

MENTAL AND PHYSICAL ILLNESS OR DISABILITY

CHAPTER 220

HOUSE BILL NO. 1089

(Human Services Committee)
(At the request of the Department of Human Services)

AN ACT to amend and reenact sections 25-01.2-09 and 25-03.1-40 of the North Dakota Century Code, relating to seclusion, restraint, and the prohibition of shock treatment and aversive reinforcement conditioning.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 25-01.2-09 of the North Dakota Century Code is amended and reenacted as follows:

25-01.2-09. Punishment - ~~Isolation~~Seclusion - ~~Physical restraints~~Restraints - Psychosurgery - Sterilization - Shock treatment.

An individual with a developmental disability receiving services at any institution, facility, or individualized setting from a public or private agency or organization may not at any time:

1. Be subjected to any corporal punishment or shock treatment.
2. Be ~~isolated or secluded, except in emergency situations when necessary for the control of violent, disturbed, or depressed behavior which may immediately result, or has resulted, in harm to that~~ ensured immediate physical safety of the individual or other individuals ~~others.~~
3. Be ~~physically restrained in any manner, except in emergency situations when necessary for the control of violent, disturbed, or depressed behavior which may immediately result, or has resulted, in harm to that~~ ensured immediate physical safety of the individual or to other individuals ~~others.~~
4. Be subjected to psychosurgery, sterilization, medical behavioral research, or pharmacological research, except in conformity with an order of a court of competent jurisdiction. Under no circumstances may an individual receiving treatment be subjected to hazardous or intrusive experimental research ~~which that~~ is not directly related to the specific goals of that individual's treatment program.
5. Be subjected to electroconvulsive therapy ~~or shock treatment~~ without that individual's or guardian's written and informed consent. If the recipient of services is a minor, the recipient's parent, custodian, or guardian may provide informed consent for that treatment, which the parent, custodian, or guardian believes to be in the recipient's best interests.

SECTION 2. AMENDMENT. Section 25-03.1-40 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-40. Rights of patients.

Each patient of a treatment facility retains the following rights, subject only to the limitations and restrictions authorized by section 25-03.1-41. A patient has the right:

1. To receive appropriate treatment for mental and physical ailments and for the prevention of illness or disability.
2. To the least restrictive conditions necessary to achieve the purposes of treatment.
3. To be treated with dignity and respect.
4. To be free from unnecessary restraint and isolation.
5. To visitation and telephone communications.
6. To send and receive sealed mail.
7. To keep and use personal clothing and possessions.
8. To regular opportunities for outdoor physical exercise.
9. To be free to exercise religious faith of choice.
10. To be free from unnecessary medication.
11. To exercise all civil rights, including the right of habeas corpus.
12. Not to be subjected to experimental research without the express and informed written consent of the patient or of the patient's guardian.
13. Not to be subjected to psychosurgery; or electroconvulsive treatment; ~~or aversive reinforcement conditioning~~; without the express and informed written consent of the patient or of the patient's guardian.
14. In a manner appropriate to the patient's capabilities, to ongoing participation in the planning of services.
15. Not to be required to participate in the development of an individual treatment plan.
16. To be free from aversive reinforcement conditioning.

Approved March 9, 2021

Filed March 10, 2021

CHAPTER 221

SENATE BILL NO. 2134

(Senators Lee, K. Roers)
(Representative Dobervich)

AN ACT to amend and reenact sections 25-01.3-01, 25-01.3-06, and 25-01.3-08 of the North Dakota Century Code, relating to duties of the protection and advocacy project.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 25-01.3-01 of the North Dakota Century Code is amended and reenacted as follows:

25-01.3-01. Definitions.

In sections 25-01.3-01 through 25-01.3-12, unless the context otherwise requires:

1. "Abuse" means:
 - a. Willful use of offensive, abusive, or demeaning language by a caretaker that causes mental anguish of any person with developmental disabilities;
 - b. Knowing, reckless, or intentional acts or failures to act which cause injury or death to a developmentally disabled or mentally ill person or which placed that person at risk of injury or death;
 - c. Rape or sexual assault of a developmentally disabled or mentally ill person;
 - d. Corporal punishment or striking of a developmentally disabled or mentally ill person;
 - e. Unauthorized use or the use of excessive force in the placement of bodily restraints on a developmentally disabled or mentally ill person; and
 - f. Use of bodily or chemical restraints on a developmentally disabled or mentally ill person which is not in compliance with federal or state laws and administrative regulations.
2. "Advocacy" means action to assist or represent a person or group of persons with developmental disabilities or mental illnesses in securing their rights, obtaining needed services, investigating complaints, and removing barriers to identified needs.
3. "Advocate" means an employee of the project.
4. "Caretaker" means a person, organization, association, or facility who has assumed legal responsibility or a contractual obligation for the care of a person with developmental disabilities or mental illness, or a parent, spouse,

- sibling, other relative, or person who has voluntarily assumed responsibility for the person's care.
5. "Committee" means the committee on protection and advocacy.
 6. "Complaint" means an allegation of a violation of human or legal rights, or a lack of needed services, which is not a report of abuse, neglect, or exploitation.
 7. "Developmental disability" is a disability as defined in section 25-01.2-01.
 8. "Eligibility for services" means persons eligible for services of the project, including:
 - a. An adult with developmental disabilities.
 - b. An adult suffering from a mental illness who is an inpatient or resident in a facility rendering care or treatment, even if the location of the person is unknown.
 - c. An adult suffering from a mental illness who is in the process of being admitted to a facility rendering care or treatment, including persons being transported to such a facility.
 - d. An adult suffering from a mental illness who within the last ninety days was an inpatient or resident of a facility rendering care or treatment.
 - e. A child with developmental disabilities or a child with mental illness who meets the criteria of subdivision b, c, or d is eligible for advocacy services.
 - f. A child with developmental disabilities or mental illness who is not an abused or neglected child as defined in chapter 50-25.1 is eligible for protective services.
 9. "Exploitation", when committed by a caretaker or relative of, or any person in a fiduciary relationship with, a person with developmental disabilities or mental illness, means:
 - a. The taking or misuse of property or resources of a person with developmental disabilities or mental illness by means of undue influence, breach of fiduciary relationship, deception, harassment, criminal coercion, theft, or other unlawful or improper means;
 - b. The use of the services of a person with developmental disabilities or mental illness without just compensation; or
 - c. The use of a person with developmental disabilities or mental illness for the entertainment or sexual gratification of others under circumstances that cause degradation, humiliation, or mental anguish to the person with developmental disabilities or mental illness.
 10. "Facility" means a school, residence center, group home, nursing home, foster home, boarding home, or other facility operated by any public or private agency, organization, or institution, which provides services to a person with developmental disabilities or mental illness.

11. "Individually identifiable health information" and "personal representative" have the meaning set forth in title 45, Code of Federal Regulations, part 160, section 103 and part 164, section 5-02, subsection g, respectively.
12. "Mental health professional" means a mental health professional as defined in section 25-03.1-02.
13. "Mental illness" means significant mental illness or emotional impairment as determined by a mental health professional.
14. "Neglect" means:
 - a. Inability of a person with developmental disabilities or mental illness to provide food, shelter, clothing, health care, or services necessary to maintain the mental and physical health of that person;
 - b. Failure by any caretaker of a person with developmental disabilities or mental illness to meet, either by commission or omission, any statutory obligation, court order, administrative rule or regulation, policy, procedure, or minimally accepted standard for care of persons with developmental disabilities or mental illnesses;
 - c. Negligent act or omission by any caretaker which causes injury or death to a person with developmental disabilities or mental illness or which places that person at risk of injury or death;
 - d. Failure by any caretaker, who is required by law or administrative rule, to establish or carry out an appropriate individual program or treatment plan for a person with developmental disabilities or mental illness;
 - e. Failure by any caretaker to provide adequate nutrition, clothing, or health care to a person with developmental disabilities or mental illness;
 - f. Failure by any caretaker to provide a safe environment for a person with developmental disabilities or mental illness; and
 - g. Failure by any caretaker to maintain adequate numbers of appropriately trained staff at a facility providing care and services for persons with developmental disabilities or mental illnesses.
15. "Other appropriate remedies" means remedies achieved through alternative dispute resolution, such as discussion, education, conciliation, and mediation.
16. "Project" means the protection and advocacy project.
- ~~46-17.~~ "Protective services" means actions to assist persons with developmental disabilities or mental illnesses who are unable to manage their own resources or to protect themselves from abuse, neglect, exploitation, or other hazards.
- ~~47-18.~~ "Report" means a verbal or written communication, including an anonymous communication, alleging the abuse, neglect, or exploitation of a person with developmental disabilities or mental illness.

SECTION 2. AMENDMENT. Section 25-01.3-06 of the North Dakota Century Code is amended and reenacted as follows:

25-01.3-06. Authority of project - Annual report.

1. Pursuant to rules adopted by the committee, the project, within the limits of legislative appropriations, shall provide advocacy and protective services for persons with developmental disabilities and persons with mental illnesses. The rules adopted by the committee relating to the need for the consent of the client must balance the rights of persons with developmental disabilities or mental illnesses to privacy and to refuse services under section 25-01.3-11 with the committee's duties to protect the human and legal rights of persons eligible for services and to monitor facilities for compliance with federal and state laws and rules.
2. The project may:
 1. a. Represent persons with developmental disabilities or mental illnesses so ~~that they~~the persons may realize the rights and services to which they are entitled.
 2. b. Investigate complaints and reports if the alleged incidents are reported to the committee or the project or if there is probable cause to believe ~~that~~ the incidents occurred.
 3. c. Monitor individual habilitation or treatment plans, program plans, educational plans, facilities and programs, and all other services and care provided to persons with developmental disabilities or mental illnesses.
 4. d. Employ counsel to represent clients to pursue legal, administrative, voluntary compliance, and other appropriate remedies to ensure the protection of the rights of persons with developmental disabilities or mental illnesses, and employ counsel to represent the project or the committee when, in the opinion of the attorney general, a conflict of interest under the North Dakota Rules of Professional Conduct exists between the office of attorney general and the committee or the project, and the conflict cannot be avoided by the appointment of counsel under subsection 3 of section 54-12-01 or section 54-12-08.
 5. e. Pursue legal, administrative, voluntary compliance, and other appropriate remedies to ensure the protection and the rights of persons with developmental disabilities or mental illnesses. ~~Prior to~~Before instituting ~~any~~ legal action in a federal or state court on behalf of a person with developmental disabilities or mental illnesses, the project shall exhaust in a timely manner all administrative remedies if appropriate. If, in pursuing administrative remedies, the project determines ~~that any~~ a matter with respect to that person will not be resolved within a reasonable time, the project may pursue alternative remedies, including the initiation of a legal action with the consent of the committee. However, exhaustion of administrative remedies is not a prerequisite to initiation of a legal action ~~when~~if that action is instituted to prevent or eliminate imminent serious harm to a person with developmental disabilities or mental illnesses.
 6. f. Sign ~~any~~ a criminal complaint necessary to protect the interests of ~~any~~ a person with developmental disabilities or mental illness, or group of persons with developmental disabilities or mental illnesses, who appear to have been victimized by or subjected to criminal conduct.

7. g. Review each annual survey report and plan of corrections for cited deficiencies made pursuant to titles XVIII and XIX of the Social Security Act with respect to any facility rendering care or treatment to persons with developmental disabilities or mental illnesses.
8. h. Provide the public, on an annual basis, an opportunity to comment on the priorities established by, and the activities of the committee.
9. i. Establish a grievance procedure for clients or prospective clients to ensure that persons with developmental disabilities or mental illnesses have full access to the services of the committee.
10. j. Prepare an annual report to the legislative assembly and the governor describing the priorities, activities, accomplishments, and expenditures of the system.
11. k. Provide information on and referral to programs and services addressing the needs of persons with developmental disabilities or mental illnesses.
12. l. Accept and administer gifts, grants, or contracts with ~~persons~~individuals or organizations, including the federal government, on such terms as may be beneficial to the state.
13. m. Contract with any person, public or private, to carry out any responsibilities of the project under this chapter and section 25-01-01.1.
3. The project shall use the report, complaint, and investigation process to assess the opportunity for voluntary compliance and other appropriate remedies.

SECTION 3. AMENDMENT. Section 25-01.3-08 of the North Dakota Century Code is amended and reenacted as follows:

25-01.3-08. Investigation of reports and complaints.

1. Upon receipt of any report of suspected abuse, neglect, exploitation, or a complaint made pursuant to sections 25-01.3-01 through 25-01.3-12, the project shall assess the need for an investigation of the report or complaint. If the project determines that the report or complaint is warranted, the project shall investigate or cause the report or complaint to be investigated. For the purpose of investigating a report or a complaint, the project may:
 - a. Interview the alleged victim who has developmental disabilities or mental illness at any time of the day or night, with or without notice.
 - b. Interview any other individual who may have knowledge of the situation.
 - c. Access all locations under the control of the caretaker where records or other information exist, including the residence of the alleged victim.
 - d. Coordinate investigations with other agencies, departments, or other entities providing services necessary or advisable for the person with developmental disabilities or mental illness.
 - e. Delegate investigatory powers to the extent necessary and appropriate to any ~~person~~individual or entity.

2. This section does not limit the responsibilities of law enforcement agencies to enforce the laws of this state or preclude law enforcement agencies from investigating, as appropriate, any alleged criminal conduct.
3. This section does not prohibit the project from assessing the opportunity for voluntary compliance and other appropriate remedies in the course of investigating a report or complaint.

Approved March 22, 2021

Filed March 23, 2021

CHAPTER 222

HOUSE BILL NO. 1117

(Representatives Klemin, Buffalo, Hanson, Heinert, Jones, Karls, Roers Jones)
(Senators Bakke, Dwyer, Larson)

AN ACT to amend and reenact sections 25-03.1-03.1, 25-03.1-06, 25-03.1-08, 25-03.1-15, and 25-03.1-19, subsection 2 of section 25-03.1-21, and sections 25-03.1-22, 25-03.1-23, and 25-03.1-29 of the North Dakota Century Code, relating to commitment procedures.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

25-03.1-03.1. Disclosure of health information.

A treating facility or mental health professional may disclose individually identifiable health information to a court, regional human service center, state's attorney, appointed counsel, retained counsel, or other mental health professional, including an expert examiner, and the disclosure is a disclosure for treatment, including the provision, coordination, and management of health care and to carry out the purposes of ~~chapter 25-03.1~~this chapter.

SECTION 2. AMENDMENT. Section 25-03.1-06 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-06. Right to release on application - Exception - Judicial proceedings.

~~Any~~An individual voluntarily admitted for inpatient treatment to ~~any~~a treatment facility or the state hospital must be orally advised of the right to release and must be further advised in writing of the rights under this chapter. A voluntary patient who requests release must be immediately released. However, if the superintendent or the director determines that the patient is a person requiring treatment, the release may be postponed until a petition for involuntary commitment has been filed with the clerk of court and judicial proceedings for involuntary treatment have been held in the county wherein which the hospital or facility is located. The patient must be served the petition within twenty-four hours, exclusive of weekends and holidays, from the time release is requested, unless extended by the magistrate for good cause shown. The treatment hearing must be held within seven days from the time the petition is served.

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

25-03.1-08. Application to state's attorney or retained attorney - Petition for involuntary treatment - Investigation by mental health professional.

1. ~~Any~~An individual eighteen years of age or over shall present, in good faith, the information necessary for the commitment of an individual for involuntary treatment to the state's attorney of the county wherein which the respondent is

presently located, or which is the respondent's place of residence, or to an attorney retained by that applicant the petitioner to represent the applicant petitioner throughout the proceedings. The attorney shall assist the applicant petitioner in completing the petition. The petition must be verified by affidavit of the applicant petitioner and contain assertions that the respondent is a person requiring the treatment; the facts, in detail, that are the basis of that assertion; the names, telephone numbers, and addresses, if known, of any witnesses to those facts; and, if known, the name, telephone number, and address of the nearest relative or guardian of the respondent, or, if none, of a friend of the respondent.

2. The petition may be accompanied by any of the following:
 - a. A written statement supporting the petition from a tier 1 mental health professional or an addiction counselor who is practicing within the professional scope of practice and who has personally examined the respondent within forty-five days of the date of the petition.
 - b. One or more supporting affidavits otherwise corroborating the petition.
3. In assisting the applicant petitioner in completing the petition, the state's attorney may direct a tier 1 or tier 2 mental health professional designated by the regional human service center to investigate and evaluate the specific facts alleged by the applicant petitioner. The investigation must be completed as promptly as possible and include observations of and conversation with the respondent, unless the respondent cannot be found or refuses to meet with the mental health professional. A written report of the results of the investigation must be delivered to the state's attorney. Copies of the report must be made available upon request to the respondent, the respondent's counsel, and any expert examiner conducting an examination under section 25-03.1-11. The state's attorney or retained attorney shall file the petition if the information provided by the petitioner or gathered by investigation provides probable cause to believe the subject of the petition is a person requiring treatment. A state's attorney who determines there are insufficient grounds for filing a petition may refer the applicant individual to other community resources. A state's attorney's decision not to institute proceedings may be reviewed under section 11-16-06.

SECTION 4. AMENDMENT. Section 25-03.1-15 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-15. Respondent's attendance at hearings.

The respondent must be present at all hearings unless the respondent waives the right to be present either orally or in writing. A respondent's refusal to attend a hearing is presumed to be a waiver of the right to be present at the hearing. The judge must be notified if the respondent has been medicated within twenty-four hours of the beginning of the hearing or an adjourned session thereof the hearing, and of the probable effects of the medication.

¹⁴⁸ **SECTION 5. AMENDMENT.** Section 25-03.1-19 of the North Dakota Century Code is amended and reenacted as follows:

¹⁴⁸ Section 25-03.1-19 was also amended by section 3 of House Bill No. 1034, chapter 223.

25-03.1-19. Involuntary treatment hearing.

1. The involuntary treatment hearing, unless waived by the respondent or the respondent has been released as a person not requiring treatment, must be held within fourteen 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 expert examiner's report, not to exceed fourteen days from the time the petition was served. The court may extend the time for hearing for good cause. The respondent has the right to an examination by an independent expert examiner if so requested. If the respondent is indigent, the county of residence of the respondent shall pay for the cost of the examination and the respondent may choose an independent expert examiner.
2. The hearing must be held in the county of the respondent's residence or location or the county wherein which the state hospital or treatment facility treating the respondent is located, if the respondent requests a change of venue. 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. During the hearing, 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 other interested person. All individuals not necessary for the conduct of the proceeding must be excluded, except that the court may admit individuals having a legitimate interest in the proceeding. The hearing must be conducted in as informal a manner as practical, but the issue must be tried as a civil matter. Discovery and the power of subpoena permitted under the North Dakota Rules of Civil Procedure are available to the respondent. The court shall receive all relevant and material evidence that may be offered as governed by the North Dakota Rules of Evidence. There is a presumption in favor of the respondent, and the burden of proof in support of the petition is upon the petitioner.
3. If, upon completion of the hearing, the court finds that the petition has not been sustained by clear and convincing evidence, the court shall deny the petition, terminate the proceeding, and order that the respondent be discharged if the respondent has been hospitalized before the hearing.

SECTION 6. AMENDMENT. Subsection 2 of section 25-03.1-21 of the North Dakota Century Code is amended and reenacted as follows:

2. If the respondent is not complying with the alternative treatment order or the alternative treatment has not been sufficient to prevent 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 and served on the respondent. Based upon the evidence presented at the 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 respondent undergo another program of alternative treatment for the remainder of the ninety-day period; or

- c. Enter a new order directing the respondent be hospitalized until discharged from the hospital under section 25-03.1-30. If the respondent refuses to comply with this hospitalization order, the court may direct a peace officer to take the respondent into protective custody and transport the respondent to a treatment facility.

SECTION 7. AMENDMENT. Section 25-03.1-22 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-22. Length of involuntary and continuing treatment orders.

1. An ~~initial~~ order for involuntary treatment following a preliminary hearing may not exceed ~~ninetyfourteen~~ days. An order for involuntary treatment following a treatment hearing may not exceed ninety days.
2. If the director or superintendent believes ~~that~~ a patient continues to require treatment, the director or superintendent ~~shall~~, not less than fourteen days before the expiration of the initial order, shall 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, which order may be for a period not to exceed one year. The court shall set a hearing date that must be within fourteen days after the petition was filed, unless extended for good cause shown.
3. ~~Unless extended under section 25-03.1-31, continuing treatment orders of indefinite duration issued before August 1, 1993, expire as follows:~~
 - a. ~~Those orders issued before August 1, 1991, expire September 30, 1993.~~
 - b. ~~Those orders issued from August 1, 1991, through July 31, 1992, expire December 31, 1993.~~
 - c. ~~Those orders issued from August 1, 1992, through August 1, 1993, expire on their first anniversaries or on March 31, 1994, whichever is later.~~
4. A respondent subject to a continuing treatment order of indefinite duration retains the rights to periodic review and to petition for discharge under section 25-03.1-31 as that section existed on July 31, 1993.

SECTION 8. AMENDMENT. Section 25-03.1-23 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-23. Petition for continuing treatment orders.

A petition for an order authorizing continuing treatment must contain a statement setting forth the ~~reasons for~~specific facts that are the basis of 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 that 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.

SECTION 9. AMENDMENT. Section 25-03.1-29 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-29. Appeal.

1. The respondent has the right to an expedited appeal from an order of involuntary commitment or alternative treatment, an order modifying a treatment order, an alternative treatment order or less restrictive treatment order, a continuing treatment order, an order denying a petition for discharge, or an order of transfer. Upon entry of an appealable order, the court shall notify the respondent of the right of appeal and the right to counsel. The notice of appeal must be filed within thirty days after the order has been entered. Such appeal must be to the supreme court and the hearing must be commenced within fourteen days of filing of the notice of appeal. The hearing must be limited to a review of the procedures, findings, and conclusions of the lower court. The name of the respondent may not appear on the record on appeal.
2. Pending appeal, the order appealed from ~~shall remain~~remains in effect, unless the supreme court determines otherwise. The respondent may not be denied the opportunity to be present at the appeal hearing, and the court conducting the appeal may issue such interim order as will assure this opportunity to the respondent while protecting the interest sought to be served by the order appealed from.

Approved April 21, 2021

Filed April 22, 2021

CHAPTER 223

HOUSE BILL NO. 1034

(Legislative Management)
(Judiciary Committee)

AN ACT to amend and reenact sections 25-03.1-11, 25-03.1-17, 25-03.1-19, 25-03.1-26, 25-03.1-27, 25-03.1-30, 25-03.1-34, and 25-03.1-42 of the North Dakota Century Code, relating to preliminary treatment and involuntary treatment hearings and references to an individual who is chemically dependent; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 25-03.1-11 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-11. Involuntary treatment - Examination - Report.

1. 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 the emergency treatment provisions of this chapter, the examination must be conducted within the time limitations set forth in section 25-03.1-26. Any expert examiner conducting an examination under this section may consult with or request participation in the examination by any mental health professional and may include with the written examination report any findings or observations by that mental health professional. This examination report, and that of the independent examiner, if one has been requested, must be filed with the court and immediately sent to the petitioner and the respondent. The report must contain:
 - a. Evaluations of the respondent's physical condition and mental status.
 - b. A conclusion as to whether the respondent is a person requiring treatment, with a clear explanation of how that conclusion was derived from the evaluation.
 - c. If the report concludes the respondent is a person requiring treatment, a list of available forms of care and treatment that may serve as alternatives to involuntary hospitalization.
 - d. The signature of the examiner who prepared the report.
2. For purposes of any examination conducted pursuant to this section:
 - a. An evaluation of a respondent's physical condition may be made only by a tier 1b mental health professional.
 - b. An evaluation of a respondent's mental status may be made only by a tier 1 mental health professional.

- c. An evaluation of whether the respondent is ~~chemically dependent~~ an individual with a substance use disorder may be made only by a tier 1 mental health professional or a licensed addiction counselor.
3. If the expert examiner concludes the respondent is not a person requiring treatment, the court may without taking any other additional action terminate the proceedings and dismiss the petition. If the expert examiner concludes the respondent is a person requiring treatment, or makes no conclusion whether the respondent is a person requiring treatment, the court shall set a date for hearing and shall give notice of hearing to the persons designated in section 25-03.1-12. If the respondent is in custody and is alleged to be a person who is mentally ill or a person who is both mentally ill and ~~chemically dependent~~ has a substance use disorder, the preliminary hearing date must be within four days, exclusive of weekends and holidays, of the date the respondent was taken into custody through emergency commitment under section 25-03.1-25 unless a delay or continuance is concurred in by the respondent or unless extended by the magistrate for good cause shown. 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 expert examiner's report, not to exceed fourteen days from the time the petition was served.

SECTION 2. 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~~ has a substance use disorder is entitled to a preliminary hearing.
 - a. At the preliminary hearing the court shall review the medical report. During the hearing the court shall allow the petitioner and the respondent an opportunity to testify and to present and cross-examine witnesses, and the court may receive the testimony of any other interested person. The 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 the individual is a person requiring treatment, the court shall dismiss the petition and order the respondent be discharged from the treatment facility if the respondent was detained before the hearing.
2. If the court finds probable cause to believe the respondent is a person requiring treatment, the court shall consider less restrictive alternatives to involuntary detention and treatment.
 - a. The court may order the respondent to undergo up to fourteen days' treatment under a less restrictive alternative or, if the court finds alternative treatment is not in the best interests of the respondent or others, 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.

3. Except for good cause, the court may not consider medical records relating to the respondent, unless the petitioner and respondent receive the medical records at least twenty-four hours before the hearing.

¹⁴⁹ **SECTION 3. AMENDMENT.** Section 25-03.1-19 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-19. Involuntary treatment hearing.

1. The involuntary treatment hearing, unless waived by the respondent or the respondent has been released as a person not requiring treatment, must be held within fourteen 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 expert examiner's report, not to exceed fourteen days from the time the petition was served. The court may extend the time for hearing for good cause. The respondent has the right to an examination by an independent expert examiner if so requested. If the respondent is indigent, the county of residence of the respondent shall pay for the cost of the examination and the respondent may choose an independent expert examiner.
2. The hearing must be held in the county of the respondent's residence or location or 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. During the hearing, 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 other interested person. All individuals not necessary for the conduct of the proceeding must be excluded, except that the court may admit individuals having a legitimate interest in the proceeding. The hearing must be conducted in as informal a manner as practical, but the issue must be tried as a civil matter. Discovery and the power of subpoena permitted under the North Dakota Rules of Civil Procedure are available to the respondent. The court shall receive all relevant and material evidence that may be offered as governed by the North Dakota Rules of Evidence. There is a presumption in favor of the respondent, and the burden of proof in support of the petition is upon the petitioner.
3. If, upon completion of the hearing, the court finds that the petition has not been sustained by clear and convincing evidence, the court shall deny the petition, terminate the proceeding, and order that the respondent be discharged if the respondent has been hospitalized before the hearing.
4. Except for good cause, the court may not consider a medical record or expert examiner's report relating to the respondent unless the petitioner and respondent receive the medical record or the expert examiner's report at least twenty-four hours before the hearing.

SECTION 4. AMENDMENT. Section 25-03.1-26 of the North Dakota Century Code is amended and reenacted as follows:

¹⁴⁹ Section 25-03.1-19 was also amended by section 5 of House Bill No. 1117, chapter 222.

25-03.1-26. Emergency procedure - Acceptance of petition and individual - Notice - Court hearing set.

1. A public treatment facility immediately shall accept and a private treatment facility may accept on a provisional basis the application and the individual admitted under section 25-03.1-25. The superintendent or director shall require an immediate examination of the subject and, either within twenty-four hours, exclusive of holidays, after admission or within seventy-two hours after admission, exclusive of holidays, if the individual is admitted with a serious physical condition or illness that requires prompt treatment, shall either:
 - a. Release the individual if the superintendent or director finds that the subject does not meet the emergency commitment standards; or
 - b. File a petition if one has not been filed with the court of the individual's residence or the court which directed immediate custody under subsection 2 of section 25-03.1-25, giving notice to the court and stating in detail the circumstances and facts of the case.
2. Upon receipt of the petition and notice of the emergency detention, the magistrate shall set a date for a preliminary hearing, if the respondent is alleged to be a person who is mentally ill or a person who is both mentally ill and ~~chemically dependent~~has a substance use disorder, or a treatment hearing, if the respondent is alleged to be a person who is ~~chemically dependent~~has a substance use disorder, to be held no later than four days, exclusive of weekends and holidays, after detention unless the person 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 magistrate for good cause shown. The magistrate shall appoint counsel if one has not been retained by the respondent.

SECTION 5. AMENDMENT. Section 25-03.1-27 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-27. Notice and statement of rights.

1. ~~When~~If an individual is detained for emergency evaluation and treatment under this chapter, the superintendent or director shall cause both the patient and, if possible, a responsible member of the patient's immediate family, a guardian, or a friend, if any, to receive:
 - a. A copy of the petition ~~which~~that asserted that the individual is a person requiring treatment.
 - b. A written statement explaining that the individual will be examined by an expert examiner within twenty-four hours of hospitalization, excluding holidays.
 - c. A written statement in simple terms explaining the rights of the individual alleged to be a person who is mentally ill or a person who is both mentally ill and ~~chemically dependent~~has a substance use disorder to a preliminary hearing, to be present at the hearing, and to be represented by legal counsel, if the individual is certified by an expert examiner or examiners as a person requiring treatment.

- d. A written statement in simple terms explaining the rights of the individual to a treatment hearing, to be present at the hearing, to be represented by legal counsel, and the right to an independent medical evaluation.
2. If the individual is unable to read or understand the written materials, every reasonable effort must be made to explain the written material in a language the individual understands, and a note of the explanation and by whom made must be entered into the patient record.

SECTION 6. 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 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 if 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 of the discharge.
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 if 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 the function of which is to assist persons who are mentally ill or chemically dependent persons~~individuals with a substance use disorder~~, 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 a less restrictive form of treatment is more appropriate for a patient hospitalized by court order, the superintendent or director may petition the court that last ordered the patient's hospitalization to modify the order of the court. The petition must contain statements setting forth the reasons for the determination the patient continues to be a person requiring treatment, the

reasons for the determination a less restrictive form of treatment is more appropriate for the patient, and describing the recommended treatment program. If the patient consents, without a hearing, the court may modify 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 7. AMENDMENT. Section 25-03.1-34 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-34. Transfer of patients.

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

SECTION 8. AMENDMENT. Section 25-03.1-42 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-42. Limitation of liability - Penalty for false petition.

1. A person acting in good faith upon either actual knowledge or reliable information which makes the petition for involuntary treatment of an individual under this chapter is not subject to civil or criminal liability.
2. A physician, physician assistant, psychiatrist, psychologist, advanced practice registered nurse, mental health professional, employee of a treatment facility, state's attorney, or peace officer who in good faith exercises professional judgment in fulfilling an obligation or discretionary responsibility under this chapter is not subject to civil or criminal liability for acting unless it can be shown that it was done in a negligent manner.
3. A person that makes a petition for involuntary treatment of an individual without having good cause to believe that the individual is a person who is both mentally ill and ~~chemically dependent~~has a substance use disorder and as a result is likely to cause serious harm to self or others is guilty of a class A misdemeanor.

Approved April 8, 2021

Filed April 9, 2021

CHAPTER 224

SENATE BILL NO. 2199

(Senators K. Roers, Kreun, Lee)
(Representatives Dobervich, Klemin, Westlind)

AN ACT to amend and reenact subsection 5 of section 25-03.1-34.2 of the North Dakota Century Code, relating to interstate contracts for the treatment of mental illness or substance use disorders.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 25-03.1-34.2 of the North Dakota Century Code is amended and reenacted as follows:

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~~may 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 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~~the residents 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.

Approved March 23, 2021

Filed March 24, 2021

CHAPTER 225

HOUSE BILL NO. 1230

(Representatives Satrom, Jones, K. Koppelman)
(Senators Conley, Myrdal)

AN ACT to amend and reenact section 25-13-01.1 of the North Dakota Century Code, relating to the definition of a service animal.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 25-13-01.1 of the North Dakota Century Code is amended and reenacted as follows:

25-13-01.1. Definitions.

For purposes of this chapter "service animal" means any ~~guide dog, signal dog, or other animal~~ trained to do work, perform tasks, or provide assistance for the benefit of an individual with a disability. The term includes ~~an animal~~ a dog trained to provide assistance ~~or protection services~~ to an individual with a disability, pull a wheelchair, lend balance support, retrieve dropped objects, or provide assistance in a medical crisis.

Approved March 22, 2021

Filed March 23, 2021