

Sixty-fifth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2042

Introduced by

Legislative Management

(Human Services Committee)

1 A BILL for an Act to amend and reenact sections 5-01-05.1, 12.1-01-04, 12.1-04-06,
2 12.1-04.1-02, 12.1-04.1-03, 12.1-04.1-04, 12.1-04.1-05, 12.1-04.1-06, 12.1-04.1-07,
3 12.1-04.1-08, 12.1-04.1-10, 12.1-04.1-11, 12.1-04.1-12, 12.1-04.1-13, 12.1-04.1-14,
4 12.1-04.1-15, 12.1-04.1-22, 12.1-04.1-23, 25-01-01, 25-03.1-04, 25-03.1-08, 25-03.1-10,
5 25-03.1-11, 25-03.1-18.1, and 32-03-48, subdivision b of subsection 1 of section 43-48-15,
6 sections 49-10.1-05, 50-25.1-03, 50-25.2-03, and 62.1-01-01, subdivisions b and c of
7 subsection 1 of section 62.1-02-01, and subdivision b of subsection 1 of section 62.1-02-01.2 of
8 the North Dakota Century Code, relating to references to mental health professionals.

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

10 **SECTION 1. AMENDMENT.** Section 5-01-05.1 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **5-01-05.1. Public intoxication - Assistance - Medical care.**

13 A peace officer ~~has authority to~~ may take any apparently intoxicated ~~person~~ individual to the
14 ~~person's~~ individual's home, to a local hospital, to a detoxification center, or, whenever that
15 ~~person~~ individual constitutes a danger to that ~~person~~ individual or others, to a jail ~~for purposes of~~
16 ~~detoxification~~. A ~~duly licensed physician~~ tier 1b mental health professional, as defined under
17 section 25-01-01, of a local hospital ~~or a licensed addiction counselor of a detoxification center~~
18 ~~has authority to~~ may hold that ~~person~~ individual for treatment up to seventy-two hours. That
19 intoxicated ~~person~~ individual may not be held in jail because of intoxication more than
20 twenty-four hours. An intoxicated ~~person~~ individual may not be placed in a jail unless a jailer is
21 constantly ~~present within hearing distance~~ monitoring the individual and medical services are
22 provided ~~when~~ if the need is indicated. Upon placing that ~~person~~ individual in jail, or if the
23 ~~person~~ individual is admitted ~~into~~ to a hospital or detoxification center, upon admission, the peace
24 officer shall make a reasonable effort to notify the intoxicated ~~person's~~ individual's family as soon

1 as possible. Any additional costs incurred by the city, county, ambulance service, or medical
2 service provider on account of an intoxicated ~~person shall be~~individual are recoverable from
3 that ~~person~~individual.

4 **SECTION 2. AMENDMENT.** Section 12.1-01-04 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **12.1-01-04. General definitions.**

7 As used in this title, unless a different meaning plainly is required:

- 8 1. "Act" or "action" means a bodily movement, whether voluntary or involuntary.
- 9 2. "Acted", "acts", and "actions" include, where relevant, "omitted to act" and "omissions
10 to act".
- 11 3. "Actor" includes, where relevant, a person guilty of an omission.
- 12 4. "Bodily injury" means any impairment of physical condition, including physical pain.
- 13 5. "Court" means any of the following courts: the supreme court, a district court, and
14 where relevant, a municipal court.
- 15 6. "Dangerous weapon" ~~means, but is not limited to,~~includes any switchblade or gravity
16 knife, machete, scimitar, stiletto, sword, or dagger; any billy, blackjack, sap, bludgeon,
17 cudgel, metal knuckles, or sand club; any slungshot; any bow and arrow, crossbow, or
18 spear; any weapon ~~which~~that will expel, or is readily capable of expelling, a projectile
19 by the action of a spring, compressed air, or compressed gas including any such
20 weapon, loaded or unloaded, commonly referred to as a BB gun, air rifle, or CO₂ gun;
21 and any projector of a bomb or any object containing or capable of producing and
22 emitting any noxious liquid, gas, or substance.
- 23 7. "Destructive device" means any explosive, incendiary or poison gas bomb, grenade,
24 mine, rocket, missile, or similar device.
- 25 8. "Explosive" means gunpowders, powders used for blasting, all forms of high
26 explosives, blasting materials, fuses (other than electric circuit breakers), detonators
27 and other detonating agents, smokeless powders, and any chemical compounds,
28 mechanical mixture, or other ingredients in such proportions, quantities, or packing
29 that ignition by fire, by friction, by concussion, by percussion, or by detonation of the
30 compound, or material, or any part thereof may cause an explosion.
- 31 9. ~~Repealed by S.L. 1975, ch. 116, § 33.~~

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- 1 40. "Firearm" means any weapon ~~which~~that will expel, or is readily capable of expelling, a
2 projectile by the action of an explosive and includes any such weapon, loaded or
3 unloaded, commonly referred to as a pistol, revolver, rifle, gun, machine gun, shotgun,
4 bazooka, or cannon.
- 5 ~~44.10.~~ "Force" means physical action.
- 6 ~~42.11.~~ "Government" means:
- 7 a. The government of this state or any political subdivision of this state;
- 8 b. Any agency, subdivision, or department of the ~~foregoing~~state or any political
9 subdivision of the state, including the executive, legislative, and judicial branches;
- 10 c. Any corporation or other entity established by law to carry on any governmental
11 function; and
- 12 d. Any commission, corporation, or agency established by statute, compact, or
13 contract between or among governments for the execution of intergovernmental
14 programs.
- 15 ~~43.12.~~ "Governmental function" includes any activity ~~which~~that one or more public servants
16 are legally authorized to undertake on behalf of government.
- 17 ~~44.13.~~ "Harm" means loss, disadvantage, or injury to the person affected, and includes loss,
18 disadvantage, or injury to any other person in whose welfare the person affected is
19 interested.
- 20 ~~45.14.~~ "Included offense" means an offense:
- 21 a. ~~Which~~That is established by proof of the same or less than all the facts required
22 to establish commission of the offense charged;
- 23 b. ~~Which~~That consists of criminal facilitation of or an attempt or solicitation to
24 commit the offense charged; or
- 25 c. ~~Which~~That differed from the offense charged only in that it constitutes a less
26 serious harm or risk of harm to the same person, property, or public interest, or
27 because a lesser degree of culpability suffices to establish its commission.
- 28 ~~46.15.~~ "Includes" should be read as if the phrase "but is not limited to" were also set forth.
- 29 ~~47.15.16.~~ "Law enforcement officer" or "peace officer" means a public servant authorized
30 by law or by a government agency or branch to enforce the law and to conduct or
31 engage in investigations or prosecutions for violations of law.

1 | ~~18-16-17.~~ "Local" means of or pertaining to any political subdivision of the state.

2 | ~~19-17-18.~~ "Manifest injustice" means a specific finding by the court that the imposition of
3 | sentence is unreasonably harsh or shocking to the conscience of a reasonable
4 | individual, with due consideration of the totality of circumstances.

5 | ~~20-18-19.~~ "Offense" means conduct for which a term of imprisonment or a fine is
6 | authorized by statute after conviction.

7 | ~~21-19-20.~~ "Official action" includes a decision, opinion, recommendation, vote, or other
8 | exercise of discretion by any government agency.

9 | ~~22-20-21.~~ "Official proceeding" means a proceeding heard or which may be heard before
10 | any government agency or branch or public servant authorized to take evidence under
11 | oath, including any referee, hearing examiner, commissioner, notary, or other person
12 | taking testimony or a deposition in connection with any such proceeding.

13 | ~~23-21-22.~~ "Omission" means a failure to act.

14 | ~~24-22-23.~~ As used in this title and in sections outside this title which define offenses,
15 | "person" includes, where relevant, a corporation, limited liability company, partnership,
16 | unincorporated association, or other legal entity. When used to designate a party
17 | whose property may be the subject of action constituting an offense, the word "person"
18 | includes a government ~~which~~that may lawfully own property in this state.

19 | ~~25-23-24.~~ "Political subdivision" as used in this title and in any statute outside this title
20 | which defines an offense means a county, city, school district, township, and any other
21 | local governmental entity created by law.

22 | ~~26.~~ "Property" ~~includes both real and personal property.~~

23 | ~~27-24-25.~~ "Public servant" as used in this title and in any statute outside this title which
24 | defines an offense means any officer or employee of government, including law
25 | enforcement officers, whether elected or appointed, and any person participating in
26 | the performance of a governmental function, ~~but the~~ The term does not include
27 | witnesses.

28 | ~~28-25-26.~~ "Risk assessment" means an initial phase with a secondary process approved
29 | by the department of human services for the evaluation of the likelihood ~~that~~ a person
30 | ~~who~~that committed an offense will commit another similar offense. The initial phase is
31 | an assessment tool that is administered by a trained probation and parole officer. A

1 predetermined score on the initial phase initiates the secondary process that includes
2 a clinical interview, psychological testing, and verification through collateral information
3 or psychophysiological testing, or both. The department of human services shall
4 perform the secondary process of the risk assessment.

5 ~~29-26-27.~~ "Serious bodily injury" means bodily injury that creates a substantial risk of
6 death or which causes serious permanent disfigurement, unconsciousness, extreme
7 pain, permanent loss or impairment of the function of any bodily member or organ, a
8 bone fracture, or impediment of air flow or blood flow to the brain or lungs.

9 ~~30-27-28.~~ "Signature" includes any name, mark, or sign written or affixed with intent to
10 authenticate any instrument or writing.

11 ~~31-28-29.~~ "Substantial bodily injury" means a substantial temporary disfigurement, loss,
12 or impairment of the function of any bodily member or organ.

13 ~~32-29-30.~~ "Thing of value" or "thing of pecuniary value" means a thing of value in the form
14 of money, tangible or intangible property, commercial interests, or anything else the
15 primary significance of which is economic gain to the recipient.

16 ~~33. "Writing" includes printing, typewriting, and copying.~~

17 ~~Words used in the singular include the plural, and the plural the singular. Words in the~~
18 ~~masculine gender include the feminine and neuter genders. Words used in the present tense~~
19 ~~include the future tense, but exclude the past tense.~~

20 ~~30-31. "Tier 1 mental health professional" has the same meaning as provided under section~~
21 ~~25-01-01.~~

22 **SECTION 3. AMENDMENT.** Section 12.1-04-06 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **12.1-04-06. Examination - Temporary commitment.**

25 Whenever there is reason to doubt the defendant's fitness to proceed, the court may order
26 the detention of the defendant for the purpose of an examination by a ~~psychiatrist or a licensed~~
27 ~~psychologist~~ tier 1a mental health professional. The detention must be in the least restrictive
28 appropriate setting, including the state hospital, the life skills and transition center, or other
29 suitable facility for a reasonable period, not to exceed thirty days, for such examination. In lieu
30 of detention, the court may allow the defendant to remain in the defendant's present residential
31 setting or other suitable residential setting for the purpose of evaluation by a suitable facility or

1 personnel, subject to any reasonable limitation the court may impose. A human service center
2 may not be considered a suitable facility and may not be considered suitable personnel under
3 this section unless the court is aware ~~that~~ an inquiry ~~has been~~was made ~~prior to~~before the court
4 ~~ordering~~ordered the evaluation to ensure ~~that~~ appropriate resources exist at the human service
5 center being ordered to conduct the evaluation. The court, by subsequent order and for good
6 cause shown, may extend the detention for a period not to exceed thirty additional days. While
7 the defendant is detained, the defendant's legal counsel, family, and others necessary to assist
8 in the defendant's case ~~shall~~must have reasonable opportunity to examine and confer with the
9 defendant.

10 **SECTION 4. AMENDMENT.** Section 12.1-04.1-02 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **12.1-04.1-02. Court authorization of state-funded mental health services for certain**
13 **defendants.**

14 A defendant who is unable to pay for the services of a tier 1a mental health professional,
15 and to whom those services are not otherwise available, may apply to the court for assistance.
16 Upon a showing of a likely need for examination on the question of lack of criminal responsibility
17 or lack of requisite state of mind as a result of the defendant's mental condition, the court shall
18 authorize reasonable expenditures from public funds for the defendant's retention of the
19 services of one or more tier 1a mental health professionals. Upon request by the defendant, the
20 application and the proceedings on the application must be ex parte and in camera, but any
21 order under this section authorizing expenditures must be made part of the public record.

22 **SECTION 5. AMENDMENT.** Section 12.1-04.1-03 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **12.1-04.1-03. Notice of defense of lack of criminal responsibility.**

- 25 1. If the defendant intends to assert the defense of lack of criminal responsibility, the
26 defendant shall notify the prosecuting attorney in writing and file a copy of the notice
27 with the court. The notice must indicate whether the defendant intends to introduce at
28 trial evidence obtained from examination of the defendant by a tier 1a mental health
29 professional after the time of the alleged offense.
- 30 2. The defendant shall file the notice within the time prescribed for pretrial motions or at
31 such earlier or later time as the court directs. For cause shown, the court may allow

1 late filing of the notice and grant additional time to the parties to prepare for trial or
2 may make other appropriate orders.

3 3. If the defendant fails to give notice in accordance with this section, lack of criminal
4 responsibility may not be asserted as a defense.

5 **SECTION 6. AMENDMENT.** Section 12.1-04.1-04 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **12.1-04.1-04. Notice regarding expert testimony on lack of state of mind as element of**
8 **alleged offense.**

9 1. If the defendant intends to introduce at trial evidence obtained from examination of the
10 defendant by a tier 1a mental health professional after the time of the alleged offense
11 to show that the defendant lacked the state of mind required for the alleged offense,
12 the defendant shall notify the prosecuting attorney in writing and file a copy of the
13 notice with the court.

14 2. The defendant shall file the notice within the time prescribed for pretrial motions or at
15 such earlier or later time as the court directs. For cause shown, the court may allow
16 late filing of the notice and grant additional time to the parties to prepare for trial or
17 may make other appropriate orders.

18 **SECTION 7. AMENDMENT.** Section 12.1-04.1-05 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **12.1-04.1-05. Examination at request of prosecuting attorney.**

21 1. If the defendant has given notice under section 12.1-04.1-03 or 12.1-04.1-04 of intent
22 to introduce evidence obtained from examination of the defendant by a tier 1a mental
23 health professional after the time of the alleged offense, the court, upon application by
24 the prosecuting attorney and after opportunity for response by the defendant, shall
25 order that the defendant be examined by one or more tier 1a mental health
26 professionals retained by the prosecuting attorney. The court shall include in the order
27 provisions as to the time, place, and conditions of the examination.

28 2. If the parties agree to examination of the defendant by a tier 1a mental health
29 professional retained by the prosecuting attorney without order of the court, sections
30 12.1-04.1-06, 12.1-04.1-07, 12.1-04.1-08, 12.1-04.1-10, 12.1-04.1-11, 12.1-04.1-12,
31 12.1-04.1-13, 12.1-04.1-14, and 12.1-04.1-15 apply to that examination.

1 **SECTION 8. AMENDMENT.** Section 12.1-04.1-06 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **12.1-04.1-06. Explanation to defendant.**

4 At the beginning of each examination conducted under section 12.1-04.1-05, the tier 1a
5 mental health professional shall inform the defendant ~~that~~ the examination is being made at the
6 request of the prosecuting attorney; the purpose of the examination is to obtain information
7 about the defendant's mental condition at the time of the alleged offense; and information
8 obtained from the examination may be used at trial and, if the defendant is found not guilty by
9 reason of lack of criminal responsibility, in subsequent proceedings concerning commitment or
10 other disposition.

11 **SECTION 9. AMENDMENT.** Section 12.1-04.1-07 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **12.1-04.1-07. Scope of examination.**

14 An examination of the defendant conducted under section 12.1-04.1-05 may consist of such
15 interviewing, clinical evaluation, and psychological testing as the tier 1a mental health
16 professional considers appropriate, within the limits of nonexperimental, generally accepted
17 medical, psychiatric, or psychological practices.

18 **SECTION 10. AMENDMENT.** Section 12.1-04.1-08 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **12.1-04.1-08. Recording of examination.**

- 21 1. An examination of the defendant conducted under section 12.1-04.1-05 must be
22 audio-recorded and, if ordered by the court, video-recorded. The manner of recording
23 may be specified by rule or by court order in individual cases.
- 24 2. Within seven days after completion of an examination conducted under section
25 12.1-04.1-05, the tier 1a mental health professional conducting the examination shall
26 deliver a copy of the recording of the examination, under seal, to the court and a copy
27 of the recording to the defendant. The recording may not be disclosed except in
28 accordance with this chapter.

29 **SECTION 11. AMENDMENT.** Section 12.1-04.1-10 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **12.1-04.1-10. Reports by tier 1a mental health professionals and expert witnesses.**

2 A tier 1a mental health professional retained by the prosecuting attorney and a tier 1a
3 mental health professional whom the defendant intends to call to testify at trial shall prepare a
4 written report concerning any examination of the defendant and other pretrial inquiry by or
5 under the supervision of the tier 1a mental health professional. Any other individual whom either
6 party intends to call at trial as an expert witness on any aspect of the defendant's mental
7 condition shall prepare a written report. A report under this section must contain:

- 8 1. The specific issues addressed.
- 9 2. The identity of individuals interviewed and records or other information used.
- 10 3. The procedures, tests, and techniques used.
- 11 4. The date and time of examination of the defendant, the explanation concerning the
12 examination given to the defendant, and the identity of each individual present during
13 an examination.
- 14 5. The relevant information obtained and findings made.
- 15 6. Matters concerning which the mental health professional was unable to obtain relevant
16 information and the reasons therefor.
- 17 7. The conclusions reached and the reasoning on which the conclusions were based.

18 **SECTION 12. AMENDMENT.** Section 12.1-04.1-11 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **12.1-04.1-11. Exchange of reports and production of documents.**

21 Not less than fifteen days before trial, the prosecuting attorney shall furnish to the defendant
22 reports prepared pursuant to section 12.1-04.1-10, and the defendant shall furnish to the
23 prosecuting attorney reports by each tier 1a mental health professional or other expert on any
24 aspect of the defendant's mental condition whom the defendant intends to call at trial. Upon
25 application by either party and after hearing, the court may require production of documents
26 prepared, completed, or used in the examination or inquiry by the tier 1a mental health
27 professional or other expert.

28 **SECTION 13. AMENDMENT.** Section 12.1-04.1-12 of the North Dakota Century Code is
29 amended and reenacted as follows:

1 **12.1-04.1-12. Use of reports at trial.**

2 Use at trial of a report prepared by a tier 1a mental health professional or other expert is
3 governed by the North Dakota Rules of Evidence. A report of a tier 1a mental health
4 professional or other expert furnished by the defendant pursuant to section 12.1-04.1-10 may
5 not be used at trial unless the tier 1a mental health professional or other expert who prepared
6 the report has been called to testify by the defendant.

7 **SECTION 14. AMENDMENT.** Section 12.1-04.1-13 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **12.1-04.1-13. Notice of expert witnesses.**

10 Not less than twenty days before trial, each party shall give written notice to the other of the
11 name and qualifications of each tier 1a mental health professional or other individual the
12 respective party intends to call as an expert witness at trial on the issue of lack of criminal
13 responsibility or requisite state of mind as an element of the crime charged. For good cause
14 shown, the court may permit later addition to or deletion from the list of individuals designated
15 as expert witnesses.

16 **SECTION 15. AMENDMENT.** Section 12.1-04.1-14 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **12.1-04.1-14. Use of evidence obtained from examination.**

- 19 1. Except as provided in subsection 2 and in sections 12.1-04.1-09 and 12.1-04.1-26,
20 information obtained as a result of examination of a defendant by a tier 1a mental
21 health professional conducted under section 12.1-04.1-05 is not admissible over
22 objection of the defendant in any proceeding against the defendant.
- 23 2. Subject to the limitation in section 12.1-04.1-15, information obtained from an
24 examination of the defendant by a tier 1a mental health professional conducted under
25 section 12.1-04.1-05 is admissible at trial to rebut evidence introduced by the
26 defendant obtained from an examination of the defendant by a tier 1a mental health
27 professional or to impeach the defendant on the defendant's testimony as to mental
28 condition at the time of the alleged offense.

29 **SECTION 16. AMENDMENT.** Section 12.1-04.1-15 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **12.1-04.1-15. Use of recording of examination.**

2 Except as provided in section 12.1-04.1-09, recording of an examination of the defendant
3 concerning the defendant's mental condition at the time of the alleged offense may be referred
4 to or otherwise used only on cross-examination for the purpose of impeachment of the tier 1a
5 mental health professional who conducted the examination and then on redirect examination of
6 that witness to the extent permitted by the North Dakota Rules of Evidence. The defendant must
7 make the recording available to the prosecuting attorney before any use of it pursuant to this
8 section. If the recording is so used, this section does not preclude its use for the purpose of
9 impeachment of the defendant in any other criminal, civil, or administrative proceeding.

10 **SECTION 17. AMENDMENT.** Section 12.1-04.1-22 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **12.1-04.1-22. Initial order of disposition - Commitment to treatment facility -**
13 **Conditional release - Discharge.**

- 14 1. The court shall conduct a dispositional hearing within ninety days after an order of
15 commitment pursuant to section 12.1-04.1-21 is entered, unless the court, upon
16 application of the prosecuting attorney or the individual committed, for cause shown,
17 extends the time for the hearing. The court shall enter an initial order of disposition
18 within ten days after the hearing is concluded.
- 19 2. In a proceeding under this section, unless excused by order of the court, defense
20 counsel at the trial shall represent the individual committed.
- 21 3. If the court finds ~~that~~ the individual lacks sufficient financial resources to retain the
22 services of a tier 1a mental health professional and that those services are not
23 otherwise available, ~~if~~ the court shall authorize reasonable expenditures from public
24 funds for the individual's retention of the services of one or more tier 1a mental health
25 professionals to examine the individual and make other inquiry concerning the
26 individual's mental condition.
- 27 4. In a proceeding under this section, the individual committed has the burden of proof by
28 a preponderance of the evidence. The court shall enter an order in accordance with
29 the following requirements:
- 30 a. If the court finds ~~that~~ the individual is not mentally ill or defective or that there is
31 not a substantial risk, as a result of mental illness or defect, that the individual will

1 commit a criminal act, ~~it~~the court shall order the ~~person~~individual discharged from
2 further constraint under this chapter.

3 b. If the court finds ~~that~~ the individual is mentally ill or defective and ~~that~~ there is a
4 substantial risk, as a result of mental illness or defect, that the individual will
5 commit a criminal act of violence threatening another individual with bodily injury
6 or inflicting property damage and that the individual is not a proper subject for
7 conditional release, ~~it~~the court shall order the individual committed to a treatment
8 facility for custody and treatment. If the court finds ~~that~~ the risk ~~that~~ the individual
9 will commit an act of violence threatening another individual with bodily injury or
10 inflicting property damage will be controlled adequately with supervision and
11 treatment if the individual is conditionally released and that necessary
12 supervision and treatment are available, ~~it~~the court shall order the
13 ~~person~~individual released subject to conditions it considers appropriate for the
14 protection of society.

15 c. If the court finds ~~that~~ the individual is mentally ill or defective and ~~that~~ there is a
16 substantial risk, as a result of mental illness or defect, that the individual will
17 commit a criminal act not included in subdivision b, ~~it~~the court shall order the
18 individual to report to a treatment facility for noncustodial evaluation and
19 treatment and to accept nonexperimental, generally accepted medical,
20 psychiatric, or psychological treatment recommended by the treatment facility.

21 **SECTION 18. AMENDMENT.** Section 12.1-04.1-23 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **12.1-04.1-23. Terms of commitment - Periodic review of commitment.**

24 1. Unless an order of commitment of an individual to a treatment facility provides for
25 special terms as to custody during commitment, the director or superintendent of the
26 treatment facility may determine from time to time the nature of the constraints
27 necessary within the treatment facility to carry out the court's order. In an order of
28 commitment, the court may authorize the director or superintendent to allow the
29 individual a limited leave of absence from the treatment facility on terms the court may
30 direct.

- 1 2. In an order of commitment of an individual to a treatment facility under this chapter, the
2 court shall set a date for review of the status of the individual. The date set must be
3 within one year after the date of the order.
- 4 3. At least sixty days before a date for review fixed in a court order, the director or
5 superintendent of the treatment facility shall inquire as to whether the individual is
6 presently represented by counsel and file with the court a written report of the facts
7 ascertained. If the individual is not represented by counsel, counsel must be provided
8 at public expense to consult with the individual and, if the individual is indigent, to seek
9 arrangement of counsel at public expense to represent the individual in a proceeding
10 for conditional release or discharge.
- 11 4. If the court finds in a review that the individual lacks sufficient financial resources to
12 retain the services of a tier 1a mental health professional and that those services are
13 otherwise not available, the court shall authorize reasonable expenditures from public
14 funds for the individual's retention of the services of one or more tier 1a mental health
15 professionals to examine the individual and make other inquiry concerning the
16 individual's mental condition. In proceedings brought before the next date for review,
17 the court may authorize expenditures from public funds for that purpose.
- 18 5. If an application for review of the status of the individual has not been filed by the date
19 for review, the director or superintendent shall file a motion for a new date for review to
20 be set by the court. The date set must be within one year after the previous date for
21 review.

22 **SECTION 19. AMENDMENT.** Section 25-01-01 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **25-01-01. Definitions.**

25 In this title, unless the context or subject matter otherwise requires:

- 26 1. ~~"Defective delinquent" means an incompetent mentally deficient person over eighteen~~
27 ~~years of age who has been found, in accordance with the procedures established in~~
28 ~~chapter 25-04, to have demonstrated a pattern of aggravated antisocial behavior such~~
29 ~~as to present a probable peril to the life, person, or property of others, or who has~~
30 ~~given substantial evidence of continuing propensity for such behavior.~~

- 1 2. "Licensed physician" means an individual licensed under the laws of this state to
2 practice medicine and also means a medical officer of the government of the United
3 States while in this state in the performance of the physician's official duties.
- 4 ~~3. "Mentally deficient person" means any person, minor or adult other than a mentally ill-~~
5 ~~person, who is so mentally defective as to be incapable of managing that person's-~~
6 ~~affairs and to require supervision, control, and care for that person's own or the public-~~
7 ~~welfare.~~
- 8 ~~4.2.~~ "Mentally ill individual" means an individual having a psychiatric or other disease which
9 substantially impairs the individual's mental health.
- 10 ~~5.3.~~ "North Dakota vision services - school for the blind" means the North Dakota vision
11 services - school for the blind as maintained under section 25-06-01.
- 12 ~~6.4.~~ "School for the deaf" means the school for the deaf of North Dakota.
- 13 ~~7.5.~~ "State hospital" means the state hospital for the mentally ill.
- 14 ~~8.6.~~ "Superintendent" means the superintendent of the state hospital, of the life skills and
15 transition center, of North Dakota vision services - school for the blind, or of the school
16 for the deaf, as the case may be.
- 17 ~~9.7.~~ "Supervising officer" means the executive director of the department of human
18 services or the superintendent of public instruction, as the case may be.
- 19 8. "Tier 1 mental health professional" means a tier 1a or tier 1b mental health
20 professional.
- 21 a. A tier 1a mental health professional is a psychiatrist licensed under chapter 43-17
22 or a psychologist licensed under chapter 43-32.
- 23 b. A tier 1b mental health professional is a licensed physician or a physician
24 assistant licensed under chapter 43-17 or an advanced practice registered nurse
25 licensed under chapter 43-12.
- 26 9. "Tier 2 mental health professional" means a tier 2a or a tier 2b mental health
27 professional.
- 28 a. A tier 2a mental health professional is an independent clinician who is a licensed
29 independent clinical social worker licensed under chapter 43-41~~or~~, a licensed
30 professional clinical counselor licensed under chapter 43-47, or a licensed
31 marriage and family therapist licensed under chapter 43-53.

1 b. ~~A tier 2b mental health professional is a licensed marriage and family therapist~~
2 ~~licensed under chapter 43-53, an addiction counselor licensed under chapter~~
3 ~~43-45, or a registered nurse licensed under chapter 43-12.~~

4 10. "Tier 3 mental health professional" means a licensed associate professional counselor
5 licensed under chapter 43-47, a licensed certified social worker licensed under chapter
6 43-41, a licensed professional counselor licensed under chapter 43-47, an associate
7 marriage and family therapist licensed under chapter 43-53, an occupational therapist
8 licensed under chapter 43-40, a licensed practical nurse licensed under chapter 43-12,
9 a behavior analyst licensed or registered under chapter 43-32, a vocational
10 rehabilitation counselor practicing under chapter 50-06.1, a school psychologist, or a
11 human relations counselor.

12 11. "Tier 4 mental health professional" means a direct care associate or technician.

13 **SECTION 20. AMENDMENT.** Section 25-03.1-04 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **25-03.1-04. Screening and admission to a public treatment facility.**

16 Under rules adopted by the department, screening of an individual to a public treatment
17 facility for observation, diagnosis, care, or treatment for mental illness or chemical dependency
18 must be performed, in person when reasonably practicable, by a regional human service center.
19 This screening must be performed in the region where the individual is physically located. Upon
20 the request of a court, a law enforcement official, a ~~qualified~~ mental health professional, the
21 individual's legal guardian, a minor's parent or legal custodian, or the individual requesting
22 services, the regional human service center shall conduct a screening. If a request for
23 screening is made by a ~~qualified~~ mental health professional and the individual ~~that~~who is the
24 subject of the screening does not authorize the disclosure of the individual's protected health
25 information, upon the request of the regional human service center, any mental health
26 professional who has treated the individual within the previous six months shall disclose,
27 subject to the requirements of title 42, Code of Federal Regulations, part 2, to the human
28 service center any relevant protected health information regarding that treatment. Upon receipt
29 of the request, the regional human service center shall arrange for a screening of the individual
30 and ~~must~~, if appropriate, shall treat the applicant, or refer the applicant to the appropriate
31 treatment facility. Upon admittance to a public treatment facility, the superintendent or director

1 shall immediately designate a ~~physician, psychiatrist, psychologist, advanced practice-~~
2 ~~registered nurse, tier 1 or tier 2~~ mental health professional to examine the individual.

3 **SECTION 21. AMENDMENT.** Section 25-03.1-08 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **25-03.1-08. Application to state's attorney or retained attorney - Petition for**
6 **involuntary treatment - Investigation by ~~qualified~~ mental health professional.**

7 1. Any individual eighteen years of age or over shall present the information necessary
8 for the commitment of an individual for involuntary treatment to the state's attorney of
9 the county where the respondent is presently located, or which is the respondent's
10 place of residence, or to an attorney retained by that applicant to represent the
11 applicant throughout the proceedings. The attorney shall assist the applicant in
12 completing the petition. The petition must be verified by affidavit of the applicant and
13 contain assertions that the respondent is a person requiring the treatment; the facts, in
14 detail, that are the basis of that assertion; the names, telephone numbers, and
15 addresses, if known, of any witnesses to those facts; and, if known, the name,
16 telephone number, and address of the nearest relative or guardian of the respondent,
17 or, if none, of a friend of the respondent.

18 2. The petition may be accompanied by any of the following:

19 a. A written statement supporting the petition from a ~~psychiatrist, physician,~~
20 ~~physician assistant, psychologist, advanced practice registered nurse, tier 1~~
21 mental health professional or an addiction counselor who is practicing within the
22 professional scope of practice and who has personally examined the respondent
23 within forty-five days of the date of the petition.

24 b. One or more supporting affidavits otherwise corroborating the petition.

25 3. In assisting the applicant in completing the petition, the state's attorney may direct a
26 ~~qualified~~ tier 1 or tier 2 mental health professional designated by the regional human
27 service center to investigate and evaluate the specific facts alleged by the applicant.
28 The investigation must be completed as promptly as possible and include
29 observations of and conversation with the respondent, unless the respondent cannot
30 be found or refuses to meet with the mental health professional. A written report of the
31 results of the investigation must be delivered to the state's attorney. Copies of the

1 report must be made available upon request to the respondent, the respondent's
2 counsel, and any expert examiner conducting an examination under section
3 25-03.1-11. The state's attorney or retained attorney shall file the petition if the
4 information provided by the petitioner or gathered by investigation provides probable
5 cause to believe that the subject of the petition is a person requiring treatment. A
6 state's attorney who determines there are insufficient grounds for filing a petition may
7 refer the applicant to other community resources. A state's attorney's decision not to
8 institute proceedings may be reviewed under section 11-16-06.

9 **SECTION 22. AMENDMENT.** Section 25-03.1-10 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **25-03.1-10. Involuntary treatment - Court-ordered examination.**

12 If the petition is not accompanied by a written supportive statement of a ~~psychiatrist,~~
13 ~~physician, physician assistant, psychologist, advanced practice registered nurse, tier 1 mental~~
14 ~~health professional~~ or a licensed addiction counselor who has examined the respondent within
15 the last forty-five days, the court shall order the respondent to be examined by an expert
16 examiner of the respondent's own choice or one appointed by the court. The order must state
17 the date and time within which the respondent must appear; the address to which the
18 respondent is to report; a statement that if the respondent fails to appear at the appointed place
19 at or before the ordered date and time, the respondent may be involuntarily taken into custody
20 and transported to the appointed place; and a statement that the expert examiner may consult
21 with or request participation in the examination by a ~~qualified~~ mental health professional and
22 may include with the written examination report any findings or observations by that mental
23 health professional. Accompanying the order must be an explanation of the intended uses and
24 possible effects of this examination. The examination may be conducted at a treatment facility,
25 at the respondent's home, or at any other suitable place in the community. A request for
26 examination at the state hospital must be screened and approved by a regional human service
27 center. The respondent may be accompanied by one or more relatives or friends at the place of
28 the examination. The costs of the court-ordered examination must be borne by the county that
29 is the respondent's place of residence.

30 **SECTION 23. AMENDMENT.** Section 25-03.1-11 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **25-03.1-11. Involuntary treatment - Examination - Report.**

- 2 1. The respondent must be examined within a reasonable time by an expert examiner as
3 ordered by the court. If the respondent is taken into custody under the emergency
4 treatment provisions of this chapter, the examination must be conducted within
5 twenty-four hours, exclusive of holidays, of custody. Any expert examiner conducting
6 an examination under this section may consult with or request participation in the
7 examination by any ~~qualified~~ mental health professional and may include with the
8 written examination report any findings or observations by that mental health
9 professional. This examination report, and that of the independent examiner, if one
10 has been requested, must be filed with the court. The report must contain:
- 11 a. Evaluations of the respondent's physical condition and mental status.
12 b. A conclusion as to whether the respondent is a person requiring treatment, with a
13 clear explanation of how that conclusion was derived from the evaluation.
14 c. If the report concludes ~~that~~ the respondent is a person requiring treatment, a list
15 of available forms of care and treatment that may serve as alternatives to
16 involuntary hospitalization.
17 d. The signature of the examiner who prepared the report.
- 18 2. For purposes of any examination conducted pursuant to this section:
- 19 a. An evaluation of a respondent's physical condition may be made only by a
20 ~~licensed physician, physician assistant, psychiatrist, or advanced practice~~
21 ~~registered nurse~~ tier 1b mental health professional.
22 b. An evaluation of a respondent's mental status may be made only by a ~~licensed~~
23 ~~physician, physician assistant, psychiatrist, advanced practice registered nurse,~~
24 ~~or psychologist trained in a clinical program~~ tier 1 mental health professional.
25 c. An evaluation of whether the respondent is chemically dependent may be made
26 only by a ~~licensed physician, physician assistant, psychiatrist, advanced practice~~
27 ~~registered nurse,~~ tier 1 mental health professional or a licensed addiction
28 counselor, ~~or licensed psychologist trained in a clinical program~~.
- 29 3. If the expert examiner concludes ~~that~~ the respondent is not a person requiring
30 treatment, the court may without taking any other additional action terminate the
31 proceedings and dismiss the petition. If the expert examiner concludes ~~that~~ the

1 respondent is a person requiring treatment, or makes no conclusion thereon~~whether~~
2 the respondent is a person requiring treatment, the court shall set a date for hearing
3 and shall give notice of hearing to the persons designated in section 25-03.1-12. If the
4 respondent is in custody and is alleged to be a person who is mentally ill or a person
5 who is both mentally ill and chemically dependent, the preliminary hearing date must
6 be within four days, exclusive of weekends and holidays, of the date the respondent
7 was taken into custody through emergency commitment under section 25-03.1-25
8 unless a delay or continuance is concurred in by the respondent or unless extended
9 by the magistrate for good cause shown. If a preliminary hearing is not required, the
10 treatment hearing must be held within four days, exclusive of weekends and holidays,
11 of the date the court received the expert examiner's report, not to exceed fourteen
12 days from the time the petition was served.

13 **SECTION 24. AMENDMENT.** Section 25-03.1-18.1 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **25-03.1-18.1. Court-authorized involuntary treatment with prescribed medication.**

- 16 1. a. Upon notice and hearing, a ~~treating psychiatrist~~tier 1b mental health professional
17 may request authorization from the court to treat an individual under a mental
18 health treatment order with prescribed medication. The request may be
19 considered by the court in an involuntary treatment hearing. As a part of the
20 request, ~~the treating a psychiatrist and another licensed physician, physician-~~
21 ~~assistant, psychiatrist, or advanced practice registered nurse not involved in the~~
22 ~~current diagnosis or treatment of the patient~~ or a final year psychiatric resident
23 ~~physician not involved in the current diagnosis or treatment of the patient~~ shall
24 certify:
- 25 (1) That the proposed prescribed medication is clinically appropriate and
26 necessary to effectively treat the patient and that the patient is a person
27 requiring treatment;
- 28 (2) That the patient was offered that treatment and refused it or that the patient
29 lacks the capacity to make or communicate a responsible decision about
30 that treatment;

1 (3) That prescribed medication is the least restrictive form of intervention
2 necessary to meet the treatment needs of the patient; and

3 (4) That the benefits of the treatment outweigh the known risks to the patient.

4 b. The court shall inquire whether the patient has had a sufficient opportunity to
5 adequately prepare to meet the issue of involuntary treatment with prescribed
6 medication and, at the request of the patient, the court may continue the
7 involuntary treatment hearing for a period not exceeding seven days or may
8 appoint an independent expert examiner as provided in subsection 4.

9 2. a. Evidence of the factors certified under subsection 1 may be presented to the
10 court at an involuntary treatment hearing held pursuant to sections 25-03.1-19
11 and 25-03.1-22, or at a separate hearing after motion and notice. The court in
12 ruling on the requested authorization for involuntary treatment with prescribed
13 medication shall consider all relevant evidence presented at the hearing,
14 including:

15 (1) The danger the patient presents to self or others;

16 (2) The patient's current condition;

17 (3) The patient's treatment history;

18 (4) The results of previous medication trials;

19 (5) The efficacy of current or past treatment modalities concerning the patient;

20 (6) The patient's prognosis; and

21 (7) The effect of the patient's mental condition on the patient's capacity to
22 consent.

23 b. Involuntary treatment with prescribed medication may not be authorized by the
24 court solely for the convenience of facility staff or for the purpose of punishment.

25 3. If the factors certified under subsection 1 have been demonstrated by clear and
26 convincing evidence, the court may include in its involuntary treatment order a
27 provision, or it may issue a separate order after notice and hearing, authorizing the
28 ~~treating psychiatrist~~ tier 1b mental health professional to involuntarily treat the patient
29 with prescribed medication on such terms and conditions as are appropriate. The
30 order for involuntary treatment with prescribed medication, however, may not be in
31 effect for more than ninety days.

- 1 4. If a patient has requested an examination by an independent expert examiner under
2 this chapter, and if the ~~treating psychiatrist~~tier 1b mental health professional has
3 requested authorization for involuntary treatment with prescribed medication, only a
4 psychiatrist or final year psychiatric resident physician may independently examine the
5 patient as to the issue of involuntary treatment with prescribed medication.

6 **SECTION 25. AMENDMENT.** Section 32-03-48 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **32-03-48. Definitions.**

9 As used in sections 32-03-48 through 32-03-50, unless the context otherwise requires:

- 10 1. "Critical incident" means any event encountered by emergency service personnel
11 within the scope of their employment which causes them to experience unusually
12 strong emotional reactions that have the potential to interfere with their ability to
13 perform their jobs or that may interfere with their personal lives.
- 14 2. "Critical incident stress debriefing" means the process of resolving the effects of
15 critical incidents on emergency service personnel through a structured meeting with
16 both psychological and educational components according to the model approved by
17 the state department of health.
- 18 3. "Critical incident stress management team" means those volunteers who are
19 recognized by the state department of health as members of an organized group that
20 provides critical incident stress debriefing services on behalf of the state.
- 21 4. "Emergency service personnel" means individuals who provide emergency services to
22 persons requiring medical aid, firefighting services, law enforcement assistance, or
23 other emergency assistance. The term includes law enforcement officers, firefighters,
24 rescue personnel, ambulance personnel, quick response personnel, emergency
25 service dispatchers, nurses, physicians, and other emergency care providers.
- 26 5. ~~"Mental health personnel" means psychiatrists, licensed psychologists, licensed social~~
27 ~~workers, licensed mental health counselors, nurses, members of the clergy, and other~~
28 ~~individuals approved by the state department of health to function as members of a~~
29 ~~critical incident stress management team, who have completed appropriate training as~~
30 ~~approved by the department.~~

1 6- "Peer support personnel" means those members of a critical incident stress
2 management team who are emergency service personnel and who have completed
3 appropriate training approved by the state department of health.

4 **SECTION 26. AMENDMENT.** Subdivision b of subsection 1 of section 43-48-15 of the North
5 Dakota Century Code is amended and reenacted as follows:

6 b. Being convicted of an offense, as defined by ~~subsection 20 of~~ section 12.1-01-04,
7 and which the board determines has a direct bearing upon a person's ability to
8 serve the public as a licensed clinical laboratory personnel or, following the
9 conviction of any offense, if the board determines that the person is not
10 sufficiently rehabilitated.

11 **SECTION 27. AMENDMENT.** Section 49-10.1-05 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **49-10.1-05. Railroad police.**

14 Railroad police officers who are designated by a railroad to be licensed under the laws of
15 this state, while engaged in their employment with the railroad, have the authority of a "law
16 enforcement officer" ~~pursuant to subsection 17 of~~ as defined under section 12.1-01-04 for the
17 purpose of arresting any person committing a felony on railroad property or associated with
18 railroad equipment, or to arrest a person committing a misdemeanor involving railroad property
19 or relating to persons or property being transported by the railroad, or awaiting transportation by
20 the railroad, and ~~have the power of removing~~ may remove an individual from a train who has no
21 right to be there, or who is engaging in a conduct prohibited by title 12.1.

22 **SECTION 28. AMENDMENT.** Section 50-25.1-03 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **50-25.1-03. Persons required and permitted to report - To whom reported.**

25 1. Any ~~physician, nurse, dentist, optometrist, dental hygienist, medical examiner or~~
26 ~~coroner, tier 1 mental health professional, tier 2 mental health professional, tier 3~~
27 ~~mental health professional, or tier 4 mental health professional as defined under~~
28 ~~section 25-01-01;~~ or any other medical or mental health professional, religious
29 practitioner of the healing arts, schoolteacher or administrator, school counselor,
30 ~~addiction counselor, social worker,~~ child care worker, foster parent, police or law
31 enforcement officer, juvenile court personnel, probation officer, division of juvenile

- 1 services employee, or member of the clergy having knowledge of or reasonable cause
2 to suspect ~~that~~ a child is abused or neglected, or has died as a result of abuse or
3 neglect, shall report the circumstances to the department if the knowledge or suspicion
4 is derived from information received by that ~~person~~individual in that
5 ~~person's~~individual's official or professional capacity. A member of the clergy, however,
6 is not required to report such circumstances if the knowledge or suspicion is derived
7 from information received in the capacity of spiritual adviser.
- 8 2. Any person having reasonable cause to suspect ~~that~~ a child is abused or neglected, or
9 has died as a result of abuse or neglect, may report such circumstances to the
10 department.
- 11 3. A person ~~who has~~having knowledge of or reasonable cause to suspect ~~that~~ a child is
12 abused or neglected, based on images of sexual conduct by a child discovered on a
13 workplace computer, shall report the circumstances to the department.

14 **SECTION 29. AMENDMENT.** Section 50-25.2-03 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **50-25.2-03. Reporting of abuse or neglect - Method of reporting.**

- 17 1. Any medical or mental health professional or personnel, law enforcement officer,
18 firefighter, member of the clergy, or caregiver having knowledge ~~that~~ a vulnerable adult
19 has been subjected to abuse or neglect, or who observes a vulnerable adult being
20 subjected to conditions or circumstances that reasonably would result in abuse or
21 neglect, shall report the information to the department or the department's designee or
22 to an appropriate law enforcement agency if the knowledge is derived from information
23 received by that ~~person~~individual in that ~~person's~~individual's official or professional
24 capacity. A member of the clergy, however, is not required to report the information if
25 the knowledge is derived from information received in the capacity of spiritual adviser.
26 For purposes of this subsection, "medical or mental health professional or personnel"
27 means a professional or personnel providing health care or services to a vulnerable
28 adult, on a full-time or part-time basis, on an individual basis or at the request of a
29 caregiver, and includes a ~~physician, nurse,~~ medical examiner, coroner, dentist, dental
30 hygienist, optometrist, pharmacist, chiropractor, podiatrist, physical therapist,
31 occupational therapist, ~~addiction counselor, counselor, marriage and family therapist,~~

- 1 tier 1 through tier 4 mental health professional as defined under section 25-01-01,
2 ~~social worker, mental health professional,~~ emergency medical services personnel,
3 hospital personnel, nursing home personnel, congregate care personnel, or any other
4 person providing medical and mental health services to a vulnerable adult.
- 5 2. A report, if required by section 25-01.3-04, satisfies all reporting requirements of this
6 chapter.
- 7 3. Any person not required to report under subsection 1 who has reasonable cause to
8 believe that a vulnerable adult has been subjected to abuse or neglect, or who
9 observes a vulnerable adult being subjected to conditions or circumstances that
10 reasonably would result in abuse or neglect, may report the information to the
11 department or the department's designee or to an appropriate law enforcement
12 agency. A law enforcement agency receiving a report under this section shall
13 immediately notify the department or the department's designee of the report.
- 14 4. ~~A person~~An individual required to report under subsection 1 shall make an oral or
15 written report and a person voluntarily reporting under subsection 2 may make an oral
16 or written report, as soon as possible. To the extent reasonably possible, a person who
17 makes a report under this section shall include in the report:
- 18 a. The name, age, and residence address of the alleged vulnerable adult;
- 19 b. The name and residence address of the caregiver, if any;
- 20 c. The nature and extent of the alleged abuse or neglect ~~org~~ the conditions and
21 circumstances that would reasonably be expected to result in abuse or neglect;
- 22 d. Any evidence of previous abuse or neglect, including the nature and extent of the
23 abuse or neglect; and
- 24 e. Any other information ~~that~~ in the opinion of the person making the report may be
25 helpful in establishing the cause of the alleged abuse or neglect and the identity
26 of the individual responsible for the alleged abuse or neglect.

27 **SECTION 30. AMENDMENT.** Section 62.1-01-01 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **62.1-01-01. General definitions.**

30 As used in this title, unless the context otherwise requires:

- 1 1. "Dangerous weapon" includes any switchblade or gravity knife, machete, scimitar,
2 stiletto, sword, dagger, or knife with a blade of five inches [12.7 centimeters] or more;
3 any throwing star, nunchaku, or other martial arts weapon; any billy, blackjack, sap,
4 bludgeon, cudgel, metal knuckles, or sand club; any slungshot; any bow and arrow,
5 crossbow, or spear; any weapon that will expel, or is readily capable of expelling, a
6 projectile by the action of a spring, compressed air, or compressed gas, including any
7 such weapon, loaded or unloaded, commonly referred to as a BB gun, air rifle, or CO2
8 gun; and any projector of a bomb or any object containing or capable of producing and
9 emitting any noxious liquid, gas, or substance. "Dangerous weapon" does not include
10 a spray or aerosol containing CS, also known as ortho-chlorobenzamalonitrile; CN,
11 also known as alpha-chloroacetophenone; or other irritating agent intended for use in
12 the defense of an individual, nor does the term include a device that uses voltage for
13 the defense of an individual, unless the device uses a projectile and voltage, then the
14 term includes the device for an individual who is prohibited from possessing a firearm
15 under this title. However, the term includes a device that uses a projectile and may be
16 used to apply multiple applications of voltage during a single incident.
- 17 2. "Direct supervision of an adult" means that an adult is present in such close proximity
18 so as to be capable of observing and directing the actions of the individual supervised.
- 19 3. "Firearm" or "weapon" means any device which will expel, or is readily capable of
20 expelling, a projectile by the action of an explosive and includes any such device,
21 loaded or unloaded, commonly referred to as a pistol, revolver, rifle, gun, machine
22 gun, shotgun, bazooka, or cannon. For a felon who is not sentenced under section
23 12.1-32-09.1, the term does not include a firearm or weapon that is a rifle that has a
24 barrel sixteen inches [40.64 centimeters] or longer or a shotgun that has a barrel
25 eighteen inches [45.72 centimeters] or longer and which is one of the following:
- 26 a. A firearm, including any firearm with a matchlock, flintlock, percussion cap, or
27 similar type of ignition system, manufactured before 1899.
- 28 b. A replica of any firearm described in subdivision a, if the replica is not designed
29 or redesigned for using rimfire or conventional centerfire fixed ammunition or
30 uses rimfire or conventional centerfire fixed ammunition that is no longer

1 manufactured in the United States and which is not readily available in the
2 ordinary channels of commercial trade.

3 c. A muzzleloading rifle or muzzleloading shotgun that is designed to use black
4 powder, or a black powder substitute, and cannot use fixed ammunition.

5 4. "Gaming site" means any room or premises licensed by the attorney general or by a
6 city or county governing body to conduct legal gaming operations.

7 5. "Government building" means a building which is owned, possessed, or used by or
8 leased to the state of North Dakota, or any of its political subdivisions.

9 6. "Handgun" means any firearm that is not designed to be fired from the shoulder, which
10 has a barrel less than sixteen inches [40.64 centimeters] long, and which is capable of
11 firing, by the energy of an explosive in a fixed metallic cartridge, an exposed projectile
12 through a rifled bore. The term includes all firearms that are designed to be readily
13 modified between rifle and pistol forms, if in compliance with the National Firearms Act
14 [26 U.S.C. 5801-5872].

15 7. "Law enforcement officer" means a public servant authorized by law or by a
16 government agency or branch to enforce the law and to conduct or engage in
17 investigations or prosecutions for violations of law.

18 8. "Machine gun, submachine gun, or fully automatic rifle" means a firearm, mechanism,
19 or instrument not requiring that the trigger be pressed for each shot, and having a
20 reservoir, belt, or other means of storing and carrying ammunition which can be loaded
21 into the firearm, mechanism, or instrument and fired therefrom at a rate of five or more
22 shots to the second.

23 9. "Mentally deficient individual" means any individual, minor or adult other than a
24 mentally ill individual, who is so mentally defective as to be incapable of managing that
25 individual's affairs and to require supervision, control, and care for that individual's own
26 or the public welfare.

27 10. "Plain view" means the handgun is placed in such a location or carried in such a
28 position as to be easily discernible by the ordinary observation of a passerby. In a
29 motor vehicle, this includes being placed on the seat, dashboard, or in a gunrack as
30 long as the handgun is not covered or is in any other way concealed from view.

1 ~~40.11.~~ "Rifle" means any firearm designed or redesigned, made or remade, and intended to
2 be fired from the shoulder and using the energy of the explosive in a fixed metallic
3 cartridge to fire only a single projectile through a rifled bore for each pull of the trigger.

4 ~~41.12.~~ "Secured" means the firearm is closed into the trunk or nonpassenger part of the
5 vehicle; placed into a closed and secure carrying device; rendered inoperative by the
6 use of a trigger, hammer, cylinder, slide, or barrel-locking device that renders the
7 firearm incapable of firing until the device is unlocked and removed; or so
8 disassembled or disabled as to be rendered incapable of firing.

9 ~~42.13.~~ "Short-barreled rifle" means a rifle having one or more barrels less than sixteen inches
10 [40.64 centimeters] in length and any firearm made from a rifle, whether by alteration,
11 modification, or otherwise, if the firearm, as modified, has an overall length of less than
12 twenty-six inches [66.04 centimeters].

13 ~~43.14.~~ "Short-barreled shotgun" means a shotgun having one or more barrels less than
14 eighteen inches [45.72 centimeters] in length and any firearm made from a shotgun,
15 whether by alteration, modification, or otherwise, if the firearm, as modified, has an
16 overall length of less than twenty-six inches [66.04 centimeters].

17 ~~44.15.~~ "Shotgun" means a firearm designed or redesigned, made or remade, and intended to
18 be fired with one hand below or behind and one hand in front of the breach, which
19 uses the energy of the explosive in a fixed shotgun shell to fire through a smooth or a
20 rifled bore either a number of ball shot or a single projectile for each single pull of the
21 trigger.

22 ~~45.16.~~ "Silencer" means any device for or attached to any firearm which will silence or
23 deaden the sound or natural report of the firearm when it is discharged.

24 ~~46.17.~~ "Unloaded" means the chamber of the firearm does not contain a loaded shell. If the
25 firearm is a revolver, then none of the chambers in the cylinder may contain a loaded
26 shell.

27 **SECTION 31. AMENDMENT.** Subdivisions b and c of subsection 1 of section 62.1-02-01 of
28 the North Dakota Century Code are amended and reenacted as follows:

29 b. A person who has been convicted anywhere of a felony offense of this or another
30 state or the federal government not provided for in subdivision a or who has been
31 convicted of a class A misdemeanor offense involving violence or intimidation in

1 violation of chapters 12.1-16 through 12.1-25 or an equivalent offense of another
2 state or the federal government and the offense was committed while using or
3 possessing a firearm, a dangerous weapon, or, as defined in ~~subsections 7 and 8~~
4 ~~of~~ section 12.1-01-04, a destructive device or an explosive, is prohibited from
5 owning a firearm or having one in possession or under control from the date of
6 conviction and continuing for a period of five years after the date of conviction or
7 the date of release from incarceration, parole, or probation, whichever is latest.

- 8 c. A person who is or has ever been diagnosed and confined or committed to a
9 hospital or other institution in this state or elsewhere by a court of competent
10 jurisdiction, other than a person who has had the petition that provided the basis
11 for the diagnosis, confinement, or commitment dismissed under section
12 25-03.1-17, 25-03.1-18, or 25-03.1-19, or equivalent statutes of another
13 jurisdiction, as a person requiring treatment as defined in section 25-03.1-02, or
14 as a mentally deficient ~~person as defined in section 25-01-01~~individual, is
15 prohibited from purchasing a firearm or having one in possession or under
16 control. This limitation does not apply to a person who has not suffered from the
17 disability for the previous three years or who has successfully petitioned for relief
18 under section 62.1-02-01.2.

19 **SECTION 32. AMENDMENT.** Subdivision b of subsection 1 of section 62.1-02-01.2 of the
20 North Dakota Century Code is amended and reenacted as follows:

- 21 b. Finds that a person is a "~~mentally deficient person~~", as defined in ~~subsection 3 of~~
22 ~~section 25-01-01~~mentally deficient individual;