

State of South Dakota

EIGHTIETH
LEGISLATIVE ASSEMBLY, 2005

400L0381

HOUSE JUDICIARY COMMITTEE ENGROSSED NO. **SB 59** - 01/24/2005

Introduced by: The Committee on Judiciary at the request of the Department of Corrections

1 FOR AN ACT ENTITLED, An Act to permit the involuntary feeding or hydration of a prisoner.

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

3 Section 1. The supervisor of a jail, as defined in § 24-11-1, or a prison warden may attempt
4 to prevent a prisoner from causing severe harm or death to himself or herself by refusing
5 sufficient nutrition or hydration. A prisoner may be involuntarily fed or hydrated if it is
6 determined, pursuant to the provisions of this Act, that the prisoner is likely to cause severe
7 harm to himself or herself by refusing sufficient nutrition or hydration. No supervisor of a jail
8 or prison warden may prevent medically imposed fasts for the purpose of conducting medical
9 tests or procedures or religious fasts for a reasonable length of time.

10 Section 2. Prior to involuntary feeding or hydration, the prisoner shall receive a hearing
11 before a panel consisting of two medical representatives and a representative of the jail or
12 prison. The medical representatives shall be a physician, physician assistant, or nurse
13 practitioner. No panel member may have participated in the prisoner's current diagnosis,
14 evaluation, or treatment. The prisoner has the right to notice of the hearing at least forty-eight
15 hours in advance, the right to attend the hearing, the right to present evidence and cross-examine



1 witnesses, and the right to representation by a disinterested lay advisor.

2 Section 3. The hearing panel:

- 3 (1) Shall engage in a confidential review of the prisoner's medical records;
- 4 (2) Shall receive a description of the proposed course of treatment for the involuntary
5 feeding or hydration of the prisoner and testimony of the circumstances of the
6 situation from the attending physician; and
- 7 (3) May ask for testimony or written statement concerning the circumstances of the
8 prisoner's lack of nutrition or hydration.

9 Section 4. The panel may order involuntary feeding or hydration by a majority vote. The
10 panel shall provide its decision in writing to the attending physician, the supervisor of the jail
11 or prison warden, and the prisoner. The prisoner may appeal an adverse decision of the panel
12 to the supervisor of the jail in which the prisoner is confined or the secretary of corrections if
13 the prisoner is confined in a Department of Corrections facility. The prisoner may appeal the
14 decision of the jail supervisor or secretary of corrections to circuit court pursuant to chapter 1-
15 26.

16 Section 5. In an emergency, involuntary feeding or hydration of a prisoner may be
17 administered without panel review for up to three days if two medical representatives who are
18 a physician, physician assistant, or nurse practitioner order the treatment. Involuntary feeding
19 for a greater length of time requires the approval of the panel.

20 Section 6. If involuntary feeding or hydration of a prisoner exceeds ten days, a physician
21 who is not the attending physician shall review the prisoner's current case and at subsequent
22 intervals not to exceed three days, make a written determination whether the involuntary feeding
23 or hydration shall be continued. The physician's written determination shall be provided to the
24 attending physician, the supervisor of the jail or prison warden, and the prisoner.

1 Section 7. A jail or prison shall maintain records of any involuntary feeding or hydration of
2 prisoners. The records shall include any available medical history of a prisoner's prior refusal
3 of adequate nutrition or hydration, current and prior illnesses, and may include such other
4 information as deemed necessary by the jail or prison to facilitate management of prisoners.

5 Section 8. No person who serves on the hearing panel, who is the attending physician, who
6 is the supervisor of the jail or prison warden, or who orders or participates in the involuntarily
7 feeding or hydrating of a prisoner may be held civilly or criminally liable for the involuntarily
8 feeding or hydrating of a prisoner pursuant to this Act if the person performs these duties in
9 good faith and in a reasonable manner according to generally accepted medical or other
10 professional practices.