

**Fifty-eighth Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 7, 2003**

SENATE BILL NO. 2296  
(Senators Mathern, Lyson, Nelson, Grindberg)  
(Representatives DeKrey, Ruby)

AN ACT to amend and reenact section 25-03.1-02 and subsection 1 of section 25-03.1-18.1 of the North Dakota Century Code, relating to mental illness commitment procedures.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Section 25-03.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**25-03.1-02. Definitions.** In this chapter, unless the context requires otherwise:

1. "Alternative treatment order" means an involuntary outpatient order for a treatment program, other than hospitalization, which may include treatment with a prescribed medication.
2. "Chemically dependent person" means an individual with an illness or disorder characterized by a maladaptive pattern of usage of alcohol or drugs, or a combination thereof, resulting in social, occupational, psychological, or physical problems.
- ~~2.~~ 3. "Consent" means voluntary permission that is based upon full disclosure of facts necessary to make a decision and which is given by an individual who has the ability to understand those facts.
- ~~3.~~ 4. "Court" means, except when otherwise indicated, the district court serving the county in which the respondent resides.
4. ~~5.~~ "Department" means the department of human services.
- ~~5.~~ 6. "Director" means the director of a treatment facility or the director's designee.
- ~~6.~~ 7. "Expert examiner" means a licensed physician, psychiatrist, psychologist trained in a clinical program, or licensed addiction counselor appointed by the court to examine the respondent and to provide an evaluation of whether the respondent is a person requiring treatment. An evaluation of a respondent's physical condition may be made only by a licensed physician or psychiatrist, an evaluation of a respondent's mental status may be made only by a psychiatrist or psychologist trained in a clinical program, and an evaluation of whether the respondent is chemically dependent may be made only by a licensed physician or licensed addiction counselor.
- ~~7.~~ 8. "Independent expert examiner" means a licensed physician, psychiatrist, psychologist trained in a clinical program, or licensed addiction counselor, chosen at the request of the respondent to provide an independent evaluation of whether the respondent is a person requiring treatment. An evaluation of a respondent's physical condition may be made only by a licensed physician or psychiatrist; an evaluation of a respondent's mental status may be made only by a psychiatrist or psychologist; and an evaluation of whether the respondent is chemically dependent may be made only by a licensed physician or licensed addiction counselor.
- ~~8.~~ 9. "Magistrate" means the judge of the appropriate district or juvenile court or a judge assigned by the presiding judge of the judicial district.

- ~~9.~~ 10. "Mental health professional" means:
- a. A psychologist with at least a master's degree who has been either licensed or approved for exemption by the North Dakota board of psychology examiners.
  - b. A social worker with a master's degree in social work from an accredited program.
  - c. A registered nurse with a master's degree in psychiatric and mental health nursing from an accredited program.
  - d. A registered nurse with a minimum of two years of psychiatric clinical experience under the supervision of a registered nurse as defined by subdivision c or of an expert examiner.
  - e. A licensed addiction counselor.
  - f. A licensed professional counselor with a master's degree in counseling from an accredited program who has either successfully completed the advanced training beyond the master's degree as required by the national academy of mental health counselors or a minimum of two years of clinical experience in a mental health agency or setting under the supervision of a psychiatrist or psychologist.
- ~~40.~~ 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 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 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.
- ~~44.~~ 12. "Person requiring treatment" means a person who is mentally ill or chemically dependent, and there is a reasonable expectation that if the person is not treated there exists a serious risk of harm to that person, others, or property. "Serious risk of harm" means a substantial likelihood of:
- a. Suicide, as manifested by suicidal threats, attempts, or significant depression relevant to suicidal potential;
  - b. Killing or inflicting serious bodily harm on another person or inflicting significant property damage, as manifested by acts or threats;
  - c. Substantial deterioration in physical health, or substantial injury, disease, or death, based upon recent poor self-control or judgment in providing one's shelter, nutrition, or personal care; or
  - d. Substantial deterioration in mental health which would predictably result in dangerousness to that person, others, or property, based upon evidence of objective facts to establish the loss of cognitive or volitional control over the person's thoughts or actions or based upon acts, threats, or patterns in the person's treatment history, current condition, and other relevant factors, including the effect of the person's mental condition on the person's ability to consent.
- ~~42.~~ 13. "Private treatment facility" means any facility established under chapter 10-19.1 or 10-33 and licensed under chapter 23-16 or 23-17.1.
- ~~43.~~ 14. "Psychiatrist" means a licensed physician who has completed a residency program in psychiatry.

44. 15. "Public treatment facility" means any treatment facility not falling under the definition of a private treatment facility.
45. 16. "Qualified service organization" means a person or entity that provides services to a treatment facility such as data processing, bill collecting, dosage preparation, laboratory analysis, or legal, medical, accounting, or other professional services, and which agrees that in dealing with patient records, it is bound by the confidentiality restrictions of this chapter, except as otherwise provided for by law.
46. 17. "Respondent" means a person subject to petition for involuntary treatment.
47. 18. "Superintendent" means the state hospital superintendent or the superintendent's designee.
48. 19. "Third-party payer" means a person or entity who pays, or agrees to pay, for diagnosis or treatment furnished to a patient on the basis of a contractual relationship with the patient or a member of the patient's family, or on the basis of the patient's eligibility for federal, state, or local governmental benefits, and includes any person or entity providing audit or evaluation activities for the third-party payer.
49. 20. "Treatment facility" or "facility" means any hospital including the state hospital at Jamestown or any evaluation and treatment facility that provides directly, or by direct arrangement with other public or private agencies, emergency evaluation and treatment, outpatient care, and inpatient care to persons suffering from a mental disorder or chemical dependency.

**SECTION 2. AMENDMENT.** Subsection 1 of section 25-03.1-18.1 of the North Dakota Century Code is amended and reenacted as follows:

1. a. Upon notice and hearing, a treating psychiatrist may request authorization from the court to treat a person under a mental health treatment order with prescribed medication. The request may be considered by the court in an involuntary treatment hearing. As a part of the request, the treating psychiatrist and another licensed physician or psychiatrist not involved in the current diagnosis or treatment of the patient shall certify:
  - (1) That the proposed prescribed medication is clinically appropriate and necessary to effectively treat the patient and ~~there is a reasonable expectation that if the person is not treated as proposed there exists a serious risk of harm to that person, other persons, or property~~ that the patient is a person requiring treatment;
  - (2) That the patient was offered that treatment and refused it or that the patient lacks the capacity to make or communicate a responsible decision about that treatment;
  - (3) That prescribed medication is the least restrictive form of intervention necessary to meet the treatment needs of the patient; and
  - (4) That the benefits of the treatment outweigh the known risks to the patient.
- b. The court shall inquire whether the patient has had a sufficient opportunity to adequately prepare to meet the issue of involuntary treatment with prescribed medication and, at the request of the patient, the court may continue the involuntary treatment hearing for a period not exceeding seven days or may appoint an independent expert examiner as provided in subsection 4.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
Secretary of the Senate

\_\_\_\_\_  
Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-eighth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2296.

Senate Vote:      Yeas    47            Nays    0            Absent    0

House Vote:      Yeas    91            Nays    0            Absent    3

\_\_\_\_\_  
Secretary of the Senate

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2003.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2003.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2003,  
at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State