Sixty-sixth Legislative Assembly of North Dakota
In Regular Session Commencing Thursday, January 3, 2019

HOUSE BILL NO. 1453
(Representatives Skroch, Buffalo, Sanford, Vigesaa)
(Senators Heckaman, Hogan, Mathern, Poolman)

AN ACT to amend and reenact sections 25-03.1-02, 25-03.1-07, 25-03.1-17, 25-03.1-21, and 25-03.1-30 of the North Dakota Century Code, relating to civil commitment procedures and alternative treatment orders; and to provide for a legislative management study.

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.

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.

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.

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

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

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

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.

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.

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

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. An advanced practice registered nurse.

    d. A registered nurse with a minimum of two years of psychiatric clinical experience under the supervision 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.

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

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 individual is not treated for the mental illness or chemical dependency there exists a serious risk of harm to that individual, others, or property.

14. "Physician assistant" means an individual licensed to practice as a physician assistant under chapter 43-17, who is authorized by the North Dakota board of medicine 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 North Dakota board of medicine.

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.

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

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

18. "Qualified service organization" means a person 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~~that person is bound by the confidentiality restrictions of this chapter, except as otherwise provided for by law.

19. "Respondent" means 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~~danger to that individual, others, or property, based upon ~~evidence~~:

        (1) Evidence of objective facts to establish the loss of cognitive or volitional control over the individual's thoughts or actions; or ~~based upon acts~~

        (2) Acts~~,~~ or threats~~, or~~; patterns in the individual's treatment history~~,~~; the individual's current condition~~,~~; and other relevant factors, including the effect of the individual's mental condition on the individual's ability to consent.

21. "Substantial likelihood" may take into account an individual's history and recent behavior.

22. "Superintendent" means the state hospital superintendent or the superintendent's designee.

~~22.~~23. "Third-party payer" means a person 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 providing audit or evaluation activities for the third-party payer.

~~23.~~24. "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 ~~individuals who are~~a person who is mentally ill or a person who is chemically dependent.

SECTION 2. 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.

An individual may not be involuntarily admitted under this chapter to the state hospital or another treatment facility ~~only if~~unless it is determined ~~that~~ the individual is a person requiring treatment.

SECTION 3. 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.

1. 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 a person who is both mentally ill and chemically dependent is entitled to a preliminary hearing.

a. At the preliminary hearing the ~~magistrate~~court shall review the medical report. During the hearing the court shall allow 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~~court may receive evidence that would otherwise be inadmissible at a treatment hearing.

b. 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 individual must be ordered discharged from~~ the court shall dismiss the petition and order the respondent be discharged from the treatment facility if ~~that individual has been~~the respondent was detained before the hearing.

2. If the court finds probable cause to believe ~~that~~ the respondent is a person requiring treatment, ~~it~~the court shall consider less restrictive alternatives to involuntary detention and treatment.

a. The court may ~~then~~ order the respondent to undergo up to fourteen days' treatment under a less restrictive alternative or, if ~~it~~the court finds ~~that~~ alternative treatment is not in the best interests of the respondent or others, ~~it~~the court shall order the respondent detained for up to fourteen days for involuntary treatment in a treatment facility.

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

25-03.1-21. Involuntary treatment order - Alternatives to hospitalization - Noncompliance with alternative treatment order - Emergency detention by certain professionals - Application for continuing treatment order.

1. Before ~~making its~~the court makes a decision in an involuntary treatment hearing, the court shall review a report assessing the availability and appropriateness for the respondent of treatment programs other than hospitalization which has been prepared and submitted by the state hospital or treatment facility. If the court finds ~~that~~ a treatment program other than hospitalization is adequate to meet the respondent's treatment needs and is sufficient to prevent ~~harm or injuries which the individual may inflict upon the individual or others~~serious risk of harm, the court shall order the respondent to receive whatever treatment, other than hospitalization, is appropriate for a period of ninety days.

2. If the respondent is not complying with the alternative treatment order or the alternative treatment has not been sufficient to prevent ~~harm or injuries that the individual may be inflicting upon the individual or others~~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. Based upon the evidence presented at 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 ~~individual to~~respondent undergo another program of alternative treatment for the remainder of the ninety-day period; or

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

refuses to comply with this hospitalization order, the court may direct a peace officer to take the ~~individual~~respondent into protective custody and transport the respondent to a treatment facility.

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 serious risk of 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 ~~shall~~ immediately shall 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, shall:

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

   b. Consider other alternatives to hospitalization, modify ~~its~~the original order of the court, and direct the ~~individual to~~respondent 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.

4. If, at the date of expiration of an order of alternative treatment, it is believed ~~that~~ an individual continues to require treatment, a petition for a determination that the individual continues to be a person requiring treatment may be filed with the court where the individual is located.

SECTION 5. AMENDMENT. Section 25-03.1-30 of the North Dakota Century Code is amended and reenacted as follows:

25-03.1-30. Discharge of hospitalized patient - Transfer to alternative treatment - Termination of alternative treatment.

1. The superintendent or director ~~may~~ at any time may discharge a voluntarily hospitalized patient who is clinically suitable for discharge.

2. The superintendent or director shall discharge a patient hospitalized by court order ~~when~~if the patient's mental condition is such that the patient no longer is a person requiring treatment.

3. If a patient discharged under subsection 1 or 2 has been hospitalized by a court order, or if court proceedings are pending, the treatment facility shall notify the court ~~must be notified~~ of the discharge ~~by the treatment facility~~.

4. A person responsible for providing treatment, other than hospitalization, to an individual ordered to undergo a program of alternative treatment may terminate the alternative treatment if the patient is clinically suitable for termination of treatment. The person shall terminate the alternative treatment ~~when~~if the patient no longer is a person requiring treatment and shall notify the court upon that termination.

5. If, upon the discharge of a hospitalized patient or the termination of alternative treatment of an individual under this chapter, the individual would benefit from further treatment, the hospital or provider of alternative treatment shall offer appropriate treatment on a voluntary basis or shall aid the individual to obtain treatment from another source on a voluntary basis.

   a. With the individual's consent, the superintendent or director shall notify the appropriate community agencies or persons of the release and of the suggested release plan. Community agencies include regional mental health centers, state and local counseling services, public and private associations ~~whose~~the function of which is to assist mentally ill or chemically dependent persons, and the individual's physician.

   b. The agencies and persons notified of the individual's release shall report to the facility that initial contact with the individual has been accomplished.

6. If, before expiration of an initial treatment order, the superintendent or director determines ~~that~~ a less restrictive form of treatment ~~would be~~is more appropriate for a patient hospitalized by court order, the superintendent or director may petition the court ~~which~~that last ordered the patient's hospitalization to modify ~~its~~the order of the court. The petition must contain statements setting forth the reasons for the determination ~~that~~ the patient continues to ~~require~~be a person requiring treatment, the reasons for the determination ~~that~~ a less restrictive form of treatment ~~would be~~is more appropriate for the patient, and describing the recommended treatment program. If the patient consents, ~~the court may,~~ without a hearing, the court may modify ~~its~~the treatment order of the court by directing the patient to undergo the agreed treatment program for the remainder of the treatment order. The patient must be given an opportunity to protest the discharge and modification of treatment order and to receive a hearing on the merits of the protest.

SECTION 6. LEGISLATIVE MANAGEMENT STUDY - REPORT - BEHAVIORAL HEALTH CIVIL COMMITMENT AND INTERVENTION BEFORE VIOLENCE.

1. During the 2019-20 interim, the legislative management shall consider studying the state's civil commitment laws and procedures under chapters 25-03.1 and 25-03.2 and the behavioral health and civil justice systems to determine whether:

   a. Steps could be taken to prevent and to decrease the incidence of violence committed by persons who are mentally ill, including the temporary removal of firearms;

   b. Law enforcement has the authority to confiscate a weapon from an individual who appears to be at serious risk of harm and whether this is applied uniformly by law enforcement across the state;

   c. Our behavioral health and civil justice systems could take steps to be more effective in intervening in the early stages of an individual's mental illness to treat the illness and avoid violence and possible contact with law enforcement; and

   d. There is a lack of uniformity in how early intervention and civil commitment is implemented across the state, and to the extent there may be a lack of uniformity, to what this lack of uniformity is attributable to and whether education and training of stakeholders may help facilitate more uniformity.

2. If the legislative management conducts this study, the judicial branch shall provide the legislative management with court data necessary to conduct the study, including data from each of the counties in the state regarding civil commitment proceedings and outcomes.

3. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-seventh legislative assembly.

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-sixth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1453.

House Vote:	Yeas 64	Nays 27	Absent 3
Senate Vote:	Yeas 47	Nays 0	Absent 0

Chief Clerk of the House

Received by the Governor at 6:44 P.M. on April 23, 2019.

Approved at 7:07 P.M. on April 25, 2019.

Governor

Filed in this office this 26th day of April, 2019, at 9:19 o'clock A. M.

Secretary of State