

TESTIMONY FOR JUDICIAL PROCESS COMMITTEE
MENTAL HEALTH STUDY

Thank you for allowing me to submit written testimony relative to NDCC Chapter 25-03.1 – Commitment Procedures. I would like to provide the committee with a little background as to my experience with North Dakota's commitment procedures.

I served as an Assistant State's Attorney in and for Grand Forks County from 1988 through 2004. During the majority of that time period, I was the primary prosecutor involved in the committal of persons in the county requiring involuntary treatment. Subsequently, I was elected to the position of District Court Judge in the Northeast Central Judicial District and took office in 2005. Between 2005 and 2008, I served as judge in numerous mental health commitments. I have been on the criminal calendar since 2008 and have not presided over mental health commitments during the past two years.

Over the years during which I have been involved with mental health commitments, I have worked with numerous agencies and providers such as the Northeast Human Service Center, Centre Incorporated, the North Dakota State Hospital, local hospitals, physicians including psychiatrists, psychologists, nurse practitioners, and licensed addiction counselors. Additionally, I have relied on the Grand Forks County Sheriff's Office and other local law enforcement to assist in responding to emergencies and transporting patients.

For a number of years, representatives of the various disciplines, listed above, met on a quarterly basis to discuss local issues concerning commitment procedures. Not only did this group resolve numerous issues, but there was also a spirit of cooperation which was then reflected in our work in this area of the law.

In preparation for this testimony, I also had a recent meeting with legislator Chris Griffin, Northeast Human Service Center staff members and representatives of the Grand Forks County State's Attorney's Office. We discussed areas of concerns and offered suggestions to improve the commitment process.

Overall, I believe that our commitment procedures as codified in NDCC Chapter 25-03.1 serve the community and the persons in need of treatment very well. However, there are several areas that I would recommend to this committee for study.

Definition of Expert Examiner – NDCC 25-03.1-02(7) in conjunction with NDCC 25-03.1-17 – Right to Preliminary Hearing. Physicians and psychiatrists, at times, rely on physician's assistants, registered clinical nurse specialists or nurse practitioners to assist in the evaluation and treatment of a patient/client.

I would suggest that this committee consider expanding the definition of expert examiner to include physician's assistants, registered clinical nurse specialist or nurse practitioners acting

under the direction of a licensed physician, psychiatrist or psychologist trained in a clinical program for the purpose of testifying as an expert at the **preliminary hearing only**.

Court-authorized involuntary treatment with prescribed medication – NDCC 25-03.1-18.1. If there is an emergency detention, the respondent has a right to a preliminary hearing in accordance with NDCC 25-03.1-17. If the court finds probable cause to believe the respondent is a person requiring treatment, the respondent may be ordered to undergo treatment for up to 14 days. If involuntary treatment beyond the 14 days is sought, then the respondent has a right to a treatment hearing.

The initial 14 day treatment period allowed by NDCC 25-03.1-17 can be critical to the recovery of the respondent, if treated with the correct medication. The respondent is often not capable of making an informed choice. Therefore, I would recommend that this committee consider amending NDCC 25-03.1-18.1(1)(a) to allow the request for involuntary treatment with prescribed medication to be made at either the preliminary and/or treatment hearing. All of the other requirements of NDCC 25-03.1-17 should remain in place including the **clear and convincing evidentiary requirement**.

Involuntary Treatment – Examination- NDCC 25-03.1-11(1). A portion of this section addresses the issue of when a respondent is taken into custody under emergency treatment provisions and requires that the examination must be conducted within **24** hours exclusive of holidays. During our recent meeting referenced above, there was some discussion of extending this examination period from 24 to 48 hours. However, it is my position that extending this period to 48 hours may be too great of an infringement on a person's rights and also considering the fact that holidays are already exempted from this time period. It has been my experience that treatment providers generally examine patients/respondents who are taken into emergency custody the same day that they are brought in.

Once again, thank you for allowing me to participate in this legislative process. If you have any questions, please feel free to contact me at my office. Phone – 701-787-2730 or email sclapp@ndcourts.gov.

Sincerely yours,



Sonja Clapp, District Judge
Northeast Central Judicial District

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