

MENTAL AND PHYSICAL ILLNESS OR DISABILITY

CHAPTER 203

SENATE BILL NO. 2041

(Legislative Management)
(Judicial Process Committee)

AN ACT to create and enact a new section to chapter 25-03.1 of the North Dakota Century Code, relating to involuntary commitment procedures and the use of telemedicine technology.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 25-03.1 of the North Dakota Century Code is created and enacted as follows:

Use of telemedicine technology authorized.

For purposes of court-ordered examinations conducted under this chapter, an expert examiner may use telemedicine technologies to assist the expert examiner in conducting those examinations.

Approved April 25, 2011
Filed April 25, 2011

CHAPTER 204

SENATE BILL NO. 2040

(Legislative Management)
(Judicial Process Committee)

AN ACT to amend and reenact subsection 2 of section 25-03.1-11 of the North Dakota Century Code, relating to evaluations in involuntary mental health commitments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 25-03.1-11 of the North Dakota Century Code is amended and reenacted as follows:

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 licensed physician, 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, psychiatrist, licensed addiction counselor, or licensed psychologist trained in a clinical program.

Approved April 25, 2011
Filed April 25, 2011

CHAPTER 205

SENATE BILL NO. 2039

(Legislative Management)
(Judicial Process Committee)

AN ACT to amend and reenact section 25-03.1-23 of the North Dakota Century Code, relating to those mental health professionals authorized to execute a certificate regarding a continuing treatment order; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 25-03.1-23 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-23. Petition for continuing treatment orders.

A petition for an order authorizing continuing treatment must contain a statement setting forth the reasons for the determination that the patient continues to be a person requiring treatment; a statement describing the treatment program provided to the patient and the results of that treatment; and a clinical estimate as to how long further treatment will be required. The petition must be accompanied by a certificate executed by a physician, psychiatrist, ~~or~~ psychologist, or licensed addiction counselor, any of whom is practicing within that individual's professional scope of practice.

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

Approved April 25, 2011
Filed April 25, 2011

CHAPTER 206

SENATE BILL NO. 2166

(Senators Mathern, J. Lee)
(Representatives Thoreson, Hogan, Wieland)

AN ACT to amend and reenact section 25-03.1-34.2 of the North Dakota Century Code, relating to detoxification services in interstate contracts for treatment of mental illness or chemical dependency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 25-03.1-34.2 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-34.2. Interstate contracts for treatment of mental illness or chemical dependency.

1. For purposes of this section, "bordering state" means Minnesota, Montana, or South Dakota.
2. Unless prohibited by another law and subject to the exceptions in subsection 3, the department may contract with any appropriate treatment or detoxification facility in a bordering state for the treatment of mental illness or chemical dependency or for providing chemical dependency detoxification services for residents of North Dakota. The department may also contract with any public or private agency or facility to provide treatment of mental illness or chemical dependency or to provide chemical dependency detoxification services in North Dakota to residents of a bordering state. An individual who receives treatment for mental illness or chemical dependency or who receives chemical dependency detoxification services in another state under this section is subject to the laws of the state in which treatment or detoxification is provided. An individual who receives treatment or detoxification in another state under this section must be informed of the consequences of receiving treatment or detoxification in another state, including the implications of the differences in state laws.
3. A contract may not be entered under this section for treatment or detoxification to individuals who:
 - a. Are serving a sentence after conviction of a criminal offense;
 - b. Are on probation or parole;
 - c. Are the subject of a presentence investigation; or
 - d. Have been committed involuntarily in North Dakota under chapter 25-03.1 for treatment of mental illness or chemical dependency, except as provided under subsection 5.
4. Contracts entered under this section must, at a minimum:

- a. Describe the services to be provided;
 - b. Establish responsibility for the costs of services;
 - c. Establish responsibility for the costs of transporting individuals receiving services under this section;
 - d. Specify the duration of the contract;
 - e. Specify the means of terminating the contract;
 - f. Specify the terms and conditions for refusal to admit or retain an individual; and
 - g. Identify the goals to be accomplished by the placement of an individual under this section.
5. The department may enter negotiations with appropriate personnel of a bordering state to develop an agreement that conforms to the requirements of this section. An agreement with a bordering state must enable the placement in North Dakota of individuals who require detoxification services, are on emergency holds, or who have been involuntarily committed as mentally ill or chemically dependent in a bordering state and enable the temporary placement in a bordering state of patients who require detoxification services or who are on emergency holds in North Dakota under chapter 25-03.1. An agreement with a bordering state must also provide that the North Dakota courts retain jurisdiction over North Dakota residents, and that the bordering state affords to North Dakota residents the rights afforded to them under North Dakota law. Individuals committed by a court of a bordering state and placed in North Dakota facilities continue to be in the legal custody of the bordering state. The bordering state's laws governing length of commitment, reexaminations, and extension of commitment must continue to apply to these residents. In all other respects, residents of a bordering state placed in North Dakota facilities are subject to North Dakota laws. An agreement with a bordering state must specify that responsibility for payment for the cost of care of a resident of a bordering state remains with the bordering state of which that individual is a resident and the cost of care of a North Dakota resident remains with the state of North Dakota. This section applies to detoxification services regardless of whether the services are provided on a voluntary or involuntary basis.

Approved April 19, 2011
Filed April 19, 2011

CHAPTER 207

SENATE BILL NO. 2142

(Senators J. Lee, Mathern, Berry)
(Representatives Delmore, Hawken, Weisz)

AN ACT to amend and reenact sections 15.1-02-16, 15.1-18-05, and 15.1-18-06, subsection 4 of section 15.1-32-01, subsection 4 of section 20.1-03-04, subsection 11 of section 25-03.1-02, subsections 3, 4, and 8 of section 25-03.3-01, section 25-03.3-07, subsection 2 of section 25-03.3-08, subsection 2 of section 25-03.3-09, sections 25-03.3-10, 25-03.3-11, and 25-03.3-12, subsection 1 of section 25-03.3-18, sections 25-03.3-19, 25-16.1-02, 25-18-01, and 25-18-15, subsection 4 of section 26.1-36-22, subsection 1 of section 27-20-34, subsection 2 of section 50-06-05.3, subsection 1 of section 50-24.1-07, subsection 9 of section 50-25.1-02, subsection 7 of section 57-38-01, and sections 57-63-01, 57-63-02, 57-63-03, and 57-63-13 of the North Dakota Century Code, relating to changing mental retardation to intellectual disability and mentally retarded to individual with an intellectual disability; and to provide for reconciliation by the legislative council of these terms in statutory provisions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15.1-02-16 of the North Dakota Century Code is amended and reenacted as follows:

15.1-02-16. Superintendent of public instruction - Issuance of credentials to teachers and administrators.

The superintendent of public instruction may adopt rules governing the issuance of:

1. Credentials for teachers of driver's education;
2. Credentials for teachers of early childhood special education;
3. Credentials for elementary school principals;
4. Credentials for teachers of students who are emotionally disturbed;
5. Credentials for teachers of students who are gifted and talented;
6. Credentials for secondary school principals;
7. Credentials for library media;
8. Credentials for teachers of title I;
9. Credentials for teachers of students who ~~are mentally retarded~~have intellectual disabilities;
10. Credentials for teachers of students who are physically disabled;

11. Credentials for coordinators of programs for students with limited English proficiency;
12. Credentials for school counselors;
13. Credentials for special education directors;
14. Credentials for special education strategists;
15. Credentials for teachers of students who have specific learning disabilities;
16. Credentials for superintendents;
17. Credentials for teachers of students who have vision impairments;
18. Credentials for teachers of students who are deaf or hard of hearing; and
19. Certificate of completion for paraprofessionals.

SECTION 2. AMENDMENT. Section 15.1-18-05 of the North Dakota Century Code is amended and reenacted as follows:

15.1-18-05. Special education strategist credential.

In addition to any other credential, the superintendent of public instruction shall implement a special education strategist credential, effective August 1, 2001. Any individual who obtains a special education strategist credential and meets all other teacher licensure requirements imposed by statute may provide special education services in the areas of ~~mental retardation~~ intellectual disabilities, emotional disturbance, and specific learning disabilities.

SECTION 3. AMENDMENT. Section 15.1-18-06 of the North Dakota Century Code is amended and reenacted as follows:

15.1-18-06. Provisional special education strategist credential.

Beginning August 1, 2001, upon application the superintendent of public instruction shall issue a provisional special education strategist credential to any individual who is licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board and who holds a credential applicable to the areas of ~~mental retardation~~ intellectual disabilities, emotional disturbance, or specific learning disabilities. The provisional credential must be made available to the individual for the lesser of three years or the period of time required by the individual to complete the requirements for a special education strategist credential.

⁸¹ **SECTION 4. AMENDMENT.** Subsection 4 of section 15.1-32-01 of the North Dakota Century Code is amended and reenacted as follows:

4. a. "Student with a disability" means an individual who is at least three years of age but who has not reached the age of twenty-one before September first of the year in which the individual turns twenty-one and who requires special education and related services because of:

⁸¹ Section 15.1-32-01 was also amended by section 1 of House Bill No. 1073, chapter 150.

- (1) ~~Mental retardation~~An intellectual disability;
 - (2) A hearing impairment, including deafness;
 - (3) Deaf-blindness;
 - (4) A speech or language impairment;
 - (5) A visual impairment, including blindness;
 - (6) An emotional disturbance;
 - (7) An orthopedic impairment;
 - (8) Autism;
 - (9) A traumatic brain injury;
 - (10) Other health impairment; or
 - (11) A specific learning disability.
- b. "Student with a disability" includes a student age eighteen through twenty-one who is incarcerated in an adult correctional facility and who, in the last educational placement prior to incarceration, was identified as being a student with a disability and did not have an individualized education program or was identified as being a student with a disability and had an individualized education program.

SECTION 5. AMENDMENT. Subsection 4 of section 20.1-03-04 of the North Dakota Century Code is amended and reenacted as follows:

4. Developmental center at westwood park, Grafton patients, North Dakota youth correctional center students, school for the deaf students, North Dakota vision services - school for the blind students, state hospital patients, ~~community health and retardation service unit patients~~clients of regional human service centers under direct therapeutic care, and residents of facilities licensed by the state department of health and the department of human services may fish without a resident fishing license. Patients of these institutions must be identified. The department shall issue authority to each institution.

SECTION 6. AMENDMENT. Subsection 11 of section 25-03.1-02 of the North Dakota Century Code is amended and reenacted as follows:

11. "Mentally ill person" means an individual with an organic, mental, or emotional disorder which substantially impairs the capacity to use self-control, judgment, and discretion in the conduct of personal affairs and social relations. "Mentally ill person" does not include ~~a mentally retarded person~~an individual with an intellectual disability of significantly subaverage general intellectual functioning which originates during the developmental period and is associated with impairment in adaptive behavior, although a person who is ~~mentally retarded~~intellectually disabled may also suffer from a mental illness. Chemical dependency does not per se constitute mental illness, although persons suffering from that condition may also be suffering from mental illness.

⁸² **SECTION 7. AMENDMENT.** Subsections 3, 4, and 8 of section 25-03.3-01 of the North Dakota Century Code are amended and reenacted as follows:

3. "~~Mental retardation~~""Intellectual disability" means mental retardation as defined in the "Diagnostic and Statistical Manual of Mental Disorders", American psychiatric association, fourth edition (~~1994~~), text revision (2000).
4. "Qualified expert" means an individual who has an expertise in sexual offender evaluations and who is a psychiatrist or psychologist trained in a clinical program and licensed pursuant to this state's law or a psychologist approved for exemption by the North Dakota board of psychologist examiners. For purposes of evaluating an individual with ~~mental retardation~~an intellectual disability, the qualified expert must have specialized knowledge in sexual offender evaluations of individuals with ~~mental retardation~~an intellectual disability.
8. "Sexually dangerous individual" means an individual who is shown to have engaged in sexually predatory conduct and who has a congenital or acquired condition that is manifested by a sexual disorder, a personality disorder, or other mental disorder or dysfunction that makes that individual likely to engage in further acts of sexually predatory conduct which constitute a danger to the physical or mental health or safety of others. It is a rebuttable presumption that sexually predatory conduct creates a danger to the physical or mental health or safety of the victim of the conduct. For these purposes, ~~mental retardation~~intellectual disability is not a sexual disorder, personality disorder, or other mental disorder or dysfunction.

SECTION 8. AMENDMENT. Section 25-03.3-07 of the North Dakota Century Code is amended and reenacted as follows:

25-03.3-07. Appointment of guardian ad litem.

At any stage of a proceeding under this chapter, on application of any individual or on its own motion, the court may appoint a guardian ad litem for a minor or an individual with ~~mental retardation~~an intellectual disability who is a respondent or witness or otherwise involved in the proceeding, if the minor or an individual with ~~mental retardation~~an intellectual disability has no parent, guardian, or custodian appearing on ~~behalf of the minor~~ or the ~~mentally retarded individual's behalf~~individual with an intellectual disability or the interests of those persons conflict with those of the minor or an individual with ~~mental retardation~~an intellectual disability. The department of human services shall pay the expense of the guardian ad litem fee as established by the court.

SECTION 9. AMENDMENT. Subsection 2 of section 25-03.3-08 of the North Dakota Century Code is amended and reenacted as follows:

2. If the state's attorney knows or believes the respondent named in the petition is an individual with ~~mental retardation~~an intellectual disability, the state's attorney shall notify the court in the petition and shall advise the court of the name of the legal guardian of the respondent or, if none is known, the court may appoint a guardian ad litem for the respondent. Before service of the notice required in section 25-03.3-10, the court shall appoint an attorney for the respondent. An individual with ~~mental retardation~~an intellectual disability

⁸² Section 25-03.3-01 was also amended by section 1 of House Bill No. 1464, chapter 208.

may be detained in a correctional facility before the probable cause hearing only when no other secure facility is accessible, and then only under close supervision.

SECTION 10. AMENDMENT. Subsection 2 of section 25-03.3-09 of the North Dakota Century Code is amended and reenacted as follows:

2. After consultation with counsel, the respondent may waive the right to counsel or the right to any hearing provided pursuant to this chapter by notifying the court in writing. The notification must clearly state the respondent's reasons for the waiver and the respondent's counsel shall separately certify that counsel has explained to the respondent the proceedings, the legal and factual issues, potential defenses, the burden of proof, and possible outcomes of the proceedings. No guardian, guardian ad litem, attorney, or other individual may waive the right to counsel on behalf of an individual with ~~mental retardation~~ an intellectual disability.

SECTION 11. AMENDMENT. Section 25-03.3-10 of the North Dakota Century Code is amended and reenacted as follows:

25-03.3-10. Notice.

If a respondent is detained pursuant to section 25-03.3-08, the state's attorney shall provide the respondent, or the respondent's guardian, if appropriate, with a copy of the petition filed with the court. The state's attorney shall provide the respondent with written notice of the respondent's right to a preliminary hearing and a commitment hearing, if probable cause is found to exist; the right to counsel and that counsel will be appointed for the respondent, if the respondent is indigent; and the right to have an expert of the respondent's choosing conduct an evaluation and testify on the respondent's behalf or, if the respondent is indigent, that the court will appoint a qualified expert for the respondent. The notice must state the date, time, and place for the preliminary hearing. If notice is given to a respondent who the state's attorney knows or believes is an individual with ~~mental retardation~~ an intellectual disability, the state's attorney also shall give notice to the respondent's attorney, guardian, and guardian ad litem, if any.

SECTION 12. AMENDMENT. Section 25-03.3-11 of the North Dakota Century Code is amended and reenacted as follows:

25-03.3-11. Preliminary hearing - Probable cause.

The respondent is entitled to a preliminary hearing within seventy-two hours of being taken into custody pursuant to an order of the court, excluding weekends and holidays, unless the respondent knowingly waives the preliminary hearing pursuant to section 25-03.3-09. The respondent has a right to be present, to testify, and to present and cross-examine witnesses at any preliminary hearing. The court may receive evidence that would otherwise be inadmissible at a commitment hearing. If the court determines after a preliminary hearing that there is probable cause to believe the respondent is a sexually dangerous individual, the court shall order that the respondent be transferred to an appropriate treatment facility for an evaluation as to whether the respondent has a congenital or acquired condition that is manifested by a sexual disorder, a personality disorder, or other mental disorder or dysfunction that makes the respondent likely to engage in further acts of sexually predatory conduct. If the court determines that probable cause does not exist to believe that the respondent is a sexually dangerous individual, the court shall dismiss the petition. If the respondent waives the preliminary hearing, then the respondent must be

immediately transferred to an appropriate treatment facility for an evaluation as to whether the respondent has a congenital or acquired condition that is manifested by a sexual disorder, a personality disorder, or other mental disorder or dysfunction that makes the respondent likely to engage in further acts of sexually predatory conduct. An individual with ~~mental retardation~~ an intellectual disability may be evaluated under this chapter at a facility only if that facility provides care and treatment to individuals with ~~mental retardation~~ an intellectual disability.

SECTION 13. AMENDMENT. Section 25-03.3-12 of the North Dakota Century Code is amended and reenacted as follows:

25-03.3-12. Sexually dangerous individual - Evaluation.

The evaluation must be conducted by one or more experts chosen by the executive director. Whenever a respondent is subject to an evaluation pursuant to this chapter, the respondent may retain an expert to perform an evaluation or testify on the respondent's behalf. When the respondent is an adult with ~~mental retardation~~ an intellectual disability and a guardian or guardian ad litem has not been appointed for the respondent, the court shall appoint an expert to perform an evaluation on behalf of the respondent. In the case of a respondent who is indigent, the court shall appoint a qualified expert to perform an examination or participate in the commitment proceeding on the respondent's behalf. The department of human services shall compensate any qualified expert appointed by the court on behalf of an indigent respondent in a reasonable amount based on time and expenses. An expert retained on behalf of the respondent must have reasonable access to the respondent for the purpose of the examination and to all relevant medical, psychological, and court records and reports.

SECTION 14. AMENDMENT. Subsection 1 of section 25-03.3-18 of the North Dakota Century Code is amended and reenacted as follows:

1. Annually, the executive director shall provide the committed individual with written notice that the individual has a right to petition the court for discharge. The notice must explain to the committed person when the committed person has a right to a hearing on the petition. The notice must inform the committed person of the rights this chapter affords the committed person at a discharge hearing. The executive director shall forward a copy of the notice to the committing court. If the committed individual is ~~mentally retarded~~ an individual with an intellectual disability, the executive director shall also provide the written notice to the individual's attorney, guardian, and guardian ad litem, if any.

SECTION 15. AMENDMENT. Section 25-03.3-19 of the North Dakota Century Code is amended and reenacted as follows:

25-03.3-19. Appeal.

The respondent has the right to an appeal from an order of commitment or an order denying a petition for discharge. Upon entry of an appealable order, the court shall notify the respondent of the right to appeal and the right to counsel. The notice of appeal must be filed within thirty days after entry of the order. The appeal must be limited to a review of the procedures, findings, and conclusions of the committing court. Pending a decision on appeal, the order appealed from remains in effect. If the respondent is a ~~mentally retarded~~ an individual with an intellectual disability, the court shall provide notice of the right to appeal to the respondent's attorney, the respondent's guardian, and guardian ad litem.

SECTION 16. AMENDMENT. Section 25-16.1-02 of the North Dakota Century Code is amended and reenacted as follows:

25-16.1-02. Conditions for appointment of receiver.

When the department has revoked the license of a treatment or care center, or when the operator of a center has requested, the department may file a petition with the district court to place the center under the control of a receiver if necessary to protect the health or safety of clients at the center. The court may grant the petition upon a finding that the health or safety of the clients at the center would be seriously threatened if a condition existing at the time the petition was filed is permitted to continue. Such a finding may be based upon evidence concerning the physical plant, the program and services offered by the center, but not solely upon evidence that a center:

1. Has been denied a license to operate as a center, or has had a previously issued license revoked; or
2. Has been denied certification as an intermediate care facility for ~~the mentally retarded~~ individuals with intellectual disabilities, or has lost or had revoked such certification.

SECTION 17. AMENDMENT. Section 25-18-01 of the North Dakota Century Code is amended and reenacted as follows:

25-18-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Department" means the department of human services.
2. "Treatment or care center" means an entity providing services to individuals with developmental disabilities and licensed by the department as an intermediate care facility for ~~the mentally retarded~~ individuals with intellectual disabilities as defined in section 1905(d) of the Social Security Act [42 U.S.C. § 1396d(d)]; group home; or a provider of day supports, supported living arrangement, extended services, or infant development services.

SECTION 18. AMENDMENT. Section 25-18-15 of the North Dakota Century Code is amended and reenacted as follows:

25-18-15. Payment for services to medically fragile children.

The department may consider the unique level of care, the additional cost required to provide services to medically fragile clients under twenty-one years of age, and the actual and reasonable cost of providing services to developmentally disabled individuals when reimbursing an intermediate care facility for ~~the mentally retarded~~ individuals with intellectual disabilities.

SECTION 19. AMENDMENT. Subsection 4 of section 26.1-36-22 of the North Dakota Century Code is amended and reenacted as follows:

4. A policy that provides that coverage for a dependent child of an employee or other member of the covered group terminates upon attainment of the limiting age for dependent children specified in the policy does not operate to terminate the coverage of a dependent child while the child is a full-time student and has not attained the age of twenty-six years or while the child is

and continues to be both incapable of self-sustaining employment by reason of ~~mental retardation~~ intellectual disability or physical ~~handicap~~ disability and chiefly dependent upon the employee or member for support and maintenance, provided proof of incapacity and dependency is furnished to the insurer by the employee or member within thirty-one days of the child's attainment of limiting age and subsequently as may be required by the insurer but not more frequently than annually after the two-year period following the child's attainment of the limiting age.

SECTION 20. AMENDMENT. Subsection 1 of section 27-20-34 of the North Dakota Century Code is amended and reenacted as follows:

1. After a petition has been filed alleging delinquency based on conduct which is designated a crime or public offense under the laws, including local ordinances or resolutions of this state, the court before hearing the petition on its merits shall transfer the offense for prosecution to the appropriate court having jurisdiction of the offense if:
 - a. The child is over sixteen or more years of age and requests the transfer;
 - b. The child was fourteen years of age or more at the time of the alleged conduct and the court determines that there is probable cause to believe the child committed the alleged delinquent act and the delinquent act involves the offense of murder or attempted murder; gross sexual imposition or the attempted gross sexual imposition of a victim by force or by threat of imminent death, serious bodily injury, or kidnapping; or the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance in violation of subdivision a or b of subsection 1 of section 19-03.1-23, except for the manufacture, delivery, or possession with intent to manufacture or deliver marijuana in an amount less than one pound [.45 kilogram]; or the gratuitous delivery of a controlled substance not a narcotic drug or methamphetamine which is a singular and isolated event involving an amount of controlled substance sufficient solely for a single personal use; or
 - c.
 - (1) The child was fourteen or more years of age at the time of the alleged conduct;
 - (2) A hearing on whether the transfer should be made is held in conformity with sections 27-20-24, 27-20-26, and 27-20-27;
 - (3) Notice in writing of the time, place, and purpose of the hearing is given to the child and the child's parents, guardian, or other custodian at least three days before the hearing; and
 - (4) The court finds that there are reasonable grounds to believe that:
 - (a) The child committed the delinquent act alleged;
 - (b) The child is not amenable to treatment or rehabilitation as a juvenile through available programs;
 - (c) The child is not treatable in an institution for ~~the mentally retarded~~ individuals who are intellectually disabled or who are mentally ill;

- (d) The interests of the community require that the child be placed under legal restraint or discipline; and
- (e) If the child is fourteen or fifteen years old, the child committed a delinquent act involving the infliction or threat of serious bodily harm.

SECTION 21. AMENDMENT. Subsection 2 of section 50-06-05.3 of the North Dakota Century Code is amended and reenacted as follows:

2. Regional human service centers shall provide human services to all eligible individuals and families to help them achieve or maintain social, emotional, and economic self-sufficiency; prevent, reduce, or eliminate dependency; prevent or remedy the neglect, abuse, or exploitation of children and of adults unable to protect their own interests; aid in the preservation, rehabilitation, and reuniting of families; prevent or reduce inappropriate institutional care by providing for care while institutionalized or providing for community-based or other forms of less restrictive care; secure referral or admission for institutional care; provide outpatient diagnostic and treatment services; provide information concerning guardianship to people interested in becoming or who are guardians; and provide rehabilitation services for patients ~~suffering from~~with mental or emotional disorders, ~~mental retardation~~an intellectual disability, and other psychiatric conditions, particularly for those patients who have received prior treatment in an inpatient facility. Regional human service centers shall deliver services in the manner prescribed by the department.

⁸³ **SECTION 22. AMENDMENT.** Subsection 1 of section 50-24.1-07 of the North Dakota Century Code is amended and reenacted as follows:

1. On the death of any recipient of medical assistance who was a resident of a nursing facility, intermediate care facility for ~~the mentally retarded individuals with intellectual disabilities~~, or other medical institution and with respect to whom the department of human services determined that resident reasonably was not expected to be discharged from the medical institution and to return home, or who was fifty-five years of age or older when the recipient received the assistance, and on the death of the spouse of the deceased recipient, the total amount of medical assistance paid on behalf of the recipient following the determination that the recipient cannot reasonably be expected to be discharged from the medical institution, or the recipient's fifty-fifth birthday, as the case may be, must be allowed as a preferred claim against the decedent's estate after payment, in the following order, of:
 - a. Funeral expenses not in excess of three thousand dollars;
 - b. Expenses of the last illness, other than those incurred by medical assistance;
 - c. Expenses of administering the estate, including attorney's fees approved by the court;
 - d. Claims made under chapter 50-01;
 - e. Claims made under chapter 50-24.5;

⁸³ Section 50-24.1-07 was also amended by section 1 of Senate Bill No. 2074, chapter 365.

- f. Claims made under chapter 50-06.3 and on behalf of the state hospital; and
- g. Claims made under subsection 4.

SECTION 23. AMENDMENT. Subsection 9 of section 50-25.1-02 of the North Dakota Century Code is amended and reenacted as follows:

9. "Institutional child abuse or neglect" means situations of known or suspected child abuse or neglect when the institution responsible for the child's welfare is a residential child care facility, a treatment or care center for ~~mentally retarded~~ individuals with intellectual disabilities, a public or private residential educational facility, a maternity home, or any residential facility owned or managed by the state or a political subdivision of the state.

SECTION 24. AMENDMENT. Subsection 7 of section 57-38-01 of the North Dakota Century Code is amended and reenacted as follows:

7. "Mental disorder" means a substantial disorder of the person's emotional processes, thought, cognition, or memory. Mental disorder is distinguished from:
 - a. Conditions which are primarily those of drug abuse, alcoholism, or ~~mental retardation~~ intellectual disability, unless in addition to one or more of these conditions, the person has a mental disorder.
 - b. The declining mental abilities that accompany impending death.
 - c. Character and personality disorders characterized by lifelong and deeply ingrained antisocial behavior patterns, including sexual behaviors which are abnormal and prohibited by statute, unless the behavior results from a mental disorder.

SECTION 25. AMENDMENT. Section 57-63-01 of the North Dakota Century Code is amended and reenacted as follows:

57-63-01. Definitions.

As used in this chapter:

1. "Business" has the meaning provided in section 31-08.1-01.
2. "Commissioner" means the state tax commissioner.
3. "Facility" includes the operating entity of each intermediate care facility for ~~the mentally retarded~~ individuals with intellectual disabilities located in this state.
4. "Intermediate care facility for ~~the mentally retarded~~ individuals with intellectual disabilities" means a treatment or care center licensed under chapter 25-16 that provides services eligible for coverage as medical assistance under 42 U.S.C. 1396a(a)(31), and also means the developmental center at westwood park, Grafton.
5. "Licensed bed" means a bed licensed under chapter 25-16 or approved by the secretary of health and human services pursuant to 42 U.S.C. 1396i.

6. "Quarter" means one of four calendar quarters beginning January first, April first, July first, or October first.

SECTION 26. AMENDMENT. Section 57-63-02 of the North Dakota Century Code is amended and reenacted as follows:

57-63-02. Imposition of assessment.

An assessment must be imposed on each intermediate care facility for ~~the mentally retarded~~ individuals with intellectual disabilities licensed in this state. No waiver otherwise available under this code is applicable to this assessment.

SECTION 27. AMENDMENT. Section 57-63-03 of the North Dakota Century Code is amended and reenacted as follows:

57-63-03. Basis of assessment.

Every year beginning July first, each intermediate care facility for ~~the mentally retarded~~ individuals with intellectual disabilities must be assessed a quarterly rate per licensed bed as of the first day of each quarter. The quarterly rate may not exceed a rate calculated by the department of human services as an annual aggregate of gross revenues as of December thirty-first of the preceding year for all intermediate care facilities for ~~the mentally retarded~~ individuals with intellectual disabilities, multiplied by one and one-half percent, and divided by licensed beds as of December thirty-first of the preceding year.

SECTION 28. AMENDMENT. Section 57-63-13 of the North Dakota Century Code is amended and reenacted as follows:

57-63-13. Provider assessment fund.

There is a special fund in the state treasury known as the provider assessment fund. The fund includes all revenue received from intermediate care facilities for ~~the mentally retarded~~ individuals with intellectual disabilities for remittance to the fund under this chapter. All moneys designated for the fund from whatever source derived must be deposited with the state treasurer in the provider assessment fund.

SECTION 29. LEGISLATIVE COUNCIL TO CHANGE TERMINOLOGY. The legislative council shall replace "mentally retarded" or "mental retardation" or any derivatives of those terms, which when used in context indicate an intention to refer to those terms, wherever they appear in legislation enacted by the sixty-second legislative assembly of North Dakota and to insert in lieu of each deletion "intellectually disabled", "intellectual disability", or "individual with intellectual disabilities".

Approved April 19, 2011
Filed April 19, 2011

CHAPTER 208

HOUSE BILL NO. 1464

(Representatives Streyle, Heilman, Holman)
(Senators Laffen, Sitte, Nelson)

AN ACT to amend and reenact subsection 9 of section 25-03.3-01 and section 25-03.3-04 of the North Dakota Century Code, relating to retention of sexual offender case files and records and the definition of sexually predatory conduct.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁸⁴ **SECTION 1. AMENDMENT.** Subsection 9 of section 25-03.3-01 of the North Dakota Century Code is amended and reenacted as follows:

9. "Sexually predatory conduct" means:
 - a. Engaging or attempting to engage in a sexual act or sexual contact with another individual, or causing or attempting to cause another individual to engage in a sexual act or sexual contact, if:
 - (1) The victim is compelled to submit by force or by threat of imminent death, serious bodily injury, or kidnapping directed toward the victim or any human being, or the victim is compelled to submit by any threat or coercion that would render ~~an individual of reasonable firmness~~ person reasonably incapable of resisting;
 - (2) The victim's power to appraise or control the victim's conduct has been substantially impaired by the administration or employment, without the victim's knowledge, of intoxicants or other means for purposes of preventing resistance;
 - (3) The actor knows or should have known that the victim is unaware that a sexual act is being committed upon the victim;
 - (4) The victim is less than fifteen years old;
 - (5) The actor knows or should have known that the victim has a disability that substantially impairs the victim's understanding of the nature of the sexual act or contact;
 - (6) The victim is in official custody or detained in a treatment facility, health care facility, correctional facility, or other institution and is under the supervisory authority, disciplinary control, or care of the actor; ~~or~~
 - (7) The victim is a minor and the actor is an adult; or

⁸⁴ Section 25-03.3-01 was also amended by section 7 of Senate Bill No. 2142, chapter 207.

- (8) The other individual is a person related to the actor within a degree of consanguinity within which marriages are declared incestuous and void by section 14-03-03 and the actor knows that; or
- b. Engaging in or attempting to engage in sexual contact with another individual or causing or attempting to cause another individual to have sexual contact, if:
- (1) The actor knows or should have known that the contact is offensive to the victim; or
 - (2) The victim is a minor, fifteen years of age or older, and the actor is the minor's parent, guardian, or is otherwise responsible for general supervision of the victim's welfare.

SECTION 2. AMENDMENT. Section 25-03.3-04 of the North Dakota Century Code is amended and reenacted as follows:

25-03.3-04. Retention of records.

Notwithstanding any other provision of law, all adult and juvenile case files and court records of an alleged offense defined by ~~section 12.1-20-03, 12.1-20-04, 12.1-20-05, 12.1-20-06, or 12.1-20-07~~ chapters 12.1-20 and 12.1-27.2 must be retained for fifty years and made available to any state's attorney for purposes of investigation or proceedings pursuant to this chapter.

Approved April 4, 2011
Filed April 4, 2011

CHAPTER 209

SENATE BILL NO. 2265

(Senators Krebsbach, Burckhard, Mathern)
(Representatives Bellew, Ruby, Thoreson)

AN ACT to create and enact two new sections to chapter 25-16.2 of the North Dakota Century Code, relating to a statement of purpose and work activity center contracts; and to amend and reenact sections 25-16.2-01 and 25-16.2-03, subsection 1 of section 54-44.4-05, and subdivision e of subsection 2 of section 54-44.4-05 of the North Dakota Century Code, relating to work activity centers and procurement of services by state agencies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 25-16.2 of the North Dakota Century Code is created and enacted as follows:

Purpose.

It is in the public interest to advance employment opportunities to individuals with disabilities so that those individuals may acquire job skills and training and gain greater independence and quality of life. This state is committed to promoting self-sufficiency, integrating individuals with disabilities into our communities, and maximizing the earning potential of individuals with disabilities.

SECTION 2. AMENDMENT. Section 25-16.2-01 of the North Dakota Century Code is amended and reenacted as follows:

25-16.2-01. Work activity center - Definition.

As used in this chapter "work activity center" means a facility, licensed by the department of human services, which is located in the state and operated by a nonprofit corporation organized for the primary purpose of employing and providing rehabilitative activities for ~~physically handicapped, developmentally disabled, and chronically mentally ill persons~~ individuals with physical disabilities, developmental disabilities, or chronic mental illnesses.

SECTION 3. AMENDMENT. Section 25-16.2-03 of the North Dakota Century Code is amended and reenacted as follows:

25-16.2-03. Contract requirement.

Any contract awarded pursuant to this chapter must be in writing and must be made available by the purchasing party to any person upon request. The contract must include the purchase price, the quantity of ~~product~~ commodity or service purchased, and the time period for which the ~~product~~ commodity or service will be provided.

SECTION 4. A new section to chapter 25-16.2 of the North Dakota Century Code is created and enacted as follows:

Direct purchase from work activity centers.

If acceptable commodities or services are produced or provided by a work activity center at fair market price, any state entity or political subdivision may enter a contract to purchase directly from the work activity center without obtaining competition.

⁸⁵ **SECTION 5. AMENDMENT.** Subsection 1 of section 54-44.4-05 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise provided in ~~sections~~section 44-08-01 and ~~25-16.2-02, chapter 25-16.2,~~ and in this chapter, purchasing contracts must be awarded through a competitive bidding process to the lowest responsible bidder considering conformity with specifications, terms of delivery, and quality and serviceability, unless it is determined to be advantageous to the state to select a contractor through a competitive proposal process using other or additional criteria. The procurement officer may reject any or all bids or negotiate for a lower price with a successful bidder. Each bid received, with the name of the bidder, must be recorded. The office of management and budget may enter into term contracts for the acquisition of commodities or services and may make multiple awards for term commodity or service contracts when it deems a multiple award to be in the best interests of the state. All bids received under this chapter pursuant to a competitive sealed bid are exempt records under subsection 5 of section 44-04-17.1 until the date and time the bids are opened.

⁸⁶ **SECTION 6. AMENDMENT.** Subdivision e of subsection 2 of section 54-44.4-05 of the North Dakota Century Code is amended and reenacted as follows:

- e. Acceptable commodities or services are produced or provided by correctional institutions or other government agencies or a work activity center as defined in section 25-16.2-01.

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⁸⁵ Section 54-44.4-05 was also amended by section 6 of Senate Bill No. 2265, chapter 209.

⁸⁶ Section 54-44.4-05 was also amended by section 5 of Senate Bill No. 2265, chapter 209.

CHAPTER 210

SENATE BILL NO. 2067

(Human Services Committee)
(At the request of the State Department of Health)

AN ACT to amend and reenact section 23-01-03.1, subsection 3 of section 25-17-00.1, and sections 25-17-01, 25-17-03, and 25-17-04 of the North Dakota Century Code, relating to newborn disease screening and research regarding metabolic and genetic diseases.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 23-01-03.1 of the North Dakota Century Code is amended and reenacted as follows:

23-01-03.1. Newborn metabolic and genetic disease screening tests.

The health council may authorize the use of newborn metabolic and genetic disease screening tests, as provided for in chapter 25-17, for research purposes. The council shall adopt rules to ensure that the results are used for legitimate research purposes and to ensure that the confidentiality of the newborns and their families is protected.

SECTION 2. AMENDMENT. Subsection 3 of section 25-17-00.1 of the North Dakota Century Code is amended and reenacted as follows:

3. "Metabolic disease" ~~means~~ and "genetic disease" mean a disease as designated by rule of the state health council for which early identification and timely intervention will lead to a significant reduction in mortality, morbidity, and associated disabilities.

SECTION 3. AMENDMENT. Section 25-17-01 of the North Dakota Century Code is amended and reenacted as follows:

25-17-01. Newborn screening education programs and tests.

The state department of health shall:

1. Develop and implement a metabolic and genetic disease educational program among physicians, hospital staffs, public health nurses, and the citizens of this state. This educational program must include information about the nature of the diseases and about screening for the early detection of these diseases so that proper measures may be taken to reduce mortality, morbidity, and associated disabilities.
2. Provide, on a statewide basis, a newborn screening system and short-term followup services for metabolic and genetic diseases.
3. Coordinate with or refer individuals to public and private health care service providers for long-term followup services for metabolic diseases or genetic diseases, or both.

SECTION 4. AMENDMENT. Section 25-17-03 of the North Dakota Century Code is amended and reenacted as follows:

25-17-03. Treatment for positive diagnosis - Registry of cases.

The state department of health shall:

1. Follow up with attending physicians cases with positive tests for metabolic diseases or genetic diseases, or both, in order to determine the exact diagnosis.
2. Refer every diagnosed case of a metabolic disease or genetic disease, or both, to a qualified health care provider for necessary treatment ~~of the metabolic disease.~~
3. Maintain a registry of cases of metabolic and genetic diseases.
4. Provide medical food at no cost to males under age twenty-two and females under age forty-five who are diagnosed with phenylketonuria or maple syrup urine disease, regardless of income. If treatment services under this subsection are provided to an individual by the department, the department may seek reimbursement from any government program that provides coverage to that individual for the treatment services provided by the department.
5. Offer for sale at cost medical food to females age forty-five and over and to males age twenty-two and over who are diagnosed with phenylketonuria or maple syrup urine disease, regardless of income. These individuals are responsible for payment to the department for the cost of medical food.
6. Provide low-protein modified food products, if medically necessary as determined by a qualified health care provider, to females under age forty-five and males under age twenty-two who are receiving medical assistance and are diagnosed with phenylketonuria or maple syrup urine disease.

SECTION 5. AMENDMENT. Section 25-17-04 of the North Dakota Century Code is amended and reenacted as follows:

25-17-04. Testing and reporting requirements.

The physician attending a newborn child, or the birth attendant in the case of an out-of-hospital birth, shall provide the parents with written information regarding the nature of the proposed testing and then cause that newborn child to be subjected to testing for metabolic and genetic diseases, in the manner prescribed by the state department of health. A physician attending a patient with a metabolic disease or genetic disease, or both, shall report the case to the state department of health. The testing requirements of this section do not apply if the parents of a newborn child object to the testing ~~on the grounds that testing for metabolic diseases conflicts with their religious tenets or practices.~~

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