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ROLL NUMBER

DESCRIPTION

2045

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10/15/03  
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2003 SENATE JUDICIARY

SB 2045

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2045

Senate Judiciary Committee

☐ Conference Committee

Hearing Date 01/20/03

| Tape Number               | Side A | Side B | Meter #  |
|---------------------------|--------|--------|----------|
| 1                         | X      |        | 00-39.0  |
| 4                         | X      |        | 1.2-14.5 |
|                           |        |        |          |
| Committee Clerk Signature |        |        |          |

Minutes: Senator John T. Traynor, Chairman, called the meeting to order. Roll call was taken and all committee members present. Sen. Traynor requested meeting starts with testimony on the bill.

Testimony in support of SB 2045

Vonnette Richter (Attachment 1) This bill deals with a date change (meter .03) The committee researched the effect this would have in rural areas in answer to Senator Stanley W. Lyson, Vice Chairman question.

Rep Merle Boucher (meter 4.4) As a member of the Judicial A Committee we should remember two things when looking at this bill: 1. The rights and protection of the Individuals 2. How can we mechanically do this process/time.

Terryl Ostmo (meter 7.0) Attachment 2. Yes I won my lawsuit, with a substantial dollar amount answered Sen. Traynor's question

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Corinne Hofmann- Director of Policy and Operations for the protection and advocacy project.

(meter 15.0) Attachment 3.

**Testimony in opposition of SB 2045:**

Judge Benny A Grift. (meter 17.0) Presiding Judge of the South Central district. I have twelve counties with ten Rural. Sited counties. It is difficult to contact contract attorneys in some areas in this time period. Yes a judge can request an extension if the defense council requests it answered Sen. Traynor's question. Discussion on "good" cause to extend a date.

Sen. Dever asked if they used all seven days or how many were done sooner? They have no record of this to answer.

Senator Stanley W. Lyson, Vice Chairman (meter 24) asked if in accordance to this bill you could not do this would the person then be released? Yes Discussion of the Petitioners testimony very one-sided.

John Olson ND States Attr. Assoc. (meter 25) Stated this was a big debate on this bill and the Study ensued. We are not capable of doing this process so quickly. City Vs Rural counties are very different. Referred to Holiday and weekend.

Arnold Thomas - Health Care Assoc. (29.8) Relationship between the Judiciary apparatus protecting the individual rights right up against medical decision making in terms of harm to oneself or possibly harm to others. Laws need to be made uniformly.

Senator Thomas L. Trenbeath discussed how holidays and weekends effect the hearing date-the soonest would be 4 the longest 7 (three day weekend)

**Testimony Neutral to SB 2045:**

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Allan Stenehjelm, (meter 34.2) Mental Health Assoc of ND. The number of hearings we actually hear (refer to attachment 2) These are very few cases. Today is a Holiday for me. I still had to get prepared for today and work today. That is a condition of my employment.

**Testimony in favor to SB 2045**

Robert Osco, Physician. (meter 38.4) All patients will be examined within 24 hours of incarceration by a doctor is the present Law.

Charles Pospichal -Social Worker. (meter 42 ) Notice the people who are against this bill are against it due to a work preparation process. The people who are for it are patients and the people who directly take care of them. The definition of a professional is to give to a job what a job

**Senator John T. Traynor, Chairman closed the hearing**

**Senator John T. Traynor, Chairman**, called the meeting to order. Roll call was taken and all committee members present. Sen. Traynor starts with committee work on the bill

(meter 1.2)

Is any additional information needed for this bill.

Senator Stanley W. Lyson, Vice Chairman reminded Sen. Traynor of E-Mail from District 16

Judge NE Judicial District, a Judge whom I have great respect for.

Discussion on a.m. conversation (3.0 meter)

**Motion Made to Do Not Pass SB 2045** (metre 5.9) by Senator Thomas L. Trenbeath , seconded by Senator Stanley W. Lyson, Vice Chairman

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Roll Call Vote: 3 Yes. 3 No. 0 Absent

Motion Fails

Discussion

Motion Made to pass SB 2045 by Senator Carolyn Nelson and seconded by Sen. Dever

Roll Call Vote: 4 Yes. 2 No. 0 Absent

Motion carried, amendment passed.

Floor Assignment Sen. Dever

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10/15/03

Date

Date: January 20, 2003  
Roll Call Vote #: 1

**2003 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. SB 2045**

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DO NOT PASS

Motion Made By Senator Thomas L. Trenbeath Seconded By Senator Stanley W. Lyson, Vice Chairman

| Senators                        | Yes | No | Senators            | Yes | No |
|---------------------------------|-----|----|---------------------|-----|----|
| Sen. John T. Traynor - Chairman | X   |    | Sen. Dennis Bercier |     | X  |
| Sen. Stanley Lyson - Vice Chair | X   |    | Sen. Carolyn Nelson |     | X  |
| Sen. Dick Dever                 |     | X  |                     |     |    |
| Sen. Thomas L. Trenbeath        | X   |    |                     |     |    |
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Total (Yes) THREE (3) No THREE (3)

Absent Zero (0)

Floor Assignment \_\_\_\_\_

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

**MOTION FAILS**

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Date

Date: January 20, 2003  
Roll Call Vote #: 2

**2003 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. SB 2045**

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DO PASS

Motion Made By Senator Carolyn Nelson Seconded By Sen. Bercier

| Senators                        | Yes | No | Senators            | Yes | No |
|---------------------------------|-----|----|---------------------|-----|----|
| Sen. John T. Traynor - Chairman |     | X  | Sen. Dennis Bercier | X   |    |
| Sen. Stanley Lyson - Vice Chair | X   |    | Sen. Carolyn Nelson | X   |    |
| Sen. Dick Dever                 | X   |    |                     |     |    |
| Sen. Thomas L. Trenbeath        |     | X  |                     |     |    |
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Total (Yes) FOUR (4) No TWO (2)

Absent Zero (0)

Floor Assignment Senator Dick Dever

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

REPORT OF STANDING COMMITTEE (410)  
January 20, 2003 5:28 p.m.

Module No: SR-10-0800  
Carrier: Dever  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**  
**SB 2045: Judiciary Committee (Sen. Traynor, Chairman) recommends DO PASS**  
(4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2045 was placed on the  
Eleventh order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-10-0800

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*10/15/03*  
Date

2003 HOUSE JUDICIARY

SB 2045

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Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2045

House Judiciary Committee

☐ Conference Committee

Hearing Date 3-3-03

| Tape Number                                 | Side A | Side B | Meter # |
|---|--------|--------|---------|
| 1   | xx     |        | 0-50    |
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| Committee Clerk Signature <i>J. Penrose</i> |        |        |         |

**Minutes:** 12 members present, 1 member absent (Rep. Klemin)

**Chairman DeKrey:** We will open the hearing on SB 2045.

**Rep. Merle Boucher:** Introduced the bill.

**Chairman DeKrey:** Thank you.

**Vonnette Richter, LC:** (see attached Interim Judicial A Committee Minutes)

**Chairman DeKrey:** Thank you. Further testimony in support.

**Terryl Ostmo:** Support (see attached testimony).

**Chairman DeKrey:** Thank you. Further testimony in support.

**Bruce Murry, Protection and Advocacy Project:** Support (see attached testimony).

**Rep. Delmore:** Can you tell me when the juvenile court was changed to 4 days, did we have a longer period once upon a time for that as well.

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**Mr. Murry:** It was a longer time period, I came into the juvenile system just as the 4 day was coming in. I don't recall if it was 7 or not. But it was much stricter requirements to stay within 4 days right at the time when I was transitioning in.

**Rep. Delmore:** What year did you come in.

**Mr. Murry:** I came in at the beginning of 2001.

**Rep. Delmore:** You did not see a problem with scheduling with the court or transportation.

**Mr. Murry:** In the juvenile setting, transportation must have been provided by the same law enforcement agencies and transportation was a problem if they were in custody, or they have been transported by foster family if that's where they were. It was a little different situation. Out of about 100 probable cause hearings, 4 or 5 were clearly outside the time line and they were continued for the judge saw that they couldn't schedule the defense attorney, or just couldn't get any of the witnesses there. It gave the court an opportunity to look over the papers and establish a comfort level, that yes, this should be going forward. Actually one of those cases was dismissed right at that point.

**Chairman DeKrey:** Thank you. Further testimony in support?

**Robert Ostmo:** I practiced medicine in ND for 18 years. The ND Academy of Family Physicians has given their support for the bill, reducing from 7 days to 4 days, the number of days a person can be held without a preliminary hearing. During the interim, the Judiciary A Committee, met to discuss this bill four times. There was much testimony on both sides. The issues of excluding weekends and holidays was discussed and rejected. When a person is admitted to a psychiatric unit against their will, they are seen within 24 hours. Hospitals don't have incentive to get people out sooner than the 7 days, especially if insurance is footing the bill.



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We don't want this done to our patients. That isn't health care. We have to ask ourselves, for whose convenience are we delaying these people's right to their day in court. Four days is plenty in ND.

**Chairman DeKrey:** Thank you.

**Rep. Eckre:** The ND Mental Health Association, Al Stenehjem, had testified in favor on the Senate side and he also testified in favor during the interim on this bill.

**Chairman DeKrey:** Further testimony in support? Testimony in opposition.

**Edwin Dyer, Attorney:** Opposed (see attached testimony).

**Rep. Delmore:** You used one situation of a Friday evening, but I would believe that probably wouldn't happen very often and it would also be a continuance that would be able to be granted to rectify this type of situation. Am I correct in that.

**Mr. Dyer:** In my experience, committals happen all the time, usually not very often in evening situation or weekends, but what my point was, it makes it over the time limit if you accept a petition and immediately have a continuance because it just can't happen in that time line.

**Rep. Delmore:** When we look at the loss of civil rights, however, in setting priorities, other states do this in 72 hours. This says 4 days.

**Mr. Dyer:** I don't know the situation in Minnesota, if the courts are open outside of normal hours, but I think the real problem is the ease with which people are placed in the situation of being are deprived of their liberties before this hearing, not really so much the timing of the hearing.

**Rep. Delmore:** I think that if I was deprived of those, I would be very cautious in the amount of time. The testimony we got from the Judiciary A Committee, compared us with 13 other states

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that have less time, and in 8 of the 14, they do use 72 hours, so I guess I have a problem with you saying that it is way too short a period of time.

**Mr. Dyer:** Most of the cases I'm involved with, hearings are held in less than 7 days, that just gives you an outside time limit. In most cases, incentives in the system, cause the hearing to be held sooner, but most people are hospitalized at public expense, instead of insurance expense, and they typically if there aren't weekends and holidays in between, they are usually within 3 of 4 days.

**Rep. Delmore:** I would certainly like to have you provide some statistics that show how many of them really are significantly less time than 7 days. I think once we set a parameter, most of it isn't going to take 7 days.

**Rep. Eckre:** After I saw this passed the Senate, I did some research. Northern Minnesota is way less populated than even western ND. I called some of those counties and they have no problem with the 3 day limit, even though they are very rural counties up there. They are able to do it, so I question why it can't be done here in Burleigh County.

**Mr. Dyer:** The main point is that the real problem isn't being addressed, there are other problems in the system, rather than the time of the hearings.

**Chairman DeKrey:** Thank you. Further testimony in opposition.

**John Olson, ND States Attorney Association:** Opposed. We have a problem with the reduction from 7 to 4 days. We need that period of time for states attorneys to be able to prepare for such a hearing, get reports as necessary, and I think that 4 days squeezes that to an unreasonable limitation. I know that historically that this issue has been studied by those who are concerned with mental health commitments from the task forces that are involved with our

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mental health commitment laws, to law enforcement people who are concerned about the fact of the application and making sure that fair hearings are set up and held and adequate reports are obtained. We've always come down to the point where that is just too short a period of time. I know that there is an opportunity for a judge to look at that extension through Just Cause shown. But that just cause showing is routine order that is issued by the court to extend those hearings. We have no problem with an amendment that would exempt holidays and weekends. If it would be 4 days with that exemption, I think that would work.

**Chairman DeKrey:** We've got western counties that don't even have an attorney in the county, they contract for states attorney's services, so in a situation like that, is a 7 day time limit even long enough.

**Mr. Olson:** I think that raises a good point. But I think people who are incarcerated and who have that right to that hearing, need a quick, expedient hearing, and I think that the state needs to take whatever steps it has to take to guarantee that that prompt hearing be held. I would not believe that we should go beyond the 7 days, but you have certainly raised some really significant issues about the rural counties that don't have access to all kinds of services.

**Rep. Delmore:** Is there a different standard for adults vs. juveniles. Juvenile cases are heard within 4 days. Is there a different standard of priority there. I can't imagine the numbers are going to be that huge.

**Mr. Olson:** That is an excellent point. I don't know if I can defend on that, but there is a little more involved in the reporting and the kinds of medical expertise that's required for these mental health hearings. There is a distinction to be made between the juvenile and the adult systems.

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**Rep. Eckre:** Can you tell me why in Minnesota, Hennipin County, there is no rural area left and all the way up to northern Minnesota, where it is very isolated, and a lot of roads you can't get through, how are they able to do it in that state, and we can't do it here.

**Mr. Olson:** I don't know.

**Chairman DeKrey:** Thank you. Further testimony in opposition.

**Arnold Thomas, President of the ND Health Association:** Opposed. I would like to raise our concerns with SB 2045 and recommend as an alternative to 2045, that you reject 2045 and support HCR 3034 for the following reasons: we're very involved in behavioral health activity across the state the ND. What is reported is practical difficulties coordinating a variety of different entities that involve a person's rights. The commentary heard earlier underscore the importance of human dignity and a person's rights and freedoms. Certainly hospitals support that, on the other hand, endangerment to oneself or to others is of equal concern and it is a societal responsibility to set up a mechanism that weighs those two and balances them. HCR 3034 opens up that whole discussion. Time right now is the biggest difficulty that we encounter. In some counties we have the ability to work within the proposed limited time frames, and other counties not necessarily. Three and four day weekends, and the availability of access to the courts and the judicial system, particularly in the area of involuntary commitments is not uniform in terms of its administration. We're not sure whether the problem requires a different mechanism within the facilities to make the evaluation information more readily available to the judicial system so it can act in its appropriate role or whether or not there are also some difficulties within the administration of the judiciary that makes the process rather burdensome as a person is waiting to determine whether or not they are going to be able to re-enter society as an

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independent individual. We don't know. HCR 3034 would open up that alternative for discussion. However, if the Committee chooses to advance SB 2045, Mr. Olson's suggestions for amendments, relating to the three or four day weekends, we would certainly support, or reduce the days from 7 to 6, which accomplishes the same objective. What you have here is not so much of an issue relative to human rights, which is what stimulated this bill, and we understand that, but you have a mechanism in place that doesn't work. We ask the committee to reject SB 2045 and take a look at the system with the Attorney General and determine if there is a better way that North Dakota can deal with human freedom and also a danger to oneself or to society and then come back with the necessary recommendations to address this issue once and for all.

**Rep. Delmore:** We often do studies and I think this has been through a whole interim committee and as we look at other states, can you tell me why states like MN and so many others can accomplish this in 72 hours and we want to keep our 7 days.

**Mr. Thomas:** I can only report to you anecdotal information. When I asked the question and what was reported to me is that the access to the courts is the problem. Not all courts are able to respond in the 4 day period. That isolates the issue separately from human freedom, human dignity. It is a mechanical situation. We have another measure that will be coming to this committee as well and it has to do with the electronic transmittal of information. Courts are not available to take faxes across the state over weekends. Some are, most are not. So the information could even be electronically transmitted, but our ability to work with the courts in many instances is impeded for reasons that we think need to be reevaluated. That's the best I can talk to. My reason for opposing SB 2045, is the mechanics, not the person, the individual.

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We have a mechanism that just doesn't work well. Taking it down to 4 days in many respects is just going to accelerate the problem that we're having with the 7 day time period. What we're asking is to work with the Attorney General's office under the auspices of the legislative interim committee and address the problem head on. We have not addressed the mechanics of the problem.

**Rep. Delmore:** If it can be done in 72 hours in other places, we set priorities to work with juveniles to do this. We know that. I guess I think the mechanics that we would put in place if we tell the courts and the other people, this is what it's going to be, as policy.

**Mr. Thomas:** I don't disagree with you. This is truly a system of priorities. What my concern is, do we know what the requirements are so those priorities can be acted upon. I don't have an answer to that. Someone from the court would have to address that.

**Rep. Eckre:** The Attorney General of ND has excellent people working for him to track every bill, and they've been to our committee many times when they are opposed or for something, yet they haven't said anything on the interim committee, they didn't show up in the Senate hearings, and they are not here today. So if you are recommending that we work with the Attorney General on this, it seems the Attorney General must not have much problem with this bill.

**Mr. Thomas:** I am in no position to speak for the Attorney General.

**Rep. Eckre:** Hospitals are open 24 hours a day, aren't our medical community and the police are on 24 hours a day. Civil rights is an ongoing thing.

**Mr. Thomas:** What you say is absolutely true and on an involuntary commit, health professionals are making a decision that this individual's freedoms need to be restricted on medical basis. But in order for that to happen, they need to have judicial access because this is a

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very, very important individual right that is being addressed by the medical profession and the courts. The problem is the length it should be. It is not a lack of respect or disregard for the rights of an individual. We have to cherish that. At the same time, if you take away a person's freedom for behavioral health circumstances, it requires the courts. Health providers cannot do that, it must have access to the courts with an expedited approval process. Weekends and periods of time in which the court is not working for a period or duration, is a difficulty and what I am suggesting is going from 7 to 4 will accelerate that problem, increase that problem. It will not address the problem.

**Rep. Eckre:** I know that during the interim, law enforcement said their busiest times for the courts are the weekends and holidays, when they have to get search warrants, etc. with a situation that is arising. So courts must be active on weekends, they are available and accessible.

**Mr. Thomas:** Many courts are, but not all.

**Rep. Wrangham:** When a citizen is detained for the purpose, are the evaluations typically available to be done at the same location as where they are detained; or do they bring in a specialist in for these evaluations.

**Mr. Thomas:** It depends on where the individual is, the obligation is to have the evaluation within 24 hours. So if an individual is detained and considered in need of an evaluation, they must be transported to such a place where that evaluation can be done. That just depends on where you happen to be located when you put into that situation in ND.

**Rep. Boehning:** It seems from my understanding, it can't be done in 4 days, we need 7 days. It seems like Friday afternoon, Saturday and Sunday are holidays in the court system. It can be done during the week, but on the weekends everything stands still?

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**Mr. Thomas:** It may sound that way in terms of the way I explained it. Many of the courts are accessible, there are ways to obtain judicial intervention in terms of the nature of this, in some circumstances, that does not necessarily work. When you are talking about behavioral health vs. someone who is incarcerated (under arrest) you are talking about not necessarily the same kind of judicial intervention and activity. Policemen may arrest an individual and then the process kicks in over a weekend, or 24 hrs a day. On the behavioral health side, you have something different. There is not necessarily a crime at issue. It is the individual's harm to themselves or to potentially others. It is a whole different set of circumstances that need to be taken into account by the courts. It is not the same as if I would go in with the handgun and hold up a 7-11 store. I am arrested by a local law enforcement officer. Processing for those types of circumstances are well known and they function 24 hours a day. Behavioral health is a little different and that is what this is all about.

**Chairman DeKrey:** Thank you. Further testimony in opposition. We will close the hearing on SB 2045.

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Operator's Signature

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2045

House Judiciary Committee

☐ Conference Committee

Hearing Date 3-11-03

| Tape Number                               | Side A | Side B | Meter # |
|---|--------|--------|---------|
| 1   |        | xx     | 0-36.3  |
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**Minutes:** 13 members present.

**Chairman DeKrey:** We will hear testimony from Judge Graff in regard to SB 2045, because he didn't have a chance to testify during the first hearing.

**Judge Benny Graff:** Opposed (see attached petition papers). I want to thank you, at the time SB 2045 was being heard, I was busy in court and I couldn't make it up, I am thankful that the Chairman allowed me to come up. I think it is a very important bill from the standpoint of how city, state and all of us. To give you some idea of the magnitude of what we are talking about, the issue for the courts. In the year 2000, we had 1,008 mental health commitments, at least mental health petitions filed. In 2001, we had 1,177, and this past year, I just checked, we just got the numbers, it's again 1,144. It's up about 150 from where it was in the '90s. I suspect that because of the drug problem, because of more people using recreational drugs, all of this is going to contribute to more petitions filed. I passed out the forms because a lot of you aren't quite acquainted with the process and how it works. Maybe you should know where we are and why

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we are there before we can know where we are going. The first one, is just the petition, that I as the judge, receive that's filled out completely, the first page of the document, filled out completely, the state's attorney assists the petitioner; whether they be the hospital or the parent, whatever and that is always approved by the state's attorney and also approved in most places by a health care professional within the county or the city. I know you heard the horror story, especially if it is the same lady that appeared on the Senate side, it's a horrible story. But of the 1200 petitions filed, I think it is almost a singular horror story. I reviewed the contents of that petition, if I also agree with the state's attorney and the health professional, I okay it, I approve it. That sets in motion what we do immediately. The other documents you see there are what we do that first time I see that petition, I sign the emergency treatment order, allowing, in Bismarck most of the times they are in St. A's or MedCenter's Psychiatric Unit and they are kept there until the hearing. I sign a Notice of Hearing. The hearing is set the same day I sign the petition. I sign an Order of Transport, which goes down to our sheriff's department so that he can pick up that person and bring them to the hearing, on whichever day it is set for. I sign an Order Appointing Attorney, because the statute requires they have an attorney. We can't count on the fact that they have the money, the intelligence, or ability at that time to hire an attorney. That takes a conscious decision and if these people are really, overtly mentally ill. This is not a situation that is semi. So we appoint an attorney right away. If we find out that they have money later we can collect it back. Lastly, there is a Notice of Procedures and Rights, which if this person is competent and healthy, they can read it and understand. All of this goes out immediately. I'm telling you that as judges now, we feel that reducing from 7 days to 4 days is going to be a very devastating process and it's going to be harmful to the citizens of the state, in

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addition to costing more money. Let me tell you why, first of all. It's not just us, I think the judiciary can handle this. To set the hearing is nothing. The real key here is all the supporting cast that we work with. First of all, the physicians right now, under the law in this state, the physician must see that patient, if we involuntary commit within 24 hours. They have to see that patient right away. They don't have to have obviously the diagnosis or the information to us until right before we have the hearing within 7 days. To shorten it from 7 to 4 is going to give that doctor less chance to consider some alternative treatment. Everybody that has this petition filed, not all of them don't go to the State Hospital. A lot of them because they aren't using their medication, some of them have horribly debilitated themselves or are physically unable to handle themselves. People who are on medication, remember are referred through this process, people who are bipolar (taking medication and quit taking medication). It might mean that all they need is 4 or 5 days in the hospital to get them stabilized, we can send them to some alternative treatment center. We don't have to send them to Jamestown. I'm saying that if we move that from 7 to 4, I think we face the problem, the physician isn't going to err on the side of letting that person go. If he doesn't have enough facts and it appears that from all the information that he has that this person has been acting, not good; he is going to act safe and recommend commitment or treatment. I think because of that fact, they can't run the tests they might have to do, get the information gathered that they need. I think it is going to result in less information for them and maybe make a more hasty decision, because a lot of times, even alternative treatment facilities don't become available in the first four days. We might have to wait up to seven, to get a place, to move that person from the psych ward at St. A's over to some housing unit that is monitored by Human Services, or whatever. Now, within seven days now, the physician has to

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give us an evaluation of this person's physical health and mental health. He has to give us an opinion. He has to give his opinion on whether or not if the person requires treatment or not; and if he requires treatment, where that treatment can take place. Can it take place in alternative treatment center or does it require that we send them down to Jamestown or someplace for further monitoring. That initial order can be for 14 days until we have another treatment plan. I'm really worried that, if we have to do that in four days, instead of seven, we are going to have a lot fewer good decisions on this matter. Secondly, the defense attorney that we appoint, he would have to try and get ready in four days for trial, if he's really got what he thinks is a client who shouldn't be there. I mean this is a very short period of time, especially when you consider bringing petitions on Friday afternoon. Friday afternoon means that we have to have that hearing on Tuesday at the latest. If we get them Wednesday, that means we are going to have to have them on Saturday. If a holiday intervenes, even though we don't have to count that holiday, if you are talking a long weekend, and that when you tend to get a lot of stuff the day before holidays. You get them the day before weekends, they have been drunk all week, they've been in the home and raising all kinds of heck, and that's when we get petitions. I'm worried about the defense attorney being able to be prepared. Also, we are having more trouble keeping defense attorneys. The moment we tell some individual that you're going to have to be ready in 4 days instead of 7, we may have people who are acting as defense counsel now that will pull back. We contract here in Burleigh County. It is the county that pays for the attorneys. It is the county commissioners duty, that is their obligation under the law. We contract now, on a regular basis, take all the cases we get within a period of time, for a certain amount of money. I can envision that money going up. Lastly, and I think very important, certainly to you and everybody, that I

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think costs are going to increase under this bill. We are going to have to have hearings on Saturday. Now a hearing is not held just with me and the respondent. We have a state's attorney involved, he has to be present. He presents all the information as to why we should commit this respondent. We have a court reporter that has to make the record, I have a clerk who has to get me the file and be present; the sheriff's department is transporting the person to wherever we have the hearing, and normally that's in the county of residence of the respondent. So in a small county down south of Jamestown someplace, who has to go someplace to get an evaluation, which may be up in Jamestown, people are transported up there on the day of the hearing and transported back. They can have the hearing under certain conditions, but not required. If we have to have hearings, I guess I can be inconvenienced. You pay me a salary, and I am going to get paid that whether or not I have to take care of this, we'll just rotate the judges here, in the small jurisdiction, where you have one judge, it is a problem. He's going to have to work Saturdays, the people who work for the counties are going to have to come in on Saturdays. I think the county commissions are going to have pay overtime, sheriff will have to put somebody on to carry. Granted, not all of the hearings will be held on Saturday, but if we sign a petition on Wednesday, we have to have it on Saturday or Sunday, because we can't have it on Monday, that's too late. I think there is also in the law, that says I can continue for good cause; and I have had judges tell me that, "I'll just continue everything over till Monday or Tuesday". I don't think that is going to work. I think our Supreme Court is going to say "good cause" is not necessarily at the convenience of the court. Just because I don't like to have a hearing on Saturday, I don't think that the Supreme Court is going to rule that way when you get into "good cause" and I suspect that Rep. Klemin might agree with me, just because it works for me, doesn't mean we

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have a person out there who is being held against his will, and I have to get him to court. I'm really worried because there are social workers who appear at our hearings, give us information concerning either where the treatment should take place, or alternative treatment, the case manager, we have medical personnel and we have a doctor who has to get us a written opinion within four days. I am very worried about this bill. I think we are going to have more trouble, we're going to find people being put away for 14 days more under this bill, then we did normally and I think in general it's going to cost us more money. I don't think we always mold the law for the exception rather than the rule. As I said, we had 1150 cases roughly last year, and 1180 the year before, and we aren't having very many people knocking down the door to tell us that this is working bad. Really, a lot of these first hearings are waived, because either the doctor said, well this guy was drunk, he's coming out of it and so okay, I am going to release him and we don't have the hearing; or they end up signing an agreement for voluntary placement someplace else, like going to the state hospital. A lot of these things never come to fruition, but they have to be set, we have to be ready and anytime you put a procedure in place, it just has to be done, and four days, I think is a very short time. Thank you for allowing me to appear.

**Rep. Delmore:** I certainly agree that 180 cases is a large filing, but if I look at the statistics that I get, how many of them are actually heard in court. I know of statistics that I have here, in Richland County, there were 8 filed, 2 hearings held, in Cass County, 303 filed, 35 heard. That certainly cuts down on the argument that there are going to be a 1,000 of these things invading our court, wouldn't you say.

**Judge Graff:** I think the odds are that the number of hearings will go up if you shorten the time, only because of the reasons I have told you. The decisions have to be made quicker, and I don't

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think the physician is going to have as much information, I don't think it is going to be as easy a time to make an alternative treatment plan for this person. A lot of these people are just off their medication. A lot of them have gone on binges and are physically bad, and if we get them into a St. Alexius setting for 4 or 5 days, by that time we have stabilized them. I think the shorter time frame you make that, the more hearings we are going to have. But that's just my opinion. I could be wrong.

**Rep. Delmore:** We do juveniles in 4 days, and other states do these cases in 72 hours. Why is it just not possible for us to do it in North Dakota.

**Judge Graff:** Remember, how sparsely we are set. That doesn't help, because if you have that up in Noonan, where do they take them, I'm not sure, do you get them to a hospital to get a psych evaluation/consultation, do you have to take them Minot, it means the state's attorney has to move there, we are a small state and sparsely populated, but we have a lot of counties. We go by the county as to who is going to bring them to the proceeding. I can't answer that question. I don't know what the delivery system is, maybe they are keyed up, maybe they have more physicians. I can't answer that question. But I can tell you how we respond and I am worried about that.

**Rep. Delmore:** We do juveniles in four days, and I would estimate that there are a lot of juveniles that are also going to be in the system. I guess I just find this process is something, we can all talk about the inconveniences and things being devastating, but I think it would be pretty devastating for me to be involuntarily committed. I think it can be done. We can do juveniles in four days, why that something this serious can't be done in four days.

**Judge Graff:** What you are talking about, in four days is merely an initial placement of the juvenile, with parents there generally in those hearings, we have the social worker, we have the young person who has gotten into the trouble, whether that be deprivation or actually a criminal behavior, whatever. We have to have the hearing within a certain number of days; but you have a competent individual, they are talking, probably 90% of the time they have been caught in the act of doing something, most of them are admitted and whether or not it rises, what we are looking for is alternative placement. Almost all of those hearings are on whether or not, most of those children are placed back in their home. We are comparing apples and oranges. I think we are looking at two different types of behavior that we have to worry about and get good evaluations on. It is pretty easy to tell if the young man was caught in the midst of a robbery, or runaway, or stealing something. Those are not difficult decisions. I think the decisions that have to be made in the mental health areas are more tenuous and more difficult.

**Rep. Delmore:** Do you think you are speaking for the majority of judges in the state.

**Judge Graff:** When I found out that I was going to appear here, I e-mailed all the judges, I heard from Judge Geiger, Judge Erickson in Fargo, Judge Goodman down in LaMoure, I heard from 7 judges out of 42 in a short period of time. I know that the judges in my district support me, that's 7 more. I can't speak for the ones who didn't respond. I sent out the message that I'm going to appear, these are the things that I am worried, do you have any additional arguments. I heard from that many that quick. That's all that I can tell you. I think the bulk of the judges feel the way I do.

**Rep. Eckre:** I was on the Interim Committee on this and you testified correct.



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**Judge Graff:** I think I was up there to testify on another bill, and somebody asked me a question about this.

**Rep. Eckre:** I remember you said you had no problem with it.

**Judge Graff:** No problem setting the hearing.

**Rep. Eckre:** You said that we can work with this and now today you are saying the same thing, we can work with us but you are concerned about the supporting cast.

**Judge Graff:** And the money involved.

**Rep. Eckre:** Did you testify to this in the Senate, too.

**Judge Graff:** I did. I testified, not as elaborately, I talked more about our perspective, thought the 4 days was rather short.

**Rep. Eckre:** Doctors and hospital work 24 hours a day, you were concerned about them, they're open 24 hours a day, our police department is open 24 hours a day, you are concerned about the defense attorney, well attorneys know that when they become an attorney they might get called in the middle in the night or on weekends or holidays for certain things, just like a doctor might. Minnesota is able to do this in three days, we talked about ND being sparsely populated, you get up in northern Minnesota, Minnesota is 1.5 times bigger than ND, when you get up to the northern part of MN, in the Arrowhead region, it is way less sparsely populated than the most sparsely populated area in ND.

**Judge Graff:** I disagree. I'm from Arrowhead.

**Rep. Eckre:** National Geographic had it in the last couple of issues. They talked about parts of Montana and northern Minnesota, now as the most sparsely populated. If you want to debate it, it's pretty close. But they are able to do it in 3 days. What we looking at here is 4. I'm just

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saying, I think our hospitals can do it, I think our police can do this, you said you can work with this, and you are worried about the cost. When it comes to people's rights as humans, we have fought many world wars and everything else for rights. I have a hard time looking at cost when it comes to people's rights.

**Judge Graff:** I think if you are going to impose this, I think you should give us exceptions for weekends.

**Rep. Eckre:** Then you are back to seven days.

**Judge Graff:** I think we would set it on Monday. I think with your exception now, that there will be a lot of judges who are going to wait until they it tested, they are going to automatically extend it. I can't be sure of that, but I think a lot of them may.

**Rep. Klemin:** You talked about the cost and getting attorneys. We had a bill in the legislature this session relating to indigent defense, and that bill was set for hearing in the Senate this week, and that came out of interim committee too. But the reason I am bringing this up, it was pointed out there that now there are a number of law firms around the state, which have notified the Supreme Court, that they are not going to renew their contracts for indigent defense because of the amount of money available, the workload that is going up tremendously due to the meth. cases that the contract attorneys are required to take on, and they just can't afford to do this, and keep their offices open, so they are withdrawing from the Indigent Defense. Of course these are paid for by the state, and these are paid by the counties. But are the county contracts comparable to the dollar amount as the indigent defense contracts paid by the state.

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**Judge Graff:** I would think roughly. I asked my court administrator the other day, and asked him how much we pay for contract counsel, and I think in Burleigh County, we have two firms that accept the appointments. I think they get paid comparable, yes.

**Rep. Klemin:** So we have a situation where basically the testimony in the Senate Judiciary committee this week, was that we are in a crisis situation with the constitutional requirements to provide indigent defense attorneys, and it looks like in that the budget is going to need an additional \$630,000-1.3 million dollars to keep the attorneys doing this. Now, you're saying that under this bill not only are they going to get paid enough to keep their doors open, they've got to do it on weekends.

**Judge Graff:** That's the way I see it. This requires a hearing in 4 days, and I don't think we are going to use Sunday, so a lot of times we are going to have hearings within three days. If you are an attorney and you have to work on Saturday, are you going to charge more or less.

**Rep. Klemin:** My question is, if nobody wants to do this work because the pay is bad, the hours are worse, you don't have time to prepare your case, what are you going to do to meet the requirements that these people have to have counsel appointed for them.

**Judge Graff:** I don't know. I don't think I can force an attorney to work on these cases. I think we will probably always have some young attorneys who are willing to contract. I don't think that is always who you want. I'm not too sure about for how long that will last. We have the same problem with the criminal indigent defense people. We get them, we're able to hold them for a couple 2 or 3 years, and the really good ones quit on us, and a lot more are quitting now, as you know because the Chief has gotten out a letter.

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**Rep. Klemin:** Looking back at this historically, originally we were 72 hours exclusive of weekends and holidays. Then there was an interim study I believe, that resulted in the time being changed from 72 hours to 7 days including weekends and holidays. Now, with this bill, we go back to 4 days including weekends and holidays. Aren't we much shorter than we were years ago when it was 72 hours.

**Judge Graff:** Sure, because we are not excluding.

**Rep. Klemin:** When a person is taken into custody and transported to a hospital and a doctor has to examine within 24 hours of custody, right now the statute says that the examination must be conducted within 24 hours exclusive of holidays. So, there is an exception here for the examination. Now if holidays, under our definition of holidays includes any normal holidays and all Sundays. Every Sunday is a holiday. It also says any act due on Saturday or holiday is performed on the next business day. So if are under this provision, for example, the person is taken into custody on Friday, and the examination has to be conducted within 24 hours, exclusive of holidays, so the examination doesn't get conducted until Monday probably, then the hearing is on Tuesday.

**Judge Graff:** That would be my understanding. We would have to have that hearing by then.

**Rep. Klemin:** Unless Monday is Memorial Day, and then the examination has to be on Tuesday, the same day of the hearing.

**Judge Graff:** I think you are correct.

**Rep. Onstad:** You make it sound like the hearings are going to be held every other week. You might get one in two years in Divide County. Is that going to be a hardship on Divide County.

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**Judge Graff:** I guess I used Divide County. I'm not too sure of the facilities and the capabilities that some of the smaller counties in the south central part of the state, Emmons, Ashley, McIntosh, LaMoure of how close a facility they have to send for the evaluation to give them the information whether or not from the physician or psychiatrist. I guess it is going to be more there, where they have to send them 60-70 miles, rather than up to Jamestown. I'm not aware of how the hospitals are staffed down there, do they have to send them to Wahpeton or Jamestown, is that the nearest place.

**Rep. Onstad:** It's that very point, you said you are not aware of what is up there. My point is it isn't going to happen very often.

**Judge Graff:** No, I agree with you.

**Rep. Onstad:** The point is you're not aware of that and are making assumptions in your arguments here that you are assuming that this is probably going to add. You're not sure if it could work or if it could not work. So for us to find out if it does work, maybe we should try it and put a sunset clause on it just to see how efficient ND can be or inefficient we can be. We are only on this assumption because you are assuming that this is the way it will work.

**Judge Graff:** I think you are assuming the same thing. I think it's a question of, I think, more hearings. I don't think there is any doubt about that. When we have to make that decision within the first four days, I think we will be setting more hearings. That may be an assumption on my part, but I've been in the district court for 30 years, and I have some idea of what causes litigation to happen. I think that the less time you give people, the less sure they are going to be at what they arrive at. I think there is going to be less alternative treatment coming out of that physician, or recommendations in four days than in seven. I don't know. The physicians didn't

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show up, so maybe they are comfortable with that. I don't know that. That's only my assumption, I agree with you totally.

**Rep. Klemin:** Let's go back to this Divide County thing. I would like to make an observation, Divide County is one of the places where there is nobody now who is willing to do indigent defense work. I don't know about civil commitment hearings. One of the other places that the Supreme Court informed us about who wasn't going to do it anymore was Williston. The attorneys in Williston who had been doing the contract, are not going to do it anymore. The hearings are either going to be in the county of the respondent's residence, which is Divide County, or the state hospital if they are taken there. If Divide County has no attorneys, where do they get the attorneys if the respondent is sent to Jamestown. Does Jamestown take the Divide County respondent.

**Judge Graff:** I think hearings have been held where the respondent is also present. Then we'd have to hire and pay an attorney down in Jamestown to represent them. I think that could be done. I'm not sure. But I think if the respondent demanded to have his hearing back in Divide County, you would have to go there. If a defense attorney is going to put up a defense, and really thinks he has something rational, he wants to come back to the county where people know him, he's not going to transport the sister, the brother or whoever it is that thinks they are okay. That's my opinion.

**Rep. Klemin:** Here is my concern. I think there is something to be said for getting that person out of the custody as soon as possible, if they really shouldn't be there, but as an attorney myself, looking at it from the standpoint of making, that the attorney basically has to do all of the work on this for that person. That person is going to be sitting there, but I know that these hearings are

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primarily matters involving a cross examination of the expert witness. That's part of the main point of these hearings, aren't we sort of defeating process if we don't get an attorney or don't have the time for the attorney to get prepared for this hearing, even in the short time that it is, so that the respondent who might want a faster hearing, is really doing himself a disservice if he's not giving his attorney enough time to get ready for the hearing.

**Judge Graff:** Yes, I guess I tried to say that earlier, that I thought that it would put defense counsel at a tremendous disadvantage. He's not going to have enough time to prepare.

**Rep. Klemin:** So it is more likely that the person, instead of getting out early, is going to stay longer.

**Judge Graff:** That is just my opinion, yes.

**Chairman DeKrey:** If there are no further questions, we are going to shut it down. Thank you Judge Graff for coming in today. Chairwoman Price and I are going to try and get these pieces of legislation taken care of. I am appointing a subcommittee of Reps. Wrangham, Onstad and Klemin.

**Ch. Price:** I am going to appoint Rep. Porter, Wieland, and Potter. I will have my intern to do some sort of a chart, as far as going through these bills, since we are adding some different sections in the time frame, because she can get that done before you guys meet.

**Chairman DeKrey:** We are going to adjourn for the day.

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2003 HOUSE STANDING COMMITTEE MINUTES

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☐ Conference Committee

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**Minutes:** 13 members present.

**Chairman DeKrey:** We will open the committee work on SB 2045. We will hear the report from the subcommittee.

**Rep. Klemin:** Explained the amendment. We had a subcommittee on 2045, and met with subcommittee from House Human Services on another bill 2345. The issue there was the timing of the hearing in the civil commitment situation. We had to mesh the timing in our bill with the timing in their bill for the notice. During our subcommittee meeting, Chip Thomas, from the Hospital Association, was there and in SB 2045 there are several places in there where the time for various hearings, for involuntary or voluntary treatment, is proposed to be changed from 7 days from the date the person is being held to 4 days. That's the time in which they have to have the hearing. We looked at all of the options and in order to mesh the time problem, the joint subcommittee, agreed upon was to change it from 7 days to 4 days, exclusive of weekends and holidays. This actually amounts to less time than 7 days in most cases, but in some cases it



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would still be 4 days or less and in some cases, it would be 4 days exclusive of weekends or holidays, depending on when the petition is filed. So that is the amendment that you have before you (see attached amendments). We looked at other laws, such as Minnesota, and Minnesota is exclusive of weekends and holidays.

**Rep. Delmore:** It is, but it is a fewer number of days.

**Rep. Klemin:** They have 72 hours.

**Rep. Eckre:** I was just going to say that it was 3 days instead of 4 days, so they're not quite the same.

**Rep. Klemin:** That's correct. I move the Klemin amendments.

**Rep. Wrangham:** Seconded.

**Voice Vote:** Carried.

**Rep. Grande:** Is it going to be perceived by the judges that they can just take up to 7 days, or are they going to understand that they need to be working with 4, with the exception of weekends and holidays.

**Chairman DeKrey:** It is my understanding from the previous testimony, that most of these hearings take place in 4 days or less anyway, what we're dealing with is the exception to the rule, is what we're doing here.

**Rep. Klemin:** They would have 4 days. It isn't 7 days anymore at all. Four days, exclusive of weekends and holidays.

**Chairman DeKrey:** So if it comes in on a Monday, they would have to get it out by Friday.

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**Rep. Delmore:** I think that there are ways to use to manipulate, because of the exclusive of weekends and holidays and often times when these take place, so many of them probably on those occasions.

**Chairman DeKrey:** According to the testimony, it seems like weekends and holidays are their worst times for this to happen.

**Rep. Delmore:** To me, we haven't changed this bill one bit, it's going to be 7 days.

**Rep. Klemin:** The testimony we had was that most of these cases come in on Sundays and Mondays, after the weekend of Friday and Saturday nights.

**Rep. Delmore:** We wake judges in the middle of the night to get search warrants. The idea of being inconvenienced is there, but I can see a great deal of inconvenience for somebody placed in this position as well. I don't think the amendments help this bill at all, might as well just leave the statute the way it is.

**Rep. Grande:** Regarding on Friday, do we not count Saturday, Sunday, and then my count starts Monday, Tuesday, Wednesday, Thursday.

**Rep. Klemin:** Yes, you don't count Saturday and Sunday and holidays.

**Rep. Grande:** They won't count in my four, even no matter what.

**Rep. Klemin:** Four days, exclusive of weekends and holidays. A couple of points that were brought up that you should be aware of is that one thing that we have to be cognizant of is that the objective here to provide more opportunity for a person who is confined, that shouldn't be confined. We've got to give their attorney a chance to get prepared for the hearing, too. Cutting the time gives them less time to get prepared, less time for the doctor to consider alternatives to hospitalization, such as outpatient treatment, etc. The defendant's attorney has less time to get

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ready for the hearing, we're already having a lot of trouble getting attorneys to do this work, so we need to take this into account. There are some other things that we're talking about, a person's right, they figured that by reducing the time to just 4 days, it is actually going to result in more hearings, because frequently a person who is there long enough to get stabilized, will delay the hearing or not have a hearing, or the doctors will determine that there is no reason to keep him, so he will be released. Some other minor things probably will be the overtime in having the hearings in the courthouse on the weekends. It's not just the judge that is involved, it's all of the other personnel that go into this. There is going to be overtime that will have to be paid to people who have to be at the courthouse on weekends, and they figure that the total number of hearings will probably go up because of the shortened time. All things considered, we thought that 4 days, exclusive of weekends and holidays, would be a good compromise.

**Rep. Maragos:** Just one question, if they are brought in on a Friday, does that Friday count as one day, and then Monday, Tuesday, Wednesday, Thursday, kick it out by Thursday.

**Rep. Klemin:** I think the date of the petition for hearing is when the days start running. Because the hospital has 24 hours to determine whether the patient should be held or not.

**Rep. Maragos:** So that doesn't start, though, until the petition is filed, right.

**Rep. Klemin:** Right, the petition has to be filed the next day, or so.

**Rep. Maragos:** So the clock starts ticking immediately when the petition is filed.

**Rep. Klemin:** Well it depends, it depends on the circumstances. Sometimes it's from the date that the court receives the examiner's report, which is usually the same day the petition is filed. In another case, if an emergency procedure, act or intention.

*Salvatore Rickford*  
Operator's Signature

10/15/03  
Date

Page 5  
House Judiciary Committee  
Bill/Resolution Number SB 2045  
Hearing Date 3-24-03

**Rep. Delmore:** There is a lot of speculation on the time frame and how many will be on weekends, etc. Even Judge Graff agreed with that when we questioned him. The big thing is the number of cases that actually go to hearing. If every single one of these went to a hearing, I would agree with you. But in my county, and I called Cass County, I called Grand Forks County, anywhere from 1 in 8 to 1 in more than that that actually go to hearing.

**Rep. Klemin:** And that would probably be a good argument to leave it at 7 days. Because that gives time for the evaluations.

**Rep. Delmore:** That's speculation whether that would be true or not.

**Rep. Eckre:** Going back to what Rep. Maragos asked, Monday could be a holiday though, too.

Rep. Klemin brought up the fact of overtime. You know a majority of car accidents happen on the weekends; hospitals work over the weekends. You look at the kids when they party, and judges signing warrants. I guess I don't see where it is an inconvenience, it's just part of the way our system is set up.

**Rep. Klemin:** I wasn't talking about overtime for the hospitals, talking about at the courthouse.

**Rep. Eckre:** I understand.

**Rep. Klemin:** I move a Do Pass as amended.

**Rep. Wrangham:** Seconded.

**Chairman DeKrey:** Further discussion.

**Rep. Boehning:** One question, how long does it take for them to file the petitions with the court, like on page 3, line 15. Do you know anything about that, how long does it take them to get it filed before it would go into effect.

**Rep. Klemin:** I'm not quite sure I understand your question.

Page 6  
House Judiciary Committee  
Bill/Resolution Number SB 2045  
Hearing Date 3-24-03

**Rep. Boehning:** You said that the dates don't start ticking until the petition is filed with the court.

**Rep. Klemin:** No, what I said was, it depends on what you're looking at, when you are dealing with different circumstances. For example, if you look at page 3, line 19, it's four days after detention. So that time would start running when the detention ended.

**Chairman DeKrey:** No further discussion, the clerk will call the roll.

**8 YES 5 NO 0 ABSENT DO PASS AS AMENDED CARRIER: Rep. Klemin**

*La Costa Rickford*  
Operator's Signature

*10/15/03*  
Date

30094.0101  
Title.0200

Prepared by the Legislative Council staff for  
Representative Klemm  
March 20, 2003

**House Amendments to SB 2045 - Judiciary Committee 03/20/2003**

Page 2, line 9, after "days" insert ", exclusive of weekends and holidays."

Page 2, line 14, after "days" insert ", exclusive of weekends and holidays."

Page 2, line 21, after "days" insert ", exclusive of weekends and holidays."

**House Amendments to SB 2045 - Judiciary Committee 03/20/2003**

Page 3, line 19, after "days" insert ", exclusive of weekends and holidays."

Renumber accordingly

Date: 3/24/03  
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2045

House Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 30094.0/01 10200

Action Taken Do Pass As Amended

Motion Made By Rep. Klemin Seconded By Rep. Wrangham

| Representatives       | Yes | No | Representatives | Yes | No |
|-----------------------|-----|----|-----------------|-----|----|
| Chairman DeKrey       | ✓   |    | Rep. Delmore    |     | ✓  |
| Vice Chairman Maragos | ✓   |    | Rep. Eckre      |     | ✓  |
| Rep. Bernstein        |     | ✓  | Rep. Onstad     |     | ✓  |
| Rep. Boehning         |     | ✓  |                 |     |    |
| Rep. Galvin           | ✓   |    |                 |     |    |
| Rep. Grande           | ✓   |    |                 |     |    |
| Rep. Kingsbury        | ✓   |    |                 |     |    |
| Rep. Klemin           | ✓   |    |                 |     |    |
| Rep. Kretschmar       | ✓   |    |                 |     |    |
| Rep. Wrangham         | ✓   |    |                 |     |    |
|                       |     |    |                 |     |    |
|                       |     |    |                 |     |    |
|                       |     |    |                 |     |    |
|                       |     |    |                 |     |    |

Total (Yes) 8 No 5

Absent 0

Floor Assignment Rep. Klemin

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

REPORT OF STANDING COMMITTEE (410)  
March 24, 2003 1:11 p.m.

Module No: HR-52-5553  
Carrier: Klemin  
Insert LC: 30094.0101 Title: .0200

**REPORT OF STANDING COMMITTEE**

**SB 2045: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (8 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING). SB 2045 was placed on the Sixth order on the calendar.

Page 2, line 9, after "days" insert ", exclusive of weekends and holidays,"

Page 2, line 14, after "days" insert ", exclusive of weekends and holidays,"

Page 2, line 21, after "days" insert ", exclusive of weekends and holidays,"

Page 3, line 19, after "days" insert ", exclusive of weekends and holidays,"

Renumber accordingly



2003 TESTIMONY

SB 2045

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LaCosta Rickford  
Operator's Signature

10/15/03  
Date

Y20 Jonette R.  
2045

Attachment-1

## 2001-2002 Interim Judiciary A Committee

### Time Period Between Commitment and Hearings

In 2001 the Legislative Assembly considered Senate Bill No. 2219. The bill would have changed from seven to four the number of days within which a preliminary hearing is to be held once a person has been detained. Testimony received on the bill indicated reducing the number of days within which a hearing must be held is important because the person is being deprived of liberty without a hearing and that the hearing should be held as soon as possible. The bill failed to pass the Senate. The legislative history for Senate Bill No. 2219 indicates there were concerns about the timelines the change would create. The legislative history also indicates the medical profession did not have a major concern with the four-day period, but the courts and the sheriffs did have scheduling and transportation concerns. It was decided the issue required more study.

According to state law the preliminary hearing must be held within seven days of the date a respondent is taken into custody. An evaluation is done within 24 hours after the person is taken into custody. If the court finds probable cause to believe the respondent is in need of treatment, the court may order the respondent detained for up to 14 days for treatment in a treatment facility. The venue for the preliminary hearing is in the county of residence. The law provides that the respondent is entitled to legal counsel.

The committee received testimony from the State Hospital regarding the allowable time periods of detention in other states. North Dakota and 13 other states were compared. Thirteen of the states have time periods that are less than North Dakota's. Eight of the 14 states have a 72-hour timeframe for a court proceeding. Those states with a 72-hour timeframe exclude weekends and holidays from the calculation.

The committee also received testimony from a person who had the experience of being involuntarily held for the seven-day period without a hearing. According to the testimony people should not be held against their will by mental health professionals who use their discretion in deciding whether a petition should be filed. It was argued there is no reason why a preliminary hearing cannot be held within three days. According to the testimony the state needs to do a better job of safeguarding individual rights. It was argued that the maximum period of time for holding a person before a preliminary hearing should be changed from seven days to three days.

Other testimony indicated Minnesota uses a three-day time period within which the preliminary hearing must be held. It was argued that the distances to transport patients are not any greater in North Dakota than they are in Minnesota. It was also argued that with the use of telephone conferences, telemedicine, fax machines, and e-mail, the preliminary hearing can be held within three days.

The committee considered a bill draft that changed from seven to four the number of days within which a preliminary hearing or a treatment hearing is to be held. Testimony in explanation of the bill draft indicated the number of days would include weekends and holidays. Several committee members expressed concerns that when the process involves an imposition on a person's civil rights, the process should be done as expeditiously as possible.

LaCosta Rickford  
Operator's Signature

10/15/03  
Date

Testimony from a member of the judiciary indicated the four-day timeframe would not be a scheduling problem for the courts, but it may be difficult for health care professionals to conduct the necessary evaluation and diagnosis within that timeframe. Other testimony indicated the Department of Human Services was not opposed to the change from seven to four days but requested exclusion of weekends and holidays from the four-day period. According to the testimony courts are not open on weekends and holidays to conduct the hearing. In addition it was noted that county sheriffs are required to provide transportation for those hearings, and there is a concern about the availability of transportation on weekends and holidays. The testimony indicated there are practical problems with reducing the seven-day period to a four-day period, but when a patient's liberty is at stake, it is important to err on the side of the patient.

Testimony in opposition to the bill draft indicated that four days would not be an adequate amount of time to receive a report of examination and set a hearing. It was argued that if the time period is changed to four days, judges likely will grant continuances.

Testimony in support of the bill draft indicated that because of the intrusive nature of the involuntary mental illness commitment process, the timeframe for the preliminary hearing should be changed from seven to four days. Other testimony in support of the bill draft indicated the scheduling of a hearing should not be determined based upon the convenience of medical personnel, court personnel, attorneys, and sheriffs. It was argued that if the bill draft were changed to exclude weekends and holidays, there would basically be no change from the current seven-day period. Other testimony in support of the bill draft indicated a seven-day period can be extremely damaging to patients. It was argued that the longer time period can also cause collateral damage to the person by affecting the person's job and career.

Y20

58<sup>th</sup> (2003) LEGISLATIVE ASSEMBLY

Attachment Z

SENATE BILL NO. 2045

TESTIMONY OF TERRY OSTMO, Wahpeton, ND

Mr. Chairman and members of the committee, my name is Terry Ostmo. I am from Wahpeton, North Dakota. I am here to ask for your positive recommendation on SB 2045.

In 1997, I was accused of being mentally ill and incarcerated in the psychiatric units of two hospitals for seven days. What was done to me during those seven days nearly destroyed my life.

Under the current law, people in North Dakota who are accused of mental illness can be locked up and forced to endure seven days of psychiatric degradation and humiliation before they get a chance in court to defend themselves. This is clearly punitive. This is worse than jail sentences for most first-offense misdemeanors. To contrast even further, a person detained for sexual crimes will have a preliminary hearing within 72 hours. The N.D. Criminal Code recognizes "time spent in custody in a mental institution as imprisonment."

These pre-hearing detention periods ruin lives. By the time you get your hearing, if you even get a hearing, it's often too late. The damage has already been done. The hospital can decide to suddenly release you after seven days incarceration and get away with never having to justify their actions in front of a judge. This is way too much power.

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LaCosta Rickford  
Operator's Signature

10/15/03  
Date

During the interim I listened to the testimony of an assistant states attorney from Barnes County. She stated an examination of the person taken into custody must be done within 24 hours. She said if the person does not meet certain criteria, the person must be released. Using that logic, there doesn't need to be a hearing at all, because it assumes the correct decision is always made by the admitting physician.

"We should be especially solicitous of liberty when it rests upon concepts so imprecise as "mental illness" or "dangerousness". Predictions of dangerous behavior, no matter who makes them, are incredibly inaccurate. Psychiatrists are not uniquely qualified to predict dangerous behavior and are, in fact, less accurate in their predictions than other professionals." (Donaldson v. O'Connor).

We especially need to do a better job of safeguarding individual rights when states attorneys make no attempt to verify the facts or witnesses on the petitions they get. I have asked my local assistant states attorney in Richland County if any of the witnesses listed on the Petition for Involuntary Commitment are contacted to verify their legitimacy before the petition is approved. He stated his office did not verify witnesses; that he had to just trust that the information was truthful. The same held true for the states attorneys office in Cass County. Witnesses were not verified. Both offices claimed that was the responsibility of human services. I called human services and they said they did not verify witnesses either when the person was already being detained. In addition, the Department of Human Services is only required to

screen admissions to the State Hospital. There is no such protection for people committed to private hospitals.

It appears to me that Patricia Burke, when she testified against the proposed changes to the commitment procedures back in 1989, was on to something. Her written testimony stated, "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."

People have a right to their day in court without delay so they can challenge the veracity of these petitions. Petitioners have different motives, and they are definitely not always pure. Psychiatry is particularly and historically heir to abuses of many kinds.

Since my ordeal with out of control psychiatry, I have read numerous accounts from other victims of psychiatry. One man, an attorney, whose wife was forcibly detained for three days stated, "I have never seen a human being reduced to the state that my wife was in when she got home. Later, she cried for hours as she explained what had happened to her." As I stated earlier, what was done to me over a period of seven days nearly destroyed my life. I was completely devastated. I didn't cry for days, but for months. There was nothing my family could do to get back the pre-involuntarily committed version of wife and mother. My husband and I complained bitterly about the way I was treated to the administration at MeritCare Hospital where I was first detained. We got nowhere. When my husband called the psychiatrist who kept me

locked up and after five days had me transferred in shackles to another hospital, that psychiatrist, Dr. Samy Karaz, said he couldn't understand why my husband was so upset since our medical insurance had covered the expenses. Indeed, our insurance did pay nearly \$1,000 for each day I was incarcerated.

In the end, I believe what saved me, what allowed me to reclaim my sense of self, my dignity, my value as a human being was the successful lawsuit my husband and I pursued. Sadly, most people who are the victims of a mental health system gone amok, are not so fortunate. Lawsuits cost money. And lots of it.

In her letter to the Interim Judiciary A Committee, the states attorney from Barnes County implied four days wouldn't be enough time to get a report of examination. This is not a relevant concern, because what we are talking about is the preliminary probable cause hearing. As her assistant, Ms. Delaney pointed out, an exam is done within 24 hours. And the respondent has the right to confront witnesses in person, certainly including the psychiatrist who issued the order to involuntarily detain the respondent. When the doctor appears in court, he can tell the judge why involuntary commitment is required. Not only that, but, Form F2 (Report of examination) and Form F2A (Report Assessing Availability and Appropriateness of Alternative Treatment) are required to be filed along with the petition within 24 hours of detention. No one who is accused of mental illness should be kept locked up for anyone's convenience, including states attorneys'.

In answer to scheduling concerns, during the interim, Judge Riskedahl

testified judicial availability should not be an issue. Judge Graff testified scheduling was not a problem for him because he had a master calendar and could schedule commitment cases as soon as he was notified.

In answer to transportation concerns, Rep. DeKrey said in discussing the issue with law enforcement in the rural areas, reducing the number of days is not an issue. In fact, in 2 of 3 counties in his district, there hadn't been a single involuntary commitment involving transportation by law enforcement in the past year.

Martin Luther King once said, "Justice too long delayed is justice denied." Being put through a mortifying seven days for an unjustified involuntary commitment is devastating. We need to do a better job in North Dakota of safeguarding individual rights. Please support SB 2045.

Respectfully yours,

*Terryl Ostmo*

Terryl Ostmo

*La Costa Rickford*  
Operator's Signature

10/15/03  
Date



**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 Petitions Filed: 303 | Hearings Held: 35 |

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

Richland County had only five hearings over a four-year period.

|                 |                          |
|-----------------|--------------------------|
| BURLEIGH COUNTY | 1997 Petitions Filed: 75 |
|                 | 1998 Petitions Filed: 68 |
|                 | 1999 Petitions Filed: 69 |

Data on actual hearings held in Burleigh County was not made available.

**SENATE BILL 2045  
SENATE JUDICIARY COMMITTEE  
January 20, 2003**

**CORINNE HOFMANN  
PROTECTION AND ADVOCACY PROJECT**

Chairman Traynor and Members of the Committee, my name is Corinne Hofmann. I am Director of Policy and Operations for the Protection and Advocacy Project [P&A]. P&A frequently provides services to persons with mental illness who are involved in the commitment process.

Senate Bill 2045 changes the time to a person's preliminary hearing from seven days to four days. This change was recommended by the Interim Judiciary A Committee after hearing from interested parties and giving the matter careful consideration. P&A thanks this committee for the role it played in ensuring that the issue received adequate study. P&A supports Senate Bill 2045.

The involuntary mental health commitment process is coercive. It infringes on a person's right to self-determination. The legislature has recognized the serious nature of the process by passing a law that requires clear and convincing evidence before granting a petition for involuntary treatment. The statutes also require a presumption in favor of the individual named in a petition for involuntary treatment. In court, the burden of proof is on the person who wants to commit the individual.

Changing the time frame to four days is consistent with the legislature's demonstrated concern for the rights of the persons involved in the involuntary commitment process. The change will help ensure that individuals subject to the mental health commitment process are afforded adequate due process. P&A asks you to vote in favor of Senate Bill 2045.

Thank you for your time. I would be happy to answer any questions the committee might have.

58<sup>th</sup> (2003) LEGISLATIVE ASSEMBLY

HOUSE JUDICIARY COMMITTEE

SENATE BILL NO. 2045

TESTIMONY OF TERRYL OSTMO, Wahpeton, ND

Mr. Chairman and members of the committee, my name is Terry Ostmo. I am from Wahpeton, North Dakota. Consistent with the interim committee's 9:2 recommendation, the Senate Judiciary's 'do pass' recommendation, and the passage in the Senate of this bill, I am here to ask for your positive recommendation on SB 2045.

Few people publicly come forward to tell of their victimization from involuntary commitment. And with good reason. A study by the National Institute of Mental Health in 1993 found that even ex-convicts rank above former mental patients in social acceptance. According to the 1999 Surgeon General's Report on Mental Illness, the stigma today is more intense than it was 40 years ago. In spite of the stigma, because of the terrible injustice I suffered, I cannot remain silent.

In 1997, I was accused of being mentally ill and incarcerated in the psychiatric units of two hospitals over seven days. There was no judicial review. What was done to me during those seven days nearly destroyed my life. I'm here to advocate for past and future victims of our discriminatory and unjust commitment statutes.

In North Dakota, persons detained for sexual crimes will have a

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LaCosta Rickford  
Operator's Signature

10/15/03  
Date

preliminary hearing within 72 hours. But people in North Dakota who are accused of mental illness can be locked up and forced to endure seven days of psychiatric degradation and humiliation before they get a chance in court to defend themselves. This is worse than jail sentences for most first-offense misdemeanors. This is clearly punitive. In fact, the N.D. Criminal Code recognizes "time spent in custody in a mental institution as imprisonment."

These pre-hearing detention periods ruin lives. By the time you get your hearing, if you even get a hearing, it's often too late. The damage has already been done. ( Many courts have recognized that pre-hearing confinement had continuing collateral consequences.) The hospital can decide to suddenly release you after seven days incarceration and get away with never having to justify their actions in front of a judge. This is way too much power .

During the interim I listened to the testimony of an assistant states attorney from Barnes County. She stated an examination of the person taken into custody must be done within 24 hours. She said if the person does not meet certain criteria, the person must be released. Using that logic, there doesn't need to be a hearing at all, because it assumes the correct decision is always made by the admitting physician. People should not be kept locked up based on the opinion of psychiatrists.

"We should be especially solicitous of liberty when it rests upon concepts so imprecise as "mental illness" or "dangerousness". Predictions of dangerous behavior, no matter who makes them, are incredibly inaccurate. Psychiatrists are not uniquely qualified to predict dangerous behavior and are,

in fact, less accurate in their predictions than other professionals." (Donaldson v. O'Connor).

And, because under current law, the State does not need good cause to justify a seven-day delay for the preliminary probable cause hearing, that power will be used routinely for convenience, without emergency. This amounts to a rubber stamp of the psychiatrist's opinion without any attempt at meaningful judicial review.

In a 4<sup>th</sup> Amendment decision, the 1991 U.S. Supreme Court case, *County of Riverside vs. McLaughlin*, ruled that 48 hours is the presumptive limit for a prompt appearance and hearing before a judge on probable cause. The lone dissent came from Justice Scalia who felt 24 hours should be the limit. If we are hearing criminal cases in 48 hours, it is preposterous that anyone can claim it would take more than four days to adjudicate a probable cause hearing for someone accused not of a crime, but accused of mental illness.

We need to do a better job of safeguarding individual rights when states attorneys make no attempt to verify the facts or witnesses on the petitions they get. I asked my local assistant states attorney in Richland County if any of the witnesses listed on the Petition for Involuntary Commitment are contacted to verify their legitimacy before the petition is approved. He stated his office did not verify witnesses; that he had to just trust that the information was truthful. The same held true for the states attorneys office in Cass County. Witnesses were not verified. Both offices claimed that was the responsibility of human services. Human services informed me they

did not verify witnesses either, when the person is already being detained. In addition, the Department of Human Services is only required to screen admissions to the State Hospital. There is no such protection for people committed to private hospitals.

People have a right to their day in court without delay so they can challenge the veracity of these petitions. Facts are easily misrepresented. Petitioners have a variety of motives, and they are definitely not always pure. Psychiatry is particularly and historically heir to abuses of many kinds.

Since my ordeal with out of control psychiatry, I have read numerous accounts from other victims of psychiatry. One man, an attorney, whose wife was forcibly detained for three days stated, "I have never seen a human being reduced to the state that my wife was in when she got home. Later, she cried for hours as she explained what had happened to her." As I stated earlier, what was done to me over a period of seven days nearly destroyed my life. I was completely devastated. There was nothing my family could do to get back the pre-involuntarily committed version of wife and mother. My husband and I complained bitterly about the way I was treated to the administration at MeritCare Hospital. We got nowhere. When my husband called the psychiatrist who kept me locked up and after five days had me transferred in shackles to another hospital, that psychiatrist, Dr. Samy Karaz, said he couldn't understand why my husband was so upset since our medical insurance had covered the expenses. Indeed, our insurance did pay nearly \$1,000 for each day I was incarcerated—a total of seven days without any

judicial review.

In the end, I believe what saved me, what allowed me to reclaim my dignity, sense of self, and value as a human being was the successful lawsuit my husband and I pursued. Sadly, most people who are the victims of a mental health system gone amok, are not so fortunate. Lawsuits cost money. And lots of it.

In her letter to the Interim Judiciary A Committee, the states attorney from Barnes County implied four days wouldn't be enough time to get a report of examination. This is not a relevant concern, because what we are talking about is the preliminary probable cause hearing. As her assistant, Ms. Delaney pointed out, an exam is done within 24 hours. When the doctor appears in court, he can tell the judge why involuntary commitment is required. Not only that, but, Form F2 (Report of examination) and Form F2A (Report Assessing Availability and Appropriateness of Alternative Treatment) are required to be filed along with the petition within 24 hours of detention. No one who is accused of mental illness should be kept locked up for anyone's convenience, including states attorneys'.

In answer to scheduling concerns, during the interim, Judge Riskedahl testified judicial availability should not be an issue. Judge Graff testified scheduling was not a problem for him because he had a master calendar and could schedule commitment cases as soon as he was notified.

In answer to transportation concerns, Rep. DeKrey said in discussing the issue with law enforcement in the rural areas, reducing the number of days is

not an issue. In fact, in 2 of 3 counties in his district, there hadn't been a single involuntary commitment involving transportation by law enforcement in the past year.

In Richland County, where I live, there were only five hearings over a four-year period.

Furthermore, no one has ever suggested eliminating the clause extending or delaying the hearing for good cause shown. Involuntary commitment is "a massive curtailment of liberty". Based on the facts, the conclusion, that a preliminary probable cause hearing be held within four days, must be made.

Martin Luther King once said, "Justice too long delayed is justice denied." Being put through a mortifying seven days for an unjustified involuntary commitment is devastating. We need to do a better job in North Dakota of safeguarding individual rights. I ask for your positive recommendation on SB2045 to the House and your yes vote when it goes to the House floor for a final vote.

Respectfully yours,

*Terry Ostmo*  
Terry Ostmo



**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 |
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|             |                           |                   |
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|                 |                          |
|-----------------|--------------------------|
| BURLEIGH COUNTY | 1997 Petitions Filed: 75 |
|                 | 1998 Petitions Filed: 68 |
|                 | 1999 Petitions Filed: 69 |

Data on actual hearings held in Burleigh County was not made available.

**SENATE BILL 2045  
HOUSE JUDICIARY COMMITTEE  
MARCH 3, 2003**

**BRUCE MURRY  
PROTECTION AND ADVOCACY PROJECT**

Chairman DeKrey and Members of the House Judiciary Committee, my name is Bruce Murry. I am an employee of the Protection and Advocacy Project [P&A]. P&A frequently provides services to persons with mental illness who are involved in the commitment process.

Senate Bill 2045 changes the time limit for a person's preliminary hearing from seven days to four days. The Interim Judiciary A Committee recommended this change after hearing from interested parties and giving the matter careful consideration. P&A thanks this committee for the role it played in ensuring that the issue received adequate study. P&A supports Senate Bill 2045.

The involuntary mental health commitment process is coercive by its very nature. It infringes on a person's right to self-determination. The legislature has recognized the serious nature of the process by passing a law that requires clear and convincing evidence before granting a petition for involuntary treatment. The statutes also require a presumption in favor of the individual named in a petition for involuntary treatment. In court, the burden of proof is on the person who wants to commit the individual.

Changing the time frame to four days is consistent with the legislature's demonstrated concern for the rights of the persons involved in the involuntary commitment process. The change will help ensure that individuals subject to the mental health commitment process are afforded adequate due process. P&A asks you to vote in favor of Senate Bill 2045.

As a former special assistant state's attorney, I can tell you that the requirement for a hearing within four days has been successful in Juvenile Court.

Thank you for your time. I am available for questions.

**TESTIMONY OF EDWIN W. F. DYER III ON SB2045**

I am a Bismarck attorney who has represented respondents under indigent defense contracts in involuntary commitment proceeding under NDCC Chapter 25-03.1 continuously since January 1986. Passage of this bill will create an unworkable situation. I urge that it not be passed.

I was a member of the task force organized by the Mental Health Association which developed major changes in Chapter 25-03.1 which was adopted by the 1989 Legislature. These changes included the current seven-day time limits for the setting of hearings. The task force had agreed that the previous limit of three days, not counting weekends and holidays, did not allow enough time. From the standpoint of an attorney representing respondents, this limit did not always allow enough time for the papers to get to me, find out what the results of the evaluation of the respondent were, meet with the respondent, and to prepare for a hearing.

Consideration of an example will show how a four-day limit would be unworkable in practice. If a respondent is subjected to emergency detention by a nonjudicial authority under NDCC § 25-03.1-25 on a Friday evening before a three-day weekend, the four-day limit will run out on the following Tuesday, the next day the courts will be open for business. Although such emergency detention is limited to twenty-four hours under NDCC § 25-03.1-25, as a practical matter the detention will last until the next

day the courts are open. Obviously, a petition can't be filed, and an attorney appointed for the respondent, and a hearing held on the same day. The court would have to either set a hearing and immediately continue it or ignore the statutory time limit. Retaining the seven-day limit would prevent this situation from arising in future.

It has been my experience that the courts in which I have appeared have never dismissed a commitment case because a hearing time limit has been exceeded. I would expect that the Supreme Court would find that a dismissal was appropriate in situations in which actual prejudice to the respondent had been shown or that an unreasonable delay without adequate justification had occurred. In any case, a dismissal which did not reach the merits could be following by the filing of another petition.

Thank you for the opportunity to address the committee on this bill. I would be happy to answer any questions from the Committee.

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF [County]

Case No. [Case No.]

In the Interest of [Respondent],  
Respondent.

### EMERGENCY TREATMENT ORDER

THE COURT, after review of the petition for involuntary commitment and the accompanying documentation in this matter, determines the probable cause exists to believe that the respondent is [Mentally Ill or Chemically Dependent] and is likely to seriously injure self or other persons or property if allowed to remain at liberty.

THE COURT also determines that an actual emergency does exist and that a secure facility other than a jail or other correctional facility is accessible.

IT IS ORDERED that the respondent be taken into immediate custody by the sheriff of [County] County and detained until the date of the [Preliminary or Treatment] hearing.

IT IS FURTHER ORDERED that the respondent be detained at [treatment facility] until the scheduled time of the [Preliminary or Treatment] hearing on [day, date and time of hearing].

Dated [today's date].

BY THE COURT:

DISTRICT JUDGE

*LaCosta Rickford*  
Operator's Signature

10/15/03  
Date

# PETITION FOR INVOLUNTARY COMMITMENT

SFN 17260 (1-90) (GN-1)

|                       |
|-----------------------|
| STATE OF NORTH DAKOTA |
| County of             |

## IN THE INTEREST OF

of respondent

## PETITION

The petitioner comes before the court and respectfully alleges:

1. That the petitioner is eighteen years of age or older.
2. That the respondent presently resides in the below named county in the State of North Dakota.

County where respondent resides

3. That the petitioner believes that the respondent is
  - ☐ mentally ill and as a result of such condition there is a reasonable expectation of a serious risk of harm if respondent is not hospitalized.
  - ☐ chemically dependent and as a result of such condition there is a reasonable expectation of a serious risk of harm if respondent is not hospitalized.
4. That because of the foregoing condition, the respondent requires treatment.
5. That the assertions contained in paragraph 3 are based upon the following specific facts (attach additional sheets, if necessary):

6. That the names, addresses, and telephone numbers of witnesses who will verify said facts are as follows:

|         |      |           |     |
|---------|------|-----------|-----|
| Name    |      | Telephone |     |
| Address | City | State     | Zip |
| Name    |      | Telephone |     |
| Address | City | State     | Zip |

7. That other information about the respondent is as follows:

|         |      |           |     |
|---------|------|-----------|-----|
| Name    |      | Telephone |     |
| Address | City | State     | Zip |

The respondent's present whereabouts are as follows:

NDCC 25-03.1-08

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*La Costa Rickford*  
Operator's Signature

10/15/03  
Date

|   |               |  |                     |
|---|---------------|--|---------------------|
| Age   | Date of birth | Sex <input type="checkbox"/> Male <input type="checkbox"/> Female                  | Marital status      |
| Occupation  |               |  |                     |
| If employer   |               |  | Approximate monthly |
| List the name, address, and relationship of respondent's relative or guardian, or, if none, a friend of the respondent:   |               |  |                     |
| Name  | Relationship  | Telephone  |                     |
| Address   | City          | State  | Zip                 |
| Name of attorney who most recently represented the respondent   |               | Telephone  |                     |
| Address   | City          | State  | Zip                 |
| Petitioner's relationship to respondent   |               |  |                     |
| Date of most recent filing of petition for involuntary commitment of respondent   |               |  |                     |
| County in which petition was filed  |               | Petition was <input type="checkbox"/> granted. <input type="checkbox"/> dismissed. |                     |
| 8. The petitioner believes that it <input type="checkbox"/> is <input type="checkbox"/> is not necessary to take the respondent into immediate custody and emergency treatment. [Immediate custody should be requested only if the respondent is seriously mentally impaired, or chemically dependent and is imminently likely to injure himself or other persons if allowed to remain at liberty.] |               |  |                     |
| 9. [Complete only if immediate custody and emergency treatment requested] Overt act(s) of the respondent which indicate the respondent is likely to injure himself or other persons if allowed to remain at liberty are described as follows:   |               |  |                     |
| 10. That to the petitioner's best knowledge, hiring an attorney<br><input type="checkbox"/> would be a substantial financial hardship on the Respondent.<br><input type="checkbox"/> would not be a substantial financial hardship on the Respondent.   |               |  |                     |
| The petitioner believes that an evaluation of the respondent's condition should be made and involuntary commitment and treatment is required.   |               |  |                     |

|                         |      |           |     |
|-------------------------|------|-----------|-----|
| Signature of petitioner | Date | Telephone |     |
| X                       |      |           |     |
| Address                 | City | State     | Zip |

MUST BE APPROVED BY STATES  
ATTORNEY WHO NORMALLY GETS PRELIMINARY  
REPORT FROM HEALTH CARE PROFESSIONAL DESIGNATED BY  
REGIONAL HUMAN SERVICE CENTER

La Costa Rickford  
Operator's Signature

10/15/03  
Date

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF [County]

Case No. [Case No.]

In the Interest of [Respondent],  
Respondent.

## NOTICE OF HEARING

TO [Respondent], [Attorney appointed], THE PETITIONER, AND OTHER  
INTERESTED PERSONS:

A [preliminary or treatment] hearing will be held on the [day, date and time of hearing]  
at the [county] County Courthouse regarding the attached petition for involuntary  
commitment.

Dated [today's date].

\_\_\_\_\_  
DISTRICT JUDGE

La Costa Rickford  
Operator's Signature

10/15/03  
Date



STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF [County]

Case No. [Case No.]

In the Interest of [Respondent],  
Respondent.

## ORDER TO TRANSPORT

TO: [County] COUNTY SHERIFF'S DEPARTMENT (or whoever is transporting at the request of the Sheriff's Department):

You are ordered to transport the respondent from the [treatment facility] to the [county] County District Court for a hearing to be held on [day, date and time of hearing].

Dated [today's date].

BY THE COURT:

DISTRICT JUDGE

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF [County]

Case No. [Case No.]

In the Interest of [Respondent],  
Respondent.

### ORDER APPOINTING ATTORNEY

[Attorney appointed] is appointed to represent the respondent in this matter. [Attorney appointed]'s phone number is: [Attorney's phone number].

The respondent may be required to pay attorney's fees unless the respondent is found to be indigent by the court.

The respondent may choose to hire an attorney other than the attorney appointed by the court. If another attorney is hired, both the clerk of court and the appointed attorney should be notified immediately.

Dated [today's date].

BY THE COURT:

DISTRICT JUDGE

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF [County]

Case No. [Case No.]

In the Interest of [Respondent],  
Respondent.

## NOTICE OF PROCEDURES AND RIGHTS

Notice is given that a petition for involuntary commitment has been filed in [county] County alleging that you are [mentally ill or chemically dependent], and as a result require emergency treatment.

A copy of the petition and any supporting documentation are attached to this notice.

Under North Dakota law, civil commitment procedure begins when the petition is filed, or when you are detained for emergency treatment. After the petition is reviewed by the judge to see whether certain qualifications are met or immediately after you are detained for emergency treatment, this notice is given to you.

If you are not taken into custody, the court may order that you submit to an examination by a physician, psychiatrist, clinical psychologist or licensed addiction counselor. This examination may be by a physician, psychiatrist, clinical psychologist or licensed addiction counselor of your own choice. If your financial condition prevents you from being examined by an expert examiner of your choice, an expert examiner will be appointed by the court to examine you at the expense of the county in which you reside.

If you are in custody for emergency evaluation and treatment, you will be examined by a physician, psychiatrist, clinical psychologist or licensed addiction counselor within 24 hours after you are admitted to the facility, excluding holidays. After the examination a hearing will be held. If it is alleged you are mentally ill, and the Court finds there is probable cause to believe you are a person requiring treatment at the preliminary hearing, a treatment hearing will be held within 14 days. If it is alleged you are chemically dependent and there is no allegation you are mentally ill, there will not be a preliminary hearing and the treatment hearing will be held within 14 days of the time you are taken into custody.

If it is found at the treatment hearing that you are a person requiring treatment, you may be hospitalized for a period of 90 days. Further orders for treatment may be issued if you continue to require treatment after the 90 days has expired. If you are hospitalized, periodic reviews of your status will be made and filed with the court.

The law also guarantees you certain other rights and privileges:

- (a) You have the right to a preliminary and/or treatment hearing;
- (b) You have the right to be present at these hearings;

- (c) **You have the right** to have an attorney prior to the hearings and any court ordered examination and at every stage of the proceedings;
- (d) **You have the right** to an additional independent expert examination by an examiner you select; and
- (e) **You have the right**, if you are indigent, to have an attorney and an independent examiner each appointed at the expense of the county which is your place of residence.
- (f) **You have the right** to receive a copy of any examination conducted in connection with these proceedings.

If you have any questions about these procedures please contact your attorney or the attorney appointed by the court for you.

Dated [today's date].

\_\_\_\_\_  
DISTRICT JUDGE

Lacosta Rickford  
Operator's Signature

10/15/03  
Date