21.0038.01000

Sixty-seventh
Legislative Assembly
of North Dakota

BILL NO.

Introduced by

Legislative Management

(Judiciary Committee)

A BILL for an Act to amend and reenact sections 25-03.1-11, 25-03.1-17, 25-03.1-19, 25-03.1-26, 25-03.1-27, 25-03.1-30, 25-03.1-34, and 25-03.1-42 of the North Dakota Century Code, relating to preliminary treatment and involuntary treatment hearings and references to an individual who is chemically dependent; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 25-03.1-11 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-11. Involuntary treatment - Examination - Report.

1. The respondent must be examined within a reasonable time by an expert examiner as ordered by the court. If the respondent is taken into custody under the emergency treatment provisions of this chapter, the examination must be conducted within the time limitations set forth in section 25-03.1-26. Any expert examiner conducting an examination under this section may consult with or request participation in the examination by any mental health professional and may include with the written examination report any findings or observations by that mental health professional. This examination report, and that of the independent examiner, if one has been requested, must be filed with the court. The report must contain:
   a. Evaluations of the respondent's physical condition and mental status.
   b. A conclusion as to whether the respondent is a person requiring treatment, with a clear explanation of how that conclusion was derived from the evaluation.
   c. If the report concludes the respondent is a person requiring treatment, a list of available forms of care and treatment that may serve as alternatives to involuntary hospitalization.
   d. The signature of the examiner who prepared the report.

2. For purposes of any examination conducted pursuant to this section:
   a. An evaluation of a respondent's physical condition may be made only by a tier 1b mental health professional.
   b. An evaluation of a respondent's mental status may be made only by a tier 1 mental health professional.
   c. An evaluation of whether the respondent is ~~chemically dependent~~an individual with a substance use disorder may be made only by a tier 1 mental health professional or a licensed addiction counselor.
3. If the expert examiner concludes the respondent is not a person requiring treatment, the court may without taking any other additional action terminate the proceedings and dismiss the petition. If the expert examiner concludes the respondent is a person requiring treatment, or makes no conclusion whether the respondent is a person requiring treatment, the court shall set a date for hearing and shall give notice of hearing to the persons designated in section 25-03.1-12. If the respondent is in custody and is alleged to be a person who is mentally ill or a person who is both mentally ill and ~~chemically dependent~~has a substance use disorder, the preliminary hearing date must be within four days, exclusive of weekends and holidays, of the date the respondent was taken into custody through emergency commitment under section 25-03.1-25 unless a delay or continuance is concurred in by the respondent or unless extended by the magistrate for good cause shown. If a preliminary hearing is not required, the treatment hearing must be held within four days, exclusive of weekends and holidays, of the date the court received the expert examiner's report, not to exceed fourteen days from the time the petition was served.

SECTION 2. AMENDMENT. Section 25-03.1-17 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-17. Involuntary treatment - Right to preliminary hearing.

1. A respondent who is in custody under section 25-03.1-25 and who is alleged to be a mentally ill person or to be a person who is both mentally ill and ~~chemically dependent~~has a substance use disorder is entitled to a preliminary hearing.
   a. At the preliminary hearing the court shall review the medical report. During the hearing the court shall allow the petitioner and the respondent an opportunity to

testify and to present and cross-examine witnesses, and the court may receive the testimony of any other interested person. The court may receive evidence that would otherwise be inadmissible at a treatment hearing.

b. At the conclusion of the hearing, if the court does not find probable cause to believe the individual is a person requiring treatment, the court shall dismiss the petition and order the respondent be discharged from the treatment facility if the respondent was detained before the hearing.

2. If the court finds probable cause to believe the respondent is a person requiring treatment, the court shall consider less restrictive alternatives to involuntary detention and treatment.

a. The court may order the respondent to undergo up to fourteen days' treatment under a less restrictive alternative or, if the court finds alternative treatment is not in the best interests of the respondent or others, the court shall order the respondent detained for up to fourteen days for involuntary treatment in a treatment facility.

b. The court shall specifically state to the respondent and give written notice that if involuntary treatment beyond the fourteen-day period is to be sought, the respondent will have the right to a treatment hearing as required by this chapter.

3. The court may not consider medical records relating to the respondent, unless the petitioner and respondent receive the medical records at least twenty-four hours before the hearing.

SECTION 3. AMENDMENT. Section 25-03.1-19 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-19. Involuntary treatment hearing.

1. The involuntary treatment hearing, unless waived by the respondent or the respondent has been released as a person not requiring treatment, must be held within fourteen days of the preliminary hearing. If the preliminary hearing is not required, the involuntary treatment hearing must be held within four days, exclusive of weekends and holidays, of the date the court received the expert examiner's report, not to exceed fourteen days from the time the petition was served. The court may extend the time for hearing for good cause. The respondent has the right to an examination by an

independent expert examiner if so requested. If the respondent is indigent, the county of residence of the respondent shall pay for the cost of the examination and the respondent may choose an independent expert examiner.

2. The hearing must be held in the county of the respondent's residence or location or the county where the state hospital or treatment facility treating the respondent is located. At the hearing, evidence in support of the petition must be presented by the state's attorney, private counsel, or counsel designated by the court. During the hearing, the petitioner and the respondent must be afforded an opportunity to testify and to present and cross-examine witnesses. The court may receive the testimony of any other interested person. All individuals not necessary for the conduct of the proceeding must be excluded, except that the court may admit individuals having a legitimate interest in the proceeding. The hearing must be conducted in as informal a manner as practical, but the issue must be tried as a civil matter. Discovery and the power of subpoena permitted under the North Dakota Rules of Civil Procedure are available to the respondent. The court shall receive all relevant and material evidence that may be offered as governed by the North Dakota Rules of Evidence. There is a presumption in favor of the respondent, and the burden of proof in support of the petition is upon the petitioner.

3. If, upon completion of the hearing, the court finds ~~that~~ the petition has not been sustained by clear and convincing evidence, the court shall deny the petition, terminate the proceeding, and order ~~that~~ the respondent be discharged if the respondent has been hospitalized before the hearing.

4. The court may not consider a medical record or expert examiner's report relating to the respondent unless the petitioner and respondent receive the medical record or the expert examiner's report at least twenty-four hours before the hearing.

SECTION 4. AMENDMENT. Section 25-03.1-26 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-26. Emergency procedure - Acceptance of petition and individual - Notice - Court hearing set.

1. A public treatment facility immediately shall accept and a private treatment facility may accept on a provisional basis the application and the individual admitted under section

25-03.1-25. The superintendent or director shall require an immediate examination of the subject and, either within twenty-four hours, exclusive of holidays, after admission or within seventy-two hours after admission, exclusive of holidays, if the individual is admitted with a serious physical condition or illness that requires prompt treatment, shall either:

a. Release the individual if the superintendent or director finds that the subject does not meet the emergency commitment standards; or

b. File a petition if one has not been filed with the court of the individual's residence or the court which directed immediate custody under subsection 2 of section 25-03.1-25, giving notice to the court and stating in detail the circumstances and facts of the case.

2. Upon receipt of the petition and notice of the emergency detention, the magistrate shall set a date for a preliminary hearing, if the respondent is alleged to be a person who is mentally ill or a person who is both mentally ill and ~~chemically dependent~~has a substance use disorder, or a treatment hearing, if the respondent is alleged to be a person who ~~is chemically dependent~~has a substance use disorder, to be held no later than four days, exclusive of weekends and holidays, after detention unless the person has been released as a person not requiring treatment, has been voluntarily admitted for treatment, has requested or agreed to a continuance, or unless the hearing has been extended by the magistrate for good cause shown. The magistrate shall appoint counsel if one has not been retained by the respondent.

SECTION 5. AMENDMENT. Section 25-03.1-27 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-27. Notice and statement of rights.

1. ~~When~~If an individual is detained for emergency evaluation and treatment under this chapter, the superintendent or director shall cause both the patient and, if possible, a responsible member of the patient's immediate family, a guardian, or a friend, if any, to receive:

a. A copy of the petition ~~which~~that asserted ~~that~~ the individual is a person requiring treatment.

b. A written statement explaining ~~that~~ the individual will be examined by an expert examiner within twenty-four hours of hospitalization, excluding holidays.

c. A written statement in simple terms explaining the rights of the individual alleged to be a person who is mentally ill or a person who is both mentally ill and ~~chemically dependent~~has a substance use disorder to a preliminary hearing, to be present at the hearing, and to be represented by legal counsel, if the individual is certified by an expert examiner or examiners as a person requiring treatment.

d. A written statement in simple terms explaining the rights of the individual to a treatment hearing, to be present at the hearing, to be represented by legal counsel, and the right to an independent medical evaluation.

2. If the individual is unable to read or understand the written materials, every reasonable effort must be made to explain the written material in a language the individual understands, and a note of the explanation and by whom made must be entered into the patient record.

SECTION 6. AMENDMENT. Section 25-03.1-30 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-30. Discharge of hospitalized patient - Transfer to alternative treatment - Termination of alternative treatment.

1. The superintendent or director at any time may discharge a voluntarily hospitalized patient who is clinically suitable for discharge.
2. The superintendent or director shall discharge a patient hospitalized by court order if the patient's mental condition is such that the patient no longer is a person requiring treatment.
3. If a patient discharged under subsection 1 or 2 has been hospitalized by a court order, or if court proceedings are pending, the treatment facility shall notify the court of the discharge.
4. A person responsible for providing treatment, other than hospitalization, to an individual ordered to undergo a program of alternative treatment may terminate the alternative treatment if the patient is clinically suitable for termination of treatment. The

person shall terminate the alternative treatment if the patient no longer is a person requiring treatment and shall notify the court upon that termination.

5. If, upon the discharge of a hospitalized patient or the termination of alternative treatment of an individual under this chapter, the individual would benefit from further treatment, the hospital or provider of alternative treatment shall offer appropriate treatment on a voluntary basis or shall aid the individual to obtain treatment from another source on a voluntary basis.
   a. With the individual's consent, the superintendent or director shall notify the appropriate community agencies or persons of the release and of the suggested release plan. Community agencies include regional mental health centers, state and local counseling services, public and private associations the function of which is to assist persons who are mentally ill or ~~chemically dependent persons~~individuals with a substance use disorder, and the individual's physician.
   b. The agencies and persons notified of the individual's release shall report to the facility that initial contact with the individual has been accomplished.
6. If, before expiration of an initial treatment order, the superintendent or director determines a less restrictive form of treatment is more appropriate for a patient hospitalized by court order, the superintendent or director may petition the court that last ordered the patient's hospitalization to modify the order of the court. The petition must contain statements setting forth the reasons for the determination the patient continues to be a person requiring treatment, the reasons for the determination a less restrictive form of treatment is more appropriate for the patient, and describing the recommended treatment program. If the patient consents, without a hearing, the court may modify the treatment order of the court by directing the patient to undergo the agreed treatment program for the remainder of the treatment order. The patient must be given an opportunity to protest the discharge and modification of treatment order and to receive a hearing on the merits of the protest.

SECTION 7. AMENDMENT. Section 25-03.1-34 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-34. Transfer of patients.

1. The superintendent or director of a treatment facility may transfer, or authorize the transfer of, an involuntary patient from a hospital to another facility if the superintendent or director determines ~~that~~ it would be consistent with the medical needs of the patient to do so. Due consideration must be given to the relationship of the patient to family, legal guardian, or friends, so as to maintain relationships and encourage visits beneficial to the patient. ~~Whenever any~~If a treatment facility licensed by any state for the care and treatment of persons who are mentally ill or ~~chemically dependent persons~~individuals with a substance use disorder agrees with the patient or patient's guardian to accept the patient for treatment, the superintendent or director of the treatment facility shall release the patient to the other facility.
2. Upon receipt of notice from an agency of the United States that facilities are available for the care or treatment of any individual ordered hospitalized who is eligible for care or treatment in a treatment facility of that agency, the superintendent or director of the treatment facility may cause the individual's transfer to that agency of the United States for treatment. ~~No person~~An individual may not be transferred to any agency of the United States if the ~~person~~individual is confined pursuant to conviction of any felony or misdemeanor or the ~~person~~individual has been acquitted of the charge solely on the ground of mental illness unless the court originally ordering confinement of the ~~person~~individual enters an order for transfer after appropriate motion and hearing. ~~Any person~~An individual transferred under this section to an agency of the United States is deemed committed to that agency under the original order of treatment.
3. ~~No~~A facility may not transfer a patient to another hospital or agency without first notifying the patient and the patient's legal guardian, spouse, or next of kin, if known, or a chosen friend of the patient and the court that ordered treatment. The patient must be given an opportunity to protest the transfer and to receive a hearing on the protest. The patient's objection to the transfer must be presented to the court where the facility is located or to a representative of the facility within seven days after the notice of transfer was received. If the objection is presented to a representative of the facility, the representative shall transmit ~~it~~the objection to the court ~~forthwith~~. The court shall set a hearing date, which must be within fourteen days of the date of receipt of

the objection. If an objection has not been filed or the patient consents to a transfer, the court may enter an ex parte order authorizing transfer.

SECTION 8. AMENDMENT. Section 25-03.1-42 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-42. Limitation of liability - Penalty for false petition.

1. A person acting in good faith upon either actual knowledge or reliable information which makes the petition for involuntary treatment of an individual under this chapter is not subject to civil or criminal liability.
2. A physician, physician assistant, psychiatrist, psychologist, advanced practice registered nurse, mental health professional, employee of a treatment facility, state's attorney, or peace officer who in good faith exercises professional judgment in fulfilling an obligation or discretionary responsibility under this chapter is not subject to civil or criminal liability for acting unless it can be shown that it was done in a negligent manner.
3. A person that makes a petition for involuntary treatment of an individual without having good cause to believe ~~that~~ the individual is a person who is both mentally ill and ~~chemically dependent~~has a substance use disorder and as a result is likely to cause serious harm to self or others is guilty of a class A misdemeanor.