

## 2023 South Dakota Legislature

**Senate Bill 67****AMENDMENT 67F  
FOR THE SENATE HEALTH AND HUMAN SERVICES**

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 be AMENDED:**

17          **34-20A-70.** A person may be committed by the circuit court upon the petition of  
18          the person's spouse or guardian, a relative, a physician, the administrator of any approved  
19          treatment facility, or any other responsible person. Any person applying for commitment  
20          shall do so to the circuit court through the clerk of courts of the county in which the person  
21          to be committed resides or is present. The circuit court judge, upon receipt of a written  
22          application prepared by the clerk of courts, shall appoint an attorney to represent the  
23          applicant. The appointed attorney shall investigate the grounds upon which the application  
24          is based and shall within five days, excluding Saturdays, Sundays, and legal holidays,  
25          submit a petition for commitment and a written report to the circuit court as to whether  
26          probable cause exists that the person subject of the petition is an alcoholic or drug abuser.  
27          All information obtained as a result of the investigation and written report shall be  
28          documented and made a part of the record of any further proceedings. The petition shall  
29          allege that the person is an alcoholic or drug abuser who habitually lacks self-control as  
30          to the use of alcoholic beverages or other drugs and:

31          (1) Has threatened, attempted, or inflicted physical harm on himself or herself or on  
32          another and that unless committed is likely to inflict harm on himself or herself or  
33          on another; or

- 1 (2) Is incapacitated by the effects of alcohol or drugs; or  
 2 (3) Is pregnant and abusing alcohol or drugs.  
 3 A refusal to undergo treatment does not constitute evidence of lack of judgment  
 4 as to the need for treatment.

5 **Section 6. That § 34-20A-70.2 be AMENDED:**

6 **34-20A-70.2.** ~~The~~Any application for emergency detention, petition for  
 7 commitment, written application, and for commitment, order for a court-appointed  
 8 examination, or written report to the circuit court and the resulting protective custody  
 9 order required by § 34-20A-70 shall must be sealed and may not be used for the purpose  
 10 of enforcing the provisions of chapter 22-42 and chapter 22-42A against the person being  
 11 committed. Any law enforcement official or prosecuting attorney may petition the circuit  
 12 court to examine these documents, and the court may allow such examination upon a  
 13 showing that the purpose of the examination is not to investigate a violation of chapter  
 14 22-42 or chapter 22-42A against the person being committed. ~~However, any~~ Any  
 15 information obtained from the examination of the application for emergency detention,  
 16 petition for commitment, written application for commitment, order for a court-appointed  
 17 examination, or written report, or protective custody order to the circuit court may not be  
 18 used against the person being committed in any prosecution for a violation of chapter 22-  
 19 42 or chapter 22-42A.

20 **Section 7. That chapter 34-20A be amended with a NEW SECTION:**

21 If the person whose commitment is sought is not being detained in a facility under  
 22 § 34-20A-63, a request for an examination of the person by a licensed physician or  
 23 addiction counselor must be filed with the court. The court may order an examination of  
 24 the person by a licensed physician or addiction counselor and shall provide notice to the  
 25 person whose commitment is sought of the request for an examination.

26 **Section 8. That § 34-20A-72 be AMENDED:**

27 **34-20A-72.** A petition filed under § 34-20A-70 ~~shall~~ for a person who is detained  
 28 under § 34-20A-63 must be accompanied by a certificate of a licensed physician or an  
 29 addiction counselor ~~either of whom~~ who has examined the person within ~~two~~ five days  
 30 before submission of the petition, unless the person ~~whose commitment is sought~~ has  
 31 refused to submit to a medical an examination or counselor assessment in which case. If

1 the person has refused to submit to an examination, the fact of refusal shall must be  
 2 alleged in the petition. If the person refuses the release of examination or certification  
 3 information, the circuit court shall order the release of the information if good cause is  
 4 shown.

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

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

12 **Section 9. That § 34-20A-73 be AMENDED:**

13 **34-20A-73.** Upon filing of a petition under § 34-20A-70, the court shall fix a date  
 14 for a hearing no later than ten days, excluding Saturdays, Sundays, and legal holidays,  
 15 after the date the petition was filed. A copy of the petition and of the notice of the hearing,  
 16 including the date fixed by the court, must be personally served on the person whose  
 17 commitment is sought and served by mail on the petitioner, ~~the person whose~~  
 18 ~~commitment is sought,~~ the person's next of kin other than the petitioner, a parent or  
 19 guardian if a minor, the administrator in charge of the approved treatment facility to which  
 20 the person has been under emergency detention, if applicable, and any other person  
 21 the court believes advisable. ~~A copy of the petition and certificate must be delivered to~~  
 22 ~~each person notified.~~

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

27 **Section 10. That § 34-20A-75 be AMENDED:**

28 **34-20A-75.** At the hearing the court shall hear all relevant testimony, including,  
 29 if possible, the testimony of at least one licensed physician ~~and or~~ one addiction counselor  
 30 who ~~have~~ has examined the person whose commitment is sought.