

State of South Dakota

EIGHTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2014

319V0662

HOUSE BILL NO. 1198

Introduced by: Representatives Stevens and Hunhoff (Bernie) and Senator Hunhoff (Jean)

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the administration of
2 medical treatment for individuals with mental illness.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 27A-12-3.11 be amended to read as follows:

5 27A-12-3.11. Emergency surgery and any other emergency medical procedures may be
6 performed without the patient's consent or court or board order if the life of the recipient is
7 threatened and there is not time to obtain consent or order or if the patient is incapacitated as
8 defined in § 34-12C-1 and substitute informed consent is obtained from an appointed guardian,
9 an attorney-in-fact, or a person with authority pursuant to chapter 34-12C. Documentation of
10 the necessity for the medical procedure shall be entered into the patient's record as soon as
11 practicable.

12 If it is ordered by a physician, psychotropic medication may be administered to a person in
13 an emergency to prevent serious physical harm to the person or to others. Psychotropic
14 medication, electroconvulsive therapy, and such other medical treatment as may be necessary
15 for the treatment of the person's mental illness may also be administered if the attending



1 physician and one other physician determine that administration of such medication, therapy,
2 or treatment is necessary to prevent significant deterioration of the person's severe mental illness
3 and that the person's potential for improvement would be significantly impaired if such
4 treatment is not provided. The medication, electroconvulsive therapy, or such other necessary
5 medical treatment may be continued for up to ten days ~~only~~ and may be extended for one
6 additional ten day period if a petition is filed pursuant to § 27A-12-13.13 within the first ten day
7 period. The reason for such treatment shall be documented in the patient's medical record.
8 Electroconvulsive therapy may be administered only by a physician. Any physician who in good
9 faith orders and administers psychotropic medication, electroconvulsive therapy, or such other
10 necessary medical treatment under this section is immune from any civil liability for such order
11 and administration, unless injury results from gross negligence or willful or wanton misconduct.

12 Health care may be performed with the patient's informed consent, or if the patient is
13 incapacitated, by a substitute informed consent from an appointed guardian, an attorney-in-fact,
14 or a person with authority pursuant to chapter 34-12C. Informed consent may be withdrawn at
15 any time, is effective immediately upon communication of the withdrawal of consent to the
16 treatment provider, and shall thereafter be reduced to writing.

17 No sterilization may be authorized under authority of this title for a person incapable of
18 providing written informed consent.

19 Section 2. That § 27A-12-3.14 be amended to read as follows:

20 27A-12-3.14. ~~Certified copies~~ Copies of the petition and notice of hearing shall be
21 personally served by the sheriff or an elector of any state not a party to the action that is
22 specifically designated by the court or board on the person immediately upon the filing of the
23 petition but no less than five calendar days before the hearing. The notice of hearing shall
24 include the following:

- 1 (1) Notice of the time, date, and place of hearing and directing the person to appear in
2 person;
- 3 (2) Notice of the person's right to be represented by an attorney at the person's own
4 expense or appointed by the court if the person is indigent;
- 5 (3) Notice of the person's right to seek an opinion of an independent psychiatrist at the
6 person's own expense or at the expense of the person's county of residence if the
7 person is indigent; and
- 8 (4) Notice that the costs of any post-commitment proceedings, treatment, medication,
9 and any hearing related to the medication, any post-commitment proceeding,
10 including a habeas corpus proceeding, the costs of compensation for the attorney
11 appointed to represent the person, and any other costs associated with any post-
12 commitment proceeding, are that person's responsibility, and that a lien for the
13 amount of these costs may be filed upon the person's real and personal property to
14 insure payment.

15 Upon the filing of the petition the court or board shall immediately appoint counsel for the
16 person if counsel has not been retained. A date shall be set for the hearing within fifteen days
17 of the filing of the petition, and this hearing shall be a priority on the court or board calendar.
18 Allowance for any additional time shall be limited to one seven-day continuance, and shall be
19 restrictively granted, only upon a showing of good cause for delay.