

HOW DOES THE COMMITMENT PROCESS BEGIN?

Any person, 18 years of age or older, may complete a **petition** stating:

- (1) why they believe a particular person is *severely mentally ill*; **and**
- (2) why that person is in immediate *need of intervention*.

The completed petition is submitted to the chair of the county board of mental illness for review.

The chair may then order the apprehension of the person if the chair has *probable cause* to believe that the criteria for commitment is met.

The individual taken into custody has the right to immediately contact a person of his/her own choosing and be represented by an attorney.

A notice of hearing is then issued and should include the following:

- (1) The *time*, *date*, and *place* of a hearing;
- (2) Notice of the *right to an attorney*;
- (3) Notice of an *examination within 24 hours* of being taken into custody;
- (4) Notice that *medical records will be available* to the examiner and the person's attorney, and
- (5) Notice of the individual's *right to obtain an independent evaluation*.

**Disability Rights South Dakota
(DRSD)**

For Voice or TDD:

(605) 224-8294

Or

**1-800-658-4782
(South Dakota-only)**

www.drSDLaw.org

This information is provided as general information regarding mental illness hearings. A person who may be subject to a mental illness hearing is strongly encouraged to consult with an attorney. This information should not be considered as legal advice. Other formats of this brochure are available upon request.

Funded by the U.S. Department of Health and Human Services; the Substance Abuse and Mental Health Services Administration; and the Center for Mental Health Services.

Statutory References: South Dakota Codified Laws 27A-1-2; 27A-11A-1 through 27A-11A-28.

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Disability Rights
South Dakota

DUE PROCESS PROCEDURE

INVOLUNTARY COMMITMENT

KNOW YOUR RIGHTS

A Publication of
The Protection & Advocacy
for Individuals with
Mental Illness (PAIMI)

Program

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CRITERIA FOR COMMITMENT

A person may be involuntary committed if it is proven by “clear and convincing” evidence that:

- (1) The person has a severe mental illness; **AND**
- (2) Due to the severe mental illness, the person is a danger to self or others or has a chronic disability; **AND**
- (3) The person needs and is likely to benefit from treatment.

It must also be shown that the person will likely benefit from the proposed treatment and that commitment to a particular facility is the least restrictive treatment option.

If the evidence **DOES NOT** establish the above, the person is to be released.

The referring county is required to provide transportation for the person to the county where the person was taken, if the person would like to return to that location.

If the evidence **DOES** establish all of the above, the board may commit the person for up to ninety (90) days to:

- (1) The Human Services Center;
- (2) A Veteran’s Administration Hospital;
- (3) A private facility (only if that facility agrees and transfer will not result in cost to the county); or
- (4) An outpatient treatment facility.

KNOW YOUR RIGHTS

The person for which a commitment hearing is held has the right:

- To have the hearing within 5 days after being taken into custody. (This timeline is extended if the time period falls over a weekend or holiday.)
- To consult with an attorney prior to the hearing.
- To participate in planning for the hearing.
- To attend the hearing.
- To present evidence, subpoena and cross-examine witnesses, and testify on their own behalf at the hearing.
- To decide whether any person not necessary for the hearing is allowed to be present during the hearing.
- To know the names and functions of anyone who will be at the hearing and/or testifying.
- To have an independent evaluation completed by a qualified mental health professional.
- To be informed of the names and functions of anyone who will be collecting information or performing any evaluations, and how that information may be used for the hearing.
- To request a continuance (delay the hearing date) in order to have additional time to prepare and consult an attorney.
- To choose to enter a treatment program voluntarily and forego a hearing.
- To refuse to see the mental health professional or physician prior to the hearing.
- The right to appeal the hearing decision.
- To know any costs associated with commitment and any subsequent exams or

If the person refuses to see a qualified mental health professional or physician, the professional may still testify at the hearing and base their testimony on a review of the person’s medical record.

The professional’s testimony should include:

- (1) what alternatives are available,
- (2) what alternatives should be available,
- (3) what alternatives were investigated,
- (4) why any alternatives are not appropriate.

If involuntary commitment is ordered, the board may also consider petitions to administer psychotropic medications, ECT, and other medical treatment, at the same hearing. The board can also consider a petition for the involuntary treatment of any co-occurring substance use disorders and order commitment to an appropriate treatment facility.