

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

625C0433

HOUSE BILL NO. 1130

Introduced by: Representatives Michels, Diedtrich (Elmer), Fischer-Clemens, Sutton (Duane),
and Wilson and Senators Albers and Bogue

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the involuntary
2 commitment of certain mentally ill persons.

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

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

5 27A-1-1. Terms used in this title mean:

- 6 (1) "Administrator," that person designated by the secretary of human services to
7 discharge the administrative functions of the Human Services Center including the
8 delegation of responsibilities to the appropriate human services center staff;
- 9 (2) "Appropriate regional facility," a facility designated by the department for the pre-
10 hearing custody of an individual apprehended under authority of this title which is as
11 close as possible in the immediate area to where the apprehension occurred; and is no
12 more restrictive of mental, social, or physical freedom than necessary to protect the
13 individual or others from physical injury. In determining the least restrictive facility,
14 considerations shall include the preferences of the individual, the environmental
15 restrictiveness of the setting, the proximity of the facility to the patient's residence,
16 and the availability of family, legal, and other community resources and support;

- 1 (3) "Center," the South Dakota Human Services Center;
- 2 (4) "Danger to others," behavior due to severe mental illness which supports a reasonable
3 expectation that the person will inflict serious physical injury upon another person in
4 the very near future. Such behavior shall be evidenced by recent acts which constitute
5 a danger of serious physical injury for another individual. Such acts may include a
6 recently expressed threat if the threat is such that, if considered in the light of its
7 context or in light of the person's recent previous acts, it is substantially supportive
8 of an expectation that the threat will be carried out;
- 9 (5) "Danger to self,"
 - 10 (a) behavior due to severe mental illness which supports a reasonable expectation
11 that the person will inflict serious physical injury upon himself or herself in the
12 very near future. Such behavior is evidenced by recent acts which constitute a
13 danger of suicide or self-inflicted serious physical injury. Such acts may include
14 a recently expressed threat if the threat is such that, if considered in the light
15 of its context or in light of the person's recent previous acts, it is substantially
16 supportive of an expectation that the threat will be carried out; or
 - 17 (b) recent behavior or related physical conditions which show there is a danger of
18 serious personal harm in the very near future as evidenced by an inability to
19 provide for some basic human needs such as food, clothing, shelter, physical
20 health, or personal safety, or by arrests for criminal behavior which occur as
21 a result of the worsening of the person's severe mental illness;
- 22 (6) "Department," the Department of Human Services;
- 23 (7) "Facility director," that person designated to discharge the administrative functions
24 of an inpatient psychiatric facility, other than the center, including the delegation of
25 responsibilities to the appropriate facility staff;

- 1 (8) "Informed consent," consent voluntarily, knowingly, and competently given without
2 any element of force, fraud, deceit, duress, threat, or other form of coercion after
3 conscientious explanation of all information that a reasonable person would consider
4 significant to the decision in a manner reasonably comprehensible to general lay
5 understanding;
- 6 (9) "Inpatient psychiatric facility," a public or private facility or unit thereof which
7 provides mental health diagnosis, observation, evaluation, care, treatment, or
8 rehabilitation when the individual is present in a hospital emergency room or resides
9 on the premises including, ~~but not limited to,~~ a hospital, institution, clinic, mental
10 health center or facility, or satellite thereof. An inpatient psychiatric facility ~~may~~ does
11 not include a residential facility which functions primarily to provide housing and
12 other such supportive services when so designated by the department;
- 13 (10) "Inpatient treatment," mental health diagnosis, observation, evaluation, care,
14 treatment, or rehabilitation rendered inside or on the premises of an inpatient
15 psychiatric facility when the individual resides on the premises or is present in a
16 hospital emergency room;
- 17 (11) "Least restrictive treatment alternative," the treatment and conditions of treatment
18 which, separately and in combination, are no more intrusive or restrictive of mental,
19 social, or physical freedom than necessary to achieve a reasonably adequate
20 therapeutic benefit. In determining the least restrictive alternative, considerations shall
21 include the values and preferences of the patient, the environmental restrictiveness of
22 treatment settings, the duration of treatment, the physical safety of the patient and
23 others, the psychological and physical restrictiveness of treatments, the relative risks
24 and benefits of treatments to the patient, the proximity of the treatment program to
25 the patient's residence, and the availability of family and community resources and

1 support;

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

6 (13) "Next of kin," for the purposes of this title, the person's next of kin in order of priority
7 stated is the person's spouse if not legally separated, adult son or daughter, either
8 parent, or adult brother or sister;

9 (14) "Physician," any person licensed by the state to practice medicine or osteopathy or
10 employed by a federal facility within the State of South Dakota to practice medicine
11 or osteopathy;

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

14 (16) "Secretary," the secretary of the Department of Human Services;

15 (17) "Severe mental illness," substantial organic or psychiatric disorder of thought, mood,
16 perception, orientation, or memory which significantly impairs judgment, behavior,
17 or ability to cope with the basic demands of life. Mental retardation, epilepsy, other
18 developmental disability, alcohol or substance abuse, or brief periods of intoxication,
19 or criminal behavior do not, alone, constitute severe mental illness.

20 Section 2. That § 27A-8-10 be amended to read as follows:

21 27A-8-10. Except as is provided in § 27A-8-10.1, a voluntary patient eighteen years of age
22 or over has the right to immediate discharge upon oral or written notice of ~~his~~ an intention to
23 terminate inpatient treatment. ~~Upon informing~~ After reviewing this notice, a staff member of the
24 inpatient psychiatric facility ~~of the intention to terminate inpatient treatment, the facility shall~~
25 promptly supply the patient with the required written form shall document the patient's notice

1 to terminate, or if possible, obtain from the patient a written notice of intention to terminate
2 inpatient treatment.

3 Section 3. That § 27A-8-10.1 be amended to read as follows:

4 27A-8-10.1. If a ~~written~~ notice of termination of inpatient treatment is given to the facility
5 pursuant to § 27A-8-10, the notice is not withdrawn, and the facility director or administrator
6 or attending psychiatrist has probable cause to believe that the patient requires emergency
7 intervention under the criteria in § 27A-1-2 and should remain in the facility, the director or
8 administrator or attending psychiatrist may initiate a mental illness hold detaining the patient for
9 a period not to exceed twenty-four hours, not including weekends or holidays, from the facility's
10 receipt of the patient's ~~written~~ notice of intention to terminate. The director or administrator shall
11 immediately advise the patient that ~~he~~ the patient is being detained on a twenty-four hour mental
12 illness hold and explain the nature of such hold. The director or administrator shall forthwith
13 notify the ~~chairman~~ chair of the county board for the county where the facility is located or a
14 local peace officer of the time of receipt of the notice to terminate, the time the hold was
15 initiated, the circumstances necessitating the hold, and the time and place the director or
16 administrator or attending psychiatrist will be available to file a petition pursuant to § 27A-10-1.
17 This information shall also be made part of the signed petition; and the patient's medical records
18 and be delivered to the patient. If a petition pursuant to § 27A-10-1 is not filed with the chair
19 within twenty-four hours of the facility's receipt of the patient's ~~written~~ notice of intention to
20 terminate, the patient shall be immediately discharged. The twenty-four hour period does not
21 include weekends or holidays.