Sixty-fourth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2015

HOUSE BILL NO. 1040
(Legislative Management)
(Health Care Reform Review Committee)

AN ACT to amend and reenact sections 25-03.1-02, 25-03.1-04, 25-03.1-06, 25-03.1-07, 25-03.1-08, 25-03.1-10, 25-03.1-11, 25-03.1-16, 25-03.1-17, 25-03.1-18.1, and 25-03.1-19, subsection 3 of section 25-03.1-21, and sections 25-03.1-23, 25-03.1-25, 25-03.1-26, 25-03.1-27, 25-03.1-41, and 25-03.1-42 of the North Dakota Century Code, relating to scope of practice in involuntary commitment proceedings; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 25-03.1-02 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-02. Definitions.

In this chapter, unless the context requires otherwise:

1. "Advanced practice registered nurse" means an individual who is licensed as an advanced practice registered nurse under chapter 43-12.1 within the role of certified nurse practitioner or certified clinical nurse specialist, who has completed the requirements for a minimum of a master's degree in psychiatric and mental health nursing from an accredited program, and who is functioning within the scope of practice in one of the population foci as approved by the state board of nursing. This chapter does not expand the scope of practice of an advanced practice registered nurse beyond the scope of practice established by the state board of nursing.

2. "Alternative treatment order" means an involuntary outpatient order for a treatment program, other than hospitalization, which may include treatment with a prescribed medication.

~~2.~~3. "Chemically dependent person" or "person who is chemically dependent" means an individual with an illness or disorder characterized by a maladaptive pattern of usage of alcohol or drugs, or a combination thereof, resulting in social, occupational, psychological, or physical problems.

~~3.~~4. "Consent" means voluntary permission that is based upon full disclosure of facts necessary to make a decision and which is given by an individual who has the ability to understand those facts.

~~4.~~5. "Court" means, except when otherwise indicated, the district court serving the county in which the respondent resides.

~~5.~~6. "Department" means the department of human services.

~~6.~~7. "Director" means the director of a treatment facility or the director's designee.

~~7.~~8. "Expert examiner" means a licensed physician, physician assistant, psychiatrist, psychologist trained in a clinical program, advanced practice registered nurse, or licensed addiction counselor appointed by the court to examine the respondent and to provide an evaluation of whether the respondent is a person requiring treatment.

~~8.~~9. "Independent expert examiner" means a licensed physician, physician assistant, psychiatrist, psychologist trained in a clinical program, advanced practice registered nurse, or licensed

addiction counselor, chosen at the request of the respondent to provide an independent evaluation of whether the respondent is a person requiring treatment.

~~9.~~10. "Magistrate" means the judge of the appropriate district or juvenile court or a judge assigned by the presiding judge of the judicial district.

~~10.~~11. "Mental health professional" means:

a. A psychologist with at least a master's degree who has been either licensed or approved for exemption by the North Dakota board of psychology examiners.

b. A social worker with a master's degree in social work from an accredited program.

c. ~~A registered nurse with a master's degree in psychiatric and mental health nursing from an accredited program~~An advanced practice registered nurse.

d. A registered nurse with a minimum of two years of psychiatric clinical experience under the supervision of ~~a registered nurse as defined by subdivision c or of~~ an expert examiner.

e. A licensed addiction counselor.

f. A licensed professional counselor with a master's degree in counseling from an accredited program who has either successfully completed the advanced training beyond the master's degree as required by the national academy of mental health counselors or a minimum of two years of clinical experience in a mental health agency or setting under the supervision of a psychiatrist or psychologist.

g. A physician assistant.

~~11.~~12. "Mentally ill person" or "person who is mentally ill" means an individual with an organic, mental, or emotional disorder ~~which~~that substantially impairs the capacity to use self-control, judgment, and discretion in the conduct of personal affairs and social relations. ~~"Mentally ill person"~~The term does not include an individual with an intellectual disability of significantly subaverage general intellectual functioning ~~which~~that originates during the developmental period and is associated with impairment in adaptive behavior, although ~~a person~~an individual who is intellectually disabled may also ~~suffer from a mental illness~~be a person who is mentally ill. Chemical dependency does not per se constitute mental illness, although ~~persons suffering from that condition~~a person who is chemically dependent may also be ~~suffering from mental illness~~a person who is mentally ill.

~~12.~~13. "Person requiring treatment" means a person who is mentally ill or a person who is chemically dependent, and there is a reasonable expectation that if the ~~person~~individual is not treated for the mental illness or chemical dependency there exists a serious risk of harm to that ~~person~~individual, others, or property. ~~"Serious risk of harm" means a substantial likelihood of:~~

~~a. Suicide, as manifested by suicidal threats, attempts, or significant depression relevant to suicidal potential;~~

~~b. Killing or inflicting serious bodily harm on another person or inflicting significant property damage, as manifested by acts or threats;~~

~~c. Substantial deterioration in physical health, or substantial injury, disease, or death, based upon recent poor self-control or judgment in providing one's shelter, nutrition, or personal care; or~~

~~d. Substantial deterioration in mental health which would predictably result in dangerousness to that person, others, or property, based upon evidence of objective facts to establish the loss of cognitive or volitional control over the person's thoughts or~~

~~actions or based upon acts, threats, or patterns in the person's treatment history, current condition, and other relevant factors, including the effect of the person's mental condition on the person's ability to consent.~~

~~13.~~14. "Physician assistant" means an individual licensed to practice as a physician assistant under chapter 43-17, who is authorized by the state board of medical examiners to practice in the field of psychiatry, holds a certification in psychiatry approved by the board, and is practicing under the supervision of a psychiatrist licensed to practice medicine in this state. This chapter does not expand the scope of practice of a physician assistant beyond the scope of practice authorized by the state board of medical examiners.

15. "Private treatment facility" means any facility established under chapter 10-19.1 or 10-33 and licensed under chapter 23-16 or 50-31.

~~14.~~16. "Psychiatrist" means a licensed physician who has completed a residency program in psychiatry.

~~15.~~17. "Public treatment facility" means any treatment facility not falling under the definition of a private treatment facility.

~~16.~~18. "Qualified service organization" means a person ~~or entity~~ that provides services to a treatment facility such as data processing, bill collecting, dosage preparation, laboratory analysis, or legal, medical, accounting, or other professional services, and which agrees that in dealing with patient records, it is bound by the confidentiality restrictions of this chapter, except as otherwise provided for by law.

~~17.~~19. "Respondent" means ~~a person~~an individual subject to petition for involuntary treatment.

20. "Serious risk of harm" means a substantial likelihood of:

a. Suicide, as manifested by suicidal threats, attempts, or significant depression relevant to suicidal potential;

b. Killing or inflicting serious bodily harm on another individual or inflicting significant property damage, as manifested by acts or threats;

c. Substantial deterioration in physical health or substantial injury, disease, or death based upon recent poor self-control or judgment in providing one's shelter, nutrition, or personal care; or

d. Substantial deterioration in mental health which would predictably result in dangerousness to that individual, others, or property, based upon evidence of objective facts to establish the loss of cognitive or volitional control over the individual's thoughts or actions or based upon acts, threats, or patterns in the individual's treatment history, current condition, and other relevant factors, including the effect of the individual's mental condition on the individual's ability to consent.

~~18.~~21. "Superintendent" means the state hospital superintendent or the superintendent's designee.

~~19.~~22. "Third-party payer" means a person ~~or entity who~~that pays, or agrees to pay, for diagnosis or treatment furnished to a patient on the basis of a contractual relationship with the patient or a member of the patient's family, or on the basis of the patient's eligibility for federal, state, or local governmental benefits, and includes any person ~~or entity~~ providing audit or evaluation activities for the third-party payer.

~~20.~~23. "Treatment facility" or "facility" means any hospital, including the state hospital at Jamestown, or any evaluation and treatment facility that provides directly, or by direct arrangement with other public or private agencies, emergency evaluation and treatment, outpatient care, and

inpatient care to ~~persons~~individuals ~~suffering from a mental disorder or chemical dependency~~who are mentally ill or chemically dependent.

SECTION 2. AMENDMENT. Section 25-03.1-04 of the North Dakota Century Code is amended and reenacted as follows:

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

Under rules adopted by the department, screening of an individual to a public treatment facility for observation, diagnosis, care, or treatment for mental illness or chemical dependency must be performed, in person ~~whenever~~when reasonably practicable, by a regional human service center. This screening must be performed in the region where the individual is physically located. Upon the request of a court, a law enforcement official, a qualified mental health professional, the individual's legal guardian, a minor's parent or legal custodian, or the individual requesting services, the regional human service center shall conduct a screening. If a request for screening is made by a qualified mental health professional and the individual that is the subject of the screening does not authorize the disclosure of the individual's protected health information, upon the request of the regional human service center, any mental health professional who has treated the individual within the previous six months shall disclose, subject to the requirements of title 42, Code of Federal Regulations, part 2, to the human service center any relevant protected health information regarding that treatment. Upon receipt of the request, the regional human service center shall arrange for a screening of the individual and must, if appropriate, treat the applicant, or refer the applicant to the appropriate treatment facility. Upon admittance to a public treatment facility, the superintendent or director shall immediately designate a physician, psychiatrist, psychologist, advanced practice registered nurse, or mental health professional to examine the individual.

SECTION 3. 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 ~~person~~individual voluntarily admitted for inpatient treatment to any 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 judicial proceedings for involuntary treatment have been held in the county where 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 4. AMENDMENT. Section 25-03.1-07 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-07. Involuntary admission standards.

~~A person~~An individual may be involuntarily admitted under this chapter to the state hospital or another treatment facility only if it is determined that the individual is a person requiring treatment.

SECTION 5. 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 qualified mental health professional.

1. Any ~~person~~individual eighteen years of age or over shall present the information necessary for the commitment of an individual for involuntary treatment to the state's attorney of the county where the respondent is presently located, or which is the respondent's place of residence, or

to an attorney retained by that ~~person~~applicant to represent the applicant throughout the proceedings. The attorney shall assist the ~~person~~applicant in completing the petition. The petition must be verified by affidavit of the applicant 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:

~~1.~~a. A written statement supporting the petition from a psychiatrist, physician, physician assistant, psychologist, advanced practice registered nurse, or 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.

~~2.~~b. One or more supporting affidavits otherwise corroborating the petition.

3. In assisting the ~~person~~applicant in completing the petition, the state's attorney may direct a qualified mental health professional designated by the regional human service center to investigate and evaluate the specific facts alleged by the applicant. 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 that 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 to other community resources. A state's attorney's decision not to institute proceedings may be reviewed under section 11-16-06.

SECTION 6. AMENDMENT. Section 25-03.1-10 of the North Dakota Century Code is amended and reenacted as follows:

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

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

SECTION 7. AMENDMENT. Section 25-03.1-11 of the North Dakota Century Code is amended and reenacted as follows:

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

1. The respondent must be examined within a reasonable time by an expert examiner as ordered by the court. If the respondent is taken into custody under the emergency treatment provisions of this chapter, the examination must be conducted within twenty-four hours, exclusive of holidays, of custody. Any expert examiner conducting an examination under this section may consult with or request participation in the examination by any qualified mental health professional and may include with the written examination report any findings or observations by that mental health professional. This examination report, and that of the independent examiner, if one has been requested, must be filed with the court. The report must contain:

   a. Evaluations of the respondent's physical condition and mental status.

   b. A conclusion as to whether the respondent is a person requiring treatment, with a clear explanation of how that conclusion was derived from the evaluation.

   c. If the report concludes that the respondent is a person requiring treatment, a list of available forms of care and treatment that may serve as alternatives to involuntary hospitalization.

   d. The signature of the examiner who prepared the report.

2. For purposes of any examination conducted pursuant to this section:

   a. An evaluation of a respondent's physical condition may be made only by a licensed physician ~~or~~, physician assistant, psychiatrist, or advanced practice registered nurse.

   b. An evaluation of a respondent's mental status may be made only by a licensed physician, physician assistant, psychiatrist, advanced practice registered nurse, or psychologist trained in a clinical program.

   c. An evaluation of whether the respondent is chemically dependent may be made only by a licensed physician, physician assistant, psychiatrist, advanced practice registered nurse, licensed addiction counselor, or licensed psychologist trained in a clinical program.

3. If the expert examiner concludes that the respondent is not a person requiring treatment, the court may without taking any other additional action terminate the proceedings and dismiss the petition. If the expert examiner concludes that the respondent is a person requiring treatment, or makes no conclusion thereon, the court shall set a date for hearing and shall give notice of hearing to the persons designated in section 25-03.1-12. If the respondent is in custody and is alleged to be ~~suffering from mental illness~~a person who is mentally ill or a ~~combination of mental illness and chemical dependency~~person who is both mentally ill and chemically dependent, the preliminary hearing date must be within four days, exclusive of weekends and holidays, of the date respondent was taken into custody through emergency commitment under section 25-03.1-25 unless a delay or continuance is concurred in by the respondent or unless extended by the magistrate for good cause shown. If a preliminary hearing is not required, the 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.

SECTION 8. AMENDMENT. Section 25-03.1-16 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-16. Medication pending treatment order.

A patient who has requested release or ~~a person~~an individual who is the subject of a petition for treatment has the right to refuse medication and other forms of treatment before the preliminary or

treatment hearing. However, a physician, a physician assistant, or an advanced practice registered nurse may prescribe medication or a less restrictive alternative if it is necessary to prevent bodily harm to the respondent or others or to prevent imminent deterioration of the respondent's physical or mental condition. The patient has the right to be free of the effects of medication at the preliminary or treatment hearing by discontinuance of medication no later than twenty-four hours before the hearing unless, in the opinion of the ~~prescribing physician~~prescriber, the need for the medication still exists or discontinuation would hamper the respondent's preparation for and participation in the proceedings.

SECTION 9. AMENDMENT. Section 25-03.1-17 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-17. Involuntary treatment - Right to preliminary hearing.

A respondent who is in custody under section 25-03.1-25 and who is alleged to be a mentally ill person or to be ~~suffering from a combination of chemical dependency and mental illness~~a person who is both mentally ill and chemically dependent is entitled to a preliminary hearing. At the preliminary hearing the magistrate shall review the medical report. During the hearing the petitioner and the respondent must be afforded an opportunity to testify and to present and cross-examine witnesses, and the court may receive the testimony of any other interested person. The magistrate may receive evidence that would otherwise be inadmissible at a treatment hearing. At the conclusion of the hearing, if the court does not find probable cause to believe that the individual is a person requiring treatment, the petition must be dismissed. The ~~person~~individual must be ordered discharged from the treatment facility if that ~~person~~individual has been detained before the hearing. If the court finds probable cause to believe that the respondent is a person requiring treatment, it shall consider less restrictive alternatives to involuntary detention and treatment. The court may then order the respondent to undergo up to fourteen days' treatment under a less restrictive alternative or, if it finds that alternative treatment is not in the best interests of the respondent or others, it shall order the respondent detained for up to fourteen days for involuntary treatment in a treatment facility.

The court shall specifically state to the respondent and give written notice that if involuntary treatment beyond the fourteen-day period is to be sought, the respondent will have the right to a treatment hearing as required by this chapter.

SECTION 10. AMENDMENT. Section 25-03.1-18.1 of the North Dakota Century Code is amended and reenacted as follows:

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

1. a. Upon notice and hearing, a treating psychiatrist may request authorization from the court to treat ~~a person~~an individual under a mental health treatment order with prescribed medication. The request may be considered by the court in an involuntary treatment hearing. As a part of the request, the treating psychiatrist and another licensed physician ~~or~~, physician assistant, psychiatrist, or advanced practice registered nurse not involved in the current diagnosis or treatment of the patient shall certify:

   (1) That the proposed prescribed medication is clinically appropriate and necessary to effectively treat the patient and that the patient is a person requiring treatment;

   (2) That the patient was offered that treatment and refused it or that the patient lacks the capacity to make or communicate a responsible decision about that treatment;

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

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

   b. The court shall inquire whether the patient has had a sufficient opportunity to adequately prepare to meet the issue of involuntary treatment with prescribed medication and, at the

request of the patient, the court may continue the involuntary treatment hearing for a period not exceeding seven days or may appoint an independent expert examiner as provided in subsection 4.

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

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

   (2) The patient's current condition;

   (3) The patient's treatment history;

   (4) The results of previous medication trials;

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

   (6) The patient's prognosis; and

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

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

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

4. If a patient has requested an examination by an independent expert examiner under this chapter, and if the treating psychiatrist has requested authorization for involuntary treatment with prescribed medication, only a psychiatrist may independently examine the patient as to the issue of involuntary treatment with prescribed medication.

SECTION 11. 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.

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.

The hearing must be held in the county of the respondent's residence or location or the county where the state hospital or treatment facility treating the respondent is located. 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 ~~persons~~individuals not necessary for the conduct of the proceeding must be excluded, except that the court may admit ~~persons~~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 ~~which~~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.

If, upon completion of the hearing, the court finds that the petition has not been sustained by clear and convincing evidence, ~~it~~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 12. AMENDMENT. Subsection 3 of section 25-03.1-21 of the North Dakota Century Code is amended and reenacted as follows:

3. If a peace officer, physician either in person or directing an emergency medical services professional, psychiatrist, physician assistant, clinical psychologist, advanced practice registered nurse, or any mental health professional reasonably believes that the respondent is not complying with an order for alternative treatment, that the alternative treatment is not sufficient to prevent harm or injuries to the respondent or others, and that considerations of time and safety do not allow intervention by a court, the designated professional may cause the respondent to be taken into custody and detained at a treatment facility as provided in subsection 3 of section 25-03.1-25 and, within twenty-four hours, shall file a notice with the court stating the circumstances and factors of the case. The state hospital or public treatment facility ~~must~~shall immediately accept, if appropriately screened and medically stable, and a private treatment facility may accept, the respondent on a provisional basis. The superintendent or director shall require an immediate examination of the respondent and, within twenty-four hours after admission, shall either release the respondent subject to the conditions of the original order or file a notice with the court stating in detail the circumstances and factors of the case. The court shall, within forty-eight hours of receipt of the notice of the superintendent or director, after a hearing and based on the evidence presented and other available information:

   a. Release the individual from hospitalization and continue the alternative treatment order;

   b. Consider other alternatives to hospitalization, modify its original order, and direct the individual to undergo another program of alternative treatment for the remainder of the commitment period; or

   c. Enter a new order directing that the respondent remain hospitalized until discharged from the hospital under section 25-03.1-30.

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

25-03.1-25. Detention or hospitalization - Emergency procedure.

1. When a peace officer, physician either in person or directing an emergency medical services professional, psychiatrist, physician assistant, psychologist, advanced practice registered nurse, or mental health professional has reasonable cause to believe that an individual is a person requiring treatment and there exists a serious risk of harm to that ~~person~~individual, ~~other persons~~others, or property of an immediate nature that considerations of safety do not allow preliminary intervention by a magistrate, the peace officer, physician either in person or directing an emergency medical services professional, psychiatrist, physician assistant, psychologist, advanced practice registered nurse, or mental health professional, using the screening process set forth in section 25-03.1-04, may cause the ~~person~~individual to be taken into custody and detained at a treatment facility as provided in subsection 3, and subject to section 25-03.1-26, except that if emergency conditions exist that prevent the immediate conveyance of the individual to a public treatment facility, a private facility that has adequate resources and capacity to hold that individual may hold the individual in anticipation of conveyance to a public treatment facility for up to twenty-three hours:

   a. Without conducting an immediate examination required under section 25-03.1-26; and

   b. Without following notice and hearing requirements for a transfer to another treatment facility required under subsection 3 of section 25-03.1-34.

2. If a petitioner seeking the involuntary treatment of a respondent requests that the respondent be taken into immediate custody and the magistrate, upon reviewing the petition and accompanying documentation, finds probable cause to believe that the respondent is a person requiring treatment and there exists a serious risk of harm to the respondent, ~~other persons~~others, or property if allowed to remain at liberty, the magistrate may enter a written order directing that the respondent be taken into immediate custody and be detained as provided in subsection 3 until the preliminary or treatment hearing, which must be held no more than seven days after the date of the order.

3. Detention under this section may be:

   a. In a treatment facility where the director or superintendent must be informed of the reasons why immediate custody has been ordered. The facility may provide treatment that is necessary to preserve the respondent's life or to appropriately control behavior by the respondent which is likely to result in physical injury to self or to others if allowed to continue, but may not otherwise provide treatment to the respondent without the respondent's consent; or

   b. In a public or private facility in the community which is suitably equipped and staffed for the purpose. Detention in a jail or other correctional facility may not be ordered except in cases of actual emergency when no other secure facility is accessible, and then only for a period of not more than twenty-four hours and under close supervision.

4. Immediately upon being taken into custody, the ~~person~~individual must be advised of the purpose of custody, of the intended uses and possible effects of any evaluation that the ~~person~~individual undergoes, and of the ~~person's~~individual's rights to counsel and to a preliminary or treatment hearing.

5. Upon arrival at a facility the peace officer, physician, physician assistant, psychiatrist, psychologist, advanced practice registered nurse, or mental health professional who conveyed the ~~person~~individual or who caused the ~~person~~individual to be conveyed shall complete an application for evaluation and shall deliver a detailed written report from the peace officer, physician, physician assistant, psychiatrist, psychologist, advanced practice registered nurse, or the mental health professional who caused the ~~person~~individual to be conveyed. The written report must state the circumstances under which the ~~person~~individual was taken into custody. The report must allege in detail the overt act that constituted the basis for the beliefs

that the individual is a person requiring treatment and that, because of that ~~person's~~individual's condition, there exists a serious risk of harm to that ~~person~~individual, ~~another person~~others, or property if the ~~person~~individual is not immediately detained.

SECTION 15. AMENDMENT. Section 25-03.1-26 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-26. Emergency procedure - Acceptance of petition and individual - Notice - Court hearing set.

1. A public treatment facility immediately shall accept and a private treatment facility may accept on a provisional basis the application and the ~~person~~individual admitted under section 25-03.1-25. The superintendent or director shall require an immediate examination of the subject and, within twenty-four hours after admission, shall either release the ~~person~~individual if the superintendent or director finds that the subject does not meet the emergency commitment standards or file a petition if one has not been filed with the court of the ~~person's~~individual's residence or the court which directed immediate custody under subsection 2 of section 25-03.1-25, giving notice to the court and stating in detail the circumstances and facts of the case.

2. Upon receipt of the petition and notice of the emergency detention, the magistrate shall set a date for a preliminary hearing, if the respondent is alleged to be ~~suffering from mental illness~~a person who is mentally ill or ~~from a combination of mental illness and chemical dependency~~a person who is both mentally ill and chemically dependent, or a treatment hearing, if the respondent is alleged to be ~~suffering from chemical dependency~~a person who is chemically dependent, to be held no later than four days, exclusive of weekends and holidays, after detention unless the person has been released as a person not requiring treatment, has been voluntarily admitted for treatment, has requested or agreed to a continuance, or unless the hearing has been extended by the magistrate for good cause shown. The magistrate shall appoint counsel if one has not been retained by the respondent.

SECTION 16. AMENDMENT. Section 25-03.1-27 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-27. Notice and statement of rights.

1. ~~Whenever any person~~When an individual is detained for emergency evaluation and treatment under this chapter, the superintendent or director shall cause both the patient and, if possible, a responsible member of the patient's immediate family, a guardian, or a friend, if any, to receive:

   a. A copy of the petition which asserted that the individual is a person requiring treatment.

   b. A written statement explaining that the individual will be examined by an expert examiner within twenty-four hours of hospitalization, excluding holidays.

   c. A written statement in simple terms explaining the rights of the individual alleged to be ~~suffering from mental illness~~a person who is mentally ill or ~~from a combination of mental illness and chemical dependency~~a person who is both mentally ill and chemically dependent to a preliminary hearing, to be present at the hearing, and to be represented by legal counsel, if the individual is certified by an expert examiner or examiners as a person requiring treatment.

   d. A written statement in simple terms explaining the rights of the individual to a treatment hearing, to be present at the hearing, to be represented by legal counsel, and the right to an independent medical evaluation.

2. If the individual is unable to read or understand the written materials, every reasonable effort must be made to explain ~~them~~the written material in a language the individual understands, and a note of the explanation and by whom made must be entered into the patient record.

SECTION 17. AMENDMENT. Section 25-03.1-41 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-41. Limitations and restrictions of patient's rights.

The rights enumerated in subsections 5, 6, 7, and 8 of section 25-03.1-40 may be limited or restricted by the treating physician, physician assistant, psychiatrist, advanced practice registered nurse, or psychologist trained in a clinical program, if in that ~~person's~~individual's professional judgment to do so would be in the best interests of the patient and the rights are restricted or limited in the manner authorized by the rules adopted pursuant to section 25-03.1-46. ~~Whenever~~When a physician, physician assistant, psychiatrist, advanced practice registered nurse, or psychologist trained in a clinical program responsible for treatment of a particular patient imposes a special restriction on the rights of the patient as authorized by the rules, a written order specifying the restriction and the reasons for the restriction must be signed by the physician, physician assistant, psychiatrist, advanced practice registered nurse, or psychologist trained in a clinical program and attached to the patient's chart. These restrictions must be reviewed at intervals of not more than fourteen days and may be renewed by following the procedure set out in this section.

SECTION 18. AMENDMENT. Section 25-03.1-42 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-42. Limitation of liability - Penalty for false petition.

1. A person acting in good faith upon either actual knowledge or reliable information ~~who~~which makes the petition for involuntary treatment of ~~another person~~an individual under this chapter is not subject to civil or criminal liability.

2. A physician, physician assistant, psychiatrist, psychologist, advanced practice registered nurse, mental health professional, employee of a treatment facility, state's attorney, or peace officer who in good faith exercises professional judgment in fulfilling an obligation or discretionary responsibility under this chapter is not subject to civil or criminal liability for acting unless it can be shown that it was done in a negligent manner.

3. A person ~~who~~that makes a petition for involuntary treatment of ~~another person~~an individual without having good cause to believe that the ~~other person~~individual is ~~suffering from mental illness or chemical dependency~~a person who is both mentally ill and chemically dependent and as a result is likely to cause serious harm to self or others is guilty of a class A misdemeanor.

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-fourth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1040.

House Vote:	Yeas 93	Nays 0	Absent 1
Senate Vote:	Yeas 46	Nays 0	Absent 1

Chief Clerk of the House

Received by the Governor at 12:19 P. M. on April 10, 2015.

Approved at 2:21 P. M. on April 13, 2015.

Governor

Filed in this office this 13th day of April, 2015,

at 4:37 o'clock P M.

Secretary of State