

2009 SENATE JUDICIARY

SB 2421

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2421


Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 2/4/09

Recorder Job Number: 8638

Committee Clerk Signature



Minutes: **Senator Nething, Chairman**

Relating to emergency procedures for mental health commitments and to provide for a legislative council study.

Senator Mathern – Introduces the bill – See written testimony.

Senator Nething – Asks what the problem is that we need to solve.

Senator Mathern – He said it is three fold. There is a misunderstanding between providers and states attorney's in terms of what does law mean and require. There is a misinterpretation of the way the statute reads. Also, because of the closing of some psychiatric facilities. The number of professionals available to do assessments and to be involved that are required by law is decreasing. There are also hospitals that have decided not to provide psychiatric care. As the services are fewer the time involved to make the assessments is becoming more difficult to meet.

Senator Fiebiger – Said he knows there is a national shortage of psych . He asks if he has any thoughts on how the availability would be determined and who would make those calls.

Senator Mathern – When the family brings the patient to the hospital an assessment must be done in 23 hours, when there is no one there who is a psychiatrist or a clinical psychologist they either need to violate the law, fly in a psychiatrist or psychologist or discharge the person.

That is the dilemma. The decision is a difficult one.

Senator Schneider – Asks if there is anything the legislature has done or should do to increase access to these psychiatric services.

Senator Mathern – Responds we haven't met the need. We have not funded the services required in our state to meet these needs.

Dr. Emmet Kenney, Jr., M.D. – CEO of Prairie St. John's – see written testimony.

Gary Euren – Cass County States' Attorney- He backs up what Dr. Kenney has said. He explains the 72 hour hold. He said the language in the current statute is unclear. One of his concerns is that sometimes people may not see a judge for eight days. He can work with other language but does believe a 23 hour hold is way too little. He discusses that some doctors won't want to do psychiatric evaluations but it at least gives an option.

Terryl Ostmo – Chairman of Protecting & Advocacy for Individuals with Mental Illness Advisory Council – See written testimony.- Opposes the bill.

Senator Nething – Asks her that her testimony focuses on the time element but does she have trouble with other sections.

Ostmo – States has not taken a position on the rest of it, her concern is the time.

Senator Olafson – Asks her to tell about her advisory council, what do they do.

Ostmo – Talks about the council and how you get on the council.

Senator Schneider – Ask for her response on how in a rural state like ND we don't have the level of services that would provide an assessment under the time line under current law. He said as a practical matter we don't have the resources to conduct these assessments in this amount of time.

Ostmo – Said she would answer on her own not for the council. She there are doctors at the emergency room.

Corinne Hofmann – Director of Policy and Operations for the Protection and Advocacy Project

See written testimony- Opposes the bill

Senator Nething – Asks if there is any middle ground for additional time.

Hofmann – They oppose any lengthening of time.

Greg Runge – Attorney in Bismarck – One of two attorneys's in the area that does mental health commitment. He said he has been involved in this for 20 years. He covers rural areas and does not see the need for a 3 or 4 day delay. He relates a past case he had years ago that a juvenile had no legal counsel. He ask what happens to the person you have held for 11 days and then found he doesn't have a mental illness. The statute we have now isn't broken so don't fix it.

Carlotta McCleary – Excutive Director of ND Federation of Families for Children's Mental Health. – See written testimony.

Close the hearing 2421

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2421

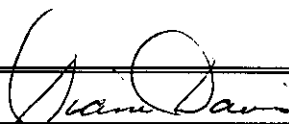
Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 2/11/09

Recorder Job Number: 9155

Committee Clerk Signature



Minutes: **Senator Nething, Chairman**

Committee work

Committee discusses that this bill didn't seem to have a lot of support. They were bothered by the fact that on a weekend you may end up incarcerated for 5 days. Senator Lyson discusses a sheriff's meeting he attended and no one there has a problem with the way it is now. He said very few if any emergency commitments go to jail then go right to the state hospital.

Senator Schneider wonders if we can maintain the time frame but allow more people to make assessments. The committee is torn between keeping people and letting people go to soon so they don't do harm to themselves or others. Senator Nething said he is unsure what is broken in the system. Most people they have spoken with do not have a problem.

The committee discusses an amendment, deleting all but section 4 which asks for a study.

Senator Olafson moves do pass on the amendment

Senator Lyson seconds

Verbal vote – all yes

Senator Olafson motions for a do pass as amended

Senator Lyson seconds

Vote – 6-0 **Senator Fiebiger** will carry

Date: 2/11/09
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

2421

Senate JUDICIARY Committee

☐ Check here for Conference Committee

amendment

Legislative Council Amendment Number _____

Action Taken ☐ Do Pass ☐ Do Not Pass ☐ Amended

Motion Made By Sen. Olafson Seconded By Sen. Lyson

Senators	Yes	No	Senators	Yes	No
Sen. Dave Nething – Chairman			Sen. Tom Flebiger		
Sen. Curtis Olafson – V. Chair.			Sen. Carolyn Nelson	X	
Sen. Stanley W. Lyson			Sen. Mac Schneider		

Total (Yes) _____ (N) _____

Absent _____

Floor Assignment _____

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

Verbal yes
Delete all but
section 4

Date: 2/11
Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2421

Senate **JUDICIARY** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ Amended

Motion Made By Sen Olafson Seconded By Sen Lyson

[illegible]

Total (Yes) 6 (N) 0

Absent

Floor Assignment Sen. Liebman

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

REPORT OF STANDING COMMITTEE

SB 2421: Judiciary Committee (Sen. Nething, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2421 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "to amend and reenact subsections 7 and 8 of section 25-03.1-02, section"

Page 1, remove line 2

Page 1, line 3, remove "to emergency procedures for mental health commitments; and"

Page 1, remove lines 6 through 23

Page 2, remove lines 1 through 31

Page 3, remove lines 1 through 30

Page 4, remove lines 1 through 7

Renumber accordingly

2009 HOUSE JUDICIARY

SB 2421

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2421

House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 3/16/09

Recorder Job Number: 10971, 11023

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on SB 2421.

Gary Euren, Cass County Assistant State's Attorney: Support (Attachment). Offered amendment from Sen. Mathern (attachment). As the bill appears before you now, it is simply a study resolution. The amendments, offered by Sen. Mathern, were originally in the bill when it went to the Senate, were taken out along with other items. The purpose of this bill is to clarify some things in the involuntary commitment law. The current amendments simply do not change anything in the wording of the law or intent. It simply moves language from one section to another.

Rep. Koppelman: This was presented to the Senate.

Gary Euren: The bill that came out of the Senate was a study resolution. Part of the reason was that there was opposition from advocacy groups. This bill came up very late in the session. There wasn't a chance to have input from anyone. The bill was put together very quickly to get into the legislative session.

Rep. Koppelman: You're requesting that if we amend it, is to keep the study resolution portion of the bill and move existing language from one section of law to another.

Gary Euren: Correct, the only change in any wording has to do with the way it is put into the bill, it doesn't change the intent; it doesn't change anything.

Rep. Koppelman: You have reason to believe that the Senate would be more amenable to this amendment in a conference committee than they apparently were before crossover.

Gary Euren: I believe there won't be any opposition, because Sen. Mathern was the primary sponsor, who could not be here today, but has been in communication with the opposition, and I believe that the opposition has come around.

Rep. Koppelman: So this is just as we see it, or was it presented as part of the entire bill and was a larger amendment in the Senate.

Gary Euren: The original bill encompassed this language along with some substantive changes. The substantive changes were the problems that the opposition had with those amendments and so they were taken out.

Rep. Zaiser: Was Legislative Council part of the changes to the bill and the location of the language.

Gary Euren: Yes.

Chairman DeKrey: Thank you. Further testimony in support.

David Boek, Protection & Advocacy Project: My testimony is in favor of the bill. We support the study and I saw the draft amendments in an email and they appear not to be substantive changes but just moves the language around.

Chairman DeKrey: Thank you. Further testimony in support, opposition or neutral. We will close the hearing.

(Reopened later in the afternoon session.)

Chairman DeKrey: We will take a look at SB 2421. What are the committee's wishes?

Rep. Delmore: I move the Mathern amendments.

Rep. Wolf: Second.

Chairman DeKrey: Voice vote, motion carried.

Rep. Koppelman: On line 4, insert after shall "consider studying".

Rep. Hatlestad: Second.

Chairman DeKrey: We will take voice vote, chair is in doubt. We will take a roll call vote.

10 YES 3 NO 0 ABSENT, motion carried. We now have the bill before us as amended. What are the committee's wishes?

Rep. Delmore: I move a Do Pass as amended.

Rep. Dahl: Second.

13 YES 0 NO 0 ABSENT

DO PASS AS AMENDED

CARRIER: Rep. Dahl

March 12, 2009

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2421

Page 1, line 1, after "Act" insert "to amend and reenact subsections 7 and 8 of section 25-03.1-02 and section 25-03.1-11 of the North Dakota Century Code, relating to emergency procedures for mental health commitments; and"

Page 1, after line 2, insert:

"SECTION 1. AMENDMENT. Subsections 7 and 8 of section 25-03.1-02 of the North Dakota Century Code are amended and reenacted as follows:

7. "Expert examiner" means a licensed physician, psychiatrist, psychologist trained in a clinical program, or licensed addiction counselor appointed by the court to examine the respondent and to provide an evaluation of whether the respondent is a person requiring treatment. ~~An evaluation of a respondent's physical condition may be made only by a licensed physician or psychiatrist; an evaluation of a respondent's mental status may be made only by a psychiatrist or psychologist trained in a clinical program; and an evaluation of whether the respondent is chemically dependent may be made only by a licensed physician, licensed addiction counselor, or licensed psychologist trained in a clinical program.~~
8. "Independent expert examiner" means a licensed physician, psychiatrist, psychologist trained in a clinical program, or licensed addiction counselor, chosen at the request of the respondent to provide an independent evaluation of whether the respondent is a person requiring treatment. ~~An evaluation of a respondent's physical condition may be made only by a licensed physician or psychiatrist; an evaluation of a respondent's mental status may be made only by a psychiatrist or psychologist; and an evaluation of whether the respondent is chemically dependent may be made only by a licensed physician, licensed addiction counselor, or licensed psychologist trained in a clinical program.~~

SECTION 2. AMENDMENT. Section 25-03.1-11 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-11. Involuntary treatment - Examination - Report.

1. The respondent must be examined within a reasonable time by an expert examiner as ordered by the court. If the respondent is taken into custody under the emergency treatment provisions of this chapter, the examination must be conducted within twenty-four hours, exclusive of holidays, of custody. Any expert examiner conducting an examination under this section may consult with or request participation in the examination by any qualified mental health professional and may include with the written examination report any findings or observations by that mental health professional. This examination report, and that of the independent examiner, if one has been requested, must be filed with the court. The report must contain:
 - a. Evaluations of the respondent's physical condition and mental status.

- b. A conclusion as to whether the respondent is a person requiring treatment, with a clear explanation of how that conclusion was derived from the evaluation.
 - c. If the report concludes that the respondent is a person requiring treatment, a list of available forms of care and treatment that may serve as alternatives to involuntary hospitalization.
 - d. The signature of the examiner who prepared the report.
2. For purposes of any examination conducted pursuant to this section:
- a. An evaluation of a respondent's physical condition may be made only by a licensed physician or psychiatrist.
 - b. An evaluation of a respondent's mental status may be made only by a psychiatrist or psychologist trained in a clinical program.
 - c. An evaluation of whether the respondent is chemically dependent may be made only by a licensed physician, licensed addiction counselor, or licensed psychologist trained in a clinical program.
3. If the expert examiner concludes that the respondent is not a person requiring treatment, the court may without taking any other additional action terminate the proceedings and dismiss the petition. If the expert examiner concludes that the respondent is a person requiring treatment, or makes no conclusion thereon, the court shall set a date for hearing and shall give notice of hearing to the persons designated in section 25-03.1-12. If the respondent is in custody and is alleged to be suffering from mental illness or a combination of mental illness and chemical dependency, the preliminary hearing date must be within four days, exclusive of weekends and holidays, of the date respondent was taken into custody through emergency commitment under section 25-03.1-25 unless a delay or continuance is concurred in by the respondent or unless extended by the magistrate for good cause shown. If a preliminary hearing is not required, the treatment hearing must be held within four days, exclusive of weekends and holidays, of the date the court received the expert examiner's report, not to exceed fourteen days from the time the petition was served."

Renumber accordingly

VR
3/17/09
1082

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2421

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Page 1, line 4, replace "study" with "consider studying"

Renumber accordingly

Date: 3/16/09Roll Call Vote #: 1**2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES**BILL/RESOLUTION NO. 2421**HOUSE JUDICIARY COMMITTEE**☐ Check here for Conference Committee

LC Amendment #

*Roll Call Vote
Koppelman Amendment*Action: ☐ DP ☐ DP / As Amended ☐ & Rerefer to Approp.
☐ DNP ☐ DNP / As Amended

Motion Made By

Seconded By

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore		✓
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning	✓		Rep. Vig		✓
Rep. Dahl	✓		Rep. Wolf		✓
Rep. Hatlestad	✓		Rep. Zaiser	✓	
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				

Total (Yes) 10 (No) 3 (Absent) —

Floor Carrier: _____

☐ Vote is amendment, briefly indicate intent:*Motion carried.*

Date: 3/16/09

Roll Call Vote #: 2

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2421

HOUSE JUDICIARY COMMITTEE

☐ Check here for Conference Committee LC Amendment # _____

Action: ☐ DP ☒ DP / As Amended ☐ & Rerefer to Approp.
 ☐ DNP ☐ DNP / As Amended

Motion Made By Rep. Delmore Seconded By Rep. Dahl

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning	✓		Rep. Vig	✓	
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Hatlestad	✓		Rep. Zaiser	✓	
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				

Total (Yes) 13 (No) 0 (Absent) 0

Floor Carrier: Rep. Dahl

☐ Vote is amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2421, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2421 was placed on the Sixth order on the calendar.

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Page 1, line 4, replace "study" with "consider studying"

Renumber accordingly

2009 SENATE JUDICIARY

CONFERENCE COMMITTEE

SB 2421

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB2421


Senate Judiciary Committee

☒ Check here for Conference Committee

Hearing Date: 4/17/09

Recorder Job Number: 11956

Committee Clerk Signature



Minutes: Conference Committee

Senator Olafson, Chairman

Representative Dahl

Senator Lyson

Representative Koppelman

Senator Fiebiger

Representative Wolf

Senator Olafson asks Rep. Dahl to explain the amendments. She explains that the amendments were prepared for Senator Mathern and this is proposed to return the provision that shifts some of the language from the definition section of the statutes to the procedure portion, so no language was lost, changed or added with this amendment, it simply takes the language that is not needed from the definitions and puts them in a place that sets forth procedures in order to make those procedures more clearly understood. Senator Fiebiger agrees with what Rep. Dahl pointed out. This does make it easier for people to use the statutes and still keeps the study to look into this further. Senator Lyson asks if they pass this it goes into law but they still study it. Response is yes. With that Senator Lyson moves that the Senate accede to the House Amendments, Senator Fiebiger seconds.

Discussion follows with a question by Senator Olafson. He wonders about a section that was not included in the amendment which addressed about who would do the evaluation if a

psychiatrist or psychologist is available. Senator Fiebiger said he visited with Senator Mathern and that language was not in the original statute, that was new language they were seeking so now they have designed this to take out the controversial piece.

Roll call vote 6 yes, 0 no

Senator Fiebiger will carry

Date: 4/17/09

Roll Call Vote #: 1

2009 SENATE CONFERENCE COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. **SB** ²⁴²¹ as (re) engrossed

Senate _____ Judiciary _____ Committee _____

☒ Check here for **Conference Committee**

- Action Taken ☒ SENATE accede to House Amendments
☐ SENATE accede to House Amendments and further amend
☐ HOUSE recede from House Amendments
☐ HOUSE recede from House amendments and amend as follows

Senate/House Amendments on SJ/HJ pages(s) 908 -- 909

☐ **Unable to agree**, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) _____ was placed on the Seventh order of business on the calendar.

Motion Made By Sen. Lyson Seconded By Rep. Koppelman

Senators				Y	N	Representatives				Y	N
				e	o					e	o
				s						s	
Senator Olafson	X			X		Rep. Dahl	X			X	
Senator Lyson	X			X		Rep. Koppelman	X			X	
Senator Fiebiguer	X			X		Rep. Wolf	X			X	

Vote Count 6 Yes 0 No _____ Absent

Senate Carrier Sen. Fiebiguer House Carrier _____

LC NO. _____ of amendment

LC NO. _____ of engrossment

Emergency clause added or deleted _____

Statement of purpose of amendment _____

REPORT OF CONFERENCE COMMITTEE

SB 2421, as engrossed: Your conference committee (Sens. Olafson, Lyson, Fiebiger and Reps. Dahl, Koppelman, Wolf) recommends that the **SENATE ACCEDE** to the House amendments on SJ pages 908-909 and place SB 2421 on the Seventh order.

Engrossed SB 2421 was placed on the Seventh order of business on the calendar.

2009 TESTIMONY

SB 2421

Judiciary Committee

February 4, 2009

Senator Tim Mathern

Chairman Nething and Members of the Judiciary Committee

My name is Tim Mathern. I am a Fargo Senator with a social work background and I am here to introduce SB 2421. Passage of this bill will help us provide mental health care in the context of our realities.

There are three primary changes passage of this bill will make in our statutes.

1. It will change items of style so that our law is more understandable to persons required to interpret it. The definition section has been limited to definitions and not implementation which is the present case. Section 1
2. A physician as opposed to a physician who is also a psychiatrist is given more authority in the process of providing care. This recognizes the reality of a psychiatrist or other mental health specialist not being available. Section 2 line 28
3. The amount of time permitted for an assessment is increased. The time chosen was the time now in place in Minnesota. Section 3 line 2 of page 4

This bill also recognizes the complicated nature of commitments and the dearth of psychiatric services in the state therefore suggests an interim study. Section 4

The three items get more complex as we move from 1 to 3. The bill was drafted with the involvement of a states attorney, psychiatrist, and Vonette Richter of Legislative Council. I also informed Mental Health America and Protection and Advocacy about the bill.

Members of the Committee I know you have the talents to understand the situation at hand to help make the right decisions. I got involved in the bill when I learned that psychiatric services were no longer being provided by hospitals in Dickinson and Williston and by Innovis hospital in Fargo. This has led to providers having less time to complete assessments and as such believe their liability is reduced if the potential patient is jailed or released in a vulnerable state until the time to do an assessment is available. For persons whose mental illness has led to a suicide attempt or extreme danger to themselves or their loved ones these alternatives are not acceptable in a civil society.

Thank you for the attention you will be giving to presenters coming before you. I invited Dr. Emmet Kenney and Mr. Gary Euren to provide some testimony to you and I know others will also want to testify. I also anticipate some objection to some of the changes which I believe put the matter in our laps as there are issues of proper balance of civil liberties and need for treatment.

Thank you for your work in weighing the issues coming before you and ask that you consider any amendments offered and that you give a Do Pass recommendation to SB 2421.

Thank you for your consideration.



Presentation to the North Dakota Judiciary Committee
Regarding Senate Bill SB 2421

February 4, 2009

By Emmet M. Kenney, Jr., M.D.
Child, Adolescent and Adult Psychiatrist
CEO of Prairie St. John's

Adjunct Associate Professor of Psychiatry, University of Minnesota
Clinical Associate Professor, University of North Dakota School of Medicine,
Dept. of Neurosciences
Clinical Associate Professor, University of North Dakota School of Medicine,
Dept. of Pediatrics

Chairman Nething and Members of the Judiciary Committee, I am Dr. Emmet Kenney, and I am CEO of Prairie St. John's. I have been practicing in North Dakota for 14 years. The delivery of psychiatric services for health care systems throughout the state has been an area of intense effort for me.

I am here today to speak about the benefits of SB 2421. This represents a significant improvement from the current commitment statute. I would like to outline for you the concerns this revision of the statute appropriately addresses when people become the focus of a commitment process.

Please note that the statute for commitments addresses nonemergent ways for a person to appear for a judicial review for commitment. SB 2421 does not suggest any changes for that process.

The changes suggested are for the process regarding emergent presentations to health care facilities.

In general, there are three types of situations where a person may come or be brought to emergent health care settings.

1. The first is where one goes to an emergency setting to access hospitalization and is simply being brought to this location as an entry point. An example would be when family members bring in a person who has been threatening suicide but has not done anything harmful to themselves yet. This is the most common type of situation.

2. The second type of situation is where people have done something relatively dangerous and require some degree of emergent medical stabilization in addition to triaging their psychiatric needs. Examples of this would be evaluations after an intentional poisoning as a suicide attempt, dressing wounds and assessing possible fractures after a car accident related to alcohol intoxication or needing wound repair after intentionally stabbing oneself. These individuals need a level of medical stabilization but generally do not need to be admitted to a medical/surgical bed immediately. They can most often be stabilized in the emergency setting and then referred to a psychiatric inpatient setting for further treatment.
3. The third type of situation is when someone has a medical/surgical condition that affects their judgment such that they are not able to rationally weigh the advantages and disadvantages of proposed medical treatment and give informed consent. Examples of this would be after a motor vehicle accident in which there is a head injury and the person is extremely confused; or a farmer having an accidental poisoning with fertilizer and making no sense when asked if he would like to have life-saving treatment.

In these cases, the judgment as to what is in the best interests of the person relies not only on an assessment of their ability to understand things and mentally process, but also a full understanding of the risks of the medical condition. In these settings, patients need to be stabilized in a medical/surgical setting for days and if their mental status is such that it does not completely resolve, then they are referred to psychiatric settings. Although this is the least common type of situation for initiating commitment processes, it is one that causes great anxiety and concern amongst treatment providers who wish to respect state statutes but do not conduct commitments routinely.

The proposed legislation modification basically affect three areas.

1. The first area reorganizes definitions to be in a more logical location.

2. The second area makes it explicit that a "physician" qualifies as an expert examiner.

Psychiatrists or psychologists may not feel comfortable on commenting on the medical/surgical needs of the patient although if available, they would comment on their ability to understand the processes of what is being recommended or not. However, these personnel are not in emergency departments and are not able to respond immediately. Therefore, the practical fact is that the judgment to proceed with life-saving medical/surgical care occurs before examination by an "expert examiner" as it is currently defined would occur. Although there is a "right to treat" section of the statute, hospital-based physicians have been advised by their legal counsel it does not adequately address this concern. Clarifying "a physician" qualifies would.

3. The third area extends to the time from the initiation of emergency procedures from 24 hours to 96 hours which more realistically allows for an expert examination to occur.

I believe this is necessary due to the rural nature of the state and limited resources within the urban area. There are 100 psychiatrists and psychiatric residents in North Dakota¹:

Psychiatrists	City
66	Fargo/West Fargo
13	Bismarck
8	Grand Forks
8	Minot
7	Jamestown
2	Devils Lake
2	Belcourt
1	Williston

¹ Source: North Dakota Medical Association (NDMA) List of Psychiatrists.

There are 163 psychologists in the state²:

Psychologists	City
52	Fargo/West Fargo
46	Grand Forks
21	Bismarck
18	Minot
12	Jamestown
6	Dickinson
3	Belcourt
3	Devils Lake
2	Williston
1	Ardoch
1	Bottineau
1	Carrington
1	Hettinger
1	Lawton
1	Mandan
1	Wahpeton

However, there are 55 hospitals in North Dakota³:

Hospitals	City	Psychiatrists	Psychologists
6	Fargo	66	52
3	Grand Forks	8	46
3	Bismarck	13	21
2	Jamestown	7	12
2	Minot	8	18
1	Ashley		
1	Belcourt	2	3
1	Bottineau		1
1	Bowman		
1	Cando		
1	Carrington		1
1	Cavalier		
1	Cooperstown		
1	Crosby		
1	Devils Lake	2	3
1	Dickinson		6
1	Elgin		
1	Fort Yates		
1	Garrison		

² Source: North Dakota Board of Psychology Examiners List of Psychologists.

³ Source: Extrapolated from North Dakota Hospital Association website.

Hospitals	City	Psychiatrists	Psychologists
1	Grafton		
1	Harvey		
1	Hazen		
1	Hettinger		1
1	Hillsboro		
1	Kenmare		
1	Langdon		
1	Linton		
1	Lisbon		
1	Mandan		1
1	Mayville		
1	McVie		
1	Northwood		
1	Oakes		
1	Park River		
1	Richardton		
1	Rolla		
1	Rugby		
1	Stanley		
1	Tioga		
1	Turtle Lake		
1	Valley City		
1	Watford City		
1	Williston	1	2
1	Wishek		

As you can see, there is a heavy concentration of people that meet the criteria for "expert examiner" in a few cities while other cities would have far less access to this. In addition, there are times when admissions to inpatient psychiatric settings have to be delayed because of their capacity. There are weeks out of any year where inpatient settings are full and deflecting admissions that present to their system to other care provider systems. This requires time to coordinate with the other care provider systems for available beds and arrange for transportation.

Transportation is a key issue that can delay the time before an expert examination as currently defined. At Prairie St. John's, we have had to refuse accepting patients who would be referred to us as we would not be able to meet the expert examination requirement as by the time they would come to us, the 24-hours of the initial emergency proceedings would have already lapsed, or would not have provided enough time to conduct an assessment.

Another concern is where transportation is needed between a medical/surgical setting and a psychiatric inpatient unit. This is most often conducted by county sheriffs. In my

experience, they are reluctant and sometimes refuse to transport during the following situations: snow emergencies, flooding, severe rain storms, icy conditions, weekends and holidays, times when there are other events that require the devotion of their resources when they do not have enough resources to transport, or concerns over the safety of the patient on the way due to their level of agitation. In other words, predictably in North Dakota. Imagine a law that can be violated every time there is a blizzard!

This is consistent with the realities faced by other states and is more similar to practices in other states. In our neighboring state, Minnesota, there is a "72-hour hold" exclusive of weekends or holidays in which one could place a patient on an emergency procedure prior to completely expert examiners report and filing it.

This is key: when there are deadlines that are not practical given the resources of the state, they create technicalities which can lead to release of patients to ultimately become destructive to themselves or other members of our community. I would ask each member of the committee: if you have a brother, a son, mother, aunt, neighbor, person you have not met before and they would be released on a technicality and then commit suicide or kill someone else, would you feel this was a good system? It is my professional opinion that in balancing patients' rights, the time it would take to obtain an expert examination should be considering all realistic possibilities, not just the ideal ones.

We all hear in the news about the tragedies of suicide, rampage shootings, etc. Most often in looking back, one finds that the persons involved do have a psychiatric history. We are recommending and supporting SB 2421 to prevent such an occurrence from happening in North Dakota. Technicalities of overly short timeframes and the availability of treatment resources and transportation should not get in the way of protecting lives.

61st (2009) LEGISLATIVE ASSEMBLY
SENATE JUDICIARY COMMITTEE

SENATE BILL NO. 2421

Testimony of Terryl Ostmo, Wahpeton, ND
Chairman, PAIMI Advisory Council

February 4, 2009

Mr. Chairman and members of the committee, my name is Terryl Ostmo. I am from Wahpeton, N.D. My testimony is as chairman of the PAIMI (Protection and Advocacy for Individuals with Mental Illness) Advisory Council. The Council is composed of family members, consumers, service providers, and professionals. We oppose this bill and ask for your do not pass recommendation.

First, the proposal to allow 96 hours instead of 24 hours to examine a person taken into custody contradicts the premise that this is an emergency. Second, it is a blatant assault on individual rights, namely, liberty. If 72 hours are allowed before the 24 hour requirement of Section 25-03.1-11 applies, it could be up to 96 hours before a person is examined. And even longer, more than a week, without a petition being filed, if the 72 hours fell just before Labor Day weekend, for example.

A petition needs to be filed within 24 hours of detention to safeguard individual rights. Any other timeline for filing the petition is an invitation to abuse. This concept was firmly established back in the 70's when the Supreme Court recognized that involuntary commitment is a massive curtailment of liberty. Any ethical physician or mental health professional should want his patients rights protected by both an examination and the filing of a petition within 24 hours. There is already a free pass to not file petitions if it is a weekend or holiday. There is no good excuse to give free passes on regular weekdays too. Why should you allow someone to procrastinate what is supposedly an 'emergency'.

If passed as written, this bill would accomplish at least two unsavory things. The facility will have a group of patients it won't be required to do exams on or file petitions on. The facility will be a sort of 'holding pen' until it can dump these unfortunate people on the state hospital. What will facilities charge for warehousing human beings?

I have personal experience of what it is like to be accused of mental illness and be locked up. It was devastating. It nearly destroyed my life. In 1997 I was locked up in two hospitals for seven days and never given a court hearing. No petition was ever filed in any court. I sued MeritCare and won. That lawsuit truly saved me. I fear what would have become of me if I hadn't been able to achieve that vindication. And I can only imagine the scars, grief, pain and suffering of other people who have had to live with similar experience. It is a pain like no other to have all your rights stripped away.

If we must involuntarily commit people, let's at least do it respectfully. If your liberty was at stake, you would want that petition filed within 24 hours. And you would not want to be warehoused with no examination until it was convenient for you to be dumped elsewhere. If ever the Golden Rule ought to come into play, it is in regard to involuntary commitments.

We all know those who purport to do good, sometimes inflict a great deal of harm. But, for the persons being detained, this bill has not even the slightest appearance of doing any good.

Please vote **NO** on SB 2421. If, however, there were to be a study, the PAIMI Council would be in support of that. Thank you.

Respectfully yours,

Terryl Ostmo, Chairman

PAIMI Advisory Council

Attachment 4
2421

**Testimony – Protection and Advocacy Project
Senate Bill 2421
Senate Judiciary Committee
February 4, 2009**

Chairman Nething 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 serves individuals who have disabilities, including individuals with mental illness.

P&A opposes passage of Senate Bill 2421. We believe the proposed changes would weaken the quality of care provided to people with mental illness, violate their due process rights, and infringe upon their liberty interests.

Section I of the 14th Amendment to the Constitution of the United States proclaims that a state cannot "...deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." The United States Supreme Court has termed involuntary civil commitment to a psychiatric hospital "a massive curtailment of liberty." *Humphrey v. Cady*, 405 U.S. 504, 509 (1972). The Court has also emphasized that "involuntary commitment to a mental hospital, like involuntary confinement of an individual for any reason, is a deprivation of liberty which the State cannot accomplish without due process of law." *Specht v. Patterson*, 386 U.S. 605, 608 (1967).

North Dakota's mental health commitment laws were carefully thought out and crafted to balance the State's substantial interest in providing treatment to persons in need of care, both for their own protection and for the protection of others, against the individual's due process protected interest in freedom from confinement and personal restraint, and liberty interest in reducing the degree of confinement.

The statutes pertaining to involuntary commitment provide for an orderly process that includes adequate notice, representation, hearings, and the right to appeal. The individual subject to a petition for involuntary treatment is not taken into custody without full due process. During the involuntary commitment process there

is ample opportunity to access resources within the service system and review less restrictive alternatives.

In contrast, the emergency detention provisions are intrusive and coercive. The provisions bypass due process requirements provided for elsewhere based on the reasonable belief that "there exists serious risk of harm of an immediate nature". To mitigate the coercive nature of the procedure and protect the liberty interests of the individual, the statutes currently require an immediate examination of the individual and either a release of the individual within 24 hours of admission or the filing of a petition for involuntary commitment. This triggers due process procedures on behalf of the individual.

The 24 hour time line is consistent with time frames being implemented in other states for emergency commitments. While I recognize that each state is responsible to meet the needs of its citizens through its own unique set of laws, it can be helpful to look at how other states have addressed similar issues. I have provided copies of emergency commitment provisions from other sparsely populated, rural states. The time frame of these states are the same or similar to North Dakota's. I also included Minnesota's statutes. Minnesota allows an emergency hold for up to 72 hours. However, protections are afforded through the requirement of an immediate examination and by allowing access to the court for relief. A petition for release may be filed and a hearing held to review the 72 hour hold.

Under the current North Dakota emergency detention provisions, private facilities are currently allowed to hold an individual for 23 hours in anticipation of a transfer to a public facility without conducting an immediate examination or following notice and hearing requirements for a transfer to another facility. This exemption already creates an encroachment upon the due process rights, liberty interests, and equal protection rights of individuals detained on an emergency basis.

The proponents of this bill now want private facilities to be able to hold an individual for 72 hours without an examination or filing of an involuntary petition. This would be added to the 24 hours given subsequently to the public facility to conduct an examination and release the person or file a petition. It greatly exacerbates the bifurcation in timelines that exists if the initial detention occurs in a

private facility with a transfer to a public facility versus directly to a public facility. It also denies any type of due process for a significant length of time. No reason is sufficient to justify this type of delay and I do not believe it would survive a constitutional challenge.

In *Jackson v. Indiana*, 406 U.S. 715, 738 (1972), the U.S. Supreme Court said that "due process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed." The proposed change would result in detaining individuals alleged to be at "serious risk of harm of an immediate nature" in what amounts to a very expensive warehouse, without recourse and without treatment. This is not consistent with the purpose of North Dakota's emergency commitment provisions.

The changes proposed in Sections 1 and 2 of the bill, are also somewhat troubling. The definition of "Expert examiner" and "Independent expert examiner" are changed and licensed physicians are permitted to evaluate mental status in the absence of a psychologist or psychiatrist. I have great respect for the medical professional, but the profession has become very specialized. Many licensed physicians would not have the requisite knowledge of mental illnesses, treatment options, and the structure and resources of the service system to properly assess an individual or prepare an examination report as required by the involuntary commitment procedure. It could compromise the integrity of the commitment process and the quality of care for individuals with mental illness to permit any licensed physician to be designated an expert examiner.

For these reasons, P&A opposes passage of Senate Bill 2421.

Thank you for listening to our concerns.

**Attachment – Protection and Advocacy Project
Senate Bill 2421
Senate Judiciary Committee
February 4, 2009**

Mental Health Commitment

The United States Supreme Court has termed involuntary civil commitment to a psychiatric hospital "a massive curtailment of liberty."¹ The court has also emphasized that "involuntary commitment to a mental hospital, like involuntary confinement of an individual for any reason, is a deprivation of liberty which the State cannot accomplish without due process of law."²

¹ *Humphrey v. Cady*, 405 U.S. 504, 509 (1972).

² *Specht v. Patterson*, 386 U.S. 605, 608 (1967).

South Dakota

27A-10-5. Notification of rights upon custody, detention, or filing of petition--
Notice to county board where person apprehended. Immediately after a person is taken into custody pursuant to § 27A-10-2 or 27A-10-3, a hold is initiated pursuant to § 27A-8-10.1 or 27A-10-19, or a petition is filed pursuant to § 27A-8-11.2, the person shall be notified both orally and in writing of the following:

- (1) The right to immediately contact someone of the person's choosing;
- (2) The right to immediately contact and be represented by counsel;
- (3) That the person will be examined by a qualified mental health professional, designated by the chair of the county board of mental illness, within twenty-four hours after being taken into custody to determine whether custody should continue; and
- (4) The right, if custody is continued, to an independent examination and to a hearing within five days after being taken into custody, within six days if there is a Saturday, Sunday, or holiday within that time period, or within seven days if there is a Saturday, Sunday, and holiday within that time period.

The person shall be further notified that the costs of any post-commitment treatment, medication, compensation for the attorney appointed to represent the person in any appeals proceedings, an additional examination requested by the person pursuant to § 27A-11A-9, and a certified transcript or tape of proceedings requested by the person pursuant to § 27A-11A-2 are that person's responsibility and that a lien for the amount of these costs may be filed upon the person's real and personal property to ensure payment.

The notice shall also be given forthwith to the county board serving the county where the person was apprehended.

Source: SL 1974, ch 184, § 4; SL 1975, ch 181, § 110; SDCL Supp, § 27-7A-4; SL 1977, ch 212, § 3; SL 1991, ch 220, § 114; SL 1992, ch 26, § 6; SL 1992, ch 189, § 34; SL 1995, ch 162, § 1; SL 1997, ch 164, § 1; SL 2000, ch 129, § 6.

Wyoming

25-10-109. Emergency detention.

(a) When a law enforcement officer or examiner has reasonable cause to believe a person is mentally ill pursuant to W.S. 25-10-101, the person may be detained.

(b) Immediately after detaining the person, the officer shall contact an examiner. A preliminary examination of the person shall be conducted by an examiner within twenty-four (24) hours after the detention. If a preliminary examination is not conducted within twenty-four (24) hours the detained person shall be released. If the examiner giving the preliminary examination finds that the person:

(i) Is not mentally ill, the person shall be released immediately;

(ii) Was mentally ill, but is no longer dangerous to himself or others, the person shall be released immediately; or

(iii) Is mentally ill, the person may be detained for seventy-two (72) hours excluding Saturdays, Sundays and legal holidays.

(c) No person shall be detained for more than seventy-two (72) hours, excluding Saturdays, Sundays and legal holidays, without a hearing under subsections (h) through (k) of this section.

(d) A person taken into custody under this section may be detained in a hospital or other suitable facility which is appropriate under the circumstances. The person shall not be detained in a nonmedical facility used for detention of persons charged with or convicted of penal offenses except in extreme emergency or if there are no other reasonable alternatives. The law enforcement officer who detained the person shall immediately notify the person responsible for the care and custody of the detained person, if known, of the time and place of detention.

(e) The law enforcement officer or examiner who initially detained the person shall make a written statement of the facts of the emergency detention. A copy of the statement shall be given to the detained person and to any subsequent examiner.

(f) When a person is detained under emergency circumstances, treatment may be given during the emergency detention period if the person voluntarily and knowingly consents. The parent or guardian of a minor or incompetent person may consent to

treatment. Treatment may be given without the consent of the detained person or his parent or guardian when treatment is limited to diagnosis or evaluation or when treatment is necessary to prevent immediate and serious physical harm to the person or others. Prior to treatment, the person shall be fully advised of the scope of treatment, and a report of the treatment shall be filed with the court if involuntary hospitalization proceedings are commenced. An examiner or a physician who provides treatment in good faith pursuant to this subsection shall be immune from civil liability for the treatment except there shall be no immunity from liability for negligent acts or deliberate misconduct.

(g) At the time of emergency detention the person shall be informed orally and in writing of his right to contact his family and an attorney, of his right to appointed counsel if he is indigent, of his right to remain silent and that his statements may be used as a basis for involuntary hospitalization.

(h) When a person is detained in emergency detention and an application for involuntary hospitalization is filed, the court shall appoint an attorney to represent the detained person unless he has his own attorney, and the court shall conduct a hearing within seventy-two (72) hours, excluding Saturdays, Sundays and legal holidays, of the initial detention to determine whether continued detention is required pending involuntary hospitalization proceedings. Notice of the preliminary hearing shall be given to the detained person and his attorney. The court may delay the hearing only at the request of the detained person or his parent, guardian or his attorney.

(j) At the hearing the court shall advise the detained person and his parent, guardian or attorney of the contents of the written statement of emergency detention required in subsection (e) of this section and the application for involuntary hospitalization.

(k) The standard of proof in an emergency detention hearing shall be by a preponderance of the evidence. If the court finds at an emergency detention hearing that:

(i) The person is not mentally ill, the court shall order the person released;

(ii) The person is mentally ill and has applied for voluntary admission, the court may dismiss the proceedings; or

(iii) The person is mentally ill, it shall order continued detention of the person for not more than ten (10) days. The court may extend the detention period at the request of the proposed patient or his attorney.

(m) If the court finds the person is mentally ill pursuant to paragraph (k)(iii) of this section, the court shall make findings as to the person's competence to make informed choices regarding treatment and the person's need for prescribed psychotropic medication. If the court finds the person incompetent to make an informed decision, the court may order the administration of prescribed psychotropic medication for the period of the emergency detention for restabilization of the person's mental health.

Montana

53-21-129. Emergency situation -- petition -- detention. (1) When an emergency situation exists, a peace officer may take any person who appears to have a mental disorder and to present an imminent danger of death or bodily harm to the person or to others into custody only for sufficient time to contact a professional person for emergency evaluation. If possible, a professional person should be called prior to taking the person into custody.

(2) If the professional person agrees that the person detained is a danger to the person or to others because of a mental disorder and that an emergency situation exists, then the person may be detained and treated until the next regular business day. At that time, the professional person shall release the detained person or file findings with the county attorney who, if the county attorney determines probable cause to exist, shall file the petition provided for in 53-21-121 through 53-21-126 in the county of the respondent's residence. In either case, the professional person shall file a report with the court explaining the professional person's actions.

(3) The county attorney of a county may make arrangements with a federal, state, regional, or private mental facility or with a mental health facility in a county for the detention of persons held pursuant to this section. If an arrangement has been made with a facility that does not, at the time of the emergency, have a bed available to detain the person at that facility, the person may be transported to the state hospital or to a behavioral health inpatient facility, subject to 53-21-193 and subsection (4) of this section, for detention and treatment as provided in this part. This determination must be made on an individual basis in each case, and the professional person at the local facility shall certify to the county attorney that the facility does not have adequate room at that time.

(4) Before a person may be transferred to the state hospital or to a behavioral health inpatient facility under this section, the state hospital or the behavioral health inpatient facility must be notified prior to transfer and shall state whether a bed is available for the person. If the professional person determines that a behavioral health inpatient facility is the appropriate facility for the emergency detention and a bed is available, the county attorney shall direct the person to the appropriate facility to which the person must be transported for emergency detention.

Alaska

Sec. 47.30.705. Emergency detention for evaluation.

(a) A peace officer, a psychiatrist or physician who is licensed to practice in this state or employed by the federal government, or a clinical psychologist licensed by the state Board of Psychologist and Psychological Associate Examiners who has probable cause to believe that a person is gravely disabled or is suffering from mental illness and is likely to cause serious harm to self or others of such immediate nature that considerations of safety do not allow initiation of involuntary commitment procedures set out in AS 47.30.700, may cause the person to be taken into custody and delivered to the nearest evaluation facility. A person taken into custody for emergency evaluation may not be

placed in a jail or other correctional facility except for protective custody purposes and only while awaiting transportation to a treatment facility. However, emergency protective custody under this section may not include placement of a minor in a jail or secure facility. The peace officer or mental health professional shall complete an application for examination of the person in custody and be interviewed by a mental health professional at the facility.

(b) In this section, "minor" means an individual who is under 18 years of age.

Sec. 47.30.710. Examination; hospitalization.

(a) A respondent who is delivered under AS 47.30.700 - 47.30.705 to an evaluation facility for emergency examination and treatment shall be examined and evaluated as to mental and physical condition by a mental health professional and by a physician within 24 hours after arrival at the facility.

(b) If the mental health professional who performs the emergency examination has reason to believe that the respondent is (1) mentally ill and that condition causes the respondent to be gravely disabled or to present a likelihood of serious harm to self or others, and (2) is in need of care or treatment, the mental health professional may hospitalize the respondent, or arrange for hospitalization, on an emergency basis. If a judicial order has not been obtained under AS 47.30.700, the mental health professional shall apply for an ex parte order authorizing hospitalization for evaluation.

Sec. 47.30.715. Procedure after order.

When a facility receives a proper order for evaluation, it shall accept the order and the respondent for an evaluation period not to exceed 72 hours. The facility shall promptly notify the court of the date and time of the respondent's arrival. The court shall set a date, time, and place for a 30-day commitment hearing, to be held if needed within 72 hours after the respondent's arrival, and the court shall notify the facility, the respondent, the respondent's attorney, and the prosecuting attorney of the hearing arrangements. Evaluation personnel, when used, shall similarly notify the court of the date and time when they first met with the respondent.

Sec. 47.30.720. Release before expiration of 72-hour period.

If at any time in the course of the 72-hour period the mental health professionals conducting the evaluation determine that the respondent does not meet the standards for commitment specified in AS 47.30.700, the respondent shall be discharged from the facility or the place of evaluation by evaluation personnel and the petitioner and the court so notified.

Minnesota

Subdivision 1. Emergency hold.

(a) Any person may be admitted or held for emergency care and treatment in a treatment facility with the consent of the head of the treatment facility upon a written statement by an examiner that:

(1) the examiner has examined the person not more than 15 days prior to admission;

(2) the examiner is of the opinion, for stated reasons, that the person is mentally ill, developmentally disabled, or chemically dependent, and is in danger of causing injury to self or others if not immediately detained; and

(3) an order of the court cannot be obtained in time to prevent the anticipated injury.

(b) If the proposed patient has been brought to the treatment facility by another person, the examiner shall make a good faith effort to obtain a statement of information that is available from that person, which must be taken into consideration in deciding whether to place the proposed patient on an emergency hold. The statement of information must include, to the extent available, direct observations of the proposed patient's behaviors, reliable knowledge of recent and past behavior, and information regarding psychiatric history, past treatment, and current mental health providers. The examiner shall also inquire into the existence of health care directives under chapter 145, and advance psychiatric directives under section 253B.03, subdivision 6d.

(c) The examiner's statement shall be: (1) sufficient authority for a peace or health officer to transport a patient to a treatment facility, (2) stated in behavioral terms and not in conclusory language, and (3) of sufficient specificity to provide an adequate record for review. If danger to specific individuals is a basis for the emergency hold, the statement must identify those individuals, to the extent practicable. A copy of the examiner's statement shall be personally served on the person immediately upon admission and a copy shall be maintained by the treatment facility.

Subd. 2. Peace or health officer authority.

(a) A peace or health officer may take a person into custody and transport the person to a licensed physician or treatment facility if the officer has reason to believe, either through direct observation of the person's behavior, or upon reliable information of the person's recent behavior and knowledge of the person's past behavior or psychiatric treatment, that the person is mentally ill or developmentally disabled and in danger of injuring self or others if not immediately detained. A peace or health officer or a person working under such officer's supervision, may take a person who is believed to be chemically dependent or is intoxicated in public into custody and transport the person to a treatment facility. If the person is intoxicated in public or is believed to be chemically dependent and is not in danger of causing self-harm or harm to any person or property, the peace or health officer may transport the person home. The peace or health officer shall make written application for admission of the person to the treatment facility. The application

shall contain the peace or health officer's statement specifying the reasons for and circumstances under which the person was taken into custody. If danger to specific individuals is a basis for the emergency hold, the statement must include identifying information on those individuals, to the extent practicable. A copy of the statement shall be made available to the person taken into custody.

(b) As far as is practicable, a peace officer who provides transportation for a person placed in a facility under this subdivision may not be in uniform and may not use a vehicle visibly marked as a law enforcement vehicle.

(c) A person may be admitted to a treatment facility for emergency care and treatment under this subdivision with the consent of the head of the facility under the following circumstances: (1) a written statement shall only be made by the following individuals who are knowledgeable, trained, and practicing in the diagnosis and treatment of mental illness or developmental disability; the medical officer, or the officer's designee on duty at the facility, including a licensed physician, a registered physician assistant, or an advanced practice registered nurse who after preliminary examination has determined that the person has symptoms of mental illness or developmental disability and appears to be in danger of harming self or others if not immediately detained; or (2) a written statement is made by the institution program director or the director's designee on duty at the facility after preliminary examination that the person has symptoms of chemical dependency and appears to be in danger of harming self or others if not immediately detained or is intoxicated in public.

Subd. 2b. Notice.

Every person held pursuant to this section must be informed in writing at the time of admission of the right to leave after 72 hours, to a medical examination within 48 hours, and to request a change to voluntary status. The treatment facility shall, upon request, assist the person in exercising the rights granted in this subdivision.

Subd. 3. Duration of hold.

(a) Any person held pursuant to this section may be held up to 72 hours, exclusive of Saturdays, Sundays, and legal holidays after admission. If a petition for the commitment of the person is filed in the district court in the county of the person's residence or of the county in which the treatment facility is located, the court may issue a judicial hold order pursuant to section 253B.07, subdivision 2b.

(b) During the 72-hour hold period, a court may not release a person held under this section unless the court has received a written petition for release and held a summary hearing regarding the release. The petition must include the name of the person being held, the basis for and location of the hold, and a statement as to why the hold is improper. The petition also must include copies of any written documentation under subdivision 1 or 2 in support of the hold, unless the person holding the petitioner refuses to supply the documentation. The hearing must be held as soon as practicable and may be conducted by means of a telephone conference call or similar method by which the participants are able to simultaneously hear each other. If the court decides to release the person, the court

shall direct the release and shall issue written findings supporting the decision. The release may not be delayed pending the written order. Before deciding to release the person, the court shall make every reasonable effort to provide notice of the proposed release to:

(1) any specific individuals identified in a statement under subdivision 1 or 2 or individuals identified in the record who might be endangered if the person was not held;

(2) the examiner whose written statement was a basis for a hold under subdivision 1; and

(3) the peace or health officer who applied for a hold under subdivision 2.

(c) If a person is intoxicated in public and held under this section for detoxification, a treatment facility may release the person without providing notice under paragraph (d) as soon as the treatment facility determines the person is no longer a danger to themselves or others. Notice must be provided to the peace officer or health officer who transported the person, or the appropriate law enforcement agency, if the officer or agency requests notification.

(d) If a treatment facility releases a person during the 72-hour hold period, the head of the treatment facility shall immediately notify the agency which employs the peace or health officer who transported the person to the treatment facility under this section.

(e) A person held under a 72-hour emergency hold must be released by the facility within 72 hours unless a court order to hold the person is obtained. A consecutive emergency hold order under this section may not be issued.

Subd. 4. Change of status.

Any person admitted pursuant to this section shall be changed to voluntary status provided by section 253B.04 upon the person's request in writing and with the consent of the head of the treatment facility.

**Testimony
Senate Bill 2421
Senate Judiciary Committee
Senator Dave Nething, Chairman
February 4, 2009**


Chairman Nething and members of the Committee: my name is Carlotta McCleary. I am the Executive Director of ND Federation of Families for Children's Mental Health (NDFFCMH). NDFFCMH is a parent run advocacy organization that focuses on the needs of children and youth with emotional, behavioral and mental disorders and their families, from birth through transition to adulthood.

According to The President's New Freedom Commission on Mental Health, nearly every consumers of mental health services who testified before or submitted public comments to the Commission expressed the need to fully participate in his or her plan for recovery. In the case of children with serious emotional disturbances, their parents strongly echoed this sentiment. Consumers and families told the commission that having hope and the opportunity to regain control of their lives was vital to their recovery. Emerging research has validated that hope and self determination are important factors contributing to recovery.

NDFFCMH believes that involuntary treatment in an in-patient setting should only occur as a last resort and should be limited to a response to an emergency, and then only when based on a standard of imminent danger of significant physical harm to self or others and when there is no less restrictive alternative. Civil commitment requires a meaningful judicial process to protect the individual's rights.

NDFFCMH has concerns with the addition of an evaluation of a respondent's mental status by a physician. We believe the evaluation needs to be conducted as it currently is done by a psychiatrist or psychologist. Experts should do the evaluations due to the seriousness of a civil commitment.

NDFFCMH is also concerned with increasing the hours that an individual can be held in anticipation of conveyance to a public treatment facility from twenty-three to seventy-two hours. We believe the proposed changes will significantly limit an individual's rights. NDFFCMH



urges you to prioritize the individual's rights over the providers needs by maintaining the current safeguards that are in place.

Thank you for your time.

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TESTIMONY IN FAVOR OF SB 2421

March 16, 2009, by Gary E. Euren - Cass County Assistant State's Attorney

As part of my duties with the Cass County State's Attorney's office, I, as part of a team, represent the State in involuntary commitment cases. The team also conducts training sessions for providers of mental health and chemical dependency treatment. Before becoming a prosecutor, I was a contract defense attorney in Grand Forks County. One of my duties was to represent respondents in involuntary commitment proceedings. I also have personal experience dealing with these issues as a result of growing up in a family with an alcoholic father, and, as an adult, initiating proceedings to involuntarily commit my sister who is schizophrenic.

During a training last fall with staff from Innovis Hospital and Prairie St. John's Hospital, it came to our attention that there are some language placement problems with the relevant statutes and that procedures for emergency commitment sometimes put up roadblocks for effective and timely treatment. This resulted in the original SB 2421 that was introduced for consideration by the Legislature.

Unfortunately, these issues came up very close to the beginning of this legislative session. There was no time for input from all parties. At the Senate Judiciary Committee hearing, a number of objections were put forth regarding allowing a physician to conduct mental health examinations in an emergency situation and with the extension of time for conducting such an examination. The bill was amended in the Senate and, in its current form, calls for an interim study to explore these issues.

An amendment has been proposed to return the provision that shifts some language from the definition section of the statutes to the procedure portion of the statutes. No language is lost, changed, or added with this amendment. It simply takes verbiage that is not needed for the

definitions and puts them in a place that sets forth procedures in order to make those procedures more clearly understood. A reading of the procedure statutes in their current form causes confusion, unless one knows to go to the definition section. It is not logically clear from the language of the statutes that there would be more clarifying language in another part of the statutes. Adopting this amendment will facilitate the work of the Courts, prosecutors offices, and treatment providers by making the statutes more clear and user friendly.

Unfortunately, due to the tight time frame the other changes to this bill - physicians conducting exams and the time extension - have been dropped. I believe they are necessary for the prompt and accurate treatment of those who are suffering from mental health or chemical dependency issues at the same time that an extremely serious medical issue has arisen. I do understand the concerns of those opposed to these provisions. Because of that I am not advocating that they be returned to the current bill. I do urge, however, that the interim study be approved. It is intended to investigate these issues with the intent that a bill be introduced in the next legislative session in order to address these issues.

My specific concern has to do with a situation where a person is brought to an emergency room of a facility that does not have the necessary facilities to treat, in house, mental health or chemical dependency issues for patients with very serious medical issues. Due to the current constraints of the law, it is possible that such a person could end up leaving the facility against medical advise without being fully treated for the medical issues, nor having had the mental health or chemical dependency issues addressed because the decision to leave is being made while in the throes of the mental illness or addiction.