

CHAPTER 25-03.1 COMMITMENT PROCEDURES

25-03.1-01. Legislative intent.

The provisions of this chapter are intended by the legislative assembly to:

1. Provide prompt evaluation and treatment of persons with serious mental disorders or chemical dependency.
2. Safeguard individual rights.
3. Provide continuity of care for persons with serious mental disorders or chemical dependency.
4. Encourage the full use of all existing agencies, professional personnel, and public funds to prevent duplication of services and unnecessary expenditures.
5. Encourage, whenever appropriate, that services be provided within the community.

25-03.1-02. Definitions.

In this chapter, unless the context requires otherwise:

1. "Alternative treatment order" means an involuntary outpatient order for a treatment program, other than hospitalization, which may include treatment with a prescribed medication.
2. "Chemically dependent person" means an individual with an illness or disorder characterized by a maladaptive pattern of usage of alcohol or drugs, or a combination thereof, resulting in social, occupational, psychological, or physical problems.
3. "Consent" means voluntary permission that is based upon full disclosure of facts necessary to make a decision and which is given by an individual who has the ability to understand those facts.
4. "Court" means, except when otherwise indicated, the district court serving the county in which the respondent resides.
5. "Department" means the department of human services.
6. "Director" means the director of a treatment facility or the director's designee.
7. "Expert examiner" means a licensed physician, psychiatrist, psychologist trained in a clinical program, or licensed addiction counselor appointed by the court to examine the respondent and to provide an evaluation of whether the respondent is a person requiring treatment.
8. "Independent expert examiner" means a licensed physician, psychiatrist, psychologist trained in a clinical program, or licensed addiction counselor, chosen at the request of the respondent to provide an independent evaluation of whether the respondent is a person requiring treatment.
9. "Magistrate" means the judge of the appropriate district or juvenile court or a judge assigned by the presiding judge of the judicial district.
10. "Mental health professional" means:
 - a. A psychologist with at least a master's degree who has been either licensed or approved for exemption by the North Dakota board of psychology examiners.
 - b. A social worker with a master's degree in social work from an accredited program.
 - c. A registered nurse with a master's degree in psychiatric and mental health nursing from an accredited program.
 - d. A registered nurse with a minimum of two years of psychiatric clinical experience under the supervision of a registered nurse as defined by subdivision c or of an expert examiner.
 - e. A licensed addiction counselor.
 - f. A licensed professional counselor with a master's degree in counseling from an accredited program who has either successfully completed the advanced training beyond the master's degree as required by the national academy of mental health counselors or a minimum of two years of clinical experience in a mental health agency or setting under the supervision of a psychiatrist or psychologist.
11. "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 an individual with an intellectual disability of significantly subaverage general intellectual functioning which originates during the developmental period and is associated with impairment in adaptive behavior, although a person who is intellectually disabled may also suffer from a mental illness. Chemical dependency does not per se constitute mental illness, although persons suffering from that condition may also be suffering from mental illness.
12. "Person requiring treatment" means a person who is mentally ill or chemically dependent, and there is a reasonable expectation that if the person is not treated for the mental illness or chemical dependency there exists a serious risk of harm to that person, others, or property. "Serious risk of harm" means a substantial likelihood of:
 - a. Suicide, as manifested by suicidal threats, attempts, or significant depression relevant to suicidal potential;
 - b. Killing or inflicting serious bodily harm on another person or inflicting significant property damage, as manifested by acts or threats;
 - c. Substantial deterioration in physical health, or substantial injury, disease, or death, based upon recent poor self-control or judgment in providing one's shelter, nutrition, or personal care; or
 - d. Substantial deterioration in mental health which would predictably result in dangerousness to that person, others, or property, based upon evidence of objective facts to establish the loss of cognitive or volitional control over the person's thoughts or actions or based upon acts, threats, or patterns in the person's treatment history, current condition, and other relevant factors, including the effect of the person's mental condition on the person's ability to consent.
 13. "Private treatment facility" means any facility established under chapter 10-19.1 or 10-33 and licensed under chapter 23-16 or 50-31.
 14. "Psychiatrist" means a licensed physician who has completed a residency program in psychiatry.
 15. "Public treatment facility" means any treatment facility not falling under the definition of a private treatment facility.
 16. "Qualified service organization" means a person or entity that provides services to a treatment facility such as data processing, bill collecting, dosage preparation, laboratory analysis, or legal, medical, accounting, or other professional services, and which agrees that in dealing with patient records, it is bound by the confidentiality restrictions of this chapter, except as otherwise provided for by law.
 17. "Respondent" means a person subject to petition for involuntary treatment.
 18. "Superintendent" means the state hospital superintendent or the superintendent's designee.
 19. "Third-party payer" means a person or entity who pays, or agrees to pay, for diagnosis or treatment furnished to a patient on the basis of a contractual relationship with the patient or a member of the patient's family, or on the basis of the patient's eligibility for federal, state, or local governmental benefits, and includes any person or entity providing audit or evaluation activities for the third-party payer.
 20. "Treatment facility" or "facility" means any hospital including the state hospital at Jamestown or any evaluation and treatment facility that provides 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 or chemical dependency.

25-03.1-03. Jurisdiction.

The district courts have original jurisdiction over the proceedings governed by this chapter.

25-03.1-03.1. Disclosure of health information.

A treating facility or mental health professional may disclose individually identifiable health information to a court, regional human service center, state's attorney, retained counsel, or other mental health professional, including an expert examiner, and the disclosure is a disclosure for

treatment, including the provision, coordination, and management of health care and to carry out the purposes of chapter 25-03.1.

25-03.1-04. Screening and admission to a public treatment facility.

Under rules adopted by the department, screening of an individual to a public treatment facility for observation, diagnosis, care, or treatment for mental illness or chemical dependency must be performed, in person whenever reasonably practicable, by a regional human service center. This screening must be performed in the region where the individual is physically located. Upon the request of a court, a law enforcement official, a qualified mental health professional, the individual's legal guardian, a minor's parent or legal custodian, or the individual requesting services, the regional human service center shall conduct a screening. If a request for screening is made by a qualified mental health professional and the individual that is the subject of the screening does not authorize the disclosure of the individual's protected health information, upon the request of the regional human service center, any mental health professional who has treated the individual within the previous six months shall disclose, subject to the requirements of title 42, Code of Federal Regulations, part 2, to the human service center any relevant protected health information regarding that treatment. Upon receipt of the request, the regional human service center shall arrange for a screening of the individual and must, if appropriate, treat the applicant, or refer the applicant to the appropriate treatment facility. Upon admittance to a public treatment facility, the superintendent or director shall immediately designate a physician, psychiatrist, psychologist, or mental health professional to examine the individual.

25-03.1-05. Discharge of voluntary patients.

Any voluntary patient who has recovered, or whose treatment the superintendent or director determines is no longer advisable, must be discharged. If, upon discharge, it is determined that the individual would benefit from the receipt of further treatment, the superintendent or director shall offer the individual appropriate treatment on a voluntary basis or shall aid the individual to obtain treatment from another source on a voluntary basis. With the patient's consent, appropriate referrals may be made for the patient.

25-03.1-06. Right to release on application - Exception - Judicial proceedings.

Any person voluntarily admitted for inpatient treatment to any treatment facility or the state hospital must be orally advised of the right to release and must be further advised in writing of the rights under this chapter. A voluntary patient who requests release must 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 where the hospital or facility is located. The patient must be served the petition within twenty-four hours, exclusive of weekends and holidays, from the time release is requested, unless extended by the magistrate for good cause shown. The treatment hearing must be held within seven days from the time the petition is served.

25-03.1-07. 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 that the individual is a person requiring treatment.

25-03.1-08. Application to state's attorney or retained attorney - Petition for involuntary treatment - Investigation by qualified mental health professional.

Any person eighteen years of age or over shall present the information necessary for the commitment of an individual for involuntary treatment to the state's attorney of the county where the respondent is presently located, or which is the respondent's place of residence, or to an attorney retained by that person to represent the applicant throughout the proceedings. The attorney shall assist the person in completing the petition. The petition must be verified by affidavit of the applicant and contain assertions that the respondent is a person requiring the treatment; the facts, in detail, that are the basis of that assertion; the names, telephone

numbers, and addresses, if known, of any witnesses to those facts; and, if known, the name, telephone number, 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 any of the following:

1. A written statement supporting the petition from a psychiatrist, physician, psychologist, or addiction counselor who is practicing within the professional scope of practice and who has personally examined the respondent within forty-five days of the date of the petition.
2. One or more supporting affidavits otherwise corroborating the petition.

In assisting the person in completing the petition, the state's attorney may direct a qualified mental health professional designated by the regional human service center to investigate and evaluate the specific facts alleged by the applicant. The investigation must be completed as promptly as possible and include observations of and conversation with the respondent, unless the respondent cannot be found or refuses to meet with the mental health professional. A written report of the results of the investigation must be delivered to the state's attorney. Copies of the report must be made available upon request to the respondent, the respondent's counsel, and any expert examiner conducting an examination under section 25-03.1-11. The state's attorney or retained attorney shall file the petition if the information provided by the petitioner or gathered by investigation provides probable cause to believe that the subject of the petition is a person requiring treatment. A state's attorney who determines there are insufficient grounds for filing a petition may refer the applicant to other community resources. A state's attorney's decision not to institute proceedings may be reviewed under section 11-16-06.

25-03.1-09. Review of petition for involuntary treatment - Probable cause established - Respondent notified - Rights.

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 25-03.1-08 and whether it establishes probable cause to believe the respondent is a person requiring treatment. If probable cause has not been so established, the petition must 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 the respondent's nearest relative or guardian or, if none, a friend of the respondent:
 - a. A copy of the petition and supporting documentation.
 - b. A notice informing the respondent of the procedures required by this chapter.
 - c. A notice of the respondent's right to a preliminary and a treatment hearing when in custody under section 25-03.1-25 and if mental illness or a combination of mental illness and chemical dependency of the respondent is alleged in the petition, or, if not in custody or if in custody and chemical dependency alone is alleged in the petition, the right to a treatment hearing; of the right to be present at the hearings; of the right to have counsel before the hearings and any court-ordered examination; of the right to an independent evaluation; and, if the respondent is indigent, of the right to counsel and to an independent expert examiner, each at the expense of the county which is the respondent's place of residence.
 - d. Notice that if an independent expert examiner is to be appointed, the respondent must be given an opportunity to select that examiner.

25-03.1-10. Involuntary treatment - Court-ordered examination.

If the petition is not accompanied by a written supportive statement of a psychiatrist, physician, psychologist, or addiction counselor who has examined the respondent within the last forty-five days, the court shall order the respondent to be examined by an expert examiner of the respondent's own choice or one appointed by the court. The order must state the date and time within which the respondent must appear; the address to which the respondent is to report; a statement that if the respondent fails to appear at the appointed place at or before the ordered date and time, the respondent may be involuntarily taken into custody and transported to the

appointed place; and a statement that the expert examiner may consult with or request participation in the examination by a qualified mental health professional and may include with the written examination report any findings or observations by that mental health professional. Accompanying the order must be an explanation of the intended uses and possible effects of this examination. The examination may be conducted at a treatment facility, at the respondent's home, or at any other suitable place in the community. A request for examination at the state hospital must be screened and approved by a regional human service center. The respondent may be accompanied by one or more relatives or friends at the place of the examination. The costs of the court-ordered examination must be borne by the county that is the respondent's place of residence.

25-03.1-10.1. Use of telemedicine technology authorized.

For purposes of court-ordered examinations conducted under this chapter, an expert examiner may use telemedicine technologies to assist the expert examiner in conducting those examinations.

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 twenty-four hours, exclusive of holidays, of custody. Any expert examiner conducting an examination under 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 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 that 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 licensed physician or psychiatrist.
 - b. An evaluation of a respondent's mental status may be made only by a licensed physician, psychiatrist, or psychologist trained in a clinical program.
 - c. An evaluation of whether the respondent is chemically dependent may be made only by a licensed physician, psychiatrist, licensed addiction counselor, or licensed psychologist trained in a clinical program.
3. If the expert examiner concludes that 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 that the respondent is a person requiring treatment, or makes no conclusion thereon, 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 suffering from mental illness or a combination of mental illness and chemical dependency, the preliminary hearing date must be within four days, exclusive of weekends and holidays, of the date 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.



REPORT OF EXAMINATION
 NORTH DAKOTA SUPREME COURT
 SFN 17244 (F-2) (Rev. 3-2006)

STATE OF NORTH DAKOTA

County of _____

CIVIL CASE NUMBER

IN THE INTEREST OF

Name of Respondent:

REPORT OF EXAMINATION

Name of Expert Examiner: (Print or Type)

Address:

City:

State:

Zip Code:

Expert examiner is a licensed

Physician

Psychiatrist

Psychologist

Addiction Counselor

Date respondent appeared in my office for examination:

As an expert examiner licensed in the State of North Dakota as listed below, I state that I have examined this respondent on the date listed above and submit the following report:

1. Evaluation of physical and mental condition of respondent:

2. It is concluded that the respondent (check all that apply):

- is 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, and is a **mentally ill person**.
- is an individual with an illness or disorder characterized by a maladaptive pattern of usage of alcohol or drugs, or combination thereof, resulting in social, occupational, psychological, or physical problems and is a **chemically dependent person**.
- may be mentally ill or chemically dependent but no conclusion is drawn by this examiner whether the foregoing statutory criteria are met.
- does not meet the foregoing statutory criteria for mental illness or chemical dependency and does not require involuntary commitment.
- does meet the foregoing statutory criteria for mental illness or chemical dependency, but does not require involuntary commitment.

3. It is further concluded that as a result of the illness or dependency identified in item#2, there exists a serious risk of harm to the respondent, others, or property and substantial likelihood of (check all that apply):
- suicide as manifested by suicidal threats, attempts, or significant depression relevant to suicidal potential.
 - killing or inflicting serious bodily harm on another person, inflicting significant property damage, as manifested by acts or threats.
 - substantial deterioration in physical health, or substantial injury, disease, or death resulting from poor self-control or judgment in providing for one's shelter, nutrition, or personal care.
 - substantial deterioration in mental health which would predictably result in dangerousness to that person, others, or property, based upon evidence of objective facts to establish the loss of cognitive or volitional control over the person's thoughts or actions or based upon acts, threats, or patterns in the person's treatment history, current condition, and other relevant factors, including the effect of the person's mental condition on the person's ability to consent.

4. The above conclusions are based upon the following tests, facts, circumstances, and observations:

5. List the form of care and treatment that may serve as alternatives to involuntary commitment:

6. Alternative treatment is is not in the best interests of the respondent or others and the respondent.
 is is not in the need of hospitalization for the following reasons:

7. The following mental health professional was consulted: participated in the examination:

Name of mental health professional (print or type):

Date:

Signature of examiner preparing report:

X