

Introduced by

Senators D. Larson, Armstrong, Hogue

Representatives Bosch, Heinert, Seibel

1 A BILL for an Act to amend and reenact sections 25-03.3-01, 25-03.3-17, and 25-03.3-24 of the  
2 North Dakota Century Code, relating to the commitment of sexually dangerous individuals; and  
3 to provide a penalty.

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

5 **SECTION 1. AMENDMENT.** Section 25-03.3-01 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7 **25-03.3-01. Definitions.**

8 In this chapter, unless the context otherwise requires:

- 9 1. "Alternative treatment" means an involuntary outpatient order for a treatment program,  
10 other than hospitalization, which may include treatment with a prescribed medication.  
11 2. "Committed individual" means an individual committed for custody and treatment  
12 pursuant to this chapter.  
13 ~~2-3.~~ "Court" means, except when otherwise provided, the district court serving the county  
14 in which the respondent resides or from which the respondent was initially committed.  
15 4. "Department" means the department of human services.  
16 5. "Executive director" means the executive director of the department of human services  
17 or the executive director's designee.  
18 ~~3-6.~~ "Intellectual disability" means mental retardation as defined in the "Diagnostic and  
19 Statistical Manual of Mental Disorders", American psychiatric association, (4<sup>th</sup> edition,  
20 text revision 2000).  
21 ~~4-7.~~ "Qualified expert" means an individual who has an expertise in sexual offender  
22 evaluations and who is a psychiatrist or psychologist trained in a clinical program and  
23 licensed pursuant to this state's law or a psychologist approved for exemption by the  
24 North Dakota board of psychologist examiners. For purposes of evaluating an

1 individual with an intellectual disability, the qualified expert must have specialized  
2 knowledge in sexual offender evaluations of individuals with an intellectual disability.

3 ~~5-8.~~ "Respondent" means an individual subject to a commitment proceeding pursuant to  
4 this chapter.

5 ~~6-9.~~ "Sexual act" means sexual contact between human beings, including contact between  
6 the penis and the vulva, the penis and the anus, the mouth and the penis, the mouth  
7 and the vulva, or the vulva and the vulva; or the use of an object that comes in contact  
8 with the victim's anus, vulva, or penis. Sexual contact between the penis and the  
9 vulva, or between the penis and the anus, or an object and the anus, vulva, or penis of  
10 the victim, occurs upon penetration, however slight. Emission is not required.

11 ~~7-10.~~ "Sexual contact" means any touching of the sexual or other intimate parts of an  
12 individual for the purpose of arousing or satisfying sexual or aggressive desires.

13 ~~8-11.~~ "Sexually dangerous individual" means an individual who is shown to have engaged in  
14 sexually predatory conduct and who has a congenital or acquired condition that is  
15 manifested by a sexual disorder, a personality disorder, or other mental disorder or  
16 dysfunction that makes that individual likely to engage in further acts of sexually  
17 predatory conduct which constitute a danger to the physical or mental health or safety  
18 of others. It is a rebuttable presumption that sexually predatory conduct creates a  
19 danger to the physical or mental health or safety of the victim of the conduct. For these  
20 purposes, intellectual disability is not a sexual disorder, personality disorder, or other  
21 mental disorder or dysfunction.

22 ~~9-12.~~ "Sexually predatory conduct" means:

23 a. Engaging or attempting to engage in a sexual act or sexual contact with another  
24 individual, or causing or attempting to cause another individual to engage in a  
25 sexual act or sexual contact, if:

26 (1) The victim is compelled to submit by force or by threat of imminent death,  
27 serious bodily injury, or kidnapping directed toward the victim or any human  
28 being, or the victim is compelled to submit by any threat or coercion that  
29 would render a person reasonably incapable of resisting;

30 (2) The victim's power to appraise or control the victim's conduct has been  
31 substantially impaired by the administration or employment, without the

1 victim's knowledge, of intoxicants or other means for purposes of preventing  
2 resistance;

3 (3) The actor knows or should have known that the victim is unaware that a  
4 sexual act is being committed upon the victim;

5 (4) The victim is less than fifteen years old;

6 (5) The actor knows or should have known that the victim has a disability that  
7 substantially impairs the victim's understanding of the nature of the sexual  
8 act or contact;

9 (6) The victim is in official custody or detained in a treatment facility, health care  
10 facility, correctional facility, or other institution and is under the supervisory  
11 authority, disciplinary control, or care of the actor;

12 (7) The victim is a minor and the actor is an adult; or

13 (8) The other individual is a person related to the actor within a degree of  
14 consanguinity within which marriages are declared incestuous and void by  
15 section 14-03-03 and the actor knows that; or

16 b. Engaging in or attempting to engage in sexual contact with another individual or  
17 causing or attempting to cause another individual to have sexual contact, if:

18 (1) The actor knows or should have known that the contact is offensive to the  
19 victim; or

20 (2) The victim is a minor, fifteen years of age or older, and the actor is the  
21 minor's parent, guardian, or is otherwise responsible for general supervision  
22 of the victim's welfare.

23 ~~10-13.~~ "Should have known" means a reasonable individual without a congenital or acquired  
24 condition that is manifested by a sexual disorder, a personality disorder, or other  
25 mental disorder or dysfunction in the actor's circumstances would have known.

26 ~~11-14.~~ "Superintendent" means the superintendent of the state hospital or the  
27 superintendent's designee.

28 ~~12-15.~~ "Treatment facility" means any hospital, including the state hospital, or any treatment  
29 facility, including the life skills and transition center, which can provide directly, or by  
30 direct arrangement with other public or private agencies, evaluation and treatment of

1           sexually dangerous individuals, outpatient care, and inpatient care to individuals who  
2           are no longer considered sexually dangerous.

3           **SECTION 2. AMENDMENT.** Section 25-03.3-17 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5           **25-03.3-17. Postcommitment proceeding, discharge, and further disposition.**

- 6           1. A committed individual must remain in the care, custody, and control of the executive  
7           director until, in the opinion of the executive director, or by order of the court, an  
8           alternative treatment program is appropriate or the individual is safe to be at large.
- 9           2. ~~Each~~A committed individual must have an examination of that individual's mental  
10          condition at least once a year. A report regarding the examination must be provided to  
11          the court that committed the individual. The state hospital shall prepare an alternative  
12          treatment program report that assesses the availability and appropriateness of  
13          alternative treatment programs for the respondent to undergo. At the time of the  
14          annual examination, the committed individual has the right to have an expert examine  
15          the individual, and, upon the request of an indigent committed individual, the court  
16          shall appoint a qualified expert to examine the committed individual and report to the  
17          court. The department of ~~human services~~ shall compensate a qualified expert  
18          appointed by the court in a reasonable amount based on time and expenses. That  
19          expert must have reasonable access to the committed individual and to all records  
20          relating to the committed individual, 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~~a report pursuant to this section is provided to the court, the court may order  
26          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, the  
28          committed individual is entitled to be present and to the benefit of the protections  
29          afforded at the commitment proceeding. The state's attorney shall represent the state  
30          at the hearing. After the hearing, the court shall determine whether the committed  
31          individual is to be discharged ~~or to be~~, retained as a sexually dangerous individual in

1           the care, custody, and control of the executive director, or placed in an adequate  
2           alternative treatment program. Before making its decision in a postcommitment  
3           proceeding, the court shall review the alternative treatment program report submitted  
4           by the state hospital. If the court finds alternative treatment is adequate to meet the  
5           respondent's treatment needs and is sufficient to prevent harm upon others, the court  
6           may order the respondent be placed in an alternative treatment program.

7           5. The executive director may only discharge a sexually dangerous individual from  
8           commitment pursuant to a court order. The executive director may petition the  
9           committing court at any time for the discharge of the committed individual. The  
10          executive director shall give the state's attorney notice of any petition for discharge the  
11          executive director files with the court. Before the petition is granted, the state's  
12          attorney has the right to be heard by the court on the petition. The state's attorney may  
13          waive this right.

14          6. If the executive director moves a committed individual from ~~a placement in the~~  
15          ~~community~~ an alternative treatment program to a placement in a secure treatment  
16          facility that is more restrictive, the committed individual may challenge the move at a  
17          hearing to be held within thirty days after the move in accordance with procedures  
18          established by the department of ~~human services~~.

19          7. If, before expiration of an initial treatment order, the executive director determines an  
20          alternative treatment program would be more appropriate for a patient hospitalized by  
21          court order, the director may petition the court that last ordered the patient's  
22          hospitalization to modify its order. The petition must contain statements setting forth  
23          the reasons for the determination an alternative treatment program would be more  
24          appropriate for the patient, and describing the recommended alternative treatment. If  
25          the patient consents, the court may, without a hearing, modify the treatment order by  
26          directing the patient to undergo the agreed upon alternative treatment program for the  
27          remainder of the treatment order.

28          8. A person responsible for providing treatment other than hospitalization to an individual  
29          ordered to undergo an alternative treatment program may terminate the alternative  
30          treatment only pursuant to a court order. The person shall petition the court for

1           termination of the alternative treatment program when the respondent is no longer  
2           considered sexually dangerous.

3           **SECTION 3. AMENDMENT.** Section 25-03.3-24 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5           **25-03.3-24. Postcommitment community placement - Penalty.**

- 6           1. Following commitment of a sexually dangerous individual, the executive director may  
7           conduct a risk management assessment of the committed individual for the purpose of  
8           determining whether the individual may be treated safely in the community ~~on an~~  
9           ~~outpatient basis~~through an alternative treatment program. The executive director may  
10          place a committed individual in the community for treatment on an outpatient basis  
11          only pursuant to a court order. The executive director may petition the court at any  
12          time for community placement. The executive director shall give the state's attorney of  
13          the county of community placement notice of any petition for community placement the  
14          executive director files with the court. Before the petition is granted, the state's  
15          attorney has the right to be heard by the court. The state's attorney may waive this  
16          right. ~~At any hearing held pursuant to a petition by the executive director for the~~  
17          ~~community placement of a committed individual, the~~The burden of proof required of  
18          the executive director is a preponderance of the evidence at any hearing held  
19          pursuant to a petition by the executive director for the community placement of a  
20          committed individual. The court's order of community placement must contain  
21          appropriate restrictions and requirements for the committed individual, including:  
22          a. Participation and compliance ~~with a specific course of treatment in an alternative~~  
23          treatment program;  
24          b. Submission to electronic monitoring and any other appropriate supervision;  
25          c. Prohibition of the individual changing place of residency or leaving the state  
26          without prior authorization of the court;  
27          d. Establishment of safety zones, and compliance by the committed individual with  
28          those safety zones;  
29          e. Requirement that the committed individual notify the court within twenty-four  
30          hours of any change in the individual's status that affects proper treatment or  
31          supervision;

Sixty-fifth  
Legislative Assembly

- 1           f.   Contact with victims is prohibited independent of a supervised treatment plan;
- 2           and
- 3           g.   Any other restriction or requirement deemed necessary by the court to assure
- 4           public safety and proper treatment of the committed individual.
- 5         2.   Violation by a committed individual of a court order issued pursuant to this section is a
- 6           class C felony.