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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 2379

03/11/2019 Authored by Brand and Sundin The bill was read for the first time and referred to the Judiciary Finance and Civil Law Division

1.1 A bill for an act
1.2 relating to human services; modifying policy provisions governing direct care and
1.3 treatment; amending Minnesota Statutes 2018, sections 253B.18, subdivision 13,
1.4 by adding subdivisions; 253D.28, subdivision 3; 609.2231, subdivision 3a.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2018, section 253B.18, is amended by adding a subdivision
1.7 to read:

1.8 Subd. 6a. Transfer; voluntary readmission to secure treatment facility. (a) After a
1.9 patient has been transferred out of a secure treatment facility pursuant to subdivision 6, the
1.10 patient with the medical director's consent may voluntarily return to a secure treatment
1.11 facility for a period of up to 60 days.

1.12 (b) If the patient is not returned to the facility to which the person was originally
1.13 transferred pursuant to subdivision 6 within 60 days of being readmitted to a secure treatment
1.14 facility, the transfer is revoked and the patient shall remain in a secure treatment facility.
1.15 The patient shall immediately be notified by the medical director in writing of the revocation.

1.16 (c) Within 15 days of receiving notice of the revocation, the patient may petition the
1.17 special review board for a review of the revocation. The special review board shall review
1.18 the circumstances of the revocation and shall recommend to the commissioner whether or
1.19 not the revocation shall be upheld. The special review board may also recommend a new
1.20 transfer at the time of the revocation hearing.

1.21 (d) If the transfer has not been revoked and the patient is to be returned to the facility
1.22 to which the patient was originally transferred pursuant to subdivision 6 with no substantive

2.1 change to the conditions of the transfer ordered pursuant to subdivision 6, no action by the
2.2 special review board or commissioner is required.

2.3 **EFFECTIVE DATE.** This section is effective the day following final enactment and
2.4 applies to any patient who is or retroactively to any patient who has been transferred out of
2.5 a secure treatment facility pursuant to Minnesota Statutes, section 253B.18, subdivision 6,
2.6 on or after that date.

2.7 Sec. 2. Minnesota Statutes 2018, section 253B.18, is amended by adding a subdivision to
2.8 read:

2.9 Subd. 6b. **Transfer; revocation.** (a) The medical director may revoke a transfer made
2.10 pursuant to subdivision 6 and require a patient to return to a secure treatment facility if:

2.11 (1) remaining in a nonsecure setting will not provide a reasonable degree of safety to
2.12 the patient or others; or

2.13 (2) the facility to which the patient transferred is no longer sufficient to meet the patient's
2.14 treatment needs.

2.15 (b) Upon the revocation of the transfer, the patient shall be immediately returned to a
2.16 secure treatment facility. The medical director shall issue a report documenting the reasons
2.17 for revocation within seven days after the patient is returned to the secure treatment facility.
2.18 Advance notice to the patient of the revocation is not required.

2.19 (c) The medical director must provide a copy of the revocation report to the patient and
2.20 inform the patient, orally and in writing, of the rights of a patient under this subdivision.
2.21 The revocation report shall be served upon the patient and the patient's counsel by the
2.22 medical director. The report shall outline the specific reasons for the revocation including
2.23 but not limited to the specific facts upon which the revocation is based.

2.24 (d) If a patient's transfer is revoked, the patient may re-petition for transfer according to
2.25 subdivision 5.

2.26 (e) A patient aggrieved by a transfer revocation decision may petition the special review
2.27 board within seven days, excluding Saturdays, Sundays, and holidays as defined in section
2.28 645.44, subdivision 5, after receipt of the revocation report for a review of the revocation.
2.29 The matter shall be scheduled within 30 days. The special review board shall review the
2.30 circumstances leading to the revocation and, after considering the factors in paragraph (a),
2.31 shall recommend to the commissioner whether or not the revocation shall be upheld. The
2.32 special review board may also recommend a new transfer out of a secure treatment facility
2.33 pursuant to subdivision 6 at the time of the revocation hearing.

3.1 **EFFECTIVE DATE.** This section is effective the day following final enactment and
 3.2 applies to any patient who is or retroactively to any patient who has been transferred out of
 3.3 a secure treatment facility pursuant to Minnesota Statutes, section 253B.18, subdivision 6,
 3.4 on or after that date.

3.5 Sec. 3. Minnesota Statutes 2018, section 253B.18, subdivision 13, is amended to read:

3.6 Subd. 13. **Appeal.** Any patient aggrieved by a provisional discharge revocation decision
 3.7 or any interested person may petition the special review board within seven days, exclusive
 3.8 of Saturdays, Sundays, and ~~legal~~ holidays as defined in section 645.44, subdivision 5, after
 3.9 receipt of the revocation report for a review of the revocation. The matter shall be scheduled
 3.10 within 30 days. The special review board shall review the circumstances leading to the
 3.11 revocation and shall recommend to the commissioner whether or not the revocation shall
 3.12 be upheld. The special review board may also recommend a new provisional discharge at
 3.13 the time of a revocation hearing.

3.14 **EFFECTIVE DATE.** This section is effective the day following final enactment.

3.15 Sec. 4. Minnesota Statutes 2018, section 253D.28, subdivision 3, is amended to read:

3.16 Subd. 3. **Decision.** A majority of the judicial appeal panel shall rule upon the petition.
 3.17 The panel shall consider the petition de novo. No order of the judicial appeal panel granting
 3.18 a transfer, ~~discharge, or provisional discharge~~ shall be made effective sooner than 15 days
 3.19 after it is issued. No order of the judicial appeal panel granting provisional discharge or
 3.20 discharge shall be made effective sooner than 30 days after it is issued. The panel may not
 3.21 consider petitions for relief other than those considered by the special review board from
 3.22 which the appeal is taken. The judicial appeal panel may not grant a transfer or provisional
 3.23 discharge on terms or conditions that were not presented to the special review board.

3.24 **EFFECTIVE DATE.** This section is effective the day following final enactment and
 3.25 applies to any judicial appeal panel order granting provisional discharge or discharge that
 3.26 is issued on or after that date.

3.27 Sec. 5. Minnesota Statutes 2018, section 609.2231, subdivision 3a, is amended to read:

3.28 Subd. 3a. **Secure treatment facility personnel.** (a) As used in this subdivision, "secure
 3.29 treatment facility" includes facilities listed in sections 253B.02, subdivision 18a, and
 3.30 253D.02, subdivision 13.

3.31 (b) Whoever, while committed under chapter 253D, Minnesota Statutes 2012, section
 3.32 253B.185, or Minnesota Statutes 1992, section 526.10, commits either of the following acts

4.1 against an employee or other individual who provides care or treatment at a secure treatment
4.2 facility while the person is engaged in the performance of a duty imposed by law, policy,
4.3 or rule is guilty of a felony and may be sentenced to imprisonment for not more than two
4.4 years or to payment of a fine of not more than \$4,000, or both:

4.5 (1) assaults the person and inflicts demonstrable bodily harm; or

4.6 (2) intentionally throws or otherwise transfers bodily fluids or feces at or onto the person.

4.7 (c) Whoever, while committed under section 253B.18, or admitted under the provision
4.8 of section 253B.10, subdivision 1, commits either of the following acts against an employee
4.9 or other individual who supervises and works directly with patients at a secure treatment
4.10 facility while the person is engaged in the performance of a duty imposed by law, policy,
4.11 or rule, is guilty of a felony and may be sentenced to imprisonment for not more than two
4.12 years or to payment of a fine of not more than \$4,000, or both:

4.13 (1) assaults the person and inflicts demonstrable bodily harm; or

4.14 (2) intentionally throws or otherwise transfers ~~urine, blood, semen,~~ bodily fluids or feces
4.15 onto the person.

4.16 (d) The court shall commit a person convicted of violating paragraph (b) to the custody
4.17 of the commissioner of corrections for not less than one year and one day. The court may
4.18 not, on its own motion or the prosecutor's motion, sentence a person without regard to this
4.19 paragraph. A person convicted and sentenced as required by this paragraph is not eligible
4.20 for probation, parole, discharge, work release, or supervised release, until that person has
4.21 served the full term of imprisonment as provided by law, notwithstanding the provisions of
4.22 sections 241.26, 242.19, 243.05, 244.04, 609.12, and 609.135.

4.23 (e) Notwithstanding the statutory maximum sentence provided in paragraph (b), when
4.24 a court sentences a person to the custody of the commissioner of corrections for a violation
4.25 of paragraph (b), the court shall provide that after the person has been released from prison,
4.26 the commissioner shall place the person on conditional release for five years. The terms of
4.27 conditional release are governed by sections 244.05 and 609.3455, subdivision 6, 7, or 8;
4.28 and Minnesota Statutes 2004, section 609.109.