2023 South Dakota Legislature

Senate Bill 67

SENATE HEALTH AND HUMAN SERVICES ENGROSSED

Introduced by: ***Senator*** *Tobin*

An Act to revise provisions related to emergency and involuntary commitment for alcohol and drug 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~~ 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~~ Department of Social Services;

~~(7)~~(5) "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)~~(6) "Incapacitated by the effects of 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)~~(7) "Incompetent person," a person who has been adjudged incompetent by the circuit court;

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

~~(11)~~(9) "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; and

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

~~(13)~~(10) "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 chapter 34-20A be amended with a NEW SECTION:

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

(1) Spouse, if not legally separated;

(2) Adult son or daughter;

(3) Parent; and

(4) Adult brother or sister.

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

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

Section 4. 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, except as follows. 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 date the petition was filed.

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

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

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

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

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

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

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

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

Section 8. 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.

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

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

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