

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:

State	Description	Statute	Law
North Dakota	Voluntary admission for treatment	Section 25-03.1-04 Section 25-03.1-06	<p>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.</p> <p>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.</p>
	Both inpatient and outpatient involuntary treatment	Section 25-03.1-07 Section 25-03.1-02(12)	<p>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.</p> <p>"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:</p> <ol style="list-style-type: none"> 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.
	For emergency evaluation	Section 25-03.1-25(1) Section 25-03.1-25(2)	<p>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.</p> <p>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.</p>
	Who may initiate	Section 25-03.1-08 Section 25-03.1-25(1)	<p>For inpatient or outpatient commitment:</p> <p>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.</p> <p>For emergency evaluation:</p> <p>A peace officer, physician, psychiatrist, physician assistant, psychologist, advanced practice registered nurse, or mental health professional.</p>

State	Description	Statute	Law
Iowa	Voluntary admission for treatment	Iowa 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.
	Both inpatient and outpatient involuntary treatment	Section 229.1(16) Section 229.1(17)	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.
	For emergencies	Section 229.11(1) Section 229.22(1)-2(a)	"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. 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.
	Who may initiate	Section 229.6 Section 229.22(2a)	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. 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.
Minnesota	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
	<p>Inpatient involuntary treatment</p>	<p>Section 253B.09(1) Section 253B.02(13) Section 253B.18(a) Section 253B.02(17)(1)</p>	<p>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.</p> <p>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.</p> <p>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:</p> <ol style="list-style-type: none"> 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. <p>A person is not mentally ill under this section if the impairment is solely due to:</p> <ol style="list-style-type: none"> 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. <p>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.</p> <p>A "person who is mentally ill and dangerous to the public" is a person:</p> <ol style="list-style-type: none"> 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.
	<p>Outpatient involuntary treatment</p>	<p>Section 253B.065(5)</p>	<p>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.</p> <p>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.</p> <p>The court shall order early intervention treatment if the court finds all of the elements of the following factors by clear and convincing evidence:</p> <ol style="list-style-type: none"> 1. The proposed patient is mentally ill;

State	Description	Statute	Law
South Dakota	For emergency evaluation	Section 53-21-129(1) Section 53-21-102(7)	<p>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.</p> <p>"Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions.</p> <ol style="list-style-type: none"> 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.
	Who may initiate	Section 53-21-121.(1) Section 53-21-129.(1)	<p>"Emergency situation" means:</p> <ol style="list-style-type: none"> 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. <p>For inpatient or outpatient commitment: 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.</p> <p>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.</p>
	Voluntary admission for treatment	South Dakota Codified Laws Section 27A-8-1	<p>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:</p> <ol style="list-style-type: none"> 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 person's 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. <p>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.</p> <p>A person is subject to involuntary commitment if:</p> <ol style="list-style-type: none"> 1. The person has a severe mental illness;
Both inpatient and outpatient involuntary treatment	Section 27A-1-2		

State	Description	Statute	Law
Wyoming	For emergency evaluation	Section 27A-10-1	<p>2. Due to the severe mental illness, the person is a danger to self or others or has a chronic disability; and</p> <p>3. The individual needs and is likely to benefit from treatment.</p> <p>"Danger to self":</p> <ol style="list-style-type: none"> 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. <p>"Danger to others":</p> <ul style="list-style-type: none"> • 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. <p>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.</p>
	Who may initiate	Section 27A-10-1	<p>For inpatient or outpatient commitment, or emergency evaluation:</p> <p>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.</p>
	Voluntary admission for treatment	Wyoming Statute Section 25-10-106 Section 25-10-107 Section 25-10-108	<p>The head of a hospital may admit 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.</p> <p>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:</p> <ol style="list-style-type: none"> 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. <p>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.</p> <p>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:</p> <ol style="list-style-type: none"> 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)	<p>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.</p>

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.

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 petition is upon 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, 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, a private 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.