

Introduced by

Representatives DeKrey, Delmore, Koppelman

Senators Hacker, Lyson, Nelson

1 A BILL for an Act to amend and reenact subsection 2 of section 25-03.3-05 and section
2 25-03.3-13 of the North Dakota Century Code, relating to the civil commitment of sexually
3 dangerous individuals; and to declare an emergency.

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

5 **SECTION 1. AMENDMENT.** Subsection 2 of section 25-03.3-05 of the North Dakota
6 Century Code is amended and reenacted as follows:

7 2. For purposes of this chapter, the disclosure of individually identifiable health
8 information by a treating facility or mental health professional shall, if requested,
9 disclose individually identifiable health information to a court, the state hospital,
10 state's attorney, retained counsel, or other a mental health professional, including
11 an expert examiner, and the disclosure is a disclosure for treatment. A retained or
12 appointed counsel has the right to obtain individually identifiable health information
13 regarding a respondent in a proceeding under this chapter. In any other case, the
14 right of an inmate or a patient to obtain protected health information must be in
15 accordance with title 45, Code of Federal Regulations, part 164.

16 **SECTION 2. AMENDMENT.** Section 25-03.3-13 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **25-03.3-13. Sexually dangerous individual - Commitment proceeding - Report of**
19 **findings.** Within sixty days after the finding of probable cause, the court shall conduct a
20 commitment proceeding to determine whether the respondent is a sexually dangerous
21 individual. The court may extend the time for good cause. At the commitment proceeding, any
22 testimony and reports of an expert who conducted an examination are admissible, including
23 risk assessment evaluations. Any proceeding pursuant to this chapter must be tried to the
24 court and not a jury. At the commitment proceeding, the state's attorney shall present evidence

1 in support of the petition and the burden is on the state to show by clear and convincing
2 evidence that the respondent is a sexually dangerous individual. An individual may not be
3 committed unless expert evidence is admitted establishing that ~~at least two experts have~~
4 ~~concluded~~ the individual has a congenital or acquired condition that is manifested by a sexual
5 disorder, a personality disorder, or other mental disorder or dysfunction that makes that
6 individual likely to engage in further acts of sexually predatory conduct. The respondent has a
7 right to be present, to testify, and to present and cross-examine witnesses. If the respondent is
8 found to be a sexually dangerous individual, the court shall commit the respondent to the care,
9 custody, and control of the executive director. The executive director shall place the
10 respondent in an appropriate facility or program at which treatment is available. The
11 appropriate treatment facility or program must be the least restrictive available treatment facility
12 or program necessary to achieve the purposes of this chapter. The executive director may not
13 be required to create a less restrictive treatment facility or treatment program specifically for the
14 respondent or committed individual. Unless the respondent has been committed to the legal
15 and physical custody of the department of corrections and rehabilitation, the respondent may
16 not be placed at and the treatment program for the respondent may not be provided at the state
17 penitentiary or an affiliated penal facility. If the respondent is found not to be a sexually
18 dangerous individual, the court shall discharge the respondent.

19 **SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.