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SENATE BILL NO. 2286

TESTIMONY OF ASST. HETTINGER COUNTY STATES ATTORNEY PAT J. MERRIMAN
SENATE JUDICIARY COMMITTEE

Chairman Larson and Members of the Senate Judiciary Committee:

I submit this testimony to supplement my February 1, 2023, oral testimony in support of Senate Bill No. 2286. As described in that testimony, this bill would easily eliminate a modern law enforcement transport problem which was created in my county in 2003 by the regional jail concept and mental health transport provisions of the Century Code as follows. I first noted the problem as Dunn County States Attorney on June 4, 2017, when my local sheriff¹ expressed his liability concerns about transporting people (against their will) outside the county. Simply put, NDCC §11-15-03 enumerates the duties of a county sheriff and, makes reference to the antiquated term “county jail” which simply no longer exists in most ND counties. A *regional correction center* (RCR), like our *Southwest Multi-County Correctional Center* (SWMCC), created under the provisions of NDCC §§12-44.1-01 and 12-44.1-02, *circa* 2003, replaces the old, traditional “county jail” in Billings, Bowman, Dunn, Golden Valley, Hettinger, Slope and Stark counties. The inherent problem? Any Sheriff, other than the local sheriff where the RCR is physically located, has no statutory authority to act as a peace officer in the county where the RCR is located because the Century Code does not currently grant that authority.

Which then begs the question, since we have no Hettinger County jail within the geographic confines of our county, what is a *deputy's* status in Stark County (the situs of SWMCC) as the deputy is either transporting a prisoner to jail/hospital, attending the District Court in Dickinson, and/or transporting any citizen as an involuntary mental health commitment under NDCC Chap. 29-05? First, recall that NDCC §11-15-03[4] only authorizes the sheriff (or her deputies) to act when the court is being held within Hettinger County and, the legal fiction that we have been embracing is that if we have a court order to transport, yet, there is still no statutory authority for a warrantless arrest or emergency detention for any of the foregoing purposes outside our county. So, in reading the plain language of the Century Code, in the absence of any ND Supreme Court guidance, it can be argued that our deputies are actually acting as private citizens outside their jurisdiction. And, if the deput(ies) are refusing to enforce a district court *order*, it could expose them to a civil/criminal contempt violation, under NDCC Chap. 27-10 or, the class A misdemeanor of disobedience of a judicial order in violation of NDCC §§12.1-10-05 and 29-06-12.

¹ The Killdeer City Police Chief also expressed the same concerns for his officer's authority as enumerated in NDCC Chap. 29-06.

Second, if any offense occurs, outside the geographic confines of our county, in a Hettinger County Deputy's presence during a prisoner or mental health transport, again, there is no statutory authority for them to make an actual *arrest*² which would, then, again, expose that peace officer to civil liability for that detention and any subsequent injury. Again, neither the ND Supreme Court nor the ND Attorney General has addressed NDCC §11-15-03 in any context except an emergency mental health transport. See, *NDAGOp. 96-L-153 (August 30, 1996)*. That logical opinion, although not our Supreme Court speaking, held that an emergency mental health transport, conducted in one, prompt, continuous journey from the county to the closest mental health facility is *implied* by NDCC Chap. 29-05. This is especially frustrating when NDCC §§29-06-05 and 29-06-05.1 actually **do** authorize foreign, non-North Dakota, peace officers (in fresh pursuit) state-wide arrest and detention powers for misdemeanors, felonies and even traffic violations or, transports of their own prisoners, in the exact same manner as a local ND peace officer in that ND jurisdiction.

Third, the problem has been exacerbated by RCR administrations which are frequently demanding that the arresting sheriff's dept. transport their inmates for medical treatment (both before and after booking) when, again, there is no statutory authority, Attorney General's Advisory opinion or ND Supreme Court case authorizing such a transport. And, for Hettinger County, both the SWMCC and our two regional hospitals lie within the geographic confines of Stark County (an hour away) and, again, our deputy is acting with no enumerated arrest, detention or transport powers outside our county. And, as I noted in 2017, this particular problem is only going to get worse as private, corporate RCR's seek to limit *their* civil liability for detaining these persons, without prior medical clearance and, also, thereby, avoid liability for any attendant medical/mental health expenses. A hotly debated issue across the entire United States right now as reported by the *Chatanooga Times Free Press* on 24 April 2017 in writing about the ongoing battle between the Bradley County, Ohio, Sheriff's Office and the Cleveland Police Department's local jail. A transported arrestee, refused booking at that jail, died when he was turned away for medical reasons and, taken by ambulance to a local hospital. He left shortly, thereafter, and was never seen alive again.

In closing, these proposed amendments to NDCC §§11-15-03, 25-03.1-25, 40-25-05 and Chap. 29-06 are those I recommended to my sheriff on February 10, 2022. Although I did not do exhaustive research on other states' laws, I did note that both California and Florida had provided the same state-wide arrest, detention and transport powers to their state licensed POST approved peace officers. In my opinion this amendment closes a gaping legal liability wound created by modern policing and detention at no expense to any member of the public and, simply approves, in writing, what sheriffs are now doing with questionable authority.

² "Arrest" is defined under NDCC §29-06-01 as the taking of a person into custody in the manner authorized by law to answer for the commission of an offense.