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Presentation to the North Dakota Judicial Process Committee
Regarding Involuntary Mental Health Commitment Procedures Study

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Chairwoman Meyer and Members of the Judicial Process Committee,

It is an honor and a privilege to speak before you today regarding issues and concerns with the state's mental health commitment procedures and availability of psychiatric services in the state.

I am Dr. Emmet Kenney, and I am CEO of Prairie St. John's. What's my expertise on the subject? I have been practicing in North Dakota for 14 years. My training started at Creighton University's Medical School in 1982 and I conducted Psychiatric Residency training at the University of Minnesota and Child & Adolescent Psychiatric Fellowship training at the University of Oklahoma. I established a solo practice in Nebraska before moving here to be in my wife's home state. I am a co-founder of Prairie St. John's, the state's largest community-based provider of psychiatric and addictions services. I have been involved in the education of Psychiatric Residents in training and Medical Students since 1988. In addition, I serve as the psychiatrist for the U.S. Conference of Catholic Bishops' National Review Board which addresses issues of sexual abuse by priests.

As a General and Child and Adolescent Psychiatrist, my expertise and experience is in working with adults as well as children and adolescents. At Prairie St. John's, we are proud to have been part of developing and improving healthcare systems for these

populations in this state. It has given us a very informed perspective on where North Dakota currently is, and what could be done for further improvement.

The state's mental health commitment procedures are in **CHAPTER 25-03.1** of the **North Dakota Century Code**. The Chapter begins with stipulating why Mental Health Commitments are necessary:

25-03.1-01. Legislative intent. The provisions of this chapter are intended by the legislative assembly to:
1. Provide prompt evaluation and treatment of persons with serious mental disorders or chemical dependency.
2. Safeguard individual rights.
3. Provide continuity of care for persons with serious mental disorders or chemical dependency.
4. Encourage the full use of all existing agencies, professional personnel, and public funds to prevent duplication of services and unnecessary expenditures.
5. Encourage, whenever appropriate, that services be provided within the community.

It defines a "person requiring treatment":

25-03.1-02. Definitions

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12. "Person requiring treatment" means a person who is mentally ill or chemically dependent, and there is a reasonable expectation that if the person is not treated for the mental illness or chemical dependency there exists a serious risk of harm to that person, others, or property. "Serious risk of harm" means a substantial likelihood of:
a. Suicide, as manifested by suicidal threats, attempts, or significant depression relevant to suicidal potential;
b. Killing or inflicting serious bodily harm on another person or inflicting significant property damage, as manifested by acts or threats;
c. Substantial deterioration in physical health, or substantial injury, disease, or death, based upon recent poor self-control or judgment in providing one's shelter, nutrition, or personal care; or
d. Substantial deterioration in mental health which would predictably result in dangerousness to that person, others, or property, based upon evidence of objective facts to establish the loss of cognitive or volitional control over the person's thoughts or actions or based upon acts, threats, or patterns in the person's treatment history, current condition, and other relevant factors, including the effect of the person's mental condition on the person's ability to consent.

The statutes proceed to outline the detention of a person reasonably suspected of being mentally ill, chemically dependent or both and for who it appears treatment is

emergently indicated and when it is not practical to bring the issue to a court or magistrate first. The first step is often referred to as an "emergency hold" and the second step is referred to as an "expert examination" leading to an "examiner's report".

25-03.1-25. Detention or hospitalization - Emergency procedure.
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1. When a peace officer, physician, psychiatrist, psychologist, or mental health professional has reasonable cause to believe that an individual is a person requiring treatment and there exists a serious risk of harm to that person, other persons, or property of an immediate nature that considerations of safety do not allow preliminary intervention by a magistrate, the peace officer, physician, psychiatrist, psychologist, or mental health professional, using the screening process set forth in section 25-03.1-04, may cause the person to be taken into custody and detained at a treatment facility as provided in subsection 3, and subject to section 25-03.1-26, except that if emergency conditions exist that prevent the immediate conveyance of the individual to a public treatment facility, a private facility that has adequate resources and capacity to hold that individual may hold the individual in anticipation of conveyance to a public treatment facility for **up to twenty-three hours** *(emphasis added)*:
a. Without conducting an immediate examination required under section 25-03.1-26; and
b. Without following notice and hearing requirements for a transfer to another treatment facility required under subsection 3 of section 25-03.1-34.

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3. Detention under this section may be:
a. In a treatment facility where the director or superintendent must be informed of the reasons why immediate custody has been ordered. The facility may provide treatment that is necessary to preserve the respondent's life or to appropriately control behavior by the respondent which is likely to result in physical injury to self or to others if allowed to continue, but may not otherwise provide treatment to the respondent without the respondent's consent; or
b. In a public or private facility in the community which is suitably equipped and staffed for the purpose. Detention in a jail or other correctional facility may not be ordered except in cases of actual emergency when no other secure facility is accessible, and then only for a period of not more than twenty-four hours and under close supervision.

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

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25-03.1-26. Emergency procedure - Acceptance of petition and individual - Notice - Court hearing set.
1. A public treatment facility immediately shall accept and a private treatment facility may accept on a provisional basis the application and the person admitted under section 25-03.1-25. The superintendent or director shall require an immediate examination of the subject and, within twenty-four hours after admission, shall either release the person if the superintendent or director finds that the subject does not meet the emergency commitment standards or file a petition if one has not been filed with the court of the person's residence or the court which directed immediate custody under subsection 2 of section 25-03.1-25, giving notice to the court and stating in detail the circumstances and facts of the case.

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25-03.1-06. Right to release on application - Exception - Judicial proceedings. Any person voluntarily admitted for inpatient treatment to any treatment facility or the state hospital must be orally advised of the right to release and must be further advised in writing of the rights under this chapter. A voluntary patient who requests release must be immediately released. However, if the superintendent or the director determines that the patient is a person requiring treatment, the release may be postponed until judicial proceedings for involuntary treatment have
been held in the county where the hospital or facility is located. The patient must be served the petition within twenty-four hours, exclusive of weekends and holidays, from the time release is requested, unless extended by the magistrate for good cause shown. The treatment hearing must be held within seven days from the time the petition is served.
25-03.1-07. Involuntary admission standards. A person may be involuntarily admitted under this chapter to the state hospital or another treatment facility only if it is determined that the individual is a person requiring treatment.

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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.

I would like to identify problems with the current statutes when people become the focus of a commitment process.

One Problem is having an expert examiner available to examine the patient within 23 hours of an emergency hold being placed due to the differing locations of the patients and the examiners:

Many times a person is brought to emergent health care setting that does not have a psychiatrist or psychologist to do an expert examination. They are brought there for immediate safety and to access psychiatric hospitalization.

Sometimes a person is brought to an emergent health care setting because they 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 needing wound repair after intentionally stabbing oneself or assessing possible fractures after a car accident related to alcohol intoxication. 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. An emergency hold can be placed by peace officers, physicians, etc, when the patient appears to be potentially dangerous and is not agreeing to allow further evaluation and treatment.

Problems arise, however, in trying to get an expert examination conducted with 23 hours.

North Dakota is a predominantly rural state. According to the North Dakota Medical Association, there are 107 Psychiatrists in the state. They are all located in 8 communities. I have added the county and population for these cities.

Location of Psychiatrists in North Dakota

Psychiatrists	City	County	Population
66	Fargo/West Fargo	Cass	137,582
13	Bismarck	Burleigh	77,316
8	Grand Forks	Grand Forks	66,983
8	Minot	Ward	55,927
7	Jamestown	Stutsman	20,480
2	Devils Lake	Ramsey	11,189
2	Belcourt	Rolette	13,665
1	Williston	Williams	19,540
Total 107	8	8	402,682

According to the North Dakota Board of Psychology Examiners List of Psychologists there are 170 psychologists in the state.

Location of Psychologists in North Dakota

Psychologists	City	County	Population
52	Fargo/West Fargo	Cass	137,582
46	Grand Forks	Grand Forks	66,983
21	Bismarck	Burleigh	77,316
18	Minot	Ward	55,927
12	Jamestown	Stutsman	20,480
6	Dickinson	Stark	22,458
3	Belcourt	Rolette	13,665
3	Devils Lake	Ramsey	11,189
2	Williston	Williams	19,540
1	Ardoch	Walsh	11,011
1	Bottineau	Bottineau	6,409
1	Carrington	Foster	3,470
1	Hettinger	Hettinger	2,427
1	Lawton	Ramsey	11,189 *
1	Mandan	Morton	25,926
1	Wahpeton	Richland	16,498
Total 170	16	16	490,881
		Total beyond above table	88,191

Lighter font signifies county populations previously counted

2007 US Census Estimates: Population of North Dakota	639,715
Population of counties with a psychiatrist or psychologist in them	490,881
% of ND Population living in counties *without* a psychiatrist or psychologist	23%

However, according to the North Dakota Healthcare Association, there are 55 hospitals in North Dakota. When we look at the Cities with a hospital that have a psychiatrist, psychologist or both, we find:

Hospitals with a psychiatrist or psychologist in their city

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	Belcourt	2	3
1	Bottineau		1
1	Carrington		1
1	Devils Lake	2	3
1	Dickinson		6
1	Hettinger		1
1	Mandan		1
1	Williston	1	2
Total 25	13	107	167

Hospitals without a psychiatrist or psychologist in their city

Hospitals	City	Psychiatrists	Psychologists
1	Ashley		
1	Bowman		
1	Cando		
1	Cavalier		
1	Cooperstown		
1	Crosby		
1	Elgin		
1	Fort Yates		
1	Garrison		
1	Grafton		
1	Harvey		
1	Hazen		
1	Hillsboro		
1	Kenmare		
1	Langdon		
1	Linton		
1	Lisbon		
1	Mayville		
1	McVille		
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	Wishek		
Total 31	31	0	0

% of hospitals *without* a psychiatrist or psychologist living in their city: **55%** (25/56)

% of cities with hospitals but *without* a psychiatrist or psychologist living there: **70%** (31/44)

% of counties *without* a psychiatrist or psychologist living there: **70%** (37/53)

As you can see, there is a heavy concentration of people that meet the criteria for "expert examiner" in a few cities which often have multiple hospitals, while the majority of cities and hospitals have none.

Another problem is the capacity and availability of beds in treatment centers.

There are times when voluntary and involuntary 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 coordination with the other care provider systems for available beds and arrange for transportation.

At Prairie St. John's, we continue to experience 2-5 day delays beds being available to transfer patients to the North Dakota State Hospital and are averaging 3-5 patients a day on the waiting list for bed availability. We are advised the State Hospital is full.

When we are full, we either refer patients to other settings or, if they are stable enough to await admission, place them on an admissions list. Current patients need to be stabilized sufficiently to be appropriately discharged before we can admit new ones. This may take days. When there is 23 hours from the initiation of the hold to start the expert examination and determine whether or not to release someone and there are issues of the time needed to coordinate care location and have an available bed, this creates major

problems. We have at times needed to decline accepting a patient for admission because we would not be able to examine them within the 23 hours from initiation of the hold.

Transportation is a key issue that can prevent conducting an expert examination within 23 hours.

When transfers occur, the deadline is still set by the timing of when the emergency hold was placed. Even when a bed is available, it takes time to coordinate the referral and arrange and then conduct the transportation. For the majority of hospitals where they do not have a psychologist or psychiatrist in their city, this always means transportation. Even though the recent changes to the commitment statutes make it easier to understand that any physician qualifies as an expert examiner, the reality is that most non-psychiatric physicians are very reluctant to function in this regard and the hospitals that do not have psychiatric units are also reluctant to have patients committed to them for mental health or addictions treatment.

The nature of transportation itself is that it is subject to availability of resources to transport and weather conditions that can make transportion hazardous.

In my experience, transportation is most often conducted by County Sheriffs. For the potentially dangerous patient, there needs to be a secure transport experience. There can be delays in transportation due to snow emergencies, flooding, severe rain storms, icy conditions, weekends and holidays, and times when there are other events that require the devotion of Sheriff's resources, when they do not have enough resources to transport, and concerns over the safety of the patient on the way due to their level of agitation. These are very predictable situations in North Dakota. The next time you hear testimony about how someone was not evaluated within 24 hours, I encourage you to ask questions about the circumstances involved: What was the weather like? What was the availability of resources?

These problems are also faced by our neighboring states. Their statutes dealing with these issues are as follows:

Minnesota

A Peace or Health Officer may place the patient on an emergency hold. Initial Examination must occur within 48 hours. A petition for commitment must be filed within 72 hours, exclusive of weekends and holidays. It stipulates psychiatrists, and psychologists as expert examiners. (Two-step process like North Dakota).

South Dakota

Peace Officers may apprehend a person they consider possibly mentally ill and representing a danger. A "Qualified Mental Health Professional", which is defined as a Licensed Psychologist, a Psychiatric Nurse with a master's degree from an accredited education program and two years of supervised clinical experience in a mental health setting, a Certified Social Worker with a master's degree from an accredited training program and two years of supervised clinical experience in a mental health setting, a Mental Health Counselor, Professional Counselor, or Marriage and Family Therapist, examines the patient within 24 hours and makes a petition to the County Board for treatment. (One-step process). The county hearing must occur within 5-8 days, considering holidays and weekends.

Montana

A Peace Officer may detain a patient for an examination by a "Professional Person" which includes a Medical Doctor; an Advanced Practice Registered Nurse with a Clinical Specialty in Psychiatric Mental Health Nursing, a Licensed Psychologist or a Licensed Clinical Social Worker. A report must be completed within 1 working day. (One-step process). The county hearing must occur within 5 days.

So, Minnesota is like North Dakota in requiring a two-step process of an initial emergency hold and then an expert examination, but allows 72 hours exclusive of

weekends and holidays for that examination. Montana and South Dakota only require the equivalent of an emergency hold which can be enacted by a broader array of professionals and then proceed directly to a commitment hearing which must be held within up to 5 and up to 8 days, respectively.

Therefore, North Dakota has the most restrictive and time-limited process. We believe other surrounding states have a better grasp of their available resources. We are aware of persons who go to jails over issues of timely expert examination as no facility will accept them when they would arrive after a hold's time requirement.

This is important. 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. That is not good for any of us.

What can we do to improve matters? We recommend the following:

- First, modify the state commitment statutes, preferably to allow 72 hours for expert examination exclusive of weekends or holidays. If not possible in that way, then to allow the current holders of current Qualified Mental Health Professional status to initiate commitments and proceed to court hearings without requiring an additional expert examination within 24 hours.

- Secondly, Allocate more funding to the Department of Human services to contract for beds in psychiatric units (and for larger facilities to contract for inpatient units) with community-based psychiatric centers, to allow for more access closer to home and with more engagement of after-care resources.

I thank you for your time in considering the needs of North Dakota in changing commitment procedures to more closely fit with the availability of resources in our state. I hope to have persuaded you through the data that the majority of facilities do not have

the means to conduct expert examinations as currently required; that the 23 hour time-line is too strict to safely allow for triage, medical stabilization and transportation to other facilities; and that even then, there may not be such availability due to a psychiatric bed shortage in our state. Changing to allow more time for the expert examination and appropriating funding for contracting with community based providers can help facilitate improvements while still ensuring the safety of mentally ill and chemically dependent persons and the people of our communities.

I am happy to address any questions or comments at this time and to offer further testimony in the future if requested.