



2023 South Dakota Legislature

Senate Bill 67

SENATE ENGROSSED

Introduced by: **Senator Tobin**

1 **An Act to revise provisions related to emergency and involuntary commitment for**
 2 **alcohol and drug abuse.**

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

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

5 **34-20A-2.** Terms used in this chapter mean:

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

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

3 ~~(6)~~(5) "Division," the Division of Behavioral Health within the department;

4 ~~(7)~~(6) "Drug abuser," a person who habitually lacks self-control as to the use of controlled
5 drugs or substances as defined in § 34-20B-3 to the extent that the person's health
6 is substantially impaired or endangered or that the person's social or economic
7 function is substantially disrupted;

8 ~~(8)~~(7) "Incapacitated by the effects of alcohol or ~~other~~ drugs," that a person, as a result
9 of the use of alcohol or other drugs, is unconscious or the person's judgment is
10 otherwise so impaired that the person is incapable of realizing and making a
11 rational decision with respect to the person's need for treatment;

12 ~~(9)~~(8) "Incompetent person," a person who has been adjudged incompetent by the circuit
13 court;

14 ~~(10)~~(9) "Intoxicated person," a person who demonstrates diminished mental or
15 physical capacity while under the influence of alcohol or other drugs, or is receiving
16 treatment for withdrawal management;

17 ~~(11)~~(10) "Prevention," purposeful activities designed to promote personal growth of a
18 person and strengthen the aspects of the community environment that are
19 supportive to the person in order to preclude, prevent, or impede the development
20 of alcohol or other drug misuse and abuse; and

21 ~~(12)~~ "Secretary," ~~the secretary of the Department of Social Services;~~

22 ~~(13)~~(11) "Treatment," the broad range of emergency, outpatient, intermediate, and
23 inpatient services and care, including diagnostic evaluation, that may be extended
24 to a person experiencing problems as a result of the use of alcohol or other drugs.

25 **Section 2. That chapter 34-20A be amended with a NEW SECTION:**

26 For the purposes of this chapter, the term, next of kin, means, in order of priority
27 stated, the person's:

28 (1) Spouse, if not legally separated;

29 (2) Adult son or daughter;

30 (3) Parent; and

31 (4) Adult brother or sister.

32 **Section 3. That § 34-20A-68 be AMENDED:**

1 **34-20A-68.** If, after the person detained under § 34-20A-63 completes treatment,
2 the administrator or an authorized designee determines that the grounds for emergency
3 detainment no longer exist, the facility shall discharge the person detained under § 34-
4 ~~20A-63 shall be discharged,~~ unless a petition for involuntary commitment under § 34-
5 20A-70 has been filed.

6 **Section 4. That § 34-20A-69 be AMENDED:**

7 **34-20A-69.** No person detained under § 34-20A-63 may be detained in any
8 treatment facility for more than five days, excluding Saturdays, Sundays, and legal
9 holidays, except as follows. If a petition for involuntary commitment under § 34-20A-70
10 has been filed within the five days, excluding Saturdays, Sundays, and legal holidays, ~~and~~
11 ~~the administrator of an approved treatment facility or an authorized designee finds that~~
12 ~~grounds for emergency detainment still exist,~~ the administrator or authorized designee
13 may detain the person until the petition has been heard and determined, but no longer
14 than ten days, excluding Saturdays, Sundays, and legal holidays, after filing the date the
15 petition was filed.

16 **Section 5. That § 34-20A-70 be AMENDED:**

17 **34-20A-70.** A person may be committed by the circuit court upon the petition of
18 the person's spouse or guardian, a relative, a physician, the administrator of any approved
19 treatment facility, or any other responsible person. Any person applying for commitment
20 shall do so to the circuit court through the clerk of courts of the county in which the person
21 to be committed resides or is present. The circuit court judge, upon receipt of a written
22 application prepared by the clerk of courts, shall appoint an attorney to represent the
23 applicant. The appointed attorney shall investigate the grounds upon which the application
24 is based and shall within five days, excluding Saturdays, Sundays, and legal holidays,
25 ~~submit a petition for commitment and~~ a written report to the circuit court as to whether
26 probable cause exists that the person subject of the petition is an alcoholic or drug abuser.
27 All information obtained as a result of the investigation and written report shall be
28 documented and made a part of the record of any further proceedings. The petition shall
29 allege that the person is an alcoholic or drug abuser who habitually lacks self-control as
30 to the use of alcoholic beverages or other drugs and:

- 31 (1) Has threatened, attempted, or inflicted physical harm on himself or herself or on
32 another and that unless committed is likely to inflict harm on himself or herself or
33 on another; or

1 (2) Is incapacitated by the effects of alcohol or drugs; or

2 (3) Is pregnant and abusing alcohol or drugs.

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

5 **Section 6. That § 34-20A-70.2 be AMENDED:**

6 **34-20A-70.2.** ~~The~~Any application for emergency detention, petition for
7 commitment, written application, and for commitment, order for a court-appointed
8 examination, or written report to the circuit court and the resulting protective custody
9 order required by § 34-20A-70 shall must be sealed and may not be used for the purpose
10 of enforcing the provisions of chapter 22-42 and chapter 22-42A against the person being
11 committed. Any law enforcement official or prosecuting attorney may petition the circuit
12 court to examine these documents, and the court may allow such examination upon a
13 showing that the purpose of the examination is not to investigate a violation of chapter
14 22-42 or chapter 22-42A against the person being committed. ~~However, any~~ Any
15 information obtained from the examination of the application for emergency detention,
16 petition for commitment, written application for commitment, order for a court-appointed
17 examination, or written report, or protective custody order to the circuit court may not be
18 used against the person being committed in any prosecution for a violation of chapter 22-
19 42 or chapter 22-42A.

20 **Section 7. That chapter 34-20A be amended with a NEW SECTION:**

21 If the person whose commitment is sought is not being detained in a facility under
22 § 34-20A-63, a request for an examination of the person by a licensed physician or
23 addiction counselor must be filed with the court. The court may order an examination of
24 the person by a licensed physician or addiction counselor and shall provide notice to the
25 person whose commitment is sought of the request for an examination.

26 **Section 8. That § 34-20A-72 be AMENDED:**

27 **34-20A-72.** A petition filed under § 34-20A-70 ~~shall~~ for a person who is detained
28 under § 34-20A-63 must be accompanied by a certificate of a licensed physician or an
29 addiction counselor ~~either of whom~~ who has examined the person within ~~two~~ five days
30 before submission of the petition, unless the person ~~whose commitment is sought~~ has
31 refused to submit to a medical an examination or counselor assessment in which case. If

1 the person has refused to submit to an examination, the fact of refusal shall must be
2 alleged in the petition. If the person refuses the release of examination or certification
3 information, the circuit court shall order the release of the information if good cause is
4 shown.

5 The certificate ~~shall~~ must set forth the physician's or the addiction counselor's
6 findings in support of the allegations of the petition and a level of care recommendation
7 for substance use treatment. ~~A~~

8 An admitting facility may not provide treatment to the person whose commitment
9 is sought if the physician or addiction counselor who provides a certificate under this
10 section is employed by the admitting facility is not eligible to provide certification, unless
11 the person to be committed requests to receive treatment at the facility.

12 **Section 9. That § 34-20A-73 be AMENDED:**

13 **34-20A-73.** Upon filing of a petition under § 34-20A-70, the court shall fix a date
14 for a hearing no later than ten days, excluding Saturdays, Sundays, and legal holidays,
15 after the date the petition was filed. A copy of the petition and of the notice of the hearing,
16 including the date fixed by the court, must be personally served on the person whose
17 commitment is sought and served by mail on the petitioner, the person whose
18 commitment is sought, the person's next of kin other than the petitioner, a parent or
19 guardian if a minor, the administrator in charge of the approved treatment facility to which
20 the person has been under emergency detainment, if applicable, and any other person
21 the court believes advisable. ~~A copy of the petition and certificate must be delivered to~~
22 ~~each person notified.~~

23 Upon service of the petition, the person whose commitment is sought must be
24 notified, in writing, of the person's right to be represented by counsel at every stage of
25 any proceedings relating to commitment, and that if the person is unable to obtain
26 counsel, the court may appoint one to the person.

27 **Section 10. That § 34-20A-75 be AMENDED:**

28 **34-20A-75.** At the hearing the court shall hear all relevant testimony, including,
29 if possible, the testimony of at least one licensed physician ~~and or~~ one addiction counselor
30 who ~~have~~ has examined the person whose commitment is sought.