

SENATE BILL NO. 2136

Introduced by

Judiciary Committee

(At the request of the Department of Human Services)

1 A BILL for an Act to create and enact a new subsection to section 54-23.3-02 and a new
2 subsection to section 54-23.3-04 of the North Dakota Century Code, relating to responsibilities
3 of the department of corrections and rehabilitation regarding the civil commitment of sexually
4 dangerous individuals; to amend and reenact subsection 2 of section 25-03.3-01, section
5 25-03.3-07, subsection 1 of section 25-03.3-08, and sections 25-03.3-12, 25-03.3-13,
6 25-03.3-14, 25-03.3-17, 25-03.3-18, 25-03.3-21, 25-03.3-24, and 54-23.3-01 of the North
7 Dakota Century Code, relating to transferring certain responsibilities for the commitment of
8 sexually dangerous individuals from the department of human services to the department of
9 corrections and rehabilitation; to repeal section 25-03.3-22 of the North Dakota Century Code,
10 relating to rules for the commitment of sexually dangerous individuals; to provide for the transfer
11 of ownership of the Gronewald Middleton building on the grounds of the state hospital; to
12 provide an appropriation; and to provide an effective date.

13 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

14 **SECTION 1. AMENDMENT.** Subsection 2 of section 25-03.3-01 of the North Dakota
15 Century Code is amended and reenacted as follows:

16 2. "~~Executive director~~ Director" means the ~~executive~~ director of the department of
17 ~~human services~~ corrections and rehabilitation or the ~~executive~~ director's designee.

18 **SECTION 2. AMENDMENT.** Section 25-03.3-07 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **25-03.3-07. Appointment of guardian ad litem.** At any stage of a proceeding under
21 this chapter, on application of any individual or on its own motion, the court may appoint a
22 guardian ad litem for a minor or an individual with mental retardation who is a respondent or
23 witness or otherwise involved in the proceeding, if the minor or an individual with mental
24 retardation has no parent, guardian, or custodian appearing on the minor's or the mentally

1 retarded individual's behalf or the interests of those persons conflict with those of the minor or
2 an individual with mental retardation. The department of ~~human services~~ corrections and
3 rehabilitation shall pay the expense of the guardian ad litem fee as established by the court.

4 **SECTION 3. AMENDMENT.** Subsection 1 of section 25-03.3-08 of the North Dakota
5 Century Code is amended and reenacted as follows:

6 1. Upon the filing of a petition pursuant to this chapter, the court shall determine
7 whether to issue an order for detention of the respondent named in the petition.
8 The petition may be heard ex parte. The court shall issue an order for detention if
9 there is cause to believe that the respondent is a sexually dangerous individual. If
10 the court issues an order for detention, the order must direct that the respondent
11 be taken into custody and transferred to an appropriate treatment facility or local
12 correctional facility to be held for subsequent hearing pursuant to this chapter.

13 Under this section, the department of ~~human services~~ corrections and rehabilitation
14 shall pay for any expense incurred in the detention or evaluation of the respondent.

15 **SECTION 4. AMENDMENT.** Section 25-03.3-12 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **25-03.3-12. Sexually dangerous individual - Evaluation.** The evaluation must be
18 conducted by one or more experts chosen by the ~~executive~~ director. Whenever a respondent is
19 subject to an evaluation pursuant to this chapter, the respondent may retain an expert to
20 perform an evaluation or testify on the respondent's behalf. When the respondent is an adult
21 with mental retardation and a guardian or guardian ad litem has not been appointed for the
22 respondent, the court shall appoint an expert to perform an evaluation on behalf of the
23 respondent. In the case of a respondent who is indigent, the court shall appoint a qualified
24 expert to perform an examination or participate in the commitment proceeding on the
25 respondent's behalf. The department of ~~human services~~ corrections and rehabilitation shall
26 compensate any qualified expert appointed by the court on behalf of an indigent respondent in
27 a reasonable amount based on time and expenses. An expert retained on behalf of the
28 respondent must have reasonable access to the respondent for the purpose of the examination
29 and to all relevant medical, psychological, and court records and reports.

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

1 **25-03.3-13. Sexually dangerous individual - Commitment proceeding - Report of**
2 **findings.** Within sixty days after the finding of probable cause, the court shall conduct a
3 commitment proceeding to determine whether the respondent is a sexually dangerous
4 individual. The court may extend the time for good cause. At the commitment proceeding, any
5 testimony and reports of an expert who conducted an examination are admissible, including risk
6 assessment evaluations. Any proceeding pursuant to this chapter must be tried to the court
7 and not a jury. At the commitment proceeding, the state's attorney shall present evidence in
8 support of the petition and the burden is on the state to show by clear and convincing evidence
9 that the respondent is a sexually dangerous individual. An individual may not be committed
10 unless evidence is admitted establishing that at least two experts have concluded the individual
11 has a congenital or acquired condition that is manifested by a sexual disorder, a personality
12 disorder, or other mental disorder or dysfunction that makes that individual likely to engage in
13 further acts of sexually predatory conduct. The respondent has a right to be present, to testify,
14 and to present and cross-examine witnesses. If the respondent is found to be a sexually
15 dangerous individual, the court shall commit the respondent to the care, custody, and control of
16 the ~~executive~~ director. The ~~executive~~ director shall place the respondent in an appropriate
17 facility or program at which treatment is available. The appropriate treatment facility or program
18 must be the least restrictive available treatment facility or program necessary to achieve the
19 purposes of this chapter. The ~~executive~~ director may not be required to create a less restrictive
20 treatment facility or treatment program specifically for the respondent or committed individual.
21 Unless the respondent has been committed pursuant to a criminal judgment or order to the
22 legal and physical custody of the department of corrections and rehabilitation, the respondent
23 may not be placed at and the treatment program for the respondent may not be provided at the
24 state penitentiary or an affiliated penal facility. If the respondent is found not to be a sexually
25 dangerous individual, the court shall discharge the respondent.

26 **SECTION 6. AMENDMENT.** Section 25-03.3-14 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **25-03.3-14. Interagency Interdivision placement.** If a committed individual also has
29 been committed pursuant to a criminal judgment or order to the legal and physical custody of
30 the department of corrections and rehabilitation, the director ~~of the department of corrections~~
31 ~~and rehabilitation~~ and the ~~executive~~ director may ~~consult one another~~ and determine the

1 appropriate placement of the individual and may transfer the individual between ~~placements~~ the
2 civil commitment division and the appropriate adult or juvenile division of the department of
3 corrections and rehabilitation.

4 **SECTION 7. AMENDMENT.** Section 25-03.3-17 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **25-03.3-17. Postcommitment proceeding, discharge, and further disposition.**

- 7 1. A committed individual must remain in the care, custody, and control of the
8 ~~executive~~ director until, in the opinion of the ~~executive~~ director, the individual is
9 safe to be at large.
- 10 2. Each committed individual must have an examination of that individual's mental
11 condition at least once a year. A report regarding the examination must be
12 provided to the court that committed the individual. At the time of the annual
13 examination, the committed individual has the right to have an expert examine the
14 individual, and, upon the request of an indigent committed individual, the court
15 shall appoint a qualified expert to examine the committed individual and report to
16 the court. The department of ~~human services~~ corrections and rehabilitation shall
17 compensate a qualified expert appointed by the court in a reasonable amount
18 based on time and expenses. That expert must have reasonable access to the
19 committed individual and to all records relating to the committed individual,
20 including confidential records.
- 21 3. If a committed individual has been committed to an out-of-state facility by the
22 ~~executive~~ director for purposes of treatment, an expert from that state may be
23 appointed by the court as a qualified expert for an indigent committed individual for
24 any postcommitment proceeding.
- 25 4. After any report pursuant to this section is provided to the court, the court may
26 order further examination and investigation of the committed individual as the court
27 considers necessary. The court may set the matter for a hearing. At the hearing,
28 the committed individual is entitled to be present and to the benefit of the
29 protections afforded at the commitment proceeding. The state's attorney shall
30 represent the state at the hearing. After the hearing, the court shall determine
31 whether the committed individual is to be discharged or to be retained as a

- 1 sexually dangerous individual in the care, custody, and control of the ~~executive~~
2 director.
- 3 5. The ~~executive~~ director may only discharge a sexually dangerous individual from
4 commitment pursuant to a court order. The ~~executive~~ director may petition the
5 committing court at any time for the discharge of the committed individual. The
6 ~~executive~~ director shall give the state's attorney notice of any petition for discharge
7 the ~~executive~~ director files with the court. Before the petition is granted, the state's
8 attorney has the right to be heard by the court on the petition. The state's attorney
9 may waive this right.
- 10 6. If the ~~executive~~ director moves a committed individual from a placement in the
11 community to a placement in a secure treatment facility that is more restrictive, the
12 committed individual may challenge the move at a hearing to be held within thirty
13 days after the move in accordance with procedures established by the department
14 of ~~human services~~ corrections and rehabilitation.

15 **SECTION 8. AMENDMENT.** Section 25-03.3-18 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **25-03.3-18. Petition for discharge - Notice.**

- 18 1. Annually, the ~~executive~~ director shall provide the committed individual with written
19 notice that the individual has a right to petition the court for discharge. The notice
20 must explain to the committed person when the committed person has a right to a
21 hearing on the petition. The notice must inform the committed person of the rights
22 this chapter affords the committed person at a discharge hearing. The ~~executive~~
23 director shall forward a copy of the notice to the committing court. If the committed
24 individual is mentally retarded, the ~~executive~~ director shall also provide the written
25 notice to the individual's attorney, guardian, and guardian ad litem, if any.
- 26 2. If the committed individual files a petition for discharge and has not had a hearing
27 pursuant to section 25-03.3-17 or this section during the preceding twelve months,
28 the committed individual has a right to a hearing on the petition.
- 29 3. At the hearing on the petition for discharge, the committed individual is entitled to
30 be present and to the benefit of the protections afforded at the commitment
31 proceeding. The state's attorney shall represent the state and may have the

1 committed individual evaluated by experts chosen by the state. The committed
2 individual is entitled to have an expert of the committed individual's choice conduct
3 an evaluation. The court shall appoint a qualified expert if the committed individual
4 is indigent and requests an appointment. The department of ~~human services~~
5 corrections and rehabilitation shall compensate a qualified expert appointed by the
6 court in a reasonable amount based on time and expenses. That expert must have
7 reasonable access to the committed individual and to all records relating to the
8 committed individual, including confidential records.

- 9 4. At any hearing held pursuant to a petition for discharge, the burden of proof is on
10 the state to show by clear and convincing evidence that the committed individual
11 remains a sexually dangerous individual.

12 **SECTION 9. AMENDMENT.** Section 25-03.3-21 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **25-03.3-21. Recovery of expense.** The department of ~~human services~~ corrections
15 and rehabilitation, to the extent it has expended sums or provided services pursuant to this title,
16 may seek civil recovery from the property of the respondent or committed individual. The
17 department of ~~human services~~ corrections and rehabilitation must commence the action within
18 six years after the department paid the sums or provided the services to the respondent or
19 committed individual. After notice and hearing, the court may order an individual to reimburse
20 the department of ~~human services~~ corrections and rehabilitation for all or part of the
21 expenditures made for that individual pursuant to this chapter. In establishing the amount of
22 reimbursement ordered under this section, the court shall consider the ability of the respondent
23 or committed individual to pay.

24 **SECTION 10. AMENDMENT.** Section 25-03.3-24 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **25-03.3-24. Postcommitment community placement - Penalty.**

- 27 1. Following commitment of a sexually dangerous individual, the ~~executive~~
28 may conduct a risk management assessment of the committed individual for the
29 purpose of determining whether the individual may be treated safely in the
30 community on an outpatient basis. The ~~executive~~ director may place a committed
31 individual in the community for treatment on an outpatient basis only pursuant to a

1 court order. The ~~executive~~ director may petition the court at any time for
2 community placement. The ~~executive~~ director shall give the state's attorney of the
3 county of community placement notice of any petition for community placement the
4 ~~executive~~ director files with the court. Before the petition is granted, the state's
5 attorney has the right to be heard by the court. The state's attorney may waive this
6 right. At any hearing held pursuant to a petition by the ~~executive~~ director for the
7 community placement of a committed individual, the burden of proof required of the
8 ~~executive~~ director is a preponderance of the evidence. The court's order of
9 community placement must contain appropriate restrictions and requirements for
10 the committed individual, including:

- 11 a. Participation and compliance with a specific course of treatment;
- 12 b. Submission to electronic monitoring and any other appropriate supervision;
- 13 c. Prohibition of the individual changing place of residency or leaving the state
14 without prior authorization of the court;
- 15 d. Establishment of safety zones, and compliance by the committed individual
16 with those safety zones;
- 17 e. Requirement that the committed individual notify the court within twenty-four
18 hours of any change in the individual's status that affects proper treatment or
19 supervision;
- 20 f. Contact with victims is prohibited independent of a supervised treatment plan;
21 and
- 22 g. Any other restriction or requirement deemed necessary by the court to assure
23 public safety and proper treatment of the committed individual.

24 2. Violation by a committed individual of a court order issued pursuant to this section
25 is a class C felony.

26 **SECTION 11. AMENDMENT.** Section 54-23.3-01 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **54-23.3-01. Department of corrections and rehabilitation - Creation - Duties -**
29 **Programs.** There is hereby created a department of corrections and rehabilitation that is
30 responsible to the governor. The department is responsible for the direction and general
31 administrative supervision, guidance, and planning of adult and juvenile correctional facilities

1 and programs within the state. The department includes a division of adult services, a division
2 of juvenile services, a division for the evaluation and treatment of individuals subject to civil
3 commitment proceedings pursuant to chapter 25-03.3, and such other divisions as are
4 determined necessary for the effective and efficient operation of the department. Programs and
5 facilities included in the department are the North Dakota state penitentiary or any of its
6 affiliated facilities, parole and probation for adult offenders, North Dakota youth correctional
7 center, community programs and services for juvenile offenders under the division of juvenile
8 services, an evaluation and treatment facility and programs for individuals subject to civil
9 commitment proceedings pursuant to chapter 25-03.3, and any other programs developed by
10 the department.

11 **SECTION 12.** A new subsection to section 54-23.3-02 of the North Dakota Century
12 Code is created and enacted as follows:

13 To provide evaluations of, and care and treatment for, individuals subject to civil
14 commitment proceedings pursuant to chapter 25-03.3.

15 **SECTION 13.** A new subsection to section 54-23.3-04 of the North Dakota Century
16 Code is created and enacted as follows:

17 To take custody, perform evaluations, and provide for the treatment, care,
18 supervision, and management of any individual subject to civil commitment
19 proceedings pursuant to chapter 25-03.3.

20 **SECTION 14. REPEAL.** Section 25-03.3-22 of the North Dakota Century Code is
21 repealed.

22 **SECTION 15. TRANSFER OF LAND AND BUILDINGS - EXEMPTION FROM**
23 **CHAPTERS 48-01.1 AND 54-44.7.** Ownership of the Gronewald Middleton building on the
24 grounds of the state hospital must be transferred to the department of corrections and
25 rehabilitation. The department of corrections and rehabilitation is not subject to the provisions
26 of chapters 48-01.1 and 54-44.7 relating to public improvement contract bids and architect,
27 engineer, and land surveying services for construction and renovation relating to the Gronewald
28 Middleton building.

29 **SECTION 16. APPROPRIATION.** Any remaining moneys appropriated to the
30 department of human services for the operation of the civil commitment of sexually dangerous
31 individuals program, including the remaining funding appropriated for seventy-three and

1 one-half full-time equivalent positions for the operation of this program must be transferred to
2 the department of corrections and rehabilitation effective on the date the transfer of the civil
3 commitment of sexually dangerous individuals program to the department of corrections and
4 rehabilitation is complete. The funds transferred by this section are appropriated to the
5 department of corrections and rehabilitation for the purpose of defraying the expenses of the
6 civil commitment of sexually dangerous individuals program, including any obligations of the
7 program that are unpaid as of the date the transfer is complete. The department of corrections
8 and rehabilitation must adequately staff and operate the civil commitment of sexually dangerous
9 individuals program described in this Act. If the department of corrections and rehabilitation
10 determines that the amount appropriated to adequately staff and operate the civil commitment
11 of sexually dangerous individuals program described in this Act is insufficient, the department of
12 corrections and rehabilitation shall request a deficiency appropriation from the legislative
13 assembly. The department of corrections and rehabilitation must report any known deficiency
14 to the office of management and budget.

15 **SECTION 17. EFFECTIVE DATE.** This Act becomes effective on the earlier of July 1,
16 2008, or the date on which the department of human services and the department of
17 corrections and rehabilitation jointly certify to the legislative council that the transfer of the civil
18 commitment of sexually dangerous individuals program, facility, staff, and appropriation from
19 the department of human services to the department of corrections and rehabilitation is
20 complete as required by this Act.