

**Sixty-first Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2009**

SENATE BILL NO. 2098
(Human Services Committee)
(At the request of the Department of Human Services)

AN ACT to amend and reenact subsection 12 of section 25-03.1-02 and sections 25-03.1-04, 25-03.1-08, 25-03.1-10, 25-03.1-21, 25-03.1-25, and 25-03.1-34 of the North Dakota Century Code, relating to commitment to a public or private facility of a person requiring treatment due to mental illness or chemical dependency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 12 of section 25-03.1-02 of the North Dakota Century Code is amended and reenacted as follows:

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.

SECTION 2. AMENDMENT. Section 25-03.1-04 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-04. Screening and admission to a public treatment facility. Under rules adopted by the department, screening ~~and admission~~ 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.

SECTION 3. AMENDMENT. Section 25-03.1-08 of the North Dakota Century Code is amended and reenacted as follows:

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, ~~or~~ 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.

SECTION 4. AMENDMENT. Section 25-03.1-10 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-10. Involuntary treatment - Court-ordered examination. If the petition is not accompanied by a written supportive statement of a psychiatrist, physician, ~~or~~ 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.

SECTION 5. AMENDMENT. Section 25-03.1-21 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-21. Involuntary treatment order - Alternatives to hospitalization - Noncompliance with alternative treatment order - Emergency detention by certain professionals - Application for continuing treatment order.

1. Before making its decision in an involuntary treatment hearing, the court shall review a report assessing the availability and appropriateness for the respondent of treatment programs other than hospitalization which has been prepared and submitted by the state hospital or treatment facility. If the court finds that a treatment program other than hospitalization is adequate to meet the respondent's treatment needs and is sufficient to prevent harm or injuries which the individual may inflict upon the individual or others, the court shall order the respondent to receive whatever treatment other than hospitalization is appropriate for a period of ninety days.
2. If the respondent is not complying with the alternative treatment order or the alternative treatment has not been sufficient to prevent harm or injuries that the individual may be inflicting upon the individual or others, the department, a representative of the treatment program involved in the alternative treatment order, the petitioner's retained attorney, or the state's attorney may apply to the court or to the district court of a different judicial district in which the respondent is located to modify the alternative treatment order. The court shall hold a hearing within seven days after the application is filed. Based upon the evidence presented at hearing and other available information, the court may:
 - a. Continue the alternative treatment order;
 - b. Consider other alternatives to hospitalization, modify the court's original order, and direct the individual to undergo another program of alternative treatment for the remainder of the ninety-day period; or
 - c. Enter a new order directing that the individual be hospitalized until discharged from the hospital under section 25-03.1-30. If the individual refuses to comply with this hospitalization order, the court may direct a peace officer to take the individual into protective custody and transport the respondent to a treatment facility.
3. If a peace officer, physician, psychiatrist, clinical psychologist, or any mental health professional reasonably believes that the respondent is not complying with an order for alternative treatment ~~or~~, that the alternative treatment is not sufficient to prevent harm or injuries to the respondent or others, and that considerations of time and safety do not allow intervention by a court, the designated professional may cause the respondent to be taken into custody and detained at a treatment facility as provided in subsection 3 of section 25-03.1-25 and, within twenty-four hours, shall file a notice with the court stating the circumstances and factors of the case. The state hospital or public treatment facility must immediately accept, if appropriately screened and medically stable, and a private treatment facility may accept, the respondent on a provisional basis. The superintendent or director shall require an immediate examination of the respondent and, within twenty-four hours after admission, shall either release the respondent subject to the conditions of the original order or file a notice with the court stating in detail the circumstances and factors of the case. The court shall, within forty-eight hours of receipt of the notice of the superintendent or director, after a hearing and based on the evidence presented and other available information:
 - a. Release the individual from hospitalization and continue the alternative treatment order;

- b. 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
 - c. Enter a new order directing that the respondent remain hospitalized until discharged from the hospital under section 25-03.1-30.
4. If, at the date of expiration of an order of alternative treatment, it is believed that an individual continues to require treatment, a petition for a determination that the individual continues to be a person requiring treatment may be filed with the court where the individual is located.

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

25-03.1-25. Detention or hospitalization - Emergency procedure.

1. When a peace officer, physician, psychiatrist, psychologist, or mental health professional 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 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 as provided in subsection 3, and subject to section 25-03.1-26, except that if emergency conditions exist that prevent the immediate conveyance of the individual to a public treatment facility, a private facility that has adequate resources and capacity to hold that individual may hold the individual in anticipation of conveyance to a public treatment facility for up to twenty-three hours:
 - a. Without conducting an immediate examination required under section 25-03.1-26; and
 - b. Without following notice and hearing requirements for a transfer to another treatment facility required under subsection 3 of section 25-03.1-34.
2. If a petitioner seeking the involuntary treatment of a respondent requests that the respondent be taken into immediate custody and the magistrate, upon reviewing the petition and accompanying documentation, finds probable cause to believe that the respondent is a person requiring treatment and there exists a serious risk of harm to the respondent, other persons, or property if allowed to remain at liberty, the magistrate may enter a written order directing that the respondent be taken into immediate custody and be detained as provided in subsection 3 until the preliminary or treatment hearing, which must be held no more than seven days after the date of the order.
3. Detention under this section may be:
 - a. In a treatment facility where the director or superintendent must be informed of the reasons why immediate custody has been ordered. The facility may provide treatment that is necessary to preserve the respondent's life or to appropriately control behavior by the respondent which is likely to result in physical injury to self or to others if allowed to continue, but may not otherwise provide treatment to the respondent without the respondent's consent; or
 - b. In a public or private facility in the community which is suitably equipped and staffed for the purpose. Detention in a jail or other correctional facility may not be ordered except in cases of actual emergency when no other secure facility is accessible, and then only for a period of not more than twenty-four hours and under close supervision.

4. Immediately upon being taken into custody, the person must be advised of the purpose of custody, of the intended uses and possible effects of any evaluation that the person undergoes, and of the person's rights to counsel and to a preliminary or treatment hearing.
5. Upon arrival at a facility the peace officer, physician, psychiatrist, psychologist, or mental health professional who conveyed the person or who caused the person to be conveyed shall complete an application for evaluation and shall deliver a detailed written report from the peace officer, physician, psychiatrist, psychologist, or the mental health professional who caused the person to be conveyed. The written report must state the circumstances under which the person was taken into custody. The report must allege in detail the overt act that constituted the basis for the beliefs that the individual is a person requiring treatment and that, because of that person's condition, there exists a serious risk of harm to that person, another person, or property if the person is not immediately detained.

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

25-03.1-34. Transfer of patients.

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

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-first Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2098.

Senate Vote: Yeas 46 Nays 0 Absent 1

House Vote: Yeas 88 Nays 0 Absent 6

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2009.

Approved at _____ M. on _____, 2009.

Governor

Filed in this office this _____ day of _____, 2009,

at _____ o'clock _____ M.

Secretary of State