



2022 South Dakota Legislature

Senate Bill 136

Introduced by: **Senator Steinhauer**

1 **An Act to revise and clarify certain processes for emergency detainment related to**
 2 **drug and alcohol abuse.**

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

4 **Section 1. That § 34-20A-2 be AMENDED:**

5 **34-20A-2.** Terms ~~as~~ used in this chapter mean:

- 6 (1) "Accredited prevention or treatment facility," a private or public agency meeting
 7 the standards prescribed in § 34-20A-27 or a private or public agency or facility
 8 surveyed and accredited by the Joint Commission; an Indian Health Service's
 9 quality assurance review under the Indian Health Service Manual, Professional
 10 Standards-Alcohol/Substance Abuse; or the Commission on Accreditation of
 11 Rehabilitation Facilities; or the Council on Accreditation; under the drug and alcohol
 12 treatment standards incorporated and adopted by the division in rules promulgated
 13 pursuant to chapter 1-26, if proof of the accreditation, with accompanying
 14 recommendations, progress reports and related correspondence are submitted to
 15 the ~~Division of Behavioral Health~~ division in a timely manner;
- 16 (2) "Addiction counselor," a person licensed or certified as an addiction counselor by
 17 the South Dakota Board of Addiction and Prevention Professionals;
- 18 (3) "Alcoholic," a person who habitually lacks self-control as to the use of alcoholic
 19 beverages, or uses alcoholic beverages to the extent that the person's health is
 20 substantially impaired or endangered or the person's social or economic function
 21 is substantially disrupted;
- 22 (4) "Department," the Department of Social Services;
- 23 (5) "Designated prevention or treatment facility," an accredited agency operating under
 24 the direction and control of the state or providing services under this chapter
 25 through a contract with the division or treatment facilities operated by the federal

- 1 government-~~which~~that may be designated by the division without accreditation by
2 the state;
- 3 (6) "Division," the Division of Behavioral Health within the department;
- 4 (7) "Drug abuser," a person who habitually lacks self-control as to the use of controlled
5 drugs or substances as defined in § 34-20B-3 to the extent that the person's health
6 is substantially impaired or endangered or that the person's social or economic
7 function is substantially disrupted;
- 8 (8) "Incapacitated by alcohol or other drugs," that a person, as a result of the use of
9 alcohol or other drugs, is unconscious or the person's judgment is otherwise so
10 impaired that the person is incapable of realizing and making a rational decision
11 with respect to the person's need for treatment;
- 12 (9) "Incompetent person," a person who has been adjudged incompetent by the circuit
13 court;
- 14 (10) "Intoxicated person," a person who demonstrates diminished mental or physical
15 capacity ~~as a result of the use of~~ while under the influence of alcohol or other
16 drugs;
- 17 (11) "Prevention," purposeful activities designed to promote personal growth of a person
18 and strengthen the aspects of the community environment-~~which~~that are
19 supportive to the person in order to preclude, prevent, or impede the development
20 of alcohol or other drug misuse and abuse;
- 21 (12) "Secretary," the secretary of the Department of Social Services;
- 22 (13) "Treatment," the broad range of emergency, outpatient, intermediate, and inpatient
23 services and care, including diagnostic evaluation, ~~which~~that may be extended to
24 a person experiencing problems as a result of the use of alcohol or other drugs.

25 **Section 2. That § 34-20A-55 be AMENDED:**

26 **34-20A-55.** Any person who appears to be intoxicated or incapacitated by the
27 effects of alcohol or drugs and is clearly dangerous to the health and safety of ~~himself or~~
28 herself oneself or others may be taken into protective custody by law enforcement
29 authorities, acting with probable cause. If the person is taken into protective custody, the
30 person ~~shall~~ must be taken to an approved treatment facility offering detoxication services
31 for emergency-~~commitment~~ detainment. If emergency-~~commitment~~ detainment is not
32 appropriate, as determined by the administrator of the treatment facility or an authorized
33 designee, the person may be detained as a patient in protective custody until no longer
34 intoxicated or up to forty-eight hours after admission. If no approved treatment facility is

1 readily available, the person ~~shall~~ must be taken to an emergency medical service or a
2 jail, but only until the person is no longer intoxicated or incapacitated or only so long as
3 may be necessary to prevent injury to ~~himself or herself~~ oneself or others.

4 **Section 3. That § 34-20A-56 be AMENDED:**

5 **34-20A-56.** Any law enforcement officer, in detaining a person pursuant to § 34-
6 20A-55 and in taking ~~him~~ the person to an approved treatment facility, ~~for emergency~~
7 ~~commitment~~ detainment, is taking ~~him~~ the person into protective custody and shall make
8 every reasonable effort to protect ~~his~~ the person's health and safety. In taking the person
9 into protective custody, the detaining officer may take reasonable steps to protect ~~himself~~
10 the officer's person. A taking into protective custody under this section is not an arrest.
11 No entry or other record may be made to indicate that the person has been arrested or
12 charged with a crime.

13 **Section 4. That § 34-20A-57 be AMENDED:**

14 **34-20A-57.** Law enforcement authorities who act in compliance with §§ 34-20A-
15 55 ~~and~~, 34-20A-56, and 34-20A-66 are acting in the course of their official duty and are
16 not criminally or civilly liable therefor.

17 **Section 5. That § 34-20A-63 be AMENDED:**

18 **34-20A-63.** An intoxicated person ~~who may be detained in an approved treatment~~
19 facility for emergency treatment if the person:
20 (1) Has threatened, attempted, or inflicted physical harm on ~~himself or herself~~ oneself
21 or on another or is likely to inflict physical harm on another unless ~~committed~~
22 detained; ~~or~~
23 (2) Is incapacitated by the effects of alcohol or drugs; or
24 (3) Is pregnant and abusing alcohol or drugs;
25 ~~may be committed to an approved treatment facility for emergency treatment.~~ A refusal
26 to undergo treatment does not constitute evidence of lack of judgment as to the
27 need for treatment.

28 **Section 6. That § 34-20A-64 be AMENDED:**

29 **34-20A-64.** Any law enforcement officer, physician, spouse, guardian, or relative
30 of the person to be ~~committed~~ detained, or any other responsible person, may make a

1 written application for ~~commitment~~ detainment under § 34-20A-63, directed to the
2 administrator of the approved treatment facility. The application ~~shall~~ must state the
3 circumstances requiring emergency ~~commitment~~ detainment, including the applicant's
4 personal observations and the specific statements of others, if any, upon which the person
5 making the application relies.

6 **Section 7. That § 34-20A-64.1 be AMENDED:**

7 **34-20A-64.1.** If any person taken into protective custody, pursuant to § 34-20A-
8 55, or ~~detained~~ under emergency ~~commitment~~ detainment pursuant to § 34-20A-64, is
9 disruptive beyond the ability of the facility to control the person's behavior, or leaves
10 without staff approval, the facility administrator, or an authorized designee, shall contact
11 law enforcement authorities who may further detain the person at whatever level of
12 confinement is necessary to protect the detainee or others.

13 **Section 8. That § 34-20A-65 be AMENDED:**

14 **34-20A-65.** The administrator of an approved treatment facility or an authorized
15 designee shall refuse an application if the application fails to sustain the grounds for
16 emergency ~~commitment~~ detainment set forth in § 34-20A-63. The administrator of an
17 approved treatment facility or an authorized designee may also refuse an application if,
18 upon personal observation, the person to be detained does not meet the grounds for
19 emergency detainment set forth in § 34-20A-63. The person detained shall be immediately
20 released and ~~shall~~ must be encouraged to seek voluntary treatment if appropriate, unless
21 the person is under protective custody. In that event, the person may be detained until
22 no longer intoxicated or up to forty-eight hours.

23 **Section 9. That § 34-20A-66 be AMENDED:**

24 **34-20A-66.** Upon approval of the application by the administrator of the approved
25 treatment facility or an authorized designee, the person shall be retained or brought to
26 the facility by a law enforcement officer or any other interested person. A law enforcement
27 officer must only transport the person if criteria for protective custody is met under § 34-
28 20A-55 at the time of transport. A law enforcement officer shall notify the treatment
29 facility if criteria for protective custody under § 34-20A-55 is not met. The person ~~shall~~
30 must be retained at the facility to which ~~he~~ the person was admitted, or transferred to
31 another appropriate treatment facility, until discharged under § 34-20A-68.

1 **Section 10. That § 34-20A-66.1 be AMENDED:**

2 **34-20A-66.1.** Payment for treatment under emergency ~~commitment~~ detainment,
3 or under protective custody pursuant to § 34-20A-55 if emergency ~~commitment~~
4 detainment is not required, may be assessed to the individual, to a legally responsible
5 relative or guardian, to the county of residence if indigent, or billed to the division through
6 contract with an approved treatment facility. Any payment for emergency ~~commitment~~
7 detainment to the Human Services Center is subject to the requirements of chapter 27A-
8 13.

9 **Section 11. That § 34-20A-67 be AMENDED:**

10 **34-20A-67.** A copy of the written application for ~~commitment~~ detainment and a
11 written explanation of the person's right to counsel ~~shall~~ must be given to the person
12 within twenty-four hours after ~~commitment~~ detainment by the administrator, who shall
13 provide a reasonable opportunity for the person to consult counsel.

14 **Section 12. That § 34-20A-68 be AMENDED:**

15 **34-20A-68.** If the administrator or an authorized designee determines that the
16 grounds for ~~commitment~~ emergency detainment no longer exist, the person ~~committed~~
17 detained under § 34-20A-63 shall be discharged.

18 **Section 13. That § 34-20A-69 be AMENDED:**

19 **34-20A-69.** No person ~~committed~~ detained under § 34-20A-63 may be detained
20 in any treatment facility for more than five days excluding Saturdays, Sundays, and legal
21 holidays. If a petition for involuntary commitment under § 34-20A-70 has been filed within
22 the five days, excluding Saturdays, Sundays, and legal holidays, and the administrator of
23 an approved treatment facility or an authorized designee finds that grounds for emergency
24 ~~commitment~~ detainment still exist, ~~he the administrator or authorized designee~~ may
25 detain the person until the petition has been heard and determined, but no longer than
26 ten days, excluding Saturdays, Sundays, and legal holidays, after filing the petition.

27 **Section 14. That § 34-20A-73 be AMENDED:**

28 **34-20A-73.** Upon filing of a petition under § 34-20A-70, the court shall fix a date
29 for a hearing no later than ten days excluding Saturdays, Sundays, and legal holidays

1 after the date the petition was filed. A copy of the petition and of the notice of the hearing,
2 including the date fixed by the court, ~~shall~~ must be served on the petitioner, the person
3 whose commitment is sought, the person's next of kin other than the petitioner, a parent
4 or guardian if a minor, the administrator in charge of the approved treatment facility to
5 which ~~he~~ the person has been ~~committed for emergency care under emergency~~
6 detainment, if applicable, and any other person the court believes advisable. A copy of
7 the petition and certificate ~~shall~~ must be delivered to each person notified.

8 **Section 15. That § 34-20A-76 be AMENDED:**

9 **34-20A-76.** If the person has refused to be examined by a licensed physician or
10 an addiction counselor, the person shall be given an opportunity to be examined by a
11 court-appointed licensed physician or addiction counselor. If the person refuses ~~and, or~~
12 there is sufficient evidence to believe that the allegations of the petition are true, or both,
13 or if the court believes that more evidence is necessary, the court may order a temporary
14 commitment and transportation by a law enforcement officer to an approved treatment
15 facility for a period of not more than five days for purposes of a diagnostic examination.