

## **INVOLUNTARY MENTAL HEALTH COMMITMENT PROCEDURES - BACKGROUND MEMORANDUM**

Section 3 of 2009 Senate Bill No. 2421 directs the Legislative Management to study the involuntary mental health commitment procedures under North Dakota Century Code Chapter 25-03.1. This section also requires that the study include an assessment of the availability of psychiatric services in the state.

### **BACKGROUND**

#### **Mental Illness Commitment Laws**

The majority of North Dakota's initial laws concerning the voluntary, involuntary, and emergency commitment of individuals with mental illness and chemical dependency were enacted in 1957 and were not substantially changed until 1977. In 1977 the Legislative Assembly enacted Senate Bill No. 2164, the bill that created Chapter 25-03.1. The bill established many of the commitment procedures for individuals with mental illness and chemical dependency which are currently in effect. The bill was precipitated by a number of state and federal court decisions that had invalidated state commitment laws similar to North Dakota's law.

A number of the commitment procedures contained in Chapter 25-03.1 have been amended in the years since the chapter was enacted. For example, Senate Bill No. 2389 (1989) replaced the terms "alcoholic individual" and "drug addict" with "chemically dependent person," the bill set forth more specific procedures for the application for involuntary treatment, and the bill permitted the parties to waive the preliminary hearing. Senate Bill No. 2370 (1993) authorized the state's attorney to seek reimbursement of funds expended by the county for a respondent who was determined to be indigent but is later found to have funds or property, clarified that a respondent has a right to a preliminary hearing, and set forth a procedure for a respondent to seek the discharge of a petition.

### **COMMITMENT PROCEDURES FOR MENTALLY ILL AND CHEMICALLY DEPENDENT INDIVIDUALS - SUMMARY OF STATUTORY PROVISIONS**

Chapter 25-03.1 provides for commitment procedures for mentally ill and chemically dependent individuals.

#### **Voluntary Commitment Procedures**

Section 25-03.1-04 provides that the screening and admission of an individual to a public treatment facility for mental illness or chemical dependency must be performed in person whenever reasonably practicable by the regional human service center in the region in which the individual is physically located. Upon receipt of the request, the regional human service center is to arrange for an evaluation of the

individual and, if appropriate, treat the applicant or refer the applicant to the appropriate treatment facility.

#### **Involuntary Commitment Procedures**

Section 25-03.1-07 provides that a person may be involuntarily admitted to the State Hospital or another treatment facility only if it is determined the individual requires treatment.

#### **Petition for Involuntary Treatment**

Section 25-03.1-08 provides that any adult (the applicant) may present a petition for involuntary treatment of an individual (the respondent) to the state's attorney of the county where the respondent is located or to an attorney retained by the applicant to represent the applicant through the proceedings. The petition must be verified by affidavit of the applicant and must contain assertions that the respondent requires treatment; detailed facts that are the basis of the assertion; and names, telephone numbers, and addresses of witnesses to those facts. To assist 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 and conversations with the respondent, if possible. The state's attorney or the retained attorney is required to file a petition with the clerk of court if the information provided by the applicant or by the investigation provides probable cause to believe that the respondent requires treatment. If the state's attorney determines there is insufficient grounds for filing a petition with the court, the state's attorney may refer the applicant to other community resources.

Section 25-03.1-09 provides that the clerk of court, upon the filing of a petition for involuntary treatment, is to notify the district judge or juvenile court judge. The judge is to review the petition and the accompanying documentation to determine whether it meets requirements of law and whether it establishes probable cause to believe the respondent requires treatment. If probable cause has not been established, the petition must be dismissed unless an amendment can cure the defect.

If the judge determines probable cause has been established, the respondent or the respondent's nearest relative or guardian must be served with:

1. A copy of the petition and supporting documentation.
2. A notice informing the respondent of procedures required by the law.
3. A notice of the respondent's right to a preliminary and treatment hearing; the right to be present at the hearings; the right to have counsel; the right to an independent

evaluation; and if the respondent is indigent, the right to counsel and an independent expert examiner, each at the expense of the county of the respondent's residence.

4. A notice that if an expert examiner is to be appointed, the respondent must be given an opportunity to select that examiner.

### **Court-Ordered Examination**

Section 25-03.1-10 provides that if the petition is not accompanied by a written supportive statement of a psychiatrist, physician, psychologist, or addiction counselor who has examined the respondent within the last 45 days, the court is to order the respondent to be examined by an expert examiner of the respondent's choice or one appointed by the court. The county of the respondent's residence is responsible for paying the cost of the court-ordered examination.

Section 25-03.1-11 provides that 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 emergency treatment provisions, the examination must be conducted within 24 hours of custody. The examination report must be filed with the court and must contain:

1. Evaluations of the respondent's physical condition and mental status.
2. A conclusion as to whether the respondent requires treatment.
3. If the report concludes that the respondent requires treatment, a list of available forms of care and treatment which may serve as alternatives to involuntary hospitalization.
4. The signature of the examiner.

Under this section, an evaluation of a respondent's physical condition may be made only by a licensed physician or psychiatrist; an evaluation of a respondent's mental status may be made only by a psychiatrist or psychologist trained in a clinical program; and an evaluation of whether the respondent is chemically dependent may be made only by a licensed physician, licensed addiction counselor, or licensed psychologist trained in a clinical program.

If the examiner concludes that the respondent does not require treatment, the court may terminate the proceedings and dismiss the petition. If the examiner concludes that the respondent requires treatment, the court is to set a date for hearing. If the respondent is in custody and is alleged to be suffering from mental illness or a combination of mental illness and chemical dependency, the preliminary hearing must be within seven days of the date the respondent was taken into custody. If a preliminary hearing is not required, the treatment hearing must be held within 4 days, exclusive of weekends and holidays, of the date the court received the examiner's report, not to exceed 14 days from the time the petition was served.

Section 25-03.1-11.1 provides that, with the consent of the court, the parties may waive the

preliminary hearing and conduct the treatment hearing within the time period set for the preliminary hearing.

### **Notice of Hearings**

Section 25-03.1-12 provides that the court is to give notice of a petition and of a time and place of any hearing to the respondent, parents of a respondent who is a minor, the respondent's attorney, the petitioner, the state's attorney, the superintendent or the director of any hospital or treatment facility in which the respondent is hospitalized or is being treated, the spouse of the respondent, any guardian, and other relatives or persons as the court may determine.

### **Right to Counsel**

Section 25-03.1-13 provides that every respondent is entitled to legal counsel. The section also provides procedures for appointing counsel, waiver of the right to counsel, and compensation of counsel for an indigent respondent.

### **Preliminary Hearing**

Section 25-03.1-17 provides that a respondent who is in custody and who is alleged to be mentally ill or to be suffering from a combination of chemical dependency and mental illness is entitled to a preliminary hearing. At the preliminary hearing, the judge is to review the medical report and allow the petitioner and the respondent an opportunity to testify and to present and cross-examine witnesses. The court may receive the testimony of any other interested person. The judge may receive evidence that would otherwise be inadmissible at a treatment hearing. If the court does not find probable cause to believe that the respondent requires treatment, the court is to dismiss the petition.

If the court finds probable cause to believe the respondent requires treatment, the court is to consider less restrictive alternatives to involuntary detention and treatment. The court may then order the respondent to undergo up to 14 days' treatment under a less restrictive alternative or if it finds that alternative treatment is not in the best interest of the respondent or others, the court is to order the respondent detained for up to 14 days for involuntary treatment in a treatment facility.

### **Court-Authorized Involuntary Treatment**

Section 25-03.1-18.1 authorizes the treating psychiatrist, upon notice and hearing, to request authorization to treat a person under a mental health treatment order with prescribed medication. The treating psychiatrist and another licensed physician or psychiatrist not involved in the current diagnosis or treatment of the patient are required to certify that the proposed prescribed medication is clinically appropriate and necessary to effectively treat the patient and that the patient is a person requiring treatment, that the patient was offered that treatment and refused it or the patient lacked the capacity to

make or communicate a responsible decision about the treatment, that the prescribed medication is the least restrictive form of intervention necessary to meet the treatment needs of the patient, and that the benefits of the treatment outweigh the known risks to the patient.

### **Treatment Hearing**

Section 25-03.1-19 provides that the involuntary treatment hearing, unless waived by the respondent, must be held within 14 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 examiner's report. The hearing must be held in the respondent's county or in 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. 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. 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 the petition has not been sustained by clear and convincing evidence, the court is to deny the petition, terminate the proceeding, and order the respondent to be discharged if the respondent was hospitalized before the hearing.

Section 25-03.1-20 provides that if the respondent is found at the involuntary treatment hearing to require treatment, the court may:

1. Order the individual to undergo a program of treatment other than hospitalization;
2. Order the individual hospitalized in a public institution; or
3. Order the individual hospitalized in any other private hospital if the attending physician agrees.

### **Alternatives to Hospitalization**

Section 25-03.1-21 provides for alternatives to hospitalization. Before making its decision in an involuntary treatment hearing, the court is to review a report assessing the availability and appropriateness of treatment programs other than hospitalization for the respondent 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 that the respondent may inflict upon oneself or others, the court is to order the respondent to receive whatever treatment other than hospitalization is appropriate for a period of 90 days.

Section 25-03.1-22 provides that an initial order for involuntary treatment may not exceed 90 days.

### **Emergency Commitment Procedures**

Section 25-03.1-25 provides that when a peace officer, physician, psychiatrist, psychologist, or mental health professional has reasonable cause to believe that an individual requires treatment and there exists a serious risk of harm to that person, other person, or property of an immediate nature that considerations of safety do not allow preliminary intervention by a judge, the peace officer, physician, psychiatrist, psychologist, or mental health professional, using the screening process set forth in Section 25-03.1-04, may cause the person to be taken into custody and detained at a treatment facility, which includes any hospital, including the State Hospital, and any public or private treatment facility.

If a petitioner seeking the involuntary treatment of a respondent requests that the respondent be taken into immediate custody and the judge, upon reviewing the petition and accompanying documentation finds probable cause to believe that the respondent requires treatment and there exists a serious risk of harm to the respondent, other person, or property if allowed to remain at liberty, a judge may enter a written order directing that the respondent be taken into immediate custody and detained until the preliminary or treatment hearing.

### **Transportation Expenses**

Section 25-03.1-39 provides that whenever an individual is about to be involuntarily hospitalized, an official or person designated by the court is to arrange for the individual's transportation to the treatment facility with suitable medical or nursing attendants and by such means as may be suitable for the person's medical condition. Whenever practicable, the individual is not to be transferred by police officers or in police vehicles. If the individual is unable to pay for expenses of transportation and friends or relatives do not oblige themselves to pay the expense, the court may direct that the expenses are to be paid by the individual's county of residence.

### **AVAILABILITY OF PSYCHIATRIC SERVICES IN THE STATE**

Testimony in support of Senate Bill No. 2421 indicated that due to the rural nature of the state and the limited availability of psychiatric services in many parts of the state, it is often difficult to meet the deadlines imposed by law within which an expert examination is required to be conducted. As a result of these concerns, the testimony indicated that an assessment of the availability of psychiatric services in the state would be useful. Following, from information provided by the North Dakota Medical Association, the North Dakota Board of Psychologist Examiners, and the North Dakota Healthcare Association, is information regarding the number of psychiatrists and psychologists in the state as well as the number of psychiatrists and psychologists in the state's hospitals.

City	Psychiatrists
Fargo/West Fargo	66
Bismarck	13
Grand Forks	8
Minot	8
Jamestown	7
Devils Lake	2
Belcourt	2
Williston	1

City	Psychologists
Fargo/West Fargo	52
Grand Forks	46
Bismarck	21
Minot	18
Jamestown	12
Dickinson	6
Belcourt	3
Devils Lake	3
Williston	2
Ardoch	1
Bottineau	1
Carrington	1
Hettinger	1
Lawton	1
Mandan	1
Wahpeton	1

City	Hospital	Psychiatrists	Psychologists
Fargo	6	66	52
Grand Forks	3	8	46
Bismarck	3	13	21
Jamestown	2	7	12
Minot	2	8	18
Ashley	1		
Belcourt	1	2	3
Bottineau	1		1
Bowman	1		
Cando	1		
Carrington	1		1
Cavalier	1		
Cooperstown	1		
Crosby	1		
Devils Lake	1	2	3
Dickinson	1		6
Elgin	1		
Fort Yates	1		
Garrison	1		
Grafton	1		
Harvey	1		
Hazen	1		
Hettinger	1		1
Hillsboro	1		
Kenmare	1		
Langdon	1		
Linton	1		
Lisbon	1		
Mandan	1		1
Mayville	1		
McVie	1		
Northwood	1		
Oakes	1		
Park River	1		
Richardton	1		
Rolla	1		
Rugby	1		
Stanley	1		
Tioga	1		
Turtle Lake	1		
Valley City	1		
Watford City	1		
Williston	1	1	2
Wishek	1		

## PREVIOUS STUDIES

### 1973-74 Interim

The Legislative Council's 1973-74 interim Judiciary "A" Committee, in its study of the state's Criminal Code, was concerned about the workability and constitutionality of the state's mental health commitment procedures. Because of its workload, the committee was unable to pursue the subject directly; however, the committee did recommend a study resolution, subsequently passed during the 1975 legislative session, directing a study of mental health commitment procedures. In 1975 the Legislative Assembly considered a measure--House Bill No. 1605--proposing a major overhaul of the state's mental health commitment procedures. The legislative history indicates that because of the size and complexity of the bill and the short amount of time available to consider the bill, House Bill No. 1605 was defeated and a study resolution was passed.

### 1975-76 Interim

During the 1975-76 interim, the Legislative Council's State and Federal Government Committee studied the state's mental health commitment procedures. The committee received testimony from individuals working with and in the state's mental health system. The testimony highlighted different aspects and shortcomings of the present laws, which led the committee to the conclusion that the system needed a major overhaul rather than a few changes here and there. The committee recommended two mutually exclusive bills. The first bill--Senate Bill No. 2070 (1977)--created a new commitment procedure and, in the process, abolished county mental health boards. The second bill--Senate Bill No. 2069 (1977)--allowed for the formation of multicounty mental health boards. Both bills recommended by the interim committee failed to pass the Senate; however, Senate Bill No. 2164, which contained many of the same provisions as Senate Bill No. 2070, passed. Senate Bill No. 2164 established procedures for the voluntary, involuntary, and emergency commitment of individuals with serious mental disorders, alcoholism, and drug addiction.

### 1987-88 Interim

During the 1987-88 interim, the Legislative Council's Budget Committee on Human Services Committee, as part of its study of the role and function of the State Hospital in the provision of services to the mentally ill and chemically dependent, reviewed the law that provided for a 72-hour emergency detention before a preliminary hearing for persons who are believed to be suffering from mental illness, alcoholism, or drug addiction. The law provided that detention was to be in a treatment facility and not in a jail unless no other secure facility was available. The committee expressed concerns regarding the holding of persons in jail facilities before their commitment hearings. The committee received testimony that jail

facility operators were being trained and provided information on the handling of mentally ill individuals. The committee made no recommendations regarding this issue. A bill passed during the 1989 legislative session which amended Section 25-03.1-25 and increased the maximum time period for detention before a preliminary hearing from 72 hours to seven days.

### **1991-98 Interims**

During the 1991-92, 1993-94, 1995-96, and 1997-98 interims, the Legislative Council's Budget Committee on Government Services monitored the continued development of a continuum of services to the mentally ill and chemically dependent. The committee also studied the change in the role of the State Hospital and the expansion of community services. The committee reviewed programs and enhancements to existing programs identified by each regional human service center which may be needed to provide a comprehensive system of services to seriously mentally ill and chemically dependent individuals in need of services in each region.

### **2001-02 Interim**

During the 2001-02 interim, the interim Judiciary A Committee studied commitment procedures for individuals with mental illness. The committee recommended a bill to change from seven to four the number of days within which a mental health preliminary hearing or a treatment hearing is to be held. The bill--Senate Bill No. 2045--was passed in 2003.

### **2003-04 Interim**

The 2003-04 interim Budget Committee on Government Services studied the needs of individuals with mental illness, drug and alcohol addictions, and physical or developmental disabilities. The committee reviewed services available for individuals with developmental disabilities, the community-based system of care for persons with mental illness or substance abuse disorders, and in the impact of methamphetamine use on state programs. The committee made no recommendation as a result of this study.

### **2007-08 Interim**

During the 2007-08 interim, the Commission on Alternatives to Incarceration received reports from the Department of Human Services regarding substance abuse treatment programs and mental health intervention programs provided by the department. The commission also received reports regarding the progress of implementation of the Cass County Justice and Mental Health Collaboration Project. The report indicated that the program was intended to provide a mental health assessment of an individual who has been arrested to determine if a mental health

issue may be an underlying cause of the individual's criminal behavior.

The commission encouraged the Governor and the Department of Human Services to allow the Robinson Recovery Center to address treatment needs for addictions other than the treatment of methamphetamine addiction. The commission expressed its support for the efforts of the Department of Human Services and encouraged the department to provide broader residential treatment services for addictions and mental health issues on a statewide basis.

## **2009 LEGISLATION**

At least two bills relating to mental health commitment procedures were passed by the Legislative Assembly in 2009.

**Senate Bill No. 2098** provides that, for the purpose of involuntary commitment due to mental illness or chemical dependency, a written statement of support which accompanies a petition may be provided by an addiction counselor. The bill also provided that the screening of an individual in a public treatment facility for care of a mental illness or chemical dependency must be performed in person whenever reasonably practicable.

**Senate Bill No. 2421**, as introduced, would have extended the time from the initiation of emergency procedures from 24 hours to 96 hours. As passed, the bill clarified which professionals may conduct an evaluation of a respondent's physical condition, mental status, or whether the respondent is chemically dependent by relocating the language from the definition of expert examiner and independent expert examiner to Section 25-03.1-11, which provides for the procedural requirements of the examination. Section 3 of the bill provided for this study.

## **SUGGESTED STUDY APPROACH**

The committee, in its study of the involuntary mental health commitment procedures under Chapter 25-03.1, may wish to approach this study as follows:

- Receive testimony from representatives of the Department of Human Services and the State Hospital regarding the involuntary commitment procedures and the changes in clinical practices and whether the current commitment procedures are compatible with those changes.
- Receive information regarding the commitment laws from other states.
- Receive testimony from the North Dakota State's Attorneys Association, the judiciary, the Protection and Advocacy Project, and mental health professionals regarding issues and concerns of each in civil commitment proceedings.
- Receive testimony from organizations such as the North Dakota Medical Association, the North Dakota Healthcare Association, the

Center for Rural Health, and the medical licensing boards regarding the availability of psychiatric services in the state.

- Develop recommendations and prepare legislation necessary to implement the recommendations.