



SOUTH DAKOTA  DEPARTMENT OF CORRECTIONS POLICY AND PROCEDURE		POLICY NUMBER 300-22	PAGE NUMBER 1 OF 6
		DISTRIBUTION:	Public
		SUBJECT:	Offender Hunger Strike
RELATED STANDARDS:	ACA 5-ACI-3B-14	EFFECTIVE DATE:	01/15/2024
		SUPERSESION:	09/01/2021
DESCRIPTION: Facilities - Security & Management	REVIEW MONTH: December	 <b>KELLIE WASKO</b> <b>SECRETARY OF CORRECTIONS</b>	

## I. POLICY

It is the policy of the South Dakota Department of Corrections (DOC) to establish and maintain processes and procedures for the medical and administrative management of offenders who engage in hunger strikes. It is the responsibility of the DOC to monitor the health and welfare of individual offenders and to ensure procedures are pursued to preserve life.

## II. PURPOSE

The purpose of this policy is to establish a process to detect, prevent, and respond to situations in which an offender engages in a refusal to eat.

## III. DEFINITIONS

### Attending Physician:

A physician who provides primary care and directs emergent, chronic, and continuing care to offenders. The physician will provide information regarding an offender's condition, risks to the offender, and effects the hunger strike may have upon the offender to the Involuntary Feeding and Hydration Treatment Panel.

### Clinical Staff:

Includes all individuals employed or contracted to provide health services in a DOC facility.

### Hunger Strike:

When an offender is observed by staff to be refusing sufficient nutrition and/or hydration for nine (9) consecutive meals. Medically imposed fasts for the purpose of conducting medical tests or procedures and religious fasts for a reasonable length of time, consistent with religious doctrine, are exempt from this definition.

### Medical Representative:

A physician, physician assistant, or nurse practitioner, as defined in SDCL §§ 34-12D-1, 36-4A-1, 36-9A-12, and 24-11B-2.

## IV PROCEDURES

### 1. Determining a Hunger Strike:

- A. Offenders may participate in medically imposed fasts for the purpose of conducting medical tests or as preparation for scheduled medical procedures, at the direction of clinical staff.

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- B. Offenders may participate in religious fasts for a reasonable length of time (less than nine (9) consecutive meals), provided the fast does not disrupt the daily operations of the facility or is likely to cause severe harm, permanent damage, or death. The cultural activities coordinator (CAC) may review and monitor offender requests for religious fasts for doctrine or consult with representatives of the faith for more information about the fast.
- C. If an offender communicates to staff that he/she is on a hunger strike, or staff observe the offender has refused sufficient nutrition and hydration for a period of nine (9) consecutive meals, the offender will be considered to be on a hunger strike. An offender may be determined to be engaged in a hunger strike even though he/she is consuming liquids. Once it is determined an offender is engaged in a hunger strike, staff will:
  - 1. Interview the offender as soon as possible and attempt to determine the offender's reason(s) for refusing sufficient nutrition or hydration.
  - 2. Immediately notify senior staff at the facility where the offender is housed, e.g., warden or associate warden(s), that the offender is engaged in a hunger strike. Clinical staff **must** be notified.
- D. If more than one offender chooses to engage in a hunger strike at the same time, the provisions of this policy shall apply to each offender.
- E. Offenders who are unable to maintain sufficient nutrition or hydration by virtue of their mental illness or acute medical conditions, who are not intentionally fasting for medical or religious reasons, and who have not announced to staff that they are on hunger strike but, will be closely observed by staff for deprivation of sufficient nutrition and hydration or significant self-harm.
- F. Offenders with metabolic disorders or other medical illnesses who deviate from normal eating habits or intake of fluid/sufficient hydration, who could experience an immediate, significant hazard (harm) to their health, well-being, and preservation, may be referred by staff to clinical services.

## 2. Initial Response:

- A. Offenders engaged in a hunger strike will be offered the opportunity to eat and drink at regularly scheduled mealtimes.
  - 1. The offender will remain in their assigned housing and retain all their allowed property and commissary items.
  - 2. The initial response is to contact clinical staff who will conduct baseline vital signs and weight. This assessment is mandatory.
  - 3. Behavioral health will consult with offenders.
  - 4. Daily visits will be scheduled with medical for weight and vital signs.
  - 5. If determined medically necessary, alternative beverages, including liquid nutritional supplements, may be offered to the offender, as ordered by the healthcare practitioner.
- B. Staff shall refer an offender on hunger strike to clinical services staff for evaluation. The evaluation procedures will be conducted by clinical services within twelve (12) hours (or sooner if deemed necessary) of staff determining an offender is on hunger strike, or when staff identify an offender is unable or unwilling to maintain sufficient nutrition or hydration for reasons not consistent with a hunger strike, i.e., mental illness, metabolic disorder, medical illness or religious fast.
- C. If the offender refuses to comply with tests, procedures, evaluations, or assessments, a record will be made by clinical services staff documenting what was offered, ordered, or recommended but refused by the offender.
  - 1. Clinical services staff will advise the offender that, at a minimum, the offender's weight will be recorded.

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2. If the offender does not cooperate in measuring his/her weight or refuses any required laboratory evaluation deemed essential by clinical services or the health care practitioner, i.e., urine specimen collection or blood draw for the lab work, the warden and the health services administrator (HSA) or designee may authorize a planned use of force to seek compliance by the offender in providing a specimen.
- D. Assessment procedures will not outweigh an offender's objection to the procedure, unless clinical services staff determine with reasonable medical certainty, that the offender is causing, or may cause, severe harm, permanent damage, or death to himself/herself.
  1. If such a determination is made, medical assessments and/or medical treatments will be conducted as deemed necessary.
- E. Clinical services and security staff will continue to meet with the offender to assess his/her current status.
  1. Staff will maintain regular contact with the offender for the duration of the offender's hunger strike and document all contact.
  2. Offenders may initiate requests for clinical services through the sick call procedure.

### **3. Criteria for Considering Involuntary Treatment:**

- A. Involuntary feeding or hydration may be considered for an offender when it is determined by clinical services staff the offender is likely to cause severe harm or death to himself/herself, or the offender's condition is deteriorating to the extent that medical intervention may soon be required.
- B. An offender is not subject to being involuntarily fed or hydrated without a hearing, except in cases requiring emergency treatment.
- C. An Involuntary Feeding or Hydration Treatment Panel will be convened to determine if the offender requires involuntary feeding and/or hydration.

### **4. Involuntary Feeding or Hydration Treatment Panel:**

- A. The Involuntary Feeding or Hydration Treatment Panel will consist of three (3) members, none of whom may have participated in the offender's current diagnosis, evaluation, or treatment.
  1. Two (2) members of the panel will be either a physician, physician assistant, or nurse practitioner.
  2. One (1) member of the panel will be a staff representative appointed by the warden, who will chair the hearing.
- B. The Involuntary Feeding or Hydration Treatment Panel will review information regarding the offender and determine if it is likely the offender's continued refusal of sufficient nutrition and/or hydration, or refused treatment, is likely to cause severe harm or death to the offender, thus warranting a need for involuntary treatment.
  1. The panel may seek testimony or written statements from anyone having knowledge of the circumstances surrounding the offender's refusal of sufficient nutrition, hydration, and/or treatment.
  2. The panel will engage in a confidential review of the offender's medical records.
  3. The panel will receive and review a proposed course of treatment for the offender, including possible involuntary treatment of the offender.
  4. The offender's attending physician will provide testimony on the offender's circumstances and conditions to the panel.

### **5. Offender Notification and Hearing Rights:**

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- A. The offender will be notified no less than forty-eight (48) hours in advance of the time and date set for the hearing before the Involuntary Feeding or Hydration Treatment Panel (see attachment #1 - *Notice of Hearing by the Involuntary Feeding or Hydration Treatment Panel*).
- B. The offender shall have the following rights:
  1. To request assistance, advice, and representation at the hearing by a disinterested lay advisor who is knowledgeable about related medical issues.
  2. To personally attend the hearing.
  3. To present information on his/her own behalf and/or have his/her lay advisor present evidence.
  4. To cross-examine any witnesses.

## 6. Decision of the Involuntary Feeding or Hydration Treatment Panel:

- A. Involuntary feeding and/or hydration may proceed upon a majority vote of the Involuntary Feeding or Hydration Treatment Panel.
  1. The decision must be based in part on reasonable medical certainty that there is an immediate threat to the offender's life or possibility of permanent damage to the offender's health.
- B. The offender will be advised, in writing, of the Involuntary Feeding or Hydration Treatment Panel's decision (see attachment #2 - *Findings of the Involuntary Feeding or Hydration Treatment Panel*).
- C. Copies of the panel's decision will also be provided to the attending physician, clinical services, DOC legal staff, and respective warden.

## 7. Ordering Treatment and Physician Reviews:

- A. *There are written plans that specify the procedures to be followed in situations that threaten institutional security. Such situations include but are not limited to riots, hunger strikes, disturbances, and taking of hostages, and natural or man-made disasters. These plans are made available to all applicable personnel and are reviewed annually and updated as needed [ACA 5-ACI-3B-14].* Designated staff will proceed with treating the offender, consistent with the decision of the panel, and as deemed medically necessary to preserve the offender's health and life, consistent with the orders of the attending physician(s), nurse practitioner, or physician assistant, for an initial period not to exceed thirty (30) days.
- B. After the first ten (10) days of treatment, and at intervals not to exceed three (3) days thereafter, the treatment must be reviewed by a health care practitioner who is not the attending physician.

## 8. Documentation of Hearings and Findings:

- A. Documentation of all hearings, findings, and actions taken by the panel or physician will be maintained in the offender's electronic health record (EHR), with copies provided to clinical services.
  1. A record of the involuntary treatment will be maintained in the offender's EHR or other designated and approved location.
  2. A copy of any ten (10) day review and any subsequent three (3) day reviews by a non-attending physician will be provided to clinical services.
- B. The chair of the Involuntary Feeding or Hydration Treatment Panel will maintain a log of hearings conducted by the panel. The log will include:
  1. The date the Involuntary Feeding or Hydration Treatment Panel conducted the hearing.
  2. The name(s) and identification number(s) of the offender(s).
  3. The names, titles, and business addresses of the panel members.
  4. The name(s) of any other person appearing and presenting information to the panel.
  5. The decision of the panel.

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## 9. Emergency Treatment:

- A. In an emergency, involuntary treatment of an offender may be administered without review by the panel for up to three (3) days, if the treatment is ordered by two (2) medical representatives (a physician, physician assistant, or nurse practitioner).
  1. An emergency exists when there is reasonable medical certainty the offender is causing, or may cause, severe harm, permanent damage, or death to himself/herself while awaiting a hearing.
- B. After three (3) days of involuntary treatment, any additional treatment requires approval from the panel.
- C. If the medical representative(s) believe there is a likelihood treatment will exceed three (3) days, an Involuntary Feeding or Hydration Treatment Panel will be convened as soon as reasonably possible within the initial three (3) days, consistent with the forty-eight (48) hour notice requirement of this policy.
- D. Prior to emergency involuntary treatment being administered, staff will make reasonable efforts to convince the offender to voluntarily accept treatment. Possible medical risks faced by the offender, if treatment is not accepted, will be explained to the offender. Staff will document all treatment efforts in the offender's medical record.
- E. Written documentation of the order to provide emergency involuntary treatment will be maintained in the offender's EHR.
  1. Daily written reports of treatment administered shall be submitted to the HSA and warden.
  2. Clinical services staff will continue clinical and laboratory monitoring as necessary until the offender's life or permanent health is no longer threatened.
- F. If and when it is determined medically appropriate and necessary, an offender may be transferred to the care of an outside medical practitioner.
- G. None of the procedures or guidelines (does not include applicable statutes) contained in this policy are intended to limit or override the exercise of sound medical judgment by medical personnel.
  1. Each case must be evaluated on its own merits and individual circumstances.
  2. Treatment is to be offered and documented in accordance with accepted medical practice.

## 10. Liability/Immunity:

- A. Pursuant to SDCL § 24-11B-8, no person who serves on the Involuntary Feeding or Hydration Treatment Panel who is the attending physician, warden, or orders or participates in the involuntarily feeding or hydrating of an offender, may be held civilly or criminally liable for the involuntarily feeding or hydrating of the offender pursuant to chapter 24-11B, if the person performs these duties in good faith, and in a reasonable manner according to generally accepted medical or other professional practices.

## 11. Other Action:

- A. The attending physician, with input from the panel, may order an offender released from evaluation and treatment status when it is determined the offender's oral intake of food and liquid has been achieved. Monitoring for severe or life-threatening complications of malnutrition may continue at the discretion of the attending physician, beyond the point at which the offender resumes adequate oral intake.
  1. This order will be recorded in the offender's EHR.

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- B. Media contacts concerning an offender's hunger strike status will be directed to the warden, the public information officer, or SOC.

## V. RESPONSIBILITY

The director of Clinical and Correctional Services and the director of Prisons will review this policy annually and update as necessary.

## VI. AUTHORITY

SDCL §§ 1-26, 24-11B-1 through 24-11B-8, inclusive, 34-12D-01, 36-4A-01, and 36-9A-12.

## VII. HISTORY

January 2024 – Renumbered from 1.4.E.11  
August 2021  
September 2019  
September 2018  
October 2017  
September 2016  
October 2015  
November 2014  
October 2013

## ATTACHMENTS *(\*Indicates document opens externally)*

1. Notice of Hearing by the Involuntary Feeding or Hydration Treatment Panel\*
2. Findings of the Involuntary Feeding or Hydration Treatment Panel\*
3. DOC Policy Implementation / Adjustments

### NOTICE OF HEARING BY THE INVOLUNTARY FEEDING OR HYDRATION TREATMENT PANEL

Offender Name: \_\_\_\_\_

Number: \_\_\_\_\_

A hearing before the Involuntary Feeding or Hydration Treatment Panel for the purpose of deciding possible treatment by the involuntary feeding or hydration of the offender named above will be held on:

Date: \_\_\_\_\_ Time: \_\_\_\_\_

Place of Hearing: \_\_\_\_\_

Reason for hearing: \_\_\_\_\_

I do  I do not desire to be present at the hearing.

I do  I do not desire the assistance of a lay advisor.

Name of lay advisor: \_\_\_\_\_

Offender's Signature: \_\_\_\_\_ Date/Time: \_\_\_\_\_  
(If the offender refuses to sign, the staff member serving the notice will sign below)

Staff Signature: \_\_\_\_\_ Date/Time: \_\_\_\_\_

**Statement Of Your Rights Pursuant To State Law:**

1. You will be given notice not less than forty-eight (48) hours prior to the hearing.
2. Your hearing will be held before a panel that will consist of two (2) medical representatives and a representative of the SD DOC, none of whom have been involved in your treatment decisions. A majority of the panel members must agree to involuntary treatment before forced feeding or hydration will begin, unless emergency action was necessary.
3. You may be present at the hearing unless you have indicated otherwise.
4. You may choose a disinterested lay advisor who is knowledgeable about medical issues to assist you.
5. You may be present information on your own behalf. You may cross-examine witnesses present at the hearing.
6. You will be notified in writing of the panel's decision following the hearing.
7. Should the panel decide to proceed with involuntary treatment, and if involuntary feeding or hydration exceeds ten (10) days, your case will be reviewed by a non-attending physician and at subsequent intervals not to exceed three (3) days.
8. You have the right to appeal the panel's adverse decision to the secretary of corrections.
9. You have the right to appeal the secretary of corrections' adverse decision to the circuit court.

**Original to: Offender**  
**Copies to: Unit manager/Institutional file**  
**Clinical services/Attending physician**  
**Hearing panel members**

### FINDINGS OF THE INVOLUNTARY FEEDING OR HYDRATION TREATMENT PANEL

Offender Name: \_\_\_\_\_ Number: \_\_\_\_\_ Date: \_\_\_\_\_

The panel heard/reviewed evidence and found the following:

- 1.  There is (or)  There is not information indicating the offender is likely to cause severe harm to himself/ herself, and:
- 2.  The harm is (or)  is not the result of a short term or temporary fast imposed for medical or religious reasons.
- 3. Without involuntary hydration or feeding the offender is likely to suffer serious physical injury: \_\_\_ Yes  
\_\_\_ No

Other considerations of the panel: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**FINDINGS ON HUNGER STRIKE:** Based on information presented on this date, the panel finds as follows:

- 1.  The offender is (or)  is not engaged in a hunger strike. If the panel determines the offender **is** engaged in a hunger strike, complete the remaining items in this section and the section **Findings On Treatment**.
- 2. The offender's hunger strike has been underway for \_\_\_\_\_ consecutive meals.
- 3. Based on the records kept by clinical services, the offender's weight has changed during the hunger strike from:  
\_\_\_\_\_ pounds on \_\_\_\_\_ (date) to \_\_\_\_\_ pounds on \_\_\_\_\_ (date)

**FINDINGS ON TREATMENT:** The panel has determined the following (check one):

- Medically identifiable results of a hunger strike that pose a serious and severe threat to the offender’s continued health and wellbeing have been documented by medical staff. The offender's medical condition is likely to improve with treatment through the use of involuntary feeding or hydration, or both. The involuntary feeding and hydration of the offender will proceed pursuant to South Dakota Codified Laws §§ 24-11B-1 through §§ 24-11B-8 and other applicable South Dakota law and the procedures of the South Dakota Department of Corrections.
- The offender's current medical condition as a result of his hunger strike does not provide sufficient cause in the opinion of the panel to require the use of involuntary hydration or feeding according to South Dakota Codified Laws §§ 24-11B-1 through §§ 24-11B-8 and other applicable South Dakota law.

Signed:

1. Medical Representative: \_\_\_\_\_ Date: \_\_\_\_\_  
 2. Medical Representative: \_\_\_\_\_ Date: \_\_\_\_\_  
 3. DOC Representative: \_\_\_\_\_ Date: \_\_\_\_\_

Copies to: Offender    Unit manager/Legal file    Attending physician    Warden