

2011 SENATE JUDICIARY

SB 2041

# 2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee  
Fort Lincoln Room, State Capitol

SB 2041  
1/10/11  
Job #12710

Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to involuntary commitment procedures and the use of telemedicine technology.

## Minutes:

There is attached written testimony

**Senator Nething** – Chairman

**Vonette Richter** – Legislative Council – Explains the bill.

**Senator Nething** – Asks what telemedicine's are available.

**Richter** – Responds, it is not defined but it is whatever is acceptable in the medical communities as far as their scope of practice.

**Senator Sitte** – Asks if rural areas it might be a phone call.

**Richter** – Responds, if that is an acceptable practice. She believes they have to be face to face as on a camera.

**Senator Sitte** – Asks if it would be redundant with what is already in place if there was a 24 hold put in place.

**Richter** – Mentions that it is not just the initial exam but the whole process.

**Senator Sorvaag** – Asks if there are any rules for who is involved.

**Richter** – Speculates, the profession involved that is already bound by their scope of practice. They are limited by what they are capable of doing through those various technologies. It is a common used practice.

**In Favor of the Bill**

**Dr. Emmet Kenney** – CEO of Prairie St. John's and member of the Governing Board of the ND Hospital Association.

See written testimony. He explains that phone calls are not telemedicine. It is video conferencing. Its intent is to protect the person who is impaired. This is to prevent someone being released on a technicality.

**Senator Lyson** – Asks if we are not opening up for all kinds of things to put in the Century Code.

**Kenney** – Explains new technologies in medicine that do not go through a courtroom process. This could facilitate treatment. He goes on to explain life saving treatment this offers.

**Senator Sitte** – Asks if these patients are sitting in jail.

**Kenney** – Explains the timeline that happens with the patient.

**Senator Sitte** – Asks if they won't be transferred to a psychiatric unit.

**Kenney** – Explains where they can be or may be held. 70 percent of emergency access points in the state do not have a psychiatrist in residence in the county of the hospital setting. He explains insurance coverage. He explains that 20% of those seen in the past week at Prairie St. Johns do not have insurance. Most are indigent. Most insurance companies do cover telemedicine. The intent here is to prevent the scenario where someone is evaluated by telemedicine and on a technicality they are released and they kill someone or themselves.

**Senator Olafson** – Asks Dr. Kenney if he would recommend an interactive video with patient and doctor can be done in a thorough and competent manner.

**Kenney** – Responds, yes.

**Mike Reiten** – Assistant Chief of Police, West Fargo Police Dept. – See written testimony.

**Senator Nelson** – Asks if he is representing a larger group of law enforcement.

**Reiten** – Said he has spoken with many departments and they agree.

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

**Senator Nething** – Asks how many mental health clinicians we have.

**Senator Olafson** – Said we would need a definition of mental health clinicians.

**Senator Sitte** – Gives definition for mental health professional.

**Senator Sorvaag** – Asks if it makes a difference who is in the room with them.

**McCleary** – Thinks someone should be in the room with them.

**Senator Nething** – Says where do you stop with what you can afford.


**Close the hearing 2041**

# 2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee  
Fort Lincoln Room, State Capitol

SB2041  
1/26/11  
Job #13502

Conference Committee

Committee Clerk Signature 

**Explanation or reason for introduction of bill/resolution:**

Relating to involuntary commitment procedures and the use of telemedicine technology

**Minutes:**

**Senator Nething** – Chairman

**Senator Nelson** moves a do pass

**Senator Sorvaag** seconds

Discussion

Senator Lyson said he will vote for this but does have a problem with it.

Roll call vote – 6 yes, 0 no

Motion passes

**Senator Nelson** will carry

Date: 1/26/11  
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2041

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. Nelson Seconded By S. Sorvaag

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. Nelson

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

**REPORT OF STANDING COMMITTEE**

**SB 2041: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS**  
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2041 was placed on the  
Eleventh order on the calendar.

2011 HOUSE JUDICIARY

SB 2041



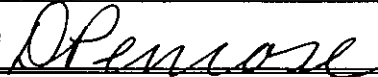
# 2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee  
Prairie Room, State Capitol

SB 2041  
March 2, 2011  
14821

Conference Committee

Committee Clerk Signature



## Minutes:

Chairman DeKrey: We will open the hearing on SB 2041.

Rep. Shirley Meyer: Support (see attached 1).

Rep. Delmore: For the purposes of telemedicine technology, would they be talking about the use of a physician, psychiatrist, psychologist or licensed addiction counselor. Does this feed into that part of the Code?

Rep. Meyer: Yes, I believe it does. There are going to be people testifying in support of this technology. They will explain that provision.

Chairman DeKrey: Thank you. Further testimony in support of SB 2041.

Emmet Kenney, CEO of Prairie St. John's: Support (see attached 2). In reference to the question posed earlier. There is a simple assertion in this proposal that would state that telemedicine is an appropriate mechanism for the examination and that would apply no matter who the examiner is; whether it's a licensed addiction counselor, psychiatrist or psychologist. Actually once the holds are lifted, the actual initial examination needs to be done by either a psychologist or a psychiatrist.

Rep. Hogan: How many facilities offer the technology to do this?

Emmet Kenney: Right now, this is not commonly done in ND. At Prairie St. John's, we've had about a 6 year history of offering telemedicine services through a clinic level of care, where patients are safe enough to be treated by basically office visits long distance. The shortage of psychiatrists is a driving factor for that. Most of the hospitals focus their psychiatrist's hours on emergency services, like hospital-based services. So one of the advantages of this, for bringing more resources to ND, is that someone would not necessarily have to be in ND, they would just need to be licensed in ND, but they could provide telemedicine from a different state. As I was driving in this morning I was thinking, I don't know why more people don't want to live in ND. On the other hand, I was kind of glad they're not. When it comes to

psychiatric recruitment, this would really increase the pool of qualified personnel if we could do this. Basically, the psychiatric inpatient services in Williston and Dickinson closed down when the sole psychiatric practitioner in the community retired or left. If we've got a vehicle like telemedicine, you could have a call pool of multiple people that would be available for continuous coverage.

Rep. Hogan: Where would the patient be located and how would that be arranged. Would it be from an inpatient facility, like in Williston or Dickinson, where they don't have psychiatric inpatient services?

Emmet Kenney: Yes, the facility where the patient is would be the originating site and then the psychiatrist, psychologist, or addiction counselor would be at a remote site. Basically the commitments have to occur within a facility. There are some statutory regulations for alternative treatment orders, which would be where someone is obligated to attend treatment where they can kind of come and go in, are contained in a facility.

Rep. Hogan: I am just assuring that all of those small hospitals have the technical facilities to make this available.

Emmet Kenney: That technology is there, both the hospital in Williston and Dickinson are part of the Catholic Health Initiatives. A group of hospitals have been in communication with their leadership. They are investing heavily in telemedicine technology. Other than getting a video camera, which you may be familiar with Skype, there is an advanced level of video equipment, but they already have all the lines hooked up. It's very common that if a small hospital has a need to do an X-ray, there may be a radiologist in another state or another community, who is already reading that radiology off a digital image that is being transferred to them. It's just as precise as if they were in the room next door.

Rep. Koppelman: I understand and appreciate the need for this kind of service in ND. We've been talking about this issue of telemedicine in the legislation for many years and implementing it in many places. As a psychiatrist, it seems it would become important to be able to be in the presence of a patient sometimes to capture their non-verbal responses, their body language, that you may be able to do over telemedicine. Do you feel, as a professional, that you get the same input that you get when you are sitting across the table from the patient. Is this a lesser quality of care. Do we need it because we are rural and remote, but it's not quite as good as being in the office.

Emmet Kenney: When we look at doing a thorough psychiatric examination, a psychiatrist is a physician who has at least four years of specialized training in psychiatry after medical school. When we look at how we conduct an examination, we review records, any information that's been prepared in advance about the patient. We talk with the patient and obtain a history to get their perspective and the perspective of others about what is going on. We conduct a mental status exam;

critical components of which would be looking at the patient's appearance, understanding how they can verbalize, communicate, looking at their non-verbal communication like body posture. In the same way you can see in the evening news broadcast and understand what the news broadcaster is trying to get across or a weather man who is explaining a cold front moving in, you can pick up those things by telemedicine. In reference to the 45 years of telemedicine, I'm the son of a psychiatrist. My father was actually the first person to conduct tele-psychiatry treatment for hospitalized patients. He was in Omaha and 90 miles away from the State Hospital in Norfolk was where the patients were. Times have really changed; in those days in NE, the law was that a patient needed to be seen by a physician once a year, and the state hospital could not meet that standard. So this really increased access; he would see patients once a month by that, and it helped significantly to actually reduce the number of patients in the state hospital system by more active treatment. When we look at all the vicissitudes of things like travel, etc. for a patient to go hundreds of miles to get to a safe place, this would help the community at large. There are times when developmentally disabled people, say someone you're not sure at age 4 if they are autistic or not, being able to be in the same room with them would have an advantage, but the commitment hearings generally only occur for people over the age of 18. You'd have the option of committing someone younger, but usually there is guardian consent instead for a younger person.

Rep. Koppelman: In those cases where you might run across a person where one-on-one attention might be needed or even essential in that case, would you have the authority to insist upon that, if we passed this or would this require that you limit your options to strictly telemedicine if that's what is called for. Is the lowest common denominator that everyone has to follow or could you say that you really need to see this patient and would that be okay, if this were to pass.

Emmet Kenney: It is hard for me to imagine a case where having to be in the same room would actually be key in making a determination, given the history is the history whether you are in the room or not. Many of the findings of the mental status exam will be exactly the same. If you recall in the commitment statutes, any licensed physician qualifies as an expert examiner. So generally it would be a licensed physician; in medical school you get two months of psychiatry training. We've already got a threshold; an expert is someone with a few months of training whereas a psychiatrist would have four years after that. It actually would raise the expertise, even though the methodology is through interactive video.

Rep. Delmore: Are you saying that by the use of telemedicine we would be more likely to have trained psychiatrists doing this vs. somebody else on the list that we have.

Emmet Kenney: Yes. The other thing to also think about in how this service could be offered, if a critical access hospital, like Mercy Hospital, if there would be a sense that the expert examiner, who by telemedicine would not be able to feel that they

had a conclusive examination, the physician on-site could go down and do their element in consultation, then you would have a face-to-face examination.

Chairman DeKrey: Thank you. Further testimony in support of SB 2041.

Alex Schweitzer, Superintendent of ND State Hospital: The Dept. of Human Services and the Hospital have an interest in this bill. In answer to a question that Rep. Hogan brought up, we're actually working with Dickinson and Williston on providing telemedicine services from the State Hospital to those regions. They actually closed their in-patient units because they did not have psychiatry services. We see this as a benefit, not only in terms of commitment hearings but even beyond the use of telemedicine, individuals from those regions would not then have to come to the State Hospital, which in many cases is probably not appropriate. We stand in support of this bill today.

Rep. Delmore: As you do these today, are we bringing a lot of the people to another facility, to exam them and secondly, are most of them that are examined, put in for involuntary commitment.

Alex Schweitzer: That's a good question. I'm not entirely sure of the answer to those questions. I can gather that information and get it to you.

Chairman DeKrey: Thank you. Further testimony in support of SB 2041. Testimony in opposition. We will close the hearing. What are the committee's wishes in regard to SB 2041.

Rep. Delmore: I move a Do Pass.

Rep. Steiner: Second the motion.

Chairman DeKrey: Further discussion; the clerk will call the roll.

**13 YES 0 NO 1 ABSENT**

**DO PASS**

**CARRIER: Rep. Steiner**

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

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
 BILL/RESOLUTION NO. 2041

House 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 Rep. Delmore Seconded By Rep. Steiner

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. Steiner

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

**REPORT OF STANDING COMMITTEE**

**SB 2041: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS**  
(13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2041 was placed on the  
Fourteenth order on the calendar.

2011 TESTIMONY

SB 2041

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 2041. Passage of this bill adds a new section to chapter 25-03.1 of NDCC to permit use of telemedicine in conducting court ordered examinations.

I served on the Judicial Process Committee this past interim and learned that our workforce in mental health and addiction treatment is stretched too thin and many people go without service. I also learned that we do not use the time of the many persons involved in the most efficient manner possible.

This bill creates permits those professionals who we already have to assist court personnel making decisions using well proven technology. This saves valuable time for everyone involved and does not lower quality of service. Use of telemedicine is not a new development. By way of example in 1980, over 30 years ago, I worked in a Veterans Administration hospital where my task was to be with patients while being examined by a psychiatrist over an interactive television network though the examiner and the patient were 150 miles apart. We learned that the technology actually assisted patients and examiners to have more open conversations than when they were face to face in the same room.

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.





PRAIRIE ST. JOHN'S™

January 10, 2011

RE: Senate Bill 2041

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 appear before you today to advise you that the hospitals in the State of North Dakota that have the responsibility of conducting court-ordered examinations stand in full support of Senate Bill 2041.


Telemedicine is the provision of direct patient care by way of live video conferencing equipment. It was pioneered more than 45 years ago in the Midwest. It is a safe, confidential and reliable way of providing treatment.

Being able to conduct examinations and treatment via telemedicine would ensure service availability throughout our state.

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.

In summary, please support and pass Senate Bill 2041 to help North Dakotans access life-saving psychiatric care in a timely manner. I am happy to field any questions you may have.

Sincerely,

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

EMK/skr

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Addictions

Judiciary Committee  
Senate Bill No. 2041

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 2041.

You have heard testimony this morning on the closely related Senate Bill 2039. Like Senate Bill 2039, Senate Bill 2041 is meant to increase the availability of mental health services in North Dakota.

Present day technologies have allowed us to communicate and conduct business across great distances. Students receive instruction from instructors hundreds or even thousand miles away. Telemedicine allows physicians to consult with their patients or their colleagues at a moments notice without the disruption of having to travel. Removing the requirement of travel increases the physician's availability to treat others. Regional meetings are frequently linked across the state to allow increased participation and to eliminate the time and expense of travel. Our technologies can bring us face to face by simply turning on a television monitor.

I believe we must look to all sources available to expand the capability and capacity of our communities and our state. Please allow expert examiners the use of telemedicine technologies to conduct court-ordered examinations. The use of telemedicine technologies will reduce the time wasted in travel of the examiner and reduce the need for long distance transportation of individuals in need of assessment.

It has been demonstrated that there is a lack of resources in North Dakota. 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.

When the need exists to transport a patient for examination that task typically falls back to your sheriff's office or your local ambulance service. The sheriff's office must schedule the transportation to comply with current law requiring the person be examined

Judiciary Committee  
Senate Bill No. 2041

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

within twenty-four hours. Frequently resources will need to be pulled from other assignments to accomplish the transportation request. Once the transportation process has begun the sheriff's office personnel are unavailable within their jurisdiction for an extended period of time. The ability of the sheriff's office to respond within your community is affected.

By allowing the use of telemedicine technologies the limited resources currently available can be more efficiently and effectively utilized. The examiners can remain at their facility to continue to treat others. The patient would not be subjected to the stress of being transported by law enforcement or by ambulance to another location for examination. Your emergency responders would remain available in your community.

Thank you for your time today.

I would be open to any questions you may have.

**Testimony  
Senate Bill 2041  
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 use of telemedicine technology for purposes of court-ordered examinations. NDFFCMH would like to see a mental health clinician at the same location as the individual being evaluated to assist with the evaluation.

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](mailto:carlottamccleary@bis.midco.net)

SB 2041

During the interim the Judicial Process Committee was assigned the study of involuntary mental health commitment because of the interest in increasing the time within which an evaluation must be done. The current requirement is that a petition must be filed within 24 hours of detention.

There wasn't any support by the committee to increase the time within which an evaluation must be done so we were looking at ways to enhance the use of psychiatrists in underserved parts of the state.

Telemedicine can be used as a tool to evaluate a person's mental status and make the commitment process work better without extending the time limitations.

Our committee received testimony that indicated that due to the rural nature of the state and the limited availability of psychiatric services in many part of the state, it is often difficult to meet the deadlines imposed by law within which an expert examination is required to be conducted.

Telemedicine is a valuable tool and several attorneys indicated to our committee 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.

SB 2041 will authorize the use of telemedicine technologies which will make the commitment process work better without extending time limitations.



PRAIRIE ST. JOHN'S™

March 2, 2011

RE: Senate Bill 2041

Dear Members of the Judiciary Committee:

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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.

In summary, please support and pass Senate Bill 2041 to help North Dakotans access life-saving psychiatric care in a timely manner. I am happy to field any questions you may have.

Sincerely,

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

EMK/skr

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