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COMPARISON OF NORTH DAKOTA AND OTHER STATES' COMMITMENT LAWS

This memorandum provides information on commitment laws in North Dakota and in other states, and summarizes the mental health commitment laws contained in North Dakota Century Code Chapter 25-03.1.

The schedule below summarizes commitment laws in North Dakota, Iowa, Minnesota, Montana, South Dakota, and Wyoming:

Description	Statute	Law
Voluntary admission for treatment	Section 25-03.1-04 Section 25-03.1-06	The screening and admission of an individual to a public treatment facility for mental illness or chemical dependency must be performed, in person whenever reasonably practicable, by the regional human service center in the region in which the individual is physically located. Upon receipt of the request, the regional human service center is to arrange for an evaluation of the individual and, if appropriate, treat the applicant or refer the applicant to the appropriate treatment facility.
		Any individual who is voluntarily admitted for inpatient treatment to a treatment facility must be orally advised of the right to release and must be advised in writing regarding other rights under Chapter 25-03.1. Under this section, a voluntary patient who requests release must be immediately released. If the superintendent or the director, however, otherwise determines the patient is a person requiring treatment, the release may be postponed until judicial proceedings for involuntary treatment have been held. The patient must be served the petition within 24 hours, exclusive of weekends and holidays, from the time release is requested, unless extended by the judge for good cause shown. The treatment hearing must be held within seven days from the time the petition is served.
outpatient involuntary		An individual may be involuntarily admitted under this chapter to the state hospital or another treatment facility only if it is determined that the individual requires treatment.
		"Person requiring treatment" means an individual who is mentally ill or chemically dependent, and there is a reasonable expectation that if the individual is not treated there exists a serious risk of harm to that individual, others, or property. "Serious risk of harm" means a substantial likelihood of:
		1. Suicide, as manifested by suicidal threats, attempts, or significant depression relevant to suicidal potential;
		2. Killing or inflicting serious bodily harm on another individual or inflicting significant property damage, as manifested by acts or threats;
		3. 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
		4. Substantial deterioration in mental health which would predictably result in dangerousness to that individual, others, or property, based upon evidence of objective facts to establish the loss of cognitive or volitional control over the individual's thoughts or actions or based upon acts, threats, or patterns in the individual's treatment history, current condition, and other relevant factors, including the individual's ability to consent.
		When a designated person has reasonable cause to believe that an individual is a person requiring treatment and there exists a serious risk of harm to that person, other persons, or property of an immediate nature that considerations of safety do not allow preliminary intervention by a magistrate the designated person may cause the person to be taken into custody and detained at a treatment facility.
		The magistrate, upon reviewing the petition and accompanying documentation, finds probable cause to believe that the respondent requires treatment and there exists a serious risk of harm to the respondent, other persons, or property if allowed to remain at liberty.
Who may initiate	Section 25-03.1-08 Section 25-03.1-25(1)	For inpatient or outpatient commitment:
		Any person 18 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.
		For emergency evaluation:
		A peace officer, physician, psychiatrist, physician assistant, psychologist, advanced practice registered nurse, or mental health professional.
	Voluntary admission for treatment Both inpatient and outpatient involuntary treatment For emergency evaluation	Voluntary admission for treatment Section 25-03.1-04 Section 25-03.1-06 Section 25-03.1-07 Section 25-03.1-07 Section 25-03.1-02(12) For emergency evaluation Section 25-03.1-25(1) Section 25-03.1-25(2) Section 25-03.1-25(2)

North Dakota Legislative Council November 2015

State	Description	Statute	Law
lowa	Voluntary admission for treatment	lowa Code Section 229.2	An application for admission to a public or private hospital for observation, diagnosis, care, and treatment as a voluntary patient may be made by any person who is mentally ill or has symptoms of mental illness.
			Upon receiving an application for admission as a voluntary patient:
			1. The chief medical officer of a public hospital shall receive and may admit the person whose admission is sought, subject in cases other than medical emergencies to availability of suitable accommodations and to the provisions of Sections 229.41 and 229.42.
			2. The chief medical officer of a private hospital may receive and may admit the person whose admission is sought.
	Both inpatient and outpatient involuntary treatment		"Seriously mentally impaired" or "serious mental impairment" describes the condition of a person with mental illness and because of that illness lacks sufficient judgment to make responsible decisions with respect to the person's hospitalization or treatment, and who because of that illness meets any of the following criteria:
			1. Is likely to physically injure the person's self or others if allowed to remain at liberty without treatment.
			2. Is likely to inflict serious emotional injury on members of the person's family or others who lack reasonable opportunity to avoid contact with the person with mental illness if the person with mental illness is allowed to remain at liberty without treatment.
			3. Is unable to satisfy the person's needs for nourishment, clothing, essential medical care, or shelter so that it is likely that the person will suffer physical injury, physical debilitation, or death.
			"Serious emotional injury" is an injury which does not necessarily exhibit any physical characteristics, but which can be recognized and diagnosed by a licensed physician or other qualified mental health professional and which can be causally connected with the act or omission of a person who is, or is alleged to be, mentally ill.
	For emergencies	Section 229.11(1) Section 229.22(1)-2(a)	If the judge finds probable cause to believe that the respondent has a serious mental impairment and is likely to injure the respondent 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 or the sheriff's deputy and be detained until the hospitalization hearing.
			When it appears that a person should be immediately detained due to serious mental impairment, but that person cannot be immediately detained by the procedure prescribed in Sections 229.6 and 229.11 because there is no means of immediate access to the district court of any peace officer who has reasonable grounds to believe that a person is mentally ill, and because of that illness is likely to physically injure the person's self or others if not immediately detained, may without a warrant, take or cause that person to be taken to the nearest available facility or hospital. A person believed mentally ill, and likely to injure the person's self or others if not immediately detained, may be delivered to a facility or hospital by someone other than a peace officer.
	Who may initiate	ay initiate Section 229.6 Section 229.22(2a)	For inpatient or outpatient commitment, or emergency evaluation:
			Proceedings for the involuntary hospitalization of an individual may be commenced by any interested person by filing a verified application with the clerk of the district court of the county where the respondent is presently located, or which is the respondent's place of residence.
			For emergency evaluation, alternatively:
			In the absence of immediate access to the district court, any peace officer who has reasonable grounds to believe that a person meets the criteria for emergency evaluation may, without a warrant, take or cause that person to be taken to the nearest available facility or hospital. A person believed mentally ill, and likely to injure the person's self or others if not immediately detained, may be delivered to a facility or hospital by someone other than a peace officer.
	Voluntary admission for treatment	Minnesota Statute Section 253B.04	Any person 16 years of age or older may request to be admitted to a treatment facility as a voluntary patient for observation, evaluation, diagnosis, care and treatment without making formal written application. Any person under the age of 16 years may be admitted as a patient with the consent of a parent or legal guardian if it is determined by independent examination that there is reasonable evidence that:
			1. The proposed patient has a mental illness, or is developmentally disabled or chemically dependent; and
			2. The proposed patient is suitable for treatment.

State	Description	Statute	Law
			The head of the treatment facility shall not arbitrarily refuse any person seeking admission as a voluntary patient. In making decisions regarding admissions, the facility shall use clinical admission criteria consistent with the current applicable inpatient admission standards established by the American Psychiatric Association or the American Academy of Child and Adolescent Psychiatry.
	Inpatient involuntary treatment	Section 253B.09(1) Section 253B.02(13) Section 253B.18(a) Section 253B.02(17)(1)	If the court finds by clear and convincing evidence that the proposed patient is a person who is mentally ill, and after careful consideration of reasonable alternative dispositions, including but not limited to, dismissal of petition, voluntary outpatient care, voluntary admission to a treatment facility, appointment of a guardian or conservator, or release before commitment as provided for in subdivision 4, it finds that there is no suitable alternative to judicial commitment, the court shall commit the patient to the least restrictive treatment program or alternative programs which can meet the patient's treatment needs.
			A "person who is mentally ill" means any person who has an organic disorder of the brain or a substantial psychiatric disorder of thought, mood, perception, orientation, or memory which grossly impairs judgment, behavior, capacity to recognize reality, or to reason or understand, which is manifested by instances of grossly disturbed behavior or faulty perceptions and poses a substantial likelihood of physical harm to self or others as demonstrated by:
			1. A failure to obtain necessary food, clothing, shelter, or medical care as a result of the impairment;
			2. An inability for reasons other than indigence to obtain necessary food, clothing, shelter, or medical care as a result of the impairment and it is more probable than not that the person will suffer substantial harm, significant psychiatric deterioration or debilitation, or serious illness, unless appropriate treatment and services are provided;
			3. A recent attempt or threat to physically harm self or others; or
			4. Recent and volitional conduct involving significant damage to substantial property.
			A person is not mentally ill under this section if the impairment is solely due to:
			1. Epilepsy;
			2. Developmental disability;
			3. Brief periods of intoxication caused by alcohol, drugs, or other mind-altering substances; or
			4. Dependence upon or addiction to any alcohol, drugs, or other mind-altering substances.
			If the court finds by clear and convincing evidence that the proposed patient is a person who is mentally ill and dangerous to the public, it shall commit the person to a secure treatment facility or to a treatment facility willing to accept the patient under commitment. The court shall commit the patient to a secure treatment facility unless the patient establishes by clear and convincing evidence that a less restrictive treatment program is available that is consistent with the patient's treatment needs and the requirements of public safety.
			A "person who is mentally ill and dangerous to the public" is a person:
			1. Who is mentally ill; and
			2. Who as a result of that mental illness presents a clear danger to the safety of others as demonstrated by the facts that (i) the person has engaged in an overt act causing or attempting to cause serious physical harm to another and (ii) there is a substantial likelihood that the person will engage in acts capable of inflicting serious physical harm on another.
			Note: The critical distinction between a patient committed as a "person who is mentally ill" and one committed as a "person who is mentally ill and dangerous to the public" is that the latter is not permitted to transfer to voluntary status.
	Outpatient involuntary treatment	Section 253B.065(5)	A court shall order early intervention treatment of a proposed patient who meets the criteria under item 2. The early intervention treatment must be less intrusive than long-term inpatient commitment and must be the least restrictive treatment program available that can meet the patient's treatment needs.
			The court shall order early intervention treatment if the court finds all of the elements of the following factors by clear and convincing evidence: 1. The proposed patient is mentally ill;

State	Description	Statute	Law
			The proposed patient refuses to accept appropriate mental health treatment; and
			3. The proposed patient's mental illness is manifested by instances of grossly disturbed behavior or faulty perceptions and either:
			a. The grossly disturbed behavior or faulty perceptions significantly interfere with the proposed patient's ability to care for self and the proposed patient, when competent, would have chosen substantially similar treatment under the same circumstances; or
			b. Due to the mental illness, the proposed patient received court-ordered inpatient treatment under Section 253B.09 at least two times in the previous three years; the patient is exhibiting symptoms or behavior substantially similar to those that precipitated one or more of the court-ordered treatments; and the patient is reasonably expected to physically or mentally deteriorate to the point of meeting the criteria for commitment under Section 253B.09 unless treated.
			For purposes of this paragraph, a proposed patient who was released (prior to commitment) and whose release was not revoked is not considered to have received court-ordered inpatient treatment under Section 253B.09. None of the following constitute a refusal to accept appropriate mental health treatment:
			A willingness to take medication but a reasonable disagreement about type or dosage;
			2. A good faith effort to follow a reasonable alternative treatment plan, including treatment as specified in a valid advance directive;
			3. An inability to obtain access to appropriate treatment because of inadequate health care coverage or an insurer's refusal or delay in providing coverage for the treatment; or
			4. An inability to obtain access to needed mental health services because the provider will only accept patients who are under a court order or because the provider gives persons under a court order a priority over voluntary patients in obtaining treatment and services.
	For emergency evaluation	Section 253B.05(1)(a) Section 253B.05(2)	Any person may be admitted or held for emergency care and treatment in a treatment facility with the consent of the head of the treatment facility upon a written statement by an examiner that:
			1. The examiner has examined the person not more than 15 days prior to admission;
			2. The examiner is of the opinion, for stated reasons, that the person is mentally ill, developmentally disabled, or chemically dependent, and is in danger of causing injury to self or others if not immediately detained; and
			3. An order of the court cannot be obtained in time to prevent the anticipated injury.
			A peace or health officer may take a person into custody and transport the person to a licensed physician or treatment facility if the officer has reason to believe, either through direct observation of the person's behavior or upon reliable information of the person's recent behavior and knowledge of the person's past behavior or psychiatric treatment, that the person is mentally ill or developmentally disabled and in danger of injuring self or others if not immediately detained.
	Who may initiate	Section 253B.07(2)(a)	For inpatient commitment:
		Section 253B.064(1)(A) Section 253B.05(1)(a) Section 253B.05(2)	Any interested person, except a member of the prepetition screening team, may file a petition for commitment in the district court of the county of financial responsibility or the county where the proposed patient is present. If the head of the treatment facility believes that commitment is required and no petition has been filed, the head of the treatment facility shall petition for the commitment of the person.
			For outpatient commitment ("early intervention treatment"):
			An interested person may apply to the designated agency for early intervention of a proposed patient in the county of financial responsibility or the county where the patient is present. If the designated agency determines that early intervention may be appropriate, a prepetition screening report must be prepared as required with candidates for inpatient commitment. The county attorney may file a petition for early intervention following the procedures set forth for inpatient commitment.
			For emergency evaluation:

State	Description	Statute	Law
			Any person may be admitted or held for emergency care and treatment in a treatment facility with the consent of the head of the treatment facility upon a written statement by an examiner.
			A peace or health officer may take a person into custody and transport the person to a licensed physician or treatment facility if the officer has reason to believe that the person meets the criteria for emergency evaluation.
Montana	Voluntary admission	Montana Code	An individual applying for voluntary admission pursuant to this section may not be admitted unless:
	for treatment	Section 53-21-111	1. The admission is approved by a professional person;
			2. The individual applying for admission has been informed orally of the matters required by Subsection 53-21-111(1)(b) to be stated in the written application for admission;
			3. A copy of the written application for admission has been given to the applicant; and
			4. The admission otherwise complies with the requirements of this section.
			An applicant who wishes to voluntarily apply for admission to the state hospital shall first obtain certification from a professional person that the applicant is suffering from a mental disorder. The professional person shall then obtain confirmation from the department or the department's designee that the facilities available to the mental health region in which the applicant resides are unable to provide adequate evaluation and treatment. The department shall adopt rules to establish a procedure whereby a professional person shall obtain the confirmation from the department or the department's designee as required in this section.
			An application for voluntary admission to a mental health facility must be in writing on a form prescribed by the facility. The form must explain:
			The process for requesting release and that the request must be in writing;
			2. That the individual applying for release may be held involuntarily for up to five days after requesting release; and
			3. That the facility may request a court to involuntarily commit the applicant.
			A statement of the rights of the person voluntarily applying for admission, as set out in this part, must be furnished to the patient within 12 hours.
			An application for voluntary admission must give the facility the right to detain the applicant for no more than five days, excluding weekends and holidays, past the applicant's written request for release. A mental health facility may adopt rules providing for detention of the applicant for less than five days. The facility shall notify all applicants of the rules and post the rules as provided in Section 53-21-168.
			A person voluntarily entering or remaining in a mental health facility shall enjoy all the rights secured to a person involuntarily committed to the facility.
	Both inpatient and outpatient involuntary treatment Section 53-21-126(1) Section 53-21-127(7) Section 53-21-102(9)(a)	If the court determines that the respondent is suffering from a mental disorder, the court shall then determine whether the respondent requires commitment. In determining whether the respondent requires commitment, the court shall consider the following:	
		Section 53-21-102(9)(a)	1. Whether the respondent, because of a mental disorder, is substantially unable to provide for the respondent's own basic needs of food, clothing, shelter, health, or safety;
			2. Whether the respondent has recently, because of a mental disorder and through an act or an omission, caused self-injury or injury to others;
			3. Whether, because of a mental disorder, there is an imminent threat of injury to the respondent or to others because of the respondent's acts or omissions; and
			4. Whether the respondent's mental disorder, as demonstrated by the respondent's recent acts or omissions, will, if untreated, predictably result in deterioration of the respondent's mental condition to the point at which the respondent will become a danger to self or to others or will be unable to provide for the respondent's own basic needs of food, clothing, shelter, health, or safety. Predictability may be established by the respondent's relevant medical history.

State	Description	Statute	Law
			Satisfaction of any one of the criteria listed in Section 53-21-126(1) justifies commitment pursuant to this chapter. However, if the court relies solely upon the criterion provided in Section 53-21-126(1)(d), the court may require commitment only to a community facility and may not require commitment at the state hospital.
			"Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions.
	For emergency evaluation	Section 53-21-129(1) Section 53-21-102(7)	1. When an emergency situation as defined in Section 53-21-102 exists, a peace officer may take any person who appears to have a mental disorder and to present an imminent danger of death or bodily harm to the person or to others or who appears to have a mental disorder and to be substantially unable to provide for the person's own basic needs of food, clothing, shelter, health, or safety into custody only for sufficient time to contact a professional person for emergency evaluation. If possible, a professional person should be called prior to taking the person into custody.
			2. If the professional person agrees that the person detained is a danger to the person or to others because of a mental disorder and that an emergency situation as defined in Section 53-21-102 exists, then the person may be detained and treated until the next regular business day.
			"Emergency situation" means:
			1. A situation in which any person is in imminent danger of death or bodily harm from the activity of a person who appears to be suffering from a mental disorder and appears to require commitment; or
			2. A situation in which any person who appears to be suffering from a mental disorder and appears to require commitment is substantially unable to provide for the person's own basic needs of food, clothing, shelter, health, or safety.
	Who may initiate	Section 53-21-121.(1)	For inpatient or outpatient commitment:
		Section 53-21-129.(1)	The county attorney, upon the written request of any person having direct knowledge of the facts, may file a petition with the court alleging that there is a person within the county who is suffering from a mental disorder and who requires commitment pursuant to this chapter.
			For emergency evaluation:
			When an emergency situation as defined in Section 53-21-102 exists, a peace officer may take any person who appears to meet criteria into custody only for sufficient time to contact a professional person for emergency evaluation. If possible, a professional person should be called prior to taking the person into custody.
South Dakota	Voluntary admission for treatment	South Dakota Codified Laws Section 27A-8-1	The facility director or administrator may receive as a voluntary patient any person 18 years of age or older who understands the nature of voluntary inpatient treatment, is capable of giving informed consent, and voluntarily executes a written application for admission, if the following requirements are met:
			1. If, after examination by a staff psychiatrist, the facility director or administrator determines that the applicant is clinically suitable for inpatient treatment. In the event of the unavailability of a staff psychiatrist, admission may be granted pending an examination by a staff psychiatrist within one working day;
			2. A less restrictive treatment alternative is inappropriate or unavailable;
			3. The person is in need of and will likely benefit from treatment which is available at the facility;
			4. The requirements in Section 27A-8-15 have been met relating the persons understanding of the admission for treatment; and
			5. The person does not have medical needs which are beyond the capacity of the center or inpatient psychiatric facility.
			If a person 18 years of age or older voluntarily seeks admission to an inpatient psychiatric facility without any element of force, duress, threat, or other form of coercion and the facility director or administrator determines, after the explanation required in Section 27A-8-15, that the person is incapable of exercising an informed consent to the admission, the person may be admitted upon exercise of a substituted informed consent in accordance with Sections 27A-8-18.1 and 27A-8-19.
	Both inpatient and	Section 27A-1-2	A person is subject to involuntary commitment if:
	outpatient involuntary treatment		1. The person has a severe mental illness;

State	Description	Statute	Law
			2. Due to the severe mental illness, the person is a danger to self or others or has a chronic disability; and
			3. The individual needs and is likely to benefit from treatment. "Danger to self":
			1. A reasonable expectation that the person will inflict serious physical injury upon himself or herself in the near future, due to a severe mental illness, as evidenced by the person's treatment history and the person's recent acts or omissions which constitute a danger of suicide or self-inflicted serious physical injury. Such acts may include a recently expressed threat if the threat is such that, if considered in the light of its context or in light of the person's recent previous acts or omissions, it is substantially supportive of an expectation that the threat will be carried out; or
			2. A reasonable expectation of danger of serious personal harm in the near future, due to a severe mental illness, as evidenced by the person's treatment history and the person's recent acts or omissions which demonstrate an inability to provide for some basic human needs such as food, clothing, shelter, essential medical care, or personal safety, or by arrests for criminal behavior which occur as a result of the worsening of the person's severe mental illness.
			"Danger to others":
			 A reasonable expectation that the person will inflict serious physical injury upon another person in the near future, due to a severe mental illness, as evidenced by the person's treatment history and the person's recent acts or omissions which constitute a danger of serious physical injury for another individual. Such acts may include a recently expressed threat if the threat is such that, if considered in the light of its context or in light of the person's recent previous acts or omissions, it is substantially supportive of an expectation that the threat will be carried out.
	For emergency evaluation	Section 27A-10-1	If any person is alleged to be severely mentally ill and in such condition that immediate intervention is necessary for the protection from physical harm to self or others, any person, 18 years of age or older, may complete a petition stating the factual basis for concluding that such person is severely mentally ill and in immediate need of intervention.
	Who may initiate	Section 27A-10-1	For inpatient or outpatient commitment, or emergency evaluation:
			If any person is alleged to meet the criteria, any person, 18 years of age or older, may complete a petition stating the factual basis for concluding that such person is severely mentally ill and in immediate need of intervention.
Wyoming	Voluntary admission for treatment	Wyoming Statute Section 25-10-106 Section 25-10-107	The head of a hospital mayadmit for treatment any adult who has symptoms of mental illness but who has sufficient insight or capacity to make responsible, voluntary application for admission and who applies for admission.
		Section 25-10-107	A person who has symptoms of mental illness but because of minority or incompetency is not capable of making a responsible, voluntary application for admission may be admitted for treatment upon application by a parent or guardian if the application:
			1. Is accompanied by a statement of an examiner that the person is mentally ill; and
			2. An examiner at the hospital, based on a personal interview, determines that the person is mentally ill.
			The head of a hospital shall discharge any patient admitted pursuant to Section 25-10-106(a) or (b) who no longer needs hospital treatment.
			A patient admitted pursuant to Section 25-10-106 who requests his release in writing or whose release is requested in writing by the person responsible for his care or custody, shall be released within 24 hours after receipt of the request except:
			1. If the patient was admitted on his own application and the request for release is made by a person other than the patient, release may be conditioned upon the consent of the patient; or
			2. If the patient is a minor or incompetent, his release may be conditioned upon the consent of his parent or guardian; and
			3. The hospital shall prepare a discharge plan in accordance with policies, rules, and regulations of the department.
	Both inpatient and outpatient involuntary treatment	Section 25-10-110(j) Section 25-10-101(a)(ix) Section 25-10-101(a)(ii)	If, upon completion of the hearing and consideration of the record, the court or the jury finds by clear and convincing evidence that the proposed patient is mentally ill the court shall consider the least restrictive and most therapeutic alternatives.

State	Description	Statute	Law
		Section 25-10-110(j)(ii)	"Mental illness" and "mentallyill" mean a physical, emotional, mental, or behavioral disorder which causes a person to be dangerous to himself or others and which requires treatment.
			"Dangerous to himself or others" means that, as a result of mental illness, a person:
			 Evidences a substantial probability of physical harm to himself as manifested by evidence of recent threats of or attempts at suicide or serious bodily harm; or
			2. Evidences a substantial probability of physical harm to other individuals as manifested by a recent overt homicidal act, attempt or threat or other violent act, attempt or threat which places others in reasonable fear of serious physical harm to them; or
			3. Evidences behavior manifested by recent acts or omissions that, due to mental illness, he is unable to satisfy basic needs for nourishment, essential medical care, shelter, or safety so that a substantial probability exists that death, serious physical injury, serious physical debilitation, serious mental debilitation, destabilization from lack of or refusal to take prescribed psychotropic medications for a diagnosed condition or serious physical disease will imminently ensue, unless the individual receives prompt and adequate treatment for this mental illness. No person, however, shall be deemed to be unable to satisfy his need for nourishment, essential medical care, shelter, or safety if he is able to satisfy those needs with the supervision and assistance of others who are willing and available.
			Additional outpatient criteria:
			If the court finds that the proposed patient does not require continuous inpatient hospitalization, would be more appropriately treated in an outpatient treatment program or a combination of outpatient and inpatient treatment or will be able to appropriately control his illness by following a prescribed treatment plan, the court shall consider such treatment options. If the court finds that the proposed patient does not require continuous hospitalization and the funding is available, it shall consider conditional outpatient treatment and may designate an outpatient care provider, including mental health centers. The court may suspend the imposition of the conditional outpatient treatment order for failure to meet the conditions and order involuntary hospitalization under this section.
	For emergency evaluation	Section 25-10-109(a)	A law enforcement officer or examiner may detain an individual if they have reasonable cause to believe a person is mentally ill pursuant to Section 25-10-101 or if they believe the individual is dangerous to self or others.
	Who may initiate	Section 25-10-110(a)	For inpatient or outpatient commitment:
		Section 25-10-109(a)	Proceedings for the involuntary hospitalization of a person may be commenced by the filing of a written application with the court in the county in which the person is initially detained.
			For emergency evaluation:
			A law enforcement officer or examiner may detain an individual if they have reasonable cause to believe a person meets the emergency evaluation criteria.

NORTH DAKOTA MENTAL HEALTH COMMITMENT LAWS

The majority of North Dakota's initial laws concerning the voluntary, involuntary, and emergency commitment of individuals with mental illness and chemical dependency were enacted in 1957 and were not substantially changed until 1977. In 1977 the Legislative Assembly enacted Senate Bill No. 2164 that created Chapter 25-03.1. The bill established many of the commitment procedures for the individuals with mental illness and chemical dependency which are currently in effect. The bill was precipitated by a number of state and federal court decisions that had invalidated state commitment laws similar to North Dakota's law.

A number of the commitment procedures contained in Chapter 25-03.1 have been amended in the years since the chapter was enacted in 1977. For example, 1989 Senate Bill No. 2389 replaced the terms "alcoholic individual" and "drug addict" with "chemically dependent person." The bill set forth more specific procedures for the application for involuntary treatment, and the bill permitted the parties to waive the preliminary hearing. Senate Bill No. 2370 (1993) authorized the state's attorney to seek reimbursement of funds expended by the county for a respondent who was determined to be indigent but is later found to have funds or property, clarified a respondent has a right to a preliminary hearing, and set forth a procedure for a respondent to seek the discharge of a petition.

COMMITMENT PROCEDURES FOR MENTALLY ILL AND CHEMICALLY DEPENDENT INDIVIDUALS - SUMMARY OF STATUTORY PROVISIONS

Chapter 25-03.1 provides for commitment procedures for mentally ill and chemically dependent individuals.

Voluntary Commitment Procedures

Section 25-03.1-04 provides the screening and admission of an individual to a public treatment facility for mental illness or chemical dependency must be performed, in person whenever reasonably practicable, by the regional human service center in the region in which the individual is physically located. Upon receipt of the request, the regional human service center is to arrange for an evaluation of the individual and, if appropriate, treat the applicant or refer the applicant to the appropriate treatment facility.

Section 25-03.1-06 requires any individual who is voluntarily admitted for inpatient treatment to a treatment facility to be orally advised of the right to release and must be advised in writing regarding other rights under Chapter 25-03.1. Under this section, a voluntary patient who requests release must be immediately released. If the superintendent or the director, however, otherwise determines the patient is a person requiring treatment, the release may be postponed until judicial proceedings for involuntary treatment have been held. The patient must be served the petition within 24 hours, exclusive of weekends and holidays, from the time release is requested, unless extended by the judge for good cause shown. The treatment hearing must be held within seven days from the time the petition is served.

Involuntary Commitment Procedures

Section 25-03.1-07 provides an individual may be involuntarily admitted to the State Hospital or another treatment facility only if it is determined the individual requires treatment.

Petition for Involuntary Treatment

Section 25-03.1-08 provides any adult (the applicant) may present a petition for involuntary treatment of an individual (the respondent) to the state's attorney of the county where the respondent is located or to an attorney retained by the applicant to represent the applicant through the proceedings. The petition must be verified by affidavit of the applicant and must contain assertions that the respondent requires treatment; detailed facts that are the basis of the assertion; and names, telephone numbers, and addresses of witnesses to those facts. To assist 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 and conversations with the respondent, if possible. The state's attorney or the retained attorney is required to file a petition with the clerk of court if the information provided by the applicant or by the investigation provides probable cause to believe the respondent requires treatment. If the state's attorney determines there are insufficient grounds for filing a petition with the court, the state's attorney may refer the applicant to other community resources.

Section 25-03.1-09 provides the clerk of court, upon the filing of a petition for involuntary treatment, is to notify the district judge or juvenile court judge. The judge is to review the petition and the accompanying documentation to determine whether it meets requirements of law and whether it establishes probable cause to believe the respondent requires treatment. If probable cause has not been established, the petition must be dismissed unless an amendment can cure the defect.

If the judge determines probable cause has been established, the respondent or the respondent's nearest relative or guardian must be served with:

- 1. A copy of the petition and supporting documentation.
- 2. A notice informing the respondent of procedures required by the law.
- 3. A notice of the respondent's right to a preliminary and treatment hearing; the right to be present at the hearings; the right to have counsel; the right to an independent evaluation; and if the respondent is indigent, the right to counsel and an independent expert examiner, each at the expense of the county of the respondent's residence.
- 4. A notice that if an expert examiner is to be appointed, the respondent must be given an opportunity to select that examiner.

Court-Ordered Examination

Section 25-03.1-10 provides if the petition is not accompanied by a written supportive statement of a psychiatrist, physician, physician assistant, psychologist, advanced practice registered nurse, or addiction counselor who has examined the respondent within the last 45 days, the court is to order the respondent to be examined by an expert examiner of the respondent's choice or one appointed by the court. The county of the respondent's residence is responsible for paying the cost of the court-ordered examination.

Under Section 25-03.1-10.1, for the purposes of court-ordered examinations conducted under Chapter 25-03.1, an expert examiner may use telemedicine technologies to assist the expert examiner in conducting those examinations. This section was enacted in 2011.

Section 25-03.1-11 provides 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 emergency treatment provisions, the examination must be conducted within 24 hours of custody. The examination report must be filed with the court and must contain:

- 1. Evaluations of the respondent's physical condition and mental status.
- 2. A conclusion as to whether the respondent requires treatment.
- 3. If the report concludes the respondent requires treatment, a list of available forms of care and treatment which may serve as alternatives to involuntary hospitalization.
- 4. The signature of the examiner.

Under this section, an evaluation of a respondent's physical condition may be made only by a licensed physician or psychiatrist; an evaluation of a respondent's mental status may be made only by a licensed physician, psychiatrist, or psychologist trained in a clinical program; and 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.

If the examiner concludes the respondent does not require treatment, the court may terminate the proceedings and dismiss the petition. If the examiner concludes the respondent requires treatment, the court is to set a date for hearing. 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 must be within seven days of the date the respondent was taken into custody. 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 examiner's report, not to exceed 14 days from the time the petition was served.

Section 25-03.1-11.1 provides, with the consent of the court, the parties may waive the preliminary hearing and conduct the treatment hearing within the time period set for the preliminary hearing.

Notice of Hearings

Section 25-03.1-12 provides the court is to give notice of a petition and of a time and place of any hearing to the respondent, parents of a respondent who is a minor, the respondent's 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, any guardian, and other relatives or persons as the court may determine.

Right to Counsel

Section 25-03.1-13 provides every respondent is entitled to legal counsel. The section also provides procedures for appointing counsel, waiver of the right to counsel, and compensation of counsel for an indigent respondent.

Preliminary Hearing

Section 25-03.1-17 provides a respondent who is in custody and who is alleged to be mentally ill, or both mentally ill and chemically dependent, is entitled to a preliminary hearing. At the preliminary hearing, the judge is to review the medical report and allow the petitioner and the respondent an opportunity to testify and to present and cross-examine witnesses. The court may receive the testimony of any interested person. The judge may receive evidence that would otherwise be inadmissible at a treatment hearing. If the court does not find probable cause to believe the respondent requires treatment, the court is to dismiss the petition.

If the court finds probable cause to believe the respondent requires treatment, the court is to consider less restrictive alternatives to involuntary detention and treatment. The court may then order the respondent to undergo up to 14 days of treatment under a less restrictive alternative or, if it finds alternative treatment is not in the best interest of the respondent or others, the court is to order the respondent detained for up to 14 days for involuntary treatment in a treatment facility.

Under Section 25-03.1-18, the superintendent or the director may release a patient subject to a 14-day evaluation and treatment order or a 7-day emergency order if, in the superintendent's or director's opinion, the respondent does not meet the criteria of a person requiring treatment or, before the expiration of the 14-day order, the respondent no longer requires inpatient treatment. The court must be notified of the release and the reasons therefor. If the respondent is released because the respondent does not meet the criteria of a person requiring treatment, the court is required to dismiss the petition.

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Court-Authorized Involuntary Treatment

Section 25-03.1-18.1 authorizes the treating psychiatrist, upon notice and hearing, to request authorization to treat an individual under a mental health treatment order with prescribed medication. The treating psychiatrist and another licensed physician, physician assistant, psychiatrist, or advanced practice registered nurse not involved in the current diagnosis or treatment of the patient are required to certify the proposed prescribed medication is clinically appropriate and necessary to effectively treat the patient and the patient is a person requiring treatment; the patient was offered treatment and refused it or the patient lacked the capacity to make or communicate a responsible decision about the treatment; the prescribed medication is the least restrictive form of intervention necessary to meet the treatment needs of the patient; and the benefits of the treatment outweigh the known risks to the patient.

Treatment Hearing

Section 25-03.1-19 provides the involuntary treatment hearing, unless waived by the respondent, must be held within 14 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 examiner's report. The hearing must be held in the respondent's county or in 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. 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 interested person. There is a presumption in favor of the respondent and the burden of proof in support of the petitioner. If, upon completion of the hearing, the court finds the petition has not been sustained by clear and convincing evidence, the court is to deny the petition, terminate the proceeding, and order the respondent to be discharged if the respondent was hospitalized before the hearing.

Section 25-03.1-20 provides if the respondent is found at the involuntary treatment hearing to require treatment, the court may:

- 1. Order the individual to undergo a program of treatment other than hospitalization;
- 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.

Alternatives to Hospitalization

Section 25-03.1-21 provides for alternatives to hospitalization. Before making its decision in an involuntary treatment hearing, the court is to review a report assessing the availability and appropriateness of treatment programs other than hospitalization for the respondent which has been prepared and submitted by the State Hospital or treatment facility. If the court finds a treatment program other than hospitalization is adequate to meet the respondent's treatment needs and is sufficient to prevent harm or injuries the respondent may inflict upon the respondent or others, the court is to order the respondent to receive whatever treatment other than hospitalization is appropriate for a period of 90 days.

Subsection 3 of this section provides if a peace officer or medical professional reasonably believes the respondent is not complying with an order for alternative treatment, the alternative treatment is not sufficient to prevent harm or injuries, and considerations of time and safety do not allow intervention by a court, the designated professional may take the respondent into custody and detain the respondent in a treatment facility. Within 24 hours of the detention, a notice is required to be filed with the court. Upon admission to the treatment facility, the superintendent or director is required to conduct an immediate examination and, within 24 hours after admission, either release the respondent or file a notice with the court stating the circumstances and factors of the case. The court is required to hold a hearing within 48 hours of receipt of the notice. The court's options are to:

- Release the individual from hospitalization and continue the alternative treatment order;
- 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 commitment period; or
- Enter a new order directing the respondent remain hospitalized until discharged from the hospital under Section 25-03.1-30.

Continuing Treatment Orders

Section 25-03.1-22 provides an initial order for involuntary treatment may not exceed 90 days. If the director or superintendent believes a patient continues to require treatment, the director or superintendent, not less than 14 days before the expiration of the initial order, is required to petition the court where the facility is located for a determination that the patient continues to be a person requiring treatment and for an order of continuing treatment. That order is limited to one year. The court is required to set a hearing date within 14 days after the petition was filed, unless extended for good cause shown.

Section 25-03.1-23 provides a petition for an order authorizing continuing treatment must contain a statement regarding the reasons for the 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 treatment, and a clinical estimate as to how long further treatment will be required. The petition must be accompanied by a certificate executed by a physician assistant, psychiatrist, psychologist, advanced practice registered nurse, or licensed addiction counselor, any of whom is practicing within that individual's professional scope of practice. The addition of the licensed addiction counselor to the professionals authorized to execute the certificate was made in 2011.

Emergency Commitment Procedures

Section 25-03.1-25 provides when a peace officer, physician, psychiatrist, physician assistant, psychologist, advanced practice registered nurse, or mental health professional has reasonable cause to believe an individual requires treatment and there exists a serious risk of harm to that person, other persons, or property of an immediate nature that considerations of safety do not allow preliminary intervention by a judge, the peace officer, physician, psychiatrist, psychologist, or mental health professional, using the screening process set forth in Section 25-03.1-04, may cause the person to be taken into custody and detained at a treatment facility, which includes any hospital, including the State Hospital, and any public or private treatment facility. This section further provides if emergency conditions exist that prevent the immediate transfer of the individual to a public treatment facility that has adequate resources and capacity to hold that individual may hold the individual in anticipation of conveyance to the public facility for up to 23 hours without conducting an immediate examination as required under Section 25-03.1-26 and without following notice and hearing requirements for a transfer to another treatment facility required under Section 25-03.1-34.

If a petitioner seeking the involuntary treatment of a respondent requests the respondent be taken into immediate custody and the judge, upon reviewing the petition and accompanying documentation finds probable cause to believe the respondent requires treatment and there exists a serious risk of harm to the respondent, other person, or property if allowed to remain at liberty, a judge may enter a written order directing the respondent be taken into immediate custody and detained until the preliminary or treatment hearing.

Section 25-03.1-26 requires a public treatment facility immediately to accept and authorizes a private treatment facility to accept on a provisional basis the individual admitted under Section 25-03.1-25. Under this section, the superintendent or director is required to conduct an immediate examination of the individual and, within 24 hours after admission, either release the individual if the individual does not meet the emergency commitment standards or file a petition if one has not been filed with the court, giving notice to the court and stating in detail the circumstances and facts of the case. This section further provides upon receipt of the petition and notice of the emergency detention, the court is required to set a date for a preliminary hearing to be held within four days, exclusive of weekends and holidays, after detention unless the individual 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 court for good cause shown.

Discharge Procedures of Hospitalized Patient

Section 25-03.1-30 authorizes the superintendent or director to discharge, at any time, a voluntarily hospitalized patient who is clinically suitable for discharge. The superintendent or director is required to discharge a patient hospitalized by court order when the patient's mental condition is such the patient is no longer a person requiring treatment. The section requires 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 is required to offer appropriate treatment on a voluntary basis, or aid the individual to obtain treatment from another source on a voluntary basis.

Section 25-03.1-31 provides for a procedure to extend continuing treatment orders. Under this section, if the director or superintendent believes a respondent continues to be a person requiring treatment, the director or superintendent, not less than 30 days before expiration of the order, is required to petition the court for another continuing treatment. The petition also must contain a notice to the respondent that, unless the respondent waives a hearing on the petition within 15 days after service of the petition upon the respondent, a hearing will be held by the court. This section also provides every individual subject to an order of continuing treatment has the right to petition the court for discharge once annually.

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