the hospital or facility is located. The patient must be served the petition within twenty-four hours, exclusive of weekends and holidays, from the time release is requested, unless extended by the magistrate for good cause shown. The treatment hearing shall be held within

* NOTE: Section 25-03.1-04 was also amended by section 2 of House Bill No. 1038, chapter 335.

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~~five~~ seven days~~, excluding weekends and holidays~~, from the time the petition is served.

SECTION 6. AMENDMENT. Section 25-03.1-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-07. Involuntary admission standards. A person may be involuntarily admitted under this chapter to the state hospital or another treatment facility only if it is determined ~~he~~ that the individual is a person requiring treatment ~~as defined by subsection 11 of section 25-03.1-02~~.

SECTION 7. AMENDMENT. Section 25-03.1-08 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-08. Application to state's attorney or retained attorney - Petition for involuntary treatment - Investigation by qualified mental health professional. ~~Proceedings for the involuntary treatment of an individual may be commenced by any~~ Any person eighteen years of age or over ~~by filing a written petition with the clerk of court~~ shall present the information necessary for the commitment of an individual for involuntary treatment to the state's attorney of the county where the respondent is presently located, or which is the respondent's place of residence, or to an attorney retained by that person to represent the applicant throughout the proceedings. The ~~clerk of court~~ attorney shall assist the person in completing the petition. The petition ~~shall~~ must be verified by affidavit of the applicant and contain assertions that the respondent is ~~the~~ a person requiring the treatment; the facts, in detail, that are the basis of that assertion; the names, telephone numbers, and addresses, if known, of any witnesses to such facts; and, if known, the name, telephone number, and address of the nearest relative or guardian of the respondent, or, if none, of a friend of the respondent. The petition may be accompanied by any of the following:

1. A written statement supporting the petition from a psychiatrist, physician, or clinical psychologist who has personally examined the respondent within forty-five days of the date of the petition.

2. One or more supporting affidavits otherwise corroborating the petition.

~~3. Corroborative information obtained and reduced to writing by the clerk of court, but only when it is not feasible to comply with, or when he considers it appropriate to supplement, the information supplied pursuant to either subsection 1 or 2.~~

In assisting the person in completing the petition, the state's attorney may direct a qualified mental health professional as designated by the regional human service center to investigate and evaluate the specific facts alleged by the applicant. The investigation must be completed as promptly as possible and include observations of and conversation with the respondent, unless the respondent cannot be found or refuses to meet with the mental health professional. A written report of the results of the investigation must be delivered to the state's attorney. Copies of the report must be made available upon request to the respondent, the respondent's counsel, and any expert examiner conducting an examination under section 25-03.1-11. The state's attorney or retained attorney shall file the petition if the information provided by the petitioner or gathered by investigation provides

25-03.1-11. Involuntary treatment - Examination - Report. The respondent ~~shall~~ must be examined within a reasonable time by an expert examiner as ordered by the court. If the respondent is taken into custody ~~pursuant to~~ under the emergency treatment provisions of this chapter, the examination ~~shall~~ must be conducted within twenty-four hours, exclusive of holidays, of custody. Any expert examiner conducting an examination ~~pursuant to~~ under this section may consult with, or request participation in the examination by, any qualified mental health professional, and may include with the written examination report any findings or observations by such mental health professional. This examination report, and that of the independent examiner, if one has been requested, ~~shall~~ must be filed with the court. The report ~~shall~~ must contain:

1. Evaluations of the respondent's physical condition and mental status.

2. A conclusion as to whether the respondent meets the criteria of a person requiring treatment, with a clear explanation of how that conclusion was derived from the evaluation ~~required~~.

3. If the report concludes that the respondent meets the criteria of a person requiring treatment, a list of available forms of care and treatment that may serve as alternatives to involuntary hospitalization.

4. The signature of the examiner who prepared the report.

If the expert examiner concludes that the respondent does not meet the criteria of a person requiring treatment, the court may without taking any other additional action terminate the proceedings and dismiss the petition. If the expert examiner concludes that the respondent does meet the criteria of a person requiring treatment, or makes no conclusion thereon, the court shall set a date for a preliminary hearing and shall give notice of this hearing to the persons designated in section 25-03.1-12. If the respondent is in custody, the preliminary hearing date must be within ~~seventy-two hours, exclusive of weekends and holidays,~~ seven days of the date respondent was taken into custody through emergency commitment ~~pursuant to~~ under section 25-03.1-25 unless a delay or continuance is concurred in by the respondent or unless extended by the magistrate for good cause shown. If the preliminary hearing is not required, the treatment hearing ~~shall~~ must be held within ~~seventy-two hours~~ seven days of the date the court received the expert examiner's report, not to exceed fourteen days, ~~excluding weekends and holidays,~~ from the time the petition was served.

SECTION 10. A new section to chapter 25-03.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

Combination of preliminary and treatment hearings. With the consent of the court, the parties may waive the preliminary hearing and conduct the treatment hearing within the time period set for the preliminary hearing.

SECTION 11. AMENDMENT. Section 25-03.1-13 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-13. Right to counsel - Indigency - Waiver.

detained for up to fourteen days for involuntary treatment in a treatment facility.

The court shall specifically state to the respondent, and give ~~him~~ written notice, that if involuntary treatment beyond the fourteen-day period is to be sought, the respondent will have the right to a ~~full~~ treatment hearing as required by this chapter.

SECTION 14. AMENDMENT. Section 25-03.1-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-18. Involuntary treatment - Release. The superintendent or the director may release a patient subject to a fourteen-day evaluation and treatment order or a ~~seventy-two hour~~ seven-day emergency order if, in ~~his~~ the superintendent's or director's opinion, the respondent does not meet the criteria of a person requiring treatment or, ~~prior to~~ before the expiration of the fourteen-day order, the respondent no longer requires inpatient treatment. The court ~~shall~~ must be notified of the release and the reasons therefor. If the respondent is released because ~~he~~ the respondent does not meet the criteria of a person requiring treatment, the court shall dismiss the petition.

SECTION 15. AMENDMENT. Section 25-03.1-19 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-19. Involuntary treatment hearing. The involuntary treatment hearing, unless waived by the respondent or the respondent has been released as a person not requiring treatment, ~~shall~~ must be held within fourteen days of the preliminary hearing. If the preliminary hearing is not required, the involuntary treatment hearing ~~shall~~ must be held within ~~seventy-two hours~~ seven days of the date the court received the expert examiner's report, not to exceed fourteen days~~, excluding weekends and holidays~~, from the time the petition was served. The court may extend the time for hearing for good cause. The respondent has the right to an examination by an independent expert examiner if so requested. If the respondent is indigent, the county of residence of the respondent shall pay for the cost of the examination and the respondent may choose an independent expert examiner.

The hearing ~~shall~~ must be held in the county of the respondent's residence or location~~,~~ or the county ~~wherein~~ where the state hospital or treatment facility treating the respondent is located. At the hearing, evidence in support of the petition ~~shall~~ must be presented by the state's attorney, private counsel, or counsel designated by the court. During the hearing, the petitioner and the respondent ~~shall~~ must be afforded an opportunity to testify and to present and cross-examine witnesses. The court may receive the testimony of any other interested person. All persons not necessary for the conduct of the proceeding ~~shall~~ must be excluded, except that the court may admit persons having a legitimate interest in the proceeding. The hearing ~~shall~~ must be conducted in as informal a manner as practical, but the issue ~~shall~~ must be tried as a civil matter. Discovery and the power of subpoena permitted under the North Dakota Rules of Civil Procedure ~~shall be~~ are available to the respondent. The court shall receive all relevant and material evidence which may be offered as governed by the North Dakota Rules of Evidence. There ~~shall be~~ is a presumption in favor of the respondent, and the burden of proof in support of the petition ~~shall be~~ is upon the petitioner.

If, upon completion of the hearing, the court finds that the petition has not been sustained by clear and convincing evidence, it shall deny the petition, terminate the proceeding, and order that the respondent be discharged if ~~he~~ the respondent has been hospitalized ~~prior to~~ before the hearing.

SECTION 16. AMENDMENT. Section 25-03.1-21 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-21. Involuntary treatment order - Alternatives to hospitalization - Noncompliance with alternative treatment order - Emergency detention by certain professionals - Application for continuing treatment order.

1. Before making its decision in an involuntary treatment hearing, the court shall review a report assessing the availability and appropriateness for the respondent of treatment programs other than hospitalization which has been prepared and submitted by the state hospital or treatment facility. If the court finds that a treatment program other than hospitalization is adequate to meet the respondent's treatment needs and is sufficient to prevent harm or injuries which the individual may inflict upon himself or others, the court shall order the respondent to receive whatever treatment other than hospitalization is appropriate for a period of ninety days.

2. If, ~~during this period, the court or the county court of a different county in which the respondent is presently located learns that~~ the respondent is not complying with the alternative treatment order, or ~~that~~ the alternative treatment has not been sufficient to prevent harm or injuries that the individual may be inflicting upon himself or others, ~~the court may without a hearing, or the county court of a different county in which the respondent is presently located may with a hearing, and based~~ the department, a representative of the treatment program involved in the alternative treatment order, the petitioner's retained attorney, or the state's attorney may apply to the court or to the county court of the different county in which the respondent is located to modify the alternative treatment order. The court shall hold a hearing within seven days after the application is filed. Based upon the ~~record~~ evidence presented at hearing and other available information, the court may:

~~1.~~ a. Continue the alternative treatment order;

b. Consider other alternatives to hospitalization, modify the court's original order, and direct the individual to undergo another program of alternative treatment for the remainder of the ninety-day period; or

~~2.~~ c. Enter a new order directing that the individual be hospitalized until discharged from the hospital ~~pursuant to~~ under section 25-03.1-30. If the individual refuses to comply with this hospitalization order, the court ~~or the court court of a different county in which the respondent is presently located~~ may direct a peace officer to take the individual into

SECTION 17. AMENDMENT. Section 25-03.1-22 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-22. Involuntary treatment orders.

1. An initial order for involuntary treatment ~~shall~~ must be for a period not to exceed ninety days.

2. If, ~~prior to~~ before the expiration of the ninety-day order, the director or superintendent believes that a patient's condition is such that ~~he~~ the patient continues to require treatment, the director or superintendent shall, not less than fourteen days ~~prior to~~ before the expiration of the order, petition the court where the facility is located for a determination that the patient continues to be a person requiring treatment and for an order of continuing treatment, which order may be for an unspecified period of time. ~~If the patient has been hospitalized for the treatment of alcoholism, the continuing treatment order may be only for thirty days after which time the patient must be released.~~

SECTION 18. AMENDMENT. Section 25-03.1-25 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-25. Detention or hospitalization - Emergency procedure.

1. When a peace officer, physician, psychiatrist, clinical psychologist, or ~~any~~ mental health professional has reasonable cause to believe that ~~a person is suffering from mental illness, alcoholism, or drug addiction~~ an individual is a person requiring treatment and there exists a serious risk of harm to that person, other persons, or property of such an immediate nature that considerations of safety do not allow preliminary intervention by a magistrate, the peace officer, physician, psychiatrist, clinical psychologist, or mental health professional may cause the person to be taken into custody and detained at a treatment facility as provided in subsection 3, and subject to section 25-03.1-26.

2. If a petitioner seeking the involuntary treatment of a respondent requests that the respondent be taken into immediate custody and the ~~judge~~ magistrate, upon reviewing the petition and accompanying documentation, finds probable cause to believe that the respondent is ~~seriously mentally impaired, a alcoholic, or a drug addict~~ a person requiring treatment and there exists a serious risk of harm to the respondent, other persons, or property if allowed to remain at liberty, the ~~judge~~ magistrate may enter a written order directing that the respondent be taken into immediate custody and be detained as provided in subsection 3 until the preliminary hearing, which ~~shall~~ must be held no more than ~~seventy-two hours, exclusive of weekends and holidays,~~ seven days after the date of the order.

3. Detention under this section may be:

   a. In a treatment facility where the director or superintendent shall be informed of the reasons why immediate custody has been

ordered. The facility may provide treatment ~~which~~ that is necessary to preserve the respondent's life, or to appropriately control behavior by the respondent which is likely to result in physical injury to himself or to others if allowed to continue, but may not otherwise provide treatment to the respondent without the respondent's consent; or

b. In a public or private facility in the community which is suitably equipped and staffed for the purpose. Detention in a jail or other correctional facility may not be ordered except in cases of actual emergency when no other secure facility is accessible, and then only for a period of not more than twenty-four hours and under close supervision.

4. Immediately upon being taken into custody, the person ~~shall~~ must be advised of the purpose of custody, of the intended uses and possible effects of any evaluation that the person undergoes, and of the person's right to counsel and to a preliminary hearing.

5. Upon arrival at a facility the peace officer, physician, psychiatrist, clinical psychologist, or ~~the~~ mental health professional who conveyed the person, or who caused the person to be conveyed, shall complete an application for evaluation and shall deliver a detailed written report from the peace officer, physician, psychiatrist, clinical psychologist, or the mental health professional who caused the person to be conveyed. The written report ~~shall~~ must state the circumstances under which the person was taken into custody. The report must allege in detail the overt act ~~which~~ that constituted the basis for the belief that the ~~person is mentally ill, an alcoholic, or drug addict~~ individual is a person requiring treatment and that, because of such condition, there exists a serious risk of harm to that person, another person, or property if the person is not immediately detained.

* SECTION 19. AMENDMENT. Section 25-03.1-26 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-26. Emergency procedure - Acceptance of petition and individual - Notice - Court hearing set.

1. The state hospital or public treatment facility must immediately accept and a private treatment facility may accept on a provisional basis the application and the person admitted under section 25-03.1-25. The superintendent or director shall require an immediate examination of the subject and, within twenty-four hours after admission, shall either release the person if ~~he~~ the superintendent or director finds that the subject does not meet the emergency commitment standards, or file a petition if one has not been filed with the ~~magistrate of the county~~ court of the person's residence, or ~~to the county of~~ the court which directed immediate custody under subsection 2 of section 25-03.1-25, giving notice to the court and stating in detail the circumstances and facts of the case.

* NOTE: Section 25-03.1-26 was also amended by section 19 of Senate Bill No. 2056, chapter 69.

2. Upon receipt of the petition and notice of the emergency detention, the magistrate shall set a date for a preliminary hearing to be held no later than ~~seventy-two hours, exclusive of weekends or holidays,~~ seven days after detention unless the person has been released as a person not requiring treatment, has voluntarily admitted himself for treatment, has requested or agreed to a continuance, or unless extended by the magistrate for good cause shown. The magistrate shall appoint counsel if one has not been retained by the respondent.

SECTION 20. AMENDMENT. Section 25-03.1-27 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-27. Notice and statement of rights.

1. Whenever any person is detained for emergency evaluation and treatment ~~pursuant to~~ under this chapter, the superintendent or director shall cause both the patient and, if possible, a responsible member of ~~his~~ the patient's immediate family, a guardian, or a friend, if any, to receive:

   a. A copy of the petition which asserted that the individual is a person requiring treatment.

   b. A written statement explaining that the individual will be examined by an expert examiner within twenty-four hours of ~~his~~ hospitalization, excluding ~~Sundays and~~ holidays.

   c. A written statement in simple terms explaining the rights of the individual to a preliminary hearing, to be present at the hearing, and to be represented by legal counsel, if ~~he~~ the individual is certified by an expert examiner or examiners as a person requiring treatment.

   d. A written statement in simple terms explaining the rights of the individual to a ~~full court~~ treatment hearing, to be present at the hearing, to be represented by legal counsel, and the right to an independent medical evaluation.

2. If the individual is unable to read or understand the written materials, every reasonable effort shall be made to explain them ~~to him~~ in a language ~~he~~ the individual understands, and a note of the explanation and by whom made ~~shall~~ must be entered into ~~his~~ the patient record.

SECTION 21. AMENDMENT. Subsection 5 of section 25-03.1-30 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. If, upon the discharge of a hospitalized patient, or the termination of alternative treatment of an individual ~~pursuant to~~ under this chapter, it is determined that the individual would benefit from the receipt of further treatment, the hospital or provider of alternative treatment shall offer ~~him~~ appropriate treatment on a voluntary basis, or shall aid ~~him~~ the individual to obtain treatment from another source on a voluntary basis. With

the individual's consent, the superintendent or director shall notify the appropriate community agencies or persons, or both, of ~~his~~ the release and of the suggested release plan. Community agencies include regional mental health centers, state and local counseling services, public and private associations whose function is to assist ~~the~~ mentally ill, ~~alcoholic,~~ or ~~drug addict~~ chemically dependent persons, and the individual's physician. The agencies and persons notified of the individual's release shall report to the state hospital that initial contact with the individual has been accomplished.

SECTION 22. AMENDMENT. Section 25-03.1-34 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-34. Transfer of patients.

1. The superintendent or director of a treatment facility may transfer, or authorize the transfer of, an involuntary patient from one hospital to another hospital or facility if the superintendent or director determines that it would be consistent with the medical needs of the patient to do so. In all such transfers, due consideration shall be given to the relationship of the patient to ~~his~~ family, legal guardian, or friends, so as to maintain relationships and encourage visits beneficial to the patient. Whenever any public or private institution licensed by any state for the care and treatment of ~~the~~ mentally ill or chemically dependent persons shall by agreement with a parent, a brother, a sister, a child of legal age, or guardian of any patient accept ~~such~~ the patient for treatment, the superintendent or director of the treatment facility shall release the patient to ~~said~~ the institution.

2. Upon receipt of notice from an agency of the United States that facilities are available for the care or treatment of any individual ~~heretofore~~ ordered hospitalized ~~pursuant to~~ under law in any hospital for care or treatment of ~~the~~ mentally ill or chemically dependent persons and ~~such~~ the individual is eligible for care or treatment in a hospital or institution of such agency, the superintendent or director of the treatment facility may cause ~~his~~ the individual's transfer to such agency of the United States for hospitalization. No person ~~shall~~ may be transferred to any agency of the United States if ~~he be~~ the person is confined pursuant to conviction of any felony or misdemeanor or ~~if to~~ the person has been acquitted of the charge solely on the ground of mental illness unless ~~prior to transfer~~ the court originally ordering confinement of ~~such~~ the person enters an order for such transfer after appropriate motion and hearing. Any person transferred as provided ~~in~~ under this section to an agency of the United States ~~shall be~~ is deemed to be hospitalized by such agency pursuant to the original order of hospitalization.

3. No patient ~~shall~~ may be transferred to another hospital or agency without first notifying the patient and the patient's legal guardian, spouse, or next of kin, if known, or a chosen friend of the patient and the court ordering hospitalization. The patient ~~shall~~ must be given an opportunity to protest the transfer and to

receive a hearing on the ~~merits of his~~ protest. The patient's objection to the transfer must be presented to the court where the facility is located or to a representative of the hospital or facility within ~~five~~ seven days~~, excluding weekends and holidays,~~ after the notice of transfer was received. If the objection is presented to a representative of the hospital or facility, ~~he~~ the representative shall transmit it to the court forthwith. The court shall set a hearing date which shall be within fourteen days of the date of receipt of the objection. If an objection has not been filed or the patient consents to a transfer, the court may enter an ex parte order authorizing transfer.

SECTION 23. AMENDMENT. Section 25-03.1-42 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-42. Limitation of liability - Penalty for false petition.

1. A person acting in good faith upon either actual knowledge or reliable information who makes the petition for hospitalization of another person under this chapter is not subject to civil or criminal liability.

2. A physician, psychiatrist, clinical psychologist, mental health professional, employee of a treatment facility, state's attorney, or peace officer who in good faith exercises ~~his~~ professional judgment in fulfilling an obligation or discretionary responsibility under this chapter is not subject to civil or criminal liability for ~~his act~~ acting unless it can be shown that it was done in a negligent manner.

3. A person who makes a petition for hospitalization of another person without having good cause to believe that the other person is suffering from ~~a~~ mental illness~~, alcoholism,~~ or ~~drug addiction~~ chemical dependency and as a result is likely to cause serious harm to himself or others, is guilty of a class A misdemeanor.

SECTION 24. AMENDMENT. Section 25-03.1-43 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

25-03.1-43. Confidential records. All information and records obtained in the course of an investigation, evaluation, examination, or treatment under this chapter and the presence or past presence of a patient in a treatment facility shall be kept confidential and not as public records, except as the requirements of a hearing under this chapter may necessitate a different procedure. All information and records ~~shall be~~ are available to the court and ~~shall be disclosed~~, under regulations established by the ~~state~~ department ~~of health~~, may be disclosed only to:

1. Physicians and providers of health, mental health, or social and welfare services involved in caring for, treating, or rehabilitating the patient to whom the patient has given written consent to have information disclosed.

2. Individuals to whom the patient has given written consent to have information disclosed.

Senate Judiciary Committee

Senator Jack Traynor, Chairman

Senate Bill 2219

January 24, 2001

Mister Chairman and Members of the Senate Judiciary Committee, for the record my name is Alex C. Schweitzer, the Superintendent of the North Dakota State Hospital. I thank you for allowing me to appear today to discuss some concerns the hospital has with Senate Bill 2219.

I concur that an individual's rights in mental health proceedings must be protected to the greatest degree possible. Also, it seems to be an advantage for persons with mental illness or chemical dependency to have their anxiety diminished because of a shorter time period between being taken into custody and the preliminary hearing. We must all work diligently to preserve the rights of citizens and to minimize their anxiety during the commitment process. I believe that the North Dakota State Hospital accomplishes these goals in most situations.

But, let me point out that the compression of the time period between the filing of a petition for commitment and the preliminary hearing also has some distinct disadvantages as well.

In respect to the impact that the change in the time frames will have on treatment facilities;

- The treatment facility will have less time to gather collateral information regarding the patient's condition.

- As such, it limits the time frame for the treatment facility in formulating a treatment plan and discussing the plan with the patient, so they can make informed decisions at the time of the hearing/or waiver signing.

- And, a compressed time frame makes it more difficult for the treatment facility to complete a comprehensive assessment and evaluation for the court.

- In addition, the patient will have less time to stabilize prior to the court hearing.

These proposed changes in the time frames will also impact the courts and law enforcement officials;

- The judge will have a compressed time frame to review the report when making a very important decision about the respondent. In addition, the compressed time frame gives less time for the states attorney and the patient's attorney to review the treatment facility's report in order to give well informed arguments during the court proceedings.

- And a compressed time frame for the court to make arrangements with county sheriffs to transport the patient back for the preliminary hearing.

- And in many courts the judge travels from county to county and is only present perhaps once per week in each county. Would this not impede the judges flexibility in scheduling of hearings?

- If the patient arrives at the hospital on a Thursday, the preliminary hearing would have to be held on Sunday. Will the courts be open on Sundays to follow the statute? The seven day time period gives the court more flexibility in scheduling the preliminary hearing around weekends.

The seven day period between the client arriving in the system and the preliminary hearing has worked effectively for numerous years. Keep in mind that the current statute provides for a hearing within or up to seven days after emergency detention. Therefore, the hearing can be held in less then seven days. This is often the case as the time frame between the emergency detention and the preliminary hearing varies from case to case.

I am very concerned about the rights of persons with mental illness and chemical dependency who are party to these proceedings. But, I do not believe we should suddenly change the mental health commitment statute because of one isolated case involving a treatment facility that did not follow the statute. There are many stakeholders that will be impacted by this change to the mental health commitment statute; the consumers of services, their families, the judiciary, attorneys representing clients, the law enforcement community, mental health professionals and treatment facilities.

A change to the statute should not happen until a multi system discussion of all stakeholders takes place to ensure that the best possible piece of legislation is passed. I urge the committee to recommend that the Mental Health Commitment statute be studied during the legislative interim, to allow for more dialogue on this very important subject. This will allow the State of North Dakota time to look at

other states efforts to update and refine their commitment statutes.

In conclusion, I do not oppose changes to the statute, as much as I oppose changes to this very important piece of law without more careful study and consideration of all parties involved.

Thank you for your kind indulgence and I would be happy to answer any questions from the committee.