



2022 South Dakota Legislature  
**Senate Bill 136**  
**ENROLLED**

AN ACT

**ENTITLED An Act to revise and clarify certain processes for emergency detainment related to drug and alcohol abuse.**

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

**Section 1. That § 34-20A-2 be AMENDED:**

**34-20A-2.** Terms used in this chapter mean:

- (1) "Accredited prevention or treatment facility," a private or public agency meeting the standards prescribed in § 34-20A-27 or a private or public agency or facility surveyed and accredited by the Joint Commission; an Indian Health Service's quality assurance review under the Indian Health Service Manual, Professional Standards-Alcohol/Substance Abuse; or the Commission on Accreditation of Rehabilitation Facilities; or the Council on Accreditation; under the drug and alcohol treatment standards incorporated and adopted by the division in rules promulgated pursuant to chapter 1-26, if proof of the accreditation, with accompanying recommendations, progress reports and related correspondence are submitted to the division in a timely manner;
- (2) "Addiction counselor," a person licensed or certified as an addiction counselor by the South Dakota Board of Addiction and Prevention Professionals;
- (3) "Alcoholic," a person who habitually lacks self-control as to the use of alcoholic beverages, or uses alcoholic beverages to the extent that the person's health is substantially impaired or endangered or the person's social or economic function is substantially disrupted;
- (4) "Department," the Department of Social Services;
- (5) "Designated prevention or treatment facility," an accredited agency operating under the direction and control of the state or providing services under this chapter through a contract with the division or treatment facilities operated by the federal

government that may be designated by the division without accreditation by the state;

- (6) "Division," the Division of Behavioral Health within the department;
- (7) "Drug abuser," a person who habitually lacks self-control as to the use of controlled drugs or substances as defined in § 34-20B-3 to the extent that the person's health is substantially impaired or endangered or that the person's social or economic function is substantially disrupted;
- (8) "Incapacitated by alcohol or other drugs," that a person, as a result of the use of alcohol or other drugs, is unconscious or the person's judgment is otherwise so impaired that the person is incapable of realizing and making a rational decision with respect to the person's need for treatment;
- (9) "Incompetent person," a person who has been adjudged incompetent by the circuit court;
- (10) "Intoxicated person," a person who demonstrates diminished mental or physical capacity while under the influence of alcohol or other drugs;
- (11) "Prevention," purposeful activities designed to promote personal growth of a person and strengthen the aspects of the community environment that are supportive to the person in order to preclude, prevent, or impede the development of alcohol or other drug misuse and abuse;
- (12) "Secretary," the secretary of the Department of Social Services;
- (13) "Treatment," the broad range of emergency, outpatient, intermediate, and inpatient services and care, including diagnostic evaluation, that may be extended to a person experiencing problems as a result of the use of alcohol or other drugs.

**Section 2. That § 34-20A-55 be AMENDED:**

**34-20A-55.** Any person who appears to be intoxicated or incapacitated by the effects of alcohol or drugs and is clearly dangerous to the health and safety of oneself or others may be taken into protective custody by law enforcement authorities, acting with probable cause. If the person is taken into protective custody, the person must be taken to an approved treatment facility offering detoxication services for emergency detainment. If emergency detainment is not appropriate, as determined by the administrator of the treatment facility or an authorized designee, the person may be detained as a patient in protective custody until no longer intoxicated or up to forty-eight hours after admission. If no approved treatment facility is readily available, the person must be taken to an

emergency medical service or a jail, but only until the person is no longer intoxicated or incapacitated or only so long as may be necessary to prevent injury to oneself or others.

**Section 3. That § 34-20A-56 be AMENDED:**

**34-20A-56.** Any law enforcement officer, in detaining a person pursuant to § 34-20A-55 and in taking the person to an approved treatment facility for emergency detainment, is taking the person into protective custody and shall make every reasonable effort to protect the person's health and safety. In taking the person into protective custody, the detaining officer may take reasonable steps to protect the officer's person. A taking into protective custody under this section is not an arrest. No entry or other record may be made to indicate that the person has been arrested or charged with a crime.

**Section 4. That § 34-20A-57 be AMENDED:**

**34-20A-57.** Law enforcement authorities who act in compliance with §§ 34-20A-55, 34-20A-56, and 34-20A-66 are acting in the course of their official duty and are not criminally or civilly liable therefor.

**Section 5. That § 34-20A-63 be AMENDED:**

**34-20A-63.** An intoxicated person may be detained in an approved treatment facility for emergency treatment if the person:

- (1) Has threatened, attempted, or inflicted physical harm on oneself or on another or is likely to inflict physical harm on another unless detained;
- (2) Is incapacitated by the effects of alcohol or drugs; or
- (3) Is pregnant and abusing alcohol or drugs.

A refusal to undergo treatment does not constitute evidence of lack of judgment as to the need for treatment.

**Section 6. That § 34-20A-64 be AMENDED:**

**34-20A-64.** Any law enforcement officer, physician, spouse, guardian, or relative of the person to be detained, or any other responsible person, may make a written application for detainment under § 34-20A-63, directed to the administrator of the approved treatment facility. The application must state the circumstances requiring emergency detainment, including the applicant's personal observations and the specific statements of others, if any, upon which the person making the application relies.

**Section 7. That § 34-20A-64.1 be AMENDED:**

**34-20A-64.1.** If any person taken into protective custody, pursuant to § 34-20A-55, or under emergency detainment pursuant to § 34-20A-64, is disruptive beyond the ability of the facility to control the person's behavior, or leaves without staff approval, the facility administrator, or an authorized designee, shall contact law enforcement authorities who may further detain the person at whatever level of confinement is necessary to protect the detainee or others.

**Section 8. That § 34-20A-65 be AMENDED:**

**34-20A-65.** The administrator of an approved treatment facility or an authorized designee shall refuse an application if the application fails to sustain the grounds for emergency detainment set forth in § 34-20A-63. The administrator of an approved treatment facility or an authorized designee may also refuse an application if, upon personal observation, the person to be detained does not meet the grounds for emergency detainment set forth in § 34-20A-63. The person detained shall be immediately released and must be encouraged to seek voluntary treatment if appropriate, unless the person is under protective custody. In that event, the person may be detained until no longer intoxicated or up to forty-eight hours.

**Section 9. That § 34-20A-66 be AMENDED:**

**34-20A-66.** Upon approval of the application by the administrator of the approved treatment facility or an authorized designee, the person shall be retained or brought to the facility by a law enforcement officer or any other interested person. A law enforcement officer must only transport the person if criteria for protective custody is met under § 34-20A-55 at the time of transport. A law enforcement officer shall notify the treatment facility if criteria for protective custody under § 34-20A-55 is not met. The person must be retained at the facility to which the person was admitted, or transferred to another appropriate treatment facility, until discharged under § 34-20A-68.

**Section 10. That § 34-20A-66.1 be AMENDED:**

**34-20A-66.1.** Payment for treatment under emergency detainment, or under protective custody pursuant to § 34-20A-55 if emergency detainment is not required, may be assessed to the individual, to a legally responsible relative or guardian, to the county of residence if indigent, or billed to the division through contract with an approved

treatment facility. Any payment for emergency detainment to the Human Services Center is subject to the requirements of chapter 27A-13.

**Section 11. That § 34-20A-67 be AMENDED:**

**34-20A-67.** A copy of the written application for detainment and a written explanation of the person's right to counsel must be given to the person within twenty-four hours after detainment by the administrator, who shall provide a reasonable opportunity for the person to consult counsel.

**Section 12. That § 34-20A-68 be AMENDED:**

**34-20A-68.** If the administrator or an authorized designee determines that the grounds for emergency detainment no longer exist, the person detained under § 34-20A-63 shall be discharged.

**Section 13. That § 34-20A-69 be AMENDED:**

**34-20A-69.** No person detained under § 34-20A-63 may be detained in any treatment facility for more than five days excluding Saturdays, Sundays, and legal holidays. If a petition for involuntary commitment under § 34-20A-70 has been filed within the five days, excluding Saturdays, Sundays, and legal holidays, and the administrator of an approved treatment facility or an authorized designee finds that grounds for emergency detainment still exist, the administrator or authorized designee may detain the person until the petition has been heard and determined, but no longer than ten days, excluding Saturdays, Sundays, and legal holidays, after filing the petition.

**Section 14. That § 34-20A-73 be AMENDED:**

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

**Section 15. That § 34-20A-76 be AMENDED:**

**34-20A-76.** If the person has refused to be examined by a licensed physician or an addiction counselor, the person shall be given an opportunity to be examined by a court-appointed licensed physician or addiction counselor. If the person refuses, or there is sufficient evidence to believe that the allegations of the petition are true, or both, or if the court believes that more evidence is necessary, the court may order a temporary commitment and transportation by a law enforcement officer to an approved treatment facility for a period of not more than five days for purposes of a diagnostic examination.

An Act to revise and clarify certain processes for emergency detention related to drug and alcohol abuse.

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I certify that the attached Act originated in  
the:  
Senate as Bill No. 136

\_\_\_\_\_  
Received at this Executive Office  
this \_\_\_\_ day of \_\_\_\_\_,  
2022 at \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of the Senate

By \_\_\_\_\_  
for the Governor

\_\_\_\_\_  
President of the Senate

The attached Act is hereby  
approved this \_\_\_\_ day of  
\_\_\_\_\_, A.D., 2022

Attest:

\_\_\_\_\_  
Secretary of the Senate

\_\_\_\_\_  
Governor

**STATE OF SOUTH DAKOTA,**

ss.

Office of the Secretary of State

\_\_\_\_\_  
Speaker of the House

Attest:

Filed \_\_\_\_\_, 2022  
at \_\_\_\_\_ o'clock \_\_ M.

\_\_\_\_\_  
Chief Clerk

\_\_\_\_\_  
Secretary of State

Senate Bill No. 136  
File No. \_\_\_\_\_  
Chapter No. \_\_\_\_\_

By \_\_\_\_\_  
Asst. Secretary of State