

AN ACT

ENTITLED, An Act to revise certain provisions pertaining to the commitment of persons with developmental disabilities.

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

Section 1. That § 27B-7-26 be amended to read as follows:

27B-7-26. The county review board has jurisdiction over all applications or petitions for involuntary commitment or for the safekeeping of persons subject to involuntary commitment within its county, except in cases otherwise specially provided for. The board chair may issue subpoenas and compel obedience thereto, and do any act of a court necessary and proper for the purpose of discharging the duties required of the board.

Section 2. That § 27B-7-28 be amended to read as follows:

27B-7-28. If a petition filed pursuant to § 27B-7-27 appears on its face to be sufficient, the chair of the county review board shall order that a psychiatric or psychological evaluation be performed and a report of the findings and recommendations be completed. The board chair shall appoint a licensed psychologist or psychiatrist within three days after receipt of the petition. The licensed psychologist or psychiatrist shall make the examination and prepare a report within five working days from receipt of the written notice from the board ordering the examination and report, containing the information required in § 27B-7-31. If it appears, based upon the foregoing evaluation, the criteria for commitment is met, a copy of the report shall be provided to Department of Human Services. The person has the right to obtain an additional examination paid for by the county that may be placed in evidence before the board, the reasonable expense of which shall be reimbursed to the county unless the person is indigent. A lien for the amount of these costs may be filed upon the person's real and personal property to ensure payment.

Section 3. That § 27B-7-29 be amended to read as follows:

27B-7-29. The chair of the county review board shall give written notice of the petition to the Department of Human Services which shall prepare a report containing a review of the person's supports and service needs and a recommendation as to appropriate service locations. The reports shall be filed with the county review board within ten working days from receipt of the written notice from the board ordering the examination and report.

Section 4. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read as follows:

Within ten days of the auditor's receipt of the board's findings regarding the residence and summary of proofs thereon, the county in which the residence was found to be, other than the referring county, may request the committing county review board to reopen the hearing upon the question of the person's residence by mailing a request to the chair of the county review board.

Section 5. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read as follows:

Upon receipt of the request to reopen the commitment hearing, the county review board 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 person 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.

Section 6. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read as follows:

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. No lien may be placed against the patient for the costs incurred in conducting any reopened hearing requested by county regarding the question of residence.

Section 7. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read as follows:

If a person is found at an initial or reopened hearing not to be a resident of the state, the county review board shall forward to the attorney general a copy of its findings and a summary of the proofs upon which the findings are based.

Section 8. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read as follows:

Within ten days of the attorney general's receipt of the committing board's findings regarding residence and summary of proofs thereon, the attorney general may request the committing county review board to reopen the hearing by mailing a request to the chair of the committing county review board. Notice of the reopened hearing shall be given to any county adversely interested and to the attorney general at least ten days prior to the reopened hearing by mailing notice to the county auditor of any county adversely interested and to the attorney general.

Section 9. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read as follows:

Any county adversely interested or the attorney general may present evidence to establish the residence of the person at the reopened hearing. The board shall then determine, by a preponderance

of evidence, whether the person is a resident of a particular county or whether the patient is not a resident of the state and shall affirm or modify its prior finding. The ultimate finding of residence shall be filed with the clerk of courts of the committing county and copies thereof mailed to the director of the facility or program where the person is undergoing treatment and to the auditor of any county found to be the residence of the person or to the attorney general if the person is found not to be a resident of the state.

Section 10. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read as follows:

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 or if a nonresident of the state, by the State of South Dakota.

Section 11. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read as follows:

The county of residence shall refund with lawful interest thereon any expenses incurred by the attorney general on account of a person whose residence is in a county of this state.

Section 12. That § 27B-7-33 be amended to read as follows:

27B-7-33. Upon receipt of a petition and reports as provided for in §§ 27B-7-27, 27B-7-28, and 27B-7-29, the chair of the county review board shall:

- (1) Fix a date, time, and place for a hearing within ten days, excluding Saturdays, Sundays, and holidays, of the board's receipt of the reports;
- (2) Provide five days written notice, excluding Saturdays, Sundays, and holidays, of the time, date, and place of the hearing to the petitioner, to the person alleged to meet the criteria for board-ordered commitment, to the psychologist or psychiatrist completing the report, to the person's attorney, or other attorney as specified in § 27B-7-35, to the director of any

facility in which the person is being served, and to the secretary of the Department of Human Services; and

- (3) Following the hearing, provide copies of all orders to the persons identified in subdivision (2).

Section 13. That § 27B-7-34 be amended to read as follows:

27B-7-34. Hearings convened pursuant to this title shall be governed by the rules of evidence.

Section 14. That § 27B-7-37 be amended to read as follows:

27B-7-37. A county review board may order the involuntary commitment of a person if the review board finds by clear and convincing evidence supported by written findings of fact and conclusions of law that the person has a developmental disability, and that due to the development disability the person poses an immediate danger of physical injury to self or others making it necessary or advisable to receive appropriate supports and services. If the person is found to meet the criteria for involuntary commitment, the county review board may order the person to be placed under the control and care of the Department of Human Services for placement in appropriate programs. If the person refuses to comply with this order, the board may direct a law enforcement officer to take the person into protective custody.

Section 15. That § 27B-7-38 be amended to read as follows:

27B-7-38. The county review board may issue a detention order and direct a law enforcement officer from the referring county or the county of residence to immediately take the person to a community service provider or facility recommended by the Department of Human Services, with the approval of the provider, to be detained for purposes of an examination if the county review board finds from the petition, from other statements under oath, or from reports of physicians, psychiatrists, psychologists, or other qualified mental retardation professionals that there is reasonable basis to believe that the person to be committed poses an immediate danger of physical injury to self or others.

If the county review board issues a detention order based on a petition that did not include a recommendation for detention by a psychiatrist or psychologist, the person shall be examined by a psychiatrist or psychologist within forty-eight hours of the issuance of the detention order, excluding Saturdays, Sundays, and legal holidays. The results shall be reported to the county review board. If the report is not received by the county review board within forty-eight hours, excluding Saturdays, Sundays, and legal holidays, the person shall be released from placement with the community service provider. The report shall include:

- (1) Whether the person may be diagnosed as having a developmental disability;
- (2) Whether supports and services are available and appropriate in lieu of county review board proceedings; and
- (3) Whether the person continues to pose an immediate danger of physical injury to self or others due to the developmental disability.

Upon receipt of the report by the county review board, if it is determined that the person continues to pose an immediate danger of physical injury to self or others due to the developmental disability, placement with a community service provider shall continue while the commitment process is pending. If the person does not continue to pose an immediate danger of physical injury to self or others, the person shall be released from placement with the community service provider pending further proceedings. No record of arrest may be charged against the person.

Section 16. That § 27B-7-39 be amended to read as follows:

27B-7-39. The county review board shall review the commitment order and accompanying information at least annually to make a determination of the continued need and supporting justification for commitment. Prior to the annual review, but not less than thirty days prior to the anniversary date of the commitment order, the developmental disability community service provider shall provide a report to the county review board that issued the original commitment order regarding

the person's supports, services, and progress. Following ten days notice to the person, the person's attorney, and the Department of Human Services, the county review board shall hold a review hearing. The review hearing shall include participation by the state's attorney, Department of Human Services, the community service provider, and the person's attorney. The rights and procedures applicable during an initial commitment hearing are applicable to review hearings. A petition pursuant to § 27B-7-27 need not be filed. At the conclusion of the review hearing, the county review board may issue an order of continued commitment or immediately discharge the person from involuntary commitment if the conditions in § 27B-7-37 justifying commitment no longer exist.

Section 17. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read as follows:

The person has the right to appear personally at any hearing and testify, but may not be compelled to do so. The person has the right to subpoena and cross-examine witnesses and to present evidence. If the person chooses not to appear, the person's attorney shall state on the record that the person has been informed of the hearing and of the right to appear and chooses not to exercise this right. Documentation of the reasons for the person's decision may not be required. The county review board may exclude any person not necessary for the conduct of the proceedings from the hearings, except any person requested to be present by the person who is the subject of the hearing.

Section 18. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read as follows:

A court reporter shall attend all hearings of the county review board and keep a stenographic record of all proceedings; or a record of all hearings shall be recorded by tape recorder or other sound reproducing equipment. If a tape recorder or other sound reproducing equipment is used, the equipment shall be of such quality that each word of the testimony and rulings made with reference thereto can be clearly heard and understood. All recorded testimony shall be preserved for at least

five years.

Section 19. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read as follows:

A person who has been committed may request a certified transcript or, if a tape recorder is utilized, a copy of the taped testimony of the hearing. To obtain a copy, the person shall pay for a transcript or copy of the tape recorded testimony or shall file an affidavit that the person is without means to pay for such transcript or tape recording. If the affidavit is found true by the county review board, the expense of the transcript or copy of the tape recorded testimony is a charge upon the county of residence of the person or, if a nonresident of the state, upon the State of South Dakota.

Section 20. That § 27B-7-42 be amended to read as follows:

27B-7-42. Counsel appointed for a person pursuant to this title shall be reasonably compensated for such services and for necessary expenses and costs incident to the proceedings in an amount to be fixed by the circuit court and in an amount approved by the chair of the county review board of the referring county. The costs described shall be allowed and paid out of county funds and may not be assessed against the person with a developmental disability.

Section 21. That § 27B-7-43 be amended to read as follows:

27B-7-43. The referring county shall pay the costs of proceedings pursuant to this title, including costs for transportation and any incidental costs of the person with a developmental disability, subject to reimbursement by the county ultimately proven to be the county of residence or, if a nonresident of the state, by the State of South Dakota. The costs described shall be allowed and paid for out of county funds and may not be assessed against the person with a developmental disability.

Section 22. That § 27B-7-45 be amended to read as follows:

27B-7-45. A person may, within thirty days, appeal a final order of a county review board pursuant to any hearing or review conducted under this title. In the case of a minor, or a person for

whom a guardian has been appointed, the right to appeal may be exercised on behalf of the person. The person shall be advised both verbally and in writing of this right at the conclusion of any proceedings. 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 county of residence, or the State of South Dakota if a nonresident of the state, shall provide for the cost of representation of the person through the conclusion of actions brought under this section.

Section 23. That § 27B-7-46 be repealed.

Section 24. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read as follows:

Any person involuntarily committed shall be discharged if, in the opinion of the director of the community service provider or facility, the person no longer meets the commitment criteria.

Section 25. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read as follows:

If a person is discharged in accordance with section 24 of this Act, the county review board, which entered the order, shall be notified. The county review board shall provide the person transportation to the person's place of residence if the person so chooses within forty-eight hours of discharge notification.

Section 26. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read as follows:

If the county review board fails or neglects to provide transportation to the person so discharged, as provided in section 25 of this Act, within forty-eight hours from the date of the order discharging the person and of the notice of the order, the responsible county is liable for and shall pay to the community service provider, or if a state provider then to the state, the full service cost as defined

in § 27B-3-28 for the care and keeping of such persons at the program or facility, the time computed shall commence forty-eight hours after the date of such order and notice.

If the community service provider is a state provider, the program director shall report any delinquencies, and the time any person is kept beyond the forty-eight hours, giving the person's name, the county of residence, and the amount due from the responsible county for such charge to the state auditor. The state auditor shall notify the county auditor of the county to be charged. The amount due shall be paid into the state treasury as other charges for the support of the developmentally disabled.

Section 27. That § 27B-8-56 be amended to read as follows:

27B-8-56. Time-out rooms used for separating a person with a developmental disability from other persons receiving services and group activities may be employed only under close and direct staff supervision and only as a technique in behavior intervention programs. No time-out room may be used in an emergency situation. Behavior intervention programs utilizing a time-out procedure may be implemented only if it incorporates a positive approach designed to result in the acquisition of appropriate behavior.

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I certify that the attached Act originated in the

HOUSE as Bill No. 1017

Chief Clerk

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Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1017
File No. _____
Chapter No. _____

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Received at this Executive Office this ____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

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The attached Act is hereby approved this _____ day of _____ , A.D., 20____

Governor

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STATE OF SOUTH DAKOTA,
ss.

Office of the Secretary of State

Filed _____ , 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State