

Introduced by

Senators Miller, Armstrong, Hogue

Representatives Becker, K. Koppelman, Toman

1 A BILL for an Act to create and enact a new section to chapter 25-03.3 of the North Dakota
2 Century Code, relating to annual reviews and petitions for discharge during a period of
3 imprisonment; and to amend and reenact section 12.1-04-07 of the North Dakota Century
4 Code, relating to reports regarding a defendant's fitness to proceed in a criminal proceeding.

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

6 **SECTION 1. AMENDMENT.** Section 12.1-04-07 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **12.1-04-07. Report - Hearing when contested.**

- 9 1. The report of the examining psychiatrists or psychologists must be given in writing to
10 the court within three days of expiration of the period of commitment or, if the
11 defendant is not committed, within thirty days after the outpatient evaluation. The court
12 shall cause copies to be delivered to the prosecutor and counsel for the defendant.
- 13 2. The report must include:
- 14 a. The identity of the individuals interviewed and records and other information
15 considered.
- 16 b. Procedures, tests, and techniques utilized in the assessment.
- 17 c. The date and time of the examination of the defendant, and the identity of each
18 individual present during the examination.
- 19 d. The relevant information obtained, other information not obtained which the
20 examiner believes may be relevant, and the findings made.
- 21 e. An opinion as to whether the defendant is fit to proceed or is unable to effectively
22 communicate with counsel and whether the defendant will attain fitness to
23 proceed or ability to effectively communicate with counsel in the foreseeable
24 future.

1 3. If the findings of the report are contested, the court shall hold a hearing prior to
2 deciding whether the defendant currently lacks fitness to proceed or currently lacks
3 ability to effectively communicate with counsel and whether the defendant will attain
4 fitness to proceed or ability to effectively communicate with counsel in the foreseeable
5 future. Upon hearing, the prosecution and defense have the right to summon and
6 cross-examine the persons responsible for the report and to offer evidence upon the
7 issues.

8 **SECTION 2.** A new section to chapter 25-03.3 of the North Dakota Century Code is created
9 and enacted as follows:

10 **Annual review - Petition for discharge - Inapplicability during periods of**
11 **imprisonment.**

12 Sections 25-03.3-17 and 25-03.3-18 do not apply if a respondent, during a period of
13 commitment under this chapter, is transferred to the custody of the department of corrections
14 and rehabilitation in accordance with section 29-27-07 or is serving a term of imprisonment in a
15 county jail or regional corrections center. Upon release from imprisonment, the respondent must
16 be retransferred to the care, custody, and control of the executive director. Upon retransfer, the
17 respondent is entitled to a review to determine whether continued commitment under this
18 chapter is warranted.