

State of South Dakota

SEVENTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2000

400D0360

HOUSE BILL NO. 1036

Introduced by: The Committee on Health and Human Services at the request of the Department of Human Services

1 FOR AN ACT ENTITLED, An Act to revise certain provisions pertaining to persons with
2 mental illness.

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

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

5 27A-1-1. Terms used in this title mean:

- 6 (1) "Administrator," that person designated by the secretary of human services to
7 discharge the administrative functions of the Human Services Center including the
8 delegation of responsibilities to the appropriate Human Services Center staff;
- 9 (2) "Appropriate regional facility," a facility designated by the department for the
10 prehearing custody of an individual apprehended under authority of this title which
11 is as close as possible in the immediate area to where the apprehension occurred; and
12 is no more restrictive of mental, social, or physical freedom than necessary to protect
13 the individual or others from physical injury. In determining the least restrictive
14 facility, considerations shall include the preferences of the individual, the
15 environmental restrictiveness of the setting, the proximity of the facility to the
16 patient's residence, and the availability of family, legal and other community resources

1 and support;

2 (3) "Center," the South Dakota Human Services Center;

3 (4) "Danger to others," ~~behavior due to severe mental illness which supports~~ a reasonable
4 expectation that the person will inflict serious physical injury upon another person in
5 the very near future. ~~Such behavior shall be evidenced by recent acts, due to a severe~~
6 mental illness, as evidenced by the person's treatment history and the person's recent
7 acts or omissions which constitute a danger of serious physical injury for another
8 individual. Such acts may include a recently expressed threat if the threat is such that,
9 if considered in the light of its context or in light of the person's recent previous acts
10 or omissions, it is substantially supportive of an expectation that the threat will be
11 carried out;

12 (5) "Danger to self,"

13 (a) ~~behavior due to severe mental illness which supports a~~ A reasonable
14 expectation that the person will inflict serious physical injury upon himself or
15 herself in the very near future. ~~Such behavior is evidenced by recent acts, due~~
16 to a severe mental illness, as evidenced by the person's treatment history and
17 the person's recent acts or omissions which constitute a danger of suicide or
18 self-inflicted serious physical injury. Such acts may include a recently expressed
19 threat if the threat is such that, if considered in the light of its context or in light
20 of the person's recent previous acts or omissions, it is substantially supportive
21 of an expectation that the threat will be carried out; or

22 (b) ~~recent behavior or related physical conditions which show there is a~~ A
23 reasonable expectation of danger of serious personal harm in the very near
24 future, due to a severe mental illness, as evidenced by the person's treatment
25 history and the person's recent acts or omissions which demonstrate an inability

1 to provide for some basic human needs such as food, clothing, shelter, ~~physical~~
2 ~~health~~ essential medical care, or personal safety, or by arrests for criminal
3 behavior which occur as a result of the worsening of the person's severe mental
4 illness;

5 (6) "Department," the Department of Human Services;

6 (7) "Essential medical care," medical care, that in its absence, a person cannot improve
7 or a person's condition may deteriorate, or the person may improve but only at a
8 significantly slower rate;

9 (8) "Facility director," that person designated to discharge the administrative functions
10 of an inpatient psychiatric facility, other than the center, including the delegation of
11 responsibilities to the appropriate facility staff;

12 (8)(9) "Informed consent," consent voluntarily, knowingly, and competently given without
13 any element of force, fraud, deceit, duress, threat, or other form of coercion after
14 conscientious explanation of all information that a reasonable person would consider
15 significant to the decision in a manner reasonably comprehensible to general lay
16 understanding;

17 (9)(10) "Inpatient psychiatric facility," a public or private facility or unit thereof which
18 provides mental health diagnosis, observation, evaluation, care, treatment, or
19 rehabilitation when the individual resides on the premises including, ~~but not~~
20 ~~limited to,~~ a hospital, institution, clinic, mental health center or facility, or
21 satellite thereof. An inpatient psychiatric facility may not include a residential
22 facility which functions primarily to provide housing and other such supportive
23 services when so designated by the department;

24 (10)(11) "Inpatient treatment," mental health diagnosis, observation, evaluation, care,
25 treatment, or rehabilitation rendered inside or on the premises of an inpatient

- 1 psychiatric facility when the individual resides on the premises;
- 2 ~~(11)~~(12) "Least restrictive treatment alternative," the treatment and conditions of
3 treatment which, separately and in combination, are no more intrusive or
4 restrictive of mental, social, or physical freedom than necessary to achieve a
5 reasonably adequate therapeutic benefit. In determining the least restrictive
6 alternative, considerations shall include the values and preferences of the
7 patient, the environmental restrictiveness of treatment settings, the duration of
8 treatment, the physical safety of the patient and others, the psychological and
9 physical restrictiveness of treatments, the relative risks and benefits of
10 treatments to the patient, the proximity of the treatment program to the
11 patient's residence, and the availability of family and community resources and
12 support;
- 13 ~~(12)~~(13) "Mental health center," any private nonprofit organization which receives
14 financial assistance from the state or its political subdivisions and which is
15 established or organized for the purpose of conducting a program approved by
16 the department for the diagnosis and treatment, or both, of persons with mental
17 and emotional disorders;
- 18 ~~(13)~~(14) "Next of kin," for the purposes of this title, the person's next of kin, in order
19 of priority stated, is the person's spouse if not legally separated, adult son or
20 daughter, either parent or adult brother or sister;
- 21 ~~(14)~~(15) "Physician," any person licensed by the state to practice medicine or osteopathy
22 or employed by a federal facility within the State of South Dakota to practice
23 medicine or osteopathy;
- 24 ~~(15)~~(16) "Resident," "patient," or "recipient," any person voluntarily receiving or
25 ordered by a board or court to undergo evaluation or treatment;

1 ~~(16)~~(17) "Secretary," the secretary of the Department of Human Services;

2 ~~(17)~~(18) "Severe mental illness," substantial organic or psychiatric disorder of thought,
3 mood, perception, orientation, or memory which significantly impairs
4 judgment, behavior, or ability to cope with the basic demands of life. Mental
5 retardation, epilepsy, other developmental disability, alcohol or substance
6 abuse, or brief periods of intoxication, or criminal behavior do not, alone,
7 constitute severe mental illness.

8 Section 2. That § 27A-7-1 be amended to read as follows:

9 27A-7-1. In each county there shall be a chair of a county board of mental illness. ~~The county~~
10 ~~board of mental illness shall consist of two people appointed by the board of county~~
11 ~~commissioners for a three-year term and a~~ A magistrate judge or lawyer shall be appointed by
12 the presiding circuit judge of the circuit in which the county is situated to serve as the chair of
13 the county board of mental illness. Any board conducting commitment hearings shall consist of
14 the chair and two additional people appointed by the board of county commissioners for a three-
15 year term. The two members appointed by the county commission shall be residents of the
16 county. The member appointed by the presiding circuit judge need not be a resident of the
17 county. The members of the board of mental illness who are appointed by the board of county
18 commissioners may be appointed to more than one term but, may not serve more than two
19 consecutive three-year terms. ~~The magistrate judge or lawyer shall serve as the chair of the~~
20 ~~county board of mental illness.~~ The state's attorney for the county may not serve on the county
21 board of mental illness. Each appointing authority ~~may~~ shall also appoint alternates.

22 Pursuant to chapter 1-24, two or more counties may jointly contract to establish a board of
23 mental illness to serve all contracting counties.

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

25 27A-10-1. ~~When~~ If any person is alleged to be severely mentally ill and in such condition that

1 immediate intervention is necessary for the protection from physical harm ~~of himself to self~~ or
2 others, any person, eighteen years of age or older, may complete a petition ~~the chairman of the~~
3 ~~county board of mental illness where such allegedly severely mentally ill person is found~~, stating
4 the factual basis for concluding that such person is severely mentally ill and in immediate need
5 of intervention. The petition shall be upon a form and be verified by affidavit. The petition shall
6 include the following:

- 7 (1) A statement by the petitioner that ~~he~~ the petitioner believes, on the basis of personal
8 knowledge, that such person is, as a result of severe mental illness, a danger to self
9 or others;
- 10 (2) The specific nature of the danger;
- 11 (3) A summary of the information upon which the statement of danger is based;
- 12 (4) A statement of facts which caused the person to come to the petitioner's attention;
- 13 (5) The address and signature of the petitioner and a statement of ~~his~~ the petitioner's
14 interest in the case; and
- 15 (6) The name of the person to be evaluated; the address, age, marital status, and
16 occupation of the person and the name and address of the person's nearest relative.

17 The state's attorney or other person designated by the board of county commissioners shall
18 assist the petitioner in completing the petition. No designee may be a member of the county
19 board of mental illness. Upon completion of the petition, the petition shall be forthwith submitted
20 to the chair of the county board of mental illness where such severely mentally ill person is found.
21 The term, forthwith, means that the petition shall be completed and submitted to the chair at the
22 earliest possible time during normal waking hours. If a petition is not filed with the chair within
23 twenty-four hours of the apprehension of the person, the person shall be released. If the person
24 is released, the referring county shall provide the person with transportation to the county where
25 the person was taken into custody if the person so chooses. If the county where the person was

1 apprehended is served by a board other than the board serving the county where the facility to
2 which the person is transported is located, a copy of the petition shall also be forthwith filed with
3 the chair of such board.

4 Section 4. That § 27A-10-2 be amended to read as follows:

5 27A-10-2. After examination of a petition filed under § 27A-10-1, the chair of the county
6 board of mental illness may order the apprehension and transportation by a law enforcement
7 officer or other designee of any person ~~who~~ whom the chair has probable cause to believe meets
8 the criteria in § 27A-10-1 to an appropriate regional facility other than the Human Services
9 Center. ~~A~~ No jail may ~~not~~ be used for prehearing custody until the availability of other
10 appropriate regional facilities has been explored and exhausted. No person may ~~remain~~ be held
11 in a jail for longer than twenty-four hours on a mental illness hold alone.

12 If the alleged mentally ill person is a nonresident of the state, the Human Services Center may
13 be used as an appropriate regional facility. If a nonresident of the state is transported to the
14 Human Services Center, the State of South Dakota shall pay any expenses and costs provided
15 for in this title as the responsibility of the county of residence, subject to any right of
16 reimbursement. If the Human Services Center is not utilized for a nonresident of the state, the
17 referring county shall pay any expenses and costs provided for in this title as the responsibility
18 of the county of residence, subject to any right of reimbursement.

19 If the facility to which the person is transported is in a county served by another board of
20 mental illness, a copy of the petition shall be forthwith filed with the chair of such board. The
21 referring county shall pay any expenses incurred in apprehension and transportation of the
22 person, subject to reimbursement by the county ultimately proven to be the county of residence.
23 ~~However, the provisions of chapter 28-14 do not apply. No lien may be placed against the person~~
24 for the costs incurred in the apprehension or transportation of the person.

25 Section 5. That § 27A-10-4 be amended to read as follows:

1 27A-10-4. After a ~~peace~~ law enforcement officer or other designee transports an
2 apprehended person to an appropriate regional facility pursuant to § 27A-10-3, the ~~peace law~~
3 enforcement officer, a physician, or other person with personal knowledge of the relevant facts
4 shall ~~forthwith~~ complete a petition ~~the chairman of the county board of mental illness serving the~~
5 ~~area wherein the facility is located as provided in § 27A-10-1. The term "forthwith" means that~~
6 ~~the petition shall be completed and submitted to the chairman at the earliest possible time during~~
7 ~~normal waking hours. Each county shall designate a peace officer or officers or other county~~
8 ~~official to assist with the completion and submission of such petition to the board chairman. If~~
9 ~~a petition is not filed with the chairman within twenty-four hours of the apprehension of the~~
10 ~~person, the person shall be released. In the event of such release, the referring county shall~~
11 ~~provide the person with transportation to the county where he was taken into custody if the~~
12 ~~person so chooses.~~

13 ~~—If the county where the person was apprehended is served by a county board other than the~~
14 ~~board serving the county where the facility to which the person is transported is located, a copy~~
15 ~~of the petition shall also be forthwith filed with the chairman of such board.~~

16 Section 6. That § 27A-10-5 be amended to read as follows:

17 27A-10-5. Immediately after a person is taken into custody pursuant to § 27A-10-2 or 27A-
18 10-3, a hold is initiated pursuant to § 27A-8-10.1 or 27A-10-19, or a petition is filed pursuant
19 to § 27A-8-11.2, the person shall be notified both orally and in writing of the following:

- 20 (1) The right to immediately contact someone of the person's choosing;
- 21 (2) The right to immediately contact and be represented by counsel;
- 22 (3) That the person will be examined by a qualified mental health professional, designated
23 by the chair of the county board of mental illness, within twenty-four hours after being
24 taken into custody to determine whether custody should continue; and
- 25 (4) The right, if custody is continued, to an independent examination and to a hearing

1 within five days after being taken into custody, within six days if there is a Saturday,
2 Sunday, or holiday within that time period, or within seven days if there is a Saturday,
3 Sunday, and holiday within that time period.

4 The person shall be further notified that the costs of any ~~commitment proceedings, post-~~
5 ~~commitment~~ treatment, medication and any hearing related to the medication, any
6 ~~post-commitment proceeding, including a habeas corpus proceeding, the costs of,~~ compensation
7 for the attorney appointed to represent the person, and any other costs associated with any
8 proceeding in any appeals proceedings, an additional examination requested by the person
9 pursuant to § 27A-11A-9, and a certified transcript or tape of proceedings requested by the
10 person pursuant to § 27A-11A-2 are that person's responsibility and that a lien for the amount
11 of these costs may be filed upon the person's real and personal property to ensure payment.

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

14 Section 7. That § 27A-10-6 be amended to read as follows:

15 27A-10-6. Within twenty-four hours after apprehension of any person who allegedly requires
16 emergency intervention or a hold is initiated pursuant to § 27A-8-10.1, or a petition is filed
17 pursuant to § 27A-8-11.2, a qualified mental health professional designated by the ~~chairman~~ chair
18 of the county board serving the area where the person is detained other than the person bringing
19 the petition or initiating the hold shall perform an examination, including a mental status
20 examination, of the person. Preceding the examination, the qualified mental health professional
21 shall identify herself or himself to the person and explain the nature and purpose of the
22 examination, including the fact that it is being performed to assist in the determination of whether
23 custody should continue and that the examination may be used as evidence in an involuntary
24 commitment hearing. The qualified mental health professional shall immediately report any
25 findings to the chair of the county board. The referring county shall pay any expenses of the

1 examination by the qualified mental health professional, subject to reimbursement by the county
2 ultimately proven to be the county of residence. ~~However, the provisions of chapter 28-14 do~~
3 ~~not apply.~~ No lien may be placed against the person for the costs incurred in the qualified mental
4 health professional examination.

5 Section 8. That § 27A-10-7 be amended to read as follows:

6 27A-10-7. If the examination required in § 27A-10-6 does not support a finding that the
7 person meets the criteria for involuntary commitment in § 27A-1-2, ~~he~~ the person shall be
8 released. Following such release, the referring county shall provide the person with
9 transportation to the county where ~~he~~ the person was taken into custody if the person so
10 chooses. These costs are subject to reimbursement by the county ultimately proven to be the
11 county of residence. No lien may be placed against the person for the transportation expenses.
12 If the ~~chairman~~ chair of the county board finds, as a result of the examination required in
13 § 27A-10-6 and an investigation of the petition for emergency intervention that the person meets
14 the criteria in § 27A-1-2, ~~he~~ the chair may order that the person continue to be detained in an
15 appropriate regional facility including, if necessary, the center, pending the hearing required in
16 § 27A-10-8. No lien may be placed against the person for the costs associated with detainment
17 pending the hearing.

18 Section 9. That § 27A-10-8 be amended to read as follows:

19 27A-10-8. Within five days after the person is taken into custody, within six days if there is
20 a Saturday, Sunday, or holiday within that time period, or within seven days if there is a
21 Saturday, Sunday, and holiday within that time period, the person shall be provided an
22 involuntary commitment hearing. The referring county shall pay any expenses incurred by the
23 board holding the hearing, including the transportation of the person to the hearing, subject to
24 reimbursement by the county ultimately proven to be the county of residence. ~~The provisions of~~
25 ~~chapter 28-14 do not apply to this section.~~

1 No lien may be placed against the person for the expenses incurred by the board holding the
2 hearing, including the transportation of the person to the hearing.

3 Section 10. That § 27A-10-14 be amended to read as follows:

4 27A-10-14. Within ninety days after the involuntary commitment of a person who is still
5 under the commitment order, the county board of mental illness which serves the county in which
6 the person is receiving treatment shall conduct a review hearing in the county to determine if the
7 person continues to meet the criteria in § 27A-10-9.1. Notice of the review hearing shall be given
8 to the person, and the person's attorney if the person has retained counsel, at least ten days prior
9 to the hearing. If the person has not retained counsel at the time of the notice, the ~~chairman~~ chair
10 of the county board shall immediately appoint counsel to represent the person.

11 At the time the notice of hearing is given, the person and the person's attorney shall be
12 informed of all evidence that will be considered at the review hearing. Any evidence subsequently
13 discovered shall be immediately transmitted to the person and the person's attorney. The rights
14 and procedures applicable during an initial commitment hearing are applicable to review hearings.
15 A petition pursuant to § 27A-10-1 need not be filed.

16 The board of mental illness may order the continued involuntary commitment of the person
17 to the same or an alternative placement or program for up to six months if a majority of the
18 board finds by clear and convincing evidence supported by written findings of fact and
19 conclusions of law that the criteria in § 27A-10-9.1 are met. If continued involuntary
20 commitment is ordered, a review in the manner provided in this section shall be conducted within
21 six months after the order. If the county board issues another order of continued involuntary
22 commitment, the next review shall be held within six months after the order. If the second
23 six-month review justifies continued commitment, the county board may order continued
24 involuntary commitment for up to twelve months. Subsequent reviews shall be conducted within
25 each twelve months thereafter that the person remains under commitment.

1 If the board orders the continued involuntary commitment of the person, the board shall
2 immediately notify the person and the person's attorney of the person's right to appeal pursuant
3 to § 27A-11A-25.

4 If findings that justify continued commitment are not made, the board shall order that the
5 person be immediately discharged from involuntary commitment. Following discharge, the
6 referring county shall provide the person with transportation to the county where the person was
7 taken into custody if the person so chooses. The county ultimately shown to be the county of
8 residence shall reimburse the referring county for any transportation costs. ~~However, the~~
9 ~~provisions of chapter 28-14 do not apply.~~ No lien may be placed against the person for the
10 expense incurred in the transportation of this person.

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

12 27A-11A-4. In any proceeding for involuntary commitment, review or detention, or in any
13 proceeding challenging commitment or detention, the state's attorney for the county in which the
14 proceeding is held shall represent the ~~persons or agencies petitioning for commitment or~~
15 ~~detention~~ petitioner and shall defend all challenges to commitment or detention. The county
16 ultimately shown to be the county of residence shall reimburse the county in which the
17 proceeding is held for any reasonable cost of such representation. ~~However, the provisions of~~
18 ~~chapter 28-14 do not apply.~~ No lien may be placed against the person for the costs incurred in
19 any proceeding for involuntary commitment, review, or detention.

20 Section 12. That § 27A-11A-9 be amended to read as follows:

21 27A-11A-9. The referring county shall pay any expenses of the evaluation required in
22 §§ 27A-10-6 and 27A-15-17.1, subject to reimbursement by the county ultimately proven to be
23 the county of residence. ~~However, the provisions of chapter 28-14 do not apply.~~ No lien may be
24 placed against the person for the costs incurred in completing the evaluation required in §§ 27A-
25 10-6 and 27A-15-17.1. The person has the right to obtain an additional examination paid for by

1 the county which may be placed in evidence before the board, the reasonable expense of which
2 shall be reimbursed to the county unless the person is indigent. A lien for the amount of these
3 costs may be filed upon the person's real and personal property to ensure payment.

4 Section 13. That § 27A-11A-12 be amended to read as follows:

5 27A-11A-12. Counsel appointed by the board or a court to represent a person shall be paid
6 by the county of residence. The counsel shall be reasonably compensated for such services and
7 for necessary expenses and costs incident to the proceedings at the rate fixed by the circuit court
8 and in an amount approved by the ~~chairman~~ chair of the board of mental illness of the referring
9 county. No lien may be placed against the patient for the cost of counsel related to any pre-
10 commitment hearing or hearing to review commitment status pursuant to §§ 27A-10-14 and
11 27A-10-15.

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

13 27A-11A-14. Within ten days of the auditor's receipt of the committing board's findings
14 regarding the residence and summary of proofs thereon, the county, other than the referring
15 county, in which residence was found to be may request the committing board of mental illness
16 to reopen the hearing upon the question of the person's residence by mailing a request to the
17 ~~chairman~~ chair of the committing board of mental illness. Upon receipt of the request to reopen
18 the commitment hearing, the committing board of mental illness shall, as soon as practicable,
19 afford the county determined to be the person's county of residence an opportunity to appear
20 before the board, at a time and place set by the board and not more than thirty days from the date
21 of the request to reopen the hearing. Notice of the reopened hearing shall be given to the county
22 where the person was found and to the county requesting the reopening of the hearing at least
23 ten days prior to the reopened hearing by mailing notice thereof to the respective county
24 auditors. Either county appearing at the reopened hearing may present any evidence it may have
25 to establish that it is not the county of residence of the person. The board shall then determine,

1 by a preponderance of evidence, the county of residence of the patient and either affirm or
2 modify its prior finding. The ultimate finding of residence shall be filed with the clerk of courts
3 of the committing county and the county of residence with copies mailed to the administrator of
4 the center or other facility where the person is undergoing treatment.

5 The referring county shall pay any expenses incurred by the committing board in conducting
6 any reopened hearing, subject to reimbursement by the county ultimately proven to be the county
7 of residence. No lien may be placed against the patient for the costs incurred in conducting any
8 reopened hearing requested by county regarding the question of residence.

9 Section 15. That § 27A-12-3.6 be amended to read as follows:

10 27A-12-3.6. Each person has the right to the implementation of a comprehensive
11 individualized treatment ~~program~~ plan developed by appropriate qualified mental health
12 professionals, including a psychiatrist. The treatment plan shall be consistent with current
13 standards for facilities and programs and may not consist solely of chemical or drug therapy
14 ~~under any circumstances~~ unless supported by sufficient psychiatric and medical opinion.

15 A person has the right to ongoing participation, in a manner appropriate to such person's
16 capabilities, in the planning of services to be provided such person, including the right to
17 participate in the development and periodic review and revision of the plan and, in connection
18 with such participation, the right to be provided with a reasonable explanation, in terms and
19 language appropriate to such person's condition and ability to understand, of the following:

- 20 (1) Such person's general mental condition and, if a physical examination has been
21 provided, such person's general condition;
- 22 (2) The objective of treatment;
- 23 (3) The nature and significant possible adverse effects of recommended treatments;
- 24 (4) The reasons why a particular treatment is considered appropriate;
- 25 (5) The reasons why certain rights enumerated under § 27A-12-3.1, may have been

1 limited;

2 (6) Any appropriate and available alternative treatments, services and types of providers
3 of mental health services; and

4 (7) An aftercare plan to facilitate discharge.

5 Treatment ~~programs~~ plans shall be designed to achieve discharge at the earliest ~~possible~~
6 appropriate time and to maximize each person's development and acquisition of perceptual skills,
7 social skills, self-direction, emotional stability, effective use of time, basic knowledge, vocational
8 occupational skills, and social and economic values relevant to the community in which ~~he~~ the
9 person lives.

10 A qualified mental health professional who is a member of the person's treatment team shall
11 periodically review, follow-up, and update all individualized treatment ~~programs~~ plans.

12 Section 16. That § 27A-12-3.7 be amended to read as follows:

13 ~~27A-12-3.7. To facilitate discharge at the earliest possible time, each person has the right to~~
14 ~~an aftercare plan which outlines available services and recommendations for continued~~
15 ~~post-discharge placement or treatment. Such~~ An aftercare plan shall be developed cooperatively
16 between the person, the legal guardian, if any, and if requested by the person or guardian, family
17 members or others, the facility or program to which ~~he~~ the person is committed or admitted, and
18 the mental health center located in the regional district to which the person will be discharged.

19 A copy of the plan shall be delivered to the person and the legal guardian, if any. The plan shall:

20 (1) Specify the services required in the community to meet the person's needs for
21 treatment, vocation, housing, nutrition, physical care, and safety;

22 (2) Specify any income subsidies for which the person is eligible; and

23 (3) Identify local and state agencies which can provide services and support to the person.

24 Participation in the discharge plan shall be at the person's discretion and the person's refusal
25 to participate may not be considered a basis for continued detention if the person is otherwise

1 entitled to discharge.

2 Section 17. That § 27A-12-34 be amended to read as follows:

3 27A-12-34. If a person is admitted, involuntarily committed, or discharged from the Human
4 Services Center, ~~his next of kin or legally appointed guardian shall be notified of such action~~
5 reasonable attempts shall be made to notify the person's legally appointed guardian. Upon
6 obtaining consent to release information, reasonable attempts shall also be made to notify the
7 person's next of kin. If the treating psychiatrist determines the person lacks the capacity to
8 provide consent, the Human Services Center shall make reasonable attempts to notify the
9 person's next of kin as to admission, or comitment to, or discharge from the Human Services
10 Center, unless such notification is determined by the ~~attending physician~~ treating psychiatrist,
11 with the input of the person's treatment team, to be detrimental to the person.

12 Section 18. That § 27A-15-1 be amended to read as follows:

13 27A-15-1. Terms used in this chapter mean:

14 (1) "Clinical evaluation," an evaluation of the minor to determine the appropriateness of
15 admission to an inpatient psychiatric facility or continued inpatient treatment. The
16 evaluation shall include a personal interview with the minor and parent, guardian, or
17 other legal custodian, an examination of all relevant available records, a mental status
18 examination of the minor, relevant social history information, and an examination of
19 the medical, psychological, social, behavioral, educational and developmental aspects
20 of the minor's situation, including a full probe of the ~~child's~~ minor's background
21 utilizing all relevant educational, treatment and other public and private service
22 provider sources;

23 (2) "Independent clinical evaluation," a clinical evaluation of the minor performed by a
24 qualified mental health professional who:

25 (a) Is not currently involved in the diagnosis, treatment, or provision of services

- 1 to the minor; ~~and~~
- 2 (b) Is not an employee of the facility to which admission of the minor is sought or
- 3 to which the minor has been admitted; and
- 4 (c) Will not receive monetary benefit by the minor's admission to or continued stay
- 5 in an inpatient psychiatric facility;
- 6 (3) "Minor," a person under eighteen years of age except that for purposes of this title,
- 7 the term does not include a person who is emancipated under Title 26 or who is
- 8 married. Any person not included within this definition of minor shall come under this
- 9 title's provisions which apply to adults;
- 10 (4) "Parent," a biological or adoptive parent who has legal custody of the minor,
- 11 including either parent if the parents have joint legal custody;
- 12 (5) "Psychiatric evaluation," an examination conducted by a psychiatrist which includes
- 13 the history of present illness, past history of medical and psychiatric illness, pertinent
- 14 psychosocial history, and a mental status examination that enables the formulation of
- 15 a diagnostic summary.

16 Section 19. That § 27A-15-1.1 be amended to read as follows:

17 27A-15-1.1. For the purposes of this chapter, an individual with a serious emotional

18 disturbance is an individual who:

- 19 (1) Is under eighteen years of age;
- 20 (2) Exhibits behavior resulting in functional impairment which substantially interferes
- 21 with, or limits the individual's role or functioning in the community, school, family,
- 22 or peer group;
- 23 (3) Has a mental disorder diagnosed under the Diagnostic and Statistical Manual of
- 24 Mental Disorders, ~~third~~ fourth edition revised, ~~1987~~ 1994;
- 25 (4) Has demonstrated a need for one or more special care services, in addition to mental

1 health; and

2 (5) Has problems with a demonstrated or expected longevity of at least one year or has
3 an impairment of short duration and high severity.

4 For purposes of this section, mental retardation, epilepsy, other developmental disability,
5 alcohol or substance abuse, brief period of intoxication, or criminal or delinquent behavior do
6 not, alone, constitute serious emotional disturbance.

7 Section 20. That § 27A-15-8 be amended to read as follows:

8 27A-15-8. The parent, guardian, or other legal custodian of the minor may execute a written
9 application for the minor's admission. The execution of an application for admission shall be
10 preceded by an explanation by the administrator or facility director to the parent, guardian, or
11 other legal custodian and minor of the nature of inpatient status, including the types of treatment
12 available, the restraints and restrictions to which the minor may be subject, a statement of the
13 parent's, guardian's, or other legal custodian's rights and minor's rights under this title, including
14 the minor's right to object to admission, and the right to view and copy records, under this title;
15 ~~and information regarding the interagency team as established in this chapter.~~ Nothing in this
16 chapter precludes the administrator or facility director or attending psychiatrist from arranging
17 for and referring the parent, guardian, or other legal custodian and minor to the mental health
18 center designated as the service center for the area in which the inpatient psychiatric facility is
19 located for an independent clinical evaluation.

20 Section 21. That § 27A-15-10 be amended to read as follows:

21 27A-15-10. After application for admission, the administrator or facility director may
22 immediately admit the minor upon a determination that the criteria in § 27A-15-5 are met. Upon
23 admission, each minor shall have a psychiatric evaluation within forty-eight hours excluding
24 Saturday, Sunday, and holidays and the administrator or facility director shall promptly request
25 all relevant information and records of treatment, education, and other services provided to the

1 minor and arrange for a clinical evaluation of the minor ~~by a psychiatrist~~ to be conducted within
2 twenty-four hours. ~~In the event of the unavailability of a psychiatrist~~ If information is not
3 immediately available to complete a clinical evaluation, admission and treatment may be
4 authorized in accordance with the provisions of this chapter by a physician pending the
5 completion of a clinical evaluation ~~by a psychiatrist~~ within seven days. The parent, guardian, or
6 other legal custodian, all public agencies and all providers of relevant services to the minor shall
7 cooperate with the administrator or facility director and shall promptly deliver information and
8 records upon request and without charge.

9 Upon completion of the psychiatric and clinical evaluation required in this section, the
10 administrator or facility director may authorize continued admission of the minor to the inpatient
11 psychiatric facility for a period not to exceed forty-five days only upon written findings by the
12 evaluating psychiatrist which reaffirm that the criteria in § 27A-15-5 are met.

13 A copy of the written psychiatric and clinical evaluation ~~and the written findings of the~~
14 ~~evaluator~~ shall be immediately delivered to the parent, guardian, or other legal custodian upon
15 request. If the minor is admitted all information and records subsequently received shall be
16 considered by the evaluator in determining whether continued inpatient treatment is authorized
17 under the criteria in § 27A-15-5. The written psychiatric and clinical evaluation, ~~the written~~
18 ~~findings of the evaluator~~, and all records and relevant information shall become part of the
19 minor's medical records.

20 Section 22. That § 27A-15-21 be amended to read as follows:

21 27A-15-21. Within ten days after the admission of a minor by ~~his~~ parent, guardian, or other
22 legal custodian under this chapter, the administrator or facility director shall ensure that a written
23 comprehensive individualized treatment plan has been developed and implemented for the minor
24 by appropriate qualified mental health professionals including a psychiatrist, and has been
25 explained to the minor and to the parent, guardian, or other legal custodian consenting to the

1 admission.

2 The treatment plan shall be based on a diagnostic evaluation that includes examination of the
3 medical, psychological, social, behavioral, educational, and developmental aspects of the minor's
4 situation and reflects the need for inpatient treatment. The plan shall be designed to maximize
5 each person's development and acquisition of perceptual skills, social skills, self-direction,
6 emotional stability, effective use of time, basic knowledge, vocational occupational skills, and
7 social and economic values relevant to the community in which the minor lives and to achieve
8 the minor's discharge from inpatient treatment at the earliest ~~reasonable~~ appropriate time ~~and~~.
9 The plan shall include specific behavioral, emotional, and other treatment goals against which
10 the success of treatment may be measured. ~~The plan and~~ shall prescribe an integrated program
11 of therapies, experiences, and activities, including recreational and play opportunities in the open
12 air, designed to meet the goals ~~and~~. No plan may ~~not~~ consist solely of chemical therapy ~~under~~
13 ~~any circumstances~~ unless supported by sufficient psychiatric and medical opinion. The minor shall
14 be involved in the preparation of the plan to the maximum feasible extent consistent with ~~his~~ the
15 minor's ability to understand and participate, and the minor's family shall be involved to the
16 maximum extent consistent with the minor's treatment needs. The plan shall include, ~~at an~~
17 ~~appropriate time~~, post-discharge plans for placement and aftercare as provided in § 27A-15-27.

18 Section 23. That § 27A-15-24 be amended to read as follows:

19 27A-15-24. Within forty-five days after the admission of a minor by ~~his~~ parent, guardian, or
20 other legal custodian under this chapter and at least every forty-five days thereafter, ~~the~~
21 ~~administrator or facility director shall arrange for a clinical~~ a psychiatric evaluation of the minor
22 shall be completed by a psychiatrist to assess the need for continued inpatient treatment. If the
23 ~~evaluator~~ psychiatrist determines that the criteria in § 27A-15-5 are no longer met, the minor
24 shall be immediately discharged to the custody of ~~his~~ the minor's parent, guardian, or other legal
25 custodian. ~~Parental~~ The refusal of the parent, guardian, or other legal custodian to take physical

1 custody of the minor is not sufficient reason for continued inpatient treatment. In the event of
2 such refusal, the administrator or facility director shall explain alternative treatment options
3 available to the parents, guardian, or other legal custodian and the ~~child~~ minor and advise the
4 parent, guardian, or other legal custodian that refusal to take physical custody of the minor upon
5 discharge will result in immediate notice to the state's attorney for further action.

6 If the ~~evaluator~~ psychiatrist concludes that the criteria in § 27A-15-5 continue to be met, ~~he~~
7 the psychiatrist shall so state the reasons in written findings which, along with the clinical
8 evaluation, shall become part of the minor's medical records. The administrator or facility
9 director shall immediately inform the parent, guardian, or other legal custodian who consented
10 to admission of ~~his~~ the right to request an independent clinical evaluation.

11 The administrator or facility director shall also request of the parent, guardian, or other legal
12 custodian an oral and written affirmation of informed consent to inpatient treatment of the minor.
13 Affirmation of the notice to the parent, guardian, or other legal custodian and the parent's,
14 guardian's, or other legal custodian's informed consent shall be in writing and be made part of
15 the minor's medical records. A parent's, guardian's, or other legal custodian's failure to affirm ~~his~~
16 informed consent ~~shall constitute~~ constitutes notice of ~~his~~ intention to terminate inpatient
17 treatment as provided in § 27A-15-12.

18 Section 24. That § 27A-15-27 be amended to read as follows:

19 27A-15-27. A predischarge plan of aftercare for a minor admitted to inpatient treatment ~~by~~
20 ~~a parent~~ under this chapter, by a parent, guardian, or other legal custodian shall be formulated
21 in cooperation with the minor and ~~his~~ the minor's family. The plan shall be explained to the minor
22 and the parent, guardian, or other legal custodian who consented to admission, who shall be
23 given a copy thereof. The plan shall, ~~at a minimum~~:

- 24 (1) Specify the services required in the community to meet the minor's needs for
25 treatment, education, housing, nutrition, physical care, and safety;

1 (2) Specify any income subsidies for which the minor is eligible; and

2 (3) Identify all local and state agencies which can provide service and support to the
3 minor.

4 The lack of such a plan is not sufficient reason for the continued inpatient treatment of a
5 minor if discharge is otherwise appropriate or required under this title.

6 Section 25. That § 27A-15-38 be amended to read as follows:

7 27A-15-38. Within ten days after the involuntary commitment of a minor, the administrator,
8 facility director, or, if the minor is committed to a program other than inpatient treatment, the
9 director of such program shall ensure that a written comprehensive individualized treatment plan
10 has been developed and implemented as provided in § 27A-15-21, and has been explained to the
11 minor and ~~his~~ the minor's parent, guardian, or other legal custodian. If such a treatment plan has
12 not been implemented within ten days, the minor shall be immediately released.

13 The treatment plan shall be based on a diagnostic evaluation that includes examination of the
14 medical, psychological, social, behavioral, educational, and developmental aspects of the minor's
15 situation and reflects the need for the involuntary treatment. The plan shall be designed to
16 maximize the minor's development and acquisition of perceptual skills, social skills, self-direction,
17 emotional stability, effective use of time, basic knowledge, vocational occupational skills, and
18 social and economic values relevant to the community in which the minor lives and to achieve
19 the minor's discharge from involuntary commitment at the earliest possible appropriate time and,
20 The plan shall include specific behavioral, emotional, and other treatment goals against which
21 the success of treatment may be measured. ~~The plan and~~ shall prescribe an integrated program
22 of therapies, activities, and experiences designed to meet the goals ~~and~~. No plan may ~~not~~ consist
23 solely of chemical therapy ~~under any circumstances~~ unless supported by sufficient psychiatric and
24 medical opinion. If commitment is to an inpatient psychiatric facility, the plan shall include
25 recreational and play opportunities in the open air. The minor shall be involved in the preparation

1 of the plan to the maximum feasible extent consistent with ~~his~~ the minor's ability to understand
2 and participate, and the minor's family shall be involved to the maximum extent consistent with
3 the minor's treatment needs. The plan shall include, ~~at an appropriate time,~~ post-discharge plans
4 for aftercare as provided in § 27A-15-44.

5 Section 26. That § 27A-15-44 be amended to read as follows:

6 27A-15-44. A predischarge plan of aftercare for a planned discharge of an involuntarily
7 committed minor shall be formulated in cooperation with the minor and ~~his~~ the minor's parent,
8 guardian, or other legal custodian. A copy of the plan shall be delivered to the parent, guardian,
9 or other legal custodian. The plan shall, ~~at a minimum:~~

- 10 (1) Specify the services required in the community to meet the minor's needs for
11 treatment, education, housing, nutrition, physical care, and safety;
- 12 (2) Specify any income subsidies for which the minor is eligible; and
- 13 (3) Identify ~~all~~ local and state agencies which can provide services and support to the
14 minor.

15 The lack of such a plan is not sufficient reason for the continued commitment of a minor
16 when release is otherwise appropriate or required under this title.