

**Sixty-seventh Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 5, 2021**

HOUSE BILL NO. 1117
(Representatives Klemin, Buffalo, Hanson, Heinert, Jones, Karls, Roers Jones)
(Senators Bakke, Dwyer, Larson)

AN ACT to amend and reenact sections 25-03.1-03.1, 25-03.1-06, 25-03.1-08, 25-03.1-15, and 25-03.1-19, subsection 2 of section 25-03.1-21, and sections 25-03.1-22, 25-03.1-23, and 25-03.1-29 of the North Dakota Century Code, relating to commitment procedures.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

25-03.1-03.1. Disclosure of health information.

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

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

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

~~Any~~An individual voluntarily admitted for inpatient treatment to ~~any~~a treatment facility or the state hospital must be orally advised of the right to release and must be further advised in writing of the rights under this chapter. A voluntary patient who requests release must be immediately released. However, if the superintendent or the director determines ~~that~~ the patient is a person requiring treatment, the release may be postponed until a petition for involuntary commitment has been filed with the clerk of court and judicial proceedings for involuntary treatment have been held in the county wherein which the hospital or facility is located. The patient must be served the petition within twenty-four hours, exclusive of weekends and holidays, from the time release is requested, unless extended by the magistrate for good cause shown. The treatment hearing must be held within seven days from the time the petition is served.

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

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

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

2. The petition may be accompanied by any of the following:
 - a. A written statement supporting the petition from a tier 1 mental health professional or an addiction counselor who is practicing within the professional scope of practice and who has personally examined the respondent within forty-five days of the date of the petition.
 - b. One or more supporting affidavits otherwise corroborating the petition.
3. In assisting the ~~applicant~~petitioner in completing the petition, the state's attorney may direct a tier 1 or tier 2 mental health professional designated by the regional human service center to investigate and evaluate the specific facts alleged by the ~~applicant~~petitioner. The investigation must be completed as promptly as possible and include observations of and conversation with the respondent, unless the respondent cannot be found or refuses to meet with the mental health professional. A written report of the results of the investigation must be delivered to the state's attorney. Copies of the report must be made available upon request to the respondent, the respondent's counsel, and any expert examiner conducting an examination under section 25-03.1-11. The state's attorney or retained attorney shall file the petition if the information provided by the petitioner or gathered by investigation provides probable cause to believe the subject of the petition is a person requiring treatment. A state's attorney who determines there are insufficient grounds for filing a petition may refer the ~~applicant~~individual to other community resources. A state's attorney's decision not to institute proceedings may be reviewed under section 11-16-06.

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

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

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

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

25-03.1-19. Involuntary treatment hearing.

1. The involuntary treatment hearing, unless waived by the respondent or the respondent has been released as a person not requiring treatment, must be held within fourteen days of the preliminary hearing. If the preliminary hearing is not required, the involuntary treatment hearing must be held within four days, exclusive of weekends and holidays, of the date the court received the expert examiner's report, not to exceed fourteen days from the time the petition was served. The court may extend the time for hearing for good cause. The respondent has the right to an examination by an independent expert examiner if so requested. If the respondent is indigent, the county of residence of the respondent shall pay for the cost of the examination and the respondent may choose an independent expert examiner.
2. The hearing must be held in the county of the respondent's residence or location or the county wherein which the state hospital or treatment facility treating the respondent is located, if the respondent requests a change of venue. At the hearing, evidence in support of the petition must be presented by the state's attorney, private counsel, or counsel designated by the court. During the hearing, the petitioner and the respondent must be afforded an opportunity to testify and to present and cross-examine witnesses. The court may receive the testimony of any other interested person. All individuals not necessary for the conduct of the proceeding must be excluded, except ~~that~~ the court may admit individuals having a legitimate interest in

the proceeding. The hearing must be conducted in as informal a manner as practical, but the issue must be tried as a civil matter. Discovery and the power of subpoena permitted under the North Dakota Rules of Civil Procedure are available to the respondent. The court shall receive all relevant and material evidence that may be offered as governed by the North Dakota Rules of Evidence. There is a presumption in favor of the respondent, and the burden of proof in support of the petition is upon the petitioner.

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

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

2. If the respondent is not complying with the alternative treatment order or the alternative treatment has not been sufficient to prevent serious risk of harm, the department, a representative of the treatment program involved in the alternative treatment order, the petitioner's retained attorney, or the state's attorney may apply to the court or to the district court of a different judicial district in which the respondent is located to modify the alternative treatment order. The court shall hold a hearing within seven days after the application is filed and served on the respondent. Based upon the evidence presented at the hearing and other available information, the court may:
 - a. Continue the alternative treatment order;
 - b. Consider other alternatives to hospitalization, modify the court's original order, and direct the respondent undergo another program of alternative treatment for the remainder of the ninety-day period; or
 - c. Enter a new order directing the respondent be hospitalized until discharged from the hospital under section 25-03.1-30. If the respondent refuses to comply with this hospitalization order, the court may direct a peace officer to take the respondent into protective custody and transport the respondent to a treatment facility.

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

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

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

- e. ~~Those orders issued from August 1, 1992, through August 1, 1993, expire on their first anniversaries or on March 31, 1994, whichever is later.~~
4. A respondent subject to a continuing treatment order of indefinite duration retains the rights to periodic review and to petition for discharge under section 25-03.1-31 as that section existed on July 31, 1993.

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

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

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

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

25-03.1-29. Appeal.

1. The respondent has the right to an expedited appeal from an order of involuntary commitment or alternative treatment, an order modifying a treatment order, an alternative treatment order or less restrictive treatment order, a continuing treatment order, an order denying a petition for discharge, or an order of transfer. Upon entry of an appealable order, the court shall notify the respondent of the right of appeal and the right to counsel. The notice of appeal must be filed within thirty days after the order has been entered. Such appeal must be to the supreme court and the hearing must be commenced within fourteen days of filing of the notice of appeal. The hearing must be limited to a review of the procedures, findings, and conclusions of the lower court. The name of the respondent may not appear on the record on appeal.
2. Pending appeal, the order appealed from ~~shall remain~~remains in effect, unless the supreme court determines otherwise. The respondent may not be denied the opportunity to be present at the appeal hearing, and the court conducting the appeal may issue such interim order as will assure this opportunity to the respondent while protecting the interest sought to be served by the order appealed from.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-seventh Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1117.

House Vote: Yeas 90 Nays 1 Absent 3

Senate Vote: Yeas 47 Nays 0 Absent 0

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2021.

Approved at _____ M. on _____, 2021.

Governor

Filed in this office this _____ day of _____, 2021,

at _____ o'clock _____ M.

Secretary of State