

MENTALLY ILL AND RETARDED, TUBERCULAR, BLIND, AND DEAF

CHAPTER 239

SENATE BILL NO. 2164

(Committee on Social Welfare)

(At the request of the Mental Health and Retardation Division)

MENTAL HEALTH COMMITMENT

AN ACT to create a new chapter of the North Dakota Century Code dealing with the emergency, voluntary, and involuntary commitment of individuals to the state hospital or other treatment facilities; to amend section 27-20-04 of the North Dakota Century Code, relating to concurrent jurisdiction of the juvenile court with county mental health boards; and to repeal sections 25-02-05, 25-02-11, 25-02-12, 25-02-13, 25-02-14, 25-02-15, 25-02-16, 25-02-17, and 25-02-18 of the North Dakota Century Code, relating to forms furnished by the superintendent of the state hospital, the establishment, powers, duties, and authority of county mental health boards, and the liability of certain officers for detention of mentally ill persons, and to repeal chapter 25-03 of the North Dakota Century Code, relating to the custody and release of the mentally ill.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. DEFINITIONS.) In this chapter, unless the context or subject matter requires otherwise:

1. "Alcoholic individual" means an individual who has lost the power of self-control, exhibits cognitive deficiencies, general confused thinking, or other manifestations of disorientation which show an inability to make judgments about areas of behavior that do not directly relate to his drinking.
2. "Court" means, except where otherwise indicated, the county court of increased jurisdiction of the county wherein the respondent resides or of the county closest geographically thereto as determined by the petitioner if no county court of increased jurisdiction is established therein.
3. "Department" means the state department of health pursuant to chapter 23-01 of the North Dakota Century Code.

4. "Director" means the director of a treatment facility.
5. "District" means the geographical area composed of those counties without county courts of increased jurisdiction surrounding, adjacent to, or geographically closest to a county court of increased jurisdiction, as determined by the petitioner. It does not refer to any established judicial, administrative, or executive district within the state.
6. "Drug addict" means an individual who has a physical or emotional dependence on a drug or drugs which he uses in a manner not prescribed by a physician.
7. "Independent expert examiner" means a physician, psychiatrist, or clinical psychologist licensed in North Dakota.
8. "Magistrate" means the judge of the appropriate county court of increased jurisdiction.
9. "Mental health professional" means:
 - a. A licensed clinical psychologist.
 - b. A social worker with a master's degree in social work from an accredited program.
 - c. A registered nurse with a minimum of two years of clinical experience under the supervision of a qualified mental health professional defined by subdivision a or b of this section.
 - d. An addiction counselor certified by the North Dakota state department of health.
10. "Mentally ill person" means an individual with an organic, mental, or emotional disorder which substantially impairs the capacity to use self-control, judgment, and discretion in the conduct of personal affairs and social relations. "Mentally ill person" does not include a mentally retarded or mentally deficient person of significantly subaverage general intellectual functioning which originates during the developmental period and is associated with impairment in adaptive behavior. Drug addiction and alcoholism do not per se constitute mental illness, although persons suffering from these conditions may also be suffering from mental illness.
11. "Person requiring treatment" means either:
 - a. A person who is mentally ill, an alcoholic, or a drug addict and who as a result of such condition can reasonably be expected within the near future to intentionally or unintentionally seriously physically harm himself or another person, and who has engaged in

an act or acts or made significant threats that are substantially supportive of this expectation; or

- b. A person who is mentally ill, an alcoholic, or a drug addict and who as a result of such condition is unable to attend to his basic physical needs, such as food, clothing, or shelter, that must be attended to for him to avoid serious harm in the near future, and who has demonstrated that inability by failing to meet those basic physical needs.
12. "Physician" means a physician licensed under the laws of this state.
 13. "Private treatment facility" means any facility established pursuant to chapters 10-19 through 10-24 and licensed pursuant to chapter 23-16 or 23-17.1 of the North Dakota Century Code.
 14. "Public treatment facility" means any treatment facility not falling under the definition of a private treatment facility.
 15. "Respondent" means a person subject to petition for involuntary treatment.
 16. "Superintendent" means the state hospital superintendent.
 17. "Treatment facility" or "facility" means any hospital including the state hospital at Jamestown, or evaluation and treatment facility which can provide directly, or by direct arrangement with other public or private agencies, emergency evaluation and treatment, outpatient care, and inpatient care to persons suffering from a mental disorder, alcoholism, or drug addiction.

SECTION 2. JURISDICTION.) The county courts of increased jurisdiction shall have original and exclusive jurisdiction over the proceedings governed by this chapter. They shall have concurrent jurisdiction with the juvenile court for the commitment of juveniles for treatment or evaluation.

SECTION 3. LEGISLATIVE INTENT.) The provisions of this chapter are intended by the legislature:

1. To provide prompt evaluation and treatment of persons with serious mental disorders, alcoholism, or drug addiction.
2. To safeguard individual rights.
3. To provide continuity of care for persons with serious mental disorders, alcoholism, or drug addiction.
4. To encourage the full use of all existing agencies, professional personnel, and public funds to prevent duplication of services and unnecessary expenditures.

5. To encourage, whenever appropriate, that services be provided within the community.

SECTION 4. VOLUNTARY ADMISSION.) An application for admission to the state hospital or a public treatment facility for observation, diagnosis, care, or treatment as a voluntary patient may be made by any person who is mentally ill, an alcoholic, or a drug addict, or who has symptoms of such illnesses. An application for admission as a voluntary patient may be made on behalf of a minor who is mentally ill, an alcoholic, or a drug addict, or who has symptoms of such illnesses, by his parent or legal guardian. The application may be submitted to a public treatment facility or to the state hospital, both of which shall have the authority to admit and treat the applicant. Upon admittance, the superintendent or the director shall immediately designate a physician, psychiatrist, or mental health professional to examine the patient.

SECTION 5. DISCHARGE OF VOLUNTARY PATIENTS.) Any voluntary patient who has recovered, or whose treatment the superintendent or director determines is no longer advisable, shall be discharged. Upon discharge there shall be a release plan. Appropriate referrals may be made for the patient.

SECTION 6. RIGHT TO RELEASE ON APPLICATION - EXCEPTION - JUDICIAL PROCEEDINGS.) Any person voluntarily admitted for inpatient treatment to any treatment facility or the state hospital shall be orally advised of the right to release and shall be further advised in writing of his rights under this chapter. A voluntary patient who requests his release shall be immediately released. However, if the superintendent or the director determines that the patient is a person requiring treatment, the release may be postponed until judicial proceedings for involuntary treatment have been held in the county or district where the hospital or facility is located. The court must be petitioned to begin such proceedings within twenty-four hours, exclusive of weekends and holidays, of the time release is requested, unless extended by the magistrate for good cause shown. The treatment hearing shall be held within seventy-two hours of the time the written request for release is received by the superintendent or director.

SECTION 7. INVOLUNTARY ADMISSION STANDARDS.) A person may be involuntarily admitted under this chapter to the state hospital or another treatment facility only if it is determined he is a person requiring treatment as defined by subsection 9 of section 1 of this chapter.

SECTION 8. PETITION FOR INVOLUNTARY TREATMENT.) Proceedings for the involuntary treatment of an individual may be commenced by any person eighteen years of age or over by filing a written petition with the clerk of court of the county where the respondent is presently located, or which is the respondent's place of residence, or of the court within the district. The clerk of court shall assist the person in completing the petition. The petition shall contain assertions that the respondent is the person requiring the treatment; the facts, in detail, that are the basis of that assertion; the names and addresses, if known, of any witnesses to such facts; and, if known, the name and address of the nearest relative or guardian

of the respondent, or, if none, of a friend of the respondent. The petition may be accompanied by:

1. A written statement supporting the petition from a psychiatrist or physician who has personally examined the respondent within thirty days of the date of the petition; or
2. One or more supporting affidavits otherwise corroborating the petition; or
3. Corroborative information obtained and reduced to writing by the clerk of court, but only when it is not feasible to comply with, or when he considers it appropriate to supplement, the information supplied pursuant to either subsection 1 or 2 of this section.

SECTION 9. REVIEW OF PETITION FOR INVOLUNTARY TREATMENT - PROBABLE CAUSE ESTABLISHED - RESPONDENT NOTIFIED - RIGHTS - INVESTIGATION.)

1. Upon the filing of a petition for involuntary treatment, the clerk of court shall immediately notify the magistrate who shall review the petition and accompanying documentation to determine whether it complies with requirements of section 8 of this chapter and whether it establishes probable cause to believe the respondent meets the criteria of a person requiring treatment. If probable cause has not been so established, the petition shall be dismissed unless an amendment would cure the defect.
2. If probable cause has been established, the magistrate shall cause to be served on the respondent and his nearest relative or guardian or, if none, a friend of the respondent, copies of the petition and supporting documentation. This shall be accompanied by notice informing the respondent of the procedures required by this chapter and an explanation of the intended uses and possible effects of the investigation mandated in subsection 3 of this section. This notice shall also include notice of the respondent's right to a preliminary and a treatment hearing; of his right to be present at the hearings; of his right to have counsel prior to the hearings and any court-ordered examination; of his right to an additional independent expert examiner; and, if the respondent is indigent, of his right to counsel and to an independent expert examiner, each at the expense of the county which is the respondent's place of residence. If an independent expert examiner is to be appointed, the respondent shall be given an opportunity to select that examiner.
3. The magistrate shall direct the city, county, or district mental health outreach worker or other qualified person to investigate and evaluate the specific facts alleged and the reliability and credibility of the person providing

the information. The investigation, to be completed as promptly as possible, shall include observations of and conversation with the respondent in his home or other surroundings where he can be found or desires to meet, unless he cannot be found or refuses to meet with the outreach worker. A written report of the results of the investigation shall be delivered to the magistrate. Copies of the report shall be made available upon request to the respondent, his counsel, and any psychiatrist or physician conducting an examination pursuant to section 11.

SECTION 10. INVOLUNTARY TREATMENT - COURT-ORDERED EXAMINATION.)

If the petition is not accompanied by a written supportive statement of a psychiatrist or physician, the court shall order the respondent to be examined by a psychiatrist or physician of his own choice or one appointed by the court. The order shall state the date and time within which the respondent must appear, the address to which the respondent is to report, and a statement that if the respondent fails to appear at the appointed place at or before the ordered date and time, he may be involuntarily taken into custody and transported to the appointed place. Accompanying the order shall be an explanation of the intended uses and possible effects of this examination. The examination may be conducted at the state hospital or a treatment facility, at the respondent's home, or at any other suitable place in the community. The respondent may be accompanied by one or more of his relatives or friends at the place of the examination. The costs of the court-ordered examination shall be borne by the county which is the respondent's place of residence.

SECTION 11. INVOLUNTARY TREATMENT - EXAMINATION - REPORT.)

The respondent shall be examined within a reasonable time by a psychiatrist or physician as ordered by the court. If the respondent is taken into custody pursuant to the emergency treatment provisions of this chapter, the examination shall be conducted within twenty-four hours of custody. Any psychiatrist or physician conducting an examination pursuant to this section may consult with, or request participation in the examination by, any qualified mental health professional, and may include with the written examination report any findings or observations by such mental health professional. This examination report, and that of the independent examiner, if one has been requested, shall be filed with the court. The report shall contain:

1. Evaluations of the respondent's physical, social, and educational condition.
2. A conclusion as to whether the respondent meets the criteria of a person requiring treatment, with a clear explanation of how that conclusion was derived from the evaluation required.
3. If the report concludes that the respondent meets the criteria of a person requiring treatment, a list of available forms of care and treatment that may serve as alternatives to involuntary hospitalization.

4. The signature of the examiner who prepared the report.

If the examining psychiatrist or physician concludes that the respondent does not meet the criteria of a person requiring treatment, the court may without taking any other additional action terminate the proceedings and dismiss the petition. If the examination concludes that the respondent does meet the criteria of a person requiring treatment, or makes no conclusion thereon, the court shall set a date for a preliminary hearing and shall give notice of this hearing to the persons designated in section 12. The hearing date must be within seventy-two hours, exclusive of weekends and holidays, of the date the court received the commitment petition unless a delay or continuance is concurred in by the respondent.

SECTION 12. NOTICE OF HEARINGS.) The court shall cause notice of a petition and of the time and place of any hearings under this chapter to be given to: the respondent; his parents, if a minor; his attorney; the petitioner; the state's attorney; the superintendent or the director of any hospital or treatment facility in which the respondent is hospitalized or is being treated; the spouse of the respondent, if his or her whereabouts is known; the guardian, if any, of the respondent; and such other relatives or persons as the court may determine. The notice shall be given at the earliest possible time and sufficiently in advance of the hearing date to permit preparation for the hearing.

SECTION 13. RIGHT TO COUNSEL - INDIGENCY - WAIVER.)

1. Every respondent under this chapter is entitled to legal counsel.
2. Unless an appearance has been entered on behalf of the respondent, the court shall, within twenty-four hours, exclusive of weekends or holidays, of its receipt of any petition, appoint counsel to represent the respondent. If an individual has been hospitalized pursuant to the emergency procedure, counsel shall be appointed within twenty-four hours, exclusive of weekends or holidays, of such hospitalization.
3. If, after consultation with appointed counsel, the respondent wants to waive his right to counsel or his right to any of the hearings provided for under this Act, he may do so by notifying the court in writing. This notification shall clearly state his reasons for the waiver and it shall also be signed by counsel.
4. If the respondent is indigent, the court shall order that appointed counsel be compensated from county funds of the county which is the respondent's place of residence in a reasonable amount based upon time and expenses.

SECTION 14. DUTY OF STATE'S ATTORNEY.) The state's attorney for the county in which proceedings under this chapter are initiated shall represent the petitioners in court proceedings and hearings

conducted under section 19 of this Act. A state's attorney need not participate in or be present at a hearing whenever a petitioner has retained private counsel, or whenever any criminal charge is pending or contemplated arising from an act of the respondent.

SECTION 15. RESPONDENT'S ATTENDANCE AT HEARINGS.) The respondent shall be present at all hearings unless he waives his right to be present either orally or in writing. The judge shall be notified if the respondent has been medicated within twenty-four hours of the beginning of the hearing or an adjourned session thereof, and of the probable effects of the medication.

SECTION 16. MEDICATION PENDING HOSPITALIZATION ORDER.) A patient who has requested release or a person who is the subject of a petition for hospitalization has the right to refuse medication and other forms of treatment before the preliminary or treatment hearing. However, state hospital or treatment facility personnel shall be able to treat him with medication or a less restrictive alternative of his preference if, in the opinion of the psychiatrist or physician, these treatments may be necessary to prevent bodily harm to the respondent or others. The patient has the right to be free of the effects of medication at the preliminary or treatment hearing by discontinuance of medication no later than twenty-four hours before the hearing unless, in the opinion of the prescribing physician, the need for the medication still exists or discontinuation would hamper preparation of and participation in the proceedings.

SECTION 17. INVOLUNTARY TREATMENT - PRELIMINARY HEARING.) At the preliminary hearing the magistrate shall review the medical report and the results of the outreach workers' investigation. During the hearing the petitioner and the respondent shall be afforded an opportunity to testify and to present and cross-examine witnesses, and the court may receive the testimony of any other interested person. At the conclusion of the hearing, if the court finds probable cause to believe that the individual is a person requiring treatment has not been established, the petition shall be dismissed. The respondent shall be ordered discharged from the hospital or treatment facility if he has been detained prior to the hearing. If the court finds that the respondent is a person requiring treatment, it must consider less restrictive alternatives to involuntary detention and treatment. The court may then order respondent to undergo up to fourteen days treatment under a less restrictive alternative or, if it finds that such alternatives are not in the best interests of the respondent or others, it shall order the respondent detained for up to fourteen days for involuntary treatment in a treatment facility.

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

SECTION 18. INVOLUNTARY TREATMENT - RELEASE.) The superintendent or the director may release a patient subject to a fourteen-day evaluation and treatment order or a seventy-two-hour emergency order if, in his opinion, the respondent does not meet the criteria of a person requiring treatment or, prior to the expiration of the fourteen-day order, the respondent no longer requires inpatient treatment. The court shall be notified of the release and the reasons therefor. If the respondent is released because he does not meet the criteria of a person requiring treatment, the court shall dismiss the petition.

SECTION 19. INVOLUNTARY TREATMENT HEARING.) The involuntary treatment hearing, unless waived by the respondent or the respondent has been released as a person not requiring treatment, shall be held within fourteen days of the preliminary hearing. 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.

The hearing may be held in the county or district of the respondent's residence, the county or district wherein the state hospital or treatment facility treating the respondent is located, or the county of the court ordering detention pursuant to section 17, at the discretion of the respondent or his counsel. At the hearing, evidence in support of the petition shall be presented by the state's attorney, private counsel, or counsel designated by the court. During the hearing, the petitioner and the respondent shall 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 persons not necessary for the conduct of the proceeding shall be excluded, except that the court may admit persons having a legitimate interest in the proceeding. The hearing shall be conducted in as informal a manner as practical, but the issue shall be tried as a civil matter. Discovery and the power of subpoena permitted under the North Dakota Rules of Civil Procedure shall be available to the respondent. The court shall receive all relevant and material evidence which may be offered as governed by the North Dakota Rules of Evidence. There shall be a presumption in favor of the respondent, and the burden of proof in support of the petition shall be upon the petitioner.

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

SECTION 20. INVOLUNTARY TREATMENT HEARING - FINDINGS AND DISPOSITIONS.) If an individual is found at the involuntary treatment hearing to be a person requiring treatment, the findings and conclusions shall be entered in the record of the proceedings and the court may:

1. Order the individual to undergo a program of treatment

other than hospitalization; or

2. Order the individual hospitalized in a public institution; or
3. Order the individual hospitalized in any other private hospital if the attending physician agrees. The reason supporting the court's particular treatment order shall be entered in the record.

SECTION 21. ALTERNATIVES TO HOSPITALIZATION.) Before making its decision in an involuntary treatment hearing, the court shall review a report assessing the availability and appropriateness for the respondent of treatment programs other than hospitalization which has been prepared and submitted by the state hospital or treatment facility.

If the court finds that a treatment program other than hospitalization is adequate to meet the respondent's treatment needs and is sufficient to prevent harm or injuries which the individual may inflict upon himself or others, the court shall order the respondent to receive whatever treatment other than hospitalization is appropriate for a period of ninety days. If, during this period, the court learns that the respondent is not complying with the order, or that the alternative treatment has not been sufficient to prevent harm or injuries that the individual may be inflicting upon himself or others, the court may without a hearing and based upon the record and other available information:

1. Consider other alternatives to hospitalization, modify its original order, and direct the individual to undergo another program of alternative treatment for the remainder of the ninety-day period; or
2. Enter a new order directing that the individual be hospitalized for the remainder of the ninety-day period. If the individual refuses to comply with this hospitalization order, the court may direct a peace officer to take the individual into protective custody and transport him to a treatment facility.

If, at the date of expiration of an order of alternative treatment, it is believed that an individual continues to require treatment, a petition for a determination that the individual continues to be a person requiring treatment may be filed with the court that originally ordered hospitalization or alternative treatment.

SECTION 22. INVOLUNTARY HOSPITALIZATION ORDERS.)

1. An initial order for involuntary hospitalization shall be for a period not to exceed ninety days.

2. If, prior to the expiration of a ninety-day order, the director or superintendent believes that a patient's condition is such that he continues to require treatment, the director or superintendent shall, not less than fourteen days prior to the expiration of the order, petition the court that originally ordered hospitalization for a determination that the patient continues to require treatment and for an order authorizing additional hospitalization for a period not to exceed ninety days.
3. If, prior to the expiration of the second ninety-day order, the director or superintendent believes that a patient's condition is such that he continues to require treatment, the director or superintendent shall, not less than fourteen days prior to the expiration of the order, petition the court that originally ordered hospitalization for a determination that the patient continues to be a person requiring treatment and for an order of continuing hospitalization, which order may be for an unspecified period of time. If the patient has been hospitalized for the treatment of alcoholism, the continuing hospitalization order may be only for thirty days after which time the patient must be released.

SECTION 23. PETITION FOR SUBSEQUENT HOSPITALIZATION ORDERS.)

A petition for an order authorizing a second ninety days or continuing hospitalization shall contain: a statement setting forth the reasons for the superintendent's or director's determination that the patient continues to be a person requiring treatment; a statement describing the treatment program provided to the patient and the results of that treatment; and a clinical estimate as to how long further treatment will be required. The petition shall be accompanied by a certificate executed by a physician or psychiatrist. The court shall set a hearing date which shall be within fourteen days of the receipt of the petition.

SECTION 24. RIGHT TO TREAT.) State hospital or treatment facility personnel shall be able to treat a patient with prescribed medication or a less restrictive alternative of his preference if, in the opinion of a psychiatrist or physician, these treatments may be necessary to prevent bodily harm to the patient or others. Nothing in this chapter shall be deemed to prohibit a hospital from rendering emergency medical care without the need for consultation, if in the exercise of sound medical judgment that care is immediately necessary for the well-being of the patient.

SECTION 25. DETENTION OR HOSPITALIZATION - EMERGENCY PROCEDURE.)

1. When a peace officer, physician, psychiatrist, or any mental health professional has reasonable cause to believe that a person is suffering from mental illness, alcoholism, or drug addiction, and is likely to cause serious injury to himself or others of such an immediate nature that considerations of safety do not allow preliminary intervention by a magistrate, the peace officer, physician,

- psychiatrist, or mental health professional may cause the person to be taken into custody and detained at a treatment facility as provided in subsection 3, and subject to section 26 of this Act.
2. If a petitioner seeking the involuntary treatment of a respondent requests that the respondent be taken into immediate custody and the judge, upon reviewing the petition and accompanying documentation, finds probable cause to believe that the respondent is seriously mentally impaired, an alcoholic, or a drug addict, and is imminently likely to injure himself or other persons if allowed to remain at liberty, the judge may enter a written order directing that the respondent be taken into immediate custody by the sheriff and be detained as provided in subsection 3 until the preliminary hearing, which shall be held no more than seventy-two hours, exclusive of weekends and holidays, after the date of the order.
 3. Detention under this section may be:
 - a. In a treatment facility where the director or superintendent shall be informed of the reasons why immediate custody has been ordered. The facility may provide treatment which is necessary to preserve the respondent's life, or to appropriately control behavior by the respondent which is likely to result in physical injury to himself or to others if allowed to continue, but may not otherwise provide treatment to the respondent without the respondent's consent; or
 - b. In a public or private facility in the community which is suitably equipped and staffed for the purpose. Detention in a jail or other correctional facility may not be ordered except in cases of actual emergency when no other secure facility is accessible, and then only for a period of not more than twenty-four hours and under close supervision.
 4. Immediately upon being taken into custody, the person shall be advised of the purpose of custody, of the intended uses and possible effects of any evaluation he undergoes, and of his right to counsel and to a preliminary hearing.
 5. Upon arrival at a facility the peace officer, physician, psychiatrist, or the mental health professional who conveyed the person, or caused him to be conveyed, shall complete an application for evaluation and be interviewed by a mental health professional at the facility. The application for emergency admission shall state in detail the circumstances under which the person was taken into custody. It must allege in detail the overt act which constituted the basis for the petitioner's belief that the person is mentally ill, an alcoholic, or drug addict and that, because of such condition, he could reasonably be expected to cause serious physical injury to himself or another if not immediately detained.

SECTION 26. EMERGENCY PROCEDURE - ACCEPTANCE OF PETITION AND INDIVIDUAL - NOTICE - COURT HEARING SET.)

1. The state hospital or public treatment facility must immediately accept and a private treatment facility may accept on a provisional basis the application and the person admitted under section 25 of this chapter. The superintendent or director shall require an immediate examination of the subject and, within twenty-four hours after admission, shall either release the person if he finds that the subject does not meet the emergency commitment standards, or file a petition with the magistrate of the county or district of the person's residence 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 to be held no later than seventy-two hours, exclusive of weekends or holidays, after detention unless the person has been released as a person not requiring treatment or has voluntarily admitted himself for treatment. The magistrate shall appoint counsel if one has not been retained by the respondent.

SECTION 27. NOTICE AND STATEMENT OF RIGHTS.)

1. Whenever any person is detained for emergency evaluation and treatment pursuant to this chapter, the superintendent or director shall cause both the patient and, if possible, a responsible member of his immediate family, a guardian, or a friend, if any, to receive:
 - a. A copy of the petition which asserted that the individual is a person requiring treatment.
 - b. A written statement explaining that the individual will be examined by a physician or psychiatrist within twenty-four hours of his hospitalization, excluding Sundays and holidays.
 - c. A written statement in simple terms explaining the rights of the individual to a preliminary hearing, to be present at the hearing, and to be represented by legal counsel, if he is certified by the medical examiner or examiners as a person requiring treatment.
 - d. A written statement in simple terms explaining the rights of the individual to a full court 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 effort shall be made to explain them to him in a language he understands, and a note of the explanation and by whom made shall be entered into his patient record.

SECTION 28. RECORDS AND PROCEEDINGS.) A record shall be made of all court hearings conducted under this chapter and a copy shall be provided to the respondent upon request for purposes of appellate review of the proceedings. If the respondent is indigent, the copy shall be provided free of charge, with the expense thereof borne by the county of residence of the respondent.

SECTION 29. APPEAL.) The respondent shall have the right to an expedited appeal from an order of involuntary commitment or alternative treatment. Such appeal shall be to the district court and the hearing shall be commenced within fourteen days of filing of the notice of appeal. The hearing shall be limited to a review of the procedures, findings, and conclusions of the lower court.

Pending appeal, the order appealed from shall remain in effect, unless the district court determines otherwise. The respondent shall not be denied the opportunity to be present at the appeal hearing, and the court conducting the appeal may issue such interim order as will assure this opportunity to the respondent while protecting the interest sought to be served by the order appealed from.

* SECTION 30. DISCHARGE OF HOSPITALIZED PATIENT.)

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

*NOTE: Identical language to subsection 5 of this section was also created by section 1 of House Bill No. 1191, chapter 240.

5. If, upon the discharge of a hospitalized patient, or the termination of alternative treatment of an individual pursuant to this chapter, it is determined that the individual would benefit from the receipt of further treatment, the hospital or provider of alternative treatment shall offer him appropriate treatment on a voluntary basis, or shall aid him to obtain treatment from another source on a voluntary basis. With the individual's consent, the superintendent or director shall notify the appropriate community agencies and/or persons of his release and of the suggested release plan. Community agencies include regional mental health centers, state and local counseling services, public and private associations whose function is to assist the mentally ill, alcoholic, or drug addict, and the individual's physician. The agencies and persons notified of the individual's release shall report to the state hospital that initial contact with the individual has been accomplished.

SECTION 31. REVIEW OF CURRENT STATUS OF CONTINUING HOSPITALIZATION.) Every individual subject to an order of continuing hospitalization has the right to regular, adequate, and prompt review of his current status as a person requiring treatment and in need of hospitalization. Six months from the date of an order of continuing hospitalization, and every six months thereafter, the director or superintendent where an individual is hospitalized shall review his status as a person requiring treatment and in need of hospitalization. The results of each periodic review conducted under this chapter shall be made part of the patient's record, and shall be filed within five days of the review, in the form of a written report, with the court which last ordered the patient's hospitalization. Within this five-day period, the director or superintendent shall give notice of the results of the review to the patient, his attorney, and his nearest relative or guardian.

If a periodic review report concludes that the patient continues to require treatment and hospitalization, and the patient objects to either or both of those conclusions, the patient shall have the right to a hearing and may petition the court for discharge. This petition may be presented to the court or a representative of the hospital or facility within seven days, excluding weekends and holidays, after the report is received. If the petition is presented to a representative of the hospital or facility, he shall transmit it to the court forthwith. The court shall set a hearing date which shall be within fourteen days of the date of receipt of the petition.

SECTION 32. PERIODIC HEARING AND PETITION FOR DISCHARGE - CONTINUING HOSPITALIZATION.) In addition to his right to a hearing under section 31 of this chapter, a patient hospitalized by an order of continuing hospitalization shall have the right to a hearing and may petition the court which last ordered the patient's hospitalization for discharge without leave of court once within each twelve-month period from the date of the original order of continuing

hospitalization. The petition shall be accompanied by a physician's or psychiatrist's report setting forth the reasons for his or her conclusions that the patient no longer is a person requiring treatment or in need of hospitalization.

If no such report accompanies the petition because the patient is indigent or is unable for reasons satisfactory to the court to procure such a report, the court shall appoint a physician or psychiatrist to examine the patient, and the physician or psychiatrist shall furnish a report to the court.

If such report concludes that the patient continues to be a person requiring treatment and in need of hospitalization, the court shall so notify the patient and shall dismiss the petition for discharge. If the conclusion is to the contrary, the court shall set a hearing date which shall be within fourteen days of the date of receipt of the physician's report.

SECTION 33. LEGAL INCOMPETENCE - PRESUMPTION - FINDING - ADJUDICATION NEGATED.)

1. No determination that a person requires treatment, no court order authorizing hospitalization or alternative treatment, nor any form of admission to a hospital shall give rise to a presumption of, constitute a finding of, or operate as an adjudication of legal incompetence.
2. No order of commitment under any previous statute of this state shall, in the absence of a concomitant appointment of a guardian, constitute a finding of or operate as an adjudication of legal incompetence.

SECTION 34. TRANSFER OF PATIENTS.)

1. The superintendent or director of a treatment facility may transfer, or authorize the transfer of, an involuntary patient from one hospital to another hospital or facility if the superintendent or director determines that it would be consistent with the medical needs of the patient to do so. In all such transfers, due consideration shall be given to the relationship of the patient to his family, legal guardian, or friends, so as to maintain relationships and encourage visits beneficial to the patient. Whenever any public or private institution licensed by any state for the care and treatment of the mentally ill shall by agreement with a parent, a brother, a sister, a child of legal age, or guardian of any patient accept such patient for treatment, the superintendent or director of the treatment facility shall release the patient to said institution.
2. Upon receipt of notice from an agency of the United States that facilities are available for the care or treatment of any individual heretofore ordered hospitalized pursuant to law in any hospital for care or treatment of the mentally

ill and such individual is eligible for care or treatment in a hospital or institution of such agency, the superintendent or director of the treatment facility may cause his transfer to such agency of the United States for hospitalization. No person shall be transferred to any agency of the United States if he be confined pursuant to conviction of any felony or misdemeanor or if he has been acquitted of the charge solely on the ground of mental illness unless prior to transfer the court originally ordering confinement of such person enters an order for such transfer after appropriate motion and hearing. Any person transferred as provided in this section to an agency of the United States shall be deemed to be hospitalized by such agency pursuant to the original order of hospitalization.

3. No patient shall be transferred 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 ordering hospitalization. The patient shall be given an opportunity to oppose the transfer and to receive a hearing on the merits of his protest before the magistrate upon whose order he was committed.

SECTION 35. HOSPITALIZATION BY AN AGENCY OF THE UNITED STATES.)

1. If an individual ordered to be involuntarily hospitalized pursuant to this chapter is eligible for hospital care or treatment by any agency of the United States, the court, upon receipt of notice from such agency showing that facilities are available and that the individual is eligible for care or treatment therein, may order him to be placed in the custody of such agency for hospitalization. When any such individual is admitted pursuant to the order of the court to any hospital or institution operated by any agency of the United States within or without the state, he shall be subject to the rules and regulations of such agency. The chief officer of any hospital or institution operated by such agency in which the individual is so hospitalized, shall with respect to such individual be vested with the same powers as the heads of hospitals within this state with respect to detention, custody, transfer, conditional release, or discharge of patients. Jurisdiction is retained in the committing court of this state at any time to inquire into the mental condition of an individual so hospitalized, and to determine the necessity for continuance of his hospitalization, and every order of hospitalization issued pursuant to this section is so conditioned.
2. An order of a court of competent jurisdiction of another state, or of the District of Columbia, authorizing

hospitalization of an individual by any agency of the United States shall have the same force and effect as to the individual while in this state as in the geographical jurisdiction of the court entering the order; and the courts of the state or district issuing the order shall be deemed to have retained jurisdiction of the individual so hospitalized for the purpose of inquiring into his mental condition and of determining the necessity for continuance of his hospitalization, as is provided in subsection 1 of this section with respect to individuals ordered hospitalized by the courts of this state. Consent is hereby given to the application of the law of the state or district in which is located the court issuing the order for hospitalization with respect to the authority of the chief officer of any hospital or institution operated in this state by any agency of the United States to retain custody, transfer, conditionally release, or discharge the individual hospitalized.

SECTION 36. ESCAPE OF PATIENT FROM TREATMENT FACILITY.) If any patient shall escape from a treatment facility, the superintendent or director may cause an immediate search to be made. If the patient cannot be found, the superintendent or director shall cause notice of the escape to be given forthwith to the court of the county of residence of the patient and to such health officials or officers of the law as may be of assistance in locating the patient. If the patient is found in the county of residence, the court shall at the request of the superintendent or director cause him to be returned to the treatment facility and shall issue its order to that effect. The patient shall thereupon be transported to the treatment facility as provided in other cases. Should the patient be found other than in the county of his residence, he may be transported at the request of the superintendent to the state hospital as directed and at the expense of the state hospital.

SECTION 37. REPORTS TO AND ADDITIONAL POWERS OF DEPARTMENT.) The superintendent or director of a treatment facility shall by means of nonidentifying data notify the department of all admissions under this Act to the state hospital or facility. In addition to the specific authority granted under the provisions of this chapter, the department shall have authority to require nonidentifying statistical data from the head of any hospital relating to the admission, examination, diagnosis, release, or discharge of any mentally ill patient.

SECTION 38. EXPENSES OF STUTSMAN COUNTY COURT.) All expenses of the county court of Stutsman County involving patients in residence at the state hospital shall be paid by the state hospital under the direction of the department.

SECTION 39. TRANSPORTATION - EXPENSES.) Whenever an individual is about to be involuntarily hospitalized under the provisions of this chapter, an official or person designated by the court shall arrange for the individual's transportation to the treatment facility with suitable medical or nursing attendants and by such means as may be suitable for his medical condition. Whenever practicable,

the individual to be hospitalized shall be permitted to be accompanied by one or more of his friends or relatives, and when practicable shall not be transported by police officers or in police vehicles. If the proposed patient is unable to pay for expenses of transportation, and friends or relatives do not oblige themselves to pay such expenses, the court may direct that such expenses be paid by the county of the patient's residence.

SECTION 40. RIGHTS OF PATIENTS.) Each patient of a treatment facility shall retain the following rights, subject only to the limitations and restrictions authorized by section 41. A patient shall have the right:

1. To receive appropriate treatment for mental and physical ailments and for the prevention of illness or disability.
2. To the least restrictive conditions necessary to achieve the purposes of treatment.
3. To be treated with dignity and respect.
4. To be free from unnecessary restraint and isolation.
5. To visitation and telephone communications.
6. To send and receive sealed mail.
7. To keep and use personal clothing and possessions.
8. To regular opportunities for outdoor physical exercise.
9. To participate in religious worship of choice.
10. To be free from unnecessary medication.
11. To exercise all civil rights including the right of habeas corpus.
12. Not to be subjected to experimental research without the express and informed written consent of the patient or of the patient's guardian.
13. Not to be subjected to psychosurgery, electroconvulsive treatment, or aversive reinforcement conditioning, without the express and informed written consent of the patient or of the patient's guardian.

SECTION 41. LIMITATIONS AND RESTRICTIONS OF PATIENT'S RIGHTS.) The rights enumerated in section 40 may be limited or restricted by the treating physician or psychiatrist, if in his medical judgment to do so would be in the best interests of the patient and the rights are restricted or limited in the manner authorized by the rules and regulations promulgated pursuant to section 46. Whenever a physician or psychiatrist responsible for treatment of a particular patient imposes a special restriction on the rights of the patient as

authorized by the rules and regulations, a written order specifying the restriction and the reasons therefor shall be signed by the physician or psychiatrist and attached to the patient's chart. These restrictions shall be reviewed at intervals of not more than fourteen days and may be renewed by following the procedure set out in this section.

SECTION 42. LIMITATION OF LIABILITY - PENALTY FOR FALSE PETITION.)

1. A person acting in good faith upon either actual knowledge or reliable information who makes the petition for hospitalization of another person under this chapter is not subject to civil or criminal liability.
2. A physician, mental health professional, employee of a treatment facility, or peace officer who in good faith exercises his professional judgment in fulfilling an obligation or discretionary responsibility under this chapter is not subject to civil or criminal liability for his act unless it can be shown that it was done in a negligent manner.
3. A person who makes a petition for hospitalization of another person without having good cause to believe that the other person is suffering from a mental illness, alcoholism, or drug addiction and as a result is likely to cause serious harm to himself or others, is guilty of a class A misdemeanor.

SECTION 43. CONFIDENTIAL RECORDS.) All information and records obtained in the course of an investigation, evaluation, examination, or treatment under this chapter and the presence or past presence of a patient in a treatment facility shall be kept confidential and not as public records, except as the requirements of a hearing under this chapter may necessitate a different procedure. All information and records shall be available to the court and shall be disclosed under regulations established by the state department of health only to:

1. Physicians and providers of health, mental health, or social and welfare services involved in caring for, treating, or rehabilitating the patient to whom the patient has given written consent to have information disclosed.
2. Individuals to whom the patient has given written consent to have information disclosed.
3. Persons legally representing the patient, upon proper proof of representation and unless the patient specifically withholds consent.
4. Persons authorized by a court order.

5. Persons doing research or maintaining health statistics, if the anonymity of the patient is assured, his consent is given, and the facility recognizes the project as a bona fide research or statistical undertaking.
6. The director of institutions in cases in which prisoners sentenced to the state prison are patients in the state hospital on authorized transfers either by voluntary admissions or by court order.
7. Governmental or law enforcement agencies when necessary to secure the return of a patient who is absent without authorization from the facility where the patient was undergoing evaluation or treatment.

SECTION 44. RECORDS OF DISCLOSURE.) When any disclosure of information or record is made as authorized by section 43, the physician in charge of the patient or the director of the facility shall promptly cause to be entered into the patient's medical records the date and circumstances under which said disclosure was made, the names and relationships to the patients, if any, of the persons or agencies to whom such disclosure was made, and the information disclosed.

SECTION 45. EXPUNGEMENT OF RECORDS.) Following the discharge of a respondent from a treatment facility or the state hospital, or the issuance of a court order denying a petition for commitment, a respondent may at any time move to have all court records pertaining to the proceedings expunged on condition that he file a full release of all claims of whatever nature arising out of the proceedings.

SECTION 46. RULES AND REGULATIONS - PREPARATION OF FORMS.) The department shall, in accordance with the terms of the Administrative Agencies Practice Act, chapter 28-32 of the North Dakota Century Code, make, promulgate, and enforce such rules and regulations as may be necessary for the implementation of this Act. The department shall be responsible for the preparation and distribution of the necessary and appropriate forms to enable compliance with this Act.

SECTION 47. AMENDMENT.) Section 27-20-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-20-04. CONCURRENT JURISDICTION.) The juvenile court has concurrent jurisdiction with the county courts of increased jurisdiction of proceedings to treat or commit a mentally retarded or mentally ill child otherwise subject to the jurisdiction of the juvenile court.

SECTION 48. REPEAL.) Sections 25-02-05, 25-02-11, 25-02-12, 25-02-13, 25-02-14, 25-02-15, 25-02-16, 25-02-17, and 25-02-18, and chapter 25-03 of the North Dakota Century Code are hereby repealed.

CHAPTER 240

HOUSE BILL NO. 1191
(Eagles, Meiers)

STATE HOSPITAL PATIENT REFERRAL

AN ACT to create and enact a new section of the North Dakota Century Code, relating to referral of patients of the state hospital upon discharge.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

* SECTION 1.) A new section of the North Dakota Century Code is hereby created and enacted to read as follows:

VOLUNTARY REFERRALS - REPORTS REQUIRED.) If, upon discharge of a hospitalized patient, it is determined that the individual would benefit from the receipt of further treatment, the hospital shall offer him appropriate treatment on a voluntary basis, or shall aid him to obtain treatment from another source on a voluntary basis. With the individual's consent, the superintendent shall notify the appropriate community agencies and/or persons of his release and of the suggested release plan. Community agencies include regional mental health centers, state and local counseling services, public and private associations whose function is to assist the mentally ill, alcoholic, or drug addict, and the individual's physician. The agencies and/or persons notified of the individual's release shall report to the state hospital that initial contact with the individual has been accomplished.

*NOTE: Identical language to this section was also created by subsection 5 of section 30 of Senate Bill No. 2164, chapter 239.

Approved March 31, 1977

CHAPTER 241

HOUSE BILL NO. 1330
(Berg)

HOME INTERVENTION PROGRAM FOR
HEARING-IMPAIRED PRESCHOOLERS

AN ACT to create and enact a new section to chapter 25-07 of the North Dakota Century Code, relating to a home intervention program for hearing-impaired preschoolers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1.) A new section to chapter 25-07 of the North Dakota Century Code is hereby created and enacted to read as follows:

HOME INTERVENTION PROGRAM.) The school for the deaf may provide a home intervention program for hearing-impaired preschoolers, under the age of five, which shall consist of supplying information, counseling services, auditory training, and basic language development programs for the parents of such children. This home intervention program will be carried out by college or university trained teachers of the deaf, speech pathologists, or audiologists.

Approved March 31, 1977