

**SENATE BILL NO. 2340
with House Amendments**

Sixtieth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2340

Introduced by

Senators Freborg, Dever, Nething

Representatives Hawken, Koppelman, S. Meyer

1 A BILL for an Act to amend and reenact sections 25-03.3-03, 25-03.3-03.1, 25-03.3-04,
2 25-03.3-05, 25-03.3-06, 25-03.3-08, 25-03.3-09, 25-03.3-10, 25-03.3-13, 25-03.3-17,
3 25-03.3-18, 25-03.3-20, and 25-03.3-24 of the North Dakota Century Code, relating to the civil
4 commitment of sexually dangerous individuals; and to provide an appropriation.

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

6 **SECTION 1. AMENDMENT.** Section 25-03.3-03 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **25-03.3-03. Sexually dangerous individual - Petition.**

- 9 1. If it appears that an individual is a sexually dangerous individual, the state's
10 attorney or the attorney general may file a petition in the district court alleging that
11 the individual is a sexually dangerous individual and stating sufficient facts to
12 support the allegation.
- 13 2. The petition and any proceeding under section 25-03.3-11 are confidential and are
14 not public records or proceedings under sections 44-04-18 and 44-04-19 and
15 sections 5 and 6 of article XI of the Constitution of North Dakota. The court may
16 permit access to a respondent's records or proceedings under this chapter to the
17 respondent's guardian, guardian ad litem, or other similarly situated individual.
18 The court may permit access to information in the respondent's records to other
19 individuals who require the information for use in performing official governmental
20 duties. Notwithstanding any other provision of law, proceedings under section
21 25-03.3-13 and any evidence introduced or presented to the court for any such
22 proceeding are required to be open to the public, with the exception of a
23 proceeding involving an individual who has not been convicted of a sexual act as
24 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. Section 25-03.3-03.1 of the North Dakota Century Code is amended and reenacted as follows:

25-03.3-03.1. Referral of inmates and juveniles to state's attorneys and the attorney general - 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 and the attorney general 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. The department of corrections and rehabilitation, through its division of juvenile services, shall maintain treatment records for any juvenile who has been found to have committed sexually predatory conduct. Approximately six months before the expiration date of the order of disposition, the department shall make an assessment to determine whether a recommendation is to be made to a state's attorney and the attorney general for civil commitment of the juvenile under this chapter. The assessment must be based on actuarial and clinical evaluations or any other information determined by the division of juvenile services to be relevant, including the juvenile's behavior and whether the juvenile participated in sexual offender treatment while in the custody of the division of juvenile services.
3. If, upon the completion of the assessment, the department determines the inmate or juvenile may meet the definition of a sexually dangerous individual, the department shall refer the inmate or juvenile to a state's attorney of an appropriate county and the attorney general as provided for in section 25-03.3-02. The department may make a referral of an inmate to more than one county.

3- 4. Any referral from the department must include a summary of the factors considered material to the determination that the inmate or juvenile 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- 5. Following the receipt of a referral and after receipt of relevant records from the department, but at least sixty days before the expiration of the order of disposition for a juvenile or the release date of the inmate, the state's attorney general shall notify the department and the ~~attorney general of the state's~~ attorney's attorney in writing of the attorney general's intended disposition of the referral. Unless the state's attorney notifies the attorney general within ten days after receipt of the notice that the state's attorney intends to file the petition pursuant to this chapter, the attorney general may file the petition. The state's attorney may file a petition pursuant to this chapter if the attorney general does not intend to file a petition.

5- 6. Any person participating in good faith in the assessment and referral of an inmate or juvenile 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 or juvenile is presumed.

SECTION 3. 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 must be retained for fifty years and made available to any state's attorney and the attorney general for purposes of investigation or proceedings pursuant to this chapter.

SECTION 4. 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

1 about a respondent or committed individual must be released to a state's attorney
2 and the attorney general for proceedings pursuant to this chapter unless release
3 results in the loss of federal funds. The physician-patient privilege and
4 psychotherapist-patient privilege do not apply to communications relevant to an
5 issue in proceedings to commit an individual as a sexually dangerous person if the
6 physician or psychotherapist in the course of diagnosis or treatment determines
7 the patient is in need of commitment and to communications with a committed
8 individual. The provision of any confidential or privileged information to the state's
9 attorney or the attorney general does not render the state, any political subdivision,
10 or any state or political subdivision official or employee, or other person liable
11 pursuant to any criminal or civil law relating to confidentiality or privilege.

- 12 2. For purposes of this chapter, a treating facility or mental health professional shall,
13 if requested, disclose individually identifiable health information to a court, the state
14 hospital, state's attorney and the attorney general, retained counsel, or other
15 mental health professional, including an expert examiner, and the disclosure is a
16 disclosure for treatment.

17 **SECTION 5. AMENDMENT.** Section 25-03.3-06 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **25-03.3-06. Use of confidential records.** Upon request, any confidential records
20 provided to the state's attorney or the attorney general pursuant to this chapter must be made
21 available to the respondent or committed individual, the attorney of the respondent or
22 committed individual, a qualified expert charged with examining the respondent or committed
23 individual, the court, and any treatment facility in which the respondent or committed individual
24 is being evaluated or treated pursuant to this chapter.

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

27 **25-03.3-08. Sexually dangerous individual - Procedure on petition - Detention.**

- 28 1. Upon the filing of a petition pursuant to this chapter, the court shall determine
29 whether to issue an order for detention of the respondent named in the petition.
30 The petition may be heard ex parte. The court shall issue an order for detention if
31 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 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 or the attorney general knows or believes the respondent named in the petition is an individual with mental retardation, the state's attorney or the attorney general 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. Section 25-03.3-09 of the North Dakota Century Code is amended and reenacted as follows:

25-03.3-09. Right to counsel - Waiver.

1. Every respondent is entitled to legal counsel. Unless an appearance has been entered on behalf of the respondent, the court, within twenty-four hours from the time the petition was filed, exclusive of weekends or holidays, shall appoint counsel to represent the respondent. If a respondent retains counsel, the retained counsel immediately shall notify the court of that fact.
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.

3. If the court determines that the respondent is indigent, the court shall appoint counsel and order that appointed counsel be compensated by the county that is the respondent's place of residence in a reasonable amount based upon time and expenses.

4. The state's attorney of a county, or the attorney general on behalf of a county, that has expended sums pursuant to subsection 3 may seek civil recovery of those sums from property of the respondent. Commencement of the action must occur within six years after the date the sums were paid. After notice and hearing, the court may order an individual to reimburse the county for expenditures made on that individual's behalf pursuant to this chapter.

SECTION 8. 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 or the attorney general 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 or the attorney general 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 or the attorney general knows or believes is an individual with mental retardation, the state's attorney or the attorney general also shall give notice to the respondent's attorney, guardian, and guardian ad litem, if any.

SECTION 9. 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

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

22 **SECTION 10. AMENDMENT.** Section 25-03.3-17 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **25-03.3-17. Postcommitment proceeding, discharge, and further disposition.**

- 25 1. A committed individual must remain in the care, custody, and control of the
26 executive director until, in the opinion of the executive director, the individual is
27 safe to be at large.
- 28 2. Each committed individual must have an examination of that individual's mental
29 condition at least once a year. A report regarding the examination must be
30 provided to the court that committed the individual. At the time of the annual
31 examination, the committed individual has the right to have an expert examine the

individual, and, upon the request of an indigent committed individual, the court shall appoint a qualified expert to examine the committed individual and report to the court. The department of human services shall compensate a qualified expert appointed by the court in a reasonable amount based on time and expenses. That expert must have reasonable access to the committed individual and to all records relating to the committed individual, including confidential records.

3. If a committed individual has been committed to an out-of-state facility by the executive director for purposes of treatment, an expert from that state may be appointed by the court as a qualified expert for an indigent committed individual for any postcommitment proceeding.

4. After any report pursuant to this section is provided to the court, the court may order further examination and investigation of the committed individual as the court considers necessary. The court may set the matter for a hearing. At the hearing, the committed individual is entitled to be present and to the benefit of the protections afforded at the commitment proceeding. The state's attorney or the attorney general shall represent the state at the hearing. After the hearing, the court shall determine whether the committed individual is to be discharged or to be retained as a sexually dangerous individual in the care, custody, and control of the executive director.

5. The executive director may only discharge a sexually dangerous individual from commitment pursuant to a court order. The executive director may petition the committing court at any time for the discharge of the committed individual. The executive director shall give the state's attorney or the attorney general notice of any petition for discharge the executive director files with the court. Before the petition is granted, the state's attorney or the attorney general has the right to be heard by the court on the petition. The state's attorney or the attorney general may waive this right.

6. 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 11. AMENDMENT. Section 25-03.3-18 of the North Dakota Century Code is amended and reenacted as follows:

25-03.3-18. Petition for discharge - Notice.

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.
2. If the committed individual files a petition for discharge and has not had a hearing pursuant to section 25-03.3-17 or this section during the preceding twelve months, the committed individual has a right to a hearing on the petition.
3. At the hearing on the petition for discharge, the committed individual is entitled to be present and to the benefit of the protections afforded at the commitment proceeding. The state's attorney or the attorney general shall represent the state and may have the committed individual evaluated by experts chosen by the state. The committed individual is entitled to have an expert of the committed individual's choice conduct an evaluation. The court shall appoint a qualified expert if the committed individual is indigent and requests an appointment. The department of human services shall compensate a qualified expert appointed by the court in a reasonable amount based on time and expenses. That expert must have reasonable access to the committed individual and to all records relating to the committed individual, including confidential records.
4. At any hearing held pursuant to a petition for discharge, the burden of proof is on the state to show by clear and convincing evidence that the committed individual remains a sexually dangerous individual.

1 **SECTION 12. AMENDMENT.** Section 25-03.3-20 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **25-03.3-20. Limitation of liability.** A person acting in good faith upon either actual
4 knowledge or reliable information, who provides information to the state's attorney, the attorney
5 general, or the court pursuant to this chapter, is not subject to civil or criminal liability.

6 **SECTION 13. AMENDMENT.** Section 25-03.3-24 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **25-03.3-24. Postcommitment community placement - Penalty.**

9 1. Following commitment of a sexually dangerous individual, the executive director
10 may conduct a risk management assessment of the committed individual for the
11 purpose of determining whether the individual may be treated safely in the
12 community on an outpatient basis. The executive director may place a committed
13 individual in the community for treatment on an outpatient basis only pursuant to a
14 court order. The executive director may petition the court at any time for
15 community placement. The executive director shall give the state's attorney of the
16 county of community placement and the attorney general notice of any petition for
17 community placement the executive director files with the court. Before the
18 petition is granted, the state's attorney or the attorney general has the right to be
19 heard by the court. The state's attorney or the attorney general may waive this
20 right. At any hearing held pursuant to a petition by the executive director for the
21 community placement of a committed individual, the burden of proof required of
22 the executive director is a preponderance of the evidence. The court's order of
23 community placement must contain appropriate restrictions and requirements for
24 the committed individual, including:

- 25 a. Participation and compliance with a specific course of treatment;
- 26 b. Submission to electronic monitoring and any other appropriate supervision;
- 27 c. Prohibition of the individual changing place of residency or leaving the state
28 without prior authorization of the court;
- 29 d. Establishment of safety zones, and compliance by the committed individual
30 with those safety zones;

- 1 e. Requirement that the committed individual notify the court within twenty-four
- 2 hours of any change in the individual's status that affects proper treatment or
- 3 supervision;
- 4 f. Contact with victims is prohibited independent of a supervised treatment plan;
- 5 and
- 6 g. Any other restriction or requirement deemed necessary by the court to assure
- 7 public safety and proper treatment of the committed individual.
- 8 2. Violation by a committed individual of a court order issued pursuant to this section
- 9 is a class C felony.

10 **SECTION 14. APPROPRIATION.** There is appropriated out of any moneys in the
11 general fund in the state treasury, not otherwise appropriated, the sum of \$5,000 or so much of
12 the sum as may be necessary, to the attorney general, for the prosecution of civil commitment
13 of sexually dangerous individuals, for the biennium beginning July 1, 2007, and ending
14 June 30, 2009.