

Fifty-eighth  
Legislative Assembly  
of North Dakota

ENGROSSED 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 and subsection 1 of section  
2 25-03.1-18.1 of the North Dakota Century Code, relating to mental illness commitment  
3 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 may include treatment with a prescribed  
10 medication.
- 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  
14 dependent may be made only by a licensed physician or licensed addiction  
15 counselor.

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

18 ~~9.~~ 10. "Mental health professional" means:

- 19 a. A psychologist with at least a master's degree who has been either licensed  
20 or approved for exemption by the North Dakota board of psychology  
21 examiners.
- 22 b. A social worker with a master's degree in social work from an accredited  
23 program.
- 24 c. A registered nurse with a master's degree in psychiatric and mental health  
25 nursing from an accredited program.
- 26 d. A registered nurse with a minimum of two years of psychiatric clinical  
27 experience under the supervision of a registered nurse as defined by  
28 subdivision c or of an expert examiner.
- 29 e. A licensed addiction counselor.
- 30 f. A licensed professional counselor with a master's degree in counseling from  
31 an accredited program who has either successfully completed the advanced

1 training beyond the master's degree as required by the national academy of  
2 mental health counselors or a minimum of two years of clinical experience in  
3 a mental health agency or setting under the supervision of a psychiatrist or  
4 psychologist.

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

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

- 18 a. Suicide, as manifested by suicidal threats, attempts, or significant depression  
19 relevant to suicidal potential;
- 20 b. Killing or inflicting serious bodily harm on another person or inflicting  
21 significant property damage, as manifested by acts or threats;
- 22 c. Substantial deterioration in physical health, or substantial injury, disease, or  
23 death, based upon recent poor self-control or judgment in providing one's  
24 shelter, nutrition, or personal care; or
- 25 d. Substantial deterioration in mental health which would predictably result in  
26 dangerousness to that person, others, or property, based upon the loss of  
27 cognitive or volitional control over the person's thoughts or actions or based  
28 upon acts, threats, or patterns in the person's treatment history, current  
29 condition, and other relevant factors, including the effect of the person's  
30 mental condition on the person's ability to consent.

- 1    ~~42.~~ 13. "Private treatment facility" means any facility established under chapter 10-19.1 or  
2                    10-33 and licensed under chapter 23-16 or 23-17.1.
- 3    ~~43.~~ 14. "Psychiatrist" means a licensed physician who has completed a residency program  
4                    in psychiatry.
- 5    ~~44.~~ 15. "Public treatment facility" means any treatment facility not falling under the  
6                    definition of a private treatment facility.
- 7    ~~45.~~ 16. "Qualified service organization" means a person or entity that provides services to  
8                    a treatment facility such as data processing, bill collecting, dosage preparation,  
9                    laboratory analysis, or legal, medical, accounting, or other professional services,  
10                   and which agrees that in dealing with patient records, it is bound by the  
11                   confidentiality restrictions of this chapter, except as otherwise provided for by law.
- 12   ~~46.~~ 17. "Respondent" means a person subject to petition for involuntary treatment.
- 13   ~~47.~~ 18. "Superintendent" means the state hospital superintendent or the superintendent's  
14                   designee.
- 15   ~~48.~~ 19. "Third-party payer" means a person or entity who pays, or agrees to pay, for  
16                   diagnosis or treatment furnished to a patient on the basis of a contractual  
17                   relationship with the patient or a member of the patient's family, or on the basis of  
18                   the patient's eligibility for federal, state, or local governmental benefits, and  
19                   includes any person or entity providing audit or evaluation activities for the  
20                   third-party payer.
- 21   ~~49.~~ 20. "Treatment facility" or "facility" means any hospital including the state hospital at  
22                   Jamestown or any evaluation and treatment facility that provides directly, or by  
23                   direct arrangement with other public or private agencies, emergency evaluation  
24                   and treatment, outpatient care, and inpatient care to persons suffering from a  
25                   mental disorder or chemical dependency.

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

- 28                   1.    a.    Upon notice and hearing, a treating psychiatrist may request authorization  
29                   from the court to treat a person under a mental health treatment order with  
30                   prescribed medication. The request may be considered by the court in an  
31                   involuntary treatment hearing. As a part of the request, the treating

1                   psychiatrist and another licensed physician or psychiatrist not involved in the  
2                   current diagnosis or treatment of the patient shall certify:

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

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

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

13                  (4)    That the benefits of the treatment outweigh the known risks to the  
14                  patient.

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