

MENTAL AND PHYSICAL ILLNESS OR DISABILITY

CHAPTER 225

SENATE BILL NO. 2240

(Senators J. Lee, Hogan)
(Representatives D. Anderson, Damschen, J. Nelson)

AN ACT to amend and reenact section 1-04-07, subsection 1 of section 5-01-09, sections 12.1-20-06.1 and 19-03.3-05, subdivision f of subsection 3 of section 23-01-44, section 25-03.1-01, subsections 3, 12, 13, and 23 of section 25-03.1-02, section 25-03.1-04, subsection 2 of section 25-03.1-09, sections 25-03.1-34.1, 25-03.1-34.2, and 38-10-01, subdivision l of subsection 1 of section 43-05-16, section 43-05-16.4, subsection 3 of section 43-17.1-06, subsection 3 of section 50-25.1-16, and section 50-25.1-18 of the North Dakota Century Code, relating to references to substance abuse disorders.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 1-04-07 of the North Dakota Century Code is amended and reenacted as follows:

1-04-07. Assignment of mortgage by foreign executor, administrator, or guardian.

Any assignment of a mortgage upon property within this state heretofore made by any executor or administrator appointed in any other state or foreign country on the estate of any person where no executor or administrator had been appointed in this state, if such executor or administrator has filed in the office of the recorder of any county in which any such mortgage was filed or recorded an authenticated copy of the person's appointment, and any assignment of a mortgage upon property within this state heretofore made by any heir or legatee of such deceased person, if such heir or legatee has recorded in the office of the recorder an authenticated copy of the judgment or decree of the foreign court transferring to such heir or legatee the ownership of such mortgage, and any assignment of a mortgage upon property within this state heretofore made by any guardian appointed in any other state or foreign country, of a minor, ~~habitual drunkard, spendthrift, or an individual who is incompetent person~~, holding and owning a mortgage upon property in this state, if such guardian has filed in the office of the recorder of the county in which the property is situated an authenticated copy of the person's appointment as guardian, and an authenticated copy of the judgment or decree of the foreign court, if any, transferring to the guardian's ward the ownership of such mortgage, if such assignment was made prior to the date of the taking effect of this code, hereby is declared to be legal and valid for all purposes, and of the same force and effect as though such executor, administrator, guardian, heir, or legatee had been authorized specifically by law to make such assignment. The provisions of this section apply to all mortgages, judgments, or other liens upon real or personal property, and to the foreclosure of any such mortgage or lien on real or personal property.

SECTION 2. AMENDMENT. Subsection 1 of section 5-01-09 of the North Dakota Century Code is amended and reenacted as follows:

1. Any individual knowingly delivering alcoholic beverages to an individual under twenty-one years of age, except as allowed under section 5-02-06, or to a ~~habitual drunkard~~; an incompetent; or an obviously intoxicated individual is guilty of a class A misdemeanor, subject to sections 5-01-08, 5-01-08.1, and 5-01-08.2.

SECTION 3. AMENDMENT. Section 12.1-20-06.1 of the North Dakota Century Code is amended and reenacted as follows:

12.1-20-06.1. Sexual exploitation by therapist - Definitions - Penalty.

Any person who is or who holds oneself out to be a therapist and who intentionally has sexual contact, as defined in section 12.1-20-02, with a patient or client during any treatment, consultation, interview, or examination is guilty of a class C felony. Consent by the complainant is not a defense under this section. A complaint of a violation of this section may be made to the police department of the city in which the violation occurred, the sheriff of the county in which the violation occurred, or the bureau of criminal investigation. Local law enforcement agencies and the bureau of criminal investigation shall cooperate in investigations of violations of this section. As used in this section, unless the context or subject matter otherwise requires:

1. "Psychotherapy" means the diagnosis or treatment of a mental or emotional condition, including alcohol or drug addiction.
2. "Therapist" means a physician, psychologist, psychiatrist, social worker, nurse, ~~chemical dependency~~addiction counselor, member of the clergy, or other person, whether licensed or not by the state, who performs or purports to perform psychotherapy.

SECTION 4. AMENDMENT. Section 19-03.3-05 of the North Dakota Century Code is amended and reenacted as follows:

19-03.3-05. Application.

This chapter does not apply to a person being treated by a physician for ~~chemical dependency~~a substance use disorder because of the person's use of controlled substances not related to treatment for pain. This chapter does not authorize a physician to prescribe or administer any drug legally classified as a controlled substance or as an addictive or dangerous drug for other than medically accepted therapeutic purposes. A person to whom controlled substances are prescribed or administered for pain is not exempt from section 39-08-01 or 39-20-04.1.

⁹⁸ **SECTION 5. AMENDMENT.** Subdivision f of subsection 3 of section 23-01-44 of the North Dakota Century Code is amended and reenacted as follows:

- f. Provide ~~drug~~ addiction treatment information, and referrals to ~~drug~~ treatment programs, including programs in the local area and programs that offer medication-assisted treatment that includes a federal food and drug administration approved long-acting, non-addictive medication for the treatment of opioid or alcohol ~~dependence~~use disorder;

⁹⁸ Section 23-01-44 was also amended by section 1 of Senate Bill No. 2198, chapter 392.

SECTION 6. AMENDMENT. Section 25-03.1-01 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-01. Legislative intent.

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

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

⁹⁹ **SECTION 7. AMENDMENT.** Subsections 3, 12, 13, and 23 of section 25-03.1-02 of the North Dakota Century Code are amended and reenacted as follows:

3. "~~Chemically dependent person~~ Individual with a substance use disorder" or "~~person who is chemically dependent~~" means an individual with an illness or disorder characterized by a maladaptive pattern of usage of alcohol or drugs, or a combination thereof, resulting in social, occupational, psychological, or physical problems.
12. "Mentally ill person" or "person who is mentally ill" means an individual with an organic, mental, or emotional disorder that substantially impairs the capacity to use self-control, judgment, and discretion in the conduct of personal affairs and social relations. The term does not include an individual with an intellectual disability of significantly subaverage general intellectual functioning that originates during the developmental period and is associated with impairment in adaptive behavior, although an individual who is intellectually disabled may also be a person who is mentally ill. ~~Chemical dependency~~ A substance use disorder does not per se constitute mental illness, although a ~~person who is chemically dependent~~ an individual with a substance use disorder may also be a person who is mentally ill.
13. "Person requiring treatment" means a person who is mentally ill or a ~~person who is chemically dependent~~ an individual with a substance use disorder, and there is a reasonable expectation that if the individual is not treated for the mental illness or ~~chemical dependency~~ substance use disorder there exists a serious risk of harm to that individual, others, or property.
23. "Treatment facility" or "facility" means any hospital, including the state hospital at Jamestown, or any evaluation and treatment facility that provides directly, or by direct arrangement with other public or private agencies, emergency evaluation and treatment, outpatient care, and inpatient care to individuals who are mentally ill or ~~chemically dependent~~ have a substance use disorder.

⁹⁹ Section 25-03.1-02 was also amended by section 1 of House Bill No. 1453, chapter 226.

SECTION 8. 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 of an individual to a public treatment facility for observation, diagnosis, care, or treatment for mental illness or ~~chemical dependency~~ substance use disorder must be performed, in person when 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 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 mental health professional and the individual who 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 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, if appropriate, shall 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 tier 1 or tier 2 mental health professional to examine the individual.

SECTION 9. AMENDMENT. Subsection 2 of section 25-03.1-09 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 10. AMENDMENT. Section 25-03.1-34.1 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-34.1. Exchange of chemically dependent patient or prisoner.

The director of the department of human services, a county, a city, or a local law enforcement agency may enter into reciprocal agreements with the appropriate authorities of any other state regarding the mutual exchange, return, and transportation of ~~chemically dependent or mentally ill patients or prisoners~~ individuals with a mental illness or substance use disorder who are treated or confined in hospitals of one state for treatment of ~~chemical dependency~~ a substance use disorder or mental illness but who have legal residence in another state.

SECTION 11. AMENDMENT. Section 25-03.1-34.2 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-34.2. Interstate contracts for treatment of mental illness or chemical dependency substance use disorder.

1. For purposes of this section, "bordering state" means Minnesota, Montana, or South Dakota.
2. Unless prohibited by another law and subject to the exceptions in subsection 3, the department may contract with any appropriate treatment or detoxification facility in a bordering state for the treatment of mental illness or ~~chemical dependency~~ substance use disorders or for providing ~~chemical dependency~~ substance use disorder detoxification services for residents of North Dakota. The department may also contract with any public or private agency or facility to provide treatment of mental illness or ~~chemical dependency~~ substance use disorders or to provide ~~chemical dependency~~ substance use disorder detoxification services in North Dakota to residents of a bordering state. An individual who receives treatment for mental illness or ~~chemical dependency~~ a substance use disorder or who receives ~~chemical dependency~~ substance use disorder detoxification services in another state under this section is subject to the laws of the state in which treatment or detoxification is provided. An individual who receives treatment or detoxification in another state under this section must be informed of the consequences of receiving treatment or detoxification in another state, including the implications of the differences in state laws.
3. A contract may not be entered under this section for treatment or detoxification to individuals who:
 - a. Are serving a sentence after conviction of a criminal offense;
 - b. Are on probation or parole;
 - c. Are the subject of a presentence investigation; or
 - d. Have been committed involuntarily in North Dakota under chapter 25-03.1 for treatment of mental illness or ~~chemical dependency~~ a substance use disorder, except as provided under subsection 5.
4. Contracts entered under this section must, at a minimum:
 - a. Describe the services to be provided;
 - b. Establish responsibility for the costs of services;
 - c. Establish responsibility for the costs of transporting individuals receiving services under this section;

- d. Specify the duration of the contract;
 - e. Specify the means of terminating the contract;
 - f. Specify the terms and conditions for refusal to admit or retain an individual; and
 - g. Identify the goals to be accomplished by the placement of an individual under this section.
5. The department may enter negotiations with appropriate personnel of a bordering state to develop an agreement that conforms to the requirements of this section. An agreement with a bordering state must enable the placement in North Dakota of individuals who require detoxification services, are on emergency holds, or who have been involuntarily committed as mentally ill or ~~chemically dependent~~having a substance use disorder in a bordering state and enable the temporary placement in a bordering state of patients who require detoxification services or who are on emergency holds in North Dakota under chapter 25-03.1. An agreement with a bordering state must also provide that the North Dakota courts retain jurisdiction over North Dakota residents, and that the bordering state affords to North Dakota residents the rights afforded to them under North Dakota law. Individuals committed by a court of a bordering state and placed in North Dakota facilities continue to be in the legal custody of the bordering state. The bordering state's laws governing length of commitment, re-examinations, and extension of commitment must continue to apply to these residents. In all other respects, residents of a bordering state placed in North Dakota facilities are subject to North Dakota laws. An agreement with a bordering state must specify that responsibility for payment for the cost of care of a resident of a bordering state remains with the bordering state of which that individual is a resident and the cost of care of a North Dakota resident remains with the state of North Dakota. This section applies to detoxification services regardless of whether the services are provided on a voluntary or involuntary basis.

SECTION 12. AMENDMENT. Section 38-10-01 of the North Dakota Century Code is amended and reenacted as follows:

38-10-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "District court" means the district court having jurisdiction of the estate of which the personal representative involved is administrator, executor, or guardian, as the case may be.
2. "Estate" means the estate of a person who died testate or intestate and the estate of a minor or of an individual who is incompetent; or a spendthrift; or habitual drunkard under guardianship.
3. "Lease for production" means any lease of property of an estate for the purpose of mining or of drilling and operating for oil, including the laying of pipelines and the building of tanks, power stations, and other structures upon the lands described in such lease for the purpose of producing, saving, and taking care of products of the mine or well.

4. "Personal representative" means an executor of the last will or the administrator of the estate of a deceased person, or a guardian of the estate of a minor or of an incompetent; ~~or spendthrift; or habitual drunkard.~~

SECTION 13. AMENDMENT. Subdivision l of subsection 1 of section 43-05-16 of the North Dakota Century Code is amended and reenacted as follows:

- l. Inability to practice podiatric medicine with reasonable skill and safety to patients because of physical or mental illness, ~~chemical dependency~~ substance use disorder, or as a result of any mental or physical condition or disability.

SECTION 14. AMENDMENT. Section 43-05-16.4 of the North Dakota Century Code is amended and reenacted as follows:

43-05-16.4. Mental examination - Access to medical data.

1. If the board has probable cause to believe that a podiatrist or applicant for license falls within the provisions of subdivision l or q of subsection 1 of section 43-05-16, it may direct the podiatrist or applicant for license to submit to a mental or physical examination or ~~chemical dependency~~ addiction evaluation. A podiatrist licensed or permitted under this chapter or an applicant for a license is considered to have consented to submit to a mental or physical examination or ~~chemical dependency~~ addiction examination when directed in writing by the board and to have waived all objections to the admissibility of the examiner's testimony or examination reports on the ground that the examination constitutes a privileged communication. The failure of a podiatrist or applicant for a license to submit to an examination when directed constitutes an admission of the allegations against the podiatrist or applicant for license and a default and final order may be entered without the taking of testimony or presentation of evidence unless the failure was due to circumstances beyond the podiatrist's or applicant's control. A podiatrist or applicant for a license must, at reasonable intervals, be given an opportunity to demonstrate that the podiatrist or applicant can resume or commence the competent practice of podiatric medicine with reasonable skill and safety to patients. In a proceeding under this subsection, neither the record of proceedings nor the orders entered by the board may be used against a podiatrist or applicant in any other proceeding.
2. In addition to ordering a physical or mental examination or a ~~chemical dependency~~ addiction evaluation, the board may, notwithstanding any law to the contrary, obtain medical data and health records relating to a licensee or applicant without the licensee's or applicant's consent if the board has probable cause to believe that the podiatrist or applicant falls within the provisions of subdivision l or q of subsection 1 of section 43-05-16. The medical data may be requested from a provider, an insurance company, or a government agency. A provider, insurance company, or government agency shall comply with a written request of the board under this section and is not liable in any action for damages for releasing the data requested by the board if the data are released in accordance with a written request under this section unless the information is false and the provider giving the information knew or had reason to believe the information was false.

¹⁰⁰ **SECTION 15. AMENDMENT.** Subsection 3 of section 43-17.1-06 of the North Dakota Century Code is amended and reenacted as follows:

3. Upon probable cause, require any physician, physician assistant, or fluoroscopy technologist under investigation to submit to a physical, psychiatric, or competency examination or ~~chemical dependency~~ addiction evaluation.

SECTION 16. AMENDMENT. Subsection 3 of section 50-25.1-16 of the North Dakota Century Code is amended and reenacted as follows:

3. If a report alleges a pregnant woman's use of a controlled substance for a nonmedical purpose, the department or its designee shall immediately initiate an appropriate assessment and offer services indicated under the circumstances. Services offered may include a referral for ~~chemical dependency~~ addiction assessment, a referral for ~~chemical dependency~~ substance use disorder treatment if recommended, or a referral for prenatal care. The department or its designee may also take any appropriate action under chapter 25-03.1.

SECTION 17. AMENDMENT. Section 50-25.1-18 of the North Dakota Century Code is amended and reenacted as follows:

50-25.1-18. Prenatal exposure to alcohol abuse - Reporting requirements.

1. An individual required to report under section 50-25.1-03 who has knowledge of or reasonable cause to suspect that a woman is pregnant and has abused alcohol after the woman knows of the pregnancy may:
 - a. Arrange for a ~~chemical dependency~~ addiction assessment conducted by a licensed treatment program and confirm that the recommendations indicated by the assessment are followed; or
 - b. Immediately report the circumstances to the department if the knowledge or suspicion is derived from information received by that individual in that individual's official or professional capacity.
2. An individual may make a voluntary report if the individual has knowledge of or reasonable cause to suspect that a woman is pregnant and has abused alcohol during the pregnancy.
3. If the woman is referred for a ~~chemical dependency~~ addiction assessment under subdivision a of subsection 1 and fails to obtain an assessment or refuses to comply with the recommendations of the assessment, an individual required to report under section 50-25.1-03 who has knowledge of the failure to obtain the assessment or refusal to comply with recommendations of the assessment shall make a report to the department.
4. If a report alleges a pregnant woman has abused alcohol, the department or its designee shall immediately initiate an appropriate assessment and offer services indicated under the circumstances. Services offered may include a referral for ~~chemical dependency~~ addiction assessment, a referral for ~~chemical dependency~~ substance use disorder treatment, if recommended, or a

¹⁰⁰ Section 43-17.1-06 was also amended by section 9 of Senate Bill No. 2094, chapter 354.

referral for prenatal care. The department or its designee may also take any appropriate action under chapter 25-03.1.

5. A report and assessment under this section is not required if the pregnant woman voluntarily enters treatment in a licensed treatment program. If the pregnant woman does not complete voluntary treatment or fails to follow treatment recommendations, an individual required to report under section 50-25.1-03 who has knowledge of the failure to complete voluntary treatment or failure to follow treatment recommendations shall make a report as required by this section.
6. A report under this section must be made as described in section 50-25.1-04 and must be sufficient to identify the woman, the nature and extent of the abuse of alcohol, any health risk associated with the abuse of alcohol, and the name and address of the individual making the report.

Approved April 8, 2019

Filed April 9, 2019

CHAPTER 226

HOUSE BILL NO. 1453

(Representatives Skroch, Buffalo, Sanford, Vigesaa)
(Senators Heckaman, Hogan, Mathern, Poolman)

AN ACT to amend and reenact sections 25-03.1-02, 25-03.1-07, 25-03.1-17, 25-03.1-21, and 25-03.1-30 of the North Dakota Century Code, relating to civil commitment procedures and alternative treatment orders; and to provide for a legislative management study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁰¹ **SECTION 1. AMENDMENT.** Section 25-03.1-02 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-02. Definitions.

In this chapter, unless the context requires otherwise:

1. "Advanced practice registered nurse" means an individual who is licensed as an advanced practice registered nurse under chapter 43-12.1 within the role of certified nurse practitioner or certified clinical nurse specialist, who has completed the requirements for a minimum of a master's degree in psychiatric and mental health nursing from an accredited program, and who is functioning within the scope of practice in one of the population foci as approved by the state board of nursing. This chapter does not expand the scope of practice of an advanced practice registered nurse beyond the scope of practice established by the state board of nursing.
2. "Alternative treatment order" means an involuntary outpatient order for a treatment program, other than hospitalization, which may include treatment with a prescribed medication.
3. "Chemically dependent person" or "person who is chemically dependent" means an individual with an illness or disorder characterized by a maladaptive pattern of usage of alcohol or drugs, or a combination thereof, resulting in social, occupational, psychological, or physical problems.
4. "Consent" means voluntary permission ~~that is~~ based upon full disclosure of facts necessary to make a decision and which is given by an individual who has the ability to understand those facts.
5. "Court" means, except when otherwise indicated, the district court serving the county in which the respondent resides.
6. "Department" means the department of human services.
7. "Director" means the director of a treatment facility or the director's designee.

¹⁰¹ Section 25-03.1-02 was also amended by section 7 of Senate Bill No. 2240, chapter 225.

8. "Expert examiner" means a licensed physician, physician assistant, psychiatrist, psychologist trained in a clinical program, advanced practice registered nurse, or licensed addiction counselor appointed by the court to examine the respondent and to provide an evaluation of whether the respondent is a person requiring treatment.
9. "Independent expert examiner" means a licensed physician, physician assistant, psychiatrist, psychologist trained in a clinical program, advanced practice registered nurse, or licensed addiction counselor, chosen at the request of the respondent to provide an independent evaluation of whether the respondent is a person requiring treatment.
10. "Magistrate" means the judge of the appropriate district or juvenile court or a judge assigned by the presiding judge of the judicial district.
11. "Mental health professional" means:
 - a. A psychologist with at least a master's degree who has been either licensed or approved for exemption by the North Dakota board of psychology examiners.
 - b. A social worker with a master's degree in social work from an accredited program.
 - c. An advanced practice registered nurse.
 - d. A registered nurse with a minimum of two years of psychiatric clinical experience under the supervision of an expert examiner.
 - e. A licensed addiction counselor.
 - f. A licensed professional counselor with a master's degree in counseling from an accredited program who has either successfully completed the advanced training beyond the master's degree as required by the national academy of mental health counselors or a minimum of two years of clinical experience in a mental health agency or setting under the supervision of a psychiatrist or psychologist.
 - g. A physician assistant.
12. "Mentally ill person" or "person who is mentally ill" means an individual with an organic, mental, or emotional disorder that substantially impairs the capacity to use self-control, judgment, and discretion in the conduct of personal affairs and social relations. The term does not include an individual with an intellectual disability of significantly subaverage general intellectual functioning that originates during the developmental period and is associated with impairment in adaptive behavior, although an individual who is intellectually disabled may also be a person who is mentally ill. Chemical dependency does not per se constitute mental illness, although a person who is chemically dependent may also be a person who is mentally ill.
13. "Person requiring treatment" means a person who is mentally ill or a person who is chemically dependent, and there is a reasonable expectation that if the individual is not treated for the mental illness or chemical dependency there exists a serious risk of harm to that individual, others, or property.

14. "Physician assistant" means an individual licensed to practice as a physician assistant under chapter 43-17, who is authorized by the North Dakota board of medicine to practice in the field of psychiatry, holds a certification in psychiatry approved by the board, and is practicing under the supervision of a psychiatrist licensed to practice medicine in this state. This chapter does not expand the scope of practice of a physician assistant beyond the scope of practice authorized by the North Dakota board of medicine.
15. "Private treatment facility" means any facility established under chapter 10-19.1 or 10-33 and licensed under chapter 23-16 or 50-31.
16. "Psychiatrist" means a licensed physician who has completed a residency program in psychiatry.
17. "Public treatment facility" means any treatment facility not falling under the definition of a private treatment facility.
18. "Qualified service organization" means a person that provides services to a treatment facility such as data processing, bill collecting, dosage preparation, laboratory analysis, or legal, medical, accounting, or other professional services, and which agrees that in dealing with patient records, ~~it~~that person is bound by the confidentiality restrictions of this chapter, except as otherwise provided for by law.
19. "Respondent" means an individual subject to petition for involuntary treatment.
20. "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 individual 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~~danger to that individual, others, or property, based upon ~~evidence~~;
 - (1) Evidence of objective facts to establish the loss of cognitive or volitional control over the individual's thoughts or actions; ~~or based upon acts~~
 - (2) Acts; ~~or threats~~; ~~or~~; patterns in the individual's treatment history; ~~the individual's current condition~~; and other relevant factors, including the effect of the individual's mental condition on the individual's ability to consent.
21. "Substantial likelihood" may take into account an individual's history and recent behavior.

22. "Superintendent" means the state hospital superintendent or the superintendent's designee.
- 22-23. "Third-party payer" means a person that pays, or agrees to pay, for diagnosis or treatment furnished to a patient on the basis of a contractual relationship with the patient or a member of the patient's family, or on the basis of the patient's eligibility for federal, state, or local governmental benefits, and includes any person providing audit or evaluation activities for the third-party payer.
- 23-24. "Treatment facility" or "facility" means any hospital, including the state hospital at Jamestown, or any evaluation and treatment facility that provides directly, or by direct arrangement with other public or private agencies, emergency evaluation and treatment, outpatient care, and inpatient care to individuals who are a person who is mentally ill or a person who is chemically dependent.

SECTION 2. AMENDMENT. Section 25-03.1-07 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-07. Involuntary admission standards.

An individual may not be involuntarily admitted under this chapter to the state hospital or another treatment facility only if unless it is determined ~~that~~ the individual is a person requiring treatment.

SECTION 3. AMENDMENT. Section 25-03.1-17 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-17. Involuntary treatment - Right to preliminary hearing.

1. A respondent who is in custody under section 25-03.1-25 and who is alleged to be a mentally ill person or to be a person who is both mentally ill and chemically dependent is entitled to a preliminary hearing.
 - a. At the preliminary hearing the ~~magistrate court~~ shall review the medical report. During the hearing the court shall allow the petitioner and the respondent ~~must be afforded~~ an opportunity to testify and to present and cross-examine witnesses, and the court may receive the testimony of any other interested person. The ~~magistrate court~~ may receive evidence that would otherwise be inadmissible at a treatment hearing.
 - b. At the conclusion of the hearing, if the court does not find probable cause to believe ~~that~~ the individual is a person requiring treatment, ~~the petition must be dismissed. The individual must be ordered discharged from the court shall dismiss the petition and order the respondent be discharged from the~~ treatment facility if that individual has been the respondent was detained before the hearing.
2. If the court finds probable cause to believe ~~that~~ the respondent is a person requiring treatment, ~~it the court~~ shall consider less restrictive alternatives to involuntary detention and treatment.
 - a. The court may ~~then~~ order the respondent to undergo up to fourteen days' treatment under a less restrictive alternative or, if it the court finds ~~that~~ alternative treatment is only in the best interests of the respondent or

others, ~~it~~ the court shall order the respondent detained for up to fourteen days for involuntary treatment in a treatment facility.

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

SECTION 4. 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~~ the court makes a 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~~ serious risk of harm, 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~~ serious risk of harm, 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~~ respondent undergo another program of alternative treatment for the remainder of the ninety-day period; or
 - c. Enter a new order directing that ~~the individual~~ the respondent be hospitalized until discharged from the hospital under section 25-03.1-30. If the ~~individual~~ respondent refuses to comply with this hospitalization order, the court may direct a peace officer to take the ~~individual~~ respondent into protective custody and transport the respondent to a treatment facility.
3. If a peace officer, physician either in person or directing an emergency medical services professional, ~~psychiatrist, physician assistant, clinical psychologist, advanced practice registered nurse,~~ or any mental health professional reasonably believes that the respondent is not complying with an order for alternative treatment, that the alternative treatment is not sufficient to prevent serious risk of 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 ~~shall~~ immediately shall 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, shall:

- a. Release the ~~individual respondent~~ from hospitalization and continue the alternative treatment order;
 - b. Consider other alternatives to hospitalization, modify ~~its~~ the original order of the court, and direct the ~~individual to respondent~~ 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 5. AMENDMENT. Section 25-03.1-30 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-30. Discharge of hospitalized patient - Transfer to alternative treatment - Termination of alternative treatment.

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

appropriate treatment on a voluntary basis or shall aid the individual to obtain treatment from another source on a voluntary basis.

- a. With the individual's consent, the superintendent or director shall notify the appropriate community agencies or persons of the release and of the suggested release plan. Community agencies include regional mental health centers, state and local counseling services, public and private associations ~~whose~~ the function of which is to assist mentally ill or chemically dependent persons, and the individual's physician.
 - b. The agencies and persons notified of the individual's release shall report to the facility that initial contact with the individual has been accomplished.
6. If, before expiration of an initial treatment order, the superintendent or director determines ~~that~~ a less restrictive form of treatment ~~would be~~ is more appropriate for a patient hospitalized by court order, the superintendent or director may petition the court ~~which~~ that last ordered the patient's hospitalization to modify ~~its~~ the order of the court. The petition must contain statements setting forth the reasons for the determination ~~that~~ the patient continues to ~~require~~ be a person requiring treatment, the reasons for the determination ~~that~~ a less restrictive form of treatment ~~would be~~ is more appropriate for the patient, and describing the recommended treatment program. If the patient consents, ~~the court may~~, without a hearing, the court may modify its the treatment order of the court by directing the patient to undergo the agreed treatment program for the remainder of the treatment order. The patient must be given an opportunity to protest the discharge and modification of treatment order and to receive a hearing on the merits of the protest.

SECTION 6. LEGISLATIVE MANAGEMENT STUDY - REPORT - BEHAVIORAL HEALTH CIVIL COMMITMENT AND INTERVENTION BEFORE VIOLENCE.

1. During the 2019-20 interim, the legislative management shall consider studying the state's civil commitment laws and procedures under chapters 25-03.1 and 25-03.2 and the behavioral health and civil justice systems to determine whether:
 - a. Steps could be taken to prevent and to decrease the incidence of violence committed by persons who are mentally ill, including the temporary removal of firearms;
 - b. Law enforcement has the authority to confiscate a weapon from an individual who appears to be at serious risk of harm and whether this is applied uniformly by law enforcement across the state;
 - c. Our behavioral health and civil justice systems could take steps to be more effective in intervening in the early stages of an individual's mental illness to treat the illness and avoid violence and possible contact with law enforcement; and
 - d. There is a lack of uniformity in how early intervention and civil commitment is implemented across the state, and to the extent there may be a lack of uniformity, to what this lack of uniformity is attributable to and whether education and training of stakeholders may help facilitate more uniformity.

2. If the legislative management conducts this study, the judicial branch shall provide the legislative management with court data necessary to conduct the study, including data from each of the counties in the state regarding civil commitment proceedings and outcomes.
3. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-seventh legislative assembly.

Approved April 25, 2019

Filed April 26, 2019

CHAPTER 227

SENATE BILL NO. 2087

(Judiciary Committee)

(At the request of the Department of Corrections and Rehabilitation)

AN ACT to amend and reenact section 25-03.3-04 of the North Dakota Century Code, relating to record retention of civil commitment of sexually dangerous individuals.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 25-03.3-04 of the North Dakota Century Code is amended and reenacted as follows:

25-03.3-04. Retention of records.

Notwithstanding any other provision of law, all adult and juvenile case files and court records of an alleged offense defined by chapters 12.1-20 and 12.1-27.2 must be retained for ~~fifty~~twenty-five years and made available to any state's attorney for purposes of investigation or proceedings pursuant to this chapter. If the subject of a case file or court record has died before the expiration of the twenty-five-year period, the official, department, or agency possessing the case files and records shall maintain the case files and records in accordance with the case file and records retention policies of that official, department, or agency. For purposes of this section, "adult and juvenile case files" mean the subject's medical, psychological, and treatment clinical assessments, evaluations, and progress reports; offenses in custody records; case notes; and criminal investigation reports and records.

Approved March 28, 2019

Filed March 29, 2019

CHAPTER 228

HOUSE BILL NO. 1517

(Representatives Schneider, Adams, Eidson, Hager, Holman)
(Senator Hogan)

AN ACT to create and enact a new section to chapter 25-04 and a new section to chapter 50-06 of the North Dakota Century Code, relating to program management for residents of the life skills and transition center and regional crisis support services for individuals with an intellectual or developmental disability; to amend and reenact section 25-04-02.1 and subsection 4 of section 50-06-37 of the North Dakota Century Code, relating to accreditation of life skills and transition center and assessment of intellectual or developmental disabilities; and to provide for a report to the legislative management.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 25-04-02.1 of the North Dakota Century Code is amended and reenacted as follows:

25-04-02.1. Accreditation of life skills and transition center.

The department of human services shall request appropriations and resources sufficient to ensure maintenance of the life skills and transition center's accreditation by the accreditation council on services for people with developmental disabilities and certification by the health care financing administration ~~and, if deemed necessary,~~ by similar accrediting and certifying organizations and agencies possessing standards applicable to an individual with a developmental disability and disciplines needed to provide quality services to individuals served.

SECTION 2. A new section to chapter 25-04 of the North Dakota Century Code is created and enacted as follows:

Program management for a resident.

The department shall ensure active program management is maintained for eligible individuals residing at the life skills and transition center.

¹⁰² **SECTION 3. AMENDMENT.** Subsection 4 of section 50-06-37 of the North Dakota Century Code is amended and reenacted as follows:

- ~~4. The department shall contract with a team of support intensity scale assessors by September 1, 2011. The team shall begin assessing immediately the identified client pilot group identified by the consultant contracted in subsection 2. conduct the standardized assessment of eligible individuals residing at the life skills and transition center.~~

SECTION 4. A new section to chapter 50-06 of the North Dakota Century Code is created and enacted as follows:

¹⁰² Section 50-06-37 was also amended by section 1 of Senate Bill No. 2247, chapter 397.

Regional crisis support services for individuals with an intellectual or developmental disability.

The department shall establish regional crisis support services for individuals with an intellectual or developmental disability. The regional crisis support services teams shall provide timely crisis assistance to individuals with an intellectual or developmental disability.

SECTION 5. REPORT TO LEGISLATIVE MANAGEMENT - SYSTEM OF SERVICES FOR INDIVIDUALS WITH AN INTELLECTUAL OR DEVELOPMENTAL DISABILITY. The department of human services shall provide the legislative management a status report on:

1. The ongoing work of the department to improve community provider capacity, including any barriers encountered and policy review; and
2. The system of services for individuals with an intellectual or developmental disability, including a review of the existing service system, funding, and unmet needs.

Approved April 25, 2019

Filed April 26, 2019

CHAPTER 229

HOUSE BILL NO. 1259

(Representatives Satrom, Grueneich, C. Johnson, Jones, Paulson, Schauer)
(Senator Wanzek)

AN ACT to create and enact a new section to chapter 25-13 of the North Dakota Century Code, relating to the misrepresentation of a pet as a service animal; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 25-13 of the North Dakota Century Code is created and enacted as follows:

Service animal - Misrepresentation - Penalty.

An individual is guilty of an infraction if the individual, in an attempt to gain admission to a public place under this chapter or obtain a reasonable housing accommodation under section 47-16-07.5, knowingly makes a false claim that a pet is a service animal.

Approved April 17, 2019

Filed April 18, 2019