

CHAPTER 623 — S.F.No. 2108

An act relating to civil commitment; establishing procedures for passes for persons committed as mentally ill and dangerous; permitting respondents to be absent from hearings under certain conditions; clarifying the conditions under which a guardian may place a minor ward in certain treatment facilities; providing for status review of persons residing in state facilities pursuant to an order of guardianship; amending Minnesota Statutes 1982, sections 253B.02, by adding subdivisions; 253B.08, subdivision 5; 253B.18, by adding subdivisions; and 526.10; Minnesota Statutes 1983 Supplement, sections 253B.07, subdivision 7; and 525.619; and Laws 1982, chapter 581, section 26, as amended.

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

Section 1. Minnesota Statutes 1982, section 253B.02, is amended by adding a subdivision to read:

Subd. 21. PASS. "Pass" means any authorized temporary, unsupervised absence from a treatment facility.

Sec. 2. Minnesota Statutes 1982, section 253B.02, is amended by adding a subdivision to read:

Subd. 22. PASS PLAN. "Pass plan" means the part of a treatment plan for a person who has been committed as mentally ill and dangerous that specifies the terms and conditions under which the patient may be released on a pass.

Sec. 3. Minnesota Statutes 1982, section 253B.02, is amended by adding a subdivision to read:

Subd. 23. PASS-ELIGIBLE STATUS. "Pass-eligible status" means the status under which a person committed as mentally ill and dangerous may be released on passes after approval of a pass plan by the head of a treatment facility.

Sec. 4. Minnesota Statutes 1983 Supplement, section 253B.07, subdivision 7, is amended to read:

Subd. 7. **PRELIMINARY HEARING.** (a) No proposed patient may be held pursuant to subdivision 6 for longer than 72 hours, exclusive of Saturdays, Sundays, and legal holidays, unless the court holds a preliminary hearing and determines that probable cause exists to continue to hold him.

(b) The proposed patient, his counsel, the petitioner, the county attorney, and any other persons as the court directs shall be given at least 24 hours written notice of the preliminary hearing. The notice shall include the alleged grounds for confinement. The proposed patient shall be represented at the preliminary hearing by counsel. If the court finds it to be reliable, it may admit hearsay evidence, including written reports.

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

(c) The court, on its motion or on motion of any party, may exclude or excuse a respondent who is seriously disruptive or who is totally incapable of comprehending and participating in the proceedings. In such instances, the court shall, with specificity on the record, state the behavior of respondent or other circumstances justifying proceeding in the absence of the respondent.

(d) The court may order the continued holding of the proposed patient if it finds, by a preponderance of the evidence, that serious imminent physical harm to the patient or others is likely if the proposed patient is not confined. The fact that a proposed patient was acquitted of a crime against the person under section 611.026 immediately preceding the filing of the petition constitutes evidence that serious imminent physical harm to the patient or others is likely if the proposed patient is not confined and shifts the burden of going forward in the presentation of evidence to the proposed patient; provided that the standard of proof remains as required by this chapter.

Sec. 5. Minnesota Statutes 1982, section 253B.08, subdivision 5, is amended to read:

Subd. 5. **ABSENCE PERMITTED.** (a) The court may permit the proposed patient to waive his right to attend the hearing if it determines that the waiver is freely given. All waivers shall be on the record. At the time of the hearing the patient shall not be so under the influence or suffering from the effects of drugs, medication, or other treatment so as to be hampered in participating in the proceedings. When in the opinion of the licensed physician or licensed consulting psychologist attending the patient the discontinuance of drugs, medication, or other treatment is not in the best interest of the patient, the court, at the time of the hearing, shall be presented a record of all drugs, medication or other treatment which the patient has received during the 48 hours immediately prior to the hearing.

(b) The court, on its own motion or on motion of any party, may exclude or excuse a respondent who is seriously disruptive or who is totally incapable of comprehending and participating in the proceedings. In such instances, the court shall, with specificity on the record, state the behavior of respondent or other circumstances justifying proceeding in the absence of the respondent.

Sec. 6. Minnesota Statutes 1982, section 253B.18, is amended by adding a subdivision to read:

Subd. 4a. **RELEASE ON PASS; NOTIFICATION.** A patient who has been committed as mentally ill and dangerous and who is confined at the Minnesota security hospital shall not be released on a pass unless the pass is part of a pass plan that has been approved by the medical director of the Minnesota security hospital. At least ten days prior to a determination on the plan, the medical director shall notify the designated agency, the committing court, the county attorney of the county of commitment, an interested person, the petition-

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

er, and the petitioner's counsel of the plan, the nature of the passes proposed, and their right to object to the plan. If any notified person objects prior to the proposed date of implementation, the person shall have an opportunity to appear, personally or in writing, before the medical director, within ten days of the objection, to present grounds for opposing the plan. The pass plan shall not be implemented until the objecting person has been furnished that opportunity. Nothing in this subdivision shall be construed to give a patient an affirmative right to a pass plan.

Sec. 7. Minnesota Statutes 1982, section 253B.18, is amended by adding a subdivision to read:

Subd. 4b. PASS-ELIGIBLE STATUS; NOTIFICATION. The following patients committed to the Minnesota security hospital shall not be placed on pass-eligible status unless that status has been approved by the medical director of the Minnesota security hospital:

(a) a patient who has been committed as mentally ill and dangerous and who

(1) was found incompetent to proceed to trial for a felony or was found not guilty by reason of mental illness of a felony immediately prior to the filing of the commitment petition;

(2) was convicted of a felony immediately prior to or during his commitment as mentally ill and dangerous; or

(3) is subject to a commitment to the commissioner of corrections; and

(b) a patient who has been committed as a psychopathic personality, as defined in section 526.09.

At least ten days prior to a determination on the status, the medical director shall notify the committing court, the county attorney of the county of commitment, an interested person, the petitioner, and the petitioner's counsel of the proposed status, and their right to request review by the special review board. If within ten days of receiving notice any notified person requests review by filing a notice of objection with the commissioner and the head of the treatment facility, a hearing shall be held before the special review board. The proposed status shall not be implemented unless it receives a favorable recommendation by a majority of the board and approval by the commissioner. The order of the commissioner is appealable as provided in section 253B.19.

Nothing in this subdivision shall be construed to give a patient an affirmative right to seek pass-eligible status from the special review board.

Sec. 8. Minnesota Statutes 1983 Supplement, section 525.619, is amended to read:

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

525.619 POWERS AND DUTIES OF GUARDIAN OF MINOR.

A guardian of a minor has the powers and responsibilities of a parent who has not been deprived of custody of his minor and unemancipated child, except that a guardian is not legally obligated to provide from his own funds for the ward. In particular, and without qualifying the foregoing, a guardian has the following powers and duties:

(a) He must take reasonable care of his ward's personal effects and commence protective proceedings if necessary to protect other property of the ward.

(b) He may receive money payable for the support of the ward to the ward's parent, guardian or custodian under the terms of any statutory benefit or insurance system, or any private contract, devise, trust, conservatorship or custodianship. He also may receive money or property of the ward paid or delivered by virtue of section 525.6196. Any sums so received shall be applied to the ward's current needs for support, care and education. He must exercise due care to conserve any excess for the ward's future needs unless a conservator has been appointed for the estate of the ward, in which case the excess shall be paid over at least annually to the conservator. Sums so received by the guardian are not to be used for compensation for his services except as approved by order of court or as determined by a duly appointed conservator other than the guardian. A guardian may institute proceedings to compel the performance by any person of a duty to support the ward or to pay sums for the welfare of the ward.

(c) The guardian is empowered to facilitate the ward's education, social, or other activities and to authorize medical or other professional care, treatment or advice. A ward who is less than 16 years of age may be admitted to a treatment facility as an informal patient according to section 253B.04 but may not be committed to any state institution except pursuant to chapter 253B and. No guardian may give consent for psychosurgery, electroshock, sterilization or experimental treatment of any kind unless the procedure is first approved by the order of the court, after a hearing as prescribed by section 525.56, subdivision 2.

A guardian is not liable by reason of his consent for injury to the ward resulting from the negligence or acts of third persons unless it would have been illegal for a parent to have consented, or unless he fails to comply with the requirements of this section which provide that a court order is necessary for commitment and for certain types of medical procedures. A guardian may consent to the marriage or adoption of his ward.

(d) A guardian must report the condition of his ward and of the ward's estate which has been subject to his possession or control, as ordered by the court on its own motion or on petition of any person interested in the minor's welfare and as required by court rule.

Sec. 9. Minnesota Statutes 1982, section 526.10, is amended to read:

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

526.10 LAWS RELATING TO MENTALLY ILL PERSONS DANGEROUS TO THE PUBLIC TO APPLY TO PSYCHOPATHIC PERSONALITIES.

Except as otherwise provided herein or in chapter 253B, the provisions of chapter 253B, pertaining to persons mentally ill and dangerous to the public shall apply with like force and effect to persons having a psychopathic personality, to persons alleged to have such personality, and to persons found to have such personality, respectively. Before such proceedings are instituted, the facts shall first be submitted to the county attorney, who, if he is satisfied that good cause exists therefor, shall prepare the petition to be executed by a person having knowledge of the facts and file the same with the judge of the probate court of the county in which the "patient," as defined in such statutes, has his settlement or is present. The judge of probate shall thereupon follow the same procedures set forth in chapter 253B, for judicial commitment. The judge may at his discretion exclude the general public from attendance at such hearing. If, upon completion of the hearing and consideration of the record, the court finds the proposed patient has a psychopathic personality, the court shall commit such person to a public hospital or a private hospital consenting to receive him, subject to a mandatory review by the head of the hospital within 60 days from the date of the order as provided for in chapter 253B for persons found to be mentally ill and dangerous to the public. The patient shall thereupon be entitled to all of the rights provided for in chapter 253B, for persons found to be mentally ill and dangerous to the public, and all of the procedures provided for in chapter 253B, for persons found to be mentally ill and dangerous to the public shall apply to such patient.

Sec. 10. Laws 1982, chapter 581, section 26, as amended by Laws 1983, chapter 251, section 27, is amended to read:

Sec. 26. EFFECTIVE DATE.

This act is effective August 1, 1982 and applies to any conduct, transaction, or proceeding within its terms which occurs after August 1, 1982. A proceeding for the commitment of a person to a treatment facility commenced before August 1, 1982, is governed by the law existing at the time the proceeding was commenced; provided, however, that if the proceedings are not terminated by August 1, 1983, they shall thereafter be governed by the provisions of sections 1 to 23. Any person, other than a person committed as mentally ill and dangerous, who was committed pursuant to chapter 253A and whose term of commitment is indeterminate shall have his status reviewed pursuant to the provisions of section 12 prior to February 1, 1984.

For persons 16 years or older, involuntarily residing in a regional center pursuant to an order of guardianship, and not committed pursuant to an order issued under Minnesota Statutes, chapter 253B, or Minnesota Statutes 1980, chapter 253A, the following review procedures will apply:

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

(a) The person shall have a commitment hearing according to Minnesota Statutes, section 253B.08, prior to August 1, 1985. The head of the regional center shall notify the responsible county which shall initiate the petition for commitment.

(b) The person shall be deemed to be legally committed to the head of the regional center until the committing court issues an appropriate judgment according to Minnesota Statutes, section 253B.09, or until August 1, 1985, whichever date occurs first.

(c) A finding by the committing court that the individual does not satisfy the commitment criteria of Minnesota Statutes, chapter 253B, shall not terminate the guardianship or constitute a restoration to capacity. An order of restoration to capacity may only be obtained under Minnesota Statutes, section 525.61.

If the committing court finds that the individual does not satisfy the commitment criteria set forth in Minnesota Statutes, section 253B, the court, by order shall immediately notify the county welfare board. The designated agency shall locate an appropriate community placement within 90 days of notification by the guardian. Until an appropriate placement is available, the ward may continue to reside in the regional center in which the ward resided prior to the commitment hearing.

Sec. 11. EFFECTIVE DATE.

Sections 4, 5, 8, and 10 are effective the day following final enactment.

Approved May 2, 1984

CHAPTER 624 — S.F.No. 1560

An act relating to crimes; subjecting certain property to forfeiture if exchanged for or associated with controlled substances; conforming definitions with other statutes; amending Minnesota Statutes 1982, section 152.19, subdivisions 1, 2, 4, 5, and 8.

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

Section 1. Minnesota Statutes 1982, section 152.19, subdivision 1, is amended to read:

Subdivision 1. The following are subject to forfeiture:

(1) All controlled substances which have been manufactured, distributed, dispensed or acquired in violation of this chapter;

(2) All raw materials, moneys, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing,

Changes or additions are indicated by underline, deletions by ~~strikeout~~.