

State of South Dakota

SEVENTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 1997

774A0488

HOUSE BILL NO. 1063

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 require the state to reimburse expenses of mental illness
2 proceedings incurred in behalf of residents of Indian reservations.

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

4 Section 1. That § 27A-10-6 be amended to read as follows:

5 27A-10-6. Within twenty-four hours after apprehension of a person who allegedly requires
6 emergency intervention ~~or~~, a hold is initiated pursuant to § 27A-8-10.1, or a petition is filed
7 pursuant to § 27A-8-11.2, a qualified mental health professional designated by the ~~chairman~~ chair
8 of the county board of mental illness serving the area where the person is detained, other than
9 the person bringing the petition or initiating the hold, shall perform an examination, including a
10 mental status examination, of the person. Preceding the examination, the qualified mental health
11 professional shall identify himself or herself to the person and explain the nature and purpose of
12 the examination, including the fact that it is being performed to assist in the determination of
13 whether custody should continue and that the examination may be used as evidence in an
14 involuntary commitment hearing. The qualified mental health professional shall immediately
15 report ~~his~~ the findings to the ~~chairman~~ chair of the county board. Expenses of the examination

1 by the qualified mental health professional shall be paid by the referring county, subject to
2 reimbursement by the county ultimately proven to be the county of residence or, if the person
3 is a nonresident of the state or a resident of an Indian reservation, by the State of South Dakota.
4 ~~However, the~~ The provisions of chapter 28-14 do not apply to this section.

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

6 27A-10-8. Within five days after the person is taken into custody, or six, if there is a
7 Saturday, Sunday or holiday within that time period, ~~he~~ the person shall be provided an
8 involuntary commitment hearing.

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

15 Section 3. That § 27A-11A-4 be amended to read as follows:

16 27A-11A-4. In any proceeding for involuntary commitment, review, or detention; or in any
17 proceeding challenging commitment or detention, the state's attorney for the county in which the
18 proceeding is held shall represent the individuals or agencies petitioning for commitment or
19 detention and shall defend all challenges to commitment or detention. Reasonable costs of such
20 representation shall be reimbursed by the county ultimately shown to be the county of residence
21 or, if the person is a nonresident of the state or a resident of an Indian reservation, by the State
22 of South Dakota. ~~However, the~~ The provisions of chapter 28-14 do not apply to this section.

23 Section 4. That § 27A-11A-9 be amended to read as follows:

24 27A-11A-9. Expenses of the evaluation required in §§ 27A-10-6 and § 27A-15-17.1 shall
25 be paid by the referring county, subject to reimbursement by the county ultimately proven to be

1 the county of residence or, if the person is a nonresident of the state or a resident of an Indian
2 reservation, by the State of South Dakota. ~~However, the~~ The provisions of chapter 28-14 do not
3 apply to this section. The person has the right to obtain an additional examination paid for by the
4 county which may be placed in evidence before the board, the reasonable expense of which shall
5 be reimbursed to the county unless the person is indigent.

6 Section 5. That § 27A-11A-12 be amended to read as follows:

7 27A-11A-12. Counsel appointed by the board or a court to represent a person shall be paid
8 by the ~~county of residence~~ referring county, subject to reimbursement by the county ultimately
9 proven to be the county of residence or, if the person is a nonresident of the state or a resident
10 of an Indian reservation, by the State of South Dakota. The counsel shall be reasonably
11 compensated for such services and for necessary expenses and costs incident to the proceedings
12 at the rate fixed by the circuit court and in an amount approved by the ~~chairman~~ chair of the
13 board of mental illness of the referring county.

14 Section 6. That § 27A-11A-14 be amended to read as follows:

15 27A-11A-14. Within ten days of the auditor's receipt of the committing board's findings
16 regarding the residence and summary of proofs ~~thereon~~ of residence, the county, other than the
17 referring county, in which residence was found to be may request the committing board of mental
18 illness to reopen the hearing ~~upon~~ on the question of the person's residence by mailing a request
19 to the ~~chairman~~ chair of the committing board of mental illness. Upon receipt of the request to
20 reopen the commitment hearing, the committing board of mental illness shall, as soon as
21 practicable, afford the county determined to be the person's county of residence an opportunity
22 to appear before the board; at a time and place set by the board ~~and~~ which is not more than thirty
23 days from the date of the request to reopen the hearing. Notice of the reopened hearing shall be
24 given to the county where the person was found to reside and to the county requesting the
25 reopening of the hearing at least ten days ~~prior to~~ before the reopened hearing by mailing notice

1 ~~thereof~~ to the respective county auditors. Either county appearing at the reopened hearing may
2 present any evidence it may have to establish that it is not the county of residence of the person.
3 The board shall then determine, by a preponderance of evidence, the county of residence of the
4 patient and either affirm or modify its prior finding. The ultimate finding of residence shall be
5 filed with the clerk of courts of the committing county and the county of residence with copies
6 mailed to the administrator of the center or other facility where the person is undergoing
7 treatment.

8 Expenses incurred by the committing board in conducting any reopened hearing shall be paid
9 by the referring county, subject to reimbursement by the county ultimately proven to be the
10 county of residence or, if the person is a nonresident of the state or a resident of an Indian
11 reservation, by the State of South Dakota.

12 Section 7. That § 27A-11A-16 be amended to read as follows:

13 27A-11A-16. Within ten days of the attorney general's receipt of the committing board's
14 findings regarding residence and summary of proofs ~~thereon~~ of residence, the attorney general
15 may request the committing board of mental illness to reopen the hearing by mailing a request
16 to the ~~chairman~~ chair of the committing board of mental illness. Notice of the reopened hearing
17 shall be given to any county adversely interested and to the attorney general at least ten days
18 ~~prior to~~ before the reopened hearing by mailing notice to the county auditor of any county
19 adversely interested and to the attorney general. Any county adversely interested or the attorney
20 general may present evidence to establish the residence of the person at the reopened hearing.
21 The board shall then determine, by a preponderance of evidence, whether the person is a resident
22 of a particular county or whether the patient is ~~not a resident~~ a nonresident of the state and shall
23 affirm or modify its prior finding. The ultimate finding of residence shall be filed with the clerk
24 of courts of the committing county, and copies ~~thereof~~ of the finding shall be mailed to the
25 administrator of the center or other facility where the patient is undergoing treatment and to the

1 auditor of any county found to be the residence of the patient or to the attorney general if the
2 person is found ~~not to be a resident~~ to be a nonresident of the state or a resident of an Indian
3 reservation.

4 Expenses incurred by the committing board in conducting any reopened hearing shall be paid
5 by the referring county, subject to reimbursement by the county ultimately proven to be the
6 county of residence or, if the person is a nonresident of the state or a resident of an Indian
7 reservation, by the State of South Dakota.

8 Section 8. That § 27A-15-15.4 be amended to read as follows:

9 27A-15-15.4. Within five days after the execution of the written objection to continued
10 inpatient treatment, or six, if there is a Saturday, Sunday, or holiday within that time period, the
11 minor shall be provided a hearing on the need for continued inpatient treatment at the facility.
12 The hearing shall be held in the county where the facility is located before the board of mental
13 illness serving that county. Expenses, including the transportation of the minor to the hearing,
14 shall be paid by the county in which the hearing is held, subject to reimbursement by the county
15 ultimately proven to be the minor's county of residence; or, if the minor is a nonresident of the
16 state or a resident of an Indian reservation, by the State of South Dakota. The provisions of
17 chapter 28-14 do not apply to this section.

18 Section 9. That § 27A-15-19 be amended to read as follows:

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