

**Fifty-ninth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2005**

HOUSE BILL NO. 1289
(Representatives DeKrey, Delmore, Horter)
(Senators Hacker, Syverson, Triplett)

AN ACT to amend and reenact section 25-03.3-03, subsection 4 of section 25-03.3-03.1, and sections 25-03.3-05, 25-03.3-11, and 25-03.3-13 of the North Dakota Century Code, relating to making evidence presented at a commitment hearing, preliminary hearing, or commitment proceeding of a sexually dangerous individual open, notice to the attorney general, and the release of medically identifiable health information.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 25-03.3-03 of the North Dakota Century Code is amended and reenacted as follows:

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

1. If it appears that an individual is a sexually dangerous individual, the state's attorney may file a petition in the district court alleging that the individual is a sexually dangerous individual and stating sufficient facts to support the allegation.
2. ~~Except for an order of the court committing a respondent for treatment or an order of the court discharging an individual from treatment and as provided in this section, the~~ The petition and all further records and proceedings under this chapter any proceeding under section 25-03.3-11 are confidential and are not public records or proceedings under sections 44-04-18 and 44-04-19 and sections 5 and 6 of article XI of the Constitution of North Dakota. The court may permit access to a respondent's records or proceedings under this chapter to the respondent's guardian, guardian ad litem, or other similarly situated individual. The court may permit access to information in the respondent's records to other individuals who require the information for use in performing official governmental duties. Notwithstanding any other provision of law, proceedings under section 25-03.3-13 and any evidence introduced or presented to the court for any such proceeding are required to be open to the public, with the exception of a proceeding involving an individual who has not been convicted of a sexual act as defined in section 25-03.3-01. The protections of subsection 10 of section 12.1-34-02 and section 12.1-35-03 apply to any records or proceedings under this chapter.

SECTION 2. AMENDMENT. Subsection 4 of section 25-03.3-03.1 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 3. AMENDMENT. Section 25-03.3-05 of the North Dakota Century Code is amended and reenacted as follows:

25-03.3-05. Abrogation of confidentiality statutes and privileges.

1. Notwithstanding any other provision of law requiring confidentiality of information about individuals receiving care, custody, education, treatment, or any other services from the state or any political subdivision, any confidential information about a respondent or committed individual must be released to a state's attorney for proceedings pursuant to

this chapter unless release results in the loss of federal funds. The physician-patient privilege and psychotherapist-patient privilege do not apply to communications relevant to an issue in proceedings to commit an individual as a sexually dangerous person if the physician or psychotherapist in the course of diagnosis or treatment determines the patient is in need of commitment and to communications with a committed individual. The provision of any confidential or privileged information to the state's attorney does not render the state, any political subdivision, or any state or political subdivision official or employee, or other person liable pursuant to any criminal or civil law relating to confidentiality or privilege.

2. For purposes of this chapter, a treating facility or mental health professional shall, if requested, disclose individually identifiable health information to a court, the state hospital, state's attorney, retained counsel, or other mental health professional, including an expert examiner, and the disclosure is a disclosure for treatment.

SECTION 4. AMENDMENT. Section 25-03.3-11 of the North Dakota Century Code is amended and reenacted as follows:

25-03.3-11. Preliminary hearing - Probable cause. The respondent is entitled to a preliminary hearing within seventy-two hours of being taken into custody pursuant to an order of the court, excluding weekends and holidays, unless the respondent knowingly waives the preliminary hearing pursuant to section 25-03.3-09. The respondent has a right to be present, to testify, and to present and cross-examine witnesses at any preliminary hearing. The court may receive evidence that would otherwise be inadmissible at a commitment hearing. ~~Every individual not necessary must be excluded, except that the court may admit any individual having a legitimate interest in the proceeding.~~ If the court determines after a preliminary hearing that there is probable cause to believe the respondent is a sexually dangerous individual, the court shall order that the respondent be transferred to an appropriate treatment facility for an evaluation as to whether the respondent has a congenital or acquired condition that is manifested by a sexual disorder, a personality disorder, or other mental disorder or dysfunction that makes the respondent likely to engage in further acts of sexually predatory conduct. If the court determines that probable cause does not exist to believe that the respondent is a sexually dangerous individual, the court shall dismiss the petition. If the respondent waives the preliminary hearing, then the respondent must be immediately transferred to an appropriate treatment facility for an evaluation as to whether the respondent has a congenital or acquired condition that is manifested by a sexual disorder, a personality disorder, or other mental disorder or dysfunction that makes the respondent likely to engage in further acts of sexually predatory conduct. An individual with mental retardation may be evaluated under this chapter at a facility only if that facility provides care and treatment to individuals with mental retardation.

SECTION 5. AMENDMENT. Section 25-03.3-13 of the North Dakota Century Code is amended and reenacted as follows:

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

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

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-ninth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1289.

House Vote: Yeas 92 Nays 0 Absent 2

Senate Vote: Yeas 44 Nays 1 Absent 2

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2005.

Approved at _____ M. on _____, 2005.

Governor

Filed in this office this _____ day of _____, 2005,

at _____ o'clock _____ M.

Secretary of State