

**SENATE BILL NO. 2296**

Introduced by

Senators Mathern, Lyson, Nelson, Grindberg

Representatives DeKrey, Ruby

1 A BILL for an Act to amend and reenact section 25-03.1-02, subsection 1 of section  
2 25-03.1-18.1, and subsection 1 of section 25-03.1-25 of the North Dakota Century Code,  
3 relating to mental illness commitment procedures.

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

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

7 **25-03.1-02. Definitions.** In this chapter, unless the context requires otherwise:

8 1. "Alternative treatment order" means an involuntary outpatient order for a treatment  
9 program, other than hospitalization, which includes treatment with a prescribed  
10 medication pursuant to section 25-03.1-18.1.

11 2. "Chemically dependent person" means an individual with an illness or disorder  
12 characterized by a maladaptive pattern of usage of alcohol or drugs, or a  
13 combination thereof, resulting in social, occupational, psychological, or physical  
14 problems.

15 ~~2.~~ 3. "Consent" means voluntary permission that is based upon full disclosure of facts  
16 necessary to make a decision and which is given by an individual who has the  
17 ability to understand those facts.

18 ~~3.~~ 4. "Court" means, except when otherwise indicated, the district court serving the  
19 county in which the respondent resides.

20 ~~4.~~ 5. "Department" means the department of human services.

21 ~~5.~~ 6. "Director" means the director of a treatment facility or the director's designee.

22 ~~6.~~ 7. "Expert examiner" means a licensed physician, psychiatrist, psychologist trained in  
23 a clinical program, or licensed addiction counselor appointed by the court to  
24 examine the respondent and to provide an evaluation of whether the respondent is

1 a person requiring treatment. An evaluation of a respondent's physical condition  
2 may be made only by a licensed physician or psychiatrist, an evaluation of a  
3 respondent's mental status may be made only by a psychiatrist or psychologist  
4 trained in a clinical program, and an evaluation of whether the respondent is  
5 chemically dependent may be made only by a licensed physician or licensed  
6 addiction counselor.

7 ~~7.~~ 8. "Independent expert examiner" means a licensed physician, psychiatrist,  
8 psychologist trained in a clinical program, or licensed addiction counselor, chosen  
9 at the request of the respondent to provide an independent evaluation of whether  
10 the respondent is a person requiring treatment. An evaluation of a respondent's  
11 physical condition may be made only by a licensed physician or psychiatrist; an  
12 evaluation of a respondent's mental status may be made only by a psychiatrist or  
13 psychologist; and an evaluation of whether the respondent is chemically dependent  
14 may be made only by a licensed physician or licensed addiction counselor.

15 ~~8.~~ 9. "Magistrate" means the judge of the appropriate district or juvenile court or a judge  
16 assigned by the presiding judge of the judicial district.

17 ~~9.~~ 10. "Mental health professional" means:

18 a. A psychologist with at least a master's degree who has been either licensed  
19 or approved for exemption by the North Dakota board of psychology  
20 examiners.

21 b. A social worker with a master's degree in social work from an accredited  
22 program.

23 c. A registered nurse with a master's degree in psychiatric and mental health  
24 nursing from an accredited program.

25 d. A registered nurse with a minimum of two years of psychiatric clinical  
26 experience under the supervision of a registered nurse as defined by  
27 subdivision c or of an expert examiner.

28 e. A licensed addiction counselor.

29 f. A licensed professional counselor with a master's degree in counseling from  
30 an accredited program who has either successfully completed the advanced  
31 training beyond the master's degree as required by the national academy of

1                   mental health counselors or a minimum of two years of clinical experience in a  
2                   mental health agency or setting under the supervision of a psychiatrist or  
3                   psychologist.

4    40. 11. "Mentally ill person" means an individual with an organic, mental, or emotional  
5                   disorder which substantially impairs the capacity to use self-control, judgment, and  
6                   discretion in the conduct of personal affairs and social relations. "Mentally ill  
7                   person" does not include a mentally retarded person of significantly subaverage  
8                   general intellectual functioning which originates during the developmental period  
9                   and is associated with impairment in adaptive behavior, although a person who is  
10                  mentally retarded may also suffer from a mental illness. Chemical dependency  
11                  does not per se constitute mental illness, although persons suffering from that  
12                  condition may also be suffering from mental illness.

13  44. 12. "Person requiring treatment" means a person who is mentally ill or chemically  
14                  dependent, and there is a reasonable expectation that if the person is not treated  
15                  there exists ~~a serious risk of harm to that person, others, or property.~~ "~~Serious risk~~  
16                  of harm" means a substantial likelihood of:

- 17                  a. Suicide, as manifested by suicidal threats, attempts, or significant depression  
18                  relevant to suicidal potential;
- 19                  b. Killing or inflicting serious bodily harm on another person or inflicting  
20                  significant property damage, as manifested by acts or threats. Direct  
21                  evidence of overt violence or an expressed intent to commit violence is not  
22                  required;
- 23                  c. Substantial deterioration in physical health, or substantial injury, disease, or  
24                  death, based upon recent poor self-control or judgment in providing one's  
25                  shelter, nutrition, or personal care; or
- 26                  d. Substantial deterioration in mental health which would predictably result in  
27                  dangerousness to that person, others, or property, based upon the risk of loss  
28                  of the person's ability to function independently in the community or the loss  
29                  of cognitive or volitional control over the person's thoughts or actions or based  
30                  upon acts, threats, or patterns in the person's treatment history, current

1 condition, and other relevant factors, including the person's inability to make a  
2 rational decision about the need for treatment.

3 ~~42.~~ 13. "Private treatment facility" means any facility established under chapter 10-19.1 or  
4 10-33 and licensed under chapter 23-16 or 23-17.1.

5 ~~43.~~ 14. "Psychiatrist" means a licensed physician who has completed a residency program  
6 in psychiatry.

7 ~~44.~~ 15. "Public treatment facility" means any treatment facility not falling under the  
8 definition of a private treatment facility.

9 ~~45.~~ 16. "Qualified service organization" means a person or entity that provides services to  
10 a treatment facility such as data processing, bill collecting, dosage preparation,  
11 laboratory analysis, or legal, medical, accounting, or other professional services,  
12 and which agrees that in dealing with patient records, it is bound by the  
13 confidentiality restrictions of this chapter, except as otherwise provided for by law.

14 ~~46.~~ 17. "Respondent" means a person subject to petition for involuntary treatment.

15 ~~47.~~ 18. "Superintendent" means the state hospital superintendent or the superintendent's  
16 designee.

17 ~~48.~~ 19. "Third-party payer" means a person or entity who pays, or agrees to pay, for  
18 diagnosis or treatment furnished to a patient on the basis of a contractual  
19 relationship with the patient or a member of the patient's family, or on the basis of  
20 the patient's eligibility for federal, state, or local governmental benefits, and  
21 includes any person or entity providing audit or evaluation activities for the  
22 third-party payer.

23 ~~49.~~ 20. "Treatment facility" or "facility" means any hospital including the state hospital at  
24 Jamestown or any evaluation and treatment facility that provides directly, or by  
25 direct arrangement with other public or private agencies, emergency evaluation  
26 and treatment, outpatient care, and inpatient care to persons suffering from a  
27 mental disorder or chemical dependency.

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

30 1. a. Upon notice and hearing, a treating psychiatrist may request authorization  
31 from the court to treat a person under a mental health treatment order with

1 prescribed medication. The request may be considered by the court in an  
2 involuntary treatment hearing. As a part of the request, the treating  
3 psychiatrist and another licensed physician or psychiatrist not involved in the  
4 current diagnosis or treatment of the patient shall certify:

5 (1) That the proposed prescribed medication is clinically appropriate and  
6 necessary to effectively treat the patient and ~~there is a reasonable~~  
7 ~~expectation that if the person is not treated as proposed there exists a~~  
8 ~~serious risk of harm to that person, other persons, or property~~ that the  
9 patient is a person requiring treatment;

10 (2) That the patient was offered that treatment and refused it or that the  
11 patient lacks the capacity to make or communicate a responsible  
12 decision about that treatment;

13 (3) That prescribed medication is the least restrictive form of intervention  
14 necessary to meet the treatment needs of the patient; and

15 (4) That the benefits of the treatment outweigh the known risks to the  
16 patient.

17 b. The court shall inquire whether the patient has had a sufficient opportunity to  
18 adequately prepare to meet the issue of involuntary treatment with prescribed  
19 medication and, at the request of the patient, the court may continue the  
20 involuntary treatment hearing for a period not exceeding seven days or may  
21 appoint an independent expert examiner as provided in subsection 4.

22 **SECTION 3. AMENDMENT.** Subsection 1 of section 25-03.1-25 of the North Dakota  
23 Century Code is amended and reenacted as follows:

24 1. When a peace officer, physician, psychiatrist, psychologist, or mental health  
25 professional has reasonable cause to believe that an individual is a person  
26 requiring treatment ~~and there exists a serious risk of harm to that person, other~~  
27 ~~persons, or property~~ of an immediate nature and that considerations of safety do  
28 not allow preliminary intervention by a magistrate, the peace officer, physician,  
29 psychiatrist, psychologist, or mental health professional may cause the person to  
30 be taken into custody and detained at a treatment facility as provided in  
31 subsection 3, and subject to section 25-03.1-26, except that if emergency

- 1 conditions exist that prevent the immediate conveyance of the individual to a public  
2 treatment facility, a private facility that has adequate resources and capacity to  
3 hold that individual may hold the individual in anticipation of conveyance to a public  
4 treatment facility for up to twenty-three hours:
- 5 a. Without conducting an immediate examination required under section  
6 25-03.1-26; and
  - 7 b. Without following notice and hearing requirements for a transfer to another  
8 treatment facility required under subsection 3 of section 25-03.1-34.