

HOUSE BILL NO. 1117

Introduced by

Representatives Klemin, Buffalo, Hanson, Heinert, Jones, Karls, Roers Jones

Senators Bakke, Dwyer, Larson

1 A BILL for an Act to amend and reenact sections 25-03.1-03.1, 25-03.1-06, 25-03.1-08,
2 25-03.1-15, and 25-03.1-19, subsection 2 of section 25-03.1-21, sections 25-03.1-22,
3 25-03.1-23, and 25-03.1-29, and subsection 7 of section 30.1-28-04 of the North Dakota
4 Century Code, relating to commitment procedures; and to repeal section 25-03.1-18.2 of the
5 North Dakota Century Code, relating to guardian consent to involuntary treatment with
6 prescribed medication.

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

8 **SECTION 1. AMENDMENT.** Section 25-03.1-03.1 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **25-03.1-03.1. Disclosure of health information.**

11 A treating facility or mental health professional may disclose individually identifiable health
12 information to a court, regional human service center, state's attorney, appointed counsel,
13 retained counsel, or other mental health professional, including an expert examiner, and the
14 disclosure is a disclosure for treatment, including the provision, coordination, and management
15 of health care and to carry out the purposes of ~~chapter 25-03.1~~this chapter.

16 **SECTION 2. AMENDMENT.** Section 25-03.1-06 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **25-03.1-06. Right to release on application - Exception - Judicial proceedings.**

19 ~~Any~~An individual voluntarily admitted for inpatient treatment to ~~any~~a treatment facility or the
20 state hospital must be orally advised of the right to release and must be further advised in
21 writing of the rights under this chapter. A voluntary patient who requests release must be
22 immediately released. However, if the superintendent or the director determines ~~that~~ the patient
23 is a person requiring treatment, the release may be postponed until a petition for involuntary
24 commitment has been filed with the clerk of court and judicial proceedings for involuntary

1 treatment have been held in the county ~~wherein~~ which the hospital or facility is located. The
2 patient must be served the petition within twenty-four hours, exclusive of weekends and
3 holidays, from the time release is requested, unless extended by the magistrate for good cause
4 shown. The treatment hearing must be held within seven days from the time the petition is
5 served.

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

8 **25-03.1-08. Application to state's attorney or retained attorney - Petition for**
9 **involuntary treatment - Investigation by mental health professional.**

- 10 1. ~~Any~~An individual eighteen years of age or over shall present, in good faith, the
11 information necessary for the commitment of an individual for involuntary treatment to
12 the state's attorney of the county ~~wherein~~ which the respondent is presently located, or
13 which is the respondent's place of residence, or to an attorney retained by ~~that~~
14 ~~applicant~~the petitioner to represent the ~~applicant~~petitioner throughout the proceedings.
15 The attorney shall assist the ~~applicant~~petitioner in completing the petition. The petition
16 must be verified by affidavit of the ~~applicant~~petitioner and contain assertions that the
17 respondent is a person requiring the treatment; the facts, in detail, that are the basis of
18 that assertion; the names, telephone numbers, and addresses, if known, of any
19 witnesses to those facts; and, if known, the name, telephone number, and address of
20 the nearest relative or guardian of the respondent, or, if none, of a friend of the
21 respondent.
- 22 2. The petition may be accompanied by any of the following:
- 23 a. A written statement supporting the petition from a tier 1 mental health
24 professional or an addiction counselor who is practicing within the professional
25 scope of practice and who has personally examined the respondent within
26 forty-five days of the date of the petition.
- 27 b. One or more supporting affidavits otherwise corroborating the petition.
- 28 3. In assisting the ~~applicant~~petitioner in completing the petition, the state's attorney may
29 direct a tier 1 or tier 2 mental health professional designated by the regional human
30 service center to investigate and evaluate the specific facts alleged by the
31 ~~applicant~~petitioner. The investigation must be completed as promptly as possible and

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

12 **SECTION 4. AMENDMENT.** Section 25-03.1-15 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **25-03.1-15. Respondent's attendance at hearings.**

15 The respondent must be present at all hearings unless the respondent waives the right to
16 be present either orally or in writing. A respondent's refusal to attend a hearing is presumed to
17 be a waiver of the right to be present at the hearing. The judge must be notified if the
18 respondent has been medicated within twenty-four hours of the beginning of the hearing or an
19 adjourned session thereof of the hearing, and of the probable effects of the medication.

20 **SECTION 5. AMENDMENT.** Section 25-03.1-19 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **25-03.1-19. Involuntary treatment hearing.**

23 1. The involuntary treatment hearing, unless waived by the respondent or the respondent
24 has been released as a person not requiring treatment, must be held within fourteen
25 days of the preliminary hearing. If the preliminary hearing is not required, the
26 involuntary treatment hearing must be held within four days, exclusive of weekends
27 and holidays, of the date the court received the expert examiner's report, not to
28 exceed fourteen days from the time the petition was served. The court may extend the
29 time for hearing for good cause. The respondent has the right to an examination by an
30 independent expert examiner if so requested. If the respondent is indigent, the county

1 of residence of the respondent shall pay for the cost of the examination and the
2 respondent may choose an independent expert examiner.

3 2. The hearing must be held in the county of the respondent's residence or location or
4 the county ~~wherein which~~ the state hospital or treatment facility treating the
5 respondent is located, if the respondent requests a change of venue. At the hearing,
6 evidence in support of the petition must be presented by the state's attorney, private
7 counsel, or counsel designated by the court. During the hearing, the petitioner and the
8 respondent must be afforded an opportunity to testify and to present and
9 cross-examine witnesses. The court may receive the testimony of any other interested
10 person. All individuals not necessary for the conduct of the proceeding must be
11 excluded, ~~except that~~ the court may admit individuals having a legitimate interest in
12 the proceeding. The hearing must be conducted in as informal a manner as practical,
13 but the issue must be tried as a civil matter. Discovery and the power of subpoena
14 permitted under the North Dakota Rules of Civil Procedure are available to the
15 respondent. The court shall receive all relevant and material evidence that may be
16 offered as governed by the North Dakota Rules of Evidence. There is a presumption in
17 favor of the respondent, and the burden of proof in support of the petition is upon the
18 petitioner.

19 3. If, upon completion of the hearing, the court finds ~~that~~ the petition has not been
20 sustained by clear and convincing evidence, the court shall deny the petition,
21 terminate the proceeding, and order ~~that~~ the respondent be discharged if the
22 respondent has been hospitalized before the hearing.

23 **SECTION 6. AMENDMENT.** Subsection 2 of section 25-03.1-21 of the North Dakota
24 Century Code is amended and reenacted as follows:

25 2. If the respondent is not complying with the alternative treatment order or the
26 alternative treatment has not been sufficient to prevent serious risk of harm, the
27 department, a representative of the treatment program involved in the alternative
28 treatment order, the petitioner's retained attorney, or the state's attorney may apply to
29 the court or to the district court of a different judicial district in which the respondent is
30 located to modify the alternative treatment order. The court shall hold a hearing within

1 seven days after the application is filed and served on the respondent. Based upon the
2 evidence presented at the hearing and other available information, the court may:

- 3 a. Continue the alternative treatment order;
- 4 b. Consider other alternatives to hospitalization, modify the court's original order,
5 and direct the respondent undergo another program of alternative treatment for
6 the remainder of the ninety-day period; or
- 7 c. Enter a new order directing the respondent be hospitalized until discharged from
8 the hospital under section 25-03.1-30. If the respondent refuses to comply with
9 this hospitalization order, the court may direct a peace officer to take the
10 respondent into protective custody and transport the respondent to a treatment
11 facility.

12 **SECTION 7. AMENDMENT.** Section 25-03.1-22 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **25-03.1-22. Length of involuntary and continuing treatment orders.**

- 15 1. An ~~initial~~ order for involuntary treatment following a preliminary hearing may not
16 exceed ~~ninetyfourteen~~ days. An order for involuntary treatment following a treatment
17 hearing may not exceed ninety days.
- 18 2. If the director or superintendent believes ~~that~~ a patient continues to require treatment,
19 the director or superintendent ~~shall~~, not less than fourteen days before the expiration
20 of the initial order, shall petition the court where the facility is located for a
21 determination that the patient continues to be a person requiring treatment and for an
22 order of continuing treatment, which order may be for a period not to exceed one year.
23 The court shall set a hearing date that must be within fourteen days after the petition
24 was filed, unless extended for good cause shown.
- 25 3. ~~Unless extended under section 25-03.1-31, continuing treatment orders of indefinite-~~
26 ~~duration issued before August 1, 1993, expire as follows:~~
- 27 a. ~~Those orders issued before August 1, 1991, expire September 30, 1993.~~
- 28 b. ~~Those orders issued from August 1, 1991, through July 31, 1992, expire~~
29 ~~December 31, 1993.~~
- 30 e. ~~Those orders issued from August 1, 1992, through August 1, 1993, expire on-~~
31 ~~their first anniversaries or on March 31, 1994, whichever is later.~~

1 4. A respondent subject to a continuing treatment order of indefinite duration retains the
2 rights to periodic review and to petition for discharge under section 25-03.1-31 as that
3 section existed on July 31, 1993.

4 **SECTION 8. AMENDMENT.** Section 25-03.1-23 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **25-03.1-23. Petition for continuing treatment orders.**

7 A petition for an order authorizing continuing treatment must contain a statement setting
8 forth the ~~reasons for~~specific facts that are the basis of the determination that the patient
9 continues to be a person requiring treatment; a statement describing the treatment program
10 provided to the patient and the results of that treatment; and a clinical estimate as to how long
11 further treatment will be required. The petition must be accompanied by a certificate executed
12 by a physician, physician assistant, psychiatrist, psychologist, advanced practice registered
13 nurse, or licensed addiction counselor, any of whom is practicing within that individual's
14 professional scope of practice.

15 **SECTION 9. AMENDMENT.** Section 25-03.1-29 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **25-03.1-29. Appeal.**

18 1. The respondent has the right to an expedited appeal from an order of involuntary
19 commitment or alternative treatment, an order modifying a treatment order, an
20 alternative treatment order or less restrictive treatment order, a continuing treatment
21 order, an order denying a petition for discharge, or an order of transfer. Upon entry of
22 an appealable order, the court shall notify the respondent of the right of appeal and the
23 right to counsel. The notice of appeal must be filed within thirty days after the order
24 has been entered. Such appeal must be to the supreme court and the hearing must be
25 commenced within fourteen days of filing of the notice of appeal. The hearing must be
26 limited to a review of the procedures, findings, and conclusions of the lower court. The
27 name of the respondent may not appear on the record on appeal.

28 2. Pending appeal, the order appealed from ~~shall remain~~remains in effect, unless the
29 supreme court determines otherwise. The respondent may not be denied the
30 opportunity to be present at the appeal hearing, and the court conducting the appeal

1 may issue such interim order as will assure this opportunity to the respondent while
2 protecting the interest sought to be served by the order appealed from.

3 **SECTION 10. AMENDMENT.** Subsection 7 of section 30.1-28-04 of the North Dakota
4 Century Code is amended and reenacted as follows:

5 7. ~~Except~~Subject to chapter 25-03.1, a grant of general authority to make medical decisions
6 includes the authority to consent to involuntary treatment with prescribed medications.
7 ~~Subject to chapter 25.1-03.1, and except~~ upon specific findings of the court, a
8 grant of limited authority does not include authority to consent to involuntary treatment
9 with prescribed medications.

10 **SECTION 11. REPEAL.** Section 25-03.1-18.2 of the North Dakota Century Code is
11 repealed.