

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, (4th 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;

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- 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.