

MENTAL AND PHYSICAL ILLNESS OR DISABILITY

CHAPTER 248

SENATE BILL NO. 2131

(Human Services Committee)

(At the request of the Department of Human Services)

COMMITMENT PROCEDURE EXAMINERS

AN ACT to amend and reenact subsections 7 and 8 of section 25-03.1-02 of the North Dakota Century Code, relating to the definitions of expert examiner and independent expert examiner for commitment procedures.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 7 and 8 of section 25-03.1-02 of the North Dakota Century Code are amended and reenacted as follows:

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, or licensed psychologist trained in a clinical program.
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, or licensed psychologist trained in a clinical program.

Approved March 7, 2005

Filed March 8, 2005

CHAPTER 249

HOUSE BILL NO. 1289

(Representatives DeKrey, Delmore, Horter)
(Senators Hacker, Syverson, Triplett)

SEXUALLY DANGEROUS INDIVIDUAL PROCEEDINGS OPEN

AN ACT to amend and reenact section 25-03.3-03, subsection 4 of section 25-03.3-03.1, and sections 25-03.3-05, 25-03.3-11, and 25-03.3-13 of the North Dakota Century Code, relating to making evidence presented at a commitment hearing, preliminary hearing, or commitment proceeding of a sexually dangerous individual open, notice to the attorney general, and the release of medically identifiable health information.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 25-03.3-03 of 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~~ The petition and all further records and proceedings under this chapter any proceeding under section 25-03.3-11 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. Notwithstanding any other provision of law, proceedings under section 25-03.3-13 and any evidence introduced or presented to the court for any such proceeding are required to be open to the public, with the exception of a proceeding involving an individual who has not been convicted of a sexual act as defined in section 25-03.3-01. The protections of subsection 10 of section 12.1-34-02 and section 12.1-35-03 apply to any records or proceedings under this chapter.

SECTION 2. AMENDMENT. Subsection 4 of section 25-03.3-03.1 of the North Dakota Century Code is amended and reenacted as follows:

4. Following the receipt of a referral, but at least sixty days 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.

SECTION 3. AMENDMENT. Section 25-03.3-05 of the North Dakota Century Code is amended and reenacted as follows:

25-03.3-05. Abrogation of confidentiality statutes and privileges.

1. Notwithstanding any other provision of law requiring confidentiality of information about individuals receiving care, custody, education, treatment, or any other services from the state or any political subdivision, any confidential information about a respondent or committed individual must be released to a state's attorney for proceedings pursuant to this chapter unless release results in the loss of federal funds. The physician-patient privilege and psychotherapist-patient privilege do not apply to communications relevant to an issue in proceedings to commit an individual as a sexually dangerous person if the physician or psychotherapist in the course of diagnosis or treatment determines the patient is in need of commitment and to communications with a committed individual. The provision of any confidential or privileged information to the state's attorney does not render the state, any political subdivision, or any state or political subdivision official or employee, or other person liable pursuant to any criminal or civil law relating to confidentiality or privilege.
2. For purposes of this chapter, a treating facility or mental health professional shall, if requested, disclose individually identifiable health information to a court, the state hospital, state's attorney, retained counsel, or other mental health professional, including an expert examiner, and the disclosure is a disclosure for treatment.

SECTION 4. 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. ~~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 5. AMENDMENT. Section 25-03.3-13 of the North Dakota Century Code is amended and reenacted as follows:

25-03.3-13. Sexually dangerous individual - Commitment proceeding - Report of findings. Within 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.

Approved April 12, 2005

Filed April 13, 2005

CHAPTER 250

HOUSE BILL NO. 1057

(Representatives Koppelman, DeKrey, Delmore)
(Senators Traynor, Trenbeath, Nelson)

SEXUALLY DANGEROUS INDIVIDUALS COMMITMENT

AN ACT to create and enact a new section to chapter 25-03.3 of the North Dakota Century Code, relating to commitment of sexually dangerous individuals; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 25-03.3 of the North Dakota Century Code is created and enacted as follows:

Postcommitment community placement - Penalty.

1. Following commitment of a sexually dangerous individual, the executive director may conduct a risk management assessment of the committed individual for the purpose of determining whether the individual may be treated safely in the community on an outpatient basis. The executive director may place a committed individual in the community for treatment on an outpatient basis only pursuant to a court order. The executive director may petition the court at any time for community placement. The executive director shall give the state's attorney of the county of community placement notice of any petition for community placement the executive director files with the court. Before the petition is granted, the state's attorney has the right to be heard by the court. The state's attorney may waive this right. At any hearing held pursuant to a petition by the executive director for the community placement of a committed individual, the burden of proof required of the executive director is a preponderance of the evidence. The court's order of community placement must contain appropriate restrictions and requirements for the committed individual, including:
 - a. Participation and compliance with a specific course of treatment;
 - b. Submission to electronic monitoring and any other appropriate supervision;
 - c. Prohibition of the individual changing place of residency or leaving the state without prior authorization of the court;
 - d. Establishment of safety zones, and compliance by the committed individual with those safety zones;
 - e. Requirement that the committed individual notify the court within twenty-four hours of any change in the individual's status that affects proper treatment or supervision;

- f. Contact with victims is prohibited independent of a supervised treatment plan; and
 - g. Any other restriction or requirement deemed necessary by the court to assure public safety and proper treatment of the committed individual.
- 2. Violation by a committed individual of a court order issued pursuant to this section is a class C felony.

Approved March 21, 2005

Filed March 22, 2005

CHAPTER 251

HOUSE BILL NO. 1231

(Representatives D. Johnson, Maragos, Nicholas)
(Senator Traynor)

DEAF AND HEARING-IMPAIRED SERVICES

AN ACT to create and enact a new section to chapter 25-07 of the North Dakota Century Code, relating to the provision of services to individuals who are deaf or hearing-impaired; and to amend and reenact sections 25-07-01, 25-07-04, 25-07-05, 25-07-06, 25-07-08, and 25-07-11 of the North Dakota Century Code, relating to the school for the deaf.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 25-07-01 of the North Dakota Century Code is amended and reenacted as follows:

25-07-01. School for the deaf - Maintained - Location - Purpose. There must be maintained at Devils Lake, in Ramsey County, ~~an institution for the education of the deaf which must be known as the~~ a school for the deaf, which may provide education and training and serve as a resource and referral center for individuals who are deaf or hearing-impaired.

SECTION 2. AMENDMENT. Section 25-07-04 of the North Dakota Century Code is amended and reenacted as follows:

25-07-04. Qualifications for admission to school for the deaf - Residents of state entitled to free education. ~~Each applicant~~

1. A child who is a resident of this state and who, because of deafness or a hearing impairment, is unable to receive an education in the public schools, is entitled to receive an education in attend the school for the deaf at the expense of the state. The North Dakota school for the deaf serves deaf or hearing-impaired children from birth through age A child is entitled to attend the school at any age up to twenty-one.
2. The North Dakota school for the deaf shall furnish provide application blanks forms upon request and no child will. A child may not be admitted to the school until the child's application is completed and approved. Students enrolled must be furnished
3. The school for the deaf shall provide transportation by the school for the deaf as indicated in the student's to any child who has been admitted, in accordance with the child's individual education plan.

~~All deaf or hearing-impaired children who are residents of the state are~~

4. Any child who is a resident of this state and who is deaf or hearing-impaired is entitled to receive special education and related services based on a completed in accordance with the child's individual education program, which considers the. Each individual education program must address the child's academic, recreational, and leisure needs, as well as the acquisition of independent living skills, and career

and technical education; ~~recreational, and leisure needs of each child opportunities.~~

SECTION 3. AMENDMENT. Section 25-07-05 of the North Dakota Century Code is amended and reenacted as follows:

25-07-05. Admission of nonresidents. ~~Deaf children of suitable age who are not residents of this state may enroll in~~ A child who is deaf or hearing-impaired but who is not a resident of this state may be admitted to the school for the deaf upon payment in advance of the, provided the annual cost of the child's education, as determined by the superintendent of public instruction. Nonresident children, however, may not be received to the exclusion of children who are residents of this state, is paid on behalf of the child in advance of the child's admission and on a yearly basis thereafter. The school may not admit a child who is not a resident of this state to the exclusion of a child who is a resident of this state.

SECTION 4. AMENDMENT. Section 25-07-06 of the North Dakota Century Code is amended and reenacted as follows:

25-07-06. Instruction at school for the deaf. The superintendent of the school for the deaf shall provide special education and related services designed to meet the unique needs of each child who is deaf or hearing-impaired students according to, in accordance with the child's individual education programs as required by federal and state laws and regulations program.

SECTION 5. AMENDMENT. Section 25-07-08 of the North Dakota Century Code is amended and reenacted as follows:

25-07-08. Clothing may be furnished when necessary - Accounts for clothing. The superintendent of the school for the deaf shall furnish suitable clothing to a pupil provide clothing to a child who is enrolled in the school who otherwise is not provided with the same. An account, certified as correct by the superintendent, must be made for clothing furnished to any pupil:

- 1- Against the parent or guardian of such pupil if the pupil is a minor; or
- 2- Against the pupil if the pupil has no parent or guardian or has attained if the child does not have suitable clothing. If the child is a minor, the school shall charge the child's parent or legal guardian for any clothing provided to the child under this section and shall charge the individual for any clothing provided to the individual under this section if the individual has reached the age of majority. An account certified as correct by If the superintendent must be certifies any charges under this section as being correct, the charges are presumed correct in all courts.

SECTION 6. AMENDMENT. Section 25-07-11 of the North Dakota Century Code is amended and reenacted as follows:

25-07-11. Home intervention program. The school for the deaf may provide a home intervention program for children who are under the age of five and who are deaf or hearing-impaired preschoolers, under the age of five, which must consist of supplying. The program must include information, counseling services, auditory training, and basic language development programs instruction for the parents of such children. This home intervention program will must be carried out by college or university trained teachers of the deaf, speech pathologists, or audiologists.

SECTION 7. A new section to chapter 25-07 of the North Dakota Century Code is created and enacted as follows:

Provision of services - Collaboration - Competition. The school for the deaf may collaborate with public and private entities for the provision of services to individuals who are deaf or hearing-impaired. The school for the deaf may not compete with any public or private entity offering the same services within a region.

Approved April 18, 2005

Filed April 20, 2005

CHAPTER 252

HOUSE BILL NO. 1146

(Human Services Committee)

(At the request of the Department of Human Services)

DEVELOPMENTAL DISABILITIES CARE CENTER INVESTMENTS

AN ACT to create and enact two new sections to chapter 25-18 of the North Dakota Century Code, relating to treatment or care centers for individuals with developmental disabilities; to amend and reenact sections 25-18-01 and 25-18-05 of the North Dakota Century Code, relating to payment to treatment or care centers for individuals with developmental disabilities; to repeal sections 25-18-02, 25-18-04, 25-18-06, 25-18-07, 25-18-08, 25-18-11, and 25-18-12 of the North Dakota Century Code, relating to a fee-for-service ratesetting system for treatment or care centers for individuals with developmental disabilities; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Two new sections to chapter 25-18 of the North Dakota Century Code are created and enacted as follows:

Treatment or care center budget flexibility. The department shall allow treatment or care centers to transfer funds received from the department between budget categories and line items.

Maximum annual return on investment. Profit-motivated institutions or facilities must be allowed an annual return on investment in fixed assets related to client care. The maximum return on investment must be established based upon the existing debt divided by original asset cost and must be determined as follows:

Annual average percentage debt
to annual average assets
51 to 80 percent -

0 to 50 percent -

Return
2 percent return on original
cost of fixed assets
3 percent return on original
cost of fixed assets

SECTION 2. 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. ~~"Fee for service" means a prospective rate based on allowable historical costs established by the department for payment of services provided to individuals with developmental disabilities by a treatment or care center.~~

3. "Historical operating costs" means the allowable costs of operating a treatment or care center during the reporting year in compliance with licensing standards prescribed by the department but does not include an annual return on investment in fixed assets related to client care.
4. "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 as defined in the 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 3. AMENDMENT. Section 25-18-05 of the North Dakota Century Code is amended and reenacted as follows:

25-18-05. Limitation on owner compensation for services provided. ~~In establishing the fee to be paid for a service, the~~ For-profit treatment or care centers may compensate working owners and their families for time worked on behalf of the treatment or care center. The amount of total annual compensation allowed for an owner acting in an executive or administrative capacity must be limited as follows:

Number of clients served:	Compensation limit:
1 - 15	\$25,000
16 - 30	\$35,000
31 - 45	\$45,000
46+	\$50,000

The limits in this section are intended to be the total compensation allowed by this state in any one year regardless of the number of owners performing work for the treatment or care center. A proration of the total compensation for owners who perform services in this state and who perform services in other states must be made on the basis of individual time distribution records. For family members working in direct care, housekeeping, maintenance, dietary, or clerical positions, wages are limited to the wage paid to any nonrelated employee, with the same qualifications and experience, working in a similar job function for that ~~organization~~ treatment or care center. The allowable compensation limit is inclusive of all salaries and related fringe benefits and may not be construed to be an addition or enhancement to the ~~fee~~ rate payable to a treatment or care center.

SECTION 4. REPEAL. Sections 25-18-02, 25-18-04, 25-18-06, 25-18-07, 25-18-08, 25-18-11, and 25-18-12 of the North Dakota Century Code are repealed.

SECTION 5. EFFECTIVE DATE. This Act becomes effective on July 1, 2005.

SECTION 6. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 4, 2005
Filed March 4, 2005