

AN ACT

ENTITLED, An Act to allow more time for a mental illness hearing.

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

Section 1. That § 27A-10-5 be amended to read as follows:

27A-10-5. Immediately after a person is taken into custody, a hold is initiated pursuant to § 27A-8-10.1, or a petition is filed pursuant to § 27A-8-11.2, the person shall be notified both orally and in writing of the following:

- (1) The right to immediately contact someone of the person's choosing;
- (2) The right to immediately contact and be represented by counsel;
- (3) That the person will be examined by a qualified mental health professional, designated by the chair of the county board of mental illness, within twenty-four hours after being taken into custody to determine whether custody should continue; and
- (4) The right, if custody is continued, to an independent examination and to a hearing within five days after being taken into custody, within six days if there is a Saturday, Sunday, or holiday within that time period, or within seven days if there is a Saturday, Sunday, and holiday within that time period.

The person shall be further notified that the costs of any commitment proceedings, treatment, medication and any hearing related to the medication, any post-commitment proceeding, including a habeas corpus proceeding, the costs of compensation for the attorney appointed to represent the person, and any other costs associated with any proceeding are that person's responsibility and that a lien for the amount of these costs may be filed upon the person's real and personal property to ensure payment.

The notice shall also be given forthwith to the county board serving the county where the person was apprehended.

Section 2. That § 27A-10-8 be amended to read as follows:

27A-10-8. Within five days after the person is taken into custody, within six days if there is a Saturday, Sunday, or holiday within that time period, or within seven days if there is a Saturday, Sunday, and holiday within that time period, the person shall be provided an involuntary commitment hearing.

Expenses incurred by the board holding the hearing, including the transportation of the person to the hearing, shall be paid by the referring county, subject to reimbursement by the county ultimately proven to be the county of residence or, if the person is a nonresident of the state, by the State of South Dakota. The provisions of chapter 28-14 do not apply to this section.

Section 3. That § 27A-11A-19 be amended to read as follows:

27A-11A-19. No person who is under an order of involuntary commitment may be transferred to a more restrictive treatment facility without, prior to the transfer, a hearing before the board of mental illness which committed the person. A petition for transfer shall be filed with the chair of the board. The person shall have at least five days notice of the hearing and has the right to be represented by an attorney. At the time of the notice, the board chair shall appoint an attorney to represent the person if that person has not retained counsel.

If transfer to the more restrictive treatment facility is necessary to prevent the immediate danger of physical harm to the person or others, the transfer may be authorized by the chair of the board pending the hearing. The hearing shall be held within five days of the initiation of the transfer, within six days if there is a Saturday, Sunday, or holiday within that time period, or within seven days if there is a Saturday, Sunday, and holiday within that time period.

Upon completion of the hearing, if the board finds by clear and convincing evidence supported by written findings of fact and conclusions of law that the proposed transfer meets the criteria in § 27A-10-9.1, the board may authorize the transfer pursuant to the initial commitment order. The transfer hearing does not substitute for the review hearings to which the person would otherwise be entitled under §§ 27A-10-14 and 27A-10-15.

The county board of mental illness authorizing a transfer under this section may authorize the sheriff of the county from which the person was initially committed to transfer the person at the expense of the county. The sheriff shall be paid no per diem but only mileage as allowed by law.

Section 4. That § 27A-11A-22 be amended to read as follows:

27A-11A-22. If at any time while a person is under an order of commitment it comes to the attention of the board of mental illness that the program of treatment has not been successful, the board shall conduct a hearing within five days, within six days if there is a Saturday, Sunday, or holiday within that time period, or within seven days if there is a Saturday, Sunday, and holiday within that time period. The person shall be represented by counsel and the person and the counsel shall be given at least five days notice of the hearing. If the board finds that the program of treatment has not been successful, it shall modify the original order and direct the person to undergo an alternative program of treatment if consistent with the criteria in § 27A-10-9.1.

If at any time while the person is under an order of commitment the administrator or facility director determines that the program of treatment has not been successful, the administrator or facility director shall notify the board of mental illness of that fact.

Section 5. That § 27A-15-15.2 be amended to read as follows:

27A-15-15.2. If a written objection to continued inpatient treatment is executed pursuant to § 27A-15-19, the administrator or facility director shall forthwith file the objection with the chair of the county board of mental illness for the county where the facility is located. In addition, the administrator or facility director shall immediately notify the minor both orally and in writing of the following:

- (1) The right to immediately contact a person of the minor's choosing;
- (2) The right to immediately contact and be represented by counsel;

- (3) That the minor will be examined by a qualified mental health professional, designated by the chair of the county board, within twenty-four hours to determine whether inpatient treatment should continue; and
- (4) The right, if inpatient treatment is continued, to an independent examination as accorded in § 27A-11A-9 and to a hearing within five days of the execution of the written objection, within six days if there is a Saturday, Sunday, or holiday within that time period, or within seven days if there is a Saturday, Sunday, and holiday within that time period.

The notice shall also be given forthwith to the chair of the county board.

Inpatient treatment of the minor may continue pending the hearing by the county board of mental illness. The facility may discharge the minor prior to the hearing upon a determination that the minor no longer meets the criteria in § 27A-15-5. If the minor is discharged, the hearing need not be held.

Section 6. That § 27A-15-15.4 be amended to read as follows:

27A-15-15.4. Within five days after the execution of the written objection to continued inpatient treatment, within six days if there is a Saturday, Sunday, or holiday within that time period, or within seven days if there is a Saturday, Sunday, and holiday with that time period, the minor shall be provided a hearing on the need for continued inpatient treatment at the facility. The hearing shall be held in the county where the facility is located before the board of mental illness serving that county. Expenses, including the transportation of the minor to the hearing, shall be paid by the county in which the hearing is held, subject to reimbursement by the county ultimately proven to be the minor's county of residence or, if the minor is a nonresident of the state, by the State of South Dakota. The provisions of chapter 28-14 do not apply to this section.

Section 7. That § 27A-15-19 be amended to read as follows:

27A-15-19. Within five days after service of the objection, within six days if there is a Saturday, Sunday, or holiday within that time period, or within seven days if there is a Saturday, Sunday, and holiday within that period, the minor shall be provided a hearing on the need for continued inpatient treatment at the facility. The hearing shall be held in the county where the facility is located before the board of mental illness serving that county. Expenses incurred by the board holding the hearing shall be paid by the county in which the hearing is held, subject to reimbursement by the county ultimately proven to be the county of residence or, if the minor is a nonresident of the state, by the State of South Dakota.

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I certify that the attached Act  
originated in the  
HOUSE as Bill No. 1062

\_\_\_\_\_  
Chief Clerk  
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\_\_\_\_\_  
Speaker of the House

Attest:

\_\_\_\_\_  
Chief Clerk

\_\_\_\_\_  
President of the Senate

Attest:

\_\_\_\_\_  
Secretary of the Senate

House Bill No. 1062  
File No. \_\_\_\_\_  
Chapter No. \_\_\_\_\_

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Received at this Executive Office  
this \_\_\_\_ day of \_\_\_\_\_ ,  
19\_\_ at \_\_\_\_ M.

By \_\_\_\_\_  
for the Governor  
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The attached Act is hereby  
approved this \_\_\_\_\_ day of  
\_\_\_\_\_, A.D., 19\_\_

\_\_\_\_\_  
Governor  
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STATE OF SOUTH DAKOTA,  
SS.  
Office of the Secretary of State

Filed \_\_\_\_\_, 19\_\_  
at \_\_\_\_\_ o'clock \_\_ M.

\_\_\_\_\_  
Secretary of State

By \_\_\_\_\_  
Asst. Secretary of State