

Introduced by

1 A BILL for an Act to create and enact a new section to chapter 25-03.3 of the North Dakota
2 Century Code, relating to the referral of inmates for civil commitment; and to amend and
3 reenact subsections 3 and 7 of section 25-03.3-01, sections 25-03.3-02, 25-03.3-03,
4 25-03.3-07, and 25-03.3-08, subsection 2 of section 25-03.3-09, sections 25-03.3-10,
5 25-03.3-11, 25-03.3-12, and 25-03.3-13, subsection 1 of section 25-03.3-18, and section
6 25-03.3-19 of the North Dakota Century Code, relating to the civil commitment of sexual
7 predators.

8 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

9 **SECTION 1. AMENDMENT.** Subsections 3 and 7 of section 25-03.3-01 of the 1999
10 Supplement to the North Dakota Century Code are amended and reenacted as follows:

11 3. "Qualified expert" means an individual who has an expertise in sexual offender
12 evaluations and who is a psychiatrist or psychologist trained in a clinical program
13 and licensed pursuant to this state's law or a psychologist approved for exemption
14 by the North Dakota board of ~~psychology~~ psychologist examiners.

15 7. "Sexually dangerous individual" means an individual who is shown to have
16 engaged in sexually predatory conduct and who has a congenital or acquired
17 condition that is manifested by a sexual disorder, a personality disorder, or other
18 mental disorder or dysfunction that makes that individual likely to engage in further
19 acts of sexually predatory conduct which constitute a danger to the physical or
20 mental health or safety of others. It is a rebuttable presumption that sexually
21 predatory conduct creates a danger to the physical or mental health or safety of the
22 victim of the conduct. ~~The term does not include an individual with mental~~
23 ~~retardation.~~

1 **SECTION 2. AMENDMENT.** Section 25-03.3-02 of the 1999 Supplement to the North
2 Dakota Century Code is amended and reenacted as follows:

3 **25-03.3-02. Jurisdiction and venue.** The district court has original jurisdiction over
4 the proceedings governed by this chapter. A proceeding pursuant to this chapter ~~must~~ may be
5 tried in ~~the~~ any county in which the respondent resides or is located, or has committed any
6 sexually predatory conduct, or if the respondent is an inmate, any of the foregoing venues or a
7 county to which the respondent has indicated an intent to relocate upon release from the
8 correctional facility.

9 **SECTION 3. AMENDMENT.** Section 25-03.3-03 of the 1999 Supplement to the North
10 Dakota Century Code is amended and reenacted as follows:

11 **25-03.3-03. Sexually dangerous individual - Petition.**

12 1. If it appears that an individual is a sexually dangerous individual, the state's
13 attorney may file a petition in the district court alleging that the individual is a
14 sexually dangerous individual and stating sufficient facts to support the allegation.

15 2. Except for an order of the court committing a respondent for treatment or an order
16 of the court discharging an individual from treatment and as provided in this
17 section, the petition and all further records and proceedings under this chapter are
18 confidential and are not public records or proceedings under sections 44-04-18 and
19 44-04-19 and sections 5 and 6 of article XI of the Constitution of North Dakota.
20 The court may permit access to a respondent's records or proceedings under this
21 chapter to the respondent's guardian, guardian ad litem, or other similarly situated
22 individual. The court may permit access to information in the respondent's records
23 to other individuals who require the information for use in performing official
24 governmental duties.

25 **SECTION 4.** A new section to chapter 25-03.3 of the North Dakota Century Code is
26 created and enacted as follows:

27 **Referral of inmates to state's attorneys - Immunity.**

28 1. The department of corrections and rehabilitation shall maintain treatment records
29 for any inmate who has been convicted of an offense that includes sexually
30 predatory conduct. Approximately six months before the projected release date of
31 the inmate, the department shall complete an assessment of the inmate to

determine whether a recommendation is to be made to a state's attorney for civil commitment of the inmate under this chapter. The assessment must be based on actuarial and clinical evaluations or any other information determined by the director to be relevant, including inmate behavior and whether the inmate participated in sexual offender treatment while incarcerated.

2. If, upon the completion of the assessment, the department determines the inmate may meet the definition of a sexually dangerous individual, the department shall refer the inmate to a state's attorney of an appropriate county as provided for in section 25-03.3-02. The department may make a referral of an inmate to more than one county.

3. Any referral from the department must include a summary of the factors considered material to the determination that the inmate is appropriate for referral. The department shall provide a copy of the referral and summary to the attorney general and the medical director of the state hospital.

4. Following the receipt of a referral but before the release date of the inmate, the state's attorney shall notify the department and the attorney general of the state's attorney's intended disposition of the referral.

5. Any person participating in good faith in the assessment and referral of an inmate is immune from any civil or criminal liability. For the purpose of any civil or criminal proceeding, the good faith of any person required to participate in the assessment and referral of an inmate is presumed.

SECTION 5. AMENDMENT. Section 25-03.3-07 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

25-03.3-07. Appointment of guardian ad litem. At any stage of a proceeding under this chapter, on application of ~~a party~~ any individual or on its own motion, the court may appoint a guardian ad litem for a minor or an individual with mental retardation who is a respondent or witness or otherwise involved in the proceeding, if the minor or an individual with mental retardation has no parent, guardian, or custodian appearing on the minor's or the mentally retarded individual's behalf or the interests of those persons conflict with those of the minor or an individual with mental retardation. The department of human services shall pay the expense of the guardian ad litem fee as established by the court.

1 **SECTION 6. AMENDMENT.** Section 25-03.3-08 of the 1999 Supplement to the North
2 Dakota Century Code is amended and reenacted as follows:

3 **25-03.3-08. Sexually dangerous individual - Procedure on petition - Detention.**

4 1. Upon the filing of a petition pursuant to this chapter, the court shall determine
5 whether to issue an order for detention of the respondent named in the petition.
6 The petition may be heard ex parte. The court shall issue an order for detention if
7 there is cause to believe that the respondent is a sexually dangerous individual. If
8 the court issues an order for detention, the order must direct that the respondent
9 be taken into custody and transferred to an appropriate treatment facility ~~to be held~~
10 ~~for evaluation and~~ or local correctional facility, at the respondent's choice, to be
11 held for subsequent hearing pursuant to this chapter. Under this section, the
12 department of human services shall pay for any expense incurred in the detention
13 or evaluation of the respondent.

14 2. If the state's attorney knows or believes the respondent named in the petition is an
15 individual with mental retardation, the state's attorney shall notify the court in the
16 petition and shall advise the court of the name of the legal guardian of the
17 respondent or, if none is known, the court may appoint a guardian ad litem for the
18 respondent. Before service of the notice required in section 25-03.3-10, the court
19 shall appoint an attorney for the respondent.

20 **SECTION 7. AMENDMENT.** Subsection 2 of section 25-03.3-09 of the 1999
21 Supplement to the North Dakota Century Code is amended and reenacted as follows:

22 2. After consultation with counsel, the respondent may waive the right to counsel or
23 the right to any hearing provided pursuant to this chapter by notifying the court in
24 writing. The notification must clearly state the respondent's reasons for the waiver
25 and be signed by counsel for the respondent. No guardian, guardian ad litem,
26 attorney, or other individual may waive the right to counsel on behalf of an
27 individual with mental retardation.

28 **SECTION 8. AMENDMENT.** Section 25-03.3-10 of the 1999 Supplement to the North
29 Dakota Century Code is amended and reenacted as follows:

30 **25-03.3-10. Notice.** If a respondent is detained pursuant to section 25-03.3-08, the
31 state's attorney shall provide the respondent, or the respondent's guardian, if appropriate, with

1 a copy of the petition filed with the court. The state's attorney shall provide the respondent with
2 written notice of the respondent's right to a preliminary hearing and a commitment hearing, if
3 probable cause is found to exist; the right to counsel and that counsel will be appointed for the
4 respondent, if the respondent is indigent; and the right to have an expert of the respondent's
5 choosing conduct an evaluation and testify on the respondent's behalf or, if the respondent is
6 indigent, that the court will appoint a qualified expert for the respondent. The notice must state
7 the date, time, and place for the preliminary hearing. If notice is given to a respondent who the
8 state's attorney knows or believes is an individual with mental retardation, the state's attorney
9 also shall give notice to the respondent's attorney and guardian or guardian ad litem, if any.

10 **SECTION 9. AMENDMENT.** Section 25-03.3-11 of the 1999 Supplement to the North
11 Dakota Century Code is amended and reenacted as follows:

12 **25-03.3-11. Preliminary hearing - Probable cause.** The respondent is entitled to a
13 preliminary hearing within seventy-two hours of being taken into custody pursuant to an order of
14 the court, excluding weekends and holidays, unless the respondent chooses to waive the
15 preliminary hearing pursuant to section 25-03.3-09. The respondent has a right to be present,
16 to testify, and to present and cross-examine witnesses at any preliminary hearing. The court
17 may receive evidence that would otherwise be inadmissible at a commitment hearing. Every
18 individual not necessary must be excluded, except that the court may admit any individual
19 having a legitimate interest in the proceeding. If the court determines after a preliminary
20 hearing that there is probable cause to believe the respondent is a sexually dangerous
21 individual, the court shall order that the respondent be transferred to an appropriate treatment
22 facility for an evaluation as to whether the respondent has a congenital or acquired condition
23 that is manifested by a sexual disorder, a personality disorder, or other mental disorder or
24 dysfunction that makes the respondent likely to engage in further acts of sexually predatory
25 conduct. If the court determines that probable cause does not exist to believe that the
26 respondent is a sexually dangerous individual, the court shall dismiss the petition. If the
27 respondent waives the preliminary hearing, then the respondent must be immediately
28 transferred to an appropriate treatment facility for an evaluation as to whether the respondent
29 has a congenital or acquired condition that is manifested by a sexual disorder, a personality
30 disorder, or other mental disorder or dysfunction that makes the respondent likely to engage in
31 further acts of sexually predatory conduct.

1 **SECTION 10. AMENDMENT.** Section 25-03.3-12 of the 1999 Supplement to the North
2 Dakota Century Code is amended and reenacted as follows:

3 **25-03.3-12. Sexually dangerous individual - Evaluation.** The evaluation must be
4 conducted by one or more experts chosen by the executive director. Whenever a respondent is
5 subject to an evaluation pursuant to this chapter, the respondent may retain an expert to
6 perform an evaluation or testify on the respondent's behalf. When the respondent is an adult
7 with mental retardation and a guardian or guardian ad litem has not been appointed for the
8 respondent, the court shall appoint an expert to perform an evaluation on behalf of the
9 respondent. In the case of a respondent who is indigent, the court shall appoint a qualified
10 expert to perform an examination or participate in the commitment proceeding on the
11 respondent's behalf. The department of human services shall compensate any qualified expert
12 appointed by the court on behalf of an indigent respondent in a reasonable amount based on
13 time and expenses. An expert retained on behalf of the respondent must have reasonable
14 access to the respondent for the purpose of the examination and to all relevant medical,
15 psychological, and court records and reports.

16 **SECTION 11. AMENDMENT.** Section 25-03.3-13 of the 1999 Supplement to the North
17 Dakota Century Code is amended and reenacted as follows:

18 **25-03.3-13. Sexually dangerous individual - Commitment proceeding - Report of**
19 **findings.** Within ~~thirty~~ ninety days after the finding of probable cause, the court shall conduct a
20 commitment proceeding to determine whether the respondent is a sexually dangerous
21 individual. The court may extend the time for good cause. At the commitment proceeding, any
22 testimony and reports of an expert who conducted an examination are admissible, including risk
23 assessment evaluations. Any proceeding pursuant to this chapter must be tried to the court
24 and not a jury. At the commitment proceeding, the state's attorney shall present evidence in
25 support of the petition and the burden is on the state to show by clear and convincing evidence
26 that the respondent is a sexually dangerous individual. An individual may not be committed
27 unless evidence is admitted establishing that at least two experts have concluded the individual
28 has a congenital or acquired condition that is manifested by a sexual disorder, a personality
29 disorder, or other mental disorder or dysfunction that makes that individual likely to engage in
30 further acts of sexually predatory conduct. The respondent has a right to be present, to testify,
31 and to present and cross-examine witnesses. Every person not necessary must be excluded,

except that the court may admit any person having a legitimate interest in the proceeding. If the respondent is found to be a sexually dangerous individual, the court shall commit the respondent to the care, custody, and control of the executive director. The executive director shall place the respondent in an appropriate facility or program at which treatment is available. The appropriate treatment facility or program must be the least restrictive available treatment facility or program necessary to achieve the purposes of this chapter. The executive director may not be required to create a less restrictive treatment facility or treatment program specifically for the respondent or committed individual. Unless the respondent has been committed to the legal and physical custody of the department of corrections and rehabilitation, the respondent may not be placed at and the treatment program for the respondent may not be provided at the state penitentiary or an affiliated penal facility. If the respondent is found not to be a sexually dangerous individual, the court shall discharge the respondent.

SECTION 12. AMENDMENT. Subsection 1 of section 25-03.3-18 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Annually, the executive director shall provide the committed individual with written notice that the individual has a right to petition the court for discharge. The notice must explain to the committed person when the committed person has a right to a hearing on the petition. The notice must inform the committed person of the rights this chapter affords the committed person at a discharge hearing. The executive director shall forward a copy of the notice to the committing court. If the committed individual is mentally retarded, the executive director shall also provide the written notice to the individual's attorney and guardian or guardian ad litem, if any.

SECTION 13. AMENDMENT. Section 25-03.3-19 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

25-03.3-19. Appeal. The respondent has the right to an appeal from an order of commitment or an order denying a petition for discharge. Upon entry of an appealable order, the court shall notify the respondent of the right to appeal and the right to counsel. The notice of appeal must be filed within thirty days after entry of the order. The appeal must be limited to a review of the procedures, findings, and conclusions of the committing court. Pending a decision on appeal, the order appealed from remains in effect. If the respondent is a mentally

- 1 retarded individual, the court shall provide notice of the right to appeal to the respondent's
- 2 attorney and the respondent's guardian or guardian ad litem.