

2011 SENATE JUDICIARY

SB 2039

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2039
1/10/11
Job #12708

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to those mental health professionals authorized to execute a certificate regarding a continuing treatment order.

Minutes:

There is attached written testimony

Senator Nething – Chairman

Representative Shirley Myer introduced the bill for the Judicial Process committee.

Representative Tim Mathern – See written testimony

Vonette Richter – LC – Reads and explains the changes in the bill. She provides a handout.

Senator Sitte- Asks for an explanation of continuing treatment.

Senator Nething asks for a moment to get that explanation.

Alex Schweitzer – Superintendent of the ND State Hospital – He gives his definition for continuing treatment. It's a petition to the court and the expert examiner makes a determination as to why the person continues to require treatment. It describes the program that will be provided to the patient. Also, what the results will be and the clinical estimate as to how much longer the person will require treatment.

Alex Schweitzer – In favor of passing bill. See written testimony.

Senator Nething – Responds that the problem is that we don't have all the professional people in every county. He asks if a physician and psychiatrist can do this.

Schweitzer – Says yes, this just expands the resources of people that can initiate the certificate and report for continued care.

Senator Nething – Asks if he is satisfied allowing these people to do this.

Schweitzer – Responds yes, within their scope of practice.

Senator Olafson – Asks if this is specific to addiction treatment and not to other areas of mental health.

Schweitzer – Responds that it allows them to bring a certificate forward for addiction but it would allow them in other areas also. There are some issues that it isn't identified in this particular fix as to what the scope of practice would be.

The committee and Mr. Schweitzer discuss scope of practice. Mr. Schweitzer says addiction counselors deal with addiction cases. He does not believe it is going to be a problem.

Senator Sitte – Asks if there is an appeal process.

Schweitzer – Explains the commitment law and the patients' rights.

Senator Nething – Asks if the patient is protected by independent counsel.

Schweitzer – Responds yes, as required by law.

Tim Blasl – ND Hospital Association – In support of this bill.

Dr. Emmet Kenney – Psychiatrist of Prairie St. Johns – ND Hospital Association
Hospitals are in support of this bill. See written testimony.

Mike Reitan – Assistant Chief of Police – West Fargo PD – In support of this bill.
See written testimony.

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

Lisa Hawley – Clinical Social Worker – See written testimony. Would like to see an amendment adding in licensed independent clinical social workers.

Senator Nething – Asks if having licensed addiction counselors present would make a difference.

Hawley - Said it would help but she understands licensed addiction counselors would be able to make that recommendation for those who are seeking addiction treatment. She said mental health counselors would make recommendations on mental health issues.

Senator Olafson – Says he is concerned about expanding this to multiple trained professionals in areas where they don't have the right expertise to deal with the issue at hand.

Hawley – Explains there are times that it is a mental health concern and there are not other people available and it is not necessarily addiction. An addiction counselor may not have the expertise if it were in mental health. She thinks the law is very vague.

Nancy Miller – Executive Director of the ND Chapter of the National Association of Social Workers. In support of this bill. See written testimony.

Senator Sorvaag – Asks her to clarify who she wants included.

Miller – Responds, only in their own area of expertise.

Mike Mullen – Assistant Attorney General – Legal Council to the State Hospital. Adds comment about legal counsel provided to the patient. Every patient has the right to legal counsel. He thinks there are procedural practices in place so there would be objection and the court would not let an addiction counselor testify about whether a person needs treatment for mental illness. He points out that under existing law 2503.1 addiction counselors are authorized to serve as expert witnesses.

Senator Olafson – Asks his opinion on adding licensed independent social worker to the list.

Mullen – Defers to the Superintendent on that question.

Opposition

Corinne Hofmann – Director of Policy and Operations for the Protection and Advocacy Project. See written testimony.

Senator Olafson – Asks if an amendment was added would she then be in favor.

Hofmann – Responds yes and explains her concern of broadening the scope. Thinks this should be approached with caution.

Senator Nething said he understands their apprehension on the initial treatment, but this is for continuation of treatment.

Close the hearing on 2039

Senator Nething asks for an interim legislative study resolution. They could then get the pros and cons.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2039
1/26/11
Job #13501

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to those mental health professionals authorized to execute a certificate regarding a continuing treatment order.

Minutes:

Senator Nething – Chairman

The committee discusses support of mental health professionals being able to execute a continuing treatment order. They discuss adding an amendment to include license social workers and making it only for chemical dependency issues. Senator Nething said when someone offers testimony and their not here there is no chance of asking questions. Senator Lyson thinks the judges should make the decisions. Senator Nething said he wouldn't support an amendment that comes before him and explains his reasons. Senator Sitte asks if the treatment counselors would be acting out of their scope of practice. Senator Nething says this does not deal with the treatment only the request for continued treatment.

Senator Lyson motions for a do pass
Senator Olafson seconds

Roll call vote – 6 yes, 0 no

Senator Sorvaag will carry

Date: 1/26
Roll Call Vote # 7

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2039

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By S. Lyson Seconded By S. Olafson

Senators	Yes	No	Senators	Yes	No
Dave Nething - Chairman	X		Carolyn Nelson	X	
Curtis Olafson - V. Chairman	X				
Stanley Lyson	X				
Margaret Sitte	X				
Ronald Sorvaag	X				

Total (Yes) 6 No 0

Absent _____

Floor Assignment S. Sorvaag

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

REPORT OF STANDING COMMITTEE

SB 2039: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2039 was placed on the
Eleventh order on the calendar.

2011 HOUSE JUDICIARY

SB 2039

2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

SB 2039
March 2, 2011
14819

☐ Conference Committee

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on SB 2039.

Rep. Shirley Meyer: This bill comes from the Interim Judicial Process Committee. Vonette Richter is in training and couldn't be here (see attached 1).

Rep. Delmore: Do we need to put an emergency clause on this bill, would that be a good idea.

Rep. Meyer: That's an excellent idea and that would be a wonderful amendment to it.

Chairman DeKrey: Thank you. Further testimony in support of SB 2039.

Alex Schweitzer, Superintendent of the ND State Hospital, ND Developmental Center of the Dept. of Human Services: (see attached 2). I believe that adding the same amendment that was added to HB 1110, in regard to professional scope of practice specific to what licensed addicting counselor can do would be a good addition to the bill.

Rep. Koppelman: What is the scope of practice of an addiction counselor, what is their training?

Alex Schweitzer: Basically we're saying that when they testify or present a report, they are doing it within their training as a licensed addiction counselor; that's their expertise in the treatment of people with substance abuse.

Rep. Koppelman: The implication, then, would be that somehow it could be misused otherwise, that they could do it in other areas, but I don't know why you would have an addiction counselor do it.

Alex Schweitzer: That was a concern when they looked at HB 1110. It just clarifies it. If you were in court testifying and the defense council for a particular patient,

didn't believe they had the expertise, they would probably object to that testimony. They felt in the House that it would be clearer if we just extended the fact that this is their scope of practice; psychiatrists have a scope of practice; and psychologists have a scope of practice.

Rep. Koppelman: I assume that was the Human Services Committee.

Alex Schweitzer: Yes.

Rep. Koppelman: What is the training for a licensed addiction counselor? Are they MA level, PhD; what do they study.

Alex Schweitzer: It can be a variety of things. It can be a BA, MA, some people years ago probably didn't have a degree, and they came from the school of hard knocks. Basically recovering alcoholics that went on to become addiction counselors. They have extensive training and extensive continuing education requirements at this point in time.

Rep. Koppelman: As part of licensure then is there a specific requirement. I'm not saying necessarily an educational degree requirement, but some kind of experiential or equivalent, if not.

Alex Schweitzer: Yes, there is, in licensure.

Rep. Delmore: At the State Hospital, do you employ some of these licensed addiction counselors, as well.

Alex Schweitzer: Yes. Licensed addiction counselors are a big part of our staff. As you may be aware, psychiatrists, psychologists are difficult to recruit to our facility; they are a big part of our treatment team. We serve not only a number of people with substance abuse and dual diagnosis, mental illness and substance abuse; we provide services for 90 individuals from the Dept. of Corrections. Those are all substance abuse clients. We have a number of addiction counselors. They are in favor of this particular bill.

Rep. Kretschmar: Would it be helpful to you or your staff to add the emergency clause to the bill.

Alex Schweitzer: Yes, it would.

Chairman DeKrey: Thank you. Further testimony in support of SB 2039.

Emmet Kenney, CEO of Prairie St. John's: Support (see attached 3). We also agree with the amendment of the emergency clause. Currently, the training for the licensed addiction counselor is not grandfathered in. You have to have BA in a health/human service related field; such as psychology or social work. Then there is

a year's training in what's called a consortium, so there are specific sites within the state where there has to be at least two licensed addiction counselors who've attained a supervisory status. The training involves time in the public and private sector, hospitalized patients, patients who are coming to evening programs. It's not required that they have a MA degree; but this is actually more time than it takes to get a MA degree.

Chairman DeKrey: Thank you. Further testimony in support of SB 2039. Opposition to SB 2039.

Craig Sinclair, Protection and Advocacy Project: (see attached 4).

Rep. Delmore: Did you present these amendments in the Senate.

Craig Sinclair: My associate, Corinne Hoffman, did not initially present it during our testimony; however, subsequent to the hearing, she did send out an email with these proposed amendments. However, the committee to the best of my knowledge did not act on these amendments.

Rep. Delmore: This particular bill seems pretty limited in scope. It's not for the whole procedure, it relates to the continuing need for further treatment. This seems to address a different issue than what the bill does.

Craig Sinclair: I think you're referring to the second proposed amendment.

Rep. Delmore: Yes.

Craig Sinclair: I think the second proposed amendment provides great clarity. It sets forth in simple language the process and restores language that was deleted during the last session and puts everything back in its proper place.

Rep. Delmore: I remember serving on this committee when we first looked at the involuntary commitment so I can understand your concerns, but I think we need to look at HB 1110 and try to do some reconciling with it. I really don't know if all the amendments you have here will be necessary to be as clear as we need to be.

Rep. Klemin: Did you see the amendment that was made to HB 1110.

Craig Sinclair: I'm aware of that amendment.

Rep. Klemin: Does that take care of at least part of the issue you were talking about.

Craig Sinclair: It would be similar to our first amendment; however, our preference is for our second proposed amendment.

Chairman DeKrey: Thank you. Further testimony in opposition. We will close the hearing. What are the committee's wishes in regard to SB 2039? I guess there are two amendments we need to put on that. As soon as we marry up SB 2039 with HB 1110, and put the emergency clause on it, it should be ready to go. If we add amendment .01001 from HB 1110, plus the emergency clause. *Rep Maragos and Rep. Delmore moved and seconded the motion to put that amendment on the bill and add the emergency clause. That was subsequently withdrawn*.

Rep. Klemin: That reads quite awkwardly.

Rep. Beadle: I was wondering if we wanted to change it "to within their professional scope". It would at least read a little smoother.

Rep. Koppelman: Another thought, since "their" is a plural term and we are dealing with a singular here, could we get rid of "who is practicing", so it would say "a licensed addiction counselor, within the professional scope of practice".

Chairman DeKrey: That sounds good.

Rep. Koppelman: So just get rid of "who is practicing", will take care of it.

Rep. Delmore: I wonder if that isn't in there, if it is referring to another definition section, it probably is. I understand what you're saying and it makes it even more compact, but I wonder if "who is practicing" might be necessary.

Rep. Klemin: "Who is practicing within the scope of practice"?

Rep. Delmore: All of them really do have to have a prevue. If you look at the other parts of the bill, for what kind of treatment they are giving and what they can do, the licensed addiction counselor can't just do it because they want to. It has to be something with chemical dependency.

Rep. Koppelman: I move that re-amend, in light of the discussion we've just had, so that it would read "the petition must be accompanied by a certificate executed by a physician, psychiatrist, psychologist, or licensed addiction counselor who is practicing within their professional scope of practice". That way, that last phrase refers to all of those professionals and the emergency clause.

Rep. Delmore: Second the motion to amend.

Rep. Koppelman: I said "who is" because it refers to "a". It says "a physician....or licensed addiction counselor, who is practicing within their" because the "their" refers back to the group listed. "Their" is possessive referring to all of those listed.

Chairman DeKrey: Further discussion.

Rep. Kretschmar: I would like to see the wording "any of whom is practicing..." and then adding the emergency clause.

Rep. Koppelman: That's a friendly amendment, that's fine. I second the additional motion.

Chairman DeKrey: Further discussion. We will take a voice vote. Motion carried. We now have the bill before us as amended. What are the committee's wishes?

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

Rep. Maragos: Second the motion.

13 YES 0 NO 1 ABSENT

DO PASS AS AMENDED

CARRIER: Rep. Hogan

March 2, 2011

VR
3/2/11

PROPOSED AMENDMENTS TO SENATE BILL NO. 2039

Page 1, line 3, after "order" insert "; and to declare an emergency"

Page 1, line 13, after "counselor" insert ", any of whom is practicing within that individual's professional scope of practice"

Page 1, after line 13, insert:

"SECTION 2. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

Date: 3/2/11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2039

House JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 11.0253.02001 .03000

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Koppelman Seconded By Rep. Maragos

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Guggisberg	✓	
Rep. Beadle	✓		Rep. Hogan	✓	
Rep. Boehning	Absent		Rep. Onstad	✓	
Rep. Brabandt	✓				
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				
Rep. Maragos	✓				
Rep. Steiner	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Hogan

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

REPORT OF STANDING COMMITTEE

SB 2039: Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2039 was placed on the Sixth order on the calendar.

Page 1, line 3, after "order" insert "; and to declare an emergency"

Page 1, line 13, after "counselor" insert ", any of whom is practicing within that individual's professional scope of practice"

Page 1, after line 13, insert:

"SECTION 2. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

2011 TESTIMONY

SB 2039

Senate Judiciary Committee

January 10, 2011

Senator Tim Mathern

Chairman Nething and Members of the Senate Judiciary Committee

My name is Senator Tim Mathern. I am a Fargo resident here to add my support to SB 2039. Passage of this bill amends Section 25-03.1-23 of NDCC to permit licensed addiction counselors to make recommendations regarding continuing treatment orders.

I served on the Judicial Process Committee this past interim and became convinced that our workforce in mental health and addiction treatment is too small. Dramatically increasing salaries to attract more out of state professionals or to attract more in state persons into training is a long term challenge. While we work on those issues some immediate small steps can be of help.

This bill is one of those small steps, it permits those professional we already have in place to assist court personnel making decisions about treatment orders.

Thank you for the attention you will be giving to the presenters coming before you. I ask for a Do Pass recommendation.

Thank you for your consideration.

SB 2039

A rewrite of a section in the Mental Health Commitment Law resulted in a reduction in the number of persons who could initiate a hold action.

SB 2039 is the attempt to correct a statutory language oversight from the 2009 session. In order to recognize a licensed addiction counselor as an expert with the ability to execute a certificate regarding a continuing treatment order this language needs to be added to 25-03.1-23 of the ND Century Code.

This change is necessary to make it consistent with other provisions in this chapter.

SB 2039 will fully recognize licensed addiction counselors as experts in addiction commitment definitions.

EXCERPT FROM JUDICIAL PROCESS COMMITTEE FINAL REPORT REGARDING SENATE BILL NOS. 2039 AND 2041

PROVIDED BY: VONETTE RICHTER

JANUARY 10, 2011

INVOLUNTARY MENTAL HEALTH COMMITMENT PROCEDURES Mental Illness Commitment Laws

The majority of North Dakota's initial laws concerning the voluntary, involuntary, and emergency commitment of individuals with mental illness and chemical dependency were enacted in 1957 and were not substantially changed until 1977. In 1977 the Legislative Assembly enacted Senate Bill No. 2164--the bill that created Chapter 25-03.1. The bill established many of the commitment procedures for the individuals with mental illness and chemical dependency which are currently in effect. The bill was precipitated by a number of state and federal court decisions that had invalidated state commitment laws similar to North Dakota's law.

A number of the commitment procedures contained in Chapter 25-03.1 have been amended in the years since the chapter was enacted in 1977. For example, Senate Bill No. 2389 (1989) replaced the terms "alcoholic individual" and "drug addict" with "chemically dependent person," set forth more specific procedures for the application for involuntary treatment, and permitted the parties to waive the preliminary hearing. Senate Bill No. 2370 (1993) authorized the state's attorney to seek reimbursement of funds expended by the county for a respondent who was determined to be indigent but is later found to have funds or property, clarified that a respondent has a right to a preliminary hearing, and set forth a procedure for a respondent to seek the discharge of a petition.

Testimony and Committee Considerations

In its study of the state's mental health commitment procedures and the availability of psychiatric services in the state, the committee received extensive testimony from the State Hospital, regional human service centers, the Mental Health America of North Dakota, the Protection and Advocacy Project, psychiatrists, psychologists, state's attorneys, a district judge, a private attorney, law enforcement, and private citizens who have been involved in the mental health commitment process. The committee's deliberations focused on two issues--statutory time limitations on patient holds and related issues and the availability of psychiatric services in the state.

Statutory Time Limitations on Patient Holds

Section 25-03.1-25 provides that a patient must be examined by an expert examiner within 23 hours of the placement of an emergency hold. An emergency hold can be placed by a peace officer or a physician if the patient appears to be potentially dangerous and does not agree to allow further evaluation and treatment. The committee received testimony from several psychiatrists

and state's attorneys regarding this section and the problems the expert examiners and others are experiencing with the time limitation in this section. The testimony indicated that problems arise when a person is brought to an emergency health care facility that does not have a psychiatrist or psychologist to do an expert examination.

The testimony indicated that another problem with the 23-hour requirement is the limited capacity of facilities and the lack of availability of beds in treatment centers in the state. According to the testimony, when there is only 23 hours from the initiation of the hold to start the expert examination and time is needed to coordinate care and find an available bed, major problems arise. The testimony noted that there are times when a facility may decline the acceptance of a patient for admission because the facility knows it would not be able to examine the patient within the 23 hours from the initiation of the hold. The testimony indicated that a case may be dismissed before it gets to court because timeframes have been missed. The testimony indicated that the timelines for mental health evaluations are 24 hours in Minnesota, Wyoming, and Alaska, while Montana provides that the examination must be done as soon as the professional can be contacted.

The committee also received testimony that the lack of available transportation for transporting patients is another key issue that can prevent an expert from being able to conduct an examination within 23 hours. The testimony indicated that if a hospital is unable to find a bed for the patient, the hospital may contact other agencies in search of a bed, detain the patient in a correctional facility, or violate the 23-hour requirement.

The testimony indicated that because psychiatric services are no longer available at the hospital in Dickinson, patients cannot be held at that location while awaiting transport to Bismarck or Jamestown. As a result, the testimony indicated that individuals may have to be held at the correctional facility until transportation can be arranged. The testimony indicated that this hold is usually for 3 hours or 4 hours but has been up to 12 hours. The testimony from the Badlands Human Service Center noted that a request for more beds in Dickinson was denied by the Legislative Assembly in 2009. It was noted that the additional beds could be used to hold patients awaiting transport.

Other testimony indicated there are concerns in the state about the lack of uniformity of commitment procedures from county to county. It was noted that this may be the result of differences in resources, differences in philosophy, and differences in expertise. It was suggested that one solution to those uniformity issues would be the simplification of commitment forms. The testimony indicated that there are multiple and duplicative forms that contribute to the lack of uniformity

in procedures. According to the testimony, uniformity could be accomplished with input from stakeholders and through legal processes. It was noted that Department of Human Services staff has engaged in meetings and consultation with judges and attorneys regarding commitment rules and will continue to do so.

The committee received testimony that recommended the 23-hour time period within which the expert examination must take place be modified to allow 48 hours or 72 hours for an expert examination, exclusive of weekends or holidays. It was suggested that if a 48-hour or 72-hour time period is not possible, then current holders of qualified mental health professional status should be allowed to initiate commitments and proceed to court hearings without requiring an additional expert examination within 23 hours. The testimony indicated that in no case should the time period be longer than 72 hours. It was noted that the 23-hour time period is adequate in most cases, but for those in which it is not, the law should allow for exceptions. One psychiatrist indicated extending the time period within which an examination must be done would be preferable to authorizing a broader group of professionals to conduct the examinations. It was noted that South Dakota allows some professionals to conduct the examinations who are not trained to treat chemical dependency or mental illness. It was noted, however, that even with the broader group of professionals who are permitted to conduct the examinations in South Dakota, there is still a shortage of professionals in the more rural areas of that state.

Testimony received from a private attorney in opposition to extending the 23-hour time period indicated that the problem is not with the laws and mental health commitment procedures, but rather the problem is the medical community and the lack of resources. According to the testimony, it is not appropriate to hold a person beyond 23 hours. The testimony stressed in order to protect the rights of the individual, it is important that the evaluation is conducted as quickly as possible. It was noted that the initial examination that is required to be performed within 23 hours is conducted before an attorney is involved in the process. The testimony also indicated that judges can order a delay based on just cause, such as a snowstorm or transportation issues.

The committee also received testimony that indicated that the commitment procedures in Chapter 25-03.1 serve the community and the persons in need of treatment very well. The testimony indicated that extending the examination period from 24 hours to 48 hours may be too great of an infringement on a person's rights.

The committee considered a bill draft that would provide for purposes of conducting an examination under Section 25-03.1-11, an individual who meets the definition of expert examiner is authorized to evaluate a respondent's mental status. Testimony in support of this draft indicated that the change would help to enhance mental health services in the state.

The committee also considered a bill draft that would amend Section 25-03.1-23 to include licensed addiction

counselors as one of the mental health professionals authorized to execute a certificate regarding a continuing treatment order. The committee received testimony that 2009 legislation, which attempted to fully recognize licensed addiction counselors as experts in addiction commitment definitions, did not include a reference to licensed addiction counselors in Section 25-03.1-23. The testimony in support of the bill draft indicated the change was necessary to make this section consistent with other provisions in Chapter 25-03.1.

Availability of Psychiatric Services in the State

The committee received testimony regarding the availability of psychiatric services in the state and potential solutions to the access issue. The committee received testimony that indicated that due to the rural nature of the state and the limited availability of psychiatric services in many parts of the state, it is often difficult to meet the deadlines imposed by law within which an expert examination is required to be conducted. According to the testimony, there are 107 psychiatrists in the state located in 8 communities and 170 psychologists in the state located in 16 communities. About 23 percent of the state's population lives in a county without a psychiatrist or psychologist. It was noted that 31 out of 55 hospitals in the state do not have a psychiatrist or psychologist on staff or in the community.

The committee received testimony that among the reasons for the loss of psychiatric services in the state is the financial pressures to be more productive, the division of a bigger workload among fewer providers, and the pressures of financial reimbursement in mental health care. It was noted that ideally there should be 13 mental health professionals per 100,000 people. According to the testimony, although it appears there are a sufficient number of mental health professionals in the Fargo area (66 psychiatrists and 53 psychologists), the number of available mental health professionals in that area is somewhat skewed because the Fargo providers also serve a large population of people who live on the Minnesota side of the river.

Other testimony regarding the availability of psychiatric services in the state indicated the two problems that are in need of solutions are the lack of sufficient resources to deal with treating mental illness and chemical dependency in the state and the fragmented utilization of the private and public resources currently devoted to the treatment of mental illness and chemical dependency. The testimony indicated that over the past decade, general hospitals in the state and other states have taken an increasingly larger role of responsibility for behavioral health care, particularly in the area of emergency services and have had to act as a backstop to other agencies and organizations. It was noted as financial margins for health care reimbursement have gotten narrower and the stability of health care organizations more tenuous, there has been declining ability of those hospitals to cross-subsidize services that historically are mission-driven. As a result, psychiatric programs at private facilities across the state have cut programming and faced increasing pressures

to reduce financial losses. The testimony indicated that without adequate supervised residential housing options, community case management, access to medications, and outpatient psychiatric care, the system is caught in a cycle of using expensive inpatient resources because it is the only thing available. It was suggested there should be joint ventures and partnerships with respect to the continuum of care needed for mental health patients. It was noted when it comes to dealing with mental health cases, hospitals and social service agencies do not communicate as well as they should.

Testimony from law enforcement indicated private medical facilities and emergency responders are being overutilized as the gateway and a treatment option for the community-based treatment program. It was noted that the statewide human service centers operate on a Monday through Friday schedule with holidays off; however, people in crisis occur 24 hours a day 7 days a week. According to the testimony, when someone is in crisis and needs assistance, the call goes to the emergency responders. The testimony suggested some solutions to this problem is more funding for community-based programs, an admissions facility that is available 24 hours per day, increased bed level at the State Hospital, and a transition facility.

Other testimony regarding the availability of psychiatric services in the state for mental health commitment evaluations indicated that availability is not so much related to the numbers or prevalence of psychiatrists, as it is to other factors, such as lack of transportation. It was suggested that increasing the availability of psychiatric services can be accomplished through expansion of telemedicine and psychiatric consultation with family medicine physicians and other medically trained professionals. It was also suggested that in the long term, the future availability of psychiatric services can be ensured by working collaboratively with all mental health and primary care providers and by working to build incentives and opportunities for those in medical training to pursue mental health practices. It was noted primary care resident physicians in the state are required to spend time in psychiatry rotations. In Fargo there is integration of psychiatry training built into the internal medicine residency.

Testimony from the Protection and Advocacy Project suggested that to increase the number of psychiatrists and other mental health professionals, the state may wish to implement a scholarship and student loan program for mental health professionals which is similar to the program for encouraging more dentists to practice in the state. It was noted that a loan or scholarship program to forgive student debt could be set up in a way that would identify certain rural areas in which the person must practice to qualify for the program.

The committee received testimony regarding the use of telepsychiatry or telemedicine for mental health evaluations. The testimony indicated telemedicine is a valuable tool that could be used to some extent, but it is important to consider the patient's rights to an expert examination. The testimony noted that although telemedicine or telepsychiatry is the wave of the future, the ideal situation is still a face-to-face evaluation.

Testimony from a pediatric psychiatrist who has worked with hundreds of children using telemedicine technology indicated the quality of telemedicine technology is good, there are few delays, and there are few concerns about breaches of security when using telemedicine technology.

Testimony from several attorneys regarding the use of telemedicine technology for conducting an expert examination indicated that if the use of the telemedicine or telepsychiatry technology is acceptable to the medical community, its use may be acceptable to the legal community as well. It was noted the use of telemedicine in the area of mental health examinations will depend on the quality of the equipment and transmissions.

The committee considered a bill draft that would authorize the use of telemedicine technologies for court-ordered examinations. Testimony in support of the bill draft indicated the bill draft clarifies that telemedicine may be used for conducting the examinations. It was noted that authorizing the use of telemedicine technologies will make the commitment process work better without extending the time limitations. Other testimony in support of the bill draft indicated the use of telemedicine technologies would enhance the use of psychiatrists in underserved parts of the state.

Recommendations

The committee recommends Senate Bill No. 2040 to provide that for purposes of conducting an examination under Section 25-03.1-11, an individual who meets the definition of expert examiner is authorized to evaluate a respondent's mental status.

The committee recommends Senate Bill No. 2039 to amend Section 25-03.1-23 to include licensed addiction counselors as one of the mental health professionals authorized to execute a certificate regarding a continuing treatment order.

The committee recommends Senate Bill No. 2041 to authorize the use of telemedicine technologies for court-ordered examinations.

Senate Bill 2039
Senate Judiciary Committee
Senator Nething, Chairman
January 10, 2011

Senator Nething, members of the Senate Judiciary Committee, I am Alex C. Schweitzer, Superintendent of the North Dakota State Hospital and North Dakota Developmental Center (One Center) of the Department of Human Services. I am here today to testify in support of Senate Bill 2039.

Currently, NDCC – 25-03.1-23, Petition for Continuing Treatment Orders, only allows a physician, psychiatrist or psychologist to certify a report to the district court requesting a continuing treatment order for a patient in treatment. The Department of Human Services supports a change in this section of the code to allow licensed addiction counselors to be added to the list of professionals that can certify a report for the court. This appears to be an oversight in the code as addiction counselors are recognized as expert examiners in other sections of the mental health commitment law.

Several reasons exist to modify the code:

- This fix in the code fully recognizes licensed addiction counselors as expert examiners.
- Licensed addiction counselors deal with most addiction cases and have the expertise to prepare reports for continuing treatment of addiction patients.

- North Dakota has 23 counties designated as mental health professional shortage areas and accessing a physician, psychiatrist or psychologist in a shortage area is at times difficult.
- The increased use of licensed addiction counselors as expert examiners is an additional resource for statewide services.

Thank you. I would be happy to answer any questions.



PRAIRIE ST. JOHN'S™

January 10, 2011

RE: Senate Bill 2039

Dear Members of the Judicial Process Committee:

I am Dr. Emmet Kenney, a psychiatrist, CEO of Prairie St. John's and a member of the Governing Board of the North Dakota Hospital Association.

I come before you today to express that the hospitals of North Dakota that conduct mental health commitment hearings stand in support of Senate Bill 2039. The commitment statute this pertains to applies to both mental health and chemical dependency commitments.

Licensed Addiction Counselors are necessary practitioners on the licensed programs for hospitalized treatment. They are qualified to gauge the progress of patients in treatment and represent the treatment team in filing reports and filing petitions for further treatment.

Ms. Susan Rae Helgeland, the Executive Director of Mental Health America of North Dakota, has requested that I advise you they also support this bill. MHA is the largest advocacy group for persons with mental illness and addictions in North Dakota.

I am happy to address any questions you may have. Thank you for your time.

Sincerely,

Emmet M. Kenney, Jr., M.D., CEO

EMK/skr

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Judiciary Committee
Senate Bill No. 2039

Testimony of Mike Reitan, Assistant Chief of Police, West Fargo Police Department

Good Morning

Chairman Nething, Vice Chairman Olafson and other committee members of the Judiciary Committee, for the record my name is Mike Reitan, Assistant Chief of the West Fargo Police Department. I am testifying concerning my support of Senate Bill 2039.

I thank you and your committee for committing to the noble, but daunting task of addressing the treatment of mental health and chemical dependency within the State of North Dakota. I believe we must look to all sources available to expand the capability and capacity of our communities and our state. Please allow a licensed addiction counselor the authority to certify the petition for continuing treatment orders and provide treatment for those in need.

As a law enforcement officer since 1984 I have come into frequent contact with individuals and families negatively impacted by mental illness or chemical dependency. The physical, emotional and financial burden to the individual and their family as well as the community can be devastating. Without the appropriate levels of preventive and follow-on care, a person has a limited chance to recover and return to become a contributing member of their community.

In speaking with others involved in law enforcement across North Dakota a noticeable trend develops. Law Enforcement agencies frequently act as the backstop within the mental health system to catch the person as they spiral out of control.

Individuals with mental illness or chemical dependency come to the attention of Law Enforcement due to criminal or erratic behaviors. At times, out of frustration, families turn to law enforcement to solve their problems. Through early treatment and follow on care the frequency and the intensity of interaction between law enforcement and the individual can be greatly reduced.

I have asked law enforcement officials to participate in an informal survey relating to their involvement with mental health and chemical dependency. Some of the respondents were: Gary Sanders; Jeff Roerich; Ron Krivoruchka; Rory Teigen; Steve Watson; Doug Howard; and Lauren Wild. Fifteen agencies responded to the questions and here is what they had to say:

- Of fifteen, fourteen transport persons with mental illness.
- Eleven of the agencies use a department vehicle to transport those medically stable and an ambulance for all others.
- Eleven go to private medical facilities; seven to state owned facilities; three to human service centers. (human service centers provide limited after hour or weekend care)
- Six of the agencies travel more than 60 miles one way with one saying they travel 180 miles; four travel 30 to 60 miles.

Judiciary Committee
Senate Bill No. 2039

Testimony of Mike Reitan, Assistant Chief of Police, West Fargo Police Department

- Ten of the fifteen indicate they average more than 3 hours in each contact.
- Seven indicate they handle less than 10 contacts a year; five said 10 to 30; and two indicated more than 50 contacts per year.
- Eleven agencies do not receive training in civil commitment.
- One agency appears to handle the matters informally within the community.
- Only twelve of fifteen of the agencies transport persons with chemical dependency issues:
 - Seven of the agencies use a department vehicle for the medically stable and an ambulance for all others; four others indicated department vehicle only.
 - Only one agency indicated there was a detoxification center available; seven used private medical facilities and six used state operated facilities.
 - Eight agencies had to travel more than 60 miles one way.
 - Eight were involved with the incident 3 hours or more and six were busy for 1 to 2 hours.
 - Five agencies said they handle 10 to 30 cases a year; two said 30 to 50; and two said more than 50.
 - One agency appears to handle the matters informally within the community.

Why are these figures important? They are important because they demonstrate how all of these interactions draw upon assets within your community (your medical facilities; your volunteer ambulance services; your law enforcement officers). The assets are applied to the resulting behaviors of mental illness or chemical dependency but do little for the problem itself. Are we being fiscally responsible using our assets in this manner?

Nationwide, and in North Dakota, the fair and proper treatment of the mentally ill and chemically dependant creates a huge liability issue for law enforcement. Some in law enforcement have chosen to do something to address that liability risk.

Law Enforcement in Minot, Fargo, Bismarck and Grand Forks are training their officers to reduce the agency's liability through the Crisis Intervention Training program. The training allows a law enforcement or correctional facility officer to recognize the signs of mental illness and chemical dependency. The officer is then able to determine the best course of action while interacting with the individual to deescalate the situation. Sadly, an officer who is has received no training or is poorly trained can worsen a situation, resulting in serious injury or criminal charges which otherwise could have been avoided. Even with law enforcement's proactive approach to train officers, law enforcement agencies can do nothing to address the lack of available mental health professionals or the availability of facilities.

During testimony on Senate Bill 2421 during the 2009 session Senator Mathern testified to the decline in the number of available professionals to conduct assessments as required by current law. He further testified additional medical facilities had chosen to discontinue or reduce the level of mental health service they would provide. These reductions further erode the ability of an individual and their family to reach essential services.

Dr. Emmet Kenney of Prairie St Johns Medical Facility provided testimony in support of Bill 2421 during 2009. He pointed to the availability of only 100 psychiatrists and psychiatric residents in North Dakota. Seventy-four were practicing in Fargo or Grand Forks making them geographically unavailable to two thirds of the state. At the time of his testimony there were 163 psychologists in the state. Ninety-eight practiced in Fargo and Grand Forks. He pointed to the difficulty of being able to provide service within the rigid constraints of the existing language of section 25-03.1.

I must confess I do not have the number of licensed addiction counselors practicing in North Dakota. By searching the web I found the 1987 Legislative Assembly established the North Dakota Board of Addiction Counseling Examiners. Administrative rules were developed and finally adopted in August 1991. The Board gained full accreditation by the National Accreditation Commission in 1992. Allowing a licensed addiction counselor the authority to certify a petition for a continuing treatment order will make great strides towards increasing capacity and availability of service within North Dakota.

Thank you for your time today.

I would be open to any questions you may have.

**Testimony
Senate Bill 2039
Senate Judiciary Committee
Senator Dave Nething, Chairman
January 10, 2011**

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.

NDFFCMH supports the addition of licensed addiction counselor as an individual who can execute a certificate to accompany the petition for an order authorizing continuing treatment. However, NDFFCMH would like to ensure the licensed addiction counselor is limited to executing a certificate for an order authorizing continued treatment in areas of their expertise.

Thank you for your time.

Carlotta McCleary, Executive Director
ND Federation of Families for Children's Mental Health
PO Box 3061
Bismarck, ND 58502

Phone/fax: (701) 222-3310
Email: carlottamccleary@bis.midco.net

From the office of
Lisa Hawley, LICSW, QCSW
Advanced Counseling for Change, PLLC
424 3rd St. SE
Devils Lake, ND 58301
701-662-1893

Good morning, Mr. Chairman and members of the subcommittee.

My name is Lisa Hawley and I am a Clinical Social Worker and the owner of Advanced Counseling for Change in Devils Lake. I am pleased to have this opportunity to testify in support of bill 2039. However I would like you to consider adding not only Licensed Addiction Counselors but also Licensed Independent Clinical Social Workers (LICSW) to the bill.

LICSWs are trained professionals who are able to administer mental health treatment therefore they should also be allowed to substantiate the need for continued treatment. LICSW have a minimum of a Master's Degree and 3000 hours of clinical experience. Therefore we should be more than qualified to make this decision.

In rural North Dakota there are times when psychiatrist is over ninety miles away and our physicians and psychologist are not only few and far between, but also they are extremely busy. Allowing LICSWs the ability to step in as needed to assess the situation and make a decision would support the patient in getting the needed services without delay.

I would like to thank you for allowing me the opportunity to testify today. Please let me know if you have any questions or comments.

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**Senate Judiciary Committee
January 10, 2011
SB 2039**

Good morning, Chairman Nething and members of the Senate Judiciary Committee.

My name is Nancy Miller and I am the Executive Director of the North Dakota Chapter of the National Association of Social Workers (NASW). NASW is the largest membership organization of professional social workers in the world, with 145,000 members. I am here today to offer support of SB2039, with the addition of an amendment to include Licensed Independent Clinical Social Workers (LICSW) within the proposed changes.

It is my understanding that this bill has been introduced to correct an oversight of some changes that were made during the 2009 Legislative Session, which specifically addressed Licensed Addiction Counselors. We do not want to stand in the way of this correction. However, we would like LICSW's to be included as well.

Social worker's with a Master's Degree are already recognized in Chapter 25-03.1 as a 'Mental Health Professional' along with the Licensed Addiction Counselors. LICSW's have an additional licensing requirement of obtaining a minimum of 3,000 hours of post-master's clinical experience. As trained professionals who are able to administer mental health treatment, they should also be allowed to substantiate the need for continued treatment.

The legislative intent of Chapter 25-03.1 is 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

Adding LICSW's to the language of SB2039 will be one more way in which the citizens of North Dakota are attended to in a prompt, efficient manner. It is not uncommon for our LICSW's who work in more rural areas of the state to be in situations where they are the only ones available to help a patient receive the appropriate services needed. By amending the bill to include LICSW's, there would be approximately 260 additional qualified mental health professionals who would be able to act in a prompt, efficient manner to authorize continuing treatment.

Again, we support SB2039 with the inclusion of Licensed Independent Clinical Social Workers, and we thank you for considering our request.

**TESTIMONY – PROTECTION AND ADVOCACY PROJECT
SENATE BILL 2039
SENATE JUDICIARY COMMITTEE
January 10, 2011**

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.

P&A cannot support passage of Senate Bill 2039 in its current form. It creates ambiguity and inconsistency with other sections of the mental health commitment statute and potentially weakens a respondent's right to review by a qualified, expert professional before additional involuntary treatment is imposed.

N.D.C.C. §§ 25-03.1-02(6), which defines an expert examiner, reads as follows:

"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.

The following language was removed from this section during the last legislative session:

...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.

It was argued this language related to the *process* of involuntary commitment and that it was better located in the section dealing with the involuntary treatment process. This language became a new subsection to N.D.C.C. 25-03.1-11, which relates to examinations conducted subsequent to a petition for involuntary treatment.

As drafted, this bill is inconsistent with the scope of authority outlined for licensed addiction counselors during the involuntary treatment process. In that process, a licensed addiction counselor's authority is limited to evaluating whether the person is chemically dependent and requires treatment. If adopted, this bill would allow a licensed addiction counselor to execute a certificate on any petition for a continuing treatment order, including those for people who are not chemically dependent.

A petition for an order for continuing treatment, which can result in involuntary treatment for up to a year, should command an equal or greater level of care and expertise as an original order for involuntary treatment, which is for a maximum of ninety days.

If licensed addiction counselors are allowed to execute the certificate that must accompany a petition for an order for continuing treatment, it should be limited to petitions involving treatment for chemical dependency.

We respectfully ask the committee for a "do not pass" recommendation on Senate Bill 2039.

SB 2039

A rewrite of a section in the Mental Health Commitment Law resulted in a reduction in the number of persons who could initiate a hold action.

SB 2039 is the attempt to correct a statutory language oversight from the 2009 session. In order to recognize a licensed addiction counselor as an expert with the ability to execute a certificate regarding a continuing treatment order this language needs to be added to 25-03.1-23 of the ND Century Code.

This change is necessary to make it consistent with other provisions in this chapter.

SB 2039 will fully recognize licensed addiction counselors as experts in addiction commitment definitions.

Testimony
Senate Bill 2039 – Department of Human Services
House Judiciary Committee
Representative DeKrey, Chairman
March 2, 2011

Chairman DeKrey, members of the House Judiciary Committee, I am Alex C. Schweitzer, Superintendent of the North Dakota State Hospital and North Dakota Developmental Center (One Center) of the Department of Human Services. I am here today to testify in support of Senate Bill 2039.

Currently, NDCC – 25-03.1-23, Petition for Continuing Treatment Orders, only allows a physician, psychiatrist or psychologist to certify a report to the district court requesting a continuing treatment order for a patient in treatment. The Department of Human Services supports a change in this section of the code to allow licensed addiction counselors to be added to the list of professionals that can certify a report for the court. This appears to be an oversight in the code as addiction counselors are recognized as expert examiners in other sections of the mental health commitment law.

Several reasons exist to modify the code:

- This fix in this section of the code fully recognizes licensed addiction counselors as expert examiners.

- Licensed addiction counselors deal with most addiction cases and have the expertise to prepare reports for continuing treatment of addiction patients.
- The increased use of licensed addiction counselors as expert examiners is an additional resource for statewide services.

House Bill 1110, a bill that is the same as Senate Bill 2039, was introduced by the House Human Services Committee at the request of the Department of Human Services. The House amended the bill to require that a licensed addiction counselor certifying a petition for continued treatment must do so within their professional scope of practice. The Department supported this amendment in the House version of the bill. Senate Bill 2039 does not make the same distinction.

Thank you. I would be happy to answer any questions.

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Adopted by the Human Services Committee

January 12, 2011

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1110

Page 1, line 12, after "counselor" insert "who is practicing within the professional scope of practice"

Renumber accordingly



PRAIRIE ST. JOHN'S™

March 2, 2011

RE: Senate Bill 2039

Dear Members of the Judiciary Committee:

I am Dr. Emmet Kenney, a psychiatrist, CEO of Prairie St. John's and a member of the Governing Board of the North Dakota Hospital Association.

I come before you today to express that the hospitals of North Dakota that conduct mental health commitment hearings stand in support of Senate Bill 2039. The commitment statute this pertains to applies to both mental health and chemical dependency commitments.

Licensed Addiction Counselors are necessary practitioners on the licensed programs for hospitalized treatment. They are qualified to gauge the progress of patients in treatment and represent the treatment team in filing reports and filing petitions for further treatment.

Ms. Susan Rae Helgeland, the Executive Director of Mental Health America of North Dakota, has requested that I advise you they also support this bill. MHA is the largest advocacy group for persons with mental illness and addictions in North Dakota.

I am happy to address any questions you may have. Thank you for your time.

Sincerely,

Emmet M. Kenney, Jr., M.D., CEO

EMK/skr

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**TESTIMONY – PROTECTION AND ADVOCACY PROJECT
SENATE BILL 2039
HOUSE JUDICIARY COMMITTEE
March 2, 2011**

Chairman DeKrey and Members of the Committee, my name is Craig Sinclair. I am an Attorney for the Protection and Advocacy Project [P&A]. P&A serves individuals who have disabilities.

P&A cannot support passage of Senate Bill 2039 in its current form. It would create ambiguity and inconsistency with other sections of the mental health commitment statute and potentially weaken a respondent's right to review by a qualified, expert professional before additional involuntary treatment is imposed.

Section 25-03.1-02 (6) of the Century Code defines an expert examiner as:

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.

The following language was removed from this section during the last legislative session:

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.

It was argued this language related to the *process* of involuntary commitment and that it was better located in the section dealing with the involuntary treatment process. This language became a new subsection

to N.D.C.C. 25-03.1-11, which relates to examinations conducted subsequent to a petition for involuntary treatment.

As drafted, this bill is inconsistent with the scope of authority assigned to licensed addiction counselors during the involuntary treatment process and exceeds the scope of their licensure. In the initial commitment process, a licensed addiction counselor's authority is limited to evaluating whether the person is chemically dependent and requires treatment. If adopted as written, this bill would allow a licensed addiction counselor to certify a petition for a continuing treatment for people who are not chemically dependent.

A petition for an order for continuing treatment, which can result in involuntary treatment for up to a year, should command an equal or greater level of relevant expertise as an original order for involuntary treatment, which is for a maximum of ninety days.

If licensed addiction counselors are to execute the certificate that must accompany a petition for an order for continuing treatment, they should be limited to petitions involving treatment for chemical dependency.

In order to ensure that only qualified experts execute certificates accompanying a petition for a continuing treatment order under N.D.C.C. 25-03.1-23, I have attached amendments that would address these concerns and will sustain the integrity of the mental health commitment process.

The first attachment is a simple amendment to line 13 of the bill which would limit licensed addiction counselors to acting on petitions for chemical dependency treatment. This is the simplest "fix" from our perspective.

The second attachment proposes to return language defining the scope of authority of expert examiners to the definitions section of the commitment chapter. This would make that scope of authority applicable to the whole chapter. We recommend this be done in addition to the first amendment. Together, these amendments would clarify the scope of authority of expert examiners throughout the commitment process.

We respectfully ask the committee to adopt both proposed amendments to Senate Bill 2039. With these amendments, P&A would support the bill.

PROPOSED AMENDMENTS TO SENATE BILL 2039

Page 1, line 13, after "or", insert a comma followed by ", for a petition authorizing continuing treatment for chemical dependency only, a"

Renumber accordingly

PROPOSED AMENDMENTS TO SENATE BILL 2039

Page 1, line 1, after "reenact" insert "subsection 7 of section 25-03.1-02 and", replace "section" with "sections" and immediately thereafter insert "25-03.1-11 and"

Page 1, line 2, after "relating to" insert "the scope of authority of expert examiners and"

Page 1, after line 4, insert:

"SECTION 1. AMENDMENT. Subsection 7 of section 25-03.1-02 of the North Dakota Century Code is 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. For purposes of any examination conducted pursuant to this chapter:
 - 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.

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