



2023 South Dakota Legislature

Senate Bill 67

SENATE HEALTH AND HUMAN SERVICES ENGROSSED

Introduced by: **Senator Tobin**

1 **An Act to revise provisions related to emergency and involuntary commitment for**
 2 **alcohol and drug 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 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~~ 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 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 that may be designated by the division without accreditation by the
2 state;

3 (6) "Division," the Division of Behavioral Health within the ~~department~~ Department of
4 Social Services;

5 (7)(5) "Drug abuser," a person who habitually lacks self-control as to the use of controlled
6 drugs or substances as defined in § 34-20B-3 to the extent that the person's health
7 is substantially impaired or endangered or that the person's social or economic
8 function is substantially disrupted;

9 (8)(6) "Incapacitated by the effects of alcohol or other drugs," that a person, as a result
10 of the use of alcohol or other drugs, is unconscious or the person's judgment is
11 otherwise so impaired that the person is incapable of realizing and making a
12 rational decision with respect to the person's need for treatment;

13 (9)(7) "Incompetent person," a person who has been adjudged incompetent by the circuit
14 court;

15 (10)(8) "Intoxicated person," a person who demonstrates diminished mental or
16 physical capacity while under the influence of alcohol or other drugs, or is receiving
17 treatment for withdrawal management;

18 (11)(9) "Prevention," purposeful activities designed to promote personal growth of a
19 person and strengthen the aspects of the community environment that are
20 supportive to the person in order to preclude, prevent, or impede the development
21 of alcohol or other drug misuse and abuse; and

22 (12) ~~"Secretary," the secretary of the Department of Social Services;~~

23 (13)(10) "Treatment," the broad range of emergency, outpatient, intermediate, and
24 inpatient services and care, including diagnostic evaluation, that may be extended
25 to a person experiencing problems as a result of the use of alcohol or other drugs.

26 **Section 2. That chapter 34-20A be amended with a NEW SECTION:**

27 For the purposes of this chapter, the term, next of kin, means, in order of priority
28 stated, the person's:

29 (1) Spouse, if not legally separated;

30 (2) Adult son or daughter;

31 (3) Parent; and

32 (4) Adult brother or sister.

33 **Section 3. That § 34-20A-68 be AMENDED:**

1 **34-20A-68.** If, after the person detained under § 34-20A-63 completes treatment,
 2 the administrator or an authorized designee determines that the grounds for emergency
 3 detainment no longer exist, the facility shall discharge the person detained under § 34-
 4 ~~20A-63 shall be discharged,~~ unless a petition for involuntary commitment under § 34-
 5 20A-70 has been filed.

6 **Section 4. That § 34-20A-69 be AMENDED:**

7 **34-20A-69.** No person detained under § 34-20A-63 may be detained in any
 8 treatment facility for more than five days, excluding Saturdays, Sundays, and legal
 9 holidays, except as follows. If a petition for involuntary commitment under § 34-20A-70
 10 has been filed within the five days, excluding Saturdays, Sundays, and legal holidays, ~~and~~
 11 ~~the administrator of an approved treatment facility or an authorized designee finds that~~
 12 ~~grounds for emergency detainment still exist,~~ the administrator or authorized designee
 13 may detain the person until the petition has been heard and determined, but no longer
 14 than ten days, excluding Saturdays, Sundays, and legal holidays, after filing the date the
 15 petition was filed.

16 **Section 5. That § 34-20A-70.2 be AMENDED:**

17 **34-20A-70.2.** ~~The~~ Any application for emergency detainment, petition for
 18 commitment, written application, and for commitment, order for a court-appointed
 19 examination, or written report to the circuit court and the resulting protective custody
 20 ~~order required by § 34-20A-70 shall~~ must be sealed and may not be used for the purpose
 21 of enforcing the provisions of chapter 22-42 and chapter 22-42A against the person being
 22 committed. Any law enforcement official or prosecuting attorney may petition the circuit
 23 court to examine these documents, and the court may allow such examination upon a
 24 showing that the purpose of the examination is not to investigate a violation of chapter
 25 22-42 or chapter 22-42A against the person being committed. ~~However, any~~ Any
 26 information obtained from the examination of the application for emergency detainment,
 27 petition for commitment, written application for commitment, order for a court-appointed
 28 examination, or written report, or protective custody order to the circuit court may not be
 29 used against the person being committed in any prosecution for a violation of chapter 22-
 30 42 or chapter 22-42A.

31 **Section 6. That chapter 34-20A be amended with a NEW SECTION:**

1 If the person whose commitment is sought is not being detained in a facility under
2 § 34-20A-63, a request for an examination of the person by a licensed physician or
3 addiction counselor must be filed with the court. The court may order an examination of
4 the person by a licensed physician or addiction counselor and shall provide notice to the
5 person whose commitment is sought of the request for an examination.

6 **Section 7. That § 34-20A-72 be AMENDED:**

7 **34-20A-72.** A petition filed under § 34-20A-70 ~~shall~~ for a person who is detained
8 under § 34-20A-63 must be accompanied by a certificate of a licensed physician or an
9 addiction counselor ~~either of whom~~ who has examined the person within ~~two~~ five days
10 before submission of the petition, unless the person ~~whose commitment is sought~~ has
11 refused to submit to a medical an examination ~~or counselor assessment in which case.~~ If
12 the person has refused to submit to an examination, the fact of refusal ~~shall~~ must be
13 alleged in the petition. If the person refuses the release of examination or certification
14 information, the circuit court shall order the release of the information if good cause is
15 shown.

16 The certificate ~~shall~~ must set forth the physician's or the addiction counselor's
17 findings in support of the allegations of the petition and a level of care recommendation
18 for substance use treatment. ~~A~~

19 An admitting facility may not provide treatment to the person whose commitment
20 is sought if the physician or addiction counselor who provides a certificate under this
21 section is employed by the admitting facility ~~is not eligible to provide certification,~~ unless
22 the person to be committed requests to receive treatment at the facility.

23 **Section 8. That § 34-20A-73 be AMENDED:**

24 **34-20A-73.** Upon filing of a petition under § 34-20A-70, the court shall fix a date
25 for a hearing no later than ten days, ~~excluding~~ Saturdays, Sundays, and legal holidays, ~~z~~
26 after the date the petition was filed. A copy of the petition and of the notice of the hearing,
27 including the date fixed by the court, must be served on the petitioner, the person whose
28 commitment is sought, the person's next of kin other than the petitioner, a parent or
29 guardian if a minor, the administrator in charge of the approved treatment facility to which
30 the person has been under emergency detention, if applicable, and any other person
31 the court believes advisable. A copy of the petition and certificate must be delivered to
32 each person notified.

1 Upon service of the petition, the person whose commitment is sought must be
2 notified, in writing, of the person's right to be represented by counsel at every stage of
3 any proceedings relating to commitment, and that if the person is unable to obtain
4 counsel, the court may appoint one to the person.

5 **Section 9. That § 34-20A-75 be AMENDED:**

6 **34-20A-75.** At the hearing the court shall hear all relevant testimony, including,
7 if possible, the testimony of at least one licensed physician ~~and~~or one addiction counselor
8 who ~~have~~has examined the person whose commitment is sought.