

# **A Professional's Guide to the Mental Health Involuntary Hospitalization and Commitment Process**

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# PART I: OVERVIEW

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## A. PURPOSE

This document is designed to assist administrators, law enforcement authorities, attorneys, judges and other professionals who work with individuals with mental illness by providing a broad overview of the state statutes that define the involuntary committal process for adults and minors. This document describes the procedural processes necessary for voluntary commitment, involuntary commitment and, outpatient commitment orders for those with a serious mental illness, as defined on Page 6, who are a danger to themselves or others and/or who would benefit from treatment. This is intended as a guide only. For more information on the specific processes and requirements, please reference South Dakota Codified Law (SDCL) Title 27A Mentally Ill Persons found here:

[http://sdlegislature.gov/Statutes/Codified\\_Laws/DisplayStatute.aspx?Type=Statute&Statute=27A](http://sdlegislature.gov/Statutes/Codified_Laws/DisplayStatute.aspx?Type=Statute&Statute=27A) .

The Division of Behavioral Health (DBH) supports a comprehensive array of services to support individuals with mental illness. However, at times, adults with a serious mental illness or minors with serious emotional disturbance may experience symptoms significant enough to warrant an involuntary commitment for treatment. More information about the community-based mental health system can be found at: <https://dss.sd.gov/behavioralhealth/community/mentalhealth.aspx>

## B. DEFINITIONS

**Administrator** - Person designated by the Department Secretary of Social Services to oversee the administrative functions of the Human Services Center including the delegation of responsibilities to the appropriate Human Services Center staff; (SDCL § 27A-1-1 (1))

**Appropriate Regional Facility** - The Department of Social Services shall designate any facility as an appropriate regional facility if the facility is approved in accordance with this section.

To be designated as an appropriate regional facility, a facility must:

- (1) Have the capacity for overnight residential services necessary to stabilize acute psychiatric or behavioral symptoms and evaluate treatment needs;
- (2) Have the capacity to admit individuals twenty-four hours a day, seven days a week;
- (3) Have the capacity to develop crisis stabilization plan for each individual admitted;
- (4) Have on-site personnel twenty-four hours a day and seven days per week, and have medical personnel available, including by electronic communication, twenty-four hours a day and seven days a week.
- (5) Have the ability to document daily interactions with or observation of the individual by treatment staff of the facility; and
- (6) Comply with other requirements determined by the department by rule promulgated in accordance with chapter 1-26.

(SDCL § 27A-1-1.2 (2))

**Bordering States** - Iowa, Minnesota, Montana, Nebraska, North Dakota or Wyoming;

**Center** - South Dakota Human Services Center; (SDCL § 27A-1-1 (3))

**Chronic Disability** - Condition evidenced by a reasonable expectation, based on the person's psychiatric history, that the person is incapable of making an informed medical decision because of a serious mental illness, is unlikely to comply with treatment as shown by a failure to comply with a prescribed course of treatment outside of an inpatient setting on two or more occasions within any continuous twelve month period, and, as a consequence, the person's current condition is likely to deteriorate until it is probable that the person will be a danger to self or others; (SDCL § 27A-1-1 (4))

**Community Mental Health Center (CMHC)** - Any private nonprofit organization which receives financial assistance from the state or its political subdivisions and which is established or organized for the purpose of conducting a program approved by the Department for the diagnosis and treatment, or both, of persons with mental and emotional disorders; (SDCL § 27A-1-1 (16))

**Crisis intervention team-** A team of law enforcement officers and individuals who have undergone a comprehensive training program in crisis intervention techniques involving any person who is mentally ill or has chemical dependency or substance abuse issues. (SDCL § 27A-10-20 (23))

**Crisis intervention team certified law enforcement officer** – Any law enforcement officer who has undergone a comprehensive training program in crisis intervention techniques involving any person who is mentally ill or has substance abuse issues and has received certification as a crisis intervention officer by the officer's department. (SDCL § 27A-10-20 (23))

**Danger to Others** - Reasonable expectation that the person will inflict serious physical injury upon another person in the near future, due to a serious mental illness, as evidenced by the person's treatment history and the person's recent acts or omissions which constitute a danger of serious physical injury for another individual. Such acts may include a recently expressed threat if the threat is such that, if considered in the light of its context or in light of the person's recent previous acts or omissions, it is substantially supportive of an expectation that the threat will be carried out; (SDCL § 27A-1-1 (6))

**Danger to Self -**

- (A) A reasonable expectation that the person will inflict serious physical injury upon himself/herself in the near future, due to a serious mental illness, as evidenced by the person's treatment history and the person's recent acts or omissions which constitute a danger of suicide or self-inflicted serious physical injury. Such acts may include a recently expressed threat if the threat is such that, if considered in the light of its context or in light of the person's recent previous acts or omissions, it is substantially supportive of an expectation that the threat will be carried out; or
- (B) A reasonable expectation of danger of serious personal harm in the near future, due to a serious mental illness, as evidenced by the person's treatment history and the person's recent acts or omissions which demonstrate an inability to provide for some basic human needs such as food, clothing, shelter, essential medical care, or personal safety, or by arrests for criminal behavior which occur as a result of the worsening of the person's serious mental illness; (SDCL § 27A-1-1 (7))

**Department** - Department of Social Services; (SDCL § 27A-1-1 (8))

**Discharge upon expiration of court order** - A person committed must be discharged by the facility no later than 90 days after the person has been physically placed in a commitment facility, unless recommitted for a second time; (SDCL § 34-20A-81, 34-20A-82)

**Essential Medical Care** - Medical care, that in its absence, a person cannot improve or a person's condition may deteriorate, or the person may improve but only at a significantly slower rate; (SDCL § 27A-1-1 (9))

**Facility Director** - Person designated to discharge the administrative functions of an inpatient psychiatric facility, other than the center, including the delegation of responsibilities to the appropriate facility staff; (SDCL § 27A-1-1 (10))

**Informed consent** - consent voluntarily, knowingly, and competently given without any element of force, fraud, deceit, duress, threat, or other form of coercion after conscientious explanation of all information that a reasonable person would consider significant to the decision; (SDCL § 27A-1-1 (12))

**Inpatient Psychiatric Facility** - A public or private facility or unit thereof which provides mental health diagnosis, observation, evaluation, care, treatment, or rehabilitation when the individual resides on the premises including a hospital, institution, clinic, mental health center or facility, or satellite thereof. An inpatient psychiatric facility may not include a residential facility which functions primarily to provide housing and other such supportive services when so designated by the department; (SDCL § 27A-1-1 (13))

**Inpatient Treatment** - Mental health diagnosis, observation, evaluation, care, treatment, or rehabilitation provided at an inpatient psychiatric facility when the individual resides on the premises; (SDCL § 27A-1-1 (14))

**Involuntary Commitment** - A person is subject to involuntary commitment if:

- (A) The person has a serious mental illness;
- (B) Due to the serious mental illness, the person is a danger to self or others; and
- (C) The person needs and is likely to benefit from treatment;

**Least Restrictive Treatment Alternative** - Treatment and conditions of treatment which, separately and in combination, are no more intrusive or restrictive of mental, social, or physical freedom than necessary to achieve a reasonably adequate therapeutic benefit. In determining the least restrictive alternative, considerations shall include the values and preferences of the person with serious mental illness, the environmental restrictiveness of treatment settings, the duration of treatment, the physical safety of the person with serious mental illness and others, the psychological and physical restrictiveness of treatments, the relative risks and benefits of treatments to the person with serious mental illness, the proximity of the treatment program to the person's residence, and the availability of family and community resources and support; (SDCL § 27A-1-1 (15))

**Minor** - A minor is an un-emancipated and unmarried person under the age of 18;

**Mobile crisis team**- an interdisciplinary team of one or more mental health professionals able to respond to any person in the community, either in person or through real-time interactive audio and video, for mental health and chemical dependency or abuse intervention. (SDCL § 27A-10-20 (23))

**Next of Kin** - In order of priority stated, is the person's spouse if not legally separated, adult son or daughter, either parent, or adult brother or sister; (SDCL § 27A-1-1 (17))

**Outpatient Commitment Order** - An order by the county board of mental illness committing a person to outpatient treatment, either following a commitment hearing or upon a stipulation of the parties represented by counsel; (SDCL § 27A-1-1 (18))

**Outpatient Treatment** - Consists of mental health diagnosis, observation, evaluation, care, treatment or rehabilitation provided by an outpatient program for the treatment of persons with mental, emotional, or substance use disorders; (SDCL § 27A-1-1 (19))

**Program Director** - The person designated to discharge the administrative functions of an outpatient program for treatment of persons with mental, emotional, or substance use disorders; (SDCL § 27A-1-1 (21))

**Serious Emotional Disturbance** – Identified in youth under the age of 18 year, or youth 18 through 21 years of age who need a continuation of services started before the age of 18, who:

- Exhibit behavior resulting in functional impairment which substantially interferes with, or limits the individual’s role or functioning in the community, school, family or peer group;
- Has a mental disorder diagnosed under the DSM, 5<sup>th</sup> edition, 2013, or coding found in the International Classification of Diseases, 10<sup>th</sup> revision, Clinical Modification, 2015;
- Has demonstrated a need for one or more special care services, in addition to mental health services; and
- Has problems with a demonstrated or expected longevity of at least one year or has an impairment of short duration and high severity.

Intellectual disabilities, epilepsy, other developmental disabilities, alcohol or substance abuse, brief period of intoxication, or criminal or delinquent behavior do not, alone, constitute serious emotional disturbance; (SDCL § 27A-15-1.1)

**Serious Mental Illness** – In adults, a substantial organic or psychiatric disorder of thought, mood, perception, orientation, or memory which significantly impairs judgment, behavior, and/or ability to cope with the basic demands of life. Intellectual disability, epilepsy, other developmental disability, alcohol or substance abuse, or brief periods of intoxication, or criminal behavior do not, alone, constitute serious mental illness; (SDCL § 27A-1-1 (24))

**Team member**- any person who is a member of a crisis intervention team or mobile crisis team. (SDCL § 27A-10-20)

**Treatment** - A mental health diagnosis, observation, evaluation, care, and medical treatment as may be necessary for the treatment of the person’s mental illness or rehabilitation; (SDCL § 27A-1-1 (25))

**Treatment Order** - An order by the county board of mental illness, as part of an inpatient or outpatient commitment order, or as a separate order by the circuit court or board after an inpatient or outpatient commitment ordered by the board, that requires a program of treatment; (SDCL § 27A-1-1 (26)) and

**Unlawful Confinement** - Any person who intentionally and wrongfully places or attempts to place any person in a facility for the mentally ill by any method other than as prescribed by law is guilty of a Class 6 felony. Any person, who confines any mentally ill person in any other manner or in any other place than is authorized by law, is guilty of a Class 1 misdemeanor. (SDCL § 27A-1-4)

## C. COUNTY BOARD OF MENTAL ILLNESS (CBMI) (SDCL § 27A-7)

Each county shall have a County Board of Mental Illness (CBMI), although two or more counties may jointly contract to establish one board serving all contracting counties. A CBMI shall consist of two people who are residents of the county and appointed by the board of county commissioners for a three-year non-consecutive term. A law trained magistrate or lawyer shall serve as the CBMI’s chair and does not need to be a resident of that county. The chair shall be appointed by the presiding judge of the county’s circuit court. The state’s attorney for the county may not serve on the CBMI. The appointing authority may appoint alternative board members. To find a listing of CBMIs, please see:

<https://dss.sd.gov/behavioralhealth/community/countyboard.aspx>.

In the case of the temporary absence or inability of any member or alternate to serve, the remaining board members shall temporarily appoint replacements so that the original composition of the board is retained.

Each member of a CBMI is required to participate in training as required by the Department of Social Services prior to undertaking their duties. The training shall include the duties, procedures, and rights of any person coming before the CBMI.

The CBMI has jurisdiction over all petitions for involuntary commitment and is responsible for the treatment of an involuntarily committed person and for the safekeeping of persons subject to involuntary commitment within its county. The CBMI may do any act of a court which is necessary and proper for the discharge of its duties.

If it appears that any board member has a conflict of interest, he/she may be removed by a filing of an affidavit with the board chair. Unless the affidavit appears clearly frivolous, it shall be granted. In the event of disqualification, a duly designated alternate or temporary replacement shall serve.

Board members shall be compensated at an hourly rate as determined by the county commissioners. Members shall also be reimbursed for mileage and other actual expenses incurred in the performance of their duties.

#### **D. QUALIFIED MENTAL HEALTH PROFESSIONAL (QMHP) (SDCL § 27A-1-3)**

The Department of Social Services, Division of Behavioral Health provides QMHP training to eligible professionals. The training is not required for professionals to provide services which are within the scope of a licensed discipline.

However, QMHP training is required to conduct a mental status examination.

An eligible professional is:

- A physician licensed pursuant to SDCL chapter 36-4 or
- A member of one of the following professions who is in good standing with a relevant licensing or certification boards:
  - 1) A psychologist who is licensed to practice psychology in South Dakota;
  - 2) An advanced practice nurse with at least a master's degree from an accredited education program and either two years or one thousand hours of clinical experience that includes mental health evaluation and treatment;
  - 3) A certified social worker with a master's degree from an accredited training program and two years of supervised clinical experience in a mental health setting;
  - 4) A person who has a master's degree in psychology from an accredited program and two years of supervised clinical mental health experience and who meets the provision of subdivision 36-27A-2(2);
  - 5) A counselor who is certified under SDCL chapter 36-32 as a licensed professional counselor--mental health;
  - 6) A counselor who is certified under SDCL chapter 36-32 as a licensed professional counselor and has two years of supervised clinical experience in a mental health setting and who is employed by the State of South Dakota or a mental health center;
  - 7) A therapist who is licensed under SDCL chapter 36-33 as a marriage and family therapist with two years of supervised clinical experience in a mental health setting;

- 8) A physician assistant who is licensed under SDCL chapter 36-4A and either two years or one thousand hours of clinical experience that includes mental health evaluation and treatment; or
- 9) A professional as listed in numbers (1) to (8) who is employed by the federal government and currently licensed in that profession in another state, in good standing with the licensing board, and acting within the scope of the professional's license.

Except as provided in (9) and SDCL 36-4-20, each qualified mental health professional shall meet all licensing and certification requirements promulgated by the State of South Dakota for persons engaged in private practice of the same profession in South Dakota. However, the private practice licensure requirements for persons referred to in (3) and (6) do not apply to those employed by the State of South Dakota, community mental health centers, or organizations that have a formal clinical supervision arrangement by an employed person who is licensed at the private practice level.

#### **E. MOBILE CRISIS TEAM (SDCL § 27A-10-21)**

A mobile crisis team consists of an interdisciplinary team of one or more mental health professionals able to respond to any person in the community, usually visiting the person at home, for mental health and substance use intervention.

If available in a community, law enforcement officers with probable cause to believe that a person requires emergency non-medical intervention, as an alternative to apprehension and transfer to an appropriate regional facility, may refer the person to the direct supervision of a mobile crisis team or crisis intervention team certified law enforcement officer.

If any member of the mobile crisis team or the crisis intervention or team certified law enforcement officer accepts direct supervision of the person, in writing, in paper or in electronic form, either direct supervision of the person or direct engagement with the person through real-time interactive audio and video, the member or officer may:

1. Resolve the intervention on a voluntary basis, either at the person's home or with the assistance of any public or private community services that the person is willing to accept. Any team member may request the assistance of law enforcement for the voluntary transfer of the person; or
2. Direct that the law enforcement officer proceeds with the apprehension of the person and transport the person to either an appropriate regional facility for an emergency intervention and/or mental illness examination or to an approved treatment facility offering services.

#### **F. PETITION FOR ADULTS AND MINORS (SDCL § 27A-10)**

Voluntary treatment is encouraged whenever possible. However, for those individuals who may be an immediate threat to the health and safety of themselves or others, an involuntary commitment order may be the best option.

At times, involuntary treatment may be necessary because of the severity of the individual's symptoms. If any person is alleged to be seriously mentally ill (SMI), or seriously emotionally disturbed (SED), and in such condition that immediate intervention is necessary for the protection from physical harm to self or others, any person, eighteen years of age or older, may complete a petition stating the factual basis for concluding that such person is SMI or SED and in immediate need of intervention. To find a listing of example documents, please see: <https://dss.sd.gov/behavioralhealth/community/countyboard.aspx> .

The petition shall include the following:

1. A statement by the petitioner that the petitioner believes, based on personal knowledge, that such person is, because of serious mental illness, a danger to self or others;
2. The specific nature of the danger;
3. A summary of the information upon which the statement of danger is based;
4. A statement of facts which caused the person to come to the petitioner's attention;
5. The address and signature of the petitioner and a statement of the petitioner's interest in the case;
6. The name of the person to be evaluated;
7. The address, age, marital status, and occupation of the person; and
8. The name and address of the person's nearest relative.
9. *Minor Only: The name of the minor to be evaluated and the address and age of the minor and the name and address of the minor's parents, guardian, or nearest relative (SDCL § 27A-15-30).*

Upon completion of the petition, the petition shall be submitted to the chair of the CBMI where such person with serious mental illness is located. If a petition is not filed with the CBMI chair within 24 hours of the apprehension of the person, the person shall be released. If the person is released, the referring county shall provide the person with transportation to the county where the person was taken into custody if the person so chooses. If the county where the person was apprehended is served by a local CBMI other than the CBMI serving the county where the facility to which the person is transported is located, a copy of the petition shall also be filed with the chair of that CBMI.

## PART II: VOLUNTARY COMMITMENT

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*Voluntary Hospitalization consists of the following steps (SDCL § 27A-8):*

- Step 1 - Admission
- Step 2 – Treatment
- Step 3- Discharge

### STEP 1: ADMISSION (SDCL § 27A-8-1)

Minors can be voluntarily admitted by:

1. A parent;
2. A guardian, or legal custodian; or
  - A. If a minor is in the custody of the Courts or Department of Corrections (DOC), upon the recommendation of a QMHP, the Courts or Secretary of DOC may place a minor in an inpatient psychiatric facility if it is determined the minor meets the applicable criteria.

Adults can be voluntarily admitted if they are 18 years of age or older and understand the nature of voluntary inpatient treatment, are capable of giving informed consent, and voluntarily execute a written application for admission, if the follow requirements are met:

1. If, after examination by a staff psychiatrist, the facility director or administrator determines that the applicant is clinically suitable for inpatient treatment. In the event of the unavailability of a staff psychiatrist, admission may be granted pending an examination by a staff psychiatrist within one working day;
2. A less restrictive treatment alternative is inappropriate or unavailable;
3. The person is in need of and will likely benefit from treatment which is available at the facility;
4. The requirements in § 27A-8-15 have been met; and
5. The person does not have medical needs which are beyond the capacity of the center or inpatient psychiatric facility.

A minor may be *immediately* admitted to an inpatient psychiatric facility by the minor’s parent, guardian, or legal custodian if the follow criteria are met:

1. The minor is an individual with a serious emotional disturbance;
2. The minor needs and is likely to benefit from inpatient treatment at the facility; and
3. The parent, guardian, or legal custodian has exercised informed consent to inpatient treatment of the minor.

Symptoms that a minor may exhibit:

1. Seriously impaired contact with reality;
2. Severely impaired social, academic, and self-care functioning;
3. Confused thinking;
4. Grossly inappropriate and/or bizarre behavior;
5. Emotional reactions which are frequently inappropriate at the situation;
6. Long-term behavior problems or suicidal behavior; or
7. Severe anxiety, depression, irrational fears, and concerns.

- These symptoms may be exhibited as:
  - Serious eating and sleeping disturbances;
  - Extreme sadness of suicidal proportion;
  - Maladaptive dependence on parents; and/or
  - Avoidance of non-familiar social contact.

Documentation required (SDCL § 27A-15-5):

1. Reasonable efforts have been made to provide for the mental health treatment needs of the minor through the provision of least restrictive treatment alternatives to inpatient treatment;
2. Such alternatives have failed to meet the treatment needs of the minor; and
3. The condition of the minor is such that least restrictive treatment alternatives are unlikely to meet the mental health treatment or diagnostic needs of the minor.
4. QMHP Evaluation.

*A written application for admission of a minor to an inpatient psychiatric facility by a minor's guardian or legal custodian must be accompanied with a recommendation by a QMHP.*

The following must be explained to the parent, guardian or legal custodian of the minor going through the voluntary commitment process:

1. Nature of inpatient status;
2. Types of treatment available;
3. Restraints and restrictions to which the minor may be subject; and
4. Statement of the parent's, guardian's, or other legal custodian's rights and the minor's right including the minor's right to object to admission and the right to view and copy records.

## **STEP 2: TREATMENT (SDCL § 27A-15)**

A minor who has been admitted to an inpatient psychiatric facility, or an adult on the minor's behalf, shall have the right to execute a written objection to continued inpatient treatment.

1. Upon receipt by a staff member of the facility of an oral or written objection to continued inpatient treatment, the facility shall promptly supply the minor or the adult objecting on the minor's behalf with the required written form, provided by treatment facility, and assist in its proper execution;
2. The form shall contain the date and time of its execution and become part of the minor's medical records;
3. A copy of the form shall be immediately delivered to the minor and the adult;
4. The form will be filed with the chair of the CBMI for the county where the facility is located;
5. The minor is immediately notified orally and in writing of the person's rights:
  - a. Right to immediately contact a person of the minor's choosing;
  - b. Right to immediately contact and be represented by counsel;
  - c. The minor will be examined by a QMHP, designated by the chair of the CBMI, within 24 hours to determine whether inpatient treatment should continue; and
  - d. The right, if inpatient treatment is continued, to an independent examination, paid for by the person, unless they are indigent, and to a hearing within five days of the execution of the written objection, within six days if there is a Saturday, Sunday, or holiday within that time period, or within seven days if there is a Saturday, Sunday, and holiday within that time period;

6. The notice shall also be given forthwith to the chair of the CBMI; and
7. Inpatient treatment of the minor may continue pending the hearing by the CBMI. The facility may discharge the minor prior to the hearing upon a determination that the minor no longer meets the criteria for involuntary committal. If the minor is discharged, the hearing need not be held.

For Minors: Upon admission, and every 45 days thereafter, the minor shall have a psychiatric and clinical evaluation and upon written findings by the evaluating psychiatrist which reaffirm that commitment criteria are met, the administrator or facility director may authorize continued admission of the minor to the inpatient psychiatric facility for a period not to exceed 45 days.

For Adults: Thirty days after the voluntary admission of an adult and every ninety days thereafter, the facility director or center administrator shall review the patient's record and assess the need for continued admission. If continued admission is indicated, the facility director or center administrator shall consult with the patient and request from the patient an oral and written affirmation of his informed consent to continued admission. If a patient was admitted upon substituted informed consent as provided in § 27A-8-18.1 and continues to be incapable of exercising an informed consent to continued admission, a substituted informed consent to continuing admission shall be obtained as provided in that section. The notification, request, and affirmation shall become part of the patient's record. A failure to affirm substituted informed consent to continued admission constitutes notice of an intention to terminate inpatient treatment as provided in § 27A-8-10.

### **STEP 3: DISCHARGE (SDCL § 27A-14-1)**

The facility director may at any time discharge a voluntary patient whom the director deems suitable for discharge.

If a petition is not filed with the chair of the county board within twenty-four hours of the facility's receipt of the patient's request for release (excluding weekends and holidays), the patient must be immediately discharged. If a petition is timely filed, the patient may be held pursuant to the involuntary commitment procedures explained in section III. (SDCL § 27A-8-10.1)

Upon voluntary admission, at the end of the first six months of hospitalization, and annually thereafter, the patient shall be given a separate written notice of release procedures. A copy of these procedures shall also be given to any one other person the patient so designates. Release procedures must be prominently and permanently displayed in every psychiatric unit. (SDCL § 27A-8-14)

A voluntary patient who has submitted a written request for release may be detained for a period not to exceed twenty-four hours (excluding weekends or holidays) from receipt of the written notice if the facility has probable cause to believe that she/he meets the involuntary commitment criteria. The facility director must immediately notify the patient of this hold and explain its nature. The director must also notify the chair of the county board or a peace officer of the time of receipt of the patient's notice, the time the hold was initiated, the circumstances necessitating the hold, and the time a petition for involuntary commitment will be filed. This information must also be delivered to the patient. (SDCL § 27A-8-10.1)

# PART III: INVOLUNTARY COMMITMENT

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*Involuntary Commitment consists of the following steps (SDCL § 27A-10):*

- Step 1 - Apprehension
- Step 2 – Hearing
- Step 3- Determination
- Step 4- Treatment
- Step 5- Discharge

## STEP 1: APPREHENSION

### A. Law Enforcement (SDCL § 27A-10-3; 27A-10-4)

Law enforcement may apprehend a person even if a petition has not been filed. The officer, however, must have probable cause to believe that the person is seriously mentally ill and, in such condition that immediate intervention is necessary to prevent harm. The officer must transport the person to an appropriate regional facility other than the Human Services Center. A petition must be filed in a forthwith manner with the chair of the CBMI. If a petition is not filed with the chair of the CBMI within 24 hours, the person must be released.

### B. Notice of Rights (SDCL § 27A-10-5)

Immediately after a person is apprehended, she/he must be notified both orally and in writing of the following:

1. The right to immediately contact a person of choice;
2. The right to immediately contact and be represented by an attorney;
3. That she/he will be examined by a qualified mental health professional, designated by the chair of the CBMI, within twenty-four hours of being taken into custody to determine whether custody should be continued;
4. The right to an independent examination if custody is continued; and the right to a hearing within five days, six, if there is a Saturday, Sunday, or holiday within that time period, or seven if there is a Saturday, Sunday, **and** holiday within that time period; and
5. The cost of post commitment proceedings, including habeas corpus, and costs of court-appointed counsel for any appeal proceedings are the person's responsibility and a lien may be filed upon the person's real and personal property to insure payment.

### C. Mental Status Exam within 24 hours (SDCL § 27A-10-6; 27A-10-7)

Within 24 hours after apprehension, the person will be examined by a QMHP designated by the chair of the CBMI. The examination may be conducted either in person or through real-time interactive audio and video. The QMHP shall perform the examination for each twenty-four-hour period during which the person is detained.

Preceding the mental status examination, the QMHP must identify himself/herself and explain the nature and purpose of the examination. The person must be informed that the examination is being performed to assist in the determination of whether custody should continue. The person must also be informed that the results of the examination may be used as evidence in a commitment hearing. The examiner must

immediately report the findings to the chair of the CBMI. The CBMI will notify the local community mental health center.

If the chair of the CBMI determines that the examination does not support finding that the person meets the involuntary commitment criteria, the person must be released. The county in which the person was apprehended must provide transportation back to that county, if the person so desires.

If the examination and an investigation of the petition indicate that the person does meet the commitment criteria, the board chair may order continued detainment in an appropriate regional facility. At this point, the person may be transported to the Human Services Center, but only if they are an out of state resident.

At any point during apprehension, the individual may request to be voluntarily admitted. At this time the chair of the CBMI shall determine whether a detained person may admit himself/herself into a facility or program. (SDCL § 27A-10-7.1)

### **STEP 2: HEARING (SDCL § 27A-11A-5)**

A copy of the petition and notice of hearing shall be personally served by the sheriff or a constable, not a party to the action that is specifically designated by the board on the person prior to the hearing. The notice will include:

1. Time, date and place of hearing;
2. The right to be represented by an attorney retained by the person or appointed by the board chair;
3. Notice of the 24-hour examination by a QMHP;
4. The QMHP and the defense lawyer have access to the individual's medication records; and
5. The right to obtain an additional examination, paid for by the individual unless indigent.

The hearing will take place in the county courthouse or such other places as the CBMI chair may designate with due regard to the rights, safety, and comfort of the person.

If upon completion of the 24-hour examination (SDCL § 27A-11A-7), it is determined that a hearing shall be held, the CBMI chair must immediately assign counsel to the person if she/he has not retained an attorney. In no instance may a person not be represented by counsel.

An appointed attorney shall represent the interests of the person, advocate the person's legal rights, and otherwise fully represent the person. The attorney shall serve as an advocate for the person rather than guardian ad litem. (SDCL § 27A-11A-26)

A person has the right to appear personally at the hearing and testify on his/her own behalf but may not be compelled to do so. If a person decides not to appear, the CBMI may not inquire into the reasons for that decision. The person has the right to require the attendance of witnesses, to cross-examine witnesses, and to present evidence. The rules of evidence shall be followed at all hearings and reviews. (SDCL § 27A-11A-11)

The CBMI may exclude the public from attending a hearing but must permit the attendance of any person requested to be present by the individual going through the commitment process. A court reporter shall attend all hearings of the CBMI and keep a stenographic or tape record of the proceedings. A person who has been committed may request a certified transcript or tape recording of the hearing. The person must pay for such transcript or recording unless indigent. (SDCL § 27A-11A-11)

If the person is receiving treatment prior to the hearing, the QMHP shall take all reasonable precautions to ensure that at the time of the hearing the person is not so affected by substance use or other treatment, to include prescribed medications, as to be hampered in preparing for or participating in the hearing. The CBMI must be provided with a record of all treatment the person has received since being taken into custody. (SDCL § 27A-11A-10)

An independent QMHP must assess the availability and appropriateness of treatment alternatives including treatment programs other than inpatient treatment. This mental health professional must testify at the hearing and explain what alternatives are or should be made available (SDCL § 27A-10-9), what alternatives were investigated, and why any investigated alternatives are not deemed appropriate.

### **STEP 3: DETERMINATION (SDCL § 27A-10-9.1)**

Upon completion of the hearing, the CBMI may order the involuntary commitment of the person if it makes the following findings by clear and convincing evidence:

1. The person meets the involuntary commitment criteria in **SDCL § 27A-1-2**, as explained above;
2. The person needs and is likely to benefit from the treatment which is proposed; and
3. The commitment is to the least restrictive treatment alternative. (SDCL § 27A-1-1 (15))

The following considerations shall be taken into account in determining the least restrictive alternative:

- i. The values and preferences of the person;
  - ii. The environmental restrictiveness of treatment settings;
  - iii. The duration of treatment;
  - iv. The physical safety of the person and others;
  - v. The psychological and physical restrictiveness of treatments;
  - vi. The relative risks and benefits of treatments to the person;
  - vii. The proximity of the treatment program to the person's residence; and
  - viii. The availability of family and community resources and support.
4. A minor may be *immediately* admitted to an inpatient psychiatric facility by the minor's parent, guardian, or legal custodian if the follow criteria are met:
    1. The minor is an individual with a serious emotional disturbance (SDCL § 27A-15-1.1);
    2. The minor needs and is likely to benefit from inpatient treatment at the facility; and
    3. The parent, guardian, or legal custodian has exercised informed consent to inpatient treatment of the minor.

Symptoms that a minor may exhibit:

1. Seriously impaired contact with reality;
2. Severely impaired social, academic, and self-care functioning;
3. Confused thinking;
4. Grossly inappropriate and/or bizarre behavior;
5. Emotional reactions which are frequently inappropriate at the situation;
6. Long-term behavior problems or suicidal behavior; or
7. Severe anxiety, depression, irrational fears, and concerns. These symptoms may be exhibited as:
  - Serious eating and sleeping disturbances;
  - Extreme sadness of suicidal proportion;

- Maladaptive dependence on parents; and/or
- Avoidance of non-familiar social contact.

If the above findings are not made, the CBMI shall order that the person be released. The referring county shall provide the person with transportation to the county where he/she was taken into custody, if the person so chooses.

A person under an order of commitment may not be transferred to a more restrictive facility without a hearing before the CBMI prior to the transfer. The person has the right to be represented by an attorney and must be provided notice at least five days in advance of the hearing. The only exception is when the transfer is necessary to prevent the immediate danger of physical harm to the person or others. In such a case, the CBMI chair may authorize the transfer pending the hearing. The hearing must be held within five days of the transfer or six, if there is a Saturday, Sunday, and holiday within that time period.

A jail may not be used for the custody of a minor. However, a juvenile detention facility may be used for pre-hearing custody if the availability of other appropriate regional facilities has been explored and exhausted. If an appropriate regional facility maintains a separate unit for minors, a minor may not be confined with adult detainees or patients. A minor may not be confined in an appropriate regional facility that does not maintain a separate unit for minors until the availability of other appropriate regional facilities maintaining a separate unit for minors has been explored and exhausted. If a minor must be placed in a facility that does not have a separate unit for minors, the minor shall be provided separate sleeping quarters and, to the maximum extent possible, separate day areas (SDCL § 27A-15-31).

If upon completion of the hearing, the CBMI finds by clear and convincing evidence that the transfer is in accordance with the commitment criteria, the CBMI may order the transfer. The transfer hearing shall not substitute for any of the review hearings the person is otherwise entitled to.

1. Duration of Commitment
  - i. Upon completion of the hearing, the CBMI may order the involuntary commitment of the person for an initial period not to exceed ninety days.
2. Appeal
  - i. An order of involuntary commitment may be appealed to the circuit court. The person shall be advised of the right to appeal both verbally and in writing upon the termination of the hearing.
3. Review Hearings
  - i. Within ninety days after the involuntary commitment of a person who is still under the commitment order, the CBMI shall conduct a review hearing to determine if the person continues to meet the commitment criteria. Notice of this hearing shall be given to the person and his/her attorney at least ten days in advance. If the person has not retained counsel, the CBMI chair must appoint an attorney at least ten days in advance of the review hearing.
  - ii. At the time of notice, the person and attorney shall be informed of all evidence that will be considered at the review hearing. Any evidence subsequently discovered shall be immediately transmitted to the person and attorney. The person is entitled to all rights and procedures applicable to an initial commitment hearing except that a new petition need not be filed.
  - iii. If, upon completion of the review hearing, the CBMI finds by clear and convincing evidence that the person continues to meet the commitment criteria, the CBMI may order continued commitment to the same or alternative placement for a period not to exceed six months. The person is entitled to another review hearing within the six-month period. If the CMBI issues

another order of continued commitment, the next review shall be held within six months after the order. If the second six-month review justifies continued commitment, the CBMI may order continued commitment for up to twelve months. Subsequent reviews shall be conducted within each twelve months thereafter that the person remains under commitment.

- iv. The CBMI may schedule review hearings in addition to those required.

#### **STEP 4: TREATMENT (SDCL § 27A-12)**

##### 1. Noncompliance with Treatment

- i. If a person ordered to undergo a program of treatment does not comply with the order, the CBMI must conduct a hearing to determine compliance or noncompliance. If noncompliance is determined, the board may order an alternative program of treatment which is consistent with the commitment criteria. The person is entitled to representation by counsel and to notice delivered at least five days in advance of the hearing.
- ii. If a person fails to comply with the requirements specified in an outpatient commitment order or a treatment order, and the person's treating physician or staff of the specified outpatient treatment program believes that the person's current condition is likely to deteriorate until it is probable that the person will be a danger to self or others, the program director or the person's treating physician may notify law enforcement.

##### 2. Unsuccessful Treatment

- i. If at any time while a person is under an order of commitment, it comes to the attention of the CBMI that the program of treatment has not been successful; the board shall conduct a hearing. This hearing must be held within five days, or six if there is a Saturday, Sunday, or holiday within that time period, or seven if there is a Saturday, Sunday, and holiday within that time period. The person shall be represented by counsel and be given at least five days' notice of the hearing.
- ii. If the board finds that the program of treatment has not been successful, it shall order an alternative program of treatment consistent with the commitment criteria. The administrator, facility director, or program director of the facility to which a person is committed is under a duty to notify the CBMI whenever a treatment program has proven unsuccessful.

#### **STEP 5: DISCHARGE (SDCL § 27A-14-2; 27A-14-3)**

An involuntarily committed person shall be discharged when the director of the facility or program of commitment determines that the person no longer meets the commitment criteria.

The CBMI must be notified of the discharge and provide the person with transportation to his/her residence within 48 hours, if the person so desires.

# **PART IV: OUTPATIENT COMMITMENT ORDER**

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*Outpatient Commitment Order consists of the following steps:*

Step 1 - Admission

Step 2 – Treatment

## **STEP 1: ADMISSION**

The CBMI may involuntarily commit an individual for outpatient treatment to a private facility or an outpatient program if that facility or program agrees to accept the commitment and if the commitment will not result in a liability to any county for the cost of treating a person.

## **STEP 2: TREATMENT**

The goal of entering an outpatient commitment order is to provide services to the individual using the least restrictive treatment alternative.

Considerations for clients in treatment with an outpatient commitment order:

1. The values and preferences of the patient;
2. The environmental restrictiveness of treatment settings;
3. The duration of treatment;
4. The physical safety of the patient and others;
5. The psychological and physical restrictiveness of treatments;
6. The relative risks and benefits of treatments to the patient;
7. The proximity of the treatment program to the patient's residence; and
8. The availability of family and community resources and support.

If someone is struggling to maintain compliance to an outpatient treatment order, the person's treating physician or staff of the specified outpatient treatment program believes that the person's current condition is likely to deteriorate until it is probable that the person will be a danger to self or others, the program director or the person's treating physician may notify law enforcement and provide law enforcement with a certified copy of the outpatient commitment order or treatment order (SDCL § 27A-10-9.4).

The outpatient commitment order or treatment order constitutes a continuing authorization for law enforcement, upon request of the program director or the person's treating physician, to transport the person to the designated outpatient treatment program or to the treating physician's office for the purpose of making reasonable efforts to obtain the person's compliance with the requirements of the outpatient commitment or treatment order. However, no person may be detained at the program's or the physician's office for more than one hour unless the person consents nor may be physically coerced or required to take prescribed medications unless the outpatient commitment or treatment order contains a specific authorization for the nonconsensual delivery of prescribed medication, pursuant to § 27A-12-3.15. If a person has been involuntarily medicated on an outpatient basis, the necessity of treatment with psychotropic medication shall

be reviewed and approved under the provisions of § 27A-12-3.16 and noted in the patient's medical record or chart (SDCL § 27A-10-9.5).

If a person fails to comply with the requirement of the outpatient commitment or treatment order, and the person's treating physician or the staff of the outpatient treatment program believes that there is a significant risk of deterioration in the person's condition, the program director or the treating physician may notify the chair of the county board of mental illness that issued the outpatient commitment or treatment order, the chair of the board where the person is located, the office of the state's attorney of the county where the person is located, and the office of the state's attorney of the county where the person is subject to the outpatient commitment or treatment order, and recommend an appropriate alternate disposition under § 27A-11A-21 or 27A-11A-22.

Within seventy-two hours of receiving the notice transmitted pursuant to this section that a person has failed to comply with the requirements of the outpatient commitment or treatment order, the state's attorney may file a petition with the board or the court for, or the chair of the board or the court may order, a supplemental hearing, or the chair of the board or the court may proceed under any section of this title. The board or the court shall hold the hearing in accordance with the procedures specified in this title. The chair of the board or the court may order the apprehension and transportation of the person to attend the hearing. (SDCL § 27A-10-9.6).

# PART V: 2020 LEGISLATIVE SESSION-

## Summary of Changes

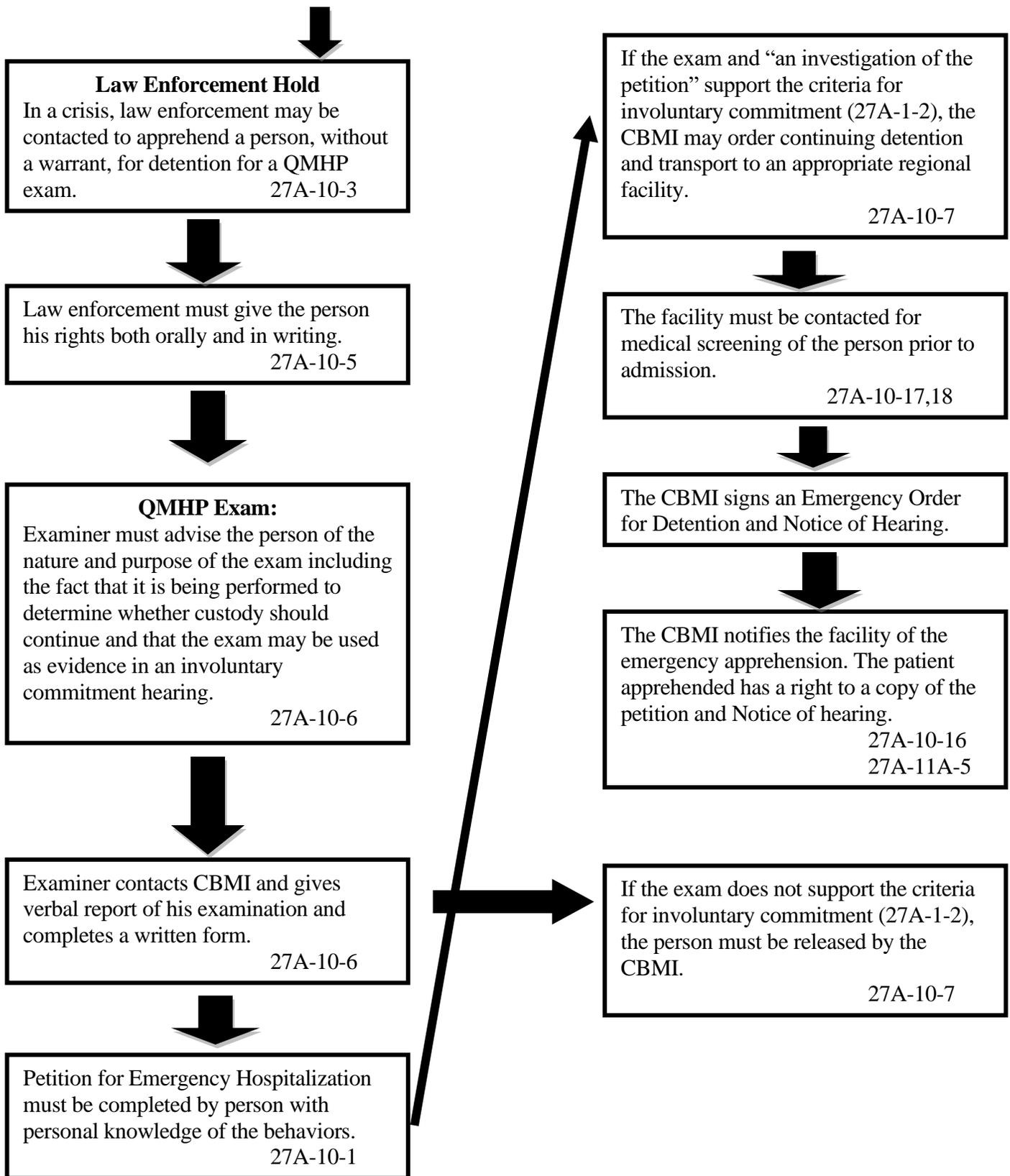
The 2020 South Dakota Legislature enacted several amendments and/or clarifying language to the statutory requirements pertaining to the emergency committal process. The amended statutes go into effect on July 1, 2020 and are summarized below.

<p><b>SDCL: 27A-10-6</b></p> <p><b>Statute Description:</b>  <b>Professional examination of person apprehended, report to chair, person released if not dangerous.</b></p> <p>To view this statute in entirety, please click <a href="#">here</a>.</p>	<p><b>Release of non-dangerous individuals:</b></p> <p><b>Addition of:</b>  The Qualified Mental Health Professional shall perform the examination for each 24-hour period during which the person is detained.</p>
<p><b>SDCL: 27A-10-20</b></p> <p><b>Statute Description:</b>  <b>Definition of terms related to crisis referral and placement.</b></p> <p>To view this statute in entirety, please click <a href="#">here</a>.</p>	<p><b>Use of telehealth technologies:</b></p> <p><b>Addition of:</b>  (3) "Mobile crisis team" an interdisciplinary team of one or more mental health professionals able to respond to any person in the community either in person or <b>through real-time interactive audio or video</b>, for mental health and chemical abuse or dependency intervention;</p>
<p><b>SDCL: 27A-10-21</b></p> <p><b>Statute Description:</b>  <b>Referral to mobile crisis team or crisis intervention team certified law enforcement officer- Voluntary resolution or placement.</b></p> <p>To view this statute in entirety, please click <a href="#">here</a>.</p>	<p><b>Use of telehealth technologies:</b></p> <p><b>Addition of:</b>  If any member of the mobile crisis team or crisis intervention team certified law enforcement officer accepts in writing, <b>in paper form or in electronic form</b>, either direct supervision of the person or <b>direct engagement with the person through real-time interactive audio and video</b>, the member or officer may:</p>

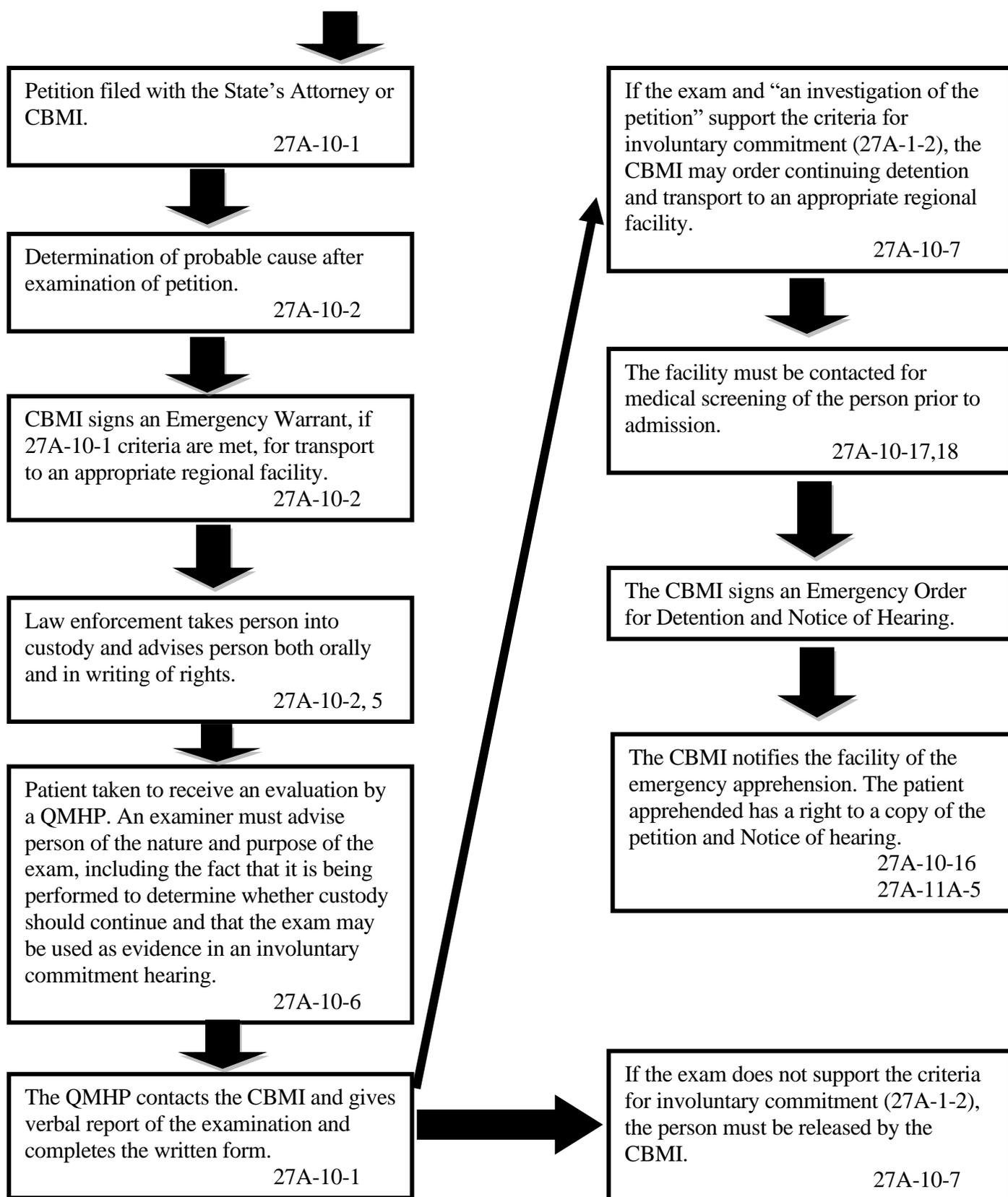
<p><b>SDCL: 27A-10-23</b></p> <p><b>Statute Description:</b>  <b>Immunity from liability—Mobile Crisis referral—Exception.</b></p> <p>To view this statute in entirety, please click <a href="#">here</a>.</p>	<p><b>Addition of “appropriate regional facility”</b></p> <p>Any law enforcement officer or authority, any QMHP in a clinic or hospital <b>or appropriate regional facility</b>, or any clinic or hospital who in good faith transferred direct supervision of a person.....</p>
<p><b>SDCL: 27A-10-1.2 *</b></p> <p><b>Statute Description:</b>  <b>Appropriate regional facility-application for Designation by Department of Social Services-Requirements.</b></p> <p><b>*Statute not currently on SDCL website.</b></p>	<p><b>Appropriate regional facility designation requirements</b></p> <p>The Department of Social Services shall designate any facility as an appropriate regional facility if the facility is approved in accordance with this section.</p> <p>To be designated as an appropriate regional facility, a facility must:</p> <ul style="list-style-type: none"> <li>(7) Have the capacity for overnight residential services necessary to stabilize acute psychiatric or behavioral symptoms and evaluate treatment needs;</li> <li>(8) Have the capacity to admit individuals twenty-four hours a day, seven days a week;</li> <li>(9) Have the capacity to develop crisis stabilization plan for each individual admitted;</li> <li>(10) Have on-site personnel twenty-four hours a day and seven days per week, and have medical personnel available, including by electronic communication, twenty-four hours a day and seven days a week.</li> <li>(11) Have the ability to document daily interactions with or observation of the individual by treatment staff of the facility; and</li> <li>(12) Comply with other requirements determined by the department by rule promulgated in accordance with chapter 1-26.</li> </ul>

<p><b>SDCL: 27A-10-9</b></p> <p><b>Statute Description:</b>  <b>Testimony of qualified mental health professional- Availability and appropriateness of alternatives.</b></p> <p>To view this statute in entirety, please click <a href="#">here</a>.</p>	<p><b>Addition of:</b></p> <p>The board of mental illness conducting the involuntary commitment hearing as provided in 27A-10-1 shall order testimony by a qualified mental health professional, <b>other than the professional who submitted the petition under 27-10-1 or initiated the hold under 27A-10-19,</b> who shall assess the available and appropriateness of treatment alternative, including treatment programs other than inpatient treatment.....</p>
<p><b>SDCL: 27A-10-9.6</b></p> <p><b>Statute Description:</b>  <b>Failure to comply with outpatient commitment or treatment order- Supplemental hearing— Alternative Disposition.</b></p> <p>To view this statute in entirety, please click <a href="#">here</a>.</p>	<p><b>Change in process for failure to comply with treatment</b></p> <p>If a person fails to comply with the requirement of the outpatient commitment or treatment order, and the person’s treating physician or the staff of the outpatient treatment program believes that there is a significant risk of deterioration in the person’s condition, the program director or the treating physician may notify <b>the chair of the county board of mental illness that issued the outpatient commitment or treatment order, the chair of the board where the person is located, the office of the State’s attorney of the county where the person is located, and the office of the state’s attorney of the count where the person is subject to the outpatient commitment or treatment order,</b> and recommend an appropriate alternate disposition under 27A-11A-21 or 27A-11A-22. Within seventy-two hours of receiving notification under this section, <b>the state’s attorney may file a petition with the board or the court for, or the chair of the board or the court may order, a supplemental hearing, or the chair of the board or the court may proceed under any other section of this title. The board or the court shall hold the hearing in accordance with the procedures specified in this title. The chair of the board or the court may order the apprehension and transportation of this person to attend the hearing.</b></p>

## Involuntary Commitment (Option 1)



## Involuntary Commitment (Option 2)



## **References**

1. State Mental Health Programs: [SDCL Chapter 27A-3](#).
2. South Dakota Human Services Center: [SDCL Chapter 27A-4](#).
3. Local Mental Health Centers: [SDCL Chapter 27A-5](#).
4. Interstate Cooperation in Mental Health Services: [SDCL Chapter 27A-6](#).
5. Costs of Care and Treatment in State Facilities: [SDCL Chapter 27A-13](#).
6. Treatment of Minors: [SDCL Chapter 27A-15](#).