

South Dakota's Substance Use Involuntary Commitment Process

»» A Roadmap for Professionals ««

PART I

Overview

A. PURPOSE OF MANUAL

This document is designed to assist administrators, law enforcement authorities, attorneys, judges and other interested parties who work with intoxicated, incapacitated, or pregnant women using substances. This document provides information concerning the procedural processes necessary for protective custody, emergency commitment and involuntary commitment of alcohol and drug users.

B. DEFINITIONS

Accredited 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 or deemed by the Office of Licensing and Accreditation under Department of Social Services.

Addiction Counselor - a person licensed or certified as an addiction counselor by the South Dakota Board of Addiction and Prevention Professionals.

Addictions Counselor Trainee (ACT) - a person who is employed on either a paid or voluntary basis at an a substance use disorder treatment agency. Trainees are required to be supervised by a Certified Addiction Counselor (CAC) or Licensed Addiction Counselor (LAC) throughout their entire recognition period as a Trainee. The ACT is a function of the Board of Addiction and Prevention Professionals (BAPP).

Board of Addiction and Prevention Professionals (BAPP) – Provides a foundation for the continuing development of practitioners in the field, as well as the credentialing of addiction and prevention professionals within generally accepted standards of professionalism and competence using valid and reliable examinations. More information can be found at <https://dss.sd.gov/licensingboards/bapp/bapp.aspx>.

Community Mental Health Center (CMHC) - CMHCs provide mental health services to both adults and youth. Services provided include screenings and assessments, case management, individual therapy, group therapy and crisis intervention. More information can be found at: <https://dss.sd.gov/behavioralhealth/community/mentalhealth.aspx> .

Department - Department of Social Services (DSS).

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, which may be designated by the Division without accreditation by the state.

Division - Division of Behavioral Health (DBH) within DSS.

Drug user - A person who habitually lacks self-control as to the use of controlled drugs or substances as defined in SDCL § 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.

Incompetent person - A person who has been determined incompetent by the circuit court.

Prevention - Purposeful activities designed to promote personal growth of an individual and strengthen the aspects of the community environment which are supportive to the person in order to preclude, forestall, or impede the development of alcohol or other drug misuse.

Secretary - The Secretary of the Department of Social Services.

Substance Use Disorder (SUD) - A substance use disorder (SUD) is a complex condition that involves a pattern of symptoms that arise from substance use and continue despite negative effects, such as cravings or strong urges to use, failure to complete major tasks at work, school, or home, and continued use that puts you in danger.

Substance Use Disorder (SUD) Treatment - A broad range of emergency, outpatient, intermediate, and inpatient services and care, including a diagnostic evaluation, which may be extended to those persons experiencing problems as a result of the use of alcohol or other drugs.

C. LIMITATIONS

Rather than prosecute an intoxicated, incapacitated, and/or pregnant substance using woman, the state has attempted to utilize a continuum of treatment to promote substance use disorder (SUD) treatment. When an individual's usage reaches the point of "incapacitation" or the person attempts, threatens or inflicts physical harm on self or others, or is a pregnant substance using woman, a legal intervention is possible.

1. USE OF AUXILIARY SUPPORT SERVICES:

a. Some clients may have multiple needs which are not, and in some cases, cannot be addressed by SUD treatment programs alone. The use of auxiliary services such as Rehabilitation Services, or other available community support functions, may be necessary. For some clients, the most beneficial intervention may be family involvement. Others may benefit from peer led functions such as peer support, supported housing, or self-help groups. A referral for an assessment at a community mental health center (CMHC) may also assist an individual as well in getting their co-occurring mental health issues addressed.

2. WHAT DOES COMMITMENT MEAN:

a. Commitment under the South Dakota statute (SDCL 34-20A-63) is a time-limited period of SUD treatment. When clients are committed to treatment agencies, they are not "locked up", and the person retains all rights guaranteed by the constitution and state statutes.

D. PERSONS WHO MAY BE COMMITTED

Not every person that drinks alcohol or uses drugs is eligible to be committed. In order to be committed, a person must be intoxicated, incapacitated, or be a pregnant substance using woman;

- An intoxicated person is a person who demonstrates diminished mental or physical capacity as a result of the use of alcohol or other drugs. (SDCL § 34-20A-2 (10))

- An incapacitated person is a person who, as a result of the use of alcohol or other drugs, is unconscious, or whose judgment is otherwise impaired that he or she is incapable of realizing and making a rational decision with respect to his or her need for treatment. (SDCL § 34-20A-2 (8))
- A pregnant substance user is a pregnant woman who lacks self-control with alcohol, controlled drugs, and/or illegal substances to the extent that the woman's health and/or the health of her unborn child is substantially impaired or endangered.

E. COMMITMENT LAW

The emergency commitment statute (SDCL34-20A-63) provides for the protection of children from prenatal exposure to alcohol and drugs. The involuntary commitment statute (SDCL34-20A-70) includes pregnant substance using women.

Voluntary treatment is encouraged whenever possible. However, protective custody and emergency commitment may reduce the danger to a person who poses an immediate threat to the health and safety of themselves or others. In the case of individuals who need treatment but do not meet the criteria for emergency commitment or protective custody, involuntary commitment may be used.

The Protective Custody statute for intoxicated or incapacitated persons (SDCL § 34-20A-55) states that "any person who appears intoxicated or incapacitated by the effects of alcohol or drugs, and is clearly dangerous to the health and safety of himself or herself or others, may be taken into protective custody by law enforcement authorities, acting on probable cause."

The law eliminates the requirement that the person be in a public place before law enforcement can place the person in custody when they are intoxicated or incapacitated by the effects of alcohol and/or drugs and is clearly dangerous to the health and safety of self or others.

F. TYPES OF FACILITIES

An accredited prevention or treatment facility is a private or public agency meeting the standards prescribed in SDCL § 34-20A-27, or is a private or public agency or facility surveyed and accredited by the joint commission; an Indian Health Services quality assurance review under the Indian Health Services 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 department in a timely manner. (SDCL § 34-20A-2 (I))

SUD treatment agencies provide a broad range of care, including outpatient services, intensive outpatient services, low intensity residential treatment, day treatment, as well as intensive inpatient treatment options. Treatment is provided in accordance with the client's clinically assessed needs. For a list of accredited services provided throughout the state, follow the below link and click on the county or surrounding counties to see the treatment agencies available to the individual. <http://dss.sd.gov/behavioralhealth/agencycounty.aspx>

PART II

PROTECTIVE CUSTODY OF CLEARLY DANGEROUS INTOXICATED OR INCAPACITATED PERSONS

Protective custody of intoxicated or incapacitated person (emergency detention): Any person who appears to be intoxicated or incapacitated by the effects of alcohol and/or drugs and is clearly dangerous to the health and safety of self and/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 shall be taken to an approved treatment facility offering detoxification services for emergency detainment.

If the administrator of the treatment facility or an authorized designee does not find an emergency detainment appropriate, the person may be detained as a patient in protective custody until no longer intoxicated or up to 48 hours after admission.

If no approved treatment facility is readily available, the person shall 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 self or others. (SDCL § 34-20A-55)

Protective Custody consists of the following steps:

Step 1 - Protective Custody

Step 2 - Commitment or Detainment

Step 3 - Discharge or Release

STEP 1 - PROTECTIVE CUSTODY

A. WHO MAY ACT

Protective custody procedure (duty of detaining officer, no arrest or record): Any law enforcement officer, in detaining a person pursuant to SDCL § 34-20A-55 and in taking him/her to an approved SUD treatment facility for emergency commitment is taking him/her into protective custody and shall make every reasonable effort to protect his/her health and safety. In taking the person into protective custody, the detaining officer may take reasonable steps to protect themselves. 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. (SDCL § 34-20A-56)

A law enforcement officer, acting with probable cause, may take a person into custody if the person is:

1. Intoxicated or incapacitated by the effects of alcohol or drugs

2. Is clearly dangerous to the health and safety of himself or herself or others. (SDCL § 34-20A-55)

Probable cause: Facts and circumstances within a law enforcement officer's knowledge which would lead a reasonable, prudent person to believe that (1) and (2) above exist.

Law enforcement authorities are not criminally or civilly liable for protective custody actions. Law enforcement authorities who act in compliance with SDCL § 34-20A-55 and SDCL § 34-20A-56 are acting in the course of their official duty and are not criminally or civilly liable therefor. (SDCL § 34-20A-57)

STEP 2 - COMMITMENT OR DETAINMENT

A. APPROPRIATE COMMITMENT:

If the approved treatment facility administrator or authorized designee determines emergency commitment is appropriate, the person shall be committed according to the emergency commitment process.

Appropriate grounds for an emergency commitment are when an intoxicated person:

1. Has threatened, attempted, or inflicted physical harm on himself or herself or on another or is likely to inflict physical harm on himself or herself or another unless committed; or
2. Is incapacitated by the effects of alcohol or drugs; or
3. Is pregnant and using alcohol or drugs

Individuals who meet one or more of the above listed criteria may be committed to an approved treatment facility for emergency treatment. A refusal to undergo treatment does not constitute evidence of lack of judgment as to the need for treatment.

B. COMMITMENT IS NOT DETERMINED:

If the approved treatment facility administrator or authorized designee determines that the emergency commitment is not appropriate, the person may be detained as a patient in protective custody. The person can be held until no longer intoxicated, or up to 48 hours after admission. (SDCL § 34-20A-55)

C. FURTHER DETAINMENT

If any person taken into protective custody or detained under emergency commitment is disruptive beyond the ability of the facility to manage the person's behavior or leaves without staff approval, the facility administrator or an authorized designee should contact law enforcement authorities. The authorities may further detain the person at whatever level of confinement is necessary to protect the detainee or others. (SDCL § 34-20A-64.1)

Any law enforcement officer, in detaining a person and taking them to an approved treatment facility for emergency commitment, is taking the person into protective custody. The officer must make every reasonable effort to protect the person's health and safety. However, the detaining

officer may take reasonable steps to protect him or herself. (SDCL § 34-20A-56)

STEP 3 - DISCHARGE OR RELEASE

A. DISCHARGE:

If a person has been committed by the approved treatment facility administrator or authorized designee, they can only be discharged according to the discharge procedures for that process.

B. RELEASE

If a person was not admitted at the approved facility for emergency commitment but detained as a patient under protective custody, he or she must be released when he or she is no longer intoxicated or within 48 hours of admission. If the person was being held in an emergency medical facility or a jail because no approved facility was available, he or she must be released as soon as s/he is no longer intoxicated or incapacitated or only so long as necessary to prevent injury to themselves or others. (SDCL §34-20A-55)

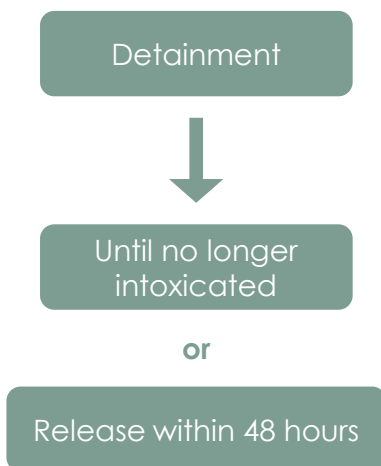
Protective Custody Process

Step 1

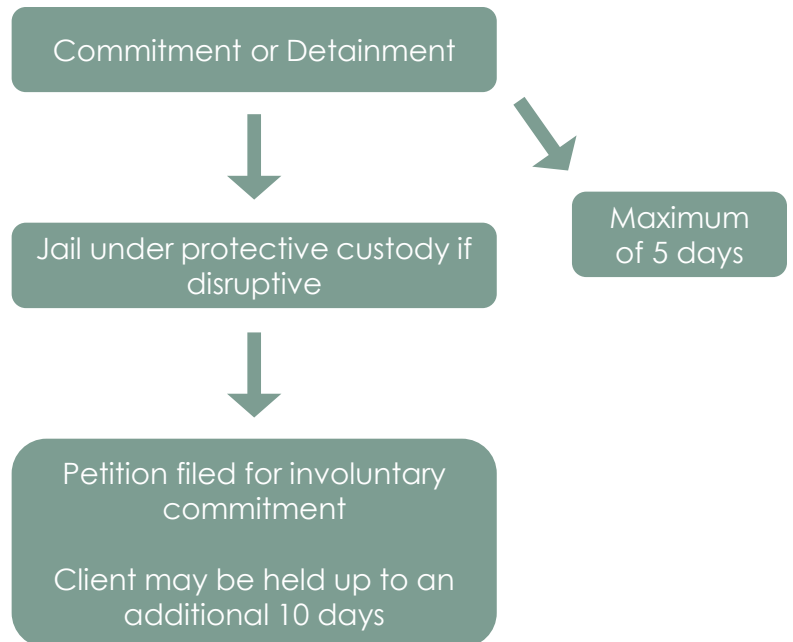


Step 2

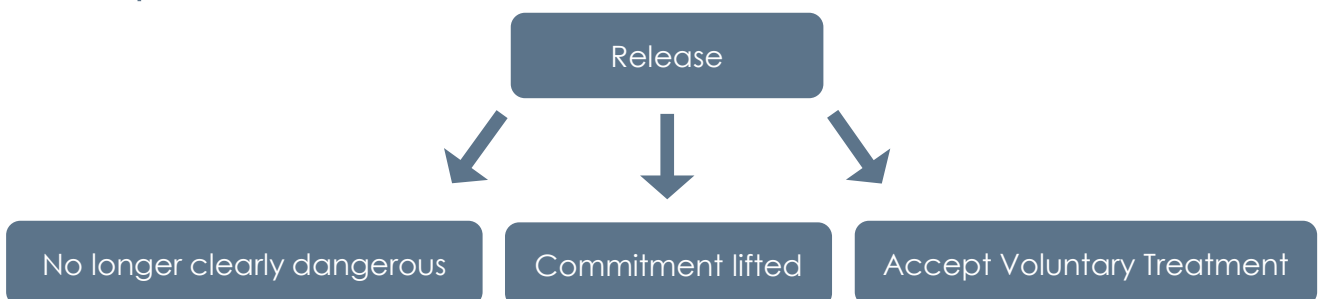
Emergency Commitment
Not Appropriate



Emergency Commitment
Appropriate



Step 3



PART III

EMERGENCY COMMITMENT OF INTOXICATED OR INCAPACITATED PERSONS, AND/OR PREGNANT WOMEN USING SUBSTANCES

This section outlines the procedures whereby intoxicated, incapacitated persons, and/or pregnant women using substances may be committed to an approved treatment facility for a period of up to five business days.

The emergency commitment procedure is for the following individuals: those who are intoxicated, incapacitated, a danger to self or others, and/or pregnant women using alcohol or drugs.

Emergency commitment consists of the following steps:

Step 1 - Application for commitment

Step 2 - Commitment

Step 3 - Discharge

STEP 1 - APPLICATION FOR EMERGENCY COMMITMENT

A. WHO MAY MAKE APPLICATION FOR COMMITMENT

A law enforcement officer, physician, spouse, guardian, relative of the person to be committed, or any other responsible person may make a written application for commitment directed to the administrator of the approved treatment facility. The application shall state the circumstances requiring emergency commitment, including the applicant's personal observations and the specific statements of others, if any, upon which the person making the application relies.

B. WHERE TO APPLY FOR EMERGENCY COMMITMENT

Applications for emergency commitment are kept by approved treatment facilities. A list of accredited detoxification/treatment facilities is located on the Division of Behavioral Health website: <http://dss.sd.gov/behavioralhealth/agencycounty.aspx>. If more immediate information is needed contact the Division of Behavioral Health at 605-367-5236.

C. REASONS FOR COMMITMENT

In order for a person to be committed under the emergency commitment statute, SDCL § 34-20A-63, the applicant must allege the person, whose commitment is being sought, is an intoxicated person who:

- has threatened, attempted, or inflicted physical harm on him or herself or on another or is likely to inflict physical harm on him or herself or on another unless committed; or
- is incapacitated by the effects of alcohol or drugs; or

- is pregnant and using alcohol or drugs

The application must also contain the specific circumstances requiring emergency commitment, including the applicant's personal observations, and the specific statements of others, if any, which support the alleged grounds for commitment. The application should include:

1. Specific facts and/or incidents at present or in recent past which indicate the individual is using alcohol or drugs. For example; the first sentence of the application could state, "My son has been drinking two cases of beer per day for over two weeks."
2. Specific facts or incidents which show that the misuse of alcohol or drugs has led to:
 - a. Substantial impairment of mental and/or physical functioning. For example, the person would be disoriented, unable to walk without staggering, or suffering from seizures during withdrawal from alcohol or drug use;
 - b. Inability to care for basic personal needs or safety. Examples might include refusal to eat while drinking, combining medications or exceeding recommended dosages, or refusal to seek medical treatment when injured;
3. Specific facts which show that the intoxication or incapacitation of the person has created a danger to self or others. For example, the person could be experiencing violent rages, striking or kicking those within range, he/she might be talking about suicide, attempting to drive a vehicle, and/or use a dangerous weapon such as a gun or knife while intoxicated; or
4. Specific facts which show that a pregnant substance user has endangered her unborn child by subjecting the unborn child to prenatal exposure to use of alcohol, controlled drugs, or substances not lawfully prescribed by a practitioner as authorized by SDCL § 22-42 and 34-20B. For example, there could be instances of daily drinking, binge drinking, ingesting substances other than alcoholic beverages for the purpose of getting high or becoming intoxicated, and/or if there is evidence of misuse of either prescription or over the counter medications.

A completed application might appear as follows:

"My husband has been consuming one quart of vodka a day for over 5 days. During this time, he has refused to eat, bathe, or change clothing. He has become incontinent of urine and feces. Even though he is a severe diabetic, he stopped taking his prescribed insulin 4 days ago. He fell down the stairway and I think he has sprained his ankle and cracked his ribs. However, he refuses to seek medical help."

The sample application provides for clear documentation of an incapacitated person.

STEP 2 - THE EMERGENCY COMMITMENT

A. REFUSAL OF THE APPLICATION

If the approved treatment facility administrator or authorized designee determines the grounds for emergency commitment are not met, the administrator shall refuse the application. The person detained shall be immediately released and shall be encouraged to seek voluntary treatment if appropriate, unless the person is under protective custody. In that event, the person may be

detained as a client at the facility until no longer intoxicated or up to 48 hours. (SDCL § 34-20A-65)

B. ACCEPTANCE OF THE APPLICATION

If the treatment facility administrator or authorized designee determines that the grounds for commitment are met, the person shall be committed, evaluated, and treated but may not be detained for longer than 5 days, excluding Saturdays, Sundays, and legal holidays. The period of detention maybe extended beyond the 5 days but only pursuant to the involuntary commitment procedures as set forth in Part IV and herein. (SDCL § 34-20A-69)

If the treatment facility does not have the ability to handle the individual who meets the grounds for emergency commitment, the facility will then provide assistance in making the emergency commitment to another agency.

C. TRANSPORTATION

1. In most cases, the intoxicated client is brought to the facility by the family, neighbors, friends, a sponsor, or other persons. All such transportation options should be explored, including taxi, ambulance, and/or police assistance, depending on the client's resources and degree of resistance.
2. A person may be taken into protective custody by law enforcement authorities who have determined the person is clearly dangerous to self or others. See Part II for protective custody procedures. (SDCL § 34-20A-55)

D. PAYMENT FOR TREATMENT

Payment for treatment under emergency commitment, or under protective custody pursuant to SDCL § 34-20A-55 if emergency commitment 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 commitment to the Human Services Center in Yankton, South Dakota, is subject to the requirement of SDCL Ch. 27A-13. (SDCL § 34-20A-66.1)

E. LENGTH OF COMMITMENT

A person may be detained for longer than 5 days only when a petition for involuntary commitment has been filed. If a petition for involuntary commitment has been filed within the 5 days, excluding Saturdays, Sundays, and legal holidays, and the administrator or authorized designee finds that grounds for emergency commitment still exist, the person may be detained until the petition has been heard and determined. The maximum period of detention shall not exceed ten days, excluding Saturdays, Sundays, and legal holidays, after the filing of the involuntary commitment petition. (SDCL § 34-20A-69) (See Part IV-Involuntary Commitment)

Each agency shall have a list of policies and procedures used to determine grounds for commitment and detainment. (SDCL § 34-20A-69)

When the grounds for commitment no longer exist, the person shall be discharged; however, the person has the option to continue the treatment voluntarily.

F. RIGHTS

A copy of the written application for commitment and a written explanation of the person's right to counsel shall be given to the person within 24 hours after their commitment by the administrator of the facility. An opportunity for the person to consult counsel shall be provided. (SDCL § 34-20A-67)

The person should sign the emergency commitment application to acknowledge he or she understands their rights. If he or she refuses to sign, that refusal should be witnessed and documented. If he or she is too intoxicated to understand their rights, the procedure should be repeated as soon as he or she is able to comprehend the explanation.

WRIT OF HABEAS CORPUS

The committed person may also seek to be discharged from commitment by a writ of habeas corpus (stating that they have been wrongfully detained), and to have counsel appointed by the court, if assistance of counsel is desired but unobtainable. If the court determines counsel is necessary, it shall appoint one. (SDCL §§ 34-20A-85, 34-20A-87)

G. TREATMENT

The committed client may engage in detoxification services to manage acute withdrawals and receive substance use disorder treatment in accordance with the South Dakota administrative rules. Clients will receive motivational counseling to encourage them to continue services as appropriate, and they will receive referrals to other agencies as needed.

If a client is in need of a psychiatric evaluation or hospital treatment of physical complications, referrals or transfers will be made by the treatment facility in accordance with their agreements, policies, and procedures. If a client becomes violent and unmanageable, he or she may be transferred to a more appropriate facility, hospitalized, or jailed, but only for so long as necessary to prevent injury to self or others. This detainment may not exceed the initial 5-day maximum allowed for emergency commitment or the 10 additional days if an involuntary commitment petition was filed. (SDCL § 34-20A-69)

LIABILITY OF PERSONNEL

Personnel operating in treatment facilities, who act in compliance with their duties, are not criminally or civilly liable. (SDCL § 34-20A-69.1)

STEP 3 - DISCHARGE FROM EMERGENCY COMMITMENT

A. TRANSFER TO VOLUNTARY STATUS

A client may continue to receive services on a voluntary basis when he or she no longer meets the grounds for commitment but desires further substance use treatment.

B. AUTOMATIC DISCHARGE

A client shall be automatically discharged when the administrator or authorized designee determines that the grounds for commitment no longer exist. (SDCL § 34-20A-68)

C. INVOLUNTARY COMMITMENT PETITION FILED

No person committed under SDCL § 34-20A-63 (emergency commitment) may be detained in any treatment facility for more than five days excluding Saturdays, Sundays, and legal holidays.

If a petition of involuntary commitment has been filed within the five days (See Part IV), and the administrator of the approved treatment facility or an authorized designee finds that grounds for emergency commitment still exist, the client may be held until the petition has been heard and determined, but no longer than 10 days, excluding Saturdays, Sundays, and legal holidays, after filing the petition. (SDCL § 34-20A-69)

Emergency Commitment Process

Step 1

Any responsible person



Petition for Emergency Commitment filed with designated treatment facility

Step 2



Petition Accepted



Petition Not Accepted

Step 3



Detoxification and
Counseling (Up to 5 days)



Client
referred to
appropriate
services



Client
placed in
protective
custody

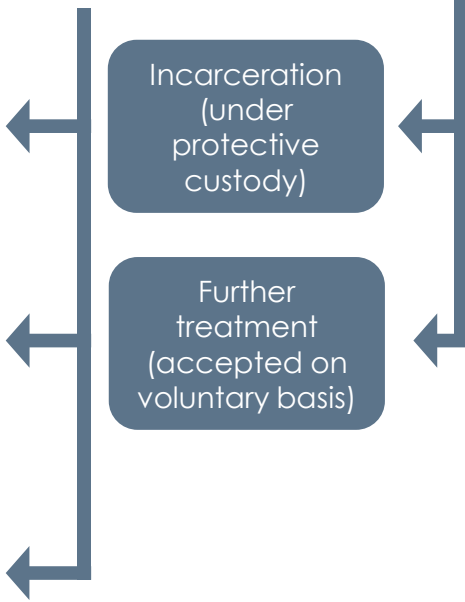
Discharge
(release when
no longer
dangerous)

Incarceration
(under
protective
custody)

Hospitalization
(due to
medical
complications)

Further
treatment
(accepted on
voluntary basis)

Petition filed
for involuntary
commitment



PART IV

INVOLUNTARY COMMITMENT

The statutes provide a procedure where an alcohol or drug user may be ordered by the court to undergo treatment for an initial period of not more than 90 days and two 90-day recommitment periods totaling not more than an additional 180 days.

Below are the steps for involuntary commitment:

Step 1 - The Petition

Step 2 - Judicial Hearing

Step 3 - Commitment

Step 4 - Recommitment

Step 5 - Discharge

STEP 1 - PETITION FOR INVOLUNTARY COMMITMENT

A. WHO MAY APPLY

A request for the commitment of an alcohol or drug user may be made by a spouse, guardian, relative, physician, the administrator of an approved treatment program, or any other responsible person. (SDCL § 34-20A-70)

B. WHERE TO APPLY

The application must be made to the circuit court through the clerk of courts of the county of residence or presence.

C. LEGAL INVESTIGATION AND PETITION FILED

Upon receipt of a written application, submitted to the clerk of courts, the circuit court judge shall appoint an attorney to represent the applicant (the person who applied for the commitment of another). The appointed attorney shall investigate the grounds upon which the application is based, and will, within 5 days, excluding Saturdays, Sundays, and legal holidays, submit a petition for commitment and a written report to the circuit court as to whether probable cause exists whether the individual qualifies for commitment. All information obtained during the investigation and written report will be documented and made part of the record of further proceedings. (SDCL § 34-20A-70)

COUNTY PAYMENT

In any proceedings for involuntary commitment or detention, or any proceeding challenging such commitment or detention, the attorney appointed by the circuit court judge to represent the petitioner (applicant) will represent the individuals or agencies petitioning (applying) for commitment or detention and defend all challenges to the commitment or detention.

The appointed attorney will be paid by the county where the hearing and commitment proceedings are taking place at a rate to be fixed by the circuit judge. The county will be reimbursed for such expense by the petitioner, if the petitioner is a family member and is financially able to do so. (SDCL § 34-20A-70.1)

D. GROUNDS FOR COMMITMENT

The petition shall allege the person whose commitment is sought is a substance user who habitually lacks self-control as to the use of alcohol or other drugs and the person:

1. Has threatened, attempted, or inflicted physical harm on self or on another, and unless committed, is likely to harm self or others;
2. Is incapacitated by the effects of alcohol or drugs;
3. Is pregnant and using alcohol or drugs;

A refusal to undergo treatment does not constitute evidence of a lack of judgment. (SDCL § 34-20A-69)

A person cannot be committed merely because they are an alcohol or drug user. A threat, attempt, or act of physical harm to self or others, or the likelihood that harm may occur is necessary before the Court has the power to commit a person. An alcohol or drug user who is unable to take care of basic personal needs or safety or lacks sufficient understanding or capacity to make or communicate rational decisions concerning him or herself is an example of a person who may be involuntarily committed. Another example is a pregnant substance-using woman who uses alcohol, or controlled drugs or substances to the extent that the woman's health or the health of her unborn child is substantially impaired or endangered. (SDCL § 34-20A-70)

E. PHYSICIAN'S or ADDICTION COUNSELOR'S CERTIFICATE

The petition must be accompanied by a certificate of a licensed physician or an addiction counselor. The physician or the counselor must have examined the person within five days before submission of the petition to court. Notably, a physician or addiction counselor employed by the admitting facility is not eligible to provide certification. If the person whose commitment is sought has refused to submit to a medical examination or counselor assessment, the refusal will be stated in the petition.

The certificate will set forth the physician's or the counselor's findings in support of the allegations of the petition. (SDCL § 34-20A-72)

F. HEARING

Upon the filing of the commitment petition, the court will fix a date for the commitment hearing no later than 10 days excluding Saturdays, Sundays, and legal holidays, after the date the petition was filed. A copy of the petition and of the hearing notice, including the date fixed by the Court, shall be served on the:

1. Petitioner (person filing the petition);

2. Respondent (person whose commitment is sought);
3. Person's next of kin other than the petitioner;
4. Guardian or parent (if respondent is a minor);
5. Administrator in charge of the approved treatment facility to which the person has been committed for emergency care; and
6. Any other persons or agencies whom the court believes advisable.

A copy of the petition and certificate of the licensed physician or addiction counselor shall be delivered to each person notified. Service of process is usually done by the County Sheriff, Deputy Sheriff, or by some other authorized process server. (SDCL § 34-20A-73)

STEP 2 - JUDICIAL HEARING FOR INVOLUNTARY COMMITMENT

A. RIGHT TO COUNSEL (ATTORNEY)

The person whose commitment is sought has the right to contest the proceedings and be represented by counsel at every stage of the commitment or recommitment proceedings. They have the right to have counsel appointed by the court if counsel is desired but unobtainable. If the court believes the person needs the assistance of counsel to ensure a fair proceeding, the court shall require, by appointment if necessary, counsel for the person regardless of that person's wishes. (SDCL § 34-20A-85)

PAYMENT OF ATTORNEY FOR RESPONDENT

The attorney appointed by a court to represent the interests of a person being committed for alcohol or drug use will be paid by the county where the hearing and commitment proceedings are taking place. The attorney shall be compensated at a rate to be fixed by the circuit judge. The county will be reimbursed for the expenses by the person if the person is financially able to do so. If the person is not financially able to pay such expenses, the cost of legal counsel shall be paid to the county by the person legally bound for the support of such person. (SDCL § 34-20A-85.1)

B. TESTIMONY

At the hearing, the court hears all relevant testimony including, if possible, the testimony of at least one licensed physician and one addiction counselor who have examined the person whose commitment is sought (the respondent). (SDCL § 34-20A-75)

The person whose commitment is sought should be present, unless the court believes that their presence is likely to be injurious to them; in this event, the court shall appoint a guardian ad litem to represent them throughout the proceeding. The court will examine the person in open court, or if advisable, will examine the person out of court. (SDCL § 34-20A-74)

The physician's or counselor's certificates and testimony should be centered on the issue of the respondent's alcohol or drug use. The testimony of family and/or treatment staff typically concerns incapacitation or acts of physical harm. In addition, for a pregnant substance-using woman, the testimony also concerns the use of alcohol or controlled drugs or substances to the extent that the woman's health or the health of her unborn child is substantially impaired or

endangered.

C. RIGHT TO AN EXAMINATION

If the person has refused to be examined by a licensed physician or a certified or licensed addiction counselor, he or she is then given an opportunity to be examined by a court appointed licensed physician or addiction counselor.
(SDCL § 34-20A-76)

If the person refuses to be examined by a court appointed physician or certified or licensed addiction counselor and there is sufficient evidence to believe that the allegations of the petition are true, or if the court believes that more evidence is necessary, the court may order a temporary commitment to an approved treatment facility for a period of not more than the five days for purposes of a diagnostic examination. (SDCL § 34-20A-76)

SERVICES PAYMENT

A licensed physician or addiction counselor appointed by the court to examine and assess a person for the purpose of involuntary commitment will be paid by the county where the hearing and commitment proceedings take place. The physician or counselor will be compensated for such services in an amount fixed by the circuit judge. The county will be reimbursed for such expense by the person if the person is financially able to do so. If the person is not financially able to pay such expense, the cost of physician or counselor examination shall be paid to the county by the person legally bound for the support of such person if financially able to do so. (SDCL § 34-20A-76.1)

STEP 3 - THE INVOLUNTARY COMMITMENT

A. FINAL DETERMINATION

Upon hearing all relevant evidence, including the results of any diagnostic examinations, if the court finds that grounds for involuntary commitment have been established by “clear and convincing proof,” it shall make an order of commitment to any appropriate accredited/approved treatment facility. The court may not order a commitment of a person unless it determines the proposed facility is able to provide adequate, appropriate, and beneficial treatment. (SDCL § 34-20A-77)

ADMISSION IMPOSSIBLE, TEMPORARY PROVISION

If it is shown to the satisfaction of the court that a committed person may not at once be admitted to the approved facility, and may not with safety, be allowed to go at liberty, the court shall require the patient be provided for until admission can be accomplished, or until the occasion no longer exists. In any event, the patient may not be detained more than thirty days.
(SDCL § 34-20A-77.1)

For example, if the court orders a commitment of a person to the Human Services Center in Yankton, but admission to the facility may not occur immediately and the person is incapable of safely awaiting treatment outside of a facility, the court may require the person be provided for at an approved treatment facility in Sioux Falls.

PAYMENT

If treatment of a person involuntarily committed is provided by an approved treatment facility, the payment for treatment may be assessed to the individual, to legally responsible relatives, to a guardian, to the county of residence if indigent or billed to the Division through a contract with the approved treatment facility. The payment for treatment of a person involuntarily committed to an accredited treatment facility will be assessed to the individual, legally responsible relatives or guardians. The payments for treatment of a person involuntarily committed to the Human Services Center is subject to the requirements found in SDCL Ch. 27A-13. Payment for treatment also applies to the temporary placement of an involuntarily committed person to an approved facility while awaiting admission to the court-ordered facility. (SDCL § 34-20A-89)

B. LENGTH OF COMMITMENT

A person involuntarily committed shall remain in the custody of the treatment facility for a period not to exceed 90 days unless discharged sooner. (SDCL § 34-20A-81)

C. TRANSFER

A person involuntarily committed shall remain in the custody of the facility for the period of commitment. The facility has the statutory right to delegate physical custody of the person from one accredited treatment facility to another if a transfer is advisable based on the committed person's treatment needs. A written report must state the reasons why a transfer to another facility or program is necessary to meet the treatment needs of the committed person. Notice of the transfer and the reasons therefore shall be given to the court, the person's attorney, and the person's immediate family, subject to rules of confidentiality. (SDCL § 34-20A-78) The facility being asked to accept the transfer may refuse. SDCL § 34-20A-79)

Since the commitment by the court is to the custody of a facility, the court should gather information concerning the best possible treatment for the person prior to making the commitment order. Not only is the person's needs a consideration when determining place of commitment, but also the needs of the family and the facility's services should be taken into consideration.

D. TRANSPORTATION

Upon commitment, the county sheriff may assist in the transportation of the committed person to the approved facility. Family, neighbors, friends, sponsors, or other interested persons may also bring the person to the facility.

E. TREATMENT PLAN

It is not the court's responsibility to designate an appropriate course of treatment. A committed person will be treated in accordance with the Division of Behavioral Health standards and requirements for accredited/approved treatment facilities. The course of treatment will be determined by a certified or licensed addiction counselor based off the results of the evaluation and recommendation.

F. VIOLATION OF THE COMMITMENT ORDER

When a committed client leaves a facility without being properly discharged, this violation should

be reported to the circuit court who issued the commitment order. The court may then issue a bench warrant for the apprehension of the person. Once apprehended, the person can be held in contempt of court or the court will take other appropriate action.

HABEAS CORPUS

A committed person may at any time seek to be discharged by the issuance of a writ of Habeas Corpus. (SDCL § 34-20A-87)

G. DISCHARGE PRIOR TO 90 DAYS

A person committed for treatment shall be discharged at any time before the end of the period for which he has been committed if either of the following conditions is met: (1) In case of commitment on the grounds of likelihood of infliction of physical harm upon himself or another, that the likelihood of such harm no longer exists; or (2) In case of commitment on the grounds of the need of treatment and incapacity, that the incapacity no longer exists, further treatment will not be likely to bring about significant improvement in the person's condition, or treatment is no longer adequate or appropriate. (SDCL § 34-20A-80)

H. DISCHARGE AFTER 90 DAYS

A committed person, unless discharged sooner, will be automatically discharged after 90 days, unless a recommitment order is obtained from the court before the expiration of the commitment period. By requiring an automatic discharge after 90 days, the statute guarantees that a committed person's condition will be reviewed by the Court before detention may be continued. (SDCL § 34-20A-81)

STEP 4 - INVOLUNTARY RECOMMITMENT

A. WHO MAY FILE

Only the administrator, or an authorized designee of the facility where the person is committed, may petition the court for a recommitment order, using the same grounds of the first involuntary commitment. The administrator should contact the court no later than day 80 of the 90 day commitment order, to ensure that the proper paperwork, service, and testimony can be completed before the 90 day period expires. (SDCL § 34-20A-81)

B. GROUNDS FOR RECOMMITMENT

The recommitment petition will be based on the same grounds as those for involuntary commitment as outlined on page 19, STEP 1, D. of this manual. (SDCL § 34-20A-70)

C. LENGTH OF RECOMMITMENT

The court may issue an order for recommitment for a further period of 90 days, unless sooner discharged. In addition, the administrator of the facility or authorized designee may seek a second recommitment on the same grounds as those for the original involuntary commitment, for an additional 90 days. Thus, a person could be initially involuntarily committed for 90 days, and twice recommitted for periods not exceeding 90 days for a potential total period of 270 days of court-ordered treatment; only two recommitment orders are permitted. (SDCL §§ 34-20A-81-83)

D. PHYSICIAN'S OR COUNSELOR'S CERTIFICATE

The petition for recommitment must be accompanied by a licensed physician or a CAC or LAC. The physician or the counselor must have examined the person within two days before submission of the petition to the court, unless the person whose recommitment is sought has refused to submit to a medical examination or counselor assessment. This refusal will be stated in the petition. The certificate shall set forth the physician's or the counselor's findings in support of the allegations of the petition. A physician or counselor employed by the admitting facility is not eligible to provide certification. (SDCL § 34-20A-72)

E. THE RECOMMITMENT PROCEEDINGS

Upon the filing of a recommitment petition, the court shall fix a date for 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, shall be served on the petitioner, the person whose recommitment is sought, his or her next of kin if other than the petitioner, the original petitioner if different from the recommitment petitioner, at least one parent or legal guardian if a minor, and any other person the court believes advisable to be notified. At the hearing, the court shall proceed as outlined in STEP 2, pages 20 & 21. Note that a guardian ad litem may be appointed, if the person's presence is likely to be injurious to his or her health. (SDCL § 34-20A-84)

STEP 5 - DISCHARGE FROM INVOLUNTARY COMMITMENT

A. 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)

B. STATUTORY CONDITIONS FOR EARLY DISCHARGE

A person committed to the custody of a facility for treatment shall be discharged at any time if any of the following conditions are met:

1. In case of commitment on the grounds of likelihood of infliction of physical harm upon self, or another, that the likelihood of such harm no longer exists (SDCL § 34-20A-80);
2. In the case of commitment on the grounds of the need of treatment and incapacity, that the incapacity no longer exists, further treatment will not be likely to bring about significant improvement in the person's condition, or treatment is no longer adequate or appropriate (SDCL § 34-20A-80); or
3. In the case of commitment of a pregnant woman using substances on the grounds of the likelihood of endangerment to her health, or the health of her unborn child, the likelihood of such endangerment no longer exists. (SDCL § 34-20A)

Involuntary Commitment Process

