

MENTAL AND PHYSICAL ILLNESS OR DISABILITY

CHAPTER 255

HOUSE BILL NO. 1415

(Representatives Disrud, Keiser)
(Senators D. Mathern, Tallackson)

RESIDENTIAL TREATMENT CENTER AND CHILD CARE FACILITY MORATORIUM

AN ACT to amend and reenact sections 25-03.2-03.1 and 50-11-02.3 of the North Dakota Century Code, relating to a needs assessment and a moratorium on the expansion of residential treatment center for children and residential child care facility or group home bed capacity; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 25-03.2-03.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

25-03.2-03.1. (Effective through June 30, ~~2004~~ 2003) Moratorium on expansion of residential treatment center for children bed capacity. Notwithstanding sections 25-03.2-03 and 25-03.2-08, unless a needs assessment conducted by the department indicates a need for the licensing of additional bed capacity, the department may not issue a license under this chapter for any additional bed capacity for a residential treatment center for children above the state's gross number of beds licensed as of June 30, 1999.

SECTION 2. AMENDMENT. Section 50-11-02.3 of the North Dakota Century Code is amended and reenacted as follows:

50-11-02.3. (Effective through June 30, ~~2004~~ 2003) Moratorium on expansion of residential child care facility or group home bed capacity. Notwithstanding sections 50-11-02 and 50-11-09, unless a needs assessment conducted by the department indicates a need for the licensing of additional bed capacity, the department may not issue a license under this chapter for any additional bed capacity for a residential child care facility or a group home above the state's gross number of beds licensed as of June 30, 1999.

SECTION 3. EXPIRATION DATE. This Act is effective through June 30, 2003, and after that date is ineffective.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 27, 2001
Filed April 27, 2001

CHAPTER 256

SENATE BILL NO. 2034

(Legislative Council)
(Criminal Justice Committee)

SEXUAL PREDATOR CIVIL COMMITMENT

AN ACT to create and enact three new sections to chapter 25-03.3 and a new subsection to section 25-03.3-17 of the North Dakota Century Code, relating to the referral of inmates for civil commitment and rulemaking; and to amend and reenact sections 25-03.3-01, 25-03.3-02, 25-03.3-03, 25-03.3-07, 25-03.3-08, subsection 2 of section 25-03.3-09, sections 25-03.3-10, 25-03.3-11, 25-03.3-12, 25-03.3-13, subsection 1 of section 25-03.3-17, subsection 1 of section 25-03.3-18, and section 25-03.3-19 of the North Dakota Century Code, relating to the civil commitment of sexual predators.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 25-03.3-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

25-03.3-01. Definitions. In this chapter, unless the context otherwise requires:

1. "Committed individual" means an individual committed for custody and treatment pursuant to this chapter.
2. "Executive director" means the executive director of the department of human services or the executive director's designee.
3. "Mental retardation" means mental retardation as defined in the "Diagnostic and Statistical Manual of Mental Disorders", American psychiatric association, fourth edition (1994).
4. ~~4.~~ 5. "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 ~~psychology~~ psychologist examiners. For purposes of evaluating an individual with mental retardation, the qualified expert must have specialized knowledge in sexual offender evaluations of individuals with mental retardation.
5. ~~5.~~ 6. "Respondent" means an individual subject to a commitment proceeding pursuant to this chapter.
6. ~~6.~~ "Sexual act" means sexual contact between human beings, including contact between the penis and the vulva, the penis and the anus, the mouth and the penis, the mouth and the vulva, or the vulva and the vulva; or the use of an object that comes in contact with the victim's anus, vulva, or penis. Sexual contact between the penis and the vulva, or between the penis and the anus, or an object and the anus, vulva, or

penis of the victim, occurs upon penetration, however slight. Emission is not required.

6- 7. "Sexual contact" means any touching of the sexual or other intimate parts of an individual for the purpose of arousing or satisfying sexual or aggressive desires.

7- 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. ~~The term does not include an individual with~~ For these purposes, mental retardation is not a sexual disorder, personality disorder, or other mental disorder or dysfunction.

8- 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 that would render an individual of reasonable firmness 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 ~~suffers from~~ has a mental disease or defect disability that renders substantially impairs the victim incapable of victim's understanding of the nature of the sexual act or contact;

(6) The victim is in official custody or detained in a ~~hospital~~ treatment facility, health care facility, prison correctional facility, or other institution and is under the supervisory authority ~~or~~ disciplinary control, or care of the actor; or

(7) The victim is a minor and the actor is an adult; 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.

9. 10. "Should have known" means a reasonable individual without a congenital or acquired condition that is manifested by a sexual disorder, a personality disorder, or other mental disorder or dysfunction in the actor's circumstances would have known.

40. 11. "Superintendent" means the superintendent of the state hospital or the superintendent's designee.

44. 12. "Treatment facility" means any hospital, including the state hospital, or any treatment facility ~~that~~, including the developmental center at westwood park, Grafton, which can provide directly, or by direct arrangement with other public or private agencies, evaluation and treatment of sexually dangerous individuals.

SECTION 2. AMENDMENT. Section 25-03.3-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

25-03.3-02. Jurisdiction and venue. The district court has original jurisdiction over the proceedings governed by this chapter. A proceeding pursuant to this chapter ~~must~~ may be tried in ~~the~~ any county in which the respondent resides or is located, or has committed any sexually predatory conduct, or if the respondent is an inmate, any of the foregoing venues or a county to which the respondent has indicated an intent to relocate upon release from the correctional facility.

SECTION 3. AMENDMENT. Section 25-03.3-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

25-03.3-03. Sexually dangerous individual - Petition.

- 1. If it appears that an individual is a sexually dangerous individual, the state's attorney may file a petition in the district court alleging that the individual is a sexually dangerous individual and stating sufficient facts to support the allegation.
- 2. Except for an order of the court committing a respondent for treatment or an order of the court discharging an individual from treatment and as provided in this section, the petition and all further records and proceedings under this chapter are confidential and are not public records or proceedings under sections 44-04-18 and 44-04-19 and sections 5 and 6 of article XI of the Constitution of North Dakota. The court may permit access to a respondent's records or proceedings under this chapter to the respondent's guardian, guardian ad litem, or other similarly situated individual. The court may permit access to information in the respondent's records to other individuals who require the information for use in performing official governmental duties.

SECTION 4. A new section to chapter 25-03.3 of the North Dakota Century Code is created and enacted as follows:

Referral of inmates to state's attorneys - Immunity.

1. The department of corrections and rehabilitation shall maintain treatment records for any inmate who has been convicted of an offense that includes sexually predatory conduct. Approximately six months before the projected release date of the inmate, the department shall complete an assessment of the inmate to determine whether a recommendation is to be made to a state's attorney for civil commitment of the inmate under this chapter. The assessment must be based on actuarial and clinical evaluations or any other information determined by the director to be relevant, including inmate behavior and whether the inmate participated in sexual offender treatment while incarcerated.
2. If, upon the completion of the assessment, the department determines the inmate may meet the definition of a sexually dangerous individual, the department shall refer the inmate to a state's attorney of an appropriate county as provided for in section 25-03.3-02. The department may make a referral of an inmate to more than one county.
3. Any referral from the department must include a summary of the factors considered material to the determination that the inmate is appropriate for referral. The department shall provide a copy of the referral and summary to the attorney general and the superintendent of the developmental center and the state hospital.
4. Following the receipt of a referral but before the release date of the inmate, the state's attorney shall notify the department and the attorney general of the state's attorney's intended disposition of the referral.
5. Any person participating in good faith in the assessment and referral of an inmate is immune from any civil or criminal liability. For the purpose of any civil or criminal proceeding, the good faith of any person required to participate in the assessment and referral of an inmate is presumed.

SECTION 5. AMENDMENT. Section 25-03.3-07 of the 1999 Supplement to 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 ~~a party~~ any individual or on its own motion, the court may appoint a guardian ad litem for a minor or an individual with mental retardation who is a respondent or witness or otherwise involved in the proceeding, if the minor or an individual with mental retardation has no parent, guardian, or custodian appearing on the minor's or the mentally retarded individual's behalf or the interests of those persons conflict with those of the minor or an individual with mental retardation. The department of human services shall pay the expense of the guardian ad litem fee as established by the court.

SECTION 6. AMENDMENT. Section 25-03.3-08 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

25-03.3-08. Sexually dangerous individual - Procedure on petition - Detention.

1. Upon the filing of a petition pursuant to this chapter, the court shall determine whether to issue an order for detention of the respondent named in the petition. The petition may be heard ex parte. The court shall issue an order for detention if there is cause to believe that the respondent is a sexually dangerous individual. If the court issues an order for detention, the order must direct that the respondent be taken into custody and transferred to an appropriate treatment facility ~~to be held for evaluation and~~ or local correctional facility to be held for subsequent hearing pursuant to this chapter. Under this section, the department of human services shall pay for any expense incurred in the detention or evaluation of the respondent.
2. If the state's attorney knows or believes the respondent named in the petition is an individual with mental retardation, 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 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 7. AMENDMENT. Subsection 2 of section 25-03.3-09 of the 1999 Supplement to 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 ~~be signed by the respondent's counsel for the respondent~~ 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.

SECTION 8. AMENDMENT. Section 25-03.3-10 of the 1999 Supplement to 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, the state's attorney also shall give notice to the respondent's attorney, guardian, and guardian ad litem, if any.

SECTION 9. AMENDMENT. Section 25-03.3-11 of the 1999 Supplement to 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 ~~chooses to waive~~ 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. Every individual not necessary must be excluded, except that the court may admit any individual having a legitimate interest in the proceeding. 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 may be evaluated under this chapter at a facility only if that facility provides care and treatment to individuals with mental retardation.

SECTION 10. AMENDMENT. Section 25-03.3-12 of the 1999 Supplement to 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 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 11. AMENDMENT. Section 25-03.3-13 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

25-03.3-13. Sexually dangerous individual - Commitment proceeding - Report of findings. Within ~~thirty~~ sixty days after the finding of probable cause, the court shall conduct a commitment proceeding to determine whether the respondent is a sexually dangerous individual. The court may extend the time for good cause. At the commitment proceeding, any testimony and reports of an expert who conducted an examination are admissible, including risk assessment evaluations.

Any proceeding pursuant to this chapter must be tried to the court and not a jury. At the commitment proceeding, the state's attorney shall present evidence in support of the petition and the burden is on the state to show by clear and convincing evidence that the respondent is a sexually dangerous individual. An individual may not be committed unless evidence is admitted establishing that at least two experts have concluded the individual 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. The respondent has a right to be present, to testify, and to present and cross-examine witnesses. Every person not necessary must be excluded, except that the court may admit any person having a legitimate interest in the proceeding. If the respondent is found to be a sexually dangerous individual, the court shall commit the respondent to the care, custody, and control of the executive director. The executive director shall place the respondent in an appropriate facility or program at which treatment is available. The appropriate treatment facility or program must be the least restrictive available treatment facility or program necessary to achieve the purposes of this chapter. The executive director may not be required to create a less restrictive treatment facility or treatment program specifically for the respondent or committed individual. Unless the respondent has been committed to the legal and physical custody of the department of corrections and rehabilitation, the respondent may not be placed at and the treatment program for the respondent may not be provided at the state penitentiary or an affiliated penal facility. If the respondent is found not to be a sexually dangerous individual, the court shall discharge the respondent.

SECTION 12. AMENDMENT. Subsection 1 of section 25-03.3-17 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. A committed individual must remain in the care, custody, and control of the executive director until, in the opinion of the executive director, the individual is safe to be at large ~~and has received the maximum benefit of treatment.~~

SECTION 13. A new subsection to section 25-03.3-17 of the 1999 Supplement to the North Dakota Century Code is created and enacted as follows:

If the executive director moves a committed individual from a placement in the community to a placement in a secure treatment facility that is more restrictive, the committed individual may challenge the move at a hearing to be held within thirty days after the move in accordance with procedures established by the department of human services.

SECTION 14. AMENDMENT. Subsection 1 of section 25-03.3-18 of the 1999 Supplement to 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, 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 1999 Supplement to 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 individual, 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. A new section to chapter 25-03.3 of the North Dakota Century Code is created and enacted as follows:

Rules. The department of human services may adopt rules under chapter 28-32 to implement this chapter, but the rules may not restrict or limit the rights guaranteed by this chapter.

SECTION 17. A new section to chapter 25-03.3 of the North Dakota Century Code is created and enacted as follows:

Individual rights. For so long as a committed individual is placed in and resides at a treatment facility, the committed individual has the same rights as other residents of the facility, subject to the following limitations and restrictions:

1. The individual's rights are subordinate to legitimate safety precautions and to the terms of the applicable individualized habilitation or treatment plan.
2. If an individual's rights are inconsistent with this chapter in a particular situation, the specific provisions of this chapter prevail.

Approved April 13, 2001
Filed April 13, 2001

CHAPTER 257

HOUSE BILL NO. 1038

(Legislative Council)
(Budget Committee on Institutional Services)

NORTH DAKOTA VISION SERVICES

AN ACT to create and enact a new section to chapter 25-06 of the North Dakota Century Code, relating to definitions; to amend and reenact sections 25-06-01, 25-06-02, and 25-06-05 of the North Dakota Century Code, relating to the name of the school for the blind, duties of the school for the blind, and services to nonresidents; and to repeal sections 25-06-04, 25-06-07, and 25-06-09 of the North Dakota Century Code, relating to qualifications for admission, instruction at the school for the blind, and duty to report blind persons.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 25-06 of the North Dakota Century Code is created and enacted as follows:

Definitions. For purposes of this chapter, an individual who is blind means an individual who is totally blind or whose central visual acuity does not exceed twenty/two hundred in the better eye with corrective lenses, or the widest diameter of the visual field is no greater than twenty degrees; and an individual with a visual impairment means an individual with an impairment in vision which, even with correction, adversely affects the individual's functional ability.

SECTION 2. AMENDMENT. Section 25-06-01 of the North Dakota Century Code is amended and reenacted as follows:

25-06-01. North Dakota vision services - school for the blind - Maintained - Location. There must be maintained at Grand Forks, in Grand Forks County, an institution a statewide service, resource, and referral center for the education and training of ~~the~~ all residents of this state who are blind or have a visual impairment which must be known as the North Dakota vision services - school for the blind.

SECTION 3. AMENDMENT. Section 25-06-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

25-06-02. ~~Object~~ Duties and responsibilities of North Dakota vision services - school for the blind. The Within the limits of legislative appropriation, North Dakota vision services - school for the blind is a statewide resource center for the provision of services to residents of this state, including vision specific consultations, evaluations, information, and training and loans of adaptive devices, equipment, and materials. It shall receive and educate blind and partially blind children who are residents of this state and who, because of this handicap, are not able to receive an appropriate education in the public schools of this state shall:

1. Provide vision-specific services that include consultations, evaluations, information, training, and educational services, including instruction in

orientation, mobility, braille, braille music, daily living skills, technology, vocational training, and recreation.

2. Collect and distribute information on vision services and resources available in the state.
3. Coordinate loans of adaptive devices, equipment, and materials.
4. Maintain a data base of residents who are blind or have a visual impairment.
5. Facilitate collaboration with agencies and programs providing services to individuals who are blind or have a visual impairment.
6. Assist residents to access appropriate services, including services available from the vocational rehabilitation division, independent living centers, infant development programs, developmental disabilities programs, the state library, local education programs, and advocacy programs.

SECTION 4. AMENDMENT. Section 25-06-05 of the North Dakota Century Code is amended and reenacted as follows:

25-06-05. Admission of Services to nonresidents. ~~Blind children of suitable age~~ Individuals who are blind or have a visual impairment who are not residents of this state may ~~enroll in the~~ receive services from North Dakota vision services - school for the blind upon payment in advance of if the individuals pay the cost of the education services as determined by the superintendent of public instruction. ~~Nonresident children, however, Nonresidents may not be received~~ receive services to the exclusion of children who are residents of this state.

SECTION 5. REPEAL. Sections 25-06-04, 25-06-07, and 25-06-09 of the North Dakota Century Code are repealed.

SECTION 6. STATUTORY REFERENCES RELATING TO SCHOOL FOR THE BLIND. The legislative council may insert or replace appropriate references to the school for the blind in North Dakota Century Code sections, consistent with usages contained in this Act. References inserted may be adjusted to suit the context and grammar of the sections and must be inserted so as to harmonize existing law with regard to the name change provided by this Act. The sections of the North Dakota Century Code to which the authority of this section applies include 15-34.1-02, 15-39-01, 15-39.1-04, 15-47-26, 15-47-27.2, 15-47-34, 15-59-05.1, 15.1-02-07, 20.1-03-04, 25-01-01, 25-01-03, 25-06-02.1, 25-06-02.2, 25-06-03, 25-06-10, 25-07-02, 32-12.2-01, 50-24.1-11, and 54-44.3-20.

SECTION 7. MEASURES ENACTED BY THE LEGISLATIVE ASSEMBLY RELATING TO SCHOOL FOR THE BLIND. The legislative council may insert appropriate references in any measure enacted by the legislative assembly which refers to the terms "North Dakota school for the blind" or "school for the blind" consistent with usages contained in this Act. References inserted may be adjusted to suit context and grammar of the sections and must be inserted so as to harmonize the legislative measure with regard to the name change provided by this Act.

CHAPTER 258

SENATE BILL NO. 2365

(Senators Erbele, Trenbeath)
(Representatives Kretschmar, Metcalf, Pollert)

ASSISTANCE DOGS

AN ACT to create and enact two new sections to chapter 25-13 of the North Dakota Century Code, relating to assistance dogs; to amend and reenact sections 25-13-02, 25-13-03, 25-13-04, 39-10-33.3, and subsection 22 of section 40-05-02 of the North Dakota Century Code, relating to the rights of individuals with disabilities who are accompanied by assistance dogs and the licensing of assistance dogs; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 25-13 of the North Dakota Century Code is created and enacted as follows:

Assistance dog - Definition. For purposes of this Act:

1. "Assistance dog" includes a dog that has been specially trained to assist an individual with a disability. The term includes guide dogs that guide individuals who are legally blind, hearing dogs that alert individuals who are hard of hearing to specific sounds, and service dogs for individuals with disabilities other than blindness or deafness. The term does not include a dog that is not trained to mitigate an individual's disability, but the presence of which is to provide for the comfort, protection, or personal defense of an individual.
2. "Service dogs" includes dogs trained to perform a variety of physical tasks, including pulling a wheelchair, lending balance support, retrieving dropped objects, and providing assistance in a medical crisis.

SECTION 2. AMENDMENT. Section 25-13-02 of the North Dakota Century Code is amended and reenacted as follows:

25-13-02. ~~Blind or handicapped person accompanied by guide or service~~ Individual with a disability - Assistance dog to be admitted to - Admission to public places. Every totally or partially blind person has the right An individual with a disability is entitled to be accompanied by a guide an assistance dog and every handicapped person has the right to be accompanied by a service dog, especially trained for these purposes, in places of public accommodations, common carriers, facilities of a health care provider, and all places ~~in~~ to which the public is generally invited, without being required to pay an extra charge for the ~~guide or service~~ assistance dog; provided, that ~~such persons are~~ the individual is liable for any damage done to the premises or ~~facilities~~ facility by the ~~dogs~~ assistance dog.

SECTION 3. A new section to chapter 25-13 of the North Dakota Century Code is created and enacted as follows:

Trainer and assistance dog in training - Admission to public places.

1. A trainer with an assistance dog in training may enter any place of public accommodation, common carrier, facility of a health care provider, and any place to which the public is generally invited, without being required to pay an extra charge for the assistance dog in training, provided:
 - a. The trainer notifies an onsite manager that an assistance dog in training is being brought onto the premises;
 - b. The trainer wears a photo identification card issued by a nationally recognized dog training program; and
 - c. The trainer is liable for any damage done to the premises or facility by the assistance dog in training.
2. Upon receiving notice as provided in subsection 1, the onsite manager may not deny admission to the trainer and the assistance dog in training without good cause.

SECTION 4. AMENDMENT. Section 25-13-03 of the North Dakota Century Code is amended and reenacted as follows:

25-13-03. ~~Precautions of driver~~ Driver of motor vehicle when approaching blind persons - Precaution - Individual with assistance dog. The If the driver of a motor vehicle approaching a totally or partially approaches an individual who is blind pedestrian or visually impaired and who is carrying a cane predominately white or metallic in color, with or without a red tip, or using a guide who is accompanied by an assistance dog, the driver shall take all reasonable precautions to avoid injury to such blind pedestrian, and any the individual and the assistance dog. Any driver who fails to take such reasonable precautions is liable in damages to the individual for any injury caused such pedestrian; provided that a totally or partially. An individual who is blind pedestrian or visually impaired and not carrying such a cane or using a guide an individual with a disability who is not accompanied by an assistance dog in any of the places, accommodations, or conveyances listed in section 25-13-02, shall have has all of the rights and privileges conferred by law upon other persons, and the individuals. The failure of a totally or partially an individual who is blind pedestrian or visually impaired to carry such a cane or use a guide the failure of an individual with a disability to be accompanied by an assistance dog in any such places, accommodations, or conveyances may not itself be held to constitute nor be is not by itself evidence of contributory negligence fault.

SECTION 5. AMENDMENT. Section 25-13-04 of the North Dakota Century Code is amended and reenacted as follows:

25-13-04. Penalty for interfering or denying use of facilities. Any person or the agent of any person who denies or interferes with admittance to or enjoyment of the public places or facilities enumerated in section 25-13-02 or otherwise interferes with the rights of a totally or partially an individual who is blind person or visually impaired, or with the rights of an individual who is accompanied by an assistance dog, is guilty of a class A misdemeanor. This section does not apply to a denial of admission under section 3 of this Act.

SECTION 6. AMENDMENT. Section 39-10-33.3 of the North Dakota Century Code is amended and reenacted as follows:

39-10-33.3. Blind pedestrian right of way. The driver of a vehicle shall yield the right of way to ~~any blind pedestrian~~ an individual who is blind or visually impaired and carrying a clearly visible white cane or to an individual with a disability who is accompanied by a guide or assistance dog.

SECTION 7. AMENDMENT. Subsection 22 of section 40-05-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

22. Dogs. To license dogs, and to regulate the keeping of dogs including authorization for their disposition or destruction in order to protect the health, safety, and general welfare of the public; provided, however, that license fees are waived in the case of an assistance dog.

Approved April 13, 2001
Filed April 13, 2001

CHAPTER 259**SENATE BILL NO. 2094**

(Human Services Committee)

(At the request of the Department of Human Services)

HUMAN SERVICES CARE FUND ELIMINATED

AN ACT to repeal section 25-16-11 of the North Dakota Century Code, relating to purchase of residential care, custody, treatment, and education for developmentally disabled persons by the department of human services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 25-16-11 of the North Dakota Century Code is repealed.

Approved March 14, 2001

Filed March 14, 2001

CHAPTER 260

SENATE BILL NO. 2239

(Senators Fischer, Flakoll, Lee)
(Representatives Delmore, Kliniske)

METABOLIC DISEASE SERVICES AND INSURANCE

AN ACT to create and enact a new section to chapter 25-17 and a new subsection to section 50-10-06 of the North Dakota Century Code, relating to definitions for the newborn screening law and services for treatment of phenylketonuria and maple syrup urine disease; and to amend and reenact sections 25-17-01, 25-17-02, 25-17-03, 25-17-04, 25-17-05, and 26.1-36-09.7 of the North Dakota Century Code, relating to services and insurance coverage for treatment of metabolic diseases.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 25-17 of the North Dakota Century Code is created and enacted as follows:

Definitions. As used in this chapter, unless the context otherwise requires:

1. "Low-protein modified food product" means a food product that is specially formulated to have less than one gram of protein per serving and is intended to be used under the direction of a physician for the dietary treatment of a metabolic disease. The term does not include a natural food that is naturally low in protein.
2. "Medical food" means a food that is intended for the dietary treatment of a disease or condition for which nutritional requirements are established by medical evaluation and is formulated to be consumed or administered under the direction of a physician.
3. "Metabolic disease" means 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 2. AMENDMENT. Section 25-17-01 of the North Dakota Century Code is amended and reenacted as follows:

25-17-01. Phenylketonuria and galactosemia Newborn screening education programs and tests. The state department of health shall:

1. Develop and ~~carry out an intensive~~ implement a metabolic disease educational program among physicians, hospital staffs ~~of hospitals~~, public health nurses, and the citizens of this state concerning the diseases phenylketonuria and galactosemia, and other metabolic diseases causing mental retardation for which appropriate methods of detection, prevention, or treatment are available. This educational program must include information about the nature of the diseases and ~~examinations about screening~~ for the early detection of such these diseases in order so that proper measures may be taken to prevent

mental retardation reduce mortality, morbidity, and associated disabilities.

2. Provide, on a statewide basis, a newborn screening, diagnostic, system and treatment control tests short-term followup services for which approved laboratory procedures are available for phenylketonuria, galactosemia, and other metabolic diseases causing mental retardation.
3. Provide that, upon completion of the testing, the actual testing materials must be returned to the department. The department shall forward the actual testing materials to the university of North Dakota school of medicine for storage and research purposes. The materials in the possession of the university of North Dakota school of medicine may not be destroyed without the authorization of the department. Coordinate with or refer individuals to public and private health care service providers for long-term followup services for metabolic diseases.

SECTION 3. AMENDMENT. Section 25-17-02 of the North Dakota Century Code is amended and reenacted as follows:

25-17-02. Establishment of testing regulations Rulemaking requirement.

The state department of health council and the department of human services shall establish standards and methods of testing to be employed for the determination of the diseases referred to in section 25-17-01 for which statewide testing programs are established adopt rules necessary to implement this chapter.

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.

1. The state department of health shall:
 4. a. Follow up ~~all~~ with attending physicians cases with positive tests for phenylketonuria, galactosemia, and other metabolic diseases ~~with the attending physician~~ in order to determine the exact diagnosis.
 2. b. ~~Make arrangements~~ Refer every diagnosed case of a metabolic disease to a qualified health care provider for the necessary treatment for diagnosed cases where treatment is indicated and the family is unable to pay the cost of such treatment of the metabolic disease.
 3. c. Maintain a registry of cases of phenylketonuria, galactosemia, and other metabolic diseases for the purpose of followup services to prevent mental retardation.
2. The department of human services, as a program provided under chapter 50-10, shall:
 - a. 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.

- b. 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.
- c. 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. Physician to initiate test and report positive diagnosis Testing and reporting requirements. The physician attending a newborn child, or the birth attendant in the case of an out-of-hospital birth, shall cause that newborn child to be subjected to testing for ~~phenylketonuria, galactosemia, and other~~ metabolic diseases, in the manner prescribed by the state department of health. A physician attending a ~~case of phenylketonuria, galactosemia, or other~~ patient with a metabolic disease ~~which may cause mental retardation~~ shall report the case to the state department of health. ~~This~~ The testing requirements of this section does do not apply if the parents of a newborn child object ~~thereto~~ to the testing on the grounds that testing for metabolic diseases conflicts with their religious tenets and practices.

SECTION 6. AMENDMENT. Section 25-17-05 of the North Dakota Century Code is amended and reenacted as follows:

25-17-05. Testing charges. The state ~~department of health~~ shall council ~~may~~ adopt rules that establish reasonable fees and may impose those fees to cover the costs of administering tests under this chapter. All test fees collected by the state department of health must be deposited in the state department of health operating account.

SECTION 7. AMENDMENT. Section 26.1-36-09.7 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

26.1-36-09.7. Foods and food products for inherited metabolic diseases.

1. As used in this section:

- a. "Inherited metabolic disease" means maple syrup urine disease or phenylketonuria.
- b. "Low-protein modified food product" means a food product that is specially formulated to have less than one gram of protein per serving and is intended to be used under the direction of a physician for the dietary treatment of an inherited metabolic disease. The term does not include a natural food that is naturally low in protein.

- c. "Medical food" means a food that is intended for the dietary treatment of a disease or condition for which nutritional requirements are established by medical evaluation and is formulated to be consumed or administered under the direction of a physician.
2. An insurance company, nonprofit health service corporation, or health maintenance organization may not deliver, issue, execute, or renew any health insurance policy, health service contract, or evidence of coverage that provides prescription coverage on an individual, group, blanket, franchise, or association basis, unless the policy or contract provides, for any person covered under the policy or contract, coverage for medical foods and low-protein modified food products determined by a physician to be medically necessary for the therapeutic treatment of an inherited metabolic disease.
3. This section applies to any covered individual born after December 31, 1962. This section does not require coverage ~~for low protein modified food products~~ in excess of three thousand dollars per year total for low-protein modified food products or medical food for an individual with an inherited metabolic disease of amino acid or organic acid.
4. This section does not require medical benefits coverage for low protein modified food products or medical food for an individual to the extent those benefits are available to that individual under a state department of health or department of human services program.

¹³⁷ **SECTION 8.** A new subsection to section 50-10-06 of the North Dakota Century Code is created and enacted as follows:

Provide medical food and low-protein modified food products under chapter 25-17 to individuals with phenylketonuria or maple syrup urine disease.

Approved April 24, 2001
Filed April 24, 2001

¹³⁷ Section 50-10-06 was also amended by section 28 of House Bill No. 1012, chapter 12.