

2023 South Dakota Legislature

Senate Bill 67**AMENDMENT 67A
FOR THE INTRODUCED BILL**

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) "Division," the Division of Behavioral Health within the ~~department~~ Department of
4 Social Services;

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

9 (8)(6) "Incapacitated by the effects of alcohol or other drugs," that a person, as a result
10 of the use of alcohol or other drugs, is unconscious or the person's judgment is
11 otherwise so impaired that the person is incapable of realizing and making a
12 rational decision with respect to the person's need for treatment;

13 (9)(7) "Incompetent person," a person who has been adjudged incompetent by the circuit
14 court;

15 (10)(8) "Intoxicated person," a person who demonstrates diminished mental or
16 physical capacity while under the influence of alcohol or other drugs, or is receiving
17 treatment for withdrawal management;

18 (11)(9) "Prevention," purposeful activities designed to promote personal growth of a
19 person and strengthen the aspects of the community environment that are
20 supportive to the person in order to preclude, prevent, or impede the development
21 of alcohol or other drug misuse and abuse; and

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

23 (13)(10) "Treatment," the broad range of emergency, outpatient, intermediate, and
24 inpatient services and care, including diagnostic evaluation, that may be extended
25 to a person experiencing problems as a result of the use of alcohol or other drugs.

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

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

29 (1) Spouse, if not legally separated;

30 (2) Adult son or daughter;

31 (3) Parent; and

32 (4) Adult brother or sister.

33 **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-70.2 be AMENDED:**

17 **34-20A-70.2.** ~~The~~ Any application for emergency detainment, petition for
18 commitment, written application, and for commitment, order for a court-appointed
19 examination, or written report to the circuit court ~~and the resulting protective custody~~
20 ~~order required by § 34-20A-70 shall~~ must be sealed and may not be used for the purpose
21 of enforcing the provisions of chapter 22-42 and chapter 22-42A against the person being
22 committed. Any law enforcement official or prosecuting attorney may petition the circuit
23 court to examine these documents, and the court may allow such examination upon a
24 showing that the purpose of the examination is not to investigate a violation of chapter
25 22-42 or chapter 22-42A against the person being committed. ~~However, any~~ Any
26 information obtained from the examination of the application for emergency detainment,
27 petition for commitment, written application for commitment, order for a court-appointed
28 examination, or written report, or protective custody order to the circuit court may not be
29 used against the person being committed in any prosecution for a violation of chapter 22-
30 42 or chapter 22-42A.

31 **Section 6. That chapter 34-20A be amended with a NEW SECTION:**

1 If the person whose commitment is sought is not being detained in a facility under
 2 § 34-20A-63, ~~the a request for an examination of the person by a licensed physician or~~
 3 ~~addiction counselor must be filed with the court.~~ The court may order an examination of
 4 the person by a licensed physician or addiction counselor ~~and shall provide notice to the~~
 5 ~~person whose commitment is sought of the request for an examination.~~

6 **Section 7. That § 34-20A-72 be AMENDED:**

7 **34-20A-72.** A petition filed under § 34-20A-70 ~~shall~~ for a person who is detained
 8 under § 34-20A-63 must be accompanied by a certificate of a licensed physician or an
 9 addiction counselor ~~either of whom~~ who has examined the person ~~whose commitment is~~
 10 sought within ~~two~~ five days before submission of the petition, unless the person ~~whose~~
 11 ~~commitment is sought~~ has refused to submit to a medical an examination ~~or counselor~~
 12 ~~assessment in which case.~~ assessment in which case. If the person has refused to submit to an examination, the fact
 13 of refusal ~~shall~~ must be alleged in the petition. If the person refuses the release of
 14 examination or certification information, the circuit court shall order the release of the
 15 information if good cause is shown.

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

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

23 **Section 8. That § 34-20A-73 be AMENDED:**

24 **34-20A-73.** Upon filing of a petition under § 34-20A-70, the court shall fix a date
 25 for a hearing no later than ten days, ~~excluding Saturdays, Sundays, and legal holidays,~~
 26 after the date the petition was filed. A copy of the petition and of the notice of the hearing,
 27 including the date fixed by the court, must be served on the petitioner, the person whose
 28 commitment is sought, the person's next of kin other than the petitioner, a parent or
 29 guardian if a minor, the administrator in charge of the approved treatment facility to which
 30 the person has been under emergency detention, if applicable, and any other person
 31 the court believes advisable. A copy of the petition and certificate must be delivered to
 32 each person notified.

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

5 **Section 9. That § 34-20A-75 be AMENDED:**

6 **34-20A-75.** At the hearing the court shall hear all relevant testimony, including,
7 if possible, the testimony of at least one licensed physician ~~and~~ or one addiction counselor
8 who ~~have~~ has examined the person whose commitment is sought.