South Dakota Department of Social Services

Involuntary Commitments (IVCs) for Substance Use Disorders

Workbook for South Dakota Attorneys 2021

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IVC: Introduction

Sometimes, it may be necessary to commit an individual who has a serious substance use disorder—for example, if they pose a safety risk to themselves or others. South Dakota law provides a legal mechanism by which involuntary committal to an approved treatment facility for emergency treatment can be achieved.

Specifically, SDCL 34-20A-63 stipulates an individual may be committed involuntarily if an intoxicated individual:

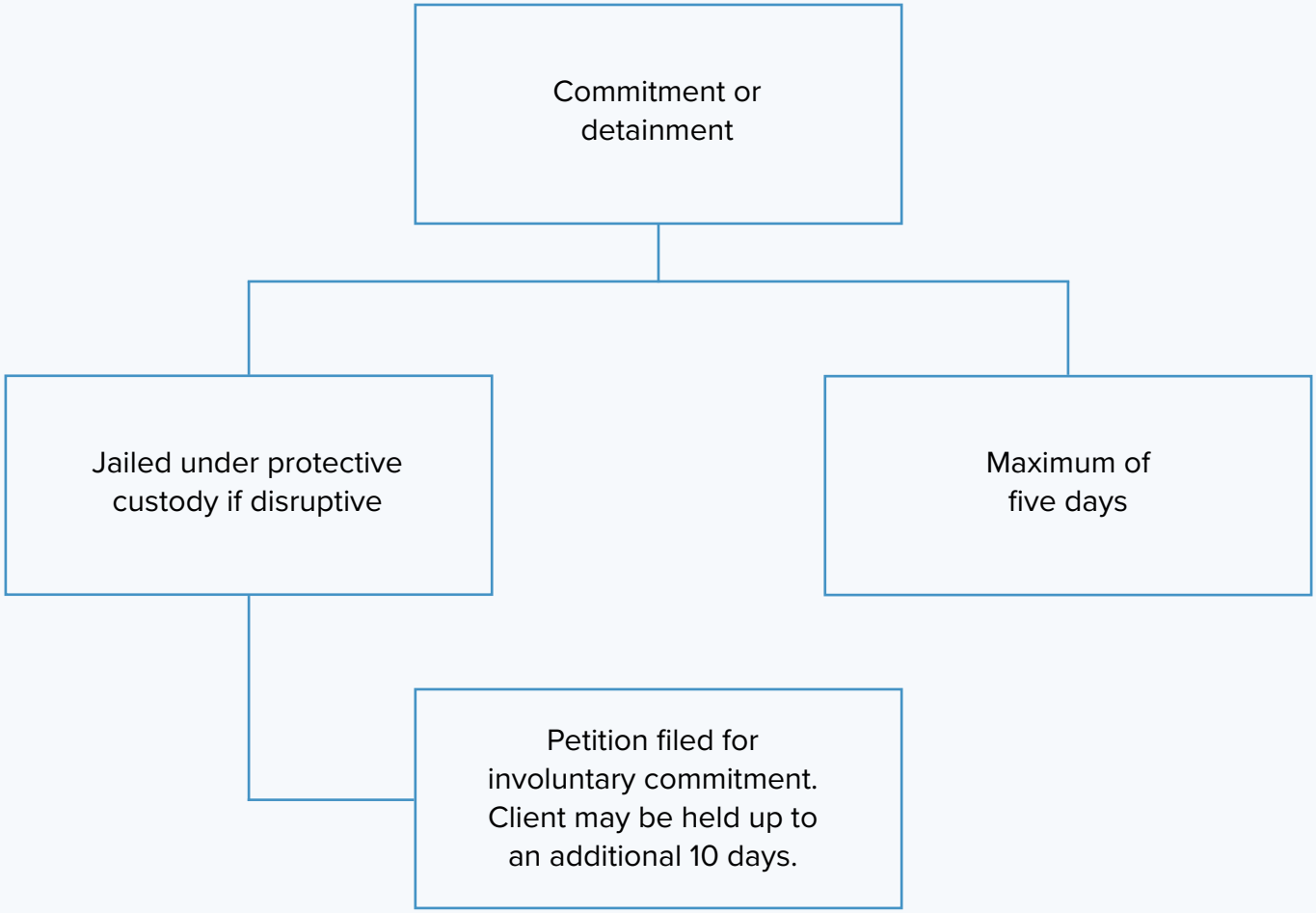
- Has threatened, attempted, or inflicted physical harm on himself or herself or on another or is likely to inflict physical harm on another unless committed; or
- Is incapacitated by the effects of alcohol or drugs; or
- Is pregnant and abusing alcohol or drugs;

The following information provides step-by-step details regarding the process for involuntary committal (IVC) in the state of South Dakota. Note: The emergency committal procedure detailed below precedes any involuntary committal or petition filing. Also provided are sample documents with case examples to demonstrate the procedures. You may use these as a starting point and tailor to the unique circumstances of each respondent.

IVC: Attorney Procedure

The process begins when a petitioner files paperwork in court providing the rationale for the IVC request. From the date that the petitioner fills out the paperwork, an attorney has five business days to file the petition with the court.

In order to apprehend a respondent, or to keep them in custody, a five-day emergency committal application (under SDCL 34-20A-63) must be completed by the attorney and approved by the admitting facility (for example: "The Link" in Sioux Falls, Pennington County Sheriff's Office Addiction Treatment Services in Rapid City, or a hospital or jail).



Within these five days, a licensed or certified addiction counselor (or physician if addiction counselor is unavailable) meets with the respondent and makes a recommendation for treatment. This evaluation must happen within two days of the filing of the petition. The resulting recommendation may include intensive inpatient treatment, low-intensity residential treatment, outpatient treatment, or some combination of the three.

On the filing date, the respondent is served with the following eight documents:

1. Cover Letter

2. Petition
   a. The Petition is the document that says, “We think the respondent has a problem and this is why we think this.” The petitioner signs it in front of a notary and sends it back to the respondent’s attorney. (This is the only document that the Petitioning party needs to be concerned about. The rest should be handled by the attorney.)

3. Notice of rights

4. Attorney’s investigative report (drafted by attorney), with attached addiction counselor or physician’s certificate

5. Notice of Hearing (to take place within 10 business days from the filing date of the petition)

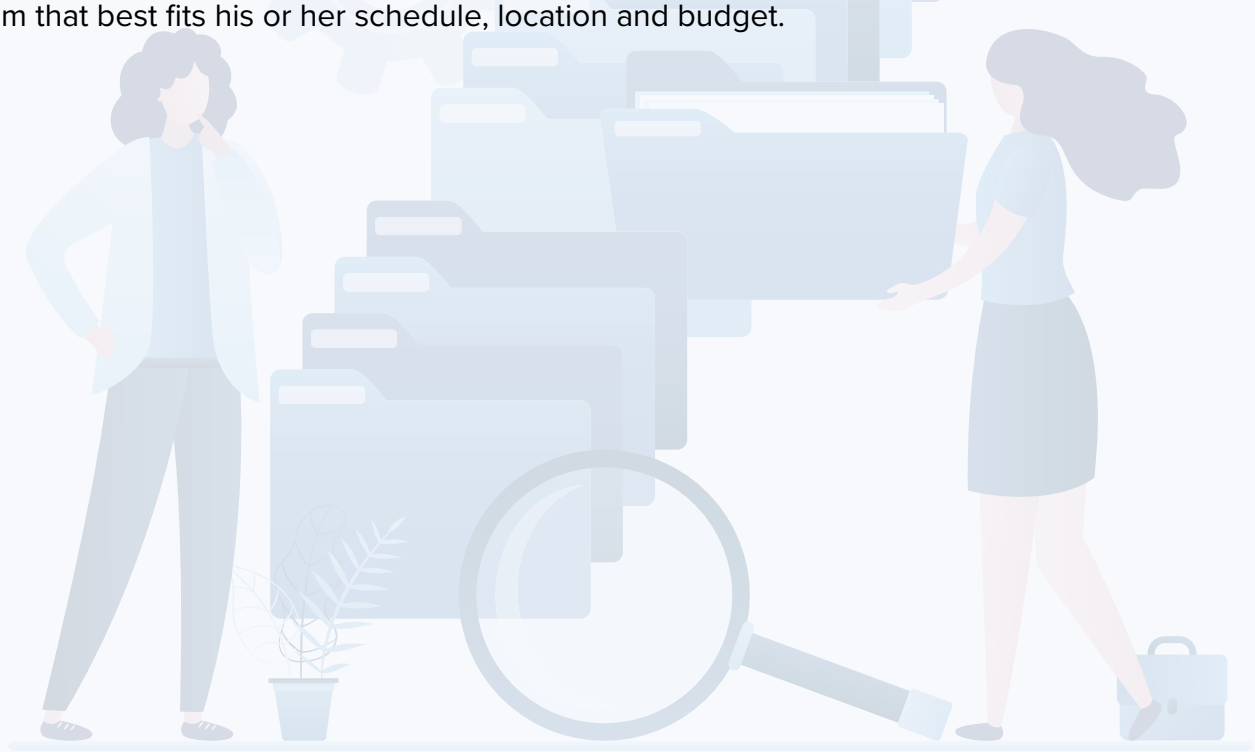
6. Certificate of Service

7. Stipulation
   a. The Stipulation is the respondent’s chance to agree in writing to the terms of treatment recommended, rather than going forward with a hearing.

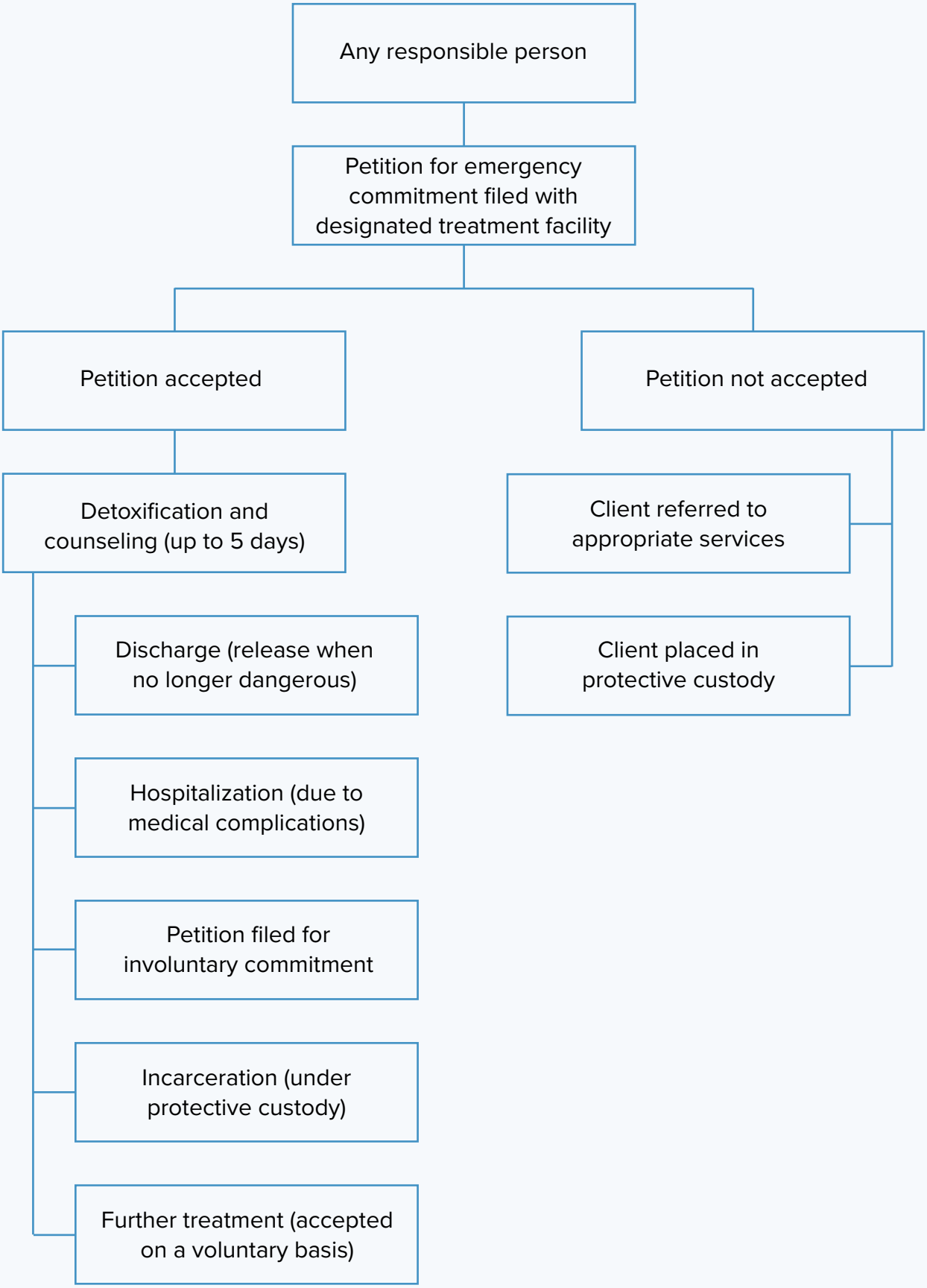
8. Application for counsel

Whether there is a hearing, or the respondent signs the stipulation, the attorney receives a signed order from a judge. At this stage, one of two things could happen.

- If the order is for intensive inpatient or low-intensity residential treatment, we keep the respondent in custody (for example the Link, a hospital, or other approved facility) until his or her bed date.
- If the order is for outpatient treatment, we give the respondent seven days to find a program that best fits his or her schedule, location and budget.



The IVC Process at a Glance



Supplemental Materials

I. Sample Emergency Committal Application:

Application for Emergency Commitment of Intoxicated
Or Incapacitated Persons under SDCL §34-20A-63 (1985)

TO: Administrator in charge: __The Link Triage Center_____
(Name of Treatment Facility)

NAME: (person to be committed): _____
ADDRESS: (place of residence):_____
AGE: _____SEX:_____ RACE:_____
SOCIAL SECURITY NUMBER: _____
LEVEL OF EDUCATION COMPLETED: _____
BIRTHDATE:_____
MARITAL STATUS/LIVING ARRANGEMENTS: _____
EMPLOYMENT STATUS: _____

I request that the above-named person be committed to your designated treatment facility for emergency treatment on the basis that the following conditions have been met:

_____ Intoxicated person who has threatened, attempted or inflicted physical harm on himself/herself or on another or is likely to inflict physical harm on himself or on another unless committed.

_____ Is incapacitated by the effects of alcohol or drugs.

_____ Is pregnant and abusing alcohol or drugs.

"Intoxicated person" means a person who demonstrates diminished mental or physical capacity as a result of the use of alcohol or other drugs. ''Incapacitated by alcohol or other drugs'' means a person, as a result of the use of alcohol or other drugs, is unconscious or his judgment is otherwise so impaired that he is incapable of rational decision with respect to his need for treatment. A "pregnant substance abuser'' is a pregnant woman who habitually lacks self-control as to 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.

Describe facts supporting the need for emergency commitment (personal observations and/or specific statements of others): IVC initiated 8/28/17; Respondent is a frequent IV drug user, including methamphetamine, heroin, and opiates. She has lost a significant amount of weight (30 pounds off 150-pound frame in a matter of months). She has track marks on her arms and sores on her face and arms. She suffers from withdrawals of shakes, nausea, and lethargy. She has been admitted to the emergency room after an overdose combined with naltrexone in September. She has pending charges of possession of controlled substance, and possession of drug paraphernalia. When using, she becomes combative.

The Respondent attended treatment in June of 2017 at Keystone Treatment Center. Upon her discharge, she maintained 4-6 weeks of sobriety, but relapsed while attending outpatient treatment, and did not complete that portion of treatment. Her family has not heard from her in weeks and is very worried about her safety.

_____
Date

/s/Attorney_____
Signature

_____
Sioux Falls, SD 57104_____
Address

II. Sample Cover Letter:

Attorney law office
Attorney address
Phone:

DATE

Via Email
RESPONDENT
c/o Link Triage Center
132 N. Dakota Ave. Ave.
Sioux Falls, SD 57104

Re: In the Matter of RESPONDENT, an Alleged Alcoholic or Drug Abuser, IVC XX-XXX

Dear Ms. RESPONDENT:

Since you have indicated that you would be willing to undergo treatment, an original Stipulation and Agreement in the above referenced matter is enclosed. Please read through it and confer with your attorney if you have any questions. If you cannot afford an attorney, the Court will appoint one for you (an application for counsel is also attached). I recommend that you obtain and consult with an attorney before signing this agreement. If you already have an attorney, please have them contact me as soon as possible.

If you agree to the terms of the Stipulation and Agreement, please sign it (in front of a Notary Public, if possible) and have a representative of the Link (or other approved placement) give me a call so that I can pick it up. In the event that you do not agree to the Stipulation and Agreement, we will have to schedule a hearing in the next 10 business days. Thank you.

Sincerely,

Attorney

III: Sample Petition:

STATE OF SOUTH DAKOTA) :SS
COUNTY OF MINNEHAHA)

IN CIRCUIT COURT

SECOND JUDICIAL CIRCUIT

In the Matter of

RESPONDENT,

An Alleged Alcoholic or
Drug Abuser.

IVC. 10-_____

PETITION FOR INVOLUNTARY COMMITMENT

PETITIONER, being duly sworn, on oath informs and petitions the Court as follows:

That the undersigned is of full legal age and wholly competent, and that she is the mother of the above-named person.

That your petitioner verily believes that said RESPONDENT is an alcoholic who habitually lacks self-control as to the use of alcohol and

1) That she has threatened, attempted, or inflicted physical harm on herself or on another and that unless committed, is likely to inflict harm on herself or on another or

2) That she is incapacitated by the effects of alcohol.

That the facts and circumstances forming the basis for the Petitioner's belief are as follows:

On Sunday, July 18, the Petitioner called the police after the Respondent had been intoxicated and driving around the block. Once the officers arrived, she was no longer driving, however they had her take a breathalyzer, and she registered a .31 BAC.

The Respondent has sustained several injuries while drinking. She has a scar on her chin from falling down stairs along with several bruises and a black eye from falls while intoxicated. During her last stay at Keystone, she was taken to the hospital with liver problems.

The Respondent has previously been in treatment twice. She underwent inpatient treatment twice at Keystone in 2009. That the Respondent has developed a serious alcohol over the course of her life. She is currently being held at the Link on an Emergency Committal.

WHEREFORE, the Petitioner prays that the Court set an early date for a hearing on this Petition, and direct notice be given, that upon that hearing, that said RESPONDENT be committed to the custody of a qualified alcohol treatment program pursuant to SDCL 34-20A-70.

Dated this _____ day of July, 2021, at Sioux Falls, South Dakota.

_____
PETITIONER
Petitioner

Subscribed and sworn to me before this _____ day of July, 2021, at Sioux Falls, South Dakota.

(SEAL)

_____
NOTARY PUBLIC – SOUTH DAKOTA
My Commission Expires: _____

IV: Sample Notice of Rights:

STATE OF SOUTH DAKOTA IN CIRCUIT COURT
:SS
COUNTY OF MINNEHAHA SECOND JUDICIAL CIRCUIT

In the Matter of IVC. 21-_____

RESPONDENT, **NOTICE OF RIGHTS**

An Alleged Alcoholic or
Drug Abuser.

You are hereby provided with notice that a Petition for Involuntary Commitment has been filed and that you have a right to legal counsel in this matter. If you cannot afford an attorney, the Court will appoint one for you. If you already have an attorney, please have him or her contact me as soon as possible. I will inform your attorney of the proceeding and provide him with the paperwork if you choose not to fight this matter, just to assist in keeping him informed of what is going on.

You also have the right to receive copies of the filings in this matter and to be present at the hearing on the matter; you have the right to present evidence at the hearing and have witnesses testify on your behalf. Along with this document, you are being served copies of the documents that have been filed in this matter.

At the hearing you would have the right for the Court to make a decision on your case and to the Court is to determine whether you are an alcoholic or drug abuser who habitually lacks self-control as the use of alcohol or other drugs and

1. that you have threatened, attempted, or inflicted physical harm upon yourself or another and that unless committed are likely to inflict harm on yourself or another or

2. that you are incapacitated by the effects of alcohol or drugs; or

3. that you are pregnant and abusing alcohol or drugs.

The burden of proof is on the Petitioner to prove the necessary elements by clear and convincing proof.

You are hereby provided with notice that prior to the date of the hearing in this matter, you are to have a medical examination by a licensed physician, and a counselor assessment by a licensed addiction counselor, pursuant to SDCL 34-20A-72. The attorney listed below represents the petitioner has made arrangements for the examination and assessment and they have been conducted. Should you choose to not sign the agreement, you would have the right to obtain the examination and assessment by providers of your own choosing, but you must bring the reports to any court date that may be set.

Dated this _____ day of July, 2021.

_____
Attorney
Attorney for the Petitioner
Address

V: Sample Attorney's Investigative Report:

STATE OF SOUTH DAKOTA IN CIRCUIT COURT
:SS
COUNTY OF MINNEHAHA SECOND JUDICIAL CIRCUIT

In the Matter of IVC. 21-____

_____, **ATTORNEY'S INVESTIGATIVE REPORT**

An Alleged Alcoholic or
Drug Abuser.

_____ is a thirty-two-year-old female who has had a problem with drugs and alcohol. According to her mother, the Petitioner, _____, her problems started approximately five years ago, and they have been getting progressively worse over the past three years. She has been in and out of treatment programs during this time. On Sunday, July 18, the Petitioner, called the police after the Respondent had been intoxicated and driving around the block. Once the officers arrived, she was no longer driving, however they had her take a breathalyzer, and she registered a 0.310 BAC. She was taken to the Minnehaha County Jail and is now being held at The Link Triage Center.

Since moving in with her mother, it has been harder for the Respondent to obtain alcohol. She steals cash and pawns items from family members to pay for her alcohol. She consumes up to a fifth of hard liquor per day. She also drinks to relieve her shakes from withdrawal. She has additional withdrawal symptoms of weakness, hyperactivity, anxiety, irritability, headaches, and insomnia.

The Respondent has a variety of health problems stemming from her alcohol abuse. She has bruises, a scar on her chin, sore ribs, and a black eye from falling while intoxicated. Her family states that she blacks out and falls.

The Respondent has been in treatment twice in the past year and a half. She underwent voluntary inpatient treatment at Keystone first in June of 2019, and again in early 2020.

The Respondent is currently being held at The Link on an Emergency Committal.

A chemical dependency assessment was conducted on the Respondent by _____ of the Link, on July 22, 2021. A certificate completed by the counselor is attached.

Based upon the information that I have obtained, I believe that probable cause exists for the Court to determine that _____ meets the criteria to be involuntarily committed to an alcohol treatment program and recommend that a hearing should be scheduled in this matter. Should the Respondent decide to willingly seek treatment, a Stipulation and Agreement is included.

Respectfully submitted this _____ day of July, 2021.

_____
Attorney NAME
Attorney for the Petitioner

VI: Sample Certificate of Addiction Counselor:

In the Matter of _____, an alleged alcoholic or drug abuser, I, _____ _____, am a licensed addiction counselor, and have examined the above-named Respondent, on the _____ day of _____, 20____, and have made a careful personal evaluation.

As a result of such evaluation, and review of the proposed Petition, I hereby certify the following findings:

_____

_____

_____

_____

_____

_____

_____

_____

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_____

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_____

_____

Recommendations: _____

_____

_____

_____

_____

Dated this _____ day of _____, 20_____.

Signature of Licensed or Certified Addiction Counselor:

_____

VII. Sample Notice of Hearing:

STATE OF SOUTH DAKOTA) IN CIRCUIT COURT
:SS
COUNTY OF MINNEHAHA) SECOND JUDICIAL CIRCUIT

In the Matter of IVC. 21-_____

RESPONDENT NAME, **NOTICE OF HEARING**

An Alleged Alcoholic or
Drug Abuser.

TO: RESPONDENT NAME, the Respondent in the above captioned matter:

You are hereby notified that a hearing in the above entitled matter will take place before the Honorable JUDGE NAME on July 25, 2021, at 3:00 pm in Courtroom 6D in the Minnehaha County Courthouse in Sioux Falls, South Dakota, or as soon thereafter as counsel may be heard.

Dated this 21st day of July, 2021.

/s/Attorney
Attorney name
Attorney address
Attorney for the Petitioner

VIII: Sample Certificate of Service:

STATE OF SOUTH DAKOTA) IN CIRCUIT COURT
:SS
COUNTY OF MINNEHAHA) SECOND JUDICIAL CIRCUIT

In the Matter of IVC. 21-_____

RESPONDENT NAME, **CERTIFICATE OF SERVICE**

An Alleged Alcoholic or
Drug Abuser.

TO THE ABOVE NAMED RESPONDENT, RESPONDENT NAME:

The undersigned attorney hereby certifies that true and correct copies of the foregoing Notice of Rights, Petition, Attorney's Investigative Report, and Notice of Hearing were served on the Respondent via fax/email to New Horizons on this 21st day of July, 2021

Dated this 21st day of July, 2021.

/s/Attorney_____
Attorney name
Attorney address
Attorney for the Petitioner

IX: Sample Stipulation:

STATE OF SOUTH DAKOTA) IN CIRCUIT COURT
:SS
COUNTY OF MINNEHAHA) SECOND JUDICIAL CIRCUIT

In the Matter of IVC. 21-_____

RESPONDENT, **STIPULATION AND AGREEMENT**

An Alleged Alcoholic or
Drug Abuser.

The Petitioner for the Involuntary Commitment proceeding in the above-named case, PETITIONER, and the Individual being petitioned into Court, RESPONDENT, stipulate and agree to the following:

1. RESPONDENT acknowledges that she has been advised of certain rights she has with respect to the Petition for Involuntary Commitment which has been filed in this matter, including:

b. Her right to counsel including her right to have a court-appointed attorney; and

c. Her right to receive service of copies of the Petition and have the Petition served upon her next of kin; and

d. Her right to have a hearing on this matter and be present at the hearing; and

e. Her right to present evidence at the hearing and have witnesses testify on her behalf; and

f. Her right to have the Court make a decision based on the Petition for Involuntary Commitment, which decision must be that she is an alcoholic or drug abuser who habitually lacks self-control as to the use of alcohol or drugs and

    1. that she has threatened, attempted, or inflicted physical harm upon herself or another and that unless committed is likely to inflict harm on herself or another or

    2. that she is incapacitated by the effects of alcohol or drugs, or

    3. that she is pregnant and abusing alcohol or drugs.

NOTE: The burden is on the Petitioner to prove all necessary elements by clear and convincing proof.

2. RESPONDENT understands that through this Agreement, she will be waiving the above referenced rights.

3. RESPONDENT understands that by entering this Agreement, she will be agreeing to a secure facility Order that cannot exceed ninety (90) days.

4. The Respondent, RESPONDENT and the Petitioner, PETITIONER, understand that RESPONDENT agrees to do all to the following, in return for which, the Petition for Involuntary Commitment will be allowed to lapse for lack of further prosecution or dismissed upon completion of the following requirements:

a. RESPONDENT agrees to enter into, remain at, and successfully complete the alcohol inpatient treatment at the program for which she qualifies; and

b. RESPONDENT understands that she will remain at the Link or another approved facility until she is transported for her bed date to treatment; and

c. RESPONDENT agrees to abide by the requirements of the 24/7 program

d. RESPONDENT agrees to follow all treatment recommendations as set forth by her counselors at the treatment program; and

e. RESPONDENT agrees to abstain from alcohol and unprescribed drugs during this commitment period.

5. RESPONDENT understands that this Stipulation and Agreement will be incorporated into the Order of the Court without further notice to either party.

6. RESPONDENT understands that the Court will be presented with this agreement and upon her failure to perform any of the above tasks at any point during the next 90 days, that the Court will be asked, based upon a Motion to Revoke an Order for her to be held at the Link or another approved facility, until a court date can be set in this case, and that she could ultimately be held for a longer period of confinement in an inpatient alcohol and drug treatment facility or another secure facility based upon the Court's ruling.

Dated this _____ day of July, 2021.

_____
PETITIONER
Petitioner

Subscribed and sworn to before me this _____ day of July, 2021, at Sioux Falls, South Dakota.

(SEAL)

_____
NOTARY PUBLIC – SOUTH DAKOTA
My Commission Expires: _____

Dated this _____ day of July, 2021.

_____
RESPONDENT
Respondent

Subscribed and sworn to before me this _____ day of July, 2021, at Sioux Falls, South Dakota.

(SEAL)

_____
NOTARY PUBLIC – SOUTH DAKOTA
My Commission Expires: _____

X: Sample Order upon Stipulation:

STATE OF SOUTH DAKOTA) IN CIRCUIT COURT

:SS

COUNTY OF MINNEHAHA) SECOND JUDICIAL CIRCUIT

In the Matter of IVC. 21-_____

RESPONDENT, **ORDER UPON STIPULATION**

An Alleged Alcoholic or
Drug Abuser.

WHEREAS, the parties having submitted a Stipulation and Agreement to the Court, signed by the Petitioner, PETITIONER, and by the Respondent, RESPONDENT and the Court having examined the Stipulation and Agreement, the Petition, exhibits and file;

WHEREAS, the Petition for Involuntary Commitment presented indicates that RESPONDENT is an alcoholic or drug abuser who habitually lacks self-control as to the use of alcohol or drugs and

1) That she has threatened, attempted, or inflicted physical harm on herself or on another and that unless committed, is likely to inflict harm on herself or on another or

2) That she is incapacitated by the effects of alcohol or drugs or

3) That she is pregnant and abusing alcohol or drugs. (pursuant to SDCL 34-20A-70);

WHEREAS, RESPONDENT chose not to contest the Petition for Involuntary Commitment in this matter, but instead entered into a Stipulation and Agreement, incorporated herein by reference;

IT IS HEREBY ORDERED that RESPONDENT shall:

g. Enter into, remain at, and successfully complete the inpatient alcohol treatment and counseling program for which she qualifies; and

h. Remain at the Link until her bed date becomes available at the determined treatment program or until further order by the Court; and

i. Follow all treatment recommendations as set forth by her counselors at the determined treatment program;

j. Abstain from alcohol and unprescribed drugs during this commitment period.

IT IS FURTHER ORDERED that if RESPONDENT is alleged to have violated any terms of the Stipulation and Agreement within the next 90 days, that law enforcement are hereby authorized to detain RESPONDENT at the Link or another approved facility pending the scheduling of a court date in the matter.

Dated at Sioux Falls, Minnehaha County, South Dakota, this _____ day of July, 2021.

BY THE COURT:

_____
Circuit Court Judge

ATTEST:
Angelia M. Gries, Clerk

By: _____
Deputy

XI: Statutes for Reference

34-20A-63. **Emergency commitment (grounds)**

An intoxicated person who:

(1) Has threatened, attempted, or inflicted physical harm on himself or herself or on another or is likely to inflict physical harm on another unless committed; or

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

(3) Is pregnant and abusing alcohol or drugs;

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.

34-20A-69. **Maximum period of detention (extension if petition for involuntary commitment filed)**

No person committed under § 34-20A-63 may be detained in any treatment facility for more than five days excluding Saturdays, Sundays, and legal holidays. If a petition for involuntary commitment under § 34-20A-70 has been filed within the five days, excluding Saturdays, Sundays, and legal holidays, and the administrator of an approved treatment facility or an authorized designee finds that grounds for emergency commitment still exist, he may detain the person until the petition has been heard and determined, but no longer than ten days, excluding Saturdays, Sundays, and legal holidays, after filing the petition.

34-20A-70. **Petition for involuntary commitment (appointment of attorney for applicant--procedure—grounds)**

A person may be committed by the circuit court upon the petition of the person's spouse or guardian, a relative, a physician, the administrator of any approved treatment facility, or any other responsible person. Any person applying for commitment shall do so to the circuit court through the clerk of courts of the county in which the person to be committed resides or is present. The circuit court judge, upon receipt of a written application prepared by the clerk of courts, shall appoint an attorney to represent the applicant. The appointed attorney shall investigate the grounds upon which the application is based and shall within five 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 that the person subject of the petition is an alcoholic or drug abuser. All information obtained as a result of the investigation and written report shall be documented and made a part of the record of any further proceedings. The petition shall allege that the person is an alcoholic or drug abuser who habitually lacks self-control as to the use of alcoholic beverages or other drugs and:

1. Has threatened, attempted, or inflicted physical harm on himself or herself or on another and that unless committed is likely to inflict harm on himself or herself or on another; or

2. Is incapacitated by the effects of alcohol or drugs; or

   SDCL 34-20A-2(8) "Incapacitated by alcohol or other drugs," that a person, as a result of the use of alcohol or other drugs, is unconscious or the person's judgment is otherwise so impaired that the person is incapable of realizing and making a rational decision with respect to the person's need for treatment;

3. Is pregnant and abusing alcohol or drugs.

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

For more information about behavioral health services and treatment resources, please contact the Division of Behavioral Health at **605.367.5236**, email questions to **DSSBH@state.sd.us**, or visit https://dss.sd.gov/behavioralhealth/services.aspx.

You may find treatment service providers in your area here: https://dss.sd.gov/behavioralhealth/agencycounty.aspx.