

AN ACT

ENTITLED, An Act to revise certain provisions regarding the costs and expenses incurred in the apprehension, transportation, evaluation, and commitment of out-of-state residents alleged to be mentally ill and in need of emergency intervention.

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

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

27A-10-2. After examination of a petition filed under § 27A-10-1, the chair of the county board of mental illness may order the apprehension and transportation of any person who the chair has probable cause to believe meets the criteria in § 27A-10-1 to an appropriate regional facility other than the Human Services Center. A jail may not be used for prehearing custody until the availability of other appropriate regional facilities has been explored and exhausted. No person may remain in a jail for longer than twenty-four hours on a mental illness hold alone.

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

If the facility to which the person is transported is in a county served by another board of mental illness, a copy of the petition shall be forthwith filed with the chair of such board. The referring county shall pay any expenses incurred in apprehension and transportation of the person, subject to reimbursement by the county ultimately proven to be the county of residence. However, the provisions of chapter 28-14 do not apply.

Section 2. That § 27A-10-6 be amended to read as follows:

27A-10-6. Within twenty-four hours after apprehension of any person who allegedly requires emergency intervention or a hold is initiated pursuant to § 27A-8-10.1, or a petition is filed pursuant to § 27A-8-11.2, a qualified mental health professional designated by the chairman of the county board serving the area where the person is detained other than the person bringing the petition or initiating the hold shall perform an examination, including a mental status examination, of the person. Preceding the examination, the qualified mental health professional shall identify herself or himself to the person and explain the nature and purpose of the examination, including the fact that it is being performed to assist in the determination of whether custody should continue and that the examination may be used as evidence in an involuntary commitment hearing. The qualified mental health professional shall immediately report any findings to the chair of the county board. The referring county shall pay any expenses of the examination by the qualified mental health professional, subject to reimbursement by the county ultimately proven to be the county of residence. However, the provisions of chapter 28-14 do not apply.

Section 3. That § 27A-10-8 be amended to read as follows:

27A-10-8. Within five days after the person is 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 provided an involuntary commitment hearing. The referring county shall pay any expenses incurred by the board holding the hearing, including the transportation of the person to the hearing, subject to reimbursement by the county ultimately proven to be the county of residence. The provisions of chapter 28-14 do not apply to this section.

Section 4. That § 27A-10-9.1 be amended to read as follows:

27A-10-9.1. Upon completion of the hearing provided in § 27A-10-8, the board of mental illness may order the involuntary commitment of the person for an initial period not to exceed ninety days if a majority of the board finds by clear and convincing evidence, supported by written findings of fact

and conclusions of law, that:

- (1) The person meets the criteria in § 27A-1-2;
- (2) The person needs and is likely to benefit from the treatment which is proposed; and
- (3) The commitment is to the least restrictive treatment alternative.

The board may commit the person to the Human Services Center or a veteran's administration hospital. The board may also commit the person to a private facility, if that facility agrees to accept the commitment and if the commitment will not result in liability to any county for the cost of treating such person.

If the above findings are not made, the board shall order that the person be released. Following such release, the referring county shall provide the person with transportation to the county where the person was taken into custody if the person chooses. The county ultimately shown to be the county of residence shall reimburse the referring county for any transportation costs. However, the provisions of chapter 28-14 do not apply. If the board orders the involuntary commitment of the person, the board shall immediately notify the person and the person's attorney of the right to appeal pursuant to § 27A-11A-25.

Section 5. That § 27A-10-14 be amended to read as follows:

27A-10-14. Within ninety days after the involuntary commitment of a person who is still under the commitment order, the county board of mental illness which serves the county in which the person is receiving treatment shall conduct a review hearing in the county to determine if the person continues to meet the criteria in § 27A-10-9.1. Notice of the review hearing shall be given to the person, and the person's attorney if the person has retained counsel, at least ten days prior to the hearing. If the person has not retained counsel at the time of the notice, the chairman of the county board shall immediately appoint counsel to represent the person.

At the time the notice of hearing is given, the person and the person's attorney shall be informed of all evidence that will be considered at the review hearing. Any evidence subsequently discovered

shall be immediately transmitted to the person and the person's attorney. The rights and procedures applicable during an initial commitment hearing are applicable to review hearings. A petition pursuant to § 27A-10-1 need not be filed.

The board of mental illness may order the continued involuntary commitment of the person to the same or an alternative placement or program for up to six months if a majority of the board finds by clear and convincing evidence supported by written findings of fact and conclusions of law that the criteria in § 27A-10-9.1 are met. If continued involuntary commitment is ordered, a review in the manner provided in this section shall be conducted within six months after the order. If the county board issues another order of continued involuntary commitment, the next review shall be held within six months after the order. If the second six-month review justifies continued commitment, the county board may order continued involuntary commitment for up to twelve months. Subsequent reviews shall be conducted within each twelve months thereafter that the person remains under commitment.

If the board orders the continued involuntary commitment of the person, the board shall immediately notify the person and the person's attorney of the person's right to appeal pursuant to § 27A-11A-25.

If findings that justify continued commitment are not made, the board shall order that the person be discharged from involuntary commitment. Following discharge, the referring county shall provide the person with transportation to the county where the person was taken into custody if the person so chooses. The county ultimately shown to be the county of residence shall reimburse the referring county for any transportation costs. However, the provisions of chapter 28-14 do not apply.

Section 6. That § 27A-11A-4 be amended to read as follows:

27A-11A-4. In any proceeding for involuntary commitment, review or detention, or in any proceeding challenging commitment or detention, the state's attorney for the county in which the proceeding is held shall represent the persons or agencies petitioning for commitment or detention and shall defend all challenges to commitment or detention. The county ultimately shown to be the

county of residence shall reimburse the county in which the proceeding is held for any reasonable cost of such representation. However, the provisions of chapter 28-14 do not apply.

Section 7. That § 27A-11A-9 be amended to read as follows:

27A-11A-9. The referring county shall pay any expenses of the evaluation required in § 27A-10-6 and § 27A-15-17.1, subject to reimbursement by the county ultimately proven to be the county of residence. However, the provisions of chapter 28-14 do not apply. The person has the right to obtain an additional examination paid for by the county which may be placed in evidence before the board, the reasonable expense of which shall be reimbursed to the county unless the person is indigent.

Section 8. That § 27A-11A-14 be amended to read as follows:

27A-11A-14. Within ten days of the auditor's receipt of the committing board's findings regarding the residence and summary of proofs thereon, the county, other than the referring county, in which residence was found to be may request the committing board of mental illness to reopen the hearing upon the question of the person's residence by mailing a request to the chairman of the committing board of mental illness. Upon receipt of the request to reopen the commitment hearing, the committing board of mental illness shall, as soon as practicable, afford the county determined to be the person's county of residence an opportunity to appear before the board, at a time and place set by the board and not more than thirty days from the date of the request to reopen the hearing. Notice of the reopened hearing shall be given to the county where the person was found and to the county requesting the reopening of the hearing at least ten days prior to the reopened hearing by mailing notice thereof to the respective county auditors. Either county appearing at the reopened hearing may present any evidence it may have to establish that it is not the county of residence of the person. The board shall then determine, by a preponderance of evidence, the county of residence of the patient and either affirm or modify its prior finding. The ultimate finding of residence shall be filed with the clerk of courts of the committing county and the county of residence with copies mailed to the administrator of the center or other facility where the person is undergoing treatment.

The referring county shall pay any expenses incurred by the committing board in conducting any reopened hearing, subject to reimbursement by the county ultimately proven to be the county of residence.

Section 9. That § 27A-11A-25 be amended to read as follows:

27A-11A-25. A person may appeal a final order of a county board of mental illness pursuant to any hearing or review conducted under this title. In the case of a minor, or a person for whom the guardian has been appointed, such right to appeal may be exercised on behalf of the person by an attorney. The person shall be advised of this right upon the termination of any proceedings, both verbally and in writing. The appeal shall be conducted in accordance with the provisions of chapter 1-26.

None of the rights granted in this section may be denied due to a person's inability to pay for costs and fees incurred in such proceedings. The board of county commissioners of the county where an indigent person has residence shall provide for the cost of representation of the person through the conclusion of actions brought under this section.

Section 10. That § 27A-15-15.4 be amended to read as follows:

27A-15-15.4. Within five days after the execution of the written objection to continued inpatient treatment, 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 minor shall be provided a hearing on the need for continued inpatient treatment at the facility. The hearing shall be held in the county where the facility is located before the board of mental illness serving that county. The county in which the hearing is held shall pay any expenses, including the transportation of the minor to the hearing, subject to reimbursement by the county ultimately proven to be the minor's county of residence. The provisions of chapter 28-14 do not apply to this section.

Section 11. That § 27A-15-19 be amended to read as follows:

27A-15-19. Within five days after service of the objection, 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 period, the minor shall be provided a hearing on the need for continued inpatient treatment at the facility. The hearing shall be held in the county where the facility is located before the board of mental illness serving that county. The county in which the hearing is held shall pay any expenses incurred by the board holding the hearing, subject to reimbursement by the county ultimately proven to be the county of residence.

An Act to revise certain provisions regarding the costs and expenses incurred in the apprehension, transportation, evaluation, and commitment of out-of-state residents alleged to be mentally ill and in need of emergency intervention.

=====

I certify that the attached Act
originated in the

SENATE as Bill No. 52

Secretary of the Senate
=====

President of the Senate

Attest:

Secretary of the Senate

Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 52
File No. _____
Chapter No. _____

=====

Received at this Executive Office
this _____ day of _____ ,

19____ at _____ M.

By _____
for the Governor
=====

The attached Act is hereby
approved this _____ day of
_____, A.D., 19____

Governor
=====

STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____, 19____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State