

State of South Dakota

SEVENTY-SEVENTH SESSION
LEGISLATIVE ASSEMBLY, 2002

400H0229

HOUSE HEALTH AND HUMAN SERVICES
COMMITTEE ENGROSSED NO. **HB 1017** -
01/16/2002

Introduced by: The Committee on Health and Human Services at the request of the
Department of Human Services

1 FOR AN ACT ENTITLED, An Act to revise certain provisions pertaining to the commitment
2 of persons with developmental disabilities.

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

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

5 27B-7-26. The county review board has jurisdiction over all applications or petitions for
6 involuntary commitment or for the safekeeping of persons subject to involuntary commitment
7 within its county, except in cases otherwise specially provided for. The board chair may issue
8 subpoenas and compel obedience thereto, and do any act of a court necessary and proper for the
9 purpose of discharging the duties required of it the board.

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

11 27B-7-28. If a petition filed pursuant to § 27B-7-27 appears on its face to be sufficient, the
12 chair of the county review board shall order that a psychiatric or psychological evaluation be
13 performed and a report of the findings and recommendations be completed. The board chair shall
14 appoint a licensed psychologist or psychiatrist to within three days after receipt of the petition.



1 The licensed psychologist or psychiatrist shall make the examination and ~~to~~ prepare a report
2 within five working days from ~~the date the petition is filed~~ receipt of the written notice from the
3 board ordering the examination and report, containing the information required in § 27B-7-31.
4 If it appears, based upon the foregoing evaluation, the criteria for commitment is met, a copy of
5 the report shall be provided to Department of Human Services. ~~If the person desires an~~
6 ~~independent psychiatric or psychological evaluation, the person may obtain one at that person's~~
7 ~~own expense.~~ The person has the right to obtain an additional examination paid for by the county
8 that may be placed in evidence before the board, the reasonable expense of which shall be
9 reimbursed to the county unless the person is indigent. A lien for the amount of these costs may
10 be filed upon the person's real and personal property to ensure payment.

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

12 27B-7-29. The chair of the county review board shall give written notice of the petition to
13 the Department of Human Services which shall prepare a report containing a review of the
14 person's supports and service needs and a recommendation as to appropriate service locations.
15 The reports shall be filed with the county review board within ~~forty-five calendar~~ ten working
16 days from receipt of the written notice from the board ordering the examination and report.

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

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

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

1 follows:

2 Upon receipt of the request to reopen the commitment hearing, the county review board
3 shall, as soon as practicable, afford the county determined to be the person's county of residence
4 an opportunity to appear before the board, at a time and place set by the board and not more
5 than thirty days from the date of the request to reopen the hearing. Notice of the reopened
6 hearing shall be given to the county where the person was found and to the county requesting
7 the reopening of the hearing at least ten days prior to the reopened hearing by mailing notice
8 thereof to the respective county auditors. Either county appearing at the reopened hearing may
9 present any evidence it may have to establish that it is not the county of residence of the person.
10 The board shall then determine, by a preponderance of evidence, the county of residence of the
11 person and either affirm or modify its prior finding. The ultimate finding of residence shall be
12 filed with the clerk of courts of the committing county and the county of residence with copies
13 mailed to the administrator of the center or other facility where the person is undergoing
14 treatment.

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

17 The referring county shall pay any expenses incurred by the committing board in conducting
18 any reopened hearing, subject to reimbursement by the county ultimately proven to be the county
19 of residence. No lien may be placed against the patient for the costs incurred in conducting any
20 reopened hearing requested by county regarding the question of residence.

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

23 If a person is found at an initial or reopened hearing not to be a resident of the state, the
24 county review board shall forward to the attorney general a copy of its findings and a summary

1 of the proofs upon which the findings are based.

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

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

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

12 Any county adversely interested or the attorney general may present evidence to establish
13 the residence of the person at the reopened hearing. The board shall then determine, by a
14 preponderance of evidence, whether the person is a resident of a particular county or whether
15 the patient is not a resident of the state and shall affirm or modify its prior finding. The ultimate
16 finding of residence shall be filed with the clerk of courts of the committing county and copies
17 thereof mailed to the director of the facility or program where the person is undergoing treatment
18 and to the auditor of any county found to be the residence of the person or to the attorney
19 general if the person is found not to be a resident of the state.

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

22 The referring county shall pay any expenses incurred by the committing board in conducting
23 any reopened hearing, subject to reimbursement by the county ultimately proven to be the county
24 of residence or if a nonresident of the state, by the State of South Dakota.

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

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

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

6 27B-7-33. Upon receipt of a petition and reports as provided for in §§ 27B-7-27, 27B-7-28,
7 and ~~27B-7-31~~ 27B-7-29, the chair of the county review board shall:

8 (1) Fix a date, time, and place for a hearing within ~~five~~ ten days, excluding Saturdays,
9 Sundays, and holidays, of the board's receipt of the reports;

10 (2) Provide five days written notice, excluding Saturdays, Sundays, and holidays, of the
11 time, date, and place of the hearing to the petitioner, to the person alleged to meet the
12 criteria for board-ordered commitment, to the psychologist or psychiatrist completing
13 the report, to the person's attorney, or other attorney as specified in § 27B-7-35, to
14 the director of any facility in which the person is being served, and to the secretary of
15 the Department of Human Services; and

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

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

19 27B-7-34. Hearings convened ~~to determine whether a person meets the criteria for~~
20 ~~board-ordered commitment pursuant to this title~~ shall be governed by §§ ~~27B-7-27 to 27B-7-33,~~
21 ~~inclusive~~ the rules of evidence.

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

23 27B-7-37. A county review board may order the involuntary commitment of a person if the
24 review board finds by clear and convincing evidence supported by written findings of fact and

1 ~~conclusions of law~~ that the person ~~cannot exercise informed consent to treatment by reason of~~
2 ~~that person's~~ has a developmental disability, and that due to the development disability the person
3 poses a an immediate danger of physical injury to self or others making it necessary or advisable
4 to receive appropriate supports and services. If the person is found to meet the criteria for
5 involuntary commitment, the county review board may order the person to be placed under the
6 control and care of the Department of Human Services for placement in appropriate programs.
7 If the person refuses to comply with this order, the board may direct a law enforcement officer
8 to take the person into protective custody.

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

10 27B-7-38. The county review board may issue a detention order and direct a law
11 enforcement officer from the referring county or the county of residence to immediately take the
12 person to a community service provider or facility recommended by the Department of Human
13 Services, with the approval of the provider, to be detained for purposes of an examination if the
14 county review board finds from the petition, from other statements under oath, or from reports
15 of physicians, psychiatrists, psychologists, or other qualified mental retardation professionals that
16 there is reasonable basis to believe that the person to be committed poses an immediate danger
17 of physical injury to self or others.

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

- 1 (1) Whether the person may be diagnosed as having a developmental disability;
- 2 (2) ~~Whether the person is capable of giving informed consent and whether the person has~~
- 3 ~~agreed to voluntary admission;~~
- 4 ~~—(3)—~~Whether supports and services are available and appropriate in lieu of county review
- 5 board proceedings; and
- 6 ~~(4)~~(3) Whether the person continues to pose an immediate danger of physical injury to self
- 7 or others due to the developmental disability.

8 Upon receipt of the report by the county review board, if it is determined that the person

9 continues to pose an immediate danger of physical injury to self or others due to the

10 developmental disability, placement with a community service provider shall continue while the

11 commitment process is pending. If the person does not continue to pose an immediate danger

12 of physical injury to self or others, the person shall be released from placement with the

13 community service provider pending further proceedings. No record of arrest may be charged

14 against the person.

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

16 27B-7-39. The county review board shall review the commitment order and accompanying

17 information at least annually to make a determination of the continued need and supporting

18 justification for commitment. Prior to the annual review, but not less than thirty days prior to the

19 anniversary date of the commitment order, the developmental disability community service

20 provider shall provide ~~information~~ a report to the county review board that issued the original

21 commitment order regarding the person's supports, services, and progress. Following ten days

22 notice to the person, the person's attorney, and the Department of Human Services, the county

23 review board shall hold a review hearing. The review hearing shall include participation by the

24 state's attorney, Department of Human Services, the community service provider, and the

1 person's attorney. The rights and procedures applicable during an initial commitment hearing are
2 applicable to review hearings. A petition pursuant to § 27B-7-27 need not be filed. At the
3 conclusion of the review hearing, the county review board may issue an order of continued
4 commitment or immediately discharge the person from involuntary commitment if the conditions
5 in § 27B-7-37 justifying commitment no longer exist.

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

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

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

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

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

1 as follows:

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

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

10 27B-7-42. Counsel appointed for a person pursuant to this title shall be reasonably
11 compensated for such services and for necessary expenses and costs incident to the proceedings
12 in an amount to be fixed by the circuit ~~judge court~~ and in an amount approved by the chair of the
13 county review board of the referring county. The costs described shall be allowed and paid out
14 of county funds and may not be assessed against the person with a developmental disability.

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

16 27B-7-43. ~~Costs~~ The referring county shall pay the costs of proceedings pursuant to this title,
17 including costs for transportation and any incidental costs of the person with a developmental
18 disability, ~~shall be reasonably compensated in an amount to be determined by the county auditor~~
19 subject to reimbursement by the county ultimately proven to be the county of residence or, if a
20 nonresident of the state, by the State of South Dakota. The costs described shall be allowed and
21 paid for out of county funds and may not be assessed against the person with a developmental
22 disability.

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

24 27B-7-45. A person may, within thirty days, appeal a final order of a county review board

1 pursuant to any hearing or review conducted under this title. In the case of a minor, or a person
2 for whom a guardian has been appointed, the right to appeal may be exercised on behalf of the
3 person. The person shall be advised both verbally and in writing of this right at the conclusion
4 of any proceedings. The appeal shall be conducted in accordance with the provisions of chapter
5 1-26.

6 None of the rights granted in this section may be denied due to a person's inability to pay for
7 costs and fees incurred in such proceedings. The county of residence, or the State of South
8 Dakota if a nonresident of the state, shall provide for the cost of representation of the person
9 through the conclusion of actions brought under this section.

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

11 ~~27B-7-46. Upon exhaustion of all administrative remedies, a person has the right to file an~~
12 ~~appeal in the appropriate circuit court pursuant to chapter 1-26.~~

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

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

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

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

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

1 If the county review board fails or neglects to provide transportation to the person so
2 discharged, as provided in section 25 of this Act, within forty-eight hours from the date of the
3 order discharging the person and of the notice of the order, the responsible county is liable for
4 and shall pay to the community service provider, or if a state provider then to the state, the full
5 service cost as defined in § 27B-3-28 for the care and keeping of such persons at the program
6 or facility, the time computed shall commence forty-eight hours after the date of such order and
7 notice.

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

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

15 27B-8-56. Time-out rooms used for separating a person with a developmental disability from
16 other persons receiving services and group activities may be employed only under close and
17 direct staff supervision and only as a technique in behavior intervention programs. No time-out
18 room may be used in an emergency situation. Behavior intervention programs utilizing a time-out
19 procedure may be implemented only if it incorporates a positive approach designed to result in
20 the acquisition of appropriate behavior.