

State of South Dakota

SEVENTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 1997

369A0397 **HOUSE JUDICIARY COMMITTEE ENGROSSED NO.**
HB1062 - 1/27/97

Introduced by: Representatives Moore, Belatti, Fischer-Clemens, Hagen, Matthews, Munson
(Donald), Schrempp, and Sperry and Senators Hunhoff, Everist, and Lawler

1 FOR AN ACT ENTITLED, An Act to allow more time for a mental illness hearing.

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

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

4 ~~27A-10-5. Immediately after the person is taken into custody or a hold is initiated pursuant~~
5 ~~to § 27A-8-10.1 or a petition is filed pursuant to § 27A-8-11.2, he shall be notified both orally~~
6 ~~and in writing of his right to immediately contact a person of his choosing, to immediately~~
7 ~~contact and be represented by counsel, and that he will be examined by a qualified mental health~~
8 ~~professional, designated by the chairman of the county board, within twenty-four hours of being~~
9 ~~taken into custody to determine whether custody should continue and, if so, the right to an~~
10 ~~independent examination, and to a hearing within five days, or six, if there is a Saturday, Sunday,~~
11 ~~or holiday within that time period. Immediately after a person is taken into custody, a hold is~~
12 ~~initiated pursuant to § 27A-8-10.1, or a petition is filed pursuant to § 27A-8-11.2, the person~~
13 ~~shall be notified both orally and in writing of the following:~~

14 (1) The right to immediately contact someone of the person's choosing;

15 (2) The right to immediately contact and be represented by counsel;

1 (3) That the person will be examined by a qualified mental health professional, designated
 2 by the chair of the county board of mental illness, within twenty-four hours after being
 3 taken into custody to determine whether custody should continue; and

4 (4) The right, if custody is continued, to an independent examination and to a hearing
 5 within five days after being taken into custody, within six days if there is a Saturday,
 6 Sunday, or holiday within that time period, or within seven days if there is a Saturday,
 7 Sunday, and holiday within that time period.

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

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

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

17 27A-10-8. Within five days after the person is taken into custody, ~~or six,~~ within six days if
 18 there is a Saturday, Sunday, or holiday within that time period, ~~he~~ or within seven days if there
 19 is a Saturday, Sunday, and holiday within that time period, the person shall be provided an
 20 involuntary commitment hearing.

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

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

2 27A-11A-19. No person who is under an order of involuntary commitment may be
3 transferred to a more restrictive treatment facility without, prior to the transfer, a hearing, ~~prior~~
4 ~~to such transfer~~, before the board of mental illness which committed the person. A petition for
5 transfer shall be filed with the ~~chairman~~ chair of the board. The person shall have at least five
6 days notice of the hearing and ~~a~~ has the right to be represented by an attorney. At the time of the
7 notice, the board ~~chairman~~ chair shall appoint an attorney to represent the person if that person
8 has not retained counsel.

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

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

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

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

25 27A-11A-22. If at any time while a person is under an order of commitment; it comes to the

1 attention of the board of mental illness that the program of treatment has not been successful,
 2 the board shall conduct a hearing within five days, ~~or six~~ within six days if there is a Saturday,
 3 Sunday, or holiday within that time period, or within seven days if there is a Saturday, Sunday,
 4 and holiday within that time period. The person shall be represented by counsel and the person
 5 and ~~his~~ the counsel shall be given at least five days notice of the hearing. If the board finds that
 6 the program of treatment has not been successful, it shall modify the original order and direct the
 7 person to undergo an alternative program of treatment if consistent with the criteria in
 8 § 27A-10-9.1.

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

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

13 27A-15-15.2. If a written objection to continued inpatient treatment is executed pursuant to
 14 § 27A-15-19, the administrator or facility director shall forthwith file the objection with the
 15 ~~chairman~~ chair of the county board of mental illness for the county where the facility is located.

16 In addition, the administrator or facility director shall immediately notify the minor both orally
 17 and in writing of ~~his~~ the following:

18 (1) The right to immediately contact a person of his the minor's choosing;

19 (2) The right to immediately contact and be represented by
 20 counsel, ~~and that he~~;

21 (3) That the minor will be examined by a qualified mental health professional, designated
 22 by the ~~chairman~~ chair of the county board, within twenty-four hours to determine
 23 whether inpatient treatment should continue ~~and, if so, the right~~; and

24 (4) The right, if inpatient treatment is continued, to an independent examination as
 25 accorded in § 27A-11A-9; and to a hearing within five days of the execution of the

1 written objection, ~~or six,~~ within six days if there is a Saturday, Sunday, or holiday
 2 within that time period, or within seven days if there is a Saturday, Sunday, and
 3 holiday within that time period.

4 ~~Such~~ The notice shall also be ~~forthwith given to the chairman~~ given forthwith to the chair of
 5 the county board.

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

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

11 27A-15-15.4. Within five days after the execution of the written objection to continued
 12 inpatient treatment, ~~or six,~~ within six days if there is a Saturday, Sunday, or holiday within that
 13 time period, or within seven days if there is a Saturday, Sunday, and holiday with that time
 14 period, the minor shall be provided a hearing on the need for continued inpatient treatment at the
 15 facility. The hearing shall be held in the county where the facility is located before the board of
 16 mental illness serving that county. Expenses, including the transportation of the minor to the
 17 hearing, shall be paid by the county in which the hearing is held, subject to reimbursement by the
 18 county ultimately proven to be the minor's county of residence; ~~or,~~ if the minor is a nonresident
 19 of the state, by the State of South Dakota. The provisions of chapter 28-14 do not apply to this
 20 section.

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

22 27A-15-19. Within five days after service of the objection, ~~or six~~ within six days if there is
 23 a Saturday, Sunday, or holiday within that time period, or within seven days if there is a
 24 Saturday, Sunday, and holiday within that period, the minor shall be provided a hearing on the
 25 need for continued inpatient treatment at the facility. The hearing shall be held in the county

1 where the facility is located before the board of mental illness serving that county. Expenses
2 incurred by the board holding the hearing shall be paid by the county in which the hearing is held,
3 subject to reimbursement by the county ultimately proven to be the county of residence or, if the
4 minor is a nonresident of the state, by the State of South Dakota.

1 **BILL HISTORY**

2 January 22 - Scheduled for hearing.

3 January 22 - First read in House and referred to Judiciary. H.J. 80

4 January 24 - Passed as amended, AYES 13, NAYS 0. H.J. 108