

Fifty-fifth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1047

Introduced by

Legislative Council

(Criminal Justice Committee)

(Representatives Mahoney, Kretschmar, R. Kelsch, Brown, Bernstein)
(Senator Nalewaja)

- 1 A BILL for an Act to create and enact chapter 25-03.3 of the North Dakota Century Code,
2 relating to civil commitment of sexually dangerous individuals.

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

4 **SECTION 1.** Chapter 25-03.3 of the North Dakota Century Code is created and
5 enacted as follows:

6 **25-03.3-01. Definitions.** In this chapter, unless the context otherwise requires:

- 7 1. "Committed individual" means an individual committed for custody and treatment
8 pursuant to this chapter.
- 9 2. "Executive director" means the executive director of the department of human
10 services or the executive director's designee.
- 11 3. "Mental disorder" means a congenital or acquired condition that is manifested by a
12 sexual disorder, a personality disorder, or other mental disorder or dysfunction.
- 13 4. "Qualified expert" means an individual who has an expertise in sexual offender
14 evaluations and who is a psychiatrist or psychologist trained in a clinical program
15 and licensed pursuant to this state's law, or a psychologist approved for exemption
16 by the North Dakota board of psychology examiners.
- 17 5. "Respondent" means an individual subject to commitment pursuant to this chapter.
- 18 6. "Sexual act" means sexual contact between human beings, including contact
19 between the penis and the vulva, the penis and the anus, the mouth and the penis,
20 the mouth and the vulva, or the vulva and the vulva; or the use of an object that
21 comes in contact with the victim's anus, vulva, or penis. Sexual contact between
22 the penis and the vulva, or between the penis and the anus, or an object and the
23 anus, vulva, or penis of the victim, occurs upon penetration, however slight.
24 Emission is not required.

- 1 7. "Sexual contact" means any touching of the sexual or other intimate parts of an
- 2 individual for the purpose of arousing or satisfying sexual or aggressive desires.
- 3 8. "Sexually dangerous individual" means an individual who is shown to have
- 4 engaged in sexually predatory conduct and who has manifested a mental disorder
- 5 that makes that individual likely to engage in further acts of sexually predatory
- 6 conduct which constitute a danger to the physical or mental health or safety of
- 7 others. The term does not include an individual with mental retardation.
- 8 9. "Sexually predatory conduct" means:
- 9 a. Engaging or attempting to engage in a sexual act or sexual contact with
- 10 another individual, or causing or attempting to cause another individual to
- 11 engage in a sexual act or sexual contact, if:
- 12 (1) The victim is compelled to submit by force or by threat of imminent
- 13 death, serious bodily injury, or kidnapping directed toward the victim or
- 14 any human being, or the victim is compelled to submit by any threat that
- 15 would render an individual of reasonable firmness incapable of
- 16 resisting;
- 17 (2) The victim's power to appraise or control the victim's conduct has been
- 18 substantially impaired by the administration or employment, without the
- 19 victim's knowledge, of intoxicants or other means for purposes of
- 20 preventing resistance;
- 21 (3) The actor knows or should have known that the victim is unaware that a
- 22 sexual act is being committed upon the victim;
- 23 (4) The victim is less than fifteen years old;
- 24 (5) The actor knows or should have known that the victim suffers from a
- 25 mental disease or defect that renders the victim incapable of
- 26 understanding the nature of the sexual act or contact;
- 27 (6) The victim is in official custody or detained in a hospital, prison, or other
- 28 institution and is under the supervisory authority or disciplinary control
- 29 of the actor; or
- 30 (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.

10. "Should have known" means a reasonable individual without a mental disorder in the actor's circumstances would have known.

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

12. "Treatment facility" means any hospital, including the state hospital, or any treatment facility that can provide directly, or by direct arrangement with other public or private agencies, evaluation and treatment of sexually dangerous individuals.

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 be tried in the county in which the respondent resides or is located.

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

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 for purposes of investigation or proceedings pursuant to this chapter.

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

1 released to a state's attorney for proceedings pursuant to this chapter unless release results in
2 the loss of federal funds. Any privilege between the respondent or committed individual and
3 that individual's spouse or any professional person, except between attorney and client, is
4 abrogated and does not constitute grounds for refusing to provide privileged information to the
5 state's attorney or the court for proceedings pursuant to this chapter. The provision of any
6 confidential or privileged information to the state's attorney does not render the state, any
7 political subdivision, or any state or political subdivision official or employee, or other person
8 liable pursuant to any criminal or civil law relating to confidentiality or privilege.

9 **25-03.3-06. Use of confidential records.** Upon request, any confidential records
10 provided to the state's attorney pursuant to this chapter must be made available to the
11 respondent or committed individual, the attorney of the respondent or committed individual, a
12 qualified expert charged with examining the respondent or committed individual, the court, and
13 any treatment facility in which the respondent or committed individual is being evaluated or
14 treated pursuant to this chapter.

15 **25-03.3-07. Appointment of guardian ad litem.** At any stage of a proceeding under
16 this chapter, on application of a party or on its own motion, the court may appoint a guardian ad
17 litem for a minor who is a witness or otherwise involved in the proceeding, if the minor has no
18 parent, guardian, or custodian appearing on the minor's behalf or the interests of those persons
19 conflict with those of the minor. The department of human services shall pay the expense of
20 the guardian ad litem fee as established by the court.

21 **25-03.3-08. Sexually dangerous individual - Procedure on petition - Detention.**
22 Upon the filing of a petition pursuant to this chapter, the court shall determine whether to issue
23 an order for detention of the respondent named in the petition. The petition may be heard ex
24 parte. The court shall issue an order for detention if there is cause to believe that the
25 respondent is a sexually dangerous individual. If the court issues an order for detention, the
26 order must direct that the respondent be taken into custody and transferred to an appropriate
27 treatment facility to be held for evaluation and subsequent hearing pursuant to this chapter.
28 Under this section, the department of human services shall pay for any expense incurred in the
29 detention or evaluation of the respondent.

30 **25-03.3-09. Right to counsel - Waiver.**

- 1 1. Every respondent is entitled to legal counsel. Unless an appearance has been
2 entered on behalf of the respondent, the court, within twenty-four hours from the
3 time the petition was filed, exclusive of weekends or holidays, shall appoint counsel
4 to represent the respondent. If a respondent retains counsel, the retained counsel
5 immediately shall notify the court of that fact.
- 6 2. After consultation with counsel, the respondent may waive the right to counsel or
7 the right to any hearing provided pursuant to this chapter by notifying the court in
8 writing. The notification must clearly state the respondent's reasons for the waiver
9 and be signed by counsel for the respondent.
- 10 3. If the court determines that the respondent is indigent, the court shall appoint
11 counsel and order that appointed counsel be compensated by the county that is
12 the respondent's place of residence in a reasonable amount based upon time and
13 expenses.
- 14 4. The state's attorney of a county that has expended sums pursuant to subsection 3
15 may seek civil recovery of those sums from property of the respondent.
16 Commencement of the action must occur within six years after the date the sums
17 were paid. After notice and hearing, the court may order an individual to reimburse
18 the county for expenditures made on that individual's behalf pursuant to this
19 chapter.

20 **25-03.3-10. Notice.** If a respondent is detained pursuant to section 25-03.3-08, the
21 state's attorney shall provide the respondent, or the respondent's guardian, if appropriate, with
22 a copy of the petition filed with the court. The state's attorney shall provide the respondent with
23 written notice of the respondent's right to a preliminary hearing and a commitment hearing, if
24 probable cause is found to exist; the right to counsel and that counsel will be appointed for the
25 respondent, if the respondent is indigent; and the right to have an expert of the respondent's
26 choosing conduct an evaluation and testify on the respondent's behalf or, if the respondent is
27 indigent, that the court will appoint a qualified expert for the respondent. The notice must state
28 the date, time, and place for the preliminary hearing.

29 **25-03.3-11. Preliminary hearing - Probable cause.** The respondent is entitled to a
30 preliminary hearing within seventy-two hours of being taken into custody pursuant to an order of
31 the court, excluding weekends and holidays, unless the respondent chooses to waive the

1 preliminary hearing pursuant to section 25-03.3-09. The respondent must be afforded an
2 opportunity to testify and to present and cross-examine witnesses at any preliminary hearing.
3 Every individual not necessary must be excluded, except that the court may admit any
4 individual having a legitimate interest in the proceeding. If the court determines after a
5 preliminary hearing that there is probable cause to believe the respondent is a sexually
6 dangerous individual, the court shall order that the respondent be transferred to an appropriate
7 treatment facility for an evaluation as to whether the respondent has a mental disorder that
8 makes the respondent likely to engage in further acts of sexually predatory conduct. If the court
9 determines that probable cause does not exist to believe that the respondent is a sexually
10 dangerous individual, the court shall dismiss the petition. If the respondent waives the
11 preliminary hearing, then the respondent must be immediately transferred to an appropriate
12 treatment facility for an evaluation as to whether the respondent has a mental disorder that
13 makes the respondent likely to engage in further acts of sexually predatory conduct.

14 **25-03.3-12. Sexually dangerous individual - Evaluation.** The evaluation must be
15 conducted by one or more experts chosen by the state's attorney. Whenever a respondent is
16 subject to an evaluation pursuant to this chapter, the respondent may retain an expert to
17 perform an evaluation or testify on the respondent's behalf. In the case of a respondent who is
18 indigent, the court shall appoint a qualified expert to perform an examination or participate in
19 the commitment proceeding on the respondent's behalf. The department of human services
20 shall compensate any qualified expert appointed by the court on behalf of an indigent
21 respondent in a reasonable amount based on time and expenses. An expert retained on behalf
22 of the respondent must have reasonable access to the respondent for the purpose of the
23 examination and to all relevant medical, psychological, and court records and reports.

24 **25-03.3-13. Sexually dangerous individual - Commitment proceeding - Report of**
25 **findings.** Within thirty days after the finding of probable cause, the court shall conduct a
26 commitment proceeding to determine whether the respondent is a sexually dangerous
27 individual. The court may extend the time for good cause. At the commitment proceeding, any
28 testimony and reports of an expert who conducted an examination are admissible, including risk
29 assessment evaluations. Any proceeding pursuant to this chapter must be tried to the court
30 and not a jury. At the commitment proceeding, the state's attorney shall present evidence in
31 support of the petition and the burden is on the state to show by clear and convincing evidence

1 that the respondent is a sexually dangerous individual. The respondent must be afforded an
2 opportunity to testify and to present and cross-examine witnesses. Every person not necessary
3 must be excluded, except that the court may admit any person having a legitimate interest in
4 the proceeding. If the respondent is found to be a sexually dangerous individual, the court shall
5 commit the respondent to the care, custody, and control of the executive director. The
6 executive director shall place the respondent at the state hospital or another appropriate
7 treatment facility or program for treatment. If the respondent is found not to be a sexually
8 dangerous individual, the court shall discharge the respondent.

9 **25-03.3-14. Interagency placement.** If a committed individual also has been
10 committed to the care, custody, and control of the director of the department of corrections and
11 rehabilitation, the director of the department of corrections and rehabilitation and the executive
12 director may consult one another and determine the appropriate placement of the individual and
13 may transfer the individual between placements.

14 **25-03.3-15. Evidence of prior acts.** Notwithstanding any other provision of law, in any
15 proceeding pursuant to this chapter, evidence of prior sexually predatory conduct or criminal
16 conduct, including a record of the juvenile court, is admissible.

17 **25-03.3-16. Limitation on findings as evidence in criminal proceedings.** Any
18 determination made pursuant to this chapter regarding whether a respondent is a sexually
19 dangerous individual or has an existing mental disorder is inadmissible in any criminal
20 proceeding against the respondent, including any criminal proceeding to determine whether the
21 respondent is fit to stand trial, incapable of forming requisite intent, or not guilty by reason of
22 lack of responsibility because of mental disease or defect.

23 **25-03.3-17. Postcommitment proceeding, discharge, and further disposition.**

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

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

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

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

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

26 **25-03.3-18. Petition for discharge - Notice.**

27 1. Annually, the executive director shall provide the committed individual with written
28 notice that the individual has a right to petition the court for discharge. The
29 executive director shall forward a copy of the notice to the committing court.

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 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.

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.

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

25-03.3-21. Recovery of expense. The department of human services, to the extent it has expended sums or provided services pursuant to this title, may seek civil recovery from the property of the respondent or committed individual. The department of human services must commence the action within six years after the department paid the sums or provided the services to the respondent or committed individual. After notice and hearing, the court may

- 1 order an individual to reimburse the department of human services for expenditures made for
- 2 that individual pursuant to this chapter.