

State of South Dakota

NINETY-FOURTH SESSION LEGISLATIVE ASSEMBLY, 2019

675B0043

HOUSE BILL NO. _____

Introduced by: _____

1 FOR AN ACT ENTITLED, An Act to repeal and revise provisions regarding emergency
2 involuntary commitments.

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

4 Section 1. That § 27A-10-2 be amended to read:

5 27A-10-2. After ~~examination of~~ examining a petition filed under § 27A-10-1 and finding
6 a reason to believe the person who is the subject of the petition is severely mentally ill and in
7 need of immediate intervention, the chair of the county board of mental illness may ~~order~~ issue
8 an order for the apprehension ~~person to be taken into custody until a hearing under § 27A-10-8,~~
9 and transportation for the person to be transported by a law enforcement officer, or ~~other a~~ a
10 designee of ~~any person whom the chair has probable cause to believe meets the criteria in~~
11 ~~§ 27A-10-1~~ the law enforcement officer, to an appropriate regional facility other than the
12 Human Services Center. ~~No~~ If the person who is the subject of the petition is a nonresident of
13 this state, the person may be transported to the Human Services Center.

14 A law enforcement officer may take into custody a person the law enforcement officer has
15 reason to believe is severely mentally ill and in need of immediate intervention under § 27A-10-
16 1. The law enforcement officer may transport the person to an appropriate regional facility other



1 than the Human Services Center to be held until a hearing under § 27A-10-8, and for the person
2 to be examined in accordance with § 27A-10-6. The law enforcement officer, a physician, or
3 any other person with personal knowledge of the relevant facts, shall complete a petition in
4 accordance with § 27A-10-1 with the chair of the county board of mental illness for the county
5 where the person is transported.

6 A person taken into custody under this section may be transported to a jail ~~may be used for~~
7 ~~prehearing custody until the availability of other~~ unless an appropriate regional facilities has
8 ~~been explored and exhausted~~ facility is available. ~~No~~ A person may not be held in a jail for
9 longer than twenty-four hours ~~on a mental illness hold alone~~ solely for purposes of custody
10 under this section.

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

18 ~~— If the facility to which the person is transported is in a county served by another board of~~
19 ~~mental illness, a copy of the petition shall be forthwith filed with the chair of such board. The~~
20 ~~referring county shall pay any expenses incurred in apprehension and transportation of the~~
21 ~~person, subject to reimbursement by the county ultimately proven to be the county of residence.~~
22 ~~No lien may be placed against the person for the costs incurred in the apprehension or~~
23 ~~transportation of the person.~~

24 Section 2. That chapter 27A-10 be amended by adding a NEW SECTION to read:

1 For any person taken into custody under § 27A-10-2 who is a resident of this state, the
2 referring county shall pay any cost or expense incurred under this chapter, subject to
3 reimbursement from the person's county of residence or any other source. For any person taken
4 into custody under § 27A-10-2 who is a nonresident of this state, the state shall pay any cost or
5 expense incurred under this title, subject to reimbursement from the person's state of residence
6 or any other source.

7 No lien may be placed against a person who is taken into custody under § 27A-10-2 for any
8 cost or expense incurred by a county or the state under this title.

9 Section 3. That chapter 27A-10 be amended by adding a NEW SECTION to read:

10 For any person taken into custody under § 27A-10-2, the chair of the county board of mental
11 illness for the county where the petition was filed under § 27A-10-1 shall file a petition in
12 accordance with § 27A-11A-3 with the county clerk of courts providing notice of a hearing
13 under § 27A-10-8.

14 For any person who is transported from an appropriate regional facility in a county to an
15 appropriate regional facility in a different county, the chair of the county board of mental illness
16 for the county from which the person is being transferred shall provide:

17 (1) Notice to the county clerk of courts of the change in county; and

18 (2) A copy of any petition, report, or other document related to the person being
19 transported to the chair of the county board of mental illness for the county where the
20 person is transported.

21 The county clerk of courts shall transfer the petition filed under this section to the county
22 clerk of courts of the county where the person is transported.

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

24 27A-1-1. Terms used in this title mean:

- 1 (1) "Administrator," that person designated by the secretary of social services to
2 discharge the administrative functions of the Human Services Center including the
3 delegation of responsibilities to the appropriate Human Services Center staff;
- 4 (2) "Appropriate regional facility," a facility designated by the department for the
5 prehearing custody of an individual apprehended under authority of this title which
6 is as close as possible in the immediate area to where the apprehension occurred; and
7 is no more restrictive of mental, social, or physical freedom than necessary to protect
8 the individual or others from physical injury. In determining the least restrictive
9 facility, considerations shall include the preferences of the individual, the
10 environmental restrictiveness of the setting, the proximity of the facility to the
11 patient's residence, and the availability of family, legal and other community
12 resources and support;
- 13 (3) "Center," the South Dakota Human Services Center;
- 14 (4) "Chronic disability," a condition evidenced by a reasonable expectation, based on the
15 person's psychiatric history, that the person is incapable of making an informed
16 medical decision because of a severe mental illness, is unlikely to comply with
17 treatment as shown by a failure to comply with a prescribed course of treatment
18 outside of an inpatient setting on two or more occasions within any continuous
19 twelve month period, and, as a consequence, the person's current condition is likely
20 to deteriorate until it is probable that the person will be a danger to self or others;
- 21 (5) "Co-occurring substance use disorder," refers to persons who have at least one mental
22 disorder as well as an alcohol or drug use disorder;
- 23 (6) "County of residence," the county of the address set forth in a petition filed under
24 § 27A-10-1 or as provided in the report of the qualified mental health professional

1 under § 27A-10-6, unless otherwise rebutted by evidence of a different county;

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

10 ~~(7)~~(8) "Danger to self,"

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

19 (b) A reasonable expectation of danger of serious personal harm in the near future,
20 due to a severe mental illness, as evidenced by the person's treatment history
21 and the person's recent acts or omissions which demonstrate an inability to
22 provide for some basic human needs such as food, clothing, shelter, essential
23 medical care, or personal safety, or by arrests for criminal behavior which
24 occur as a result of the worsening of the person's severe mental illness;

~~(8)~~(9) "Department," the Department of Social Services;

~~(9)~~(10) "Essential medical care," medical care, that in its absence, a person cannot improve or a person's condition may deteriorate, or the person may improve but only at a significantly slower rate;

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

~~(10A)~~(12) "Health care," any care, treatment, service, or procedure to maintain, diagnose, or treat a person's physical or mental condition;

~~(11)~~(13) "Incapacitated by the effects of alcohol or drugs," that a person, as a result of the use of alcohol or drugs, is unconscious or the person's judgment is otherwise so impaired that the person is incapable of realizing and making a rational decision with respect to the need for treatment;

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

~~(13)~~(15) "Inpatient psychiatric facility," a public or private facility or unit thereof which provides mental health diagnosis, observation, evaluation, care, treatment, or rehabilitation when the individual resides on the premises including a hospital, institution, clinic, mental health center or facility, or satellite thereof. An inpatient psychiatric facility may not include a residential facility which functions primarily to provide housing and other such supportive services

1 when so designated by the department;

2 ~~(14)~~(16) "Inpatient treatment," mental health diagnosis, observation, evaluation, care,
3 treatment, or rehabilitation rendered inside or on the premises of an inpatient
4 psychiatric facility when the individual resides on the premises;

5 ~~(15)~~(17) "Least restrictive treatment alternative," the treatment and conditions of
6 treatment which, separately and in combination, are no more intrusive or
7 restrictive of mental, social, or physical freedom than necessary to achieve a
8 reasonably adequate therapeutic benefit. In determining the least restrictive
9 alternative, considerations shall include the values and preferences of the
10 patient, the environmental restrictiveness of treatment settings, the duration of
11 treatment, the physical safety of the patient and others, the psychological and
12 physical restrictiveness of treatments, the relative risks and benefits of
13 treatments to the patient, the proximity of the treatment program to the
14 patient's residence, and the availability of family and community resources and
15 support;

16 ~~(16)~~(18) "Mental health center," any private nonprofit organization which receives
17 financial assistance from the state or its political subdivisions and which is
18 established or organized for the purpose of conducting a program approved by
19 the department for the diagnosis and treatment, or both, of persons with mental
20 and emotional disorders;

21 ~~(17)~~(19) "Next of kin," for the purposes of this title, the person's next of kin, in order
22 of priority stated, is the person's spouse if not legally separated, adult son or
23 daughter, either parent or adult brother or sister;

24 ~~(18)~~(20) "Outpatient commitment order," an order by the board committing a person

1 to outpatient treatment, either following a commitment hearing or upon a
2 stipulation of the parties represented by counsel;

3 ~~(19)~~(21) "Outpatient treatment," mental health diagnosis, observation, evaluation, care,
4 treatment or rehabilitation rendered inside or outside the premises of an
5 outpatient program for the treatment of persons with mental, emotional, or
6 substance use disorders;

7 ~~(20)~~(22) "Physician," any person licensed by the state to practice medicine or
8 osteopathy or employed by a federal facility within the State of South Dakota
9 to practice medicine or osteopathy;

10 ~~(21)~~(23) "Program director," the person designated to discharge the administrative
11 functions of an outpatient program for treatment of persons with mental,
12 emotional, or substance use disorders;

13 ~~(22)~~(24) "Referring county," the county from which a person is transferred under
14 section 3 of this Act;

15 ~~(25)~~ "Resident," "patient," or "recipient," any person voluntarily receiving or ordered by
16 a board or court to undergo evaluation or treatment;

17 ~~(23)~~(26) "Secretary," the secretary of the Department of Social Services;

18 ~~(24)~~(27) "Severe mental illness," substantial organic or psychiatric disorder of thought,
19 mood, perception, orientation, or memory which significantly impairs
20 judgment, behavior, or ability to cope with the basic demands of life.
21 Intellectual disability, epilepsy, other developmental disability, alcohol or
22 substance abuse, or brief periods of intoxication, or criminal behavior do not,
23 alone, constitute severe mental illness;

24 ~~(25)~~(28) "Treatment," a mental health diagnosis, observation, evaluation, care, and

1 medical treatment as may be necessary for the treatment of the person's mental
2 illness or rehabilitation;

3 ~~(26)~~(29) "Treatment order," an order by the board of mental illness, as part of an
4 inpatient or outpatient commitment order, or as a separate order by the circuit
5 court or board after an inpatient or outpatient commitment ordered by the
6 board, that requires a program of treatment as specified in this title.

7 Section 5. That § 23-7-48 be amended to read:

8 23-7-48. The attorney general shall transmit to the National Instant Criminal Background
9 Check System administered by the Federal Bureau of Investigation the name and other
10 identifying information of ~~any~~ a person who is prohibited from possessing a firearm under 18
11 U.S.C. § 922(g)(4) because the person was acquitted of a crime by reason of insanity ~~pursuant~~
12 ~~to~~ under § 23A-26-5, the person was determined to be incompetent to stand trial ~~pursuant to~~
13 under § 23A-10A-4, or the person was involuntarily committed ~~pursuant to~~ under chapter 27A-
14 10 based on a finding that the person is a danger to self as defined in ~~subdivision 27A-1-1(7)(a)~~
15 under § 27A-1-1 or a danger to others as defined in ~~subdivision 27A-1-1(6)~~ under § 27A-1-1.

16 Section 6. That § 23-7-50 be amended to read:

17 23-7-50. Within sixty days after the date of filing the petition for restoration, the court shall
18 conduct a hearing to determine whether the petitioner's right to possess a firearm should be
19 restored. The record of the hearing under this section is confidential and may only be disclosed
20 to the parties and the Supreme Court in the event of an appeal. If the court finds, based on ~~the~~
21 a preponderance of the evidence presented at the hearing, that the petitioner is not a danger to
22 self as defined in ~~subdivision 27A-1-1(7)(a)~~ under § 27A-1-1 or a danger to others as defined
23 in ~~subdivision 27A-1-1(6)~~ under § 27A-1-1, the court shall enter an order restoring the
24 petitioner's right to possess a firearm and directing the attorney general to report to the National

Instant Criminal Background Check System that the petitioner is no longer prohibited from possessing a firearm under 18 U.S.C. § 922(g)(4).

Section 7. That § 23A-10A-13 be amended to read:

23A-10A-13. The term, approved facility, as used in this chapter, means the Human Services Center; the state developmental centers; a community support provider; a mental health center; ~~as defined by subdivision 27A-1-1(13);~~ or any other facility approved by the Department of Human Services or the Department of Social Services for placement or treatment of mentally ill or developmentally disabled persons.

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

27A-8-15. Before ~~an individual~~ a person is accepted for voluntary inpatient treatment at an inpatient psychiatric facility, an explanation shall be made to ~~him~~ the person of the nature of ~~such~~ the status of commitment, including the types of treatment available, ~~and~~ the restraints or restrictions to which ~~he~~ the person may be subject, including possible conversion to involuntary status ~~as provided in~~ under this chapter ~~together with, and~~ a statement of his the person's rights under this title.

An informed consent ~~as defined in subdivision 27A-1-1(8)~~ shall be obtained orally and in writing upon an application form which shall contain in bold print and simple language the substance of §§ 27A-8-10, 27A-8-11.2, 27A-8-14, and 27A-8-10.1. In addition, the application form shall include the following representations:

- (1) The applicant understands that his treatment will involve inpatient status;
- (2) He is willing to be admitted to the facility;
- (3) He consents to such admission voluntarily, without any element of force, duress, threat, or other form of coercion.

The consent shall be part of the person's record. In addition, a copy of the signed application

1 and a written statement of the patient's rights under this title shall be given to the patient and to
2 any one other person designated by the patient.

3 Section 9. That § 27A-10-24 be amended to read:

4 27A-10-24. If the board of mental illness orders an involuntary commitment based on a
5 finding ~~pursuant to~~ under § 27A-10-9.1 that the person is a danger to self ~~as defined in~~
6 ~~subdivision 27A-1-1(7)(a)~~ or a danger to others ~~as defined in subdivision 27A-1-1(6)~~, the chair
7 of the board shall report to the attorney general for reporting to the National Instant Criminal
8 Background Check System the ~~involuntarily committed~~ person's name and other identifying
9 information. The chair shall submit the report to the attorney general, in the manner and form
10 prescribed by the attorney general, within seven working days after the date of the final order
11 of involuntary commitment. The report may not include information relating to the person's
12 diagnosis or treatment.

13 Section 10. That § 27A-15-9 be amended to read:

14 27A-15-9. An informed consent, ~~as defined in subdivision 27A-1-1(12)~~, to inpatient
15 treatment of the minor shall be obtained orally; and in writing upon the application form from
16 the parent. The consent and signed application shall become part of the minor's medical records.
17 ~~In addition, a~~ A copy of the signed application and a written statement of the parent's and
18 minor's rights under this title shall be given to the parent and to the minor.

19 Section 11. That § 27A-10-5 be amended to read:

20 27A-10-5. Immediately after a person is taken into custody ~~pursuant to~~ in accordance with
21 ~~§ 27A-10-2 or 27A-10-3~~, a hold is initiated pursuant to § 27A-8-10.1 or 27A-10-19, or a petition
22 is filed pursuant to § 27A-8-11.2, the person shall be notified both orally and in writing of the
23 following:

24 (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 post-commitment treatment, medication, compensation for the attorney appointed to represent the person in any appeals proceedings, an additional examination requested by the person pursuant to § 27A-11A-9, and a certified transcript or tape of proceedings requested by the person pursuant to § 27A-11A-2 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 12. That § 27A-10-9.7 be amended to read:

27A-10-9.7. Nothing provided in §§ 27A-10-9.4 to 27A-10-9.6, inclusive, limits the authority of any law enforcement officer to detain a patient pursuant to the emergency authority conferred by ~~§ 27A-10-3~~ § 27A-10-2. Any law enforcement officer who in good faith performs any act of taking custodial charge, transportation, delivery, or other commitment procedure at the request of or direction of another under the provisions of §§ 27A-10-9.1 to 27A-10-9.6, inclusive, is immune from any civil liability that might otherwise be incurred or imposed. The

1 immunity from civil liability under this section does not apply if a resulting injury was due to
2 willful or wanton misconduct.

3 Section 13. That § 27A-10-19 be amended to read:

4 27A-10-19. If any person presents to a facility licensed by the state as a hospital, other than
5 the Human Services Center, and after an examination by a qualified mental health professional
6 it is determined that the person is severely mentally ill and in such condition that immediate
7 intervention is necessary to protect the person from physical harm to self or others, the qualified
8 mental health professional may initiate a twenty-four hour hold on the person and retain the
9 person at the hospital for purposes of observation and emergency treatment. The hospital or the
10 qualified mental health professional shall notify the chair of the county board of mental illness
11 of the twenty-four hour hold. The qualified mental health professional shall petition for
12 commitment of the person ~~according to §§ 27A-10-1 and 27A-10-4~~ in accordance with § 27A-
13 10-1. The person shall be afforded rights according to § 27A-10-5. If a petition for emergency
14 commitment ~~pursuant to~~ under § 27A-10-1 is not filed within twenty-four hours, the person
15 shall be released.

16 Section 14. That § 27A-10-3 be repealed.

17 ~~—27A-10-3. A peace officer may apprehend any person that he has probable cause to believe~~
18 ~~requires emergency intervention under the criteria in § 27A-10-1. The peace officer shall~~
19 ~~transport the person to an appropriate regional facility, as defined in § 27A-1-1, other than the~~
20 ~~Human Services Center for an examination as provided in § 27A-10-6. A jail may not be used~~
21 ~~for prehearing custody until the availability of other appropriate regional facilities has been~~
22 ~~explored and exhausted. No person may remain in a jail for longer than twenty-four hours on~~
23 ~~a mental illness hold alone.~~

24 Section 15. That § 27A-10-4 be repealed.

1 ~~27A-10-4. After a law enforcement officer or other designee transports an apprehended~~
2 ~~person to an appropriate regional facility pursuant to § 27A-10-3, the law enforcement officer,~~
3 ~~a physician, or other person with personal knowledge of the relevant facts shall complete a~~
4 ~~petition as provided in § 27A-10-1.~~